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The Law School at the Crossroads

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third year students for the degree, compared with last year when there were only four."

The Law Faculty numbered three in 1910: Dean McGehee, Atwell Campbell McIntosh, and Patrick Henry Winston. In 1919, Oscar Ogburn Efird was added to the faculty; in 1921, Maurice Taylor Van Hecke and Robert Hasley Wettach; in 1923, Albert Coates and Fred B. McCall. Professor Efird resigned from the Faculty in 1921 and Professor Van Hecke in 1923. The Faculty increased from three to five during McGehee's administration.

Atwell Campbell McIntosh was instrumental throughout this period in developing the Law School. He was born in 1859, graduated from Davidson College in 1881 with Phi Beta Kappa standing, and studied law with Judge David Schenck. Professor McIntosh taught in the public schools for ten years, before his appointment as Professor of Law in Trinity College Law School from 1904 to 1910. From 1910 to 1938, he was Professor of Law at the University of North Carolina, serving as Acting Dean in 1923-1924 and in 1926-1927. As a legal scholar, he was author of *Cases in Contracts*, co-author of *Selected Remedies*, and author of the outstanding treatise on *North Carolina Civil Procedure*. Professor McIntosh also associated with Dean McGehee in compiling the Consolidated Statutes. Moreover, as a public servant, he served as City Attorney, member of the North Carolina General Assembly, and member of the County Government Study Commission. He was one of the most highly respected and best loved members of this faculty and belongs in that honored group of law school deans, including Mordecai of Trinity, Talley of Wake Forest, and McGehee of North Carolina.

III

THE LAW SCHOOL AT THE CROSSROADS

Toward the end of his administration, Dean McGehee requested relief from administrative duties, and President Chase began to look around for a suitable successor to the deanship. The quest was speeded by McGehee's death in the fall of 1923. On November 28, President Chase outlined the following declaration of Law School policy to the members of the executive committee of the University Trustees.

President Chase takes his stand. "During the past two weeks I have visited the law schools of Chicago, Harvard, and Columbia, have talked

with men prominent in the field of legal education, and have studied data put at my disposal by the Carnegie Foundation in its study of legal education.

"My conviction that the Law School stands at the cross-roads in its history has been strengthened. I beg, therefore, to submit for your consideration the following analysis of the situation. Under the conditions which now exist, the type of dean chosen must depend on the policy adopted for the school.

"I assume that we are all agreed that we desire to build up a strong law school, with the same sort of reputation that other departments of the University possess, a school that will be a credit to the University, that will be the outstanding law school of the State and of the section. I would ask your consideration of what this involves.

"First, in terms of standards. The Washington Conference on Legal Education in 1921, called by the American Bar Association, defined a standard law school. It is a school which requires (a) two years of college work as a preliminary to admission, (b) a three year course of legal training leading to a degree, (c) adequate library and faculty. The other day the Council of the American Bar Association published the first list of standard schools. These are thirty-nine in number. In the South, these include Texas, Virginia, Washington and Lee, Emory (Atlanta), and Trinity College. (Trinity, as a matter of fact, has no third year students, but as it offers the three year course for a degree, and has two years of college work required for entrance, it was included.)

"Furthermore, the Association of American Law Schools has voted that by 1925 all its member schools must meet the two year preliminary requirements for entrance. Florida, West Virginia, Georgia, Tennessee, and Alabama, in the South, have signified their intention of so doing.

"Our Law School, at present, requires one year of college work for entrance. It must raise this to two years by 1925, or it must definitely abandon, not only any thought of leadership, but any idea of keeping up with the procession, and must make up its mind to be thought of in a class below Virginia, Trinity, Washington and Lee, Texas, Emory, Florida, Georgia, Tennessee, Alabama, and West Virginia—in other words, to assume, with South Carolina, a position at the foot of the group of Southern Law Schools.

"Putting entrance on such a basis will probably diminish somewhat for a time the number of students. This should be expected, and squarely faced. It happened with the Medical School, which soon built up again.

"Second. The Three Year Course. This is now offered by the School, but the third year classes are small, as the majority of students leave at the end of the second year. This is in large part due to the two-year requirement for admission to the bar. North Carolina is one of nineteen states which require less than three years study of law for admission to the bar, and one of five states in which examinations are still set by the Supreme Court, rather than by a board or commission appointed for that purpose, as is the general practice with other professions. (Indiana has no special requirements for admission to the bar and is in a class by itself.)

"It may be assumed that the raising of the requirements for admission to the bar to three years will be a matter of difficulty and time. For some time, at any rate, the Law School must attempt to hold students to a third year course when they can be admitted to the bar after two years. This can be done, but it calls for the development of a high morale and a strong professional spirit among the students. Other schools in states with two-year bar requirements are doing it, and it can be done here.

"Third. Faculty. Our faculty on permanent appointment consists now of four men (one being on temporary appointment in addition). I find the consensus of opinion to be that two men, in addition to the dean, should be added now, and a third man in a year or two. I find furthermore that practically all schools are paying law teachers a higher range of salaries than is the case in the college departments. I think we shall have to adopt, for our law teachers, a maximum of at least $5,000, and $6,500 to $7,500 for the dean. Such salaries are necessary because of the professional rewards which good men can receive in practice.

"Fourth. Summer Law School. The present Summer Law School is frankly a coaching class for the bar examinations. It is the only such school now conducted by any institution of standing, and should be discontinued in its present form. It tends, clearly enough, to have a tendency to make men loaf on their work during the regular session, with the expectation that they can cram up quickly—and superficially—during the summer. A regular summer quarter, with courses of the same nature as those in the regular year, might well be substituted.

"Fifth. Teaching Methods. The school must be put in a position to develop a more intense professional spirit. Our law students do not look on their work in the same spirit that, say, the medical students do.

The work must be stiffened up, rather mercilessly at first, and men dropped that do not come up to proper standards. As for the methods of teaching, the case method is now universally used in reputable law schools. Whatever may have been the case in the past, it is certainly true today that the body of existing law is so vast that the emphasis must be on method, and not on information. The case method, recognizing that law in America is a matter of court decisions, attempts to train students through the study of selected cases, in the methods they will actually have to follow in practice. As opposed to the older didactic lectures, it does for law students what the study of hospital cases does for medical students.

"The method, properly used, requires great skill, and hard work on the part of both teachers and students. It is, however, a method which seems abundantly to have justified itself by results, until it has now become the basis of modern legal education.

"Conclusion. The question at the root of the whole matter is whether it is the function of the University Law School to prepare an inferior brand of lawyers for law as a trade, or whether it shall prepare men for practice and leadership in law as a profession. It cannot do both. It is no answer to say that great professional success has been attained by men with little legal training. Times have changed. Not only has the existing body of law grown enormously, but the whole social and economic life of North Carolina is rapidly undergoing a transformation which affects legal problems as it affects problems in every other sphere of life.

"I submit, therefore, that we must choose between a law school which is frankly a coaching school for bar examinations and a real professional law school in the modern sense. To choose the former course means to abandon all thought of leadership. A strong faculty can never be secured and kept in a law school today under such conditions. Nor would the better type of students enter or remain.

"To choose the second course—that of building up a strong law school in the modern professional sense, is to choose the path of leadership, but also that of difficulty. It is a task calling for an administrative head who knows legal education, who has been trained in modern methods, and who has the youth and vigor to give himself to a grinding task —to a task of building, not of perpetuating a condition which exists. I cannot emphasize this too strongly. To put at the head of our Law School at the present moment any man who is unfamiliar with modern

methods of teaching, who does not know law school problems, standards, and administrative problems, and who will not understand how to build up a strong and well-trained faculty, would be, in my judgment, a tragic mistake. No man past vigorous middle age who lacks these things can well acquire them. The job is one for a builder in full strength and vigor. I know of no more difficult one, nor one that ought to bring better rewards.

"It is my firm conviction, therefore, that we should, for our dean, go to some other law school and pick a man familiar with the type of administrative problems he will have to solve here, and of demonstrated capacity in such problems, and then that we should leave him free, precisely as any other department head at the University is free, to make such appointments as he chooses, and hold him responsible for results—and that we should give him at least five years to show results. We must build a law school with an eye to the future, not merely to meet the exigencies of the present moment."

The battle ground. Battle lines in the Board of Trustees were quickly drawn on three issues: entrance requirements, method of instruction, and the deanship. The Governor led the opposition to the requirement of two years of college training for admission. The *News and Observer* reported his argument: "The Governor had one impressive reason and a thousand examples to lend it weight. It would disbar ability from competent training. He could point out from his seat lawyer after lawyer who had been trained at the University, and who, if the proposed plan had been in effect when they entered, they could not have attended that school. He himself had never had college training. He called over the names of scores of great lawyers who had never attended college."

This argument was all the more effective in coming from a man who, as the *Raleigh Times* of the same date wrote, "has been the friend of higher education and took it in out of the wet and gave it a prominent place in his platform, a place on his program. He has wrought manfully for the University maintenance and championed its right to take rank with the leading Universities of the land."

On the issue of instruction methods one prominent lawyer argued: ". . . I know that most of the law schools follow the case system. This, I think, is due not so much to any merit in the system as to the fact that it is a system adopted by Harvard University. I understand that the University of Virginia does not follow the system, and the law school of the University of Virginia, I believe, is generally regarded as

the foremost law school of the South. I think you are correct in saying that practicing lawyers prefer men trained under the case system, and if the function of a law school is to produce law clerks, then the case system is the system to follow. The trouble with the case system is that its applicants have pushed it to the extreme, just as the advocates of the old text book system pushed that to the extreme. It seems to me that the ideal system of instruction is the lecture system based upon a standard text, with parallel reading of important cases. Of course, no system of legal instruction is worth the name which does not give the student a familiarity with the leading decisions on the various branches of the law, but a system which bases its hope of success upon the ability of the average law student to form correct legal conclusions from the reading of reported cases, expects too much of human nature. To make a good lawyer under such a system would require not three years, but ten years of study, and after the ten years the student would not have as clear a concept of legal principles as a student who had read legal history and studied the writings of eminent lawyers. The case system is essentially an inductive system, whereas the practice of law is essentially a deductive process. The advocates of the case system are talking pure foolishness when they say that legal principles are not sufficiently crystallized to be embodied in a text. As a matter of fact all legal principles have become crystallized to such an extent that a great per cent of them have been enacted into statutes. For instance, the law student now studies the uniform negotiable instruments law which has been enacted into statute by 47 of the 48 states of the union. Before the enactment of the negotiable instruments law he studied the same law in Norton on Bills and Notes. I am informed that the law schools are no longer teaching Blackstone. I hope that the students are reading Blackstone whether it is taught or not, but a system of legal instruction which omits all instruction in one of the greatest legal classics of all time, because, forsooth, it is in the form of a text book, is theory run to 'seed.'

"I can readily understand that an able law teacher can supply the defects of the case system through his lectures, just as an able law teacher can supplement the text book system with reference to leading cases, but I have no doubt that the system of legal instruction which will eventually be adopted in all first class schools will be a combination of the case and text system, such as I understand, is really the system of the University of Virginia."

On the issue of the deanship one point of view favored the selection

of a man who had spent his life "in the thick of things"—in the office and the courthouse, at the bar and on the bench. "Coming to the question as to who is to be Dean of the law school, I want to say that I am less interested in individuals than I am in securing the proper type of man for this place," an alumnus reasoned. "I suggested Judge ——— because I thought that he would be an ideal man. I have heard Judge ——— suggested, and I think that he also would make an admirable man. The point is, that the law student is being trained for the most practical of all professions, and to my mind it is the gravest sort of mistake to entrust his training to a purely theoretical teacher. In medicine the last two years of the course are given under the instruction of men who have learned medicine not as a theory, but who have made a success of the practice of the profession themselves. A practical man in charge of the law school will give to the law students a practical out-look on the profession. As an illustration, there is all the difference in the world between the point of view of the men who write the opinions of the Supreme Court and the men who write the articles appearing in the Carolina Law Review, and the difference is, that the constructive work of the Supreme Court is not only building up the profession, but building up the state, whereas the critical point of view of the Law Review gets nowhere. . . . I know in my own case that I learned from Judge MacRae many, many things which were not written in the books, nor expressed by him on his lectures. The fact that he had been a successful lawyer, a Judge of the Supreme Court, gave to his way of looking at things a value in my eyes which I did not ascribe to the teachings of the ordinary instructor. I think that you will agree with me that most men teach more by what they are than what they say, and the very presence of an able Judge at the head of a law school, a man who has been a vital factor in the life of the state, will mean more in the building up of the law school and in the life of the various students who will come in contact with such a character than any one subject, or any dozen subjects that will be taught in the school."

Many lawyers rallied to this point of view with a variety of illustrative candidates—many of them citing the University of Virginia to prove their case. Whereupon President Chase wrote the President of the University of Virginia for information, and received the following reply: "Do not permit yourself to be driven into putting any lawyer in your faculty because he is a practitioner, however eminent. Teaching law and practicing law are two different professions.

"The University of Virginia has never had a great teacher who was a practitioner of any long standing. The thing to do is to catch them young, regardless of whether they have had any practice at the bar, and make teachers of them. Their job is to teach law, not to practice it. The technique of the practice is easily learned.

"John B. Minor came here at thirty-two, having practiced law in miscroscopic villages for six or seven years. Our greatest law teacher today, Prof. Graves, never entered a courtroom. Prof. Lile, a very great teacher also, practiced briefly. Raleigh Minor not at all. Our successes have not been practitioners—our failures have been, or rather our mediocrities, as teachers. There isn't but one side to this question. Of course, if perchance a great lawyer is inherently a great teacher, praise be to God. Get him at any cost, but teaching is a distinct profession, as much so as practicing law.

"Intelligent procedure in great American law schools picks out young promising scholarly men and makes teachers of them. I hope Carolina will follow this precedent." This letter carried weight, for President Alderman was a native of North Carolina, a graduate of the University of North Carolina, and for some years its President.

Support for Chase. There was solid support for Chase's position among the University alumni at the bar and on the bench. One of them wrote: "Is there no way in which we can get a live constructive modern law teacher as the Dean of the Law Department of the University? I want one who knows not only the fundamentals, but one who knows the call for the application, use and expansion of the fundamentals to the needs of industrialism and commerce! To get one who has only had four years of judicial experience, or one [who] has been on some General's Staff during the war, or who has heretofore taught six years or had ten years' office experience, is simply to continue to keep the Law Department second to Yale or Harvard or Columbia, or tenth to these Universities, and sixtieth to the prestige of the University of Virginia.

"I propose that we get Dean Richards of the University of Wisconsin, or some other man who can and will advance his men in their preparation so that they can fill positions on the commercial firing line of the United States in its new place in the domestic and world trade which the war conditions gave it.

"The University Law Department has been hide-bound for 100 years by aristocratic and family and political ties. Because someone's grandfather has been Chief Justice, or a member of the Cabinet or a

distinguished North Carolinian, such men have been put into positions where they taught well but where they missed the vision necessary in preparing their students for the different business eras in the growth of this country. We have graduated political lawyers.

"For the present please consider this confidential. Some have been proposed for the Deanship who are as slow in gait and initiative as they would be in outlook for their students and the place they are to take in the world. The Dean of the Law Department should be alive to world conditions, and should wish his men to have a knowledge and training in law as would immediately fit them for great commercial positions."

Another alumnus wrote: "It is needless for me to tell you that the law school has for years been lagging behind the balance of the University, that now it is for the first time housed in adequate physical quarters, and therefore, at what may be the turning point of its history. It may be made a great school, the compeer of the great law schools of the country, or it may continue to lag.

"The answer to this question depends upon the correctness of your decision in the selection of a Dean.

"I would have the Dean of the University Law School to be a man, first of all, who possesses character and scholarship, as all of the faculty should. He should be a man who is not only learned in the law, in the strict sense of the term, but also one who has had experience, and been successful, in its practice, and is, therefore, familiar with the questions which arise in the Court House, which are so different from the ones which [arose] in the classroom when I was a student. The practicing lawyers will all tell you that when they left the law school they were as helpless, so far as knowing how to practice was concerned, as if they had never seen the inside of a law book. There ought to be some way to correct this condition. There should be practical as well as theoretical learning.

"The Dean should be a man also who will be abreast of the best thought of the great law schools of the country, and of the best methods known to those who are engaged in the field of legal education. He should be a man who can assimilate those ideas from elsewhere, who will study them and be able to sort out the good from the bad, without prejudice and without too much preconception of his own.

"It is extremely important that the dean be a man who will think more of building a great school than of advancing his own personal distinction. You know the type of man to be avoided, in this respect.

We cannot afford to consider a man who desires the job just for the sake of rounding out a life of what he may think has been prominence in the profession, by wearing the honors of scholarship as a mere adornment of himself."

Another wrote: "I agree with you that a teacher of law and not a practitioner of law should be placed at the head of the law school. We should go to some high grade law school and get the best man we can. Five years of active work in the Courts as now conducted will 'diffuse' any mind to such an extent that exact principles escape it. This is our golden chance to start a fine law school. We have had and have now good teachers. We need a commanding head. Count on my cooperation."

In June, 1924, President Chase won overwhelmingly on all three issues, and on his recommendation the Trustees elected Merton Leroy Ferson, former Dean of the Law School of George Washington University, as Dean of the Law School of the University of North Carolina. ". . . I believe that under his direction," said President Chase in his report to the Trustees in the fall of 1924, "we can look confidently forward to the building here of a law school which should be outstanding in its work and service . . . it is the business of a university law school to develop men who will regard law, not as a trade, but as a profession; whose training has been directed, not toward immediate objectives of passing bar examinations, or the acquisition of a superficial facility in the routine details of practice, but toward precisely those ends which any professional school of university character must seek, and among which capacity for growth, based on a large knowledge of fundamentals, must always rank higher than mere technique."

IV

TRANSITION TO THE MODERN LAW SCHOOL

The story of the modern law school is the story of the implementation of the policies outlined by President Chase in 1923 and approved by the University Board of Trustees in 1924. It is the story of three law school deans working from 1924 to 1941: Merton Leroy Ferson from 1924 through 1926; Charles Tilford McCormick from 1927 through 1931; Maurice Taylor Van Hecke from 1931 through 1941.