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# The Law School

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# THE LAW SCHOOL

(From September, 1968, to October, 1969)

## I. ENROLLMENT

Total opening enrollment in the fall of 1969 was 546. Entering class enrollment was 288. Both of these figures are the highest in the School's history.

Composition of the student body in terms of residences and pre-law educational backgrounds continued essentially unchanged from that of recent years. Thus, 82 per cent of this year's entering class are residents of North Carolina, as against 81 per cent in 1968, and 83 per cent in 1967. The remaining 18 per cent of this first year class come from a total of 19 other American states and two foreign countries. Approximately 40 per cent of the class had all of their undergraduate work at the University of North Carolina at Chapel Hill. The remaining 60 per cent had all or part of their undergraduate work at a total of 106 other colleges and universities. Ninety-five per cent of the class entered with undergraduate degrees. Of the 12 who did not, 11 are on the University's combined degree program and hence will have earned undergraduate degrees before completing law school.

## II. NEW LAW SCHOOL BUILDING

Van Hecke-Wettach Hall, in formal use since the beginning of the 1968-1969 academic year, was officially dedicated on May 3, 1969. Culminating a series of events extending over three days, the dedicatory address by Earl Warren, Chief Justice of the United States, provided a fine conclusion to a rewarding experience in the life of the School. Taking part in the formal dedication ceremony were Lieutenant Governor H. Patrick Taylor, Jr., LL.B., North Carolina, 1948, representing the State; Thomas H. Leath, Esq., J.D., North Carolina, 1936, representing the University Board of Trustees; President William C. Friday, LL.B., North Carolina, 1948, representing the Consolidated University of North Carolina; Chancellor J. Carlyle Sitterson, representing the University of North Carolina at Chapel Hill; and Dean William B. Lockhart of the University of Minnesota Law School, representing the Association of American Law Schools, of which he was then President. Other features of the program were the finals of the Moot Court arguments, judged by a dis-

tinguished panel made up of Associate Justices of the Supreme Court of North Carolina William H. Bobbitt, Joseph Branch, J. Frank Huskins, I. Beverly Lake, and Susie Sharp; an address by the Honorable Robert Morgan, Attorney General of North Carolina; a dinner honoring the families of the late Deans Maurice T. Van Hecke and Robert H. Wettach and faculty members emeriti Millard S. Breckenridge, Albert Coates, John P. Dalzell, and Fred B. McCall; and a luncheon honoring two alumni of the School with particularly distinguished careers in legal education, Dean Jefferson B. Fordham of the University of Pennsylvania Law School and Professor Wex S. Malone of Louisiana State University Law School, both former presidents of the Association of American Law Schools.

### III. THE FACULTY

With the close of the 1968-1969 academic year Professor Albert Coates reached the University's mandatory retirement age. His retirement concluded a career of official service to the University and the State that began as a Teaching Fellow of the University in 1919, and that continued, with only one break of three years duration, for all of the fifty following years. His service was never less than passionately all-out. From 1931 to 1962 he was Director of the Institute of Government, which he conceived and whose development to unquestioned national pre-eminence among similar institutions he led. During all of these years from 1923 he was a member of the faculty of the School of Law. His contribution in both capacities to the University, to the legal profession, and to the State are literally immeasurable. His retirement signals for the Law School the conclusion of corporate service by that altogether remarkable group of five, Breckenridge, Coates, McCall, Van Hecke and Wettach, to whose lives and service the School literally owed its own life for a period of more than forty years, and to whom it owes a continuing debt for providing the foundation for progress today. We are grateful for Mr. Coates' continued presence at the Law School where, with our other resident professors emeriti, Messrs. Dalzell and McCall, he continues to interest himself in the affairs of the School and to contribute to it and to the legal profession.

We report with regret the loss by resignation of two fine faculty members during the period of this report. Professor Melvin C. Poland resigned to join the faculty of Indiana University School of Law at In-

dianapolis and Associate Professor Kenneth L. Penegar to enter private law practice in Washington, D. C.

Professor Dan B. Dobbs was on leave for all of the 1968-1969 academic year as a Visiting Professor at Cornell Law School and returned to residence in the summer just past for resumption of his duties here. Associate Professor Michael P. Katz is on leave for the academic year 1969-1970 doing graduate work in Sociology at Northwestern. We are fortunate to have as a Visiting Professor for the entire 1969-1970 academic year Professor Thomas W. Mapp, B.A., Rochester, 1950; LL.B., Illinois, 1956, and a member of the faculty of the University of Oregon School of Law. He is teaching a section of the first year course in Property, and the full year course in Advanced Property.

Two regular members of the faculty were added during this period. Associate Professor Kenneth S. Broun, B.S., Illinois, 1960; LL.B., Illinois, 1963, joined us after a period of five years private practice as an associate in the Chicago firm of Raymond, Mayer, Jenner and Block. He is teaching a section of Contracts, a section of Evidence, and an advanced elective course in Trial Advocacy. Assistant Professor John E. Evans, A.B., Louisville, 1960; LL.B., Duke, 1966, joined us after a period of private practice as an associate in the Cleveland law firm of Squire, Sanders and Dempsey. He is teaching a section of Contracts, Decedents Estates and Trusts, and Municipal Corporations. Also during this period Messrs. Katz, Louis, Robinson, and Walker received promotions to the rank of Associate Professor and Miss Oliver to the rank of Professor.

In addition to their normal teaching and Law School committee responsibilities, the faculty engaged in a variety of professional and public service activities, participated in general University affairs in a variety of leadership roles, and made a number of contributions to the legal literature. These are here summarized.

Kenan Professor William B. Aycock gave a widely acclaimed address in July, 1969, to the Southern Region Education Board's 18th Annual Legislative Work Conference in Hot Springs, Arkansas, on "Emerging and Prospective New Relationships in the Academic Community." He served as a member of the Chancellor's Advisory Committee, the executive committee of the University Advisory Committee, and the Faculty Hearings Committee.

Alumni Distinguished Professor Herbert R. Baer had published by

the Michie Company the Second Edition of his *Admiralty Law in the Supreme Court*.

Graham Kenan Professor Henry P. Brandis continued to serve as advisor to the Committee on Pattern Jury Instructions of the Conference of North Carolina Superior Court Judges; served for the fifth consecutive year as Commentator on problems of evidence at the Annual Seminar of the Federal Trial Examiners in Washington, D. C.; participated as a panelist in the discussion of the proposed Federal Rules of Evidence at the Judicial Conference of the Court of Appeals for the Fourth Circuit, at Hot Springs, Virginia; and became on July 1, 1969, the first Director of the newly created Law Center (described in section VI of this report). He was signally honored in May of 1969 by being the recipient of the University Trustees annual "O. Max Gardner Award."

Associate Professor Kenneth Broun (Visiting Professor during the period of this report) acted as co-reporter and draftsman for the Committee on Pattern Jury Instructions of the Conference of North Carolina Superior Court Judges and delivered a lecture to the North Carolina Association of Physical Therapists on "The Liability of Supportive Personnel." He appeared as counsel for the North Carolina Civil Liberties Union in oral argument on amicus brief before the Supreme Court of North Carolina to argue the unconstitutionality of the death penalty.

Professor Robert G. Byrd had published in this *Review* an article, *Malicious Prosecution in North Carolina*, 47 N.C.L. REV. 285 (1969).

Associate Professor Donald F. Clifford was a panel discussion participant at the Southern Law Review Conference in Williamsburg, Virginia; was a Visiting Professor at the University of Texas Law School during the 1969 summer session; and engaged in a research project (still in process), funded by the University Research Council and the Law Center, investigating attitudes toward and difficulties encountered in doing business under the North Carolina Business Corporation Act.

Professor Dan B. Dobbs had published a two-part article in this *Review* dealing with *Trespass to Land in North Carolina*. Part I dealt with The Substantive Law, in 47 N.C.L. REV. 31 (1968), and Part II with Remedies, in 47 N.C.L. REV. 334 (1969).

Graham Kenan Professor Frank W. Hanft continued his service on the North Carolina General Statutes Commission.

Associate Professor Arnold W. Loewy acted as co-reporter and draftsman for the Committee on Pattern Jury Instructions of the North Carolina Conference of Superior Court Judges. He had published this

past summer in the *George Washington Law Review* an article, *The Warren Court as Defender of State and Federal Criminal Law: A Reply to Those Who Believe That The Supreme Court is Oblivious to the Needs of Law Enforcement*, 37 GEO. WASH. L. REV. 1218 (1969).

Associate Professor Martin B. Louis continued to serve as a member of the Civil Rules Drafting Subcommittee of the North Carolina General Statutes Commission and in April, 1969, presented a paper to the North Carolina Bar Association Continuing Legal Education Institute on the New Rules of Civil Procedure.

Assistant Professor and Assistant Dean Robert A. Melott served as consultant to the Florida Board of Law Examiners and had published under the aegis of the North Carolina State Bar Council an annotated set of the ethics opinions of that body.

Professor and Librarian Mary W. Oliver served as Chairman of the Certification Board of the American Association of Law Libraries; as a representative of that Association to the Joint Committee on Library Education of the Council of National Library Association; and as a member of the Steering Committee of the Southeastern Conference of Law Teachers.

Professor Daniel H. Pollitt presented papers or lectured on professional topics to the 1969 Conference of North Carolina School Attorneys, the 16th annual Duke University Conference on Law and Education, the Delaware AFL-CIO Educational Conference, and the University's Campus Security Officer Training Program. He served during the period as President of the University Chapter of the Association of American University Professors; as Special Counsel to the Committee on Education and Labor of the United States House of Representatives; and as a member of the Southern Regional Council, the Executive Board of the North Carolina Civil Liberties Union, and the University Advisory Council.

Associate Professor Richard H. Robinson, under the aegis of the Institute of Government, did research on the problems of labor relations in public employment, the results of which will be published this fall in the Institute's publication, *Popular Government*. He continued to serve in the General University Administration as advisor to undergraduate students.

Professor John W. Scott presented a paper, "Recent Developments in Estate Planning," to the South Carolina Banker's Association and served

as a member of the Drafting Subcommittee on the Principal and Income Act for the General Statutes Commission.

Associate Professor Richard M. Smith served as a member of the Drafting Subcommittee on Lien Law for the General Statutes Commission and acted as Assistant Director of the Association of American Law Schools' pilot "Law Teaching Clinic," which was conducted at this School during August, 1969.

Professor Frank R. Strong served as Director of the "Law Teaching Clinic" referred to in the preceding paragraph. He had published two articles, one in this *Review: Dilemmic Aspects of the Doctrine of Constitutional Fact*, 47 N.C.L. REV. 311 (1969), and one in the *Supreme Court Review: Fifty Years of "Clear and Present Danger": From Schenck to Brandenburg—and Beyond*, 1969 S. CT. REV. —.

Associate Professor Laurens Walker presented a paper to the North Carolina Bar Association's Continuing Legal Education Institute on the New Rules of Civil Procedure and had published in this *Review* two articles, *Foreign Corporation Laws: The Loss of Reason*, 47 N.C.L. REV. 1 (1968), and *Foreign Corporation Laws: A Current Account*, 47 N.C.L. REV. 733 (1969).

Assistant Professor Dale Whitman presented a paper, "Current Developments in Housing and Urban Renewal," to the North Carolina Bar Association's Continuing Legal Education Institute on Real Estate Transactions. He served as Consultant on North Carolina Landlord—Tenant Law for a conference on housing laws sponsored by the National Institute for Education in Law and Poverty and as Consultant to the Duke Legal Aid Clinic on housing matters. During August, 1969, he attended a workshop for law teachers in housing and urban renewal law at New York University.

Professor Seymour W. Wurfel was guest speaker on two occasions to the International Law Society of North Carolina Central University Law School. He had published an article, *Aircraft Piracy—Crime or Fun?*, 10 WM. & MARY L. REV. 820 (1969).

The writer of this report continued to serve during this period as a member of the North Carolina Courts Commission and had published the 1969 Supplement to *McIntosh, North Carolina Practice and Procedure* (West, 1969).

#### IV. THE LAW LIBRARY

As of September 1, 1969, the Law Library had a total collection of

129,260 volumes. During the past year 5,234 volumes and 3,500 micro-cards were added. Included in the added volumes were gifts from the following donors: Melvin Belli of San Francisco, California; Henry Brandis, Frederick B. McCall and Dickson Phillips of Chapel Hill; B. Everett Jordan of Washington, D. C.; and Mrs. Lincoln Kellogg of Asheville, N. C. We are pleased to express our gratitude for these gifts.

#### V. CURRICULUM

Several changes and additions in curriculum offerings and sequences were adopted by the faculty—some already in effect, some effective in 1970-1971. Those reflecting fundamental reassessments or inputs of new offerings likely to be regular offerings are here summarized.

Reflecting the pervasive impact of the Uniform Commercial Code on the whole field of "commercial law"—sales, secured transactions, suretyship, mortgages, etc.—fundamental changes in our traditional offering in this area have been approved to go into effect beginning with the 1970-1971 academic year. A new four-hour course, "Sales and Secured Transactions," covering the area of Articles 2, 5, 7, and 9 of the Uniform Commercial Code and a new three-hour course, "Land Finance and Development," will then be offered to supplant the traditional Sales, three-hour, and Credit Transactions, six-hour, courses. Negotiable Instruments will be retained as a two-hour course open to second year students only. Both of the new courses above described will be open to third year students only.

New courses and seminars added for 1969-1970 are as follows: Seminars—Civil Procedure, Legislation (reintroduced), Corporate Law Revision, Aviation Law (reintroduced and expanded from the old "Air Law" seminar), and Public School Law; Courses—Advanced Torts (fraud, defamation, invasion of privacy, interferences with contractual relations) and Trial Advocacy (in two sections on different tracks).

#### VI. A NEW "LAW CENTER"

Effective July 1, 1969, the Law School had transferred to its budget a significant sum for administering a program originally conceived by Professor Emeritus Albert Coates and initiated by him under the name "Institute of Civic Education." Within the Law School framework, these funds will be administered by a newly created "Law Center." Former Dean Henry Brandis has been appointed Director of the Center by the Dean. Participating in overall direction of its efforts will be an ad-

ministrative board consisting of the Director, who will act as chairman, three faculty members, the editor-in-chief of the *Law Review*, and a member of the staff of the Institute of Government.

Essentially, the Center will be operated to accomplish two basic purposes: direct, legally-oriented service—through research, consultation and writing—to the State and enrichment, in the process of providing this service, of the internal educational mission of the Law School.

The extension service aspect is seen as one peculiarly appropriate to the function of a state university law school conscious of its obligation of service to the supporting state. Complementing efforts of such agencies as the General Statutes Commission, the Legislative Research Commission, and various ad hoc study commissions, it can fill a gap not customarily within their range of interest. Systematic surveillance of the actual working of legal rules, statutes, and judge-made law can test them against their intended consequences and confirm or draw in question the premises of their adoption. Such surveillance may well require, in addition to "pure" legal research, empirical field studies constructed by people aware of the essential legal framework. A state university law faculty, drawing where need be on other disciplines of the university, is admirably equipped to perform this kind of function. Examples of this type of research would be studies of the actual workings of compulsory automobile liability insurance and of the practical impact on corporations considering North Carolina incorporation of our Business Corporation Act (the latter study actually in process). Additionally, original research studies, either prompted by outside agencies or initiated within the Law Center, might provide starting points for actual legislative programs on the basis of suggested policy alternatives. On a more obvious basis, research resulting in the type of case and statutory law surveys intermittently provided by the *Law Review* will now be produced systematically by the Law Center, with publication in the *Law Review* and perhaps in a new, separate publication.

Direct enrichment of the internal teaching mission of the School through substantial involvement of students in Center programs is the second, and equally important, purpose envisioned. Obvious opportunities will be created for taking students past the traditional teaching materials of decided cases, extant statutes, regulations, and rules into concerns with policy formulation lying behind legislation and with the legislative and judicial decision-making processes themselves. Additional

opportunities to students other than *Law Review* members for supervised research and writing will also result.

Potentially, the entire range of interest of the Law School curriculum lies within the scope of Law Center interest. Initially, emphasis will probably be placed upon such obvious problems as those of state and local government, welfare and poverty law, taxation, natural resources law, consumer protection, criminal law administration, and judicial administration. Spin-off value is anticipated in the form of teaching materials for summer institutes for public school teachers of government, publication of books and articles, enrichment of present Law School courses and seminars, new credit courses and seminars in the Law School, and short, non-credit courses possibly co-sponsored by other organizations, such as the North Carolina Bar Association. The closest cooperation is anticipated with the Institute of Government.

#### VII. SUMMER SESSION

During the summer session of 1969 we had four visiting professors joining with our eight resident faculty members to offer the eleven courses making up our two-term summer school curriculum. They were Dean Thomas W. Christopher of the University of New Mexico, Professor Edward R. Cohen of the University of Texas, Professor D. Meade Feild of Mercer University, and Professor Joe Scott Morris of the University of Florida. They taught, respectively, the courses in Constitutional Law, Patent, Copyright and Trademark Law, Administrative Law, and Water Law.

#### VIII. ACADEMIC ACHIEVEMENT

The masthead of this issue lists those students who are members of the editorial board and staff of the *Law Review*.

Fifteen students, on the basis of standing in the top ten per cent of the class of 1969, were elected by the faculty to the Order of the Coif, a national honorary law society. These students were, in the order of their final standings: Neill Gregory McBryde, Isaac Boyce Covington III, Richard Whitlowe Ellis, Laurence Vaughn Senn, Michael Kent Curtis, David McDaniel Moore II, William Henry Lewis, Jr., Thomas Wilbur Taylor, William Vann McPherson, Jr., David Pollock Underwood, William Sidney Geimer, Robert Ambrose Wicker, John Thaddeus Bode, Harold Ned Bynum, and Patrick Harris Pope. Of this group McBryde, Covington, Ellis, Senn, and Curtis were also winners of the Chief Justice

Walter Clark Awards, made annually to the five students who, on the basis of their cumulative records after five semesters, have the highest averages in their class.

The degree of J.D. with High Honors was awarded to Richard Whitlowe Ellis and Neill Gregory McBryde.

The degree of J.D. with Honors was awarded to: Harold Ned Bynum, James Robert Carpenter, Michael Kent Curtis, William Sidney Geimer, William Henry Lewis, Jr., William Vann McPherson, Jr., David McDaniel Moore II, Patrick Harris Pope, Laurence Vaughn Senn, Thomas Wilbur Taylor, and Robert Ambrose Wicker.

Douglas Leon Leonhardt was the winner of the Block Improvement Award, given to the senior who, having devoted himself most sincerely to his law studies during all his law school career, makes the most consistent improvement in academic work from the date of enrollment to the end of his fifth semester. This award, which consists of a three-hundred dollar cash prize, was established by Mr. Norman Block of the Greensboro Bar in memory of his father.

The Lawyers Title Award, a one-hundred dollar prize given to the senior demonstrating excellence in the study of real property law and selected at this school on the basis of the highest average grade on the three courses, Real Property, Titles, and Future Interests, was won by Laurence Vaughn Senn, Jr.

#### IX. THE STUDENT BAR ASSOCIATION AND STUDENT ACTIVITIES

The officers of the Student Bar Association for the academic year 1969-1970 are Franklin Freeman, Jr., President; Wade Barber, Jr., Vice President; Michael A. Thrasher, Secretary; and Henry Poole, Treasurer. Kenneth B. Spaulding is Chief Justice of the Honor Court and Charles Worley is Chief Justice of the Holderness Moot Court Bench.

The SBA continued its orientation program for entering first year students under the chairmanship of Wade Barber; is working with the Administration in placement activities through a committee chaired by Matt Forstadt; is continuing its active speakers program under the co-chairmanship of Tom Anderson and Bill Trott; and conducts a program of social events for students and faculty under the co-chairmanship of John Freeman and Ken McCotter. The Association has also developed a Recruitment Committee under the co-chairmanship of Ken Essex and Clint Eudy to plan and conduct a recruitment program primarily aimed at minority groups. Under the chairmanship of Bill Lamb, the SBA is

working toward the establishment of a five-thousand dollar scholarship to be awarded annually to an incoming first-year student.

For the second consecutive year the Dean, with approval of the faculty, has appointed members of the student body to the following Law School committees: Curriculum, Library, Building Use, and Grading and Examinations. These students are selected by the Dean from nominations submitted to him by a committee of student-organization heads. A Joint Faculty-Student Relations committee gives attention to the overall operational and structural problems in the administration of the School. It is hoped that the recommendations of this committee will continue to reflect the consensus of students and faculty in major areas of concern to the School. Last year's experience in this area of student participation was most encouraging.

The *Tar Heel Barrister* was replaced during the 1968-1969 school year by the *North Carolina Law Record*. With the able leadership of Samuel Woodard this newspaper-magazine published six issues. Under the editorship of Joe Hackney the *Law Record* intends to expand this number to eight during the 1969-1970 academic year. With distribution of approximately 3,500 copies, this new publication of the law students is rapidly becoming prominent both within and outside the state.

#### X. ALUMNI ACTIVITIES

The steady annual increase in the level of alumni support through Association dues, which has been characteristic since its formal inception, continues. For this, we at the Law School are profoundly grateful. As of September 22, 1969, some 1019 alumni and friends had contributed a total of \$19,521 (billing instructions for \$800 *not* included), as compared with 1186 contributors contributing a total of \$20,377 for all of last year.

Contributions to the University of North Carolina Law Foundation during the period reported are now actually a part of the ambitious "Second Century Fund Campaign," designed to increase, over a four-year period, the size of our principal fund by one million dollars. On a campaign that actually got underway in broad solicitation in late spring, pledges and contributions of cash and property from all sources had reached the figure \$501,043.54 as of November 6, 1969. This includes 157 alumni contributions, aggregating \$31,631.85, during this calendar year (to September 22). This compares with 377 alumni contributions aggregating \$105,111.76, for all of 1968 (including one contribution of

property valued at \$80,000). Our hopes are high for successful accomplishment of the drive to substantially build up our principal fund.

The bulk of the annual financial support provided by the generosity of alumni and friends continues to go to scholarships. The amount budgeted this past year for this purpose was \$16,000. In addition, smaller sums are used to help finance the *North Carolina Law Record* (nee *Tar Heel Barrister*) and to supplement the modest state appropriation of funds for faculty and staff official travel and other incidental expenses.

Between the annual meetings of 1968 and 1969, the officers of the Law Alumni Association and of the Foundation Council were as follows—*The Association*: Robin L. Hinson, *President*; Franklin T. Dupree, Jr., *First Vice President*; James B. Garland, *Second Vice President*; Henry Brandis, Jr., *Secretary-Treasurer*; and Morris R. Gelblum, *Assistant Secretary-Treasurer*—*The Foundation Council*: Robert H. Schnell, *Chairman*; Richmond G. Bernhardt, Jr., *Vice Chairman*; Donald W. McCoy, *Secretary*; Henry Brandis, Jr., *Treasurer and Assistant Secretary*; and Morris R. Gelblum, *Assistant Treasurer*.

#### XI. INSTITUTES FOR PRACTICING ATTORNEYS

The School continued its participation with the North Carolina Bar Association and the other participating law schools of the State in the cooperative continuing legal education program. Participation by individual members of the faculty on the various institutes conducted during the year has been reported in the section on faculty activities.

#### XII. BAR EXAMINATION RESULTS

In August of 1969, out of 126 of our 1969 graduating class taking the North Carolina Bar Examination, 125, or 99.4 per cent, passed. We are of course most gratified with the success of our graduates.

#### XIII. STATEMENT OF PURPOSE AND DEDICATION

The primary role of this School of Law is to prepare students for practice in the legal profession. This contemplates the American legal profession at large and its manifold aspects of specialization and emphasis. This role is not adequately discharged by narrow concentration on the more vocational aspects of the profession, but requires as well major curricular attention to the institution of law in its historical, sociological, and philosophical aspects. Neither is this role acceptably discharged by over-concentration on the particular jurisprudence and legal institu-

tions of the supporting State as distinguished from Anglo-American systems in general. A proper goal of legal education in a state university must be to prepare graduates to be skilled and competent craftsmen of the profession in the various state and federal systems in which they may practice, to be valuable critics and reformers of the institutions of law in whatever system (including that of the supporting State) they may acquire influence, and, through the varied opportunities traditionally open to members of the legal profession, to be constructive and imaginative shapers and implementers of policy through the political processes in which a great number will always be involved.

Given the fact that this School presently produces, and for the foreseeable future will continue to produce, a majority of the persons annually entering the profession of law in the State of North Carolina, the scope of its role, and the importance to the State of the success with which the School is able to fulfill the role, is obvious. On its success depends to a large extent the caliber of the bar and bench of the State, and hence of the administration of justice, the reform of legal institutions, and the shaping of policy at all levels of government. We hope most devoutly that it will be equal to the task and dedicate ourselves to that end.

DICKSON PHILLIPS, Dean