7-7-1974


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**Report of the Dean**

*University of Notre Dame. Law School.*  
[Notre Dame, Ind.]: Notre Dame Law School,

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**Details**

**Description**  v. ; 23-28 cm.  
**Current Frequency** Annual.  
**Local Notes**  Title on 1973-74; 1974-75: Dean's report.  
Binder's title on 1953-56: Annual report of the dean.  
**Subject**  University of Notre Dame. Law School -- Periodicals.  
Law schools -- Indiana -- Periodicals.  
**Added Title**  Dean's report  
**Spine Title**  Annual report of the dean
Report of the Dean
1973-1974
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. 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."  

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.

I. The Private Practice of Law

I was in Washington, D.C., last spring to testify for our National Center for Law and the Handicapped interns 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. 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.

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.)

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

A third reason I find to explain why young lawyers do not last in public interest work is that they find it in 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 hand of principals, 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 revolutionary period in which lawyers have not run things at all. 

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. 

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 Kistowski took over as placement director (and N.D.L.A. executive secretary) in January, after the resignation of Mrs. Barbara Korn. The N.D.L.A. board at its meeting in March set up a placement committee chaired by Burton Dekker, 49L, Phoenix, to advise our alumni more heavily in the business of finding jobs for Notre Dame law graduates.

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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 percent 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 159 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 four were at 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 252, 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 160 places (which, because of incredible pressures, may come out over 150); the entering students are higher in G.P.A. than last year (between 3.5 and 3.6) and have a mean I.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 Kelleher); Criminal Law I and II (six hours, Professor Duskin); Procedure I and II (six hours, Professor Rodes and Roiter); Introduction to the Legal Profession (one hour, Dean Shaffer and Professor Duse; and Legal Bibliography (two hours). Dr. Cekanski assisted in the legal bibliography program this year and will direct it next year.

14 The core courses, in which enrollments for the most part exceed 90 percent—see 49 NOTRE DAME LAWYER 214, 216 (1973)—are Constitutional Law (four hours, Professors Rice and Murphy); torts (six hours, Professor Rice); Property Settlement (four hours, Professor Land); Federal Taxation (four hours, Professors Kelleher and Murphy); Criminal Law I and II (six hours, Professor Duskin); Procedure I and II (six hours, Professors Rodes and Roiter); Introduction to the Legal Profession (one hour, Dean Shaffer and Professor Duskin); 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.

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., created the system 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

16 The London curriculum was expanded this year to include such basic second-year courses as Constitutional Law and Federal Taxation. The faculty this year 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 Oronoro, Richard Toba, and John McConnell. Our British faculty included Patrick Hamer, Helen Graham, 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 committee's policy, 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 bulldozed. We have, for instance, initiated programs in advanced study in the representation of business clients, trial practice, criminal practice, appellate advocacy, and environmental law.

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 Maxfield. These were reformed this year by the Environmental Protection Agency. Professor Maxfield is a member of 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 DURK LAW JOURNAL, his extensive treatise on new trends in estate planning. He organized a seminar for our students on legal autonomy, participated in a week-long seminar on 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 (TERRA 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 for offices maintaining the Criminal Justice Plan 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 in the Indiana State Prison; Dr. Cekanski, Mr. Wise, and Professor Kellenberg lectured in that program. Edward Berlowitz, '74L, directed the Cass County operation. Willie Lipscomb, '75L, replaced James Cavanaugh, '74L, as executive director of the L.A.D.A.

24 Professor Kellenberg continued to advise the scores of students 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.

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26 Professor Dawle teaches first-year criminal law, and Professional Responsibility and an advanced policy course called Administration of Criminal Justice (along with Professor Link). 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 Criminal Law Review (along with Professor Link). He worked this year on our admissions committee, as first-year moot court advisor, and in a series of lectures on the legal status of the lawyer. 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 Environmental Law Review.
taught in the fall semester in this field. Professor Laing will pick these courses up next year. He comes to us after teaching in the University of Virginia. Professor Kellenberg will replace him as London Summer Director.

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 this year in international law, along with two periodical pieces on legal education in 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 and with the administrative and teaching assistance of Associate Dean Link, our summer program in Japan. That program 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, 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.

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, to make its own unique contribution to the private practice. We reviewed the 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's 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 1:2 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
I. Introduction

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; to increase the library collection; and to add full-time teachers (toward a full-time faculty-student ratio of 1:20, with 10-15 part-time teachers). 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 many other law schools; we suffer less, I believe, than those who 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. 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 public funds and the other foot in the University. American legal education is probably the best in the world and the best the world has even had. 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 public funds and the other foot in the University.

The current flood tide of law students tends to make the organized profession suspicious of legal education. "Calm leadership in the American Bar Association (which accredits law schools, thereby making it possible for its graduates to become lawyers, and which speaks for the legal profession nationally) keeps an eye on 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, issued this year a set of required courses. The list covers 54 hours of course work—more than 44 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. 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. 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 teacher. 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.

II. Professional Autonomy

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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 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.

43 This explains the faculty's decision in 1971 to set up our own campus for legal studies. The reason was that the law professor (and law dean), while a lawyer, is also a committed teacher. 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.

44 M. Ruud, The Burgeoning Law School Enrollment Is Portia, 60 A.B.A.J. 182 (1974), showed enrollment up about four percent from 1972-73 and up more than 100 percent since 1966. 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. 6, 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 1975 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 an 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 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. Beamter, Jr., Norman Kepner, Douglas Seely, and Robert Miller. Elsewhere in Michigan, the Indiana Supreme Court of Appeals again heard arguments on campus this spring, through the generous cooperation of Chief Judge Hoffman.
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 stu-
dents in 1966, given the football image of our University, and its pervasive
males, 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.26

"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,27 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.28

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 dis-
cipline 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, mostly
vivifying 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

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 jus-
tice . . . ." 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 profes-
sion, his teachers.
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. 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 of the standards for accreditation of the American Bar Association. 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 Manual. 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. The result is that the Manual does not reflect accreditation requirements imposed on the University by the American Bar Association and the Association of American Law Schools. 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 Council has proposed a new requirement that any decanal or faculty appointment will be made only after consultation with the Law Faculty. I view this as 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 personnel 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 the A.B.A. rules, which are organized in written paragraphs, set these relevant principles:

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 (1973) (cited hereafter as "A.A.L.S."). The A.B.A. rules, which are organized in written paragraphs, set these relevant principles:

201. 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.

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204. The Governing Board may establish general policies for the law school, provided they are consistent with a sound educational program and the Standards. Any internal policies 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.

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. [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:

i. 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.

ii. Exempt 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).

54 Letter to Shaffer from Millard H. Rued, Consultant, Section of Legal Education and Admissions to the Bar, American Bar Association, February 20, 1973, reporting on the activities of the Council 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 size 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 Academic Council. This section prescribes 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 not made by the President, 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 selecting the President ..."").

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 Council, an 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.  

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 hill of particulars above, enjoy generous support from the officers of the University.61 The ideal, as I see it, is that the Law School enjoy an autonomy analogous to that we seek to develop in 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.62 I am never sure how well the pervasive approach to ethics works, although it has had some memorable moments here,63 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,64 and we will offer an elective course for third-year students, taught by Professor Seckinger.65 Even with these efforts, I find the treatment of Dutile and myself,62 and we will offer an elective course for third-year students, the faculty in 1973 that we return to initial, formal instruction in the subject at the beginning of the curriculum.

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Incoming students this year will be required to read the manuscript of Professor Rodes' superb new jurisprudence text, The Law of Professors, 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. First-year required sessions in professional responsibility, as well as an optional guest lecture series, and, I hope, do 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 Chirout 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, and the responsibility recommended to us all by the Rome statement on Catholic universities. 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.68 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 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.

A treating 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.

Professor Chirout's two volumes on Aristotelian ethics 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 seminars in Modern American Jurisprudence.

The Law Advisory Council and the Notre Dame Law Association board67 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

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, and others are based 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."

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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 Law Advisory 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.
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 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.

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 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 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.

72 Professor Bauer, Associate Dean Link, and I joined him, Professor Carl Holm (Southern Illinois) and Stanley Laughlin (Ohio State), and Professor Crutchfield on the C.L.E.O. faculty. Willie Lipscomb and Santiago Ruiz, both "71, were invaluable as teaching assistants. Thirty students were accepted and 25 completed. The institute, cosponsored by Southern Illinois University, Indiana University-Purdue University, Indiana University-Hoosier 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.
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, none-the-less, 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, 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." 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, are dependable and tireless bearers of my burdens.

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

July 15, 1974

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

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