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## The Role of Law Schools in Educating Judges to Increase Access to Justice

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# The Role of Law Schools in Educating Judges to Increase Access to Justice

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## I. INTRODUCTION

This article<sup>1</sup> examines the role of judges as public citizens creating access to justice and, in particular, the roles that law schools play in educating judges to better perform their crucial role. This article takes a cross-cultural look at the issue, with contributions from professors and lawyers in India, Nigeria, and the United States. Of course, many of the institutional processes are different in various parts of the world, but there are certain commonalities that make for very interesting comparisons. In some places, individuals can become judges directly following the completion of law school. In other jurisdictions, the process is lengthier and may take many years and require much experience as a practicing lawyer. Other differences include the process of choosing judges by examination, by election or by appointment. However, the commonalities between the systems allow us to use the different experiences to shed light on the problem. The common issue is that, in most places, law schools pay scant attention to what it means to be a judge and how judges work in the courtroom, even though judges are the most important functionaries in the court process, as they have the power to make the final decision.

The first section of the article starts with a description of the Nigerian experience, the role of the Judicial Academy in converting lawyers into judges,

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1. Several members of the Global Alliance for Justice Education (“GAJE”) presented a multinational panel on the above topic on Saturday, December 11, 2010, at the University of Hawai’i School of Law. GAJE is a worldwide organization of persons committed to achieving justice through education. While clinical education of law students is a key component of justice education, this organization also works to advance other forms of socially relevant legal education, including the education of practicing lawyers, judges, non-governmental organizations (“NGOs”) and the lay public.

and what role the law school can and should play in judicial education. The second section considers India, with a discussion of judicial training and the skills that are specific to judges, as well as the various stages where law schools can and should contribute to or focus on judicial education, and explains how a strategic partnership between judicial academies and law schools may be useful to improve judicial administration and education. Section Three looks briefly at the process of becoming a judge in civil law countries, and then moves to discuss some failings of law school training in the United States which hinder the ability of judges to effectively perform their functions. Section Four discusses the importance of providing social justice, community lawyering, and clinical experiences in the law school setting to educate future judges on the problems with access to justice. Finally, Section Five gives an insider's look at judicial training and experience in the United States.

## II. SECTION ONE—THE NIGERIAN EXPERIENCE

Legal education in Nigeria has been central and noncommittal to the various areas of legal services available to a lawyer. In other words, Nigerian lawyers are trained in all areas (solicitors, advocates, judicial officers, and academics) using the same curriculum.<sup>2</sup> It is obvious that such a mode of training falls short of standards for equipping a professional for specific skills. It is opined that there is a high possibility that a good prosecutor turned judge may bring his bias against defendants as a judge or magistrate. Similarly, a public defender turned judge will be naturally biased against the state or similar plaintiffs. A judge without judicial training may not draw a line as to his role as an unbiased arbiter. He simply employs his personal and emotional idiosyncrasies in deciding public fate. There is no formal training curriculum for Nigerian judicial officers in any university or law school in the country. This system has been grossly criticized.<sup>3</sup> As a result of the criticisms, the National Judicial Institute was established to train judges and magistrates on the job.<sup>4</sup> Dr. Omaka is a former Senior Magistrate, and he finds that it is evident that such an on-the-job training scheme

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2. This is common in all law faculties in Nigeria. The curriculum for training lawyers all over the country only emphasizes twelve core law courses viz: Introduction to Nigerian legal system, law of evidence, law of torts, law of contract, land law, criminal law, company law, commercial law, constitutional law, jurisprudence, equity & trusts, and a long essay. See NETWORK OF UNIV. LEGAL AID INST. NIGERIA & FIN. ASSISTANT OF OPEN SOC'Y INST., CLINICAL LEGAL EDUCATION: CURRICULUM FOR NIGERIAN UNIVERSITIES' LAW FACULTIES/CLINICS 2 (2006) [hereinafter NIGERIAN CLE].

3. One of the strong critics of this system of law training in Nigeria is Professor Ernest Ojukwu, the Deputy Director-General of Nigerian Law School and President of Network of University Legal Aid Institutions. *Id.* at 2-6.

4. Wendy Zeldin, *European Union/Nigeria: Conference Held on Improving Judicial Performance Evaluation System*, LIBR. CONGRESS, [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_1205401862\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205401862_text) (last updated Mar. 10, 2010).

is not good enough; hence the need for developing a formal training curriculum for judges in law schools.

In Nigeria, judges are appointed from the bulk of generally trained lawyers. The appointment of a person to the office of a judge of a state high court is made by the governor of the state on the recommendation of the National Judicial Council,<sup>5</sup> after consultation with relevant stakeholders in the administration of justice.<sup>6</sup> The person must be a lawyer licensed to practice in Nigeria, with no less than ten years post qualification.<sup>7</sup> There is no specific legal education one must possess to be considered. A person is considered for appointment after ten years post-call to bar experience, with a couple of appearances in the High Court, Court of Appeal, and maybe the Supreme Court. In the case of a magistrate, Magistrate Grade 2 could require as few as four years post-call, while Senior and Chief Magistrate ranges are between seven and ten years post-call experience. A magistrate is simply appointed with no form of judicial training! In fact, when Dr. Omaka was appointed a Senior Magistrate in 2001 with twelve others, he was simply invited for an orientation on 'judicial ethics' that lasted for three days. The "lecturers" were older magistrates and high court judges. After their "training," they were simply distributed into courts for one week to understudy older colleagues. That was it. They were then dispatched to court to determine people's fates, most of which were criminal in nature.<sup>8</sup> Before then, Dr. Omaka had never had any course on ethics, judicial practice, or similar skills, apart from the general rules of professional conduct at the Nigerian Law School in Lagos. At that time, there was nothing like clinical legal education, hence the law pedagogy was inchoate. It was basically theoretical and lacked skill content.<sup>9</sup>

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5. CONSTITUTION OF NIGERIA (1999), § 271(1)(2).

6. The names of judgeship nominees are usually sent to the relevant branches of the Nigeria Bar Association, the Bench, the State Security Service (SSS), etc., for screening before appointment. *Nigeria: Integrity Indicators Scoreboard*, GLOBAL INTEGRITY REP., <http://report.globalintegrity.org/Nigeria/2007/scorecard/44> (last visited Oct. 6, 2011).

7. CONSTITUTION OF NIGERIA (1999), § 271(1)(3).

8. "Rest in Pieces": *Police Torture and Deaths in Custody in Nigeria*, HUM. RTS. WATCH, July 2005, at 56, available at <http://www.hrw.org/sites/default/files/reports/nigeria0705.pdf> (magistrate courts handle approximately 90% of all criminal cases).

9. But for a few law faculties, to wit, Ebonyi State University, University of Uyo, Abia State University, University of Maiduguri, Adekunle Ajasin University, and some new clinical based law faculties, legal education in Nigeria operates under a unified standard curriculum and regulations prescribed by the National Universities Commission ("NUC").

The LL.B degree syllabus is a five-year programme for the Joint Matriculation Examination (JME) candidates and four years for the direct entry candidates. The direct entry candidates are mainly candidates who hold minimum of first degree or its equivalent. Each year is divided into two semesters of about fourteen weeks of lectures in each semester. On completion of the LL.B degree programme candidates who wish to enroll at the Bar must undertake a one year training programme at the Nigerian Law School and pass the bar examination. All LL.B graduates of recognized Universities/Faculties are qualified to undergo training at the Nigerian Law School.

For the LL.B programme, generally twelve law courses are made compulsory. These are: Constitutional law, Contract, Criminal law, Company law, Commercial law, Law of equity and trust,

*A. Self-Help and Fire Brigade Reactive Efforts*

The scenario above is typical of how judges are appointed and “trained” in Nigeria and many common law countries.<sup>10</sup> Against this background, many jurisdictions of the Nigerian judiciary have been grappling with the challenges of making their judges fit for their jobs in ethics, discipline, and learning.

For example, the Lagos State Judicial Service Commission recently appointed six new judges to the State’s High Court; the training session was facilitated by the Justice Research Institute.<sup>11</sup> The first part of the training commenced on April 7, 2008, at the Elias Centre.

In attendance on the first day were Mr[.] Supo Shasore (SAN), Hon. Attorney General and Commissioner for Justice Lagos State, Hon[.] Justice Ade Alabi, Chief Judge of Lagos State, Professor Yemi Osinbajo (SAN), Director, Justice Research Institute, Justice O. O. Oke[.] and the newly appointed judges. A typical training day started with a paper presentation by an Honorable Judge<sup>12</sup> on various aspects of substantive and procedural law.

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Law of evidence, Jurisprudence, Land law, Nigerian legal system, Law of torts and a compulsory essay. In addition to these core courses are other law courses (the list varies from university to university) that must be taken to make up the credit load in each semester in addition to at least five non-law courses which the student must pass such as computer appreciation and programming, natural science, the use of English, social science, logic and philosophic thought.

As recommended, every law subject is split into two parts, parts II and I. Each part is taught to a student for half a session (that is to say one semester). In each semester a law course has a 4-credit unit load. It means that for each 4-credit unit load course, 3 hours is located for lectures, while one hour is assigned to tutorial per week.

At the end of the semester a conventional theory examination is presented on the subjects taught over 100% in most faculties, as continuous assessment is not compulsory in most faculties.

NIGERIAN CLE, *supra* note 2, at 2-3.

10. Like England and the old colonies of Great Britain (many colonies of Great Britain inherited this system of judicial appointment from Britain), Nigeria (this view has been adequately illustrated above), Ghana (Nigeria and Ghana have a similar judicial recruitment, training and administrative system), India (see the views expressed by Professor Ved Kumari in this paper; according to her, “even though the law students in India have the career option of becoming judges straight after finishing the law school, the law schools focus on producing lawyers, but not judges”), Australia, Canada, and others share a similar experience in terms of judicial administration.

11. JUST. RES. INST., <http://www.justiceresearchinstitute.org> (last visited Oct. 28, 2011). The international NGO interested in justice education works in collaboration with its sister organization, the Orderly Society Trust. *About JRI*, JUST. RES. INST., [http://www.justiceresearchinstitute.org/?page\\_id=2](http://www.justiceresearchinstitute.org/?page_id=2) (last visited Oct. 28, 2011).

12. The paper presentation was garnered by on-the-job experience and not by any form of formal judicial education. He had to teach from his limited wealth of knowledge on justice and judicial education.

The Second part of the training was at the Eko Tourist beach. It was training as usual for the newly appointed judges. This lasted from the 15th to the 20th of April 2008[.]<sup>13</sup>

These impromptu training sessions are endangered by the lack of formal training curriculum for judges in any Nigerian university. Unfortunately, most of the ad-hoc on-the-job trainings for already-appointed judges are done by judges who know little or nothing about the fundamentals of legal education.

Similarly, the international community has been concerned by this unfortunate state of affairs,<sup>14</sup> hence the United Nations Office of Drug Crime (“UNODC”) recently sponsored project on Strengthening Judicial Integrity and Capacity in Nigeria,<sup>15</sup> in the context of “giving an overview of how it fits into a broader international initiative.”<sup>16</sup> The UNODC project on ensuring integrity in the Nigerian judiciary is part of the global clamour<sup>17</sup> for disciplined, well trained, and integrity-driven reforms aimed at making the judiciary the last hope of the common man. Consequently, this global agenda is “guided by an International Judicial Group on Strengthening Judicial Integrity, formed in April 2000 by the Chief Justices of Uganda, Tanzania, South Africa, Nigeria, Bangladesh, India, Nepal and Sri Lanka.”<sup>18</sup> According to reports from the group, Egypt and the Philippines joined this campaign at its third meeting in Sri Lanka in January 2003. During the Integrity Group’s first meeting in Vienna in 2000, it claimed the following achievements:

*The creation of a “safe” and productive learning environment for chief justices in which they can be exposed to best practices regarding **judicial** reform, management of change and the **strengthening** of the rule of law; [t]he formulation of a concept of **judicial** accountability which will be of practical effect and raise the level of public confidence in the courts without jeopardizing the principle of **judicial** independence; [t]he establishment of the *objectives, scope and basic principles for judicial reform*; [t]he development of a *Universal Declaration of Principles of Judicial Conduct*; [t]he design of a *comprehensive assessment methodology*.<sup>19</sup>*

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13. See JUST. RES. INST., *supra* note 11. Five-day training for a lifelong career is unacceptable.

14. Petter Langseth, *Strengthening Judicial Integrity Against Corruption*, CILJ Y.B. 4 (Mar. 2001), available at <http://www.unodc.org/pdf/crime/gpacpublications/cicp10.pdf>.

15. Participating Nigerian states include Borno, Delta, and Lagos. PETTER LANGSETH, *STRENGTHENING JUDICIAL INTEGRITY AND CAPACITY IN NIGERIA*, PROGRESS REPORT 3 (2003).

16. *Id.* at 4.

17. This global clamour is exemplified by the views held by different professors from different regions, as contained in this paper. See LANGSETH, *supra* note 14, at 4.

18. *Id.*

19. *Id.* at 3. At its first meeting, which was organized by UNODC in collaboration with Transparency



*B. Need for Proactive Curriculum for Would-Be Judges*

It is conceded that these reactive or fire-brigade measures may have cushioned the effect of informal training a little, yet the lack of a well articulated curriculum in a formal law school sector has not done much in equipping judges to understand their jobs as independent and unbiased umpires. Dr. Omaka and others are advocating for more proactive, rather than reactive, educational measures for training of judges in law faculties of universities in Nigeria and other common law countries where there is no such judicial education. They recommend the introduction of judicial training curriculum in law faculties and schools that utilizes the Clinical Legal Education (“CLE”) methodology for formal training of future judges. This course is intended to develop skills and ethical values that are needed in the sensitive and exalted position of a judge as a decider of public fate. This curriculum would largely embody clinical models of pedagogy and a variety of ethical problems, then discuss appropriate responses. We recommend this model of curriculum below.<sup>20</sup>

*Module one* will be the INTRODUCTION part of the curriculum. It will contain issues such as the distinction between disciplinary rules<sup>21</sup> (e.g. Code of Conduct for Judicial Officers)<sup>22</sup> and a statement of basic ethical principles<sup>23</sup> (i.e.

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International, the Group considered means of strengthening judicial institutions and procedures as part of strengthening national integrity systems. After delineating the objectives, scope, and basic principles for judicial reform, three of the participating member states, namely Nigeria, Sri Lanka, and Uganda, volunteered to pilot-test some of the identified reform measures. *Id.*

20. This model, except *module 8*, is currently being tried by the National Judicial Institute (“NJI”) in Nigeria. However, the NJI often compresses the programme into no more than four days, which is grossly inadequate. Ideally, the curriculum should be taught in a minimum of two semesters spanning at least one academic year in a formal law faculty and law school. U.N. OFFICE ON DRUGS & CRIME (UNODC), JUDICIAL ETHICS TRAINING MANUAL FOR THE NIGERIAN JUDICIARY 9-13 [hereinafter UNODC, JUDICIAL ETHICS], available at [http://www.unodc.org/documents/corruption/publications\\_unodc\\_judicial\\_training.pdf](http://www.unodc.org/documents/corruption/publications_unodc_judicial_training.pdf).

21. Violation of a disciplinary rule may constitute misconduct or misbehavior and may entail disciplinary action, while ethical principles are self-regulatory standards of conduct. While there may be an overlap or interplay, the latter are independent of the former in the sense that failure to observe such principles does not of itself constitute either misconduct or misbehavior.

*Id.* at 9.

22. Different countries have their own code of conduct for judicial officers. In Nigeria, for example, see Legal Practitioners Act (2004) Cap. (207) (Nigeria).

23. Principles of judicial conduct are drawn up by the judges themselves, and are intended to be used to improve conduct and to help Judges to perform more effectively.

Such principles are usually complemented by the establishment within the judiciary or a Judges’ association of a committee or other body of persons having a consultative or advisory role and which is available to a Judge whenever some uncertainty arises as to whether a particular activity is compatible with the status of a Judge. Such a body would be separate from one that is responsible for imposing disciplinary sanctions.

Judicial independence cannot be protected solely by principles of judicial conduct, but require also appropriate constitutional, statutory and administrative rules.

UNODC, JUDICIAL ETHICS, *supra* note 20, at 9-10.

the Bangalore Principles of Judicial Conduct).<sup>24</sup> It will also discuss ethics and places of ethical issues in, “(a) the courtroom, (b) outside the courtroom and (c) in judgment writing.”<sup>25</sup> The curriculum, under this module, should have key components in identifying ethical principles, to wit:

International standards of judicial conduct[:] Universal Declaration of Human Rights,<sup>26</sup> International Covenant on Civil and Political Rights,<sup>27</sup> UN Basic Principles on the Independence of the Judiciary,<sup>28</sup> The Bangalore Principles of Judicial Conduct,<sup>29</sup> African Charter on Human and Peoples’ Rights,<sup>30</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa[,]<sup>31</sup> Commonwealth Principles on the Accountability of, and the Relationship Between, the Three Branches of Government.<sup>32</sup>

The module should also have domestic standards of judicial conduct, to wit, the Constitution of the Federal Republic of Nigeria<sup>33</sup> (or the relevant state or country), and the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria<sup>34</sup> (or the relevant state or country). Part of *module one* should also include steps to resolve an ethical issue: “define the ethical dilemma; identify any specific codes, rules, guidelines and principles that are relevant; consult colleagues; identify permissible options, outlining the strengths and weaknesses of each,” and identify the preferred option for the purpose of justifying and adopting it.<sup>35</sup>

*Module two* will be based entirely on INDEPENDENCE as a fundamental concern for judicial integrity and functionality. This module will highlight the content of the value and the principle derived therefrom, and the hypothetical

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24. Judicial Grp. on Strengthening Judicial Integrity, *The Bangalore Principles of Judicial Conduct*, U.N.E.S.C. Res. 2006/23 (2002) [hereinafter Judicial Grp., *Bangalore*].

25. UNODC, JUDICIAL ETHICS, *supra* note 20, at 10.

26. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

27. International Covenant on Civil & Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171, 6 I.L.M. 368 (Dec. 16, 1966).

28. U.N. Basic Principles on the Independence of the Judiciary, G.A. Res. 11/1987 (1985), U.N. Doc. A/CONF.121/22/Rev.1 at 59 (Dec. 13, 1985).

29. Judicial Grp., *Bangalore*, *supra* note 24.

30. African Charter on Human and Peoples’ Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 59 (1982).

31. This is a supplementary document to the African Charter on Human and Peoples’ Rights promulgated in 2003 pursuant to Articles 5, 6, 7, 26 and 45(c) of the Charter. *Id.* at arts. 5-7, 26, 45(c).

32. UNODC, JUDICIAL ETHICS, *supra* note 20, at 10 (adopted by Commonwealth Heads of Government at Abuja Nigeria in 2003).

33. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA PROMULGATION DECREE NO. 24 of 1999.

34. *See* Legal Practitioners Act (2004) Cap. (207) (Nigeria).

35. UNODC, JUDICIAL ETHICS, *supra* note 20 at 10.

ethical issues involved, such as “undue influence exerted by the Executive; pressure from the Legislature; previous political connections; interference by senior colleagues; influence of the corporate sector; [and] effect of family or social relationships.”<sup>36</sup>

*Module three* will center on IMPARTIALITY. The module will examine the content of the value and the principle derived from the concept of impartiality. Additionally, this module examines hypothetical ethical issues like “strong personal feelings about the subject matter or the parties; family’s financial interests; personal knowledge; ex parte orders and communications; public statements; offers of post-retirement employment; and applications for recusal.”<sup>37</sup>

*Module four* will center on INTEGRITY. The module will look into the content of the value and the principle derived therefrom, and hypothetical ethical issues including “private life; conforming to community standards; transgressing the law; and conduct in court.”<sup>38</sup>

*Module five* will focus on PROPRIETY, “the content of the value and the principle derived therefrom,” and hypothetical ethical issues such as

use of clubs and social facilities; gambling; social contact with the legal profession; ordinary social hospitality; family members in the legal profession; exercise of the freedom of expression; misuse of the prestige of judicial office; disclosure of confidential information; participation in community activities; membership of a commission of inquiry; and acceptance of gifts.<sup>39</sup>

*Module six* will focus on EQUALITY, the content of the value and the principle derived therefrom, and hypothetical ethical issues, to wit, “applying international standards; stereotyping; responding to cultural diversity; gender discrimination; and manifestations of bias or prejudice by court staff and lawyers.”<sup>40</sup>

*Module seven* will deal with COMPETENCE AND DILIGENCE. It will discuss the content of the value and the principle derived therefrom, and hypothetical ethical issues like “maintaining professional competence; punctuality and prompt disposition of court business; delivery of reserved judgments; transparency; corruption in the court-house; and application of international standards in human rights law.”<sup>41</sup>

Finally, *module eight* will deal with MANAGEMENT OF HUMAN AND OTHER ELEMENTS. These include management of transitions (e.g. The

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36. *Id.* at 11.

37. *Id.*

38. *Id.*

39. *Id.* at 12.

40. *Id.*

41. *Id.* at 12-13.

Director of Public Prosecution, or public prosecutor to Judge; a public defender to Judge, an academician to a Judge, etc); management of biases (those that have natural hatred or likeness of certain actions of man: rape, murder, fraud, bigamy, homosexuality, lesbianism, Islam, Hindu, Christianity, and other religions, etc); management of internal and related pressures (e.g. from the Chief Judge, the Director of Public Prosecution, colleagues, Commissioner of Police, the government, staff etc.); management of time and schedule; management of load and case files; and management of equipment and office machines.

*C. Strengthening Judicial Education*<sup>42</sup>

Dr. Omaka strongly believes that judicial education cannot be supported by government funding alone; it should be done in collaboration with development partners and specialized agencies. We highlight some thematic areas of training below, and advocate for implementation in all jurisdictions.

*1. Judicial Ethics Training*

Ethics training for **judicial** personnel and court staff is to be developed and implemented jointly by representatives of the pilot state judiciaries, the [Independent Corrupt Practices Commission] ICPC, the [National Judicial Institute of Nigeria] NJI, the [National Centre for State Courts] NCSC and the [United Nations office of Drug Crime] UNODC.<sup>43</sup>

This recommendation is in line with a communiqué issued during the Strengthening Judicial Integrity conference, the purpose of which was, among other things,

- Raising awareness of the ethical challenges for judicial and court staff.
- Training staff on how to handle these challenges.
- Strengthening internal and external integrity systems, including the complaints mechanism, court user groups and the development of a code of conduct for court staff.
- Ensuring follow-up through action planning and measurable output and impact indicators.

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42. See LANGSETH, *supra* note 15. Some of these recommendations stem from experience garnered after attending a workshop, which is now captured in the report.

43. See *id.* at 20.

The inputs to this training will include:

- An assessment of the main ethical challenges faced by Nigerian judges and court staff identified during the UNODC [or any other UN] assessment of judicial integrity and capacity.
- The findings of the working group on judicial ethics organized by the NCSC with the support of the UNODC [or any international body].<sup>44</sup>

## *2. Computerization and Training*

In line with what UNODC has been doing, Dr. Omaka recommends that major development partners assist in computerization of law schools, and even of the courts for judicial education and service. For example, in Nigeria, the UNODC has been handy to this challenge in the courts,<sup>45</sup> but not in law schools. Training should be conducted for selected staff in operating this system in relevant university faculties.

The system will be used for tracking, analysing [sic] and following up on all petitions, complaints and other misconduct related complaints, including the preparation of periodic reports[.] In order to develop a functional system that will work in **Nigeria**[,] an international database expert would[] conduct a need assessment. Based on this need assessment, the project [should] develop and install and pilot test a computerized complaint system in selected faculties.<sup>46</sup>

## *3. Electronic Court Recording Education*

Dr. Omaka also joins the Integrity Group<sup>47</sup> in recommending electronic recording education for judges. This is paramount. Education for judicial and other officers to operate electronic court devices is key to making a judge functional. In Nigeria for instance, the National Centre for State Courts (“NCSC”) conducted two training sessions on how to operate electronic court recording systems in Kaduna and Abuja, which drew participants from UNODC pilot states like Borno, Delta, and Lagos to participate in this training.<sup>48</sup> We commend such trainings for judicial officers and those who work with them in the law schools and faculties.<sup>49</sup>

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44. *Id.*

45. *Id.*

46. *Id.*

47. *See id.*

48. *See supra* notes 14-17; LANGSETH, *supra* note 14, at 20. These states are drawn from three geopolitical zones of Nigeria.

49. *See* LANGSETH, *supra* note 14, at 6.

*D. Conclusion*

There is need for a well-structured, CLE-oriented, and university-based education for judges and judicial officers. This will “(i) improve access to justice, (ii) increase the timeliness and quality of justice, (iii) enhance public confidence in the courts, (iv) establish an efficient, effective and credible complaints system, and (v) enhance co-ordination and collaboration throughout the criminal justice system.”<sup>50</sup>

III. SECTION TWO—JUDICIAL TRAINING IN INDIA

*A. India—Appointment of Judges*

The Indian judiciary has three tiers of hierarchy. The Supreme Court is the top at the national level, having appellate, original, and writ jurisdiction.<sup>51</sup> Each state has a High Court which also has appellate, original, and writ jurisdiction.<sup>52</sup> The District Courts are usually the courts of first instance in civil and criminal matters, but the senior judicial officers in the District Courts also hear appeals against the decisions of the civil judges and magistrates.<sup>53</sup> Appointments in all the courts are made either by direct appointments or by promotion.<sup>54</sup> At the lowest level of the hierarchy of these courts, fresh graduates from law schools may become judges by passing the judicial examination and interview after enrolling themselves as advocates.<sup>55</sup> No experience as an advocate is required for taking this examination.<sup>56</sup> Advocates with seven years of experience may become judges of the higher judiciary in the District Courts by clearing the examination and interview held for this purpose.<sup>57</sup> Civil judges and Magistrates recruited directly after earning their law degree become eligible for promotion after ten years of service.<sup>58</sup> Appointment of a judge in the High Court is by promotion from among

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50. U.N. OFFICE ON DRUGS AND CRIME, STRENGTHENING JUDICIAL INTEGRITY AND CAPACITY IN NIGERIA: PROGRESS REPORT #2, 6 (2003), available at [http://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening\\_Judicial\\_Integrity\\_and\\_Capacity\\_in\\_Nigeria\\_progress\\_Report\\_2.pdf](http://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening_Judicial_Integrity_and_Capacity_in_Nigeria_progress_Report_2.pdf).

51. INDIA CONST. arts. 32, 131-39.

52. INDIA CONST. arts. 225-28 (relating to appeal and revision provisions of the Code of Civil Procedure, Code of Criminal Procedure, and other enactments).

53. *Delhi District Courts Users' Handbook*, DELHI CTS., <http://delhicourts.nic.in/Users%20Handbook%20for%20Net.pdf> (last visited Oct. 29, 2011); see also The Code of Criminal Procedure, 1973, No. 2 of 1974, CODE CRIM. PROC. (1974) (India); The Code of Civil Procedure, 1908, No. 5 of 1908, CODE CIV. PROC. (1908) (India).

54. DELHI JUDICIAL SERVICE RULES, 1970, pt. II(5), available at [http://www.delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice\\_A7QUZKZKZ.PDF](http://www.delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_A7QUZKZKZ.PDF) (last modified on Apr. 1, 2010).

55. *Id.* at pts. III(9), IV(14).

56. *Id.* at pt. IV(14).

57. See generally DELHI JUDICIAL SERVICE RULES, 1970, *supra* note 54.

58. *Id.*

the judicial officers in the higher judiciary in the District Court, or directly from among the Advocates by invitation.<sup>59</sup> Judges of the Supreme Court may also be appointed either by promotion from the High Court or by direct appointment by advocates or renowned jurists.<sup>60</sup>

Even though law students in India have the career option of becoming judges straight after finishing law school, law schools focus on producing lawyers, not judges.<sup>61</sup> This is not surprising because a law school's activities are regulated by the Bar Council of India, which is charged with the duty of maintaining standards for law schools, and determines the courses to be taught in law schools.<sup>62</sup> The Bar Council has prescribed, among other things, compulsory courses for teaching practical skills necessary for a lawyer so that law schools produce efficient and ethical lawyers.<sup>63</sup> The law schools are free to add additional courses.<sup>64</sup> Law schools have not introduced any courses focused on teaching skills required by judges.<sup>65</sup> Good, efficient, and ethical judges are as essential for the success of the judicial system as good lawyers.

On becoming judicial officers, the fresh law graduates are presently given training for varying duration, from a few months to one year,<sup>66</sup> by the State Judicial Academies, which function under the supervision and control of their respective High Courts.<sup>67</sup> The newly appointed judges learn about their job through classes held at the Academy, field visits to various institutions connected with judicial administration, and attachment with courts to observe the proceedings.<sup>68</sup> Experienced judges perform most of the training of the new judges, and the new judges learn the best practices from senior judges who teach

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59. *Id.* at pt. II(7A)-(7B), (9).

60. INDIA CONST. chs. IV-V.

61. See generally *Legal Education*, B. COUNCIL INDIA, <http://www.barcouncilofindia.org/about/legal-education/> (last visited Oct. 29, 2011).

62. See *Affiliation and Recognition of Colleges and Universities*, B. COUNCIL INDIA, <http://www.barcouncilofindia.org/about/legal-education/affiliation-and-recognition-of-colleges-and-universities/> (last visited Oct. 29, 2011); see also BAR COUNCIL OF INDIA, RULES OF LEGAL EDUCATION pt. IV (2008) [hereinafter RULES OF LEGAL EDUCATION], available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>.

63. RULES OF LEGAL EDUCATION, *supra* note 62.

64. *Id.*

65. National Law University, Delhi has introduced a one-year diploma in Judicial Skills since last year. One can do this course after completing a law degree but not while completing a law degree. See *Admission Notice for PGDJCM & PGDEUM: 2011-2012*, NAT'L L. U. DELHI, <http://www.nludelhi.ac.in/pdf/PGDiplomaInCourtMangement.pdf> (last visited Oct. 6, 2011).

66. TRAINING CALENDAR 2011, DELHI JUDICIAL ACAD., 40, available at <http://judicialacademy.nic.in/Training%20Calendar%202011.pdf> (last visited Oct. 29, 2011).

67. *Composition of Delhi Judicial Academy*, DELHI JUDICIAL ACAD., <http://judicialacademy.nic.in/composition.htm> (last visited Oct. 7, 2011).

68. TRAINING CALENDAR 2011, *supra* note 66, at 41.

from their own experience on the Bench and from the precedents laid down by the High Court and the Supreme Court.<sup>69</sup>

The Delhi Judicial Academy conducts a one-year induction training for the freshly recruited judges, which focuses on four aspects of learning: Knowledge, Attitude, Skills, and Ethics, in terms of the direction of the Supreme Court.<sup>70</sup> Professor Ved Kumari's exposure to the newly recruited judicial officers from the law school showed that they had acquired a lot of knowledge about legal provisions and principles much beyond the law curricula for passing the judicial examination, but they had no exposure to the role, functioning, and responsibilities of a judge. Many of them were attracted to becoming a judge because it symbolized high status with a good salary and other perks,<sup>71</sup> like an official car, residence, peons, etc.<sup>72</sup> Some of them were driven to it because of the power it gave them to do justice. However, they had no practical skills required of a judge. They also did not realize that being a judge is a responsibility that they have to discharge twenty-four hours a day, seven days a week for the rest of their lives, leading to very restrained and secluded lives.<sup>73</sup> Advocates with seven or more years of practice entering the higher judiciary also undergo training at the Academy for four months, focusing on inculcating judicial ethics and skills required for judges.<sup>74</sup> The law schools, however, remain outside this whole arena of legal learning and teaching, even though all judges necessarily have to have a law degree.

### *B. Gaps in Legal Education of Judges*

Teaching in law schools is focused on legal provisions, precedents, doctrines, theories, and practical skills needed by a lawyer. Some courses focus on current issues of social justice, discrimination, and the relationship between law and society.<sup>75</sup> What is important to notice is that the skill sets required by a lawyer are very different from the skills required by a judge. While law schools do focus on active listening, communication, articulation, drafting, research, arguments, witness examination, negotiation, and mediation, the emphasis is on creating the

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69. *See id.*

70. *Id.* at 9, 32.

71. *See generally Three-fold Salary Hike for SC, HC Judges*, ONEINDIA NEWS (Feb. 25, 2009), <http://news.oneindia.in/2009/02/25/three-fold-salary-hike-for-sc-hc-judges.html>.

72. *See The High Court Judges (Salaries and Conditions of Service) Act, 1954*, No. 28, Acts of Parliament, 1954 (India).

73. *See District Courts Case Management Manual*, DIST. CTS. DELHI: JUD. COMM., 28-29 (Apr. 2005), <http://delhicourts.nic.in/Case%20Management%20Manual%20V1.0.pdf>.

74. *See TRAINING CALENDAR 2011*, *supra* note 66, at 42.

75. *See, e.g., Courses of Study for Bachelor of Laws Examination*, LAW COLL. DHANBAD, <http://www.lawcollegedhanbad.ac.in/courses.html> (last visited Oct. 7, 2011); *infra* note 84 and accompanying text.



best legal case for one's client.<sup>76</sup> Lawyers are trained to be partisan, and their personal value system or biases have no or minimal impact on the way they prepare the cases of their clients.<sup>77</sup>

Active listening is required of a judge, but it is very different from that of a lawyer. The lawyers listen for comparatively shorter periods of time compared to judges who have to actively listen throughout the day to lawyers of all different caliber and proficiency, with an open mind, and without taking sides until the end. The subject matter of their listening also keeps changing with each new case called, and the judges need to change their track of thinking as soon as the next case is called. The lawyers may decide what and how many cases to accept.<sup>78</sup> The judges have no such discretion, and they need to manage their dockets and case flow as they are assigned to them by the administering senior judge and according to their posting.<sup>79</sup> In addition, the judges need skills in deciding matters, judgment writing, non-partisan verbal and non-verbal communication, giving dictation in open court, management of their cases and courts, etc. They need to ensure not only that justice is done, but that it is seen to be done! Most importantly, their personal value systems may wreak havoc in their decision-making unless identified and minimized.

There is also a big difference in the professional ethics of lawyers and judges.<sup>80</sup> While lawyers are officers of the court and are there to assist the court in reaching a just decision,<sup>81</sup> they are taught to find legal ways and means, or loopholes, in the law or evidence to assist their client's case. They are bound by the principles of client confidentiality, fact investigation, not concocting evidence, not concealing precedents that may go against them,<sup>82</sup> and so on. The core values that the judges must possess are very different. The Bangalore Principles include six core values necessary for judges, namely: independence, impartiality, integrity, equality, propriety, and, finally, competence and diligence.<sup>83</sup>

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76. See *Academic Overview*, LAW COLL. DHANBAD, <http://www.lawcollegedhanbad.ac.in/acd.html> (last visited Oct. 7, 2011).

77. COURT RULES OF THE HIGH COURT OF DELHI pt. 5, ch. 6, pt. B, available at [http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile\\_GQ0GRYGV.PDF](http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_GQ0GRYGV.PDF) (last visited Nov. 12, 2011) (India) (Legal Practitioners).

78. *Id.*

79. See *District Courts Case Management Manual*, *supra* note 73, at 22, 27.

80. See, e.g., COURT RULES OF THE HIGH COURT OF DELHI pt. 1, ch. 20, available at [http://www.delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile\\_4Q6J S1LC.PDF](http://www.delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_4Q6J S1LC.PDF) (last visited Nov. 12, 2011) (India) (Judicial Powers); COURT RULES OF THE HIGH COURT OF DELHI pt. 7, app. G [hereinafter *Advocates Rules*], available at [http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile\\_X09D4F6E.PDF](http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_X09D4F6E.PDF) (Standards of Professional Conduct and Etiquette to be Observed by Advocates).

81. See *Advocates Rules*, *supra* note 80, at 1.

82. *Id.*

83. THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2002), available at [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

None of these skills or judicial values are taught or inculcated in law schools.<sup>84</sup> Training of judges is done by judges who focus on legal provisions, procedure, appreciation of evidence, judgment writing, management of docket, case flow, court, adjournments, etc.<sup>85</sup> However, the judges are not trained to organize teaching, conceptualize courses, or determine progression of topics in a given course.<sup>86</sup> They certainly have not been trained to be teachers by their seniors, but only to become judges. Judges as teachers mainly rely on primary legal materials and their own experiences on the bench for teaching the junior judges.<sup>87</sup> With the unmanageable workload, they get little time to prepare for their classes.<sup>88</sup> In refresher courses, the judges prefer to answer questions that may be raised by the participating judges. These limitations are inherent when judges teach judges, and leave the judges completely unaware of the critique of law or the best practices from other jurisdictions that are essential for the growth and reform of judicial practices and processes.

Academies do occasionally invite law teachers and other experts to address the judges during their trainings. Most of the time, however, the judges find the knowledge of the law teacher to be irrelevant to their court work. Judges want solutions to the practical problems they face in the day-to-day functioning of the court. The teachers instead focus on critiques of the law, conceptual underpinnings of the legal provisions, problems faced by litigants, etc. Teachers in India are also often unaware of the issues faced by judges in courts, as they are not required to have experience in practicing in a court of law before becoming a law teacher.<sup>89</sup> In fact, full-time law teachers are barred from legal practice.<sup>90</sup> On

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84. *Courses of Study for Bachelor of Laws Examination*, *supra* note 75 (listing the twenty-one compulsory courses required by The Bar Council of India: Jurisprudence, Contract-I, Contract-II, Tort and Consumer Protection Laws, Family Law-I, Family Law-II, Law of Crimes, Criminal Procedure Code Juvenile Justice Act and Probation of Offenders Act, Constitutional Law, Property Law, Law of Evidence, Civil Procedure Code and Limitations Act, Legal Language/Legal Writing, Administrative Law, Company Law, Human Rights And International Law, Arbitration Counseling and Alternate Dispute Resolution Systems, Environmental Law, Labour Law, Interpretation of Statutes, and Land Laws).

85. TRAINING CALENDAR 2011, *supra* note 66, at 43-44.

86. *Id.*

87. *Id.* at 18.

88. Judicial officers of the District Judiciary in Delhi may have a caseload of a few hundred to many thousand cases, depending on the jurisdiction. See *Cause Lists Retrieval*, JUDGMENT INFO. SYS., [http://judis.nic.in/causelists/cl\\_retrieve.asp](http://judis.nic.in/causelists/cl_retrieve.asp) (last visited Oct. 1, 2011).

89. *Education Rules 2008*, B. COUNCIL OF INDIA, <http://www.barcouncilofindia.org/about/legal-education/education-rules-2008/> (last visited Oct. 29, 2011).

90. Bar Council of India, Res. No. 108 (1996).

Resolved that the Bar Council of India disapproves the practice of enrolling full time salaried teachers in law . . . and direct all the State Bar Councils to take immediate steps to initiate removal proceedings . . . against such full time salaried law teachers, who have been enrolled as advocates. . . . [T]he Council resolved that Law Teachers be not granted permission to act, appear and plead in the courts of law in the cases processed through the Legal Aid Bureau and in other cases taken by the Law teachers on humanitarian grounds.

This restriction on full-time law teachers to practice law was upheld by the High Court of Delhi. Anees Ahmed

the first day a new judge sits in court, a typical full-time law teacher may not know what judges should do when a lawyer with a litigant appears, or an accused is produced before them.<sup>91</sup> Should they look at the litigants? Should they smile? How should they write their first order? What materials should they look for to determine if a prima facie case is made out or not? What kind of evidence may be asked at the initial stage of proceedings to determine whether to retain or dismiss the case? How should they deal with adjournment requests, an unruly / unprepared lawyer, victims / complainants / accused, child witnesses, court staff, seniors, VIPs? There are many aspects of judicial practice that law teachers remain blissfully unaware of, and that have not found a space in law school.

Law teachers conducting training sessions at judicial academies may pat their back after delivering a brilliant critique of judicial decisions by the Supreme Court, but the district level judges are left wondering what to do with that critique because they are bound to follow the judgments of the superior courts due to the common law doctrine of precedents.

Law schools do not give students any exposure to judges' lives. Judges lead very isolated lives for the fear of the allegation of partiality.<sup>92</sup> They are under constant pressure from friends and relatives, who approach them for a favorable disposition in cases before them or their peers.<sup>93</sup> They do not keep visiting cards due to the fear that an unscrupulous person, who they may have met in a social gathering, claims close affinity to the judge, flaunting that visiting card.<sup>94</sup> They carry the huge burden of individual and non-delegable responsibility for deciding matters.<sup>95</sup> Sometimes they live with the uncertainty of the decision being right or wrong. Many of them do not read newspapers, lest they be influenced by the media reporting. They need courage and commitment to deal with the threats they receive while dealing with cases of influential persons. They also live lives full of tension, especially in view of the huge workload and long-pending cases.<sup>96</sup> There is very little time to spend with their family and loved ones.<sup>97</sup> Judges sit in open courts and work under full public gaze. A slight verbal or non-verbal communication on their part may result in suggestions of bias and request for transfer of the case to some other court. Judges are taught to mask their feelings

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v. Univ. of Delhi, 2002 A.I.R. 440 (Delhi H.C.) (May 3, 2002) (India).

91. Bar Council of India, Res. No. 108 (1996).

92. *District Courts Case Management Manual*, *supra* note 73, at 27–29.

93. *Id.* at 34.

94. *Id.* at 29.

95. *Id.* at 27.

96. *See Courts Will Take 320 Years to Clear Backlog Cases: Justice Rao*, TIMES OF INDIA (Mar. 6, 2010), <http://timesofindia.indiatimes.com/india/Courts-will-take-320-years-to-clear-backlog-cases-Justice-Rao/articleshow/5651782.cms>; *see also High Courts*, INDIASTAT, <http://www.indiastat.com/crimeandlaw/6/courts/72/highcourts/17696/stats.aspx> (last visited Oct. 1, 2011) (providing statistical tables related to business conducted in India's high courts).

97. *Courts Will Take 320 Years to Clear Backlog Cases: Justice Rao*, *supra* note 96; *see also High Courts*, *supra* note 96.

and thinking, yet still show empathy and concern for the disadvantaged and powerless in their courtrooms.

### C. *Space for Judicial Education in Law Schools*

Law schools need to include judicial education as part of law degrees in order to provide a rounded view of judicial administration. Judges are the most important players in judicial administration because the final power to decide the dispute rests with them. Law schools can play a crucial role in producing skilled, sensitive, and impartial judges by developing courses on judicial ethics and practical skills. These courses may be integrated into law degree courses. Alternatively, different streams of courses for lawyers and judges may be created for students depending on what career they want to pursue at the end of their law degree. Such courses will be useful for the first level judges as well as those entering the judicial service at the higher level. These courses will help students make an informed decision and choose a profession suitable to their attitude and aptitude. While sensitivity to issues of social justice, violations of human rights, discrimination, disability, and poverty are equally useful and relevant for lawyers and judges, identification of hidden biases and their minimization is crucial for just decision making. Prospective judges must be exposed to courses that make them aware of their own biases, myths, and prejudices that may be hidden (even from them) and trained in how to deal with them.

In addition, law teachers have a great role to play in judicial training conducted at the judicial academies. Teachers may introduce the best judicial practices from different jurisdictions to widen the horizon of judges in dealing with cases. Law teachers may also offer theoretical underpinnings of various legal provisions and legislation for facilitating contextual interpretation of laws. Use of non-legal materials to generate the context of law may also be part of law teachers' contribution to judicial education. Judging is an independent task that continues for the full working day. Most judges do not get a sense of the functioning of the judicial system as a whole. Judging is a non-delegable, individualistic task.<sup>98</sup> Each judge spends most of the day in his/her own courtroom and gets very little time to interact with colleagues.<sup>99</sup> Judges can speak with confidence about their own courtroom functioning and the staff under their control, but they do not have channels of communication to receive information about the functioning of other courtrooms or the behavior of their colleagues in their own courtrooms. They also have targets for the number of cases they need

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98. *I Hate You (Like I Love You) or the Torrid Love Between Journalists and the 30-Headed Supreme Court Hydra*, LEGALLYINDIA (Aug. 30, 2011, 4:04 PM), <http://www.legallyindia.com/Supreme-Court-Postcards/i-hate-you-like-i-love-you-or-the-torrid-love-between-journalists-and-the-30-headed-supreme-court-hydra>.

99. *See id.*

to dispose of month, and they are always under pressure to meet those targets.<sup>100</sup> This is especially true in view of the huge pendency and delay in disposal of cases.<sup>101</sup> Law teachers may share research reports relating to the functioning of courts to provide an occasion for self-reflection on the inner-workings of the courts in general. Law teachers may also help judges sharpen their skills at distinguishing and identifying binding precedents and true import of various judgments through their case comments and critique of leading judgments.

Law schools may conduct special judicial education programs. These programs may include courses on communication, judgment writing, sentencing, personality building, stress management, etc., in addition to teaching about the latest developments in specialized and new fields of law.

#### *D. Strategic Partnership*

In conclusion, it is submitted that legal education is incomplete if it is not focusing on the skills and knowledge required by the key players in the court system, namely, the lawyers and the judges. Strategic partnership between law schools, judges, and lawyers is essential for bringing about judicial reforms. At present, there is little conversation and trust among legal academics, lawyers, and judges.<sup>102</sup> Each group thinks less of the others,<sup>103</sup> while what is needed is the joining of hands by all three, to bring about systemic changes in judicial practices. The High Court of Delhi and the Delhi Judicial Academy have been putting lot of emphasis on the settlement of cases using alternate dispute resolution (“ADR”) mechanisms, including court-initiated mediation, out-of-court settlement, etc., instead of using only judicial decisions.<sup>104</sup> For the success of ADR and out-of-court settlements, it is necessary that ADR courses are given the same importance in the law school curricula as litigation-related courses. Similarly, there needs to be a consensual approach to adjournments, trial agendas, sequence of examination of witnesses, prioritization of examination of vulnerable and key witnesses, and time allocation for case flow management.

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100. See *Courts Will Take 320 Years to Clear Backlog Cases: Justice Rao*, *supra* note 96.

101. There are more than 31.28 million cases pending in Indian Courts. *Id.*; see *High Courts*, *supra* note 96.

102. See Marc Galanter, *Part I Courts, Institutions, and Access to Justice: “To the Listed Field . . .”*: *The Myth of Litigious India*, 1 JINDAL GLOBAL L. REV. 65, 72 (2009).

103. Lawyers in India have long lamented that legal education does not prepare students for legal practice. Hence, the Bar Council of India made certain Practical Training papers compulsory in law schools. The author is privy to the acrimonious relationship between judges who joined the judiciary straight from law schools and others who joined after a few years of practice. The former group thinks that the ethics of the latter group are questionable, while the latter thinks that the former knows less law, procedure, and evidence due to having no practical experience before becoming judges. The law teachers find faults with the lawyers and judges for not having conceptual clarity and thereby frustrating the purposes of many legal provisions. RULES OF LEGAL EDUCATION, *supra* note 62, at 24.

104. See TRAINING CALENDAR 2011, *supra* note 66, at 14.

Law schools alone may provide the space for hashing out lawyers' and judges' perspectives on such matters, which may lead to some kind of common policy and approach by these two key players. This would contribute to better management of caseloads and reduce the time necessary to dispose of cases.

#### IV. SECTION THREE—JUDGES IN CIVIL LAW COUNTRIES AND CONCERN ABOUT THE U.S. APPROACH

Civil law judges are, first and foremost, judges. They are generally educated separately from lawyers. They are usually part of the civil government and are appointed in a manner consistent with civil service employment. Civil law judges will typically begin their careers in the lower courts and work their way up to a leadership role or a higher court.<sup>105</sup>

This civil service model is found in almost all of Europe, as well as in many parts of the developing world.<sup>106</sup>

The model is slightly different depending on the country.<sup>107</sup> For example, in France, law graduates may become judges by passing a post-university examination or by practicing for more than five years.<sup>108</sup> At that point, they either enter a two-year course of study, which includes both in-class academic training and practical apprenticeship training for the new graduates, or a six-month training program for the experienced graduates.<sup>109</sup> The provision allowing experienced lawyers to take the qualifying examination is a recent innovation due to a lack of professionally trained judges.<sup>110</sup> Only after completing one of these training programs can lawyers take a second examination, which determines where they will begin their careers as judges.<sup>111</sup> This is basically a merit-based system: the better the score, the more impressive the court to which a lawyer is assigned.<sup>112</sup> France, Spain, Portugal, and Germany all use merit (however defined) to determine promotion.<sup>113</sup> In other countries, such as Italy, there is no

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105. Sande L. Buhai, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L.A. L. REV. 979, 1015 (2009).

106. Mary L. Volcansek, *Judicial Selection: Looking at How Other Nations Name Their Judges*, 53 ADVOC. 95, 95 (2010).

107. Marc T. Amy, *Judiciary School: A Proposal for a Pre-Judicial LL.M. Degree*, 52 J. LEGAL EDUC. 130, 134-37 (2002).

108. *Id.*

109. *Id.* at 134.

110. Paul M. Li, *How Our Judicial Schools Compare to the Rest of the World*, 34 NO. 1 JUDGES' J. 17, 18 (1995).

111. *Id.*

112. See Jacqueline L. Lafon, *The Judicial Career in France: Theory and Practice Under the Fifth Republic*, 75 JUDICATURE 97, 100 (1991).

113. See *id.*

requirement to become a judge other than a university degree in law and passing an examination, and promotions are based solely on seniority.<sup>114</sup>

Notwithstanding some of their differences, the great benefit to civil law systems is that the judges are generally trained to be judges. This specific training has at least two important consequences. First, judges have actual training on how to do their jobs. This training, which is specific to their job performance, is invaluable and may allow for a much more efficient and effective judicial officer. In what other setting would we allow the most important person in a particular profession to be untrained in the actual duties of that profession? Second, they are not trained as litigators, corporate counsel, prosecutors or defense counsel. As Dr. Amari Omaka explains, many of the judges in common law countries come to their positions after being inculcated in the values and roles of a particular side of a matter. This inherent bias may be very difficult to overcome.

In the United States, judges are either appointed or elected. In order to get either a coveted appointment or, in most cases, to win an election, judges must have significant experience in the practice of law.<sup>115</sup> Indeed, many judges are former government prosecutors.<sup>116</sup> All lawyers and judges get the same training from law school. They take the basic first-year courses in substantive law and then often take advanced courses in specialized fields including litigation.<sup>117</sup> The law schools generally do not see themselves as filling the role of training judges.<sup>118</sup> This is perhaps in part because so few members of the graduating class will even ultimately become a judge, and even if they do, it will be many years and experiences away. There are, of course, judicial academies in the United States as in most countries, but they are generally short training programs.<sup>119</sup>

Thus, most judges in the United States come to the bench with very little training and with a lot of practical experience. The training that judges receive in the United States is mostly peer training on an on-going basis.<sup>120</sup> There seems to be a consensus that, for continuing professional education, this model is very successful.<sup>121</sup> As described by Professor Kumari above, this type of training is also common in other common law countries, including Australia, England, and

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114. See INT'L ASS'N OF SUPREME ADMIN. JURISDICTIONS, 2007 BANGKOK CONGRESS: NATIONAL REPORT ITALY 1-2 (2007), available at <http://www.iasaj.org/download/sites/default/files/docutheque-docs/EReportItaly.pdf>.

115. Henry R. Click & Craig Emmert, *Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Judges*, 70 JUDICATURE 228, 228 (1987).

116. Mack Reed, *County Bar Pushing for a Non-Prosecutor to Fill Judge's Post*, L.A. TIMES (Sept. 29, 1997), <http://articles.latimes.com/1997/sep/29/local/me-37432>.

117. *Inside Law School*, LSAC, <http://www.lsac.org/JD/Think/inside-law-school.asp> (last visited Oct. 7, 2011).

118. See Amy, *supra* note 107, at 130.

119. See Cheryl Thomas, *Review of Judicial Training and Education in Other Jurisdictions*, U. C. LONDON (May 2006), [http://www.ucl.ac.uk/laws/socio-legal/docs/Review\\_of\\_Judicial\\_Train.pdf](http://www.ucl.ac.uk/laws/socio-legal/docs/Review_of_Judicial_Train.pdf).

120. See Li, *supra* note 110, at 17.

121. *Id.*

Canada.<sup>122</sup> The success of this model is described as helping to alleviate the sense of isolation that many judges feel, as well as allowing the sharing of solutions to common problems.<sup>123</sup> While professional continuing education may provide excellent assistance to judges and create a more effective judiciary over time, it does not alleviate the responsibility of law schools to do more to train future judges in the first instance.

There are many ways that law schools can assist in ensuring that our judges on the frontlines are committed to and able to provide access to justice. In the following section, the article discusses the use of clinical legal education and, in particular, community lawyering to train future judges. The section will focus on two lessons that can be accomplished in a more traditional academic classroom; undoubtedly there are others. First, all law students should be exposed to the social and psychological literature about decision-making. Second, the issue of bias is one that should be addressed in an open and upfront way for all law students.

#### A. *Decision Making*

Many recent studies show the impact of emotion and other cognitive processes on an individual's ability to be a completely rational actor.<sup>124</sup> We have learned a lot about how our brains function from the fields of psychology, sociology, and behavioral economics. An entire discussion of this is outside the scope of this article, but some brief observations may be helpful.

A study by Carroll E. Izard, for example, demonstrates that emotions can affect perception.<sup>125</sup> In Izard's study, subjects were first made either happy or angry.<sup>126</sup> They were then shown scenes illustrating situations of varying degrees of interpersonal friendliness or hostility. Subjects were asked to determine which scenes were friendly or hostile, and which faces were happy or angry. The study found that happy subjects perceived more friendly scenes and happy faces, while angry subjects perceived more hostility and anger.<sup>127</sup> Emotions altered the subjects' basic perceptual processes.<sup>128</sup> In the legal field this can occur during a trial. "Jurors in a negative mood, for instance, would be predicted to perceive

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122. *Id.* at 17-18.

123. *Id.*

124. See Sande L. Buhai, *Emotional Conflicts: Impaired Dispassionate Representation of Family Members*, 21 GEO. J. LEGAL ETHICS 1159, 1166 (2008); see also Alan Lerner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students to Make Ethical Professionally Responsible Choices*, 23 QUINNIPIAC L. REV. 643, 660, 678 (2004).

125. See CAROLL E. IZARD ET AL., *EMOTIONS, COGNITION, AND BEHAVIOR* (1984); see Robert C. Solomon, *Emotion*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/EBchecked/topic/185972/emotion> (last visited Oct. 8, 2011).

126. See IZARD ET AL., *supra* note 125, at 21; see Solomon, *supra* note 125.

127. See IZARD ET AL., *supra* note 125, at 21; see Solomon, *supra* note 125.

128. See IZARD ET AL., *supra* note 125, at 21; see Solomon, *supra* note 125.



more negative information about the judgment target, to recall more negative information about the target, and thus to be influenced by that biased data set when forming ultimate judgments of responsibility.”<sup>129</sup> Certainly the same could be said of judges. Other studies have been conducted, looking at the impact of positive and negative emotions on problem solving and decision making.

Positive emotion increases problem solving ability and aids in the “integration of information.”<sup>130</sup> But an individual with positive feelings is also predisposed to seek out variety, overestimate the probability of positive outcomes, and underestimate the likelihood of negative outcomes.<sup>131</sup> A good mood can promote longer deliberations, thorough use of existing information, and a higher likelihood of risk-taking.<sup>132</sup> The effect of positive emotion does not end with the initial decision.<sup>133</sup> Decisions resulting in pleasurable emotion affect future decisions.<sup>134</sup> The pleasant memory becomes an important guidepost for future choice.<sup>135</sup>

By contrast, negative emotion can result in hasty and incomplete processing of information, a narrowing of attention, and a failure to seek alternative solutions.<sup>136</sup> Those in unpleasant moods tend to prefer simple decisions and strategies.<sup>137</sup> In difficult situations, their choice accuracy suffers.<sup>138</sup> Studies on negative bias show that “negative events in context evoke stronger and more rapid physiological, cognitive, emotional, and social responses than neutral or positive events.”<sup>139</sup>

Psychologists have learned that people rely on mental shortcuts, which psychologists call “heuristics,” to make complex decisions.<sup>140</sup> Heuristics can be “rules of thumb,” educated guesses, intuitive judgments, or simply common sense.<sup>141</sup> Reliance on these heuristics often facilitates good judgment, but it can

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129. Neal Feigenson & Jaihyun Park, *Emotions and Attributions of Legal Responsibility and Blame: A Research Review*, 30 LAW & HUM. BEHAV. 2, 143, 148-49 (2006).

130. B.A. Mellers, A. Schwartz & A.D.J. Cooke, *Judgment and Decision Making*, 49 ANN. REV. PSYCHOL. 447, 453 (1998).

131. *Id.* at 453-54.

132. *Id.* at 454.

133. *Id.*

134. *Id.* at 455.

135. *Id.*

136. *Id.* at 454.

137. *Id.* at 453.

138. John T. Cacioppo & Wendi L. Gardner, *Emotion*, 50 ANN. REV. PSYCHOL. 191, 206 (1999).

139. *Id.*; Buhai, *supra* note 124.

140. Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1128 (1974). For a detailed description of this work, see AMOS TVERSKY & DANIEL KAHNEMAN, *JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES* (Daniel Kahneman, Paul Slovic, & Amos Tversky eds., 1982); *see also* SCOTT PLOUS, *THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING* 109-30, 145-52 (1993).

141. *See* Tversky & Kahneman, *supra* note 140.

also produce severe and systematic errors in judgment.<sup>142</sup> When people rely on these heuristics, it can create cognitive illusions that produce erroneous judgments.<sup>143</sup> Cognitive illusions are analogous to optical illusions in that they lead people to commit errors without knowing they are doing so,<sup>144</sup> except these illusions arise from people's difficulties in quantifying and dealing with probabilities, uncertainty, and risk.

Studies have shown that judges are not immune to the effects of cognitive illusions.<sup>145</sup> There are five common cognitive illusions that could influence judicial decision making: anchoring (making estimates based on irrelevant starting points); framing (treating equivalent gains and losses differently); hindsight bias (perceiving past events to have been more predictable than they actually were); the representativeness heuristic (ignoring important background statistical information in favor of individuating information); and egocentric biases (overestimating one's own abilities).<sup>146</sup> These illusions are among the best documented in psychological literature regarding judgment and choice.<sup>147</sup> Each one of the heuristics, as well as the general impact of non-rational human beings acting as judges, should be explicitly considered in the law school classroom.

Second, the issue of bias is one that should be addressed in an open and upfront way for all law students. Everyone is biased. There is a wonderful tool that can be used by everyone and should be used by every law student and potential judge, called the Implicit Association Test ("IAT").<sup>148</sup>

"Since 1998 when the IAT was officially introduced, hundreds of peer-reviewed scientific publications have produced largely consistent results. Implicit biases—by which we mean implicit attitudes and stereotypes—are both pervasive (most individuals show evidence of some biases), and large in magnitude, statistically speaking."<sup>149</sup>

Clear evidence of the pervasiveness of implicit bias comes from Project Implicit, a research website operated by Harvard University, Washington University, and the University of Virginia. At Project Implicit, visitors

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142. Marybeth Herald, *Deceptive Appearances: Judges, Cognitive Bias, and Dress Codes*, 41 U.S.F. L. REV. 299, 304 (2007).

143. Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777, 778 (2001).

144. See Ward Edwards & Detlof von Winterfeldt, *Cognitive Illusions and Their Implications for the Law*, 59 S. CAL. L. REV. 225, 226 (1986).

145. Jennifer K. Robbenolt, *Evaluating Juries by Comparison to Judges: A Benchmark for Judging?*, 32 FLA. ST. U. L. REV. 469, 497 (2005); see also Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decision-making and Misremembering*, 57 DUKE L.J. 345 (2007) (concluding that implicit memory biases taint the legal decision-making process).

146. Guthrie et al., *supra* note 143, at 784.

147. See Robbenolt, *supra* note 145, at 497; Edwards & von Winterfeldt, *supra* note 144, at 226; Guthrie et al., *supra* note 143, at 778; see also Levinson, *supra* note 145.

148. PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/> (last visited Oct. 2, 2011).

149. Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465, 473 (2010).

can try IATs that examine implicit attitudes and stereotypes on topics ranging across race, gender, age, politics, region, religion, and even consumer brands. With over seven million completed tests, Project Implicit comprises the largest available repository of implicit social cognition data.<sup>150</sup>

Education and, indeed, simple recognition of this phenomena can make a difference.<sup>151</sup> Making someone aware of potential biases, motivating them to check those biases, and holding them accountable should have some effect on the translation of bias to behavior.<sup>152</sup> Judge Mark Bennett gives the following instruction:

As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on stereotypes, generalizations, gut feelings, or implicit biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.<sup>153</sup>

This type of instruction could be taught in trial advocacy, professional responsibility, and civil procedure courses. Professor Kang gives us three examples.<sup>154</sup> In the first study, “imagining a countertypical female leader for a few minutes in a mental imagery exercise reduced implicit gender stereotyping.”<sup>155</sup> In the second study, “exposure to positive exemplars of the disfavored social category [such as Martin Luther King Jr.] decreased implicit bias against that category over a twenty-four-hour period.”<sup>156</sup> A third “longitudinal study found that women who attended a single-sex university for one year had their average group implicit stereotypes against women decrease to zero”<sup>157</sup> due to “exposure to female professors and administrators.”<sup>158</sup> “By

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150. *Id.*

151. *Id.* at 500.

152. *Id.* at 473.

153. *Id.* at 500 n.166.

154. *Id.* at 501-02.

155. *Id.* at 501.

156. *Id.*

157. *Id.*

158. *Id.* at 502.

contrast, a control group of women who attended a coed university for one year had its average group implicit bias increase.”<sup>159</sup>

Finally, there is a general failure to realize that it may be very difficult to convert a long practicing lawyer, public prosecutor, or defense lawyer into a judge, and it is not something that the judicial academies are necessarily equipped to do. The discussion above shows that all of us have cognitive and implicit biases and, as a result, can work in combination to make us very poor decision makers. Law schools should tackle these issues head-on to better prepare law students for their possible future roles as judges.

#### V. SECTION FOUR—CLINICALLY-BASED COMMUNITY LAWYERING IN TRAINING FUTURE JUDGES

The central function that judges perform is interpreting the law in the social context. In addition to the skills discussed above, law schools need to take the initiative to incorporate social context into the legal education curriculum, so that students can become instruments of “social engineering.”<sup>160</sup> It is in this spirit we propose that the community lawyering process become an effective and important component in the training of judges and *prospective* judges,<sup>161</sup> and be integrated into the law school curriculum through law school clinical programs.

With some exceptions,<sup>162</sup> the community lawyering clinical model has taken hold almost exclusively in Anglophone countries with a common law tradition.<sup>163</sup>

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159. *Id.*

160. We acknowledge that the term “social engineering” usually has a negative connotation. However, we intend it here to mean that judges should be mindful of the important role they play in influencing society through their resolution of disputes and jurisprudence. Perhaps the sentiment is better captured in a statement issued a decade ago at the second GAJE conference: “[j]ustice education requires that teachers always ask in whose interests the law operates and how issues of vested interest are talked about in classrooms . . . Courses should cover not only the existing law *per se* but also the realities of its implementation.” GLOBAL ALLIANCE FOR JUSTICE EDUC., REPORT ON THE SECOND WORLD CONFERENCE OF THE GLOBAL ALLIANCE FOR JUSTICE EDUCATION: RECONCILIATION, TRANSFORMATION AND JUSTICE (2001), available at <http://www.gaje.org/wp-content/uploads/2011/01/GAJE-2001-Conference-Report-Durban-South-Africa.pdf>, cited in Margaret Martin Barry, Martin Geer, Catherine F. Klein, & Ved Kumari, *Justice Education and the Evaluation Process: Crossing Borders*, 28 WASH. U. J.L. & POL’Y 195, 198 (2008). See also Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1935 (2002) (stating that students “learn to use the legal system to seek social change . . . they learn the limits of law in solving individual and social problems”).

161. This prescription is most apt for magistracy schools and judicial training colleges, but can also be applied to the standard law school program, where graduates may not sit on the bench until after years in practice or academia. See, e.g., Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 120, n.10 (2005) (Chinese law schools and legal clinics are beginning to consider ways in which to incorporate judicial training.).

162. See, e.g., Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL L. REV. 615, 623-32 (2006) (discussing justice-oriented clinical institutions established in eastern Europe); Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL L. REV. 515 (2002) (clinics in civil law context); Brian K. Landsberg, *Strategies To Increase The Availability of Skills Education in*

In adapting an educational model, each country must take into account its own laws, traditions, habits, and customs.<sup>164</sup> As one veteran rule of law scholar noted: “The transplantation of laws and legal institutions is not always wrong, but formalistic transplantation should come with a caveat emptor.”<sup>165</sup>

#### A. Community Lawyering

Law school clinical community lawyering serves a dual purpose. It provides a sophisticated educational experience for the students on the one hand, and has the immense capacity of shaping the students’ inclination for social justice initiatives on the other.<sup>166</sup> Community lawyering can sensitize law students to the actual needs of communities,<sup>167</sup> so that clients are perceived as more than mere facts of a case.<sup>168</sup>

The multidirectional nature of this lawyering concept contributes to the richness and complexity of legal education, which is vital for the training of judges expected to decide complex issues at the intersection of society, economy, and polity. The community lawyering process involves the association and collaboration of all stakeholders related to the client community.<sup>169</sup> This allows students to have a broad-based, overarching understanding of the larger role of law in society. This form of practice is not limited to the typical skills of interviewing, investigating, counseling, and litigating.<sup>170</sup> It also involves collaborating, partnering, networking and forming bargaining units, generating political power, and a host of other strategic initiatives.<sup>171</sup> Although many of these

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China, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 45 (2009); Phan, *supra* note 161 (clinics in a regime without rule of law tradition); and James Marson, Adam Wilson & Mark Van Hoorebeek, *The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective*, INT’L J. CLINICAL LEGAL EDUC. 40 (2005) (discussing Asian and African countries with non-Anglophone, civil law colonial history).

163. See Stephen A. Rosenbaum, *Clinique ToGo: Changing Legal Practice in One African Nation in Six Days*, INT’L J. CLINICAL LEGAL ED. (forthcoming 2011).

164. See Sarah Cliffe & Nick Manning, *Practical Approaches to Building State Institutions*, in BUILDING STATES TO BUILD PEACE 163, 169, 171 (Charles T. Call ed., 2008).

165. Erik G. Jensen, *Justice and the Rule of Law*, in BUILDING STATES TO BUILD PEACE 136 (Charles T. Call ed., 2008).

166. Louise G. Trubek, *Poverty Lawyering in a New Millennium*, 17 YALE L. & POL’Y REV. 461, 462, 467 (1998).

167. Professor Trubek discusses the effectiveness of the Yale Law School Liman Program on poverty lawyering in inculcating the values of social justice among the students of the program. See *id.* at 462-63.

168. See generally Donald Nicolson, *Legal Education or Community Service? The Extra-Curricular Student Law Clinic*, 3 WEB J. CURRENT LEGAL ISSUES (2006), available at <http://webjcli.ncl.ac.uk/2006/issue3/nicolson3.html>.

169. See Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL’Y 201, 202-04, 225-26 (2006) (discussing a collaboration between law school students and labour organization).

170. There is no denying that these skills are important for litigation purposes. See *id.* at 242, 244, 246, 248.

171. See *id.* at 238, 251-55.

functions are not traditionally considered to be part of a lawyer's role, all of these are vital for a *community* lawyer,<sup>172</sup> and enable students to situate law in a social context.

This model builds partnership with the communities and allows client communities to make informed decisions about using the wide range of legal and non-legal mechanisms in furtherance of their interests.<sup>173</sup> Since community lawyering is a "client-centered" process,<sup>174</sup> it gives due attention to client choice and satisfaction.<sup>175</sup> Client-centered lawyering is the ideal way to address the dual goals of clinical legal education,<sup>176</sup> viz. fostering a practical skills-based education and a social justice orientation<sup>177</sup>—both of which are essential attributes of a judge.

Community lawyering encourages students to reflect on their experience of working with underprivileged or marginalized groups of people.<sup>178</sup> Reflection exposes students to the diverse forces that contribute to social, economic, and political inequality. Use of the justice system to perpetuate this inequality becomes evident to the students.<sup>179</sup>

Recent scientific research has found that decision-making by the human brain is determined by active experience, rather than passive indoctrination.<sup>180</sup> Community clinics place students in real-life and uncomfortable situations.<sup>181</sup> Hardships of life these students may never have known become realities as they personally live through them.<sup>182</sup> While working in the clinic, students begin to

172. *Id.*

173. V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 84-85 (2002).

174. *Id.*

175. See *id.* at 86, 93-95; see also Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 955 *et seq.* (1992).

176. See Suzanne Rabé & Stephen A. Rosenbaum, *A 'Sending Down' Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 J. LEGAL EDUC. 296, 297, n.2 (2010) ("word 'clinical' in its broadest sense encompasses any practical, service-learning, or experiential education or training offered to law students").

177. On the essentialness of a social justice orientation to skills-based education, see, for example, Antoinette Sedillo López, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 310, n.16 (2001) (citations omitted) ("For some clinical programs, skills training was the primary justification for clinical teaching. However, many clinical programs moved beyond skills training to the teaching of professional responsibility and social justice . . . a return to the roots of clinical legal education.").

178. See Brodie, *supra* note 169, at 226-27.

179. See López, *supra* note 177, at 316-17; see also Brodie, *supra* note 169, at 250.

180. See generally JONAH LEHRER, *HOW WE DECIDE* (2009); Alan Learner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students To Make Ethical, Professionally Responsible Choices*, 23 QUINNIPAC L. REV. 643 (2004).

181. Professor William Quigley asserts, "if you want to do social justice work you have to be ready to be in an uncomfortable situation." See William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7, 14-15 (2007). See also López, *supra* note 177, at 325-26.

182. Professor Juliet Brodie describes a situation where a client was on the verge of eviction because she

shift their thinking from their own educational objectives to the plight of their clients.<sup>183</sup> Client needs become more important than a student's individual, clinical educational experience.<sup>184</sup> Similarly, needs of the disputing parties are the primary concern of a judge. Thus, to train judges in law school, it is important to devise law school clinics that expose students to community lawyering.

### *B. Law School Clinic-Based Community Lawyering Initiative*

The greatest advantage of a community-based clinic is the wide range of experiences it offers students. Specifically, it provides the unique experience of relationship building.<sup>185</sup> If students can weigh their role as lawyers in the larger social context,<sup>186</sup> they can also balance the legal and non-legal strategies in furtherance of the client's interests.<sup>187</sup> Once they are sufficiently familiar with the problems of the justice system, students are encouraged to think about alternatives to a litigation strategy,<sup>188</sup> e.g., legal education, networking, and other political initiatives.<sup>189</sup> Students can begin to realize that sometimes avoidance of litigation is the best option for the client,<sup>190</sup> and can consider more unconventional means to address their client's cause.<sup>191</sup>

Further, since clinics are part of the academic institution, the practical aspects of the enterprise go hand-in-hand with research, writing, and other analytical pursuits, all of which are central to a judge's role. This facilitates scholarship and publication on important issues in a systematic manner for a wider readership.<sup>192</sup>

The edge that the community lawyering clinic holds over individual client representation clinics is the complexity of the issues.<sup>193</sup> Sometimes, however, the

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fell behind on her \$685 monthly rent. She asserts that the context is appropriate for stimulating the student to think of situations that compelled the rental default. The overall monthly budget of a working class family also becomes clear to the student. These experiences would, in turn, make students question the existing socio-political set-up that results in the economic hardships of the communities. See Brodie, *supra* note 169, at 234-35, 249.

183. Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405, 443-44 (2002).

184. See *id.*

185. Aliza G. Organick, *Creating a Tribal Law Practice Clinic in Kansas: Carving the Peg to Fit the Hole*, 82 N. DAK. L. REV. 849, 862 (2006); see also Brodie, *supra* note 169, at 238, 242.

186. Such an understanding from students is otherwise absent when students work for individual clients. See López, *supra* note 177, at 317.

187. See Brodie, *supra* note 169, at 238, 242-44, 254-55 (referring to the legal and non-legal work as "legislative" and "organizational" activities); see also Enos & Kanter, *supra* note 173, at 84, 99-100 (weighing clients' legal and non-legal options in the short- and long-term).

188. See Brodie, *supra* note 169, at 255.

189. See *id.* at 250-52.

190. See Enos & Kanter, *supra* note 173, at 87.

191. See Brodie, *supra* note 169, at 254-55.

192. See *id.* at 259.

193. See Kruse, *supra* note 183, at 430-31.

complex nature makes it difficult to allow students “ownership” and “control” over their client’s matters.<sup>194</sup> Identifying real issues and prioritizing strategies to address those issues might require specialized knowledge and experience that the students lack.<sup>195</sup> An added phenomenon is the long-term nature of the relationships and issues involved. As it is impossible for students to witness the entire problem-solving process in one semester, or even two,<sup>196</sup> there is a tendency to believe they did not have a fulfilling clinical experience.<sup>197</sup> Here, the role played by the clinical supervisors attains immense significance. They must be in a position to put things in perspective, to show students the big picture, and to identify the student’s role in it.<sup>198</sup> Supervisors also add the experience quotient to the lawyering endeavor.<sup>199</sup> It is the supervisor’s duty to facilitate a fruitful community lawyering experience at the law school.

In an effort to produce efficient and responsible problem-solvers, with an eye to social justice issues,<sup>200</sup> we propose community lawyering legal clinics as one of the effective mechanisms for training future judges.

The obstacles to developing law school clinics have more to do with the traditional legal *educational* models than the country’s particular inherited legal scheme.<sup>201</sup> This problem begins with the type of instructors available. For the most part, professors are recruited directly from the Academy, with no law practice experience or training.<sup>202</sup> Classes are almost exclusively about theory, delivered lecture style in a large hall, with minimal to no student interaction or opportunities for *formation pratique*.<sup>203</sup>

Before locating a physical space for a clinic, it is necessary to secure the personnel and institutional commitment.<sup>204</sup> Typically, any recommendations for a changed curriculum or the establishment of a law school clinic are subject to a formidable and centralized decision-making process. At a minimum, a change in

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194. *See id.*

195. *Id.* at 430-33. However, Professor Katherine Kruse argues that this lack of experience can sometimes be advantageous in enabling the students to choose from alternative courses of action.

196. *See id.* at 431-32.

197. *Id.*

198. *See id.* at 433-34.

199. *See generally* Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611 (2004) (guidelines for externship supervisors equally applicable to the clinical setting).

200. As Professor Kruse asserts: “[I]f the goal is for [students] to leave law school with a personal and professional responsibility to act as problem-solvers for social justice issues, there is no substitute for actively engaging them in trying to solve some of those problems as law students.” Kruse, *supra* note 183, at 433.

201. Lusine Hovhannisian, *Clinical Legal Education and the Bologna Process*, PUB. INT. L. INITIATIVE, Dec. 2006, at 1, 14-15.

202. Thomas F. Geraghty & Emmanuel K. Quansah, *African Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to Neglected Means of Securing Human Rights and Legal Predictability*, 5 LOY. U. CHI. INT’L L. REV. 87, 103 (2007).

203. *See, e.g., id.* at 90, 97, 100.

204. *See id.* at 102.



law policy or practice often needs approval by university authorities or even the Education or Justice ministries.<sup>205</sup> Students who enter the faculty of law right out of secondary school may have too little background or professional orientation at that stage to fully participate in a legal clinic designed for would-be lawyers. This viewpoint has been echoed by other scholars in the field. Professor Frank Bloch previously observed that a clinical program for an upper-teen at an undergraduate college of law in a “lecture-based, code-dominated curriculum” may look different than it does for his American law school counterpart.<sup>206</sup> According to Bloch, the American student tends to be older, desirous of a career in the legal field, and engaged in an “interactive and advocacy-oriented course of study.”<sup>207</sup> Professor Leah Wortham goes further with her advice that American consultants not be wedded to their “home country model” of what constitutes a law school clinic.<sup>208</sup> Professor Richard Wilson has devised a ten-step program in clinic construction, complete with five foundational principles.<sup>209</sup>

Thus, one must adopt a model that is compatible not only with national legal institutions and practices, but also with the educational system. Funding the clinic may also prove to be a huge issue, and the expectation is that the host government or academic institution commit its own resources and not rely exclusively on foreign non-governmental organizations or government donors.<sup>210</sup>

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205. Professors Thomas Geraghty and Emmanuel Quensah observe that it has been the *private* law schools—with their younger generation of faculty and competition for students—who have been quick to embrace innovative curriculum, such as clinical education. *Id.* at 103.

206. Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL’Y 111, 115 (2008).

207. *Id.* But see Hovhannisian, *supra* note 201, at 15 (explaining that European universities that enroll students in law faculties just after secondary school now recognize the need for “practical training at the early stages of legal education.”); Marson, Wilson & Hoorebeak, *supra* note 162, at 41-42 (noting appropriateness of clinics at the undergraduate level).

208. Wortham, *supra* note 162, at 654. Pedagogically, financially and/or logistically, the leap to an in-house clinic may be just too great for some institutions—at least in the initial stages of experimenting with experiential education. The externship or field placement has evolved into a more robust and credible vehicle for learning and practice, thanks to efforts by the American Bar Association and by a number of able law school professionals and academics—including Professor Wortham herself. *See, e.g.*, ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, CHAPTER 3: PROGRAM OF LEGAL EDUCATION 25 (2011). *See also* J.P. OGILVY, LEAH WORTHAM & LISA G. LERMAN, LEARNING FROM PRACTICE (J.P. Ogilvy, Leah Wortham & Lisa G. Lerman, eds., 2d ed. 2007) (textbook used in a number of U.S. law schools for extern students’ classroom component).

209. Richard J. Wilson, *Ten Practical Steps to Organization and Operation of a Law School Clinic* (Feb. 2004) (unpublished manuscript) (on file with authors). Under Wilson’s definition of a clinic, it must be part of the law school curriculum, offered for credit, and be accompanied by a course using experiential methodology. Its students should be engaged in actual cases or projects (while supervised by experienced attorneys) on behalf of clients who may otherwise go unrepresented. *Id.* at 2.

210. Funding, and particularly *local* funding, will be a constant concern. The small faculty-student ratio inherent in most clinical programs is reason enough to ask how one can expect law schools to invest in what their American counterparts continue to view as an expensive educational venture. *See id.*

Externships, as part of the law school curriculum, offer an alternative clinical model.<sup>211</sup> Where there are suitable placements, future lawyers and judges have the opportunity to work directly at the courthouse, in law firms, non-governmental organizations and public law offices. For example, students would work under the supervision of an attorney or judge<sup>212</sup> for a specified time, for the purpose of acquiring professional experience, absorbing values inherent to the profession, and mastering the professional code of ethics.<sup>213</sup> In-house legal clinics are another experiential educational model.<sup>214</sup> The objective of both externships and clinics is to give future attorneys and judges the necessary tools to familiarize citizens with their rights and to facilitate their access to justice.<sup>215</sup> Encouraging the judiciary to utilize students in an externship capacity is merely a variation on the larger effort to convince the *bar* to supervise and train the future *lawyers*.<sup>216</sup>

Practice-oriented continuing education seminars should also be held with bailiffs, marshals, clerks, notaries, law students, judicial college students, senior attorneys, the human rights minister, and members of civil society and non-governmental organizations.<sup>217</sup> While one can hope to improve the quality of court personnel and infrastructure, and access to the court itself, a far more affordable and realizable short-term goal may be to sensitize traditional village or

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211. The literature on externships is too voluminous to cite here. With regard to programs for large student bodies, see, for example, Mary Jo Eyster, *Pedagogy: Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347 (1999); James H. Backman, *Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLINICAL L. REV. 1 (2007) (discussing an extensive annotated bibliography on externships).

212. On the practical implementation of judicial externships, see, for example, Mariana Hogan & J.P. Ogilvy, *Judicial Externships in LEARNING FROM PRACTICE 239 et seq.* (J.P. Ogilvy, Leah Wortham & Lisa G. Lerman eds., 2d ed. 2007)

213. Eyster, *supra* note 211, at 362-63.

214. According to Professor Wilson,

[A] law school can call its clinical legal education program by any name—live-client clinic, legal aid, field placement (externship or internship), street law, simulation or role-play, apprenticeship or any other local name—so long as the focus is on student experiential learning—learning by doing—for academic credit.

Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823, 829 (2009). Professor Bloch asserts that “access to justice” is a “central component” of clinical education in the United States and abroad. See Bloch, *supra* note 206, at 111 n.1 (citing sources that document the role law school clinical programs play in assuring equal access to law and the legal system). The three key elements of clinical education, according to Bloch, are: “professional skills training, experiential learning, and instilling professional values of public responsibility and social justice.” *Id.* at 121.

215. Bloch, *supra* note 206, at 115.

216. The notion that a judge might utilize a law student or recent graduate *stagiaire* to assist with the court’s workload is not necessarily obvious and may be greeted with skepticism from the bench. See Stephen A. Rosenbaum, *Short Order Rule of Law: A Role for the Short-Term Consultant*, 6 BERKELEY J. INT’L L. (PUBLICIST) 54 (2010), available at <http://bjil.typepad.com/Publicist06-rosenbaum-pdf.pdf> (conversation with Togolese judge concerning prison detainee docket backlog). For a personal account of establishing a clinical and *pro bono*-based legal aid program in one developing nation, see Rosenbaum, *supra* note 163.

217. Rosenbaum, *supra* note 216, at 71. On the value of the co-education of prospective lawyers with other paralegal professionals, see Stephen A. Rosenbaum, *The Juris Doctor Is In: Making Room at Law School for Paraprofessional Partners*, 75 TENN. L. REV. 315, 318-23, 329-41 (2008).

neighborhood leaders, councils of elders and family law judges (already engaged in traditional conflict resolution) about contemporary human rights and other legal norms.<sup>218</sup>

The focus on encouraging good decision-making at the local level also helps to strengthen new laws.<sup>219</sup> Judges who have a foundation in clinically-based community lawyering are key to that process.

## VI. SECTION FIVE—REAL LIFE AS A JUDGE

Many have stated that the test of a civilization or the measure of a society is found in how it treats its weakest and most helpless citizens: the old, the young, the poor, and the powerless.<sup>220</sup> In that homily, necessarily, must be an understanding that there can be no expectation of justice unless the needy have access to a process for achieving that vaunted goal.

“Access to Justice” is a term of art that has come to mean the creation of methods for all groups of people to have easily accessible non-violent avenues to resolve disputes in a civil and equitable manner for a just result.<sup>221</sup> Nearly every state in the United States has an “Access to Justice” commission, committee, coalition, or program of some type.<sup>222</sup> Some programs are state-supported, others are managed by the state’s bar, and some are a combination of the two.<sup>223</sup> Anne Taylor, a member of our panel, works in the New York State Court System, which has one of the most well-supported “Access to Justice” programs in the United States, so we will use the New York program to illustrate the positive

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218. See KRISTIN KALLA & JONATHAN COHEN, ENSURING JUSTICE FOR VULNERABLE COMMUNITIES IN KENYA 26 (2004), available at [http://www.soros.org/initiatives/health/focus/law/articles\\_publications/publications/kenya\\_20070416/kenya\\_20070416.pdf](http://www.soros.org/initiatives/health/focus/law/articles_publications/publications/kenya_20070416/kenya_20070416.pdf). Embracing alternative forums and non-adversarial methods also requires a change in legal education. Clinical education in law schools already incorporates a good dose of non-adversarial justice methodology. See MICHAEL KING, ARIE FREIBERG, BECKY BATAGOL & ROSS HYAMS, NON-ADVERSARIAL JUSTICE 240-43, 246, 248-50 (2009).

219. *Id.* (comments of former Kenyan national human rights commissioner). The so-called “customary law” offers its own rules and norms in a parallel system of justice. Nchunu Justice Sama, *Providing Legal Aid in Criminal Justice in Cameroon: the Role of Lawyers*, in ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY 153 (Penal Reform Int’l & Bluhm Legal Clinic eds., 2007). There is a school of thought favouring “deformalizing and deprofessionalizing” dispute settlement in developing countries as a means to ensure poor people’s access to lawyers, rather than “seeking to put more lawyers for the poor into the existing formal court structure.” See Wortham, *supra* note 162, at 636 (summarizing Professors David Trubek and Marc Galanter’s critique of Law and Development Movement).

220. PEARL S. BUCK, MY SEVERAL WORLDS: A PERSONAL RECORD 337 (1954).

221. Van Vollenhoven Inst., *Access to Justice: The Concept*, UNIVERSITEIT LEIDEN, <http://law.leiden.edu/organisation/metajuridica/vvi/research/access-to-justice/access-tu-justice/the-concept.html> (last modified Mar. 31, 2010).

222. See Res. Ctr. for Access to Justice Initiatives, *State Access to Justice Commissions: Lists and Links*, ABA, app. XX (Mar. 4, 2011), [http://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/resource\\_center\\_for\\_access\\_to\\_justice/state\\_atj\\_commissions.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html) [hereinafter *State Access to Justice Commissions*].

223. See *State Access to Justice Commissions*, *supra* note 222.

impact that introduction of judicial training at the law school level could accomplish. The mission of the New York State Courts Access to Justice Program is:

To ensure access to justice in civil and criminal matters for New Yorkers of all incomes, backgrounds and special needs, by using every resource, including self-help services, *pro bono* programs, and technological tools, and by securing stable and adequate non-profit and government funding for civil and criminal legal services programs.<sup>224</sup>

New York's program provides a broad array of opportunities for lawyers and law students to involve themselves in programs beyond their own areas of expertise by receiving training and providing *pro bono* advice and service to litigants, indigent or otherwise.<sup>225</sup> The program also provides fresh approaches and thoughtful points of contact for litigants to help themselves (DIY model) or to receive assistance that ranges from limited to extensive.<sup>226</sup> For example, the 2010 report of the "New York State Courts Access to Justice Program" lists thirteen programs in which lawyers may volunteer, eight self-help programs for persons seeking to meet a legal need, and eight community outreach programs.<sup>227</sup>

Dispersal of the "access to justice" concept requires that judges have an awareness of the validity of the concept, an understanding of the models that may be employed, and an understanding of their superiority in certain instances to the traditional courtroom model for the attainment of justice.<sup>228</sup> The law school curriculum at both the graduate and post-graduate levels could be the transformative tool for introducing potential judges to the "access to justice" concept at a period of their lives where they could incorporate it into their entire legal and judicial careers.

#### A. *Preparation for the Judiciary*

The issue of training and education of potential judges prior to their application for appointment or election to the bench has been raised by academia, but has been responded to in a very limited manner.

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224. JONATHAN LIPPMAN, ANN PFAU, FERN A. FISHER & ROCHELLE KLEMPNER, NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM 2010 (2011), available at [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2010report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2010report.pdf).

225. *Id.* at 2.

226. *Id.*

227. *Id.* at ii.

228. The members of the panel were in agreement that the goals of "access to justice" coordinate well with GAJE's goals, and that GAJE could approach the development and broad dispersal of the access to justice concept by examining the impact that the targeted education of judges could make. *Mission Statement*, GLOBAL ALLIANCE FOR JUST. EDUC., <http://www.gaje.org/about-gaje/mission-statement/> (last visited Oct. 9, 2011).

In an article published in 2002, Judge Marc T. Amy suggested that educators consider making available degree programs or courses in the judicial process to prospective judges.<sup>229</sup> Judge Amy lobbies very effectively for an LL.M. program that would be open to potential judicial candidates and to others who have an interest in the ethics, workings, and effectiveness of the courts.<sup>230</sup> He compares the judicial training programs of several other countries to what can only be considered the rather haphazard methods of self-selection<sup>231</sup> and individual preparation for the judiciary as it currently exists in this country. Judge Amy notes the two established programs for judges: the University of Virginia's LL.M. program for appellate judges and the National Judicial College's masters program for trial judges.<sup>232</sup> However, he opines that it is equally important for judicial hopefuls to be well-trained in the disciplines attendant to new developments to be able to respond effectively to the needs of a rapidly changing world.<sup>233</sup>

Judge Amy proposes an academic program that would combine the peer-group (in-service) educational model of judicial training, now in place in most common-law countries, with the law school education model currently in use in most civil law countries.<sup>234</sup> He also makes an excellent argument that a stable academic environment would provide the judiciary as a profession with opportunities for intellectual inquiry and academic discourse at levels not currently available in the United States, inviting pre-judicial scholars to study and develop an individualized judicial philosophy.<sup>235</sup>

In 2006, Professor Steven Zeidman of the CUNY School of Law also suggested that in order to apply for appointment, a judicial candidate should first have to complete a rigorous judicial training program.<sup>236</sup> Zeidman's paper was presented at a symposium held at Fordham Law School on April 7, 2006.<sup>237</sup> Zeidman hypothesizes that structured preparation would change the crop of judicial applicants and improve the preparation of current judges applying for re-appointment.<sup>238</sup>

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229. Amy, *supra* note 107, at 139.

230. *Id.*

231. *Id.* at 137.

232. *Id.* at 140.

233. *Id.*

234. *Id.* at 134.

235. *Id.* at 139.

236. Steven Zeidman, *Careful What You Wish For: Tough Questions, Honest Answers, and Innovative Approaches to Appointive Judicial Selection*, 34 FORDHAM URB. L.J. 473, 481 (2007).

237. Professor Zeidman's paper, along with others presented at the symposium, was published in Symposium on Rethinking Judicial Selection: A Critical Appraisal of Appointive Selection for State Court Judges Essay. *Id.*

238. *Id.* at 482.

This topic was re-examined by Norman L. Greene.<sup>239</sup> His focus is on the appointment process, or more broadly, the selection of state judges, “including the choice of the selection system, the design of the selection system, the comparison of alternative modes of selection, and the effect of the system on judicial performance or decision making, including ‘judicial independence.’”<sup>240</sup> Mr. Greene does, however, pick up the thread concerning the education of potential judges prior to their appointment or election, in a one-paragraph broadside:

PRE-JUDICIAL EDUCATION—SHALL THE LAW  
SCHOOLS DEVELOP A PROGRAM?

The subjects of judicial education and examinations were raised by the Fordham symposium. Possible suggestions included a judicial training program (or “judicial studies graduate school”) or a test like a bar examination. Observations were made about the international experience where judges must pass through “academic and practical training.” Although judges in the United States are not typically required to complete any courses before becoming judges today, judging is a skill that arguably may be enhanced through education before judicial service begins. Most of the available educational offerings today are “in-service and continuing professional education for judges already selected and serving.” To correct any deficiencies in judicial education, legal educators may need to consider precisely how and which opportunities for judicial education may be provided.<sup>241</sup>

Steps towards making any of these suggestions a reality have been limited. The New York City Bar Association has an exemplary program entitled “How to Become a Judge,” produced biennially by the Association’s Special Committee to Encourage Judicial Service.<sup>242</sup> This program, however, is directed at informing lawyers about the process for becoming an elected or appointed judge in New York City and in the federal districts in which parts of the City are included. The program answers questions such as: what experiences a candidate should seek to have before running for office or seeking appointment, who the gate-keepers are and how you can get to know them, the relevant government, political and other

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239. Norman L. Greene, *Appointive Selection of Judges, Limited-Jurisdiction Courts with Non-Lawyer Judiciaries, and Judicial Independence*, 43 CT. REV. 54, 80 (2006), available at <http://aja.ncsc.dni.us/htdocs/publications-courtreview.htm>.

240. *Id.*

241. *Id.* (footnotes omitted).

242. SPECIAL COMM. TO ENCOURAGE JUDICIAL SERV., N.Y.C. BAR ASS’N, HOW TO BECOME A JUDGE (2010).

bodies that participate in the selection processes, and the statutory and other criteria applicable to the selection process for each type of judicial position.<sup>243</sup>

The New York Bar Association distributes an approximately 50-page booklet to registrants.<sup>244</sup> The booklet is updated and expanded every two years to reflect changes in the process or in the parties who may play a part in any given geographic area of the City.<sup>245</sup> Not much attention is given at this one-day session to the training that a jurist should have before applying for appointment or standing for election – candidates are largely self-selecting, with the assumption that the “wheat” will be winnowed from the “chaff” in the various selection processes.<sup>246</sup> Attendees at this program usually find it very helpful. Many are delighted to find that the Chief Judge, political leaders, and many members and chairpersons of the various judicial screening panels are present and accessible for individualized conversations. Clearly, however, the focus here is on how one becomes a judge, and not on substantive preparation for judicial practice.<sup>247</sup>

#### *B. Judicial Perception of the “Preparation” Issue*

In approaching the topic of judicial education, a short survey was prepared and distributed to a non-random, easily accessible sample of judges, who currently sit on various courts in the boroughs within the City of New York.<sup>248</sup> Of the twenty-five judges approached, sixteen responded.<sup>249</sup> Although the judge’s identities were known, the responses, via “Survey Monkey” were anonymous.<sup>250</sup> Half of the respondents identified themselves as elected judges and half as having been appointed.<sup>251</sup> Additionally, the gender breakdown was exactly fifty percent, one half were women and one half were men.<sup>252</sup> About half of the judges were recently elevated to the bench between 2006 and 2010, while one-third began their judicial career between 2001 and 2005, and are thus approaching a decade on the bench.<sup>253</sup>

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243. *Id.* at 1, 3.

244. *Id.*

245. *Id.* at 1.

246. See *Winnowing Wheat from Chaff*, [http://www.schneblin.com/studies/pdfs/winnowing\\_wheat\\_chaff.pdf](http://www.schneblin.com/studies/pdfs/winnowing_wheat_chaff.pdf) (last visited Oct. 6, 2011) (discussion of sifting out the good from the bad, or the useful from the useless).

247. SPECIAL COMM. TO ENCOURAGE JUDICIAL SERV., *supra* note 242.

248. Raw data on file with author.

249. Raw data on file with author.

250. Raw data on file with author.

251. Raw data on file with author.

252. Raw data on file with author.

253. Raw data on file with author.

In response to the question, “At what point in your career did you begin to focus on becoming a judge?,” only one person responded that his/her interest in the judiciary had been piqued in law school,<sup>254</sup> a clear indicator that there is room for more focus by law schools on preparation for the judiciary.

In questions about the concept of access to justice, slightly more than half of the respondents (53%) described their relationship with access to justice programs as: “‘Access to Justice’ is not on my radar screen!”<sup>255</sup> When asked for the first word that comes to mind in response to the phrase “Access to Justice,” responses ranged from “unknown” to “trying to level the playing field for unrepresented litigants.”<sup>256</sup>

Although this survey was not scientifically conducted, it does give support to the concept that pre-judicial education, at least in New York, is a good thing that is likely to be supported by the judiciary. One hundred percent of the respondents felt that prospective judges would benefit from participating in a formal training program regarding the work of the judiciary prior to seeking to become a judge.<sup>257</sup>

Of course, like any professional education and training program, not every person who takes the certification course is guaranteed an appointment, but in some ways that would be one of the purposes of the program—to help winnow the wheat from the chaff in a more efficient and productive manner.<sup>258</sup>

In the United States, the use of the law school curriculum as a tool for increasing awareness of access to justice and providing early awareness of the judiciary as a profession can only improve from its current low profile. As an aside, the preparation of judges for the many non-judicial tasks that they are often required to carry out in their first judicial appointments is all nearly forgotten in the flames of judicial independence and merit selection. Such tasks include managing, scheduling and training court personnel, interacting with coordinate criminal justice agencies, disposing of judicial records, handling the physical attributes and the budgetary constraints of the myriad court locations.<sup>259</sup> Having a structured program that would provide prospective jurists with a “real world” view of the judicial system would not only improve the effectiveness of new jurists but would also provide a base for the development of shared solutions to current issues regarding improving access to justice at every level.

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254. Raw data on file with author.

255. Raw data on file with author.

256. Raw data on file with author.

257. Raw data on file with author.

258. See *Winnowing Wheat from Chaff*, *supra* note 246.

259. Christopher E. Smith & Heidi Feldman, *Burdens of the Bench: State Supreme Courts' Non-Judicial Tasks*, 84 JUDICATURE 304 (2001).



## VII. CONCLUSION

Judges are very important in the protection of our democratic values and in protecting the right of people's access to the justice system. By creating a system of education that starts in the law school, we can better prepare judges for this difficult role.

