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THE CONTINUING EDUCATION OF THE COMPLETE LAWYER

HARRISON TWEED†

The Tyrrell Williams Memorial Lectureship was established in the School of Law of Washington University by alumni of the school in 1949, to honor the memory of a well-loved alumnus and faculty member whose connection with and service to the school extended over the period 1898-1947. This twelfth annual lecture was delivered on April 29, 1960.

I like to think that my subject is an entirely appropriate one for this series of lectures established in memory of Tyrrell Williams, who, as you all know, taught in the Law School of Washington University from 1913 to 1946. It is true that his interest was in the education of those who had not yet been admitted to the bar but it was always of the broadest and deepest sort. I am certain that if he were alive today he would be in the forefront of the many law school professors who are giving their time and thought and energy to the somewhat different educational process which is now being worked out for those who have won their spurs and have entered the legal arena. And it is a pity that we, who are now engaged in that form of legal education, cannot have the benefit of his ideas and inspiration.

As I have suggested, what we call continuing legal education does not begin until admission to the bar. One of the definite and unanimous decisions has been that neither the individuals nor the organizations which take part in planning, promoting, supervising or conducting this sort of education should attempt to tell any law school dean or professor, or any law school faculty, how he or it should proceed in the education of the young men and women in their

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schools. And no one has suggested that the fact that post-admission legal education is necessary is any criticism or disparagement of what the law schools of this country are doing.¹ Everyone admits that the law schools cannot, in the three year opportunity which is available to them, turn out lawyers in all respects competent to undertake any form of practice in which they may undertake to engage. That would be asking the humanly impossible.²

This suggests the comment that, generally speaking the bar has been very slow and rather stupid in its efforts to protect and improve itself. The most conspicuous exception to this is in the turning over to the law schools the responsibility for the education of those who seek to become lawyers, without interference save by way of over-all standards and requirements for admission to practice. I think it is internationally recognized that the law schools have discharged this responsibility extraordinarily well. But for the very reason that they have done and must continue to do this, they cannot also undertake responsibility for the education of lawyers after admission to practice. This must be the responsibility of the bar itself.³

There is no termination date for continuing education. To resort to the old cliché: Education is a journey, not a destination. Very clearly, in the case of the legal profession, it should continue to the grave or at least to that illusory date of retirement which some regard as a delightful dream and others as a dreadful nightmare.⁴

There are three somewhat different forms of education for which opportunities should be offered to the practicing lawyer which I will

1. "Few would question that, generally speaking, law school education in this country is excellent. To say that it cannot prepare the lawyer for all of today's problems is not to disparage or criticize the work of the schools. For what have seemed convincing reasons, the duration of law school education is limited to three years, except in the case of those who take post-graduate work. This limits the amount which can be taught effectively." Arden House Report, Continuing Legal Education for Professional Competence and Responsibility 2 (1959).

2. "It should be frankly recognized that no law school can hope in the three years at its disposal for undergraduate instruction to teach a student all that he will need to know for life as an enlightened member of the legal profession." Vanderbilt, *The Mission of a Law Center*, 27 N.Y.U.L. Rev. 20, 25 (1952).

3. See Arden House Report, *op. cit. supra* note 1, at 5, 64-71; Address by Rankin, *The Continuing Education of Lawyers*, Thirty-seventh Annual Meeting of The American Law Institute, May 20, 1960; Address by Malone, *Professional Responsibility—A Constant Challenge*, Cleveland Bar Ass'n, Jan. 15, 1959; Address by Malone, *The Lawyer and His Professional Responsibilities*, John Randolph Tucker Lectures, Washington & Lee University, 1960.

4. If the individual is properly educated, retirement will lead to a happier life rather than to suicide. Education in this sense means a proper balance between technical competence in one's vocation or profession and the knowledge of how to use leisure time (before as well as after retirement) in ways which are personally satisfying and enriching.

mention from time to time and describe in some detail. Very briefly stated:

The first is training for greater competence in practice. This is the orthodox variety with which all of us are familiar and which is appropriately but undignifiedly referred to as how-to-do-it, bread-and-butter or grass-roots education.⁵

The second is instruction to qualify for professional responsibilities both in practice and beyond. These include much more than what is prescribed by the rules of conduct laid down in the Canons of Ethics. In a very general way, these responsibilities have to do with the improvement of the law or the administration of justice. The appropriate form of systematic education for this differs little from the traditional training and instruction except that it must have greater breadth and depth and must look towards the stimulation of activity outside of and beyond practice.⁶

The third form has been called education for public responsibility. This involves a further step beyond education for competence and professional responsibility and is designed to qualify for public service not frequently undertaken by lawyers or included within their commonly accepted professional responsibilities. This public service is frequently full-time and almost always so intensive as to require a greater reduction of activity in practice than does the performance of the more usual professional responsibilities.⁷ I will say more about this distinction later on.

5. See Mulder, *Services Offered by the Joint Committee on Continuing Legal Education* (1959); Ballantine, *The Work of the Practising Law Institute*, 38 *A.B.A.J.* 833 (1952); Simpson, *Continuing Education of the Bar*, 59 *Harv. L. Rev.* 694 (1946); Stumpf, *Practical Problems in Continuing Legal Education*, 6 *Prac. Law.* 8 (April 1960); Rodgers, *Continuing Education of the Bar in the United States of America*, paper submitted for the Eighth Conference of the Int'l Bar Ass'n, Salzburg, July 4, 1960.

6. "Programs for continuing legal education thus far have placed a major emphasis on professional competence and have not always given to professional responsibility the attention it should have. In the future these programs must also emphasize the professional responsibilities of the lawyer. They must help the lawyer to fulfill a wide range of professional responsibilities: to the courts, to the administration of justice, to law reform, the law-making process, to his profession, and to the public." Arden House Report, *Final Statement*, *op. cit. supra* note 1, at xiv-xv. The complete text of the *Final Statement* is produced in note 23, *infra*. See Stone, *Legal Education and Public Responsibility* (1959); Jenkins, *Continuing Legal Education for Lawyers*, 27 *Tenn. L. Rev.* 347 (1960); *Report of the Joint Conference on Professional Responsibility*, 44 *A.B.A.J.* 1159 (1958).

7. See McCloy, *The Extra-Curricular Lawyer*, 15 *Wash. & Lee L. Rev.* 171 (1958). My remarks have been confined to the lawyer after his admission to the bar, but we should not overlook the important, if limited, opportunities for training and inculcation of professional and public responsibilities which can

Another unanimous determination by the continuing legal educators has been that they will not resort to preaching or exhortation in order to accomplish their objectives. We are confident that we can safely leave that sort of thing to others. There are always lawyers, and laymen too, ready and willing and anxious to deliver sermons on the deficiencies of the lawyer of today and we do not wish to get into competition with them.⁸ We like to think of ourselves as educators and not as preachers or even orators. We do not seek to herd lawyers into public service but rather to offer them the opportunity to better qualify themselves to engage in that service if, as and when they want to do it.⁹

We are confident that when educational opportunities are offered, lawyers will take advantage of them so as to be better prepared to discharge their responsibilities to themselves, to the profession and to the public. Our confidence is based on the fundamental concepts, first, that knowledge of a subject stimulates interest in it and, second, that this in turn leads to a desire to participate actively. And behind both lies the nature of the human being who has become a lawyer. As is stated in the Introduction to the Arden House Report:

A good lawyer cannot help being something more than a technician. By training and experience he possesses certain qualifications which create a demand for his services in diversified fields, some of them quite remote from practice. Generally speaking, a man does not choose the bar as a career unless he has the inherent ability and willingness to be useful in wider

be done during three years of law school. These opportunities have not altogether escaped the attention of our law school faculties: "The demands of society for leadership from the legal profession are such that the lawyer should assume the role of legal statesman as well as become an ever better legal craftsman. The goal of the total educational process in training lawyers should be to develop such persons. This should be the goal of all law schools no matter what their nature, national or local, private or state, day or night. There is no place in our society for second-class law schools or second-class lawyers." The University of Michigan Law School, *The Law Schools Look Ahead: 1959 Conference on Legal Education* 5-6 (1959). See also, Stone, *Legal Education and Public Responsibility* (1959); Schwartz, *Some Thoughts and Questions on Education for Professional Responsibility*, 35 L.A. Bar Bull. 183 (1960).

8. "Lawyers have to suffer, too often from other lawyers, a great deal of exhortation about how lawyers should and must be leaders in our political and social life, to say nothing of the solemn speeches which assure us that they are. Now hortatory moral instruction is no more effective on lawyers than on anyone else. It is no more persuasive than a course on legal ethics is edifying. Some of us enjoy it, but it must be classified as entertainment." Curtis, *The Future of the Bar* (unpublished manuscript). See Rodell, *Woe Unto You, Lawyers!* (1939).

9. Tweed, *Continuing Legal Education and the Law Schools*, 27 *Tenn. L. Rev.* 338, 342-43 (1960).

fields of endeavor. If he is to fulfill his inclinations and comply with the demand for his services, he must have an education broader than that needed in the comparatively narrow confines of practice. The opportunity to obtain it should be offered him by the organized bar. And it should be such as to instill an appreciation of the accepted standards of the profession and to encourage participation in the discharge of professional and public responsibilities outside of practice. Should it be suggested that this is asking a good deal of the profession and its individual members, the answer is that if our way of life and government are to survive, this demand must be made and must be complied with.¹⁰

Everybody has been talking about education ever since people could talk. And even before that there must have been some communication on the subject by those who could only make signs.¹¹ It would be interesting to know how many words were written and spoken about education in the twelve months of 1959. Unfortunately, there are no reliable statistics.

All sorts of reasons have been given by the educational philosophers why education is important. I am an amateur in the field but I have Woodrow Wilson's blessing in his statement that:

When it comes to doing new things and doing them well, I will back the amateur against the professional every time, because the professional does it out of the books and the amateur does it with his eyes open upon a new world and with a new set of circumstances. He knows so little about it that he is fool enough to try the right thing.¹²

10. Arden House Report, *op. cit.* supra note 1, at xviii.

As to the type of men who take up the legal profession, I have remarked elsewhere that as far as I have been able to observe it is something like the following:

Perhaps for a good many it is a process of elimination. If a man has no great acquisitiveness but wants to live comfortably, have children, educate them and make some provision for his widow; has no definite artistic or literary flair; is not facile in mathematics or things scientific but has an interest in the intellectual, and perhaps particularly in argument, analysis and logical presentation, orally or in writing; wants to be free to take a position on public questions and to play a part in the affairs of the community in which he lives and, perhaps above all, has confidence in his physical and mental ability to work hard enough and do good enough work to survive in keen competition—then the law seems to offer him the best chance for happiness.

Address by Harrison Tweed, *The Changing Practice of Law*, Cardozo Lecture before the Ass'n of the Bar of the City of N.Y., Oct. 27, 1955, in 11 *Record of N.Y.C.B.A.* 13, 16 (1956).

11. Blakely, *New Goals in the Education of Adults*, 14 *Record of N.Y.C.B.A.* 203 (1959).

12. Wolworth, *Woodrow Wilson, World Prophet* (1958).

My amateurish conception of the purpose of education is a very simple and earthy one: it is to increase the student's usefulness in the world. But that carries with it an important by-product. For most human beings who find themselves useful derive a sense of fulfillment which makes for their greater enjoyment of life and their increased happiness. And I am heathen enough to believe that happiness is a thoroughly desirable state of mind and soul. Indeed, I believe that the most important thing in life is the enjoyment of it. I think it is seldom that a lawyer—or almost anyone else—does anything really well that he does not enjoy doing. It is sometimes hard to tell which comes first, the quality of the performance or the pleasure derived, but almost always the two co-exist.

That justification of education seems to me to be particularly applicable to the continuing education of lawyers. Certainly the lawyer who is not useful to others cannot or ought not to be happy. Indeed, he is no lawyer at all, for it is of the essence of the lawyer's calling that he serve others. The extent to which he does so—other things being equal—measures his status in the profession.

Taking a look at education in general, it was at about the turn of the century that the clamor was for more and better education in the liberal arts. This still persists notwithstanding that the number of students now participating is ten times as great and still increasing. There are those, however, who doubt whether there is not now a threatened excess in the number of those who seek, or at least subject themselves to, this sort of education. The doubters believe that some of these students would live happier lives if they had learned less about art and music and more about the practicalities and techniques of what has become their life's work.

Then came the period, about 1930, when the technologists told the world that working hours were going to be so reduced that the important thing to learn was how to use spare time. It is true that the modern machine has dispensed with a great deal of manual labor but the demand for goods has so greatly increased that men and women still work a considerable part of the time and are not at all worried about what they are to do during the rest of it. How to enjoy leisure is a subject on which every man is his own expert, although the expertness of very few is vindicated by their lives.

The Second World War and its aftermath brought an emphasis on scientific study in many fields—electronics, nuclear forces and the problems of space. This was accentuated when the Sputnik flared and the demand became insistent for scientific education to enable us to compete successfully with the Russians. Of quite a different sort was the appreciation which came as a reaction to the McCarthy era of the importance of education on the nature and value of civil

rights.¹³ More recently this has merged with the school of thought which believes that our superiority over the Russians can best be established through a demonstration of the superiority of our system of government and way of life. Such a demonstration requires an improvement in our political behavior, governmental performance and individual sense of values. A prerequisite to this is a new and special quality of education and preparation.

All of this has led in turn to an appreciation of the importance of trained and informed leadership, which presupposes the establishment of education designed to produce it. There has been no substantial diminution in the enthusiasm for education of the masses but there has been creeping in a re-awakened realization of the value of the superior individual. At least one of our leading foundations has expressed this in its concentration on education for excellence.¹⁴ This line of thought should certainly have the support of lawyers.

Recently, the education of adults of all sorts and varieties, and through numerous different ways and means, has had strong financial support from foundations and elsewhere and has come to be a recognized force.¹⁵ It was inevitable that in this atmosphere the special qualifications, abilities and values of those trained and experienced in the law should come to be correctly appraised. And this has happened. A recent study to evaluate the influence of different groups within our population reached the conclusion that lawyers should be accorded a factor of fifty-seven as against seventeen for the next highest group.¹⁶

To return to the post-admission education of lawyers; it has had a short history.¹⁷ I date its formal beginning from 1916, when some lectures were given at the Association of the Bar of the City of New

13. For an example of the type of activity which led to this appreciation, see The Fund for the Republic, *A Report on Three Years' Work* (1956), which cites numerous projects and grants involving law, lawyers and bar associations.

14. As an illustration, see Rockefeller Brothers Fund, *The Pursuit of Excellence: Education and the Future of America* (1958).

15. See, e.g., Kellogg Foundation, *Continuing Education: An Evolving Form of Adult Education*; The Fund for Adult Education, *Continuing Liberal Education, A Report: 1957-1959* (1960); American Foundation for Continuing Education, *Two Year Report* (1959); The Fund for Adult Education, *Education for Public Responsibility*; Siegle, *New Directions in Liberal Education for Executives*, a publication of the Center for the Study of Liberal Education for Adults (1958); Fletcher, *The Great Awakening*, a publication of The Fund for Adult Education (1958). See also, Symposium, *American Civilization and its Leadership Needs, 1960-1990*, 325 *Annals of the Am. Academy of Pol. & Soc. Science* (Sept. 1959).

16. Stone, *Legal Education and Public Responsibility* 21 (1959).

17. Mulder, *Lawyers: A Little More Learning is Not a Dangerous Thing*, 20 *Pa. B.A.Q.* 224 (1949); Mulder, *The Present and Future of Continuing Legal Education*, 5 *J. Legal Ed.* 155 (1952).

York by lawyers who had made their reputations—and their money—by virtue of their expertness in certain special branches of the law, particularly those concerning business and finance. They volunteered to put their learning and experience at the disposal of all who cared to come and listen.¹⁸

I like to mention this because we of that bar association are very proud of what it has done for the profession throughout its ninety years and because it has done more for my own education as a lawyer than any other influence, except perhaps that of the Harvard Law School. It was there that I first heard of legal aid and learned about the duty of lawyers to support and promote it. And it was by membership on an association committee that the desire for further work of a similar sort was stimulated.¹⁹ I mention this as an example of learning by doing.

About 1932, the Practising Law Institute of New York was organized as a non-profit corporation.²⁰ It has continued from that day to this to offer courses for the improvement of the competence of a great many lawyers. Fairly soon afterwards there was activity in other states, notably California, Wisconsin, Iowa and Texas, through various different sorts of instrumentalities, and both bar associations and law schools commenced to take an interest in offering educational opportunities to members of the bar. There was a difference in the point of view as between bar associations and the law schools, the former treating education as an association program and a stimulus to membership, while the latter concentrated on the educational objective.

The war brought a special demand on the part of returning veterans who were badly in need of refresher courses, at the very least. For a while the American Bar Association operated directly in this field in collaboration with the Practising Law Institute of New York. A good deal of progress was made, but in 1947, both organizations approached the American Law Institute to take over the responsibility on a national scale. As a result, there was then organized the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association, now known as the Joint Committee on Continuing Legal Education. This is a group of eighteen members with an equal number of representatives from each organization. In addition, it has a professional staff consisting of a director, an assistant director and an office staff of seven.²¹

18. Sheldon, *The Association of the Bar of the City of New York, Historical Sketch, 1870-1920* 96 (1920).

19. 77 A.B.A. Rep. 136 (1952).

20. Ballantine, *op. cit. supra* note 5.

21. Writing in 1946, Sidney Post Simpson asked: "What kind of an organiza-

This arrangement affords an example of the value to the bar of a group set up for a special purpose, which should have some independent financing but is entitled to bar association appropriations as well as promotional support. The "organized bar," whether national, state or local, cannot undertake to do well all the things that the organized bar should do. It is proper, therefore, if not necessary, that in many cases special groups be organized for specific purposes. Such groups can have continuity of membership and leadership based on qualifications regardless of geography or organization politics. Other examples are the Uniform Commissioners on State Laws and the National Legal Aid and Defender Association, which, while operating independently with continuous management and salaried workers, have the publicized support of the American Bar Association. A more recent example is the Council on Legal Clinics, consisting of lawyers as well as legal educators, set up to supervise the use of the generous grant by the Ford Foundation, with the objective of broadening the horizons of law students to let them learn the public responsibilities of the profession.

Until 1957 almost all of the education offered to practicing lawyers was designed to improve professional competence and to do nothing more. In the fall of that year, it was felt by many of those interested in the cause that something should be done to put new life into the movement. The formula adopted contained two innovations: first, putting the education offered to practicing lawyers on a somewhat professional basis through better organization, salaried personnel and

tion should be entrusted by the organized bar with the national aspects of continuing education? It must be a national organization, with directors or trustees geographically representative of the American bar. It must be a non-profit organization. It must be an organization which can work harmoniously with the bench, the bar and the law schools throughout the United States. It must be able to gain the confidence of the entire organized bar. It must be prepared to pioneer in continuing legal education." Simpson, *op. cit. supra* note 5, at 717-18.

Today the Joint Committee is composed of eighteen members with the President of The American Law Institute serving as Chairman and the President of the American Bar Association serving as Vice Chairman. The Director of the A.L.I. and President-Elect of the A.B.A. are ex-officio members. The remaining fourteen are appointed by the Chairman and Vice Chairman. Current members of the Joint Committee and their geographic representation are as follows: A. James Casner (Mass.); Paul B. DeWitt (N.Y.); Philip C. Ebeling (Ohio); Edgar N. Eisenhower (Wash.); Herbert F. Goodrich (Pa.); Hubert Hickam (Ind.); Peter H. Holme, Jr. (Colo.); Charles W. Joiner (Mich.); Ross L. Malone (N.M.); Russell D. Niles (N.Y.); Lewis F. Powell, Jr. (Va.); John D. Randall, Vice Chairman (Iowa); Churchill Rodgers (N.Y.); Howard R. Sacks (Ill.); Whitney North Seymour (N.Y.); Harrison Tweed, Chairman (N.Y.); Weston Vernon, Jr. (N.Y.); John W. Wade (Tenn.).

The Joint Committee's office is located at 122 South 36th Street, Philadelphia 4, Pa.

reasonable charges; second, introducing education designed to equip the practicing lawyer to understand and meet his professional responsibilities beyond his primary obligation to be competent.²²

22. The Call of the Meeting of the Arden House Conference reads in part:

While great strides have been made since the inception of post-admission education in the United States, and particularly since formation of the ALI-ABA Committee in 1946, it must be conceded that much remains to be done in order to establish a comprehensive, planned program of education for practicing lawyers throughout the United States.

The importance of this, to both improve the professional competence of lawyers and to develop their sense of professional responsibility to the public, cannot be exaggerated. The criticisms of the qualifications and characteristics of American lawyers on admission to the bar today are, first, that they lack practical training sufficient to qualify them to competently advise, counsel and represent clients and, second, that they do not have a full appreciation of what it means to be a lawyer either from the point of view of the obligations which that entails or of the opportunities which it offers to serve the community and the country. These criticisms do not come only from the layman but from the best informed and most dedicated members of the Bench and bar. And most lawyers admit the soundness and fairness of these criticisms. On the other hand, it seems to be pretty well recognized by the organized bar and by the law schools that it is impracticable to furnish the remedy either before or during the ordinary law school period. The result is inescapable that the remedy must be found after admission to the bar through what has come to be known as continuing legal education and that the responsibility that this be done, and done promptly, rests with the bar itself.

It is the purpose of the National Conference on Continuing Education of the Bar to:

1. Make available to all states the experience in this field of the states and institutions which are most advanced in their programs.
2. Analyze the present status of continuing legal education in the United States today, determining both what is good and what is bad about the present program.
3. Agree upon the type of continuing education program for the Bar which will meet the need of the profession and hold out the greatest hope of benefiting the major portion of the Bar, in the light of the necessity for adapting the program to the needs and conditions of individual states.
4. To determine how continuing legal education can be more clearly related to education in the law schools.
5. Determine how continuing legal education can be used more effectively to educate the members of the Bar as to its public responsibilities, both collectively and individually.
6. Determine the place of Bar Associations and the place of the law school in the continuing legal education program of the future, and make recommendations as to the relationship between these two agencies which will insure the most effective use of the resources which each has to offer.
7. Devise plans whereby the program which may be agreed upon

A conference of representative lawyers from all over the country was suggested by Whitney North Seymour, 1960-61 President of the American Bar Association, and, as a result, what has come to be known as the Arden House Conference, financed by The Fund For Adult Education, was held in December 1958. Over a hundred lawyers attended, and discussions were conducted for two and a half days, first in small groups and then in plenary session. A so-called consensus was arrived at in the form of a brief Final Statement.²³ The out-

at the Conference can be put into operation in all of the states in a minimum of time and with a maximum of effectiveness.

Questions implicit in the foregoing objectives which will be the subject of discussion at the Conference include:

How can the quality of legal institutes be improved and the benefit to participants be increased?

What inducements can be provided which will substantially increase the attendance of members of the Bar?

Is it feasible to provide diplomas, certificates or other forms of recognition as a means of stimulating attendance?

Could the joint ALI-ABA Committee act as a central accrediting agency which would approve the adequacy of the program of instruction to the end that both quality and uniformity will be increased?

What is the place of one and two week summer courses by law schools in the post-admission field?

Is a paid staff essential to an effective program, and if so, how can one be obtained?

Can a continuing legal education program be self-sustaining?

What is necessary to make it self-sustaining?

To what extent should the program include the publication and sale of books, pamphlets and treatises of various kinds?

We hope and believe that the cumulative experience of the Conferees at Arden House will provide sound answers to these and other pertinent questions which, in turn, will be the basis for the new and expanded program of continuing legal education envisioned as the product of the Conference.

Regardless of how good a program comes out of the Conference, its benefit to the profession will be determined entirely by the extent to which it is implemented and reflected in stepped-up activity in the individual states. This will be in the hands of the Conferees and will be their responsibility—one which each of you is in a peculiarly favorable position to perform.

Arden House Report, *op. cit.* supra note 1, at 93-96.

23. The complete text of the Final Statement, adopted unanimously by the conferees of the Arden House Conference, reads as follows:

American Lawyers today are confronted with problems of vast and increasing complexity. No law school education can be expected to deal with all of these problems. A practicing lawyer has an obligation to continue his education throughout his professional life. This education not only must increase his professional competence but also better qualify him to meet his professional responsibilities to his clients and to the public.

The organized bar has the primary obligation to make this contin-

standing feature of the Statement was that it brought into the continuing legal education picture for the first time, and in bold relief, the importance that the educational opportunities should not be aimed simply at an improvement in professional competence, but in addition, should be designed to "help the lawyer to fulfill a wide range of professional responsibilities: to the courts, to the administration of justice, to law reform, to the law-making process, to his profession and to the public."

uing legal education available to the members of the profession. A generation ago the bar recognized its responsibility for the adequate education of law students. Today it recognizes a comparable responsibility for the continuing education of practicing lawyers.

The bar must take stock of the existing resources for continuing education of practicing lawyers; it must formulate educational goals in this field; and it must determine the means to achieve them. This is the inquiry and the efforts that the Conference has attempted to launch.

The Conference examined in detail the existing programs for the continuing education of lawyers, and gave special attention to the national program conducted by the Joint Committee of The American Law Institute and the American Bar Association. The Joint Committee has published a series of valuable texts and sponsored the publication of *The Practical Lawyer*, a successful periodical for the general practitioner.

Through the efforts of various agencies of the bar, valuable programs of continuing legal education have been presented for many years.

The concern of the law schools for the future of the profession has led many schools to play an important part in the development and conduct of post-admission legal education programs. Moreover, individual teachers have participated in courses sponsored by the organized bar.

It was agreed that the present programs, national, state and local, have made good progress, but that much remains to be done.

Programs for continuing education thus far have placed a major emphasis on professional competence and have not always given to professional responsibility the attention it should have. In the future these programs must also emphasize the professional responsibilities of the lawyer. They must help the lawyer to fulfill a wide range of professional responsibilities: to the courts, to the administration of justice, to law reform, to the law-making process, to his profession, and to the public.

Programs directed to professional competence should include advanced and specialized instruction as well as courses suited to the needs of newly admitted lawyers.

At the national level, the responsibility to stimulate the broader program envisaged here must be discharged by the Joint Committee on Continuing Legal Education of The American Law Institute and the American Bar Association. The Committee should take advantage of the facilities of the American Bar Association as well as all the other means at its command to encourage throughout the country strong programs of continuing legal education under local leadership and

I wish that I could give some idea of the atmosphere at the Arden House Conference. Personally, I have never had a more exhilarating experience than participation in what was done there. There was a general feeling of camaraderie and unity in a joint enterprise of enormous importance to the bar of this country. And it is gratifying that the work done and the spirit generated has borne fruit during the last year and a half. Many state bar associations have created committees on continuing legal education, with membership of the highest calibre, and a good many of them have already arranged financing which will assure efficient and properly compensated administrators.²⁴

Notwithstanding all this, some of those familiar with the history and status of continuing legal education felt that even the recent recognition of the significance of education for professional responsibility by the Joint Committee went only part of the way and that there was room for a new organization to carry the torch further.

guidance. The Joint Committee should continue its publication program and expand it to include texts dealing with the professional responsibilities of lawyers. The Committee should study ways to stimulate increased participation in continuing legal education programs. Special attention should be given to means of meeting the needs of newly admitted lawyers. The Committee should also examine the feasibility of establishing standards for these programs.

In the last analysis, the responsibility for this entire program in each state rests with the organized bar of the state. In most states it will be desirable for the state bar association to coordinate the activities of the organized bar, the law schools and other special groups concerned with the education of practicing lawyers. The autonomy of local groups and independent organizations should not be impaired, but their efforts should be encouraged and strengthened.

An adequately compensated professional staff is essential to develop and carry out an effective program. For this purpose some neighboring states may find it advantageous to form regional organizations.

Law schools have an important contribution to make to the continuing education of the bar. This contribution should be made without either impairing the independence of the schools or diverting them from their primary responsibility for the education of law students.

The conferees, representing the organized bar throughout the United States, pledge their best efforts to carry forward in their respective states this program for the continuing education of the bar.

Arden House Report, *op. cit.* supra note 1, at xiii-xvi.

24. As of December 1, 1960, eleven states and Puerto Rico have retained full or part-time professional administrators: Alabama—Douglas Lanford; California—Felix Stumpf; Maryland—William P. Cunningham; Michigan—E. Donald Shapiro; Missouri—Lowell R. McCuskey; New Jersey—Raymond Del Tufo, Jr.; Ohio—Boris Auerbach; Pennsylvania—John E. Mulder, temporary co-ordinator; Virginia—Peter C. Manson; Wisconsin—William Bradford Smith; New York—Willis Sargent; Puerto Rico—David M. Helfeld.

Conferences were held at LeChateau in the Savoy Hilton Hotel, New York City, last January and April, at which a statement was adopted saying, among other things:

We see a need for an organization, professional in character, adequately financed and assured of continuity. This organization would prepare educational materials and programs and would enlist the services of the Joint Committee of the ALI and ABA, state and local bar associations and law schools to promote and present them. The content of the materials would combine instruction in specific techniques with discussion of public policy issues, in varying degrees according to the nature of the subject matter and the local needs.²⁵

The thought was that while bar associations and law schools can do a great deal in planning and promoting education which will increase competence and instruct in *professional* responsibility, they lack the money and the manpower to take the next step of educating in the discharge of *public* responsibilities. The group which met at LeChateau has been, or very soon will be, formally organized and there is every reason to anticipate that, because of the standing and ability of the individuals involved, adequate financing will be secured.²⁶ When that has been done, another milestone will have been added on the path of the education of the bar.

There is no clear line of distinction between what I have referred to on the one hand as professional responsibilities and, on the other hand, as public responsibilities. One way to differentiate is to contrast the responsibilities referred to at the Arden House Conference and subsequently stated in the Arden House Report with those enumerated in the memorandum prepared by the committee appointed by the twenty-five judges, lawyers and legal educators at the conferences held at LeChateau. Among the former, priority was given to the responsibility of every lawyer to be competent to handle the professional work which he undertakes. Well up in the list was the obligation to participate in the public service work of bar associations and other organizations. Another was the obligation to work towards the objectives of law reform and adequate representation of the poor and the unpopular. On a lower level perhaps, but nevertheless of extreme im-

25. Final Statement of Chateau Conference, Jan. 8-9, 1960.

26. The persons who have attended the Chateau meetings are: Laird Bell, James Douglas Brown, Homer Crotty, Norris Darrell, Henry J. Friendly, John Raeburn Green, Erwin N. Griswold, Charles A. Horsky, J. Willard Hurst, Charles W. Joiner, Edward H. Levi, Ross L. Malone, William Marbury, Russell D. Niles, J. Lee Rankin, Walter V. Schaefer, Edwin Blythe Stason, Robert G. Storey.

In addition to the conferees, the following have attended the meetings as observers: Robert J. Blakely, Paul B. DeWitt, C. Scott Fletcher, Herbert F. Goodrich, Harrison Tweed, Adam Yarmolinsky.

portance to the profession and the community, came the obligation of lawyers to serve on educational and charitable boards and to contribute leadership of public opinion, whether in a wide or narrow sphere.

The *public* responsibilities in the LeChateau Statement include among other things: (1) problems of urbanization, meaning the difficulties created by the rapid growth of cities and their environs and the techniques suggested for dealing with them; (2) juvenile delinquency, including an analysis of it and a determination of what can be done about it both by way of cure and prevention; (3) international organization and the possibilities of an international common law; (4) local government and its structure, finance, organization and political ethics; and (5) comparative law and an analysis of fundamental legal institutions and procedures in other societies and how they can contribute to our system of law.²⁷

Perhaps the most that can be done to draw a philosophical distinction between the two varieties of responsibilities is to base it on the proximity to or remoteness from the actual practice of the law. For instance, an understanding of and interest in the principles of the criminal law are close enough to the ordinary work of the lawyer to be classified as a *professional* responsibility whereas special knowledge of the problem of delinquency is sufficiently remote to be regarded as a *public* responsibility. This basis of distinction also brings out the element of generality on one side and of specialty on the other side. Criminal law is a general subject, about which all lawyers should know at least the fundamentals, whereas delinquency is a special branch of it, to which only a relatively small group of lawyers can be fairly

27. In addition to particular problem areas to be covered, the Statement outlined some special projects:

A resident summer session might be established under the aegis of the central organization, on a university campus, for a limited group of lawyers chosen by state and regional selection committees which would be made up of laymen as well as older lawyers. The session, running from four to six weeks, would offer courses like those described above, as well as special lectures primarily, but not exclusively, on public affairs. The effort would be to make attendance at the session sufficiently prestigious so that after the first few years those selected would be willing to pay their own way. When they returned to their own communities, they should provide the second generation membership of local sponsoring committees for the overall program.

The central organization should also publish a periodical for graduates of its courses, and other interested persons, in order to generate greater interest in the program. The periodical would contain articles of particular interest to lawyers concerned with the role of law in society. It might be modeled on the general pattern of the Harvard Business Review and the Scientific American offering general ideas in a form attractive to readers with a common specialized background.

Chateau Conference on Continuing Legal Education, Memorandum, 5 (1960).

expected to give their attention. And this illustrates another element of differentiation—that the discharge of professional responsibilities is apt to be less absorbing in time or effort than the undertaking of so-called public responsibilities.

The *nature* of the distinction or even the *existence* of a distinction between education for professional responsibilities and education for public responsibilities is not too important. Here we are pioneering in new territory for which no maps exist. As I have indicated, the Joint Committee has undertaken to offer the sort of training and education to develop qualifications for meeting professional responsibilities as well as for doing competently the technical work of the practicing lawyer. The Council on the Education of the Bar for Public Responsibility is designed to offer education to prepare for this further and somewhat different field of work for which lawyers are well qualified but for which more preparation is necessary in the present crisis. It might seem that this is multiplying instrumentalities to accomplish the same or almost the same objective. But, in fact, there is need for both the Joint Committee and the newly organized group. And there is no room for fear that there will be any conflict between them; rather an assurance that through the cooperative activities of both the whole area will be thoroughly covered.

A very brief summary of the situation today in the field of continuing legal education is that it is good—better than it was ten or even five years ago—but not good enough by any means to meet the needs of the public and to fulfill the obligation of the bar. In carrying on from here, help will be needed from many sources. To put the first thing first, the cause of continuing legal education needs financial support. If, as we believe, the great need of the country is intelligent leadership in public affairs, then it seems sensible that the education of lawyers should be given high priority. Where, other than within membership of the bar, is the human material for leadership so easily identifiable, so readily available, so thoroughly receptive and so temperamentally qualified?

Financial help should be forthcoming from foundations and other sources. And it is entirely fair and proper to ask help from outside the profession. Under present economic conditions, and particularly the existing taxation of earnings, the lawyer cannot be expected to accumulate funds for philanthropic uses even within the profession.²⁸ But

28. I think it would be fair to say that the best continuing education—note I didn't say continuing legal education—the best continuing education in this country today is provided at the Harvard Business School. The Harvard Business School has developed an elaborate system which it calls the 'Advanced Management Program.' The Advanced Management Program is designed for people in their late thirties, and early

apart from money, the bar is willing and anxious to make its full contribution. Lawyers who are extremely busy in practice will give their time in planning programs and preparing materials, and in distributing, explaining and expounding them. Law school men will do likewise and their schools will make their physical facilities available.

At present law firms do far less than they should to develop the completeness or even the competence of their young associates and partners. The hope is that with the growing enthusiasm for better education of practicing lawyers greater attention will be paid to this professional responsibility, which is not only an obligation of the firm partners and of the profession as a whole but an opportunity for the firm itself to improve the quality of its "client serving" and its status in public esteem.²⁹

At the same time that I make these somewhat uncomplimentary remarks about law firms in general, I want to say that in my opinion the institution of the large law firm is a great asset of the profession. Briefly, the reasons are: the supervision and encouragement given; the increased opportunity to select the particular fields of the law to which the young lawyer is best suited and, not too soon but not too late, to specialize in one of them; to have the increased sense of financial security because of the number and diversity of clientele and year-in, year-out averaging of earnings; the probability of association with a mature, experienced and successful lawyer and what it brings in cooperative work and enduring friendship. Finally, and more mun-

forties. The Middle Management Program is designed for people in their early thirties.

They bring these people selected by their companies back to Cambridge for a ten-week intensive program. This is organized as a separate division of the Harvard Business School, with a staff whose primary assignment is to deal with these people. They draw on the regular staff of the Business School, but in no sense is this just taken on as an added chore by the regular staff of the Business School. There is an extensive staff whose function it is to deal with these people.

Let me tell you now just a few facts of life in connection with this. These people are sent back by their companies. They are paid their full salaries while they are there. They are paid all their living expenses, and often the expenses of their wives and families while they are there. And their companies pay to the Harvard Business School a tuition charge of \$1750 each for the ten weeks.

Griswold, Arden House Report, *op. cit.* supra note 1, at 140.

Dean Griswold then goes on to suggest that something like this might be done in the legal profession if law firms, as a business expense, would send their younger lawyers to get the best continuing legal education available.

29. Voorhees, *How to Teach a Young Lawyer Professional Responsibility*, 6 *Prac. Law.* 8 (March 1960); Voorhees, *An Experiment in Indoctrination: The New Lawyer in a Large Law Office*, 44 *A.B.A.J.* 1163 (1958).

danely, the statistics are conclusive that, other things being equal, the earnings of each member of a sizable law firm are far greater than those of a member of a small firm or of a solo practitioner.³⁰

In the final analysis, the job of making individual lawyers better craftsmen, stronger leaders of opinion and more effective public servants beyond practice is for the bar itself. While much that is said on the subject may seem to be directed at the individual lawyer and his professional and public activities, the test of success or failure of continuing legal education will be found in the accomplishments of the profession when taken as a whole. And that means not only bar associations and law schools; it extends to that conglomerate group whose sole bond in common is that they have been sworn in as attorneys and counselors-at-law. But that is a strong bond and the group is a great group. Every member must recognize his individual obligation but the over-all leadership and supervision must come from the organized units of the profession.

Fortunately, there is this clarification and consolation, that what both the individual lawyer and the entity do contributes to the objective. The extent to which the profession offers opportunities to its members makes it easier for each individual lawyer to improve himself and to make his contribution. By the same token, the prompt and full acceptance of those opportunities by the individual lawyer makes for the better qualification of the profession itself in meeting its responsibilities—local, state, national and international.

Continuing legal education is a joint venture on the part of a quarter million lawyers as individuals and as an entity. The first step is the one that is now being taken by the existing organizations working in the field. They must have the support of the organized bar and the law schools. If the undertaking is to be successful, it must be conducted more intelligently and with greater concentration on efficiency than have so many past undertakings of the bar. For it is essential that the education offered be of the highest quality because, to a large extent, the willingness of both young and mature lawyers to take advantage of their educational opportunities will depend upon their appraisal of its probable value.

30. Recently it has been frequently pointed out that the earnings of lawyers have decreased in comparison with the earnings of those in other professions. Reginald Heber Smith believes that the best hope for an improvement in the earnings of lawyers lies in greater use of the technique of the comparatively large law firm. I agree with him and am convinced that one reason for this is that such firms are able to offer their clients the services of lawyers who have become outstandingly expert through specialization. Smith, *Needed: A Bureau of Legal Economics*, 46 A.B.A.J. 483 (1960); Special Committee on Economics of Law Practice (John C. Satterfield, Chairman), *The 1958 Lawyer and His 1938 Dollar*; Tweed, *op. cit. supra* note 10, at 15.

I want to emphasize that a decision by a lawyer to continue his legal education does not require any self-sacrificing nobility on his part.³¹ That part of his education which is designed to make him more competent in his practice will, of course, bring its reward in more clients and larger earnings. Participation in the education which will stimulate and qualify for activities outside of practice will broaden the lawyer's horizon and permit him to enjoy a fuller and happier life.

As I have said, there is a need for interest and support from every member of the profession. However, there are two groups of lawyers by whom participation in the opportunities offered them is particularly important. One consists of those lawyers who are at the point in their careers when they must choose whether to limit permanently their activities exclusively to practice or whether to seek to enrich their lives and benefit their fellow men by giving a part of their time and energy to other activities. I would put this point at somewhere between the ages of 45 and 50, which means after about twenty-five years of practice. This is a moment for pause in the competition with fellow lawyers to take a look forward and make plans for the future. If those plans include a desire to do more than serve clients, there should be a willingness to seek the further education which will better qualify for activity in the wider field.

The second important group consists of younger lawyers, and perhaps particularly of those who have just been admitted to the bar.³²

31. It might be said that the appeal which the legal educators make is not to the conscience of lawyers but to their common sense. It is not an appeal that they do good in the interest of others so much as it is that they live their own lives to the full. It is here that I quote Holmes. He said: "The rule of joy and the law of duty seem to me all one. I confess that altruistic and cynically selfish talk seem to me about equally unreal. With all humility, I think 'Whatsoever thy hand findeth to do, do it with thy might' infinitely more important than the vain attempt to love one's neighbor as one's self"

Tweed, *The Lawyer as a Public Servant* (to be published).

32. What I want to do is to lay before you the importance of moving from a mere concern with estate planning, with the latest federal income tax law, with other bread-and-butter courses, to the great questions which underlie our whole world, and to say it is the responsibility of the leaders of the bar to develop among the juniors of the bar and the profession as a whole, an awareness of the very deep questions—whether this takes the form of seminars, whether it takes the form of stimulating in each of the states reviews of legislative as there are reviews of judicial action, I do not say. But I am convinced that we are dealing here with a problem of the most challenging nature, in which our responsibility to the community is best performed by our being aware of our responsibility to the young people in our calling

Most of them will recognize that, hard as they have worked in college and law school, they are not full-fledged lawyers qualified for all forms of practice. Leaving aside the question of education for professional or public responsibilities and concentrating only on education for competence as craftsmen in the practice of law, the question will confront these young men whether they have the energy and the perseverance to continue their education and make themselves, partly in their own interest and partly out of pride in their profession, better practitioners. And if we continuing legal educators are right in believing that one thing leads to another, when these young lawyers have perfected their knowledge of some branch of the law, they will have acquired an interest in it which prompts them to broader activities, perhaps limited to the improvement of the law in that particular field but very likely going further in serving the needs of the public. The highest hope which the continuing legal educators cherish is that they will succeed in offering the younger members of the bar opportunities for their improvement and advancement as lawyers and as citizens, which the great majority of them will accept.

I appreciate that I have not yet explained what I mean when, in my title, I refer to the complete lawyer. Perhaps something of what I have in mind will have emerged from what I have already said. It is not easy to prescribe or apply any definite test. There is no external standard because largely the completeness of the lawyer is a result of his own thinking and, to a greater or less degree, of what I call fate. Not every lawyer can do all that he would like to do by way of public service and at the same time retain his clients or his salaried position. But there is nothing to prevent him from wanting to serve and trying to—or at least being alert for opportunities to serve. It is only those who decline to be interested in the opportunities which fate offers who lack even the beginnings of completeness.

There are three kinds of public service which must be distinguished one from the other: (1) part-time service which may be either continuous or spasmodic, (2) full-time temporary service, (3) full-time permanent service. This last variety I have reluctantly omitted from my definition of the complete lawyer because a full-time permanent public servant has ceased to be a lawyer except in those comparatively rare cases in which he holds judicial or quasi-judicial, legal or quasi-legal office. It seems to me inaccurate to include within the definition of a complete lawyer one who is no longer engaged in serving clients, because that is of the essence of lawyerhood, and also because the

It should be our concern to watch the souls of men of our calling,
and what they do within themselves.

Address by the Honorable Charles E. Wyzanski, Jr., Arden House Report, *op. cit.* supra note 1, at 163-64.

objectives and standards are different for those within the profession and those who hold more or less permanent public office. But this strictness of definition must not be taken as anything but an accolade to the lawyer who has given up his profession to devote himself exclusively to something even nearer maximum usefulness to the public. For those who are interested in seeing the bar become of the greatest possible value to the world, to do otherwise than acclaim a lawyer who has gone so far as to devote his whole life to some other form of public usefulness would be ridiculous. However, it is obvious that, comparatively speaking, there will always be rather few of them and that, realistically, the hope must rest with those lawyers who continue to practice but who have the desire and ability to give a substantial part of themselves to other useful activities.³³

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33. Candidly, what the profession needs today is a more courageous attitude in defending the courts, in asserting the constitutional guarantees of civil rights, and above all a reiteration of the belief that the greatest thing in our world is the liberty of the individual and the untrammelled right to think as men wish to think. And incidentally never let us forget that the guarantees of the First Admendment are without precedent and are in every sense a purely American contribution to the development of political philosophy.

It means, in short, a reteaching by lawyers of the old rule of law, and bringing back the overtone of idealism. You see, I have not told you how to remedy any of these situations. I admit I have been speaking in terms somewhat vague, but these problems are not narrowly defined, gentlemen. What I am really asking is, what is to be the attitude of the individual lawyer in the future toward these new problems? Is he going to sit back, or is he going to take part in providing guidance in the discussions of these grave issues? Is he going to accept responsibilities in his own community and speak out in the interest of freedom?

Is he going to do his part? Is he going to speak out against unreasoning hysteria? Is he going to stand up and be counted as did the great figures in legal history in the past that you and I worship? Or is he going to relax and try to ignore these great forces about us? Above all, is he going to recognize the age-long obligation imposed upon every lawyer by the fact that he is a member of the legal profession and an officer of the judicial system? That imposes upon the individual lawyer a special sense of conscience. It means constant recognition of obligations peculiar to the legal profession, of understanding of the rights of others in the community, and the constant recognition in Burke's terms of philosophy, of the prejudices and the views of other people. The burden is a heavy one but the rewards are great. For as Holmes said in one of his early addresses, a man can live greatly in the profession of law as elsewhere; that there, in the practice of the law as elsewhere, his thought may find its unity in an infinite perspective and in the wisdom of detachment; that there as well as elsewhere he may wreak himself on life, may drink the cup of heroism and may wear his heart out after the unattainable. Many of you, who like myself have

Vaguely, the image in my mind of the complete lawyer is one who gives a considerable part of his time and energy wholeheartedly to advising and representing clients and doing it with a broader viewpoint than the mere self-interest of the clients, and who gives the rest of his time and energy, and is not limited by any union rules, to the sort of work in the public interest for which he is particularly qualified.³⁴

Thus, for completeness, a desire to go outside the limits of pure practice is the first step. The next is willingness to learn through study or through doing. In most cases this leads to active service in the spirit of both usefulness in the world and enjoyment of life. At that point the lawyer has become complete so far as any practical definition is concerned. He may be more or less successful competitively in number of clients, amount of income, extent of influence or importance of position. Progression towards completeness as a lawyer is not a rat race. Securing clients, business, big fees, high salary or important public offices is not the test. The completeness of the lawyer is to be judged less on the basis of what he does than on the basis of what he is.

I will abandon philosophy and quote from the poet, Laurence Hope:

Men should be judged not by the color of their skin,
The gods they worship or the vintage that they drink,
Not by the way they love or fight or sin
But by the quality of thought they think.

held public office, I am sure, have done this and have swallowed many a dose of disillusionment.

Address by John Lord O'Brian, Arden House Report, *op. cit. supra* note 1, at 131-32.

34. Chief Justice Arthur T. Vanderbilt summarized what I mean when he listed the functions of the lawyer as follows:

First of all, a truly great lawyer is a wise counselor to all manner of men in the varied crises of their lives when they most need disinterested advice Next the great lawyer is a skilled advocate, trained in the art of prosecuting and defending the legal rights of men both in the trial courts and on appeal The third task of the great lawyer is to do his part individually and as a member of the organized Bar to improve his profession, the courts, and the law. . . . In a free society every lawyer has a fourth responsibility, that of acting as an intelligent, unselfish leader of public opinion. . . . Finally, every great lawyer must be prepared, not necessarily to seek public office, but to answer the call for public service when it comes. The attorney whose professional thoughts begin and end with his own private clients is a pitiable mockery of what a great lawyer really is.

Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A.B.A.J. 31, 32 (1954).