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What Judges Want and Need: User-Friendly Foundations for Effective Judicial Education

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INTRODUCTION

Over the past fifty years, judicial education has become "integral and essential" to judicial systems.[1] Most states have judicial education divisions or research organizations.[2] Many also have significant funding for judicial education.[3] Scholars increasingly study judicial education programming. Dozens of organizations now design, evaluate, and implement judicial education.[4] Despite these advancements, it is not clear how closely judicial education is grounded in the needs and preferences of judges.

This article evaluates the connection between judicial education and judges' needs and preferences. In Part I, we begin by discussing the history, purpose, and form of judicial education, charting its evolution over time. In Part II, we examine current judicial education programs and scholarship, highlighting differences and similarities between federal and state programming. In Part III, we analyze the limitations of existing scholarship and programming, arguing judicial education programs are insufficiently tied to evidence of judicial demands. We conclude in Parts IV and V by suggesting two proposals to align programming with needs: (1) an annual needs-based assessment of judicial education offerings and (2) a voucher system for judges to attend their choice of judicial education programs.

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[1] A.L. Riches, *Judicial Education—A Look at the Overseas Experience*, 64 THE AUSTRALIAN L. J. 189, 190 (1990). "The most striking trend of the last twenty years in continuing judicial education is its virtual spread throughout the United States and its emergence as a big business . . . programming [in 1990] was provided annually to nearly 57,000 participants . . . [in 1992 these are] now estimated at nearly 72,000 participants annually." Livingston Armytage, *Judicial Education as an Agent of Leadership and Change: Lessons from Common and Civil Law Experience*, 15 THE PHILJA JUD. J. 1, 12 (2003) (quoting JK Hudzik, *The Continuing Education of Judges and Court Personnel*, Judicial Education Network (1989)).

[2] CATHARINE M. WHITE & MAUREEN E. CONNER, ISSUES AND TRENDS IN JUDICIAL BRANCH EDUCATION 2005 App. 2A, (2005) (part of the Judicial Education Reference Information & Technical Transfer Project (JERITT)); *see also* REPORT TO THE JUDICIAL COUNCIL, JUDICIAL COUNCIL OF CALIFORNIA 2 (Aug. 22, 2013) (noting in 1995 the Judicial Council added education as one of its five strategic goals).

[3] WHITE & CONNER, *supra* note 2, at App. 2B.A.

[4] Links, NAT'L ASS'N OF STATE JUDICIAL EDUCATORS, http://news.nasje.org/links/ (last visited May 20, 2015).

I. BACKGROUND

To understand the limitations of current judicial education programming and develop proposals for improvement, it is first necessary to understand the origin of judicial education and the development of its purpose, content, and form.

A. History

Before 1956, there was no formal judicial education for judges in the United States.[5] That year, the Institute of Judicial Administration sponsored a two-week seminar for appellate judges.[6] In 1958, the first judicial education programming for trial judges was held. In 1961, the American Bar Association joined with the American Judicature Society to create the Joint Committee for the Effective Administration of Justice.[7] Chaired by United States Supreme Court Justice Tom C. Clark, the committee determined judging was sufficiently different from lawyering to warrant specialized judicial education.[8] This determination led to the creation of the National College of the State Judiciary, later the National Judicial College (NJC).[9] In 1967, Congress established the Federal Judicial Center (FJC) to provide continuing education to the federal judiciary.[10] The FJC remains the leading provider of judicial education for federal judges. In 1975, the National Association of State Judicial Educators (NASJE) formed "to improve the justice system through judicial branch education."[11] NASJE promulgated a set of core competencies, principles, and standards for judicial education and is now a leading provider of education for state judges. By 1986, all states had some form of judicial education.[12]

B. Purpose

In 1991, NASJE stated the goal of continuing judicial education "to enhance the performance of the judicial system as a whole by continuously improving the personal and professional competence of all persons performing judicial branch functions."[13] To meet this goal, NASJE developed and published standards and principles for judicial education:

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[5] Delmar Karlen, *Judicial Education*, 52 A.B.A. J. 1049, 1049 (1996), *available at* http://www.jstor.org/discover/10.2307/25723806?uid=3739744&uid=2134&uid=2&uid=70&uid=4&uid=3739256&sid=21105968647211.

[6] *Id*. at 1050.

[7] A Legacy of Learning, NAT'L. JUDICIAL COUNCIL, http://www.judges.org/about/history.html (last visited May 20, 2015). Sadly, the American Judicature Society has voted to dissolve. AM. JUDICATURE SOC'Y, http://www.ajs.org (last visited May 20, 2015).

[8] Judge William F. Dressel, *Crystal Ball with Rearview Mirror: Perspective on the Art of Judging in the 21st Century*, 48 JUDGES J. 34, 34 (2009); *see also* NAT'L JUDICIAL COUNCIL, http://www.judges.org/about/history.html (last visited May 20, 2015).

[9] Dressel, *supra* note 8, at 34.

[10] *See* Tom C. Clark, *The Federal Judicial Center*, 6 ARIZ. ST. L.J. 537, 537 (1974).

[11] About NASJE, NAT'L ASS'N OF STATE JUDICIAL EDUCATORS, http://news.nasje.org/about/ (last visited May 20, 2015).

[12] Armytage, *supra* note 1, at 12.

[13] NAT'L ASS'N OF STATE JUDICIAL EDUCATORS, PRINCIPLES AND STANDARDS OF CONTINUING JUDICIAL BRANCH EDUCATION 1-2 (2001), *available at* http://nasje.org/resources/principles.pdf.

1. Help judicial branch personnel acquire the knowledge and skills required to perform their judicial responsibilities fairly, correctly, and efficiently;
2. Help judicial branch personnel adhere to the highest standards of personal and official conduct;
3. Help judicial branch personnel become leaders in service to their communities;
4. Preserve the judicial system's fairness, integrity, and impartiality by eliminating bias and prejudice;
5. Promote effective court practices and procedures;
6. Improve the administration of justice;
7. Ensure access to the justice system;
8. Enhance public confidence in the judicial branch.[14]

While these general goals have remained constant, developing meaningful judicial education consistent with them is an evolving process. In its early stages, judicial education focused primarily on substantive legal issues.[15] From there, content broadened to include non-legal issues affecting the law, such as science, drug abuse, and family violence.[16] Increasingly, scholars and judicial educators argue that education focusing on substantive legal and social issues is insufficient. Judicial education must also develop judges' internal character and integrity, along with their decision-making, critical thinking, and interpersonal skills.[17] As one author says: "[t]he danger is that the educational effort may be concentrated solely on enhancing skills or learning new subject matter leaving no resources for education that is designed for development, personal growth, or overall reform of the judicial system."[18] In essence, education must focus on what judges need to know *and* how they function.[19] Relatedly, some scholars argue judicial education should equip and assist the judiciary in advancing human rights and access to justice.[20] These scholars promote judicial education as a means for judges to

[14] *Id*. at 4.

[15] Patricia Murrell, *Judging: A Role with a Soul*, 45 JUDGES J. 1, 3 (2006); John W. Kennedy, *Personality Type and Judicial Decision Making*, 37 JUDGES J. 4, 5 (1998).

[16] Murrell, *supra* note 15, at 5.

[17] Murrell, *supra* note 15, at 1; Kennedy, *supra* note 15, at 5; Charles S. Claxton, *Characteristics of Effective Judicial Education Programs*, 76 JUDICATURE 11, 12 (1992); RONALD M. CERVERO, EFFECTIVE CONTINUING EDUCATION FOR PROFESSIONALS 31 (1988) ("In the swamp, the practitioner must find or construct problems from ambiguous situations. Thus, problem setting rather than problem solving is the key to professional practice.").

[18] Bruce E. Bohlman, *Transforming the Judicial System Through Education*, *in* EDUCATION FOR DEVELOPMENT: THE VOICES OF PRACTITIONERS IN THE JUDICIARY, JERITT Monograph Six (Charles S. Claxton & Esther K Ochsman eds., 1992); Charles Claxton & Patricia Murrell, *Education for Development: Principles and Practices in Judicial Education*, JERITT Monograph Three at 3-4 (1992) ("Teaching must focus not only on helping judges to master content but also on helping them develop the more generalized abilities they need in order to meet the complex demands placed upon them.").

[19] Claxton, *supra* note 17. In 1992, the American Bar Association observed the two necessary requirements for judges were legal skills and integrity. *See* Murrell, *supra* note 15, at 3 (quoting "Report of the Task Force on Law Schools and the Profession: Narrowing the Gap," better known as the MacCrate Report (ABA 1992)).

[20] Armytage, *supra* note 1, at 5; *see also* Livingston Armytage, *Training of Judges: Reflections on Principle and International Practice*, EUR. J. OF JUD. EDUC. 21, 27 (2005); *see generally* Kathleen Mahoney, *The Myth of Judicial Neutrality: The Role of Judicial Education in the Fair Administration of Justice*, 32 WILLIAMETTE L. REV. 785, 814-819 (1996) ("The key element to sustainable and successful reform, however, is the realization that change must come from within the judiciary and that

obtain skills to act as "agent[s] of leadership and change."[21]

Consistent with this shift, much scholarship discusses the proper purpose of judicial education, focusing broadly on one of four main content areas: (1) substantive legal issues; (2) judicial and technical competence; (3) character, civility, and ethics; and (4) personal growth and development.[22] Ideal judicial education would advance all four areas, but such multi-purposed programming has yet to emerge. The result is a tension between judicial education on substantive knowledge and judicial education on judges' implementation of that knowledge.[23]

C. Form

Judicial education takes many forms. Historically, judicial education focused on passive learning through panel or single-presenter presentations.[24] Increasingly, scholars advocate and judicial educators utilize programming with active or experiential learning techniques. One commonly promoted technique uses concrete experiences, discussion and reflection, abstract conceptualization, and application.[25] Judicial education has also recently incorporated distance- and web-based learning as an alternative to in-person presentations.[26] Distance-learning is often more cost-effective and timely than live, face-to-face programming.[27] Web-based videoconferences and webinars can be especially interactive. Increasingly, comprehensive judicial education also includes special programming for judicial staff and clerk's offices.[28]

II. REVIEW OF CURRENT JUDICIAL EDUCATION PROGRAMMING AND SCHOLARSHIP

Federal and state governments have invested significant time and resources developing and improving judicial education programs. Scholars have also increasingly studied the provision of judicial education.

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judges must lead the reform. Not only would this give the reform legitimacy and credibility in the eyes of the judges, but it also would address the requirement of judicial independence.").

[21] Armytage, *supra* note 1, at 4-5.

[22] Patricia Murrell & Philip Gould, *Educating for Therapeutic Judging: Strategies, Concepts and Outcomes*, 78 REV. JUR. U.P.R. 129, 144 (2009); Philip Gould & Patricia Murrell, *Therapeutic Jurisprudence and Cognitive Complexity: An Overview*, 29 FORDHAM URB. L.J. 2117, 2130 (2002); Dennis Catlin, *An Empirical Study of Judges' Reasons for Participating in Continuing Professional Education*, 7 JUST. SYS. J. 236 (1986).

[23] Claxton, *supra* note 17, at 12.

[24] Diane Cowdrey, *Educating into the Future: Creating an Effective System of Judicial Education*, 51 S. TEX. L. REV. 885, 888 (2010).

[25] Murrell, *supra* note 15, at 3; Claxton, *supra* note 17, at 13; *see also* Cowdrey, *supra* note 24, at 892 ("The Kolb Model posits that effective education forms a circle, covering four points: (1) providing a concrete experience, (2) reflecting on that experience, (3) providing related information and concepts, and (4) application. Specific learning activities are connected to each of the four points.").

[26] Cowdrey, *supra* note 24, at 895 ("We need to move away from the assumption that effective, high-quality education requires live events and a traditional face-to-face classroom experience.").

[27] *Id.*

[28] Judge William F. Dressel, *Judicial System Education Means Collaboration*, 40 JUDGES J. 43 (2001).

A. Federal Court Programming

Created by Congress in 1967, the FJC is "the research and education agency of the federal judicial system."[29] Responsible for the development, oversight, and implementation of federal judicial education, its statutory duties include:

- conducting and promoting research on federal judicial procedures and court operations;
- conducting and promoting orientation and continuing education and training for federal judges, court employees, and others;
- conducting and fostering the study and preservation of federal judicial history; and
- providing information and advice to further improvement in the administration of justice in the courts of foreign countries and inform federal judicial personnel of developments in foreign court systems that could affect their work.

Of note to judicial education, the FJC's "Education Division" "plans and produces educational programs, services, and resources for judges and for non-judicial court personnel, such as those in clerk's offices and probation and pretrial services offices."[30]

The FJC provides educational materials and offers two one-week seminars for newly appointed federal district, bankruptcy, and magistrate judges.[31] The orientation seminars focus on the "acquisition of skills unique to judging"[32] such as "civil and criminal trial practice, case management, judicial ethics, opinion writing, and, for district and magistrate judges, the criminal sentencing process. The seminars also focus on substantive law including complex statutory and constitutional legal issues frequently arising in federal litigation (including employment discrimination and habeas corpus)."[33] The first seminar, soon after appointment, includes about 8-12 new judges and uses a "mentoring model" where new judges watch FJC videos and participate in discussions led by experienced judges.[34] The second seminar, after a judge's first year on the bench,[35] combines multiple orientation groups with presentations on a variety of topics including "case management, judicial ethics, and the role of the judge, as well as common legal and practical problems."[36]

The FJC also provides orientation programming for federal appellate judges. The FJC invites newly appointed federal appellate judges with no district court

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[29] Federal Judicial Center Home, FJC.GOV, http://www.fjc.gov/ (last visited May 20, 2015).

[30] *Id.*

[31] EDUCATION AND RESEARCH FOR THE UNITED STATES FEDERAL COURTS, THE FEDERAL JUDICIAL CENTER 2, *available at* http://www.fjc.gov/public/pdf.nsf/lookup/fjcedres.pdf/$file/fjcedres.pdf.

[32] THE FEDERAL JUDICIAL CENTER OFFERS TRAINING AND RESEARCH, INTERVIEW WITH UNITED STATES DISTRICT JUDGE BARBARA ROTHSTEIN 1 (Oct. 2009), *available at* http://www.fjc.gov/public/pdf.nsf/lookup/FedL1009.pdf/$file/FedL1009.pdf [hereinafter JUDGE ROTHSTEIN INTERVIEW].

[33] EDUCATION AND RESEARCH FOR THE UNITED STATES FEDERAL COURTS, *supra* note 31, at 2.

[34] *Id.*

[35] FEDERAL JUDICIAL CENTER ANNUAL REPORT 2013 5 (2013), *available at* http://www.fjc.gov/public/pdf.nsf/lookup/AnnRep13.pdf/$file/AnnRep13.pdf [hereinafter FJC ANNUAL REPORT 2013].

[36] *Id.*

judicial experience to attend the first seminar for district, bankruptcy, and magistrate judges.[37] The FJC then sponsors a two-day seminar in Washington, D.C. for all appellate judges, orienting them to ethics, collegiality, and opinion-writing. The FJC also funds the attendance by new appellate judges of an orientation program at the Institute of Judicial Administration at New York University School of Law.[38]

In addition to orientation programs for new federal judges, the FJC sponsors the majority of continuing education programs for federal judges.[39] Most continuing judicial education is presented in-person to facilitate discussion. The FJC hosts an annual series of national and regional programs for district, magistrate, and bankruptcy judges.[40] Every three years, it offers a national program for appellate judges.[41] It also provides publications, television broadcasts, video and audio recordings, and web-based materials.[42]

While there is no data on judicial participation in FJC versus non-FJC sponsored education programs, we do know that in 2013, the FJC "delivered 43 programs for 2,675 federal judges."[43] In contrast, only five appellate judges attended privately funded education seminars requiring disclosure.[44] The 2013 FJC judicial education programming consisted of orientation training for all new federal judges and continuing education for veteran judges. Continuing education focused on "neuroscience (three programs); employment law; intellectual property; the humanities and science; law and genetics; law and society; law and terrorism; mediation skills; patent litigation; e-discovery; environmental and natural resources law; and effective use of mobile devices."[45] The most popular programs were technology-based. Format delivery included workshops, webinars, print, and media resources.

B. State Court Programming

Judicial education varies widely by state. "There is little uniformity among continuing education requirements among state judicial education systems."[46] States have varying structures and methodologies, and judicial education is still a

[37] JUDGE ROTHSTEIN INTERVIEW, *supra* note 32, at 37.

[38] *Id*.; *see also* Institute of Judicial Administration, NYULAW.EDU, http://www.law.nyu.edu/centers/judicial (last visited May 20, 2015).

[39] JUDGE ROTHSTEIN INTERVIEW, *supra* note 32, at 37 (these are typically two- to three-day seminars held around the country, often presented in cooperation with law schools).

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] FJC ANNUAL REPORT 2013, *supra* note 35, at 5.

[44] The Judicial Conference requires judges to disclose attendance at privately-funded conferences in the following situations: "Any organization covered by the policy that issues an invitation on or after January 1, 2007 (for a program commencing after that date), to a federal judge to attend an educational program as a speaker, panelist, or attendee and offers to pay for or reimburse that judge, in excess of $305, must disclose financial and programmatic information." Privately Funded Seminars Disclosure System, U.S. COURTS, http://www.uscourts.gov/RulesAndPolicies/PrivateSeminarDisclosure.aspx (last visited May 20, 2015). This data was obtained from reviewing the privately funded seminars disclosure system for each circuit in 2013. First Circuit: 0; Second Circuit: 0; Third Circuit: 0; Fourth Circuit: 1; Fifth Circuit: 1; Sixth Circuit: 0; Seventh Circuit: 0; Eighth Circuit: 1; Ninth Circuit: 2; Tenth Circuit: 0; Eleventh Circuit: 0.

[45] FJC ANNUAL REPORT 2013, *supra* note 35, at 5.

[46] Murrell & Gould, *supra* note 22, at 136.

relatively recent area of continuing professional education.[47] In most states, an administrative arm of the state supreme court oversees and administers judicial education.[48] Often, the administrative office collaborates with a judicial education committee comprised of judges to design, direct, and implement judicial education.[49] In about 40% of states, judicial education is mandatory.[50] In the other 60%, it is either recommended or voluntary.[51] In states where education is not mandatory for generalized judges, it may be required for commissioners or referees in specialized courts.[52]

In some states, primarily those with mandatory judicial education, state-sponsored judicial programs and conferences provide the majority of judicial education programming. In Florida, for example, where judicial education is mandatory, the Florida Judiciary Education offers over 900 hours of instruction through live and distance-learning formats.[53] In Illinois, a mandatory 30-hour judicial education conference is held biennially to help judges satisfy the state's continuing judicial education requirement. Judges may attend approved non-judicial conference programs, but they do not count toward the state's mandatory requirement.[54] In Louisiana, state judges are required to earn at least 5 of their 12.5 required continuing judicial education hours from programs sponsored by the Louisiana Judicial College.[55] In most states, judges may obtain credit through state-sponsored continuing judicial education or other accredited program providers.[56]

Like judicial education requirements, the content of education programs also varies by state. According to the Judicial Education Reference Information and Technological Transfer Project (JERITT), from 1990-2004 the largest percentage (22%) of judicial education programming covered court administration, management, and leadership.[57] The next largest percentage (8%) covered crimes and offenses.[58] Juveniles, criminal law and procedure, civil law and procedure, domestic relations, and societal issues and the humanities each encompassed 5%-7% of programming.[59]

The NJC is one leading judicial educator of state court judges, offering an average of 90 courses annually to over 4,000 (mostly state) judges from all 50

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[47] *Id*.

[48] *E.g.*, Office of State Court Administrator, YOUR MO. COURTS, http://www.courts.mo.gov/page.jsp?id=233 (last visited May 20, 2015); Michigan Judicial Institute, MICH. COURTS, http://courts.mi.gov/education/mji/pages/default.aspx (last visited May 20, 2015).

[49] *E.g.*, Administrative Office of the Courts: Judicial Education Training, DEL. STATE COURTS, http://courts.delaware.gov/aoc/judicialed.stm (last visited May 20, 2015).

[50] WHITE & CONNER, *supra* note 2, at app. 3D.

[51] *Id*.

[52] *Id*. California requires juvenile dependency commissioners and referees to participate in basic education within one year of assignment and to complete annual continuing education. *Id.*

[53] Judiciary Education, FLA. COURTS, http://www.flcourts.org/resources-and-services/judiciary-education (last visited May 20, 2015).

[54] Comprehensive Judicial Education Plan for Illinois Judges, ILL. COURTS, http://www.state.il.us/court/Education/Plan/Plan_IIIB.asp (last visited May 20, 2015).

[55] LA. SUP. CT. R. XXX (Rule 3. CLE Requirement), *available at* http://www.lascmcle.org/rules.asp.

[56] *See, e.g.*, Education Services, AZCOURTS.GOV, http://www.azcourts.gov/educationservices/Home.aspx (last visited May 20, 2015).

[57] WHITE & CONNER, *supra* note 2, at 173.

[58] *Id*.

[59] *Id*.

states.[60] In addition to individual programs, the NJC has a professional certificate program in five areas: administrative law adjudication skills, dispute resolution skills, general jurisdiction skills, special court trial skills, and tribal judicial skills.[61] It also offers a Master and Ph.D. of Judicial Studies.[62]

C. Programming for Both State and Federal Judges

Although state and federal judges generally attend separate judicial education programs, some programs cater to both. The Institute of Judicial Administration (IJA) at New York University School of Law is one example.[63] Founded in 1952, the IJA was one of the first organizations dedicated to improving education in both state and federal courts. The Duke Law Center for Judicial Studies also provides educational programming to state and federal judges, offering a Master of Judicial Studies obtained through two summers of coursework.[64]

Another program for state and federal judges is the ASTAR program of the Advanced Science and Technology Adjudication Resource (ASTAR) Center, a judicial education organization funded by the United States Department of Justice.[65] The ASTAR program exposes judges to advances in science and technology through collaboration with researchers, the National Institute of Health, the National Institute on Alcohol Abuse and Alcoholism, the Eunice Kennedy Shriver Institute on Child Health and Human Development, and other organizations.[66] Beginning in 2006, the ASTAR Center began holding science and technology training for hundreds of judges across the country.[67] After 120 hours of education, a judge is eligible to become an ASTAR fellow.

In 1990, the FJC began compiling a list of educational programs attended by state and federal judges.[68] This information is available on the FJC's website, with the goal of "generat[ing] additional interest in state-federal programs and encourag[ing] sponsorship of more programs."[69] Topics include ADR and settlement, allocation of jurisdiction, bankruptcy, certification of questions of law, class actions and mass torts, court administration, criminal practice, discovery, evi-

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[60] A Legacy of Learning, NAT'L JUDICIAL COUNCIL, http://www.judges.org/about/history.html (last visited May 20, 2015).

[61] *Id*.

[62] *Id*.

[63] Institute of Judicial Administration, NYU LAW, http://www.law.nyu.edu/centers/judicial (last visited May 20, 2015).

[64] Master of Judicial Studies, DUKE LAW, http://law.duke.edu/judicialstudies/degree/ (last visited May 20, 2015); Mission Statement, DUKE LAW, http://law.duke.edu/judicialstudies/mission (last visited May 20, 2015).

[65] *See* Science in the Court, GENOME.GOV, http://www.genome.gov/27540059 (last visited May 20, 2015) ("Our mission is to develop portals between court systems and science centers so that judges can be properly prepared case managers at trial and on appeal.").

[66] *Id*.

[67] *Id*.; *see also* Eric Hartley, *Newest Science Program Creates "Resource Judges*," CAPITALGAZETTE.COM, http://www.capitalgazette.com/news/newest-science-program-creates-resource-judges/article_c02fcf19-8f92-5a78-ba93-7dd61be33cce.html?mode=jqm (last visited May 20, 2015).

[68] State-Federal Judicial Education Programs, FED. JUDICIAL CTR., http://www.fjc.gov/fsje/home.nsf (last visited May 20, 2015).

[69] *Id*.

dence, federalism, habeas corpus, judicial process, jury selection, public trust, and state-federal relationships.[70]

D. Judicial Education Scholarship

In the vast realm of legal scholarship, relatively little addresses judicial education. Still, scholars increasingly study the topic, with a significant rise in scholarship over the last twenty years. A review of the existing literature shows a few trends in topic selection. One of the most timely and frequent topics is the private funding of judicial education, which many scholars argue implicates judicial impartiality.[71] In 1998, the United States Judicial Conference's Advisory Committee on Codes of Conduct issued Advisory Opinion 67, allowing judges to attend "seminars and similar educational programs organized, sponsored, or funded by entities other than the federal judiciary" except where attendance creates the appearance of impropriety.[72] In 2007, the Judicial Conference began requiring judges to disclose their attendance at any judicial education program sponsored by a non-governmental source.[73]

Many judicial education articles also focus on substantive legal issues, advocating education in certain areas, such as mental health, domestic violence, the environment, gender and race fairness, science, and technology.[74] The general thesis of these articles is that judges increasingly encounter and ultimately decide cases intertwined with a wide variety of unfamiliar topics, and education is necessary to inform decision-making. For example, articles proposing science education argue judges are ill-equipped to interpret complex and technical science in cases with DNA evidence, genetic testing, statistical and forensic analysis, and medical issues. The result is that judges cannot effectively perform their function as gatekeepers, determining what evidence is relevant and who is competent to testify.[75] Articles proposing education on issues of disability, mental illness, race, and gender strive to alert judges to the unique challenges arising from unconscious and pervasive biases.[76]

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[70] State-Federal Judicial Education Programs, FED. JUDICIAL CTR., http://www.fjc.gov/fsje/home.nsf (last visited May 20, 2015).

[71] Peter Chickris & Jack Turano III, *Integrity is Their Portion and Proper Virtue: The Ethics of Funding Judicial Education*, 51 S. TEX. L. REV. 869, 869-70 (2009).

[72] U.S. Jud. Conference Advisory Comm. on Codes of Conduct, Advisory Op. 67 (revised 1998) (education sponsored by state governmental organizations does not require disclosure).

[73] Judicial Conference Policy on Judges' Attendance at Privately Funded Educational Programs (2007) (Judges must disclose if they are paid or reimbursed for expenses "above the threshold at which judges must report reimbursements on their annual financial disclosure reports").

[74] *See e.g.*, Stephanie Gwillim, *The Death Penalty of Civil Cases: The Need for Individualized Assessment & Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 ST. LOUIS U. PUB. L. REV. 341 (2009); Steve Seidenberg, *Bench Learners*, 92 A.B.A. J. 18 (2006); Mara Merlino, *Science Education for Judges: What, Where, and by Whom?*, 86 JUDICATURE 210 (2003); Lynn Hecht Schafran, *California: First as Usual*, 22 WOMEN'S RTS. L. REP. 159 (2001); Katie Land, *Toward More Effective Judicial Education in Issues of Family Violence*, 9 BUFF. WOMEN'S L. J. 31 (2001); Lynn Hecht Shafran, *Is the Law Male?: Let me Count the Ways*, 69 CHI.-KENT L. REV. 397 (1993).

[75] Seidenberg, *supra* note 74, at 158; Merlino, *supra* note 74; Franklin Zweig & Diane E. Cowdrey, *Educating Judges for Adjudication of New Life Technologies*, 83 JUDICATURE 157 (2000) ("Judges need a special form of science education in order to craft and implement adjudication tailored to novel, complex cases.").

[76] *See, e.g.*, Gwillim, *supra* note 74; Mahoney, *supra* note 20.

One scholarly rationale for promoting specialized substantive knowledge is the rise of specialized courts. These courts — including domestic violence, family, drug, mental illness, and, and most recently, veterans courts — consolidate resources in one centralized place to foster non-adversarial, specialized, and effective responses to specific situations.[77] Specialized courts rely on close collaboration between judges, lawyers, law enforcement, social workers, and other community members to address the myriad issues posed by these cases. Because of the therapeutic and rehabilitative focus of these courts, along with the ongoing, collaborative nature of the relationships in them, these judges need specialized — and often continuing — education to focus on the "tangible solutions" that accompany "problem-focused treatment" and monitoring.[78]

III. LIMITATIONS OF JUDICIAL EDUCATION SCHOLARSHIP AND PROGRAMMING

Programming and recommendations for programming should be founded on judges' preferences and needs. This section explores the depth and width of this foundation.

A. Lack of Judicial Input and Empirical Data on Judicial Preferences

Legal scholarship on judicial education programming generally is not grounded in evidence-based metrics. Scholars propose ideas for judicial education content and delivery without empirical research on what judges need to know or what they seek from continuing professional education. For instance, content-based articles propose areas where judicial education is "necessary" without assessing whether judges possess this knowledge or encounter cases where the knowledge is beneficial.[79] Delivery-based articles propose engaged learning methods without evaluating whether judges find these methods effective.[80]

Similarly, state and federal programs often set content without comprehensive needs-based assessment. Research shows judges participate in continuing judicial education for a variety of reasons, "not wholly dependent on the content of the program."[81] Although many state judicial education committees include judges, the programming often is formulated without input from a substantial number of judges. Additionally, while continuing judicial education programs frequently

[77] Betsy Tsai, Note, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1287 (2000).

[78] Melinda R. Roberts, et al., *A Social Worker's Role in Drug Court*, SAGE OPEN, Apr.-June 2014, at 3, 3-4 ("Competence through professional education and training is essential to the function of the county drug court. . . . The judge is involved in every aspect of the participants' treatment, including receiving the drug screen results, setting fee schedules, and ready daily compliance reports."). Judge Donald Dowd, *Suspicious of Drug Courts? Don't Be. A judge's perspective*, 77 TEX. B. J. 310, 313 (2014) ("All drug court staff are required to continue to be involved in education and training. Many drug courts visit other drug courts to compare notes on what is effective and ineffective.").

[79] *See supra* note 74 (advocating content without empirical evidence of judicial preferences).

[80] *See supra* note 22. *But see* PATRICIA H. MURRELL, LEADERSHIP INST. IN JUDICIAL EDUC., INST. FOR FACULTY EXCELLENCE IN JUDICIAL EDUC. (on file with author) (describing the Leadership Institute on Judicial Education as employing a "learning style inventory that enables [participants] to explore their learning preferences and how those preferences impact on their leadership and management styles, their communication and interaction patterns, their learning and teaching orientation").

[81] Catlin, *supra* note 22, at 253.

include post-program surveys to evaluate effectiveness, this information rarely is made available to judges or the public. Furthermore, it is not clear that content is adapted to accommodate the responses.

In Delaware, for example, judges from each of the state courts and the Chief Magistrate Judge serve on the Judicial Education Committee "with the charge to design and direct the implementation of educational programs."[82] Similarly, the FJC designs its curriculum, programs, and resources "in coordination with its Board[83] and advisory committees. The Center also works closely with subject-matter experts from the courts, with scholars, and with staff from other government agencies to provide instruction on substantive legal topics, case and court management, and leadership development."[84] California has a curriculum-based approach to judicial education that analyzes the role of a particular judge and then determines what knowledge, skills, and attitudes are necessary to that role.[85] Even in these well-organized jurisdictions, the majority of judges are not involved in shaping judicial education curriculum.

Searching the literature, there are only two published attempts at the state level to evaluate judicial preferences on judicial education.[86] Over 30 years ago, the executive director of the Michigan Judicial Institute — the arm of the state Supreme Court responsible for judicial education — surveyed 523 Michigan trial judges on their reasons for participating in judicial education and the perceived benefits.[87] Seven reasons yielded an average score of six or above, on a seven-point scale with seven being extremely important and one being not important:

(1) "to help me keep abreast of new developments in the law" (6.47);
(2) "to help me be more competent in my judicial work" (6.30);
(3) "to further match my knowledge or skills with the demands of my judicial activities" (6.23);
(4) "to better respond to the questions of law presented to me" (6.17);
(5) "to develop proficiencies necessary to maintain quality performance" (6.14);
(6) "to maintain the quality of my judicial service" (6.08); and
(7) "to increase my proficiency in applying legal principles" (6.00).[88]

The study also found a correlation between number of years since law school and judges' professional perspective. The correlation suggested more recent law graduates are more likely to participate in judicial education to develop profes-

[82] *See* Administrative Office of the Courts: Judicial Education Training, DEL. STATE COURTS, http://courts.delaware.gov/aoc/judicialed.stm (last visited May 21, 2015).

[83] The Board consists of the Chief Justice, the Director of the Administrative Office of the United States Courts, and five federal judges appointed by the Judicial Conference of the United States. Clark, *supra* note 10, at 538.

[84] FJC ANNUAL REPORT 2013, *supra* note 35.

[85] Cowdrey, *supra* note 24, at 891.

[86] There are other surveys on the effectiveness of judicial education. For example, after a three-day conference on science, ethics, and the law, the Utah Administrative Office of the Courts conducted a survey of participating judges from five states to determine the conference's perceived usefulness and impact. Zweig & Cowdrey, *supra* note 75, at 158. Of the twenty judges interviewed, sixteen responses were evaluated, and the results demonstrated judges were satisfied with the conference, retained information, and applied it in their practice. *Id*.

[87] *See generally* Catlin, *supra* note 22, at 236 (the survey yielded a 76% response rate).

[88] *Id*. at 242.

sional perspective.[89] The study concluded, "research suggests implications for the way in which judicial education programs are designed."[90]

In 2011, scholars surveyed New York state judges on the role of law schools in educating judges to increase access to justice. Sixteen of the twenty-five judges surveyed replied. Only one reported question was relevant to the content and format of judicial education programming: all of the judges responded that prospective judges would benefit from pre-judicial education.[91]

At the federal level, the FJC more comprehensively assesses judicial preferences on judicial education. From November 2012 to February 2013, the FJC surveyed federal judges about the essentiality of about 150 different judicial resources to the performance of their official functions.[92] The survey yielded responses from 1,399 judges, a 65% response rate. The majority of judges ranked the following programming as "absolutely or highly essential": judicial-position-relevant education programs (e.g., new judge orientation, national workshops); in-person programs; court-supported training programs (e.g., how to use IT equipment); and special-focus education programs (e.g., intellectual property, scientific evidence, environmental law).[93] Conversely, over 20% of the judges ranked the following programs as "not at all or minimally essential": training computer lab in courthouse; IT-related training at the San Antonio Systems Deployment and Support Division; training on how to use legal research tools; streaming video or archived video programs; and reimbursement for textbooks, workbooks, video tapes, and other program-related materials.

The survey also revealed important differences between appellate and district judges. For example, 42.4% of appellate judges found the computer training lab in their courthouse to be "minimally essential," while only 21.9% of district judges felt the same. Forty-two percent of appellate judges felt streaming video or archived programs were "minimally essential," compared to 21.3% of district judges. Age differences also emerged. The essentiality of special-focus education programs significantly declined with age. Eighty-one percent of judges younger than 45 believed special-focus education programs were "essential," compared to 55.2% of judges older than 75. The difference was even more marked for streaming video and archived programs, with 61.3% of judges younger than 45 ranking the programming as "essential" compared to 32% of judges older than 75.

Overall, current judicial education programming is not consistently conceived, designed, or refined based on a comprehensive assessment of judges' educational preferences or needs. According to one scholar, judicial education must be developed through a method that "assesses the learner's educational needs, develops learning objectives based on those needs, designs a curriculum and corresponding learning activities, delivers the education, and evaluates what was learned."[94] Only through this process can "education [be] delivered . . . targeted

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[89] *Id*. at 253.

[90] *Id*.

[91] Sande L. Buhai et al., *The Role of Law Schools in Educating Judges to Increase Access to Justice*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 161, 198 (2011).

[92] Memorandum from Jason A. Cantone, Jessica Snowden & Jim Eaglin, Fed. Judicial Ctr., to the Honorable Duane Benton 1 (July 17, 2014) (on file with author).

[93] *Id*. at tbl. 1 (Judges could rank programming as "absolutely or highly essential," "moderately essential," or "not at all or minimally essential").

[94] Cowdrey, *supra* note 24, at 891-92.

to the needs of the specific learners and . . . based on well-defined objectives."[95] Due to limited efforts to assess judges' reasons for participating in judicial education and their preferences for continuing professional development, different approaches are necessary.

B. Resulting Issues

Failing to ground judicial education in judicial preferences increases the probability that programming will not meet judges' needs. As evidenced by the FJC's survey, a one-size-fits-all approach to judicial education is insufficient. Content and delivery that is effective for appellate judges may not necessarily be effective for district judges. What helps younger, newer judges may not help older, veteran judges. Similarly, needs and preferences of judges in mandatory-education states may differ from those in states where education is voluntary.[96] Further, programming that satisfies one category, e.g., content, may fail to meet needs in another, e.g., opportunities for collaboration with other judges. This dichotomy produces programming that may be both over-inclusive and under-inclusive, providing unnecessary education while failing to account for actual demands.

Education detached from judicial needs may also fail to invest judges and ineffectively use resources. Adult learners seek to develop knowledge and skills for immediate use.[97] Judges are best situated to decide the information and skills most helpful to them. This is critical for veteran judges who, because of their experiences and learning styles, differ significantly from novice judges in their educational needs.

Judges' investment is also relevant to delivery format. Scholars may advocate evidence-based teaching methods,[98] yet these also lack evidence of judges' preferred delivery methods.[99] Even if research supports one method, program participants still will be more interested and invested in education delivered in their preferred format. One author hypothesized "a high percentage of judges" do not attend judicial education programs because they believe they "can learn more by reading than by attending large interactive conferences." As this author noted about active-learning programs generally, "[t]o an introvert, the prospect of personal disclosure in a group of colleagues is not a pleasant one."[100] Simply put, if judges are not invested in educational offerings or consider them ineffective, they are less likely to use them.

Finally, unhinged from judicial preferences, judicial education wastes time and money. In times of resource scarcity, effective evidence-based programming is necessary. Failing to account for judicial preferences in continuing judicial education depletes these resources on underutilized or unnecessary programming, leaving scarce funds for productive programming.

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[95] *Id*. at 892.

[96] Catlin, *supra* note 22.

[97] *Adult and Professional Education: An Overview*, *in* JUDICIAL EDUCATION/ADULT EDUCATION PROJECT (JEAEP) 2.4, *available at* http://jeritt.msu.edu/documents/02Mckinney.pdf.

[98] *See e.g.*, *id*. ("adult learners respond better to uninterrupted time periods" and "the classroom should be non-competitive").

[99] Cowdrey, *supra* note 24, at 892 ("Good practice rests on sound research.").

[100] Kennedy, *supra* note 15, at n.3.

IV. PROPOSAL 1: YEARLY SURVEYS ON JUDICIAL EDUCATION

One means to tie judicial education to judicial preferences and needs is to conduct comprehensive regular surveys of federal and state judges about judicial education.

A. Process

We propose that state judicial organizations and the FJC implement an annual needs-based assessment of current judicial education offerings and areas for future programming.[101] Although surveys may vary by jurisdiction, we propose, as a model, one with three main goals: (1) determine which current judicial education programming, if any, judges believe is unnecessary; (2) conduct a needs-based assessment of topics judges desire; (3) assess preferred delivery formats. In addition, the survey could solicit suggestions for preferred instructors or service providers.

After completion, the survey results should be available for review. This entails compiling the results — with names redacted — in a clear, understandable format and posting it for public access.[102] Scholars, researchers, and other judicial education providers could then use the results to suggest further educational content or critique current programs. Finally, programming should be better tailored to meet judges' expressed preferences. To be sure, budget restrictions, legislative requirements, and other factors may affect the formulation of judicial education. However, continuing education providers should strive to develop programming to meet judges' stated needs.

The Indiana Judicial Center (IJC) recently conducted a two-step needs assessment similar to the one we propose. First, the Indiana Judicial Education Committee administered an open-ended survey to 90 select judges to evaluate whether the IJC's education programming was meeting judges' needs.[103] This 14-step survey asked judges to list challenges and anticipated changes, prioritize the importance of day-to-day tasks, and brainstorm ideas for effective education.[104] One third of surveyed judges responded.[105] Using the educational priorities and needs identified from the open-ended surveys, the Indiana Judicial Education Committee then administered a closed-ended survey to all Indiana judges.[106] From the list of knowledge, skills, abilities, and competencies identified in step one, the survey asked judges to rank: (1) the importance of each item to effective judging; (2) how frequently the item is needed or used; (3) the proficiency of Indiana judges to address the item; (4) whether the item needs additional attention in

[101] Although we propose a needs-assessment conducted of judges, we recognize that an assessment incorporating the views of attorneys and other community members may also provide valuable insight into areas for potential judicial education. *See* Armytage, *supra* note 20, at 38. This is an especially salient consideration for those who believe judicial education should seek to reform the justice system and increase access to it. *See supra* notes 20-21.

[102] Although some judicial-education administrators gather information, it is not readily available to the public or scholars.

[103] Interview with Julie McDonald, Educ. Att'y, Ind. Judicial Ctr. (Sept. 9, 2014).

[104] *Id*.

[105] *Id*.

[106] *Id*.

judicial education programs; and (5) the level of interest in attending education programming on the item.[107]

Of approximately 500 judges surveyed, 176 responded.[108] The IJC is now using the needs assessment results to modify its judicial education curriculum.[109] Specifically, the IJC uses the results to prioritize programming at its conferences and add additional programming where necessary.[110]

B. Benefits

There are many benefits to tying judicial education to empirical data on judges' education needs. A needs-based assessment allows judicial education providers to offer timely and relevant programming. Judicial education needs vary over time depending on a variety of factors including changes in science, technology, medicine, and law. Judges are best situated to report which changes affect the cases they hear and the decisions they make. Designing programming based on a wide consensus of judges — rather than a small subset — ensures that judicial education covers topics judges encounter frequently. Surveys can also highlight the needs of different groups (e.g., appellate versus trial, or rural/urban). Programming can then be designed specifically to meet those needs. Surveys also help prioritize topics, which is essential in times of resource scarcity with limited funding for judicial education.[111]

In addition to programming benefits, basing judicial education on judicial needs enhances judges' investment in educational offerings. In states without mandatory continuing-judicial-education, educational investment significantly affects participation rates. Even in states with a mandatory requirement, judicial investment in education programming should enhance judicial education.

Similarly, surveys allow judicial educators to provide programming through preferred delivery formats. Scholars and educators have significant empirical research on effective adult education formats,[112] but judicial education is frequently planned without regard to these principles.[113] Moreover, continuing professional education is distinct from other forms of adult education and may require different delivery.[114] Even when education is delivered in effective formats, participants are more likely to attend education in their preferred format.[115]

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[107] *Id.*
[108] *Id.*
[109] Interview with Julie McDonald, *supra* note 103.
[110] *Id.*
[111] *See* Cowdrey, *supra* note 24, at 888.
[112] *Id.* at 892.
[113] *Id.* at 890 (discussing the form of judicial education: "The 'how' is usually tainted by personal preferences, past history, or stakeholders with entrenched perspectives.").
[114] Catlin, *supra* note 22, at 238.
[115] Kennedy, *supra* note 15, at n.3 ("I suspect that a high percentage of judges who do not attend judicial education programs stay away because they believe they can learn more by reading than by attending large interactive conferences. . . . To an introvert, the prospect of personal disclosure in a group of colleagues is not a pleasant one.").

C. Challenges

A yearly survey on judicial education presents challenges. Surveys can be time-consuming and resource-intensive, requiring someone to write, administer, organize, and publish. In states with hundreds of judges, this can be burdensome. To be effective, surveys would also require high participant response rates. Despite the potential drawbacks, the FJC Board is well-situated to implement and elicit participation in a yearly survey of federal judges.

States may find it difficult to generate survey participation without a state supreme court mandate, or at least support. States may also lack funding to design and administer a yearly survey. This challenge is not insurmountable. As one option, the State Justice Institute (SJI), an organization awarding federal grants to improve the quality of state courts, could provide grants for state judicial education surveys.[116] The SJI currently awards six types of grants, two of which are for "curriculum adaptation and training" and "education support program[s]."[117] These grants are intended to "conduct judicial branch education and training programs"[118] and to "enhance the skills, knowledge, and abilities of judges and court managers by supporting attendance at programs sponsored by national and state providers that they could not otherwise attend because of limited state, local, and personal budgets."[119] With over $30,000 available through each grant,[120] states could seek assistance in funding judicial education surveys.[121]

V. PROPOSAL 2: JUDICIAL EDUCATION VOUCHERS

A second means to tie judicial education to judicial preferences is judicial-education vouchers.

A. Process

An alternative to surveying judges on individual educational preferences is a voucher system. Congress and state legislatures could appropriate funds for judicial education vouchers (in addition to judicial education programming). Similar to teacher professional development vouchers, judges could use these vouchers to

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[116] STATE JUSTICE INST., CELEBRATING 30 YEARS OF IMPROVING THE ADMINISTRATION OF JUSTICE IN OUR STATE COURTS 6 (2014) (noting that SJI carries out its mission by "supporting national, regional, and in-state educational programs to speed the transfer of solutions to issues shared by courts across the nation.").

[117] *Id*. at 7.

[118] SJI Grants, STATE JUSTICE INST., http://www.sji.gov/grants.php (last visited May 22, 2015).

[119] *Id.*

[120] *Id*.

[121] In 2013, the SJI awarded seventeen grants for curriculum adaptation and training. As one example, the Connecticut Judicial Branch received $29,900 to "support widespread implementation of the 'Successful Interactions with People with Hidden Disabilities' training program, the goal of which is to ensure a judicial system where participants with non-apparent disabilities can expect clear, fair, and consistent justice from an independent and impartial judiciary." Grant Requests and Awards, STATE JUSTICE INST., http://www.sji.gov/PDF/SJI_Grant_Awards_FY_05-14_with_Award_Numbers.pdf (2014) (last visited May 22, 2015). In 2011, the Alaska Court System received an award for "technical assistance to conduct a statewide rural court security assessment . . . ." *Id*.

attend their choice of judicial education programs.[122] Any unused funds could revert back to the FJC or state judicial education organization.

Some states have a form of vouchers for judicial education. Arizona, for example, provides scholarship funds for judges to attend NJC programs.[123] If judges meet certain criteria, the scholarships fund the cost of tuition and conference fees at any NJC program.[124]

Arkansas's policy is broader, providing $100,000 in funding for out-of-state programs sponsored by organizations including the NJC, the National Council of Juvenile and Family Court Judges, the Institute for Court Management, and the American Bar Association.[125] The Director of Judicial Branch Education in Arkansas approves funding requests, and judges are limited to funding for one program a year.[126]

Indiana has one of the broadest voucher-like programs, providing scholarships or reimbursement up to $3,000 for judicial education seminars, conferences, or meetings not provided by the IJC.[127] In 2013, the IJC awarded 48 scholarships,[128] and the Indiana Supreme Court Division of State Court Administration reimbursed judicial officers or their counties $57,307. This funding covered 80% of Indiana judges' expenditures for outside programming.[129]

[122] Many universities offer vouchers to qualifying teachers in districts where the university places student teachers. *See* ELEONORA VILLEGAS-REIMERS, TEACHER PROFESSIONAL DEVELOPMENT: AN INTERNATIONAL REVIEW OF THE LITERATURE, 78 (U.N. Educational, Scientific, & Cultural Organization: International Institute for Educational Planning 2003). Teachers may use these vouchers to attend university courses free of cost. *See, e.g.*, Vouchers for Cooperating Teachers, ELMHURST COLL., http://public.elmhurst.edu/tl/188865681.html (last visited May 22, 2015); Using Reduced Enrollment Fee Privileges Frequently Asked Questions, PORTLAND STATE UNIV., http://www.pdx.edu/sites/www.pdx.edu.education/files/gse_fp_reduced_fee_faqs.pdf (last visited May 22, 2015); Professional Development, Tuition Reimbursement and College Vouchers, WESTON PUB. SCH., http://www.weston schools.org/index.cfm?pid=11677 (last visited May 22, 2015).

[123] *Scholarship Funds Available!*, JUDICIAL COLL. OF ARIZ., http://www.azcourts.gov/Portals/2/EDSERV/JCA/NJCScholApl.pdf (last visited May 22, 2015). Available funds shall be used in order of the following priorities, pursuant to ACJA § 1-302.M:

> 1. Newly elected or appointed judges seeking to attend suitable comprehensive national judicial education program;
> 2. Judges and court personnel who have complied with the education standards but have been unable to attend a suitable comprehensive national judicial education program within the first two years of taking office;
> 3. Judges and court personnel who have complied with the education standards and who last attended a national judicial education program three or more years;
> 4. Judge and court personnel seeking to attend seminars and educational conferences applicable to the judicial responsibilities and jurisdictional level who comply with educational standard;
> 5. Where an urgent or critical need exists, a judge may be considered for assistance more than once during the same year, assuming funds are available.

Id.

[124] *Id*.

[125] *Procedures for Out-of-State Judicial Education Requests*, ARK. JUDICIARY, https://courts.arkansas.gov/sites/default/files/tree/Policy.pdf (last visited May 22, 2015); Interview with Marty Sullivan, Dir., Ark. Judicial Branch of Educ. (Aug. 20, 2014).

[126] *Id*.

[127] *Current Operating Policies of the Institute of Continuing Judicial Education*, JUDICIAL BRANCH OF IND., http://www.in.gov/judiciary/center/files/professional-development-scholarship.pdf (last visited May 22, 2015); Interview with Julie McDonald, Educ. Att'y, Ind. Judicial Ctr. (Aug. 20, 2014).

[128] Requests must be approved by the Chief Justice of the Indiana Supreme Court. *Current Operating Policies of the Institute of Continuing Judicial Education*, *supra* note 127.

[129] Interview with Julie McDonald, Educ. Att'y, Ind. Judicial Ctr. (Sept. 8, 2014).

In Texas, the Appellate Education Fund provides roughly $1,000 for each Texas appellate judge to attend in-state and out-of-state judicial education specific to appellate judging.[130] If funds are available five months before the end of the fiscal year, judges who have used their $1,000 may apply for additional funding.[131]

B. Benefits

A voucher system starves unnecessary education programs, while expanding programs judges prefer and need. Making sustainability depend on participation enhances both the quality and quantity of programming. Vouchers also promote accountability, incentivizing judicial educators to develop more effective programs. Judges thus should have more choices for educational offerings, which more closely fit their needs.

Additionally, vouchers may encourage law schools and private organizations to host judicial education programs without the controversy surrounding the private funding of judicial education. If the educational offering is valuable, the enterprise should be sustainable, thereby reducing the need for outside funding. This would also force programs to keep unnecessary costs (e.g., exotic locales) to a minimum, while still encouraging quality programming. Although the FJC and state judicial organizations may continue as the primary judicial education providers, vouchers allow other providers to enter the market.

Vouchers also provide evidence of judges' educational preferences without the administrative and logistical burdens of surveys. The most valuable programs should thrive, thus providing direct evidence of education programs judges feel are necessary. These programs are self-validating, without constant evaluation and re-evaluation. Similarly, vouchers allow new groups to offer a wider range of topics or purposes for judicial education. Unlike a yearly judicial survey assessing only judges' preferences, vouchers let outsiders promote diverse judicial education. For example, those who promote judicial education as a means to increase access to justice and reform inequalities in the judicial system, can more easily offer programming than under the present system.

In sum, vouchers would likely increase participation rates in judicial education by increasing the diversity of offerings and providers, and better tailoring judicial education to judges' preferences.

C. Challenges

Like surveys, vouchers present challenges. One concern is diverting funds from the FJC and state judicial education organizations, many of which devote significant time and resources to studying and providing continuing judicial education.[132] If these organizations weaken, the number and quality of judicial educa-

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[130] *Appellate Education Fund (AEF) Policy*, TEX. CTR. FOR THE JUDICIARY, http://www.yourhonor.com/img/cms/assets/data/AEFPolicy.pdf (last visited May 22, 2015); Interview with Debra Malkiewicz, Accountant, Tex. Ctr. for the Judiciary (Aug. 21, 2014).

[131] *Id*.

[132] The FJC has an annual budget of approximately $21,000,000. EDUCATION AND RESEARCH FOR THE UNITED STATES FEDERAL COURTS, *supra* note 31, at 1. States budgets for judicial education vary

tion programs may decrease. Reduced funding for the FJC and state judicial education organizations may also threaten their long-term, strategic planning capabilities. These organizations depend on dedicated staff, who are experienced experts on judicial education. With reduced funding, these organizations may lose key staff, undermining their specialized research and planning.

At the same time, entry costs of designing, developing, and implementing continuing-judicial-education may deter new providers, resulting in fewer total programs. A voucher system may also require oversight of accreditation, especially in mandatory judicial education states. While a voucher system incentivizes programs better tailored to judges' needs and preferences, the system may also encourage relaxed standards on content, attendance, and participation. Unmonitored, this could degrade the overall quality of programming provided and lead to programs with widely varying levels of success.

CONCLUSION

Judicial education has advanced significantly over the last half century.[133] Though progressing, it still is challenging to provide meaningful professional education to *all* judges.[134] Although scholars and judicial educators continue to refine processes for educating the judiciary, there is room for improvement. Many recognize that judges' interests and needs should be at the heart of judicial education programs.[135] But there are currently few systematic, comprehensive, or evidence-based mechanisms for determining these needs. Connecting judicial education to judicial preferences and needs — with surveys or vouchers — presents two feasible solutions to enhance the administration of justice.

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from as little as $5,000 to as much as millions of dollars. WHITE & CONNER, *supra* note 2, at app. 2B.A.

[133] Murrell & Gould, *supra* note 22.

[134] Clark, *supra* note 10, at 546.

[135] Claxton, *supra* note 17, at 14.