

1979

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## Recommended Citation

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

## Part IV: The Pirsig Years—A Time of Transition, 1948-1955†

Robert A. Stein\*

*When Everett Fraser retired as Dean of the University of Minnesota Law School in June of 1948, he left to his successor a school ripe for change. The length and the strength of Dean Fraser's administration, together with the dramatic effects of World War II on the size and atmosphere of the school, had stifled the articulation and resolution of several problems. In the years following Fraser's retirement and the War's conclusion, issues long muted began to surface and developments long postponed began to require attention. Through his seven-year administration, the new dean, Maynard E. Pirsig, preserved the school's tradition of excellence in its faculty and curriculum, while the groundwork was laid for the difficult transition to a new faculty-dean relationship. Under Dean Pirsig's direction, the law school maintained the course established by his predecessors in the continuing pursuit of excellence.*

Dean Fraser's 28-year administration of the University of Minnesota Law School had been a powerful one. Significant innovations in the school's educational program had been made at Dean Fraser's initiation early in his administration; thereafter, these innovations were carefully developed. Once the Minnesota Plan,<sup>1</sup> Fraser's major achievement, had been instituted, stability had become either a goal or a natural consequence of his style of leadership. With a reputation

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The first three articles in this series described the development of the University of Minnesota Law School under Deans William S. Pattee, William Reynolds Vance, and Everett Fraser. 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); 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); Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part III: The Fraser Years—A Time of Excellence and Innovation, 1920-1948*, 62 MINN. L. REV. 1161 (1978).

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1. The Minnesota Plan, which allowed students with two years of undergraduate work to enter the law school on a four-year plan is discussed in Stein, *In Pursuit of Excellence—A History of the University of Minnesota Law School Part III: The Fraser Years, 1920-1948*, 62 MINN. L. REV. 1161 (1978).

not only for brilliance in scholarship and teaching but also for a powerful personality and firm adherence to his views,<sup>2</sup> faculty deference to his leadership was natural.<sup>3</sup> Surrounded by a supportive and familiar faculty,<sup>4</sup> the last years of Fraser's administration had been concerned largely with the War's effects on the school, and not with any major reevaluations of its program or educational approach.

Fraser's retirement and the return to normalcy after World War II, however, encouraged more frequent expression of faculty opinions about the future of the school and about the relationship between the faculty and its dean. The faculty, following the trend in legal education circles across the country, was anxious that its concerns regarding the school and the faculty's role in its administration be heard. Minnesota's early deans, like early law school deans elsewhere, had held a great deal of power. Though they governed with the aid of their faculty, they had great personal authority over their schools' operation. But, perhaps as a consequence of the growth in the size and professionalism of faculties, both in the law schools and elsewhere, more of the power began to shift to the faculty.<sup>5</sup> At Minnesota this transition, slowed under Fraser's strong leadership, was to accelerate upon his retirement.

2. Testimony to the dominance of Dean Fraser's personality is given in the University of Minnesota Senate's eulogy to him: "[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 . . . It is too bad that so many students and teachers saw only this aspect of the man." Minutes of the University of Minnesota Senate, 1971-1972, at 144 (1972).

3. In the words of one of Fraser's faculty members—Dean Pirsig, 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 his resentment with a red line coming up the back of his neck and a face flushed and stern.

Interview with Maynard E. Pirsig, Professor Emeritus, University of Minnesota Law School, in Minneapolis (Nov. 15, 1977) [hereinafter cited as 1977 Pirsig Interview].

4. There had been only three new faculty members in the nine years preceding his resignation.

5. Testament to the development of this transition in the Yale Law School, for example, was given in its 1940 memorial to William Reynolds Vance:

The organization of the schools within Yale University is such that Mr. Vance did not wholly escape from the problems of administration. The dean of this law school is a moderator, not a dictator. The government of the school and the direction of its policies are in the hands of the faculty, including young as well as old.

WILLIAM REYNOLDS VANCE, 50 YALE L.J. 195, 196 (1940) (memorials by A. Corbin, A. Gulliver & E. Morgan).

Although the assertion of greater authority by the faculty was one of the strongest currents that made the post-Fraser years turbulent, other challenges also existed. The fluctuations in enrollment caused by World War II were no sooner over than the Korean War began to have similar effects. The faculty, after several years of stability, began to lose some of its continuity as a result of growth in size and a return to a significant amount of turnover. Finally, the library, after years of continuous growth, had filled to overflowing the structure built for it in 1928 and needed additional space. These challenges ensured that the post-Fraser period was not to be an easy one. Following Fraser's unusually stable administration, the new dean, Maynard E. Pirsig, was to preside over a seven-year period of tumult and transition, a difficult but productive period for the school.

#### A. THE DEAN

Maynard E. Pirsig was born in 1902 on an Iowa farm just south of the Minnesota border.<sup>6</sup> After attending country school and high school in Elmore, Minnesota, Pirsig came to the University of Minnesota, where he completed three years of undergraduate work before beginning his law school studies. Surprisingly, Pirsig's decision to pursue a legal education was more his father's choice than his own. His father, a farmer and livestock dealer with no formal education beyond the eighth grade, had an abiding but unsatisfied ambition to be a lawyer himself and strongly desired that his son would vicariously satisfy this ambition. To that end, Pirsig's father supported him through law school.<sup>7</sup>

Entering the law school in the early twenties, Pirsig studied under a faculty largely chosen by Dean Vance but then under the administration of Dean Fraser. Henry Ballantine, Wilbur Cherry, George Osborn, and Wesley Sturges were some of the outstanding scholars under whom he studied.<sup>8</sup> But his first grade was from Jimmy Paige, a faculty member from the time of Dean Pattee, who gave him a D in Criminal Law, a course Pirsig was later to teach. According to Pirsig, that grade was probably the most valuable one he received, because it frightened him into more serious study.<sup>9</sup> Whatever the source of his motivation, Pirsig's subsequent academic career was stellar (including an A in the next class he took from Paige),<sup>10</sup> culminating in service as Note Editor of Volume 9 of the *Minnesota Law*

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6. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF TEACHERS IN MEMBER SCHOOLS, 1936-37, at 121 (1936); 1977 Pirsig Interview, *supra* note 3.

7. 1977 Pirsig Interview, *supra* note 3.

8. *Id.*

9. *Id.*

10. *Id.*

Review and election to the Order of the Coif in 1925.<sup>11</sup>

After graduation from law school, Pirsig continued his association with the University by becoming the attorney for and director of the Legal Aid Society of Minneapolis, where he tutored senior law students in the clinical component of their education.<sup>12</sup> After serving with the Society for several years, Pirsig began his teaching career by filling in for the ailing Professor Henry Fletcher in a course in suretyship; he then took over, on a part-time basis, the course in pleadings.<sup>13</sup> His success in the classroom and his experience with the Legal Aid Society made him a logical choice when Dean Fraser, in initiating the Minnesota Plan, sought someone to develop some of the courses that the plan required. After two years of study in preparation for this work, first at Harvard and then in England, Pirsig returned to the University in 1933 to develop the highly successful course in Judicial Administration, a course he subsequently taught for almost four decades.<sup>14</sup>

When Pirsig began his work on the subject of judicial administration, the field was largely uncharted and, therefore, one of his first challenges was to prepare a suitable collection of cases and materials for the course. His pioneering work in this area became of widespread benefit to legal education when, in 1946, after twelve years of experience with the material, he produced *Cases and Materials on Judicial Administration*<sup>15</sup> for use in his own and similar courses.<sup>16</sup> By the time of its publication, interest in the area and the course had grown significantly and the book was well received. Fifteen journals reviewed the book during the next year.<sup>17</sup> In one, Elliott E. Cheatham, Professor of Law at Columbia, wrote:

The book is unusually well done. . . .

. . . .

. . . If we are to have a bar which will adjust its methods to the needs of our changing society, its on-coming leaders must be willing

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11. Personnel File, Maynard E. Pirsig (on file at Administrative Office, University of Minnesota Law School, Minneapolis, Minnesota).

12. 1977 Pirsig Interview, *supra* note 3.

13. *Id.*

14. Pirsig taught Judicial Administration for 35 years, from 1934 until retirement in 1970.

15. M. PIRSIG, *CASES AND MATERIALS ON JUDICIAL ADMINISTRATION* (1946).

16. Although this was Pirsig's first fully original work, in 1944 he had revised Mark B. Dunnell's *MINNESOTA PLEADING* (2d ed. 1914). Reworked again in 1956, the book is now known as *PIRSIG ON MINNESOTA PLEADING* (4th ed. 1956).

17. *E.g.*, Anderson, Book Review, 41 *AM. POL. SCI. REV.* 367 (1947); Cheatham, Book Review, 95 *U. PA. L. REV.* 568 (1947); Dunn, Book Review, 22 *NOTRE DAME LAW.* 234 (1948); Frank, Book Review, 56 *YALE L.J.* 589 (1947); Gardner, Book Review, 60 *HARV. L. REV.* 680 (1947); Leflar, Book Review, 32 *A.B.A.J.* 665 (1946); Shafroth, Book Review, 47 *COLUM. L. REV.* 333 (1947); Taylor, Book Review, 42 *ILL. L. REV.* 410 (1947).

to think through its basic assumptions. In this essential task, Professor Pirsig's clear-sighted and hard-headed book would be of great aid.<sup>18</sup>

In another, George K. Gardner of the Harvard Law School noted, "Here are a thousand pages on the purpose and problems of our profession which will well repay thoughtful study by any student, teacher, or practitioner of the law."<sup>19</sup>

Three years after the Judicial Administration casebook was published, Pirsig produced, under the title *Cases and Materials on Legal Ethics*,<sup>20</sup> the first of five editions of a book dealing with legal ethics. Originally, the work was short and was intended only for use in a course supplementing the more comprehensive Judicial Administration course. In the preface to the 1957 second edition, entitled *Cases and Materials on the Standards of the Legal Profession*,<sup>21</sup> Pirsig summarized the treatment envisioned:

[The course on judicial administration] comprehends a broad study of the aims, methods and improvement of the administration of justice in judicial tribunals . . . . The course in professional standards is a study of the standards that control or guide the individual practitioner and of the aims, ideals and responsibilities of the legal profession as reflected in those standards. It supplements, it does not replace, the course in judicial administration.<sup>22</sup>

By 1966, however, when Pirsig produced his third edition of this material, newly retitled *Cases and Materials on Professional Responsibility*,<sup>23</sup> the course was no longer of supplemental status, but was viewed as a course of intrinsic importance and amenable to independent treatment. Reviewer Douglas H. Parker, Professor of Law at the University of Colorado, wrote that "as a finished, polished treatment of the subjects selected for treatment in the earlier supplementary versions [the new edition] now stands as an excellent tool for the systematic presentation of a one or two hour course in professional responsibility."<sup>24</sup>

In addition to establishing himself as a leading authority in the fields of judicial administration and legal ethics, Pirsig developed an

18. Cheatham, *supra* note 17, at 568-69.

19. Gardner, *supra* note 17. Of course, not all of the reviews were so glowing. For example, Judge Jerome Frank, of the Second Circuit Court of Appeals, described the book as valuable but "[n]evertheless . . . laid [it] down . . . with a keen sense of disappointment" generated by gaps in the materials he thought were obvious. Frank, *supra* note 17 at 589.

20. M. PIRSIG, *CASES AND MATERIALS ON LEGAL ETHICS* (1949).

21. M. PIRSIG, *CASES AND MATERIALS ON THE STANDARDS OF THE LEGAL PROFESSION* (1957).

22. *Id.* at xi.

23. M. PIRSIG, *CASES AND MATERIALS ON PROFESSIONAL RESPONSIBILITY* (1966).

24. Parker, Book Review, 19 J. LEGAL EDUC. 228, 232 (1966).

expertise in criminal law, a course that he often taught. While classroom duties helped strengthen him in those fields of law, Pirsig's extensive commitment to public service involved him in other areas. On the national level, Pirsig has had a long career as a member of the National Conference of Commissioners on Uniform State Laws—he was appointed a commissioner in 1947<sup>25</sup> and is now a life member<sup>26</sup>—and chaired the committee that drafted the Uniform Arbitration Act<sup>27</sup> and the Uniform Juvenile Court Act.<sup>28</sup> He also was a member of the United States Advisory Committee on the Federal Rules of Civil Procedure from 1951 through 1957, and of the United States Advisory Committee on the Federal Rules of Criminal Procedure from 1960 through 1970.<sup>29</sup> On the state level, Pirsig chaired the Minnesota State Bar Association committees<sup>30</sup> that drafted the Youth Conservation Act<sup>31</sup> and the County Court Act,<sup>32</sup> and was the reporter for the Minnesota Legislative Committee on Revision of the Minnesota Criminal Code.<sup>33</sup> He also was a member of the Advisory Committee that drafted the Minnesota Juvenile Court Act,<sup>34</sup> and was the Secretary of the Minnesota Judicial Council.<sup>35</sup>

Still active at the present time, Pirsig has recently been a member of the Minnesota Supreme Court Commission on Juvenile Courts,<sup>36</sup> and is the liaison representative of the National Conference of Commissioners on Uniform State Laws to the American Bar Asso-

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25. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1947, at 22 (1947).

26. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1976, at 9 (1976).

27. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1955, at 17 (1955).

28. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1968, at 23 (1968).

29. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS, 1961, at 271 (1961).

30. Interview with Maynard E. Pirsig, Professor Emeritus, University of Minnesota Law School, in Minneapolis (Jan. 23, 1978) [hereinafter cited as 1978 Pirsig Interview].

31. MINN. STAT. §§ 242.04-.55 (1976 & Supp. 1977).

32. MINN. STAT. §§ 487.01-.40 (1976 & Supp. 1977).

33. See MINNESOTA LEGISLATURE COMMISSION TO STUDY JUVENILE DELINQUENCY, CRIME, AND CORRECTIONS, REPORT OF THE DRAFTING SUBCOMMITTEE ON REVISION OF THE CRIMINAL LAW, *Progress Report No. 1*, at 3 (Oct. 1957).

34. MINN. STAT. §§ 260.011-.57 (1976 & Supp. 1977); see MINNESOTA LEGISLATIVE INTERIM COMMISSION ON PUBLIC WELFARE LAW, REPORT ON PROPOSED JUVENILE COURT ACT 87 (Jan. 1959).

35. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS, 1964, at 275 (1964).

36. See SUPREME COURT JUVENILE JUSTICE STUDY COMMISSION, REPORT TO THE MINNESOTA SUPREME COURT 1 (1976).

ciation Committee revising the standards of criminal justice.<sup>37</sup>

Finally, in addition to his teaching and his scholarly and community work, Pirsig had a brief tenure as a Minnesota Supreme Court Justice. In the fall of 1942, vacancies had left the court with only five justices, and it was falling behind in its caseload. Consequently, the court requested two interim appointments until elections for the positions could be held. Pirsig was one of those appointed by Governor Stassen, upon the recommendation of Fraser and Cherry. During his three months on the court, Pirsig wrote twelve opinions, including dissents and concurrences;<sup>38</sup> of these, one was reported,<sup>39</sup> and four others were cited,<sup>40</sup> in *American Law Reports*. One was affirmed by the United States Supreme Court in a 5-4 decision in which Pirsig's former graduate school professor, Justice Frankfurter, wrote the majority opinion.<sup>41</sup>

Pirsig's role in the development of the Minnesota Plan, his success as a scholar, and his close contacts with the Minnesota bench and bar made him a natural choice to succeed Fraser as dean. With Fraser urging his candidacy<sup>42</sup> and the faculty supporting him,<sup>43</sup> Pirsig became the first and only Minnesota graduate to become dean of the law school.

## B. CURRICULUM EVALUATION BY THE FACULTY: 1950

### 1. Background

In light of the orderliness of the change in administrations and the similarity of philosophy between the old and the new deans,

37. 1978 Pirsig Interview, *supra* note 30.

38. See, e.g., *Trovatten v. Minea*, 213 Minn. 544, 7 N.W.2d 390 (1942); *Marsh v. Henriksen*, 213 Minn. 500, 7 N.W.2d 387 (1942); *State v. Northwest Airlines, Inc.*, 213 Minn. 395, 7 N.W.2d 691, *aff'd*, 322 U.S. 292 (1942); *State Bank v. Joyce*, 213 Minn. 380, 7 N.W.2d 385, *cert. denied*, 319 U.S. 751 (1942); *Lunde v. National Citizens Bank*, 213 Minn. 278, 6 N.W.2d 809 (1942); *Benton's Apparel, Inc. v. Hegna*, 213 Minn. 271, 7 N.W.2d 3 (1942); *Gentle v. Northern States Power Co.*, 213 Minn. 231, 237, 6 N.W.2d 361, 364 (1942) (Pirsig, J., concurring specially); *O'Brien v. O'Brien*, 213 Minn. 140, 145, 6 N.W.2d 47, 50 (1942) (Pirsig, J., dissenting).

39. *Benton's Apparel, Inc. v. Hegna*, 213 Minn. 271, 7 N.W.2d 3 (1942) was reported in 143 A.L.R. 1148 (1943).

40. Annot., 64 A.L.R.2d 1296 (1959) (citing *Lunde v. National Citizens Bank*, 213 Minn. 278, 6 N.W.2d 809 (1942)); Annot., 10 A.L.R.2d 901, 911 (1950) (citing *Marsh v. Henriksen*, 213 Minn. 500, 7 N.W.2d 387 (1942)); Annot., 151 A.L.R. 781, 782 (1944) (citing *Trovatten v. Minea*, 213 Minn. 544, 7 N.W.2d 390 (1942)); Annot., 143 A.L.R. 603, 605 (1943) (citing *O'Brien v. O'Brien*, 213 Minn. 140, 6 N.W.2d 47 (1942)).

41. *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292 (1943), *aff'g State v. Northwest Airlines, Inc.*, 213 Minn. 395, 7 N.W.2d 691 (1942).

42. See Interview with Robert C. McClure, Professor of Law, University of Minnesota Law School, in Minneapolis (Nov. 10, 1977) [hereinafter cited as McClure Interview].

43. See 1978 Pirsig Interview, *supra* note 30.



observers may well have expected little change in the course of the school under Pirsig's administration. Such was not to be the case. In the beginning, however, the changes were subtle.

The biggest problem for Pirsig and the law school in 1948 was the enormous student enrollment caused by the crush of returning veterans. A facility and a faculty adequate for the pre-war average of 300 to 350 students was strained by an attempt to accommodate 797 enrollees.<sup>44</sup> Candidly, Pirsig reported to the President of the University that "[t]his registration was beyond the capacity of the school facilities and personnel to render instruction on the level sought to be maintained. The exceedingly large classes, totaling in many instances over 200, resulted in substantial deterioration in the quality of instruction that was possible to the individual student."<sup>45</sup> To help out, Dean Fraser contributed another year of service by teaching his regular classes,<sup>46</sup> but with a faculty of only twelve, this obviously was not enough. All that could be done was to endure the overcrowding and wait for a return to normalcy. By 1951, enrollment was back down to around 400,<sup>47</sup> and the worst of the crisis was over.

Byproducts of the enrollment bulge, however, continued to affect the school. The most significant of these were the doubts that were raised about the continuing desirability of the Minnesota Plan. These doubts resulted in part from the wartime expedient of offering a three-year course to those students entering with a B.A. degree. Also contributing to the concern was the overcrowding elsewhere in the University, which reduced the willingness of other faculties to prepare and offer the Plan's intended social science, philosophy, and related courses to senior law students.<sup>48</sup> Critics said students were thus forced to spend their entire fourth year studying law, not broadening their horizons. In partial response to criticism of this sort, the law school faculty, through a Curriculum Committee headed by Professor William B. Lockhart, undertook the first major curriculum reevaluation since the development of the Minnesota Plan in 1930.<sup>49</sup>

## 2. *A Second Look at the Minnesota Plan*

The Committee's 55-page report, adopted by the faculty in

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44. See Pirsig, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1950-1952, at 149 (1952).

45. Pirsig, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1948-1950, at 114 (1950).

46. See *id.*

47. See Pirsig, *supra* note 44, at 149.

48. McClure Interview, *supra* note 42.

49. See Pirsig, *supra* note 45.

March of 1950,<sup>50</sup> declared two objectives paramount: "(1) . . . to continue, and wherever possible improve, the thorough training given Minnesota students for the typical lawyer's practice. . . . [and] (2) . . . to continue preparing our students to provide governmental and community leadership, to aid in improving the law and its administration, and through this broader training, to serve their clients better."<sup>51</sup> Significantly, the Committee unanimously agreed "that sixteen years experience with the Minnesota four-year plan has demonstrated its fundamental soundness and effectiveness as an educational program designed to achieve both basic objectives."<sup>52</sup> It "strongly recommend[ed] that the four-year plan be continued and strengthened,"<sup>53</sup> and suggested various changes to that end.

Yet, despite this strong expression of support for the Minnesota Plan, the body of the report contained observations and recommendations that highlighted both present and future problems in the program. The Committee seemed implicitly to have recognized that the Minnesota Plan's time had passed, and may have inadvertently contributed to its demise. By taking the lead in evaluating the four-year plan, moreover, the Committee may have initiated the first step in altering the relative leadership roles of the dean and the faculty.

#### a. The Four-Year Plan

One example of the report's ambivalent treatment of the Minnesota Plan can be seen in the Report of the Subcommittee on Minnesota Four-Year Plan, attached as an appendix to the full report.<sup>54</sup> "The principal criticism, by an outside observer of the Minnesota Plan in operation," it said, "has been that the four-year curriculum has become almost exclusively devoted to the study of law."<sup>55</sup> For-

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50. Minutes of the University of Minnesota Law School Faculty (Mar. 13, 1950) [hereinafter cited as Law School Minutes, Mar. 13, 1950].

51. Revised Program of Legal Education, University of Minnesota School of Law: Report of Curriculum Committee 1 [hereinafter cited as 1950 Curriculum Report] (on file at University of Minnesota Law School Library, Minneapolis, Minnesota), appended to Law School Minutes, Mar. 13, 1950, *supra* note 50.

52. *Id.* at 2. In the same year, Lockhart echoed this theme in an article that described the law school's curriculum and highly praised the four-year plan. Lockhart, *The Minnesota Program of Legal Education—The Four-Year Plan*, 3 J. LEGAL EDUC. 234 (1950).

53. 1950 Curriculum Report, *supra* note 51, at 2.

54. Report of Subcommittee on Minnesota Four-Year Plan, in 1950 Curriculum Report, *supra* note 51, at 31 app. A [hereinafter cited as Report of Subcommittee on Minnesota Four-Year Plan].

55. *Id.* at 32 app. A. A similar criticism had earlier been voiced by Pirsig to Fraser when he was dean. Pirsig's concern was that there were not enough cultural courses in the curriculum, which had become too traditional. See 1977 Pirsig Interview, *supra* note 3.

merly, courses such as Modern Philosophy, Social Reform, and Legal Psychology had been offered in the school by members of other faculties,<sup>56</sup> but these courses had become unavailable since the post-war enrollment bulge. It was argued that these and other similar nonlegal courses should be added if the broadening objectives of the four-year plan were to be met. The Subcommittee responded not by directly questioning the usefulness of these nonlegal courses, but by stating that, as an historical matter, the four-year plan had never envisioned an emphasis on non-law courses.<sup>57</sup> The Subcommittee argued that while one objective of the four-year plan had been to allow students to elect courses from other departments with the approval of the dean, the major emphasis of the plan had really been to develop law courses of a new type. Further, the Subcommittee found that there had been substantial progress toward this end, noting that since 1937 many law courses had been added, including Judicial Administration, Legislation, Jurisprudence, Comparative Law, Administrative Law, Labor Law, Trade Regulation, Creditors' Rights, Security Transactions, and Modern Social Legislation.<sup>58</sup>

In accordance with its conclusions about the historical intent of the Minnesota Plan, the Subcommittee recommended that no nonlegal courses be offered through the law school, but that further integration of nonlegal materials into both practice-oriented and cultural law courses be encouraged.<sup>59</sup> Finally, it recommended more elaborate criteria by which the dean was to evaluate student requests to take courses outside of the department.<sup>60</sup> Through these findings and rec-

56. Report of Subcommittee on Minnesota Four-Year Plan, *supra* note 54, at 34 app. A.

57. Dean Fraser and many of the faculty have from time to time orally expressed belief that legal education should include more non-legal material, especially suitable work in the social sciences. . . . But there has been no statement of policy placing emphasis on courses offered by other departments of the University in the third and fourth years of the law school curriculum. On the contrary, Dean Fraser expressly postponed emphasis upon social science material to a future fifth year, to be incorporated into law school instruction of a new type with lawyer-social-scientist cooperation . . . .

*Id.* at 34-35 app. A.

58. *Id.* at 33-34 app. A.

59. *Id.* at 41 app. A.

60. The previous standard had been that "students in the four-year course [could] elect, with the approval of the Dean, work in other departments of the University." *Id.* at 34 app. A. The new standard allowed credit for senior and graduate courses.

when, before enrolling in a course, the individual student show[ed] to the satisfaction of the Dean that (1) the work done in the course [would] provide training in an area in which lawyers are called upon for service and leadership, or [would] otherwise be of value to the student in pursuing a special field of interest related to his law training, (2) the course [would]

ommendations, the Curriculum Committee, and subsequently the faculty, seemed to retreat a bit from the liberal and broadening approach of the original Minnesota Plan to one emphasizing greater internal control by the law school over the education of its students. The difficulties of securing faculty from other departments to teach in the law school, coupled with fears that students were taking outside courses mainly to bolster sagging grade point averages,<sup>61</sup> combined to make a restriction of the liberal policy of the four-year plan seem desirable.<sup>62</sup>

#### b. The Three-Year Option

The second respect in which the 1950 Curriculum Report's treatment of the Minnesota Plan was ambivalent concerned the continuation of the three-year option. When originally proposed, the Minnesota 2-4 plan, requiring two years of prior college study and four years of law study, was to operate alongside a more traditional 3-3 plan. However, the enthusiasm of Fraser and the faculty for the 2-4 plan compelled the school to make its 3-3 plan first into a 4-3 plan,<sup>63</sup> and then, before that proposal had even become operational, to require four years of law work for all entrants regardless of their prior academic attainments.<sup>64</sup> This full embracement of the Minnesota Plan

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contribute toward a balanced program for the particular student consistent with the objectives of the four-year plan, and (3) the student [had] the necessary academic background to complete the course successfully.

*Id.* at 40.

61. McClure Interview, *supra* note 42.

62. Further evidence of the faculty's desire to control the use of outside classes in a law student's curriculum (and evidence, also, of the changing faculty-dean relationship) can be seen in subsequent faculty actions. For example, within six months following the adoption of the new criteria of the Curriculum Report, *see* note 60 *supra*, the faculty voted to require work outside the department to be not only approved by the dean, but also to be supervised by a faculty member. *See* Minutes of the University of Minnesota Law School Faculty (Sept. 12, 1950). Faculty supervisors were encouraged to report to the dean on the value and difficulty of the course taken. During the next year, a faculty committee examined the operation of that reporting system and recommended that the faculty role be diminished, as the students themselves could supply the desired information. Minutes of the University of Minnesota Law School Faculty (Dec. 14, 1951 app.). The report of this committee was received along with a dissent from one of its members who disagreed with it, "insofar as the report (1) indicated approval of students being allowed to take work outside of the Law School without strict control being exercised over their choice of suggestions [sic] and (2) recommended methods of facilitating the students taking additional work." Minutes of the University of Minnesota Law School Faculty (Nov. 30, 1951). The report was not adopted in full. *Id.*

63. UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1936-1938, at 10 (1936): "After 1937 a B.A. or equivalent degree will be required for admission to the three-year law course."

64. "For all students entering the Law School after 1937, the law course will be

was frustrated by America's involvement in World War II, however. On September 12, 1940, the following resolution was unanimously adopted by the faculty:

In view of the delay in entering professional life that will be involved in the selective service act, the University of Minnesota Law School will postpone operation of its rule requiring four years of law school study for students who have a baccalaureate degree when they enter the Law School and will continue the three year course for them. While the four year requirement first became effective with respect to the present third year class, those who had a Bachelor of Arts or equivalent degree when they entered the Law School may be candidates for graduation at the close of this year. For students who do not have a degree when they enter, the law school course will continue to be four years.<sup>65</sup>

Throughout the course of the War and during its aftermath, when tremendous enrollment fluctuations and student dislocations were occurring, a return to the requirement of a four-year law course for every student was precluded by the hardships that such a requirement would impose. The three-year course continued to offer the practitioner's core curriculum to students for whom the B.A. degree, coupled with their wartime experiences, ensured a cultural perspective akin to that which the fourth year was designed to impart. The three-year offering also guaranteed that Minnesota would not lose veterans to other schools that were offering a faster means to the same degree.

With the conclusion of the war period, the time for readoption of a universally required four-year program had arrived. Yet, instead of adopting a four-year requirement, the 1950 Curriculum Report recommended that the existing 4-3 program be extended to a 4-3½ program,<sup>66</sup> with a requirement that sixteen credits be taken from the courses that had been added since the Minnesota Plan was instituted. The report offered this rationale:

While the Subcommittee is convinced that regardless of the amount or nature of his pre-legal education a student should devote four years to legal education of the character provided by the Minnesota Plan, it is aware that there are reasons for shortening the period somewhat when he enters law school with a B.A. degree or equivalent. Nevertheless, the Subcommittee believes that three years of

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four years." UNIVERSITY OF MINNESOTA SUPPLEMENTARY BULLETIN: LAW SCHOOL, 1937-1938, at 6 (1937).

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

66. It was more accurately a 3 1/3 year program, as the "½ year" was actually "attendance at one summer session or the equivalent." Report of Subcommittee on Minnesota Four-Year Plan, *supra* note 54, at 38-39 app. A.

legal education added to the full college course cannot ordinarily produce a lawyer fully capable of satisfying the demands of modern practice. Lawyers today must be familiar with new fields of law that have grown up beside the old; both are important. It is impossible to do justice to both in three years; and since bar examinations usually test knowledge only of the older fields of law, three-year students feel constrained to choose their courses from the older.<sup>67</sup>

Although the reasons for shortening the four-year course for B.A. students are not exactly clear, it is significant, in tracing the faculty's changing attitude toward the Minnesota Plan, that the primary justification articulated for the extension of the three-year course was the need to introduce the student to new fields of law—not the original justification of supplementing traditional law courses with cultural ones.<sup>68</sup> This would indicate that at least some of the original justifications of the Plan had, in the faculty's perception, eroded since the exclusively four-year curriculum had been adopted twelve years before. Another reason for the faculty's reluctance to fully embrace the four-year plan may have been that other high prestige schools, such as Harvard and Yale, had clung to a 4-3 program, thus making it competitively disadvantageous for Minnesota to require a longer period of legal education to obtain the same degree. Finally, if the dislocations incident to a war and the draft system had justified the original time reduction for those with a B.A. degree, the Korean War, which began about three months after the Curriculum Report was adopted, would again provide that justification.

Regardless of the motivations for its actions, the Curriculum Committee's treatment of the questions presented by courses taken outside of the law school and by the continuance of a three-year program, indicated that the faculty of 1950 was less committed to the major reform of the Fraser years—the Minnesota Plan—than the faculty of 1937 had been. Yet other features of the Report indicated that reform itself was not dead. During the transition years of Pirsig's administration, reform would merely follow different routes.

### 3. *Course Work*

Although the 1950 Curriculum Report recommendations regard-

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67. *Id.* at 38 app. A.

68. That the justification for the additional time required in legal studies had changed is further underscored by noting the courses from which the sixteen required credits were to have been chosen. Four of these could be characterized as courses in new fields (Administrative Law, Antitrust Law, Labor Law, and Unfair Trade Practices), four could be characterized as cultural, as that term was meant in the original 2-4 proposal (Judicial Administration, Jurisprudence, Legislation, and Modern Social Legislation), and one was a mixture of the two (International Law and Organization). See *id.* at 39 app. A.

ing outside course work and the length of the course of study were tentative and ambivalent, a much stronger resolve was reflected in its recommendations concerning the remainder of the curriculum, which was overhauled in several major respects. In one of the most sweeping reforms, the criminal law course was completely restructured in accordance with the cultural objectives of the Minnesota Plan. Detailed study of the technicalities of each crime was abandoned in favor of a more limited study of one or two representative crimes, followed by materials and discussion "devoted to the principles of criminal liability and the administration of criminal justice in their relation to criminology and kindred sciences."<sup>69</sup> This new approach, with its wholehearted endorsement of the integration of nonlegal materials into a law course, was designed, according to a classic restatement of the cultural objectives of the Minnesota Plan, to "lead in time to a more healthy attitude by the bar toward this neglected but significant area of public law."<sup>70</sup>

A second major revision was in the remedies sequence. Replacing courses in Actions, Equity II, Equity III, and Damages (of which only Actions and Equity II were required<sup>71</sup>) with Judicial Remedies I, II, and III, the Committee hoped to make the student more "remedies conscious" and better prepared to identify and choose among those available.<sup>72</sup> The entire sequence was required during the student's first two years. Through this integrated approach to the remedies material, it was hoped that the student would be able not only to identify when substantive rights had been violated and how to adjudicate the issue procedurally, but also to select the preferable remedy intelligently.

Another area of the curriculum which was substantially modified by the 1950 Committee, and which has remained largely intact during the subsequent 28 years, was legal research and writing. The major innovation was to make Legal Research a first-year course. Noting that "[f]irst year students take to the books with enthusiasm," the Committee concluded that "advantage should be taken of this to make them library and law book conscious at the outset of their professional study."<sup>73</sup> The format of this course was to make the student aware of the legal resources available, by lectures on legal bibliography and exercises involving their use, followed by problems in research and writing of a nature similar to but simpler than those

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69. See 1950 Curriculum Report, *supra* note 51, at 4.

70. *Id.*

71. See UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1949-1951, at 13 (1949).

72. See Report of Subcommittee on Remedies Sequence, in 1950 Curriculum Report, *supra* note 51, at 47-48 app. C.

73. 1950 Curriculum Report, *supra* note 51, at 9.

handled by a junior associate in a law firm.<sup>74</sup>

Next, the second-year course of Brief Writing was expanded into a course entitled Legal Research II. This course was designed to involve four projects: an appellate brief; an examination of an abstract of title with an opinion letter; and two other problems that would "require research into more difficult materials, such as commission reports and administrative regulations . . . ."<sup>75</sup> In view of the broadened scope of this course, its credit value was increased from 3 to 6 quarter credits, putting it on a par with other second-year courses.<sup>76</sup>

These two courses required in the first two years, together with the required third-year research problem in legislation, the writing required for the practice court cases in the third year, and the research paper required in the fourth-year Judicial Administration class, ensured that the research and writing program continued throughout a student's law school career.<sup>77</sup>

The final major area addressed by the 1950 Curriculum Committee was that of electives and seminars for third and fourth year students. The basic plan for the school's curriculum involved covering the traditional substantive law course work during the first two years, years in which the courses were entirely prescribed. In the third year, the major emphasis was on the procedural aspects of the law, with required courses in Evidence, Pleading, Practice, and Practice Court, and a few credits of the cultural courses, of which Legislation and Ethics were required.<sup>78</sup> The fourth year was largely elective, with only Judicial Administration and, after the Curriculum Report, Modern Social Legislation required.<sup>79</sup> This program left one-third of the third year and three-fourths of the fourth year open for electives. The Committee, even though it reduced the number of electives in the fourth year by requiring Social Legislation, endorsed the elective system by concluding that, "so far as practicable, courses in the third and fourth years should be elective to permit each student to derive full benefit from the Minnesota [P]lan by molding his studies to fit his individual interests and needs."<sup>80</sup> In addition, modification of the prescribed curriculum was further authorized when, in the discretion of the dean, "a student had demonstrated that substitution of another course for a required one (other than Practice, Evidence or Legal Ethics) will best meet his or her needs and that the values of the four-year plan for that student will be preserved."<sup>81</sup>

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74. *Id.* at 8-9.

75. *Id.* at 12.

76. *Id.*

77. *Id.* at 9.

78. *See id.* at 14.

79. *Id.* at 15.

80. *Id.*

81. *Id.* at 16.



Like electives, the faculty saw seminars as another means of better achieving the goals of the four-year plan. "Because seminars require intensive research by all participating students, often in areas outside traditional legal materials, this type of study is particularly appropriate to the four-year plan."<sup>82</sup> They encouraged, in particular, faculty cooperation with the faculty and students of other departments and, with a view toward later requiring seminars of all fourth-year students, they recommended that enough seminars be scheduled so that all fourth-year students could elect at least one.

Although the report of the Curriculum Committee was comprehensive in nature and contained a variety of recommendations, the question remains as to its net effect. At least part of its significance results from the fact that it was the faculty's first major curriculum evaluation since the initiation of the four-year plan twenty years earlier. As such, it indicated that the faculty was interested in playing a more active role in shaping the school's policies. The Committee's report had emphasized the integration of nonlegal materials into law courses and a restriction on outside course work, the development of new fields of law as a reason to extend the three-year course by a quarter, and the need for program flexibility and in-depth research in a field of special interest. These emphases suggest that faculty support of the four-year plan was grounded not so much in the need to provide a culturally broadening experience, as in the need to acquaint the student with new and rapidly developing areas of law and to provide at least some students with the background required for specialization. Through the 1950 Curriculum Committee Report, one can perceive both the beginning of a new and more powerful faculty role in the school's governance and a change in the way the faculty felt about the premises and goals of the four-year plan.

### C. MAJOR CHALLENGES

In addition to the problems addressed by the historically significant Curriculum Report, the law school was faced with a number of other challenges. Perhaps the most consuming problem of the period was faculty recruitment. Securing the additional space required by the library also demanded attention. Further, there was the continuing need to find innovative responses to current social problems. And, finally, there were a host of problems concerning the internal operation of the school, such as curriculum refinement, student scholarship, and the future of the *Law Review*. As these issues surfaced, some found solution while others were merely observed.

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82. *Id.* at 19.

### 1. Faculty Recruitment

Unlike today, faculty recruitment during the 1950's was the job of the dean and the dean alone,<sup>83</sup> and it was a job Pirsig did well. In his seven years as dean, Pirsig personally sought out and persuaded ten new faculty members to come to Minnesota. Most of these new faculty members were, or were to become, pillars in the world of legal scholarship.

Pirsig's success in recruitment was due, in large measure, to his personal contacts in the eastern law schools,<sup>84</sup> the traditional source of law teachers. At Yale, Pirsig could count on the advice and help of Dean Charles Clark, with whom he had developed a friendship while working on the United States Advisory Committee on the Federal Rules of Civil Procedure.<sup>85</sup> At Columbia, Pirsig consulted with Professor Elliott Cheatham, a friend through a common interest in professional responsibility;<sup>86</sup> each had written a book on the subject.<sup>87</sup> And at Harvard, Paul Freund, with whom Pirsig had been a graduate student in several Harvard seminars, helped out with recommendations and suggestions.<sup>88</sup> By tapping these and other resources, Pirsig was able to determine who was available and how good they might be.

The first of Pirsig's faculty additions was librarian Leon Liddell. Liddell, then at Connecticut, was convinced by Pirsig to come to Minnesota where vast amounts of work awaited him. As the first full-time librarian since Arthur C. Pulling left in 1942,<sup>89</sup> Liddell inherited

83. See 1977 Pirsig Interview, *supra* note 3.

84. See 1978 Pirsig Interview, *supra* note 30.

85. *Id.*

86. *Id.*

87. E. CHEATHAM, *CASES AND MATERIALS ON THE LEGAL PROFESSION* (2d ed. 1955); M. PIRSIG, *supra* note 20.

88. 1978 Pirsig Interview, *supra* note 30.

89. After thirty years of service as head librarian, Pulling left Minnesota to return to Harvard, where he had started out as an assistant in 1907. For the next ten years, 1942 until 1953, Pulling directed the largest and best law school library in the country. When Harvard's retirement policy forced him to give up that job, Pulling untiringly accepted a new post at the young Villanova Law School and began again the task of building a quality library from the ground floor up, a task which he pursued for nine years. Finally, in 1962, Pulling moved again, leaving Villanova for the law library at the University of Maine. There he served until his death in September, 1963.

All four institutions are deeply indebted to Arthur C. Pulling's dedication and ability, but none more than the University of Minnesota. Through his wisdom, he built at Minnesota a law library of enduring quality and laid the foundation for many of the law school's achievements. It is most fitting that the Rare Book Room of the new law library is named in his honor. For biographical data, see Brede, *In Memory of Arthur C. Pulling*, 57 *LAW LIB. J.* 66, 66-67 (1964); Morgan, *Arthur Clement Pulling, Director of the Harvard Law Library*, *HARV. L. SCH. BULL.*, October 1953, at 8; 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, 870-71 (1978).

an extensive and very good collection—but one which was largely uncatalogued and unclassified. Although Pulling's priority had always been acquisition rather than organization, the effects of this policy were mitigated during his tenure by the fact that Pulling, able to recall the scope and position of his library with great precision, was his own catalogue.<sup>90</sup> In his absence, however, organization became a much more important goal, and one whose attainment was frustrated by the problems of space the school encountered in the early fifties. It was this task that Liddell was given in 1949.

In the teaching faculty, Pirsig was faced with two vacancies at the end of his first year when Professor Henry L. McClintock, on the faculty since 1924, retired, and Dean Fraser, who had remained an additional year, left for a professorship at Hastings College of Law in California. To fill one of these positions, Pirsig turned to Kenneth M. Anderson, a Minnesota graduate (LL.B., 1948; LL.M., 1949), who had just finished a year as Assistant Editor of Volume 33 of the *Minnesota Law Review*. Anderson served on the faculty for seven years before going into private practice in Minneapolis.<sup>91</sup> To fill the other position, Pirsig, on the recommendation of Dean Albert J. Harno of the University of Illinois,<sup>92</sup> hired Joseph F. Rarick, a 1948 graduate of that school who took his LL.M. degree from Columbia in 1949.<sup>93</sup> After four years at Minnesota, Rarick left for the University of Oklahoma, where he still serves.

In the next year, the recruitment challenges for Pirsig continued as Professor Horace Read left Minnesota to assume the deanship at Dalhousie Law School,<sup>94</sup> and the illustrious 36-year teaching career of Professor Wilbur Cherry ended with his death on February 21, 1950.<sup>95</sup> To ensure that the maturity which had been provided by these men was maintained, Pirsig attracted Kenneth Culp Davis, an established scholar who was just entering his most productive years. After having taught at the University of Texas for eight years and having been a visiting professor at Harvard for two, Davis came to Minnesota in 1950 for an eleven-year tenure.<sup>96</sup> During this time, he wrote and published his four-volume administrative law treatise,<sup>97</sup> which is now

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90. 1977 Pirsig Interview, *supra* note 3.

91. Anderson recently returned to the school's service by supplementing the teaching faculty as an adjunct professor in 1976.

92. See 1978 Pirsig Interview, *supra* note 30.

93. See ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS, 1976, at 778 (1976) [hereinafter cited as 1976 DIRECTORY].

94. See Pirsig, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1948-1950, at 114 (1950).

95. *Id.*

96. 1976 DIRECTORY, *supra* note 93, at 292.

97. K. DAVIS, ADMINISTRATIVE LAW TREATISE (1958 & Supp. 1978) (supplemented

widely cited as the leading authority in the field.

To continue Minnesota's outstanding practice course tradition, Pirsig sought to replace Cherry with one of Cherry's former students, David Louisell. A 1938 Minnesota graduate, and President of Volume 22 of the *Minnesota Law Review*, Louisell was then practicing in Washington, D.C. He accepted a \$5,000 per year decrease in salary in order to return to Minnesota and begin a teaching career.<sup>98</sup> In 1956, after six years at Minnesota, Louisell left to become professor of law at the University of California at Berkeley,<sup>99</sup> where he co-authored a casebook on evidence.<sup>100</sup> He held this position, except for a return to Minnesota as a Distinguished Alumni Professor in 1971, until his death in the spring of 1978.

During the next five years, the growth of the school and the normal faculty attrition afforded Pirsig several more opportunities to make his impact on the school through his selection of faculty. One such position was filled by a young scholar just a year out of Yale Law School, Charles Alan Wright. After having served as a clerk for then Judge Charles Clark, Wright, at the age of 23, turned down a Supreme Court clerkship in order to begin teaching at Minnesota.<sup>101</sup> His career, well begun at Minnesota, took him to Texas in 1955,<sup>102</sup> and saw him produce both a casebook<sup>103</sup> and a hornbook<sup>104</sup> on the federal courts and a major treatise on federal practice and procedure.<sup>105</sup> Most recently, Wright received public attention as one of President Nixon's attorneys during the Watergate affair, in which he represented the President in matters relating to the assertion of executive privilege.<sup>106</sup>

Another addition to the Minnesota faculty in the early fifties was criminal law specialist Monrad Paulsen, who was attracted with the encouragement of Professor Davis<sup>107</sup> from a teaching position at the University of Indiana at Bloomington.<sup>108</sup> After five years of service at Minnesota, Paulsen left for a twelve-year term at Columbia before

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by K. DAVIS, *ADMINISTRATIVE LAW OF THE SEVENTIES* (1976) and currently being revised).

98. 1978 Pirsig Interview, *supra* note 30.

99. 1976 DIRECTORY, *supra* note 93, at 612.

100. D. LOUISELL, J. KAPLAN & J. WALTZ, *CASES AND MATERIALS ON EVIDENCE* (1968).

101. 1977 Pirsig Interview, *supra* note 3.

102. See ASSOCIATION OF AMERICAN LAW SCHOOLS, *DIRECTORY OF LAW TEACHERS, 1977*, at 870 (1977) [hereinafter cited as 1977 DIRECTORY].

103. C. McCORMICK, J. CHADBOURN & C. WRIGHT, *CASES AND MATERIALS ON FEDERAL COURTS* (5th ed. 1970).

104. C. WRIGHT, *HANDBOOK OF THE LAW OF FEDERAL COURTS* (1970).

105. C. WRIGHT, *FEDERAL PRACTICE AND PROCEDURE: CRIMINAL* (1969); C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE: CIVIL* (1969).

106. See *Showdown Before the Justices*, TIME, July 15, 1974, at 13.

107. 1978 Pirsig Interview, *supra* note 30.

108. 1976 DIRECTORY, *supra* note 93, at 741.

assuming a teaching position and the deanship of the University of Virginia School of Law. Though most noted for his casebook, with Sanford H. Kadish, on criminal law and process,<sup>109</sup> he has also written on family<sup>110</sup> and poverty law.<sup>111</sup>

In 1953, Minnesota graduate Ronan E. Degnan was invited to join the faculty after two years of teaching at Drake. He left the following year and is now on the faculty of the law school of the University of California at Berkeley.<sup>112</sup> Professor Jesse Dukeminier, Jr., also served at Minnesota for one year after having completed a year of graduate study at his alma mater, Yale. Now at UCLA,<sup>113</sup> Dukeminier is the coauthor of a leading casebook in the area of trusts and estates.<sup>114</sup>

The final faculty member chosen by Pirsig was Michael Sovern, who, like Wright, gave up a Supreme Court clerkship to accept the Minnesota position. A brilliant student, Sovern reportedly had straight A's throughout his pre-law and law work at Columbia.<sup>115</sup> After three years at Minnesota, Sovern returned to Columbia, where he is now Dean of the Law School.<sup>116</sup>

The stature of these legal scholars brought to Minnesota by Dean Pirsig gives testimony to the reputation of both the school and the Dean who attracted them. Pirsig considered the task of faculty recruitment to be the major responsibility of his deanship and a job which was his alone.<sup>117</sup> Ironically, after Pirsig's recruitment effort was completed, the faculty, although filled by many of his selections, began to urge limits on the power of the dean to recruit and appoint new faculty. On January 10, 1956, about four months after the effective date of Dean Pirsig's resignation, the faculty passed the following resolution despite Pirsig's dissent:

Resolved that any recommendation for appointment to the law faculty and any recommendation for promotion to indefinite tenure should be made by the Dean only after joint faculty discussion at a meeting of the faculty, and the Dean's recommendation to the President should report the faculty's view as well as the Dean's own recommendation.<sup>118</sup>

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109. S. KADISH & M. PAULSEN, *CRIMINAL LAW AND ITS PROCESSES* (3d ed. 1975 & Supp. 1977).

110. M. PAULSEN, W. WADLINGTON & J. GOEBEL, *CASES AND OTHER MATERIALS ON DOMESTIC RELATIONS* (2d ed. 1974).

111. M. PAULSEN, *EQUAL JUSTICE FOR THE POOR MAN* (1964).

112. See 1976 *DIRECTORY*, *supra* note 93, at 298.

113. See *id.* at 323.

114. J. DUKEMINIER, JR. & S. JOHANSON, *FAMILY WEALTH TRANSACTIONS: WILLS AND ESTATES* (2d ed. 1978).

115. See 1978 Pirsig Interview, *supra* note 30.

116. See 1977 *DIRECTORY*, *supra* note 102, at 763.

117. See 1977 Pirsig Interview *supra* note 3.

118. Minutes of the University of Minnesota Law School Faculty (Jan. 10, 1956).

## 2. *Building Needs*

Whatever the final outcome of Pirsig's hiring practices, it is clear that it was only one of the concerns of his administration. Another was the pressing need for space. The requests for additional space to house the growing library began as early as 1944,<sup>119</sup> continued throughout the remainder of Fraser's tenure, and intensified during the first years of the Pirsig administration. Fraser Hall, as the old law building was named on Charter Day, February 15, 1951,<sup>120</sup> had been built in 1927 and 1928 with a legislative appropriation of \$250,000. It was designed to house a library of up to 100,000 volumes and a student body of less than 300,<sup>121</sup> but by 1952 the law library had grown to 185,000 volumes<sup>122</sup> and the post-war enrollment had settled at about 400 students.<sup>123</sup> As Pirsig summarized, "the space in Fraser Hall ha[d] reached a critical condition and additional space [was] an urgent necessity."<sup>124</sup>

Nine years after the need for space was first officially noted and several legislative sessions after the University had presented the project as a first priority, the 1953 legislature appropriated \$600,000 for an addition to Fraser Hall.<sup>125</sup> Unfortunately, the appropriation did not finally solve the problem. Two years later, in January of 1955, the Dean reported to the faculty that the lowest construction contract bid had been \$118,000 over the \$600,000 authorized.<sup>126</sup> A supplemental appropriation request was deemed inadvisable and construction plans had to be redrawn, sacrificing some of the interior construction and remodeling and leaving much of the stack flooring and shelving to be added at a later date.<sup>127</sup> With these revisions, acceptable bids

119. See 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).

120. On the same occasion, Dean Emeritus Fraser was awarded the Honorary Doctor of Law degree by the University of Minnesota. U. MINN. L. SCH. NEWS, Feb. 1951, at 3, col. 2.

121. See Untitled Report on the Dedication of the New Building (n.d.) (on file at MINNESOTA LAW REVIEW).

122. See Pirsig, *supra* note 44, at 149.

123. See Pirsig, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1952-1954, at 167 (1954).

124. Pirsig, *supra* note 44, at 149-150.

125. See Pirsig, *supra* note 123. Dean Pirsig gives much of the credit for securing the appropriation to State Senator Al Johanson, a University of Minnesota law graduate (1924) from Wheaton. According to Pirsig, Johanson, having made the law building his principal goal for the 1953 session, was appointed to the conference committee considering the measure and shepherded it through. See 1978 Pirsig Interview, *supra* note 30.

126. Minutes of the University of Minnesota Law School Faculty (Jan. 10, 1955).

127. *Id.*; U. MINN. L. SCH. NEWS, Apr. 1955, at 1, col. 1.

were obtained and construction was begun in 1955. A year later, the addition—built in two parts, one to the west and one to the south of the original building—was ready for use even though not complete. In the next few years, the missing floors and shelves were gradually added until the addition was completed. In the 1954-1956 President's Report, then-Dean William Lockhart reported: "[T]he appropriation was inadequate to meet fully all of the Law School's building needs. . . . [T]he major library needs have been met, and the library capacity nearly doubled. This will satisfy our library needs for approximately 15 years."<sup>128</sup>

Surprisingly, just six years later, after noting that a significant enrollment increase could be expected, Lockhart concluded that a "major new addition . . . or a new Law Building [would] be necessary in the near future."<sup>129</sup> For the time being, however, the addition, hard won during Pirsig's administration, would have to suffice.

### 3. *A New Program: Training for Delinquency Control*

In addition to achievements in faculty recruitment and in securing a building enlargement, another challenge of Pirsig's administration was the development of an interdepartmental program providing training for professionals in delinquency control. No other project was so clearly the result of Pirsig's personal initiative and abilities. Pirsig envisioned the program and then developed it as a personal contribution toward the solution of one of society's pressing problems.

The wellspring of the project was Pirsig's involvement in juvenile court reform. While serving as an interim Minnesota Supreme Court Justice,<sup>130</sup> he had been appointed chairman of a Minnesota State Bar Association committee to examine the Youth Authority Act prepared by the American Law Institute.<sup>131</sup> In the course of this work, Pirsig played a substantial role in drafting the Minnesota adaptation of the Act, and worked for its passage with American Law Institute representative and lobbyist John R. Ellingston.<sup>132</sup> He also became acquainted with the conditions at juvenile institutions and at the refor-

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128. Lockhart, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1954-1956, at 160 (1956).

129. Lockhart, *The Law School*, in UNIVERSITY OF MINNESOTA BULLETIN: THE BIENNIAL REPORT OF THE PRESIDENT OF THE UNIVERSITY OF MINNESOTA, 1960-1962, at 150 (1962).

130. See notes 38-41 *infra* and accompanying text.

131. 1977 Pirsig Interview, *supra* note 3.

132. The Youth Conservation Act was passed in 1947, see ch. 595, § 1, 1947 Minn. Laws 1047 (current version at MINN. STAT. §§ 242.01-.55 (1976 & Supp. 1977)), and much of it was recently amended or repealed. See Act of June 2, 1977, ch. 392, §§ 1-6, 14, 1977 Minn. Laws 890.

matory—conditions amounting to an “atmosphere of repression.”<sup>133</sup> Given the rehabilitative emphasis of the Act,<sup>134</sup> Pirsig recognized that the people implementing it would be vital to its success. He also recognized that, for the most part, these people were not trained for their responsibilities. Without competent staff, the juvenile system established by the legislative reform for which Pirsig had worked would be useless.

Consequently, after Pirsig became dean, the development of a training program for professionals in delinquency control became one of his principal concerns.<sup>135</sup> When he learned that John Ellingston was leaving the American Law Institute, Pirsig sought him as the logical choice to come to Minnesota to establish and direct the program. With the support of University President J.L. Morrill,<sup>136</sup> Pirsig established and chaired a committee to oversee the program, and attained the necessary sponsorship commitments from the law faculty,<sup>137</sup> the Department of Sociology, and the School of Social Work.<sup>138</sup> In the fall of 1954, the program began its twenty-year history through the establishment of an interdisciplinary curriculum leading to a B.A. degree. In addition, summer institutes for juvenile court judges and police officers were offered and were well received. Although the program was terminated in 1970, after Pirsig retired from the University faculty and vacated the chairmanship of the supervisory committee,<sup>139</sup> its history was a successful one. The program was one of Dean Pirsig’s major contributions.

#### D. CURRICULUM STUDY REVISITED: 1952-1954

Despite the extensive study and revision adopted in 1950, curriculum development remained a subject of continuing faculty interest. Of greatest importance was the generation in the 1951-1952 academic year of a set of memoranda giving the views of new faculty members

133. 1977 Pirsig Interview, *supra* note 3.

134. See MINN. STAT. § 242.01 (1976) (repealed 1977).

135. Speaking of the program in a later interview, Pirsig said,  
 . . . it occurred to me—well, I was dean now—I could do a lot of things, then at least—it occurred to me that we should start an interdisciplinary program in the University whereby these people [University Faculty] would be training people for this and also set up an adult program for juvenile judges, probation officers and so on.

1977 Pirsig Interview, *supra* note 3.

136. See Letter from Maynard Pirsig to J.L. Morrill (Nov. 24, 1952) (on file with Presidents’ Papers, University of Minnesota Archives, Minneapolis, Minnesota).

137. See Minutes of the University of Minnesota Law School Faculty (Mar. 1, 1954) [hereinafter cited as Law School Minutes, Mar. 1, 1954].

138. See UNIVERSITY OF MINNESOTA LAW SCHOOL BULLETIN: TRAINING FOR DELINQUENCY CONTROL, 1954-1955, at 3 (1954).

139. See 1977 Pirsig Interview, *supra* note 3.



on Minnesota's educational plan. At Professor Paulsen's suggestion, he and Professors Davis, Wright, and Louisell recorded their appraisals of legal education at the University of Minnesota and submitted them to faculty scrutiny in May of 1952.<sup>140</sup> While each took a different tack, all stressed that certain reforms were needed.

Most interesting, in light of its analysis of the four-year plan, was Kenneth C. Davis' contribution, entitled "Unrealized Potentialities of the Minnesota Plan."<sup>141</sup> While he noted several areas of great strength within the school,<sup>142</sup> he highlighted several weaknesses, prominent among which was faculty complacency concerning the four-year plan. Davis observed that other schools would inquire of newcomers whether they saw the need for corrections or improvements, while the characteristic question at Minnesota was: "Isn't the four-year plan splendid, and aren't we doing a fine job?"<sup>143</sup> The result of this smugness, according to Davis, was that Minnesota was falling behind other leading law schools in both the scope and the intensity of its curriculum.

Specifically, he noted that while the catalogue continued to claim that a number of Minnesota's courses developed since the creation of the four-year plan could not generally be taken by students at a law school on a three-year plan, most of those courses, and several others besides, had become generally available at all the leading law schools.<sup>144</sup> In fact, although the four-year plan was designed to allow Minnesota to enrich its legal curriculum with greater amounts of social science materials, Davis found that most of the leading three-year law schools were delving more deeply into the social sciences than was Minnesota. Further, Davis explained that the reason three-year law schools could compete with and even sur-

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140. See Minutes of the University of Minnesota Law School Faculty (May 13, 1952) [hereinafter cited as Law School Minutes, May 13, 1952].

141. K. Davis, Unrealized Potentialities of the Minnesota Plan, October 9, 1951 (on file with Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

142. Davis had the following to say regarding the strengths of the law school: The faculty as a whole is of great ability, remarkably congenial, properly industrious, and entirely free from a kind of bigotry that is often found in other leading law schools. The library is truly superb; I have never seen a library that is more smoothly or more satisfactorily operated. The ideals of the four-year plan are wholly admirable—to broaden and deepen the instruction, especially through a more thorough development of the social science foundations of law. The crowning achievement of the four-year plan lies in the two courses based upon two magnificent contributions to legal education in the nation, the casebooks on Judicial Administration and on Modern Social Legislation.

*Id.* at 1.

143. *Id.* at 1-2.

144. *Id.* at 2.

pass Minnesota in the amount of social science material covered was that Minnesota had slipped into a pattern of slowly paced instruction which stretched the curriculum out over the additional year. Comparing the rate of instruction in his Minnesota classes with that at a number of other institutions where he had taught, Davis found resistance to progress to be considerably greater at Minnesota. The explanation, he said, lay not with the ability of the students but rather with the prevailing atmosphere at the law school. Putting it succinctly, he asked, "Are we, as one member of our faculty has put it, 'running a night school with classes in the morning?'"<sup>145</sup>

Davis observed that Minnesota had become overweighted with course requirements in the areas of procedure, property, and commercial law; his analysis showed that Minnesota consistently required approximately double the classroom work in these areas than did the nine leading schools that Davis had selected for comparison.<sup>146</sup> Davis concluded by arguing that these problems were harmful byproducts of the four-year plan.<sup>147</sup> Unlike schools on a three-year plan, Minnesota had for some time avoided the major problem in curriculum planning: "pull[ing] the deadwood out of the curriculum."<sup>148</sup> With a built-in year of leeway, Minnesota had resisted the need to condense its curriculum, and had merely added new subjects when needed.<sup>149</sup>

Significantly, however, Davis did not recommend the end of the four-year plan. Rather, he recommended, among other things, that the number of classroom hours be shortened for many courses, while the intensity of those hours be increased; that several new requirements be added; and that a renewed effort be made to incorporate social sciences into the materials of the curriculum. He ended by suggesting that if his recommendations were followed, "the Minnesota [P]lan [would] come closer to a realization of both its original objectives and its potentialities."<sup>150</sup> The contributions of the other professors, while focusing less directly on the four-year plan, made similar recommendations, calling for specific course additions and requirements, and, more generally, for the creation of a curriculum committee to study ways of coordinating, improving, and individualizing the school's system of instruction.

The immediate results were a new requirement that all four-year students select a seminar or a tutorial, the offering of a seminar in Criminal Law, the addition of a course in Family Law, and the ap-

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145. *Id.* at 5.

146. *Id.* at 5-7.

147. *See id.* at 15.

148. *Id.*

149. *See id.*

150. *Id.* at 17.

pointment of a new committee to conduct further study.<sup>151</sup> That new committee's report, adopted by the faculty in 1954,<sup>152</sup> abolished the Judicial Remedies sequence, established four years earlier, in favor of a first-year course entitled Introduction to Private Law<sup>153</sup> and a consolidated Choice of Remedies course in the second year. The report also established Legal Accounting as a required course in the first year and made several minor credit adjustments in other courses.<sup>154</sup>

The long-term result of the newcomers' memoranda was to shake the law school faculty out of complacency and into a period of continuing curriculum reevaluation. The 1950 Curriculum Report had been richly laudatory of the Minnesota Plan although implicitly, and most probably inadvertently, ambivalent in its recommendations supporting it.<sup>155</sup> But after 1952, the four-year plan, no longer a sacred cow, would be the subject of increasingly critical analysis. And for Dean Pirsig, identified as its chief supporter, the road would become increasingly rocky.

#### E. ONGOING PROGRAM PROBLEMS

Though faculty recruitment, building needs, the Delinquency Control Training Program, and curriculum study consumed much of Pirsig's energies, other problems continued to demand attention. Some of these were matters of internal concern affecting only the law school. Others were problems arising out of the law school's relationship to the central administration of the University.

##### 1. *Student Scholarship*

One issue of internal concern that required attention was student

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151. See Law School Minutes, May 13, 1952, *supra* note 140. In the interim between the appointment of the committee and the adoption of their report, minor curriculum changes continued. The most important of these was the initiation of a seminar in Agricultural Economics. See University of Minnesota Law School Faculty Minutes (Apr. 5, 1954) [hereinafter cited as Law School Minutes, Apr. 5, 1954].

152. See Minutes of the University of Minnesota Law School Faculty (June 4, 1954) [hereinafter cited as Law School Minutes, June 4, 1954].

153. This course, which was offered on an experimental basis, was a reworking of the old Judicial Remedies I course. The emphasis was switched from developing the details of the common law actions, to the "sources and growth of the common law and equity." Report of the Curriculum Committee to the Faculty, *appended to* Law School Minutes, June 4, 1954, *supra* note 152. Also offered in the first year was an Introduction to Public Law, which first appeared as a part of the Agency course, see UNIVERSITY OF MINNESOTA BULLETIN: THE LAW SCHOOL, 1952-1954, at 12 (1952), and later as a separate course, see UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1954-1956, at 13 (1954).

154. On the same day that this report was adopted, the faculty voted to eliminate Saturday classes. Law School Minutes, June 4, 1954, *supra* note 152.

155. See notes 50-54 *supra* and accompanying text.

scholarship deficiencies. In Pirsig's administration, as it had been in Dean Fraser's, the main focus of the problem was on the first-year class. Despite the agitation in the latter years of Dean Fraser's tenure for a system of admissions that could fairly accomplish the selection process traditionally performed by high first-year attrition rates, little success had been achieved.<sup>156</sup> As the establishment of an effective screening process was not yet possible, the improvements in the admissions policy during the Pirsig administration tended to be greasing of the revolving door—encouraging the early departure of unqualified students. Thus, first-year students were given an aptitude test during their first week and were given exams at the end of fall quarter. When they arrived back from Christmas vacation, their aptitude tests together with fall quarter grades were used to counsel them on the likelihood of their future success in law school. It was hoped that those for whom failure was imminent would leave voluntarily and thus reduce the waste, both to themselves and to others, of their further participation.<sup>157</sup> Consequently, the first-year attrition rate remained at forty percent,<sup>158</sup> and dissatisfaction with first-year scholarship continued.

In 1954, when the Dean relayed to the faculty that the first-year class had expressed considerable dissatisfaction with the grading of their exams (including suspicions that some papers had never been read and that, in the grading of others, the faculty had either collaborated or had assigned certain members an "axe wielding" function), the faculty had occasion to register its "disappointment with the caliber" of the first-year class.<sup>159</sup> In the course of their discussion, "the following problems were raised but not solved . . . : (1) entrance requirements, (2) attendance, (3) outside work, (4) unpreparedness, and (5) the feasibility of giving more examinations during the year."<sup>160</sup> And to these problems, the Korean War, with the adverse effects on scholarship occasioned by wartime,<sup>161</sup> may be added. For the most part, however, little action was taken during these years on the problem of deficient student scholarship and the related issues of admission standards and student loan and scholarship funds.<sup>162</sup>

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156. See McClure Interview, *supra* note 42.

157. Report of Law School Self-Survey Committee, Report C, at 1 (1955) [hereinafter cited as Self-Survey Report], *appended to Minutes of the University of Minnesota Law School Faculty* (Mar. 21, 1955).

158. *See id.*

159. *See Law School Minutes*, Apr. 5, 1954, *supra* note 151.

160. *See id.*

161. The February 1952 issue of the *Law School News* reported that seventeen percent of the previous year's first-year class had been called up, as well as a number of upper classmen. U. MINN. L. SCH. NEWS, Feb. 1952, at 3, col. 3. Special testing procedures were instituted for those called up more than half way through a course. *See Minutes of the University of Minnesota Law School Faculty* (Jan. 29, 1951).

162. One notable exception to the lack of activity regarding scholarships was the

## 2. *The Law Review*

Although the usual focus of the scholarship issue had been on the first-year class, an added dimension during the early fifties was a concern over the *Minnesota Law Review*. One problem was inducing eligible and able students to participate; another was maintaining the *Review's* financial viability.

The problem of student participation had developed in the post-war era, when the increased maturity of many students imposed burdens of family and finances that could not be balanced with the obligations of *Review* work. Reacting to the problem in 1947, a faculty Law Review Committee recommended a variety of administrative changes which were designed to, among other things, "attract to the *Review* higher-ranking students; . . . [and] improve the morale and attractiveness of the *Review* by eliminating what has seemingly become a choice between law school average and Law Review work."<sup>163</sup> The problem appeared then to be a temporary one and the solutions suggested in the report were hoped to be adequate.

Faculty dissatisfaction with the degree of student participation continued, however, and was most often expressed when it came time to consider elections to the Order of the Coif.<sup>164</sup> For several years, the faculty debated whether they could elect to that honor *Law Review* members whose law school averages were not, as is required by the Order of the Coif charter, among the top ten percent of their class, and whether they could exclude from consideration those high-ranking students who had declined *Law Review* service.<sup>165</sup> Neither policy was allowed under the Order of the Coif charter, but the persistence of the argument demonstrates the desire of the faculty to have its best students participate on the *Review*. The final word on this issue during the Pirsig era came when the faculty voted in 1956 to elect to the Coif those students who in prior years had been "eligible but were passed over for failure to participate in the Law Review."<sup>166</sup> But the dean was still authorized to advise the eligible students that

development of the Cherry Fund in honor of Professor Wilbur Cherry, undertaken by the Law Alumni Association. Announced in the first issue of *Law School News*, U. MINN. L. SCH. NEWS, Feb. 1951, at 3, col. 2, the Fund had by February, 1956, received contributions from 562 sources and was supporting 11 scholarships that year. U. MINN. L. SCH. NEWS, Feb. 1956, at 3, col. 1.

Another exception was the development of the Henry J. Fletcher Memorial Aid Fund, established in 1952 by alumnus Charles L. Horn. See U. MINN. L. SCH. NEWS, Feb. 1956, at 3, col. 3.

163. See Report of Faculty Law Review Committee, *appended to Minutes of the University of Minnesota Law School Faculty* (May 5, 1947).

164. See *id.*

165. See Minutes of the University of Minnesota Law School Faculty (Apr. 28, 1950); *id.* (Jan. 11, 1952); *id.* (Apr. 21, 1954).

166. Minutes of the University of Minnesota Law School Faculty (May 17, 1956).

"the faculty will give great weight to successful Law Review work by those persons eligible to participate in making recommendations for legal positions after graduation."<sup>167</sup> It is difficult to document whether this or any other inducement was successful. It may be that nonparticipation was simply a phenomenon largely independent of the nature of the program offered or the advantages gained. In any event, it is clear that the lack of participation by qualified students was of grave concern to the faculty as a matter reflecting adversely on the scholarly atmosphere and status of the school.

A second problem facing the *Law Review* in the early 1950's was its financial status. In 1920, three years after its birth, the *Law Review* had entered into a symbiotic relationship with the young and growing Minnesota State Bar Association whereby the *Review* was sent to each Bar Association member as a benefit of his or her membership. The subscription cost was included as a part of the membership dues. Although this relationship had proved very lucrative to the *Law Review*, it was terminated in 1948 when the Bar Association, in deference to the large number of its members who had come from other law schools, felt its continued support of the *Minnesota Law Review* inappropriate.<sup>168</sup> Fortunately, at the time of the termination, the *Law Review* was left with an accumulated surplus of \$24,000 that could absorb the operational losses, which for the next six years would average about \$2,800 a year.<sup>169</sup> Yet this surplus could not last forever, and some action would have to be taken.

One possibility was a direct subsidy for the *Law Review* from the State Bar Association, but neither the Bar Association nor the faculty was enthusiastic about this suggestion.<sup>170</sup> And whatever lingering hopes there may have been for such direct support may have been diminished by a skirmish in the Bar Association's Board of Governors over the *Review's* publication of an article on obscenity by Professors Lockhart and McClure.<sup>171</sup> As reported to the faculty by Dean Pirsig, who attended the Board meeting, the Board first adopted a motion making it clear that the Bar Association had no editorial control or responsibility for the *Law Review*, and then considered a motion that the legend "Journal of the State Bar Association," which had continued to appear on the cover and masthead of the *Review* despite the termination of the official relationship with the Bar Association, be

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167. Law School Minutes, Apr. 21, 1954, *supra* note 165.

168. See 1978 Pirsig Interview, *supra* note 30.

169. See Self-Survey Report H, at 2, appended to Minutes of the University of Minnesota Law School Faculty (Mar. 17, 1955).

170. See Minutes of the University of Minnesota Law School Faculty (Jan. 18, 1954).

171. Lockhart & McClure, *Literature, the Law of Obscenity, and the Constitution*, 38 MINN. L. REV. 295 (1954).

deleted. "The Dean was told that the motion had no relation to the obscenity article but the Dean stated that he doubted that the faculty would believe that."<sup>172</sup> Though the Bar Association took no action on the motion, the faculty, as the *Law Review's* Board of Directors, accomplished the same result by action at its next meeting.<sup>173</sup> In any event, no Bar Association subsidy was requested or received, and throughout the early and mid-fifties the *Law Review* continued to operate at a loss and to consume its reserves.

### 3. *The Law School's Relationship to the Rest of the University*

If the internal problems of the school had proved somewhat intractable, problems arising between the law school and the University administration were little easier. One of the perennial sources of tension, then and now, is the dean's advocacy of the law school's budget and salary needs to the University President. The financial pinch induced by the post-war student enrollment fluctuations made any significant budget improvements, at least in the early years of Pirsig's administration, almost impossible. In fact, just nineteen days after he had submitted a request for an increase in the school's travel budget needed to recruit additional faculty members,<sup>174</sup> Pirsig received the news that instead of an increase, a University-wide retrenchment would require that his 1950-1951 budget be \$2,500 less than the 1949-1950 budget.<sup>175</sup> And if gains were hard to come by in the early years of Pirsig's administration, they were equally difficult in the later years. In 1954, a memorandum submitted by Pirsig graphically depicted the University's unenviable salary situation relative to other midwestern university law schools and prompted President Morrill to admit that the law school was at "a considerable recruiting and holding power disadvantage."<sup>176</sup> But at the same time, Morrill was "almost equally troubled by the fact that the Law School salaries, on the basis of age, experience, and training, [were] clearly out of line with comparable salary levels for faculty elsewhere in the University, except perhaps at the upper ranks of the Medical School."<sup>177</sup> Given this reaction of the University's President, it is not surprising that the problem of competitive salaries and the resulting loss of young faculty talent, by now almost a tradition, would remain.

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172. Minutes of the University of Minnesota Law School Faculty (May 19, 1954).

173. *See id.*

174. *See* Letter from Maynard Pirsig to J.L. Morrill (Mar. 30, 1950) (on file with Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

175. *See* Letter from J.L. Morrill to Maynard Pirsig (Apr. 18, 1950) (on file with Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

176. *See* Letter from J.L. Morrill to M.M. Willey (Nov. 29, 1954) (on file with Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

177. *Id.*

A second and related ongoing source of tension has been protection of the law school's status within the University. Ordinarily, there are few manifestations of this concern. But when Claude Allen suggested that, because of the proximity of the Mayo Medical Center, the University should promote its medical school as its "one outstanding school," Pirsig protested to President Morrill that the law school was another outstanding school in the University.<sup>178</sup> Included in the letter were reports that leading law educators considered Minnesota "the best law school west of the Alleghenies," that the current faculty indicated their esteem for the school by refusing offers from other prestigious schools, and that an Assistant United States Attorney General was finding that his best recruits were Minnesota graduates.<sup>179</sup>

Another problematic aspect of the law school's relationship to the central administration was its participation in University-wide programs and policies. Somewhat surprisingly, it was an incident arising out of such participation that provided the faculty with its most sweeping opportunity to articulate and advance its perception of its governance responsibilities within the law school. As at other law schools at that time, the relationship between Minnesota's dean and faculty had been slowly changing throughout Pirsig's administration as the faculty assumed additional powers. The catalytic event in this transition was the law faculty's evaluation of, among other things, the law school's administrative needs—an evaluation undertaken at the direction of the University's central administration. This evaluation would also mark the practical end of Dean Pirsig's administration.

#### F. THE SELF-SURVEY REPORT: 1955

The story begins with the decision by the University's central administration to include in its 1954 budget discussions an analysis of the ten-year goals of the institution.<sup>180</sup> To that end, a questionnaire was distributed requesting that each school make a survey of its requirements and goals, projecting them through the next decade. Thus, on March 1, 1954, Dean Pirsig opened the faculty meeting to a discussion of the law school's program in the future.<sup>181</sup> Though some discussion was recorded and more was planned, the project was not mentioned again in the faculty minutes, and it is clear that it was not considered a high priority item. The casual nature of this treatment was, apparently, a mistake. Eight months later, in a letter to

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178. See Letter from Maynard Pirsig to J.L. Morrill (Apr. 3, 1951) (on file with Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

179. *Id.*

180. See Law School Minutes, Mar. 1, 1954, *supra* note 137.

181. *Id.*



President Morrill, University Vice President Malcolm Willey included a note that drew attention to the law school's self-survey effort with this comment:

The Law School is the only member of the instructional unit in the University which does not seem to have given serious consideration to the self-survey. The face sheet of the report indicates that it was prepared by the dean without any consultation whatever. The statements it contains are brief and uninformative.<sup>182</sup>

The displeasure with the law school's self-survey exemplified by this critique was apparently shared not only by members of the University administration, but by the law school faculty as well. Although the exact process by which the faculty was alerted to the administration's dissatisfaction with the report is unclear, subsequent events seem to indicate that the faculty was embarrassed, if not angry, with the way the self-survey had been handled and was anxious to remedy the situation. Thus, at the end of the February 21, 1955 faculty meeting, the faculty passed Professor Rottschaefer's motion creating a special committee for the preparation of a supplemental ten-year survey.<sup>183</sup> The motion provided that the committee be chaired by Professor Lockhart and consist of Professors Anderson, Davis, Kinyon, Louisell, and McClure, with Dean Pirsig serving as an ex officio member.<sup>184</sup> The motion further provided that the committee's report be distributed to each faculty member before the meeting at which final action was to be taken.<sup>185</sup> The nature of the motion and its passage make clear the seriousness with which the faculty regarded the endeavor and its desire to produce a truly faculty-formulated statement of the school's goals.

Further evidence of the earnestness with which the faculty approached this task is the fact that the 63-page committee report was adopted by the faculty just a month after the committee was formed, and only after the report was discussed at four full faculty meetings held within one week.<sup>186</sup> The product was a wide-ranging analysis of almost every facet of the law school's operation. It addressed some of

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182. The note was from Professor Caplon. See Letter from M.M. Willey to J.L. Morrill (Nov. 15, 1954) (on file with Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota). See note 169 *supra*.

183. Minutes of the University of Minnesota Law School Faculty (Feb. 21, 1955).

184. *Id.*

185. *Id.*

186. The Self-Survey Report was adopted in sections on March 16, 17, 21, and 22, 1955. For discussions and amendments, see Minutes of the University of Minnesota Law School Faculty (Mar. 16, 1955); *id.* (Mar. 17, 1955); *id.* (Mar. 21, 1955); *id.* (Mar. 22, 1955). Since it was intended as a planning guide and served as a blueprint for the next administration, the report will be discussed more fully in the next article in this series.

the school's developing and perennial problems, such as faculty salaries, admissions standards, the *Law Review*, loan funds, and the hopes for a Legal Aid Clinic. But of more immediate and particular bearing on the subject of this Article—the transition years of the Pirsig administration—is the report's discussion of the school's administrative structure.

In short, the report's treatment of the law school's administration was far from kind. The opening lines of the report, as approved by the faculty, read as follows:

In the opinion of the members of the faculty who have been associated with the Law School for a substantial period of time its administrative organization and operation has for many years been inadequate in many respects. For 30 years or more the staff in the Dean's office has consisted of the Dean and one senior secretary, with one or (in the past 5 years) two full-time stenographers (one a junior secretary now), plus a part-time Assistant Dean and a part-time junior secretary for a period of four years. . . . During this period the senior secretary has handled many administrative matters and responsibilities for which she was neither qualified, trained nor adequately paid. The Dean has spent endless hours in making schedules, handling correspondence and seeing students on routine matters, and doing other delegable and routine administrative chores that could as well have been done by a junior administrator receiving less than half the Dean's salary. The result is that many important matters, both in the area of the business management of the school and in such areas as placement, scholarship procurement, alumni and public relations, student relations, and service to the bar and the state, have not been adequately dealt with.

It is not the purpose of this memorandum to blame anyone for this state of affairs or seek an explanation or justification for it. It exists, and the problem is whether something effective can be done about it.<sup>187</sup>

From this dispassionate and critical introduction, the report went on to identify ways in which the school's administration could be improved.

The first and most fundamental issue discussed was the allocation of administrative authority; the most important aspect of this discussion was its focus on the bifurcated nature of the powers within the University.<sup>188</sup> The report explained that the Board of Regents had delegated the power to govern, through the University Senate Constitution, in part to the President and in part to the school or college

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187. Minutes of the University of Minnesota Law School Faculty (Mar. 16, 1955) app. 1-2 (recommendations to faculty by the Self-Survey Committee). A shorter statement was included in the submitted Self-Survey Report, *supra* note 157, at 49-50.

188. See *id.* at 2-6.

faculty. The power delegated to the President was justified by the need for integrated operations, and the power delegated to the faculties was justified by the desire for a high degree of autonomy within each school.

The role of the dean, the report continued, was that of a liaison between these two autonomous sources of power:

Although he acts as the single administrative head of the school (for reasons of efficiency, unity and integration of operations), he exercises his administrative powers as a representative of two distinct (and sometimes adverse) principals (each having direct powers from the Regents) rather than as an independent executive officer like the President with a direct line of authority from the Regents.<sup>189</sup>

Within the school itself, the dean's function was seen as that of a leader in and a facilitator of faculty decisionmaking regarding the internal affairs and policies of the school. While it was clear that the dean did not have the authority personally to decide the school's policy questions, the report made explicit the dean's responsibility as a faculty leader to "initiate, coordinate and expedite faculty action."<sup>190</sup> And once the school's policies and objectives had been decided, the dean's role was that of a spokesman and advocate in presenting those views to the University administration and the public.<sup>191</sup>

It is difficult to imagine the report coming to a more explicit statement of the relationship between dean and faculty that had been evolving during the preceding decade. Once clearly stated and adopted, the tensions incident to the birth and growth of this relationship could be lessened. As University Vice President Malcolm Willey observed,

the analysis really lays out the responsibilities of a dean and makes it perfectly clear that in this college, at least, the faculty regard the dean as more than a presiding chairman. His responsibilities to the faculty and his responsibilities to the President are well balanced. What he is expected to do has been set down in such a way that it is evident that real leadership is possible.<sup>192</sup>

The next dean, knowing fully what his role was to be, would have an easier task than did Pirsig.

In light of the tone of the faculty's Self-Survey Report, it is not surprising that Dean Pirsig tendered his resignation effective September 15, 1955.<sup>193</sup> His tenure as head of the Minnesota Law School

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189. *Id.* at 5 (emphasis in original).

190. *Id.* at 4-5.

191. *See id.*

192. Letter from M.M. Willey to W.T. Middlebrook (Mar. 25, 1955) (on file with Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

193. *See* Lockhart, *supra* note 128, at 159.

had been a mix of successes and frustrations. With an apparent genius for finding and recruiting faculty members, Pirsig brought scholars such as Kenneth C. Davis, David Louisell, Charles Allan Wright, Monrad Paulsen, and Michael Sovern to Minnesota. With the help of these new people and the core of the faculty left by Fraser, Pirsig maintained the standards of excellence which, since Vance's time, had clearly placed Minnesota among the top law schools in the country. With the help of the University administration and law school alumni, he secured a much needed addition to the law building. These were among his successes. Among his frustrations were the dramatic post-war student enrollment fluctuations that significantly overloaded the faculty and the facilities of the school; the campus-wide retrenchment program that deprived him of the faculty positions he needed; lack of support from the University central administration; a faculty that was becoming increasingly less enthusiastic about the Minnesota Plan, to which he remained committed; a faculty that was anxious to redefine its relationship to the dean and assume a more active leadership role in the school; and, generally, the distastefulness of administrative fare to a scholarly palate.<sup>194</sup>

The Pirsig years, as a time of transition, were difficult ones for the law school. But traditions of excellence were maintained and the

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194. Following his resignation as dean in 1955, Maynard Pirsig returned to his chosen work of law teaching, scholarship, and service, adding further laurels to his distinguished career. Pirsig continued as a member of the faculty at the University of Minnesota Law School for fifteen additional years, until he reached the University's mandatory retirement age in 1970. Thereafter, he continued his law teaching as a member of the faculty of the William Mitchell College of Law. At age 77, he currently resides with his wife, Harriet, in Minneapolis, and remains active as a professor at the William Mitchell College of Law and as Professor Emeritus at the University of Minnesota Law School.

Dean Pirsig continues to be a man of extraordinary energy and productivity. It is not unusual to find him working late into the night in the law school library, on one of his many projects. Indeed, many of Pirsig's most distinguished achievements have occurred since leaving the deanship. He is a prolific scholar, producing new editions of his *CASES AND MATERIALS ON PROFESSIONAL RESPONSIBILITY* in 1970 and (with Kenneth F. Kirwin) in 1976. He continues to publish articles in various legal periodicals, frequently dealing with the uniform law projects in which he is engaged. See notes 25-37 *supra* and accompanying text.

His work in the uniform law area has produced contributions to the nation, state, and legal profession. In connection with his work on the Uniform Rules of Criminal Procedure, for example, he is currently serving as the representative of the Commissioners on Uniform State Laws to the American Bar Association Committee, revising the Standards of Criminal Justice. He also serves as a consultant to the Minnesota Supreme Court regarding the Minnesota Rules of Criminal Procedure, and has served as a member of the United States Advisory Committee on Federal Rules of Criminal Procedure and as Reporter for the Advisory Committee to the Minnesota Legislative Commission for the Revision of the Minnesota Criminal Code.

Maynard Pirsig is not the only member of his family to receive widespread public

foundation was laid for more productive future years. The hardships were not suffered in vain.

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recognition for his achievements. His son, Robert M. Pirsig, authored the book *ZEN AND THE ART OF MOTORCYCLE MAINTENANCE* (1975), which rose to the top of the national best-seller lists for several months, selling over 1½ million copies in ten languages.