

## THE PRACTISING LAW INSTITUTE AND CONTINUING LEGAL EDUCATION

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There is, in America, a growing realization that a lawyer's education ought not to end with his graduation from law school. Professional education, it is felt, is an on-going process, which should supplement the lawyer's knowledge of the rules of law with basic practical information and background and a systematized training in the experts' ways of thinking, planning and acting when handling his clients' problems. Such professional instruction and training is referred to as continuing education of the bar, or post-admission legal education.

### *Purposes of the New Instruction*

#### *Orienting Law School Graduates*

A young doctor can think back to his internship and hospital clinic experiences to recall the remedies for curing his patients' ailments. A young lawyer, on the other hand, receives no similar practical training. He is often puzzled about what to advise when consulted about purchasing a house, obtaining a divorce or making a will. Although in law school he learned the rules of property ownership and transfer, he does not know what provisions should be included in the contract of sale to protect the buyer or the seller in various circumstances. He knows the grounds for divorce, but probably learned nothing in law school on what provisions are necessary in a separation agreement to safeguard the wife after divorce. The requirements for the execution of a will or the heir's rights are easily recalled or ascertainable, when a client wishes advice about the testamentary disposition of his property; but what plans of disposition are available and which is most suited to the client's situation often are matters of mystery to the young lawyer.

The point is that, in America, the law school curriculum does not, nor is it intended to,<sup>1</sup> provide a complete training for the practice of law. Sometimes the young lawyer can acquire

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<sup>1</sup> In America, the requirements for admission to the bar vary from state to state. The primary prerequisites for licensing are passing an examination and proving good character. Almost universally, graduation from an approved law school is sufficient to qualify a candidate to take the examination. Probably not more than two states require also that a clerkship be served. But no attempt is made to test the nature or measure of any practical training acquired in this way. The result is that in determining a candidate's educational fitness to practise law, reliance is placed only on matters falling within the scope of the usual law school curriculum.

craftsmanship and skill in professional techniques through a journeyman's development, and thus bridge the gap between what he must know to practice law competently and what he learned in law school. But most often this is a long and haphazard process, even when guided by thoroughly skilled and experienced mentors; and, today, opportunities for such tutelage are rare. This is true particularly in the large cities. For most young graduates, therefore, the experience of law office employment can neither carry them beyond the apprenticeship stage nor add much to their professional knowledge and skill. The alternative of handling their clients' matters without assistance encounters the real risks of making costly errors through inexperience. What young lawyers need and can get through a programme of post-admission education is systematic training in the arts of practising law to supplement their law school training in legal theory.

### *Keeping Abreast of New Developments*

Changes in social and economic conditions open up new fields of law work. For example, when the use of automobiles increased, accidents multiplied; and thousands of law suits were brought for personal injuries and property damage. Within a generation litigation of this type became the chief work of many urban lawyers. Soon such cases constituted the bulk of the work of trial courts. New techniques were developed in interviewing witnesses, gathering evidence, preparing for trial, examining jurors and presenting testimony. The physician and x-ray technician became common figures on the witness stand. A knowledge of medicine became necessary, if the trial lawyer were to present his case adequately.

A more recent example of the growth of a new field is labour law. Similarly, many new types of work for lawyers were created by the wartime laws and regulations dealing with wage stabilization, price control and government contracts. Taxation is perhaps the best illustration of the rapid growth of new fields of law. The general practitioner of the nineteen twenties considered tax practice an esoteric specialty. Even now, the undergraduate curricula of many law schools do not include any instruction in taxation. Yet, there are few common types of law work in which tax considerations do not arise.

In addition to the development of new fields of law work, numerous changes occur in existing fields. Thousands of new statutes are enacted annually. These statutes are interpreted

and re-interpreted by the courts. The principles of the common law also are continuously modified, developed and reaffirmed by the courts, in the light of changing conditions.

A lawyer cannot, and need not, know all the law; nor will he keep abreast of all changes. But he ought to have a familiarity with the basic concepts and principles of the important fields of law. He will also wish detailed information about current trends and developments in the fields that are of particular interest in his day to day work.

New problems were created for trial lawyers when women became jurors. Rent control regulations must be studied carefully by the real estate lawyer. And it is important for a corporation lawyer to learn about the application of the latest regulations governing the issuance of corporate securities.

Most lawyers need information from time to time about practice in new fields of law and recent developments and changes in existing fields. They can keep up to date through a programme of continuing education.

### *Training for Specialized Fields*

In many branches of practice skill comes only with specialization and years of experience. Bankruptcy, taxation and personal injuries actions are a few examples. Often, the exigencies of a lawyer's practice require that he have a greater amount of specialized knowledge of a particular field than his experience has provided. For example, a general practitioner who represents a building materials manufacturer may suddenly need a knowledge of labour law because his client's employees are organizing a labour union. Or, he may need an expert knowledge of real estate practice quickly, because his client has decided to establish a chain of distributing agencies and wishes to purchase or lease suitable sites for that purpose.

Organized instruction is needed by mature lawyers who wish to enlarge the scope of their professional activities and engage in fields unrelated to their previous experience.

### *The Agencies Furnishing Post-Admission Education*

Programmes of continuing education of the bar have been offered primarily by specially organized institutions and bar associations rather than by the law schools, although the latter have given effective aid in some cases.

The work of perhaps greatest significance, both qualitatively and quantitatively, has been that of the Practising Law Institute of New York City, which has pioneered in developing many of the projects' facilities and methods. The remainder of this article will be devoted, therefore, to an explanation of the Practising Law Institute's activities in order to make clearer and more specific what the programme of the continuing education of the bar embraces.

### *The Practising Law Institute*

The Practising Law Institute, a non-profit corporation chartered under the Education Laws of New York State, is governed by a Board of twenty-five Trustees, among whom are outstanding judges, leaders of the bar and members of law faculties.<sup>2</sup> It was organized in 1938 to develop the work originated by Harold P. Seligson, who has been the Institute's Director since its founding. In 1933 Mr. Seligson, then just completing his first decade in practice, offered the first of a series of lectures designed to bridge the gap between the law school graduate's academic training and the realities of day-to-day practice. Mr. Seligson's own apprenticeship days had made him realize the need for systematically organized practical training to supplement the law school course. This initial programme was the culmination of much planning and study since his admission to the bar.

Mr. Seligson's experimental work expanded quickly into a more comprehensive curriculum and, after studies by bar association committees in New York City, was established on a permanent basis by the organization of the Institute. The extension of the Institute's courses to other cities was the next step. The American Bar Association lent its support in 1943 by co-sponsoring a national programme of tax instruction; and

<sup>2</sup> The Institute's present Trustees are Arthur A. Ballantine, formerly Under Secretary of the Treasury, President; Harold P. Seligson, Director; Alfred A. Cook, Vice President; Whitney North Seymour, formerly Assistant Solicitor General of the United States, Treasurer; Ralph Montgomery Arkush, Secretary; Robert M. Benjamin; Ralph M. Carson; William Nelson Cromwell; Norris Darrell; Mary H. Donlon, Chairman of the New York Workmen's Compensation Board; Mark Eisner, formerly Collector of Internal Revenue for New York; James A. Fowler, Jr.; Arnold Frye; Charles V. Graham; H. Struve Hensel, formerly Assistant Secretary of the Navy; Nicholas Kelley; Alfred McCormack, formerly Special Assistant to the Secretary of State; Judge Harold R. Medina of the United States District Court; Robert P. Patterson, formerly Secretary of War and Judge of the United States Circuit Court of Appeals; Francis T. P. Plimpton; Lloyd N. Scott; Judge Bernard L. Shientag of the New York Supreme Court, Appellate Division; Dean Young B. Smith of Columbia University School of Law; Professor George A. Spiegelberg of New York University School of Law; and Weston Vernon, Jr.

two years later this collaboration was broadened, in view of the need of lawyer war veterans for refresher training, to include the fields of general practice and trial practice.

Since 1946 about 30,000 lawyers, of whom over 9,000 are war veterans, have continued their professional training by enrolling in the Institute's lecture or correspondence courses, or utilizing its publications for home study. In New York City the Institute's lecture courses are attended each year by more than 2,000 practitioners. The Institute, in cooperation with state and local bar associations, has conducted lecture courses in over 50 cities in all parts of the United States. Classes have varied in size from 40 to 350. In recognition of the public importance of the Institute's work, the Carnegie Corporation of New York made a grant of \$50,000 to aid its unhampered development. Friends of the Institute supplemented this support by contributing \$44,000.

The value and soundness of the work having been demonstrated, it will now be consolidated and carried forward on a national scale by the American Law Institute, which has attained national distinction in preparing the outstanding "Restatements of the Law". The Practising Law Institute, through the work of its Director and the group of expert practitioners cooperating with him, will continue its work in New York and will also make its experience available to the American Law Institute.

### *Means Used For Providing the Instruction*

Each of the three media by which the Practising Law Institute furnishes its instruction, i.e. lecture courses, publications and correspondence courses, is organized to function independently; but to the extent possible they are carefully integrated so as to make the instruction as specific and helpful as possible. The discussion of lecture and clinic courses is based on the Institute's activities in New York City.

### *Lecture Courses*

One or more lecture courses have been organized in each of the major branches of practice, such as real estate, wills and estates, patent law, taxation, corporate practice, labour law and trials. The lectures are informal. The lecturers speak from notes rather than read papers. The standard lecture period is two hours, with a five minutes intermission at the end of the first hour. Almost all this time is devoted to the lecturers' presentation of his subject. There are no students' recitations. Questions and

class discussion are reserved generally for the final five or ten minutes. Thus interruptions to orderly presentation, which would result from questions anticipating matters to be covered in later portions of the lecture, are avoided and there is less danger that the lecture will not be completed within the allotted time.

Two types of lecture courses, basic and advanced, are given. The basic courses provide an orientation in the fields covered. They are intended for lawyers of limited experience or those whose experience has been chiefly in other fields. Most of the lectures in a basic course are given by the same lecturer and generally there is continuity among the lectures.

The advanced courses are intended for specialists in particular fields. Each lecture in an advanced course deals usually with a different topic and often their common relationship to the same general subject is the only connection among them. The presentations are detailed. The subjects covered are either those of most importance currently or those in which recent changes and developments have occurred. Usually therefore they are entitled "Current Problems in" a particular subject, such as Current Problems in Real Estate or Current Problems in Taxation. The contents of the advanced courses are changed each time they are given.

### *Clinic Courses*

The arts of trying cases, writing briefs or arguing appeals require a variety of skills. These subjects are therefore taught best in clinic courses. Thus the student can acquire actual experience and skill under expert individual guidance. For example, in the Trials Clinic he goes through all the steps in trying typical law suits. He selects juries, examines witnesses and makes summations. The instructor evaluates the student's performances, corrects his errors and demonstrates how to overcome his difficulties. At appropriate points the instructor also offers preliminary guidance in a new phase which the class is about to study, or summarizes the principles developed as a result of their clinical experiences. The clinical technique is also used to provide training in the drawing of legal papers such as contracts and pleadings.

### *Demonstrations and Panel Discussions*

Another method used for classroom instruction is the demonstration. Like the clinic courses, demonstrations are used

chiefly in teaching the arts of trial and appellate work. Some use of this method is also made in teaching contract negotiations.

A typical demonstration session consists of two parts. During the first half two outstanding trial lawyers perform the steps in a particular portion of a lawsuit or a particular kind of lawsuit. A single phase of a trial, such as selecting a jury, or examining a witness, can be demonstrated in its entirety. But in demonstrating an entire trial, such as a patent infringement action, the time is devoted mainly to matters peculiar to such actions, and phases that are similar to other types of trials are omitted. Actual courtroom conditions are simulated as much as possible. Frequently one or both of the participants in the demonstration will have been counsel in the original case; and the actual witnesses will be used, if they are available, to participate in the demonstration. When new witnesses participate they are instructed thoroughly in the nature and content of the testimony they are to give. A judge of the appropriate court presides during the demonstration. The details of the demonstration of course are planned in advance.

During the second portion of the session, the judge, the two lawyers and the chairman of the course engage in a round-table discussion of the problems that confronted the attorneys, how they dealt with them and what alternative methods were available. The significance of tactics which were not apparent to everyone are analyzed and errors pointed out. Questions and discussions by the audience are invited during this part of the session.

The demonstrations furnish opportunities to learn by observing and understanding the methods of outstanding lawyers. Courses consisting entirely of demonstrations are conducted in trials. In other subjects, such as patent law, labour law and corporate practice, demonstrations are included sometimes in series of lectures.

### *The Curriculum and Programmes*

The main fields of specialization among American lawyers are real estate, wills and estates, trial work, taxation, corporate practice, labour law and patent law. The Institute conducts both basic and advanced courses in these subjects. In taxation, two basic courses are given, one dealing with the concepts of the tax laws and the other covering tax practice and procedure. There are also two advanced tax courses — a lecture series on Current Problems, and a Tax Planning Clinic which furnishes training in handling tax problems. Similarly, trial work is covered in two basic and two advanced courses. One basic course is a lecture

series. The other is a clinic for lawyers of limited experience. The two advanced courses are the Symposium on Trials, consisting of a series of demonstrations, and a course on Negligence which deals with personal injuries actions.

The curriculum also includes two lecture courses and a clinic course on General Practice, which deal with the more important branches of practice and furnish a convenient means of orientation in the work of a practising lawyer.

Courses on special topics are given from time to time as the need arises. Some of them are limited to intensive analyses and explanations of recently enacted statutes. These courses are discontinued after one or two semesters and any problems that continue to require special treatment are integrated into the regular courses of broader scope. The social security laws, termination of war contracts and other war-time laws, the excess profits tax and the new labour act have been treated in this way.

Special courses are also given intermittently in subjects that are not of interest to sufficient numbers to justify offering them frequently. Examples of such courses are Insurance, Bankruptcy, Minority Stockholders' Actions, Trade-Mark Law and Copyright Law. Since the number of lawyers who desire comprehensive instruction in these subjects grows slowly and new developments are not frequent, several years must elapse for a sufficient demand to accumulate.

The courses are conducted during two regular semesters, a fall semester that begins in late September and continues until January, and a spring semester beginning in late February and continuing until May. Each course consists of 12 to 16 two-hour sessions conducted one evening a week. Generally 10 to 13 courses are given each semester; but most lawyers attend classes only on one or two evenings a week. All courses meet at the same hour, 7:30 to 9:30 p.m., and two or more are scheduled for each evening. Classes are held in the auditoriums of the bar associations.

Many of the courses are also offered at a four weeks Summer Session designed for lawyers from other cities and states. Topics of only local interest are omitted. Classes meet daily from 9 a.m. to 4:30 p.m. in air-conditioned rooms; and schedules are so arranged that a course may be completed in one week.

Enrollment is open to all graduates of law schools. There is no prescribed curriculum. A student may enroll for any one or more courses. There are neither examinations nor grading of students.

Collateral reading or other assignments are given only in the clinic courses, where the students are asked to plan such activities as summing up a case or preparing a contract of employment. In courses for which the Institute's monograph series (discussed below) are available, the students are urged to read the applicable articles in advance of the lectures. Although the lectures can be understood without an advance reading of the monographs, they are more meaningful to the student if he is familiar with the text material. Detailed mimeographed outlines, containing annotations, are distributed at many of the lectures for which publications are not available. These outlines are prepared by the lecturers and often include checklists, extracts from statutes which are to be referred to during the lecture and other helpful material which facilitate the lecturers' presentations. Miscellaneous other materials, including filled-in forms which are to be discussed, are also distributed at the lectures. The instruction is detailed and specific. Most students therefore find it helpful to take notes.

### *The Lecturers*

In selecting lecturers the criteria used are a thorough knowledge of and the ability to present their subjects in a clear and interesting fashion. Most lecturers are active practitioners, who specialize in the fields about which they lecture. Lectures dealing with the activities of government agencies are often given by officials of the particular agencies. Occasionally lectures are given by law school teachers, when a discussion of legal theory is desired. When non-legal subjects, such as medicine, investments, accountancy or the testing of disputed documents, are to be covered, practitioners of those professions are asked to lecture.

There are many sources of information about the abilities of prospective lecturers. Some of these are their reputation in the profession and the opinions of persons who are familiar with their work.

Students are encouraged to express their opinions about the lectures to members of the Institute's administrative staff who attend the sessions. In some courses questionnaires are distributed at the last lecture to obtain information about the students' reactions to the courses.

### *Publications*

Four series of monographs, on "General Practice", "Trial Practice", "Fundamentals of Federal Taxation" and "Current

Problems in Federal Taxation", have been published by the Institute with the sponsorship of the American Bar Association. The Institute has published also a series of articles on "Significant Developments in the Law During the War Years" prepared under the direction of the Association of American Law Schools.

### *The Subjects of the Monograph Series*

Two series are devoted to taxation because of the importance of the subject and the great need among practitioners for clearly written authoritative explanations of tax law and the methods of handling tax problems. The advanced series on "Current Problems in Federal Taxation" is the only publication on taxation that does more than merely explain and analyze the rules. It explains the experts' methods of handling typical tax matters.

Tax law is not static. The revenue laws are amended frequently and new court decisions, and Treasury regulations and interpretations, are issued constantly. To keep practitioners abreast of these developments addenda to the articles in the Fundamentals are issued quarterly.

Of equal interest to lawyers is the subject of trials. The series on "Trial Practice" explains the art of preparing and trying cases, including practice, tactics and strategy in state and federal trials and also the problems arising in particular types of suits, such as negligence cases, defamation suits and litigation arising in decedents' estates.

The series on "General Practice" explains how to solve problems in particular fields, for example, organizing corporations, drawing wills, purchasing and selling real estate, drafting leases, writing briefs and arguing appeals, matrimonial matters and secured loans. These monographs, unlike other law books, are not theoretical discussions of the rules of law but rather are practical handbooks in the lawyer's arts.

### *Point-of-View, Style and Illustrative Materials*

The discussions are often built around the solutions of problems which might come to any lawyer. This method helps to stimulate reader interest. As many practical suggestions and warnings as possible are included. Pitfalls which confront the unwary are explained. Rare and unusual problems are omitted.

Extensive use is made of check lists. In reproducing legal instruments for which printed forms are usually used, facsimiles rather than book face type are used in order to illustrate how

blanks are to be filled in and what portions of the printed forms ought to be stricken out or modified.

### *The Authors, Editors and Staff Assistants*

Many of the authors are experienced lecturers in the Institute's courses. A few had not previously participated in the Institute's work. Substantially all are practising lawyers. One or more editors were in charge of each series. The editors are authorities in their fields. They reviewed the monographs for accuracy, thoroughness and adequacy. In some cases there were numerous conferences and considerable correspondence between an editor and an author about suggestions for revisions and additions!

In addition to the editors, other specialists reviewed the manuscripts in the subjects in which they are experts. After a manuscript had been approved by the editors and reviewers, it was checked by members of the Institute's staff, who rewrote any portions that required clarification and checked the accuracy of citations. The members of the editorial staff are experienced lawyers with special ability for editorial work.

### *Correspondence Courses*

The purpose of the Practising Law Institute's correspondence courses is to provide, through systematized home study, the equivalent of the instruction offered in some of its lecture courses on the techniques of practising law. Four courses covering general practice, trial practice and taxation are offered. The chief materials by which the instruction is given are the various monograph series described previously, assignment sheets and answer explanation sheets.

### *Assignment Sheets*

For each lesson the student receives an assignment sheet containing instructions on the monograph or monographs to read and also on how to study the assigned material. The main contents of the assignment sheet is a group of about fifteen questions or problems which are to be answered after studying the assigned materials. The questions are intended to present typical practical problems which confront lawyers frequently in the fields covered by the course.

The questions are principally the objective type, which can be answered by indicating the truth or falsity of a statement or the

choice of one or more of several possible alternative answers. Essay type questions require less effort to prepare, but seem unsuited to the plan of these courses. By using objective type questions, it has been possible to achieve a wide coverage of each topic and uniformity in scoring standards. Additional advantages are the reduction of the time required to answer questions and secure the answers, and the minimization of drudgery both for the student and examiner.

Ideally, the questions should systematize the student's study by focusing attention on (a) the practical significance of various techniques explained in the texts and (b) his own skill in applying these techniques. They should determine therefore the student's attitude and his ability to apply principles and to see the relevant considerations in fact situations, rather than merely test informational areas and a knowledge of the specific matters explained in the texts.

In formulating questions, considerable use was made of the multiple choice form, which the examinee answers by choosing one or more of several possible answers. This form seemed preferable to the true-false question, which, though adequate to exercise memory, affords no opportunity to stimulate constructive thinking by requiring the student to make distinctions.

### *Answer Explanation Sheets*

The equivalent of the lecture discussions is provided in the correspondence courses by means of answer explanation sheets. These explanations supplement the discussions in the monographs with examples of how typical situations are analyzed and how the principles set forth in the monographs are applied. In other words, they amplify and illustrate the basic text materials.

### *Administration of the Courses*

On enrollment in a correspondence course, the student receives the first two lessons and the texts on which these lessons are based. When he has answered the problems on the first assignment sheet, he returns it to the Institute and begins work on the second assignment.

On receipt of the student's completed assignment sheet, the Institute sends him the next assignment and the applicable text materials. The assignment sheet is scored by one of the staff of lawyers, who writes his comments and suggestions on the assignment sheet, and then returned to the student.

*The Value of Continuing Legal Education*

In his Introduction as General Editor of the Practising Law Institute's monograph series on "General Practice" and "Trial Practice", Dean Emeritus Roscoe Pound of the Harvard Law School said:

What pre-eminently distinguishes a profession from ordinary callings is the spirit of public service in which it is carried on. It is this solicitude for things beyond the mere earning of a livelihood which makes the practice of law practice of a profession. In seeking to do what can be done to make those coming into the profession as fit as may be for full performance of their tasks and as efficient as may be for promoting justice by doing their part well in maintaining the legal order on which the economic and social orders rest, the lawyers are but justifying their title to be a profession.

Were it necessary to argue the value of a programme of continuing legal education, it could readily be urged that an improvement in the profession's ability to serve the public has been one of the obvious achievements. And certainly no one can doubt that a better informed and more proficient bar can but enhance the reputation and standing of our profession.

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**YOUR DEMOCRACY AND MINE**

I am unwavering in my belief in democracy of the old representative type, when the representative was to exercise his judgment and discretion and not merely voice the will of the electorate. The trouble with our democracy is that we have not been willing to pay the price — that is, educate the electorate. That must be a continuous process — not a quadrennial or annual campaign. And it must involve a much wider participation in government. I think consideration of governmental problems can be made for a large section of the people the most alluring of occupations. (Letter of Justice Louis D. Brandeis to Mr. Norman Hapgood, November 23rd, 1932; quoted by Alpheus Thomas Mason in *Brandeis: A Free Man's Life*. New York: The Viking Press, p. 602)