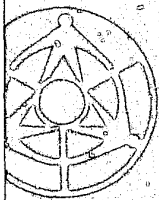


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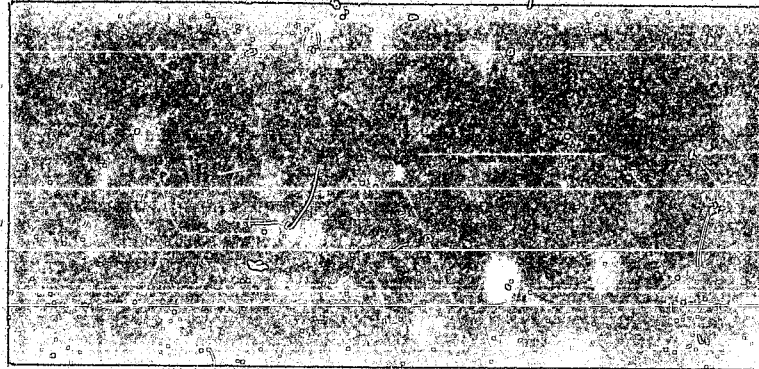
Institute for Advanced Studies in Justice

The American University Law School

Washington, D.C.

A Program of the
Adjudication Division
Office of Criminal Justice Programs
Law Enforcement Assistance Administration
U.S. Department of Justice

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REPORT OF THE JUDICIAL EDUCATION STUDY GROUP

NCJRS

MAY 18 1978

TO:

THE ADJUDICATION DIVISION
OFFICE OF CRIMINAL JUSTICE PROGRAMS
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
U.S. DEPARTMENT OF JUSTICE

ACQUISITIONS

May 1978

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
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TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. SUMMARY OF RECOMMENDATIONS	7
II. JUDICIAL EDUCATION: A RATIONALE	9
III. STUDY GROUP RECOMMENDATIONS	15
1. Elements of a Career Education Program	15
2. Pre-Service Orientation	16
3. In-Service Orientation	17
4. Continuing In-Service Education; State and Regional	18
5. Continuing In-Service Education and Support; National Programs.....	20
6. Advanced Degree Programs	21
7. Sabbatical Programs	22
8. Juvenile Judges	24
9. Lay Judges	25
10. Court Support Personnel	27
11. Highest Court Responsibilities	28
12. Professional Staff Support	28
13. Financial Responsibility for Judicial Education	29
IV. RESOLUTIONS AND STANDARDS RELATING TO JUDICIAL EDUCATION	30
1. Guidelines for Judicial Education by the Conference of Chief Justices, July 1977	31
2. Resolution Relating to Judicial Training and Education Recommended by the Judicial Adminis- tration Division to the American Bar Association House of Delegates, February, 1978	35
3. Standard 1.25 - <u>Standards Relating to Court Organization</u> , American Bar Association Commission on Standards of Judicial Administration, 1974 ...	39
4. Standard 7.5 - <u>Courts</u> , National Advisory Commission on Criminal Justice Standards and Goals, 1973	43
V. APPENDICES	48
1. Appendix A - State Judicial Education Programs, Sofron N. Nediłsky, Esq.	
2. Appendix B - A Perspective on Continuing Professional Education for Physicians, R. Dale Lefever, Ph.D.	
3. Appendix C - Legal Education Perspective on Judicial Education Needs, Dean Roger C. Cramton	
4. Appendix D - Evaluation of Judicial Education and Training, Dr. Peter Haynes	
5. Appendix E - Summary of State Judicial Education Survey Results	

INTRODUCTION

In the spring of 1977, at the request of the Adjudication Division of LEAA's Office of Criminal Justice Programs, the Criminal Courts Technical Assistance Project at The American University convened a special study group to conduct a fundamental public policy-oriented assessment of judicial education in the United States, with specific attention to the following three areas:

- 0 The educational and training experience of both a pre-service and in-service nature that would be most desirable for judicial personnel;
- 0 The degree to which present judicial education and training programs and resources can provide the elements identified in the above task; and
- 0 The formulation of recommendations to initiate and develop a career education track for sitting judges and for individuals who might aspire to judicial careers.

In assembling the Study Group, the primary consideration was to assure the participation of individuals with diverse backgrounds and expertise to guarantee a wide range of views and ideas. Careful attention also was given to ensuring the representation of judges from different judicial levels and environments, and individuals of prominent stature from different academic disciplines. The members of the Study Group are listed below:

John F. X. Irving (Chairman) Former Dean
Seton Hall University Law School
Newark, New Jersey

Hon. James Duke Cameron
Chief Justice
Supreme Court of Arizona
Phoenix, Arizona

Dean Roger C. Cramton
Cornell Law School
Ithaca, New York

Hon. Margaret C. Driscoll
Chief Judge of the Juvenile Court of Connecticut
and

Past President
National Council of Juvenile Court Judges
Bridgeport, Connecticut

Dr. George L. Grassmuck
Professor of Political Science
University of Michigan
Ann Arbor, Michigan

Hon. George G. Inglehart, Jr.
Supreme Court of New York
and

Past President
American Judges Association
Watertown, New York

Edward B. McConnell
Director
National Center for State Courts
Williamsburg, Virginia

N. Edd Miller
President
University of Maine
Gorham, Maine

Sofron Nedilsky, Esq.
Director of Judicial Education
Supreme Court of Wisconsin
and

Past President
State Judicial Educators Association
Madison, Wisconsin

Hon. Theodore R. Newman, Jr.
Chief Judge
District of Columbia Court of Appeals
Washington, D.C.

Hon. William C. O'Neill
Chief Justice
State of Ohio
Columbus, Ohio

Hon. George Revelle
Superior Court of King County
Seattle, Washington

Hon. James J. Richards
Chief Judge
Superior Court of Lake County
Hammond, Indiana

Maurice Rosenberg
Professor of Law
Columbia University School of Law
New York, New York

H. Ted Rubin
Assistant Executive Director
Institute for Court Management
Denver, Colorado

Hon. Joseph R. Weisberger
Associate Justice
Supreme Court of Rhode Island
Providence, Rhode Island

Study Group Staff Support
R. William Linden, Jr. - Coordinator
Caroline S. Cooper
Sara Travis
Sue Ann Krinsky

To assist the Study Group in its consideration of the major issues involved in this study, a Resource Group composed of individuals with expertise in the field of professional education also was commissioned. The Resource Group consisted of the following persons:

Dr. Nicholas N. Kittrie (Chairman)
Interim Dean
Washington College of Law
The American University
Washington, D.C.

Douglas Lanford, Esq.
Executive Director
American Academy of Judicial Education
Washington, D.C.

Dr. R. Dale LeFever
Associate Director of Faculty Development
Association of American Medical Colleges
Washington, D.C.

Dean Louis W. McHardy
Executive Director
National Council of Juvenile Court Judges
Reno, Nevada

Dean Ernst John Watts
National Judicial College
Reno, Nevada

An initial planning meeting of the Study and Resource Groups was held in Washington, D.C. in April 1977. At this meeting the methodology and parameters of the study were discussed and refined after formal

presentations on the topic of judicial education by several Study and Resource Group members, including the following:

- International Perspectives on Judicial Education:
Dean Nicholas N. Kittrie
- State Activities in Judicial Education: Sofron Nedilsky
- Legal Education Perspective on Judicial Education:
Dean Roger C. Cramton
- Training and Education Needs of Juvenile Court Judges:
Dean Louis McHardy
- Judicial Education: A National Perspective: Douglas
Lanford and Dean Ernst John Watts
- Career Education in Medical and Other Science Fields:
Dr. R. Dale LeFever

In the period between the April meeting and a second meeting at the end of June in Chicago, staff of the Courts Technical Assistance Project prepared a number of papers for the Study Group's use. Among these were an assessment of existing literature on judicial education, an initial survey of present state judicial education programs, and elaborations on some of the issues raised in the presentations at the April sessions.

At the Chicago meeting, the Study and Resource Groups heard from Professor Franklin Zimring of the University of Chicago Law School on the inter-disciplinary education of judges; Barbara Fenoglio, Director of the Illinois League of Women Voters' Court Watchers Project, on the public's perception of judges; John Ryan of the American Judicature Society on the judicial performance measurement study currently being conducted by the Society; and Dr. Peter Haynes of Arizona State University on issues relating to the evaluation of judicial education programs.

The major part of the August meeting was devoted to the development of a draft position paper on many of the issues embraced by the study and agreement on an agenda for further work by members of the group and technical assistance project staff, including a detailed survey of

present and recent state-conducted judicial education programs.

At this meeting, also, the majority of the Study Group members present concurred, on the basis of deliberations to date, that the issue of a career education track for aspirants to a judicial career was too complex a field of inquiry and too tangential to the principal focus of the Group's mandate to be adequately addressed within the time and resources available to it. Consequently, it was agreed that the Group's report would address itself in the form of recommendations and commentaries to the major issues involved in the need for, establishment and development of a comprehensive career education program for sitting judges and court support personnel.

The final meeting of the Study Group was held in Washington on August 21-22, 1977. At this meeting, the Group was briefed by Dean Irving on his visits to the National Judicial College in Reno, Nevada, and the California Center for Judicial Education and Research, in Berkeley, and was given a progress report by Mr. Nedilsky on the state judicial education survey.

The rest of the meeting was devoted to discussion and refinement of a second draft of the position paper, prepared by Chairman Irving, and to setting an agenda for an additional round of research and writing by the Chairman and staff on several of the issues addressed in the draft document. The results of this effort were circulated to each Study Group member for review and approval during March and April 1978.

The present Report, having received the unanimous endorsement of the Study Group membership, is hereby officially transmitted to the Adjudication Division of the Law Enforcement Assistance Administration. Chapter II of this report is a discussion of the need and rationale for career judicial education programs. Chapter III, structured in the

form of recommendations and commentary, addresses the issues involved in this study in detail. Chapter IV is a compilation of resolutions relating to Judicial Education adopted by the Conference of Chief Justices and the American Bar Association and relevant standards from the National Advisory Commission on Criminal Justice Standards and Goals and the American Bar Association Commission on Standards of Judicial Administration. Chapter V contains four papers formally presented to the Study Group which provide an excellent overview of many of the administrative and substantive issues involved in judicial education program development. This chapter also includes a discussion and graphic summary of the Survey of State Judicial Education Programs (1974-1976) conducted by the State Judicial Educators Association for the Study Group.

Finally, the Study Group wishes to express its appreciation to the Resource Group members for their valued assistance and support, and to the many individuals who took the time to meet with or address them in writing.

May 1, 1978
Washington, D.C.

The Judicial Education Study Group
John F. X. Irving, Chairman

I. SUMMARY OF RECOMMENDATIONS

Comprehensive Career Education Programs

1. The continuing education of judicial personnel being essential to the development and competence of the nation's judicial system, a comprehensive career education program consisting of the following elements should be available to each judge:
 - (A) Orientation
 - (B) Continuing in-service training
 - (C) Degree-granting programs
 - (D) Sabbaticals
2. Every judge, prior to assuming judicial responsibilities, should receive adequate orientation assistance.
3. Within an appropriate period during a judge's first year on the bench, he or she should participate in a structured in-service orientation program.
4. Sitting judges should be afforded adequate opportunities to participate in continuing in-service training programs. These programs should be structured to meet the unique and varying needs of judges at different stages in their career. In-service programs should be available at the state, regional and national levels.
5. National judicial education programs and organizations should be utilized to complement state-based and regional in-service educational capabilities. Their involvement should include direct training, research, and technical assistance to state-based education activities.
6. Consideration should be given to the establishment of University-based advanced degree programs in subject areas relating to the judicial function.
7. Sabbatical programs for judges should be encouraged, as one element of a comprehensive career judicial education program.

Special Concerns

8. Continuing education programs designed specifically to address the distinct educational needs of juvenile court judges must be provided.
9. States should provide adequate training and education programs designed to meet the special needs of lay judges.
10. States should provide continuing programs of in-service training and education for court support personnel as an integral part of the overall judicial education program.

Policy and Administrative Considerations

11. The highest court of each state should exercise policy and administrative responsibility for the design and conduct of the judicial education program in that state, with the participation of all levels of the judiciary.
12. Professional staff capability should be available to the highest state court or its designee to plan, conduct, and evaluate judicial education programs and to provide necessary staff support to their policy development efforts.
13. Budgetary support of judicial education programs should be viewed as an essential responsibility to state governments, and such programs should be offered at no expense to the individual participant.

II. JUDICIAL EDUCATION: A RATIONALE

Comprehensive education for all state and local judges in the United States is an ideal which is long overdue. This goal, ambitious though not unreachable, underlies the series of recommendations made in this report.

It may surprise some to learn that, by and large, judges must rely on their own initiative and motivation to improve their judicial skills. In far too many instances, a new judge is given little opportunity to participate in pre-service and in-service educational programs wherein he can be introduced to the procedural, substantive and administrative challenges that will confront him during his tenure on the bench. As a result, judges are left to orient themselves to their environment. This technique can, however, be both frustrating to the judiciary and potentially harmful to litigants. Fortunately, experience shows that there are better ways for judges to master their tasks.

In thirty-three states, structured education programs are available to judges either on the local or state level, or through participation in national judge training organizations. Most of the state programs are in the developmental stage, both in terms of the comprehensiveness of their program offerings, and the number of judges they reach. Also, some states have participated in regional programs, or are considering doing so. These endeavors represent a substantial and reasoned recognition of the necessary role which the state must play in providing these education programs.

In order to fully understand the critical needs involved here, one must first consider the role which the judiciary plays in our

governmental structure. Trial and limited jurisdiction judges exercise great authority over the lives and property of litigants, and it is here that the vast majority of citizens view their judicial system in action. It is obviously in society's interest to ensure that the trial judges receive an adequate opportunity to develop required skills and gain needed knowledge which will allow them to function as effectively and fairly as possible. Also, even though a relatively small percentage of cases are appealed from the trial courts, appellate court judges play an increasingly important role in both reviewing contested decisions and in the continuing elucidation and evolution of the law. Increasingly, our appellate courts have been cast in the role of the social arbiter and mover.

Two of the most important reasons for the development of comprehensive education programs is the difficulty judges often have in adapting to their new role, and the relative lack of resources now available for them to take advantage of in their efforts to do so. While this factor applies primarily to orientation needs, if neglected it can cause adverse ramifications throughout a judge's career.

The difficulties inherent in making the transition from other roles to the judicial role must be recognized. Some judges have never been able to truly make this transition; one is said to be "still a prosecutor", another "thinks he's the county sheriff". One courtroom may be relaxed, while the atmosphere in another may be unduly tense because the latter is presided over by a judge who dominates the proceedings in the same way he or she did while acting as trial counsel. Then it was good trial strategy; now it is often inappropriate.

There is much more involved in the transition from bar to bench than the mere donning of a black robe and the juxtaposition of location

in the courtroom. Qualities essential to the successful advocate can often be undesirable in the more passive and neutral role of a judge. New judges need assistance in developing essential judicial skills, and in orienting themselves to the new and difficult role which they are assuming.

One criticism of courts and judges which is commonly voiced by citizen court watching groups and in bar association evaluations is that some judges do not possess the proper temperament needed to assure that court proceedings project a view of impartiality and justice to participants and observers. This speaks to a need to provide judges with educational programs designed to acquaint them with the dynamics of interpersonal relations in the courtroom. The way a judge interacts with litigants, lawyers, witnesses and court staff is one of the primary means by which these actors form their impressions of the justice system. Judges need to be made aware of the impact their actions in court have on these participants. In the survey on the image of courts recently conducted by Yankelovich, Skelly and White, Inc. (see page 13), a significant portion of those polled expressed concern with different elements of judicial behavior.

Another factor which the Study Group deems of great importance concerns certain identified inadequacies in the education which judges receive prior to assuming judicial office. As a separate class within the judiciary, lay judges obviously have more pressing educational needs than their legally trained counterparts. In order to function at an effective level they must have an understanding of the judicial process and the areas of substantive law with which they are dealing on a daily basis. The availability of relevant judicial education programs geared to lay judges must be of the highest priority.

Legally trained judges--and these comprise the greatest number of the nation's 24,000 odd judges-- have a lesser need to study basic legal principles, but they do have a critical need to understand the judicial function and process, the interrelation of the judiciary to other branches of government, the complexities of a rapidly changing society and its correspondent needs, and the ethical and humanistic elements of a judges' work. Outside of the issue of legal ethics, a typical law school curriculum may not offer the in-depth treatment of these subject matters which a lawyer needs in order to assume judicial responsibilities. The law schools are not to be faulted for neglecting these areas; their principal role is to teach the law. However, lawyer/judges must be acquainted with these areas if they are to effectively perform on the bench.

There is a discernible trend in the professions, as a whole, to require in-service education as a prerequisite to continued licensure. While the Study Group has decided against advocating mandatory judicial education at this point in time, it is evident that there is a need to provide continuing educational programs in order to keep judges abreast of new developments in the law and the behavioral sciences. This need is prompted by the fact that federal and state appellate courts are continually reviewing, modifying or reversing case law. Also, legislative action often necessitates eventual interpretation and application by the courts of laws which are both complex in purpose and, sometimes, ambiguous in language. Along with this, new knowledge is evolving in the behavioral sciences that has strong implications for judges. Continuing and regular participation in judicial education programs is the most logical means of assuring that our judiciary is well informed and cognizant of factors bearing on their function.

Continuing education programs for the bar are becoming common, and this factor alone puts substantial pressure on the judiciary to stay

abreast of new developments. A few states have made the return of lawyers to school mandatory and to date, three states (Iowa, Minnesota and Wisconsin) have imposed similar requirements on their state court judges. In addition to this, specialized continuing education programs for other actors in the justice system are widespread. For example, the National District Attorneys College and the National College of Criminal Defense Lawyers and Public Defenders provide varied training programs in both regional and national settings.

The law, as well as other disciplines, has been in a constant state of evolution since most of our judges were in law school. New fields of litigation have developed. The move toward social planning by the courts requires new knowledge and skills. Often, added pressure is placed on the judiciary to deal with issues which have been ignored or mishandled. It is obvious that few judges have any prior training in redesigning a school district to affect desegregation, in setting mandatory standards for correctional institutions, or in articulating reasonable tax formulas to insure equal and effective public education. These factors exacerbate the need for the judiciary to remain informed of all relevant developments in the world around the courthouse.

Finally, the courts have a need to be understood by the public and a correlative need to understand the public. Judges must be aware of the citizen's perceptions of the courts and must be alert to the expectations of justice system consumers. The results of a recent national survey* on the public image of courts conducted by Yankelovich, Skelly and White, Inc. for the LEAA sponsored Williamsburg Conference on the Courts-II emphatically underscores this need. This same survey also revealed a willingness on the public's part to expend tax revenues for the purpose of

*Yankelovich, Skelly and White, Inc., The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders, National Center for State Courts, 1978.

effecting necessary reform in the courts and to upgrade the quality of the judiciary.

Considering these several realities; the Judicial Education Study Group concludes that continuing education of the nation's judges and court support personnel is increasingly essential to maintain the competency and effectiveness of the judicial branch of government. Further, the Study Group recognizes that in-service judicial education must be developed and implemented within the context of merit selection, and continue throughout a judge's career. The following section, Chapter III, structured in the form of recommendations and commentary, addresses these issues in detail.

III. STUDY GROUP RECOMMENDATIONS

1. THE CONTINUING EDUCATION OF JUDICIAL PERSONNEL BEING ESSENTIAL TO THE DEVELOPMENT AND COMPETENCE OF THE NATION'S JUDICIAL SYSTEM, A COMPREHENSIVE CAREER EDUCATION PROGRAM CONSISTING OF THE FOLLOWING ELEMENTS SHOULD BE AVAILABLE TO EACH JUDGE:

- (A) ORIENTATION
- (B) CONTINUING IN-SERVICE TRAINING
- (C) DEGREE GRANTING PROGRAMS
- (D) SABBATICALS

COMMENTARY: Structured and comprehensive education programs designed to meet the career-long educational needs of the judiciary are potentially the most effective means of assuring the maximum competency and sensitivity of the judicial branch of government.

The desirability of establishing career-long programs should be evident. Experience shows that in the past, and to a great extent now, judicial education programs have proceeded largely on an ad hoc basis, primarily in response to developments in the law or society which have had an immediate, and often confusing, impact on the courts and the judicial process. This is not to say that program quality has necessarily suffered from this approach, but it is obvious that a well planned, structured and comprehensive approach to judicial education would be a more rational and productive way of meeting the career education needs of our nation's judges.

The development of career programs would necessitate clear identification of the educational needs of the judiciary at different career

stages. It would also require a substantial and continuing commitment from the state courts, the legislatures, and, of course, the judiciary. Given the relatively embryonic stage of development of most state programs, the establishment and development of comprehensive career programs will require much planning resources and effort.

2. EVERY JUDGE, PRIOR TO ASSUMING JUDICIAL RESPONSIBILITIES, SHOULD RECEIVE ADEQUATE ORIENTATION ASSISTANCE.

COMMENTARY: It is unreasonable to expect newly selected judges to assume their judicial responsibilities without affording them an opportunity to participate in an orientation program designed to acclimate them to the administrative and substantive tasks they will face, as well as to the environment in which they will be functioning. This type of assistance is essential to assure that novice judges have, at the very least, a basic understanding of the complexity of the tasks facing them before they are expected to function in a judicial capacity.

A majority of the states presently offer short orientation programs for new judges. Most of these programs, however, do not reach the new judge prior to assuming office, but are held during his or her first year on the bench. It is conceded that not every state has the resources or need to develop a regular pre-service orientation program. In some instances, regional orientation programming may be the most realistic means of providing the necessary training at a manageable cost. The Study Group, however, wishes to suggest that the following pre-service in-state assistance should, at a minimum, be provided to new judges:

- Receipt of a "bench book" and other reference materials,

- Audio cassettes dealing with the judicial function, judicial ethics, and any specialized subject matter as warranted,
- Assignment of a senior advisor judge for the new judge to consult with, and
- An introduction, verbal or written, to court policies and other matters affecting day-to-day court operations.

Non-lawyer judges require, and should receive, more specialized pre-service orientation than law trained judges. At the very least they should receive extensive instruction relating to the laws and procedures with which they will be dealing on a day-to-day basis. A subsequent recommendation will address this concern in greater detail.

3. WITHIN AN APPROPRIATE PERIOD DURING A JUDGE'S FIRST YEAR ON THE BENCH, HE OR SHE SHOULD PARTICIPATE IN A STRUCTURED IN-SERVICE ORIENTATION PROGRAM.

COMMENTARY: The second part of the orientation phase of a career judicial education program should be a structured orientation program which judges should attend within their first year on the bench. In this phase, judges should be exposed in detail to appropriate substantive and procedural law areas, to an examination of the judicial role and demeanor in the courtroom, and to administrative and inter-disciplinary matters which impact their day-to-day functions.

The Study Group is of the opinion that these orientation programs would most appropriately be conducted on the state level, although it is recognized that some states will not have the resources or the need, in terms of numbers of judges, to fully develop such programs. In these circumstances, consideration should be given to the establishment of

a cooperative regional orientation program, perhaps with rotating state responsibilities for its conduct, or to the use of national judge training resources for this purpose.

Decisions as to the length, comprehensiveness, format, and specific subject matter of orientation programs will have to be made by the individual state court systems, and existing state, regional and national orientation programs should be looked to for guidance in this area.

4. SITTING JUDGES SHOULD BE AFFORDED ADEQUATE OPPORTUNITIES TO PARTICIPATE IN CONTINUING IN-SERVICE TRAINING PROGRAMS. THESE PROGRAMS SHOULD BE STRUCTURED TO MEET THE UNIQUE AND VARYING NEEDS OF JUDGES AT DIFFERENT STAGES IN THEIR CAREER. IN-SERVICE PROGRAMS SHOULD BE AVAILABLE AT THE STATE, REGIONAL AND NATIONAL LEVELS.

COMMENTARY: Subsequent to the orientation stage of a judge's career, opportunities must be provided to the judge to participate in periodic judicial education programs. These programs must be designed to meet the changing educational needs of the judiciary as a whole, and the unique and personal needs of individual judges. The Study Group recognizes that the development of these programs necessitates diverse resources on the state, regional and national levels, and that careful and continuous planning must be undertaken to forecast in-service training needs and to develop programs to meet them.

There are a number of reasons why in-service judicial education opportunities must be provided to our nation's judges. Foremost among these reasons is the very nature of our judicial system. Changes in the law and in other areas affecting the courts are continuous and of varying degrees of impact. In order to function competently, judges must stay abreast of these changes through their individual efforts, and it is safe to assume that, given ever increasing caseloads and the stringent

demands on judicial time, many judges find it difficult to do so. Structured education programs designed to acquaint and inform judges of new and relevant developments of which they need to be aware are a rational approach to keeping the judiciary well informed.

Another factor underlining the necessity for in-service programs concerns the danger that judges, after having served for a time, may become restive and, perhaps, even weary of their duties. Many judicial functions can, after a time, become predictable. One purpose of in-service programs should be to provide a vehicle whereby judges can periodically question their roles and performance. In other words, these programs can provide a setting where judges can reflect on and critically appraise the quality of their performance away from the daily regimen of their position. In-service programs should strive to stimulate judges to reassess, and hopefully refresh, their approach to carrying out their judicial duties.

While the details of these programs also should be determined by the individual states, it is suggested that, at a minimum, judges should have an opportunity to participate in in-service programs in the following subject matters:

- 0 Substantive and procedural law
- 0 Community relations
- 0 Judicial administration
- 0 Inter-disciplinary training
- 0 Ethics and role-perception

States should structure judicial education programs in such a way as to assure enough flexibility for judges to pursue both general and special interests relevant to the judicial function. If feasible, individual judges should be encouraged to develop their own career education tracks, geared to their personal needs and areas of interest.

The Study Group realizes that the states will necessarily vary in their capacity to develop comprehensive in-state, in-service programs. Those states which either do not have the need, in terms of number of judges, or the resources to develop an on-going program should consider organizing and participating in regional judicial education programs.

Regional programs represent an effective, and cost efficient, means of providing in-service education that, for one reason or another, could not be supported on a wholly in-state basis. Geographically adjacent states could save costs by holding regional programs where, for instance, faculty may be coming from distant parts of the country. Smaller states, where the number of sitting judges may not justify formalized, state-funded programming, could also derive benefits from this approach.

While the administration of regional programs should be left to the participating states, national judge-training organizations have experience in designing and conducting such programs and should be looked to for assistance.

5. NATIONAL JUDICIAL EDUCATION PROGRAMS AND ORGANIZATIONS SHOULD BE UTILIZED TO COMPLEMENT STATE-BASED AND REGIONAL IN-SERVICE EDUCATIONAL CAPABILITIES. THEIR INVOLVEMENT SHOULD INCLUDE DIRECT TRAINING, RESEARCH AND TECHNICAL ASSISTANCE TO STATE-BASED EDUCATION ACTIVITIES.

COMMENTARY: National judicial education programs have played and should continue to play an important role in the education of our judiciary. National organizations should be encouraged to continue to offer in-service education programs for all levels of the state judiciary.

One very evident advantage of national programs is that they offer judges the opportunity to mix with judges from different jurisdictions

and thereby be exposed to a wide range of viewpoints and ideas within the context of an educational program. Another advantage is that they often are able to attract top educators to instruct their programs, where as it may not be feasible for individual states to obtain the services of these persons.

National organizations should also play a prominent role in research and study relevant to the conduct and impact of judicial education and in the training of qualified judges and non-judges to be judicial educators. The utility and relevance of state and regional in-service programs depends, in large part, on the knowledge and experience of those who administer and teach them. The national organizations are encouraged to develop and sponsor programs especially geared to training the trainers in effective educational techniques, as well as in specialized subject matters.

Finally, national programs should also assist the various states in developing in-service, in-state and regional programs. Their experience in this area should be shared with the states to assure that developing state and regional programs take advantage of the accumulated knowledge available at the national level.

6. CONSIDERATION SHOULD BE GIVEN TO THE ESTABLISHMENT OF UNIVERSITY-BASED ADVANCED DEGREE PROGRAMS IN SUBJECT AREAS RELATING TO THE JUDICIAL FUNCTION.

COMMENTARY: The establishment of advanced degree programs for sitting judges is an attractive concept which potentially can serve

to accelerate the development of a highly trained and professional judiciary.

The advantages of degree programs for judges are numerous. They would allow judges to refine and polish their skills in a structured academic setting and, conceivably, could result in a pool of judges with very specialized expertise in the judicial function from which to draw in filling high court vacancies. Advanced degree programs of this nature also would significantly advance the development of knowledge in the judicial sciences and related substantive areas. Finally, they would certainly provide incentives for those judges who actively seek intellectual growth and career advancement. Benefits would also accrue to the public in the form of a more knowledgeable and competent bench.

Many universities presently offer Master of Law degrees in such specialized subjects as taxation and labor law. In structuring degree programs for judges, the nation's law schools would seem to be the logical setting. The actual degree requirements, and other specifics such as residency time and credit for experience, should properly be set by the participating law school. Because of the time demands on most judges, matriculation in a degree-granting program would probably have to be effected during a sabbatical year or a number of intensive summer sessions.

7. SABBATICAL PROGRAMS FOR JUDGES SHOULD BE ENCOURAGED, AS ONE ELEMENT OF A COMPREHENSIVE CAREER JUDICIAL EDUCATION PROGRAM.

COMMENTARY: Sabbaticals are one method of attaining the continued stimulation and refreshment which is necessary to assure the continued

vitality and effectiveness of the judiciary. Sabbaticals have long been a fixture in the American academic community and the universities should be looked to for guidance in structuring judicial sabbatical programs. Typically, faculty sabbaticals must be approved by appropriate university officials and the purpose of the sabbatical must be clearly identified and documented. The underlying rationale for this process is that the sabbatical period is to be used for relevant study or research and should result in a product of worth both to the faculty member and the university, and the academic community as a whole.

In structuring judicial sabbatical programs careful attention must be given to delineating specific criteria, preferably through legislation or court rule, relating to the permissible range of sabbatical activity and eligibility. Every effort must be made to assure that the sabbatical activity will benefit the judicial branch and the public. One possible procedural approach might be to have interested judges apply to the highest court of the state for specific permission for sabbatical leave. The highest court could then review the applicant's eligibility and the merits of his or her proposed sabbatical plan. Clear articulation of the objectives and methodology of a sabbatical proposal must be made to ensure that the public and other branches of government harbor no misconceptions regarding the potential advantages and benefits of structured judicial sabbaticals.

Admittedly, there is little precedent in the United States concerning sabbatical study for judges. The State of Oregon has a statute authorizing judges to take sabbatical leave from their courts to engage in research or teaching, and there are isolated instances of other states and, at least in one instance, of the federal judicial system allowing a particular judge to take an extended leave to participate in a specific activity. Abroad, sabbaticals for judges seems to have gained some acceptance. In New South Wales, for example, trial and appellate court judges can take a six-month

sabbatical, at full pay, after five years of service, or a full year after ten years on the bench. Canada and Iceland offer similar opportunities.

One further issue concerns whether sabbaticals should be at the judge's regular salary, a portion of it, or without reimbursement. While the Study Group feels that sabbaticals should be at regular pay, this issue is best left to the state legislative bodies for ultimate determination. It will be the legislatures, after all, who will have the responsibility to authorize sabbatical programs for state judges, and tangential issues such as funding and eligibility should be addressed by these bodies, with input from the judiciary.

8. CONTINUING EDUCATION PROGRAMS DESIGNED SPECIFICALLY TO ADDRESS THE DISTINCT EDUCATIONAL NEEDS OF OUR NATION'S JUVENILE COURT JUDGES MUST BE PROVIDED.

COMMENTARY: Judges exercising juvenile jurisdiction function in a specialized judicial area and, as a result, their training and educational needs vary from those of their colleagues sitting in general jurisdiction courts. States should be cognizant of the unique educational needs of juvenile judges and should provide programs designed to meet these needs.

It should be realized that while many of the procedural aspects involved in juvenile matters are similar to those applicable to adult criminal matters, the dispositional process differs both in its goal and its method. The disposition goal in juvenile matters is to determine why a child committed the crime and to fashion a remedy designed to prevent a recurrence. It is in choosing the method to achieve these goals that the juvenile judge is faced with a plethora of disposition alternatives from which a choice tailored to the needs and situation of each individual child must be made. The dispositional method requires

that the juvenile judge be well acquainted with the behavioral sciences, as well as current developments in juvenile substantive law. This need is also present when dealing with matters involving child abuse and neglect and the termination of parental rights.

It is suggested that state training and education programs for juvenile judges should include, at a minimum, the following subjects: substantive juvenile law; behavioral sciences; management of juvenile courts; community relations; and dispositional alternatives.

In structuring state programs for juvenile judges, input from the user group must be assured in order for the programs to be responsive to actual needs and interests. Accordingly, juvenile judges should be represented on the state judicial education committees discussed in Recommendation Number Ten.

9. STATES SHOULD PROVIDE ADEQUATE TRAINING AND EDUCATION PROGRAMS DESIGNED TO MEET THE SPECIAL NEEDS OF LAY JUDGES.

COMMENTARY: Lay judges have distinct training and education needs which differ in many respects from those of their legally trained colleagues. States should be cognizant of these needs and should provide structured educational opportunities designed to meet them.

There are approximately 10,000 lay judges in the United States. For the most part, these judges are elected and serve on a part-time basis. They issue warrants of arrest and attachment and search warrants. They issue civil and criminal process. They set bail. They assess and collect fines.

They try cases, jury and non-jury. They sentence and commit in criminal cases. They may have full judicial powers of contempt. Unfortunately, however, these judges are generally treated as poor relations in the judicial firmament, and there is no exception to that practice in the field of judicial education. Many judges of courts of records, for example, attend seminars and schools to study the latest cases and Supreme Court pronouncements defining the rules for the issuance of search warrants. They are rejuvenated by the return to an academic atmosphere and stimulated to be awakened to the developing thrust of the Sixth Amendment, once dormant but now "the sharp cutting edge of the law." Rarely, however, do they have the opportunity to issue search warrants. That is often done by lay judges who have not read the Sixth Amendment, much less the latest Supreme Court decisions.

So it is with bail, with contempt and many other basics of the judicial function. In the "Courts of First Jurisdiction," where these basics are taking place daily, many of the judges involved are lay judges. It seems fundamental that they ought to be given a priority in the educational process.

Some states do have educational programs for lay judges and in a few they are mandatory. It is unlikely that any state, however, devotes as much money for the education of lay judges as for the "regulars".

Education of lay judges also presents special problems in technique. Many of them have little or no academic experience and the standard law school methodology of training is not effective. It may even be offensive and counter-productive.

As this report sets forth, the emphasis in judicial education for general trial judges is rightly in substantive law. But it is in procedural law that most lay judges are weakest and we suspect, where most of their decisions and judgments are reversed on appeal.

10. STATES SHOULD PROVIDE CONTINUING PROGRAMS OF IN-SERVICE TRAINING AND EDUCATION FOR COURT SUPPORT PERSONNEL AS AN INTEGRAL PART OF THE OVERALL JUDICIAL EDUCATION PROGRAM FOR THE STATE.

COMMENTARY: Properly trained court support personnel are essential to efficiently and effectively conduct the business of the judicial system. Commonly, judicial officers rely heavily on support staff to discharge their administrative duties, and a competent administrative staff allows judges to devote more time to their judicial responsibilities. Through in-service training and education programs court personnel will be better able to serve the public, as well as the courts.

Education committees appointed by the state's highest court, should assess the training needs of court personnel, establish policies and guidelines for their participation in a continuing in-service training and education program, and be representative of the interests of all groups concerned in order to establish and maintain needed communication, and to assure court personnel that the program will be responsive to them.

Because of its importance and its expected benefits to the state courts and the public, in-service training and education of court support personnel should be financed in such a manner as to encourage all eligible persons to attend. As is the case with judicial education (Recommendation Number 13) the Study Group is of the opinion that the principal funding support for these programs should come from the states. Furthermore, in those states which have full financial responsibility for their courts, requirements for continuing in-service education should be set, and should relate to promotion and classification standards.

11. THE HIGHEST COURT OF EACH STATE SHOULD EXERCISE POLICY AND ADMINISTRATIVE RESPONSIBILITY FOR THE DESIGN AND CONDUCT OF THE JUDICIAL EDUCATION PROGRAM IN THAT STATE, WITH THE PARTICIPATION OF ALL LEVELS OF THE JUDICIARY.

COMMENTARY: Responsibility for insuring the basic competency of the bench remains with each state's highest court, regardless of the state's court structure. Concomitant with this responsibility is the duty to develop and monitor a system-wide career education program which would be available to all judges within the state. Operational responsibility for planning and implementing educational opportunities can be assigned to a Judicial Council which could designate a special committee for this purpose, or to a specially established Education Committee. It is essential, however, that the program planning activity involve all levels of the judiciary in the state and also representatives of non-judicial court system personnel, if the Committee's responsibility extends to education program planning for the latter group as well. It is desirable that education planning activity include representatives of non-legal disciplines and from the community at large to help assure the relevance, perspective and responsiveness of the educational program.

12. PROFESSIONAL STAFF CAPABILITY SHOULD BE AVAILABLE TO THE HIGHEST STATE COURT OR DESIGNEE TO PLAN, CONDUCT AND EVALUATE JUDICIAL EDUCATION PROGRAMS AND TO PROVIDE NECESSARY STAFF SUPPORT TO THEIR POLICY DEVELOPMENT EFFORTS.

COMMENTARY: The education of the state's judiciary should be viewed as a professional function requiring skills and experience relevant to the conduct of an adult education program for professional personnel.

It is important that judicial education program staff be recognized as professionals by their judicial clientele, as well as by the judicial policy and planning groups which they serve. Only if judicial education efforts are seen as falling within the framework of "professional education" will they be raised above the level of periodic orientation sessions in terms of both substance and impact.

13. BUDGETARY SUPPORT OF JUDICIAL EDUCATION PROGRAMS SHOULD BE VIEWED AS AN ESSENTIAL RESPONSIBILITY OF STATE GOVERNMENTS, AND SUCH PROGRAMS SHOULD BE OFFERED AT NO EXPENSE TO THE INDIVIDUAL PARTICIPANT.

COMMENTARY: Regardless of the structure of a state's judicial system, whether primarily centrally administered or decentralized, whether state or locally funded, whether unified or not, the leadership, direction and resources for educating its judiciary must come from the state level government. The state legislature should not rely entirely or primarily on the federal government for support of judicial education programs, nor relegate this responsibility to local governments whose interests are necessarily more parochial. The provision of judicial education and training programs and resources should be an essential part of the state court budget, irrespective of the state's share of total court system support. Funding from federal and other non-state sources for judicial education should only be supplemental and for educational purposes or programs consistent with state-developed educational priorities.

State financing of a judicial education program should include reimbursement of approved out-of-pocket expenses, such as travel, room, board, and registration fees, which are incurred by the program participant

IV. RESOLUTIONS AND STANDARDS RELATING TO JUDICIAL EDUCATION

The following resolutions and standards adopted or promulgated by national judicial, legal and advisory organizations relate to comprehensive career judicial education. In many ways, these statements by the Conference of Chief Justices, the National Advisory Commission on Criminal Justice Standards and Goals, and the American Bar Association's Judicial Administration Division and Commission on Standards of Judicial Administration complement and bolster the recommendations of the Study Group. Most importantly, however, they reflect a growing recognition of the need and importance of providing relevant pre-service and in-service training and education opportunities to our nation's judiciary at this critical stage in the national court improvement movement.

1. RESOLUTION - GUIDELINES FOR JUDICIAL
EDUCATION, CONFERENCE OF
CHIEF JUSTICES, 1977

RESOLUTION - II

GUIDELINES FOR JUDICIAL EDUCATION

By The

CONFERENCE OF CHIEF JUSTICES

WHEREAS, it is now fully recognized that a program of special educational training for judicial officers is both essential and necessary to the proper administration of justice; and

WHEREAS, judicial educational programs for new judicial officers are absolutely crucial to avoid the problems inherent in having new judges learn only through mistakes made on the job; and

WHEREAS, existing judicial officers desire and need educational programs to both bring them current in new developments in law and to provide a forum for new ideas to improve the administration of justice.

NOW, THEREFORE, be it resolved by the Conference of Chief Justices that the following judicial educational guidelines are recommended for an effective judicial educational program to enhance and improve the administration of justice.

1. New Judge Judicial Education.

A. A new judge judicial educational program should be established and funded in each state or region.
Each new judicial officer should be required to attend a prescribed judicial educational program within his or

her first two years of judicial office. Educational leave should be allowed for this purpose.

B. Each new judge should be encouraged to attend a national judicial educational program during his first three years as a judicial officer. State funds should be provided for this purpose and the judge should be allowed three weeks educational leave to attend this type of educational program.

2. General Judicial Education.

A. Each existing judicial officer should be required to attend a minimum of one week or forty hours of approved state, regional or national legal educational courses every three calendar years. Educational leave should be allowed for that purpose.

B. Each existing judicial officer should be encouraged to attend national or regional educational programs in addition to that required by subparagraph A. State funds should be provided for attendance at these programs and the judge should be allowed an additional two weeks of educational leave every three years for this purpose.

3. Judge Expenses.

Full per diem costs and expenses should be provided for all approved judicial educational programs.

4. Judge Faculty

It must be recognized that in order for judicial educational programs to exist and be credible in their presentations, judge faculty must comprise a majority of the staff in such presentations. It is therefore recommended that each faculty member be granted educational leave for a minimum of fifty percent of the time away from his court on faculty duties. The remaining fifty percent would be credited against annual leave. The approval of the Chief Justice or a designated judicial official may be necessary for proper judicial administration.

5. Judicial Educational Board

It is recommended that an educational board be established by the State's highest court whose representative voters at the Conference of Chief Justices in each jurisdiction to set educational policy, approve, programs, and prepare the necessary budget to fund judicial educational program.

This report was approved by the Executive Council in its meeting held in Minneapolis on July 31, 1977.

. Respectfully submitted,

Ben F. Overton, Chairman

Francis G. Dunn

Robert Boochever

Joe R. Greenhill

Albert W. Barney, Jr.

2. RESOLUTION RELATING TO JUDICIAL TRAINING AND
EDUCATION RECOMMENDED BY THE JUDICIAL
ADMINISTRATION DIVISION TO THE A.B.A..
HOUSE OF DELEGATES, FEBRUARY, 1978*

*A modified resolution not affecting the substance of the recommended text was ultimately adopted by the House of Delegates. The official text of the House of Delegates Resolution was not available at the time of this publication.

AMERICAN BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES
JUDICIAL ADMINISTRATION DIVISION

RECOMMENDATION

The Judicial Administration Division recommends to the House of Delegates adoption of the following resolution:

BE IT RESOLVED, That the American Bar Association encourages and recommends creation of the following:

1. New Judge Judicial Education

- A. A new judge judicial educational program should be established and funded in each state or region. Each new judicial officer should be required to attend, first, an orientation course of instruction for new judges as soon as practicable after selection or election and, second, a prescribed judicial educational program within his or her first two years of judicial office. Educational leave should be allowed for this purpose.
- B. Each new judge should be encouraged to attend a national judicial educational program during his first four years as a judicial officer. State funds should be provided for this purpose and the judge should be allowed four weeks educational leave to attend this type of educational program.

2. General Judicial Education

- A. Each existing judicial officer should be required to attend a minimum of one week or forty hours of

approved state, regional or national legal educational courses every four calendar years. Educational leave should be allowed for this purpose.

- B. Each existing judicial officer should be encouraged to attend national or regional educational programs in addition to that required by subparagraph A. State funds should be provided for attendance at these programs and the judge should be allowed an additional two weeks of educational leave every four years for this purpose.

3. Judge Expenses

Full per diem costs and expenses should be provided for all approved judicial educational programs.

4. Judge Faculty

- A. It must be recognized that in order for judicial educational programs to exist and be credible in their presentations, judge faculty must comprise a majority of the staff in such presentations. It is therefore recommended that each faculty member be granted educational leave for a minimum of two-thirds of the time away from his court on faculty duties. The remaining one-third would be credited against annual leave. The approval of the Chief Justice or a designated judicial official may be necessary for proper judicial administration.
- B. Teaching hours contributed by a judicial officer as a faculty member of an approved judicial educational program shall be counted towards fulfilling any continuing legal education attendance requirement.

5. Judicial Educational Board

It is recommended that an educational board be established by the state's highest court, whose representative votes at the meetings of the Conference of Chief Justices, in each jurisdiction to set educational policy, approve programs, and prepare the necessary budget to fund judicial educational programs.

REPORT

Judicial training and education are necessary and essential for the judges of this nation to stay abreast of current developments in the law, to develop new judicial skills and techniques, to establish standards for judicial functions and to understand the importance of their role under our system of government.

It is the responsibility of the governmental entity employing a judge to provide necessary funding for his training and education.

The principal source of funds for the training and education of state and local judges for the last several years has been provided by block grants from the Law Enforcement Assistance Administration (LEAA) of the Department of Justice. Recently, LEAA's appropriations for that purpose have been reduced, and it is expected that within the foreseeable future LEAA will not be making block grants available for judicial training and education.

Thus, the Judicial Administration Division requests that the Association encourage and recommend the funding agencies of all state and lower courts and administrative agencies to include in their budgets of appropriated monies funding to provide, as a minimum, training and education for judges of unlimited jurisdiction and full-time judges of limited jurisdiction, and administrative law judges.

This recommendation is in conformity with the Association's Standards Relating to Court Organization which state in Standard 1.5:

Judges should maintain and improve their professional competence through continuing professional education. The court system should operate or support judges' participation in training and education, including programs of orientation for new judges and refresher education for experienced judges, in developments in the law and in technique in judicial and administrative functions. Where it will result in greater convenience or economy, such program should be operated jointly by several court systems, or regionally or nationally.

This recommendation was approved by the Judicial Administration Division Council on August 10, 1977, and on February 12, 1978.

Respectfully submitted,

WILLIAM A. GRIMES, Chairman

February, 1978

3. STANDARD 1.25 - STANDARDS RELATING TO COURT ORGANIZATION,
AMERICAN BAR ASSOCIATION COMMISSION ON
STANDARDS OF JUDICIAL ADMINISTRATION, 1974

self available to recall for active service on the bench should not engage in the practice of law.

References:

AMERICAN JUDICATURE SOCIETY, JUDICIAL SALARIES AND RETIREMENT IN THE UNITED STATES (1970).

WINTERS & LOWE, JUDICIAL RETIREMENT AND DISABILITY COMMISSIONS AND PROCEDURES (1969).

1.25 Continuing Judicial Education. Judges should maintain and improve their professional competence through continuing professional education. Court systems should operate or support judges' participation in training and education, including programs of orientation for new judges and refresher education for experienced judges in developments in the law and in technique in judicial and administrative functions. Where it will result in greater convenience or economy, such programs should be operated jointly by several court systems, or regionally or nationally. Provision should be made to give judges the opportunity to pursue advanced legal education and research.

Commentary

Continuing training and education for judges is essential to establishing and maintaining a satisfactory level of professional competence in the judiciary. Newly appointed judges need orientation to their role, which is novel even for lawyers with long experience as advocates. They also need training in the administrative and collegial responsibilities of judicial office, which are quite unlike the ordinary professional experience of lawyers. At the same time, experienced judges need refresher education in substantive and procedural law; the rate of legal change has become so rapid that few can stay abreast simply on the strength of their own

efforts. Experienced judges also need training in new techniques in court administration and performance of judicial duties, to benefit from advances and simplifications in these functions.

The tasks of organizing and conducting continuing judicial education are the responsibility of the court system, and should be carried out under the supervision of the chief justice through the court administrative office. Techniques of organizing and presenting programs of continuing judicial education are undergoing constant change. Certain types of programs, such as orientation for new judges and refresher courses for all judges, should be provided through a regular periodic cycle. Other programs are designed to respond to specific new demands on the courts, such as the introduction of new procedural rules. Some states have a large enough judiciary to sustain their own programs in many fields, but organized programs in highly specialized subjects are beyond the capacity of all but the largest systems. This suggests the need for cooperation between court systems in establishing continuing judicial-education programs. Such cooperation also exposes judges to the experience and outlook of judges from other systems. Like benefits result from exposure of judges to lawyers and legal educators and to the "clientele" of the courts, the latter exemplified in judicial-education programs where judges have visited prisons, jails, detention centers, and mental hospitals to see and talk with their inmates.

The recommendation that judges be provided opportunity to engage in advanced study is based on arrangements to this effect now operative in Oregon and other states. A similar underlying policy has led to the growing practice of establishing such arrangements as a matter of routine in law firms, business organizations, and some government agencies. The opportunity for reflection and redirection of thought has always been an essential aspect of judicial of-

sice. In the swift-moving milieu of the modern era, this opportunity can most effectively be provided by temporary disengagement from daily responsibilities.

References:

- Burger, *School for Judges*, 33 F.R.D. 139 (1963).
Gutman, *Program for Judicial Education*, Vol. 7 No. 3 TRIAL 49 (1971).
Hansen, *The Continuing Education Program of the Wisconsin Judiciary*, 52 MARQ. L. REV. 240 (1968).
Karlen, *Judicial Education*, 52 A.B.A. J. 1049 (1966).
Ketcham, *Summer College for Juvenile Court Judges*, 51 JUDICATURE 330 (1968).
Leflar, *The Appellate Judges Seminars*, 21 ARK. L. REV. 190 (1967).
O'Connell, *Continuing Legal Education for the Judiciary*, 16 J. LEGAL ED., 405 (1964).
Reichert, *The Future of Continuing Legal Education*, in LAW IN A CHANGING AMERICA (Hazard, ed. 1968).

1.26 Judicial Officers Assisting Judges.

(a) Qualifications. Judicial officers are legally trained officers of the court performing judicial and quasi-judicial functions under the authority of regular judges of the court system, as provided in Section 1.12 (b). They should have qualifications as prescribed by administrative regulations promulgated pursuant to Section 1.32. These qualifications should include good moral character, emotional maturity and stability, good physical health, a general education through the college level, and admission to practice law. Further qualifications may include a minimum period of experience in the practice of law or in government.

(b) Selection. The procedure for selection should be prescribed by administrative regulation. Notice of prospective appointments should be given publicly and well in advance,

4. STANDARD 7.5 - COURTS, NATIONAL
ADVISORY COMMISSION ON CRIMINAL JUSTICE
STANDARDS AND GOALS, 1973

Standard 7.5

Judicial Education

Every State should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extensive commitment of judge time, both as faculty and as participants for such programs, that will be necessary. Funds necessary to prepare, administer, and conduct the programs, and funds to permit judges to attend appropriate national and regional educational programs, should be provided.

Each State program should have the following features:

1. All new trial judges, within 3 years of assuming judicial office, should attend both local and national orientation programs as well as one of the national judicial educational programs. The local orientation program should come immediately before or after the judge first takes office. It should include visits to all institutions and facilities to which criminal offenders may be sentenced.

2. Each State should develop its own State judicial college, which should be responsible for the orientation program for new judges and which should make available to all State judges the graduate and refresher programs of the national judicial educational organizations. Each State also should plan specialized subject matter programs as well as 2- or 3-day annual State seminars for trial and appellate judges.

3. The failure of any judge, without good cause, to pursue educational programs as prescribed in this standard should be considered by the judicial conduct commission as grounds for discipline or removal.

4. Each State should prepare a bench manual on procedural laws, with forms, samples, rule requirements and other information that a judge should have readily available. This should include sentencing alternatives and information concerning correctional programs and institutions.

5. Each State should publish periodically—and not less than quarterly—a newsletter with information from the chief justice, the court administrator, correctional authorities, and others. This should include articles of interest to judges, references to new literature in the judicial and correctional fields, and citations of important appellate and trial court decisions.

6. Each State should adopt a program of sabbatical leave for the purpose of enabling judges to pursue studies and research relevant to their judicial duties.

Commentary

The tasks of judging have special requirements and demands that are best conveyed through an

organized educational program. Changing social and legal conditions also call for a structured program of continuing judicial education. In recognition of the need for continuing education and training, the number and variety of legal education programs have increased substantially in recent years.

Orientation Programs for New Judges

It is more than just a step in a legal career when a lawyer becomes a judge. It is a major career change to a position involving significantly different functions and requiring different skills and knowledge than were required of the person in his prior professional position. Orientation for new judges on all trial courts therefore should be part of every State judicial education plan. The program should be mandatory for each new judge before or immediately after he begins his judicial duties.

Despite the great need, there are few State orientation programs in the Nation today. An outstanding exception, and a model which other states might emulate, is the Wisconsin Judicial College. It conducts an annual 1-week orientation program for all new State trial judges. Teaching materials have been collected into a looseleaf binder, which can serve as a bench manual and can be updated easily.

Each State should establish an educational program of this sort. Such a program could be placed under the administrative direction of the State supreme court or the State court administrator or the State judicial conference, perhaps with the aid of a law school or the director of the continuing legal education division of the State bar association.

Each orientation program should include visits to the various State institutions to which judges may make commitments. A judge should be fully informed as to the kinds of programs and conditions to which he is sentencing offenders. Care should be taken to assure that the personnel of these institutions understand the purpose of these visits; if the visits are to be meaningful, they must reveal frankly the shortcomings as well as the strengths of institutional programs and facilities.

National Programs

To continue the judicial education process, every State should provide an opportunity for each of its new judges to attend a national in-resident program. Thereafter, judges should be able to attend shorter, in-depth graduate or refresher courses at least every third year.

While the Commission does not specifically endorse any particular program or approach to judicial education, it recognizes that several organizations

have attempted to construct meaningful courses and that a number of judicial education programs, now offered on a regional or national level, might satisfy this standard. Educational courses for judges are offered, for example, by the Institute of Judicial Administration (appellate judges, 2 weeks at New York University); the American Academy of Judicial Education (limited jurisdiction trial judges, 2 weeks at the University of Alabama); the National College of the State Judiciary (general jurisdiction trial judges, 4 weeks, and limited jurisdiction trial judges, 2 weeks, at the University of Nevada); and the National Council of Juvenile Court Judges (1- and 2-week programs at the University of Nevada).

These national programs encourage a much needed exchange of methods and ideas, and they can attract instructional talent not otherwise available. They provide an opportunity to examine the philosophy of justice, the role of a judge, the doctrine of separation of powers, the interdisciplinary aspects of the criminal justice system, problems of bail, sentencing, judicial ethics, and other matters with judges from all sections of the Nation. These programs tend to break down self-satisfaction with local ways and the pervasive sectionalism that often has characterized the judicial establishment.

While most judges will be enthusiastic about judicial education, attendance at selected educational programs is so important that the Commission recommends a mandatory educational component of judicial office, with power in a judicial conduct commission to discipline or remove judges who willfully fail to participate in the required programs.

In States that already have created a State college of trial judges, attendance at a national program could wait until the second year of judicial service. In States where there is no program or only a brief orientation or an annual State judicial seminar, attendance at an in-residence national program is more urgent during the first year of judicial service.

Annual State Seminars

Two or 3-day annual seminars for trial and appellate judges should be conducted in each State. If manpower requirements make it difficult to have the State's entire judiciary away from their courts at one time, two separate sessions should be conducted each year. These seminars should include a report from the court administrator on the needs, deficiencies, and innovations of the State system, and a report on national trends in judicial education programs. It also should include courses on techniques and skills used in judging and on matters of substantive law and procedure, such as recent develop-

ments in criminal law, sentencing problems, and evidence.

These seminars should be located so that they provide, over a period of years, an opportunity for the participating judges to visit or revisit the State's correctional and mental institutions. They also should be structured to provide an opportunity to open and maintain communications with other parts of the criminal justice system. While most of the seminar schedule should be devoted to law, court procedure, and problems of the judiciary, each program also should devote time to understanding the workings of other parts of the system. Participants from police and correctional agencies might be profitably involved.

Special Subject Programs

Each State should include provisions for specialized subject matter programs in its judicial education plan. One selected subject each year, or each month, should be presented and a limited number of judges invited to participate.

Smaller States might find it worthwhile to pursue a regional approach to special subject programs. Several States, for example, might put on these programs together, with judges from each State participating in each program. Subjects that would be appropriate for judges sitting on criminal cases include psychiatry, social work, and the law; theory of government and separation of powers; computers in courts; poverty law; criminal law—substantive and procedural; criminal law—sentencing; court administration, including special seminars for chief judges of metropolitan courts with emphasis on techniques to assure a speedy trial; the relationship between corrections and courts; the relationship between law enforcement and courts; the relationship between courts and the executive and legislative branches of government; the relationship between courts and the news media; family law; juvenile law; criminal penalties for infractions of environmental law; and opinion writing.

The expense of judicial education is as necessary a cost of a good judicial system as are courtrooms and court clerks. The cost will not be insubstantial. But the Commission believes that money spent on an education program, such as that described in this standard, is well spent, and it recommends that specific provisions be made for direct costs as well as indirect, such as the loss of judicial time that occurs when judges participate in such programs, either as instructors or as students. Careful examination suggests that the total time taken from a judge's judicial duties by an educational program is not an unreasonable portion of his professional time.

If, during the first 2 years of service, a judge spends 10 court days in orientation, 2 days each year at his own State judicial conference, 5 to 10 days at a State judicial college program, and 20 days at a national educational program, the entire time commitment to education for the new judge will have totaled 39 to 44 days during the first 2 years of judicial service. Thereafter, he would devote only 2 days per year to his State judicial seminar and an additional 10 days each third year to refresher programs of various kinds. In addition, some judges will be asked to make a contribution of their time to judicial education as members of the faculties in the various programs. The court system must accept these time commitments.

In most States, creating and maintaining an effective education program will be an undertaking that requires a full-time professional staff person with necessary support personnel. He could be part of the judicial branch of government, as a member of the State court administrator's staff or the supreme court's staff. Or he could be on the staff of a continuing legal education program, either at a law school or with the State bar association. In any case, he will need to work closely with the judges in order to devise useful programs, and he will need to select carefully the faculty for the State-operated programs and work with them in developing up-to-date course materials.

Some Programs of Interest

The Commission studied a number of innovative programs that provide continuing education for judges. Virginia judges now attend two annual training sessions, each 2 days long, as part of the State's inservice continuing education for judges. The program is separated into sessions for judges of courts of record and for judges of courts not of record; the two sessions are given 6 months apart. In addition, the Virginia Council of Juvenile Court Judges has appointed a five-member committee to develop, plan, and present a 2-day program for judges specializing in juvenile justice. The State-coordinated training sessions keep judges informed of new laws, recent court decisions, and changes in courtroom procedures.

In 1972, West Virginia conducted a 3-day seminar for all State judges, the first of its kind in 3 years. The seminar, under the direction of the National College of the State Judiciary, covered criminal law, evidence, civil proceedings before trial, and the inherent powers of the court. The seminar was sponsored jointly by the Governor's Committee on Crime, Delinquency, and Corrections, and the West Virginia Judges Association, with Safe Streets Act funds.

The Center for the Administration of Justice, Wayne State University Law School, provides a 6-week course for newly elected judges in Michigan. The center also conducts an ongoing series of 1- to 5-day seminars for judges and high-level court administrators in areas of law and court proceedings. Other activities include off-duty extension courses for all members of the State criminal justice system; special leadership conferences explaining the judicial process and its needs to business, professional, and political leaders of the State; and special study projects conducted in cooperation with the Michigan State Supreme Court.

The California Conference of Judges, a voluntary professional organization, has developed a 2-week course, given every year at the University of California at Berkeley Law School, especially for new and recently appointed judges. Called the College of Trial Judges, the course covers all aspects of judicial responsibility, including criminal law, ethics, and courtroom procedures. Members of the CCJ and professional educators instruct the courses, conduct seminars, and arrange field trips to various criminal justice facilities.

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Related Standards

The following standards may be applicable in implementing Standard 7.5:

- 10.5 Participation in Criminal Justice Planning
- 12.4 Statewide Organization of Prosecutors
- 12.5 Education of Professional Personnel
- 13.11 Salaries for Defender Attorneys
- 13.16 Training and Education of Defenders

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V. APPENDICES

- Appendix A - State Judicial Education Programs,
Sofron N. Nodilsky, Esq.
- Appendix B - A Perspective on Continuing Professional
Education for Physicians, R. Dale Lefever, Ph.D.
- Appendix C - Legal Education Perspective on Judicial
Education Needs, Dean Roger C. Cramton
- Appendix D - Evaluation of Judicial Education and Training,
Dr. Peter Haynes
- Appendix E - Summary of State Judicial Education Survey
Results

INTRODUCTION TO APPENDICES A - D

Over the course of its work, the Study Group was exposed to a wide variety of lay and professional perspectives on judicial education in the form of oral and written presentations. Four of these presentations have been selected for inclusion in this report for their cumulative value in providing the reader with an overview of the public administration and intellectual context in which "judicial education" as a distinct field of inquiry and endeavor is developing.

Sofron Nedilsky's paper highlights the interrelationship of the evolution of judicial education programs and the resurgent court reform movement of the 1960's and 1970's. It also points up the variety of uncoordinated and yet unproven approaches being taken to this new area of professional education.

Dale Lefever's analysis of the relevance of the medical school training of physicians to their subsequent practice demonstrates the gap that can exist between the formal preparatory training of a class of professionals and the skills required of them in the performance of their roles in society. He suggests that properly designed continuing education programs are the most feasible means of bridging that gap, given the relative resistance to change of the professional preparatory schools. He goes on to urge that judicial education planners study recent efforts at improving the practice-relevancy of continuing education programs for physicians and develop the necessary foundation of judicial performance standards which would enable the conduct of judicial education activities designed to rectify disparities between performance expectations and actual practice behavior.

Roger Cramton's perspective on judicial education needs stresses the central importance of value-oriented education not only to the professional and personal development of the individual judge, but to the relevance and

vitality of the judicial function in our system of government.

Finally, Peter Haynes' evaluation perspective on judicial education argues the need to document and assess the various approaches being taken to judicial education, as summarized in Mr. Nedilsky's paper, and to research and develop goal-oriented judicial education curricula which would advance both the skills and the intellectual development of the judge participants, as advocated in the Lefever and Cramton papers.

APPENDIX A - STATE JUDICIAL EDUCATION PROGRAMS,

SOFRON N. NEDILSKY

STATE JUDICIAL EDUCATION PROGRAMS

The first judicial education programs were presented in the late 1940's by the American Bar Association Traffic Court Program directed by James P. Economos, at the invitation of a number of states seeking to improve administration of their traffic courts. In 1956, New York University Law School was the site of the first seminar for appellate court judges. By the early 1960's, many states began to hold annual Judicial Conferences and other educational seminars. The Judicial Council of California, in 1962, designated "Cy" Shain to organize and present institutes and workshops for the judges in that state.

A flurry of organizational activity occurred on the national scene between 1963 and 1970. The National College of the State Judiciary was founded in 1963 and held its first session in 1964 at the University of Colorado at Boulder, Colorado. The original funding came from W.K. Kellogg Foundation of Battle Creek, Michigan, but in 1965 the National College received a ten-year grant from Max C. Fleischman Foundation of Reno, Nevada and moved to permanent quarters on the University of Nevada, Reno campus. The Fleischman Foundation was also the funding source for the establishment of the National College of Juvenile Justice in 1969. This educational institution for juvenile court judges is also located in the Judicial College Building on the campus of the University of Nevada, Reno. The American Academy of Judicial Education held its first two-week residency conference for new judges of limited jurisdiction courts in 1970. The National College of Juvenile Court Judges, early in the 1960's, received grant support from the National Institute for Mental Health for a national series of training conferences, community team workshops and sensitivity training sessions. From this evolved the Summer College for Juvenile Court Judges in Boulder, Colorado.

As the 60's reflected national program activity, the 70's clearly belonged to state judicial education programs. The National Center for State Courts issued two publications entitled, State Judicial Training Profile. The profile, published in 1974, indicated that seventeen states identified personnel with sole responsibility for the development of judicial training programs. The 1976 edition of the profile reflected that the number of such states rose to thirty. Recognition of the need for the establishment of state-level judicial education programs was obvious. A forward-looking director of a state program in Indiana, Rosemary Huffman, made the initial survey of state programs and invited representatives to the first State Judicial Education Roundtable, hosted by the Center for Judicial Education in Indiana, and held on February 26-27, 1973. About a dozen state programs were represented. It was such a successful meeting that the participants resolved to meet again the following year and the Indiana program hosted the second Roundtable on February 18-19, 1974. The National Center for State Courts invited state program representatives, court administrators, LEAA and state planning agency representatives, and others to the National Judicial Educators Conference held at the University of Mississippi on April 28 - May 1, 1974. Directors of state judicial education programs again called for a third Roundtable meeting, which was held on February 19-20, 1975 at the Palmer House in Chicago, Illinois. Participants at this meeting resolved to form a State Judicial Educators Association and elected interim officers. The First Annual Meeting of the State Judicial Educators Association was held on August 25-27, 1975 in Chicago, Illinois. Twelve members attended the First Annual Meeting of the Association. The Second Annual Meeting was held on March 24-26,

1976 in San Antonio, Texas. The Third Annual Meeting was held on March 30 - April 1, 1977 in Santa Fe, New Mexico. Presently, the Association has thirty-eight members representing twenty-seven states and five national programs. The constitution of the Association, a copy of which is attached, limits eligibility for full membership to "any director or chief administrator of a state or local nonprofit program of education for judges and/or court-support personnel ...". As pointed out earlier, the State Judicial Training Profile indicates that thirty states have designated a director or chief administrator of a state judicial education program. With twenty-seven of these states represented in the Association, it is the determined wish of the members to continue to provide leadership and educational opportunities in this rapidly developing profession.

A. Availability of State Judicial Education Programs

As was noted above, approximately thirty states have organized programs with specific personnel designated to plan and implement them. The remaining states rely primarily on statewide Judicial Conferences, meetings of associations of judges, and national programs, both to assist development of in-state programming and training of judges at their own courses.

B. Organizational Structure

A great variety of organizational structures exist. The most commonly found affiliation is with the State Supreme Court and/or a state court administrator's office. Some programming exists on a local level within the offices of a trial court administrator. In a few states, such as Indiana and Mississippi, the state program is within the administrative structure of a university law school. Examples can be found of affiliation with a state bar association, judicial boards or associations, criminal justice training centers, the office of attorney general, and the college or center concept exhibited in the State of Washington.

For the most part, state programs express deep concern for a close relationship with the judiciary serviced by the program. This is often provided by a board or committee representative of the users of the program. The responsibility and authority of such committees varies from state to state but in general terms they tend to be the policy-making bodies for the program.

C. Funding

A number of state programs, generally those who have been in existence the longest, are now fully funded through state appropriations, with little or no reliance on federal funds. A quick review of the latest profile indicates that only two states, Kentucky and South Carolina, report that their entire judicial education budget comes from state funds. Almost all of the programs rely heavily on LEAA funds, with some funding made available from the National Highway Safety funds. The Center for Administration of Justice at Wayne State University Law School is one of the few programs that have received support

from private foundations. There are also efforts underway in one or two states to attempt using surcharges on fines as a source of funding for educational programs. This has been more extensively used in the area of law enforcement training.

D. Who are the Users?

Most of the programs on the state level were initially organized to provide educational opportunities for judges. There are some that still limit themselves to this purpose, as exemplified by the program in California. Most of the programs, however, have expanded their services to include administrative and clerical personnel, probation officers, juvenile officers, court reporters, registers in probate, and even district attorneys and public defenders.

In some states, such as Texas, separate programs are established for general jurisdiction judges from those that primarily serve the lay judiciary or judges of limited jurisdiction.

The scope of any program is as much determined by the availability of funding as it is by predetermined objectives.

E. Developing Program Objectives

Most frequently, program objectives are determined in a very informal manner. They can be decided by committees, often composed of user representatives, or it could be as a result of unilateral direction from an individual or a statutory body.

Some states have developed formal assessments of needs, using contracted personnel to do extensive assessments. A most recent example is the formal assessment of needs developed in the State of Michigan. Other programs depend entirely on in-house assessments of needs and limit themselves to formal or informal surveys of the users.

F. Program Emphasis

Most of the programs place their primary emphasis on orientation of law-trained and lay judiciary. This is accomplished by various means and includes pre-service as well as in-service orientation. "Advisor Judge" programs, such as developed in California, as well as internships with a sitting judge, are often the form of pre-service training provided at the state level. Several states have developed extensive programs under the title of "Judicial College." This concept can reflect a program of two days in duration or as ambitious as fourteen days long. In addition, many state programs provide benchbooks, publications, audio tapes, as well as video tapes, to supplement their orientation programming. Specialty seminars, such as sentencing institutes, are often held annually, emphasizing an area of judicial functions of critical concern to the judges. Crisis-generated seminars in response to the enactment of new legislation, both substantive and procedural, often demand a change in program emphasis.

Finally, comes the emphasis of some programs on conferences and meetings of various judicial organizations. These are frequently held annually and are especially suited for programming on areas of general concern of the user judges.

G. Methodology

Methodology or format of programming on the state level ranges from the very traditional to innovative. On the traditional end of the scale are the conferences, institutes, and seminars presented with a heavy reliance on lecture and group discussion. The more experimental the innovative formats include use of problem-solving, dramatization, gaming, and other participant-oriented techniques. Video-taped vignettes raising issues in evidentiary problems and motion problems are more extensively used as educational tools in programming. More and more frequently, participants are limited in number of attendance at any specific program in order to allow the most extensive interaction in the group.

To supplement live programming, and to reach users who are not available at these programs, more reliance has been placed on publications. These include materials for the live programs, benchbooks and manuals, and newsletters distributed to the users on a regular basis as a means of communicating changes and information.

Audio and video tapes have been used basically in three ways. The first has exclusively an informational purpose by taping a speaker during his presentation. A second method is directed at a more instructive purpose with heavier emphasis on educational aids such as charts, exhibits, and other demonstrative tools. The third use of tapes emphasizes the participation of the viewer. These generally present brief problems and questions to which the viewer has to react. Accompanied by a manual, this form is exceptionally well-suited to self-education.

H. Fiscal Matters

Many programs have exclusive responsibility for grant writing and accounting under the grants. Recently, more programs have established themselves within an office that can provide fiscal and accounting services to the program.

There is still a great variance on the reimbursement policies among the various states. Some states rely on participants obtaining funding from other sources, while most states do reimburse the participants fully for their expenses while in attendance at programs.

To my knowledge, none of the state programs have instituted fees or tuition as a method of covering the costs of the programs.

I. Relationship to National Programs

State program relationship to national programs varies greatly, seemingly determined more by personal contact than financial criteria. In some states, there is no state level participation, meaning that no state funds are available to judges to attend national programs

and the state program does not utilize the services of national programs to assist with instate programs. Most state programs have a complementary relationship with the national programs. Where there is an extensive state program, funds are still made available to judges in that state to participate in national programs. There are a number of states that utilize national programs as exclusive providers of both instate training and orientation training of judges at the national programs.

In some states, national programs provide a service that is of technical assistance nature. At the request of such states, they assist in the planning of programs, selection of speakers, preparation of materials, and even implementation of the program. In recent years, some national programs have also contracted with states to publish benchbooks, manuals, and other written materials.

J. Evaluation

In rare instances, some state programs have attempted to develop quantitative evaluations of their programs. These efforts have been costly and have been met with limited success. Almost all of the programs rely heavily on questionnaires and individual feedback to evaluate the success of each program. Although most programs maintain counts of participants, they recognize that this has no relevance in evaluating the quality of the program and utilize the data for planning and budgeting.

A few states rely exclusively on an informal evaluation, such as unsolicited comments from the participants. On the other hand, there are three states, namely Michigan, Delaware, and South Carolina, according to the latest "profile", that instituted testing procedures for the participants. This method of evaluation should become more extensively used as programs mature and become self-critical in their evaluations.

K. Mandatory Judicial Education

Presently, there are three states that have instituted mandatory judicial education. Minnesota and Iowa plans are integrated with mandatory continuing legal education, requiring fifteen hours of accredited participation in a one-year period.

Wisconsin instituted a mandatory judicial education program on January 1, 1977, separate from the mandatory continuing legal education plan, authorizing the Supreme Court Judicial Education Committee to establish the guidelines and set the credits to be granted. As you will note in the attached order and guidelines, three programs are made mandatory for each justice, judge, and supreme court commissioner to attend once in a six-year period, in addition to the credit requirements. Due to the recent implementation date, Wisconsin is only now learning the issues that are involved in administering such a program.

APPENDIX B - A PERSPECTIVE ON CONTINUING PROFESSIONAL
EDUCATION FOR PHYSICIANS,
R. DALE LEFEVER, PH.D.

A Perspective On Continuing Professional Education For Physicians

Introduction

One of the necessary starting points in designing continuing education programs for professionals is the examination of the prior education they have received. It must be asked, for instance, whether this education was adequate for professional practice and whether it is an appropriate model for future training?

The purpose of this paper is to provide a brief analysis of professional education in medicine relative to the above questions in an effort to stimulate similar issues in the design of continuing education for judges.

Basic Issues In Program Design

The initial question relates to who are the professionals we have produced? While this question can not be answered in an individual sense, we do know that 60% of physicians establish office practices and 25% work in hospitals. Sixteen percent of hospital based physicians, however, are interns and residents, which means that only 9% of physicians actually establish a hospital-based practice. We also know that 62% of practicing physicians work alone.¹ Without great elaboration, it should be noted that the hospital context in which physicians are trained is not consistent with the office setting in which they will eventually practice. The preference for solo practice, however, is consistent with the highly competitive academic setting in which they were trained, but may not be consistent with the growing need for health care teams and family oriented clinics. The educational issue is whether continuing education for physicians should be hospital-based and individually oriented or whether a community-based, health care team approach would be more appropriate?

A second question that needs to be addressed is the kind of patients physicians actually manage in practice? Again, without presenting tedious details, we know that the typical patient comes to a physician with common complaints or no symptoms (74% of visits); they were seen previously for the same problem (61% of visits); he contacts a specialist (59%); he is with a physician less than 12 minutes (50%); he receives minimal, if any, history/physical or laboratory workup (70%); the problem diagnosed is slight or not serious (81%); drugs are prescribed (68%); and a return appointment is made (65%).²

The educational issue this presents is that there is an inconsistency between the patients managed in training at the university medical centers and the patients which present in the eventual practice setting. Medical centers are tertiary (specialized) care facilities where patients with serious or, at least, undiagnosed illnesses are referred. Medical students, therefore, are taught using patients

¹This citation and all citations in this paper refer to a paper by John W. Williamson entitled "The Product of Our Medical Schools in Perspective", presented at the Council of Deans Meeting in April 1975. Dr. Williamson is Professor, Department of Health Care Organization, the Johns Hopkins School of Hygiene and Public Health.

²See Footnote 1.

that are less representative than the at risk population they will eventually manage. This might explain, for instance, why only a minimal history and physical examination is conducted. Most patients have had this completed prior to admittance to the medical center. Medical students, therefore, are denied the opportunity to practice their skills in this area.

The implication for continuing medical education is whether the programs will be relevant to actual practice or whether they will be oriented toward the critical, but unrepresentative issues of primary importance to academic medicine and research?

A third question relates to the cost of health care and the professional's role and responsibility for cost containment. Since the reader does not need to be convinced of the high cost of health, the issue relates to how to best introduce the cost variable into the education of physicians. Most medical students are not faced with the cost of treatments they request while in training. They never see the patient's bill and are rarely alerted to the cost-benefit approach to patient management. The challenge to continuing education is how to introduce professional accountability to the consumer in a profession where the physician "knows best".

A final, and perhaps the most fundamental issue relates to how well physicians actually perform in practice. Without commenting on the many issues surrounding the validity of malpractice suits, there is clear evidence of 1) observer error (serious lesions were missed in roughly 25% of 100 chest films), of 2) inadequate diagnosis (urinary tract infection was missed in 71% of 265 patients at a community hospital), and of 3) deficiencies in care provided (fetal age/viability examination was not conducted in 14 of 27 abortion cases).³

The implication here is not that unqualified physicians are the norm in society, but rather that physicians have an incredible responsibility in making judgments about the health of others and must practice this judgment frequently under pressure. The need for continuing education for the physician who practices apart from the resources of the academic medical center is clear. This education must be directly related to the problems physicians face in practice and must begin with recognition on the part of the physician that continued assessment of his skills is appropriate.

A Model For Professional Education

With the above issues as background, I would like to propose some minimum elements for conducting educational programs for practicing physicians. Again, these comments are made in an effort to stimulate discussion of their relevance for judicial education.

The initial effort must be to establish minimum standards for patient care. Education must be goal-directed. Unless there are standards for quality, educational programs will be arbitrarily designed and predictably ineffective in changing behavior. Perhaps the best way to phrase the issue is to ask "what would medical practice be like if it were good?"

³See Footnote 1.

One of the fundamental difficulties in attacking this issue has been the desire of professionals to be independent and autonomous practitioners. Most physicians take the position that only they can judge other physicians and that they know better than the patients what is best. This attitude has delayed efforts to develop standards of care and must be overcome if relevant educational programs are to emerge.

However general or tentative the minimum standards are, they must ultimately be translated into educational objectives, i.e., statements of what the individuals are expected to learn through the educational experience. While this approach may seem obvious, it is simply not done. Very few programs ever have stated objectives and those that do are never evaluated to determine whether the objectives have been met. Literally hundreds of programs are conducted each year without any attention being paid to the explicit purpose they are to accomplish.

One of the difficulties related to this lack of clear objectives is the categorical approach taken in designing continuing educational programs. Generally, a topic is selected, the meeting is scheduled, and participants come, sit, and listen. The need for the program is frequently determined by the presentors and may or may not reflect the actual needs of the practicing physicians. The presentors are genuine authorities in their fields, but they are not equipped to meet the specific needs of the heterogeneous audience. The result is that people pick up bits of information, but are not sure how to implement the new ideas or procedures in their individual practice contexts. A few weeks or even days after the meeting, most of what was said is forgotten.

An alternative to treating all physicians as a homogeneous group is the development of a mechanism for needs assessment by the participants themselves. Teachers are always telling students what they need to know. Students, particularly adult students, however, are quite capable of generating their own learning needs. The approach, therefore, should be to include participants in a process that would begin with an identification of needs at their level of practice and then proceed from this point with program design.

The next step in this process would be the development of methodologies for measuring behavioral change. If specific needs of participants have been identified and translated into objectives, the subsequent behavior of participants can be measured. Many people reject this idea suggesting that the issues are too subjective to measure. This is true if there are no standards for minimum care. If, however, you begin with standards of care, you can easily begin an evaluation process. An example will illustrate how this could work. A minimum standard for the diagnosis of depression might be not more than 5% to 10% missed. A hospital staff could be assessed to determine the per cent of findings compared with a panel of experts. If the findings were outside this acceptable range, educational programs focused on diagnosing depression could be conducted and the hospital staff reevaluated three to six months later. This has actually been done and has proven to be far more effective than a lecture on depression to a group of participants who aren't even aware of their need to improve. The issue here, I would suggest, is not whether performance can be evaluated, but whether professionals will allow their performance to be assessed.

The final step in this process would be a study of the cost/benefit ratio relative to improved patient care. Most educational programs neglect the consumer in making judgments on the merits of a program. This is generally a direct result of the failure, cited above, to evaluate changes in participant behavior. Continuing education programs often become an end in themselves. In Michigan, for instance, physicians are required to complete 50 hours of continuing education each year for recertification and relicensure purposes. The assumption is that completing a fixed number of credits will result in improved patient care. This assumption, however, is not tested. We know, for instance, that physicians attend programs which present a new procedure for managing an illness that they will never be required to address. The program is expensive both in terms of real costs and reduced services, but the accumulation of credits is paramount. What is needed, therefore, is explicit attention to the cost of educational programs relative to the benefit accrued by the patient.

In summary, the model I am recommending would involve: 1) the establishment of minimum standards for performance; 2) the translation of these critical functions into educational objectives; 3) the assessment of specific needs; 4) the measurement of behavioral change; and 5) a study of the cost/benefit ratio in terms of improved services.

Major Obstacles

In the opening paragraph I suggested that the prior educational context of professionals must be examined to determine whether it provides an appropriate model for continuing education. My comments suggest that I have some definite reservations. These reservations have focused on the substance of what physicians were taught, where they were taught, and the relationship of these contextual issues to practice. An equal consideration must be given to how they were taught and whether the educational process they experienced should be emulated in continuing education programs.

The most striking feature of higher education in general and medical education in particular is that it is normative and competitive in nature. Grading is based on what a student knows relative to his/her classmates. A score of 40% on an examination, for instance, may warrant an A if everyone else scores below this point. This does not mean, however, that an individual is competent in the subject in question. A second consequence of normative evaluation is the competition it creates between students. Simply stated, one person's gain is another's loss. This does not produce an environment where individuals learn to assist each other and explains why most physicians choose solo practice.

An alternative approach and the one advocated for continuing education is competency-based and collaborative in nature. By setting minimum standards for care the objective becomes an independent criteria and not a subjective comparison. This approach also makes it possible to encourage collaborative efforts among physicians and other health care professionals. If the goal is to reduce the number of misdiagnoses of heart failure, one person's success is contributory and not dysfunctional to the success of another.

A second aspect of traditional education is that it is primarily technical and cognitively oriented. Students memorize an enormous amount of facts and practice technical procedures. They have no long term involvement with the patients or their families and have little training in the psychosocial aspects

of medicine. This is evident in the study that showed that depression was missed in 84% of 274 patients with this finding.⁴

The direction education must consider in response to this approach is toward a more clinical and person-oriented process. Continuing education that presents only factual information to a group of passive participants is inadequate. Programs must reflect the clinical setting in which physicians practice and address themselves to patients and not diseases.

A third obstacle to be overcome is the specialized and autonomous approach fostered during training. Physicians are forced to continually narrow their focus in order to maintain the expertise they desire in a given subject. They become superspecialists which in turn creates greater distance between themselves and their colleagues. This autonomy makes it difficult to work collaboratively with others and to refer patients when necessary. The patient has several physicians who often do not communicate well with each other and none of them assume total responsibility for integrating care.

The challenge for continuing education is to introduce a more comprehensive approach to health care and to coordinate these efforts in a team-oriented approach. One of the inhibiting forces here is that medical students did not relate to other health professionals while in school and have no appreciation for the contribution or availability of these people as resources for patient care.

The final obstacle involves the emphasis on disease and episodic care. The patient is not the focus in clinical training. Rather, students study diseases of the heart or liver or learn specific surgical procedures. These are certainly important, but they deny the student the opportunity to work with the whole patient. There is no continuity of care provided and little emphasis on preventive care.

In contrast to this narrow focus, continuing education programs are beginning to promote patient-centered and even family-centered care. Programs on the human dimensions of medicine, doctor-patient relationships, and death and dying are now being offered. The issue of preventive medicine and patient education is also emerging, but the progress is slow in view of the deep entrenchment of prior educational models.

The challenge is simply to evaluate the previous educational practices to determine their appropriateness for adult education. While I would personally advocate a competency-based, clinically and preventive oriented program for all medical training, it is unlikely that these changes, which would require major organizational adjustments, will soon take place. Continuing education, however, is not as organizationally bound and perhaps more amenable to new approaches.

Implications for Judicial Education

The major challenge for judicial education is to relate the continuing education of judges to their performance and consequently to the quality of the services rendered by them. The judicial profession and the public must look

⁴See Footnote 1.

upon continuing education as a major element of any quality assurance effort. This cannot be accomplished, however, unless the profession itself is open to the establishment of minimum standards and to the auditing of individual performance in relationship to acceptable practice standards.

In medicine, this process is monitored by independent Physician Standard Review Organizations (PSRO's) which review the medical necessity, quality, and cost of the medical care provided by both hospitals and individual physicians. If the average length of stay (ALOS) for heart attack patients, for instance, is eight days in one hospital and fifteen days in another, reasons for these differences can be explored and individual practitioners can be educated in alternatives to lengthy and costly stays in intensive care units. For judges the approach could be to monitor the granting of continuances, or the use of plea bargaining, or the existence of pre-trial release programs to determine whether there were major discrepancies between courts or judges which need to be addressed.

The ideal continuing education system, therefore, would help individual judges examine discrepancies between their performance expectations and their actual practice behavior and then design learning activities relevant to the practice problem. This is a major departure from many existing programs which focus strictly on broad conceptual topics or issues with the unexplainable hope that everyone will gain something from what is said. The reality, however, is that, unless continuing education of judges addresses the practical aspects of their practice, most of what is taught will be forgotten with only minimal transfer to actual behavior.

Summary

The attitude that has been assumed in this paper is that educational programs for professionals must be explicitly designed with practical implications in mind. It is not that the existing programs are totally inadequate or intentionally poorly designed, but rather that the individuals responsible have had little background in the teaching process. In the absence of any specific training or direction, people teach the way they were taught and thereby perpetuate the system. What is needed is an independent look at continuing education to understand the unique qualities and requirements for such programs.

R. Dale Lefever, Ph.D.
Associate Director
Division of Faculty Development
May 9, 1978

APPENDIX C - LEGAL EDUCATION PERSPECTIVE ON
JUDICIAL EDUCATION NEEDS,
DEAN ROGER C. CRAMTON

LEGAL EDUCATION PERSPECTIVE
ON JUDICIAL EDUCATION NEEDS

Summary of remarks of Roger C. Cramton, Dean and Professor of Law,
Cornell Law School, Ithaca, New York, at the April 18th meeting of the
Judicial Education Study Group:

Three dangerous tendencies, pervasive in higher education today, should be avoided in designing programs for the initial and continuing education of judges and other court personnel: (1) an instrumental approach to the educational process; (2) a preoccupation with the formal curriculum as distinct from the total learning environment; and (3) an avoidance of "value" questions.

I

The prevalent view of education today is utilitarian and instrumental in focus. While education is and should be useful, its aim and purpose are broader than merely a tool or instrument. The extreme "filling station" analogy should be avoided -- students going to school in order to get "tanked up" with knowledge and skills. The transforming qualities of education should not be ignored.

Western society has traditionally viewed education as a way of producing the whole man, one who could achieve his fullest potential in all aspects of life. Education is good for its own sake and not only because it helps one to earn a living. As Plato said, "If you ask what is the good of education, the answer is easy -- that education makes good men, and that good men act nobly . . . because they are good men."

Judicial education should be concerned with this deeper aspect of education and not merely with the paraphrenalia of judicial administration. Techniques and skills of processing cases or handling a docket need to be taught. But a

substantial portion of the educational effort should be devoted to broader ideas and concepts: the nature, functions and limits of law; the relationship of courts to other types of decision-makers; the values served by concepts such as finality and stare decisis, etc. Judicial education should include much of the intellectual excitement of good education everywhere: the stimulation of curiosity, the encouragement of self-learning, the reexamination of basic premises, and the like. Its goal should not be the limited one of judicial "efficiency" but the more fundamental one of contributing to the advancement and understanding of justice.

II

There is a marked tendency for those involved in educational programs to equate what the teachers are trying to teach with what the learners learn. But exposing individuals to a curriculum will not necessarily result in their learning what the teachers want them to learn. The cause-effect relationship in education is much more complicated. The motivation of the student (what he wants to learn and why) is a critical factor. The reward mechanism that affects students is also important. And, finally, what is learned is greatly influenced by the total learning environment in which the student is placed.

Much of what students learn is learned from one another; and this learning includes attitudes, values, information and skills that may or may not be what the teachers are trying to communicate. Thus a program in which new judges are brought together for an educational experience is likely to have a marked effect on judicial attitudes and behavior; but much of what is learned will come from the example of influential peers and from the tabletalk in luncheons and cocktail sessions rather than in the formal classroom sessions. And what is learned may be inconsistent in greater or lesser degree with the formal attitudes that are presented in formal sessions.

Much of the learning that is most vital -- self-identity as a judge, appropriate judicial behavior, the implicit values of the judicial enterprise -- are more frequently learned by the example of respected peers than by any other means. In designing programs attention should be given to the total setting in which education occurs and not merely the formal curriculum.

III

A modern tendency that should be resisted is that of believing that education can proceed in a value-free context. Nothing is more common than an artificial dichotomy between "facts" -- which are viewed as concrete, tangible, and real -- and "values" -- which are supposedly amorphous, intangible and vague. Under this approach, disagreements concerning facts are soluble, whereas disagreements on values are insoluble and subjective. People can't agree on values, the argument goes, because differences of value rest on preference or taste, which are essentially subjective to character and therefore not susceptible to rational argument. The result, if this argument is accepted, is education that is technical, strictly utilitarian, and largely oriented toward discrete skills and information.

This is not the place to rebut the basic proposition other than to state that it is possible to reason about values and that it is inevitable that basic choices will be made largely on value grounds. Human beings cannot operate effectively without answers to basic questions such as "who are we?", "where did we come from?", "what are we here for?", and "where are we going?"

The avoidance of explicit discussion of values does not eliminate them from the scene or reduce their effect on policy choices. It merely bans them from open discussion and consideration. Basic values in many discussions tend to be unarticulated and unexamined. They continue to rule us, but from secret graves.

Value issues should be brought out in the open and made an explicit part of the educational program. Judicial education, like other efforts to transform the human mind and personality through organized educational effort, should be more concerned with ideas, values, and ideology (e.g., what is justice, what kinds of order does society require, how should the exercise of official power be channeled and controlled) than it is with technical skills, specialized knowledge and the nuts and bolts of judicial administration.

APPENDIX D - EVALUATION OF JUDICIAL

EDUCATION AND TRAINING,

DR. PETER HAYNES

EVALUATION OF JUDICIAL

EDUCATION & TRAINING

Peter Haynes, Associate Professor
Arizona State University

In assessing how well judicial education and training are meeting program goals, it is important that we attempt to reconcile two different types of activity which should be coordinated but which are presently carried out somewhat in isolation of each other. First, there is the issue of assessing how well present institutions are meeting the needs in this area. In other words, what do we know about the programs which exist at present. Second, we need to know what the true needs are in this field based on some type of rational analysis. Finally, a comparison of these two should enable us to assess not only the present state of the art, but also indicate to us where we might be going if deficiencies are to be redressed.

In this presentation I have attempted to explore each of these three areas and at the same time I have attempted to avoid duplicating any of the subject matter covered in the other presentations that you have already been exposed to.

I. Attempts to Determine Training Needs

The Federal government has supported a number of major attempts to analyze the work performed by various individuals involved in the justice process. Judges and judicial staff have been amongst those subject to this examination. The most prominent of these efforts have been Project STAR (Systems and Training Analysis of the Requirements for Criminal Justice Personnel) and the National Manpower Survey (NMS). In spite of the expenditure of millions of dollars (\$2.5 million over a three year period of STAR and \$4.0 million over a two year period for NMS), the work is not used to any significant degree at present. Although it is true that the Manpower Survey is only just being released, Project STAR results have been available for some time and yet the majority of judges and court officials have not even heard about it. Why is this? Is there anything of value in these major undertakings, or do they justify the neglect they have received to date?

A. Project STAR

This project began in 1971 (May) and was completed in 1974 (November) and involved work with criminal justice agencies in California, Michigan, New Jersey and Texas.

The research and development activity was focused upon police officers, prosecuting attorneys, defense attorney, judge, case-worker and correctional worker. In that regard, work was done which addressed at least three roles which could be within the judicial branch.

Judge

Jurists in trial courts who have jurisdiction over felony and misdemeanor criminal cases, excluding Justice and Appellate Courts, but including Juvenile Court Judges.

Defense Attorney

Public defenders and, in those jurisdictions not served by a public defender, those private defense attorneys who are appointed by the court to represent persons economically incapable of securing private defense counsel.

Case-Worker

Full-time probation officers assigned to presentence/probation investigation or caseload supervision responsibilities for juvenile and adult, felony and misdemeanor cases, serving trial court judges, including juvenile judges.

The project was designed so that initial attention was paid to identification of roles, tasks and performance objectives. These were defined in the following ways.

Role

The personal characteristics and behavior expected in a specific situation of an individual occupying a position.

Task

An activity to be accomplished within a role and which usually involves a sequence of steps and which can be measured in relation to time.

Performance Objective

A statement of operational behavior required for satisfactory performance of a task, the conditions under which the behavior is usually performed, and the criteria for satisfactory performance.

This analysis was performed for every central role in the criminal justice process with the exception that performance measures were not developed for judges.

Next, existing education and training programs were reviewed to identify where education and training requirements were not being fulfilled. On the basis of these research findings, individual education and training packages were developed. These are now published and available commercially.

Judicial Process Role Training Program - 608 pages, \$15.25 single/\$12.25 six or more postpaid.

Corrections Role Training Program - 752 pages, \$15.50 single/\$12.50 six or more postpaid.

All publications are available from:

David Publishing Company, Inc.
250 Potero Street
P.O. Box 841
Santa Cruz, California 95060
(408) 423-4968

Anderson Publishing Company
Criminal Justice Publications Division
646 Main Street
Cincinnati, Ohio 45201
(513) 421-4142

As a satellite activity, the project developed both futurist papers and social trends analyses, and related these anticipated developments to education and training requirements.

As a result of this work, the project concluded that, for the six positions examined, seventeen roles could be identified. Of these, 13 roles were considered to be system goals as they related to multiple positions (See Table I). It can be seen that the roles identified are somewhat general in nature.

These findings were then used to develop a comprehensive judicial process role training program for Judge, prosecutors and defense attorneys. One example of a training module is included to demonstrate what was developed in this area. (attached).

Table 1
Criminal Justice Role
Categories and Identifiers

ROLE CATEGORY AND ROLE IDENTIFIER	POSITION						
	POLICE OFFICER	PROSECUTING ATTORNEY	DEFENSE ATTORNEY	JUDGE	CASEWORKER	CORRECTIONAL WORKER	SYSTEM
<u>Advocate</u>							
Advocating for the Defense			X				
Advocating for the Prosecution		X					
Advocating Effective Judicial Process		X	X	(X)			
<u>Community and Criminal Justice System Relations</u>							
Assisting Criminal Justice System and Other Appropriate Agency Personnel	X	X	X	(X)	X	X	X
Building Respect for Law and the Criminal Justice System	X	X	X	(X)	X	X	X
Providing Public Assistance	X	X	X	-	X	X	X
Seeking and Disseminating Knowledge and Understanding	X	X	X	(X)	X	X	X
<u>Information Processing</u>							
Collecting, Analyzing, and Communicating Information	X	X	X	(X)	X	X	X
<u>Management</u>							
Managing Cases	X	X	X	(X)	X	X	X
Managing Judicial Process				(X)			
<u>Personal and Social Development</u>							
Assisting Personal and Social Development	X	X	X	(X)	X	X	X
<u>Protection of Rights and Dignity</u>							
Displaying Objectivity and Professional Ethics	X	X	X	(X)	X	X	X
Protecting Rights and Dignity of Individuals	X	X	X	(X)	X	X	X
Providing Humane Treatment	X	X	X	(X)	X	X	X
<u>Protection of Society</u>							
Enforcing Law Impartially	X	X	X	(X)	X	X	X
Enforcing Law Situationally	X	X	X	(X)	X	X	X
Maintaining Order	X				X	X	X

B. National Manpower Survey

This national survey has only just been completed and it is not readily available, even now. There is an abstract of some of its findings presented in your manual.

Essentially, the project attempted to broaden the number of positions subject to analysis to some twenty key occupations. Each of these was studied in order to determine existing and future personnel needs; adequacy of local and federal programs to meet these needs; determine the effectiveness and sufficiency of training and academic assistance programs under the Omnibus Crime Control and Safe Streets Act; and develop and issue guidelines based on revealed training and education needs in order to set funding priorities for training and academic assistance programs.

The products of this work include, (a) a national manpower projection model which will produce projections of the demand for criminal justice personnel by major occupational category and the key occupations to 1985; (b) a state prototype manpower model for use by states in producing projections of manpower demand for up to ten years; (c) a task bank of key occupations related to training and educational requirements; (d) an assessment of gaps between the current training and educational posture and the current and future training and education needs; (e) recommendations for establishing guidelines for funding educational and training programs and allocating resources to meet manpower, education and training demands determined by the study.

II. Assessment of Existing Programs

Evaluation Report (1974) on National Training Package Grant.

At one time LEAA channelled its support of judicial training activities to the National Center for State Courts, which in turn distributed these monies to six institutions. These were: (1) The Institute for Court Management; (2) The National College of the State Judiciary; (3) The American Academy of Judicial Education; (4) The National College of Juvenile Justice; (5) The Institute of Judicial Administration; and (6) Louisiana State University Institute of Continuing Legal Education's appellate judges seminar series.

The grant requirements resulted in an independent assessment of these activities being commissioned. An evaluation team was formed, which was chaired by B.J. George from Wayne State.

University and this author was one of the team members. This group set out to evaluate whether these programs had achieved their goals and immediately ran into real methodological problems. It was determined that the individual programs had not been designed in such a way that we could assess performance. Goals of various institutions were somewhat general and no information about impact on participants was being collected (in the main). As a consequence, the evaluation team performed a policy evaluation which essentially assessed three functions. First, the relationships between these national programs and selected state judicial education programs. Second, the relationship between individual national programs. Third, an examination of the need for a planning model which would allow for more meaningful strategic and operational evaluations in the future.

Our recommendations were as follows:

1. That judicial education and training be viewed as a cooperative activity between national institutions and in-state programs with each addressing its own specific area of expertise.
2. That an in-state education program was the most desirable way to respond in a meaningful and cost-effective way, to the basic requirements of the state judiciaries and their support staff. Accordingly, development of such programs should be of the highest priority.
3. That national programs should eventually restrict their efforts to those subjects which are multi-jurisdictional in nature. These include subject matters such as federal rule changes, judicial role, administration, etc. In addition, they could assist state programs through technical assistance, curriculum design methods, material development, training of trainers, etc.
4. That the national programs move away from presenting in-state programs (except in those states of minimal size) and that no such program be promoted without the approval of state judicial education leadership.
5. That LEAA treat the national training programs equitably and not place more onerous conditions on one compared with the other, e.g., National College for the State Judiciary and the Academy of Judicial Education.
6. That LEAA continue to support both the National College and the Academy and allow them to compete for attendees until such a time that it could be demonstrated that

TABLE 1

GOALS AND OBJECTIVES FOR THE DELIVERY
OF DEFENDER SERVICES

<u>GOAL I:</u>	To facilitate the effective and efficient delivery of legal and supportive services to all persons who need and qualify for public representation in criminal and related proceedings.
Availability/ Immediacy	<u>Objective 1)</u> Representation should be available beginning at the time the individual is arrested or requested to participate in an investigation that has focused upon him to be the subject of an investigation, or at the request of someone acting in his/her behalf.
Eligibility	<u>Objective 2)</u> Representation should be provided to any individual who is eligible and desires representation.
Scope	<u>Objective 3)</u> Representation should be available throughout all criminal and related proceedings at which an individual is faced with the possible deprivation of liberty or continued detention.
Duration	<u>Objective 4)</u> Representation should be available until all reasonable avenues of relief are exhausted.
<u>GOAL II:</u>	To insure that the representation of clients is of high quality.
Competence	<u>Objective 1)</u> Representation on behalf of clients should be competent.
Zeal	<u>Objective 2)</u> Representation on behalf of clients should be zealous.
Political Influence	<u>Objective 3)</u> Representation on behalf of clients should remain free from political influence.
Judicial Control	<u>Objective 4)</u> Representation on behalf of clients should remain free from improper judicial control.
Discrimination	<u>Objective 5)</u> Representation should not be affected by racial, cultural, religious or sexual characteristics of clients.
<u>GOAL III:</u>	To assist in the exposition and improvement of the adversary process within the criminal justice system.
Community Education	<u>Objective 1)</u> Defenders should contribute to the knowledge of the community about the adversary process and the role of counsel.
System Improvement	<u>Objective 2)</u> Defenders should seek to improve the criminal justice system and other components therein.

A more relevant attempt to appraise performance of individuals was made by a project designed to develop goals and objectives for delivery of defender services. This project sponsored by NIADA, and directed by Roberta Rovner-Pierczenik, developed instruments to assess public defender systems in the light of three goals and eleven objectives. This methodology might be used as a model for judicial performance. It has the virtue of recognizing that there are many tasks performed by a judge which are highly discretionary in nature, and that a true evaluation will require that each be assessed not just one task, e.g. sentencing.

It should be recognized that assessment of professional competency is a difficult undertaking. Some comments on the difficulty in assessing the trial bar are almost certainly relevant to the issue of judicial performance. Paul D. Carrington emphasized in an article in Trial Magazine (p. 36, Dec., 1976) the following:

"First, it should be emphasized that the principal ingredients of competence are attitudinal. If one were to identify the most important attitude, which is probably central to all others, it is self regard, or pride. It is very difficult, if not impossible, to inculcate such attitudes by direct methods. One can hope that they will result from the right kind of experiences, but what those are and how they can be contrived is less than clear. Not only are such attitudes difficult to produce, they are also very difficult to measure or identify.

Secondly, competence is elusive because it is relative. Unless we could make all of us the same, some will always seem more competent than others, and will in fact produce better results. Vonnegut has described a nightmarish plan to pursue equality by imposing handicaps on those who have extraordinary talents. Producing universal competence would require some use of Vonnegut's proposed approach.

Thirdly, competence is situational. Some situations evoke much better performances than others. Thus, much of the adverse comment on lawyer performance is directed at situations which all but prohibit competent performance. I have in mind the great

bulk of criminal litigation which is conducted in such haste and volume that effective advocacy is prevented. A lawyer prosecuting, defending, or settling several matters a day can hardly be prepared to do other than poorly when he is called upon to make a full presentation on an issue of fact. Moreover, much criminal litigation is conducted in situations in which there is no recognition or reward for effectiveness, and no deterrence or disincentive for ineffectiveness. Over the course of a few years, work in such situations erodes the pride and competence of all but the hardiest spirits."

This author went further and emphasized that high social cost can accompany efforts to achieve professional competence (e.g., medicine) and that the difficulties in assessment (measurement) result, many times in measuring things, that don't truly represent performance, i.e., we mistake quality for what we can measure.

IV. Assessment of What Remains to be Done

It is evident that we have not yet been successful in integrating, to any significant degree, attempts to analyze manpower needs, the nature of the judicial role, and the assessment of the training programs designed to meet those needs. There is a real need for a judicial education model which involves every aspect of manpower planning.

Second, it is evident that we cannot restrict this attention to judges alone. There are equally pressing needs in education and training for court support staff who contribute in many ways to the quality of justice delivered by the judicial branch. The better judicial education programs have recognized that it is essential to view judicial education as covering all judicial branch members.

Third, the issue of how such services should be delivered still needs to be resolved. The proper relationships between state and local programs still require attention. These issues are inexorably intertwined with issues of funding. How can judicial education be funded? What are the pros and cons of various alternatives, e.g., statewide training commission, LEAA funding nationally, earmarked state statutes, etc.

Finally, there is considerable detailed work which still needs to be performed to understand training methods, use of materials, scheduling across states of large geographical size, certification, required continuing education, etc., etc.

V. Suggestions for Further Team Work

1. That the team consider the possibility of developing the components of a model state education program by assessing states of various types. Assessment of a well developed state program, e.g., Wisconsin, a partially developed state program, e.g., Massachusetts, and a state which has no program at present, but which has the capability to develop one, e.g., Arizona, might be a fruitful way to pursue this approach.
2. That the team consider following the approach followed by the Special Study Team on LEAA - Court relationships in developing recommendations. This approach involved buttressing the suggestions with as much detailed empirical observation as possible to assist in acceptance and to point the way for implementation.
3. That the team consider addressing issues that can be dealt with based upon continuation of present trends together with some longer range recommendations which would stimulate improvement, but which would probably only come to fruition later.
4. That assessment of foreign court systems centralize around the practical problems that are involved in adopting various techniques to the reality of our constitutional system. This would involve borrowing subject matter, e.g., training programs, but, in addition, it is critical that an assessment be made of how such desirable aspects as are identified might be practically applied here. Unless this is done it will not be useful.

SUMMARY OF STATE JUDICIAL EDUCATION SURVEY RESULTS

In conjunction with the Judicial Education Study conducted under the auspices of the Criminal Courts Technical Assistance Project, the State Judicial Educators Association developed and distributed a survey questionnaire designed to elicit information regarding existing judicial education programs in the various states. The genesis of this undertaking was a resolution passed at the 1977 annual meeting of the Association to the effect that a formal survey should be conducted of both member and non-member states to obtain programing information for the years 1974-1976. To accomplish this, in mid 1977 a survey questionnaire was developed and sent to those persons designated as the administrative heads of state judicial education offices or departments in the fifty states and the District of Columbia.

The questionnaire was divided into two main categories, state programs and national programs. Under state programs, information was sought in eleven program categories: Structured Orientation; Clinical Orientation; Self-Learning Orientation; Continuing Education, Judicial Conference; Continuing Education; Judicial College; Continuing Education, Association Programs; Continuing Education, Self-Learning; Special Programs; and In-State Programs in cooperation with national organizations. In addition to the identification of programs in these categories, information was also solicited concerning length, format, target group, purpose, facilities, and cost.

Twenty-eight states responded to the survey (eighteen responses from states having an officially designated judicial education officer or director), and these responses were compiled and published in a separate document entitled State Judicial Education Programs: 1974-1976 which is available on request from the Criminal Courts Technical Assistance Project.

Once the survey was conducted and published, two principal questions regarding its utility became evident: 1.) for technology transfer purposes what uses does the information have, and 2.) what implications does the survey have for future judicial education planning and programing.

The answer to the first question rests almost entirely on the extent to which the survey will be used by individuals involved in judicial education programing. The survey contains the pieces of a puzzle that, if used and put together, will present a representative picture of the efforts in judicial education on the state level. It may surprise many to see the scope and volume of programing that goes on in each state and the extent of innovation and inter-disciplinary programing which has been developed. The information contained under the category of "National Programs" and in the category of "In-State Programs in cooperation with National Programs", provides an excellent indication of the extent of cooperative programing involving the state and national judicial education resources. When viewed in its entirety, the survey represents a compilation of programs that could be described as "Career Development Programing". They range from the most elementary orientation efforts to the most sophisticated specialty programing available. From another perspective, the survey can serve as a source of primary information on specific programs and as a means of indentifying states for further specific information in each individual program category.

The question concerning future implications of the survey, is more difficult to answer. How the information contained in the survey is used for this purpose is purely a subjective matter. Potentially every state would benefit from a close scrutiny and analysis of the information in the survey, coupled with the objectives formulating realistic, long-term plans for continuing education of judges and court support personnel. Each responding state presents a potential answer to a problem being confronted in another state.

The following cross tabulation of state programs was compiled from the twenty-eight (28) responses to the questionnaire. The chart lists the eleven program categories and the information from the 28 responding jurisdictions. On the chart, the year followed by a number (i.e., 1974-1) reveals that in 1974 one program in a specific category was offered in the particular state. States which indicate that they did present programs but did not provide yearly breakdowns, are designated by an "X". Of the twenty-eight states responding, sixteen (16) provided specific information in all appropriate categories, ten (10) provided specific and general information, depending on the category, and two (2) provided non-specific information.

A chart relating to national programs participation by state court judges and support personnel is also attached. Here, eighteen jurisdictions provided information, and the chart depicts the number of national programs participated in by year, and the number of attendees where available.



	ARIZONA	CALIFORNIA	CONNECTICUT	IDAHO	ILLINOIS	IOWA	KANSAS	KENTUCKY	LOUISIANA
Structured Orientation		1974-1 1975-3 1976-4	1974-1		1976-1		1975-1		
Clinical Orientation Programs		X		X					
Self-Learning Orientation Program		X							
Continuing Education, Judicial Conference					1974-2 1975-2 1976-1				X
Continuing Education, Judicial College									
Continuing Education, Annual Programs	1974-2 1975-1 1976-2	1974-6 1975-9 1976-6	1974-1 1975-2	1976-4	1974-3 1975-6 1976-3	1974-5 1975-5 1976-6	1974-5 1975-6 1976-7	1975-1 1976-1	1974-1 1975-1 1976-1
Continuing Education, Non Recurring Programs		1974-3 1975-1 1976-1	1974-10 1975-17 1976-9		1975-3			1974-1 1975-2 1976-2 1977-1	
Continuing Education, Association Programs									
Continuing Education, Self Learning							1975-1 1976-1		
Special Programs				1975-1 1976-1				1974-6 1975-8 1976-2	
In-State Programs in Cooperation with National Organizations								1974-1 1975-1 1976-1	X

CONTINUED

1 OF 2

Maryland Massachusetts Michigan Minnesota Montana Nebraska New Jersey N. Carolina N. Dakota

Structured Orientation	1975-1 1976-1	1974-1 1976-1	1976-3 1977-4	1974-5 1975-2 1976-2			1974-3 1975-2 1976-4	X	
Clinical Orientation Programs	X	X		X					
Self-Learning Orientation Program						X			
Continuing Education, Judicial Conference							1974-2 1975-2 1976-1		
Continuing Education, Judicial College							1976-1		
Continuing Education, Annual Programs		1974-5 1975-6 1976-4	76/77-9	1974-1		1974-1 1975-1 1977-11	1974-1 1975-3	X	X
Continuing Education, Non Recurring Programs		1976-2 1977-2	76/77-2	1973-1 1974-3 1975-8 1976-1		1974-1 1975-2	1974-1 1976-1		
Continuing Education, Association Programs			X	1974-2 1975-1		1974-1 1975-1 1976-1			
Continuing Education, Self Learning	1976-1	X				X			
Special Programs		1974-2 1975-14 1976-2	76/77-4	X	1977-3	1976-6			
In-State Programs in Cooperation with National Organizations				1974-1 1976-1					

[illegible]

NATIONAL JUDICIAL EDUCATION PROGRAMS

State	Number of Programs by Year	Number of Attendees (1974-1976)		
		Total	Judicial	Non-Judicial
Arizona	1974-76 - 43	121	--	--
California	1974 - 30 1975 - 27 1976 - 30	182	--	--
Connecticut	1974 - 9 1975 - 14 1976 - 8	160	58	102
Idaho	1975 - 73 1976 - 30	85	85	0
Iowa	1976 - 9	30	--	--
Kansas	3 (1974-1976)	55-60	--	--
Kentucky	16 (1974-1976)	30	--	--

State	Number of Programs by Year	Number of Attendees (1974-1976)		
		Total	Judicial	Non-Judicial
Maryland	2 (1974-1976)	15	15	0
Michigan	1 (1974-1976)	15	15	0
Montana	10 (1974-76)	34	31	3
New Jersey	1974 - 10 1975 - 12 1976 - 11	130	--	--
North Dakota	10 (1974-76)	15	--	--
Ohio	N/A	50-60	--	--
Pennsylvania	1974-75 - 24 1975-76 - 23 1976-77 - 26	174	105	69

NATIONAL JUDICIAL EDUCATION PROGRAMS

State	Number of Programs by Year	Number of Attendees (1974-1976)		
		Total	Judicial	Non-Judicial
Texas	5 (1974-1976)	8	--	--
Utah	4 (1974-1976)	46	--	--
Wisconsin	1974 - 21 1975 - 25 1976 - 23	58 45	66 58 43	5 3 2

END