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*Symposium: Celebrating Twenty Years of Continuing Legal Education: The Art and Science of Educating Attorneys*

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# LAW SCHOOL EDUCATION AND LIBERAL CLE

Jay Conison\*

## I. INTRODUCTION

In the fall of 2002, several organizations in the fields of law and legal education jointly sponsored the Second Indiana Conclave on Legal Education.<sup>1</sup> The purpose of the meeting was to assess the status of legal education in the State of Indiana, both in law school and beyond; identify goals that could guide the improvement of legal education; and map out means to achieve those goals. Within this general framework, the Conclave emphasized issues relating to core values of the profession; more particularly, instilling and supporting them in the face of great changes in the profession and society.

The Conclave sought to promote not just discussion but action, and it was organized to generate concrete proposals. One set of priority recommendations, of course, focused on ways to instill professional values in law students and new lawyers. Several other recommendations – not priorities, but important nonetheless – dealt with education after law school, including programs of continuing legal education. One of these recommendations urged a broadening of “what qualifies for continuing legal education credit to include enrichment activities, personal development courses, and public interest topics.”<sup>2</sup>

This attention to continuing legal education, and the linking of CLE to core values, reflects a commitment by the legal profession that has increased steadily over the past seventy years.<sup>3</sup> Continuing legal

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<sup>1</sup> The sponsors were the Indiana State Bar Association, the Supreme Court of Indiana, the Indiana Bar Foundation, and the four law schools in the State of Indiana: Valparaiso University School of Law, Indiana University-Bloomington School of Law, Indiana University-Indianapolis School of Law, and Notre Dame University School of Law. The author was Vice-Chair of the committee that planned and organized the Conclave and was subsequently Chair of the committee charged with follow-up.

<sup>2</sup> Report from the 2002 Indiana Conclave on Legal Education 8 (Oct. 23, 2003) (on file with author) [hereinafter Conclave Report].

<sup>3</sup> For a useful history of CLE, see Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE*, 8 GEO. J. LEG. ETHICS 1145, 1147-52 (1995).

education is now treated as a fundamental part of what it means to be a lawyer,<sup>4</sup> and most states require a minimum amount of continuing education each year (or other period) by attorneys admitted to practice.<sup>5</sup> Over time, the scope of continuing legal education offerings and the scope of mandates have expanded to serve recognized educational needs (such as trial and other skills) and to promote important values (in particular, professional ethics and diversity). Also over time, the number of providers has grown, and new media have emerged—most recently, the Internet—through which CLE is offered. Yet, despite the broadening in scope and growth in access, subjects of the kind referred to in the Conclave Report are rarely offered.

The purpose of this Essay is to urge that there should be a larger place in continuing legal education for what one might call *liberal CLE*. The term “liberal” here should be understood not in a political sense but in the traditional, pedagogic sense of being “directed to a general broadening of the mind, not restricted to the requirements of technical or professional training.”<sup>6</sup> As we shall see, liberal CLE, like CLE of types currently offered, supports well-recognized functions and roles of lawyers and sustains professional values. Its rationale, moreover, much like that of current CLE, is rooted in both the broad purposes of continuing legal education and in the limitations of law school education. We will outline the scope of liberal CLE, but we first examine why it is necessary and appropriate.

## II. THE PRINCIPLES AND PURPOSES UNDERLYING CLE

Continuing legal education has not lent itself to grand theory. It tends to be viewed as an essentially practical field and the few books, journals, and conferences dealing with the subject largely approach it from this practical perspective. Still, one can divine four principles that have motivated CLE and broadly guide its scope.

The first, and perhaps most fundamental, principle is that *law school is inherently incomplete*. Law school is a three-year, self-contained

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<sup>4</sup> See MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. 6 (2004). The comment states:  
To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

*Id.*

<sup>5</sup> Illinois is the most recent state to do so. See ILL. SUP. CT. R. 790-97 (adopted Sept. 29, 2005).

<sup>6</sup> THE NEW SHORTER OXFORD ENGLISH DICTIONARY 1576 (Lesley Brown ed., 1993).

program. It is self-contained because, unlike graduate programs in medicine or mathematics, it presupposes no specialized body of knowledge or skill on the part of those admitted to study.<sup>7</sup> Because it is self-contained, much of the three-year curriculum must be given over to teaching fundamental skills—case analysis and synthesis, methods of reasoning and argument, legal research and writing—and to foundational subjects such as torts, contracts, and constitutional law. This leaves little time for everything else. And there is a great deal of “everything else”—for example, trial skills, advanced or specialized legal subjects, and the business aspects of law practice. The many important subjects, skills, and competencies that cannot be learned or acquired in law school must be learned or acquired, if at all, after graduation.

Second, *law changes*. New fields emerge and existing ones evolve and become more complex. In the not too distant past, sports law and e-commerce law were barely recognizable; today they are rapidly growing in both complexity and importance. The bankruptcy code has just been dramatically revised<sup>8</sup> and the law of employee benefit plans has been a work in progress for over thirty years. An attorney practicing in a field must stay abreast of changes. Yet, this can be difficult on one’s own. Hence, it is a great convenience for someone to provide lectures and conferences through which an attorney can learn about developments in relevant areas of law and practice.

Third, for any of a variety of reasons, *the focus of an individual’s practice might change*. One reason is that an area of practice can disappear. Leaf through an old West Digest and find quaint topics such as “steam” and “street railroads,”—at some point the trolley lawyer had to move on. Another reason for change is that an attorney might become bored with her current area of practice and intrigued by a new one, or she might perceive economic opportunities to be better in another area.

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<sup>7</sup> The American Bar Association Section on Legal Education and Admissions to the Bar has prepared a statement on Preparation for Legal Education. The statement makes clear that “[t]here is no single path that will prepare you for a legal education,” and that “[t]he ABA does not recommend any undergraduate majors or group of courses to prepare for a legal education.” ABA Preparation for Legal Education, <http://www.abanet.org/legaled/prelaw/prep.html> (last visited Nov. 5, 2005) [hereinafter Preparation for Legal Education]. The statement does, however, identify general skills and values beneficial for legal education. They include: “analytic and problem solving skills, critical reading abilities, writing skills, oral communication and listening abilities, general research skills, task organization and management skills, and the values of serving faithfully the interests of others while also promoting justice.” *Id.*

<sup>8</sup> See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

Yet another reason is that an attorney may begin to handle problems or transactions in an area and, as one client leads to the next, find that it begins to dominate her practice. Whatever the cause, an attorney may have a need to build new expertise. Continuing legal education programs aimed at the practitioner new to an area can help build expertise quickly.

The fourth principle underlying CLE is the *need for public confidence*. Lawyers provide more than legal services. They assume leadership and managerial positions in government, business, and society. They serve on civic, philanthropic, religious, educational, and other boards. They are persons in whom confidence is often reposed *precisely* because they are trained as lawyers; they willingly serve in these many roles *precisely* because their legal education instills a commitment to leadership and service. Because of the importance and pervasiveness of lawyers in our society, it is vital that there be public trust in the profession as a whole. One way to promote this trust, especially regarding lawyer competence and integrity, is to require a modicum of continuing legal education each year. This is a central rationale for mandatory CLE.

### III. LAW SCHOOL EDUCATION AND ITS LIMITATIONS

As noted above, one of the guiding principles of CLE is that law school education is incomplete.<sup>9</sup> If law school were more comprehensive, the need for CLE might diminish, though not disappear. Yet, to say that law school education is incomplete is only a partial account, for the term “incomplete” is a relative term. It always invites the question, “Incomplete relative to what?” or “Incomplete relative to what end?” In fact, there are two very different respects in which law school is incomplete: one relating to its character as a generalist education, the other relating to its character as a specialized education. The first form of incompleteness yields the need for CLE of forms now common, the other the need for what we have called liberal CLE.

#### A. Law School and Generalist Education

The curriculum of law schools today is substantially designed to train *generalists in the law*.<sup>10</sup> The basic pedagogic principle is that a law

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<sup>9</sup> See also CONTINUING LEGAL EDUCATION FOR PROFESSIONAL COMPETENCE AND RESPONSIBILITY: THE REPORT OF THE ARDEN HOUSE CONFERENCE 2-3 (ALI-ABA 1959) [hereinafter ARDEN HOUSE I REPORT].

<sup>10</sup> Law school mission statements often reflect this, usually implicitly but sometimes explicitly. As an example of the latter, the mission statement of the University of Chicago Law School states in part that:

school should prepare its graduates to pursue any form of practice, whether law firm or corporate, business-oriented or individual-oriented, big-city or small-town. Of course, a law school can have a particular emphasis,<sup>11</sup> but it is only an emphasis within the general framework of training generalists.<sup>12</sup> The notion that there should be fundamentally different types of law schools was rejected long ago.<sup>13</sup>

Law school education, thus, is a kind of liberal education. Just as with liberal arts college education, law school education is broad and foundational, and it seeks to prepare graduates for a wide range of careers and roles. It seeks to instill an approach to problems and induce intellectual versatility through an emphasis on thinking, reasoning, analyzing, and arguing. This is the ultimate meaning of the phrase “teaching students to think like a lawyer.” It is doubtful that there is any

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Chicago remains committed to legal education as an education for generalists, although students with particular interests will find it possible to study topics in depth through advanced and more specialized courses. Emphasizing the acquisition of broad and basic knowledge of law, an understanding of the functioning of the legal system, and the development of analytic abilities of the highest order, a Chicago legal education prepares students for any professional role they might choose—legal practice or legal education, entrepreneurial ventures, international private or public law practice, corporate practice, government service, alternative dispute resolution including arbitration and mediation, or work with non-profit organizations. Graduates do many things in their careers, and they all take with them the analytic skills emphasized during their years at the Law School.

See University of Chicago Law School History and Mission of the Law School, <http://www.law.uchicago.edu/socrates/history.html> (last visited Nov. 5, 2005).

<sup>11</sup> ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS Interpretation 301-2 (2005) [hereinafter ABA STANDARDS].

<sup>12</sup> For example, the mission of the Franklin Pierce Law Center, which emphasizes intellectual property, is as follows:

Pierce Law strives to provide its students with the best possible legal education. Pierce Law is a community of scholars, oriented towards the practice of law, who teach, learn and empower others to contribute productively to a global legal system. Students from around the world with diverse experiences engage in active, practice-based learning in small, cooperative and interactive learning environments. While traditional areas of law and emerging specialties are taught, the intellectual property law curriculum, one of the broadest in the country, is continually emphasized and improved. Graduates are highly capable, confident professionals who will serve clients, employers and the public with integrity and excellence.

Welcome to Pierce Law, <http://www.piercelaw.edu/> (last visited Nov. 5, 2005).

<sup>13</sup> See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S ch. 7 (1983).

way of thinking unique to lawyers.<sup>14</sup> But through law school education, people do acquire competencies that enable them to be good lawyers, as well as leaders in other domains.

To a great extent, this generalist orientation is inevitable. The three-year, self-contained structure of law school education permits little other choice. A further constraint is the bar examination, which is a broad-based test of analytic and problem-solving skills and of basic knowledge in a dozen or more subjects that (in the view of the jurisdiction) every practicing attorney should know. The character of the legal employment market provides yet another constraint in that the majority of positions for law school graduates are with small and medium-sized firms, and the majority of practice settings for experienced attorneys are solo practice and small firms.<sup>15</sup> This creates an incentive for law schools to focus on versatility of graduates, rather than particular specialties.

Whether or not inevitable, this pedagogic approach has virtues. There is mobility in law practice and constant change in law. A generalist education, properly designed, can equip lawyers with skills and knowledge that will serve for a lifetime no matter what career path they may choose and no matter how the law evolves. Indeed, the generalist education even equips lawyers for the myriad of non-legal roles that so many law school graduates ultimately fulfill, whether in business operations or management, non-profit organizations, consulting, or a host of other fields. Finally, because the generalist education is substantially the same at every law school, it promotes a shared culture and shared set of values among *all* lawyers, which bind them together into a unitary profession.<sup>16</sup>

Yet, the weakness of the generalist approach is that the graduate is no more a fully competent lawyer than a college graduate with a philosophy major is a fully competent philosopher. In both cases the education is incomplete relative to the ultimate professional aim. But unlike philosophy or medicine, law has no institutionalized paths to ensure that the initial, generalist education is properly completed. Rather, there is a hodgepodge. There are some formal or semi-formal routes to specialties: for example, L.L.M. programs and law firms

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<sup>14</sup> See, e.g., John O. Mudd, *Thinking Critically About "Thinking Like a Lawyer"*, 33 J. LEGAL EDUC. 704 (1983).

<sup>15</sup> See AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS § 3 (2004).

<sup>16</sup> See LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 120 (1992) [hereinafter MACCRATE REPORT].

committed to training and mentoring in their areas of focus. But in the area of essential skills, values, and competencies, there is less structure. Some law firms have a strong commitment to the ongoing training of their lawyers, but this is not universal and it can be costly in both money (lost billing) and energy of senior lawyers. Some bar associations and other organizations have mentoring programs for younger lawyers.<sup>17</sup> But in general, the legal profession continues to view itself essentially as a profession of generalists, and the prevailing view is that it is enough for the law school graduate to be equipped to learn what he needs through his own initiative.<sup>18</sup>

Thus, the importance of continuing legal education, both as means to further a lawyer's education and as means to assist individual initiative. Bridging the gap programs and other programs specifically for new lawyers can help facilitate the move from law student to practicing lawyer. Other continuing legal education programs compensate for limitations of law school education in the area of skills training and other subjects that, while offered in law school, are either not emphasized or are more effectively taught to those with at least a modicum of practice experience. There are also courses on the business side of practice—docket management, effective use of paralegals, for example—that are usually not taught in law school at all and that are sometimes even disdained by law schools and law faculties. Finally, there is the panoply of courses and programs that provide foundational instruction in areas that a lawyer, new or old, might want to begin to practice in, or at least become familiar with, so that she can handle relevant problems competently.

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<sup>17</sup> As a result of the Second Conclave on Legal Education, Indiana has initiated two mentoring programs, one for young lawyers and one for law students. See Conclave Report, *supra* note 2, at 3–5; Clyde Compton, *President's Perspective: Closing Statement*, 49 RES GESTAE, Oct. 2005, at 5.

<sup>18</sup> See MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. 2 (2004). The comment states:

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study.

*Id.*



B *Law School and Specialist Education*

That law schools provide a type of generalist education is well appreciated; so, too, are its limitations. Less well appreciated is the fact that law schools also provide—from another perspective—a *specialist* education: specialist in that it focuses only on a subset of the roles lawyers fulfill and the careers they pursue. Also unappreciated are the limitations of this specialist form of education and the fact that these limitations imply the need for continued education after law school.

1. The Specialized Structure of Law School Education

Law school education is designed to equip graduates to handle disputes in courts and other formal venues, give advice on legal rights and obligations, negotiate for clients, and otherwise represent clients in transactions. This design reflects a common understanding of what practicing lawyers do.<sup>19</sup> The Model Rules of Professional Conduct, for example, explain that:

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.<sup>20</sup>

Law school educational design is not affected by mode of instruction. The case method, the problem method, lecture courses, skills courses, and clinical courses differ in structure and emphasis, but all are directed toward preparing graduates to assume these canonical roles.

It is because there are other, important functions and roles *not* emphasized that law school education may be said to be specialized.

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<sup>19</sup> More specifically, it reflects an understanding of what the generalist does or is capable of doing. See, e.g., MACCRATE REPORT, *supra* note 16, at 125. To say that a law school education is both a generalist education and a specialist education is just to look at different aspects of the same intended outcome.

<sup>20</sup> MODEL RULES OF PROF'L CONDUCT preamble ¶ 2 (2004).

These other functions and roles will be described below. Here, we note that the present emphasis results not only from pedagogic choices but also from constraints. Again, the bar examination is one, for it tests the ability to give advice on legal rights and obligations (essay questions and Multistate Bar Examination) and, in most jurisdictions, the ability to perform basic skills within one or more of the canonical roles (Multistate Performance Test or comparable state test). As both a practical and an accreditation matter, a school must do its best to ensure that graduates pass the bar examination, preferably the first time.

As this latter point reflects, the ABA Standards for Approval of Law Schools constitute another significant constraint. The basic regulation for the program of study, Standard 301(a), provides that:

A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.<sup>21</sup>

Other, more specific, standards seek to ensure that graduates have knowledge and skills necessary for client service. Thus, Standard 302(a) provides that:

A law school shall require that each student receive substantial instruction in:

- (1) the substantive law generally regarded as necessary for effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context . . . ;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

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<sup>21</sup> ABA STANDARDS, *supra* note 11, at Standard 301(a).

- (5) the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.<sup>22</sup>

These constraints and their common understanding have entrenched the focus on the specific lawyer roles and functions noted above. This can be seen in the various efforts directed at improving the law school curriculum by making it better preparation for what lawyers do: These efforts continue to emphasize the same lawyer roles. For example, the best known and most influential recent effort is the report of the American Bar Association's Task Force on Law Schools and the Profession: "Narrowing the Gap," commonly known as the MacCrate Report.<sup>23</sup> The MacCrate Report sought to develop a statement of the "skills and values with which a well-trained generalist should be familiar before assuming ultimate responsibility for a client."<sup>24</sup> It focused in particular on skills, competencies, and values necessary for litigation and other types of formal dispute resolution, negotiation, counseling, and representation in transactions.<sup>25</sup> Another ambitious recent study, undertaken by the Clinical Legal Education Association, is similar in aim and emphasis.<sup>26</sup>

## 2. Law School Education and the Value of Perspective

No one would deny that the roles and functions currently emphasized in law school are fundamental or that law school educational programs should indeed be structured to train lawyers for them. But to put emphasis in one place is to reduce it elsewhere, and the areas of reduction include some important roles and functions of a lawyer. Among them are the roles of public citizen and learned professional. The Preamble to the Model Rules of Professional Conduct describes these roles as follows:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal

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<sup>22</sup> *Id.* at Standard 302(a). Standard 302(b) further requires that a law school "offer substantial opportunities for . . . live-client or other real-life practice experiences." *Id.* at 302(b).

<sup>23</sup> See MACCRATE REPORT, *supra* note 16.

<sup>24</sup> *Id.* at 125.

<sup>25</sup> *Id.* at 135-40.

<sup>26</sup> Clinical Legal Education Association, Best Practices of Law Schools for Preparing Students to Practice Law (Draft Aug. 25, 2004), available at <http://www.cleaweb.org/resources/bp.html>.

profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.<sup>27</sup>

Preparation for the lawyer roles currently emphasized, such as advocate or advisor, is best accomplished through an education in basic legal subjects and in the skills and competencies identified in the ABA Standards and the MacCrate Report. By contrast, preparation for the roles of public citizen and learned professional is best accomplished through an education that reveals perspectives on law and introduces bodies of knowledge that promote deeper understanding of law, its purpose, its aims, and its development. These roles are served through courses dealing with the social context of law and legal institutions; the aims of law reform; legal and other branches of history; foundational considerations of justice, philosophy, religion, and political theory; and the discoveries of economics, sociology, and other social sciences. Most law schools provide a modest amount of education of this kind. A few require a so-called perspective course drawn from one or more of these areas.<sup>28</sup> Many offer courses at the intersection of law and one or more of these fields.<sup>29</sup> Some schools try to emphasize a particular perspective throughout the curriculum.<sup>30</sup> But the constraints of time, the absence of a required course of pre-law study,<sup>31</sup> and the press of other educational

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<sup>27</sup> MODEL RULES OF PROF'L CONDUCT preamble ¶ 6 (2004).

<sup>28</sup> For example, the Indiana University School of Law-Bloomington requires "completion in the second or third year of a Perspectives course, chosen from a wide array of courses emphasizing the perspectives of nonlegal disciplines (e.g., psychology, history, economics, sociology) on legal problems." Indiana University, Degrees Offered at the School of Law, [http://www.law.indiana.edu/curriculum/programs/degree\\_explained.shtml#jd](http://www.law.indiana.edu/curriculum/programs/degree_explained.shtml#jd) (last visited Nov. 5, 2005).

<sup>29</sup> For example, the University of Michigan Law School offers courses such as Communication Science and Law, Public Choice and Public Law, Creating the American Lawyer, Persuasion and the Law, and Using Social Science in Law. University of Michigan Law School Course List, [http://cgi2.www.law.umich.edu/\\_ClassSchedule/CourseList.asp](http://cgi2.www.law.umich.edu/_ClassSchedule/CourseList.asp) (last visited Nov. 5, 2005).

<sup>30</sup> For example, the George Mason University School of Law emphasizes economics and quantitative methods. See George Mason University School of Law, Academics, <http://www.law.gmu.edu/academics/gmpln.html#econ> (last visited Nov. 5, 2005). The Ave Maria School of Law provides a legal education "in fidelity to the Catholic Faith," emphasizing natural law foundations. See Ave Maria School of Law, <http://www.ave-marialaw.cedu/prospective/philosophy/phill.cfm> (last visited Dec. 16, 2005).

<sup>31</sup> Although accredited law schools require a college degree as a prerequisite for law study, there is no prescribed course of pre-law studies and no requirement to ensure that law students bring the broader perspective with them. See Preparation for Legal Education, *supra* note 7.

demands significantly limit the degree to which law school can teach about these other areas and address the other roles of a lawyer.

Thus, there is a need to educate for these roles after law school. This is not a new insight. In an opening address at the Third Arden House Conference on Continuing Legal Education,<sup>32</sup> William Reece Smith, Jr., discussed the need for continuing legal education of just this kind to promote the ends of professionalism. He argued that:

The fourth priority of continuing legal education, observed even more in the breach, must be to counteract negative aspects of specialization with a broadening of intellectual and moral horizons. No less than law schools, continuing legal education provides an opportunity to understand the social and economic forces that impinge on lawmaking; to recognize the consequences of regulation, statutes, and court decisions; to become aware of the impact, for good or ill, that this institution has for our society and for its future. Here the emphasis would be on law as an institution and its relations with other institutions. Here is an opportunity to take advantage of the telling information being accumulated by social scientists and law professors on how our system actually works, on what impedes its healthy functioning, on what injustices it has failed to address, and on what hopes it can reasonably fulfill. This priority would be an enormous corrective to the myopia induced on lawyers by the demands of commercialization and the effects of specialization.<sup>33</sup>

The argument for continuing legal education of this kind can be pressed still further. For many people, continuing legal education may be a better venue than law school to instill perspective on law and provide training to support the roles of public citizen and learned professional. It is sometimes said, partially in jest, that college education is wasted on the young. Much the same can be said about parts of law

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<sup>32</sup> Over the past half-century, the American Law Institute and the American Bar Association have sponsored three important conferences on broad, national issues in continuing legal education. The three are known, by reference to their location, as Arden House I, Arden House II, and Arden House III. For an overview of the three conferences, see Aliaga, *supra* note 3, at 1149-52 and MACCRATE REPORT, *supra* note 16, at 307-09.

<sup>33</sup> William Reece Smith, Jr., *Realizing the Promise of Professionalism*, in CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION: THE REPORT ON THE ARDEN HOUSE III CONFERENCE 43, 50 (ALI-ABA 1987); see also ARDEN HOUSE I REPORT, *supra* note 9, at 163.

school education. The benefit of a course on negotiation, for example, may be greater when a person brings experience and context to the instruction. Without experience and context, this practical subject may remain too abstract. For the same reason, a person who has experience with law and the legal system might be better equipped to understand the meaning, function, impact, and practicalities of law reform and might better appreciate the ways in which social, political, philosophical, and other considerations can enter into discussion and action. Similarly, a person who has been in practice for a time may have a heightened appreciation of the value of cultivating “knowledge of the law beyond its use for clients,” and a heightened motivation to seek it.<sup>34</sup> Indeed, anecdotal evidence<sup>35</sup> suggests an unmet desire on the part of many practitioners for opportunities to gain just such perspectives and forms of knowledge.

### 3. Law School Education and the Many Roles and Functions of Lawyers

Lack of emphasis on perspective and on these other key roles of lawyers is only one way in which law school education, as specialized, is incomplete. Another is insufficient attention to what lawyers and law school graduates do.

To begin, consider what lawyers actually do *as practicing lawyers* – as advocates, negotiators, and counselors. They provide many more services for clients, and serve many more client needs, than those considered specifically legal.<sup>36</sup> This results, in part from the fact that handling a *legal* problem of a client is so often, at bottom, a matter of resolving a *personal* problem or issue, such as conflicts with family

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<sup>34</sup> MODEL RULES OF PROF'L CONDUCT preamble ¶ 6 (2004).

<sup>35</sup> Including the Conclave Report, *supra* note 2. The Conclave was heavily attended by practicing lawyers.

<sup>36</sup> For example, a Second Circuit judge observed:

Not only are lawyers increasingly expected to participate in more phases of what I characterize as coercive justice cases, but their role at each phase is being drastically redesigned . . . [A report prepared for the New York State judiciary] concluded that lawyers representing indigent defendants should be required, in addition, to supervise a startling array of extra-legal services and information, including “housing information, job counseling, family counseling, psychiatric aid, and medical advisory rehabilitation.”

Irving R. Kaufman, *Advocacy As Craft*, in CONTINUING LEGAL EDUCATION FOR PROFESSIONAL COMPETENCE AND RESPONSIBILITY SINCE ARDEN HOUSE II: SELECTED ARTICLES ON PROFESSIONAL COMPETENCE AND PROFESSIONAL RESPONSIBILITY FROM THE ALI-ABA CLE REVIEW 94, 95 (ALI-ABA 1984).

members, a feeling of lack of appreciation, or the desire for an apology. Fifty years ago, Erwin Griswold urged that law school education would be strengthened by giving more attention to what he called “human relations,” particularly the teachings of psychology and the social sciences. His argument was that the lawyer, in dealing with client problems, is very often dealing with matters best resolved through an understanding of human motivations, emotions, needs, perceptions, and relations.<sup>37</sup> Since that time, law schools have undertaken more instruction in these areas of human relations, often in the context of negotiation or mediation courses. But again, there are limits to the time law schools can devote to these subjects.

Thus, the need for continuing legal education in this area. Here, too, continuing legal education has potential to be even more effective than law school courses, again because of the value in bringing experience and context to the instruction. But whether or not more effective, this type of continuing education course would still *be* beneficial, to lawyers, to clients, and to the profession, by better equipping lawyers to understand and solve client problems.

A second area of incompleteness relates to the kinds of careers and jobs law-trained individuals pursue. Quantitative data on long-term employment patterns of lawyers are scarce, but it is obvious that law school graduates pursue an enormous variety of careers and jobs that are not specifically legal—in business, in government, in nonprofit organizations, in religions, in journalism, in higher education, in consulting, and in many other domains. Those who pursue such careers and professions are not failed lawyers. Nor are they outliers. To the contrary, many attend law school aiming to pursue non-legal careers. In general, law schools recruit and matriculate people who are disposed to excel in a multiplicity of fields, and law school clearly provides useful training for a wide range of endeavors.

Just as law schools cannot feasibly provide specialized training in all areas of law, they cannot provide more than a smattering of specialized education to support this panoply of non-legal careers. Thus, support must be left to education after law school. Of course, there are limits. Continuing legal education cannot be a substitute for, say, business school or journalism school, and the fact that a law school graduate is a major league baseball manager does not mean that a CLE program in stealing signs should be offered. Yet, to the extent these individuals are

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<sup>37</sup> Erwin N. Griswold, *Law Schools and Human Relations*, WASH. U. L.Q., June 1955, at 217.

making use of their law school education, there is a proper role for continuing legal education in serving them. Some such types of continuing legal education programs are highly appropriate: for example, courses on enterprise management, organizational behavior, human resource management, and teaching. Programs of this type, in fact, would also benefit lawyers who, while still in or closely connected with law practice, have extensive responsibility for management or functions other than direct service to clients. Programs of this type would also serve the further purpose, described above, of facilitating changes in practice focus or career. For example, such programs could serve the needs of corporate counsel who move from the legal department to a business area of an enterprise. Finally, programs of this type would benefit lawyers and law graduates with respect to yet another set of roles and functions, described immediately below.

This third area of incompleteness relates to what practicing lawyers and other law-trained persons do, *apart from their careers*, in large measure *because* they are lawyers or law-trained. Such individuals participate extensively, and take leadership positions, in bar organizations, civic organizations, local governmental bodies, philanthropic boards, public interest organizations, and many other associations. They are in high demand as writers and speakers on legal and other current topics, as volunteers, as informal consultants, and in other roles where they draw on their legal training. These roles embody many of the values law schools try to instill; in particular, the values of service and leadership.

While law schools can provide some preparation,<sup>38</sup> time and resources are once more a severe limitation. Here, again, continuing legal education programs can support well recognized lawyer functions and roles. It is not a new insight that CLE should serve this group of lawyer functions and roles. In fact, the point was prominently made at the very outset of serious national attention to continuing legal education. The Report of the first Arden House Conference in 1958 contained, as one of its findings, that future programs of continuing legal education “must help the lawyer to fulfill a wide range of professional responsibilities,” including:

Responsibilities to the public of a general character, such as service on educational and charitable boards,

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<sup>38</sup> Standard 302(b)(2) of the ABA Standards for Approval of Law Schools requires that law schools “offer substantial opportunities for . . . student participation in pro bono activities.” ABA STANDARDS, *supra* note 11, at Standard 302(b)(2).



leadership of public opinion and community leadership.<sup>39</sup>

The validity of this finding has not diminished with time. It simply has not received the attention that the argument of this essay suggests it deserves.

#### IV. A PROPOSAL FOR LIBERAL CLE

Two main principles emerge from the prior discussion. *First*, liberal CLE should compensate for the specialized character of law school education, just as a great deal of current CLE compensates for its generalized character. *Second*, liberal CLE courses should (a) support important roles of lawyers (such as public citizen) not fully served through law school education; (b) support professional work of lawyers and law-trained individuals that is based in training they received in law school; or (c) promote important professional values or support important non-professional activities (such as civic service). Liberal CLE, so designed, would advance the purposes of continuing legal education and help it contribute to a full and integrated system of lifelong education for lawyers. Continuing legal education, so broadened, would more effectively support the professional work of lawyers and law school graduates, promote competence, and facilitate professional mobility.

Of course, to the extent courses and programs that satisfy these principles are the basis for CLE credit in a state, more detailed criteria might be needed. But working out those further criteria would be a practical issue, not a consideration that undercuts the need for and appropriateness of *some* types of liberal continuing legal education.

##### A. *The Scope of Liberal CLE*

Although detailed criteria must be left to each state, the prior discussion points to some important areas that generally fall within the scope of liberal CLE.

*Applied Psychology and Human Relations.* Law school graduates, practicing lawyers, business people, government officials, teachers, or consultants, are most often problem solvers. In particular, they are solvers of personal and interpersonal problems. Thus, they can benefit from an understanding of, and an ability to use tools from, psychology,

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<sup>39</sup> See ARDEN HOUSE I REPORT, *supra* note 9, at 18-19, 28.

counseling, and other areas relevant to personal dynamics. Continuing legal education programs that help one develop and strengthen such knowledge and skills would be highly beneficial in a wide range of professional contexts. They would be just as appropriate as programs to teach trial or negotiation skills and of at least as much interest and value.

*History, Philosophy, and Other Subjects Valuable In Providing Perspective on Law and In Making For An Educated and Well-Rounded Professional.* CLE courses drawn from liberal arts disciplines not only supply perspective and support the public citizen and learned professional roles of lawyers; they also contribute to the flexibility of mind, breadth of knowledge, and ability to draw on intellectual resources so beneficial to the problem-solving, leadership, and service roles played by lawyers and law graduates. Some business leaders have come to recognize the value of education in these fields.<sup>40</sup>

There are still further benefits to continuing legal education courses of this kind. They would help lawyers “capture some of the craft tradition and make lawyers feel that by taking them they are enriching themselves *and* the craft, that they are acquiring insight into the *why* of what they are doing, the higher directions of the law.”<sup>41</sup> They would also provide an opportunity for reflection, something lawyers find increasingly difficult in a world where electronic devices put them endlessly on call.

*Current Developments in Government, Politics, Economics, International Affairs, Social Structures, and Demographics.* Just as with liberal arts subjects, courses on current conditions, trends, problems, and prospects can be invaluable to lawyers in their roles of public citizen and learned professional, and can also support them in their problem-solving, leadership, and service roles.

*Leadership, Management, and Other Business-Related Subjects.* Law schools prepare an enormous number of graduates for positions in business operations, entrepreneurship, finance, management, human resources, consulting, and a host of other business-related pursuits. Preparing them for these activities, and for managerial and leadership roles, is an important part of what law schools do and do very well.

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<sup>40</sup> See, e.g., Michael DeWilde, *The Business of the Humanities*, CHRONICLE OF HIGHER EDUCATION, July 1, 2005, at B5.

<sup>41</sup> Bernard G. Segal, *Comments at Second Plenary Session: The Views of the Organized Bar, in GOALS FOR CLE AND MEANS FOR ATTAINING THEM: THE REPORT ON THE 1968 NATIONAL CONFERENCE ON CONTINUING LEGAL EDUCATION 32 (ALI-ABA 1968)* (emphasis in original).

Programs to support these roles and functions could further a great deal of the generalist training initiated in law school and be immensely valuable to the lawyer who is planning to move into a non-law practice role or who is already in one.

*B. Some Objections and Responses*

A number of objections can be raised to this proposal. Several are worth considering, although none undermines the conclusions and recommendations.

*First*, it can be argued that any lawyer (or, indeed, any person) who is interested in subjects that fall within the ambit of liberal CLE can pursue them himself, through books, magazines, journals, books on tape, college classes, or otherwise. It is unnecessary to devote CLE resources to these topics. Yet, the argument proves too much. *Any* subject now offered as continuing legal education, whether “Current Developments in Real Estate Finance” or “Basic Mediation Training,” can be pursued through other means. CLE courses are not a unique means of education but a convenience providing useful instruction in an accessible context.

*Second*, it can be argued that liberal CLE topics are not a core concern of continuing legal education, because they do not promote attorney competence. There are two responses. To begin, if “competence” is intended in the narrow sense of knowledge of substantive law and possession of trial and certain other legal skills, then again the argument proves too much. Much of current CLE serves other ends, such as promoting understanding of ethical issues or promoting understanding of issues relating to diversity in the profession. While promoting competence in this narrow sense is an important goal of continuing legal education, it is not the only one.

On the other hand, if “competence” is understood in the broader sense of competence to fulfill the functions and roles typically fulfilled by lawyers, then the argument is simply wrong. To promote competence in this sense is one of the very purposes of liberal CLE. Specifically, liberal CLE is intended to promote competence in both core lawyer functions—representation, counseling, advocacy, and negotiation—and in the many other functions and roles—public citizen, resolver of personal problems, civic organization leader, and more—that lawyers ordinarily fulfill.

*Third*, it can be argued that courses of these kinds are not as important to attorneys or to the profession as CLE courses of kinds now

widely offered. This is an over-generalization and simply untrue in many cases. An expert in lender liability who practices only in that area may have no need for continuing education in her practice area; indeed, she may teach CLE courses in the field and would benefit far more from a program on constitutional history or demographic trends. The argument also ignores the many graduates who do not practice law but are still engaged in careers for which law school has equipped them. Some types of liberal CLE could better meet their professional needs. While there may be good reason for even non-practicing lawyers periodically to take some CLE courses on substantive legal topics—say, to maintain a connection with the practicing bar—these individuals might well find other types of continuing education courses far more useful to their professional work and their service activities.

*Fourth*, one purpose of CLE is to assure the public of attorney competence and ethics, and it can be argued that this purpose would be undermined by allowing credit for liberal CLE courses. This is a very doubtful claim. It is difficult to see why a CLE program on the history of tort law or on the management of nonprofit boards would be perceived as frivolous or inessential. To the extent it is deemed important for public confidence that members of the bar participate in a certain kind of CLE—say, courses on current legal developments—then the solution is to require a minimum amount of it. Nothing in this Essay suggests that members of the bar should be *required* to participate in liberal CLE programs or should participate *only* in liberal CLE programs. The argument is that those programs are valuable and congruent with the aims of continuing legal education and should be made more widely available.

*Fifth*, it can be argued that liberal CLE courses should not be used to fulfill mandatory CLE requirements. If the argument here is that liberal CLE courses should not count at all toward the required CLE credits, then it is just a back door to the previously rejected arguments. If, on the other hand, the argument is that liberal CLE courses *alone* should not be permitted to meet the mandate and that, say, a minimum number of credits of other kinds of CLE should be required, then the argument is plausible, but it does not undermine the conclusions reached above. All it tends to show is that a state should adjust CLE requirements to specify, say, a minimum number of credits for CLE of other types, or to set a maximum on the number of liberal CLE credits that could count toward the requirements. That is a detail of implementation, not a reason to reject liberal CLE.

V. CONCLUSION

Much of continuing legal education today responds to the generalist character of law school education—to its design for training generalists in the law. The argument of this Essay is that the scope of continuing legal education should be expanded to respond to another—specialist—character of legal education: that is, its focus on only a subset of the many roles and functions of lawyers. We call this additional form of continuing legal education liberal CLE because it is directed toward broadening lawyer education beyond the specialized base and toward broadening lawyers' knowledge and perspective.

The potential benefits of expanding continuing legal education in this way are substantial. Continuing legal education should complement law school and contribute substantially to a system of lifelong education for lawyers. Expanding its scope as proposed here would enable continuing legal education to more fully serve its purpose and more effectively meet lawyer educational needs: specifically, those relating to important roles and functions of lawyers not currently served by law school or CLE, and to the broad range of careers, occupations, and roles pursued by law school-trained individuals.

The arguments advanced here are not entirely new; some were advanced long ago, when serious national attention was first given to the aims and potential benefits of continuing legal education. A broadening of continuing legal education would support educational needs, promote professionalism, help lawyers and law school graduates better serve their many constituencies, and serve the public interest in lawyer competence.