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# Round Table on Law School Objectives and Methods

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ter motivated to perform effectively on the test if it is cast in the language used in the profession they are seeking to enter. It makes the taking of the test seem reasonable to them and stirs their interest. In fact, we have had some experience with simple, scientific problems where

those taking the test have refused to answer them at all because, in their estimation, it is perfectly ridiculous to ask a lawyer that kind of question.

I am afraid I have run over my time, but it is difficult to compress this within the twenty-minute limitation.

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## Round Table on Law School Objectives and Methods

*Association of American Law Schools, Thirty Seventh Annual Meeting, Chicago,  
December 29, 1939*

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TOPIC FOR DISCUSSION: "RESOLVED THAT THE ASSOCIATION OF AMERICAN LAW SCHOOLS SHOULD RECOMMEND TO MEMBER SCHOOLS THE ESTABLISHMENT OF A FOUR-YEAR CURRICULUM IN LAW."

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MAURICE H. MERRILL

*Professor of Law, Univ. of Oklahoma, Norman, Okl.*

MR. Chairman, Ladies and Gentlemen: I was in conversation yesterday with one of my very good friends who likewise was one of the long-suffering victims of the inquiry which my subcommittee made of members of the faculties of schools using the four-year plan. There was some comment concerning the report which the subcommittee had submitted. Purely by way of pleasantry, with no thought of provoking the response I got, I said to him, "Well, of course, you remember the old saw about the fool and the wise man," and with the heartfelt accents of one at last getting an opportunity to voice his true sentiments, he said, "Well, you certainly did play the part." I was properly put in my place.

I don't know just exactly what I am called upon to say here. I assume that most members of this assemblage are literate, and I assume, also, that, being careful lawyers, you have thoroughly perused what was put in your hands. Of course, what is contained in the subcommittee's report was just about as

thoroughly summarized and digested as we knew how to do. Then, to be asked to digest a summary is somewhat disconcerting.

I think, perhaps, all I should do at this time is to emphasize one or two things which remain the most thoroughly imbedded in my own mind as a result of reading the very excellent responses which came to the subcommittee from the faculties of the four-year schools, prefacing those remarks, of course, with what I think is axiomatic in almost any field of human research, particularly so in respect to this matter, namely, that all conclusions must be tentative, and that probably at this time the entire program is so experimental that it is very difficult to say that the experience of the schools affords any basis for definite or long enduring conclusions.

In the first place, it has seemed to me that the experience recorded by the four-year schools indicates that very probably it is unwise to attempt to present both a three-year program of legal education and a four-year program at the same

time. There are certain elements of competition that seem to make it impossible for both programs to survive side by side.

In the second place, probably the objective of a four-year course should be not simply to offer more courses of the same general nature as those which are presented under the traditional three-year program, though there are some schools which seem to feel that their experience has been relatively happy with that sort of a program. The general consensus of both the schools that have attempted to broaden the nature of legal training and the content of their educational program and those which have merely added more courses when they put in the four-year plan seems to be that it is desirable to attempt something more than just an additional year's training in the ordinary type of law courses.

Then this last conclusion which, of

course, is no more profound than anything else that has been said here, and may appeal to you as entirely superficial, a thing you could have said to yourselves without having this subcommittee send out a lengthy questionnaire: The kind of a four-year course, the extent of the program, the degree of pioneering and exploration of new fields and new methods of education which can be attempted under a four-year course will depend very largely upon the resources of the particular school, its resources in faculty and its resources in money because, after all, it does take money to do very much experimenting and pioneering these days. I have been impressed with that fact as the returns have come in. After all, the schools from which we may expect the greatest amount of investigation in new fields are those which have the largest amount of resources.

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DALE F. STANSBURY

*Professor of Law, Wake Forest College, Wake Forest, N. C.*

I thank Dean Merrill for relieving me of the necessity of explaining one embarrassment, that of condensing into a two-minute summary a report which covers fifteen printed pages and which itself is a condensation of a pile of questionnaires twenty-four and seven-tenths inches high.

I need not tell any of you that we sent out questionnaires. All of you have seen them and most of you answered them. If you forget exactly what was in them and care to be refreshed, you will find them set out verbatim beginning on page 65 of the program.

One questionnaire was sent to the deans. I will pass that over very quickly. It called for plans that might be in effect in the schools with respect to adopting the four-year course. Out of 68 that answered, only 11 appeared to be favorable to the adoption, even when circumstances permit, of a four-year plan. A number of others were undecided. Of the eleven who were favorable,

only two had definite plans at this time for putting a four-year course into effect. The details will be found on pages 51 to 53 of the report.

Then a questionnaire was sent to the teachers seeking, roughly, three things: First, how do you feel about this four-year plan? Are you for it or against it or haven't you made up your mind yet? Second, why? That is, what are the arguments for and against it? Finally, in the event you should have a four-year plan, what would you put into it?

We find on page 54 a tabulation of the results of that first inquiry. The highlights, I think, are, first that a majority are in favor of an optional four-year law course, and, at the other extreme, that some 88 per cent are unfavorable to an Association requirement of a four-year course. This, of course, leaves entirely open the disposition of the resolution that forms the topic of discussion at this round table.

Then on pages 55 and on, for a few

pages more, you find a summary of the arguments that were given for and against the four-year course. The questionnaire suggested three arguments in favor and nine arguments against the course. I hardly need state that that does not indicate any bias at all on the part of the committee. We just thought of all the arguments we could think of. Also, an explanation of the system we used in evaluating the answers, just enough explanation, I think, to convince you that we had a system, but not enough to get us in dangerous territory, by showing exactly what the system was.

I think the most informative part of the report deals with the opinion as to the arguments against the four-year course. I confess to considerable embarrassment when the answers began to come in. I found that probably the most obvious and certainly one of the most important arguments hadn't been suggested in the questionnaire, and that is the argument that we have got to let these boys start practicing law at an early enough date that they will have time enough left in their lives to develop their careers—just

purely a question of time. I wondered why in the world we hadn't thought of a thing like that. Finally, I decided, as far as I was concerned at least, it was just a case of not seeing the forest for the trees. I started with that idea and tried to split it up, with the result that I got a number of other arguments and omitted that one.

The very predominant feeling was that the chief argument against the four-year course was the financial burden on students (as it was put in the questionnaire). I am very much inclined to think that that was interpreted rather liberally by a large number of those who answered the questionnaire, and it was not entirely a financial burden but just a general burden—that we were expecting too much of the students.

The last part of the questionnaire—the suggestions as to the nature and content of a four-year course—cannot be condensed any more than it already has been in the report, and if you want to find out about it, I am afraid you will just have to read the report.

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ALFRED HARSOH

*Professor of Law, Washington University, Seattle, Wash.*

Mr. Chairman and Gentlemen: Nineteen years ago the subject which we are scheduled to discuss this morning was before this Association for consideration. At that time a report of a special committee appointed the previous year to consider the advisability of recommending the increase of the law course from three years to four years was before you. Such a recommendation had been unanimously approved by the Executive Committee two years earlier, but the majority report of the special committee was not favorable and this report was accepted by the Association.

One member of the committee, Dean Wigmore, submitted a vigorous dissent, and set forth many of the arguments which are currently urged in favor of such a program of law instruction.

Since that time the matter seems not to have been formally considered, although throughout the intervening period there have been one or more member schools which, with more or less vigor at various times, have been experimenting with such plans. But it has been only within the past few years that a sufficient number of schools have inaugurated four-year programs and a sufficiently large number of teachers in the law schools have evidenced enough interest in the matter to have the subject again brought up for discussion before this Association.

The resolution, as stated by the Chairman, consists of a recommendation "that member schools adopt a four-year curriculum in law." It is phrased in the form of a recommendation, not a re-

quirement. That which is recommended is a four-year curriculum in law, not any particular type of four-year program. This is well because the most cursory examination of the existing programs shows a wide divergence in them.

This examination seems to reveal two divergent objectives in the lengthening of the law school course:

First, to provide needed additional time in which to offer all students course instruction in areas of law for which the three-year course is inadequate;

Second, to provide a curriculum which lays greater stress upon economic, political and social phenomena and theories and their relation to law and the legal system.

The survey recently conducted by the Curriculum Committee of this Association reveals that these factors seem to be uppermost in the minds of all of the teachers who see some justification for the lengthening of the law course to four years.

Still, no one of the existing courses adheres strictly to a single objective. Rather, each one seems to represent an attempt to revise the curriculum of the law school in a manner which will afford not only lawyers schooled in a wider area of technical substantive law but in providing a background which will enlarge the entire mental equipment with which the lawyer has to work. The differences are those of stress, although the distances between the extremes is considerable, I must admit.

For my own part, I look upon the four-year movement as but one manifestation of a growing suspicion upon the part of a large number of law teachers in this country that a reexamination of our teaching techniques is presently needed. As such, I believe it calls for an examination not only of the content of and methods employed in the law school course but of the pre-legal training which our law students are receiving. To my way of thinking, the two are inseparable; they are but two somewhat artificially created aspects of the same problem

which we should no longer continue to treat as wholly distinct. But as other speakers on this panel will deal directly with this phase, I shall pass over it with this reference, and direct my remarks to the longer law course.

The divergent characters of the existing four-year programs no doubt represent different ideas as to what, if anything, is wrong with our present programs. Most of the present four-year programs seem to recognize that law school instruction should be broadened to include some areas which have not been covered in the usual three-year course. Particularly prominent in this respect is the public law field, and others might be mentioned. There are also other indications of the feeling that professional deficiencies exist. This is represented by the addition of the requirement that students undertake to do some independent research and acquire some facility in presenting the results of such work in acceptable written form.

Others of the present four-year programs indicate the belief that our law graduates should and must have more positive familiarity with existing theories in the closely related fields of thought and more surely see how closely knit with economic, political and social phenomena is the law. But even among those who are definitely committed to this view, it is apparent that differences of opinion exist as to the closeness of the bond between law and the so-called social sciences, as to the extent to which they can be successfully blended, and as to the methods to be employed in effectuating the desired integration.

The time allotted here does not permit me to give illustrations but I believe that an examination of some existing three-year as well as four-year programs would bear out these observations.

Another suggestion which I would like to make is that the law schools today are training men and women not only for orthodox practice of law but to occupy positions as judges, administrative positions in government, business executives and as leaders in community, state and

national affairs. If, as I suspect, a substantial number of our law graduates, because of their law training, are engaging in activities which are not wholly of a professional character, are we not also charged with the responsibility of examining our present programs of instruction to ascertain how well the training we give develops attitudes which are desirable socially in persons occupying such positions in our communities? And if this factor is to be recognized, to what extent should we alter our present programs in order to meet this situation?

However, even though we are ready to concede that a re-examination of our present methods is called for, we are still confronted with the question: Is a four-year course essential? To this I answer: We do not know, and we are not going to know unless some of us experiment. Clearly, a well executed 2-4 or 3-4 program is better than an inadequately conceived 2-3 or 3-3 course. A well organized 2-3 or 3-3 plan is better than a poorly done 2-4 or 3-4 curriculum. I visualize a good 2-4 program as better than a good 3-3 course. But I am not certain. And neither is any one of you yet. We shall find out only if some, as many as are able, of the member schools in this Association are willing to undertake thoughtfully constructed programs of an experimental character.

But even though I believe in the possibilities of the four-year law course, I do not believe that this Association should urge all of its members to embark upon such courses. At the outset, an important consideration is that of competition. Some schools might not be able to undertake such a program unless others in the same area which it serves did the same. The additional financial burden upon its students, if the combined college and law course is lengthened, must be considered, and student aid should be made available. Next, the faculty must be able to agree upon a program which is not so fraught with compromises as to destroy the possibility of gaining the objectives agreed upon. There must be promise of sufficient financial support to

enable the program to be put into effect, and unless a larger sum is made available than is had for a three-year course, it is unlikely that very much of a departure from present methods can be had, because the development of new techniques and new materials goes hand in hand with curricular revision of any kind. And this cannot be done unless the faculty is provided with time and means to develop themselves as well as their teaching materials.

But even with the obstacles which must be overcome in putting into operation such a program, I favor the resolution proposed. If there is any one thing which this Association ought to sponsor, it is improvement in legal education. This it has done to the extent of establishing certain minimum standards. But there seems to be a great deal of reticence upon other scores. Without law students we would not long continue to exist. To me, the educational function of a law faculty seems equally as important as the critical and scholarly services it performs. If this is true, and it appears to me that no one can dispute it, this offers an opportunity for the Association to at least lend moral support to critical study of and possible improvement in the techniques of legal education, without attempting, however, to control the lines along which such developments shall proceed.

For the present at least, I believe that we need to give attention not only to wider coverage of legal subject-matter but to the development of teaching techniques which will better develop the abilities and the attitudes which the law-trained man should possess, as well as to the creation of a greater awareness of how great is the commixture of law and other fields of learning. The extent to which this can be accomplished and the means of accomplishing it can be ascertained only if a number of us are willing to put into operation different plans and, through the various experiences, learn what is effective and what is not. To that end, we should urge all those willing and able to undertake the task to join in this movement.

*RALPH F. FUCHS**Professor of Law, Washington University, St. Louis, Mo.*

Mr. Chairman, Members and Guests of the Association: I presume I was placed upon this program as a representative of a school which has embarked upon the experiment of a four-year curriculum in the thought that, as the representative of such a school, I would naturally urge the adoption of the resolution which is before you this morning. As interpreted by Professor Harsch, I should be glad to see the resolution adopted for the reasons he stated, but I do not believe that any of us, certainly not my colleagues at Washington University, are urging that a four-year curriculum, whether optional or compulsory, should be adopted by all member schools, or even that experimentation with the three-year curriculum should cease and attention be diverted entirely to the four-year curriculum.

The justification for experimentation with the four-year curriculum is, I believe, as Professor Harsch has indicated, the same as the justification for other recent developments in legal education which followed the war. We are all more or less conscious of the fact that behind our legal doctrines, whether adopted by courts or promulgated by legislatures, and also behind many of the new procedures which are being employed, especially by administrative agencies, there lie economic, social, and political problems in terms of which these legal rules and methods can be explained. We realize I think, that the existing law curricula are not adequate for the purpose of building up in the student and, therefore, of creating in the lawyer an adequate appreciation of the reasons for the phenomena with which he deals.

Nor is this inadequacy confined to the field of public law. I have heard it suggested that the four-year curriculum is, to some extent, a conspiracy on the part of public law teachers to get a much larger share of the total time of the student while he is in law school. But I

suggest that the problems which will readily come to your minds, that have arisen in the practice of law because of the developments of which I speak, are by no means confined to the field of public law. One could spend the morning in enumerating legal phenomena which are not in the field of public law but which cannot be understood without an appreciation of the forces that lie behind recent developments.

Priorities among liens on movable personal property are being newly worked out by the courts in terms of changing conditions. Liquidation of debtors' estates and the problems of corporate reorganization are likewise responsive to newly-arising factors of an economic nature. Procedure in mortgage foreclosure, flotation of corporate securities, collective bargaining between employers and workers, the establishment of the wages and hours of labor in private employment, the price policies which producers and distributors of commodities pursue—these and many other daily concerns of people in private life, as well as in public office, with which the lawyer has to busy himself, are responsive to factors which at the present time we do not adequately cover in our law curricula.

Moreover, we are all aware that we have far from solved by legal means many of the problems which require solution by those means. The law graduate who is unable to appraise the tendencies in regard to these and, in his advice to clients or in his work in public office, wisely to shape future development is not adequately equipped for present-day needs.

In the legal curriculum which does adequately meet these needs, we shall require more than we have of materials that go behind the legal rules and the methods of legal agencies, to bring out the reasons for them. We shall need more emphasis upon legislative and administrative processes than we have had.

We shall need more attention than we have had to estimating future tendencies, and we shall have to devote more effort than we have to developing in students the ability, as Professor Harsch has said, to engage in research that goes beyond the law books and to evolve in written form, whether it be in the form of a brief or a paper or a draft of a legislative bill, solutions to some of the problems that confront us.

If we endeavor in legal education today to introduce these needed additional elements in the curriculum, we are confronted at once with the inadequate backgrounds of the students who enter our law schools. I need not say to a group which has been teaching law students how inadequate these backgrounds often really are. Few students have any appreciation whatever of the problems I have referred to with which the law must deal, and equally few of them have a real, deep-seated interest in the evolution of society or of the legal institutions which serve society and which they are proposing to operate when they leave law school.

I think it is probably impossible to introduce the added elements which we need in the face of the present inadequacy in the equipment of our entering students within the framework of the three-year curriculum. We are confronted, therefore, with the alternative of either endeavoring to improve the equipment of those who come to us or else of expanding our curricula to take care of the need within the law school.

I wish for myself to subscribe anew to the ideal which has actuated the law schools in the past of serving as professional schools for students who come to them as truly cultured individuals. I believe that the ideal of the truly cultured young person is not beyond attainment in the four-year college course. I should not be willing by adopting a compulsory four-year law curriculum and by requiring, as a condition of taking it, the type of development of the individual which I mentioned, to close the door to

the completion of law training in less than eight years of university work.

I believe that we certainly ought to maintain a three-year curriculum which will take the man who is the product of the four-year college course and who is a truly cultured individual and turn him out as a lawyer at the close of the three years. I see no justification for extending the total period of training to eight years, perhaps not even to seven, and I think that the reforms in college education, which are under way, give promise that we may have an increasing number of truly cultured individuals seeking admission to law schools at the close of their four years of collegiate training. I do not know how many individuals of that sort these reformed college curricula may produce, but I hope it will be more than we have had. If we can get men who have steeped themselves in art and literature and the physical sciences, who have discussed with their fellows the fundamental problems of human existence, and then put them into a professional curriculum, I think we can do an excellent job with them in three years.

But the fact remains that probably relatively few of the students who enter an American college are susceptible of the type of development to which I have referred, in the four years of college work, whether it be because of certain factors in American life, because of the nature of American education, or for both reasons. It seems to me that many students can absorb culture, can become acquainted in an adequate manner with the background of their vocational interests only by the vocational approach. I believe that there is a sound argument for taking students of that type, who probably far out-number the other type, at the expiration of two years of college, and endeavoring to lead them to the economic, political and social factors which I mentioned before, via the professional approach.

Indeed, the very developments in college education which give promise of turning out more truly cultured individuals after four years of college are pro-



ducing, also, a break in college education at the end of two years, which makes that a strategic time for recruiting students into the law school if they are not to go on for four years of college. If we take students at the expiration of two years of college and subject them to the enriched curriculum for four years, which many proponents of the four-year curriculum advocate, we will have established a total period of law training of only six years, not an extension over the period of time now generally prevailing.

The personal economic problems of students referred to in some of the previous discussion, consequently are not a serious objection to the four-year curriculum, although they emphasize the need for a sufficient number of law school scholarships and of other forms of financial aid to students.

Within the four-year curriculum we shall need, first, a critical approach to legal problems in terms of the ends of law and the place of law in ordering human affairs. That critical approach can be developed, I think, in introductory courses of a jurisprudential nature such as some of the schools are endeavoring to work out, and in survey courses which relate economic, social, and political change to legal development.

We shall also need, of course, to enrich greatly the existing detailed courses and to work into them the "non-legal" materials which are susceptible to treatment via the specific approach. By this means, I should like to point out, we shall also be enriching the three-year curriculum, which I believe can coexist with the four-year curriculum and which will then be made up of more adequate courses designed to fit into both.

I wish there were time to go into some of the other needs which the four-year curriculum can serve. I should like, in conclusion, to point out that the law faculties undertaking four-year curricula are under a grave duty to make these curricula genuinely cultural in character, because, if we are going to take an additional year of the student's time, we should not take it purely for professional reasons. Most law teachers are very modest in their approach to an expansion of legal education and they ought to be. Many are so modest, I know, that they feel they have no right at all to endeavor to absorb an additional year of the student's time. But I leave this question in conclusion: Will we not do a better job of teaching, inadequate though we are, if we try to do this larger job than if we proceed in the traditional paths we have been following?

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**WILBER G. KATZ**

*Dean of the Law School, University of Chicago, Chicago, Ill.*

Mr. Chairman, I trust that it will not be expected that I shall devote much attention to the resolution as it is proposed. If I were asked what vote I would recommend, it would be in the negative. I do not think the proposal, that we recommend to member schools the establishment of a four-year curriculum, is either intelligible or desirable. But I assume that we aren't here to debate that motion. We are here to re-consider our whole job as we have all been considering it at these meetings for many years, and to consider it in the same spirit.

At Chicago, our interest in the four-year curriculum has arisen out of our desire to explore more effectively the relation between law study and fields such as economics, philosophy, history, and so on, and to see whether their contribution to the understanding and criticism of legal doctrine can be made effective. Now, there is nothing new, of course, in this approach. Proceedings of our Association over the past twenty-five years have devoted much time to attacks upon the same problem. But the very fact that we have been giving perennial attention

to it, with so little in the way of concrete progress, suggests that there is something particularly subtle about the problem and suggests, perhaps, that something in the nature of major surgery is necessary if we are to get beyond the verbal discussion of it.

Our opportunity at the University of Chicago was unusual in that the general structure of university organization made it easy for us to experiment with a four-year curriculum. At Chicago there is a break at the end of the second year of college. President Hutchins' program of general education, fitting into the general junior college movement throughout the country, means that a student has had a general introduction to the physical sciences, biological sciences, social sciences and humanities at the end of his second year of college.

That meant that the opportunity was ours, as it was that of other professional schools and divisions, to receive students at that level and to build up an integrated program over a period of four years.

For schools in which that is the pattern, or for many students who have made up their minds to enter law by the end of their second year, I believe that the 2-4 program is sound and promising. I think, in the first place, it is promising because it bids fair to develop a different attitude toward the study of subjects such as economics and philosophy.

In the past we have dwelt too much on the words "cultural" and "professional." They have suggested a false dichotomy. We have too frequently implied that the attitude toward "cultural" studies is necessarily that of the dilettante. We have emphasized, in contrast, the notion that professional study deals with something we are going to use. I suggest that both of those attitudes are false, that when we put the studies together we begin to see, as of course in a way we saw before, that our objective in any case is the deeper understanding of the problems of human life and that, whether we are discussing economics or philosophy or law, the study can be made just as rigorous and just as definite as if we are talk-

ing about professional study in terms of something to use.

In the second place, the putting together of these subjects into a single curriculum has made it possible to develop more definitely the interrelations between these fields of knowledge. In our own curriculum, the non-legal fields are introduced in two ways. There are some separate courses at various points in the four years, and there are also courses in which further non-legal material is considered in detail in connection with the legal problems to which it relates. The ordinary pre-legal study, however effectively conducted, is too often far separated from the related legal courses to enable the student to utilize it effectively in his law curriculum unless he is a particularly tenacious and diligent student.

In the third place, and I think this is one of the most important factors, the putting together of this curriculum has forced us to develop and maintain faculty contacts; that is, contacts between law instructors and instructors in other divisions of the university. The difficulties of intercommunication and of effective cooperation are such that, over a period of years, while we have said much about such cooperating, the way has been rather hard going. I suggest, on the basis of the experience we have had thus far at Chicago, that one of the most favorable aspects of our experiment is to require us to continue those personal contacts. Only through working together in this way will we be enabled ultimately to determine just what contributions the various non-legal fields may make to the understanding of law.

But, as has already been said, many students do not know whether they are going into law at the end of their second year of college. Many have definite interest in completing four years of college in one field or another. I think we must all agree with Professor Fuchs when he says that we should not extend the period of required college and law study to an eight-year total. So we have continued to offer a three-year curriculum to those students, but not a three-

year curriculum of the kind that law schools in general have been conducting. That is, we have faced the question of major surgery there, also. We believe that experimentation is necessary in the three-year program, as well as experimentation with four-year programs. We must break away, somehow, from the system of multiplication of elective courses which require a student to know nothing in one field and to go through elaborate details in those which he does elect. I am more and more convinced of the importance of experimenting with condensed forms of instruction. I do not think it is necessary for students to take up each course in the same manner. Once a student is thoroughly introduced to the problem of the nature of legal concepts and legal principles, to their slippery character and the process by which they are applied, I think it is not necessary for all of the courses to give the same emphasis to uncertainties and unpredictability. I believe that once he is introduced to the judicial process in a really effective way, whether in an introductory legal philosophy course such as we have in our first year, or through the careful and laborious case technique in many courses of the first two years, other law subjects may be presented to him in a much more condensed fashion.

This selection and combination of courses into larger units and condensation of method by which the material is

presented can make the way, I believe, even in a three-year program for much non-legal material and even for considerable individual research and writing.

What I have said indicates I would be definitely opposed to a four-year curriculum which would pave the way for the addition of more law courses, even of public law, or of a "broadening" character. But there is another angle I would like to mention, that we have scarcely attacked at all, and that is the relation between what can be most effectively taught in a law school and what a lawyer should learn after he gets out. It is possible that an additional year should be worked out in relation to that problem. In Washington there is considerable discussion currently about the possibility of internship programs in cooperation with various law schools. I think it is not impossible that a program might be developed by which students, working either in the government offices or in the offices of practitioners who are really interested in the education of lawyers, might gain very effective additional education. That suggests that we have perhaps too closely narrowed our problem. Our problem is one of determining what the law school can most effectively do out of the whole total of what a student or a lawyer or a government administrator must acquire in his college, in his law school, and in his years after graduation.

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*PHILIP MECHEM*

*Professor of Law, University of Iowa, Iowa City, Iowa*

Mr. Chairman, I find that, when I listen to these gentlemen, advocating this program, and when I read their works to the same effect, I have two very definite, very marked reactions. The first of those is a very, very genuine sympathy with the objectives that they are after. I don't know that I am quite as optimistic of ever attaining those objectives in any way as they are, but that I think is just temperamental scepticism on my

part. Certainly, I am heartily in favor of those objectives.

The second reaction is a feeling equally strong, perhaps stronger, that there isn't the slightest connection between the evil and the proposed cure, that it is a wholly unproved and probably unprovable hypothesis, that what is wrong with our legal education is, it is too short. I think there are a great many things wrong with it but that I should say was the very

last objection that could possibly be argued.

I might illustrate it in this way. If you say to a doctor, "I don't find that I am able to digest my food very well," would he say, "Well, try eating twice as much, and if you maintain the same percentage of digestion, you will get twice as much nourishment?" He might—but I doubt it. I don't believe that is a scientific approach to digestion, and I don't believe the four-year curriculum is a scientific approach to the problem of what is wrong with the law school.

Another illustration, not hypothetical; this is actual. Let me recall to your attention that miserable object with which we are all so familiar. I am referring, of course, to the third year student in any law school, blasé, cynical; uninterested, simply going through the motions, going to the same old classes, going to the same old professors, hearing the same old stuff, wondering why, if the professors are so smart, they don't think of something new. I don't believe that is exaggeration. Of course, I haven't taught in all schools, and I hope there are schools that don't have them, but we have them in our school, and that is no secret. I don't think I am giving away a thing. I suspect we have them everywhere. I think if you look at this exhibit, you are likely to say, "If time is the essence here, let's not increase it, let's cut it down perhaps to two years," because there are some indications that we have worked out a method which works for two years, which for two years keeps the student's interest, but up to the present I think that ends at the second year and that the third year is failure. And to suggest that we add a fourth year without proving first that we can work out a good third year, is utter folly.

To look at the matter a little more in an orderly fashion, this thing inevitably comes up from two angles or in the form of two propositions. There is the proposition, first, that at the present time prospective lawyers are getting a terrible education in legal materials. Granted.

The second proposition is that at the present time prospective lawyers are getting a terrible education in non-legal material. Granted again. Now, of course, the conclusion is to urge a four-year curriculum, but that is a conclusion that I do not accept.

I had intended taking those two points or propositions up, one by one, but I didn't realize Mr. Van Hecke was going to be as tough as he has turned out to be, in the matter of holding us down on time.

In regard to the legal curriculum, I am simply going to suggest three ideas I have about it, which I think are quite intelligible. It probably wouldn't do any good to enlarge on them anyway. The first is that the trouble with the existing curriculum is that it is accidental, it is just what Mr. Langdell thought of seventy years ago as modified by largely accidental happenings in the particular law school since that time. Mr. A leaves the law school; Mr. B takes A's course and adds an hour to it. Mr. C, the Contracts expert, who has been waiting like a hawk (you know how like hawks Contracts experts are) gets the course in Contracts extended from eleven hours to fifteen. That is how curricula are made. I think that needs no demonstration.

The second point Mr. Katz handled for me, and that is that we are over-obsessed with the case method. Nobody could be quicker than I to say that that is the only way to start our law education, but I think it is folly to say it is the only way to carry on thereafter. After you have spent the first year in teaching a student—what was it Mr. Katz said? "the slippery techniques," and so on—there ought to be some more time-saving, more efficient way of going on.

The third point I wanted to make was, again, this matter of the expert. There are all kinds of definitions of experts, but I suppose in this group, at least, an expert is a person who wants to teach more and more of some particular subject. As a consequence, you get this continual expansion of courses, and so

of the curriculum. In general, I suppose any law faculty will agree *collectively* that they aren't trying to teach all the law about everything. But when you tackle them individually, when you ask Mr. X about that, he says, "Why, certainly. Mr. Y and Mr. Z and Mr. A and Mr. B are having too much time. Cut them down—but, of course, I have to have *my* five hours. I would be a lot better off and the public would be better off if I had six." In that way you get your experts constantly working in the direction of adding to the amount of time it takes to study the same group of subjects.

So, I think if you say that the legal part of the curriculum needs four years, the answer is very clear. Let us see if we can try a good three-year curriculum first. That may be unjust, no doubt, to certain schools, let's except, e. g., the new Harvard curriculum, the Columbia curriculum, the work they are doing at Ohio State and Michigan. Let us assume they have there honestly thought-out, carefully-planned curricula—but I think cases of that sort are very definitely exceptions, and that in most institutions you find this haphazard, accidental curriculum that has grown up very much like the map of Europe, and by much the same process. That is a brief summary of what I meant to say on that point.

On the non-legal curriculum, we have two forms of attack. First there is the argument that we want more non-legal stuff in the courses as they are. There it seems to me the answer is: if there are non-legal materials, if they can be put into law courses, why not do it first and expand the curriculum afterwards? That is, why not get out some casebooks that are full of non-legal stuff and see how much more time they take. I am not at all sure that they would take any more time. For example, one illustration is Mr. Handler's fine casebook on Trade Regulation. There is quite a bit of non-legal material in it and it is my experience that that speeds up the course, that you can cover more pages of Mr. Handler's book per day than you can

of a book like Gray's Cases on Property that is full of little half-page cases. The students and the instructor read the non-legal material; and perhaps they assimilate that, and apply it to the cases without discussion. Or perhaps you put your attention on the non-legal material and the cases follow after it without much discussion. Either way, in my experience it doesn't slow up the process. This is a matter of individual experience to be sure, but I don't think there is any substantial evidence that, if you were to get the non-legal materials put in the casebooks it would really slow up the process. So, on that point I think the proposition remains to be proved.

The other proposition, the more difficult one to meet and, I think, the more appealing one, is to have courses in non-legal subjects in the law school, to teach our students psychology, grammar perhaps—I don't know, I guess we have given up on that—various things like that, as part of the law school curriculum. That, I say, is appealing. I suppose we all instinctively feel they do a terrible job across the way, even more terrible than we do, so, if we could get those men over here studying economics in the atmosphere of a law school, they would learn a lot better. That may be true. Still, I have some queries about that.

For one thing, I wonder if it is tenable, as a proposition of general educational validity, to say that every professional school is going to take over the preliminary education of all of its students. That is the end, of course. That is the direction in which this leads. I remember a few weeks ago when I was listening to certain non-legal materials, Jack Benny was discussing Phil Harris' education and said he had never got past blocks. I anticipate that ten years hence, coming up to the back door of the Chicago Law School, I will see my friend Mr. Katz out there teaching the little boys and girls blocks—two kind of blocks, red and blue. The red blocks will be the legal blocks, and the blue blocks will be the non-legal blocks. That might be an exaggeration; I don't know. This is

really serious to me. If we say, "Let us do it all over again in the law school and the medical school and the school of art and the school of business," I don't believe that the public funds will stand it. I don't believe we can afford to make a claim of that sort.

I have already mentioned the suggestion that, if you bring the students over into the law school to study their social sciences, they are going to work better. I wonder if it isn't conceivable that you will get the contrary result. Is it possible that by teaching economics in the law school, you might not raise the standards of economics teaching but on the contrary just lower the standards of

law teaching? That seems possible to me.

Finally, I should think that something might be tried along these lines. Couldn't we insist, not simply by exhortation but by examination, that students coming to law school can read and write adequately and know this non-legal stuff? Couldn't we decide that every law student should give evidence of an honest grounding in five or six subjects and take a good, stiff examination on that? You have to pass an examination if you want to get into civil service. I think we are probably every bit as good as civil service.

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EVERETT FRASER

*Dean of the Law School, University of Minnesota, Minneapolis, Minn.*

This is rather a difficult point at which to come into this program. It is rather difficult to get a serious consideration of anything further, I am afraid, after the entertaining speech we have heard. But, being a serious-minded person, I shall have to follow my natural bent.

I would suggest at the outset that the committee has submitted this resolution as a device to arouse your interest, rather than put it forward as a serious proposition. They framed a resolution to the effect that we recommend the establishment of a four-year law course. I don't think they meant that at all. If they did, I would have amended it for myself. I would say that we recommend consideration of the establishment of a four-year law course, for I would be the last person to suggest that every school establish such a course. Many considerations enter into the consideration of that question.

First, you must consider your local conditions. What competition would you have if you established a longer course? Would the establishment of such a course lead students into other schools where they would not get as good a course as your three-year course is? That is a

factor that I think every school must take into account.

Then, again, what are the resources of the school? Would it mean increasing the courses in the law school, burdening the present faculty to the point where they couldn't work effectively? If so, that undoubtedly is a factor which should make one hesitate to adopt a four-year course.

Even more important than these is the question, what is your objective? Just why are you establishing a four-year course? What is wrong, in your opinion, with the three-year course? If it meant merely an additional year to be devoted to the traditional law work, I would think it a step backward. I think we have enough of that in the three-year course. If, on the other hand, it means that you have certain objectives that you want to accomplish and which cannot be achieved within the limits of the three-year course, then there is a real purpose in a four-year course. I have not a very high opinion of the value of some of the pre-law college work, but I would prefer it rather than more of the traditional subjects in the law school.

We hear a good deal about the general

culture that the student gets before he comes to law school. I have been looking around for that general culture and I haven't found it yet in the students coming from the colleges. Even if you do find it, I would raise the question as to whether you can afford to have this general culture to the displacement of culture in the law itself. That was the factor that influenced us when we realized that we were sending students out of law school who had never heard a discussion within the school, of programs of law reform that were being considered by the forward-looking leaders of the profession. That seems to us rather inexcusable, and the kind of a practice that could not be found in any other department of a university.

So, our objective is to give the lawyer a somewhat broader outlook than he has had traditionally. We looked around to see what was the matter with lawyers, so that people write books about them, "Woe Unto You Lawyers." We saw justification for some criticism of the attitude of the profession. We thought that must be, at least in part, attributable to their training in law school, and, perhaps foolishly, we hoped that we might be able to do something about it, but we were sure that we couldn't do anything about it by merely adding another year to the law course, and giving the old, traditional work. We couldn't change the point of view, the static point of view, of the lawyer to the dynamic point of view by giving him more of the old stuff. Consequently, it is an important factor, I think, in establishing a four-year course to consider what you are going to do with the time when you get it. Are you going to prescribe certain work which will accomplish a certain objective? That should not be left out of consideration.

There is another factor that has to be considered, in my opinion, and that is the relation of a four-year course to the pre-law course. It is an entirely different question for a school which is so situated that it must require a college degree, and a school which is so situated

that it does not need to require a college degree. We cannot separate this question of a four-year course from the whole problem and treat it as a thing apart. Personally, I should hesitate a great deal to require a total of eight years of study before beginning the practice of law.

It may be that some schools are so situated that they practically must require a college degree for admission. We, fortunately, are not so situated.

I was asked by the Chairman to direct my particular attention to the pre-law curriculum. Should there be prescribed pre-law work, or take anything that comes? We can't answer that question without asking ourselves, why are we requiring college work? What is the purpose of it? It seems to me, on the whole, that our attitude is that it is somehow good and the more of it, the better. But I have not observed any careful consideration of just why we are requiring it. It does add to our respectability to require it and, consequently, we tend to require more and more of it.

There is an old idea, of course, in regard to college work which perhaps still prevails in a good many quarters, and that is that it somehow sharpens the mind so that it is capable of doing any kind of work thereafter, no matter what you put it at, something like the sharpening of a chisel. Perhaps a chisel is the best tool to think of in this connection. You get it sharpened by heating and hammering through four years of college. Then it will be effective for whatever purpose you wish to use it for later. That idea no longer prevails with educational psychologists. Experience and experiments have demonstrated that there is comparatively little transfer from one field to another. Educational psychologists maintain that there are, in fact, possible hindrances, that the mind gets running in certain channels, and unless the new field is like the old, those are positive hindrances when the student transfers to a new field. It may be that that is what President Conant was thinking of when he suggested that the students were getting natural science

concepts in the colleges and trying to carry them over into the social sciences, with great harm to the social sciences, because the mind was running in certain channels. Given the same maturity, is it not true that the student who enters law school, with practically no college training, if he has the same natural endowment will do substantially as good law school work as the student who has been through the college process? The evidence that I have seen indicates that that is true.

Now, there is another purpose for which college work might be used, and that is the selection of students, the selective process. If you were going to use college work for that purpose, you might well have an entirely different content from what you would have if you were using it for other purposes. One member of our faculty, now retired, used to say prelaw work should be prescribed on two principles; first, that the student shouldn't like the work, and, second, it should be as hard as hell. That was the old-fashioned method. That would be the kind of work to require for purposes of selection. If you are going to use the college work as a mere selective device, by all means put in plenty mathematics, and perhaps Latin and Greek, and you will have an excellent sifting process because the students will mostly hate them, and a great majority of them will never reach law school.

Now, I don't think myself that college work is required for either of those purposes. I think the only justification for the college work is that there is a certain informational content in it which is desirable for lawyers, not necessarily essential to the study of law, but essential to the well rounded lawyer. It is on that basis that we have attempted to prescribe our pre-law course which is mostly prescribed. In that prescription there are certain tool subjects, English, logic, but they are mostly basic subjects that enter into the constructive work of the lawyer, are not necessary for an understanding of the rules of law but are

necessary to a lawyer as a law-maker and an administrator of government. These subjects, such as ethics, psychology, government, economics, English, constitutional history, are the ones that we prescribe.

There is just one other thought I want to suggest, and that is I have become greatly impressed with the difficulty of advanced social science work, economics, particularly. I used to think the natural sciences required the greatest amount of ability. I have changed my mind. I believe now, to get a proper understanding of principles of economics requires greater ability and maturity than any of the other subjects in the university, not excluding law. I believe that students can study law, the elementary parts of the course, with less training and maturity than they can advanced social science work, and that we should make law a prerequisite to such studies for that reason and for the further reason that a knowledge of law is essential to an understanding of the application of economics and government to problems of law and government. We should finish the training of our lawyers with such subjects as jurisprudence, judicial administration, legislation, advanced economic theory, and so on, based upon their preliminary course in college, where they get the elementary principles, and based, also, upon their law training, making law, as I say, the prerequisite to these, and not making those the prerequisite to law.

CHAIRMAN VAN HECKE: Thank you, Mr. Fraser.

James M. Landis, who was to have concluded the discussion is unable to be present and has sent as his representative, Sidney Simpson of the Harvard faculty.

Mr. Simpson, will you come forward?

Mr. SIDNEY P. SIMPSON: Gentlemen, the two things that Dean Landis had in mind to talk about I know were, first, the question of a pre-legal curriculum and, second, a possible, new combination of law and the social sciences. I



propose to say a few words about each of those topics.

The other day I was looking over the catalog of a small college—it happens to be the college from which I was graduated, downstate in Illinois—in which was suggested a pre-legal curriculum consisting mostly of economics, government and sociology. I think that is about as wrong a pre-legal curriculum as it is possible to imagine. There was no adequate provision in that curriculum for acquainting students who are coming to the bar with the course in English and American history. There was no adequate attempt to acquaint them with the empirical method of acquiring knowledge which is characteristic of the natural sciences. There was no attempt to give the training in logical method, by substantial acquaintance either with logic as such or perhaps better with mathematics. The whole emphasis was on what a friend of mine calls “the social so-called sciences.”

Now, I should be the last person in the world to say that economics and government and even sociology have nothing to give to law. I do think what they have to give to law is mostly help at solution of specific problems. And I am very skeptical as to the usefulness of a college education before law school which soaks one mostly in the social sciences.

It is my view, and I think a good many of at least my own faculty would agree, that the old-fashioned liberal education in college is the best preparation with which to come to law school. Certainly, the ability to use one's own language is not without use. I am old-fashioned enough to think that even studying Latin is useful. Certainly some acquaintance with the natural sciences—I don't mean by that one course in physics or chemistry, but going far enough with a science

so you really know what the scientific way of doing things is all about. The same remark applies in connection with what I have called logical method, and I believe myself in pursuing the method of logic through the study of mathematics. Some acquaintance with the history of philosophy, with philosophical thought, also seems to me important. Those things seem more important as pre-legal training than any amount of economics or government or sociology. I have omitted to re-emphasize history, which I feel is essential.

Suppose a man came to law school at the end of four years or even at the end of three years, with the kind of preparation I have described. Suppose he did two years of the hard, rigorous grind we put our students through. I think by that time, actually having had three years in college and two years in law school, he would really profit by study of the social sciences at the graduate level. I think if it were possible to place such study of those disciplines after the student has acquired some acquaintance with the law, rather than before, the results would be rather happier for the students than they now are. Whether they would in all cases be happier for some of the people who are teaching some of the social sciences, I think is open to argument.

Those are the two things that I wanted to place before you for discussion: In the first place, the notion that the optimum preparation for the study of law is a liberal education, and not social studies; and, secondly, the view that it may well be that the time to enter upon those social studies—and I would not be thought to say I do not believe they are important—is *after* some rather rigorous training in this particular discipline of ours.