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Report of the Dean 1973-1974

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LAW SCHOOL
UNIVERSITY OF NOTRE DAME

Report of the Dean
1973-74

To the Chairman of the Board of Trustees, the President, the Provost, and the Associate Provost of the University

Gentlemen:

My assessments of the Law School have tended more to describe developments than to state aspirations.[1] I continue to assess things in that vein; my preference for leadership in the Dean's Office is to build on the goals which are implicit in the work of the tireless, dedicated people who teach and learn law at Notre Dame. My hope in approaching our enterprise in this way is to discover myself, and to help my colleagues discover, the power with which they serve God, the University, the community, our embattled profession, and one another. "This power in us," St. Paul said, "is the power he used when he raised Christ from death and seated him at his right side in the heavenly world."[2]

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The Law School's objective is to identify and inform the qualities in men and women which will cause them to be honorable, autonomous, private lawyers. We are interested in their being knowledgeable, skillful professionals whose principal concern is the well-being of their clients. This involves a concern with the private practice, which is the destination of about 85 percent of our graduates, with professional autonomy, and with ethical standards which are consequent on a sense of professional responsibility (*i.e.*, the ability to respond to one's clients) and on the implications of the Gospel in a lawyer's life.[3]

I. The Private Practice of Law

I was in Washington, D.C., last spring to testify for our National Center

1 48 NOTRE DAME LAWYER 232 (1972); 49 NOTRE DAME LAWYER 214 (1973).

2 St. Paul's letter to the Christians in Ephesus 1: 19-20. My meditation on this bit of Pauline hope was enlarged in a poem, "Paul's Prayer":

> You—and not wind or cold, not swift wet rage—
> Are the power. I the power, not stone,
> Steven, a power which heeds its hurting,
> Which seeks its weakness as God sought his own.
>
> We are the kingdom, power, and glory.
> Therefore smile with me to find God, not where
> Pain is something uncaused, and hope for pain
> We can avoid causing, and God can share.

3 The First Appendix lists the Law Faculty; the Second Appendix lists major supporters of the Law Scholarship Fund.

for Law and the Handicapped interns[4] on behalf of a bill to aid retarded children, and to work on a book which arises out of our school's involvement in locating and enforcing the legal rights of mentally retarded citizens.[5] I had occasion to talk to two young lawyers about their beginning careers. One of them is in the private practice in a small town in northern Virginia; the other works for the Federal Trade Commission. I was struck by the fact that, while each of them was idealistic and unselfish toward his duties and toward his responsibilities to the community, the private lawyer was happy about what he did and the public lawyer was disappointed. It led me to reflect, as I have often in the past three or four years, on the fact that lawyers in full-time public service, or in legal services offices, grow disenchanted with their careers; almost all of them soon leave their initial employment and enter the private practice. This is not basically a question about what our commencement ritual refers to as "a fierce partisanship for justice." The Notre Dame law students I know increase their commitment to justice while they are here and leave with a determination to make the world better. Some few of them (never more than ten percent) choose to do this initially in full-time public service (including practice in offices for the poor); they, perhaps more than their classmates, have a special interest in law reform. One hopes they retain an interest in law reform even as they tend to lose interest in their initial employment. In any case, almost without exception these graduates are in private practice before the fifth anniversary of their graduation.[6]

Why do these young lawyers turn (return?) to the private practice? The reason is not money; legal services offices now pay about what law teaching pays, and law teaching is a remarkably stable profession. I don't think legal services lawyers leave their work out of a fear that their programs won't last, although insecurity has been a factor this year. (The organized bar, not someone in the government, invented legal aid. The organized bar has kept it alive and growing, although admittedly with federal support. One of the things to remember about the young liberals in legal services is that they have been saved and sustained by some unlikely liberal reformers from the private bar, lawyers such as Orison Marden of New York and Lewis Powell of Virginia.[7])

One reason may be that legal services lawyers are alienated from the community. This reason is often described as alienation from the power structure,

4 We now have internship programs in criminal law, environmental law, poverty law, representation of the handicaped, and civil rights.

5 I also testified, in Chicago, on a proposal to revise the federal appellate judicial system; I spoke at Law Day ceremonies and Universal Notre Dame Night in a dozen cities, and at educational conferences in Louisiana, San Francisco, Elkhart, Boulder, Minneapolis, and elsewhere. I published several short pieces on legal counseling, helped edit a new book on the legal rights of the mentally retarded, and continued to serve on a number of charitable, professional, and commercial boards of directors.

6 I expressed these sentiments in Law Day talks in Chattanooga, Fort Wayne, and Evansville.

7 Mr. Justice Rehnquist presided over our final moot court arguments this year, along with Chief Justice O'Neill of the Supreme Court of Ohio and Judge Bright of the United States Court of Appeals for the Eighth Circuit. The winners of the final round, and of the A. Harold Weber prizes for 1974, were Norman Lerum of Indiana and Thomas Pacquin of Massachusetts, both '74L. Roberta Halladay and George McCarthy, both '74L, also argued in that final round. Steven Peifer, '74L, was moot court director this year; Patricia Leonard, '75L, was elected director for 1974-75.

from "city hall," but I suspect that power is not the heart of the point so much as professional kinship. Lawyers who yearn for change in their society yearn also for identification with public leadership, with the sort of leadership our profession celebrates in most of our presidents, most of our governors, most of our legislators.

Another reason may be that the legal services lawyer tends to feel that he is a peculiar subspecies in the organized profession. Lawyers in the full-time service of the public interest tend to see themselves as not exactly lawyers. Often, no doubt, they choose to be not exactly lawyers. I know many who chose that in law school.[8] But the point is not their choice, or even their alienation, so much as the fact that they ultimately find this situation oppressive, and they correct it by entering or returning to the private practice of law. They do not leave the legal profession; they join the private bar. They join it, perhaps, as if it had been their destination all along.[9]

A third reason I find to explain why young lawyers do not last in public interest work is that they find in it a diminished, inadequate kind of attorney-client relationship. Their clients come from a different culture. Most of those served by public interest lawyers are poor or from racial minorities or both; most lawyers are suburban-bred, white, and middle-class. Those served by public interest lawyers do not pay for services. They are denied the certain dignity that comes from paying for what you get. And the real control of legal services in public interest programs tends to be in a board of directors, or a council of leaders who resemble in some way, or are thought to represent, the client population. Many offices are controlled by the government. Their clients do not have any significant power over them. The power comes from the community or from funding agencies. Often it comes from the bureaucratic organization which sustains the legal services program and which, like all bureaucratic organizations, tends to have a life and goals of its own. Whatever these goals are, they are not necessarily shared by the clients.

None of these factors exists in private practice. Lawyers in private practice are not alien to the community. American lawyers have always run the country, from the lowest to highest levels—from the local symphony orchestra to the White House. They have not run it meekly, either. We have had only one violent revolution in the United States, and one of the principal reasons we have not had others is that lawyers preside over our revolutions. This was so

8 Our steadfast policy has been to employ for the faculty only lawyers who have had substantial experience in the practice. This of course poses difficulties for us under the University's policies on rank and tenure as well as our salary budget, all of which trace to the fact that a typical beginning law teacher at Notre Dame is five years past his terminal degree, while teachers in most other fields come to the faculty fresh from commencement. At this writing we have employed three new teachers for 1974-75. Their average time in the practice of law is six years, four months. All three were hired as assistant professors.

9 The Class of 1974 has 18 graduates in judicial clerkships—in federal courts and in state supreme courts. Most of the class will go directly into private practice. The Class of 1974 was about 90 percent placed by the end of May. Ninety-four employers visited us to interview students last fall, most of them in September, October and November. Mrs. Millie Kristowski took over as placement director (and N.D.L.A. executive secretary) in January, after the resignation of Mrs. Barbara Kunz. The N.D.L.A. board at its meeting in March set up a placement committee chaired by Burton Apker, '49L, Phoenix, to involve our alumni more heavily in the business of finding jobs for Notre Dame law graduates.

in 1776. It was true of Andrew Jackson's revolution, of the industrial revolution, of the New Deal, of the "civil rights revolution," and of the war on poverty. Most American revolutionaries have come from the private practice of law.

I suspect that whatever legal revolution we are likely to have in the rest of the 20th century will again come from lawyers in private practice. The growth of the corporate state in America is something lawyers must limit and humanize, and there are thousands of private lawyers, representing hundreds of thousands of clients, who will determine whether the effort succeeds or not. Civil liberties for the poor and despised in America have not arrived yet, and the systematic weakening of the Civil Rights Commission will not stop efforts to attain racial justice. But many of the lasting civil rights victories, and many of the best environmental law victories, are won by private lawyers—private lawyers who are animated by complex and usually worthy motives which involve decisions about expense, and time, and issues of public significance. They involve hard choices which, I hope, begin to be issues for our lawyers when they are with us as students.

I think the struggle for social justice in America will go on whether public interest lawyering grows or not. I think the great moments in social justice will be moments like Thurgood Marshall's argument in *Brown v. Board of Education,* or Daniel Webster's argument in the Dartmouth College case, or Horace Binney's in the first Girard College case, or notable victories in the defense of those accused of crime. The creators of these moments will come, as our great advocates have always come, from the private bar.[10]

The influence of a lawyer in private practice is on people, one at a time. The private lawyer's influence is, I think, becoming more and more personal. Lawyers are more like Marcus Welby than like Clarence Darrow—and that is what our students these days prefer and look forward to.[11] That should suggest to us more attention to the skills of human relationships. It should also suggest that the legal profession will continue to be the principal carrier of values in our society. De Tocqueville observed that Americans tend to restate religious and moral issues in legal terms. In America, for some reason, moral leadership rests largely with lawyers. It is an enormous responsibility, and we must make sure

10 It is important that we provide them models—ourselves first of all, but other active teachers and practitioners as well. We continue to expand the practice of inviting here visitors who will spend days rather than hours with us and will associate with our students on the informal level as well as in lectures. Visitors who came in that spirit this year included Walter Johnson, Jr., of the Greensboro Bar; Professor Louis M. Brown of the University of Southern California; Professor Victor Rosenblum of Northwestern; Jerome Nealon of the Binghamton Bar; George Tompkins, '56L, of New York; John R. Martzell, '61L, of New Orleans; Vernon Jordon, executive director of the National Urban League; Msgr. Ralph Brown, officialis (chief judge) of the archdiocesan tribunal in London; Senator George McGovern; Rep. Shirley Chisholm; Rep. John Brademas; Senator Birch Bayh; Sargent Shriver, our 1974 Civil Rights lecturer; and Professor Booker, home from London for a week's visit. Visitors here for a shorter stint included an array of distinguished trial lawyers, among them Stephen Milwid, Chicago; Thomas Hicks, Terre Haute; Richard Ver Wiebe, Fort Wayne; James Dooley, Chicago; and Drs. Morris Friedman and Martin Troyer. Visitors to the London campus included Malachy Kelly, of the English Customs and Excise Service; Andre Cardel, of the Paris Bar; Michael Ryan, of the Florida Bar; Judge Frank Kaufmann of the U.S. District bench; Michael Meliffe, a London solicitor; Dean John Cribbett of the University of Illinois; and Fathers Burtchaell and Lewers.

11 See my observations last year, 49 NOTRE DAME LAWYER 214, 218-19 (1973).

our students are able to respond to it. Too many lawyers in the past few years have been on the front pages because they seemed unable to recognize a moral value when they saw it.

The program of instruction, as I have known it at this law school, has always aimed at the private practice of law. That vision was particularly clear in the curriculum adopted under Dean Joseph O'Meara's leadership in the 1950's. Perhaps legal education lost some of the clarity of its purpose for a while. In any case, I see developing a return to the clear preparation of Notre Dame lawyers for knowledgeable, skillful, and concerned representation of private clients.

We share with most law schools a tough, case-oriented first year. It has, as a matter of fact, become much more demanding since 1968; it is now the heaviest first-year regimen I know about, anywhere.[12] (I found the first year at the Notre Dame Law School to be the most completely challenging thing I have ever done, before or since; the regimen now is more challenging.) Last year we required 34 semester hours in the first year and covered in it virtually everything a lawyer requires for his elementary education in the law. I find little disposition in the Faculty—and this after some frustrated efforts at change —to reduce our first-year rigor. The students we accept these days—nearly all of them from the top ten per cent of college graduates—are able to do the work.[13]

In 1968 we began to adopt an elective curriculum after the first year, to add a broader array of courses, and to diffuse somewhat the rigor developed in the 1950's in the second and third years. The faculty completed the process in 1971 when it adopted a curriculum which is fully elective after the first year. There were good arguments for change: the diffusion of the law has become too wide to be covered in a single set of required courses; lawyers are now beginning openly to specialize, to limit their practices, and the organized bar will doubtlessly sanction certified specialization within the next decade; graduate professional students, who have been in school for 16 or 17 years, should be capable of making intelligent choices on their own. The faculty, nonetheless, made the change haltingly. Unlike most law schools, we prescribe "core" courses after the first year and maintain a counseling system to give the students individual guidance

12 Seven students out of a class of 139 failed out of the first-year class this year. All seven applied for readmission; their petitions are now pending. In 1972, 13 failed out, and in 1973 four; none of these 17 were readmitted. Fifteen students in the first-year class received one or more "F" grades. One student failed out of the third-year class this year, and four of his classmates received failing grades in their spring semester courses. We lost no one from the second-year class this year; one student failed out of the second-year class in the fall semester; only one "F" was recorded for the second-year class in the spring semester. Our rules on dismissal turn both on current-course failures and on accumulated records of failing grades or "D" grades.

13 49 NOTRE DAME LAWYER 214, 216 (1973); 48 NOTRE DAME LAWYER 232, 253 (1972), trace the history of applications and admissions criteria. This year (for the class entering in August 1974), we had 1,720 applications for a target of 140 places (which, because of incredible pressures, may come out over 150); the entering students have a slightly higher mean G.P.A. than last year (between 3.5 and 3.6) and a mean L.S.A.T. score of about 625. The first-year courses to which this paragraph refers are Contracts I and II (six hours, Professor Murphy); Torts I and II (six hours, Professor Rice); Property I and II (six hours, Professor Kellenberg); Criminal Law I and II (six hours, Professor Dutile); Procedure I and II (six hours, Professors Rodes and Bauer); Introduction to the Legal Profession (one hour, Dean Shaffer and Professor Dutile); and Legal Bibliography (two hours). Dr. Cekanski assisted in the legal bibliography program this year and will direct it next year.

on their programs. Our students move even more haltingly; almost all of them take the courses we designate as "core" and few take the courses one might identify as optional in preparation for private practice.[14] I am now taking a number of steps toward advising the profession—and particularly those who hire our students and who examine their competence to practice law—of our core course system and of each student's response to it.

Of more importance to our objective—the preparation of lawyers for the private practice of law—is the program that has begun to become clear as the faculty has grown in size and diversity and as the profession has made its needs clearer. It begins to look like this:

—A rigorous first year of elementary legal education and training in skills of analysis. This part of our program is shared with all other law schools, although our version of it is tougher than most. It is in fact something of a sacred cow in legal education; no one seems to understand how it works, but most concede that the work of professionalization takes place in the first year.[15]

—A second year which concentrates on information in the most common areas of legal practice. Our curriculum and core course system have, for instance, moved to the second year courses in basic practice which have been taught here in both the second and third years—business associations, taxation, commercial law, property settlement, evidence, constitutional law, labor law, antitrust, administrative law, federal practice, and jurisprudence. Almost all of our students take these courses in the second year; our London curriculum has been expanded to offer many of them to students who elect to spend their second year abroad.[16]

—A third year in which students divide their time, in small groups, among specialized advanced courses, exploratory seminars, and a number of new programs which are clinical in character.

14 The core courses, in which enrollments for the most part exceed 90 percent—see 49 NOTRE DAME LAWYER 214, 219 (1973)—are Constitutional Law (four hours, Professors Rice and Beytagh); Commercial Transactions (three hours, Professors Moo and Laing); Evidence (three hours, Professor Broderick); Business Associations (four hours, Professors Rodes and Murdock); Property Settlement (four hours, Professor Campfield); Federal Taxation (four hours, Professor Link); Jurisprudence (two or three hours, Professors Chroust and Rodes); and Practice Court (four hours, Professors Barrett and Seckinger).

Professor Barrett, after 26 years on our faculty during which he invented and implemented the Practice Court, decided this year to retire. He plans to teach as a visiting professor at the Delaware Law School next year; the faculty, students and area alumni honored him at a special dinner in November, during which Father Hesburgh presented him a Presidential Citation.

15 A traditional and fairly crude representation of the system is portrayed in the current movie "The Paper Chase"; *see* B. Boyer and R. Cramton, *American Legal Education: An Agenda for Research and Reform,* 59 CORNELL L. REV. 221 (1974). Dr. Robert S. Redmount and I, with help from Craig Boyd and Karen Bulger, both '74L, and Patrick Utz, Ph.D., '73, recently completed two years of data gathering for a report on the professionalization process in the first year of law school, most notably its effect on the values and instincts one might call humanistic.

16 The London curriculum was expanded this year to include such basic second-year courses as Constitutional Law and Federal Taxation. The faculty there offered three American lawyers as teachers (in addition to Professor Booker, who directed the program, represented the home office, and taught a full load); they are William Onorato, Richard Toub, and John McNeill. Our British faculty included Patricia Harmer, Helen Galas, Professor Charles Alexandrowicz, Keith Uff, and Professor Ronald Maudsley. Professor Maudsley came to Notre Dame in the spring semester to inaugurate the Thomas J. White Chair in the Law School.

The crucial point in this development is now the third-year curriculum. The curriculum committee, which I chair, has been at work on suggestions for changes in the third-year program, but I find that most of the changes are taking place out of a dynamic which does not need to be imposed. We have, for instance, superb programs in advanced study in the representation of business clients,[17] trial practice,[18] criminal practice,[19] appellate advocacy,[20] environmental

17 These courses are taught by Professors Link and Murdock; Professor Phillip Brockington, on weekly visits from Valparaiso, taught Securities Regulation in the spring semester, in Professor Murdock's absence, and Drs. John Carey, Edward Gray, '58L, and Nelson Vogel, '71L, all of South Bend, taught Entity Taxation. Professor Link and I, with assistance from Professor Louis M. Brown of Southern California (who came here for 14 days of teaching in the spring semester), developed a new skills program in Law Office Practice. Professor Link talked to groups of lawyers and corporate executives in several national meetings, served on the congressional task force on legislative materials, helped organize and present two national A.B.A. conferences, served on panels for the Indiana Continuing Legal Education Forum, and was elected to the vice-chairmanship of the new A.B.A. section on law office management and to a chairmanship in the section on taxation. Professor Murdock will be back in the fall from a visit to the law faculty at Hastings (University of California, San Francisco). He spoke in Indianapolis, Dallas, Atlanta, Kansas City, and elsewhere on the legal rights of mentally retarded citizens and represented our law school at the annual meeting of the Indiana State Bar Association.

18 Professor Barrett has taught the trial practice course for the past 20 years; the course will be taken over by Professor Seckinger in the fall. Professor Broderick offers an advanced seminar in trial practice. Professor Broderick is again this year a co-editor of the proceedings of the Notre Dame-St. Mary's Union-Management Conference (the theme this year is "Are Union-Management Relations Coming of Age?"), a member of the advisory group for the Indiana Criminal Justice Planning Agency, and an active officer in Phi Beta Kappa. He gave two lectures on evidence under the Uniform Code of Military Justice to members of the Air Force R.O.T.C. contingent. Professor Seckinger, '68L, was the top man in his law class, an editor of the *Lawyer*, and is the holder of a master's degree in physics. He went into a judicial clerkship in the federal district court in Denver for a year, then spent three years as a law-reform lawyer in the Metropolitan Legal Aid Society of Denver (where he was a Reginald Heber Smith fellow). More recently he has been chief deputy district attorney of Denver County, specializing in consumer fraud cases. He has been an instructor in trial tactics for the past two years in a national program in trial advocacy conducted at Boulder and in Reno.

19 Professor Foschio devised this program, which goes into its fourth year next year. He took on this year the primary burden of admissions, in addition to full-time teaching, the development of the appellate advocacy program, and the complex duties of assistant dean. He and Professor James Daschbach are at work on a sponsored program on developing statewide judicial statistics for Indiana's trial courts. He was appointed evaluator for the National Prosecutor and Defense Internship programs conducted by the National District Attorneys Association, to the University's judicial appeals board, and to the board of advisors of the Indiana Center for Judicial Education. He and Mrs. Foschio represented Notre Dame at the June conference of the Law School Admissions Council.

20 This program was devised by Professors Foschio and Beytagh, working closely with Chief Judge Luther M. Swygert, '27L, of the Federal Court of Appeals in Chicago. Professor Beytagh, who also offers a seminar in constitutional litigation and who has acted this year as moot court advisor, is preparing a study of the new Indiana bar-admission rule for the *Journal of Legal Education*, as well as articles on the recommendations of the Freund Committee on the overload in the Supreme Court, on the nonretroactivity concept in Supreme Court cases, and on reapportionment in the Virgin Islands. He taught a heavy load here this year; he also served as our elected representative on the Academic Council, and as consultant to the National Center for Law and the Handicapped and to the Administrative Conference of the United States. Professors Seckinger and Bauer will also work in appellate advocacy next year. Professor Bauer's article on antitrust audits was reprinted by the Young Lawyers Section of the American Bar Association. He served on the academic policy and placement committees of our faculty and on University committees on Luce Fellowships and on Academic Honesty. He is a member of the exemptions subcommittee of the A.B.A. Section on Antitrust Law.

law,[21] labor law, and in planning and drafting.[22] We started a program last year in law office practice, and we continue to offer, in courses[23] and in fieldwork,[24] excellent clinical experience in public interest law.[25] Our curriculum includes advanced work in criminal law,[26] international and comparative law,[27] political

21 Our environmental law programs, which include two semesters of course work, a joint-degree program, and supported internships, have all been devised by Professor McIntire. These were refunded this year by the Environmental Protection Agency. Professor McIntire participated in the A.B.A. conference on land use and mineral extraction at Snowbird, Utah, in September.

22 The principal user of planning-drafting devices on our faculty is Professor Campfield. He will publish this fall, in the DUKE LAW JOURNAL, his extensive treatment of new trends in estate planning. He organized a seminar for our students on legal careers. He participated in a week-long seminar in estate planning last summer at the University of Wisconsin and served as the chairman of our library committee.

23 Examples are Professor Rodes' course in public welfare law (Social Legislation) and Professor Broden's seminar in law and poverty. Professor Rodes' books on the Anglican Establishment (THE HOUSE I HAVE BUILT) and on jurisprudence (THE LEGAL ENTERPRISE) will be published next year in New York and Oxford. He received this year the University Faculty Award, in a citation which praised his interdisciplinary work in jurisprudence and his 18 years of creative teaching on this faculty. Professor Broden, who continues to assist both his colleagues in the Law School and our students in countless ways, was elected this spring to be president of the United Religious Community in South Bend.

We added important strength in this area this summer when Professor Crutchfield was appointed to the faculty. He comes from eight years in the practice, most of it spent working in and directing the legal services program in South Bend. He is a retired Air Force officer who earned a master's degree in political science and taught in that field for the University of Maryland while he was on active duty. He is president of the Urban League in South Bend and a former president of the local N.A.A.C.P. chapter, among many other distinctions.

24 Professor Kellenberg continued to advise the scores of students who work in offices maintained by our Legal Aid and Defender Association. The Cass County (Mich.) division of the L.A.D.A. handled 500 cases, about two-thirds of them civil. The Post-Conviction Remedies Division, under the direction of Ann Williams, '75L, set up an educational program (including the creation of a law library) for prisoners at the Indiana State Prison; Dr. Cekanski, Professor Link, Mr. Wise, and Professor Kellenberg lectured in that program. Edward Berkowitz, Ph.D., '74L, directed the Cass County operation. Willie Lipscomb, '75L, replaced James Cavanaugh, '74L, as executive director of the L.A.D.A.

Twelve students gained related experience as interns in the National Center for Law and the Handicapped, which served as a law reform agency in cases and legislative representation in 20 states this year, under Dr. Burgdorf's supervision. She taught our interdisciplinary seminar in law and the handicapped and participated in an array of conferences on the legal rights of the retarded, the blind, the disabled, the mentally ill, and those suffering learning disabilities. I served on the N.C.L.H. Board of Directors and completed (with three other co-editors) work on the new volume, THE MENTALLY RETARDED CITIZEN AND THE LAW, which will be published next year by Free Press.

25 Not the least of which is a system of internships in the Center for Civil Rights. Professor Glickstein is director of the Center; Dr. Wise (who will begin teaching in the fall as adjunct assistant professor of law) and Mr. Cleveland were assistant directors of the Center. Professor Glickstein's study of school financing was published in the STANFORD LAW REVIEW. He served on the University's affirmative action committee and on several national advisory boards. He spoke before groups of labor officials, lawyers, law students, personnel administrators, civic organizations, and teachers, and was a guest panelist on television. His interdisciplinary seminar in the fall was on "the second reconstruction." He cotaught, with Professor Beytagh, the spring seminar in civil and political liberties. This Report does not cover the Center for Civil Rights.

26 Professor Dutile teaches first-year criminal law, and Professional Responsibility and an advanced policy course called Administration of Criminal Justice. He is a member of the Board of the South Bend Work Release Center, a hopeful and successful venture in prisoner rehabilitation, and a member of the advisory committee of the Civil Rights Center (along with Professors Beytagh, Link and myself). He worked this year on our admissions committee, as first-year moot court advisor, and in a series of lectures on the law for the spouses of our students. His article on the voluntary criminal law seminar was published in the JOURNAL OF LEGAL EDUCATION; he is at work this summer on two book reviews and the development, in England, of a new course on school law.

27 Our program in these fields depends on a component on the Indiana campus (taught until this year by Father William M. Lewers, C.S.C.) and on our three foreign programs. Professor Aleck Che-Mponda of the Department of Government and International Studies

and civil liberties, law and medicine,[28] property law,[29] business and commercial law,[30] patent-copyright-trademark law,[31] insurance,[32] and other areas. We offer, as well, advanced, exploratory seminars in such areas as judicial administration, biblical law, legal history, law and technology, community property, African law, mental illness and mental retardation, and other fields.[33]

I find, to my mild surprise, that this development tends to reduce here the celebrated phenomenon of bored third-year students.[34] Much of the reason, I think, is that it is possible for third-year students to fit their interests to small groups of those who have similar interests, to practice as much as to listen, and to participate in decisions on what they study. The price we pay for this improved third year is a relatively heavy, relatively crowded, relatively "required" second year, and a continuation of our tradition that members of the Faculty work harder than they would work if they taught somewhere else.[35]

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taught in the fall semester in this field. Professor Laing will pick these courses up next year. He comes to us after being one of the founding teachers of the new law school at the University of the West Indies. He has published two books, and several periodical pieces in international and comparative law and in legal method. He is a British (Cambridge) educated American lawyer, a member of the Illinois Bar who has practiced also in New York and in the West Indies.

28 Professor Rice developed the law and medicine program in courses last summer, this summer, and in the spring semester. His essays on the Supreme Court abortion decision were published in the HOUSTON LAW REVIEW and in the BOSTON COLLEGE LAW REVIEW. He spoke on that topic and on other constitutional issues to audiences in Washington, New York, Chicago, Wichita, Des Moines, Oklahoma City, Detroit, Louisville, St. Paul, and Indianapolis. He is a member of the advisory committee of the national Right to Life Organization and is chairman of the United Conservatives of Indiana. He is director of our on-campus summer program and serves on two University committees—safety and health and the bicentennial planning committee.

29 Handled in part this year by Professor Maudsley, who taught two courses this spring and assisted in several others. He visited or lectured (or both) at the law schools at Northwestern, Chicago, Iowa, Michigan, San Diego, Southern California, U.C.L.A., Hastings (San Francisco), Stanford, Missouri, and Ohio State. He chaired the panel of judges for the final round of the A.B.A. National Client Counseling Competition which was held here in March, and in countless other ways proved a delightful guest and a formidable inaugurator of the Thomas J. White Chair.

30 Professor Moo is our commercial law teacher, assisted this year by Judge Robert Rodibaugh, '41L, of South Bend. Professor Moo has made steady recovery from a serious illness which first struck last summer. He will teach a somewhat reduced load next year. He continued his work this year on secured creditors in bankruptcy and served as a lecturer on consumer credit law for the Indiana Continuing Legal Education Forum.

31 Drs. Sokolowski and Silver started a course in this field this spring. Both are on the legal staff at Miles Laboratories; they will continue to teach here in this field next year.

32 Judge Douglas Seely, of our practice court bench and of the St. Joseph Superior Court, taught the course in insurance in the spring semester.

33 The Legal Aid and Defender Association organized a voluntary seminar on law practice; lecturers included Robert Craig, Glenn Squiers, '51L, and Judge James Hoff, all of Cassopolis; Father Hesburgh; and myself.

34 See Boyer and Cramton, *supra* note 15; *Faculty Development in a Time of Retrenchment* (Change magazine monograph, 1974).

35 Our average faculty member (full time) spends between 55 and 60 hours per week at his professional duties. About five percent of this occurs outside the Law School (as compared with probably 20 percent of a practicing lawyer's time away from his practice and as much as 20 percent under the University's consulting policy as that is implemented outside the Law School; that policy is not followed in the Law School). About ten percent is spent on administrative duties (as compared with an estimated 30 to 40 percent at other law schools; see Boyer and Cramton, *supra* note 15). An average of about 40 percent is spent on course preparation, examinations, etc., and in class; about 35 percent is spent talking to students and in support of student activities. Little remains for scholarship, but our faculty remains productive on that score. (I do not reproduce lists of publications here; the University publishes those separately.)

The Law School has three programs of foreign study which seem to me to fit into our dedication to the private practice of law. They perhaps elevate it to the horizons lawyers must learn to accept if they propose to represent their clients in world markets and world forums, and to inspire in their clients a human concern which does not stop at American beaches. We began this year, under the direction of Professor Murphy[36] and with the administrative and teaching assistance of Associate Dean Link, our summer program in Japan. That program[37] is focused on international trade and investment, particularly the involvement of Americans in the Far East and the involvement of Asians in the economic and social life of the United States. Our London summer school, in its fifth year, is the largest (and, I think, the best) among some 30 foreign law programs offered this year by American law schools. That program, and our year abroad of study for our own students in London,[38] continue to combine serious attention to the Anglo-American legal heritage with learning about modern transnational legality and with solid professional preparation. Professor Beytagh again directed the London summer program; Professor Booker will be director at the year-round London Centre for 1974-75, his third year in that post.[39]

The campus summer program, which this year engages six members of the faculty, 60 of our own students, and 15 students from elsewhere is, in my view, capable of making its own unique contribution to the private practice. We revived summer law study here two years ago in response to student interest in shortening the J.D. program from six semesters to five semesters and two summer sessions. This year our program, under Professor Rice's direction, offers 11 courses (taught by Professor Rice and Professors Rodes, Kellenberg, Broderick, Campfield, and McIntire). The program has many strengths, not the least of which is the special value of small, relatively informal classes (with a student-faculty ratio of 1:12, as compared with 1:6 in Tokyo, 1:10 in London, and 1:20 during the academic year). It has two serious weaknesses: it does not pay for itself, and it does not take advantage of its enormous opportunities to innovate and to attract new constituents for legal education at Notre Dame—more students from other schools, practicing lawyers, paraprofessionals, and those whose interest in the law is not vocational. Professor Rice and I agree on both points; I am confident that next year's summer program will be sounder

36 Professors Murphy and Rice were volunteer teachers of religion at Marian High School in Mishawaka. Professor Murphy's essay on waiver of defense clauses in consumer sales was published in the new anthology CONSUMER PROTECTION. He chaired our policy committee and is director of the Notre Dame summer law program in Tokyo. He and Professor Link taught in that program this summer, along with four members of the law faculty from Sophia University.

37 The program is open to lawyers as well as law students, and enrolled 30 participants this year. Professor Murphy will remain Japanese director for summer 1975.

38 Mr. Toub adopted a small-group seminar format for the London course in Federal Taxation (the first time we offered instruction in that field in London). Professor Alexandrowicz developed a new course there in Common Market Law. Two new books of his were published this year in international law, along with two periodical pieces on legal education in England and on African partition. He is a visiting fellow at the Center for International Studies at Cambridge and is editor for the Grotian Society papers.

39 Professor Beytagh will be on leave next year to serve as visiting professor of law at the University of Virginia. Professor Kellenberg will replace him as London Summer Director.

economically and that we will begin to experiment with time periods, teaching methods, personnel, content, and student interest.

II. Professional Autonomy

Every year has its own menace for the Law School; the University Archives contain a century of strident letters from law deans describing them. The reason we have survived them so well is that, when the menace is identified by the dean, those who share in responsibility for legal education at Notre Dame respond with interest and concern. I felt when I became Dean in 1971 that our school was unjustly overcrowded and understaffed—not only that we had less room, more students, and fewer teachers than would be ideal, but that the situation had become a matter of injustice. My identified menaces were described in terms of a need to reduce the number of students here, to remodel the building,[40] to increase the library collection,[41] and to add full-time teachers (toward a full-time faculty-student ratio of 1:20, with 10-15 part-time teachers).[42] The faculty, the students, and my masters in University administration continue to respond to these identifications of mine in a spirit which suggests that they share both my concern and my aspirations; because of that response we have grown better during the past two years, in an era when decline and regression have been more typical of legal education.

In the spirit of that custom I now identify a current difficulty.

I am concerned with the erosion of professional autonomy in the Law School—erosion visited on us by the legal profession itself (this we share with other law schools; we suffer less, I believe, than those which are supported with public funds), and erosion from the University. American legal education is probably the best in the world and the best the world has even had.[43] Its unique and remarkable contribution has been the American university law school; the genius of the university law school is that it keeps one foot in the profession and one in the academy.

The current flood tide of law students tends to make the organized profes-

40 Charles Nau, '74L, organized a series of magnificent exhibitions of legal and political art in the new display cases in the main hall of the law building. These included original sketches by Charles Bragg, originals of editorial cartoons and courtroom drawings from national publications, and the *Newsweek* drawings of hearings held last year before the Senate committee on the Watergate affair.

41 Ms. Rausch joined our professional library staff during the year. Mr. Cleveland continued his active work with black students, in and out of the law school, served as assistant director of the Civil Rights Center, and represented us at legal career days around the country. Dr. Farmann and Mr. Farmann edited the assignments pamphlet for the new edition of the Pollack text on legal research. All four professional librarians proved to be essential sources of assistance for the first-year students in the legal bibliography program.

42 48 NOTRE DAME LAWYER 232, 234, 250-52 (1972); 49 NOTRE DAME LAWYER 214, 228 (1973).

43 This explains the faculty's decision in 1971 to set up our own campus for legal studies in London. For all of the glories of British university education, legal education there remains largely independent of the practice of law, relatively unimaginative, narrow (and undergraduate), and perhaps more brutal than its American counterpart. The professionalization process in the United Kingdom appears to take place in programs of apprenticeship rather than in school.

sion suspicious of legal education.[44] Calm leadership in the American Bar Association (which accredits law schools, thereby making it possible for their graduates to become lawyers, and which speaks for the legal profession nationally) keeps at bay threats to control enrollments and inhibits threats to control entrance to the practicing profession. But the A.B.A. has not prevented a persistent effort on the part of many elements in the profession to interfere with the autonomy of legal educators. The Indiana Supreme Court, for example, in the wake of a disastrous and bigoted bar examination,[45] issued this year a set of required courses.[46] The list covers 54 hours of course work—more than 64 per cent of the minimum 84 hours we require for the juris doctor degree. Beginning in 1977, students must either take these courses or be ineligible to take the bar examination in Indiana. The House of Delegates of the American Bar Association has twice been urged to begin requiring courses in A.B.A.-accredited schools; both efforts have been sidetracked, but there are those who feel that the A.B.A. will capitulate to the pressure and will begin to dictate curricula. The level of stridency in advice a law dean gets at bar association meetings on what the professors should do has risen markedly in the past couple of years. What seems to have happened is that fears of overcrowding in the Bar have encouraged the practicing profession's perennial interest in detailed control of legal education.

Legal education depends on the legal profession.[47] Much of its philanthropic support comes from lawyers (much, but not enough); almost all of its tuition support comes from those who propose to be lawyers. We enjoy thousands of hours of voluntary time from our brothers and sisters at the Bar.[48] Our students find their elders in the profession to be generous with time, advice, and moral support. One hopes that practicing lawyers, traditionally generous to us, will continue to remember that the genius of American legal education has been that the law professor (and law dean), while a lawyer, is also a committed

44 M. Ruud, *The Burgeoning Law School Enrollment Is Portia,* 60 A.B.A.J. 182 (1974), shows enrollment up about four percent from 1972-73 and up more than 100 percent since 1964. New admissions to the Bar (annually) have more than doubled since 1964, to more than 25,000 in 1973.

45 B. Bruening, C. Hektnei, and P. Riedel, *The Web of an Obscene Bar Exam Question,* THE STUDENT LAWYER, April, 1974, p. 8, describes part of it.

46 Rules of the Indiana Supreme Court, Rule 13.

47 We could not survive without our friends. I found, on rough figures, that it costs about $1.4 million a year to operate the Law School and that tuitions bring us $1.04 million. And as many as 15 percent of those tuitions are paid by donors rather than by students. We assessed philanthropy benefiting the Law School in the second half of 1973 and discovered that our friends gave us $250,000—$169,000 in the building program, $35,000 for scholarships, and $46,000 for endowment. Even so, we cannot operate our scholarship program at even a minimal level for less than $100,000 a year. At this writing we have about $80,000 raised in 1973-74.

48 Members of the St. Joseph County Bar Association, as always, head the list. A substantial percentage of our local Bar has, at one time or another, put hands to oars in the Law School; I am deeply, deeply grateful. I will not attempt to list all of our local lawyer benefactors, but I must pay special tribute to Thomas Singer, and Thomas DiGrazia, '70L, who are with us nearly as often as members of the faculty, and to Judges Robert A. Grant, George N. Beamer, Sr., George N. Beamer, Jr., Norman Kopec, Douglas Seely, and Robert Miller. Elsewhere in Michiana, we have been beneficiaries of generous help from Robert Craig and Glenn Squiers, '51L, Cassopolis, Judge James Hoff of the Cass County (Michigan) Circuit Court, and Chief Judge James Richards of the Lake County Superior Court. The Indiana Court of Appeals again heard arguments on campus this spring, through the generous cooperation of Chief Judge Hoffman.

university professor. He or she has chosen a life of teaching and reflection. The law professor presides over consideration of the deepest values a lawyer must consider, and, for the most part, he introduces those values into a lawyer's life and sustains them from afar with his concern while the lawyer is in practice.[49] Moral virtues—and thoughtful lawyers frequently celebrate them, even amid complaints that "you never teach those kids anything practical"—depend on the law school's identity as part of the university, on a traditional respect for academic freedom among those who choose what is to be taught and how to teach it, and on the rich nourishment a law school and its faculty enjoy from sharing their professional lives with philosophers, theologians, historians, poets, priests, engineers, and scientists. The practicing profession and the judiciary must continue to reflect, more than current developments indicate they do, on the consequences of turning law schools into vocational and technical colleges. If the profession hopes to avoid those consequences it must renew its respect for its teachers.

I was asked by the chairman of a liaison committee to prepare an open letter this summer to members of the Indiana State Bar Association on what our Law School expects of the Bar and on what it might hope to expect from us. Here are a few thoughts and examples from that letter:

"The perennial dilemma of American law schools is the dilemma of appropriate independence. We do best if we are independent—autonomous is perhaps a better word—from academic traditions which get in the way of preparing thoughtful and able lawyers, but we must know at the same time how to keep the educational and cultural advantages of nourishment by a university. On the other hand, we try to serve the Bar and the courts as committed university professors, lawyers who have chosen not to practice law, who have elected, at considerable sacrifice, a life of thought and learning. We are lawyers who know better than our university administrations what legal education requires. And we are professors who know better than our brother and sister lawyers how to prepare young college graduates to be lawyers who go on learning all of their lives.

"To cite an example (and only one of many): the commitment that all law schools have undertaken to open the legal profession to those traditionally excluded from it, and particularly to women, black people, and Chicanos. Three of the Indiana law deans and the Board of Bar Examiners had a vituperative quarrel last year over a bar examination question which, we deans thought, was peculiarly insulting to women. The question itself became a lead article in the national *Student Lawyer Journal.* This question, which was given in the first examination a significant number of our women graduates took, seemed to me hurtful. And I, though not a woman, was one of the people hurt

49 Congressman John Brademas spoke to our students in September, 1973, and observed, as many students these days do: "I think it may well be too late by the time a student gets to law school to instill in him the values of decency and honesty, of a commitment to justice . . . ." One reaction to that sentiment might be that, hopeless as it may seem, legal education should not throw up its hands. But I believe that there is moral education to be found in a student's first conception of himself as a lawyer—much to be thought about, learned and resolved, and much to be absorbed from those who are his principal models in the profession, his teachers.

by it, because it was so thoroughly uncooperative of the Board to taunt us, and our women graduates, rather than to support us. We have invested so much in an endeavor we can no longer even legally avoid—the education of women for the legal profession. The years since Notre Dame took its first women students in 1966, given the football image of our University, and its pervasive maleness, have not been easy. It hurts not to have the support of the Bar at a task which, at the very least, we are required to undertake.[50]

"Black students are another part of the example. Indiana law schools had very few black students prior to the murder of Martin Luther King, Jr., in 1968. We still have less than ten percent (and the Bar about 1.5 percent). Unlike women, many black college graduates are poorly educated. It is a tough job to select those who can make it in law school, and an even tougher job to help them catch up with their white counterparts in three short years. We don't always succeed, but we often succeed. It is depressing to find that those we find are ready for the profession tend to fail bar examinations,[51] especially Indiana bar examinations, especially in the past five years. It takes an effort of the will, sometimes, to avoid thinking that part of the trouble is the examination itself."[52]

Legal education (and here I speak primarily of Notre Dame) depends as well on its university parentage. American legal education has become entirely graduate education (unlike legal education almost everywhere else in the world), and is therefore a scholarly professional discipline. But it is a professional discipline presided over by lawyers—lawyers who are expected to reflect the concern and the ideals of their brothers and sisters in the practice, who come from and return to the practice, and who bring to their students their initial, most vivid professional models. The University must be more sensitive than it has been to the school's professional identity. I think sensitivity involves a spirit of respect and an informed, specific adherence to the requirements placed upon law schools by the practicing profession. Our law school built an independence in the O'Meara years which carried out this purpose, and, perhaps, went further than was necessary or even healthy, given all that we lawyers and other scholars can do to enrich one another. Much of this independence has fallen away since

50 Mary Jane Gillespie, a 1967 graduate of the Harvard Law School, noted in 16 STUDENT LAWYER JOURNAL 22 that, after three years of patronizing treatment by male law teachers and repeated discrimination and insult in employment interviews:

> All I could do was swallow and say to myself, "Come on, kid. Big girls don't cry." (Which isn't at all true. They do cry—more often than little girls, because little girls still think they can be president) . . . . A lot of my own hurt comes because I am a Wasp, and my own particular educational experience, or maybe my own stupidity, coincided so that when I entered my third year of law school, I really believed that I would be judged, as I had been in the past, on my ability. Finding discrimination at that age is like a white man waking up one morning to find his skin has turned black.

Id. at 24, 25.

51 Our reports on bar examination success are always imprecise and incomplete, but as nearly as we know about the Class of 1973, about 90 percent passed examinations on the first try. The class scored 100 percent in Minnesota, Washington, Arizona, Oregon, Pennsylvania, Missouri, Ohio, and Hawaii. Thomas Kronk, '73L, Newberry, Michigan, is the class representative and a member of the Board of Directors of the Notre Dame Law Association.

52 It says something about our groping maturity in the education for the profession of members of minority groups that our black graduates had a reunion here in April. Albert Munson, '75L, president of our chapter of the Black American Law Students Association, organized that happy affair. Walter Johnson, a black lawyer from Greensboro, North Carolina, was principal speaker; Professor Crutchfield was master of ceremonies.

1968. I am glad that it has; I have enjoyed the growing mutual trust among my fellow deans and the officers of the University, and have been pleased to see independent functions which were done poorly in the Law School (*e.g.*, administration of loan programs, fund raising and student housing) transferred to more appropriate University departments. My residue of concern—the menace for this year—is over a diminishing respect in other segments of the University for our *necessary* autonomy, particularly for the autonomy we must have in selecting and advancing our faculty and in determining the content and direction of our curriculum.[53] For example:

—The Law School must continue to have its own alumni organization. The Notre Dame Law Association should enjoy material support parallel to that given the University's alumni association. This is particularly important as to N.D.L.A. work in recruiting students, placing graduates, and seeking alumni advice on the program of the Law School.

—The Law School must be allowed to develop its own policies on promotion and tenure. The tenure quota observed by the University has been, as applied to the Law School, formally denounced as in violation

53 The general references here are AMERICAN BAR ASSOCIATION, STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS (1973) (cited hereafter as "A.B.A."), and ASSOCIATION OF AMERICAN LAW SCHOOLS, APPROVED ASSOCIATION POLICY (1971) (cited hereafter as "A.A.L.S."). The A.B.A. rules, which are organized in written paragraphs, set these relevant principles:

> 204. The Governing Board may establish general policies for the law school, provided they are consistent with a sound educational program and the Standards.
>
> 205. Within those general policies, the dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure; curriculum; methods of instruction; admission policies; and academic standards for retention, advancement, and graduation of students.
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> * * *
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> 210. Affiliation between a law school and a University is desirable, but is not required for approval. If the law school is affiliated with or a part of a University, that relationship shall serve to enhance the program of the law school.
>
> [210](c) If the University's general policies relating to rank, advancement, tenure, and compensation do not provide adequately for the recruitment and retention of a qualified law faculty, separate policies should be established for the law school.
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> * * *
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> 403. The major burden of the educational program and the major responsibility for faculty participation in the governance of the law school rests upon the full-time faculty members. [I note in passing that this paragraph makes it a matter of professional duty for me to make the points I am making in this section of my report.]

The A.A.L.S. provisions are contained in a single section at p. 10 of the compilation cited above:

> *As to personnel matters,* experience in the law school world has shown that a competent faculty is best assured by the faculty's exercising a substantial degree of control over decanal and faculty appointments or changes in faculty status (such as promotions, tenure, designations, and renewal or termination of term appointments). The capacity to make the pertinent decisions is maintained by procedures under which:
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> * * *
>
> ii. The faculty, individually or collectively, is consulted with respect to appointment of the dean before submission of any official recommendation to the final appointing authority, or, when no such official recommendation is contemplated, before action by the final appointing authority.
>
> iii. Except in rare cases and for compelling reasons, no decanal or faculty appointment or change in faculty status will be made over the expressed opposition of the faculty (acting as a whole or by a representative portion determined by reasonable criteria).

of the standards for accreditation of the American Bar Association.[54] The Law Faculty, in an attempt to solve this problem for itself and at the same time not seek special privilege, adopted a proposal for non-tenured appointments in the Law School; that program was approved by the Steering Committee of the Academic Council but defeated in the Council itself—even though it enjoyed the support of the Provost and President of the University. This situation presents a hard choice. We in the Law School need accreditation more than we need the Academic Council. I cannot, in any event, defend the tenure quota.

—In finally amending and adopting the new Academic Manual, the Academic Council adopted the requirement of formal consultation of the faculty in appointments of the deans of the undergraduate colleges. It then defeated my motion to state the same requirement as to the dean of the Law School.[55] The result is that the Manual does not reflect accreditation requirements imposed on the University by the American Bar Association[56] and the Association of American Law Schools.[57] I have formally advised the Provost and the President of these requirements, and of the seriousness with which the organized legal profession enforces them. It would be clearer and less obviously petty for the Academic Manual to conform to this fundamental implication of having a law school at Notre Dame.

—The professional requirements placed upon the Law School by the A.B.A., the A.A.L.S., and 50 supreme courts are complex and evolving. It is a major part of the assistant dean's duty, and therefore of mine, to keep abreast of them. The Law School must be allowed by the University to conform to these requirements. The Academic Code, adopted in May, 1974, by the Academic Council is an interference with this necessity. At best the Code, which does not reflect the continuing demands of the legal profession on the Law School, would oblige me to carry lists of constantly changing requirements to the Council for approval; I lack the time and the interest for that task. The Provost moved the Council to adopt a modest exemption over which he, not I, would preside, but the Council defeated his motion. The situation as it now stands violates

54 Letter to Shaffer from Millard H. Ruud, Consultant, Section of Legal Education and Admissions to the Bar, American Bar Association, February 20, 1973, reporting on a decision of the Council of the Section at its meeting, February 10 and 11, 1973, in Cleveland, which decision is an interpretation of A.B.A. paragraph 405, *supra* note 53: "Any arbitrary limit on the fraction of the law faculty that may under all circumstances be granted tenure is inconsistent with the letter and spirit of the American Bar Association's accreditation criteria for law schools. . . ." Letter to Shaffer from Ruud, October 12, 1973: "The Council was very firm in its view. It may be of interest to you and your colleagues that the lead in developing this position of the Council was taken by practitioner and judicial members of the Council." The Executive Committee of the Association of American Law Schools has proposed a new bylaw which would provide: "A law school shall not limit the number of full-time faculty members who may be granted tenure." A.A.L.S. Newsletter, No. 74-2, June 15, 1974, p. 1.

55 Section 4, Art. II, ACADEMIC MANUAL (FACULTY HANDBOOK 1973-74, p. 24): "The Dean of a College is appointed by the President, with the concurrence of the College Council." This section then prescribes detailed duties for the Provost, including the formation of a formal faculty committee to receive nominations. Compare Section 5: "The Dean of the Law School is appointed by the President . . . . When such an appointment is to be made . . . the Provost consults formally with all Professors and Associate Professors of the School . . . ."

56 The deficiencies in this procedure, aside from the fact that more faculty involvement is required in an undergraduate college than in the Law School, is that the procedure fails to satisfy A.B.A. paragraph 205, *supra* note 53 ("Faculty . . . shall have the responsibility for . . . selection . . . .").

57 A.A.L.S. requirements, *supra* note 53 ("No decanal . . . appointment . . . will be made over the expressed opposition of the faculty . . . ."). There is, in the Academic Manual, no opportunity for the Law Faculty to be informed before anyone else of the President's choice, let alone an opportunity to object to it; the required concurrence of college councils in Section 4 eliminates this objection as to undergraduate deans.

> the standards under which we are accredited.[58] I advise you that, in case of conflict, I will follow the accreditation standards.

I owe you candor, but I owe more, especially in view of the fact that we in the Law School, as is obvious from the bill of particulars above, enjoy generous support from the officers of the University.[59] The ideal, as I see it, is that the Law School enjoy an autonomy analogous to that we seek to develop in our young lawyers. Autonomy is not independence. An autonomous person is one who is not afraid to be dependent, but who is able to make mature choices about when independence is best for him and for others.

III. Professional Responsibility and Christian Witness

We can hardly answer for the conduct of our graduates—although if we could receive credit for their victories of conscience I would accept blame for their failures. What we have to answer to the profession for, however, is our systematic instruction in the moral rules of the profession, its courtesies and sensitivities, and its historic ideals. We began a new program in professional responsibility during the past academic year.

Prior to 1966, the Law School had a required three-hour course in legal ethics in the first semester of the first year. That course was dropped because of increased demands for "hard law" in the first year (brought on by the elective curriculum) and because the Faculty felt that professional responsibility might more functionally be taught later in the student's career in relation to experience in the profession and to substantive legal problems. We decided to teach professional responsibility "pervasively"—as issues came up in other courses.[60] I am never sure how well the pervasive approach to ethics works, although it has had some memorable moments here;[61] in any event, I found it necessary to remind my colleagues of our undertaking, and I recommended to the faculty in 1973 that we return to initial, formal instruction in the subject at the beginning of the curriculum.

In the next academic year, we will again have a required course (called "Introduction to the Legal Profession") in the first semester, taught by Professor Dutile and myself,[62] and we will offer an elective course for third-year students, taught by Professor Seckinger.[63] Even with these efforts, I find treatment of

58 A.B.A.: "The dean and faculty shall have responsibility for formulating and administering the program." A.A.L.S., pp. 9-10: The full-time law faculty has "the major burdens of planning and executing the institution's instructional work" and the "determination of institutional policies."

59 49 NOTRE DAME LAWYER 214, 215 (1973).

60 We have also required third-year students to prepare a short paper on the Code of Professional Responsibility and to certify that they have read and understand the Code.

61 Father Burtchaell on one such happy occasion led Professor Campfield's classes in a discussion of the moral dimensions of practice in the wills-trust field.

62 See earlier reports at 48 NOTRE DAME LAWYER 232, 249-50 (1972), and 49 NOTRE DAME LAWYER 214 (1973).

63 Dr. Cekanski, who assisted Professor Dutile and me, will be in private practice in South Bend next year and will continue to serve our faculty as a research associate (teaching fellow) in charge of the first-year legal bibliography program. She served this year on the University's energy committee and worked with other members of the Faculty and the Legal Aid and Defender Association in a creative new program in legal education for prisoners at the Indiana State Prison.

moral subjects to be difficult with men and women who are 22-50 years of age and bent on developing marketable professional skills. A paragraph from an article I wrote this year on Christian theories of professional responsibility perhaps reflects the frustration:

"Systematic consideration of the implications of being a Christian and a lawyer might be thought to have belonged, long ago, to those who founded, maintained, and taught in Christian university law schools. But it has not been done, is not being done, there. Most of the law faculties at what were once thought to be the great Protestant Christian universities appear uninterested in their institutional heritage, if not ashamed of it. Law faculties in Roman Catholic universities have rarely gotten beyond fruitless phrases about natural law, which long ago became a banner rather than an idea, and is now neither banner nor idea. I often feel that we in Catholic law schools are looking for a modern mission—something to replace the contribution we made to the vertical mobility of the children of Irish, Polish and Italian immigrants. Red mass sermons, and remarks from visiting clergy on the social gospel, remind Catholic lawyers and law students that the poor must be fed and the persecuted delivered from their chains; but most of our students and graduates, most Christians in the American legal profession, remain involved in the defense of power and wealth. There was for a time some sign of organized revolution against injustice ('law against order' Charles Morgan called it), but it is a dim glow now and comes, in any event, from an agnostic candle. Christianity has had too little to do with what is hopeful in the American legal profession. I believe that a motivating reason for that is our diffidence in talking about religious commitment; when few talk about religion, personal value is inaccessible and public style becomes irreligious. Too many candles are under too many bushels."

All of the efforts we make at Notre Dame to change this state of affairs seem inadequate; I am not happy with them, but I again report them:

—Our informal, unrequired discussions on Christian lawyering continued (in the fall semester) on Saturday mornings, with poor but interested attendance which was not by any means confined to Catholics, led by Professor Rodes and Noel Augustyn, '74L.

—Our revised bulletin, and other faces we turn to the world, more clearly enunciate our Christian heritage and attempt with some candor to state its minimum implications.[64]

64 BULLETIN OF INFORMATION, 1973-75, p. 4 (Jan. 1973):

Notre Dame's Law School draws its inspiration from two ancient traditions. It is, first, in the tradition of English and American common law, and a peculiarly American contribution to that tradition, the university law school. This is an honorable tradition, one that attests to and, in part, accounts for the unusual power and prestige that the bar enjoys in the United States. Notre Dame shares it with other national university law schools.

The other tradition is the Christian tradition, the tradition of Sir Thomas More, who was able to say that he was "the King's good servant, but God's first." Notre Dame is a Christian university. It is founded and, in great part, is maintained by Roman Catholics, and its trustees are mandated to continue it as a Catholic institution. In a community where people of every kind of opinion are welcome and are valued for the different contributions they have to make, the exact significance of this religious orientation is difficult to state and, in many ways, is controversial. But most people here agree on at least this much: (1) Moral and religious questions are important; no one need apologize for raising them or for taking them seriously when

—Incoming students this year will be required to read the manuscript of Professor Rodes' superb new jurisprudence text, *The Legal Enterprise*, and the manuscript of my essay on Christian theories of professional responsibility, as well as Dean O'Meara's *An Introduction to the Law and How to Study It*.[65] First-year required sessions in professional responsibility, as well as an optional guest lecture series, will not ignore the necessity of looking at religious values in a lawyer's life.

—Professor Murphy's course in biblical law and the jurisprudence courses taught by Professors Rodes and Chroust imply obvious opportunities to look at religious heritage, opportunities these model Christian lawyers do not neglect.[66]

But we have not done enough and have not thought of enough to do. In many ways the Law School's challenge in this respect resembles the University's. It calls to mind the undertaking stated by the University in the report of the Committee on University Priorities,[67] and the responsibility recommended to us all by the Rome statement on Catholic universities.[68] It has seemed to me that the essence of this is that the institution accept its responsibility—as an institution—to bear witness to moral values and to teach them.

Part of the intellectual challenge is to draw the two aspects of this agenda together—to relate professional rules of conduct to our Christian heritage, and to distinguish minimum professional honor from the grave demands of love and change visited on a Christian lawyer by the Gospel.[69] I admire remarks made about that issue by the president of Brigham Young University, Dr. Dallin H. Oaks (himself a distinguished law professor), when the new law school at Brigham Young University was dedicated last year:

"A lawyer's predominant professional loyalty should be to principles of law, not to the officials who administer them or to the person, organization, or other client in whose interest those principles are applied. A lawyer obviously

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others raise them. (2) Everyone who comes here should be encouraged to explore his basic personal commitments, and to relate them to what he is learning here. (3) The University has an obligation to Christians, particularly Roman Catholics, to provide assistance in this exploration.

65 This treatise, developed from tapes of Dean O'Meara's course in Introduction to Law, Fall, 1962, was published as a supplementary law review issue last year, 49 NOTRE DAME LAWYER, SPECIAL SUPP. (1973), and is also used in other law schools. Dean O'Meara remains a valuable source of advice and inspiration to the faculty and me.

66 Professor Chroust's two volumes on Aristotle were published in London, along with 17 periodical articles in this country, South Africa, Denmark, Holland, Spain, Belgium, and Italy. He is spending this summer in research and writing in Europe and plans to again teach our seminar in Modern American Jurisprudence.

67 NOTRE DAME MAGAZINE, December, 1973.

68 J. Gresser, *How Catholic Are We?*, THE SCHOLASTIC, May 3, 1974, pp. 7, 9, summarizes this statement as including four characteristics which bear on institutional commitment—an inspired community, reflection, fidelity, and institutional service.

69 In 1971-72 there was strong student interest in revising our Honor Code, which was adopted by the Student Bar Association in 1962. In 1972-73 a student poll indicated serious reluctance to observe an essential part of the Code—the duty to report violations. This feature was carried over from the express requirements of the Code of Professional Responsibility (Disciplinary Rule 1-103) and could, neither in principle nor in practice, be dropped. I sense that the problem has become less acute this year. Of five Honor Code cases handled in my office this spring, one was a self-reported violation and two were reported by students. In any event, I decided to underline this aspect of professional responsibility for the incoming class. Every letter of acceptance this year encloses a copy of the Honor Code and includes a detailed admonition on the duty to report violations.

owes a high duty of loyalty to his client, but the duty he owes to the Constitution and laws is higher still.

"Different rules stand on different footings. There is no democracy among legal rules. Some are more important than others. Thus, some rules are based on eternal principles of right and wrong or on basic tenets of our Constitution. Others are rooted in the soil of men's reasoning, soil that may be washed away by the torrent of human custom or the current of advancing thought, leaving the rule without support or justification. One who studies law through the lens of the Gospel should surely be realistic about the limited longevity of men's ideas and the consequent short duration of rules and reasons grounded on the shifting sands of current facts and opinions. . . .

"In furtherance of their devotion to the rule of law the graduates of this Law School should have minds sufficiently bright and consciences sufficiently sensitive to distinguish between rules grounded on morality and those grounded solely on precedent or tradition. . . . For example, this is the unstated but vital distinction between the rules that forbid a lawyer from advertising or from forming a law partnership with a non-lawyer and the rules that forbid a lawyer from knowingly using false evidence or assisting his client in conduct he knows to be illegal.

"Another aspect of the rule of law, sometimes misunderstood, is the principle that the law stands for the protection of the man who is evil as well as the man who is good, just as the Lord 'maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust.' The results of this impartial protection are not ideal, but history shows this principle to be the best available alternative until our legal processes are perfected by the great lawgiver and judge to whom one day we all will bow in allegiance. So long as our lawgivers and judges are fallible men, we need rules that will not bend one way for the man or the cause that someone deems to be good and yet another way for the man or cause that some men judge to be evil."

The Law Advisory Council[70] and the Notre Dame Law Association board[71] have both during the past year asked me to describe more clearly than I have one aspect of our institutional responsibility to bear Christian witness. That aspect relates to our efforts to join with our sister schools in increasing the number of black and chicano lawyers. American law schools began ten years ago to assume common burdens toward the education for the legal profession of members of minority groups. In specific reference to black people the fact is that, even after ten years of effort, only about 1.5 percent of the profession is black; about 11 percent of the population is black. The comparison is even more stark

70 The fall, 1973, meeting of the Law Advisory Council was well attended and filled with vitality. Our advisors joined their usual business with participation in the celebration of our newly remodelled building and the dedication of the Kresge Law Library. A. A. Sommer, a member of the Council and a Securities Exchange Commissioner, represented Father Hesburgh and the Law School at a national dinner in May honoring former Dean Clarence Manion. Judge Roger Kiley, '29L, assumed senior status on the federal appellate bench this year before falling ill in the spring. He is at this writing on the mend.

71 Hugh Fitzgerald, '34, New York, was installed as N.D.L.A. president and Hugh McGuire, '60L, Birmingham, Michigan, was elected president-elect. President David Thornton, '53L, presided over the well-attended meeting and appointed committees to explore law school policies, placement of graduates, and fund raising.

when one considers Chicanos, Puerto Ricans, or American Indians. Those minority groups have almost literally no lawyers.

The Council on Legal Education Opportunity was established several years ago, with the active support of the A.B.A. and the A.A.L.S., and with federal and foundation funds, to give students from minority groups several weeks of preparation for law school before law school begins. Evaluation in summer institutes operated by C.L.E.O. has also been used to supplement the Law School Admission Test. We are hosting a C.L.E.O. institute this year, under Assistant Dean Foschio's direction.[72]

In the spring of 1968, when Martin Luther King was murdered, there were two black students in our Law School and one Chicano. In a series of faculty and student-faculty meetings that spring, the community decided to increase its efforts to bring in black students. As a result of those meetings, teams of recruiters went to black colleges in the East and the South; the new admissions committee, chaired by Professor Murphy, gave special attention to admissions from minority groups; and our new dean, Judge William B. Lawless, pledged himself to lead the Law School in doing its part toward bringing black lawyers into the profession.

We discovered three things: (1) The students we are likely to get have poor educations. They often come from distinctly inferior elementary and secondary schools, and many of them have college educations which are no better than a good high school education in the white suburbs. (2) These students present poor admissions criteria, if one considers only the traditional metrical measurements of ability to study law. This is especially true of scores on the Law School Admission Test. (3) These students do not have the resources to finance graduate professional education. National surveys indicate that the resources available to a typical black college student, from his family and other sources, are about half those available to a typical white college student. Our experience with black law students has been that resources are even more meagre than these national surveys suggest. Our response to our own good intentions and to these early discoveries was these:

1. If we applied admissions criteria to black students in the normal manner, we were probably not going to enroll any black students, or at least not enough to make any substantial contribution to the national effort to educate black lawyers. This was especially true if we applied Law School Admission Test scores to black students and other minority groups in the same way in which we applied them to white students.

2. Any student we did accept would require financial aid. Because these students, once accepted, would have to work hard to catch up in our educational

72 Professor Bauer, Associate Dean Link, and I joined him, Professors Carl Holm (Southern Illinois) and Stanley Laughlin (Ohio State), and Professor Crutchfield on the C.L.E.O. faculty. Willie Lipscomb and Santiago Rios, both '75L, were invaluable as teaching assistants. Thirty students were accepted and 25 completed. The institute, cosponsored by Southern Illinois University, Indiana University-Purdue University, Indianapolis, Ohio State University, and Valparaiso Law School, serves 24 law schools in the Midwest. Our ability to be host school depended on scores of hours of tireless, hectic labor by Dean Foschio (who has too much to do, even without C.L.E.O.), on the University's generous contribution of support and facilities, and on generous encouragement from Dr. Robert E. Gordon, the Vice President for Advanced Studies, and his office.

climate, however, it was clear that financial aid extended to students in this category could not be subject to the retention criteria which had been applied by Dean O'Meara under the Law Scholarship Fund. We therefore divided our financial aid resources into two groups: scholarships, which were subject to retention standards, and tuition grants, which the student could keep while he remained in school.

3. Out of the requirements of justice, and out of an intelligent concern for our black students, it was essential that we maintain our academic and examination standards for all students. It was vitally important, and remains vitally important, that we not have two educational tracks here.

4. If students from minority groups find it difficult to keep up in the Law School, it will be up to us to devise systems of tutorial help for them rather than to change our system to accommodate their difficulty. In practice, we have not found it necessary to set up special systems of supplemental help, since it has always been a tradition here that tutorial help is available to any student who asks for it. Our practical problem has been to convince black and chicano students that this help is available to them and that they should ask for it before their situations become desperate.

5. The result of these policy decisions, taken for the most part in 1968, is that we aimed to have the black or chicano student, in the last semester of his third year, at the same place in which our suburban-bred white student is. In other words our objective is to help the minority group student catch up while he is in the Law School. My general impression, on admittedly imprecise criteria, is that we usually succeed in this effort. We of course have a duty to see to it that a *minimum* standard is met in the case of every student. My general impression is that we are more likely to fail in that duty with respect to white students than with respect to students from minority groups.

The result of the program of financial aid for students from minority groups has been the allocation of about 40 percent of our outright financial aid resources for them. The faculty in 1970 directed that at least a third of our financial aid resources be directed to what were termed "educationally disadvantaged" students. That policy has been followed with careful consistency; it is important to note, though, that not all "educationally disadvantaged" students have been from minority groups.

In my opinion, no inequality is involved here. A student's educational disadvantage is one of several factors considered when we allocate our meagre financial aid among the many students who call on us for assistance. Other factors are need, "merit," and the student's ability to contribute to the University generally. Programs of this sort in public law schools are funded out of tax revenues.

There is no doubt that the small number of lawyers who are black, Mexican, or American Indian is a scandal for the United States and is a lingering effect of slavery, peonage, and injustice. I would regard our doing any less than we are doing about that social injustice as a default in our responsibility to the community and as a refusal to accept the consequences of our Christian religion in legal education. There are those of good faith who disagree with that point of

view. Our policy in this respect has been set by the faculty, not by the dean, and has at least the virtue of accommodating differing points of view. It is, nonetheless, the policy I would follow if it were entirely up to me and one which I wholeheartedly support. My main difficulty, with all that we have done at Notre Dame since 1968 to redress the racial imbalance that exists in the legal profession, is that it has been too little and too late.

This policy as to direct financial aid has, of course, reduced funds available to students who are not from minority groups. For *all* students, the tuition continues steadily to climb at the rate of $185 a year (to $2,600 for 1974-75), and projections I have been given indicate that these increases are planned for the next three years. I must protest, as I did last year,[73] that the combined result of higher tuition and fewer scholarship dollars has devastating effects on our students. An obvious effect is that we are about one-fifth as able as we were six years ago to help the student who cannot afford to study law at Notre Dame. Another effect is that almost all of our students are forced to borrow too heavily ($20,000 is not uncommon, against a probable average beginning professional income of under $13,000) and to spend more time at part-time employment than is healthy for them or for the school. Father Joyce, speaking in April to a Universal Notre Dame Night audience in Denver, said, "at some point there is going to have to be a cease-fire." "The crunch," he said, "is on the middle class," who "face being squeezed out of private colleges and universities."[74] That situation could not be starker than it is today in the Notre Dame Law School.

* * * * * *

I continue to be in debt to those who sustain me in the privileged place I have as dean among my teachers, my students and my classmates. Those to whom I answer in the University comfort more than they know by being as interested as anyone in a strong law school here. My colleagues and students, and especially Associate Dean Link, Assistant Dean Foschio, our Administrator, Miss Hopkins, and the new president of our Student Bar Association, Chauncey Veatch, '75L,[75] are dependable and tireless bearers of my burdens.

In our continuing commitment to the law which finds men innocent.

Thomas L. Shaffer

July 15, 1974

73 49 NOTRE DAME LAWYER 214, 225 (1973).
74 The Denver Post, April 17, 1974.
75 He is a graduate of the University of the Pacific, and a Californian. He has been president of his class since it entered the Law School and a tireless worker. His wife Amy is president of our Law Wives.

Appendix A

Notre Dame Law Faculty

June 30, 1974

Charles H. Alexandrowicz, D.Jur., LL.D., Lecturer on Law (London)
Edward F. Barrett, B.A., M.A., J.D., J.S.D., Professor of Law Emeritus
Joseph P. Bauer, B.A., J.D., Assistant Professor of Law
George N. Beamer, Sr., Chief Judge, United States District Court for the Northern District of Indiana, Judge of the Practice Court
George N. Beamer, Jr., Judge, St. Joseph County Superior Court, Judge of the Practice Court
Francis X. Beytagh, Jr., A.B., J.D., Professor of Law (on leave 1974-75)
Frank E. Booker, J.D., Professor of Law
Charles M. Boynton, B.A., J.D., Lecturer on Law
Thomas F. Broden, Jr., LL.B., J.D., Professor of Law and Director of the Institute of Urban Studies
John J. Broderick, A.B., M.P.A., J.D., Professor of Law
Marcia P. Burgdorf, A.B., J.D., Lecturer on Law and Chief Attorney, National Center for Law and the Handicapped
Regis W. Campfield, A.B., J.D., Assistant Professor of Law
Kathleen E. Cekanski, A.B., J.D., Research Associate (Teaching Fellow)
Anton-Hermann Chroust, J.U.D., Ph.D., S.J.D., Professor of Law Emeritus
Granville E. Cleveland, Assistant Law Librarian
Charles F. Crutchfield, A.B., M.A., J.D., Visiting Assistant Professor of Law
Fernand N. Dutile, A.B., J.D., Associate Professor of Law
Kathleen G. Farmann, A.B., M.L.L., J.D., Law Librarian
Stanley L. Farmann, A.B., M.L.S., Associate Law Librarian
Leslie G. Foschio, B.A., J.D., Assistant Dean and Associate Professor of Law
Howard A. Glickstein, A.B., J.D., LL.M., Adjunct Professor of Law and Director of the Center on Civil Rights
Robert A. Grant, Senior Judge, United States District Court for the Northern District of Indiana, Judge of the Practice Court
Patricia Harmer, B.A., LL.B., Lecturer on Law (London)
Marianne Hopkins, B.A., Law School Administrator
James Hoff, Judge of the Cass County (Michigan) Circuit Court, Judge of the Practice Court
Norman Kopec, B.A., J.D., Lecturer on Law and Chief Judge of the Practice Court
Conrad L. Kellenberg, A.B., J.D., Professor of Law
Edward A. Laing, B.A., LL.B., LL.M., Assistant Professor of Law
Millie Kristowski, Executive Secretary of the Notre Dame Law Association and Director of Placement
David T. Link, B.S.C., J.D., Associate Dean and Professor of Law
Ian M. Kennedy, LL.B., LL.M., Lecturer on Law (London)

Ronald H. Maudsley, LL.B., M.A., S.J.D., Thomas J. White Professor of Law, 1973-74; Lecturer on Law (London)
Michael V. McIntire, B.S.C.E., J.D., Associate Professor of Law (on leave 1974-75)
John H. McNeill, A.B., J.D., LL.M., Lecturer on Law (London)
Robert L. Miller, former judge of the St. Joseph County Superior Court, Judge of the Practice Court
Paul R. Moo, B.S., J.D., Professor of Law
Charles W. Murdock, B.S.C.E., J.D., Associate Professor of Law
Edward J. Murphy, B.S., J.D., Professor of Law
Joseph O'Meara, A.B., J.D., LL.D., Dean and Professor of Law Emeritus
William T. Onorato, B.A., J.D., Lecturer on Law (London)
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Douglas D. Seely, Judge of the St. Joseph County Superior Court, Judge of the Practice Court
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Melvin A. Silver, B.A., J.D., Lecturer on Law
Myron Sokolowski, Ph.D., J.D., Lecturer on Law
James F. Thornburg, A.B., J.D., Lecturer on Law
Richard Toub, B.A., J.D., Lecturer on Law (London)
Keith Uff, LL.B., Lecturer on Law (London)
Michael B. Wise, B.A., J.D., Adjunct Assistant Professor of Law and Assistant Director of the Center on Civil Rights

Appendix B

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**William L. Travis, '27L, Hammond, Indiana
Raymond W. Troy, '34, Newark, New Jersey
Clarence F. Tuskey, '52L, Mishawaka, Indiana
Russell T. Van Keuren, '51L, Houston, Texas
William E. Voor, '25L, South Bend, Indiana
*David R. Wall, Brooklyn, New York
Donald F. Walter, '56L, South Bend, Indiana
**A. Harold Weber, South Bend, Indiana
Robert E. White, '61L, Aurora, Illinois
William A. Whiteside, Jr., '54L, Philadelphia, Pennsylvania
Lawrence D. Wichmann, '60L, Covington, Kentucky*
John C. Wiessler, '50L, Buchanan, Michigan
Joseph V. Wilcox, '49L, Grand Rapids, Michigan
Taras M. Wochok, '65L, Philadelphia, Pennsylvania
Henry C. Wurzer, '25, Detroit, Michigan
James A. Wysocki, '63L, New Orleans, Louisiana

*Judge Wichmann, a valued alumnus, died in March.

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