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Foreword

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This issue is a special one for, in a continuation of the North Carolina tradition of distinguished scholarship in historic preservation law, the *North Carolina Central Law Journal*, in this symposium issue, is honoring Robert Stipe, one of America's pre-eminent preservation lawyers and teachers. A renaissance man of wide and deep learning, Bob Stipe (aided and abetted by his life-long companion Josie Stipe) has had an enormous impact on the preservation movement in America in general and in North Carolina in particular. A long-time trustee of the National Trust for Historic Preservation, Bob has served on the faculties of the Institute of Government at the University of North Carolina at Chapel Hill and of the School of Design at North Carolina State University. He has also been the director of the North Carolina Division of Archives and History. Bob's influence can be measured in his being quoted by Justice William Brennan of the United States Supreme Court in 1978 in the landmark historic preservation case *Penn Central Transportation Company v. City of New York*.[1]

This symposium leads off with tributes from several of Bob's colleagues: James Biddle, President of the National Trust for Historic Preservation; John Sanders, Director of the Institute of Government at the University of North Carolina at Chapel Hill; and Rufus Edmisten, the Attorney General of North Carolina. Each offers his own perspective on Bob Stipe's multi-faceted career.

Beyond honoring the man himself, the *North Carolina Central Law Journal* Symposium is appropriate because North Carolina is without question a pre-eminent state in historic preservation. From the Historic Preservation Fund of North Carolina to Stagville Center, from the Attorney General's office to the National Trust for Historic Preservation in Washington, D.C., the private and public accomplishments of North Carolinians are unsurpassed. The *North Carolina Central Law Journal* endeavors to continue a tradition of productive scholarship that for the past decade has been the almost exclusive province of North Carolina law schools. Indeed, Bob Stipe was among the first to recognize that there was such a thing as preservation law, and he encouraged two previous preservation symposia published in *Law and Contemporary Problems* in 1971 and in the *Wake Forest Law Review* in 1976.

1. 438 U.S. 104 (1978).

Historic preservation law only recently has emerged as a separate field within the rubric of real property. The spread of historic districts and adaptive re-use, the *Penn Central* case, the preservation provisions under the Tax Reform Act of 1976 and the Revenue Act of 1978, litigation over the meaning of the Historic Preservation Act of 1966, and statutory modification of common-law rules of conveyancing and tort liability have highlighted this period. Such evolution obviously warrants scholarly attention.

The substantive portion of the issue begins on a retrospective note. The Board of Editors have chosen to reprint two columns by Robert Stipe from *Preservation News* first published in 1970 and 1972. Hardly an antiquarian indulgence, these columns portray Bob Stipe's early recognition of preservation law as a separate field and serve as a point of departure for his 1980 essay reflecting on what the intervening decade has meant for preservation law and what the next decade may bring.

In the past decade one of preservation law's most visible accomplishments has been the revitalization and adaptive re-use of urban commercial centers. San Francisco's Ghirardelli Square, Boston's Quincy Market, and, for North Carolinians, Carrboro's Carr Mill readily come to mind. Arthur P. Ziegler, Jr., President of the Pittsburgh History & Landmarks Foundation and a pioneer in the field, offers a national perspective to urban commercial revitalization.

For preservationists in North Carolina, 1979 was an important year. Following extensive deliberations by the Attorney General's Select Committee on Preservation Law Revisions, the North Carolina General Assembly substantially revised the state's preservation statutes. Keith N. Morgan, of the North Carolina Division of Archives and History and a member of the Select Committee, discusses the statutory changes and the intent of the drafters. His discussion should prove indispensable to anyone practicing under the new statutes.

Private planning, not only in preservation law but also in land use generally, has always run a poor second to the police power, at least in the hearts and minds of law professors. For those who favor planning through voluntary agreement, the emergence of the private preservation revolving fund has been one of the most exciting events in recent memory. In addition, North Carolina is fortunate in being the first state in the nation to have a statewide revolving fund that has in the past few years rescued and encumbered many important properties. In his discussion, Myrick Howard, Executive Director of the Historic Preservation Fund of North Carolina, focuses on the legal aspects of a revolving fund and the use of covenants and easements for preservation purposes. His insights are all the more important because of North

Carolina's joining those states that have simplified the common law rules of conveyancing that formerly so impeded private planning.

The brunt of the exercise of the police power for preservation purposes falls, at least at present, on the state and local level. Furthermore, as a result of the Supreme Court's sanction given in the *Penn Central* case, an increased assertion of power by state and local authorities is anticipated. My article surveys developments in state preservation law since 1976 and includes an appendix to all preservation statutes and uncodified session laws in the fifty-six American jurisdictions.

To be sure, those who wish a technical reference to existing law will find it in my article. The article, however, has a second and more important purpose: to ask some hard questions about the preservation movement and its commitment, or lack of it, to the survival of democratic capitalism and the freedom of the individual. The rise of neoconservatism in recent years and the familiar insights of such long-established scholars as Friedrich Hayek, Milton Friedman, and Russell Kirk suggest that a re-evaluation of the role of the state in historic preservation and of preservationists in our society should be made. This reevaluation is a prelude to the privatization of the preservation movement as part of a larger confinement of the power of government throughout our society.

Case law is vitally important to the lawyer and scholar, and Bob Stipe began to collect preservation case law during his Institute of Government years. Stephen N. Dennis, Associate Chief Counsel, Landmarks and Preservation Law, at the National Trust for Historic Preservation, has continued this work and has prepared a comprehensive annotated guide to all American preservation case law, both state and federal. It has the added virtue of including many unreported cases not readily available in most law libraries.

The student works section of this symposium issue leads off with a comment that examines the Historic Preservation and Conservation Agreements Act passed by the North Carolina General Assembly in 1979, and will be of special interest to North Carolina lawyers and preservationists as it describes a statutory approach to historic preservation that is increasingly widespread.

The symposium concludes with a useful student work that establishes a degree of continuity in the literature. The 1976 symposium in the *Wake Forest Law Review* contained a bibliography to legal periodicals dealing with historic preservation and aesthetic regulation for the years 1922 to 1975. With the outpouring of scholarly work on preservation law in the past four years, the Editors decided to update the previous bibliography with a supplement covering the years 1975 to

1980. This guide to the literature, along with the statutory appendix and the case law annotation, should aid practitioners and scholars in their research.

As is proper, this symposium is offered as a service both to the practicing bar and the larger community of scholars in the law schools. Accordingly the issue addresses itself both to the practical and the abstract, offering pragmatic problem-solving and reflections on policy. This duality of enterprise is in keeping with the historic mission of law schools within the university setting. John Masefield, the British poet laureate, said it best. To him, a university was an intellectual community where "the free minds of men, urged on to full and fair enquiry, may still bring wisdom into human affairs . . . . [and] uphold ever the dignity of thought and learning and . . . exact standards in these things." This symposium is offered as a hopeful augury of that ideal.

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