

## FOREWORD: CELEBRATING TEN YEARS OF THE NORTH CAROLINA BANKING INSTITUTE

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In 1996, planning for the first Banking Institute continuing legal education program and the first volume of the *North Carolina Banking Institute* journal began at the University of North Carolina School of Law. This effort was spearheaded by a group of seven law students—David P. Broughton, Anderson D. Caperton, Rodney Eugene Davis, Jr., Alan Kronovet, Lisa Lukasic, L. Thomas McLean, Jr., and Alan M. Presel—who were determined to begin a third student-edited journal at the law school, and wished to devote that journal to the legal issues of interest to the state’s financial services industry. The dean at the time, Judith Wegner, while impressed with the students’ enthusiasm for the project, denied their request to begin a law journal because of the costs of publication and her concern that student interest in the journal would not continue after the initial group of dedicated students had graduated.

Nevertheless, the suggestion that the law school should and could provide service to the state’s financial services industry struck a chord. Dean Wegner asked Marion Cowell, the recent past president of the law school’s alumni association and general counsel of First Union Corporation, to work with me as the school’s banking law teacher, to plan a continuing legal education (CLE) program directed at the lawyers serving and supporting the financial services industry. Marion worked to form a board of advisors made up of prominent banking lawyers from throughout the state and nation. Marion’s plans to develop the Banking Institute into one of the best banking law CLEs in the country in five years, and the esteem with which he was held in the industry, excited those he contacted so that we soon had twenty-nine advisors at work planning the first Banking Institute to be held in Chapel Hill on March 20-21, 1997.<sup>1</sup> The group of advisors included the general counsels of

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\* Wachovia Professor of Banking and Finance and Director, Center for Banking and Finance at the University of North Carolina School of Law.

1. The Board of Advisors included those listed below (identified by their affiliation in 1997). Those whose names are in italics still serve on the board. *Lissa L. Broome*, UNC School of Law; *James R. Bryant, III*, Womble Carlyle Sandridge & Rice; J. Thomas

BB&T, Centura Banks, NationsBank, and Wachovia, in addition to Marion Cowell from First Union. The major North Carolina law firms—Brooks Pierce, Hunton & Williams, Kennedy Covington, Moore & Van Allen, Parker Poe, Petree Stockton, Robinson Bradshaw, The Sanford Law Firm, Smith Anderson, Smith Helms, and Womble Carlyle—all had representatives on the advisory board. Distinguished banking law practitioners from around the country also answered Marion's call to serve, including Rodgin Cohen of Sullivan & Cromwell and John Douglas of Alston & Bird.

Dean Wegner told the student group that they were welcome to prepare papers on current issues that could be copied and distributed to the participants at the first Banking Institute in 1997. Frankly, she and I thought that was the last we would hear from the student group. In December of 1996, however, the students came to me and presented a proposal to have their manuscripts, which they and a staff of other students had written and edited, published in law journal format by a law journal publisher. They made a compelling case. The cost of publishing the papers in a bound journal was only slightly higher than the cost of copying all the manuscripts for distribution to the participants at the Banking Institute. Volume 1 of the North Carolina Banking Institute journal, printed by Joe Christensen, Inc., was distributed in March 1997 at the first North Carolina Banking Institute.

Volume 1 contained a preface solicited by the students and written by Governor James B. Hunt, Jr. Governor Hunt noted the prominence of North Carolina-based financial institutions in the financial services industry, and emphasized that

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Cardwell, Akerman, Senterfitt & Edison; *Alfred P. Carlton, Jr.*, The Sanford Law Firm; *James P. Carroll*, Cadwalader, Wickersham & Taft; *H. Rodgin Cohen*, Sullivan & Cromwell; *Marion A. Cowell, Jr.*, First Union Corporation; Larry J. Dagenhart, Smith Helms Mulliss & Moore; *John L. Douglas*, Alston & Bird; *Robert Eisenbeis*, Federal Reserve Bank of Atlanta; *Anthony Gaeta, Jr.*, Moore & Van Allen; Barnes Hauptfuhrer, First Union Capital Partners; *Thomas L. Hazen*, UNC School of Law; *Jerone C. Herring*, Branch Banking & Trust Co.; *William Jackson*, UNC Kenan-Flagler Business School; *John L. Jernigan*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan; J. Donnell Lassiter, Kennedy Covington Lobdell & Hickman; Mark B. Mahoney, First Union Capital Markets Corp., E. Lynwood Mallard, Petree Stockton; *Jerry W. Markham*, UNC School of Law; Kenneth W. McAllister, Wachovia Corporation; Harvey L. Pitt, Fried, Frank, Harris, Shriver & Jacobson; *Paul J. Polking*, NationsBank Corporation; Russell M. Robinson, II, Robinson, Bradshaw & Hinson; Mary Nash Kelly Rusher, Hunton & Williams; Joseph A. Smith, Jr., Centura Banks, Inc.; Judith W. Wegner, UNC School of Law; *Edward C. Winslow, III*, Brooks, Pierce, McLendon, Humphrey & Leonard; and *W. Samuel Woodard*, Parker, Poe, Adams & Bernstein.

Technology and the twenty-first century will make new demands on us and will clearly raise new issues that we must address. What better way to meet this challenge than by forming a Banking Institute at the University of North Carolina School of Law. This will permit us to bring together our best legal and financial minds to debate the issues and craft new solutions. The Institute's publication will provide an invaluable resource for the leaders of business and government.<sup>2</sup>

At the first Banking Institute in 1997 some of the issues alluded to by Governor Hunt were touched upon: electronic commerce, the entry of banking organizations into the insurance and securities industries, and financing through securitization of assets. Ed Crutchfield, CEO of First Union Corporation gave an address entitled *Banking on the Future*. Prior to the heightened attention to the issue of preemption, Neil Milner of the Conference of State Bank Supervisors spoke on the *Role of the Dual Banking System*. Volume 1 contained articles written by the speakers at the Institute on these topics, as well as ten student notes on a variety of subjects,<sup>3</sup> including sophisticated treatments of originating lender bank liability to participants in the B-tranche of a leveraged loan,<sup>4</sup> commercial mortgage backed securitizations,<sup>5</sup> and lending to health maintenance organizations and physician practice management companies.<sup>6</sup>

In the spring of 1998, after publishing Volume 2 of the *North Carolina Banking Institute* journal, the journal received official recognition by the faculty so that beginning with Volume 3, third-year editors were afforded academic credit for their work on the journal. A significant factor in the faculty's decision to recognize the journal in

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2. James B. Hunt, Jr., Preface, 1 N.C. BANKING INST. xi, xi-xii (1997).

3. The seven founding student members of the banking journal served as the editors of Volume 1. They recruited fifteen student staff members: Heather C. Alston, Will Bacon, Laura Turner Beyer, Lawana L. Bryant, Louisa Crampton, John C. Jaye, Kimbrelly Kegler, Robert D. Markworth, Joseph K. Moore, Karen M. Mower, Lonnie M. Player, Jr., Jason A. Walser, Elizabeth L. Weddington, Richard Wei, and Debra S. Wood.

4. Louisa C. Crampton, Student Note, *Originating Lender Bank Liability to Participants in the B-Tranche of a Leveraged Loan: Mending the Gap Between Federal Banking and Federal Securities Regulation*, 1 N.C. BANKING INST. 255 (1997).

5. Alan Kronovet, Student Note, *An Overview of Commercial Mortgage Backed Securitization: The Devil Is in the Details*, 1 N.C. BANKING INST. 288 (1997).

6. Debra S. Wood, Student Note, *Risky Business: Lending to Health Maintenance Organizations and Physician Practice Management Companies*, 1 N.C. BANKING INST. 322 (1997).

this manner was that the students had overcome the initial objections to the journal articulated by Dean Wegner. The journal is published at no cost to the School of Law<sup>7</sup> and student interest in the journal continued beyond the graduation of the founding members.<sup>8</sup>

In 2001, the North Carolina Banking Institute moved its annual program from Chapel Hill to Charlotte, and almost doubled its attendance in the process. The first program in Charlotte featured Hugh McColl, CEO of Bank of America, as the dinner speaker, just weeks before his retirement from Bank of America. Prominent banking leaders who have spoken at the Institute, in addition to Mr. McColl in 2001 and Mr. Crutchfield in 1997, include John Allison, CEO of BB&T (2004); Joe Reid, CEO of Capitol Bancorp Limited (2005); and Kennedy Thompson, CEO of Wachovia Corporation (2002). Regulatory leaders who have spoken at the Institute include Mark Olson (2003) and Susan Bies (2006) of the Board of Governors of the Federal Reserve System; Virgil Mattingly (1998) and Scott Alvarez (2005), General Counsel, Board of Governors of the Federal Reserve System; Donald Powell (2002) and Donna Tanoue (2000), chairmen of the Federal Deposit Insurance Corporation; Jerry Hawke as Under Secretary of Treasury for Domestic Finance (1998), as Comptroller of the Currency (2001), as partner at Arnold & Porter (2006); Eugene Ludwig (1999), former Comptroller of the Currency and then Vice Chairman, Bankers Trust; Julie Williams, First Deputy Senior Comptroller and Chief Counsel of the Office of the Comptroller of the Currency (1997, 2001, 2006); Wayne Abernathy, Assistant Secretary of the Treasury for Financial Institutions (2003); Roy Cooper, North Carolina Attorney General (2005); Richard Moore, North Carolina Treasurer (2006); and Joe Smith, North Carolina Commissioner of Banks (2005).

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7. The journal publishes manuscripts of speakers at the annual Banking Institute along with notes and comments written by the law student staff members of the journal. The North Carolina Banking Institute CLE program purchases several hundred journals each year for distribution at the annual Banking Institute. This purchase almost totally offsets the cost of printing the journal. In addition, there are approximately 100 subscribers to the journal, including law school libraries, government regulatory agencies, law firms, and individuals. The journal also receives royalties from WestLaw for journal articles accessed on this legal database.

8. The journal is also one of the few extracurricular activities at the School of Law that is geared to the interests of students headed for a corporate practice, and as such, it is successful in recruiting student participants.

The Banking Institute's success is due primarily to the involvement and hard work of its Board of Advisors.<sup>9</sup> David Batty, Jamie Bryant, John Douglas, Pat Doyle, Tony Gaeta, Gene Katz, and Joe Smith, are just a few of the board members who have performed extraordinary service in planning panel presentations at multiple Banking Institutes. In addition to serving as coordinators for program panels at the annual Banking Institute, board members, through their banks and firms, serve as sponsors of the annual program. The sponsorship effort has been led each year by Tony Gaeta of Gaeta & Eveson, PA, in Raleigh.<sup>10</sup> Sponsorship funds have been used to keep the registration fee for the program as low as possible, assist the journal with its initial purchase of computers, endow a research fund at the law school, and endow a scholarship awarded since 2001 to a third year student on the journal's editorial board.<sup>11</sup>

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9. The current members of the Board of Advisors, including the original members who still serve, are listed at the front of this volume. Others who previously served on the Board include (with their affiliations at the time of their original service): Russell J. Bruemmer, Wilmer Cutler & Pickering; R. Lee Burrows, Trident Securities, A Division of McDonald Investments Inc.; Richard Cheatham, Kilpatrick Stockton LLP; Michael S. Helfer, Wilmer, Cutler & Pickering; James W. Hovis, Moore & Van Allen; James S. Lofton, North Carolina Association of Financial Institutions; Charles A. Neale, National Commerce Bancorporation; Gene R. Nichol, UNC School of Law; Marianne K. Smythe, Wilmer Cutler & Pickering; Eileen McDermott Taylor, Kilpatrick Stockton LLP; and Owen Williams, First Union Fixed Income, Capital Markets. In addition, the Editor-in-Chief and Institute Editor of the banking journal served two-year terms on the Board of Advisors. Serving as Editor-in-Chief were David P. Broughton and Anderson D. Caperton, Volume 1, 1997; Laura Turner Beyer, Volume 2, 1998; Lara L. Spencer-Smith (formerly Smith), Volume 3, 1999; Todd H. Eveson, Volume 4, 2000; Richard C. Holley, III, Volume 5, 2001; Cynthia L. Collins (formerly Mabel), Volume 6, 2002; Jon H. Patterson, Volume 7, 2003; Janet K. Dawson, Volume 8, 2004; T. Scott Kummer, Volume 9, 2005; and Kimberly Easter Zirkle, Volume 10, 2006. Serving as Institute Editor were Louisa C. Fisher (formerly Crampton), Volume 2, 1998; Hayley M. Brady, Volume 3, 1999; Kerry Fraas, Volume 4, 2000; Tara C. Hogan, Volume 5, 2001; Kimberly L. Wierzel, Volume 6, 2002; Amanda K.S. Hill, Volume 7, 2003; Stephanie R. Ennis (formerly Patterson), Volume 8, 2004; Vaughn K. Reynolds, Volume 9, 2005; and Jabari M. Vaughn, Volume 10, 2006. *See supra* note 1 (listing the founding members of the Board of Advisors).

Staff support for the Banking Institute program has also been instrumental in the program's success. We have benefited from the dedicated service of Sara Abdoulayi, Jacqueline Carlock, Bill Poole, Allison Stelljes, and Catherine Willis.

10. In 2003, Tony's contributions to the Banking Institute were recognized at the Banking Institute dinner program.

11. The recipients of the Professor Lissa Broome Center for Banking and Finance Scholarship Fund were Cynthia Collins (formerly Mabel) (2001-02), Jon Patterson (2002-03), Phillip Kennedy (2003-04), Scott Kummer (2004-05), and Kimberly Zirkle (2005-06). The scholarship is awarded based on scholastic and writing ability as evidenced by membership in the journal's editorial board and financial need.

In 2004, the Banking Institute dinner program honored Marion Cowell, Jerone Herring, and Paul Polking as the first recipients of the Center for Banking and Finance Leadership Awards for their outstanding contributions to banking law and to the banking industry, in addition to their support of and contributions to the North Carolina Banking Institute. Together, these three men, who served as the general counsels of First Union Corporation, BB&T Corporation, and Bank of America respectively, represented over ninety years of leadership and commitment to the banking community.<sup>12</sup> All three gentlemen remain on our board of advisors. Their successor general counsels have joined our board and also embraced our mission of supporting the financial services industry and the lawyers who serve it.<sup>13</sup>

The *North Carolina Banking Institute* journal has also benefited from the opportunity to publish articles written by members of the board of advisors. Joe Smith, now the Commissioner of Banks of North Carolina, formerly general counsel of Centura Banks and then an attorney with Thacher Proffitt & Wood in Washington, D.C., leads the way with six publications to his credit,<sup>14</sup> followed by David Batty of Kennedy Covington with four publications.<sup>15</sup> It has also been heartening to publish the work of two of the journal's alumni in their capacity as industry professionals.<sup>16</sup>

The success of the North Carolina Banking Institute and the student-published journal were recognized at the School of Law when the Center for Banking and Finance was established at the school on July 1, 2000.<sup>17</sup> The Center, which I am privileged to direct, is the

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12. See Lissa L. Broome, *The Legal Giants that Propelled North Carolina Banks to National Prominence: Paul J. Polking, Marion A. Cowell, and Jerone C. Herring*, 8 N.C. BANKING INST. 119 (2004).

13. Timothy Mayopoulos, Bank of America Corporation; M. Patricia Oliver, BB&T Corporation; and Mark Treanor, Wachovia Corporation serve on the Board of Advisors along with the general counsels of RBC Centura Banks, Inc. (Betsy Edelman); SunTrust Banks, Inc. (Raymond Fortin); First Horizon National Corporation (Harry A. Johnson, III); and Capitol Bancorp, Ltd. (Joe Reid, III).

14. Joe Smith authored or co-authored articles in Volumes 2, 3, 4, 5, 6, and 8 of the North Carolina Banking Institute journal.

15. David Batty authored or co-authored articles in Volumes 4, 6, 7, and 9 of the North Carolina Banking Institute journal.

16. In addition to student notes published in Volumes 3 and 4, Todd Eveson published an article in Volume 6. Carrie O'Brien's student piece was in Volume 5 and she co-authored an article that appeared in Volume 9.

17. When Gene R. Nichol succeeded Judith Wegner as dean of the School of Law in July 1999, he appointed a faculty committee to consider areas where the law school might

sponsor of the Banking Institute and the banking journal. The Center is dedicated to supporting the leadership role played by North Carolina-based financial institutions in the continual evolution of the financial services industry by studying the legal and policy issues related to banking and finance, advancing the teaching of banking and finance, and sponsoring conferences for industry professionals.<sup>18</sup> The Center for Banking and Finance, the North Carolina Banking Institute, and the *North Carolina Banking Institute* journal have also helped to attract substantial gifts to fund the Center's activities from the charitable foundations supported by the Wachovia Corporation and the Bank of America Corporation.<sup>19</sup> The Center has also received grant funding from the Z. Smith Reynolds Foundation to support a project, the Director Diversity Initiative, whose focus is to increase the racial, ethnic and gender diversity of corporate boards, particularly of those companies headquartered in North Carolina.<sup>20</sup>

At the 2005 Banking Institute, we celebrated two hundred years of banking in North Carolina.<sup>21</sup> At the 2006 Banking Institute, we

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wish to establish "centers of excellence." The faculty committee reported back on a number of potential areas, and a consensus emerged to establish two centers at the school—the Center for Banking and Finance, and the Center for Civil Rights. The Center for Banking and Finance completed its fifth year of operations on June 30, 2005.

18. The Center sponsors alone or with others three other annual programs in addition to the North Carolina Banking Institute: The Consumer Law and Consumer Credit Symposium, held annually since 2002 as part of the law school's Festival of Legal Learning; the North Carolina Bank Directors' College, sponsored in conjunction with the North Carolina Commissioner of Banks and the Federal Deposit Insurance Corporation since the fall of 2002; and the Dan K. Moore Program in Ethics which, since the involvement of the Center for Banking and Finance in 2002, has focused on ethical issues of interest to members of the corporate bar. The Center has held other programs on topics of special interest (*e.g.*, Emerging Issues Forum: Clarity in Off-Balance Sheet Finance and Accounting, held in Washington, D.C. in May 2002 with the assistance of James Bryant from the Board of Advisors) or co-sponsored occasional programs with other organizations, including the Securities Industry Association, the American Bar Association, and the Federal Reserve Bank of Atlanta.

19. The cumulative total of pledges, gifts, and grants to the Banking Institute and the Center since the inception of the Banking Institute in 1997 is over \$600,000. The support and assistance of Mary S. Murray, Assistant Dean for External Relations, has been instrumental in procuring these gifts.

20. This, and other activities of the Center, are described in greater detail at the Center's website, [www.law.unc.edu/banking/](http://www.law.unc.edu/banking/).

21. Thad Woodard, President and CEO of the North Carolina Bankers Association (NCBA), narrated a slide show with a script prepared by Paul Stock, Executive Vice President and Counsel of the NCBA, on the first two hundred years of banking in North Carolina. See Lissa Lamkin Broome, *The First One Hundred Years of Banking in North Carolina*, 9 N.C. BANKING INST. 103 (2005).

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honor the considerably shorter history of the North Carolina Banking Institute program and journal by thanking those law students, lawyers, and banking professionals who had a vision for the University of North Carolina School of Law to provide service to the financial services industry through an annual program and law journal devoted to banking law issues. We are all thankful for the success of these efforts and the broadening of them through the Center for Banking and Finance. We invite you to participate in our activities and to help us ensure that our contributions continue to provide a valuable service over the coming years to the financial services industry.