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THE LAW SCHOOL'S ROLE IN POST-J.D. SPECIALTY EDUCATION

Guy O. Kornblum*

I. THE REALITIES OF SPECIALIZATION

Although there has been considerable concern about legal specialization during the past two decades, surprisingly little has been done to effect a plan for certifying specialty practitioners. Virtually nothing has been done to educate them. There is no doubt, however, that specialization in the practice of law is commonplace. Not only has this fact long been acknowledged by members of the legal profession,¹ but it is supported by recent statistics. In March of 1968 a special committee of the state bar of California initiated a survey to ascertain the nature and extent of existing specialization, the views of the California bar toward specialization, and what problems members of the bar anticipated would arise in the event that a plan for certification was adopted.² The survey revealed that at least two-thirds of all California attorneys practicing more than three years specialize and that the level of income is a correlative of specialty practice.³ In general, the attorneys polled registered a definite preference for specialty


² See California State Bar Committee on Specialization, Preliminary Report, 44 Calif. St. B.J. 140 (1969) [hereinafter cited as Committee on Specialization—Preliminary Report]. A random sample of 2,196 (out of a total of approximately 30,000 attorneys in California) was chosen, with 1,241, or about 60 percent of those surveyed reporting. The Committee on Specialization was advised that this was a satisfactory and statistically reliable return which would give a representative picture of the state bar association. Id. n.1.

³ Of those earning less than $10,000, less than half were specialists, while 79 percent of those reporting incomes in excess of $50,000 practiced in one or a relatively few fields of law. Committee on Specialization—Preliminary Report 145. The bulk of the California bar’s specialists are in business and corporate matters, estate planning, negligence, probate and trusts, family law, real estate, criminal law, taxation, and workmen’s compensation. Id. at 143.
practice in the future. After reviewing the results of the survey, the bar committee predicted that within a short time, regardless of whether a certification plan is adopted, three out of four California practicing lawyers will specialize.

The California survey appears to be an accurate reflection of the present extent of specialization, as well as a reliable prediction of things to come. Yet the law schools and the profession have generally ignored the trend toward specialization by continuing to act on the premise that anyone who graduates from law school and passes a state bar examination is competent to practice in every field of the law, and fully capable of educating himself when faced with a problem in a field with which he is not familiar. This premise is no longer valid; no attorney can hope to acquire and maintain competence in all areas of the law. Yet the only protection the public has from professional incompetence is the discretion of the attorney himself. If we have reached a juncture where specialization is common, it would seem that the profession has an obligation to test and certify those practicing in a specialty, just as the profession felt an obligation a few decades ago to test and certify those graduating from law school before they could engage in general practice.

The public and the bar are squarely confronted with problems involving specialization when a general practitioner who does not have the proper training and experience holds himself out as a specialist and undertakes a task which requires specialized

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4 Almost 72 percent of the bar would prefer to specialize, which is 5 percent more than are currently specializing, and three-fourths of the bar anticipate a public benefit from certification. In fact, 62.8 percent of the non-specialists expressed such a belief even though a decided majority of them did not anticipate a personal benefit from certification. Committe on Specialization—Preliminary Report 146-48.
5 Id. at 146.
6 In 1962, David F. Maxwell, then chairman of the American Bar Association Special Committee on Recognition and Regulation of Specialization in Law Practice, stated:

> The legal problems of the early 20th Century are still with us today, but they have multiplied manyfold and have become much more complex, more subtle and more difficult of solution. It is no longer possible to regard the law as a seamless web which a single lawyer can master. The law today is divided into numerous separate compartments, each of which can only be entered with a special and different key.

7 Dean Robert B. McKay of New York University has observed that the system founders upon the fact that, to the extent that “holding out” of professional competence is permitted, the determination of capacity is left principally to the discretion of the individual lawyer or law firm.

The consequences of this looseness of rule are about what might be expected. For example, a casual examination of law firm listings in the 1970 Martindale-Hubbel Law Directory for New York City and New Orleans disclosed more than forty fields of law which various firms were prepared to handle. The range was from Administrative Law, Admiralty, and Anti-Trust to Title Examination, Trade Regulation and Trusts. One two-man firm did
knowledge, or when a practitioner who once had the requisite knowledge to qualify as a specialist fails to maintain his qualifications. Although the instance may be rare when a lawyer undertakes a task fully aware that he lacks the necessary specialized knowledge, a lawyer may unwittingly and unintentionally do so. The lines of specialty competence are fine and particularly difficult to draw in the absence of some objective means of evaluation such as certification.

As members of a profession which is largely self-policing, attorneys must find ways to protect the public by indentifying the areas of practice that require special expertise and by ensuring that those who hold themselves out as specialists possess the necessary expertise. Simply because one claims a specialty or even practices a specialty does not mean that he has the requisite

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not hesitate to list nine fields of law which it was prepared to handle. Although these listings are made without any "representations of special competence or experience"... there is equally no basis for confidence in capacity beyond individual self-assertion.

Individual attorneys are also allowed to suggest (without claiming) competence by showing membership in organizations as varied as the American College of Probate Lawyers, the American Society of International Law, and the Maritime Association of the United States.

Only in one field, that of patent practice, is there at present a reasonably reliable means of certification. Lawyers registered to practice before the United States Patent Office (after examination), are separately identified in Martindale-Hubbel and may identify themselves with the field of patents.

R. McKay, Role of Graduate Legal Education in the Development of the Legal Specialist (1970) (unpublished monograph, prepared for joint meeting of the ABA's Special Committee on Specialization and the ABA Section of Legal Education and Admissions to the Bar).

8 In an effort to provide competent counsel, the Palo Alto Lawyers Reference Service of the Palo Alto, California, Area Bar Association requires some experience for each lawyer to qualify for listing as a possible reference on specialty matters. For example, to qualify for the Business Organizations Panel an attorney must have represented clients on two or more matters involving an incorporation through stock permit, a partnership agreement, a sale of a business, a stock buy-and-sell agreement, or a business dissolution. Similar experience is required for the total of seventeen "General Practice Panels" ranging from Administrative Law and Adoptions to Wills and Trusts and Workmen's Compensation. In addition, there are two "Specialty Panels" for Criminal and Juvenile, and Patent, Trademark and Copyright Matters. To qualify for the Criminal Panel, the attorney must have had a minimum of one year of experience handling criminal matters, and he must have a practice which includes representation of accused persons in all criminal matters, including juvenile and traffic cases and requiring appearances before the local county courts. In addition, the attorney must have handled six or more criminal matters which included the following: (1) preliminary examination; (2) one felony trial to judgment; (3) one jury trial to judgment; (4) one drunk driving trial; and (5) one criminal juvenile court proceeding. The Patent, Trademark and Copyright Panel requires the attorney to be admitted before the U.S. Patent Office and to maintain a practice involving mechanical, electrical, or chemical inventions. 1971 Rules, Palo Alto Lawyer Referral Service of the Palo Alto Area Bar Association, Palo Alto, California.

Obviously, the basis for qualifying for all these panels is experience. The certification of specialists and the completion of specialty training in the law schools would provide additional and perhaps alternative criteria for choosing panelists for lawyer referral service.
competence in a specialty does not mean that he will continue to practice and maintain his competence and keep abreast of new techniques and developments. Certainly the profession should not be satisfied with the threat of malpractice claims as the only means to regulate this aspect of a lawyer's practice. The profession must establish certification requirements for specialty practice, and the law schools must be willing to accept primary responsibility for educating those attorneys who wish to satisfy these requirements and engage in such a practice.

II. ATTEMPTS TO DEAL WITH THE PROBLEMS OF SPECIALIZATION

The American Bar Association (ABA) has been discussing the problem of specialization for at least two decades. In 1954 the ABA House of Delegates adopted a resolution approving in principle the need for regulating voluntary specialization in various fields of law. For thirteen years the problem was considered by various committees, and in 1967 the House of Delegates established a Special Committee on Specialization which presented a report in early 1969 concluding that a plan for certification of specialists by the ABA was not desirable at the time, but recommending that experimental pilot programs be established. Cal-

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9 As some authorities have stated:

"specialist" and "expert" are not necessarily synonymous. One can devote a great deal of time to an area and yet not be expert in it; similarly, one can be very proficient in a particular task and yet devote relatively little time to it.

Greenwood & Frederickson, Specialization in the Medical and Legal Profession, 5 LAW OFFICE ECON. AND MANAGEMENT 175, 177 (1965-66).

Similarly, the California bar committee said that mere limitation of practice is not synonymous with either competence or expertness. The specialist, certified or not, must be a competent lawyer and not a mere technician. A specialist will not become an expert in his field by certification alone but only by years of experience and practice and constant and concentrated study in a particular field of law. If a lawyer, therefore, is to be allowed to identify himself publicly as a specialist in a particular field, he should be required to meet prescribed minimum standards of experience and education.

California State Bar Committee on Specialization, Final Report, 44 CALIF. ST. B.J. 493, 500 (1969) [hereinafter cited as Committee on Specialization—Final Report].

10 The malpractice of the specialist is discussed in Note, Standard of Care in Legal Malpractice, 43 IND. L.J. 771, 785–89 (1968). As this note points out, there has been little malpractice litigation involving specialty practice, and up until now courts have been somewhat reluctant to apply a higher standard of care for specialists.

11 For a summary of ABA activities, see Committee on Specialization—Final Report 469-98. For a history of how the medical profession met the need for training specialists, see Joiner, Specialization in the Law? The Medical Profession Shows The Way, 39 A.B.A.J. 539 (1953).

California was the first state to approve a pilot program for certification of practicing specialists. The program in California initially will be effective for five years in order to test its feasibility and desirability.\textsuperscript{13}

The California program provides for certification in three areas: taxation, criminal law, and workmen’s compensation. The requirements for certification under the California pilot program can be grouped into three categories: (1) practice: a minimum of five years law practice, plus a showing of “substantial involvement” in the specialty field during a reasonable period of time immediately preceding certification; (2) examination: both oral and written; and (3) education: “special educational experience” in the specialty field.\textsuperscript{14} The specific requirements for meeting each of these standards are not yet defined. They are to be set by a Board of Legal Specialization after consultation with an Advisory Commission for each specialty area. An attorney must be re-certified every five years, and one of the requirements is a satisfactory showing of further “special educational experience in the particular field of law.”\textsuperscript{15} Thus, the plan requires a showing of specialty education not only to achieve but to maintain certification. As to what this requirement means, the California bar committee stated:

Special educational experience may consist of appropriate work under the auspices of the California Continuing Education of the Bar, law school post-graduate work, attendance at symposiums, lecturing in programs presented by any of the foregoing, and apprenticeship in a specialty.\textsuperscript{16}

It is clear from this broad definition of an educational requirement that the committee was leaving the road open for experimentation, calling upon law schools to crystallize their own thoughts and to make their own suggestions and recommendations.\textsuperscript{17}

\textsuperscript{13}See Crowe, Annual Report of the Board of Governors, 45 Calif. St. B.J. 601, 635-36 (1970). For the full text of the Pilot Program in Legal Specialization as adopted by the California Supreme Court, see Pilot Program in Legal Specialization, 46 Calif. St. B.J. 182 (1971). Texas has recently approved a plan for certification and is now formulating implementing standards. Colorado, Florida, Illinois, Minnesota, Missouri, New Jersey, Oregon, Pennsylvania, Virginia, and Wisconsin also are reportedly considering plans for certifying specialists, and some twenty-five state bar associations and other local bar associations have committees studying specialization. Committee on Specialization—Final Report 499.

\textsuperscript{14}Pilot Program in Legal Specialization, supra note 13, at 185.

\textsuperscript{15}Id.

\textsuperscript{16}Committee on Specialization—Final Report 510.

\textsuperscript{17}The Committee recommended that

the Board and the Advisory Commissions give appropriate consideration to special educational experience so that law schools, the Continuing Education of the Bar, sections of local bar associations, and other interested groups may
Law schools must accept a leading role in devising curricula to educate and prepare lawyers for specialty certification and to assist lawyers in maintaining their competence and improving their qualifications once they are certified. The immediate challenge is to devise a means of educating and training those who are practicing and who wish to acquire competence in a specialty area. The questions here are whether this should be by a program leading to an advanced degree or by a shorter program leading only to certification, and whether the law schools should participate at all in a certification program which does not lead to an advanced degree.

A less immediate but equally important challenge is presented by the question whether law schools should offer specialty training in their first degree program. With the proposition generally established that most lawyers will specialize and with the adoption of standards for certifying specialists which include an educational requirement, a logical question is why wait until after graduation to educate and train the specialist when a specialty curriculum could be made available to the first degree student who has decided on a specific career or who wishes to investigate a particular area of the law. This question is the focal point of a recent report to the Association of American Law Schools (AALS) from its Curriculum Study Project Committee and is one of the issues in the current movement to reform legal education. The introduction of specialty training in a first degree program does not necessarily mean there is no room for a general legal education. Instead, law schools should continue to provide opportunities for the general practitioner who, like the medical general practitioner, is concerned primarily with individual, family, and in the case of lawyers, small business matters, and who relies on specialists for advice and assistance in recognized specialty areas. The general practitioner still has a major role to play. In an urban community, he may serve as the only conduit between his client and the specialist, and a program of certification may enable him

be encouraged to develop appropriate courses in specialized areas and in order to stimulate interest on the part of practicing lawyers generally.

Id. 18 1971 AALS PROCEEDINGS, pt. 1, § 2. The debate over the length of the law school curriculum continues. Contrasting with the recommendations of the 1971 study to shorten it is this statement from the Curriculum Committee Report, 1966 AALS PROCEEDINGS, pt. 1, at 45: "There are now so many significant fields of law, and the law is growing so rapidly in so many directions, that adequate doctrinal training of law students should take at least four intensive years." Another alternative is that used at Northeastern Law School under its cooperative four-year plan of six months of school followed by six months of work. O'Toole, Realistic Legal Education, 54 A.B.A.J. 774 (1968). See also Cavers, A Proposal: Legal Education in Two Calendar Years, 49 A.B.A.J. 475 (1963).
to more accurately indentify competent specialists so that he can provide full services to his client. Certification may also prove to be a boon to the sole and small firm practitioners, for it may provide them an opportunity to compete with the large firms which now offer a wide range of specialized services. The report of the California committee specifically recognized the interests of the general practitioner when it stated:

Any plan for certification must recognize the necessity of a broad legal education and must minimize any potential adverse effect on the general practitioner. It must not eliminate county-seat lawyers nor benefit the middle and large size firms to the detriment of the small firms or the sole practitioners. On the other hand, care must also be taken to ensure that the plan does not retard the accelerating trend of lawyers to form larger partnerships.¹⁹

Having briefly discussed the increasing trend toward specialty practice and the kind of certification plan that is likely to be established, we now turn to a discussion of the immediate challenge presented to the law school by a certification plan containing an educational requirement. It is the purpose of this article to urge law schools, by working closely with bar associations and professional groups, to accept a position of leadership in devising post-J.D. curricula for the education and training of the specialist.

III. SPECIALTY CURRICULA TO ACHIEVE COMPETENCE

A. Establishing Appropriate Curricula

By their nature, law schools are well suited to participate in the implementation of the education requirement for specialty certification. At the outset, however, the relative roles of a post-J.D. degree law school program and of continuing legal education programs of the bar in a plan of specialty education and certification should be defined. For example, in California the Board of Legal Specialization will be faced with a question of what educational requirement to impose on those who are presently members of the bar and who wish to be certified, but who do not meet the "grandfather clause" requirements,²⁰ and whether to rely upon a

¹⁹ Committee on Specialization—Final Report 502. It should be pointed out that the California plan specifically prohibits any limitation on "the right of a certificate holder to practice in all fields" even though certified in a particular field. In addition, a lawyer is not precluded from practicing in a specialty area because he does not have a certificate. Id. at 508.

²⁰ Under the grandfather clause, certification may be granted only within a period of two
post-J.D. degree program administered by the law school or on continuing legal education programs of the bar to satisfy the educational requirement. If reliance is upon a law school program, there is the additional question whether one of the recognized advanced degrees (LL.M., J.S.D., or Ph.D.) should be required or whether a program leading to a new degree or to certification as a “special counsellor” in the specialty should be devised.

Under their present format, continuing legal education programs of the bar are generally not suitable for lawyers seeking to achieve competence; they are not designed for long-range investigation and reflection, nor can they feasibly be used to test knowledge. The standard law school curriculum on the other hand, is structured around an objective of acquisition of knowledge in new areas and can provide opportunities for the long-range, intensive investigation of an area of the law so essential to acquiring the detailed understanding which a specialist must possess. Thus the educational standard for a certification program should require attendance at a program structured on the traditional law school format, utilizing lectures, demonstrations, and seminars, and requiring the students to prepare materials for the classroom, submit papers, and complete examinations. The complexity of the specialty will be the principal factor in determining how long the educational program lasts, but it would seem that as a general rule, a one-semester program (approximately fifteen credit hours or 225 classroom hours) would be sufficient.

A specialty program might be divided into five course areas: Administration; Skills and Techniques; Procedure; Policy Examination; and Substantive Law. For example, in the criminal law specialty curriculum, attorneys in the Administration course would examine the agencies dealing with law enforcement. They would study the structure of the federal and state prosecutor and defender offices, the federal, state, and local law enforcement agencies, and the various departments and agencies involved directly or indirectly with law enforcement. In this course, there would be an extensive examination of the administrative structure of the probation agency and the parole system and what part each of these play in the administration of the criminal law. The Skills and Techniques course in a criminal law curriculum would be

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years after the date the pilot program for the specialty is effective, provided the applicant has ten years actual practice and makes a “satisfactory showing... of a substantial involvement (i.e., actual performance) in the particular field of law during a five year or other reasonable period, but not less than three years, immediately preceding certification.” Committee on Specialization—Final Report 509.
devoted to advocacy training. The course would cover basic investigative techniques, trial preparation, trial practice, and appellate advocacy. Supervised courtroom training based on an advanced clinical model might also be used. The Procedure course would obviously involve an intensive examination of state and local court rules and procedures, while in the Policy course the attorneys would view in depth the accomplishments of the system of criminal law to see if it is meeting the needs of society and analyze suggested changes in the laws designed to carry out social policy. And finally, in the Substantive Law course the attorneys would study in detail the body of criminal law in the particular jurisdiction. These five courses should provide an adequate foundation for the attorney who wishes to engage in the specialty practice of criminal law. A similar curriculum model might be designed for each of the other specialty areas recognized under a state certification plan.

Under such a curriculum, an attorney would have an opportunity for reflective examination of the theoretical and practical problems faced by practitioners in the specialty during his study to achieve competence in the field. The objective of these specialty curricula is not to train a technically competent, unthinking functionary who knows the law by rote. Rather, the well-educated lawyer is one who has a thorough understanding of theory and policy along with knowledge of the technical rules of procedure and the substantive law. Thus specialty curricula should require learning the judicial philosophy and policy of the specialty area, as well as the practical rules; these are not mutually exclusive in the specialty curricula and should co-exist. They are compatible and complementary and together can enhance the learning experience of the lawyer.

There is merit to the argument that specialization may result in a lawyer becoming too narrowly based, confining his perspective to one or two fields of the law. For this reason, it is essential that a curriculum emphasize the relationship of the field of specialization to the broad system of American justice. The curriculum suggested in this article, by dividing the study of a specialty into five separate courses, is well suited for such an inquiry.

**B. Administrative Problems**

There are several problems of an administrative nature which must be confronted in establishing a post-J.D. specialty education program. One major problem is financial. Whether a post-J.D.
program in law schools is feasible is partially a marketing problem, for in the absence of a state certification plan that entails an education requirement there may not be a sufficient number of lawyers desiring additional training to make such a program economically practical. However, as certification plans are established, a market for post-J.D. degree specialty education should develop. In any event, no post-J.D. degree specialty education program should be run at a financial loss to either the state or the law school. Fees should be set so the program is self-sustaining. Costs would be minimized by inter-institutional exchange programs of faculty, lawyer-students, and educational materials. Costs also could be minimized by combining the financial, faculty, and administrative resources of several law schools in a geographical area with the resources of the state bar.

Since the educational requirement for specialty certification can be fulfilled by programs shorter in duration than those leading to advanced degrees, it may be more practical for law schools to organize consortia to sponsor these programs and for the state certifying agency to designate these cooperative programs as acceptable means for specialty education. Such a program might operate as follows. The state certification agency would recognize individual law school or consortia programs, based on the suggested curriculum model, as accepted programs for meeting the educational requirement. A committee of representatives of these accepted schools or consortia would meet with the various specialty advisory commissions to outline suggested topics to be covered by the five basic courses. The instructors selected would then work with the law school or consortia representatives and representatives of the advisory commissions in selection and preparation of materials. Application for admission and registration could be processed centrally by the state bar, while actual instruction would be the responsibility of the law school. A standard written examination would be administered upon completion of the specialty curriculum, followed by an oral examination by a three-man panel composed of one law professor, one practitioner who is not a member of the state certification agency or advisory commission in the specialty area, and one member of the specialty's advisory commission. Of course, each member of the panel should be an expert in the specialty field.

As more fields become recognized as specialty areas for certification, another problem will be finding faculty for the program. A possible solution is to provide teaching leaves for practitioners. Law firms might consider paying qualified members of their firms
while on teaching leaves to instruct in a specialty program. The certification program would benefit by having a resource of active practitioners with actual specialty experience, and the law firm would benefit by the prestige which attaches to having a member of the firm be an instructor in the certification program.

Team teaching might also be used. Full-time faculty can assume the responsibility for planning, administering, and assembling teaching materials, while the practitioner-teachers can assist in preparation of the materials and teach some of the intricate aspects of practice. Many full-time teachers value the opportunity to know and to work with practitioners, and many practitioners value the opportunity to return to law schools. Wayne State University Law School has apparently been extremely successful using this method in its regular three-year curriculum; Wayne State's most successful courses are reported to be those in which team teaching by professors and practitioners is used.

Another major problem of a post-J.D. specialty education program is how to offer the "specialty semester." A residency program of full semester's duration is a logical alternative and would provide desirable continuity. Larger law firms and government agencies might be able to allow leaves of absence for attorneys to attend these programs. However, many sole and small firm practitioners would find a semester program impractical. Thus an alternative scheme of two short semesters of eight weeks each or an early evening program might be established. Law schools should particularly examine possibilities for scheduling these educational programs during "dead" periods (weekends, summers, and early evenings) when regular students are gone. And then there is the problem of admission standards.

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21 The problems of using practitioners as teachers in law schools should not go unrecognized. There may be resistance by full-time faculty to the use of "part-timers." However, in post-J.D. specialty programs leading only to certification and not to an academic degree, there probably would be less resistance, and in fact encouragement, by full-time faculty since it would leave time for the full-time faculty to devote to academic instruction in first degree or advanced degree programs. It may also be difficult to find practitioners who are qualified in a specialty and who are effective as teachers and willing to take time from their practice. For a frank discussion of the prejudice against practitioners turned teachers, see Dente, Need for More Professors Who Have Practiced Law, 18 CLEV. ST. L. REV. 252 (1969); Silverman, The Practitioner as a Law Teacher, 23 J. LEGAL ED. 424 (1971).

22 The ROLE OF LEGAL EDUCATION IN THE PREPARATION OF THE LEGAL SPECIALIST 11 (ABA Legal Education Series 1971).

23 At present the only law school sponsoring a post-J.D. degree specialty education program is Temple University School of Law. Its Advanced Legal Studies Program offers late afternoon and evening courses in taxation, fiduciary management, workmen's compensation practice, products liability, and civil trial advocacy. The courses are primarily "open to members of the bar who wish to continue their professional education, whether or not they are candidates for a post-graduate degree." Since the beginning of the academic year 1967 -68, the offerings in taxation and trial practice have been sequentially organized and may lead to a Dean's Certificate, TEMPLE UNIVERSITY SCHOOL OF LAW, ANNOUNCEMENT OF ADVANCED LEGAL STUDIES PROGRAM (Fall Semester, 1970).
for those educational programs. If law schools would undertake to provide specialty curricula leading only to a certificate and not a degree, and keep separate the post-J.D. degree programs leading to a second law degree, admissions standards can be relaxed so that all attorneys applying only for specialty certification are admitted. There is no valid reason for limiting admission only to those with outstanding academic records. The lawyer wishing to specialize should be judged on whether he can meet the standards for certification by successfully completing the specialty curriculum.

IV. CONTINUING LEGAL EDUCATION TO MAINTAIN COMPETENCE

Once competence is achieved, the bar faces the problem of how to ensure that the specialist maintains his competence and reaches his potential as a lawyer practicing in the specialty. The California pilot program requires re-certification every five years by a showing of “substantial involvement for a reasonable period of time immediately preceding re-certification” and “special educational experience.” In the event the lawyer fails to meet these requirements he is entitled to take an examination. However, the question arises whether the specialist each year should be required to attend a minimum number of hours of recognized continuing legal education programs in his field to maintain his competence and qualify for re-certification. This undoubtedly is one method of ensuring that the specialist remains competent, although the California pilot program provides that the specialist can maintain his competence and qualify for re-certification by independent study and examination.

Improvement and expansion of existing continuing legal education programs sponsored by the various bar associations and professional groups would provide a useful means for an attorney to maintain competence in his specialty once certified. The question remains, however, as to what role the law schools should play in such continuing legal education programs. This question has been debated at several legal conferences over the past decade.

In addition, George Washington University National Law Center offers a non-degree, non-certificate continuing legal education program for specialized areas of study which is included in its Master's and Doctoral programs. Where the courses are taken for a degree or credit, graduates may have the field of specialization noted on their diplomas. Lawyers who take the course only as part of the continuing legal education program are not officially admitted to the university. No credit or grade is given and no record is kept. The only prerequisite to admission is membership in the bar and payment of tuition.

24 For brief histories of continuing legal education in the United States, see Reichert, The Future of Continuing Legal Education, in LAW IN A CHANGING AMERICA 167.
and one-half. The Joint Committee on Continuing Legal Education of the American Law Institute and the ABA has been one of the major promoters of continuing legal education programs and has taken a position in favor of a "closer identification of law schools with post-admission legal education." While the Joint Committee recently has sponsored some programs with law schools, at present the participation of law schools is sparse.

169-71 (G. Hazard ed. 1968); Wright, The Role of the Law School in Continuing Legal Education, 28 Pitt. L. Rev. 19 (1966); Darrell, The Role of the University in Continuing Professional Education, 32 Ohio St. L.J. 312 (1971). Mr. Darrell states that New York University devised the first continuing legal education program in 1891. The first continuing legal education organization was begun in 1946 in California. Today there are continuing legal education organizations in 60 percent of the states. In 1969-70, there were 730 continuing legal education programs in the United States, as compared with 319 in 1965-66, 1970 ALI Proceedings 657.

In 1959 at the First Arden House Conference on Continuing Legal Education, law schools were given a secondary part to play in continuing legal education. Continuing Legal Education for Professional Competence and Responsibility—The Report of the Arden House Conference (1959). At the Second Arden House Conference in 1963, a more vocal group advocating primary responsibility on the part of the law schools for post-J.D. legal education made its position known, but still the conference implied that the law school's role should not be a key one. Arden House II: Toward Excellence in Continuing Legal Education—The Report of the Second National Conference on the Continuing Education of the Bar (1964). The next major discussion took place at a round table at the 1966 Annual Meeting of the AALS. The round table discussion's edited transcript is reported in The Role of the Law School in Continuing Legal Education (pts. 1-2), 13 Prac. Law., May, 1967, at 6, and October, 1967, at 6. At the end of the round table, Professor Myres S. McDougal, then newly-elected president of the AALS said:

The principal relevance of the three years' training that we offer is in its preparation and strengthening of the legal profession for its total performance. To say that our responsibility stops, rather arbitrarily, at the end of three years is just a little absurd to me. The training for the transition from the schools to the profession, the refresher course, and the provision for appropriate opportunities for specialization all tremendously affect the quality of the total performance of the bar and, hence, the relevance of what we achieve by our initial training.

I have been much enlightened by the discussion we have heard. We in the law schools certainly would not want to do anything to diminish the sometimes dubious quality of the instruction that we now offer in the three years of training. I find myself, however, highly sympathetic with the attitudes of [those who] . . . suggest that ways should be found by which we can increase our law school contribution to our total professional responsibility.

The great need is for unified planning of the whole experience of the profession in its training for performance of its uniquely public functions. There may be ways, further, for us to contribute beyond the planning function more than we are now contributing.


Id. 1971 ALI Proceedings 197-98.

Id. at 61-62. Another example of cooperative efforts between professional groups and law schools has occurred in California between the California Continuing Education of the Bar (CEB) and various law schools. An environmental law program was co-sponsored
The question whether the law schools should be actively involved in continuing legal education depends on a law school's willingness to commit faculty time, physical facilities, and administrative services to programs outside the ordinary law school curriculum. More basically, there is the question whether law schools have a duty to sponsor programs designed to maintain or raise the level of competence of lawyers who have already qualified to practice in a chosen field. One answer comes from E. Donald Shapiro, former Chairman of the AALS Continuing Legal Education Committee:

I believe that continuing legal education is legal education, and as legal education, it is the primary responsibility of the law school and the university. There is no reason why we should tolerate second-rate legal education in continuing legal education any more than we would tolerate second-rate or shoddy legal education in the undergraduate curriculum. Our standards should not and need not change when we are educating a 40-year-old lawyer who has great responsibilities in the community, both to his clients and to his profession, than when we are dealing with a 22-year-old student. Indeed, our standards should be even higher.28

Though Mr. Shapiro sees a primary role for the law schools, this does not necessarily mean that existing continuing legal education groups should be eliminated. The essential ingredient to effective continuing legal education programs is cooperation. Law schools and their faculties are experts in education, teaching, and administration; the state bar obviously has an interest in continuing education as a means of upgrading the competence and standards of the bar. By blending the best of the academic community with the experience and knowledge of the professional bar, law faculties and practitioners together can make a meaningful contribution to the continuous legal education process which begins when the student first opens Prosser on Torts and does not end until the lawyer concludes his practice.29

The easiest, least expensive, and least time-consuming way for a law school to participate in a continuing legal education program with Hastings College of the Law in San Francisco in September, 1970, and for seventeen years CEB has sponsored with California law schools a one-week summer program for lawyers to discuss new vistas in the law. The 1971 program included instruction on estate planning and taxation, constitutional litigation, business law, remedies and class actions, and low-income housing law.

28 The Role of the Law School in Continuing Legal Education, 13 PRAC. LAW., May, 1967, at 106. See Wright, supra note 24. Professor Wright also agrees that the role of the law school in continuing education programs is a major one.

29 The need for law school faculty participation in continuing legal education programs is discussed in Reichert, supra note 24, at 175–76, and Wright, supra note 24, at 27–36.
is to offer classroom space. If each law school would make space available to the state or local bar association for a one-day or two-day program twice each year, this would be a significant contribution. It would begin a dialogue between the law faculties and the bar’s continuing legal education organizations which should result in greater understanding and a spirit of cooperation among members of the bar and the law schools. Most law schools, regardless of resources, should be capable of participating in continuing legal education programs to this extent.

Where continuing legal education organizations are functioning effectively, efforts should be made to form joint planning committees for programs on a regional basis as a cooperative project of the bar association, the continuing legal education agencies, and the law schools and their faculties. In addition to planning continuing education programs at the law schools, particularly in areas where the law school has a special expertise, continuing education programs sponsored by bar organizations can be supplemented by the law school making faculties available on a release-time basis, supplying materials, and, as mentioned earlier, providing physical facilities.30

The ABA, in addition to its sponsorship of the Joint Committee on Continuing Legal Education, has recognized the need for intensive advocacy training programs by establishing the National Institute for Trial Advocacy, under the direction of Professor A. Leo Levin of the University of Pennsylvania Law School and jointly sponsored by the ABA with the American Trial Lawyers Institute for trial Advocacy, under the direction of Professor four-week institute is planned for the University of Colorado in the summer of 1972 and will cover both civil and criminal litigation. But training in trial advocacy and other specialities requires more than just one seven-day college, an occasional weekend

30 An example of a special joint continuing education program combining the resources of a law school and a professional bar association is the Hastings-American Trial Lawyers National. College of Advocacy. This seven-day intensive civil advocacy program held at Hastings College of the Law in San Francisco in the summer of 1971 brought together outstanding members of the trial bar with the faculty of Hastings to teach concepts and techniques of trial advocacy to over 300 lawyers from forty states. The curriculum covered all phases of civil litigation, and was taught by leading trial lawyers, law professors, doctors, and scientists from across the country. A second National College of Advocacy will be held in August of 1972.

The Hastings-American Trial Lawyers Association program cost approximately $80,000, which included production costs for videotaping fifty hours of lectures and demonstrations for future use in closed circuit T.V. and video cassette programs. The tapes will be edited into education programs for distribution to law schools, professional bar associations, medical schools, and law firms and individual practitioners. The National College of Advocacy is the most extensive videotaping project ever undertaken by a professional group and has proven that such a project is administratively feasible and economically practical.
program, or one four-week institute. These programs are first steps only; longer programs must be developed for educating the lawyer seeking to achieve competence in trial advocacy and other fields, and these can be developed as part of the specialty curricula of the law school. In addition, continuing education programs should be developed for attorneys wishing to maintain, refine, and elevate their level of competence. And, if the bar is going to require specialists to attend and complete a required number of continuing legal education hours to maintain both competence and certification, then some means must be devised for ensuring quality instruction, a variety of course offerings, and maximum exposure and access to leading members of the bar. Law schools and law school consortia should be experimenting with specialty curricula, analyzing resources, and discussing recommendations for educational requirements with their faculty so these can be communicated to bar associations. These various continuing legal education programs should then be reviewed by a certification board in each state for acceptance as an approved continuing education program for meeting the education requirement for re-certification.

Thus, once certification plans become widespread and demand for post-J.D. specialty education increases, law schools must assume primary responsibility for establishing education programs for those attorneys who wish to achieve the level of competence in a field of law necessary to satisfy certification requirements. Moreover, law schools must cooperate with bar and professional groups in improving and expanding those continuing legal education programs which provide an opportunity for attorneys engaging in specialty practice to maintain their competence. Law schools must accept these dual responsibilities, for the education of the lawyer is no longer a process which can be abandoned on graduation day.