



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# Experiential (Judging Focused) Judicial Education

**IOJT Conference  
Sydney, 2009**

---

[www.nji-inm.ca](http://www.nji-inm.ca)



# Workshop Agenda

1. Overview Presentation
  - with reference to program on Managing Domestic Violence Cases (Canada)
2. Judging Through a Pandemic (Canada)
3. Communications Skills for Newly Appointed judges (Canada)
4. Skills Education for Newly Appointed Judges (Ukraine)



# Materials

The CD that accompanies this workshop includes:

1. All of the power points
2. Agendas, materials and videos for the courses discussed in this workshop
3. The NJI Course Design Guide
4. Power Points on Selected Topics  
(Learning Objectives; Defining, Designing and Teaching Judging Focused Judicial Education; Developing Designing and Delivering Judicial Education; Updated Barcelona Skills Presentation; The NJI and Experiential Education)
5. Faculty Development Agenda



# Workshop Objective

- To reinforce the essential elements of good judicial education course design
  - Elements that can be incorporated, even with modest resources and planning- and adapted to various judicial learning environments
  - Primary issue may be the pace and extent of the changes required or even possible
- To illustrate this with a course on domestic violence, other examples from Canada and recent Ukrainian programming for new judges



# 1. Learning Needs and the Judicial Education Curriculum

When you assess judges' learning needs and then design a curriculum, there is one inescapable conclusion:

Judicial education should include three dimensions: knowledge (law and other disciplines), judicial skills (the craft of judging) and an understanding of context

And should be adapted to the judicial career



# Judicial Skills

## Judges perform a wide range of skills:

- **Listen, Assess and Filter**
  - Receive evidence (filtering)
  - Assess credibility
  - Hear legal submissions
- **Manage the Process and Communicate** (verbal and non-verbal communication)
  - Manage the trial process
  - Communicate in the courtroom
  - Question
  - Facilitate dispute resolution (settlement conferencing)
  - Deliver oral judgments



# Judicial Skills

- **Think** (intellectual or cognitive skills)
  - Interpret and apply principles of law, procedure
  - Take into account context; exercise discretion
  - Synthesize information
  - Engage in judicial reasoning (facts+ law + context = decision)
- **Decide**
  - Reach a decision (result)
  - Decide on the outcome (remedy): a sentence, an order.
- **Write** (convey decisions)
  - Convey sufficient reasons
  - Organize evidence, notes, affidavits (the writing process)
  - Write judgments



# Social Context

- understanding the unique role of the judge (including unique ethical context); awareness of the society in which judges work and in which individual decisions are made;
- self awareness;
- understanding equality.





## 2. The Judicial Education Culture or Context Is Important

Will affect the degree of emphasis on the three dimensions and the pace of change to the education curriculum:

For Example:

- Many judges with no or little legal education
- An environment with major recent legal or procedural reforms
- A traditional emphasis on knowledge alone
- Context requirement not seen as important or seen as introducing bias rather than enriching perspectives
- Major concerns about how judges are performing their unique judicial functions
- Concerns about corruption, judicial ethics or lack of independence



## 3. Judicial Skills and Educational Design

- Judicial education must recognize the complexity of the judicial role and must practically and concretely address judicial roles, tasks and duties
- Judges are adult learners who have a particular professional context and constitutional position. Judicial education will be most engaging and effective when it implements adult learning principles and uses a experiential, skills-based approach.

**Judicial skills or tasks become an important design element for each course, whether it is knowledge, skills or context intensive**



# What Does This Mean?

- Grounding the education in judges' experience and in the performance of judicial tasks

## **A. Integrating knowledge, skills and context**

Every area of the curriculum asks judges to develop: knowledge (analysis), and ability to do things (skills)

within:

legal and social contexts (attitudes)  
and in a judicial manner (ethics)



# Experiential Learning

## **B. Recognizing the different ways adults learn by adopting a course design that respects each learning style**

- The Experiential Learning Process



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# The Experiential Learning Process

- 1. Something that connects the topic to the judges' experience**
  - “this is a real issue for me that I face or am likely to face”
- 2. A chance to reflect on and exchange experiences**
  - “there are different perspectives and approaches to this issue”



# The Experiential Learning Process

- 3. An opportunity to acquire the needed knowledge to deal with the issue**
  - the knowledge, concepts, criteria and/or analytical frameworks relevant to judging in this area
  - ideally with a framework or guide to apply to future cases
- 4. A chance to apply the knowledge to the performance of a simulated judicial task or skill**



# Skills-Based Instruction

## **C. Following the required steps when teaching a judicial skill:**

Demonstration of effective performance

Criteria for good performance

Opportunity to practice it

Expert feedback on performance



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

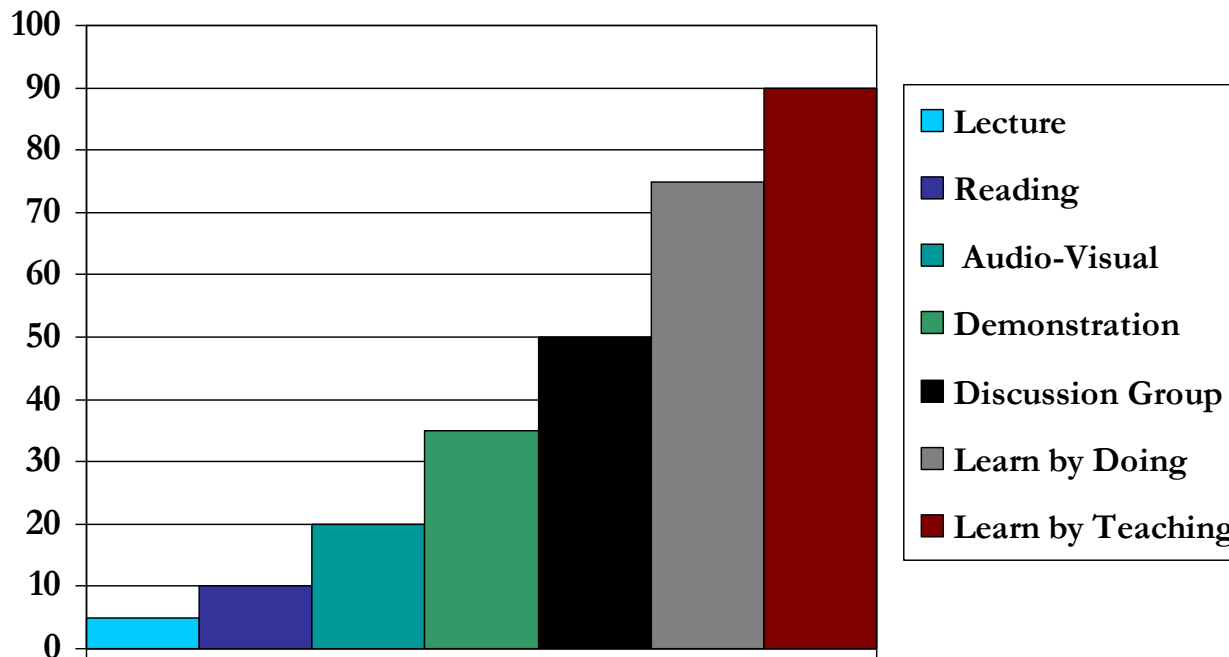
# Teaching Methods

## **D. Adopting teaching techniques that increase the likelihood of retention**





# Retention by Teaching Strategies





NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# Adopting a Course Design Process That Reflects These Principles



# The Essential Elements of Course Design

- 1. Judicial leadership**
  - some faculty development for judicial champions
- 2. Some time to plan**
  - support to the planning process
- 3. A planning committee**
  - more than judges ( academics, community members)



# Domestic Violence

- Judges
- Prosecutor
- Defence lawyer
- Researcher-clinician
- Academic
- Advocate with direct knowledge of victims



# Learning Needs

## 4. Identifying what the judges need to learn:

Some are not readily apparent:

e.g. **Domestic violence:**

- why do victims recant?
- how effective are treatment programs, are the various judicial orders a judge can make?
- how does one assess risk at various stages?
- how does the judge protect the alleged victim without demonstrating bias?
- how to assess credibility and reach a decision?



# Learning Objectives

## 5. Establishing the Learning objectives:

- Learning objectives are statements of what the learner will be able to do as a result of the instruction.
- They turn the broad learning needs into objectives that can drive the course design process



# Learning Objectives

- Are the mechanism that usually connects the learning need to the performance of a judicial task
- They connect the learning needs to the way most judges learn best (using the knowledge, the skill, the understanding of context in the performance of a relevant task)



# Learning Objectives

## **E.G. Domestic Violence:**

The judge will be able to:

- describe factors that increase and decrease risk at the pre trial stage and manage
- identify the reasons why alleged victims recant and be able to manage common recanting situations
- assess credibility and provide oral reasons that adequately explain her decision





# Learning Objectives

The judge will be able to:

- identify the relevant factors in sentencing and apply these to a common fact situation
- manage difficult courtroom situations e.g. an unrepresented accused cross-examining his spouse
- describe the test for the admission of expert evidence and apply it to several situations dealing with the admissibility of expert evidence



# Course Format

Using the experiential learning approach and the methods that increase retention

## **A. Connecting to past experience with opportunity to reflect**

Domestic Violence:

- Brief opening presentations from Judge, Prosecutor, Defence Counsel, Academic, Researcher/Clinician and Community Lawyer who works with victims:  
“Why are these cases so difficult”
- They constitute “Greek Chorus” for ongoing discussion and reflection throughout course



# Course Format

## **B. Knowledge, concepts, criteria and/or analytical frameworks**

### Domestic Violence:

- brief lecturettes on issues as they arise
- access to “Greek Chorus” for different perspectives, social context
- Frameworks, templates for various issues



# Course Format

## **C. A chance to apply the knowledge to the performance of simulated judicial tasks or skills**

### Domestic Violence:

- one fact situation that flows through course
- simulations (videos and live simulations)
- small group discussions with trained judicial facilitators



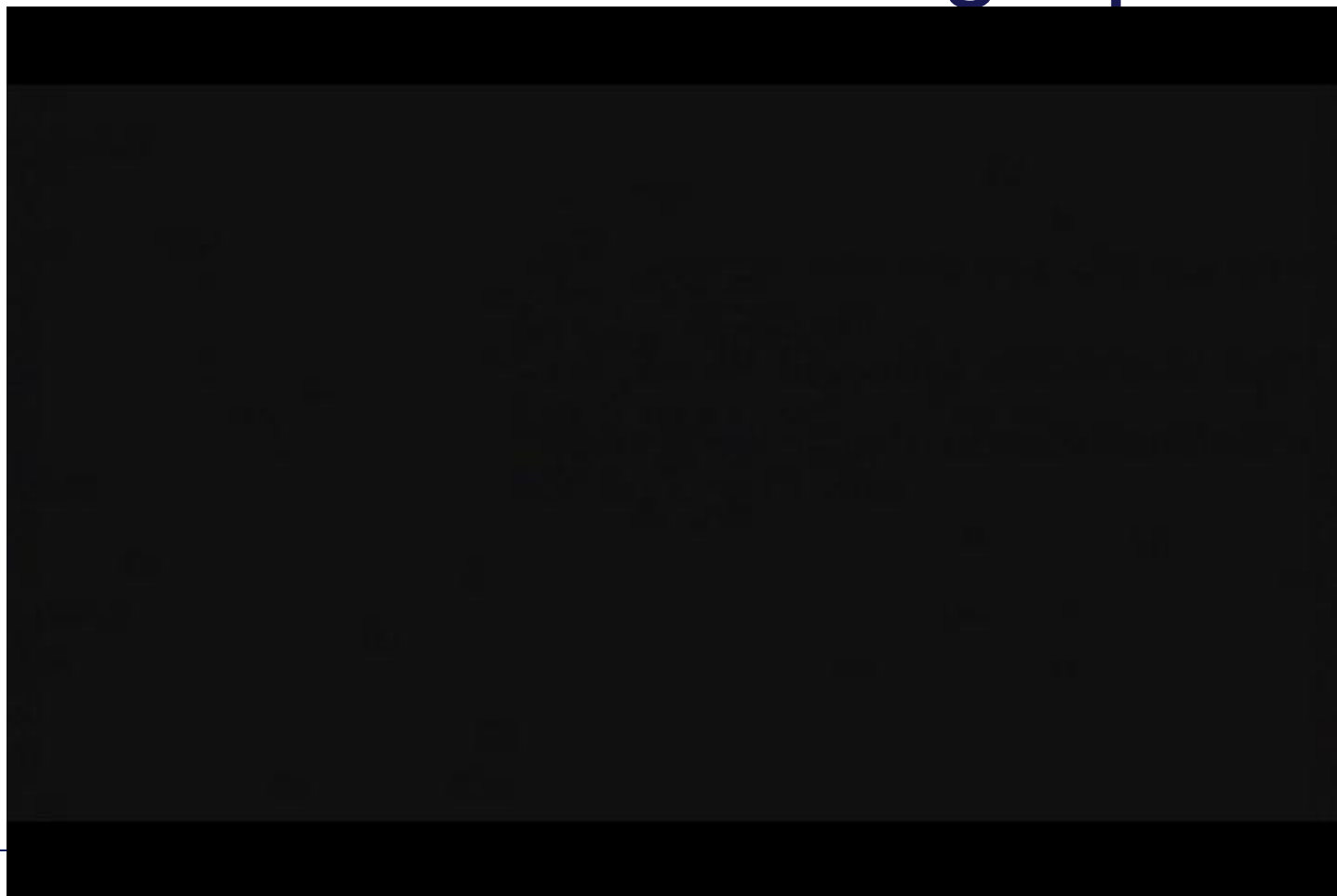
# Variety of Teaching Techniques

1. Sample video of recanting spouse
2. Managed sentencing process, using clicker technology and access to Greek Chorus and other experts



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

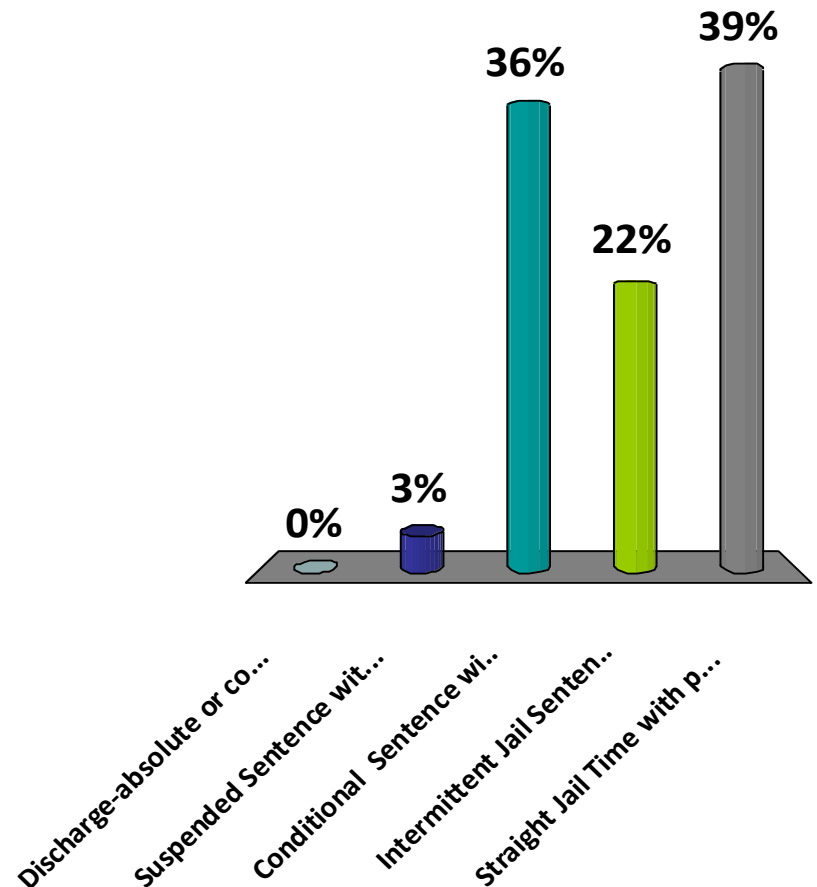
# Video: The Recanting Spouse





# 1. Sentencing Options:

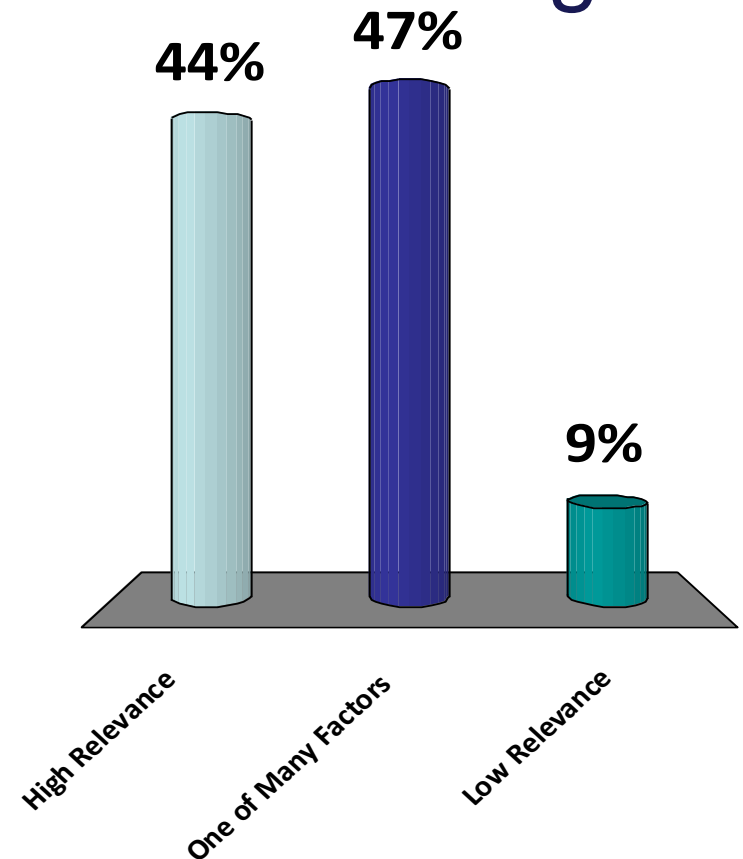
- A. Discharge-absolute or conditional
- B. Suspended Sentence with probation
- C. Conditional Sentence with probation
- D. Intermittent Jail Sentence With probation
- E. Straight Jail Time with probation





## 2. How Relevant is Risk of Future Violence to Hilda in your sentencing:

- A. High Relevance
- B. One of Many Factors
- C. Low Relevance



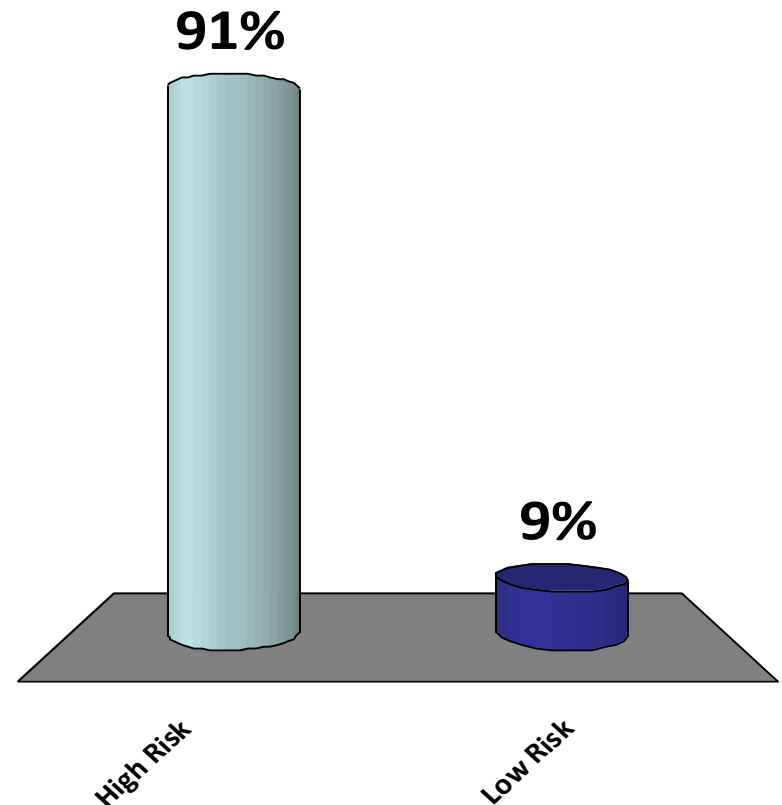




# 3. Assessing Risk of Future Violence in This Case:

A. High Risk

B. Low Risk

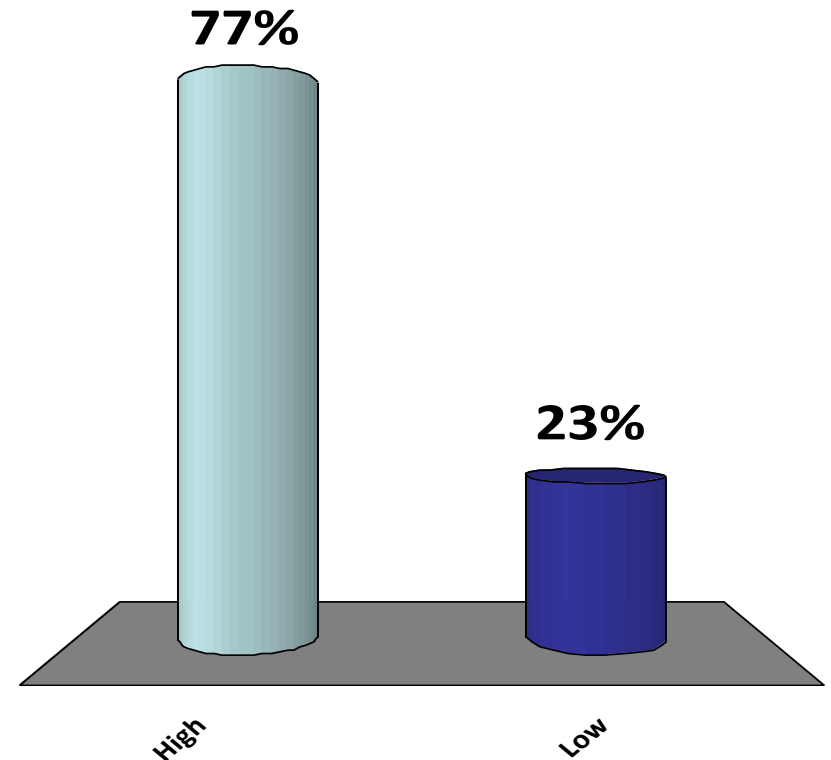




## 4. The Impact Of The Possible Reconciliation On Your Sentencing:

A. High

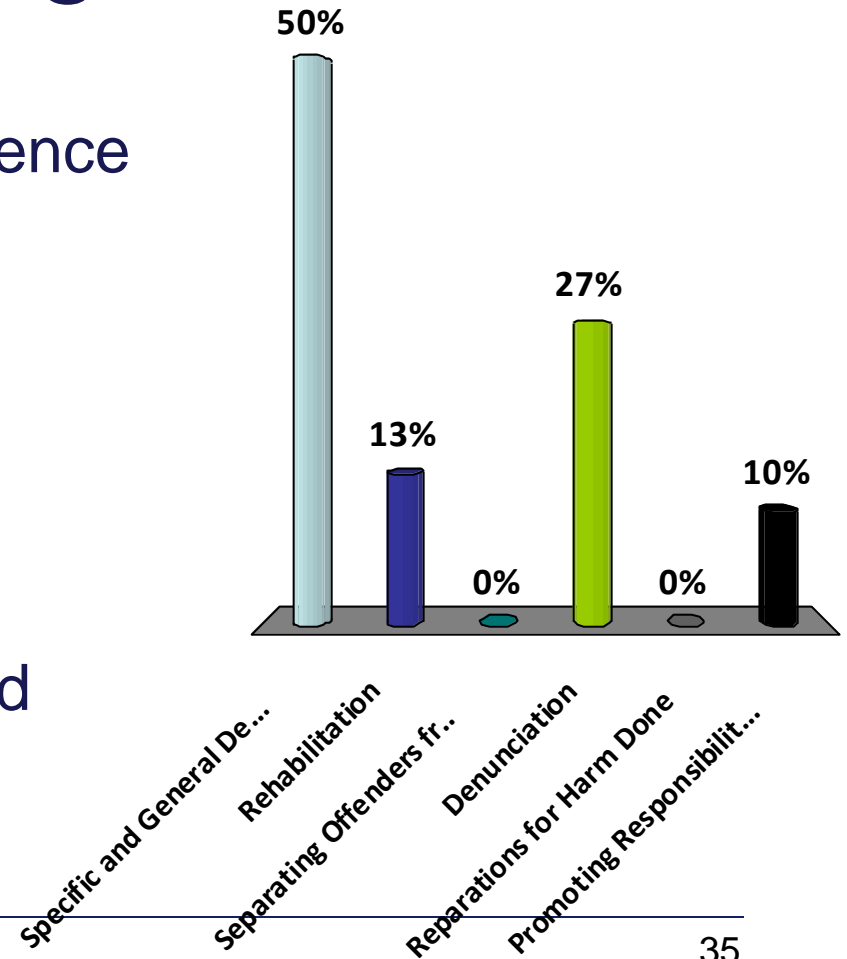
B. Low





# 5. The Sentencing Criteria:

- A. Specific and General Deterrence
- B. Rehabilitation
- C. Separating Offenders from Society, Where Necessary
- D. Denunciation
- E. Reparations for Harm Done
- F. Promoting Responsibility and Recognition of Harm Done



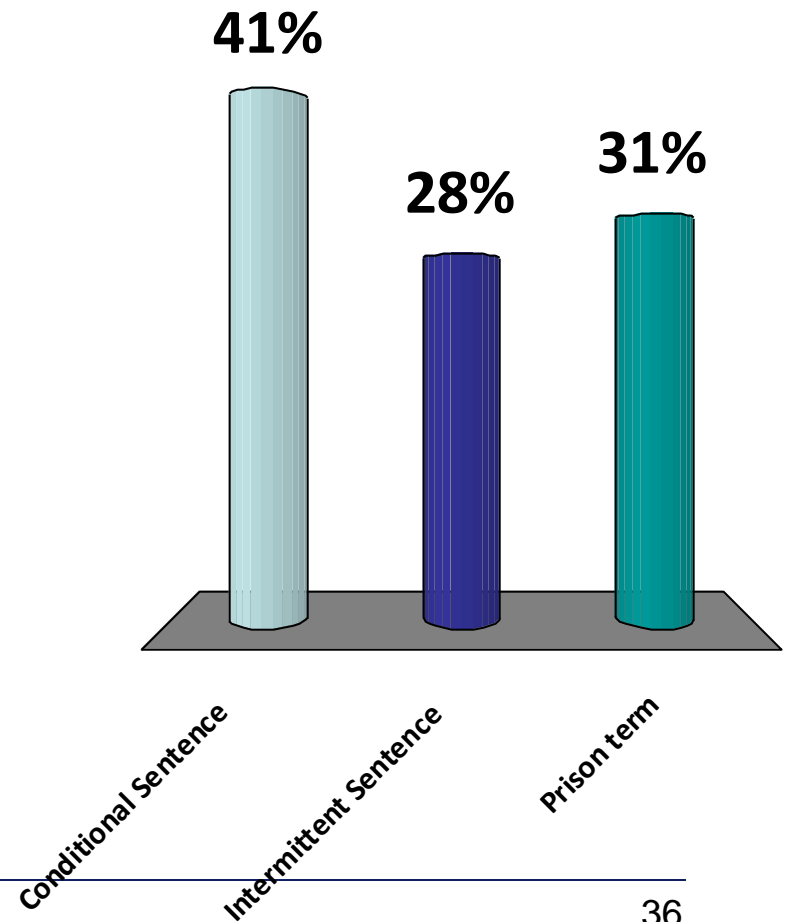


# 6. Incarceration:

A. Conditional Sentence

B. Intermittent Sentence

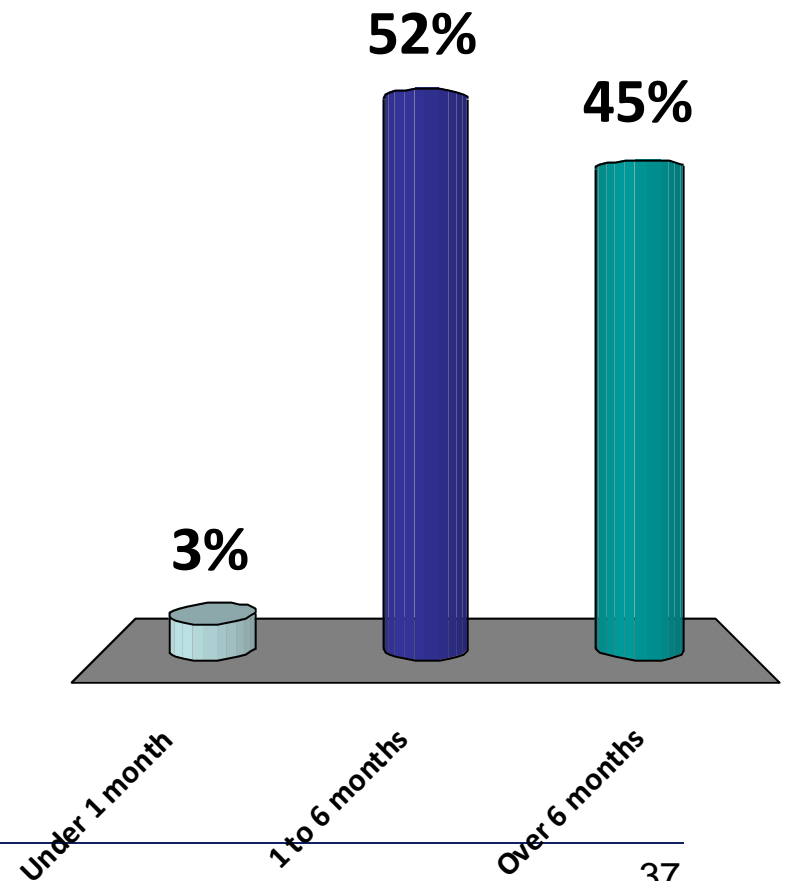
C. Prison term





# 7. Length Of Sentence:

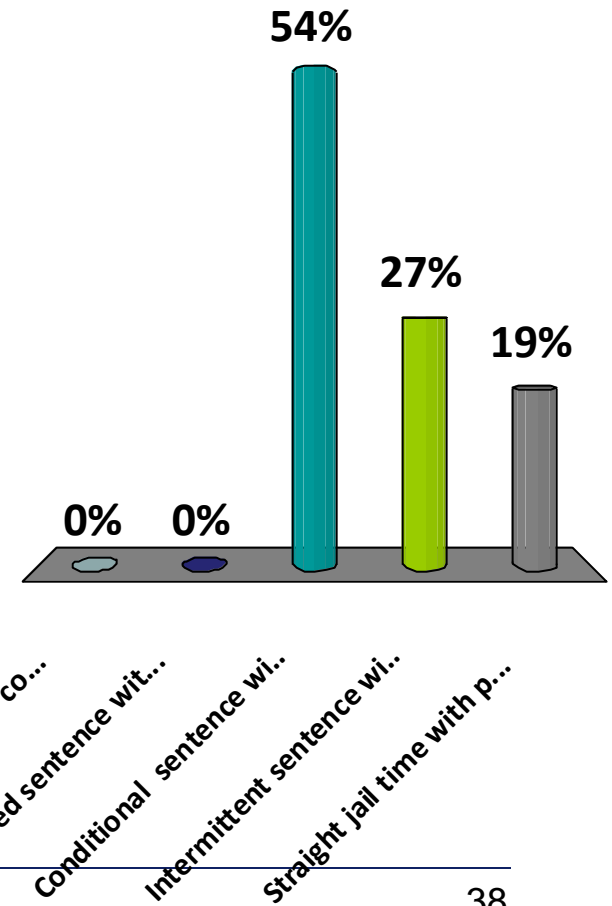
- A. Under 1 month
- B. 1 to 6 months
- C. Over 6 months






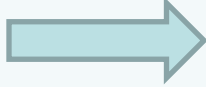
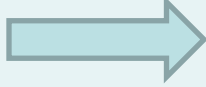
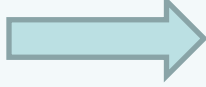
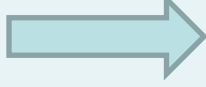
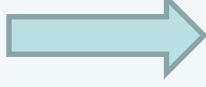
# 9. Sentencing Options:

- A. Discharge-absolute or conditional
- B. Suspended sentence with probation
- C. Conditional sentence with probation
- D. Intermittent sentence with probation
- E. Straight jail time with probation





# It Represents a Major Cultural Shift

FROM		TO
Doctrinal law focus		Judging focus
Passive learning (lectures)		Active learning (exercises)
Teacher control		Learner generated knowledge
Expert/superior led		Peer/colleague led
Judicial voices		Diverse voices
Content focus in planning		Objectives and activity focus in planning



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# Other Canadian Examples

1. Judging Through a Pandemic: Justice Adèle Kent





NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# National Judicial Institute

## Science



# Objectives of Science Education

- Judges
  - Will learn about scientific concepts from leading experts (e.g. genetics, neuroscience)
  - Will learn the principles for determining whether to permit scientific evidence (the gatekeeper function)
  - Will learn how to weigh complex scientific evidence



# Judging Through a Pandemic – Objectives

- Acquire an understanding of the diseases that may lead to a pandemic
- Learn about the legal issues that may arise in the event of a pandemic, including arrest, seizure of property, quarantine, access to medical information, obligation to work
- Develop a court plan for the operation of the judicial system during a pandemic



# Acquiring the Skills

- Put the idea of a pandemic in historical perspective
- Provide the necessary science
- Provide the legal framework
- Work through problems
- Provide planning tools
- Draft a court plan



# Other Canadian Examples

## 2. Communications Skills for Newly appointed Judges: Justice Gloria Epstein



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# Adapting the Model to Another Judicial Environment

Ukrainian Education for Newly appointed  
Judges: Iryna Voytyuk



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# **CONTRIBUTION OF THE ACADEMY OF JUDGES OF UKRAINE INTO DISSEMINATION OF RESULTS OF THE UKRAINIAN-CANADIAN JUDICIAL COOPERATION PROJECT**



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# **Cooperation of the Academy of Judges of Ukraine (AJU) with the National Judicial Institute of Canada (NJI) in development of educational modules for newly appointed judges**





# STAGE I. Preliminary

- Knowing more about partners' activities for a better understanding,
- Learning a methodology for designing of educational courses at NJI, based on development of judicial skills,
- Defining subjects of educational courses for Ukrainian judges.



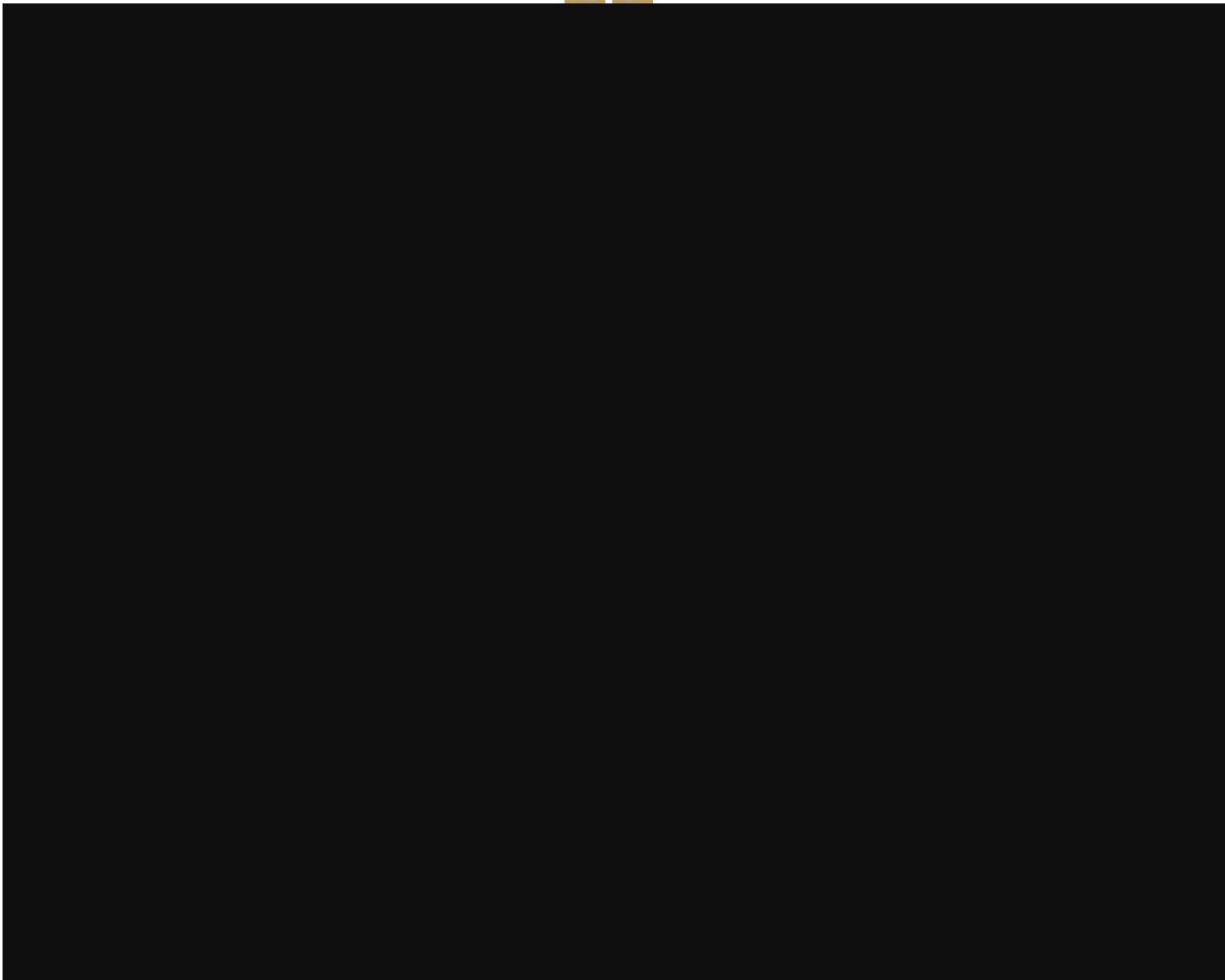
## **STAGE II. Development of educational modules for newly appointed judges**

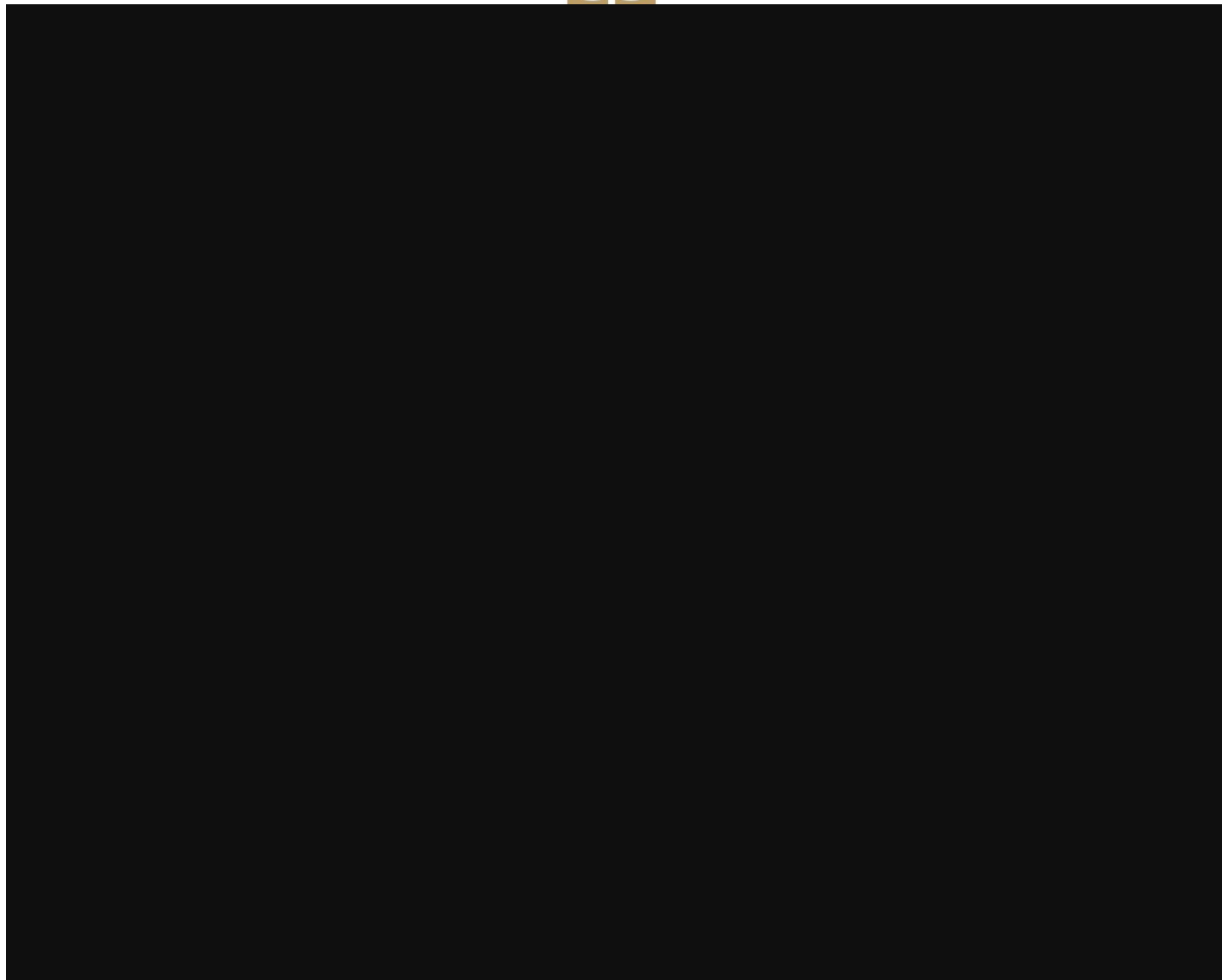
- Module «Courtroom Management»
- Module «Fundamentals of Evidence Law»



# Preparing a video case study for modules:

- «Evidence, based on testimonies of witnesses»,
- «Courtroom management. An inexperienced judge»
- «Courtroom management. An experienced judge»







# STAGE III. A Pilot Approbation of the Developed Modules

- Training for **18** judges-lecturers from regional branches of AJU (23-24 March, 2009)
  - Seminars for newly appointed judges (within a professional development program) on the modules:
    - «**Fundamentals of Evidence Law**»  
(26-27.03.09 in Lviv, 02-03.04.09 in Donetsk);
    - «**Courtroom Management**»  
(30-31.03.09 in Lviv, 31.03.09-01.04.09 in Donetsk).
- There were **38** judges participants.



# STAGE IV. Development of a lecturer tool kit

- A Manual «Courtroom Management and Evidence in Court» (for lecturers and judges, who will study within the program of the modules);
- Methodological recommendations on design and presentation of educational modules, based on judicial skills development;
- A DVD with video cases and slides for educational modules.



NATIONAL JUDICIAL INSTITUTE • INSTITUT NATIONAL DE LA MAGISTRATURE

# Is This Model of Judicial Education Transferable?





# Different Cultures/Different Contexts

For Example:

- Many judges with no or little legal education
- An environment with major recent legal or procedural reforms
- A traditional emphasis on knowledge alone
- Judicial resistance to judicial education
- Contextual awareness not seen as important or seen as introducing bias rather than enriching perspectives
- Major concerns about how judges are performing their unique judicial skills
- Concerns about corruption, state of judicial ethics or lack of independence
- Limited resources, infrastructure, staff support, time to plan



# The Impact of Cultural Difference

- Recent research shows that there are cultural differences in learning styles (Kolb, 2009)
  - For example, in cultures with high uncertainty avoidance, learners may have a more reflective learning style
- These differences are not, however, profound
- Age, level of education and area of specialization are as, or even more, important than cultural differences
- The research reinforces the point that good education takes into account all types of learning styles



# Lessons from the Canadian Experience-Domestic and International

1. Some basic requirements:
  - senior level endorsement of the attempt
  - a few judicial champions-trained to use the model
  - time to plan-some support to the planning process
  - access to examples/demonstrations-ideally chance to observe the model



# The Canadian Experience

2. Adjusting as appropriate the pace and extent of the changes in course design:
  - e.g. gradual move away from all-knowledge, all lectures
  - start small- beginning with common generic skills-some early wins
- courses where context is obviously required and easily integrated e.g. youth justice; domestic violence



# The Canadian Experience

## 3. Adapting to available resources

- simpler, cheaper methods ( e.g. role plays rather than videos) rather than compromising on the design elements and planning process
- modest start: limited numbers; component of larger course; incorporate experiential elements



# Conclusion

1. Each of these course design elements is important
2. All can be done with modest resources
3. A key issue is how to introduce them to the existing judicial education culture
  - need a few trained judicial champions
  - starting small and building the expectations of the judicial learners