

“The ideal place for the establishment of a great Law School” — The Early Years of Washburn University School of Law

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When Washburn College hired Norman Plass in 1902 to be its new President, it was a private school affiliated with the Congregational Church. It had only three departments, a College of Liberal Arts, a School of Music, and a preparatory school called the Washburn Academy. Although enrollment was not limited to church members, enrollment the previous year totaled only 328 students.

President Plass was dynamic and entrepreneurial and quickly set about expanding the size and prestige of the College.¹ A principle guiding Plass' plan for growth was that the College should meet the needs of its community. During his inaugural address on October 7, 1902, Plass announced that the Board of Trustees in a special session that afternoon had authorized the College's Executive Committee to investigate the feasibility of adding a Dental College² and a Law School and, if appropriate, to open them both in 1903. Plass believed there were educational advantages in Topeka that were not available in other cities and that resources in the local legal community could be used to reduce the costs for faculty and a law library that a small college like Washburn otherwise might have been unable to bear:

Topeka is the ideal place for such a school. We have here the United States District Court and Circuit Courts, and the Bankruptcy Referee; the Supreme Court of the State, with its seven judges; the District Court and the Probate Court, in constant session; and the City and Police Courts. We have also in Topeka a large proportion of the leading lawyers of the State. We have the headquarters of the great railroads, with their special attorneys. We have the State Law Library, with its 50,000 volumes, which men come hundreds of miles to consult. It is manifest beyond doubt that this is the one place in Kansas for the establishment of a great Law School.³

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1. Washburn agreed in 1902 to merge with the twelve-year-old Kansas Medical College, located at Twelfth and Tyler Streets. It offered classes there as part of Washburn during Plass' first year. Plass completed a merger with the Reid-Stone Art School, forming a Department of Fine Arts. During the six-year Plass presidency, enrollment reached 800 students in six departments. Justice David Brewer, a member of the College Board of Trustees and the only Kansas lawyer ever to sit on the United States Supreme Court, helped Plass persuade Andrew Carnegie to donate \$40,000 for a new library. Carnegie Library and Crane Hall and Observatory were completed during the Plass years and construction started on Thomas Gymnasium.

2. The Dental College never opened.

3. WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 9-10 (Nov. 1902).

Plass asked local lawyer Robert Stone to chair a committee to form the Law School. Stone's "[h]igh ideals of law and his success in fund-raising activities made him the perfect candidate. Stone immediately began working on the idea."⁴ The Secretary of the College Board of Trustees, L.H. Greenwood, another local lawyer, was among the more active members of the committee. The school's mission would be "to furnish facilities for legal training and preparation for the practice of law as a profession, equal to those offered anywhere, and to encourage the systematic study of general jurisprudence, legal history, and the fundamental principles of government."⁵

Understanding the challenges Stone's committee faced requires understanding of the status of law schools and the ways lawyers were trained at the turn of the twentieth century. Attendance at a law school had not been the predominant method of preparation for the practice of law. As of 1900, more than half of America's lawyers not only had not attended law school but also had not attended so much as one year of college.⁶ Until 1897, applicants for admission to the bar in Kansas were required to show only that they had "read law for two years, the last of which must be in the office of a regularly practicing attorney."⁷ There was no requirement of even a high school diploma. Graduation from a law school not only was not required, it was not alone sufficient to satisfy the training requirement. There was no statewide bar examination. Until 1903, applicants who satisfied any district court that they possessed the requisite learning were admitted to practice in all district and inferior courts, and then could be admitted upon motion to practice in the Supreme Court. The examinations administered by the district judges, or by committees of local lawyers appointed by them, often were oral and in many districts lacked rigor.⁸ Lax standards for admission to the bar, of course, made it difficult for law schools to attract students. Those seeking the easy way saw no need to endure the rigor of law school when there was no rigorous test to pass to become a lawyer.

4. Ellen Sue McLane, *A Home at Last: A History of Washburn School of Law*, WASHBURN ALUMNUS, Sept. 1969, at 3, 4. This history was published as a special issue of the University's alumni magazine, coinciding with the dedication of the new law building constructed after the 1966 tornado. It is clear from the text that the author solicited written recollections from graduates of early classes and may have interviewed some of them personally. Efforts to locate the source materials compiled by Ms. McLane have failed. Sadly, they may not have been preserved.

5. WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 5 (June 1903).

6. Paul R. Carrington, *Legal Education for the People: Populism and Civic Virtue*, 43 KAN. L. REV. 1, 26 (1994).

7. GEN. STAT. KAN. ch. 11, § 2 (1868).

8. Paul E. Wilson, *Centennial Footnotes*, 27 KAN. L. REV. vii, ix (1979); N.H. Loomis, *Report of Special Committee on Admission to the Bar*, in BAR ASS'N OF THE STATE OF KAN., PROCEEDING OF THE TWELFTH ANNUAL MEETING 17 (1895).

By the mid-1890s, the Kansas Bar Association regularly urged that education requirements for admission to the bar be increased and that district by district admission be abolished. Finally, in the spring of 1903, as Washburn was preparing to open its Law School, the Kansas Legislature transferred responsibility for admission to the bar from the district courts to the Supreme Court,⁹ which in turn created a Board of Law Examiners to administer a written examination to qualified applicants. The statute further required applicants either to have read the law for two years in the office of a practicing attorney or to be a graduate of the law school of the University of Kansas “or some other law school of equal requirements and reputation.”

The University of Kansas (K.U.) began to require completion of a three-year course of study in 1900. Two small law schools operating in Kansas at the time, one at Campbell College in Holton that opened in 1897, and one at Bethany College in Lindsborg that opened in 1902, both offered two-year courses of study.¹⁰ The national trend was toward a three-year program, but by 1904, only sixty-five of America’s 111 law schools required it. Washburn opted from the outset to require three years of study. By 1904, the new Board of Law Examiners announced it would not recognize “as a standard law school any institution that does not require a three years’ course.”¹¹ This literal interpretation of the statute as mandating a length of program equal to that at K.U. created, temporarily, an anomaly in bar admission requirements. An applicant who attended law school had to complete three years, but an applicant who studied in a law office could take the bar examination after only two years. Because this disparity disfavored the law schools, the Legislature in 1905 increased the requirement for law office study to three years.

ADMISSION REQUIREMENTS

No one today questions that an applicant to law school needs the broad general education a college degree provides. It was not always so. At the turn of the century, only three schools, Harvard, Columbia, and the University of Chicago, required a college degree before admission to law study. Indeed, as late as 1896, only seven law schools required applicants to have completed a high school course,¹² and even in 1904 less than half, fifty-one, did so.¹³ There were schools that

9. See 1903 Kan. Sess. Laws ch. 64, § 1.

10. James M. Concannon, *The Other Law Schools of Early Day Kansas*, J. KAN. B. ASS’N, Nov. 1996, at 24, 30.

11. *Id.* at 25.

12. James Barr Ames, *Address to the Section of Legal Education of the American Bar Association*, 1 AM. L. SCH. REV. 265, 266 (1904).

13. *Id.* at 267.

had no minimum age for admission and required no more than an eighth grade education. Reflecting the populist views of its dean, James W. Green, the law school at the University of Kansas for many years resisted the imposition of strict admission requirements.¹⁴ Green discounted the need for a college education, writing,

I believe the man with a good English education, who has spent three or four years in active commercial life, where he has met his fellow men and learned their way of doing things, and the ways of the business world, has had a better preparation, and is better fitted to enter a law school than the man who has spent the same time in acquiring a collegiate education.¹⁵

By 1903, K.U. required applicants to have a diploma from a high school or academy or otherwise to meet requirements for admission to the University, but, if they did not, they could be admitted upon passing an entrance examination demonstrating equivalent preparation. However, there were no economic incentives to grade that examination rigorously and few applicants, if any, were turned away.

Not surprisingly, Washburn adopted similar admission requirements. While it urged applicants to “preface their legal study with a college course wherever practicable,” it was

not deemed advisable to require a college degree for admission, as such requirement excludes many who are abundantly qualified to pursue the study of law and to become practitioners, who cannot afford to spend the time and money required to complete the college course before beginning their professional study. It is deemed wise, however, that a thorough elementary preparation be required before entering upon the study of a learned profession.¹⁶

Applicants for the degree program were required to be eighteen years of age and were admitted without examination if they were graduates of a high school course covering four years, or, if it covered less than four years, if they had completed the subjects required for admission to Washburn College. These subjects included three years of English, three years of Latin, two-and-one-half years of mathematics, one year of physics, one year of history, one-half year of additional science, plus three additional units of specified electives.¹⁷ Applicants could be admitted conditionally if they lacked no more than one-and-one-half of the required credits, provided they later made up the miss-

14. Carrington, *supra* note 6. Green wrote,

This School is supported by a tax levied upon all the property of the State. Each property holder is compelled to contribute to its support, whether he will it or not. It is maintained for the benefit it may be to the State. Should its doors not be thrown wide open, with as little restriction as possible, to all the young men and women of the State who may desire to enter therein?

James W. Green, *The History and Future Policy of the School of Law*, GRADUATE MAGAZINE, Nov. 1905, at 45, 57.

15. Green, *supra* note 14, at 59.

16. WASHBURN COLL. SCH. OF LAW, *supra* note 5, at 5.

17. *Id.* at 10-13.

ing credits in the Washburn Academy. Applicants lacking these credentials were admitted if they passed an examination covering the required subjects. In addition, like K.U. and many other law schools, Washburn provided for admission without examination of “special students” who were not formally seeking the law degree. Special students had to be nineteen years old and “of adequate maturity and scholarship.”¹⁸ It was thought this category would attract those “engaged in mercantile pursuits,”¹⁹ who would benefit from business law courses, and others wishing to dabble in the law. Special students could convert to degree-seeking status after one or more years by meeting the requirements of those entering the regular course. Practicing lawyers could take courses as special students too. Lawyers admitted after reading law in an office for two years who wanted a more formal legal education and better credentials could be admitted as regular students with advanced standing upon passing examinations on the subjects of the first year or of the first and second years. Applicants who had read law for one year could attempt to pass examinations in first-year subjects and also be admitted with advanced standing.

PRELIMINARY STEPS

Stone’s committee began recruiting local lawyers and judges to teach one or more courses as Lecturers, without pay, to help the school get started. Many would not be needed until after the first year, but the list of twenty-five volunteer lawyers read like a *Who’s Who* of the Topeka Bar. It included four Justices of the Kansas Supreme Court (William R. Smith, John C. Pollock, Rousseau A. Burch, and Henry F. Mason); former Chief Justice Frank Doster; Kansas Court of Appeals Judge Theodore Garver; District Judge Lee Monroe; Judge of the Court of Topeka and Washburn Trustee Arthur J. McCabe; and Judge of the Police Court Clad Hamilton. For reasons that are not clear, three of the part-time faculty were given the title Professor of Law, J.G. Slonecker, George H. Whitcomb, and William H. Rossington. They taught no more than other part-time faculty and less than some. Slonecker was then President of the Kansas Bar Association and later would be Referee in Bankruptcy. He previously taught part-time at K.U. Whitcomb later would be District Judge in Topeka and taught Sales for many years. Rossington was one of the best-known lawyers in the state.

While organizers planned to rely principally upon the State Law Library for research materials, the new school did need to have a

18. *Id.* at 15.

19. *Id.* at 16.

working library on site. Prospects for starting the school received a boost in February 1903 with the donation by Colonel T.W. Harrison of Topeka of an “excellent set” of law books valued at \$5,000.²⁰ It included the Kansas statutes and digests, the Kansas and United States Supreme Court reports, the Kansas Court of Appeals reports, the American Law Reports, the Supreme Court reports of several other states, plus digests and treatises on various topics. The books arrived in March. Because quarters for the school were not yet available, they were stored in the College’s mechanical drawing room.

By May, a Dean had been hired, and he came to Topeka to confer with Stone’s committee. Ernest Bancroft Conant became Dean just five years after he received his law degree from Harvard. He was thirty-three years old. His pre-legal education was at Phillips Exeter Academy and Harvard. He practiced law in Boston from 1898 through 1902 and taught classes in the evening law program of the Boston Y.M.C.A. In January 1903, he moved to Chicago where he practiced law and taught Torts and Damages at the Illinois College of Law.

Conant was a very personable young bachelor with a splendid baritone voice that set many young Topeka hearts to palpitating. I remember one of his recitals where he sang a beautiful arrangement of the Rubaiyat. He was younger than many of his students but he handled the job well.²¹

Students had to be recruited. A twenty-page catalogue was issued in June, announcing the school would open for academic year 1903-04, listing faculty, describing admission requirements, the course of instruction, requirements for a degree, and generally promoting the advantages of the school. Tuition was a seemingly modest fifty dollars per year, but that was twice the tuition for Kansas residents at the University of Kansas law school, where tuition had been free to Kansas residents as late as 1901-02. Expenses for room and board, plus books and laundry were estimated to range from \$123 to \$254 for the college year.

The College rented facilities for the Law School at 118 West Eighth. Washburn College had roots downtown, having opened in 1865 as Lincoln College at the corner of Tenth and Jackson and only later moving to its current home. Locating College programs downtown was consistent with Plass’ community-based vision. The Kansas

20. *More Books*, WASHBURN REV., Feb. 20, 1903, at 3.

21. McLane, *supra* note 4, at 5. McLane states Washburn “obtained the services of Conant from a branch of the old Boston family of educators.” *Id.* An Ernest L. Conant was a member of the Harvard Law School faculty in 1894 and 1895 and a James Bryant Conant was President of Harvard University from 1933-53. However, I have been unable to confirm that Dean Conant was related to either of them. Harvard’s comprehensive listing of its alumni indicates Dean Conant’s father was a woolen mill overseer. CHARLES WARREN, 3 HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA 253 (1999).

Medical College continued to hold its classes downtown after its merger with Washburn. The Law School's location not only provided students with access to the State Law Library, the courts, and downtown employment opportunities, but it also was convenient for part-time faculty who might have been unwilling to travel to the campus to teach. The school occupied the top floor of the three-story building, above the Daugherty Shorthand School. Like the Law School's two later homes downtown, the building still stands today. Currently, it is the site of the Celtic Fox Pub and Restaurant, although the top floor has not been used for many years. The quarters were described as "more than could be desired for the purpose. The rooms are high-studded and excellently lighted."²² There were three lecture rooms, a large reading room and library, coat rooms, toilet rooms, and offices.²³ Before the school's second year, the three lecture rooms were remodeled and turned into two larger classrooms. Another window was added.

Registration for the first semester was held September 15, 1903. Entrance examinations for those lacking high school diplomas were administered that day and the next. Classes began September 17. Classes were scheduled to accommodate students who worked, but the schedule caused both students and Dean Conant to have long days. Conant taught three classes during the fall term: Contracts each day at 8:00 a.m., Evidence at 5:00 p.m. each day except Wednesday, and Torts on Tuesday from 7:15 to 9:15 p.m. Students in Torts were split for an additional class, with one group meeting Friday evening and the other on Thursday and Friday afternoons at 2:00 p.m. Harry G. Larimer taught Bills and Notes at 1:00 p.m. while A.W. Dana taught Real Property in the Monday evening slot, and L.H. Greenwood offered Personal Property and Bailments on Thursday evening.

Dean Conant thereafter taught three, and occasionally even four, courses each semester in addition to administering the school. His other subjects included Common Law Pleading, Suretyship and Guaranty, Quasi-Contracts, Trusts, and Municipal Corporations. Occasionally, he taught part of the courses in International Law and Private Corporations.

To receive the Bachelor of Laws degree, students had to complete "the required course of instruction and have passed the regular examinations in all subjects."²⁴ The content of the "required course of instruction" clearly varied from year to year. Not until March 1911, did the catalogue make specific reference to a number of credit hours re-

22. *The New Law School*, WASHBURN REV., Aug. 20, 1903, at 13.

23. *Id.*

24. WASHBURN COLL. SCH. OF LAW, *supra* note 5, at 18.

quired for a degree. A total of seventy-two credit hours apparently was required, and this was made explicit in the March 1913 catalogue. The normal semester load was twelve hours, the maximum load allowed was fourteen hours, and third-year students were required to take at least ten hours each semester to assure compliance with the American Association of Law Schools' requirement that they complete three full years of study. The 1913 catalogue also was the first one to explain explicitly the grading system: A, B, C, D, or E. E was a failure, and the student was required to retake the course. D also was a failure, later called a condition, but the student was required only to retake the next examination in the course. This system had one advantage over later grading systems: students had to demonstrate minimal competence in every subject to graduate.

THE FIRST STUDENTS

Forty-one students took law classes during the school's first year. Eighteen were classified as regular first-year students, and twenty-three were special students. Students at the College who enrolled in a law class were given this classification, as was a student who transferred to Washburn after taking his first year of law school at K.U., Chauncey Brown. Eight students already were lawyers, and five of them would complete the course of study and receive degrees at the school's first commencement three years later: John S. Dawson, William H. England, Ross B. Gilluly, Ernest R. Simon, and William H. Vernon.²⁵ Dawson, for example, already was thirty-four years old when he enrolled. He had been admitted to the bar in 1898 in Wakeeney after reading law in a lawyer's office in Hill City. He came to Topeka in 1899 to be Bond Clerk in the State Treasurer's office and in 1903 was named Chief Clerk in the Attorney General's office. He was admitted upon motion to practice before the Kansas Supreme Court on May 4, 1904.²⁶ He continued to attend as a special student even after he was named Assistant Attorney General, although he did not enroll in classes in the fall of 1904 because of political responsibilities during the election.

Fifteen of the regular 1Ls continued law classes after the first year and ten ultimately received degrees, nine as members of the initial graduating class. Only eight of the special students continued. Five graduated with the 1906 class while a sixth, Herbert Clayton, took classes for nine years before completing his law degree in 1912.²⁷

25. 72 Kan. ix, xiii-xvii (1906) (listing attorneys admitted to bar upon motion).

26. 140 Kan. xli, lii (1934) (listing attorneys admitted to practice before the Kansas Supreme Court from the earliest history of the State to July 1, 1935).

27. Clayton worked in the State Law Library while attending classes and ultimately became Law Librarian at McGeorge Law School in California.

Three women completed the first year as special students but elected not to return for the second year.²⁸

The class was augmented in the fall of 1904 by three students who entered with advanced standing. Edward R. Sloan and John W. Wilson had received LL.B. degrees that spring from Campbell College after completing its two-year course of instruction. They withdrew their applications to take the bar examination when the Board of Law Examiners enforced its decision that only applicants who had completed a three-year course met the statutory requirement for admission based upon law school study.²⁹ Washburn encouraged enrollment by those who had received law degrees at two-year schools by offering them advanced standing.³⁰ Thus, Sloan and Wilson chose to enroll at Washburn. That November, Sloan was elected Sheridan County Attorney. He named the opponent he defeated as his deputy to act as County Attorney until Sloan was eligible to practice law. Sloan soon told his classmates, “[The] questions put to a county attorney are not like those we get in school — they expect a fellow to know the statutes from cover to ditto.”³¹ Sloan and Wilson were permitted to take the June 1905 bar examination, based upon their combined three years of study at Campbell and Washburn. They formed a law firm in Hoxie, and Sloan assumed full responsibility as County Attorney. They returned to the Law School periodically the following year and were members of the first graduating class.

The Class of 1906 numbered seventeen graduates, a number not matched until 1912 and not exceeded until 1914. Each paid a five-dollar diploma fee. Seven members of the class already had been admitted to practice. “By intention or accident,” two or three members of the class wore street clothes at the ceremonies on June 2.³² The class adapted a motto from Shakespeare: “A fee! A fee! My advice for a fee!”³³ Perhaps in response, the graduation speaker, part-time professor William Rossington, told them what one might tell a graduate entering solo practice today:

I presume that you all intend to make the law the business and chief concern of your lives or you would not have gone to the trouble, labor and the expense of this course of preparation. I need not tell you that, like young bears, you have all your troubles ahead of you. To begin with, you will have to wait. . . . It is one thing to express a willingness to practice law and to assert your fitness to undertake its

28. Two other women took at least one class that year. The history of women students at Washburn is described in detail in Linda Diane Henry Elrod, *Washburn Law School Celebrates a Century of Welcoming Women*, 42 WASHBURN L.J. 853 (2004).

29. Concannon, *supra* note 10, at 30-31.

30. WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 12-14 (May 1904).

31. *Law School*, WASHBURN REV., Feb. 28, 1905, at 7.

32. *Lawyers Who Were “Made in Topeka,”* TOPEKA DAILY CAP., June 3, 1906.

33. THE KAW 46 (1906).

. . . responsibilities by hiring a small office and hanging out a sign; and another thing to bear with a cheerful heart the seeming unwillingness of clients with cases to mount your stairs and intrust you with business. If you are depending upon the law for your living from day to day, you may soon be discouraged. If you have certain versatility of talents, you may still adhere to your purpose and retain your connection with the law until you can tide over this period.³⁴

All members of the first graduating class passed the bar examination, and a Washburn graduate was the only one of fifty-seven takers singled out for special commendation.³⁵ “The showing surpassed the record of any other school in Kansas,” the 1907 *Kaw* gloated.³⁶ In fact, no Washburn graduate failed the Kansas bar exam through at least 1915. As late as 1921, the school touted that only one of its graduates had ever failed the test. Students took delight in pointing out that graduates of the state’s other law school were not as uniformly successful in passing it.³⁷ Even Chief Justice William A. Johnston would point to Washburn’s successful record on the bar exam when telling those attending the Law School’s tenth anniversary banquet, “The best test of the school is its product,”³⁸ and “Washburn College and the Law School are the proudest possession in Topeka.”³⁹

The class of 1906 was remarkable in many ways. Two of its members, Dawson and Sloan, would serve together on the Kansas Supreme Court. Dawson was the unquestioned intellectual leader of the class and gave remarks on its behalf at graduation. William W. Harvey, who taught Insurance Law to the group in its third year and later would sit with Dawson on the Kansas Supreme Court, remembered him as

an unusually intelligent, hard-working student, eager to be confronted with legal principles new to him, to search their source and the reasons for them, and to become familiar with their use. Actually, we studied the subject together — I am sure I learned as much from him as he did from me.⁴⁰

It was said that Dawson was the law school’s “*de facto* instructor in latin . . . When in doubt, ask him; he knows.”⁴¹ When the John Marshall Club that was formed during the school’s first semester argued a moot court appeal, *Grief v. Strychnine*, Dawson sat as Chief Justice.⁴²

34. *Lawyers Who Were “Made in Topeka,” supra*, note 32.

35. *THE KAW* 52 (1907).

36. *Id.*

37. *Law School Notes*, *WASHBURN REV.*, Mar. 1, 1916.

38. *Washburn City’s Best Possession*, *TOPEKA DAILY CAP.*, May 27, 1913.

39. *Id.*

40. 159 Kan. iv, xvi (1945) (honoring Chief Justice Dawson, titled *Dawson Encomium*).

41. *Notes from the Law School*, *WASHBURN REV.*, Oct. 23, 1903, at 12.

42. *Notes from the Law School*, *WASHBURN REV.*, Dec. 21, 1903, at 14.

Dawson achieved prominence almost immediately. He became personal secretary to Governor W.R. Stubbs in 1909 and then in 1910 was elected Attorney General of Kansas. In 1914, just eight years after receiving his law degree from Washburn, and after only sixteen years as a lawyer, he was elected to the Kansas Supreme Court. He was the first graduate of any Kansas law school to sit on the Court.⁴³ He was a member of the Court for thirty years, then the third longest term in Kansas history, and for the last eight years was Chief Justice. For ten more years he was Pardon and Parole Attorney for four Governors, concluding a state record of fifty-six years working in the State House.

Edward R. Sloan was elected or appointed to six public offices, including three terms in the Kansas House of Representatives. In March 1931 he was asked by Governor Guy Woodring to accept appointment to fill a vacancy on the Supreme Court. He served the remaining twenty-one months of the term but opted not to seek election to the position for another term. He later was appointed to the Kansas Corporation Commission and in 1947 was appointed Referee in Bankruptcy.

Other members of the class achieved success. All but two would practice law. Llewellyn J. Graham became Kansas Supreme Court Reporter after having worked in the office while attending law school. He first published Kansas advance sheets. His untimely death in 1911 was noted in the *Kansas Reports*, an unusual honor for one who did not serve on the Court.⁴⁴ George A. Kline became District Judge in Shawnee County in 1928, serving until 1948, and Hugh McFarland was Probate Judge there. Class President William H. Vernon initially was selected as law clerk to Justice Henry Mason, one of his instructors, and he and Ernest R. Simon were asked to be Lecturers at the Law School the year following their graduation. Vernon moved to Larned, became Pawnee County Attorney, and later was Speaker of the Kansas House of Representatives. Simon was elected Judge of the Court of Topeka in the spring of 1907 and then was Shawnee County Attorney. He became President of the Law School Alumni Association and was largely responsible for its decision, starting in 1909, to underwrite fifty-dollar annual scholarships to the top students in the first and second year classes. He taught part-time until 1914, when he was offered

43. Thomas A. Lee, *What Washburn Law School Does For Kansas*, in WASHBURN COLL., WASHBURN COLLEGE BULLETIN 14 (Mar. 1917). The memorial for Justice Judson S. West, 144 Kan. iii (1936), states he "attended" law school at K.U., but he is not listed among K.U. graduates. The number of early justices was small since there were only three members of the Supreme Court until 1901. The early justices either read law in an office or graduated from out-of-state law schools. Three Washburn graduates became justices before the first graduate of K.U. sat on the Supreme Court in 1933, Walter G. Thiele.

44. 84 Kan. vi (1911).

a full-time teaching position. He opted instead to move to California to practice law. According to one student, "There is no more popular man connected with the law school, than Judge Simons [sic]. Brilliant, thoroughly charged with his subject and with the 'smile that won't come off,' he holds his classes from start to finish."⁴⁵ Another member of the class, Benjamin Scandrett, taught Evidence during the 1909-10 academic year and later became general attorney for the Union Pacific Railroad.

CHARTING DIFFERENT PATHS

At the turn of the century, the law school at the University of Kansas had three full-time faculty members and a modest number of part-time lecturers for selected courses. Because of the small size of the bar in Lawrence, many of the lecturers came from nearby communities. Coinciding with the opening of Washburn, K.U. expanded its full-time faculty to four professors and eliminated part-time teaching positions, "owing to the inability of the several persons who held these positions to fulfill their engagements at the times fixed" because of demands of their practices.⁴⁶ The four full-time faculty taught all the regular courses and had astonishing course loads, even for Dean Green, of ten or eleven courses each during the academic year.⁴⁷ K.U.'s catalogue took a competitive shot at Washburn's plan to rely heavily upon part-time lecturers: "It is believed to be proved by experience that to be thoroughly efficient, instructional training in law courses must be given by resident teachers who give their whole time to instruction."⁴⁸

However, Washburn's model of reliance upon part-time lecturers was followed by many schools, and it resulted in a practical approach that played well with members of the bench and bar. Just four months after the school opened, the Committee on Legal Education of the Kansas Bar Association reported, "There are two well equipped schools of legal education in the state of Kansas. . . . Your committee believes that this school gives promise of becoming one of the most important factors in legal education to be found anywhere."⁴⁹ One year later the Committee "heartily endorse[d] the work" of the school, noting that "students have peculiar advantages in being able to

45. *Law Notes*, WASHBURN REV., Nov. 16, 1910, at 3.

46. Green, *supra* note 14, at 50. Ten of the twelve Special Lecturers listed in the school's 1904-05 bulletin were from distant communities like Wichita, Anthony, Minneapolis, St. Louis, and Kansas City, Missouri, suggesting that they gave only occasional lectures and did not teach entire courses.

47. UNIV. OF KAN. SCH. OF LAW, BULLETIN OF THE UNIV. OF KAN. SCH. OF LAW, ANNOUNCEMENT FOR 1904-05.

48. *Id.* at 27.

49. BAR ASS'N OF THE STATE OF KAN., PROCEEDINGS OF THE TWENTY-FIRST ANNUAL MEETING 26, 28 (1904).

witness the actual trial of cases in State and Federal courts and listening to arguments in the State Supreme Court.”⁵⁰ The committee concluded, “This law school like that of the University of Kansas, gives advantages to students seeking a legal education equal to those given in many of the old schools of national reputation”⁵¹

TEXTS VERSUS CASES

The two Kansas schools soon emphasized different methods of instruction. The traditional method was to use textbooks, which students read as the basis for class recitations and lectures. Dean James W. Green at K.U. was steadfastly devoted to the text method, and it was used almost exclusively in first-year courses there.⁵² Green believed, “The average student, in the beginning of his study of the law, is not prepared to discover the rule laid down in a case, nor to decide, from the mass of irrelevant matter it contains, whether the decision is good or bad in principle, or whether it should or should not be recognized as law.”⁵³ The only rational way for students to master the principle, he thought, was to “go to the works of some learned writer who has, after an examination of the cases, developed the principle and clearly stated it,” before considering cases “from which the rule is deduced.”⁵⁴

The competing case method, instituted at Harvard, began to spread to other schools in the 1890s, but its merits were the subject of sharp debate among legal educators at the turn of the century. By 1904, the case method was used in varying degrees by a majority of member schools of the Association of American Law Schools but in less than half of all law schools.⁵⁵ During Washburn’s first academic year, the text method predominated. In the class on Bills and Notes, students first studied a textbook but by December were studying “special cases.”⁵⁶ Not surprisingly, the Harvard-trained Dean Conant pushed for greater use of the case method in the school’s second year. Instead of using *Harriman on Contracts*, a book only one-inch thick, a casebook of two volumes was used, costing ten dollars. A similar switch was made in Common Law Pleading. A student wrote, “This plan of work is harder but more profitable. Those who do not like hard work complain some, but it is hoped we all may be benefitted by

50. BAR ASS’N OF THE STATE OF KAN., PROCEEDINGS OF THE TWENTY-SECOND ANNUAL MEETING 7, 9 (1905).

51. *Id.*

52. UNIV. OF KAN. SCH. OF LAW, BULLETIN OF THE UNIV. OF KAN. SCH. OF LAW 27 (1904-1905).

53. Green, *supra* note 14, at 57.

54. *Id.*

55. Ames, *supra* note 12, at 268.

56. *Notes from the Law School*, WASHBURN REV., Dec. 14, 1903, at 16.

the change.”⁵⁷ In an address to the Kansas Bar Association in 1906, Conant set forth the virtues of the case method while diplomatically acknowledging that the state’s two law schools, like most schools, used it to varying degrees:

I do not understand that any law school has officially indorsed any one system of instruction to the exclusion of all others, although four or five schools may be using the system exclusively. Much depends upon the personality of the individual instructor in charge of each particular course or subject. A method of instruction that one man might find adapted to his needs and personality might not do at all for another. It may not be well to adopt any one method to the exclusion of all others. The instructor should choose as the basis of his work that system which he knows himself to be most qualified to use and which he considers best adapted to the work he has in hand, and every instructor should be allowed absolute freedom of choice in his methods of teaching.⁵⁸

Regardless whether the instructor used a text or a casebook, the work was more challenging than some students expected:

We find that one must grow into a lawyer. He must eat with the law, talk with the law, smoke with the law, break the Sabbath for it, go to bed with it and get up with it. He must meditate upon it day and night. ‘Truly the law is a jealous mistress!’ One has to be vaccinated for the law, and it must *take*. Shades of Coke and Parke! [W]atch the score of our embryonic jurists roosting on desks and chairs in every conceivable fashion with their number-ten feet propped up higher than their heads and their noses buried in Ames’s Cases on Common Law Pleading, tearing their hair because some fractious gearing in their heads won’t work smoothly on the niceties of *replikation de injuria sua propria absque tali causa*.⁵⁹

JOINING THE ASSOCIATION OF AMERICAN LAW SCHOOLS

No decision made during the Law School’s first year was more important to its future than the decision to apply for membership in the Association of American Law Schools (A.A.L.S.). The A.A.L.S. was formed in 1900, at the encouragement of the Section on Legal Education of the American Bar Association. Its principal purposes included raising the quality of legal education and improving the preparatory training of entering students. Its initial requirements for membership were only that member schools: (1) require a two-year course of law study, which increased to three years effective in 1905; (2) require applicants to have completed a high school course “or its equivalent;” and (3) have a library containing at least the reports of

57. *Law School*, WASHBURN REV., Sept. 30, 1904, at 7.

58. Ernest B. Conant, *The Case System*, BAR ASS’N OF THE STATE OF KAN., PROCEEDINGS OF THE TWENTY-THIRD ANNUAL MEETING, 53, 65 (1906).

59. THE KAW 54 (1905).

the state and the United States Supreme Court.⁶⁰ Yet, many American law schools did not meet even these minimal requirements. When Washburn Law School was admitted to membership, only thirty-seven law schools were members and as late as 1920 only forty-seven of 150 American law schools were members.

Washburn's application was considered by the A.A.L.S. Executive Committee in May 1904, and was continued for a year, no doubt because the school had not even completed its first year. Washburn was admitted to membership on August 22, 1905, at the Association's annual meeting at Narragansett Pier, Rhode Island.⁶¹ Dean Conant and J.G. Slonecker represented the school. Other law schools admitted that year were those at the University of Nebraska and at Trinity College in North Carolina, which later became Duke Law School. It is not clear that the school's leaders at first fully appreciated the importance of A.A.L.S. membership. It was not even mentioned in the catalogue until March 1911 and was not touted in the text until the catalogue of June 1923. The A.A.L.S. increased its membership requirements periodically throughout the years. Washburn's need to increase its standards to maintain A.A.L.S. membership measurably helped the Law School when the College's central administration, because of severe financial problems, had incentives not to provide sufficient resources and to allow quality at the Law School to decline.

SKILLS TRAINING IN THE EARLY YEARS

A feature of law office study that allowed it to compete with law schools at the turn of the century was the opportunity it provided to learn the nuts and bolts of daily practice and to draft documents for actual cases. The first catalogue addressed the issue directly:

In the course in Code Pleading the students will receive instruction and be given practice in the preparation of pleadings, petitions and motions. The object will be to duplicate as far as possible the routine work of the law office in a systematic manner through the whole field of practice. The papers will be read and criticised and returned to the student. . . . The students will thus be given . . . practical training that will enable them to go directly from the Law School into active practice without obtaining any experience in a law office with a regular practitioner.⁶²

The school also operated a Practice Court in which students prepared and conducted mock trials of jury cases. When the same mock cases were used during the school's second year that had been used in the first, student interest and performance predictably declined.

60. AM. BAR ASS'N, PROCEEDINGS OF THE FIFTH ANNUAL ASSOCIATION OF AMERICAN LAW SCHOOLS 9, 12, 41 (1905).

61. *Id.* at 4.

62. WASHBURN COLL. SCH. OF LAW, *supra* note 5, at 17.

At the turn of the century, many lawyers relied upon oral advocacy skills to compensate for the limited general education they possessed. Thus, by December of the school's first year, students formed two clubs, the Blackstone Club and the John Marshall Club, to help develop these skills. They discussed legal questions at weekly meetings and presented appellate arguments of mock cases. Students sat in panels as judges and issued written opinions, although sometimes after much delay. Some decisions were even held over until the following academic year. Interest in these clubs varied from year to year, and the Blackstone Club outlasted the Marshall Club.

In the fall of the school's second year, Professor Orwell Bradley Towne from the College taught a special oratorical course. Among questions the class debated was the advisability of abolishing the requirement of unanimous verdicts in civil cases. The College was known among colleges in Kansas for its success in debate and oratory competitions and had active literary and debating societies for both men and women. Several law students elected to participate in the Prize and Inter-Society Debates on the main campus. "This is some evidence to show a mixture of the departments, which will, probably be a benefit all around."⁶³ However, the next year, law students decided to form their own debating society called the Forensics Club. There had been adverse reaction on the campus to the Laws (the term Washburn students used for the law school) participating in the College societies. Plus, there were advantages of a separate society since it "would serve to unify and harmonize the student body"⁶⁴ and allow students to discuss legal, ethical and political questions of importance to them but of little interest to students in other departments. Professor Slonecker offered a prize of twenty-five dollars for the winner of a Law School oratorical contest, and Henry G. Larimer put up a second prize of fifteen dollars.⁶⁵ During academic year 1906-07, the College made law students eligible to represent Washburn in intercollegiate debates, realizing that tapping their special skills might help win more competitions. John W. Huntsberger (class of 1908) promptly became Washburn's top debater in its annual debate with Baker University.

BLENDING WITH THE COLLEGE: STUDENT LIFE

There were other attempts to blend in with the College. Wilber Greer, Professor of Latin at the College, taught Roman Law. Justice Rousseau Burch's course in International Law in the spring of the school's first year was opened as an elective for students in the Col-

63. *Law School*, WASHBURN REV., Nov. 1, 1904, at 5.

64. *Laws to Debate*, WASHBURN REV., Sept. 26, 1905, at 11.

65. *Id.*

lege, and any student entering the Law School who already had taken the course at the College was granted credit for it toward the law degree. The College accepted enough law courses as electives that students could earn both a Bachelor of Arts degree and a Bachelor of Laws degree in six, rather than seven years.

During the school's second year, the College faculty made students at the Law and Medical Schools eligible to join Greek letter societies if they met the requirements of membership for College students. The following year, Laws were permitted to try out for the baseball team, and they soon became important members of the College football team. In those years, Washburn annually competed with the University of Kansas and often played the University of Missouri and the State Agricultural School in Manhattan. In 1907, Washburn's team was undefeated, beating both K.U. and the University of Oklahoma.

Law students sometimes complained of "being ostracized and looked down upon by the people out on the Hill. . . . [T]he Laws are slighted by the Arts students."⁶⁶ After the first annual Law School edition of the student newspaper was published in early 1911, the editor, a liberal arts major, admitted that "a good many of the College students hardly realized that we have an active and efficient law school as one of the integral parts of the institution."⁶⁷ Later, when more students entered the Law School after completing one or more years of college, interaction increased. One year, half the football lettermen were Laws. All the captains of the men's debating teams, half the debaters, and two of the College orators were Laws. However, some law students felt they gave more than they received when building bridges to the College:

The Laws sacrificed their opportunity for developing a Law School football team in order that they might unite with the College. They refused the challenge of other law schools to debate in order that they might assist the College in fulfilling its heavy debate schedule. The hope and ambition of the Blackstone club has been sacrificed for the College literary societies.⁶⁸

From the School's first days, there was both love and hate in the relationship between the Law School and the College. Law students declined to make pledges to President Parley Womer's endowment campaign, the so-called "\$100 idea," citing various grievances.⁶⁹ A year later, future Congressman Clifford R. Hope (class of 1917) offered his perspective.

66. *Editorial*, WASHBURN REV., Nov. 30, 1910, at 5.

67. WASHBURN REV., Feb. 1, 1911, at 4.

68. "Laws" in *Athletics*, WASHBURN REV., May 13, 1914, at 3.

69. WASHBURN REV., Jan. 26, 1916, at 2.

The Washburn Law School might be compared to a boisterous youth that has strayed away from home and sometimes does things that shock its staid and dignified mother. However, a fourteen-year-old could not be expected to behave with all the discretion of its fifty-two-year-old parent Our environment is perhaps not one to especially uplift and inspire us.

. . . [T]he Law School occupies much the same relation to the College proper that Australia does to England. They are from the same stock and are ready to fight for the mother country, even tho [sic] separated by a barrier of water. The Law School is separated from the College by a gulf of distance that renders it impossible to take part in all the activities which it desires. It is willing to do all that it can, however, to help out any college enterprise.⁷⁰

Law students made the most of their downtown location. There was a gathering place downstairs in the law building. An alumnus recalled,

Not only in faculty and student body were we blessed [T]here was Augustin Alba. Augustin had been a high-ranking officer in the Mexican army, a graduate of Chapultapec Academy, the Mexican West Point. He bet on the wrong horse in one of the revolutions which plagued that unfortunate nation in the first years of this century and was lucky in getting out with his life. The only thing he could do to make a living was cook. So on the ground floor of the law school building he opened the town's first Chili Parlour. It was a first experience for most of the students. But in those days American hard money was really worth face value. Most of us boys were making a large part of our own way. And Augustin was a Godsend. There at the crowded tables you could get a bowl of chili (about two cups) and hot as the dew of hell plus another bowl full of oyster crackers and "dippin" rights in a big bowl of chopped onion for the sum of one nickel 5¢ no more. We all got the big end of our proteins out of Augustin's chili.⁷¹

There also were social events. However, Law School parties were not quite what they are today. At a stag party organized by the freshman class, "[m]usic, games and story telling kept the company entertained. At a suitable hour, refreshments of doughnuts, pumpkin pie, apples and cider were served."⁷² One year, students even formed a Mandolin Club. The Law School held a banquet at the National Hotel to celebrate completion of the school's second year. Four students and two faculty made remarks and gave toasts. The banquet became an annual event.

Almost all law students in the early years worked. Many found employment in offices at the State House.⁷³ Thirteen of the sixteen seniors in 1913 were described as self supporting. Four were stenographers, four worked in lawyers' offices, two delivered newspapers, one

70. *Law School*, WASHBURN REV., Feb. 14, 1917.

71. McLane, *supra* note 4, at 5.

72. *Law Notes*, WASHBURN REV., Nov. 23, 1910, at 3.

73. *Washburn Law News*, WASHBURN REV., Feb. 12, 1908, at 8.

was a collector, one was a mail clerk, and one worked in the Santa Fe shops.

A LOYAL PART-TIME FACULTY

Initially, only the Dean taught full-time. Even when the full-time faculty briefly was at its peak size of three during the School's first sixteen years, full-time faculty taught no more than sixty percent of the courses. The extraordinary commitment of local judges and lawyers to the school's success was indispensable, particularly as leadership at the school changed frequently during its first two decades. No less than twelve Justices of the Kansas Supreme Court and one Judge of the Kansas Court of Appeals taught classes during the school's first thirteen years, and their presence on the faculty list added luster to the school. Two of the original adjunct faculty, Justice Henry Mason, who taught Constitutional Law, and George H. Whitcomb, who taught Sales and became Judge of the Third Judicial District in 1911, taught for twenty-three and twenty-nine years, respectively. Among other members of the original faculty, Henry G. Gottlieb taught for sixteen years and was Judge of the Practice Court for many of them. John G. Slonecker taught for fourteen years, and Robert Stone, District Judge Lee Monroe, Clad Hamilton, Bennett Wheeler, John Switzer, and John Rosen all taught for twelve years. Several other lawyers who joined the adjunct faculty during the Law School's years downtown also taught for many years. William C. Ralston taught fourteen different courses over twenty-two years beginning in 1909 and often taught more than one class each year. Clinton J. Evans taught for twenty years starting in 1912, and Thomas Amory Lee taught for more than a quarter century starting in 1916.

Practitioners and judges brought "real world" cases into the classroom. Justice Mason frequently presented cases that were before the Kansas Supreme Court to his class in Constitutional Law. "I remember one such case where Judge Mason, in commenting on one of the answers I had written, remarked 'You haven't decided the case as the court now has but you get an A anyway because your reasoning was clear and would have been usable by us.'"⁷⁴

One drawback of heavy reliance upon part-time faculty, of course, was the frequency with which they canceled classes because of other commitments. When Fred S. Jackson was a candidate for Attorney General in 1906, for example, his Criminal Law class often did not meet. "Competition is the life of trade; but irregularity of classes is death to the school," one student wrote in 1904.⁷⁵

74. McLane, *supra* note 4, at 5.

75. *Law School*, WASHBURN REV., Oct. 14, 1904, at 6.

Barely half of the initial part-time faculty had themselves graduated from law school. Six had neither college nor law degrees. Thus, there was a grain of truth in the tongue-in-cheek comments of one of the first graduates:

The School has been of immense value to the members of the local bar who have served upon its faculty. Those who have essayed to teach the embryo legal minds have often learned points and principles which in many particulars within the knowledge of the writer has redounded to the advantage of their clients. The direct fruition of their able work is now exemplified in the graduating class of 1906, the members of which will at all times be ready and willing to give their old-time professors legal advice and counsel, and, if need be, take full charge of their practice (and fees).⁷⁶

CHANGE AND GROWTH

Annual enrollment in law school courses remained constant, ranging from thirty-nine to forty-five students, during the school's first six years. The number of regular students grew to about thirty per year, as 1Ls became 2Ls, 2Ls became 3Ls, and special students became regular students. The number of special students declined to an average of ten per year. One consequence of the school's small size was that many courses were offered every other year. 1Ls could find themselves taking an upper level class like Sales with 2Ls.⁷⁷ While the number of law graduates was small, they constituted a significant percentage of the graduates of the College. In 1908, Laws numbered nine out of sixty-eight graduates.

Samuel E. Cary came to Washburn in 1907 from Providence, Kentucky, and was the first black graduate in 1910. He joined the practice of a renowned black trial lawyer, W.L. Sayers, in Hill City. Cary was elected Logan County Attorney in 1914. He moved to Denver and opened a law practice there in 1919.⁷⁸ Washburn's second black graduate, Frederick C. Helm (class of 1912), began his law studies during Cary's senior year. Helm was well regarded by his classmates who elected him as an officer of the first-year class, Sargent-at-Arms, and Vice-President of the first-year Arthur Debating Club.⁷⁹ He showed a talent for trial work in Practice Court. After graduation, Helm opened a law office in Wichita. The third black graduate, legendary trial lawyer Elisha Scott (class of 1916), received a law dictionary for winning the Special Prize Debate as a beginning student in 1910. He was "heralded with much applause among the students as the ad-

76. THE KAW 38 (1906).

77. *Law School*, WASHBURN REV., Feb. 14, 1905, at 12.

78. In 1971, a new organization in Denver, formed to instill professionalism among African-American lawyers, was named the Samuel Cary Bar Association in his honor.

79. *School of Law*, WASHBURN REV., Oct. 20, 1909, at 6; *School of Law*, WASHBURN REV., Dec. 15, 1909, at 9.

vocate of their cause” when they were assigned the role of the criminal defendant in cases he defended in Practice Court.⁸⁰ He and Helm conducted mock trials and debates in local black churches.

That his classmates would elect Helm as a class officer at the same time they elected the only woman in the class, Jessie Nye (class of 1912), as Secretary-Treasurer suggests that early on the Law School had a progressive view on issues of diversity. Reverend Nathan A. Mitchell, a native of Jamaica who enrolled in the spring semester, 1911, “came to Topeka in preference to attending law school in Louisville because here, he says, he has found no race prejudice. When he applied for entrance in a college in Illinois, he found a sentiment among the students, which he interpreted as unfriendly.”⁸¹

The school offered summer school classes for the first time in 1907. That summer, Conant resigned as Dean to become Professor of Law at the University of Nebraska. The College administration named a member of the part-time faculty to be Acting Dean until a permanent Dean could be hired. Edward Delahay Osborn was thirty-six years old and had been a Lecturer since 1905, co-teaching the course in Wills and Administration of Estates with former Kansas Supreme Court Chief Justice Frank Doster. Osborn was a native Kansan whose grandfather, Mark Delahay, was the second United States District Judge for the District of Kansas and whose father, Thomas Osborn, was Governor of Kansas from 1873-77. He spent a large part of his boyhood days in Brazil and Chile where his father served by Presidential appointment as U.S. Minister. He attended Washburn Academy, then attended Williams College from 1890-93. He is the only Dean and one of only two members of the full-time faculty who never graduated from law school. He studied in the offices of Rossington, Smith & Dallas in Topeka before being admitted to the bar in 1895. He practiced law in Topeka with Alex M. Harvey and was retained as an attorney for the Missouri-Pacific Railroad.⁸²

Though he was only Acting Dean, Osborn nevertheless made significant changes. He inaugurated in each course a moot court in which at least four cases were argued each term. He expanded the Practice Court, inviting various lawyers, primarily those who had

80. *Law School*, WASHBURN REV., May 17, 1916.

81. *Legal Atmosphere is a Drawing Card*, WASHBURN REV., May 1, 1912. Mitchell did not complete his law studies at Washburn. He left upon being named to a pastorate at a church in Columbia, Missouri. The student newspaper reported that he planned to enroll at the law school of the University of Missouri. *Personals*, WASHBURN REV., Aug. 12, 1912, at 6. However, black students were excluded from that law school at that time. See *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938). Mitchell ultimately became a lawyer and practiced in St. Louis, Missouri. In 1925, he became “the first Negro attorney known to represent a white client” there. J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944*, at 333 (1993) (citing *ST. LOUIS STAR*, June 19, 1925).

82. 3 *KANSAS: A CYCLOPEDIA OF KANSAS HISTORY* 697 (Frank W. Blackmar ed., 1912).

served as judges, to preside over trials before juries composed of members of the student body.⁸³

The College selected William Reed Arthur to become Dean in 1909. Osborn thereafter devoted substantially all his time to teaching, although he did keep an office downtown. On November 9, 1911, Osborn presented the only argument of his career before the United States Supreme Court.⁸⁴ He represented a landowner challenging the railroad's claim of right-of-way. The Court affirmed the ruling of the Eighth Circuit Court of Appeals against Osborn's client.

Arthur came to Topeka from Chicago but had roots both in Kansas and at Washburn. His family had moved to Kansas from Pennsylvania when he was a child. He started college at Emporia but received his bachelor's degree at Washburn in 1899. He was an instructor at Kinsley High School and principal of the Logan schools during six years in which he saved money to attend law school. He received his LL.B. from Northwestern University at age thirty-one in 1908. Arthur worked as Assistant Librarian at the Chicago Law Institute and traveled to several cities to study card cataloging.

Arthur's challenge was to increase the size of the school. There was said to be talk of discontinuing the school because of low enrollment.⁸⁵ Indeed, College Treasurer L.H. Greenwood postponed any "definite arrangement" for Arthur's salary for his second year "until some estimate could be made on how the law department was going to show up this year."⁸⁶ Arthur was forced to alert President Sanders late in the academic year about the "oversight in relation to my salary" and to explain he had "delayed taking the matter up, thinking that possibly at the end of the first six months the allowance would be made."⁸⁷

Arthur quickly implemented new recruitment strategies. He sent circulars to all teachers in the city inviting them to enroll in Justice Henry Mason's class on Constitutional Law. He encouraged students who formerly were teachers to invite their friends to visit the school when they attended the meeting of the state teachers' association in Topeka. He invited prospective students to attend the Law School's annual spring banquet. At least two of Arthur's relatives even enrolled, and his brother John Arthur graduated as a member of the class of 1912. To make it possible for those holding full-time jobs to complete a law degree, Arthur created a separate night school pro-

83. *Law News*, WASHBURN REV., Nov. 20, 1907, at 8.

84. *Kindred v. Union Pac. R.R.*, 225 U.S. 582 (1912).

85. *Ex-Washburn Law Dean Dies*, TOPEKA CAP., Nov. 4, 1963, at 1.

86. Letter from William R. Arthur to Frank Sanders (Apr. 24, 1911) (on file in Mabee Library, Washburn University).

87. *Id.*

gram, commencing its operations November 1, 1909. He received no extra pay for the extra work. Classes were taught by the same instructors who taught in the day program. Initially, classes were held three nights each week for two hours. By the spring semester, night classes were extended to three hours each, starting at 7:00 p.m. "Students will not be permitted to use stimulants during the session," the student newspaper reported.⁸⁸ As soon as the night school opened, day students reorganized the Blackstone Club and night students organized the Kent Club. The day students challenged the night students to a debate. Night school classes continued throughout the summer.

Arthur understood the importance of rallying support from alumni and members of the bar. "[T]o judge by the little talks he made in introducing the speakers at the Booster Lunch last Saturday noon, everybody that ever even saw the school is 'a loyal supporter,' 'a backbone,' 'an old friend' or some other kind of a helping hand."⁸⁹ In his third year, he sent a letter to all former students who had not graduated, asking them to join alumni in establishing scholarships.

Arthur's efforts worked. Enrollment increased by seventy-five percent during 1909-10. Arthur set a goal to reach 100 students and this goal was achieved by the spring of 1911. A "Century Jubilee" was held to celebrate.⁹⁰ One student later wrote, "[E]veryone remarked about the 'swell eats' for a small price but a couple of years later, it leaked out that the Dean had noticed before hand the scanty menu and had dug down in his pocket and added 'two bits' to each plate."⁹¹

The school benefitted from broader publicity. An article in the February 1911 issue of *Case & Comment* about John Dawson's election as Attorney General noted that he received his law degree at Washburn, "[l]ike others of the younger men in Kansas politics."⁹² Later that spring, students learned of a favorable article about the Law School in the *Chicago Record Herald*.⁹³ The following year, enrollment passed 120, although many of the students were not pursuing a degree. In the fall of 1912, Arthur offered lectures on law for business people, giving away 100 free tickets to the first lecture by Professor Osborn, and forty people attended.⁹⁴ The following spring, twenty-six people enrolled in a special class for business people.⁹⁵ Arthur devised a plan to distribute the catalogue directly to high school

88. *School of Law*, WASHBURN REV., Mar. 2, 1910, at 6.

89. "At Least 100 Students Next Year," WASHBURN REV., Mar. 30, 1910.

90. *Law School Has Big Celebration*, WASHBURN REV., Mar. 1, 1911, at 6.

91. *Laws Banquet*, WASHBURN REV., Mar. 26, 1915.

92. *The Editor's Comments*, 17 CASE & COMMENT 481 (1911).

93. *Law Notes*, WASHBURN REV., May 24, 1911, at 9.

94. *Law Notes*, WASHBURN REV., Oct. 12, 1912, at 14.

95. *Law Notes*, WASHBURN REV., Feb. 19, 1913, at 12.

graduates. The fall of 1913 saw the largest first-year class yet, and there were twenty students in the night school.

For the only time in the Law School's history, its tuition relative to that at the College even helped student recruitment. Although law tuition had risen to sixty dollars per year, tuition at the College was sixty-five dollars per year, and students "on the hill" also paid gymnasium and other fees law students did not have to pay. Ray Hugh Garvey (class of 1915), who was taking classes both at the College and the Law School, exhibited the acumen that would lead him to success in the business world. He observed the price differential, realized that law students were free to take classes at the College, and promptly switched his enrollment to the Law School.⁹⁶

Besides recruiting students, Arthur sought to enhance academics. Not surprisingly, given his background in the law library in Chicago, Arthur immediately added to the curriculum a course in "Brief Drawing" that he taught himself. It was a course about "where and how to find the law" and included brief writing exercises. In 1912, a course was added focusing upon the enactment and interpretation of statutes, as was a practical course on Kansas practice and procedure. The school established a second division of the Practice Court during the spring semester in 1914 so students could gain more trial experience. Juniors practiced in the second division, seniors in the first division. Starting in 1913-14, first-year students were given weekly exams in all subjects. The increase in enrollment meant more classes were offered, and 1Ls did not have to be mixed with upper-level students. The number of class sessions held each week reached fifty-eight by 1915, double the number when Arthur arrived.⁹⁷

On April 5, 1913, two teams from Washburn, selected by the Blackstone Club, debated two teams from the Kansas City Law School, one debate being held at Washburn and one in Kansas City. It was the school's first intermural competition. The students debated whether the government should own and operate interstate railroads. Washburn's representatives included: future Dean Antrim Hambleton (class of 1914); future long-time member of the adjunct faculty Edward Rooney (class of 1914); future Congressman Harold C. McGugin (ex-class of 1915); Harry Logan (ex-class of 1915), for whom an endowed lecture series is named; and future Newton lawyer J. Sidney Nye (class of 1915).

Arthur was the student's friend. In 1913, a student was considering quitting school because of gambling losses. "How much money

96. OLIVE WHITE GARVEY, *THE OBSTACLE RACE: THE STORY OF RAY HUGH GARVEY* 27 (1970).

97. *TOPEKA DAILY CAP.*, July 31, 1915, at 4.

will you need to finish the year?" Arthur asked.⁹⁸ When the student quoted a figure of \$400, Arthur said, "Come up to my office tomorrow and I'll have the money for you."⁹⁹ The student later became a District Judge in western Kansas. Arthur later estimated he loaned more than \$10,000 to students, and signed notes for many more, over his forty-year teaching career. The second Washburn graduate to serve on the Kansas Supreme Court, William A. Smith (class of 1914), believed he owed his legal career to Arthur:

Smith had delivered the Topeka Capital one year while attending college, and ended up owing the paper about \$100. The next fall he enrolled in the law school. The college authorities told him he could not attend unless he made settlement with the Capital.

"[Arthur] heard about this," Smith said, "and unsolicited by me got in touch with Arthur Capper. The result was that the newspaper gave me an afternoon job, with arrangements whereby I applied one-half of my pay to the paper bill and used the other half to live on. I have often wondered what would have been my fate if a man of less human characteristics had happened to be dean of the law school at that time."¹⁰⁰

MOVING AROUND DOWNTOWN

Predictably, growth in enrollment taxed the capacity of the school's rented facilities on Eighth Street. By the spring of 1911, Supreme Court Justice Clark Smith elected to meet his class in Extraordinary Legal Remedies in his chambers at the State House to relieve the congestion a bit. Even before the enrollment spike, the school's quarters were not optimal. Custodial service and maintenance were irregular, and students sometimes undertook these tasks themselves. It would be May 1909, before "the lives of law students" would be "made more secure by the construction of good substantial fire escapes."¹⁰¹ A student visiting the school from another department described the scene in bleak terms late in 1908:

[O]ne must abruptly climb three flights of dark, narrow stairs, and upon reaching the top, find as gloomy a scene as can well be imagined. The rooms are not only dark and dingy, but the walls are smoky and covered with pencil works, the desks and chairs cut up, and broken, and the outlook from the grimy windows as discouraging as the rooms themselves. Every year when the Washburn Campus is being improved and made more beautiful, why must this other division in the college not share in the benefits received, nor

98. *William Reed Arthur Is "Pop" to Judges and Others He Helped Through School*, KAN. CITY TIMES, May 14, 1949.

99. *Id.*

100. *Id.*

101. *Law Notes*, WASHBURN REV., May 26, 1909, at 6.

obtain some of the cleaner, pleasanter quarters we of the Arts Course have profited from?¹⁰²

It did not help matters that the 1903 Kansas Legislature had appropriated \$50,000 for construction of a new law building at the University of Kansas, which was occupied in 1905. As early as 1906, President Plass included a goal of \$40,000 for a law building in his plan to raise endowments through a Million Dollar Club, but made no progress toward this goal during the remainder of his presidency.

Coinciding with Arthur's arrival in 1909, the rooms were cleaned and the walls were repaired. Lighting was fixed in the library and in classrooms. Second- and third-year students on their own papered and painted the walls in the room set aside as a place for students to smoke and talk. They purchased mission furniture for it. Still, there were problems. In December, instructors and students were unable to study in the library because of the cold. By the spring, Arthur was fueling talk of a new building.¹⁰³ A committee was formed to search for a new location that retained the school's advantage of proximity to the State Law Library and the courts. Regret was expressed that the original location of Lincoln College could not be obtained. By the end of 1910, the committee started to raise the funds that would be needed. However, the need to alleviate overcrowding could not wait for the committee to complete its work.

The College leased larger quarters in the double building at 725-727 Kansas Avenue, while the search for a permanent home continued. The school occupied the third floor over the Mills Dry Goods Store. Alumni Mike Jackson (class of 1980) and Chris Woolery (class of 1980) today have offices on another floor of the same building. The move to the new quarters was sufficiently completed so that classes could begin on time for the fall semester 1911, although the move continued into the next month, and some students spent several Saturdays helping to put the facilities into usable shape. There were two large lecture rooms and two library rooms, plus an office for the Dean, a faculty office, two cloak rooms, and two student reception rooms. To returning students it was "a wonderful improvement over the cramped space" on Eighth Street and gave the school "an air of prosperity" not possible before.¹⁰⁴ However, it was not ideal. Roy Painter (class of 1916) later described it as an "old warren," observing that "with its rheumatic stairs and splintered seats, dingy rooms and broken plaster, and its isolation from the college, the dreamer needed heroism to discover the great law school."¹⁰⁵

102. *Law Notes*, WASHBURN REV., Dec. 9, 1908.

103. *Greater Washburn Law School in Sight*, WASHBURN REV., Mar. 9, 1910.

104. *Legal Atmosphere is a Drawing Card*, *supra* note 81.

105. *A Word from "Grads"*, WASHBURN REV., Apr. 4, 1917.

Increased enrollment and larger facilities meant more support services were needed. There were no funds to hire a secretary, so Arthur handled “the continual and ever increasing mass of petty yet necessary detail[s]”¹⁰⁶ himself. At the start of the spring semester 1912, Antrim Hambleton (class of 1914), a future Dean, agreed to stay in the building all day “to keep the microbes cleaned out” in addition to being in charge of the library during the afternoon.¹⁰⁷ Students serving as librarian received a scholarship. A year later, future Kansas Supreme Court Justice William A. Smith (class of 1914) had the job. Finally, in early 1915, Emily Sanford Platt was hired as Secretary. One student wrote, “she has a happy little way that promotes acquaintanceship.”¹⁰⁸ She would be the law school’s anchor for more than twenty-six years before retiring in 1941.

The trustees of the College decided to close the Medical Department at the end of the academic year in 1913, due to rising costs and declining enrollments. They resolved, however, to strengthen the remaining downtown department, the Law School. The trustees appointed a subcommittee, composed of the three lawyer members of the board, Robert Stone, James W. Gleed, and A.A. Godard, to secure a permanent home for the school. By December 1912, the committee announced that a contract had been negotiated to purchase the Bell Telephone building at 211 West Sixth Street. It became available because the company was moving to a larger building following a merger. Trustee Gleed was credited with securing favorable terms since he also was a director of the telephone company.¹⁰⁹ The cost was approximately \$20,000, eighty percent of which was pledged or already paid when the deal was announced. “The money has been raised by solicitation among the lawyers of Topeka but more especially among the lecturers and instructors in the school who have put their interest in the school before everything else and made large contributions toward the fund for purchasing the building.”¹¹⁰ Additional funds were required for renovation. Mrs. Lewis H. Greenwood made a significant contribution, and the library in the new building was named for her husband, the long-time secretary of the Board of Trustees and Lecturer on Domestic Relations, who had died nearly two years earlier.

The building measured 25 feet by 125 feet, stood two-and-one-half stories high, and was constructed of pressed brick. Today, the building is home to an insurance agency and a firm producing business

106. *Dean Arthur*, WASHBURN REV., Jan. 25, 1911, at 4.

107. *Law Notes*, WASHBURN REV., Feb. 14, 1912, at 11.

108. WASHBURN REV., Mar 24, 1915, at 4.

109. *New Law Building Washburn College*, WASHBURN REV., Mar. 26, 1913.

110. *Law School Will Have a New Home*, WASHBURN REV., Dec. 3, 1912.

forms. Remodeling of the first floor created offices and three lecture rooms, one for each of the three classes, with seniors assigned the room closest to the front door and freshmen assigned the one in the rear of the building. The moot court room was on the second floor, along with the library and reading rooms. The basement was used for lockers and storage. Future expansion to a lot at the rear of the building, which the College also owned, would be possible.

Renovation of the building took longer than expected. Hopes of having classes in the new building some time during the spring semester of 1913 evaporated and it was necessary, for the first time, to cancel the summer session. Moving the library books nevertheless commenced in April, and a "Decennial New Building Jubilee Banquet" was held at the Throop Hotel on May 26. New furniture was purchased. The building opened with much fanfare in September 1913, and on April 20 the following spring, the entire student body "marched — complete with drums and flags — from West Sixth to the campus in celebration of 'one of the finest law buildings in the West.'"¹¹¹ Many students congregated between classes at Percy Walker's nearby drugstore and were prone to arrive back late for class. Thus, when a system of electric bells was installed in the classrooms early in 1915, Arthur placed a bell on the same circuit at the drugstore and rang it a minute or two before classes began.¹¹²

FACULTY TURNOVER

Growth in enrollment led to a need not only for larger facilities but also for more full-time faculty. Arthur and Osborn were the only full-time teachers until 1911. However, attempts to increase the number of faculty were frustrated by sudden departures. Shelby L. Large became the third full-time professor in the fall of 1911. Large, who started law school at Stanford before completing his degree at Northwestern, was an attorney for the Legal Aid Society of Chicago before moving to Topeka. He stayed just one semester, however, before returning to Illinois to practice in Rockford. No replacement was hired. Before the new building opened in 1913, K.U. enticed Osborn away to fill a vacancy on its full-time law faculty caused by a death. Arthur persuaded local lawyer Clinton J. Evans, who had been a Lecturer on Wills and Corporations the previous two years, to devote a substantial part of his time that year to teaching. Besides Arthur, he was the only member of the faculty who taught courses to all three classes of the Law School plus the night school. In addition, Paul H. Dodge was

111. McLane, *supra* note 4, at 7.

112. *Law School Notes*, WASHBURN REV., Mar. 3, 1915; *William Reed Arthur is "Pop" to Judges and Others He Helped Through School*, *supra* note 98.

added as Professor of Law. He received his J.D. from the University of Chicago and studied law at Oxford for a year. He had practiced in New York City and had taught at Stetson College of Law in Florida the previous year. Dodge offered prizes in his Contracts and Equity classes for the best brief of assigned cases. The prizes consisted of “ten rules of practice,” which he valued at one hundred dollars.¹¹³ Perhaps not surprisingly, only one student submitted a brief. Dodge left the faculty at the end of the year.

Limited financial resources no doubt made retention of full-time faculty difficult. The College was operating at a deficit, and College President Frank Sanders took an unpaid leave of absence during the 1913-14 academic year. Expenditures at the Law School for 1911-12 totaled only \$2,591.37, barely more than \$2,000 of which went for salaries. When Large was not replaced, salaries fell to only \$1,725 the next academic year. By 1915, a local newspaper reported there were four faculty members on salary, including the Dean,¹¹⁴ suggesting the school did allocate some funds to pay local lawyers like Clinton Evans who devoted a substantial part of their time to teaching. There were token honoraria for other Lecturers, but many continued to donate their time.

Ernest R. Simon (class of 1906) initially agreed to devote full-time to the Law School in the fall of 1914. He taught his initial classes but left abruptly to accept a position practicing law in California. Arthur was able on short notice to persuade William Cullen Burns to leave his practice in Chicago to replace Simon for one semester. It was a financial sacrifice for Burns, but he had Kansas ties. He had grown up in Oswego and, after reading law in an office, practiced law there and served four years as Probate Judge before moving to Chicago to attend Northwestern University. He completed an LL.B., then was the first student to earn an LL.M. from Northwestern. Burns taught as a Lecturer in Chicago. He was popular with students who appreciated the amusing anecdotes he told in class, his experience in public life, the fact he knew every student’s name by the second week, and “his earnest desire to share what he knew with students.”¹¹⁵

As luck would have it, at least for Washburn, one of the most respected lawyers and judges in Kansas, Justice Alfred Washburn Benson, was unexpectedly defeated for re-election to the Kansas Supreme Court in November 1914. “Such a misfortune may always happen wherever judges are elected by the people,” the student newspaper astutely observed.¹¹⁶ Benson had been a Lecturer on

113. *Law Notes*, WASHBURN REV., Oct. 29, 1913.

114. *Dean W.R. Arthur Quits Washburn Law School*, TOPEKA DAILY CAP., July 31, 1915.

115. *Honor W. Burns*, WASHBURN REV., Feb. 3, 1915, at 1.

116. *Albert Washburn Benson Memorial*, WASHBURN REV., Feb. 16, 1916, at 1.

Code Pleading for six years. He agreed to replace Burns on the full-time faculty for "an almost nominal remuneration" but refused to discuss school matters until his term expired because "my time belongs to the state until January 11, 1915."¹¹⁷

Benson was a Civil War veteran. His fifty-year career included twelve years as District Judge in Ottawa and Lawrence, where he taught law classes at K.U. He also served in the Kansas House of Representatives and Kansas Senate, was appointed to fill an unexpired term in the United States Senate, and finally, filled a vacancy on the Kansas Supreme Court in 1907. That appointment led Benson to teach part-time at Washburn. In his first semester as a full-time professor, Benson taught ten credit hours in five subjects, Quasi Contracts, Mortgages, Domestic Relations, Criminal Pleading, and Damages. In addition, he made himself available in the library for one hour each afternoon to advise students informally on any legal questions they wished to ask him. From the outset, students

responded to the intense interest this veteran of the law has taken in their training. No lapse of years has dimmed the youthful outlook of his mind for the years to come; no firmly settled habits of life have prevented him from adapting himself wholly to the new work; no bitterness or pessimism have chilled the natural enthusiasm and ardor of his scholars; no lagging interest in his work that was, to say the least, different to him, has permitted any student an excuse for his own disinterest¹¹⁸

So large was Benson's legend that the school's chapter of Phi Alpha Delta law fraternity was named in his memory even though it was not formed until six years after his death. He threw himself into the whole of academic life, leading law students on several marches out to the main campus and in various school parades. Benson began compiling his own casebook on Damages as the first step in a broader publishing project that had been discussed at the school for several years.

A demand for books of this kind has been felt by western law schools because the eastern institutions nearly control the law book publishing. Owing to an important divergence in the code law of the eastern states, from that of the western, many leading cases in New York and Massachusetts cannot be made to apply in Kansas and it is to supplement these cases and their holdings with western decisions that the Topeka school is undertaking this new work.¹¹⁹

Spurred by reports that the cost of educating a doctor at the University of Kansas was \$3,000, members of the 1915 Kansas Legislature asked Washburn to determine the cost of educating a lawyer. Ar-

117. *Id.*

118. *Former Justice A.W. Benson, Now Washburn Law Instructor*, WASHBURN REV., May 26, 1915.

119. *Washburn Law Books*, TOPEKA ST. J., Mar. 1, 1915, at 4.

thur's "carefully tabulated results showed that each diploma, on average, cost the school \$312.50."¹²⁰ Arthur acknowledged that a graduate paid only \$165 in tuition plus a five-dollar diploma fee for the three-year course but explained the school nevertheless was self-supporting because of the tuition payments of those who commenced law studies but failed to "reach the final goal."¹²¹ He also cited the willingness of several of the part-time faculty to teach without pay as a factor keeping costs down.¹²²

Dean Arthur was justifiably praised for his remarkable success in increasing enrollment and strengthening the Law School. The 1914 College yearbook was dedicated to him. At the Law School's annual banquet that year, James Coleman lauded Arthur as "a tireless worker . . . who had dreamed a dream which he was able to put into reality, in the placing [of] the Washburn Law School on an equal with all other law schools of this country."¹²³ Arthur's abilities were noticed elsewhere. In 1913, K.U. recruited Arthur, before it ultimately hired Osborn, but he declined the offer because he felt he needed more time to solidify the school's future.¹²⁴ Later, he rejected an offer to join a California law firm for the same reason.¹²⁵ In 1914, he was invited to judge a debate between the law schools at Creighton University and the University of South Dakota and to present a series of lectures at the John Marshall Law School in Chicago. Finally, during the summer of 1915, the University of Colorado offered him a professorship in real property law, funded by a new endowment that paid almost double his Washburn salary.¹²⁶ Arthur accepted and resigned the deanship.¹²⁷

Public announcement of his departure was delayed so that candidates could be recruited.¹²⁸ Justice Benson was urged by some to become a candidate, but he expressed hesitancy. William Cullen Burns, who taught at Washburn the previous fall, applied. C. Martin Alsager of the University of Chicago also applied, even though he had rejected an offer for a full-time faculty position the prior year. Dean D.E. McDugan of St. Louis University asked to be considered.

The person selected was Thomas Welburn Hughes. Unlike the first three Deans, Hughes already had built a reputation as a major figure in legal education. He was fifty-seven years old and had taught for twenty-two years at four major law schools, most recently while

120. *Full Fledged Washburn Law Grad Costs \$312.50*, TOPEKA DAILY CAP., Apr. 4, 1915, at 10B.

121. *Id.*

122. *Id.*

123. *Annual Banquet*, WASHBURN REV., May 27, 1914, at 14.

124. *Dean W.R. Arthur Quits Washburn Law School*, *supra* note 114.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

serving for three years as Dean at the University of Florida. He was born in the province of Ontario, Canada, and began teaching in the common schools there at age seventeen. He completed two years of study at the Hamilton, Ontario, Collegiate Institute and taught for four more years in Manitoba and Ontario before entering the University of Michigan School of Law when he was nearly thirty years of age.¹²⁹ He received his LL.B. in 1891 and stayed to complete an LL.M. in 1892. He did such high quality work that he was invited to remain at Michigan after graduation and taught law there for six years. He then taught for twelve years at the University of Illinois College of Law and for two years at Louisiana State University before accepting the deanship at Florida. It was reported his decision to move from Florida to Washburn was because "the climate in Florida and his health do not agree."¹³⁰ In addition, he was moving to a school with higher standards. Florida required only two years of high school for matriculation when he arrived, a requirement he raised to four years during his deanship, but it remained a two-year law program until the year after his departure.

Hughes already was a nationally recognized scholar. His treatise, *Hughes' on Evidence* (1906), was being used in more than twenty law schools, including for the past eight years at the University of Kansas, where Dean James Green called it "the best work on this topic for class instruction, in print. It brings the rules of evidence out with great clearness and precision."¹³¹ It had been recommended by Professor John C. Gray, Jr. at Harvard, and the instructor who used it at Buffalo Law School also praised it: "I know of no clearer definitions anywhere in any work on evidence than those of Mr. Hughes. . . . I know of no work on evidence that puts more that is modern and practical into the same number of pages."¹³² There were 5000 copies in print by 1917. The treatise later was cited by the United States Supreme Court, which referred to Hughes as an "[author] of repute."¹³³ He also had published *Hughes' on Commercial Law* (1909), *Hughes' on Criminal Pleading and Practice* (1910), and *Hughes' on Criminal Law* (1913). After arriving at Washburn, he published a shorter *Hughes' Pocket Digest of Evidence* (1917) for use primarily by lawyers and judges and a new casebook, *Hughes' Cases on Criminal Law and Procedure* (1919).

129. *Life of Service*, TOPEKA DAILY ST. J., Apr. 9, 1927, at 9.

130. *Florida Man To Be Law Dean*, TOPEKA DAILY CAP., Aug. 5, 1915, at 1.

131. J.W. Green, *Comments on THOMAS WELBURN HUGHES, HUGHES' POCKET DIGEST OF EVIDENCE* (1906); see also William C. Ralston, *Dean Hughes*, in WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 2, 2 (Mar. 1917).

132. Ralston, *supra* note 131, at 2.

133. *Clark v. United States*, 289 U.S. 1, 13 (1933).

Hughes was described as one who “takes a deep interest in good citizenship and in the moral welfare of the community.”¹³⁴ While he was teaching at Illinois, a proposal was submitted to voters in Urbana and Champaign to ban saloons in those cities. Hughes spoke in churches and public halls in support of the proposal, and his efforts helped anti-saloon forces win majorities in both cities.

Curiously, in light of Hughes’ credentials, the announcement of his appointment described him only as Acting Dean,¹³⁵ and he was described the same way in the catalogue. There was public speculation that the trustees still hoped to entice Arthur to return as Dean.¹³⁶ Understandably, Arthur was a hard act to follow, and Hughes had a difficult first semester. Justice Benson died December 15. A Harvard-educated lawyer who had recently arrived in Topeka, Thomas Amory Lee, agreed to take over Benson’s classes in Contracts, Code Pleading, and Mortgages, teaching nearly full-time. Students complained that examinations given by one professor, apparently not Hughes, “were so vague and indefinite that it was impossible to answer them, and that as a result grades were unfairly low.”¹³⁷ Students asked local lawyers to review the questions, and the lawyers “were unanimous in branding them unfair and unjust.”¹³⁸ A local newspaper reported there was talk of a strike and that some students threatened not to take any work from the professor if he was retained for the following semester. It also reported that Dean Hughes had been severely criticized by several students. The student body reacted, passing a resolution that the article “did not express the sentiments of the school at all” and voicing “our confidence in and appreciation of Dean Hughes and his work for the institution. His teaching is satisfactory to us and his administration of the affairs of the school is of a high order.”¹³⁹ An editorial in the campus newspaper a week later also offered support. “Handicapped though he has been by the tremendous popularity of his immediate predecessor, and by the death of the great Benson — Kansas’ incomparable jurist, teacher and man — Dean Hughes has more than justified expectations.”¹⁴⁰

Hughes did not act like an Acting Dean. He continued to expand student recruitment, ordering 400 copies of the law edition of the student newspaper to mail to high schools that had a four-year course and mailing a copy of the new catalogue to every lawyer in the state

134. Ralston, *supra* note 131, at 3.

135. *Florida Man To Be Law Dean*, *supra* note 130.

136. *Arthur May Come Back*, *TOPEKA DAILY CAP.*, Jan. 29, 1916, at 12.

137. *Questions Peeve Embryo Lawyers*, *TOPEKA DAILY CAP.*, Jan. 16, 1916, at 12.

138. *Id.*

139. *Law School Resolution*, *WASHBURN REV.*, Feb. 9, 1916.

140. *Active Lawyer on Law Faculty*, *WASHBURN REV.*, Feb. 16, 1916.

along with a cover letter touting the school's advantages. He re-wrote the catalogue's statement of the Law School's purpose so that it included not only knowledge of court procedure and fundamental principles of law and equity but also "legal methods of reasoning and legal habits of thought; intellectual power and acumen; and a high sense of honor and professional duty."¹⁴¹ His desire for quality rather than quantity was greater than that of his predecessor.¹⁴² Near the end of his first year, the faculty "decided that a few of the lower classmen should be requested to withdraw from school owing to unsatisfactory work."¹⁴³ Good grades were harder to make, and a few students who did not make them the following fall threatened to attend Kansas City Law School.¹⁴⁴

RAISING STANDARDS

While requirements for admission to Washburn Law School's first classes seem modest from a modern perspective, they exceeded those of many law schools nationally. In Kansas, it was not until 1924 that the Supreme Court required applicants for admission to the bar to have completed one year of college. Of course, nothing prevented law schools from imposing requirements of pre-legal education higher than those for admission to the bar. However, there were practical limitations to consider. As a fledgling department at a small college, Washburn Law School needed to attract students to survive. When the University of Kansas in 1912 instituted a requirement of thirty hours of college credit, its junior class reportedly dropped from 125 to 47.¹⁴⁵ If a law school's requirements were too far in excess of the Court's requirements for bar admission, prospective law students, instead of taking the additional preparatory work, could go elsewhere. Law office study remained an available option for them, and the Supreme Court did not begin to tighten regulation of that option until 1926. Alternatively, they could enroll in a nearby state in a law school whose admission requirements merely matched those of the Kansas Supreme Court, and they would be eligible upon graduation to take the Kansas bar exam.

The ability to admit "special students" was a wild card in the admissions process. By requiring only completion of a high school course "or its equivalent," the A.A.L.S. membership standards con-

141. WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 5 (June 1916).

142. *Here We Stop*, WASHBURN REV., Oct. 25, 1916; *see also* Ralston, *supra* note 131, at 2-3.

143. *Law Faculty Meets*, WASHBURN REV., Apr. 5, 1916.

144. *Law School*, WASHBURN REV., Jan. 31, 1917.

145. William A. Kelly, *The University of Kansas School of Law, in REQUISITE LEARNING AND GOOD MORAL CHARACTER: A HISTORY OF THE KANSAS BENCH AND BAR* 107, 115 (Robert W. Richmond ed., 1982).

templated the occasional admission of special students, and almost all member schools had them. When done too routinely, however, admission of special students could mean a school's pre-legal education requirements were merely published ones, not real ones. The presence of too many under-prepared students also could diminish the quality of classroom discussion. Washburn did not always do a thorough job of documenting in its records what it deemed "special" about the special students it admitted, something the A.A.L.S. regulations required. Of course, the ultimate check on laxity in standards was performance on the bar examination, and here Washburn's early performance was extraordinary.

It was Thomas Hughes, during his first stint as Dean, who began to reform admission of special students. "From its inception," he wrote after assessing the reality of admission requirements, the Law School "has been handicapped by lack of funds to meet its operating expenses. In consequence of this misfortune, and founded upon necessity, many students, not qualified to matriculate, have been enrolled. Some of these students were not even qualified to enter the higher grades in the ward schools."¹⁴⁶ He reduced the number of special students from twenty-eight the year before he arrived to fourteen in 1915 and to four in 1916. "It is not the policy of the Law School totally to eliminate special students. Its policy, however, is to reduce the number to a minimum. No first-class law school has more than a few special students. Some have none at all."¹⁴⁷ Having persuaded Washburn President Parley P. Womer to support this change of policy, regardless of its consequence for tuition revenue, Hughes publicly called Washburn fortunate to have a President "who possesses keen foresight and excellent judgment."¹⁴⁸ The change was made not a moment too soon, since the spring 1917 A.A.L.S. inspection report concluded the former practice of admitting students "deficient in entrance requirements" violated the Association's membership requirements.

Nearly half the members of the entering class in 1916 had at least one year of college training, and the student newspaper noted the faculty's "pleasure and satisfaction in teaching students whose preliminary training has fitted them to study law."¹⁴⁹ By November, the faculty recommended to the trustees a requirement of one year of college work for all students, subject to continued discretion in the Dean to admit occasional special students. The change was approved, effective for the entering class in 1918, although the effective date later was postponed one year due to World War I. Still, this was well before the

146. *Here We Stop*, *supra* note 142.

147. *Id.*

148. *Id.*

149. *Law School*, WASHBURN REV., Oct. 4, 1916.

A.A.L.S. in 1923 required all its member schools to impose such a requirement. Hughes' work to increase standards "made him liked and respected by every Washburn supporter."¹⁵⁰

The school devised a four-year course to which students who had not completed one year of college could be admitted. The only law course these students took in the first year was Torts. They took Introduction to Economics in the second year, along with law courses. The four-year plan gave the school control of the content of students' pre-legal education it did not have with students who completed a year of college work on their own. American History, British Constitutional History, History of the British Empire, Composition and Literary Types, Principles and Practice of Modern Free States, and Public Speaking all were included in the first year, along with one College elective each semester.

Hughes added a full semester one-hour course on Legal Ethics, teaching it himself, and later increased the number of credits to two. Previously, the topic had been the subject only of special lectures. He inserted into the catalogue for the first time a lengthy statement about the ethics of the legal profession. "The Dean is a man of lofty ideals," wrote one of the part-time faculty.¹⁵¹ "His moral impress upon the student is of the best. He stands for the highest ethical standards of the profession. He is thorough and painstaking in his methods of instruction. He takes a deep personal interest in his students. He likes his work. He enjoys association with students."¹⁵² Students quickly grew fond of Hughes. He had "a remarkable power of setting forth in a simple form the difficult problems and principles of law."¹⁵³ One student wrote,

The law school to a man would put its money on Dean Hughes against any one in the state of Kansas in his grasp of the principles underlying every branch of the law. . . . And he makes it interesting. When it comes to livening up a dull subject Dean Hughes could make Topeka on a Sunday afternoon look like San Francisco on New Year's night.¹⁵⁴

An earlier history of the school called Hughes a "colorful teacher," adding,

When he would come to the point in a long discussion, he would say, "Now gentlemen, that is the milk in the coconut." There was a standing reward of five dollars to anyone who dared to put glue in the top of his hat so his toupee ("an early day one and a horrible fit") would come off when he removed his hat; but "we all loved

150. *Dr. Hughes Writes Book on Evidence*, WASHBURN REV., May 4, 1921.

151. Ralston, *supra* note 131, at 4.

152. *Id.*

153. *New Law Book Out*, TOPEKA DAILY ST. J., July 7, 1917, at 10.

154. *Our Dean*, WASHBURN REV., Apr. 4, 1917.

him so that we didn't pay much attention to it except to note what a poor imitation it was for real hair."¹⁵⁵

During his second year as Dean, Hughes was the only full-time teacher, although William Chalmers Ralston carried nearly a full-time load. Ralston was in private practice after serving six years as City Attorney and would not become Assistant Attorney General until 1921. He had been a Lecturer since 1909. Evans, Lee, and Otis Hungate also carried heavier teaching loads than most part-time faculty.

THE A.A.L.S. REQUIREMENT FOR LIBRARY BOOKS

The founders of the Law School assumed it could avoid major expenditures for a library because the proximity of the State Law Library gave law students ready access to the largest collection of legal materials in the state. The 1905 legislature by statute directed the State Law Librarian to supply Washburn Law School with a free set of the *Kansas Reports*, the *Kansas Court of Appeals Reports*, and *Dasler's Kansas Digest*, along with new volumes as they were issued.¹⁵⁶ This may have been the first public funding the College ever received. Donations were a principal source of growth of the collection from the school's inception. Rarely would more than a few months pass without announcement of a donation of books. For example, former Senator and future Vice President of the United States Charles Curtis of Topeka gave the school 700 volumes of Senate and House Reports. Mrs. L.H. Greenwood contributed a valuable set of *Cyclopedia of Law and Procedure*. In 1912, however, the A.A.L.S. adopted a requirement that member schools must own a library of at least 5000 volumes. Easy access was not the test, ownership was. Funds were not available to add to the collection the number of books needed. James W. Clark (class of 1909), then a part-time Lecturer, attended a meeting at which Dean Arthur outlined the problem:

I left Dean Arthur in full contemplation of certain ruin; but on my way back to my office uptown, I stopped in at one of the city's leading firms of lawyers. They told me the group had many books in their library which were of no value to them but could be a great help to the school aside from meeting the Association's demand. I called upon several law firms, meeting the same cordial and generous reception. All promised to deliver the books.¹⁵⁷

Local lawyers donated 1500 books.¹⁵⁸ The problem with reliance upon donations for collection development, of course, was that it lacked planning and purpose. Many of the materials received were

155. McLane, *supra* note 4, at 9.

156. 1905 Kan. Sess. Laws ch. 485, § 1 (codified at KAN. STAT. ANN. § 20-208 (a)(3) (1995)).

157. McLane, *supra* note 4, at 7 (quoting James Clark LL.B.).

158. *Among the Lawyers*, WASHBURN REV., Oct. 8, 1913, at 3.

outdated or not very useful. Only by happenstance were the books essential to a good core collection.

Washburn was by no means the only member school with a collection that was too small. The A.A.L.S. made it clear that schools would have a reasonable time to come into compliance. The first A.A.L.S. membership inspection after the requirement went into effect was in April 1917, and the library was found deficient. The disruption of legal education caused by World War I bought the school some additional time. The A.A.L.S. canceled the 1917 annual meeting, to which a Washburn representative had been summoned to respond to the deficiency. However, when the school moved to the campus during the war, the loss of easy access to the State Law Library made the issue more critical. President Womer represented in a letter to the A.A.L.S. Executive Committee before the 1918 meeting that Washburn was taking "active steps" to meet the library deficiency but asked for more time because of the "abnormal conditions" produced by the war.¹⁵⁹

Womer appeared before the Executive Committee on December 29, 1919, explaining that the library had been overhauled, that much obsolete material had been eliminated, and that the library had 4500 volumes and would reach the required 5000 volumes in one-and-one-half years. The Executive Committee ordered a follow-up inspection in 1920. The A.A.L.S. inspector, H.C. Horack from Iowa, found gaping holes in the collection. In January 1921, the Executive Committee took the extreme step of specifying by name sets of books the school must acquire before the 1921-22 academic year to retain its Association membership. The required books included the First Decennial Digest and all missing volumes of the National Reporter System and its Shepard's Citators. At its December 1921 meeting, the Executive Committee found there was substantial compliance with its acquisition requirements, although some items remained to be purchased. However, when Horack inspected the school again in the fall of 1922, he disagreed with the school's volume count, reporting that only 3600 volumes were on the shelves and recommending that Washburn be excluded from the Association.¹⁶⁰ President Womer, new Dean Harry K. Allen, and Chief Justice William Johnston appeared before the Executive Committee on December 29, 1922. They claimed Horack had miscounted the collection but acknowledged there were only 4300 volumes on the shelves after further weeding of obsolete materials

159. Minutes, Executive Committee, Association of American Law Schools (Nov. 16, 1918) (on file at A.A.L.S. office in Washington, D.C.).

160. The recommendation also was based upon Horack's finding that the school lacked the required three full-time faculty because new Dean Harry K. Allen spent afternoons in a downtown law office examining abstracts.

when the school moved to new quarters. They reported that 1400 books had been ordered and would be on the shelves within two weeks. The issue was at last resolved.

THE IMPACT OF WAR

Foreign conflicts affected the school. When Mexican bandit Pancho Villa began his raids into Texas, two first-year law students were members of the Kansas National Guard battery that was sent in 1916 to the Mexican border.¹⁶¹ Other law students were eager to help. A 1L at the time later recalled,

We decided to declare a holiday and march out to the campus to recruit men to go to Mexico and help. I was quite willing to go myself. But Dean O.D. McEachron [Vice-President and Dean of the College] marched out to meet us and stopped us before we ever got to the campus. The holiday came to an immediate end.¹⁶²

The next conflict was more serious. The United States entered World War I in April 1917. Graduating seniors who were scheduled to attend Officer Candidate School in May were granted their degrees early and were admitted to the bar based upon what one graduate remembered to be a one-question oral exam.¹⁶³

Despite the uncertain times, Albert J. Harno agreed to leave law practice in Los Angeles to become the new Dean. Enrollment throughout the College plummeted in the fall of 1917 from 900 to 400. In the Law School, the decline was thirty-seven percent. The separate night school was abandoned. Of forty-three students who began law studies in 1916-17, only three graduated within the normal three years time. Imposition of the requirement for admission of one year of college was deferred until 1919. Harno sought to shore up enrollment by persuading students who did not plan to practice law to take law courses. The College accepted as electives up to twenty-six hours in Law School courses, and Harno argued in the student newspaper that the "study of law should be regarded as part of a liberal education" that would be "of incalculable value to you in your business or profession."¹⁶⁴

Some law schools suspended operations during the war. Washburn fared better than most. The Government Committee on Education and Special Training selected Washburn to participate in the Student Army Training Corps (S.A.T.C.) program. Law students between eighteen and forty-five years of age who had registered for the

161. *Law Notes*, WASHBURN REV., Mar. 29, 1916, at 3.

162. McLane, *supra* note 4, at 8.

163. CLIFF HOPE, JR., QUIET COURAGE: KANSAS CONGRESSMAN CLIFFORD R. HOPE 22 (1997).

164. *The Study of Law and Its Non-Professional Value*, WASHBURN REV., Oct. 17, 1917, at 1, 3.

draft could be inducted into S.A.T.C. and take classes toward a law degree. The weekly schedule included eleven hours of practical military training plus sixteen classroom hours. However, it was not the traditional law school curriculum. S.A.T.C. students took a two-credit course in International Law, a three-credit course in Military Law, and five credits split between War Issues and theoretical military instruction, but that left six hours for electives in standard law courses.¹⁶⁵ Harno spent the summer of 1918 at Fort Sheridan, training to teach in this revamped program.¹⁶⁶ Given the attractive option of S.A.T.C., a large number of the new students who registered at the College for 1918-19 elected the law course, and the Law School had the two largest freshman classes in its history in 1918 and 1919. Few of the new students completed the degree program, but for the first time Washburn's law enrollment exceeded that at K.U., which saw enrollment decline to only twelve students. Indeed, Washburn touted a Carnegie Foundation study showing it had the highest enrollment of all strictly day law schools in the country, two more than Harvard.¹⁶⁷

There were other firsts in these uncertain times. During the spring semester of 1919, the Student Bar Association elected its first woman President, Ruth Miller Kaster (class of 1921).

MOVING TO THE CAMPUS

The new building on Sixth Street initially was hailed as "a home for all time."¹⁶⁸ However, the luster wore off quickly as students came to take for granted having their classes on the ground floor for the first time. The student newspaper commented,

It is generally conceded that the present location is inappropriate. Facing on Sixth Street, with a brick paved alley on the west, the noise and confusion is frequently so great that classes have to be discontinued. Street cars, racing autos and delivery wagons blast all powers of concentration. The building itself is inadequate and unfitted to the needs of a modern law school. The class rooms are poorly lighted and absolutely without suitable means of ventilation. In the brief intermission between classes the windows are thrown open while the budding lawyers with coat collars turned up and their hands in their "own" pockets stamp about to keep their blood from congealing — only later to sit and breathe, rebreathe and breathe again the fast depreciating ozone . . . The building as it greets the prospective student is unattractive and even repulsive and many a good man is lured away to another school of a more prepossessing appearance.¹⁶⁹

165. *Washburn Law School Moves to Campus*, WASHBURN REV., Oct. 2, 1918, at 1.

166. *Law School*, WASHBURN REV., Aug. 20, 1918.

167. *Law School Enrollment*, WASHBURN REV., Mar. 5, 1919.

168. THE KAW 71 (1913).

169. *A New Law Building Is the Dream of Dean Hughes*, WASHBURN REV., Apr. 4, 1917.

As early as the second year of Hughes' deanship, there was talk of a new building, to be financed in part by the sale of the current building as well as the old Medical College building.¹⁷⁰ World War I would resolve the issue. When it became clear that a majority of the law students in 1918-19 would be members of S.A.T.C., and thus would have to be on the main campus for military training each day, the College arranged for law classes to be held in the basement of Crane Observatory, with offices on the main floor of the building. The move was thought to be a temporary one, but there were advantages to having the Law School on campus. It was easier for students in the College to take courses in the Law School and visa versa. Greater cooperation between the departments was possible. By the spring, it was decided the Law School would stay on the campus, and the library was moved in April from the downtown location to the Observatory. The building on Sixth Street ultimately was sold for \$12,000.

Starting in 1919, three consecutive catalogues proclaimed, "Plans are laid which give every reasonable assurance that in another year the law school will be located in a new home equipped for its exclusive use."¹⁷¹ Indeed, the College agreed that Holbrook Hall, which was one of the earliest buildings on campus and had been a dormitory since 1885, would be remodeled for the Law School to use once a new dormitory was completed. However, the new dormitory was not completed until 1922, and the Law School remained in the Observatory for four years.

The Observatory was not designed to meet the needs of the Law School. "It could accommodate only a crowded 124; there was no special courtroom for moot court — 'furniture was rearranged and imagination was brought into play.'"¹⁷² There were not sufficient reading rooms in the library. When the full-time faculty reached three in 1920, faculty too lacked adequate quarters. The A.A.L.S. ordered the College to provide adequate temporary facilities, pending renovation of Holbrook Hall.

CHAPEL EXERCISES

Because Washburn College had a religious affiliation, it held mandatory weekly chapel exercises in MacVicar Chapel. Part of the time was set aside for devotions, and during the rest of the time there were speakers and meetings. While the Law School was downtown,

170. *Law School — New Building for Laws?*, WASHBURN REV., Nov. 22, 1916.

171. WASHBURN COLL., WASHBURN COLLEGE BULLETIN 70 (May 1919); WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 6 (May 1920); WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 6 (Apr. 1921).

172. McLane, *supra* note 4, at 9.

law students were exempt from having to attend. When the Laws moved to campus, the question was whether their exemption would continue. As long as the move to campus was thought to be temporary, law classes were not scheduled during the chapel hour so that law students could attend, but attendance was not mandatory. When the move was made permanent, the College administration believed it imperative that law students be required to attend. There was a battle of wills. At a law student assembly,

one of the students made a motion that the Laws refuse to go to chapel. When the chairman called for the vote the "ayes" were given with such force that some of the residents of College Avenue wondered if the football season had started. The Laws then voted that any Law man caught attending chapel would be treated the same as the timid Freshman who forgets to wear his little blue cap.¹⁷³

Submission of the dispute to the full faculty of the College produced the predictable result. Dean Hughes issued a notice: "Students of the Law School are required to attend chapel the same as other students. All excuses heretofore granted to law students for absences from chapel exercises, for the future are hereby revoked."¹⁷⁴ Before long, the Law School was allowed to conduct its own chapel exercises, inviting speakers of interest to its students, and the controversy went out of the issue.

THE FIRST SIX DEANS

In the Law School's first nineteen years, there were six different Deans. The Dean was the only full-time member of the faculty during the school's first six years, and in five other years the Dean and a former Dean were the only full-time faculty. Four of the first six Deans held their first full-time faculty positions at Washburn, and three had been lawyers for five years or less. Washburn made remarkable choices, however. The available evidence suggests they were talented teachers and administrators. Other law schools lured five of the six away from Washburn with more lucrative offers. All six early Deans had long and distinguished careers in legal education, and three of them served as deans at other law schools.

After resigning as Dean in 1907, Ernest Conant taught at the University of Nebraska for six years. He then spent four years as Professor of Law at the University of the Philippines, a law school with 240 students, and represented that school at meetings of the Association of American Law Schools. He returned to become Professor of Law at Washington University in St. Louis, teaching on the full-time

173. *Laws Elect Officers*, WASHBURN REV., Oct. 1, 1919, at 3.

174. *Laws Required To Attend Chapel*, WASHBURN REV., Jan. 7, 1920, at 1.

faculty from 1917-35 and thereafter as Professor Emeritus. Throughout his career he maintained a strong interest in the school he helped to start, visiting several times while he taught at Nebraska and returning to describe the early history of the Law School at its twenty-fifth anniversary celebration.

Upon leaving Washburn in 1913, Edward Osborn taught at K.U. full-time until the start of World War I. He served in France in 1918 with the American Red Cross. After the war, he chose to leave teaching, practicing law in New York City for four years, then returning to Paris where he practiced law for six years.¹⁷⁵ He rejoined the Washburn Law School faculty in 1930 and continued to teach until his retirement in 1941 at age sixty-nine. Beginning in 1932, he wrote a number of articles as part of Washburn's contribution to the initial four volumes of the *Journal of the Kansas Bar Association*.

Osborn was described as "thorough and fair to everyone," and as one "who looks through all the frills and fantastics of a fellow and sees the real man and then he deals with the real man rather than any disguise he may try to assume."¹⁷⁶ In his later years, he "was affectionately known as 'Daddy' Osborn."¹⁷⁷

Coincidentally, Osborn's successor later would be known as "Pop" Arthur. At Colorado, he was named the Charles Ingles Thomson Professor. An additional attraction of the position at Colorado was that it provided more time for legal writing than Arthur had at Washburn, where he found time only to write legal guides for township officers and police officers and to publish compiled Kansas election laws. By the end of his career, he had authored five other books, the best known being multiple editions of *The Law of Newspapers* and *The Law of Drugs and Druggists*, the latter of which was used in nearly every pharmacy school in the country, and one edition of *The Law of Dentists and Dentistry*. When he retired at Colorado in 1946, an issue of his school's journal was dedicated to him,¹⁷⁸ and he was named Professor Emeritus.

Arthur continued his association with the Law School throughout the years. In 1935, he taught at Washburn during the second summer session, trading places with Dean Harry K. Allen, who taught at Colorado.¹⁷⁹ When the Law School was flooded with new students after

175. *E.D. Osborne[sic], Instrumental in Founding Law School, Returns to Teach*, WASHBURN REV., Sept. 15, 1930.

176. *A Tribute*, WASHBURN REV., Mar. 26, 1913.

177. THE KAW 54 (1941).

178. *Dedication*, 18 ROCKY MTN. L. REV. insert after 344 (1946).

179. *New Summer School Idea*, WASHBURN REV., Mar. 29, 1935.

World War II, Arthur spent the 1946-47 academic year, his first year of retirement, as Visiting Professor of Law at Washburn.¹⁸⁰

After two years as Dean, Thomas Hughes continued teaching at Washburn for more than eleven years until he retired in 1928 at age seventy. When his successor as Dean left on short notice after only two years, Hughes agreed in 1919 to serve again as Acting Dean but within six months announced he would serve only one year. His administrative duties interfered too much with his real love, writing law books. He was under contract with Callaghan and Company to write a casebook on Evidence but had been unable to make any progress on that work. Not only were administrative duties time consuming, they kept him in the law building and away from the State Law Library downtown, which was the only place he could conduct his research since Washburn's law library was inadequate for that purpose.

Hughes' love for writing was enhanced by its financial rewards. The student newspaper observed, "The additional compensation for performing the executive duties pertaining to the law school is a mere trifle as compared to the remuneration for writing law books; and Dean Hughes has made a considerable financial sacrifice this year in having to abandon the writing of his case book on Evidence."¹⁸¹ It was said when he arrived in 1915 that annual royalties on his popular treatise on Evidence, at twenty percent of sales, were about \$1200 per year. *Hughes' Cases on Evidence* was published in 1921 and soon was selected for use at N.Y.U. and Georgetown, among other schools.¹⁸² The next year, he completed a casebook on Criminal Law and Procedure. Although his early works were treatises, he now believed that students should be taught by "use of case books in the main, and text books for references only."¹⁸³ Unlike many casebook authors, Hughes edited cases closely, so that students would not have to read useless material to find the main point.¹⁸⁴ He continued to write and, shortly before he retired, completed his first book not designed for use in law schools or by practitioners, *Was Jesus Guilty?*¹⁸⁵

When Hughes announced plans to retire from teaching due to impaired hearing, students called a special assembly. They unanimously passed a resolution urging the President and Trustees of the College to grant him an appropriate lifetime pension.¹⁸⁶

180. The next two years he visited at the Kansas City Law School and then taught in Florida at Stetson College Law School. He still was teaching as a Visiting Professor at the St. Louis University School of Law as late as the 1952-53 academic year.

181. *Law Dean Requests To Be Relieved*, WASHBURN REV., Jan. 21, 1920.

182. *To Use Topekan's Book*, TOPEKA ST. J., Mar. 27, 1922, at 3.

183. *Dr. Hughes Writes Book on Evidence*, WASHBURN REV., Mar. 22, 1922.

184. *Id.*

185. *Review by Dr. T.W. Hughes*, TOPEKA DAILY ST. J., Apr. 27, 1927, at 9.

186. *Hughes to Retire*, TOPEKA ST. J., Mar. 26, 1927, at 2.

When Albert J. Harno succeeded Hughes as Dean in 1917, he was only twenty-eight years old. No one could have anticipated he would become one of the leading figures in the history of American legal education. He was a native of South Dakota and received his B.S. from Dakota Wesleyan University in 1911. He had been a lawyer for only three years but had earned his LL.B. magna cum laude from Yale in 1914. He received Yale's Foster Prize as the graduate with the highest grade average, twice won the Wayland prize in competitive debates, and was an editor of the *Yale Law Journal* during his final two years. Following graduation, Harno joined the Los Angeles firm of Bennett, Turnbull & Thompson but left within a year to practice on his own before coming to Washburn.

It was said Harno had "a keen legal mind and is very industrious. He is a good mixer, has a very sunny disposition, is very approachable and is an exceedingly likable young man. He is a firm believer in the case method of teaching law and stands for quality. . . ."¹⁸⁷ He taught Persons, Property I, II, and III, Wills and Administration, and Suretyship, and one year taught Common Law Pleading and the next year co-taught Torts. While at Washburn, he published in the *Kentucky Law Review*, the first of many articles he would author during his career¹⁸⁸ and accepted an invitation to become an Alumni Contributing Editor of the *Yale Law Journal*.

On June 30, 1919, Harno resigned as Dean to become Professor of Law at the University of Kansas, ironically replacing Osborn when he opted to practice in New York after the war. It was the third time in just six years K.U. tried to lure away a member of Washburn's faculty, and the second time it succeeded. Washburn's President Parley Womer was happy to see Harno leave. The campus was then in an uproar over Womer's firing of Dr. J.E. Kirkpatrick without hearing or formal charges. Dr. Kirkpatrick was the popular head of the Department of History and Political Science, who had been critical of the administration and urged its reorganization.¹⁸⁹ Harno sided with Kirkpatrick and was among faculty members who applied to charter a Washburn local of the American Federation of Teachers, a union affiliated with the American Federation of Labor. As a parting shot in an interview the day before his resignation, Harno charged that the current system of administration was unfair.

I candidly believe that under this system the college cannot have a wholesome growth," he declared last night. "The strength of the college lies primarily in its faculty, with the proper co-ordinated

187. *Albert J. Harno*, WASHBURN REV., Apr. 17, 1918, at 1.

188. Albert J. Harno, *Revocability of Licenses as Applied to Property in Land*, 7 KY. L.J. 1 (1919).

189. ROY BIRD, WASHBURN THROUGH THE YEARS 75 (1997).

heads of the departments. Any college administration, which regards its heads of departments and faculty members as mere hirelings is building on false premises.¹⁹⁰

Harno stayed at K.U. only for two years before becoming a professor at the University of Illinois College of Law. He was named Dean there one year later and held the position, remarkably, for thirty-five years. For thirteen of those years, beginning in 1931, he also served as Provost. He would be a leader in almost all of the national legal organizations of his era.¹⁹¹ Harno was recognized as a "prime mover in raising standards of legal education" through the A.A.L.S. and the A.B.A.¹⁹² He published four editions of a widely used casebook on Criminal Law and Procedure.

In 1916, the A.A.L.S. adopted a requirement that member schools have at least three faculty members "who devote substantially all of their time" to the work of the school. Only for one semester during 1911 had Washburn had three full-time teachers. Washburn was not unique among A.A.L.S. members in its reliance upon part-time faculty, and the A.A.L.S. requirement was made effective for the 1919-20 academic year to give schools time to come into compliance. However, with Harno's sudden departure, Thomas Hughes was the only full-time teacher for 1919-20. Washburn President Parley Womer's preference was still to operate the Law School on the cheap, but he concluded that "on the whole it will be better for us to make a supreme effort to meet" the requirement "and retain our place in the association."¹⁹³ Dean Hughes praised Womer's "excellent judgment," observing that A.A.L.S. membership "gives Washburn Law School considerable prestige which it cannot afford to lose" and that having three full-time faculty "will add greatly to the value of the instruction."¹⁹⁴ Washburn came into compliance in 1920 when the new Dean, Charles E. Carpenter, and Assistant Professor James R. McBride, who had just earned his LL.B. from the University of Chicago, joined Hughes as full-time faculty.

Expanding the law faculty to three full-time members while at the same time seeking to comply with the A.A.L.S. requirement of 5000 library volumes, taxed the limited resources of the College. That

190. *Union at College!*, TOPEKA ST. J., June 30, 1919, at 1.

191. Dean Harno served on the executive committee and then in 1932 as President of the Association of American Law Schools. He was national President of the Order of the Coif from 1934-37. He was chair of the Council of the Section on Legal Education of the American Bar Association from 1942-45 and was a member of the A.B.A. Board of Governors from 1950-53. He was selected as a member of the Council of the American Law Institute in 1947. He became a Commissioner from Illinois to the National Conference of Commissioners on Uniform State Laws in 1934 and served as President from 1947-49. He was chair of the Board of Directors of the American Judicature Society from 1945-51 and was its President from 1953-56.

192. Roy R. Bartlett, *Heritage of Excellence*, WASHBURN ALUMNUS, Oct. 1960, at 1, 2.

193. *Law School to Raise Standards*, WASHBURN REV., Jan. 14, 1920.

194. *Id.*

Womer decided “on the whole” to do so suggests he saw the options as closely balanced. He received unsolicited advice from an unexpected source. The Dean of the Graduate School at the University of Kansas, Frank W. Blackmar, wrote Womer to suggest “that you could best solve your present difficulties by discontinuing your Law School”¹⁹⁵ and by seeking to make Washburn an elite undergraduate liberal arts college. Blackmar acknowledged he was open to attack because his “interest in the Law School at the University of Kansas is paramount,” but claimed he based his suggestion entirely upon his experience, his observation of “ideal administration,” and his belief there should be only one law school in the state.¹⁹⁶ In the elite, liberal arts college Blackmar envisioned for Washburn, “all professional schools of whatever sort should be eliminated because wherever they will exist, they have a tendency [sic] to dominate the college and rob it of its funds, power and ability to develop as it should. . . . Professional schools attached to small colleges breed trouble as the sparks fly upward.”¹⁹⁷ No record of Womer’s response, if any, exists.

Charles Carpenter became the Law School’s sixth Dean in 1920 at the age of forty-two. He received his LL.B. from Harvard in 1908, then practiced for a year in Boston. He then taught at the University of North Dakota School of Law for five years, initially as Assistant Professor and then as Professor of Law. For the next four years, he was Professor of Law at the University of Illinois College of Law. He already had begun to establish a reputation as a productive scholar, having published two articles in the *Harvard Law Review* and one in the *Columbia Law Review*.¹⁹⁸ He left teaching during the war to serve with the Y.M.C.A. in France. For reasons that are not clear, he did not return to Illinois after the war but instead came to Washburn for the 1919-20 academic year. A partial explanation is that he had Kansas ties, having earned his A.B. degree in 1903 and his M.A. degree in 1904 from the University of Kansas. Curiously, he was hired to teach not in the Law School, but in the embattled Department of History and Political Science.¹⁹⁹ However, he was “eager to get back into law work, where his interest lies.”²⁰⁰ His resumé in later years would not acknowledge his time teaching non-law subjects outside the

195. Letter from Frank W. Blackmar, to P.T. [sic] Womer, President (Jan. 5, 1921) (on file at Mabee Library, Washburn University, Topeka, Kansas). Blackmar had visited the campus in the course of determining that graduates of Washburn College would continue to be admitted to the Graduate School without question.

196. *Id.*

197. *Id.*

198. Charles E. Carpenter, *Court Decisions and the Common Law*, 31 COLUM. L. REV. 593 (1917); Charles E. Carpenter, *De Facto Corporations*, 25 HARV. L. REV. 623 (1912); Charles E. Carpenter, *Jurisdiction Over Debts for the Purpose of Administration, Garnishment, and Taxation*, 31 HARV. L. REV. 905 (1918).

199. *Law School on Improved Basis*, WASHBURN REV., Sept. 22, 1920.

200. *Id.*

Law School.²⁰¹ Among the courses Carpenter taught as Dean were Torts, Contracts, Legal Liability, Suretyship, Trusts, and Conflict of Laws.

Carpenter experienced a difficult start to his deanship. There were reports of “a grave feeling of unrest among the students of the law school,” and Hughes felt obliged to tell students who invited him to speak at their pep meeting that he “would not accept the Deanship of the [S]chool of [L]aw under any circumstances.”²⁰² However, Carpenter earned praise by the A.A.L.S. Executive Committee when it found the school had achieved substantial compliance with A.A.L.S. requirements for the library.

Carpenter instituted the Juris Doctoris degree for work beyond that required for the LL.B. It was awarded to graduates who held a Bachelor of Arts or of Science, completed their law courses with “distinguished excellence,” apparently meaning cum laude, and also produced a thesis on a subject approved by the Dean. The thesis had to be between 2000 and 10,000 words and had to “exhaust the cases decided during the period covered by the thesis.”²⁰³ It could be returned for revision or rejected altogether if unsatisfactory. The J.D. also was available to those who earned an LL.B. at Washburn or another law school “of recognized standing” but without “distinguished excellence” honor, if they held the A.B. or B.S. degree, completed the thesis, and finished a fourth year of courses at Washburn. Roscoe W. Graves (class of 1921) and Ruth Miller Kaster (class of 1921) were the first graduates to earn the J.D., but there were not as many candidates for the degree as Carpenter may have expected, as only five J.D.s were awarded in the next seven years.

One of Carpenter’s changes did not last long. Beginning in 1921, each student was required “to keep a satisfactory note book embracing an abstract of the cases and notes on the lectures in each course, except practice courses, as a condition precedent to his receiving a grade in such course.”²⁰⁴ Students were not amused. In November, a committee selected at a student assembly met with Carpenter and argued that “the value of abstracting every case, did not compensate for the time necessary to abstract them.” Four of the students, including future Supreme Court Commissioner Earl Hatcher (class of 1923),

201. Carpenter’s entry in the annual A.A.L.S. Directory of Law Teachers claimed he was Dean and Professor at Washburn Law School from 1918-22. See, e.g., A.A.L.S. DIRECTORY OF LAW TEACHERS 17 (1927).

202. *Quality Rather Than Quantity Is Creed of Prof. Hughes*, WASHBURN REV., Nov. 24, 1920.

203. WASHBURN COLL. SCH. OF LAW, WASHBURN COLLEGE BULLETIN 17 (Apr. 1921).

204. *Id.* at 14.

were invited to present their case to the full faculty, which voted to terminate compulsory abstracts.²⁰⁵

In 1922, Carpenter left to join the law faculty of the University of Oregon. Carpenter, too, would become a major figure in legal education. After five years of full-time teaching at Oregon, Carpenter served four years as Dean there, from 1927-31. He then accepted a position at the University of Southern California Law School and later was named the Henry W. Bruce Professor of Law, a position he held until 1947. He became one of the country's leading authorities on Torts, writing numerous law review articles on that subject as well as on Constitutional Law. He engaged in a four-part debate with Professor Prosser about *res ipsa loquitur*²⁰⁶ and authored a series of nine articles on proximate cause, published between 1940 and 1942 in the *Southern California Law Review*. He also wrote two books as a "crusader" to preserve private enterprise, *A Real New Deal* and *Private Enterprise and Democracy*, that brought him in touch with numerous industrial and political leaders.²⁰⁷

CONCLUSION

From today's perspective, Washburn President Norman Plass' proposal in 1902 that his private, church-affiliated college of 328 students start a law school should have been doomed to failure. Insufficient financial resources were a recurring issue for the College as a whole and limited the Law School's ability, both during its first two decades and later, to expand the full-time faculty, to build an adequate library, and to have facilities conducive to quality legal education. Other Kansas law schools affiliated with small colleges had struggled financially. A law department that opened in Wichita in 1888 at Garfield University, a school affiliated with the Christian Churches, lasted only two years before financial problems forced the entire University to close.²⁰⁸ The law schools at Campbell College, in Holton, and Bethany College, in Lindsborg, closed shortly after Washburn's opened. Plass nevertheless may have been correct in his inaugural address, describing Topeka as "the ideal place"²⁰⁹ in Kansas for a law school. Members of the bench and local bar were devoted to the school, and many of them freely gave their time to assure that the school would succeed despite limited resources.

205. *No More Abstracts*, WASHBURN REV., NOV. 9, 1921.

206. Charles E. Carpenter, *The Doctrine of Res Ipsa Loquitur in California*, 10 S. CAL. L. REV. 166 (1937); Charles E. Carpenter, *Res Ipsa Loquitur: A Rejoinder to Professor Prosser*, 10 S. CAL. L. REV. 467 (1937).

207. ASS'N OF AM. LAW SCHS., 1948 HANDBOOK 241-42 (1949).

208. Concannon, *supra* note 10, at 25-27.

209. WASHBURN COLL. SCH. OF LAW, *supra* note 3, at 9.

The Law School's second decade closed in the academic year 1922-23 with its move to its fifth location, remodeled Holbrook Hall, and with the appointment of its seventh Dean, Harry K. Allen. The next chapter of the school's history would involve greater stability than the school's early years. The Law School would remain in Holbrook Hall for seventeen years, and Allen would serve as Dean longer than anyone in the school's history, more than fourteen years.