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# The Law School

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# THE LAW SCHOOL

(From September 1969, to October 1970)

## I. ENROLLMENT

Opening total enrollment this fall was 626, a new high. This consists of 271 first year, 194 second year, and 161 third year students. The School thus continues its necessary growth in response to general population trends, to an increased student interest in legal careers over other alternatives, and to a continuing increase in the demand by the public for legal services and by the bar for manpower to provide them. In relation to our planned build-up over the next five years, we are now rather substantially over-enrolled. While build-up must continue—and can in terms of physical capacity—we must be concerned with its rate. Our projections attempt to keep it within tolerable bounds as delimited by a reasonable faculty/student ratio. It is these projections which are being exceeded despite a rather substantial hike in admission standards forced by the number of applications now being received.

Composition of the student body in terms of residences and pre-law educational backgrounds continued essentially unchanged from that of recent years. Thus 81 per cent of this year's entering class are residents of North Carolina, as against 82 per cent in 1969, and 81 per cent in 1968. The remaining 19 per cent of this first year class come from a total of 21 other states. Approximately 35 per cent of the class had all of their undergraduate work at the University of North Carolina at Chapel Hill. The remaining 65 per cent had all or part of their undergraduate work at a total of 106 other colleges and universities. Ninety-six per cent of the class entered with undergraduate degrees. Of the 11 who did not, 10 are on the University's combined degree program and hence will have earned undergraduate degrees before completing law school.

## II. THE FACULTY

With the end of the 1969-1970 academic year, Alumni Distinguished Professor Herbert R. Baer, having reached the University's optional retirement age, retired from the faculty. This concluded a 25 year career in this law school—a career characterized by a devotion to duty, a productivity in research and writing, and a quality of classroom teaching

which earned the universal respect of students and faculty colleagues. He thus joins our increasing list of faculty emeriti whose retirements we regret, but whose continued presence and counsel we prize—Professors Coates, Dalzell, and McCall.

Effective at the beginning of this academic year, Associate Professor Richard H. Robinson resigned from the law faculty to take a position as Assistant to the President of the Consolidated University, a position he had held on an acting basis during last year's spring semester.

Associate Professor Dale A. Whitman is on leave of absence for the full academic year as a Visiting Professor at U.C.L.A. His teaching duties are being handled by Visiting Professor Susan Ehringhaus McDonald, a 1968 Honors graduate of this law school.

Graham Kenan Professor Frank W. Hanft begins this year his first of two final years of half-time teaching prior to full retirement under University retirement policy.

During the period reported, two faculty members, Messrs. Robert A. Melott and Dale A. Whitman, received well-deserved promotions to the rank of Associate Professor.

Two regular faculty members were added. Assistant Professor Thomas J. Andrews is a 1960 graduate, cum laude, of Dartmouth College, and a 1964 graduate, with distinction, of the Duke Law School. He spent two years in the Peace Corps as a legal advisor to Ethiopian governmental agencies, after which he practiced for four years in the Boston law firm of Hale and Dorr. He is teaching sections of the courses in Criminal Law, Advanced Property, and Negotiable Instruments. Assistant Professor David E. Epstein is a 1966 honors graduate of the University of Texas Law School, after which he served for a year as law clerk to Justice Ruel Walker of the Texas Supreme Court, obtained his LL.M. from Harvard in 1969, and practiced for three years with a leading Phoenix law firm. He is teaching sections of the courses in Contracts and Corporations and the course in Creditors Rights.

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 served as Chairman of the University Hearings Committee, and as a member of the Chancellor's Advisory Committee, and of the Faculty Hearings Committee; served on

the estate administration drafting committee of the General Statutes Commission and had published in this *Review* an article, *Introduction to General Members of the Federal Question Jurisdiction Family*, 49 N.C.L. REV. — (1970).

Graham Kenan Professor Henry Brandis had published his 1970 Supplement to STANSBURY, NORTH CAROLINA EVIDENCE (Michie); continued to serve as Advisor to the Committee on Pattern Jury Instructions of the Conference of Superior Court Judges; made his sixth consecutive appearance as Commentator on problems of Evidence at the Annual Seminar of the Conference of Federal Trial Examiners in Washington, D.C.; delivered a paper, *Evidence and Disclosure of Evidence in Adversary Hearings of Regulatory Agencies* at the 50th Anniversary meeting of the Federal Bar Association; and continued to serve as Director of the Law Center.

Associate Professor Kenneth S. Broun had published an article: *Proposed Federal Rules of Evidence (Article IX and X)*, 1969 LAW AND THE SOCIAL ORDER 611; and had accepted for early publication, in the UNIVERSITY OF ILLINOIS LAW FORUM, an article, *Statistics and Probability in Evidence*; continued to serve as draftsman and co-reporter to the Committee on Pattern Jury Instructions above mentioned, and commenced service as project coordinator for the North Carolina Legal Services Association.

Professor Robert G. Byrd had published in this *Review* three articles: *Proof of Negligence in North Carolina: Res Ipsa Loquitur*, 48 N.C.L. REV. 452 (1970); *Proof of Negligence in North Carolina: Similar Occurrences and Violations of Statute*, 48 N.C.L. REV. 731 (1970); and *Recent Developments in North Carolina Tort Law*, 48 N.C.L. REV. 791 (1970).

Associate Professor Donald F. Clifford had published (with Professor Smith) an extended review of NORDSTROM & LATTIN, SALES AND SECURED TRANSACTIONS: PROBLEMS AND MATERIALS, 48 TEX. L. REV. 862 (1970); served as a member of the Corporations Drafting Committee of the General Statutes Commission; and is engaged in a research project funded by the Law Center examining various aspects of North Carolina's "Blue Sky" securities laws.

Professor Dan B. Dobbs had accepted for publication in the *Cornell Law Review* an article, *Contempt of Court: A Survey*, deriving from a comprehensive study of the law of contempt of court funded by the Law

Center, and continued work under contract with the West Publishing Company on his Remedies hornbook.

Assistant Professor David G. Epstein had published four articles: "*Proceeding*" Under the Uniform Commercial Code, 30 OHIO ST. L.J. 787 (1969); *The Scienter Requirement in Actions Under Rule 10b-5*, 48 N.C.L. REV. 482 (1970); *Security Transfers by Secured Parties*, 4 GA. L. REV. 527 (1970); and *Bank Participation Interests as Securities*, 87 BANK. L.R. 99 (1970).

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

Associate Professor Arnold W. Loewy had published in this *Review* an article, *Punishing Flag Desecrators: The Ultimate in Flag Desecration*, 49 N.C.L. REV. 48 (1970); was Visiting Professor at the North Carolina Central University Law School; and continued to serve as draftsman and co-reporter to the Committee on Pattern Jury Instructions of the Conference of Superior Court Judges.

Assistant Dean Robert A. Melott had published, under the aegis of the North Carolina State Bar, a book, CANONS OF ETHICS, OPINIONS, RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR (1970); served as Consultant to the Florida Board of Law Examiners and to the Chairman of the Ethics Committee of the North Carolina State Bar; and, by appointment of the Chancellor, as his representative before the University Hearings Committee under the Trustee's campus disruption policy.

Assistant Professor Barry Nakell is conducting, with Professor Pollitt, a study sponsored by the Law Center, of the application of the death penalty in North Carolina; and presented a report on due process protection for the convention to deter aircraft hijacking to a Special Committee of the World Peace Through Law Center working in this area.

Professor Walter Navin had published in this *Review* an article, *Waivers of Defense Clauses in Consumer Contracts*, 48 N.C.L. REV. 505 (1970) and presented a paper, *Toward More Rational Justice; The Search for a Functional Test of Criminal Trial Prejudicial Publicity* at a course for Practicing Newsmen sponsored by the School of Journalism.

Professor and Librarian Mary W. Oliver contributed to POLLACK, FUNDAMENTALS OF LEGAL RESEARCH; taught a course in Law Library Administration for the School of Library Science in the 1960 summer session; and served as a member of the Libraries Committee of the

Association of American Law Schools, and of the Certification Board and Education Committee of the American Association of Law Libraries.

Professor Daniel H. Pollitt had published in this *Review* an article, *Impeachment of Federal Judges: An Historical Overview*, 49 N.C.L. REV. — (1970); is working, with Professor Nakell, on a study of the application of the death penalty in North Carolina, under the aegis of the Law Center; served as a member of the University Faculty Council, of the Chancellor's Advisory Committee, and of the Executive Committee of the President's Advisory Committee; acted as Special Council to the U.S. House of Representatives Committee on Education and Labor; and is presently serving as President of the North Carolina Civil Liberties Union.

Assistant Professor Thomas J. Schoenbaum had published in this *Review* an article, *The Growth of Judicial Power in the European Economic Community*, 48 N.C.L. REV. 32 (1969); published, under the aegis of the Law Center, a monograph, *Water Pollution Control in North Carolina*; and conducted funded research during the summer of 1970 in Brussels on the work of the Commission of the European Economic Communities.

Professor John W. Scott served as Chairman of the Drafting Committee of the General Statutes Commission working on revision of the Uniform Principal and Income Act.

Associate Professor Richard M. Smith had published, with Professor Clifford, an extended review of NORDSTROM & LATTIN, SALES AND SECURED TRANSACTIONS: PROBLEMS AND MATERIALS, in 48 TEX. L. REV. 862 (1970); served as a member of the Drafting Committee on Lien Law Revision of the General Statutes Commission, as executive secretary of the Uniform Consumer Credit Code Study Commission, and as Assistant Director of the A.A.L.S. Law Teaching Clinic.

Professor Frank R. Strong had published two articles: *The Time Has Come to Talk of Major Curtailment in the Supreme Court's Jurisdiction*, 48 N.C.L. REV. 1 (1969), and *Fifty Years of "Clear and Present Danger": From Schenck to Brandenburg—and Beyond*, 1969 SUP. CT. REV. 41; served as Director of the A.A.L.S. Law Teaching Clinic; began serving in March, 1970 as National Secretary-Treasurer of the Order of the Coif; served as a member of the University's Faculty-Student Committee on Judicial Reform; and is a member of the Administrative Law Drafting Committee of the General Statutes Commission.

Associate Professor W. Laurens Walker had published two articles: *Foreign Corporation Laws: Re-Examining Woods v. Interstate Realty Co. and Reopening the Federal Courts*, 48 N.C.L. REV. 56 (1969), and *Foreign Corporation Laws: Source and Support for Reform*, 1969 DUKE L.J. 1145; and has in progress a research project under the aegis of the Law Center, investigating use of mixed motive game techniques as a device for doing basic research in civil procedure.

Professor Seymour W. Wurfel had published two articles: *Aircraft Piracy—Crime or Fun?*, 10 WM. & MARY L. REV. 820 (1969) and *Choice of Law Rules in North Carolina*, 48 N.C.L. REV. 243 (1970), a book review of BURGENTHAL, *Law Making in the International Civil Aviation Organization*, 38 FORDHAM L. REV. 608 (1970); taught as a Visiting Professor in the summer session of the California Western University Law School; and is serving as Principal Investigator for the legal research element of the Sea Grant Project for the Conservation and Development of North Carolina Marine Resources.

The writer of this report continued to serve as a member of the North Carolina Courts Commission; commenced service as member of the North Carolina Bar Association Penal Systems Study Committee; and had published the 1970 supplement to MCINTOSH, NORTH CAROLINA PRACTICE AND PROCEDURE.

Signal honor and achievement during this period can be reported on the part of two faculty members. Professor Frank R. Strong was honored by being chosen as one of two University Boshamer Professors, in recognition by the University at large of his contribution to the institution. Associate Professor W. Laurens Walker was awarded the earned degree, Doctor of Juridical Science, by Harvard University in June 1970.

### III. THE LAW LIBRARY

As of June 30, 1970, the Law Library had a total collection of 136,398 volumes. During the past year 5,115 volumes and 5,845 microcards were added. Included in the added volumes were gifts from the following donors: Senator B. Everett Jordan of Washington, D.C., Professor Jack Behrman of Chapel Hill, N.C., Mr. Robert Haire of Sylva, N.C. and Mr. James Wallace of Chapel Hill.

### IV. CURRICULUM

As anticipated in last year's report, significant curriculum changes in the general area of commercial law were put into effect for the 1970-1971

academic year. These are designed to accommodate to the pervasive impact of the Uniform Commercial Code on both local and national law. 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," are now offered. These supplant the three-hour Sales and six-hour Credit Transactions courses, long fixtures in our curriculum. Negotiable Instruments is retained as a two-hour course to round out these offerings.

The other significant change is in the method of presenting Professional Responsibility materials. Heretofore we have offered one systematic elective course in this subject. This gave attention not only to the canons of ethics materials but also to a broader range of topics contemplated by the course title. This course is retained as an upperclass elective. But a new "pervasive" approach to the subject is being introduced into the required first year curriculum on professional responsibility, including observance of ethics canons, which are appropriate to the particular subject matter of the five first year courses. Thus, in Criminal Law, consideration may be given directly to the ethical implication of the representation of persons confessedly guilty. Planning and supervision of the introduction of these materials is committed to Professor Melott. He will, by arrangement with the teachers involved, either present the materials himself, or cooperate in this preparation for presentation by the teachers of particular courses.

A further significant curriculum development is the introduction of a seminar in Environmental Law, presented by Professor Schoenbaum.

#### V. LAW CENTER

In last year's report, creation of the Law Center as an adjunct of the School was announced, and its function and purpose described. It has now completed one year's operation with most encouraging results. The experience with its operation to date has been valuable in suggesting modes of operation which will enable it to realize its full potential. Substantial achievements from this first year's operation can be counted. Suggestive of the research endeavors made possible by its budget are the following studies which have either been completed or are in process under direction of various faculty members: (1) A full study and evaluation of the operation of the District Court Division of the General Court of Justice, with the cooperation of the Administrative Office of the Courts, (2) A study



of the problems encountered by corporations doing business under the North Carolina Business Corporation Act. (3) A study of the application and impact of the death penalty in North Carolina. (4) A study, with the Department of Psychology, of the usefulness of the "mixed motive game" technique in testing the effectiveness of pre-trial procedures in civil litigation. (5) A study and evaluation of North Carolina's "Blue Sky" laws in securities regulation.

## VI. SUMMER SESSION

During the summer session of 1970 we had five visiting professors joining with our seven resident faculty members to offer the twelve courses making up our two-term summer school curriculum. They were Professor Wendell Basye of the University of Oregon, Judge J. Braxton Craven of the U.S. Court of Appeals, Professor Harry Groves of the University of Cincinnati, Professor Thomas Mapp of the University of Oregon, and Professor Bernard J. Ward of the University of Texas. They taught, respectively, the courses in Income Taxation, Constitutional Law, Conflict of Laws, Decedent's Estates, and Federal Courts.

## VII. ACADEMIC ACHIEVEMENT

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

Eleven students, on the basis of standing in the top ten per cent of the class of 1970, 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: Michael Robert Abel, Thomas Franklin Loflin, Raleigh Alexander Shoemaker, William Preston Aycock II, Richard Foutz Mitchell, Claude Franklin Goldsmith, Jr., Thomas Baine Anderson, Jr., John Malcolm Murchison, Jr., Donald Wayne Stephens, Turner Van Adams, and John Eugene Bugg. Of this group, Abel, Aycock, Loflin, Mitchell and Shoemaker 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 Michael Robert Abel, Thomas Franklin Loflin, III and Raleigh Alexander Shoemaker.

The degree of J.D. with Honors was awarded to Turner Van Adams, Thomas Baine Anderson, Jr., William Preston Aycock, II, Claude Frank-

lin Goldsmith, Jr., Richard Foutz Mitchell, John Malcolm Murchison, Jr., and Donald Wayne Stephens.

Thomas David Haigwood 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 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 Michael Robert Abel.

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

The officers of the Student Bar Association for the academic year 1970-1971 are Stephen E. Hart, *President*; Shelton Jones, *Vice President*; Linda A. Bernasek, *Secretary*; and Stephen T. Edelstein, *Treasurer*. J. David James is *Chief Justice* of the Honor Court.

The SBA continued its orientation program for entering first year students under the chairmanship of Shelton Jones; is working with the Administration in placement activities through a committee chaired by David Beard; is continuing its active speakers program under the co-chairmanship of Michael Yaggy and Thomas F. Taft; conducts a program of social events for students and faculty under the co-chairmanship of Richard A. Hirschenbein and Bruce W. Vanderbloemen; and continues the recruitment program, organized one year ago, primarily aimed at minority groups under the co-chairmanship of J. Clint Eudy and Robert Anderson.

The Student Bar Foundation, Inc. (nee SBA Scholarship Committee), a non-profit corporation, has awarded its first scholarship this year to a first year student. The corporation is led by Robert Farris as President and a nine-man board of directors.

For the third 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. Past experience in this area of student participation has been most encouraging.

*The North Carolina Law Record*, now publishing eight issues a year, continues to expand its role of communication among students and alumni. Editor of the Law Record for the academic year 1970-1971 is Michael H. McGee. This publication now has a circulation of approximately 4,000.

During the summer of 1970 a Legal Services Office was opened in Chapel Hill and is being manned by second and third year law students. James Fuller and Grosvenor Burnett coordinate the office; Professor Kenneth Broun, a board of professors, and local attorneys are advisors to this Service.

#### IX. PLACEMENT

With only two members of the graduating class of 1970 unaccounted for, as of mid-September 1970, placement of the class can be reported in the following summary. The largest number, 52, are employed by law firms, 40 of these with North Carolina firms, 12 with firms in other states. The next highest number, 16, are employed as law clerks, 6 with federal judges, 10 with state judges. Then follow in order, 10 each in the military service and with government agencies, 5 with legal aid offices, 2 as sole practitioners, 2 in public accounting positions, and one in teaching.

#### X. ALUMNI ACTIVITIES

Alumni support of the School's programs continued at a most gratifying level. During 1969, an annual budget of \$20,500 for supplementary support of the school's current operations was funded through annual dues paid by a record total of 1193 alumni and friends. A budget of \$24,000 was adopted for 1970, and, as of this writing, seems within the range of anticipated dues payments for this year.

The bulk of these annual operating budgets—\$16,000 this year—is allocated for student scholarships. The balance is allocated to supplementary support of the *North Carolina Law Record* and of the student placement program, and to provide a dean's discretionary fund which is used mainly to supplement the modest state appropriation for professional travel.

In addition to this quite considerable annual budget supported by dues, 208 alumni and friends, contributing to the "Second Century Fund," added to its principal another \$25,572 in gifts and pledges. This brought the amount realized under this drive for one million dollars in endowment funds to a total of \$654,457 as of August 31, 1970. Our hopes remain high for successful realization of the one million dollar goal by the end of the drive period next June.

Between the annual meetings of the Law Alumni Association and the U.N.C. Law Foundation, Inc. (formerly the Foundation Council) of 1969 and 1970, the officers of the two organizations were as follows—*The Association*: Franklin T. Dupree, *President*; James B. Garland, *First Vice President*; Stuart R. Childs, *Second Vice President*; Henry Brandis, Jr., *Secretary-Treasurer*; and Morris R. Gelblum, *Assistant Secretary-Treasurer*. *The Foundation*: Richmond G. Bernhardt, Jr., *President*; Donald W. McCoy, *Vice President*; J. V. Morgan, *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 1970, out of 94 of our 1970 graduating class taking the North Carolina Bar Examination, 92, or 97.9 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 of 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 institutions of the

supporting State as distinguishing 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