

'Junket' Science

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By James Q. Wilson

Judges learn a lot in law school and as lawyers, but even after they put on black robes the training must continue, because the world they confront is becoming more complex, more litigious and less defined by well-understood legal maxims. In both civil and criminal trials, judges must evaluate competing claims about scientific evidence presented by experts hired by rival counsel who have only a modest interest in truth.

Much of that training today is carried on by private groups, including universities, that sponsor seminars. Judges are free to attend or ignore these programs as they wish, but that freedom, even when exercised by an independent branch of government, does not sit well with critics who fear that some self-serving ideology will be foisted upon tender judicial minds.

Sens. Russ Feingold, John Kerry and Pat Leahy want to put an end to university-based training programs. If they succeed, all such training will have to be approved by the Federal Judicial Center, a group of administrators governed by a board of seven judges, constituting the research arm of the federal judiciary. But the real motive of their bill is not to approve courses but to end them.

The bill is inspired by an organization, the Community Rights Counsel, which is funded to a significant degree by George Soros and chiefly concerned with environmental law. It has designed programs to help states and cities press ahead on environmental measures without worrying about the takings clause of the federal Constitution. It raised questions about the qualifications of John Roberts and Samuel Alito to be justices of the Supreme Court.

The CRC regards university efforts to educate judges as "junkets." I am puzzled by this view because for many years I have spoken or led seminars at meetings run by the George Mason University School of Law. Most of these meetings are strictly academic exercises in which scholars talk about economic principles, statistical techniques, tort and contract law, criminal and family law, the logic and methods of science, and similar matters. Some go well

beyond these issues and involve lectures about Plutarch, Homer, Montesquieu, Locke, Blackstone, Tocqueville, Renaissance humanism and the founding of the American republic.

In each two-day session that I have attended, every judge had to read about 250 pages of serious scholarly or humanistic writings; at six-day sessions, they had to read over 500 hundred pages. The discussions are lively and involve views from every political perspective. The discussion leaders have included John Searle, Orley

Should George Soros decide what judges learn?

Ashenfelter, Gordon Wood, Cass Sunstein, Donald Kagan, Michael Ignatieff and eight Nobel laureates. Every judge to whom I have spoken said they enjoyed the discussions. Over the 30 years that George Mason has run this program, more than 2,400 judges have attended, and they include about two-fifths of all of the federal judges appointed with life tenure.

One reason the CRC dismisses these ventures as junkets is that in the afternoon, following a tough morning of seminars, the judges play golf or take hikes. But there is a very good reason for letting them have fun at a nice resort. Since they are not paid a fee for attending, many would not come if they could not make it part of a vacation. (The university pays coach air fare and hotel room and food bills, but the golf comes at the judges' own expense.)

The other reason CRC calls them junkets instead of educational activities is that it thinks, for reasons that baffle me, that the groups who donate funds to these activities will influence the judges and shape their opinions. That possibility is farcical—no donors attend the meetings, the judges do not know who the donors are, and no subject about which a donor may have a legal interest is a topic for discussion. Moreover, corporate donors supply less than 10% of George Mason's budget for this event, one of the largest in the country.

A typical session goes like this: Professor

Orley Ashenfelter of Princeton describes statistical correlations and regression equations. Then I, or someone like me, uses these techniques to explain what scholars do and do not know about deterring crime, evaluating the impact of illegal drugs on crime, and understanding the ways in which private gun possession does or does not affect crime rates. Following that another scholar, such as David Popenoe of Rutgers, will describe how statistical analysis may help explain the strengths and weaknesses of families.

Or Gordon Wood from Brown will make clear how the Founders understood democracy, and another scholar, such as Jasper Griffin from Oxford, will compare that view to how the ancient Greeks understood popular rule. The notion that any of this biases judges is ludicrous. On the contrary, it helps them understand scientific techniques they may hear discussed in court and gives them a deeper understanding of the culture of which America is a part.

Despite the hard work through which we eggheads put the judges, the New York Times also refers also to these trips as "junkets" and endorses the Feingold-Kerry-Leahy bill. On the ABC program 20/20, a reporter, parroting the views of the CRC, kept asking judges who paid the bills for these seminars. They all said they did not know. The reporter then mused aloud about why this information was kept secret. But of course the judges did not know: George Mason keeps the identity of its contributors confidential precisely in order to prevent judges from thinking that anything they learn might be linked to the legal interests of a donor.

Any university can offer its own judicial training programs. The notion that the Federal Judicial Center has to pass on them before judges can be allowed to attend amounts to an effort to assert centralized political control that can only be based on one or both of two propositions: Judges are too stupid to decide for themselves whether to attend, or every program must contain whatever views the Judicial Center thinks it correct for judges to hear.

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