

4

The Konop Era 1923-1941

THOMAS F. KONOP WAS THE MAN CHOSEN TO SUCCEED Dean Vurpillat in 1923. It is not difficult to imagine the task which faced the new dean. The law school was in considerable disarray and morale was at low ebb. That Dean Konop met the challenge with vigorous leadership is attested by a number of achievements from the very outset and confirmed by the admission of the Notre Dame Law School to membership in the Association of American Law Schools in 1925. Not long thereafter it received approved rating from the Council of Legal Education of the American Bar Association.¹

Thomas F. Konop was born in Franklin, Wisconsin, in 1879. He attended college at the State Normal School at Oshkosh and graduated in 1900. He then began the study of law, taking his first year at the Illinois College of Law and the remainder at the University of Nebraska, from which he received the bachelor of laws in 1904. Somewhat remarkably, the month after taking his law degree, he was elected prosecuting attorney of Kewaunee County, in which office he served until 1910. With this taste of public service, he decided to run for the United States House of Representatives on the Democratic ticket. Successful in three campaigns, he represented the Ninth Congressional District of Wisconsin until 1917. Two years before leaving Congress he had joined in the establishment of a law partnership, Wigman, Konop, and Diener in Green Bay and there he began the practice of law at the end of his service in Washington. Later he became counsel to the Milwaukee Electric Company and the Wisconsin Gas and Electric Company, with an office in Milwaukee, and continued in this position until he was invited to become dean of law at Notre Dame. Testimony to his legal stature in Wisconsin was given by his appointment by a Republican administration to the State Industrial Commission shortly after his beginning practice in Green Bay. He also served for a number of years on the State Board of Vocational Education.²

As dean at Notre Dame, Konop kept up his interest in politics and the social movements of the day. He was chosen as one of fourteen law deans and professors to testify before the Senate Judiciary Committee on

President Roosevelt's proposal to reorganize the Supreme Court, the so-called court-packing proposal. He testified in support of the plan.³ In 1941 Konop relinquished the office of dean, but remained active in teaching until 1949, at which date he retired to the small town of San Pierre, Indiana, where he died in 1964.

Entering upon his duties, Dean Konop immediately began to raise the requirements for admission to the Law School. In the *University Bulletin* for 1923-1924 (pp. 296-297) is the announcement: "With the beginning of the schoolyear September, 1925, only graduates of approved colleges and applicants who, in addition to a four year academic or high school course, have completed two years of work in an approved college will be admitted to the College of Law as candidate for degree. . . ." In 1928-1929 this was increased to three years of work in an approved college. Then in the *University Bulletin* for 1931-1932 (p. 7) a revised admission requirement announcement appeared: "The persons eligible for admission to regular standing in the College of Law are 1) graduates of a recognized college or university, and 2) those who have completed three years of work in the College of Arts and Letters, the College of Science, the College of Engineering, or the College of Commerce at the University of Notre Dame or other college or university of approved standing, and have secured at least ninety semester hours of acceptable credit in college courses." (Emphasis added.) Nothing is expressly said about the combination course treated at some length in Chapter II, for students eligible for admission after three years of college work, for,

although Notre Dame students took the combination course, students from other approved colleges and universities did not. Hence students with three years of successful college study were eligible for admission to the law school even though they were not following the combination course, and this would remain true until 1946–1947, when the words italicized in the above quotation were deleted from the announcement. Two years later schedules of specific courses in the combination program for Notre Dame undergraduates appeared for the first time.⁴ For students not in a combination program, graduation from an approved college became mandatory only in 1946.

The case method had become well established as the primary method of instruction; the thorough and practical preparation of students for the practice of law continued to be the aim:

It is the aim of the College to give its students a thorough and practical preparation for the practice of law in any state. The case method of instruction is used. By the study, comparison and discussion of selected cases, the principles of law are developed with reference both to their historical growth and to their application in contemporary practice. The classroom lectures and discussions are supplemented by collateral reading and by systematic training in the practice courts. In these practice courts, presided over by a Judge of the Superior Court of St. Joseph County, Indiana, the students receive training in the preparation of pleadings, motions, trial records, exceptions and appeals, and the preparation of cases for trial and briefs on appeal. Each candidate for a degree in

law is required to conduct the complete procedure or at least one case from the service of process to final determination on appeal.⁵

In preceding chapters, programs of courses have been given in some detail for various years. The purposes of these listings have been to show what at different times the law faculty thought should go into the education of a lawyer and to reveal the gradual proliferation of courses in the program. All courses were prescribed, or required, and it seems that the aim was to cover almost every subject of substantive law and to give plenty of training in practical law. To achieve this, many courses were reduced to one semester hour of credit, which could give the students only a superficial knowledge of these subjects. Dean Konop apparently recognized this and his solution was the adoption of the elective system, although elective courses were never permitted first year law students. The *Bulletin* announcement of this important change reads:

The curriculum has been recently revised. Since it is impossible for any student to obtain a complete mastery of the Law during the brief period of three years, the elective system has been in part adopted. Certain fundamental subjects are required of all. In addition to these required subjects the student, with the advice of the faculty may each year select other subjects with a view to preparing himself for a particular branch of the Law, or to meet the requirements of the profession in a particular state.⁶

In other words, the change in curriculum provided a basic education in law required of all students and the

opportunity for each student to specialize in a branch of the law or even to merely prepare himself for bar examinations and practice in a particular state. This last provision strikes us today as an especially narrow notion of legal education; the provision for specialization on this level of legal education is a moot question. In this connection it is interesting to note here that at a later era of the law school the elective system was discarded for substantially the same reason as was given for its adoption.

In the first years following the adoption of the elective system, nineteen semester hours of electives were allowed, and, except for a short time around 1930, the number grew steadily until it was forty-six in 1950. In 1929-1930, when the elective hours were sixteen, the required courses were: First Year: year courses in Contracts, Torts, and Legal Responsibility, and semester courses in Agency, Bibliography, Common Law Actions, Pleadings, Criminal Law and Procedure, Personal Property and Bailments, and Real Property I: Rights in Land; Second Year: year course in Equity and Equity Pleading, and semester courses in Evidence, Procedure: Trial and Appellate, Real Property II: Titles and Wills, and Administration; Third Year: year courses in Constitutional Law, Court and Briefing, and semester courses in Private Corporations and Legal Ethics.⁷

This required program underwent some changes with the passing years, and it is of interest to record what it was in 1940-1941, the last year of the Konop era: First Year: year courses in Contracts, Torts and Legal Responsibility, Procedure I and II, and semester

courses in Business Association, Bibliography, Criminal Law and Procedure, Personal Property and Bailments, and Domestic Relations; Second Year: year courses in Equity I and II, Evidence I and II, Real Property I and II; Third Year: semester courses in Conflict of Laws, Constitutional Law, Municipal Corporations, Private Corporations, and Practice Court and Briefing.⁸

Another innovation occurred in the program of studies for 1930–1931 and continued to be announced through the remainder of the Konop era. This was the Senior Seminars: “The senior class in the College of Law is divided into three seminar groups. These groups meet once a week for the purpose of discussing matters of practical importance. A member of the faculty presides at each meeting.”⁹ No elaboration or illustration is given of what the practical matters presented for discussion were.

We have noted that the student body in the law school was around two hundred and fifty when Thomas Konop became dean.¹⁰ No records are available on student numbers for the Konop era, but they apparently declined greatly during the depression years of the 1930s, and had fallen to around fifty at the end of the decade.¹¹

Although there is no information on the number of students for this era, there is much on the faculty. The new dean set himself at once to the building up of the teaching staff, and a special *College of Law Bulletin* for 1923–1924 (p. 17) announced: “With the opening of the schoolyear in 1923 the faculty was increased and strengthened by the addition of new members. At pres-



Present Law Building

ent five instructors are giving the whole time to the teaching of the Law and to the supervision of the work of the Law students. Then, others whose successful practice of the Law has won for them widely acknowledged leadership are engaged as regular lecturers." The aim of Dean Konop in the selection of staff was to form an integrated group of men possessing widely divergent qualifications. The constant turnover in staff probably defeated this objective during the 1920s, but in the 1930s a rather remarkable stability was maintained, at least among the full-time faculty members. These numbered six throughout the decade, with only one replacement, James J. Kearney for William Cain.¹²

The year 1930 was another milestone in the development of the physical facilities of the law school, as had been 1889 and 1919. In that year the construction of the present Law Building was completed in time for occupancy at the beginning of the school year. It was part of an extensive building program initiated by the Reverend Charles O'Donnell, eleventh president of the university. A gothic structure, its external iconography is the finest of the buildings at Notre Dame. Just as the Hoynes College of Law was spatially much superior to the old law quarters in Sorin Hall, so the new building was a great improvement over the Hoynes College of Law. The *Bulletin* description of it reads: "This [three-story] building, 157 feet long and 104 feet wide, has an assembly hall for 350 persons, four classrooms, four seminar rooms, a court room, a discussion room (which doubles as a student lounge), a library reading room 50 by 100 feet in which is a working library

of 10,000 volumes . . . and additional stack room for 25,000 volumes, and offices for the dean, the librarian, the members of the faculty, and the *Notre Dame Lawyer*."¹³ This announcement continued year after year, only the estimated number of volumes in the library being a variant.

Magnificent as this new home was thought to be, it has long since been outgrown, and at present a new and far more spacious building is in the planning stage.

The inadequacy of the present law building for the needs of today is felt in several ways but it is truly crucial in regard to library space. The library is housed in a splendid, high-ceilinged room which might be easily renovated into a gothic chapel. But one cannot escape the suspicion that in designing it, the architect had in mind its esthetic quality rather than its function as a depository for books. There is much wasted space and no feasible way of transforming it into usable space. But in perspective one should not be too critical of the architect and of the others who were involved in planning the building; they probably never envisioned a time when library holdings would exceed or even reach the thirty-five-thousand-volumes stack capacity which they provided. The rate of growth of these holdings was painfully slow, and after sixty-one years of law at Notre Dame they numbered only ten thousand volumes in 1930. This number was to grow to sixteen thousand volumes by 1941, which represented an increase of twelve thousand volumes in the fifteen years from 1926 to 1941. The appointment of the first law librarian,

Mr. John Whitman, in 1925 may largely account for this relatively good showing.

Today the *Notre Dame Lawyer* holds high rank among the law periodicals edited and published by the students of American law schools. Its founding was a notable achievement of the Konop era, the first issue having appeared in November 1925. This issue makes no mention that the *Lawyer* had a predecessor, the *Notre Dame Law Reporter*, which has been largely unknown to succeeding generations of law students. This is understandable because its life span was only about eighteen months, April 1920 to November 1921, during which time seven issues were published, and the *Lawyer* is not a continuation of the *Reporter*. Despite its short life, a word should be said about this publication.

In the Foreword to the first issue it is stated that the *Reporter* would not be simply another law journal patterned on other law journals, of which there were enough, but would "constitute a new and novel departure in law school journalism." The "new and novel departure" is then spelled out: "The *Reporter*, which is to be published quarterly during the schoolyear, will be primarily a student publication, of and for and by the law student body. Its second feature, however, will be no less important than the first—that devoted to the interests of the law alumni. The purpose of these two departments in the *Reporter* is to bring together in fact as they are already united in spirit, the law school alumni and the law school students. . . ." In a word, those who founded the *Reporter* regarded it as a "family" periodical, a means of communication between

alumni scattered abroad and students still "at home." Articles by jurists outside the family were, therefore, excluded from the purview of these founders. Although the *Reporter* was said to be a publication "of, for and by the law student body," its editor-in-chief was Dean Vurpillat, and its associate editors, the members of the faculty. Also there was a student staff of about twenty members, among the first of whom was a future dean of the law school, Clarence Manion.

To return to the *Notre Dame Lawyer*, the Foreword to the first issue is devoted entirely to the proud defense of the choice as motto for the new magazine, "Law is the perfection of human reason," maxim of Sir Edward Coke, the sixteenth- and seventeenth-century English jurist, in the face of current cynicism of those who no longer accorded the law "the venerable position enjoyed by it in the past." No trumpet is blown to announce that a new law periodical was being launched; no description of the character, purpose and scope of the "new magazine" is given. But the issue itself shows that the new publication was very much in the pattern of other American law school journals. It would be not only an organ through which the students could develop their writing and other legal skills but also another outlet for the studies of established jurists and lawyers in and out of the teaching profession. It would also be entirely student edited and managed; Mr. Clarence J. Ruddy was the first editor-in-chief; and Mr. Maurice Coughlin, the first business manager. Begun as a monthly journal in 1925, the *Lawyer* became a quarterly in 1930; in 1958, a fifth annual issue was

added in which were published papers read at the law symposium held each year; and in 1962 this was increased to six issues.

As would be expected, the quality of the *Lawyer* has greatly improved over the years, but even the first volume is a creditable publication. Also the purpose and character of the review, unannounced at first, have later been defined in the official *Bulletins*. The earliest *Bulletin* statement reads: "The *Notre Dame Lawyer* is primarily a student publication. Its managerial and editorial staff is made up of students in the College of Law. Three members of the faculty act as faculty advisers. . . . It is published monthly during the scholastic year and contains articles by jurists, lawyers, and law professors, reviews of recent cases by students and also reviews of new publications."¹⁴ This rather brief announcement continued throughout the Konop era, and was not elaborated upon until 1949-1950. The elaborated statement reads:

The *Notre Dame Lawyer* was founded in the Fall of 1925. It appears quarterly, is wholly student edited, and reaches a large number of lawyers, public officials and scholars. . . . The quarterly brings to its readers lead articles by outstanding authorities in the legal profession, a book review section, a note section containing analyses of significant legal problems, and a section devoted to up-to-the-minute coverage of important recent decisions. The latter two sections are written by the student staff. The *Notre Dame Lawyer* aims, in the main, to fulfill the idea of a "Christian Law Review" and expresses the doctrines of the natural law.

The quarterly is also intended to provide for its student staff excellent training in writing and in exhaustive legal research, which staff members are required to perform in preparation of notes and case work. Membership on the *Notre Dame Lawyer* is considered a distinct honor. Selection for staff members is based on (a) the student having a general scholastic average of 85% or higher; (b) his service for one year in the "In-Training" group; (c) his having had an article accepted for publication; and (d) approval of the dean upon recommendation by the editor.¹⁵

In the *Bulletin of the Law School* for 1969-1970 (p. 13), this announcement has been modified to read:

The *Notre Dame Lawyer*, founded in 1925, is regularly published six times a year by students of the Notre Dame Law School. It affords qualified students an invaluable opportunity for training in precise analysis of legal problems and in clear and cogent presentation of legal issues. The *Lawyer* contains articles and book reviews by eminent members of the legal profession as well as comments and notes by members of the staff. The *Lawyer* is entirely student-edited and its integral and important part of the School's instructional program derives in large measure from this fact.

Members of the staff are selected at the end of the first year of study on the basis of academic standing and appointment is recognized as a distinct honor.

The Editor of the *Lawyer* is elected by the staff from the senior members on the basis of scholastic, literary and leadership achievements. He in turn selects the other officers.

In the preceding chapter was cited a letter from Frank McDermitt to Father Matthew Walsh in support of Dean Vurpillat in his controversy with a member of the law faculty. The letter conveyed to Father Walsh a resolution unanimously adopted by the Student Law Club and is dated March 2, 1923. Obviously, then, the club had been formed sometime before that date but for some reason did not receive recognition in the *University Bulletin* until 1928. Possibly it had lapsed for a time and was revived in 1928, but more probably it had been formed originally by the students as a private organization whose purpose was to manage social and other extra-curricular affairs; only later did it become a co-curricular activity. The first announcement of it reads: "The Law Club is primarily a student organization. It has charge of the extra-curricular activities of the College of Law. Lectures by prominent Judges and Members of the Bar are arranged for and delivered under its auspices."¹⁶ The co-curricular activities increased with the passing years. Thus the announcement for 1942-1943 adds to that of the year 1928-1929, "The South Bend Committee of the American Bar Association holds meetings every month with senior members of the Law Club at the courthouse of St. Joseph County. At these meetings court dockets are examined and explained, and the mechanical features and routine operations incidental to the trial of lawsuits, probate of estates, the recording of instruments, execution of sales, and the like, are illustrated by court and county officials by references to actual public records."¹⁷

In 1950 the name was changed to the Student Law

Association and among the activities under its auspices were listed "the Natural Law Institute, the Law Ball, the Student Natural Law Debates, the Practicing Law Institute, the Senior Banquet, the Moot Court Competition and the Spring Dance. . . ."¹⁸ In 1967 the name of the organization was again changed to the Student Bar Association; its purposes and functions had also changed considerably. The latest *Bulletin of the Law School* announces: "All students are eligible for membership in the Student Bar Association. The purpose of the Association is to foster the professional development and the social life of the students, and to represent their interests. It is a member of the American Law Student Association, which is sponsored by the American Bar Association."¹⁹ The Student Bar Association has many important functions, including responsibility for administering the School's system of unproctored examinations, commonly known as The Honor System."²⁰

At the time the law club first received recognition in the *University Bulletin*, the "Eleven" Clubs were also announced. These clubs were for members of the freshman class, who were subdivided into groups of eleven. Each group met weekly and at each meeting every member was required to give an impromptu talk. Twice each semester a convention of these clubs was held for parliamentary drill and an instruction on parliamentary law.²¹ For the freshmen law students these clubs seem to have served somewhat the same purposes that the Debating Society had served at an earlier period, to train them in the art of expression and in impromptu speaking and discussion. Announcement of

the "Eleven" Clubs continued only until the end of the Konop era, 1941-1942.

At the opposite end of the spectrum from the clubs for the freshman law students was a Bureau of Research in Educational and Civil Church Law established toward the end of Dean Konop's tenure. This bureau had five objectives: 1) to supply to all interested persons memoranda on particular legal problems in the field of Civil Church Law; 2) to survey the legal status of schools and churches in all the jurisdictions of the United States, to be published state by state; 3) to publish monographs on particular abstract propositions of law pertinent to schools and churches; 4) to prepare an annual Digest of all cases involving Civil Church Law; 5) to conduct courses in Civil Church Law. This bureau, an excellent undertaking, was directed by Professor James J. Kearney who joined the law faculty in 1938, but it unfortunately ended when he left Notre Dame in 1942. During its short existence, Kearney published "A Memorandum on the Liability Created by a Mortgage on Church Property which is Held by an Ecclesiastic as a Common Law Trustee," a treatise on "Public Aid for Private and Sectarian Schools," "A Digest of Church Law Decisions of 1939," and "A Digest of Church Law Decisions of 1940."²²

The success of its graduates in passing the bar examinations in their several states on first appearance before bar examination boards is not a primary gauge of a law school's quality, but it is an important measure of such quality, and every school takes pride when its graduates are uniformly successful. For the early years of the

Hoynes era, Notre Dame received praise and congratulations on the excellent record her graduates were marking up in bar examinations. Over the years this record has been uniformly good. In 1921 a law graduate of that year was moved to telegraph Dean Vurpillat, "Reports are that Notre Dame scored perfect record in the October Bar [Illinois] . . . and I wish to thank the Law Faculty for their untiring efforts. I wonder how many of the boys know what the Doctrine of Hotchpotch [Hotchpot] is. Notre Dame has a record to be envied."²³ But what is a good record on the bar examinations? Here the experts disagree. A 1937 news release from the university's Office of Public Information noted that "seventy-five percent of the 1937 graduates from the Notre Dame College of Law were admitted to the bar in various states." Then the writer added: "Dean Konop stated that this is an exceedingly high average for a class. He said the average is about fifty percent."²⁴ Several years later Dean Clarence Manion in a letter to Father Howard Kenna, Vice-President for Academic Affairs, implies that eighty percent success of the current graduates in passing their bar examinations was nothing to be proud of. He wrote, "The record of Notre Dame law graduates in passing the bar examinations in the several States has been uniformly good down through the years, but there have been deviations. Thus of the graduates who took the bar examinations in 1948, 20% failed."²⁵ And very recently Dean Joseph O'Meara wrote: "Eighty-five and five tenths percent of the Class of '67 passed the bar examinations on the first try—not a showing to be proud of." Then he added,

"Except for the disastrous results in one state, however, the percentage passing on the first try would have been 98.1."²⁶

In conclusion a generally favorable judgment can be passed on Thomas Konop's years as dean. When he took over the leadership of the school it was at a low point both in organization and morale, and he left it well rehabilitated.

NOTES

1. Cf. *University Bulletin* (1924-25), 151; *Special College of Law Bulletin* (1927-28), 9; and the *University of Notre Dame du Lac*, 1934, p. 3. Notre Dame Collection, University Memorial Library.
2. For biographical data, cf. *Who's Who in Law*, I (1937), 524; *The Faculty of the College of Law, University of Notre Dame*, 1930; *Alumnus*, October 1937, 9 and 26.
3. *South Bend News-Times*, March 17, 1937.
4. *Bulletin of the College of Law* (1948-49), 17 ff.
5. *University Bulletin* (1925-26), 167. This announcement was repeated in the *University Bulletins* for many years.
6. *Bulletin of the College of Law* (1923-24), 17-18.
7. *University Bulletin* (1929-30), 188-189.
8. *Ibid.* (1940-41), 339.
9. *Ibid.* (1930-31), 187-188.
10. Cf. Chapter III, note 10.
11. This statement is based on a letter from Clarence Manion to the author, which is treated in detail in Chapter 5.
12. The members, in addition to Dean Konop, were Clar-

ence Manion, Elton Richter, Homer Earl, William Rolison, William Cain and James Kearney. Aaron Huguenard (1928-31) was also full-time member during the first year of the decade.

13. *University Bulletin* (1931-32), 218.
14. *Ibid.* (1930-31), 187.
15. *Bulletin of the College of Law* (1949-50), 8-9.
16. *University Bulletin* (1928-29), 198.
17. *Ibid.* (1942-43), 335.
18. *Bulletin of the College of Law* (1950-51), 9.
19. Membership in the American Law Student Association was first announced in 1950-51 when the name Law Club was changed to Student Law Association.
20. *Bulletin of the Law School* (1969-70), 18.
21. Cf. *University Bulletin* (1928-29), 198.
22. *Alumnus* (March, 1941), 13. Oddly, no mention of this Bureau is found in the official *Bulletins* of 1939-1942. The two Digests were published in the *Notre Dame Lawyer*, XV (1940), 307 ff. and XVI (1941), 318 ff. respectively. "Public Aid for Private and Sectarian Schools" appeared in *Yearbook of School Law* VIII (1940), 144 ff. A *Memorandum* was published in pamphlet form.
23. Henry W. Fritz to Vurpillat, October 11, 1921. UNDA, Vurpillat Papers.
24. News release, December 1, 1937. Office of Public Information, Konop file.
25. Manion to Kenna, March 2, 1948. Office of Vice-President for Academic Affairs, Manion file.
26. *Notre Dame Law School: Report of the Dean* (1967-68), 22.