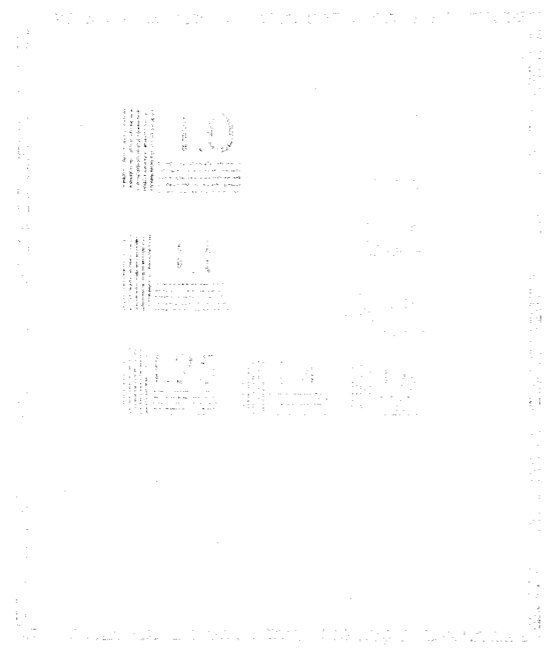


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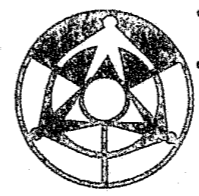
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THE AMERICAN UNIVERSITY

Criminal Courts Technical Assistance Project
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.



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SUMMARY OF ASSISTANCE
REGARDING THE CREATION OF A
JUDICIAL COLLEGE IN LOUISIANA

NCJRS

MAR 8 1977

October 1976

Consultants:

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I. INTRODUCTION

A. Background

Upon the recommendation of the Louisiana Judicial Council, Chief Justice Joe W. Sanders of the Louisiana Supreme Court, appointed a committee, chaired by Associate Justice James L. Dennis, to study the feasibility of establishing a Judicial College in Louisiana for Louisiana judges. It was felt that the College might provide orientation courses, training and continuing education to the state's judges at all levels. To assist the Committee in exploring the feasibility of establishing such a program, Mr. Eugene Murret, Louisiana's Judicial Administrator, requested LEAA's Criminal Courts Technical Assistance Project at The American University to provide the services of three expert advisors who were knowledgeable in the area of judicial education programs and who could attend the Committee's initial meeting on May 14, 1976. The consultants requested were Professor Noah Sweat, who had established the Mississippi Judicial College, John F. X. Irving, Dean of the Seton Hall Law School, and Ms. Bobbie Franklin of the National Center for State Courts.

B. Summary of Meeting

During the meeting, each consultant made a brief presentation to the Committee. Dean Irving traced the history of the development of judicial education in the United States, noting the need for state judicial colleges, which presently existed in 25 states, and the need for these colleges to provide training for court-related personnel as well as judges.

Professor Sweat described the structure of the Mississippi Judicial College which has a five-member board of governors appointed by the Chief Justice with four judges (one from each level of the court system) and a law professor. The college conducts two seminars per year, each

lasting three to four days. Although attendance is not compulsory and 50 percent to 60 percent of the judges are in attendance at any given seminar, Professor Sweat recommended that attendance be compulsory. The college has also worked on various publications, including model jury instructions, a general benchbook and an evidence benchbook, and holds seminars for court reporters, justices of the peace as well as for judges. The college provides legal research to judges through a watts line telephone system by which a judge can call in his question for research by the legal interns who then call back the information.

Professor Sweat recommended that a Louisiana Judicial College be located at the State Law School because of the availability of resources and research capabilities.

Ms. Franklin's remarks focussed upon the need for a cohesive program. She noted the importance of mandatory orientation training for new judges and suggested that the various components of any proposed program be implemented one at a time, with successful implementation of one component justifying funding for the next.

Following the consultants' presentations, additional comments were provided by Father David Boileau of the Louisiana Committee for the Humanities. A general discussion followed during which the Committee members expressed unanimous agreement that a judicial college should be established in Louisiana. It was tentatively agreed that the college should be supervised by a Board of Governors consisting of seven members, all judges, appointed by the Supreme Court for a one-year term with the possibility of reappointment. It was understood that the Committee would give further thought to this proposed structure once preliminary information would be gathered regarding the planning, financing, location and curriculum of the proposed college, which would be prepared by special committees that were appointed by Justice Dennis at the meeting.

On June 25, the Louisiana Judicial College was created by order of the Louisiana Supreme Court, a copy of which is appended to this report.

In the section which follows, Dean Irving provides an historical perspective upon the development of judicial education in the United States and the present status of these programs.

II. JUDICIAL EDUCATION IN THE UNITED STATES

A Critique and Prognostication

Dean John F.X. Irving

"....Many of the problems of the courts are closely related to the quality and competence of the major official participants - the contending lawyers and the judges."

Chief Justice Warren Burger
Supreme Court of the United States
1975 Annual Report

A. Introduction

This paper will provide an overview of the history and present the status of judicial training and education in the United States. Shortcomings and new directions will be identified with the presumptuous expectation that the paper may serve as a foundation for those who are planning to offer programs in this rapidly evolving field.

B. Raison D'Etire

Education of federal and state court judges has become increasingly important for at least the following reasons:

1. The law is evolving rapidly and becoming more complex. Many subject areas in which judges make decisions were not even in the curriculum during their years in law school;
2. Courts are doing much of the social planning for society. As state legislatures flounder over politically sensitive issues, courts are being asked to come down with early decisions. This phenomenon is seen in the recent rash of court decisions setting standards for state prisons, school busing and land use. Judges have had no training in social planning and are ill equipped for the task;
3. Legal services lawyers and others know that law reform is uncertain through the legislative process but a court decision can be obtained within a reasonable

time. In addition, a court decision provides the drama and public interest that some lawyers seek to publicize their cause;

4. Continuing education of lawyers is a reality. In some states, it is now mandatory. Judges who do not stay current will find themselves obviously inept;

5. The behavioral sciences have much to offer in the court disposition of troubled juveniles, family disputes, and in the sentencing of adult criminal offenders. It is not by chance that three areas provide the greatest difficulty for the courts and engender the greatest public criticism. Few judges had any introduction to the behavioral sciences in their professional education; and

6. The role of the judge is changing. The 1973 Standards and Goals for Criminal Justice (LEAA), for example, prod the judges to become more visible and more active as change agents.

The fact is therefore that the judges of this nation are under great pressure to increase their competency and performance. That pressure comes from within the judicial branch where the judge is the key personality in setting the tone, the pace and even the level of integrity of our justice system. The pressure comes also from a society increasingly restive about this invisible third branch of government, the judiciary, a society which is demanding an accounting as well as more community involvement. An example of this community pressure is reflected in the present posture of the Governor of New Jersey who has refused to fill all judicial vacancies claiming the judges do not work hard enough.

Enlightened judges see the need not only to keep abreast of the law and to gain familiarity with the behavioral sciences but they are coming to recognize their particular vulnerability by the budget-setting legislatures and in the hands of a public which bases a sometimes hostile assessment on limited or inaccurate information. As a result, the trial judge who wants to be perceived

as neither "a hanging judge" nor a mollycoddler will want to learn the techniques of a public information program. Similarly, other levels of the judiciary will want to learn the fundamentals of public education if only for purposes of survival. The recent decision of an appellate court in Oregon to remain passive prior to election day was by hindsight a tragic miscalculation. The public voted not to retain any of the members of that bench.

C. Judicial Education: Defining the Art

At the outset, the observer must be sensitized to the difference between training and education. The terms are often loosely interchanged and the concepts then become blurred. The differences are real and there is a compelling need for the judiciary to obtain both continuing training and education.

Training demands no creativity by the trainee. Judges are often assembled for judicial conferences at which a court spokesman will explain the use of reporting forms required for statistical purposes. Instructions to juries are another subject for training; the trial judge is taught to select charges #1, 2 and 3 for most homicides but to include charge #4 to the jury when insanity has been pleaded as a defense. These are typical training sessions. Training then seeks to make the judge more efficient in the use of his time and it gives him instruction in the use of forms, guidelines and rules of thumb.

Education however rises to a higher endeavor. It seeks to give the judge self understanding, understanding of human behavior and the world in which he functions. It is mind expanding and self enriching. It includes substantive law but transcends it. Education will invariably have faculty drawn from many disciplines; training utilizes only other judges or court personnel as lecturers.

D. Historical Development

Those of us who were responsible for pioneer training and educational programs for judges recall how novel this concept was in the 1950's. And even into

the sixties we had concern for the participation of judges of so-called inferior courts in any self-improvement programs. We wondered if judges would feel demeaned or vulnerable if they participated. Would they feel they were revealing a lack of knowledge better left concealed? Surprisingly, judges reacted with enthusiasm to most opportunities to improve their performance and understanding and it is safe to say that the return of judges to the classroom has in less than twenty years experience become an accepted and popular practice.

The history of continuing education begins with a seminar for appellate court judges in the summer of 1956 at New York University Law School. Training at judicial conferences predates this event by several years in those states where a unified court system existed. By 1960 educational programs began to appear under state sponsorship. In close order the National College of the State Judiciary was organized by the American Bar Association and eventually located at the University of Nevada in Reno with the lure of Fleischman Foundation grants. The Traffic Institute of Northwestern University began to attract municipal court judges and the National Council of Juvenile Court Judges initiated novel programs for its judge members and court-related personnel. On the federal level, former U.S. Supreme Court Justice Tom Clark led a major effort to create the Federal Judicial Center. Other national programs emerged and all went through difficult days of growth and curriculum evolution.

The National Council of Juvenile Court Judges, e.g., received a three year grant in the mid-sixties from the National Institute For Mental Health, the only federal money flexible enough for private programs in judicial education. Your writer served as dean of these Juvenile Court Judges' programs during the period of the grant. Despite the positive reactions of the participants and

the enthusiastic evaluations by outside persons, NIMH created a study team to assess the federal role. It concluded that the federal government (NIMH) "should probably not be in the judge training business".

Three and four week programs were offered new and experienced judges at the Boulder campus of the University of Colorado. This was, I believe, the first time that any juvenile court judges had the chance to do pre-service, organized study, the terms of several of them beginning sometime after the summer sessions.

These summer programs offered modified sensitivity training, units in corrections, psychology and psychiatry, followed finally by the unit on the law. They were well attended and in fact, oversubscribed. Shorter programs were put on in states which requested them and the audience frequently combined judges with police or with mental health personnel. From this the current National College of Juvenile Justice has evolved, housed in Reno alongside the National College of the State Judiciary.

A more detailed treatise on the history of judicial education can be found in an article entitled "Education of Judicial Personnel: Coals to Newcastle", Connecticut Law Review, Spring, 1975.

E. Relationships of Federal and State Programs

The state court judges in both California and New York are not allowed to participate in any national programs in the field of training or education. The policymakers believe that the in-state programs can offer as much as any nationwide program.

This concept is fallacious at two levels: state programs generally do not attract the broad range of faculty or nationally known lecturers that will come to such a prestigious school as the National College of the State Judiciary. Secondly, state programs are parochial; the participants are all from the same

jurisdiction and they give almost exclusive attention to state law and local practices.

These are important functions for each state level program. A national program, however, is far more expansive. It takes a broader view of the law and of the world in which the judge functions. It puts the participant into a classroom with others drawn from several regions of the country and they learn from one another. This prods continuing self-assessment and evaluation of the substantive and procedural laws of each participant's state.

In essence then, state programs can provide the heavy indoctrination in state law, local practices and internal administrative procedures. These engender a sense of camaraderie and tend to equalize the disparity in human temperament and personal philosophy about the role of the courts in society. The 1973 Standards and Goals for Criminal Justice (LEAA) recommends establishment of a judicial college in each state and slightly more than half the jurisdictions have to date created an on-going program. Quality and continuity, of course, range greatly from state to state.

National programs offer a broader perspective if only because they cannot give sole attention to the law and judiciary of a state from which only a small percentage of the attendees comes. Comparative law emerges as a substitute for intensive analysis of the statutes of any individual state. Nationally known speakers and professionals from other disciplines expand the mind and encourage greater self-understanding. Most national programs could do far more in this latter undertaking, however. There is still a tendency both at the national and state levels to have judge trainees mingle only with other judges and taught exclusively by judges. Such limitations are obviously self-defeating.

In summary then, both national and state programs are necessary in the evolving field of judge training and education. Each plays a distinct, inter-related role and neither is adequate alone.

III. A LOOK AT THE FUTURE

Further stimuli are necessary for the healthy maturation of both training and education. Many judges unfortunately are dull and self-centered as lecturers and their impact on students can be stultifying. Also state employees are too rarely inspired and the programs they construct often lack imagination. Continuing education of adults, for example, has developed teaching techniques that far transcend the conventional methods and these should be assimilated into the learning sessions for judges.

The need exists for creation of training programs for every level of the judiciary in each of the fifty states and within the American territories. Nearly half of this universe is untouched. Further, of the 22,000 (approximate) state court judges in this nation, only 5,000 have attended the premier national programs offered by the National College of the State Judiciary.

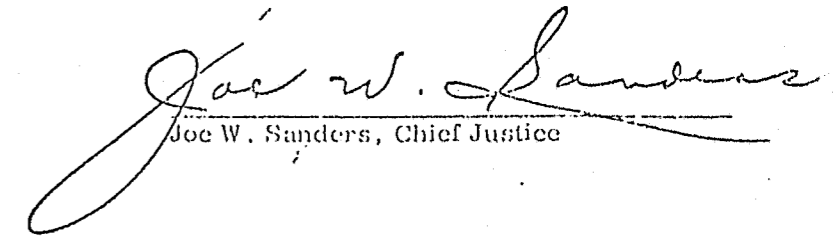
The great majority of judges who take time out to attend a learning session study only with fellow judges. This maintains an unhealthy insularity and invites public skepticism of the courts as well as maintaining provincial thinking within the bench that all shortcomings lie with the police, corrections or with some other component of the justice system and certainly not with the courts. Inter-disciplinary programs, therefore, are an essential but rare antidote.

Finally, a proposal is now being advanced to revolutionize judicial education in the United States. It seeks to recommend the creation within interested universities of a master's degree granting program in judicial sciences. The result may be the institutionalization of continuing education for this nation's judiciary.

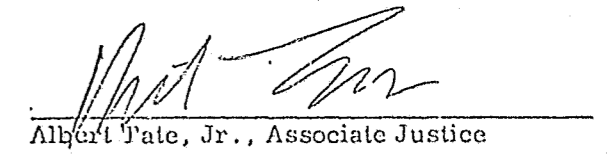
A judge or one who aspires to the bench will see the need to earn the master's degree as a step in career development and advancement. Such a pool of sensitized, specially educated persons will mean a better day for the nation's courts. As it looks now to many observers, that day is long overdue.

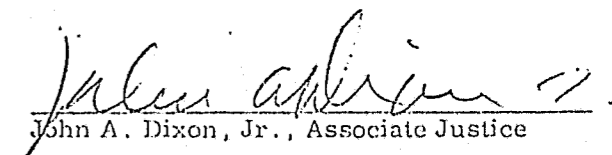
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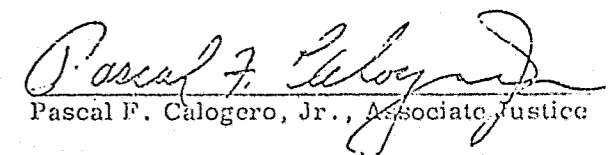
Given under our hands and seal this ^{24th} day of June, A.D.,
1976, New Orleans, Louisiana.

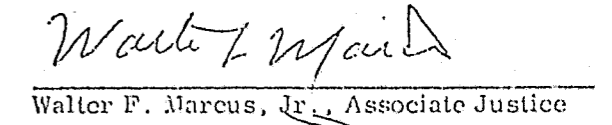

Joe W. Sanders, Chief Justice

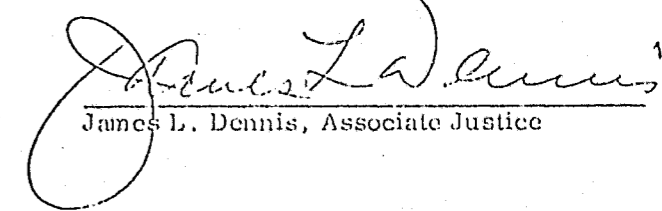
Frank W. Summers, Associate Justice


Albert Tate, Jr., Associate Justice

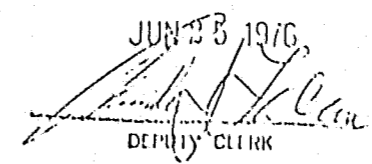

John A. Dixon, Jr., Associate Justice


Pascal F. Calogero, Jr., Associate Justice


Walter F. Marcus, Jr., Associate Justice


James L. Dennis, Associate Justice

SUPREME COURT OF LOUISIANA
A TRUE COPY

JUN 23 1976

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