Furthering Judicial Education

Proceedings of the Conference of Judicial Schools in Latin America

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Furthering Judicial Education: Proceedings of the Conference of Judicial Schools in Latin America

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Furthering Judicial Education
Proceedings of the Conference of Judicial Schools in Latin America

Waleed Haider Malik
Carlos Esteban Larios-Ochaita

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Foreword

Guatemala’s Supreme Court of Justice, in partnership with the World Bank hosted a conference in Guatemala of judicial school directors from Latin America and elsewhere in October 2001, entitled “Toward Judicial Excellence.” This region-wide meeting was intended to promote the exchange of ideas among judicial school managers, judges, trainers, experts, researchers, practitioners, law students, and government officials who are working in the area of judicial education and training. The conference generated tremendous interest. Participants included representatives from 11 countries, including Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Nicaragua, Panama, and Venezuela. Also in attendance were a number of representatives from the UNDP, UNOPS, USAID, and the World Bank as well as participants and observers from a wide range of justice sector institutions in Guatemala. The meeting coincided with the festive occasion of the inauguration of the newly expanded and renovated facilities of Guatemala’s Judicial School.

The conference focused on highlighting the links between achieving judicial excellence, successful judicial reform, and the delivery of high-quality judicial education programs. It aimed to harness good practice and knowledge for furthering judicial education. The conference focused on the following themes and work group topics: concepts of judicial excellence, judicial ethics and the role of human rights training, perspectives on maximizing e-learning and distance education, excellence in in-service training and evaluation, the use of education to promote change in the courts, and inspiring judicial vocation in law students and future professionals.

We are pleased to provide the proceedings of this conference. It is hoped that this volume will help judiciaries identify effective strategies to improve the quality and impact of their educational programs.

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Abstract

The papers in this volume were presented at the international conference on judicial excellence in Guatemala on October 8, 2001. The meeting was organized by the Supreme Court of Justice of Guatemala in partnership with the World Bank, where judicial school directors, judges, practitioners, law students, and officials from over 11 countries participated. The meeting aimed to harness good practices and knowledge for furthering judicial education, based on the premise that the knowledge and skills of judges, of court staff, and of other justice sector professionals and users impact significantly on the performance of the judicial system. Discussions centered around different themes and working-group topics, including concepts of judicial excellence, judicial ethics and the role of human rights training, e-learning and distance education, in-service training and evaluation methodologies, attitudinal change in the courts and the role of education, and strategies to inspire future generations of law students and professionals. This report brings together the proceedings of the conference on the various facets of judicial education and its challenges and opportunities. It is hoped that this volume will help judiciaries improve the performance of judicial education programs and systems.
Acknowledgments

Special thanks are due to the Guatemalan Judiciary Branch and Supreme Court of Justice, and particularly to its Judicial School and Modernization Unit, for hosting the meeting and for assisting with the publication of the proceedings, and in particular to Lic. Carlos Alfonso Alvarez-Lobos Villatoro, President of the Judicial Branch and Supreme Court of Justice (2001–02); Dr. Hugo Leonel Maúl Figueroa (President of the Judicial Branch and Supreme Court of Justice for 2000–01); Dr. Carlos Larios Esteban Ochaita, Supreme Court Justice and Coordinator of the Judicial Branch Modernization Unit; Licda. Amanda Ramírez de Arias, Supreme Court Justice and Conference Coordinator; Licda. María del Carmen Ortiz, Sub-Coordinator of the Modernization Unit; Lic. Osvaldo Aguilar, Director of the Judicial School; Byron Escobedo; and Laurie Sargent. Special thanks are due to every member of the Judicial Branch Modernization Unit team for their help in organizing and running the meeting, and especially to Napoleón Guix, Miguel Ángel Fuentes, José Rodríguez, Patricia Moreno, Carroll del Cid, Patricia Escobar; Ana María Hernández, Cristina Ibáñez, Waldemar Leonardo, Mildred Luna de Espina, Gustavo Monterroso, Pedro Pablo Pérez Quan, Rogelio Rodríguez, and Ernesto Sitamul.

Special thanks are also due to the Guatemalan ambassador in Washington, D.C., Mr. Arias, for his collaboration and support for this conference. Also special thanks are also due to Patricia O’Connor, Josefina Coutino of UNDP, Brian Treacy and Steve Hendrix of USAID, Palmeri de Luzena of UNOPS, and Leonel Maza of the Guatemalan Embassy in Washington, D.C., for their participation and contributions. In addition to contributions from the distinguished speakers, panelists, and coordinators, the meeting benefited from the assistance of Luis Roberto Aragón, Elizabeth Ávila de Gaitán, Fernando Aroche, Sandra Carrillo, Martha Castro, Massielle Cotto Klussmann, Fernando González Freeman, Gladys Pappa, Karin Romero, the entire staff of the Guatemalan Judicial School, and particularly the working group reporters: Irma Borrayo, Martha Cazali, Elisa de Aqueche, Hugo Jáuregui, Edna Rodríguez, and Ricardo Velásquez.

The meeting and report have benefited from the support of Ko-Yung Tung, David De Ferranti, Moises Pienda, Donna Dowsett-Coirolo, Cheryl Gray, Ernesto May, Ian Bannon, Claudia Costin, Francisco Castro y Ortiz, Ronald Myers, Maria Dakolias, Suzana Augusto, Humberto Lopez, Eduardo Somensatto, Roberto Panzardi, Richard Messick, Herman Nissenbaum, Beth Lin, Martine Wauters, Nina Ohman, Alexandra Habershon, Claudia Morbiducci, Sharon Spriggs, David Gray, Bari Rabin, Tania Gupta, Mayela Rojas, Karine Abdelnoor, Eva Liebanas, Shirley Matzen, Sonia
Ruseller, Sergio Jellineck, Elizabeth Greene, Carlos Jimenez, Shannah Metz, Cristina Villegas, Raul Gochez, and others at the World Bank for policy guidance, organization and research support, report production and graphics, editorial assistance, translation services, administrative support, and other contributions.

The material in this volume is taken mostly from papers and transcripts in Spanish that have been translated into English and edited for readability. All efforts have been made to adhere to the original in the English-language-equivalent titles of participants and terms. The findings, interpretations, and conclusions expressed in this document are entirely those of the author(s) and should not be attributed in any manner to the World Bank, to its affiliated organization, or to the members of its Board of Executive Directors or the countries they represent. The World Bank does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of their use.
PART I

OVERVIEW
Furthering Judicial Education

Mr. Waleed Haider Malik
Senior Public Sector Management Specialist, World Bank

Since a competent judiciary is essential for the effective application of the rule of law, the role of their training and education is critical. That is because the knowledge and skills of judges, court staff—both legal and other disciplines, justice and legal sector professionals, and users impact significantly on the performance of the judicial system.

These educational activities encompass the training of new judges and staff, continuous education for all already in the system, knowledge management programs diffusing best practices, technological advances to enhance educational impact and content, and outreach and information programs. Their quality is important. Successful education in turn depends upon the merit and relevance of the content, the quality and adequacy of the training faculty, the disposition of the participants and their incentives to enhance knowledge, capacity and choice of the delivery mechanisms, effective use of resources and tools, and the capacities to plan, assess, and evaluate programs.

Many judiciaries in the developing world understand these requirements. But in many cases the quality of legal education has deteriorated. Fortunately, therefore, many are open to new ideas. They are also showing leadership in building capacities in partnerships with law schools and agencies (local and international) for assorted educational programs. They are spearheaded by supreme courts, ministries of justice, the law faculties, judges, professional associations, and judicial branches. Many of these efforts are facing challenges because of the overall evolution of the education systems in their countries. All these experiences have spread over the globe as well. Advanced communication and knowledge networks (such as the IUDICIS network of Latin American Supreme Courts, Iberoamerican Courts network, Commonwealth Association of Supreme Courts, Association of Constitutional Courts in Francophone countries) enable learning to take place more quickly and across national boundaries and across legal and judicial systems. They provide a better appreciation of what has been done and can cut costs in cases when countries want to initiate or expand training development.
For example, Guatemala has been striving toward a new judiciary with excellence. Its Supreme Court identified the need to develop varied educational programs and has set up a new judicial school (institutional training unit) for these objectives. It created new organization structures for the judiciary branch and school. Also, it is striving to build a solid faculty, brand new facilities, and tools and norms for encouraging judges and staff to receive training under the new Judicial Career Law.

At the inauguration of a new training building in Guatemala, a knowledge-sharing activity was held in October 2001. Its purpose was to harness ideas and lessons of experience through a participatory approach in the areas of judicial education and learning. This provided an input for the assorted purposes of faculty development and teaching, continuing education, new judges' orientation, e-learning, and community outreach programs. It served also to promote learning among judiciaries of the region and a core group of experts' interchange and dialogue for judicial development. It helped build bridges among legal and judicial institutions that are at times unable to coordinate or focus on common goals of professional excellence and justice.

The successful conference brought together over 100 judicial practitioners, international experts, civil society representatives, and students from 12 countries. The meeting was launched by remarks from the President of the Guatemalan Supreme Court of Justice, Lic. Hugo Leonel Maúl Figueroa. He urges participants to speak openly about their experiences, and to work together for upgrading efficiency and quality in the administration of justice. He saw the conference as a means of bringing together and sharing international lessons and knowledge. He hoped that future exchanges and meetings would advance similar agendas.

World Bank Vice-President and General Counsel, Mr. Ko-Yung Tung, emphasized the importance of framing these discussions as part of a global effort. He stressed that an effective and efficient judicial system should be a "cornerstone" of the execution of the rule of law, which he felt was integral to achieving equitable economic development, poverty alleviation, and worldwide peace. He said that the conference should be recognized as an invigorated movement toward judicial reform within Latin America and be celebrated as such.

Ms. Claudia Costin, World Bank Sector Manager, emphasized the need to harness human potential through such institutions as the judicial school. She expounded upon the benefits of heightened communication and information sharing through the utilization of modern technologies. As did others, Ms. Costin saw such improvements as critical for social stability and equitable development.

Dr. Larios Ochaita, Magistrate and Coordinator of the Judicial Branch Modernization Unit, characterized judicial education as a key component of a merit-based judicial career system. He underscored schools' problems in fulfilling their roles if their infrastructure was inadequate (as had been the case prior to the modernization efforts in Guatemala). In this connection, the conference marked the formal completion of the school's development with its expanded and renovated infrastructure, as well as its opening to processes aimed at the modernization and improvement of judicial education.

In accepting the school's keys, Lic. Edgar Osvaldo Aguilar, Director of Guatemala's Judicial School, opened it for service. In his address, Lic. Aguilar noted that the meeting both inaugurated the new facilities and provided an opportunity for a useful exchange of ideas and experience.
Keynote

As the keynote speaker, the Honorable P. N. Bhagwati, Chairman of the U.N. Human Rights Committee and former Chief Justice of India, addressed the roles of judges and lawyers as partners in the interpretation and implementation of the rule of law. He stressed the importance of an active, innovative, and flexible judiciary to carry out the intentions of the laws and ensure justice for every citizen. He emphasized the importance of educating judges to remain constantly aware of the fundamental norms enshrined in such instruments as the Universal Declaration of Human Rights. Judges should bridge the gap between rigid law and human justice; while judges must apply the constitution and the law as written, they are also inevitably called upon to interpret these instruments.

Justice Bhagwati also underscores the crucial importance of ethical judicial conduct for just execution of law, to be practiced by both the bar and the bench. He saw learning, common sense, eloquence, serenity, impartiality, integrity, and courage as fundamental for the judicial branch. He also called for the continual critical analysis of the judicial process for continual renovation and improvement. In closing, the justice endorsed the Judicial School as a necessary agent for the study, practice, and assessment of law.

Judicial Ethics

Dr. Solano Carrera of the Costa Rican Supreme Court outlined the country's new Judicial Code of Ethics. He emphasizes that the legitimacy of, and respect for, the courts must be built on a day-to-day, case-by-case basis, through the actions of judges and judicial personnel demonstrating their integrity and dedication to public service. He said the challenge is in finding a way to apply the principles of the code of ethics, in a substantive manner, rather than merely exercising their formal function. Judicial independence should be conceived as a right-obligation duality; judges have both the right and obligation to make independent judgments. This illustrates the importance of judges receiving comprehensive training on ethical issues.

Dr. Barreda Valenzuela of Guatemala's Supreme Court spoke of the fundamental values that inspired the new Ethical Norms for the Judicial Branch. He also emphasized the supremely human elements of judging. From the perspective of an educator, Dr. Barreda provided examples of topics and issues, including fundamental human rights, that should be used as practical examples for training judges on ethical norms. Dr. Barreda closed with a strong endorsement of the Judicial School's potential for producing judges who recognize the human nature of law and all citizens' basic human rights.

Following the presentations, conference participants exchanged views with the panelists. Some of the topics addressed were the structure and drafting of codes of ethics, innovative solutions to problems of language and access to justice for indigenous peoples, and the enforcement of decisions relating to human rights issues that do not have the binding force of law. Later, the participants attended working groups and shared background papers.
Working Groups

Justice Officials' Group

The delegates met in working groups to discuss their experiences with respect to the challenges and best practices in virtual and distance education, continuing judicial education, and promoting attitudinal and behavioral change conducive to increased efficiency in the courts.

Maximizing the Potential of E-Learning and Distance Education

Lic. Ángel Alfredo Figueroa, former President of the Supreme Court of Justice of Guatemala, outlined successful techniques and methodologies for uses of virtual and distance judiciary education. Stressing the need for a systemized structure, he explained the potential benefits of socialized teaching methods and other participatory frameworks that can be used in different learning structures. These techniques recognize that adult education often works with students that already have a high education level and, therefore, must challenge the students. Some strategies include in-depth discussions, role play, position defense papers, and presentations. Lic. Figueroa said that virtual learning is conducted from a central teaching site and participants interact via the Internet and email. Distance learning involves a facilitator with students studying in their own workplace about the processes and solutions they identify as a group. These alternative techniques challenge the traditional education paradigms while also bringing continued and enhanced learning to more people over greater geographic areas.

The ensuing discussion considered the advantages and opportunities for judicial education presented by new technologies. It noted the need to ensure that educational methodologies and delivery systems correspond to the subject matter being taught. Updating legal knowledge and skills may sometimes be highly efficient and cost-effective using computer-assisted learning and distance education over the Internet. In other situations, personal contacts facilitated by workshops might be needed for solidarity and discussing complex questions. Future work might include cost-benefit analysis of the different methodologies, partnerships between universities and judicial branches, and coordinating cross-institutional technology and benefit sharing. Participants agreed that new technologies had great potential to increase excellence by providing access to information in an interactive format, particularly when judges and judicial personnel are prepared to teach themselves.

Finally, the group agreed on six focal points for successful implementation and utilization of new technologies and methodologies in judicial education:

- Training programs and curricula should be planned in accordance with the institutional policies and training objectives set by the judicial branch in order to provide the skills and knowledge needed for proper performance of judicial duties.
- Virtual training and distance education should be used in combination with on-site education programs, since training over the Internet cannot entirely replace human contact, particularly for developing new skills and changing attitudes.
- Training objectives and the desired characteristics of the trained judge must be defined prior to program initiation.
• Priority should be given to participatory methodologies designed to complement the curriculum content as well as to facilitate desired behavioral changes.
• Initial training programs should be offered that develop participants’ knowledge, skills, and attitudes in order to increase their ability to self-teach, and to decrease their dependence on trainer assistance over time.
• Evaluation of training and educational programs should be done in holistic fashion, looking at the impacts, costs, administration, and quality.

Excellence in Continuing Judicial Education

Lic. Héctor Aníbal de León Velasco, Magistrate II of the Supreme Court of Justice of Guatemala, discussed the Judicial School’s continuing education program in a paper on “Achieving Excellence in Continuing Judicial Education.” He said the law requires judges and magistrates to maintain high levels of professional skills and competence. He noted that on-site continuing education is offered through the Judicial Summer School program for all sector employees. Lic. Velasco praises the school for providing a good setting for judicial employees to congregate in and analyze and debate contemporary topics of importance. The classes are designed according to the needs recognized by the students, offering not only basic training, but also more specialized and advanced courses.

Magistrate Velasco’s paper was used by the second working group to discuss the design of continuing judicial education programs. They agreed that such programs should be designed to respond to internally and externally perceived needs and weaknesses in the judicial system. This requires widespread consultations with judges and judicial personnel, as well as judicial schools or other qualified bodies. Perhaps most important, all users of the justice system should be consulted.

The group noted the similarities among the participating countries in the administration of continuing education programs, underscoring their common knowledge and focus. They agreed that it is important to incorporate new methodologies and technologies designed to facilitate adult teaching and learning into continuing education programs. The factors that should be considered when assessing the educational needs of judges include the following:

• the definition of the role and profile of the ideal judge,
• perceived needs of the legal community and civil society,
• the results of performance evaluations of judges and magistrates,
• assessments of previous training programs,
• analyses of judgments and sentences,
• public opinion from the media and other means, and
• reports from international organizations.

Using Education to Promote Efficiency in the Courts

Lic. Gerardo Alberto Hurtado Flores’s paper discussed the potential of judicial training to improve case management efficiency. He recognized that Latin America’s justice system has been plagued with inefficient, corrupt, and erroneous procedures that pose challenges to be overcome in judicial reform. He outlined Guatemala’s experience in working with various judicial actors to identify solutions to the root causes of these administrative problems. It was made clear that a partic-
ipatory approach to research, assessment, and problem solving not only demonstrates one way that judicial reform can take, but also provides a replicable step to improving case management efficiency from the inside-out.

The participants explored approaches to improving case management efficiency and, more generally, to managing the process of change in a judicial reform initiative. They noted the importance of dealing with such challenges as lack of infrastructure and equipment, and excessively formal procedural rules. These highlight the need to promote attitudinal and behavioral change among judges and judicial personnel. They observed that, even in the absence of other changes, problems of inefficiency can be greatly reduced if the judiciary adopts a more humane and service-oriented approach to the administration of justice. They agreed, as many countries have already experienced, that this requires a multidisciplinary approach to education and reform.

Finally, the third group identified solutions to the Latin American courts' heavy backlogs of cases and lengthy delays through the decrease of case loads and improved office management and efficiency. They concluded that

• Judges and the judicial court must be seen as separate entities, and practicing lawyers should not be seen as the only professionals who can take an active role in the administration of justice.
• Diagnostic assessments of case proceedings are needed in order to target changes and training.
• Judicial schools need to promote a multidisciplinary approach to the administration of justice focused on more effective management strategies to promote both structural and long-term changes.
• Training and education that aim to reduce case-load backlogs should seek to change human behavior, to transform attitudes and institutional cultures, and should work with judicial support staff and court personnel, as well as lawyers and judges.
• Now, more than ever before, the active participation from other sectors of society and areas of expertise is indispensable for the proper administration of justice.

Law Students' Group

Three Magistrates of the Supreme Court of Justice of Guatemala, Justices Marieliz Lucero Sibley, Otto Marroquín Guerra, and Alfonso Carrillo Castillo, led a workshop of top Guatemalan law students that focused on judicial vocation, judicial decisionmaking, and judicial ethics. All three emphasized the importance of a judge's human qualities as an indispensable, yet often disregarded, component of the just practice of law.

Licda. Marieliz Lucero Sibley addressed the judicial vocation. She argued that judges must have certain securities that allow them to maintain their honesty, autonomy, and credibility, and of those guarantees, judicial tenure is foremost. In order to carry out their roles effectively and impartially, judges need to remain independent and be free from social and political pressures. They also must be able to listen to and acknowledge the collective social consciousness because rendering honest and impartial judgment constitutes one of a judge's most important services. She prescribed empathy, courage, honesty, and truth for carrying out their duties as the law intends.
Lic. Otto Marroquín Guerra provided a detailed account of Guatemala’s laws (such as the Judicial Career Act) that provide an impartial, independent, and honest justice system. The Career Act requires impartiality, as well as internal and external autonomy; it also sets out criteria for evaluating the decisionmaking functions of its judges.

On the issues of judicial ethics and human behavior, Lic. Alfonso Carrillo Castillo conveyed an extensive message on ethics and morality in law, as in one’s day-to-day life. Judges must be able to use laws that are devised within an institutional setting while also operating within their personally designed moral framework. They must uphold the honor and respect of the judicial system through the application of judicial ethics, because the entire profession suffers if the promise of justice is tarnished in the eyes of the citizenry. He urged law students to put such qualities as respect, solidarity, efficiency, and impartiality into practice in every aspect of their daily lives.

Background Papers and Presentation

The Hon. Sandra Oxner, President of the Commonwealth Judicial Education Institute, provided a comprehensive overview of legal education initiatives and programs in a number of civil and common law countries. She shared varying structures and components that judicial education can take, while demonstrating their common functions of training an impartial, competent, efficient, and effective judiciary. She noted that attitudinal change is both the most difficult and most sensitive educational component, given the need to respect judicial independence and the judiciary’s traditional resistance to change. In addition to suggesting ways of overcoming these challenges, Justice Oxner provided helpful guidelines to evaluating both judicial performance and education programs from quantitative and qualitative perspectives. She called for more feedback between judicial actors, as well as pilot studies of alternative and progressive evaluation processes involving both the bar and the bench.

In a letter on international interest in judicial reform and the solidarity among public judicial actors, the Hon. Irshad Hasan Khan, Chief Justice of Pakistan, wrote about the value of an independent judiciary for just, effective, and efficient enforcement of human rights and exercise of the law. Additionally, he stressed the necessity for a congenial, respectful, and peaceful working environment in order to create a judicial strategy for equitable development. He recommended the creation of an internationally acceptable methodology for peace through the rule of law.

David Gray, a Senior Knowledge Management Officer in the World Bank, identified the structure and function of the Global Development Learning Network (GDLN) in terms of its contributions to the transfer of knowledge. He said that the GDLN enhances the potential for distance learning as a cost-effective means of providing access to a worldwide network of students, teachers, and experts. Judicial practitioners, as well as civil society, and especially rural and indigenous communities, could profit from such cost-effective programs, also a means of empowerment through self-guided instruction and interaction.
PART II

INTRODUCTORY REMARKS
It is a great honor for us to host this event, "Toward Judicial Excellence," which brings together judicial school directors from Latin America and beyond, as well as magistrates, judges, and deans and professors of law schools for the purpose of sharing experiences and promoting dialogue about activities and best practices in the field of judicial education, in what is certain to be an enriching event for all participants.

It is with great pleasure that I recognize the presence of members of the international community attending as observers. I would also like to acknowledge the presence of a number of magistrates from the Supreme Court of Justice of Guatemala who will be presenting, moderating, and coordinating today's activities.

We are also proud to be hosting a parallel session for a group of the top Guatemalan law students in their final year at Guatemala's various law schools. It is our hope that this session will enrich the universities' training of future legal professionals and will help to awaken the judicial vocation in a new generation of Guatemalan lawyers.

The object of this conference is to share knowledge and experience on key topics for judicial reform, such as judicial ethics, human rights, increasing case management efficiency, continuing judicial education, and harnessing new technologies and methodologies to improve the quality of education. Another important aspect of the conference will be the subsequent publication of the expert contributions, discussions, analysis, and conclusions resulting from our work today, thereby promoting future exchanges and meetings of a similar caliber.

The Supreme Court of Justice of Guatemala is acutely aware of the great importance of judicial education, as it ensures that the judiciary and judicial personnel have the opportunity to update their knowledge and skills on a continuing basis. In addition, it raises their awareness of topics such as judicial ethics and human rights, with a view to improving the quality and efficiency of the administration of justice.
We are honored to have with us today the Chairman of the Human Rights Committee of the United Nations and to hear the words of the Vice-President of the World Bank, both of whom will share with us their vast experience and reflections on human rights and judicial ethics as they pertain to the judicial profession.

Other topics of particular interest include virtual and distance learning, both increasingly important means of delivering integrated judicial education and training, while at the same time breaking down the barriers of time, distance, and cost.

In addition, this meeting seeks to identify the needs of judges and magistrates with respect to the types and formats of continuing education that will best help judges to manage and foster change. This is particularly important, since the Guatemalan judicial branch and so many other judiciaries are all currently involved in a process of transformation that aspires to ever-increasing excellence. We know that this transformation will be achieved if we work together toward this common goal.

I would like to take this opportunity to reiterate our thanks to the World Bank and the United Nations for their support of the modernization of the justice sector in Guatemala and in so many other Latin American countries. Their participation in today's event demonstrates once again their solidarity and cooperation in this field.

Finally, and on behalf of the court, I wish to thank the organizers of today's event and express our hope that its results will serve as a basis for reflection and for strengthening judicial education in each of our countries, thereby benefiting our governments and citizens by helping to consolidate democracy, justice, and peace in our region.
Building a Strong Foundation for the Rule of Law

Mr. Ko-Yung Tung
Vice President and General Counsel, World Bank
(videotaped message)

First, let me apologize for not joining you in person. I very much wanted to be here. I am truly touched and honored to be invited to this historic event: the inauguration of the new Judicial School in Guatemala. This school is not just bricks and mortar. It embodies Guatemala’s commitment to renewing and revitalizing its judiciary to meet the challenges of the future. The challenges are many and daunting. They go to the very heart of a nation. No nation can stand without the solid foundation of the rule of law. The judiciary is the key cornerstone to that foundation.

Each of the nations you represent will be looking to you and counting on you for a better future. Today’s conference of judicial schools focuses on the path “Toward Judicial Excellence.” Your discussions are part of a global effort to pursue judicial excellence by establishing the rule of law. Many, including myself and others at the World Bank, will follow the discussions at this meeting and their subsequent developments with great interest.

The ideas you generate today will be shared globally and will contribute to greater judicial competence, independence, and integrity and, ultimately, to a stronger rule of law. The rule of law subjects even the government and its officials to the law; the rule of law ensures that the law is applied equally to everyone; and the rule of law empowers the vulnerable, such as indigenous peoples, women, and the poor.

I firmly believe that equitable economic development and sustainable poverty reduction—and, indeed, enduring peace itself—can only be achieved through the rule of law. Therefore, I wholeheartedly applaud your initiatives and offer our continued commitment to share in, learn from, and support your commitment to excellence in the judiciary. There is no substitute for excellence in the judiciary in ensuring efficient, effective, and equitable justice for all.

I look forward to hearing about the developments that emerge from your meeting and offer my best wishes that this historic event will inaugurate an invigorated judiciary and solidify the rule of law in Guatemala and the rest of Latin America.
Toward Equitable, Efficient, and Transparent Justice

Ms. Claudia Costin  
Sector Manager, Public Sector, World Bank

On behalf of the World Bank, I want to thank President Maúl Figueroa, Dr. Larios Ochaita, the Magistrates of the Supreme Court of Justice of Guatemala, and the entire Judicial Branch Modernization Unit team for their invitation to attend the inauguration of the new Institutional Training Unit (Judicial School). I also wish to acknowledge the support and participation in the Judicial Branch’s Modernization Program of the Inter-American Development Bank, UNDP, UNOPS, USAID, and other institutions, universities, and civil society organizations.

This is an important event. The inauguration of the newly renovated Judicial School constitutes a crucial step forward on the path chosen by Guatemala toward achieving a judicial system administered on the basis of the principles of equity, efficiency, and transparency. Judicial education is a key factor in promoting these principles and for the success of the judicial reform program that is being implemented in Guatemala. So too are emerging information and communication technologies that combined with new teaching methodologies, provide us with valuable opportunities to engage in an ongoing internal and external dialogue on the best international practices in the justice sector. A dialogue, for example, on the ways to expand the scope of reform efforts to ensure that they foster a more modern and efficient administrative and institutional capacity, on how to promote transparency and the efficient administration of justice, on how to strengthen access to justice for all, and on how to improve the design and delivery of social communications programs to ensure that citizens are informed not only of their rights and responsibilities, but also of the fundamental changes that your institutions are carrying out at all levels of the justice sector. For the quality of the judicial system does not depend solely on the success of the reforms and improvements introduced in judicial institutions; it depends also on the confidence that citizens have in the judiciary and on the commitment of the entire government to reform efforts.
At the Bank, we are very aware of the importance of this modernization project, because we believe that judicial reform is indispensable to the promotion of social stability and equitable development. We are also very conscious of the potential significance of Guatemala's Judicial School, not only for the administration of justice here, but also for the region and beyond. This event has brought together representatives from many different nations. We have met to participate in a dialogue with a view to finding the best path toward excellence in the justice sector. This dialogue will extend beyond the four walls of this auditorium and beyond the walls of this splendid new building, because today we are able to communicate through virtual classrooms and other Internet media that enable sustained communication between judiciaries and institutions throughout the world that are committed to reform, modernization, and excellence in all areas of the administration of justice.

We want to continue to participate in and support this dialogue, learn from and help share your experiences with others at every step along this long and difficult path. The benefits of taking this path have already been felt and will continue to be felt in greater access to justice for all. As you progress along this path to judicial excellence, it is important to measure and monitor the impact of change, to share results, forge partnerships, consult with stakeholders, and promote civil participation.

Above all, I want to express my sincere hope that you achieve the goals that you have set yourselves today and in the months and years to come.
Promoting Judicial Education through Modernization

Dr. Carlos Esteban Larios Ochaita
Magistrate IX, Guatemalan Supreme Court of Justice, and Coordinator, Judicial Branch Modernization Unit

It is a great pleasure and honor for the Supreme Court of Justice of Guatemala to welcome such distinguished visitors and participants to today’s event. For the Supreme Court, the promotion of judicial reform, and particularly the implementation of a new judicial career system, have been and continue to be an institutional priority of the highest importance. To this end, we now have a fully functioning Judicial Career Council and Judicial Disciplinary Board. In addition, we have worked to strengthen the Judicial School, recognizing its importance as a key component of the judicial career system, since it is responsible, among other things, for educating future judges, training and professionalizing active judges, and coordinating training and continuing education for auxiliary and administrative personnel.

The Judicial School’s new program has greatly strengthened courses for aspiring judges, and has improved continuing education and teaching modules at each level and stage of the educational process, including the adaptation of courses for virtual classrooms. We are very proud of the fact that the success of this last component is almost unique in the Americas. These efforts alone were not sufficient, however, since the Judicial School still lacked an adequate infrastructure, an important element that—in conjunction with educational materials, professors, and personnel—allows for the proper functioning of the Judicial School in an environment that corresponds to the needs of effective education.

With this reality in mind, the presiding Supreme Court President, Lic. Hugo Leonel Maúl Figueroa, delegated to the Modernization Unit (which I have the honor of coordinating) the task of carrying out the expansion and renovation of the school’s infrastructure so as to meet the demands imposed upon it by the new judicial career system. After eight months—on this eighth day of October 2001—we can now happily say with great satisfaction: “Mission accomplished.”
Achieving this goal was made possible through the efforts of all those who participated, including in particular the sustained efforts of the construction company and of the Modernization Unit's technical and administrative team, who gave generously of their time and skill to ensure that we met our goals.

I would also like to extend my personal thanks and join the President of the Court in recognizing the dedicated technical and financial support provided to us by the World Bank, which has supported the modernization effort in Guatemala since 1996, when it began to work with the previous Supreme Court on the plan that the current court is implementing.

I would add that when we undertook our efforts to improve the Judicial School, we determined that the school should be enriched by holding events such as this one. We decided that the inauguration of the renovated building would provide an excellent opportunity to do so, and we firmly believe that the knowledge and experience that you share today on behalf of your countries will contribute to strengthening the Judicial School so as to allow it to fulfill its new role in fostering judicial excellence. I therefore wish to express my profound gratitude to you for agreeing to join us here on this occasion, thereby allowing us to turn an ambitious goal into reality through your valuable and gracious participation.

I would not wish to end these brief remarks without giving everyone their due recognition. The judges of the preceding Supreme Court dedicated themselves to assessing needs and planning reforms—in other words, to carrying out the invisible but important work that lies behind the achievement we celebrate today. When we were appointed to the court, we had the good fortune to inherit their work in the form of a Modernization Program. We had two choices: to put their work aside, or to implement it. Recognizing that putting the plan aside would be highly detrimental to Guatemala, we—a team of 13 magistrates all profoundly aware of Guatemala's needs—took up the previous Court's work and have sought ever since to implement it as planned before the June 30, 2004. By that date, we hope to be able to pass on a newly modernized and restructured Judicial Branch capable of responding to the needs of democracy and the rule of law.

In conclusion, and on behalf of the Modernization Unit, it is my pleasure to officially hand over the keys of the newly renovated facilities to the President of the Judicial Branch and the Supreme Court of Justice of Guatemala, thereby formally transferring the administration and maintenance of the facilities to the Judicial Branch.
The event that brings us together here today has a dual significance: first, it represents the opportunity to inaugurate the infrastructure and material conditions within which judicial education is carried out in Guatemala; second, it initiates the intellectual activities that characterize a learning institution, by encouraging us to draw upon the experience of each of the judicial schools represented here in an effort to reach the maximum potential for each of our respective institutions.

The judicial vocation constitutes a serious goal and challenge for jurists, who, at one moment or another, decide to dedicate themselves to the law. This in turn necessitates high-quality training on both substantive legal and human issues. For while it is true that law schools and universities provide society with professionals endowed with legal and social knowledge, as well as analytical skills, they are generally oriented toward the private practice of lawyering. It therefore falls to our judicial schools to frame and refine their accumulated knowledge and experience so as to prepare them for a judicial career.

This is, in effect, the core objective of the Guatemalan Judicial Branch's Judicial School. The current vision of the school's role is very much oriented toward developing programs that prepare judges and judicial personnel to meet the demands for an improved justice system and administration of justice.

The topics and themes for today's conference were likewise selected with a view to drawing out the methodologies and solutions that will assist each of our judicial schools in fulfilling its mission, by ensuring that we identify, develop, and recruit the highest human potential among the candidates to our judiciaries, thereby fulfilling society's wish for a better justice system.
PART III

KEYNOTE
I am deeply grateful to the Supreme Court of Justice of Guatemala and the Judicial School for inviting me to speak to the participants at this conference. As I have been the Chief Justice of India and a judge in the Superior Courts of India for over 27 years, I consider it a privilege to be able to speak to judges, lawyers, and academics. Please allow me at the outset to congratulate the World Bank for taking this and so many other initiatives in support of judicial reform in various parts of the world—an initiative I have had the honor to be associated with in some measure.

I also congratulate the Supreme Court of Justice of Guatemala for its initiative in founding and improving this Judicial School, for the defense of human rights is not possible unless there is a strong and independent judiciary committed to the cause of human rights.

The judicial profession is a noble one, demanding learning and scholarship in the law and legal rules, knowledge of social and economic conditions, intimate understanding of human nature, deep and profound sensitivity to and compassion for human suffering, and capacity for converting the rhetoric of human rights into reality. I shall speak about these qualities in some detail in the course of my address this morning.

But before I do so, let me point out that in every kind of civilization and in every form of political ordering, the pursuit of justice occupies a place of prime importance. It is a basic and primordial instinct in every human being; it is an individual as well as societal instinct and every society strives to attain it through its legal system. The degree of success attained by the legal system may be measured by the extent to which it succeeds in allowing people's instinct for justice the freedom to express itself and to achieve its fulfillment.

The legal system cannot succeed in achieving justice in a democratic society governed by the rule of law unless there is a strong and independent judiciary committed to the cause of justice. The judiciary has to assume an active role in the realization of basic human rights and ensuring justice for every citizen. The judge must not therefore be a timorous soul, anxious always to be
technically right. Judges must innovate and change and become a continuing vehicle for adapting law to justice. They must, while interpreting the constitution and the law, constantly remind themselves that their interpretations must carry out the great purpose and end of the law, namely, justice, which is a fundamental imperative under the constitution of every country. Otherwise, people will lose respect for the law, and the credibility of the judicial process could be seriously eroded. In order to be able to achieve this object and purpose, the judge must possess judicial craftsmanship and a vision of the future. This requirement becomes all the more necessary when the judge is dealing with human rights issues, whether under the civil or the criminal justice system. It is for this reason that judicial training on human rights is absolutely essential, and I am sure that the Judicial School, still young in this country, will achieve this goal over the years to come.

Do you know how we in the common law system begin our work every day when we enter the courtroom? The judge standing on the raised platform and the lawyer standing at the other end, both bow down. They bow not to each other. They bow to the deity that presides over the court. It is a temple of justice in which we are votaries, and it is, therefore, necessary that, as in the temple of God, we be full of humility when we are in the temple of justice.

Judges must realize that no human mind is so comprehensive that it can take in all aspects of the problem at one time. Arguments often clarify the issues, and a judge must possess the intellectual humility to realize that he or she might have something to learn even from the most junior lawyer. Judges must be prepared to receive light from whatever source. Judges must therefore approach their work with humility and with full knowledge of their fallibility. They must always remember that the judge who makes no mistakes is yet to be born. Moreover, and as Justice Cardozo of the United States once observed: "Something of Pascal's spirit of self-research and self-reproach must come at moments to the man who finds himself summoned to the duty of shaping the progress of law." Similarly, judges should bear in mind the wise words of one of the greatest American judges, Judge Learned Hand, who stated to a journalist as the key to his philosophy the words of Oliver Cromwell, spoken just before the battle of Dunbar: "I beseech ye in the Bowels of Christ, think that ye may be mistaken."

Experience of working with the courts shows that a strong bar and a strong bench act on and react to each other. A strong bench corrects the vagaries of the bar, while a strong bar checks the idiosyncrasies of the bench. We judges must realize that the quality of our judgments is always determined by the quality of the arguments presented before us. The credit for contributing to the development of the law must always be shared by the bench and the bar alike. That is why perfect cooperation between the bench and the bar is essential for a proper administration of justice in our courts.

I will now turn briefly to the question of judicial ethics in its widest sense. There are certain qualities and virtues that, above all others, judges must possess if they are to earn the respect of their fellow beings. I do not think I can do better than refer to an ancient Indian text in which the qualities and virtues a judge must possess are enumerated as follows.

First and foremost, the judge must have mastered the law and legal rules. But that is not all. The judge must also have an abundance of common sense to be able to penetrate the plots of the designing and the wicked. Because scholarship does not necessarily go hand in hand with an abun-
dance of common sense, our ancients put common sense in close juxtaposition to scholarship. In addition to common sense, they emphasized eloquence and the power of persuasion. When a judge is deciding a case, naturally his own *ipsa dixit* is not sufficient. To satisfy a vigilant bar and all those who are interested in legal institutions, judges must give convincing reasons for their decisions.

The next qualification is that judges must under no circumstances be motivated by anger. Anger is capable of vitiating anyone's judgment. Therefore, when a judge is dealing with legal rights as between a citizen and the state, as between citizens *inter se* or as between two states, it is absolutely necessary that he or she be free of any emotions that might vitiate judgment.

Judges are also expected to administer justice with an even hand and without discriminating, as can happen between friends, enemies, and family relations. They should pronounce a verdict only after thoroughly assessing the record of the case. Above all, judges must have the courage to protect the citizen from the unjustified wrath of the executive authorities.

These virtues and qualities are part of the ethical equipment required by the judicial office. To them, I would add two more—courtesy and patience—both qualities that should adorn every judge. Judges should realize that both the bar and the bench are engaged in a great adventure, namely, the administration of justice. They are engaged in a common pursuit, namely, the search for truth. This pursuit will never succeed unless there is utmost cooperation and harmony between the bar and the bench. Courtesy and patience are two of the essential requisites for obtaining and maintaining such cooperation and harmony.

More recently, the **values of judicial ethics** came to be considered by a committee set up by the International Commission of Jurists (ICJ), and they were formulated as follows:

- Justice must not merely be done but it must also be seen to be done. The behavior and conduct of members of the judiciary must reaffirm people's faith in the impartiality of the judiciary. Accordingly, any act of a judge (whether in an official or personal capacity) that erodes the credibility of this perception shall be avoided.
- A judge should not contest his or her election to any office of a club, society, or other association; further, judges shall not hold such elective office except in a society or association connected with the law.
- Close associations with individual members of the bar, particularly those who practice in the Supreme Court, shall be eschewed.
- A judge should not permit any member of his or her immediate family, such as spouse, son, daughter-in-law, or any other close relative who is a member of the bar, to appear before him or be associated in any manner with a case to be dealt with by him or her.
- No member of the judge's family, who is also a member of the bar, shall be permitted to use the residence in which the judge actually resides or other facilities for professional work.
- A judge should practice a degree of aloofness consistent with the dignity of the office.
- A judge shall not hear and decide a matter in which a member of his family, a close relation, or a friend is concerned.
- A judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or likely to arise for judicial determination.
A judge is expected to let his judgments speak for themselves. Judges shall not give interviews to the media.

A judge shall not accept gifts or hospitality except from family, close relations, or friends.

A judge shall not hear and decide a matter in which a company in which he or she holds shares is concerned, except where he or she discloses this interest and no one objects to the judge hearing and deciding the matters at issue.

A judge shall not speculate in shares, stocks, or the like.

A judge should not engage directly or indirectly in trade or business either alone or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business.)

A judge should not ask for, accept contributions, or otherwise actively associate him or herself with the raising of any fund for any purpose.

A judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this regard must be resolved and clarified through the Chief Justice.

Judges must at all times be conscious that they are in the public eye and they should commit no act or omission unbecoming of the high office they occupy and the public esteem in which that office is held.

This is only a "Restatement of the Values of Judicial Ethics" and is not meant to be exhaustive but rather illustrative of what is expected of a judge. They are, however, the type of standards for judicial ethics that should be instilled by judicial schools in the minds of judges, as they have the approval of the International Committee.

Let me now turn to the question of human rights. Human rights inhere in a human being by virtue of his or her being a human. They are rooted in basic human dignity, and they are essential for the development of a human being. If I may quote the words of Shreedath Ramphal, former Secretary General of the Commonwealth, "Human rights were not born of man but were born with man." Human rights attained supreme importance in the 20th century as a result of the Holocaust of the Second World War, and they found their specific formulation in the Universal Declaration of Human Rights, adopted by the General Assembly on December 10, 1948. The Universal Declaration focused principally on civil and political rights but a few of the social and economic rights also found a place in it. The Universal Declaration marks the starting point of the modern story of human rights, as the rights set out in the Universal Declaration were elaborated upon subsequently in various human rights instruments, such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Covenant on the Rights of the Child; and the Covenant against Torture. Most of these treaties set up treaty bodies to monitor their implementation in countries that have ratified them—I am president of the body set up to monitor implementation of the Convention on Civil and Political Rights.

Human rights play a highly significant role in advancing human welfare and happiness. It is largely through legal processes that this result is sought to be achieved. It is clear that the law
must command legitimacy with the people and that in turn, the legitimacy of the law necessarily depends on whether it accords with justice. The concept of justice has no universally accepted definition. It has meant different things to different people, in different societies at different times. It is therefore necessary to have a set of standard values that give substance to a concept of justice against which laws may be measured. Such a standard must necessarily be superior to the law itself and constitute the highest rank in the legal hierarchy. There was a time when religion and morality provided the standard or norm for judging the laws. But soon it was found that these standards could not resolve the problems of modern society or serve as the standard against which to judge rulers and laws (when I speak of laws, I am also referring to executive decisions and action). Some other basis had to be found, and this was provided by the concept of human rights, as it evolved and developed over the last five decades of the previous century. The previous century can rightly be regarded as the century in which a worldwide consciousness of human rights emerged.

Human rights represent the normative standards or values by reference to which we must judge the actions of the executive and the legislature. They represent the basic values of justice according to the perceptions of the world community. It is therefore essential that these standards or norms be taken into account by the judges while developing the law or interpreting the constitution or statutory law.

It should be possible for judges to do so, because there is sufficient scope for creativity on the part of a judge even when interpreting the constitution or statute. There is no doubt that judges have to interpret the constitution and the law according to the words in which these are couched, but as pointed out by another great jurist, Justice Holmes, "A word is not a crystal, transparent and unchanged, it is the skein of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." It is for the judge to give meaning to what the legislature has said, and it is this process of interpretation that constitutes the most creative and thrilling function of the judge.

Plato posed this very same problem over two thousand years ago. Is it preferable to be subjected to the best men or the best laws? He answered by saying that laws are by definition general rules and generality falters before the complexities of life. Law's generality and rigidity are at best a makeshift solution, far inferior to the discretion of a philosopher king whose pure wisdom would render real justice, by giving each person his due.

In contrast, Aristotle was in favor of the rule of law. He stated that "he who bids the law rule bids God and reason rule; whereas he who bids man rule adds an element of the beast, for desire is a wild beast and passion perverts the minds of rulers even though they be the best of men." The law is "reason unaffected by desire." It is "intelligence without passion"—the accumulated wisdom of the ages. Yet Aristotle knew, like Plato, that legislation cannot anticipate the endless combinations and permutations of circumstance and situation. There is bound to be a gap between the generalities of law and the specifics of life. This gap in our justice systems is filled by the judge.

In entrusting this task to the judge, we have synthesized the wisdom of Plato and the wisdom of Aristotle. It is here that the judge takes part in the process of law making, or what Justice Holmes called "interstitial legislation." Law making is an inherent and inevitable part of the judicial
process. Even where a judge is concerned with the interpretation of a statute, there is scope to
develop and mold the law. A judge is not a mimic. Greatness on the bench lies in creativity. Judging
is a phase of never-ending movement and something more is expected of a judge than imitative
reproduction, the lifeless repetition of a mechanical routine.

Where the language of the law is clear, judges must of course give effect to it. There are many
cases, however, where it is possible to decide either way and it is here that judges are called upon
to make value-based choices. This is what must be inculcated into the minds of our future judges.
For where the law and its application are both clear, or the rule of law is certain and the applica-
tion alone is doubtful, there will be no difficulty for the judge. There are other cases, however,
where a decision one way or the other will make a difference for the future, or where it may advance
or delay the development of the law in the proper direction—whether by a lot or a little. It is espe-
cially in these types of cases where the judge has to leap in the heart of legal darkness, without
guidance from legal decisions or the language of the statute, where the judge has the opportu-
nity to mold the law and give it shape and direction. Judges are therefore called upon to invest
laws with meaning and content. In this process of interpretation, judges must remember that they
have to do justice according to international human rights standards or norms without doing vio-
ence to the language of the law or the constitution.

Judges therefore have a creative role to play in which they bear a heavy responsibility to dis-
charge their judicial functions adequately in every sense. They cannot afford simply to follow
mechanically the rules laid down by the legislature; they must interpret so as to reconcile these
rules to the wider objectives of justice, as encapsulated in international human rights instruments.
It is axiomatic that while different countries in the world may have different political structures
and different expectations from their peoples, there should always be a common denominator
that inspires the judicial tradition to correlate constitutional and legal interpretation to basic
human rights and social justice, in order to protect the basic human dignity and fundamental
human freedoms set out in international human rights instruments. This has been done in ample
measure by the judiciary in India, by developing important human rights jurisprudence relating,
for example, to the liberty and security of the person, with particular emphasis on access to courts.

It will be useful in this regard to refer to the luminous words of the Supreme Court of the United
States in *Weems vs. U.S.* (1909), 54 L Edition at page 801:

*Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils,
but its general language should not, therefore, be necessarily confined to the form that evil
had, theretofore, taken. Time works changes, brings into existence new conditions and pur-
poses. Therefore, a principle, to be vital, must be capable of wider application than the mis-
chief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enact-
ments designed to meet passing occasions. They are, to use the words of Chief Justice
Marshall, "designed to approach immortality as nearly as human institutions can approach
it." The future is their care, and provisions for events of good and bad tendencies of which
no prophecy can be made. In the application of a constitution, therefore, our contempla-
tion cannot be only of what has been, but of what may be.*
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It is this principle of interpretation that must be applied by judges in interpreting the constitution and the law. Lawyers and judges must advance human rights jurisprudence and dispense social justice by expanding the reach and content of human rights, whether enshrined in the constitution or in the law.

Before concluding, I wish to impress upon you that if our judicial process is to be responsive to our societies' needs, if it is to fulfill its true purpose and advance the cause it is intended to serve, it must be subjected to a constant and continuing analysis. Our judicial systems must continually be renovated and improved so they become a fit and adequate instrument of justice as we conceive it to be, not only for the fortunate few, but also for the masses.

May I remind you in closing of the words of Justice Cardozo in his address on the topic of "Faith in a Doubting World" to the New York County Lawyers' Association:

Where shall we find a more stirring message than the great speech delivered by Lord Brougham a century ago in the English House of Commons when he spoke in support of a motion that an address be presented to the King petitioning a commission be established to inquire into the defects, occasioned by time and otherwise, in the laws of this realm of England as administered in the courts of common law, and the remedies which may be expedient for the same.

He then proceeded to quote from a book written by Claud Mullins with the provocative title, *In Quest of Justice*.

It was boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be our sovereign's boast, when he shall have to say that he found law dear and left it cheap; found a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the double-edged sword of craft and oppression, left it the stuff of honesty and the shield of innocence.

Let judges exercise their functions in a manner that brings justice to everyone in the country. For I am certain that this Judicial School, in times to come, will help, like the boast of Augustus, to make justice a ready instrument in the hands of all people.
PART IV

PRESENTATIONS
Background

In October 1994, the Center for Judicial Studies and Training for Central America and Panama (CJSCA) gave a seminar on judicial ethics, out of which there arose a call to the judicial branches of the region to promote the development of a body of norms applicable in this area. Subsequently, at the fourth Meeting of Supreme Courts of Central America and Panama, held in San José the same month, the parties reached an agreement formalizing this exhortation. This in turn prompted the Supreme Court of Justice of Costa Rica to draft a body of norms governing the ethical conduct of judges.

The Judicial Code of Ethics was adopted in 2000 and has since been communicated through workshops given across the country with the support of the Institutional Values Commission and the Judicial School. At the Central American level, the CJSCA gave seminars in San Salvador and Panama, with participation from a French judge, Mr. Phillipe Darrieux. Madam Justice Flor de María García Villatoro of Guatemala was also invited to the first of these events.

Outline: Costa Rica’s Judicial Code of Ethics

Our code is, for lack of a better term, “principle oriented,” meaning that it outlines the overarching principles and goals intended to guide the conduct of judges, judicial staff, and justice in general, without setting out detailed discussion of specific fact scenarios. The drafters preferred this normative, open-ended orientation.

The following are some of the considerations taken into account in drafting this body of norms:
1. Judges are civil servants who, as is increasingly recognized, must earn their legitimacy day-by-day and case-by-case. In other words, judges and, for that matter, everyone who participates in what we call the "administration of justice," must be able to demonstrate constantly their technical, professional, and ethical capacity and competence.

2. Justice is essentially a public service. Thus, justice must be imparted with unfailing respect for the dignity of the people who require this service, while judicial services are provided with equal treatment for all and operate with the utmost efficacy, honesty, efficiency, and quality. (article 1, Code of Ethics)

3. We adopted the perspective that the Constitution is not neutral as to the type of justice imparted. In other words, the Constitution does not accept any and every type of justice, but rather only a justice that accords with the principles defined in the Constitution, essentially, the principles that define the democratic state.

Justice must therefore be prompt and free from excessive delays. This requires uprooting past practices that tolerated "litigation at any cost" and tended to paralyze cases in their tracks, by way of unlimited interlocutory proceedings, appeals, requests for review, etc. Such practices tended to turn the judge into a mere spectator of the process, rather than being a protagonist exercising control of proceedings.

Justice must also have a human face. It must be able to respond effectively to demands for information through appropriate channels. It must create a space in which the suffering of victims is recognized and it must, for example, have programs that reach out to the community run by the judicial school.

Justice must be informed by the law writ large—and by this I refer not only to ordinary law but also to the constitutional and international human rights norms applicable in internal law together with the principles and values that underlie them—so as to respond to society's legitimate expectations of its justice system. Remember that the main sin for which our judicial systems are criticized is the sin of omission, or the "lack of moral courage," as described by former President Patricio Aylwin of Chile.

It is true that inserting this broader understanding of justice into a legal culture characterized by different and varying practices may initially have negative results. A well-known Costa Rican jurist, for example, once referred to this fact when he lamented somewhat bitterly that today, the Constitution says 90 percent more than it used to, or than we thought it used to, without there having been a single word altered.

It is this very challenge that ethics poses for justice, namely, based on the application of the principles outlined above, how do we progress from the merely formal exercise of our function to a serious attempt to satisfy the desire for substantive justice?

**Judicial independence**

In order to transform this goal into an observable reality, the first requirement is to have independent, impartial judges who in every sense "act according to rules of conduct which honor the integrity and independence of their function" (article 1). To this end, we included in the code as
a fundamental principle that “the independence of the judge be subject only (a) to the constitution and the law, that is, to the legal order, its values and overarching principles” (article 2.2).

I believe that it is only once this requirement has been met that we can feel that we are truly working toward justice.

**Independence as Right and Obligation**

In an attempt to clarify potential doubts on this sensitive subject, we postulated the existence of independence as a right-obligation, in the sense that judges not only have a right to be independent, they also have an obligation to defend this independence. This point has since been incorporated into the “Ibero-American Judge’s Statute” approved at the sixth Summit of Ibero-American Supreme Courts of Justice, at which parties adopted the following two complementary rules that, in my view, are also essential in this respect:

1. All state institutions of the judicial branch must assist judges in the defense of their independence whenever it is threatened for whatever reason, thereby demonstrating that the judicial branch is a unified body having the same values and goals, regardless of rank or level. (As we all know, this vision is not always shared, and certain state institutions sometimes act as though they were completely divorced from the judicial sector, yet at the same time imbued with the sense that they are the de facto rulers of the judicial branch).
2. Judges are also required to maintain and defend their independence—a fact that would seem self-evident, but in systems such as ours, in which the judges themselves do not always know the limits of their own functions, it is apparently necessary to remind judges of the need to be vigilant with respect to their own independence.

**A Happy Ending?**

When recently asked by his colleague, Antonio Skaimeta, what was needed for humanity to enter the third millennium in a happy condition, Pedro Lemebel observed, “In my opinion, for humanity to enter the third millennium happily, we require complete obliteration of all that came before.”

Allowing for poetic license, in my view this sentence embodies fairly accurately the feeling that has long been widespread among the population, that justice is not for everyone, that it is applied in a discriminatory fashion, and that it has been—and has been perceived to be—wielded as an arm of political power.

I am aware that some have suggested recently that the poor showing by justice systems in public opinion polls likely reveals only the views of those who have not had any contact with the system, since those who have had some contact tend to evaluate it in a more positive light. Nevertheless, we must recognize reality for what it is. While it is true that the situation has improved and in fact must continue to improve, this will take time and will require, among other things, improved communications with society and communities so that, as a Panamanian sociologist stated last week at another event, judges are no longer perceived as being “on the other
side" or "one of the big boys," or in other words, apart from, and even against, the common people.

I believe that instead of getting angry, we must try to overcome this negative image that still plagues us and pick up the pieces: Do we want a justice of excellence, or excellent justice?

The latter is, of course, a very legitimate aspiration—and one that will require a great deal of work, particularly with respect to ethics and to strengthening the values inherent to justice, as well as the level of service demanded by them.

The rest, if I may be so bold, will follow naturally as a result. It remains, in these last few seconds, to wish my colleagues in the Supreme Court of Justice of Guatemala much success in their efforts to reform justice in this country.

For I believe that this is the path we must all take, as we seek to build, as someone once put it, a justice that is respected and respectable, and no longer a justice that is feared and fearsome.
Judicial Conduct: Valuing Honor and Decorum

Dr. Edgardo Barreda Valenzuela
Magistrate X of the Guatemalan Supreme Court of Justice

Introduction

As guarantors of the democratic system, judges must base their decisions on the constitution and on human rights conventions, while their conduct is governed by the applicable ethical norms.

Any course on judicial ethics for the year 2002 must include issues of great importance that can no longer be ignored, for which a judge must have clear parameters regarding the value-based aspect of judging that will govern his or her conduct. Among these issues, it is necessary to include euthanasia (medical procedure by which a patient’s death is accelerated or caused), the death penalty, assisted reproduction (including the ethical and moral issues relating to artificial insemination, in vitro fertilization, the transfer of embryos, surrogate motherhood, and varying conceptions of motherhood and fatherhood), genetic manipulation (referring to transformations in DNA structure that may have legal and moral repercussions), AIDS, drugs, organ transplants, and the environment or ecology (consequences of pollution and the modification of human habitats). Other issues that have long preoccupied society include abortion, war, suicide, hunger strikes, care for terminally ill patients, experiments on human bodies, and breaches of personal privacy.

Still other issues of major importance include cases of alcoholism in the workplace, corruption at all levels, lack of mutual respect between superiors and subordinates, and, linked to this issue in the work environment, sexual assault as suffered primarily by women.

Given the seriousness of these issues and the situations they imply, any person responsible for orienting and training new judges has the difficult task of highlighting these issues while at the same time conducting an in-depth study of the applicable ethical norms. In Guatemala’s case, they are found in the Supreme Court of Justice Agreement No. 7-2001, by which the Ethical Norms for the Judicial Branch of the Republic of Guatemala came into force. These norms are inspired by values such as honor, honesty, decorum, prudence, rectitude, loyalty, respect, independence, impartiality, truthfulness, efficiency, solidarity, and dignity—values that must be observed in every...
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judicial act. Courses on ethics must therefore aim to ensure that candidates to the judiciary have a clear understanding of the significance of these and all other values that must govern their conduct as judges.

**Essential Functions: Decisionmaking and Service to the Public**

Judges must impart justice—it is in this way that they manifest the power of the state. Nevertheless, they must also remain mindful that imparting justice should be conceived of as providing a service to the public. Judges must never forget that they are the servants of the users of the system and the public who come before the tribunal, and that their salaries are paid by taxes and any other fees paid to the judicial branch.

A judge must never allow him- or herself to simply apply the law automatically, for if they ever did so, they would quickly find themselves replaced by a computer, which, in a cold and systematic fashion, would find the applicable norm or article more quickly than any human being could. This must not come to pass, for the “just” person, and therefore the ideal judge, is characterized by value-based reflection and human warmth, two inherent components of the sacred function of conflict resolution.

The following are some of the fundamental principles that should therefore underlie judicial activity:

- To respect and apply laws in force adopted by a legitimate power, even when they do not coincide with one’s personal values, provided that they correspond to the minimum norms established by society.
- To know the law in force and to be critical of it where necessary, since even if a law is in force it may be inconsistent with the principles of justice. To invest in justice is to invest in social harmony and solidarity.
- Judges must apply the law to everyone such that no person feels that his or her rights have been denied. It is important to remember that human dignity is an irreversible achievement. To feel solidarity with humanity is also to be just.

**Ethical Norms for the Guatemalan Judicial Branch**

It is important for aspirant judges and judges to conduct a thorough study of the Agreement adopting Ethical Norms for the Guatemalan Judicial Branch, in order to generate greater awareness among them that these norms constitute only the basic principles of ethical conduct. In order to transform these principles into reality, they must be incorporated into each judge’s way of understanding and thinking about issues; they must become part of the daily life of every judge exercising his or her profession.

New judges must be conscious of the important role they play in society, whether it be as justice of the peace, first instance judge, or justice of appellate or supreme courts. Every piece is important on the judicial chessboard. Nowhere is this more obvious than in the case of a rural municipality, far from the capital city, where the judge serves as an example of morality, hard work, and
love of service—be it good or bad—to other public servants and to the entire community. In these isolated communities, the local population will scrutinize the justice of the peace such that every word spoken or action taken by the judge will take on a positive or negative significance for the community. For this reason, the judge's conduct must be irreproachable—therein lies the great importance of the quality of a judge's training and professionalism.

Without diminishing the importance of other relevant principles included in the body of ethical norms, it is helpful to highlight the following: judicial independence; moderation and self-criticism; the justification for, and reasonableness of, judicial decisions; continuing judicial education; cultivating human relationships with every person; abstention from taking gifts or bribes; respect for the dignity and equality of every person; rejection of pressures of any kind; the need for great caution when agreeing to any private meetings; and providing to the media only objective statements in a clearly impartial form and without expressing any opinion prior to releasing a decision. Every one of these topics should be the object of serious study and debate in the Judicial School.

As a general recommendation to educators giving courses on ethics, it is important that the material be highly practical, including examples of situations that occur on a daily basis in the courts and to whose elimination we are firmly committed by our current efforts. Thus, it is useful for the educator to be a practicing lawyer or an active judge with a solid knowledge of ethical principles, who can ensure that the course does not deal simply with theoretical concepts that have little application to the practical context.

**Human Rights**

When exercising their functions, judges must be fully aware that they are not called upon simply to apply the Criminal Code, for example. They must have a solid understanding of the supremacy of the Constitution and, in particular, of its provisions relating to human rights. They must understand the hierarchy of norms applicable in criminal proceedings.

With respect to international laws, they must understand that there are two principal human rights systems: the universal system supported by the United Nations (U.N.) and the inter-American system supported by the Organization of American States (OAS).

Judges in Guatemala must know that all human rights conventions signed and ratified by Guatemala take precedence, for example, over internal law, as set out in article 46 of the Constitution. The judge is therefore obliged to apply these conventions as though they were laws of the republic, to the extent that they expand or clarify the content of national laws.

**Inter-American Context**

In Latin America, there are a number of international instruments that allow jurists to defend democracy and human rights with which judges are required to be familiar, including:

- The American Convention on Human Rights (San José Pact), which creates two institutions:
  - The Inter-American Commission on Human Rights
  - The Inter-American Court of Human Rights
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- The American Declaration on Human Rights,
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), and
- Inter-American Convention to Prevent and Punish Torture.

Universal Context

The following are among the UN conventions and declarations to be taken into account:
- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights,
- International Declaration on the Rights of the Child,
- Convention on the Rights of the Child,
- Convention on the Elimination of All Forms of Discrimination against Women,
- International Covenant on the Elimination of All Forms of Racial Discrimination,
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- Convention on the Prevention and Punishment of the Crime of Genocide,
- Conventions of the International Labor Organization (ILO Conventions 107 and 169),
- Code of Conduct for Public Servants Responsible for Law Enforcement, and

In conclusion, by creating a course on human rights and developing a curriculum that integrates the practical aspects of judicial ethics, the Guatemalan Judicial School will produce judges who are not machines, but rather people who see each of the parties who come before them as human beings to whom the law must be applied, in some cases harshly, but without ever losing sight of the fact that each human being has the right to life, liberty, and equality; to freedom of movement; not to be imprisoned without cause; to be notified of the cause for detention; to a full and fair defense; to due process; and to all other rights inherent to human beings, both within and outside of court proceedings.

Questions and Answers

Human Rights, Judicial Ethics, and Independence

Participants presented the following questions to the panelists in order to explore a number of earlier points in greater depth.

What Measures Are Available to Strengthen Respect for the Judicial Office?

The Hon. P. N. Bhagwati: Judges' behavior must be impeccable in order to earn the public's respect. Judicial practices must never give the impression that judges may be influenced by members of their family or by the political environment, for example. If judges follow the principles set out
in the International Commission of Jurists' statute [set out above], they will go far in ensuring that
the public respects the judiciary.

**What Entities or Institutions Should Be in Charge of Training and Education for Judges and
Magistrates?**

**Dr. Solano:** Judicial schools will of course be the primary providers of judicial education and train-
ing, principally through their training programs for aspirant and newly appointed judges, as well
as continuing education programs. The law schools tend to be a missing link in this equation, as
they have the potential to play a significant role in the field of education on judicial ethics. Finally,
the bar may play an important role in strengthening ethics in the judicial system, by providing feed-
back and monitoring judicial performance in this area.

**In Guatemala, the Decisions of the Human Rights Ombudsman are Nonbinding. How Can
Enforcement Be Achieved?**

**The Hon. P. N. Bhagwati:** In India, the Human Rights Commission (more or less equivalent to
the ombudsman) has itself brought certain cases of serious human rights violations before the
courts. As the commission cannot issue binding decisions, this has provided a means of obtaining
binding judgments in important cases.

**What Efforts Have Been Made to Provide Access to Judicial Services for Mayan Communities
Who Do Not Speak Spanish?**

**Dr. Barreda:** This is a complicated area in which the Supreme Court of Justice of Guatemala has
achieved some success through training and the use of interpreters in the courts. Increasingly, the
court has also appointed judges who are bilingual and speak the language of the region in which
they carry out their functions. It is not simply a question of language, however: Judges must also
understand the customs and traditions of the communities they serve. This can be difficult in a
country such as Guatemala, where 23 different languages are spoken by communities with different
traditions and practices. The Supreme Court is therefore taking a variety of approaches, including
a pilot cultural sensitivity training program for judges in the Quiché province, in order to ensure
that the whole population has access to justice.

**The Hon. P. N. Bhagwati:** In India, there are 17 languages and a number of different tribal groups.
The country is divided into states, generally along linguistic lines. Judges are normally named from
within their own state, so they usually know the local language, although they may not be familiar
with some dialects. Where they do not understand the language of the parties, an interpreter
is normally provided.

Beyond language issues, however, there is the problem of marginalization and poverty that often
bar people from approaching the courts. In India, “public interest litigation” has been developed
as one possible solution to this problem, as the courts have granted community groups and
NGOs the necessary standing to bring cases on behalf of a collectivity. The court may then appoint
a commission to investigate the alleged rights violations to provide the court with the necessary
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information upon which to base its resolution of at least some aspects of the situation in question. This legal innovation has greatly helped to bring justice closer to the people and has helped to provide more equitable solutions for otherwise marginalized groups.

Does the Inclusion of Examples Strengthen a Code of Ethics?

Dr. Solano: The new Judicial Code of Ethics in Costa Rica generally sets out broad principles, in order to avoid the problem of people saying it does not apply just because an example of their particular situation was not provided. It does include a few hypothetical examples to emphasize particular points, however, including the need to be punctual in attending hearings and the need to avoid private meetings, hearings, or parties, etc. that could compromise judicial independence or the appearance thereof.
PART V

WORKING GROUPS
Justice Sector Officials

Participants were divided into three working groups to share knowledge and experience through roundtable discussions on three topics related to excellence in judicial education. The coordinator of each group prepared a paper in advance in order to stimulate discussion among participants and assisted participants in arriving at a number of conclusions emerging from the discussions.

Group 1: Maximizing the Potential of Virtual and Distance Education

Coordinator: Lic. Ángel Alfredo Figueroa, Guatemala
Participants: Dr. Gladys Álvarez, Argentina
Dr. Estuardo Gálvez Barrios, Guatemala
Licda. Surama Hernández Trujillo, Cuba
Lic. Lionel Maza, Guatemala
Mr. Roberto Panzardi, World Bank
Ing. Miguel Sanabria, Venezuela
Dr. Joaquín Talavera, Nicaragua
Dr. José Albino Tinetti, El Salvador
Dr. Juan Enrique Vargas, Chile

Background Paper: New Education Technologies and Methodologies

Lic. Ángel Alfredo Figueroa
Former President, Guatemalan Supreme Court of Justice

Introduction

Judicial education is a very specific form of adult education that has traditionally fallen under the purview of academics or judicial officials. In both cases, there have been notable weaknesses in terms of educational methodologies and techniques employed.
For example, it cannot be assumed that just because a judge is a good judge, he or she will be able to provide high-quality education for new judges or active judges. A good judge may not necessarily have the capacity to be a trainer—he or she may lack the skills required to transmit knowledge or to encourage others to discover and develop the abilities they need to carry out the judicial function effectively.

For this reason, judicial education needs to be systemized in the sense that the materials, methods and techniques used must satisfy both needs specific to the judicial function and the demands of, appropriate learning techniques. Otherwise, regardless of efforts made and resources invested, there may be little practical application of materials taught to the provision of judicial services, as there will be a disassociation between the classroom and the real world.

**Participatory Methodology**

Socialized teaching methods focus mainly on social integration, developing cooperative group work attitudes, and building a sense of community. They also focus on developing an attitude of respect toward others. This does not mean, however, that such methods neglect individualization where it helps to achieve better results.

Socialized teaching is generally carried out through groups or other means of gathering students together, for example, through extracurricular activities, so as to cultivate common objectives and a sense of responsibility for group tasks for which they must coordinate their efforts.

This method promotes group work and participation in accordance with students' potential and preferences. Each student contributes as best he or she can to achieving a common goal through the sum of their individual efforts.

Group study is a method that requires the formulation of the proper incentives in order to ensure that students cooperate, rather than compete, without excluding any individual study component. The main goal of teaching must be to offer the student the opportunity to participate in collective and individual tasks. Where possible, however, the facilitator should normally encourage group work.

**Study Groups**

According to experts in the field, there exist primary and secondary groups. Primary groups consist of directly interacting members who are bound by significant intimate or personal ties, as is the case of relations between family members, a group of friends, or a group of students in a class, etc. A study group may generally be viewed as a primary group, provided that its members are operating in a situation that involves direct interaction.

According to specialists, for group work to occur successfully, it should be carried out according to the following principles:

- **Environment.** The group should work in a physical environment conducive to productive work: the environment should be comfortable and appropriate for the type of work to be undertaken, given that this location will contribute to creating a group "atmosphere" that may or may not be favorable to productivity.
- **Alleviation of coercion.** Relations between group members must be friendly, frank, respectful, and cooperative. Sometimes, however, the very fact of working in a group provokes feel-
ings of fear, inhibition, hostility, or shyness that may be considered to fall into the category of coercion or intimidation.

- Distributed leadership. Every group requires leadership in order to carry out its tasks successfully. This leadership must be distributed across the members of the group, however, in order to ensure every member participates.

- Formulation of goals. Goals must be clearly formulated for group work to be successful. All members should participate in determining the goals such that they each feel they have an ownership stake in the tasks at hand.

- Flexibility. Once goals have been established, the group must select the means to achieve them. These means must be sufficiently flexible, however, to be able to deal with new unforeseen circumstances. The plan of action may vary when circumstances require.

- Consensus. The group must seek to establish free and spontaneous communication, avoiding antagonism, polarization, or the formation of factions within the larger groups that will inevitably thwart cooperation. There should be a general spirit of cordiality and openness to sincere dialogue in pursuit of truth, rather than a will to impose one truth, since the latter attitude generally reveals only intolerance.

- Understanding of the process. The group must learn to distinguish the content of the subject matter to be considered from the procedures to be followed regardless of any tensions, lack of competence, frustration, inhibitions, etc. that may arise during group work. This distinction will provide helpful indications of which procedural path to follow in order to resolve difficulties regarding substantive issues.

- Continuous evaluation. The group must remain aware of whether its objectives and activities correspond to the wishes and interests of the group members. Thus, it is important to continually perform evaluations in order to assess the extent to which the group is satisfied with its work and to which the established goals have been achieved.

The following summarizes a number of pedagogical methods involving group work.

Socialized individualizing method: This method involves assigning work to both groups and individuals, thereby permitting students to work according to their preferences. There are two modes in which this type of education can be carried out, with the second being most applicable to adult education. This method emphasizes student participation, which begins the moment the course is planned.

There are seven phases to this method: informal presentation, planning, systematic study, presentation and discussion, personal development, verification of learning, and individualized feedback.

1. Informal presentation. In this phase, the student is invited to engage in a practical exercise that allows him or her to experience the reality of the subject matter in question and the challenges at stake, as well as to recognize his or her knowledge, or lack of knowledge, of the subject matter at hand.

2. Planning. The teacher and students outline the key issues and questions raised by the topic and seek to map out their solutions; they also select general research resources.

3. Systematic study. Students begin to study the matter in a systematic fashion according to the plans laid out in phase 2.
4. Presentation and discussion. Once the group members have shared the results of their research, each group chooses a reporter to present the material studied to the rest of the groups as a basis for discussion.

5. Personal development. Based on information gathered during the two previous phases (individual study and group discussion), as well as on research and debate, students will be assigned a personal assignment in which they express in writing their views and positions on the matter in question. The object is to ensure that the student takes a personalized position with respect to the paper topic.

6. Verification of learning. Upon conclusion of the previous phase, the educator shall devise a task or test that will verify learning in all essential components of the topic of discussion.

7. Individualized feedback. At this stage, individualized feedback should be provided, where possible, to each of the students.

**Assembly method.** This method involves having participants study an issue and then discuss it in class, as though they were members of a government assembly. This method is advisable when studying controversial topics that will likely give rise to differing opinions. In order to work properly, the group must be organized such that people are designated to take on the role of president, secretary, and introductory speakers.

**Panel method** This method involves bringing together a number of experts or well-informed people to discuss their views on a particular topic, in an informal setting, thereby presenting a number of divergent views without entering into polemical discussion. The panel method requires a panel coordinator, the, speakers and an audience.

**Taking Advantage of New Technologies: Virtual and/or Distance Learning**

New technologies have a great potential to facilitate education and learning. In order to take advantage of this potential, however, it is important to develop innovative methodologies—this requires changing traditional educational paradigms.

According to research, adults learn 83 percent by sight, 11 percent by hearing, and the rest through their other senses. Adults can remember up to 50 percent of what they see but only 20 percent of what they hear. Thus, the use of new technological tools such as computers, projectors, slide projectors, videos, etc. provides important means of facilitating the educational process.

Using new technologies is crucial, therefore, to obtaining a higher rate of return on education, since it has been demonstrated that people assimilate and retain 20 percent of what they hear in the classroom; 30 percent of what they see in the classroom; 50 percent of what they see and hear in the classroom; 50 percent of what they see, hear, and discuss in a group; and up to 90 percent of what they see, hear, practice, or do during their group work.

Given that this is the case, classroom education produces excellent results in terms of adult teaching and learning, since it allows teachers to use a rich variety of participatory methodologies. Nevertheless, it must be recognized that this is the most costly type of education. It also implies significant disruption of day-to-day work activities and organizational functions.

Particularly in the judicial sphere, it is not always possible to bring together judges and/or support staff to attend educational activities, whether it be because of the importance of the function
they are performing, or because no replacement is available, or due to the distance separating them from educational sites.

For this reason, we have sought new ways of educating that allow us to reach the largest number of people possible. This has lead to education “in situ” (at one’s own workplace), distance education, and virtual training, all high-impact means of making educating and learning more accessible to everyone in a more democratic fashion.

What Is Virtual Training?

Virtual training is an educational mode that distributes educational topics and materials to a wide audience who gain access to training without having to present themselves physically at training centers or classrooms. It consists essentially of communication via Internet and frequent use of email. It therefore requires development of substantive course materials as well as technical support.

Guatemala’s virtual continuing education program for judges and court registrars aims to provide its students with the necessary tools for training and updating their knowledge on a continuous basis, including a preliminary course on how to use the necessary equipment and software. Students and teachers communicate through a program administrator, whose office is located in a teaching center.

Students can work whenever it is most convenient for them to do so and they may, subject to certain limits, access any given lesson a number of times, print it, download it, and consult with a virtual teacher on a number of occasions. In addition to the technical infrastructure, which includes an Internet server and teaching center, every student must have the minimum equipment necessary to participate, including a computer, printer, and telephone line.

The substantive side of this type of education requires one or more “virtual teachers” who are well versed in the software used to deliver the course as well as in the materials being taught. For example, for the purposes of its initial virtual education program, Guatemala adapted written material consisting of 22 modules prepared for the On-Site Training Program for Justices of the Peace.

On the technical side, a university (Galileo University) has provided the program’s operations center. While the university has provided private servers and telephone lines at a relatively reasonable cost, there are a number of limitations inherent to using another institution’s equipment.

The judges and justices of the peace chosen to participate in Guatemala’s virtual training program received 32 hours of training from IT technicians and the virtual teachers on how to use the software and equipment. The university developed a user manual designed specifically for these students that is intended to guide them through the software package even if they forget some of the lessons. Students can also continue to obtain technical assistance directly from the university technicians or from the virtual teachers.

What Is Distance Education?

In Guatemala, distance education has taken the form of facilitator- or evaluator-supervised training for operators in autonomous learning processes in their workplace. The facilitator provides support and assistance to a small group of people studying in their own workplace who seek to improve their performance.
The subject matter covered tends to be broad and oriented toward visualizing problems from the perspective of practical applications in the workplace. In the judicial sphere, this type of education is useful in situations where processes are being modified, since it encourages analysis of the role and tasks performed by each member of the office staff. The facilitator contributes to improving or strengthening work carried out by the students.

When assessing on site, the evaluator does not arrive with the intention of imposing his or her views, but rather to suggest possible solutions to concrete problems and to foster the necessary conditions to allow the students themselves to develop the most appropriate solutions.

The evaluator provides the group with resources such as printed materials, including new legislation and jurisprudence that will encourage the students to carry out the necessary changes to their work habits.

Evaluations are carried out for the purpose of encouraging some form of change or improvement that, in the judicial context, does not always require increasing the number of decisions rendered or cases processed. Rather, it means ensuring that judges act with professionalism, while the support staff are also improving their skills and abilities.

**Important Aspects of Distance Education**

- **Role of the facilitator.** In order for this type of distance education program to work successfully, the facilitator must take on three functions: 1. Academic, which involves evaluating students' written work and marking written assignments, assisting students to understand teaching materials by way of discussions and clarifications, providing guidance to students by all available means, and motivating students to progress and complete their studies. 2. Administrative, which involves answering participants' questions about the institution, informing students of existing training plans, providing reports on participants' progress as required, providing support and feedback to those responsible at a centralized level for developing course materials; and solving problems encountered by students both in the academic and administrative sphere. 3. Institutional, which involves acting as representative of the education center in accordance with the center's philosophy.

- **How should a tutorial session be conducted?** As a suggestion, it is important to take into account the fact that when dealing with adult students, you are dealing with students who already have a good deal of training, and the educational material should be chosen accordingly.

- **Responsibilities of the facilitator:** to listen effectively; to provide complete answers; to ensure that students' doubts have been clarified; to allow participants to disagree; to provide sufficient examples; to recognize the differences that may exist among participants and seek out ways of ensuring that each one is successful in his or her studies; and to be organized and make sure that tutorials are not simply improvised, but rather that they accomplish the pre-established goals.

- **Responsibility of participants:** to complete assigned tasks; to bring any questions to the tutorial session in writing, in order to take full advantage of time with the tutor; to keep up to date with the readings; to ask questions or express diverging viewpoints in a respectful and reasoned manner; and to be punctual.
Group Discussion

Dr. Gladys Álvarez, Argentina
It is important to explore the various possible ways we can take advantage of new technologies in order to encourage interactive participation between students and teachers. One example may be role playing in a case simulation. Adult education must be oriented toward developing skills, rather than simply toward inculcating additional knowledge. It is therefore important to design virtual training programs that take into account this need.

With respect to possible cooperation between judicial branches and universities, in Argentina, the judicial branch sometimes adjudicates contracts to universities in rural areas to give courses on materials selected and designed by the judicial branch. The judicial branch grants certificates for studies completed in this type of program.

Dr. Juan Enrique Vargas, Chile
Today's challenge is to figure out how to harness all the different possible teaching and training methodologies—workshops, virtual classrooms, transmission of texts or videos via the Internet—so as to maximize their impact and ensure that they are appropriate for the type of subject-matter being taught. For instance, where the goal is to update judges' knowledge of new legislation, this may be done effectively by means of a virtual classroom, primarily through the transmission of electronic texts. Where, however, the goal is to foster a sense of solidarity between judges and to help them to feel less isolated in their work, some form of workshop or conference is required that brings people physically together, for example, to develop solutions to difficult ethical issues.

It is also important to carry out a cost-benefit analysis of the different methodologies and systems for delivering education and training in order to ensure that students receive the highest quality and most appropriate training.

Dr. José Albino Tinetti, El Salvador
In El Salvador, as in most countries, there is a large and increasing demand for training for judges and magistrates. El Salvador has therefore sought to take advantage of new technologies to promote self-teaching. This involves not only teachers, but also tutors, who serve as the contact point between trainers and their students—be they judges, prosecutors, etc. The idea is that the students will be trained not only in legal subjects, but also on how to learn, so that over time, they will require progressively less direction from the trainers.

Dr. Joaquin Talavera, Nicaragua
It is useful to explore more extensive cooperation between judicial branches and universities, as the latter may tend to have more developed technological resources. They can therefore be asked to prepare and/or deliver virtual education at a favorable price to judges and public servants, in accordance with the requirements of the judicial branch.
Mr. Roberto Panzardi, World Bank

Many government institutions are investing significantly in fiber optic cable. This new infrastructure will facilitate virtual training, since it allows for faster and easier transmission of videos and images as well as text. It is therefore important to foster interinstitutional coordination in this area, in terms of ensuring that as many government institutions as possible benefit from public sector investment in new technology.

Group Recommendations

- Training programs and curricula should be planned in accordance with the institutional policies and training objectives set by the judicial branch in order to provide the skills and knowledge needed for proper performance of judicial duties.
- Virtual training and distance education should be used in combination with on-site education programs, since training over the Internet cannot entirely replace human contact, particularly for developing new skills and changing attitudes.
- Training objectives and the desired characteristics of the trained judge must be defined prior to program initiation.
- Priority should be given to participatory methodologies designed to complement the curriculum content as well as to facilitate desired behavioral changes.
- Initial training programs should be offered that develop participants' knowledge, skills, and attitudes in order to increase their ability to self-teach, and to decrease their dependence on trainer assistance over time.
- Evaluation of training and educational programs should be done in holistic fashion, looking at the impacts, costs, administration, and quality.

Group 2: Achieving Excellence in Continuing Judicial Education

Coordinator: Lic. Héctor Aníbal de León Velasco, Magistrate II of the Supreme Court of Justice, Guatemala

Participants: Lic. José Luis Arriola Maldonado, Guatemala
Lic. Gustavo Bonilla, Guatemala
Licda. Gladys Marina Chávez de Borjas, El Salvador
Dr. Noeval de Quadros, Brazil
Lic. Francisco Díaz Rodríguez, El Salvador
Lic. José Francisco de Mata Vela, Guatemala
The Hon. Sandra Oxner, Canada
Ms. Bari Rabin, World Bank
Licda. Ximena Rodríguez de Canestri, Venezuela
Lic. Luis Fernando Solano Carrera, Costa Rica
Article 209 of the Political Constitution of Guatemala establishes the judicial career system, made law with the passage of the Judicial Career Act in 1999. Access to the judicial profession is regulated by this law, which also establishes the procedures for judicial promotion, training, and discipline.

With respect to judicial training, article 13 of the act states that the Institutional Training Unit (Judicial School) is the institution responsible for planning, executing, and facilitating professional and technical training for judges and magistrates with a view to ensuring excellence and updating knowledge and skills to ensure the efficient and effective performance of the judicial function. In this way, the law provides for continuing judicial education in its reference to updating knowledge and skills.

Article 28 of the act imposes a duty on judges and magistrates to maintain a high level of professional skill and competence. Similarly, article 32 establishes that one of the bases for evaluating the performance of judges and magistrates is their academic performance, as evaluated by the Judicial School.

These legal provisions are mentioned to illustrate the importance of continuing education for active judges and magistrates.

**Continuing Education**

The purpose of continuing education is to complement the basic information and training transmitted during the initial education given to new judges. The Judicial School is the administrative entity within the judicial branch that, organized within the institutional hierarchy as a center for higher and specialized education, is responsible for technical and systematic training throughout a judge’s career.

There are many ways to deliver continuing education, including offering a variety of multicourse programs both at the school’s central location and in a more decentralized fashion throughout the country. Judicial schools may carry out this training by way of

- on-site continuing education and
- virtual training activities.

These activities may include courses, seminars, multiple-day workshops, courses over the Internet, etc. In Guatemala, virtual courses were initially oriented toward justices of the peace. As you know, these courses are advantageous because they do not require participants to move around physically. Thus, the courses can be planned on a relatively long-term basis and can even be used to provide a permanent source of information.
In Guatemala, to satisfy the need to produce high-quality written educational materials, a number of working groups have been constituted to draft resource manuals, particularly in the area of criminal law, including the *Criminal Law Handbook* and the *Guide to Criminal Procedure*.

In order to create a space for reflection and open discussion on topics of current importance—and in order to analyze the role and development of the judicial function in each of its aspects—the Supreme Court of Justice, in conjunction with the Judicial School, has provided a very specific type of continuing education program through its judicial summer school "Juan Carlos I."

It is worth examining this program in some detail, given its importance for all judicial sector employees, as it is open to judges and magistrates in every area of the law as well as to prosecutors and defense lawyers practicing in the area of criminal law. Since 1997, the Guatemalan judicial branch and Supreme Court of Justice, in cooperation with the Spanish Judicial Council and the Spanish International Cooperation Agency, have been conducting an annual Judicial Branch Summer School. From its inception, it has taken place at the Ibero-American Training Center located in Antigua, Guatemala.

Over the past five years, more and more justice sector institutions have begun to participate in the courses. Thus, since 1999, some of the activities have been carried out in conjunction with San Carlos University and Rafael Landivar University. The Training Sections of the Public Ministry and the Public Defenders Institute have also begun to participate. Each of the organizing institutions plays an important role in designing the program.

It is interesting to note that as of 2001, judges from other Central American countries, including Honduras, El Salvador, and Nicaragua, have attended the summer school.

Thus, the summer school has, somewhat unusually, become a complementary program to the regular courses offered by the Judicial School. Beyond providing a forum for analyzing contemporary topics of importance to the judiciary, it has come to constitute a center for debate and for ongoing research, as it now includes a Permanent Secretariat through which judges from across the country and the region can keep in touch and have access to the materials produced on topics already covered, as well as proposing topics for future discussion.

For this reason, the course is designed on an annual basis, in light of immediate needs for training as perceived by the Judicial School (represented by its director), as well as by the other training institutes, so as to guarantee the greatest effectiveness and complementarity with other training programs offered by these institutions.

It should be pointed out that this year, for example, trainers used participative methodologies and techniques to identify needs according to topic and to determine what academic programs should be included. They based their conclusions on interviews with judges, magistrates, and other judicial sector personnel who were asked to indicate the most significant problems and challenges they face on a daily basis.

Based on the results of these consultations, a commission created and designed the relevant courses. The course outline was then submitted to the teaching staff to tailor the programs and request, where necessary, legislation and cases from any foreign jurisdictions considered relevant to the topic in question.
Consultations indicated that the following areas gave rise to the greatest need for training:

- **Basic training.** This training is oriented toward judges and magistrates who, generally because of reasons of distance and other similar factors, have not been able to participate in other training programs. Basic training programs are designed to include an evaluation to determine areas of greatest weakness. These may include subject areas on which they have received little training in the past few years or new issues and legislation within previously covered topics. For example, in 2001, international adoptions, banking law, tax law, and medical issues were judged to be a priority for basic training.

- **Specialization and advanced training.** These courses are oriented toward members of the judiciary who over the years may have taken part in training courses but who find it useful to complement these courses as a means of achieving greater specialization in particular areas. In some cases, specialized courses will be given to specific groups, such as the course on medical issues given to participants who had already taken part in courses on the issue given by the Judicial School. On the basis of the specialized course materials, the Judicial School will then design new general courses in the same area. Specifically, specialized summer school courses have covered civil law (seminar on civil responsibility) and criminal law (given twice, with seminars on the constitutional foundations of criminal procedure for judges, prosecutors, and defense lawyers). These courses allowed judges assigned to courts dealing specifically with these areas to obtain more advanced training in these subject areas.

- **Developments in the law, doctrine, and jurisprudence.** The summer school has sought to open up a space for reflection and debate on certain specialized topics that have in turn helped to develop the law, doctrine, and jurisprudence as much as possible through the exercise of the judicial function. For instance, at the request of participants, the school has given multidisciplinary courses on legal journalism and multiculturalism, drawing on sociological, economic, and anthropological studies of the country.

The summer school's specific objectives include:

- **To improve judges' and magistrates' knowledge of the law, thereby complementing their previous education and initial judicial training.** The same goal applies in the case of personnel from other justice sector institutions.

- **To give judges and magistrates who have not had the opportunity to take Judicial School courses a chance to acquire the specialized knowledge required to perform their decision-making function adequately.**

- **To increase participants' technical skills and professional competence, as well as provide a specialized forum for analyzing and debating important current legal topics.**

- **To improve the legal knowledge of others whose work is related to that of the judiciary, including that of lawyers, law professors, university students, and support staff.**

The Judicial Branch Summer School has sought to orient its continuing education programs for justice sector personnel (judges, magistrates, prosecutors, and public defenders) in two complementary directions:
1. To update knowledge in the most important areas as required for satisfactory exercise of the judicial function, as well as in other general and complementary areas. Similarly, to update the knowledge and skills of other justice sector personnel in order to improve their performance.

2. To create a space for reflection on specialized topics having a direct impact on, or relevance to, judicial functions and other justice sector personnel.

Evaluations conducted over the course of each program indicate that these goals have been met every year.

Group Discussion

Licda. Gladys Marina Chávez de Borjas, El Salvador

El Salvador recently initiated a two-year comprehensive training program for new judges. The course covers substantive subject matter as well as the practical aspects of exercising the judicial function. In addition, El Salvador has a continuing education program that combines on-site education with virtual or distance education, including a system set up to allow for constant consultation by way of e-mail. Jurisprudence workshops have also been developed to give representatives of different justice sector institutions (prosecutors, police, defense lawyers, judges, etc.) a chance to study, analyze, and solve practical case studies.

In order to ensure that training is effective, it is important for every judicial school to determine the profile of the ideal judge as a basis for designing a program that will help to achieve this ideal.

Dr. Noeval de Quadros, Brazil

Brazil offers an 11-month (800-hour) initial training course for aspirant judges. The course is administered in a decentralized fashion. For recently appointed judges, there is a basic training course that brings them into contact with the other institutions they will be working with in exercising their functions. With respect to continuing education, courses are generally offered every three to four months, lasting five or six days, providing specialized training in particular subject areas. In addition, workshops are provided for judicial support staff, in order to motivate them to provide better service to the public.

In addition, there is a relatively new videoconference program given once a month. Each conference lasts two hours and covers a topic of current general interest. One example addresses the most recent changes to the Civil Code. The videoconferences are conducted via satellite and are open to all members of the legal profession (judges, lawyers, etc.). Finally, there are a number of agreements between judicial organizations, universities, and bar associations that permit interested judges to participate in courses offered by these different institutions.

Lic. Francisco Díaz Rodríguez, El Salvador

The methodology for designing continuing education programs must include surveys of public and judicial opinion, as well as evaluations carried out by the judicial schools respecting weaknesses in judicial performance.
It is important to recognize that initial training is implicit in the topic of continuing education. The more comprehensive and solid the initial training, the less need there will be for extensive and ongoing continuing education. Particularly in countries where the universities do not produce highly skilled lawyers, judicial schools may be required to assume the responsibility of additional training. Hence the need to coordinate efforts among educational institutions, where possible.

**The Hon. Sandra Oxner, Canada**

The experience of the Commonwealth Judicial Education Institute (CJEI) in the area of continuing judicial education points to a need to design continuing education programs according to a methodology that takes into account the views of civil society regarding the weaknesses and failings of the justice system. This may be done by surveying users of the justice system—lawyers, local community organizations, NGOs, unions, women’s groups, etc., as well as judges. Based on the results of the survey, judicial schools can design a training program specifically oriented toward addressing the perceived weaknesses of the system.

Judges are public servants. They must therefore, as stated so eloquently today by the Hon. Justice Bhagwati, seek to bridge the gap between law and justice. To do so, they must be both competent and just. On this point, it is interesting to note that surveys conducted by the CJEI in over 50 countries have showed that weaknesses perceived by the public tend to relate not so much to judicial incompetence, but rather to lack of impartiality, corruption, inefficiency, and ineffectiveness. In contrast, judges themselves are apt to identify competence and knowledge as areas of weakness. This shows why judicial schools should not design their training based solely on the views of judges, since in doing so, they will fail to address significant weaknesses perceived by the public in the crucial areas of ethics and efficacy.

**Licda. Ximena Rodriguez de Canestri, Venezuela**

Venezuela is currently modifying the structure of its judicial education program. One of the main proposals for the new judicial school is to establish a judicial research section that would have as one of its main functions the internal analysis and diagnosis of weaknesses in judicial performance—based on a review of decisions, number of appeals, etc., as well as the evaluation of external perceptions of the judiciary. This research would then serve as the basis for designing judicial training programs that respond to the observed weaknesses.

**Lic. Luis Fernando Solano Carrera, Costa Rica**

With respect to judicial skill and competence, it is important to improve coordination between judicial schools and universities, given that judicial schools do not have sufficient resources to become full-scale higher education institutions.

With respect to program design, it is important for judicial schools to have the capacity to conduct their own evaluations of judicial performance and areas of weakness, since judges often cannot recognize their own weaknesses. For example, a judge who does not know that you have to apply international conventions in certain types of cases will not respond in a survey that he or she is weak in this area.
Lic. José Francisco de Mata Vela, Guatemala
In recent years, Guatemala has experimented with training programs involving representatives from various justice sector institutions—prosecutors, judges, police, and public defenders—who come together to analyze issues, conduct practical case studies, etc., specifically in the area of criminal justice. These programs have been very important in view of the need to train all justice sector personnel very quickly on the new adversarial and oral criminal procedures that have significantly changed the law in this area.

Group Recommendations
- the definition of the role and profile of the ideal judge,
- perceived needs of the legal community and civil society,
- the results of performance evaluations of judges and magistrates,
- assessments of previous training programs,
- analyses of judgments and sentences,
- public opinion from the media and other means, and
- reports from international organizations.

Group 3: Using Education to Promote Efficiency in the Courts
Coordinator: Lic. Gerardo Alberto Hurtado Flores, Magistrate XII of the Supreme Court of Justice, Guatemala
Participants: Mr. Francisco Castro, World Bank
Dr. Alfredo Chirino Sánchez, Costa Rica
Dr. Elias Cordero, Venezuela
Lic. Francisco Rolando Durán Méndez, Guatemala
Lic. Hipólito Gill, Panama
Dr. Alfonso Guarín Arizada, Colombia
Ms. Thea Herman, Canada
Dr. Oscar Luna, El Salvador
Dr. Francisco Salvador Tobar, El Salvador

Background Paper: Judicial Training to Improve Case Management Efficiency
Lic. Gerardo Alberto Hurtado Flores
Magistrate XII, Guatemalan Supreme Court of Justice
Starting from the premise that in the majority of Latin American countries, justice systems have been subject to neglect and underfunding by the other branches of government, it is logical to suppose that this situation has led to a lack of efficiency and resistance to change.
Among several factors contributing to this situation are limited investment in infrastructure, a sometimes submissive attitude on the part of the judiciary toward other branches of government, and a certain level of laziness or lack of interest on the part of those who have, until now, been charged with imparting justice. As a consequence, the justice system does not satisfy user expectations. The justice system must—and in fact does—have the potential to be improved substantially, so as to adapt to the requirements of modern society and to be transformed into a more efficient system such that it can respond to society’s demands.

Other weaknesses of our justice systems that must also be acknowledged, include (a) the empiricism with which justice sector officials perform their functions, principally due to the lack of courses in law faculties that should provide training in technical and procedural matters from the judiciary’s perspective; (b) the corruption that continues to plague our systems; (c) the existence of poor practices based on the repetition of erroneous procedures; (d) the lack of unity between different codes, and the existence of a “jungle” of laws and regulations; (e) the selection of judges and judicial personnel based on connections rather than on objective criteria and merit, such that incompetent people are hired; (f) the lack of infrastructure needed to permit the efficient functioning of the courts; and (g) low salary scales, etc.

Given this situation, it is important to identify and recognize these weaknesses. It is even more important to seek out their root causes in order to find solutions. This goal should inspire every initiative to improve case management and the efficiency of court administration.

As a participant in, and later coordinator of, the Case Management Reform Project that began in Guatemala in 1999, I have had the opportunity to see that, as is the case with any reform process, it is important to employ methods and mechanisms that allow one to arrive at solutions that are based not only on correct facts, but also tested by way of practical pilot projects to ensure that the planned objectives are actually met.

Referring specifically to Guatemala and to criminal procedure in this country, in 1994, a new procedural system was introduced to replace the old inquisitorial model with oral hearings and accusatorial procedures. While this paper cannot hope to cover all aspects of this broad topic—and recognizing that even today there are still jurists who still do not acknowledge the advantages of the new Code of Criminal Procedure—over time it has become clear that resistance to the new code could have been reduced if the enforcement of the legislation had occurred under different circumstances and if the draft legislation had been prepared by national experts in procedural matters, rather than by foreign lawyers, as was actually the case.

Be that as it may, in 1999, the Supreme Court of Justice embarked on a Project for Strengthening the Rule of Law, which encompassed a Case Management Reform Project to analyze the causes for delay in noncriminal cases. The Supreme Court coordinated the project, carried out by four working groups made up of justices of the appellate courts, first instance judges, court registrars, and other officials. These groups studied the way in which different procedural steps were followed in practice. The groups were divided according to the following areas: administrative and corporate law, civil law, family law, and labor law. Each group member was given initial training on how to create diagrams and flow charts that would reflect graphically the different procedural steps involved in taking a case through the courts, as well as show the time required to go from one step to the next.
Once they were familiar with these techniques, the groups proceeded to diagram the proceedings in their area; at the same time, they determined the average time (in terms of business days) the respective tribunals and courts took at each stage. This exercise allowed for rapid detection of duplicated efforts, inadequate procedures, absence of control mechanisms, etc. These findings, and corresponding measures taken to correct them, led to considerable reductions in the time and effort required at each stage. Improvements were witnessed by the members of each team in their own courts as well as by judges in the pilot courts that implemented the improved procedures.

It became clear that certain procedural norms were obsolete. The four groups joined together to formulate a proposal intended to serve as the basis for procedural reform with a view to drafting a general code of procedure, applicable to all noncriminal proceedings. In order to bring this project to fruition, PROFED, in conjunction with the Supreme Court, hired three Guatemalan experts on procedure who drafted the general code based on the findings and recommendations of the working groups. The draft has received the approval of magistrates and first instance judges in Guatemala City, in which participants presented only a few comments regarding format.

The process outlined above demonstrates that the Guatemalan judicial branch is well on its way to achieving its goal of promoting efficiency and efficacy in the administration of justice. How is this goal to be achieved? It is very important that those who administer justice and work in the system identify and determine their own weaknesses. At the same time, they should also participate in all processes aimed at improving the justice system. This very participation will constitute a motivating push toward achieving the necessary attitudinal change among justice sector personnel. The fact that judges and magistrates feel that they are a part of the process of change will motivate them not only to recognize deficiencies in their own courts but also to react positively to proposed solutions from others. In addition, this will allow justice sector personnel to escape the routines and delays that have characterized their work until now.

The Supreme Court is also contributing to bringing about attitudinal change by carrying out projects relating to physical infrastructure, and specifically by transforming court offices into more pleasant work environments with adequate equipment to improve the performance of judicial responsibilities. Participation by a number of judges in internships in Uruguay, a country that already has a General Code of Procedure, has also proved to be a highly motivating factor in this process.

**Group Discussion**

**Lic. Hipólito Gil, Panama**

Panama has had a judicial career system in place for over a decade. Judicial education and training has included courses in procedural matters, taught with a view to avoiding delays and excessive bureaucracy. There have been workshops to teach judges to simplify their tasks, by providing model decisions, for example, that reduce the amount of time required for drafting decisions. Flow charts were also produced in order to identify which procedural stages tended to constitute the most significant obstacles to a speedy process—notification, hearing, rendering of judgment, etc.—and, as a consequence, where the focus of judicial training should be with respect to procedural matters, among others.
Panama’s procedural legislation has recently undergone an important reform process affecting all areas of the law—civil, criminal, etc.—and particularly those necessary for the continuation of a proceeding, including notification. The judicial school is currently training judges and judicial personnel in these new procedures to promote greater efficiency.

**Dr. Oscar Luna, El Salvador**

In order to provide adequate solutions, it is necessary to identify deficiencies and determine the practical objectives to be achieved. It is also important to foster attitudes favorable to change and committed to achieving these goals. With respect to corruption, which is one of many possible causes of delays in proceedings, it is not sufficient simply to say that it is difficult to identify situations involving corruption. It is necessary to investigate cases of excessive delay, determine the causes—inefficiency, inefficiency, or any other—and apply the appropriate sanctions if corruption is identified as the cause.

**Dr. Francisco Salvador Tobar, El Salvador**

El Salvador shares many of the problems mentioned by Lic. Hurtado Flores in his background paper. We must all hope that events such as today’s for sharing knowledge, experiences, and best practices will assist judicial branches in our respective countries to improve their efforts to achieve greater efficiency in the courts.

**Ms. Thea Herman, Canada**

While it is true that Canada has a somewhat different legal tradition from that of Latin American countries, it shares many of the same problems and concerns with respect to inefficiency in the courts. Canadian judges are selected from among the best lawyers in the country and have, in general, very strong legal skills. In general, however, they do not have significant training in management or office administration.

Recognizing this weakness, the Canadian National Judicial Institute has begun to offer courses on case management and office administration designed specifically for judges. The course is quite revolutionary in Canada, since in the past, judges tended to resist any type of training other than that relating to updating and perfecting their legal knowledge. Now, however, judges participate actively and enthusiastically in courses on case management and office administration.

**Dr. Elias Cordero, Venezuela**

Venezuela recently adopted a new Constitution that broke with the old models of the past respecting the judicial branch and the role of judges. The new Supreme Court was required to create an administrate office responsible for the administration of justice. The office is run by a multidisciplinary team that brings new strategic tools to the administration of justice. This team began its work by proposing a new vision for the judicial branch. It adopts the perspective that administrative support for the judges’ work must make a value-added contribution to the substantive judicial decisionmaking function.

The Court has gone through an organizational audit that was designed as a function of the vision and goals to be achieved. The audit identified the strengths and weaknesses of the judicial branch.
As a result of the report, emphasis has been placed on improving human resources, infrastructure, and technology.

**Dr. Alfonso Guarin Arizada, Colombia**

Colombia’s judicial school has existed for over 30 years and has a research section that produces studies on various aspects of the administration of justice. In particular, and in relation to delays in the judicial process, these reports have noted a problem of excessive formalism in Colombia’s procedural codes that also manifests itself in the excessively formalist attitude adopted by the judges and officials who apply them.

Since attitude is the key factor in change management, judicial training to improve case management efficiency requires an interdisciplinary approach that will produce a transformation of judicial culture and attitudes. This transformation from formalist to humanist is absolutely indispensable to any successful judicial reform initiative.

**Dr. Alfredo Chirino Sánchez, Costa Rica**

There is a general recognition among members of the group that making judicial processes more efficient is not just a legal problem. Thus, any judicial training aimed at improving the situation will likely have to be interdisciplinary in orientation.

The value that the judicial system may bring to a society has an internal aspect, in that judges need to recognize that their decisions constitute a valuable public service. The need to make judicial processes more efficient by way of behavioral and attitudinal change presents a challenge of supreme importance for judicial schools, as they must assume responsibility for designing courses that transform judges into active case managers.

Once judicial branches have recognized that improving case management efficiency is both an important priority and a problem without a purely legal solution, they must begin to look at rationalizing the distribution of human resources more efficiently, so as to optimize the skills of their personnel and the potential of existing infrastructure. They must also start to ensure that support staff are placed in positions that correspond to their training, skills, etc.

**Group Recommendations**

Finally, working from a consensus regarding the many factors that have contributed to the current situation in which most Latin American courts find themselves, with heavy backlogs of cases and lengthy delays, the group came up with a number of suggestions based on past experience and group discussions. They recognized the following obstacles that need to be acknowledged and steps that need to be taken in order to decrease case loads and improve case management and organizational efficiency. They concluded that

- Judges and the judicial court must be seen as separate entities, and practicing lawyers should not be seen as the only professionals who can take an active role in the administration of justice.
- Diagnostic assessments of case proceedings are needed in order to target changes and training.
- Judicial schools need to promote a multidisciplinary approach to the administration of justice, focused on more effective management strategies to promote both structural and long-term changes.
• Training and education that aims to reduce case load backlogs should seek to change human behavior, transform attitudes and institutional cultures, and work with judicial support staff and court personnel, as well as lawyers and judges.

• Now, more than ever before, the active participation from other sectors of society and areas of expertise is indispensable for the proper administration of justice.

Law Students’ Group

Three Magistrates of the Guatemalan Supreme Court, Justices Marieliz Lucero Sibley, Otto Marroquin Guerra, and Alfonso Carrillo Castillo, led a workshop of top Guatemalan law students focused on judicial vocation, judicial decisionmaking, and judicial ethics. All three emphasized the importance of a judge’s human qualities as an indispensable, yet often disregarded, component of the just practice of law.

Judicial Vocation

Licda. Marieliz Lucero Sibley
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What are the meaning and scope of the term “vocation,” and, more specifically, what does “judicial vocation” mean?

While there exists no definitive profile of what a judge should be, it is important to establish certain general parameters and criteria in this area. We know that prior to becoming a judge (and as required by Guatemalan law), a candidate to the judiciary must have studied at one of Guatemala’s law schools. This leaves a gap in their preparation, however, since traditionally law schools have designed their curricula to train the professionals who practice law. To a large extent, they have left out other activities intimately linked to the study of law and have oriented students in these other directions.

It is also the case that, in recent times, society has viewed the judicial profession with a certain amount of mistrust. As society has evolved, temptation, corruption, and the lack of training and vocation, among other factors, have tended to produce a lack of credibility within the justice system at the same time as they have undermined the judicial culture.

Returning to the topic at hand, then, we can understand vocation to mean, as defined by the Dictionary of the Spanish Royal Academy, “the inspiration by which God summons us to a particular calling.” As part of this calling, judges are called upon to demonstrate a profoundly humanistic and existential vocation, in which the human element must take priority over every other factor at the moment the law is applied. In addition, judges must have received a solid education on the transcendental concepts and ideals of justice. In other words, the judge must be an intelligent, highly cultured person who uses these talents for honest service—honesty being the key criterion in this profile.

It is important to emphasize that in the context of their role as administrators of justice, judges must enjoy a minimum number of guarantees that allow them to carry out their work efficiently,
honestly, and equitably. In this sense, the traditional element of security of judicial tenure must be understood as the best guarantee of the autonomy and independence that must characterize the exercise of judicial functions. This tenure should be limited only by reason of age, impossibility of continuing in office, or the commission of disciplinary faults as defined by the law.

It is equally important to remember that the law has an extraordinary power to act as a conduit for achieving justice. Without overlooking other social values such as peace, stability, the maintenance of social order, and equality, it must be recognized that the judge is the true embodiment of justice. Judges must remember that judging is much more than a personal act.

This perspective reveals the full importance of the judge's role in society. The judge must be understood to be the key medium through which the law resolves disputes between members of society.

By adopting this human, rather than cold scientific, perspective, we see that the judge is the person who stands guard on behalf of those who have been wronged for arbitrary reasons. Seen in this light, the judge is neither simply someone who "applies" legal rules nor a cold "legal automaton." The judge as a professional plays a key role in the "litis" (by which I refer not to the parties, but to the substantive conflict at issue in the case).

The judge must therefore demonstrate human qualities, including, for example, a superior ability to listen to the parties. In addition, every judicial system must be staffed by professionals who are capable of tapping into the collective consciousness, as expressed through the law, when the time comes to decide each case. Indeed, the act of rendering a judgment constitutes one of the most important social duties among the many grave responsibilities conferred on the judge. The judge's decision is not just the necessary conclusion to a proceeding, nor is it simply the judge's personal solution to the conflict at issue. It is above all a social act having an inherent ethical dimension as well as giving rise to a number of consequences. The most precious of human values can be affected—and in fact, are affected—whenever a judge renders a decision. Liberty, patrimony, and property, among other values, rest in the hands of the judge called upon to impart justice. It is for this reason that the vocation to do justice requires judges to exercise their functions with the utmost honesty.

Similarly, the judge must not be content simply to apply the strict letter of the law. Judging without leaving room for interpretation, and without reference to jurisprudential analysis as a source of law, constitutes judging without wisdom. For while it is true that the judge must render justice (ius quaeque tribuere) based on the text of the law, this is not always an easy task, since in doing so, judges must be aware that there is always a risk they may fail to do justice or, even worse, may deny justice.

Nobody would object to the proposition that a judge must render justice. What is important, however, is that judges understand their duty to render justice from the perspective of doing good (that is, truly impartially and independent of all self-interest). From this perspective, the judicial responsibility will always be a weighty one. At the same time, however, the act of judging is transformed into one of the most beautiful and noble activities a human being can aspire to do.

In summary, we can now outline the parameters of our judicial profile somewhat more clearly:

- Judges must be fair, honest, studious, reflective, attentive to matters of equity and the common good, impartial, independent, conciliatory, responsible, balanced, and characterized by equanimity and integrity; they must be an example to the community.
• Judges must be acutely conscious of the ethical aspect of their role, be capable of listening and reasoning, maintain emotional balance, have an aptitude for hard work, and be tenacious, constant, devoted to service, patient, courageous, and well-rounded.
• Judges must place themselves at the service of the community, be trained to administer justice, be disposed to take on the risks associated with their mission, and be in good mental and physical health.
• Judges must be aware of the ethical norms inherent in their work, know the applicable provisions of constitutional law, human rights, general procedural rules, the substantive subject matter of specialized courts, advocacy techniques, and legal reasoning, as well as mastering oral and written language and using doctrine and jurisprudence as an effective guide to judging, rather than as dogma.

This description of the judicial profile would be incomplete if we did not emphasize one more very important attribute of the good judge: he or she must be free of prejudice, since anyone who allows him- or herself to be influenced by the economic, social, or cultural conditions or the gender of the persons appearing in court lacks the necessary impartiality to be a good judge.

Over the majority of their time spent in active service, judges will find themselves faced with the challenge of overcoming temporal or material obstacles to the proper exercise of their responsibilities. Thus, any person with the calling to be a judge must place justice at the very top of his or her value system. This is the attitude adopted by judges who truly feel themselves honored and privileged to have been called to the judicial profession. For by judging truthfully and correctly and applying justice with both the humanity and the thoroughness required of the office, judges can serve society's interests very effectively.

The Judicial Decisionmaking Function

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The judicial decisionmaking function arises when judges make decisions pertaining to substantive laws or procedures that have a legal effect, including decisions as to verdict or sentencing.

Guatemala's Constitution establishes that only the courts have the power to make judicial decisions and to oversee the execution thereof. To protect this function, the Constitution provides the following guarantees for the judicial branch:
• functional independence;
• budgetary independence;
• Security of tenure for magistrates and first instance judges, except in cases established by law; and
• power to select personnel.

With respect to judicial independence, the Constitution affirms that "Justices and judges are independent in the exercise of their functions and are subject only to the Constitution and the laws of the nation." To ensure that this principle is respected, the Constitution also provides that
“whoever violates the Judicial Branch’s independence shall be punished according to the Criminal Code and shall be prohibited from occupying any public office.” Reaffirming the nature of the function as one that pertains solely to a state institution, the Constitution adds that “the judicial decision-making function is exercised with absolute exclusivity by the Supreme Court of Justice and by other tribunals established by law.” Providing an added safeguard against the usurpation of this function by any other state entity or administrative or municipal authority, for example, the Magna Carta reaffirms that “no other authority may intervene in the administration of justice.”

In the matter of budgetary independence, the Constitution provides in article 213 that “the Supreme Court of Justice has the power to determine the budget for the Branch and, to this end, an amount no less than 2% of the State’s Ordinary Revenues Budget shall be provided to the Judicial Branch Treasury every month, in proportion and in advance, by the corresponding body.”

As a supplement to these revenues, the Constitution contemplates that “all funds derived from the administration of justice are the sole funds of the Judicial Branch and are to be invested only by the Supreme Court of Justice. The Judicial Branch shall publish its budget annually and shall report to Congress every four months regarding the spending of monies, including an analysis of their use.”

These amounts have proven insufficient to meet the economic needs of the judicial branch. Thus, the Supreme Court of Justice has often undertaken special measures to request and manage additional budgetary funds in order to cover an approximate annual budget of 900 million quetzals (US$112.5 million) instead of the approximately 500 million quetzals (US$62.5 million) that would otherwise be allocated.

This was even more the case after the signing of the Peace Accords in 1996, as they provided the basis for additional support from the international community for the administration of justice. Thus, the judicial branch has benefited from donations from a number of countries such as the Netherlands, which is currently funding part of a program to build justice of the peace offices in the Department of Guatemala, as well as a number of general training programs for lower court judges and staff. Similarly, the Swedish and Norwegian governments have supported programs relating to first instance courts.

With respect to the guarantee of security of tenure for and first instance judges, the Constitution provides in article 208 that “Justices, regardless of their rank, and first instance judges, will remain in office for five years, after which the former may be reelected and the latter may be reappointed. During this period, they shall not be removed or suspended except in accordance with the law.”

This provision does not cover the case of justices of the peace, who remain subject to the will of the Supreme Court of Justice, the body that appointed them and that therefore has the power to remove them from office where there is cause for taking such an extreme measure.

This constitutional guarantee has been entrenched in the Judicial Career Act, enacted pursuant to article 209 of the Constitution that required the creation of a judicial career system and provided further that “entry, promotion and elevation shall occur by competition” as regulated by law.

To give a broad overview of the contents of the Judicial Career Act, article 1 establishes the object and purpose of the legislation as being “to establish the principles, norms and procedures and to create the bodies necessary for the administration and operation of the Judicial Career System.” Article 1 goes on to state: “The Judicial Career System regulates the admission, tenure, promo-
tion, training, discipline and other activities of judges and magistrates, whatever their category or rank, for the purpose of guaranteeing their dignity, independence and professional excellence in the exercise of their judicial functions.” As Professor Gabriela Judith Vázquez explains in her book *Independencia y carrera judicial en Guatemala,* “The institutionalization of a judicial career system permits the establishment of a normative framework in which judicial functions are to be exercised and places precise limits on any type of arbitrary conduct toward judges and magistrates.” Vázquez also points out that the new act establishes the principle of horizontality in that “it recognizes that all judges are equal and that the only significant difference between them relates to the functions they carry out in accordance with their jurisdiction.”

Article 2 of the act emphasizes both the internal and external aspects of the principle of independence, as well as referring to the principle of impartiality, a quality of utmost importance in carrying out the judicial decisionmaking function, as it requires the double perspectives of objectivity and subjectivity.

External independence guarantees the judge’s autonomy from other state powers and pressure groups. Unfortunately, the Guatemalan Criminal Code still does not include a crime of “influence trafficking”—a crime that is in fact often committed. However, judges are protected from such influence in the sense that they are now selected through public competitions, as well as with training on ethical issues given during workshops on the judicial branch ethical norms, published recently in the *Official Gazette,* and of general application throughout the country.

Internal independence guarantees, as Vázquez puts it, “the autonomy of the judge from powers within the judicial structure,” in such a way as to ensure that no judge can interfere with the work of another judge, except by way of collective measures contemplated in the Judicial Branch Act, including superlative rules, recommendations, and orders to carry out particular tasks. Internal independence is also reflected in the absolute respect for court hierarchy, under which the Supreme Court of Justice, whether through its justices or in any other manner, is prohibited from interfering in the work of any judge in any way that would imply an attempt to influence the matters under their responsibility. This does not preclude, however, the review of a judge’s official conduct as contemplated by the Judicial Career Act.

Similarly, the act sets out criteria for evaluating the performance of judicial decisionmaking functions—these criteria shall be taken into account as required in order to take any necessary measures or to determine, at the end of the five-year term of the judge of first instance, whether he or she will be reappointed in accordance with constitutional provisions. Article 32 of the act is the most important article in this respect and it reads as follows:

32. The quality of judges' and magistrates' performance in carrying out their functions shall be evaluated annually, or periodically as required, by the Judicial Career Council.

For the purposes of the evaluation, the Council shall consider, among other factors:

a. The number of decisions rendered by the judge or magistrate on a monthly basis;
b. The number of decisions that were confirmed, overturned or quashed as compared to the number of decisions that were not appealed or subject to any other recourse and therefore final.
c. The number of hearings held or working days per month in the court or tribunal;
d. The number of cases resolved by means of the application of procedures designed to
dejudicialize the case load;
e. Observance of the legally prescribed delays to which the judge or magistrate is sub-
ject according to applicable laws;
f. Any disciplinary or other sanctions to which the judge or magistrate has been subjected;
g. The academic report prepared by the Institutional Training Unit (Judicial School).
Satisfactory performance standards for judges and magistrates shall be set by the Judicial
Career Council. They shall be public and all appointments and elevations shall be made in
strict compliance therewith.

Professor Vásquez reminds us that independence is "the basis for judicial impartiality; in
exchange, the judge is responsible for his or her acts." For this reason, the basic principles that
underlie judicial independence include the following: "judges shall resolve the matters which come
before them with impartiality, based on the facts and in accordance with the law, free from limi-
tation, influence, suggestion, pressure, threat or undue interference, whether direct or indirect,
from any sector or for any reason."

It is therefore useful to think of impartiality as both subjective and objective. Subjective impar-
tiality (or partiality, as the case may be), refers to anything that affects the spirit of the judge, whether
by way of injury, bad faith, fear, or intimidation; in other words, all cases in which the judge favors
one or other of the parties knowingly and with the intention of doing so. In this respect, article
122 of the Judicial Branch Act sets out a number of factors that are considered impediments to
impartiality and therefore situations in which a judge should not hear a case—essentially whenever
the judge has some personal interest in, or connection to, a case due to a family connection or
friendship.

In contrast, objective impartiality consists in the judicial duty to know the law and to learn all
relevant details of the case in order to be able to resolve it correctly. Objective partiality is put into
question, therefore, whenever the judge acts negligently, whether because of a lack of knowledge
of the law or of the case, but without the intention to injure or favor one or other of the parties.
In this respect, article 463 of the Criminal Code punishes the crime of "culpable equivocation,"
defined as "A judge who, out of inexcusable negligence or ignorance, renders decisions that are
contrary to the law or based on incorrect facts."

Judicial decisionmaking has therefore been protected by several layers of guarantees in order
to prevent direct or indirect influence that might prejudice a judge's independence or impartiality.
The Judicial Career Act therefore strictly regulates the public competitions for entry into, and pro-
motion within, the judicial career system.

The Judicial Career Council is responsible for implementing and applying the act. In Guatemala,
there are already a number of judges who are the product of public competitions and subsequent
education provided to candidates to the judiciary. This education is carried out by the Institutional
Training Unit (Judicial School), an institution that is still being consolidated but that shortly should
count among its teaching staff a number of active judges and magistrates. They will give theoretical
and practical courses, outside of business hours, in conjunction with qualified university lecturers and professors, so as to ensure that new judges are properly prepared to exercise their judicial function.

Turning now to judicial support staff such as registrars, clerks, court officials, bailiffs, and commissioners, as well as other personnel working in the judicial system, such as forensic doctors, psychologists, social workers, and others subject to the Act Respecting the Judicial Branch Civil Service (Congressional Decree No. 48-99), they are also selected by means of open public competitions. This process recently began to be administered through a national convocation of all potential participants, coordinated by the Human Resources Manager whose Director is also part of the Judicial Career Council. This process led to the selection of a fairly large pool of candidates who scored above the minimum of 70 points in the admission test. These people will gradually be offered positions as vacancies arise and after they have received training coordinated by the Judicial School. They will be subject to performance evaluations on a continuous basis, to ensure that only the best candidates are selected as judicial support staff. In order to counteract certain causes of corruption that do, unfortunately, and in a relatively isolated fashion, affect the judicial decision making function, a number of mechanisms for audit and review have been put into place, including the Office of the Supervisor General of Tribunals, which will provide support to the Disciplinary Committee, which falls under the responsibility of the Human Resources Manager. In this way, the Supreme Court of Justice will be able to resolve issues of employee misconduct and remove personnel where necessary.

In the case of first instance and appellate court judges, the Judicial Discipline Board is responsible for hearing and deciding cases relating to irregularities in official judicial conduct. This regime deals only with administrative liability—any criminal liability that arises will be the responsibility of the Public Prosecutor’s office. Where necessary, the Judicial Discipline Board may recommend to the Supreme Court or to Congress, in the case of judges and justices respectively, that the person in question be removed from office.

In addition to these measures, the Supreme Court of Justice has significantly increased salaries for appellate court justices and all judges, as an incentive to strengthening the judiciary. In addition, the Court has planned the periodic and systematic transfer of judges (every five years or so) in order to avoid the creation of the kinds of friendships and connections that may naturally arise whenever one stays in one place for a long time, as they may negatively affect the independence and impartiality that guarantee the fairness of the judicial decision making function and thereby guarantee social justice. It is only on the basis of transparency, objectivity, and integrity that the judiciary will earn the trust of its country’s citizens.

Judicial Ethics and Human Behavior

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There can be no doubt about it: the ethical principle constitutes one of the supreme rules that should govern every aspect of human existence. This principle takes on a special meaning as a guiding principle of judicial activity, given that the judge exercises his or her functions on behalf of the state.
It is useful to begin our reflections on this topic by defining morality and ethics, given that they are often regarded as synonymous or interchangeable. On the one hand, morality refers to the nature of the behavior and the body of norms that define any given society. These may be embodied in codes of conduct, rules, or laws that may give rise to ethical criticism or question. Morality is therefore the combination of behavior and customs particular to an individual or a social group. It refers to how people behave and what they are.

On the other hand, ethics, a branch of philosophy, constitutes the study of human conduct and of the norms that govern human behavior. It provides a philosophical reflection on the bases for these customs and behaviors and is therefore situated beyond the individual or questions of morality. While ethics may seek to provide a foundation for morality, it may also seek to influence morality by showing that a certain behavior is justified or valid while another is not.

One kind of ethical study focuses on the human being's duty toward him- or herself and toward others. This current seeks to go beyond the human ego to identify ethical norms that justify decisions in and of themselves, based on reason. This study is called "deontological ethics"—an ethical system that seeks to define human duties.

Legal axiology studies the ways in which the absolute values of the law, such as the common good, juridical certainty, social peace, and justice, can be deontologically achieved, the extent to which they are in the hands of those who administer justice, and, therefore, the need for judges to enforce respect for these values. The "duties" of every judge and of judicial personnel, more generally, are derived from this.

Ethics, therefore (related both to axiology and deontology), constitutes a theoretical and philosophical reflection that attempts to define, provide a foundation for, and orient both morals and morality. It is about how people should be or should behave, and asks what their values and duties are; in other words, it is the general study that attempts to define what is "good."

**The Relationship between Morality and Law**

Morality must not be confused with law, because while all laws are moral phenomena, morality is not fully captured by the law. The law itself is a group of ethical norms (the rules of the game), created and codified by human beings at a particular moment in time for the purpose of governing relations in a community.

The judicial branch is charged with enforcing the law. The purpose of the law is to ensure that justice is done impartially and on a basis of equality, in order to achieve the rule of law and social peace. Faced with such a monumental responsibility, judges must be imbued with the highest moral principles and govern themselves in accordance with all applicable ethical codes. In other words, in order to render justice properly, a judge must have "judicial ethics."

It is important to discuss judicial ethics. Judicial ethics does not require the judge to be perfect. What it does mean, however, is that we must be sufficiently concerned with ethics to ensure that the judicial branch maintains a reputation of integrity and neutrality and that it functions in practice with honesty and impartiality.

Given this preoccupation—and motivated by the desire to achieve ethical excellence within the Judicial Branch—the Court adopted Agreement No. 7-2001, "Judicial Branch Ethical Norms."
intended to strengthen to the greatest degree possible the standards of personal and professional behavior of judges, who are urged to adopt the norms as their own personal code of conduct.

These norms were devised within an institutional context. Every human being, however, necessarily creates an individual moral framework that is not the product of chance, but rather the product of our homes, schools, universities, and, in many cases, religion. Before becoming a judge, a judge is a human being, a son, father, husband, brother, and citizen, and as such must conduct him- or herself courteously and honestly.

Nevertheless, in administering justice, one must also display a seemingly infinite set of additional values. Article 12 of the Ethical Code establishes, for example, that “the judge, in exercising his or her duties, is required to act diligently, prudently, serenely, impartially and thoroughly.” The judge must have additional qualities such as tenacity in seeking out a solution to every conflict, dedication to using all legal means applicable to ensure that parties obtain a judgment that corresponds to the applicable legal norms, impartiality of judgment, and a determination to seek out “justice” in every case.

Whenever possible—and where permitted by law—the judge shall seek to promote conciliation, whereby the parties themselves arrive at a solution that is just for each of them, thereby allowing the parties to reach their own agreement under the guidance of a neutral third party who ensures that the decision is consistent with the law and with fundamental human rights, rather than having to carry out a decision reached by a third party. Consistent with the above, article 14 of the Ethical Code states, “provided that there is no contrary provision, the judge shall seek to promote understanding between the parties, or at the very least to mitigate the antagonism between them.”

At the moment they render their decisions, judges must make sure that the text is drafted in clear and precise language so as to be understood by the lawyers and the parties who are ultimately the real object of the decision. Article 7 of the Norms therefore states, “...the judge must respond to the arguments and demands raised by the parties, so as to ensure that they perceive that the decision is reasonable and well founded.”

It is important to recall that judicial ethics is intimately linked to judicial independence. It is difficult to speak of one without referring to the other. The law is a promise to impart justice in a neutral fashion. Where this promise is violated, and where there is no neutrality or justice in the application, administration, and interpretation of the law, then the law as we know it ceases to exist.

Article 5 of the Norms therefore refers to “integrity and independence as motivational principles requiring judges to exercise their functions according to rules of conduct that honor the integrity and independence of their important office.”

Judicial ethics and independence both have as much to do with appearance as with reality. If injustice is perceived, even if it is only in appearance, the judiciary will find itself the object of suspicion and discredit.

These are just a few of the guiding principles found in the Ethical Code of the Judicial Branch. Nevertheless, the complex analysis of what is ethical or not lies, in the end, with one’s own conscience. Indeed, norms and codes of ethics are generally no more than “codes of conscience.” We must therefore be our own judges: if we fail, society’s judgment and institutional sanctions will follow where required.
I wish to emphasize the following point: wherever human conduct is inconsistent with moral principles, it is equally inconsistent whether the person in question is a judge or judicial official. However, if a human being fails to conduct him- or herself according to these principles, he or she does not stop being a human being. Such persons may be punished socially, morally, or according to their religion in a more or less serious fashion, yet they continue to be part of society. In contrast, judges or officials who fail to respect these principles may be punished, and, where the misconduct is serious, they may even be stripped of their office as they do not have the personal, moral, and professional qualities necessary to be entrusted with imparting justice. One should not be permitted to judge the conduct of others if one’s own is not adequate.

The second paragraph of the Preamble to the Ethical Code of the Judicial Branch states that every person charged with administering justice “is invested with values such as honor, probity, respect, independence, loyalty, impartiality, truth, efficiency and solidarity in every one of his or her actions.”

Judges must therefore prohibit themselves from manipulating the concept of justice when they exercise their functions in the courts, given that the ultimate end of the law and the justice system is to preserve peace, the stability of the democratic system, human rights, and security and harmony among citizens. Thus, whether a lawyer “wins or loses” a case is of secondary importance. As the arbiter chosen by society to judge human conduct, judges must be seen as unblemished human beings; they must not only be good, they must show that they are good. It is not only the personal dignity of the judge that must be respected, but also the dignity of the office. It is therefore important for judges to feel that they are an essential part of the administration of justice.

Therein lies the importance of establishing norms of conduct that honor the integrity and independence of the judicial function, while at the same time stimulating respect for, and confidence in, the judiciary.

One thing is very clear: misconduct by a single judge tarnishes the image and prestige of the entire profession. We must therefore all be vigilant with respect to the conduct of judges as well as of lawyers and parties. We must not allow incidents to occur that cast a shadow over the administration of justice because they appear unjust or immoral. Given that we constitute the embodiment of the justice system, the preservation of the prestige of the judicial process and of the rule of law rest firmly in our hands.

It would be a great reward for me if, after our brief meeting today, some of you should aspire to become judges who will one day bring honor to the judicial branch. I hope that all of you will aspire to be brilliant students and exemplary parents and children, as these are the bases for becoming a respectable, honest, and fair judge.

We must convince ourselves that the idea of an untarnished justice system is not a distant utopia, but rather a beautiful reality that is within our reach, and that depends on our conduct and behavior.
PART VI

BACKGROUND PAPERS
AND PRESENTATION
Judicial Education: A Key Component of Reform

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Introduction

Education is a separate component in most judicial reform projects, but it is also a thread running through and supporting all judicial reforms—from delay reduction to the construction of modern courthouses designed to facilitate security for witnesses and judges and to facilitate appropriate record keeping and case flow management. This paper discusses the structure, function, and targets of judicial education. The latter is not limited to judges but includes aspirant judges, judicial support staff, and the bar on specific topics such as ethics and case flow reduction, the legislature, the executive, the media, the community, and NGOs who have undertaken the task of building pressure points for judicial reform outside formal judicial structures.

Reform is change. Judicial and legal reform to a great extent involve changing the habits and behavior of humans—often contrary to their personal and vested interests. This is not as easy as building roads and bridges. Most people by nature tend both to resist change and to revert to their former ways when a short-term pressure for change goes away. Experience shows us that to successfully achieve long-term behavioral change requires a combination of the following: incentives to change, participatory identification and articulation of changes required by those to be most affected by the reforms, and sanctions for failure to change. To achieve this, we need to create an environment open to change, an important part of which is to inculcate in the judges, support staff, and the bar an ethos of service and openness to reform.

In legal and judicial reform, there is the added challenge that this must be done in a way that protects the independence of the judiciary and the bar while creating or strengthening the accountability and transparency of their processes and procedures. In addition, the legal profession, including the judiciary, is often a conservative element in the community and strongly resistant to change.
Legal Education

Judicial competence and effectiveness begin with legal training. Reform of university-level education will be the strongest support to the development of an independent judiciary. Being a good judge requires legal-analytical skills, critical thinking skills, intellectual and personal integrity, and a vision of the legal profession as a public service. This is in addition to a basic understanding of various areas of the law and the legal skills and dedication necessary to keep abreast of the rapidly changing law.

Many civil law countries have themselves undertaken the training of their potential judges to ensure an appropriate foundation. Common law countries leave it basically to the market, and along with the new market economies, often experience difficulties in attracting appropriate candidates with suitable legal training to the bench.

In most jurisdictions, judges come from law schools and, at least in common law jurisdictions, usually through an organized bar. The ethical and public service values instilled—or not—in them in their law schools and professional bodies will shape the bench. Their legal, analytical and research skills will determine the quality of their profession. Their jurisprudential understanding of the theory and philosophy of law is particularly important in those jurisdictions with constitutionally entrenched charters of rights and in countries developing modern market economies. A failure of law students to achieve acceptable standards of basic legal education that inculcates a jurisprudential understanding of the function of law as the underpinning of the economic and social well-being of the community provides a poor foundation for reform.

A recent publication has analyzed civil process reform in 13 countries. The study concluded that the one constant in efforts to reform justice systems in both common and civil law countries, developed and developing, was the opposition of the organized bar. The bar has a great deal of political clout in most countries, and there are many examples of how they have successfully impeded reforms that they perceive threaten their vested interests.

While an ethos of public service cannot alone serve to overcome the resistance of the bar to change, where it exists it is a powerful support for reform. Linked with high professional standards imposed and enforced by an effective self-disciplinary bar, it can go a long way to creating pressures to overcome resistance to change. Continuing professional legal education can provide a supportive environment for a justice system that effectively serves the community.

Unfortunately, bar associations in some developed and many developing countries have not assumed, or do not exercise, the necessary control over admission standards, continuing education, or the professional conduct of their members. Judicial reform projects would do well to encourage the bar to assume these responsibilities. This requires support for the regular reform process of widespread dissemination of information on comparative best practices, widespread consultation to achieve the articulation of desired reform appropriate to the national culture, identification and training of emerging reform leaders, formulation and stakeholder adoption of a step-by-step reform process, and implementation of the reforms. “Training” is involved at every stage of the reform process.

Objectives, Standards, and Definition of Judicial Education

The objective of judicial education is to support an impartial, competent, efficient, and effective judiciary. Judicial education is a term used to include collegial judicial meetings to discuss edu-
cation 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 distance learning—electronic and print, self-study, mentoring, and feedback programs. It has two divisions: (1) preservice or orientation programs and (2) continuing judicial education and professional growth training.

Targets

The targets of judicial reform training are

- aspirant judges,
- newly appointed judges,
- sitting judges,
- judicial support staff;
- the legislature,
- the executive,
- the media,
- schoolchildren, and
- the community at large, including NGOs and CSOs.

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 appeals court judges, high court judges, subordinate court judges (Canada, UK); and some offer orientation and continuing judicial education training to appeals court judges, high court judges, subordinate court judges and judicial support staff (United States, Malawi).

Preappointment training is relatively rare in common law countries, though there are exceptions. England and Wales give training to the part-time judges whose part-time work forms part of the criteria for appointment to judicial office. Some African common law jurisdictions, such as Zimbabwe and Uganda, have formalized training for lay magistrates. The Uganda program is under a statutory body called the Law Development Center. It is chaired by a Supreme Court justice and gives a nine-month diploma course on the basics of substantive, procedural, and evidentiary law as well as ethics. The cost for tuition and accommodation is 2 million Uganda shillings (US$1,112). Candidates who complete the course successfully qualify for a lay magistrate position. The course has been such a success, however, that there are more graduates than lay magistrate positions. Many graduates find employment in legal firms.

On the other hand, preappointment training is part of the judicial culture in the European countries of Italy, France, Germany, Portugal, and Spain. It can be very expensive. The cost of judicial training in France is US$23,430,000 per year. This makes duplication of such training impossible for transitional and developing countries that follow the civil law pattern, have difficulty in attracting suitable candidates to the judiciary and would like to adopt the European judiciaries' approach of training their own.

Levels of Judicial Education

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, audiotapes, audiovisual tapes, electronic means (diskette or e-mail), local area networks, and 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 programs.

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.

A 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 ensure an impartial and accountable bench that meets social expectations is the fourth and 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 improve perceptions 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—very often other judges skilled in this area.

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

"Impartial" 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, in a way 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 decisionmaking 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 some transitional states, 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 as well as a protector of the rule of law and civil and human rights. 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 courtroom management (placing the judge and not the bar in charge of case management); case flow and process efficiency; reform of rules and procedures to narrow the issues earlier in the proceedings, encourage timely settlements, and respond to contemporary needs; and court-annexed and freestanding 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 almost impossible in developing countries, where statutes, case reports, and textbooks are in short supply. Some courts have none. It also includes “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 or interpretation of constitutions or through the judicial exercise of discretion. Integrity, legal competence, and valor 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 reform is also a prerequisite. Introspective analysis of one’s jurisprudential approach and an objective evaluation of its effectiveness to achieve justice are also essential for effective judicial decisionmaking.

Judicial predictability is a second aspect of judicial effectiveness. A third 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 nonpolitical ways.

To be effective, a judiciary must be legitimate—trusted, respected, and relevant. 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.

Training in Detection of Factual and Legal Bias in Fact Finding

The greatest power of a fact-finding judge lies in the function of accepting or rejecting evidence, as for all practical purposes, a judge cannot be reversed on appeal in this area. Any finding of guilt
or innocence or of rights as between parties determined by the facts is based on subjective beliefs of the tryer of fact. In many jurisdictions, a single judge sitting alone without a jury is the finder of fact.

Judges should therefore be aware, as most having any experience are, of the fallibility of the human powers of observation and memory. The experiments of psychologist Elizabeth Loftus\textsuperscript{11} have shown us how sympathy can make honest people see things inaccurately. Many experienced judges are of the view that their function in making findings of credibility is not in danger of being usurped by a lie-detecting machine, as in their experience most people have convinced themselves that their evidence is true by the time they get to the courtroom.

The science of fact finding in judicial decision making is an important but neglected issue. While legal writers have given some attention to this issue,\textsuperscript{12} their analysis is different from the process of belief and proof that is considered by Seniuk.\textsuperscript{13} His work points out that because of the power of the finder of fact, the outcome of a case is often determined by which judge is drawn. This, in essence, leaves the outcome as much to chance as would the flip of a coin.\textsuperscript{14} His conclusion is supported by mock findings of guilt or innocence made by judges in judicial education programs. Having viewed a video that depicts a trial in which a young female with a troubled past alleges a retired, war-disabled veteran sexually assaulted her, the judges are polled for their verdicts. International use of this teaching tool has revealed a remarkably consistent approximate 40/60 split on the part of the experienced judicial decision makers.\textsuperscript{15} Programs assisting judges to analyze, detect, and improve biases in their fact-finding process are important to the success of the judicial reform process.

Judges also need to be aware of analyses of schools of jurisprudence. It is important that they be assisted to be sufficiently introspective to identify the school into which they fall and to determine if there is a need to consider a changed jurisprudential approach to achieve justice in their decisions. This will involve the study of academic articles analyzing judicial approaches to decision making, an analytical self-study of the judge’s decision making process, and a philosophical consideration of the objectives of the justice system fuelled by taking time for academic reading.

Evaluation of Judicial Performance

Measurement of judicial performance may be quantitative\textsuperscript{16}—relating to the efficiency of the judicial process and the individual judge—or it may be qualitative—attempting to measure the competency, impartiality, and effectiveness of the judicial process or the performance of the individual judge. The quantitative evaluation is less difficult\textsuperscript{17} as it collates objective data such as number of cases filed per year, number of cases disposed of per year, number of cases pending at year end, clearance rate (ratio of cases disposed of to cases filed), congestion rate (pending and filed over resolved), average duration of case, number of judges per 100,000 habitants, workload per judge, work time per judge, length of time in which judgment is rendered after close of case, etc. Further data may also be collected from those jurisdictions\textsuperscript{18} that have time limits for the rendering of judgments counting from the close of the case.

In quantitative evaluation, two thoughts must be kept in mind. The first is that the desired end product of the justice system is not speed but justice, even accepting that “justice delayed is jus-
The second is that there must be good judicial statistical data gathered by the courts before such measurements can be made. In many developing jurisdictions, the gathering of statistical data is considered by the judiciary and staff as secondary to the staff member’s role as judicial assistant. Experience has shown that until this attitude is changed, the data gathered will not be sufficient or reliable enough to identify bottlenecks in the system or provide measurement of judicial performance. Basic to quantitative measurement of the judiciary is the entering of court data, either manually or electronically, in such a way that it is available for analysis.

The qualitative measurement of judicial performance has in most common law countries been left to the appeals courts. Only in the Philippines (a hybrid system) and South Africa in the common law world are errors in law or ignorance of the law considered misbehavior triggering discipline or dismissal. The qualitative assessment presents difficulties of subjectivity, attempting to measure immeasurables, lack of data, and reluctance of court users to evaluate individual judges. The qualitative assessment is particularly difficult in hierarchical developing countries, where the culture depresses criticism of authority figures.

**Common Law—High Courts**

In the past decade, performance evaluations of judges of all levels have come into being. These contemporary judicial feedback performance mechanisms are far from universal and indeed would be considered in many jurisdictions as an encroachment on judicial independence. To date, they are used extensively in the United States and are being considered in Canada and Australia in the common law world. These vary from bar-initiated evaluations, those initiated by the legislature by statute, those initiated by the judiciary as a volunteer mechanism for self-improvement, and others initiated as a judicially ordered feedback mechanism for self-improvement, reappointment, or promotion and disciplinary purposes.

In some American states with elected judges, evaluations are published for the benefit of the voters. In nonelected jurisdictions, they are generally disclosed only to the judge himself or herself or to the chief justice and judge. A volunteer Canadian pilot project took great care to separate the anonymous feedback from the disciplinary process, and the information was made known only to the judge through a mentor chosen by him or her. All material relating to the project was destroyed.

In addition to providing the judge with information for improving personal performance, summaries of the evaluation results are also valuable to judicial education bodies to indicate areas of general weakness in judicial performance, which may be improved through judicial education programs.

**Common Law—Subordinate Courts**

Competitive examinations are written in some Asian jurisdictions by subordinate court judges at certain career-level entry points. Annual performance appraisals by the chief judge of the court are common in Africa and Asia. This is a holdover from colonial days, when magistrates formed part of the executive and came under civil service regulations. This is a monitoring mechanism considered by some countries, such as Pakistan, to be essential information for promotion. Other countries, such as Uganda, are considering doing away with it. These annual performance reports
can be an internal judicial independence issue and be threatening to the independence and integrity of the subordinate judge. There are no comparable annual performance appraisals for Commonwealth high court judges.

**Civil Law Jurisdictions**

In many civil law jurisdictions, candidates enter by competitive examination and are promoted by judicially controlled promotion criteria that evaluate judicial performance. Some of these processes have recently come under criticism for lack of accountability and transparency. A European conference was held last year at Maastricht, the Netherlands, on the issue of performance evaluations. As a result, performance evaluation projects will be undertaken in civil law jurisdictions as well.

One which has already been put in place is the new Belgian professional evaluation system. In this system, the President of the Court of First Degree and two peer judges evaluate each judge once a year. There are articulated criteria for both quantitative and qualitative performance evaluation that differ from court to court. If the judge receives an insufficient score, he or she may be penalized financially for six months, and the judge's file is sent to the Minister of Justice and the High Judicial Council. While the Belgian process is held to be distinct from the disciplinary system is carried out through the Cassation Court, in light of the sanctions available and the communication of the file to the promotional authorities the distinction appears to be blurred.

**Conclusions**

Appropriate judicial performance evaluations bring to the judiciary a much-needed opportunity for professional self-improvement. They provide a much-needed and acceptable method of communication between the court users and the judge. Most judges want to do a good job and will strive to modify their behavior to respond to negative comments in the evaluations. Judges, who in their isolation rarely receive praise, will feel appreciated and be inspired by the positive aspects of the evaluations.

To achieve the most effective results possible, care should be taken to design performance evaluation processes so that firewalls are built between the evaluation and the disciplinary process. This will go a long way to attracting judicial support. A further suggestion for easing into such a program would be to initiate it on a voluntary basis.

It is doubtful that performance appraisals will be accepted by developing country common law high courts or by civil law judicatures such as Italy, the institutions of which favor independence over accountability. The social and legal cultures of many developing countries would prevent successful judicial performance evaluation projects in the unlikely event that the interest of the judges could be engaged. Because of a tradition of annual performance reports by their immediate superiors, a broad-based judicial performance evaluation would be possible in some career-path developing countries. Applying different standards to the subordinate court than the higher courts will, however, mitigate against reform efforts to support and improve the status of the subordinate court.

It would be useful to attempt one pilot project in Africa, one in Latin America, and one in Asia under the following conditions: leadership by a senior local judge interested in pursuing the con-
cept, a design that totally separates the evaluation from the disciplinary process, destruction of all evaluations post-project, and judicial participation on a voluntary basis. In the writer’s view, it would be counterproductive for the bar to initiate such a project without the support of the judiciary, as it would exacerbate tensions between the bench and the bar often caused by judicial reform initiatives.

**Special Issues Relating to Evaluation of Judicial Education Programs**

The first measure of successful judicial education program content is how well it responds to the community’s concerns about its judiciary. Judicial education is expensive and must be cost effective. Consistent evaluation of the programs is required to achieve the high quality necessary to effectively transfer information and attract the judges to repeat programs. To enable effective participant evaluation, precisely defined session objectives should be included in course programs.

Careful evaluation of programs 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 behavioral change programs, papers, participants’ presentations on assigned topics, or other interactive activities can be used and would generate a richer adult learning experience.

Evaluation requires measurement of the objectives of the program against its achievements—the learning achieved and the impact of attitudinal and behavioral 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 measurement of learning achieved, however, is relatively simple when compared with the challenge of evaluating how the learning process produces attitudinal and behavioral change. Those involved in judicial reform spend long hours attempting to develop effective performance indicators. While these are still being fine-tuned, a combination of the following is often used:

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

A further aspect of judicial education that needs to be evaluated is the effectiveness of presentation. In the old days, any incumbent of a distinguished office was considered an adequate speaker to fill up judicial education hours. Failing this, a quickly established panel of those present would be talked into convening an ad hoc discussion. Long lectures—highly conducive to judicial nap taking!—were a matter of course. Today, adult education studies have shown that an
average adult (hopefully, a judge is better than average) retains only 5 percent of what he or she hears. Visual aids, teaching plans, provision of background material, and interactive teaching methods are now de rigueur in order to achieve an acceptable score in programming evaluation.

Notes

1. Italy, France, Germany, Spain and Portugal. Many transitional and developing civil law countries (i.e., Ukraine) would like to follow this, but the costs are too high.
2. Some jurisdictions train their own judicial officers in law outside of law schools.
3. See Zuckerman.
5. Visit by the writer to the Sri Lankan judiciary in 1999.
7. Judicial Studies Board, Annual Report 1997–1998 (London: Judicial Studies Board, 1998) and the writer’s discussions with Mr. Edward Adams, Secretary to the Judicial Studies Board (notes of which are in her files).
10. Information received from the Honourable Justice John Tsekooko, Chairman of the Law Development Center in Uganda. In Zimbabwe the Justice College, chaired by the Chief Justice, trains lay magistrates. Both programs were inspired by the need for magistrates created by a lack of legally trained candidates for the positions.
14. Rabelais’s Judge Brudlegoose did decide cases by tossing a coin. Gargantua and Pantagruel, transl. J. M. Cohen, Vol. 3, Chs. 39-43 (Penguin, 1955). Another unusual story of a coin-tossing judge is that of the Manhattan judge who used this method to decide the length of a jail sentence. He also asked courtroom spectators to vote on which of two conflicting witnesses to believe. He was removed from office in 1983 by the New York State Commission on Judicial Conduct (The Times, 3 February 1982).
15. Experience gleaned from the use of the video at Commonwealth Judicial Education Institute programs.
17. Though little has been done; see Dakolias.
18. That is, Nova Scotia, Canada, and the Philippines have time limits for the rendering of judgments counting from the close of the case. The Philippines has other time limits and sanctions if a judge does not achieve
the deadline. Pakistan also expects subordinate court judges to complete a certain number of cases in a given time. The Philippines and Pakistan time limits are often honored in the breach or honored in a way that is counterproductive to the justice system.


21. That is, Massachusetts (duplicate process).

22. Nova Scotia, Canada.

23. Many American states.

24. Some Asian jurisdictions, such as Pakistan, still are governed by the civil service regulations.

25. Judicial performance evaluation in the subordinate court in common law countries is not a new idea. In many European countries and in developing Asian, African, and South American countries, entry to the judicial profession is by competitive examination. Annual performance appraisal reports in the bureaucratic style are performed on each subordinate court judge and placed in his or her file. This is also a common occurrence in Africa. Such reports play an important part in promotion. In countries where there is a tradition of interference in subordinate judge decisionmaking by senior judicial officers who have a say in the performance report, these reports have obvious dangers. They are also a vestige of the bureaucracy from which the subordinate judiciary has come and are ties that bind the subordinate judiciary to the executive in its common law struggle to emancipate itself from it. Such ties underline publicly held perceptions of executive control of the judiciary and hinder efforts of the subordinate court to gain the trust of the public as judicial officers independent of the executive. Superior court judges in developing common law countries have, to my knowledge, never been formally evaluated post-appointment.


27 Learning Pyramid, published by the National Training Laboratory, Bethel, Maine, and used in the course materials at the annual Intensive Study Programme for Judicial Educators presented by the Commonwealth Judicial Education Institute, Halifax, Canada.
Judicial Independence as a Measure of Excellence

The Hon. Irshad Hasan Khan
Chief Justice of Pakistan

I am grateful to Mr. Justice Hugo Leonel Maúl Figueroa, President of the Judicial Branch and Supreme Court of Justice of Guatemala, for inviting me to participate in the Conference of Judicial Education Schools "Toward Judicial Excellence," to be held on 8 October 2001 in Guatemala City. It is unfortunate that due to unavoidable circumstances, I cannot attend the conference, though it has been my great desire to meet my counterparts of the Latin American countries and discuss matters of mutual interest pertaining to the administration of justice. I thought that I must at least send a message on this auspicious occasion. I am sure that the conference will succeed in achieving its stipulated objectives.

The judiciary in Pakistan is independent of the executive. The independence of the judiciary is inextricably linked and connected with the appointment of judges of the superior courts, as set out in the Constitution. To ensure such independence, the Constitution of Pakistan prescribes the qualifications for, and mode of appointment of, judges; their security of tenure; conditions of service, salary, and other privileges; together with the means and grounds for removal of judges and the power to recruit administrative staff and regulate their terms and conditions of service.

Any decision of the Supreme Court on a question of law or enunciating a principle of law is binding on all other courts in Pakistan. All executive and judicial authorities in Pakistan are to act in aid of the Supreme Court. The Constitution grants the superior courts the power to punish any acts of contempt.

Pakistan's superior court judiciary enjoys administrative, financial, and decisional independence. This judiciary enforces fundamental rights, namely, security of the person; safeguards upon arrest or detention; prohibition of slavery and forced labor; protection against retrospective punishment, double jeopardy, and self-incrimination; inviolability of human dignity; freedom of movement, assembly, association, trade, business or profession, speech, and freedom to profess religion and
to manage religious institutions; safeguards against taxation for purposes of any particular religion; safeguards as to educational institutions in respect of religion; protection of property rights; the equality of citizens and nondiscrimination in respect of access to public places; safeguards against discrimination in service, preservation of language, script, and culture, etc.

To achieve the desired goals and objectives, the judiciary has to be properly organized and made effective and efficient enough to address quickly and resolve public claims and grievances. The judiciary must also be strong and independent enough to dispense justice fairly and impartially. The superior judiciary of Pakistan, in order to maintain its independence, is continuously engaged in maintaining an appropriate legal and judicial environment in which there is social peace and security, sanctity of life, protection of property, and the guarantee of essential human rights and freedoms for all individuals and groups, irrespective of any distinction or discrimination on the basis of caste, creed, color, culture, gender, or place of origin, etc.

A congenial working environment for the judiciary is increasingly being emphasized both locally as well as internationally. Such an environment is a key pillar of creating a judicial strategy for spurring economic development and growth.

The civilization of a country is measured by the respect the people and the other branches of government have for the judiciary. A fair and effective criminal system marks the distinction between a civilized society and anarchy. If the judicial system is allowed to function fairly, people can enjoy the rewards of their labor. If it works badly, people's lives are likely to be marred by constant fear of crime, including terrorism. What is required, therefore, is a strategy developed by the executive as well as the judiciary to determine the corresponding priorities and objectives in a coherent way. It is my hope that the legal luminaries attending this conference will help to generate an internationally acceptable methodology for peace through the rule of law.
The Global Development Learning Network

David A. Gray
Senior Knowledge Management Officer, World Bank

Introduction

Launched in June of 2000 by World Bank President James Wolfensohn, the vision behind the Global Development Learning Network (GDLN) is for decisionmakers across the developing world to have cost-effective and regular access to a global network of peers, experts, and practitioners with whom they may share ideas and experiences to help them in their fight against poverty and corruption. This is being achieved through a network of interconnected partner agencies utilizing state-of-the-art video and Internet communications. There are 30 such Distance Learning Centers in operation, including 12 in Latin America, and the total number is expected to double within the next 12 to 18 months.

The GDLN's program meets global challenges by using technology to bring people together in learning environments so they can work on common challenges. The current topics of study cover the full range of development issues from AIDS education, anticorruption, and environmental policy to business journalism and urban development. The Distance Learning Centers offer courses, seminars, global dialogues, and Web-based courses as the principal learning instruments.

- Courses and seminars combine two-way multimedia videoconferencing sessions complemented with print packages, CD-ROMs, interactive Web communications, or face-to-face tutorials.
- Global dialogues consist of short videoconferences (three hours) that allow participants to work together to address pressing issues that call for a common international agenda or require a local policy response.
- Web-based courses are self-paced and individualized to fit the needs of audiences with diverse backgrounds and experience levels. Internet/Web and CD-ROM technologies make up the bulk of the programming.

Using these approaches (often in combination), tailored to meet the needs and characteristics of the audience and topic, GDLN's goals are to
• provide cost-effective interactive learning activities throughout the developing world, by reaching across geographic borders, time zones, and language barriers;
• improve the quality of and access to decision making through interactive learning that is based on real-life experiences shared by experts, practitioners, and decision makers;
• facilitate regular exchanges among practitioners and experts across countries and regions, in a way hitherto restricted by the need for extensive travel and costs; and
• provide the means to deliver cutting-edge knowledge to the development community on current issues, in real time, through virtual face-to-face events and activities.

The GDLN – A Tool for Knowledge Partnerships

By choosing to work with a range of agencies, including government training institutes, universities, and international organizations, the GDLN is able to take advantage of existing technical and intellectual capacity. A consequence of this is that in many regions, notably Latin America, the GDLN is recognized as a tool that empowers the countries of the region to solve their own problems. By sharing experiences, practitioners are able to find appropriate solutions to pressing policy questions. Given its global reach, expertise can be brought in from almost anywhere upon request. In short, the GDLN is facilitating knowledge flow in an extremely cost-effective manner. It has been estimated that a typical “global dialogue,” where 20 to 30 participants come together in each of six countries, costs less than US$5,000, while it would cost around US$80,000 to hold a face-to-face workshop with the same participants (travel costs, subsistence, not to mention the opportunity costs of being away from their workplaces).

A logical evolution of the GDLN is its role in supporting “knowledge networks.” These are groups distributed over a region (or globally) that share a common thematic area of interest, that confront similar issues, and that seek common solutions. The GDLN is an ideal tool to allow communications and sharing of expertise. The network can be used in a variety of contexts, such as formal training courses, dialogue events, and online discussions. By using two-way videoconferencing, the quality of interactions is high, particularly if events are moderated in a relatively structured manner. Commonly, videoconferencing is now being complemented by online resources or e-learning, to provide ongoing communications and a common resource base.

Several knowledge networks are making use of the GDLN, most notably indigenous groups from across Latin America and the Caribbean. Working in collaboration with the Rigoberta Menchu Foundation and others, these events have evolved into a regular series structured around rich and diverse topics. Similar commonality exists within most sectors. In the case of land administration, practitioners from across Central America are using the GDLN to share experiences and resolve issues arising from their reform efforts. It is expected that this will improve the quality of development projects in this field and ensure that successes in one country are rapidly transferred to another.

Given these developments, it is hoped that the GDLN can be applied to the area of judicial reform, one of the most developed knowledge networks in the region. By bringing together justices from across the region and beyond, the GDLN can complement IUDICIS and the work of
the growing number of judicial schools. GDLN can support short exchanges as well as distributed courses—where each Center of Excellence provides inputs based on expertise.

The World Bank stands ready to support you in this effort and would welcome your comments or suggestions on how we can take a first step.
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The Honorable P. N. Bhagwati, Chairman, U.N. Human Rights Committee and former Chief Justice of the Supreme Court of India

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