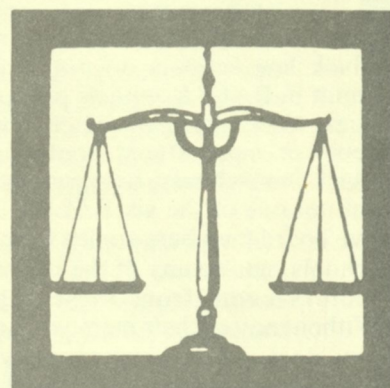


The Barrister

NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW

DURHAM, NORTH CAROLINA



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Number 1

The New Law School Building

H. E. Groves, Dean

January 16, 1978, marked the beginning of the work on our new law school building when men with chain saws began cutting down the stand of pine trees which covered the site at the corner of Alston Avenue and Cecil Street. It is regrettable that the trees had to be almost entirely removed. But the building, parking areas, access roads and sidewalks will cover most of the site. The sloping terrain will lend itself to attractive landscaping when construction is completed.

The traditional symbolic ground-breaking ceremonies were held on January 27th. The Chancellor invited a representative group of persons to a luncheon at the Ramada Inn. These included the two former deans, Professors DeJarmon and Sampson, who planned the building, the presidents of each class, Mary Rudd, First Year, Brewington Croswell, Second Year, Pamela Hunter, Third Year; representatives of the faculty, the alumni, the administration, the legislature, the bench, bar, and friends of the school. The group moved from the Ramada Inn to the site and turned several shovelsful of earth. Appropriate remarks were made by U. S. Attorney H. M. Michaux, the Mayor of Durham, President of the University of North Carolina, William Friday, Mr. William A. Clement, President of the Board of Trustees, Chancellor Albert N. Whiting, District Judge William Pearson, the class presidents, and others. The affair was attended by representatives of television and the press and received favorable coverage throughout the state.

The building will contain more than 75,000 square feet, distributed over four floors. On the ground floor will be located a student lounge, a canteen, lockers, student activities offices, including the Law Journal, and some library storage space, as well as the receiving area for library shipments.

The first floor will house a large Moot Court room, with an elevated circular seating plan. Also on this floor will be two large classrooms, the administrative offices and a faculty and staff lounge. The main entrance is spacious and will provide some lounge area for students and visitors. It will do double duty as a place for small

receptions. A compact serving kitchen is available for this use.

The second floor contains the library offices, faculty offices around the outside walls, and stack and reader space. Special features on this floor of the library include a student smoking lounge, a student conference room and a media room. Also on the second floor are four classrooms and complete facilities for the legal clinic, with offices for the director, the assistant director and secretaries, as well as two seminar rooms.

The top floor is devoted entirely to the library, with stack space and individual student carrels, and with both a student lounge and a separate student smoking room.

The architect for the handsome 3½ million dollar brick building is W. Edward Jenkins of Greensboro, who designed the new Communications Building on campus.

The contract completion date for the new building is July 9, 1979. However, approximately one month was lost because of severe weather at the beginning of site clearance. The pace has, however, picked up; and we are still hoping for occupancy at the beginning of the 1979-80 academic year.

The building will permit an increase in the student body. Present plans are that total student enrollment will rise to about four hundred and stabilize there. This means an annual entering class of about 150 students.



Proposal for Giving Predominantly Black Law Schools More Representation on BALSA's Executive Board

I. Introduction

The question was to BALSA's relationship to predominantly Black schools has often been asked. Although BALSA is supposedly a national organization that represents Black law students nationally regardless of the mixed make-up of the schools they attend, BALSA in the past has primarily focused its attention on the problem confronting Blacks attending predominantly white schools. Very little has been said about BALSA's position on the continuation of predominantly Black law schools; nor, has very much been said

about what policies BALSA initiates to alleviate some of the problems confronting Black students at Black law schools. This is not to say that BALSA is not concerned about predominantly Black law schools, but it should be noted that BALSA has not addressed the problems these schools are faced with on a national level. It is believed that this problem exists because the decision-makers of BALSA do not attend these schools. Although all BALSA board members and regional directors are elected in a democratic manner, the fact still remains

that students from predominantly Black law schools do not have the input in Balsa as their portion dictates. One-fourth of Black law students or more attend predominantly Black law schools; however, at present not one of the six Balsa executive board members comes from these schools, nor do any of the regional directors come from these schools. Without any of their members being in any decision-making capacity with Balsa, it is almost impossible for Balsa to be fully apprised of the problems confronting predominantly Black schools, nor can it be truly representative of the students attending these schools.

This proposal offers a plan whereby Balsa can be assured that problems confronting predominantly Black law schools can be fully appreciated by the organization. It is also a plan whereby Balsa can become more of an organization that truly represents Black students.

II. Objectives

Although Blacks attending predominantly Black law schools are not necessarily faced with a hostile internal atmosphere or administration, they are constantly faced with the problems regarding the existence of their schools. Year after year, Black law schools are threatened to have their accreditation revoked by the ABA. This is the ultimate problem facing most predominantly Black law schools. Although the ABA finds their curricula to be fine, for some reason or another, it can still find some area in which to reprimand these schools. For instance, at Southern University School of Law, for the past three years, the ABA has complimented the school on its academic curricula, but has questioned the school's accreditation because of limited building space, the number of full-time instructors, etc.

It is believed that Balsa does not fully appreciate the problems confronting Black law schools, primarily because students attending these schools are not given the input into the organization that they should have. Therefore, to alleviate this problem, it is necessary that Balsa develop a program whereby these students can be given a greater voice in the organization. If each predominantly Black law school is given one seat on the Balsa executive board, then the problems confronting each school could be more easily brought to the attention of Balsa. If Balsa was to increase its executive board to a number whereby it could give each of these schools a seat and at the same time, have one-third of the board members be elected at large, then the problem of Balsa's supposed enmity toward Black law schools will end, and Balsa will be a more representative organization.

III. Goal

This proposal asks that predominantly Black law schools be given one seat per school on the National Balsa Executive Board. This proposal asks that each predominantly

Black law school be allowed to develop its own means of electing representatives on the board. If this proposal is adopted, Balsa will be more representative of Black law students and their problems.

IV. Conclusion

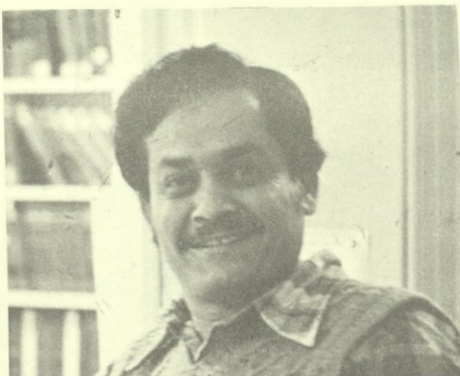
This proposal does not seek to give students attending predominantly Black law schools more representation than their share; rather, it is a means whereby the individual problems confronting students at each predominantly Black law school will be better heard. Since each Black law school accounts for such a significant number of Black law students, and since every Black law school is faced with its own individual problems, it is necessary that each school be given a seat on the executive board of Balsa in order for Balsa to fully understand their problems.

Balsa has a lot to offer predominantly Black law schools, if for no other reason than because it is in a position to focus on the problems of these schools on a national level. To fully understand the problems of these schools, it is necessary that this proposal be adopted. The Southern University Delegation sees this proposal as being very realistic, and hopes that you will give it the utmost attention.

Willie Rose, SBA President
Southern University School of Law
Baton Rouge, Louisiana.

NEWS ITEMS

ABA/LSD Silver Key Awards



Syed I. Hyder

Syed I. Hyder (class of 1978), Lt. Governor, ABA/LSD 4th Circuit (1977-78) and Jacqueline Sellers (class of 1979) ABA/LSD Representative at NCCU School of Law (1977-78) received Silver Key Awards from the American Bar Association/Law Student Division at the Spring Roundtable Conference of the Division held at Washington and Lee University School of Law, Lexington, Virginia on March 10 and 11. Syed and Jacki represented NCCU School of Law at the Conference which started in the evening of Friday, March 10 with an address by Pulitzer Award Winner Clark Mollenhoff who spoke on the "Political Pitfalls of a Philadelphia Prosecutor" in the Moot Courtroom of Lewis Hall. Saturday was a busy day at the Conference with general business meetings of the circuit, several rounds of National Appellate Advocacy Competition which was held

in conjunction with the Spring Roundtable Conference, workshops by proponents of Equal Rights Amendment and Womens' Caucus and finally banquet and award giving ceremony in the evening with an address by President of the ABA/LSD Michael Hollis of the University of Virginia. The most interesting feature of the day was the final round of the National Appellate Advocacy Competition in which teams from Washington and Lee University and the University of Virginia argued a problem concerning federal abstention doctrine. Winner was the team from Washington and Lee University and they will next argue in the National Round to be held in conjunction with the annual convention of the American Bar Association in August 1978 at New York City. Chief Justice Burger is expected to lead the bench in the National Round.

Jacki is Governor



Jacqueline Sellers

Jacqueline Sellers (class of 1979) took office as Governor of the Fourth Circuit of American Bar Association/Law Student Division (ABA/LSD) on March 12, 1978. Miss Sellers was elected to the post a day before at the Spring Roundtable Conference of the Division held at Washington and Lee University School of Law, Lexington, Virginia. Traditionally, home school of the Governor becomes the headquarters of the circuit. Accordingly, NCCU School of Law should expect to be the center of most of ABA/LSD activities in the Fourth Circuit comprising all law schools in Virginia, West Virginia, North Carolina and South Carolina in 1978-79. Such activities will include, among others, regional rounds of Client Counselling Competition (spring 1979) and National Appellate Advocacy Competition (spring 1979), and Spring Roundtable Conference of the Division (1979).

Cheek and Whisenhunt Are Finalists in Client Counselling Competition



Michael Cheek and Margaret Whisenhunt

Michael Cheek (class of 1979) and Margaret Whisenhunt (class of 1979) advanced all the way up to the final round of the Client Counselling Competition held at Washington and Lee University School of Law, Lexington, Virginia on March 4 and 5. They finally lost to the team from University of Kentucky. Teams from Wake Forest University, Louisville University, William and Mary, Washington and Lee, University of Richmond, and the University of North Carolina also participated in the competition which was sponsored by American Bar Association/Law Student Division.

Students Denied Membership in the Law Journal Board

There has been some recent con-

trovery with regard to admission criteria for Law Journal membership. On February 21, 1978 two second year students Michelle Jackson and William Fewell were denied membership on the staff of the Law Journal. Editor-in-Chief, Mr. Ben Alford stated in a memorandum addressed to these candidates that the reason for their exclusion was "lack of interest" in the Law Journal as manifested by their lack of work time. The excluded students have attempted to redress, what they claim was an unfair treatment by the Editorial Board of the Journal, by asking the Student Bar Association and Prof. DeJarmon to intercede. The SBA is trying to resolve this controversy on an organizational level.

Statement of Charles Markham Before City Council Hearing on Downtown Civic Center

In January of 1978, the Durham City Council chose to consider the recommendation by certain select advisors to build a new million dollar civic center in downtown Durham. Faced with the possibility of an increase in Durham property taxes to finance this project, several citizens including NCCU Law School professor Charles Markham were not so willing to endorse what seemed to be an unquestioning acceptance of the civic center project by the Council. Professor Markham sought to have the Council consider the impact on Durham property owners of such a costly project. The Barrister presents Mr. Markham's speech to a public meeting of the Durham City Council on January 1978 as an example of one professor's and the law school's concern that administrative agencies respond to the needs of the people concerned.

This is my third appearance at a public hearing before this Council. Nearly 20 years ago, I appeared to discuss a zoning matter, and I prepared a brief to present to your predecessors. I took it to the office of one of them. He passed it back across the desk to me. He said, "I can't read your brief. It *might* influence my decision." I hope and believe we have come a long way from conducting the public business in this manner; this public hearing is a healthy sign that we have.

Thirteen years ago your predecessors held a public hearing on the downtown urban renewal plan. On that occasion, the consultants were there with their charts, and the legions of the so-called establishment of Durham were there to voice their enthusiasm. Although not the only skeptical citizen, I was the only one who appeared to raise objections. I said: "If this plan is approved, downtown Durham will one day be the largest parking lot in the world surrounded by shopping centers." The Council approved the plan, 13 to 0. History will decide whether that decision was wise, but in a sense the verdict of history is in. If that plan had been more carefully considered, more thoughtfully executed, and more closely coordinated with development activity in other parts of the city, we would not be here tonight considering ways to pick up some of the pieces.

Again, I think it is a healthy sign for Durham that tonight I do not stand before you alone.

You have before you a plan which probably will require a public expenditure of millions of dollars. There are those who apparently on first seeing it, said "We can't get started soon enough." I say, "If this is not the best way to spend \$5 or \$10 million of public funds, we can't delay it long enough." I do not think this is a decision that can be made tonight.

More than 40 years ago, a committee of the U. S. House of Representatives wrote: "The well-learned lesson of democratic government with 'experts' is that they should be kept on *tap*, and not on *top*." Let Zuchelli and Hunter stay on *tap*, if they will; but the citizens who elected you expect *you* to stay on *top*, and to make policy for the City of Durham in a deliberate and unpressured way.

If you feel the need to proceed at once, I urge you to elect either options D or E. The two favored options, A and B, happen to be the two that would cost the most disruption of businesses, the greatest destruction of buildings, and the most public dollars. There is nothing sacrosanct about land within the "loop" or putting these buildings in "the mainstream of downtown commerce." The convention center in Chicago is so far from downtown Chicago they run shuttle buses to it. If the convention center and hotel attract the added development, some foresee, put it north of Morgan Street where there is plenty of vacant land to attract further development.

My basic objection to this proposal is that it is a piecemeal approach to the downtown problem. Neither Zuchelli and Hunter, the Downtown Foundation, the Downtown Advisory Committee nor this Council have come up with the *total* downtown strategy that we need, and as I have urged you in writing, that will only be possible if you broaden the base of your Advisory Committee and give it six months to consult with the best minds in the Re-

search Triangle Area; to determine what other cities have done; and to catalogue all available financial resources and changes in governmental powers that can be brought to bear to induce private investment in the downtown area. *Then* give this proposal the careful consideration it deserves.

This occasion is really one for "Believe it or not" or "Alice in Wonderland": here we have representatives of some of the most conservative forces in the community here to urge you to move ahead hurriedly on a plan to spend millions of tax dollars, and an academic and ex-bureaucrat asking you to go slow. I may have been one of those "pointy-headed" bureaucrats George Wallace used to talk about, but I did have responsibility for several years for programs with a budget of several hundred million dollars. I say this to suggest to you that I am not a woolly-minded ivory tower theorist here to derail the train of progress. I am here to say before that train moves one foot down the track, Stop! Look! Listen! Listen to the people and not just the representatives of some of them. Seek out their views and best judgment, and not merely tonight. The people are wiser than some may think, and wiser sometimes than the experts.

Charles Markham
January 23, 1978

LEGAL NEWS

Cloud Over the Sunshine Laws: N.C.G.S. 143-318.2

by Syed I. Hyder

Using a dictionary definition the North Carolina Supreme Court recently limited the effectiveness of the "open meeting" laws. The Supreme Court set aside a permanent injunction entered by the trial court enjoining the faculty of the School of Law of the University of North Carolina, Chapel Hill, from transacting faculty business except in conformity with North Carolina "open meeting laws." The relevant statute provides that all official meetings of *governing and governmental bodies* of the state including their subsidiaries and component parts thereof "which claim authority to conduct meetings, deliberate or act as body politic and in the public interest shall be open to the public." The Board of Governors of the University of North Carolina was held not to be a "group organized for government," as the statutory phrase *body politic* is defined in Webster's New International Dictionary 2nd Edition, and thus its component part, the law school faculty was held not to be subject to the restrictions of the open meeting laws. The court held that the use of the words *governing and governmental bodies* in the statute in conjunctive, denotes that the bodies subject to the restrictions of the statute must not only be governing bodies but they must also have some attributes of sovereignty typical of a governmental body. Since powers of the Board of Governors of the University of North Carolina are no different from powers of a board of gov-

ernors of privately endowed and operated university, which is obviously not a governmental body of the state, the Board is similarly not a governmental body subject to the restrictions of the statute. Justice Exum declined to join the majority, which according to him, was trying to tie the meaning of statutory words to some "esoteric notion of 'sovereignty'", and explaining these words with "classroom dictionary definitions." Without offering any possible interpretations of the statute in positive terms he concluded his dissent with these words: "The most simple and direct answer to the issue posed in this case is that the official meetings of the law school faculty should be open to the public." *Student Bar Assoc. Board of Governors v. Byrd*, 46 LW 2348 (1977).

Wrongful Life

In a case alleging negligent sterilization the Minnesota Supreme Court allowed parents of an unplanned child to recover compensatory damages from a doctor for the *burden* of rearing a healthy child. The court held that the cost of rearing the child to the age of majority is a direct financial *injury* to the parents caused by doctor's negligence in sterilization, for which compensatory damages are recoverable. Amount of damage was measured by computing the reasonably foreseeable cost of rearing the child with a set-off for the value of benefits conferred to parents by the child. The court disregarded public policy considerations in permitting parents to recover damages by proving their healthy child a net burden to them. *Sherlock v. Stillwater Clinic*, 47 LW 2227 (1977).

Appellate Division of the New York Supreme Court went a step further and recognized a cause of action for wrongful life on behalf of the unwanted child. After their first child died of a fatal hereditary kidney disease plaintiffs sought doctor's advice. Relying upon his professional opinion that the chances of their having any future baby with the same disease was practically nonexistent they planned another child who was born with the same defect, and died at the age of two. In suit against the doctor for negligent medical advice the issue was not just whether the doctor was liable to the child for causing his painful existence. In other words, if someone on behalf of the child could prove that he was worse off becoming a human being than he would have been had he never been born, then any person causing him to become a person causing him to become a human being would be liable to him for his wrongful life. The court failed to consider the difficulty in determining damages, for such a result, and went on to say that a breach of the established right of parents not to have a child is also tortious to the fundamental rights of a child to be born as a whole, functional human being. Thus the court has opened the door for suits against parents, doctors and others, by anyone who can prove that his existence which was caused by the defendant is a burden on himself. *Park v. Chesin*, 46 LW 2336 (1978).

OSHA Crippled

Fifth Circuit Court of Appeals recently invalidated a regulation by Secretary of Labor under Occupational Safety and Health Act giving employees right to refuse to work under circumstances confronting the employee at the work place, which would cause him to conclude that there is real danger of death or injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. Agreeing that the regulation is designed to achieve an end consistent with the purpose of the Act the court held that the means adopted by the Secretary were deliberately rejected by Congress. Outlining the required procedure for protection from an "imminent danger" at the work place, the court found that the worker, on discovery of such danger must notify the secretary who, if satisfied that reasonable ground exists to believe the informer, will send an OSHA inspector to investigate. If the inspector believes that such a danger exists he will recommend to the secretary that immediate injunction be sought. Thereupon, the Secretary will seek injunction through a federal court. Although such procedure for meeting imminent dangers is unrealistically burdensome and the regulation was designed to clear the path for effective enforcement of the Act, the court was constrained to invalidate the regulation due to legislative history of OSHA where it found that Congress deliberately (a) rejected workers' right to strike with pay and instead allowed them the right to request inspection of employers premises and (b) rejected administrative orders prohibiting employment and instead allowed only for injunction through federal courts. *Marshal v. Daniel Construction Company Inc.*, 46 LW 2282 (1977).

COMMENTS

Hard Times

by Mary Rudd

Lots of things can happen to you the first semester of law school, either because you aren't looking or you don't know.

1. You may be hard at work studying and then go to your locker to find your books have been stolen.

2. You may only read twenty-five pages for Civil Procedure when you were supposed to read one hundred and five.

3. You may break your shoe heel going down the stairs and

4. Your name may get mispronounced for the first six weeks.

If you get past all of these little things, you will be on your way to success in the law school. Leaving the humor behind, making it through the first semester depends on you. Most first-year students found that a study routine helps . . . certain hours every night, certain subjects everyday, and, of course a rest day. I think we found relaxation was essential to our peace of mind. Those of us who felt we

could run like steam engines all semester found that by December, we only had a puff-puff left.

Focus should be on the word *adjustment*. I'm a Dallas Cowboy fan and I never missed one of their games on television until this year. In fact, I'm a football fan, period. But, I saw very little live action last fall. I did manage to catch the UNC marching band's practice session while studying at the law library, however. Giving up a few of those things you would like to do is all a part of law school. Their replacements will be Torts, Property, Contracts and Civil Procedure.

While I did give up a few things I wanted to do, I did not neglect them all. Don't think that I never went out to the movies, to the shopping center or to a party. I did. It was good therapy. It relaxed my mind so I could get on with the studying.

I'd like to tell you what my colleagues and I expected last semester, but I found we anticipated very little. We did not know what to expect from law school the first semester and we left our minds open to any happening. I think it was the best approach. There were few disappointments and few dreams were destroyed.

Law school is time consuming, but not totally time consuming, nor should it be. Looking back, I find that law like everything else has its place, its place just happens to take up a lot of space.

THE BARRISTER

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William R. Fewell, Jr.
Editor-in-chief

Contributing Editor Photography
Syed Hyder Constance Griffin

Contributions:
Patricia Bailey James Finch Mary Rudd

SUPPORT LAW DAY

Law Day Speaker Program

Friday, April 21, 1978, 11:00 a.m.
B. N. Duke Auditorium

Speaker: Retiring Professor and
Former Dean
LeMarquis DeJarmon

Banquet: Holiday Inn, Raleigh,
North Carolina (downtown)

Time: 6:30 p.m.—Banquet Speaker:
Theodore R. Neuman

Fees: Free for Law Students—Fees to be
posted for guest and alumni

The Barrister invites all N. C. C. U. Law School organizations to submit articles for publication. An organization may elect to reserve a regular space on the "News Items" page or submit individual articles for publication prior to various publication deadlines. To insure that notice is received by concerned organizations, the various organizational heads should submit to the Barrister either a request for space reservation or a request for regular notice of publication deadlines in writing. A request for a space allotment reservation carries with it an obligation to submit an article of a minimum length of 200 words and no more than 600 words for each publication. This reservation also guarantees that your article will appear in a given publication. All other articles submitted will be subject to a selection process by the editorial staff.