

A JANUARY REPORT

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THE FOLLOWING IS THE TEXT OF REMARKS DELIVERED BY DEAN FREDRIC C. TAUSEND TO THE ANNUAL MEETING OF THE LAW SCHOOL'S BOARD OF VISITORS AT THE NORTON CLAPP LAW CENTER ON JANUARY 16, 1981.

President Phibbs, Judge Wright, Members of the Board of Visitors, Faculty, Students, Friends:

When President Phibbs, Judge Wright, and I began to make the plans for this meeting last November, the first thing I did was to read for the first time the University's guidelines for Boards of Visitors. Before I read those guidelines, I was under the impression that the Law School's Board of Visitors was intended to be a blue ribbon booster club for the Law School. I discovered instead that the guidelines' statement of purpose begins with the following excerpt from a Harvard Visiting Committee report of 1889:

Nothing would tend more directly towards holding the several departments of instruction up to a high standard of activity and efficiency than a consciousness among those in charge of them that their work was sure of intelligent appreciation if good, and equally intelligent criticism if poor.¹

The guidelines which follow make it clear that this Board is an advisory body to the President and the Board of Trustees of the University and as such is the Law School's auditor.

The roles of auditor and supporter, however, are not necessarily inconsistent. A constructive critic working within the framework of the University can often be the most effective advocate of the institution to the community at large. This Law School needs and wants a board of visitors whose members are prepared to offer constructive criticism along with active sup-

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1. UNIVERSITY OF PUGET SOUND, BOARDS OF VISITORS GUIDELINES 2.1(a) (1980).

port. We are confident that we have, in you, that kind of a board of visitors.

Although in past years, we have held the annual Board of Visitors meeting in the fall—something which was not practical this year because of the ceremonies dedicating the Norton Clapp Law Center—I believe it is both symbolic and useful that this meeting is being held in January. The first month of the year is named after the Roman God, Janus, the God whose image is shown facing in two directions. Janus looks simultaneously to the past for guidance and to the future with hope. Janus is, I believe, the right symbol for a young law school with an impressive beginning and the promise of a truly distinguished future.

Moreover, it is useful to meet in January because by now we have completed the preparation of the annual budget for the following year—a process which requires us to consider and evaluate our goals and the appropriate means of implementation. We have completed a semester and have a reasonably good picture of our recent gains and any new difficulties which have arisen as a result of our progress. In January, if we are seeking to add new faculty members for the following year, as we are this year, we are in the midst of that process. Finally, our admissions program is far enough along to give us some good preliminary impressions of our next entering class. These topics will be the subject of discussion throughout the meeting. Today, I want to talk with you about several matters that, I believe, are of paramount importance to our immediate and long-range future—matters about which I believe you are particularly suited to give counsel and help.

I began my deanship on January 1, 1981, fifteen days ago, but the transition and preparation began in August, shortly after my appointment by President Phibbs. It was then that Acting Dean Donald S. Cohen and I worked out a procedure for a smooth transition and a crash course for me on how to become a law school dean. My instruction began at once and proceeded at an accelerating pace from September to December. While I still have much to learn, I feel ready and prepared to tackle the job. If that feeling is justified, it is because I have had superb teachers. All of the faculty have been helpful, supportive, and patient. Three persons have made special contribution to my training: President Philip M. Phibbs, University Vice President for Financial Affairs Ray Bell, and Donald Cohen. Now it is my obligation to give them a good return on their investment.

In describing the principal challenges that I see confronting the Law School over the next three to five years, I divide my observations into several categories and address them in order. I begin with the Law School's student body.

THE LAW SCHOOL'S STUDENT BODY

Many of you are, no doubt, aware of national studies projecting a decline in law school enrollment now and for the immediate foreseeable future, a trend already affecting some law schools. This year, at least, that trend did not hit our law school. Instead, we were hit with the largest first-year class that this school, or any other school in the Northwest, has ever enjoyed. Over four hundred fifty students matriculated here in September; four hundred thirty-three of them enrolled in the second semester, giving the school a mid-year attrition rate slightly lower than in the past. The reasons for the large first-year class are several. It was not planned. The normal and desired size for our entering class is between three hundred and three hundred thirty full-time students; we plan to return to that goal next year.

In part, the over-enrollment that we experienced this year was due to insufficient historical information that led to some miscalculation, and, more significantly, our need to be sure, in the light of the almost universal predictions of declining enrollment, that we would not have a class too small to meet our budget. We believe that we are now in a position to minimize the effect that those factors will have on our enrollment in the future.

The size of the class also stemmed from our failure adequately to assess the attractiveness of the law center concept and the new facility, as well as the growing reputation of the University of Puget Sound Law School. To the extent that we can implement the law center concept and maintain and increase our growing reputation for excellence, I am confident that we can buck the trend of declining enrollment. To do so, each year for at least the next five years, we must improve the quality, the visibility, and, consequently, the reputation of the University of Puget Sound Law School, and enhance the distinctiveness of the program we offer. We shall not maintain this Law School at its present size of nine hundred students, nor, in all probability, at next year's projected size of approximately eight hundred thirty students. But, if we can avoid involuntary reduc-

tion of the size of our student body, then we can determine the size that this Law School ought to be with reference to factors relating to the furnishing of a legal education of the highest quality and the greatest degree of responsiveness to the legal profession. These factors include the optimum size of the faculty to assure sufficient direct student contact as well as diversity and stimulating exchanges of views, the desired size of classes for most effective instruction, the size and efficient use of the physical facility in which we operate, the national and regional demand for lawyers, and the effectiveness of this Law School in placing its graduates.

The size of the student body, however, is not nearly as important as is the quality. And, by quality, I definitely do not mean merely grade point averages and LSAT scores. I mean intelligence and willingness to work hard; I mean diversity—a student body comprising persons from different backgrounds economically, geographically, racially, and ethnically. The single most important characteristic of a first-rate law student is, in my opinion, motivation—the enthusiastic desire to become a good lawyer. The admissions committee and a special *ad hoc* committee are presently working on a phase of our admissions policy which will enable us to identify students whose index numbers² may be somewhat below our regular standard, but who, for other reasons, show the potential of doing well in law school. Such a policy carefully worked out and applied will enable us to increase our attraction to minority students, the economically disadvantaged, and others, including so-called “late bloomers.” It will include an early entry summer program and a continuing booster program as needed in the first year. This summer, in addition, we are hosting at the University of Puget Sound for the entire western region an early entry program under the sponsorship of the Council on Legal Education Opportunity (CLEO) funded by the federal government. All of these efforts are intended to help us retain and increase the vital diversity of our student body.

The diversity we seek should be intellectual as well. Legal

2. For those of you who may be unfamiliar with the terminology, the admission index number is a combination of the applicant's grade point average multiplied by 100 plus his LSAT score.

Editor's Note — In March 1981 the faculty admission committee formalized the criteria for the Law School's alternative admission policy consistently with the recommendations of the *ad hoc* committee and Dean Tausend's remarks.

education has traditionally been regarded as narrowing. While a sharpening of the law student's analytical focus may require an intensity of effort leading to a narrowing of interests, we must guard against the excesses of that tendency and strive to make legal education a broadening experience as well. The best lawyers are well-rounded men and women. Sir Walter Scott observed that a lawyer without a background in history and literature is a mere mechanic; but that a lawyer with knowledge of these may venture to call himself an architect.³ I hope that both our admissions program and our curriculum will encourage the spirit of architecture. To shift the metaphor slightly, when Erwin Griswold was Dean of the Harvard Law School, he would make his point with the entering students that law school was all work and no play by telling us, "There are no glee clubs at the Harvard Law School." I believe that it is more than a sense of mid-life mischief which makes me determined to see a glee club at the University of Puget Sound Law School. I turn from this somewhat light-hearted suggestion to the most serious problem we face, the need to achieve financial independence from total reliance on tuition to cover operating expenses.

FINANCIAL INDEPENDENCE FROM TOTAL RELIANCE ON TUITION TO COVER OPERATING EXPENSES

One of the essential ingredients of a high quality, diverse student body, especially in a law school where the annual tuition next year will be \$4,860, is a major scholarship program. We already have some scholarships based on achievement and some based on need but we must increase our scholarship monies substantially in both categories. If a student is admitted to the University of Washington, he can attend for under \$800. No matter how much we continue to improve the quality of the education we offer, that differential is impossible to overcome without a major scholarship program.

This Board of Visitors meeting is not the time or place to initiate a major fund-raising campaign. But I would be less than responsible if I did not point out to you the importance in the years immediately ahead of raising money that can be used to fund scholarships and hopefully to endow several professorships. A law school that remains, as U.P.S. is now, totally dependent

3. W. SCOTT, GUY MANNERING 294 (1917 ed.).

on student tuition to meet its operating expenses, cannot achieve either the stability or the excellence that we are all determined to gain. When I was interviewed for the deanship, I stated these views to President Phibbs and members of the Board of Trustees. At the same time, I pledged to them that any such fund raising would be embarked on not as a separate program of the Law School but as part of the overall program of the University of Puget Sound. In my view, this approach is the right one and the one most likely to assure success.

At a future time, after I have had the opportunity to consider alternative plans with President Phibbs, University Vice President Shirley Bushnell, and members of this Board and the Alumni Association, we can consider in detail the best ways to meet this challenge. But we must face it directly and begin to meet it soon. In my reference to fund raising, I mentioned the possibility of endowed chairs at the Law School. That leads to the subject of the faculty.

THE FACULTY

We have presently twenty-four full-time career faculty members, seventeen of whom have been awarded tenure. They are persons who earned their degrees with distinction at a number of nationally-recognized law schools. Many of them have had substantial experience in private practice, in government service, or in teaching before joining the Law School faculty. They are a young faculty; they are a good faculty, marked particularly by a desire to teach.

In describing the type of creative intellectual atmosphere one strives for on a law school faculty, I am reminded of a passage from the autobiography of the great Mexican artist, Jose Orozco which captures the essence of the adversary process. Orozco tells of an evening he spent in New York in the late thirties with several companions discussing vital and timeless questions. Each participant in the discussion took a different position constantly challenging the view of the others. Describing the evening, Orozco states:

Without conflict there would be no films, no bull fights, no journalism, no politics, no free struggle, nothing. Life would be most boring. As soon as anyone says "yes" it is necessary to answer "no". Everything should be done against the grain, against the current, and if some insensate fellow proposes a remedy that would do away with the difficulties, we must crush

him at whatever cost, for civilization itself is at stake.⁴

It is that kind of excitement, that kind of willingness to do things against the grain, that will stimulate the greatest contribution from our gifted faculty and will attract to the Norton Clapp Law Center creative and energetic men and women who want to devote their lives to the training of people who will become America's lawyers. I am confident that we have at this Law School now, not yet the fact but certainly the imminent potential, for that kind of an atmosphere.

The school's previous deans and faculty members have been able to recruit our present faculty for several reasons. A principal attraction has been and is the school's location in one of the nation's most favored regions. But, there is a danger in being situated in an exceptionally attractive and livable area. It can lead to complacency—complacency about productivity and complacency about compensation. We must recognize that to attract and hold the best, intellectual stimulation without adequate compensation can go just so far. We have, in the past two years, improved our faculty salary scales in comparison with other institutions to some extent. Of 161 national law schools reporting salaries to the American Bar Association, the University of Puget Sound Law School now ranks 96th on a comparative scale which combines base salaries and fringe benefits.⁵ We have moved slightly upward on this scale during the past two years. We must continue to move upward to retain quality faculty and attract additional scholars and teachers of outstanding caliber.

REALIZATION OF THE LAW CENTER CONCEPT

At the time of the dedication of the Norton Clapp Law Center in September, we were excited and enthusiastic about the new Law School building and pleased with what we saw. We had been in our new quarters for only a few days and could not then be certain that it would function on a par with its appearance. While there are, of course, some problems and while we still have a lot to learn about the building to be able to take maximum advantage of what it has to offer, we now all know that it works exceedingly well.

4. J. OROZCO, *OROZCO AN AUTOBIOGRAPHY* 72 (1962).

5. Confidential memorandum from James White, Consultant on Legal Education to the American Bar Association, to Deans of ABA approved law schools, Median Base Salaries and Fringe Benefits by Rank for Full-Time Teachers 1980-81 (Nov. 5, 1980).

One way to state the principal challenge that lies ahead of us is: To fulfill the promise implicit in the Norton Clapp Law Center.

When Chief Justice Burger was here for the dedication of the Center in September, he met with the faculty and made some suggestions that indicated what the law center concept might mean to him. The Chief Justice stressed the importance of integrating into our faculty and curriculum outstanding practitioners and members of the bench. Certainly, one way to fulfill the promise of a law center is to develop a means for bringing the best influences of the profession to bear upon the training of those who will shortly become members of that profession. The selective and well-planned use of judges and practicing lawyers as members of the school's adjunct faculty and, from time to time, as full-time visiting professors can be an enriching experience for the students, for the career faculty, and for the practitioners and jurists. I believe that the school should select a core adjunct faculty of not more than fifteen persons at any one time; that our selected adjuncts should be given a brief training program, including guidance on teaching methods, available texts, grading standards, and the like; and that each adjunct should be assured the opportunity and, in return, make a commitment to teach his assigned course for at least two and preferably three consecutive years. Preparation and continuity should enable the school to derive greater value from its adjunct professors while, at the same time, enabling our part-time faculty to benefit more from their teaching experience. The program should also include a scheduled rotation of a portion of the core adjunct faculty every three or four years.

This semester we have inaugurated, as an experiment, a course team-taught by a career faculty member and an adjunct professor. The first course to test this approach is the Antitrust course currently being taught by career faculty member Richard B. Hirst and me. Since I was lead counsel in several major anti-trust cases as recently as seventeen days ago, I believe I still qualify as a practitioner. Professor Hirst and I have planned the course syllabus together and are present at all classes. One or the other of us takes primary responsibility for a series of classes in alternating sequence. We are encouraged by the initial responses that this approach will be of value to the students and to both the faculty participants. I hope that we can have at least six such team-taught courses offered over the next several years.

This Law School and its faculty are interested in complying with the spirit of those proposals made by American Bar and federal court committees calling for greater availability of law school training in professional skills, including legal writing, trial and appellate advocacy, counseling, negotiation, and drafting. We have a clinical program which will accommodate up to twenty-four students a semester. Last month, the faculty approved, on an experimental basis, an externship program under which students will be permitted to earn credit for carefully-supervised outside experience. Under the general guidelines adopted by the faculty, we have now approved two externship positions—one with a court of appeals judge in Alaska; the other with the Northwest Women's Law Center in Seattle.

I believe that this Law School has an obligation to offer to our students, particularly in the third year, an increased opportunity to receive supervised practical experience. The most recent figures which have been made available to me from our Placement Office show that close to fifty per cent of our 1979 graduates went into practice by themselves or with small law firms.⁶ While small firms can, in many instances, furnish support and close supervision for the new lawyer, these figures confirm what many have observed, namely, that an increasing number of lawyers are entering the practice for the first time either unsupervised or undersupervised. Bar association executives with whom I have spoken have made the same observation and indicated their concern. This phenomenon is not, of course, peculiar to the graduates of this Law School; but, as the largest law school in the Northwest, I believe that we have a particular responsibility to see that sufficient training is furnished in law school and for a reasonable time period thereafter. In meeting this responsibility, we should work closely with the organized bar to devise ways to provide guidance, constructive criticism, and practical training to those newly admitted lawyers who are unable to obtain such assistance through formal programs at law firms or in government or public law offices.

I have mentioned the need, nationally recognized, for us to increase the practical aspects of our training. This must, however, be done without abandoning or diminishing the indispensable role that the Law School must play in sharpening our students' analytical powers and recognizing scholarship as a vital

6. Statistics on file in University of Puget Sound Law Review Office.

attribute of every good lawyer. We must expand those courses and seminars in our curriculum which probe deeply into jurisprudence and the philosophical bases of the law. One of our goals should be that graduates of the University of Puget Sound Law School not be content with the law as it is but will ask, "How should it be?" The best way to cultivate such graduates is to confront them with the question while they are still in law school.

Are these proposals asking too much? I think not. You have perhaps heard the expression that the third year of law school is the year in which "they bore you to death." There is an apocryphal story that this truism was first uttered by Rutherford B. Hayes when he was in his third year of law school. Hayes, you will recall, went on to become one of America's more boring presidents and is, I might add, our only president to date who was a graduate of the Harvard Law School. By developing more diverse and stimulating options for our third-year students, both in skills and in scholarship, I believe we can make a direct attack on the boredom of the third year.

I have outlined briefly some of the challenges facing us, some of the problems which we must solve, and a few thoughts for the continuing development of the school. But overriding these particulars, there is a question that is seldom asked. A number of years ago, Robert Maynard Hutchins, who had been Dean of the Yale Law School and Chancellor of the University of Chicago, posed the question, "What is the purpose of the Harvard Law School?"⁷ I paraphrase that question: "What is the purpose of the University of Puget Sound Law School and the Norton Clapp Law Center?"

Members of the faculty and many of you will come up with different answers to that question. My answer is: To cultivate men and women who will become America's lawyers, judges, and law teachers. Crucial to that statement of purpose is a definition of what an American lawyer ought to be. No society has ever placed as much emphasis on the rule of law and the ideal of a government of laws as has our nation from its founding. Over a hundred years ago, Alexis de Tocqueville observed accurately that "scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial

7. See Nader, *Introduction to J. SELIGMAN, THE HIGH CITADEL* at xiii (1978).

debate.”⁸—in other words, a legal question. De Tocqueville’s observation, made in the nineteenth century, seems today like a prophecy of what would happen in the twentieth century. Indeed, de Tocqueville saw the influence of American lawyers as essential to the survival of the Republic. “I cannot believe” he said, “that a Republic could subsist at the present time, if the influence of lawyers in public business did not increase in proportion to the power of the people.”⁹

Instilling in our students a sense of a lawyer’s special obligations and social responsibilities while, at the same time, furnishing rigorous training in the principles of law and the skills of legal analysis, should, I believe, be the guiding purpose of the University of Puget Sound School of Law.

At the beginning of this report, I made reference to the God Janus. Like that Roman God, we should look to our own past and the many valid elements in the tradition of American legal education and build on them. At the same time, we should look ahead and be willing to experiment and to welcome the new so that we can make our own distinctive contribution. I ask each of you to join with the faculty, with President Phibbs and the University administration, and with me in addressing the exciting and difficult challenges which are ours to meet.

8. 1 A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 270 (H. Reeve trans. 1971).

9. *Id.* at 266.