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# In Pursuit of Excellence—A History of the University of Minnesota Law School

## Part III: The Fraser Years—A Time of Excellence and Innovation†

Robert A. Stein\*

*The first two articles in this series described the development of the University of Minnesota Law School under Deans William S. Pattee<sup>1</sup> and William Reynolds Vance.<sup>2</sup> Dean Pattee had provided the steady and accommodating leadership needed to lay the groundwork for the years of ascendancy under Dean Vance. During his eight-year tenure at Minnesota, the most important of the many improvements Dean Vance had made was in the quality of the faculty. With a talent for recognizing the early manifestations of scholastic excellence, Vance had attracted to the law school professors who developed into some of the leading scholars of their day. The work of Vance and these professors made the still young school into one of the country's finest, but it also attracted the attention of other fine institutions. The subsequent loss of these men and of the Dean who had attracted them in the faculty raids by Yale University in the late teens imperiled the advances that had been made and caused many to fear that the school was headed toward an early demise. Yet, surprisingly, the school's reputation during the next several decades continued to advance. Vance's resignation signaled not the end of an era of success but simply another stage in the school's continuing pursuit of excellence.*

That Vance's resignation was a transitional rather than a terminal point in the school's development was due largely to the appointment of Everett Fraser as his successor. Fortunately for the Regents and the University, Fraser proved as successful as Vance at the fundamental task of faculty recruitment. By continuing a strong emphasis upon high standards of academic excellence applicable to both teachers and students, Fraser ensured that Vance's contribu-

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1. See Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part I: The Pattee Years—A Time of Accommodation*, 62 MINN. L. REV. 485 (1978).

2. See Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part II: The Vance Years—A Time of Ascendancy*, 62 MINN. L. REV. 857 (1978).

tions to faculty quality and a rigorous curriculum would be preserved. In addition, during his long administration, Fraser did more than establish a particular academic tone. Vance's administration, despite innovations such as the legal clinic and the practice court, was largely directed at developing Minnesota along the lines of the best eastern law schools. Fraser's administration, on the other hand, set out to make Minnesota an innovator and a leader in its own right by developing a new and successful curriculum responsive to the problems of its time.

As dean from 1920 to 1948, Fraser saw the roaring twenties, with its red scares, fanaticism, and prosperity search; the Depression of the thirties, with the difficult birth of the New Deal and the international crisis of democracy; and the forties, with World War II and its aftermath. Each of these periods presented serious challenges to governmental institutions and the legal profession. Law schools, which by the time Fraser became dean, were firmly established as the institutions that trained most of the persons who formulated legal and governmental responses to social problems, began to feel responsible for the national and international state of affairs. Fraser, more than most, saw the broader significance of the law school's function and wanted Minnesota to be more actively concerned with improving its product. Committed to the ideal of the lawyer as a learned and judicious civic leader, his persistent goal was to foster educational programs that caused law students to become more acutely aware of their social responsibilities and of the breadth and depth of learning required for those responsibilities. With this objective, his administration implemented innovations in the structure and content of legal education that elevated Minnesota to the status of a leading, rather than an imitative, law school.

#### A. THE DEAN

A tribute to Dean Fraser in the University of Minnesota Senate Minutes reads, in part, as follows:

In his home and at social gatherings his warmth, charm and honest friendliness was [*sic*] manifest. At the law school and in University and professional meetings, however, his intense dedication to excellence in teaching and to the improvement of legal education made him seem grim and forbidding to most students, colleagues and lawyers. He was an almost terrifying first-year teacher in his implacable insistence on a correct understanding of the intricacies of traditional real property concepts. It is too bad that so many students and teachers saw only this aspect of the man.<sup>3</sup>

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3. Minutes of the University of Minnesota Senate, 1971-1972, at 143 (1972).

As with many men of great intensity, Dean Fraser appears to have been a difficult man to get to know. This inscrutability is frustrating in view of Fraser's extraordinary impact on an institution that has affected so many for so long. At least a little of the man emerges, however, from an examination of the course of his early life.

Everett Fraser was born in 1879 to a Canadian family of Scottish descent on a farm in Prince Edward Island. In 1888, when the University of Minnesota Law School first opened its doors, Everett Fraser was a boy of nine, working on the farm and attending a small rural school. He attended Prince of Wales College from 1897 to 1899 and then worked at odd jobs before entering Dalhousie University in Halifax. After having worked his way through Dalhousie as a purser on a transatlantic cable repair ship, he graduated in 1907 and moved on to the Harvard Law School. Upon graduation from Harvard in 1910 at age 31, Fraser went immediately into teaching, a career that he would pursue for 55 years. His first teaching position was at George Washington University, starting the year after William Reynolds Vance left that school for Yale. Four years later, in 1914, like Vance before him, Fraser became dean of the George Washington University Law School.<sup>4</sup>

Everett Fraser's first taste of the responsibilities of deanship was not unqualifiedly pleasant. Faced with the task of procuring a better facility to house his school, Dean Fraser experienced the frustrations of negotiating with a board of trustees whose propensity for foot dragging he found to be unreasonable.<sup>5</sup> Added to this was the frustration of an unreasonably modest income: \$4000.<sup>6</sup> Understandably, under these conditions Fraser was receptive to offers from elsewhere. Thus when Professor Ernest Lorenzen left Minnesota for Yale and recommended Fraser as his successor,<sup>7</sup> Vance and Fraser struck an agreement that, for \$5000, brought Fraser to Minnesota for a trial year.<sup>8</sup> That year, 1917, was the first of 32 years of continuous association between Fraser and the Minnesota Law School.

In 1920, three years into Fraser's Minnesota tenure, Dean Vance,

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4. *See id.*

5. *See* Letter from Everett Fraser to William Reynolds Vance (Mar. 29, 1917) (on file in Everett Fraser Papers (unprocessed), University of Minnesota Archives, Minneapolis, Minnesota).

6. *See id.*

7. *See* Letter from Ernest Lorenzen to William Reynolds Vance (Apr. 27, 1917) (on file in Everett Fraser Papers (unprocessed), University of Minnesota Archives, Minneapolis, Minnesota).

8. *See* Letter from William Reynolds Vance to Everett Fraser (May 2, 1917); Letter from Everett Fraser to William Reynolds Vance (Apr. 21, 1917); Letter from William Reynolds Vance to Everett Fraser (Apr. 19, 1917) (letters on file in Everett Fraser Papers (unprocessed), University of Minnesota Archives, Minneapolis, Minnesota).

also on his way to Yale, recommended to the Board of Regents that Fraser be named his successor. Apparently, his succession was not unquestioned, for in reporting the Board of Regents' action in the matter, Vance wrote to Fraser that "I . . . felt no little relief when the official announcement of your election was made. I hope this is the last time the fight for specially trained teachers and administrators must be made in this Law School."<sup>9</sup>

Without question, Fraser was well-qualified for the post. By the 1920's a dean of any good law school had to be a scholar of the highest standing. Yet other attributes, such as practical expertise, commitment to the community, and willingness to advocate one's position, also were important for effective fulfillment of the responsibilities of the post. Dean Fraser's activities as scholar, lawyer, and political enthusiast all gave evidence of his qualification for the position at the head of Minnesota's Law School.

### 1. *Scholar*

Dean Fraser's achievements as a scholar were of the first order. Not a prolific writer, he focused his energies on a few major works. The most important of these was his casebook comprised of two volumes—one an introduction to real property, the other to personal property—which were published first in 1932, with new editions in 1941 and again in 1954.<sup>10</sup> This casebook was a part of the University Casebook Series, a series for which Fraser both wrote and served as a member of its editorial board—a board whose chairman was former Minnesota professor Edmund Morgan.<sup>11</sup>

A further testament to Dean Fraser's standing as a scholar was his selection as Reporter for the American Law Institute's (ALI) Restatement work. In 1933, Fraser was designated as the Reporter for the Rights in Land Section of the Restatement of the Law of Property.<sup>12</sup> As Reporter, he was the primary author of that section of the Restatement, working in collaboration with advisors who, along with Fraser, were among the outstanding property scholars in the country: Harry A. Bigelow, Oliver W. Branch, Laurence H. Eldredge, Stanley V. Kinyon, J. Warren Madden, Max Rheinstein, and Oliver

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9. Letter from William Reynolds Vance to Everett Fraser (July 22, 1920) [hereinafter cited as Vance Letter] (on file in Everett Fraser Papers (unprocessed), University of Minnesota Archives, Minneapolis, Minnesota).

10. See E. FRASER, CASES AND READINGS ON PROPERTY (3d ed. 1954); E. FRASER, CASES AND READINGS ON PERSONAL PROPERTY (3d ed. C. W. Taintor 1954). Volume two of the set of casebooks, which was on the subject of personal property, was reedited in 1954 by Charles W. Taintor, not by Fraser himself.

11. See, e.g., E. FRASER, CASES AND READINGS ON PROPERTY ii (3d ed. 1954).

12. See 13 ALI PROCEEDINGS 72 (1936) (remarks of William Draper Lewis).

S. Rundell.<sup>13</sup> Fraser's area of the Restatement included "uses of land, sometimes called natural uses, which do not have their origin in any transaction between the respective landowners or their ancestors in title,"<sup>14</sup> such as lateral support and riparian rights. Fraser became convinced, however, that these natural uses could be stated more clearly and simply in the Restatement of Torts. To that end, he persuaded the American Law Institute to include this subject matter in the Division of the Restatement of Torts entitled "Interference in the Use of Land." In the *ALI Proceedings*, it was announced that "Mr. Fraser and Mr. Bohlen, the Reporter for Torts, will collaborate in preparing the drafts relating to this Division; Mr. Fraser being primarily responsible for all the Chapters except that on Nuisance, for which Mr. Bohlen will be responsible."<sup>15</sup> Thus Dean Fraser had the unusual distinction of serving as a Reporter for both the Restatement of Property and the Restatement of Torts.

While Fraser's scholarship earned him national recognition and opportunity, it also was useful in the service of Minnesota interests. His most notable local effort was a scholarly analysis of Minnesota's statutory treatment of future interests and trusts. Written in 1947, this 53-page article appeared as a preface and introduction to chapters 500 through 502 of *Minnesota Statutes Annotated*.<sup>16</sup> It remains a useful reference today.

Dean Fraser's commitment to scholarship and service also was evidenced by his contributions to various journals. Several of his articles, particularly those written in his earlier years, concerned the subject of property.<sup>17</sup> Most, however, and particularly those written during his deanship, concerned legal education and the profession generally.<sup>18</sup> While his efforts as a property scholar largely focused on his casebook and the Restatements, Fraser's journal publications were primarily opportunities for him to make known his high ideals—for the profession of law and to explicate and advocate the system of legal education he had designed to train lawyers worthy of those ideals.

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13. See 4 AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW OF TORTS iv (1939).

14. 13 ALI PROCEEDINGS 72 (1936) (remarks of William Draper Lewis).

15. *Id.* at 73.

16. Fraser, *Future Interests, Uses and Trusts in Minnesota*, 28 MINN. STAT. ANN. 53 (1947).

17. See, e.g., Fraser, *The Rules Against Restraints on Alienation, and Against Suspension of the Absolute Power of Alienation in Minnesota* (pts. 1-3), 8 MINN. L. REV. 185, 295, 9 MINN. L. REV. 314 (1924-1925); Fraser, *Future Interests in Property in Minnesota* (pts. 1-2), 2 MINN. L. REV. 320, 3 MINN. L. REV. 307 (1919-1920).

18. See, e.g., Fraser, *Academic Training for the Bar*, 11 MINN. L. REV. 582 (1927).

## 2. *Lawyer*

But scholarship was only one of the ways in which Fraser served his profession and community. Another was through his brief career as a practicing attorney, which was an outgrowth of his position in the University. Fraser's most notable contribution was his work on the *Chase* case.<sup>19</sup> This friendly litigation was brought to determine the status of the University within the system of state agencies. The Minnesota legislature had created a State Commission of Administration and Finance, which was given supervisory powers over all state budgetary matters. The suit was brought by the Board of Regents against State Auditor Ray Chase to exempt the University from Commission overview and establish the University's constitutional autonomy. Charles W. Bunn, a Regent, and Dean Fraser represented the University and obtained a decision in favor of the University that denied the power of the Commission to supervise the University budget and guaranteed the University a position of independence within the state's administrative system. Fraser's work on the case was highly commended and thereafter his advice often was sought and relied on by University officials.<sup>20</sup> Though Fraser never engaged in private practice, this foray into the workings of the judicial system both proved his competence to those who would doubt it and helped to keep him in touch with the needs and concerns of the practicing lawyer.

## 3. *Political Advocate*

Finally, accompanying Fraser's other qualifications for the position of dean was an intensity of political commitment. Deanships, like every other position of power, require not only the ability to develop a plan but also a willingness to advocate it. There is ample evidence that Dean Fraser not only knew what he believed but was willing, even eager, to insist on his view. Certainly his faculty was familiar with this quality of Fraser's personality, one of them commenting that

Fraser was one of the most powerful personalities you could meet. His analytical abilities, evidenced for example in his classes, were so impressive that one hesitated to argue with him. He enjoyed debate and respected the talents of those with whom he dealt. Yet he was always tolerant of the weaknesses he saw in others. But if he thought he was being criticized unfairly by those whose opinions he respected he would, while maintaining his composure, show

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19. *State ex rel. Univ. of Minn. v. Chase*, 175 Minn. 259, 220 N.W. 951 (1928).

20. Minutes of the University of Minnesota Senate, 1971-1972, at 144 (1972).

his resentment with a red line coming up the back of his neck and his face flushed and stern.<sup>21</sup>

One example in particular—Fraser's support of Franklin Delano Roosevelt—reveals that his advocacy could be ardent to the point of adamancy. Though not a regular party man, Fraser early aligned himself with Roosevelt.<sup>22</sup> In 1944, as faculty advisor to the Campus Committee for Roosevelt, Fraser told the group that "most of the isolationists are in the Republican party,"<sup>23</sup> and he questioned whether the Republicans, if elected, could hold together long enough to secure the international cooperation necessary for peace after the war.<sup>24</sup> These comments provided the impetus for a revealing bit of political fisticuffs as Republican National Committeeman Roy E. Dunn (also majority leader in the Minnesota House of Representatives) responded by publicly lamenting that Fraser, "a man who is paid by all the taxpayers of Minnesota," had seen fit to attack the Republicans of Minnesota.<sup>25</sup> Campaign fever on both sides fanned the controversy into a highly publicized dog fight in which emotion and politics rather than logic seemed to underlie the statements made.<sup>26</sup> A *St. Paul Dispatch* editorial entitled *The Dean and Dunn* aptly noted, "These are both very worthy men and in the heat of political dispute neither is doing himself full justice. . . . They ought to be arguing, not slugging."<sup>27</sup> But slug they did, clearly demonstrating the intensity with which Dean Fraser could approach an issue.

Fraser's achievements in his roles as scholar, lawyer, and politi-

21. Interview with Maynard Pirsig, former Dean of the University of Minnesota Law School, in Minneapolis (Nov. 15, 1977).

22. For instance, his support for FDR's court-packing proposal earned him the following comment from Edmund Morgan: "I have learned indirectly that your views on the President's proposal are about as bad as they could be. What is getting the matter with you in your old age? Have you gone entirely crimson?" Letter from Edmund Morgan to Everett Fraser (Apr. 20, 1937) (on file in Law Teachers Information File, Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

23. Minneapolis Star Journal, Aug. 28, 1944, at 11, col. 6. Fraser also said, "There is nothing in [the Republican] platform but weasel-words." *Minnesota Daily*, Aug. 23, 1944, at 1, col. 5. See also E. Fraser, *Why I Am Supporting President Roosevelt* (Aug. 25, 1944) (political pamphlet on file at MINNESOTA LAW REVIEW).

24. See *St. Paul Pioneer Press*, Aug. 23, 1944, at 14, col. 1.

25. Minneapolis Star Journal, Aug. 22, 1944, at 13, col. 1.

26. See, e.g., Minneapolis Star Journal, Aug. 25, 1944, at 11, col. 1 (report that *Minnesota Labor*, the newspaper of the Minnesota Congress of Industrial Organizations, had called Dunn's attack an example of "Hitler philosophy"); *id.*, Aug. 23, 1944, at 13, col. 7 (DFL nominee for governor attacks Dunn for attempting to curb academic freedom); Minneapolis Sunday Tribune, Sept. 3, 1944, Minnesota Section, at 4, col. 3 (Fraser and Dunn accuse each other of acting like Nazis); Minneapolis Tribune, Aug. 28, 1944, at 11, col. 1 (former Regent sends letters to then current Regents protesting Dunn's invasion of academic freedom).

27. *St. Paul Dispatch*, Aug. 26, 1944, at 4, col. 1.



cal advocate all reflect this intensity. A man of few hobbies or outside concerns, most of his energy was highly focused upon his roles as dean and professor. With an approach described by one observer as "thoughtfully deliberate," he moved steadily ahead toward his objectives without equivocation or distraction.<sup>28</sup> Though some within his sphere found him "cold" or "unsympathetic," others, who feel they knew him better, found him "warm," "patient," and "very human."<sup>29</sup> But his forcefulness, capability, and dedication are undisputed.

## B. THE TWENTIES

It was indeed fortunate for the law school that Dean Fraser was as forceful and resourceful as he was because the situation facing the school in the early 1920's was bleak. Some of the school's problems were indigenous, such as procuring and maintaining faculty and facilities adequate for the school. Some were the result of the era itself, which was filled with distractions and marked by the tarnishment of the legal profession.

### 1. *Faculty Retention and Quality*

The most immediate problem facing the school was faculty turnover. Vance had developed a school of the first rank by employing four truly topflight professors in a faculty of six. Within three years, however, all four had left.<sup>30</sup> Upon his own departure, Vance emphasized the problem in a letter to Fraser:

I am afraid that you may have to struggle against a slight tendency to demoralization in the student body due to the cumulative effect of the numerous resignations from our faculty. I am convinced, however, that if you can hold your ground during the next session there is no reason why the Minnesota Law School should not go steadily forward. It is not necessary for me to observe, however, that this is not a time to make any mistakes in the selection of teachers. I have made so many mistakes myself in times past that I know how easy it is to do.<sup>31</sup>

Vance had done what he could to maintain faculty quality by selecting first-rate replacements, but it was clear that they, too, could be enticed away. For example, during the next few years, Wilbur Cherry, who had worked with Edmund Morgan in the practice court

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28. Minutes of the University of Minnesota Senate, 1971-1972, at 144 (1972).

29. *Id.*

30. See Stein, *supra* note 2, at 883-85.

31. Letter from William Reynolds Vance to Everett Fraser (Aug. 6, 1920) (on file in Everett Fraser Papers (unprocessed), University of Minnesota Archives, Minneapolis, Minnesota).

and was appointed his successor in 1917,<sup>32</sup> received a number of offers promising financial rewards superior to those available at Minnesota.<sup>33</sup> Dean Fraser himself also received such offers.<sup>34</sup> While both Cherry and Fraser decided to stay, others, motivated by the lucrative offers of other prestigious schools, did leave. For instance, Professor Bruce, hired in 1918, left for Northwestern in 1923. Professor Dowling, hired in 1919, left for Columbia, also in 1923.<sup>35</sup> Professor Ballantine, selected in 1920 on Vance's recommendation,<sup>36</sup> left in 1924. Professor Osborne left for Stanford in 1923 after only two years' service. Professor Miller was hired away to Southern California after only three years. Yale claimed Professor Sturges in 1924 after only one year at Minnesota. And Professor Lavery, hired in 1924, went to Cincinnati in 1927.<sup>37</sup> All together, of the seven professors hired in the period 1918-1923, only one stayed at Minnesota for more than five years. And from a faculty that in 1928 included only eight positions, eleven men had been lost in the ten preceding years—all to positions offering higher salaries.<sup>38</sup> Indeed, throughout the 1920's, it must have seemed as if an internship on the faculty of the University of Minnesota Law School was the surest route to success in the law teaching business.

This pattern could not long be tolerated. As the Dean noted in his 1921-1922 Report to the President,

it is a tribute to this school that its faculty is in such demand elsewhere. But unless we can find means to hold the able men who come to us, it is a question whether it would not be wiser to appoint men who would be less sought after by other schools, than to continue to be a training school for faculties elsewhere.<sup>39</sup>

Despite the drastic results of the salary disparity that existed between the University and its competitors (Cherry was offered \$10,500 by both Yale and Columbia, compared to his 1928 Minnesota salary of \$7500),<sup>40</sup> the Board of Regents was reluctant to allocate

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32. See Fraser, *Wilbur Harkness Cherry: 1887-1950*, 36 MINN. L. REV. 557 (1952).

33. References to the offers made to Professor Cherry appear in two letters, written four years apart by Dean Fraser. See Letter from Everett Fraser to L.D. Coffman (Jan. 14, 1928) [hereinafter cited as Fraser Letter (Jan. 14, 1928)] (on file in Guy Stanton Ford Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Everett Fraser to Pierce Butler (Sept. 19, 1924) [hereinafter cited as Fraser Letter (Sept. 19, 1924)] (on file in Butler File, Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

34. See Fraser Letter (Sept. 19, 1924), *supra* note 33.

35. See Fraser Letter (Jan. 14, 1928), *supra* note 33.

36. See Vance Letter, *supra* note 9.

37. See Fraser Letter (Jan. 14, 1928), *supra* note 33.

38. See *id.*

39. Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1921-1922, at 145, 148 (1922).

40. See Fraser Letter (Jan. 14, 1928), *supra* note 33.

much more to law school faculty salaries. As Fraser admitted, "[t]here are any number of law teachers to be had who could be retained here on the salaries that we pay";<sup>41</sup> the problem was in retaining a faculty of the high quality to which the school had become accustomed. An additional problem was that the University's law professors, even at their less than competitive salaries, were compensated far more richly than most of their colleagues at other schools in the University, and salary increases to law faculty would further exacerbate the disparity.<sup>42</sup>

Faced with these obstacles, the law school turned inward to find at least a partial solution to its salary problem. First, the opening of a new law building<sup>43</sup> allowed for an expansion of the student body and a resulting increase in total student fee contribution. Second, beginning in the 1928-1929 school year, the law school was allowed to increase its fees,<sup>44</sup> thereby freeing up more money for salaries and the law library.

Whether these supplements alone were enough to stem the tide of faculty losses is not clear. It is clear, however, that by 1930 law school professors had the highest average salary in the University—more than \$300 higher than professors in the medical school.<sup>45</sup> It is also clear that professors began to stay with the University for a much longer time. In fact, professors hired between 1929 and 1938 averaged over 22 years of service at Minnesota.

Increased salaries may only partly explain this dramatic change in faculty turnover patterns. The Depression,<sup>46</sup> too, probably encour-

41. Fraser Letter (Sept. 19, 1924), *supra* note 33.

42. *Id.*

43. See notes 66-81 *infra* and accompanying text.

44. Compare UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1928-1930, at 10 (1928), with UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1926-1928, at 9 (1926).

45. See University of Minnesota Annual Salaries: 1930-31, at 2 (Aug. 22, 1930) (unpublished report on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

46. Besides being a decade of depression, the thirties also saw a wave of anti-Semitism sweep the country. Among the many letters received by Dean Fraser concerning applicants for faculty positions are two that give graphic evidence of the pervasiveness of the problem. In the first, Professor Thurman Arnold of the Yale faculty wrote concerning Edward Levy,

If you can take a Jew on your faculty, I do not think you could find anywhere a better man than Levy. His name is his only possible handicap. . . . Inasmuch as it is so difficult for Jews to get a foothold in teaching, I am particularly anxious to get Levy placed if I can because it is a long time since I have seen anyone I could recommend so highly.

Letter from Thurman Arnold to Everett Fraser (Feb. 13, 1936) (on file in Law Teachers Information File, Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota). In the second, Professor Edmund Morgan writing from Harvard said, "If you are willing to take a Jew, by far the best available man is A.H. Feller, who is this

aged those who had jobs to stay with them. Furthermore, educational innovations undertaken in the school, particularly the major curriculum overhaul initiated in 1930, undoubtedly created an atmosphere of enthusiasm and excitement that made Minnesota a more enjoyable, stimulating, and prestigious law school at which to teach.

Another factor in reducing faculty turnover may have been the policy, developed in response to the financial constraints on the school, of keeping the faculty small but well-paid. Although this naturally resulted in larger classes (the 1924 student-faculty ratio in the law school was 35 to 1 while in the University as a whole it was about 10-15 to 1)<sup>47</sup> and a more limited curriculum than was optimal, it helped to ensure a faculty of excellent quality.<sup>48</sup>

Finally, for the first time since Dean Pattee hired James Paige and Hugh Willis, the law school began to hire its own graduates for faculty positions. Of the nine professors hired in the last twenty years of Fraser's administration, five—Maynard Pirsig, William Prosser, Edward Bade, Stanley Kinyon, and Robert McClure—had been Fraser's students at Minnesota. Of this group, only Prosser left Minnesota prior to retirement, and then only after ten years. The others remained on the faculty until their retirement, with the exception of McClure who continues on the faculty after 32 years.

The correlation between the onset of the policy of hiring more Minnesota graduates and the reduction in faculty turnover invites the question whether the amount of turnover was reduced because of the factors of increased salaries for a smaller faculty, the Depression, the school's academic innovations, and alumni loyalty, or because Minnesota graduates, as professors, were less attractive to other schools. The question is important insofar as it implies that the quality of the faculty might have been sacrificed on the altar of stability. Such does not appear to be the case. Although it may be that a Minnesota diploma was less attractive to hiring schools than one from Harvard, the University's Law School enjoyed a reputation such that its top students were competitive anywhere. This is borne out not only by the fact that Minnesota's reputation remained high after some of its graduates were added to the faculty, but also by the fact that Minnesota graduates were highly sought after for the faculties

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year giving International Law at this School. . . . If it were not for his race, I haven't the slightest doubt that he would have been called as a member of this faculty." Memorandum from Edmund Morgan to Everett Fraser (Feb. 26, 1938) (on file in Law Teachers Information File, Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

47. See Fraser Letter (Sept. 19, 1924), *supra* note 33.

48. See Report Distributed by Dean Fraser (Mar. 14, 1942) (unpublished report presented to the University of Minnesota Board of Regents) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota).

of other schools. For example, in 1958 the deans of three of the top four California law schools—UCLA, USC, and the University of California at Berkeley—were all Minnesota graduates from the Fraser years.<sup>49</sup>

Thus, through whatever combination of factors, by the 1930's Dean Fraser largely had solved the most pressing problem of his early years as dean by slowing the rate of faculty turnover without sacrificing the quality of his faculty. The 1938 faculty is a good example. At the head of this faculty was the Dean himself, whose scholarship in the area of property already has been detailed. Next was Professor Cherry,<sup>50</sup> whose practice court was considered by many to be one of the best in the country.<sup>51</sup> Professor Rottschaefers<sup>52</sup>—one of two teachers hired in the early twenties who weathered the faculty raids—was the school's first tax professor and the author of Minnesota's first income tax law.<sup>53</sup> Henry McClintock, the other early twenties success, was professor of pleading, labor law, and trade regulations.<sup>54</sup> Maynard Pirsig, later dean of the Minnesota Law School, taught criminal law and process and a course that he personally developed for the new curriculum entitled Judicial Administration.<sup>55</sup> William Prosser,<sup>56</sup>

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49. See *Three California Deans*, U. MINN. L. ALUMNI NEWS, January 1960, at 4.

50. In addition to his professional duties, Cherry also served on the Supreme Court of the United States Advisory Committee on Rules of Civil Procedure, to which he was appointed in 1935. In 1939, Cherry was elected President of the Association of American Law Schools and was appointed as an advisor to the American Law Institute in drafting a Code of Evidence. Fraser, *supra* note 32, at 560.

51. *Id.*

52. Henry Rottschaefers was a bulwark of the Fraser faculty. Born in the Netherlands, he came with his parents to Michigan while still a young boy. He attended Hope College and then moved on to the University of Michigan where he was both a student in the law school and an instructor in economics. He graduated in 1915 with a J.D. after serving as editor of the *Michigan Law Review* and being elected to the Order of the Coif. After a year of graduate study and an S.J.D. degree at Harvard, Rottschaefers practiced tax law in New York City for six years. He came to Minnesota in 1922. See Minutes of the University of Minnesota Senate, 1967-1968, at 97 (1968).

53. See *Rottschaefers to Retire*, U. MINN. L. SCH. NEWS, April 1957, at 1.

54. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF TEACHERS IN MEMBER SCHOOLS, 1938-1939, at 115 (1938).

55. See text accompanying note 164 *infra*.

56. Prosser received his A.B. degree from Harvard in 1918 and took his LL.B. from Minnesota ten years later. From Harvard he had gone into the Marines and then served from 1919-1921 as Secretary to the United States Commercial Attache in Brussels, Belgium. From Belgium, he returned to Harvard for one year of law school before moving to a job with Russell-Miller Milling Co. in Minneapolis. In 1926, he left that job to finish his law degree at Minnesota, where he was Note Editor of Volume 12 of the *Minnesota Law Review* and was elected to the Order of the Coif. After graduation, Prosser went to work for the Dorsey law firm in Minneapolis. Within a year he returned to the law school as a part-time lecturer, becoming an assistant professor in 1930. As part of his faculty responsibilities, he served as Assistant Editor to the *Minnesota Law Review* from 1930 until 1936. In that year, he became the Editor-in-Chief, a position

then three years away from publishing his authoritative work on torts,<sup>57</sup> taught that subject and sales. Professor Bade<sup>58</sup> lightened the Dean's work by taking over advanced property classes, while newcomers Kinyon,<sup>59</sup> Read,<sup>60</sup> Jennings,<sup>61</sup> and Riesenfeld,<sup>62</sup> with help from Professor Emeritus James Paige (then in his 48th year of teaching at Minnesota) and an array of lecturers, did the rest. The work of the

he retained until 1942. See ASSOCIATION OF AMERICAN LAW SCHOOLS, *supra* note 54, at 143; Prosser to Receive Award, U. MINN. L. SCH. NEWS, April 1963, at 4.

57. The first edition of Prosser's *Handbook on the Law of Torts* was published in 1941. In 1942, Fraser reported to the Regents that "reviews of it state that it is the outstanding work in this field in the past twenty-five years." Report Distributed by Dean Fraser, *supra* note 48, at 7.

58. Professor Bade grew up in Minnesota and entered the University of Minnesota after graduating from East High School in Minneapolis in 1913. His progress at the University was interrupted, first by tuberculosis and then by service in World War I, and it was not until after the War that he entered the University of Minnesota Law School. After service on the *Law Review* and election to the Order of the Coif, he graduated in 1922. Bade practiced law in Minneapolis for nine years until, in 1931, he completed a B.A. degree at the University of Minnesota and headed for a year's study and an LL.M. degree at Columbia. He returned to Minnesota and began his teaching career in the law school. He became a full Professor of Law in 1943 and served in that capacity until his retirement in 1961. See *Prof. Bade Retires After Three Decades At Minnesota*, U. MINN. L. SCH. NEWS, April 1961, at 1.

59. See generally ASSOCIATION OF AMERICAN LAW SCHOOLS, *supra* note 54, at 102.

60. Horace Emerson Read came to Minnesota after an extensive teaching career at one of his alma maters, Dalhousie University Law School. A Canadian, Read had interrupted his studies for three years of service in the Royal Canadian Air Force during World War I. He returned to Canada to complete his B.A. degree in 1921 at Acadia University. Read took his LL.B. from Dalhousie in 1924 and began lecturing there in 1925, after having received his LL.M. from Harvard. He was named professor of law in 1929 and served as Munro Professor of Law from 1931 to 1934. In 1933, Read also accepted a position as a research fellow at Harvard and earned his S.J.D. there the following year. From Harvard, he joined the Minnesota faculty as a professor in 1934. See *id.* at 145.

61. Edward Goodell Jennings obtained an A.B. (1926) and an A.M. (1927) degree from the University of Nebraska and earned an LL.B. degree from Harvard (1931). He then served as a clerk to Judge Kenyon of the United States Court of Appeals for two years before returning to Harvard to receive his LL.M. in 1934. After teaching for one year at the University of Iowa Law School, Jennings joined the Minnesota faculty in 1935. *Id.* at 96. Jennings is remembered in Minnesota as a man of amazing memory—a memory so good that he did not bother to bring books or notes into the classes he taught but was able to cite each case and make each point unaided. Interview with Maynard Pirsig, former Dean of the University of Minnesota Law School, in Minneapolis (Jan. 23, 1978).

62. Stefan Albrecht Riesenfeld was a refugee from the anti-Semitism of the Third Reich. Pirsig Interview, *supra* note 61. Born in Germany, he attended the Universities of Breslan, Munich, Berlin, and Milan and earned several advanced degrees in legal studies before coming to the United States. He received his LL.B. from the University of California in 1937, then studied for a year at Harvard before coming to Minnesota as a faculty member in 1938. See ASSOCIATION OF AMERICAN LAW SCHOOLS, *supra* note 54, at 148.

faculty was supplemented by librarian Arthur Pulling, who, through miracles of book acquisition, built the school's collection into the sixth largest and one of the best in the country.<sup>63</sup>

63. Testimony to Pulling's ability both to spot bargains and to interest others in their purchase is contained in correspondence between Pulling, Fraser, and the University's administration. Apparently, throughout the 1930's, the library was operated with a small budgetary allotment that was supplemented, when necessary, to purchase particular collections that Pulling wanted. *See, e.g.*, Letter from Everett Fraser to L.D. Coffman (May 23, 1936) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota). In an interesting example, Pulling wrote the following of a potential purchase in 1936:

There exists an unequaled opportunity to acquire a working library of foreign law at low costs due to the unsettled conditions in Germany. A bookseller from Berlin recently visited this Library and offered sets and single items from his own or his competitor's catalogue at 40% discount from the catalogue prices.

There is a feeling in Germany that all Jewish firms will have to close within eight weeks after the Olympic [*sic*] games are completed. The bookseller in question has a collection of 260,000 volumes which he must liquidate by that time.

Letter from Arthur Pulling to Everett Fraser (Apr. 24, 1936) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota).

Although no money was available for this purchase, *see* Letter from L.D. Coffman to Everett Fraser (May 25, 1936) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota), funds often were found by President Coffman for similar opportunities. When Guy Stanton Ford succeeded to the presidency upon Coffman's death in 1938, however, he had questions about the practice and pressed Fraser for an explanation. The response was contained in two long memoranda detailing the law library's policies and position.

The first, from Pulling to Fraser, made clear that Pulling's policy was, and always had been, to buy books of maximum permanent value at the sacrifice of present convenience. For example, no practitioner services were purchased, and Shepard's references and statutory compilations were kept to a minimum in order to maximize the ability of the school to purchase decisions of various tribunals, bar association reports, session laws, and legal periodicals. *See* Letter from Arthur Pulling to Everett Fraser (Feb. 23, 1939) (on file in Law School Library File, President's Papers 1936-1944, University of Minnesota Archives, Minneapolis, Minnesota). Pulling also used the following chart to demonstrate graphically how much was being done with a very small allocation:

TABLE LISTING NUMBER OF VOLUMES,  
BOOK EXPENDITURES AND SALARIES FOR 1936-1937  
FOR THE SIX LARGEST LAW SCHOOL LIBRARIES

	Number of Volumes	Book Expenditures	Salaries
Harvard	513,000	\$75,000	\$69,388
Yale	231,000	\$23,368	\$39,500
Columbia	205,000	\$25,000	\$31,000
Michigan	130,409	\$52,408	\$35,000
Northwestern	114,205	not reported	not reported
Minnesota	100,800	\$17,729	\$ 6,710

All in all, the faculty in 1938 was a distinguished one. But being distinguished and being an effective teacher are two distinct qualities. The former quality can be determined by looking at credentials; the latter quality, only by first-hand observation. According to what can be gathered from the perspective of the years, however, many of the 1938 faculty were as effective in the classroom as they were in their writings. On the whole, students of the era found themselves well-prepared, whether their careers took them to a Wall Street law firm<sup>64</sup> or outstate Minnesota.<sup>65</sup>

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*Id.* Of particular note in this table is Pulling's salary. Always paid considerably less than the teaching faculty, Pulling was unquestionably one of the best bargains in the school's history.

The second memorandum, from Fraser to Ford, made it clear that, during Fraser's years, the key to the library's success was Mr. Pulling:

No doubt, the generous assignment of surplus moneys each of the last ten years has contributed greatly to the present good condition of the law library. But the main credit for its condition is due to Mr. Pulling's effective use of the funds that he has had. When he came here in 1914, the library had only 17,000 volumes. Prior to 1929 there were no surplus assignments, and the annual appropriation was small. Yet in these twenty-five years Mr. Pulling has built up a library of over 100,000 volumes of unusually valuable material. The values that he has obtained for the money expended and his success in collecting valuable material without the expenditure of money have been remarkable and unequalled, I believe, by any other law librarian in the country.

Letter from Everett Fraser to Guy Stanton Ford (Mar. 11, 1939) (on file in Law School Library File, President's Papers 1936-1944, University of Minnesota Archives, Minneapolis, Minnesota).

However persuasive these memoranda may have been, they were not sufficient to stifle Ford's displeasure when later, in the spring of 1939, it was disclosed that Pulling had made purchases of nearly \$12,000 *over* his \$12,000 budget. Ford wrote to Comptroller Middlebrook, "As noble as has been the success of Mr. Pulling in building up the Law Library to its present outstanding rank, it does not excuse such a total disregard of the funds given him and within which he was supposed to operate." Letter from Guy Stanton Ford to W.T. Middlebrook (May 10, 1939) (on file in Law School Library File, President's Papers 1936-1944, University of Minnesota Archives, Minneapolis, Minnesota).

64. Although graduates fended for themselves in the job market for the most part, appointments to the New York firms were handled quite differently. Faculty minutes in the later Fraser years report that on at least two occasions the faculty as a whole sat to consider which of the year's seniors should be recommended to the New York firms. See Minutes of the University of Minnesota Law School Faculty (Nov. 10, 1938); *id.* (Dec. 6, 1937).

65. A primary objective of every law school is, of course, to prepare students for their future careers. But it is always difficult to predict just what a law student's future career might be. Law students' education, therefore, must necessarily prepare them for the widest range of endeavors. The diversity of experience for which Minnesota trained its students can perhaps be most clearly seen by comparing the reminiscences of two graduates from the early twenties. The text of these reminiscences appears in the Appendix, *infra* at pp. 1202-07.



## 2. *A New Law Building*

The second indigenous problem requiring early solution was to secure a new law school building. The law building that was constructed in 1889 (with an addition in 1904) had been described by Pattee as "designed, completed, and furnished with sole reference to the needs of [the law school]."66 In 1916, only 27 years after that statement was made, however, Dean Vance reported that there was an urgent need for a new building because Pattee Hall, "never well suited to the uses of the Law School, is now becoming much crowded, not only in its library, but in its office rooms and classrooms."67 Particularly disturbing was the fact that the library, now of great value, was stored in such an inflammable building as Pattee Hall.

Nevertheless, the move to build a new school was slow. In 1919, the law school was placed on the University's ten-year building program,<sup>68</sup> but there was no rapid action. Two years later, Fraser, in his first report as dean, made the fifth annual plea for quick construction. In summary form he listed the arguments: "a valuable library maintained in a most inflammable building; shelf space for the library utterly exhausted; reading-room space already inadequate; classrooms too small and most deficiently ventilated."<sup>69</sup> No other department in the University, he claimed, was in greater need. Yet four years later there was still no action. Finally, in 1925, the Regents set aside \$250,000<sup>70</sup> (ten times the amount allotted in 1889) to build and equip a new law school. While it was hoped that the new building might not cost that much, President Coffman assured Fraser that the Regents wished the new building to be totally satisfactory and adequate for the University's needs.<sup>71</sup>

Three years later, in 1928 (twelve years after the original request) the law school moved to the new building,<sup>72</sup> now known as Fraser Hall, that was to house the law school for fifty years. At the time, the law building undoubtedly seemed more than adequate. It offered stack space for a library of 100,000 volumes<sup>73</sup> at a time when the

66. Pattee, *Law School of the University of Minnesota*, 2 GREEN BAG 203, 206 (1890).

67. Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1915-1916, at 72, 74 (1917).

68. See Vance, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1918-1919, at 141, 143 (1920).

69. Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1920-1921, at 131, 137 (1922).

70. See Letter from L.D. Coffman to Everett Fraser (Nov. 16, 1925) (on file at MINNESOTA LAW REVIEW).

71. *Id.*

72. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1928-1930, at 6 (1928).

73. See Untitled Report on the Dedication of the New Law Building (n.d.) [hereinafter cited as Untitled Report] (on file at MINNESOTA LAW REVIEW).

school's actual library was half that size.<sup>74</sup> It included fourteen administrative and faculty offices and space for the *Law Review*,<sup>75</sup> when the school had only nine full-time faculty members.<sup>76</sup> And it provided a reading room capable of seating 260 students<sup>77</sup> for an enrollment of 275 to 300 students.<sup>78</sup> This reading room was described as one of the most beautiful in the country. With windows on all four sides, it provided ample natural lighting for daytime use, and special mirror lamps were mounted on each of the room's fourteen-foot oak tables for evening study.<sup>79</sup> Finally, the building was planned in such a way that future additions could double its size.<sup>80</sup>

The dedication of the new building was held on April 3, 1929, and those interested in the law school must then have felt secure about its future. Not only would the new building provide more adequate facilities, it also would allow for an expansion of the student body, which would help in controlling the faculty turnover problem. In addition, the dedication, occurring a little over six months before the stock market crash that signaled the start of the Great Depression, took place during the peak of an era of optimism and prosperity. On that night, after listening to the dedicatory address of former University of Minnesota Regent and then Associate United States Supreme Court Justice Pierce Butler, the future must have seemed very rosy.<sup>81</sup>

### 3. *Social Currents*

The 1920's were more, however, than just years of overinflated prosperity. They also were a time of intense, confusing, and often distracting social currents. Particularly in the early twenties, American society, disillusioned by World War I, seemed adrift and in conflict. One need not go beyond the confines of the University community to find evidence of the distractions and conflicts of the era.

One manifestation of societal discontent in the early twenties was the national red scare. The University was not immune from this phenomenon. For example, a series of letters between then Regent

74. The library contained 46,000 volumes. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1928-1930, at 6 (1928).

75. See Untitled Report, *supra* note 73.

76. UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1928-1930, at 5 (1928).

77. See Untitled Report, *supra* note 73.

78. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1927-1928, at 196 (1929).

79. See Untitled Report, *supra* note 73.

80. See *id.*

81. See Butler, *The Law School and the State*, MINN. CHATS., May 1929, at 6. Justice Butler's assessment was summed up in one sentence: "This school now occupies a good position; better than it ever had." *Id.* at 10.

Pierce Butler and Regent Fred Beal Snyder detailed Butler's concern with the influence of socialist radicals in the student body and on the University faculty. Is the student organization called the Seekers really just a front organization for socialist agitators?<sup>82</sup> Does a professor have the right to use the "subversive" book, *Theories of Social Progress*?<sup>83</sup> These are examples of questions that Butler posed to Snyder and sought to answer. Perhaps the most interesting inquiry Butler made was into the propriety of the University's inviting or allowing the "radical poet" Carl Sandburg, reportedly "a good revolutionist and an active member of the Communist party,"<sup>84</sup> to recite on campus.<sup>85</sup> President Coffman's response to this last concern conveys a bit of the frustration incident to running a campus in a time of such unrest. After noting that Carl Sandburg was "one of the five foremost living American poets," he lamented, "I really believe that we have not had a single speaker at the University this year, concerning whose coming I have not received some criticism."<sup>86</sup>

Another area of national turmoil that affected the University was the movement for women's rights and suffrage. Surprisingly, this movement did not seem to affect greatly the pattern of female enrollment at the law school (which stayed at between three and six a

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82. "I gain the impression that atheism, communism, free love, etc., is openly advocated in this organization, as well as the advancement of the purposes of a political [sic] party, namely the socialist party." Letter from Pierce Butler to Fred Beal Snyder (May 27, 1920) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

83. If, as suggested the other day by President Burton, any professor has a right to teach what he believes to be true, I am in error in suggesting that [*Theories of Social Progress*] ought to be eliminated. But I do not agree with Dr. Burton's statement, and I think it was more sweeping than he himself would have it.

*Id.*

The author of *Theories of Social Progress*, Arthur James Todd, was a University of Minnesota Professor of Sociology when the book was published. In the liberal reformist tradition, the book contains a vigorous criticism of the economic determinism of Marx and Engels, see A. TODD, *THEORIES OF SOCIAL PROGRESS* 214-35 (1919), and evidences a belief in both the possibility and desirability of progress, defined as "social amelioration according to some fairly definite standard of values," *id.* at 535.

84. Unsigned Letter (Jan. 18, 1921) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota). Internal evidence indicates that this letter probably was written by the then Secretary of the Saint Paul Citizens Alliance to Pierce Butler and that Butler thereafter forwarded a copy of the letter to Snyder.

85. See Letter from Pierce Butler to Fred Beal Snyder (Jan. 20, 1921) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota). In the letter Butler acknowledged that, during a previous telephone call to Snyder, he had made a mistake in calling Sandburg a "communist," rather than a "bolshevik," stating, "I do not hold all the refinements of definition in mind." *Id.*

86. Letter from L.D. Coffman to Fred Beal Snyder (Jan. 20, 1921) (on file in Fred Beal Snyder Papers, University of Minnesota Archives, Minneapolis, Minnesota).

year),<sup>87</sup> but it did affect the life of Professor James Paige. In 1895, Paige had married a school teacher named Mabeth Hurd. According to one account, Paige requested that Mabeth study law as a condition of their marriage in order to ensure their congeniality.<sup>88</sup> She did study law, and at the University, but as the time neared for her graduation, Paige tried to persuade her to quit. Although he wanted her to know about his work, he thought it unwomanly of her actually to be admitted to the bar or to engage in practice. Mabeth, however, listened to her father (or herself) rather than her husband. She graduated in 1899 and, though she never practiced law, she became heavily involved in the Women's Christian Association (the Mabeth Hurd Paige Residence Hall is named for her) and in the suffrage movement. After suffrage was secured she ran for, and, in 1922, was one of the first four women elected<sup>89</sup> to the Minnesota Legislature, where she served for twenty years. During her campaigns, her husband always worked the seamier sides of her district for her.<sup>90</sup> Yet throughout it all he apparently retained the belief that women should not be lawyers. To that end he engaged in the practice of calling upon his women students to report the more lurid cases in an apparent attempt to embarrass and discourage them.<sup>91</sup>

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87. Pirsig Interview, *supra* note 21.

88. See Fraser & Holbert, *Women in the Minnesota Legislature*, in *WOMEN OF MINNESOTA* 247, 252 (B. Stuhler & G. Kreuter eds. 1977).

89. See *id.* at 247.

90. See *id.* at 252-55.

Mrs. Paige's legislative district included Bridge Square, the part of Minneapolis in which it is least pleasant for a woman to linger. Night after night, during campaigns, Jimmy Paige made his way from saloon to flophouse canvassing for his wife's candidacy. Great was the delight of an unregenerate student, or former student, of law to come upon Paige in one of these improbable settings and to shout to the whole gathering, "Jimmy, fancy meeting you here."

J. GRAY, *THE UNIVERSITY OF MINNESOTA, 1851-1951*, at 164 (1951).

91. See Letter from Milton I. Holst to Dean Robert Grabb (Apr. 20, 1976), in *Reminiscences of Alumni Who Graduated 50 Years or More Ago from the University of Minnesota Law School* (1976) [hereinafter cited as *Reminiscences*].

A 1925 law school graduate, Helen Spink Henton, recalls Jimmy Paige's quandary in dealing with sexual topics in a class that included women students in this manner:

Jimmy [Paige] was not openly opposed to women in the Law School (he would not have dared, being married to Mabeth Hurd Paige) but one incident caused me to wonder as to how he really felt. He taught Criminal Law, which I would ordinarily have taken from him in the first year, and the word got around that he was more than a little upset by the prospect of having me in his class because there were certain subjects (rape and sodomy) which had to be taught but could not be mentioned in mixed company. Fortunately for him, I was finishing work toward B.S. and took only Contracts, Torts and Property that first year and got Criminal Law in summer school, and I never found out how it would have been handled.

Letter from Helen Sprinks Henton to author (Nov. 12, 1978).

#### 4. *Student Scholarship*

Another phenomenon of the early twenties, perhaps partially a result of the conflicts and instability of the era, was a problem with student scholarship and attitudes. In the law school, this problem was most acute in the first-year class of 1921-1922. In his report for that year, Dean Fraser maintained that "[n]ever in the experience of the faculty has such a class entered the school. It threatened to break down [the school's] traditions and morale."<sup>92</sup> Nor could Fraser find any excuses for the performance: "[O]utside employment had little to do with the failures"; "lack of application" did.<sup>93</sup> In particular, Fraser reported that the "record of the general fraternity members of the class [was] deplorable."<sup>94</sup> Perhaps this was in part because of the drop in morale of which Vance had warned,<sup>95</sup> but that cannot fully explain why, for the first time since its creation, the school's honor system had seriously failed, resulting in sixteen expulsions or suspensions for cheating.<sup>96</sup> Clearly, the first-year class of 1921-1922 had something other than scholarship on its mind. The situation apparently improved rather quickly, however, since by the next year, President Coffman could report a noticeable improvement in the scholastic interests and attainments of students throughout the University. This he "attributed partly to the fact that the views of citizens everywhere are more stable, less chaotic, more deliberate and rational, less emotional and hysterical than they were immediately following the war."<sup>97</sup>

But improvements in scholarship in the law school were not entirely the result of societal stabilization. The disasters of the 1921-1922 academic year elicited three quick responses from the law faculty. The first was to limit admission to those who had maintained a C average in their prelaw work.<sup>98</sup> Such an "honor point" requirement already was maintained by other colleges at the University, and it was feared that the less able students, turned away by the other colleges, were flocking to the law school.<sup>99</sup> A second response was to ensure greater faculty supervision of students by making all first-year

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92. Fraser, *supra* note 39, at 150.

93. *Id.*

94. *Id.*

95. See text accompanying note 31 *supra*.

96. See Fraser, *supra* note 39, at 150.

97. Coffman, *The President's Report*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1922-1923, at 5, 5 (1924).

98. "Candidates for admission to the Law School must have completed at least two years of work with an average, for all work completed, one grade above the passing mark . . . The minimum requirement is 90 credits and 90 honor points." UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1922-1923, at 6 (1922).

99. See Fraser, *supra* note 39, at 148-49.

teachers advisors to a segment of the first-year class and requiring a personal interview between each advisor and student.<sup>100</sup> A forerunner to the class-sectioning concept, this was the first attempt to institutionalize the counseling aspects of the professor-student relationship. Finally, the third response that Dean Fraser found helpful was "to inform entering students of the percentage of failures in prior years."<sup>101</sup> This undoubtedly was done through the vehicle of the now infamous "look to your left—look to your right" speech. Borrowed from Harvard, the speech was a part of the Dean's opening remarks to the first-year class. "Gentlemen," he advised, "look to the man on your left; now look to the man on your right. At the end of this year, one of you will not be here. At the end of three years, only one of you will remain."<sup>102</sup> This classic warning about the effects of the so-called revolving door admissions policy struck fear into the hearts of freshmen year after year and encouraged them early on to either "fish or cut bait."

The effect of these three responses and the general return to stability was gratifying. Scholastically, the 1922-1923 school year was the best to date in Fraser's experience at the University.<sup>103</sup> The percentage of first-year students passing all of their exams rose from 44.4 to 61.5, and the percentage of successful students in the total enrollment increased from 38.4 to 53.3.<sup>104</sup> Although these percentages may not seem very high by modern standards, in the days of "easy in/easy out" law school admissions policies, they were, if not good, at least a substantial improvement.

##### 5. *The Legal Profession*

With the return to scholarship by many of the students in the middle and late twenties, many of the challenges of that tumultuous era subsided. But one persisted with great tenacity. This was the problem of widespread dissatisfaction with the administration of justice and the lawyer's role in it. In part, dissatisfaction focused on particular lawyer activities—most often ambulance-chasing—that discredited the profession and were a disservice to society. But more fundamentally, the dissatisfaction was with what was perceived as a change in the role of all lawyers within society.

Professor James Willard Hurst, in *The Growth of American Law*, noted that there have always been two conflicting, but simul-

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100. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1922-1923, at 160, 161 (1924).

101. *Id.*

102. See Letter from Helen Spink Henton to Dean Robert Grabb (Apr. 20, 1976), in *Reminiscences*, *supra* note 91.

103. See Fraser, *supra* note 100, at 161-62.

104. *Id.* at 162.

taneously existing, public attitudes towards the legal profession. He explained that "[f]rom colonial days popular attitudes conceded to the bar a marked measure of honorable distinction. Yet this was always matched in popular lore by a character for sharpness, petteffogging, and greedy manipulation of technicality to oppress the weak and ignorant."<sup>105</sup>

The first attitude, and the most complimentary, is the image fostered by the lawyer-statesmen who so often have played important roles in our political life. Dean Fraser once noted that in earlier times, lawyers possessed greater learning than the great majority of their compatriots and often were turned to for opinions on matters of both public and private import.<sup>106</sup> Often, too, they were the most articulate and persuasive spokesmen for whatever view they espoused. These were men whose station in life allowed them the relative luxury of a broad education of which law was only a part. Their credibility and standing in the community were a result not solely of their position as lawyers but of the cumulative effect of their various roles as lawyers, scientists, farmers, financiers, and the like.

In the years since the formation of that image, the complexity of society and of law had increased dramatically. By the 1900's, lawyers had become full-time advocates who needed legal business for their livelihood.<sup>107</sup> Moreover, they operated in a society where many others also were highly educated and sophisticated. In short, lawyers no longer had a monopoly on learning, nor did they have the breadth of knowledge or experience that had made their predecessors so revered and respected.<sup>108</sup> By the twenties, a smaller percentage of statesmen were lawyers, and a higher percentage of lawyers were acting less like statesmen and more like entrepreneurs.<sup>109</sup> Further, overcrowding in the profession forced some to conduct their profession/business in a manner that was less than highly ethical.<sup>110</sup> For hungry attorneys, any claim, no matter how tenuous, represented a needed meal. These lawyers, the shysters and the ambulance chasers, created the second public image of the bar.

Together, the two images put a good deal of pressure on the

105. J.W. HURST, *THE GROWTH OF AMERICAN LAW* 251 (1950).

106. See *Proceedings of the Minnesota State Bar Association*, 22 MINN. L. REV. 11, 108 (Supp. 1937) [hereinafter cited as *1937 Proceedings*] (remarks of Everett Fraser) (quoting Newton D. Baker).

107. See J.W. HURST, *supra* note 105, at 252-54.

108. See *1937 Proceedings*, *supra* note 106, at 108 (remarks of Everett Fraser) (quoting Newton D. Baker).

109. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1938-1940, at 265 (1940).

110. See Stalland, "I Want to Be a Lawyer," 14 MINN. L. REV. 441 (1930).

nation's law schools. The image of the lawyer as civic leader continued, then as now, to attract throngs of students to the profession. At the same time, dissatisfaction with the operation of the legal system and the way in which some lawyers conducted their business posed a new challenge for the schools. As society's institution for the training of lawyers, the law schools began to be held accountable for failings in legal training, manifested both in the unethical conduct of some lawyers and, more broadly, in the operation of the legal system of which all were a part.

#### a. Increased Law School Admission Requirements

Generally, the response of the leaders of the bar and, more enthusiastically, the administrators of the leading schools, was to try to raise the standards of admission to law school and the bar. Nevertheless, in what was by then a familiar pattern, the leading schools set one standard, bar leaders lagged a bit behind, and the state supreme courts lagged still further behind. For example, ten years after Minnesota began to require two years of college as a prerequisite to law school admission, the American Bar Association Section on Legal Education endorsed an equivalent standard,<sup>111</sup> and four years after that, in 1925, the State of Minnesota adopted new requirements for admission to the bar, which only required that an applicant's prelegal training be a four-year high school course or a passing grade on University entrance exams.<sup>112</sup> In short, fourteen years after the University started requiring two years of college before law school, the state was still admitting those who had no prelaw training beyond high school.

The significant gap between what was required by university law schools and what was required by the states did much to foster an increase in the number and popularity of competing schools. In Minnesota, five and sometimes six schools operated throughout the twenties—two day schools and four night schools, with a fluctuating total enrollment of about 1000.<sup>113</sup> Nationally, the situation was similar. From 1900 to 1925, the number of the country's law schools increased from 102 to 167 and the number of students from 12,500 to 40,000.<sup>114</sup> By comparison, in the field of medicine, where a seven-year period of study was required with some consistency, the number of schools decreased over the same 25-year period from 163 to 79, and the num-

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111. See Fraser, *supra* note 39, at 144.

112. See Minn. Sup. Ct. R. Admission Bar 10, 160 Minn. 615 (1925).

113. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1928-1930, at 283, 285 (1930).

114. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1925-1926, at 148, 148 (1927).



ber of students fell from 25,000 to 19,000.<sup>115</sup> In light of these simultaneous trends, there is little doubt that, as Fraser noted, "[p]ersons seeking a profession are taking the easier way."<sup>116</sup>

The low bar admission standards and the proliferation of competing law schools posed a problem for the Minnesota Law School. Around the nation, law schools of similar quality were beginning to require three and even four years of college before admission.<sup>117</sup> At Minnesota, in the early twenties, annual tabulations demonstrated that those who had entered the law school with three or four years of college work were more successful than their two-year prelaw classmates.<sup>118</sup> These facts made the law faculty desirous of establishing new and higher standards of admission. Requirements that too far exceeded those of the state bar, however, would only deter students from studying at the University, prompting them to attend schools with lower admission requirements.<sup>119</sup> Consequently, throughout the twenties, stricter admissions requirements were forgone, but students were advised informally that prelaw study beyond two years was strongly recommended.<sup>120</sup> This informal approach was quite successful, as demonstrated by a comparison of the amount of prelaw training of students enrolled during the years 1920-1921 and 1929-1930:

	<u>Three or more years of prelaw training</u>	<u>Two years of prelaw training</u>	<u>special students (less than two years of prelaw training)</u>
1920- 1921	20%	41%	39%
1929- 1930	57%	41.5%	1.5% <sup>121</sup>

115. *See id.*

116. *Id.*

117. There is a clearly evident tendency on the part of university law schools to require larger preparation. Harvard University, the University of Pennsylvania, the University of Pittsburgh, and Northwestern University, have required a degree for admission to their law schools. Leland Stanford University and the University of California, which formerly required three years of college work, have this year changed to the degree requirement. Yale University, the University of Chicago, Columbia University, Western Reserve University, have required three years of college work. The University of Michigan Law School has given notice of the same requirement. The time is not far distant when most university law schools will be graduate schools.

Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1923-1924, at 120, 121 (1925).

118. *See id.*

119. *See Fraser, The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE PRESIDENT'S REPORT FOR THE YEAR 1926-1927, at 133 (1928).

120. The following sentence was added to the *1921-1922 Law School Bulletin* and repeated throughout the decade: "Although two years of college education satisfy the

The effect of higher admissions standards and better training at the University also can be seen in the results of the Minnesota bar exam. While many examinees failed, University graduates were usually successful. In 1929, for example, 92% of the Minnesota graduates passed the bar, while only 40% of all other candidates succeeded.<sup>122</sup> By the end of the twenties, the University was maintaining a rather constant pattern of contribution of new members to the bar. Out of a total enrollment of just under 300, seventy to eighty students were graduating each year, and the University was contributing about sixty percent of the annual admissions to the state bar.<sup>123</sup> Admission to the law school during this period was not further limited beyond the requirement of two years of college work with a C average, but it was clear that the school did not seek a larger enrollment or a larger number of graduates. Convinced that the profession was being overcrowded with incompetent and poorly trained individuals, the school contented itself with producing what it felt was the cream of an otherwise milky crop.

It is ironic, then, that by the time it appeared that the state was willing to raise its standards for admission to the bar, the University Law School did an about-face in its thinking about prelaw requirements. In 1928, the Minnesota Bar Association passed a resolution favoring the adoption of two years of college work as a requirement for bar admission.<sup>124</sup> This resolution was adopted by the Minnesota Supreme Court, effective March 1931.<sup>125</sup> Since the University maintained standards well above the requirements of the bar, this action by the state liberated it to join the nineteen other schools that in 1930 required three or more years of prelaw training.<sup>126</sup> In the late twenties, however, Minnesota took a second look at the performance of its students relative to the length of their prelaw training. Surprisingly, the resulting study indicated that, if anything, those with only two years of academic training did better than those with three or four years. A higher percentage of two-year admittees achieved high first-year grade averages than did three- and four-year admittees.<sup>127</sup>

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Law School's entrance requirements, prospective law students are urgently advised to take a full college course or at least three years if possible." UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1921-1922, at 5 (1921).

121. See Fraser, *supra* note 113, at 287.

122. *Id.* at 288.

123. *Id.* at 287.

124. See *Proceedings of the Minnesota State Bar Association*, 13 MINN. L. REV. 11, 135, 150-52 (Supp. 1928).

125. See Minn. Sup. Ct. R. Admission Bar 10, 181 Minn. 702 (1930).

126. See Fraser, *supra* note 113, at 286.

127. See Fraser, *Academic Preparation for Law School*, 26 ILL. L. REV. 797 (1932).

If two years of academic training equipped one for legal study as well as three years, there was little reason to require three years of training as an admission requirement to law school other than the desire simply to keep up with the admissions requirements of other schools of the same quality. More important, it followed that the problems with the quality of the legal profession and the administration of justice could not be corrected merely by attempts to extend prelaw training requirements. The conclusion that followed was that the problem with prelaw training and legal education itself was more one of content than of duration. This discovery, although partly the product of the study of prelaw academic training, was also partly the product of a second of Dean Fraser's projects—the development of the research functions of the law school.

#### b. Law School as a Research Agency

Fraser began developing the concept of the law school as a research agency as early as 1922, in his second report to the President.<sup>128</sup> Charging that “[t]he law and its administration have not kept up to the necessities of changing conditions,” he asserted that the “common law is becoming more confused, contradictory and uncertain” and “[o]ur legislative enactments are perhaps worse.”<sup>129</sup> With the courts too busy and the legislature ill-equipped, Fraser found it remarkable that there was “no competent expert agency in the state charged with the duty of working for the improvement of the law.”<sup>130</sup> To fill that void, he proposed for the University law faculty a much more active role than it or many others throughout the country ever had undertaken. Working, in particular, in association with the State Bar Association on legislative reforms, many of the faculty became the drafters of significant new legislation during the next twenty years. Indeed, the law school faculty has increasingly played an important role as a research resource for the state and nation, investigating and advocating reforms in many areas of the law. What began with Dean Vance's work on the conciliation court and was expanded by Fraser's enthusiastic approach has remained a major function of this and every good law school. For Fraser, however, it was only the seed of much larger reform.

#### C. THE MINNESOTA PLAN

The soil from which the major innovation of the Fraser administration grew was the Dean's experience, resulting from his emphasis

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128. See generally Fraser, *supra* note 39, at 146-47.

129. *Id.* at 146.

130. *Id.* at 146-47.

on the research function of the school, of serving on a state crime commission.<sup>131</sup> The impetus for the innovation was the surprising resistance that the Dean encountered, particularly from members of the legal profession, to the reforms the commission's study had shown necessary. Lawyers, he discovered, were frightfully attached to the status quo. "[T]he legal profession," he charged, "is all brakes and no engine. If our simian ancestors had been lawyers, we should still be walking on all fours."<sup>132</sup>

The conservatism and indifference on the part of the legal community that Fraser witnessed induced him to reanalyze his approach to the problem of improving judicial administration. The research and reform projects then being undertaken at the University and other legal centers across the country would be useless, Fraser concluded, unless there was professional and public willingness to act upon them. Such willingness was conspicuously lacking among the lawyers he encountered. This was so, he concluded, because of a deficiency in professional training—a deficiency in his and other law schools.<sup>133</sup> This discovery was the beginning of a thirty-year experiment with the Minnesota Plan.

The problem with legal education, as it appeared to Fraser and to his faculty in the late twenties, was its preoccupation with client care. The entire three-year curriculum at Minnesota and elsewhere was directed at providing the student with "the information and skill necessary to enable the lawyer to serve his client." It had not, wrote Fraser, "given the information, skill or interest necessary to enable the lawyer to serve the state through improvement in the administration of justice."<sup>134</sup> Law schools produced lawyers who acted not only as client caretakers but also as legislators, judges, and other civic leaders—yet law schools actually prepared their students for only the first of these functions. In no law school in the country did Fraser find in the regular curriculum courses on the administration of justice, the organization of courts, the selection of judges and their function, the role of the jury, and the history of law, criminology, or penology.<sup>135</sup>

Fraser's plan, adopted by the law faculty and detailed in an eight-page letter from Fraser to President Coffman in February of 1930, was to experiment by offering two courses of study for the law degree. The first would follow the traditional law school curriculum

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131. Pirsig Interview, *supra* note 21.

132. Fraser, *An Integrated Course of Training for Lawyers*, 8 AM. L. SCH. REV. 714, 714 (1937).

133. See *The Four Year Law Course*, 15 MINN. L. REV. 77, 78-80 (1930) (introduction to the student section of the December 1930 issue of the *Minnesota Law Review*, taken substantially from Letter from Everett Fraser to L.D. Coffman (Feb. 3, 1930)).

134. *Id.* at 80.

135. See *id.*

as it always had been offered, changed only by a requirement of three years of undergraduate work before entry, in accordance with the current policy of most of the nation's leading schools. This was the 3-3 plan. The second course of study also would require a total of six years of higher education, but it would allocate only two years to prelaw studies; the other four years would be spent in law school. The major goal of this 2-4 arrangement was to create time, without short-cutting the client care curriculum, for the legal culture courses that Fraser envisioned. These courses, such as judicial administration and legislation, were missing from the traditional curriculum, and would be offered in the fourth year of law school when the student, by then familiar with the substance of the law, could better appreciate courses that placed it in perspective. During the fourth year, the students also would be free to take courses outside the law school that, like the legal culture courses in the law school, would be more meaningful after the bulk of their professional training was complete.<sup>136</sup>

The 2-4 course of study, subsequently called the Minnesota Plan,<sup>137</sup> was arranged so that students would receive two degrees. At the end of the first two years in the law school, when the study of the strictly substantive courses was complete, the student would be awarded a B.S. degree. For those who studied law merely for business purposes (and, it was hoped, for those who had experienced some academic difficulty in law school), this would be a terminal degree. For those who wanted to be lawyers, the LL.B. would be available after two more years, the first devoted to adjunctive technical courses, such as practice and pleading, the second to cultural courses both in and out of law school.

In short, the 1930 proposal of Dean Fraser and his faculty requested two related but separable actions from the Regents. First, it requested that the length of study required to earn a law degree be extended to six years. Second, it requested that, for at least part of the law class, the extra year of study be experimentally added, not in prelaw work, but in the law school and that it be composed of courses both in and out of the law school that would broaden the student's concept of his profession. The result, in the opinion of the law faculty, would be

a better type of lawyer. He will have a broader vision, will see law as a phase of human relations varying in time and place. His interest in the public aspects of his profession will be increased. He will appreciate better the place of law and courts in society. His acquaintance with other legal ideas and systems will give him a flexi-

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136. See *id.* at 81-82.

137. See *A Minnesota View of Legal Education*, 13 CAN. B. REV. 414 (1935).

bility of mind now too often lacking. Is it too much to hope that he will develop a philosophy of law that will give him a sense of direction in his professional activities?<sup>138</sup>

The Fraser proposal was not simply to follow a trend established by other leading law schools; it was a major innovation. Consequently, the Board of Regents took some time to study it. One of the Regents, Duluth attorney John Williams, solicited the opinion of the Minnesota Supreme Court and was concerned to find Chief Justice Samuel B. Wilson skeptical about the 2-4 plan.<sup>139</sup> Fraser, however, solicited letters of support from other judges (of the federal appellate and district courts, the state supreme court, and the state district courts) and from bar leaders (presidents of the Minnesota, Hennepin County, and Ramsey County bar associations) to counteract this skepticism.<sup>140</sup> Perhaps the most persuasive supporting letter came from the Honorable Edward F. Waite, a trial judge of 25 years experience.<sup>141</sup> Judge Waite wrote,

It is all too true, as Dean Fraser says, that, speaking generally, the present generation of lawyers is not much interested in judicial progress. The older men are hopelessly indifferent. The best of the younger group are at the most concerned with questions involving ethics, organization and merely vocational standards of admission to the profession. They accept methods of procedure that waste time and sometimes hinder justice, and tolerate misfits and anachronisms in substantive law, almost without question; are unaware of improvements or promising experiments in other jurisdictions, and do not seem to be sensitive to the wide-spread criticism to which the methods and results of law administration are subject nowadays.

The fault is not with the men,—speaking still of the best,—but with their training. . . .

I have come deliberately to the opinion that the cure for the present evils to which the administration of justice in the United States—Minnesota, to be specific—is subject, is to be found *only* in the development of the morale of the legal profession, through a system of legal education which will bring men to the bar with a trained sense of obligation to the profession, and through the profession to the public.<sup>142</sup>

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138. *The Four Year Law Course*, *supra* note 133, at 83.

139. See Letter from John Williams to Samuel B. Wilson (Mar. 13, 1930) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota).

140. See Letter from Everett Fraser to L.D. Coffman (Apr. 2, 1930) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota).

141. See Letter from Edward F. Waite to L.D. Coffman (Mar. 25, 1930) (on file in Law School File, President's Papers 1916-1942, University of Minnesota Archives, Minneapolis, Minnesota).

142. *Id.*

These letters, together with Fraser's own advocacy, had their effect. The Board of Regents approved the law faculty's proposal on April 26, 1930.<sup>143</sup> Fraser's experiment was underway.

#### D. THE THIRTIES

The viability of the Minnesota Plan, designed to answer the problems of one decade, was enhanced by the intensification of those problems in another. During the twenties, the focus was on specific problems of the legal profession and judicial administration. The thirties brought problems of national and international scope that highlighted, at least in Fraser's mind, the failure of lawyers to perform their duties of civic leadership. The Depression, the New Deal, and a Supreme Court wed to substantive due process all evidenced the problems that could result when traditional legal education ignored the social sciences.<sup>144</sup> In addition, the worldwide crisis of democracy in the late thirties demonstrated the catastrophic effects of a void in public leadership—a role that lawyers, it seemed, had forsaken. Fraser, confident that the Minnesota Plan offered part of the solution to these broad problems, championed it with continuing enthusiasm and success.

##### 1. *Success of the Minnesota Plan*

By 1936, over sixty percent of the entering freshmen were opting for the four-year course, up from 25% in the entering class of 1931.<sup>145</sup> This was so even though the first group of four-year students, upon realizing that their three-year classmates were a year ahead of them in the job market, unanimously petitioned for exemption from the fourth year.<sup>146</sup> And it was so even though some of the 1936 freshmen already had completed three or four years of college and would have been eligible for the three-year curriculum.<sup>147</sup> The faculty, heartened by the student response and their successes in the classroom, voted to make the four-year program even more attractive by making a B.A. degree a prerequisite to the three-year curriculum (that is, a 4-3 plan), effective in 1938.<sup>148</sup> Talk also began of making the four-year course the only one available and then expanding it by another

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143. See Minutes of the University of Minnesota Board of Regents (Apr. 25-26, 1930).

144. See Fraser, *supra* note 109, at 265-66.

145. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1934-1936, at 200, 200 (1937).

146. Pirsig Interview, *supra* note 21.

147. See Fraser, *supra* note 145, at 200.

148. See *id.*

year—making it a 2-5 plan.<sup>149</sup> But here, caution was urged lest the University law school again encourage its in-state competition, which had decreased from six law schools in 1925-1928 to three in 1935. In 1936, the University was educating about 46% of the law students in the state, compared to 21% in 1923-1924. Imposition of too many additional requirements on its students would only jeopardize the school's attractiveness to prospective students and its influence among the state's lawyers.<sup>150</sup>

Another means to the same end of extending the students' legal studies was to prescribe the two years of prelaw work that the school required. Thus the *1936-1938 Law School Bulletin* announced that certain prelaw courses (comprising about seventy percent of a student's first two years of college)<sup>151</sup> would be required for the bachelor of laws degree through the four-year program. These courses included freshman English, problems of philosophy, logic, ethics, American government and politics, comparative European governments, principles of economics, English constitutional history, and general psychology.<sup>152</sup> While these courses had previously been recommended, scheduling problems had made them difficult to take. At that time, they were rescheduled, however, and thus made available.<sup>153</sup> By this requirement, the law school at least partially extended its course of study into the fifth and sixth years.

Two years later, in 1938, the three-year curriculum was dropped entirely and Minnesota became the first law school in the country to require a four-year course of study regardless of the amount of prelaw work.<sup>154</sup> This policy, however, was short-lived; in 1940, with World War II on the horizon and the selective service system calling more and more students into military service, the faculty voted to postpone implementation of its four-year requirement and allow those who entered the school with baccalaureate degrees in 1938 to finish in three years.<sup>155</sup> Thus the 2-4 and 4-3 plans continued to operate side by side throughout the War.

Faculty enthusiasm, measured by actions designed to increase the effectiveness of the four-year plan whenever possible, was not the

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149. See *id.* at 201. In regard to the proposed content of the fifth year of law school, see Fraser, *supra* note 132, at 717.

150. See Fraser, *supra* note 145, at 201, 203.

151. See Fraser, *supra* note 132, at 715.

152. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1936-1938, at 7 (1936).

153. See Fraser, *supra* note 145, at 201.

154. See Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1936-1938, at 229, 229 (1938).

155. See Minutes of the University of Minnesota Law School Faculty (Sept. 12, 1940).



only indication of the Minnesota Plan's success. Another was the attention given the experiment by outside observers. For example, Esther Lucile Brown, in *Lawyers, Law Schools, and the Public Service*, a 1948 work that generally chastised legal education for its failure to train lawyers adequately for public service, noted that "[o]ne law school, that of the University of Minnesota, has been interested for nearly two decades in training lawyers to assume more broadly the policy-making function in regard to the larger issues of justice and the legislative process."<sup>156</sup> Ms. Brown went on to commend in particular three of Minnesota's new legal culture courses—Professor Pirsig's course in Judicial Administration,<sup>157</sup> Professor Riesenfeld's Modern Social Legislation course,<sup>158</sup> and Professor Read's Legislation course.<sup>159</sup>

Attention also came from other schools. In 1942, Dean Fraser reported to the Board of Regents that since Minnesota had adopted the 2-4 plan, five other schools, including the University of Chicago, had followed suit and that "[m]embers of the faculties of Harvard, Yale, and Columbia have told us that they believe that we are following the right course, but that they cannot adopt it because the B.A. tradition is too strong in the East."<sup>160</sup> Fraser also reported that members of the Harvard faculty recently had ranked Minnesota as the fifth or sixth best law school in the country.<sup>161</sup>

## 2. *Innovations in Curriculum*

As Esther Brown indicated, the most significant improvement of the Minnesota Plan was the development of the unprecedented legal culture courses. When the Plan first was presented, Fraser recognized that much work would be required to prepare such courses before the first fourth-year students would take them in 1934. Each would necessarily be the result of exhaustive, groundbreaking research by a professor. Consequently, Fraser included in his proposal a request, which was granted, for three additional professors over the next five years.<sup>162</sup> Realizing too that a significant amount of enthusiasm and excitement would be necessary for the course development actually to result in a viable classroom experience, he seemed to reserve these assignments for his youngest and newest professors.<sup>163</sup> These men realized the opportunity that Fraser was offering and were infused

156. E. BROWN, *LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE* 109 (1948).

157. *See id.* at 137-39.

158. *See id.* at 135-37.

159. *See id.* at 222-26.

160. Report Distributed by Dean Fraser, *supra* note 48, at 5.

161. *See id.* at 9.

162. *See* Fraser, *supra* note 113, at 293.

163. Pirsig Interview, *supra* note 21.

with his infectious enthusiasm for the project.

The paradigm example of Fraser's approach was the experience of Professor Pirsig and the development of the first of the new courses, Judicial Administration. Pirsig, a Fraser pupil, graduated near the top of his class in 1925 and went to work as attorney for the Minneapolis Legal Aid Society. With senior University of Minnesota students spending a portion of their time in his office under his tutelage, and Dean Fraser and Professor Cherry on the Legal Aid Society's Board of Directors, Pirsig had considerable contact with his alma mater. When Professor Fletcher became ill in the middle of a course on suretyship, Fraser asked Pirsig to take over the class. In 1929, Pirsig, still only a part-time faculty member, inherited the unpopular course on pleading and successfully reworked it. Consequently, when the Minnesota Plan was approved in 1931, Pirsig was Fraser's natural choice to develop one of the new courses. Fraser knew, too, where he wanted Pirsig to go for ideas. With financial aid from private sources, Fraser was able to offer Pirsig a year's study at Harvard under Dean Roscoe Pound and Professor Felix Frankfurter, followed by a year in England. After these two years, Pirsig returned and put together the course on Judicial Administration that he taught for over twenty years.<sup>164</sup>

While the opportunity that Fraser offered Pirsig was the most dramatic of Dean Fraser's gestures to encourage and support the pioneering effort to create the new courses, it was not the only one. Whether through allocation of classroom time, study time, or scarce financial resources, Fraser's commitment to these courses and the Minnesota Plan was unwavering. His enthusiasm for the project, transmitted through his leadership to the faculty, had an immeasurable impact on the success of the Minnesota experiment.

### 3. *Maintenance of Quality in Traditional Curriculum*

As important as the development of new courses was, the Minnesota Plan's success also was dependent on the quality of the old client-care curriculum. In the rush to develop the new courses, Fraser could not and did not ignore the school's bread and butter courses. He realized that, in the main, maintenance and improvement of a law school's substantive and procedural curriculum are a function of procuring and leading a capable faculty. As described earlier, the faculty problem was one of Fraser's earliest and most severe challenges—but one that he handled successfully.<sup>165</sup> Professor Rottschaefter, one of Fraser's earliest faculty additions, is an example of the measure of Fraser's success. A specialist in taxation and constitutional law,

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164. *Id.*

165. See notes 30-65 *supra* and accompanying text.

Rottschaefer was productive both in and out of the classroom. In addition to other accomplishments, he wrote the original state income tax law and contributed substantially to a brief in the case that upheld its constitutionality.<sup>166</sup> He also wrote an extensive casebook on constitutional law, published in 1932,<sup>167</sup> which the United States Supreme Court promptly outdated by reversing itself on the New Deal legislation.<sup>168</sup> Rottschaefer served for 23 years as the University's faculty representative to the Big Ten Athletic Conference,<sup>169</sup> succeeding James Paige in that post. But of most importance, his performance in the classroom was, according to many students, superb. Other professors—McClintock, Bade, Prosser, Kinyon, Riesenfeld, and Lockhart, to name just a few—were of the same quality. Operating in an atmosphere dominated by Dean Fraser's insistence on excellence in scholarship and teaching, Fraser's faculty made certain that Minnesota's students were among the most well-trained lawyers anywhere.

#### 4. *Improving the Quality of the Legal Profession*

Even though Fraser was confident that Minnesota provided its students with a first rate legal education, his concern about the profession of law and the quality of people it attracted continued. By the early thirties, the national enthusiasm for the study of law had begun to wane. In Minnesota, this trend began earlier, and the number of students studying law decreased from a high of 1073 in 1923 to 474 in 1931. About half of those students studied at the University.<sup>170</sup> Nevertheless, Fraser's concern with overcrowding of the profession continued, as demonstrated in his 1934 speech to the Minnesota State Bar Association entitled *Selecting Recruits for the Bar*.<sup>171</sup> "I believe," he said,

that this overcrowding is harmful to the profession and to the public that it serves. The farmer knows that if he seeds too thickly the young sprouts will crowd each other and that none of them will attain to their full maturity. . . . It is my own belief that nothing would do more to raise the level of the legal profession than greater

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166. See *Reed v. Bjornson*, 191 Minn. 254, 253 N.W. 102 (1934); *Rottschaefer to Retire*, *supra* note 53, at 1.

167. H. ROTTSCHAEFER, *CASES ON CONSTITUTIONAL LAW* (1932).

168. *A Tribute to Professor Henry Rottschaefer on His Retirement*, 42 MINN. L. REV. 1, 7 (1957) (testimonials by E. Bade, O. Freeman, W. Lockhart, and W. Prosser).

169. See *Rottschaefer to Retire*, *supra* note 53, at 4.

170. Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1930-1932, at 111, 112-13 (1932).

171. *Proceedings of the Minnesota State Bar Association*, 19 MINN. L. REV. 11, 44 (Supp. 1934) [hereinafter cited as *1934 Proceedings*].

restrictions upon the admission to it. By requiring better quality we would secure the requisite reduction in numbers.

Although too many are studying law, there are not too many who are qualified for the work of the profession. It is my opinion that there are not enough able men studying law and far too many who should never be admitted to it.<sup>172</sup>

Because legal training was useful for other occupations, Fraser originally believed that the University should continue to provide education to all. The problem of overcrowding, he thought, could be solved by a bar exam that selected only those of "the highest attainments in character and training" for admission into "the sacred precincts of the halls of justice."<sup>173</sup>

Recognizing, however, the waste and frustration involved in this procedure, Fraser began to advocate a search for a way of screening candidates *before* as well as after admittance to law school. Thus, in the mid-thirties the law school began to experiment with various methods of predicting legal aptitude before admission.<sup>174</sup> Unfortunately, the tests developed were at that time unacceptably unreliable and could not safely be used as an exclusionary tool.

Another potential screening device was required registration with the state bar examiners before an applicant entered law school. With the then current system, the bar examiners were under considerable pressure to pass candidates who had spent three or four years training for the profession. If, however, most of the unfit could be screened out before making such a large commitment of time and effort, the injustices incident to a restrictive bar examination could be eliminated. To that end, Fraser proposed a system of registration by which prelaw students would submit to prelaw examinations, intelligence tests, and screening by the State Board of Bar Examiners.<sup>175</sup> If they were successful, they could be admitted to practice upon completion of law school and the bar exam. If not, they could still study law, but with the understanding that their study was for business and not professional purposes. Although a preregistration system of this type was recommended to the Minnesota Supreme Court by the State Bar Association in 1939,<sup>176</sup> the plan was never adopted.

Given the failure of his proposals for predictive tests, the major thrust of Fraser's concern about preadmission aptitude was to inform would-be students directly of the problems that they would encounter and allow them to make the choice. He asked them to read the article,

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172. *Id.* at 47.

173. Fraser, *supra* note 170, at 111.

174. See Fraser, *supra* note 145, at 202.

175. See 1934 *Proceedings*, *supra* note 171, at 49-51 (remarks of Everett Fraser).

176. See *Proceedings of the Minnesota State Bar Association*, 24 MINN. L. REV. 9, 142, 181-82 app. (Supp. 1939).

"*I Want to Be a Lawyer*" by Knute D. Stalland,<sup>177</sup> which highlighted how difficult it was for one not possessed of advantageous connections to practice law ethically and still make a living. To this, Fraser added his own warning about the intelligence and dedication required to succeed in the field of law, having a short piece entitled *Law as a Profession: Choice and Training* added to the school's bulletin. Its first paragraph read as follows:

Recent surveys in several states reveal that there are more lawyers than can make a living in practice, that overcrowding is resulting in unethical conduct, and that lawyers with poor scholarship records are not likely to succeed in practice. On the other hand, no profession offers greater opportunities to the man of unusual attainments. There are not enough such to supply the private service and the public leadership that the country needs.<sup>178</sup>

In 1938, another method was employed to discourage poor prospects from entering the profession. The law faculty, concerned that students in the lower portion of their class were not adequately prepared to practice (which was indicated by the fact that several of them failed the bar exam), took steps to prohibit such students from attaining the professional degree. The faculty's action was to make entry into the second two years of the four-year curriculum conditional upon completion of at least one of the first two years with a grade average at least five points higher than the lowest passing grade (which was 70). It was projected that this requirement would eliminate over twenty percent of the students who previously had continued their studies for the professional degree and, it was hoped, would save the faculty the embarrassment of having its graduates fail the bar exam (even though over 96% still were passing the exam).<sup>179</sup>

##### 5. *Law Student Financial Aid*

Although Fraser and the faculty tried to discourage the less able student, they wanted to make sure that the better student would be fully able to take advantage of the education they offered. In order to support themselves financially while attending school, a great number of students found it necessary to work. If their jobs required too much of their time, the faculty encouraged them to curtail their academic load and extend their period of training.<sup>180</sup> But the real

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177. Stalland, *supra* note 110. The faculty authorized a printing of 1000 copies of the article for "distribution at the discretion of the Dean." Minutes of the University of Minnesota Faculty (Mar. 17, 1930).

178. UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1939-1941, at 4 (1939).

179. See Fraser, *supra* note 154, at 229, 231.

180. See, e.g., UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1947-1949, at 12 (1947); UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1921-1922, at 10 (1921).

concern was with the financial status of those students who otherwise were eligible and willing to do law review work.<sup>181</sup> Because the time constraints involved in working on the *Law Review* precluded any opportunity to earn money on the side, some of the school's best students had been forced to forgo the law review opportunity in order to stay in school. The answer for these students was scholarships, and consequently Dean Fraser was continuously conducting a campaign for such funds. When he began, no scholarships were available.<sup>182</sup> By 1927, three scholarships of \$150 each (the yearly tuition was \$120) were offered to law review students as gifts from the Law Alumni Association, the *Law Review*, and the faculty.<sup>183</sup> In 1930, twenty such scholarships were awarded to self-supporting student editors and a loan fund also was begun.<sup>184</sup> Eight years later, during the school's semicentennial year, a fund raising drive among the law alumni netted \$18,281 for the Law Alumni Loan Fund,<sup>185</sup> which then granted two-year interest-free loans to students with a B average. By 1948, when Fraser retired, the Law Alumni Fund had grown to about \$30,000; a separate \$25,000 loan fund had been bequeathed to the school by former lecturer turned Senator and Secretary of State, Frank B. Kellogg; and over \$20,000 was available for scholarships (\$9500 of which had been donated by the faculty).<sup>186</sup> These resources made it possible not only to ensure that some students would not be forced to forgo the law review experience for monetary reasons, but also that a number of other good students would be aided. The next law school scholarship effort would be made on behalf of highly qualified first-year students who were being lured away to schools with more scholarship assistance.<sup>187</sup> But for the time being, this had to wait.

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181. The *Law Review's* own financial situation was significantly improved by an agreement that Fraser worked out with the State Bar Association, whereby the *Law Review* became the official journal of the Bar Association and was sent to all its members. The subscription fees were given to the *Law Review*. See 7 MINN. L. REV. 40 (1922). The results of this symbiotic relationship were that the State Bar Association experienced a tremendous growth in membership and the *Law Review* experienced many years of financial stability and a large readership. Begun in 1922, this association lasted until 1948.

182. See Fraser, *supra* note 100, at 162.

183. See Fraser, *supra* note 119, at 134. The first *Law Review* scholarship was awarded to student William L. Prosser. See Minutes of the University of Minnesota Law School Faculty (Apr. 29, 1927).

184. See Fraser, *supra* note 113, at 288.

185. See Coffman, *The President's Report*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1936-1938, at 1, 102 (1938).

186. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1947-1949, at 10 (1947).

187. See Fraser, *supra* note 144, at 269.

## E. THE FORTIES

How to attract and assist better students, to discourage less able ones, and to implement further the goals of the Minnesota Plan innovation—all these concerns of the late thirties had to wait because of the disruption caused by World War II. The War and its effects hit the Minnesota Law School suddenly and dramatically and dominated its operation for the entire decade of the forties.

The first sign of the growing worldwide hostilities appeared in the law school faculty minutes of December 1, 1938, recording the faculty's vote to join the faculties of other law schools throughout Europe and North America in the Amsterdam resolution, condemning the abuse of human rights reported in the German concentration camps.<sup>188</sup> The next indication of the coming conflagration was the decision of the faculty in September 1940 to postpone its abolishment of the 3-3 plan "[i]n view of the delay in entering professional life that will be involved in the selective service act."<sup>189</sup> This postponement allowed current third-year class members who had entered law school with B.A. degrees to finish their schooling at the end of that year; the four-year requirement remained in effect for the rest of the class.

The real impact of the War, however, was not felt until the Japanese attacked Pearl Harbor on December 7, 1941. The next day, the faculty voted to schedule examinations at the mid-year for all subjects completed at that time and for all students who expected to quit school before the end of the academic year.<sup>190</sup> Ten days later, provision was made for special examination of members of the fourth-year class who were drafted or volunteered. If they passed the exam, they would be awarded their degree early and would not have to return to school at the War's end.<sup>191</sup> Additionally, the school, previously on a year-long calendar, switched to a quarter system to facilitate easier exit from and reentry to the school.<sup>192</sup> Each of these accommodations was designed to facilitate the great fluctuation in student enrollment that the War induced.

The following graph of annual fall registrations at the law school shows most strikingly the nature of the fluctuating enrollment problem:

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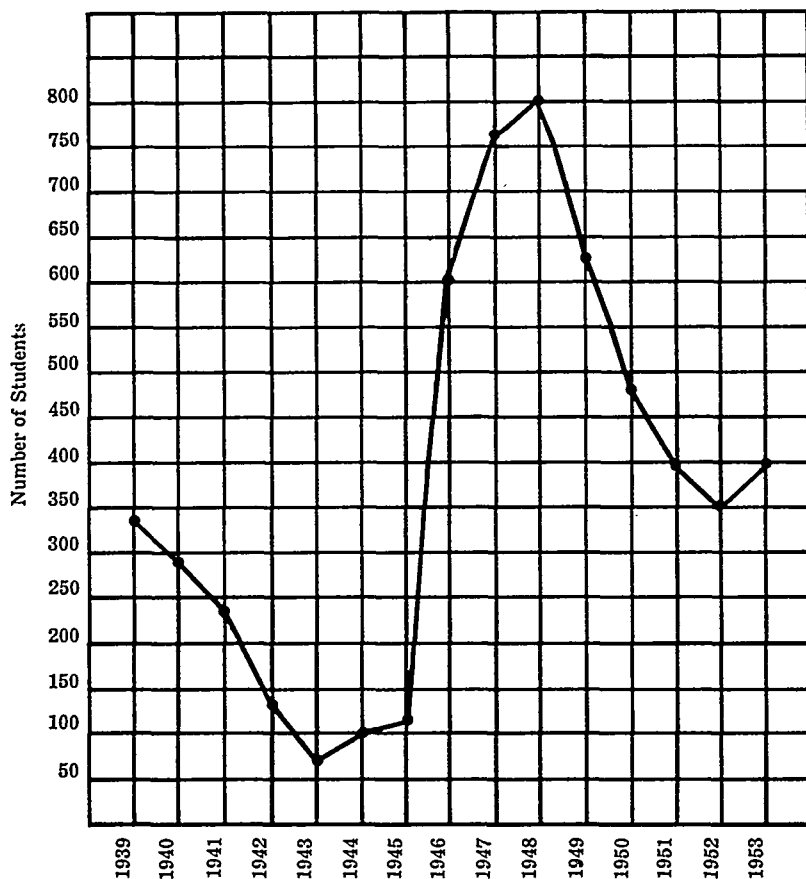
188. See University of Minnesota Law School Faculty Minutes (Dec. 1, 1938).

189. *Id.* (Sept. 12, 1940).

190. See *id.* (Dec. 8, 1941).

191. See *id.* (Dec. 17, 1941).

192. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1943-1945 (1943).



*Fall Registration*

As the graph indicates, most of the students left in 1942. By 1944, Dean Fraser could report that no further decreases were expected because there were then “no men in the school eligible for military service.”<sup>193</sup> The faculty also fluctuated in size. By 1944 four or more members had left the eleven-man faculty of 1938.<sup>194</sup> The remaining

193. Fraser, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1942-1944, at 130 (1944).

194. *See id.*



students and faculty struggled to keep the school's program and traditions alive. The *Law Review* continued to be published with the faculty doing much of the work itself, and although the curriculum was curtailed, the basic course work continued. In a crippled condition, the school hobbled on.

The end of the War, however, far from signaling a return to normalcy, brought even more dramatic challenges to the school. Enrollment increased almost 500% in 1946 and peaked at almost 800 students in 1948. Operating on the quarter system, the school was in session throughout the year, admitting veterans as they returned. The *Law Review* resumed normal operations with the election of its first post-War board in the winter of 1946; many of its members resumed law review work even before enrolling that fall or winter.<sup>195</sup> The faculty grew to its former size, but then added only two new positions to handle a student body more than twice as large as before the War.<sup>196</sup> The faculty, of course, had to teach more hours per week and more students per hour as enrollment swelled. But the students were older and more mature, serious, and intent in pursuing their goals. Thus the larger class sizes did not foster inordinate disruption.

There can be little doubt, however, that discussion and interaction, helpful in all law courses (and vital to the legal culture courses of the Minnesota Plan), were stifled to some extent by the large classes and the students' desire to get on with their careers. What may have been a provoking and stimulating class when attended by fifty students was probably one only to be endured when taught to 150. Additionally, the courses that had been available in other colleges as supplements to the law curriculum for fourth-year students were closed to law students after the War because of overcrowding.<sup>197</sup>

Despite these difficulties, Fraser and his faculty remained strongly committed to the Minnesota Plan and its objectives. They believed that when the enrollment and society returned to normal, the 2-4 plan would continue to be the best approach to legal education available. Sadly, normalcy was still a few years off when Dean Fraser, after 28 years at the head of the law school, reached the age of 68 and was due for retirement. In June 1948, after witnessing the graduation from the law school of his son, Donald M. Fraser, the time

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195. Telephone Interview with Richard Maxwell, Professor of Law, University of California at Los Angeles (Apr. 15, 1978).

196. They were Harvard graduate William B. Lockhart, later dean of the law school, and Minnesota graduate Robert C. McClure, whose teaching career has spanned more than three decades and continues today.

197. Interview with Robert McClure, Professor of Law, University of Minnesota, in Minneapolis (Nov. 10, 1977).

had come for Minnesota's most powerful and influential dean to step down.<sup>198</sup>

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198. Fraser's retirement in 1948 was not to be the end of his career. He stayed in Minnesota another year to head a five-person regional loyalty board and to teach at the still overcrowded law school. He then moved to the faculty at Hastings College of Law in San Francisco, where he taught until a second retirement in 1965 at age 85. In 1951, while still at Hastings, Fraser was called back briefly to Minnesota to attend a convocation in his honor. On that occasion he was awarded the honorary degree of Doctor of Laws, and the Law School Building was renamed Fraser Hall. A few years later, in 1957, Governor Orville Freeman named one of Minnesota's lakes in his honor as well. Dean Fraser died on November 17, 1971, at the age of 92. See *Minneapolis Star*, Nov. 18, 1971, § B, at 23, col. 3; *Minneapolis Sunday Tribune*, Apr. 6, 1958, Upper Midwest Section, at 4, col. 1; *Minneapolis Tribune*, Nov. 18, 1971, § B, at 9, col. 4.

## APPENDIX

REMINISCENCES OF TWO UNIVERSITY OF MINNESOTA  
LAW SCHOOL GRADUATES

Two lawyers who were students at the University of Minnesota Law School in the early twenties under the deanship of Everett Fraser have detailed some of their memories from that period. The first is Norris Darrell, the son of a preacher, a member of the class of 1923, and one of the World War I veterans who moved through the school early in the Fraser period. The second is Helen Spink Henton, one of two women graduates in the class of 1925. Portions of their reminiscences are set forth to exemplify the diversity of experiences for which the University of Minnesota Law School trained its students.

## Norris Darrell

“Upon graduation from law school, I did not immediately seek a position in a law firm—although Professor Cherry volunteered to help. Instead, with a fellow classmate—Bill Freng—I made a trip to the Far West primarily for the purpose of looking the situation over with a view toward possibly practicing in the West. Our first serious stop was in Seattle where we stayed with Alfred Scheppe, who had previously graduated from our Law School with a brilliant record, including Editor-in-Chief of the Law Review, and who was a member of a Seattle law firm as well as Dean for a time at a local law school.

“An important incident occurred one night while I was staying with Al. Dean Fraser called me from Minneapolis and asked whether I could return to Minneapolis by August 15th. I expressed reluctance, saying we were planning to spend all summer circling the West Coast. He pressed and I asked ‘Why the hurry?’ His reply in substance was that the American Bar Association will be meeting at that time in Minneapolis, that the famous Lord Birkenhead is coming over from London to address the meeting, that Mr. Justice Butler (appointed to the United States Supreme Court some months before) is giving a dinner for him on the evening of August 15th and that Justice Butler has invited me to come. This surprised and puzzled me as I did not know Justice Butler, though I knew his daughter in law school, and I expressed my surprise to the Dean. He quickly responded to the effect that he should have explained the situation more fully, that the Justice wanted a law clerk from the graduating class and had asked him for a recommendation, and that I was the one recommended, and that the Justice wanted me to come to the dinner a half hour early so that he could have a talk with me before the other guests arrived. Needless to say, I assured the Dean I would be there.

"I served as Justice Butler's law clerk for two terms of Court, 1923-1925. [Mr. Darrell was the first Minnesota graduate ever to serve as clerk to a Supreme Court Justice.] Meanwhile Professor Dowling had become a distinguished Professor at Columbia Law School. While there Dowling became a close friend of Columbia Dean Harlan Fiske Stone. Later, Stone on retiring as Dean rejoined the New York law firm of Sullivan & Cromwell with which he had started practice before becoming a Professor. Before long, however, he left the firm again on being appointed, successively, Attorney General of the United States and Justice of the United States Supreme Court.

"As my period of service with Justice Butler was coming to an end, Professor Dowling got in touch with me several times and urged that I consider seriously practicing in New York City and that I talk with Justice Stone about it.

"But I had an inclination and had expected to return to Minnesota, which Justice Butler clearly wanted me to do. In an effort to persuade me, Justice Butler compared the lives of two brilliant young lawyers who had come to his firm in St. Paul. Some years later each received offers from New York City law firms. One accepted the New York offer and the other did not. The one who accepted worked hard in his practice, made a lot of money and gave a lot to charity but he never married. He rode the subways, was little known in his community and played no part in community affairs. The other, who stayed in St. Paul, lived very comfortably with his wife and family on his income of a hundred thousand to one hundred fifty thousand dollars a year, was widely known and greatly admired in his community in which nothing of great importance happened without his participation. Which of these, he implied, do I most admire?\*

"However, pursuant to Professor Dowling's urging I went to see Justice Stone. Justice Stone recommended that I go to New York and see the head of Sullivan & Cromwell, Royall Victor, who incidentally had been his law school classmate.

"I decided that I should at least visit New York before returning to Minneapolis to get married. But I was in a quandary as to what to

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\* "Years later on a visit to Washington I dropped in to see Justice Butler. We had a good laugh over the above story and what had subsequently happened. The man who happily stayed in St. Paul had subsequently become the United States Attorney General where he made a distinguished record. On leaving that office, he did not go back to his St. Paul law firm but undertook to make a new life in New York City where he joined and later became head of the law firm then headed by his old associate in St. Paul, who, unlike him, had accepted the early New York offer.

"Their names? The St. Paul associate who early elected New York was Carl Taylor. The associate who early elected to remain in St. Paul until he became Attorney General was William D. Mitchell, the son of one of Minnesota's most distinguished Chief Justices."

do. I visited Sullivan & Cromwell and Mr. Victor offered me a job. I visited two other leading Wall Street law firms that had been recommended to me and each of them offered me a job. I consulted Professor Dowling again and he thought that I should accept the Sullivan & Cromwell offer. However, since I was planning to return promptly to Minneapolis I wanted to consult with Dean Fraser. When I explained the situation to the Dean, he asked to see the letterheads of the three firms listing the names of their partners. As he studied the letterheads I held my breath until he suddenly threw down one of them, pointed to the name of a partner far down the list who was unknown to me and said I should by all means go there because he had taught that man when he was teaching Property—Future Interests at a law school in Washington, D.C., that the man never kept notes in class as expected—his notebook being usually blank except for doodles—but that he regularly had the highest marks in his class. Moreover, he said, the fellow was very ambitious and was bound to go far and I should go to Sullivan & Cromwell where he was. I was delighted and relieved. His name? John Foster Dulles. Needless to say, I decided to follow the advice of Professor Dowling and Dean Fraser, a decision I have never regretted.”

Letter from Norris Darrell to Dean Robert Grabb (June 17, 1976), in *Reminiscences*, *supra* note 91.

Mr. Darrell became a partner in Sullivan and Cromwell in 1934 and has now been with the firm for over 50 years. At the urging of John Foster Dulles, he concentrated on the still relatively new field of taxation and eventually became the partner responsible for that department. As an outgrowth of his study, he became active in a variety of advisory committees and wrote and lectured widely upon the subject of taxation. One of Mr. Darrell's speeches was delivered in 1957 to the Hennepin County Bar Association at their meeting honoring retiring Professor Rottschaefer. Mr. Darrell's interest in tax law and its reform also led him to become a member of the American Law Institute, and for fifteen years he served as its President. Mr. Darrell has received numerous awards for distinguished service to the legal profession, including, most recently, the 1978 Gold Medal Award of the New York State Bar Association for Distinguished Service in the Law and the 1977-1978 Harrison Tweed Award of the National Association of Continuing Legal Education Administrators. Long an active supporter of the law school, Mr. Darrell received, in 1962, the University of Minnesota Law Alumni Association award for distinction in law practice and public service.

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Helen Spink Henton

“I REMEMBER taking the bar examinations and the apprehension with which we all faced the immediate future as to whether we

would be admitted to practice and if admitted, where we would find work. Except for the top men in the class who would go to New York, Chicago or big firms in the cities, or for those who would enter family firms, the worry was legitimate, for the depression which was to engulf the country in '29 was already in evidence out here and placement was difficult for the men and all but impossible for a woman. Several in the class said that they would let me know if they found anything more than for themselves, but only one did so, and that was a rather unlikely opening, tho it worked out well.

"I REMEMBER applying at every prestigious firm in both cities, and some not so prestigious. The only questions I was asked were how many words a minute I could type and what experience I had had. I was not about to become a part of a typing pool, and I knew the second question was a brushoff, for none of us had experience. Without a job, which paid in these firms from nothing to \$50 a month to start, we could not get experience and without a [*sic*] experience we could not get a job.

. . . .  
"I had no feeling at the time, or now, that they were wrong. They had an image and I question how a client, referred to a woman, would have reacted. It took a lot of spade work to make a place for woman to find acceptance in the practice, and I knew when I went into it that I would have to make my own place.

"I REMEMBER, after not being able to get a job even in personnel in one of the department stores and being as discouraged as I have ever been, getting a letter from Bob Henton. (We later married, but then he was just another class mate). He suggested that I might get some experience by going into a nominal partnership with his actual partner at Morton, locating at Franklin. Anything was better than nothing, and I looked into it, and it became Dalzell & Spink, Lawyers, in Franklin, a town of 500 which never before and never since has had a lawyer, or really needed one.

"I REMEMBER that office in Franklin on September 1, 1925, with my brand new shingle, brand new diploma and brand new admission to practice. It was located in the only two story brick building in town, up a flight of wood steps, a very large reception room and a very small private office, heated as winter came on by an airtight fed by split wood stored in the closet in the reception room. The rent was \$7 a month, about what it was worth. In the winter the frost was thick on the bay window in the big room until ten in the morning and the only heat for my private office, furnished with a second hand desk, my typewriter and two chairs, was thru the open door.

"I got by on borrowing. I got a loan of \$1,000.00 to buy a Ford coupe and a \$350 library and I had a little over a hundred left for living expenses. Dalzell loaned me his name, and introduced me at

the Bank, where he suggested that I should handle collections. He also said they did not really need the director's table and all of the chairs in back of the banking room and 'borrowed' them for my office, loaned me some file cases and a blank case from his own office at Morton, and I was in business.

“I lived on a few small collections (I still hate collections!), a \$50 probate fee, a man who was not a vet but who insisted on vaccinating hogs and needed representation, the collision of two cars at a blind corner, and a farm-village fight. It was not much but it was experience and I enjoyed those months.

“I REMEMBER the letter from Elmer Jensen, class of '23, who was then head of the Legal Aid in St. Paul, telling me that he was leaving for private practice and that he would recommend me to replace him. I got the job and with it my first real pay check, \$150.00 a month. It does not sound like much, but it was pretty average.

“Most of the work was divorce, largely default, along with battles with loan sharks, occasional litigation, a nice steady case load which I handled with the assistance of my investigative assistant. When I got too confident I could always count on someone to put me in my place, as when a woman, consulting about a divorce, said that she could not afford a real lawyer so she came to me.

“I REMEMBER prejudice, but I also remember that it did not last long. A couple of instances might be of interest, for that sort of prejudice is pretty much a thing of the past now that we have a greater acceptance of women.

“I recall one matter which was going to trial, a hotly contested divorce. The man was represented by a member of a highly respected firm in St. Paul. How he ever got into a Legal Aid matter I do not know, but I did find out that he was antagonistic to women lawyers and had announced publicly that he had never tried a case with a woman on the other side and he was not about to. He had little choice in this matter, short of telling his client to find another lawyer, for I was not only the head of the Legal Aid—I was it. He consistently refused the ordinary courtesies such as a continuance I had asked because of a conflict.

“Both of our clients were deaf and without speech, and they had fought with insulting notes written on anything they could put hand to, mostly paper bags, posted on doors or wherever they could find a handy place, and the fighting stopped only when the lights were turned off. The situation had become so unpleasant that a divorce seemed the only solution. We worked thru an interpreter. My opponent was known for his dramatic courtroom presence and a loud and fine voice, along with considerable legal ability.

"The first thing that happened when we went to trial was that he unloaded a bulging brief case filled with torn paper bags and shoved a revolver toward me across the table, along with a selection of the notes—of which the less said the better. The revolver belonged to my client, confiscated by her husband during a fight, and the notes were her part of the written battles. I read a sampling and had to believe that they were written by my sweet, quiet, blameless client (on whom I had not done enough home work). My opponent looked pleased and smug as he watched me read one after another of them. Then I laughed. Here I was stuck with Miss Lily White—and it struck me funny. My opponent was startled.

"The trial went on deliberately for working in sign language is slow. One interpreter quit because she refused to repeat an answer she deemed too filthy, and nothing would persuade her, even the threat of jail for contempt of court, and we had to find another not so fussy. My opponent ran out of scratch blocks—we had to write all questions, submit them to each other and then to the interpreter. I shoved a couple across to him and he muttered that he was getting writer's cramp, the first civil words he had spoken to me since the case started. The final blow came when Judge Bechhoeffer, without taking the matter under consideration as was customary, instructed me to draw the findings for my client, immediately after we both had rested.

"I thought that was the end of the matter, but some three weeks later he called to ask whether I would stop in his office when I had time. I was curious and made time. What he wanted was my opinion as to whether *his daughter* should study law. I told him that if she had the brains and the courage, she should. Later we became rather good friends. That is what mostly happens to prejudice—it disappears."

Letter from Helen Spink Henton to Dean Robert Grabb (Apr. 20, 1976), in *Reminiscences*, *supra* note 91.

Although Mrs. Henton left the practice of law when she was married in 1930, she remained grateful for the education she had received. It had, she said, "taught me how to work, how to learn, and as is the case with any lawyer worth his/her salt, how to be a quick study in dealing with new problems, legal or not." *Id.* She concluded, "If I had it to do over, knowing what I know now, I would do it again. It was not easy, but I did not expect it to be easy. What I know is that out of that funny little red building with the great faculty I got a preparation for life that was second to none." *Id.*



