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Report of the Dean 1980–1981

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Office of the Dean

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October 1981

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

Gentlemen:

I submit herewith the Annual Report for the Law School.

The Law School is now clearly at a cross road. It is clear that we are capable of attracting first rate faculty and students. The reputation for top level teaching continues at the same time we are proving our ability to produce creative scholarship. There seems little doubt that our national reputation is rising dramatically. But the critical needs for additional space and research materials, for a competitive faculty retention program and for an endowment to insure the continuance of the research centers, are beginning to hold us back. If we can solve these problems, progress will continue at a rapid pace but if we cannot we will inevitably regress. It is impossible to stabilize at the present situation.

I submit this annual report with a hope and confidence that next year we will report that we have overcome those few barriers which stand in the way of Notre Dame being recognized as one of the nation's leading law schools.

Respectfully yours in Notre Dame,

David T. Link
Dean

DTL:ck

SUMMARY

1980 was a good year at Notre Dame Law School. The faculty was strengthened through the addition of three new members plus strong recruiting of faculty for 1981-82. The continuation of a strong and diverse student body was assured by an increase of more than 20% in applications for admission. The curriculum was strengthened through the inauguration of an innovative legal writing program and increased emphasis on clinical legal education. The administrative structure of the national programs was improved through the establishment of an umbrella Institute for Public Policy to coordinate the work of the three major centers attached to the Law School. Initial steps were taken toward revitalization of the Law School Alumni organization through appointment of a new Board of Directors. The plans for adding a new wing to the Law School building to provide badly needed additional space were further refined and proposals to prospective donors were developed. The trend of Notre Dame Law School continues upward, although the need for an expanded facility and a competitive faculty retention program has begun to slow the rate of progress.

INTRODUCTION

As stated in last year's report the Law School had great success with its first long range plan and has embarked on a major strategic planning process. The administration, faculty, Advisory Council, and students have already had input to this process. General alumni participation in the strategic planning begins with the receipt of the following Annual Report. Since many alumni may not be up to date on all phases of the present situation at the Law School, this Annual Report takes on a slightly new look. The first part reviews the Academic Year 1980-81 and can be regarded as a kind of academic profit and loss statement. In order to come as close as possible to the University recommendation on overall size we have tried to keep this part as succinct as possible. A more detailed report will be filed in the Provost's Office. The second part of this report is a kind of Law School balance sheet listing the salient facts about the program as of August, 1981. We hope these facts will be helpful to those who complete the Strategic Planning Questionnaire which is distributed with this report.

FACULTY

The faculty, a major strength of the Law School, became even stronger through developments in 1980-81. It was a year in which we lost two faculty members who had served the Law School well, but we were most fortunate in bringing on board two new scholars with valuable professional and teaching experience.

Larry Soderquist, who had gone to Vanderbilt Law School on a one year visitorship, elected to remain at that school. Philip Postlewaite accepted a teaching position at Northwestern Law School. These two fine lawyers, teachers and scholars go with the good wishes of all who knew them at Notre Dame.

Added to the faculty during the year:

G. Robert Blakey, a North Carolina and District of Columbia lawyer, is one of the most respected criminal law professors in the country. He has served as a Special Attorney, Organized Crime and Racketeering Section, U.S. Department of Justice; Chief Counsel to the Subcommittee on Criminal Laws and Procedures of the U.S. Senate; Consultant to the President's Commission on Crime and Administration of Justice; Reporter for the Electronic Surveillance Standard of the American Bar Association; Consultant to the National Commission on the Reform of Criminal Laws; Consultant to the National Gambling Commission; and member of the National Wiretap Commission. From 1977 to 1978, he was Chief Counsel and Staff Director of the Select Commission on Assassinations of the United States House of Representatives and is co-author of the book, The Plot to Kill the

President. He returns to Notre Dame after having served as a professor at Cornell Law School.

Douglas W. Kmiec graduated with honors from Northwestern and the University of Southern California Law Center and is a member of the Illinois and California Bars. A senior editor of the Southern California Law Review, he has practiced with major law firms in Chicago and Beverly Hills. Prior to joining the faculty at Notre Dame he taught at Valparaiso University Law School and in the Department of Environmental Affairs at Indiana University. A member of the American Bar Association Committee on Land Use, Planning and Zoning, he has served as an advisor to various private and public entities in property and land use matters.

Two faculty members were added in full-time adjunct positions.

Carol Ann Mooney is a graduate of St. Mary's College and summa cum laude from the Notre Dame Law School. Upon her graduation she was awarded the Dean Hoynes prize for the best record in Scholarship, Application, Deportment and Achievement. She practiced law with a leading law firm in the District of Columbia and is admitted to practice in both the District of Columbia and Indiana. She is teaching in the areas of property settlement, estate planning and trusts and her adjunct position will be changed to a regular faculty appointment for the next academic year.

Ronald M. Soskin was appointed as an Adjunct Associate Professor in the spring semester, 1981 to take on the position of Director of Clinical Programs in the Law School. He continues to serve as the Executive Director of the National Center for Law and

the Handicapped. He graduated from the University of Pennsylvania Law School in 1973. As a New York and Indiana attorney, his experiences include working from 1973 to 1976 on the staff of the New York Mental Health Information Service, an agency providing legal advocacy and representation of mentally ill and mentally retarded persons and working on the staff of the National Center for Law and the Handicapped prior to assuming its directorship.

Teresa Godwin Phelps joined the faculty as an Assistant Professional Specialist during the academic year. A native of England, she has a Ph.D. in English from the University of Notre Dame and taught writing courses at Notre Dame since 1974. She served as editor of the Notre Dame English Journal during the period 1978-80. She is introducing an innovative experimental writing program at the Law School and will be appointed as an Adjunct Assistant Professor for the year 1981-82.

Elvin C. Lashbrooke, Jr. joined the faculty as a Visiting Associate Professor in the spring semester of 1981. Professor Lashbrooke earned both a J.D. and an LL.M. degree from the University of Texas as well as a Masters Degree in Mathematics. He served as Legislative Counsel with the Texas Legislative Council from 1972 to 1975. He was in private practice in Texas from 1975 to 1977 when he joined the faculty of DePaul University College of Law. From 1979 he was on the faculty of Stetson University College of Law until his visitorship at Notre Dame. He taught in

the business planning and securities regulation fields during the spring semester and his visitorship will continue during the next academic year in which he will be teaching in the field of federal taxation.

Faculty recruiting for the next academic year has been limited by the number of anticipated openings but it has been highly successful. We are pleased to announce that Patricia O'Hara who taught at Notre Dame Law School in the 1979-80 academic year will be returning as a regular member of the faculty. She is a summa cum laude graduate of Notre Dame Law School and was recipient of both the Dean Hoynes prize and the Dean O'Meara Award for Outstanding Academic Achievement. She was an associate with the San Francisco law firm of Brobeck, Phleger and Harrison and is a member of the California State Bar, the Federal Bar for the Northern District of California, and the United States Court of Appeals for the Ninth Circuit.

The addition of Professor O'Hara plus the appointment of Professor Mooney to a regular faculty position results in the addition of two outstanding women scholars to the regular faculty. It had been apparent to all that with the student body comprised of nearly 30% of female members, women were under-represented on the regular faculty. We feel most fortunate to have added two professors with such outstanding academic credentials, good practical experience and proven teaching ability.

Also joining the faculty in a visiting capacity during the next academic year will be Ronald C. Griffin. He will serve as a substitute for Notre Dame Law School Professor Joseph Bauer who

is on leave for the 1981-82 academic year. Professor Griffin holds a Masters of Law degree from the University of Virginia and is visiting from Washburn Law School. He will be teaching Anti-trust and Consumer Law at Notre Dame.

Faculty research and scholarship was again producing at a high rate. In addition to twenty-two law review articles and six published books, three other books were prepared for publication and two internal-use books were written (with the intention of publishing these if trial usage warrants). Faculty scholarship also produced numerous speeches, visiting teaching presentations, lectures, Congressional testimony, government reports, and amicus briefs. For the last three years, faculty scholarship has been at a consistent high level, somewhat higher than the administration's goal and expectation.

STUDENTS

The Law School is very satisfied with its student body. There were almost 12 applications for each seat in the new incoming class. The academic statistics of entering students continue to improve and there is broad diversity in the make-up of the student body. Placement opportunities for new Notre Dame lawyers are quite good.

We continue to maintain an enrollment slightly higher than our goal of 465 students. In 1980-81 there were 496 enrollees,

including 34 students in the Notre Dame London Law Programme. This is approximately 22 more than the desired capacity for the home campus facility and 6 students under the optimum for London. The student population has reached a natural level at just under 30% women and just below 10% minorities.

Applications for admission in the fall of 1981 were up sharply (more than 20%, even though the number of students nationally taking the LSAT continues to decline). We believe this increase results from a combination of growing national awareness of Notre Dame Law School and stepped-up "recruiting" efforts. A law school representative participated in each of the law school regional caravan visits and admission materials were provided to pre-law advisors at all undergraduate institutions. The admitted class of 165 came from 103 undergraduate schools and from 30 states, with 1 student each from Guam and Canada. The median LSAT of the class is 640, up modestly over previous years, and a grade point median of 3.52, just about the same as for earlier years. The academic statistics for the entering minority students were improved over previous years.

One hundred fifty-three students were awarded Juris Doctor degrees in May, 1981. The multiple job offers were many and almost all of the graduates had secured law related positions as of the summer survey. Nine of the graduates received Federal judicial

clerkships, a prestige position for the new lawyer. Judith McMorrow, who graduated in 1980, has been chosen to serve as clerk for Chief Justice Burger of the United States Supreme Court. One hundred forty-six prospective employers from twenty-five states interviewed in the Law School. Efforts to increase the number, scope and geographical distribution of interviewers are showing positive results as more than 200 firms are scheduled to interview in the fall of 1981.

The ability of students to finance their legal education is a growing problem. Scholarship funds available to the Law School were markedly augmented in 1980-81 by an increase in expendable income for Kiley Fellowships, and a new endowment of more than one hundred thousand dollars from the estate of Thomas C. Hollywood for law school scholarships. Gifts from the law alumni continue to be generous as well. However, even with these increases in available scholarship funds, we are still losing ground because of the rapidly escalating costs for subsistence and tuition. The financial aid situation will be further exacerbated in the near future as the eligibility criteria for guaranteed student loans are tightened and fund availability decreases. The impact of this development will hit the Law School particularly hard as more than 2/3 of the students depend on the guaranteed student loan.

The full range of student activities were conducted in 1980-81. Significant developments included:

The Notre Dame Lawyer (Christopher Koenigs, Editor-in-Chief)

underwent a major administrative up-grading, including changing to a printer which specializes in law reviews, inaugurating a reference library, and the beginning of a transition to word processing equipment with a professional operator. These improvements were accomplished without increase in budgeted funds.

The Journal of Legislation (Lorelie Masters, Editor-in Chief) completed the transition to full affiliation with the White Center where it will continue to function as a Law Review concerned with matters of public policy.

The Mock Trial Team advanced to the National Competition finals in Houston. Team members were Robert Christians, Edward Flynn and William Rohn.

The Law School's Moot Court Competition was judged by Reynaldo G. Garza, U.S. Court of Appeals for the Fifth Circuit; Judge Manuel L. Real, U.S. District Court of Los Angeles; and Associate Justice Joseph R. Nolan, Supreme Judicial Court of Massachusetts. The student winners were Harold C. Ray and Elizabeth A. Asperger.

The International Moot Court Team received an award as the second runner-up in the West Central Regional Round of the Jessup Moot Court Competition. Team members were Sandra Bennett, Laura Dickinson, Douglas Van Essen and Perry Vieth.

THE LONDON PROGRAMME

The Notre Dame London Law Programme took a giant stride

toward maturity in 1980-81 when it was permanently endowed by a bequest of Dagmar Concannon in the name of her late husband, Matthias. It will hereinafter be known as the Concannon Program of International Law. Since the inauguration of the Notre Dame London Law Programme in 1968 it has occupied several different temporary locations, and has operated "on a shoestring" in terms of facilities and library materials. The bequest made possible the acquisition of a new facility on a long term lease basis and a broad upgrading of the program. Professor William A. West, an English lawyer who had worked with the Notre Dame Programme for many years and taught at the home campus as well, was named director of the London Law Programme and led the transition into the new facility. Major renovation is now underway, and library materials have been acquired. The upgraded condition of the London Programme combined with the establishment of the Concannon Visiting Professorship of International Law at the home campus serve to markedly advance the law school's program in International Law.

Thirty-four second year students, twelve of them from law schools other than Notre Dame, matriculated in London during 1980-81 academic year. Forty-five students have been admitted for the 1981-82 programme.

CURRICULUM

With substantial curriculum changes implemented in the last

few years it is concluded that the curriculum of Notre Dame Law School is in good shape, but some further refinements are in order. Two areas received significant attention in 1980-81.

It is the judgment of the legal profession that law schools need to exert greater efforts in the teaching of legal writing. After experimenting with different solutions to the problem, Notre Dame Law School inaugurated an innovative approach in which a non-lawyer teacher, schooled and experienced in writing, would be added to the Law School faculty. Teresa Phelps who had acquired her Ph.D. in English with a specialty in writing, and who had taught writing in the English Department, was added to the law faculty to teach the required course in Legal Writing to all first year students. Although it is too early to make a definitive judgment, indications are that this experiment is working quite well and it will be continued into next year. A minimum writing standard has been established which every student must meet to receive a Notre Dame Law School degree. It is anticipated that tutorial work with some students may have to continue through most of their time in law school. We believe this effort is worthwhile and even essential for the Law School to meet its responsibility to the legal profession.

Recent national studies have concluded that a gap exists between the formal education of the law school classroom and the ability to practice in the profession. These studies judged that in the absence of another entity to perform the role, the law schools should provide skills training or clinical experience

to help bridge the gap. Notre Dame Law School has long had various elements of skills training in such programs as Legal Aid, Moot Court and Trial Advocacy. To address the problem of clinical education more completely, a government grant was sought and received for academic year 1980-81 and a Director of Clinical Programs was employed (Adjunct Associate Professor Ronald Soskin). We have concluded that a stronger program of clinical education is a responsibility of the school and one can be implemented without diminishing any aspect of the traditional classroom program. Accordingly this program will be further augmented for next year. Professor Frank Booker, a broadly experienced teacher and practitioner has been named to take supervisory responsibility for all facets of clinical legal education in Notre Dame Law School. We have recently learned that federal funding will not be forthcoming for the next academic year, but are determined to continue this new emphasis within available resources.

The faculty adopted a new grading system for the law school in order to make clearer distinctions in academic achievement. The old system of A, B, C, D, F, is replaced by a system of A(4), A-(3.75), B+(3.25), B(3), B-(2.75), C+(2.25), C(2), C-(1.75), D(1), and F(0). A grade-point average will be computed using the values set out in parenthesis above. Honors at graduation and academic standing (including fail out) will be according to grade-point average. A Dean's Honor Roll will be

published along with the median grade point average so that judgments may be made about a student's academic progress.

ADMINISTRATION

The Law School functions with an Administrative organization consisting of the Dean, two Assistant Deans, a Library Director, a Chairman of the Institute of Public Policy and the Directors of the three centers. Although this organization is smaller than that of comparable size law schools it appears to be functioning well, and plans to increase the size have a low priority.

Reverend Michael D. McCafferty, C.S.C., having served well as Assistant Dean in the area of Academic Affairs for 2 1/2 years will return to full time teaching in 1981-82. Professor Peter W. Thornton, who has taught for many years and served as the Founding Dean of Nova Law School, will serve in the Assistant Dean capacity in place of Fr. McCafferty.

ALUMNI

There is every evidence that Notre Dame Law School has a loyal and supportive alumni. They assist the school in many ways, placement of graduates, recruiting of new students, and with their financial contributions. The alumni are organized into the Notre Dame Law Association (NDLA) which is loosely

governed by a Board of Directors. In a move directed toward revitalization of the NDLA membership totaling about 4,700 members, the Board of Directors is going through a reorganization under the leadership of Frank Gregory of the Notre Dame Law School class of 1966. It is anticipated that the new board will hold its first meeting at the Law School in the spring of 1982.

As a new service to the NDLA membership, the Law School distributed a new legal directory which provides current business addresses of all Notre Dame law alumni. With a new NDLA Executive Secretary, Nancy Kommers, now on board, it is planned to inaugurate a quarterly newsletter to the NDLA membership commencing during the next academic year.

Our goal is a more informed NDLS alumni in exchange for a revitalization of the alumni support of the Law School.

PHYSICAL FACILITIES

The most pressing need facing the Law School is an expansion of the physical facility. With the addition of the centers and new faculty with supporting staff, the demands for space exceed the capacity of the current building. Plans have been drawn and proposals made for the addition of a wing on the southeast corner of the law building. The University has assigned high priority to the funding for the addition and presentations have been made to prospective donors. The Law School will of necessity operate at reduced efficiency until such time as the expansion can be made.

NATIONAL PROGRAMS

A major new development this year was the creation of an Institute of Public Policy to serve as an umbrella organization for the centers attached to the Law School. The Institute embraces The Thomas and Alberta White Center for Law Government and Human Rights, the Center for Constitutional Studies and the Center for Civil and Human Rights. The concept of the Institute is to provide a single administrative structure with increased efficiency, mutual support and elimination of duplication, and better application of financial resources.

The Institute and its constituent three centers have filed separate Annual Reports of their activities for the 1980-81 year. The highlights of those Annual Reports are as follows:

The Thomas and Alberta White Center for Law and Public Policy
--Major projects included a study of the growing immigration and refugee problem in the United States with special emphasis on the problems resulting from the influx of Haitian refugees and the constitutional and legislative issues that has raised; an examination of recent legislation introduced in both houses of Congress calling for adoption of a national voter initiative; formulation of a legislative bill proposing procedural rules in the event of a constitutional convention, and an examination of the Indiana programs for the mentally retarded with special emphasis placed on the role of residential services and a proposed plan for the de-institutionalization of the State's mental hospital and care facilities. This Center also continued its Distinguished Speaker

Program, converted the Journal of Legislation into an official University publication intended to be the primary vehicle for publishing the Public Policy Scholarship of White Scholars, members of the faculty, student research assistants, guest lecturers and outside writers, and through a legislative reference service, responded to requests for assistance from eight state governments, the Federal Communications Commission, and the governments of North Marianas, Guam and Samoa.

The Center for Constitutional Studies--the primary research project was on state regulation of religiously affiliated higher education sponsored by a grant from the Ford Foundation. Under a grant from the Ford Foundation and the Lily endowment, the Center is in the process of producing a desk book on legal problems for college administrators, while a grant from the Board of Higher Education and Ministry of the United Methodist Church, is making possible the preparation of a Legal Inventory for College Administrators. A revision of the Center's Report to the Sloan Commission on Government and Higher Education was completed during the past academic year and the monograph will probably be published soon under the title, "Government and the Campus--Federal Regulation of a Religiously Affiliated Higher Education." The Center also filed amicus curiae briefs in the cases of McDaniel v. Essex Wire, Brandon v. Board of Education and Chess v. Widmar. Each of these cases had to do with the No-Establishment Clause of the First Amendment.

Joint projects of the Thomas J. White Center and the Center for Constitutional Studies--These two centers combined to conduct a symposium on Federal Regulation Arising Under the Spending Power. The conference was held at the Woodrow Wilson International Center for Scholars at the Smithsonian Institution and the edited version of the papers will be under the title, "The Federal Purse and the Rule of Law: Perspectives on Federal Regulations." The two centers also co-sponsored a conference in Washington on the problem of providing government aid to private education and this has resulted in the publication of a volume of essays and commentary entitled, "Private Schools and the Public Good: Policy Alternatives for the 80s."

Center for Civil Rights--the major project was an analysis of United States law and public policy affecting the admissibility and treatment of refugees. Other projects involved the examination of United States Constitutional law issues having an impact on civil rights, a comparative study of U.S. and European constitutional law doctrines and historical research into the evolution of U.S. civil rights policy. The Center published "International Human Rights, a Bibliography, 1970-75," and hosted the appearance of Kenneth L. Karst, Professor of Law at the University of California at Los Angeles, who delivered the Ninth Annual Notre Dame Law School Civil Rights Lecture. Prof. Karst, one of the nation's most noted constitutional law scholars, addressed the subject, "Equality and Community: Lessons from the Civil Rights Era," and his lectures will be printed in the Notre Dame Lawyer.

The National Center for Law and the Handicapped, which had operated for many years with federal funding, was not refunded for fiscal year 1981 and thus was forced to drastically curtail its activities. The University of Notre Dame provided minimal interim funding while efforts to regain federal government or private support were undertaken. As of this writing it appears that NCLH will discontinue in the fall. Its assets will be retained in the event that new funding support can be found. NCLH has filed a separate annual report for 1980-81. Despite its limited resources and personnel, the Center was able to prepare six valuable monographs for distribution: "A Comprehensive Guide to Employment Discrimination of the Handicapped"; The Mentally Retarded Offender: Competence, Culpability, and Sentencing"; "The Handicapped Child: A Prisoner of the Juvenile System"; "Sterilization: Rationales and Process Due"; "State Statutes Providing Equal Employment Opportunities and Non-Discrimination Provision for Handicapped Individuals"; Civil Commitment of the Developmentally Disabled Individual: A Resource Manual for Judges - Revised Edition.

The Center also filed four amicus curiae briefs (including two in the United States Supreme Court), conducted training seminars in seven cities for vocational rehabilitation counselors and delivered a number of speeches on the rights of the handicapped.

The National Institute of Trial Advocacy (NITA) has now been headquartered at Notre Dame Law School for two years under the directorship of Professor James Seckinger. NITA is playing

a nationally recognized role in the training of lawyers for trial work and of teachers for training students for trial work. The NITA Board of Trustees and the NITA Director express their satisfaction of the support given by the Law School and the University of Notre Dame. The Law School reaps the benefit of NITA's presence by the high quality teaching offered our students in the field of Trial Advocacy as well as the national recognition brought to the school because of NITA's presence here. We believe this mutually supporting role continues to the betterment of both NITA and Notre Dame Law School.

CONCLUSION

As those of us directly connected with the Law School travel around the country many people tell us "the reputation of Notre Dame Law School is rising rapidly." It is gratifying to learn that recruiters from top level law firms compare us favorably with such great schools as Chicago, Harvard, Virginia and Yale. We cannot rest on the gains that have been made because if we are going to have a reputation among the leadership schools we must continue with high level performance. We must keep up the momentum that has been established, for a great many things still need to be done. The building and library collections must be expanded and our program for hiring and retaining top level faculty must become

more competitive with our peer schools. Most of all, our continued momentum will depend on all those who share the excitement of our mission continuing to participate in future planning and implementation.

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Report of the Dean



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