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# THE CONTINUING EDUCATION PROGRAM OF THE WISCONSIN JUDICIARY

CONNOR T. HANSEN\*

An independent judicial department is the keystone of our American system. It is the institution of America that is denied to peoples of totalitarian states. The maintenance of free government is dependent upon the maintenance of an independent and strongly functioning system of courts. Whatever we do to strengthen the courts, strengthens America.<sup>1</sup>

The citizens of the State of Wisconsin have long been cognizant of the need for a strong, independent judiciary. Over a half century ago, under the leadership of the judiciary and the lawyers of the state, our legislature established the beginning of what has become a strong, vigorous program for the continuing education of the Wisconsin judiciary. What modestly began with a meeting of the new Board of Circuit Judges at "the senate chamber in the city of Madison, on the twenty-ninth day of December, 1913,"<sup>2</sup> has developed into statewide programs for continuing judicial education of County Judges, Juvenile Court Judges, and Criminal Court Judges. In recent years it has been further implemented by establishment of the Judicial Conference of Wisconsin and the Wisconsin Judicial Orientation Institute.

The role of a trial judge is sometimes described as a lonely one. At no time is this more true than when he first takes the bench. For the first time he comes face to face with the responsibility of the decision making process—a responsibility which is his alone. It is his duty to make black or white out of gray. The decisions must be made, and made with the knowledge that rarely, if ever, will all parties be pleased with the result. He can only approach his duties and responsibilities as a judge in absolute humility—as a man, subject to all the fallibilities of man.

The act of donning a judicial robe does not magically transform a lawyer into a competent, experienced jurist. It is a fallacy to say that all great trial lawyers make great trial judges. The transition from the adversary position to the judicial one is not so predictable or automatic. There is more to making a judge than naming him one.<sup>3</sup>

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<sup>1</sup> Simmons, *To Strengthen the Courts of America*, 33 A.B.A.J. 86 (1947).

<sup>2</sup> Wis. Laws 1913, ch. 592, § 9; WIS. STAT. § 252.08 (1933).

<sup>3</sup> Address by Hon. A. W. Parnell, Circuit Judge of the Tenth Circuit of Wisconsin, before the Committee on Trial Techniques of the Section of Insur-

The lawyer cannot fully appreciate the vast differences between the work and responsibilities of the bench and the bar until the day he takes on his awesome new duties. As an advocate he has paid little attention to many facets of court life, some of which will eventually become second nature to him, such as details of judicial administration, jury management, conducting preliminary hearings, juvenile court procedures, and commitments under the Mental Health Act. Quite understandably he begins to worry about even the simple things, such as how to open court.<sup>4</sup>

So a man is a lawyer one day and a judge the next. His continuing judicial education begins at once.<sup>5</sup>

#### THE WISCONSIN JUDICIAL ORIENTATION INSTITUTE

To aid in the transition from bar to bench, the first Wisconsin Judicial Orientation Institute was conducted at the Marquette University Law School in the spring of 1968. Under the auspices of the Supreme Court, with Chief Justice E. Harold Hallows as chairman, Court Administrator Edwin M. Wilkie as coordinator, and Circuit Judge Ernest John Watts as director, twenty-two new county and circuit court judges took part in a very valuable four day session.

The foreword of the Institute manual, presented to each participating judge, states well the needs and goals of the Institute:

We appreciate that even the most experienced lawyer finds his role, behind the bench, considerably different from the practice of law. This Institute is designed to assist in that transition.

The purpose of the Institute is not to teach substantive law, but to give an intensive training exposure designed to acquaint new Judges with the administrative procedures of their office, how to conduct hearings, what to do to insure proper and complete hearings, the timely filing of papers, efficient calendars, proper instructions to parties in regard to rights and the many other similar unique but vitally essential functions of the Judge. We do not propose to give the new Judge all the answers, but to give him general guidelines for his procedures and to acquaint him with source materials where he may find remaining answers.

As the foreword states, the Institute was not directed to substantive law, but to specific problems in the mechanics of how to perform the wide range of duties and responsibilities of a judge. The "faculty" of the Institute consisted of two law professors, and trial and appellate court judges with experiences ranging from one and a half to twenty-six years on the bench. The judges on the faculty represented all the various types of courts in Wisconsin. They were selected from single

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ance, Negligence and Compensation Law at the American Bar Association meeting in New York, Aug. 11, 1964.

<sup>4</sup> Joint Committee for the Effective Administration of Justice, National Conference of State Trial Judges, *The State Trial Judges Book* 1 (1965).

<sup>5</sup> Karlen, *Judicial Education*, 52 A.B.A.J. 1049 (1966).

branch county courts in less populated areas on the one hand to multi-branch trial courts in metropolitan areas on the other.

The morning and afternoon sessions were designed for the presentation and discussion of assigned subject matter. Evening sessions were made up of small groups of the twenty-two new judges meeting informally with those who had conducted the daytime sessions to discuss any "how to do it" questions.

A brief review of some of the subjects discussed at the Orientation Institute will emphasize the importance of a program such as this in making the transition to the judiciary.

The Institute provides the new judge with his first training in the importance of docket control and the basics necessary for efficient court administration. The lawyer, no matter how capable, has had no experience as a judicial administrator. He has not been called upon to develop proficiency or talent in the orderly processing of litigation or the handling of a multitude of public records. For instance, a county judge is responsible for the efficient processing of literally hundreds of probate documents. This is quite a different situation than managing the confidential files of his clients in his former law practice. His responsibility in the selection, management and control of a jury is also entirely different than that of an advocate.

Early in his judicial career he must develop his individual pretrial techniques, techniques which can be as varied as the judges conducting them. The Institute affords him an opportunity to develop methods which are a composite of the experiences of many judges.

The sessions at the Institute instruct the new judge on how to conduct hearings on a variety of areas in which he probably has had no previous contact. Often he will be faced with such hearings upon little or no notice and sometimes under emergency situations. Some of these hearings will be pursuant to the Mental Health Act, or medical and tuberculosis commitments, or adoption proceedings. Also, his role as a juvenile court judge will be new. More than likely he has had little or no experience with the provisions of the Children's Code<sup>6</sup> as a practicing attorney. He will need to identify his role as juvenile court judge with the child, the child's parents, church, school, law enforcement officers and various social agencies.

The problems attendant to conducting court for traffic violations; misdemeanors; management of the small claims branch of the county court; the mechanics of issuing warrants, fixing bail, and conducting preliminary hearings; issuing *ex parte* orders and temporary injunctions; and the responsibility of advising the parties of their rights are all covered in detail at the Orientation Institute.

The "how to do it" aspect of the everyday duties of the judge,

<sup>6</sup> WIS. STAT. ch. 48 (1955).

including those mentioned above and many more, is the important emphasis of the Judicial Orientation Institute. The key to its success is affording the new judge an opportunity to learn from the experiences of other judges through free and open discussion.

Those in attendance reported that the first Orientation Institute was a most worthwhile experience. The Institute will again be held in August, 1969, and it is hoped that it will become an annual program.

#### THE JUDICIAL BOARDS

Education for a judge does not end with orientation. It is only the beginning of several programs designed to strengthen the Wisconsin judiciary. Wisconsin formally recognized the need for further education of judges in 1913. The legislature that year adopted Chapter 592, section 9, which provided that "the several circuit judges of the state shall constitute a board to be known as the 'Board of Circuit Judges.'" The Board was to meet once a year and "make such rules and regulations as [it] shall deem advisable."<sup>7</sup>

Over the years the purpose and scope of the Board meetings have greatly expanded. As reflected by the current statutory provision the Board meetings are for the purposes of "discussion and exchange of ideas," "recommendation to its members of rules of court to promote due and prompt judicial administration," and "recommendation to either the legislature or the supreme court of methods for improving the administration of justice."<sup>8</sup>

With the apparent success of the Board of Circuit Judges, a similar board was soon created for county judges. Chapter 406, Laws of 1917, provided that the Board of County Judges "shall hold [its] first meeting at the courthouse, in the city of Milwaukee, on the last Thursday of June, 1917."<sup>9</sup>

As society became more complex and responsibilities of courts expanded, two additional state judicial boards were created by the legislature—in 1945 the Board of Juvenile Court Judges<sup>10</sup> and in 1951 the Board of Criminal Court Judges.<sup>11</sup>

Each member of the Wisconsin judiciary who presides over a circuit court, county court or juvenile court is a member of his respective state board; most are members of more than one board. As all circuit court judges and county court judges preside over courts exercising criminal court jurisdiction, they are all members of the Board of Criminal Court Judges. The county courts, among other things, have exclusive jurisdiction over proceedings brought pursuant

<sup>7</sup> Wis. Laws 1913, ch. 592 § 9.

<sup>8</sup> Wis. STAT. § 252.08 (1961).

<sup>9</sup> Wis. Laws 1917, ch. 406, § 1; Wis. STAT. § 2464n (1917); now Wis. STAT. § 253.20 (1961).

<sup>10</sup> Wis. Laws 1945, ch. 159, § 4; Wis. STAT. § 48.09 (1967).

<sup>11</sup> Wis. Laws 1951, ch. 335; Wis. STAT. § 256.325 (1967).

to the Children's Code<sup>12</sup> and are designated as the juvenile court in all counties except Milwaukee County.

The schedule of a judge provides little time to do more than look after the daily matters which demand his attention. The many facets of judicial administration require his constant scrutiny. Rarely is there time for in depth study of substantive legal problems. The Board meetings provide an excellent forum for exchanging ideas to gain more familiarity with trends in the law and judicial administration.

The truly worthwhile educational accomplishments of these various state judicial boards become apparent with an examination of the agenda of the meetings. The sessions of the different boards are as varied as the names of the groups that comprise them. However, all include presentation of papers of academic excellence on substantive law and procedure prepared by members of the boards, distinguished lawyers, professors and other jurists. The sessions always contain periods dedicated to the problems of adjusting judicial administration to keep abreast of current social and economic conditions. The emphasis at all of the sessions is the accommodation and encouragement of freedom of discussion and individual participation. In the opinion of this writer, one of the major contributions of these conferences has been to provide the judiciary with a means of enabling continuous fruitful contact with the changing social background out of which controversies arise.

In addition to discussions and presentation of papers on timely subjects of substantive law and judicial administration, there have been some very tangible accomplishments by the various state boards of judges.

The State Board of Circuit Judges, with the cooperation of the Law Extension Department of the University of Wisconsin Law School, has been responsible for publication of the two volume Wisconsin Civil Jury Instructions book. The State Board of Criminal Court Judges, with assistance from Professor Frank J. Remington of the University of Wisconsin Law School and Mr. William A. Platz, Assistant Attorney General, developed the two volume Wisconsin Criminal Jury Instructions book. Both of these publications are now recognized and accepted by the bench and the bar of the state.

The State Board of County Court Judges also has made an important contribution to the administration of justice in the state. As a result of its efforts, uniform forms have been adopted for the administration of proceedings in county court under Title XXIX of the Wisconsin Statutes.<sup>13</sup> Throughout the state forms used in probate

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<sup>12</sup> WIS. STAT. § 253.13 (1961).

<sup>13</sup> WIS. STAT. § 253.21 (1961).

proceedings, guardianship matters, adoptions and other county court proceedings now have a general uniformity.

Similarly, the State Board of Juvenile Court Judges is charged with the responsibility of adopting uniform forms necessary for the administration of juvenile court matters under the Children's Code.<sup>14</sup> The desirability of the use of uniform forms throughout the state becomes readily apparent when one reflects upon the great number of public and private agencies that need the service of the juvenile court in carrying out their work.

All of these materials developed by the respective state judicial boards can only be kept in a current, useful status by continuous attention of the members of the judiciary responsible for the administration of justice in Wisconsin.

#### COURT REORGANIZATION AND THE JUDICIAL CONFERENCE

The court reorganization of 1962<sup>15</sup> provided the keystone for further development of the program of continuing judicial education in Wisconsin. As a result of court reorganization, the first annual Judicial Conference of Wisconsin convened in 1964 as an educational seminar for the entire Wisconsin judiciary. Section 251.1835(5), sets forth the functions of the conference.<sup>16</sup> The responsibility for the development of the conference is vested in the administrative committee for the court system of Wisconsin and the court administrator, subject to the approval of the supreme court.<sup>17</sup>

Much has been accomplished during the five years of its existence. Though, like most new ventures, its full potential has not yet been realized and probably will not be reached for some years to come.

Wisconsin, like most states, has been faced with a steady and constant increase in court business. This situation, of course, is not unique to the judiciary. It is an understandable and expected phenomenon that accompanies the growth and development of our society and the corresponding complexities of life.

<sup>14</sup> WIS. STAT. § 48.10 (1961).

<sup>15</sup> Wis. Laws 1959, ch. 315; Wis. Laws 1961, ch. 495, 519, 561, 564, 615.

<sup>16</sup> WIS. STAT. § 251.1835 (1964):

"Judicial conference of Wisconsin.

(5) The functions of the conference shall be:

(a) To consider the business and the problems appertaining to the administration of justice in this state, and to make recommendations for its improvement.

(b) To conduct instructive programs and seminars at its annual meeting in order to better equip the members of the conference in the performance of their judicial duties.

(c) To provide for the creation of committees to study particular subjects appertaining to the administration of justice and its improvement and report the results of their study together with their recommendations to the next meeting of the conference. The membership of each such committee shall be appointed by the administrative committee."

<sup>17</sup> WIS. STAT. § 251.1835(3) (1964).

One of the most serious aspects of the constant escalation of court business is the corresponding diminution of time available to the individual judge to keep up to date with the rapid changes and growing complexities of the law.

The review and study of trial transcripts, preparation and drafting of opinions, interviewing and conferring with countless numbers of people and lawyers who properly have a right to see "their judge," must overlap into the hours and days of the week that are generally reserved by many for family and personal pursuits. For the judge, who is already occupied with pending legal matters and everyday local court administrative problems, the study that is necessary to "keep up with the law" and the ever present need for "efficient judicial administration" approaches the impossible, if each individual judge were expected to do so while presiding over his own court. The answer is periodic judicial training programs such as Wisconsin has developed over the years.

The recent comments of a law professor dramatize this problem. He observed that with only two subjects to teach, he found it necessary to devote all of his time outside the classroom to the research necessary to keep on top of the subjects. Yet a judge is expected to field all the "flies" that come his way and be responsible for the efficient administration of his court.

The Judicial Conference is an attempt to alleviate the shortcomings of the judge's schedule through three days of intensive dissemination of information.

An effort such as a statewide judicial conference was impractical prior to court reorganization because the responsibilities of the circuit and county courts varied so greatly. The circuit courts of the state had general jurisdiction in all civil and criminal matters, and the basic statutory jurisdiction of all county courts was probate and juvenile matters. Furthermore, all aspects of the county court, including salary and staff, were solely the responsibility of the individual counties. The result was that the legislature had enacted special legislation relating to the operation and jurisdiction of the county courts in some 54 of the 72 counties in the state. No two of the 54 special county court acts were the same. A county court in one county might have jurisdiction even greater than that provided by court reorganization, while the jurisdiction of a neighboring county court could be limited to probate and juvenile court proceedings.

The court reorganization of 1962 repealed all special county court acts and created a uniform county court system throughout Wisconsin, subject to some exceptions for Milwaukee County. The jurisdiction of most county courts was substantially increased. For instance, in addition to the previously designated statutory jurisdiction of probate



and juvenile matters, a county court now has jurisdiction in all criminal matters, except treason, and in all civil matters not involving more than \$100,000 damages and general equity jurisdiction.<sup>18</sup> The presiding judge of the constitutional circuit court has always had jurisdiction to sit as a county judge. Under court reorganization a county judge may now be temporarily assigned to sit in a circuit court matter if he meets the constitutional requirements for circuit court judges.<sup>19</sup>

Another important innovation of court reorganization was the creation of the office of the Administrator of Courts.<sup>20</sup> The Court Administrator is to keep the Chief Justice of the Supreme Court, or other designated justice, informed of the status of the administration of judicial business in the courts of the state. One of the duties of the Court Administrator is to assist in the temporary assignment of judges when the need arises. Such temporary assignments accommodate many situations such as crowded calendars or the absence of a presiding judge because of illness or disqualification.

There are now over 160 circuit and county court judges in Wisconsin and that number is constantly increasing. Unfortunately, the appellate court structure has not kept abreast of the trial court system. Sixty years ago the appellate court system of the state consisted of the Supreme Court, composed of a chief justice and six associate justices. Sixty years later the appellate court system is still the same size while the circuit courts have increased from twenty-one<sup>21</sup> to forty-seven<sup>22</sup> judges and the county courts have increased from seventy-two<sup>23</sup> to one hundred and eighteen<sup>24</sup> judges. There is no more reason to believe that an appellate court system which was adequate over half a century ago is still adequate today than there is to believe that the trial court system of a half century ago could properly accommodate the needs of 1969.

Court reorganization in 1962, and the creation of the Wisconsin Judicial Conference opened a new door for judicial education in Wisconsin. The accomplishments of the seminars at the annual judicial conferences during the few short years of its existence have been found wanting by some. Yet a firm foundation has been laid for the continued development of an outstanding judicial education program in Wisconsin. Each year the conference has gained from the experience of previous years. Also, much has been learned from other institutes and seminars conducted throughout the nation.

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<sup>18</sup> WIS. STAT. § 253.11 (1961).

<sup>19</sup> WIS. CONST. art. VII, §§ 10, 24; State *ex rel.* McCormack v. Foley 18 Wis. 2d 274, 118 N.W.2d 211 (1962).

<sup>20</sup> WIS. STAT. § 256.54 (1961).

<sup>21</sup> Wisconsin Blue Book, 1044-1052 (1907).

<sup>22</sup> *Id.* 511-12 (1968).

<sup>23</sup> *Id.* 1063 (1907).

<sup>24</sup> *Id.* 513 (1968).

The format of the conference program has also been subject to discussion, consideration and re-evaluation. At the last several conferences the members have been divided into three groups, the object being to function in smaller units and thus afford greater opportunity for freedom of discussion and expression. The three groups support three half-day panel discussions, each on a different subject. Each discussion is repeated three times so that all members have an opportunity to participate in each of the three group subjects.

The group or section discussions are presided over by three or more panelists—each knowledgeable in a particular field. Excellent cooperation has been received from members of the bench, the bar and the faculties of the two law schools in Wisconsin. Frequently, in order to give breadth to the discussions, an outside point of view of a person from another state and with considerable experience in a particular field is added to the panel.

One half-day session is devoted to a meeting of the entire conference membership. At this session the brief business of the conference is conducted. However, a most important part of this session is an address presented by a person of national repute on a subject of timely interest along with an opportunity for discussion. At the 1969 conference Dr. Karl Menninger, Director of the Menninger Foundation, presented the subject "The Crime of Punishment."

It is interesting to review some of the subjects considered at previous meetings of the conference. Mention of a few of them will indicate the variety and timeliness of the subject matter considered and discussed, and dramatize the usefulness and need for a state-wide judicial conference directed at involvement of the entire state judiciary.

The subjects presented and discussed in the group panel sessions include: (1) role of courts in times of stress and mass disorder, (2) poverty and the law, (3) recent developments in criminal law, (4) post-conviction remedies, (5) evidentiary problems in Wisconsin—consideration of uniform rules of evidence, (6) pretrial procedures in criminal cases, (7) what an appellate court expects of a trial judge, (8) problems of discovery, (9) the power of contempt, (10) jury trials, (11) guardians ad litem, and (12) judicial administration.

No one would suggest that the sessions of the Wisconsin Judicial Conference have met with complete success. Yet the need for judicial education is now firmly established throughout the land. It is generally recognized that continuing educational sessions for the judiciary are as essential as similar programs in other fields of endeavor. There have been disappointments in some of the Wisconsin Judicial Conferences, but the positives far outweigh the negatives. Its few short years of existence have demonstrated its value. As with all endeavors of a worthwhile nature, each must have its beginning and so the Wis-

consin Judicial Conference has come into existence. Its potential for a state oriented judicial educational program, encompassing all members of the judiciary, is unlimited.

NATIONAL PROGRAMS INVOLVING MEMBERS  
OF THE WISCONSIN JUDICIARY

Wisconsin also has been fortunate in benefiting from participation by many members of its judiciary in national educational programs. Many distinguished members of the Wisconsin judiciary have served on the faculties of various national educational programs for the judiciary.

Circuit Judge Andrew W. Parnell has had the distinction of serving as Chairman of the National Conference of State Trial Judges. His efforts contributed substantially to the establishment of the National College of State Trial Judges which opened in the summer of 1964. As a result of this group's efforts, *The State Trial Judge's Book*, published by the West Publishing Company in 1965, has become a handbook for trial judges. Judge Parnell was a moving force in the publication of this worthwhile volume and a substantial contributor to its contents.

Judge Byron B. Conway, County Judge of Wood County, has served as Chairman of the National Council of Juvenile Court Judges. His efforts contributed substantially to a national three-year program for training juvenile court judges. The emphasis of the program was on the social and psychological aspects of the juvenile court judge's role. It was conducted by highly trained individuals and directed toward having the judge better understand himself so he could improve his skills in working with others.

THE NEED FOR CONTINUING EDUCATION OF THE JUDICIARY

A striking example of the demands of our ever-changing society on the judiciary is evidenced by some current statistics from the Wisconsin Supreme Court. In recent years the decisions of the United States Supreme Court have had a tremendous impact in the field of criminal law. Not only have these decisions required constant alertness to changing substantive law, but they also have produced judicial administrative problems of staggering proportions.

Certain postconviction remedies afforded inmates of state penal institutions are determined by the Wisconsin Supreme Court, without arguments or submission of full briefs, through unpublished opinions. The number of unpublished opinions filed by the Wisconsin Supreme Court in the last four years on postconviction proceedings has increased nearly fivefold: 1965—31, 1966—47, 1967—80, and 1968—146.

The impact of these United States Supreme Court decisions is even greater on the volume of work in the trial courts. Unfortunately, comparative figures for those courts are not available.

The vital importance and necessity of programs for the continuing education of the judiciary is self-evident. They afford a unique opportunity for the judge, who is busily occupied with his day-to-day duties, to enhance his knowledge; to keep abreast of current legal and social advances; and to better his technical proficiency. Equally important, the educational programs afford the Wisconsin judiciary an opportunity to strengthen its *esprit de corps*. Judges are put in contact with other judges whom they otherwise would never meet. It is from these opportunities they learn that their problems are not singular to their court or their community, but common to all judges. Another important accomplishment of these educational programs is the sharing of experiences and problems with the organized bar and the law schools. All this is essential to the continued development of the Wisconsin judiciary.

Much has been accomplished in continuing education for the Wisconsin judiciary; much more can be accomplished in the future. Wisconsin can be proud of its efforts, both past and present.