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# Vanderbilt Law School in the Nineteenth Century: Its Creation and Formative Years

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## INTRODUCTION

Vanderbilt University Law School is recognized today as offering one of the nation's preeminent programs in legal education.<sup>1</sup>

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1. See *Schools of Law*, U.S. NEWS & WORLD REP., Apr. 15, 2002, at 64, 72 (including Vanderbilt Law School in its grouping of "The Top Schools" and ranking it number seventeen in a field of 175 law schools).

Its opening in Nashville in 1874, however, was inauspicious at best, and its operation during the remainder of the nineteenth century was marked principally by modest, incremental advances. Yet an examination of the Law School's creation and formative years reveals a rich tale of administrators, faculty, students, alumni, and supporters striving to fashion an enduring, high-quality institution. This Article recounts the story of Vanderbilt Law School in the nineteenth century.<sup>2</sup>

### EXTERNAL INFLUENCES

Circumstances existing in the economy, the legal profession, and the world of legal education influenced Vanderbilt Law School's formation and evolution.

*The Economy.* At the time of Vanderbilt University's founding, the country, particularly the South, was still recovering from the Civil War.<sup>3</sup> The region was in such a precarious economic state that University founders struggled to secure the funds necessary to create the institution.<sup>4</sup> But for the substantial contributions of Cornelius Vanderbilt, the University might have never come into being.<sup>5</sup> Vanderbilt Law School, however, benefited little from Vanderbilt family funding.<sup>6</sup> During the nineteenth century, the Law School was essentially a quasi-proprietary operation functioning under a lease arrangement with the University.<sup>7</sup>

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2. See generally Mark B. Riley, *Looking Back: First Dean Laid Sound Foundations*, VAND. LAW., Winter 1981, at 8; William H. Fligeltaub, *Vanderbilt Law Department 1875-1904: Survival Without Stagnation* (Jan. 1976) (unpublished Senior Writing Requirement paper, Vanderbilt University Law School) (on file with Professor James W. Ely, Jr.). These two works are the only prior writings primarily devoted to an analysis of Vanderbilt Law School's program of legal education during this period.

3. EDWIN MIMS, *HISTORY OF VANDERBILT UNIVERSITY 78-85* (1946) (discussing dire state of Southern colleges and universities in the post-Civil War period). See generally MORTON KELLER, *AFFAIRS OF STATE: PUBLIC LIFE IN LATE NINETEENTH CENTURY AMERICA* (1977) (analyzing post-Civil War developments).

4. PAUL K. CONKIN, *GONE WITH THE IVY: A BIOGRAPHY OF VANDERBILT UNIVERSITY 11-12* (1985); *HISTORY OF NASHVILLE, TENN.* 413 (J. Wooldridge ed., 1890).

5. CONKIN, *supra* note 4, at 15-18; MIMS, *supra* note 3, at 14 ("Central University [Vanderbilt University's original name] was a mere castle in the air until the Commodore transformed it into a substantial structure."); JNO. J. TIGERT IV, *BISHOP HOLLAND NIMMONS MCTYEIRE: ECCLESTICAL AND EDUCATIONAL ARCHITECT* 182 (1955); *ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6*, at second page numbered 8 (1875).

6. See CONKIN, *supra* note 4, at 53-54; MIMS, *supra* note 3, at 95-96.

7. See *infra* notes 73-79, 132-33 and accompanying text.

Given these economic circumstances, pricing the Vanderbilt Law School educational product was a tricky matter.<sup>8</sup> Administrators needed to set Law School tuition at an amount students could afford, but at a level sufficient to sustain the School's operations. At the time of its creation in 1874, the Law School pegged annual tuition at \$120.<sup>9</sup> This rate was the same amount charged at that time by established and thriving rival, Cumberland University School of Law in neighboring Lebanon, Tennessee.<sup>10</sup> It soon became evident that \$120 was unduly pricey, so in 1877 the annual Law School tuition at Vanderbilt was decreased to \$80.<sup>11</sup> Apparently, this amount was determined by administrators to be excessively low. The following year (1878) annual tuition at Vanderbilt Law School was raised to \$100,<sup>12</sup> a level maintained throughout the remainder of the nineteenth century.<sup>13</sup> Interestingly, Cumberland School of Law lowered annual tuition to \$100 at about this time (1879) and held it at that amount well into the twentieth century.<sup>14</sup> Thus, these rival institutions offered competitive tuition for most of the last quarter of the nineteenth century.<sup>15</sup> Viewed from a wider perspective, when Vanderbilt Law

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8. Concern about the cost of legal education in the South continued long after the Civil War ended. See *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE ELEVENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE 60 (1892) [hereinafter *Committee Report for the Eleventh Annual Meeting*] (opining that "Southern lawyers must content themselves, for the present, with such legal education as the very moderate wealth of their section will afford").

9. See ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, at 39 (1875); see also ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, at 53 (1876).

10. See DAVID J. LANGUM & HOWARD P. WALTHALL, FROM MAVERICK TO MAINSTREAM: CUMBERLAND SCHOOL OF LAW, 1847-1997, at 60, 83 (1997).

11. See 1 Vanderbilt University: Minutes of the Board of Trust and of the Executive Committee, pt. 1, at 100-01 (May 1, 1877) (on file with Jean and Alexander Heard Library, Vanderbilt University) [hereinafter VU:BOTM] [Volume numbers cited for VU:BOTM are from the title pages of these volumes]; REGISTER OF VANDERBILT UNIVERSITY 1876-7/ANNOUNCEMENT 1877-8, at 57 (1877) [hereinafter REGISTER 1876-77]; *New Publications*, CHRISTIAN ADVOC., June 23, 1877, at 8 (indicating that other University departments also lowered tuition at this time); CHRISTIAN ADVOC., Aug. 25, 1877, at 15 (announcement of the opening of the academic year at Vanderbilt University, which also appeared numerous times in the *Christian Advocate* during September through December of 1877).

12. REGISTER OF VANDERBILT UNIVERSITY 1877-8/ANNOUNCEMENT 1878-79, at 57 (1878) [hereinafter REGISTER 1877-78].

13. See REGISTER OF VANDERBILT UNIVERSITY 1878-9/ANNOUNCEMENT 1879-80, at 65 (1879) [hereinafter REGISTER 1878-79] through REGISTER OF VANDERBILT UNIVERSITY 1899-1900/ANNOUNCEMENT 1900-1901, at 100 (1900) [hereinafter REGISTER 1899-1900].

14. LANGUM & WALTHALL, *supra* note 10, at 83-84.

15. In 1893, the University of Tennessee Department of Law lowered its annual tuition to \$50 from \$100. This move apparently resulted in increased enrollments at that institution. Julia P. Hardin, *Polishing the Lamp of Justice: A History of Legal Education at the University of Tennessee, 1890-1990*, 57 TENN. L. REV. 145, 148, 150 (1990); Lewis L. Laska, A History of Legal

School set its annual tuition at \$100 in 1878, it became one of the higher-priced law schools in the country.<sup>16</sup> Although its tuition remained at \$100 through the end of the century, maintaining that rate placed the Law School even higher on the nationwide law school tuition scale as new law schools with lower tuition rates were established.<sup>17</sup>

The economy also had a broader influence on the operation of Vanderbilt Law School during its formative years. The latter part of the nineteenth century saw developments in industry, transportation, business, and banking that created a new economic order, of which a robust legal profession and an increasingly influential system of legal education centered on law school training were integral parts.<sup>18</sup>

*The Legal Profession.* Vanderbilt Law School was founded at a time when the legal profession was undergoing extensive change.<sup>19</sup> Transformation of the profession did not occur suddenly or smoothly; crosscurrents existed. On one hand, the profession was becoming more accessible to aspirants of various backgrounds and less clubby in nature.<sup>20</sup> Simultaneously, many members of the profession issued a call for higher professional standards and more rigorous examination for admission to practice.<sup>21</sup> Interested lawyers established local and state bar associations, as well as a national organization—the American Bar Association (“ABA”) (1878).<sup>22</sup> This “professionalization”

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Education in Tennessee, 1770-1970, at 391 (1978) (unpublished Ph.D. dissertation, Vanderbilt University) (on file with Peabody Library, Vanderbilt University).

16. See REPORT OF THE COMMISSIONER OF EDUCATION FOR THE YEAR 1878, at 570-71 (1880) (reporting tuition for thirty-seven law schools with twenty-six having tuition less than \$100, seven (including Vanderbilt) having tuition of \$100, and four (including Cumberland) having tuition above \$100).

17. See 2 REPORT OF THE COMMISSIONER OF EDUCATION FOR THE YEAR 1899-1900, at 1986-91 (1901) (reporting tuition for ninety-five law schools with seventy-four having tuition less than \$100, fourteen (including Vanderbilt and Cumberland) having tuition of \$100, and seven having tuition above \$100).

18. See KERMIT L. HALL, THE MAGIC MIRROR: LAW IN AMERICAN HISTORY 211-13 (1989); ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 23 (1983); JAMES SUMMERVILLE, COLLEAGUES ON THE CUMBERLAND: A HISTORY OF THE NASHVILLE LEGAL PROFESSION 48-49 (1996) (discussing economic developments nationally and in Nashville during this period).

19. See generally LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 633-54 (2d ed. 1985) and KELLER, *supra* note 3, at 349-53 for discussions of the evolution of the legal profession in the latter portion of the nineteenth century.

20. FRIEDMAN, *supra* note 19, at 619, 634; HALL, *supra* note 18, at 212, 216 (noting that change in “the social composition of the bar” in Southern states did not proceed as rapidly as it did in other regions).

21. FRIEDMAN, *supra* note 19, at 619, 634-35; HALL, *supra* note 18, at 214-16; STEVENS, *supra* note 18, at 25.

22. FRIEDMAN, *supra* note 19, at 648-52; HALL, *supra* note 18, at 214-16; KELLER, *supra* note 3, at 352-53; ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF LAW

movement ostensibly was designed to ensure the delivery of competent legal services, but it also had the anticompetitive effect of limiting the flow of new attorneys into the profession, a development that would directly benefit existing practitioners.<sup>23</sup> Academic training of prospective lawyers was a significant component of the move toward professionalism in the legal world, fueling the emergence of university-related law schools such as Vanderbilt.<sup>24</sup>

The legal profession of the late 1800s was also experiencing a shift in the way law was practiced. Individual practitioners with a local practice were supplemented by the organization of law firms that handled legal business on a grander scale. The law firm became a staple of the legal profession due in large measure to the expanding expectations of business enterprises seeking legal services. As railroads, financial institutions, and commercial ventures of various types experienced a need for more expansive legal representation, lawyers responded with the creation of firms designed to provide the required services. By the end of the nineteenth century, law firms had become an entrenched part of the legal culture. Law schools were a relatively efficient and effective way of supplying these firms with academically trained lawyers capable of engaging in the sophisticated, business-oriented practice that was the law firm's standard fare.<sup>25</sup>

Vanderbilt Law School's immediate legal environment was shaped by these developments in the legal profession. Both the Nashville Bar Association and the Tennessee Bar Association were organized and became active in the last quarter of the 1800s.<sup>26</sup> The work of the Tennessee Bar Association's Committee on Legal Education and Admission to the Bar was directly relevant to the operation of Vanderbilt Law School.<sup>27</sup> For example, the Committee

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204-16 (1921). The cited authorities discuss the significance of the founding of the American Bar Association. *See also* ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 72-78, 80-88 (1953) (considering work of the ABA's Committee on Legal Education and Admission to the Bar and its Section on Legal Education during late 1800s).

23. *See* FRIEDMAN, *supra* note 19, at 634-35; HALL, *supra* note 18, at 211-13; STEVENS, *supra* note 18, at 25.

24. *See* FRIEDMAN, *supra* note 19, at 606-07; HALL, *supra* note 18, at 211-12; STEVENS, *supra* note 18, at 24; ROBERT H. WIEBE, THE SEARCH FOR ORDER 1877-1920, at 117 (1967).

25. *See* FRIEDMAN, *supra* note 19, at 607, 640-42; HALL, *supra* note 18, at 212-14; STEVENS, *supra* note 18, at 22-24; WILLIAM G. THOMAS, LAWYERING FOR THE RAILROAD: BUSINESS, LAW, AND POWER IN THE NEW SOUTH 36-38 (1999).

26. *See* SUMMERVILLE, *supra* note 18, at 46-48, 57-59; Laska, *supra* note 15, at 168.

27. *See generally* Laska, *supra* note 15, at 168-214 (discussing the Committee's work and the Association's activity).

endorsed law school education over apprenticeship arrangements,<sup>28</sup> and beginning in 1883, proposed to the state legislature that a formal bar examination supervised by a Board of Examiners replace the existing slipshod scheme of examination by judges.<sup>29</sup> Throughout the next two decades, the Committee periodically renewed its basic recommendation for a general system of examination<sup>30</sup> until the state legislature finally adopted a 1903 statute providing for a state bar examination administered by a Board of Examiners.<sup>31</sup> Vanderbilt Law School faculty members were active on the Bar Association Committee

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28. See *Report of the Committee on Legal Education and Admission to the Bar*, CHARTER, CONSTITUTION AND BY-LAWS, TOGETHER WITH THE PROCEEDINGS OF THE BAR ASSOCIATION OF TENNESSEE AT ITS FIRST ANNUAL MEETING 60-61(1882).

29. See *Report of the Committee on Legal Education and Admission to the Bar*, THE BAR ASSOCIATION OF TENNESSEE: SECOND ANNUAL MEETING 41-44 (1883). Subsequent Committee reports occasionally were highly critical of examinations conducted by certain judges. See *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE EIGHTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE [1889], at 39-43 (1890); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE TWELFTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE [1893] 31 (1894) ("It is well known that, in many instances, this examination is a mere farce."). For discussion of problems with oral examinations given by judges, see Laska, *supra* note 15, at 160-67; Fligeltaub, *supra* note 2, at 9-10.

30. See *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE THIRD ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE 12-13 (1884) (supporting recommendation of the previous year); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE SIXTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE [1887] 23 (1888) (calling for examination by Tennessee Supreme Court); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE SEVENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE [1888] 100 (1889) (resubmitting recommendation of previous year); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE FOURTEENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE 36-38 (1895) (noting that the committee prepared and submitted a bill to establish the State Board of Law Examiners); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE SIXTEENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE 16-19 (1897) (proposing statute to create State Board of Law Examiners); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE SEVENTEENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE [1898] 12-15 (1899) [hereinafter *Committee Report for the Seventeenth Annual Meeting*] (supporting legislation recommended in the previous year and opining that the proposal "be so amended as to deprive the law schools of the State of the power to grant license to practice law"); *Report of the Committee on Legal Education and Admission to the Bar*, PROCEEDINGS OF THE EIGHTEENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE 10-12 (1899) [hereinafter *Committee Report for the Eighteenth Annual Meeting*]. See generally Fligeltaub, *supra* note 2, at 11-12 (discussing reasons for legislature's reticence to enact such measure).

31. 1903 TENN. ACTS ch. 247; see also SUMMERVILLE, *supra* note 18, at 60; W. Raymond Blackard, *Past and Present Requirements for Admission to the Bar in Tennessee*, 14 TENN. L. REV. 135, 135-42, 149 (1936); Laska, *supra* note 15, at 206-14. This statute also eliminated "the diploma privilege." See Laska, *supra* note 15, at 211-13; *infra* notes 40-44 and accompanying text.



during these years,<sup>32</sup> and Dean Thomas Malone was a noted supporter of the bar examination statute.<sup>33</sup> This Tennessee measure was part of a nationwide shift with respect to the requirements for admission to the bar; by the early twentieth century such a formal system of bar examination had become standard procedure among the states.<sup>34</sup>

Mirroring national trends, corporate law practice thrived in Nashville during the latter part of the nineteenth century. The city became a hub of railroad and business activities, and lawyers developed the legal expertise necessary to service these clients.<sup>35</sup> Indeed, longtime Vanderbilt Law School faculty member Edmund Baxter achieved distinction as legal counsel for the railroad industry,<sup>36</sup> as did J. M. Dickinson, who served on the law faculty for a brief period at the end of the nineteenth century.<sup>37</sup>

*Legal Education.* Vanderbilt Law School was a cog in legal education's shift from an apprenticeship approach to an academic model. A boom in the number of university-based law schools occurred during the latter stage of the nineteenth century. Concurrently, bar preparation in the form of reading law in a practicing lawyer's office declined markedly. By century's end, the systematic study of law in a university setting became the standard form of legal training.<sup>38</sup> As

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32. See *Committee Report for the Eleventh Annual Meeting*, *supra* note 8, at 59-70 (Edmund Baxter chaired committee); *Committee Report for the Seventeenth Annual Meeting*, *supra* note 30, at 12-15 (Thomas Malone chaired committee); *Committee Report for the Eighteenth Annual Meeting*, *supra* note 30, at 10-12 (J. M. Dickinson chaired committee); see also *Report of the Committee on Legal Education and Admission to the Bar*, CHARTER, CONSTITUTION AND BY-LAWS, TOGETHER WITH THE PROCEEDINGS OF THE BAR ASSOCIATION OF TENNESSEE AT ITS FIRST ANNUAL MEETING 49 (1882) (Andrew Allison, a committee member who read the report, became a Vanderbilt Law School faculty member several years later.).

33. SUMMERVILLE, *supra* note 18, at 60.

34. See REED, *supra* note 22, at 102-03 (noting that seventy-five percent of the states had "central boards of bar examiners" by 1917); STEVENS, *supra* note 18, at 25.

35. SUMMERVILLE, *supra* note 18, at 48-49. See generally DON H. DOYLE, NASHVILLE IN THE NEW SOUTH 1880-1930, at 19-62 (1985) (discussing Nashville's economic expansion in the latter part of nineteenth century); THOMAS, *supra* note 25, at 37-38 (analyzing railroads' impact on the development of corporate law practice in the South).

36. See *infra* notes 163-69 and accompanying text.

37. See *infra* notes 196-98, 212 and accompanying text.

38. See BURTON J. BLEDSSTEIN, THE CULTURE OF PROFESSIONALISM: THE MIDDLE CLASS AND THE DEVELOPMENT OF HIGHER EDUCATION IN AMERICA 190-91 (1976); FRIEDMAN, *supra* note 19, at 606-09; REED, *supra* note 22, at 183-99, 203; UNIVERSITY OF THE STATE OF NEW YORK, COLLEGE DEPARTMENT SECOND ANNUAL REPORT 1899, 2 PROFESSIONAL EDUCATION IN THE UNITED STATES 154 (Henry L. Taylor preparer, 1900) (Law Introduction written by James Russell Parsons) [hereinafter PROFESSIONAL EDUCATION]; see also STEVENS, *supra* note 18, at 73 (discussing bases for university-law school affiliations); PETER DEL. SWORDS & FRANK K. WALWER, THE COSTS AND RESOURCES OF LEGAL EDUCATION 32-33 (1974) (exploring reasons for shift from apprenticeship system to law school training); W. G. Hammond, *American Law Schools, Past and Future*, 7 S. L. REV. 400, 405-11 (1881) (ascribing "remarkable growth of law

United States Supreme Court Chief Justice Morrison Waite commented in 1881: "The time has gone by . . . when an eminent lawyer in full practice could take a class of students into his office and become their teacher. . . . The consequence is that law-schools are now a necessity."<sup>39</sup>

The rise of the university-based law school was spurred in certain states, including Tennessee, by statutory measures that, in essence, bestowed admission to the bar on graduates of in-state law schools without examination. Known as "the diploma privilege," such statutes strongly favored law school graduates over candidates for the bar who had served an apprenticeship with a practicing attorney.<sup>40</sup> In Tennessee, the diploma privilege was on the books from 1860<sup>41</sup> until 1903.<sup>42</sup> The proliferation of in-state law schools of varying quality and program length, as well as the potential for abuse or outright fraud, precipitated repeal of the Tennessee diploma privilege statute.<sup>43</sup> Vanderbilt Law School Dean Thomas Malone was a leading advocate for this legislative reform.<sup>44</sup>

schools" principally to the adoption of codes of practice and procedure, and the construction of a network of railroads).

39. *Educational Miscellany*, CHRISTIAN ADVOC., Nov. 19, 1881, at 7.

40. FRIEDMAN, *supra* note 19, at 620; STEVENS, *supra* note 18, at 26-27. See generally *Admissions to the Bar*, CENT. L.J., July 2, 1874, at 320-21 (criticizing diploma privilege).

41. 1859-1860 TENN. PUB. ACTS ch. 73 (1860). This statute did not specifically require a student to graduate in order to receive the benefit of the diploma privilege. Instead, it gave in-state law school faculties "the same power to grant license to practice law in the courts of this State, that the Judges of the Courts now have." *Id.* Thus, a law school faculty presumably could grant a license to a student who did not meet graduation requirements. Indeed, the Vanderbilt law faculty publicized this possibility for a period. See, e.g., REGISTER 1876-77, *supra* note 11, at 56-57; REGISTER OF VANDERBILT UNIVERSITY 1882-83/ANNOUNCEMENT 1883-84, at 61-62 (1883) [hereinafter REGISTER 1882-83]; see also Riley, *supra* note 2, at 10; Fligeltaub, *supra* note 2, at 11; *infra* notes 335-37 and accompanying text.

42. 1903 TENN. ACTS ch. 247 (1903); see also Blackard, *supra* note 31, at 136-37; Fligeltaub, *supra* note 2, at 10-12 (discussing the history of the diploma privilege in Tennessee).

43. See LANGUM & WALTHALL, *supra* note 10, at 101-02; Lewis Laska, *A Review of David J. Langum & Howard P. Walthall, From Maverick to Mainstream: Cumberland School of Law, 1847-1997*, 30 CUMB. L. REV. 493, 499 (2000) (book review); Laska, *supra* note 15, at 104-05, 198-213; *Committee Report for the Eighteenth Annual Meeting*, *supra* note 30, at 12. The diploma privilege was repealed by the 1903 bar examination statute discussed in the immediately previous subsection. See Laska, *supra* note 15, at 211-13; *supra* notes 27-34 and accompanying text.

44. See Laska, *supra* note 15, at 206, 210; Fligeltaub, *supra* note 2, at 12; *Committee Report for the Seventeenth Annual Meeting*, *supra* note 30, at 12-15 (noting that Malone chaired the committee that recommended the elimination of the diploma privilege). Vanderbilt faculty member J. M. Dickinson joined Malone in this endeavor. See Fligeltaub, *supra* note 2, at 12; *Committee Report for the Eighteenth Annual Meeting*, *supra* note 30, at 10-12 (noting that Dickinson chaired the committee that strongly endorsed the committee's previous recommendation to repeal the diploma privilege).

The diploma privilege may have put Vanderbilt, with its two-year law program, at a competitive disadvantage against Cumberland, with its one-year course of legal study. See 3

As law schools began to dominate legal education, they formed a national organization in 1900, the Association of American Law Schools (“AALS”), to promote and shape legal education provided at law schools.<sup>45</sup> Vanderbilt Law School dispatched new faculty member J. C. Bradford to serve as its representative at the AALS organizational meeting.<sup>46</sup> The Law School, however, did not join the Association at its inception, instead taking until 1910 to satisfy the requirements for membership.<sup>47</sup> This was not unusual; law schools in the South typically experienced difficulty during that period in complying with AALS standards.<sup>48</sup> Vanderbilt Law School’s delayed entry into the AALS is consistent with the School’s status at the turn of the twentieth century—an established, effectual operation with a primarily local, state, and regional outlook, but not an institution competitive with elite law programs nor heavily involved in legal education at the national level.<sup>49</sup>

Vanderbilt Law School faced stiff competition during the nineteenth century even in its limited sphere of operation. Neighboring Cumberland School of Law was nationally recognized and the premier law school in Tennessee, if not the area, during the bulk of the mid- to late-nineteenth century.<sup>50</sup> Although Cumberland’s star

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VU:BOTM, *supra* note 11, at 11 (June 17, 1895); 3 *id.* at 201 (June 13, 1898); Fligeltaub, *supra* note 2, at 15-16; Laska, *supra* note 15, at 207-08; *supra* notes 305-13 and accompanying text. See generally LANGUM & WALTHALL, *supra* note 10, at 101 (noting Cumberland’s opposition to the bar examination statute), 103-04 (describing the enduring nature of Cumberland’s one-year law program).

45. See HARNO, *supra* note 22, at 88-90; REPORT OF THE TWENTY-THIRD ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 569-75 (1900); Law School Curriculum 10-12 (undated), Centennial History Project, Box 25 (unpublished memorandum on file with Jean and Alexander Heard Library, Vanderbilt University) [hereinafter Law School Curriculum].

46. REPORT OF THE TWENTY-THIRD ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 569-70 (1900); Law School Curriculum, *supra* note 45, at 11.

47. AALS DIRECTORY OF LAW TEACHERS, 2002-2003, at 179; PROCEEDINGS OF THE TENTH ANNUAL MEETING OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 41 (1910); see also 5 VU:BOTM, *supra* note 11, at 51 (June 15, 1908) (noting that the AALS demanded “certain entrance requirements and a three year course” and that Vanderbilt Law School was “eligible on the basis of entrance requirements, but not in respect of time”); Bob Holladay, *The Case History of Vanderbilt Law School*, VAND. LAW., Spring/Summer 1999, at 14-15 (noting that entry into the AALS was made possible by the implementation of a three-year program); John Bell Keeble, *The Law School and Some Men Who Have Helped to Make It*, 3 VAND. ALUMNUS 200, 201 (1913).

Accreditation by the American Bar Association was not an issue then. The ABA did not begin its program of accreditation until the 1920s. See STEVENS, *supra* note 18, at 115, 173.

48. PROCEEDINGS OF THE FIFTH ANNUAL MEETING, ASSOCIATION OF AMERICAN LAW SCHOOLS 33-39 (1905).

49. See generally Riley, *supra* note 2; Fligeltaub, *supra* note 2; discussion *infra* “Reorganization”: Poised for Change section.

50. See SUMMERVILLE, *supra* note 18, at 59; W. Raymond Blackard, *Law Schools in Tennessee*, 14 TENN. L. REV. 267, 268 (1936); Laska, *supra* note 43, at 499; Laska, *supra* note 15, at 109. For discussion of the Cumberland program, see LANGUM & WALTHALL, *supra* note 10, at

was beginning to dim toward the end of the century,<sup>51</sup> Vanderbilt's law program was still not as high-profile as Cumberland's at that time.<sup>52</sup> Moreover, numerous other law schools, including one at the University of Tennessee, were founded in the state and region during the last quarter of the nineteenth century, adding numerous competitors to the law school marketplace.<sup>53</sup> Thus, at the beginning of the twentieth century, Vanderbilt Law School was both a stride behind Cumberland in name recognition<sup>54</sup> and facing challenge from newer law schools.<sup>55</sup>

#### PART OF "A GREAT UNIVERSITY"

The founders of Vanderbilt University saw their self-appointed task as creating "a great university."<sup>56</sup> Their expansive rhetoric addressed both the scope and excellence of the new institution. At the 1874 Laying of the Cornerstone of the Vanderbilt University, Methodist Bishop William Wightman sounded the theme on the

97-111, 117; N. Green, *The Law School of Cumberland University*, 2 THE GREEN BAG 63 (1890); Laska, *supra* note 15, at 109-34.

51. See LANGUM & WALTHALL, *supra* note 10, at 97-111, 117.

52. See Blackard, *supra* note 50, at 268; Laska, *supra* note 43, at 499; Laska, *supra* note 15, at 166.

53. In addition to Cumberland and Vanderbilt, one authority lists eight other law schools that operated in Tennessee during the period from 1875 to 1900. Blackard, *supra* note 50, at 269. This group includes the University of Tennessee School of Law, founded in 1890. See Hardin, *supra* note 15, at 148. The list, however, does not include the law school at Neophogen Male and Female College that operated in Gallatin, Tennessee briefly in the mid-to-late 1870s. See WALTER T. DURHAM, A COLLEGE FOR THIS COMMUNITY 55, 61, 71 (1974); REED, *supra* note 22, at 433; Laska, *supra* note 15, at 157-59. For historical analysis of Tennessee law schools and legal education in the state, see generally Laska, *supra* note 15; Clyde Conley Street, A History of Legal Education in Tennessee (1941) (unpublished M.A. thesis, University of Tennessee) (on file with Alyne Queener Massey Law Library, Vanderbilt University).

For statistical data regarding the growth in the number of law schools in other Southern states during the latter portion of the nineteenth century, see REED, *supra* note 22, at 446.

54. See Blackard, *supra* note 50, at 268; Laska, *supra* note 43, at 499; Laska, *supra* note 15, at 166.

55. One listing of law schools operating in Tennessee in 1899 identifies six law schools—Cumberland, American Temperance University, Central Tennessee College, Tennessee, Vanderbilt, and University of the South. PROFESSIONAL EDUCATION, *supra* note 38, at 168. Another study indicates that nine unidentified law schools were in operation in Tennessee in 1900. REED, *supra* note 22, at 446. Still another compilation identifies ten institutions as conducting law programs in Tennessee in 1900—Cumberland, Vanderbilt, Central Tennessee (Walden), Tennessee, Southern Normal University, University of the South, American Temperance (American), Union University, Chattanooga College of Law, and Southern Law College. Blackard, *supra* note 50, at 269.

56. CONKIN, *supra* note 4, at 23. For the story of the founding of Vanderbilt University and the critical financial support provided by Cornelius Vanderbilt, see *id.* at 3-22; LUCIUS SALISBURY MERRIAM, HIGHER EDUCATION IN TENNESSEE 107-18 (1893); MIMS, *supra* note 3, at 13-44; TIGERT, *supra* note 5, at 173-203.

founders' minds: "It will be a University—not in title only, but in fact and reality," he said, describing an educational institution that would offer "the highest and amplest culture of the time."<sup>57</sup> Chancellor Landon Garland, in his 1876 Founder's Day speech, captured the vision of those who created the University:

What the opinion of the Church demanded was not a mere college, but a university in the true sense of that word—an institution in which every subject of valuable research might be prosecuted to an extent to meet the largest demands of our youth—in which, besides the literary and scientific studies that make up the curriculum of most institutions, every useful calling and profession should have a school: such as theology, law, medicine, engineering, mining, mechanism, commerce, agriculture, and the fine arts . . . . It was the prevailing sentiment of the body to attempt nothing unless something great could be accomplished.<sup>58</sup>

Legal education was a significant part of the Vanderbilt vision from the University's inception. The University can be traced to 1858, when Tennessee's legislature granted a charter for Central University of the General Conference of the Methodist Episcopal Church South,<sup>59</sup> which included a law department with its own board of trust.<sup>60</sup> The Civil War, however, delayed any effort to act on the approved charter and establish a university.<sup>61</sup>

Following the war, Methodist efforts to create an independent theological school foundered, and the supporters of a new educational institution agreed to promote a plan for a university that would comprise a theological school, as well as a law school.<sup>62</sup> In early 1872, representatives from several Methodist conferences in the region adopted resolutions to establish an academic institution "where the youth of the church and country may prosecute theological, literary,

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57. *Bishop Wightman's Address at the Laying of the Corner Stone of The Vanderbilt University*, CHRISTIAN ADVOC., May 9, 1874, at 6.

Because the high aspirations of those who founded Vanderbilt were clear, Governor Porter's comment in his address at the 1875 university inauguration must have sounded as a grand understatement: "Gentlemen, the mission of this University is above mere commonplace." *Synopsis of Addresses on the Inauguration of Vanderbilt University*, CHRISTIAN ADVOC., Oct. 16, 1875, at 9. In fact, expressions of lofty expectations for the University were the order of the day. Thus, by December of 1875, the phrase "Harvard of the South" had appeared in print in reference to Vanderbilt. *See Another \$100,000 for Vanderbilt University*, CHRISTIAN ADVOC., Dec. 25, 1875, at 8 (suggesting that Vanderbilt needed to achieve a certain level of funding to attain a Harvard-like position in the region).

58. *Address of Dr. Garland, Chancellor of Vanderbilt University on Founder's Day*, CHRISTIAN ADVOC., June 10, 1876, at 8, 9 [hereinafter *Address of Dr. Garland*].

59. CONKIN, *supra* note 4, at 4; HISTORY OF NASHVILLE, TENN., *supra* note 4, at 647-48; MERRIAM, *supra* note 56, at 107.

60. HISTORY OF NASHVILLE, TENN., *supra* note 4, at 647-48; MERRIAM, *supra* note 56, at 107.

61. CONKIN, *supra* note 4, at 5-6; MERRIAM, *supra* note 56, at 108.

62. *See* HISTORY OF NASHVILLE, TENN., *supra* note 4, at 412-13; MERRIAM, *supra* note 56, at 109-11.

scientific, and professional studies . . . .”<sup>63</sup> It was further specified that the university would consist of a theological school, a literary and scientific school, a normal school, a law school, and a medical school.<sup>64</sup> These resolutions were incorporated in the charter for The Central University of the Methodist Episcopal Church South that was issued by court decree on August 6, 1872.<sup>65</sup> Within a year, on June 16, 1873, the institution’s name was changed to The Vanderbilt University in recognition of the crucial financial contributions of Cornelius Vanderbilt.<sup>66</sup>

While one might hope to find evidence of a compelling vision that would explain why legal education was included within the University’s mission from the outset, that does not appear to be the Law School’s story. It is not clear if University founders had any special interest in legal education,<sup>67</sup> or if they simply followed a typical pattern of university organization. For a variety of reasons, law schools had become an increasingly familiar feature of American universities in the second half of the nineteenth century.<sup>68</sup>

The original organizational structure of the Law School suggests that it was a significant component of the overall scheme for Vanderbilt University. In 1874, the Board of Trust approved an original law school organization that included the appointment of a faculty of eight, specified generous yearly compensation for the dean (\$2,500) and a junior professor (\$1,500), and directed that the program be “selfsustaining.”<sup>69</sup> Chancellor James Kirkland later described this

63. 1 VU:BOTM, *supra* note 11, pt. 1, at 1 (Jan. 26, 1872); MERRIAM, *supra* note 56, at 110-11.

64. 1 VU:BOTM, *supra* note 11, pt. 1, at 1 (Jan. 26, 1872); MERRIAM, *supra* note 56, at 111.

65. CODE OF BY-LAWS AND CHARTER: THE VANDERBILT UNIVERSITY 24-27 (2000) [hereinafter VU CHARTER]; State v. Bd. of Trust of Vanderbilt Univ., 129 Tenn. 279, 296, 164 S.W. 1151, 1155-56 (1914). The Circuit Court of Davidson County, Tennessee, Judge Nathaniel Baxter presiding, issued the decree. VU CHARTER, *supra*, at 25-27. In 1871, the Tennessee legislature had authorized the state’s chancery courts to grant corporate charters. 1870-1871 TENN. ACTS ch. LIV (1871).

On August 19, the judge certified the copy of the charter obtained by the Vanderbilt Board of Trust to be “a true and perfect copy of a decree” issued previously on August 6. See 1 VU:BOTM, *supra* note 11, pt. 1, at 8 (Aug. 21, 1872).

66. See VU CHARTER, *supra* note 65, at 24, 27-28; ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, at second page numbered 8 (1875); MERRIAM, *supra* note 56, at 116; *Bd. of Trust of Vanderbilt Univ.*, 129 Tenn. at 307-09, 164 S.W. at 1158-59.

67. Chancellor Landon Garland, who fashioned the university’s academic structure, had studied law for a short time. CONKIN, *supra* note 4, at 39-40.

68. See REED, *supra* note 22, at 183-87; STEVENS, *supra* note 18, at 73; *supra* notes 19-24 and accompanying text.

69. 1 VU:BOTM, *supra* note 11, pt. 1, at 30 (Jan. 15, 1874); 1 *id.* at 37-38 (Apr. 29, 1874); see also Riley, *supra* note 2, at 8. For discussion of the Law School’s first academic year in operation, see *infra* “A False Start” section.

arrangement as being “on a rather pretentious scale.”<sup>70</sup> The optimistic initial organization of the Law School was unsuccessful in its only year of operation.<sup>71</sup> Consequently, in 1875 the Board executed a twenty-five year “lease” agreement for the operation of the School, placing its management in the hands of three local attorneys.<sup>72</sup>

Although the University’s founders may have underestimated the financial resources necessary to develop a top-flight law school, the Law School’s operation under a quasi-proprietary lease arrangement should not be taken as evidence that it was made part of the University *ex post*,<sup>73</sup> on a second-class basis,<sup>74</sup> or solely for cosmetic purposes.<sup>75</sup> The general understanding in academe at the time was that law schools would be financially self-sufficient,<sup>76</sup> and Vanderbilt’s founders were well aware of this convention.<sup>77</sup> University-based law schools with a proprietary bent frequently were linked to their central universities by relatively tenuous academic alliances and generally had a free hand operationally.<sup>78</sup> Vanderbilt’s approach to law school/university affiliation, hence, was fairly common.<sup>79</sup>

70. J. H. Kirkland, *Twenty-Five Years of University Work*, 1 VAND. U. Q., May 1901, at 86, 87. Kirkland succeeded Garland as chancellor in 1893. See EDWIN MIMS, CHANCELLOR KIRKLAND OF VANDERBILT 93-96 (1940).

71. See discussion *infra* “A False Start” section.

72. See discussion *infra* The “Lease” and The “Lessees” sections.

73. See Holladay, *supra* note 47, at 14 (“A law school for Vanderbilt wasn’t exactly an afterthought, but it wasn’t a primary objective either.”).

With regard to the formation of the University, Chancellor James Kirkland stated: “In the beginning the question had been raised whether Vanderbilt should not devote itself exclusively to graduate, or university work. This question was wisely decided in the negative, for it was seen that the South was by then no means ready for an institution organized on such a basis.” Kirkland, *supra* note 70, at 89; see also ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, at 11-12 (1875) (discussing rejected notion that Vanderbilt should offer solely graduate programs).

74. *But cf.* Holladay, *supra* note 47, at 14.

75. *But see* CONKIN, *supra* note 4, at 24 (opining that the Law School and the Medical School constituted “window-dressing,” allowing Vanderbilt to become a university even though its “guiding purposes remained those of a church-related liberal arts college”).

The trustees’ subsequent deeds, in fact, matched the rhetoric espousing a comprehensive educational institution that was to comprise professional programs. By 1887, Vanderbilt had added Pharmaceutical, Dental, and Engineering departments. See HISTORY OF NASHVILLE, TENN., *supra* note 4, at 417; *Vanderbilt University: The Lines of Work Pursued There, and the Inducements Offered*, CHRISTIAN ADVOC., July 2, 1887, at 4.

76. See REED, *supra* note 22, at 183-87, 192; SWORDS & WALWER, *supra* note 38, at 35-36; Mary Kay Kane, *President’s Address: Recommitting to Teaching and Scholarship*, [AALS] NEWSLETTER, Feb. 2001, at 1, 3.

77. See *Address of Dr. Garland*, *supra* note 58, at 8, 9 (noting that “departments of Law and Medicine . . . are usually self-sustaining”).

78. See FRIEDMAN, *supra* note 19, at 608-09; REED, *supra* note 22, at 183-87, 192; STEVENS, *supra* note 18, at 35; SWORDS & WALWER, *supra* note 38, at 35-36; Kane, *supra* note 76, at 3; Fligeltaub, *supra* note 2, at 3; see also Riley, *supra* note 2, at 8-9; discussion *supra* “External

It is unsurprising that founders who envisioned “a great university” included a law department among the institution’s original departments. Indeed, the absence of a law school would have been notable for a university in which professional education was a central feature of its creators’ aspirations. However, the quasi-proprietary nature of the Law School and its rather ambiguous administrative relationship to the University<sup>80</sup> were sources of tension during the term of the twenty-five year operating lease.<sup>81</sup>

#### “A FALSE START”

Vanderbilt Law School offered classes in fall 1874,<sup>82</sup> a full year before the main University enrolled its first crop of students.<sup>83</sup> But the law department’s head start turned out to be “a false start.”<sup>84</sup> What happened?

In January 1874, the Vanderbilt Board of Trust authorized a seven-person law school faculty, which included a departmental dean.<sup>85</sup> A few months later, in April, the Board created a junior professor slot to increase the law faculty to eight, selected individuals to fill these positions, and addressed the question of faculty compensation.<sup>86</sup>

The Board designated Judge William F. Cooper as the Law School’s initial dean. It also named three other sitting or former judges to the School’s first faculty: Edward H. East, a Board of Trust

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Influences” section; discussion *infra* The “Lease” section. See generally Mark Bartholomew, *Legal Separation: The Relationship Between the Law School and the Central University in the Late Nineteenth Century*, 53 J. LEGAL EDUC. (forthcoming 2003).

79. Fligeltauh, *supra* note 2, at 3.

80. Vanderbilt’s law and medical departments of this era have been described as “two appended proprietary, administratively autonomous professional schools.” CONKIN, *supra* note 4, at 24.

81. See Law School Administration: Deans second through seventh unnumbered pages (undated), Centennial History Project, Box 25 (unpublished memorandum on file with Jean and Alexander Heard Library, Vanderbilt University) [hereinafter Law School Administration: Deans] (discussing control of law student activities as an issue on which the Law School and the University differed from time to time); see also *infra* notes 288-90 and accompanying text.

82. The Medical School was also in operation during the 1874-75 school year. MERRIAM, *supra* note 56, at 118; MIMS, *supra* note 3, at 97; Kirkland, *supra* note 70, at 87.

83. The University launched its academic program in early October of 1875. CONKIN, *supra* note 4, at 55; James G. Wharton, *Opening Date: October 1875*, 35 VAND. ALUMNUS, Jan.-Feb. 1950, at 8, 8-9; *Dedication and Inauguration of the Vanderbilt University*, CHRISTIAN ADVOC., Oct. 9, 1875, at 8.

84. CONKIN, *supra* note 4, at 55. For other discussions of the Law School’s 1874-75 academic year, see MERRIAM, *supra* note 56, at 118-19; MIMS, *supra* note 3, at 97-98.

85. See 1 VU:BOTM, *supra* note 11, pt. 1, at 30 (Jan. 15, 1874).

86. See 1 *id.* at 37-38 (Apr. 29, 1874).



member; A. O. P. Nicholson, Chief Justice of the Tennessee Supreme Court; and H. M. Spofford, former Louisiana Supreme Court member.<sup>87</sup> The remaining law faculty members selected by the Board were: Edmund D. Baxter; Thomas H. Malone; Jordan Stokes, an incorporator of the University; and William B. Reese, who filled the junior professorship.<sup>88</sup> Of this group of eight, only three—Baxter, Malone, and Reese—would play important faculty roles in the Law School's formative years.

The Board's selection of Cooper as dean was a logical one. He was a well-known chancery court judge who later became the Nashville Bar Association's first president, a Tennessee Supreme Court member, and the initial president of the Tennessee Bar Association.<sup>89</sup> He had a demonstrated interest in and some experience with law school education, having served as a professor in a short-lived law department operated by the University of Nashville for some months in the mid-1850s.<sup>90</sup> Coincidentally, Cooper had been involved with Vanderbilt University before being named dean of its law school; he presided at the 1873 legal proceeding in which the University's name was changed from The Central University of the Methodist Episcopal Church South to The Vanderbilt University.<sup>91</sup> He would also be reconnected to the Law School long after his brief stint as dean had

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87. See *id.*; *Meeting of the Board of Trust of Vanderbilt University*, CHRISTIAN ADVOC., May 9, 1874, at 9; *Vanderbilt University Law Department*, REPUBLICAN BANNER, Aug. 19, 1874, at 3 & Sept. 2, 1874, at 3 (advertisement); *Vanderbilt University. Law Department*, CHRISTIAN ADVOC., July 18, 1874, at 13 (advertisement).

Judge East was heavily involved in the organization and early growth of the University, serving as one of its incorporators and as a Board of Trust member from the institution's inception until 1893. See VU CHARTER, *supra* note 65, at 25; *Vanderbilt Commencement*, CHRISTIAN ADVOC., June 29, 1893, at 9.

88. See 1 VU:BOTM, *supra* note 11, pt. 1, at 37-38 (Apr. 29, 1874); VU CHARTER, *supra* note 65, at 25.

89. See JOHN W. GREEN, LIVES OF THE JUDGES OF THE SUPREME COURT OF TENNESSEE 1796-1947, at 194-97 (1947) (chapter on Cooper); SUMMERVILLE, *supra* note 18, at 31-32, 57-58, 139, 150; Samuel C. Williams, *History of the Courts of Chancery of Tennessee*, 2 TENN. L. REV. 6, 21-22 (1923) (noting high quality of Cooper's opinions as chancellor and emphasizing his impact as a judge and legal commentator on field of equity); *Judge William Frierson Cooper: Paper Read by John Bell Keeble Before Tennessee Bar Association in Chattanooga*, NASHVILLE AM., Aug. 2, 1909, at 5 (eulogizing Cooper); *Brilliant Son of Tennessee*, NASHVILLE BANNER, May 8, 1909, at 1 (reporting Cooper's death); PROCEEDINGS OF THE SEVENTH ANNUAL MEETING OF THE BAR ASSOCIATION OF TENNESSEE 5 (1888) (listing "presidents since organization"). See generally Louise Davis, *The Revealing Cooper Diaries (First of Two Parts): A Man Who Went Where the Action Was*, NASHVILLE TENNESSEAN MAG., Oct. 26, 1969, at 10; Louise Davis, *The Revealing Cooper Diaries (Last of Two Parts): 90 Years of Passion & Patriots*, NASHVILLE TENNESSEAN MAG., Nov. 2, 1969, at 12.

90. See MERRIAM, *supra* note 56, at 46; Laska, *supra* note 15, at 143-51; see also REED, *supra* note 22, at 424 (listing the University of Nashville as having a law school in 1854-55).

91. See VU CHARTER, *supra* note 65, at 27-28.

ended. One day, Cooper's extensive personal collection of legal volumes would become a significant component of the Vanderbilt law library.<sup>92</sup>

With a faculty of eight headed by a capable dean, the law department at Vanderbilt needed only students and a place to hold classes. Neither would materialize as planned.

Because the principal building on campus, which was to house the classrooms, was incomplete,<sup>93</sup> the Law School was left to find space elsewhere. Arrangements were made with the Methodist Publishing House for quarters in which the law faculty could conduct classes and carry on the general operations of a law school.<sup>94</sup> Meanwhile, Reese, who had been named law faculty secretary, placed an advertisement in a local newspaper to attract students. The law department's advertisement, which appeared in the *Republican Banner* in August and September 1874, identified the faculty, described the nature of the two-year program, stated its cost—\$120 per academic year, and proclaimed: "THE LAW COURSE will commence on the First Monday in October next."<sup>95</sup>

October arrived, but for various reasons, few law students did. First, the \$120 annual tuition may have been too expensive for many prospective Southern law students; the region was still suffering economically from the impact of the Civil War.<sup>96</sup> Second, Vanderbilt was a start-up law school located in the same vicinity as Cumberland School of Law, a well-established provider of legal education.<sup>97</sup> Third, because Vanderbilt University was not yet operational, the Law School lacked the publicity, credibility, and organization that association with a functioning university can provide. Last, and perhaps most significantly, the space reserved in the Methodist Publishing House was unavailable for Law School use, a development that reportedly deterred some students from appearing and drove

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92. 2 VU:BOTM, *supra* note 11, at 121 (June 11, 1891); REGISTER OF VANDERBILT UNIVERSITY 1890-91/ANNOUNCEMENT 1891-92, at 65 (1891) [hereinafter REGISTER 1890-91]; CONKIN, *supra* note 4, at 120; *see also infra* notes 418-22 and accompanying text.

93. *See* CONKIN, *supra* note 4, at 19, 36, 41; HISTORY OF NASHVILLE, TENN., *supra* note 4, at 415.

94. 1 VU:BOTM, *supra* note 11, pt. 1, at 44-45, 49 (May 3, 1875).

95. *Vanderbilt University Law Department*, REPUBLICAN BANNER, Aug. 19, 1874, at 3 & Sept. 2, 1874, at 3 (boldface removed). This advertisement also appeared in the *Christian Advocate*. *See Vanderbilt University Law Department*, CHRISTIAN ADVOC., July 18, 1874, at 13.

96. *See* discussion *supra* Economy subsection in External Influences section (considering the effect of the economy on Vanderbilt Law School); *see also* Laska, *supra* note 15, at 510 (opining that "adverse economic conditions (the Panic of 1873) cut into enrollment").

97. *See supra* notes 50-52 and accompanying text.

others away.<sup>98</sup> Just four prospective law students were on hand at the time classes were to begin.<sup>99</sup>

Faced with the embarrassment of having no suitable place to operate a law school and only a handful of students, Dean Cooper consulted with law faculty secretary Reese, Bishop Holland McTyeire (the President of the Board of Trust), and the four prospective law students. It was ultimately arranged that, rather than postpone the opening of the Law School, Reese would teach classes on his own.<sup>100</sup> He did so in a “very neatly fitted up” classroom in an office building, just above an insurance business.<sup>101</sup> Over the course of the academic year, three more students arrived, bringing the total to seven, but one stayed only briefly before taking a leave of absence.<sup>102</sup>

Reese, whose father was a Tennessee Supreme Court judge,<sup>103</sup> reportedly had received some legal training at Cumberland School of Law.<sup>104</sup> He was reputed to be a kind and understanding individual,<sup>105</sup> well liked by his students.<sup>106</sup> He successfully taught law to the seven young men who attended Vanderbilt Law School in its initial year of operation—1874-75.<sup>107</sup> Essentially, Reese was Vanderbilt Law School

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98. 1 VU:BOTM, *supra* note 11, pt. 1, at 49 (May 3, 1875).

99. 1 *id.* Obviously, this was an unsettling situation for those involved. Nonetheless, an aggressive modern public relations specialist might discern an upside to the situation—with four students and eight faculty members, Vanderbilt Law School started out with perhaps the most favorable student/faculty ratio in the history of legal education.

100. See 1 *id.* at 49-50; CONKIN, *supra* note 4, at 55; Riley, *supra* note 2, at 8; see also Kirkland, *supra* note 70, at 87.

101. *Vanderbilt University: Opening of the Law and Medical Departments*, REPUBLICAN BANNER, Oct. 4, 1874, at 4 (noting the building's College Street location); see also Law Department, at 6 (undated), J. T. McGill collection, Box 6, File 99 (unpublished memorandum on file with Jean and Alexander Heard Library, Vanderbilt University) [hereinafter Law Department] (indicating that the Law School's second-floor classroom was situated in a College Street structure that later housed the Fourth National Bank).

102. See 1 VU:BOTM, *supra* note 11, pt. 1, at 50 (May 3, 1875); Law Department, *supra* note 101, at 15 (listing seven law students in 1874-75).

103. GREEN, *supra* note 89, at 98 (indicating in a chapter about Reese's father, William Brown Reese, that Reese was “Jr.”); Riley, *supra* note 2, at 9; *Judge Wm. B. Reese: Death of the Well-Known Lawyer and Scholar*, DAILY AM., Oct. 25, 1891, at 4 [hereinafter *Judge Wm. B. Reese*].

104. *Judge Wm. B. Reese*, *supra* note 103, at 4 (“He attended the law department of Cumberland University at Lebanon, Tenn., and was admitted to the bar about 1854.”). The authors have been unable to locate further information about Reese studying law at Cumberland.

105. See Keeble, *supra* note 47, at 200; Edward E. Barthell, *The Best Features of My College Life*, 3 VAND. ALUMNUS 147 (1918) (extolling virtues of Reese).

106. See Barthell, *supra* note 105, at 147; H. B. Schermerhorn, *History of the School of Law*, 17 VAND. ALUMNUS 178, 178 (1932).

107. See 1 VU:BOTM, *supra* note 11, pt. 1, at 50 (May 3, 1875); Riley, *supra* note 2, at 8.

in its first year of existence. He received all tuition, with a guaranteed minimum of \$700, for his efforts.<sup>108</sup>

At the end of the academic year, five students had progressed far enough in their studies to be promoted from the junior to the senior class, and one individual, William Van Amberg Sullivan, had finished all courses required for graduation.<sup>109</sup> It was then common for advanced law students to cover the two-year program in considerably less time;<sup>110</sup> in fact, Vanderbilt Law School's initial newspaper advertisement specifically mentioned this possibility,<sup>111</sup> as did most University announcements during the Law School's first decade.<sup>112</sup>

Dean Cooper administered a "very thorough" examination to Sullivan.<sup>113</sup> This was apparently the only academic, as distinguished from administrative, activity Cooper ever undertook on behalf of Vanderbilt Law School.<sup>114</sup> The examination was identical to the one given to law school graduates at Washington University in Saint Louis; Sullivan passed with flying colors and stood ready to graduate.<sup>115</sup> At a ceremony held on May 27, 1875, William Van Amberg Sullivan received a diploma and thus became the first individual to graduate from Vanderbilt Law School.<sup>116</sup>

108. 1 VU:BOTM, *supra* note 11, pt. 1, at 49 (May 3, 1875).

109. 1 *id.* at 50; *The First Diploma in Law*, 8 VAND. ALUMNUS 72 (1923).

110. See CONKIN, *supra* note 4, at 120, 122; MERRIAM, *supra* note 56, at 130; Riley, *supra* note 2, at 10; *Committee Report for the Eleventh Annual Meeting*, *supra* note 8, at 65; see also *infra* notes 306-11 and accompanying text.

111. See *Vanderbilt University Law Department*, REPUBLICAN BANNER, Aug. 19, 1874, at 3 & Sept. 2, 1874, at 3 (advertisement); *Vanderbilt University. Law Department*, CHRISTIAN ADVOC., July 18, 1874, at 13 (advertisement). This advertisement recognized early graduation provided the student's "previous reading will justify it." *Id.*

112. These announcements stated: "In exceptional cases the degree may be fairly won in a single year. Everything depends on the student." See, e.g., REGISTER OF VANDERBILT UNIVERSITY 1880-81/ANNOUNCEMENT 1881-82, at 60 (2d ed. 1881) [hereinafter REGISTER 1880-81]; REGISTER 1876-77, *supra* note 11, at 56.

113. *Commencement of the Law Department of Vanderbilt University*, CHRISTIAN ADVOC., June 5, 1875, at 8.

114. See Schermerhorn, *supra* note 106, at 181.

115. See *Commencement of the Law Department of Vanderbilt University*, *supra* note 113, at 8.

116. *Id.*; *The First Diploma in Law*, *supra* note 109.

A number of medical students received Vanderbilt degrees in February 1875, a few months before Sullivan's graduation. They had completed the first year of their medical education while the two-year medical school was being run solely under the auspices of the University of Nashville. Beginning in 1874, the Medical School operated under the banners of both universities. Thereafter, medical students had the option of obtaining a degree from Vanderbilt, the University of Nashville, or both institutions. See CONKIN, *supra* note 4, at 54; MIMS, *supra* note 3, at 96-97; James H. Kirkland, *Vanderbilt School of Medicine Had Precarious Beginning 60 Years Ago*, NASHVILLE BANNER, July 18, 1937, at 10; *Medical School to Mark Hundredth Anniversary*, 14 VAND. TODAY, Feb. 1975, at 1.

Upon graduation, Sullivan returned to his home state of Mississippi to practice law, eventually becoming a United States Senator.<sup>117</sup> He had demonstrated leadership ability, as well as academic acumen, at the Law School, where he served as the founding president of the “Cornelian Debating Society,” reportedly the initial student organization at Vanderbilt.<sup>118</sup> Years later, in 1900, Sullivan, then a Senator, returned to the Vanderbilt campus to display his oratorical skills, serving on that occasion as a principal speaker at the University’s twenty-fifth anniversary celebration.<sup>119</sup>

One graduate, one United States Senator alumnus—a remarkable success rate for Vanderbilt Law School. But the low number of students and the overall organization of the School needed to be addressed. After just a single year in operation, a major change was due. It occurred soon after the 1875 spring term ended.

#### THE “LEASE”

Based on its unsatisfactory experience with the Law School’s initial academic year, the Board of Trust resolved in May 1875 to reconfigure the department.<sup>120</sup> The Board started by receiving the resignation of Dean Cooper and several of the other law professors.<sup>121</sup> With the deck thus cleared, the Board executed a twenty-five year “Lease,” commencing May 27, 1875, with three members of the original law faculty—Edmund D. Baxter, Thomas H. Malone, and William B. Reese (“Lessees”).<sup>122</sup> This new organizational framework allowed the University to claim the Law School as its own, but at the same time to delegate responsibility for the School’s management to three semi-independent contractors.<sup>123</sup> In essence, the lease agreement

117. Riley, *supra* note 2, at 12; BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS 1774-1989, at 1895; *Law School Directory*, 3 VAND. ALUMNUS 205, 205 (1918) (entry for Sullivan).

118. See *The Vanderbilt*, CHRISTIAN ADVOC., Apr. 3, 1875, at 1; see also *The Cornelian Literary Society of the Vanderbilt Law School*, CHRISTIAN ADVOC., June 5, 1875, at 8 (noting that the society would continue to operate when the Law School reopened in the fall).

119. CONKIN, *supra* note 4, at 143-45; Frederick W. Moore, *The Twenty-Fifth Anniversary of the Opening of Vanderbilt University and Presentation of Kissan Hall*, 1 VAND. U. Q., Mar. 1901, at 6, 11, 20.

120. 1 VU:BOTM, *supra* note 11, pt. 1, at 44-45 (May 3, 1875); 1 *id.* at 58 (May 4, 1875); 1 *id.* at 59 (May 11, 1875); Riley, *supra* note 2, at 8.

121. See 1 VU:BOTM, *supra* note 11, pt. 1, at 59 (May 11, 1875); 1 *id.* at 59-60 (May 12, 1875); 1 *id.* at 61 (May 25, 1875). Three faculty members—Nicholson, Spofford, and Stokes—did not formally resign. The Board asked Board President McTyeire “to write to Judge Nicholson, Judge Spofford and Col. Stokes, informing them of this action [“lease” agreement], and thanking them for the use of their names in the original organization.” 1 *id.* at 61.

122. 1 *id.* at 61-62 (“Lease of Law Department”); CONKIN, *supra* note 4, at 55; Riley, *supra* note 2, at 8.

123. See CONKIN, *supra* note 4, at 24; see also *supra* notes 69-72 and accompanying text.

established a quasi-proprietary law school operating under the Vanderbilt name.<sup>124</sup>

Since the lease dictated the basic structure of the Law School for a quarter century, it bears scrutiny. But first, a brief look at the possible motivation of the parties to the agreement is instructive. On the University side, Board President McTyeire and Chancellor Garland had not given a great deal of attention to the formation of a law school and apparently were inclined to devote as few resources to the venture as feasible.<sup>125</sup> Yet, it was important from their perspective to include both a law school and a medical school in the institution to further the founders' vision of providing professional education<sup>126</sup> and to create a "university," rather than just another college.<sup>127</sup> From this viewpoint, the lease made sense. Obviously, the arrangement also appealed to the lessees—Baxter, Malone, and Reese. They could continue their local law practices and supplement their incomes by running the Law School on a part-time basis.<sup>128</sup> Such an arrangement was unexceptional; law professors of that era customarily were part-time legal educators who conducted a law practice or served as a member of the judiciary.<sup>129</sup> The lessees also would have the

124. See CONKIN, *supra* note 4, at 24, 120; Holladay, *supra* note 47, at 14.

125. See CONKIN, *supra* note 4, at 42, 53-54; MIMS, *supra* note 3, at 95-96 ("[I]t was quite clear that no idea of financial outlay was entertained in connection with the establishment of the Divisions of Medicine and Law."); *Address of Dr. Garland, supra* note 58, at 8, 9 (noting that "departments of Law and Medicine . . . are usually self-sustaining").

126. See *supra* notes 62-64 and accompanying text.

127. See CONKIN, *supra* note 4, at 24; see also *supra* notes 56-58 and accompanying text. Indeed, the Law School was restructured roughly in accordance with the organization of the Medical School, which carried the Vanderbilt name but was wholly run by the medical faculty under a contractual arrangement with the University. See MIMS, *supra* note 3, at 96-98. The University's agreement with the Law School, however, apparently gave the University greater authority to regulate the operations of that department than it had under its contract with the Medical School. See CONKIN, *supra* note 4, at 54-55.

128. See MERRIAM, *supra* note 56, at 120 ("The professors of the Vanderbilt law faculty have been men actively engaged in the practice of law, and this fact necessarily has had much to do with shaping the character of the school").

Of the three, Reese seems to have had the least extensive local practice and committed the most time to the law school venture. See *Judge Wm. B. Reese, supra* note 103, at 4 ("As a lawyer he never acquired a large practice, but he was recognized as one of the most accurate and logical jurists the State has produced."); Schermerhorn, *supra* note 106, at 178 (Reese's "health obliging him to retire from active practice of the law, he devoted his entire time to the work of the Law School"). See generally H. A. Hood, *The Law School Faculty: The Part-Time Faculty, 1875-1920*, at 1-19 (1973) (unpublished First Draft (Corrected)), Centennial History Project (on file with Jean and Alexander Heard Library, Vanderbilt University and with Vanderbilt Law School in Howard A. Hood, *Law School History Drafts of Centennial History Project*) (discussing the impact of the "part-time character of the faculty").

129. See FRIEDMAN, *supra* note 19, at 609; HARNO, *supra* note 22, at 100; PROFESSIONAL EDUCATION, *supra* note 38, at 155; REED, *supra* note 22, at 182-84; Kane, *supra* note 76, at 3; Riley, *supra* note 2, at 9; Fligeltau, *supra* note 2, at 33, 40.

opportunity to improve the quality of education available to aspiring lawyers and to engage in the process of law teaching. In this latter respect, Reese apparently found his year as an active law professor rewarding, as he seemed to discover a professional niche.<sup>130</sup> In any event, the three lessees were sufficiently drawn to legal education and confident in their personal/professional relationship to commit themselves to this long-term undertaking.

The “lease” itself was much more than what that term ordinarily connotes today—authorization to possess and use property for a certain period.<sup>131</sup> True, part of the lease dealt with the utilization of University-owned space in which to operate the law program. But the relationship was like a franchise or license agreement in that it permitted the three lawyers to use the Vanderbilt name in conducting a legal education business. Such proprietary-based arrangements were commonplace in the law school world of the late 1800s; an uneasy alliance often existed between universities that focused on scholarly pursuits and their law schools which had a decidedly practical, revenue-producing bent.<sup>132</sup>

Several provisions of the lease are noteworthy.<sup>133</sup> The University promised to provide a “suitable and commodious” classroom and a similar library for the Law School and to publish the Law School’s catalogue. The Board of Trust also empowered Baxter, Malone, and Reese to retain tuition receipts,<sup>134</sup> guaranteeing that each lessee would earn \$1,000 annually over a three-year span. Further, the Board gave the lessees “exclusive control” over the Law School, except that the University could discharge law professors for cause, discipline law students, and select the dean from the group of lessees. Malone was named dean and professor; Baxter and Reese were appointed professors. Each had a qualified right to name their own

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130. See *Judge Wm. B. Reese*, *supra* note 103, at 4.

131. BLACK’S LAW DICTIONARY 889 (6th ed. 1990).

132. See FRIEDMAN, *supra* note 19, at 608-09; REED, *supra* note 22, at 183-87, 192; STEVENS, *supra* note 18, at 35; SWORDS & WALWER, *supra* note 38, at 35-36; Kane, *supra* note 76, at 3; Fligeltaub, *supra* note 2, at 3; see also Riley, *supra* note 2, at 8-9. See generally Bartholomew, *supra* note 78.

133. The lease is set out at 1 VU:BOTM, *supra* note 11, pt. 1, at 61-62 (May 25, 1875). For discussion of the lease provisions, see CONKIN, *supra* note 4, at 55; MERRIAM, *supra* note 56, at 119; MIMS, *supra* note 3, at 98; Riley, *supra* note 2, at 8; Fligeltaub, *supra* note 2, at 2-3; H. A. Hood, Law School Finance, 1874-1973, at 4 (1973), Centennial History Project, Box 25 (unpublished First Draft on file with Jean and Alexander Heard Library, Vanderbilt University and with Vanderbilt Law School in Howard A. Hood, Law School History Drafts of Centennial History Project); Laska, *supra* note 15, at 511-12.

134. Such an arrangement for compensating law professors was widespread in that era. Kane, *supra* note 76, at 3; Fligeltaub, *supra* note 2, at 34.

successor,<sup>135</sup> and as a group they could add law professors at their discretion. For the lessees' part, they promised to operate a law school "in a manner equal in every respect to the manner in which similar schools are conducted in the Universities of the United States."<sup>136</sup> And so Vanderbilt Law School's course was set for the remainder of the nineteenth century.

Locking the Law School into an organizational arrangement of this kind for such a long period may seem foolhardy to modern eyes. But law schools were being absorbed into the university system unevenly and uneasily throughout the latter part of 1800s.<sup>137</sup> Vanderbilt University was fortunate that, notwithstanding the quasi-proprietary nature of the law department's program, the three lessees would provide stable and highly competent leadership over the lease term, thereby helping the Law School and legal education in general edge toward the mainstream of academia.<sup>138</sup>

#### THE "LESSEES"

Who were these three practicing attorneys—Edmund D. Baxter, Thomas H. Malone, and William B. Reese—entrusted with the long-term management of Vanderbilt Law School on a part-time basis? Reese turned to a career in law after attending the University of Tennessee and preparing for the ministry.<sup>139</sup> He was apparently the only one of the three lessees who had gone to law school, reportedly having studied at Cumberland at some point.<sup>140</sup>

Reese shared a military background with Baxter and Malone; all had been members of the Confederate Army during the Civil

135. This right was "subject to the ratification of the other lessees and of the Vanderbilt University." 1 VU:BOTM, *supra* note 11, pt. 1, at 62 (May 25, 1875).

136. 1 *id.* at 62.

137. See FRIEDMAN, *supra* note 19, at 608-09; REED, *supra* note 22, at 183-87; STEVENS, *supra* note 18, at 35; Fligeltaub, *supra* note 2, at 3. See generally discussion *supra* Legal Education subsection in External Influences section; Bartholomew, *supra* note 78.

138. See Kirkland, *supra* note 70, at 95; Riley, *supra* note 2, at 9; Fligeltaub, *supra* note 2, at 40-41.

139. *Judge Wm. B. Reese*, *supra* note 103, at 4; see also *supra* notes 103-08 and accompanying text (describing Reese).

140. See *Judge Wm. B. Reese*, *supra* note 103, at 4 ("He attended the law department of Cumberland University at Lebanon, Tenn., and was admitted to the bar about 1854.") (The authors have been unable to locate further information about Reese studying law at Cumberland.); MEMOIR OF THOMAS H. MALONE 92-93 (1928) [hereinafter MALONE MEMOIR] (indicating that Malone prepared for practice by reading law in an attorney's office); Thos. S. Weaver, *Thomas H. Malone, M.A.*, 7 VAND. U. Q. 77, 93-94 (1907) (noting that Malone prepared for admission to the bar by studying with a practicing lawyer); *Judge Baxter Passes Away*, NASHVILLE BANNER, June 13, 1910, at 3 ("[W]hile he [Baxter] never went to school after he was 14 years of age, he read law while in the office of Mr. Andrew Ewing at Nashville . . .").



War.<sup>141</sup> Students called Reese and Malone “Colonel” but apparently did not use that honorific title when referring to Baxter.<sup>142</sup> The Civil War bulked particularly large in Malone’s life. In his memoirs, Malone recounts at some length his service as a Confederate officer throughout the entire war,<sup>143</sup> including his capture by Union forces and subsequent lengthy stint “In Prison” on Lake Erie’s Johnson Island.<sup>144</sup>

Malone, who had a master’s degree from the University of Virginia, prepared for the practice of law by serving a law office apprenticeship.<sup>145</sup> He entered practice in Nashville shortly before the Civil War<sup>146</sup> and after the war returned to the city to reestablish his legal career.<sup>147</sup> In time, he became a leading figure in the area of equity practice and was appointed to a chancery court judgeship.<sup>148</sup> Malone also achieved prominence as a business executive, being

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141. See Keeble, *supra* note 47, at 200 (Malone and Baxter); Riley, *supra* note 2, at 9 (same); Schermerhorn, *supra* note 106, at 178 (same); *Judge Wm. B. Reese*, *supra* note 103, at 4 (noting that Reese “enlisted in the Confederate service”).

142. See Keeble, *supra* note 47, at 200 (referring to Baxter as “Judge”).

143. See MALONE MEMOIR, *supra* note 140, at 111-87; Weaver, *supra* note 140, at 94-98. Unfortunately, Malone died before he wrote the Vanderbilt stage of his memoirs. See MALONE MEMOIR, *supra* note 140, at 218.

144. See MALONE MEMOIR, *supra* note 140, at 174-87; Riley, *supra* note 2, at 9; Weaver, *supra* note 140, at 98. Coincidentally, one of Malone’s future Vanderbilt law faculty colleagues and the person who would succeed him as dean of Vanderbilt Law School, Horace Lurton, was also a Confederate soldier imprisoned at the same site at the same time. Riley, *supra* note 2, at 9; see also James F. Watts, Jr., *Horace H. Lurton*, in 111 THE JUSTICES OF THE UNITED STATES SUPREME COURT: THEIR LIVES AND MAJOR OPINIONS 925, 930 (Leon Friedman & Fred L. Israel eds., 1997). See generally *infra* notes 199-206 and accompanying text (discussing Lurton).

145. See MALONE MEMOIR, *supra* note 140, at 33-77, 90-95; Riley, *supra* note 2, at 9; Weaver, *supra* note 140, at 85-87, 93-94.

146. See MALONE MEMOIR, *supra* note 140, at 95-110; Riley, *supra* note 2, at 9; Weaver, *supra* note 140, at 94.

147. See SUMMERVILLE, *supra* note 18, at 50; Weaver, *supra* note 140, at 100; *Judge Malone Passes Away*, NASHVILLE AM., Sept. 15, 1906, at 6; *Judge Thomas H. Malone Dead After Long Illness*, NASHVILLE BANNER, Sept. 14, 1906, at 8.

As part of his practice, Malone represented those who obtained the charter for The Central University of the Methodist Episcopal Church South, soon to be renamed The Vanderbilt University. See Davidson County Chancery Court File No. 7214, Metropolitan Government Archives of Nashville & Davidson County, Tennessee; see also Interview by Katherine Edge, Tennessee Bar Foundation Legal History Project, with Charles C. Trabue, Jr., Nashville, TN (Dec. 10, 1999).

148. See SUMMERVILLE, *supra* note 18, at 50; Williams, *supra* note 89, at 22; Keeble, *supra* note 47, at 200; Schermerhorn, *supra* note 106, at 178; Weaver, *supra* note 140, at 105; *Judge Malone Passes Away*, *supra* note 147, at 6; *Judge Thomas H. Malone Dead After Long Illness*, *supra* note 147, at 8.

named Nashville Gas Company's president in the latter portion of the 1890s, a post he held for the remainder of his life.<sup>149</sup>

Malone occupied the deanship at Vanderbilt Law School from the execution of the lease in May of 1875 until he stepped down in 1904.<sup>150</sup> His role at the Law School during a seven-year stretch from 1882 to 1889, however, is unclear. For health reasons, Malone apparently was only titular law dean during this time.<sup>151</sup> Although on several occasions in the later half of the 1880s, Reese used the designation "Acting Dean" in reporting to the Board of Trust on behalf of the Law School,<sup>152</sup> the University Register/Announcement listed Malone as "Dean of the Faculty, and Emeritus Professor" throughout the seven-year period.<sup>153</sup> Malone, who had submitted his resignation and proposed his successor as professor to the Board in 1882,<sup>154</sup> did not teach during the years under discussion. The Board approved a professorship for W. A. Milliken as a replacement for Malone.<sup>155</sup> Milliken took over Malone's equity and commercial law classes<sup>156</sup> and

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149. See Riley, *supra* note 2, at 9; Weaver, *supra* note 140, at 105-06; *Judge Malone Passes Away*, *supra* note 147, at 6; *Judge Thomas H. Malone Dead After Long Illness*, *supra* note 147, at 8; Laska, *supra* note 15, at 523.

For additional observations about the accomplished and erudite Malone, see generally MALONE MEMOIR, *supra* note 140, at i-vii (Introduction by J. M. Dickinson); Weaver, *supra* note 140, at 77-109.

150. Holladay, *supra* note 47, at 14-15; Riley, *supra* note 2, at 8-9; Weaver, *supra* note 140, at 77, 102; see also 1 VU:BOTM, *supra* note 11, pt. 1, at 61 (May 25, 1875) (Board's appointment of Malone to Law School deanship); 4 *id.* at 177-78 (June 13, 1904) (Malone's letter of resignation); 4 *id.* at 195 (June 14, 1904) (Board's acceptance of Malone's resignation). See generally Law School Administration: Deans, *supra* note 81, at first through ninth unnumbered pages (discussing Malone's deanship, citing his accomplishments, and noting instances of conflict with Chancellor Garland over Law School-University relations).

151. 1 VU:BOTM, *supra* note 11, pt. 1, at 313-14 (July 4, 1882) (Malone wrote "that the State of my bealth will prevent me from continuing longer my labors in the Vanderbilt Law School").

152. See 1 *id.* pt. 2, at 473-74 (June 15, 1886); 1 *id.* at 670 (June 17, 1889); 1 *id.* at 677 (Aug. 5, 1889).

153. See REGISTER 1882-83, *supra* note 41, at 61; REGISTER OF VANDERBILT UNIVERSITY 1883-84/ANNOUNCEMENT 1884-85, at 61 (1884) [hereinafter REGISTER 1883-84]; REGISTER OF VANDERBILT UNIVERSITY 1884-85/ANNOUNCEMENT 1885-86, at 60 (1885) [hereinafter REGISTER 1884-85]; REGISTER OF VANDERBILT UNIVERSITY 1886-87/ANNOUNCEMENT 1887-88, at 63 (1887) [hereinafter REGISTER 1886-87]; REGISTER OF VANDERBILT UNIVERSITY 1887-88/ANNOUNCEMENT 1888-89, at 74 (1888) [hereinafter REGISTER 1887-88]; REGISTER OF VANDERBILT UNIVERSITY 1888-89/ANNOUNCEMENT 1889-90, at 63 (1889) [hereinafter REGISTER 1888-89].

154. See 1 VU:BOTM, *supra* note 11, pt. 1, at 313-14 (July 4, 1882).

155. See 1 *id.* at 314.

156. See REGISTER 1883-84, *supra* note 153, at 61; REGISTER 1884-85, *supra* note 153, at 60; *The Faculty List* (on file with Jean and Alexander Heard Library, Vanderbilt University) (entry for Milliken).

served as secretary of the law faculty for a number of years.<sup>157</sup> When Milliken left the faculty in 1886,<sup>158</sup> the Law School secured the services of Andrew Allison, a Harvard Law School graduate, to cover the commercial, corporate, and equity areas until Malone resumed teaching in the 1889-90 school year.<sup>159</sup>

In addition to his long tenure as dean, Malone had strong familial ties to Vanderbilt Law School. His son, Thomas Jr., graduated from the Law School in 1896 and taught equity at the School for many years.<sup>160</sup> Moreover, Malone's daughter, Julia, married Vanderbilt Law School graduate Charles Trabue,<sup>161</sup> the law department's 1894 Founder's Medalist.<sup>162</sup>

The third lessee, Edmund Baxter, was a judge's son.<sup>163</sup> Baxter, who finished his schooling at age fourteen,<sup>164</sup> served an apprenticeship with a law firm before establishing an exceptionally successful career representing railroads.<sup>165</sup> His vast influence as a practitioner in this field has been assessed in the following terms: "At the national level, Ed Baxter, in his position as special counsel for nearly all southern railroads, did more than any railroad attorney to dismantle the ICC's

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157. See 1 VU:BOTM, *supra* note 11, pt. 2, at 373 (May 26, 1884); 1 *id.* at 412 (May 26, 1885); 1 *id.* at 464 (June 14, 1886); 1 *id.* at 505 (June 13, 1887); REGISTER 1882-83, *supra* note 41, at 61, 62; REGISTER 1883-84, *supra* note 153, at 63; REGISTER 1884-85, *supra* note 153, at 62.

158. See REGISTER 1886-87, *supra* note 153, at 63.

159. See REGISTER 1887-88, *supra* note 153, at 74; REGISTER 1888-89, *supra* note 153, at 63; REGISTER OF VANDERBILT UNIVERSITY 1889-90/ANNOUNCEMENT 1890-91, at 58 (1890) [hereinafter REGISTER 1889-90]; *The Vanderbilt Opening*, CHRISTIAN ADVOC., Sept. 3, 1887, at 9 (noting that Allison had served as Tennessee Bar Association president and American Bar Association vice president); HARVARD UNIVERSITY QUINQUENNIAL CATALOGUE OF THE OFFICERS AND GRADUATES 1636-1930, at 970, 987, 1213, 1216 (1930) (listing Allison as graduating from Harvard Law School in 1865).

160. See 3 VU:BOTM, *supra* note 11, at 75 (June 15, 1896) (listing Law School graduates); Riley, *supra* note 2, at 9; *Noted Lawyer Dies at Home in Belle Meade*, NASHVILLE BANNER, Mar. 22, 1941, at 1, 16; *T. H. Malone Rites Today*, NASHVILLE TENNESSEAN, Mar. 22, 1941, at 2.

161. *Mrs. Trabue Dies: From Victorian Era*, NASHVILLE BANNER, Sept. 4, 1976, at 17.

162. See REGISTER OF VANDERBILT UNIVERSITY 1894-95/ANNOUNCEMENT 1895-96, at 140-41 (1895) [hereinafter REGISTER 1894-95] (listing Law School 1894 prize-winners). "The Founder's Department Medal" was "awarded annually to that graduate . . . regarded by the Faculty as the best lawyer of his class . . ." REGISTER OF VANDERBILT UNIVERSITY 1893-94/ANNOUNCEMENT 1894-95, at 75 (1894) [hereinafter REGISTER 1893-94].

163. SUMMERVILLE, *supra* note 18, at 49; *Judge Baxter Passes Away*, *supra* note 140, at 3; *Judge Ed Baxter Crosses the Bar*, NASHVILLE AM., June 13, 1910, at 1. Baxter's father issued the court decree chartering the University. See VU CHARTER, *supra* note 65, at 25, 27; see also *supra* note 65 and accompanying text.

164. *Judge Baxter Passes Away*, *supra* note 140, at 3; see also *Judge Ed Baxter Crosses the Bar*, *supra* note 163, at 1 ("Judge Baxter was largely a self-educated man.").

165. See SUMMERVILLE, *supra* note 18, at 49; Keeble, *supra* note 47, at 200; Schermerhorn, *supra* note 106, at 178; *Judge Baxter Passes Away*, *supra* note 140, at 3; *Judge Ed Baxter Crosses the Bar*, *supra* note 163, at 1, 3; *Law Locals*, HUSTLER, Sept. 24, 1896, at 3. Baxter assumed the presidency of the Tennessee Bar Association in 1892-1893. TENN. BAR J., Nov. 1983, at 39.

power in cases before the Supreme Court.”<sup>166</sup> Baxter was also considered an exceedingly capable law professor; he impressed law students with his attention to detail and demand for precision on all counts.<sup>167</sup>

Baxter was associated with Vanderbilt Law School from 1874 until apparently 1904, but over the last few years of this period, he served solely as a Lecturer on the Law of Interstate Commerce.<sup>168</sup> Moreover, in the late 1890s, he took a leave of absence from the Law School to attend to the demands of his law practice.<sup>169</sup>

The three lessees apportioned the curriculum among themselves.<sup>170</sup> Reese, after having taught all the classes in his initial year of teaching,<sup>171</sup> centered his attention on constitutional law, statutory, and real property courses. Naturally, Malone focused on equity; he presented classes on commercial and corporate matters as well. Baxter, for his part, offered instruction in evidence, pleading and practice, and, in his latter years on the faculty, interstate commerce. He was also heavily involved in the Law School's moot court program for a time.<sup>172</sup>

The nature of the lease arrangement, which placed the Law School in the hands of practitioners and distanced it from the University administratively, financially, and academically, may have stifled creativity and innovation in legal education.<sup>173</sup> Nevertheless, Baxter, Malone, and Reese provided steady and capable leadership for Vanderbilt Law School during its formative years.<sup>174</sup> Collectively they supplied the bulk of legal instruction offered Vanderbilt law students

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166. THOMAS, *supra* note 25, at 177.

167. See Barthell, *supra* note 105, at 147; Keeble, *supra* note 47, at 200; see also *Law Briefs*, HUSTLER, Oct. 20, 1896, at 3 (student tribute to Baxter upon his “retirement”).

168. See *The Faculty List*, *supra* note 156 (entry for Baxter). Baxter apparently did not even lecture at the Law School during the 1900-01 school year. See *id.* (entry for Baxter); 4 VU:BOTM, *supra* note 11, at 1 (June 26, 1900) (no entry for Baxter in the list of law faculty appointed for the 1900-01 academic year).

169. See 3 VU:BOTM, *supra* note 11, at 143 (June 14, 1897); 3 *id.* at 201 (June 13, 1898); *Law Locals*, *supra* note 165, at 3; *Law Briefs*, *supra* note 167, at 3 (student tribute to Baxter upon his “retirement”).

170. See Fligeltaub, *supra* note 2, at 30-31; Keeble, *supra* note 47, at 200; *The Faculty List*, *supra* note 156 (entries for lessees); ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6 (1875) through REGISTER OF VANDERBILT UNIVERSITY 1890-91/ANNOUNCEMENT 1891-92 (1891).

171. See *supra* notes 100-01 and accompanying text.

172. See REGISTER 1888-89, *supra* note 153, at 64; REGISTER 1889-90, *supra* note 159, at 59; REGISTER 1890-91, *supra* note 92, at 63; REGISTER OF VANDERBILT UNIVERSITY 1891-92/ANNOUNCEMENT 1892-93, at 60 (1892) [hereinafter REGISTER 1891-92].

173. See Laska, *supra* note 15, at 522-24.

174. See Kirkland, *supra* note 70, at 95; Riley, *supra* note 2, at 9, 13; Fligeltaub, *supra* note 2, at 40-41.

in the nineteenth century.<sup>175</sup> Although Reese passed away in 1891,<sup>176</sup> Malone and Baxter were still associated with the Law School when the lease expired in 1900.<sup>177</sup>

An examination of the obituaries of the three lessees is revealing with respect to the stature accorded a faculty position at Vanderbilt Law School during the late nineteenth century and with regard to the role teaching at the School played in each individual's legal career. Reese's obituary indicates that he found "his life work" as a Vanderbilt Law School professor and includes resolutions from the "Vanderbilt law class" and the faculty of the University.<sup>178</sup> The newspaper articles reporting on the death of Baxter or Malone, however, generally only mention their work at Vanderbilt Law School.<sup>179</sup> Other professional achievements overshadowed their efforts as part-time legal educators. Seemingly, the Baxter and Malone obituary writers by and large did not consider an extended law professorship, or a deanship for that matter, at Vanderbilt Law School to be of great importance or interest.

The three lessees' accomplishments in legal education, however, were more significant than generally recognized by newspaper accounts at the time of their deaths. These individuals—Baxter, Malone, and Reese—were highly respected practitioners who gave Vanderbilt Law School credibility in the city and the state.<sup>180</sup> As part-time teachers and administrators, the lessees, particularly Malone,<sup>181</sup> provided continuity and direction for a fledgling law school,

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175. See Riley, *supra* note 2, at 9.

176. See *Judge Wm. B. Reese*, *supra* note 103, at 4.

177. See 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900) (Kirkland noting that "[t]wo of the original faculty are still in active work"). Beginning in the late 1890s, however, Baxter's involvement in the law school had decreased appreciably. See *supra* notes 168-69 and accompanying text.

178. See *Judge Wm. B. Reese*, *supra* note 103, at 4 (noting that Reese "produced a work on constitutiona[l] law, which is now considered a necessity for every well-equipped lawyer").

179. See *Judge Baxter Passes Away*, *supra* note 140, at 3 (noting in fourth tier of headline that Baxter was "Law Professor at Vanderbilt University" and covering this aspect of his life in two sentences); *Judge Ed Baxter Crosses the Bar*, *supra* note 163, at 1 (including no mention of Baxter's law school professorship); *Judge Malone Passes Away*, *supra* note 147, at 6 (noting only that "[f]or a period of over twenty years he was Dean of the law department of Vanderbilt University"); *Judge Thomas H. Malone Dead After Long Illness*, *supra* note 147, at 8 (containing one paragraph about Malone's work as dean and professor at Vanderbilt Law School).

180. See *supra* notes 139-69 and accompanying text.

181. See Holladay, *supra* note 47, at 14 ("It is hard . . . to overstate [Malone's] early influence."); Thomas H. Malone, Jr., Address Before the Malone Inn, Phi Delta Phi, and Delegates of the Provincial Convention (Dec. 8, 1922), in MALONE MEMOIR, *supra* note 140, at 225 (observing that Malone "devoted his utmost energies" to his work as dean and that "[n]o case was ever more important to him than the preparation of his law lectures"); Law School Administration: Deans, *supra* note 81, at eighth through ninth unnumbered pages (commenting on Malone's contributions).

offered a sturdy educational product in the School's formative years,<sup>182</sup> and became involved in broader issues facing legal education,<sup>183</sup> all for scant financial reward.<sup>184</sup> In the words of Chancellor James Kirkland: "The three professors who had this department in charge for twenty-five years, and whose salaries during this time were dependent on the receipts of this department, established in the beginning rigid requirements and enforced the same with sublime indifference to their own personal advantage."<sup>185</sup>

#### CHANGES IN COMPOSITION OF FACULTY

Although the three lessees—Baxter, Malone, and Reese—provided most of the instruction at Vanderbilt Law School during the nineteenth century,<sup>186</sup> the Law School also employed other faculty members. As noted earlier, W. A. Milliken and Andrew Allison were appointed to take over the ailing Malone's classes during a substantial portion of the 1880s.<sup>187</sup>

In 1891, Reese died abruptly at the age of sixty-one, creating the need for another faculty appointment.<sup>188</sup> Pursuant to the lease that governed the management of Vanderbilt Law School, Reese's widow had the right to select Reese's successor on the faculty, conditioned upon approval by Baxter, Malone, and the Board of Trust.<sup>189</sup> This highly unusual method of selecting a new faculty member proved predictably problematic in practice. Mrs. Reese chose Robert McPhail Smith to join the Law School faculty as Reese's

182. See Kirkland, *supra* note 70, at 95; Riley, *supra* note 2, at 9, 13; Fligeltau, *supra* note 2, at 40-41 (concluding that a "sound program" had resulted from the efforts of the lessees and others).

183. See *supra* notes 38-49 and accompanying text.

184. See Fligeltau, *supra* note 2, at 33 (commenting on the law faculty's "nominal" compensation and opining that "[g]iven the purchases for the Law Library from the lessee's finances and the establishment of two \$100 annual scholarships, the faculty's net salaries were virtually nonexistent"); H. A. Hood, *The Law School Faculty: Faculty Salaries 52-53* (1974) (unpublished First Draft (Incomplete)), Centennial History Project (on file with Jean and Alexander Heard Library, Vanderbilt University and with Vanderbilt Law School in Howard A. Hood, *Law School History Drafts of Centennial History Project*) ("One may assume that the professors of that period were not getting rich from their teaching.").

185. Kirkland, *supra* note 70, at 95; see also 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900) (Kirkland commenting that the law professors "have seemed at all times indifferent to the question of their own remuneration").

186. See Riley, *supra* note 2, at 9.

187. See *supra* notes 155-59 and accompanying text.

188. *Judge Wm. B. Reese*, *supra* note 103, at 4.

189. 1 VU:BOTM, *supra* note 11, pt. 1, at 62 (May 25, 1875) (fifth lease provision); 2 *id.* at 170 (June 14, 1892). See generally *supra* notes 133-36 and accompanying text (discussing lease provisions).

replacement; Baxter and Malone readily concurred.<sup>190</sup> An obstacle, however, emerged at the Board of Trust level regarding Smith's religious views.<sup>191</sup> Certain trustees objected to approving Smith, alleging that he had "denied the Divine origin of the Christian religion and also the inspiration of the Bible."<sup>192</sup> The Board and Smith engaged in a rapid exchange of correspondence on the subject. For his part, Smith disavowed taking such a stance and further observed that one's "private opinions" on "these matters" were irrelevant, but he also acknowledged the University's affiliation with the Methodist Church and pledged to "sedulously avoid" expressing opinions in or outside class that "might not pass in the Theological Department."<sup>193</sup> A mollified Board endorsed the selection of Smith to succeed Reese.<sup>194</sup> Smith taught at the Law School for several years, offering constitutional and statutory law courses previously offered by Reese.<sup>195</sup>

Following Smith's death during the 1897-98 school year, Vanderbilt chose Jacob M. Dickinson, a judge and former United States Assistant Attorney General, to occupy the open professorial slot.<sup>196</sup> Dickinson, who was active in the Tennessee Bar Association,<sup>197</sup> focused his teaching in the areas of real property and constitutional law.<sup>198</sup>

In 1898, the Law School made two other faculty appointments, substantially expanding the size of the faculty. Horace H. Lurton was appointed constitutional law professor, and Charles N. Burch was named criminal law lecturer and law faculty secretary.<sup>199</sup>

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190. 2 VU:BOTM, *supra* note 11, at 170 (June 14, 1892). Smith had already taught at the Law School. Malone and Baxter had recruited him to take over Reese's courses after Reese's death. 2 *id.*

191. See 2 *id.* at 197 (June 15, 1892); 2 *id.* at 202-03 (June 16, 1892); CONKIN, *supra* note 4, at 120; Fligeltaub, *supra* note 2, at 32-33.

192. 2 VU:BOTM, *supra* note 11, at 202 (June 16, 1892) (letter from board member Judge Edward East to Smith).

193. 2 *id.* at 202-03 (June 16, 1892) (letter from Smith to board member Judge Edward East).

194. See 2 *id.* at 203.

195. See REGISTER 1891-92, *supra* note 172, at 59, 62; REGISTER OF VANDERBILT UNIVERSITY 1892-1893/ANNOUNCEMENT 1893-94, at 59 (1893) [hereinafter REGISTER 1892-93]; REGISTER 1893-1894, *supra* note 162, at 73; REGISTER 1894-95, *supra* note 162, at 75; *The Faculty List*, *supra* note 156 (entry for Smith).

196. 3 VU:BOTM, *supra* note 11, at 193, 201 (June 13, 1898).

197. Dickinson was the Tennessee Bar Association's president in 1889-1890 and chaired the Association's Committee on Legal Education and Admission to the Bar in 1899. TENN. BAR J., Nov. 1983, at 39 (listing former Tennessee Bar Association presidents); *Committee Report for the Eighteenth Annual Meeting*, *supra* note 30, at 10-12.

198. Keeble, *supra* note 47, at 200-01; Riley, *supra* note 2, at 9.

199. 3 VU:BOTM, *supra* note 11, at 201 (June 13, 1898).

Appointing Lurton was particularly important for Vanderbilt Law School.<sup>200</sup> He played a leading role in the development of the Law School after the operating lease ended<sup>201</sup> and brought national attention to the School through his work as a prominent jurist.<sup>202</sup> Lurton, who was a judge on the federal Sixth Circuit Court of Appeals at the time he was added to the Vanderbilt Law School faculty,<sup>203</sup> had an enormously successful legal career, culminating in his appointment as a Justice on the United States Supreme Court.<sup>204</sup> He continued to sit on the Sixth Circuit throughout his teaching career at the Law School, even during his term as Vanderbilt Law School dean in the years 1904-10.<sup>205</sup> Lurton departed in 1910 upon joining the Supreme Court.<sup>206</sup>

The Burch appointment was noteworthy in its own right. A member of the class of 1889, Burch was the first in a series of Vanderbilt Law School graduates to return to teach at the Law School.<sup>207</sup> Although Burch was on the Law School faculty for only two years,<sup>208</sup> he led the way for Vanderbilt Law School graduates to receive faculty appointments at their home institution.<sup>209</sup>

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200. See generally Riley, *supra* note 2, at 9-10 (discussing Lurton); Law School Administration: Deans, *supra* note 81, at ninth through fourteenth unnumbered pages (dealing with Lurton's career in law and his service at Vanderbilt Law School).

201. See Keeble, *supra* note 47, at 201 (stressing Lurton's role in developing the three-year program and in strengthening graduation standards).

202. See 5 VU:BOTM, *supra* note 11, at 156 (June 13, 1910); Law School Administration: Deans, *supra* note 81, at tenth through fourteenth unnumbered pages.

203. 3 VU:BOTM, *supra* note 11, at 201 (June 13, 1898).

204. See generally GREEN, *supra* note 89, at 213-18 (chapter on Lurton); LANGUM & WALTHALL, *supra* note 10, at 67-69 (discussing Lurton as notable Cumberland School of Law graduate); SUMMERVILLE, *supra* note 18, at 51 (commenting on Lurton); Watts, *supra* note 144, at 925-43 (treating Lurton's life and legal career).

205. 4 VU:BOTM, *supra* note 11, at 214 (Sept. 19, 1904); 5 *id.* at 156 (June, 13, 1910); Laska, *supra* note 15, at 524-25; Hood *supra* note 128, at 3; Law School Administration: Deans, *supra* note 81, at twelfth through fourteenth unnumbered pages; see also Watts, *supra* note 144, at 927, 935.

206. SUMMERVILLE, *supra* note 18, at 51; 5 VU:BOTM, *supra* note 11, at 156 (June 13, 1910); Watts, *supra* note 144, at 925, 933; Laska, *supra* note 15, at 524; Law School Administration: Deans, *supra* note 81, at fourteenth unnumbered page. Lurton's tenure as a Supreme Court Justice lasted only a little over four years; he died in the summer of 1914. Watts, *supra* note 144, at 927, 942; Law School Administration: Deans, *supra* note 81, at twelfth unnumbered page.

207. See REGISTER 1888-89, *supra* note 153, at 111 (listing Burch as receiving bachelor of laws degree); *Law Faculty*, HUSTLER, Oct. 6, 1898, at 1 (noting that Burch was "a Vanderbilt graduate"); *Law School Directory*, *supra* note 117, at 205, 209 (entry for Burch).

208. See REGISTER OF VANDERBILT UNIVERSITY 1898-99/ANNOUNCEMENT 1899-1900, at 89, 92 (1899) [hereinafter REGISTER 1898-99]; REGISTER 1899-1900, *supra* note 13, at 97, 101; *The Faculty List*, *supra* note 156 (entry for Burch).

209. Burch was eventually chosen to serve on the University Board of Trust. See *Law School Directory*, *supra* note 117, at 209 (entry for Burch).



The appointments of Burch and Lurton represented a key component of a plan to bolster the Law School's program. Increasing the number of law faculty members was part of a concerted effort to strengthen the Law School before its operating lease ended in 1900 and the University took "direct control" of the School.<sup>210</sup> With these hires and Baxter's return to the podium on a limited basis after a leave of absence, the Law School was operating with five faculty members, an unprecedented position of faculty strength.<sup>211</sup>

Circumstances dictated that Vanderbilt Law School make a final adjustment to its faculty roster before the end of the lease term. During the 1899-1900 school year, Dickinson was named the Illinois Central Railroad's general counsel, a post based in Chicago, and left the faculty to devote his attention to this new endeavor.<sup>212</sup> Replacements were needed. Judges Claude Waller, the Founder's Medalist of the Vanderbilt Law School class of 1890,<sup>213</sup> and J. Willis Bonner, immediate past President of the Tennessee Bar Association,<sup>214</sup> were called upon to take over Dickinson's courses.<sup>215</sup> Although Waller taught at the Law School only in the 1899-1900 academic year,<sup>216</sup> he remained associated with the University as a Vanderbilt Board of Trust member.<sup>217</sup> Bonner served as a Law School faculty member intermittently for most of the following decade.<sup>218</sup>

When the Law School lease lapsed in 1900, the Board of Trust reconstituted the faculty, expanding it to eight members, and established a faculty salary scale.<sup>219</sup> Only Malone and Lurton

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210. See 3 VU:BOTM, *supra* note 11, at 201-02 (June 13, 1898).

211. See 3 *id.* at 201; *Law Faculty*, *supra* note 207, at 1.

212. See 3 VU:BOTM, *supra* note 11, at 312 (June 18, 1900); THOMAS, *supra* note 25, at 142-43, 157; Keeble, *supra* note 47, at 201; Riley, *supra* note 2, at 9. Dickinson apparently lectured at the Law School during the period 1901 to 1904 and then returned to serve as a professor in 1912 and 1913. See *The Faculty List*, *supra* note 156 (entry for Dickinson); Riley, *supra* note 2, at 9. Dickinson became a national legal figure. He assumed the presidency of the American Bar Association in 1907-08 and served as Secretary of War in the Taft administration. Keeble, *supra* note 47, at 201; Riley, *supra* note 2, at 9; AMERICAN BAR ASSOCIATION 2002-2003 LEADERSHIP DIRECTORY 367 (2002) (listing past ABA presidents).

213. 2 VU:BOTM, *supra* note 11, at 16 (June 16, 1890).

214. TENN. BAR J., Nov. 1983, at 39 (listing former Tennessee Bar Association presidents and noting that Bonner was the head of the organization in 1898-99).

215. See 3 VU:BOTM, *supra* note 11, at 312 (June 18, 1900).

216. See *The Faculty List*, *supra* note 156 (entry for Waller).

217. See *Law School Directory*, *supra* note 117, at 210 (entry for Waller).

218. See *The Faculty List*, *supra* note 156 (entry for Bonner).

219. 4 VU:BOTM, *supra* note 11, at 1 (June 26, 1900); see also 3 *id.* at 315, 352 (June 18, 1900). See generally discussion *infra* "Reorganization": Poised for Change section.

Excluding Lurton, with whom a "special arrangement" had been made setting his compensation at \$500, annual faculty salaries were established according to rank and the number of class hours offered. Professors were to receive \$200 per hour taught each week.

remained as professors, with Malone continuing as dean.<sup>220</sup> The Board added four professors, one adjunct professor, and one instructor. The six fresh faces were: (1) James C. Bradford, who was to run the moot court program;<sup>221</sup> (2) John Bell Keeble, an 1888 Vanderbilt Law School graduate and future long-term dean of the Law School,<sup>222</sup> who was given the responsibility of serving as secretary of the faculty as well as filling a professorial slot; (3) Percy D. Maddin, an 1882 Law School graduate and prominent bank attorney;<sup>223</sup> (4) James C. McReynolds, a future United States Supreme Court Justice;<sup>224</sup> (5) Thomas A. Street, who served as adjunct professor; and (6) Thomas H. Malone, Jr., the dean's son and an 1896 Law School graduate,<sup>225</sup> who was employed as an instructor.<sup>226</sup> This post-lease faculty is remarkable in that two of its eight members, Lurton and McReynolds, would become United States Supreme Court Justices.<sup>227</sup>

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Adjunct professors were entitled to \$150 per hour. Instructors earned \$100 per hour. The dean was paid a \$100 supplement, and the faculty secretary was given an extra \$200. Law faculty members taught from two to four hours per week, with most offering three class sessions weekly. Thus, annual salaries were in the \$300-to-\$800 range. In addition, law faculty members, again excluding Lurton, were to share in any law school profit. The University and law faculty would evenly divide profits, with faculty members to allocate their portion pro rata on the basis of salary. 4 VU:BOTM, *supra* note 11, at 1 (June 26, 1900); *see also* 3 *id.* at 315, 352 (June 18, 1900); *infra* notes 466-68 and accompanying text. For discussion of this salary scheme, *see* Hood, *supra* note 184, at 53-54.

220. Baxter was not included on this post-lease faculty. Apparently, he returned to the faculty as a lecturer on the Law of Interstate Commerce during the period 1901 to 1904. *See The Faculty List*, *supra* note 156 (entry for Baxter).

221. *See generally* SUMMERVILLE, *supra* note 18, at 50-51, 58 (discussing Bradford).

222. CONKIN, *supra* note 4, at 122; REGISTER 1887-88, *supra* note 153, at 120 (listing Keeble as receiving a bachelor of laws degree); 7 VU:BOTM, *supra* note 11, at 235 (Nov. 30, 1915) (Keeble named Law School's acting dean); Keeble, *supra* note 47, at 200; *Law School Directory*, *supra* note 117, at 208 (entry for Keeble). Keeble served as Vanderbilt Law School dean from 1915 until 1929. CONKIN, *supra* note 4, at 261; Holladay, *supra* note 47, at 15.

223. Riley, *supra* note 2, at 10; *Law School Directory*, *supra* note 117, at 207 (entry for Maddin).

224. Keeble, *supra* note 47, at 201-02; Riley, *supra* note 2, at 9. *See generally* JAMES E. BOND, I DISSENT: THE LEGACY OF [ ] JUSTICE JAMES CLARK McREYNOLDS (1992); David Burner, *James C. McReynolds*, in III THE JUSTICES OF THE UNITED STATES SUPREME COURT: THEIR LIVES AND MAJOR OPINIONS 1006-17 (Leon Friedman & Fred L. Israel eds., 1997); SUMMERVILLE, *supra* note 18, at 51-52 (discussing McReynolds).

225. 3 VU:BOTM, *supra* note 11, at 75 (June 15, 1896) (including Malone Jr. in the listing of Law School graduates); Riley, *supra* note 2, at 9; *Noted Lawyer Dies at Home in Belle Meade*, *supra* note 160, at 1, 16; *T. H. Malone Rites Today*, *supra* note 160, at 2; *Law School Directory*, *supra* note 117, at 211-12 (entry for Malone Jr.).

226. 4 VU:BOTM, *supra* note 11, at 1 (June 26, 1900); *see also* 3 *id.* at 315, 352 (June 19, 1900). Malone Jr. was a faculty member at Vanderbilt Law School for decades, teaching law there well into the twentieth century. *See Noted Lawyer Dies at Home in Belle Meade*, *supra* note 160, at 1, 16; *T. H. Malone Rites Today*, *supra* note 160, at 2.

227. Laska, *supra* note 15, at 524-25; *see also* Keeble, *supra* note 47, at 201-02; Riley, *supra* note 2, at 9.

The attorneys who were appointed to the Vanderbilt law faculty in 1900, although an accomplished group of professionals, were part-time legal educators.<sup>228</sup> Thus, Vanderbilt Law School entered the twentieth century still burdened with being only an ancillary endeavor for those who ran the institution; the faculty's primary professional interests lay elsewhere. Vanderbilt was in the mainstream in this regard; at that time law school faculties typically were composed of practicing attorneys and sitting judges.<sup>229</sup>

### LAW STUDENTS

Vanderbilt law students were immersed in campus life, playing an energetic role in cultural, social, athletic, and academic affairs from the initial days of the University.<sup>230</sup> Law students reportedly formed the first student organization on campus, founding the Cornelian Debating Society, named after Cornelius Vanderbilt, on March 27, 1875.<sup>231</sup> They also created the University's initial student publication, the short-lived *Vanderbilt Austral*.<sup>232</sup> This section examines the composition of this lively and engaged body of law students and then explores areas in which their involvement in campus activities presented problems for University administrators.

*The Student Body.* Law students in the last quarter of the nineteenth century more nearly resembled undergraduate students

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228. See generally Hood, *supra* note 128, at 1-19 (discussing the impact of the "part-time character of the faculty").

229. See FRIEDMAN, *supra* note 19, at 609; HARNO, *supra* note 22, at 100; PROFESSIONAL EDUCATION, *supra* note 38, at 155; REED, *supra* note 22, at 182-84; Kane, *supra* note 76, at 3; Riley, *supra* note 2, at 9; Fligeltau, *supra* note 2, at 33, 40.

230. CONKIN, *supra* note 4, at 55; see also H. A. Hood, Vanderbilt Law School Students 80-83 (1972), Centennial History Project (unpublished Rough Draft on file with Jean and Alexander Heard Library, Vanderbilt University) (discussing law student participation in campus "literary societies"—"public speaking or debating clubs"). For further description of literary societies at Vanderbilt, see ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, at 15-16 (1875).

Dean Malone reported strong "*esprit du Corps*" among law students in 1892 that he attributed, in part, to the "good fellowship produced by university athletics," noting that law students were team leaders in baseball and football. 2 VU:BOTM, *supra* note 11, at 169-70 (June 14, 1892); see also Laska, *supra* note 43, at 504 (commenting on law students as football players); *Law Notes*, HUSTLER, Oct. 5, 1893, at 4 (observing that "it seems the law class will be well represented in base ball this year").

231. *The Vanderbilt*, *supra* note 118, at 1. William Sullivan, the first person to graduate from Vanderbilt Law School, was the society's founding president. *Id.*; see also *supra* notes 109, 118 and accompanying text. Professor Reese apparently served as faculty advisor. See *Cornelian Literary Society of the Vanderbilt Law School*, *supra* note 118, at 8.

232. See *infra* notes 278-87 and accompanying text.

than the postbaccalaureate students of today's law schools.<sup>233</sup> Indeed, law students pursued a *bachelor* of laws degree.<sup>234</sup> Of the nation's law schools that had admission requirements in the period from 1874 to 1900, few required more than an academic background that would meet college entrance standards.<sup>235</sup> Vanderbilt Law School was one of the many law schools that had not established any standard for admission of entry-level students.<sup>236</sup> Nonetheless, Vanderbilt law students of the era were not a group of mere teenagers fresh from high school; in fact, some had graduated from college.<sup>237</sup> The average age of Vanderbilt law students was approximately twenty-one in the School's earliest years, gradually increasing to twenty-two later in the lease term.<sup>238</sup>

By modern standards, the law classes at Vanderbilt during this quarter century were homogenous, with apparently no women or African-American students enrolled.<sup>239</sup> Such homogeneity was common for the time; relatively few women were admitted to law school programs,<sup>240</sup> and separate law schools for African-American students were maintained.<sup>241</sup>

Vanderbilt Law School, however, did attract several Native American students to its program during the latter part of the

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233. See generally REED, *supra* note 22, at 313 (noting the mixed educational background of law students during this period).

234. REED, *supra* note 22, at 169 (discussing the nature of the bachelor of laws degree, commonly known as an LL.B. degree); Laska, *supra* note 43, at 504.

235. See REED, *supra* note 22, at 318-19; Brainerd Currie, *The Materials of Law Study*, 3 J. LEGAL EDUC., 331, 368-69 (1951); E. W. Huffcut, *A Decade of Progress in Legal Education*, 10 AM. LAW. 404, 405-09 (1902).

236. Fligeltaub, *supra* note 2, at 4-5; see also *infra* notes 296-304 and accompanying text.

237. MERRIAM, *supra* note 56, at 130; *Educational Notes*, CHRISTIAN ADVOC., Oct. 17, 1889, at 7; *Law Notes*, *supra* note 230, at 4 (observing "that the number of college graduates who matriculate is on the steady increase"); Hood, *supra* note 230, at 12, unnumbered page containing Table IV found between pages 13 and 14; see also Riley, *supra* note 2, at 10 (noting "increasing percentage of students with undergraduate preparation" in the 1890s). See generally REED, *supra* note 22, at 313 (noting the mixed educational background of law students during this period).

238. Average Age of Matriculates in the University, J. T. McGill Collection, Box 6, File 100 (entries for the Law School from the 1875-76 school year through the 1888-89 school year) (on file with Jean and Alexander Heard Library, Vanderbilt University); Law Department, *supra* note 101, at 15.

239. See PROFESSIONAL EDUCATION, *supra* note 38, at 168 (listing the law department at Vanderbilt as a school for "Men").

240. See VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 37-63, 118-30 (1998); STEVENS, *supra* note 18, at 82-83.

241. HALL, *supra* note 18, at 219; see also STEVENS, *supra* note 18, at 81-82. Central Tennessee College (later Walden University) maintained a law school in Nashville for African-American students during the last two decades of the nineteenth century and beyond. REED, *supra* note 22, at 425; Blackard, *supra* note 50, at 269; Laska, *supra* note 15, at 688-89.

nineteenth century.<sup>242</sup> For example, William Wirt Hastings and William P. Thompson, 1889 graduates of the Law School, grew up in Indian Territory as members of the Cherokee Nation. They had been childhood friends and following graduation became law partners in Tahlequah, Indian Territory, the Cherokee Nation's capital.<sup>243</sup> Hastings was named Cherokee Nation Attorney General and later was elected to represent Oklahoma in Congress, holding office for nearly two decades.<sup>244</sup> Thompson eventually became a Commissioner of the Supreme Court of Oklahoma.<sup>245</sup>

In addition, a few members of the Chickasaw Nation received their legal education at Vanderbilt Law School in the mid-to-late 1890s. Under a Chickasaw Nation legislative measure,<sup>246</sup> a group of young Chickasaw men were chosen to attend Vanderbilt University to prepare for tribal leadership roles in government and education.<sup>247</sup> Three of those students entered the Law School;<sup>248</sup> two completed the program. Joseph H. Goforth graduated in 1897,<sup>249</sup> and Jacob L.

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242. During this period, the Law School listed at least seven students from Indian Territory. See REGISTER 1888-89, *supra* note 153, at 117; REGISTER OF VANDERBILT UNIVERSITY FOR 1895-96/ANNOUNCEMENT FOR 1896-97, at 129 (1896) [hereinafter REGISTER 1895-96]; REGISTER OF VANDERBILT UNIVERSITY FOR 1896-97/ANNOUNCEMENT FOR 1897-98 at 129 (1897) [hereinafter REGISTER 1896-97]; REGISTER OF VANDERBILT UNIVERSITY FOR 1897-98/ANNOUNCEMENT FOR 1898-99, at 129 (1898) [hereinafter REGISTER 1897-98].

243. Riley, *supra* note 2, at 12; Wm. P. Thompson, *W. W. Hastings, A Pioneer, 1866-1938*, VAND. ALUMNUS, May 1938, at 13, 13; Dollye Hefner Cravens, Standard Bearer of the Cherokees: The Life of William Wirt Hastings 3-4 (1942) (unpublished M.A. thesis, Oklahoma Agricultural and Mechanical College) (on file with Bizzell Memorial Library, University of Oklahoma Libraries) (including a quotation from a Thompson manuscript); REGISTER 1888-89, *supra* note 153, at 111, 117.

244. Riley, *supra* note 2, at 12 (noting Hastings' eighteen-year congressional career); Joe Sweat, *Cherokee Trailblazer*, 30 VAND. LAW., Fall/Winter 2000, at 8, 8-9 (observing that Hastings was a "nine-term congressman"); Thompson, *supra* note 243, at 13; *W.W. Hastings, 71, Ex-U.S. Legislator*, N.Y. TIMES, Apr. 9, 1938, at 17; *Hastings, William Wirt, 1866-1938*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS 1774-1989, BICENTENNIAL EDITION 1150-51 (1989) (reporting that Hastings was a congressional officeholder from 1915 to 1921 and from 1923 to 1935), at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000333> (last visited Mar. 11, 2003).

245. *Supreme Court Commissioners*, 91 OKLA. iii (1923); see also *School of Law Notes*, VAND. ALUMNUS, Dec. 1936, at 7, 7.

246. *An Act to Educate Twelve Chickasaw Boys in the States, and Providing Pay Therefor*, in DAVIS A. HOMER, CONSTITUTION AND LAWS OF THE CHICKASAW NATION 306-09 (1899).

247. CINDY GENTRY, *BATTLE GROUND ACADEMY: A MONUMENT TO EDUCATION* 26-27 (1996). Apparently at Chancellor Kirkland's suggestion, the Chickasaw students initially attended the Wall and Mooney School (now Battle Ground Academy) in Franklin, Tennessee, to hone their Greek and Latin skills. *Id.* at 26.

248. See REGISTER 1895-96, *supra* note 242, at 129; REGISTER 1896-97, *supra* note 242, at 129; REGISTER 1897-98, *supra* note 242, at 129.

249. REGISTER 1897-98, *supra* note 242, at 141; *Law School Directory*, *supra* note 117, at 212 (entry for Goforth). Goforth served as the first treasurer of the Vanderbilt Law Club, "[a] literary society" that was formed in the spring term of 1896. *Law Locals*, HUSTLER, Mar. 19, 1896, at 1.

Thompson received his law degree in 1898.<sup>250</sup> Both returned to Indian Territory where they practiced law.<sup>251</sup> Goforth became a county judge,<sup>252</sup> and Thompson occupied a number of administrative posts in the Chickasaw Nation.<sup>253</sup>

Vanderbilt Law School occasionally attracted an international student in the nineteenth century. During this period, the Law School enrolled at least four students from foreign countries, three from Japan and one from Brazil.<sup>254</sup> The admission of a few international students created a more diverse student body but presented challenges if a particular student was not fluent in English. For example, in 1889, the law faculty reported to the Chancellor that it had been unable to evaluate satisfactorily the academic progress of a “manifestly studious” international student because of “his limited knowledge of the English language.”<sup>255</sup> The Board of Trust responded by authorizing “a certificate of attendance for his two years in the Law School,”<sup>256</sup> which was awarded the student at graduation.<sup>257</sup> A similar issue arose again in 1890, when the Board approved, upon the law faculty’s recommendation, an LL.B. degree for another international student “although he has not studied with us the law of procedure . . . , speaks English but little, and does not propose ever to practise law.”<sup>258</sup> The Board approved this degree with the understanding that “this precedent [would be limited] strictly to the case of foreigners who do not intend to practise law.”<sup>259</sup>

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James W. Breedlove, another student from Indian Territory, who apparently was not part of the Chickasaw Nation group, argued with the “affirmative” team in a debate held at the Vanderbilt Law Club’s initial meeting. The topic was: “Resolved: that Cuban independence should be declared by the United States.” Breedlove graduated with Goforth in 1897. *Id.* at 1; REGISTER 1897-98, *supra* note 242, at 141; *Law School Directory*, *supra* note 117, at 212 (entry for Breedlove indicating that he engaged in the practice of law in Oklahoma).

250. REGISTER 1898-99, *supra* note 208, at 140; *Law School Directory*, *supra* note 117, at 212 (entry for Thompson).

251. INDIAN TERRITORY 612, 921-22 (1901) (also published with D. C. Gideon listed as author).

252. *Id.* at 612.

253. *Id.* at 921.

254. See REGISTER 1888-89, *supra* note 153, at 117; REGISTER 1889-90, *supra* note 159, at 104-05; REGISTER 1892-93, *supra* note 195, at 115.

255. 1 VU:BOTM, *supra* note 11, pt. 2, at 670 (June 17, 1889).

256. 1 *id.* at 672.

257. *Ending the Session*, DAILY AM., June 20, 1889, at 2; *Vanderbilt Commencement*, CHRISTIAN ADVOC., June 27, 1889, at 9.

258. 2 VU:BOTM, *supra* note 11, at 49 (June 16, 1890).

259. 2 *id.* The student had advised the Law School at the time he enrolled “that his purpose was solely to become acquainted with the general principles of law . . . to fit himself for the discharge of diplomatic duties.” 2 *id.*

During the nineteenth century, Vanderbilt law students were also somewhat diverse with respect to their home states.<sup>260</sup> Each academic year law students came from a number of states, frequently ten or more, and as many as fifteen (1889-90).<sup>261</sup> Neighboring jurisdictions, particularly Kentucky and Mississippi, were strong feeder states.<sup>262</sup> Texas also supplied numerous law students, and California was well represented, particularly in the 1890s. Nonetheless, Tennessee predictably was the substantial leader in providing students to Vanderbilt Law School in the nineteenth century.<sup>263</sup> The percentage of Tennesseans in the student body exceeded fifty percent in the 1870s. That percentage dropped to an all-time low of twenty-two percent by the 1887-88 academic year, only to rise again in the mid-1890s.<sup>264</sup> Tennesseans once again constituted a majority of the Vanderbilt Law School student body, and the number of other home states represented declined along with the percentage of out-of-state students. This loss of geographic reach in the 1890s may have motivated Chancellor Kirkland to urge a post-lease arrangement designed to boost the Law School's "popularity."<sup>265</sup>

Nineteenth-century Vanderbilt law graduates often pursued professional opportunities outside the area.<sup>266</sup> Among what could be called the inaugural graduating "class" of 1876 was a graduate who practiced law in British Columbia and another who served as a United States Attorney in Alaska.<sup>267</sup> Graduates in subsequent classes

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260. Riley, *supra* note 2, at 11. *But cf.* Fligeltaub, *supra* note 2, at 12-13 (revised version on file with authors) (opining that the "limited geographical areas for recruiting" constituted a longstanding problem).

The following analysis of the composition of the Vanderbilt Law School student body during the nineteenth century is based on data contained in the Vanderbilt University catalogues issued from ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, through REGISTER 1899-1900, *supra* note 13. Geographic distribution charts are on file with the authors. For annual enrollment numbers, see *infra* Figure 1 accompanying note 358.

261. See Riley, *supra* note 2, at 11.

262. See *id.* (noting law students' "predominantly Southern background"); Hood, *supra* note 230, at 1; Fligeltaub, *supra* note 2, at 13 (revised version on file with authors).

263. See Fligeltaub, *supra* note 2 (revised version on file with authors), at 13; Hood, *supra* note 230, at 1.

264. During the 1880s and early 1890s, the percentage of Tennessee students generally was in the mid-thirty to mid-forty percent range. Not only did the percentage of out-of-state students increase during this period, but the number of other states represented in the student body also rose.

265. See 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900); *infra* notes 441-47 and accompanying text.

266. Riley, *supra* note 2, at 11-13.

267. *Id.* at 12; *Law School Directory*, *supra* note 117, at 205 (entries for John E. Gannaway and Lytton Taylor).

occupied a variety of practice, corporate, government, academic, and judicial positions in numerous states across the country.<sup>268</sup>

*“Usurping . . . Authority.”* The University administration did not always appreciate law students’ enthusiastic involvement in campus life, as their actions sometimes conflicted with established expectations of student conduct.<sup>269</sup> Two such problems arose surrounding the introduction of a moot court exercise into graduation ceremonies and the creation of a student publication, the *Vanderbilt Austral*.<sup>270</sup>

A moot court performance presented by law students during graduation festivities developed into a popular part of the occasion each year.<sup>271</sup> But the initiation of this moot court event caused Chancellor Garland to draft a letter to Dean Malone just before the University’s initial general commencement in 1876, objecting to the law students’ plans.<sup>272</sup> “Surely,” Garland wrote, “they do not intend to do this of their own accord, thereby usurping the authority which resides only in the Faculty of the University.”<sup>273</sup> A pencil notation on the surviving copy of this letter indicates that it was not posted.<sup>274</sup>

268. See Riley, *supra* note 2, at 11-13; *Law School Directory*, *supra* note 117, at 205-13. Not surprisingly, many Vanderbilt law students of this era remained in Nashville after graduation. See SUMMERVILLE, *supra* note 18, at 59 (“Vanderbilt University Law School was clearly a strong influence in the Nashville bar . . .”); Riley, *supra* note 2, at 11 (observing that “the School’s graduates became prominent in the legal communities of Nashville, the state of Tennessee and throughout the Southeast”).

269. See CONKIN, *supra* note 4, at 55 (“The Law students early gained an enviable reputation among students as free and daring, the nearest approximation to radicals on the early and very staid campus.”); MIMS, *supra* note 3, at 117 (observing that medical students and law students “were a law unto themselves, or outside the law”); Joseph Sweat, *Uncommon Men*, VAND. MAG., Fall 1999, at 10, 12.

270. A third illustration, which involves a law student demonstration against the administration’s selection of a campus speaker, reflects the law students’ independent-minded, if not confrontational, nature and also indicates how strongly some law students identified with the region. At one point, the brother of Union General William Tecumseh Sherman was scheduled to speak on campus. Law students protested the event and then led a march to further express their displeasure. MIMS, *supra* note 3, at 126; Sweat, *supra* note 269, at 12.

271. CONKIN, *supra* note 4, at 55; see also *Vanderbilt University*, DAILY AM., May 28, 1880, at 4; *Vandcrbilt*, DAILY AM., May 27, 1881, at 4; *Vanderbilt Exercises*, DAILY AM., May 29, 1882, at 4. See generally *infra* notes 341-47 and accompanying text; Fligeltaub, *supra* note 2, at 22-24 (discussing moot courts conducted during the school year).

272. Unsent letter from Landon C. Garland, Chancellor, Vanderbilt University to Thomas H. Malone, Dean, Vanderbilt Law School (June 7, 1876) [hereinafter Unsent Garland Letter] (on file with Jean and Alexander Heard Library, Vanderbilt University); see also Law School Administration: Deans, *supra* note 81, at third unnumbered page.

273. Unsent Garland Letter, *supra* note 272. Garland also wrote: “We know of no University in which Moot courts form a part of the Commencement Exercises except the Cumberland University, & in our opinion the Vanderbilt [University] will be more honored in the breach than in the observance of their custom.” *Id.*

274. *Id.*



Instead, Garland forwarded a more temperate message to Malone, offering “no objection” as long as the performance was “a private arrangement,” conducted in a Law School classroom (not the University chapel), and scheduled so as to avoid interfering with “duly authorized” commencement activities.<sup>275</sup> Notwithstanding Garland’s concerns, the moot court performance was held in the chapel and turned out to be a major University event at the 1876 graduation and subsequent graduations.<sup>276</sup> Soon Garland began to attend.<sup>277</sup>

Law students found other ways to push the limits of authorized behavior. During the spring term of 1879, the *Vanderbilt Austral*, the self-proclaimed first “University paper,” was published, initially “under the auspices of the Law Department.”<sup>278</sup> In light of University faculty rejection of every student proposal to publish a periodical, law student entrepreneurs obtained funding for the *Austral* through a campus sale of stock at five dollars a share.<sup>279</sup> The *Austral* covered a variety of subjects of interest to the University community,<sup>280</sup> criticized a Board of Trust policy that restricted the area in which academic department students could live,<sup>281</sup> and lambasted University faculty opposition to student publications.<sup>282</sup> On this last topic the student editors pointedly observed: “The paper was ridiculed; the

275. Letter from Landon C. Garland, Chancellor, Vanderbilt University to Thomas H. Malone, Dean, Vanderbilt Law School (June 7, 1876) (on file with Jean and Alexander Heard Library, Vanderbilt University); see also Law School Administration: Deans, *supra* note 81, at third unnumbered page.

276. See *Vanderbilt Commencement*, DAILY AM., June 21, 1876, at 4; *Vanderbilt University*, DAILY AM., May 30, 1879, at 4; *Moot Court*, DAILY AM., May 30, 1883, at 5; *Moot Court Debate*, DAILY AM., May 28, 1888, at 3.

A related controversy arose in 1888, when the Executive Committee of the Board permitted the Law School to present diplomas to its graduates at the moot court event prior to the University’s commencement, a practice the Chancellor argued should be discontinued. 1 VU:BOTM, *supra* note 11, pt. 2, at 575 (June 18, 1888).

277. See *Vanderbilt University*, *supra* note 276, at 4 (reporting that Garland and Board President Bishop McTyeire were in attendance); *Moot Court*, *supra* note 276, at 5 (noting that Garland made the announcement and that McTyeire gave the benediction.).

278. *Editorial*, VAND. AUSTRAL, Mar. 1879, at 3; see also CONKIN, *supra* note 4, at 63 (noting that efforts to publish this periodical were “[p]ed by more daring law students”); MIMS, *supra* note 3, at 120; *Story of Vanderbilt Austral Recalled*, 8 VAND. ALUMNUS 114, 114 (1923). The *Austral* appeared each month from March of 1879 through June of 1879. See VAND. AUSTRAL, Mar. 1879; VAND. AUSTRAL, Apr. 1879; VAND. AUSTRAL, May 1879; VAND. AUSTRAL, June 1879.

279. MIMS, *supra* note 3, at 120; *Story of Vanderbilt Austral Recalled*, *supra* note 278, at 114.

280. See MIMS, *supra* note 3, at 120-21.

281. *Editorial*, *supra* note 278, at 3-4. The paper’s writers presumed that the rule—which resulted in “inferior accommodations with superior prices”—was intended to keep students enrolled in the academic department from visiting the city and was applicable only to those students “because our Board probably considered the theologians incorruptible and the lawyers too corrupt for redemption.” *Id.*

282. *Id.* at 6-7.

minds of the students presumptuous enough to write for the paper were disparaged; and it was publicly told us that there was not ability enough here, nor would be for many decades, to run a paper, which is saying but little for the training of the professors or the work of the University since its inauguration.”<sup>283</sup>

In his report to the Board of Trust that spring, Chancellor Garland referred to the publication of the *Austral* as a “flagrant violation of law,” noting that the law students who created the paper were “under the impression that they were not bound by any prohibition laid upon the other students of the University.”<sup>284</sup> He asserted that the “clandestinely published” paper was “demoralizing” to the student body in that it signaled that “violations of the law may be committed with impunity if done in secrecy.”<sup>285</sup> Garland concluded that it was important for the students to be cognizant of the Trustees’ authority “to purge out any disorganizing element.”<sup>286</sup>

The *Vanderbilt Austral* never opened for business in its second academic year. Apparently the names of the students involved in its publication became public by virtue of an imprudent bulletin board posting. The administration reportedly required those students, as a condition of enrollment for the 1879 fall semester, to agree to shut down the *Austral*.<sup>287</sup>

The controversies aroused by the actions of law students were attributable, in part, to a lack of clarity about the reach of University disciplinary regulations.<sup>288</sup> The Law School’s operating lease specified: “The Law Students shall be subject to the University discipline in like manner with the students of the other departments.”<sup>289</sup> In practice, however, differences appeared because of perceptions that the rules governing the general student body did not unequivocally apply to law students.<sup>290</sup> Thus, relying on “a special contract,” Dean Malone asserted exemptions for law students from University rules governing where students could live and requiring them to attend chapel services. Chancellor Garland disavowed knowledge of such an arrangement, but agreed not to enforce the rules at issue and sought direction from the Board of Trust with respect to enforcing general

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283. *Id.* at 6.

284. 1 VU:BOTM, *supra* note 11, pt. 1, at 174 (May 28, 1879).

285. 1 *id.*

286. 1 *id.*

287. *Story of Vanderbilt Austral Recalled*, *supra* note 278, at 114.

288. See CONKIN, *supra* note 4, at 55.

289. 1 VU:BOTM, *supra* note 11, pt. 1, at 62 (May 25, 1875) (sixth lease provision).

290. CONKIN, *supra* note 4, at 55; see also MIMS, *supra* note 3, at 117.

University regulations against law students.<sup>291</sup> The Board responded by delegating decisions about where students could live to the faculties of the individual schools and by directing a council of deans headed by Garland, known as the University Senate, to convene each month to foster consistency and compatibility among the schools.<sup>292</sup>

Perhaps in response to the University administration's unease, all matriculating law students began signing a pledge in 1890: "I promise to obey the laws of the University."<sup>293</sup> In 1897, the pledge was expanded: "I promise to obey the laws of the University and the Library."<sup>294</sup> It is unknown what law student activities or legalistic defenses might have prompted this more comprehensive formulation. It appears likely, however, that Chancellor Kirkland's desire to dissolve the quasi-proprietary law school arrangement at the end of the operating lease in 1900 reflected, in part, a determination to bring the regulation of law students more firmly under central University authority.<sup>295</sup>

#### ACADEMIC PROGRAM

In one sense, an academic program begins with admission standards. On this score, Vanderbilt Law School was wholly lacking in its early days. During the nineteenth century, Vanderbilt maintained no academic standards for the admission of entry-level law students.<sup>296</sup> This practice was common then.<sup>297</sup> Even those law schools

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291. 1 VU:BOTM, *supra* note 11, pt. 1, at 176 (May 28, 1879); *see also* Law School Administration: Deans, *supra* note 81, at second through seventh unnumbered pages (discussing this conflict). Dean Malone's claim may have originated from the provision in the 1875 lease that gave the faculty "the right to the exclusive control of said Law Department." 1 VU:BOTM, *supra* note 11, pt. 1, at 61 (May 25, 1875) (fourth lease provision).

292. 1 VU:BOTM, *supra* note 11, pt. 1, at 187 (May 30, 1879); Law School Administration: Deans, *supra* note 81, at fifth through sixth unnumbered pages.

293. Volume, the title of which is obscured, containing rosters of matriculating law students at Vanderbilt during the years 1889-1907, at 8 [hereinafter Rosters of Matriculating Law Students] (on file with Vanderbilt Law School).

294. Rosters of Matriculating Law Students, *supra* note 293, at 28.

295. *See* 3 VU:BOTM, *supra* note 11, at 201-02 (June 13, 1898); 3 *id.* at 249 (June 19, 1899); CONKIN, *supra* note 4, at 122; *infra* notes 436-69 and accompanying text. *See generally* Reed, *supra* note 22, at 184-87 (discussing the trend among universities to assert greater authority over their law schools).

296. Fligeltaub, *supra* note 2, at 4-7; Law School Curriculum, *supra* note 45, at 3, 5; *see also* 3 VU:BOTM, *supra* note 11, at 143-44 (June 14, 1897); *Committee Report for the Seventeenth Annual Meeting*, *supra* note 30, at 14; Riley, *supra* note 2, at 10; Law School Curriculum: Admission Requirements 1-5 (undated), Centennial History Project, Box 25 (unpublished memorandum on file with Jean and Alexander Heard Library, Vanderbilt University) [hereinafter Law School Curriculum: Admission Requirements]. The Law School's announcements specifically provided that applicants were not subject to any entrance

that had admission standards generally did not establish criteria any more demanding than the prevailing academic requirements for entering college.<sup>298</sup> In any case, Vanderbilt Law School found competitive and financial reasons for maintaining a policy of standardless admission throughout the nineteenth century; the institution was required to recruit a sufficient number of law students to remain an economically viable academic entity.<sup>299</sup>

Near the end of the century, Vanderbilt law faculty members evinced concern about the insufficient academic preparation of law students.<sup>300</sup> Ultimately, Dean Malone proposed to the Board of Trust that he and Chancellor Kirkland explore the possibility of adopting some educational requirement—for example, a college degree—for admission to the Law School.<sup>301</sup> Kirkland agreed to consider the matter, but, ever concerned about increasing the size of the Law School's student body,<sup>302</sup> he viewed the notion of requiring a college degree for law school admission as probably premature for a Southern

examination. *See, e.g.*, ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 37; REGISTER 1897-98, *supra* note 242, at 89.

On a single occasion—in 1892, the Law School included the following statement in the Course of Instruction section of its Announcement: “Candidates for admission to both grades . . . must have previously read Walker’s American Law or its equivalent upon the institutes of the law.” REGISTER 1891-92, *supra* note 172, at 60; *see also* Fligeltaub, *supra* note 2, at 6 n.18. In addition, at the very end of the century—in 1899, the Law School established the following Senior Class admission standard for students seeking a degree:

Applicants for admission to the Senior Class, who desire to become candidates for the degree of LL. B., must either have successfully passed through the Junior Class of this school, or present the diploma or certificate of graduation from some other school of law having a two years’ course, or pass a satisfactory examination on all the subjects studied by the Junior Class of this school.

REGISTER 1898-99, *supra* note 208, at 89.

297. REED, *supra* note 22, at 319; Currie, *supra* note 235, at 368-69; Huffcut, *supra* note 235, at 405-06; *Committee Report for the Seventeenth Annual Meeting*, *supra* note 30, at 14 (“It is believed that no educational acquirements as conditions precedent are required by any law school in this State.”); Fligeltaub, *supra* note 2, at 5; Law School Curriculum, *supra* note 45, at 3-4; Law School Curriculum: Admission Requirements, *supra* note 296, at 1-5.

298. REED, *supra* note 22, at 318-19; Currie, *supra* note 235, at 368-69; Huffcut, *supra* note 235, at 405-08.

299. Fligeltaub, *supra* note 2, at 5-6 (exploring “factors” supporting a standardless admission policy); *see also* Riley, *supra* note 2, at 10; *supra* notes 3-55 and accompanying text.

300. *See* 2 VU:BOTM, *supra* note 11, at 283 (June 18, 1894) (Professor R. McPhail Smith, reporting to Board of Trust as the Law School’s “Dean Pro Tempore,” opined that “many of those entering upon the study of law have lacked the proper preliminary training therefor” and stressed the importance of pre-law education that encompassed “a good smattering of Latin, a fair amount of Geometry (the finest embodiment of applied logic), and a tolerable knowledge of the history of our own country and of England.”); Fligeltaub, *supra* note 2, at 6; Laska, *supra* note 15, at 518.

301. 3 VU:BOTM, *supra* note 11, at 181 (June 14, 1897).

302. *See infra* text accompanying notes 441-47; Fligeltaub, *supra* note 2, at 6-7.

institution.<sup>303</sup> The issue was shelved; admission requirements were not imposed at Vanderbilt Law School during the period under consideration (1874-1900).<sup>304</sup>

Once admitted, law students at Vanderbilt faced a program of legal study that ostensibly extended over a two-year period, bifurcated into a junior and a senior year.<sup>305</sup> After successful completion of this endeavor, a student received a bachelor of laws degree.<sup>306</sup> The two-year duration of the program, however, was not firm.<sup>307</sup> Indeed, the law faculty signaled from the Law School's opening that the required coursework could be completed in less time.<sup>308</sup> A substantial number of students, including the Law School's first graduate,<sup>309</sup> seized the opportunity to compress their legal education and were awarded degrees after just one year at the Law School.<sup>310</sup> For many years, the law faculty tolerated, even facilitated, this academic shortcut on the

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303. 3 VU:BOTM, *supra* note 11, at 143-44 (June 14, 1897).

304. See REGISTER 1899-1900, *supra* note 13, at 97. In 1899, the Law School did establish a Senior Class admission standard. See REGISTER 1898-99, *supra* note 208, at 89. This standard is set out *supra* note 296.

In 1907, the Board of Trust finally established academic standards for admission of entry-level law students. See 5 VU:BOTM, *supra* note 11, at 45 (July 23, 1907); Law School Curriculum: Admission Requirements, *supra* note 296, at 5.

305. *E.g.*, ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6 at 37; REGISTER 1882-83, *supra* note 41, at 61-62; REGISTER 1891-92, *supra* note 172, at 59-60; Riley, *supra* note 2, at 10.

306. *E.g.*, ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 37; REGISTER 1898-99, *supra* note 208, at 91; see also Riley, *supra* note 2, at 10.

Terminology used to describe the degree received by nineteenth-century Vanderbilt law graduates varied. It was referred to originally as "Bachelor of Laws" (see, *e.g.*, ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 37; ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 52), then as "Bachelor of Law" (see, *e.g.*, REGISTER 1876-77, *supra* note 11, at 27, 30, 56; REGISTER 1880-81, *supra* note 112, at 60), and later as "Bachelor of Laws" again (see, *e.g.*, REGISTER 1888-89, *supra* note 153, at 65; REGISTER 1897-98, *supra* note 242, at 90, 141). The abbreviation used in certain early public announcements was B.L. (see, *e.g.*, REGISTER 1876-77, *supra* note 11, at 27; REGISTER 1880-81, *supra* note 112, at 28), but a later announcement used LL.B. (see REGISTER 1898-99, *supra* note 208, at 89), as did Chancellor Garland at one point early on (see 1 VU:BOTM, *supra* note 11, pt.1, at 68 (June 17, 1876) ("L. L. B.")). All these terms were essentially interchangeable and simply reflected variations common in the academic community. See REED, *supra* note 22, at 169 (discussing nature of the bachelor of laws degree, commonly known as LL.B. degree).

307. See Riley, *supra* note 2, at 10; Fligeltaub, *supra* note 2, at 7, 13-15.

308. See, *e.g.*, REGISTER 1876-77, *supra* note 11, at 56 ("In exceptional cases the degree may be fairly won in a single year."); REGISTER 1887-88, *supra* note 153, at 74 (noting that "a student may . . . graduate[ ] in one year"); REGISTER 1891-92, *supra* note 172, at 59-60; *Vanderbilt University! Law Department*, REPUBLICAN BANNER, Aug. 19, 1874, at 3 (advertisement recognizing early graduation provided the students' "previous reading will justify it").

309. See *supra* notes 109-16 and accompanying text.

310. CONKIN, *supra* note 4, at 120, 122; MERRIAM, *supra* note 56, at 130; REGISTER 1887-88, *supra* note 153, at 74 (noting that "many have graduated in one year"); *Committee Report for the Eleventh Annual Meeting*, *supra* note 8, at 65; Riley, *supra* note 2, at 10.

articulated grounds that numerous Vanderbilt law students had studied law before enrolling or had difficulty devoting the time and money demanded by a two-year program.<sup>311</sup> Moreover, a reality of the marketplace could not be ignored; rival forms of legal study existed—the still viable apprenticeship method and one-year law school programs,<sup>312</sup> such as that offered at neighboring Cumberland.<sup>313</sup>

Over time the law faculty apparently came to the conclusion that the intellectual quality of the law school experience suffered for those students who finished in one year. Thus, at the start of the 1890s, the law faculty created three full-tuition scholarships for the senior year to be given to the top students in the junior class in order to entice them to stay in school for the entire two-year program.<sup>314</sup> Then in 1892, the law faculty required law students to secure the dean's endorsement in order to pursue the one-year degree track.<sup>315</sup> Finally, in 1893, Vanderbilt Law School established two years as the unalterable duration of its program.<sup>316</sup> This decision to mandate a two-year program was made at the risk of declining enrollments.<sup>317</sup>

311. See REGISTER 1887-88, *supra* note 153, at 74; REGISTER 1891-92, *supra* note 172, at 59.

312. Fligeltaub, *supra* note 2, at 15; see also Riley, *supra* note 2, at 10; *supra* notes 38-44 and accompanying text.

313. See LANGUM & WALTHALL, *supra* note 10, at 103-04 (discussing the enduring nature of Cumberland's one-year law program); Fligeltaub, *supra* note 2, at 15-16; see also *supra* note 44 and sources cited therein (indicating that the diploma privilege may have given Cumberland, with its shorter program, some market advantage over Vanderbilt).

314. 2 VU:BOTM, *supra* note 11, at 122 (June 11, 1891) (noting that the faculty increased the number of scholarships for the senior year from the intended two to three because of a publishing error which indicated that three scholarships were available); MERRIAM, *supra* note 56, at 130; Untitled draft document, apparently forwarded from Wilbur F. Barclay, Secretary of the Faculty, Vanderbilt Law School to Holland N. McTyeire, President, Board of Trust, Vanderbilt University 4 (undated), J. T. McGill Collection, Box 7, File 113 (on file with Jean and Alexander Heard Library, Vanderbilt University) [hereinafter Untitled Draft Document].

The number of Senior Scholarships was soon reduced to two. See, e.g., REGISTER 1891-92, *supra* note 172, at 61; REGISTER 1892-93, *supra* note 195, at 61. Still another reduction was planned. In 1893, the law faculty decided to begin awarding only one Senior Scholarship. 2 VU:BOTM, *supra* note 11, at 283 (June 18, 1894) (noting that the information in the announcement needed to be amended). The members of the law faculty apparently changed their minds about reducing the Senior Scholarships to one; subsequent Law School announcements continued to declare that two Senior Scholarships would be granted. See, e.g., REGISTER 1893-94, *supra* note 162, at 75; REGISTER 1895-96, *supra* note 242, at 79; REGISTER 1899-1900, *supra* note 13, at 99-100.

315. REGISTER 1891-92, *supra* note 172, at 59-60; Fligeltaub, *supra* note 2, at 14.

316. See REGISTER 1892-93, *supra* note 195, at 59 (allowing transfer students to satisfy one year of this requirement at another law school); 2 VU:BOTM, *supra* note 11, at 221 (June 19, 1893); 2 *id.* at 270 (June 18, 1894); Riley, *supra* note 2, at 10; Fligeltaub, *supra* note 2, at 14; Law School Curriculum, *supra* note 45, at 6.

317. 2 VU:BOTM, *supra* note 11, at 221 (June 19, 1893) (Dean Malone reporting that the law faculty expected that a firm two-year program would "seriously affect our numbers"); 2 *id.* at 270 (June 18, 1894) (Chancellor Kirkland noting that "diminution of the number of students was to be expected"); see also 3 *id.* at 11 (June 17, 1895) (Chancellor Kirkland expressing the desire to

Fortunately for the Law School, the size of its student body decreased only slightly the following year and then rebounded completely in subsequent years.<sup>318</sup> Indeed, near the end of the century, Chancellor Kirkland expressed the hope that at some point the Law School could extend its academic program to three years.<sup>319</sup>

The fluidity of the length of the Law School's academic program during the period from 1874 to 1900 must be viewed in light of the standard in legal education at the time. At Vanderbilt Law School's creation, law schools nationwide were divided between one-year and two-year programs, with two-year programs predominating.<sup>320</sup> Over the last quarter of the nineteenth century, law schools moved toward longer academic programs—of two or three years duration, with three-year programs in the ascendancy at century's end.<sup>321</sup> Hence, Vanderbilt was within the legal education mainstream of the time with its loose, then firm, two-year academic program in law<sup>322</sup> and its aspiration to develop a three-year course of study.<sup>323</sup>

The Vanderbilt Law School faculty articulated from the start an approach to legal education that guided their work:<sup>324</sup>

It will be the aim of the Professors to pursue such a plan of instruction as will lay a broad foundation of principle upon which the student may build his own superstructure according to the laws of the place where he may locate, and the branch of the profession he may adopt; and for this purpose special attention will be paid to the mental discipline and training of the student, and to the teaching of those general principles of reason which underlie all positive systems of Law.<sup>325</sup>

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substantially increase the size of the Law School student body and noting: "Our Law School suffers somewhat by reason of the fact that other schools with which we compete still graduate students after only one year's study."); 3 *id.* at 201 (June 13, 1898) (Chancellor Kirkland opining that the existence of one-year law programs at rival institutions may have had a negative impact on the size of enrollments at Vanderbilt Law School); Fligeltaub, *supra* note 2, at 14-16.

318. See 2 VU:BOTM, *supra* note 11, at 270 (June 18, 1894); *School of Law*, VAND. ALUMNUS, Dec. 1935, at 6, 6 (charting Law School enrollment figures); see also *infra* notes 358-78 and accompanying figure and text (analyzing the issue of the size of Law School enrollments in the nineteenth century).

319. See 3 VU:BOTM, *supra* note 11, at 201 (June 13, 1898).

320. See PROFESSIONAL EDUCATION, *supra* note 38, at 155; REED, *supra* note 22, at 171.

321. See PROFESSIONAL EDUCATION, *supra* note 38, at 155; REED, *supra* note 22, at 171, 177-78; Huffcut, *supra* note 235, at 408 (noting that Southern law schools lagged behind the trend to increase the duration of the academic program to three years).

322. See *supra* notes 305-16 and accompanying text (discussing the law faculty's consideration of the length of the academic program).

323. See 3 VU:BOTM, *supra* note 11, at 201 (June 13, 1898).

324. See Riley, *supra* note 2, at 10.

325. ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 38 ("The true object of education is not so much to fill the memory with particulars as to prepare the mind for their reception."); ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 52.

Thus did the University and law faculty express their desire to prepare students broadly for legal practice.<sup>326</sup> The law school classroom experience was intended “to expand the intellect rather than to teach points of local practice or rules of local law.”<sup>327</sup> Similarly, “daily examinations” were to be conducted to promote independent thinking over pure memorization.<sup>328</sup>

Course offerings remained relatively constant at Vanderbilt Law School over the last quarter of the nineteenth century. Subjects presented at both the beginning and end of this period included pleading, contracts, domestic relations, criminal law, real property, corporations, partnership, torts, evidence, constitutional law, moot court, equity, and wills.<sup>329</sup>

Published expectations of law students in the classroom, however, were uneven. Academic standards were established for a bachelor of laws degree—law students were required to achieve a seventy-five percent score on a “searching examination in writing” every semester,<sup>330</sup> as well as to have satisfactorily performed “daily

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326. See Riley, *supra* note 2, at 10 (noting that this orientation “differentiated the School immediately from state institutions being established during the same period”).

327. ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 38-39; ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 52.

Apparently, interdisciplinary work could be arranged at Vanderbilt Law School during the nineteenth century. The Law School enrolled its first joint degree candidate in 1875. Charles Pickney Wofford of Spartanburg, South Carolina, was registered in the Law School and also in the academic department to study Latin, then geology and natural history. See ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 9, 15; REGISTER 1876-77, *supra* note 11, at 9, 16. Wofford graduated from the Law School in 1877. REGISTER 1877-78, *supra* note 12, at 18, 21.

328. ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 38; ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 52.

329. See ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 37-38; ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 51-52; REGISTER 1899-1900, *supra* note 13, at 98-99. See generally Fligeltaub, *supra* note 2, at 24-29 (discussing the nature of the Law School curriculum during this period).

330. REGISTER 1877-78, *supra* note 12, at 56; REGISTER 1882-83, *supra* note 41, at 61. Later, students were required to meet the seventy-five percent standard with respect to “written examinations” or “written examinations and recitations.” See REGISTER 1883-84, *supra* note 153, at 62 (“written examinations”); REGISTER 1898-99, *supra* note 208, at 91 (“written examinations and recitations”).

After a period of specifically requiring written course examinations (see, e.g., REGISTER 1883-84, *supra* note 153, at 62; REGISTER 1888-89, *supra* note 153, at 64), the Law School, beginning in 1891, permitted oral as well as written course examinations (see, e.g., REGISTER 1890-91, *supra* note 92, at 64-65; REGISTER 1899-1900, *supra* note 13, at 99). This policy continued until the law faculty announced a return to only written course examinations in 1901. See REGISTER OF VANDERBILT UNIVERSITY 1900-1901/ANNOUNCEMENT 1901-1902 at 102 (1901) [hereinafter REGISTER 1900-01]; see also Fligeltaub, *supra* note 2, at 7-9.



recitations.”<sup>331</sup> The Law School’s earliest announcements, however, cast doubt on the seriousness with which classroom work was sometimes taken:<sup>332</sup> “Students will find it much to their advantage to enter promptly at the beginning of the Session, but they may do so at any time.”<sup>333</sup> Perhaps in response to students taking advantage of this laxness, the faculty stiffened its stance in 1884: “Students should present themselves punctually at the opening of the Session. The loss of a few lectures at the beginning may prove to be a serious embarrassment to subsequent progress.”<sup>334</sup>

The Law School’s public description of “the diploma privilege” also reflects tightened standards.<sup>335</sup> Initially, the law faculty called attention to its willingness to exercise its authority to grant licenses to practice law to students who did not earn a law degree.<sup>336</sup> Beginning in 1884, the statement on the diploma privilege in the Law School’s announcement no longer highlighted this possibility.<sup>337</sup>

Early announcements described classroom methodology at Vanderbilt Law School as follows: “Instruction is given by Lectures, daily Examinations and by Moot-courts.”<sup>338</sup> Law School announcements also included a list of the textbooks that students were to use in the course of their legal studies.<sup>339</sup> The School’s lecture/quiz/textbook approach to law teaching was unremarkable; it was the norm in legal education at that time.<sup>340</sup>

331. REGISTER 1876-77, *supra* note 11, at 56; REGISTER 1899-1900, *supra* note 13, at 99 (“daily recitation”).

332. *See* Riley, *supra* note 2, at 10.

333. *E.g.*, REGISTER 1876-77, *supra* note 11, at 56; REGISTER 1882-83, *supra* note 41, at 61.

334. REGISTER 1883-84, *supra* note 153, at 61.

335. *See supra* notes 40-44 and accompanying text (discussing the diploma privilege).

336. *See, e.g.*, REGISTER 1876-77, *supra* note 11, at 56-57; REGISTER 1882-83, *supra* note 41, at 61-62; *see also* Riley, *supra* note 2, at 10; Fligeltaub, *supra* note 2, at 11.

337. The new statement simply read, “The Faculty are empowered by statute to grant License to practice law in any of the courts of the State of Tennessee.” REGISTER 1883-84, *supra* note 153, at 62. Eventually certain Vanderbilt faculty members assumed prominent positions in the public campaign to eliminate the diploma privilege. *See supra* note 44 and accompanying text.

338. *See, e.g.*, REGISTER 1876-77, *supra* note 11, at 56; REGISTER 1882-83, *supra* note 41, at 61.

339. *See, e.g.*, REGISTER 1876-77, *supra* note 11, at 57; REGISTER 1882-83, *supra* note 41, at 62; *see also* Fligeltaub, *supra* note 2, at 27-29 (commenting on the course materials used at Vanderbilt Law School).

340. *See* FRIEDMAN, *supra* note 19, at 610-11; HALL, *supra* note 18, at 219; Fligeltaub, *supra* note 2, at 20.

Moot court, however, was emphasized at Vanderbilt Law School<sup>341</sup> and was detailed in early Law School announcements: "Students are required to prepare pleadings on statements of cases made for the purpose, argue the cases, draw the proper judgments and decrees, prepare bills of exceptions, and prosecute appeals or writs of error to the Appellate Court."<sup>342</sup> This description of moot court exercises hardly does justice to this component of the curriculum; moot court occupied a central place in the instructional program offered at the Law School during its formative years.<sup>343</sup> Indeed, later Law School announcements expanded the explanation of moot court, pointing out that law students would handle more than one hundred moot court cases during each academic year, that moot court occupied a position of "prominence" in the institution's overall academic program, and that Professor Baxter devoted his teaching efforts to "[t]his feature of the school."<sup>344</sup>

The emphasis on moot court is consistent with the nature of the Vanderbilt Law School faculty—active attorneys who taught law as a collateral activity.<sup>345</sup> Indeed, the Law School endeavored to accentuate the way in which its faculty's practitioner background enhanced the classroom experience.<sup>346</sup> The School's inaugural catalogue professed the "hope . . . that, coming daily to their Lectures fresh and heated from the contests of the bar, they may be able to impart to the study of the law a measure of the enthusiasm inseparably connected with the practice; and, at all events, they will continually keep prominent before the student the live law and practical questions of the day."<sup>347</sup>

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341. REGISTER 1876-77, *supra* note 11, at 56 (noting that moot court received "[v]ery great attention"); REGISTER 1882-83, *supra* note 41, at 61 (stating moot court received "[e]special attention").

342. *See, e.g.*, REGISTER 1876-77, *supra* note 11, at 56; REGISTER 1882-83, *supra* note 41, at 61.

343. *See* Fligeltaub, *supra* note 2, at 22-24 (describing moot court instruction); Untitled draft document, *supra* note 314, at 3 ("The most marked improvement in methods of instruction has been in the increased attention given to the Moot Court. . . . It is believed that at no other law school in the world is such attention given to the practical preparation of the students for the trying duties of the court room."); *see also supra* notes 271-77 and accompanying text (discussing moot court performance at graduation).

344. *See, e.g.*, REGISTER 1887-88, *supra* note 153, at 75; REGISTER 1891-92, *supra* note 172, at 60.

345. *See* discussion *supra* The "Lessees" section and Changes in Composition of Faculty section.

346. *See* MERRIAM, *supra* note 56, at 120; Riley, *supra* note 2, at 9.

347. ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 39.

The Vanderbilt law faculty apparently made no dramatic adjustment in instructional approach during the nineteenth century.<sup>348</sup> A fundamental pedagogical change, however, was afoot in the world of legal education; the controversial case method of law teaching, utilized at Harvard Law School, was gaining momentum.<sup>349</sup> Indeed, near the end of the nineteenth century, the Vanderbilt Law School faculty indicated that it was beginning to incorporate the case method into its existing teaching model: "The method of instruction is partly by text-books, partly by lectures, and partly by the examination and discussion of selected cases."<sup>350</sup>

The Vanderbilt Law School faculty also demonstrated a desire to expand the academic program. For four academic years, 1888-92, the faculty offered instruction for "post-graduates and young practicing lawyers."<sup>351</sup> Rather than develop a particular course of study, the faculty indicated that it would design an appropriate program for interested parties.<sup>352</sup> The short duration of the offering and the lack of any fuller description of the program indicate that it may not have been a successful venture.

The trajectory of the academic program at Vanderbilt Law School during the final quarter of the nineteenth century was clearly upward. The faculty's aspirations for a more rigorous intellectual environment were demonstrated by efforts to first encourage and then require a longer period of study, to create a more demanding classroom experience, and to consider establishing minimal admissions standards. While the School was not a national leader academically, by all accounts the University administration and the Law School faculty were serious about providing as fine a legal education as their circumstances would allow.<sup>353</sup>

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348. Fligeltaub, *supra* note 2, at 18-20; Law Department, *supra* note 101, at 8.

349. See FRIEDMAN, *supra* note 19, at 612-18; HALL, *supra* note 18, at 219-21; STEVENS, *supra* note 18, at 52-64. See generally WILLIAM P. LAPIANA, LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION (1994) (analyzing the development and impact of the case method).

350. See, e.g., REGISTER 1895-96, *supra* note 242, at 77; REGISTER 1898-99, *supra* note 208, at 90.

351. REGISTER 1887-88, *supra* note 153, at 77; REGISTER 1888-89, *supra* note 153, at 66; REGISTER 1889-90, *supra* note 159, at 61; REGISTER 1890-91, *supra* note 92, at 66.

352. See REGISTER 1887-88, *supra* note 153, at 77; REGISTER 1888-89, *supra* note 153, at 66; REGISTER 1889-90, *supra* note 159, at 61; REGISTER 1890-91, *supra* note 92, at 66.

353. See Riley, *supra* note 2, at 13; Fligeltaub, *supra* note 2, at 4, 40-41; Law School Administration: Deans, *supra* note 81, at eighth through ninth unnumbered pages.

## INFRASTRUCTURE

Vanderbilt Law School's early academic program was entwined with the School's financial, facility, and library infrastructure. An examination of these fiscal and physical factors facilitates an understanding of the constraints within which the lessees operated.

*Finances.* Vanderbilt University's financial arrangement with the Law School lessees, beginning with the 1875 lease,<sup>354</sup> was simple. The lease specified that the three lessees—Baxter, Malone, and Reese—were entitled to tuition receipts, guaranteeing \$1,000 per lessee per annum over the next three academic years.<sup>355</sup> Although the lessees could look to the University to make up any shortfall during this three-year, start-up period, the University's financial guarantee expired at the end of the 1877-78 academic year.<sup>356</sup> Thereafter, the lessees depended solely on tuition for compensation. Law School enrollment data and tuition rates signal how the lessees fared financially throughout the remainder of the nineteenth century.<sup>357</sup> Enrollment totals for the years of the lease are shown in Figure 1.<sup>358</sup>

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354. See generally discussion *supra* The "Lease" section.

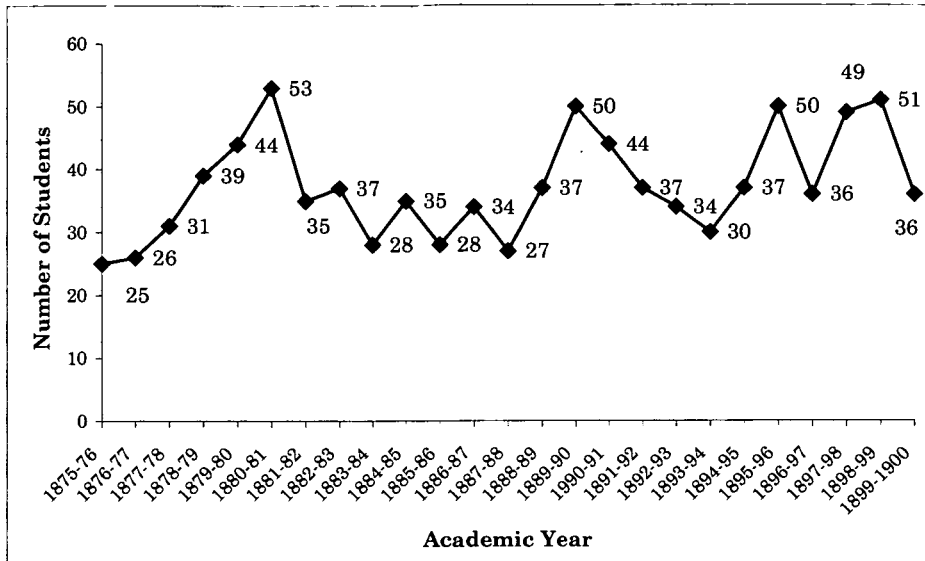
355. 1 VU:BOTM, *supra* note 11, pt. 1, at 61-62 (May 25, 1875). See generally *supra* notes 133-36 and accompanying text (discussing lease provisions).

356. 1 VU:BOTM, *supra* note 11, pt. 1, at 61 (May 25, 1875).

357. See Fligeltaub, *supra* note 2, at 33 (noting that the law faculty "suffered with nominal remuneration" and pointing out that they personally financed certain library acquisitions and student scholarships); Hood, *supra* note 184, at 52-53 ("One may assume that the professors of that period were not getting rich from their teaching."); Hood, *supra* note 133, at 5-7 (estimating mean annual Law School income in the nineteenth century at "more than \$4,000," but recognizing that it "may have been less" because of unpaid student debt). The dip in enrollment to thirty in the 1893-94 academic year prompted Chancellor Kirkland to report that "[t]hese gentlemen [the lessees] do not now realize as much from fees as was guaranteed them by the University during the first three years of the operation of the department . . ." 2 VU:BOTM, *supra* note 11, at 270 (June 18, 1894).

358. The following figure is derived from statistics presented in *School of Law*, 21 VAND. ALUMNUS, Dec. 1935, at 6, and confirmed by examination of data contained in University catalogues issued from ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7 (1876) through REGISTER 1899-1900, *supra* note 13. Enrollment in the Law School's opening academic year (1874-75) is discussed *supra* notes 99-102 and accompanying text.

Figure 1



Enrollment and tuition figures for the initial three years of Vanderbilt Law School's existence under the lease (1875-78) indicate that a total tuition revenue of \$8,600 should have been produced,<sup>359</sup> an amount almost matching the \$9,000 guaranteed by the University for that period. Further, annual tuition for Vanderbilt Law School was \$100 from the 1878-79 academic year through the remainder of the lease.<sup>360</sup> With an average annual enrollment of almost thirty-nine law students per academic year during that period, the initial \$3,000 target for annual income seemed manageable. In reality, a different picture emerged.<sup>361</sup>

The University bursar reported to the Board of Trust that cumulative income from law student fees from 1875-78 was only \$5,877.75.<sup>362</sup> Similarly, fees paid by law students in the 1878-79 school year totaled \$2,171.50,<sup>363</sup> even though full tuition from the thirty-nine

359. Reported enrollments in those years were twenty-five, twenty-six, and thirty-one. Tuition charges were \$120 the first two years and \$80 the third year. See *supra* notes 9-11 and accompanying text.

360. See *supra* notes 12-14 and accompanying text (discussing tuition).

361. See generally Hood, *supra* note 133, at 1-8 (discussing the financing of Vanderbilt Law School operations in the nineteenth century).

362. 1 VU:BOTM, *supra* note 11, pt. 1, at 160 (May 27, 1879).

363. 1 *id.*

enrolled students would have yielded tuition income of \$3,900.<sup>364</sup> Several factors may account for this revenue deficiency.

First, the Law School allowed students to attend class prior to paying tuition. This practice occurred notwithstanding announcements mandating the advance payment of tuition.<sup>365</sup> In reporting on the Law School's deficit in 1877, Board of Trust President McTyeire projected—incorrectly, as it turned out—that the Law School would become “self-supporting” the following year since “some who gave tuition notes a year ago have paid them.”<sup>366</sup> Collection of law student debts continued to be a problem.<sup>367</sup> For example, the bursar reported in 1879 that he had received \$129.25 from law students for overdue amounts from prior years and that unpaid law student obligations approaching “several hundred dollars” had been turned over to a local attorney for collection.<sup>368</sup> Similarly, a decade later, the following entry appeared in the “Resources” section of University financial records: “Notes of Law students for tuition [\$]435.”<sup>369</sup>

Second, scholarship and tuition remission programs may also have reduced revenue somewhat.<sup>370</sup> This factor does not, however, appear to have had a significant negative financial impact on the Law School. It is doubtful that early University scholarship or tuition remission programs, which were expressly or apparently designed primarily for students in other departments, decreased Law School tuition receipts significantly, if at all.<sup>371</sup> Moreover, the Law School did not establish its own full tuition scholarship program until the

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364. Vanderbilt Law School charged \$100 annual tuition beginning in 1878 and continued doing so over the rest of the nineteenth century. *See supra* notes 12-13 and accompanying text.

365. *See, e.g.*, ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 39; REGISTER 1878-79, *supra* note 13, at 65.

366. 1 VU:BOTM, *supra* note 11, pt. 1, at 103 (June 18, 1877).

367. Law student obligations might have taken forms other than for unpaid tuition. At some point the University created a Sustainment Fund from which loans were made to students. *See* 1 *id.* pt. 2, at 606 (June 20, 1888).

368. 1 *id.* pt. 1, at 160 (May 27, 1879).

369. 1 *id.* pt. 2, at 650 (May 17, 1889); *see also* 2 *id.* at 44 (June 16, 1890) (listing “Law Dept. Bills Receivable—Notes of students [\$]575” in “Resources” category of “Bursar’s Statement”).

370. *See* Fligeltaub, *supra* note 2, at 33.

371. *See, e.g.*, ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, at 18-19 (1875) (“Ministers of the gospel . . . will be admitted to . . . the Academic and Biblical Departments free of tuition fees.”); 1 VU:BOTM, *supra* note 11, pt. 1, at 103 (June 18, 1877) (noting that in the 1876-77 school year eighty individuals, which “included theological Students, the sons of Ministers . . . , and worthy but indigent young men,” attended Vanderbilt without paying tuition); REGISTER 1877-78, *supra* note 12, at 47 (describing Teachers’ Scholarships to “non-professional Schools of the University” and Endowed Scholarships for a few students); *Educational*, CHRISTIAN ADVOC., July 17, 1880, at 16 (Vanderbilt advertisement proclaiming, “Six Scholarships . . . are annually awarded to successful undergraduates.”).

beginning of the 1890s, and this program was limited to two or three senior students each year.<sup>372</sup>

Third, the Law School prorated tuition for those students who did not maintain their enrollment for the full year.<sup>373</sup> Enrollment statistics may have included law students who were in attendance for only a semester, and tuition apparently was charged on a semester rather than an annual basis.<sup>374</sup> Furthermore, University records refer to fees that were refunded to law students<sup>375</sup> without clarifying whether this return of fees was a refund for students who did not complete a semester or the functional equivalent of a scholarship or loan program.

In addition to tuition revenues falling short of expectations based on the number of students enrolled, enrollment patterns themselves at Vanderbilt Law School during the nineteenth century contributed to financial and planning concerns. These patterns were not only irregular (year-to-year fluctuations of more than twenty percent were not uncommon), but overall growth was painfully modest.<sup>376</sup> The average enrollment in the first five academic years of the lease (1875-80) was thirty-three; the average for the last five academic years of the lease (1895-1900) was only forty-four.<sup>377</sup> These somewhat discouraging enrollment figures and their import for Law School revenue were increasingly on Chancellor Kirkland's mind as the end of the lease drew near.<sup>378</sup>

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372. See *supra* note 314 and accompanying text (discussing Senior Scholarship program).

373. In the Law School's initial year of operation under the lease, law students were allowed to pay a pro rata share of tuition for attending a portion of a semester. But the Law School also announced that "no part of [tuition] . . . will be refunded on any account." ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6 at 39 (1875). These provisions do not appear in subsequent early announcements. See, e.g., ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, at 53 (1876); REGISTER 1878-79, *supra* note 13, at 65.

374. See REGISTER 1878-79, *supra* note 13, at 65 (stating that tuition for the full nine-month academic year was \$100 and that tuition for each semester was \$50).

375. See 1 VU:BOTM, *supra* note 11, pt. 1, at 160 (May 27, 1879) (stating that \$180 of \$2,171.50 paid by the "Law Class of the present year" was refunded "by authority of the Dean of the Law Faculty and on the Chancellor's warrants").

376. See Fligeltaub, *supra* note 2, at 12 (revised version on file with authors).

377. This modest growth can be contrasted with the marked increase in law school enrollments nationally during this period. The number of students enrolled in law schools increased from 3,134 in 1880 to 12,516 in 1900, and the average law school size grew from 61 to 123 students. See Reed, *supra* note 22, at 198-99, 443-44.

378. See 3 VU:BOTM, *supra* note 11, at 11 (June 17, 1895) (Chancellor Kirkland stating his desire to substantially increase the size of the Law School student body); 3 *id.* at 201 (June 13, 1898) (Chancellor Kirkland discussing enrollments at Vanderbilt Law School and expressing "hope" that the increase in law faculty size "will cause an increase in attendance in this department"); *infra* text accompanying notes 441-47; Fligeltaub, *supra* note 2, at 7.

*Facilities.* Vanderbilt Law School occupied three separate facilities during the nineteenth century.<sup>379</sup> In the Law School's opening year (1874-75), Professor William Reese conducted all classes off campus in a single classroom in a commercial building.<sup>380</sup> For its second academic year (1875-76) and its initial year under the long-term lease, the Law School moved to campus where it stayed until 1889.<sup>381</sup> During this on-campus period, Vanderbilt Law School was housed in the University's principal building, which was then known as "Main."<sup>382</sup> As early as 1880, the law faculty appealed to the Board of Trust for additional quarters, noting that its existing room in Main was "too small" to accommodate Law School classes adequately.<sup>383</sup> The Law School was at some point allowed to expand within Main,<sup>384</sup> but the modest size of the Law School's area in this building apparently was a continuing problem.<sup>385</sup>

Eventually a solution to the Law School space issue was reached.<sup>386</sup> The University decided to construct an office building in Nashville's business/legal district to provide accommodations for the Law School, the Dental School, and commercial tenants.<sup>387</sup> The project, which reportedly was not a successful investment from a financial perspective, was finished in 1889.<sup>388</sup> Vanderbilt Law School moved into its new off-campus quarters in time for the start of the 1889-90 academic year.<sup>389</sup> The structure, referred to originally as the

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379. See Law Department, *supra* note 101, at 6; H. A. Hood, Law Sch.—Admin.—Physical Plant 1-6 (1973), Centennial History Project, Box 25 (unpublished First Draft (Corrected) on file with Jean and Alexander Heard Library, Vanderbilt University and with Vanderbilt Law School in Howard A. Hood, Law School History Drafts of Centennial History Project).

380. *Vanderbilt University: Opening of the Law and Medical Departments*, REPUBLICAN BANNER, Oct. 4, 1874, at 4; Law Department, *supra* note 101, at 6; see *supra* notes 100-01 and accompanying text.

381. Law Department, *supra* note 101, at 6 (undated); Hood, *supra* note 379, at 1-2 (noting that the lease required the University to provide facilities for the Law School). See generally *supra* notes 133-36 and accompanying text (discussing lease provisions).

382. CONKIN, *supra* note 4, at 55; Law Department, *supra* note 101, at 6. "Main" is currently named "Kirkland Hall." CONKIN, *supra* note 4, at 19, 411.

383. See 1 VU:BOTM, *supra* note 11, pt. 1, at 232 (May 27, 1880).

384. See Law Department, *supra* note 101, at 6 (stating that the Law School gained additional space in Main in 1878).

385. See 1 VU:BOTM, *supra* note 11, pt. 2, at 473-74 (June 15, 1886) (regarding the need for additional book space).

386. See Hood, *supra* note 379, at 3-4.

387. CONKIN, *supra* note 4, at 110 (stating that the structure was located "on Cherry Street (presently Fourth Avenue)"); see also Laska, *supra* note 15, at 515 (noting that the building was situated "at 311-313 Fourth Avenue North").

388. See CONKIN, *supra* note 4, at 110, 120-21, 202; see also HISTORY OF NASHVILLE, TENN., *supra* note 4, at 421.

389. See CONKIN, *supra* note 4, at 120.



Law and Dental Building and later as the Law Building when the Dental School departed the premises,<sup>390</sup> would house the Law School until the beginning of 1916.<sup>391</sup> The Law School initially was allocated “The Law Lecture Room,” as well as two additional rooms for housing the law library.<sup>392</sup> Attorneys rented much of the other office space in the building.<sup>393</sup> While the new site separated the Law School from the rest of the University, the law students’ classes were now just a short distance from the courts and many law offices.<sup>394</sup> Moreover, access to the Law School was more convenient for faculty members as they shuttled between practicing law and teaching.<sup>395</sup>

By 1896, the condition of the Law School’s accommodations in the Law and Dental Building had become an issue. Law students petitioned the law faculty to restore the School’s quarters to their “proper condition.”<sup>396</sup> Dean Malone seconded the students’ petition, noting the “dilapidated and disreputable appearance of the Law lecture room.”<sup>397</sup> Chancellor Kirkland agreed that the lecture room required “considerable work” and advised the Board of Trust that “[s]omething must be done.”<sup>398</sup> The Board responded by having the lecture room renovated before the beginning of the 1896-97 school year.<sup>399</sup> As a means of ensuring that the Law School facilities would remain in good repair, the Law School instituted a program of requiring all students to post a \$2.00 damage deposit.<sup>400</sup>

*Law Library.* Vanderbilt Law School initially did not have its own library by contemporary standards,<sup>401</sup> but the School did collect

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390. See *id.* at 202; MIMS, *supra* note 3, at 208, 214; Hood, *supra* note 379, at 4-5; 1 VU:BOTM, *supra* note 11, pt. 2, at 675 (Aug. 2, 1889).

391. CONKIN, *supra* note 4, at 202, Riley, *supra* note 2, at 10-11; Hood, *supra* note 379, at 5-7.

392. 1 VU:BOTM, *supra* note 11, pt. 2, at 675 (Aug. 2, 1889).

393. CONKIN, *supra* note 4, at 110, 202; Laska, *supra* note 15, at 515.

394. REGISTER 1889-90, *supra* note 159, at 61 (proclaiming that the “building is one of the handsomest in the city” and emphasizing its convenient location); CONKIN, *supra* note 4, at 120; MERRIAM, *supra* note 56, at 130.

395. CONKIN, *supra* note 4, at 120.

396. 3 VU:BOTM, *supra* note 11, at 71 (June 15, 1896).

397. 3 *id.* at 105.

398. 3 *id.* at 71.

399. 3 *id.* at 143 (June 14, 1897).

400. 3 *id.*; see also REGISTER 1896-97, *supra* note 242, at 79 (stating that a deposit was required at enrollment and providing for refund of “[t]he whole of this deposit, or any unexpended part” at graduation).

401. CONKIN, *supra* note 4, at 55.

The Law School’s initial catalogue indicates that space in Main had been allocated for a law library. ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 39. But this and the next Law School catalogue spoke in aspirational terms, referring to “a

law books from the first academic year under the lease.<sup>402</sup> From the beginning, Vanderbilt law students also had privileges at the library operated by the state<sup>403</sup> and soon gained access to the law library maintained by the Nashville Bar Association.<sup>404</sup>

The Law School's library developed slowly. In 1880, the law faculty formulated a plan to create a "large Law Library" by requesting that practitioners and judges donate used legal tomes to the Law School.<sup>405</sup> This effort achieved a measure of early success. By 1886, more volumes had been collected than could be housed in the Law School's two bookcases in Main.<sup>406</sup> At that point general reference works were moved from the Law School to the University library to make room for recent donations of law books.<sup>407</sup> But despite these developments, the law library remained of extremely modest size.<sup>408</sup>

Several significant breakthroughs occurred for the law library when Vanderbilt Law School moved in the summer of 1889 to set up operations in the newly constructed Law and Dental Building. First, the University assigned two rooms for use as a law library.<sup>409</sup> This was a signal occasion; never before had the Law School's facilities included sufficient space to house a substantial collection of legal materials.<sup>410</sup> The Law School and University were thereby motivated to initiate concrete steps to develop a quality law library.<sup>411</sup>

Second, the law faculty sought University funding for a law librarian, contending that the creation of this position would lead local attorneys to rent space in the Law and Dental Building, entrust their

selection of ordinary Text-books to be attached to the School." *Id.* at 37-38 (emphasis added); ANNOUNCEMENT OF VANDERBILT UNIVERSITY 1876-7, *supra* note 9, at 51.

402. *Vanderbilt Library*, AMERICAN, Oct. 21, 1875, at 4 (noting "[h]andsome donations" of legal material to "Library of Vanderbilt University"—"seven volumes" plus a single "work"); *A Munificent Gift*, CHRISTIAN ADVOC., Oct. 30, 1875, at 8 (reporting the contribution of "seven volumes" to "the Library of the Law Department of the Vanderbilt University").

403. ANNOUNCEMENT OF VANDERBILT UNIVERSITY, FIRST SESSION, 1875-6, *supra* note 5, at 38.

404. REGISTER 1876-77, *supra* note 11, at 57.

405. 1 VU:BOTM, *supra* note 11, pt. 1, at 232 (May 27, 1880) (noting that the law faculty advised the Board that implementation of this plan would create the need for shelving space).

406. 1 *id.* pt. 2, at 473-74 (June 15, 1886).

407. 1 *id.* at 474 (two individuals donated a total of approximately one hundred books).

408. See CONKIN, *supra* note 4, at 120; Fligeltaub, *supra* note 2, at 34 (opining that the Law School's legal "sources were not only limited but also random"); Untitled Draft Document, *supra* note 314, at 1 (reporting that the Law School's "library consisted of broken sets of the U.S. Supreme Court Reports, Tennessee Reports, Bacon's Abridgement, and a few old text books").

409. 1 VU:BOTM, *supra* note 11, pt. 2, at 675 (Aug. 2, 1889).

410. Later the law library was allocated even larger space in the Law and Dental Building. See 3 *id.* at 143 (June 14, 1897) (noting that the law library was moved to "more ample accommodations" on a different floor).

411. See Untitled Draft Document, *supra* note 314, at 1.

law books to the care of the law librarian, and allow those volumes to be used by the Law School.<sup>412</sup> The law professors further argued: “With a library we feel assured we can make the Law Dept. double its attendance . . . .”<sup>413</sup> The Board of Trust soon approved a plan to organize and operate a law library in the new building and to hire a law librarian at a \$1,000 annual salary.<sup>414</sup> In addition to attending to the law library, the law librarian was charged with significant supplemental administrative duties, namely managing the Law and Dental Building, except for the Dental School’s area, and serving as Law School secretary.<sup>415</sup> Wilbur F. Barclay, a member of the Board of Trust,<sup>416</sup> was named Librarian of the Law Library of the University shortly before the beginning of the 1889-90 academic year.<sup>417</sup>

Third, the Law School rapidly assembled a collection of legal works exceeding \$10,000 in value.<sup>418</sup> The School acquired these materials primarily through a \$2,000 Board of Trust allocation, the gift of Francis B. Fogg’s noteworthy personal collection, and the Nashville Bar Association’s contribution of its substantial law

412. 1 VU:BOTM, *supra* note 11, pt. 2, at 670 (June 17, 1889). A Board committee studying this matter issued a report favorable to the Law School’s request. *See* 1 *id.* at 673-74 (concluding that (1) “[t]he presence of a good Law library in the building would add very greatly to the desirability of the offices which are for rent,” (2) “a large number of books will be given to the University by its friends, if a suitable library and competent librarian are provided,” and (3) “[a] large number of books will also be loaned to the library by attorneys”).

Those leasing space in the Law and Dental Building could use the law library free of charge, but nonoccupant users were required to pay an annual fee. REGISTER 1891-92, *supra* note 172, at 62.

413. 1 VU:BOTM, *supra* note 11, pt. 2, at 670 (June 17, 1889). The enrollment did not double. It did jump from thirty-seven in 1888-89 to fifty the following year, but then declined each of the next four years to thirty students in 1893-94. *See supra* note 358 and accompanying figure.

414. 1 VU:BOTM, *supra* note 11, pt. 2, at 675-76 (Aug. 2, 1889). *See generally* Fligeltaub, *supra* note 2, at 38-39 (discussing the law librarian’s job).

415. 1 VU:BOTM, *supra* note 11, pt. 2, at 676 (Aug. 2, 1889) (specifying that, as Law School secretary, the law librarian was responsible for managing “the matriculation of law students, and shall receive and receipt for . . . all tuition and other fees due from them”).

416. REGISTER 1888-89, *supra* note 153, at 5 (listing Barclay as a member of the Board of Trust); 1 VU:BOTM, *supra* note 11, pt. 2, at 617 (May 7, 1889) (identifying Barclay as a Board member present); 2 *id.* at 56 (June 17, 1890) (noting Barclay’s resignation from the Board).

417. 1 VU:BOTM, *supra* note 11, pt. 2, at 677 (Aug. 5, 1889). In late 1892, Barclay stepped down as law librarian and was succeeded by Annie Warren. At that juncture, the Board placed “oversight” of the Law and Dental Building in the hands of outside managers, directed the University bursar to handle law student tuition payments, and decreased the law librarian’s yearly salary to \$300. The expectation was that Warren would be able to earn substantial supplemental income by providing stenographic services to lawyers and others who rented office space on the premises. *See* 2 *id.* at 205 (Sept. 21, 1892); 3 *id.* at 72 (June 15, 1896); 3 *id.* at 143 (June 14, 1897) (noting that the law librarian’s annual salary had been raised to \$400).

418. 2 *id.* at 55 (June 17, 1890) (Barclay’s report as law librarian).

library.<sup>419</sup> Also included were less extensive donations from law faculty members and other benefactors.<sup>420</sup> With the law faculty's purchase in 1891 of former Dean Cooper's exceptional law volume collection, the Law School's library holdings grew to approximately six thousand volumes, reportedly unsurpassed in the region.<sup>421</sup> The Law School continued to expand its collection; by the end of the nineteenth century, the law library's volume count had reached eight thousand.<sup>422</sup>

A careful look at the way the growth of the law library was financed reveals the comparatively aggressive role the law faculty played in this endeavor and the tension that developed between the faculty and the University over law library financing. The members of the law faculty were keenly interested in nurturing the expansion of the law library; they formulated plans, obtained donations, made contributions of their own, and pressed the University for financial support.<sup>423</sup> The University's Board of Trust, however, exhibited understandable hesitancy about committing funds for law library development given the quasi-proprietary nature of the Law School.<sup>424</sup>

The Board's general approach on this score is illustrated by its handling of an 1890 Law School overture calling for a substantial University financial commitment to law library expansion. The law professors proposed that the Board "invest" \$6,000 to \$10,000 in library purchases to create, in the words of Law Librarian Barclay, "a complete law library." The law faculty would guarantee the University a six percent annual return through the end of the lease by utilizing funds generated by library user fees and covering any shortage themselves. The Board was not persuaded and "postponed indefinitely" the matter.<sup>425</sup>

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419. 2 *id.* (noting that "Godfrey M. Fogg, Esq., gave us the valuable library bequeathed him by his distinguished uncle, the late Francis B. Fogg"); REGISTER 1890-91, *supra* note 92, at 65; REGISTER 1891-92, *supra* note 172, at 61; CONKIN, *supra* note 4, at 120.

420. 2 VU:BOTM, *supra* note 11, at 55 (June 17, 1890) (Barclay's report as law librarian); REGISTER 1890-91, *supra* note 92, at 65-66; REGISTER 1891-92, *supra* note 172, at 61; CONKIN, *supra* note 4, at 120; Untitled Draft Document, *supra* note 314, at 1-2.

421. 2 VU:BOTM, *supra* note 11, at 121 (June 11, 1891) (reporting that Dean Malone estimated the value of the law library holdings at "perhaps \$14,000"); REGISTER 1890-91, *supra* note 92, at 65; CONKIN, *supra* note 4, at 120; *see also* Untitled Draft Document, *supra* note 314, at 2-3 (describing the Cooper acquisition).

422. REGISTER 1899-1900, *supra* note 13, at 100; *see also* REGISTER 1900-01, *supra* note 330, at 103 (describing the contents of the law library).

423. *See* Fligeltaub, *supra* note 2, at 35-38 (discussing law library finances).

424. *Id.* at 35.

425. 2 VU:BOTM, *supra* note 11, at 49 (June 16, 1890) (Law School proposal); 2 *id.* at 55-56 (June 17, 1890) (Barclay report supporting the Law School proposal and emphasizing the importance of "a complete law library" to remain competitive for "first class tenants"); 2 *id.* at 56 (Board of Trust action).

The Board of Trust, however, by no means ignored the financial needs of the law library. It had, after all, hired a law librarian and provided seed money for acquisition of legal volumes in order to fashion a suitable law library in the Law and Dental Building.<sup>426</sup> Nonetheless, strings were attached to the \$2,000 allocation; the Board stipulated that the law school faculty members pay interest on that amount to the University.<sup>427</sup> Uncertainty eventually arose regarding this "obligation," which appeared in the University's financial records as a "Law Faculty Loan."<sup>428</sup> Noting that the existence of a written undertaking by the law faculty was in doubt and that the University had benefited from the existence of the law library in the Law and Dental building, Chancellor Kirkland suggested that the Board relinquish its claim to interest payments and have the entry moved to the "Library Equipment" assets category of University financial records.<sup>429</sup> The Board did not pursue this matter further; the arrangement remained designated as a loan on the University records until after the lease ended.<sup>430</sup>

Another misunderstanding regarding library financial matters developed with respect to the Law School's acquisition of the Cooper collection. In 1891, the law faculty had, on its own account, bought Dean Cooper's library for a \$240 annual annuity over the duration of Cooper's life.<sup>431</sup> Two years later, Dean Malone advised the Board of Trust that it had been the law faculty's hope that the University would assume the obligation of making annuity payments and that he thought there had been "some informal statement to this effect by one or more of the Executive Board."<sup>432</sup> Nonetheless, the Board of Trust apparently did not undertake any responsibility in this regard at that point, and the law professors continued to pay the Cooper annuity.<sup>433</sup>

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426. See *supra* notes 414, 419 and accompanying text.

427. See 1 VU:BOTM, *supra* note 11, pt. 2, at 678 (Oct. 18, 1889).

428. See 2 *id.* at 150 (June 13, 1892) ("Statement of Vanderbilt Endowment Re-investment Fund Account"); 2 *id.* at 188-89 (containing the committee's expression of dissatisfaction with the arrangement and its opinion that "the Law Faculty will be slow to pay this debt and perhaps in the end all we will have to show for the \$2000.00 will be the books themselves").

429. 2 *id.* at 270-71 (June 18, 1894) (Kirkland also discussed other pertinent factors, noting that Dean Malone was absent when the arrangement was made and that any agreement entered by the law faculty "must certainly have been limited to the term of their lease.").

430. See 4 *id.* at 50-51 (June 17, 1901) (including a comment by Chancellor Kirkland that "the entry as it is on our books is purely fictitious"); 4 *id.* at 59 (June 18, 1901) (directing that the listing be moved to the "equipment" category).

431. 2 *id.* at 121 (June 11, 1891) (noting that Cooper's library had an estimated value of \$7,000).

432. 2 *id.* at 222 (June 19, 1893).

433. See 3 *id.* at 11 (June 17, 1895).

As these situations indicate, the issues of law library funding and management under the Law School operating lease were nettlesome and beyond easy resolution. Uncertainties surrounding the University–Law School partnership in maintaining a law library lingered until the end of the lease in 1900.

#### “REORGANIZATION”: POISED FOR CHANGE

As Vanderbilt Law School’s operating lease approached its 1900 termination date, Chancellor Kirkland and the Board of Trust considered alternative organizational models. Although sound reasons had existed for both sides to enter the lease,<sup>434</sup> the overall structure of the arrangement had significant educational, financial, and governance drawbacks.<sup>435</sup>

Kirkland did not wait until the end of the lease to begin campaigning for a significant change in the University–Law School relationship. In 1898 he reported to the Board:

It will be remembered that our present contract with the Law Faculty expires in June 1900. It is very desirable that we should do everything possible to build up the Department within the next two years, so that the University can then assume direct control of the Law Department, managing it in every way as we now manage the other departments of the University with the exception of the Dental Department.<sup>436</sup>

At the 1899 Board of Trust annual meeting, Kirkland noted that the Law School lease would lapse the following year. While reporting that “no serious friction” had developed regarding the lease arrangement, he opined “that steps ought to be taken by this Board to assume direct control of the Law Department next year” and expressed his opposition “to any form of contract which alienates from the Board complete control of any department of university work.”<sup>437</sup>

By the end of the century, several factors prompted a University decision to restructure its relationship with the Law School. First, the Law School’s operating lease was not an attractive one financially for Vanderbilt. The University provided the Law School with teaching and library space that the University furnished,

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434. See *supra* notes 125-30 and accompanying text.

435. See CONKIN, *supra* note 4, at 122 (discussing objectives that Kirkland achieved by the 1900 Law School restructuring).

436. 3 VU:BOTM, *supra* note 11, at 201-02 (June 13, 1898). Kirkland added that in the event the Board should decide differently and choose to enter another law school lease arrangement, “it will be much easier to make a favorable contract for leasing a successful department than one which is comparatively weak.” 3 *id.* at 202.

437. 3 *id.* at 249 (June 19, 1899).

maintained, and cleaned, and for which it paid the utilities.<sup>438</sup> Moreover, the University had been funding a law librarian's salary since 1889.<sup>439</sup> But the institution never obtained any income from the lease because the lessees were entitled to tuition receipts.<sup>440</sup> In essence, the lease arrangement ensured that the Law School would be a financial drain on the University.

The related issue of the size of the Law School student body was also a matter of concern.<sup>441</sup> Chancellor Kirkland became frustrated by the Law School's inability to increase its enrollment and toward the end of the lease term was sharing this frustration with the Board of Trust on an almost annual basis: "Our enrollment ought never to be below 50, and really ought to reach 100."<sup>442</sup> (1896) "We have always felt that the attendance in this department was not as large as the merits of the department deserved."<sup>443</sup> (1898) "[W]e should not be satisfied until we have secured an attendance of at least 75 students [i]n this department."<sup>444</sup> (1899) Yet, the largest Law School enrollment during the nineteenth century was fifty-three students in the 1880-81 school year,<sup>445</sup> and the 1899-1900 academic year saw a drop in enrollment from fifty-one in the previous year to thirty-six.<sup>446</sup> Indeed, Kirkland phrased the question that led to restructuring the Law School largely in terms of enrollment. After noting that a "self-sustaining" law program was impossible with current enrollment levels, he stated that the issue presented the Board was how to enhance the Law School's "popularity" without impairing its "efficiency."<sup>447</sup>

Governance of Law School matters was yet another disquieting subject. In his plans for realigning the University-Law School working relationship, Chancellor Kirkland, taking a position

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438. See 1 *id.* pt. 1, at 61 (May 25, 1875); *supra* notes 133-36 and accompanying text (discussing lease provisions).

439. See *supra* notes 412-17 and accompanying text (discussing law librarian).

440. See discussion of lease provisions *supra* The "Lease" section; discussion of Law School financial situation *supra* *Finances* subsection in *Infrastructure* section.

441. See *supra* notes 358-78 and accompanying figure and text (analyzing enrollment data).

442. 3 VU:BOTM, *supra* note 11, at 71 (June 15, 1896).

443. 3 *id.* at 201 (June 13, 1898).

444. 3 *id.* at 249 (June 19, 1899). Kirkland opined that the size of Vanderbilt Law School's student body was adversely affected by the existence of the diploma privilege in Tennessee which, in his view, "puts a premium on cheap schools with short courses and lax requirements, and makes it hard for such departments as our own to secure the pre-eminence they deserve." 3 *id.* For discussion of the diploma privilege, see *supra* notes 40-44 and accompanying text.

445. See *supra* figure and text accompanying notes 358-78.

446. 3 VU:BOTM, *supra* note 11, at 293, 312 (June 18, 1900); see also *supra* figure accompanying note 358.

447. 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900).

consistent with a national trend in academe of that era,<sup>448</sup> emphasized the importance of the University having “direct control” over the Law School.<sup>449</sup> He may have viewed a new arrangement as a way of avoiding the uncertainties that had arisen in the areas of student discipline and financial affairs—particularly the purchases that contributed to the expansion of the law library.<sup>450</sup>

The Board of Trust approved a “reorganization” of Vanderbilt Law School at its annual meeting in June 1900.<sup>451</sup> Kirkland praised the law faculty’s performance over the years (“[it] has always been of a high and thorough character”<sup>452</sup>), but reported that he and the Executive Committee had ascertained “certain weak points in the method of managing this department, which we think ought to be remedied.”<sup>453</sup> Under the new arrangement, Malone was selected to continue in the position of Law School dean, although his post-lease decanal role has been characterized as being “largely . . . honorary.”<sup>454</sup> In any case, Malone’s reappointment to this high-level administrative post may be read as signaling University recognition of the value of his long-term leadership and the need to establish a positive, as well as highly visible, point of continuity during a transition period.<sup>455</sup>

Indeed, the reconstituted plan for the Law School mandated a number of noteworthy changes:<sup>456</sup> (1) Appoint “an active and enthusiastic man” as Law School secretary who, in addition to teaching, would be responsible for overall administration of Law School operations.<sup>457</sup> Among his duties would be “judicious advertising” of the law program, which was expected to cause the Law School’s enrollment to be “doubled within a few years.”<sup>458</sup> (2) Increase

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448. See REED, *supra* note 22, at 184-87 (discussing the trend among universities to assert greater authority over their law schools). See generally Bartholomew, *supra* note 78.

449. See 3 VU:BOTM, *supra* note 11, at 202 (June 13, 1898); 3 *id.* at 249 (June 19, 1899).

450. See CONKIN, *supra* note 4, at 120, 122; *supra* notes 418, 426-33 and accompanying text.

451. See 3 VU:BOTM, *supra* note 11, at 312-15 (June 18, 1900); 3 *id.* at 350, 352 (June 19, 1900); 4 *id.* at 1 (June 26, 1900) (listing law faculty appointments and their compensation).

452. 3 *id.* at 313 (June 18, 1900).

453. 3 *id.*

454. CONKIN, *supra* note 4, at 122; see also Holladay, *supra* note 47, at 14.

455. See Kirkland, *supra* note 70, at 95; *supra* notes 180-85 and accompanying text (discussing Malone’s and other lessees’ accomplishments in legal education).

456. See 3 VU:BOTM, *supra* note 11, at 313-15 (June 18, 1900) (setting forth the reorganization scheme); 4 *id.* at 1 (June 26, 1900) (listing law faculty appointments and their compensation). For discussion of the “reorganization,” see CONKIN, *supra* note 4, at 122; MIMS, *supra* note 3, at 214; Laska, *supra* note 15, at 519-22.

457. 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900); see also CONKIN, *supra* note 4, at 122.

458. 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900). John Bell Keeble was named to this position. 4 *id.* at 1 (June 26, 1900). For discussion of Keeble, see *supra* note 222 and accompanying text.



the number of weekly instructional hours offered in each year (junior and senior) of the two-year program from six to a minimum of ten,<sup>459</sup> with moot court being an additional requirement.<sup>460</sup> This adjustment was designed to move the Vanderbilt Law School program toward parity in this regard with other law schools.<sup>461</sup> (3) Schedule class hours, not for the “convenience of the professors” as in the past, but for the benefit of the students.<sup>462</sup> By concentrating course offerings in a certain portion of the day for each of the junior and senior classes, law students would need to undertake only a single daily commute to the Law School; presumably they then would view recently constructed on-campus student housing as a more attractive residential alternative.<sup>463</sup> (4) Rearrange the Law School’s space in the Law Building, including provision for a second lecture room, made possible by shifting the Dental School to another location.<sup>464</sup> (5) Expand the size of the law faculty to eight members and pay those individuals predetermined salaries.<sup>465</sup>

Financially, the new arrangement brought the Law School within the general University framework, but the law program still retained a vestige of its former quasi-proprietary nature; the law faculty members would receive a salary bonus if the Law School operations were profitable.<sup>466</sup> In accordance with standard University/departmental accounting practice, the Law School secretary was to collect Law School receipts and transfer those funds to the University bursar who would pay Law School obligations.<sup>467</sup> The University and the law faculty would evenly divide any profit

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459. 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900) (observing “perhaps it would be better to provide 12 hours”); *see also* 4 *id.* at 1 (June 26, 1900) (listing class hours to be taught by each law faculty member); REGISTER 1900-01, *supra* note 330, at 100 (stating that “[e]ach class attends two lectures five days in the week”).

460. *See* 3 VU:BOTM, *supra* note 11, at 315 (June 18, 1900); REGISTER 1900-01, *supra* note 330, at 100 (noting that “on Saturday both classes meet in the moot court”).

461. *See* 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900).

462. 3 *id.*

463. 3 *id.*

464. 3 *id.* at 314-15; CONKIN, *supra* note 4, at 122-23.

465. *See* 4 VU:BOTM, *supra* note 11, at 1 (June 26, 1900) (naming the law faculty, establishing a Law School faculty salary scale which was inapplicable to Lurton who had a “special arrangement” regarding salary, and setting the salary for each faculty member); REGISTER 1900-01, *supra* note 330, at 101; *supra* notes 219-29 and accompanying text (discussing members of the expanded faculty and their salaries).

466. CONKIN, *supra* note 4, at 122; Hood, *supra* note 133, at 8.

467. 3 VU:BOTM, *supra* note 11, at 315 (June 18, 1900).

resulting from the operation of the Law School, with the law faculty members' portion to be allocated pro rata on the basis of salary.<sup>468</sup>

Chancellor Kirkland expressed pleasure with the outcome of the reorganization, writing in 1901: "Our professional schools are no longer farmed out to those who will assume the responsibility of administering them without burden to the University or annoyance to the Board. They are now, every one of them, under the care and charge of the Board of Trust, so that one harmonious organization runs through our whole system."<sup>469</sup>

The major features of this reorganization offer an implicit assessment of Vanderbilt Law School during its first quarter century. While Kirkland's words of praise at the end of the lease reflected well on the lessees,<sup>470</sup> more important was the revised approach and direction charted for the Law School. The University committed additional funds and facilities, expanded the faculty and administrative personnel, enhanced the academic demands of the program, and oriented it more toward student needs. These changes were not the response of a disgruntled Board of Trust and Chancellor. Rather, these actions suggest an overall positive evaluation of the quality of legal education provided at Vanderbilt Law School and a judgment that increased resources would lead to a more robust Law School in the twentieth century.

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468. 4 *id.* at 1 (June 26, 1900) (noting that Judge Lurton was not covered by either the Law School faculty salary scale or the salary bonus scheme given his "special arrangement"); *see also* 3 *id.* at 315 (June 18, 1900) (excluding Lurton from salary bonus scheme).

469. Kirkland, *supra* note 70, at 94-95.

470. Kirkland spoke of the law faculty's "twenty-five years of splendid achievement" rendered "with sublime indifference to their own personal advantage." *Id.* at 95; *see also* 3 VU:BOTM, *supra* note 11, at 313 (June 18, 1900) (Kirkland observing that "work done by the Law faculty has always been of a high and thorough character" and noting that the law professors "have seemed at all times indifferent to the question of their own remuneration" in developing "a very worthy department of instruction").