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ACQUISITIONS

BACKGROUND INFORMATION

ON

THE NATIONAL COLLEGE FOR CRIMINAL DEFENSE

As early as 1967 (long before Chief Justice Warren Burger's well-known lament about the quality of American trial advocacy), a report of the President's Commission on Law Enforcement and the Administration of Justice noted that many criminal defense lawyers called from civil practice to serve as appointed counsel were woefully unprepared for their task. The same was said to be true of the young and inexperienced called for the same tasks. In 1972, reports by the National Advisory Commission on Criminal Justice Standards and Goals and by the American Bar Association reemphasized what thoughtful observers already knew: the criminal justice system cannot work fairly if a large number of lawyers lack the necessary trial skills of competent criminal defense attorneys. What was clearly needed was a continuing education program conducted on a national level and aimed at strengthening the trial skills of criminal defense lawyers.

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The National College for Criminal Defense (until 1979 known as the National College of Criminal Defense Lawyers and Public Defenders) is a result of this need. Founded in April, 1973, it is a post-graduate school dedicated to improving the professional skills of criminal defense lawyers in the United States. The College serves both private practitioners frequently appointed in indigent criminal cases or desiring such appointment and public defenders. The College is primarily funded by the Law Enforcement Assistance Administration. It is sponsored by the American Bar

Bar Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid and Defender Association. The College also has received assistance from the J. Edgar Hoover Foundation, Pepsico Foundation, Bally Manufacturing Corporation and the American College of Trial Lawyers. In addition the College receives contributions from faculty, alumni and other interested persons.

The policy-making function of the College is vested in the Board of Regents. Each sponsoring organization places four persons on the Board. In addition to setting overall goals and policies, the Board is charged with the duty of selecting a Dean to run the College and administer Board policies.

C. Anthony Friloux, a practicing attorney in Houston, Texas, served the College as its Charter Dean. He was primarily responsible for locating the College in quarters jointly occupied by the National College of District Attorneys on the campus of the College of Law of the University of Houston. His efforts laid the groundwork for the College's present high standard of instruction.

The College's first program took place in July, 1973, barely six weeks following grant approval from LEAA. At that time it was a three-week intensive course, using the lecture method of instruction, led by well-known criminal practitioners, public and private. The first course was attended by 92 lawyers from thirty states plus the District of Columbia and the Virgin Islands. Since that time the summer resident sessions have undergone substantial change. The College now holds two two-week sessions during which participants, through role playing exercises, learn the basics

of criminal trial practice. The College has been a leader in the development and implementation of new and innovative training techniques. The summer Trial Practice programs are considered by many to be the best trial practice training offered in America today.

The first Regional Institute (forerunner of the National Institutes offered today) was held January 4-6, 1974, at the University of Richmond Law School in Richmond, Virginia. A panel of defense lawyers and scientific experts demonstrated cross-examination techniques, presentation of evidence and practical skills to 106 participants from 19 states, the District of Columbia and the Virgin Islands. Again the lecture format was used in these early programs. The College has now abandoned the lecture format in favor of demonstration or role-playing formats which accomplish a great deal more education. Each year the College develops one or two new National Institute programs covering a broad range of topics. Each of these programs is then presented in five different locations over a two-year period. Locations are chosen so as to give the widest possible coverage to a particular program. Once a program has been presented five times it is retired from the academic schedule but is retained for special programs occasionally done in conjunction with state and local lawyer or public defender associations.

In 1975, the College produced the first of a series of four Defender Management Workshops, aimed at administrators in Public Defender offices and agencies. These programs dealt with the internal and administrative problems of defender offices. Two were held in Washington, DC and two in Denver, CO. Unfortunately, this program had to be discontinued due to a

competing grant issued by a separate division of LEAA. This grant application asks for funds to reinstitute this successful series of programs. The College is anxious to again undertake this responsibility.

As mentioned above, the College also conducts programs in addition to its regularly scheduled grant-supported programs. Special "custom" programs have been produced for bar association/defense lawyer groups in Florida, Montana, District of Columbia (presented in Maryland), Michigan, Oregon and North Dakota. Additional such programs are in the negotiation stage. In addition the College underwrites programs on its own to supplement the grant-supported programs.

Dean Friloux remained in charge of the operation of the College for about two years, assisted by two Houston lawyers, Scott Campbell and Bill Steen. In April, 1975, Dean Friloux returned to the full time practice of law. His successor as Dean was John E. Ackerman, who continues to serve the College in that capacity. Mr. Ackerman was the Associate Dean of the College for the four months prior to his being named Dean. A native of Sundance, Wyoming, and a graduate of the University of Wyoming and its Law School, Ackerman had developed the first public defender system for the State of Wyoming. That program has now been extended statewide. Ackerman practiced law in Casper, Wyoming for several years prior to his move to Houston. He was a participant in the first program offered by the College in 1973.

The office of the Associate Dean remained vacant until Professor Melvin B. Lewis of John Marshall Law School in Chicago, Illinois was appointed. Mr. Lewis served the College for nearly one year after which he

returned to his full time teaching career. In early 1977, a prominent Chicago defense lawyer, Dominic Gentile, relocated in Houston to become the College's third Associate Dean. Gentile resigned in December, 1978, to enter the private practice of law in Las Vegas, Nevada. The current Associate Dean is G. Michael Cooper also from Chicago who came to the College from a successful private practice in that city.

Through the calendar year 1979, the College had produced 55 separate training programs, training 5,281 lawyers in the process. This does not begin to describe the impact of the College on the quality of representation provided to the indigent in this country, however. Each participant shares skills with other lawyers on a factor of at least two. In addition our publications reach additional thousands of lawyers (see maps attached as Exhibit No. "1").

A further outreach of the College influence is represented and facilitated by the sale of audio and video tapes produced by the College. Ranging from taping of "live" program activities to studio productions, the tapes cover a wide range of trial-technique subjects and feature outstanding practitioners sharing their professional skills.

During 1979, the College purchased the rights to publish a criminal law case digesting service, "Nedrud: The Criminal Law". It is published in tabloid newspaper format 10 times per year with an annual hard-bound volume which compiles all the material contained in the tabloid issues. There is not a more complete criminal law case digesting service available. It is the hope of the College that the acquisition of "Nedrud" will assist greatly in the goal of diminishing the support necessary from LEAA.

SELF-SUFFICIENCY

Since its humble beginnings in the summer of 1973, the College has made great strides toward self-sufficiency, epitomizing the "seed money" concept of LEAA. Early Grants to the College supported Criminal Defense Magazine and The National Journal of Criminal Defense. These two publications have grown to the point that LEAA support has been unnecessary for the last three years. Their subscription revenues pay all the costs of their production.

The College is also becoming self-sufficient in its National Institute training programs. Of the 12 programs sponsored by the College during the calendar year of 1979, 5 were funded by sources other than LEAA.

The College's "Operations" Division has shown remarkable growth over the last three years. The purpose of this division is to develop sources of income to the College, outside LEAA, which will enable the College to become more and more independent of LEAA funding. The gross income of this division since 1976 has grown from \$33,328 in that year to \$209,546 for calendar year 1979. Among other things this department is responsible for an annual contribution to the grant project of the College.

LEAA "seed money" continues, however, to be necessary to the operation of the College. As LEAA money has allowed past projects to achieve self-sufficiency, such funding is necessary for the growth of the College and the development of new and innovative projects of service to the Defender Bar of the United States. A number of such new initiatives are contained within this grant application.

TRAINING PROGRAMS, 1980-1981

Admissions to the College's training programs will be pursuant to the Admissions Policy, amended by the Board of Regents on February 2, 1980, a copy of which is appended to this application as Exhibit "2".

The College actively pursues a policy of strict non-discrimination on the basis of race, creed, color, gender and/or national origin, both in its employment practices and in the approval of applications for attendance at training programs. Furthermore, in the event applications are received for attendance at any program produced by the College, where such applications are too numerous for all applicants to be accommodated, the Registrar of the College, in consultation with the Dean seeks to maintain an equal balance between public defenders and private attorneys. Within those categories, selection is made on a first-received, first-accepted basis, the fairness of which is assured by the fact that all program announcements (as many as 14,000 for each program) are mailed simultaneously.

LEAA-sponsored scholarships for the two Summer Sessions will, as in the past, be awarded in accordance with the 50-50 formula established by the Regents. Private attorneys applying for scholarships must indicate the percentage of their time that is involved in the defense of the indigent and must sign a commitment to accept indigent cases following attendance at the College. They are also required to furnish the College with the names and addresses of the judges before whom they most frequently appear. The College, following the session, informs the judges of this commitment and

urges the appointment of the graduate pursuant to the commitment. Beginning with the 1980 Summer Sessions, the College will attempt to follow up on these commitments to determine whether or not they are being kept.

Defender Management Workshop

As mentioned above the College will reinstitute this previously successful series. The format will be approximately the same as in previous years. A panel of active heads of public defender offices will be chosen, in consultation with the National Legal Aid and Defender Association to assist the Dean and Associate Dean in establishing the curriculum and designing the program. It is expected that the program will be held in a central location, such as Denver, Colorado in the Spring of 1981.

Training of Trainers

During this grant year the College will design a program for training the training directors from Public Defender offices in the United States. The program design and curriculum will again be arrived at in consultation with the National Legal Aid and Defender Association. It is expected that the training program will be a combination of correspondence course-type training and resident training. The resident training would most likely be accomplished in conjunction with the 1981 College Summer Sessions. The only funding requested by this grant seeks planning monies for this project. It is expected that from 1981 and beyond the program will be an

annual event. Communications with training directors around the country and with management personnel in the National Legal Aid and Defender Association have firmly established the need for such training.

Investigator's Training

Again consultation with NLADA and with the National Association of Public Defender Investigators has firmly established the need for such training. The only training available, apparently, for persons entering this field is that of experience. Many have backgrounds in police work, but insufficient knowledge of the defense of criminal cases to perform at maximum efficiency. In consequence of this well-established need the College proposes to sponsor two programs, one in this grant year and one in the following year. Again the curriculum will be designed in cooperation with the National Legal Aid and Defender Association with assistance from the National Association of Public Defender Investigators. The program will be open to all investigators, public or private, who assist attorneys involved in the defense of the accused. Funds are therefore requested in this grant for planning and execution of one of these programs.

Three-Day National Institutes

Three three-day National Institutes are planned for 1980-1981, supported by LEAA. The tentative topics and locations are as follows:

The Insanity Defense	Boston, MA
Jury Selection	Dallas, TX
Advanced Cross-Examination	Seattle, WA

In addition to these grant-supported programs, the College plans to present a number of other three-day National Institutes supported by other funding sources.

These highly successful and well-received training programs feature a faculty of nationally-known successful criminal defense lawyers, both public and private. They are organized into challenging working sessions using innovative training techniques. Emphasis is always on practical, how-to-do-it sessions.

One or two new topics for these institutes are developed each year. Typically a new program will be presented five times at various locations and then be retired. The retired topics from previous years are retained in readiness for conversion to Self-Paced Study Programs (a correspondence-type training design) should funding ever become available for their development. These retired programs also remain available for contract programs in cooperation with state and local bar groups.

Summer Sessions

The College again plans to conduct two two-week Summer Sessions using the unique and innovative training model refined by the College. There are many indications that this training design is the leader in CLE in America.

Tentative results of a recent survey of CLE by ALI-ABA, places this College at the very top of all groups surveyed in many categories. The recent McManis evaluation report supports these findings.

The key ingredient of these programs is learning through role playing. Participants work with edited transcripts of actual cases and during the two-week period will be asked to perform all the tasks which are required in the trial of a case. Each group of 10 participants is under the guidance of an instructor. The summer teaching staff is widely recognized as the finest CLE faculty in America. Efforts are made to provide as much realism as possible in the mock courtroom settings in which the training takes place. As an example, professional actors and actresses are utilized for all juror and witness roles, many of whom will be returning for the fifth year with the College. Faculty is rotated daily so that participants are exposed to a wide variety of skills, styles and advocacy techniques. The College makes extensive use of videotaping during these sessions so that the participants can view their performances. This has proven itself an extremely valuable teaching tool. It is hoped that the videotaping can be expanded in the future so that a camera can be placed in each simulated courtroom.

Each faculty member is provided with a detailed workbook setting out each day's schedule, the purpose of the exercise and the manner in which it should be conducted. Instructors are monitored by College staff so that the format is consistently followed. A typical 24 training period is described below:

At 4:45 on Monday evening all participants are assembled in Krost Hall to hear an orientation lecture on jury voir dire. This lecture will last

approximately 45 minutes. Its purpose is to acquaint them with the exercise that they will be required to perform the next day. It should enable them to be prepared for the next day's assignment. The lecturer will be a recognized expert in voir dire who will explain some of the considerations one should have in mind while preparing for the voir dire plus the techniques to be used. Following this orientation lecture, the faculty meets to discuss the day's activities and prepare for the next day. These sessions frequently last for as long as two hours. The College staff first seeks feedback about the day's exercises and how they could be improved. The next day's exercises are then discussed. The faculty is advised what the staff's expectations for the exercises are. Frequently these meetings become training sessions for the faculty, teaching them how to critique the performance of the participants.

The next morning begins at 8:30 with each participant in a trial practice room, prepared for the day's exercises. The juror roles are all to be performed by professional actors and actresses so as to lend realism to the process. The roles they will play have been prepared by the College staff in an effort to provide a group of jurors representative of the "typical" jury pool.

During the day, each participant will conduct two jury voir dires in their case of "major responsibility". Prior to conducting the voir dire participants must be prepared to state all objectives that they would hope to attain during the examination. Instructors will select from the stated objectives those which the participant will be expected to pursue. In rooms where television is available these exercises are taped and the tapes are used during critique. All participants are expected to participate in

the critiquing sessions.

These exercises will continue, with an intervening short lunch break until 4:00 p.m. when all participants will again gather in Krost Hall. For the next 45 minutes they will see a voir dire demonstration conducted by one or more of the faculty members most skilled in that art. This is, of course, followed by an orientation for the next day's tasks thus restarting the 24 hour cycle.

Replicability of Training Programs

Training materials, schedules and administrative memoranda which bear on the organization and execution of training programs are retained by the College so as to facilitate replication of any specific program. Such replication might be under the auspices of the College, as discussed above, or it might be effected at the behest of a bar association, public defender office or some other interested group of lawyers. These materials are also available to other groups for use in developing CLE programs. Two specific replication programs have been completely planned and designed, however implementation funding has never been available. These are the video-based self-paced study programs and the mobile training unit. Both would be highly desirable additions to the College's programs, but could not be substituted for current programming needs.

The College would hope, over this year's project, to improve its outreach by making contact with more State and Local bar groups and making them aware of the services the College can offer.

EVALUATION AS AN ACTIVITY

Trainers and educators have long dealt with the problem of evaluation of training and education. In many instances, the only rationale for training as an activity seems to be that it can't hurt. The evaluation dilemma is especially large when addressing a training activity which seeks to change behavior rather than impart specific measurable quantities of knowledge. For instance it is not difficult to determine the quantity of learning that has taken place when teaching multiplication tables. It is on the other hand difficult, if not impossible to quantify the learning which takes place when one seeks to change a medical doctor's behavior in relation to a patient.

The proliferation of Federal grant-in-aid programs, dating largely from the era of President Johnson's "Great Society," has resulted in the gradually widening use of a number of managerial techniques, many of which bear only peripheral or ancillary relationship to the substantive work performed under the terms of a specific grant. "Evaluation" is a term embracing philosophical, pragmatic, managerial, and accounting components; and the growing emphasis placed upon something called "evaluation" as an intrinsic responsibility of grantees under various Federal programs is a phenomenon which underlies the entire issue.

Philosophy

"Evaluate" Webster's Seventh New Collegiate Dictionary reveals, is

simply a transitive verb, meaning "1: to determine or fix the value of, 2: to examine and judge." There is suggested as metaphysical undergirth, addressing itself to the ancient riddle of "reality"; for, implicitly only that which has being or reality is capable of having a value capable of fixation, or measurement. On the other hand, tangibility, which as long ago as Seneca was successfully separated from and shown to be immaterial to reality, is not a prerequisite to evaluation. In this latter philosophical aspect, verging upon the esoteric, evaluation becomes highly isiosyncratic with respect to the evaluator, and although a sound philosophical argument can be propounded in its defense, there should be a clear understanding at the outset that for purposes of evaluating Federally-supported grant programs all experience tends to show that objective measurement of results against definitive goals constitutes the relatively narrow subset of the evaluative domain which must be addressed.

Pragmatic Considerations

Assuming the foregoing to be true, "evaluation" in the sense of repertorial obligations of Federal grantees (e.g. NCCD) connotes the posing of certain inquiries, in the light of the answers to which can be drawn inferences which tend to answer the central question, "Did the project achieve the objects for which it was funded?" Concomitant questions include, "If not wholly, then to what extent?", "If not to an acceptable extent, why not?", and even, perhaps, "If so, with what implications for setting future goals and subsequent operational procedures?"

Management Considerations

Management concerns itself with the organization, allocation, and control of a body of resources for the purpose of achieving objectives. In this sense, "Management by Objectives" is a redundancy. If this current "in-term" in management theory were restated as "Management Without Losing Contact with Objectives," it would be more precise but verbose and unwieldy; so the shorter term is used, and semantic purism is sacrificed.

The point is that in the absence of clearly defined objectives, what continues to be called "management" is really "reaction to crisis" or "hunch," and evaluation is condemned to the esoteric or idiosyncratic realm described above. As humility is the beginning of wisdom, so objectives are the touchstone of evaluation.

The first step, then, in the process of evaluation must be the development of realistic objectives, followed by management procedures that create a climate in which those objectives can be theoretically accomplished. Therefore "management" at all levels of NCCD and comparable grantee institutions must concentrate upon goal-accomplishment at all stages of planning and operation.

Accounting Considerations

For the purposes of this document, "accounting" is treated as a much broader, generic term than its customary, narrow application to fiscal record-keeping would admit. The term "accountability" is increasingly

used in public administration to denote the unique obligation of managers at all levels to describe the outcome resulting from the expenditure of resources. As noted above, resources are the "raw materials" from which "achieved objectives" are to be fashioned through the process called "management."

Resources, in the context of the operation of NCCD, may conveniently be examined as: funds, manpower, and time. Readily apparent is the cumulative character of fiscal resources, with which, among other things, the time of personnel is purchased. Without belaboring the manifest fact that money buys all other resources, there is no great difficulty posed by the equally valid observation that what the personnel accomplish within the time available is not necessarily a direct function of the amount of funds expended.

Funds. Quantified by nature and subject to generally recognized and accepted methods of fiscal accounting, the money resources of an institution lend themselves to some fairly simple evaluative techniques. Whether funds were expended legally and for legitimate, approved purposes is easily determined by conventional financial auditing procedures.

However, whether the funds were, or are projected to be, expended wisely (i.e., in such a way as to make optimum contribution to the achievement of the objectives) is outside the responsibility, expertise, or proper concern of the financial auditor. Fiscal accountability, in and of itself, is virtually meaningless in the context of evaluation. Nevertheless, funding levels constitute the most readily measurable, and often the strictest, constraint on accomplishment of the objectives. Therefore, the accounting

system used should, while facilitating the legal requirements for fiscal accountability, be contemporaneously so arranged as to permit maximum analytical derivation with respect to such goal-oriented activities as feasibility studies, priority identification, and cost-effectiveness determinations.

PPBS. A convenient vehicle for this kind of fiscal-accounting-cum-planning/management is "Planning, Programming and Budgeting System" (PPBS), the acronym for which has somehow been counter-evolved into "Program Planning and Budgeting System" in some public-administration circles. Regardless of the antecedent terminology, PPBS was originally a Department of Defense (DOD) innovation during the "McNamara Years," extended by Executive Order of President Johnson to all Federal Agencies, and gradually filtered by fiat and by fellowship into various State, local, and quasi-public operations. When not employed at a level of overkill, PPBS has proved adaptable from the sublime level of the Five-Year Defense Program of DOD, down the ladder of sophistication to comparatively limited direct and flow-through grant programs administered by other Federal Executive Departments (especially HEW and its web of subordinate bureaus and offices).

PLANNING, PROGRAMMING, AND BUDGETING SYSTEM (PPBS)

This discussion of PPBS is undertaken with NCCD as the specific frame of reference. In such context, it resembles only vaguely (as should be the case) its progenitor in DOD and other Federal Departments. The principle

elements of the system are intact, however, although some of the functions described may be performed almost intuitively by management persons in an enterprise as small as NCCD. The elements include:

Broad Areas of Concern

Assistors and Inhibitors (assets and liabilities bearing on the effectiveness with which areas of concern may be addressed by programs)

Objectives

Priorities

Programs to achieve priority objectives

Resource Analysis and Allocation to Programs

Management

Evaluation in terms of objectives sought

A simplified chart based on Project Evaluation and Review Technique (PERT) depicts a feasible relationship of these elements in Figure 1.

Areas of Concern constitute both solicited and random inputs to the College. They could originate from such diverse sources as a formal needs assessment conducted by LEAA, NCCD, a private contractor or one of NCCD's sponsoring organizations, to a casual comment by an institute participant, calling attention to an unmet need.

Areas of Concern are normally broad in scope, general in definition, and topical in expression. An example: Making competent counsel available to those accused of crime in remote areas of the U.S. Analysis of this

area of concern would reveal that some remote areas are more acutely in need of services than others; that some may have structures for providing such services, but that the structures have not been implemented; that some areas are "remote" by virtue of topography (Appalachia), while others are "remote" in terms of population sparsity and distance (the Intermontane Desert). Likewise, inhibitors to effective action may take the form of cultural patterns ("mountain folk") racial or ethnic distinctions, or legal barriers (treaty rights of certain Native American Tribes for example).

A careful examination of the inhibitors will not normally "rule out" an area of concern at this stage; for to permit it to do so would consign the College to "picking the easy ones" and subvert its basic function, which is to upgrade the quality of representation of the accused (presumably most of all where that is a particularly "tough" task).

Balancing resources and assistors against needs and inhibitors, policy-makers can then begin to "zero in" on those tasks that appear to be (1) worthy of attention, and (2) not clearly beyond the capability of the College to affect. Priorities will emerge, as they must; since there are never sufficient resources to do everything simultaneously.

At this point, objectives may be written, and from these objectives will flow Program Elements, with their attendant arrangements, for the purpose of accomplishing the objectives. Since objectives constitute the framework upon which all of the remaining functions are laid, an analysis of the nature and development of objectives is appropriate.

END