

deciding the cases presented to them. In this respect I agree wholeheartedly with Professor Kalven, the leader of the University of Chicago jury project. He says: "The freedom of the jury to inject its own sense of justice is one of the greatest strengths of the American Jury system." If the system is to continue, that aspect of a jury's duty must also continue.

A jurors' handbook puts it as follows: If he will permit his conscience to guide his intelligence, a juror will not often be wrong in his endeavor to render justice.

Little if any of what I've said is new to you, but it may well have been sometime since you gave many of these things serious thought. As you relax in the sun and surf here, you may have more time to cogitate

on these matters and plan improvements for the system as it operates in your home jurisdiction than you ever will again.

You are an influential group. Use that influence to improve the court and jury procedures in your respective states. Through the National College of State Trial Judges and other groups disposed to improve the judiciary and judicial procedures, much is being done. But there's no reason that the Bar shouldn't contribute to the improvements and get some of the credit.

In many of these areas you can even get the plaintiffs Bar to participate and cooperate. And if you work on the same side for a while, you might all end up wearing white hats.

## Upgrading And In-Service Training For The Judiciary

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### I. INTRODUCTION

Like all of Gaul, judicial education and training may be divided into distinct component parts.<sup>1</sup> One, pre-service orientation and training; two, resident programs of instruction for newly elevated judiciary;<sup>2</sup> three, for the established jurist, refresher courses<sup>3</sup> and academic leaves of absence;<sup>4</sup>

<sup>1</sup>For an excellent definitive treatment of the topic, see *Judicial Education in the United States: A Survey*, New York University, Institute of Judicial Administration, New York, 1965.

O'Connell, *Continuing Legal Education for the Judiciary*, 16 *J. Legal Ed.* 405 (1964).

Also, 5 *Trial Judges Journal* 4 (April, 1966).

<sup>2</sup>Information concerning the National College of State Trial Judges, its admission policies and scholarship aid, may be obtained by writing the National College of State Trial Judges, University of Nevada, Reno, Nevada 89507; see also 48 *J. Am. Jud. Soc'y* 95 (Oct., 1964).

<sup>3</sup>During the summer of 1964, the Institute of Judicial Administration offered an advanced program for judges who had previously attended an Appellate Judges Seminar. A majority of the participants in this week-long program were presiding justices.

<sup>4</sup>2 *Trial Judges Journal* 17 (April, 1966).



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four, for the entire state, annual judicial seminars.<sup>5</sup>

A moment's consideration suggests that no one scheme meets the requirements of

<sup>5</sup>For a complete discussion of state judicial seminars including a partial roster of state seminars held through July, 1965, see *Judicial Education in the United States: A Survey*, New York University, Institute of Judicial Administration, New York (1965). Additional information on state judicial seminars since September, 1966 may be found in the Annual Report, National College of State Trial Judges, University of Nevada, Reno, Nevada.

all members of the judiciary any more than any one scheme meets the needs of a particular state.<sup>6</sup> Yet, the remarkable thing is that literally overnight judicial education has become a reality and that some of the lessons learned in this field are now spilling over into legal education. This development is even more remarkable when one considers that the first program for the judiciary as such was launched in 1957 and the developments which we will be discussing are the products of the last five or six years.<sup>7</sup>

Just what provided the impetus for this movement is difficult to say, but it has been a movement by judges,<sup>8</sup> for judges and gives every indication of remaining on the scene for some time. The fact that the program has been academically sound has led a number of states to provide funds for its implementation.

## II. EVOLUTION OF JUDICIAL EDUCATION IN THE UNITED STATES — 1956-1967

### A. University Programs

Judicial education as an entity became a reality in the United States when in the summer of 1956<sup>9</sup> New York University School of Law sponsored its first appellate judges' seminar. This program has now reached over two hundred out of the seven hundred appellate judges serving in both the state and federal judicial systems. From its inception the program was to have a profound influence on the development of judicial education. Topics currently covered by that seminar include appellate review of criminal cases, appellate control over judge-jury relations, uniform rules of evidence, appellate review of decisions of administrative agencies, administrative functions of state supreme courts, critique of quality of judicial opinions, appellate

<sup>6</sup>It has been observed that there is a certain sameness about the make-up of our state judiciary and the significant differences are to be found in terms of the metropolitan vs. rural judge and the total numbers of judges which one state has as opposed to neighboring states.

<sup>7</sup>An excellent overview of judicial education and its rapid growth may be obtained by reading Karlin, *Judicial Education*, 52 *A.B.A.J.* 1049-54 (1966).

<sup>8</sup>Recognition for financial support should also be given to the American Bar Association, the Kellogg Foundation of Battle Creek, Michigan and the Max C. Fleischman Foundation of Nevada.

<sup>9</sup>See Burger, "School for Judges," 33 *FRD* 139 (1963); Leflar, "The Appellate Judges Seminar at New York University," 9 *J. Legal Ed.* 359 (1957).

courts as supervisors of the legal profession, improvement of judicial administration, interstate family problems, current trends of negligence law, principles and techniques of statutory interpretation and comparative law.<sup>10</sup>

During the first ten years of its existence, the topics treated by the program have remained much the same attesting to the wisdom of Dean Russell Niles who placed his whole-hearted support behind the program.<sup>11</sup> Judges participating in the program are supplied with a detailed bibliography on select subjects as well as reading lists well in advance of their arrival.

This summer, two sessions of the appellate judges seminar have been conducted, one at New York University and the second at the University of Nevada.

### B. Federal Programs

In contrast to state judicial education some difficulty is experienced in dating the educational program for federal district judges. The program seems to have been an off-shoot of circuit judicial conferences.<sup>12</sup> At any rate, the first seminar on Protracted Litigation held at New York University School of Law in August, 1957<sup>13</sup> was well received and has been supplemented by three subsequent seminars. A further variation on this program has been the evolution of Federal Sentencing Institutes.<sup>14</sup>

### C. State Judicial Seminars

Turning again to the state scene, while no one can lay claim to primacy, several states<sup>15</sup> may claim to be forerunners in efforts by the judiciary to hold yearly meetings to discuss common problems. However, a continuing program of state judicial

<sup>10</sup>Leflar, *Continuing Education for Appellate Judges*, ..... *Buffalo L. Rev.* 370 (196....).

<sup>11</sup>Supra note 5, Ch. III.

<sup>12</sup>Morse, "Federal Conferences and Councils; Their Creation and Reports," 23 *Cornell L.Q.* 347 (1942).

<sup>13</sup>Supra note 5, Ch. IV.

<sup>14</sup>Following the pilot institute held at Boulder, Colorado, a series of institutes were initiated including an Institute for New Judges held at Denver, Colorado, February 18, 1964. In the case of the latter institute, each participant was provided a workbook containing background reading material, information on the federal prison system and "demonstration diagnostic cases."

<sup>15</sup>Washington (1959) in cooperation with University of Washington School of Law; California (1959) in cooperation with University of California, School of Law at Berkeley.

education became a reality when in 1961 the Joint Committee for the Effective Administration of Justice under the leadership of Justice Tom C. Clark launched a program for state and regional judicial seminars.<sup>16</sup> From 1961 and until the fall of 1966 when administrative responsibility for these programs was assumed by the National College, it reached the judiciary in all fifty states. Currently, the National College is prepared to assist fifteen to twenty such seminars each year. In a number of instances the College has found it feasible to encourage states to sponsor regional seminars, particularly in the far west where the judicial population in some instances is less than thirty judges per state.<sup>17</sup>

### III. THE NATIONAL COLLEGE OF STATE TRIAL JUDGES

So successful was the state program that many felt that a clearing house for judges should be established to capitalize on the experience gained to date. To accomplish this end, the American Bar Association in August of 1963 adopted a resolution authorizing the Section of Judicial Administration to create and conduct a College for Judges. In the summer of 1964 the first session of the National College of State Trial Judges opened at the School of Law in Boulder, Colorado.<sup>18</sup>

On September 1, 1965, a permanent academic home for the College was opened at the University of Nevada under a ten-year \$2,300,000.00 grant from the Maxwell C. Fleischman Foundation of Nevada. This summer the College conducted its fourth "term" consisting of two sessions of the College, each reaching one hundred fifty judges.<sup>19</sup> Steady expansion which the Col-

<sup>16</sup>Although the initial ABA grant of \$12,500 launched what was to become the state seminar program, financial stability for the program came late in the fall of 1961 with an announcement from the Kellogg Foundation that it had pledged \$348,000.00 to expand and continue the work of the program. Later, supplemental support made possible the establishment of the National College of State Trial Judges and its expanded resident program.

<sup>17</sup>See J. Am. Jud. Soc'y (1966).

<sup>18</sup>Rosenberg, "Judging Goes to College," 52 A.B.A.J. 342-45 (1966); "National College of State Trial Judges," 48 J. Am. Jud. Soc'y 95 (Oct., 1964).

<sup>19</sup>Although each year the College strives to take as many qualified applicants as possible, applications continue to outnumber vacancies by two to one.

lege's resident program has experienced is in itself a remarkable thing, when one considers the College initially opened with a student body of one hundred judges and that by the end of the fourth year it was able to triple its capacity.<sup>20</sup> Even more remarkable is the marked increase in state support which has been made available to members of the judiciary expressing a desire to attend the College.<sup>21</sup>

The format followed by the College in its instructional program is basically a four-week program representing a hundred and ninety hours of intensified course work. Classes meet from eight until twelve-fifteen; participants and faculty then lunch together to visit and hear law-related topics discussed. A study period is set aside each afternoon to give the participants an opportunity to prepare for class and do independent research. Sunday through Thursday, a two-hour evening session follows the dinner hour.<sup>22</sup> Curriculum of the College concerns itself with eleven discreet areas of instruction,<sup>23</sup> namely, court administration, civil proceedings before trial, judicial discretion, domestic relations, evidence, special problems in the judicial function, jury, community relations, sentencing and probation, new developments in criminal law and new developments in civil law.

To support this ambitious resident program of the College, a separate grant of \$200,000 was made available to establish one of the outstanding law libraries in the country. Special emphasis has been given

<sup>20</sup>During academic year 1966-67, two sessions of the College were held: University of Pennsylvania, Philadelphia, Pa., July 3-28, and University of Nevada, Reno, Nevada, August 7 - September 1, 1967.

<sup>21</sup>A growing number of states are providing budgetary support for travel and programs such as offered by the College.

<sup>22</sup>Reinforcing classroom discussion, the evening seminar session held five nights a week provides an opportunity for the judge participant to play an active role in the teaching process. Guided by a faculty advisor, judges are divided into groups of twelve to review that day's class discussion and prepare as a group for the topics which will be covered on the succeeding day. Supplemental reading assignments are divided among the members of the seminar group. At these nightly sessions, individual judges assume a share of the responsibility for leading that evening's discussion.

<sup>23</sup>Because the resident program of the College is primarily directed toward those who have been on the Bench more than six months but less than two years, particular emphasis is laid on the assimilation of judicial skills as opposed to updating basic concepts covered in law school.

to the collection of materials on judicial administration, criminal law and procedure, and personal injury litigation.

Course material furnished by the College as part of each course touches the many problems facing the trial judge. These range from *The State Trial Judge's Book*<sup>24</sup> to loose-leaf materials selected by the faculty and duplicated by the College.<sup>25</sup> Particular attention is given to preparation of research aids and bibliographic material. Participants are urged to take these materials with them when they leave and many have written indicating their usefulness once they have returned to the Bench.<sup>26</sup>

#### IV. EXPANDING EFFORTS OF NATIONAL COLLEGE

In addition to the resident offering and the state seminar program, the College has undertaken assistance to states to improve judicial administration. In recent years, considerable attention has been focused by the popular press on delay in our courts. A number of scholarly books<sup>27</sup> have sought to analyze the role of the American judiciary in connection with the growing number of metropolitan areas experiencing docket delay. At present, the College is busily engaged in collecting suggestions relative to programs of internal improvement which have been adopted and implemented by various courts.<sup>28</sup> The picture which is emerging is most encouraging. From these

<sup>24</sup>The State Trial Judges Book, West Publishing Co., St. Paul (1965) and supplementing Trial Judges Guide, West Publishing Co., St. Paul (1966).

<sup>25</sup>Owing to the fact that little has been published exclusively for use by judges per se, the College has made considerable use of material initially published in law reviews and other legal periodicals.

<sup>26</sup>Of particular value to the "graduate" has been *The State Trial Judges Book*, West Publishing Co., St. Paul (1965) and supplement; *Guides for Sentencing*; National Council on Crime and Delinquency, New York (1957), and the publications of American Law Institute and American Bar Association's Project on Minimum Standards for Criminal Justice.

<sup>27</sup>Kalven and Zeisel, *The American Jury*, Little, Brown Pub. Co., Boston (1966), Rosenberg, *Pre-Trial Conference and Effective Justice*, Columbia 1964.

See also Klein, *Judicial Administration and the Legal Profession: A Bibliography*, Oceana Publications, Dobbs Ferry (1963), for a complete list of monographs and articles on this topic.

<sup>28</sup>A number of interesting innovations for internal court improvement have been detailed in the *Trial Judges Journal*. Also *State Bar Journals* contain articles of interest in this area.

is developing a more complete appreciation of the causes for delay and how best they can be met by the individual in his home community. Noteworthy among the devices which appear to have merit are pre-trial,<sup>29</sup> settlement calendaring,<sup>30</sup> and an improved manner for reporting cases at issue.<sup>31</sup>

The College has also assumed a leadership role in examining problems of broken homes, divorce and child support. Problems within the American family unit have caused a marked increase in the workload of the average trial judge having jurisdiction in domestic relations area. Many judges have written to the College expressing the feeling of inadequacy in this area in that their experience prior to coming to the Bench fell outside of the family law field. One of the noteworthy developments in this area is the collection of material relating to "divorce counseling,"<sup>32</sup> a technique which offers considerable promise in making couples aware of their responsibility to their children.

Finally, the College is involved in a program of cooperating with individuals directly and immediately involved in court administration.

Recent years have seen a modernization, in some instances a re-structuring, of our courts. Much work remains to be done in this area. Encouragement is to be found in a number of developments including the training of professional court administra-

<sup>29</sup>For an up-to-date discussion of the experience of the Los Angeles Superior Courts, see 4 Am. Jur. Trials 659-761, written by Judge William H. Levit, Presiding Judge of the Pre-trial Master Calendar, Department of Los Angeles Superior Court in 1963.

<sup>30</sup>"Settlement Calendaring" is a term which seems to have evolved overnight and means different things to different people. Basically, it implies the scheduling of a discussion between the parties regarding the possibility of disposing of a matter by settlement or compromise. It is to be distinguished from pre-trial in that it does not involve any attempt to simplify the issues or stipulate various matters.

<sup>31</sup>One of the most promising devices to develop an appreciation of the magnitude of delay is the "certificate of readiness": which notifies the judge and/or court administrator that the case can now be considered ready for trial.

<sup>32</sup>"Divorce counseling" is an attempt to reach those couples who have rejected conciliation and now should be concerned about providing for the financial and educational needs of their children. Guidance here ranges from the desirability of refinancing existing obligations to preparation of a monthly budget by the person who is to be awarded custody of minor children.

tors and more effective ways of keeping vital statistics. Needless to say, electronic information retrieval holds great promise here. The College is currently examining ways in which information retrieval may be employed in monitoring the work of multi-division courts as well as the entire judiciary of a single state. It is anticipated that there will be increasing requests for information in these areas owing to the fact that judges are becoming increasingly aware of the potential gains which may be made here.

Time does not permit detailing future programs of the National College of State Trial Judges. However, it is felt that the College may wish to explore in greater detail programs to assist states desiring to establish orientation courses for newly elevated judges and programs designed to assist our municipal courts<sup>33</sup> in meeting their many problems and responsibilities. Pressures occasioned by substantial backlog in our metropolitan areas seem to have broken through arbitrary jurisdictional lines and today the municipal judge is finding his work approximating that of judges of courts of unlimited jurisdiction. Initial experimentation at the College indicates that in select instances judges with less than general jurisdiction may profitably be included in the resident program directed toward district court judges.

In concluding any discussion of the work of the National College, some reference should be made to its ambitious state judicial seminar program. Currently, the College is prepared to provide speakers and administrative assistance to individual states desiring to hold two-day judicial seminars. A list of approximately forty topics<sup>34</sup> and a selection of experienced

seminar discussion leaders may be had by writing the College. These topics vary from year to year owing to the fact that every effort is being made to maintain a practical level of currency while winnowing out topics which have become dated. If time permitted, I'm sure you would have been interested in hearing something of these topics and more of this important and dynamic program. As one who has participated in state judicial seminars since 1963, I can truthfully say that it has been one of the more stimulating experiences which I have encountered in legal education.

## V. CONCLUSION

What remains to be said of judicial education? Only this. The last and final chapter in this exciting undertaking has yet to be written. The nation's judiciary is seriously concerned with what appears to be growing popular dissatisfaction<sup>35</sup> with our current system for the administration of civil justice. They, like we, are acutely aware of the fact that as a nation we have not kept pace in providing per-

<sup>35</sup>The most recent article appearing on this topic is a thirteen-part series on the courts published in the Christian Science Monitor. The first installment appeared April 12, 1967.

<sup>33</sup>California, e.g., pursuant to an act of its legislature convened its First Institute for Municipal and Justice Court Judges in October, 1964. Oak County, Ill., also initiated a similar program during 1964 following a constitutional amendment which allows court appointed magistrates to try jury cases for recovery of money up to a minimum of \$5,000 and such criminal actions assigned to them.

<sup>34</sup>

1. Pre-trial conference
2. Settlement calendaring
3. Proceedings before trial in criminal cases
4. Judge's responsibility in domestic relations cases
5. Family courts
6. Demonstrative evidence
7. Judicial court administration
8. Court administrators
9. Judge-jury relations

10. Community relations
11. Free press-fair trial
12. Courthouse facilities
13. Ruling on evidentiary questions
14. Sentencing and probation
15. Pattern jury instructions
16. New developments in criminal law
17. Proceedings during civil trial
18. New developments in civil law
19. Judicial selection and tenure
20. Role of judicial qualifications committee
21. Divorce counseling
22. Court rules
23. Control of civil calendar
24. Central v. individual assignment system
25. Trial without jury
26. Instructing the jury
27. Proceedings after verdict
28. Juvenile court proceedings
29. The grand jury
30. Judgment orders and opinions
31. Proceedings in criminal cases
32. Search and seizure problem
33. Right to counsel
34. Post-conviction applications
35. Canons of judicial ethics
36. Court reorganization
37. Electronic information retrieval
38. Relations with legal profession
39. Current trends in negligence laws
40. Uniform Commercial Code.

sonnel or facilities to staff our courts. Adding to our judicial manpower is complicated by both political and financial considerations. Attention must naturally focus on obtaining maximum service from existing facilities. Study must be given to programs which will allow a judge or group of judges to improve their working conditions within existing framework. This means that some vehicle must be identified by which judges can exchange ideas and information with respect to court facilities and administrative problems. Two broad areas appear marked for additional attention. They are: critical examination of what can be done in the field of judicial court administration and, secondly, the establishment of standards for physical facilities utilized by our trial courts.

Since the inception of the state judicial seminar program one of the most popular topics at state seminars has been "judicial court administration." Judges universally wish to improve their procedures, yet innovations are difficult to arrive at and to evaluate. Unfortunately, there are no running inventories available<sup>36</sup> largely because the area of judicial skills has been neglected by our law schools. Here a cataloging of problems encountered by others would appear to be indicated. Not all innovations would, of course, be applicable to any one jurisdiction. However, it is felt that a detailing of some of these problems and possible solutions would be of considerable assistance to the judiciary in working toward improvement in this area.<sup>37</sup>

<sup>36</sup>Since its inception, a number of interesting short articles have appeared in the Trial Judges Journal suggesting various writers' experiences with innovations ranging all the way from the "jury questioner" through the "judge's role in drafting legislation."

<sup>37</sup>Areas which might be treated under this heading largely fall into the following category: Judge's staff, its recruitment, selection and its retention including the court reporter, bailiff, and/or clerk-bailiff; judicial court management including fiscal affairs, purchasing, securing services, maintenance and organizing office activities; preparation of the calendar, and court rules. In the area of court rules, stress would be laid on the fact that all courts should have certain rules both written and unwritten. Also, under the latter topic would be such sub-topics as control of civil calendars, calendaring upon request of attorneys, arrangement of trial calendars, courts on circuit, problems dealing with civil cases, delays in calendaring by various factors, some discussion of various calendaring systems, central versus individual calendars, short-

Turning to an examination of court facilities, one sees a unique area for cooperation between Bench and Bar. All of us are, I'm sure, embarrassed by the physical appearance of a majority of our court facilities. Because much of the excellence of our local hospitals is attributable to a system of inspection and accreditation, it has been suggested that the Bar should launch a similar program of inspection. Practitioners in consultation with members of the judiciary could lead the way in establishing minimum standards for court facilities including county law libraries. An expeditious way to advance this program would be to define minimal acceptable standards and incorporate them into an inspection manual. This text would be used by members of an inspecting team when requested to review existing facilities by a county or state judicial conference. Such a program would not only describe minimal conditions, but attempt to assist members of the judiciary in obtaining support for efficient up-to-date facilities.<sup>38</sup>

Implementation of such a program is not as difficult as it might appear.<sup>39</sup> There are a number of inspection manuals available as well as a guide for law library inspectors<sup>40</sup> prepared some years ago. In addition, the American Bar Association and the American Institute of Architects con-

<sup>38</sup>Appropriate check sheets would be included at the conclusion of each chapter designed to allow both the resident judge and the investigating team to evaluate a particular facility. Upon pre-testing and finalization, the Bar might undertake to recruit and train a series of investigators who would be willing to participate in the implementation of the program.

<sup>39</sup>The Association of American Law Schools has for some time provided a comparable service to member schools who have requested visitation.

<sup>40</sup>Hargrave, "Manual for Law Library Inspectors," prepared in connection with the Joint Committee on Cooperation Between the Association of American Law Schools and the American Association of Law Libraries, mimeographed (1950).

ening time for amendments and the role of the judge in supervising the calendar. Another topic would be pre-trial conferences and pre-trial settlement procedures, their place in the system and their effectiveness. Finally, the role of the court administrator as an officer of the court. Importance of accuracy and judicial statistics and the judge's use of public support and his outside contacts with the public including his obligation to higher education and to his profession.

tinue to work on the design of new courtroom facilities and their experience in this area could be of great benefit.<sup>41</sup> This program would be of considerable importance to judges who are experiencing difficulty in obtaining funds to renovate or replace dated facilities and would allow them the

<sup>41</sup>The most recent development in this area is to be found in a letter from the Honorable Joseph D. Tydings, United States Senate, Chairman of the Subcommittee on Improvements in Judicial Machinery, Committee on the Judiciary, transmitting Proposed Amendments to Senate Bill #1033, the National Court Assistance Act. For a complete discussion of this proposal, see Congressional Record, Vol. 113, No. 25, February 20, 1967.

benefit of consultation with acknowledged leaders from the Bar.

These have been but a few highlights in this new field of judicial education with particular emphasis on the program of the National College. In-service training for the American judiciary is of considerable importance to each of us. It is hoped that all will leave this meeting feeling that some importance must be attached to laboring in this particular area. The judiciary needs our support and counsel just as we as practitioners need theirs if the public is to continue to have confidence in the legal profession as a whole.

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