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**D e m o c r a c y**



LEGAL EDUCATION  
IN THE  
UNITED STATES

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VOLUME 7 NUMBER 2

# Legal Education in the United States

From the Editors

THE NOTED U.S. Supreme Court Justice, Robert Jackson once said of the law, “We are not final because we are infallible, but infallible only because we are final.” The law inevitably has the final word in society not only as to guilt or innocence in the case of crime, but also with regard to the myriad of disputes, claims and counter claims that are an integral part of any modern society. Hence, the importance of legal education—of trying to ensure, as far as is possible, that those individuals who work in our courts are second to none with regard to their skills and qualifications.

It may come as a surprise to some readers, however, that the detailed and comprehensive courses available in legal education today are a comparatively recent phenomenon in the United States. In the opening article of our journal, Robert W. Gordon, professor of law at Yale University, explains how legal education in the U.S. has evolved from its earliest beginnings in the late 19th and 20th centuries to the large law schools of today—almost 200 of them at last count.

There have been many catalysts for the growth of legal education over the decades, but none more important than the American Bar Association (ABA). John Sebert, a consultant in continuing legal education to the ABA, explores how this important body shaped legal education in an article that lays particular emphasis on the importance of maintaining high standards.

In view of the importance of the law to every citizen, continuing legal education for those associated with the profession is of particular importance. Macarena Tamayo-Calabrese, director, Latin American Legal Initiatives Council; Annette Cook, associate director, ABA Center for Continuing Legal Education; and Shirley Meyer, educational products manager, ABA Center for Continuing Legal Education, address the topic in an article that underlines the importance of keeping up to speed in the ever-changing world of law and jurisprudence.

In our feature article, contributing editors Stuart Gorin and David Pitts profile three bedrock institutions that provide legal educa-

tion – the Federal Judicial Center, the National Judicial College and the National Center for State Courts. The article details not only the breadth of the courses available there, but also the diversity of the student body that includes legal professionals from across the globe.

In our final article, Joseph A. Trotter, Jr., research professor and director of the Justice Programs Office of the American University School of Public Affairs, looks at the importance of court administration. He discusses how reform of the courts has spurred the emer-

gence of a professional class of managers and administrators whose job it is to ensure court efficiency. This need for such frontline personnel is underlined by the enormous increase in recent years in the caseloads of courts at all levels of jurisdiction.

As always, the journal concludes with a bibliography of books and articles, and websites related to the topic of legal education.

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# Legal Education in the U.S.: Origin and Development

by Robert W. Gordon

*The story of legal education in the United States mirrors the evolution of American democracy—from the earliest days of the Republic when professional standards were few, and the professions were the preserve of white property-owning males, to the current situation that could not have been imagined by the small town lawyers of post-colonial times whose only legal education was a few years’ apprenticeship in a lawyer’s office. As Robert W. Gordon, professor of law at Yale University, details in this article, legal education has evolved enormously from its earliest beginnings in the 20th century. In today’s law schools—that have a far more diverse body than they had just a few decades ago—classes in such fields as civil rights law, women’s rights, employment discrimination and most recently, global legal studies, have been added to a traditional curricula still in the throes of change.*

IN THE UNITED STATES, being a lawyer means many different things. There are trial lawyers who appear in court before judges and juries, and many more lawyers who never see a courtroom; partners in huge big-city law firms employing 500 to 1,000 lawyers who do specialized work for multinational corporations; lawyers who work inside company managements; lawyers who practice alone or in small firms who help families and small businesses with their legal problems, such as divorces, wills, property transactions and disputes or bankruptcies; lawyers who represent people in serious personal trouble, such as victims of accidents or suspects accused of crimes; government lawyers, prosecutors and judges; law professors; legal-services lawyers who serve the poor; and “public-interest” lawyers who fight for causes. Law is also the favored career for entry into politics.

As diverse as American lawyers are in their specialties, incomes and status, clients and backgrounds, they all belong to a single,



*Robert W. Gordon*

unified profession and have the same basic formal qualifications, education and training. They have all been admitted to the “bar”—the official organization of the legal profession—of one or more of the 50 states, under rules laid down by the highest state courts. And virtually all have attended some law school.

Entry to the profession is controlled by the bar associations, the state courts and academic law schools. Almost all states now require that to become a lawyer one must successfully complete four years of undergraduate college, then three years of a law school approved by the national bar association (the American Bar Association or ABA) and finally pass a bar examination. In most states, 50 to 80 percent of candidates who take the bar examination pass it. In practice, this system makes admission to law school the crucial and most difficult step in admission to the profession.

There are now 185 ABA-approved law schools, with about 2,000 full-time professors teaching in them. The schools are supported by

student tuition fees, gifts from graduates and, if public schools, grants from state legislatures. Law school in the U.S. is post-graduate, not undergraduate. Admissions are very selective, determined by high marks in college and on a standardized test (the Law School Admissions Test or LSAT). For example, Yale Law School has 5,000 applicants for 170 places in its entering class. Expenses are a high barrier as well. Students at private law schools must pay about \$30,000 a year in tuition and fees; even at the state (public) law schools they must pay \$15-20,000 per year; and thus many graduate with debts of \$100,000 or more.

Law schools control not only who gets into the profession, but opportunities after graduation. High-ranking graduates of the most elite schools are actively recruited for the highest-paying and most prestigious jobs, such as those in the large city law firms; while graduates of lower-ranking schools sometimes have trouble finding any employment as a lawyer.

### First Year

Though the schools are actually preparing graduates for very diverse careers, their basic curricula and methods are remarkably similar. They all teach the same first-year courses—property, contracts, torts (non-criminal cases, such as injuries from cars or defective products), procedure and criminal law—and teach them by the “case method.” Students come to each class having read a few “cases”—decisions and opinions of high state and federal courts—collected in published “casebooks”; and the professor then engages the students in a dialogue about the cases. A typical first class in law school might start out looking at the following fictional case:

**Professor (P):** Mr. Fox, what are the facts that gave rise to the case of *Hawkins v. McGee*?

**Fox:** Well, Hawkins had injured his hand in an accident, so he consulted Dr. McGee; and McGee said that he could repair the hand surgically so it would be a “100 percent perfect hand.” But the operation came out badly, so the hand was disfigured. So Hawkins brought suit against the doctor for breach of contract.

**P:** And what was Dr. McGee’s defense?

**Fox:** McGee said he hadn’t made the promise, and even if he had, doctors can’t be held liable for statements they make to patients about the outcomes of medical treatments.

**P:** Procedurally, how was the case resolved in the trial court? And how did it get to the state supreme court?

**Fox:** McGee made a motion to the trial judge to direct the jury to find for McGee, the defendant, on the ground that doctors shouldn’t be liable for statements to patients. The trial court refused and the jury found for Hawkins. McGee appealed, saying the trial judge should have granted the motion. The state supreme court affirmed the decision of the trial judge on the motion, but said the judge had given the wrong instruction on damages.

**P:** Hasn’t Mr. Fox left something important out of the facts? Did Hawkins bring any other claims? Yes, Ms. Goldberg?

**Goldberg:** McGee also sued Hawkins for medical malpractice, saying he had been negligent. The trial court directed the jury to find for McGee on that claim. The judge said there was no evidence of malpractice.

**P:** Why? What evidence would Hawkins have had to put forward? What witness, document or thing? Who could provide testimony on that issue? Mr. Lee?

**Lee:** I think he would have needed evidence that the doctor made a mistake, which he would have to get from another doctor.

**P:** Mr. Fox, let’s go back to the court’s opinion on appeal. Did the court reach the right conclusion? If you were arguing McGee’s side of the case, what would be your argument that doctors should not be liable for breach of contract even if they promise a cure, and the promise doesn’t come true?

### Early Requirements

This system of legal education—the post-graduate three-year program, staffed by full-time faculty, teaching a mostly standardized curriculum, using the case method—came into being only gradually. Until the 20th century it hardly existed. In their revolution against English rule, Americans rejected aristocracies and monopolies. In the early American republic, this feeling developed into intense democratic suspicion of professional privileges and professional organizations. Most states imposed no formal requirements of education or examination on lawyers; at most, they required a few years of apprenticeship in a lawyer’s office. A few law schools were founded nonetheless— such as the famous Litchfield Law School in western Connecticut, and several university law schools connected with the colleges of William and Mary, Harvard and Columbia. These early law schools trained many of the leading lawyers of the new republic. But these schools required only a high school degree for admission and only a year or two of law study. They were usually staffed by part-time practitioners. Students listened to lectures and read secondary treatises or commentaries on legal subjects.

### Winds of Change

The winds of change began to blow in the

1870s. The dramatic advancements of natural science, the prestige of the great European (especially German) universities, the urgent need for educated talent in industrial management and government, all created new confidence in trained experts and demand for organized professions as the means of supplying them. Leading lawyers founded new bar associations—for example, the Association of the Bar of New York City, 1870, and the American Bar Association, 1878—with the aim of imposing new educational and examination requirements for admission to the legal profession and building a disciplinary system to expel corrupt and incompetent lawyers and judges.

In part the reformers' motives were to raise standards of education, practice competence and ethics. But they also hoped that the new standards would keep the new waves of immigrant lawyers from Southern Europe out of the profession. Their aim was to close down alternative routes to the bar, such as apprenticeship and study at night schools and part-time schools, and to reserve the American profession for college graduates, at that time only 2 percent of the population. (In this last aim they did not succeed until the late 20th century, by which time over 25 percent of the population had college degrees.)

### The Harvard Model

Harvard Law School was the pioneer. From 1870-1900 Harvard's Dean C.C. Langdell and his colleagues built a new model of legal education. Harvard required some college training, and eventually a college degree. It set up a three-year program of sequenced courses, with regular examinations in each course, and expelled students who failed the exams. To teach law as a rigorous "science," it narrowed the curriculum to private law subjects, prescribing the first-year

program that almost every law school adopts to this day: torts, contracts, property and civil procedure. It hired full-time law teachers as its faculty. Its teachers published the first casebooks, and taught students by the case method, making them grapple with the primary materials of legal cases, and to learn actively and interactively through dialogue with the teacher, rather than passively listening to lectures. The top students in each class were elected to edit the *Harvard Law Review*, the journals that publish law professors' scholarship and also law students' notes and comments on cases and development in the law. Law review membership became a credential for the jobs as clerks to high court judges, associates in big-city law firms and law teachers.

The Harvard model of legal education spread to one school after another, and eventually was adopted by all. Critics complained that the model taught little of immediate practical relevance to law practice—no trial skills or practice drafting documents, no exposure to the statutes (legislation) and administrative agency rulings that were increasingly replacing judge-made case law (or common law) as the primary modes of law-making, nor knowledge of corporate law or regulatory law. Defenders admitted this was true, but said the model taught the general skill of "thinking like a lawyer," which graduates could apply flexibly to any practice setting. Other law school programs, such as "moot courts," in which students argued hypothetical cases before panels of real judges, came in to supplement the case method.

### Legal Realists

After 1920 a group of critics called "Legal Realists" attacked the Harvard model for teaching only formal rules and principles of law, legal doctrine or legal dogma. The reasons that judges gave for deciding cases, the Realists said, were rarely the real factors behind the decisions. Law,

they argued, had to be studied and taught as a social product, which arose in social conflicts and served social interests and policies. The Realists urged scholars to integrate law with social sciences, to conduct empirical studies of courts and legal agencies and processes, and to teach students to argue for results on social policy grounds.

The Realist program received a tremendous boost from President Franklin D. Roosevelt's New Deal programs (1932-1940). The New Deal brought many law professors into government service as drafters of legislation and lawyers for the new government agencies. The flood of new federal regulation employed thousands of new law graduates in both private law firms and government. New Deal veterans staffed the faculty of law schools after World War II and brought with them new courses in novel fields of legislation—tax, labor, securities, anti-trust and regulated industries law. Books of cases were turned into books of cases and materials—the materials being statutes, administrative agency rulings, government reports and social science studies.

### New Wave of Change

The social upheavals of the 1960s and '70s brought several new waves of change to legal education. The social movements for the rights of African-Americans and women added new courses to the curriculum in civil rights law – which for the first time became a central topic in constitutional law—and employment discrimination. A body of new social regulation, especially of the environment, created the demand for a new field of environmental law.

In 1965 President Lyndon Johnson created a federally funded legal services program to serve poor clients and bring lawsuits on behalf of poor clienteles. This program and other foundation-funded “poverty law” programs inspired law

schools to create clinics—law offices within the school, staffed by new cadres of clinical law teachers, where students could learn not just to think like lawyers, but to represent real clients while in law school under the supervision of practicing lawyers and clinical teachers. In many law schools today, most students get some experience representing tenants in rental housing, prisoners, criminal suspects, welfare recipients, immigrants seeking to enter or remain in the U.S., poor debtors in consumer disputes or environmental causes.

The new social movements also transformed the population of law schools. Law schools in the South had admitted no black students, and law schools in the North very few until the 1970s; since then black and Hispanic students have made up about 10 percent of each class. Law schools had strict quotas for women before 1970; between 1970 and 1990, women went from 4 percent to 50 percent of law school enrollments. To accommodate the new students, law schools in the 1970s and '80s doubled in size.

Administrative and regulatory law, clinics, and the disciplines of poverty and environmental law, and civil rights law, were all responses to external challenges and changes. Law schools also began to respond to intellectual challenges from inside the academy. In the 1930s, law schools had flirted with other social sciences—especially economics, history, psychology, sociology and anthropology—but these other disciplines were kept at the margins of law study. In the 1970s, law teachers began more aggressively to integrate other disciplines into research and teaching—among them moral and analytic philosophy, social history, feminist studies, political science and criminology. The most powerful and far-reaching alliances were between law and economics. Field after field of law—not just antitrust and regulated industries, but corporations, con-

tracts, torts, property and many others—borrowed from economics to explain what kinds of legal rules and institutions were efficient or could be made more so. Economic theory and economic reasoning are now pervasive in academic legal literature—and often in court opinions as well, since several well-known legal-economics professors have become federal judges. New law teachers, especially in elite schools, now often hold doctorates in economics, history, political science, philosophy or sociology as well as law.

### Global Law

The next big changes in legal education—already beginning—are clearly going to be in the direction of global legal studies. U.S. law schools have been expanding their graduate programs for foreign law students, gradually admitting more non-Americans to regular law programs and sending more American students off for a year's study in other countries. Courses are beginning to proliferate in transnational legal fields—especially transnational commercial law and international human rights as well as in regional specialties such as Chinese, Japanese and Islamic Law.

The story of American law schools is one of gradual, slow and often reluctant, but real enlargement of vision. Following Harvard's

example, modern U.S. law schools began by teaching exclusively private law to prepare graduates for private practice, but gradually expanded to include public law to prepare for public service and practice on behalf of the poor and social movements. These institutions began by teaching law as an isolated field of its own, but have since expanded to include and integrate law with other disciplines. They have learned to supplement the case method with live-client clinics. And after two centuries of isolation, they have begun to open up to and learn from students, legal traditions and experiments in the world outside the United States.

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## Legal Education and the Concept of Judicial Review

Courts in the U.S. exercise a unique power, called “judicial review,” meaning that judges may declare invalid and set aside, laws passed by the legislatures or executive acts that the courts interpret as violating the Constitution. The power is not mentioned in the U.S. or state constitutions. But over time it has come to be accepted as a legitimate power, and is regularly exercised by judges in both state and federal (national) courts.

The concept of judicial review was explained in *Marbury v. Madison* (1803), one of the Supreme Court’s earliest and most celebrated cases. The outgoing president, John Adams, had appointed William Marbury a justice of the peace. The incoming president, Thomas Jefferson, who was hostile to Adams’ party and its judges, never delivered Marbury his commission. Marbury, relying on an act of Congress, petitioned the Supreme Court for a writ of mandamus, an order commanding the government to deliver his commission as judge.

In the unanimous decision by the Supreme Court, Chief Justice John Marshall laid the groundwork for the future authority of the Court by stating that the Constitution did not allow Congress to empower the Court to issue mandamus writs, and that the act of Congress was therefore void. The Constitution, said Marshall, was not simply a plan of government, but the supreme law, superior even to laws enacted by legislatures. Since “it is emphatically the province and duty of the judicial department to say what the law is,” it follows that courts must have the

power to strike down and refuse to enforce unconstitutional laws.

In the decades that followed *Marbury*, many state courts used the power of judicial review to strike down statutes they considered contrary to constitutional law. Between 1880 and 1937, the U.S. Supreme Court frequently struck down acts of Congress and of the states that they thought went beyond constitutional limits on the power of government to regulate business. After 1950 the courts used the power most often to protect civil rights and civil liberties of individuals against repressive state action, such as criminal prosecutions of political dissenters and unpopular religious groups. In the famous case of *Brown v. Board of Education* (1954), the Supreme Court invalidated all segregation laws pertaining to public education, on the grounds that such laws violated the Constitution’s command that everyone have the “equal protection of the laws.”

The fact that courts have the final word on the constitutionality of legislation means that in the United States, great political questions such as racial segregation often end up being debated and decided as legal questions in the courts. As a result, the work of ordinary lawyers is connected to fundamental issues of statecraft and policy. So from the earliest years of the American republic, legal education has been concerned with teaching lawyers about the basic design and purposes of governmental structures and actions.

# The American Bar Association and Legal Education in the United States

by John A. Sebert

*Since its inception in 1878, the American Bar Association (ABA) has been concerned with improving the quality of U.S. legal education. Following numerous studies of educational law programs available at the end of the 19th century, it was determined that a national process must be developed to ensure the quality of the education of a prospective lawyer. By 1921, the ABA had adopted a statement for minimum standards of legal education and published a list of law schools that complied with those standards. John A. Sebert, consultant on Legal Education to the American Bar Association, administers the ABA accreditation process, supervising a full-time staff of 13. In this overview, Sebert looks at how the ABA has shaped legal education in the U.S. over time and how law schools are accredited by the Council of the ABA Section of Legal Education and Admissions to the Bar.*

THE AMERICAN BAR Association is the national organization for the legal profession in the United States. Its members principally are practicing lawyers, judges, court administrators, law teachers, public service lawyers, lawyers whose current positions do not directly involve the practice of law (such as business executives and government officials) and law students. In 2002, with more than 400,000 members, including more than 350,000 attorneys, the ABA is the world's largest voluntary professional association. It has long served a dual role as advocate for the profession and for the public, and the membership includes approximately half of all lawyers practicing in the United States.

Although the actual power to admit attorneys and to discipline lawyers rests with the individual states and other jurisdictions in the United States, the ABA is a major force in establishing the ethical guidelines for the profession through promulgating the ABA Model



*John A. Sebert*

Rules for Professional Conduct. The ABA also is a very influential voice in matters related to the law and the legal profession before Congress and the executive branch in Washington, D.C. Over the past 25 years the ABA has played a major role in the international rule of law movement, for example.

### Legal Education in the United States

Unlike in other countries, legal education in the United States is post-baccalaureate. Thus, students pursue their law degree after receiving an undergraduate degree. Many U.S. law students also enter law school later in life, after having substantial work experience or other graduate or professional education.

The most significant substantive change in U.S. legal education over the last 30 years has been the inclusion of extensive skills training in the curricula of almost all American law schools, primarily through clinical education and sophisticated simulation courses. Traditionally, U.S. legal education did an outstanding

job of training law students to “think” like lawyers and of teaching substantive and procedural law. Current U.S. legal education also does very well in training its graduates to “act” like lawyers. Most U.S. law schools have concluded that a combination of full-time faculty members (many of whom have extensive law practice experience prior to joining a law faculty) and experienced judges and practitioners who serve as adjunct faculty is best suited to provide the breadth and depth of skills training that a newly admitted attorney needs.

In recent years, skills training at ABA-approved law schools has been greatly influenced by the 1992 report of the ABA Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum, commonly known as the MacCrata Report*, which gives a compelling description of the fundamental skills and values that are necessary for the competent representation of a client.

### ABA-Approved Institutions

Legal education in the United States is provided by a variety of institutions and in a variety of formats. Today, a total of 185 institutions are approved by the American Bar Association to confer the first professional degree in law (the J.D. degree). One hundred seven of the approved law schools are at private institutions, and 78 are at public institutions funded by state or local governments. Even the public institutions, however, rely heavily on tuition and private giving to provide the necessary financial support for their law programs.

The total J.D. enrollment in ABA-approved schools has increased from approximately 91,225 students in 1971 to 127,260 in the fall

of 2001. About 21,000 of those students were enrolled in part-time programs, in which it normally takes a student four years to earn the degree. The remaining majority of students were enrolled in full-time programs, for which three years of study normally is required. In the fall of 2001, about 45,000 new first-year students enrolled at ABA-approved law schools. Forty-nine percent of the new students were women, and 21 percent were members of minority groups.

Law schools approved by the ABA provide a legal education that meets a set of minimum standards as promulgated by the Council of the ABA Section of Legal Education and Admissions to the Bar. Every jurisdiction in the United States has determined that graduates of ABA-approved law schools are able to sit for the bar in their respective jurisdictions. The role that the ABA plays as the national accrediting body has enabled accreditation to become unified and national in scope among the 50 states, the District of Columbia, the Commonwealth of Puerto Rico and other U.S. jurisdictions.

### The Council and the Accreditation Committee

The Council of the ABA Section of Legal Education and Admissions to the Bar is the U.S. Department of Education's recognized accrediting agency for programs that lead to the first professional degree in law. The Council is comprised of 21 voting members, no more than 10 of whom may be law school deans or faculty members. Other members of the Council include judges, practicing attorneys, one law student, and at least three public members who are neither lawyers nor employees of a law school.

The law school approval process established by the Council is designed to provide a careful and comprehensive evaluation of a law school and

its compliance with the Standards for Approval of Law Schools. The Standards establish requirements with respect to matters such as curriculum, faculty, admissions and student affairs, library and information technology, and physical facilities. The Standards are reviewed frequently to ensure that they focus on matters that are central to quality legal education. The Council, which ultimately adopts the Standards, has established an extensive process to seek comment and possible revisions on them by law school deans, law faculty, university presidents, leaders of the bar and judiciary, and others interested in legal education.

In its oversight of law schools, the Council is assisted by the Accreditation Committee of the Section of Legal Education and Admissions to the Bar. The Accreditation Committee, which has a composition similar to the Council, reviews reports concerning all ABA-approved schools, and all those applying for approval, to determine whether the school complies with the requirements of the Standards. The respective roles of the Council and the Accreditation Committee in the accreditation process are described in the following sections.

Staff support for the Council and the Accreditation Committee, and the other activities of the Section of Legal Education and Admissions to the Bar, is provided by the Office of the Consultant on Legal Education, located at ABA offices in Chicago, Illinois. The consultant and his staff oversee the administration of the accreditation and Standards revision processes, provide assistance and advice to law school deans and administrators, and represent legal education in many forums.

### Provisional Approval

A law school may not apply for provisional approval by the ABA until it has been in operation for one year. In recent years, applications for

provisional approval have come from two types of schools. Some applicant schools are newly established law schools. Others are established law schools whose graduates are eligible to take the bar examination in one or a small number of U.S. jurisdictions. They seek ABA approval in order to have their graduates eligible for admission to practice in all jurisdictions within the United States.

When a school applies for provisional approval, it must develop an extensive self-study, which describes the school in detail and provides expansive information about the school. The Office of the Consultant appoints a team of six or seven persons to undertake a site evaluation of the school. The team usually consists of two or three academic law school faculty members or law school deans, a law librarian, one faculty member with an expertise in professional skills instruction (clinic, simulation skills or legal writing), one judge or practitioner, and one university administrator who is not a member of a law faculty.

The site evaluation team carefully reviews the materials the school has provided and visits the school for three days. The team meets with the dean and other leaders of the faculty and law school administration, the president and other university administrators, and with as many faculty members as possible. The team also visits as many classes it can in order to make judgments concerning the quality of instruction.

Shortly after leaving the school, the team drafts and finalizes a site evaluation report. The report covers all aspects of the school's operation, including faculty and administration, the academic program, the student body and their success on the bar examination and in placement, student services, library and information resources, financial resources, and physical facilities and technological capacities.

The site evaluation report is sent to the

Office of the Consultant, and also to the school where the evaluation was made. The school is then given the opportunity to provide written corrections of any factual errors and to make other comments on the report. Afterward, the report is sent to the Accreditation Committee, which holds a hearing where representatives of the school applying for provisional approval appear. After the hearing, the Accreditation Committee makes its recommendation concerning provisional approval to the Council.

A school that applies for provisional approval must establish that it "is in substantial compliance with each of the Standards and presents a reliable plan for bringing the school into full compliance with the Standards within three years after receiving provisional approval." If the Accreditation Committee concludes that a school is in substantial compliance with the standards and that the school has a reliable plan for coming into compliance, the committee will recommend that the Council grant provisional approval.

When a school seeks provisional approval, the final decision on the school's application is made by the Council. If the decision of the council is to grant provisional approval, that decision is transmitted to the ABA House of Delegates for its concurrence or for non-concurrence and referral back to the Council.

A school that is provisionally approved is entitled to all the rights of a fully approved law school. Similarly, graduates of provisionally approved law schools are entitled to the same recognition that is accorded graduates of fully approved schools.

### Obtaining Full Approval

Once a school has obtained provisional approval, it remains in that status for at least three years, and no more than five years. In order

to be granted full approval, a school must demonstrate that it is in full compliance with each of the Standards; substantial compliance does not suffice.

During a school's provisional status, the progress of the school is closely monitored. It is visited by a site evaluation team once each year, and after each visit, a site evaluation report is submitted to the school and the Accreditation Committee. The committee reviews the site report and the school's response and sends the school a letter that indicates any areas where the committee concludes the school does not yet fully comply with the Standards.

In the time in which a school is considered for full approval, the process is identical to that undertaken in connection with an application for provisional approval. Decisions on full approval are made only by the Council, in reviewing the findings, conclusions and recommendations of the Accreditation Committee. The role of the House of Delegates in reviewing Council decisions on full approval is identical to the House's role concerning decisions on provisional approval.

After a school is granted full approval, it undergoes a full site evaluation in the third year after full approval, and then a full sabbatical site evaluation every seven years. The site evaluation process and the review of the site report by the Accreditation Committee is very similar to that described in connection with a school's application for provisional approval.

## Admission to the Bar in the United States

Admission to the bar in the United States is governed by independent rules and regulations established in each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico and other U.S. jurisdictions. Over half of these juris-

dictions require that one must have graduated from an ABA-approved law school in order to be eligible for admission to practice law in the jurisdiction. Of those jurisdictions that permit graduates of non-ABA-approved law schools to sit for the bar, most limit that privilege to graduates of non-ABA-approved law schools located in their specific jurisdiction.

All but one of the jurisdictions requires an applicant who has not been admitted to practice in another U.S. jurisdiction to take and pass the bar examination administered by the state. The exception is the state of Wisconsin, which grants a "diploma privilege" to graduates of the two law schools located in the state, permitting them to be admitted to practice in Wisconsin without taking the bar examination.

A typical state bar examination lasts two or three days and consists of at least two major parts—an objective examination (the Multistate Bar Examination, created by the National Conference of Bar Examiners (NCBE)), which tests basic knowledge of fundamental areas such as contracts, property, torts, procedure and constitutional law, and an essay examination covering topics chosen by the individual jurisdiction.

An increasing number of jurisdictions use the Multistate Essay Examination, prepared by the NCBE, rather than drafting their own essay examinations. Over half of jurisdictions also now use the Multistate Performance Test (MPT, also produced by the NCBE) as a portion of their essay examination. The MPT tests particular lawyering skills by providing the examinee with a factual setting and the legal principles applicable to the situation, and then asks the examinee to produce a legal document (such as a will, contract or pleading). All jurisdictions also conduct a character investigation of all persons who seek admission to practice law.

Most jurisdictions permit an attorney who

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has been admitted to practice for a specified number of years (commonly five) and is in good standing in the jurisdiction in which he or she is admitted, to be admitted by motion without taking a new bar examination. Some jurisdictions, however, require that even an attorney being admitted on motion pass an attorneys' examination, which usually focuses on procedural rules and ethical requirements. A few states, such as Florida and California, do not permit even experienced attorneys to be admitted without taking the bar examination for their state.

#### A Collaborative Enterprise

One of the great strengths of the ABA law school accreditation process is that it is a collaborative enterprise involving significant participation by law school faculty and deans, by practicing attorneys, by judges, by university administrators and by representatives of the public. This assures the public that the perspectives of the

bench and bar, university administrators and knowledgeable public representatives, as well as the views of law faculty and deans, are considered as the standards to which U.S. law schools must comply are adopted, and as decisions are made as to whether an individual school complies with those standards. This cooperative effort has worked well for many years. In particular, the judiciary and the practicing bar have been very important forces in the significant expansion of sophisticated skills training in U.S. law schools over the past 30 years.

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# Continuing Legal Education in the United States

by Macarena Tamayo-Calabrese, Annette Cook and Shirley Meyer

*Lawyers in the United States have a special obligation as guardians of the rule of law and democratic process. Regardless of the field in which a lawyer practices, all of the more than one million lawyers in the U.S. are sworn officers of the court. As such, they not only have a moral and professional obligation, but also a legal obligation to uphold the law, maintain professionalism and decorum, be fair-minded and ensure the integrity of the process. Those core values contribute to public confidence in the system. In this essay on continuing legal education (CLE) Macarena Tamayo-Calabrese, director, Latin American Legal Initiatives Council; Annette Cook, associate director, ABA Center for Continuing Legal Education; and Shirley Meyer, educational products manager, ABA Center for Continuing Legal Education, look at the importance of CLE in a lesson that burgeoning democracies may find useful.*

U.S. LAWYERS work in various settings, including private practice (from solo practitioner to large-firm private practice), government agencies, nongovernment public interest practice, in-house corporate legal departments and law schools. In addition, attorneys also practice in a wide variety of legal areas, including business, constitutional, corporate and securities, criminal, energy, environmental, family, intellectual property, international, public interest, tax, and trust and estates law.

The foundation of the justice system in the United States is the U.S. Constitution, but attorneys also are governed by the acts of the U.S. Congress, 50 state constitutions, and by state and municipal government statutes. U.S. law also is grounded in the decisions of its courts, at the federal, state and local levels. These decisions comprise the common law of the United States, and prior court decisions provide the precedent for later court decisions involving similar issues.

The U.S. legal system reflects the increasing complexity of today's society. Complicated



Macarena Tamayo-Calabrese

business deals, rapid technological change and increasing governmental regulation demand constant study. Lawyers have an obligation to themselves, their profession and their clients to continue refining their skills and expanding their substantive knowledge of the law. As such, continuing legal education is an important component in a lawyer's training.

### Legal Education as Continuum

In 1992, the American Bar Association Section on Legal Education and Admissions to the Bar issued the *MacCrate Report* on the state of legal education and post-graduation training of members of the bar. The report is recognized nationally as a leading tool for the development of lawyers and sets forth a detailed inventory of the fundamental skills and professional values needed for competent practice, as well as a blueprint on how new members of the profession can acquire these essential skills and values.

The *MacCrate Report* identifies the following skills and values as essential to competent and responsible practice:

#### Skills

- Problem solving
- Legal analysis and reasoning
- Legal research
- Factual investigation
- Communication
- Counseling
- Negotiation
- Knowledge of litigation and alternative dispute resolution (ADR) procedures
- Organization and management of legal work
- Recognition and resolution of ethical dilemmas

#### Values

- Providing competent representation
- Striving to promote justice, fairness and morality
- Professional self-development

Although law schools have a responsibility to the profession to ensure that students graduate with a certain degree of proficiency, the *MacCrate Report* recognizes that “[U.S.] law schools cannot reasonably be expected to shoulder the task of converting even very able students into full-fledged lawyers licensed to handle legal matters.” The three-year law school course of instruction lays the foundation. The report emphasizes that “legal educators...and practicing lawyers...are engaged in a common enterprise: the development of the skills and values of competent and responsible lawyers along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience and continues throughout the lawyer's career.”

The legal culture in the U.S. embraces continuing legal education as a life-long commitment.

## Continuing Legal Education Today

Continuing legal education programs play a critical role in teaching skills and values that lawyers need in order to attain and maintain the accepted professional standards required to practice law in the United States. CLE programs take many forms, are delivered in many settings and are administered by many providers.

**In-House Training.** Large law firms and large public sector organizations such as federal government agencies often offer formalized in-house CLE for their partners, associates, staff attorneys and paralegals. Training programs can be as varied as the organization, but most importantly, in-house training allows the curriculum to be tailored to the firms' or other organizations' needs. In-house training, particularly for new attorneys, can also be skills-based, such as seminars on legal writing, negotiating contracts, and developing and strengthening litigation skills (e.g., how to take depositions, how to conduct cross-examinations). A substantial majority of small law firms do not administer a formal in-house training program for new lawyers. Rather, skills are usually learned on the job.

Although some law firms may employ a professional development coordinator, whose role is to coordinate the professional training of lawyers throughout the firm, in-house programs are usually conducted by partners or senior associates or staff members. The programs are structured around self-study programs, such as videotapes or audiotapes from outside CLE providers.

**External CLE Provides.** There is a wide range of external CLE providers, including national nonprofit organizational providers such

as the American Bar Association Center for Continuing Legal Education, the American Law Institute/American Bar Association (ALI-ABA) Committee on Continuing Legal Education, the Practising Law Institute, state and local bar associations and law schools. There are also commercial providers such as Aspen Law and Business, Executive Enterprises and the American Conference Institute.

National providers concentrate on legal topics at the federal level, such as federal taxation, securities and

employee benefits. State and local bar associations concentrate on topics that are extensively regulated by state laws, which vary



*Annette Cook*

from state to state—family law, estate planning, real estate law, personal injury and criminal law, among other topics. State and local bar association programs also may include a formal transitional program to assist new members of the bar in developing the skills and values needed for competent practice.

Through its Center for Continuing Legal Education, the American Bar Association offers CLE through a variety of traditional and innovative distance learning formats. The most traditional of formats are one- to three-day seminars that tend to be annual updates of substantive areas of the law, such as mergers and acquisitions or class actions. The faculty include nationally recognized speakers who are experts in the particular areas of the law that the seminars address. One distinct advantage of live seminars is the ability to interact or “network” with faculty and

other participants who practice in the same or related areas of interest and to establish contacts with one another for future advice and business development. Although attendance at these seminars can be quite large, there are often workshops that allow participants to break out into smaller groups to discuss more particularized areas of the law in greater detail.

### CLE Through Technology

The ABA also offers CLE through several types of less traditional, distance learning formats, including satellite seminars, teleconferences, video conferences with teleconference simulcasts and webcasting, and other online programming. Satellite seminars are typically four-hour programs on fast-breaking issues and topics of national interest that are broadcast live to 80-100 sites across the country. Satellite seminars provide a forum for substantive information to be dispersed along with the opportunity to network, while reducing the expenses and travel time for busy attorneys.

Teleconferences are 60- to 90-minute seminars on hot issues, accessible anywhere from any telephone. A live, interactive question-and-answer session follows the program, and participants are able to ask questions of the faculty while still online. One of the key benefits of the teleconference is the ability to obtain continuing legal education in the office, at a low cost. Because of the shorter lead time needed to organize teleconferences in general, they can respond to hot issues, such as a major decision just handed down from the U.S. Supreme Court. Course materials are delivered online through a companion web page. One of the great successes using this delivery method is the *ABA Connection*, a monthly CLE program delivered at no cost to ABA members. Each month, the *ABA Journal* publish-

es an article on a substantive topic that serves as the course materials for the teleconference. Attorneys simply read the article in advance and then dial in for the teleconference.

Video conferences with teleconference and web-based simulcasts are another type of in-the-office CLE. These programs are available by video conferencing equipment, by telephone or via the Internet. As with stand-alone teleconferences, a question and answer session completes the program.

The programs mentioned above are recorded and available on videotape or audiotape, which leads us to another important method of obtaining continuing legal education: self-study. Attorneys can buy an audio or video program, along with accompanying books or other course materials, and review them at their convenience and at their own pace. Audio Books, audiotapes and CDs based on previously published books, allow busy attorneys, normally unable to set aside reading time, to listen to the audiotape or CD while commuting to work, for example. Or videotapes and audiotapes can be part of larger in-house programs, where multiple attorneys gather to watch or listen to the presentation. Finally, VideoLaw Seminars are professionally produced CLE videotapes designed as single programs or as part of a modular series. Many of the VideoLaw Seminars are skills-based and frequently incorporate demonstrations, dramatizations, computer-generated graphics and other visual effects to enhance program content.

As technology advances, so must the delivery of continuing legal education. CLE providers must develop innovative methods constantly to provide attorneys with greater access to continuing legal education. One of the newer technology-based CLE formats that the ABA employs, for example, is its audio and video webcasting (streaming). Audio webcasting enables attorneys

to access both live and archived CLE programs over the Internet. Participants can listen to the program online while viewing electronic slides and other course materials. Faculty interact with the webcast participants during the program via e-mail. One example of live webcasting is the audio webcast that is offered simultaneously with each of the teleconferences. Video webcasting adds video to the streaming signal so participants can view online programs with accompanying slides and materials.

Another type of online programming that the ABA provides to its members and the profession at large is the interactive program. Information is presented to participants via video, audio or text. Questions and exercises are dispersed throughout the interactive lesson to engage the user. Participants also have access to course materials that can be downloaded. One example of a popular interactive program is an online writing program that allows participants to hone their writing and editing skills through the use of sample exercises and to gain specific and immediate feedback on those exercises.

### Mandatory Continuing Legal Education

Each of the 50 states requires that attorneys obtain a license to practice law in that state and each state sets forth its own requirements for maintaining that law license. Forty of the 50 states require that attorneys regularly receive continuing legal education as a condition to maintaining their law licenses. One of the important functions of the ABA throughout its 125-year history is the development of model rules.

These rules are designed to set forth standards for particular areas of law to create a uniform body of law across the states. State legislatures use these model rules as a guide in adopting the laws that will apply in their jurisdictions. The

ABA Model Rule for Minimum Continuing Legal Education (MCLE) was developed by the American Bar Association Standing Committee on Continuing Education of the Bar as a model for the adoption of uniform standards and means of accreditation of CLE programs and providers and was passed in 1986. The Model Rule covers the appointment and composition of the administrative body that will govern CLE, the number of MCLE hours needed annually, reporting of MCLE by the attorneys to their respective governing bodies, sanctions and appeals, lawyers covered by the rule, approval or accreditation of CLE providers and self-study, among other issues.

The ABA Model Rule serves as guidance to the states, but each of the 40 states that has adopted MCLE promulgates its own set of rules. Thus, a myriad of rules exist regarding the number and types (e.g., ethics) of credit hours required in a reporting period, the length of reporting periods, lawyers covered by MCLE rules, the definition of CLE, and allowance of credit for “self-study,” which consists of videotape or audiotape programs, and online programs. For example, some states require either 12 or 15 credit hours with annual reporting periods, whereas other states require 45 hours, but have three-year reporting periods. Some states base the reporting period on the anniversary of the lawyer’s admittance to the practice of law, whereas other states base the reporting period on a specific date (i.e., January 31 of each year or every three years) or even on the lawyer’s birthdate. The proportion of ethics or professionalism credits in relation to overall MCLE credits also varies by state.

Each state has different rules that address who is covered by those rules. Typically, there are different MCLE requirements for active lawyers who are regularly engaged in the practice of law and inactive lawyers who are not regularly

engaged in the practice of law. Typically, inactive lawyers are subject to a lower requirement than active lawyers. Whether a lawyer is active or inactive depends on his or her state's classification, but there are some common threads. For example, a retired lawyer most likely would be classified as inactive. There also may be different requirements for newly admitted attorneys. Attorneys in practice less than three years may be required to take a certain number of basic skills courses shortly after being admitted to the bar. Attorneys at all levels may be required to earn a certain number of legal ethics, professional or substance abuse training hours per reporting period.

The states define CLE differently as well. Some states do not allow minimum continuing legal education credit for self-study programs and mandate that attorneys earn MCLE credits by attending live programs. Some states do not accredit online programming. The ABA has long been a leader in the innovative use of technology to provide CLE and is leading the charge in urging the state accrediting agencies to approve for MCLE participatory credit the full spectrum of technology-based continuing legal education formats.

## Conclusion

The rule of law in the United States is the foundation for our fundamental values, and there are few more fundamental tenets in the life of a lawyer in the U.S. than a sense of the importance of lifelong learning—renewing one's knowledge and skills and reinvigorating professional values. It is this sense of continuum and renewal that drives a strong system of continuing legal education—keeping lawyers' knowledge and skills at the highest level and safeguarding the justice system in the U.S.

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# Continuing Legal Education: Three Organizations That Fulfill The Need

by Stuart Gorin and David Pitts

*A new judge wants to know how to preside properly over a courtroom trial. An experienced clerk of the court requires familiarity with the latest procedures in order to better handle his or her duties. Judges and court officials around the globe seek information on the U.S. judicial system. Every year there are thousands of requests for information on and questions about court procedures throughout the United States, in both the federal- and state-level judicial arenas. In this look at three organizations that provide the answers—the Federal Judicial Center, the National Judicial College and the National Center for State Courts—Contributing editors Stuart Gorin and David Pitts, examine how these and other organizations fulfill all of these legal education needs and much more.*

THE CONTINUING EDUCATION aspect is critical, says Fern Smith, a U.S. district judge who serves as the Federal Judicial Center’s director. Smith points out that changes in the judicial system are vast, especially with new rulings coming continuously from the U.S. Supreme Court and with changes in the role of federal district judges.

Established in the nation’s capital by Congress in 1967 on the recommendation of the Judicial Conference of the United States, the Federal Judicial Center (FJC) is the research and education agency of the U.S. federal judicial system. The center conducts orientation and promotes continuing education and training for federal judges and court employees. The center also conducts and promotes research on federal judicial procedures and court operations.

“We are not specialized and we handle every kind of case that comes to district court, both criminal and civil,” Smith says, adding



*Judge Heather Van Nuys*

that “Judges need help in learning different areas of law and in keeping abreast of the latest developments to be on the cutting edge.”

### Three Divisions

Based on the tasks it performs for the federal judicial system, the Federal Judicial Center is organized into three divisions: court education, judicial education and research.

The court education division develops and administers education and training programs and services for non-judicial court personnel, such as those in clerks’ offices and probation and pretrial services offices, and management training programs for court teams of judges and managers.

The judicial education division develops and administers education programs and services for judges, career court attorneys and personnel from the offices of U.S. federal defenders.

The research division undertakes empirical and exploratory research on federal judicial processes, court management and sentencing, often at the request of the Judicial Conference

and its committees, the courts themselves or other groups in the federal system.

### Primary Vehicles for Continuing Education

Last year, the Federal Judicial Center provided 985 educational programs for more than 48,000 U.S. judges and court staff members, and hosted seminars or briefings for 422 foreign judges and officials representing 34 countries. It also published or updated a dozen reports or reference guides and broadcast almost 2,000 hours of educational programming on the Federal Judicial Television Network.

The primary vehicles for orientation and continuing education for judges include face-to-face conferences, seminars and workshops. Court staff participate in local training events or through satellite broadcasts, on-line computer conferences and audio and video conferences.

FJC workshops cover such topics as recent developments in jurisdiction, evidence, sentencing, employment law, genetic research and international litigation. Special-topic seminars for small groups of judges have explored intellectual property, civil rights litigation, mediation techniques, federalism and bankruptcy.

Examples of television network programming have included reviews of Supreme Court terms and have examined the principles of science in the courtroom related to analyzing evidence.

Numerous educational publications produced for judges and legal staff include resource guides for managing U.S. federal death penalty trials, judicial management of alternative dispute resolution (ADR) and a civil litigation management manual, as well as one on recurring problems in criminal trials. Reports and reference

guides released in 2001 include *International Insolvency, Liability Litigation, Redistricting Litigation* and *The Use of Visiting Judges in the Federal District Courts*.

In addition to briefings and discussions, programs for foreign judicial officials also include bringing judicial fellows to the center to work as scholars-in-residence. Since this aspect of the program began 10 years ago, more than 30 foreign judges have conducted research in such areas as judicial independence, administration and the role of law clerks.

### The National Judicial College

In 1961, the American Bar Association recognized the need for an analysis of the American justice system. Joining the American Judicature Society and the Institute of Judicial Administration, they organized the Joint Committee for the Effective Administration of Justice, chaired by then-Supreme Court Justice Tom C. Clark. Among the committee's recommendations was a provision for continuing judicial education, which in 1963, became the National Judicial College.

Since that time, over 58,000 judges worldwide have been provided legal educational and professional development opportunities. Judges come to NJC from all parts of the world, usually through arrangements with the State Department and the U.S. Agency for International Development (USAID), although some programs are arranged through the World Bank. There also are direct communications between the college and foreign governments. In addition to its staff of judges and other legal professionals, the college has representatives from other disciplines, including physicians, psychologists, and computer and communication experts. Faculty donate much of their time.

NJC's chief objective is to improve justice

through national programs of education and training directed toward judicial proficiency, competency, skills and productivity. Located on the campus of the University of Nevada, Reno, the National Judicial College maintains affiliations with a variety of other educational institutions.

### Importance of Judicial Education

Washington state Superior Court Judge Heather Van Nuys underlines the importance of judicial education not only at the state, but also at the national level. "Over the years, I've found the courses at the National Judicial College very helpful," she says. "They are an important supplement to state judicial education in a number of important respects. First, it affords an opportunity to confer with judges from other jurisdictions—to discuss their approach to cases"—based on their own state law. Those in attendance are not just Americans, either. Judges from overseas also are frequent participants in classes at the NJC.

In addition, there are a variety of professional participants, not just legal professionals. Van Nuys adds that courses at the National Judicial College also include a broad cross-section of other professionals from across the United States, for example, in medicine and science.

She also says the courses at NJC "are in greater depth than those at the state level. For example, I have just participated in a week-long course in decision-making. Such detailed courses would not be available at the state level." Non-legal issues that pertain to the courtroom also are discussed, she notes.

### Model Courtroom

One feature of the National Judicial College

is the model courtroom, a state-of-the-art center that allows for both print and electronic media to record court proceedings, as well as providing access to courts by witnesses, lawyers and jurors with vision or hearing deficiencies, and closed-circuit television capabilities for interviewing sensitive witnesses. Not only does the model courtroom provide hands-on training for NJC participants, but the courtroom is also used on occasion by the Ninth Circuit Court of Appeals as well as by the court system for the state of Nevada.

### Professional Certificate

The Professional Certificate in Judicial Development is an innovative program of the college designed for judges who want to concentrate their studies in a focused academic area. A masters degree and Ph.D. also are offered in the judicial studies program. In addition to judges from 150 countries who have attended regular NJC courses and those attending as observers, the college also has presented special courses for judges from emerging democracies, primarily from Latin America, Eastern Europe and the former Soviet Union.

### The National Center for State Courts

In 1971, then-Chief Justice of the U.S. Supreme Court Warren Burger, founded the National Center for State Courts (NCSC), a nonprofit organization in Williamsburg, Virginia, that promotes justice through leadership and service to U.S. state courts. In this manner, the NCSC is committed to improving the administration of justice in the United States and abroad through research, education, consulting and information services.

The NCSC is made up of several divisions that conduct numerous programs. For example, the court research division promotes public confidence by

helping state courts respond to policy issues of concern, anticipate societal problems that will affect courts and develop the leadership necessary to provide fair and equitable administration of justice.

The court management consulting division provides expert technical assistance in court administration, caseload management, court technology, family law and human resources, among other court operations. The government relations division tracks national policy issues and pending legislation that could affect state courts and helps state judicial leaders make their voices heard within all branches of the federal government.

The Institute for Court Management (ICM) is directed toward every level and type of state-level court, including trial, appellate and those at the municipal level. The ICM's flagship program, the Court Executive Development Program provides high-quality professional education to court employees pursuing careers within the judicial branch of government. It is open to American judges with management responsibilities, clerks of court and court administrators. ICM also conducts national courses in civil mediation, trial court performance stands, court financial resources and other diverse areas.

### International Programs

Created in 1992 to assist courts, legislators and other justice system components outside the United States, the international programs division of the NCSC works to improve the administration of justice and the rule of law worldwide. A team of multi-disciplinary members who are well-versed in policy and program development, all aspects of court management and administration, including technology applications and system assessments related to the courts and other integral agencies, assist foreign judicial staffs.

Richard Van Duizend, executive director of international programs, says the organization pro-

vides technical assistance and training projects through long-term programs in such countries as Mexico, Nigeria, Serbia, Croatia and Mongolia. Working with the U.S. Agency for International Development and others, Van Duizend adds, the center also arranges court visits around the country for between 300-400 international visitors a year.

### Opportunities for Everyone

One participant in the international training programs such as those in Reno and Williamsburg, was Judge Ales Zaler, the vice president of the Slovenian Judges Association. “The U.S. judicial reforms fostered my understanding that judges should be service providers for citizens, rather than just servants of the state,” he says. The judge especially liked the court-annexed ADR programs, which provide citizens with the possibility of mediation, arbitration or early neutral evaluation of cases. “As a result of my U.S. training,” Judge Zaler adds, “the Slovenian example of court-annexed mediation introduced

in the Ljubljana District Court has proven to be a success story of a fair, efficient and cost-effective judicial system. It is also proving to be a model program, not only for the courts outside Ljubljana, but also for courts all over southeastern Europe.”

Continuing legal education is strictly voluntary. No judge or court staff anywhere are required to take further legal education training, but they do so enthusiastically. For judges and judicial staffs both in the United States and around the world, however, the opportunities for continuing judicial education provided by such organizations as the Federal Judicial Center, the National Judicial College and the National Center for State Courts can ensure that the world’s citizenry is afforded the best protection possible under the rule of law.

## A Judge Talks About the Importance of Legal Education



*Judge William Dressel*

The important point about judicial education, says Judge William Dressel, president of the National Judicial College (NJC) in Reno, Nevada, is that it is recent—within the last four decades—and has evolved and changed

since the early programs were established.

“Forty years ago, there was nothing really in terms of judicial education,” notes Dressel. When judicial education began, it tended to be formal lectures from a presenter. Now, the format tends to be informal classes in which issues are discussed and the focus is on skills acquisition, he adds.

Nowadays, there is also much more emphasis on “the judge being in control of the trial, not the lawyers,” says Dressel, a trend that was accentuated after the O.J. Simpson trial. “It’s felt that the judge is the one who should be responsible for the trial, not the lawyers,” Dressel continues. “Over the years, we have looked at the skills judges need to have to effectively case manage. There also has been much more emphasis on judicial independence, ethics, decision-making and the relationship to the community.”

In addition, judges now focus “more on attitudes and problem solving,” as well as law per se, remarks Dressel. This has led to “problem-solving adjunct institutions such as drug courts—and also modern methods of problem solving such as alternate dis-

pute resolution and mediation. Can a judge, for example, do something other than rule on a motion; can he or she solve problems?” Dressel asks. For years, the attitude was completely different. “Judges haven’t abandoned their traditional roles, but they question them much more than they used to,” he explains.

Dressel also says that when judicial education was first introduced, the emphasis was on the mechanics of civil and criminal law, and rules of evidence. That is still important, but now judges may talk about such matters as scientific evidence. How do you decide, for example, if someone is truly an expert? On issues such as this, you might have someone introduce the topic, but then it moves on to discussion.

“Forty years ago, most judges were in their 50s, many now are in their 30s and 40s and they might not have a broad-based judicial career,” Dressel says. “This means you now need to cover a lot more of the basics, but at the same time deal with all the other issues that tend to come up in modern courtrooms.” Therefore, professional development (continuing education) is much more essential than it once was, he adds.

In terms of the student body at the college, Dressel says “We have sessions for federal administrative law judges (but not federal criminal law), Native American tribal judges and state trial judges. We have some courses where we bring them all together and some that are separate. We get a fairly good mix of judges.”

# Court Administration Education in the U.S.

by Joseph A. Trotter, Jr.

*In both the U.S. federal court system, where issues involving national law are resolved—consisting of about 10 percent of all court filings in the United States—and in the individual court systems of the 50 U.S. states – in which 90 percent of the country’s court cases are filed – day-to-day management of the non-judicial functions of individual courts and court systems is primarily carried out by specially trained personnel formally known as court executives, court managers or more commonly, court administrators. In this overview of how the position of court administrator has evolved, Joseph A. Trotter, Jr., J.D., research professor and director of the Justice Programs Office, American University School of Public Affairs, looks at how the reform of the courts has necessitated a need for a new kind of manager, and what is available in the way of education and training.*

COURT ADMINISTRATORS are appointed by either the chief judge of the court system or by the presiding or administrative judge of the individual court in which they serve. As is the case with judges in the U.S., there is no government-run school for the career preparation of individuals to serve in these positions. Also, except for a formal certification procedure adopted in recent years by the federal courts for the few positions in that system, there is no national qualifying exam or certification procedure for persons serving as court administrators. Finally, although they are charged with the management of an environment where the principal business is conducted by judges and attorneys, these personnel are not required to be lawyers, and in fact, the vast majority are not. Yet, these individuals are so central to the capacity and credibility of the American judicial system that their education and training is appropriately included in an overview of legal education in the U.S.



*Joseph A. Trotter, Jr.*

Job preparation for administrators in American courts has relied on a variety of educational resources which have evolved only over the past 30 years. These consist of a few college and university-based graduate education programs in court administration, several specialized programs conducted by nongovernmental organizations (NGOs) dedicated to judicial system improvement, in-service training conducted by state judicial systems for their employees, and most notably, the increasingly sophisticated education programs conducted by professional associations of court administrators and related professionals at national, regional and state conferences. This pattern of training and education is due, in large part, to the way in which the position of court administrator has evolved, the constantly expanding spectrum of responsibilities of the position, and the diversity of court and court system organizational structures in which the administrator must function.

## Court Administrator as a Profession

The volume and complexity of court workloads in the United States, at both the federal and state levels, did not compel changes in time-tested policies, procedures and court rules until the decades following the Second World War, as the nation became more urbanized and litigation of all types mushroomed. Legal commentators and the general public court users became very vocal about the shortcomings and inefficiencies of the courts, particularly the fragmented state court systems.

In the mid-1960s, in response to these criticisms, several state trial courts and supreme courts hired the first court administrators, before there was widespread recognition of that occupation as a distinct profession. The individuals hired in those early years reflected diverse backgrounds, primarily in local government and law, although a few had management experience in the private or public sector. Their initial responsibilities included such things as assisting the chief judge in carrying out his or her administrative responsibilities, with no delineation of specific functions.

By 1971, there were only about 50 individuals serving as court administrators throughout the United States. The number grew to about 500 by 1980 and doubled again by 1990, largely as a consequence of the national effort during the 1970s and early 1980s to modernize, de-politicize and reorganize the country's state court systems.

Today, the concept of professional court administrators managing the operations of a court or court system to implement the policy directions of the chief judicial authority is universally accepted. All 50 state court systems and all 11 circuits of the federal court system are being

served at the system-wide level and in individual courts by approximately 2,500 court administrators and many thousands of specialist staff under their supervision.

### Court Reform Era

The court reform era in the 1960s and 1970s in the U.S. was fueled by federal financial assistance to states during the decade of the 1970s for criminal justice system improvement, and by the reports of various national commissions, task forces and citizen groups, which focused specifically on court system improvement issues. These influences culminated in the promulgation by the American Bar Association of a series of standards and goals, and performance measures for court system organization and operations throughout the 1970s, 1980s and into the 1990s. The existence of standards and performance measures underscored the need to bring professional managerial perspective and skills to the business of the courts. This awareness was further enhanced by the necessity to introduce modern technology, especially automation and computers, microfilm and other records storage technologies, and court reporting communications technologies, into what had previously been an enclave of traditional, and largely labor-intensive, ways of doing things.

During this period, a substantial number of states reorganized their court systems through constitutional amendment and legislative action. Among the more fundamental changes wrought by these reorganization efforts, were four which had the greatest implications for the skills required of court administrators:

- unification of fragmented local courts with specialized jurisdictions into unified trial courts with separate divisions and a chief judge charged with administrative responsibility for overall court operations;

- the establishment of a centralized system of court management, emanating from the U.S. Supreme Court down to the lowest trial court;

- the establishment of a personnel system for non-judicial personnel working in the courts that was controlled by the court system itself, rather than by an executive branch agency; and

- state assumption of the costs of operating the court system. Before the states assumed costs, courts were dependent on the less affluent resources of the counties and cities in which they were located to provide adequate resources.

One result of these and other reform measures was that judges were faced with responsibility for additional management functions relating to fiscal, personnel, security facilities and other issues which they were generally ill-prepared by training—and often interest—to perform. An even more important result of these reforms was the erosion of the notion of administrative independence of individual courts and judges, and a new emphasis on judicial accountability. The new centralized courts system management schemes, with state court administrators' offices assisting the supreme court in its superintendence of the court system, required periodic reporting of workload and dispositions for individual courts and judges. This allowed for administrative action to correct either poor performance or inadequate resources in individual courts, and also underscored the need for management professionals at both the state and local levels.

As the organization and activities of court systems became more complex and administratively demanding in the 20-year period between the mid-1960s and mid-1980s, the need for specially trained personnel to help judges manage the courts was increasingly evident. Within this context the field of professional court administrator education developed to prepare individuals to

perform a supportive role to the court or court system's chief judge.

### Evolution of Court Administration Education

In the late 1960s, a voluntary national association of court administrators was established, although at first, its membership was very small. The organization promoted the professional credentials and role of the court administrator, providing training on issues of current import and serving as a mechanism for professional networking in the field. An important issue which the profession confronted during the early period of its development was clarifying that the professional court administrator was not a "super clerk," since the position of "clerk of the court" had been long established. A major goal of the national association was, therefore, to promote understanding of the management functions which a court administrator needed to perform, distinct from the general clerk's functions.

In 1971, under the leadership of then-Supreme Court Chief Justice Warren Burger, an NGO called the Institute for Court Management (ICM) was established to provide a professional training and certification program for court administrators. Its first director, Dean Ernest Friesen, had been instrumental in establishing the National Judicial College to provide a centralized venue for in-service education and training opportunities for judges from all of the states.

The program sought and attracted a high caliber of participants, with varied backgrounds and experience, many from the scientific and technology communities. All had a common interest in building on their analytical skills, as well as their knowledge of technology and project management, in order to develop an expertise in the emerging field of court administration.

The early ICM graduates went on to work in courts across the country as the first formally trained court administrators. They reinforced recognition of their profession among the judicial system and other state and local officials, by their professionalism, skills, system-wide perspective, and national network of court-serving organizations and consultants.

At approximately the same time as ICM was founded, the National Center for State Courts (NCSC) also was established, again under Chief Justice Burger's mentorship. Its establishment provided, for the first time, a national-scope research, information dissemination and technical assistance resource specifically for judges and court managers. The NCSC is an NGO devoted to serving the state courts community and is governed by a board of directors consisting of judges and court administrators drawn from state courts.

Also established during the 1970s was the National Association of State Judicial Educators (NASJE). Over the years, this voluntary association has played an increasingly prominent complementary role to court administrator-specific training organizations by incorporating management training into its judge and non-judicial training and education activities. Membership consists of employees of individual state administrative offices of the courts who are charged with planning and conducting, in conjunction with a state's judicial leadership, in-state continuing education programs for judges and non-judge court personnel.

In 1979, the first joint national training program for court administrators and court clerical personnel was conducted in Sarasota, Florida, and shortly thereafter, the national associations for court administrators and court clerks merged into the current National Association for Court Management (NACM). At the time the organization was established, most court administrative

activity was occurring at the state or local level from which the membership was drawn. With the growth of the court administration profession and the development of professional court administrators in the federal court system, many of those professionals joined the organization. Today, NACM, which has statewide and regional subunits, conducts court administration training on a year-round basis.

In the early 1980s, the NCSC and ICM merged, and today the ICM division of the NCSC continues to offer a wide array of training programs for court management personnel, with a substantial emphasis on technology applications in judicial system operations. Traditional subjects of caseload management, financial management, human resources management, facility management, planning, and interagency and community relations are also offered.

Previously, several U.S. universities also developed judicial administration programs within their curriculum. These included American University in Washington D.C.; the Denver University, in Denver Colorado; and the University of Southern California, in Los Angeles. These programs focused primarily on master's level education although courses in judicial administration were generally also available for undergraduates as well. The Denver University program was established in the university's law school; the other universities conducted their judicial administration programs in their Schools of Public Administration. Currently, however, the formal judicial administration programs of these institutions have been largely suspended or discontinued, although specific courses in the field may still be offered.

## Other Developments

Since the early 1980s, the management func-

tions for state and local courts have exploded, both in terms of the range of tasks needing to be performed and their complexity. The need for professional court administrators is clearly recognized and the functions they perform draw upon a range of skills and expertise which generally require an increasing number of staff to fulfill.

As with all disciplines, the impact of technology on court systems has been extraordinary, affecting the entire caseload and case management process, including the way cases are filed and managed, the manner in which records are maintained and court activity reported, and the nature of equipment that must be procured. Combine the technological revolution with other developments impacting local court systems—security issues, facility needs, fiscal and personnel management functions, legislative developments affecting court services, such as the Americans With Disability Act (ADA), the expanded functions many trial courts are performing in areas such as domestic violence protection and custody disputes, and the need to service increasingly diverse court users, many of whom are litigants who represent themselves, without an attorney, and/or do not speak English—and the educational and training implications for court administrators become all the more complex.

## Tailoring Education and Training

Increasingly, formal education and training for trial court administrators is relying on in-service training programs conducted by the state court administrator's office and/or local in-service training programs conducted by the court itself. The NCSC/ICM certificate program continues to serve a small cadre of court administration staff and the national association meetings focus almost entirely on "cutting edge" issues.

For the past several years, NACM has also begun conducting regional meetings to promote increased participation in its programs and the capacity to tailor its educational services to regional needs. State associations of court administrators have also developed and can provide more specialized training on issues of specific import to court administration staff in the locale. Increasingly, many such staff are also relying on training provided from other sectors, such as technology, fiscal and accounting practices, security and other relevant disciplines with which the court administrator must deal.

In light of the expertise now required to effectively perform the functions of state and local trial court administration, much of the preparatory/orientation training that was initially provided through the various mechanisms discussed above is now expected to be obtained by the court administrator through his/her prior education and/or job experience. As such, in recent times, court administration-specific training has focused upon the application of these requisite skills and experience to the court environment and specific court processes in a given court system. In addition, with the development of the court administration function and the consequent growth of court administrator's offices, training in effective human resource management and skill development has become an added component of training needs for the trial court administrator.

In conclusion, the evolution of training and education services for state and local court administrators in the U.S. has paralleled the development of the functions and skills that these positions have taken on during the past several decades. Drawing upon an informal partnership of national, state and local public and private resources, court administrators' training has evolved from an initial focus on the essential elements of the professional court administrator's role to the more complex application to court practice of expertise and skills in a wide range of technological, management and human services.

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## Internet Sites on Legal Education

### **American Bar Association Section of Legal Education and Admissions to the Bar**

<http://www.abanet.org/legaled/>

A 6,500-member group that strives to improve legal education and lawyer licensing by fostering cooperation among legal educators, practitioners and judges through workshops, conferences and publications.

### **ALI-ABA**

<http://www.ali-aba.org/>

The ALI-ABA Committee on Continuing Professional Education provides extensive online information about its traditional and satellite CLE offerings.

### **Association of American Law Schools (AALS)**

<http://www.aals.org/>

The AALS is a nonprofit association of 164 law schools, which publishes the *Journal of Legal Education*, among other. Conducts standards reviews, annual meetings and workshops.

### **Continuing Legal Education**

<http://www.lpig.org/cle.html>

A guide to resources for attorneys.

### **Federal Judicial Center (FJC)**

<http://www.fjc.gov/>

The FJC is the research and education agency of the federal judicial system.

### **Legal Terms Glossary**

<http://www.lawyers.com/lawyers-com/content/glossary/glossary.html>

Includes 10,000 legal terms, pronunciations and legal definitions.

### **The Judicial Education Reference, Information and Technical Transfer Project (JERITT)**

<http://jeritt.msu.edu/>

JERITT is the national clearinghouse for information on continuing judicial branch education for judges and other judicial officers; administrators and managers; judicial branch educators; and other key court personnel employed in the local, state and federal courts.

### **Principles and Standards of Continuing Judicial Education**

<http://jeritt.msu.edu/pdf/Standardsforweb2.pdf>

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**Jurist: The Legal Education Network**

<http://www.jurist.law.pitt.edu>

Geared to law professors, this website contains research, news, syllabi and other information.

**Jurist: The Birth of a Law School**

<http://jurist.law.pitt.edu/idea.htm>

Articles about the challenges of starting a new law school.

**The Law Teacher**

<http://law.gonzaga.edu/ilst/newsltr.htm>

A newsletter for law school professors containing articles on teaching style, curriculum, and practical advice for practitioners. Also see the Institute for Legal Education publications page at:  
<http://law.gonzaga.edu/ILST/PubsResources/main.htm>

**Legal Education Bibliography**

<http://www.wvu.edu/~lawfac/jelkins/orientation/biblio.html>

**Legal Information Institute:****About: Legal Education**

[http://www.law.cornell.edu/topics/legal\\_education.html](http://www.law.cornell.edu/topics/legal_education.html)

**The McCrate Report**

<http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>

Recommendations of an ABA committee to improve legal education.

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