

NATIONAL ASSOCIATION OF STATE JUDICIAL EDUCATORS

NASJE News

Vol. 7 No. 2

Summer 1992

Alcohol and Host Liability

James C. Drennan

ALCOHOL—an expected and accepted refreshment at most social gatherings? An important lubricant of effective social gatherings? A source of pleasure for many people? The most abused substance in the world? The most likely source of liability or tragedy at a judicial education conference?

The answer to all those questions may well be *yes*. If alcohol is to be included at conference social events, the judicial education conference planner needs to minimize the possibility that it will be abused.

Consider the case of an association of criminal justice employees in a western state. The association was created primarily to sponsor conferences for state and local officials interested in criminal justice issues. At the conferences, the association had a hospitality room, where alcohol was freely available, as well as formal receptions, where alcohol was served by a bartender. At one conference, some members enjoyed themselves—first at the reception,

then at the hospitality room, and, when chased out of that room, at a nearby public bar. When they drove away from the bar, they hit a parked car. Inside the car was a person who sued, among others, the association and its officers. The suit alleged that the association negligently furnished part of the alcohol that caused the driver to lose his faculties and cause the accident. The state law imposed liability on entities who serve alcohol but who are not engaged in its sale (often known as social host liability). In a trial, the fact finder found the association, among others, liable—\$395,000 worth. After the others found liable paid portions of the judgment, the association was left with an unpaid judgment of over \$200,000. It did not have \$200,000 in the bank or in other kinds of assets; after consideration of its options, it declared bankruptcy. The association no longer serves alcohol at its functions.

Could this happen to a judges' association or a judicial education organization that serves alcohol? State law will answer the question. Most states do not impose liability on social hosts for serving alcohol negligently, but the number that do has grown in the last decade (although several courts have also rejected the

doctrine in the same decade). Some of the statutes or court rulings deal only with service of alcohol to minors; others include intoxicated persons as well. A substantial majority of states impose liability on commercial servers of alcohol for the subsequent negligent or intentional acts of their customers, if the servers could have reasonably foreseen that serving the customer could present a danger to others.

Are judicial education organizations or voluntary associations of judicial officials social hosts for this purpose? Fortunately, there have been no instances in which this kind of incident has led to a lawsuit. In the absence of legislation or appellate litigation on the subject, the issue cannot be resolved with certainty. But in a state that draws a distinction between social and commercial hosts, it is clear that the decision of how an entity is classified may be critical in determining if there is liability, as a leading commentator notes:

Definitional problems may arise [in determining if the entity is a social host or a commercial server], however, if the defendant is an organization, not an individual. In such instances, courts generally render decisions based on whether the defendant is deriving an economic benefit, either from the social event itself or specifically from the service of alcoholic beverages. Mosher, *Liquor Liability Law*. 12.06 (1990).

How might that analysis apply to judicial education organizations? In
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Conference Reminder

The NASJE 1992 annual conference will be held October 11-14 in Charleston, South Carolina. Preconference materials have been mailed. Kay Boothman, conference host, urges you to reserve your room as soon as possible for that time is a peak season for Charleston. If you have any questions, call Kay at (501) 376-6655. ■

PRESIDENT'S COLUMN

Jerry Beatty



I never cease to be amazed at the new developments in judicial education. No where in the last few years is change and innovation more evident than in the programs, products, and technical assistance now available to states due largely to grant awards by the State Justice Institute (SJI). *The Judicial Education Grant Awards Sourcebook*, *Judicial Education Products Review*, and *Judicial Education Program Summary*, publications of the Judicial Education Reference, Information and Technical Transfer (JERITT) Project, illustrate some of the education-related projects funded by SJI.

One publication I would like to highlight is *Issues and Trends in Judicial Education*, volume 1, October 1991, prepared by Professor John Hudzik and the JERITT staff. *Issues and Trends* is based on a detailed survey of 57 judicial education organizations at the state and national levels. The findings present the best information to date on the state of judicial education in the United States.

A few of the study's findings are summarized below.

- Allowing for varying interpretations of "mandatory," 28 states require continuing judicial education for most or all judges. Another 13 states have educational expecta-

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Judicial Writing

Dr. Elizabeth A. Francis

Expert instruction in judicial writing is central to a comprehensive program of judicial education. Just as judges benefit from close study of substantive law and refinements of procedure, judges benefit from studying the features of language on the page. Judicial writing courses need not be long, but they need to be taught to the highest contemporary understanding of legal language and its special variant, judicial discourse.

Strong judicial writing programs balance work on "opinion writing"—the traditions, logic, and design of model documents—with "judicial writing"—the underlying rhetorical and stylistic principles that govern reader/listener perception and enable judges to write clearly, cohesively, cogently, and completely. Strong judicial writing programs direct attention to the patterns of language on the page, training judges to recognize details of style and their effects. Such courses emphasize principle rather than rule, recognizing that a small subset of underlying principles governs expert uses of language and permits writers to infer and discern "rules" that are merely conventions. Judges do well in judicial writing courses that emphasize the difference between principle and rule, for they are expert at comparing principles and fact in daily courtroom work. Judges are trained analysts who have, under the pressure of heavy work loads, seldom had the opportunity to consider "style." Judicial writing programs offer an opportunity for the judge to examine writing, which, current research demonstrates, both encodes and affects the outcomes of decisions. Judicial education programs that offer judges the opportunity to look closely at style, even for a short time, produce clearer prose, sharpen analytical and listening skills, and raise standards

of argument and case presentation in courtrooms.

It is extremely important for judges to understand (1) fundamental principles that govern and reliably produce clear, precise, cohesive, coherent, and well-argued writing; (2) extension of those principles in argument design; (3) principles of style that govern audience response and viewpoint; (4) points at which skilled use of writing principles invokes judicial ethics; (5) differences between legal and judicial language; (6) the purpose of the writing and its intended audience. The carefully planned course states its objectives and keeps its promises. It presents materials collaboratively, no matter how large the group or how short the time. And it is tailored to the needs of the judges who participate. The best judicial writing programs acknowledge adult education models, but also offer powerful training in intellectual inquiry and critical thinking, based upon contemporary research in legal language.

The outcomes of the well-designed judicial writing program are many: (1) clear, coherent, readable opinions; (2) efficient oral rulings; (3) skilled handling of witnesses, jurors, attorneys, and experts in the courtroom; (4) better individual writing, but also better listening, reading, and decision-making skills; (5) efficient understanding of statutes, issues, and legal principles; (6) clear understanding of the effects of key language patterns on audiences and on decision making; (7) comprehension of ethical issues of language in the courtroom; (8) increased ability of the public to understand decisions; (9) better handling of questioning and hearings in juvenile matters; (10) clear communication with jurors; and (11) sharpened interest in and attention to nuances of language and their effects on courtroom behavior and case outcomes.

Finally, good judicial writing programs, whether short or long, understand that judicial language and ju-

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Dr. Elizabeth Francis has been faculty coordinator of judicial writing courses at the National Judicial College for 10 years.

Judicial Specialists

Gary J. Scrimgeour, Ph.D.

Many judges agree that judges in the 1990s must know more about almost everything, and judicial educators will try to do the job. But the lectures on specialized topics given to large numbers of judges that characterize today's judicial education can waste learners' time and strain their attention spans; the topic may or may not be relevant in a judge's court. Judges must study subjects more deeply. The study should be appropriate to the judge. It should be timely, coming when needed. The knowledge acquired should be broad and current.

How to do it? There is a way, one that is familiar among the faculties of technical subjects in universities: the cadre of specialists from the profession who learn, teach, and do. The judiciary needs judges who are themselves experts in any of several subjects and who act as experts for their colleagues; in other words, judges who specialize. We need to create a judge in whose knowledge level colleagues can feel confidence.

By analogy from technical professions, one can see how to create such specialist judges (and without the impracticable sabbatical). The specialist judge would set out on a formal program of education attached to a certification process. There would be levels and subsets of knowledge to be acquired, places or individuals for instruction, a credential won by examination, continuing education, and formal recognition of specialist status.

Like an engineer or a geologist, a judicial specialist would then act as adviser, educator, and consultant both to individual colleagues and to the state's judiciary as a whole while still performing as a judge.

Specialists would become permanent resources for their colleagues in a selected area, providing informa-

tion and research support, knowing where to network with judges in other states and with subject matter experts from other jurisdictions.

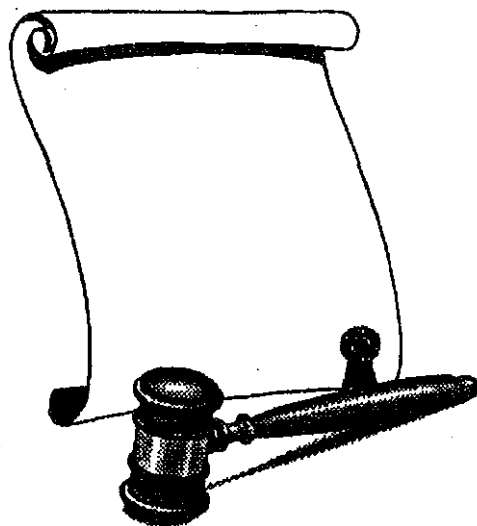
The difficulty of bringing this about may make the idea look like pie in the sky. But every state already has the means: the office of the state judicial educator, staffed by experts with the skill to provide depth, persistence, continuity, and credentialing, if they decide that their judges must supplement continuing legal education with something more academic.

The state judicial educator's office, as the logical broker and guarantor for specialist education, could provide staff and research support. Currently, a state judicial educator working on a subject area for this year's large-lecture program may identify only a single available expert; the job in the future would be to identify all the experts and to determine how the experts will instruct the judicial specialists-to-be. The judicial education office would itself become a repository of knowledge: a resource library, a directory.

The office would also superintend the credentialing process. Educational programs might be provided with special economy by the national education organizations or by three or four states; but their acceptability as "satisfying a requirement" would be determined by the state judicial educator.

The office would also connect judicial specialists and the rest of the judiciary, deciding how the specialist is best used and discovering when and where the specialist is most needed. Specialists and educators would, thus, be staff for each other.

Together, specialists and state judicial educators can serve other functions: as consultants when legislation is needed, for instance, or when inquiries come from other states or national-level research, or when a teaching resource is needed by another state. They would create an identifiable structure of expertise within the state and the nation.



Because judges are already specialized and give briefings within areas of the statutes and case law, the subject matters for specialization would be, for the most part, nonlegal: handling life support issues, perhaps, or sentencing alcohol/drug offenders, expediting caseload, managing the complex case, or dealing with children in court.

Currently, too much of the special expertise of state judicial educators and some judges is wasted. It is used once, or infrequently. It is rarely thorough or current. It is hard for outsiders to tap. Considering the level of education and intelligence the judges and state educators possess, waste of their expertise is intolerable because they are a government-paid resource for the whole judiciary and, hence, the community. There is also a detectable nationwide thirst among judges to use their abilities more precisely.

Judges consider stress, tedium, and burnout among the major dangers of their work. We should too. Judges need incentives: to stay interested despite the grind of their job; to undertake refreshing education voluntarily and at their own expense; to win real recognition from their colleagues and community. It is within the power of every state judicial educator to offer all that immediately and at almost no cost.

In this era of rapid change, the judiciary needs to marshal its resources more effectively. It can no longer afford only scatter-gun benefits from education. In a time of lessening resources, it needs to discover how to create economically the daily

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Teleconferencing Project of the Ohio Judicial College

Martha V. Kilbourn

Judicial education using audio teleconferencing has become very popular with referees* in Ohio because it allows them to receive quality continuing legal education and to discuss pertinent issues with other referees across the state without leaving their courthouses. Twelve cities were selected as teleconference sites, based on the number of referees in the area. The teleconferences each last two hours and are generally held over the lunch break. This scheduling results in limited time away from busy dockets.

The judicial college conducted 24 audio teleconferences between October 1990 and October 1991 under a grant from the State Justice Institute. Nearly 1,200 juvenile, domestic relations, and municipal court referees participated. The project was so well received by the referees that teleconferences will be offered to judges and court personnel with the costs supported by the Supreme Court of Ohio.

An audio teleconference is similar to a large-scale conference call and uses telephone lines to connect the sites. Each of the 12 teleconference sites has a speaker box and three microphones to enable large groups of people to communicate with the other sites. Attendance at each site runs from a minimum of four referees in the smaller communities to a maximum of 25 in the larger cities.

Each site has a program facilitator (a referee or another court employee) who is responsible for:

- registering referees,
- maintaining and setting up the teleconference equipment,
- receiving advance mailings of conference materials,
- establishing a comfortable learning environment,
- returning to the judicial college documentation of participants' attendance.

Each participant receives a course manual that contains the visual materials that would normally be shown on an overhead or flipchart during a typical judicial college course. A picture of the faculty is also provided so that the participants can match faces with voices.

It is *essential* that every teleconference include the opportunity for interaction. A lecture is not effective for a teleconference program. Generally, participants can listen to a disembodied voice for no longer than 15 minutes without losing attention. Effective ways of prompting interaction include:

Frequent question and answer periods. These segments are more effective after the participants have become familiar with the equipment and are no longer intimidated by the microphones. Many times the speaker has directly asked a specific question about a court to generate discussion. Advice to faculty members: "If participants don't ask you any questions, ask *them* some."

Hypothetical case analyses. These segments provide the opportunity to apply new learning acquired during the teleconference. Copies of the cases are included in the manual, and each site is assigned a specific case. The conference breaks for 10-15 minutes while the participants at each site discuss the issues. When the conference reconvenes, each site reports its ideas. Variations of this include:

- subgrouping the teleconference to combine two or three sites for discussion (this is particularly good if there are fewer than five people at each of the sites);
- assigning a case to one site for comment and to a second site for follow-up.

Because of the nature of audio teleconferencing and the limitation of the two-hour timeframe, teleconferences must be focused, interactive, and supply information that is applicable to the referees' work in the courtroom. The college con-

ducted a number of highly successful teleconferences in which new legislation was reviewed and discussed. The participants then applied this knowledge to hypothetical cases.

The judicial college considers audio teleconferencing very cost-effective. The cost per hour is just over ten dollars per participant and includes the telephone line time, printing, postage, supplies, faculty and staff travel, and funding for advisory committee meetings. The equipment cost was a one-time expenditure of approximately \$650 per site and includes three microphones and a speaker box, which are connected to telephone lines.

There are two main disadvantages to audio teleconferences: the lack of both visual stimulation and direct interaction between the speaker and the participants. Compensation can be made for these drawbacks by supplying written materials and encouraging referees to participate in their own learning by asking and answering questions and by discussing the hypothetical cases.

The advantages of audio teleconferences must be balanced against the disadvantages when determining the effectiveness of the project. Substantial time and money are saved because the participants do not have to travel. Additionally, referees from the same court can meet for the teleconference and communicate with other referees from all over the state without leaving their courts. It should be noted that the judicial college considers teleconferencing a supplement, not a substitute, for its more traditional education offerings.

**In Ohio, a referee is an attorney employed by a court to conduct hearings and make recommendations to the judge as to the proper disposition of a case. Additional information and copies of the independent evaluation of the teleconferencing project in Ohio may be obtained from Martha V. Kilbourn, Assistant Director, Judicial College, Supreme Court of Ohio, 30 East Broad Street, 23rd Floor, Columbus, OH 43266-0419. (614) 752-8677. ■*

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The Future of Interstate Child Support

Margaret Campbell Heynes

It is well known that the easiest way to avoid paying child support is to leave the state in which you were ordered to pay support. (Testimony by Wendy Epstein before U.S. Commission on Interstate Child Support.)

No one questions that the interstate system is in disarray. According to a recent GAO study, at least 30 percent of child support cases are interstate. Yet only \$1 of every \$10 collected comes from an interstate case. The Family Support Act of 1988 established a 15-member federal commission that will report to Congress on needed improvements to the interstate child support system in May 1992.

In developing its recommendations, the commission has relied to a large extent on "users" of the system—parents, child support case-workers and administrators, private and public attorneys, decision makers, and court administrators. Organizations testifying at public hearings included the Conference of State Court Administrators and the National Council of Juvenile and Family Court Judges. The following principles have guided the commission's work:

Children thrive best when they receive healthy emotional and adequate financial support from both parents.

Although visitation and child support share important roles in the world of the "separated" child, they present separate legal issues. Nonpayment of support should not be a valid defense to visitation denial. Similarly, visitation interference should not be a valid defense to nonpayment of child support.

The paramount goal of any child support system should be the improved economic security of all children.

The best interest of children should motivate policymakers' decisions concerning legislative and procedural reform. In some instances, that interest must be balanced against the state's interest in recouping or minimizing the public expenditures.

In order to achieve an improved interstate child support system, laws and procedures need to be more uniform and less complex.

To create needed uniformity in the interstate area, many of the recommendations will affect intrastate support cases as well.

The commission is recommending four major reforms: creation of a national computer network, state registries of support orders, W-4 reporting of child support obligations, and direct income withholding.

Creation of a National Computer Network. States must be able to exchange information expeditiously. The commission recommends linking the existing Federal Parent Locate Service with statewide automated systems so that a state child support agency could broadcast information requests to a specific state or to the entire country. Agencies would have access to automated federal and state records for the purpose of locating the obligor or the obligor's assets.

State Registry of Support Orders. To facilitate the interstate enforcement of support orders, the commission recommends that each state establish a registry of support orders and that orders or abstracts of the orders be maintained on the registry. The commission proposes that the registry contain all orders enforced by the state child support program (IV-D orders) and non-IV-D orders that are placed on the registry by a parent.

W-4 Reporting of Support Obligations. One of the greatest barriers to interstate child support collection is lack of locate information. Obligor often move from job to job and from state to state. In order to have current locate information, the state of Washington piloted a unique program involving W-4 reporting. The commission recommends that this idea be implemented, with some modification, at the national level.

The W-4 form for reporting exemption claims for new hires should be amended to reflect whether the employee has a support obligation, the terms of any such obligation, and the existence of an income-withholding order. The employer is to begin withholding immediately if the employee indicates the existence of such an order. Information provided by the employee, including the lack of any support order, will be broadcast over the proposed national network. States will either verify or correct the information. If the employee is subject to an income-withholding order, the appropriate state will send directly to the employer a copy of the income-withholding order. In such a manner, income withholding can commence with the employee's first paycheck.

The commission further recommends that the federal government develop an order for income withholding so that employers are not unduly burdened by processing 54 different state forms.

Direct Income Withholding. Under current law, an employer need only honor income-withholding orders that are issued by tribunals with jurisdiction over the employer. If such jurisdiction is lacking, the rendering tribunal must forward a copy of the support order and a request for interstate income withholding to the state that does

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Margaret Campbell Heynes is chair of the U.S. Commission on Interstate Child Support.

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CONTINUING PROFESSIONAL EDUCATION ADVISORY BULLETIN

A service of the
**JUDICIAL
EDUCATION
ADULT
EDUCATION
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**The National
Association of
State Judicial
Educators**
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Editor's Column

It's interesting how good ideas are used in many different contexts. This happens frequently in the field of continuing education, where we don't often have the opportunity to learn what other professional fields are "up to." However, we frequently find that what they are "up to" is very similar to what we're doing!

In this issue, we provide some ideas and resources from similar fields; there is clearly overlap with judicial education. The lead article discusses some state judicial systems that have adopted judicial evaluations, a practice commonly used in business and industry settings. Two leadership programs are also discussed, as well as the new resource on quality standards in continuing legal education. No doubt these topics sound familiar to judicial educators. It is not only exciting to see what other fields are doing; it is also affirming to see that we are on a similar path.

Diane E. Tallman
Editor

Performance Management in the Judicial Sector

Assessing and evaluating the performance of employees is a fairly commonplace practice in most work settings. The way in which it gets done certainly varies across organizations - it may be formal or informal, it may involve only supervisor review or peer review as well, it may occur annually or several times during the course of a year, or be so ingrained into the organization that it occurs continuously. The current way of referring to this activity is "performance management;" this term denotes ongoing attention to performance and the concept of managing, rather than simply assessing, performance. In this article, information on performance management in the

judicial sector will be presented. Information will be drawn from a recently published article in the *State Court Journal*, "Judicial Performance Evaluation Comes of Age" by Keilitz and White-McBride (1992). The innovative programs described in this article will be discussed in terms of some of the management literature in this area.

Principles of Performance Management Systems

According to Rausch (1985), performance management is a "multistep process for encouraging, or stimulating performance which exists in every organization, either formally or informally" (p. 5). In management settings, this is done not only to improve actual performance on the job, but also for reasons such as increased employee satisfaction, greater employer control, or compliance with institutional regulations. In the judicial setting, on the other hand, there are other reasons why a state decides to implement assessment of its judges. In the programs described by Keilitz and White-McBride, states were interested in attaining some or all of the following goals: (a) improving the performance of judges (an individual and institutional benefit), (b) gathering assessment information to help voters make decisions in judicial retention elections, (c) providing direction for judges in their continuing education, (d) helping in effective assignments of judges, (e) improving the design of CJE, and (f) increasing the public's awareness of the judiciary.

Whatever the goals of any performance management system, Rausch (1985, pp. 16-19) believes that the following principles should underlie that system:

1. The system should be as thorough as possible.
2. The system should use measurements of performance which are as accurate and factual as possible.

(continued...)

3. The system and measuring techniques it uses should be meaningful.
4. The system should satisfy the needs of the organization and of the individual, including the shared need for effective communication.

With these principles in mind, we will take a closer look at systems of judicial assessment that are currently in place or that are being developed. According to Keilitz and White-McBride, six states and the Navajo Nation courts have judicial performance evaluation programs, with eight additional states in the development process. Their article focused on four programs - Alaska, Colorado, New Jersey and Minnesota - that are currently operational.

Principle 1 - Thoroughness

Essentially, this principle is concerned with assessment of all employees, evaluations that assess all responsibilities of an employee, and time frames that assess an entire period of work. In judicial assessment, thoroughness appears to be the general rule. Since judges have a variety of responsibilities that involve various segments of the judicial system, assessment often is conducted by several groups of individuals. For example, in Alaska, information on a judge is collected from attorneys, peace officers, and probation officers who rate the judge on a range of performance measures. Additionally, juror questionnaires, as well as public hearings, offer ways to get input from the general public. Judges themselves also complete a questionnaire, providing a third means of assessment. In other states, videotaped sessions, peer review, and review by a communications expert provide additional ways of gathering information. This emphasis on getting information from a number of sources provides strong evidence of the thoroughness of these judicial assessment systems.

Principle 2 - Accurate and Factual Measures

This principle focuses on the accurate and objective measurement of performance which should result in comparable results across evaluators. Also, there should be an appeals process for the employee. Judicial assessments achieve this goal in several ways. First, as is noted above, there is more than one rater of performance so that a number of evaluative comments are gathered. This information is then usually forwarded to a centralized body, such as Colorado's state and local commissions, New Jersey's Senate Judiciary Committee, or Minnesota's supreme court committee. This centralized body then has the opportunity to compare assessments from the various evaluators and observe the "inter-rater reliability," or how comparable the ratings were.

Additionally, the various individuals conducting evaluations will only assess the judge on areas relevant to that individual. For example, some states utilize a communications expert to assess communication performance in the courtroom; or, in Alaska, attorneys assess the legal abilities of judges (rather than those who do not have a legal background). Minnesota uses "resource judges" - sitting or retired judges - to help with courtroom assessment.

Principle 3 - Meaningful System and Measures

This principle is concerned with how meaningful and relevant the measures are in evaluating employees. The measures should examine behaviors that are within the control of the employee. As noted above, many of the judicial performance management systems include various aspects of the judge's behavior, particularly their courtroom behavior. Obviously, this is a very meaningful component of the judges' performance and therefore, should be a large part of the evaluation. Moreover, this courtroom behavior is often evaluated from several perspectives (legal judgments or communication skills, for

example). In the systems described by Keilitz and White-McBride, considerable attention has been given by states to ensure meaningful evaluation.

Principle 4 - Satisfy Needs of the Organization

Concern for the organization is the major emphasis of this principle. However, in judicial evaluation systems, the "organization" is not the only recipient that benefits from a performance management system. Some states are specifically concerned with providing feedback to the public for judicial retention elections; therefore, performance management systems benefit the general public as well as the state judicial system. Certainly, communication between some of the various constituencies within the state judicial system is enhanced by this process and judges are provided important feedback - often difficult to achieve in the isolated occupational setting in which they perform their work.

While judicial performance management is still in the early stages, many states have made a commitment to it. Keilitz and White-McBride close their analysis by stating: "Judicial performance assessments offer many intrinsic benefits. Judges can learn about and reflect on how their performance is perceived by others, and judicial educators can target resources to performance areas needing attention" (p.13). These systems seem to be a potentially valuable tool for judicial educators in planning educational programs.

Diane E. Tallman is project director of the JEAEP Project.

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Leadership Programs in Continuing Education

Two institutional forerunners in professional development have announced their 1993 leadership development programs. Judicial educators have participated in both programs. The Leadership Institute for Continuing Professional Education, cosponsored by Harvard University and The Pennsylvania State University, is currently planning its second institute, a week-long, residential program at Harvard. The University of Georgia's National Leadership Institute for Adult and Continuing Education is accepting nominations for participants in its third institution, a program consisting of 3 one-week sessions held throughout the year. These intensive programs are designed to meet the needs of continuing educators from a variety of contexts. NASJE members are encouraged to contact the appropriate institution if interested in more information.

Leadership Institute for Continuing Professional Education

The inaugural session of the Leadership Institute for Continuing Professional Education was held at Harvard University in March. Cosponsored by Harvard and The Pennsylvania State University, the one-week residential program brought together forty continuing professional educators from the United States, Canada, and New Zealand.

Participants represented a variety of professional fields including medical, judicial, legal, nursing, and engineering education. They remarked that the program provided a rare opportunity for continuing professional educators from different fields to discuss common issues and concerns about their practice. Institute topics included faculty development, the professional as a learner, needs assessment, and marketing strategy.

Faculty members - most of whom were in residence for several days -

included Donald Schon from MIT, Ron Cervero from The University of Georgia, Bob Kegan and Cliff Baden from Harvard, Donna Queeney and Wayne Smutz from Penn State, and Alan Knox from the University of Wisconsin. Teaching formats included case studies, large group discussions, experiential exercises, and small discussion groups.

The Leadership Institute was an unusual exercise: continuing professional education program for continuing professional educators. With that in mind, participants and faculty discussed openly the relative strengths and benefits of different aspects of the program. There was a strong consensus that the Institute was a provocative, energizing experience. It created a unique forum at which practitioners could share perspectives on the issues facing the field of continuing professional education today; it also provided an all-too-rare opportunity for them to step back and reflect on their own practice.

Plans are underway for a second Institute to be held at Harvard next year. For more information, please contact Patricia Teti, Program Coordinator, 339 Gutman Library, Harvard Graduate School of Education, Cambridge, MA 02138, (617) 495-3572.

National Leadership Institute

The National Leadership Institute (NLI) in Adult and Continuing Education is an opportunity for the enrichment and renewal of both emerging and established leaders in adult and continuing education. This yearlong institute is structured in three residential learning sessions held at the Georgia Center for Continuing Education.

Nominations for participation in the third NLI are now being accepted for the institute beginning in spring 1993. Nominations will be accepted through July 28, 1992.

The program will start with Focus I: *Leadership in the Field of Adult and Continuing Education* on February 17-21, 1993. This segment develops participants' critical thinking skills and

encourages them to strengthen the bridge between theory and practice. Participants will create their vision for the future of the field through such sessions as:

- ♦ what does it mean to be a leader in our field
- ♦ leadership: a futurist's perspective
- ♦ the scope of our field: the problems and benefits
- ♦ strengthening the bridge between theory and practice
- ♦ integrating leadership and change: a commitment to self, others and the field

Focus II: *Organization Leadership* on June 23-27, 1993, deepens the understanding of the applications of organizational leadership through such sessions as:

- ♦ dealing with diversity and change in organizations
- ♦ strategic planning
- ♦ integrating strategic planning into your organization
- ♦ power and empowerment in organizations

The last session, Focus III: *Individual Leadership* on October 13-17, 1993, orients participants to leadership development theory and research, and lets them design an operational framework for recognizing, developing and applying their own strengths as leaders. Sessions include:

- ♦ what do the "experts" say about leadership?
- ♦ exploring your own philosophy and style as a leader
- ♦ vision and individual leadership: can one person really make a difference?
- ♦ becoming a reflective practitioner

Tuition for NLI includes all instructional materials, lodging at the Georgia Center and most meals. The total for all three sessions is \$3,200. Participants are responsible for their own transportation costs. A limited number of partial scholarships are

available.

For more information, please contact: Edye Stolz, NLI Project Manager, Room 280, Georgia Center for Continuing Education, The University of Georgia, Athens, GA 30602, (706) 542-2275.

Resources

American Law Institute-American Bar Association Committee on Continuing Professional Education (1991). *Attaining excellence in CLE: Standards for quality and methods for education*.

At the Arden House III Conference in 1987, conferees put forth a charge to the American Law Institute-American Bar Association (ALI-ABA) to "undertake a study to design methods to evaluate the quality of CLE programs and materials and the performance of CLE providers (p. xi)." ALI-ABA took on this recommendation and hence this book.

Attaining excellence in CLE: Standards for quality and methods for education contains four sections which discuss the need for quality continuing legal education; an introduction to the standards; the standards, including comments and self-evaluation questions; and methods for evaluating the quality of programs.

The Arden House III Conference considers performance standards to be essential in attaining quality in CLE programs. In the first part of the book, the Committee for Continuing Professional Education lists five reasons for establishing quality standards in continuing legal education. These standards and the accompanying methodology provide the vehicle for self-evaluation by CLE providers. Self-evaluation efforts can review all aspects of a CLE program, such as development and implementation. These quality standards and methods are proposed for use on a voluntary basis by providers of continuing legal education.

The second part of the book provides an introduction to CLE quality evaluation standards. The 1987 Arden House III Conference reported on the findings from

a study to update a previous one on the quality of continuing legal education. Specific recommendations were made by conferees to ALI-ABA's Committee on Continuing Professional Education in response to the findings.

A major purpose of the quality standards outline in this book is to ensure that continuing legal education learning experiences promote specific professional competencies. Curricula, then, would be centered around these competencies and measured by the behavioral impact. The standards in this book are built on the main goal of continuing legal education today, which is to provide opportunities for lawyers to achieve, maintain, and improve their professional competence, as well as to increase their ability to accomplish practical lawyer-like tasks.

Continuing legal education has always believed that leadership should come directly from the legal profession or its associates. With the growth of continuing professional education as a distinct field, however, the view that only members of the legal profession should administer its education programs is changing. A major recommendation during the Arden House III Conference was to involve individuals who are formally trained in continuing professional education or adult education as consultants.

The quality standards for continuing professional education began in the 1960s in the medical field and entered the legal profession in 1975. The current standards for quality in CLE are based on the "Principles of Good Practice in Continuing Education" which was put forth in 1984 by the International Association for Continuing Education and Training. The "Principles" assert that the goal of continuing education is behavioral change in skills, attitudes, and proficiencies as demonstrated in performance. The ALI-ABA Committee on Continuing Professional Education has critiqued these principles in developing the current standards. Thus, the standards for quality are stated in general terms to allow for a variety of learning objectives, and do not specify rules that would constrain potential goals of continuing legal education.

The third part of the book groups the quality evaluation standards into six components of continuing legal education. Within each component, standards are stated, accompanied by comments, and questions to be used by CLE provid-

ers in their self-evaluations. These questions collectively form a methodology to be used in evaluating the performance of CLE providers and the quality of their programs. Questions are phrased as inquiries that administrators might make of their organizations in determining how their program is meeting the standards.

The final part of the book compiles the questions that appear at the conclusion of each standard as a practical resource for the continuing legal education administrator. A candid and critical assessment is encouraged by checking off the appropriate answers in working through the list. Blank pages have been provided for note-taking.

Attaining excellence in CLE is recommended for all providers of continuing legal education. The standards are outlined, clearly stated, and have helpful comments. The self-evaluation questions are presented separately so they have practical application.

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Continuing Professional Education Advisory Bulletin

The *Continuing Professional Education Advisory Bulletin* is published as an insert to the *NASJE News* by the Judicial Education/Adult Education Project. The JEAEP Project is housed at The University of Georgia Center for Continuing Education. It is made possible by a grant from the State Justice Institute (R-01-044). Opinions expressed herein, however, do not necessarily reflect the views of the State Justice Institute.

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President's Column, *continued*

tions or requirements that are "quasi-mandatory," i.e., applicable only to certain types of judicial officers or programs.

- In 1991 the average state judicial education organization trained 1,446 participants; the median was 1,575.
- Over two-thirds of the state judicial education organizations are affiliated with either the supreme court or the state court administrator's office. The remaining organizations are associated with a university, a judges' conference, a nonprofit corporation, or a combination.
- There were 2 state judicial education organizations before 1961, 9 by 1970, 35 by 1980, and 47 by 1990.
- Ninety-five percent of the directors of judicial education organizations have a postgraduate degree; over one-third have a master's degree; nearly half have a law degree; and 14 percent have a Ph.D.
- Salaries of state judicial educators range from \$25,000 to \$114,000, with \$50,000 the median.
- The number of full-time employees in state judicial education organizations ranges from 0 to 30; the average office has five employees; 40 percent have three or fewer.
- Three-quarters of the state judicial education organizations have policymaking boards that provide information, advice, and ideas for curriculum and programming.
- The groups that receive the most education and training are (in order) new judges, general jurisdiction judges, chief or presiding judges, limited jurisdiction judges, special judges, court administrators and deputies, and clerks of court.
- The median state judicial education budget is \$300,000 per year.
- On the average, 87 percent of the state judicial education budgets go to in-state programming; 13 percent is allocated for out-of-state education.
- The most popular months for programming are April, October, and

November, in that order; the least training occurs in August and the winter months.

- Where rules or guidelines exist, on the average, judges and nonjudicial personnel are allowed five days of educational leave per year. Many states, however, have no formal policy or fixed limits for judicial training leaves.
- Lecture is used in over 80 percent of the programs; two-thirds use discussion and question/answer sessions; and 40 percent use problem-solving exercises.
- Sixty percent of the offices have a lending library; ten offices permit out-of-state borrowing.
- Nearly 90 percent of judicial educators believe they have freedom to shape programming and program contents.
- Judicial educators identified lack of staff and inadequate budgets as their "principal problems."
- Although most judges have continuing judicial education opportunities, it is estimated that three-fourths of the court support personnel receive little, if any, initial or continuing education.

The National Association of State Judicial Educators (NASJE) was founded in 1975 by a handful of dedicated judicial educators who envisioned an ongoing organization for the exchange of information, ideas, and techniques to enhance state judicial education programs. Since then, NASJE has grown to approximately 100 members from 41 states, the District of Columbia, six national organizations, and three foreign countries. Today, state judicial educators have an estimated training pool of over 28,000 judges and 300,000 court personnel.

The JERITT survey found that judicial education in the United States is "big business," costing state governments alone more than \$22 million annually. Judicial educators conduct over 1,000 programs a year for 57,000 judicial officers and court staff. Although many judicial education offices, like other state departments, are currently facing budget shortfalls, judicial educators report

strong support for education and training among the major judicial power centers, i.e., supreme courts, state court administrators, and trial judges.

Survey data suggest the need for continuing judicial education and professional development will continue to spur increased demand for training opportunities. The study concludes that continuing judicial education has "come of age" and has emerged as a "great influence" in improving justice system performance and revising policies and practices in state courts. Our critical and continuing challenge is to contribute what we can to this process.

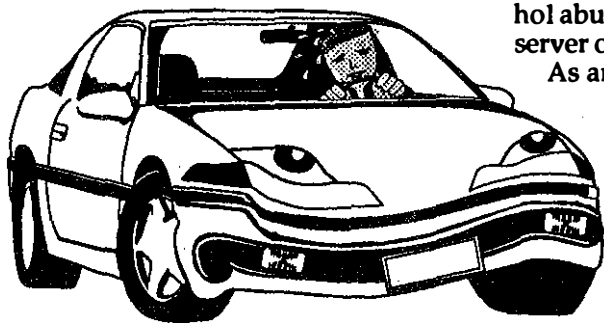
The Judicial Education Management System (JEMS) project is off and running. The project, which is a response to the difficulty most state AOCs have in providing automation support to judicial education offices, will survey the state of automation support for judicial education offices nationwide, analyze automation needs, evaluate existing software packages against the needs of educators, and design a model judicial education management system.

The project's development committee began drafting the national survey and structuring the requirements analysis process last October. The project is especially sensitive that its technical questions are appropriate for nontechnical respondents.

The project completed the bulk of the requirements analysis in February and expects to have completed its survey of generic adult education software by April. Tony Fisser, Richard Saks, and Larry Stone, under the aegis of the JEMS project, attended the Third Annual National Court Technology Conference, which was held in Dallas in March.

■

Alcohol and Liability, continued



D'Amico v. Christie, 518 N.E.2d 896 (N.Y. 1987), the New York Court of Appeals declined to impose liability on a social and athletic association that consisted solely of employees of a corporation. Its sole purpose was to conduct two social functions each year. The court declined to find the association liable under a statute imposing liability on sellers of alcohol. The statute required a sale, and the court found that this kind of service of alcohol in which the alcohol was purchased by the pooling of funds by association members was not a sale. In declining to extend common-law liability for negligent service of alcohol by the group, the court noted that the association did not sell or actually serve the alcohol; instead, individuals served themselves, and no representative of the association monitored the degree to which individuals were consuming alcohol. The court also noted that the motor vehicle accident in the complaint occurred off the association's premises. Both practices deprived the association of the opportunity to control its members' behavior. A similar analysis might be applied to determine if an organization existing for educational and other professional advancement should be held liable in a state that imposes liability on commercial servers of alcohol but not on social hosts.

That analysis poses a dilemma for the person responsible for determining how alcohol will be served. If the alcohol is left for anyone to get as much as he or she wants, there may be less likelihood of liability under the New York court's ruling; there is also a much greater chance of alco-

hol abuse. What is the responsible server of alcohol to do?

As an initial step, research the state law on the subject to determine if liability is recognized by statute or common law on commercial servers and on social hosts. If it is, investigate how the organization in question might be classified. If liability is a possibility, take the steps necessary to minimize risks to the organization and public.

But if there is no apparent problem with liability, a prudent and responsible organization should see what steps, if any, are necessary to minimize the risk to the public. This kind of liability is a developing body of law, and an organization may be just an accident and a lawsuit away from being the test case in a particular state.

What steps can an organization take to ensure that it is being responsible in handling alcohol? It can:

1. Provide nonalcoholic beverages as an alternative.
2. Always provide food to accompany the alcohol, including high-protein food and snacks that are not salty and do not increase thirst.
3. Control the manner in which the alcohol is served, preferably by using a facility's trained bartender or by having someone in the organization who is designated as a monitor. This is especially important when hospitality rooms remain open for several hours.
4. If the event is in a hotel or facility licensed to sell alcohol, consider using a cash bar; it ensures that nondrinkers do not pay for the alcohol of others, and it provides a useful check on overconsumption.
5. For early evening social hours or cocktail parties, follow up with a banquet at the same place to provide valuable sobering-up time; this also ensures that the beneficial effects of food on alcohol absorption will be present. Be cautious in including wine with the meal if a cocktail party precedes the meal.

6. Conduct the event in a facility that does not require participants to drive immediately after the event. If the conference is in a hotel, having the event in the hotel makes it possible for an overzealous drinker to sleep it off before driving.
7. If the event must be held away from the hotel, transportation of potentially unsafe drivers should be provided. If the use of private autos is unavoidable, promote the use of designated drivers. Be prepared to use taxis if necessary.
8. Provide leadership. Let the participants know in a polite way that responsible alcohol use is expected.

Hopefully, these practices will prevent problems. If they do not, confronting a person who has abused alcohol is difficult, especially if the person is a judge. A firm, non-confrontational and nonjudgmental suggestion that the person not drive (or not speak rudely to others, or not keep drinking at the open bar, etc.) will be unpleasant, but it pales in comparison to the unpleasantness that occurs if the person does drive (or gets in a fight) and causes an injury to self or others.

No state imposes strict liability for alcohol service; the issue, even in social host liability states, is whether the server acted reasonably. That should be the standard for responsible conference planning as well, regardless of the law. ■

Membership Information

To receive NASJE membership information, write Diana Clemons, chair, NASJE Membership Committee, Education Services, Administrative Office of the Courts, 100 Millcreek Park, Frankfort, KY 40601-9230; (502/564-2350). ■

The Future of Interstate Child Support, *continued*

have jurisdiction. The two-state enforcement process is cumbersome—according to a recent GAO report, 72 percent of state agencies are avoiding interstate income withholding by sending the withholding order directly to the out-of-state employer. Surprisingly, these agencies report that 75 percent of employers comply with direct withholding requests. The respondents to the GAO survey recommended that Congress legalize the practice that is already widespread. The commission agrees.

The commission has developed approximately 100 additional recommendations for improving the interstate child support system. The following highlighted recommendations may be of particular interest to judges and court administrators.

Support Guidelines. The commission recommends that Congress establish a commission to explore the desirability of a national child support guideline.

Duration of Support. To avoid forum shopping, every state should impose a support obligation until a child is 18 or completes secondary or vocational school, whichever event occurs later. States should also be required to authorize decision makers to award support, if considered appropriate, until a child enrolled in a postsecondary or vocational school reaches age 22.

Statutes of Limitation. Every state should have laws providing that an obligor's support obligation is enforceable until at least the "child's" thirtieth birthday.

Parentage Establishment. States should have laws authorizing a state tribunal to legally establish paternity based on a voluntary acknowledgment of parentage, without the necessity of formal pleadings or a hearing.

Uniform Interstate Family Support Act. Congress should require all states to enact the proposed Uniform Interstate Family Support Act (the revised, revised URESA) without change as of a certain date.

Self-employed Obligors. The commission recommends that states put holds on occupational and professional license renewals until the obligor takes care of his or her child

support arrears. Similarly, states should put holds on driver's license and motor vehicle registration renewals in cases where the applicant has an outstanding warrant for failure to appear in a child support case.

Evidence. The commission recommends that Congress authorize a subpoena with national reach for discovery of income information for the past 12 months for child support enforcement purposes.

Case Management. The commission recommends the use of telephone hearings in interstate cases, encourages courts to use individual calendaring in child support cases, and encourages states to allow flexibility in the time of day used for hearing child support cases.

Resources. Since the average caseload for a child support caseworker is staggering (1,000), the commission recommends that the secretary of Health and Human Services conduct state-specific staffing studies. The staffing report should examine personnel levels of entities under IV-D cooperative agreement as well as IV-D personnel. States should be required to provide staffing at the recommended ratio.

Training. Recognizing that good laws do not necessarily translate into effective implementation, the commission has a number of recommendations stressing the importance of training for all players in the child support community, including judges and court administrators.

The commission is recommending that Section 452(7) of the Social Security Act should be amended to add training as one of the duties of the secretary of Health and Human Services under Title IV-D.

In addition, Congress will be encouraged to provide federal funds to plan, draft, publish, and use a core curriculum that includes all laws and procedures that apply to all 54 child support jurisdictions. Those states would develop state-specific manuals that build on the core material, including state policy information and regulatory updates. These manuals would be used as tools for training all IV-D directly hired or contract staff as well as judges, attorneys, caseworkers, and support staff

not under cooperative agreement to the IV-D agency. The latter group of non-IV-D-paid persons would be eligible for a federal contract for training only. States would be encouraged to work with universities, colleges, foundations, other state agencies, organizations, and groups to obtain the resources to develop and maintain a training program. ■

Judicial Specialists, *continued*

and universal expertise the courts need and how to make that expertise instantly and steadily available.

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Editorial Committee Note: *This is a thought-provoking article, and the editorial committee expresses its appreciation to Mr. Scrimgeour for submitting it. It raises some interesting questions, and NASJE News wants to hear judicial educators' reactions. Some questions that occurred to the editorial committee are:*

Would a formal accreditation program be meaningful if done only on an individual state level, or should it be pursued at a national level?

Would it be equally valuable for a state to facilitate development of judicial specialists without creating a certification process?

Would it be more desirable to use academic institutions more familiar with accreditation and degrees in conferring this new status?

Would advanced degrees in judging from academic institutions be necessary? Would they be sufficient?

Is it desirable to put a judicial educator in a position to have to tell a judge he or she has failed the certification process? To tell a judge that his or her certification is being revoked for some reason? To tell a judge he or she will not be used as an instructor, even though certified?

Will this process cost money for additional specialized training, additional staff time to administer the program, time off for judges to study, etc.?

Send us your views! ■

Washington State Curriculum-planning Efforts

In Washington State, a Board for Trial Court Education (BTCE), established by supreme court order, determines policies and priorities for judicial education programs and funding. The BTCE consists of the state court administrator and representatives from associations of district and municipal court judges, superior court judges, county clerks, district and municipal court administrators, juvenile court administrators, superior court administrators, law school deans, and state bar. The BTCE sponsors educational activities for judges and court personnel. Each constituent group on the board has its own education advisory committee. The State Office of the Administrator for the Courts' judicial education section coordinates the overall effort.

The BTCE met at a long-range planning retreat in January 1991 to consider the future course of judicial education. During the retreat, members discussed and reflected upon the purpose and operation of the board, the funding and priorities of issues, the subject matter and delivery of educational services, and the need for a more comprehensive approach to curriculum planning.

After the retreat, several representatives of the BTCE participated in the national Leadership Institute in Judicial Education, held in North Carolina in April 1991. At the Institute, the team drafted a mission statement and action plan to enhance judicial education in Washington State over the next few years. In September 1991, the BTCE approved the action plan, which emphasizes a

more coordinated approach to curriculum development and identifies the need to "implement a comprehensive plan that addresses the training, educational, and development needs of the judiciary (trial courts)."

With the impetus of the retreat and the national institute, the BTCE enthusiastically decided to sponsor its own Leadership in Judicial Education Institute. In several workshops in 1991, the BTCE brought together representatives of all judicial and court administrative associations to expand horizons in judicial education. The workshops focused on adult-learning theory, curriculum development, and practical applications for educational-planning groups. At each juncture, the board encouraged greater involvement in the learning process and in planning efforts.

The main thrust is for a more planned, comprehensive approach to curriculum planning. In late 1991, BTCE constituent groups began developing a curriculum plan covering a three-to-five-year period. The board plans to adopt an integrated, systemwide plan that takes into account all user groups and a vast array of educational activities. The first draft of the integrated plan will be completed in summer 1992, with a more comprehensive report of the process available in late 1992. ■

CHECKLIST

Criteria for Developing Learning Objectives

- ☐ 1. Relevant to learners' needs?
(based on some assessment of what participants want or need to learn)
- ☐ 2. Consistent with overall learning goals?
(conforming to a general program philosophy)
- ☐ 3. Consistent with knowledge and skills of instructors?
(or instructor expertise that can be developed)
- ☐ 4. Stated in behavioral terms?
(what the learner should be able to do; how the learner should be able to respond)
- ☐ 5. Stated in clear language?
(no ambiguous words, awkward phrasing, or complicated syntax that might evoke different interpretations between instructors and learners)
- ☐ 6. Narrow and specific?
(no compound sentences, no double or triple objectives in one, no broad generalities)
- ☐ 7. Achievable in terms of time constraints?
(including number of learners and number of learning objectives)
- ☐ 8. Achievable in terms of learning resources?
(equipment, printed materials, information sources, physical space, etc.)
- ☐ 9. Suitable for evaluating learning results?
(should imply how instructors can know whether the objective has been achieved)

From time to time, NASJE News will reprint items from educational workshop handouts. Dr. Gordon Zimmerman, of the University of Nevada-Reno, provided us with this checklist.

Judicial Writing, continued

judicial "writing" stand in a unique position with respect to other language uses, including the language of the law as practiced by attorneys. Spoken or written, judicial "writing" is the intersection between language and action. Words are not merely words in judicial decisions—they are judicial acts, and as such cross the border between language and action so often viewed as absolute in western culture. Well-formed judicial writing programs recognize that the law is about actions, responsibilities, and the qualifiers that shade them. These programs acknowledge this recognition in the principles they teach, skills they develop, and outcomes they seek. ■

Money, Budgets, and Judicial Education II

Last summer, NASJE News asked several judicial educators how fiscal crises in their states had affected their education programs. A year has passed, and we thought that we should check and see if the fiscal situation is improving, worsening, or stabilizing.

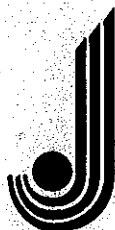
By far the most spectacular events occurred in New York. Chief Judge Sol Wachtler sued Governor Cuomo over the governor's proposed across-the-board budget cuts. Ed Borrelli reports that the suit has been settled out of court. Ed expects education funding to be at last year's level, which means that the belt-tightening steps already taken will remain in effect; i.e., a large two-week seminar

will not be funded, and several positions in the education office will remain vacant. Ed also tells us that the so-called lag payroll system instituted last year was found to be unconstitutional. New York's fiscal year begins April 1; at that time, the New York education office will learn the details of the budget.

Suzanne Keith reports that like New York, the situation in Tennessee has stabilized. Out-of-state travel has been sharply reduced, and trial and appellate court judges must pay their travel expenses to the annual judicial conference—these steps were taken last year. Jim Dennen in North Carolina and Bill Capers in Virginia expect their budgets to re-

main at 1991 levels. Both Jim and Bill report that they have been able to supplement their state-funded programs with outside-funded special purpose programs. North Carolina was able to use federal Bureau of Justice Assistance and State Justice Institute scholarships for some out-of-state travel.

In Washington State, the governor has asked for across-the-board cuts for all state agencies. Ann Sweeney says her office is being asked to reduce biennial program expenses by 20 percent. To meet this goal, fewer programs will be offered, and out-of-state education travel is restricted. ■



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The editorial committee encourages contributions to NASJE News from judicial educators and other interested parties. Not every contribution will receive a byline. Articles will receive a byline under the following guidelines:

The writing is intended to reflect the opinion of the author; the editorial committee finds it appropriate to give a byline to make clear that the writing does not reflect the opinion of the editorial committee; or the writing reflects a substantial piece of work that occupies a prominent place in the newsletter and is at least one newsletter page in length.

In applying these guidelines the committee will resolve close issues against giving bylines to committee members and in favor of giving bylines to noncommittee members. When noncommittee members make contributions not otherwise credited, their names will be listed as contributing to that newsletter.

This newsletter, published quarterly by NASJE through the National Center for State Courts, is made possible by a grant from the State Justice Institute. Opinions expressed herein, however, do not necessarily reflect the views of the State Justice Institute. Address all correspondence and inquiries to NASJE News, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187-8798; (804) 253-2000.

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