Judicial Selection

Now search for able men among all the people, men who revere God, and are honest, men who despise unfair profit...and let them judge the people at all seasons.\textsuperscript{1}

The quality of justice in any society is very much dependent upon the men selected to occupy the seats of judgment in that society.\textsuperscript{2}

The actual procedures taken leading to judicial appointment tend to be clouded in secrecy and mystery.\textsuperscript{3}

Judicial selection – in particular, the criteria and process of appointment to judicial office – has direct and major implications in defining the need for judicial education. It determines the standards of entry to the judiciary. In doing so, it provides insights on the issue of what makes a good judge.\textsuperscript{4} It also defines the threshold of judicial competence and, thereby, determines the point of departure for any program to meet the needs for continuing judicial education.

While there is universal agreement that judicial selection should be based on merit, there is limited agreement on what constitutes merit. At a minimum, merit imports fundamental qualities of competence, integrity and temperament. There are, however, divergent views on what constitutes merit beyond this point.

Analysis of selection practice in the United States, for example, discloses what will be seen as a formalized and relatively humanistic approach to selection which permits the appointment of academic and other non-practising lawyers, usually as the result of an elective process. In Britain and Australia selection is by appointment, and is based on a concept of merit which is viewed narrowly in terms of a forensic mastery of legal knowledge and

\textsuperscript{1} \textit{Exodus} 18.21 and 22: Jethro to Moses.  
\textsuperscript{4} An answer to this central question is sometimes sought from polling practising lawyers to obtain insights on what they perceive are the cardinal competencies. See, for example, Young P (commenting on a recent English survey of barristers), “What Makes a Good Judge?” \textit{The Australian Law Journal}, 68, 485/6.
court-craft, and operates in an informal process which lacks uniformity or transparency.

Extraneous considerations, relating to political or social factors such as the emerging “fair reflection” doctrine, play a discernible role in the selection process. These considerations affect the application of the merit criteria and thereby the threshold of competence. Consequently, they also influence any assessment of the need for judicial education.

A review of practice in the United States, England and Australia reveals that the needs for judicial education is affected by these different selection criteria and procedures. It will be observed that these needs can differ significantly in each common law system. In the United States, for example, new judges appointed by election may reflect prevailing social values and possess perhaps only elemental levels of trial experience. Conversely, such appointees in Britain or Australia may be selected on the basis of extensive forensic experience without necessarily taking into account broader humanistic qualities. Consequently, the needs for judicial education may vary. In the United States, it will be argued that the need for judicial education is to provide judicial competencies pertaining to knowledge of substantive law and procedure, and trial-based judicial skills for appointees lacking extensive practical experience and expertise. In Britain or Australia, it will be argued that the need for judicial education is to develop the art of judging which lies beyond the domain of technical competence, and to look outward in terms of the broader role and relationship of the judge in society.5

It follows that educators operating in the common law systems should assess the criteria and procedures for selection as an explicit and critical component of any assessment of the need for judicial induction and continuing education. Considerable caution should be exercised in the adoption of different models owing to the profound effects of selection practices on the need for judicial education.

I Criteria

Candidates for judicial office are generally required to meet two sets of criteria for appointment. These are eligibility and merit selection criteria.