

Following is Dean Kimball's report to the alumni on the crisis in the Law School. It is of general interest to all who are interested in the Law School and its future.

REPORT TO ALUMNI

By the Dean of the
University of Wisconsin
Law School, May 1, 1971

Introduction

Previous reports to you have usually been optimistic in tone, or else routine reporting of facts about the school. Today we are faced with problems of great magnitude, and I propose to present the facts about the "crisis" as accurately as I can in brief compass.

The origins lie in the late 1950's and 1960's, when higher education was enjoying favor in the State Capitols, in Washington and with the foundations. But enhanced expenditures went mostly into the sciences and law schools got relatively little of it. One reason was that the increasing enrollments were in other fields, not in law. Our enrollment in 1958 was 494, in 1968 only 587, an increase of about 19% in the decade.

The turn into the 1970's brought changes: the downturn in the economy, the ending of student pressures at the freshman level, disenchantment with the universities, and austerity on the campuses. The budget squeeze finds the universities with heavy commitments to enlarged programs built in better days, from which it is hard to disengage. Now it is the law schools' turn to have exploding enrollments, unfortunately absent the affluent circumstances of the 1960's.

Law schools start from a very low base. They have always been under-budgeted. Long ago we were caught in a pattern of cheap, mass-production education, even though we are training students at the graduate level for the most intellectually de-

manding of the professions, whose complexities increase daily. The basic budget figures tell the story best. In the state's budgeting process for Madison, the following figures are currently used: freshmen and sophomores, \$808; juniors and seniors, \$1,249; master's candidates, \$2,414; Ph.D. candidates, \$2,114; law students, \$1,423; and medical students, \$7,131. Law students average 15 class hours, master's candidates 12, and Ph.D. candidates 7. On a per credit basis, law students are \$95; master's candidates, \$201; and Ph.D. candidates, \$302. At current tuition rates, resident law students pay 42% of the amount the process allows for them, non-resident law students, 149%; master's candidates, 24% and 88% of tuition, and doctoral candidates 28% and 100%. Tuition of law students generates about 60% of the total direct budget of the law school. I trust no one is surprised when I express a feeling that the law school has been systematically short-changed.

I have no personal devils and do not blame any person, except perhaps ourselves. We have been poor advocates. Specifically, I attach no blame to the Madison campus administration which has during my tenure been sympathetic and helpful, though limited in what it can do. Once a unit is in a pattern of cheap education it is hard to break out of it, because the historical costs, whether inadequate or excessive, are built as a base into the whole budgeting process.

The Enrollment Pressure

We had 587 fulltime law students in fall of 1968, 654 in 1969 and 771 in 1970. In addition to regular law students we have traditionally opened law classes to particularly qualified students — usually candidates for graduate degrees in other parts of the University — whose areas of special interest relate to the law courses they wish to take. These days the number of such non-law students in one or more law courses runs to perhaps 50 each semester.

When the new Law Building went through its planning stages in the 1950's, a study of long term patterns indicated that population growth, law school enrollments and the size of the practicing bar all followed more or less the same rate patterns. This suggested that future legal education needs of the State could be estimated perhaps as well from projections of general population growth as from any other factors. Thus relying on the anticipated growth of Wisconsin's population, it was assumed that a Law Building

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THE GARGOYLE

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sufficient for 850 students would meet needs for state supported legal education until 1980 or so. But we hit 1980 ten years early, for with the 771 fulltime law students and 50 more non-law students in our law classes last fall we approached the 850 capacity for which the building was designed. With the prospect of 875 to 900 fulltime law students on hand for fall 1971, despite our strenuous efforts to hold the line on admissions, and the probability of 50 or so non-law students, we will overflow the building and be forced to conduct perhaps a dozen or so classes each semester outside the law building.

The increase in students in two years, from 1968 to 1970, was over 31% compared with 19% in the previous decade, and a pessimistic forecast for next year would add another 19% to the 1968 base, a possible total growth of 50% in three years.

Budget. This increase must be evaluated not only in terms of the inherent problems created by large size and rapid growth, but in relation to resources available. Our direct budget for 1968-69 was \$876,000; for 1969-70, \$982,000; and for 1970-71, \$1,032,000. We have received no clear indication that it will be increased substantially, if at all, for next year, despite our pressing needs. From 1968 to 1969 the increase was less than 12%, and this year it was 6%, for a total of less than 18% on the 1968 base. Inflation robbed us of about 12% of that, so our effective gain was about 6% in the budget for a student increase of over 31%.

Faculty Size. A good faculty like ours comes and goes. There are absentees on leave and research grants and public service jobs, all paid from other budgets. There are varying but heavy administrative tasks. They are hard to count, therefore. A rough measure of effective faculty size is the number of full and part-time teachers teaching classes per semester. That number averaged 30 in 1958-59, dropped slightly in the next two years, and was 37 for each of the last three years. The increase in the decade from 1958 to 1968 was

23% while students increased 19%. But students increased in the last two years by 31%, the faculty not at all. If it increases next year, it will have to be from part-time teachers. Even if we had plenty of money, the market is picked over at this date, and people of a quality commensurate with the distinction of this school at a price we can pay are scarce. For beginning teachers we are almost competitive, but we average around \$3,000 below schools of comparable stature for teachers in their middle years and more than that at the top. There are 39 schools with higher top salaries than ours, though our highest salaried professor is one of the superstars of legal education. Not only does our salary disparity make initial hiring difficult, but it renders us very vulnerable to raids thereafter.

Dean Kimball invites all alumni to meet their friends and classmates in Suite E, Lakelawn Lodge, on Wednesday afternoon, June 16, during the State Bar Meeting.

Other Budget Problems. I will not dwell on other budget problems. They are too many for today. But one problem besides faculty size and salary structure is too crucial to ignore. For 7 years our library book budget has been constant, at \$44,000. This is just over the minimum for approved law schools, and far the smallest in the Big Ten. A reasonable estimate is that it will buy in 1971 about 65% of what it would buy in 1964. Our effective book budget is about a third less than in 1964.

Admission Pressures

Enrollment pressure is only the top of the iceberg. I have told you of the increase in students we must handle, but not of the applicants we must reject. During the late 1950's and the early 1960's we developed a more restrictive admissions policy. Twenty years ago we had an open admissions policy, but we flunked

out a third to a half of the entering class. The state was then spending large sums and diluting the educational experience for the survivors just to "give everyone a chance", though a stricter admissions policy would have greatly reduced the cost to the State and improved the education of the rest. We are accused of limiting admissions to make a more elite, prestigious and satisfying place for ourselves. That is nonsense. I began teaching two decades ago in a school with a similar open admissions policy. The job was then easy. Though I now know much more, I must spend more time preparing to teach more challenging students than in my first year of teaching, two decades ago. Grading has become a nightmare—when I first began the grades were widely spread from A+ to E—. They were easily distinguished. Now the quality is generally high and differences are harder to measure. The first decade was easy—the last decade has been the hard one. And it gets harder year by year. If our egos need feeding they can most easily be fed by having large numbers of inadequate students to flunk out summarily. But we have forsaken that easy path. The question we ask now is not what kind of student body we would like, but what admissions policy serves the State best. We undoubtedly make mistakes but our criterion is right.

In 1968, the draft kept the entering class down to 256 and many of them disappeared during the year. That year we probably accepted everyone who should have been accepted, though reasonable men may differ on the point at which the probability of success justifies a state subsidy of nearly \$1,000 to teach a resident student.

In 1969, however, we met a new phenomenon, the proportions of which we did not then sense. About 1400 applicants appeared for the 300 seats at our disposal. We aimed at 285 and 307 showed up. Many were rejected who would have been accepted in any prior year. In 1970 we faced even larger demand. De-

spite widely distributed guidelines 1500 self-selected applicants appeared. Our aim was again 285. We got 335. The three classes together produced a student body of 771, which with 50 non-law students from the hill, is just within the size for which the school was built, but well above a suitable number for quality instruction with available faculty, which has not grown with the student numbers.

The phenomenon was a national one. Enrollment in ABA-approved schools jumped 31% from 1968 to 1970. The number taking the Law School Admission Test rose from about 50,000 for the 1968 year to 75,000 for 1970. This year all American Law schools together have been filled to within a thousand seats of total capacity. An increase of 2% in the entering classes would have filled them all. However, some well-informed people thought the peak was near and that demand would level off. After all, there were clear signs of impending saturation of the market for practicing lawyers.

But then came 1971 and the deluge. Instead of leveling off, the steep climb became a tidal wave. The 75,000 test-takers became 110,000 in one year. Our own applicants jumped from 1,500 to 2,000, most of them qualified on the criteria of three short years ago. Another entering class of about 300 would be too large for our resources but a burden that could be managed. However, two classes of 350 would swell it to 833 next year and 864 the year after, while classes of 400 would increase it to 883 and 954. Preserving the quality of education at the Wisconsin Law School under existing and anticipated circumstances demands the 300 figure, and despite many misgivings because of the good students we must turn away, we aimed again at about that figure.

But this year all the predictors have gone awry. Despite cautious administration by the admissions committee, current information points to a class that may mount to 400. It would be easy to go far

higher with students fully qualified by 1968 standards. But it would be irresponsible for us to grow without adequate faculty and facilities, and we see no prospect of making up the sharp recent decline in our position.

Solutions

The Wisconsin Law School does not exist to serve the comfort and convenience of the Faculty. It exists to meet the needs of the State of Wisconsin for lawyers and of Wisconsin residents for legal education. The needs of the state are for good lawyers and of Wisconsin residents for a good legal education. Education and good education are not the same thing. This school has traditionally provided a good legal education, and that is why students want to come here. The problem is how to continue to provide quality legal education for residents of this state.

Elimination of non-residents. The proposal that naturally leaps to the mind when overcrowding is mentioned is that non-residents should be eliminated. The solution is plausible but unsound.

First, we really are part of a nation and free flow of students across state lines is of great value to the state and the nation. The flow goes both ways. A parochial policy in Wisconsin would not only be destructive of this State's vital interest in attracting able people here, some to stay; it would also invite retaliation from other states that now educate Wisconsin residents.

Second, the argument is often based upon a supposed added burden imposed on Wisconsin taxpayers. That is a myth, as the figures I have given show. I do not suggest that a net profit to the state on legal education is an argument for having non-residents, but the fact that non-residents now pay 149% of the direct costs of their Wisconsin legal education negates any argument based on supposed burdens to the taxpayers.

Third, residents and non-residents



Dean and Mrs. Kimball

alike want to go here because it is a quality school. One factor making it good is a reasonable mix of non-resident students with residents. Wisconsin residents get the advantage of a prestigious and broadly based law school without leaving the State. Eliminating or substantially reducing the non-resident enrollment would in short order diminish the quality and prestige of legal education available here for Wisconsin students, and would cheat the very people it was supposed to help—the resident students.

Fourth, eliminating non-residents would scarcely touch the problem. If we eliminated them all we would still have to reject a great many residents who would have been admitted three years ago. More drastic action is needed—the rapid expansion of legal educational facilities in the State to meet the need. This is based on the assumption that as a state we should satisfy the demand of all qualified residents for a legal education, rather than limit the supply of lawyers by a guess at the needs of the practicing bar.

Expansion at Madison. There are only two basic ways to provide additional facilities. The first is expansion at Madison. There are both advantages and disadvantages to this solution. Among the advantages, the first is simplicity. The school is in being, with an experienced faculty and administration. It can be argued that there are still economies of scale to be achieved by further

expansion, though their magnitude is easy to exaggerate. They would be mostly in avoiding the need for duplication of the library.

A second advantage is attachment to one of the great universities of the world.

A third advantage is ease of contraction if the present demand for legal education drops back. There is little indication, however, that the demand will be short-lived. It has many new causes.

But there are disadvantages to expansion in Madison. The first is that there is no prospect for adequate financing in advance of growth, under the budgeting process as I have seen it. We have already been caught in that trap and it has crippled us. Perhaps that could change but I should want assurances of it before considering expansion.

The second is that the present facilities are suitable only for the present student body and faculty, if even for that. Further expansion would require new facilities. This is no absolute barrier, but additional facilities can almost as easily be elsewhere. Additional faculty could as readily be hired for another law school. For teaching staff there are no more economies of scale to be realized. The faculty carries as heavy a teaching load as it could do.

Third, a larger school would make completely impossible administrative tasks that are now difficult and increasingly demanding. At the point we have now reached, those burdens seem to increase faster than size. This is closely related to the fourth point, that a larger school would reduce greatly the kind of community between faculty and students and among each group that is an important component of a quality institution. Effective teaching means contact with students, which is harder to achieve as size increases, even if student-faculty ratios stay constant. Much has already been lost in recent years.

Fifth, unlike graduate students generally, who support themselves through teaching or research appointments, most law students pay

their own way and many are dependent on the local job market to avoid heavy indebtedness by graduation. Our enrollment has grown faster than the Madison job market and it would be desirable to be able to tap a new market for law-related jobs.

A New State Law School. If present demand is to be met, expansion is necessary. It could be elsewhere. Such action has both advantages and disadvantages, which are to some extent the counterparts of those with respect to expansion at Madison.

The first advantage is that a single state law school must try to be all things to all men. A second school would make it possible to narrow the definition of tasks of both schools, which could complement instead of duplicating each other.

Second, by proper location, a second school could bring the advantage of commuter education to a large number of students who find residence in Madison expensive, and thus reduce cost to many Wisconsin residents. To this cost advantage can be added the possibility of tapping a second job market for part-time legal jobs.

Third, a second school would make it possible for many years to admit all qualified resident students who applied, thus restoring the situation that existed in 1968, when the only question asked was whether a resident applicant *should* be given a state-subsidized chance at legal education, not whether there was room. Non-residents, too, could be admitted freely, since they pay the full cost of their legal education.

Fourth, it would preserve the advantage of the present situation at Madison—of permitting a faster pace of learning and thus the production of better lawyers for the state than can take place with undifferentiated students with a wide range of abilities. A second law school should be a good school but it would not at first attract large numbers of the best students, and the pace of instruction would be slower.

There are disadvantages to the creation of a new school.

First, it takes time to do it right. There should be a lead time of two or three years before it opens its doors to its first class. This presents a real problem in view of the urgency of the need.

Second, it requires careful consideration of location, so that it can best meet the needs of the State.

Third, it requires initial investment in plant and library, though such an investment would be trivial compared to many other educational investments that are being talked about. Since expansion at Madison would also require added facilities, the cost of a new school elsewhere is less burdensome than the concept first suggests.

Fourth, if there is any lingering doubt whether the admissions problem we face is permanent, and suspicion that it may diminish as the market for practicing lawyers gets more nearly saturated and placement more difficult, a new school seems harder to justify. There is little doubt, however, that old levels of demand have been left behind for good.

A Satellite. An intermediate solution which makes possible quicker action and also looks toward the creation of a second school is creation of a temporary satellite school elsewhere. It could be expanded into a second school if demand continued, or could be phased out if demand dropped off. Its flexibility and speed of establishment are its great advantages. It could probably be created

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WANTED—

**PICTURES FROM YOUR
LAW SCHOOL DAYS —**

Please identify:

**Group; year; occasion;
individuals, if possible.**

**ANY SIZE OR SHAPE CAN BE
USED.**

**WE PROMISE TO RETURN
THEM IN GOOD CONDITION.**

UNIVERSITY OF WISCONSIN
LAW SCHOOL
AWARDS CONVOCATION

Saturday, May 1, 1971

4:00 P.M.

Law School

AWARDS PRESENTED

U.S. Law Week Award:

For the most satisfactory progress during 3rd year..... Maris Rushevics

Mathys Memorial Award for Appellate Advocacy:

Selected at close of arguments on May 1..... Howard Eisenberg
James Barnett

Milwaukee Bar Foundation Moot Court prizes:

Selected at close of arguments on May 1..... Howard Eisenberg
Claude Moulton
Paul Hejmanowski

West Publishing Co. book Award:

For outstanding scholarly contribution to the Law School.... James Clark

William Herbert Page Award:

For outstanding contribution to the Law Review:
For Comment: "The Legislation Necessary to Effectively Govern
Collective Bargaining in Public Higher Education,"
1971, Wis. Law Review, 275..... Thomas Wildman

George J. Laikin Award:

For Note "Securities—Inside Information as a
Corporate Asset"..... Terrence Knudsen

William J. Hagenah Scholarship prize:

To the Editor of Law Review, elected April 30..... Richard A. Primuth
Presentation of Editorial Board, Wis. Law Review

Wisconsin Title Association Jacob Beuscher Award:..... Timothy Fenner

Jacob H. Beuscher Fund Scholarship:..... John E. Knight

Phi Delta Phi Outstanding Graduate:..... Carl Ross

Student Advocacy Award:

Award presented by International Academy of Trial Lawyers.
Student selected by the Faculty for excellence in trial and
appellate advocacy..... Howard Eisenberg

Wisconsin Law Alumni Association prizes:

First ranking student after 45 credits..... Jay Himes
Second ranking student after 45 credits..... Robert Heidt

Joseph E. Davies prize:

To the outstanding member(s) of the second year class: Scholarship
and contribution to the life of the school..... Lucy Gleasman, Jean Zorn

Daniel Grady prize:

To the graduating student—highest standing in studies..... Angela Bartell

Salmon Dalberg prize:

To the outstanding graduating student..... Angela Bartell

Order of Coif:

Bartell, Angela G. B.	Loring, John C.
Bell, Thomas D.	Magyera, Charles P.
Clark, James R.	Schoeffel, Jon M.
Dickey, Walter J.	Schulz, William J.
Frank, James Stuart	Wahlin, John D.
Grimwade, Richard Llewellyn	Weiss, Richard A.
Harring, Janet S. L.	White, William Ambrose
Heiser, Walter W.	Widder, Theodore Carl III
Knudsen, Terrence K.	Zoesch, Thomas J.
Long, James J.	

BOARD OF VISITORS
MARCH 19 MEETING
CURTAILED

The last great snowstorm of this past winter—which will live forever in memory—occurred on March 18 and 19. The Board of Visitors had planned its annual two day visitation for March 19 and 20. Scheduled were class visits, lunch with students, dinner with Faculty members, and a series of reports about the Law School's present state.

Classes were not held. Most of the visitors were unable to be present. The scheduled dinner with Faculty was cancelled. Visitors who were able to be present included Edwin Larkin, Eau Claire; John Tonjes, Fond du Lac; Herbert Terwilliger, Wausau; Justice Nathan Heffernan, John Shiels, A. Roy Anderson, Madison; Glen Campbell, Janesville. The program consisted of informal discussions with Faculty and students.

REPORT TO ALUMNI

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for the fall of 1972 if an early decision were made and resources committed. A small library and a building adapted from other uses would do for a start. The administrative headaches of operating two parts of a single school are its greatest drawback. But it does have possibilities worth exploring.

The Need For Action Now

Though my personal preference may be discernible in what I have said, I hope not, for a final judgment is premature. One thing I can confidently urge, however, in concluding this report.

It is important that study be begun at once to develop a plan of action. A committee should study the problem, consisting of representatives of the Law School, the Madison campus and University administrations, and the law alumni. That committee should report its recommendations at an early date, for implementation as soon as possible thereafter.