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John F. Sonnett Memorial Lecture Series: The Minnesota Plan: Mandatory Continuing Education for Lawyers and Judges as a Condition for the Maintaining of Professional Licensing

Robert J. Sheran
Minnesota Supreme Court

Sheran Introduction

What response should the legal profession have to public criticism of attorney competence? Several Sonnett lecturers have addressed the issue of attorney competence. Among them, most have focused on legal education prior to admission as an attorney. Justice Clark aimed at the need of law schools to switch from teaching abstract theory to teaching practical skills. Chief Justice Burger also took aim at the law schools' lack of clinical education.

Minnesota's Chief Justice Robert Sheran outlined an approach to the legal competence issue that focuses on legal education after admission to the bar. Chief Justice Sheran discussed Minnesota's mandatory continuing legal education program, the nation's first such program. In the years since 1975, twenty seven other states[1] have joined Minnesota in requiring attorneys to complete some amount of legal education after admission to the bar. Often, it is a prerequisite to continued practice in the state.

**** (Quote greek philosopher on education as continuing)**** Mandatory Continuing Legal Education requirements recognize that learning does not stop upon graduation from law school or admission to the bar. In this era of expanded legislative and administrative activity, continuing education is an effective response that should improve the quality of service provided by attorneys. While some

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[1] Whittier, 641 (give full cite)

attorneys argue that the mandatory nature of some programs is improper and even unconstitutional, the benefits are undeniable. Attorney incompetence is as much a problem today as it was when Chief Justice Burger spoke of it in 1973. The response by Chief Justice Sheran's state and twenty seven other states has been an admirable approach to the improvement of the legal system. The discussion that follows provides the foundations of mandatory continuing legal education programs that remains relevant here in New York and all around the nation.

Corrected Version
Comp. Edit Dept

MINNESOTA PLAN: MANDATORY CONTINUING LEGAL EDUCATION FOR LAWYERS AND JUDGES AS A CONDITION FOR THE MAINTAINING OF PROFESSIONAL LICENSING *

* For the sake of editorial convenience, the first person singular has been retained. However. the text of the article is the joint work of the authors. The authors wish to thank Timothy Baland, Law Clerk to the Chief Justice during 1975-1976, for his assistance in the preparation of this article.

THE HONORABLE ROBERT J. SHERAN**

LAWRENCE C. HARMON***

* This article substantially embodies the text of the Sixth Annual John F. Sonnett Memorial ti.; lcture delivered by Chief Justice Sheran at the Fordham University School of Law on December 9, 1975.

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Iinneapolis, Minnesota, 1970-1973; Associate Justice of the -Supreme Court of the State of .Minnesota, 1963-1970, graduate of the Law School of the ersity of Minnesota, 1939; member of the American College of Trial Lawyers, and the. merican Law Institute.

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At the Sixth Annual John F. Sonnett Memorial Lecture, Chief Justice Sheran . of the Supreme Court of Minnesota presented a speech on Minnesota's decision to become the first state to mandate continuing legal educationfor all icensed attorneys and judges in the state. The purpose of the decision, which pitaslzes the quaiit of advocacy in Minnesota, was to implement the concept of Canon 6 of the Code of Professional Responsibility which provides that a lawyer should represent a client competently. This Article discusses the considerations and the process which led to the

adoption of the Minnesota plan.

I. INTRODUCTION

On April 3, 1975, the Supreme Court of Minnesota approved a program which requires all licensed attorneys and judges in the state to complete forty-five hours of postgraduate legal education every three years.[1] Why did we take this action? How is our plan

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[1] The Order of Promulgation reads as follows: 'IT IS HEREBY ORDERED. that the

ched Rules for continuing professional education of lawyers admitted to practice in Minnesota dopted and shall be distributed to the attorneys and judiciary of this state, to be effective

mediately .

IT IS HEREBY ORDERED that the Board of Continuing Legal Education shall classify, by the attorneyS and judges presently licensed in the State of Minnesota in three classifications of tantially equal size, for purposes of administration of and compliance with the said Rules.

e first class shall complete fifteen (15) hours of approved legal study between the dates of July 1. 1974 and June 30, 1976, inclusive. The second class shall complete thirty (30) hours of 4Pr°ved legal study between the dates of July 1, 1974 and June 30, 1977, inclusive. The third class shall complete forty-five (45) hours of approved legal study between the dates of July 1, 1974 and June 30, 1978. After the first period, each class shall complete the prescribed educational requirements during successive three-year periods."Ken took out the cite & put into note 20 Our order sparked some interesting media commentary. See Newsweek, Jan. 12, 1976, at 71; Kurland, Polishing the Bar, N.'. Times, Apr. 24, 1975, at 35, col. 1; Oelsner, Decision on Schooling for Lawyers Raises Broad Questions on Competence of the Profession, N.Y. Times, Apr. 8, 195, at 19, col. 2; Oelsner, Back-to-School Plan Weighed for Lawyers, N.Y. Times, Apr. 2, 1975, at 1, col. 1.

set up? How is it working so far? Questions like these need to be answered. Since Minnesota was the first state to make continuing legal education mandatory, and since other states are considering similar proposals, I welcome this opportunity to explain the origins and operation of the Minnesota Plan.

II. INTEREST IN MANDATORY CONTINUING LEGAL EDUCATION NATIONAL TRENDS AND FACTORS

In recent years a number of factors have come together to raise the issue of the post-admission competence of attorneys. Traditional wisdom tells us that a lawyer's time is his stock in trade. This maxim is true, as far as it goes, but today's attorney needs to offer both society and his clients more than his time in order to deserve the title "Counselor at Law." To serve his clients adequately, a lawyer must be able to apply specialized knowledge in a skillful and effective way. Since the law changes constantly, this is not an easy task. In Minnesota, the more

highly motivated and conscientious lawyers have traditionally availed themselves of voluntary continuing legal education (CLE) course offerings and other means of keeping current. For these attorneys, the advent of mandatory CLE simply formalizes practices which had previously been self-imposed. For attorneys whose skills have been eroded by time, or those who have not stayed up to date, mandatory CLE provides the incentive for doing what the times so clearly require.[2]

I mentioned that the law changes constantly. One can name almost any field of law and point to significant developments which have occurred in the last decade. For example, we now have no-fault auto insurance and fault-free divorce in many states.[3] Criminal law and procedure are hardly what they were ten years ago;

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[2] While Minnesota is the first state to require continuing education for attorneys, at least ten states have made continuing education a condition of relicensing for their physicians N.Y. Times, Jan. 29, 1976, at 24, col. 5.

[3] At least twenty states have no-fault auto insurance. Comment, No-Fault Automobile Insurance, 23 U. Kan. L. Rev. 141 (1974). For a recent state-by-state analysis of divorce laws. se Freed, Grounds for Divorce in American Jurisdictions (as of June 1, 1974), 8 Fam. L.Q. 401 (1974).

in both tax and bankruptcy law, major changes appear imminent.[4]

That change occurs constantly can also be statistically established. Consider these figures: in 1930, the U.S. Code contained three and one-half million words; today it contains twenty million words. In the bi-annual session of the California Legislature (1967), 1,725 laws vere enacted. In the 1973-1974 annual sessions, the California Legislature produced 2,825 new laws. In Minnesota's last bi-annual session, 966 las were passed; in 1973-1974, the number jumped to 1,365. ilar increases have occurred in the number of reported court decisions. In 1965, the West Publishing Company printed 208 Minneta Supreme Court decisions. Last year, 381 decisions appeared. For 11 volumes in the West system, state and federal, just over 28,000

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[4] The scope and dimension of the changes which have taken place in the last fifteen years in cnminal law and procedure are summarized in Bureau of National Affairs, The Criminal Law Re-olution and Its Aftermath: 1960-1972 i1973). Tax law changes are discussed in Symposium: Federal Tax Reform, 26 Nat. Tax J. 309 (1973) and Freeman & Baland, The Rich Get Richer and the Poor Get Taxes: Toward a Democratic Theory of Tax Reform, 2 Hast. Const. L.Q. 681 (19iS. Proposed changes in the Federal bankruptcy laws are now pending before Congress and ha-e been the subject of thorough study. See Report of the Commission on the Bankruptcy Laws of the United States. H.R. Doc. No. 13i, 93d Cong., 1st Sess. (1973).

decisions were reported in 1965; by last year, the number had risen to 40,847.[5]

Ethical Consideration 6-1 of the Code of Professional Responsibility states that the lawyer "should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle."[6] When one combines this precept with change of the magnitude just described, the conclusion is inescapable that some formal program of post-admission education is vitally important to the law's continued credibility as a learned profession. Additionally, unless the judicial system serves its functions adequately, others will act in our stead. In 1971, for example, a resolution was introduced in the California Senate calling for continuing education of professionals in various fields.[7] There have been

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[5] The statistics in this paragraph were provided by West Publishing Co., St. Paul, innesota.

[6] ABA Code of Professional Responsibility EC 6-1 (1975).

[7] Calif. S. Res. No. 211, introduced in the California Senate on October 18, 1971, by Senator George Deukmejian.

similar legislative rumblings in Minnesota,[8] and Minnesota and California are hardly unique in this respect.

The need for attorney post-admission education programs has, in short become self-evident. No one seriously suggests that our law schools--now training over 100,000 new attorneys[9]--can meet this need. While law school training is satisfactory for its purposes, the specific skills needed to serve the practical requirements of clients are, for the most part, learned "on the job," after admission to the bar. And the fact that we need to do a better job with our post-admission educational programs, or at least extend their reach and coverage, is attested to by rising malpractice claims against attorneys.[10] As in the medical field, there is no longer reluctance on the part of consumers of legal

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[8] Between February and May 1975, eleven bills affecting the legal profession were introduced in the Minnesota State Legislature. See the recommendations and report of the Commission on Legal Services. Minnesota State Bar Association, Oct. 4, 1975, 32 Bench and Bar of Minnesota no. 4, 21-23 (Oct. 1975).

[9] 110,713 students were enrolled in ABA-approved law schools in the fall of 1974. White, Is That Burgeoning Law School Enrollment Ending?, 61 A.B.A.J. 202 (1975).

[10] See Blaine, Professional Liability Claims: An Increasing Concern for Lawyers!. 59 Ill. B.J. 302 (1970); King, Legal Malpractice: The Coming Storm, 50 Calif. St. B.J. 362 (1975)

services to make claims for damages where the efforts of the attorney prove unsatisfactory. The fact that attorneys are novv potential y able for the nondisclosure of material information in S.E.C. registration cases is but one recent development in this area.[11]

When one adds up all these factors--the Code's precepts, legislative intervention, increasing malpractice claims, high-volume legislative and judicial production coupled with rapid change--the question becomes not whether we should have formalized post-admission attorney education programs, but rather what form such programs should take. Many different proposals have been

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[11] See the complaint filed by the S.E.C. in S.E.C. v. National Student Marketing Corp, 11971-1972 Transfer Binder] CCH Fed. Sec. L. Rep. 11 93,360 (D.D.C. 1972), dismissal of complaint denied, [1972-1973 Transfer Binder] CCH Fed. Sec. L. Rep. 11 93,820 (D.D.C. 1973) Many lau review articles on the expanding obligation of attorneys to disclose corporate fraud in SEC cases have appeared. See, e.g., Lowenfels, Expanding Public Responsibilities of Securities Lawvers: An Analysis of the New Trend in Standard of Care and Priorities of Duties, 74 Colum L. Rev. 412 (1974); Myers, The Attorney Client Relationship and the Code of Professi°nal Responsibility: Suggested Attorney Liability for Breach of Duty to Disclose Fraud to the Securities and Exchange Commission, 44 Fordham L. Rev. 1113 (1976).

suggested.[12] A discussion of the various alternatives to mandatory continuing legal education is beyond the scope of tonight's lecture, but before leaving the topic I would at least like to list some of the possibilities that were considered in Minnesota. We looked into post-admission plans based upon: (1) systematized peer review, (2) voluntary self-assessment testing, (3) mandatory periodic testing as a basis for recertification, (4) specialization by a method of certification, as in California, or by representation of special competence, as in New Mexico, and (5) improvement of instructional techniques, standards, and course offerings in voluntary programs.

In concluding this portion of my remarks, let me remind you that Chief Justice Burger, in this same lecture series two years ago,[13] decried the low state of trial advocacy and called for some system of certification of trial lawyers. The Chief Justice argued

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[12] See Parker, Periodic Recertification of Lawyers: A Comparative Study of Programs for Maintaining Professional Competence, 1974 Utah L. Rev. 463.

[13] Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?. 42 Fordham L. Rev. 227 (1973).

that advocates owe a duty of competence to their clients and to the courts. If this obligation exists for trial advocates, then it exists for all attorneys.[14] In Minnesota we concluded that mandatory continuing legal education is the best practical means to help insure that this duty is fulfilled.

III. INTEREST IN MANDATORY CONTINUING LEGAL EDUCATION: MINNESOTA DEVELOPMENTS

These various national developments and pressures--all spotlighting the need for more systematic approaches to the matter of attorney competence--took concrete shape in Minnesota during 1971. In that year, members of an advisory committee to

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[14] As David Brink has written: "In today's more complex, demanding, and consumer oriented society, what are the true priorities for action by the organized bar? In other times some principal priorities were for social and fraternal purposes or to resist incursions by less responsible and skilled groups. While these may continue as proper goals, today's legitimate bar association activities can best be ascertained in terms of the lawyer's duties. These are, in decreasing order of importance, duties to the public, duties to the profession, duties to the organized bar, and duties to the individual. Brink, Who Will Regulate the Bar?, 61 A.B.A.J. 936, 938 (1975). Mr. Brink, a member of the Board of Governors of the American Bar Association, is a Minneapolis attorney who was instrumental in the creation of the Minnesota plan.

Minnesota's voluntary CLE program read a New York Times article which told of several physicians in Oregon who lost their licenses to practice when they failed to comply with a mandatory continuing education program.[15] This article suggested to the committee that it was time for serious investigation of ways to ensure the continuing competence of attorneys practicing in Minnesota. A special Study Committee was established to investigate mandatory CLE and other alternatives. Special attention was given to what other professional organizations were doing. A consensus gradually developed that mandatory continuing legal education was the best solution for Minnesota.

The preliminary report of the Study Committee was a major topic of discussion at the 1973 State Bar Convention. Out of that convention came a resolution that 1974 would be a "year of communication" on the subject. As a result, approximately twenty meetings between committee members and local bar groups were held all across the state. At the July 1974 State Bar Convention, the

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[15] N.Y. Times, Jan. 9, 1972, at 63, cols. 6-8.

delegates voted overwhelmingly to approve the committee's proposed rule instituting a mandatory CLE program. Hearings were held that fall and winter at the Minnesota Supreme Court; judges as well as attorneys were brought within the ambit of the rule, and on April 3, 1975, Minnesota became the first state to adopt mandatory continuing legal education.

The fact that the initiative for a mandatory program had come from the State Bar Association, and the fact that there was substantial support for such a program throughout the bar, weighed heavily in the court's decision to adopt mandatory CLE.

Another important consideration was the fact that in Minnesota there existed strong voluntary CLE programs for both attorneys and judges.[16] Courses for attorneys in the state had been conducted

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[16] See Final Report of the Study Committee on Continuing Professional Competence, Minnesota State Bar Association, Mar. 16, 1974, 30 Bench and Bar of Minnesota no. 9, 21 (Mar1974), where the following comment appears in response to the Committee's rhetorical question as to why Minnesota should be the first state to mandate continuing education for lawyers: "[T]he existing [voluntary] program of continuing legal education in Minnesota is an excellent one On per capita lawyer basis, the Minnesota program ranks favorably nationally. The availabilitY d this excellent existing program makes Minnesota a logical candidate for the introducti°n d mandatory continuing legal education. " Id. at 24.

since 1965 by Minnesota Continuing Legal Education, a cooperative program of the Minnesota State Bar Association and the Continuing Education and Extension Office of the University of Minnesota. In terms of the state's attorney population of about 7,500, Minnesota CLE is probably the most active state organization. In 1974-1975, for example, it sponsored thirty-seven different courses, for which more than 7,100 individuals registered.

Judges and other court personnel in Minnesota have been offered individualized educational programs since 1973 under the auspices of the Office of Continuing Education for State Court Personnel. The office, unique in the nation, offers courses and a forum for professional interchange among judges, clerks, court administrators, prosecutors, defense counsel and law enforcement personnel. Recent programs have ranged from seminars on the new Minnesota Rules of Criminal Procedure to a session on judicial writing co-sponsored with the Wisconsin Supreme Court's Judicial Education Center.

Another important factor leading to the institution of

mandatory CLE was the developing legislative interest in the area. During the 1975 session of the Minnesota Legislature, eleven different bills were introduced affecting matters of interest to attorneys.[17] Among the bills were measures which would have: (1) permitted specialization identification, (2) repealed the attorney's lien law, (3) required attorneys to post fees, (4) barred attorneys from serving in the legislature, (5) permitted lay persons and corporations to practice law, (6) segregated attorneys into solicitor and barrister classifications, and (7) allowed the director of consumer affairs to investigate charges against attorneys.

The bills were wide-ranging in their potential impact; moreover, they were introduced by one of the state's most influential senators during a period when fallout from Watergate and a heightened sense of Consumerism had combined to create a potentially volatile atmosphere in the legislature. I believe the bar in Minnesota took the position that a mandatory educational

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[17] See note 8 supra.

program under the control of the judiciary was preferable to one which might be imposed by the legislature, and the initiative of the bar in the matter was a natural consequence of that position.[18]

Also of interest was the fact that the State Medical Association in Minnesota had formally approved a program which conditions association membership on attendance at educational sessions. Minnesota dentists have operated under statutory competency requirements since 1969; legislation requiring continuing education for nurses in Minnesota as passed in 1975.[19]

I mention these developments to give you a sense of the situation that existed during the fall and winter of 1974-1975 when our court was considering this matter. Though we were the first

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[18] Even if it had been the legislature which mandated continuing legal education, the enactment would no doubt have been subject to strong constitutional challenge. See Sharood v. Hatfield 296 Minn. 116, 123, 210 N.W.2d 275, 279 (1973), which held that legislation affecting the right of the Minnesota Supreme Court to regulate the practice of law in the state was an unconstitutional usurpation of powers reserved to the judicial branch.

[19] 11 Minn. Stat. Ann. ^U 150A.09(2) (1970) requires dentists in the state to take at least twenty hours of continuing education course instruction every five years. Minn. Session Laws, ch. 240 (19,.) provides for a program of mandatory continuing education for nurses in the state. Rules and regulations affecting the nurses are to be ready for legislative review by January 1, 1 7 the program becomes effective January 1, 1978.

court to order mandatory CLE, our decision is not altogether remarkable considering the circumstances which I have outlined. Yet, at the same time, we were cognizant of the pioneering aspects of our decision, and I personally was always aware that we ought not to make mandatory that which could be achieved as well, or almost as well, voluntarily. In the end, we adopted mandatory continuing legal education, but it was not an easy decision.

IV. THE MINNESOTA PLAN IN OPERATION

On the basis of our experience to date with mandatory continuing legal education, it appears that the critical factor in its success is the work of the Board in supervising the operation of the program. The Minnesota State Board of Continuing Legal Education is a thirteen-member agency composed of a chairperson, three laymen and nine lawyers, including one judge of general jurisdiction. The Supreme Court appoints the chairperson and all members of the Board, as well as an Executive Director who serves as the administrator of the program. The Board has general

supervisory authority over the operation of the rules.[20]

The Executive Director initially determines whether courses submitted to the Board should be accredited and, if so, for how many hours. The Board thereafter reviews course approvals and disapprovals and may elect to overrule the Executive Director's decisions.[21]

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[20] Rules Relating to Continuing Professional Education, Supreme Court of the State of Minnesota, no. 45298, Order of Promulgation (April 3, 1975) [hereinafter cited as April 3d Order]. Supreme Court Rule 2 reads in pertinent part as follows:

"There is hereby established a State Board of Continuing Legal Education, to be appointed by this Court, consisting of 12 members and a chairperson. Three of the members of the Board other than the chairperson may be persons who are not members of the Bar of this state. Each other member of the Board, with the exception of one who shall be a District Judge, shall be a member of the Bar of this state who practices in Minnesota with his principal office located in this state.... The chairperson of the Board shall be appointed by this Court for such time as it shaU designate and shall serve at the pleasure of this Court....

"The Board shall have general supervisory authority over the administration of these rules. The Board shall accredit courses and programs which will satisfy the educational requirements of these rules and shall discover and encourage the offering of such courses and programs.

"The Board shall at all times be subject to the direction and supervision of this Court in aO matters . "

[21] Rule 108, Rules of Minnesota Board of Continuing Legal Education (adopted and effective Nov. 6, 1975) [hereinafter cited as Board Rules], reads as follows:

"(a) Determinations. The Executive Director shall, in response to written requests for approval of courses, awarding of credit for attending of or teaching in approved courses, waivers, extensiON of time deadlines, or interpretation of these Rules, make a written response giving appropriate reasons for the determination. The Executive Director may seek a determination of the Board before making a response. At each Board meeting the Executive Director

The Board's decisions are made in light of written standards.[22]

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shall report to th Board on all determinations made since the Board's last meeting together with observations and comments relating to other matters under the Board's jurisdiction.

"(b) Review. The Board shall review any adverse determination of the Executive Director The lawyer or sponsoring agency affected may present information to the Board in writing or

person or both. If the Board finds that the Executive Director has incorrectly interpreted the fact or the Rules it may take such action as may be appropriate. The Board shall advise the lawYer or sponsoring agency of its findings and any action taken."

e. Participants shall attend courses in a suitable classroom or laboratory setting devoted to the educational activity of the program. .o course will be approved which involves solely TV vievinR in the home. correspondence work or self-study. Video. motion picture or sound tape presentations may be used provided a faculty person is in attendance at all presentations to comment and answer questions.

f. Ordinaril! credit will not be given for speeches given at luncheons or banquets.

B . Iist of all participants shall be maintained by the sponsoring agency and transmitted to the Board following the presentation of the course.

h Credit -ihall be awarded on the basis of one hour for each 60 minutes actually spent in attendan,e at an approved course.

i A law!er shall not receive credit for anv course attended before being admitted to practice law in .linnesota but one so admitted may receive credit of one hour for each 60 minutes actually Spent in attendance, for attending for credit or as an auditor of a regular course offered by a law sChool approved by the American Bar Association. "

[22] Rule 101, Board Rules, supra note 21, reads as follows:

"The following standards shall be met by any course for which credit or approval is s0UghL a. The course shall have significant intellectual or practical content.

b. The course shall deal primarily with matter directly related to the practice of law or to th professional responsibility or ethical obligations of the participants.

c. Each facultv member shall be qualified by practical or academic experience to teach the sUbJect he or she covers. Legal subjects

Chief among them is a requirement that the course relate primarily to the practice of law or the lawyer's professional responsibility. Other standards urge the sponsoring agency to provide an atmosphere conducive to a sound educational experience. Ideally, all courses are offered in well-lighted, comfortable facilities. Each participant should have a writing surface. Typically, each course is accompanied by carefully prepared written materials that are distributed to the participants no later than at the time of registration. The faculty must be well-qualified by education and experience to teach the subjects covered.

So far, the Board has approved 750 courses. Sponsors range from large, well-known organizations like the Practicing Law Institute,American Law Institute and Minnesota Continuing Legal Education, to small, recently organized groups like the Minnesota

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should normally be taught by lawyers. . , d. While written materials need not be distributed for every course, thorough, high qual readable, carefully prepared written materials should be distributed to all partiCiPants a

before the time the course is offered whenever practicable. ;

Practice Institute, a for-profit private offshoot of Minnesota Bar Review, Inc. In between, one finds courses sponsored by local bar associations. "In-house" training seminars for attorneys in larger law firms have also been accredited.[23]

Most of the courses submitted to the Board have been approved, although decisions have sometimes been made in the number of credit hours allowed. Courses have been rejected when they were oriented more toward business than legal considerations or were not sufficiently keyed to legal practice. For example, a course on accounting and real estate transactions was not accredited. A television series on the subject of bankruptcy was refused approval because it was not conducted in an academic setting.

Course offerings coupled with social occasions are also disfavored under the rules, although the last convention of the bar association did feature four seminars totalling twenty hours of course work. These sessions were conducted in facilities separated

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[23] The information in this paragraph was provided by The Office of the Executive Director, Minnesota State Board of Continuing Legal Education. This information represents the situation in Minnesota as of January 1, 1976.

from the convention itself.

Courses certified by the State Board differ in scope, as well as subject matter, from those subjects traditionally taught in law schools. Law school instruction typically provides in-depth analysis of legal problems and trends. The CLE programs are primarily refresher courses in relatively narrow areas of the law, which are designed to update the participant on subjects with which he has some familiarity; only about twenty percent of the sessions present information which is completely new to the average practitioner.

Approved courses fall into two basic categories: about ninety percent are refresher curses designed to bring participants up to date in specific areas; the remainder emphasize performance techniques rather than information. Within these two categories, the range of courses is impressive. Recent Minnesota CLE offerings, for example, have included courses on Basic Securities Law, Professional Responsibility, and a seminar on Advising the Client in Tax Fraud Cases. A legislative wrap-up seminar and a

course on the new Minnesota Probate Code were among the courses offered at the last State Bar Convention; a Patent and Trademark seminar is scheduled for early 1976.

Since mandatory continuing legal education went into effect, the number of course offerings and registrations has risen dramatically. Minnesota CLE presented eighteen courses in the first four months of its last fiscal year; in the corresponding period this year, twenty-seven courses have been offered--a fifty percent increase. Registrations have jumped from 3,370 in the first four months last year to 5,900 during the same period this year; if one counts some 1,200 registrations which were not accepted because courses were over-subscribed, then total registrations in the first four months of this fiscal year already equal the number achieved in all of 1974-1975.[24]

Attorneys who do not wish to fulfill the requirements of our mandatory plan can choose "restricted status." An attorney so

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[24] These statistics were provided by John B Wirt, Director, Minnesota Continuing Legal Education.

classified can still represent certain close relatives or a single employer in Minnesota. The Board can grant a waiver of the rules or an extension of time in which to comply in cases of hardship or in other extenuating circumstances. Absent restricted status or hardship, non-compliance results in an investigation and hearing conducted by the Board, followed by a report to the Supreme Court, where "appropriate disposition" is to be made.[25]

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[25] Restricted status is provided for by Rule 3, April 3d Order, supra note 1. Supreme C° Rule 3 in pertinent part reads as follows: . 3 "A restricted attorney shall not be required to maintain the educational requirements provided , by thest rules. ()ther than himself. he may not represent any person in any legal matter or , proceedins ithin the State of Minnesota except a full-time employer. spouse, son, daughter, . father. mother. brother, sister, father-in-law, mother-in-law, brother-in-law, or sister-in-law. udge. referees. judicial of ficers, or magistrates of any court of record of the State of Iinnesota, or attorneyls sering as legal counsel in any goernmental unit of the State of Minnesota, are not e!igible to appl! for restricted status until they retire or lea-e their position."

Rule i also pro ides for wai ers and extensions:

"In indi idual cases, the Board may grant waiers or extensions of the minimum educational or the reporting requirements.'

Rule co ers non-compliance procedures:

"If n .cti e attorney tails to complete the minimum educational or the reporting requirements to the atisfaction of the Board. the Board shall report such failure to the Supreme Court for appropriate disposition.

'The oard of Continuing Legal Education. before reporting any matter to the Court, shall ln estidte the facts in order to make a report on the reasons for noncompliance incluading affordin the lawer inoled a hearing, upon his request, in accordance with the principles of the (iue procecs of law. The Board shall. howeer, before reporting any noncompliance to the Court, ;3ttempt to resole all matters on a confidential basis." The Board has adopted rules

V. THE STATUS OF MANDATORY CONTINUING LEGAL EDUCATION IN OTHER STATES

Minnesota is the only state with a mandatory CLE program presin operation; Iowa joins us ir. January. The Wisconsin Supreme urt has approved in principle a mandatory plan similar to Iowa's, d in orth Dakota a proposed rule based upon Minnesota's has the animous backing of the orth Dakota State Bar Association and is bout to be submitted to that state's Supreme Court for consideration. Elhe Supreme Courts of New Mexico, Utah, and Washington also have prOposals for mandatory CLE under consideration.[26]

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to carrl out the directi es of the Court's .pril 3d Order. See Board Rule 109, supra note 21.

[26] The facts stated in this paragraph and throughout the balance of Part 7 come from letters receleri by tht Chief justict during October and Noember 1975 in response to state-by-state inquriei on hii part as to the current statuj of continuing legal education in each state. Responses

In a handful of other states_California, Idaho, Kansas, and arland_final drafts of plans are pending before the State Bar

SSociations In Kansas, a mandatory system won Kansas Bar Assocition Eecutive Councll approval a year ago. Since then, a motion by tbe Association asking the State Supreme Court to adopt mandatory

LE has been made and then tabled; the future of the project depends upon what kind of consensus develops.

In California, legislative pressure relative to lawyer competence dates back to 19,1. The Board of Governors of the California Bar Assocition has now approved in principle a proposal which calls for

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ert rtceled trom all jurisdictions including Puerto Rico and the District of Columbia. lntornllltlon in Part i' relatie to the current situation in Wisconsin, Iowa, and North Dakota was Conhrme(i h! phone conersation in December 1975. See also Parker, supra note 12, at 81-86.

the periodic relicensing o attorney s conditioned upon elther their accumulation of approved educational credits, or their professional re-examination. California's tentative plan calls for sixt credits elery fi e ears, with a certain minimum number of credit hours to be deoted to specific subject areas, including ethics. Alternati-el!, an attorney- could maintain his license to practice b successfull- passing a state bar examination within the two ears precedin the expiration of his license.[27]

Wisconsin s eperience w ith mandator CLE is worth mentioning in more detail. The Wisconsin Supreme Court held a public hearing on the matter in March 1975. In May, it announced its support for the principle of compulsor CLE, e en though onl four of the se en justices -oted to adopt the resolution which committed the court to adopting rules instituting mandatory CLE within a reasonable time. Also in Ma, again by a 4-3 decision, the Wisconsin Supreme

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[27] Letter from James H. oacs, Program Director, California Board of Legal SpecialiZation. to Chief Justice Robert J. Sheran of Minnesota, October 8, 1975.

Court ordered that an adisory referendum on the issue of mandator CLE be held, with all active la ers in the state (about ,,700) eligible to ote. The results of the referendum are now in, with 3,90j ballots in faor of mandatory CLE and 1,551 against.[28] Whether the court would have backed away from its resolution to adopt a mandatory system had the results of the referendum been less one-sided is an open question. Also of interest is the 4-3 ote and the decision to issue a statement lending the prestige of the court to the concept of mandatory CLE when the members of the court were themselves split on the merits of such action.

Sixteen states are not activel considering mandatory continuing legal education at present. Nevv York and New Jerse are in this group. In twent-six other states the subject of mandator postadmission education is under study b bar associations or committees, and it can be expected that the experiences of the

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[28] Letter from Chief Justice Horace W. Wilkie of Wisconsin. to Chief Justice Robert J Sheran of Minnesota, October 2. 1975.

states which already ha-e mandator CLE ill be instructive. In Michigan, for example, an entire issue of the State Bar Journal was de oted to a discussion of the topic.[29] Hearings are being scheduled around that state, much as was done in Minnesota, so that a consensus might deelop before any action is taken.[30]

[HERE PUT IN A SMALL SUMMARY OF WHAT WAS SAID IN THE DELETED PART]

VI. OBJECTIONS TO MANDATORY CONTINUING LEGAL EDUCATION

Numerous objections to mandatory continuing legal education have been raised.[31] They fall into two main categories: (1) that

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[29] Mandator Continuing Legal Education_U'hat, Where. Ho, When, Wh. Wh! Notand Whether, 5 1 Mich. St. B.J. 760 i 1975).

[30] Id. at 761.

[31] The most widely available compilation of the objections to mandatory continuing legal education appears in Wolkin. A Better Way to Keep Lawvers Competent, 61 A.B.A.J. 574 (1975) and Wolkin, More on a Better Way to Keep Lawyers Competent, 61 A.B.A.J. 1064 (1975). Criticisms of mandatory CLE also surface at conferences on the topic. See. e.g., Bingaman, Lawyers Competence: Mandatory Continuing Legal Education; Carroll, The Economics of Continuing Legal Education. These latter two papers were included in materials made available to participants at the A.B.A. sponsored National Conference on Continuing Legal Education, held November 10-12, 1975, in Chicago. Parker also mentions various objections to mandatory CLE. Parker, supra note 12, at 477. The sources listed in this note provide the basic research material for Part VI of this Article.

one or another of the various alternatives to mandatory CLE is more likely to insure professional competence, and (2) that mandatory plans like Minnesota's are either misguided or not sufficiently rigorous in what they require.

I have already referred in passing to some of the main alternatives to mandatory CLE, and I have outlined the reasons why Minnesota decided as it did. A more complete analysis of the merits and disadvantages of the alternatives to mandatory CLE is beyond the scope of this lecture. I would, however, like to comment briefly on some of the criticisms in the second category.

It has been suggested, for example, that lawyers attending mandatory post-admission educational courses should be tested to determine whether they have assimilated the course material. Some argue that the programs are excessively lenient in permitting the lawyers to prove attendance at mandatory educational courses merely by stating the time and place of the course attended. It has been suggested that some authority other than the lawyer himself should determine his needs and prescribe the courses necessary to answer

them. It seems to me that these are not arguments against the idea of mandatory education as such, but are, instead, arguments that its principles should be extended farther than has so far been considered advisable. If experience proves that testing, monitoring, and course prescription are needed and ill serve a useful purpose, there is nothing in the concept of mandatory education which will prevent use of these additives.

The claim has been made that mandatory programs will dilute the health educational impact of voluntary programs. The point is made that an attorney who voluntarily attends a course does so because he is highly motivated and that motivation is the key to the learning process. It does not follow, however, that the advent of compulsory CLE means the end of motivation. On the contrary, it would appear that lawyers who are presently attending continuing legal education courses voluntarily will be even more likely to go back to school under a mandatory system, because, in effect, the importance of what they have been doing all along has been officially recognized.

Another argument is that mandatory CLE emphasizes appearance at the expense of reality, that the result achieved is "cosmetic" rather than substantive. Mandatory CLE is seen as an overreaction to "consumer demands" upon the profession. But, in my view, we should expect that the public will approve a plan requiring refresher education for attorneys. At a time when the legal profession is so often criticized and misunderstood, a program should not be rejected simply because it is responsive to public demand. To the extent that lawyers accept mandatory educational programs purely for the sake of the appearance of things, the solution, it seems to me, is to make the fact conform with the appearance rather than to reject the program out of hand.

What about costs? Won't mandatory CLE be inordinately expensive? In Minnesota, the budget for the administrative operation of the program is estimated at $35,000 per annum. We have raised this money by adding an extra $5.00 to each attorney's

annual registration fee.[32] For courses which are locally sponsored and presented, the cost of a day's instruction (five and one-half to six and one-half credit hours) averages about $40.00, or $8.00 an hour. This means that an attorney who receives fifteen credits per year would spend about $125-$150 each year in course registration fees. To this, of course, must be added any travel expenses and the cost of time away from the office, but, however one adds up the figures, it is difficult to conclude that mandatory CLE is inordinately expensive or likely to work financial hardship on most attorneys.

It is argued that a mandatory program imposes hardships on certain lawyers for example, the aged practitioner, or legal scholars and judges who, by the nature of their work, are already involved in a post-admission educational process far more rigorous than that prescribed by a mandatory plan of continuing legal education. The "hardship" argument is also raised in connection

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[32] Minnesota had 7,484 registered attorneys as of December 31, 1975. This information was provided by the Minnesota Supreme Court Office of Attorney Admissions and Registrations.

with corporate counsel or military legal personnel whose responsibilities or assignments require them to locate in states other than where they are admitted to practice. It is my impression that these cases are exaggerated. To the extent that they are real, methods of accommodating any problems which occur can be easily enough employed. In Minnesota, for example, an attorney may choose "restricted status" and still represent certain close relatives or a single employer.

The idea that mandatory CLE somehow infringes upon an attorney's independence or freedom of choice is an often-voiced, but to me unconvincing objection to mandatory CLE. To become an attorney, one must graduate from an accredited law school and, in most states, pass a bar examination. Once admitted, an attorney is constrained by the Code of Professional Responsibility as adopted in his state. Chief Justice Burger has suggested that attorneys not be admitted to practice in the federal courts unless they first satisfy certain minimal requirement of experience and competence, and the Second Circuit is studying proposed rules to

this effect.[33] No matter how independent they maybe, lawyers will accept regulation when the need is clear.

Other arguments sometimes encountered are these: that mandatory CLE emphasizes the quantity rather than the quality of course offerings; that mandatory CLE will not provide courses for lawyers who have particular, specialized needs; that lawyers will not be discriminating in their selection of courses under a mandatory CLE program; that mandatory CLE will place greater stress on exposition than participation and that therefore the educational exchange will be less effective.

On the latter point, I don't believe that a mandatory program will have an effect on the ratio of expository to participatory

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[33] See .ew Admission Rules Proposed for Federal District Courts, 61 A.B...J. 945 (1975), uhi(h di.cus ies a report on this topic prepared b- the Judicial Conference of the Second Circuit. See alo Ehrlich. A Critique of the Proposed New Admission Rules for District Courts in the Second (irclit 61 A.B.A.J. 185 (1975); Kaufman. A Response to Objections to the Second clr(lit Propose(l District Court Admission Rules. 61 A.B...J. 1514 (19iS); N.Y. Times, Nov. 2 19, at 11, col. 1. Commentar has also appeared in the .New York Law Journal. See Frankel. Ill-Advised Rulcs for Bar Admission, 174 N.Y.L.J., Dec. 31, 1975, at 1, col. 4. Judge ran speech drew strong criticism from Chief Judge Irving R. Kaufman of the Second Cir(uit Court of Appealc ('hief Judge Kaufman was joined in his criticism by Simon H. Rifkind, a memher of Paul. Weiss, Rifkind. Wharton & Garrison. 175 N.Y.L.J., Jan. 7, 1976, at 1, col. 3.

courses. Competition among sponsors should ensure quality as well as quantity in course offerings. Specialized courses are in fact regularly offered in Minnesota. And it seems to me that a lawyer who spends his time and money to attend legal seminars will, out of self-interest alone, be careful in his selection and alert in his participation.

Obviously, there are risks in mandating a program where experience is a limited as is the case with post-admission legal education. On the other hand, it may be that many of the apprehensions voiced with resect to mandatory CLE have been overstated. In any event, in Minnesota we decided that the need, coupled with the prospect of success was worth the risk of disappointment. At worst, we should be able to improve our programs in light of practical experience.

II. CONCLUSION: THE SYMBOLIC ASPECTS OF MANDATORY CONTINUING LEGAL EDUCATION

There is a measure of symbolism involved in the mandatory

continuing legal education movement. Those who oppose mandatory CLE see it as a symbol of unjustified interference with an attorney's independence, on the theory that the lawyers should be left free to determine for themselves an ongoing course of study. This reasoning is troublesome. First, it assumes a measure of independence for attorneys that does not exist. Second, we know from experience that the freedom to prescribe one's own course of study too often results in little being done to maintain professional competence. Of course, the sensitivity of the legal matters with which lawyers and judges deal requires that they have a certain amount of autonomy in arriving at their professional judgments. But their freedom must necessarily be circumscribed, if required in the public interest. Events in Minnesota brought us to the conclusion that the public interest and the good of the profession required action on the issue of maintaining professional competence; mandatory continuing education was the result.

Those who favor mandatory continuing legal education also find it symbolic. To them it symbolizes a commitment to the proposition

that the lawyer has a duty to remain competent for the duration of his practice. The importance of this obligation cannot be overemphasized, for unless he remains competent, an attorney cannot hope to satisfactorily perform his duties to the public, the profession, his clients, or himself. The Minnesota Plan reflects our judgment that an obligatory process is a timely and effective means for achieving this crucial objective.