

A GRADUATE PROGRAM FOR LAWYERS

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Some of my friends in other law schools have been amazed to learn that there are in the graduate division of the School of Law of New York University more than 450 lawyers from fifty-five different law schools, and that these graduate students have been able to choose from among fifty-three¹ courses and seminars. Some of my friends have been apprehensive that we might flood the market with young teachers; others have wondered how our program fits in with the plans of the American Bar Association and the American Law Institute for the continuing education of the bar.² Actually, our program is not new; it has been evolving for sixty years. It is not designed primarily to produce teachers, nor to keep practicing lawyers up to date. The program is unique in that it is designed for practicing lawyers and for recent graduates who wish to practice law. Much of the work might more accurately be called advanced professional work than graduate work. We may be less pretentious about advanced work than some of our neighbors, but we take no "auditors"; all students must prepare their assignments, present drafting or other exercises on time, and take examinations. Unlike most post-admission programs, ours requires all students, whether senior partners or inexperienced young lawyers, to submit to academic discipline.

As stated in the announcement of graduate courses,

The graduate curriculum is designed to serve the profession in a number of ways: (1) to enable law-school graduates to broaden their backgrounds in the law by studying jurisprudence, Roman and comparative law, public law, and legal history; (2) to permit lawyers to specialize in fields in which there are great professional opportunities, such as taxation, corporation law, estate law, labor law, administrative law and international law; (3) to train lawyers for government service, especially in the administrative agencies; (4) to develop teachers, research workers, and legislative draftsmen.³

Graduate work is an important part of the program of a law center as conceived by Dean Emeritus Arthur T. Vanderbilt,⁴ now Chief Justice of the Supreme Court of New Jersey. Our graduate division has proved

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¹ Eight of these courses are offered in the Graduate Division for Training in Public Service or in the Graduate School of Arts and Sciences. All of the courses and seminars are described in the ANNOUNCEMENT OF GRADUATE COURSES which may be obtained by writing to Alice J. Kassel, Secretary to the Committee on Graduate Studies, School of Law, New York University, 100 Washington Square East, New York 3, N. Y.

² Mulder, *Continuing Legal Education*, 1 J.LEGAL ED. 378 (1949); Simpson, *Continuing Education of the Bar*, 59 HARV.L.REV. 694 (1946).

³ See note 1 *supra*.

⁴ Vanderbilt, *The Law School in a Changing Society: A Law Center*, 32 A.B.A.J. 525 (1946). See also his various Dean's Reports, especially for 1947-1948.

a valuable laboratory for experimentation in new courses and new techniques of instruction. A graduate program may furnish the answer to the quest for more time in law school,⁵ for there are many advantages in scheduling part of a lawyer's formal training after he has had some experience in the practice.

The following report on our program may be of general interest because of the present awareness of the need for the continuing education of the bar. It is our belief that the law schools have a duty to the profession which does not end with the granting of the LL.B. degree; that in the over-all post-admission program there is an important role for the law schools to play. In some ways New York University is in a favorable situation to pioneer in this field: Washington Square is in the transportation center of the greater New York area. Many of the best specialists in our profession live in the metropolitan area. Lawyers from New Jersey, Pennsylvania, and Connecticut are within commuting range. But many law schools are located near large centers of population and could offer similar programs.

The Program of Courses and Seminars

It may be of interest to note that some of the cultural courses are among the most popular. Professor Edmond Cahn's course in Jurisprudence is always oversubscribed, and the course in Law and Society, given this year by Professor Sidney Post Simpson and Visiting Professor Julius Stone, has created a great deal of interest, as has Professor Stone's course in Roman Law. Many other courses, especially those in comparative and international law, are taken by lawyers as a matter of general interest.

The most popular and successful specialized program is in the field of taxation. Students who have not had a recent course in taxation and who lack a familiarity with the Internal Revenue Code must take the basic course in Federal Income Taxation. Other basic courses are Gift and Estate Taxation and State and Local Taxation. The advanced courses are built on these three. At the next level are Tax Procedure and Advanced Income Taxation. Then follow seminars in Federal Taxation of Corporations and Partnerships, Problems in Corporate Income Taxation, Federal Tax Litigation, Tax Problems of the Fiduciary, Tax Penalties and Prosecutions, and Latin American Tax Law. In addition there is supervised research in tax law, including editorial work in connection with the *Tax Law Review*. There are also available courses in Government Finance and Government Fiscal Policy. The program has been successful because we have been able to attract some of the most eminent scholars and practitioners in the field to participate in it.

The corporation specialty is the next most popular. Most students start with Dean de Capriles' justly famous course in Accounting for Lawyers. Other courses are Organizing Business Enterprises, Corporate Reorganizations, Federal Regulation of the Securities Business, and Seminar on Corporate Documents. Related are courses in Trade-Mark and Trade-Name Protection, Trade Regulation, and Seminar on Problems in Trade Regulation.

⁵ Hall, *A 2-2-2 Plan for College-Law Education*, 56 HARV.L.REV. 245 (1942), in which the various proposals for a four-year law course are discussed.

Another specialization of increasing popularity is in labor law. In addition to a basic course in Labor Law and Labor Relations, there are advanced courses in Collective Bargaining and the Collective Bargaining Agreement, Management Functions under Collective Bargaining, Labor Arbitration, Wage and Hour Administration, Social Security and Its Administration, a seminar on the Taft-Hartley Act, and a research seminar on Problems in Labor Law.

The estate law specialty is in the process of evolution. In addition to the courses in Gift and Estate Taxation and the Tax Problems of the Fiduciary, we offer a course in Decedents' Estate Practice and seminars in Estate Planning and Estate Administration. On the basis of our experience in these courses we are now trying senior elective seminars in drafting.

Our offering in international law is enriched by our cooperation with other graduate schools in the University in the Program of Studies in United Nations and World Affairs. Courses and seminars in the field include the basic course in International Law and advanced courses in International Claims, Legal Problems Arising under International Agreements, Constitutional Law of the United Nations, Treaty Making and International Legislation, and seminars on the Inter-American Regional System and on Problems in International Law.

The comparative law specialization has a double aspect. Through the curriculum of the Inter-American Law Institute instruction is offered in the common law on a comparative basis. Even here the objective is to train practicing lawyers, not scholars, so that Latin American lawyers upon their return to their countries may deal with lawyers from the United States on a plane of mutual understanding. To common-law students courses are offered in Latin American Commercial Law, Latin American Civil Law and Procedure, Latin American Tax Law, Western European Commercial Law, and, of course, Roman Law.

The field which will be most expanded next year is administrative law and government control of business. At present we offer courses and seminars in Administrative Law and Comparative Administrative Law, and specialized courses in Public Utilities, Housing Law and Administration, Trade Regulation, Trade-Mark and Trade-Name Protection, Copyright, Patent Law, and Patent Office Practice and Procedure. New seminars are planned especially in Administration of the Food, Drug and Cosmetic Act and the Administration of the Anti-Trust Laws.

Course Materials

We have had difficulty selecting materials for our advanced courses. Some of the courses available for graduate students are offered only because many graduate students did not have an opportunity to take such courses during their undergraduate days. For such courses there are traditional casebooks available. Many of our advanced and specialized courses have not been given in other law schools, and it has therefore been necessary to improvise teaching materials. Some instructors have used mimeographed materials extensively. Some have used professional texts, form books, codes, and regulations. Others have experimented with special editions of professional services, especially in labor law, estate planning, and several

tax courses. Most of the seminar courses, however, have been conducted by the problem method, so that students have been required to use the general resources of the library.

Selection of Students

Since our graduate students during the current academic year represent some forty-five law schools located in the United States and ten law schools located in other countries, we have had substantial difficulty in selecting students and in arranging suitable programs. Naturally we have found that these students vary considerably, both in ability and in the courses covered during their undergraduate program. Furthermore, some of our graduate students have had no practical experience, some have had general practice, and some have had only government experience or legal experience within some narrow specialty.⁶ It is a severe administrative burden to interview these students and to arrange programs. Our greatest single difficulty has been to get students in courses or seminars at the appropriate level. Most students, with the confidence that is typical of the profession, think that they are able to take advanced seminars before they have a sound and systematic understanding of the basic field. On the other hand, an inflexible system of prerequisite courses would force some students of maturity and experience into courses which would be too elementary for them. The only solution is in patient, tactful, and firm administration.⁷ We have had, by the way, some unpleasantness in the matter of restricting registration in advanced seminars and also in the matter of requiring all students to take examinations. Some members of the bar have acquired too much dignity to undertake the hazards of a competitive examination.

On Teaching Skills

We have acquired substantial experience in teaching skills, and from our experiments in the graduate division we have been able to add courses to the undergraduate program. Professor W. Barton Leach has expressed the view that drafting problems should not be given to students unless they are capable of doing a job of high professional quality. His argument is that if a student is capable of doing only an imperfect or defective job, it is better for him not to do it at all. We have come to a contrary conclusion. Professor Cavers made an astute observation when he distinguished between teaching students a lawyer's skills and teaching the skillful use of the lawyer's skills.⁸ We agree that it is not possible to teach undergraduate law students to be expert or artistic in doing the work a lawyer does, but it does not follow that we should not have skill courses in the undergraduate program. A senior, for example, who is required to draw wills and trust instruments for imaginary clients may not learn to draw perfect in-

⁶ Measured by the number of "points" of instruction taken, over a third of our graduate students are full-time students; but on a head count the percentage would be less because most part-time students take two or three years to complete the requirements for the LL.M. degree. Most of the courses are given in the late afternoon, the evening, or on Saturday.

⁷ The graduate division is now administered by Associate Dean Miguel de Capriles, with the able assistance of Alice J. Kassel, Secretary to the Committee on Graduate Studies.

⁸ Cavers, "*Skills and Understanding*," 1 J.LEGAL ED. 395 (1949).

struments, but he will learn a great deal of law. He will learn to use the standard services and the form books. He will re-examine both statutory and case law with a new interest. He will be forced to synthesize what he has learned in several courses. He will have a new educational motivation. Furthermore, he will develop a little confidence; we have very little worry about his becoming overconfident. If he does not become skillful, he will develop an awareness which may later be converted into professional competence. Drafting courses at this level have been transferred to the senior year, and we now have seminar courses in drafting trusts, wills, leases, and conveyances, and problem seminars in tax law, labor law, and corporation law. We shall expect each senior to elect one of these skill seminar courses.

In the graduate division we believe that we are making progress in learning how to teach the skillful use of skills—although we have not always been skillful about it. Our seminars in estate planning and estate administration, the seminar in drafting corporate documents, and some of the advanced seminars in taxation and in labor law are designed to develop a certain amount of professional expertness. Indeed, we feel justified in giving the specialized degree of Master of Laws in Taxation and Master of Laws in Labor Law as academic certification⁹ of the special training of the graduate student.

It might be that some of the courses involving professional skills could be taught in a summer session for graduate students and for students who have completed two years of law school work. It might be possible to have undergraduate students take one summer of professional work between the junior and senior year in law school for credit toward a Master of Laws degree. Such a student would complete his work for the Master of Laws degree after graduation and preferably after some experience in the practice. We plan to experiment along this line because we have reached the tentative conclusion that it is better to have students spend an extra year for the LL.M. degree than to have a required fourth year of law for the LL.B. degree. We prefer the LL.M. alternative because of its flexibility and because we believe that some of the higher-level work should be given to students who have had some experience in the practice. We do not believe that there is room in the conventional three-year undergraduate program for the type of practical work suggested by Judge Jerome Frank,¹⁰ but we think that a good deal can be done along the lines which he has suggested at the post-graduate level.

On Integration of Law and Other Disciplines

The graduate program has offered many opportunities for experimentation in the integration of law with the social sciences. For example, the students who are specializing in the law of taxation have been encouraged to take a course in Public Finance or in Government Fiscal Policy in the Graduate School of Business Administration or in the Graduate School of

⁹ Cf. Kegan and Melchior, *Certification—A Proposal to the Bar*, 42 ILL.L.REV. 413 (1947).

¹⁰ Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947). Cf. Simpson and Field, *Social Engineering Through Law: The Need for a School of Applied Jurisprudence*, 22 N.Y.U.L.Q.REV. 145, 184 (1947).

Arts and Science. We feel, however, that it would be better to have a course on tax policy given at a high level by a lawyer who is also sophisticated in matters of public finance. Since our tax faculty includes men who have had a good deal of experience in forming tax policy, we believe that several of the seminar courses now contain a happy fusion of technical and policy problems. Our program in labor law has been enriched by some advanced courses in the Graduate Division for Training in Public Service and in the Graduate School of Arts and Science. We hope next year to have some courses offered in the Law School by professors from other departments. The advantage would be that all of the students would be lawyers. The courses should therefore have a sharper focus.

The courses in criminal law and welfare law offer the ideal opportunity for integration of the various social sciences with law. In addition to courses on Criminal Procedure and Problems in the Administration of Criminal Law, we have seminars on Legal Problems in Penology and on Social-Penal Legislation. We have an advanced course on Separation, Annulment, and Divorce, and plan further experiments in cooperation with the graduate faculties and with the College of Medicine, especially in the psychiatric field.

On the Economics of the Graduate Program

A graduate program such as the one outlined above is necessarily expensive. Since the enrollment in some of the advanced seminars must be restricted, it is impossible to make the program self-sustaining. If the practicing lawyers who give the high-level courses were paid at the rate of full-time professors, the cost would be ruinous. The program requires more seminar rooms and small classrooms than are available in most law school buildings. In our new building we are planning more seminar rooms than classrooms because of the peculiar needs of our graduate offerings.

The burden on the library is very great because students in most of the advanced courses and seminars have no casebooks and must therefore use the general library. It is necessary to buy and maintain many professional services. In our new building we have adopted the plan of multiple libraries, with several collections of the standard materials. We have in addition provided for 135 carrells or study cubicles off the air-conditioned stacks. The carrells are not exclusively for the use of graduate students, but will be available for any students who are engaged on research work and wish to leave their materials undisturbed.

Conclusion

The graduate program is expensive, it is difficult to administer, it takes a good deal of the time and energy of our best people, but it is in our judgment worth the cost and the effort. There are many advantages in having advanced law students who have had some practice and who approach their work with quite a different background and a different point of view from that of the undergraduate students. There is unquestionably a great demand for this type of program. We believe that other law schools, especially in metropolitan areas, should carry on similar experiments. We should be very happy to exchange information with others who may be interested and to make recommendations about the curriculum or about individual courses or seminars.