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THE ROLE OF THE LAW SCHOOL IN CONTINUING LEGAL EDUCATION

Robert R. Wright*

For the past twenty years, bar associations on all levels have increasingly emphasized the need to continue the professional education of their members. Professor Wright suggests that such programs are not only desirable but necessary, and that the law school should, as a part of its duty toward the profession and the public, integrate continuing legal education techniques into its curriculum. The basis for this proposal is that the combination of the scholarly approach of law teachers and the practical orientation of the working lawyer will offer the best combination for learning, both by the law student and the law graduate.

The idea that a lawyer's education has scarcely begun when he graduates from law school is probably one that no experienced lawyer would care to challenge. Practically every attorney who has been practicing for any length of time looks back with something approaching fear and amazement at the appalling lack of knowledge he possessed when he graduated from law school. Usually, the better the lawyer, the more he is aware of his previous inadequacies. Whether the law school be one of the “prestige” institutions or a less influential school, whether it be public, private or sectarian, whether the lawyer in question was outstanding, average or marginal while in law school, the conclusion seems to be universal. The very fact that this feeling exists among members of the legal profession poses some serious questions with regard to education in the law school. Indeed, the quality of education dispensed by American law schools has been the subject of many articles, pro and con, with practicing attorneys usually on the attack and law professors on the defense.¹ This article does not

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deal with the question of legal education for law students, but with the problems and arguments surrounding legal education for practicing attorneys.

Education for active members of the Bar has come to be known as "continuing legal education."\(^2\) Certainly there can be no argument concerning the fitness of the word "continuing." Legal education is something which is carried on beyond the law school years yet does not consist of postgraduate education by an individual seeking an advanced degree or engaged in a particular course of study leading to specialization. Beyond this point, however, the dispute begins. Is "continuing legal education" actually "education" at all in the sense that these terms are used by legal educators? Does the law school play any substantial role in this activity, or is it merely something of interest to bar associations? Does the public-supported law school have an obligation in this connection while the private law school does not? Are continuing legal education programs of any value, or are they simply grab bags of gimmicks, "how-to-do-its," and hot air put together with a premium on entertainment value? Is this an area for the professional educator or should it be strictly under the control and management of private practitioners?

These are some of the questions which this article will discuss.

I. THE ARDEN HOUSE CONFERENCES

It is well first to examine the background and development of continuing legal education in the United States. It is still in the cradle stage to say the least. The Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association,—the leading trailblazer\(^3\)—has been in operation for only two decades.\(^4\) The first continuing legal education organization in any

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2. The California program, a leader in the field, is called "Continuing Education of the Bar," but with that exception the phrase "continuing legal education" has come into almost universal use.

3. See the comments of Dean John W. Wade of the Vanderbilt University Law School in Wicker & Wade, Legal Education in Tennessee, 29 TENN. L. REV. 525, 554-56 (1962), on the work of the Joint Committee.

state was begun in 1946 in California.\(^5\) The great majority of such movements were begun in the 1960's.\(^6\) Today there are continuing legal education organizations in 30 states, although in two of these states, the executive secretary of the state bar association also acts as the administrator of the legal education program.\(^7\)

The manner in which state continuing legal education organizations are administered varies in practically every state. However, there are four basic structures (with some states presenting a combination of these structural arrangements). These are: (1) the administrator is an employee of or is associated with the state bar association or bar foundation; (2) the administrator is a member of the law faculty at the state university law school; (3) the administrator operates under the state university extension division; and (4) the administrator is the head of a separate "institute," which is connected in some way with either the state university law school or the state bar or both.\(^8\) Excluding the two states in which the executive secretary of the state bar association is also the head of continuing legal education, the continuing legal education director is a bar association employee (or connected with the state bar) in 11 states;\(^9\) he is a law faculty member in 14 states;\(^10\) he operates under or through the extension division in 4 states;\(^11\) and he is head of an "institute" in 8 states.\(^12\) The reason

5. ARDEN HOUSE II: TOWARD EXCELLENCE IN CONTINUING LEGAL EDUCATION, THE REPORT OF THE SECOND NATIONAL CONFERENCE ON THE CONTINUING EDUCATION OF THE BAR 147 (1964) [hereinafter cited as ARDEN HOUSE II].
6. Id. at 147-53.
7. 1966 ALI ANN. REP. 99-100. The two states mentioned are Kansas and North Carolina.
8. Ibid. See also ARDEN HOUSE II 145-53. A portion of this information comes from the knowledge the author has gleaned as a charter member of the Association of Continuing Legal Education Administrators.
9. ARDEN HOUSE II 145-53. These states are Florida, Idaho, Illinois, Indiana, Massachusetts, Missouri, New York, Oregon, Pennsylvania, Texas and West Virginia. However, this is an over-simplification. In Illinois, the director and the "institute" are under the Illinois Bar Foundation, and the "advisory council" consists partly of law school deans or their representatives. The Indiana "forum" is a separate organization, and a majority of the governing body comes from the Indiana, Notre Dame and Valparaiso Law Schools. There is also some law school representation on the Pennsylvania governing body. In West Virginia, the organization is a "joint enterprise" of the state bar and the law school, although the primary connection as well as the organizing initiative seems to be with the state bar.
10. ARDEN HOUSE II 145-53. These states are Alabama, Arizona, Arkansas, Colorado, Georgia, Maryland, Michigan, Mississippi, New Jersey, South Carolina, South Dakota, Virginia, Washington and Wisconsin.
11. ARDEN HOUSE II 145-53. These states are Alabama, California, Minnesota and New Jersey.
12. ARDEN HOUSE II 145-53. These are Arizona, Illinois, Indiana (which uses the term "forum" rather than "institute"), Michigan, New Jersey, Ohio, Pennsylvania and Wisconsin. In practically all of these states, the institute is a cooperative endeavor of the state bar and the law school (or schools) within the state. In Pennsylvania, Ohio, Indiana and Illinois, the organizational arrangement seems to lend itself more to state
this adds up to more than the number of states having such programs is because we often see a combination of these devices, for example, a law faculty member who is director of an institute. Even taking this factor into consideration, however, the breakdown is not as precise as it might appear. Where the administrator is a law professor, there is almost invariably a state bar continuing legal education committee, or an advisory committee of some sort with liberal bar membership, through which the administrator operates or with which he cooperates. Similarly, where the administrator is a state bar employee, he will work in varying degrees with law schools in the state in connection with some or all of the programs. Consequently, in most states, from the standpoint of planning and administration, the program is in varying degrees a joint effort of the state bar association and the state university law school, with other law schools in the state participating occasionally.  

Probably the greatest stimulus to the establishment of continuing legal education organizations came with the first Arden House Conference in 1958. Until then California and Wisconsin had the only “state” continuing legal education administrators, although Texas and Oregon had undertaken such activities through their state bars. Continuing legal education (often referred to as CLE) was largely a function of such private organizations as the Practicing Law Institute, the New England Law Institute and the Southwestern Legal Foundation. Harrison Tweed, probably the person most responsible for the bar orientation, while in Wisconsin, Michigan and Arizona, the arrangement seems weighted more toward law school orientation. Of course, the degree to which this is true varies.

13. E.g., in North Carolina, the state bar association works with the Wake Forest Duke and the University of North Carolina law schools in conducting several institutes during the year with each law faculty having periodic responsibility.

14. The first National Conference on the Continuing Education of the bar was held at Arden House, Harriman, New York, on December 16-19, 1958. Its final statement, a summary of its deliberations and numerous appendices are found in THE REPORT ON THE ARDEN HOUSE CONFERENCE—CONTINUING LEGAL EDUCATION FOR PROFESSIONAL COMPETENCE AND RESPONSIBILITY (1959) [hereinafter cited as ARDEN HOUSE], published by the Joint Committee on Continuing Legal Education.

15. ARDEN HOUSE II 58 n.1. The California program, which is under the excellent direction of Felix Stumpf, a pioneer in the field and the current President of the Association of Continuing Legal Education Administrators, was begun in 1946. The Wisconsin program, another CLE leader, is ably directed by Professor A. G. Eckhardt.

16. ARDEN HOUSE II 151-52. The State Bar of Texas originated its program in 1939, but did not have an administrator until the appointment of Eugene Cavin in 1963. The progress made in this field in Texas (outside of the work of the Southwestern Legal Foundation in Dallas) stems from the beginning of Gene Cavin’s term as administrator. The Oregon CLE committee was organized in 1949, and its program is headed by energetic Kay Stallings.

17. The work of these prominent organizations is still some of the most outstanding being carried on in this field in the United States today. PLI, in addition to its excellent
development of continuing legal education in the United States over the past two decades, summarized the program called for by the first Arden House Conference:

1. Increased and improved education for professional competence with concentration on newly admitted lawyers and specialists.
2. Emphasis on professional responsibility and traditional standards.
3. Education to stimulate lawyers to greater participation in activities touching crucial national and international problems.
4. Responsibility at the national level on the Joint Committee of the American Law Institute and the American Bar Association.
5. Responsibility at the state level on each state bar association aided by a carefully selected committee with a salaried executive director whenever possible.
6. Preparation of adequate literature in book form and in The Practical Lawyer, published by the Joint Committee, and an increase in purchasers and subscribers.
7. Performance by law schools of an active and special role, without infringement on their primary obligation to educate for admission to the bar.\(^\text{18}\)

While growth occurred in all of these areas between Arden House I and Arden House II, in December, 1963\(^\text{19}\) the most significant development in that five-year span, as noted in the report from the second conference, was the increase in the number of administrators from two to twenty-four.\(^\text{20}\) By then, the basic pattern of state development had been established, and the conference could, as the title of its report states, turn “toward excellence in continuing legal education.”

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19. There had been intervening meetings which touched upon the subject. The June 1959 Conference on Legal Education was held at the University of Michigan, and the Conference of Southeastern Law Teachers was held at Gatlinburg, Tennessee in September, 1959. The Tweed and Jenkins papers, note 18 supra, and note 26 infra, respectively, were delivered to the latter conference.
20. ARDEN HOUSE II 45-46.
The final statement of Arden House II was directed to four areas: (1) improving educational literature, programs, and techniques; (2) meeting the educational needs of newly admitted lawyers; (3) implementing education for professional responsibility; and (4) making more effective the organization and financing of continuing legal education.21

Arden House I had left the law schools "an active and special role, without infringement on their primary obligation to educate for admission to the bar."22 In delineating this role, Mr. Tweed found "differences of opinion between law schools . . . as to the part which they should play as contrasted with the part that should be played by the organized bar and the practicing lawyers." He found this diversity, however, to be "a healthy state of affairs."23 Arden House I, he felt, concluded that the majority of the work in the "strictly bread and butter, how-to-do-it field, and in the special field of the newly admitted lawyer . . . should be left to be planned and administered by the bar with . . . a good deal of help from individual law school teachers . . . ."24 He foresaw the role of the law schools as primarily that of conducting special courses of a substantive or specialized nature, such as estate planning, labor law, taxation, statute interpretation, federal-state relations, and perspective or reflective courses of a jurisprudential or comparative law nature.25

Erby Jenkins, the President of the Tennessee Bar, who attended Arden House I, concluded that the "law schools represented at the Arden House Conference agreed with the other participants that it [the continuing legal education program] must be accomplished through the cooperative efforts of the Bar and the law schools, with a division of labor and coordination of effort."26 He quoted Robert G. Storey, former President of the American Bar Association and Dean emeritus of the Southern Methodist University Law School, as follows:

No, legal education cannot in our day stop with the LL.B. That is the minimum. Really it is the beginning. It has always been so, because the great lawyer is a constant student of the law. But law self-taught, out of advance sheets and legal services, is a far cry from law taught in the seminar by an outstanding authority in the field. That is the real service of the program for continuing

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21. Arden House II xxii-xxviii. The Arden House II conference final statement (but without the extensive report) also may be found in 50 A.B.A.J. 136 (1964).
22. Tweed, supra note 18, at 339.
23. Ibid.
24. Id. at 340.
25. Id. at 340-41.
education of the Bar. It is a service which good law schools and the organized Bar should perform co-operatively.\textsuperscript{27}

Jenkins concluded that Tennessee should have a part-time administrator "who should be on the faculty of a law school . . . ."\textsuperscript{28}

These talks by Tweed and Jenkins, presented on the same day to the Conference of Southeastern Law Teachers by an individual who had participated in Arden House I, illustrate somewhat varying opinions as to the role of the law school. On the one hand, Mr. Tweed would have law schools participate largely by conducting programs of a specialized or purely substantive nature; on the other, Mr. Jenkins would have as the Tennessee administrator a member of a law faculty, presumably from Vanderbilt or Tennessee. This conflict emphasis is illustrative of the developments which followed the first Arden House conference. In some states the CLE organization followed the Tweed line of thought with law schools cooperating with a state bar administrator, while in other states the administrator was a faculty member who may previously have been a practicing attorney or a law teacher.

Arden House II, which the author attended, presented in the discussion sessions preliminary to the final report some conflicting views on the role of the law school. What might be called the "traditional view" was presented by some of the law deans or professors present, as well as by some of the practicing attorneys, to the effect that the business of the law school (and presumably almost its sole business) was to educate law students in the customary manner. The law school, they felt, should cooperate with the bar-oriented and bar-operated continuing legal education programs wherever and whenever possible and should, from time to time, conduct programs or offer courses of a specialized or substantive nature. The contrary view, emanated most forcefully from law faculty members who were responsible for the continuing legal education programs in their respective states, was, essentially, that the law schools had a more direct and active role to play in the field of continuing legal education and, particularly in the case of state universities, had an obligation to the legal profession and the public for both professional responsibility and competence in the state.\textsuperscript{29} As might be expected, the final conference statement watered

\textsuperscript{27} Id. at 349-50.
\textsuperscript{28} Id. at 350.
\textsuperscript{29} No citation can be given to sustain the author's bifurcation of the opinions expressed at Arden House II. This was simply the impression gained from participation in the session which produced the final statement as well as in other sessions during the conference. As a matter of information, the author was one of those who advocated a more direct and active role on the part of the law schools.
down both views and sought the middle road, although it tended more toward the "traditional view," even after amendment from the floor. It stated that state bar organizations "have generally recognized their primary responsibility for continuing legal education programs within their states," but "without detracting from their primary responsibility for the education of law students, many law schools have cooperated fruitfully in continuing legal education." The statement added that "in the last analysis responsibility . . . in each state rests with the organized bar," although law schools "have an important contribution to make."

The Arden House II report should have pleased the traditionalists, who were relieved by its terms from dealing with something more lively than the sterile necessity of dissecting the Rule in Shelley's Case and laying it bare for a twentieth century world to ponder, like some archeologist laboring over a dusty relic from an age long past. They could certainly "cooperate" without soiling the test tube purity of the Socratic method applied en masse to a hundred warm bodies, fresh out of liberal arts. It left something to be desired, however, for those who envisioned an activist role for the law school and who thought in terms of law school responsibility. This feeling burst forth at the 1965 meeting of the newly formed Association of Continuing Legal Education Administrators, at which conference the membership was constrained to proclaim that "continuing legal education is education." The necessity for the proclamation stemmed from the fact that the traditionalists seemed to doubt that it was.

80. ARDEN HOUSE II xxii. (Emphasis added.) The "Final Statement" should be differentiated from the "Report of the Conference," which the conferees did not approve as a group and which was written later by the reporters. The "Report" stated, under "The Role of the Law Schools," that "both Conferences proceeded on the premise that it is not the function of law schools to provide training in practical skills." It added, however, that "the conferees hoped that law schools would take an even more active part in continuing legal education than they have in the past, for the value of their participation, through manpower, talent, and physical facilities, has been fully demonstrated." ARDEN HOUSE II 21-22. Perhaps this language was intended to be conciliatory, but it was altogether too anemic for many administrators. Taken literally, the sum total of Arden House II (both the statement and report) was to leave the law schools somewhat in the position of second-class citizens, rather than full partners, in the conduct of continuing legal education programs. It failed to recognize the prominent role which many law schools had by that time undertaken. Moreover, it failed to take into account the fact that in smaller states, where the bar association cannot subsidize an extensive program, the primary hope for a quality program is through the state university law school.

31. ARDEN HOUSE II xxii-xxiii.

32. This is not to say that a Property professor can ignore Shelley's Case. We still have it, in part, in Arkansas. It is to say that a law school's involvement does not begin and end in the classroom.

33. No citation is given because the minutes of the administrators' meetings are not
II. Legal Education: The Academy and the Bar

It is logical that the state bar, integrated or not, should have an interest in such a program. Whether considered as a service to the members of the bar association or as an upgrading of professional responsibility resulting from improvement in professional competence, effective continuing legal education is of vital interest to the state bar association. There would be little, if any, dispute of this fact from state bar professionals. But what about the state university law school? What is its obligation, if any? Without question, its primary function is to educate future lawyers in a purely teacher-student relationship within the customary academic framework. Some faculty members, not all of whom are mental crustaceans whose thinking processes have been hardened by time into an unalterable pattern, pause at the thought of educating lawyers. For one thing, in the minds of some of these legal scholars, a lawyer is already educated. An accredited law school has placed the stamp of alphabetized approval on him by granting him an LL.B. or J.D., and he has in turn run the gauntlet of the bar examiners, and now stands before the public bearing the mark of approval of bench, bar and academe. It is the attitude of some faculty members that if the practicing attorney needs anything further, he can either enroll in postgraduate courses or simply take himself to a good law library where he can no doubt find the answers. The difficulty with this approach is it fails to take into account the fact that there is something beyond the law library, or the case study method, or Socratic teaching devices designed to develop the analytical abilities which most lawyers need in order to be effective advocates.

Admittedly no law school, regardless of the effectiveness of its trial practice or moot court programs, can produce skilled trial lawyers in the time available. On the other hand, the recognition that most lawyers are something other than law clerks or research specialists is the first essential step toward realization of the fact that a lawyer's education has only begun when he graduates from law school. Aside from the art of advocacy in a trial court before a judge and jury, the fact is that the handling of corporate reorganizations and liquidations, the preparation of wills, trusts, leases, contracts, security agreements, mortgages, and so forth, is something into which the recent graduate has only some slight insight. Moreover, it can hardly be assumed that even an experienced lawyer is well educated in estate planning or tax generally available. The administrators' unhappiness with the previously noted inadequacies of the Arden House II final statement and report formed the basis for the statement.
law, for example, or about the Uniform Commercial Code, which is a comparatively recent enactment in practically every state.\textsuperscript{34} Arkansas has recently adopted a new and comprehensive corporation act,\textsuperscript{35} and has prepared a substantial body of model jury instructions for tort cases,\textsuperscript{36} which, of course, constitutes the greatest volume of jury trials. Here again the need to educate experienced practitioners on new law of a substantive nature is evident.

Certainly, if the law schools are competent to educate law students on substantive law, they should be equally competent to educate practicing attorneys on the changes resulting from newly enacted substantive law. As a matter of fact, law teachers should be better qualified from the standpoint of teaching ability and professional competence in their field than the vast majority of practitioners. Even if law teachers participate only partially in continuing education programs, or not at all on an instructional basis, a law faculty member should logically possess, as a result of his experience, more knowledge of effective methods by which to communicate ideas on a teacher-student basis than any practicing attorney. Consequently, a program administered by someone with a law faculty background should profit from his experience. Theoretically, at least, this would also be true in the area of "skills" and "how-to-do-it" presentations. While these presentations obviously should be made for the most part by experienced practitioners, the fact remains that so far as the organization and structure of such programs are concerned, we are again dealing with the transmission of ideas on a teacher-student basis. Although it might be argued in that connection that "demonstrations" of skills, particularly in the personal injury field, emanated from practicing attorneys, the fact of the matter is that "demonstrations" have their genesis in the law school moot court programs. These represent the future lawyer's first participation in a legal "demonstration" on a "how-to-do-it" basis.

This is not to say that law schools should pre-empt the field of continuing legal education anymore than they should relegate themselves to a second-class position of mere "cooperation" with bar associations. Rather, this is to say that the best possible continuing legal education program will take advantage of the strengths of both the academic law

\textsuperscript{34} 1966 ALI Ann. Rep. 16. Except for Pennsylvania and Massachusetts, the effective date of the UCC in every adopting state is subsequent to January 1, 1960. Thus the vast majority of lawyers in these states were formally educated in the Negotiable Instruments Law, the Uniform Sales Act, the Bulk Sales Act and so on.


\textsuperscript{36} ARKANSAS SUPREME COURT COMMITTEE ON JURY INSTRUCTIONS, ARKANSAS MODEL JURY INSTRUCTIONS (1965).
community and the practicing law community, and at the same time avoid the weaknesses of both.

A brief look at the strengths and weaknesses is helpful. The typical law school professor will seldom admit it, but the truth of the matter is that he too often presents the "ivory tower" image which his contemporaries in the active bar paint for him. This is particularly true if he has never practiced law. As the years go by, he is drawn more and more into various pedagogic considerations and determinations of what the rule is, or what the rule should be, or what the trend seems to be, or how the case of Smith v. Jones went off on a rather remote and peculiarly academic point (which will next be argued in the state supreme court in 1987 and which last came up in 1913 when the court uttered some dictum on the subject). Law professors, by the nature of the animal, become involved in rules and analysis of facts, problems and legal minutiae. They master a subject as no ordinary lawyer can. Often they forget, however, that the problems of the practicing lawyer are those of the advocate—the problems of finding law to support a cause, of deciding whether a reasonable settlement can be reached, or, of whether a particular deposition should be taken. His "practicalities," which he accuses (often correctly) the law teacher of not having are matters of technique, strategy and psychology. For him, the answer is not what the law is, as if in a chemistry test tube, but how the law, the cases and the facts can be molded and developed to support his client's cause.

This background of law professor and law practitioner expresses itself in the continuing legal education program. Without the influence of the other, each is a bit myopic. The law professor will tend to address himself to the question of "what the law is" on his particular topic, while the law practitioner will devote more time to "how you handle a case like that." The law professor will tend toward the weighty substantive presentation; the law practitioner will tend toward the strictly skills presentation. A continuing legal education program entirely in the hands of a law faculty would very likely provide a dose of heavy-handed education of a substantive nature, with a strong tendency toward philosophical, jurisprudential and ethical problems. On the other hand, a continuing education program solely in the hands of practitioners all too often degenerates into a presentation heavily larded with demonstrations of trial techniques and talks, the core of which is "why I am such a damned fine lawyer" or "how I manage to look good in court." Skills presentations, in the pure sense, are to lawyers what candy is to children. They cannot get enough of per-
sonal injury programs, trial technique seminars and the like; and to leave continuing legal education in the hands of many of these excellent and well-meaning lawyers is to seriously undermine the more scholarly considerations of law practice. To allow practitioners to run amuck through the pastures of continuing legal education is to leave them in the same plight as the fellow who majors in education. He knows how to teach, if he just knew something of substance. It would be an unfortunate situation if lawyers became so engrossed in skills that they ignored matters of substantive law. For their clients it would be most unfortunate.

The obvious answer is the one into which most states have stumbled, perhaps because subconsciously at least everyone recognized the validity of this argument which Arden House II failed to express. The state continuing legal education programs which have developed in recent years have quite often been joint, cooperative efforts of the state bar and the state university law school in which the talents and resources of each are pooled for the advancement of the program. The result in most instances is a well-calculated blending of scholarly substantive presentations with those which are skills-oriented.

III. THE ROLE OF THE LAW SCHOOL

Despite this recognition of their role by a number of forward-looking law schools, there remains some disagreement in the law academic community as to whether the law school actually has a part to play, and if so, what it should be. For the most part, the only law schools which have taken any active part in continuing legal education have been the state university schools. Privately endowed or sectarian law schools have studiously avoided any substantial involvement. Their

37. See notes 9 and 12 supra. States in which the program is largely a joint effort of the state bar and the law school (or schools), regardless of whether the director is a law faculty member or is associated with the state bar, include Arizona, Arkansas, California, Georgia, Michigan, Mississippi, New Jersey, Ohio, South Carolina, South Dakota, Virginia, Washington, West Virginia and Wisconsin. To a lesser extent, this is also true in Illinois, Indiana, Pennsylvania, and possibly in other states. See ARDEN HOUSE II 147-53, for information on some of these states. In most of these states, the law school or law faculty members have a more active role than that envisioned by either of the Arden House Conferences.

38. Specifically, the state university law schools of Arizona, Arkansas, Georgia, Maryland, Michigan, Mississippi, New Jersey (Rutgers), Ohio, South Carolina, South Dakota, Virginia, Washington, West Virginia and Wisconsin. Also involved, in Colorado and Michigan respectively, are the Denver and Wayne State law schools. See ARDEN HOUSE II 147-53, and authorities cited.

39. There are exceptions, of course. The Arden House II report notes the "active and energetic role" played by some law schools as being illustrated by the programs offered by Harvard, Dickinson, Louisville "and others," ARDEN HOUSE II 28 n.1. The note
contribution, where it exists, is usually through an occasional seminar or institute or perhaps a summer course. The thought of placing a full-time or part-time continuing legal education director on the faculty either has not occurred to them or is totally devoid of appeal.

From time to time, some of the feeling of the "traditionalists" at Arden House II rears its head to a sufficient degree that the conclusion may be reached that some faculty members believe: (1) that continuing legal education is not really legal education at all, but a sort of hoopla that practicing lawyers enjoy; (2) that legal education does stop with the law degree or with advanced degrees; and (3) that the role of the law school is limited to the student on the campus, which is to say that it is limited to "formal" legal education.

The first would-be theorem, to the effect that continuing legal education is not really education, condemns all law schools to Hell without hope of Purgatory. What it seems to imply is that the kind of legal education being dispensed in law schools today is the only kind in existence. As a corollary, the proponents of this theory would seemingly freeze legal education into a Socratic case study rigidity, which possibly would please some purists. The difficulty is that there is no completely settled area of agreement in American law schools on teaching methods or curriculum, with the possible exception of the first-year curriculum. Legal education, like the law itself, is con-

looks a little strange today, in singling out these three law schools, in the light of the major involvement of many of the schools named in note 42 supra. Vanderbilt, Duke, Texas, North Carolina, Wake Forest, Illinois and numerous other law schools also conduct occasional continuing legal education programs, although none of these law schools are as actively involved on a continuous basis as are many or most of the law schools mentioned in note 38, supra.

stantly changing and developing. Methodology which was valid some years ago is no longer valid today, and what is common practice today may not be acceptable twenty or thirty years from now. Thus, former Dean Albert J. Harno, in an article in the *American Bar Association Journal*, observed that in the last thirty-five years, and more particularly since World War II, there has been much experimentation in law schools on the content of the law program and on teaching methods. He also stated:

The case system still draws fire. The major criticism of past years, when cases were used as the sole source materials of study, is no longer valid, but there is point in current criticisms that the schools still rely too heavily on cases for teaching materials, and particularly, since there is a waning interest on the part of students in case study after the first year of their law course, that there is too much stress on cases in the advanced years of the course.41

Who can say that law schools might not profit by emulation in advanced courses or seminars of some of the techniques employed in continuing legal education institutes, seminars and workshops. This might be done by redesigning law school “skills” activities, such as moot court, to adopt the better features of CLE demonstrations, particularly those of the excellent presentations of the Michigan Institute of Continuing Legal Education,42 and by increasing the amount of written material of a practical nature made available to students. It is not suggested that this is the answer to the dilemma of maintaining the interest of the third-year student,43 but simply that these continuing legal education programs are dealing with the communication of ideas and with converting individuals into more polished and able professionals. In short, they are doing what the law school is doing on a somewhat different level.

If these techniques are more effective in communicating ideas and in developing able lawyers on the CLE level, there is no reason why law schools might not modify and adapt these techniques to the third year law school level. Abandonment of the case study method during


42. Michigan's Institute of Continuing Legal Education is under the able direction of E. Donald Shapiro, Associate Dean for State-wide Education. The Institute, particularly in its annual Advocacy Institute, has presented some excellent demonstrations of direct and cross-examination, as well as other techniques. The recent American Trial Lawyers Association seminars, using demonstrations of techniques based on hypothetical fact situations, were also devised by Dean Shapiro. For a recent magazine article on Shapiro's program, see *Time*, March 25, 1966, pp. 43-44.

43. This is another source of debate. Freeman, *Legal Education: Some Farther-Out Proposals*, 17 *J. Legal Ed.* 272 (1965); Gellhorn, *supra* note 40; Leflar, *supra* note 40.
the third year is not here advocated. But it is submitted that some third-year courses could become more meaningful, and the students could be better prepared, if some skills aspects or techniques were injected into the curriculum. In Creditors' Rights, for example, a student studies attachments, garnishments and executions, among other things, but what does one of these writs really look like, how does it work and how does a lawyer go about effecting one? Although we must not turn out mere form-book lawyers or become “trade schools,” students should at least know basic functions before they are unleashed upon an unsuspecting public. The older a lawyer becomes, the more he is appalled by the products of the law schools, and he begins to conclude that the law schools are degenerating. Much of this feeling results from forgetfulness of his own ineptness when he first began his career, but the criticism which the Bar voices against legal education is too vocal and too continuous to be wholly without merit. Law school participation in legal aid programs, experiments in postgraduate internship, “bridging-the-gap” seminars and the skills programs at the University of Wisconsin and in New Jersey are all efforts to correct this criticism. If the criticism did not have some validity, these efforts would not have been made.

At this point a valid question might be raised to the effect that if law schools possess educational expertise, why do they have substantial problems in the basic education of law students, and how can it be said that law school operation of, or substantial participation in, the continuing legal education program would be beneficial. The simple answer is that education is the business of the law schools and that educational processes within the law school context are constantly undergoing re-examination and re-evaluation. Many of the techniques utilized in continuing legal education programs were either devised by law faculty members or by lawyers working in conjunction and cooperation with law faculty members. Basically, these techniques were designed for practicing attorneys and, in some instances, they are perhaps ill-suited for use in the classroom setting. There is a substantial amount of basic material which must be covered and which probably is covered best by use of the customary methods. To contend that law schools might draw to some extent from methods suitable to continuing legal education presentations in advanced seminars or in the

44. Not that this hasn't been suggested. See Gellhorn, supra note 40 at 8-14; Freeman, supra note 43 at 278.
45. A description of the New Jersey skills course is found in Jarmel, The New Jersey Skills Training Course, 17 J. Legal Ed. 432 (1965).
moot court or trial practice areas is not to deny the basic fact, however, that just as the trial lawyer is an expert in his field through experience, so are law faculties better equipped in the field of education.

If we accept the premise—and probably no law teacher would deny it—that the methodology of formal legal education is not fixed or established by past practices and is in a state of continuing change resulting from activity on the part of law schools themselves, then it should be difficult to write off continuing legal education as something less than education on the basis of its methods and techniques. For one thing, the most common continuing legal education programs still consist of lectures and are not far removed from the typical classroom setting. Even the case study method is sometimes employed in hypothetical case situations or in short courses or workshops. The criticism, or the suggestion that this is all hoopla and gimmicks, is aimed largely at the demonstrations and more particularly at personal injury programs. (Sometimes, the criticisms stem more from defense counsel than from law professors.) Of course, what these continuing legal education programs are doing is experimenting, to some extent, in educational techniques. These demonstrations are strictly "skills" presentations, and they proceed upon the assumption that the viewer can learn by observation. Being free of fear of criticism from accrediting agencies or from their peers in other states, the continuing legal education programs may experiment in any way they deem appropriate, without having to wait, as the law schools often do, for one of the "prestige" institutions to lead the way. However, as has been mentioned, even in the purely skills area of demonstrations, the continuing legal education organizations are simply presenting a more sophisticated version of the law school's moot court program, the chief difference being that the participants are experienced trial attorneys and the viewers also have varying degrees of trial experience. The use of trial lawyers to present such demonstrations within the law school, as supplementary to the moot court program, is not only feasible but has been used at the University of Arkansas and no doubt at other institutions as well. Another possibility is the use of the law school courtroom for the trial of actual cases by a court of general jurisdiction.

Continuing legal education, although still in its infancy and in a healthy stage of constant experimentation is simply a form of advanced, non-credit education of a particular type. Whether it manifests itself in books of local interest or in oral presentations of one type or another, it is for the busy lawyer the most feasible means of keeping abreast of new developments and of sharpening the skills which are
incidental to the profession. Legal education itself, as Dean Harno observed, "is for the lawyer a lifetime undertaking, and not merely a period restricted to three years of law school study." His "formal" education may have ended with his law degree, but a lawyer's real education has only begun.

If it is conceded that continuing legal education is in fact education of a somewhat different variety than that dispensed in the classroom, the argument of those who oppose any substantial involvement by law schools in continuing legal education has to be the third point mentioned previously—that the role of the law school is limited to "formal" legal education of students enrolled in the law school. In the context of a state university, this would seem to have validity only if the university can be considered to have no responsibility to the state as a whole beyond that of educating its students. In the context of the law school, this premise would seem valid only if the law school had no responsibility to the legal profession in its area of influence other than providing formal education for law students. Surely, no forward-looking dean or law professor could espouse such a premise. The law school cannot always look inward rather than face its larger responsibility. As Dean Allan F. Smith stated in an article in the *Michigan Law Review*, commenting on the growth and development of the University of Michigan Law School:

A third measurement of service may be taken with reference to service to the profession. In 1934, law schools were little concerned with continuing legal education. Graduation marked the end of formal training. But legal developments now come too rapidly to permit reliance upon leisurely self-education. Steadily, since 1946, service to the profession has been enlarged.

It is nothing new or startling for law schools to look outward to their influence within the profession or to their obligation to the public. What is comparatively new and perhaps difficult for some is to see their responsibility toward continuing legal education. Yet the very fact that continuing legal education is education, as was succinctly expressed by the administrators, clarifies the role of the law school. This function becomes part and parcel of the law school's duty and responsibility to the profession and to the public. Just as law schools and their faculty members have been instrumental in the production of scholarly works which have influenced and directed the development and reform of legal thinking in the United States, so it is natural that

46. Harno, supra note 41 at 850.
the law schools should take the lead in this particular type of postgraduate, beyond-the-classroom, education. Perhaps the obligation of the state university law school is made clearer because of its tie to state government and its support from the public purse. Moreover, any state university worth its salt is an active partner with the state government in research, law reform, economic studies, and the like. Nonetheless, a private or sectarian institution has its own area of public responsibility and to excuse such a school from participation on the ground that it has no stake in this particular endeavor is to strike at the very heart of its broader responsibility to those who look to it for leadership —its alumni, its denomination if church-supported, and the particular geographical area throughout which its influence extends.

In essence, the role of the law school in continuing legal education must be an active one, forming an integral part of its larger public responsibility. Judge Learned Hand once ascribed to law schools the function of “contriving new methods, of discovering new ideas, of surveying new territory . . . .” Continuing legal education is a part of these new ideas; it is “new territory.” It will grow, develop and improve far more rapidly when it is recognized as an integral function, and a high opportunity, for each and every law school.