

December 2019

Continuing Legal Education

William Hedges Robinson, Jr.

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

Recommended Citation

William H. Robinson, Jr., *Continuing Legal Education*, 14 Wyo. L.J. 80 (1960)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol14/iss2/3>

This Special Section is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

CONTINUING LEGAL EDUCATION

WM. HEDGES ROBINSON, JR.*

Your president, Jimmie Wilson, and I had a very pleasant experience last December when we, with approximately 100 other lawyers, law school deans and teachers, were invited to participate in the Arden House Conference on Continuing Legal Education for Professional Competence and Responsibility. Jim asked me to report to you briefly on that conference. I do not know why he made this request since he is much more able than I to tell you about the conference. However that may be, I accepted his invitation and as a result both my wife and I have enjoyed your warm hospitality and the pleasure of renewing some of our friendships and making new friends among the Wyoming lawyers and their wives. I feel, however, that I cannot deliver the quid for the quo which you have so generously bestowed upon Mrs. Robinson and myself. You can discover for yourselves in much more detail the general topic of this talk in the report of the Arden House Conference which is available for \$3.00.¹ I am sure that one of these days there may even be a popular edition which will probably sell for 35¢. So you can see my discussion does not have a very great value even in the original edition and far less in the paper back variety.

The Arden House Conference which was held in December of 1958 was probably one of the most important conferences which has been convened since the 1928 conference. In the quarter of a century since then there have been various movements within the legal profession which attempted to reconcile the complexity of the present practice of law with the lack of a complete legal education. It was recognized that law schools could not be expected to deal with all the problems which may confront a lawyer in his practice. For example, it can't train tax lawyers, or criminal lawyers, or governmental lawyers as such. At some place the law schools have to draw a line. At this point they must say, we have provided a good, basic, legal education, but we do not the time, facilities or money to educate the law student in all areas encompassed by each lawyer in his day to day practice. From the terminal point of this formal education, the bar associations are obligated in some manner to provide the means of aiding the lawyer in his educational process. Within the last thirty years, the legal profession has begun to discover that the gap between the place where the law schools are forced to stop in the educational process and the point where the demands of the practice required additional training for professional competence is becoming progressively greater. Various attempts to close this gap have been made.

*Wm. Hedges Robinson, Jr. received his LL.M. degree from the University of Colorado. Mr. Robinson is Associate Dean and Professor of Law at the University of Denver.

1. Continuing Legal Education for Professional Competence and Responsibility. The Report of the Arden House Conference, December 16th to 19th, 1958.

Admittedly, they have been on a trial and error basis. Admittedly, some of them have been bad and some of them good, but there has been little or no correlation between the efforts and results in one state and those in another. Where information has been exchanged between groups it has been discovered that the solutions found to be worth while in one area may be of dubious benefit in another.

The purpose of the Arden House conference was to obtain and correlate the experience and understanding of some 110 lawyers and law teachers who had experience in the field of continuing legal education. For several days this conference, which was broken into small groups of lawyers who successively studied and reported on the various problems and solutions in their own areas, discussed the basic problems and answers which had arisen from past experiences. Gradually it became apparent to the conference that improvement in the mechanical competence of lawyers could be obtained through an intensification, expansion and acceleration of the present educational programs, that these programs could be readily evaluated, their deficiencies remedied and additions and improvements added. As this awareness dawned upon the conference, it then became acutely disturbed by a challenging objective, namely that there was a widening gap between law school training and the ability and awareness of lawyers to discharge their professional responsibilities. In this area, the need for imaginative planning and new methods became painfully obvious. As a result, the conference came to the conclusion that, for the most part, "lawyers have been slow to recognize the limitations on their competence to serve their clients and the public. There has been altogether too ready an acceptance by older lawyers, as well as younger ones, of the tradition that a person who has passed a bar examination and taken the oath is a full-fledged lawyer competent to engage in any branch of practice and to advise any client who may come to his office. This has lulled the neophyte into a sense of security which inevitably is shattered—sometimes very soon. Many lawyers and judges have pointed to the need for a greater sense of responsibility on the part of lawyers to improve their professional competence, but none has spoken more clearly than the late Chief Justice Arthur T. Vanderbilt:

It is not fair for the profession to place the responsibility solely upon the shoulders of the individual practitioner. The profession, acting through the organized bar, owes a duty to offer every lawyer an opportunity to make himself a better lawyer engendered with a deep sense of public responsibility. So far the bar has not met this obligation, partly because of a lack of adequate organization.

The organized bar now recognizes that it has the primary obligation to make continuing legal education available to its members and at the same time the law schools realize that they must collaborate with the associations to make the performance of the obligation feasible. This calls

for an overall addition to the so-called how-to-do-it institutes of a program of advanced and specialized education as well as a program designed specifically to meet the needs of the newly admitted member. It is hardly necessary to comment on this objective other than to say that perhaps the professional competence of the newly admitted member is one which now requires more serious consideration. Undoubtedly, as the Conference report says, the young lawyer is the most neglected person in our profession. Contrast his education and instruction with that of the English barrister who supplements his formal education with a year of training in the office of a lawyer or under the auspices of the Council of Legal Education of the Bar, or with the efforts made in the State of Pennsylvania, which provide for apprenticeships. Of course, outside of the profession, the most obvious example is that of the internships in the medical profession. The gap between the theory of the law school and its practical application is a wide one and this is said without any reflection on the law schools whose duties and obligations are circumscribed. Some efforts have been made in various states in this field. For example, in Colorado we, for several years now, have had a course which is available to newly admitted lawyers, and others if they wish to attend, which deals with the practical problems encountered in the fields of practice and procedure before each of our courts. This course has been attended very well, averaging from 60 to 70 lawyers each year. It is taught by practicing lawyers, aided by the clerks of the particular courts involved and ranges from the humblest court in the state to our supreme court and through each of the federal courts. This area of instruction was particularly stressed by the conference.

As I indicated, however, the conference in its latter hours became chiefly concerned with the problem of professional responsibility. Too often lawyers are associated only with courts, not only in the minds of the laymen but sometimes in the minds of the profession. However, in our modern civilization it is too frequently overlooked, as Justice Jackson has remarked, that "the lawyer and the law office are indispensable parts of our administration of justice." This subject matter had previously engaged the attention of the Joint Conference on Professional Responsibility formed by the Association of American Law Schools and the American Bar Association. In July, 1958, this joint committee issued a report² which, among other things, pointed out that today the lawyer plays a changing and increasingly varied role. In many areas—such as that relating to weather control and atomic energy—the precise contribution of the legal profession is as yet undefined. In these areas the lawyer who determines what his own contribution shall be is at the same time helping to shape the future role of the profession itself. In these new duties which the lawyer must now undertake, the inherited traditions of the bar often yield but an indirect guidance. Principles of conduct

2. Report of the Joint Conference on Professional Responsibility, July 1, 1958.

applicable to appearance in open court do not, for example, resolve the issues confronting the lawyer who must assume the difficult task of mediating among opposing interests or determining the future course of the law relating to cloud seeding, or atomic energy. For example, the scope of this obligation is well stated in a recently published article by Prof. Leo Albert Huard.³

Prof. Huard says:

The lawyer's first duty is to become aware of the good and the evil of the nuclear energy industry. If the lawyer is to participate importantly in the sound development of this new industry, he must be able to balance prospective benefits against potential harms. He must make a reasoned selection of the path industrial nuclear energy is to take. In order to do this, the lawyer's knowledge must include foreign policy objective, national internal security policy, economic considerations and public health matters. All of these, and a working knowledge of nuclear energy technology, are the tools required to formulate sensible policy.

The lawyer who has armed himself in this manner will then be prepared to give intelligent leadership to the new industrial revolution. He can make direct contributions by service in Congress, the state legislatures and regulatory bodies at all levels of government. Indirectly, he can influence community attitudes by encouraging educational atomic energy programs in bar associations, chambers of commerce, civic and fraternal organizations. This latter responsibility the lawyer shares, in large measure, with all his fellow citizens.

In the daily practice of law, the lawyer will soon begin to encounter nuclear energy problems. He can thus impress upon the business community (through his clients), and upon the courts (through sound preparation and professional skill) a fair appreciation of the difficulties which inevitably harass a new industry.

Where the lawyer's work is of sufficient public concern to become newsworthy, his audience is today often vastly expanded, yet at the same time the issues in controversy are less readily understood by the public than formerly. While performance under public scrutiny may at times reinforce the sense of professional obligation, it may also create grave temptations to unprofessional conduct. This Joint Conference also stated the obvious when it discussed the lawyers' obligations in the realm of public service and as guardians of due process, including the representation of unpopular causes. It accomplished its greater purpose, however, when it pointed out that the lawyer had a very definite obligation to bring about legal reform and reform within the very processes of the profession itself. It stressed the necessity of lawyers adhering to the demands of both public and private trust with the delicate moral issues that confront a lawyer even in the most humble private practice.

3. *The Lawyer's Duties and Responsibilities in the Nuclear Age*, 12 *Vanderbilt Law Rev.* 1 (1958), 9 *Law Rev. Digest* 92 (1959).

With this report in mind and with some of the disturbing inquiries which had arisen during the Conference, the Arden House conferees started to think in somewhat larger terms than the so-called practical process of legal education and began to realize that the most neglected and yet obvious field of legal education was that dealing with public responsibility. The very vastness of this area is challenging, embracing as it does all fields of professional interrelationships and those with the public as individuals and including responsibilities which arise from the problems of the administration of justice, the selection of judges, the need of reforms in procedural and substantive law and the obligations of the lawyer to the profession and the organized bar.

As you can see from this very sketchy statement of some of the problems, there can be no clear cut solution as to the vehicles through which the obligations of the profession may be discharged. One of the most obvious of these vehicles is that of the Joint Committee on Continuing Legal Education. This committee was established by virtue of an agreement between the American Bar Association and the American Law Institute in 1947. This committee, as you know, has prepared a number of handbooks, publishes *The Practical Lawyer* and cooperates with each association in providing programs for continuing legal education.

It is my feeling that, while this joint committee serves a very useful and worthwhile purpose, the great hope of the Arden House conference is that the state or area committee on legal education will be stimulated to the point that they may carry forward the purposes and objectives of the conference. In the last analysis, as the conference points out, the program for continuing legal education rests with the organized bar of each state and the autonomy of these organizations and their efforts in this field should not be impaired but their efforts should be encouraged. From this conference, we now see some definitive activity in the field of continuing legal education in areas where this has been largely neglected.

We have also seen that the law schools have attempted to define and assert their area of responsibility as a result of the 1959 Conference on Legal Education held in June of this year at Ann Arbor, Michigan.

It has been obvious that I have been talking in generalities and that the conference dealt in generalities in its most important aspects. Now, I would like to devote a few moments to the discussion of the program of the Colorado Committee on Continuing Legal Education, which we hope to have operate on a regional basis.

This committee was created in 1958 to provide a method of correlating the activities of the bar associations—state and local—with those of our two law schools. The committee is composed of two representatives of the Colorado Bar Association, one representative each of the College of Law, the University of Denver, and the College of Law of the University of

Colorado, and the Director of the Law Center. It has sponsored institutes and conferences on a wide diversity of subjects, including among other things, the Model Corporation Code, and the federal rules of procedure, both of which are in effect in Colorado with some modifications. It is now engaged in sponsoring a series of tax institutes throughout the State of Colorado.

In almost every one of our institutes we have featured discussions dealing with legal ethics on some other phase of public responsibility of the legal profession. These sessions have proved to be one of the most interesting and worthwhile portions of each institute. For example, the institute devoted to the subject of "Defending a Criminal Case" featured a talk on the ethics of the prosecuting attorney and defense lawyer. Everyone who attended this meeting believed it to be the highlight of that institute, and I personally felt it to be one of the outstanding talks of the entire program.

Some of these institutes—like those which deal with fact finding and presentation and traffic courts—bring to Colorado lawyers and experts with a national reputation. The subject matter of these institutes knows no state boundaries. As we progressed with our program, it became apparent to us in Colorado that there were many subjects which we shared with our neighbors that have little reference to local or state law.

Therefore, in June, 1959, we called a conference with representatives from New Mexico and Wyoming to attend a meeting at which it was proposed that the activities of the Committee on Continuing Legal Education be expanded to a regional level, and that adequate representation for the other law schools and state bar associations in this area be provided on the committee. Prof. Frank Trelease of the University of Wyoming School of Law attended the Conference. It was felt, for example, that in the fields of corporation law, civil procedure and federal taxation, where we all share the same basic law, that the legal professions in these and other states could profitably share also in the program of continuing legal education. We hope that the Wyoming Bar Association will now implement this plan and join with us in this work. It means that the expenses of the program will be less, the level of the institutes will be higher, the legal understanding of our profession will be improved, and the fellowship among the lawyers will be greater. I think that even these simple objectives are well worth our every effort.