

CONTINUING LEGAL EDUCATION

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THE project for continuing training of the bar, organized on a national basis, has now been under way for approximately one year. It is under the supervision of a Committee on Continuing Legal Education, composed of twelve representatives of the American Law Institute, eight representatives of the American Bar Association, and the presidents of both organizations.

That there is need for such training will be denied by few. It is not easy to *become* a good lawyer. Nor is it easy to *remain* one. That may be a platitude, but it is also a serious truth.

No matter how much has been done about it—and much has been done—there is a real gap between the law school and the law office. The novice at the bar is in many respects a liability to his office for a considerable period of time. He is bewildered by his lack of knowledge of a thousand and one little practical details. Something should be done about this.

Lawyers, generally, need training in the techniques of their profession, particularly in fields which are new to them, but which they must confront in their general practice. This may be designated “how-to-do-it” stuff. Lawyers who know “something” about a subject usually need to know more about it. Those who aspire to become specialists need even more intensive training. And all lawyers need to be kept abreast of the changes and developments that are constantly occurring in the substantive law itself.

The trouble is that not enough has been done about this. The legal profession has not kept pace with medicine and dentistry. In these two fields frequent institutes are not only held but are exceptionally well attended. The doctor and the dentist are constantly studying many fine scientific journals which they have at their disposal.

This is not to say that the bar has done nothing along this line. What has been done varies from some things which are excellent to others which are very poor. There is not much educational value in a single lecture on a broad subject, after cocktails and a sumptuous dinner. The programs of state and local bar associations are, in some instances, inclined to be spotty, sporadic, and sketchy. In other words, their educational content could be considerably increased.

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On the other hand, there have been some really significant achievements. In California, for example, there is in existence a well organized and carefully planned program. The integrated bar, local bar associations, law schools, and the Extension Division of the University of California have joined hands in the promulgation and conduct of a state-wide program, designed to be brought home to the bar in all communities of the state. In 1947, a ten-lecture program on Federal Taxation was offered in sixteen cities throughout the state. Future plans call for similar work on Selected Problems in Wills and Estates, Community Property, Domestic Relations, and Trial Practice with special emphasis on Evidence.¹ The California program is not an ephemeral thing; it promises to be permanent, and it gives indications of becoming financially self-supporting.

In Texas, under the leadership of Robert G. Storey, Dean of Southern Methodist University School of Law and President of the State Bar Association, the Southwestern Legal Foundation is now a thriving organization. Funds have been secured from public-spirited Texas lawyers, and the foundation is not only operating as a research institute in fields of the law important to the bar of Texas, but is also engaged in cooperation with local bar associations in offering institutes throughout the state on a basis comparable to the California experiment.

The Institute conducted by New York University and the volume published by that Institute, entitled *Annual Survey of American Law*, are now very familiar to law teachers, judges, and members of the bar in every state.

The pioneer in continuing legal education was perhaps the Practising Law Institute. For many years this organization has conducted regular programs in New York City. More recently, in collaboration with the Section of Taxation of the American Bar Association, it has successfully sponsored tax courses in many cities from coast to coast. Also, at the close of the war, in collaboration with the Section on Legal Education of the American Bar Association, the Practising Law Institute sponsored many refresher courses. In connection with these two latter projects, five series of monographs were published which have become familiar to the bar generally. These are: Fundamentals of Federal Taxation, Current Problems in Federal Taxation, General Practice, Trial Practice, and Significant Developments in the Law During the War Years. The last-named series of pamphlets was published with the cooperation of the Association of American Law Schools. The success of the Practising Law Institute is due in large part to the inspiring

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zeal of its director, Harold Seligson, of the New York bar, and its president, Arthur A. Ballantine.

Although much has been accomplished, a great deal remains to be done. It is apparent that in some places, such as California, and more recently Texas, the bar generally, in large and small communities, was and is receiving a considerable amount of the training that is needed and desired. For the nation as a whole, however, this is not true.

An agency organized on a national basis appeared to offer the solution, if one could be found. In 1946, a resolution passed by the House of Delegates of the American Bar Association provided that the American Bar Association should “. . . undertake to initiate and foster a national program of continuing legal education of the bar . . .” Pursuant to this resolution, a committee of fourteen members was appointed, with Sidney Post Simpson, Professor of Law at New York University, designated as chairman. It was ultimately decided by this committee, with the cooperation of the Practising Law Institute, that the American Law Institute should be asked to undertake this project. Negotiations having been completed, an agreement between the American Law Institute and the American Bar Association was executed with the approval of both organizations.

As a result, the Committee on Continuing Legal Education came into existence. As partially indicated above, twelve members are selected by the American Law Institute and eight by the American Bar Association—two from its Section of Bar Activities, two from the Junior Bar Conference, and four from the Section on Legal Education and Admissions to the Bar. The presidents of both organizations are ex-officio members.

It is an excellent and energetic committee. Included are young lawyers and others who have attained high positions at the bar. They come from North, East, South, and West. The author was selected as Director of the program, and Professor James E. Brenner, of Stanford University School of Law, as Director for the Western Area. The committee has met five times. It feels that much has been accomplished, but the program is really only getting started.

THE PROGRAM—PRESENT AND FUTURE

At the outset, the committee was confronted with something of a dilemma. There was the urge to move immediately into the sponsorship of lecture programs on a large scale. There was reason behind this. As a result of the refresher programs offered throughout the country by local bar associations, law schools, and the Practising Law Institute immediately following the war, considerable impetus had been

given to continuing legal education. It was felt that this impetus should not be lost. Several programs were currently being carried out or about to be carried out under the aegis of the Practising Law Institute, which, however, agreed that after these had been completed it would confine its lecture programs to New York State and leave the rest of the field to the new organization.

On the other hand, there was the thought that the new committee should proceed slowly, should ascertain needs and desires of the bar generally throughout the country, and should make an exhaustive study as to the most effective method of preparing literature and of meeting the needs and desires of the bar locally.

In effect, a compromise resulted. The new enterprise has always stood willing and able to offer its assistance in sponsoring courses, including the same subject matter as those previously offered by the Practising Law Institute, and to use the literature of that organization. In at least two different instances that has been done.

The initial venture was, with the cooperation of the Philadelphia Bar Association, to offer a twelve-lecture course on Current Problems in Taxation in Philadelphia. This was successfully done, and approximately two hundred members of the bar of Philadelphia and surrounding communities attended. The lecturers were carefully chosen, and the consensus of the audience was that the educational value of the series was high.

The program was qualified with the Veterans Administration, enabling veterans to have their tuition paid by the Government. The tuition fee was \$25, which entitled the enrollees to receive the monograph series entitled "Current Problems in Federal Taxation," consisting of twelve monographs.

In September, 1948, a twelve-lecture course on Fundamentals of Federal Taxation began in Wilmington, Delaware, with the co-sponsorship of the state bar association. The total enrollment was around one hundred, and again the program appeared to be very well received.

The Revenue Act of 1948 raised innumerable problems for all lawyers engaged in preparation of wills and trusts and in estate planning. The committee felt that it was most urgent that immediate action be taken to permit a one-day institute on this subject wherever it was desired. This type of institute was offered in New Haven and Hartford, Baltimore, Des Moines, Fargo, Boise, Tulsa, and on successive days in three different cities in Nebraska, always with the cooperation and co-sponsorship of the state or local bar association.

A syllabus of the course was prepared by George E. Cleary, of the New York Bar, and distributed to those enrolled in the course. This

syllabus had considerable value. It made possible a more or less uniform course throughout the country. It enabled the lecturers to prepare their lectures with a minimum of effort and a maximum of speed. It enabled those enrolled in the course to follow the lecturers more easily.

Meanwhile, the committee continued with its deliberations looking toward the future of the project. It is apparent that courses of a basic, practical, rather elementary nature are much desired by the bar. They appear to be essential if the desired assistance is to be rendered in smaller communities.

Also, the use of syllabi appears to be sound and desirable from an educational point of view. Syllabi for courses on the following subjects are now being developed:

- Tax Returns and Related Problems
- Accounting for Lawyers
- Legal Problems of the Small Business
- Bankruptcy
- Pre-Trial Practice under the Federal Rules
- Wills and Estate Planning

These subjects appeared to be of most immediate concern. Others will be developed in the course of events.

After long consideration, the committee decided to use a method comparable to that employed in the preparation of the Restatements of the Law by the American Law Institute. A reporter will be chosen for each subject, and he will prepare the syllabus. His draft will then be submitted to a small group of advisers, who are acknowledged experts in their respective fields. Eventually, there will evolve the finished product.

Most of these basic elementary courses will be short, perhaps covering no more than one day. They are designed to fill an immediate need and to make the program known to the bar associations throughout the country. In many instances, one day of the annual or midwinter meetings of the state bar associations will be given over to these institutes.

That is the more or less immediate program. One-day institutes are good for suddenly timely subjects, such as the Revenue Act of 1948. For other purposes, their educational value is obviously limited. In the larger cities there is a desire for more extensive treatment of various subjects. Likewise, with some bar associations three-day concentrated institutes are in demand. In these instances, the content of the courses will be on a somewhat more advanced level than that of the basic, practical courses. It will be assumed that the audience knows something about the subject before attending. There will be something more than instruction in "how to do it." There will be substantive content.

On a higher level, there will be developed programs for the specialist. These will probably take the form of seminars, and here the cooperation and co-sponsorship of the law schools will be invited and sought. In these last two categories, eventually literature of a more comprehensive nature than syllabi will evolve.

A comprehensive syllabus for a ten-lecture course on Labor Law and Labor Negotiations has been prepared and is now available. Every effort will be made to keep this syllabus up to date in the event of pending legislative changes in the Taft-Hartley Act.

All of this costs money. Methods of financing will be discussed hereafter. Under any method, however, it is obvious that in small and remote communities the problem of financing is critical. But the committee feels strongly that the needs and desires of the bar in these small communities must be fulfilled.

An exhaustive investigation is being made as to how best to produce recorded programs on various subjects. It appears that this can be effectively done at a minimum of cost to local bar associations. There will be the added advantage that the speakers will consist of outstanding lawyers who could not be induced or expected to make personal appearances in small communities. The recorded programs can be supplemented by the presence of a local expert to act as chairman of the meeting and to lead subsequent discussion from the floor, particularly where there are local differences in law and practice. The records will be supplemented further by mimeographed material pointing out these local differences.

The possibility of the use of motion pictures is also undergoing thorough study. Clearly, even a motion picture of a prominent lecturer or a round-table discussion is of more stimulating interest than a mere recording. Also, particularly in the field of trial techniques, much educational value can be generated by the use of motion pictures.

Here cost is a real factor, but the committee confidently expects to be able to bring about the use of motion pictures, in some form or other, at a cost within the reach of the small bar associations.

METHODS OF ORGANIZING THE PROGRAMS

There was, and is, a serious problem as to how, from an organizational point of view, the national program should be brought into local communities. With what local agencies should the committee work?

In some of the larger cities, appropriate committees were already in existence, and no difficulties were encountered. The same may be said with respect to some state bar associations. In these communities the

only problem is, What can the national organization do better than the local one? As the program develops, it is anticipated that the committee will have much to give to these groups.

In other states, no committees existed and not much had been done in continuing legal education. Also, there are problems of distance where there are no large metropolitan centers with a concentrated bar in a given state.

The committee concluded that it would be advisable to make the new project known to state bar association officials and to encourage the appointment by them of cooperating groups.

Accordingly, Professor Brenner, over a period of some six months, visited some thirty states, addressing bar association meetings and conferring with their officers. As a result, in substantially all of these states, liaison committees have been set up to cooperate with the American Law Institute.

It is anticipated that these state committees will prove an effective means of bringing home to their communities the benefits of the program. On a statewide basis, either in conjunction with bar association meetings or at separate times, institutes will be held. Some states will organize on a regional basis. An example is Ohio. There the state committee is dividing the state into several territories where regional institutes will be held, the state committee acting as liaison between the regional groups and the American Law Institute.

The creation and existence of these local organizations raises another problem. By whom shall the local programs be sponsored? The situation will vary from community to community.

Most of the institutes on the Revenue Act of 1948 were jointly sponsored by the national committee and the local bar association. This is by no means essential. The committee seeks no glory; its members are self-effacing, and the policy appears to be one of performing a service most effectively, even though this may mean entirely local sponsorship, with the committee merely offering its aid. Indeed, the matter may be stated most clearly by repeating here the resolution of policy adopted by the committee on November 7, 1948, in Chicago:

RESOLVED, that our principal objectives shall be:

1. Policy, planning and co-ordination of the entire program of continuing education for the Bar.
2. Research in the field of continuing education for the Bar.
3. Preparation and dissemination of literature, pamphlets, syllabi, monographs, movies and recordings of subjects relating to Continuing Education for the Bar.

4. Preparation and presentation of courses or institutes designed to become as nearly national as possible in scope.
5. Co-operation with state and local associations to encourage and establish their own programs.
6. Co-operating with and assisting other agencies, including Association of American Law Schools, individual law schools, law centers, foundations and other agencies interested in the program of Continuing Education for the Bar.

Thus it may eventually develop that the committee will function as a policy-making, advisory group. It will provide timely and adequate literature, have available a panel of skilled lecturers on important subjects, and distribute recorded and motion-picture programs.

THE FUNCTION OF LAW SCHOOLS

In this project, the law schools of the country should play an important part. Individually they have much to offer, and collectively they have, in the Association of American Law Schools, an agency at hand for cooperation. The Association has already appointed a committee for that purpose, the chairman being Professor Russell N. Sullivan of the University of Illinois.

The higher-level program, the seminar aid to the specialist or prospective specialist, would seem to offer a field in which the law schools and the committee might most effectively pool their efforts. Out of this may evolve some highly valuable and discriminating literature.

At any rate, a close working arrangement with the Association of American Law Schools can confidently be predicted, with a resulting substantial contribution to continuing legal education nationally.

THE FINANCIAL SITUATION

The mundane aspect of this discussion has been reserved for the end, even though the problem of financing may not be the least important.

The American Law Institute is a non-profit organization. Its numerous projects in the past have been generously supported by private grants. They have been for the most part non-income-producing.

In part this is true of continuing legal education. The Carnegie Corporation has supplied sufficient funds to launch and establish the enterprise. By the time those funds have been exhausted the project must have become self-sustaining, or other grants must be solicited, or it will cease to function.

The last possibility is not within contemplation. The enterprise is too vitally important, it can perform too valuable a function, to be permitted to fail. For that reason, finances must be discussed.

Several methods of financing suggest themselves.

1. *Tuition fees.* Each enrollee can be charged a reasonably modest tuition fee for attendance, entitling him to receive the literature without additional cost. This has been done in comprehensive courses in Philadelphia and Wilmington, and in several of the one-day institutes on the Revenue Act of 1948.

To this, there are things to be said both pro and con. Pro: A lawyer should be willing to pay for something that makes him a better lawyer. He is likely to put more into it himself, and to take it more seriously, if he pays for it. He should not expect, in most instances, that his bar association dues entitle him to these benefits. If he does there is inclined to be a lessening of interest and application on his part, and it becomes more difficult to maintain a high educational standard in the programs. Con: In the smaller communities good programs may not be financially feasible. The small enrollment, even with tuition fees, cannot meet the cost of literature and lecturers. Of course, any profit received in larger places can be used to offset losses sustained elsewhere. To this, larger places tend to object. A partial answer to this may be splitting profits with the local sponsor in larger places.

2. *The Nebraska plan.* Nebraska has an integrated bar. Its practice is to offer institutes without charging tuition fees. On June 6, 7, and 8, 1948, an institute on the Revenue Act of 1948 was held in Omaha, Grand Island, and North Platte. Three prominent and competent Chicago tax experts made the grand tour as lecturers.

The syllabus was sold to those who wished to purchase it. The total attendance exceeded 250. All expenses were paid by the Nebraska Bar Association, including a reasonable allowance to the American Law Institute for overhead.

This so-called "Nebraska Plan" appears to be feasible for bar associations, particularly integrated bars, which have funds. But even in Nebraska it is entirely probable that tuition fees will eventually be charged.

Financially, the situation in some localities is not so promising. The bar needs to be brought around to a feeling of need for continuing education, and to the idea that it is worth paying for. These local bars are of small membership and limited resources. Strong local leadership is needed.

3. *Miscellaneous sources of revenue.* It is not beyond the realm of hope that public-spirited law firms, lawyers, and interested persons and organizations will be willing to contribute voluntarily to foster this enterprise.

As literature is developed and a demand therefor is created, some revenue can confidently be anticipated from its sale. Also, it is possible that some revenue may be expected for services performed in obtaining lecturers and for other services rendered to local groups in connection with programs which are locally sponsored.

Such miscellaneous items will, at best, help; they will not be adequate in themselves to support the project. On the whole, however, the ultimate financial picture need not be of immediate concern. It is merely something to be thinking about. Perhaps the program will so demonstrate its usefulness that financial problems will eventually take care of themselves.

CONCLUSION

The national program of continuing legal education can constitute a truly significant contribution to the legal profession. It is needed. It will make the novice a lawyer more quickly; it will make all lawyers better lawyers; it will increase pecuniary rewards; and it will better enable the practitioner to perform his obligations as a public servant.

Experience thus far indicates that members of the bar generally are anxious to take advantage of the benefits offered under this national program. It is to be anticipated that as the committee has more and more to offer, this interest will increase.

The committee members are unselfishly interested in doing the best job that can be done. In this effort, the cooperation of individual lawyers in their own communities, of local and state bar associations, of law professors and law schools, and of the Association of American Law Schools is earnestly desired.