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CONTINUING LEGAL EDUCATION: HISTORICAL BACKGROUND, RECENT DEVELOPMENTS, AND THE FUTURE

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Although practical experience and independent study advance a lawyer's education, continuing legal education (CLE) connotes a formal educational experience, such as a lecture, a seminar, or a workshop, related to the practice of law and sponsored by a bar association, a law school, or an organization which specializes in such advanced professional training. In this Article I will describe the growth of the CLE in the United States, with emphasis on the role of the American Bar Association (ABA), and discuss new developments in the field.

HISTORICAL BACKGROUND

Origin of CLE

Early CLE activity occurred on a local level. In the spring of 1916, the Association of the Bar of the City of New York began offering a series of lectures by lawyers with expertise in particular areas for the benefit of the general practitioner.¹ The lectures were successful and, except for a hiatus during World War I, continued into the 1930's.²

Sponsored by the District Bar Association of the 14th Judicial District, the Lawyers Chautauqua was founded in Emmetsburg, Iowa, in July 1924. Although the Chautauqua has a social aspect, its educational value has always been high.³ Another midwestern organization, the Cleveland Bar Association Institute, launched a CLE program in October 1931 with lectures by Roscoe Pound. By 1938 the Institute had offered 11 lecture series, each of which

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¹ C. MORELAND, PROFESSIONAL EDUCATION OF THE BAR: GROWTH AND PERSPECTIVES 3 (1972) [hereinafter cited as MORELAND], citing ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, SOME LEGAL PHASES OF CORPORATE FINANCING, REORGANIZATION AND REGULATION vii (1917).

² MORELAND, *supra* note 1, at 4.

³ *Id.* at 5-6. The Lawyers Chautauqua is now sponsored by the District 3A Lawyers Organization and is accredited by the Iowa Supreme Court as a sponsor for CLE activities. See Iowa Sup. Ct. Comm'n on CLE. Supplemental Listing of Accredited Sponsors, Feb. 10, 1976.

boasted attendance of between 400 and 600 lawyers.⁴ The state bars of Minnesota and Wisconsin also developed successful, well-attended CLE programs in the early 1930's.⁵

In an effort to bridge the gap between law school theory and practical experience, the Practising Law Institute (PLI) was founded by Harold P. Seligson, a New York City practitioner, in 1933. Using the quarters of the New York University Law Review, he began with 16 evening lectures given by 4 practitioners to 15 recent graduates. By 1936 the program had expanded to 9 courses, taught by 40 attorneys, totaling 188 hours of evening instruction. Attendance figures proved that Seligson's practice-oriented introductory and specialized courses filled a need.⁶

As a result of Seligson's success in New York, Herbert Wenig, a young San Francisco practitioner, prompted the Stanford Law Society to conduct a similar lecture series. In March 1937 the Society initiated a 15-week series of lectures by active practitioners having particular expertise in the subjects taught. The series was phenomenally successful. The lecture hall was filled to its 300-person capacity for the first program, and more than 200 additional applicants had to be turned away. Attendance during the series averaged 250 attorneys for each lecture.⁷

Although the ABA Section of Legal Education and Admissions to the Bar had been established in 1893, it was not until the late 1930's that the Section itself engaged in any significant CLE activity. In 1937 the ABA resolved to aid practicing attorneys in their attempts to systematically extend their fields of legal knowledge and to cooperate with state and local bar associations to provide "opportunities for supplementing the legal education and training of its members."⁸ Between 1937 and 1940 the ABA aided a large number of state and local bars in the presentation of well-attended programs.⁹

The introduction in 1938 of the Federal Rules of Civil Procedure gave impetus to the CLE movement. The ABA Section of Legal Education and Admissions to the Bar and the School of Law of Western Reserve University sponsored a 3-day program on the

⁴ MORELAND, *supra* note 1, at 8-9.

⁵ *Id.* at 7-8.

⁶ *Id.* at 11-13, citing Seligson, *Post-Admission Education for Lawyers*, 22 A.B.A.J. 231-32 (1936).

⁷ MORELAND, *supra* note 1, at 16-17, citing Dooling, *The Stanford Law Society's Experiment in Post-Graduate Instruction for Lawyers*, 12 CAL. ST. B.J. 109-10 (1937).

⁸ Section of Legal Education and Admissions to the Bar, *Report*, 65 A.B.A. REP. 342, 345 (1940).

⁹ *Id.* at 345-46.

Rules prior to the ABA Annual Meeting in Cleveland. In addition, the ABA sponsored institutes on the Rules in Washington, D.C., and New York City. The programs were so well received that over 20 cities held lectures on that topic alone in subsequent months.¹⁰

Post-World War II Activity

World War II had a significant impact on CLE. Returning veterans whose legal careers had been interrupted needed to refresh their skills and be updated on interim developments. The ABA cooperated with the PLI in presenting much needed courses. By mid-1945 PLI had organized courses in 24 states and had planned them in 10 more.¹¹

In 1947 the ABA entered into a Memorandum of Understanding with the American Law Institute (ALI) pursuant to which the Committee on Continuing Legal Education of the ALI, with representation by the ABA, was created.¹² Under the Memorandum of Understanding, the CLE efforts of the two organizations were to be conducted jointly. The ALI assumed responsibility for, among other things, a national publication program, coordination and encouragement of state and local CLE efforts, and the program's financing. The ABA's responsibilities were supportive in nature. The programs were conducted by ALI-ABA staff who reported to the ALI Committee. The Memorandum has since been amended in 1958,¹³ 1970,¹⁴ and 1974,¹⁵ and each time the ABA's responsibilities within ALI-ABA have been expanded and its freedom to engage in other CLE activities enlarged. In 1958 the Committee was renamed the ALI-ABA Joint Committee on Continuing Legal Education, and in 1974 it was changed to the ALI-ABA Committee on Continuing Professional Education. Currently the ABA nominates half of the Committee's members, but has not otherwise shared in any significant way in program planning or financing.

The current ALI-ABA agreement contains explicit recognition that both the ABA and the ALI "may carry out [CLE] objectives in their individual capacities or with any other entities with which they may elect to collaborate. The program conducted by the Committee shall be deemed to be no more than one of the methods by

¹⁰ Section of Legal Education and Admissions to the Bar, *Report*, 64 *id.* 452, 459-60 (1939).

¹¹ *Proceedings of the House of Delegates*, 70 *id.* 101, 123 (1945).

¹² Section of Legal Education and Admissions to the Bar, *Report*, 72 *id.* 307, 313 (1947).

¹³ ALI-ABA Comm. on Continuing Legal Education, *Report*, 83 *id.* 617, 620 (1958).

¹⁴ Board of Governors, *Informational Report*, 95 *id.* 584, app. A, at 597 (1970).

¹⁵ Standing Comm. on Continuing Education of the Bar, *Report*, 1974 A.B.A. REP. NO. 127, at 8.

which ABA and ALI shall fulfill their responsibilities in meeting the educational needs of the bar."¹⁶

The nature and quantity of CLE has been affected by a series of important conferences. At the first, which took place in 1958 at Arden House in Harriman, New York, the development of professional CLE staffs at the state bar level was urged. At the second Arden House Conference, held in 1963, improving the quality and expanding the reach of CLE programs were the focus. Two needs were emphasized: providing law school graduates with practical skills and coordinating the numerous organizations offering CLE.

CURRENT STATUS

Organizations and Format

The mandate of the first Arden House Conference was taken seriously. By 1975 the membership of the Association of Continuing Legal Education Administrators (ACLEA) numbered over 60 and came from 39 different states.¹⁷ The Annual Bar Associations Profile compiled by the ABA Section of Bar Activities in June 1975 indicates that 34 state bar associations have at least 1 or more staffpersons employed full or part time for CLE projects alone.

CLE organizations have a wide variety of financial bases. Some are affiliated with a bar association; some are affiliated with a university; others are sponsored by both a bar association and a university; and still others are privately operated on either a proprietary or a nonprofit basis.

The catalogue of CLE programs, offered in the United States, published by ALI-ABA, lists well over 500 scheduled and planned programs in 33 different states, the District of Columbia, and the Virgin Islands.¹⁸ And, to avoid excessive program conflict and duplication, 80 organizations adhere to the "Standards of Fair Conduct and Voluntary Co-operation."¹⁹ The majority of CLE programs consist of lectures or panel discussions supplemented by written material. Most give the audience a chance to question the expert speakers. Film and video tape have to date been utilized only to a limited extent, often for the purpose of reproducing live presentations for wide dissemination.

¹⁶ *Id.* at 13.

¹⁷ ACLEA, Membership List, Sept. 1, 1975.

¹⁸ ALI-ABA, CATALOG OF CONTINUING LEGAL EDUCATION PROGRAMS IN THE UNITED STATES (Fall/Winter 1975-1976).

¹⁹ *Id.* at vii.

ABA Activities

In 1966, the ABA instituted the National Institute's program in response to the desire of the various sections to sponsor their own CLE programs. By definition, ABA National Institutes are

substantive or informational programs sponsored principally by an ABA Section and under its control, composed of lectures, panels, demonstrations, or workshops, lasting at least one full day, for which a registration fee is charged, and to which non-members as well as members are invited.²⁰

Since the initiation of the program on January 1, 1967, over 80 National Institutes attended by over 18,000 persons have been presented. The ABA not only hopes to expand the National Institutes program, but is continuing its active participation in ALI-ABA as well.

In recent years, the ABA has undertaken a greater leadership role in the rapidly expanding CLE field, and in 1975 the ABA Task Force on Advanced Judicial and Legal Education recommended the continuation of such involvement.²¹ Concurrently, on January 1, 1975, under the aegis of the Standing Committee on Continuing Education of the Bar (Standing Committee), the ABA established the new staff Division of Professional Education (Division) for implementation of ABA-CLE activities. The Division staff took responsibility for the National Institutes program.

Through the Division, the ABA has undertaken a Consortium for Professional Education which will offer programming services to state and local bar associations and other CLE organizations. The ABA will develop high quality modules of video, audio, and written material which can be used either separately or together with programs and materials produced by state and local groups. Where possible, live presentations by experts will be supplied by the ABA for Consortium participants, who will also be encouraged to continue to offer their own independent programs.

The first Consortium program will deal with ethics and professional responsibility and liability. A book tentatively entitled *An Attorney's Guide to Professional Responsibility*, which will accompany the program, will discuss, among other issues, acquiring clients, the attorney's responsibilities to clients and to the public, the attorney's

²⁰ Board of Governors, *Report*, 91 A.B.A. REP. 401, exhibit A, at 408 (1966) (Guidelines for National Institutes).

²¹ Task Force on Advanced Judicial and Legal Education, *Report*, 1975 A.B.A. REP. No. 117, at 1-2.

relations with nonclients, and the enforcement of ethical responsibilities. Video tapes will be produced to supplement the live programming and written materials. The Standing Committee hopes to have the ethics program available by the summer of 1976.

The second Consortium program will concern trial advocacy. The Standing Committee and the board of directors of the National Institute for Trial Advocacy (NITA) have reached an agreement in principle to adapt the NITA's advocacy program for dissemination to a larger audience. The NITA presently offers an intense 3-week course on this topic every summer in Boulder, Colorado. Attendance requires a substantial commitment of time and money. By condensing the course for presentation on the local level through state bar associations, many more lawyers will have the opportunity to benefit from this practical, comprehensive course.

In addition, the Consortium is investigating several other subjects worthy of attention. Preliminary inquiries suggest that a great need exists for a program on the proper utilization of legal assistants. The Consortium also plans to develop materials for "self-assessment testing" programs.

Mandatory CLE

In two states, Minnesota²² and Iowa,²³ lawyers are now required to take a minimum number of hours of CLE over a specified period of time. In Wisconsin, the Supreme Court has ordered the State Board of Continuing Legal Education to develop detailed rules governing its mandatory CLE program that will become effective January 1, 1977. Several other states have mandatory CLE proposals under consideration and many more have committees studying the problem.²⁴ A CLE board or commission in each state will determine which courses its lawyers may take for credit. Proponents contend that mandatory programs ensure a minimum level of participation in CLE, thus enhancing the quality of legal services offered by the profession. Opponents dispute the value of mandatory CLE as a vehicle for improving the quality of legal services because the requirements are limited and because no provision is made for verifying that the lawyer has in fact learned from the few courses he must take.

²² MINN. SUP. CT. (CLE) R. 1 *et seq.*

²³ IOWA SUP. CT. R. 123 *et seq.*

²⁴ ALI-ABA, CATALOG OF CONTINUING LEGAL EDUCATION PROGRAMS IN THE UNITED STATES (Fall/Winter Supp. 1975-1976).

Relation Between Quality Legal Services and CLE

An informed discussion of the relationship between CLE and quality legal services is difficult to undertake because of the paucity of information available. No statistics exist on either the number of lawyers delivering poor legal services or the percentage of the legal profession participating in CLE. Nor is there any data demonstrating that lawyers who participate in CLE deliver better services than lawyers who do not.

A lawyer could maintain high quality service through independent study, such as reading advance sheets and journals, and his obligation to do so could be enforced through bar disciplinary machinery. It appears, however, that a significant portion of the bar does not voluntarily participate in either CLE or independent study. Arguably, an attorney participating in CLE only because he is compelled to do so will not be receptive to the educational experience. He should nonetheless derive some benefit therefrom, and mandatory programs may be the only way to include this sector in the CLE audience.

Participants in the 1975 National Conference on Continuing Legal Education concluded that before recommending that all states adopt such programs the organized bar should carefully study the effect of mandatory CLE programs now in operation to determine whether they actually improve the quality of legal services.²⁵ It was also suggested that the bar investigate other methods of ensuring that such an improvement is made.²⁶

Certification and Specialization

Some practitioners and educators have suggested certification of specialists and specialization as other methods of improving the quality of the delivery of legal services. Through specialization a lawyer can concentrate his energies in the one or two fields in which he prefers to practice thereby promoting delivery of high quality legal services at lower costs. CLE is related to specialization. The attorney with the specialized practice will be better able to keep abreast of new developments because he no longer need be concerned with the gamut of legal practice.

Some specialization plans require a certain amount of specialized experience and education before certification will be granted; others allow self-designation of specialization. In Califor-

²⁵ *National Conference on Continuing Legal Education Issues Final Statement with Recommendations*, 62 A.B.A.J. 210 (1976).

²⁶ *Id.*

nia, participants in the pilot specialization program must also pass an examination in order to qualify for certification. It was concluded at the 1975 National Conference on Continuing Legal Education that qualifying standards in specialization plans should place more emphasis on experience and periodic testing than on mandatory CLE.²⁷

THE FUTURE

Although the precise course CLE will take in the future is unclear, several developments appear imminent.

Second Circuit Admission Requirements

The Advisory Committee on Qualifications to Practice Before the United States Courts in the Second Circuit (Advisory Committee) has recommended to the district courts in the Second Circuit that in order to upgrade the quality of trial practitioners, applicants seeking admission to practice before such courts should be required to either take certain courses in or after law school or present to the Admissions Committee proof that they have acquired the equivalent knowledge.²⁸ The proposed rule for admission has been criticized for several reasons: that it is applicable only to newly admitted attorneys; that no relationship has been proved between the required courses and good advocacy; that it creates an elitist system duplicative of the barrister-solicitor system; that it interferes with the academic freedom of law schools; that the same goal could be better achieved through a federal bar exam; and, that the proliferation of different requirements in the 96 federal district courts in the United States would disrupt the educational system and impair the mobility of attorneys. The Advisory Committee disagrees with all of these accusations except the last. The Advisory Committee recommends that the rules for admission in all of the 96 district courts be uniform. Not all the district judges are in favor of the proposal. In fact, district judges in both the Southern and Eastern Districts of New York recently declined to adopt the proposed rules.²⁹ Nevertheless, if the new rules are promulgated in the Second Circuit, they will have an effect on CLE. Attorneys unable to schedule the required courses in law school or present to the Advisory Committee proof of equivalent

²⁷ *Id.*

²⁸ ADVISORY COMM. ON PROPOSED RULES FOR ADMISSION TO PRACTICE IN THE SECOND CIRCUIT, FINAL REPORT, in 67 F.R.D. 161 (1975).

²⁹ 62 A.B.A.J. 211 (1976).

experience would be forced to participate in CLE in order to be admitted to the bar.

New Teaching Techniques

Computer-aided learning may have potential in CLE. Appropriately utilized, it can broaden the dissemination of CLE to audiences previously unreached. The rural lawyer, prevented by time, geography, and financial restrictions from attending CLE lectures held in large cities, will someday have access to these lectures via computer terminals linked together by long-distance telephone wires.

Computer-aided exercises for law students in evidence, professional responsibility, and trial practice have already been employed successfully at the University of Minnesota Law School.³⁰ The exercises "place the students in professional roles and require them to respond as judge or counsel in some simulated problem situation."³¹

Computer-aided learning has several advantages over more traditional teaching techniques. The computer can provide the student with an instant critique of his performance, and the program can be adapted to meet the particular need of the individual. In addition, the student can work with the computer at his own pace.³²

Unfortunately, computer technology will require significant capital investment before its potentially low per pupil cost will become a reality. Its use will require access to specialized equipment and familiarity with its operation. Experimentation and innovation in new media in CLE should nonetheless be encouraged and monitored so that its effect on the delivery of legal services can be ascertained.

Accreditation

The proliferation of both voluntary and mandatory CLE has generated a need for national standards. In states where CLE is either mandatory for all or required as part of a specialization program, courses are approved for credit by a state board. As more and more lawyers meet the new minimum requirements, the volume of paper work for both state boards of accreditation and CLE

³⁰ Keeton, *A Framework for Thinking About Law-Related Learning*, in ABA NAT'L CONFERENCE ON CONTINUING LEGAL EDUCATION, PRE-CONFERENCE PAPERS 17-18 (1975).

³¹ *Id.* at 20.

³² *Id.*

administrators will increase. An accreditation system would also be helpful to lawyers who participate in CLE on a voluntary basis, for it would help them ascertain which courses are of high quality.

The Association of Continuing Legal Education Administrators has drafted a set of guidelines for CLE accreditation on a program-by-program basis. Representatives of the ACLEA and the ABA have met to discuss establishment of a national, independent CLE accreditation commission. Participants in the 1975 National Conference on Continuing Legal Education recommended that a national, independent commission which does not itself conduct CLE programs should promulgate national CLE standards providing for approval on both an institutional and a course by course basis.³³ The conferees concluded, however, that until mandatory CLE requirements are more widely adopted, a formal accreditation system does not have high priority.³⁴

CONCLUSION

The original impetus for the CLE came from within the legal profession. The growth of the CLE movement over the past half century demonstrates the increasing need the profession has for high quality CLE. Through the ABA Consortium for Professional Education, the ABA National Institutes program, and the ALI-ABA Committee on Continuing Professional Education, the ABA has been and will continue to be an advocate of high quality CLE.

Hopefully, before all states adopt such a requirement, mandatory CLE will be studied for its effect on the quality of the delivery of legal services. In addition, the legal profession will likely experiment with alternative methods of improving these delivery systems. Nevertheless, it seems clear that CLE will remain an essential means of maintaining quality legal services and will turn out to be even more important as the access to and the quality of legal services improve. Finally, it is also predicted that it will come to be increasingly integrated with other means of maintaining quality legal services including specialization, certification, and discipline.

³³ *National Conference on Continuing Legal Education Issues Final Statement with Recommendations*, 62 A.B.A.J. 210 (1976).

³⁴ *Id.* at 211.