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Toward a New Paradigm of Judicial Education

CHIEF JUSTICE MARY R. RUSSELL*

INTRODUCTION

When lawyers don black robes to become judges, they do not magically acquire all the knowledge, experience, and skills necessary to become excellent judges. They may come to the bench with a particular expertise in the law, but certainly not an expertise in *all* areas of the law. They have had certain lifetime experiences and obvious limitation in decision-making. It is because of this reality judicial education is imperative.

When talking about judicial education, a central question emerges: What is the goal of judicial education for judges? A simple answer springs to mind: To make us better judges, of course. This of course is a deceptively simple question with a deceptively simple answer, until there is an attempt to specifically identify how to accomplish this worthy judicial education goal, and that is where simplicity disappears.

We certainly expect judicial education to include the case law and statutes that form the foundation of sound legal decisions. Judicial education must convey the appropriate information to allow judges to develop the most comprehensive and current understanding of substantive areas of the law, as well as the law of evidence and procedure. Missouri's judges have come to rely on the judicial education that is provided here in the State as a primary source of such information. That will not change.

Despite education programs offered in Missouri, Missouri judges still face limitations in judicial education. Budgetary shortfalls are frequently felt most prominently in this area. The reality of fewer funds has reduced our ability to send judges to national seminars and conferences. The state has compensated for this by striving to design the most effective possible curricula for our mandatory week-long judicial colleges and new judge orientations,¹ combining a focus on developments in the areas of civil law, criminal law, family law, juvenile law, and probate, with sessions on skills and information that will make our judges the best professionals they can possibly be. Another limitation is the amount of time judges can be away from courtrooms to attend educational programs. Our dockets are full and impose real limitations on the time judges can devote to educational opportunities.

These limitations, no matter how substantial, should not prevent us from exploring new possibilities and options for judicial education. What about the broad range of topics that can make a judge a more effective decision maker, communicator, collaborator, and administrator? What about those areas that make us better

* Supreme Court of Missouri. Thanks to Anthony Simones, J.D./Ph.D and Manager of Judicial Education for the Office of State Courts Administrator, for his assistance in creating this article.

1. See *Annual Meeting & Judicial Conference*, THE MO. BAR, <http://www.mobar.org/am2014/> (last visited Sept. 3, 2015).

people? What about those matters that enhance the judiciary's understanding of the world from which cases emerge and the unique circumstances and needs that have shaped the parties who appear in our courtrooms? These are all questions that coalesce under the umbrella of judicial education.

As Missouri trial court judge Karl DeMarce has observed, "Judges deal at various times with nearly every aspect of human life, and thus there is probably almost no discipline, field of study, or practical skill, the pursuit of which would not make one a better judge in some fashion."² While it is not feasible to think judicial education can be made to encompass every discipline, field of study or practical skill, there is considerable wisdom in Judge DeMarce's belief that judges would benefit greatly from education beyond changes in the law. In the following pages, I explore these issues and examine new directions for judicial education.

I. KNOWING THE NEEDS OF THE PEOPLE WE SERVE

Judge Bruce Bohlman of North Dakota once noted "the key element in the positive change or growth of the courts" is education, specifically education that puts judges in the position of "knowing the needs of the people we serve, and having the ability to serve those needs."³ Many judges would agree with Judge Bohlman's assertion, although for different reasons. Some would come from an unselfish perspective — understanding that this sort of knowledge allows judges to help those caught up in tragic circumstances. Others would see it from a more pragmatic perspective, building on the old adage that knowledge is power and the most effective decisions will occur in a context of awareness and expertise. Whatever the reason, it is vital that judicial education position judges to know the world from which their cases will emerge, and to understand the world in which their rulings will be enforced — this article examines the ways judicial education can accomplish these objectives.

A. *Addiction and Substance Abuse*

The public in recent years has come to expect courts to be problem solvers in areas where judges have not traditionally been involved. With the creation of problem solving and specialty courts follows the need for specialized training for the judges involved. One such specialty court is designed for people with addictions and substance abuse issues.

When we are dealing with the area of civil or criminal law, or when we hear a case in probate or juvenile court, it is often that many of the cases have their roots in substance abuse, and the parties involved will be linked to some sort of addiction.⁴ It may take the form of a criminal defendant under the influence at the time

2. E-mail from Hon. Karl DeMarce, Mo. 1st Judicial Circuit, to author (July 31, 2014) (on file with author).

3. Bruce Bohlman, *Transforming the Judicial System Through Education*, in EDUCATION FOR DEVELOPMENT: THE VOICES OF PRACTITIONERS IN THE JUDICIARY, JERITT MONOGRAPH SIX 7 (Charles Claxton & Esther Ochsman eds., 1995).

4. See William D. Bales et al., *Substance Abuse Treatment in Prison and Community Reentry: Breaking the Cycle of Drugs, Crime, Incarceration, and Recidivism?*, 13 GEO. J. ON POVERTY L. & POL'Y 383 (2006); Manuel Utset, *Rational Criminal Addictions*, 74 U. PITT. L. REV. 673 (2013);

of the commission of an offense. It may take the form of a parent whose addiction requires the removal of children from the home. Whatever the sad and specific nature of these multitude cases, it is essential the judges who hear them understand the impact of substance abuse and addiction. Judicial education can play an essential role in providing knowledge for these specific areas, and may ultimately shed light on the actions of parties involved, as well as help shape just rulings. As such, education becomes an essential element for judges to deal effectively with these kinds of pervasive problems. The number of judges who will not deal with the effects of addiction and substance abuse in one way or another is a limited one indeed, and thus it is beneficial for all judges to learn about addiction.

Treatment courts have been especially successful, utilizing a melding of supervision and accountability with opportunity and possibility.⁵ We have more treatment court dockets per capita in Missouri than any other state. By this point, many of us are aware of the results produced: graduates of such programs staying clean and out of trouble, reduction in crime rates far more impressive than more harsh alternatives, and the cost savings of avoiding incarceration and recidivism. While most of us know treatment courts can work, it is more of a mystery on how they are created and how they operate. This is another area in which I would like to see an expansion of judicial education. We need to move beyond extolling the virtue of treatment courts and offer more programming on best practices for making treatment courts as effective as possible.

B. Mental Illness

As funds for mental health treatment and facilities have dwindled in recent years, many of those suffering from mental illness have ended up in our courts.⁶ Dealing effectively with those plagued by mental illness strains the talent and ability of experts. For judges, most of whom have no expertise on such matters, handling this type of situation will prove difficult for all except those possessing exceptional crisis-management skills. The Conference of Chief Justices identified mental illness “as a far-reaching problem with enormous impact on the judicial system.”⁷ It is almost inevitable that judges will encounter parties suffering from mental illness in our courts, yet most judges receive no specialized training on dealing with parties suffering from mental illness.

Given the likelihood judges will encounter individuals dealing with mental illness in their courtrooms, it is essential that judicial education equip judges with

Patrick Murray, Comment, *In Need of a Fix: Reforming Criminal Law in Light of a Contemporary Understanding of Drug Addiction*, 60 UCLA L. REV. 1006 (2013).

5. See Hon. Peggy Hora, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717 (2008); Jennifer Broxmeyer, Article, *Prisoners of Their Own War: Can Policymakers Look Beyond the “War on Drugs” to Drug Treatment Courts?* 118 YALE L.J. POCKET PART 17 (2008).

6. See Kevin Johnson, *Mental Illness Cases Swamp Criminal Justice System*, USA TODAY (July 21, 2014), <http://www.usatoday.com/story/news/nation/2014/07/21/mental-illness-law-enforcement-cost-of-not-caring/9951239/>.

7. Conference of Chief Justices, *In Support of the Judicial Criminal Justice/Mental Health Leadership Initiative*, Policy Res. 11 (2006), available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01182006-In-Support-of-the-Judicial-Criminal-Justice-Mental-Health-Leadership-Initiative.ashx>.

the knowledge and the tools needed to deal with this reality.⁸ The American Psychiatric Foundation and the Council of State Governments' Justice Center have worked with the National Judicial College to create programs that enhances a judge's ability to interact effectively with individuals suffering from mental illness. Missouri judges, like judges throughout the nation, would benefit from this program.

C. Domestic Violence

Another area judges require more training concerns the realities of domestic violence. For far too long, the domestic violence that occurred behind closed doors was viewed as nobody's business, outside the purview of courts. Thankfully, this has changed, though we still have a long way to go. At times, our domestic violence jurisprudence is still plagued by the assumptions and stereotypes of the past. We cannot expect nineteenth century ideas to serve our society in the twenty-first century. At other times, the courts operate under the mistaken belief that domestic violence cases are the same as any other case.

Judicial education must play a vital role in informing judges about the realities of domestic violence cases.⁹ The reality is the dynamics between intimate partners create mindsets and choices that may seem to the outside observer strange or inexplicable, such as an individual's failure to leave a dangerous situation or to refuse to file charges against an abusive spouse. Another reality is there are often others such as children in a household who will feel the effects of domestic violence, and become caught up in a situation beyond their control. The needs of domestic violence victims must be considered in order to break this cycle of misery that may otherwise continue for generations. Judges should be made aware of the available resources¹⁰ in order to help the parties before them. Not all domestic violence cases are the same, and judges need to be fully prepared to deal with the range of situations they may encounter. States can help facilitate this: for example, Missouri recently held a Domestic Violence Summit in 2015 to help judges

8. Amanda Pustilnik, *Prisons of the Mind: Social Value and Economic Inefficiency in the Criminal Justice Response to Mental Illness*, 96 J. CRIM. L. & CRIMINOLOGY 217 (2005); Jennifer Bard, *Rearranging Deck Chairs on the Titanic: Why the Incarceration of Individuals with Serious Mental Illness Violates Public Health, Ethical, and Constitutional Principles and Therefore Cannot Be Made Right by Piecemeal Changes to the Insanity Defense*, 5 HOUS. J. HEALTH L. & POL'Y 1 (2005); Marchell Goins et al., Article, *Perceiving Others as Different: A Discussion of the Stigmatization of the Mentally Ill*, 19 ANNALS HEALTH L. 441 (2010); E. Lea Johnston, *Theorizing Mental Health Courts*, 89 WASH. U. L. REV. 519 (2012); Julie Goldman, *The Need for Mental Health Courts for Lawyers to Fulfill Their Duties Under the ABA Model Rule*, 26 GEO. J. LEGAL ETHICS 683 (2013).

9. See Michelle Madden Dempsey, *What Counts as Domestic Violence? A Conceptual Analysis*, 12 WM. & MARY J. WOMEN & L. 301 (2006); Shelley M. Santry, *Penny Wise but Pound Foolish in the Heartland: A Case Study of Decriminalizing Domestic Violence in Topeka, Kansas*, 14 J.L. FAM. STUD. 223 (2012); Christina Samons, *Same-Sex Domestic Violence: The Need For Affirmative Legal Protections at All Levels of Government*, 22 S. CAL. REV. L. & SOC. JUST. 417 (2013).

10. For example, the National Center for State Courts has an online Domestic Violence Resource Guide and provides a free online training program about domestic violence for judges. Domestic Violence Resource Guide, NAT'L CTR. FOR STATE COURTS, <http://www.ncsc.org/Topics/Children-Families-and-Elders/Domestic-Violence/Resource-Guide.aspx> (last visited May 25, 2015). Also, the National Council of Juvenile and Family Court Judges provides domestic violence education and resources. Domestic Violence, NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, <http://www.ncjfcj.org/our-work/domestic-violence> (last visited May 25, 2015).

across the state better understand the complexities involved in these sorts of cases.¹¹

Complicating the matter further is the fact domestic violence frequently occurs in combination with substance abuse and mental illness. To address only one aspect is to turn a blind eye toward additional elements of the problem that will prevent the effective resolution of the situation. Yet, this is the approach that our system employs with regularity. Missouri trial court judge Patricia Joyce summarizes the problem effectively: “The issues of domestic violence, substance abuse and mental illness are treated separately by the judicial system. Often services are provided for only one of the issues, when the family is suffering the consequences of the other issues as well. Providers do not coordinate their services and end up not providing the necessary support and tools for the family to make the needed changes. Each of these treatment systems are silos and do not have adequate resources or understanding to treat the whole family system. Judges must be knowledgeable about all of the needs of the family and address them holistically.”¹² If this problem is to be addressed, judicial education will have to play a significant role in providing the knowledge that Judge Joyce identifies.

D. A Changing Population

Judges must also recognize the changing composition of the population. According to the U.S. Bureau of the Census, four percent of the population of Missouri is foreign born.¹³ Almost half of these individuals speak English less than “very well.”¹⁴ Six percent of the Missouri population speaks a language other than English at home.¹⁵ With these realities forming the backdrop, it is likely our judges will encounter a situation in which they have to meet the needs of a Limited English Proficient (LEP) individual. This data raises another area where judicial education is essential.¹⁶ First, it is essential that judges recognize their obligations under the law. Second, both Missouri and federal law require state-paid interpreters be provided in all legal proceedings in which a non-English speaking person is a party or witness.¹⁷ Judges must also be aware of the options available to them in discharging legal obligations and providing interpretation services for the LEP population.¹⁸ Finally, judges need to be informed about the procedures involved in actually making use of these services. Some might see this as the

11. The Missouri Office of Prosecution Services hosted a conference in May 2015 regarding Family and Sexual Violence. Training, MO. PROSECUTORS, <http://www.moprosecutors.gov/training> (last visited May 25, 2015).

12. E-mail from Hon. Patricia Joyce, Mo. 19th Judicial Circuit, to author (September 26, 2014) (on file with author). See also Lisa Lightman & Francine Byrne, *Courts Responding to Domestic Violence: Addressing the Co-Occurrence of Domestic Violence and Substance Abuse: Lessons From Problem-Solving Courts*, 6 J. CENTER FOR FAM. CHILD. & CTS. 53 (2005).

13. See *State & County QuickFacts: Missouri*, U.S. CENSUS BUREAU (Dec. 21, 2014), <http://quickfacts.census.gov/qfd/states/29000.html>.

14. *State & County Quickfacts: Missouri*, *supra* note 13, at l. 73, col. J.

15. *State & County QuickFacts: Missouri*, *supra* note 13.

16. See Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999 (2007); Kelly McAnnany & Aditi Shah, *Representing Clients with Limited English Proficiency or Communication-Related Disabilities*, 47 CLEARINGHOUSE REV. 80 (2013).

17. MO. REV. STAT. §§ 476.803, 476.806 (2015); 28 U.S.C. § 1827 (2015).

18. LIMITED ENGLISH PROFICIENCY: A FEDERAL INTERAGENCY WEBSITE, <http://www.lep.gov/index.htm> (last visited May 25, 2015).

courts merely electing to extend a courtesy to those in need; however, the law requires the LEP population to be accommodated, and judicial education can play a vital role in ensuring legal compliance with this important area.

II. THE INFORMATION NECESSARY FOR JUDGES TO BE EFFECTIVE IS CONSTANTLY EXPANDING

The information provided in judicial education should reflect the growing complexity of the world judges confront. The judges of today and tomorrow face situations not necessarily encountered by their predecessors. Whether it concerns the evidence upon which judges must rule, the needs of the parties appearing in our courtrooms, or the political and social environment in which judges must exist, members of the bench will be facing a reality that demands greater and more sophisticated judicial education than ever before.

A. *Scientific and Technological Developments*

Today, judges are called upon to make rulings on a wide array of scientific and technological matters. In making decisions on issues involving a range of questions, from information technology and security, to online privacy and surveillance, from biotechnologies to nanotechnologies, judges cannot afford to hand down opinions rooted in ignorance. Not only do judges have to be informed on new areas of science and technology, they are also required to reconsider what had been seen as accepted and trusted evidence. As Missouri trial court judge Jeff Bushur points out: “As a result of the National Academy of Science’s report on the forensic sciences, the reliability of such evidence has been called into question. The presidential National Commission on Forensic Science is just a few months into its work and troubling questions need some answers. Judges should be aware of these developments.”¹⁹

Judicial education is an essential part of empowering judges to make informed decisions on these issues. The Advanced Science and Technology Adjudication Resource (ASTAR) Project was created by the Ohio and Maryland courts and the Einstein Institute for Science, Health and the Courts.²⁰ ASTAR provides training to judges on how to knowledgeably handle cases with scientific and technological elements and implications. In Missouri, over 30 of our judges have participated in the ASTAR program, establishing one of the most effectively trained judiciaries in the country with respect to complex scientific and technological dockets. These ASTAR judges are available to hear cases in which scientific and technological issues are involved that may otherwise go beyond the judge’s expertise. In addition, the Trial Judge Education Committee has created numerous seminars on science and technology for Missouri judges. Still, we cannot af-

19. E-mail from Hon. J. Bushur, Mo. 16th Judicial Circuit, to author (Aug. 6, 2014) (on file with author). See also William C. Thompson & Rachel Dioso-Villa, *Turning a Blind Eye to Misleading Scientific Testimony: Failure of Procedural Safeguards in a Capital Case*, 18 ALB. L.J. SCI. & TECH. 151 (2008); D. Michael Risinger, *The NAS/NRC Report on Forensic Science: A Path Fraught with Pitfalls*, 2010 UTAH L. REV. 225 (2010); Jennifer E. Laurin, *Remapping the Path Forward: Toward a Systematic View Forensic Science Reform and Oversight*, 91 TEX. L. REV. 1051 (2013).

20. ASTAR: Advanced Science & Technology Adjudication Resource Project, CIRCUIT COURT FOR ANNE ARUNDEL CTY., <http://www.circuitcourt.org/learn-about/astar> (last visited May 25, 2015).

ford to rest on our laurels. Just as science is constantly evolving, judicial education addressing the manner to which scientific developments impact the law should be constantly evolving as well.

B. Complex Litigation

The centerpiece of my platform as Chief Justice of the Supreme Court of Missouri has been a focus on how our courts can better serve all Missourians. In my meetings with judges, lawyers and litigants on how our courts can better serve Missourians, both large and small circuits throughout the state echoed a similar interest: the education of judges who would be specially trained in matters of complex litigation. Included in this category of complex litigation would be cases involving sophisticated business matters, mass torts, multiple parties, lengthy trials, and complicated discovery.

Once again, judicial education was an essential part of making this happen. In 2014, we partnered with the National Judicial College to offer a multi-day seminar on complex litigation. Over thirty judges stepped forward to be a part of this corps of complex litigation specialists and these judges became trained on issues including forensic accounting, trade secrets, and e-discovery. Trial judges hearing cases deemed complex will be able to request appointment of one of the specially trained judges. This represents yet another example of judicial education playing a vital role in addressing the problems created by an ever-changing society.

C. Self-Represented Litigants

Another reality of modern courts is the increasing presence of self-represented litigants, numbering in the tens of thousands each year. There are many reasons for this. Some resort to self-representation out of necessity, when parties are unable to find an attorney they can afford, or are unable to secure legal aid assistance. For others, it is a matter of geography. More than three-fourths of all of Missouri's attorneys practice in just six counties, including the city of St. Louis. Only a quarter of all attorneys practice in the remaining 109 counties, where nearly 60 percent of our state's population lives. Some Missourians choose to use online legal services because they believe lawyers have overpriced their services, and they worry about the mounting costs of what seems to them to be a long court process. Still others, influenced by the current "do-it-yourself" culture, believe they can represent their own interests just as effectively as an attorney.

These self-represented litigants create a wide array of issues for judicial education.²¹ There is a compelling need for best practices to most effectively serve these parties. Some assert self-represented litigants are not receiving the same

21. See Carolyn D. Schwarz, Note, *Pro Se Divorce Litigants: Frustrating the Traditional Role of the Trial Court Judge and Court Personnel*, 42 FAM. CT. REV. 655 (2004); Nina Ingwer VanWormer, Comment, *Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon*, 60 VAND. L. REV. 983 (2007); Sherry M. Cohen & Joanna Weiss, *Know Your Audience: How NYC Tribunals Have Addressed Self-Represented Litigants and Increased Access to Justice*, 29 J. NAT'L ASS'N ADMIN. L. JUD. 485 (2009); Rory K. Schneider, *Illiberal Construction of Pro Se Pleadings*, 159 U. PA. L. REV. 585 (2011); Mark Andrews, *Duties of the Judicial System to the Pro Se Litigant*, 30 ALASKA L. REV. 189 (2013).

level of justice as those represented by counsel.²² By showing judges how to ensure the due process rights of the self-represented-litigant, judicial education will play a role in preventing this from occurring. At the same time, judges must find a way to balance their protection of the interests of the self-represented with their obligation to be impartial. It is precisely because cases involving self-represented litigants are so complex — and have the potential for such frustration and consternation — that it is imperative for judicial education to provide guidance and insight on how to navigate these complex waters.

III. THE SKILLS NEEDED BY MODERN JUDGES

More and more frequently, judges are being called upon to play roles that extend beyond the deciding of cases. None of the judges being called upon to excel in these unfamiliar areas received training on these matters in law school. Thus, it is imperative judicial education fill-in these gaps and equips judges to perform these functions.

A. Administration of the Courts

As judges play a greater role in the administration of courts, some are becoming involved in budgetary matters: either from the perspective of creating and monitoring a budget, or presenting and justifying that budget to the legislature and the governor. In addition, some judges are immersed in matters of managing human resources, either by creating policies for the court, participating in the resolution of complaints raised by staff, or serving as a sounding board for court personnel facing important life situations. Finally, some judges are being asked to take on the role of project manager and are being given responsibility for overseeing initiatives as substantial as the construction of a new courthouse. This was the case with Missouri trial court judge Douglas Beach in St. Louis County, who observes, “[f]or judges, the administration of justice requires more than knowledge of the law, but also includes knowing how to find ways to make the judicial process work for citizens. Every court is constantly under pressure to construct and develop new and creative ways to carry out justice, from new buildings to new programs and keeping up with the world of change around us.”²³

Yet another subject upon which most judges have no formal training is the use of technology. Judges need information on a wide variety of technologies: from e-filing and e-bench²⁴ to the use of video conferencing. Some judges are even being asked to become involved in making decisions regarding the technology that will be installed throughout the entire judiciary in their counties. And the list of areas a judge must have a mastery of goes on.

Let us not lose sight of the bigger picture involved in these technological choices and challenges. Advances in technology provide judges the means to offer more effective service to the people of Missouri, assisting judges in honoring

22. Chris Bevan, *Self-Represented Litigants: The Overlooked and Unintended Consequences of Legal Aid Reform*, 35 J. SOC. WELFARE & FAM. L. 1 (2013).

23. E-mail from Hon. D. Beach, Mo. 21st Judicial Circuit, to author (Sept. 19, 2014) (on file with author).

24. eBench is an online warrant system that allows warrants to be processed and electronically delivered to police departments. *Court Briefs*, HAW. B.J., August 2008, at 24.

our constitutional obligation to ensure “the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character.”²⁵

Although there are a number of different paths judicial education can take to assist in these matters, one of the most effective options available to judges is the National Center for State Courts’ Institute for Court Management.²⁶ In our state, the Office of State Courts Administrator and the Coordinating Commission for Judicial Education have collaborated to create the Missouri Court Management Institute (MCMI). MCMI is a six-part, yearlong program based upon the National Center’s curriculum and tailored to the needs of the Missouri judiciary.²⁷ The courses are facilitated by experts from Missouri, for an audience composed of judicial personnel from Missouri. Included in the program are Managing Technology Projects, Managing Court Financial Resources and Managing Human Resources, courses that provide judges with a fundamental understanding of many of the areas involved in court administration.

Enhancing the experience for judges in MCMI is the fact they will be interacting with court administrators, juvenile officers, court clerks, treatment court managers and personnel officers. This sort of interaction provides judges with information from, and the perspectives of, others in the judiciary, further expanding judges’ ability to effectively work within the judicial leadership structure.

B. Ensuring Accountability and Effectiveness

Courts today exist in a very different world. In these days of competition for limited resources and increasing demands for accountability, it has become necessary for courts to provide evidence of effectiveness. Some judge’s bristle at this necessity, but it is the reality faced by those who take the bench. Ten years ago, the Conference of Chief Justices adopted a resolution recognizing “the failure to be accountable can foster an environment in which the other branches of government and the public do not understand the Judiciary’s role; and in which the other branches of government are more likely to micro-manage or otherwise diminish the Judiciary’s ability to govern its own affairs, and are more likely to criticize particular decisions of individual judges and courts.”²⁸ This observation is just as relevant today as it was a decade ago.

Fortunately, judges need not become experts on quantification and statistical theory to provide this evidence. The National Center for State Courts has produced a set of performance measures that evaluate and demonstrate judicial effectiveness and efficiency. The performance measures are known collectively as CourTools.²⁹ These CourTools measure access and fairness for customers, clear-

25. MO. CONST. art. I, § 14.

26. Court Management Program, NAT’L CTR. FOR STATE COURTS, <http://www.ncsc.org/Education-and-Careers/ICM-Certification-Programs/Court-Management-Program.aspx> (last visited May 25, 2015).

27. *Anderson Recognized for Court Training*, DEMOCRAT MISSOURIAN (March 11, 2015) <http://www.demo-mo.com/2015/03/11/26647/anderson-recognized-for-court.html>.

28. Conference of Chief Justices, *Policy Statements & Resolutions*, at resolution 23, in OR. STATE BAR CMTY. OUTREACH PROGRAM, *STRONG COURTS BUILD STRONG COMMUNITIES*, available at http://www.osbar.org/_docs/judicial/Strongcourts.pdf.

29. The CourTools measures were based upon the Trial Court Performance Standards (TCPS). The TCPS were developed in the 1990s by the National Center for State Courts working with the Bureau of

ance rates, percentage of cases disposed within established time frames, the age of active pending caseload, the reliability and integrity of case files, the collection of monetary penalties, the effective use of jurors, employee satisfaction, and the average cost per case.³⁰

It is essential that judicial education provide guidance to judges on the measurement of court performance. One option is for judges to travel to the National Center for State Courts to study CourTools. For judges in Missouri, the answer is much closer to home. The MCMI features a course on CourTools, one that will empower judges to not only ensure accountability, but also to direct the attention of judicial officers and court personnel to what they are doing well and what they need to improve.

Of course, if measurements of court performance are to become essential in a process of accountability, it is in the best interest of judges to ensure their courts operate in the most effective and efficient manner possible. Once again, judicial education will play a key role. Caseflow management is the subject of a course taught by the National Center for State Courts and in the MCMI. This course not only emphasizes specific steps such as implementing standards and goals, and limiting the number of continuances, but also addresses the larger issues of judicial leadership, vision and shaping the court culture. The providing of very practical suggestions for improving the efficiency of courts, combined with challenging judges to consider the role they play in establishing priorities for the judiciary, make this the type of judicial education we should aspire to utilize with even greater frequency.

In 2001, the Council of State Court Administrators adopted the following policy statement: “While vigilant of our constitutional prerogatives as a separate branch of government, courts in the future must go beyond accepting the necessity of outside review and actually welcome it as an excellent opportunity to educate the public and the other branches of government about the mission, accomplishments, and needs of the third branch.”³¹ Judicial education must play a role in equipping judges to provide this sort of knowledge to the world beyond the courthouse.

IV. TEACHING THE ART OF JUDGING

In addition to substantive and administrative judicial education, what about the art of judging? Some might suggest trying to teach the art of judging to be a fool’s errand. I am sure these people would argue the art of judging is something that is only bestowed upon judges with time and experience on the bench, as their knowledge of the law expands, and their understanding of the subtleties and intricacies of being a judge develops. To a certain extent, I might agree. The idea that

Justice Assistance, and are widely accepted as providing one of the most authoritative and reliable set of indicators of judicial excellence, efficiency and effectiveness. BUREAU OF JUSTICE ASSISTANCE, TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY (1997), *available at* <https://www.ncjrs.gov/pdffiles1/161570.pdf>.

30. LEE’S SUMMIT MUN. COURT, COURTOOLS REPORT: THE TOOLS OF MEASURING SUCCESS (2008), *available at* <http://cityofls.net/LinkClick.aspx?fileticket=DzPqR3%2BVT6E%3D&tabid=912>.

31. CONFERENCE OF STATE COURT ADM’RS, POSITION PAPER ON EFFECTIVE JUDICIAL GOVERNANCE AND ACCOUNTABILITY 2 (2001), *available at* <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/judgovwhitepapr.ashx>.

a course on the art of judging could be designed that would transform those who take it into a brilliant jurist, borders on the preposterous.

Perhaps, though, it is all in one's perspective. Certainly the art of judging is an idea composed of many layers and dimensions, and no single course or series of courses could ever capture such a complex idea. But that is not to say it would not be possible a single course might shed a certain amount of light on *some* aspect of the art of judging. What if such a course could be combined with other courses that focused on different aspects of the art of judging? If there were enough of these courses of such design, the pieces might be brought together into a tapestry that would reveal much about the art of judging. Each course could be taught by a presenter whose focus was to transmit a small piece of the art of judging to all of those in the audience. Each participant might walk into these sessions with the expectation that they were to receive a new piece of wisdom regarding the art of judging. In such a world, the art of judging would be taught and learned, not in any single course, but in the coalescence of a multitude of courses, presenters and participants whose objective it is to seize every possible opportunity to explore the idea of what it means for judges to be their absolute best. This is what we should seek to accomplish with judicial education. There are a number of different models for the transmission of information about the art of judging. Each involves more experienced judges playing the role of teacher, in one form or another.³² There are several options that could make this type of education feasible.

The first option is the most traditional, where more experienced judges make presentations on substantive developments in the law to those with less experience. The experienced judges weave into their presentations the manner they have handled difficult or challenging situations. The less experienced judges, who are developing their own philosophies and approaches, are able to consider the insights they are presented with and incorporate them into their own view of how judging should be accomplished.

A second option involves a panel approach, in which experienced judges are brought together before an audience of less experienced judges to address issues that shed light on the art of judging. The panel would be given an opportunity to articulate their perspectives. Additionally, the judges will interact with each other and respond to questions from the audience. This option has the advantage of making the art of judging the focus of the session. In addition, the less experienced judges in the audience receive the benefit of being exposed to multiple perspectives, providing them with a greater wealth of information. Finally, less experienced judges most likely will feel more comfortable posing questions to more experienced colleagues in this type of setting.

A third option would involve using the sharing of information by the experienced judge as a starting point. After the basic information has been provided, the

32. It is important to remember that the term "experienced" in this article is one that is relative. I do not mean to suggest it always relates to age, nor do I mean to necessarily equate it with years on the bench. Rather, I use "experienced" to denote a certain degree of expertise on an issue. It is possible an "experienced" presenter is the judge who has the least amount of time on the bench in the room, but has heard the greatest number of cases dealing with the subject of the presentation. By the same token, a 60-year-old judge who has been on the bench for thirty years could fall into the category of "less experienced participant," if the subject of the presentation represents a brand new world with which the judge is unfamiliar. A single judge could be experienced in some areas and capable of teaching judicial education courses, while being less experienced in others and needing to play the role of student.

participants would then be presented with scenarios that illustrate the subject being taught. It would then be up to the participants to take what they have been given and apply it to the scenarios. Participants would then share their decisions and ideas with other members of the group. The exercise has now become a communal learning experience and the participants would be exposed to different insights, perspectives, and approaches of their colleagues. The exchange of ideas produced in this environment represents a wealth of information and wisdom each participant now can utilize. Throughout this interaction the more experienced members of the faculty should interject their expertise to supplement the ideas being presented.

Teaching the art of judging by one of these methods provides an educational opportunity for inexperienced judges to wrestle with issues and dilemmas they will inevitably confront on the bench. Under the guidance of more experienced colleagues, the art of judging is something lived by both presenter and participant.

CONCLUSION

Judicial education is more than just the training of legal technicians, as judging is not a mechanical function. Judicial education is the instrument through which our profession seeks to operate at its optimum. It is the means by which the individuals who occupy one of the most important positions in our society reach their full potential. These two ideas are not distinct, but rather, interrelated. It is through our development as individuals our profession will make the greatest advances.

In one of the landmark monographs of judicial education, Judge E. G. Noyes of Arizona wrote: “We are fortunate to be in a profession where we become better at what we do by becoming better at who we are.”³³ This idea is both appealing and intriguing. As we become more fully developed as human beings, we become more effective judges. The path to emerging as the best possible judge does not stop with the accumulation of legal knowledge and expertise, rather, it is the development of our aptitude for reason and reflection, and our capacity for growth in our skills and vision, that truly distinguish us as judges.

Change is inevitable. That is the theme that has run through this article. No matter how much we prefer the status quo, no matter how much we are opposed to the idea of altering what we do, the simple fact of life is that change will occur. The courts must change along with the world in which they exist. Once again, we can look to Judge Noyes for guidance: “In these changing times, the society looks to the judiciary for stability and leadership. People want integrity and competence in all branches of government, but they *expect* it in the judiciary. To maintain integrity and competence and to strive for excellence as an organization, the judiciary must continue to change, to develop intelligently as an organization. The best way to change the organization is to support the ongoing development of the individuals within the organization.”³⁴

33. E.G. Noyes, *Building Community in the Arizona Court System, in EDUCATION FOR DEVELOPMENT: THE VOICES OF PRACTITIONERS IN THE JUDICIARY*, JERITT MONOGRAPH SIX 32 (Charles Claxton & Esther Ochsman eds., 1995).

34. *Id.* at 33.

Judicial education will play a number of roles in helping courts adapt to changing circumstances. It will make the case for change when change is necessary. It will present ways in which change can be accomplished and incorporated effectively into what judges do. Hopefully, it will offer the opportunity for individual development of the judges, who will then be open to the change that is necessary. As Justice Christine Durham of the Utah Supreme Court once wrote: “The courts cannot be responsive to the demands for change, if the people who run them do not have the capacity for growth in their own skills and vision.”³⁵ It is my hope we can craft a system of judicial education that allows and empowers us, as individual judges and as a judiciary as a whole, to accomplish what is necessary, and to make the changes required, for the courts to operate at their absolute best.

35. Cited in Henry Williams, *A Judge’s Perspective on Education for Development*, in *EDUCATION FOR DEVELOPMENT: THE VOICES OF PRACTITIONERS IN THE JUDICIARY*, JERITT MONOGRAPH SIX 32 (Charles Claxton & Esther Ochsman eds., 1995).