





# DUKE LAW SCHOOL, 1868-1968: A SKETCH

by W. Bryan Bolich†

## I. 1850-1894

Tracing through Trinity College, Duke University's history began in 1838 when a group of Methodist and Quakers joined in the creation of a school in Randolph County called Union Institute, of which Brantley York was principal until succeeded by Braxton Craven in 1842. It was incorporated in 1851 as Normal College. A church-state institution emphasizing education for the profession of teaching in the public schools, its Board of Trustees included state officials with the governor as chairman. Having broadened its curricula and educational objectives in 1859 Normal College terminated its connection with the state and became Trinity College, an arm of the Methodist Church.<sup>1</sup>

The history of instruction in law at Duke began in 1850 as part of a liberal arts education when President Braxton Craven inaugurated his lectures on Political and Natural Law, which were replaced in 1855 by his lectures on Constitutional Law and International Law.<sup>2</sup> This utilization of law as part of a liberal arts curriculum, of which Braxton Craven was an ardent advocate, stemmed from the influence of Sir William Blackstone who in 1753 became a lecturer on law at Oxford University and was in 1758 made the first holder of its distinguished Vinerian Professorship of English law. It seems startling that this late date marked the first lectures on English law ever delivered in a university. At this time the Inns of Court were in eclipse, and the only avenue to the legal profession was through self-education and office apprenticeship, which generally produced legal craftsmen unlettered in the broad context and implications of the law. Blackstone contended that this situation could never "be effectually remedied but by making academical education a previous step to the profession of the common law, and at the same time making the rudiments of law a part of academical education." Blackstone's first lecture, the Study of Law, outlined and attempted unsuccessfully to introduce a system of legal education in England. However, his message bore fruit in America where his *Commentaries*, of which this lecture was the first part, became the legal bible of lawyers and law students. His thesis that all citizens should study and understand the law under which they lived was widely followed in this country.<sup>3</sup> Until the last half of the nineteenth century, the average American lawyer's preparation followed the English pattern of self-study and apprenticeship. In the late 1700's and early 1800's several chairs of law were established with able men such as Wythe (Wm. & Mary, 1779), James Kent (Columbia, 1793), and Parker (Harvard, 1815). The aim was not to train lawyers, but to lay a broad foundation in responsible citizenship for the further education of prospective lawyers and non-lawyers alike.<sup>4</sup>

\*This paper constitutes the somewhat revised text of an address by the author at the Law Alumni Association Annual Luncheon Meeting and Duke Law School Centennial Observance, April 20, 1968.

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In 1865 Trinity adopted the university system of schools or departments, and the course of instruction was embraced in eleven schools, viz. Latin, Greek, Mathematics, English Literature, Natural Science, Modern Languages, Mental and Moral Philosophy, Engineering and Architecture, Analytical Chemistry, Theology, and Law.<sup>5</sup> Theology or Law might be studied exclusively, but in all other departments the student was required to take classes in at least three schools for a degree.<sup>6</sup> In a subsequent undated paper of President Craven entitled "Law No. 1 – Study of the Law," he stated that the above mentioned 1865 action of the Board of Trustees intended three things: "1. To furnish facilities for thorough collegiate education. 2. To give practical instruction in the arts and pursuits most generally followed by our citizens. 3. To bestow that superior literary finish rarely attained except by the most zealous scholars and the best talents. 4. To meet these views the study of law was introduced, and the department is open to all who have the qualifications, the inclination and the leisure to give it their attention."<sup>7</sup> Thus, study in the law department might constitute part of a student's academic education, or be "practical instruction" in a "pursuit," the profession of law.

The formation of a School or Department of Theology for the training of preachers occurred in 1866. To meet another need for specialized training, a School of Law was organized in 1868.<sup>8</sup> As to it, the catalogue of 1868-69 says: "This School is organized to meet a growing demand. The instruction will be as thorough as possible, and will be given by textbooks and lectures. Text Books: Blackstone's *Commentaries: Stephen on Pleading; Vattel's International Law; Law of Executors; Greenleaf's Evidence; Adams' Equity*, etc."<sup>9</sup> This institution of professional training in law after two decades of law teaching as part of an academic education seems a logical development and, emerging as it then was from the ashes and debris of defeat in the Civil War, North Carolina desperately needed training for leadership as provided by lawyers and preachers. But such was the poverty of the North Carolina Methodist Church Conference and the College that President Craven's pleas for funds for professorships of divinity and law went unmet, and he alone carried the teaching load for some years. In the Department of Law the catalogue of 1873-74 listed President Craven, D.D., LL.D., Professor of National and Constitutional Law and John W. Young, Esq., Instructor of Common and Statute Law. By way of description of the Department of Law it said: "complete instruction is given by daily lectures, examinations, etc. Students are fully prepared to obtain license. College students \$20 per annum. Law students exclusively \$60 per annum. Young gentlemen who desire to study law will find many advantages at Trinity, not usually found at Law Schools."<sup>10</sup> Three features may be noted: both academic and law students were enrolled in the school, the courses prepared one for the bar, and Trinity afforded "many advantages" over Law Schools. Except for omission of the name of a teacher of Common and Statute Law, the above quoted notice as to the Department of Law is substantially repeated in all catalogues until Craven's death.<sup>11</sup> When he died in November, 1882, his last class had dwindled to 6 students from an 1870-71 high of 37 as the college enrollment itself dropped from 200 to 100.<sup>12</sup> Counting both academic enrollees and law students in the Department or School of Law, approximately 150 studied law at Trinity from 1868 through 1882.<sup>13</sup> Nearly a third of these became lawyers, and over half of them studied law from 1874 through the academic year 1882-83.<sup>14</sup> This seems a fine record during the turmoil and poverty of Reconstruction, and the competition of office-apprenticeship and private law schools.<sup>15</sup> The key figure was Braxton Craven, father of Trinity College, a broadly educated man of vision, indefatigable energy, and

high ideals.<sup>16</sup> In 1875 he reported to the Methodist Conference that Trinity alumni "in recent years have made nearly one-fifth of the Legislature" of North Carolina.<sup>17</sup>

Following President Craven's death law teaching was in abeyance at Trinity until 1887 when it was resumed as an academic course in the School of History. The offering was prefaced by the following words: "every liberally educated young man should, whether he expects to make law a profession or not, know the principles and definitions of our common law." Begun as a required course in elementary law for seniors, its topical outline followed Blackstone's *Commentaries*, the prescribed collateral text; and it was first taught by Trinity's President Crowell.<sup>18</sup> The next instructor, N. C. English, enlarged the offering and permitted an election between it and a course in general jurisprudence.<sup>19</sup>

Coincident with the projected removal of Trinity in 1891 from Randolph County to Durham, the School of Law was re-opened in 1891 with Justice A. C. Avery of the North Carolina Supreme Court as its Dean, but he did not begin teaching until the College opened in Durham on September 1 the next year.<sup>20</sup> The public announcement noted the inadequacy of office law training and the aim of the school to provide such a broad legal education as to prepare one for practice in any state. The two-year curriculum covered in the first year the prescribed subjects of examination for admission to the North Carolina bar, and in the second year continued some of these and stressed historical growth of law and modern developments and practice. Completion of the two-year course led to the LL.B. degree. As was then generally true as to law school admission in most of the United States, no undergraduate work was required. The first-year courses and prescribed texts in the Law Department for 1891 included Rights and Wrongs (Blackstone's *Commentaries*), Pleading (Stephen), Evidence (1st Greenleaf); Real Property (Williams), Executors and Administrators (Schouler), Contracts (Smith), Corporations (Angell & Ames), Equity (Adams), and Civil Procedure (North Carolina Code). Professor B. B. Nicholson taught these courses in 1891. He was joined by Dean Avery at Durham in 1892 and the second year program was commenced. Fourteen students were in attendance during this epoch. The catalogue of 1893-94 states that "This Department as such will be discontinued after the year 1893-94."<sup>21</sup> This was done for financial reasons.

Although the aforementioned professional greats, such as Wythe, Kent, and Parker of the late eighteenth and early nineteenth centuries set an example of legal education for colleges, it did not prevail, and most American lawyers prior to the twentieth century came to the bar via the route of office apprenticeship, self-education or one-man proprietary law schools. It is said that in 1833 a total of only about 150 law students were enrolled in United States colleges, where the training was mostly by rote and bar oriented, and the teachers were part-time lawyers or retired judges. After 1865 industry, finance, and urban areas grew fast in the North, thereby creating new and complex legal problems, which demanded more broadly and rigorously trained lawyers.<sup>22</sup> In the 1870's Langdell at Harvard gave institutional legal education both a great shock and a boost when he upset prevailing notions that law should be studied through text or lecture and taught by retired or part-time judges or lawyers. He both inaugurated the professional law teacher and resurrected and perfected what was basically the case method of the English Inns of Court.<sup>23</sup> His was a scientific approach to principles winnowed from the vast body of Anglo-American cases, but studied in the relative vacuum of the appellate court opinion. It gave a new dimension to legal education and created self-reliant lawyers skilled in legal method. However, it was not until the 1920's that Langdell's narrow horizons gave way, and law study was integrated with study of related aspects of society and broadened with foundation and perspective courses.<sup>24</sup>





## II. 1894-1930

Following its removal from rural Randolph County to Durham, Trinity gained in stature, particularly through two factors: the forceful and enlightened leadership of Presidents John F. Crowell (1887-1894) and John C. Kilgo (1894-1910); and as it came under the aegis of the Duke family: Father Washington and his sons James Buchanan and Benjamin Newton.<sup>25</sup> The latter two provided the endowment for the Law School which reopened in September 1904. As set forth in a letter on the subject from President Kilgo, apparently to B. N. Duke, organization plans crystallized in the appointment of Samuel Fox Mordecai, distinguished Raleigh lawyer and part-time law teacher at nearby Wake Forest College, as Senior Professor of the Law Department, which in 1905 became the School of Law and Professor Mordecai its Dean. Kilgo wrote: "I feel sure you will be greatly pleased with him and that all the plans you and your brother had in the organization of this school will be conserved in him."<sup>26</sup> Incident to his assumption of the Deanship he visited the Law Schools of the following universities: Boston, Columbia, Harvard, Pennsylvania, and the New York Law School for purposes of observation and study of their organization, curricula, teaching methods and materials. In a detailed report to President Kilgo dated December 26, 1904, his evaluation and recommendations were outlined. He received courteous treatment and full cooperation from the deans and faculties of these institutions, especially Harvard.<sup>27</sup> I once asked Professor Joseph Beale if he remembered Mr. Mordecai's visit. He replied with a twinkle in his eye, "Did I? Mordecai was a sensation at Harvard."

The establishment of the Law School set new standards in Southern legal education in its requirement of two years of college work for admission, three years for the LL.B. degree, and adoption of the case method as the basis of instruction. This was a revolutionary innovation because, in the South in particular, institutional legal education was laggard. Elsewhere as well, instruction was through lectures or texts, teachers were seldom full-time and admission requirements, if any, seldom exceeded a high school diploma. In 1921 the American Bar Association inaugurated a movement to improve its profession by upgrading legal education and bar admission. As a first step, it established criteria for judging law schools and defined an approved school as one requiring two years of college work for admission, three years of study for a law degree, and having an adequate library and faculty.<sup>28</sup> In 1923 it published its first list of approved law schools. They numbered thirty-nine and only five of them were in the South: Emory, Texas, Trinity, Virginia and Washington and Lee.<sup>29</sup> Having adopted such advanced admission and degree requirements in 1905, and met its other high standards for membership, in 1905 Trinity joined the University of Tennessee as the other Southern member of the Association of American Law Schools.<sup>30</sup> When in 1925 and 1935 the University of North Carolina and Wake Forest, respectively, raised law school admission standards to two years of college work and degree requirements to three years of study, each was admitted to the Association of American Law Schools and approved by the American Bar Association.<sup>31</sup>

In order to make a hurried opening in September 1904, a tentative two-year curriculum was adopted utilizing the text and lecture system.<sup>32</sup> This was replaced in 1905 by a three-year curriculum with the case method as the basis of instruction,<sup>33</sup> and a suggested supplementary text in accord with Dean Mordecai's belief that the average



student needed more of a legal diet than the mere dialectics of the case system.<sup>34</sup> This program of study with its materials of instruction testifies to the high level on which the School embarked in 1905. A noteworthy feature of the first year's curriculum was the Dean's course in Elementary Law and Constitutional Law. This, as he put it, gave "the student in his first year a bird's eye view of the history of the law and of the most important topics of the law." As one might say today, this was a perspective course enabling the beginner to see the forest instead of just trees.<sup>35</sup> The inclusion in the curriculum of a second-year course on Political Institutions and a third-year course on Legal and Constitutional History was novel and ahead of the times.<sup>36</sup> Except for the omission of these two courses and some rearrangements of others, this 1905 curriculum remained in use substantially intact until the end of the year 1927-28.<sup>37</sup> Since most of the School's students expected to practice law in North Carolina, and the courses comprised in the first and second years fulfilled the requirements for the bar examination, and three years of resident study was required for the LL.B., the third year was not elected and no law degrees were granted prior to 1929 except in two cases by special arrangement.<sup>38</sup>

The law school faculty in 1904 was composed of Senior Professor Mordecai and Professor A. C. McIntosh, both of whom left law practice in their prime to become full-time law teachers. The others were Associate Professor R. P. Reade, with Dr. W. H. Glasson of the Economics and Political Science Department and Dr. J. S. Bassett of the History Department each offering one course. The original idea for the school was to have a faculty of professional lawyers whose work would be supplemented by instruction in history and economics. In addition to being a remarkable teacher, Dean Mordecai was an erudite gentleman, a fine legal scholar and a great character.<sup>39</sup> His classic two-volume text, *Law Lectures* (2d ed. 1916), restates in his inimitable way the relevant of Blackstone's *Commentaries* (1) and (2) in terms of North Carolina law; and his *Lex Scripta* (1905) summarizes and updates the principal acts of Parliament in Blackstone. With Professor McIntosh he published *Remedies by Selected Cases* (1910), a first-rate comprehensive casebook on civil remedies having an unusual topical arrangement. His *Law Notes* (1913-25) was a student survey-commentary on a number of courses. Professor McIntosh published an excellent volume entitled *Cases on Contracts*. All of these books were prescribed course material in the School, and constituted quite a faculty publication record for its time. *Mordecai's Miscellanies* (1927) is a unique collection of his "gems" of wit, wisdom, philosophy, and humor in verse, letter, and story form.<sup>40</sup>

With its advanced admission and degree requirements and high scholastic standards, Trinity aimed to benefit Southern legal education and thereby improve the bar; and intentionally put quality high above quantity.<sup>41</sup> As feared, these stiff admission standards and degree requirements resulted in the School remaining numerically small, with a total of only about 200 students being enrolled from 1904-1927.<sup>42</sup> This is not surprising because admission requirements of competing local law schools, the University of North Carolina until 1925 and Wake Forest until 1935 were less exacting, and also Trinity did not conduct a summer law school, or bar review, as did they.<sup>43</sup> North Carolina law schools shared a general student disinterest in completing a third year of law because of the two-year law study requirement for admission to the bar, and the antiquated one-day 66 question information test, set by a single Justice of the Supreme Court, required little law training to pass but mainly memory of the answers to past bar

examination questions found in a Gulley's or Jones' Quizzer. Every examination had numerous repeated questions. Only the Certificate of a law school dean or member of the bar that an applicant had completed a prescribed two year course of law study was sufficient to admit one to the examination. A statute of 1933 created a Board of Law Examiners which replaced the Supreme Court, and in 1938 its rules for the first time required some general education and three years of law study, and a modern essay-type bar examination replaced the old 66-question information test. Of the 34 candidates certified by attorneys, 28 failed but only 10 of 66 certified by approved law schools.<sup>44</sup> Dean Mordecai's first bar flunk occurred in 1920; and he was so exasperated that in his own handwriting, he so noted it in the student's official record.<sup>45</sup> One deficiency of the School was the fact that some examinations followed the 66-question examination pattern.<sup>46</sup>

Semesters were not observed in teaching courses, but a certain number of class hours was allotted to individual courses, which were concluded by an examination and another course immediately commenced.<sup>47</sup> From about 1905 to 1927 classes were taught on the second floor of the East Duke building; and a second floor wing of the general library constituted the law library. I entered in September 1919 with ten other veterans of World War I and finished the two-year course in June 1921. As was generally true of Trinity law students, most all of our class held the bachelor's degree. We didn't just study law, we *lived* law. Mr. Mordecai was inspirational. He ran a strictly professional school and taught law "in the grand manner" with a single aim: to make great lawyers. His method was socratic and his system near tutorial "as he drove his students to excellence with a lash of jovial satire and scorn for mental laziness."<sup>48</sup> He loved his students and they loved him.<sup>49</sup> H. G. Hedrick and W. S. Lockhart completed the faculty at this time. Both were part-time Durham lawyers and good teachers, and Lockhart's *Handbook of the Law of Evidence in North Carolina* (1915) was a well regarded work. Age was creeping up on the Dean and he was a little crotchety by 1921 when one day he left the law library never to return after a trivial run-in with J. P. Breedlove, General Librarian. Thereafter, any library business was conducted with the Assistant Librarian, through a ground floor window which was opened when the Dean gently tapped on it with his cane.

Certainly the most important event in this period of the Law School's history was James B. Duke's creation of the Duke Endowment in 1924 whereby Trinity College was metamorphosed into Duke University. In Article Seventh of the Indenture he summarizes his objectives and general plan. In it he states three cardinal principles as to the University's operation: that it secure for its "officers, trustees and faculty men of such outstanding character, ability and vision as will insure its attaining and maintaining a place of real leadership in the educational world; that it admit as students only those whose previous record shows a character, determination and application evincing a wholesome and real ambition for life;" and that its program of education "be arranged first, with reference to the training of preachers, teachers, lawyers and physicians because they are most in the public eye, and by precept and example can do most to uplift mankind."<sup>50</sup>

With the foundation of Duke University in 1924 the Law School shared in the expansion thereof from a base of twenty-five students and three professors in 1924-25 to fifty-five students and five professors in 1929-30. During the 1930's these figures stabilized at about 100 students and thirteen faculty members until 1941 when World

War II caused a dramatic drop.<sup>51</sup> Upon completion of the new buildings on East Campus in the fall of 1927, the Law School was moved from East Duke to enlarged quarters in the Carr Building. In the spring of 1927 illness forced Dean Mordecai to stop teaching, and Marshall Spears, Sr., local attorney, was added to the faculty on a part-time basis. The Dean died in December, 1927, leaving behind him a legacy of respect and devotion only possibly excelled by his own dedication to the Law School and the legal profession. In the fall of 1927 the reorganization of the Law School began when Judge T. D. Bryson and I joined W. S. Lockhart, Marshall Spears, Sr., and W. T. Towe on the faculty.<sup>52</sup> In the academic year 1927-28 a drastic change occurred when the School's then out-of-date two-year program of instruction<sup>53</sup> was terminated in favor of the more modern three-year curriculum leading to the LL.B. degree.<sup>54</sup> The Law library, in a condition of neglect in September 1927<sup>55</sup> was practically trebled during the ensuing three-year period so as to provide over 12,000 volumes, the minimum of statutes, law reports, treatises and legal periodicals deemed essential at the time for a working library.<sup>56</sup>

As the faculty member to whom certain administrative functions were committed from 1927 to 1930 when there was no Dean, I pushed curriculum reform and library expansion. The school year 1927-28 was the finale of the 1905 two-year program. In 1928-29 the third year of instruction was begun, and at Commencement 1929 I presented four candidates for the LL.B. degree, which number increased to thirteen in 1930.<sup>57</sup> After 1929 most students remained for the third year and the LL.B. degree, instead of leaving at the end of the second year with only the traditional Dean's Certificate testifying to completion of the then-required two years of law study for the North Carolina Bar. With its expanded library, enlarged faculty, new curriculum and reorganization, the Law School stood ready in 1930 to resume membership in the Association of American Law Schools from which it had withdrawn in 1919.<sup>58</sup>

Commencing early in 1925, President Few devoted much time to the development of the Law School. For several years Dean Huger W. Jervey of Columbia Law School was his principal consultant. One of the results was that the "old" law building was a miniature Kent Hall. In 1929, William Draper Lewis, Director of the American Law Institute, visited Duke in an unsuccessful effort to convert the Law School into a research adjunct of the Institute. President Few being away, Dean W. H. Wannamaker, Dr. R. L. Flowers, and I, as representative of the Law School, met with Lewis and, having heard and considered his proposal, informed him that Duke was not interested in discontinuing its professional law school. As a result of this meeting, conferences ensued between Few, Flowers and Lewis, who made the suggestion that Duke "invite a group of selected persons to submit to it a report on the further development of the law school." This culminated in his naming a panel of well-qualified possibilities for the Deanship, including Justin Miller. Each of them submitted a paper outlining his suggested plan of development. As of July 1, 1930 Miller was appointed Dean.<sup>59</sup>





### III. 1930-1968

The School opened on the newly-built West Campus in September 1930, and entered upon a new stage of development with Justin Miller as Dean. He came to Duke from the Deanship of Southern California Law School with the stated intention of establishing in the Southeastern area a law school of national scope and character as planned by the Duke administration. He brought with him to the faculty some well known figures of the law school world, mostly from California. Within two years the faculty increased from five to fourteen. The School was reorganized and the curriculum<sup>60</sup> and professional activities greatly broadened. Required prelegal study was increased from two to three years. Expansions included a much-enlarged library, graduate work leading to the degrees of LL.M. and S.J.D., the Legal Aid Clinic, the Department of Legislative Research and Drafting, the Practice Court and the Duke Bar Association, which supplanted the Samuel Fox Mordecai Law Society, a similar student organization. Forty tuition scholarships were established, of which twenty were first-year and ten each were for second and third-year students, awarded annually to the top ten in each rising class. The *Duke Law Journal* evolved from the *Duke Bar Association Journal*, which was established in 1931.<sup>61</sup> Miller had in 1930 secured funds for a traditional law review, but with only about ninety students such a publication was not feasible. This resulted in a faculty-edited substitute publication, *Law and Contemporary Problems*, the original symposium-type law review in which experts treat the legal, economic and other social science aspects of a topic. The brain child of Professor David F. Cavers, Professor Douglas B. Maggs named the infant. The first symposium appeared in December, 1933, on the subject of Protection of the Consumer of Food and Drugs.<sup>62</sup> Beginning in this era of the School, individual faculty members have through the years taken active roles in various professional organizations of lawyers and law teachers. A number have contributed substantially to the improvement of law through research, writing and legislation, fulfilling Ames' "three-fold vocation of the law professor, teacher, writer, expert counselor in legislation."<sup>63</sup>

The impact of Duke's new program was of profound significance in the South; and during the 1930's Duke held almost undisputed leadership in terms of quality of curriculum and facilities, faculty and students. In 1937 its high-quality student body of 102, including Richard Milhous Nixon '37, Whittier College, California,<sup>64</sup> represented twenty-nine different states and fifty-five different colleges. In about fifteen years Duke's enrollment had moved from local, to regional, to national.<sup>65</sup> Dean Miller accomplished much, though his time at the helm was short. In 1934 he left the School on leave of absence for the United States Department of Justice; and in 1935 resigned the Deanship. His rise in Washington was swift; and as a member of the D. C. Court of Appeals he wrote the majority opinion in a case of first impression involving the doctrine of *cy pres* which awarded the endowed Ackland Art Museum to the University of North Carolina after Duke had renounced the legacy.<sup>66</sup> Professor H. C. Horack succeeded Miller in 1934 and held the Deanship through the last years of the Depression and World War II. He retired in 1947. In the late 1930's Professor Cavers returned from a visiting professorship at the University of Chicago with a "New Plan" of instruction based upon the problem method of teaching under which certain courses would be combined. A functional approach, it cut across traditional course classifications based upon legal concepts. After extended

discussion, it was adopted by a seven to six faculty vote, but never became operational because of the war.<sup>67</sup>

The outbreak of World War II produced a dramatic drop in students and a number of faculty members left teaching to enter government work. The Army Finance School was located at Duke, and took over about three-fourths of the Law School Building for the duration. However, enough room remained to accommodate a temporary wartime teaching union of the law schools of Duke and Wake Forest, which increased class enrollments and decreased total necessary teaching personnel. In order to expedite law training during the war the faculty voluntarily operated the School on a three-semester basis; and by a system of class rotation beginning students were admitted in each semester, permitting one to acquire the LL.B. degree in two calendar years.<sup>68</sup> At the end of the war in 1946 Duke resumed separate operation and returned to its two-semester program. The ensuing G.I. bulge flooded the School; one freshman class had 140 members; and at its peak in 1948 there was an enrollment of about 300, including a large number of graduate students. During the periods immediately preceding and following the war numerous changes in faculty personnel occurred. Professors Cavers, Fuller, Poteat, Roalfe, and Sanders resigned to go elsewhere. Judge Bryson and Dean Horack retired. Their replacements were Professors E. C. Bryson, Currie, Kramer, Livengood, Pemberton, Stansbury, and Shepherd.<sup>69</sup> Professor Harold Shepherd succeeded Horack as Dean in 1947. Under his leadership both the external relations and internal organization of the School were much improved, especially in the matter of enriching and modernizing the curriculum. Faculty committees made a detailed appraisal of curriculum and teaching methods which resulted in a number of course changes and additions. Work in the public law field was expanded, and renewed emphasis given to legal research and writing through required seminars, some of which involved planning and drafting of legal instruments.<sup>70</sup> At this time Duke assumed editorship of the *Journal of Legal Education*, official organ of the Association of American Law Schools. By 1948 our active law alumni had increased to 650 from the figure of 380 in 1935,<sup>71</sup> and a formal reorganization of the Law Alumni Association then occurred.<sup>72</sup>

Following Dean Shepherd's resignation in 1949, Professor C.L.B. Lowndes was Acting Dean until the appointment of Joseph A. McClain, Jr. who held the office from 1950 until his resignation and return to law practice in 1956. By 1950 veteran enrollments subsided and we reached normal figures again, only to be reinterrupted by the Korean War. As a result, enrollment in 1952-53 dropped to 104, which increased to the more normal figure of 129 in 1955-56. They represented 25 different states and 57 colleges, and were of the high quality always true of Duke. Dean McClain inaugurated the first American law school placement bulletin in 1952. Issued annually to a selected list of law firms and other organizations, it supplied biographical data, educational information, and career preferences as to the year's listed graduates. At this date the building that had seemed large enough in 1930 was now too small. The law library of over 100,000 volumes could not be housed, and overall our physical facilities were not keeping pace with other Southern law schools. Dean McClain put his shoulder to the wheel. In 1951 he procured a starting commitment of \$250,000 from the University Trustees; and through continued activity, including appointment of a faculty building committee,<sup>73</sup> brought the vision of a new and modern law building into view; but only after abandonment of plans to enlarge and remodel the old building and thereby retain the Law School's advantageous location next to the University library.



Following McClain's resignation, Professor E. R. Latty became Acting Dean in 1956 and then Dean in 1958. By precept and example he inaugurated a regime of action. He immediately spurred the new building plans and program, procured additional Law School scholarships, and inaugurated a policy of active recruitment of top-flight students, and was himself chief scout. Upon the retirement of its Director, Professor Bradway, in 1959 the Legal Aid Clinic was phased out.<sup>74</sup> Its quarters were taken over by the World Rule of Law Center (now Rule of Law Research Center), the first such department in any law school. Its establishment at Duke resulted in great measure from Charles S. Rhyne, Class of 1937, an ardent advocate of the international rule of law, who delivered the Duke Commencement address in 1958 on that topic, and interested President Hollis Edens. Professor Arthur Larson has directed the Center since its inception. Prior to the late 1950's faculty consensus was to maintain a quality student body of about 200 to 250. Physical facilities were so planned, but growth pressures have substantially increased that number to a 1967-68 student body of 340, representing some 40 states and 75 colleges and universities, all with very high scholastic and other qualifications for the profession of law. The present law building was formally dedicated on Law Day, 1963, with an address by the Chief Justice of the United States in the presence of an assemblage which included invited representatives from bench and bar and most other American law schools.<sup>75</sup>

Professor F. Hodge O'Neal became Dean in 1966 upon the resignation of Dean Latty, who returned to teaching and research as William R. Perkins Professor. Under Dean O'Neal the Law School has continued its progress. However, on December 12, 1966 one long period of close cooperation in public service, especially in the state's nationally acclaimed program of continuing legal education for lawyers, was ended by faculty resolution upon the School's termination of official relations with the North Carolina Bar Association. This action was taken upon its inferred failure on racial grounds to admit to membership a named 1966 Negro graduate of Duke. The termination was specified to continue until such time as all applicants for membership are accepted without discrimination based upon race.<sup>76</sup> Thanks to a Ford Foundation grant the Law Library has been substantially increased and now has over 150,000 volumes — a far cry from the 4,000 in 1927. In 1966-67 sectioning of first year classes began and now virtually all such classes are sectioned, as well as larger second year classes. In 1968 the Duke Board of Trustees, sanctioned change of the traditional Bachelor of Laws degree (LL.B.) to the now widely recognized degree of Juris Doctor (J.D.). Dean O'Neal's resignation of his office became effective at the end of the 1968 school year, regretfully making it the shortest Deanship in the School's history.<sup>77</sup> Fortunately, he has continued his professorship at Duke, concentrating on teaching, research and writing.

As of 1968 the faculty numbered twenty-four including three visitors. Active law alumni now number more than 1350.<sup>78</sup> Located in all states of the Union, they include such a number of outstanding lawyers, judges, legislators, and other government officials, corporate executives and teachers, that Duke Law School may be justly proud of its current contribution to society as well as its distinguished past.



## EDITORS NOTE

[A. Kenneth Pye became Dean of the Law School following Dean O'Neal's resignation as Dean in 1968. Dean Pye held the position of Dean until resigning to become University Chancellor effective September 1, 1970. The current Dean, Joseph T. Sneed, assumed the office on February 1, 1971.

The faculty for the school year 1971-72 numbered twenty-eight and there are now nearly nineteen hundred active Duke Law School alumni. Ed.]

## FOOTNOTES

1. Chaffin, *Trinity College, 1839-1892: The Beginnings of Duke University* (1950) Chs. 2-4 [hereinafter cited as Chaffin]; *Catalogues of Trinity College, 1889-1890, 14-15; 1890-91, 30-35; 1892-1893, 17-19.*
2. Bolich (ed.) *Alumni Directory, Duke University School of Law* 2d ed. (1948) xi [hereinafter cited as Bolich]; Chaffin 151; see Braxton Craven Law Lectures (Braxton Craven Papers).
3. Harno, *Legal Education in the United States* (1953) 8, 11-14 [hereinafter cited as Harno]. As to Blackstone's Oxford law lectures and lectures and career, see Lockmiller, *Sir William Blackstone* (1938), 23-52; Wigmore, *Panorama of The World's Legal Systems* (1936), 1096.
4. Harno, 23-26.
5. Chaffin, 301.
6. *Catalogue of Trinity College, 1868-1869, 10.*
7. Braxton Craven Papers, Duke University Library; 1955 *Prolocutor*-Yearbook of Duke University School of Law, 9 [hereinafter cited as 1955 *Prolocutor*].
8. Chaffin, 299.
9. *Catalogue of Trinity College, 1868-1869, 17.* This description of the School of Law is repeated in the *Catalogues* of 1869-1870, 19; 1870-1871, 18; 1871-1872, 19; 1872-1873, 18.
10. *Catalogue of Trinity College, 1873-1874, 17.*
11. *Catalogues of Trinity College, 1874-1875, 11; 1875-1876, 25; 1876-1877, 25; 1878-1879, 26; 1879-1880, 21; 1880-1881, 21.*
12. Chaffin, 300, 520; Sheppard, "The Trinity College Law School," 1 *Trinity Alumni Register*, 264, 264-66 (1916).
13. Bolich, 84-85; Sheppard, *supra* note 12.
14. Chaffin, 533-38.
15. Private law schools were numerous in North Carolina during the 19th century, and a few existed in the first part of the 20th century. The most famous was Richmond M. Pearson's in Yadkin County where hundreds of lawyers were educated, and where the one-day, 66-question examination seems to have evolved, probably because it was the official examination during his tenure of 31 years on the Supreme Court which gave it until 1933. Other well known private law schools were Dick and Dillard of Greensboro, the Bailey schools of Asheville and Elizabeth City and the Wilmington Law School of Judge Pell. Coates, "A Century of Legal Education" 24 *N.C.L. Rev.*, 306, 321-326 (1946) as to private schools only [hereinafter cited as Coates].
16. Chaffin, 55-60, 65.
17. *Ibid.* 328.
18. *Catalogues of Trinity College, 1887-1888, 39, 40; 1888-1889, 34, 35.*
19. Sheppard, *supra* note 12 at 267; see *Catalogue of Trinity College, 1889-1890, 58.*
20. *Catalogues of Trinity College, 1890-1891, 28; 1892-1893, 18, 45.*
21. *Catalogues of Trinity College, 1890-1891, 94; 1891-1892, 45; 1893-1894, 21; Baade, "History of the Law School," 1955 Prolocutor, 10, 11-12; Bolich xi-xii, 85; Sheppard, supra note 12, 267.*
22. Hurst, *The Growth of American Law: The Law Makers* (1950) 256-64 [hereinafter cited as Hurst].
23. Harno, 15-17, 59-61.
24. Hurst, 260-63, 268-71.
25. Porter, *Trinity and Duke, 1892-1924; Foundations of Duke University* (1964) chs. 1-3 [hereinafter cited as Porter].
26. See such letter of August 18, 1904, Trinity College Papers; *Catalogue of Trinity College, 1905-1906, 109-10.*
27. Memorandum dated December 26, 1904, to President John C. Kilgo; Subject - Law Department Trinity College from S. F. Mordecai, Trinity College Papers.
28. 46 Rep. Am. Bar Ass'n. (1921), 37-47, 680; 47 Rep. Am. Bar Ass'n. (1922), 482-84; Legal Education 8 A.B.A.J. 160 (1922). As to U. S. law school admission requirements and course standards in general, see Hurst, 268-69, 272-74.
29. Law Schools Meet Association Standards 9 A.B.A.J., 728 (1923).

30. Bolich xii; Porter, 91-92, 143-46, Prospectus Trinity College Law Department, Durham (1904); *The Morning Post* [Raleigh, North Carolina] August 13, 1905, 10 Law Department of Trinity College; *Catalogue of Trinity College*, 1905-1906, 113; Association of American Law Schools, Proceedings, Part One, 1966, 7.
31. Coates, *supra* note 15 at 347, 349, 357, 361-362; 3 Gulley, *History of Wake Forest College, The Law School* (1943), 327-328 [hereinafter cited as Gulley].
32. See Mordecai *op. cit. supra* note 27.
33. *Catalogue of Trinity College*, 1905-1906, 111-113. This curriculum for the 3 years, listing in order name of course, hours per week and instructor follows: FIRST YEAR – *Elementary Law and Constitutional Law*, 3 hours, Mordecai; *Torts*, 2 hours, Reade; *Domestic Relations*, 1 hour, Mordecai; *Criminal Law*, 2 hours, Reade; *Contracts*, 3 hours, McIntosh; *Equity*, 1 hour, McIntosh. SECOND YEAR – *Real Property, Conveyancing, Special Proceedings under CCP, Administration*, 3 hours, Mordecai; *Negotiable Instruments*, 1 hour, Mordecai; *Personal Property*, 2 hours, Reade; *Pleading and Legal Remedies at Law, Legal Remedies Under CCP*, 2 hours, Reade; *Equitable Remedies*, 2 hours, McIntosh; *Corporations*, 1 hour, McIntosh; *Evidence*, 1 hour, McIntosh; *Political Institutions*, 3 hours, second half year, Glasson. THIRD YEAR – *Sales of Personal Property*, 2 hours; *Agency*, 1 hour, Reade; *Partnership*, 1 hour, Mordecai; *Bankruptcy*, 1 hour, McIntosh; *Suretyship and Mortgage*, 2 hours; *Conflict of Laws*, 1 hour; *Insurance*, 1 hour; *Legal and Constitutional History*, 3 hours, second half year, Bassett.
34. "The objections to this system are that very many points in any topic are not covered by the cases from the brief summaries given by the instructor. Should the student fail to take proper notes or to clearly comprehend the instructor when he sums up he will be put to great disadvantage. In the next place the student is placed in *medias res* – he is made to walk – and I might say to run – before he has learned to crawl. For a long time after he has commenced the study of law his mind must necessarily be in a fog. . . . Another disadvantage is that a man of mediocre ability will not learn as much by this method as he will by other methods, and a dull man, though he might acquire a very fair knowledge of law by other methods, will waste his time in attempting to learn by the case method. A bright man will learn the law by any method, but will probably be a much better lawyer if taught by the case method." Mordecai, *op. cit. supra* note 26.
35. Such a first-year course in legal history is uncommon, but has long been given at Columbia and was put in at Harvard recently.
36. Mordecai, *op. cit. supra* note 27; Hurst *op. cit. supra* note 24.
37. *Catalogues of Duke University*, 1926-1927, 302-07 and 1927-1928, 233-34.
38. Bolich xii; by special arrangement Professors H. G. Hedrick '13 and W. S. Lockhart '11 received the LL.B. degree from Trinity upon their completion of a prescribed third year of law at Harvard. See insert in Trinity Grade Book, Duke Law School Records.
39. As to the man and his work, see "Samuel Fox Mordecai 1852-1927, Presentation of a Portrait." Pub. by Law Alumni (1932).
40. *Mordecai's Miscellanies*. Rare Book Room, Duke University Library. Privately printed 1927 and sent to out-of-Durham friends by railway express.
41. See note 30 *supra* and Sheppard, note 12 *supra*.
42. Bolich xii, 85-87; Porter, 187.
43. See Coates, *supra* note 15, 336-343, 355-357, 361-364; Paschal, *supra* note 31, 305-315, 324-327.
44. Bryson, "The Organized Bar in North Carolina," 30 N.C.L. Rev. 337, 346-47 (1952); 134 N.C. 747-48 (1904); N.C. Gen. Stat. Sec. 84-24 (1950); "A Survey of Statutory Changes in North Carolina in 1933," 11 N.C.L. Rev. 191, 192 (1933); Bolich, "Activities of the North Carolina Bar Association, 1925-1935," 28 N.C. Bar Ass'n Repts. 82 (1936), Coates, *supra* note 15, 362. When the author took the bar examination in 1921 there were 54 repeated questions out of 66.
45. Duke Law School Records, Trinity Grade Book, 92.
46. See William Bryan Bolich Papers, Duke University Library.
47. See note 37 *supra*.
48. Nelson, Milestones in Legal Education, *Durham Morning Herald*, May 22, 1955.
49. See *Mordecai's Miscellanies*, *op. cit. supra* note 40, 78-84.
50. The Duke Endowment. Pub. by the Trustees (1930) 23-27; Porter 229, 232-33.
51. Bolich xix, 87-90.
52. See the announcement statement of President Few, the *Raleigh Times*, Aug. 27, 1927.

53. *Bulletin of Duke University*, 1926-1927, 302-07.
54. *Bulletin of Duke University*, 1928-1929, 197.
55. See *Catalogue of Duke University*, 1927-1928, 307-08, for a general description.
56. Duke Law Library Acquisition Records 1927-1930; William Bryan Bolich Papers, Duke University Library.
57. Bolich 87.
58. Notes 30, 53, and 54 *supra*.
59. See W. P. Few Papers, Duke University Library.
60. See *Bulletin of Duke University School of Law*, Vol. 3, May 1931, 15-17.
61. See generally Bolich xii, iii; Baade, note 21 *supra*.
62. 1 *Law & Contemp. Prob.* 1-133 (1933).
63. Ames, *Lectures on Legal History* (1913), 368.
64. See 1955 Prolocutor, 6-7. Having served with distinction as Vice President from 1952-1960, Mr. Nixon bestowed upon the Law School the greatest single honor in its 100-year history when in November 1968 he was elected 37th President of the United States.
65. Bolich 89-90, classes of 1937, 1938, 1939.
66. Noel et al. v Olds, et al., 138 F.2d 581-82, 78 U.S. App. D.C. 155-56 (1943), cert. denied, 321 U.S. 773, 64 S. Ct. 611, 88 L. Ed. 1067 (1944).
67. See William Bryan Bolich Papers, Duke University Library.
68. See *Catalogue of Duke University School of Law*, 1943-1944, 12, 13.
69. Bolich xiii. A list of the faculty from the beginning of the Law School through 1948 appears at XIX.
70. *Bulletin of Duke University, The School of Law*, Vol. 21, March 1949, 26-31.
71. Bolich 84-94.
72. *Id.* xv-xviii.
73. Its members were Professors E. C. Bryson, Chairman, W. B. Bolich, E. R. Latty, M. G. Shimm, and D. F. Stansbury.
74. In 1969 both the Legal Aid Clinic and the Department of Legislative Research and Drafting resumed.
75. Principal participants in the dedication exercises were Provost R. Taylor Cole; United States Senator John Sherman Cooper; Solicitor General Archibald Cox; Professor Walter Gellhorn, President of the Association of American Law Schools; Dean E. R. Latty; Charles S. Rhyne '37, former President of the American Bar Association; Chief Justice Earl Warren; and B. S. Womble '04, Chairman of the Executive Committee of the Duke University Board of Trustees and of its Law School Committee. See 20 *Duke Law Reporter* No. 1, Nov. 1963.
76. *Durham Morning Herald*, Dec. 15, 1966, p. 2A. on July 1, 1969, official relations between the Law School and the Bar Association were resumed.
77. Professor A. Kenneth Pye became Dean on September 1, 1968.
78. See Geographical Directory, Duke Law School Alumni (Spring 1967).