

## MARK HOPKINS—HIS LOG

ANOTHER article on legal education, in view of the past accumulation,<sup>1</sup> seems to deserve a word of justification. The urgency of some change in basic method and structure seems obvious if the legal profession is to continue to be able to keep ahead or at least abreast of its competitors, answer its articulate critics and retain public respect.<sup>2</sup> Many of the existing proposals for improving the quality of the law school graduate are blocked because of lack of time in the regular curriculum. Much of the thinking about improvements is olympian, in that it reflects the sincere zeal of the mature legal scholar who has himself weathered the storm; rather than realistic, in terms of what the students are thinking at their stage of development struggling to find a personal way out of confusion. The present proposal urges a plan in which limitations of time are no longer a serious hindrance; in which law schools once and for all have a chance to produce a maximum quality product; in which the emphasis is on the learning, rather than on the teaching process.

The eternal triangle in the educational field may be said to be symbolized by Mark Hopkins and the student at ease upon the log. The present paper proposes that Mark and the student should not remain seated indefinitely on any log but should arise and stroll around the woods together however rugged such perambulations may be. It is urged, for example, that the instructor as a human being is more important in the educational process than the subject which he teaches, and that the students learn more thoroughly by doing than by listening.

Limitations of space prevent a consideration here of anything but the general outlines of the plan with a statement of some of the principles which underlie it. The details are so much a matter of concern to the individual law school and would have to be varied so much to suit local conditions that one may be forgiven for omitting them from the present discussion.

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<sup>1</sup> The Index to Legal Periodicals testifies to the popularity of the subject. See, for example: *A Symposium in Legal Education After the War*, 30 IOWA L. REV. 325-341 (1945); five leading articles in 43 COL. L. REV. 423-485 (1943).

<sup>2</sup> For a discussion of the probable impact of socialism on the law in England, see Gower, *The Future of the English Legal Profession*, 9 MOD. L. REV. 211 (1946).

## THE REASONABLE LAW STUDENT

One begins, cautiously, with the assumption that all law teachers are reasonable and that most law students belong in a somewhat comparable category.<sup>3</sup> Attempting to view the ladder of legal education through the eyes of the reasonable law student the reader is asked to imagine that the neophyte sees the need for deciding certain very personal questions. If, instead of saying that a law student should have this or that course, or requiring him at his peril to make an election, we can attempt to formulate and then answer these recurring questions we may find ourselves with an outline for a different system of legal education than that now regarded as orthodox. It may even be that this new system may have advantages over the present one.

The initial question of the reasonable law student may well be: "Do I want to be a professional, rather than a business, man?" Closely related to it is a second query: "If I am to be a professional man—why the law, as against other fields of endeavor?" These two items may plague a young man for a long time. He first becomes aware of them in the pre-legal phase of his education. If there were such an academic course as the public relations aspect of training for participation in the administration of justice these two questions might well occupy a place in it. A third basic problem lies in the economic field: "If my inclinations are in favor of spending my life at the law can I expect to make a reasonable living?"<sup>4</sup> A fourth inquiry is: "Can I surmount the obstacles erected to keep out of the profession those without the requisite qualifications?"

The fourth question may be broken down into such points as the following:

1. How shall I learn the method of studying law?
2. How shall I acquire the basic information about the principles, rules and concepts of law which every qualified lawyer has gained

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<sup>3</sup>The occasional article presenting the point of view of the law student merely serves to emphasize its unusual character, E.g., Piel, *The Student's Viewpoint Toward Clinic Work*, 8 AM. L. SCHOOL REV. 228 (1935); Dudley, *The Harvard Legal Aid Bureau*, 17 A. B. A. J. 692 (1931); Herman, *Law Students on Law Schools*, 3 JOHN MARSHALL L.Q. 289 (1937); Moorhead, *A Student's View and Later*, 43 COL. L. REV. 466 (1943).

<sup>4</sup>The desirability of a continuing study such as is presented in the "Economics of the Legal Profession" prepared by the American Bar Association's special committee on the Economic Condition of the Bar (1938) is indicated.

and which has become a part of his subconscious self — a matter largely of memory?

3. How shall I acquire the advanced information about the substantive law which will enable me to hold my own as a competent client server — a matter of extreme difficulty because of the variety of mental characteristics involved?

4. How shall I acquire the skills and techniques necessary to obtain reasonable results for my clients according to law — a matter of method?

The orthodox law school has its own answers to these questions, often framed by persons conditioned to the role of the legal scholar. Admitting that these traditional answers are admirable it is true that they may be difficult of adequate comprehension by the law student at his stage of development. The inquiring student does not stop asking questions merely because he has received his diploma. He may even find himself after graduation involved in a serious situation grappling with: "How can I prepare myself to pass the bar examination?" "How shall I continue my legal education?"

It is arguable that the present law school curriculum, even if of some forty or fifty subjects, and even if a man took all the courses offered, would not meet the needs of the reasonable student. There are perhaps those who urge that the objective of the law school should not be comprehensive and encyclopaedic but that they should be limited to traditional activities. The present proposal runs counter to that conventional philosophy and urges that: The law school should assume a broader responsibility toward the profession because it can do a better piece of work; it is not enough for a law school to turn out law clerks because the public has need for more mature lawyers who can head their own offices; legal education is too important to the community to be restricted in terms of Hopkins' log whether it is cut to a length of three or even four years.

#### THE REASONABLE CLIENT

One assumes, cautiously, that there are reasonable clients and that a deserving object of the educational process is to turn out lawyers capable of serving the needs of these clients. It is simple to speculate as to the qualifications which such a client may be expected to require in selecting and retaining his confidential attorney.

We may assume some orthodox formula for expressing this need such as that a lawyer should be a cultured gentleman, a sound legal scholar and a useful public servant. But demand goes beyond this point.<sup>5</sup> It may not be too much to say that the reasonable client expects the lawyer to know everything there is to know and be able to accomplish satisfactory results according to law in whatever is undertaken.

Every time the client contacts the lawyer he puts him through an examination infinitely more ruthless and searching than any given by a law school or board of bar examiners. If the lawyer fails to pass, the client takes his legal work elsewhere.

A course of legal instruction of the proportions necessary to meet comprehensive needs of this sort cannot be given successfully in so short a period as three or four years. But why make the effort to be comprehensive? From the negative side one may point to the encroachment upon the field of activity of the traditional lawyer which has caused the writing of severe statutes prohibiting unauthorized persons from practicing law.<sup>6</sup> But in more positive fashion one may assume the desire of the best element at the bar to give increasingly effective service to clients.

Ultimately the best guarantee for the economic survival of the individual lawyer lies in his ability to convince his client that he can do a given piece of work better than his neighbor. Similarly the best guarantee for the survival of the profession in its present form, in a world of economic and social conflict and upheaval, is its ability to do a piece of work better than a competing non-legal group can do it. That legal education should face this challenge is an idea neither new nor far-fetched.

Orthodox objections to the assumption of a broader responsibility by law schools are frequently based on arguments that time and money are lacking. It is not unusual to see a movement designed to shift the load of unorthodox legal teaching to the private practitioner or the law office. But unwillingness to face the situation is no

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<sup>5</sup>The records of the legal aid societies are probably the only law office records available for statistical study. They represent an exceptionally broad variety of problems coming from only one section of the community. Clients constantly expect lawyers to accomplish results which lawyers know can be obtained only outside the field of law.

<sup>6</sup>The Unauthorized Practice News published by the American Bar Association contains a running commentary upon the efforts to solve this problem.

solution. The law school should be able to do educational work better than anyone else and for that reason should be drafted.

The present proposal is that Mark Hopkins and the student place the log in a glass case with appropriate expressions of appreciation for the services it has rendered in the past and then, encouraged by the need for standing instead of sitting, go forward together through the forest until the end of the trail — that is until the student withdraws from law practice — whenever that contingency may occur.

Because of limitations of space, discussion of the proposal will be limited to such concrete topics as: Methods of learning on the professional level; the need for basic and advanced courses; basic skills and techniques; post graduate legal education.

#### LEARNING ON THE PROFESSIONAL LEVEL

There is probably no single phrase which can be used to describe accurately the objects and purposes of a law school.<sup>7</sup> Generalizations

<sup>7</sup> Law school catalogues may mean one thing to the student and something else to the faculty which prepares the text. One wonders what the student infers from various statements of objectives. The following are selected entirely from a desire to provide a geographical spread:

"... to prepare for the practice of the legal profession wherever the common law prevails." 43 OFFICIAL REGISTER OF HARVARD UNIVERSITY No. 18, August 2, 1946.

"The curriculum is designed to prepare students for the practice of law, to provide legal training for those who may be planning to enter public service, and to lay a foundation for law teaching and authorship." 42 BULLETIN OF YALE UNIVERSITY LAW SCHOOL No. 14, July 15, 1946.

The primary objective of the Law School of Louisiana State University is to prepare its students for the practice of law. . . .

"... To state the College's objectives generally, a sustained effort is made to inculcate in students thoroughly organized practical information and highly developed technical skills, the highest professional and ethical standards, the finest legal scholarship, breadth and objectivity of point of view, an appreciation of the function of law in the social order, and a consciousness of the responsibility of the lawyer to society for the rational development and improvement of the law both in its substance and in its administration." 47 BULLETIN, THE TULANE UNIVERSITY (OF LOUISIANA) COLLEGE OF LAW No. 6, June 1, 1946.

"The development of a law school program to serve the interests of the area and population of the Middle West and to provide the training required for its young lawyers imposes heavy obligations upon a University." 47 NORTHWESTERN UNIVERSITY BULLETIN, SCHOOL OF LAW No. 20, April 14, 1947.

"The aim of the school is not only to prepare students to practice law, but also develop the scientific study of law and to further legal research. . . . The school's graduates are qualified to become applicants for admission to practice in any state of the United States." 39 UNIVERSITY OF CALIFORNIA BULLETIN, ANNOUNCEMENT OF THE SCHOOL OF JURISPRUDENCE No. 16, April 1, 1946.

like "teaching students to think and act like lawyers" hardly do justice to the process. Before he can be trusted with professional responsibilities a vast amount of information must be transferred to the student's mind. At least, he should be exposed to it. Again as a prerequisite the acquisition of certain mental habits must be demonstrated. If we knew more specifically the qualifications of a great lawyer we might attempt to use them as a point of departure. But even as matters stand there is reason to consider the process from the standpoint of the student and to discuss learning rather than teaching.

Looking at legal education from the standpoint of the student it is possible to lay down a probable progression of events in the minds of the members of the class without entering into a discussion of the topics to be learned. Approached in this fashion the first step occurs when an idea is planted in the student's mind. This may be accomplished by reading, general discussion, a lecture or otherwise. At the next step the student fills the role of an observer while an experienced law teacher demonstrates how the idea may and should be used on the professional level. A third step sees the student, under supervision, making use of the idea himself. Eventually as experience and self-confidence in dealing with enough ideas are gained the supervision is relaxed and the mature, competent lawyer emerges.

How far present day legal education brings the student along these steps is arguable. The critic depending upon the severity of his nature may take a more or less discouraging view of the situation.<sup>8</sup>

The present article, however, is not designed to cover the whole ground. It is directed to the following specific points where improvement seems not only desirable but possible:

1. No law school can train a student to be a qualified client-server prepared to meet present day conditions in a curriculum limited to three, or even four years. It is obvious that since additional training is necessary there is reason to face the facts and make it a lifelong enterprise. The law school is the obvious agency to assume this burden.

2. For the student it tends to be bewildering if method and law

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<sup>8</sup> The literature criticizing legal education is extensive and requires no specific selection of reference. Green, *Reconversion in Legal Education*, 40 ILL. L. REV. 443 (1946); Vanderbilt, *Law School Study After the War*, 20 N.Y.U. L. Q. REV. 146 (1944); Gavit, *Post War Problems of Legal Education*, 19 IND. L. J. 341 (1944).

are taught at the same time in the early courses. After the student has gained a grasp of both method and law the two may more safely be combined.

3. For the student it tends to be confusing if breadth and depth are taught at the same time in the early courses. Breadth should come first and depth thereafter when the student has a satisfactory background.

4. For the practicing lawyer a different sort of graduate study will be necessary than that recorded in the orthodox law school catalogues.

An attempt to construct a curriculum which, while preserving the basic learning process also offers an answer to the foregoing points is by no means hopeless. It is suggested that in place of the existing three year course of study the following three categories may be used as a basis for indicating the emphasis to be given to the various courses:

1. Preliminary instruction in the method of legal study.
2. Instruction in substantive law giving effect to the dimensions of breadth and depth.
3. Preliminary instruction in the methods of practicing law.

A three year course of study built upon a frame work distinguishing method from law should accomplish more than is possible at present.

Some comment is now in order with reference to the terms method, basic and advanced, as applied to law courses.

#### METHOD, BASIC AND ADVANCED COURSES

The proposal to distinguish between method and law is based on the assumption that an effort in a single course to emphasize everything may be confusing. It is possible to offer certain courses which emphasize law and others which are concerned primarily with method.

A course in how to think when one is studying law appears a prerequisite to other work. Orthodox courses in legal method, in the use of law libraries, in how a litigated case starts and finally gets into a case book are all useful. But beyond them is a largely uncharted area of student questioning. If, by the trial and error method, we can discover some discipline which will start him on this process more quickly than he can make headway himself under the present

system, it would be worthwhile to devote a course to the purpose. Many of our present law students are former servicemen. They learned by doing. The idea was presented. The student observed. Under supervision he participated. Finally he was ready to carry on under his own power. It will save time to go through this process at the beginning of law school in the matter of methods of study and related topics.

Once having acquired the "know-how" it would be possible to spread before each student a panoramic, encyclopaedic, over-all picture of the field of substantive law and to devote two years to the task. It is not difficult, in the physical world, to recognize the value of a comprehensive approach to a subject before embarking upon a study of details. Our present procedure of special courses in the traditional topics may turn out to be unnecessarily time consuming as well as difficult. Is it necessary or desirable to require the student to build his own abstract picture of each field of law from a series of specially selected appellate decisions; from class discussions in many of which he is not called upon to recite and in which the instructor is striving to teach method, to cover breadth and depth and to adjust his teaching to students each one of whom has an individual problem of learning?

There is reason to suggest that in each field rather than in each course of law there may be basic principles, rules, concepts so well established that we may treat them as fundamental and learn them by processes other than the traditional case method.<sup>9</sup> On the other hand there may be other advanced principles, rules and concepts now debatable, uncertain, unpredictable. These items certainly require for their understanding the strictest application of the case method, analysis, argument by analogy and the other profounder techniques of legal thinking.

Assuming that some line, even though a rough one, may be drawn between basic and advanced principles of law we may find it advantageous to have two groups of courses and two groups of methods for teaching them. There is no reason to take time in an attempt to establish that one group or one course is any more important than

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<sup>9</sup> It would be interesting to take two comparable classes of students, give one the present orthodox first year case method instruction and the other a series of courses based on memory. An examination at the end of the year of a comprehensive variety might reveal the relative extent of comprehension at that stage of the work.



the other. It is not a matter of the student electing one or the other. He should realize that he needs both but that he should understand the basic before he tackles the advanced group. It should be not a question of whether, but of when and how.

The line of distinction between basic and advanced courses can hardly be drawn in any general paper like the present one; nor is it a matter in which one can afford to be over-hasty. But one method of approach to the task may serve as an illustration. Let us assume that the student takes down from the shelf an index to *Corpus Juris Secundum* or to *American Jurisprudence* and makes a list of all the fields of law named. A comparison of this list with the twenty-five or thirty courses he may be able to take while in law school will leave him with a certain humility as to what he can expect to accomplish in three years of study. But from that longer list an experienced person may, in time, be able to group certain subjects and to arrange them so that each group has a basic course followed by a series of advanced courses. For example, one may assume a group of business law topics in which the introductory material could be called a course in contracts. The advanced topics might be labeled agency, negotiable instruments, insurance, business associations, credit transactions, debtors' estates. The student should study the accepted principles of law relating to the general field of business or economics and later could engage in more profound work in advanced topics.

Similarly a basic course called constitutional law might be followed by advanced public law courses such as labor law, taxation, administrative law. An introductory course in concepts of ownership of property might point the way to advanced work in landlord and tenant, sales, future interests, wills and administrations.

But these so-called basic courses—contracts, constitutional law, property, would have a somewhat different content than the names connote in the present curriculum. The emphasis would be on breadth, depth of thinking would be postponed. Characteristic of the breadth courses would be historical, economic and sociological factors out of which the particular body of rules or concepts of law developed and which have shaped and continue to influence its growth. At this stage the mental power of analysis would be less important for the student than memory.

The foregoing suggestion is based upon an analogy in the field of learning to speak a foreign language. At one stage the student

laboriously can take an English word, translate it mentally into the foreign language and then utter it. At a later stage he can think automatically in the foreign language. But this maturing takes time. It cannot successfully be hurried. If the three years of law school can put the student through the first of these stages with respect to the material of the law it is time well spent. But there is no necessity to continue the present overcrowding of curriculum and class.

The first two years of law school should be devoted to a series of required basic courses. In the third year half the time could properly be spent in advanced courses where depth was the object. Characteristic of the depth courses would be an effort to have the student find out not only what the courts are saying about the particular field of law today but what the law offices are doing, thinking and planning regarding the law of tomorrow. Here the ability to analyse would be very important for the student. One hopes his mind, already filled with basic material, would be better prepared than under the present system to plunge into the most complicated type of legal thinking. The other half year should be devoted to exercises in becoming familiar with the basic methods in practicing law, gathering facts, planning a campaign in a case, concluding that campaign by a variety of devices including, but not limited to, the litigation process.

Under the present thesis, formal education would not end with the issuance of an academic degree. Commencement, as the name implies, would be an arch looking toward both past and future — a point of departure as well as an immediate goal.

#### POST GRADUATE LEGAL EDUCATION

The best practicing lawyers realize that they must continue their education if they are to continue to command the respect of their clients. In an expansive if inaccurate generalization the clients expect them to know everything and be able to do whatever the client thinks ought to be done. The problem for each is how best to go about fitting himself to meet these demands which will be made upon him? This question may be broken down into:

1. How shall he learn the substantive law he did not have time to study in law school but which the better lawyers know?
2. How shall he increase his present skills and experience and acquire new abilities?

3. How shall he learn the new law which is constantly being made and, if he wishes, become an expert in any of the great variety of special fields which are open to a lawyer?

The present paper argues that the law school should assume the responsibility for supplying the answers to these and similar questions because continuity of standards of instruction will provide an easier adjustment for the lawyer and because by and large the law school can do the work better than possible competitors.<sup>10</sup> The average lawyer can readily be made to see that it will save him money and time to secure instruction of this sort regularly. This realistic factor should provide the answer as to how to finance such an enterprise.

Instruction on this graduate level will, of course, vary from the orthodox law school methods. For one thing, the teacher may confidently assume in the practicing lawyer a background of information and experience which is not present in the mind of the average law student. There will not be so much need at this point to separate substantive and procedural law from method. Courses need not center around academic concepts but may be related more closely to events in the careers of practicing lawyers. The student-instructor sessions should be more on a seminar or individual basis rather than in the fairly rigid structure of a class. Attention may be at this point devoted to the law of a particular jurisdiction. The lawyer-student will not have to be taught analysis and so should be able to make much better progress.

Once the custom is established lawyers will find it easy to devote regular periods of time each year to receive this instruction and their efforts will be on a basis of preliminary outlining of a topic followed by research and not merely sitting and listening to a lecture. Materials may be distributed for the transfer of information but the process of thinking on the professional level should be continued and improved to the limit of individual capacity. New teaching techniques will appear but it is probable that the learning process will remain much the same as we have heretofore considered it.

#### A PROPOSED CURRICULUM

It seems in order to suggest a tentative curriculum, not so much

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<sup>10</sup> A cooperative endeavor between law schools and bar associations should be productive of mutual benefit. The modern law office itself seldom has time for educational work.

because the details are important or cannot be improved upon locally but rather to illustrate more specifically the preceding general statements.

### *The first year*

The objectives in the first year are:

1. To help the student to answer the question: "Do I want to be a lawyer"; on this point a course in the history and present problems of the legal profession, including the orthodox material of legal ethics.

2. To teach the student how to study law. On this point a method course might consider such mundane matters as: Budgeting student time; analysis; briefing a case; taking notes; reciting; writing an examination; reviewing; self evaluation. The assumption that the student knows how to do those things is often unwarranted. It is in this course that unsuited students are eliminated. Until a man can do this work satisfactorily he should not be permitted to slow down the rest of the class.

3. To teach breadth in substantive law. To this end a series of courses during the first two years would introduce the student to basic concepts. The number of these courses would necessarily be a matter for experimentation and the accumulation of experience, but one suggests some 14 of them each year; each running for two hours and for one semester. If the student could be sure of some 25 or more basic areas of the law the two years would have been spent to fair advantage.<sup>11</sup> Business law, status, property, legal wrongs, public regulation of the individual, are labels suggesting themselves for some of such courses. Each instructor should be free to develop his course as seems best to him but a variety of teaching methods would almost certainly prove helpful. New types of case books would surely be evolved. More emphasis could be expected upon the economic, psychological, sociological conditions out of which the field of law evolved and which are continuing to affect it.

At the conclusion of the first year the student should be in a position to answer the question — whether he wants to be a lawyer. He

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<sup>11</sup> Probably the student learns more during the summer vacation after his first year than at any other time. He is digesting a vast amount of ideas which have been urged upon him. But during the summer of the second year there may be a place for several more basic courses.

should feel confidence in dealing with some dozen fields of law although only on an elementary level.

The faculty might well test his progress by a single comprehensive examination to emphasize the fact that law is broken down into fields and courses for more convenient study but that in practice the seamless web concept is often justified. If he does not make the grade in this examination one may conclude that he does not have the necessary interest. The method course at the outset will determine whether or not he is capable.

### *The second year*

The objective in the second year is:

To continue to teach breadth in substantive law. To this end 14 more two hour courses, each for a semester, might be given. The selection of fields is not a matter of life and death. The idea that some courses in law school are more important than others is not universally true. In the law office the client's problem or problems focus attention. The solution may lie in a dozen different fields of law at the same time. But in whatever field they do lie their presence is what creates importance — not the field itself. The law school in two years can hardly hope to anticipate every situation confronting the prospective client-server but at least it can give him a comprehensive view so that as his mind approaches the client's difficulties it may be able to accomplish the first step in analysis. Present day law school courses often ignore this first step and thereby unwittingly lull the student into a false sense of security. The catalogue records the name of a particular course. The case book re-emphasizes it. Every case in the case book has something to do with the topic and the student need only turn to the table of contents to see an outline of the material. But the client does not obligingly wear on the lapel of his coat a tag stating "I am a tort case" or "I am a future interests case." The lawyer must find this out for himself the hard way and often the task is a difficult one. He must learn to decide which case book or case books to take down off the shelf.

At the conclusion of the second year another comprehensive examination, in addition to a series of tests on the different courses if desired, would appear in order. By this time the student should have taken his first great step in the law and should have enough background of information and experience to prepare to take the second.

*The third year*

The objectives in the third year are:

1. To teach the student how to study law in depth. To this end a number of structural changes should be made:

a. The class—which supplies the individual student with a sort of lateral support—should be broken up and instruction should continue on an individual basis. The student who seeks a mature professional viewpoint needs to experience the sense of loneliness surrounding the lawyer who is making responsible decisions.

b. The individual student—who previously has dealt entirely with required courses—should have acquired enough background to enable him to decide in which fields of law he wants to learn how to start to do the profounder sort of work characteristic of the good client-server. So the topics studied should be elective. The instructor may assign and lay down the routine for performing the various tasks in much the same fashion as the head of a law firm would require a memorandum of law on a particular point. The student would then proceed to gather material, marshal it and submit a report in writing. That report might not be accepted by the instructor unless it contained not merely what the courts and legislatures have said on the subject but what the law offices are thinking and doing in advance of litigation. A few exercises in this sort of discipline should give the student an entirely different dimension to his work—depth.

Obviously the student cannot—in a year's time study all law in depth—but he can learn *how* to study law in depth and having learned *how* he can carry on by himself if necessary.

The instructor should be able to obtain a better idea of the capabilities of the student under such conditions than can be done in a crowded classroom where the individual is submerged in the group; where each man recites only occasionally and submits at the end of the year an examination book as the main basis for a grade.

2. To teach the student basic method in law practice the Legal Aid Clinic course<sup>12</sup> has progressed to the point at which it appears to supply the answer to this step.

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<sup>12</sup> Early material on the development of the legal aid clinic movement is contained in a "Tentative Bibliography of Material on Legal Aid Work" published in 1940 by the National Association of Legal Aid Organizations. A more recent publication in the same field by the writer is "Clinical Preparation for Law Practice" (Duke University Press, 1946).

At the end of the third year the student should be required to pass an examination in the legal aid clinic work. But it is doubtful whether any examination in the rest of the work is needed. The reports submitted periodically should cover the ground.

### *The Graduate Courses*

The graduate courses would be the most interesting to develop. Such specialization as might be accomplished under the proposed plan in the first three years of law school would be slight. The time for specialization is after a suitable base has been acquired. The needs of lawyers thereafter are quite diversified and the instruction offered should reasonably meet the demand. One thinks of the subject as divisible into three categories and embodied in courses given annually, perhaps for three weeks or a month in the summertime.

1. A course in new local and national law should be cumulative, covering statutes, new decisions, city ordinances, practices and policies. This in addition to a study of the advance sheets and other aids for the busy lawyer might be made very practical.

2. A course in research of substantive law in depth would give the attorney experience in all the fields which he had not had time to cover in the first three years. The possibilities of development here are quite extensive and the usefulness of such work beyond question.

3. Courses in method. The starting point would be the various positions in which lawyers may find themselves. The object would be to demonstrate the particular type of thinking required of a lawyer in that position. Thus, the man who wanted to teach law might take the research in such fields as Comparative Law, Roman Law, Jurisprudence, International Law and other more modern graduate fields; the man who wanted to be a judge could cover the entire technique of the judicial process and others like the prosecuting attorney, candidates for the position of trust officer, corporation counsel and municipal attorney, could receive expert and advanced instruction.

The situation opens up interesting ideas for constructive effort in maintaining the profession at the peak of effectiveness in serving the public.

The details might vary from place to place but the general idea challenges our ingenuity and resourcefulness. This graduate work would be available annually. Until the lawyer retired he would make

a habit of taking work of this sort. The prestige of the profession would be increased. Hopkins and the student would be walking together.

#### CONCLUSION

Here then is a proposal to take the traditional log away from Mark Hopkins and his student. After all, the personal relationship between the two is a more important educational factor than the courses taught. The student will not long remember much of what he is taught but his recollection of the man who taught it and whether or not he did a satisfactory piece of work, will last. The benefit to the instructor will be considerable.

The proposal, of course, has many drawbacks but there is no need that it be perfect. All one requires is that it point the way to a more satisfactory procedure than the one that exists and that its good features out-weigh those which are undesirable. This requirement seems to be met.

Specifically it proposes:

1. To make formal education a lifetime part of the lawyer's routine. This will have the advantage of avoiding the congestion of the present three or four year curriculum. There will be time to digest what is taught. The question will be not whether the student shall study a particular topic but when. His goal is to know everything and how to do everything.

2. To organize the framework of instruction not on the pedagogical device of the orthodox courses in law but in an effort to appraise and answer the student's problems at various stages of his development. The proposal should improve the learning process without too much disturbance to the routine of teaching. The instructor could continue to teach his course as he wished. One may argue that the student is the client of the law school, that the student-faculty relationship is a status and that the mutual obligation is not to be broken by the somewhat artificial step of granting a diploma. Rather it should continue as long as the parties live.

3. To have the law school assume a more important position in relation to the bar than it has previously occupied. The law school is better qualified for the proposed work than anyone else. Finances should not long be an obstacle because the lawyers who submitted themselves to this continuing discipline would probably soon demon-



strate the advantages of the system. Thereafter the enterprise should be self-supporting.

4. The plan will not make law study easier for those applying for admission to the profession. The course in method proposed for the first year should be the point at which the majority of those not determined to succeed will turn back. But the concentration of attention on this course should be an advantage to the man who drops out. He will discover or be forced to realize, at the very beginning, that the law is not for him and without wasting time will make some other selection for his life work. Thereafter the questions which recur in the minds of the reasonable student and lawyer should be answered as they arise.

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