

Would United States Judges Benefit From More Graduate Training?

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Abstract

In the United States, there is no degree or training required to become a judge. On-the-job education primarily consists of orientation programs and updates on substantive and procedural law. Although these programs serve an important need, they are generally of limited duration and scope, taught by fellow judges, and are not degree programs. Two notable exceptions are the now-defunct University of Virginia Graduate Program for Judges, which offered an LL.M. in judicial process for sitting appellate judges and the Duke University School of Law's LL.M. in judicial studies—also for sitting judges. Do judges benefit from such degree programs? There has been no research into this question by scholars of judicial institutions. This article fills this gap. It is based on interviews with 32 state and federal judges who participated in these programs. Broadly speaking, I ask them about their reasons for enrolling in the program and then, regardless of the reasons, whether they perceive that their judging improved as a result of the education. With the caveat that these findings are subject to all of the problems with self-reporting, the results are extremely interesting and instructive on the benefits of post-graduate degree programs for judges.

I. Introduction

Judicial education in the United States has come a long way. There was a time when the use of the word “education” in connection with the judiciary brought raised eyebrows.¹ Today, the notion of judges receiving continuing education is well accepted. In fact, many states require continuing education for judges, much like they do for lawyers. There is also a wide range of courses available to judges—from courses on substantive or procedural law, to case management skills, and to non-legal technological skills. Additionally, though judicial education does not receive the same attention from scholars as other areas of judicial studies, there has been some increase on scholarship on judicial education. For example, there was just recently an entire symposium on judicial education organized by the University of Missouri’s Center for the Study of Dispute Resolution entitled “Judicial Education and the Art of Judging: From Myth to Methodology.”² The symposium generated a diverse range of articles on judicial education, including on topics such as the goals and purpose of judicial education,³ teaching about judicial bias,⁴ and best practices in judicial education,⁵ to name a few.

¹Judith Resnik, *Trial As Error, Jurisdiction As Injury: Transforming The meaning of Article III*, 113 HARV. L. REV. 944, 945 (1999-2000) (citing *Report of the Joint Committee for the Effective Administration of Justice*, 1963 Annual Meeting of the ABA 625).

²Articles from the symposium, many of which are cited in this paper, can be found at <http://scholarship.law.missouri.edu/jdr> (last accessed Mar. 16, 2016).

³Duane Benton and Jennifer A. L. Sheldon-Sherman, *What Judges Want and Need: User Friendly Foundations for Effective Judicial Education*, 2015 J. DISP. RESOL. 23, 24 (2015).

⁴Kathleen Mahoney, *Judicial Bias: The Ongoing Challenge*, 2015 J. DISP. RESOL. 23, 24 (2015).

⁵Dr. Livingstone Armytage, *Educating Judges: Where To From Here*, 2015 J. DISP. RESOL. 23, 24 (2015); Brettel Dawson, *Judicial Education: Pedagogy for a Change*, 2015 J. DISP. RESOL. 23, 24 (2015).

But none of the scholarly attention on judicial education has been focused on a relatively new entry on the judicial education landscape: the graduate degree program for sitting judges, as exemplified by the University of Virginia Graduate Program for Judges and the Duke Law School Masters in Judicial Studies Program. Judges who have participated in these programs have raved about their experiences. Some of the testimonials⁶ from the judges are:

“I was a far better judge for having done the program. This was the intellectual highlight of my life.”⁷

“Greatest thing about my career!”⁸

“Program made me a better person and better judge.”⁹

“This was the best time in my life. The time away from my desk and from my court to think about issues broadly is very valuable for a judge.”¹⁰

“This was the best educational experience including college and law school.”¹¹

One might expect that the fervor with which graduates of these programs speak of their experiences would catch the interest of scholars of judicial institutions. And if not for that reason, then perhaps the fact these programs represent an exception in the history and overall practice in judicial education would attract the attention of judicial education scholars. Yet, there is no literature in judicial education about post-graduate degree program for judges or research into the question of whether their particular

⁶ To preserve the anonymity of the judges, I have assigned each judge a number from 1 to 32.

⁷ Judge 2.

⁸ Judge 3.

⁹ Judge 4.

¹⁰ Judge 14.

¹¹ Judge 1.

approach adds value in terms of the quality of judging. Are they different from other educational programs judges attend? Is there an optimal time to pursue such programs? Do they improve or impact judging? And if so, why and how? This article uses interviews with 32 judges who graduated from the University of Virginia and Duke programs to spotlight these programs and to probe these questions. The judges not only spoke glowingly about their experiences, but importantly reported that the broad theoretical academic degree curriculum offered by the two programs improved their judging. With the caveat that these reports are subject to all the problems with self-reporting and self-selection, I argue that what the judges have to say about the benefits of post-graduate studies is new, revelatory, and instructive on how we think about judicial education. Moreover, accepting the judges' perceptions that the programs benefited their judging, I argue that law schools consequently have a unique role to play in judicial education, beyond the role that they currently play. Finally, I submit that challenges such as time constraints and funding must be considered if post-graduate degree programs are to become a viable opportunity for more judges.

The article will proceed as follows. It first gives context and background by describing the judicial education landscape and summarizing the two post-graduate programs. It then proceeds to the heart of the article: the interviews of the judges. Finally, it offers lessons learned from the interviews for further thinking about judicial education in general.

II. Judicial Education Landscape

A. History

Everyone seems content to operate on the assumption that the donning of judicial robes makes a man competent to perform all duties of office. [I]n fact, however, [a] judge needs opportunity, time and assistance in the reduction of his ignorance. In many instances it will not be a case of re-tooling – it will be a tooling up for the first time.¹²

In the United States, post-graduate degree education for sitting judges is relatively new, makes up a small part of the judicial education landscape, and, overall, represents a departure in the education of American judges. As Judge Richard Posner noted in his recent book, students of foreign legal systems find it remarkable that there is no degree or training requirement to become a judge in the United States.¹³ Other than the initial legal education that all lawyers receive, there are no special requirements to move from attorney to judge. As many have observed, judges in the United States typically “[take] the oath, [step] onto the bench, and [proceed] to fill the judicial role as if born in the robe.”¹⁴ Additionally, for American judges, like their lawyer counterparts, the dominant form of continuing education consists of non-degree continuing legal education programs in the forms of seminars, workshops, and conferences.

Indeed, the idea of judicial education in any form in the United States did not take seed until the 1950s—and did not grow until the 1960s—as part of a general effort

¹² Edson L. Haines, *Judicial Education*, in HANDBOOK FOR JUDGES: AN ANTHOLOGY OF INSPIRATIONAL AND EDUCATIONAL WRITINGS FOR MEMBERS OF THE JUDICIARY. (Glenn R. Winters ed., 1975).

¹³ Richard Posner, *DIVERGENT PATHS*, 345 (2016).

¹⁴ Emily Kadens, *The Puzzle of Judicial Education: The Case of Chief Justice Williams de Grey*, 75 BROOK. L. REV. 143, 145 (2009).

for court reform.¹⁵ In 1956, the Institute of Judicial Administration held a two-week summer seminar for appellate judges at New York University, which continues today. Two years later in 1958, the first judicial education program for trial judges was held.¹⁶ However, it was not until 1961 that a key moment in the history of judicial education occurred.¹⁷ That year, the American Bar Association, the American Judicature Society, and eight other organizations committed to court reform joined forces to create the Joint Committee for the Effective Administration of Justice. During the period between 1961 and 1963, the Committee organized approximately fifty seminars for trial judges throughout the country.¹⁸ The committee had determined that “judging was sufficiently different from lawyering to warrant specialized judicial education.”¹⁹ This determination was a catalyst for the establishment of the National College of State Trial Judges, now known as the National Judicial College.²⁰

Today, the National Judicial College remains a major provider of judicial education programs to state and tribal court judges, offering an average of 95 courses a year to over 2,700 judges.²¹ The National Judicial College offers a wide range of courses on the art of judging, substantive law, and technology. It also offers judges certificates

¹⁵ Robert G. Bone, *Judging as Judgment: Tying Judicial Education to Adjudication Theory*, 2015 J. DISP. RESOL. 129, 131 (2015).

¹⁶ Benton and Sheldon-Sherman, *supra* note 3, at 24.

¹⁷ Bone, *supra* note 15, at 131 (“However, it was not until 1961 that the judicial education movement caught fire.”).

¹⁸*Id.*

¹⁹ Benton and Sheldon-Sherman, *supra* note 3, at 24.

²⁰*Id.*

²¹ See <http://www.judges.org> (last visited March 16, 2016); see also Cheryl A. Thomas, *Review of Judicial Training and Education in Other Jurisdictions*, (London: Judicial Studies Board 2006).

in Administrative Law, Adjudication Skills, Dispute Resolution Skills, General Jurisdiction Trial Skills, Special Court Trial Skills, and Tribal Judicial Skills.

What is more, today there are over 70 different organizations providing judicial education program for state judges but these programs are still non-degree programs and in the main primarily taught by fellow judges. Other main providers include the National Center for State Courts, the American Academy of Judicial Education, and the National Association of State Judicial Educators. In addition, the state courts themselves are providing judicial education programs. For-profit judicial education institutions also exist, but not without criticism of their propriety.²²

Moreover, continuing legal education is presently mandatory for state court judges in all 50 states. The requirements vary from state to state, with an average training requirement between seven and 15 hours per year. Generally, these requirements are tied to Judicial Codes of Conduct, which set rules for accrediting programs, reporting requirements, and disciplinary proceedings if requirements are not met.²³

For federal judges, judicial education took a leap in 1967 when Congress established the Federal Judicial Center to provide continuing education to federal judges. The Federal Judicial Center was established as an independent agency committed to research, education, and the administration of justice in the federal

²²See Bruce A Green, *May Judges Attend Privately Funded Educational Programs, Should Judicial Education be Privatized : Questions of Judicial Ethics and Policy*, 29 FORDHAM URB. L.J. 941, 941-44 (2002).

²³Thomas, *supra* note 21.

judiciary.²⁴ In its early years, the Federal Judicial Center primarily provided seminars for newly appointed district judges and other district court personnel. It later expanded to add seminars for experienced district court judges and federal appellate judges. Today, the Federal Judicial Center provides educational programs for all federal judges, including Article I bankruptcy and magistrate judges. It conducts over 50 seminars and conferences annually for an average 2,000 federal judges and 10,000 court staff. Its programs include face-to-face conferences, seminars, workshops, web-based programs, and broadcasts on the Federal Judicial Television Network.²⁵

Outside of the United States, the education of judges—both preservice and post-service—vary widely depending on whether it is a civil law jurisdiction or common law jurisdiction like the United States.²⁶ For broad comparison, civil code countries—such as France and Spain—historically use a preservice educational model.²⁷ Unlike in the United States, the study of law in these countries is an undergraduate degree. For the preservice education, the graduates receive mandatory preservice educational programs at judges' school. These programs typically run from six to 27 months.²⁸ They teach a general curriculum equally applicable to judges, criminal prosecutors, and other government and private attorneys. But because some judges are also recruited with some professional experience (a newer trend) there is also some in-service training post

²⁴ <http://www.fjc.gov>.

²⁵ For a critique of the limitations and effectiveness of the Federal Judicial Center see Posner, *supra* note 13, at 358.

²⁶ A full comparative law analysis of judicial education is beyond the scope of this article and much has been written on this topic. For an excellent compilation see Thomas, *supra* note 21; see also Paul M. Li, *How Our Judicial Schools Compare to the Rest of the World*, 34 No. 1 JUDGES' JOURNAL 17 (1995).

²⁷ *Id.*

²⁸ *Id.*

appointment.²⁹ The formal organizational structure for judicial education varies with the civil code jurisdiction.³⁰ One category is the formal state judicial schools (France, Spain, Portugal, and Germany). Others fall in the category of less structured training organizations, which are usually committees with judicial associations (Italy).³¹

Like the United States, the common law countries (England, Canada, and Australia) are primarily engaged in the in-service continuing education of sitting judges. Similar to the United States, these countries use the peer group educational model: judges teaching other judges.³²

In sum, in its short history, judicial education—particularly in the United States—has rapidly evolved. Judicial education has notably gone beyond updates on substantive and procedural law. It now also includes what is referred to as the “art of judging” or “judge craft”—courses including skills training in areas such as opinion writing, ruling on evidence, case management, sentencing, and dealing with certain types of litigants, such as self-represented parties. There has also been a shift to include training to help judges recognize and eliminate gender or racial bias. With changes in technology, the format for delivering judicial education has also widened: from formal lectures, seminars, and meetings to printed materials, audiovisual formats, and television broadcasts.³³

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Clifford Wallace, *Globalization of Judicial Education*, 28 YALE J. INT’L L. 355 (2003).

³³ *Id.*

B. Post-Graduate Degree Programs For Judges

Despite the changes summarized above, and despite representing a different model of judicial education, the post-graduate judicial studies degree programs for judges remain a very small part of the judicial education landscape and one that has not attracted scholarly attention. Significantly, where most continuing education for judges are updates on substantive and procedural law or skills course (what many judges refer to as nuts and bolts), the post-graduate degree model is predominantly theoretical learning. It is the model of taking judges back to law school. In that regard, and in contrast to continuing education for judges that are predominantly taught by fellow judges (peer model), the post-graduate programs are primarily taught by law school faculty.

The first graduate degree program for judges in the United States was conceived by the American Bar Association's Appellate Judges' Conference, which in the late 1970s was looking for an institution to administer an ABA-sponsored program in the judicial process. The idea was for a law school to provide the facilities and faculty and for the program to be funded by the Department of Justice's State Justice Institute. Although the Appellate Judges' Conference recognized the importance of continuing education seminars for judges, the conference believed that a "broad and intellectually demanding course of study would be in the long run more beneficial to the participants (and thus to the judiciary and society)."³⁴ The Conference set three requirements for

³⁴ James Duke Cameron, *Second Degree for Appellate Judges*, 19 JUDGES' J. 33, 40 (1980).

such a program.³⁵ First, it had to be a recognized law degree program, not a seminar or workshop. In the Conference's view, this would assure the intellectual content of the program. And because judges were familiar with the rigor of an academic degree program, they would buy in and do the necessary hard work to earn the degree. Second, the program would need to be offered by a nationally recognized law school to both attract judges and to assure the quality of the program. And finally, the time in residence would need to be during a time of year when members of a collegiate court could attend without neglecting their duties to the court and colleagues. The University of Virginia School of Law answered the call. Thus was born the first graduate degree program for judges in the United States—the Graduate Program for Judges.

Just as its founders conceived it, the Graduate Program for Judges differed from other judicial education programs in duration, academic orientation, and rigorous instruction. It was a three year program: two consecutive summers of six weeks on campus followed by writing a thesis in the third year. After successful completion of the program, the judges received a Master of Laws (LL.M.) in the Judicial Process. It was designed primarily for appellate judges, both state and federal, "because they, more than trial judges, are involved in writing opinions and shaping law."³⁶ A major goal of the program was to "provide sitting judges the opportunity to engage in reflective study for a substantial period of time away from their chambers and courtrooms."³⁷ The program was not focused on vocational skills or training or with the problems of

³⁵ *Id.*

³⁶ University of Virginia School of Law, *Master of Laws in the Judicial Process, A Program of Advanced Judicial Education*, 1999-2000.

³⁷*Id.*

judicial administration. As the last director of the program, professor Earl Dudley, explained in a 2007 interview, “the program was not meant to teach judges the practical role of judging or skills in administering a court. The purpose of the program was to teach judges how to be law students again, not how to run a docket or write an opinion.”³⁸ According to Dudley, the general hope was that judges who had graduated 20 or 30 years before would come to the University of Virginia to learn about new developments in legal theory or judicial decision-making.³⁹

The program was taught by full-time members of the University of Virginia law faculty, visiting professors and lecturers, and professors from other disciplines. Generally, the courses focused on the economic implications of judicial decision making, legal history and jurisprudence, interdisciplinary problems of law, biomedical science, the social sciences, and comparative law.

The program ran for twenty-five years, from 1979 to 2004. It graduated its first class in 1982 and its last in 2004. Over the course of the program, it graduated 296 judges. The Program ended in 2004 after it lost its funding from the Department of Justice’s State Justice Institute.⁴⁰

It is also worth noting one of the legacies of the University of Virginia program. Since 1986, the University of Nevada, Reno, in collaboration with the National Judicial

³⁸ Seth Brostoff, *Dudley Recalls Benefits of Judicial LL.M Program*, VA. L. WEEKLY, Nov. 9, 2007.

³⁹*Id.*

⁴⁰The Department of Justice’s State Justice Institute was terminated by Congress in 2003 for reasons unrelated to the Judges Program at the University of Virginia. Two other factors contributed to the closing of the program (1) Professor Daniel Meador who had been director of the program from its inception no longer wanted to continue in that role and no other faculty stepped up to assume the role; and (2) the number of qualified applicants was dwindling. Stewart G. Pollock, *Saving the LL.M Program*, 31 JUDGES’ J. 20 (1992).

College and the National Council of Juvenile and Family Court Judges has offered judges a Master in Judicial Studies. And since 2001, it has offered a Ph.D program in Judicial Studies to judges. James Duke Cameron, former Chief Justice of the Arizona Supreme Court who was instrumental in creating the University of Virginia program, was also instrumental in creating the Master in Judicial Studies program at the University of Nevada, Reno. Because the University of Nevada's Master in Judicial Studies is not offered by a law school and its structure is significantly different from both the University of Virginia and Duke programs, it is not included in this study.⁴¹

The University of Nevada program is not the only legacy of the University of Virginia program.⁴² A number of the judges interviewed reported that what they had heard about the University of Virginia program inspired their decision to search for an LL.M. program for judges, and influenced their ultimate decision to apply to the Duke Law School Master of Laws (LL.M.) in Judicial Studies for sitting judges. The Duke Program was launched in 2012, making it presently the only law school with such a

⁴¹ For the University of Nevada program, each collaborating partner provides faculty, research facilities, institutional support, and educational expertise to the program. All three partners provide required and elective courses to the curriculum. Judges have the option of two majors: the Trial Court Judge Major and the Juvenile and Family Court Major. However, because the program confers degrees, all courses must meet the standards of the University of Nevada, Reno Graduate School. Required classes vary depending on the judge's major (Trial Court or Juvenile Court). Required courses for trial court majors include: General or Advanced Jurisdiction, Administrative Law: Fair Hearing, Judicial Writing, and History and Theory of Jurisprudence. Elective courses for Trial Court majors include: Criminal Evidence, Ethical Issues in Law, Effective Case Flow Management, Dispute Resolution, Scientific Research Methods for Judges, and Comparative Law. To earn the Master Degree judges must complete 32 credits in the prescribed curriculum, maintain a 3.0 grade point average in graded courses, take classes for at least 12 weeks in residence on the University of Nevada, Reno campus, and complete a thesis. The program is designed to be completed in two years, but judges are allowed six years to complete the Master Degree. See Handbook, Judicial Studies, University of Nevada, Reno (2009), *available at* www.judicialstudies.unr.edu/hamdboo_09.pdf. (last visited March 16, 2016).

⁴² Additionally, one judge reported that Indiana's Graduate Program for Judges and Indiana's Judicial Master's Certificate Program were inspired by the UVA program. See <http://www.in.gov/judiciary/center> (last visited Mar. 16, 2016).

program. According to an article published in the *Judicature* at the launch of the program, the program is “the brainchild of Duke Law Dean David F. Levi, former Chief Judge of the U.S. District Court for the Eastern District of California, who recognized the need for academic opportunities for judges and Duke’s scholarly strength in the study of the judiciary.”⁴³ The program examines “the history and processes that have shaped the institution of the judiciary and continue to affect judicial decision-making.”⁴⁴ It is designed to take a scholarly and interdisciplinary view of the judiciary as an institution. To earn the Master of Laws in Judicial Studies, judges must complete 22 course credits in-residence at Duke Law School over two successive summers, pass required exams, and complete a master’s thesis based on original research.⁴⁵ Judges are given a full or nearly full scholarship to cover tuition and room and board.⁴⁶ The program is funded by a grant from the Duke Endowment.⁴⁷

The first summer courses for the inaugural class were: Study of Judiciary, Analytical Methods, Forensic Finance for Judges, Statutory and Constitutional Interpretation, International Law in United States Courts, Comparative Federalism, Constitutional Courts (taught by Supreme Court Justice Samuel Alito), Judicial History, and a weekly Judges’ Seminar with visiting jurists and scholars.

⁴³*Judges Trade Courtroom For Classroom As Duke’s Masters of Law In Judicial Studies Welcomes Inaugural Class*, 96 *JUDICATURE* 48 (2012).

⁴⁴ John K. Rabiej, *Duke Law Holds Post-Graduate Degree Program for Judges*, *THE HOUSTON LAWYER MAGAZINE*, May/June 2013, at 43.

⁴⁵*Id.*, see also <http://www.law.duke.edu/judicialstudies/degree> (last visited Mar. 16, 2016).

⁴⁶*Duke Law Holds Post-Graduate Degree Program Judges*, 50 *JUN Hous. Law* 43, 2013.

⁴⁷ *Judicial Studies Center Receives \$5 Million Grant From The Duke Endowment*, *Duke Law News* (June 4, 2013), <http://law.duke.edu/news/judicial-studies-center-receives-5-million-grant-duke-endowment/>.

The courses for the second summer consisted of: Research Design (Thesis Preparation), National Security and Foreign Relations Law, Problems in Self-Regulation, Accuracy and Error in the Criminal Justice Process, Administrative Law and the Courts, Foreign Law in United States Courts, Judicial Writing Workshop (part of which was taught by Supreme Court Justice Antonin Scalia), and Judges' Seminar.

The inaugural class consisted of 18 sitting state, federal, and foreign judges representing both the trial and appellate courts. In May 2015, the program graduated its first class of Master of Laws in Judicial Studies. Fifteen judges completed and earned the Master Degree.

The University of Virginia and Duke post-graduate degree programs share the law school approach training of judges used in civil law jurisdictions with the exception that the programs are for already sitting judges. But more importantly, as indicated at the outset, they are different from the common form of judicial education offered to judges in the United States in two significant ways. First, they are primarily taught by law faculty, rather by judicial peers. Second, what is different and new about both programs is their focus on theory, the judicial role, process, and decision-making, rather than on updates on substantive and procedural law, or judicial skills.

III. The Interviews

*As recently as fifteen years ago, the thought of judges going back to school would have seemed ludicrous to most members of the legal profession.*⁴⁸

Using alumni information from the two law schools, I first contacted the judges by email. In my email, I identified myself as a United States Magistrate Judge and candidate at Duke Law's Master of Judicial Studies working on a thesis project on judicial education of judges. I asked if I may contact them to interview them about their experience in their respective LL.M. programs. I informed them that the interviews would be confidential. With the judges who responded, I then scheduled a set date and time for the interview.⁴⁹ In the end, I interviewed 32 judges—22 judges who graduated from the University of Virginia Law School program and 10 judges from the Duke School of Law program. The judges interviewed were of various state, federal, trial, and appellate courts. They were nine district court judges, six United States court of appeals judges, 10 state court intermediate court of appeals judges, five state supreme court justices, and two state trial court judges.⁵⁰ Again, to preserve the anonymity of the judges, I refer to them as Judge 1 through Judge 32.

⁴⁸ Delmar Karlen, *Judicial Education*, 52 A.B.A.J. 1049, 1049 (1966).

⁴⁹ Of the 18 judges from the inaugural Duke class, I emailed the 16 U.S. judges but did not email the two international judges. Of the 16 I emailed, 13 responded and agreed to be interviewed. Due to primarily scheduling conflicts, I interviewed 10 of the Duke judges. With regard to the University of Virginia judges, I emailed 76 using the alumni information and some public data information. I made sure each graduating class was represented. Of the University of Virginia emails, 22 responded and were interviewed, 29 did not respond, and 25 of the emails were returned as invalid.

⁵⁰ I note the positions the judges last held at the time of the interviews. Some of the judges are presently on senior status and some are fully retired. Some of the judges had also been elevated to different judicial positions since attending the programs. Some moved from state court to federal court and others moved within their respective court systems.

All the interviews were done over the telephone. Because the judges had not met me in person, I did not request permission to record the interviews and did not record them. I took notes and told the judges during the course of the interviews that I was taking notes. After each interview, using my hand-written notes, I typed out the interview. I had a fixed set of question to use for the interviews. However, I also allowed the judges to take the interview where they wanted. The length of the interviews varied. They ranged from half an hour to approximately one and a half hours. I began each interview by explaining my project. I then proceeded with my prepared set of questions.

Most relevant to this article are the following questions: (1) why did the judges enroll in the programs; (2) whether the judges perceived the programs improved or impacted their judging; (3) whether the judges thought there was an optimal time for judges to do such programs; (4) how the post-graduate degree program differed from other continuing judicial education programs; (5) whether they supported post-graduate studies for judicial aspirants; (6) whether the judges thought courts should grant judges sabbaticals to do such post-graduate degree programs; and (7) whether the judges believed courts should fund judges earning post-graduate judicial education. Below, I report on the themes that emerged from the answers to these questions.

A. Reasons for Enrolling in a Post-Graduate Degree Programs

As one recent paper argued, scholars generally “propose ideas for judicial education content and delivery without empirical research on what judges need to

know or what they seek from continuing professional education.”⁵¹ An exception to this is the study, *An Empirical Study of Judges’ Reasons for Participating in Continuing Professional Education* by Dennis Catlin, which extended the research that had been done with other professionals on their reasons for participation in continuing professional education to judges.⁵² In this study, Michigan judges reported participating in continuing legal education for a variety of reasons. In the survey, the Michigan judges ranked the following reasons for participating in judicial education the highest:

- (1) “to help keep abreast of new developments in the law”;
- (2) “to help me be more competent in my judicial work”;
- (3) “to further match my knowledge or skills with the demands of my judicial activities”;
- (4) “to better respond to the questions of law presented to me”;
- (5) “to develop proficiencies necessary to maintain quality performance”;
- (6) “to maintain the quality of my judicial service”; and
- (7) “to increase my proficiency in applying legal principles.”

For this article, rather than using a survey, I asked each judge interviewed his or her reason for enrolling in post-graduate degree program for judges. Four primary themes emerged from this question. Judges enrolled: (1) to be better judges; (2) to update or deepen their legal education (by that, I mean their Juris Doctor); (3) to fill in gaps in their judicial education; and (4) to invest in life-long learning.

⁵¹ Benton and Sheldon-Sherman, *supra* note 3, at 24.

⁵² 7 JUST. SYS. J. 236 (1986).

Preliminarily, the judges' reports that they sought the degree programs to be better judges was not categorically different from the reasons the Michigan judges had ranked as reasons for participating in judicial education. That is to say the reasons ranked by the Michigan judges can be grouped under the umbrella of "wanting to be a better judge." In this sense, the theme of wanting to be a better judge that emerged from the interviews is not new. As will be discussed later, what is new from the interviews is the idea that judges perceive that theoretical learning can make them better judges. Additionally, the themes of the perceived gaps in both legal education and continuing legal education also appear to be new or at least different than the reasons the Michigan judges ranked in the survey. And finally, the theme of life-long learning may or may not be different than what was documented in the Michigan study. One reading is that a desire to invest in life-long learning as a judge is not necessarily divorced from a desire to be a better judge, thus not too dissimilar from the interviews or the Michigan study. As a judge wrote in a landmark monograph of judicial education: "We [judges] are fortunate to be in a profession where we become better at what we do by becoming better at who we are."⁵³ Another slightly different reading is that the judges are interested in life-long learning for its own sake (personal development) and not necessarily for the purpose of improving their judging.

Turning to the specific responses from the interviews, with both the University of Virginia judges and the Duke judges, the desire to be "better judges" was the most cited

⁵³ Mary R. Russell, *Towards A New Paradigm of Judicial Education*, 2015 J. DISP. RESOL. 79 (2015) (citing E.G. Noyes, *Building Community in the Arizona Court System*, in *EDUCATION FOR DEVELOPMENT: THE VOICES OF PRACTITIONERS IN THE JUDICIARY*, JERITT MONOGRAPHY SIX 32 (Charles Claxton & Esther Ochsman eds., 1995)).

reason for enrolling. One judge put it as follows: “I want to be the best judge.”⁵⁴ Another judge put it as “I wanted to be an even better judge.”⁵⁵ Variations on this theme included: “I enrolled because I thought it would make me a better judge. I graduated law school in 1971. I had no opportunity to engage in constitutional perspective. The main thing for me is I learned more about constitutional history. I learned more about judicial philosophy.”⁵⁶ Another judge expressed this theme as: “I want to be a better judge. Judging does have differences with lawyering. As judges, our training is in the practical stuff, not on the overall view. I wish every judge could do this program.”⁵⁷

The second theme that emerged was a desire of the judges to update or deepen their Juris Doctor education. This response was repeated mostly by the University of Virginia judges, who amongst the judges interviewed were older as a group and had a wider gap between their Juris Doctor and the pursuit of their LL.M.⁵⁸ Specifically, most of these judges had graduated from law school decades prior to attending the University of Virginia program. Many commented on how legal education had changed since they attended and they wanted the benefit of the new information. One judge explained: “When I went to law school there was not that much emphasis on jurisprudence. We just studied cases. I see a big difference between law students today and when I went to law school. Today’s students who have never decided a case know

⁵⁴ Judge 9. Judge 26 similarly stated “I aspire to be the best judge.”

⁵⁵ Judge 5.

⁵⁶ Judge 1.

⁵⁷ Judge 24.

⁵⁸ A likely explanation for this age gap is that the University of Virginia focused on appellate judges who are generally, as a group, older than trial court judges.

their jurisprudence.”⁵⁹ Another judge explained that she thought that the program would “expose her to theories that she had not previously been exposed to when she attended law school.”⁶⁰ Another judge expressed the same idea by stating that he enrolled because learning new ideas on the law such as Law and Medicine, Legislation, and Capital Punishment was very appealing to him.⁶¹ One judge succinctly explained his reason for enrolling was because he “received a doctor in jurisprudence without any classes in jurisprudence.”⁶²

Indeed, when asked whether the program had met their expectations, the judges uniformly commented that the program had exceeded their expectations, citing exposure to courses in areas that were not available in law school when they attended, such as Law and Economics, Feminist Legal Theory, and Legal History. Thus, for many if not most, the program was a chance to go back to see what changes had occurred in law. “The law had changed since law school. Everyone can benefit from updating their legal education,” one judge commented.⁶³

The third theme that emerged is that judges wanted to fill in gaps left not only by their legal education but also by their continuing judicial education. This theme was echoed by both the University of Virginia and Duke judges. One judge captured this view best: “Cookbook programs are useful. But, they should not be the beginning and the end of judges’ education. Judges need a broader range of education in the sciences,

⁵⁹ Judge 9.

⁶⁰ Judge 2.

⁶¹ Judge 21.

⁶² Judge 3.

⁶³ Judge 21.

humanities, and international law. Judges also learn a lot from meeting and interacting with other judges.”⁶⁴ Another judge echoed this view saying the “program was different in length and substance. Other programs were more practical how-to, ethics, nuts and bolts. [The program] was broad base and theoretical learning.”⁶⁵ Finally, another judge reported “This was an opportunity to grow as a judge, to step back. Think deeper.”⁶⁶

The fourth theme that emerged is that many of the judges saw themselves as lifetime learners. “I am a believer in lifetime education,”⁶⁷ stated one judge. Another stated similarly, “I love to be educated.”⁶⁸ Another judge enthused, “I love school . . . the whole academic environment . . . I loved law school . . . always wanted to get an LL.M. . . . always wanted to improve myself.”⁶⁹ Yet another judge reported “Legal education should not stop at law school. There is a continuing need for education.”⁷⁰

Although these four categories of responses represent the majority of responses from the interviews, some of the less repeated responses were also interesting. Two judges reported that the prestige of the respective law schools was a factor in enrolling.⁷¹ Another judge said he thought an LL.M. would be a “resume builder.”⁷² Along that same line, another judge also thought that the credential of the degree was a career boost—“Looks great on resume.”⁷³ In a similar vein, one judge stated that she

⁶⁴ Judge 17.

⁶⁵ Judge 13.

⁶⁶ Judge 9.

⁶⁷ Judge 11.

⁶⁸ Judge 5.

⁶⁹ Judge 6.

⁷⁰ Judge 19.

⁷¹ Judges 20 and 32.

⁷² Judge 22.

⁷³ Judge 21.

thought that the program “upped her credentials” because she had not attended a top tier law school.⁷⁴ Another judge reported that he enrolled because he thought the LL.M. degree would help his post-judicial career in teaching.⁷⁵ Finally, another judge stated with tongue firmly in cheek that he did so badly in law school that he wanted a do-over.⁷⁶

B. Impact of Program

I asked each judge whether he or she perceived that his or her judging improved or was impacted by the program. As an initial matter, I had expected to see a difference in the responses between the University of Virginia judges and the Duke judges because the Duke judges only recently graduated from their Master’s Program. However, no such difference emerged from the interviews. Of the 32 judges interviewed, 29 responded that the program improved or positively impacted their judging; two responded that it did not; and one responded that he did not know. That the majority of judges reported their judging improved is significant and in my opinion, new, and will be explored in Part IV below. How could programs not designed as nuts and bolts improve judging?

Turning to the specific responses on the impact of the program, one of the judges who responded that the program did not impact his judging explained as follows: “By the time I went to the program I already had my own judicial philosophy and there was nothing law professors who had never been in a courtroom could teach me about

⁷⁴ Judge 32.

⁷⁵ Judge 8.

⁷⁶ Judge 2.

trials.”⁷⁷ Although this judge did not perceive the program to have improved or impacted his judging, he stated that the benefit of the program was thinking about law in a broader sense than just in the context of presiding over trials.⁷⁸ The other responded that he did not think that the objective of the program was to improve judging. Even so, he reported that although he did not take “anything concrete back that could apply to daily work” he did go back to work “refreshed.”⁷⁹

The judge who responded that he did not know if the program impacted his judging responded that although it was hard to say, he knows that his attitude improved. “I was reenergized by the ability to sit back and look at things more broadly and by the ability to look more broadly at law and society,” he reported.⁸⁰

The judges who responded that the program improved or impacted their judging repeated themes of the program making them “more conscious,” “more thoughtful,” “more insightful,” “more questioning,” and “more intentional.”⁸¹ The judges also described the experience as “mind-expanding,” and “awareness building.”⁸² They reported that they gained broader perspective as judges, that they understood the impact of their decisions more, that they understood their roles as judges more, and that they appreciated the decision-making process more.⁸³ For example, a recent graduate of the Duke program related: “The program made me more aware. The way that I

⁷⁷ Judge 13.

⁷⁸ *Id.*

⁷⁹ Judge 28.

⁸⁰ Judge 1.

⁸¹ Judges 2, 5, 10, 20, 23, 24,12,25.

⁸² *Id.*

⁸³ Judges 11, 12, 25, 31, 9.

approached things changed. It made me question how things are done.”⁸⁴ Interestingly too, a number of these judges also remarked that the program boosted their confidence as judges.⁸⁵

Of the judges reporting they benefitted from the program, a number of them pointed to specific courses such as constitutional history, jurisprudence, and statutory interpretation as particularly impactful. Of the constitutional history course, for example, a judge reported that she gained “in-depth understanding of what we accept as current doctrine.”⁸⁶ Similarly, another judge reported that studying legal history made constitutional doctrines “more alive” for her.⁸⁷ One judge noted that her exposure to reading John T. Noonan’s *Mask of Law in Legal History* “refocused her energy on the people who come before me In trying to keep up with cases all judges take mental shortcuts. The materials read refreshed my commitment to not taking short cuts.”⁸⁸ Another judge regarded the course at Duke on Accuracy in Criminal Process as particularly impactful. He reported that what he learned on the identification process, for example, made him listen to suppression hearings differently.⁸⁹ A number of judges reported that the appreciation for empirical evidence that they gained made them evaluate expert witnesses differently.⁹⁰

⁸⁴ Judge 24.

⁸⁵ Judges 14, 30, and 32, for example.

⁸⁶ Judge 19.

⁸⁷ Judge 17

⁸⁸ Judge 29.

⁸⁹ Judge 32.

⁹⁰ Judges 29 and 30

Others pointed out that the exposure to courses that they did not have when they went to law school, such as Law and Economics, Comparative Law, and Feminist Legal Theory, as particularly beneficial. One judge reported, for example, that a course on Law and Economics allowed him to speak the latest “lingo.”⁹¹ Another judge made a similar point in noting that “there was a new breed of lawyers who were exposed to new developments who made arguments that I did not understand” and the post-graduate studies brought him up to date with the new breed of lawyers.⁹²

Overall, even the judges who reported that their judging benefitted from the program responded that it was difficult to articulate or quantify exactly *how* the program impacted their judging. One judge reported that “there is some change even without a judge appreciating it The difference is subtle, not like plastic surgery, not a gross modification . . . perhaps, it is just a checklist a judge goes through intuitively.”⁹³ Another judge expressed the same sentiment in stating that the impact is “subliminal, rather than blunt.”⁹⁴

It is worth pausing on this fact—that despite how emphatic the judges were that the program had improved or impacted their judging, they had difficulty articulating how the programs improved their judging. I attribute this difficulty in articulation to two related broader questions: (1) the difficulty of parsing out what judges do and (2) what makes a good judge. Because judging calls for the exercise of a variety of skills, it can sometimes be difficult to articulate what good judging is. As a result, it can also be

⁹¹ Judge 3.

⁹² Judge 20.

⁹³ Judge 14.

⁹⁴ Judge 22.

difficult to articulate how one improves as a judge and what kind of education improves judging. In my view, therefore, the difficulty in articulation does not diminish the judges' response but reflects the inherent difficulty of the question posed.

Additionally, with the exception of two, the judges reported that they could not point to specific cases where the outcome was changed by their post graduate judicial studies. For example, a judge reported: "I can't identify any specific cases but I believe I approach things better, from examining issues to setting forth my rationale."⁹⁵ One judge explained that the program "did not change the substance of my decisions but it changed the process of my decisions."⁹⁶ Nonetheless, one judge noted that even if she was not able to use the coursework in specific cases, "it is good to recognize things even if you can't use them."⁹⁷

The judges also reported two other categories of benefits of the program: benefits gained from the faculty and benefits gained from classmates. As to the faculty, the judges uniformly praised the caliber of their qualifications, teaching, and level of engagement. They praised the faculty as experts in their fields or "powerhouses in their fields,"⁹⁸ as several judges put it. They noted that some faculty even interacted with them socially. But what stood out from the interviews is that some of the judges reported perceiving that the faculty also benefited from teaching them. As an example, one judge stated: "it was a great benefit to the teachers to have adults who had been

⁹⁵ Judge 25.

⁹⁶ Judge 26.

⁹⁷ Judge 10.

⁹⁸ Judge 16. A similar characterization was made by other judges such as Judges 5, 6, and 8.

lawyers and now judges wrestling with them with the materials they teach and have been teaching.”⁹⁹

As to the benefits gained from fellow judges, the judges relayed stories of the networks and camaraderie they developed in the program. A number of judges formed study groups. Some had dinner together regularly. Other judges took morning walks where they would discuss the previous night’s readings. A number of judges reported that the opportunity to learn from other judges both in and outside the classroom was unique.¹⁰⁰ One judge stated that the opportunity to learn in a mixed classroom of appellate judges, trial judges, state and federal judges was beneficial. She opined that it was good for appellate judges, especially those who were not trial judges, to see there “smart judges in the trenches.”¹⁰¹ Similarly, she thought it valuable that the federal judges had a chance to see that state court judges are smart too.¹⁰² Another judge reported that studying with a diverse group of judges made her more tolerant of her colleagues and lawyers back home.¹⁰³ Beyond the classroom, a number of judges reported attending class reunions, visiting each other when they travel, following each other’s promotions and elevations, and developing friendships.

C. Post-Graduate Studies for Judges Compared to Other Judicial Education Programs

Both the University of Virginia judges and the Duke judges reported that the programs differed from other judicial education programs in significant ways. The

⁹⁹ Judge 4.

¹⁰⁰ For example, Judges 4, 9, 8, and 28.

¹⁰¹ Judge 9

¹⁰² *Id.*

¹⁰³ Judge 8.

judges saw the fact the programs were degree-earning programs as significant. They were academically rigorous, they reported. They were “more intense” and “got deeper into subjects.”¹⁰⁴ The judges also noted where other judicial education programs are “nuts and bolts,” these programs were broader and more theoretical. One judge noted, for example, that “baby judge school is more like cookbook, how-to, UVA is more theory, not CLE. UVA was about thinking in broad concepts and philosophical views.”¹⁰⁵ A judge from the Duke program made a similar point, “This program was a unique opportunity to step back and think about how we judge . . . an opportunity to step out and look out and then look in. This can’t be done in a program that lasts one or two days.”¹⁰⁶ One judge opined that “baby judge school was very valuable in teaching how to be a judge,” but thought “the value of the post-graduate studies is to think about law in a broader sense.”¹⁰⁷

The judges also noted that unlike continuing legal education and workshops, the post-graduate programs were also different in that they had “to perform” and “produce output.”¹⁰⁸ “Most CLEs do not have an expectation that judges absorb the materials, just attend,” one judge remarked.¹⁰⁹ Some judges commented that unlike continuing legal education, the programs had accountability with the exams and thesis requirement.

The judges noted that the residential component of the programs was also distinguishing feature. Some judges reported that the residential component allowed

¹⁰⁴ Judges 5, 15, 10, and 21, for example.

¹⁰⁵ Judge 17.

¹⁰⁶ Judge 26.

¹⁰⁷ Judge 20.

¹⁰⁸ Judges 2 and 8.

¹⁰⁹ Judge 27.

them to get away from their day job and focus on thinking about the law. Others noted that the residential component contributed to the “comradery and fellowship,”¹¹⁰ which resulted in learning not just from the faculty but from fellow judges. One judge remarked that the law school setting itself added to the experience.¹¹¹

D. Optimal Time to Attend

I asked the judges whether there was an optimal time in a judicial career for a judge to obtain a post-graduate judicial degree. There were no differences in responses between the two groups of judges. Of the 32 judges interviewed, 23 responded that earlier in the judicial career was optimal, two judges responded that later in the career was optimal, two responded anytime, and five responded that it depended on the individual judge.

Starting with the minority view, the judges who thought the optimal time would be later in the career thought that the program should be timed to prevent burn-out. On this point, one judge explained: “I was a far better judge for having done this program. It was an enormous renewal. Although I was fairly new to the appellate court, I had been a trial judge. This was renewal. The intellectual fires were lit. The discussions and the enthusiasm was a real stimulus.”¹¹² The other judge explained that “I think the optimal time is after 10 years to reenergize and prevent burnout. After 20 years it is too late. The judge is looking for boondoggle and not looking to work too hard.”¹¹³

¹¹⁰ Judge 3.

¹¹¹ Judge 5.

¹¹² Judge 2.

¹¹³ Judge 22.

The two judges who responded that the program can be done anytime focused on the content of the program. Because the program does not teach judging, it is helpful at any time, they opined.

As noted above, the majority of judges fell in the camp of “the earlier, the better.” Though responding “the earlier, the better,” these judges also agreed that it should not be done as early as “baby judge school” or similar orientation programs. The general consensus among these judges is that though it should be done early in one’s career, that a judge must first be “seasoned.” The judges opined it should not be done too early because the programs were not nuts and bolts programs. The judges opined that it is important that a judge first know the job. Another judge made this point as follows: “I think it is important that one learns to be a capable judge first. I had been on the bench for four years when I went. It took me about five years to be a decent judge. It is difficult to be a lawyer on Friday and then a trial judge on Monday.”¹¹⁴ Another judge articulated this point as follows: “I believe a judge should have five years under her belt. A judge needs context. A judge needs to have made decisions in order to study decision-making. Need to have done some doing.”¹¹⁵ This judge further elaborated: “although in my pre-judicial career I made sentencing recommendations, as a judge I realize that the cases were closer. I did not feel the weight of making the decision as a litigator. In the end, if the point of the program is to make better judges, judges need to have a little judging experience. It makes them more honest in looking at judicial

¹¹⁴ Judge 20.

¹¹⁵ Judge 9.

decision-making.”¹¹⁶ Yet, another judge summarized this view as “I believe judges should have enough experience to relate what they are learning in the program to their own job.”¹¹⁷ It is worth noting that there was no unanimity as to how many years of seasoning was optimal, but approximately five years was the most repeated. The repeated explanation was that generally it takes a judge about that much time to get comfortable in the role. However, one judge stated that the five year mark made sense to her because it is the point at which judges start to get “restless.”¹¹⁸

Another theme that was repeated with these judges was that seasoning was also important for the judges to not only put the program in context, but also for the judges to be able to get away from their jobs to do the program. (“After 3-5 years on the bench is optimal because it takes time to figure out one’s court and one’s role on the court and how you can balance doing the program and the job.”¹¹⁹; “I think the earlier the better. But a judge needs to have enough time on the bench to have feet on the ground to be able to spend time from chambers and manage docket remotely.”¹²⁰).

Finally, a number of the judges remarked that it was “more bang for the buck”¹²¹ to do the program earlier. The judges explained that in terms of a return on investment, “judges should do the program when they have time to put the education into play.”¹²² “There is nothing wrong with senior judges doing the program, but the payback to the

¹¹⁶ *Id.*

¹¹⁷ Judge 12.

¹¹⁸ Judge 28.

¹¹⁹ Judge 7.

¹²⁰ Judge 15.

¹²¹ Judge 6, for example.

¹²² Judge 8.

system is not as great,” explained one judge.¹²³ “From an efficiency perspective, not best use to give a seat to a 74 year old judge with mandatory retirement age of 75”¹²⁴ another judge remarked. One judge summarized as follows: “this was the best educational experience including college and law school. A lot of my classmates were approaching retirement. I wish judges who were going to stay for the long haul would get the opportunity earlier in their career.”

E. Post-Graduate Studies for Judicial Aspirants

Finally, I asked the judges what they thought of a similar program of post-graduate judicial studies for lawyers interested in becoming judges. I had expected that given the majority of judges’ view that the programs made them better judges that they would have been supportive of such a concept for lawyers who want to be judges. Contrary to my expectation, the majority of the judges were not favorable to the idea. They expressed a variety of concerns. First, a number of the judges expressed concern about the difficulty of lawyers taking time off from their busy practices. Consequently, they thought that such a proposal would be impractical. Second, a number of judges were concerned that such a program would breed elitism. These judges worried that only lawyers with money would be able to attend. Third, judges responded that because becoming a judge in our system depends “on luck and politics,”¹²⁵ pre-judicial

¹²³ Judge 19.

¹²⁴ Judge 8. This is not to say that the judges did not recognize the value of more senior judges’ participation. Judge 10, for example, relayed that he remembers thinking that his classmates were mostly novices like himself. He commented “I understand why you don’t want to spend money for a judge who is nearing retirement. But that experience would add a lot.”

¹²⁵ Judge 20.

education for lawyers would be a “waste”¹²⁶ of the lawyers’ time. One judge thought it was “silly” and that given the politics involved in becoming a judge, lawyers would be better off pursuing a graduate degree in politics.¹²⁷ Fourth, some judges were concerned about the possibility of manipulation by lawyers. These judges were concerned that in jurisdictions where judges are elected, lawyers who completed the program would tout it as evidence that they were qualified to be judges. Others opined that this would not be beneficial because lawyers come to the bench with a variety of backgrounds and “that some qualities for becoming a good judge can’t be taught.”¹²⁸ These judges worried that requiring a graduate program would otherwise disqualify good candidates. Finally, a number of judges opined that it does not make sense to study judging before becoming a judge because such studies are best done after a judge has some years of judging under her belt. (This last concern was wholly consistent with the majority of the judges’ views that even the post-graduate program for judge is optimally done after a judge has some seasoning under her belt.)

However, a few of the judges were open to the idea. They thought that the idea of “prepping and priming”¹²⁹ lawyers was a good idea and “an improvement over current state of affairs.”¹³⁰ One judge thought this could possibly be a way for candidates to gain insight into the role of the judge and perhaps some people would

¹²⁶ Judge 14.

¹²⁷ Judge 20.

¹²⁸ Judge 9.

¹²⁹ Judge 2.

¹³⁰ Judge 16.

screen themselves out because “not everybody should be a judge.”¹³¹ Another judge thought that such a program would be valuable because most judges come from narrow practice areas. Accordingly, “a post-graduate program for lawyers interested in becoming judges would broaden judicial candidates.”¹³² But even the few judges who were open to this idea expressed concerns about how lawyers could take time off from their busy schedules to do such a program, a concern repeated by the majority of judges who responded unfavorably to such a program.

IV. Lessons for Judicial Education

A. Benefits of The Programs

The scholars of judicial education have yet to study post-graduate judicial studies degree program for judges. This article is a modest start, with two obvious caveats. First, I did not interview all the judges who have graduated from the University of Virginia and Duke programs. Two hundred and ninety-six judges graduated from the University of Virginia program during its 25 year tenure and 15 have graduated from Duke so far. I have interviewed 32. But the judges’ perception that the programs benefited their judging was consistent with the majority of interviews. Second, I only report what the judges told me – their perceptions of their own judging. I did not test or set out to empirically test, measure, or capture their “before and after” judging, nor am I convinced that there is a meaningful way to empirically test the judges’ perceptions. The kind of improvement the judges described such as becoming

¹³¹ Judge 1.

¹³² Judge 21

“more aware,” “more intentional,” asking more questions about accepted doctrines and practices, feeling more confident cannot be measured by for example, speed of disposition, rate of affirmance by higher courts, or frequency of citations of opinions by other courts.¹³³ As one judge explained, the changes are subtle rather than blunt and therefore, in my view, not easily measurable. Nonetheless, what the judges—the consumers of the programs—have to say on the validity and usefulness of the post-graduate degree programs should matter to those who think, write, research, plan, and execute judicial education programs and to other judges who participate in judicial education.

What are the lessons learned from the interviews? First, the judges, like other professionals, want to be good at their jobs; they want to be good judges. This should not be either surprising or revelatory. Second, the judges value continued judicial education as critical to being good judges. This too is not novel. Third, the majority of the judges perceived the broad theoretical curriculum of the post-graduate degree programs as having improved their judging. This, I think, is new. As a preliminary matter, the report from the judges that they benefitted from this type of academic learning may run counter to the perceived estrangement between the legal academy and the judiciary, which Judge Posner details in his recent book *Divergent Paths*. But the judges’ perceptions also raise the question of how post-graduate degree programs for judges not designed to teach the craft of judging improve judging, as the judges interviewed perceived? There are three potential explanations.

¹³³ See Stephen Choi and Mitu Gulati, *A Tournament of Judges*, 92 CALIF. L. REV. 299 (2004).

First, perhaps the judges' reports that they benefitted from the programs are self-serving and self-justifying. They are justifying the expenditure of time and resources. The possibility that the judges' reports are a product of self-selection may also be a factor. That is, it remains possible that the judges who agreed to be interviewed are the judges most enthusiastic about the benefits of the programs. These concerns notwithstanding, the perception that their judging improved was consistent across the judges.

Next, another possible explanation is that the University of Virginia and Duke degree programs are not dissimilar to other continuing education programs that judges attend. In other words, the post-graduate degree programs have how-to components, which benefit and improve judging. A course on opinion writing¹³⁴ or a Judges' Seminar where other judges and speakers present on current or complex issues judges face fall in this category. However, neither the curriculums, nor importantly the interviews, support this theory. Judge crafting was either a non-existent part of the curriculum (as the University of Virginia judges reported) or very little, as the Duke judges reported (Duke's curriculum included an opinion writing seminar and Judges' Seminar). Although a few judges credited the benefits of practical courses like opinion writing, most of the judges pointed to quite the opposite. They noted what distinguished these post-graduate degree programs from other continuing education they have attended is that they were not "nuts and bolts," not "cookbooks," and not

¹³⁴ This course is offered at Duke but was not offered at the University of Virginia, according to the judges interviewed.

“drive-bys.” Rather they were theoretical and provided broad views and analysis of the law. (“Looking at forests, rather than the trees” as one judge put it.) For example, Judge 27 stated what he learned the most was at the “character evaluation level” which he defined as questions on “how should the law be applied,” “how should judicial power be used,” “how do judges use discretion?,” and “what is the proper place of a judge’s values in the discretionary grey zone?” These types of reflections were echoed with most of the judges who reported that the programs benefitted them. These are not topics generally covered in updates on substantive or procedural law. They are of course theoretical questions.

Thus, the third potential explanation is that theoretical studies where judges reflect on broader issues rather than individual case application are beneficial for judging. This seems more aligned with what the judges had to say. That is, the opportunity to step away from looking at individual cases and look at judging through a systemic framework, through the lens of history, and through the purview of the latest research and scholarly work done on decision-making, benefitted their judging. This is supported by the judges describing the programs as “mind-expanding,” “consciousness-building,” and “awareness building.” Or, as the judge quoted above put it, “character-evaluating.” As the interviews showed, these are the types of experiences that are difficult to articulate, let alone empirically measure. In other words, it is difficult to measure a “before and after.” Perhaps the impact of theoretical education on judging is best described by Chief Justice Mary Russell when in talking about judicial education in general she stated: “The path to emerging as the best possible judge does

not stop with the accumulation of legal knowledge and experience, 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.”¹³⁵

This leads to a final, but important, lesson learned from the interviews. If theoretical judicial education improves judging, as the judges interviewed perceived, then a further lesson from the interviews is that law schools must play a role in the continuing education of judges, beyond symposiums and conferences. While the Federal Judiciary Center and other providers of educational programs do an excellent job of providing continuing legal education in the form of workshops, seminars, conferences, publications, and web-content, they have neither the infrastructure, resources, nor the expertise to provide theoretical learning in an academic degree programs for judges. Although law schools generally do not see themselves as filling the role of training judges, they are uniquely situated to provide the stable academic environment and intellectual rigor required of a degree program. Judge Posner, perhaps the most vocal judge critic on the need for changes in the judicial education of judges, endorses a role for law school in educating judges. “In a nutshell, the need is for continuing judicial education in process rather than in substance, in judging rather than doctrine. Law schools can provide that education as long as they have a clear sense of the judges’ needs and which of those needs law schools can fill.”¹³⁶ I go one step further. Law schools are uniquely situated to provide judges not just longer intensive

¹³⁵ Mary R. Russell, *Towards a New Paradigm of Judicial Education*, 2015 J. DISP. RESOL. (2015), available at: <http://scholarship.law.missouri.edu/jdr/vol2015/iss1/6>.

¹³⁶ Posner, *supra* note 13, at 351.

seminars but degree programs centered on judicial process, judicial role, and judicial decision-making.

Law schools offering degree programs for judges would not face the objections that have arisen with private or industry sponsored judicial education programs.¹³⁷ To the contrary, law schools providing degree programs to judges may address some of the common charges in the scholarship on judicial education against the way judicial education is currently conducted. One paper summarized these criticisms as follows:

Conventional wisdom suggests that the judiciary should “take primary responsibility for providing continuing judicial education,” a view that is based on claims of expertise (i.e., the belief that only judges can appreciate the particular pressures and demands of acting as a judge and thus are the only persons qualified to act as instructors) and the need to protect judicial independence. However, questions have been raised in a variety of contexts about the propriety of self-regulation, since self-interest may tempt individuals to act in a manner that is contrary to the public interest. Concerns about self-regulation may be particularly pressing in cases involving judicial education, given the role that the judiciary plays in a well-ordered society.¹³⁸

Where law schools would be making decisions about curriculum, faculty, and admissions, concerns about self-regulation and self-interest would not apply.

B. Barriers and Challenges

Scholars have identified both time and funding as common barriers to delivering judicial education. For example, both concerns of time and funding have driven the Federal Judicial Center to increase the range of distance education programs—from publications on law and judicial procedure, to the use of broadcasts over the Federal

¹³⁷ See Douglas T. Kendall & Eric Sorkin, *Nothing for Free: How Private Judicial Seminars are Undermining Protections and Breaking the Public's Trust*, 25 HARV. ENVTL. L. REV. 405, 469-80 (2001).

¹³⁸ S. I Strong, *Judicial Education and Regulatory Capture: Does the Current System of Educating Judges Promote a Well-Functioning Judiciary and Adequately Serve the Public Interest?*, 2015 J. DISP. RESOL. (2015).

Judicial Network and website. Additionally, lack of continued funding was a primary factor in the closing of the University of Virginia program. Thus, if post-graduate degree program for judges will be a viable option for judges on a wider scale beyond just at the one law school, funding and time constraints will need to be considered.

Though these broad policy considerations are worthy of investigation beyond the scope of this article, I asked the judges about their views of courts funding judges participation in post-graduate studies and courts allowing sabbaticals for judges to pursue post-graduate studies. Regarding court funding of judges attending degree programs, 28 judges were supportive and four were not. Of the judges who were supportive, two qualified their response by saying that courts should fund at least partially. Overall, while the judges were sensitive to the fiscal challenges of the courts, most of the judges thought that courts contributing to the funding was justifiable as the degree programs made for better judges, which in turn benefitted the judiciary and the public that it serves.

Four general themes were repeated amongst the judges who were supportive of court funding these programs. First, they stated that they themselves, or their classmates, received some financial assistance to attend the University of Virginia Program. Second, these judges thought that the courts should pay because graduate education for judges is “an investment in a better judiciary,”¹³⁹ it resulted in “better, more competent judges,”¹⁴⁰ and “it improves and strengthens the courts.”¹⁴¹ Third, the

¹³⁹ Judge 9.

¹⁴⁰ Judge 2.

¹⁴¹ Judge 18.

judges responded that without the court's financial support or other outside funding, that "only older and richer judges" could participate.¹⁴² Finally, judges responded that without court or outside funding, enrollment in such programs would suffer. "Judges need a push to study and take time to study. Courts funding judges help," reported one judge.¹⁴³ A number of judges reported that they would not have been able to do the program if they had to pay out of pocket.

Of the judges who were not supportive of court funding, the financial state of the courts was of primary concern. One judge laughed and responded that her court is in financial crisis. The judge reported that they do not even have money for court reporters. One judge opposed funding because he thought that the program is "not a necessity to do the job."¹⁴⁴ Finally, one judge thought funding by the courts should only be warranted with evidence that the program helps judges do their job of judging.

On the question of sabbaticals, of the 32 judges interviewed, 27 supported courts having sabbatical programs to allow judges to pursue judicial degree programs.¹⁴⁵ Overall, as with the case of court funding, the judges who supported sabbaticals thought they were justifiable because the programs benefitted the judges, which in turn was beneficial to the judiciary. Further, two judges noted that their courts had "sabbatical" programs. One state trial court allowed the judge to use educational leave

¹⁴² Judges 16 and 8 .

¹⁴³ Judge 17.

¹⁴⁴ Judge 20.

¹⁴⁵This area is ripe for study. The most cited work on judicial sabbaticals that I found was a 1987 study by the Federal Judicial Center written by Ira P. Robbins available at [http://www.fjc.gov/public/pdf.nsf/lookup/judisabb.pdf/\\$file/judisabb.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/judisabb.pdf/$file/judisabb.pdf) (last visited Mar. 16, 2016).

time for the residency part of the program, rather than using his vacation time.¹⁴⁶ The other judge reported that his court has had an established “sabbatical” program for a long time. Every seven years a judge can take four months off the assignment wheel to catch-up, teach, travel, study, or do whatever the judge wishes.¹⁴⁷

The judges who supported sabbaticals cited to the difficulty of doing graduate studies while balancing judicial duties. (“It would be good not to have your mind in two places.”¹⁴⁸) They gave as examples either themselves having to work during the residential part of the program or observing colleagues working while at the program. One judge thought that perhaps if sabbaticals were given for post-graduate studies, more judges would apply to earn graduate degrees. Another judge went further and stated that he thought sabbaticals were a great idea not only for studies but for other respite. He explained as follows: “The job is difficult and consuming. Even a few months away to refresh, to study, write, or make other contributions to the system would benefit judges and the court.”¹⁴⁹

Even the judges who supported sabbaticals expressed concerns about political backlash. The judges worried that sabbaticals may contribute to a perception with legislatures or the general public that judges do not work hard, that judges are “overpaid and spoiled,”¹⁵⁰ and that the sabbatical is just a judicial “boondoggle.”¹⁵¹ A judge commented that sabbaticals to pursue post-graduate degrees would be a hard sell

¹⁴⁶ Judge 32.

¹⁴⁷ Judge 19.

¹⁴⁸ Judge 27; Judge 24 also thought that sabbaticals would allow more immersion into the program.

¹⁴⁹ Judge 5.

¹⁵⁰ Judge 2.

¹⁵¹ Judge 5.

with the public, stating that not even fellow judges appreciate the value of the program. (“Good luck selling it to legislature,” one judge commented.¹⁵²) One judge thought that in jurisdictions where judges were elected, judges would fear that taking a sabbatical would be used in a future election campaign against them. Two of the judges interviewed gave examples of sabbaticals from their courts—allowing judges educational leave time rather than vacation time and taking judges off the assignment wheel for a period of time.

Of the five that were not supportive, one reasoned that because “taxpayers don’t pay you to do things you want to do. A judge can on his own arrange his schedule to do such a program.”¹⁵³ Another judge responded that it depended on the length of the sabbatical and the court (for example, it might be easier for a judge on an appellate court). Two judges thought that not having a sabbatical attracts judges to the programs who really want to do it. (“People who really want to do the program will toughen up and find a way to do it even without a sabbatical. Valuable program comes at a price.”¹⁵⁴) Finally, one judge opined that as with the case of court funding, unless it can be quantified how the LL.M. programs help do the job of judging, sabbaticals should not be justified.¹⁵⁵

¹⁵² Judge 29.

¹⁵³ Judge 20.

¹⁵⁴ Judge 24; Judge 26 similarly argued that not having sabbaticals might attract judges who really want to do the program.

¹⁵⁵ Judge 28.

C. Suggestions For Future Research

This is a first step at looking at post-graduate degree programs for judges. But the questions highlighted by this article are worthy of further examination. Is there value in teaching judges to be law students again? Can abstract academic studies benefit judges in the day-to-day work of judging? How do judges articulate the impact of such theoretical learning and can claims of improvement be empirically tested? Is a longitudinal study of judges who earn post-graduate degrees possible? For these questions and others raised by the interviews, a useful extension of this project would be interviews of a greater number of graduates of these programs. What about the larger question of whether judges who volunteer to do these programs are outliers in the judiciary generally? Accordingly, another follow-up of this article would be to look at the profiles (education, judicial priors, years on the bench prior to enrolling, pre-judge career) of the judges who enrolled. Which judges are these programs attracting and why? And what, if anything, that information can tell us about the usefulness of post-graduate degree programs for judges?¹⁵⁶ Finally, a slightly related, but important, topic of investigation worthy of consideration is the impact, if any, of judges entering these programs on the scholarship on judicial education, and on the field of judicial studies in general.

¹⁵⁶ Additionally, there can be value to the study of legal education in general to look at these programs from the perspective of value added to law schools. For example, one inquiry is : Would taking on the education of judges impact how law schools teach law students?

V. Conclusion

Judicial education has come a long way. And the scholarship on judicial education has improved too. However, one area that has not been studied is post-graduate degree programs for judges. This article is a first step. Although it is risky to generalize from the interviews of just 32 judges to the entire judiciary, the interviews strongly support that judges who graduated in post-graduate programs perceive the programs as benefiting their judging. Their perceptions then indicate that post-graduate academic programs should be part of the menu of educational opportunities available to judges. But this option is not viable without law schools answering the call to use their expertise and resources to make this a reality. Even so, challenges such as funding and time must be addressed with the possibility of court funding and court-given sabbaticals among the options.