

The Role of Legal Education After Law School

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At the Virginia State Bar's Conclave on the Education of Lawyers in Virginia at Wintergreen in March 1992, one day was spent on law school education and most of one other was spent on continuing legal education after law school. Although the two forms of education were discussed together, they are as different as they could be.

Whereas the Conclave's discussion centered on how law schools might teach more practical skills, very little criticism was directed at continuing legal education. Where law school education emphasizes abstract, theoretical analysis, continuing legal education emphasizes the concrete and practical. It is totally oriented toward practical problem solving. Typical boilerplates in CLE brochures speak of offering "nuts and bolts" and "bread and butter" subjects. CLE sponsors operate in a competitive economic environment and need to at least break even financially on programs; they soon find out that scholarly subjects do not sell registrations.

Perhaps the lack of criticism of CLE occurs because the practicing bar controls most of what happens at CLE programs. Practicing lawyers help design and teach the courses for all CLE courses. And nearly all courses are designed around lawyers' practice needs and their ability to get away from the office for only short periods of time, thus making one-day courses the necessary standard in CLE.

How did CLE get that way? Its beginnings were modest. Informal meetings at bar association meetings allowed members

to speak to each other about practice problems and their solutions. Often written materials were minimal, if any. The didactic was frequently interrupted by humor, anecdotes, and other pleasant digressions. No one counted the minutes or recorded attendance.

As the practice of law became more complex and practitioners found the information given at such presentations more necessary, formal CLE organizations sprouted to meet the need. In Virginia, the first such organization was "The Joint Committee on CLE of the Virginia State Bar and the Virginia Bar Association," which started offering CLE programs in 1960 and eventually became Virginia CLE, operating under the umbrella of the Virginia Law Foundation. As is typical in most state-oriented CLE sponsors, Virginia CLE operates as a nonprofit organization with close ties to the organized bar.

Within the past 10 years, many other sponsors have gotten into the act, both in Virginia and in the other states. A few for-profit companies run CLE seminars, but by far the majority of programs come from groups like Virginia CLE and from local or special interest bar associations. In addition, in recent years large law firms have begun doing in-house CLE. In Virginia there are 160 sponsors with automatic program accreditation and hundreds more who offer programs infrequently that are approved by the MCLE Board on an individual basis.

In some respects the entire field resembles a vast, disorganized potpourri,

with each sponsor putting out an assortment of seminars related neither one to the other nor to any other sponsor's programs. There are very few courses offered in a hierarchy so that lawyers can progress in a subject from the elementary to the complex. Lawyers are too much on the run to schedule themselves for such an exercise. In the business of CLE, each program becomes an isolated offering. Unlike law school, there are few opportunities for extended, in-depth study, and this probably reflects the realities of practicing law.

These days the major CLE sponsors pay close attention to business principles. No more are CLE seminars informal events where admission is a few dollars or even free. Full-time staffs run the larger sponsors, complete with overhead obligations. Supervising committees and boards watch the bottom line carefully. Some CLE sponsors, particularly local bar programs, use CLE net revenue to help support the parent organization. Others, such as Virginia CLE, are mandated to run break-even operations.

Recently, a number of CLE sponsors across the country have experienced financial distress, in part because lawyers nationwide have felt the effects of the recent economic recession more than any other previous recession and have cut back on CLE expenditures. One state CLE organization even entered Chapter 11 bankruptcy last year. A recent ABA conference focused on the problem.

In February 1992, the ABA hosted an invitational conference on "A Crisis in the

Profession: The Future of Continuing Legal Education and Professionalism." The "crisis" of the conference title was identified as "diminished support from the profession for CLE." William Reece Smith, Jr., former ABA President and chair of the conference, said that "the future of some of the most outstanding providers of CLE is threatened by economic recession, programmatic proliferation and professional apathy." He continued, "Most national programs and some state programs are suffering from a loss of participation, rising costs and declining revenues."

Thus, CLE as an industry (if it can be called that) is in transition, impelled by economic necessity but also motivated by a desire to improve on the standard formula of stand-up lectures, two coffee breaks and a

set of outlines. The economic exigencies pull in the opposite direction from the desire to provide more interesting fare, however. The lecture format is cost-efficient, if nothing else. More creative formats, whether they be skills-oriented seminars such as those sponsored by NITA, or other formats with audience participation, require higher upfront investment and smaller audiences. There is financial risk for being creative, though it might be argued that there is also risk in not trying creative and more interesting formats lest lawyers cut back on their CLE budgets as they may already be doing.

As long as the practice of law continues to become more complex, CLE will play a role in keeping lawyers current and teach-

ing them the practical tips that help them practice efficiently, particularly lawyers in small firms and solo practice. But just as law practice has changed dramatically over the past decade or two, CLE will be forced to change too. This change will perpetuate the differences between continuing legal education and law school education, where grand old traditions live on.

CLE is essentially members of the bar educating each other and sharing practical tips on how to better serve their clients. Whether law school education and CLE will ever be more alike is essentially the same question as whether practicing law will ever be more like the teaching of it. Both will have to change considerably before CLE resembles law school education.

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