

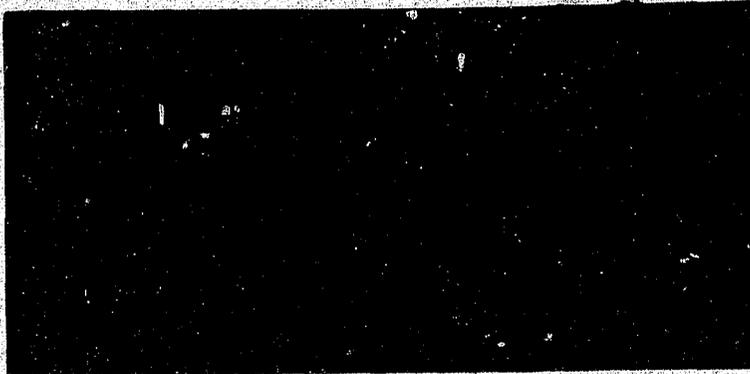
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T/A #84A

TRAINING NEEDS ASSESSMENT
FOR THE
NORTHWEST INTERTRIBAL COURT SYSTEM

April 1980

NCJRS

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ACQUISITIONS

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I. BACKGROUND INFORMATION

A. The Northwest Intertribal Court System

The Northwest Intertribal Court System (NICS) is a private, non-profit agency located on the Swinomish Indian Reservation near LaConner, Washington. The primary purpose of NICS is to provide basic court system resources to those Indian tribes in western Washington which wish to participate in the NICS circuit trial court. Presently, a total of thirteen tribes are participating in the program and to a varying extent make use of the resources offered by NICS.¹ The basic court system resources offered are a judge, a prosecutor, a defender, and administrative support, particularly in scheduling. The provision of these resources is pursuant to the consent of the individual tribes; only with the permission and authorization of the tribes may the personnel and administrative resources of NICS be permitted to assist the tribes with judicial proceedings.

Having been in existence for approximately one year, NICS responds to a recognized need for enhanced judicial system resources within western Washington's tribal government systems. The need for a regular dispute resolution forum and the personnel to administer such a forum has become increasingly apparent in recent years (see Appendix B which reproduces grant material elaborating on the purpose of the NICS program). Prior to the availability of NICS, all tribes in western Washington administered their own tribal court in a varying and individualized fashion, proceeding upon the sovereignty of the Indian tribe and the exclusive jurisdiction of that tribe in specified legal areas. NICS is an attempt not only to enhance the judicial activities of participating tribes, but to do so in an

¹The participating tribes are: Muckleshoot, Port Gamble, Puyallup, Quinault, Shoalwater Bay, Skokomish, Suquamish, Squaxin Island, Swinomish, Upper Skagit, Lower Elwha, Lummi, Sauk-Suaittle and Chehalis. The obligations of the tribes in participating in NICS are listed in Appendix A.

efficient manner. NICS is in essence a pool of resources which can be provided to the tribes on a shared, coordinated basis. The relatively light caseloads of each tribe permit scheduling of a NICS judge, prosecutor, and defender, so as to respond to the needs of multiple tribal courts.²

The twenty federally recognized Indian tribes in western Washington together have a reservation population of approximately 18,000. The thirteen tribes using NICS have eleven court locations; three tribes have formed a cooperative and support a single tribal court.³ Each of western Washington's tribal court organizations receives some funding from the Bureau of Indian Affairs (BIA) for their tribal courts; the funding for NICS supports only NICS's immediate staff and is derived from both BIA, Law Enforcement Assistance Administration (LEAA), and private foundation funds. The present staff of NICS consists of one chief judge, one associate judge, an administrator, a prosecutor, a defender, a chief clerk, and two secretaries.

All Indian tribes in western Washington exercise some aspects of their legal jurisdiction over reservation lands or tribal members in the operation of tribal courts. The last 15 years have witnessed increasing assertions of tribal jurisdiction, although historically, the doctrines of tribal sovereignty and self-government are firmly rooted and well accepted. Virtually all tribes in western Washington presently are expanding their jurisdictional authority, following a national trend in

²The NICS endeavors to recognize the need to carefully distinguish between its role and the role of independent tribal judges. Where tribes do not necessarily want or cannot afford their own reservation-based judges, the NICS can provide judicial services on a circuit basis. This is not in any way intended to supplant the independent judges. Furthermore, the NICS can provide prosecutors, defenders, and an appeals panel when needed, as well as a judge when needed.

³Located at the Swinomish reservation, the three tribes in the cooperative are the Swinomish, the Upper Skagit, and the Sauk-Suaittle.

tribal court operations. The role of tribal courts in legal controversies that arise on reservations or involve tribal members is undergoing significant development and has been the subject of important litigation in the federal court system. Emerging from this litigation is a well established principle that tribal courts have a legitimate and important role to play in the governmental affairs of the tribes; tribal courts, established to resolve disputes in a forum established by the tribe, are fast becoming a fundamental institution in tribal government. Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians. The exercise of tribal jurisdiction is premised on several recognized needs:

- the need for control of Indian reservation resources;
- the need to assist in the regulation of the provision of social services to Indians;
- the need for a dispute resolution forum to handle fishing rights disputes;
- the need to enhance the tribe's law enforcement system generally; and
- the need to provide a dispute resolution mechanism which can apply the individualized legal code of a particular Indian tribe.

The Northwest Intertribal Court System represents a new approach to the development of court systems for Indians. An overriding characteristic of the program is the fact that each tribal court is an independent organization operating under the sovereignty of the tribe. Thus, NICS is placed in a service provision role not only with respect to administrative needs such as training, but also with respect to the provision of basic judicial system services, which comprises the essential purpose of NICS.⁴

⁴While the rulings of the NICS judge are binding so long as the judge has been authorized by the tribe to hear a case, at any time that authority may be revoked in favor of a more exclusively Indian tribal court forum.

All administrative needs of the tribal courts, including that of training, must be assessed in light of the unique organizational characteristics of tribal courts.

B. Approach to Conducting This Training Needs Assessment

One of the stated purposes of NICS is to assist tribal court clerks in obtaining a high standard of proficiency in their job functions through training programs addressing court procedures, court records, filing systems, and basic clerical skills. Specifically, this objective is part of the responsibility of the NICS administrator, Mr. Jack Brummel. Pursuant to this mandate, Mr. Brummel submitted a request for technical assistance in the area of training to the Office of Financial Management, Division of Criminal Justice, Washington State. The request was referred to the Law Enforcement Assistance Administration and the Criminal Courts Technical Assistance Program lodged at the American University's Institute for Advanced Studies in Justice. The T.A. program retained the services of Ernest H. Short and Associates, Inc. (EHS&A) to provide the needed technical assistance.

It was decided that the technical assistance project would be conducted in two phases. The first phase, which is the subject of this report, was a training needs assessment during which the specifics of a training program were explored based upon a review of the NICS program and the operations of the participating tribal courts. The second phase envisions implementation of a training program based upon the first phase's needs assessment.

During the week of March 17-21, 1980, Mr. Ernest H. Short and Mr. Charles F. Doolittle conducted a site visit to the NICS offices and three of the tribal courts utilizing NICS services. Interviews were held with Mr. Jack Brummel (Administrator), Judge Mary Turgeon (Chief Judge), Judge Doreen

Schuyler (Associate Judge), Ms. Kris Whipple (Chief Clerk), Mr. Gene Straw (Court Clerk, Skagit System Cooperative), and Ms. Laurie Mattson (Court Clerk, Klallam Indian Tribe). Portions of the legal codes of several of the tribes were collected for review as were many forms in use by the courts. Courtroom facilities were toured, and although it was not possible to observe in-court proceedings during the site visit, the interviews sought information regarding the nature of in-court proceedings and the role of court clerks therein. The remainder of this report documents the consultants' observations and conclusions regarding training needs for tribal court clerks participating in the NICS program.

II. TRAINING NEEDS ASSESSMENT

A. Operational Description of Tribal Courts

All tribal courts making use of NICS resources require a single part-time or full-time clerk. The basic functions of these positions are recordkeeping for court cases, scheduling, financial accounting, jury management, certification procedures, summoning procedures, and any other administrative tasks required by the tribal court. Although all eleven tribal courts have in common a basic judicial purpose and simple organizational structure, one need only look slightly below the surface to discover distinct differences in their operations. First, each tribe has its own legal code embodying differing substantive and procedural law. Secondly, the experience and capabilities of the court clerks varies to a marked degree.

Since the tribal circuit court created by NICS consists of the individual tribal courts of participating tribes, the specific procedures employed among the tribal courts necessarily differ. The procedural practices now in use by the court clerks are largely the result of an individual clerk's ability to provide the administrative support needed by the tribal court operation, based upon the mandates of the tribe's legal code and the historical practice of the tribal court to date. Since most of the clerk positions are CETA funded, a high rate of turnover of court clerks is evident, creating inconsistency in the quality of court clerk job performance.

NICS offers to the participating tribes a continuity of court system resources; however, these resources (judge, prosecutor, defender) must conform to the legal practices of the individual tribes. In this sense, procedural practice, which ultimately is the subject of court clerk training, is dictated "from the

bottom up" and not "from the top down". There is a definite limitation to NICS staff authority in prescribing procedural practice.

The typical tribal court in the NICS holds court every two weeks. An arraigning officer commonly is available in the interim to hold arraignments and respond to emergency situations. The trial court of NICS moves from reservation to reservation; the judge conducts court at appointed times at each reservation and hears all cases that have accumulated since the last trial day. The caseloads consist primarily of criminal and fishing rights cases with minimal civil, domestic relations, and probate cases.

Because the NICS judges have a limited amount of time at each tribal court, much is expected of the court clerk at each location. The ability to manage the operation independently is an essential quality in a successful court clerk. Whether the position be part-time or full-time, the court clerk is responsible for total administrative support of the court. An example of the scope of these duties is found at Appendix C which displays a court rule pertaining to court clerks of the Skokomish Tribal Court.

B. Court Clerk Training Needs

Emerging from the interviews conducted during the needs assessment site visit is a consensus that basic administrative and clerical skills are the appropriate subjects for court clerk training. The subject areas should address rudimentary aspects of clerks' office procedures:

- how to construct and maintain a case file (e.g. what does and does not go into a case file and how should the file be organized);
- how to keep a filing system;

- how to keep records of the court's financial accounts;
- how to process legal documents, such as date-stamping upon receipt, certification, issuing summons, etc.;
- how to read, maintain, and apply the legal code of the tribe; and
- how to relate to a judge and participate in courtroom proceedings.

Other suggestions regarding training needs included understanding legal terminology and procedures for producing transcripts of courtroom proceedings (the court clerks prepare transcripts from audio tapes for cases on appeal).

Given the unique environmental characteristics of the Northwest Intertribal Court System, the training needs assessment question becomes how to structure a training program which successfully imparts improved skills in the above areas. Two obstacles are apparent: 1) the procedural specifics which necessarily are the subject of court clerk training are different among tribes and will continue to be so, and 2) a high rate of turnover among court clerks threatens to undermine the results of a training program. Overcoming these problems is essential to the success of any efforts to train the tribal court clerks.

Although the procedural differences among the tribes are significant, there are nevertheless certain clerical procedures and practices in which the court clerks could be trained which do not encroach upon the individualized mandates of Indian law. Uniformity of practice among the tribes in case file maintenance, filing systems, notification procedures, accounting procedures, and in-court behavior could be developed while maintaining respect for the tribes' individualized legal codes. The question remains, however, in each of the subject areas as to what specific procedure is to be followed. Some definition of these procedures must be made by NICS if court clerks are to be expected to follow a uniform, effective practice. It

would not be enough in a training program to relay the principles and objectives of, for example, records management and expect court clerks to develop independently the effective and uniform practice desired.

Specifically, NICS must define those procedural practices which at a minimum should be performed uniformly by the court clerks. Examples include:

- arrangement of case files (contents, order);
- methods of noting receipt of documents, e.g. date stamping and signing;
- scheduling communication with NICS staff;
- litigant notification procedures;
- in-court duties (expected behavior);
- preferred accounting formats (bookkeeping); and
- summoning procedures.

Definition of minimum procedural specifics by NICS staff serves two primary purposes: 1) the subject matter of a training program is specified to a level of detail which allows the trainers to go beyond a conceptual level to an applications level, and 2) the documentation of these procedures addresses the problem of court clerk turnover by offering a manual-type resource available to new court clerks who have not had the benefit of a seminar-type training program.

The obstacle of court clerk turnover may be addressed by two approaches which offer continuity in training resource availability. The first is the development of a written procedures manual documenting those procedures which should be performed uniformly by courts of NICS. This manual should grow out of the documentation of minimum procedural specifics

as discussed above. Secondly, the NICS Administrator represents a potential training resource to supplement the instructions of the manual. The job duties of the Administrator should encompass training by having the Administrator maintain an instructional program which educates new court clerks and develops uniformity of procedure among the tribal courts to an optimal level.

A seminar type training program such as is envisioned in the second phase of this technical assistance project has utility as a focal point for the establishment of an ongoing training program. The ongoing program would employ a written manual, the availability of NICS staff as a training resource, and the periodic conducting of court clerk training seminars. Without a programmatic context, a seminar training program at this time would likely be too conceptually oriented (as opposed to applications oriented) and lose its impact over time rapidly. A potential agenda for a seminar designed to introduce a training program and provide specific operational instructions is shown at Figure 1.

FIGURE 1

PRELIMINARY COURT CLERK TRAINING SEMINAR AGENDA

- 9:00 a.m. Introductions, welcome
- 9:15 a.m. Orientation Address - Jack Brummel
- explain format of training seminar
 - introduce concept of ongoing training program
- 9:30 a.m. The Judicial Process in Tribal Courts - Judge Turgeon
- the concept of tribal courts, status of the institution
 - importance of administrative support of court operations
- 10:00 a.m. Judicial Administration: The Role of the Court Clerk, Consultant Trainer
- components (management areas) of judicial administration
 - duties of court clerks, the "independent managers" of the tribal courts
 - introduction of procedures manual, presentation and discussion of content
- 11:00 a.m. Guest Speaker
- individual from outside organization invited to address topical subject
- 1:30 p.m. Management/Operations Workshops
- Group A: Hypothetical Problems Demonstrating the Importance of Uniform Procedures
- Group B: Records Management Problem
- Two Workshop Leaders each Group:
Judge/Brummel
Judge/Consultant
- 2:30 p.m. Reverse Workshop Subjects
- 3:30 p.m. Applications Questionnaire
- using the knowledge gained in the training session
- 4:00 p.m. Training Evaluation Post-Test
- assessing the effectiveness of training, planning for future seminars

III. SUMMARY OF TRAINING NEEDS ASSESSMENT RECOMMENDATIONS

Clearly, there exists a need for training of court clerks of the Northwest Intertribal Court System to improve basic administrative and clerical skills in the support of the tribal circuit court. The substance of this training should be both general and specific in nature. Training should focus both on education as to the importance of quality judicial administration and sound management principles, and on the specific procedures which should be practiced uniformly by court clerks throughout the tribes. Through this dual focus in training, the purpose and function of NICS may be communicated effectively to the court clerks.

Prior to the implementation of a seminar-type training program, a delineation of specific procedures to be the subject of training should be made. This phase of the training process no doubt will involve the NICS Administrator in the operational specifics of the tribal courts and thus prepare that position to be an ongoing training resource in the area of clerks' procedures. Participation in preparing a procedures training manual will enhance the NICS Administrator's role as an administrative resource.⁵ Also involved in this procedural definition process should be the judges, prosecutor, and defender of NICS, as well as the technical assistance consultants if deemed necessary. An underlying benefit of this type of procedural documentation is a clearer definition of NICS' role as an administrative resource to the tribal courts, a benefit which lends credence to further training efforts.

A training seminar is recommended as an initiation of an ongoing training capability within NICS. The procedures manual suggested above may be presented and discussed at this seminar

⁵Presently, the NICS central office keeps a duplicate copy of case records.

in the context of a comprehensive training seminar. Specific procedures will be outlined for adoption by the court clerks as delineated in the procedures manual. In addition to this instructional approach, an educational approach is suggested wherein the judicial process and judicial administration generally are addressed with particular emphasis on component management areas in the operation of a clerk's office.

The recommendation of this report to consider training of court clerks as an ongoing process rather than as a singular event is made in light of the unique organizational characteristics of tribal courts and the unusual role of NICS as the provider of court system resources. The tribal courts are individualized organizations and the content of uniform procedures appropriate for systemwide training demands continuing attention. Furthermore, the turnover of court clerk positions and the part-time aspect of some of the involved positions dictate that a structured approach to training be taken whereby a procedures manual and an ongoing training capability among NICS staff comprise the major features of the training program.

Recommendations:

1. NICS staff (Administrator, judges, prosecutor, and defender) should document their perceptions of how a tribal court clerk's office should function and what procedures should be performed uniformly among the clerk's offices.
2. Technical assistance should be given to NICS after the documentation above is completed to develop a procedures manual. Two consultants devoting five days each to the task is estimated as a minimum requirement.
3. Following completion of the procedures manual, a training seminar should be held to introduce and begin implementation of a structured training program. Two consultants working for five days each to plan and prepare materials for the seminar is required in addition to two days each to conduct the seminar.

The above three recommendations summarize the training needs assessment presented in this report. Training of tribal court clerks is seen as critical to administrative improvement in the Northwest Intertribal Court System; a structured, programmatic approach to training is seen as indispensable to the effectiveness of a training effort.

APPENDIX A

EXCERPT FROM GRANT MATERIAL:
REQUIREMENTS FOR RECEIVING NICS SERVICES

OBLIGATIONS OF THE TRIBES

Each tribe that wishes to participate must provide certain support for the system. This includes:

- a. Copies of tribal laws sent to the NICS office;
- b. Resolutions appointing the NICS judge(s) as tribal judges;
- c. Copies of all forms used by tribal court;
- d. Designation of a court clerk who handles, at the reservation, docketing, filing, typing, etc. for the court, plus space and equipment for the clerk;
- e. A bailiff for court sessions;
- f. An arraigning officer who can act in a judicial capacity in emergencies, and who can coordinate the delivery of services at the reservation;
- g. A yearly list of the approximate number of cases each tribe will be expecting the NICS to handle;
- h. A list of probation officers, juvenile officers and resources available that may be utilized by the court in sentencing; and
- i. Passing a resolution authorizing an agent of the tribe to enter into the NICS Governing Agreement.

APPENDIX B

EXCERPT FROM GRANT MATERIAL:
PURPOSE OF NICS

PART IV

PROGRAM NARRATIVE

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE

Need: The need for this program is documented in "A Plan for a Western Washington Circuit Tribal Court and Court of Appeals," a summary of findings and conclusions of a research project funded by the Bureau of Indian Affairs.

The tribes' powers of self government are based on long accepted doctrines of tribal sovereignty and have been affirmed in recent federal court decisions, most notably by the 1974 fishing rights decision. As tribes exercise jurisdiction over their reservation and territories, the need for an expanded and improved tribal court system has become increasingly evident.

Because there are many small tribes in Western Washington, the establishment of tribal trial and appeals court systems on each reservation would be extremely difficult. The situation presents problems in terms of operational costs and maintaining qualified personnel.

As a result of these considerations, seven Western Washington tribes have effected a cooperative agreement to establish the Northwest Intertribal Court System to serve all participating tribes.

Goals and Objectives: The goal of the Northwest Intertribal Court System is to strengthen the participating tribes' powers of self government through the establishment of an independent judicial system. The purpose of the judicial system is to guarantee all rights of due process and equal protection to all parties of tribal court proceedings and all persons under tribal jurisdiction. This program will institute a cooperative endeavor to provide all necessary assistance to Western Washington tribes in establishing efficient and competent trial and appeals court systems.

The specific objectives requisite to achieving this goal are:

- (a) To establish a Northwest Intertribal Court Systems Board. This Board will consist of one member from each participating tribe. The purpose of the Board will be to implement and oversee the administration of the Northwest Intertribal Court System.

- (b) To institute a joint agreement detailing the responsibilities of the program administrator. The program administrator will be hired by the Board. The program administrator will assist in hiring the additional personnel.
- (c) To establish a tribal circuit court system. Each tribe will have a trial court on its reservation. Program staff will assist in the preparation of procedural and substantive codes of law upon tribal request. The circuit court staff, consisting of a trial judge, prosecutor, defender, law clerks and secretaries will be hired.
- (d) To establish an appeals court system. Procedural codes for the court will be developed by the administrator for Board concurrence. The appeals court system will utilize the services of the law clerks and the secretaries of the trial court system. A panel of appeals court judges will be selected and receive training.

2. RESULTS OR BENEFITS EXPECTED

Western Washington Tribes will be participating in this program. Resolutions of endorsement have been received from the Muckleshoot, Port Gamble, Puyallup, Quinault, Shoalwater Bay, Skokomish, Suquamish, Squaxin Island, Swinomish, Upper Skagit, Lower Elwha, Lummi, Sauk-Suaittle and Chehalis tribes.

The program will result in the strengthening of the tribes' powers of self government through the establishment of an effective judicial system. Each tribe will benefit by receiving all necessary assistance to effectuate the proper administration of justice on each reservation. Establishment of a functioning judicial system will allow tribes to regulate activities within their jurisdiction more proficiently and guarantee to all individuals within tribal jurisdiction equal protection and rights of due process.

The Northwest Intertribal Court System will fulfill each tribal government's legal responsibility to provide a uniform and impartial system of justice.

APPENDIX C

COURT RULES PERTAINING TO
COURT CLERK JOB DUTIES

Rule 1. Clerk

- a. Before taking office, the court clerk shall state in the presence of the judge that he or she will perform the clerk's duties faithfully and honestly, will not let personal views and relationships affect the performance of the clerk's duties, will not attempt to influence the course of court proceedings, and will not reveal confidential matters which the clerk learns in the course of official duties.
- b. Duties of the court clerk include:
 1. Making and keeping records of all lawsuits and criminal prosecutions brought in the tribal court, all actions taken by the parties or the court during such cases, and all court hearings;
 2. Keeping a calendar of court hearing dates and deadlines, and helping with scheduling of court proceedings;
 3. Notifying the judges and parties, as required in these rules, of actions taken, hearings scheduled, and other developments requiring their attention during cases filed in tribal court;
 4. Receiving and recording money for fines and costs charges to parties in court cases; and keeping records of property seized, held for use as evidence, disposed of, and returned in the course of court proceedings;
 5. Participating in training programs identified as necessary by the court administrator;
 6. Maintaining for the use of court personnel and parties an up-to-date set of Rules of the Skokomish Tribal Court and the Skokomish Tribal Code;
 7. Maintaining a list of persons who are permitted to appear in tribal court as representatives for parties and witnesses;
 8. Maintaining a list of persons eligible to serve on juries, and summoning jurors as provided in these rules.
- c. The court clerk shall have authority to do the following:
 1. Administer oaths of persons who make out complaints and affidavits;

2. Prepare and certify the official record of a court hearing;
3. Sign and issue summonses for potential jurors and witnesses, as long as such summonses will be served within the Skokomish Reservation.

END