

2016

Judicial Education for State Appellate Court Judges: A Regional Collaborative Strategy

Cathy R. Silak

Concordia University School of Law, csilak@cu-portland.edu

Follow this and additional works at: <https://digitalcommons.csp.edu/clr>



Part of the [Law Commons](#)

CU Commons Citation

Silak, Cathy R. (2016) "Judicial Education for State Appellate Court Judges: A Regional Collaborative Strategy," *Concordia Law Review*. Vol. 1 : No. 1 , Article 4.

Available at: <https://digitalcommons.csp.edu/clr/vol1/iss1/4>

This Essay is brought to you for free and open access by the School of Law at DigitalCommons@CSP. It has been accepted for inclusion in Concordia Law Review by an authorized editor of DigitalCommons@CSP. For more information, please contact digitalcommons@csp.edu.

ESSAYS

JUDICIAL EDUCATION FOR STATE APPELLATE COURT JUDGES: A REGIONAL COLLABORATIVE STRATEGY

*Cathy R. Silak, J.D., LL.M.**

INTRODUCTION

Specialized judicial education would help supreme court justices and appellate judges of state judicial systems face the unique challenges inherent in their positions. The decisions of appellate judges become the law in their jurisdiction by virtue of the legal maxim of *stare decisis*. Since their decisions carry such immense weight, appellate judges must strive for excellence in judicial decision-making and opinion writing. As caseloads expand, they must manage to deliver justice within greater constraints of time and budget. Many decisions are controversial and may lead to election challenges. In turn, state judicial elections, especially those at the supreme court level, have become more akin to traditional political elections, even in states where appellate judges are elected on non-partisan or retention ballots. Supreme court justices are often responsible for the administration of the court system, presenting budgets to state legislatures and governors, and proposing legal reform measures to improve the function of the court.

Drawing from the author's own experience in obtaining a Master of Laws degree from the University of Virginia, and also from a review of existing judicial education offerings, this Essay proposes a two-week program of judicial education that is academic and practical. On the academic side, the law school faculty of the host school will teach short seminars to update the attendees on recent developments in Civil and Criminal Law and Procedure. The seminar will also include a skills course to improve opinion drafting and legal research. Additionally, the curriculum will include practical courses on budgeting, management, and contemporary approaches to delivering justice, such as specialized courts and alternative

* Dean, Concordia University School of Law; LL.M., University of Virginia School of Law; J.D., University of California, Berkeley, School of Law; Masters of City Planning, Harvard University; B.A., New York University; Former Justice on the Idaho Supreme Court and Judge on the Idaho Court of Appeals. The author would like to thank Anne Comstock and Jennifer Hanway for their research assistance and suggestions, along with the faculty, staff, and student body of Concordia University School of Law for their support.

dispute resolution at the appellate level. The curriculum will include intensive training for appellate judges who take on dispute resolution functions at the appellate level. This Essay will also focus on how judicial education programs can facilitate important conversations about relevant topics within the realm of judicial ethics, including recusals, campaign communications, and finances.

The proposed program will be implemented through collaboration among law schools at the regional level, initially serving low population states whose appellate judiciary is relatively small. Examples include states such as Idaho, Montana, Nevada, Wyoming, South Dakota, and North Dakota. Participating law schools will partner to provide faculty. The law schools will help these appellate judges form peer-mentoring networks for ongoing education and support.

I. UNIVERSITY OF VIRGINIA SCHOOL OF LAW'S MASTER'S DEGREE

My experience with existing judicial education programs formed the foundation for this proposed solution. Seventeen years after graduating with a J.D. from the University of California Berkeley School of Law,¹ I drew upon my courage and returned to pursue a Master of Laws degree at the University of Virginia.² At that time, I was an associate justice of the Idaho Supreme Court and a former judge of the Idaho Court of Appeals. A trusted colleague and friend from the Idaho Court of Appeals had completed the program several years before and encouraged me to apply. He believed the experience greatly enhanced his judicial acumen, and he persuaded me that I would also benefit from the program. Because the Idaho appellate judiciary was relatively small at the time,³ the opportunities for judicial education targeted specifically at appellate judges was relatively limited in-state.

The Master of Laws in Judicial Process program at the University of Virginia School of Law was offered between the 1980s and the early 2000s. Each class consisted mostly of state court appellate judges, with a few federal trial and appellate court judges. The students attended the University of Virginia Law School for six weeks during two consecutive summers, taking fifteen credits each summer. My class included thirty

¹ The UC Berkeley School of Law is colloquially known as Boalt Hall.

² I returned to the University of Virginia in 1993.

³ The Idaho appellate judiciary was composed of eight judges and justices at that time, and is now composed of nine.

judicial students. Although it was a burden on these students' court systems because they were far away from their courts, the University offered a full-ride scholarship to all students.⁴ The University secured its own funding to offer the program.

Courses were usually taught by the University's faculty members, and sometimes taught by visiting law professors, as well as local practicing attorneys. The courses were designed to provide instruction in traditional subjects, but also to update the judges on the latest trends in legal theory, such as Law and Economics, Social Sciences in Law, Critical Legal Studies, and Constitutional and Statutory Interpretation. The Judicial Process class examined the theory and practice of judging, including writing and analysis. The classes utilized the Socratic method, which enriched the students' experiences. An especially memorable class in the Jurisprudence course⁵ was a presentation on the history of *Brown v. Board of Education*,⁶ and the role of the faculty and graduates of the Howard Law School.⁷

The curriculum included writing a well-researched, publishable thesis. Most of the writing was done off campus, and was scheduled around court hours. My thesis proposed a methodology of interpretation for initiatives and referenda. I focused on Idaho, attempting to lay out a detailed framework of statutory interpretation. The thesis was later adapted into an Article that was published in the Idaho Law Review.⁸

In looking back on the experience, it was a unique opportunity to return to the classroom and gain mastery in subjects that helped refine and polish judicial skills. We expanded our knowledge of contemporary fields, such as Law and Economics, a type of analysis that receives national attention to this day. Constitutional and Statutory Analysis was the most useful class, as this type of analysis often characterizes the issue in appellate cases. Despite the numerous benefits of the program, the extensive time commitment proved to deter appellate judges who were not willing or able to undertake such a program of study. I kept up with court duties by sending

⁴ The full-ride scholarship consisted of tuition, books, room (in nearby undergraduate dorm apartments) and some living expenses, including air transportation.

⁵ Professor Calvin Woodard taught jurisprudence.

⁶ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

⁷ Thurgood Marshall was among those who had a role in *Brown*, 347 U.S. 483.

⁸ See Cathy Silak, *The People Act, the Courts React: A Proposed Model for Interpreting Initiatives in Idaho*, 33 IDAHO L. REV. 1 (1996). My original thesis, along with a comprehensive collection of the graduates' theses, is on file at the University of Virginia Law School law library.

opinions back to my court and making frequent phone calls. In today's world, with the availability of the Internet and e-mail, "judicial telecommuting" would be even easier, thus reducing this barrier to participation for many judges.

One of the most valuable attributes of the program was the opportunity it provided for appellate judges to form friendships and have candid peer-to-peer discussions with one another. Now that I am in academia myself, I have often considered how to re-create the benefits of this program, while limiting the need for a large commitment of time and monetary resources. Appellate judges would benefit from a new program that focuses on updating legal knowledge, appellate judging skills, court administration, and the politics of the judicial branch. This program would aid appellate judges in adjusting to the current political climate, which has changed drastically over the last twenty years due to the increased level of participation in judicial elections, where appellate judges—especially supreme court justices—must discharge their responsibilities.

II. CURRENT PROGRAM OFFERINGS

Before proposing a new platform for a judicial education course, it is necessary to examine the landscape for programs that are currently being offered to appellate judges. This Part offers a short summary of education for judges that focuses on the following: degree-granting programs for judges, programs on the values and ethics of the judicial profession, and administrative skills.

There currently appear to be only two degree-granting programs with a focus on Judicial Studies and a goal of providing additional education to sitting judges.⁹ In addition to those two programs, there are also a small number of institutions that offer short courses and seminars. One scholar in support of judicial education aptly commented, "I see little hope for a sustained program of education for judges if they themselves must carry it on. If it is to be done, I believe that the law schools must do it."¹⁰

⁹ See *Master of Judicial Studies*, DUKE L., <http://www.law.duke.edu/judicialstudies/degree/> (last visited Jan. 20, 2016); *Judicial Studies*, U. NEV., RENO, http://www.judicialstudies.unr.edu/JS%20Prog%20Desc%202016_FINAL.pdf (last visited Jan. 24, 2016).

¹⁰ Kenneth J. O'Connell, *Continuing Legal Education for the Judiciary*, 16 J. LEGAL EDUC. 405, 414 (1964).

A. *Master of Judicial Studies at Duke University School of Law*

Duke University School of Law currently offers a relatively new Master of Judicial Studies Program (MJS),¹¹ whose inaugural class graduated in the spring of 2014.¹² The degree consists of twenty-two credits: two years of summer courses that last four weeks totaling eighteen credits, and four credits for a thesis based on independent research.¹³ The program offers both practical and substantive legal courses, including Statutory and Constitutional Interpretation, National Security, Foreign Law in United States Courts, Judicial Writing Workshop, and Finance for Judges.¹⁴ Many of the courses offered help judges recognize bias and understand “influences that may affect their decision-making.”¹⁵ This program is currently available with a full scholarship to all sitting judges.¹⁶

B. *Master of Judicial Studies and Doctorate of Philosophy, Judicial Studies at University of Nevada, Reno*

The University of Nevada, Reno offers two degrees for sitting judges: a Master of Judicial Studies (MJS) and a Doctorate of Philosophy, Judicial Studies, which is the only judicial doctoral degree in the nation.¹⁷ The MJS Program is open to sitting judges and offers two majors: the Trial Court Judge Major, and the Juvenile and Family Court Judge Major.¹⁸ The MJS program requires the completion of thirty-two credits, and either the writing and publishing of a scholarly article, or the writing and defending of a thesis.¹⁹ To enroll in the doctoral program, applicants must have graduated from the MJS Program.²⁰ The requirements for the doctoral program include an additional forty-nine credits beyond the MJS, and writing and defending a dissertation, along with completing a comprehensive examination.²¹

¹¹ *Master of Judicial Studies*, *supra* note 9.

¹² Duke Law News, *Duke Announces New Center for Judicial Studies*, DUKE L. (June 6, 2011), <https://law.duke.edu/news/6524/>.

¹³ *Master of Judicial Studies*, *supra* note 9.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Judicial Studies*, *supra* note 9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Degree Requirements*, U. NEV., RENO, <http://www.judicialstudies.unr.edu/degree.htm> (last visited Jan. 20, 2016).

²¹ *Judicial Studies*, *supra* note 9.

A wide variety of substantive law courses, affiliated with the National Judicial College, are available for both programs including: Criminal Evidence, Advanced Evidence, Dispute Resolution, and Judicial Writing, among others.²² In addition to the substantive law courses, the programs offer practical courses in administrative skills such as Effective Caseflow Management, Conducting the Trial, and Enhancing Judicial Bench Skills.²³

C. *Additional Short Course/Seminar Offerings*

In addition to the degree programs discussed above, the National Judicial College²⁴ and George Mason University School of Law²⁵ offer a number of short courses and seminars for judges. The National Judicial College offers Professional Certificate Programs in a variety of topics including Appellate Judicial Skills, General Jurisdiction Trial Skills, and Special Court Trial Skills.²⁶ The certificate programs have three required courses and fifteen elective credits, which are available in a wide variety of topics.²⁷ Upon completion of the programs, the participant receives a Certificate in Judicial Development.²⁸ The Mason Judicial Education Program at the George Mason University School of Law offers a number of short courses and seminars in discrete areas of substantive law including the Economics Institute for Judges, various Judicial Symposia, and courses in the advanced Law and Economics Institutes.²⁹

In addition to courses and seminars, both the National Judicial Education Program³⁰ and the University of New Mexico³¹ offer online documents, trainings, and DVDs for sitting judges. The National Judicial

²² *Id.*

²³ *Id.*

²⁴ *Courses by Date*, NAT'L JUD. C., <http://www.judges.org/courses/reno.html> (last visited Jan. 24, 2016).

²⁵ *Mason Judicial Education Program*, GEO. MASON U. SCH. L., <http://www.masonlec.org/programs/mason-judicial-education-program> (last visited Nov. 8, 2015).

²⁶ *Courses By Name*, NAT'L JUD. C., <http://www.judges.org/courses/courses-by-name/> (last visited Jan. 24, 2016).

²⁷ *Certificate Program Requirements*, NAT'L JUD. C., <http://www.judges.org/academic/certificate-program/appellate-judicial-skills/> (last visited Jan. 24, 2016).

²⁸ *Certificate Program FAQ*, NAT'L JUD. C., <http://www.judges.org/academic/certificate-program/faq/> (last visited Nov. 8, 2015).

²⁹ *Mason Judicial Education Program*, *supra* note 25.

³⁰ *National Judicial Education Program*, LEGAL MOMENTUM, <http://www.legalmomentum.org/national-judicial-education-program#block-views-resources-materials-block-1> (last visited Jan. 24, 2016).

³¹ *Judicial Education Center*, U.N.M., jec.unm.edu (last visited Jan. 24, 2016).

Education Program (NJEP) offers education to judges, attorneys, and other legal professionals in issues specifically related to gender bias and the ways in which it can undermine fairness in Criminal, Civil, Family, and Juvenile Law.³² The NJEP offers online resources and training on gender bias issues to promote fair adjudication of sexual assault and domestic violence cases.³³ The University of New Mexico Judicial Education Center³⁴ provides a number of online resources and trainings for New Mexico's sitting judges, which are available online for other interested parties.³⁵

New York University Law School's Institute of Judicial Administration offers a New Appellate Judges Seminar open to appellate court judges with fewer than four years of experience on the bench.³⁶ The seminar provides practical training and exposes enrollees to current issues of substantive law.³⁷ Alongside the New Appellate Judges Seminar, the Institute of Judicial Administration offers various programs, training seminars, and workshops on special topics.³⁸

The need for additional educational options directed toward members of the judiciary and state appellate justices is apparent. A curriculum that provides an in-depth program over a relatively short time period, with both a doctrinal and ethical focus, should be a welcome addition to the field.

III. VALUES AND ETHICS IN THE JUDICIAL PROFESSION AND THE CONDUCT OF JUDICIAL EDUCATION

There are currently thirty-nine states with some form of judicial elections.³⁹ With judicial elections comes a need to balance a judicial candidate's First Amendment rights and the need to fundraise, all while maintaining impartiality and unbiased decision-making while on the bench. There are three primary Supreme Court cases that explore these issues:

³² *National Judicial Education Program*, *supra* note 30.

³³ *Id.*

³⁴ *Judicial Education Center*, *supra* note 31.

³⁵ *Id.*

³⁶ *Institute of Judicial Administration*, N.Y.U. L., <http://www.law.nyu.edu/centers/judicial> (last visited Jan. 24, 2016).

³⁷ *See id.*

³⁸ *Id.*

³⁹ AM. BAR ASS'N, FACT SHEET ON JUDICIAL SELECTION METHODS IN THE STATES, http://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdm.pdf (last visited Feb. 6, 2016).

Republican Party of Minnesota v. White addressed the issue of candidate speech during judicial elections and what speech can be prohibited by a state's Model Code of Judicial Conduct;⁴⁰ *Caperton v. A.T. Massey Coal Co.* provided that a judge should recuse herself, not only when a judge has actual bias or an economic interest in the outcome of a case, but also when there is a strong probability of bias;⁴¹ and, more recently, *Williams-Yulee v. Florida Bar* decided that a rule of judicial conduct that bans candidates from directly soliciting campaign funds did not violate the First Amendment because the rule was narrowly tailored.⁴² This trilogy of cases outlines the basic parameters judges must operate within when faced with the prospect of an election.

Despite the Supreme Court's attempt to clarify some of these ethical issues, based on the number of scholarly articles related to both *White*⁴³ and *Caperton*,⁴⁴ it seems as though more questions remain than have yet been answered. In light of the decision in *White*,⁴⁵ many states have made policy decisions that restrict a judicial candidate's speech "in order to preserve an 'impartial judiciary, and to prevent the erosion of public confidence in the judicial system.'" ⁴⁶ However, since *White*,⁴⁷ many of these speech restrictions have eroded.⁴⁸

The most recent example occurred in *Wolfson v. Concannon*, decided by the Ninth Circuit in 2014.⁴⁹ The court examined the Arizona

⁴⁰ *Republican Party of Minn. v. White*, 536 U.S. 765, 768 (2002).

⁴¹ *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884 (2009).

⁴² *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1672 (2015).

⁴³ *White*, 536 U.S. 765. See, e.g., Angela Allen, *The Judicial Election Gag is Removed: Now Texas Should Remove Its Gag and Respond*, 10 TEX. WESLEYAN L. REV. 201 (2003); Thomas R. Phillips & Karlene Dunn Poll, *Free Speech for Judges and Fair Appeals for Litigants: Judicial Recusal in a Post-White World*, 55 DRAKE L. REV. 691 (2007); David Schultz, *The State of Judicial Selection: The White Cases Revisited*, 67 BENCH & B. MINN. 40 (2010).

⁴⁴ *Caperton*, 556 U.S. 868. See, e.g., Kevin C. Newsom & Marc J. Ayers, *A Brave New World of Judicial Recusal?: The United States Supreme Court Enters the Fray*, 70 ALA. LAW. 368 (2009); Jonathan H. Todt, Note, *Caperton v. A.T. Massey Coal Co.: The Objective Standard for Judicial Recusal*, 86 NOTRE DAME L. REV. 439 (2011); Eric Sandberg-Zakian, *Rethinking "Bias": Judicial Elections and the Due Process Clause After Caperton v. A.T. Massey Coal Co.*, 64 ARK. L. REV. 179 (2011).

⁴⁵ *White*, 536 U.S. at 788.

⁴⁶ Matthew D. Besser, Note, *May I Be Recused? The Tension Between Judicial Campaign Speech and Recusal After Republican Party of Minnesota v. White*, 64 OHIO ST. L.J. 1197, 1199–1200 (2003).

⁴⁷ *White*, 536 U.S. 765.

⁴⁸ See Besser, *supra* note 46.

⁴⁹ *Wolfson v. Concannon*, 750 F.3d 1145 (9th Cir. 2014).

Code of Judicial Conduct's solicitation clause⁵⁰ and held it was unconstitutional as applied to non-incumbent judicial candidates because the Arizona Code was not narrowly tailored and restricted speech that presented little risk of corruption or bias towards future litigants.⁵¹

The subsequent *Williams-Yulee* decision, however, reinforced previous speech restrictions.⁵² The Court held that all personal solicitation by judicial candidates requesting funding for their campaigns "create[s] a public appearance that undermines confidence in the integrity of the judiciary."⁵³ The rule of judicial conduct restricting solicitation was sufficiently narrow and, therefore, constitutional.⁵⁴

Though the *Caperton* Court was unable to define precise criteria as to when a judge should recuse herself, it did offer guidance stating the "disqualifying criteria 'cannot be defined with precision. Circumstances and relationships must be considered.'"⁵⁵ The Court ultimately looked not at "whether the judge [wa]s actually, subjectively biased, but whether the average judge in his position [wa]s 'likely' to be neutral, or whether there [wa]s an unconstitutional 'potential for bias.'"⁵⁶

The proposal presented here suggests a regional program, and, therefore, the judicial codes of Idaho and the surrounding states were reviewed to understand the limitations placed on both freedom of speech and campaign finances. States with judicial elections share similar rules relating to judicial campaigns, but the rules relating to judicial elections vary by state because they are based on each state's judicial code of conduct. Many states limit the ability of judges and judicial candidates' to support or oppose non-judicial candidates, and place limits on partisan activities.⁵⁷ Additionally, most states have prohibitions on personal

⁵⁰ The solicitation clause requires that a judge running for election is not allowed to solicit funds personally, but must use an election committee. *See* ARIZ. JUD. CODE OF CONDUCT r. 4.4 cmt. n.1 (2009).

⁵¹ *Wolfson*, 750 F.3d at 1160.

⁵² *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656 (2015).

⁵³ *Id.* at 1671.

⁵⁴ *Id.* at 1673.

⁵⁵ *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 880 (2009).

⁵⁶ *Id.* at 881.

⁵⁷ IDAHO CODE OF JUD. CONDUCT CANON 5(B)(1)(2013); NEV. JUD. CODE OF CONDUCT r. 4.1 (A)(1)–(7) (2009); ARIZ. JUD. CODE OF CONDUCT r. 4.1(A)(1)–(5) (2009); WASH. JUD. CODE OF CONDUCT r. 4.1(A)(1)–(3) (2011); MONT. JUD. CODE OF CONDUCT r. 4.1(A)(1)–(3) (2008); OR. JUD. CODE OF CONDUCT r. 5.1 (A)(1) & (2) (2013). Utah and Wyoming have retention elections after initial appointment and therefore the rules regarding judicial campaigns vary slightly from those states with nonpartisan elections. *See*

solicitation of funds for campaigns, except through permitted committees,⁵⁸ and restrictions on comments that would

reasonably be expected to affect the outcome or impair the fairness of a matter pending . . . in connection with cases, controversies, or issues that are likely to come before the court [or] make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.⁵⁹

Because of the variety of rules, and interpretations of such rules, additional guidance to judges as they face re-election campaigns would be beneficial.

In addition to the limited guidance available through case law and scholarly articles analyzing the application of those cases, the program at University of Nevada, Reno has an elective course in Ethical Issues in the Law⁶⁰ and the National Judicial College offers a variety of short courses and seminars on various ethical issues in adjudication.⁶¹ Yet, despite the recent holding in *Williams-Yulee*,⁶² and the few available courses that cover judicial elections, difficulties navigating judicial elections are likely to continue.

Of the two available degree programs aimed at judges, neither offers courses on budgeting, judicial finance, or managerial skills for judges.⁶³ Although there are no course offerings in these subjects, the literature on

UTAH JUD. CODE OF CONDUCT CANON 4 (2016) and WYO. JUD. CODE OF CONDUCT CANON 4 (2009).

⁵⁸ See IDAHO CODE OF JUD. CONDUCT CANON 5(B)(1) (2013); NEV. CODE OF JUD. CONDUCT CANON 4.2(B)(4) (2009); ARIZ. CODE OF JUD. CONDUCT CANON 4.4(B) (2009); WASH. CODE OF JUD. CONDUCT CANON 4.1(A)(7) (2011); MONT. CODE OF JUD. CONDUCT CANON 4.4(B)(1) (2008); OR. CODE OF JUD. CONDUCT CANON 5.1(E) (2013).

⁵⁹ MODEL CODE OF JUD. CONDUCT CANON 2.10(A)–(B) (2010). Numerous states in the western United States have adopted a canon similar to the Model Code. See WASH. CODE OF JUD. CONDUCT CANON 4.1(A)(11)–(12) (2011); IDAHO CODE OF JUD. CONDUCT CANON 3(B)(9) (2013); NEV. CODE OF JUD. CONDUCT CANON 4.1(A)(12)–(13) (2009); ARIZ. CODE OF JUD. CONDUCT CANON 4.1(A)(9)–(10) (2009); MONT. CODE OF JUD. CONDUCT CANON 4.1(A)(11)–(12) (2008); OR. CODE OF JUD. CONDUCT CANON 5.1(F) (2013). Specifically, Arizona also places additional restrictions on the words that can be used in judicial campaign ads. See ARIZ. CODE OF JUD. CONDUCT CANON 4.3(C)–(E) (2009).

⁶⁰ *Judicial Studies*, *supra* note 9.

⁶¹ See *Ethics, Fairness, and Security in Your Court and Community*, NAT'L JUD. COLL., <http://www.judges.org/ethics-fairness-security-in-your-court-and-community-1610> (last visited Jan. 20, 2016).

⁶² *Williams-Yulee v. Florida Bar*, 135 S.Ct. 1656, 1672–73 (2015).

⁶³ See *Master of Judicial Studies*, *supra* note 9.

judicial education recognizes a need for training in these areas.⁶⁴ New judges may not have experience with these subjects, but they make up a large part of the job.⁶⁵ While there are not formal course offerings in conjunction with a degree program, online resources are available.⁶⁶ A few budgeting resources include *Trial Court Budgeting* by Robert W. Tobin⁶⁷ and *Funding Justice: Strategies and Messages for Restoring Court Funding*, published by Justice at Stake and National Center for State Courts.⁶⁸

Trial Court Budgeting provides an in-depth analysis of trial court budgeting, how to develop and review a court budget, techniques for presentation of the budget, and methods of monitoring the judicial budget.⁶⁹ *Trial Court Budgeting* serves three purposes: “(1) it describes the fundamentals of court budgeting from a court perspective; (2) it provides court managers with reference points by which to evaluate their budget process; and (3) it helps executive branch officials of state and county government to understand some of the unique features of court budgeting.”⁷⁰

Funding Justice provides a brief informational guide on ways courts can effectively communicate with their state legislatures when proposing judicial budgets.⁷¹ It aims to assist readers in creating an effective message for successfully reaching the public and influencing budget policymakers.⁷²

There are a number of articles related to the broader category of Judicial Administration, but not as many resources for managerial training.⁷³ These articles provide a wide variety of information related to managing a judicial budget and court funding, case administration, and governance principles.⁷⁴

⁶⁴ See Keith R. Fisher, *Education for Judicial Aspirants*, 31 J. NAT’L ASS’N ADMIN. L. JUD. 99, 108 (2011).

⁶⁵ *Id.*

⁶⁶ *Judicial Education Center*, *supra* note 31.

⁶⁷ ROBERT W. TOBIN, *TRIAL COURT BUDGETING* (1996).

⁶⁸ NAT’L CTR. FOR STATE COURTS, *FUNDING JUSTICE: STRATEGIES AND MESSAGES FOR RESTORING COURT FUNDING* (2012).

⁶⁹ TOBIN, *supra* note 67.

⁷⁰ *Id.* at v.

⁷¹ *FUNDING JUSTICE*, *supra* note 68.

⁷² *Id.*

⁷³ NAT’L CTR. FOR STATE COURTS, *PRINCIPLES FOR JUDICIAL ADMINISTRATION* (2012); ROBERT W. TOBIN, *AN OVERVIEW OF COURT ADMINISTRATION IN THE UNITED STATES* (1997) [hereinafter TOBIN, *COURT ADMINISTRATION*].

⁷⁴ *PRINCIPLES FOR JUDICIAL ADMINISTRATION*, *supra* note 73; TOBIN, *COURT*

Another important judicial administrative skill is case management. There are both formal educational programs and supplemental guides available on this skill.⁷⁵ Schwarzer and Hirsch's guide provides judges with guidance on how to manage a case through each stage, including discovery, motions, pretrial conferences, and trial.⁷⁶

IV. PROPOSAL FOR A REGIONAL INSTITUTE FOR APPELLATE JUDICIAL EDUCATION

This proposal for state appellate judiciary education programs is designed for the real world of scarce judicial resources, in terms of both time and money. This program should (1) be regionally based; (2) be law-school based; (3) be limited to the state appellate judiciary; (4) consist of a two-week blended curriculum of substantive law, legal ethics, and administrative skills courses; (5) use experiential teaching methodology; (6) provide a platform for ongoing peer-to-peer consultation; and (7) include exercises involving community participation.

A. *Regionally Based*

Judicial educational programs should be regionally based for multiple reasons. First, this reduces travel time and cost, increasing the ease of participation. A second advantage of this approach is to connect the appellate judiciary from relatively small population states within regional groupings of similar states. The main goal of a regionally based program is to create a network of judges that can work together to deal with common issues.

B. *Law-School Based*

A law-school based program takes advantage of existing educational infrastructure. Law schools have classrooms, law libraries, faculty, residential facilities, and conference rooms. A two-week summer program would fit well at many law schools where summer courses for their own students will not occupy the entire capacity of the facilities or faculty.

C. *Appellate Judiciary Enrollment*

Supreme courts in most states have unique responsibilities to

ADMINISTRATION, *supra* note 73.

⁷⁵ See WILLIAM W. SCHWARZER & ALAN HIRSCH, THE ELEMENTS OF CASE MANAGEMENT: A POCKET GUIDE FOR JUDGES (2d. ed. 2006).

⁷⁶ *Id.* at 10–19.

oversee court administration and to interact with their legislators, governors and executive branch, and the public. The opinions and rulings of supreme courts are followed closely by the media and are, at times, controversial. The same is true for appellate court decisions. The curriculum should be tailored to recognize these unique challenges. Thus, enrollment would be limited to the appellate judiciary.

D. *Blended Curriculum*

A curriculum comprised of substantive law, legal ethics, and administrative skills courses would benefit the appellate judiciary. The two week curriculum will cover topics important to the appellate judiciary, including updates on the latest Supreme Court jurisprudence, best practices in court administration, legal ethics involving recusals, participation in outside activities, and judicial elections. This curriculum will be tailored to address the unique challenges facing the appellate judiciary.

E. *Experiential Teaching Methodology*

The experiential teaching methodology provides important practical experience, using examples, for judicial students. This includes simulations, opinion-writing workshops, presentations to legislators, and mock campaign scenarios. Classroom simulations, such as videotaping a judicial candidate speech, will reinforce learning and enable group discussion to facilitate peer guidance. This approach to instruction allows for the high-level learning that is appropriate for appellate judges.

F. *Peer-to-Peer Consultation*

A network of judges is important to facilitate continued comity and intellectual discussion. By creating a small community of judges from neighboring states, the summer regional institute will help judges make trusted connections, and allow for ongoing discussion as issues of concern arise or where the judge needs consultation from outside her own state. Educational programs such as this will expand opportunities for judges to connect with one another.

G. *Final Exercise with Community Participation*

Striving for impartiality can isolate judges from the community. It is imperative, however, to connect judges with their respective communities. A judicial exercise incorporating community participation encourages this connection. This exercise may vary each summer, such as the presentation

of a lecture and dinner with members of the bench, bar, law school, and community. Involvement in the community can strengthen the public opinion of the judiciary, and provide appellate judges with exposure to current legal practices.

CONCLUSION

In closing, to meet modern-day challenges, the appellate judiciary would benefit from a streamlined and specialized low-cost regional judicial education program. A two-week program, granting a certificate, and providing a platform for ongoing peer-to-peer support, will add value to the judicial system as a whole, and provide a unique opportunity not currently available to state appellate judiciaries.