

# Transforming 21st Century Education

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The National Judicial College (NJC) gathered the foremost judicial education experts to discuss how the judicial education field can best educate U.S. trial court judges at every stage in their careers. Some judges enter the judicial profession with no specialized education or training about the judicial role. Yet, society asks these professionals to make often life-changing decisions during their first days on the job. During the 2.5-day *Transforming 21st Century Judicial Education* symposium held at NJC in Reno, Nevada, the experts provided suggestions, engaged in debates, and offered resources.

During the symposium, the participants agreed that a number of paradoxes exist. For instance, core competencies have been established for court administrators and judicial educators, but no U.S. entity has ever drafted core competencies for judges. As a result, most U.S. judicial education efforts aren't based upon any type of guiding curricula. Rather, most state judicial education organizations use committees of judges, who are not professional educators, to select the educational topics for their annual conferences.

Judge Andre Davis (ret.), a fourth circuit court of appeals judge and now Baltimore's city solicitor, commented that "our current judicial education model needs to step into the 21st Century. No good reason exists for the sporadic nature of judicial education." Diane Cowdrey, an experienced judicial branch educator from California, commented that many educational programs around the country would benefit from a curriculum-based approach to education. "How do we know that the judge presiding over a case has the educational background and experience to hear the case? When most states provide one-hour sessions on a variety of subject matters, most judges lack the in-depth knowledge that our increasingly complex society demands."

Maureen Conner, professor emerita at Michigan State Uni-

versity, former judicial educator for Michigan and Illinois, and former director for the Judicial Education Reference, Information and Technical Transfer (JERITT) Project and the MSU Judicial Administration Program, noted that "[m]ost judicial education in the country relies on the venerable lecture. The vast majority of presenters don't have any background or knowledge about adult education philosophy and practice, which dramatically and negatively impacts knowledge and skills retention."

The Symposium participants identified the educational needs of all levels of judges, from the judge who has just been elected or appointed to the experienced judge. The hope is that this information will assist judicial education efforts across the country. The participants also highlighted what would help the judicial education field to progress. Judge Madeleine Landrieu (ret.), a former Louisiana Court of Appeals judge and now the dean at Loyola University College of Law, stated, "The judicial education field is at a cross-roads. In its infancy, judges participated in courses that continuing legal education providers designed for lawyers. No courses existed to teach judges about the intricacies of decision making, judicial writing, effective communication skills, and the myriad of skills that judges must exercise each day on the bench, in their chambers, and in the community. Today, while these important courses exist, no systematic method exists for ensuring that all judges have access to the individualized learning that they need."

This *Transforming 21st Century Judicial Education Report* provides suggestions for further research in three primary areas. First, the judicial education field needs data regarding who the new judges are (e.g., age, gender, racial identity, previous experience, etc.). American University published a study in 2004 that gathered and analyzed this data. However, making educational decisions using 14-year-old data is fraught with peril.

## ACKNOWLEDGMENTS:

Judge William Dressel (ret.), president emeritus and a former trial judge in Colorado for 22 years, and I moderated the 2.5-day *Transforming 21st Century Judicial Education* symposium. NJC chose the participants because of their relevant background and experience in educating judges in the United States. The participants were as follows: Hon. Efrain Alvarado (NY); Dr. Jan Bouch (VT); William Brunson, Esq. (NV) (moderator); Hon. Eileen Burlison (CT); Hon. Thomas E. Cheffins (AR); Hon. Charles Cloud (ret.) (VA) (Cherokee Nation); Dr. Maureen Conner (MI); Dr. Diane Cowdrey (CA); Hon. Charles Daniels (NM); Hon. Amy Davenport (VT); Hon. Andre Davis (ret.) (MD); Hon. William Dressel (ret.) (HI) (moderator); Claudia Fernandes, M.P.A. (CA); Christine Folsom, Esq. (WA) (Choctaw Nation); Irene Hart, Esq. (NV); Hon. Toni Higginbotham (LA); Hon. Candace Hissong (OR); John Holcomb, Esq. (FL); Hon. Gregory Holiday (MI); Hon. Peggy Fulton Hora (ret.) (CA); Hon. William Kelly

(MI); Natalie Knowlton, J.D. (CO); Peter Koelling, Esq. (NL); Professor Phyllis Williams Kotey (FL); Hon. Kathleen Kroll (FL); Hon. Madeleine Landrieu (ret.) (LA); Hon. Denise Langford-Morris (MI); Jennifer Leal (CA) (Washoe Tribe); Hon. Patricia Lenzi (CA) (St. Regis Mohawk); Melody Luetkehans, Esq. (NV); Martha Martin, J.D. (FL); John Newell, J.D. (NM); Michele Oken (CA); Kimberly Papillon, J.D. (CA); Hon. G. William Rice (OK) (United Keetoowah Band of Cherokee Indians); Hon. Margaret Ross (WA); Hon. Daniel Ryan (ret.), Ph.D. (MI); Joseph Sawyer (NV); Jeffrey Schrade (AZ); Hon. Miriam Shearing (ret.) (NV); Hon. V. Lee Sinclair Jr. (ret.) (OH); Hon. Steve Smith (TX); Marty Sullivan (AR); Hon. Ann Timmer (AZ); Hon. Jack Weil (VA); Katheryn Yetter, J.D. (NV); Dr. Gordon Zimmerman (NV); and Dr. Isaiah Zimmerman (VA).

I could not have written this publication without the insights, knowledge, and shared discussions of these well-respected individuals. Any errors or omissions are solely mine.

Second, the judicial education field needs a definition of the core competencies of judges. From this work, judicial education entities can develop curriculum-based judicial education. As one Symposium commentator said, using a curriculum-based approach will ensure that judicial education entities avoid using a “flavor-of-the-day” approach to education.

Third, the JERITT Project collected and evaluated trends in judicial education from 1989 to 2003. Since 2003, no entity has done that work. As a result, no good data exist for what the states are doing with regard to judicial education. That information will assist users in defining gaps in providing judicial education.

This report addresses the funding of state and national judicial education, how to identify and support judicial education faculty, online learning, and resources for judges and judicial educators. Next, the report explores how we currently educate judges and also potential innovations, which may help improve judicial education. The report discusses the debate as to whether having mandatory judicial education is a benefit and suggests the possibility of allowing judges to take sabbaticals to implement justice improvement projects or write articles. Finally, the report describes a novel approach for pursuing court improvement projects that will benefit both judges and their court systems.

## FUNDING OF NATIONAL AND STATE JUDICIAL EDUCATION

Judicial education budgets are subject to the fluctuations of state budgets. “Though the national economy is in its seventh year of recovery from the Great Recession, many states are still facing major funding gaps that have locked legislatures in protracted battles with governors. In some states, lawmakers have gone into overtime with unresolved budgets, special sessions and threats of widespread government layoffs. Only 25 states have passed budgets, according to the National Association of State Budget Officers, which tracks legislative activity.”<sup>1</sup> These budget gaps generally result in fewer opportunities for national judicial education. They may also result in restricted programming for in-state courses such as annual conferences and specialized topics.

To provide educational opportunities when funding is more restricted, many states are utilizing online learning, primarily webcasting, to provide additional educational opportunities for judges and court staff.

Two primary sources of scholarships for judges to attend national judicial education courses come from the State Justice Institute (SJI) and the U.S. Department of Justice, Bureau of Justice Assistance (BJA). In 2015, SJI’s funding totaled \$5,121,000.<sup>2</sup> Of that amount, SJI allocated approximately \$175,000 to its Education Support Program, which amounted to approximately 3.4% of its funding. Conversely, BJA doesn’t

make an annual allocation to annual judicial education. Rather, from 2011 to 2015, BJA allowed NJC to allocate \$514,000 of a total grant amount of \$1.2 million to scholarships, or approximately 43%. Today, BJA doesn’t allocate any funds for scholarships.

With these minor federal amounts devoted to national judicial education, judges generally seek funding from their states or localities. A very small percentage pays for education out of their own resources.

## FACULTY IDENTIFICATION AND SUPPORT

The Symposium participants suggested that identification of excellent faculty members is a continuing struggle for all judicial education entities. One potential risk in choosing faculty members, especially for national providers, is choosing judges or other professionals who are not respected in their own states. This situation can be alleviated by ensuring that state judicial educators (SJE) or chief/presiding judges are consulted before making faculty selections. Judicial educators can also identify faculty by noticing new judges who participate in courses and who evidence a passion for education and knowledge. The educators can then provide support and encouragement for a future teaching assignment. Other potential instructors can be found in online courses where the SJE identifies learners who perform particularly well. Most judicial educators make every effort to diversify their faculties, which will only improve upon the overall education experiences because more points of view are represented.

Once faculty members have been identified, they need to know what their responsibilities are. In other words, SJE have to be clear in setting expectations for faculty. They should stress that teaching adults is a labor-intensive process and a serious commitment. Unless faculty members are willing to put in adequate preparation time, they should not accept a teaching position. Next, SJE should make it clear that faculty members are expected to keep participants’ minds active by using interactive teaching methods (e.g., quizzes, case studies, debates, learning games, etc.). They should create learning environments where their students have the ability to express their knowledge and experience. However, the use of interactivity should not give faculty members a license to neglect preparation because they simply host a large discussion group. This can result in a session where the presenter and students simply share ignorance. SJE should ensure their faculty members have access to adult education information. Faculty should know that the best predictor of learning outcomes is teacher behavior; it even trumps learner motivation. A presenter who evidences excitement and passion for the subject matter will ensure greater retention than the instructor who is obviously unexcited about the subject matter. If the instructor is uninterested in the subject matter, how can he or she expect the students to be interested?

## Footnotes

1. Julie Bosman, *States Confront Wide Budget Gaps Even After Years of Recovery*, N.Y. TIMES, June 8, 2015 at A1, available at <https://www.nytimes.com/2015/06/08/us/states-confront-wide-budget-gaps-even-after-years-of-recovery.html>.

2. *Update on FY 2016 Appropriations*, ST. JUST. INST., <http://www.sji.gov/update-on-fy-2016-appropriations/> (last visited Sept. 6, 2018).

In some cases, judges don't want to teach, but they want to be involved in the education process. In that case, state judicial educators can employ those individuals as resource persons who can assist with the development of lesson plans and the overall curriculum. Anyone who has a passion for education should be able to assist in some way. Recognition of both roles is highly important, so all feel honored for their roles in education. Another possibility is to provide faculty development such as NJC's course *Designing and Presenting Programs Effectively*.<sup>3</sup> This course is helpful for any judicial educator who wants to improve his or her teaching ability.

Most state judicial education programs don't have the staff resources to provide individual support to their faculty. Larger states and national providers may have more of an opportunity to provide support in developing PowerPoint presentations or lesson plans. Because the judiciary and topics are constantly in flux, SJE's and national providers must continually vet new faculty and keep their faculty rosters up-to-date. SJE's also can pair new faculty with experienced teachers (i.e., set up faculty mentoring) to assist new faculty members. SJE's should share the results of any needs assessments with faculty members, so they know why their topics are needed. Similarly, evaluations can be fruitful instruments for providing helpful suggestions to faculty over time.

Removing or working with poorly performing faculty is a dilemma that all judicial education entities must confront. This process can be especially difficult in a state where the poor performing faculty member is chair of the education committee or otherwise wields power over those attempting to make beneficial changes to educational programming.

The most recent *Issues and Trends in Judicial Education* noted that judges comprise 95% of all faculty.<sup>4</sup> As judges, they are extremely busy, full-time employees, so how can they find the time to prepare for their teaching assignments? Some are quite skillful at managing their cases with high settlement rates, which leaves them time to prepare and teach. Others don't hesitate to work on evenings and weekends because they truly enjoy creating and delivering presentations. Still others seek administrative leave when their states allow for it. As more states embark on online learning, they will find those efforts can be even more demanding than face-to-face education.

To support volunteer faculty, SJE's should find ways to reward them for their efforts because they aren't being paid monetarily. SJE's should find ways to recognize the faculty for their efforts with regular positive reinforcement in public, preferably in the presence of their peers. Another possibility is to provide them with continuing legal education (CLE) or continuing judicial education (CJE) credit for their efforts. This would be true whether they serve as curriculum developers, faculty, or facilitators.

SJE's will need to work with their bar CLE/CJE entities to accomplish the granting of CLE/CJE. SJE's should also consider providing small token gifts to the faculty. Anything that will make faculty members feel "special" will work.

## ONLINE LEARNING

Online learning in judicial education has become much more common in recent years. For instance, in 2017, The National Judicial College educated 3,800 participants utilizing the internet. As a comparison, the NJC educated 6,639 participants in face-to-face courses. Accordingly, the NJC educated more than 36% of its participants via online learning, which dwarfs the NJC's early years in online learning. The states of California, Florida, Hawaii, Idaho, Indiana, Iowa, Missouri, Minnesota, New Mexico, New York, North Dakota, Ohio, Utah, Virginia, and Washington also use online learning opportunities to supplement their educational offerings.<sup>5</sup> Most of the states are utilizing synchronous web conferences (e.g., Adobe Connect, Cisco WebEx, Citrix GoToWebinar, and Zoom) as their primary online learning platforms, although more and more states are experimenting with learning management systems. SJE's have reported using the following systems: Bridge, Canvas, Cornerstone, SumTotal Growth Edition, TraCorp, and Ziiva.

Likewise, some states and national providers are experimenting with blended models of education, which feature face-to-face classes along with synchronous and asynchronous educational opportunities. Some Symposium participants complained participants often won't participate in online learning that precedes or follows a face-to-face course because of fear of technology, lack of knowledge about using technology, scheduling difficulties, apathy, and concern that online learning isn't worthwhile, among other reasons.

Despite these concerns, research has shown that blended learning is superior to face-to-face education or online learning alone. The United States Department of Education found evidence that blended learning (blending synchronous and asynchronous modalities, or blending the face-to-face classroom with synchronous and/or asynchronous modalities) is more effective than face-to-face or online learning by themselves. The meta-study is "the result of a meta-analysis involving research published from 1996 to July 2008, in which [the U.S. Department of Education] sifted through more than 1,100 empirical studies of online learning, 46 of which provided sufficient data to compute or estimate 51 independent effect sizes," according to the report.<sup>6</sup> Likewise, Babson Survey Research Group reported in February 2015, "[t]he percent of academic leaders rating the learning outcomes in online education as the same or superior to those in the face-to-face instruction grew from

3. *Designing & Presenting Programs Effectively: A Faculty Development Workshop*, NAT'L JUD. C., <http://www.judges.org/faculty-development-workshop-1510/>.
4. CATHARINE M. WHITE & MAUREEN E. CONNER, JUDICIAL EDUC. REFERENCE, INFO. AND TECHNICAL TRANSFER PROJECT, *ISSUES AND TRENDS IN JUDICIAL BRANCH EDUCATION* 139 (2005).
5. Interview with Joseph Sawyer (Aug. 14, 2018) (As the online learning director for the NJC, Mr. Sawyer has been cataloguing

the use of online learning by each state). Please note this list may not be exhaustive.

6. U.S. DEP'T EDUC., OFF. PLAN., EVALUATION, AND POL'Y DEV., *EVALUATION EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES* (2010), available at <https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>; see also Samuel Riffell & Duncan Sibley, *Using Web-Based Instruction to Improve Large Undergraduate Biol-*

57.2% in 2003 to 77.0% in 2012.”<sup>7</sup> In the same study, the authors reported, “[t]he proportion of academic leaders who believe the learning outcomes for online education are inferior to those of face-to-face instruction remained the same as last year at 25.9%.”<sup>8</sup> Perhaps more importantly, the study showed “[t]he proportion of academic leaders who report that online learning is critical to their institution’s long term strategy has grown from 48.8% to 70.8% this year.”<sup>9</sup>

While there are very few blended learning courses offered nationally as of 2018, more U.S. judicial education organizations will begin implementing the blended approach as their constituencies join the bench with online learning experience. Many judges still don’t participate in the pre- or post-course learning opportunities, only participating in the face-to-face portion of courses. The Symposium participants noted a potential method of motivating the participants to attend the *entire* course. Rather than referring to learning events as pre- or post-course, it’s important to define those events as “part of the course.” For instance, a course may include one webcast before the face-to-face event, one three-day face-to-face event, and two webcasts after the face-to-face event. These five events constitute the course. Additionally, it may be fruitful to ask the judges to “pledge” that they will complete the *entire* course (including the webcasts and face-to-face event).

## RESOURCES FOR JUDGES AND JUDICIAL EDUCATORS

During the Symposium, the participants identified a number of potential resources that would be helpful for judges. For instance, it would be helpful for a court system to provide new judges with a list of judges and their expertise, so the new judges have someone to contact when they have cases outside their comfort zones. Likewise, SJs could benefit from the use of event apps for their annual conferences. The apps can provide the agenda, sponsor and presenter rosters, presenter biographies, facility layout, things to do in the conference location, and local weather.

The National Center for State Courts (NCSC) has a library of more than 100 topics that judges can access.<sup>10</sup> The categories include access and fairness, courthouse facilities, civil, criminal, court management, problem-solving courts, and technology,

among many others.<sup>11</sup> NCSC also acquired the American Judicature Society’s Center for Judicial Ethics. If judges need information on court technology innovations, the best objective source of information is NCSC. It features an excellent blog curated by James McMillan and John Matthias located here: <https://courttechbulletin.blogspot.com/p/links-and-resources.html>.

The National Council for Juvenile and Family Court Judges has an extensive resource library that contains best practices for family and juvenile judges to rule on child abuse and neglect, domestic violence, juvenile justice, and substance abuse, among many other types of cases.<sup>12</sup>

Likewise, the NJC has resources for judges including information about capital cases, commercial driver’s licensing laws, mental competency, and sentencing sex offenders, among others.<sup>13</sup>

For judicial educators, the primary resource is the National Association of State Judicial Educators (NASJE). NASJE’s website features a newsletter with recent articles discussing how judicial educators can lead through education, how they can make changes to their educational systems in a tough economy, and how they can educate about diversity, fairness, and access.<sup>14</sup> The site also showcases resources such as access and fairness, curriculum designs, essential readings, tech corner, a link to *Thiagi Gameblog* (a resources for using learning games in education), and a link to *Judicial Balance*, among others.<sup>15</sup>

## NEEDED RESEARCH AND DEVELOPMENT

The Symposium participants identified a number of areas where more information would be helpful. For instance, no up-to-date data exist regarding the composition of the U.S. judiciary (e.g., age, gender, racial identity, previous experience, etc.). American University published the last study in 2004, partially utilizing data provided by the *American Bench*, a resource that suggests it has data for more than “20,000 judges in all levels of federal, state and local courts.”<sup>16</sup> However, according to the National Center for State Courts, there are approximately 28,558 trial and appellate judges in the U.S.<sup>17</sup> Consequently, the composition of the judiciary isn’t fully available from that resource. The data from the National Center for State Courts indicate there are 27,179 trial judges, and 1,379 appellate judges.<sup>18</sup> The majority of the states didn’t complete

ogy Courses: *An Evaluation of a Hybrid Course Format*, 44 COMPUTERS & EDUC. 217 (2005) (finding that online assignments were just as effective, if not more so, than traditional lectures; and classroom-based active-learning exercises were more effective when coupled with online assignments. Instructors of large lecture courses could improve the learning environment by adopting hybrid course formats).

7. I. ELAINE ALLEN & JEFF SEAMAN, GRADE LEVEL: TRACKING ONLINE EDUCATION IN THE UNITED STATES 5 (Feb. 2015) (The Babson Survey Research Group focuses on higher, graduate, and post-graduate education). The research shows that online learning is effective in general.

8. *Id.*

9. *Id.*

10. *Information and Resources*, NAT’L CTR. ST. CTS., <http://www.ncsc.org/information-and-resources.aspx> (last visited Aug. 10, 2018).

11. *Browse by Category*, NAT’L CTR. ST. CTS.,

<https://www.ncsc.org/Information-and-Resources/Browse-by-Category.aspx> (last visited Aug. 10, 2018).

12. *Resource Library*, NAT’L COUNCIL JUV. AND FAM. CT. JUDGES, <http://www.ncjfcj.org/resource-library> (last visited Aug. 10, 2018).

13. *Resources*, NAT’L JUD. C., <http://www.judges.org/resources/> (last visited Aug. 10, 2018).

14. *News*, NAT’L ASS’N. ST. JUD. EDUCATORS, <http://nasje.org/category/news/> (last visited Aug. 10, 2018).

15. NAT’L ASS’N. ST. JUD. EDUCATORS, <http://nasje.org/> (last visited Aug. 10, 2018).

16. *The American Bench*, FORSTER-LONG, LLC, <https://www.forster-long.com/americanbench> (last visited Aug. 10, 2018) (advertisement for an annual biographical reference guide to American judges and courts).

17. *Number of Trial Court Judges*, NAT’L CTR. ST. CTS., <http://tinyurl.com/number-trial-ct-judges> (last visited Aug. 10, 2018).

18. *Id.*

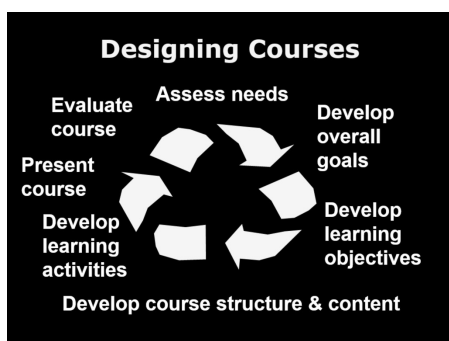
the surveys that the National Center for State Courts utilized in its attempt to identify judges' race and their ethnicity, and no questions were asked about previous experience before joining the bench.<sup>19</sup>

Likewise, the Symposium participants noted that no information exists about the core competencies of judges. While this was true at the time of the Symposium, NCSC produced a report in December 2017. The *Elements of Judicial Excellence* framework project provides a "systematic exploration of what state trial court judges think it takes to be a 'good judge' and the general types of knowledge, skills, abilities, and other characteristics they say are important to judicial excellence." The resource can be found at <https://tinyurl.com/Judicial-Excellence>.

From 1991 to 2003, John Hudzik wrote the first issue and then Maureen Conner wrote later *Issues and Trends in Judicial Education*, a biennial publication, which researched, catalogued, and analyzed how each state educated its judiciary. The research assessed the personnel, budget and finances, programs and services, and organization and governance structures of seven national and as many state judicial branch education organizations that would participate. This information was extremely helpful for defining the judicial education efforts of each state. It not only highlighted the content of the courses, but also how the courses were presented (e.g., defining methods of instruction). No resource currently exists that provides this research about the ongoing efforts of national and state judicial education entities.

## EDUCATING JUDGES

During the Symposium, the participants discussed not only the content of what judges need to know, but also how to effectively provide that education and training. To ensure successful judicial education and training, judicial educators must use state-of-the-art adult education philosophies and practices. From performing needs assessments to evaluating courses for their effectiveness, judicial educators must examine every part of their work to ensure they are using best practices. Figure One shows the model for creating judicial education programming.



In honoring adult education practice, judicial educators first should conduct a needs assessment. The educational need is the gap or discrepancy between the existing level of knowledge or skills and the desired level of knowledge or skill. Depending

upon the course being designed, needs assessment contributors should include future participants and faculty members and may include law enforcement, litigants, jurors, witnesses, court watchers, treatment providers, probation officers, medical treatment professionals, and public agencies (e.g., child care and support, energy assistance, housing, transportation, food, financial help, medical, educational and vocational training), among others. Symposium participants debated whether members of the public should serve in this role. Again, the answer is largely dependent upon the type of education and training that the state judicial education organization is developing.

Next, the judicial educator should develop the overall goals for the course. The goals can answer the following questions: (1) why are we developing the course?; (2) what are the faculty's goals?; and (3) what are the participants' goals? The goals are usually greater than the course time will allow.

To focus the course, the judicial educator must define learning objectives that are achievable in the amount of time devoted to each topic. Learning objectives are learner-centered, measurable or observable, and clear. They define what the participants will be able to do after the session that they weren't able to do before the session. Learning objectives answer the question of "what's in it for me?" (the learner). The Symposium participants noted that all judges, especially new ones, need an understanding of why they're doing what they're doing. A good educational design will provide those answers.

Once the judicial educator has defined the learning objectives, he or she can begin to develop the overall course structure and content. Sequencing of topics happens at this stage. The judicial education professional needs to define how long the breaks are, whether there is a presenter at lunch, and other aspects of the course. Is it advisable to show a movie after lunch? Indeed, what should you serve at lunch to ensure better student attention? What factor does temperature or room comfort play in learner retention? One very experienced judicial educator told a story of how he felt his job was to ensure that the courses and presenters were all exceptional. It was not his job to be concerned about logistical matters such as lunches, temperature, hotel rooms, etc. A senior appellate judge kindly explained to him that without those logistical arrangements being held in high regard, the learners will remember more about the cold chicken and the stifling room than they did about the intricacies of the subject matter that they were learning. In short, a judicial educator needs to concern herself with the entire experience of the learners, not just the content.

While learning objectives define *what* the participants will be able to do differently, learning activities are *how* the instructor will assist the participants in achieving those objectives. Types of learning activities include mini-lectures, brainstorming, debates, case studies, large and small group discussions, learning games, role plays, self-assessments (i.e., quizzes), videos, and writing exercises, among others.<sup>20</sup>

Symposium participants discussed the importance of using a variety of learning activities. For example, an instructor

19. *Id.*

20. WILLIAM J. BRUNSON, BEST PRACTICES FOR USING LEARNING ACTIVI-

TIES (Apr. 2018) (checklist on file at the National Judicial College).

could engage the participants in a mock bail hearing to ascertain whether they have grasped the purposes of bail. Likewise, Symposium participants recommended video recording a two-hour trial and building in pauses with questions to answer for the judicial participants. The students would define how they would respond to different factual scenarios. For new judges, this may be the first time that they see the courtroom from the position of an arbiter, rather than as an advocate.

Some Symposium participants recommended the use of “retreats” to reinvigorate judges who are very experienced and/or utilizing those judges as mentors/coaches. Interactive learning activities or experiential learning opportunities (ELOs) have the potential to change the paradigm of judicial education if done well. NJC utilizes a variety of ELOs in its offerings. For instance, the NJC offers a course in Ashland, Oregon, in conjunction with the Oregon Shakespeare Festival. In that course, participants attend the plays and discuss the ethical dilemmas posed within the plays as those dilemmas relate to the judiciary.<sup>21</sup> Further, the judicial participants read books to spark in-depth discussions and analyses of ethical behavior and justice.<sup>22</sup> Likewise, NJC’s course *When Justice Fails: Threats to the Independence of the Judiciary* asks participants to tour the Holocaust Museum in Washington, D.C. to help them decipher why the judiciary failed to uphold Germany’s laws in Nazi Germany.<sup>23</sup> The participants compare that failure to modern-day failures of justice.

Quizzes and tests also can improve retention. Many judicial educators inappropriately believe their learners dislike self-assessments or quizzes. Through its evaluation instruments, NJC has found that the participants don’t necessarily dislike assessments if they are *truly* self-assessments (only to be used by the learners to self-assess their own knowledge) and not used by instructors to measure the participant’s success. In other words, if the educator removes the consequences of a poor performance, the quiz doesn’t result in displeasure or antipathy. Researchers found that testing improves retention rates and that “[r]epeated retrieval induced through testing (and not repeated encoding during additional study) produces large positive effects on long-term retention.”<sup>24</sup> Quizzes and tests can be objective or subjective, the latter usually requiring the participant to draft responses in essays.

Another type of assessment involves personal identification or definition such as the *Implicit Association Test*. It “measures attitudes and beliefs that people may be unwilling or unable to report.”<sup>25</sup> The test is especially important for judges because it may show they have implicit biases or attitudes that they don’t know about. “For example, [a judge] may believe that women and men should be equally associated with science, but [her] automatic associations could show that [she] (like many others) associate men with science more than [she] associate[s]

women with science.”<sup>26</sup> Symposium participants suggested bias education is extremely important. However, at least one participant cautioned that identifying the course as a bias or diversity course will change attitudes and hamper learning. A better title is the *Neuroscience of Decision Making*. Some participants suggested it’s important to test biases before the course to identify the baseline. Next, the presenters would work with the participants on dismantling biases. Finally, the organizers would then test participant biases again to ascertain if there has been improvement.

After the instructors present the course, the judicial educator evaluates the course using an evaluation instrument. The evaluation instrument should assess whether the learning objectives have been met in addition to assessing whether the instructors were effective, clear, and enthusiastic; whether the presenters’ methods of presentation held the participants’ interest; whether the presenters managed class time well; and whether the instructional materials were beneficial in learning the topic. The Symposium participants discussed the best ways to obtain good data on what participants knew before and after the content provided. They debated about whether it’s a good practice to pre- and post-test participants to define whether measurable learning occurred. Some grant agencies, such as the U.S. Department of Justice, Bureau of Justice Assistance, now require such testing to establish that measurable learning indeed occurred. Symposium participants noted that other forms of measurement include the observation of performance rather than cognitive testing. The National Judicial College uses this approach in its faculty development workshops where the faculty members assess the teaching skills of the participants on the last day of the workshop. Retention of information is always relevant in determining the success of an educational event.

In assessing educational programs, The National Judicial College utilizes Kirkpatrick’s Model of Evaluation. The model has four levels:

**Level 1: Reactions:** Did the participants like the program? Was the material relevant to their work? Use written instruments and/or the provider may utilize focus groups. A level-one evaluation should not just include reactions toward the overall program (e.g., did you like the program?). It should also include measurement of the participants’ reactions or attitudes toward specific components of the program, such as the instructor’s mastery of the topic, learning objectives, the chosen topics, the presentation style, audiovisuals, etc. NJC recommends that (1) program attorneys evaluate directly after the course; (2) instruments use both close-ended items (rating scales) and open-ended questions; and (3) rate whether the course met the overall learning objectives.

21. *Ethical Issues in the Law*, NAT’L JUD. C., <http://www.judges.org/2018courses> (last visited Aug. 20, 2018).

22. *Id.*

23. *When Justice Fails*, NAT’L JUD. C., <http://www.judges.org/when-justice-fails-threats-to-the-independence-of-the-judiciary-2017/> (last visited Aug. 20, 2018).

24. Jeffrey D. Karpicke & Henry L. Roediger III, *The Critical Importance of Retrieval for Learning*, 319 *SCIENCE* 966, 968 (Feb. 15, 2008).

25. PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/> (last visited Aug. 20, 2018).

26. *Id.*

**Level 2: Learning:** Have the participants learned new skills, gained knowledge, or changed attitudes? The goal of a level-two evaluation is to determine what the participants learned during the course. Learning outcomes can include changes in knowledge, skills, or attitudes. Some courses will emphasize knowledge, some will emphasize skills, some will emphasize attitudes, and some will emphasize multiple learning outcomes. Educators use objective and subjective tests or quizzes to assess learning, and performance tests or asking participants to present subject matters. In addition to tests or quizzes, “it is also possible to use writing samples, performances, speeches, and other class-appropriate assessments”<sup>27</sup> such as individual presentations. Educators can measure attitudes with survey instruments (responding with Likert scale—strongly agree, agree, neutral, disagree, or strongly disagree) and open-ended questions.

**Level 3: Transfer:** Are the newly acquired skills, knowledge, or attitudes being used in the everyday environments of the participants? In a level-three evaluation, the judicial educator is assessing whether the participants changed their on-the-job-behaviors as a result of their participation in courses. If a behavior change does not occur, the judicial educator may want to determine why. In simple terms, a level-three evaluation measures whether the course had a positive effect on participants’ job performance. Educators can measure using a post-course evaluation (e.g., 3 to 6 months after the course) to assess what work behavior, if any, the learner has changed because of the course. Some educators may even utilize court watchers to assess whether the participants are using their new skills in the courtroom. Others may survey presiding judges, subordinates, lawyers, litigants, jurors, and other court users to ascertain whether the judge has applied any new techniques.

**Level 4: Results:** Has the education resulted in increased court efficiency, improved access, decreased costs, increased perceptions of fairness, reduced frequency of problems, etc.? Research institutions generally conduct this type of long-term study, which is empirical in nature. Control groups are generally required for validity. Unfortunately, it is difficult to isolate the effect of the training course because there are usually many additional causal variables operating on the level four outcome variables (i.e., the educational event is just one of many potential causes).

### IMPROVING RETENTION RATES

The Symposium participants noted the following methods of improving retention rates:

- Video record judicial presentations so student judges can review them. Research shows that repetition improves information retention.

- Offer more hands-on work right away to ensure student judges have the opportunity to experience the information, reflect upon it, theorize broader application, and apply the information to certain situations, so they can make efficient decisions.
- Provide opportunities for small-group discussions and work (i.e., providing participants with problems to solve).
- Utilize team-based learning to encourage additional verbal processing by learners.
- Use checklists for complex subject matters to ensure all necessary items are addressed.

Another method for improving retention was flipping the classroom.

### FLIPPING THE CLASSROOM (THE KHAN ACADEMY APPROACH)

Many Symposium participants expressed excitement about the prospect of flipping the classroom (Khan Academy approach), whereby participants watch lectures via recorded videos and use classroom time (face-to-face time) for application of principles. The Khan Academy uses technology to track student progress. Using a virtual dashboard, teachers can quickly decipher which students are excelling, succeeding, and falling behind. With this information they can assist struggling students and use top students to help educate those who are struggling. “Everyone in the room is working at their own level and pushing themselves forward at their own pace. By providing lesson scaffolds in various ways, I am able to make sure that all of my students, regardless of their *individualized learning plan* goals . . . are working on grade-level standards.”<sup>28</sup>

Conversely, many Symposium participants argued that flipping the classroom will be difficult, if not impossible, especially considering the audiences at annual conferences. They reasoned that judges are reluctant or unwilling to work, before the face-to-face courses or conferences (i.e., unwilling to do homework). Without repeated prompting, the judges are not likely to do the homework.

### INDIVIDUALIZED LEARNING PLANS OR INDIVIDUAL EDUCATION PLANS (IEPS)

Symposium participants also addressed the importance of creating or facilitating the creation of individualized learning plans or individual education plans (IEPs) for judges. The participants expressed interest in having judges complete self-assessment instruments in which the judges would define their own strengths and weaknesses. The participants thought it would be beneficial for a person to be designated to review the individualized education plan with the judge in a confidential manner. Some thought that mentors/coaches could serve in that role. Others believed that state judicial educators could review those plans with the judges, or they could organize an appropriate pairing with a mentor/coach.

27. Ludmila Praslova, *Adaptation of Kirkpatrick’s Four Level Model of Training Criteria to Assessment of Learning Outcomes and Program Evaluation in Higher Education*, 22 EDUC. ASSESSMENT EVALUATION & ACCOUNTABILITY 215, 220 (July 2010).

28. *Khan Academy Teacher Published in Education Week*, KHAN ACAD., <http://schools.khanacademy.org/post/89390190303/khan-academy-teacher-published-in-education-week> (last visited Aug. 20, 2018) (teacher testimonial) (emphasis added).

States have varied resources for brand new judges. Some judges have access to a tremendous number of resources. Others don't have access to much. Nevertheless, if a national instrument was created, it would help all states address the varied educational needs of their judges. Some of the Symposium participants expressed that it would be a best practice to assign new judges to a limited jurisdiction first (if possible) so they can transition into their new roles with greater ease. The IEP would provide more detailed information about best assignments for easing judges, whether experienced or not, into their new roles.

### MENTORING AND COACHING

The majority of Symposium participants supported the idea of using mentors/coaches to assist judges, especially new ones. A number of judicial education entities utilize mentoring to supplement their judicial education efforts. For example, Florida has had a formal mentoring program for judges since 1991.<sup>29</sup> In that program, the courts pair newly elected and appointed trial court judges with more experienced members of the judiciary.<sup>30</sup> The purpose of the program is to “make the transition from the bar to the bench as seamless as possible.”<sup>31</sup> It provides judges with access to critical information, court resources, and one-to-one guidance for judges immediately upon their taking the bench.<sup>32</sup> In New York, they utilize judicial hearing officers (JHO), who are retired judges, as mentors. The JHOs worked without pay when the JHO program was suspended for monetary reasons. In Maryland, new trial judges are assigned to a mentoring program. “The purpose of the New Trial Judge Mentoring Program . . . is to assist New Trial Judges in the transition from attorney to judge and provide support to the New Trial Judges prior to and following the mandatory New Trial Judges’ Judicial Education Program.”<sup>33</sup>

Dr. Maureen Conner and William Anderson identify the elements of mentoring as follows:

- 1) [M]entoring is a professional work-related relationship,
- 2) between an older more experienced member of a profession or organization, and
- 3) a lesser-experienced newcomer,
- 4) where the senior member offers advice and guidance designed to enhance the newcomer’s skill development and socialization within the profession or organization.<sup>34</sup>

One likely result of mentoring is to provide collegial support to new judges, so they can alleviate the stress of the new role.<sup>35</sup>

A smaller number of states also utilize coaching to improve judicial performance. For instance, Massachusetts instituted

| <b>FOCUS</b>         | <b>MENTORING</b>   | <b>COACHING</b>  |
|----------------------|--|--|
| Definition and Focus | A more informal association focused on building a two-way, mutually beneficial relationship for long-term career movement.   | A more formal structured association focused on improvements in behavior and performance to resolve present work issues or handle specific aspects of the job.   |
| Role                 | Talking with a person who has identified his needs before entering into a mentoring relationship. The emphasis is on active listening, providing information, making suggestions, and establishing connections.  | Talking to a person, identifying what he needs, and developing an action plan. The emphasis is on instruction, assessing, and monitoring.  |
| Approach             | This is a self-directed modus operandi whereby participants have choices. This approach can begin with a self-matching process and continue throughout the relationship using a committed timeline to determine how often and where individuals will meet, identify goals, and so forth. | A structured modus operandi is more frequently used whereby participants are working within a narrower perspective; their agenda is more specific, shorter in duration, and oriented toward certain results. Usually a coach is assigned to an employee. |
| Tools                | The most important tool is the Mentoring Agreement—developed, completed, and signed by both participants. This document formalizes commitment to the mentoring relationship. Items include individual goals, learning content, a meeting schedule, and communication methods.            | Depending on the individual situation, various assessment instruments can be used such as skills-training activities and teaching evaluations. A contract can be issued regarding the problem to be resolved or skills to be learned.                    |

29. See *Mentoring*, FLORIDA CTS., <http://www.flcourts.org/publications-reports-stats/judiciary-education/mentoring.shtml> (last visited Aug. 20, 2018).

30. *Id.*

31. *Id.*

32. *Id.*

33. *In the Court of Appeals of Maryland Administrative Order on Orientation and Mentoring for New Trial Judges*, MARYLAND CTS., <https://mdcourts.gov/sites/default/files/admin-orders/>

20160825orientationmentoringnewtrialjudges.pdf (last visited Aug. 20, 2018).

34. MAUREEN E. CONNER & WILLIAM A. ANDERSON, *JUDICIAL EDUC. REFERENCE, INFO. AND TECHNICAL TRANSFER PROJECT, MENTORING IN THE JUDICIARY* 5 (2d ed. 2005), available at <http://cj.msu.edu/assets/JERITT-Monograph-2-Mentoring-in-the-Judiciary.pdf>.

35. See Celeste Bremer, *Reducing Judicial Stress Through Mentoring*, 87 *JUDICATURE* 244, 245 (Mar.–Apr. 2004).



the J2J Program, which is a collaborative, judge-to-judge peer-mentor coaching program.<sup>36</sup> While mentoring and coaching have many similar characteristics, they also have differences as outlined in Table 1.<sup>37</sup>

Working with the judicial education division in Massachusetts, Jan and Steve Bouch designed the coaching/mentoring program to build and grow the individual capacity of judges to provide justice.<sup>38</sup> J2J assists in “transitioning newly-appointed judges to the bench and integrating them into the judicial system, acts as a resource to address performance issues, and is an ongoing network of care and support for judges throughout their careers.”<sup>39</sup> The program provided structure for inculcating a mentoring and coaching culture. To attract talented mentors and coaches, the founders provided a great deal of positive reinforcement and made it an honor to be selected as a mentor and coach. They selected *respected* retired judges as the mentors/coaches. They also provided education and training on how to successfully perform as mentors/coaches. Finally, they gave new judges (the protégés) the ability to choose their mentors/coaches because an improper pairing will result in disassociation.

At the outset of the relationship, mentors/coaches contacted new judges by email to welcome and let them know they can contact them any time for questions. The coaches also had access to standardized information about what to expect when transitioning to the bench (logistics, family issues, etc.). In some cases, J2J supplied subject-matter expert mentors/coaches to assist new judges with regard to specialized topics.

For marketing a coaching or mentoring program, Symposium participants suggested that if the state establishes a mentoring or coaching program as something elite, then people will want to do it. They also opined that many retired judges want to feel useful and participating in a mentoring or coaching program can give them that opportunity. Some courts have used something as simple as a special pin, which identifies the judge as one of the elite few that is available to mentor new judges. The pin evidences that the judge has this “elite” status.

In the medical field, some hospitals are experimenting with Project ECHO. Project ECHO is a lifelong learning and guided-practice model to assist in educating medical professionals and increase workforce capacity to provide best-practice specialty care and reduce health disparities.<sup>40</sup> The ECHO model is a hub-and-spoke knowledge-sharing network, led by expert teams (the hub) who use multi-point videoconferencing to conduct clinics with community providers (the spokes).<sup>41</sup> Project ECHO solves two significant issues. First, it provides spe-

cialist advice because there aren’t enough specialists, especially in rural and underserved communities.<sup>42</sup> Second, ECHO trains primary care clinicians to provide specialty care services themselves where necessary.<sup>43</sup> The specialists provide mentoring and feedback to primary care clinicians, who become part of a learning community.<sup>44</sup>

In the judicial arena, judges with particularly difficult cases could reach out to fellow judges who have specialized expertise with the type of case in issue. The judicial educators’ role would be to provide linkages between “judicial specialists” and the judges who need that expertise. A possible technological approach would be the use of a listserv to discuss particularly difficult cases. Another approach would be to utilize old cases to present problems to learner judges. How would you resolve the case? Some state ethics rules may require the judge who receives assistance to disclose the consultation, depending upon how and when it occurs.

Some Symposium participants recommended the use of shadowing. In this process, new judges would sit with experienced judges on the bench. The new judge would observe what the experienced judge does. Judicial educators could also educate experienced judges about how to debrief these shadowing sessions, so the new judge has an opportunity to process the information more fully. Alternatively, experienced judges can shadow or watch new judges as they conduct hearings to provide advice. Obviously, some issues require instantaneous decisions, so new judges will make mistakes as part of the learning process. However, there is a potential technological solution: The senior or experienced judge could have an iPad or tablet to transmit thoughts privately to the new judge. (NOTE: This approach may have ethical implications depending upon the jurisdiction.)

## USE OF KNOWLEDGE NETWORKS

To help in the design of judicial branch education, a summit participant suggested the creation of knowledge networks. *Knowledge networks* are “collections of individuals and teams who come together across organizational, spatial and disciplinary boundaries to invent and share a body of knowledge. The focus of such networks is usually on developing, distributing and applying knowledge.”<sup>45</sup> In the context of judicial education, a potential network could include judges of all types and levels, attorneys, and court staff. Depending upon the nature of the education, other knowledge network contributors could include law enforcement, litigants, jurors, witnesses, court watchers, treatment providers, probation officers, medical treatment professionals, and public agencies (e.g., child care and support, energy assistance, housing, transportation, food,

36. COMMW. MASS., SUP. JUD. CT., ANNUAL REPORT ON THE STATE OF THE MASSACHUSETTS COURT SYSTEM FY2013 4 (2014), available at <http://archives.lib.state.ma.us/handle/2452/208607>.

37. Annabelle Reitman & Sylvia Benatti, *Mentoring Versus Coaching: What’s the Difference?*, ASS’N FOR TALENT DEV. (Aug. 20, 2018), <https://www.td.org/insights/mentoring-versus-coaching-whats-the-difference> (last visited on Dec. 4, 2015).

38. See JUST. COACHING CENTER, <https://justicecoachingcenter.com/> (last visited Aug. 20, 2018).

39. COMMW. OF MASS., SUP. JUD. CT., *supra* note 36.

40. *Project ECHO*, U.N.M. SCH. OF MED., <https://echo.unm.edu/> (last visited Dec. 7, 2015).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Katrina Pugh & Laurence Prusak, *Designing Effective Knowledge*

financial help, medical, educational and vocational training), among others.

## EMPATHY FOR JUDGES

A symposium participant advocated teaching pain empathy to judges. Because many criminal defendants are responding to the pain of depression, drug withdrawal, abusive relationships, and other difficult life circumstances, judges should use empathy in their decision making. In this way, they can fashion the most appropriate sentence. Professor Rebecca Lee defines empathy as follows:

[T]he action of taking the perspective of another by conceptually placing oneself in another's position—to better understand what the other person is thinking and feeling. Empathy encourages both cognitive and emotional understanding of others with different experiences, identities, and worldviews. It entails attempting to better understand all sides to a dispute, with care taken to understand the side with less power and less similarity vis-à-vis the adjudicator, to ensure that all sides are given full consideration. Empathy matters for judging because judges must expressly and consciously take into account the full positions of the parties, from where the parties stand, to avoid making unconscious and biased judgments.<sup>46</sup>

Professor Lee suggests that empathy is especially important in cases where the judges “are differently situated from the parties in terms of life opportunities and societal expectations.”<sup>47</sup>

For example, if a criminal defendant faces the prospect of a jail sentence for the first time, it is a frightening proposition. That potential sentence causes tremendous anguish. However, if the defendant is a “frequent flier” (that is, he or she has been incarcerated on a number of occasions), the prospect of jail time doesn't cause anguish because (1) the offender has learned to cope, and (2) the offender may have friends in jail.

Critics of this viewpoint suggest that empathetic judging is emotional and irrational judging, which will lead to favoritism for one side or another.<sup>48</sup> However, Professor Lee argues that “empathizing is necessary to deal with any unconscious bias that a judge may hold against the litigant she least identifies with.”<sup>49</sup> To maintain objectivity in adjudicating cases, judges must empathize with the parties to fully consider their views.<sup>50</sup>

Teaching empathy is possible. In a research study involving resident physicians, researchers asked patients to rate physi-

cian empathy before they had been trained.<sup>51</sup> The researchers educated half of the residents using a series of three training modules about the neurobiology and physiology of empathy and emotions.<sup>52</sup> The other half received the usual residency training. Patients rated the trained residents significantly higher on providing compassionate care.<sup>53</sup> Most people believe empathy is an inborn trait that cannot be learned, but the researchers found that empathy can, in fact, be taught:

Residents learned to sit down, make meaningful eye contact, and listen better. Trained physicians also maintained professionalism and compassion even when patients were demanding or using manipulative tactics. They became more aware of the underlying vulnerability of their patients' surface behaviors and more able to manage their own emotions.<sup>54</sup>

Education for judges on empathy is likewise possible.

## MOTIVATING ATTENDANCE AT EDUCATIONAL EVENTS

Symposium participants discussed the best ways to attract attendance at educational events, especially for those states where attendance is voluntary. They agreed that improving in-state educational events by utilizing adult education best practices was the best way to encourage attendance because learning is much more enjoyable. Some Symposium participants recommended allowing participants to “test-out” of courses, thereby ensuring they were only taking those courses that would be beneficial for them.

Symposium participants also encouraged judicial education organizations to award certificates for the mastery of subject matters. This would create an incentive-based system that would motivate many learners. In this model, state judicial educators would develop curricula that would take multiple years of annual conferences to complete with emphasis on different disciplines (e.g., criminal, civil, family, etc.), especially in those states where judges are assigned to specialized dockets as opposed to being general jurisdiction.<sup>55</sup> It's possible that the state bar could provide incentives such as scholarships to attend national courses in support of the specialized discipline. Another motivator may be to encourage the judge to teach the subject matter that he or she has mastered. For those judges in elected states, the judge could potentially announce the attainment of the certification, which would likely assist in reelection.

For those suffering from burnout (which can result from

Networks, MITSLOAN, Fall 2013, available at <https://sloanreview.mit.edu/article/designing-effective-knowledge-networks/>.

46. Rebecca K. Lee, *Judging Judges: Empathy as the Litmus Test for Impartiality*, 82 U. CIN. L. REV. 145, 205 (2014) [hereinafter *Judging Judges*]. See also Thomas B. Colby, *In Defense of Judicial Empathy*, 96 MINN. L. REV. 1944 (2012); and Emily Jane Goodman, *The Importance of Judicial Empathy*, THE NATION (Aug. 5, 2013), <https://www.thenation.com/article/importance-judicial-empathy> (last visited on Aug. 20, 2018).

47. *Judging Judges*, supra note 46, at 205.

48. *Id.* at 147.

49. *Id.* at 149.

50. *Id.* at 148.

51. Helen Riess, *Can Empathy Be Taught?*, MEDSCAPE (Feb. 1, 2013), available at <https://www.medscape.com/viewarticle/778463>.

52. *Id.* at 1.

53. *Id.* at 2.

54. *Id.*

55. Some Symposium participants advocated the use of breakout sessions at annual conferences devoted to the different experience levels of judges (e.g., new, mid-career, and seasoned judges). Because of the resources necessary to accomplish this and because of audience size issues, only relatively large jurisdictions can accomplish this.

boredom due to years of experience, from judicial stress, or from vicarious trauma), some Symposium participants recommended the offering of esoteric classes and topics to reinvigorate those judges. Some examples at the national level include *Today's Justice: The Historical Basis of American Law*, *Judicial Philosophy and American Law*, *Ethical Issues in the Law: A Novel Approach*, *When Justice Fails: Threats to the Independence of the Judiciary*, and *Current Issues in the Law*. Each of these National Judicial College courses allows judges to reexamine or get in touch with why they became judges in the first place. They are also offered in locations that are conducive to a more retreat-like experience.

### CREATING A "CULTURE OF LEARNING"

Symposium participants suggested that judicial education providers would benefit from the creation of a "culture of learning." Private industry provides an excellent definition of a *learning culture*. It is a "set of organizational values, conventions, processes, and practices that encourage individuals – and the organization as a whole – to increase knowledge, competence, and performance."<sup>56</sup> In courts, not only do judges need education throughout their careers, but all court staff require education as well. Most state judicial education offices provide education and training for judges and court staff and are excellent at inculcating learning cultures.

Another way to describe a learning culture is to suggest the importance of lifelong learning. All professionals, especially judges, will only grow and provide excellent service to the justice system if they engage in lifelong learning. As academician Peter Jarvis writes, "learning underlies our humanity: humans learn because we are consciously alive and that our learning is not only cognitive but all that makes us human beings which is added to our bare animal existence is learned. In this sense, learning must be *life long*."<sup>57</sup>

In a learning culture, Symposium participants commented that widening the knowledge field is important for all judges. That is, judges should not only be concerned with topics such as evidence, courtroom procedures, updates to statutory and case law, etc., they should also seek out education that addresses economics, history, medicine, sociology, psychology, and more esoteric topics that may not have immediate applicability. While new judges are most likely to appreciate information from judges, more experienced judges (e.g., intermediate to experienced judges) are more likely to want to receive education from other professionals because they have mastered the basic knowledge of the profession. Professionals who have taught at the National Judicial College include accountants, court administrators, law professors, lawyers, journalists, physicians, psychologists, psychiatrists, researchers, treatment providers, university professors, among other disciplines.

### OPTIMUM CLASS LENGTH FOR RETAINING LEARNERS' ATTENTION

Symposium participants discussed methods of improving in-state educational events: Some judicial educators are reviewing their education practice of providing longer sessions (e.g., 1.5 to 2 hours) instead of one-hour sessions. Many SJE's utilize a format of 90-minute sessions, not because of improved attention, but because of the financial inability to provide refreshments during the breaks. Conversely, some SJE's recommend one hour maximum for sessions because of attention-span issues. Further, some report that their learners who are generally in their 50s or older report that more breaks are needed for physical reasons.

No researchers have conducted empirical studies to determine the best lengths of courses for older learners. Indeed, the vast majority of studies about learning and retention involve learners who are 18 to 22 years old (i.e., college age) or younger. Researchers in a study of college students reviewed the preferences of students between three class formats (i.e., 1 hour/three times a week, 1.5 hours/twice a week, or 3 hours/one time a week).<sup>58</sup> The researchers wanted to know which format was optimal "in terms of student (a) perspectives, (b) grades, and (c) evaluations of instructor performance."<sup>59</sup> They found that regardless of major, students preferred the twice a week, 1.5-hour format. "Student performance in the [three-hour] class format was the lowest, and student performance in the [one-hour] class format was found to be slightly better."<sup>60</sup>

While researchers may be able to replicate this study for older learners, it's not likely they will find a measurable difference in retention rates between 1 and 1.5 hours of instruction. It's more likely that the *method* of instruction (e.g., using a variety of learning activities in addition to lecture) will be more significant than the amount of time in class.

### DISCUSSIONS ABOUT CURRENT POLICIES AND PRACTICES

Symposium participants recommended that judicial educators engage participants in discussions about how judicial policies and practices in the judiciary can be improved. In other words, how can those in the judiciary improve case outcomes, fairness, perceptions of fairness, etc.? They also suggested the use of a problem-centric approach. Some Symposium participants recommended weaving ethics, bias, access to justice, and fairness issues into every topic taught. Also, one of the participants stated there are some subjects that require metacognition. The *Oxford English Dictionary* defines metacognition as "[a]wareness and understanding of one's own thought processes."<sup>61</sup>

56. *Seven Steps to Building a High-Impact Learning Culture*, ORACLE, <http://www.oracle.com/us/chro-docs/june-2013-chro-deck4-1961622.pdf> (last visited Aug. 20, 2018).

57. PETER JARVIS, *DEMOCRACY, LIFELONG LEARNING AND THE LEARNING SOCIETY: ACTIVE CITIZENSHIP IN A LATE MODERN AGE 3* (2008) (emphasis added).

58. James Reardon, Janice Payan, Chip Miller & Joe Alexander, *Optimal Class Length in Marketing Undergraduate Classes: An Exami-*

*nation of Preference, Instructor Evaluations, and Student Performance*, 30 J. MARKETING EDUC. 12, 19 (Apr. 2008).

59. *Id.* at 12.

60. *Id.* at 19.

61. *Metacognition*, *Oxford English Dictionary*, <https://en.oxforddictionaries.com/definition/metacognition> (last visited Aug. 20, 2018).

The participant suggested that utilizing procedural fairness techniques would be considered a form of metacognition. Quoting psychology Professor Tom Tyler, Judges Kevin Burke and Steven Leben suggest four basic expectations that encompass procedural fairness:

1. **Voice:** the ability to participate in the case by expressing their viewpoint;
2. **Neutrality:** consistently applied legal principles, unbiased decision makers, and a “transparency” about how decisions are made;
3. **Respectful treatment:** individuals are treated with dignity and their rights are obviously protected;
4. **Trustworthy authorities:** authorities are benevolent, caring, and sincerely trying to help the litigants; this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.<sup>62</sup>

The National Judicial College, for example, added procedural fairness as a topic in its two-week *General Jurisdiction*, a course for judges with zero to three years of experience. Likewise, the NJC includes the subject matter in its self-study, online course for judges who have been appointed or elected to the bench but not have yet taken the bench. Procedural fairness is a bedrock of the NJC’s judicial education programming for new judges.

### SHOULD WE HAVE MANDATORY JUDICIAL EDUCATION?

The Symposium participants could not reach consensus on whether education and training for judges should be mandatory. Some believe mandatory education doesn’t really impact the 8 to 10% of judges who are educationally apathetic or have retired in place. Apathy makes education impossible. Further, no evidence exists that mandatory education improves outcomes or that it makes better judges. Mandatory education fills the room with a percentage of detractors who will lessen the experience for all.

Conversely, some believe having those judges participate is important even if they may be disruptive to the educational process. The apathetic judges can’t help but to gain something by the experience, even though the judges may deny it. From a public perception standpoint, the public deserves judges who are lifelong learners. Likewise, mandatory judicial education improves the public perception of the courts because the public feels it’s getting judges who continue to educate themselves. If there was no requirement that we pay taxes, would we? Nevertheless, we all know that paying taxes makes for a better society. Likewise, we should require judicial education because it makes the majority better. They argue the judges who most

need the education don’t come to it. If they continue to participate, they can’t help but be improved in the process.

A similar question involves mandating an *area* of judicial education such as ethics or fairness education. Many judges believe they have expertise in ethics and fairness education, so they don’t need it. However, they may be subject to the Dunning–Kruger effect. It holds that “poor performers are often not in a position to recognize the depths of their deficits, no matter how honestly, impartially, or eagerly they strive for accurate self-assessments.”<sup>63</sup> Requiring the education would alleviate the effect.

A Symposium participant postulated that how judges are treated may be part of the problem if education is not mandated. That is, no one has the ability to require judges (who truly need education) to go to judicial courses if it’s not mandated by statute or rule.

Conversely, one participant, who opposed mandating education, felt it would be possible to educate brand new judges about the importance of lifelong education so long as the new judges received that message within six months of appointment or election. Another thought that if supreme court justices improved their attitudes toward education or increased their attendance at educational events, it would improve the perceptions of lower-level court judges toward judicial education. Consequently, mandating education would not be necessary. Still another thought that if apathetic judges are part of the planning process, buy-in from those judges would be greater for attendance.

### JUSTICE SYSTEM IMPROVEMENT PROJECTS

Researchers have defined occupational burnout as the “physical and emotional stress stemming from occupational factors.”<sup>64</sup> Burnout “may negatively affect a judge’s ability to consider relevant evidence.” Symposium participants noted that many judges experience burnout after years on the bench. “Anxiety stemming from occupational responsibilities can be remedied by an occasional break from work. Even an extra day off to engage in a favorite hobby can help a judge come back to the bench refreshed and relaxed. Longer-term sabbaticals should also be encouraged from time to time to allow judges to get away for a few weeks or months.”<sup>65</sup>

In an effort to ensure state judiciaries don’t lose experienced jurists, the participants recommended a number of potential solutions. First, they suggested that the judge should be allowed to leave the work of day-to-day judging to engage in the development of a project that will improve the system in some way. Alternatively, the judge could write an article to impart gained wisdom.

Symposium participants felt freeing the judge for a period of time from the day-to-day work would be possible without legislative authority. To ensure the public’s support of the oppor-

62. Kevin Burke and Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 COURT REV. 4, 6 (2007–08) (citing TOM R. TYLER, WHY PEOPLE OBEY THE LAW 22–23 (2006)).

63. Oliver J. Sheldon, Daniel R. Ames & David Dunning, *Emotionally Unskilled, Unaware, and Uninterested in Learning More: Reactions to Feedback about Deficits in Emotional Intelligence*, 99 J. APPLIED

PSYCHOL. 125, 126 (2014).

64. Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AM. ACAD. PSYCHIATRY LAW 214 (2009).

65. *Id.* at 221.

tunity, benchmarks for the time frame and project would be helpful. Indeed, drug courts started because of the sabbatical of one judge in Florida taking a break to look at the problem of drugs. To market the Justice System Improvement Project to judges, it would ask the judges to leave a legacy, to remember the passion and why the person became a judge in the first place, and to implore the judges to share the wisdom they have obtained from many years on the bench.

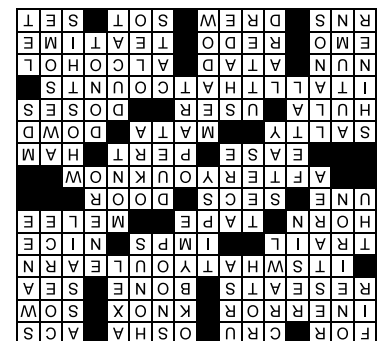


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**Answers to Crossword**

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# EFFECTIVE ADJUDICATION OF DOMESTIC ABUSE CASES

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