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## **Student Organizations and Their Evolving Impact on the School of Law**

### **THE NORTH CAROLINA LAW REVIEW AT THREESCORE AND TEN**

**MARTIN H. BRINKLEY**

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### **APOLOGY TO HENRY BRANDIS**

This issue of the *North Carolina Law Review* is the successor-in-interest to a collection of essays published in 1947 to honor the sesquicentennial anniversary of the founding of the University of North Carolina. Hinton James's fabled trek from the lower reaches of the Cape Fear to Old East preceded by five decades the trustees' appointment of North Carolina Superior Court Judge William Horn Battle to the first "Law Professorship"<sup>1</sup> at the University. Thus the sesquicentennial of formal legal study at Chapel Hill coincides with the University's Bicentennial celebration. It is fitting that *A Century of Legal Education*,<sup>2</sup> in which Albert and Gladys Coates<sup>3</sup> recounted

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1. See University of North Carolina Trustees Executive Committee Minutes, Oct. 3, 1845 (on file with Wilson Library, University of North Carolina at Chapel Hill).

2. See *A CENTURY OF LEGAL EDUCATION* vii (Robert H. Wettach ed., 1947).

3. See Albert Coates, *A Century of Legal Education*, in *A CENTURY OF LEGAL EDUCATION*, *supra* note 2, at 1-95. Although Professor Coates's essay is nominally his

the history of the Law School's first hundred years, should be the model for this work.

Like the issue as a whole, this essay takes up the thread spun by a predecessor. During the final semester of a thirty-two-year career on the law faculty, Graham Kenan Professor Henry P. Brandis, Jr., wrote an article entitled *The North Carolina Law Review: 1922-1972*<sup>4</sup>. The former dean,<sup>5</sup> an eyewitness to the *Review*'s first five decades of life, was destined to be its Boswell.<sup>6</sup> After his first student contribution (a casenote he later condemned as "feeble") appeared in Volume Six, Brandis penned eighteen leading articles and miscellaneous pieces and fifteen decanal reports, establishing himself as the journal's most prolific professional contributor. For more than half its life, Dean Brandis served the *Review* as a faculty advisor. Accordingly, the Board of Editors of Volume 50 viewed the retirement of the law school's "number one citizen"<sup>8</sup> as an occasion worthy of the most splendid tribute it could bestow.

Brandis, however, had the temerity to do the editors one better. Laden with honors and lapped in a lifetime's accumulated treasure, some would have accepted a paean lackadaisically. However, the old dean gave them tribute for tribute. Mentor to its leaders and an unsurpassed enricher of its pages, Brandis wrote an encomium to the

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alone, no one who understood the scholarly partnership that bound him and Gladys Coates can doubt that the work was as much hers as his. In his foreword to the collection, Dean Wettach admitted as much. See *A CENTURY OF LEGAL EDUCATION*, *supra*, at vii ("Professor and Mrs. Coates began the arduous task of checking University records, Trustees' minutes, Faculty minutes, catalogues, Battle's *History* and other documents for the data needed. Acknowledgment is gratefully made for the painstaking research and devoted application of Mrs. Coates to this work.").

4. 50 N.C. L. REV. 965 (1972).

5. Professor Brandis became Dean of the University of North Carolina School of Law on July 1, 1949, and voluntarily terminated his deanship on June 30, 1964. Albert Coates, *Henry Brandis*, 50 N.C. L. REV. 961, 961 (1972).

6. Dean Brandis himself remarked:

The author of this article, a Tar Heel born and bred, was a member of the *Review*'s staff while a student, has, since that regrettably remote time, contributed moderately to its pages, and served on the Law School's faculty for more than thirty-two years. His sentiments about the *Review* are undeniably colored by personal considerations and by institutional and provincial loyalties. . . . Hence, any reader who is seeking an unbiased appraisal, academically worthy of the *Review*'s normal standards, should stop here and allot his limited reading time to something more congenial.

Brandis, *supra* note 4, at 965.

7. *Id.*

8. Professor Coates attributes the label to Dean J. Dickson Phillips, Jr. Coates, *supra* note 5, at 963.

Review itself. *The North Carolina Law Review*: 1922-1972 occupies twelve pages in a "special issue" of the journal published in August 1972.

This essay supplements and concludes Dean Brandis's appraisal of the *Review's* first five decades. It examines some subjects that Brandis chose to ignore, such as the role the journal played in the Law School's transition from a provincial school to a national center of law study on the Harvard model. It likewise ignores some matters that Dean Brandis treated fully, such as the *Review's* relationship with the North Carolina State Bar in the years before there was a North Carolina Bar Association. Finally, where Brandis relied on his encyclopedic memory of events, this essay tends toward revelation of documented facts.

### I. ORIGINS: 1922-45

In the late summer of 1921, Maurice Taylor Van Hecke arrived in Chapel Hill to join the faculty of the University of North Carolina as an associate professor of law. A native of Wisconsin and a law graduate of the University of Chicago, the twenty-nine year-old Van Hecke joined a "Law Department," as it was then known, comprising 120 students, of whom perhaps one-sixth had earned a bachelor's degree and another sixth had had no college training whatever.<sup>9</sup> None of Van Hecke's three senior colleagues—Dean Lucius Polk McGehee, Professor Atwell Campbell McIntosh, and Professor Patrick Henry Winston—held a formal academic law degree.<sup>10</sup> The Law Department, for years an orphan without permanent quarters in the University classroom buildings, consisted of a single lecture room, constantly in use, and a small library.<sup>11</sup> Fewer than twenty students remained in Chapel Hill for the entire three-year program leading to conferral of the LL.B. degree.<sup>12</sup>

The arrival of Professor Van Hecke heralded the University of North Carolina's entrance into the ranks of "modern" American law schools. Since William Horn Battle's appointment in 1845, the Law Department had dedicated itself to producing practitioners for the North Carolina state courts. By claiming the life of University President Edward Kidder Graham, the influenza epidemic of 1918 sounded the death knell of purely practical legal instruction at Chapel

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9. See *id.*

10. See Coates, *supra* note 3, at 46-47.

11. *Id.* at 52.

12. *Id.* at 54.

Hill. In an unprecedented departure from tradition, the trustees selected a northerner, sociology professor Harry Woodburn Chase, to succeed Graham. The reform-minded Chase immediately began surveying the instructional methods employed in the nation's leading law schools. By embracing the classroom reforms wrought in the 1870s at Harvard by Dean Christopher Columbus Langdell, President Chase's crusading spirit changed forever a law school dominated, according to a resentful alumnus, by "aristocratic and family and political ties."<sup>13</sup> Enlisting the support of Dean McGehee and Professor McIntosh, Chase resolved in the face of powerful opposition<sup>14</sup> to convert an antebellum bar-cramming school into a Langdellian oasis south of the Mason-Dixon line.<sup>15</sup>

Together with Chase's reforms there came to Chapel Hill the cornerstone of Dean Langdell's modus of law teaching—the casebook. Throughout the 1920s new faculty members, all of whom had learned their contracts and real property from casebooks at one of the established university law schools in the North and Midwest, began teaching in Manning Hall. This steady stream of young men, many of them North Carolinians like Albert Coates (who had just spent three years sitting at the feet of Harvard's Charles "Bull" Warren and Felix Frankfurter), brought with them the student organizations that had begun to flourish in the law schools of the Ivy League. Under Dean Langdell's system, every waking moment of a law student's day was to be devoted to the deepening and expansion of his reasoning faculties. This philosophy of total intellectual immersion found its culmination in the law review: the preparation by law students and law professors of scholarly commentary on recent judicial decisions and statutes.

Although legal periodicals had been published in the United States since the early nineteenth century (*The Carolina Law Repository*, which ran to two volumes between 1813 and 1816 under the editorship of Chief Justice John Louis Taylor, was North Carolina's representative), such publications had not been systematically sponsored by the private law tutors who then dominated the paths to the profession. With the establishment of the *Harvard Law Review* in 1887, a course was firmly set. Law schools on the Harvard model were expected to underwrite the production of permanent journals of

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13. *Id.* at 62.

14. Governor Cameron Morrison led opposition to many of Chase's law school reforms. *See id.* at 58-59.

15. *See id.* at 55-63.

legal scholarship, dedicated to intelligent criticism of legal developments in American courts and legislatures.<sup>16</sup> Unlike the practice in other fields in the humanities, law reviews were to be run by students. In contrast to the casebook's utility solely as a classroom device, the proponents of law reviews saw their publication as a double arrow in the law school's quiver: a vehicle capable of educating neophyte lawyers and bringing the work of legal educators to the attention of leading members of an increasingly powerful profession. American law reviews flourished because they exalted the prominence of academically trained legal "scientists" at a time when American law schools were seeking to defend their tightening hold on the gates of the private bar.

The American bar enthusiastically received these new publications. Lawyers in private practice, academic lawyers, and sitting judges contributed "professional" articles, essays, and book reviews to their pages. By the year of Professor Van Hecke's North Carolina debut, Dean McGehee reported to University alumni that the Law Department had acquired complete sets of the *Law Quarterly Review*, the *Harvard Law Review*, the *Columbia Law Review*, the *Michigan Law Review*, and the *American Bar Association Journal*.<sup>17</sup> With these volumes piling up on the shelves of the law library and work underway on a new law building (soon to be named Manning Hall) the tides of change and reform ran high in Chapel Hill. Influenced by Van Hecke and the school's other new "modern" law teacher, Robert Halsey Wettach, McGehee in December 1921 called attention

to the desirability of a journal or periodical publication which may represent the School and the work it is doing. It would serve as a link between the legal profession and the School, and would be a most valuable tool for improving our instruction, and an incentive to faculty and students alike.<sup>18</sup>

Fired by the enthusiastic response of North Carolina lawyers to Dean McGehee's proposal, Professor Van Hecke labored throughout the winter and spring of 1922 to forge a format for the new journal. Sixty pages long, the first issue of the *North Carolina Law Review* reached Van Hecke's home direct from the printers in June 1922.<sup>19</sup>

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16. By 1920 the *Harvard Law Review* consisted primarily of student-written casenotes and comments on newly minted statutes. Yale, in 1891, and the University of Virginia, in 1914, began publishing legal periodicals of their own based on the Harvard model.

17. *Id.* at 73 (footnote omitted).

18. *Id.*

19. Professor Van Hecke did not have the luxury of modern, machine-attached mailing labels. As reported more than four decades later by Professor Frederick B. McCall, the

The frontispiece contained a masthead listing twelve "Student Editors, Selected by the Faculty for Excellence in Scholarship." There followed an editorial statement of purpose titled, simply, "*The Review*."<sup>20</sup> According to this statement, the *North Carolina Law Review* was founded to serve four elements of the legal profession: the law student, the law teacher, the practitioner, and the judge.

From the tone of the passage it is apparent that its author believed these goals to be essentially harmonious. Yet in hindsight it is obvious that the qualities each of these groups seeks in a legal periodical are at once disparate and conflicting. Putting aside the matters of prestige and employment, the law student views law review

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*Review's* first student member, Van Hecke, and McCall sacked the journal into envelopes at Van Hecke's dining room table and hand-addressed them for mailing. Frederick B. McCall, *Van: My Teacher, Colleague, and Friend*, 42 N.C. L. REV. 274, 276 (1964).

20. The statement read:

It is hoped that this *Review* may be of service to the law students, the law teachers, the members of the bar, and to the judges upon the bench, and, through them, to the people of the state.

As a supplement to the routine daily class work of the [Law] School, it will afford to the second and third year students, a means of intensive training in legal writing. To them, the independent experience, under faculty supervision, in the analysis, investigation, and critical discussion of current problems in North Carolina law will be invaluable. As the *Review* goes into volumes year by year, it will constitute a collection of reference materials on the local law, of definite value as collateral readings in connection with class discussion.

To the faculty of the School, the *Review* will be an added incentive to systematic research in the state law and a medium for the publication of the results achieved. To the members of the bar and the judges upon the bench, the *Review* will make available, in the form of leading articles, editorial notes and comments, discussions of important legal problems, statements of the significance of outstanding recent state and federal decisions, and historical accounts of the development of distinctive topics and doctrines of North Carolina law. In other words, the *Review* will carry to the active members of the legal profession, the work the School is doing in tracing the development of law in North Carolina and in the country at large.

Of equal importance to the law student and to the law teacher, will be the opportunity afforded by the *Review* to learn of the attitude, the needs, and the problems of the attorneys and judges in active practice. It is hoped that those who are daily carrying on the litigation and the legal work of the state may find in the *Review* a means of expressing their reactions to, and the constructive suggestions for dealing with, the difficulties encountered in the practical administration of the law. Only through this closer contact and understanding can the lawyer, the judge, the law student, and the law teacher effectively unite in what should be a common effort for the solution of modern legal problems. In this latter connection, namely, that of the public service of the legal profession as a whole, particular attention will be given in the pages of the *Review* to the influence upon legal problems of matters of legislation, government, business, and social and economic conditions.

*Editorial Notes*, 1 N.C. L. REV. 31, 31-32 (1922).

membership essentially as vigorous training in various techniques of answering legal questions. In most cases, students hope that the practice in legal research and writing offered by review membership will better prepare them for a career at the bar or in another branch of the profession. For the law professor, on the other hand, the law review is fundamentally a venue for personal expression; publishing "professional" articles in law reviews cements a prominent tile on the road to professional advancement—an avenue of scholarly dialogue with fellow law teachers, with legislators, and in particular with the bench. The practicing attorney is attracted to the review as a time-saving research tool and a source of practical theories for the courtroom and the negotiating table. Finally, the sitting judge sees the law review as a gadfly given to stinging criticism of recent judicial efforts—a reflecting pool in which decisions are subjected to penetrating (and occasionally humiliating) analysis. By declaring its intention to serve four very different masters at once, Professor Van Hecke's infant publication was destined to toil in a career riven by internal conflict.

Although absent from its statement of purpose, the element of reward has never been wholly absent from *Review* membership; the first "student editors," after all, were "[s]elected by the [f]aculty for [e]xcellence in [s]cholarship."<sup>21</sup> Karl Llewellyn might have been speaking in Manning Hall when he said of the *Columbia Law Review* in 1930:

We have in law schools an aristocracy of a peculiar kind. We may almost say it is a perfect aristocracy. One achieves membership exclusively in terms of his performance. Membership carries honor, but the honor that it carries is the duty to work and slave and drive oneself as no other student is expected to. A perfect aristocracy, then, *because* continued membership is based on higher performance than is demanded of non-members.<sup>22</sup>

That membership in the *North Carolina Law Review* could create an "aristocracy" of academic excellence at the University of North Carolina appealed to President Chase's and Dean McGehee's efforts at reform. As the clarion voice of legal "science" winding out from Chapel Hill to the bar of North Carolina, the *Review* elevated public discourse on the developing law of a newly industrialized state. The founding of a law review at the University represented to some the

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21. 1 N.C. L. REV. 31, 31 (1922) (title page).

22. KARL N. LLEWELLYN, THE BRAMBLE BUSH 121-22 (1930).



admission of North Carolina lawyers into the legal mainstream of the nation, justifying the monopoly of an increasingly lucrative profession.<sup>23</sup> Yoking scholarly labor to academic progress, the establishment of the *North Carolina Law Review* thus started a process of assimilation transcending the law school and extending to the farthest reaches of the state. By the late 1920s, North Carolina lawyers could echo Professor Llewellyn in announcing to young men and women commencing the study of law at Chapel Hill:

Now this law review is a *scientific* publication, on which in good part the reputation of the school depends. Here is a thing American. Here is a thing Americans may well be proud of. There is not so far as I know in the world an academic faculty which pins its reputation before the public upon the work of undergraduate students—there is none, that is, except in the American law reviews. Such an institution it is a privilege to serve. Such an institution it is an honor to belong to. And by virtue of the terms of tenure of office, of this you may be sure: to earn that honor is to *earn* an education. I hold out before you, then, as the goal of highest achievement in your first year, this chance to enter on real training in your second.<sup>24</sup>

## II. FORMATIVE YEARS: 1923-45

### A. *The Review: 1923-41*

When the first issue of the *North Carolina Law Review* reached the desks of North Carolina lawyers in June 1922, the new journal received a resounding welcome. Writing in the *University of North Carolina Record* in the autumn of 1922, Dean McGehee commented:

The foundation of the *North Carolina Law Review* last June is a notable event in the history of the School. Two numbers of the *Review* have been issued, which have enlisted much approving comment from the profession in and outside of the State . . . . The editorship of the *Review* has been committed to Mr. Van Hecke, who is devoting untiring

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23. See LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 536 (1973) (arguing that the flourishing of Langdellian legal science in the law schools occurred because it exalted the prestige of law and legal reasoning in a period when lawyers needed to justify their monopoly of practice); STEPHEN B. PRESSER & JAMIL S. ZAINALDIN, LAW AND JURISPRUDENCE IN AMERICAN HISTORY: CASES AND MATERIALS 721-22 (2d ed. 1989).

24. LLEWELLYN, *supra* note 22, at 122 (first emphasis added).

energy and enthusiasm to the task, and is making it a credit to the law department and the University. It is one of the chief means by which we hope to extend the influence of the School and to increase its usefulness.<sup>25</sup>

Volume One appeared in four issues, published in November, January, April, and June, 1922-23. Its articles, casenotes, and comments set a pattern that the *Review* followed for many years: professional articles were solicited not only from members of the University law faculty, but also from distinguished scholars in other seats of legal learning. In Volume One, for example, Professor Thomas Reed Powell of Columbia contributed a twenty-one-page article examining the Supreme Court's recent decision in *Hammer v. Dagenhart*,<sup>26</sup> in which a five-justice majority invalidated a federal statute prohibiting the interstate shipment of goods coming from a mining or manufacturing establishment that employed children under certain ages.<sup>27</sup> Like many early *Review* contributors, Professor Powell carefully tailored the article to his North Carolina audience, examining the impact of the Court's decision on a state in which whole industries in the 1920s depended upon child labor. The University law faculty also figured prominently in the pages of Volume One. Professor Atwell Campbell McIntosh and Professor Van Hecke wrote two articles apiece; Professor Wettach and Dean McGehee each contributed one. Prominent lawyers were represented: the opening article of the volume was written by Walter F. Dodd, a member of the Chicago bar and probably a friend of Van Hecke's.<sup>28</sup> James H. Pou, a widely respected Raleigh attorney, offered a contribution on North Carolina corporate law.<sup>29</sup>

Virtually all of the professional articles, notes, and comments published in Volume One examined some aspect of North Carolina law. Writers from other law schools, such as Thomas Reed Powell, were encouraged to explore the North Carolina ramifications national topics might present. As the editors of Volume Two noted, the *Review's* main purpose was, without question, "to publish . . . discussions of important legal problems and of significant recent decisions, placing special emphasis on the development of the North

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25. Lucius P. McGehee, in *UNIVERSITY OF NORTH CAROLINA RECORD* (1922-23), at 64-65 (quoted in Coates, *supra* note 4, at 74-75 & 75 n.321).

26. 247 U.S. 251 (1918).

27. See Thomas Reed Powell, *Child Labor, Congress, and the Constitution*, 1 N.C. L. REV. 61 (1922).

28. Walter F. Dodd, *Statute Law and the Law School*, 1 N.C. L. REV. 1 (1922).

29. James H. Pou, *Shares of Stock Without Par Value*, 1 N.C. L. REV. 26 (1922).

Carolina law.”<sup>30</sup> Significantly, Volume One contained a special survey of “Statutory Changes in North Carolina Law in 1923,”<sup>31</sup> in which Dean McGehee and Professor McIntosh explored recent legislative enactments. The survey of statutory changes became a regular feature of the *Review*. The policy of publishing composite faculty commentaries on new North Carolina legislation continued through Volume Thirty-Eight, when the combined effect of ever-lengthening legislative sessions and multiplying numbers of complex new statutes resulted in the cancellation of the comprehensive survey.

To a far greater extent than in later years, wearers of the judicial robe, particularly the justices of the state supreme court, contributed regularly to the *Review*’s early volumes. In Volume Two, Chief Justice Walter Clark’s *Magna Charta and Trial by Jury*<sup>32</sup> was the leading article; Justice William J. Adams contributed two historical pieces to the same volume.<sup>33</sup> Chief Justice Walter P. Stacy<sup>34</sup> and Superior Court Judge Frank A. Daniels<sup>35</sup> both authored contributions to Volume Three. The *Review* set about building a close relationship with North Carolina’s state and federal judges by regularly documenting important events in the life of the judiciary. In the editorial notes to Volume Two, for example, brief tributes to Chief Justice Clark<sup>36</sup> and United States District Court Judge Henry Groves Connor,<sup>37</sup> both recently deceased, appeared. Volume Three celebrated UNC alumnus John Johnston Parker, Jr.’s appointment to the United States Court of Appeals for the Fourth Circuit.<sup>38</sup> These contributions, coupled with others commenting on the affairs of North Carolina’s state-court bench,<sup>39</sup> exemplified the law faculty’s desire “to build up a closer connection with the judges in the state.”<sup>40</sup>

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30. *Editorial Notes*, 2 N.C. L. REV. 29, 33 (1923).

31. 1 N.C. L. REV. 263 (1923).

32. 2 N.C. L. REV. 1 (1923).

33. William J. Adams, *Evolution of Law in North Carolina*, 2 N.C. L. REV. 133 (1924); William J. Adams, *The Life and Influence of John Manning*, 2 N.C. L. REV. 218 (1924).

34. Walter Parker Stacy, *Chief Justice Hoke, Patriot and Great-Hearted Fighter for the Right*, 3 N.C. L. REV. 83 (1925).

35. Frank A. Daniels, *The Lawyer as Citizen—His Duty to the Public*, 3 N.C. L. REV. 156 (1925).

36. *Editorial Notes*, Walter Clark, 2 N.C. L. REV. 225, 225-28 (1924).

37. *Editorial Notes*, Henry Groves Connor, 2 N.C. L. REV. 225, 228-30 (1924).

38. *Editorial Notes*, John Johnston Parker, 3 N.C. L. REV. 167, 168 (1925).

39. See, e.g., Robert W. Winston, *Chief Justice Shepherd and His Times*, 3 N.C. L. REV. 1 (1925).

40. *Editorial Notes*, 2 N.C. L. REV. 33, 33 (1923). For many years the *Review* was furnished to the justices of the Supreme Court of North Carolina and to all North Carolina Superior Court judges without charge.

The death of Dean McGehee in 1923 and the departure of Professor Van Hecke from Chapel Hill after only one year on the faculty made it "indeed hard to carry on the work" of the *Review*.<sup>41</sup> Professor Wettach replaced Van Hecke as "Faculty Editor in Charge," supported by Professors McIntosh and Winston and by two new additions to the faculty: Albert Coates, a Tar Heel fresh from Harvard, and Frederick Bays McCall, who assisted Professor Van Hecke with Volume One. With the change in leadership came a perceptible shift in the *Review*'s subject-matter: Articles designed to appeal to the practitioner began to appear in greater numbers than Volume One had foretold.

Editorial responsibility for the *Review* at first clearly rested with the law faculty. The masthead of Volume One listed four faculty members as assistant editors and twelve "Student Editors." No student was given a specific editorial title. It was not until Volume Five that one student—Samuel Elton Vest—was given the title of "Editor-in-Chief" and another, Charles Raper Jonas, was named "Assistant Editor." Despite this increase in the prominence of students as actual editors of the *Review*, the masthead continued to list a faculty member as "Editor in Charge" through the April issue of Volume Seventeen. With Number Four of Volume Seventeen the faculty's intention to repose complete editorial authority in the students was announced,<sup>42</sup> and the faculty "Editor in Charge" was dropped from the masthead. Through Volume Forty-One, however, the masthead continued to list the whole faculty as "Faculty Advisors." Beginning with Volume Seventeen, the dean of the law school designated one faculty member as principal adviser to the *Review*, a practice which continues today.<sup>43</sup>

### B. *The Second World War*

Between 1931 and 1942, the student body of the law school numbered, on average, 110.<sup>44</sup> As the academic year 1941-42 progressed, many students volunteered for or were called up to active military service; by Commencement enrollment had plummeted to twenty-one. By May 1943 the total number of law students in Chapel Hill was thirteen. The faculty was decimated: Professors Brandis,

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41. *Id.*

42. See 17 N.C. L. REV. 421 (1940).

43. The present faculty adviser is Thomas Lee Hazen, Cary C. Boshamer Distinguished Professor of Law.

44. Coates, *supra* note 4, at 81.

Hanft, Van Hecke (who had returned to the School in the late 1920s), and Dalzell entered upon full-time military work, leaving Dean Wettach and three associates to keep the law school in operation.

As these statistics attest, the effect of the Second World War on the University of North Carolina School of Law and on the publication of the *North Carolina Law Review* was profound. In June 1941, six months before the Japanese attack on Pearl Harbor, fifteen students were listed on the masthead of the *Review* as student editors. By Number One of Volume Twenty, released in December 1941, only ten students were listed.<sup>45</sup> By Number Three of the same volume, this figure had decreased to eight, plus three "Editors in War Service." Throughout Volume Twenty the list of "Faculty Advisors" remained intact; by April 1943, the *Review* felt the full brunt of war: four students and five faculty members were left to labor over student casenotes and comments, checking citations, and typing manuscripts. These numbers continued with slight variations through December 1945.<sup>46</sup>

Dean Henry P. Brandis, Jr., called the journal's continuous publication throughout the war "the most remarkable epic in the history of the *Review*."<sup>47</sup> As few as four faculty members and three students "managed to publish volumes of respectable length and more than respectable quality."<sup>48</sup> Cyrus F. Lee, who served as editor-in-chief of Numbers One and Two of Volume 25, both published just after the end of the war and before the students had returned to Chapel Hill in large numbers, commented in a 1993 memorandum: "During my stay, the emphasis of the faculty and the students was to hold the [law school] tradition and the N.C. Law Review tradition intact until the men returned from the war. Those were times when the study of law did not take top priority."<sup>49</sup>

The number of professional articles published in each of the wartime volumes was usually fewer than ten. Cyrus Lee observed:

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45. These numbers, and those that follow, were first noted by Dean Brandis. See Brandis, *supra* note 5, at 970-71.

46. In December 1943 the number of student editors dropped to an all-time low of three, out of a total of twelve in the entire Law School student body; the number of faculty advisors dropped to four, Professor Frank W. Hanft having left for Army service.

47. Brandis, *supra* note 5, at 971.

48. *Id.*

49. Memorandum from Cyrus F. Lee, Attorney-at-Law, Wilson, N. C., titled *A Few Experiences of Mine Working on the N.C. Law Review*, to Martin H. Brinkley 3 (Feb. 5, 1993) (on file with author).

It is my recollection that during the time . . . I was connected with the Law Review . . . it was difficult to obtain lead articles that the faculty would consider to be worthy of publication. We went about trying to get articles for publication by writing the faculties of other law schools and any other source that came to our attention. Faculty members were on the lookout for cases that pointed to new directions in the law or for other reasons were felt to be a fit subject for a student note. The student editors selected the subject on which they wished to write a note from the cases that were suggested or from other developments in the law.<sup>50</sup>

The bulk of the wartime issues was taken up with student notes and comments.

### III. SUBJECT MATTER

#### A. 1945-60

Throughout the first fifteen years after the war, many of the *North Carolina Law Review's* pages were dedicated to serving North Carolina practicing attorneys' and state officials' need for accurate, readable coverage of new developments in North Carolina law. In the 1950s the *Review* paid substantial attention to the vast changes then being wrought by the United States Supreme Court in the national understanding of the Bill of Rights. At the same time, the deluge of congressional legislation enacted while the Great Depression and the Second World War were raging had dealt a mortal blow to the supremacy of state law. During the immediate postwar years, as a result, the nation's law journals inexorably shifted their focus toward legal questions of national importance—most of them federal. The last days of this period saw the demise of the *North Carolina Law Review* of McGehee and Van Hecke. By 1957, a new member of the law faculty, Daniel H. Pollitt, had begun his long association with the journal.<sup>51</sup> Pollitt's contributions as a prolific writer on constitutional subjects, together with his service as the *Review's* principal faculty advisor in the 1960s, led the journal to seek the national prominence that springs from close examinations of federal issues.

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50. *Id.* at 1.

51. See Daniel H. Pollitt, *Presidential Use of Troops to Execute the Laws: A Brief History*, 36 N.C. L. REV. 117 (1957).

Henry E. Frye, the first African-American to serve as an associate justice of the Supreme Court of North Carolina, was also the first African-American to serve as a student editor of the *North Carolina Law Review*. In choosing a judicial decision for his first casenote, Frye concluded that the logical subject was a recent opinion of the state supreme court.<sup>52</sup> As Frye's own contributions to the *Review* reveal, substantial legal, and particularly constitutional, questions considered by the North Carolina court were prime topics for publication in the *Review*.<sup>53</sup>

The postwar editors of the *Review* set about serving the North Carolina legal community by creating their most enduring legacy: the journal's annual survey of North Carolina caselaw. First published in 1954, the survey made no attempt to examine every opinion rendered by the Supreme Court of North Carolina during a given period. The editors intended, instead, "to discuss only those decisions which are of particular importance—cases regarded as being of significance and interest to those concerned with the work of the Court, and decisions which reflect substantial changes and matters of first impression in the law of North Carolina."<sup>54</sup> Most research and writing for the survey, which covered a full range of legal subjects,<sup>55</sup> were accomplished by selected student editors, working under the supervision of the faculty. Some sections were prepared exclusively by individual faculty members.<sup>56</sup> Eventually the annual survey of new caselaw and the biannual survey of statutory changes were consolidated into a single issue of the *Review*, titled "Recent Developments in North Carolina Law." That the journal published two such lengthy surveys in a single volume of only four issues and less than a thousand pages reveals the

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52. Interview with the Honorable Henry E. Frye, Associate Justice of the Supreme Court of North Carolina, in Raleigh, N.C. (Mar. 14, 1993). Justice Frye's first casenote examined *State v. Cooke*, 246 N.C. 518, 98 S.E.2d 885 (1957). See Henry E. Frye, *Criminal Law—Trial De Novo—Power of Superior Court to Amend Warrant*, 36 N.C. L. REV. 80 (1957).

53. See, e.g., Wilton Rankin, *Constitutional Law—Fourteenth Amendment—Trespass Protection Not Discrimination by State*, 37 N.C. L. REV. 73 (1958) (discussing *State v. Clyburn*, 247 N.C. 455, 101 S.E.2d 295 (1958)).

54. *Fourth Annual Survey of North Carolina Case Law*, 35 N.C. L. REV. 177, 177 (1957).

55. The 92-page Fourth Annual Survey, for example, contained discussions of recent cases in the fields of administrative law, agency and workers' compensation, business associations, civil procedure, constitutional law, contracts, credit transactions, criminal law and procedure, damages, domestic relations, equity, evidence, future interests, insurance, municipal corporations, real property, sales, torts, trial and appellate practice, trusts, and wills and estate administration. See *id.* at 177-269.

56. *Id.* at 177.

editors' concern with full coverage of North Carolina law during the 1950s.<sup>57</sup>

It is hardly surprising that the *Review* maintained, as it still does, substantial allegiance to state law when other American law reviews were lifting their sights to new developments in federal law, and particularly to the riveting pronouncements emanating from the Warren Court. The *North Carolina Law Review*, true to its name, had been for many years the only scholarly journal of legal writing published in North Carolina. As a child of the state university law school, it had, by all accounts, an obligation to serve the state. The student body of the law school was overwhelmingly North Carolinian in origin; in 1956, for example, only eight percent of the students were not residents of the state.<sup>58</sup> The vast majority of the students obtained legal employment in North Carolina following graduation. A journal focused on state law was the natural fruit of such a close climate.<sup>59</sup>

Throughout the late 1940s and 1950s, the Board of Editors continued to solicit professional contributions from the faculty of the law school and from Professor Albert Coates's new foundation, the Institute of Government. In addition to substantive articles, the faculty contributed many book reviews to the journal. The deaths of two University alumni in the ranks of the appellate judiciary—Chief Judge John Johnston Parker, Jr., of the United States Court of Appeals for the Fourth Circuit and Chief Justice Walter P. Stacy of the Supreme Court of North Carolina—led to a brief renaissance in the tradition of sitting judges offering the *Review* tributes to their brethren.<sup>60</sup>

Throughout the postwar years, the *North Carolina Law Review* published its volumes on very tight budgets. Especially during the early decades, student editors were forced to publish thin volumes, for the costs of publication far exceeded their modest fiscal reach. On more than one occasion, herculean efforts rescued the journal from imminent financial peril. During the summer of 1957, Thomas P.

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57. An informal statistical survey, conducted by the author, supports this thesis: throughout the 1950s, no volume of the *Review* devoted less than 50% of its pages to some aspect of North Carolina law.

58. Henry P. Brandis, Jr., *The Law School*, 36 N.C. L. REV. 62, 62 (1957).

59. I am grateful to Professor William B. Aycock for generously offering some of the insights reflected in the foregoing paragraphs within this Part III.

60. See William A. Devin, *Chief Justice Walter Parker Stacy*, 30 N.C. L. REV. 1 (1951); Morris A. Soper et al., *Tribute to Judge John J. Parker, Jr.—"The Gladsome Light of Jurisprudence,"* 37 N.C. L. REV. 1 (1958).



Walker and Thomas C. Creasy, Jr., respectively the business managers of Volumes 35 and 36 of the *Review*, compiled a supplemental index-digest covering the last nine volumes.<sup>61</sup> Although the *Review* struggled to obtain the funds necessary to produce the index-digest, the books eventually produced several hundred dollars' profit, which future editorial boards used to reduce the journal's regular operating deficit. The *Review* soon fell again into financial lean times, however, and in 1958 the Board of Editors was forced to cancel the special subscription rate previously afforded members of the North Carolina bar.

### B. 1960-93

By the early 1960s, a new generation of student editors, schooled in the Warren Court's increasingly broad definitions of the rights of American citizenship, had wrought discernible changes in the editorial policies of the *Review*. For a journal whose last ten years had been devoted overwhelmingly to North Carolina subjects, the publication in 1964 of a nearly 200-page symposium, *Civil Rights and the South*,<sup>62</sup> revealed the editors' growing willingness to examine the ills of American society at the expense of traditional expositions of common-law doctrine. Stocked with opposing viewpoints on the debate over civil rights legislation—both Attorney General Robert F. Kennedy and Senator Sam J. Ervin, Jr. (men of sharply differing viewpoints on the subject), offered short pieces<sup>63</sup>—the symposium was recognized by Dean J. Dickson Phillips, Jr., as "one of the most notable efforts ever undertaken by the *Review*."<sup>64</sup> Within a year of its publication, *Civil Rights and the South* had attracted national attention, resulting in by far the largest reprint sales ever recorded by the *Review*.<sup>65</sup>

The years between 1962 and 1968 marked a period of transition, during which the *Review* set its sights on national coverage and broad scholarly recognition. The success of *Civil Rights and the South* gave succeeding editorial boards a taste for fame. North Carolina subjects increasingly were relegated to casenotes and comments. A reader

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61. Brandis, *supra* note 59, at 69. This index-digest was subsumed in the cumulative index-digest of the *Review*'s first 43 volumes, published in 1965.

62. 42 N.C. L. REV. 1 (1963).

63. See Robert F. Kennedy, *Introduction*, 42 N.C. L. REV. 1, 1-2 (1963); Sam J. Ervin, Jr., *The United States Congress and Civil Rights Legislation*, 42 N.C. L. REV. 3, 3-15 (1963).

64. J. Dickson Phillips, Jr., *The Law School*, 43 N.C. L. REV. 110, 121 (1964).

65. *Id.*

comparing the professional articles in the February 1965 issue of Volume 43 with those in virtually any issue from the previous decade could hardly fail to note the sea change in the *Review's* focus. The publication of five professional articles,<sup>66</sup> as opposed to only one or two; the articles' substantive content ("Equality in America"; "Minorities in the Market Place"; "The Free Press and a Fair Trial"); and the nonacademic occupations of some of their authors (e.g., Vermont Royster, longtime editor of the *Wall Street Journal*) represented a substantial departure from former *Review* practice.

It is impossible to divine all the causes of this tidal shift, but at least a few are apparent. The increasing dominance of federal law over state regulation, together with the steady overshadowing of state supreme courts' incremental common-law jurisprudence by national crises demanding sweeping resolution, was bound to be reflected in journals of legal scholarship. When academic lawyers, whose personal reputations were staked on writings published in the nation's leading journals, ascended to important judicial posts, the prominence of the law review as a career-enhancing institution rose. Like its counterparts at other law schools, the *North Carolina Law Review* in the mid-1960s was ceasing to be simply a reactive force. Perhaps it is not far-fetched to see in the appointments of William O. Douglas and Jerome N. Frank (both former Yale Law School professors identified with the rejection of Langdellian legal "science" in major law reviews) to the federal bench the advent of a new relationship between the judiciary and the law review. No longer did judges look to journals simply for criticism of the "reasoning" employed in their decisions; now, they perused their pages for the reasoning itself. Contributing to this trend, no doubt, was federal judges' widespread insistence upon law review experience as a prerequisite for prestigious judicial clerkships.

Since the *Review* began to focus more intensely on federal law, the importance of North Carolina judicial decisions as the bread and butter of the *Review* decreased. By the middle of the decade the Board of Editors was seeking to curtail drastically its annual survey of North Carolina caselaw in order to pledge staff members' time to

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66. See Avery B. Cohan, *Should Direct Placements Be Registered?*, 43 N.C. L. REV. 298 (1965); Harold Demsetz, *Minorities in the Market Place*, 43 N.C. L. REV. 271 (1965); Samuel R. Pierce, *The Anatomy of a Historic Decision: New York Times Co. v. Sullivan*, 43 N.C. L. REV. 315 (1965); John P. Roche, *Equality in America: The Expansion of a Concept*, 43 N.C. L. REV. 249 (1965); Vermont Royster, *The Free Press and a Fair Trial*, 43 N.C. L. REV. 364 (1965).

other subjects. The faculty, in an attempt to accommodate both the editors and the North Carolina bar's insistence upon coverage of developments in state law, offered to write the survey itself. The *Review* endorsed this plan, and for several years the professors rendered stalwart service in preparing the survey.<sup>67</sup> Although full-scale professional articles on North Carolina subjects were becoming more difficult to obtain, the *Review* commissioned and published as many as it could.<sup>68</sup>

Throughout the 1980s, the *Review* consistently published volumes of more than 1500 pages. The increase in girth resulted in great part from the decision, taken in the mid-1970s, to increase the number of issues per volume from four to six; yet it also stemmed from a steady, almost precipitous rise in the length of both professional and student contributions to the journal. For example, Volume 69, produced in 1990-91, contained twenty professional articles averaging fifty-two pages each; it also published twenty-nine student notes of approximately twenty-six pages each. These numbers represent a fourfold increase over the typical volume of the early 1950s.

The *Review's* publication of a symposium, "*The Law of the Land*": *The North Carolina Constitution and State Constitutional Law*,<sup>69</sup> in 1992 signaled a renaissance of its former practice—embraced often in the 1970s, but rarely since—of commissioning a collection of scholarly writings centering on a single topic.<sup>70</sup> "*The*

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67. See, e.g., J. Dickson Phillips, Jr., *The Law School*, 46 N.C. L. REV. 71, 73-76 (1967) (noting that Professors William B. Aycock, Henry P. Brandis, Jr., Donald F. Clifford, Frank W. Hanft, Martin B. Louis, Walter D. Navin, Daniel H. Pollitt, Frank R. Strong, and Seymour W. Wurfel each contributed case comments on developments in various fields of North Carolina in preceding volumes of the *Review*).

68. See, e.g., William B. Aycock, *Introduction to Water Use Law in North Carolina*, 46 N.C. L. REV. 1 (1967); Robert G. Lehnen & J. Oliver Williams, *Some Aspects of the Criminal Court Process in North Carolina*, 49 N.C. L. REV. 469 (1971); Dale A. Whitman, *Transferring North Carolina Real Estate Part I: How the Present System Functions*, 49 N.C. L. REV. 413 (1971).

69. 70 N.C. L. REV. 1701 (1992).

70. See, e.g., Symposium, "*To Endure for Ages to Come*": *A Bicentennial View of the Constitution*, 65 N.C. L. REV. 881 (1987); Symposium, *Labor in the South*, 59 N.C. L. REV. 1 (1981); Symposium, *The Bankruptcy Reform Act of 1978*, 58 N.C. L. REV. 665, 881 (1980); Symposium, *Health Facility Regulation*, 57 N.C. L. REV. 1163 (1979); Symposium, *Reflections on a Decade Under the Code of Professional Responsibility: The Need for Reform*, 57 N.C. L. REV. 495 (1979); Symposium, *Products Liability Law: The Need for Statutory Reform*, 56 N.C. L. REV. 625 (1978); Symposium, *Population Problems and the Law*, 55 N.C. L. REV. 357 (1977); Symposium, *Law and Society: The Challenge of the Seventies*, 47 N.C. L. REV. 523 (1969); Symposium, *The Uniform Commercial Code in North Carolina*, 44 N.C. L. REV. 525 (1966); Symposium, *Civil Rights and the South*, 42 N.C. L. REV. 1 (1963).

*Law of the Land*" also saw the reemergence of contribution to the *Review* by the North Carolina judiciary: Chief Justice James G. Exum, Jr., and retired Associate Justice Harry C. Martin, the latter a specialist in state constitutional law,<sup>71</sup> prepared essays for the symposium on the significance of the North Carolina Constitution.<sup>72</sup> A chief attraction was the *Foreword*, written by retired Associate Justice William J. Brennan, Jr., of the United States Supreme Court;<sup>73</sup> in an essay written for the *Harvard Law Review* in 1977, Justice Brennan had ignited scholarly and judicial interest in state constitutions as sources of protection for individual liberties.<sup>74</sup> The symposium contained a history of the North Carolina Constitution,<sup>75</sup> a comment on the Supreme Court of North Carolina's issuance of advisory opinions,<sup>76</sup> an essay on Article I, Section 35 of the constitution,<sup>77</sup> and a number of casenotes on recent constitutional decisions by the North Carolina appellate courts.<sup>78</sup>

The following year the Board of Editors of Volume 71 published a more ambitious symposium, *The Urban Crisis: The Kerner Commission Report Revisited*,<sup>79</sup> with contributions by nationally famed legal scholars, sociologists, and journalists. Both of these symposia were well received by the *Review*'s subscribers.

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71. Justice Martin is now Dan K. Moore Visiting Professor of Ethics and Jurisprudence at the University of North Carolina School of Law.

72. James G. Exum, Jr., *Rediscovering State Constitutions*, 70 N.C. L. REV. 1741 (1992); Harry C. Martin, *The State as a "Font of Individual Liberties": North Carolina Accepts the Challenge*, 70 N.C. L. REV. 1749 (1992).

73. William J. Brennan, Jr., *Foreword*, 70 N.C. L. REV. 1701 (1992).

74. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

75. John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. REV. 1759 (1992).

76. Margaret M. Bledsoe, Comment, *The Advisory Opinion in North Carolina: 1947 to 1991*, 70 N.C. L. REV. 1853 (1992).

77. Louis D. Bilonis, *On the Significance of Constitutional Spirit*, 70 N.C. L. REV. 1803 (1992).

78. John D. Boutwell, Note, *The Cause of Action for Damages Under North Carolina's Constitution: Corum v. University of North Carolina*, 70 N.C. L. REV. 1899 (1992); Stacey L. Joseph Cardenas, Note, *Constitutional Expansion of Local Government Financing Alternatives: Wayne County Citizens Association v. Wayne County Board of Commissioners*, 70 N.C. L. REV. 1947 (1992); Michele L. Harrington, Note, *State v. Whittle Communications: Allowing School Boards to Turn on "Channel One"*, 70 N.C. L. REV. 1929 (1992); Matthew P. McGuire, Note, *Baker v. Martin and the Constitutionality of Partisan Qualifications for Appointment to District Courts*, 70 N.C. L. REV. 1916 (1992).

79. 71 N.C. L. REV. 1283 (1993).

## IV. INTERNAL MATTERS

A. *Staffing the Review*

Throughout the first four decades of its publication, the *Review's* requirements for staff membership were both simple and unbending. The initial hurdle consisted of scholastic achievement: any student who earned a minimum cumulative quality-point average of "B" at any time became eligible to "write for" the *Review*.<sup>80</sup> Thus, for nearly forty years academically successful first-year students would be invited to write a casenote or comment for the *Review* as early as the second semester of their law school careers.<sup>81</sup> Yet becoming eligible to "write for" the *Review* did not automatically convey membership or the right to see one's name displayed on the masthead. The student also had to write a casenote or comment considered "publishable" by the Board of Editors.<sup>82</sup>

Even attaining full rights of *Review* membership did not enable law students in the mid-1950s to rest upon their laurels. Any *Review* member whose cumulative quality-point average fell below the mark of "B" at any time was dismissed from the *Review*, even if he already had written a "publishable" casenote or comment and had seen his name listed on the masthead. The spectre of public disgrace goaded *Review* members to exceed themselves in their examinations, even after two or three semesters of hard labor in the library stacks. The grade-based system signalled that *Review* membership was a tribute awarded the scholastically successful. Underlying this theme was a value-laden message: maintaining the *Review* as an academic honor society was important to the law faculty, more important even than securing staff members whose literary and analytical talents might directly benefit the *Review's* pages at the expense of strong examination performance.

Although the "B average" standard had the advantage of grounding membership rights in objective fact, it caused considerable

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80. See, e.g., Henry Brandis, Jr., *The Law School*, 38 N.C. L. REV. 62, 70 (1959).

81. *Id.*

82. *Id.* Although these paragraphs refer to the *Review's* "staff" and to "staff membership," they do so only for ease of locution. It was not until the mid-1970s that the masthead created a distinction between the "Board of Editors" and the "Staff." For most of its history, the *Review's* membership consisted simply of student "editors," four of whom held titles and served as the journal's governors. Thus, student members who wielded no real editorial powers were long denominated "editors."

hardship for the *Review* as a working legal periodical. The four editors could not plan the volume well in advance, because they could not count upon the presence of trained assistants for more than one semester at a time. Uncertainty constrained creativity and scholarly ambition; the editors, naturally eager to maintain their own lofty positions on the scholastic ladder, were inhibited from contracting for the publication of lengthy, research-laden professional articles. Their hesitation was reflected in the paucity of the *Review*'s professional contributions during these years. Before 1960, for example, the editors found it virtually impossible to publish more than seven or eight professional articles in a single volume; most of these were coaxed from members of the law faculty.

In 1958, student complaints, both from within and without the *Review*, about the journal's membership criteria reached the ears of Dean Brandis, who responded by appointing a faculty committee to conduct a "thorough study of the selection and organization of the staff of the *Review*" during the academic year 1958-59.<sup>83</sup> After surveying the operations of comparable law journals around the country, the committee recommended modest changes designed to preserve the *Review*'s character as an honor society while providing the editors with a dependable staff.<sup>84</sup> Under the new regulations, the ten highest-ranked students in the first-year class automatically became eligible to join the staff of the *Review* at the end of their first semester.<sup>85</sup> By the close of the first year, the top fifteen students, or all those having a "middle B" average, whichever would yield the larger number, would become eligible.<sup>86</sup> The committee recommended that the faculty retain the old rule that full-fledged staff membership, including having one's name on the masthead, not be awarded until the candidate had written *two* publishable casenotes<sup>87</sup> "or the equivalent."<sup>88</sup> As the size of the law school's student body increased during the 1960s, the number of students chosen for *Review* candidacy based on first- and second-semester grades rose to twenty. After 1958, a student, having achieved membership on the *Review*, could no longer be removed solely on the basis of a drop in scholastic

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83. See Henry Brandis, Jr., *The Law School*, 37 N.C. L. REV. 58, 66 (1958).

84. See *id.* at 70-71.

85. *Id.* at 70

86. *Id.*

87. This represented an increase over the original membership requirements, which insisted that prospective staff write only one publishable casenote.

88. See Brandis, *supra* note 87, at 70-71. Presumably "the equivalent" would have been a comment or more extended casenote.

standing. The faculty, it seems, had recognized the value of a regularly constituted staff to the overall quality of the journal.

The changes wrought by the 1958-59 committee's recommendation were but a harbinger of later metamorphoses. Within a decade the editors had begun to lose confidence in the use of examination marks as the exclusive avenue to *Review* membership, a feature retained in the earlier reforms. As one editor-in-chief commented in a 1970 memorandum to the faculty:

Experience has indicated to the present Board of Editors that examination grades do not furnish a fool-proof criterion for judging the analytical and literary competence sought in a law review writer. It is not that grades bear no relation to ability, but rather that there are very likely some men in the class who could do good law review work, but whom the grading system does not select for membership. . . . [I]t is only fair to recognize legal ability that does not manifest itself in the examination process; we feel we have, in the past, rather arbitrarily excluded competent writers by the mechanical quality-point test. [F]rom the standpoint of the welfare of the law review, our publication could only benefit from rigorous competition in the selection of some of its contributors.<sup>89</sup>

Although the reforms adopted in 1959 had brought certainty and stability to the staff-selection process, the midyear entry of a few students (some in their third year) continued to cause administrative headaches for the editors. Students who joined the staff in January lacked the practical experience in citation-checking and casenote-writing their predecessors from the fall enjoyed. The editors were forced to assimilate these new members at the very moment in the year when the substantive labors of editing the *Review* were most onerous. Students who made the *Review* at the beginning of their third year were perceived as anxious for the credential of *Review* membership but unenthusiastic about the drudgery of citation-checking. This attitude irritated senior *Review* members, who had labored as much as three semesters longer than the new third-years for no greater reward.

These faults in the old system, together with continued dissatisfaction over the use of grades as the sole criteria for *Review* member-

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89. Thomas F. Loflin, III, *A Proposal to Expand Law Review Membership* 1, 3 (Mar. 17, 1970) (memorandum from the Board of Editors of the *North Carolina Law Review* to the Faculty of the University of North Carolina School of Law).

ship, led the Board of Editors to propose to the faculty the establishment of a writing competition by which "any student in good standing as of the beginning of his third semester [could] have the opportunity [of] becoming a candidate for staff membership on the . . . Review."<sup>90</sup> The traditional means of attaining *Review* candidacy through grades and class standing were not to be altered; the Board's proposal simply created a "different route by which a student who demonstrates that he is capable of quality Law Review work can attain 'Law Review' status."<sup>91</sup> The Board recommended that not more than four students taking part in the proposed writing competition be permitted to attain candidacy.<sup>92</sup> Anticipating the faculty's objection that the change would bring onto the *Review* students who had not "earned" the distinction, the Board emphasized that it was striving not to displace the laudable goal of rewarding academic distinction, but rather to "complement it with an alternative *competitive* route to staff membership . . . ."<sup>93</sup> The Board further suggested that students experiencing academic difficulties be precluded from entering the competition; every candidate for *Review* membership, they thought, should have a grade-point average at least of "C" before the student's writing could be evaluated.

The faculty agreed to permit a writing competition to take place in the fall of 1970. Second-year students who wished to enter the competition were assigned to a member of the Board of Editors, who offered each candidate a recent decision and guided him in the writing of a casenote. There was open season on the library stacks. The entire editorial board judged the entries, focusing closely upon the quality of the entrant's writing, the depth of her research, casenote organization, and accuracy in citation form. In the end, four students, as forecast, were selected for staff membership.

The apparent success of the *Review*'s first writing competition masked the hardships the competition had entailed. The ordeal of simply planning a competition open to all wreaked havoc with the *Review*'s busy fall publication schedule and annihilated the Board's hitherto cordial relationship with the staff of the law library. Participating second-year students ceased preparing for classes while

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90. *Id.* at 1.

91. *Id.*

92. *Id.*

93. *Id.* at 2.



researching and writing their casenotes.<sup>94</sup> Moreover, the competition posed a familiar administrative dilemma to the Board: How could students selected for the *Review* through the writing competition be integrated into the staff when their peers, chosen on the basis of grades, already had been laboring at the *Review* tasks for months?

To assuage these frustrations, during the late 1970s the Board substantially modified the writing competition, which, due to its success, had been endorsed by the faculty as a regular event, shifting it from mid-semester in the fall to immediately after final examinations in the spring. Although the prospect of writing a casenote after an arduous examination period made this change unpopular among the students, the new date stuck, and endures today. The editors channeled the actual writing portion of the competition into a closed packet of materials containing the decision on which the casenote was to be composed, various background cases, and supplementary materials. Candidates were not permitted to consult sources outside the packet. A small group of editors, selected by the editor-in-chief, reviewed the entries and recommended the best for staff membership.

The method of staff selection employed by the *Review* today has remained virtually unchanged for nearly fifteen years. As the size of the student body has increased—from fewer than 300 in 1960 to more than 700 in 1993—the number of staff members has grown to an annual average of thirty-nine. The present selection procedure renders the top thirteen students in the rising second-year class eligible for *Review* membership. Any law student who at the end of her fourth semester of study has attained a cumulative grade-point average at least equal to the first-year cumulative average of any student in her class who was extended an invitation to staff membership also must be invited to join the staff. The Board of Editors must choose at least thirteen additional staff members based on the writing competition. The remaining members of the staff are selected using a combination of the writing competition score and grades. The candidates having been offered the chance to decline staff membership, the new staff is announced at the opening of the academic year without any indication of the means by which the individual candidates were selected.

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94. The writing competition originally was conducted in early October, a full six weeks after the opening of the academic year and just before mid-term examinations.

### B. *The Board of Editors*

From 1926, when Samuel Elton Vest was named the *North Carolina Law Review's* first student editor-in-chief and Charles Raper Jonas its first student assistant editor, through 1959, the selection of editors involved no exercise of discretion by the members of the *Review* or the law faculty. "Selection," indeed, is an inapt term, for the editorships were dictated entirely by the class rank of the four leading members of the rising third-year class. The second-year student ranked first in his or her class automatically became editor-in-chief of the *Review*. The three second-years ranked second, third, and fourth in the class became associate editors. All others were eligible to serve as ordinary *Review* "editors,"<sup>95</sup> but held no title and performed merely perfunctory editorial duties.

As discussed above,<sup>96</sup> during the academic year 1958-59, a committee of the law faculty carefully studied the selection and organization of the *Review's* staff.<sup>97</sup> Led by Professor Daniel Pollitt, the committee persuaded the faculty that grounding *Review* editorships in class rank did not necessarily ensure the journal's eminence as a repository of legal scholarship. Success on law school examinations, the committee argued, is not necessarily the mark of a successful law review editor. After considering the matter at length, the faculty approved the committee's recommendation that the four principal editors of the *Review* be selected by the faculty from eight nominees of the current editors. Academic standing was no longer the sole criterion; to become a *Review* editor, a candidate was expected to possess qualities of leadership, editorial and critical competence, and administrative ability. Most important, he or she was to be a writer of skill and finesse. The first three editors-in-chief chosen under the new regime, E. Osborne Ayscue, Jr., James Y. Preston, and Julius L. Chambers, eased the *Review's* transition from rigid adherence to grade-point averages in the selection of editors: each possessed well-honed powers of written expression and led (or nearly led) their classes scholastically.

On observing the *Review's* masthead, the reader of today is confronted with an array of no less than six editorships, two of which

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95. See *supra* note 86.

96. See *supra* notes 87-92 and accompanying text.

97. See Henry Brandis, Jr., *The Law School*, 37 N.C. L. REV. 58, 66 (1958).

are held by several persons at once.<sup>98</sup> It was not until the late 1960s that members of the Board of Editors began to assume these positions of specialization. By 1972, the Board of Volume Fifty consisted of the editor-in-chief, an articles editor, three associate editors, a managing editor, and a business manager. The articles editor, whose position had been recently created to stem and cull through the growing tide of unsolicited professional articles the *Review* constantly received, assisted the editor-in-chief in planning the portion of each issue dedicated to professional scholarship. The associate editors continued, as they long had, to supervise the writing of casenotes and comments by second-year staff members. The managing editor was responsible for promulgating the *Review*'s publication schedule, and for dealing directly with the printer to ensure the journal's timely appearance. The business manager, as his title implied, maintained the *Review*'s books of account and its list of subscribers, sold advertising space, and attempted to keep the journal solvent.

Throughout the 1970s and 1980s the size of the Board of Editors more than doubled (from seven editors in 1972 to sixteen in 1991), and specialized Board positions continued to proliferate. The widening girth of professional articles during these years was largely responsible for this trend.<sup>99</sup> By 1980 the position of "associate editor" had been eliminated, and the Board consisted of articles editors, note and comment editors, and research editors working under the leadership of the editor-in-chief and managing editor.

In the early 1980s two leading candidates emerged for the position of editor-in-chief. Fearing that the rejected candidate for the *Review*'s principal chair might refuse another editorship position entirely, the Board of Editors, with the approval of the faculty, created the post of executive articles editor. The holder of this new editorship, the Board anticipated, would serve as assistant to the editor-in-chief for purposes of managing the *Review* generally, and would assume all responsibility for soliciting articles from and making offers of publication to professional contributors. The executive

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98. The editorships in Volume 71 (1992-93) consisted of an editor-in-chief, an executive articles editor, a managing editor, a publications editor, seven articles editors, and five note and comment editors.

99. In 1957, for example, a professional article published in the *Review* consisted of an average of 25 printed pages (the average length of a student casenote today). By 1991 law professors, judges, and practicing attorneys were offering the *Review* articles averaging 52 pages. Today it is not unusual for a given Board of Editors to publish several articles that each exceed 100 pages of printed *Review* text. In manuscript form, such pieces typically number more than 300 typed pages, and contain more than 500 footnotes.

articles editor also would begin to supervise compilation of the annual survey of developments in North Carolina law.

With the appointment of the *Review's* first executive articles editor, the constitution and tenor of today's Board of Editors was largely established.<sup>100</sup> The *Review's* sheer size, coupled with the tremendous volume of work it undertakes, have made it extremely difficult for a single individual to manage all its affairs. Although ultimate responsibility remains in the hands of the editor-in-chief, the *Review* is in truth led jointly by the four members of the so-called "executive board" (editor-in-chief, executive articles editor, managing editor, and publication editor), working as a team. The editor-in-chief continues to preside at all meetings of the full Board, and represents the *Review* in its dealings with the dean, the law faculty, and the alumni of the law school. The editor-in-chief and the executive articles editor together plan the volume of the *Review* for which they are responsible. The executive articles editor monitors the receipt of professional articles and makes offers of publication to their authors. The managing editor presides at meetings of the staff, schedules the actual production of each issue of the *Review*, and allocates research and editing responsibilities among the various Board and staff members. The publication editor holds primary responsibility for the journal's financial health, and coordinates the technical aspects of printing the *Review*. With the assistance of the other Board members, and in addition to the general editing duties that are shared by the entire Board, these four individuals supervise the *Review's* daily operations.

### C. *A Matter of Diversity*

The first female member of the *North Carolina Law Review* was Daisy Strong Cooper, a member of the Class of 1926. Between Ms. Cooper's tenure and the mid-1960s, a number of women served on the staff of the *Review*, though none as an editor. The first woman to preside over the *Review* was Doris R. Bray, of the Class of 1966, whose career as editor-in-chief produced Volume 44, at 1192 pages the lengthiest *Review* tome published to date. By the early 1970s,

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100. In 1989 the Board of Editors of Volume 68 decided that the position of research editor should be eliminated in favor of distributing research responsibilities among all the articles editors and note and comment editors. The Board of Volume 69 likewise eliminated the post of business manager, vesting the *Review's* financial affairs in the hands of the publication editor, a new Board position designed to serve as a liaison with the journal's printer.

women were represented regularly in all the editorships. With the election of Teresa Wynn Roseborough as editor-in-chief of Volume 64, a pronounced trend emerged; in the eight volumes published since the fall of 1985, the Board of Editors has been approximately equally divided between women and men. As of 1993, four of the eight immediately preceding editors-in-chief, five of the eight executive articles editors, and four of the eight managing editors of the *Review* were women. For the first time in 1989-90 (Volume 68) women held all three positions on the executive board, and would have done so again the following year had not the new position of "Publication Editor" been filled by a man. Thus, in recent years the *Review* has been staffed and edited by an almost equal number of men and women.<sup>101</sup> As women have matriculated into the Law School, they have competed for and obtained positions on the *Review* as a matter of course, in complete parity with their male classmates.

With respect to African-American representation the *Review* has not been so fortunate.<sup>102</sup> The problem is difficult to pinpoint in a system that identifies candidates to their evaluators only by social security number, but the lack of minority participation on the *Review* has been disconcerting. The frustration has been amplified because of the indirect role the journal played in desegregating the law school. In *McKissick v. Carmichael*,<sup>103</sup> decided in 1951, the United States Court of Appeals for the Fourth Circuit ordered the law school to cease denying admission to African-Americans solely because of their race.<sup>104</sup> Writing for the court, Judge Morris Soper emphasized that

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101. Three recent volumes of the *Review* attest to the general trend toward equal gender representation on the staff and Board of Editors. The Board of Volume 71 consisted of nine women and seven men; of 45 staff members, 27 were men and 18 were women. For Volume 70, the Board of Editors consisted of nine men and seven women; of 43 staff members, 24 were women and 19 men. For Volume 69, there were ten women and six men on the Board of Editors; the 43-member staff consisted of 21 women and 22 men.

102. With only the *Review*'s masthead as a guide (no written records of the matter exist), it is of course impossible to determine how many African-American law students have served on the *Review* over the past four decades. At least three, however, have served the *Review*, the state, and the country with great distinction: The Honorable Henry E. Frye, a member of the *Review* for Volumes 36 and 37; Julius L. Chambers, a member of the *Review* for Volume 39 and editor-in-chief of Volume 40; and Teresa Wynn Roseborough, a member of the staff of Volume 63 and editor-in-chief of Volume 64.

103. 187 F.2d 949 (4th Cir.), cert. denied, 341 U.S. 951 (1951). For an examination of the *McKissick* decision, see Dickson McLean, Jr., Note, *Constitutional Law—"Separate but Equal" Test in Graduate Education*, 30 N.C. L. REV. 153 (1952).

104. 187 F.2d at 950. *McKissick* followed *Sweatt v. Painter*, 339 U.S. 629 (1950), in which the Supreme Court emphasized that legal education "cannot be effective in isolation from the individuals and institutions with which the law interacts." *Id.* at 634. The Court

the North Carolina College for Negroes (now North Carolina Central University) had no law review:

The members of the [University of North Carolina law] Faculty have shown scholarly capacity in writing legal articles contributed by them to the North Carolina Law Review, which has been issued since 1923 [sic], and to the Law Reviews published by other law schools of good standing. The North Carolina Law Review is published by the University of North Carolina Press, under the management of the faculty of the Law School. It serves as a medium of scholarship, working toward the improvement of the law; and it also serves as a factor in the legal training of the abler students who, by reason of their facility of expression and their ability to make the necessary research, are deemed qualified to make contributions to the publication. Those who are chosen for this purpose have the opportunity to cooperate and engage in discussion in the preparation of the articles for publication and thereby receive training and experience of considerable educational value. Colored students of the Colored Law School do not share in this opportunity. They are allowed to contribute and two or three have done so in the past, but none since the last war.<sup>105</sup>

Partly on the basis of the intangible advantages offered by a law school possessing its own law review, Judge Soper concluded that the legal education offered by the law school at the North Carolina College for Negroes was "clearly inferior" to that afforded by the all-white law school in Chapel Hill.<sup>106</sup> Given the journal's prominence in *McKissick*, the dearth of participation by African-American students has been a source of frustration for the *Review* and for the law school as a whole. Efforts to change the status quo will doubtless continue.<sup>107</sup>

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continued:

The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85 percent of the population of the State and include most of the lawyers, witnesses, jurors, judges, and other officials . . . . With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal.

*Id.*

105. *McKissick*, 187 F.2d. at 950-51.

106. *Id.* at 950.

107. Asian-Americans and other persons of Asian origin, Native Americans, and persons of Hispanic origin have become staff members and editors of the *Review* roughly

V. THE *REVIEW* AND THE LEGAL COMMUNITY

In his reflections on the *Review*'s first five decades, Dean Henry P. Brandis, Jr., attempted to describe the benefits of law review experience by citing the careers of University of North Carolina School of Law alumni who had served on the journal during their years in Chapel Hill.<sup>108</sup> No survey can examine the myriad contributions to the nation's legal, governmental, and educational institutions rendered by thousands of *North Carolina Law Review* members over the past five decades. The paragraphs that follow necessarily resemble an incomplete laundry list. If they emphasize those alumni who have obtained positions of public trust, it is simply because such successes are easy to discover and document.

Since 1972 a number of former *Review* staff members and editors have become judges of state and federal courts across the country. Two occupy the bench of the United States Court of Appeals: J. Dickson Phillips, Jr., whose achievements as dean and professor of law at the University of North Carolina School of Law are described elsewhere in this volume; and David B. Sentelle. Judge Phillips is a senior member of the United States Court of Appeals for the Fourth Circuit, having been appointed in 1978 by President Carter. Judge Sentelle serves on the United States Court of Appeals for the District of Columbia Circuit, to which he was appointed by President Reagan after service as a federal district judge in the Western District of North Carolina. Three of the present justices of the Supreme Court of North Carolina were members of the *Review* during their years in Chapel Hill: in order of seniority, they are Chief Justice Burley B. Mitchell, Jr., and Associate Justices Henry E. Frye and Willis P. Whichard. The number of present and former United States district judges, judges of the North Carolina Court of Appeals and of the Superior and District Courts of North Carolina, and jurists in other states who received significant training in legal research and analysis from service to the *Review*, is too great to list here.

Former *Review* members have served important academic institutions in faculty and administrative positions. William B. Aycock, now William Rand Kenan, Jr., Professor of Law emeritus at the Law School, became Chancellor of the University of North Carolina at Chapel Hill in 1957, ten years after serving as editor-in-

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in proportion to their relatively small numbers in the law school community.

108. See Coates, *supra* note 5, at 973-74.

chief of the *Review*. He resigned as Chancellor in 1964 and spent the next thirty years teaching property, federal jurisdiction, and other subjects. Julius L. Chambers, editor-in-chief of the *Review* in 1960-61, was named Chancellor of North Carolina Central University in 1992. Some forty *Review* alumni are teachers of law in universities around the United States; three of them, former dean Robert G. Byrd, S. Elizabeth Gibson, and John C. Boger, teach at the University of North Carolina School of Law.

At least seventy-five legislators in North Carolina alone, several Members of Congress, a Governor and Lieutenant Governor of North Carolina, and approximately two dozen past presidents of state bar organizations are alumni of the *North Carolina Law Review*. It is impossible to describe in detail the varied and illustrious careers of leaders of the practicing bar who have emerged from the ranks of the *Review*. Of equal significance is the number of *Review* alumni who have entered the public-service arms of the legal profession, serving as federal and state prosecutors, public defenders, state attorneys general, and legal aid lawyers.

## VI. REFLECTIONS

Addressing the graduating class of the Law School at Commencement on May 16, 1976, former University Chancellor and Kenan Professor William B. Aycock briefly reminisced about Justice Oliver Wendell Holmes's first experience of law study at the Harvard Law School. In the years immediately following the Civil War the law presented itself, Aycock observed, as "a ragbag of details."<sup>109</sup> Yet "where others found only unrelated instances" Holmes managed to convert his knowledge "into the organic tissue of wisdom."<sup>110</sup> Although the extent to which law students actually manage to accomplish this conversion may be impossible to measure,<sup>111</sup> experience teaches that those who have the opportunity of serving and guiding a professional journal of legal scholarship usually manage to grasp at least some of the elemental principles that are the heartbeat of the law. If the actual practice of law often seems to consist of myriad details, a task bereft of time for enjoying the forest's sweep, the former law review member knows that there may somewhere be method in the madness.

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109. WILLIAM B. AYCOCK, SPEECHES AND STATEMENTS 414 (1989).

110. *Id.* at 415.

111. *See id.*



There are those who feel that young men and women, not yet even out of law school, are not experienced enough to select articles and otherwise provide leadership for a legal journal of national influence. This writer's response is that any author is fortunate to have the editorship of such persons as William B. Aycock, J. Dickson Phillips, Jr., Robert G. Byrd, or Julius L. Chambers, to mention only some of those from whose work a large number of law school alumni have benefited.

For the author of this article, and for nearly all the *Review* alumni with whom he has spoken, serving the *North Carolina Law Review* was uniformly a positive experience. The skills acquired through staff membership—sharpened powers of analysis; refined writing skills; increased knowledge of research materials—in virtually every case have made us better lawyers sooner than we might have been without them. Although the scholarly activities associated with law review work are not often duplicated in law practice, their practical value should not be dismissed. The law review member, by working to prepare scholarly articles, comments, and casenotes for publication, acquires a breadth of legal knowledge that may prove of practical value in her subsequent career. Cyrus F. Lee, a highly respected practitioner in Wilson, North Carolina, and editor-in-chief of half of Volume 25, has written:

Working on the Law Review was a tremendous learning experience. There is no doubt that the discipline required to analyze the cases and compose and put together a student note was the very best training in brief writing and in the preparation of legal memoranda for presentation to the trial courts . . . .<sup>112</sup>

If the staff member's mind is of an idealistic turn, moreover, she may take pleasure in the knowledge that she has advanced the frontiers of the law and has contributed to the *Review's* ability to promote and justify positive societal change.

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112. Lee, *supra* note 51, at 2.