

## Evaluating Judicial Education

*Programming must go beyond the old standbys  
of Sentencing and Procedures*

By Judge Sandra E. Oxner  
President of CJJI



**CJJI Intensive Study Programme, June 1999**

**W**HEN I became the Education Chair of Nova Scotia's Provincial Court Judges' Association in 1971, evaluating judicial education was limited to noting whether or not it existed. Success had nothing to do with program content or the effectiveness of its delivery. The only evaluative technique was observing whether or not the judges stayed for the whole presentation. On one occasion there was a mass exodus from a hostelry that required the joint use of bathrooms. I suppose I recall this so well because I was the seminar organizer left to entertain the distinguished speakers with a Yeoman's Guard of judges. Decades later when I was working with a judicial reform team in Russia, I learned of the fifty percent plus absentee rate in Russian judicial education programming. My first thought was "Do they have to share bathrooms?"

Donor agencies have recently recognized the importance of an independent and strong judiciary to national economic development. International development banks such as the World Bank and the Asian Development Bank, as well as bilateral donors like CIDA, USAID, and private foundations now seek to strengthen judicial reform founded on, or supported by, judicial education. One result of this is closer scrutiny of judicial education. The need for devel-

opment agencies and donors to demonstrate frugality to their shareholders has created a demand not only for high quality standards of design but cost effective presentation methods. Performance indicators of success in programming have become an essential part of judicial education. This comes as no surprise to well developed JE bodies like the National Judicial Institute (Canada) and the Federal Judicial Center (USA), which rigorously evaluate their programmes for relevance of content, level of learning and behavioural change achieved, and effectiveness of presentation. These measurements are carried out so that future programming will benefit from lessons drawn from past successes and failures.

The content of judicial education programming must respond to community perceptions of judicial weaknesses. The community (in this context) includes the judiciary, the bar, court-users, but also the business sector and society at large. Judicial education is expensive - one must take into the account the judge days off the bench, the cost of maintaining courthouses and court staff during judicial absences - as well as travel and accommodation expenses for participants, and program delivery costs. To justify

these expenditures, programming must go beyond the old standbys of "Sentencing" and "Procedures" and visibly respond to areas of perceived weakness. A curriculum committee may employ several tools to identify areas requiring improvement:

- a) needs analysis survey;
- b) review of complaints against judges;
- c) review of media complaints on justice issues;
- d) assessment of common areas of the law that call for an appellate review.

Improved curriculum design provides for the inclusion of topics such as teaching philosophical debates underpinning new laws, the exercise of discretion and behav-

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ioral change programs such as detecting hidden bias and fact-finding, gender and racial sensitivity, and increased awareness of the economic impact of judicial decisions.

Program topics must respond not just to common objectives, but individual sessions within a program should articulate sub-objectives that can also be evaluated. This would allow quantifiable evaluation of whether programming objectives were achieved or, unhappily, not achieved.

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 deemed sufficiently qualified to

fill up judicial education hours. Failing this, a quickly established panel of those present would convene an ad hoc discussion. Lengthy, soporific lectures were a matter of course. Today, adult education studies have shown that an average adult retains only seven percent of what he or she hears. Utilizing visual aids and interactive methods is now standard practice in classroom teaching, and the beneficial results are reflected in programming evaluation scores.

Recently I had the pleasure of attending the National Judicial Institute's annual course for Canadian judicial educators on program evaluation. In my view, the course was outstandingly successful in articulating the necessity of setting session objectives linked to participant evaluation forms. Canada is fortunate to be in the forefront of judicial education pedagogical trends.

It was a highly enjoyable and stimulating event, and I think all present enjoyed the course and our time together. Over coffee I

expressed my admiration for the program content to one of my fellow participants. She agreed with me and went on to say that it compared favourably with the one she had attended the year before. I had seen copies of judicial education programming from my colleague's province and noted that they did not incorporate session objectives. I wondered, since she appreciated their importance, why she had not encouraged their use.

I delicately nudged the conversation around to the point of asking, "Why does your province not provide session objectives?"

"Oh," my new friend replied, "it is because they are so much trouble to design and we never have time when our volunteer judges are putting a program together."

I knew the problem exactly. It has been with me during many years of coaxing program reform out of judicial education committees on five different continents. This has made me very aware of the difficulty in finding judges both with the appreciation of the need for session objectives and sufficient time to think through their complexity. Judicial educators around the globe must champion the need for creating model teaching plans that incorporate session objectives and provide for their evaluation.

Only through the rigorous evaluation of the learning and behavioral change achieved by our programming and its relevance to priority needs can judicial education be improved. Only through application of evaluative techniques can we discharge our duty to be accountable to the public and ourselves for the time and money spent on our professional growth. □

CJEI Report is also available in Adobe Acrobat PDF format on our website:  
<http://is.dal.ca/~cjei>

## Judicial Education initiatives in New South Wales

The Judicial Commission of New South Wales promotes judicial education programming on a number of levels. Judges and magistrates regularly are given timely and relevant sentencing information to assist them in reaching some consistency in their approach to sentencing. That information includes sentencing legislation, common law principles and statistical information as to actual sentences imposed.

The Commission also provides all NSW judicial officers with bench books and other legal resource materials, some in hard copy and some through its on-line Judicial Information Research System (JIRS). Its systems training officers provide one-on-one training in the use of information technology including the use of JIRS and a number of different software programmes.

As part of its education programme the Commission publishes a monthly bulletin, a twice yearly review containing a selection of conference and seminar papers, a twice yearly bulletin on the Children's Court and undertakes original research into topics of assistance to sentencers and publishes the results of these research studies.

Finally, the Commission provides a comprehensive conference and seminar programme. An annual conference of two or three days is held for each of the six courts within the State. Recent themes of conferences have been, "The Public Face of the Court", "Access to Justice" "New Technology" and "Apprehended Violence Orders".

An induction course is held for newly appointed New South Wales magistrates which includes pre-bench training, a mentor scheme and a week-long, skills-based, residential course. An orientation course for judges from throughout Australia is conducted annually in conjunction with the Australian Institute of Judicial Administration

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### Effective Performance Indicators

- ✓ Focus groups (pre-, post- and year-end)
- ✓ Survey of internationally accepted standards
- ✓ Participant satisfaction and self evaluation interviews
- ✓ Assessment of court data and records
- ✓ Personal interviews with designated officials
- ✓ Independent expert appraisal

After his motion to suppress evidence was denied by the court the attorney spoke up, "Your Honor," he said, "What would you do if I called you a stupid, degenerate, old fool?" The Judge, now also angered, averred, "I would hold you in contempt of court and seek to have you suspended from practicing before this court again!" "What if I only thought it?" asked the attorney. "In that case, there is nothing I could do, you have the right to think whatever you may." "Oh, I see. Then, if it pleases the court, let the record reflect, I 'think' you're a stupid, degenerate, old fool."

- <http://www.counselquest.com/jokes.htm>

## BANGLADESH

Correspondent: Hasan Shaheed Ferdous,  
Deputy Director (Training), JATI

The Judicial Administration Training Institute (JATI) administered two in-service training programmes for Senior Assistant Judges and Additional District and Sessions Judges in October and November of last year.

Curriculum topics included Judicial Ethics and Codes of Conduct, Fundamental Rights, Human Rights and Good Governance, Environmental Disaster Management, Gender Issues, Juvenile Justice, and Court Management. Various aspects of the Bangladesh judicial system were discussed, including ADR and PIL. Mr. Justice Mostafa Kamal, Senior Judge of the appellate division of the Supreme Court, was the guest of honour in the Inaugural Session. The Hon. Chief Justice of Bangladesh, Justice A. T. M. Afzal, was the honoured guest in the concluding session and gave away the certificates.

With assistance from the World Bank under the Capacity Enhancement of the Judicial Sector project, JATI conducted three one-week in-service training courses for District Judges in 1999. Two courses were completed in February and one in June. The Institute also ran a two-month Basic Training Course on Judicial Administration for newly appointed Assistant Judges, beginning March 1st, 1999, and a three-week in-service training programme for Senior Assistant Judges from 1st May 1999.

### British-Bangla Law Week

The Foreign and Commonwealth office of the British Government and the British Council, Bangladesh organized "British-Bangla Law week" from 29 November to 5 December, 1998 in recognition of the fiftieth anniversary of the Universal Declaration of Human Rights. As part of the law-week programme, a mock trial was held at the Old High Court Building, in which the British system of jury trial in criminal cases was presented. The roles of Judge, Barristers, Juries, accused and witnesses were played by British and Bangladeshi judges, barristers and others. The Institute officers actively participat-

ed in the British-Bangla Law Week and the Mock-Trial. The presentation gave the audience an opportunity to see how the British courts function in criminal trials.

# NEWS & NOTES

### Danish Support to Human Rights and Good Governance

A formulation mission on Danish assistance to human rights and good governance visited Bangladesh on 7-18 September 1998 with the aim of drafting a programme of support for the areas identified from the pre-identification mission report from 15-29 June 1997.

The project objective is to enhance the capacity of the Judicial Administration Training Institute in order to fulfil its mandate of providing training programmes for the Bangladesh judiciary. The activities of the project are first of all capacity building of the Institute in the area of needs assessment, curriculum development, staff training and management. The project falls within the overall framework of Danida assistance to strengthen human rights and good governance in Bangladesh.

### Draft Paper on Judicial and Legal Reform

The Bangladesh Government has requested World Bank assistance in the preparation of a comprehensive legal and judicial capacity building project. As part of the preparation, a needs assessment study was undertaken by Bangladeshi consultants. These were supplemented by reviews from international experts and the World Bank team. During the preparation phase, preliminary funding were also discussed in workshops across the country. In the Draft strategy paper a programme of Legal and Judicial Capacity Building was prepared which included with other things, law reform, Judicial Reform, Judicial Training and Legal Education, Court Automation and Infrastructure, Access to Justice, ADR and Legal Aid, Legal Literacy and Public Awareness, and Gender Sensitivity.

In Chapter V of the strategy paper it is mentioned that after the changes are made under the proposed programme, the work of judges is expected to become more complex than ever before and will have to face new challenges. Traditional patterns of judicial decision making will no longer be relevant. The role of Judges in society will undergo change.

The strategy paper mentions that Judicial Training in its current nascent state in Bangladesh is not sufficiently developed to meet current challenges. The strategy paper has recommended further institutional and curriculum development for effective judicial education and training in Bangladesh.

### Court of Metropolitan Sessions Judges

The Bangladesh Government has inaugurated a Court of Metropolitan Sessions Judges. Metropolitan Sessions Judges, Additional Sessions Judges and Assistant Judges will deal with criminal cases in the Metropolitan areas. It is expected that these courts will contribute in reducing backlog of criminal cases in large urban areas.

A week-long "11th Judicial Administration Training Course for the District Judges" was held in Bangladesh in February 1999. 35 District Judges and officers of the rank of District Judge, participated in the programme organized by JATI. The Honourable Chief Justice, the Judges of the Supreme Court, Senior Judicial Officers and forensic experts were resource persons. The training program was intended to enhance judicial skills and court management abilities of District Judges. The course covered subjects such as judicial ethics, judicial independence, codes of conduct, and sentencing, in order to bring about attitudinal change in Judges.

The two-month "12th Basic Training on Judicial Administration for the Newly Appointed Assistant Judges" was held at JATI from 1st of March 1999 in which fifty Assistant Judges participated. The course was designed to prepare Judges of Bangladesh for the next millennium.

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# Singapore judiciary ready for next millenium



*With its Corinthian columns and interior murals by Italian artist Cavaliere Rodolfo Nolli, the Singapore Supreme Court is one of the finest classical buildings erected during the British era.*

Although 1998 was a year of global economic downturn and regional financial turmoil, the Singapore Judiciary was able to fine-tune its justice system and implement new initiatives.

## Preparing for the Knowledge Economy

The Knowledge Economy of the 21st century calls for a mindset of continuous learning, to keep at or near the leading edge, as new products, services and ideas develop. With the launch of the part-time Diploma in Legal Studies Programme in 1998, the Supreme Court demonstrated that it has developed a culture of continuous learning and emphasis on human resource development. The 3-year programme will better equip our staff in legal and general business knowledge, office management and computer skills to enable them to contribute and function more effectively within the organisation. In addition, to better support and provide qualitative assistance to lawyers who wish to use electronic and multimedia presentations for their trials, a short course on the use of multimedia and other technologies, including computer animation for court staff was developed.

## Multi-door Courthouse

The Subordinate Courts launched the Multi-door Courthouse (MDC) in May 1998. It is the first such multi-door courthouse in the Commonwealth and the Asia-Pacific region. The MDC is a one-stop service centre for the screening and channeling of cases. Thus, it seeks to increase public awareness of the dispute resolution process, offer and co-ordinate a selection of high quality dispute resolution programmes and facilitate the public in locating appropriate dispute resolution means.

**FOR FURTHER INFORMATION on computerization of the Supreme Court in Singapore, see their website at:**

[www.gov.sg/judiciary/supremect/computerisation/index.html](http://www.gov.sg/judiciary/supremect/computerisation/index.html)

**Download the Adobe Acrobat document "to have a look and feel of what it is like to use electronic documents in the hearing of appeals."**

The Registry of the Supreme Court is constantly identifying areas to further improve its case management. In the past, parties were automatically called for pre-trial conferences (PTCs) in writ actions after the close of pleadings, or if the writs were inactive for 3 months or more. In 1998, PTCs were also introduced automatically when parties failed to file their summonses for directions or to set down within the time required. With PTCs held at more stages, no case will be left dormant for long and disputes can be resolved more expeditiously and efficiently with costs savings to all parties.

The Supreme Court has also surpassed its target of disposing of actions within 12 to 18 months from the date of the filing of the writ, by reducing the disposal time to an average of 9 to 12 months in a substantial number of cases. This was due to the constant review by the Registry to ensure that cases proceed within the time frames set, and to its ability to accommodate parties who want an early trial of their matter.

## New Supreme Court Complex

A study conducted in 1994 showed that the projected increase in workload and corresponding need for more working space could not be accommodated in the existing premises which comprise the Supreme Court and City Hall buildings. As such, we are now in the midst of building a new Supreme Court Complex which will feature world-class facilities

The new building will enable the Supreme Court to harness state of the art technology to facilitate the seamless operation of the paperless court system when EFS is fully operational. This strategic investment in the future will spur and sharpen the competitive focus of Singapore's legal sector to make it a regional and global hub for legal services.

## Information Technology Streamlines Supreme Court

The Supreme Court of Singapore is utilizing information technology (IT) to enhance its internal administrative operations. In March 1997, EFS Phase 1.0 was launched which enabled law firms to file writs of summonses electronically. The Supreme Court is now in the process of expanding the scope of filing to include all matters concerning writs of summonses and proceedings such as summonses-in-chambers, registrar's appeals and approval of draft orders. By November 1999, law firms in Singapore will no longer be able to file paper documents in relation to writs of summonses matters.

The Supreme Court aims to complete Phases 2 and 3 by the year 2000, when the electronic extract service and the electronic service of documents service will be made available, to allow court documents to be extracted electronically, to allow the courts to serve documents on behalf of law firms electronically; and enable law firms to serve documents on each other electronically. By then taxation of costs, interpleader summonses, originating summonses proceedings and appeals to the Court of Appeal will also be added to the list of matters which can be filed electronically.

After the launch of the Technology Court in July 1995, the Supreme Court has since extended the use of electronic documents to the hearing of appeals. For the first time, electronic documents were used for Magistrate's Appeals on 13 August 1998, and for the hearing of appeals in the Court of Appeal on 17 August 1998.

The conduct of such hearings in an electronic environment was well received by the judges and lawyers alike. At the close of 1998, 60 appeals to the Court of Appeal and 46 Magistrate's Appeals had been conducted electronically. This is in line with the Supreme Court's plan to give judges and lawyers hands-on experience in conducting trials using electronic documents, and to prepare them for the full implementation of EFS when all hearings will be conducted electronically.

Based on the successful implementation of such hearings in appeals to the Court of Appeal and in Magistrate's Appeals, the

Supreme Court plans to equip all the courtrooms in the Supreme Court Building for electronic hearings by mid-1999. Thereafter, all criminal trials and selected civil trials will be conducted in an electronic environment.

## Institutionalised Reforms in the Subordinate Courts

The Subordinate Courts in Singapore have established a pro-change culture. As part of continuing education, judicial officers and court administrators regularly attend

*"By November 1999, law firms in Singapore will no longer be able to file paper documents in relation to writs of summonses matters."*

refresher courses, forums, seminars, and video-conferences with talks by foreign and local experts, as well as make study visits to various agencies as part of their "social context education." In 1998 alone, Subordinate Courts judicial officers were invited to present papers on their initiatives at various conferences, seminars, colloquiums and workshops in Australia, Brunei, China, India, New Zealand, South America, and the UK. Their research papers covering various administrative and case management topics in civil, criminal, family and juvenile courts have provided a clearer understanding of the effectiveness of judicial processes in Singapore.

In June 1998, at the request of the World Bank, the Subordinate Courts held a video-conference session with the technical specialists and advisors to the World Bank to share their reform experience. A follow-up session with a Latin American judiciary was also proposed. Over the last five years, the Subordinate Courts have forged strategic partnerships or held discussions with the Australian state and federal judiciaries, the Nordic judiciaries, the UK Lord Chancellor's Office, the Shanghai intermediate judiciary, the Australian Institute of Judicial Administration, the US-based National Center for State Courts, the Commonwealth Magistrates' and Judges' Association, and the World Future Studies Federation.

In addition, the Subordinate Courts have established links with eminent foreign consultants who provide specialist information on judicial administration and reforms in other jurisdictions, and conduct seminars and video-conference lectures for the judicial officers and court administrators.

## International Rankings of the Judiciary

Similar to previous years, surveys conducted by various organisations, namely the Hong Kong-based Political and Economic Risk Consultancy (PERC) and the Switzerland-based International Institute for Management Development (IMD), have again confirmed the high level of confidence in the Singapore Judiciary by the international community.

In its World Competitiveness Yearbook 1998, the Singapore Judiciary was ranked first for legal framework, and fourth for justice by IMD. PERC, an international consulting firm, has once again ranked the Singapore Judiciary number one in its survey of business executives on the perceived quality of key institutions in Asian countries. These encouraging results will spur the Singapore Judiciary to greater heights of excellence in the administration of justice. □

### QUICKLAW Expands Commonwealth Judges Information Service

QUICKLAW and Commonwealth Courts are cooperating in the operation of the Commonwealth Judges Information Service. The service presently offers judges free Internet access to an exhaustive collection of decisions from Canada and smaller collections of decisions from England and Wales, Scotland, Australia and South Africa. Decisions of the Eastern Caribbean Courts and of the courts of Uganda are expected to be available in the near future. Courts interested in receiving more information about this program should contact Alan Dingle in Canada at [adingle@quicklaw.com](mailto:adingle@quicklaw.com) or at +1 (613) 238 3499.

## MORE NEWS & NOTES...

### NIGERIA

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#### ALL-NIGERIA LOWER COURTS JUDGES' CONFERENCE

The All-Nigeria Lower Courts Judges Conference was held from Monday 9th to Friday 13th November, 1998, at the North-eastern city of Maiduguri, the capital city of Borno State. The National Conference was attended by top Borno State and Federal Government Officials, the Chief Justice of Nigeria, President of the Court of Appeal, Chief Judges of the States, Presidents of Customary Courts of Appeal, High Court Judges, and over 200 Lower Court Judges from various states in the country. Conference attendees were generally positive about the performance of the Lower Courts. The South-South zone will hold its own workshop from 19th to 23rd July, at Uyo, Capital City of Akwa Ihom state. Lastly, the South-eastern zone will hold its own workshop from 26th to 30th July, at Enugu, capital city of Enugu state of Nigeria.

The annual induction course for newly appointed High Court Judges from across the country, was held from 7th to 11th June at Abuja, the Nigerian Federal Capital City. The biennial All Nigeria Superior Court Judges' Conference last held in November, 1997 is scheduled for the 1st to 5th November 1999, also at Abuja.

### UGANDA

Uganda has a permanent Judicial Training Committee that designs and delivers Judicial Training Programmes to both Judicial and non-Judicial Staff. Eight graduates from the CJEI Intensive Study Programme in Halifax form an important faculty resource for our Committee. Last year, with support from the Danish and Ugandan governments, we organized and conducted 18 Training Programmes for Judges, Registrars, Magistrates and non-Judicial Staff. During these workshops, we imparted practical skills in Case Management, Ethics and Accountability, Trial of Juveniles, Alternative Dispute Reso-

lution, Court Administration and Management, and Gender issues. We were also able to send a total of 18 Judicial officers and non-Judicial Staff for training abroad in areas of Human Rights, Judicial Education, Management of Training, Essential Judicial Skills, Human Resources Management, Refugee Law and General Management. For us, 1998 was a successful year.

This year, we have already held an Orientation Course for seven new Judges. We have plans to continue training non-Judicial Support Staff in Record Keeping, Computer Skills and Court Administration. We shall also continue to train Judges and Magistrates



in mediation skills which are now part of our Civil Procedure Rules following the amendments to the Rules by the Chief Justice in July 1998. Our Judicial Training Committee consisting of 10 members meets once every month to discuss and approve training activities.

### ZAMBIA

The Zambian Judiciary has amended its Civil Procedure rules to shorten the stages of pleadings before trial. The purpose is to reduce delays in justice delivery. Hitherto litigation in Zambia has been lawyer driven, but the new civil rules place the responsibility on the Judge to monitor the movement of the case. This means that lawyers now cannot slow down the pace of litigation by taking their time in completing pleadings.

A D R Rules have been introduced in our Civil Procedure in order to reduce the backlog of cases and provide an expeditious way of disposing of cases. Some Lawyers have

already been trained as mediators. In March, 1999 more Lawyers and persons from the other professions were trained as mediators.

The Arbitration Act has also been revamped to meet the changed circumstances in a liberalized economy. So far 18 Arbitrators have already been trained by ICA under the auspices of USAID.

The business community through the Chambers of Commerce has complained about the delay in disposing of commercial cases. They claim that economic ruin often befalls litigants before cases are decided. Investors have expressed similar concerns.

To address these concerns a civil list has been introduced in the High Court and will be in force during the next one month or so. A number of Judges will be committed to the commercial list only and in that way it is hoped that these cases will be expeditiously dealt with.

The Hon. Judge Sandra E. Oxner, CJEI President and the Hon. Mr. Justice Annel M. Silungwe, Member of the CJEI Board of Directors, paid a call on the Honourable Chief Justice Mr. Justice Mathew Ngulube at his Chambers on 28th January, 1999 and had a discussion with the Members of the Training Committee

on facilities available in the Southern African Region in order to establish a Regional Institute. The establishment of a Secretariat for the Institute was also discussed.

### VANUATU

Two graduates from Vanuatu in 1998 are Magistrate Steve Reeves Bani and Magistrate Rita Bill Naviti, Chief Registrar. In July 1998 Magistrate Steve Reeves Bani completed a two-week attachment with Full Pacific Regional Human Rights Education Resource team working closely with the Regional coordinator Mr Kim Stanford Smith. Funded by the UNDP. He was then appointed by the Acting Chief Justice of Vanuatu as our Judicial Education Coordinator. Recently married, Mr. Bani has also been nominated member of the Country's Public Service Disciplinary Board. The judiciary is planning to run two training courses this year: an Island Court Justices Course and a Court Administration Course.



## Chief Justice Dennis Byron

Chief Justice Dennis Byron is one of the most experienced jurists in the Caribbean region. Born in Basseterre, St. Kitts, he is a graduate of Cambridge University and was called to the Bar at the Society of Inner Temple in 1965. In 1986, as Acting Chief Justice of the Supreme Court of Grenada, he presided over the Maurice Bishop murder trial. In the field of judicial education, Chief Justice Byron's record is outstanding. He has served as a trainer for magistrates, bailiffs, and police prosecutors in programmes sponsored by USAID, and in 1995 was also selected to lead, along with three other judges, a U.S.-sponsored Judicial Training Project in Haiti. In May 1996, Chief Justice Byron was invited by the U.S. government to participate in Roundtable II for Judicial Reform in Latin America and the Caribbean, held in Washington, D.C. In addition to being appointed Chief Justice (Ag.) of the Eastern Caribbean Supreme Court in 1996, he is also both Court of Appeal Judge and a member of the Judicial and Legal Services Commission of the ECSC.

## Judicial Educators in profile

### Hon. Mr. Justice Annel Muzenga Silungwe



The Honourable Mr. Justice Annel Muzenga Silungwe is one of CJJI's distinguished board members. A native of Zambia, Central Africa, he has lectured at the School of Law, University of Zambia, and also taught at the Zambian Institute for Advanced Legal Studies. He has served on the Council of

Legal Education of Zambia, and as judge on the Seychelles Court of Appeal. He is Past District Governor of Rotary International; Regional Chairman of Cheshire Homes Southern African Region; and African representative on the Board of Governors of the London Goodenough Trust for Overseas Graduates. Mr. Justice Silungwe is currently director of the Justice Training Centre of Namibia and Acting Judge of the Supreme Court of Namibia. He is married with five children and eight grandchildren.

### Hon. Judge Corrine Sparks



The Hon. Judge Corrine Sparks received her L.L.B. from Dalhousie University in 1979. In 1987 she became the first black woman judge in Canada. She was appointed to the Provincial Family and Youth Court as a Family Court

Judge in Halifax, Nova Scotia. Judge Sparks is known to have a strong interest in equality issues: racial and gender biases in the legal system in particular. In 1993 she served on the Canadian Bar Associations Gender Equality Task Force which led to the publication of a comprehensive report on the status of Women of Colour in the legal profession. In her leisure time, Judge Sparks enjoys reading, gardening, golf and tennis. Accepting a seat on the bench brings onerous responsibilities and can add some restrictions to a person's life in order to maintain impartiality as a judge. "Before I was appointed to the bench, I practiced family law with another female lawyer and we also played tennis together. We had to stop when I was appointed because she would probably be appearing before me in court. One has to be cautious to avoid any appearance of a conflict of interest," she says.

#### List of Participants attending CJJI's June 1999 Intensive Study Programme in Halifax, Nova Scotia:

The Honourable Justice Neil J. Buckley, *Australia*  
The Honourable Judge Corrine Sparks, *Canada*  
Magistrate Jayant Prakash, *Fiji*  
Magistrate Noel B. Irving, *Jamaica*  
The Honourable Justice R.R. Chinangwa, *Malawi*  
The Honourable Justice E.B. Twea, *Malawi*  
Magistrate E.P.B. Hoff, *Namibia*  
The Hon. Mr. Justice Mushtaq Ahmed Memon, *Pakistan*

The Honourable Mr. Justice Nasir-ul-Mulk, *Pakistan*  
Fr. Ranhilio Aquino, *Philippines*  
Attorney Edwin Sandoval, *Philippines*  
Magistrate N.B. Denge, *South Africa*  
Ms. A.M. Rademan, *South Africa*  
The Honourable Mr. Justice Stanley Moore, *Tortola*  
The Honourable Lady Stella Arach Amoko, *Uganda*  
His Worship David Wangutusi, *Uganda*  
The Honourable Justice Sylvester Simachela, *Zambia*  
Mrs. Gertrude Chawatama, *Zambia*  
Magistrate Andrew Mutema, *Zimbabwe*

# UNDERSTANDING LAW AND ECONOMICS: A PRIMER FOR JUDGES

by Ma. Lourdes A. Sereno

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[Editor's note: The following article is an abridged version of Professor Sereno's essay. The full text may be found on CJEI's Internet website at <http://is.dal.ca/~cjei/>]

**L**aw-making, as practiced by both by the legislature and the judiciary carries implicit beliefs about human existence and the nature of society. Each resolution of a conflict, presupposes a theory about the nature of law. While there are predominant schools of thought on the matter, the exercise of the judicial function requires a judicious choice of a legal theory, in accordance with what the judge believes to be true and represents the essence of the legal system. Some theories believe that law springs from a source higher than human desire and choices. Some believe that law is nothing more than the external and objective manifestation of societal choices and is therefore value-free. Since it is indisputable that a judicial decision affects the behavior of society, whether the behavior of direct litigants in the case, those incidentally affected, and future actors, the fact that decisions mold lives and societies inevitably impress the necessity of choosing a theory which compels intellectual assent, and "inner" fit. In other words, it must be a choice which will prove to be correct in the light of the experience and inner convictions of the law-maker or the judge who interprets the law.

## Decision-Making as Application of Legal Theory

Legal theory, at bottom, is a theory about the state and nature of man and human society. It is concerned about social organization, and the concepts of powers and rights are defined in the

context of allocation of finite resources, and the less definable concepts of dignity, equality and entitlements. Both political and social theory, therefore, provide the foundational underpinnings for both legal and economic theory. Law and economics, on the other hand, according to some authors, is not a neutral and objective science, but assumes "values" which are embedded in one's social theory. It is therefore important to obtain a background on the most popular legal theories and what they represent before a transition to law and economics can be made.

In turn, a good lawyer must understand the philosophical bias behind a position, whether it be that of the Constitution, a particular judge, or a piece of legislation, so that a more effective case can be made for his client's cause. A good lawyer can make use of the economic tools available in order to present his point. A judge, in the same manner, will benefit from the same analytical tools to unlock the rock-bottom position of litigants before her court.

Resolution of cases using arguments drawn from the social sciences started with the works of Max Weber and Roscoe Pound, wherein an attempt was made to use social science data, specifically sociological data, to analyze legal behavior. However, most of these works have focused on the participants' behavior rather on the substantive content of the law. It has only been more recently that social studies have been applied in the some areas of legal research and legal reform, such as family law, sexual crimes, welfare legislation, criminal defenses, penology, etc.

No other analytical framework in the social sciences has been used with a sufficiently fair degree of application as law and economics. Although sociology and law, for example, has been used for more than a hundred years, it has been the tightness of economic analysis which has allowed its application to the fullest

range of legal situations. Of course, it can be argued that law and economics has remained, except in the areas of antitrust and liability, only in the realm of the academic disciplines. It is surprising, however, that economic tools of analysis fuel many contemporary legal debates such as prison reform, the welfare system, taxation, even procedure and family law. The ability of economics to abstract from reality as a theoretical framework and arrive at generalizations is in fact, its greatest strength.

## Law and Economics as a Legal Discipline

As an academic discipline, Law and Economics became popular starting in the early 1960's in America with the works of Ronald Coase (who later won a Nobel prize in economics for his study on social costs and the economics of institutions) and Guido Calabresi (who later became dean of Yale Law School). The study of economic dynamics in antitrust cases has always been recognized as the most advanced field of study in law and economics, and since the Sherman Act in 1890, has been a rich field of both legislation, judicial decisions, and scholarship. Until the early 60's, however, economic analytical tools were not applied to other legal situations. Coase's earliest work on the subject was an article on the problem of social cost. Calabresi's was on risk distribution and the law of torts.

Coase's article was especially groundbreaking because he attempted to create an analytical model for assigning property rights and liability in economic terms. Many followed, scrutinizing many legal doctrines through econom-



ic analysis. Gary Becker made the next important breakthrough with his prolific writings on the relevance of economics to a wide range of non-market behavior, even charity and love, and wrote on specific subjects as economic analysis of crime, racial discrimination, marriage and divorce. It was the University of Chicago Law School that sustained the most intense interest in the new law and economics. The most famous member of its faculty was a judge, Richard Posner, who became quite well-known for his many books and articles on law and economics. One famous judge, Judge Learned Hand, is also known for his law and economics analysis in several cases, one of which became known as the Learned Hand formula in negligence cases.

The beauty of economic analysis is its ability to immediately conceptualize the scenario which confronts all decision makers, whether from an individual or from a more collective point of view: that of having finite choices. Whereas other social sciences cannot capture in hierarchical form these choices, and the effects they may have, economics attempts to do that by abstracting from the situation and predicting what would be the probable outcome on behavior had the parties been made to shoulder the costs in cases of voluntary transactions, pay damages, or be put under pains and penalties. In this way, it has been very useful in resolving by way of direct application not only antitrust cases, but tort, liability, contract, property rights, insurance, taxation, issues on the welfare system, and pollution and environmental cases.

### **The Question of Justice and Equity**

The most emotional debates on the place of economics in legal reasoning have to do with the notion that justice and equity can never be set against the standard of efficiency. The first way by which economics can be useful in the justice and equity debate is to show that in the majority of instances, the concepts are just descriptions of economic conditions in two senses: (a) "distributive justice" is nothing more than pronouncements on the tolerable degree of economic inequality in society, and which issue economics can definitely help, and (2) the notion of

due process and rights as illustrations of the value against the waste of resources. Penalties without trial, unjust enrichment, and failure to redress the demand for damages are simply, at bare bones, efficiency concepts. The second manner by which economics can be useful is for values clarification - to show that in many instances there are pseudo-justice issues masquerading under intellectual disguises and at the same time, concretize the cost of justice. After all, any debate on justice is not complete without a consideration of its costs.

### **The Legal Process and Judicial Decision-Making**

In economic terms, the body of precedent is the lawyer's capital stock. The body of precedent yields value over a period of time, and this value is measured in the durability of a legal doctrine - the length of time by which it has predictive capability in the outcome of future similar cases. The more frequently these precedents are overturned, the more their value diminishes. That is why, unlike some professions, the value of a lawyer's services increases over time, i.e., his ability to utilize the capital stock in relation to his age and experience, is positive. This capital stock is produced by the lawyers of the litigants and the judges, yet the judges are not paid in relation to the value the capital stock gives. Why is this so? What then do judges maximize? Generally, it cannot be monetary gain because the rules of judicial ethics prohibit them from doing so. Neither, on a general scale, can it be the promotion of the interests of the class to which he belongs because conflict-of-interest rules are intended to curtail that. And, by the way, interesting studies in the United States reveal that the economic interests of the Federal Supreme Court justices appreciated insignificantly in relation to their decisions.

The more dominant theories state that judges maximize either of two things: (a) their ability to render decisions in such a way that the probability of their promotion is increased, and (b) the promotion of their values and preferences, thus their extreme sensitivity to being overturned, since the welfare-value of their decision will be rendered worthless should it be overturned. This

welfare-maximization matrix is not incompatible with the viewed sacred duty of judges to uphold the law. The usefulness of the insight is to draw attention to areas that can be strengthened in the reform process - the stability of judicial decisions as precedent to increase predictability in the system, and the strategic importance of the educational process for the legal world.

With respect to law-making, most economists view the process as redistribution of wealth between the politically effective and ineffective. Thus, the importance of an independent judiciary cannot be underemphasized because in many instances an efficient outcome can result from judicial "intervention." Since the process of law-making is such, it is quite important to control the use and solicitation of campaign funds, to minimize the frequency and severity of interest-group politics, because this often brings about an inefficient outcome.

### **Conclusion**

Economics can help, within bounds, to clarify the costs and benefits of a certain outcome, and to arrive at a resolution of a case which attempts to maximize societal welfare without sacrificing the non-negotiable values. In other instances, where there is nothing at stake other than outright property interests, a straightforward cost-benefit analysis might even be sufficient for the final outcome. However, when a society's intransmutable values are at issue, then the role of economics is to clarify what are pseudo-justice issues, and those which can be viewed with mere economic measures. To those that are genuine nonmaterial justice issues, economics can also speak by clarifying for society what is the cost of upholding these values. In all these instances, there is room for making use of a tool which has been immensely helpful in terms of economic development in many jurisdictions.

*Prof. Ma. Lourdes Aranal Sereno is director of the Institute of International Legal Studies of the University of Philippines Law Center. She is recognized as the foremost Filipino authority on international law and economics and ASEAN (Association of Southeast Asian Nations) law. Last year, Sereno served as Counselor of the World Trade Organization Appellate Body Secretariat in Geneva.*

## NIGERIAN CHIEF JUSTICE EXTOLS MARITIME LAW AT SEMINAR

By Ibrahim H. Alkali, National Judicial Institute, Abuja, Nigeria

(27-04-99) - At the opening ceremony in Lagos, Nigeria, of the 1999 Maritime Seminar for Judges, the Chief Justice of Nigeria, Honourable M. L. Uwais, urged Nigerian judges to be conversant with, and update their knowledge of, maritime law.

Justice Uwais stressed that the scope of maritime law is both municipal and international. Maritime law, being one of the specialised areas of Nigerian law, requires not only judges, but also legal practitioners (especially those in maritime practice), academics, law lecturers, shipping industry practitioners, and other interested persons to constantly update their knowledge of maritime practice in Nigeria.

The Honourable Chief Justice aptly described the maritime industry as the veritable focal point of international commercial transactions, whereby all the nations of the world co-exist and interact in a global network. His Lordship noted that international maritime law and conventions are just as important to maritime practice in Nigeria as domestic maritime law.

Chief Justice Uwais observed that in Nigeria, relatively few judges deal with cases or maritime law, due to the fact that the Federal High Court has exclusive jurisdiction on maritime law cases.

Justice Uwais also observed that previously, Nigerian Judges and lawyers relied on the decisions of English courts in maritime law disputes.

The Honourable Chief Justice stated that there was a noticeable change in the volume of work before the courts in Nigeria after the cement armada of the 1970s. Since that date the volume of work on shipping and maritime law generally, has increased considerably.

Jointly organised by the National Judicial Institute of Nigeria and the Nigerian Shippers' Council, the Maritime Seminar for Judges has met annually since 1995. During the 3-day seminar, papers were presented by legal and maritime experts on different aspects of maritime law and practice. Some of the topics included Cargo Claims; Principles of General Average; Ship, Master, and Crew; Claim for Oil Pollution; Unlawful Arrest Compensation; and Hamburg Rules.

### NEW SOUTH WALES

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(AIJA).

Other educational seminars are held on topical matters either relevant to a particular court, or of interest to all courts. Recently "field trip" seminars have been conducted for magistrates on speed detection equipment and breath analysis equipment, and for all judicial officers on aboriginal cultural

awareness. Intercultural seminars have been held on accountancy for judicial officers, working with sex offenders, enterprise agreements and understanding lying and deception.

The Education Section of the Commission also gets involved in outside educational initiatives. The Education Director is heading a committee responsible for organising the 1999 CLEAA (Continuing Legal Education

## Professional development for the New Zealand Judiciary

contributed by

The Institute of Judicial Studies

In May 1998, the New Zealand government authorized the creation of an Institute of Judicial Studies to enhance the quality of justice. In making the announcement, Minister for Courts Wyatt Creech was quoted as saying, "Currently, the judiciary is one of the largest professional bodies without extensive formal provision for development and training. The Institute of Judicial Studies is a judicially-led initiative and will now address this situation." The Institute will better coordinate continuing education, information and research services for judges and other judicial officers such as coroners and JPs. "The principal functions of the Institute will be to help professional development and promote judicial excellence. It will foster an awareness of developments in the law, judicial administration and social and community issues amongst judicial officers," Creech said. The government announced that the Institute will receive funding totalling NZ\$2.1 million over three years. On 1 July 1998, a Memorandum of Understanding was concluded between the Chief Justice, the Chief District Court Judge and the Chief Executive Officer of the Department for Courts to ensure that judicial independence is maintained and that the Institute enjoys autonomy in its affairs.

Association of Australasia) Annual Conference in Sydney in on 14-16 November. The theme of the conference will be "People Before Paper". Sessions will include dealing with stress, the use of technology, how to conduct pre-bench training for magistrates and an open forum to allow participants to discuss a variety of issues of common interest. □

# CALENDAR OF EVENTS

## 1999

<b>Seminar on Judgment Writing</b>	July 6-10, 1999 Montréal, Canada	Canadian Institute for the Administration of Justice
<b>The Cambridge Lectures 1999</b>	July 11-21, 1999 Cambridge, England	Canadian Institute for Advanced Legal Studies
<b>Evaluation for Practice Conference</b> Topic: international trends in evaluation research	July 12-14, 1999 University of Huddersfield, England	Call +44 (0) 1484 472130\472583 or email: joanwragg@hud.ac.uk
<b>Annual AIJA Court Administrators' Conference</b>	August 6, 1999 Adelaide, Australia	Australian Institute of Judicial Administra- tion (AIJA) 08-8379 8222 fax: 08-8379 8177 e-mail: plevin@camtech.net.au
<b>17th AIJA Annual Conference "Justice Delivery: Meeting New Challenges"</b>	August 6-8, 1999 Adelaide, Australia	AIJA (as above)
<b>Two-day Residential Conference, Supreme Court of New South Wales.</b> Selected Topics: "The Public Face of the Court", expert evidence, "The Judge in the Criminal Court."	September 3-4, 1999 Terrigal, New South Wales	Judicial Commission of New South Wales Contact: Ruth Windeler, Tel: 612 9299 4421 Fax: 612 9290 3194 E-mail: ruth_windeler@agd.nsw.gov.au
<b>Sixth National Court Technology Conference (CTC6)</b>	September 13-16, 1999 Los Angeles, USA	National Center for State Courts
<b>Twelfth Commonwealth Law Conference</b>	September 13-16, 1999 Kuala Lumpur, Malaysia	Malaysian Bar Council
<b>National Judicial Orientation Programme</b>	September 26 -October 1, 1999 Sydney, Australia	AIJA (Joint programme with the Judicial Commission of NSW)
<b>XIX Biennial Conference on the Law of the World</b>	October 2-9, 1999 Budapest, Hungary & Vienna, Austria	World Jurist Association E-mail: wja@wja-wptlc.org
<b>4th International Conference on the Child</b>	October 13-15, 1999 Montreal, Canada	(514) 593-4303 FAX: (514) 593- 4659 <a href="http://www.opcr.ca">http://www.opcr.ca</a>
<b>Annual CIAJ Conference: "The Judiciary... Manifestations and Challenges to Legitimacy"</b>	October 13-16, 1999 Québec City, Canada	CIAJ
<b>Biennial All Nigeria Judges' Conference</b>	November 1-5, 1999 Abuja, Nigeria	Nigerian National Judicial Institute Tel: 234-9-234-7786 ext. 18
<b>Association of International Refugee Law Judges Conference</b>	November 5-10, 1999 Ottawa, Canada	Canadian Institute for the Administration of Justice
<b>8th International Association for Women in Development</b> Topic: Leading Solutions for Equality and Justice	November 11-14, 1999 Washington, DC	<a href="http://www.awid.org">http://www.awid.org</a>
<b>Continuing Legal Association of Australasia Annual Conference</b>	November 14-16, 1999 Sydney, Australia	CLEAA
<b>Early Orientation for New Judges Seminar</b>	November 22-26, 1999 Ottawa, Canada	National Judicial Institute
<b>2000</b>		
<b>Fifth Biennial Masters' Conference</b>	April 26-28, 2000 Auckland NZ	AIJA
<b>National Judicial Orientation Programme</b>	August 6-11, 2000 Sydney, Australia	AIJA/JCNSW
<b>Technology for Justice 2</b>	October 2000, Melbourne, Australia	AIJA

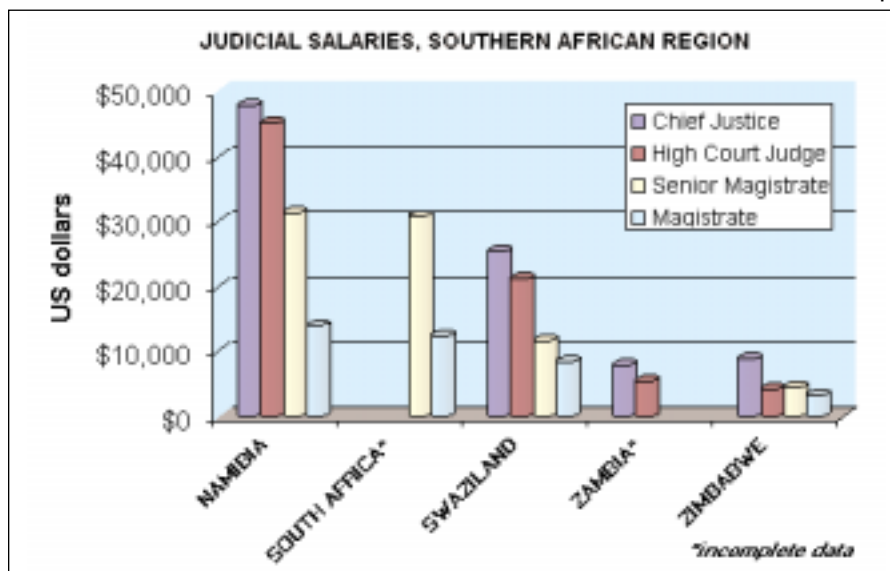
# The BACK PAGE

## JUDICIAL SALARIES AND BENEFITS IN THE SOUTHERN AFRICAN REGION

CJEI's ongoing survey of judicial salaries and benefits in Commonwealth countries finds marked contrast in salary and benefit provisions in the Southern African region. While superior court judges generally enjoy benefits and pay scales that compare

ern African region can expect to receive perks such as free telephone and electricity, no such services are provided to the subordinate courts. Car and fuel allowances are also common in the upper judiciary, but completely absent in the lower courts. Security arrangements are also lacking in the lower courts.

With respect to income levels and salaries, the range of figures obtained is surprisingly broad. A senior magistrate in South Africa, for example,



favourably with other countries, subordinate court judges in **Namibia, South Africa, Swaziland, Zambia** and **Zimbabwe** enjoy few of the benefits afforded their senior colleagues. For example, only South Africa and Swaziland provide housing allowances, and only Zimbabwe provides a car allowance. Medical coverage is provided for subordinate court judges in Namibia and South Africa, but not elsewhere.

While high court judges in the South-

receives an annual salary of **\$30,800** (in US dollars), whereas in Zimbabwe the figure is **\$4,517**. A similar pattern exists at the highest levels of the judiciary: in some countries the Chief Justice receives an annual salary six times greater than that paid in other countries in the region.

Namibia and Swaziland offer bonuses to superior court judges in the form of tax-free, cost of living, and housing allowances, but these benefits were not reported in other countries. □

## IN YOUR OPINION

The Honourable Mr. Justice Kenneth M. Lysyk, Supreme Court of British Columbia, offers the following response to last issue's In Your Opinion questions:

### 1. Is a financial disclosure statement an appropriate method of strengthening public trust in the judiciary?

*With respect to the first question, presumably the principal, if not sole, objective is to avoid conflict of interest situations. If it is aimed at a judge who would not otherwise disqualify himself or herself from hearing a particular case due to concerns about conflict of interest or the appearance of bias, I doubt whether this sort of filing requirement is really necessary or justifies the bureaucratic arrangements. Having said that, I would have no objection in principle to complying with such a requirement.*

### 2. If so, should these statements be available to the general public?

*It is not apparent to me why any such statements ought to be available to the walk-in public. Perhaps a litigant should be able to inquire whether the assigned judge has a financial interest in any of the corporate bodies or other entities that are parties to that particular law suit or which the litigant identifies as potentially affected by that litigation.*

### 3. Would you let us know if your country requires annual financial disclosure statements?

*Federally appointed judges in Canada are not required to file financial disclosure statements.*

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