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In Pursuit of Excellence—A History Of The University Of Minnesota Law School

Part V: The Lockhart Years—A Time of Achievement and Challenge, 1956-1972†

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Following the long and successful administration of Dean Everrett Fraser (1920-1948), the University of Minnesota Law School's fourth dean, Maynard E. Pirsig (1948-1955), presided over seven transitional years at the school. With a talent for attracting young faculty members of extraordinary quality, he did much to enhance the school's tradition of excellence. But, at the same time, his administration suffered from the tensions incident to a changing relationship between the faculty and the dean. In 1955, a faculty-drawn self-survey provided the impetus for a statement of a new division of responsibility between dean and faculty, which clearly articulated both the faculty's responsibility for law school policy and the dean's responsibilities as leader of the faculty and executor of faculty-established policy. With the contours of this new relationship clearly defined, the school's next dean, William B. Lockhart, was to have a long and successful tenure. From 1956 until 1972 he presided over the school as it worked to improve its relations with the Minnesota bar, strengthen its educational program, and increase its ability to attract and retain high quality faculty and students. While in the later years the school's progress was stymied by the critical inadequacy of its physical facility, the University of Minnesota Law School during Dean Lockhart's administration was characterized by the pursuit and achievement of excellence, despite many challenges.

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* Vice President for Administration and Planning, University of Minnesota; Professor of Law, University of Minnesota Law School. I would like to express my appreciation to Andrew J. Mitchell, J.D., University of Minnesota Law School, 1978, for his extraordinary assistance in the research and writing of this series of articles. Also, I would like to thank my colleagues, Carl A. Auerbach and John J. Cound, for their valuable comments on a draft of this Article.
Near the end of Dean Maynard E. Pirsig's administration, at the request of the University's central administration, the law school undertook an extensive self-evaluation. The evaluation resulted in a detailed report that touched upon almost every aspect of the law school's program and identified many areas in which improvement was thought to be necessary. This report, adopted by the faculty in 1955, was drafted by a faculty committee chaired by Professor William B. Lockhart.

Although this report was to serve as a blueprint for Dean Lockhart's administration in many ways, it was equally useful as an articulation of the faculty-dean relationship to which the faculty aspired. The report clearly asserted that the faculty had responsibility for determining the educational policies of the school, but that the dean had an obligation to lead by "initiat[ing], coordinat[ing], and expedit[ing] faculty action." The faculty expected the dean not only to implement its directives and to advocate its policies before the central administration and the community, but also to aid the faculty in identifying issues with which it should be concerned and solutions that it should consider. The model it espoused was one of faculty democracy with the dean having a strong leadership role.

Upon Dean Pirsig's resignation, the University began to search for the person who could fill the role envisioned in the 1955 Self-Survey Report. University President James L. Morrill appointed an advisory committee of four law school faculty members to assist him in screening the nation's talent while first Professor David Louisell and later Professor William Lockhart assumed the duties of acting dean of the law school. The committee's search outside the school proved unfruitful, however, since candidates with the desired qualifications were "almost invariably well-established, successful and happy in their current positions and [could] not easily be induced


2. Members of the committee were Professors Stanley Kinyon, William Lockhart, Monrad Paulsen, and Henry Rotschaefer. See Search for New Dean Continues, U. MINN. L. SCH. NEWS, Apr. 1956, at 1 [hereinafter cited as Search for New Dean Continues].

3. Professor David Louisell served from September 15, 1955 to January 31, 1956, when a previous commitment to serve as a Visiting Professor at the University of California at Berkeley took him from Minnesota. He later decided to remain at Berkeley, where he taught until his death in the spring of 1978. Professor Louisell returned to the University of Minnesota Law School for a visit as an Alumni Professor in 1971-1972.
to make a change." Consequently, the committee informed the President that he should focus his attention on the Minnesota faculty itself and that the committee could be of no further assistance to him.\(^4\) After consulting with each member of the faculty and with leaders of the state judiciary, bar association, and alumni groups, President Morrill appointed Professor William Baily Lockhart dean on May 11, 1956.\(^5\)

As a faculty member since 1946 and as the author of the 1955 Self-Survey Report, Lockhart was well aware of Minnesota's current needs and the role that the dean was expected to assume. As the man whose leadership would shape the school, his responsibilities and opportunities were great. The history of the next sixteen years of the University of Minnesota Law School bears testimony to his extraordinary abilities and industry.

A. THE DEAN

1. The Early Years

Dean Lockhart was born in Des Moines, Iowa, in 1906.\(^7\) The son of a minister, his upbringing instilled in him both a strong religious commitment and an appreciation for midwestern values and style that he has retained throughout the subsequent years. While attending Drake University in his home town of Des Moines, he preached part-time for the Disciples of Christ Church. This commitment did not, however, interfere with his studies. He graduated in 1929 as a member of Phi Beta Kappa with majors in both political science and English.\(^8\)

Pursuing an interest in politics and government, Dean Lockhart proceeded from Drake to Harvard University. There, he first received a Master of Arts degree in Government in 1930, and subsequently entered Harvard Law School. In the middle of Dean Lockhart's year in the Masters Program, the Depression arrived. He supported himself throughout the remainder of that year and during his three years of law school by accepting the call of his church to the ministry of a

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5. Interview with William B. Lockhart, former Dean of the University of Minnesota Law School, in Ely, Minnesota (Aug. 27, 1978) [hereinafter cited as Lockhart Interview].
7. Lockhart Interview, supra note 5.
small parish in Massachusetts. In addition to his church work, Dean Lockhart served on the Harvard Law Review and was Book Review Editor for Volume 46.

After graduating from Harvard in 1933, Dean Lockhart entered the private practice of law. His first job was with a small law firm in Louisville, Kentucky, where he did a good deal of appellate work for a clientele composed largely of insurance companies. But it took only a year in the Middle South before the attractions of the midwest brought Lockhart back to join a general practice firm in Des Moines, Iowa. He practiced there from 1934 to 1937, with the exception of a year during which he filled an unexpected vacancy on the faculty of the Drake University Law School. Having previously declined one teaching fellowship offer from Harvard, Lockhart concluded the year of teaching at Drake still disinclined to choose legal education as his career. He changed his mind, however, when Harvard again offered him the Ezra Ripley Thayer Teaching Fellowship in 1937. He returned to Harvard for a year of teaching and the beginning of research that eventually led to his S.J.D. degree, awarded in 1943.

From Harvard, Lockhart in 1938 moved to a position as Associate Professor of Law at Stanford University. There, in addition to his classroom work, he did a significant amount of writing in the constitutional law area, primarily on the subject of state taxation of interstate commerce. Much of this work was published in the Harvard Law Review. The advent of World War II, however, disrupted both his classroom and research work. In 1942 he left Stanford, first for a post with the Office of Price Administration, and then to serve as a supply officer in the Navy. He served tours of duty in Corpus Christi

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9. Lockhart Interview, supra note 5.
10. Dean Lockhart to Retire, supra note 8, at 4. It was in the capacity of law review editor that Lockhart first met Kenneth Culp Davis, later a colleague on the Minnesota faculty. As an editor of the Harvard Law Review, Lockhart edited a student piece submitted by Davis. Lockhart Interview, supra note 5.
11. Lockhart Interview, supra note 5.
12. Id.
14. See, e.g., Lockhart, Gross Receipts Taxes on Interstate Transportation and Communication, 57 Harv. L. Rev. 40 (1943); State Tax Barriers to Interstate Trade, 53 Harv. L. Rev. 1253 (1940); The Sales Tax in Interstate Commerce, 52 Harv. L. Rev. 617 (1939).
15. Lockhart was the OPA Regional Rent Attorney for the West Coast in the OPA's formative years and played a role in writing its original regulations. He also hired a number of attorneys for the national OPA organization from within the ranks of the West Coast law faculties. Lockhart Interview, supra note 5.
and in the Aleutian Islands before his discharge at the end of the war.\textsuperscript{16}

After the war, Lockhart returned to Stanford briefly in 1946. While there, he received a letter from Dean Everett Fraser offering him a position on the Minnesota Law School faculty—a position that he was eager to accept.\textsuperscript{17} As Dean Lockhart explained years later, Stanford was a bit "sleepy" at the time with "not too many [people] doing a lot of productive work . . . . [I]t was not nearly as aggressive as Minnesota."\textsuperscript{18} Consequently, the change for him was welcome, and he in turn was a welcome addition to the faculty with which Dean Fraser faced the surge of returning war veterans.

2. Personal Qualifications

From the moment of his arrival in 1946, Professor Lockhart played an active role on the Minnesota Law School faculty. Within four years of his arrival, he was appointed chairman of the first faculty curriculum reevaluation study in twenty years.\textsuperscript{19} Five years later he served as chairman of the special committee to prepare the law school's ten-year Self-Survey. As noted previously,\textsuperscript{20} this extensive report did much to clarify the role of the dean within the law school—a role Lockhart was soon to assume. But, in addition to defining the dean's role, the report also detailed the type of person the faculty wanted for the job:

In our school, as in most good law schools, the Dean is traditionally and desirably a professional and teaching Dean . . . . He is expected to be among the country's top scholars in the field of his specialty . . . . As is true of all other law school professors, he is expected to participate in bar association, public service and law school association activities in the areas relating to his special competence. . . . [All of] these demands must be met if our Dean is to have standing and respect locally and nationally and if he is to be an effective leader of his professional faculty.\textsuperscript{21}

A teacher, a scholar, and a leader—both within the profession and in

\textsuperscript{16} Id.

\textsuperscript{17} Recalling the situation recently, Lockhart said that deciding to accept the Minnesota offer took only as long as a phone call to his wife. Id.

\textsuperscript{18} Id. No doubt an additional factor was the attraction of being close to the Lockhart family retreat on an island in Burntside Lake near Ely, Minnesota.

\textsuperscript{19} This was the 1950 Curriculum Committee. For details of its report see Stein, \textit{In Pursuit of Excellence—A History of the University Of Minnesota Law School Part IV: The Pirsig Years—A Time of Transition}, 1948-1955, 63 MINN. L. REV. 299, 305-14 (1979) [hereinafter cited as Stein, \textit{The Pirsig Years}].

\textsuperscript{20} See text preceding note 1 supra.

\textsuperscript{21} Self-Survey Report A, supra note 1, at 13.
the community—this was what the faculty envisioned, and, in Lockhart, this is what they received.

a. Teacher and Scholar

As the author can attest from first-hand observation both as a student and as a faculty colleague, Dean Lockhart is an excellent teacher. Before assuming the responsibilities of the deanship, Lockhart regularly taught Constitutional Law and Labor Law. In addition, he taught other courses, including Municipal Corporations, Trade Regulation, and Torts, as dictated by the interests of the faculty and the needs of the school.22 After becoming Dean, Lockhart narrowed his focus to Constitutional Law, and continued as an active teacher by teaching one section of this required course each year.

The author first formed a highly favorable opinion of Dean Lockhart's teaching skills as a student in his classes. Later, when the author returned to Minnesota as one of Dean Lockhart's colleagues on the faculty, he again had the opportunity to learn from the Dean, both by observation and conversation. With only one minor exception, Dean Lockhart's pedagogical approaches and advice were excellent. His only weakness was in his scheduling preferences. An early riser himself, the Dean was convinced that the best time to teach was in the first hour of the day. Apparently unaware that many law students are barely able to function before nine o'clock, he consistently resisted the wise counsel of the author to abolish the 8:15 a.m. class. Yet, despite this curious foible, students aware of his excellent reputation as a teacher were more than satisfied to find themselves in his early-morning section. They formally recognized his teaching skill when, after the conclusion of his deanship, he remained at the school for a year of full-time teaching and was voted the Teacher of the Year by the Class of 1973.

Just as Dean Lockhart's excellent teaching ability was known throughout the law school, his reputation as a preeminent legal scholar is nationally recognized. As the author or coauthor of many articles and several casebooks, Lockhart is a leading authority in a variety of fields. He is perhaps best known to the current generation of law students for the standard casebooks on Constitutional Law23

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23. There are three constitutional law casebooks authored by Lockhart, Kamisar, and Choper—The American Constitution: Cases and Materials; Cases and Materials on Constitutional Rights and Liberties; and Constitutional Law, Cases,
that he coauthored with Professors Yale Kamisar and Jesse Choper,\textsuperscript{24} both of whom he brought to Minnesota while dean. Lockhart's other writings, however, evidence the breadth and depth of his scholarship. As mentioned previously, Lockhart's earliest writings dealt extensively with problems of state taxation of interstate commerce.\textsuperscript{25} But Lockhart's first articles for the \textit{Minnesota Law Review} evidenced his strong interest in labor and antitrust law.\textsuperscript{26}

Undoubtedly, however, the major focus of Lockhart's scholarship during the time of his deanship was the law of obscenity. In collaboration with his faculty colleague Robert C. McClure, Lockhart coauthored four major articles\textsuperscript{27} that, underscoring the paucity of sociological data in the area, urged a minimum of regulation, at least until there was evidence that obscene speech was a cause of proscribable conduct. The work of Lockhart and McClure attracted considerable attention, most notably from Justice William O. Douglas. Justice

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\textit{Comments and Questions.} They differ in scope and depth of coverage, as each is designed for use in a slightly different context. First published in 1964, they were edited in 1969, 1970, and 1975, with a fifth edition now in preparation.

24. Lockhart's association with Kamisar and Choper was formed when all three were colleagues on the University of Minnesota Law School faculty. In a short tribute published in the \textit{Minnesota Law Review} on the occasion of Lockhart's resignation from the deanship, his collaborators expressed their "admiration, gratitude and debt."

In the early sixties, Bill invited the two of us, his very junior colleagues, to join him in the publication of teaching materials in constitutional law. Bill has been the ideal collaborator. From the beginning, Bill Lockhart—The Teacher (here, of his colleagues) encouraged us to develop our own notions—regardless of his immense expertise in the area, irrespective of the fact that he had already prepared a full and refined set of materials over a number of years, and despite our being riders on the coattails of his contract with the publisher. He gave us our say over those segments of the book that were assigned as our primary responsibility and was genuinely eager to receive our comments on his portions. But, all having been said and done, he was the man of wisdom in the field. His adroit perceptions and penetrating judgments mark the entire project.


25. See note 14 \textit{supra} and accompanying text.


Douglas cited their work extensively in several Supreme Court opinions, including his well-known dissenting opinion in Roth v. United States, in support of the proposition that:

The absence of dependable information on the effect of obscene literature on human conduct should make us wary. It should put us on the side of protecting society's interest in literature, except and unless it can be said that the particular publication has an impact on action that the government can control.

In Roth, Justice Douglas, with a somewhat amusing choice of words, referred to Lockhart and McClure as "two of our outstanding authorities on obscenity." While presumably Lockhart and McClure would prefer to be known as outstanding authorities on the law of obscenity, rather than on obscenity itself, it is clear that Douglas paid them a great compliment in relying so heavily on their work.

A further compliment to their work was President Lyndon B. Johnson's decision to appoint Dean Lockhart to the congressionally authorized United States Commission on Obscenity and Pornography in 1968. Lockhart's fellow commissioners elected him chairman, a position that occupied much of his time during the following two years. The charge to the Commission was to develop the sociological data needed for informed decision making in the pornography area and to make legislative recommendations based on those data. The result was volumes of studies concerning the effect of obscenity, and a very controversial set of recommendations.

The Commission found no evidence that adult exposure to pornography was an incitement to the commission of sexual crimes. As a result, the Commission urged that the law "be revised to let consenting adults make their own decision on what they will read or view." In addition, it recommended a detailed statute designed to control the distribution of explicit sexual materials to young people. Finally, and perhaps most controversially, the Commission recommended a "massive program of sex education to produce healthy

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29. 354 U.S. at 508 (Douglas, J., dissenting).
30. Id. at 511.
31. Id. at 509.
34. See Lockhart, supra note 32, at 215.
35. See id. at 221.
attitudes toward sex and a sound understanding of our sexual natures in order to provide solid underpinnings for our most basic institutions—marriage, home and family.

Not surprisingly, the Commission's report met with considerable popular and political opposition. Issued in 1970, the report was quickly criticized by the Nixon administration and was rejected by the United States Senate by a vote of 60-5. The report, however, had not been prepared with immediate political acceptance in mind. Dean Lockhart described the Commission's approach as follows:

But when we accepted this assignment we put aside our personal views and determined to seek and report the truth, whatever it might be, and then to form our independent judgment on what the government should do in this problem area only after we saw the scientific evidence.

The report was true to the scholarly standards of Dean Lockhart's work.

36. See id. at 212.
37. See 116 Cong. Rec. 36,478 (1970). Indeed, Senator Dole claimed the Commission's "conclusions are reprehensible, a monumental fiasco to the mandate given by Congress." 116 Cong. Rec. 33,830 (1970). Senator Griffin recommended the report "be tossed in the trash can along with all the foul . . . material that it would make available to the public." 116 Cong. Rec. 36,473 (1970). Only one Senator, Walter F. Mondale of Minnesota, rose to speak in defense of Dean Lockhart and in opposition to the motion to reject the commission findings. A 1956 graduate of the University of Minnesota Law School, Mondale, now Vice President of the United States, was a former student of Dean Lockhart. See Lockhart Defends Report, Minneapolis Star, Oct. 14, 1970, § B, at 6, col. 1.

In addition to hostile national reaction, there was equally predictable local controversy in which the chairman of the self-styled "Committee for the Preservation of the University of Minnesota" called for Dean Lockhart's resignation. But University President Malcolm Moos and others supported Dean Lockhart and no serious threat was mounted. See Lockhart's Right to Conscience, Minneapolis Star, Oct. 31, 1970, § A, at 19, col. 1 (editorial). Throughout the vitriolic and often personal attacks on the Commission's work, Lockhart never indicated that the criticisms bothered him. Consistently, he addressed himself to the merits of the issue and avoided acknowledging the mudslinging accusations of his detractors. It was only later, at the time of President Nixon's resignation, that a comment made to the author revealed how deep the wounds had been. Of Nixon, Lockhart said, with great emotion, "and this is the man who called me morally bankrupt."

38. Lockhart, supra note 32, at 211.

For his defense of freedom of speech, Lockhart was awarded the first Distinguished Public Service Award of the National Book Committee in 1971. See Dean Lockhart to Retire, supra note 8, at 5; William B. Lockhart Biographical File, University of Minnesota Archives, Minneapolis, Minnesota.
b. A Leader Within the Profession and the Community

According to the 1955 Self-Survey Report, Minnesota's law faculty wanted their dean to be not only a teacher and a scholar of high standing, but also an active participant in "bar association, public service and law school association activities." They wanted the dean to possess a perspective and persuasiveness that could be developed only in service beyond the law school. In Dean Lockhart, the school had a dean with this kind of experience. His service as chairman of the Commission on Obscenity and Pornography was one example of the type of leadership of which Lockhart was capable and which he was willing to undertake. But it is only one of many examples in his career.

Dean Lockhart has also made a significant contribution to the legal profession by serving as a member of the American Law Institute (ALI) Council. The position is as important as it is prestigious. The Council, as the Institute's managing body, is responsible for selecting areas of ALI study and substantively reviewing each ALI product—the Restatements and Model Codes—before it is submitted to a vote of the ALI’s general membership. Elected in December of 1959, Dean Lockhart continues to serve in this capacity today.

In addition, Dean Lockhart served the legal education profession by his extensive work in the Association of American Law Schools (AALS). His positions of leadership within the AALS included membership on its five-person executive committee in 1962, serving as its President-Elect in 1968, and serving as its President in 1969. During the period of his administration of the AALS, his major efforts were directed at developing the Association’s response to the inadequacies in the provision of legal education to minority students. In particular, he spent much of his time seeking federal appropriations and foundation funds for scholarships and special summer institutes designed to help disadvantaged students prepare for law school.

Earlier, however, the focus of Lockhart’s AALS work had been the enhancement of faculty responsibility for the development of law school policy. In the middle to late 1950s, Dean Lockhart, first as a member and then as chairman of a Special Committee on Definition of Sound Educational Program, was instrumental in persuading the

43. Lockhart Interview, supra note 5.
AALS to adopt Articles of Association and Standards for Membership that required educational policy to be determined through faculty action and ensured that law school faculty would have a direct voice in faculty appointment and tenure decisions. Specifically, in 1957 Dean Lockhart engineered the passage of the Committee’s recommendation to amend the AALS Articles of Association to provide that member schools and other schools, in order to be acceptable for admission, shall:

[Vest] primary responsibility for the determination of matters of educational policy in a properly constituted and organized faculty, which shall meet regularly and according to orderly procedures, and which shall keep records of its deliberations.44

In 1958, he successfully urged the adoption of the following standard:

The faculty (or a representative portion thereof determined by reasonable criteria) shall exercise a substantial degree of control over faculty appointments and tenure designations. This control shall be assured by procedures which:

a. Authorize the faculty . . . to submit recommendations concerning faculty appointments and tenure designations through the appropriate administrative officials to the governing board or officer with final appointing authority.

b. Provide that, except in rare cases for compelling reasons, faculty appointments and tenure designations will not be made over the opposition of a majority of the faculty members voting on the question.45

These proposals reflect precisely the transition in faculty-dean relationships that had been in incubation at Minnesota in the early 1950s. And they were precisely the changes that Lockhart, as dean, championed at Minnesota during the earliest years of his administration. Leading the move, both at home and nationally, to institutionalize the law faculty’s responsibility for educational policy, Lockhart ended Minnesota’s years of uncertainty and transition with a new era of faculty democracy.

B. THE TRANSITION TO FACULTY DEMOCRACY

No doubt the most dramatic change in administrative outlook that followed Lockhart’s appointment to the deanship was his commitment to faculty control of educational policy. One of the first

44. ASSOCIATION OF AMERICAN LAW SCHOOLS, PROCEEDINGS 1957, at 92 (1958).
45. ASSOCIATION OF AMERICAN LAW SCHOOLS, PROCEEDINGS 1958, at 305-06 (1959) [hereinafter cited as AALS 1958 PROCEEDINGS].
It is important to get our committee organization on a permanent basis with well-defined jurisdiction and responsibility, to replace the ad hoc special committee system that has largely characterized our joint faculty action in the past. More efficient, quicker, and more expert handling of the many problems that should come before faculty committees will result from having standing committees with continuing responsibility. An alert standing committee organization . . . will provide the Dean with an already existing faculty organization to which he can turn immediately with new problems, or to which he can delegate without delay administrative matters falling within their jurisdiction. The result is bound to be a faculty that understands better all aspects of the school and student problems, and that is more constantly on the alert for points at which improvement can be made in the educational achievement and the services of our school.\(^4^6\)

By making the democratic processes of the faculty effective and efficient, the faculty would be capable of handling the responsibility it was assuming under the new relationship. The recommendations of the Self-Survey Report were adopted, and the faculty's committee system has existed since that time—although the number and nature of the committees has varied from time to time.

Shortly after the Self-Survey Report came a second indication of the institutionalization of faculty responsibility for educational matters. This was the adoption of the following faculty resolution in January of 1956, over the dissenting vote of former Dean Pirsig:

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.\(^4^7\)

Later in the same year, a joint statement of the faculty and Dean Lockhart was adopted which delineated more clearly where the admitted hazy lines of recruitment responsibility were to be drawn:

The effective power as the system operates is neither in the Dean nor in the Law Faculty but is in both, acting jointly subject to approval of the President and the Board of Regents . . . . To share with the Dean the task of sifting prospective appointees, we have a Faculty Procurement Committee, of four members, ap-

\(^4^6\) Self-Survey Report A, supra note 1, at 23.

\(^4^7\) Minutes of the University of Minnesota Law School Faculty (Jan. 10, 1956).
pointed by the Dean . . . . The initiative in sifting may be taken either by the Dean or by the Faculty Committee, or by both acting together. The working relation between the Dean and the Committee is not formalized and is not constant; it changes from time to time in accordance with circumstances.48

While this statement falls short of the formalized approach recommended by Lockhart's AALS committee, it clearly established that the faculty would have a "substantial degree of control over faculty appointments and tenure designations."49

These formal measures, however, were merely manifestations of the more basic change in the faculty-dean relationship. Asked years later to characterize the political balance to which he aspired, Dean Lockhart described it as "democracy with a leader."50 While it is clear that he was an advocate of faculty responsibility and control, it is equally apparent that he believed the dean had an obligation to provide strong leadership. This leadership was both of the type that is implicit in the task of representing the policies of the University's central administration to its colleges, and of the type that is evidenced among peers and colleagues. The dean was to be more than an executor of University administration policies and more than a leading member of the faculty's democratic community; he was to be both.

With the faculty now organized for effective participation in the direction of the school, and with a dean who was fully cognizant of the need for such faculty participation, the committee system worked well—so well that the faculty later granted to certain committees the power to make final determinations, without the need for subsequent faculty approval, within the less controversial areas of their jurisdiction.51 For example, matters of scheduling, scholarship, student recruitment, Law Review, honors, student petitions, and admissions could be finally decided by the appropriate committee without compulsory submission to the whole faculty. This cleared faculty meeting agendas for more substantive and policy-oriented decisions.

Although faculty democracy blossomed in the Lockhart years, Dean Lockhart rigorously protected from faculty encroachment those decisions that he felt were best left to the dean's discretion. The best example of this is the matter of budgetary control. In 1970, a faculty member proposed that it might be desirable to create a faculty committee to consult with the dean on budgetary planning. The advocate of the suggestion indicated that it was based on the

48. Minutes of the University of Minnesota Law School Faculty (Oct. 23, 1956).
49. See AALS 1958 PROCEEDINGS, supra note 45, at 305.
50. Lockhart Interview, supra note 5.
51. See Minutes of the University of Minnesota Law School Faculty (May 29, 1964).
belief that important decisions, such as those of a budgetary nature, should not be made *in camera*. He stated that a consultative committee on the budget would remove any fears that the faculty might have that a dean had acted vindictively when acting alone and would further insure that some important element in the process had not been overlooked. . . . He also added that he believed that while such a committee is not necessary under the present Dean, one might be needed under a successor, and that it would be politically more desirable to establish the committee now.52

The suggestion prompted an explanatory memorandum from Dean Lockhart in which he set forth the budgetmaking procedure and the potential for faculty involvement in it. He wrote,

Consultation with a [faculty consultative] committee could be helpful to the dean in reaching his decisions, *but I would want it clearly understood that the final decisions on budget are for the dean to make and that he will exercise an independent judgment after careful consideration of the views of the committee.*53

Apparently, the faculty was content to leave budgetary matters in the hands of the dean, at least for the time being. A straw vote on the committee proposal showed that a majority of the faculty felt annual reports by the dean on the budget would be sufficient to ensure the protection of their interests without infringing on an area that Dean Lockhart claimed as his own.54

With budgetary powers clearly in the hands of the dean and central administration, and educational policy matters clearly subject to faculty democratic control, the lines of responsibility were delineated but highly interrelated. As a result, one could no longer speak of accomplishments within the school as accomplishments of the dean or the faculty alone. Initiative might come from either source; implementation could surely be affected by either source; and thus responsibility would be shared by both. Governing the law school was increasingly a cooperative venture.

Invigorated by the administrative reforms of the middle 1950s, the University of Minnesota Law School was ready to move ahead. Secure in the belief that the faculty and the dean could be partners

52. Minutes of the University of Minnesota Law School Faculty (Apr. 24, 1970) (emphasis in original).
53. Memorandum to the Faculty, Subject: Possible Creation of Two New Committees for 1970-71, at 3, appended to Minutes of the University of Minnesota Law School Faculty (Apr. 24, 1970) (emphasis added).
54. The faculty vote was five for the establishment of the committee, seven for no committee, but with an understanding that the dean "might wish" to render annual reports, and three for leaving the matter exclusively up to the dean. See Minutes of the University of Minnesota Law School Faculty (Apr. 24, 1970).
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in the school’s governance and confident in each other's ability to perform, both the dean and the faculty were anxious to proceed in attaining the goals established in the 1955 Self-Survey Report. Improving relations with the bar, revitalizing the educational program, and maintaining a strong faculty were all significant priorities. In each, the school achieved significant success and experienced some disappointment.

C. IMPROVING RELATIONS WITH THE BAR

1. Increasing Faculty Involvement in the Organized Bar

A dominant theme in the 1955 Self-Survey Report was the need for improved relations with the bar. The law school, as a center for scholarly research and critical analysis of legal developments, had significant expertise to offer not only to the bar’s law reform activities but also to the continuing education of the bar. Although the primary instructional responsibility of the law school was to provide a quality education for its students, the University of Minnesota Law School, as a state-supported school that educated only one-half of the state's law students and contributed only seventy-five graduates each year to a state bar of over 3,100 lawyers, felt its influence should have a broader impact.

a. A Bar Center

One attempt to implement a more constructive relationship was a proposed Minnesota Bar Center. Initiated by Dean Lockhart and John Palmer of the Law Alumni Association, the proposal was for a center, housed within the law school and directed by a faculty member, which would operate as a clearinghouse for bar projects requiring the expertise and research capabilities of the law school. Negotiations between Dean Lockhart, the President of the Minnesota State Bar Association, and the President of the Minnesota State Bar Foundation resulted in an eight page memorandum detailing the objectives and the operations of the plan. Presented to the faculty in February, 1957, the proposal received unanimous approval.

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55. See Report of Law School Self-Survey Committee, at 41 (1955) (complete report) [hereinafter cited as Self-Survey Report]. The Self-Survey Report was adopted in sections on March 16, 17, 21, and 22, 1955. The Report that is referred to here is the complete report, as compiled and edited for submission to the University administration.

56. See Minutes of the University of Minnesota Law School Faculty (Nov. 16, 1956).

57. See Memorandum of Understanding, appended to Minutes of the University of Minnesota Law School Faculty (Feb. 5, 1957).
posal fell from view, however, and was not mentioned in the faculty minutes again. Most probably, lack of funding proved to be the stumbling block.

b. Informal Involvement

A more successful and more modest approach toward involving the law school in the affairs of the bar was to encourage greater faculty membership and participation in Bar Association activities. Dean Lockhart developed a law school policy of paying the Association initiation fee for faculty members willing to join, and of soliciting faculty to speak at local bar association meetings. The informality of this approach placed a premium on the enthusiasm and initiative of each faculty member. While some faculty have found a number of areas for involvement in and contribution to the organized bar's work, others have not. Consequently, improved relations with the bar has, in this sense, remained a recurring problem throughout the years.29

2. Increasing Bar Support of the Law School Program

Dean Lockhart's law school was very successful in improving its relationship with the bar in another manner, however. During the Lockhart years, the law school established productive ways in which the bar could demonstrate its interest in the school—through financial support of scholarships and faculty chairs. The 1955 Self-Survey Report informed the University's administration of two concerns whose solution would be rather expensive. One was the need for increased financial assistance to students, especially in order to compete with out-of-state schools in scholarships to attract the most promising students.60 The other was the desire to supplement and perhaps stabilize the law school faculty by inviting distinguished law professors to assume special chairs on the Minnesota faculty.61 Both suggestions required a substantial financial commitment. While the Report as submitted to the central administration implied that the University itself should be the source of funding, a faculty addendum to one of these suggestions,62 as well as general faculty discussion,63

58. See, e.g., Minutes of the University of Minnesota Law School Faculty (Nov. 13, 1956); id. (Nov. 6, 1956); id. (Jan. 12, 1965).
59. The high priority given to improving bar relations by the law school's current Dean, Carl A. Auerbach, is evidence that the concern remains today. See Auerbach, The Dean's Message, in ANNUAL REPORT TO PARTNERS IN EXCELLENCE, 1972 (University of Minnesota Law Alumni Association 1972).
60. See Self-Survey Report, supra note 55, at 32.
61. See id. at 10-11.
62. See Addendum for the Faculty on Financial Assistance to Students,
indicated that the faculty was considering other sources, most particu-
larly the Minnesota bar.

a. Student Financial Aid

(1) Annual Law Firm Scholarships

More than a year after the Self-Survey Report had been submit-
ted, the faculty returned its attention to these two proposals. The
first step was to establish which of the two projects should have
priority. At the time, only four percent of the school’s students were
recipients of scholarships. Fifteen scholarships were awarded an-
ually, all to upper classpersons who were working on the Law
Review. No scholarships were then available to other deserving
second- and third-year students. And while other good law schools
were actively competing for the best first-year prospects by advertis-
ing their scholarship programs, Minnesota had no scholarships
available for first-year students. In light of these facts, it was not
surprising that the faculty concluded that scholarship procurement
was the more pressing need.5

At the time—November, 1956—there was, however, considerable
doubt as to whether it was then appropriate to begin an ambitious
scholarship drive.6 The school had recently been through an adminis-
trative shakeup, and the new dean, Lockhart, was not yet well known
to the Minnesota bar. Moreover, the law school had other high prior-
ity tasks—such as revitalizing the educational program—that from a
public relations standpoint might best be done before an alumni
solicitation was begun.67 At any rate, it was decided that the dean
should investigate with the officers of the Alumni Association and the
University’s fund raising offices both the timing issue and the drive’s
potential for success. Apparently, the consensus was that this was
indeed not a very auspicious moment to begin a major solicitation,
and it was not until three years later that a full-fledged drive was
initiated.68

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5 appended to Minutes of the University of Minnesota Law School Faculty (Mar. 17,
1955).
63. See Minutes of the University of Minnesota Law School Faculty (Nov. 6,
1956).
65. See Minutes of the University of Minnesota Law School Faculty (Nov. 6,
1956).
66. See id.
67. Interview with John J. Cound, Professor of Law, University of Minnesota
Law School, in Minneapolis, Minnesota (Feb. 26, 1979).
68. See Lockhart Initiates Scholarship Drive, U. MINN. L. SCH. NEWS, Apr. 1960,
at 1.
Essentially, the goal of the drive was to effect an immediate increase in available scholarship funds. This could not be accomplished by an extended endowment drive because of the time lag before the endowment would produce significant income for scholarships. The solution was an appeal to Minnesota law firms and businesses to support annual scholarships, in "units of $500, designed to pay a student's educational expenses for one year." Significantly, the drive, which was carried out almost entirely by Dean Lockhart personally contacting each firm, was directed not only at Minnesota alumni but at all Minnesota firms. As it was recognized that all lawyers have an interest in the quality of the University of Minnesota Law School, both as a source of future talent and as an influence on the quality of the Minnesota bar generally, the drive was broadly based.

The response of the Minnesota bar was heartening. Within a year, scholarship funds were doubled by law firm donations, allowing for the creation of thirty-seven annual scholarships. Dean Lockhart reported that, as a result of the drive, "we have the best first-year class we have had in my fifteen years at Minnesota." By 1962, scholarship funds were up 666% over those available in 1957. Eighty-one firms and individuals were contributing, and sixty-seven students were receiving aid. The gaping hole in the school's financial aid program, of critical dimension in 1957, was largely filled by the swift and generous response of the many contributors. With the immediate need met, there was time to consider more permanent solutions.

(2) The Loan Program

One of the first developments lessening the dependence on annual law firm contributions as a solution to student financial concerns was the creation of a new student loan plan. At the time of the 1955 Self-Survey Report, the faculty identified several severe problems with the structure and funding of the University's loan program. For example, students were limited to loans of $300 per year and to a $600 maximum for a student's entire University career. Furthermore, loans from general University funds carried four per-

69. See id.
70. Lockhart Interview, supra note 5.
72. Id.
73. See Scholarship Funds Increase over 650% in Past 5 Years, U. MINN. L. SCH. News, Oct. 1962, at 3.
cent interest, even while the student was in school, and were written to require repayment one year after the date of the loan, even though many students would still be in school at that point. Although it was understood that, if the interest were paid, the University would not require repayment of the principal until the student was no longer enrolled, this did not relieve the anxiety of students who did not want to obligate themselves on notes that they knew they could not repay when due. Finally, the University’s loan plans were deficient in that even loans from law school funds—the Frank B. Kellogg Loan Fund74 ($25,000), the Henry J. Fletcher Memorial Aid Fund75 ($6,000) and the Law Alumni Loan Fund76 (approximately $30,000)77—which could be made interest-free for two years, were subject to the $600 career maximum.78

Although the 1955 Self-Survey Report suggested that the University’s entire loan plan be reformed to increase the amounts available and to liberalize the repayment options,79 the law school later found an independent solution. The solution was a new student loan plan created in 1963 by the law school and the First National Bank of Minneapolis, with the assistance of Minneapolis attorney Julius E. Davis, a 1936 graduate of the law school.80 Under the plan, second- and third-year students could borrow up to $1,000 a year. Repayment would not be due until after the bar exam, at which time borrowers

74. This fund was the gift of Frank B. Kellogg, former lecturer in the law school, later a United States Senator, Secretary of State, and recipient of the Nobel Peace Prize in 1929. 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, 499 (1978) [hereinafter cited as Stein, The Pattee Years].

75. The Fletcher Fund was established in 1952 by a contribution from Charles L. Horn of the class of 1911. For many years Mr. Horn made additional contributions, as did other alumni and friends of the school. Henry J. Fletcher taught at the school for 34 years (1895-1929). He was also the first Editor-in-Chief of the Minnesota Law Review. See Stein, In Pursuit of Excellence—A History of the University of Minnesota Law School Part II: The Vance Years—A Time of Ascendancy, 62 MINN. L. REV. 857, 880 (1978) [hereinafter cited as Stein, The Vance Years].


77. For the size of all three of these funds at the time of the 1955 Self-Survey Report, see UNIVERSITY OF MINNESOTA BULLETIN: LAW SCHOOL, 1954-1956, at 10-11 (1954).


79. Id. at 3.

80. See note 96 infra and accompanying text.
would have up to four years to complete repayment. With more than $50,000 loaned in the first year and almost $150,000 in loans outstanding by 1966, the program was a substantial success. Guaranteed originally with funds donated by the Federal Cartridge Corporation Foundation and the Robins, Davis, and Lyons Foundation, and later with funds donated by the Law Alumni Association through its dues, this loan program was another demonstration of the bar's willingness to support the University of Minnesota Law School.

(3) Increase in Endowed Scholarship Funds

Another development that reduced the need for direct annual contributions to student financial assistance was an increase in the number and size of endowed scholarship funds. In 1954, the Law School Bulletin reported seven scholarship funds, the largest of which was the Wilbur H. Cherry Memorial Scholarship Fund of $55,000. By 1968, the Bulletin listed, in addition to seventy-three law firms that supported annual scholarships, thirty-five other scholarship sources, including twenty endowed funds. Among these funds were the Edmund M. Morgan and William Reynolds Vance funds, at $25,000 each, the Cherry Fund, then at $60,000, the Walter J. Trogner Fund at over $300,000, and the Royal A. Stone Memorial

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81. See Loan Program Success in First Year: 88 Students Receive Funds, U. MINN. L. SCH. NEWS, Oct. 1963, at 2 [hereinafter cited as Loan Program Success in First Year].


85. Reportedly, the guarantee fund was kept small in relation to the funds loaned due to “the very favorable experience of the University with loans to law students.” Loan Program Success in First Year, supra note 81, at 2. Unfortunately, the loan plan failed in 1975 when student defaults made the loans unacceptable risks. Interview with Robert F. Grabb, Associate Dean of the University of Minnesota Law School, in Minneapolis, Minnesota (Nov. 6, 1978).


88. Both of these funds were the result of donations by Charles M. Dale, a 1917 graduate of the law school and former Governor of New Hampshire (1945-1948). See id.

89. The Cherry Fund was established in honor of the law school’s long-time professor of practice and procedure, Wilbur H. Cherry. Created a few years after his death in 1950, the fund received most of its assets through contributions in its first few years of existence. Donations continued, however, to trickle in through the subsequent years. See Cherry Memorial Fund, U. MINN. L. SCH. NEWS, Feb. 1957, at 3.

90. The Trogner Fund was a bequest from Walter J. Trogner, a 1911 graduate of the law school and a Minneapolis attorney. See UNIVERSITY OF MINNESOTA BULLETIN:
Fund of approximately $2,000,000. Contributed by alumni and friends of the school, these dramatic increases in the endowments supporting student scholarships did much to ease the crisis in student financial aid and reduce the school’s reliance on annual law firm scholarship contributions.

b. Partners in Excellence

With the dramatic improvement in the student loan and scholarship program, the law school was able to shift the focus of its alumni solicitations to its second objective, improving its faculty retention. Throughout its history, Minnesota had persistently and recurrently experienced the frustration of losing some of its best faculty members just as their work had earned them a national reputation and eminence in their field. Minnesota had seemingly always had a faculty of bright and rising young scholars, but it had seldom achieved the stability provided by a good mixture of established and aspiring scholars. Consequently, while Minnesota’s faculty was consistently of unusually high quality, maintaining that quality required that the school continually recruit new talent to replace its frequent losses, a time-consuming and risky task.

To break this pattern, the faculty sought to strengthen its position by making truly competitive offers to mature scholars both outside and within the law school. As the University alone had been unable to provide the resources necessary to compete in this market, it was proposed that the alumni and the University work together to fund these chairs. By sharing the cost, it was hoped that chairs could

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91. The Royal A. Stone Fund was created from the bequest of Olive Whiting Stone. Her husband, Royal A. Stone, had studied for two years at Carleton College in Northfield, Minnesota, and then at the University of Minnesota for a year before taking his LL.B. from Washington University Law School in St. Louis in 1897. He later became an Associate Justice of the Supreme Court of Minnesota (1923-1942). See Royal A. Stone Bequest File (on file with the Dean’s Office, University of Minnesota Law School, Minneapolis, Minnesota). Coincidently, upon Justice Stone’s death, Maynard E. Pirsig, a faculty member who was to precede Lockhart as dean, was appointed to the bench to serve out Stone’s term. See Stein, The Pirsig Years, supra note 19, at 305.


93. Since the Vance years of ascendancy had ended in a round of vicious faculty raids, see Stein, The Vance Years, supra note 75, at 883-85, the Minnesota turnover problem had been almost continuous. The only exception was a near decade of stability during Dean Fraser’s administration. See Stein, The Fraser Years, supra note 76, at 1172.
be established that would attract distinguished teachers and scholars of prominence to provide balance to Minnesota's youthful faculty. Although the chairs were originally offered on an annual visiting basis, it was hoped that, as the program matured, permanent appointments to four or five chairs could be made. Through these chairs and Professional Awards to other faculty members of eminence, it was hoped that the alumni could provide the "catalyst of leaders" necessary to make Minnesota an attractive place to continue, as well as begin, a career in legal scholarship. This was the goal of the Partners in Excellence Program.

Partners in Excellence had its origins in a conversation between Dean Lockhart and two law school alumni, Julius E. Davis and Solly Robins. When the Dean discussed the school's problem and mentioned the need for funds to support the distinguished visiting professorships, Davis and Robins urged him to solicit the alumni and further encouraged him by offering to give the first $5,000 annually if the alumni would raise the next $15,000 needed to fund the first chair.

With this, the Partners were off to an auspicious start. Raising $93,000 in 1967-1968, the first year, the Partners have, throughout their ten-year history, raised an average of over $100,000 a year to supplement the law school's University funds. Further, the number of contributors has steadily increased and the amount contributed has been stable or growing despite competition from much needed building fund solicitations. To date, Partners in Excellence has

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95. Id. (quoting Gerald E. Magnuson, campaign chairman).
96. Julius E. Davis' services to the University of Minnesota and the law school were numerous. He served as a Director (1962-1975) and President (1965-1969) of the Law Alumni Association, and as a Trustee (1970-1974), Senior Vice President (1974-1976), and President (1978) of the University of Minnesota Foundation. He was also co-chairman of the Law School Building Fund Committee (1975-1977) and served as a Director of the Minnesota Research Foundation, and as a member of the Executive Committee of the University of Minnesota Foundation campaign for funds for the Hubert H. Humphrey Institute of Public Affairs. In 1978 Mr. Davis received the University's highest service honor, the Regents Award. Mr. Davis died on March 15, 1979.
97. See Memo to All Faculty Members from Dean William B. Lockhart, appended to Minutes of the University of Minnesota Law School Faculty (Nov. 15, 1967).
funded the visits of fourteen distinguished professors100 and has supported sixty-two faculty summer research projects.101 In addition, the

100. Those who have held the distinguished Law Alumni Chairs include the following:

   Robert Braucher (1968-1969), then a member of the Harvard Law School faculty and nationally recognized authority on commercial law, currently an Associate Justice on the Massachusetts Supreme Court;

   William E. Hogan (1969-1970), also a leading authority on commercial law and a member of the Cornell University law faculty;

   Clark Byse (1969-1970), a member of the Harvard Law School faculty and a leading scholar on administrative law;

   Frank J. Remington (1970-1971), a member of the University of Wisconsin Law School faculty and a leading author and authority on criminal law;

   Richard C. Maxwell (1970-1971), a 1947 graduate of the University of Minnesota Law School, a professor and former Dean (1959-1969) of the UCLA Law School and a national authority on property law;

   David W. Louisell (1971-1972), a 1938 graduate of the University of Minnesota Law School, a former Minnesota faculty member (1950-56), and a leading author and teacher in procedure, evidence and practice on the faculty of the University of California at Berkeley Law School until his death in 1978;

   Robert E. Keeton (1971-1972), a member of the Harvard Law School faculty and an authority on trial practice, torts and insurance, who has recently been appointed a Federal District Court Judge for the District of Massachusetts;

   William B. Lockhart (1972-1974), assuming for two years a chair named in his honor after stepping down from the deanship of the University of Minnesota Law School in 1972;

   F. Hodge O'Neal (1972-1973), a professor and former Dean (1966-1968) at Duke University School of Law and an authority on corporate law, currently Professor at Washington University School of Law in St. Louis;

   Clyde W. Summers (1973-1974), a member of the Yale Law School faculty and leading scholar on the subject of labor law, currently on the faculty of the University of Pennsylvania Law School;

   William D. Hawkland (1974-1975), a 1947 graduate of the University of Minnesota Law School, and a nationally recognized expert in commercial law from the University of Illinois College of Law, recently appointed Dean of the Louisiana State University Law School;

   Donald R. Cressey (1975-1976), a renowned criminologist from the University of California at Santa Barbara, who offered a sociological perspective on criminal law;

   Sir Leon Radzinowicz (1977-1978), a Fellow of Trinity College (Cambridge University) and an international authority on criminal law; and

   Victor H. Kramer (1978-1979), a Professor and Director of the Institute for Public Interest to Representation of Georgetown University Law Center, and an authority on administrative law and the legal profession.

101. The research pursued under these grants has been diverse. Much of it has resulted in articles later published by the Minnesota Law Review. See, e.g., Clark, Civil and Criminal Penalties and Forfeitures: A Framework for Constitutional Analysis, 60 Minn. L. Rev. 379 (1976); Park, The Entrapment Controversy, 60 Minn. L. Rev. 163 (1976). Both of these articles were at least partially researched under Partners in Excellence grants during the summer of 1975.

The Partners grant program has helped to partially satisfy the dramatic need for research funds which has so long been a problem for the school. See The University of
fund has been used to supplement the salaries of particularly deserving Minnesota professors, to sponsor a series of seminars on the future of legal education, to fund the William B. Lockhart Lecture Series, and to aid the law library. Through its program of annual giving, the Partners in Excellence has acted, in the same manner as the endowments of the best private law schools, to ensure the school's progress towards excellence.

The Minnesota bar and the alumni of the school, first through the annual law firm scholarships, later through contributions to the Partners in Excellence Fund, and even more recently through generous support of the law school building fund, have dramatically demonstrated their support for the University of Minnesota Law School.

D. IMPROVING THE EDUCATIONAL PROGRAM

Although improving relations with the bar was one of the law school's primary objectives in the early Lockhart years, a second


102. These seminars were presented in 1976-1977 when the school did not appoint anyone to the alumni chair. As the faculty was then considering curricular reforms advanced by Dean Carl Auerbach, the seminars, which featured leading legal educators from around the country, focused on current directions in legal education. The visiting seminar speakers included J. Willard Hurst of the University of Wisconsin Law School, Robert A. Gorman of the University of Pennsylvania Law School, Richard D. Swartz of the State University of New York at Buffalo School of Law, Thomas Ehrlich, President of the National Legal Services Corporation and formerly of Stanford University Law School, and Eugene V. Rostow of Yale University Law School.

103. The series was established in 1973, and there have been four lectures to date. The first, by Professor Louis Henkin, was delivered in 1976 and is reprinted at 60 MINN. L. Rev. 1113 (1976). Dr. Charles Frankel of the Columbia University School of Law gave the second in 1977. Professor Frank Michelman of Harvard Law School lectured in 1978. His lecture, Norms and Normativity in the Economic Theory of Law, is reprinted at 62 MINN. L. Rev. 1015 (1978). Joseph L. Rauh, a Washington, D.C. attorney, lectured in May, 1979. The law school also hosted the Oliver Wendell Holmes Devise Lecture by Professor Anthony Amsterdam of Stanford University Law School in 1973.

104. In two recent years, grants of $25,000 have been made to bolster the law library's operating budget. "Inadequate funding by the Central Administration over the past few years has resulted in the library's slipping from the fifth largest law school library in the country to seventh. Partners in Excellence support will assist in rebuilding the collection." TENTH ANNUAL REPORT TO THE PARTNERS IN EXCELLENCE, 1977, at 30 (University of Minnesota Law Alumni Association 1978).

105. This development in the history of the law school will be covered in the next article in this series, dealing with the deanship of Carl A. Auerbach.
important goal was improving the academic program of the school. While the law school was and had for years been a school of high standards, Dean Lockhart and the faculty had, as their objective, new heights of excellence. Early in the Lockhart years, the faculty felt that the school lacked some of the rigor and the excitement that should characterize legal study in a first-rate institution.\textsuperscript{106} There were too many mediocre students and not enough outstanding ones. Furthermore, there was concern that the academic program itself was not as demanding and challenging as it should have been—that it proceeded too slowly.\textsuperscript{107} Perhaps a trimming and revitalization of the curriculum was in order. Finally, there was the perennial concern, noted previously,\textsuperscript{108} of building and retaining the quality faculty needed to keep the school’s scholastic standards at the highest level.

1. \textit{Improving the Student Body—"A Reasonable Prospect for Success"}

a. Attracting the Best Students

The first concern about the quality of the school’s educational program was a concern with the caliber of students.\textsuperscript{109} Many of the state’s very best students were not coming to the law school and too many marginal students were. As previously noted, a major part of the problem of attracting top quality students was the need to compete with the scholarship offers of other prestigious law schools. A part of the solution, therefore, was the development of bar-supported scholarships,\textsuperscript{110} and, as was done with the Trogner Fund, the allocation of scholarship funds to the most outstanding prospects.\textsuperscript{111} In addition, however, the school had to undertake a campaign to make itself known to the top student prospects. Dean Lockhart therefore engaged in yearly recruiting forays. Either he or his assist-

\begin{footnotesize}
\begin{itemize}
\item[106.] Lockhart Interview, \textit{supra} note 5.
\item[107.] \textit{See} Stein, \textit{The Pirsig Years}, \textit{supra} note 19, at 299, 323.
\item[108.] \textit{See} text accompanying note 93 \textit{supra}.
\item[109.] This was not a new problem. \textit{See} Stein, \textit{The Pirsig Years}, \textit{supra} note 19, at 324-25; Stein, \textit{The Fraser Years}, \textit{supra} note 76, at 1180-81. Yet, it would not be fair to imply that the school did not have many excellent students throughout the period. Evidence of the high quality students is the fact that the second United States Supreme Court law clerk to graduate from the law school—William C. Canby, Jr.—was selected from the class of 1956. The third graduate to receive that honor was James J. Hale, a 1965 graduate who clerked for Chief Justice Earl Warren. The first law school graduate to clerk for a United States Supreme Court justice was Norris Darrel from the class of 1921. \textit{See id.} at 1203.
\item[110.] \textit{See} text accompanying notes 64-73 \textit{supra}.
\end{itemize}
\end{footnotesize}
ant dean visited annually nearly every college in Minnesota and many others nearby. Initially, the recruitment effort was frustrated by the effectiveness of the competition, but by 1962 the Dean could report a "striking increase in quality" in the first-year class. Ironically, when the great demand for law school admission arrived just a few years later, the school would be forced to turn away applicants as highly qualified as those it sought to recruit in the early 1960s.

b. Discouraging the Poor Prospect

In the middle 1950s, the concern with the quality of the student body was still very real. Not only was there the problem of recruiting the best students, there was also the dilemma of how to discourage the marginal ones. The school had long used the "revolving door" admission policy by which any student with a C average in his college work could matriculate. This "easy in/easy out" approach was motivated in part by the University's land grant philosophy of ensuring an open educational opportunity for all and, in part, by comparison with the admissions standards of competing night law schools.

The school, however, was troubled by the high price it paid for the "revolving door" policy. Scholastic failure rates for the first-year class had, in many years, ranged between forty and fifty percent. For those students who failed, there was the obviously high cost, both economic and emotional, of a year futilely invested in law school. For the school, there was the comparably high cost exacted by "the impediment to effective instruction due to the slower pace of the incompetent students." Although a recently adopted counseling plan, which used aptitude tests and first-quarter examinations to apprise first-year students of their likelihood for success at the school, encouraged early withdrawal by weaker students, the burden remained too high.

112. In at least one year, the expenses of the dean's 20-school recruiting trips were paid by the school's Alumni Association. See Letter from Dean William B. Lockhart to Vice President Stanley Wenberg (Oct. 10, 1960) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).


115. See note 120 infra and accompanying text.

116. See Lockhart, supra note 6, at 158.

117. Id.

118. See Stein, The Pirsig Years, supra note 19, at 325.

119. See Lockhart, supra note 6, at 159.
As a result, the law school began to advocate a tightening of its admissions standards. In a letter to University President Morrill, Dean Lockhart explained,

We intend to move very cautiously in this exclusionary policy, eliminating in the first years under this policy only those virtually certain to fail . . . . We have no intention of trying to skim off just the cream of the crop, for we recognize that a state university has an obligation to educate all who have a reasonable prospect for success in law studies. Instead, we hope to eliminate dregs at the bottom of the bucket . . . .

Although the law school's hopes were modest, they still met with resistance. In a letter of reply, President Morrill stated,

My primary concern, as you know, is that educational opportunity of the University of Minnesota not be foreshortened by major admission policy revisions. The land grant commitment to keep the door open to everybody to make the most of his abilities I have largely in mind here. [With the first year being the best indicator of success, there is] a certain element of mortality—an element beyond the possibility of precise prediction—[which] is inherent in the state university conception. Consequently, implementation of meaningful qualitative restrictions based on academic grade point averages and aptitude tests came slowly. Nonetheless, the faculty adopted a resolution restricting admission to those whose academic grade point average, LSAT score, or "other relevant bases for judgment indicate a reasonable prospect for success in law study." A faculty committee, appointed to develop the admissions standards, recommended that for 1957-1958 the basic requirements should be a grade point average of not less than 1.25 and an LSAT score of not less than 400. Though, by current standards, these requirements do not appear to be highly restrictive,
they did result in the law school turning down twenty percent of its applicants in 1958.\textsuperscript{124}

2. Curricular Reform

There was, however, another means by which admission standards could be tightened: requiring an additional year of pre-law college work. To that effect, the Faculty Admissions Committee in 1956 recommended for further study a proposal to replace the 2-4 program with a 3-4 plan.\textsuperscript{125} Over the next year, the proposal received considerable faculty attention,\textsuperscript{126} with much of the discussion centering on the nature and value of the projected third year in the pre-law curriculum. The proposal was again submitted to the Committee for study in March of 1957.\textsuperscript{127}

As discussion continued, it became clear that the resolution of the pre-law requirement question was inseparable from resolution of the more far-reaching questions concerning the fate of the entire four-year plan. The 1955 Self-Survey Report had simply stated that “the two-four plan . . . involves a cluster of serious problems which are in need of careful study.”\textsuperscript{128} Among the questions it listed as in need of examination were the following: “Should the proportion and amount of time students on the two-four plan spend on general education be increased? Should the proportion and amount of time students on that plan spend in studying law be reduced?”\textsuperscript{129} These questions had continued to be discussed and debated within the faculty in the two years following the Self-Survey Report. Therefore, it was not surprising that, in September of 1957, Dean Lockhart asked for and received authority to expand the jurisdiction of the Pre-Law Curriculum Committee to include consideration of the length of the law program.\textsuperscript{130}

\begin{itemize}
\item \textsuperscript{124} See Letter from Dean William B. Lockhart to President James L. Morrill (Oct. 7, 1958) (on file with the Presidents’ Papers, University of Minnesota Archives, Minneapolis, Minnesota).
\item \textsuperscript{125} See Report of the Admissions Committee, appended to Minutes of the University of Minnesota Law School Faculty (Mar. 14, 1956).
\item \textsuperscript{126} See Minutes of the University of Minnesota Law School Faculty (Mar. 22, 1957); id. (Mar. 15, 1957); id. (Mar. 3, 1957); id. (Mar. 14, 1956).
\item \textsuperscript{127} See Minutes of the University of Minnesota Law School Faculty (Mar. 22, 1957).
\item \textsuperscript{128} Self-Survey Report, supra note 55, at 55.
\item \textsuperscript{129} Id.
\item \textsuperscript{130} See Minutes of the University of Minnesota Law School Faculty (Sept. 20, 1957).
\end{itemize}
a. The End of the Minnesota Plan

Less than a month later, in a detailed report, the Committee recommended that the 2-4 plan be terminated. The Committee proposed to offer in its place a modified 3-3 1/3 program and to continue the old 4-3 1/3 program. At the faculty meeting in which the recommendation was presented, Dean Lockhart asked each faculty member to express his or her views concerning it; there was a general discussion, and then the recommendation was adopted over a lone dissenting vote. Suddenly and somewhat surprisingly, the law school's twenty-seven year experiment with the Minnesota Plan was over.

What had happened? In 1950, a curriculum committee, chaired by then Professor William B. Lockhart, had reported that "sixteen years experience with the Minnesota four-year plan has demonstrated its fundamental soundness and effectiveness as an education program . . . ." Seven years later, a second committee, also chaired by Lockhart, recommended that the two-four plan be discontinued. What happened in those seven years? Dean Lockhart summed up the explanation for the change in a word: "Experience."

When the first report had been written, Lockhart was still a relatively new member of Minnesota's well-established faculty. Undoubtedly, the Minnesota Plan and the faculty's commitment to it had caught his imagination and had impressed him. But a few years later, with the faculty's makeup significantly altered, it was time for a second look. Thus, in May of 1952, when four of the most recent additions to the faculty submitted their appraisals of Minnesota's curriculum, a different story was told. While none of these appraisals called for an end to the Minnesota Plan, one of them argued persuasively that undue faculty complacency regarding the Plan had resulted in a number of harmful by-products. All four of these appraisals called for more serious faculty study of ways in which Minnesota's curriculum might be improved and made comparable to that of other leading institutions. At the least, the tone and focus of these appraisals ensured that the faculty's complacency would be dis-

131. See Minutes of the University of Minnesota Law School Faculty (Oct. 16, 1957).
133. Lockhart Interview, supra note 5.
134. These memoranda are discussed in detail in Stein, The Pirsig Years, supra note 19, at 321-24.
135. Id. at 322.
turbed and that the Minnesota Plan was in for more rigorous scrutiny.

By 1957, continued experience and more critical appraisals had convinced Lockhart and most of his faculty that the need for reform was clear. There were essentially two basic reforms in the curriculum revision that year. The first lengthened and strengthened the required pre-law work. The second shortened and intensified the law school course of study.

(1) The Additional Year of Pre-Law Work

The new requirements for admission were either a bachelor's degree or, alternatively, three years of college work in which the undergraduate major sequence was fully completed, all distribution requirements were satisfied, and the student had been exposed to two major independent research and writing programs.136 In a Bench and Bar article presenting the changes, Dean Lockhart explained:

The basic reason for this significant change in our program is the increasing dissatisfaction of the Law School faculty with the inadequacies of a two-year prelaw preparation . . . . [Most two-year students] came to the Law School immature in age and immature in intellectual experience, seldom having been forced to do any independent thinking, and without a solid, well-grounded training in any special field of knowledge.137

136. The exact requirements for admission under the three-year program were as follows:
Completion of three-fourths of the credits required for a B.A. degree, under a program that will result in a B.A. upon successful completion of the first year of law, providing these credits include:
(1) Full completion of the major sequence requirements of the department in which the student chooses to major.
(2) Completion of two substantial papers involving independent research, either as a part of the requirements for a course or as an independent research assignment. These must be of a substantial nature, fairly equivalent to the papers required for the starred courses under Plan B, Master's degree at the University, recognizing, of course, that the students are juniors, not graduate students.
(3) Completion of all other college requirements for the B.A. degree, apart from the minor sequence. The successful completion of the first year of law will be treated as fulfilling the minor sequence requirement.
(4) Completion of such pre-law courses as may be prescribed by the Law School, but these will be kept to a minimum, limited perhaps to one or two, with strong recommendations of a few others.

Report of the Committee on Prelaw and Law School Programs, at 1-2, appended to Minutes of the University of Minnesota Law School Faculty (Oct. 16, 1957) [hereinafter cited as Report of the Committee on Prelaw and Law School Programs].

137. Lockhart, New Prelaw and Law School Program at the University, 15 Bench
The article went on to describe the threefold effects of the immaturity of the two-year students. First, two-year students were failing in greater proportions than their degree-bearing classmates. Years before, Dean Fraser had conducted a study that had demonstrated that two-year students were doing as well as, or better than, students with three and four years of pre-law work.138 A more recent study, however, indicated that thirty-eight percent of the two-year students were failing as compared to thirty percent of students with undergraduate degrees, and that thirty-four percent of the degree students attained a B average while only twenty-five percent of the two-year group were that successful.139

Second, the immaturity of the two-year students was causing a general depression in the level of classroom performance. Teachers and classmates alike could not ignore the thirty-eight percent of the class destined to fail. An attempt had to be made to teach them even if it slowed the progress of the remainder of the students.

Finally, it was feared that the two-year admission program allowed too many students to graduate from law school without the breadth and depth of education and perspective needed to perform the civic responsibilities of their profession. The faculty felt that many of their students, while technically well trained, lacked the solid liberal education needed to make them good citizens. Surprisingly, this was the very concern that had motivated the development of the Minnesota Plan twenty-seven years earlier.140 The heart of that proposal had been that the fourth year in the law school would be a broadening one, filled with cultural courses both within and outside of the law school. The 1957 committee reported, however, that “[t]his has not been the result in most cases,” citing the fact that of the thirty-eight fourth-year students the previous year, only eleven had taken as many as twelve credits outside of the law school.141 Moreover, the committee asserted that the motivation for enrollment in many of the outside courses had been less for educational betterment than for bolstering sagging grade point averages. It concluded that “[t]his falls far short of the educational experience that would result from completing all the requirements of a major department required for a B.A.”142

140. See Stein, The Fraser Years, supra note 76, at 1187 & n.133.
142. Id.
to be ineffective in broadening the education of its students, the new plan was to shift the majority of that responsibility back to the undergraduate curriculum.

(2) The Reduction in the Length of the Law School Course

The second major revision adopted in the 1957 report was to reduce the length of the maximum law school curriculum from 4 years to 3 1/3 years for all students. This reduction was motivated partially by the desire to avoid extending the total length of college and law training. The committee noted that, "[p]articularly at this time, when most of the young men are required to give two or three years to military service, it is important not to add still another year to their total period of University training." Moreover, the law school could not ignore the fact that the majority of its competitors were granting legal degrees for six years of post-high school work. Consequently, if the pre-law work was to be extended, the law course would have to be shortened.

Just as importantly, however, the committee hoped that the reduction to three years would strengthen the law school program by increasing the intensity with which the students approached their studies. This point was made clear in the 1957 report:

The proposed three and one-third year plan will avoid in a large measure the lethargy and lack of interest that has been characteristic for many years of students in their fourth year in the law school. The fact is that for the great majority this has been a most unpopular year, with serious resentment at being required to spend an extra year at law training when their classmates [who entered on the 4-3 1/3 program] are out practicing law. Accompanying this resentment has been a growing boredom with the study of law . . . .

Apparently, four years had proved to be simply too long a period for sustained intellectual enthusiasm and rigor in the study of law.

143. Id. at 12-13.
144. According to the 1957 Review of Legal Education, most of the Big Ten Schools, including Northwestern University, the University of Wisconsin, and Indiana University, had a 3-3 program. See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 1957 Review of Legal Education (1957).
146. Many students who had a successful academic record in their first three years of law school found the fourth year debilitating, as they had little incentive to work hard while their graduated classmates were out practicing law. An outstanding example of this recurring phenomenon was an honor student who failed out of law school in his fourth year after having been Case Editor of the Law Review during his third year. Id. at 14.
If the course were cut to 3 1/3 years, the tempo of study could be increased and the same goals accomplished in less time. To that effect, a number of revisions in the content and organization of the curriculum were made in 1957 that would allow greater coverage in a shorter time. Substantially the same number of courses were available in 3 1/3 years with the new curriculum as were taken previously in four years.\textsuperscript{147} And the additional one-third year requirement of the 3 1/3 year plan ensured that the courses especially developed for the Minnesota Plan would continue.

(3) Reaction

In short, the two major curricular revisions adopted by the faculty in 1957 were to improve the academic program by increasing the quality of the student body's preparation for the study of law and by reducing the students' tendency to become bored with the study. A shorter, more intense curriculum could cover almost all that had been covered in four years, and at a pace that would hold the interest of the students. The result would be better work and a better atmosphere in the school.

Despite these arguments in its favor, Dean Lockhart recognized that the faculty's action might meet with substantial resistance. As an obvious compromise between those who wanted the school to adopt the conventional 4-3 plan and those, both on the faculty and in the community, who wanted to preserve the distinctive elements of Minnesota's then-aging innovation, the new program tried to give something to both sides. The requirements of the three-year pre-law program represented an attempt to satisfy the former group by ensuring that most students would obtain their bachelor's degree before entering\textsuperscript{148} and that those who did not would have completed the substantial intellectual equivalent in three years. The 3 1/3 year law curriculum was, in the retention of the additional 1/3 year over a standard three-year law program, an attempt to maintain the school's commitment to the goal of training lawyers to better discharge their responsibilities for the improvement of the administration of justice and the provision of civic leadership.\textsuperscript{149} Yet one could not ignore the fact that the effect of the revision was to abolish what for many years had been a highly successful educational experiment known as the Minnesota Plan.

\textsuperscript{147} See id. at 12.

\textsuperscript{148} That Minnesota had effectively moved to a 4-3 1/3 plan rather than a 3-3 1/3 plan is demonstrated by the fact that of the 130 applicants for the fall class of 1960, only 5 applied without a degree. See Minutes of the University of Minnesota Law School Faculty (June 20, 1960).

Indeed, opposition was encountered. Some undoubtedly opposed the change because they had personally experienced the four-year plan and found it successful. Others questioned the reform on the basis of its fundamental assumptions. Of these, perhaps the most vehement was the father of the Minnesota Plan, Dean Emeritus Everett Fraser.

Fraser, in compliance with the University's policy on mandatory retirement, had retired from the deanship in 1948 and had moved to a position at the Hastings College of Law. There, in the fall of 1957, he received a copy of the 1957 curriculum revision. In this cryptic response, he gave Dean Lockhart an idea of his reaction:

This is to thank you for the copy of the report of the committee on THE PRELAW AND LAW SCHOOL PROGRAM which has been adopted by the Faculty of the Law School. I have studied it with great interest.

It is nicely typed.

Dean Fraser had an opportunity to elaborate on his position a month later when Dean Lockhart was in San Francisco for a meeting of the Association of American Law Schools. When Lockhart visited Hastings to see its new building, he was invited to Dean Fraser's office to discuss the report. What followed, undoubtedly, seemed like a long afternoon to Dean Lockhart. Later, in a long letter to Maynard Pirsig, Fraser recounted the conversation and gave his response to each of the report's justifications for ending the 2-4 plan.

Dean Fraser began with the report's contention that two-year students should be eliminated because they were failing more frequently than were the degree-holding students. While Dean Lockhart's study had shown this to be true, Dean Fraser wondered whether the study had gone far enough. Perhaps, he suggested, the failure of two-year students was due to a higher proportion of low ability students among the group rather than to deficiencies in their preparation. He cited his own earlier study which, using the additional factor of college honor points to try to measure ability as well as preparation, had shown that among students of equal aptitude, additional college preparation was of little consequence to successful legal study. In addition, he noted that neither the University of

150. See Stein, The Fraser Years, supra note 76, at 1201 n.198.
151. Letter from Everett Fraser to Dean William B. Lockhart (Nov. 9, 1957) (on file at the Minnesota Law Review).
153. See Fraser, Letter to the Editors, 26 Nw. U.L. Rsv. 797 (1932); Fraser, supra note 138, at 287.
Illinois nor Hastings College of Law, both of which had adopted 2-4 plans, had found any substantial difference between the performance of two-year and degree-holding students.

In response to the charge that two-year students had little experience in independent thinking, Dean Fraser observed that this was also true of college graduates. He cited a speech in which Dr. Arthur Goodhart of Oxford University argued that American universities had emphasized a socializing function—acquainting their students with their fellow men and women and imparting a certain attitude toward life. Acquainting students with the world of ideas—with vigorous scholarship and intellectualism—was, according to Goodhart, a secondary and most often neglected objective. Universities, he said, except perhaps in their graduate departments, were not really demanding much from their students, and as a result were not getting much in return.

Finally, Dean Fraser noted that if the motivation for dropping the two-year students was to improve the quality of first-year work by removing its slowest members, then little would be gained, since approximately thirty percent of the class would still be headed for failure. The real problem with the first-year class, he argued, was the school’s traditionally liberal admissions policy, and that, he noted, had predated the Minnesota Plan and was only “designed to get rid of the night schools and to give vocational guidance to the students.” As it was in no way related to the Minnesota Plan, the admissions policy could be changed without violating the 2-4 curriculum.

Having dealt with the justifications for extending the pre-law requirements, Dean Fraser next turned to the arguments advanced for shortening the law curriculum. First, he noted that, contrary to the implications of Dean Lockhart’s report, it had never been the faculty’s intention that fourth-year students should actually use all of the non-law credits that they were allowed. Therefore, it was not a failure of the 2-4 plan that a majority of fourth-year students spent most of their time in the law school and not in advanced social science classes in other departments.

Second, regarding the assumption that the fourth year in the law school had merely encouraged the law school faculty to teach in four unit courses what others taught in three units, Dean Fraser pointed...
out that the four-unit pattern had developed because Minnesota re-
quired fifteen class hours per week while others demanded only
十二 or thirteen. This again was independent of the basic 2-4 pro-
gam and could be changed without affecting the Minnesota Plan.

Finally, there was the contention that, as long as it was "now
considered satisfactory" for half of the school's graduates (the degree
holders) to pursue only a 3 1/3 year course, it was unfair to require
four years of the other half (the two-year students). To this Dean
Fraser responded by inquiring: Who considered the 3 1/3 year law
course satisfactory? Certainly he did not. At the inception of the 2-4
plan, he explained, the 3 1/3 year curriculum had been a necessary
expedient. At that time the school had needed students and could not
attract degree holders to enroll in a four-year program while compet-
itors offered the LL.B. in three years. But the 3 1/3 year course had
not been planned as a permanent alternative to the four-year law
course. If, in 1957, the law school wanted to remedy the unfairness
of the dual offerings, it need only require four years of everyone. As
Dean Fraser emphasized, this was really no more than had been
suggested and predicted by Dean Lockhart only seven years earlier.

Having described his point-by-point response to the 1957 curric-
ulum reform report, Dean Fraser offered two capsule appraisals.
First, "the short of it is [that] the 2-4 course has been made the
scapegoat for all features that are considered defects by the present
administration." Second, neither Dean Lockhart nor the faculty
realized the loss of prestige that would result from foresaking the
school's leading innovation.

Some twenty years later, Dean Lockhart described his recollec-
tion of the afternoon conversation with Dean Fraser. Though Fraser
had been well-prepared to try to convince him "of the error of [his] ways," Lockhart's conclusion was that he and Fraser simply disa-
greed on the value of a college education. Dean Lockhart thought
college work had real value as a means of training the mind, of honing
one's intellectual skills. Dean Fraser, he believed, did not. Conse-
quentially, their differences over the Minnesota Plan were irreconcila-
bile, and both came away from the meeting unpersuaded.

157. Id.
158. In fact, the school had attempted to terminate the 3 1/3 year course in favor
of a universal four-year requirement in 1937. Before the requirement was fully opera-
tional, however, World War II began and the 3 1/3 year option was reinstated. See
Stein, The Fraser Years, supra note 76, at 1198.
159. These predictions had been made quite publicly. See Lockhart, The Minne-
sota Program of Legal Education—The Four Year Plan, 3 J. LEGAL EDUC. 234 (1950).
161. Id.
162. Lockhart Interview, supra note 5.
At any rate, the meeting gave Dean Lockhart added appreciation of the severe public relations problems implicit in tampering with Minnesota's most distinctive innovation. Indeed, some of those disappointed in the faculty's action suspected that the Minnesota Plan had fallen into disfavor not because of its own weaknesses but because so many of the faculty, particularly the new members, had graduated from prestigious three-year law schools and couldn't accept the implication that their own legal education had in any way been deficient. These critics saw the faculty's reforms more as an attempt to imitate the nation's other leading law schools than as a sincere response to actual problems with the four-year plan.

This view of the motivation behind the revision is, however, at least partially negated by the fact that the committee that formulated the revision consisted not of those who, for some time, had been antagonistic to the Minnesota Plan, but of its supporters. Dean Lockhart, perhaps with public relations considerations in mind, had intentionally loaded the committee with every member of the faculty, except one, that favored the Minnesota Plan. Nevertheless, the committee unanimously recommended the end of the two-four option.

With the law faculty almost universally committed to the wisdom of the revision, Dean Lockhart proceeded carefully to advocate the reform. Reporting the faculty's action to President Morrill, the Dean acknowledged that he was conscious of the public relations aspect [of the recommendation], because of the propaganda the four-year plan has received in the past. Actually, many lawyers have never been sold on the four-year plan . . . . Nevertheless, I intend when the new program is finally adopted to play up the change as implementing more effectively the objectives of the four-year program.

163. Interview with Robert C. McClure, Professor of Law at the University of Minnesota Law School, in Minneapolis, Minnesota (Nov. 10, 1977).
164. The committee report that recommended the revision did note that the number of schools with the 2-4 program was on the decline. Only six other such programs still existed in 1957, at Arkansas, Hastings, Mercer, Nebraska, Utah and Southern California (available only to B students). See Report of the Committee on Prelaw and Law School Programs, supra note 136, at 5.
165. The committee consisted of Professors James L. Hetland, Jr., James F. Hogg, Stanley V. Kinyon, Dorothy O. Lareau, Allan H. McCoid, Robert C. McClure, and Dean William B. Lockhart. Professors Hetland, Kinyon, Lareau, and McClure were Minnesota graduates. See id. at 1.
166. The exception was Professor Maynard E. Pirsig. Lockhart Interview, supra note 5.
167. Letter from Dean William B. Lockhart to President James L. Morrill (Oct. 17, 1957) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).
This he successfully did. The new plan received the approval of the Board of Regents on January 9, 1958, and became effective for all students entering the law school after May, 1960.

With the implementation of this major revision, the law school had taken a substantial step toward its goal of improving its academic program. With better students pursuing a more rigorous curriculum, it was hoped that the law school would become a more exciting and invigorating institution. But a change in the timing of legal studies was not the only reform undertaken. Other major curriculum changes implemented in the Lockhart years were designed

168. An example of "play[ing] up the change as implementing more effectively the objectives of the four-year program," id., is Lockhart's explanatory article in the Bench and Bar, which included the following:

For several years, the Minnesota law faculty has been studying how to remedy these weaknesses without any loss in the values sought under the two-four program pioneered by the University of Minnesota. The faculty is convinced that the program outlined above will accomplish more effectively the basic purposes of the four-year program, and at the same time get rid of the weaknesses of the two-year prelaw admission policy without substantially increasing the overall period of University study leading to the LL.B. degree.

Lockhart, supra note 137, at 9.

169. See Minutes of the University of Minnesota Board of Regents (Jan. 9, 1958) (on file at University of Minnesota Archives, Minneapolis, Minnesota).


171. Two years later, in 1958, the law faculty acted to improve its system of measuring academic performance by changing its grading system. Abolishing the long-used 100-point scale, the faculty attempted to standardize its grading practices by adopting a 20-point scale. Letter grades were distributed in this numerical scale as follows:

18 to 20—Exceptionally outstanding performance (A+);
14 to 17—Excellent to normally outstanding performance (A);
11 to 13—More than average competence through very good performance (B);
8 to 10—Evidencing competence to deal with more advanced work adequately and to deal with the problems of an average legal practice (C);
4 to 7—Inadequate performance (D);
1 to 3—Grossly inadequate performance (D-).


In 1970, as part of an extensive reworking of the law school's academic regulations, the grading system was amended by shortening the scale to include only the numbers 4-16, with the numbers having the following letter-grade equivalents:

14 to 16—A;
11 to 13—B;
8 to 10—C;
5 to 7—D;
4—Failing grade.

A score of eight (C-) remained the minimum satisfactory grade. See Minutes of the University of Minnesota Law School Faculty (June 10, 1970).
to increase the individualization of legal studies, to further streamline the law school course, and to improve the clinical component of the school's educational program.

b. Making Legal Education More Personal

One of the foremost problems addressed in the 1955 Self-Survey Report was the need for increased individual instruction. The Minnesota Law School, which for years had followed the policy of retaining a quality faculty through higher salaries to fewer people, had fallen far behind many of its peer schools in its student-faculty ratio. By 1954, Minnesota's ratio was 30 to 1, while that of the University of Chicago was 14.6 to 1, that of the University of Illinois was 15.4 to 1, that of the University of Iowa was 21.3 to 1, and that of Northwestern University was 23.5 to 1. Although ratios do not, in themselves, reflect the quality of the instruction provided, they do indicate areas in which problems may be expected. At Minnesota, these areas included the large size of first-year classes and the lack of adequate individual supervision of each student's research and writing endeavors.

(1) Sectioning the First-Year Class

The 1955 Self-Survey Report detailed the ill effects of large first-year classes. Starting with the assumption that the case method "is the heart of legal education," the report emphasized its importance in the first-year course of study. While other methods were more efficient for teaching what the law is, the case method was regarded as essential for the development of the student's skill in thinking about problems of law. "Through the case system, first year students learn to focus upon narrow problems, to distrust a common type of abstract generalization, and, above all, to think critically about problems of principle by close examination of applications of principle in concrete contexts."

The case method was failing to achieve these objectives, however, when used in classes of over 150 students. Students were understandably reluctant to participate freely, letting needed insights and inquiries lie unarticulated in the back of their minds. Professors, sensing the class participation difficulties, contributed to the problem by either lecturing or reducing the nature of the class discussion

173. See Stein, The Fraser Years, supra note 76, at 1170 n.42.
175. Id.
176. Id. at 5.
from "joint exploration" to mere "oral examination."\textsuperscript{177} The report concluded that "the University of Minnesota Law School is now robbing the first year students of a substantial portion of the special realness of the case system."\textsuperscript{178}

The solution, of course, was to reduce the size of the classes. While the Self-Survey Report suggested that a class of forty students was about the maximum size that would ensure the effectiveness of the case system, it acknowledged that this was economically not feasible.\textsuperscript{179} Instead, a system of sectioning the first year classes was recommended in order to allow the first-year students to have a few smaller classes. A few years later, after an increase in the school’s faculty size, sectioning was implemented.\textsuperscript{180} Even then, the decision involved the temporary sacrifice of two upper-level classes from the curriculum.\textsuperscript{181} The result of sectioning was, however, that each first-year student had at least two out of nine courses in classes of approximately thirty students.\textsuperscript{182} Thus, in 1958, Dean Lockhart could report:

Each student is under greater pressure to prepare better for each class. Each is required to participate in the discussion more often. Each feels greater freedom to raise questions and to make points when in a small class. The teacher is better able to understand the difficulties the individual student is having, and to give him the personal attention he needs to get on the right track.\textsuperscript{183}

A few years later, the expanding enrollment again threatened the gains made by class sectioning. In the mid-1960s, with entering enrollment limited to 250 students, first-year courses were divided into two sections of 100 students and one of 50 students. With the student/faculty ratio still less than optimal, the system remains today the best the school can do to ensure personalized student-professor dialogue in the first year.

(2) Intensifying the Supervision of the Writing and Research Sequence

While a close and personalized relationship between students

\textsuperscript{177} See generally id. at 6.
\textsuperscript{178} Id. at 5.
\textsuperscript{179} Id.
\textsuperscript{181} Family Law and Jurisprudence were deleted for one year. See Minutes of the University of Minnesota Law School Faculty (Jan. 29, 1957).
\textsuperscript{183} Lockhart, supra note 180, at 168.
and faculty was considered to be essential for effective use of the case method of instruction in the first year, it was also believed to be vital to ensure that the goals of the school's research and writing courses were achieved. The objective of the research and writing curriculum, like that of the case method of instruction in the first-year classes, was not so much to impart knowledge of the law as to develop particular skills necessary for practicing law. Consequently, individual and careful supervision of a student's progress in these courses was essential. In 1950, the faculty had undertaken a major reorganization of this curriculum and had stressed the need for expanding the program by the addition of seminar work in the fourth year.184 Enthusiasm for increased individualized instruction was reflected in the adoption of a seminar requirement for four-year students in 1952185 and for all students in 1957.186 But since further advances in seminar work were not possible without increasing the size of the faculty, more ambitious plans were curtailed.187

With the seminar possibilities complete, at least insofar as was then possible, the faculty turned its attention toward improving the supervision in the earlier writing courses. This was accomplished in the first-year course by replacing direct faculty supervision over a large number of students with supervision by a number of part-time instructors—"recent high ranking graduates and former Law Review officers"—over the work of a smaller number of first-year students.188

In the second-year legal writing course, each faculty member was assigned only three or four students and had considerable latitude in designing a research program for them. Whatever project was selected, the goal was to "give all second year students some of the advantages of the highly intensive training received by students on the Minnesota Law Review Staff."189 In 1962, in order to produce greater uniformity in the work demanded of the students and to decrease the burden on the faculty, the second-year course was reorganized into an appellate advocacy exercise. Individualized instruction, however, remained a priority, and more teaching assistants, with credentials similar to those employed in the first-year course, were utilized.190 By 1964, thirty-four practicing lawyers and

184. See Stein, The Pirsig Years, supra note 19, at 313.
186. See Minutes of the University of Minnesota Law School Faculty (Oct. 30, 1956).
187. See Minutes of the University of Minnesota Law School Faculty (Mar. 22, 1957).
188. Lockhart, supra note 180, at 168.
189. Id.
190. See Memorandum: Legal Research and Writing Program, appended to Minutes of the University of Minnesota Law School Faculty (Mar. 7, 1962).
judges, working for "nominal honorariums," were supervising the school's writing program.

Throughout the next decade practicing lawyers continued to assist the school by supervising legal writing and appellate advocacy work. But increasing enrollment pressures, the burden to participating members of the bar, and problems of program coordination combined to cause the law school to return in the 1970s to student supervision of student writing. Whether through supervision by lawyers or law students, however, progress was made in providing more individualized instruction in the writing program.

(3) Changing from a Largely Required to a Largely Elective Curriculum

A final example of the trend toward personalizing legal education at the law school was the reform aimed at maximizing the student's ability to design his or her own program of study. When the four-year plan was in effect, students often took nearly every course the school offered. Consequently, whether or not a course was required was often of little significance. As more, and then all, of the students moved to the shorter law school curriculum, however, required courses substantially impinged on their ability to direct their studies toward their own particular interests. At the same time, the range and depth of specialties within the law were increasing, making the case for selectivity in the law school curriculum more compelling.

Nonetheless, students in 1965 were effectively limited to only five or six electives to be chosen from twenty-three course alternatives—a degree of prescription greatly exceeding that of most other high prestige schools at the time. In the fall and winter of the 1965-1966 school year, the faculty therefore devoted considerable time to identifying which courses should be prescribed. After discussing the replacement of the current requirements with a cluster or concentration requirement, the faculty finally agreed on a proposal that granted the students a high degree of choice. The proposal required, after the first year, only five courses (twenty-four credits) and three afternoons of attendance at the Legal Aid Society. While the requirements of

192. See Memorandum: Report on Recommendations for Core Curriculum, appended to Minutes of the University of Minnesota Law School Faculty (Jan. 6, 1966).
193. See Memorandum: Recommended Core Curriculum, appended to Minutes of the University of Minnesota Law School Faculty (May 19, 1965).
194. The required courses were Criminal Law and Procedure, Appellate Advocacy, Trial Practice, Evidence, the Professional Obligations of a Lawyer, and a senior
the bar exam and law practice could generally be relied on to ensure that enrollment would remain high in many of the formerly required courses, the students were, under the new rules, freer to choose their own areas of emphasis. This open election system has, with some further liberalization, continued to the present time.

c. From 3 1/3 to 3 Years of Law Study

A third way in which the law school attempted to improve its educational program was by completing the work it had begun in shortening the law school curriculum. When the 2-4 plan was terminated in 1957, it was replaced by a 3 1/3 year law program. The additional one-third year was, in effect, a "peace offering" to Minnesota Plan advocates distressed over the change. The fifteen credits represented by the one-third year requirement were usually taken by students during a summer session, typically after their first year, so that they would still be able to graduate in June of their third year. By 1965, however, dissatisfaction with the requirement had grown. The faculty was concerned, as they had been in making the 1957 reduction, "that the additional work ha[d] been a deterrent to many excellent law students who have preferred to attend other law schools which manage to give a legal education in three academic years. The fact that other outstanding law schools have not imposed this additional requirement," read a curriculum committee report, "has raised questions as to the merits of our retaining the requirement."

The faculty also was concerned that the requirement was inducing intellectual fatigue in students, reducing the quality of their performance. Without benefit of the refreshment that three months away from school could bring, the students were entering into their second school year weary of the demands of legal education. Finally, the faculty was concerned that the summer session requirement was placing an undue financial burden on students who needed income to finance the three years of school. With one summer "rendered financially unproductive," students tended to accept part-time em-

writing requirement. See Minutes of the University of Minnesota Law School Faculty (Jan. 20, 1966); Memorandum: Modification of Proposal for Core Curriculum (Jan. 19, 1966) (on file with the Curriculum Committee Reports, Dean's Office, University of Minnesota Law School).


197. See id.
ployment throughout the year, thereby reducing their full-time commitment to law school.198

Acknowledging that, "at the time of the 1957 change in program, it was believed necessary to retain the 15 credit hour requirement in order to permit the students to receive something approaching the breadth and depth of legal instruction which had been possible under the old four-year program," the curriculum committee reported its conclusion "that these objectives should be accomplished within the regular three-year program."199 It noted that curriculum reforms such as those described above, in combination with the decision to place the entire school schedule on the quarter rather than the semester system,200 should make this possible. Thus, the faculty, by a vote of fourteen to three, adopted the reduction to a three-year curriculum in October of 1965, effective for that year's first-year class.201 Minnesota was, for the first time since 1930, back to a straight three-year law course.202

d. Development of Clinical Education

Another way in which the law school improved the quality of legal studies at Minnesota was through the development of a strong clinical component to its educational program. Legal aid clinics have always engendered debate in law school circles, much of which has appeared to arise out of differing perspectives on the purpose of the clinics. According to some, clinics are established for the primary

198. Id. at 2.
199. Id.
200. The law school, like most educational institutions, has alternated between semesters and quarters throughout its history. Before the change of schedule indicated in the text, first-year students attended classes on a quarter system while courses for the upper division students were offered on a semester schedule. For an announcement of the change, see Changes in School Curriculum, U. MINN. L. SCH. NEWS, Feb. 1966, at 1.
201. See Minutes of the University of Minnesota Law School Faculty (Oct. 15, 1965).
202. Another action that brought the law school into closer harmony with other leading law schools, was the decision in 1967 to confer on the graduates the degree of Juris Doctor (J.D.) instead of the Bachelor of Laws (LL.B.) degree. Many other schools had adopted this measure in recognition of the fact that they were offering graduate education, with admission predicated on prior attainment of a bachelor's degree or completion of at least three years of college work. Another impetus to the change was the confusion over the distinction between the J.D. and LL.B. degrees that had developed in the marketplace, and holders of the LL.B. degree found themselves at a distinct disadvantage in certain employment situations. The decision to grant the J.D. degree, adopted by the Board of Regents in the spring of 1967, was retroactive, applying to all University of Minnesota Law School graduates holding LL.B. degrees. See Law School Changes to J.D. Degrees, U. MINN. L. SCH. NEWS, Spring 1967, at 1.
purpose of providing students practical experience—a basic familiarity with the "how-to-do-its" of legal practice. By giving students the supervised opportunity to interview a client, research the client's legal problems, and pursue a case to its conclusion, the clinic produces students better prepared to enter into the practice of law upon graduation.

Others have assigned to clinical education the function of vitalizing legal education by offering students the opportunity to see firsthand the importance of their legal studies to their ability to function successfully as lawyers. By making concrete what might otherwise appear to be an "abstract, bloodless system of theories," the clinical experience ensures better student performance in the traditional courses.203

And finally, some have seen the clinics as the most powerful way of communicating to students the nature of their professional responsibilities. By exposing students, in many cases for the first time, to the problems and needs of indigents, a law school hopes that the student-turned-lawyer will remain sensitive to the lawyer's ethical obligations in the American system of justice.

Of course, in most law schools all of these objectives are intermingled in the development and operation of the clinical program. This was true at Minnesota204 when, in 1913, the law school established one of the nation's first clinical programs205 in conjunction with the Minneapolis Legal Aid Society. Under the original program, senior law students were required to spend three consecutive afternoons, five times a year, observing and, in a modest way, practicing law in the clinic's downtown office.206 But in the fifty years subsequent to its creation, the program had not grown or developed significantly. In fact, because of larger class sizes, seniors in the class of 1967 had only a single three-day opportunity at the clinic.207

This lack of development seems to have resulted, at least in part, from the fact that the law school had, for many years, met its students' need for practical education through its nationally recognized practice courses. Under the 2-4 plan, Minnesota had made a substantial commitment to the teaching of procedural law by devoting the better part of the third year to its study. In the third year, course work

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205. The other clinics established in 1913 were at Harvard and Northwestern. See Johnstone, Law School Legal Aid Clinics, 3 J. LEGAL EDUC. 535, 541 (1950).
206. See Stein, The Vance Years, supra note 75, at 877.
207. See text accompanying note 194 supra.
in pleading and practice was closely coordinated with the laboratory work of the practice court. In addition, Minnesota's legal writing program provided exposure to the most common of the practitioner's writing tasks through the memorandum and brief writing exercises. With a good deal of practical education provided by these courses within the traditional curriculum, therefore, the clinical experience was assigned the largely socializing function of exposing students to the poor and giving them a feel for the nature of the attorney-client relationship.

Elsewhere, however, law schools with less developed procedure and writing courses were increasingly turning to legal aid clinics as their major source of practical training. By the 1950s, these schools had developed a variety of clinical programs with varying amounts of student responsibility, supervision, and commitment. The increasing national attention to, and experimentation with, the clinical method of instruction caused Minnesota faculty and students alike to reevaluate their program.

The 1955 Self-Survey Report, significantly including its clinical program under the broader heading of "Practical Instruction in Litigation," indicated that, in light of the need for additional legal aid facilities to satisfy the increased enrollment, the faculty planned "to explore with the appropriate bar officials and existing legal aid societies the feasibility of setting up a University-centered legal aid program operated by students to serve the University community, subject to proper standards of indigency." The initiative for expanding the clinical program shifted from the faculty to the Law School Council. In early 1956, the Law School Council appointed a three-student committee to study the possibility of establishing a clinic at the University for the University community. After surveying the twenty-five clinics then operating in American law schools and consulting the local legal aid clinics as to areas of need, the committee submitted a rather unique proposal in its forty-four page report. In addition to offering traditional legal aid services to indigent University of Minnesota students, the committee proposed to offer research services, primarily to judges, and to represent University students before University administrative bodies.

208. See generally Johnstone, supra note 205, at 541-46.
210. The three students were Jack Estes, Roland W. Comstock, and Robert T. McQuine. See Legal Aid Committee Reports, U. MINN. L. SCH. NEWS, Apr. 1956, at 4.
212. See Legal Aid Committee Reports, supra note 210, at 4.
A joint student-faculty committee was formed to present the proposal to the State Bar Association’s Legal Aid and Unauthorized Practice committees. In February of 1957, the student-faculty committee reported back to the faculty that, while the research endeavor and the intra-university representation proposals had been rejected as constituting the unauthorized practice of law, the clinic itself had been authorized subject to certain restrictions. These were that "[t]he student's interview with the client can be a fact gathering session only; thereafter the student must confer with a member of the bar, who will determine what advice is to be given and who will sign all pleadings, make all appearances, etc. . . . [Additionally, no] criminal matters will be handled."213

At the conclusion of the committee's report, a motion that the faculty approve the limited legal aid clinic in principle drew some general discussion covering potential problems in administering the clinic and its effect on the school's relationship with the bar. These concerns were, however, largely silenced when, according to the minutes, "[i]t was pointed out that the faculty had initiated the idea of the legal aid clinic originally and that the students, who have put in a great deal of work, should be allowed to give the plan a try."214 With this, the motion was passed.

With bar and faculty approval, the clinic was quickly opened. Young members of the bar volunteered to supervise the work of the student volunteers. Under the guidance of faculty advisor Professor James L. Hetland and a student Board of Directors, students processed about 130 cases in the clinic's first year and a half of operation.215 Two years later, in the spring of 1960, the clinic reported a caseload increase of 220% over its first year and an expansion in the type of work it was authorized to accept, including assistance as law clerks to public defenders or court-appointed defense counsel in criminal matters.216

Not since the establishment of the Law School Council and the Law Review during Dean Vance's administration (1912-1920) had any law school project vested such significant responsibility in student leaders. Like the Law Review, the clinic was operated by the students with minimal faculty supervision. On the basis of their work in the clinic, some of the student candidates were elected to be members, and a smaller group was elected to the governing Board of

213. Minutes of the University of Minnesota Law School Faculty (Feb. 5, 1957).
214. Id.
Directors. Slowly, as the amount of work increased and came to be better appreciated, clinic members began to seek and receive more recognition for their services. After the clinic had been in operation for nine years, third-year students in the clinic in the 1965-1966 school year who completed certain work requirements thus received 1.5 academic credits for their work. Furthermore, they were given larger quarters to house their offices. Six years later, the credit awarded was placed on a par with Law Review work so that students received three credits for second-year participation and two credits per quarter for service as a director in their third year.

Meanwhile, other events occurred outside of the law school that influenced the development of the clinic. One such event was the creation in 1966 by the Minnesota Legislature of the Office of the State Public Defender. Housed in the law school, the State Public Defender proposed to make extensive use of the University's Legal Aid Clinic. This, of course, provided a new stability to the criminal case component of clinic work.

Of even greater importance was the Minnesota Supreme Court rule adopted in June, 1967, which permitted senior law students to appear in court, under the supervision of a practicing lawyer, on behalf of indigents involved in both civil and criminal matters. Actively advocated by the law school, this development was termed by Dean Lockhart "the greatest curricular advance" of the biennium. With its promulgation, the stage was set for the development of a much more active clinical program.

That fall, the State Public Defender and the law school agreed to make Robert E. Oliphant, then Assistant to the State Public Defender, available to act as part-time director of the clinic. The clinic's civil jurisdiction was expanded, and by mid-year a criminal law com-

217. See Legal Aid Clinic Begins Sixth Year, U. MINN. L. SCH. NEWS, Oct. 1962, at 5.
219. See Minutes of the University of Minnesota Law School Faculty (June 15, 1971).
221. See Rule Re Student Representation of Indigents, 276 Minn. ix (1967).
222. An important vehicle for this advocacy was a detailed brief prepared within the clinic and distributed to law school faculty, members of the State Bar Association, and the Justices of the Minnesota Supreme Court. See Oliphant, Clinical Education at the University of Minnesota, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 148, 150 (1969).
ponent involving representation of indigent misdemeanor defendants was added. Before the year ended, nearly 100 University of Minnesota Law School seniors had conducted trials in the Hennepin and Ramsey County courts. Working with part-time public defenders, the students often handled cases from start to finish.

A year-end evaluation by the State Public Defender’s Office and the law school revealed, however, that the program was offering too little supervision and that student performance was poor. Coordination with the part-time defenders was difficult, leading to situations in which students were forced or allowed to “go it alone” too often. Tighter supervision and more faculty involvement were needed.

Fortunately, interest in clinical education was growing not only in the law school but throughout the nation’s legal community. As a result, grants to experiment with or refine clinical programs were becoming available, and in 1969 the Council on Legal Education for Professional Responsibility awarded such a grant to the University of Minnesota Law School for the appointment of a Clinical Professor. With this three-year $40,000 grant in hand, the faculty voted in March of 1969 to appoint Robert E. Oliphant to a full-time two-year position with the understanding that the entire program would be reevaluated at the end of those two years.

With the appointment of Professor Oliphant, which marked the first direct faculty involvement in the clinic, the clinic adopted modern case management techniques and increased its level of student supervision. The clinic also became more popular among students and, at the same time, more controversial. Both of these developments were reflected in the promised reevaluation issued by the Clinical Education Committee in 1971. The Committee, composed of three professors and three students, split sharply in their assessments. The majority (one professor and three students) strongly endorsed the clinic’s development and recommended its continuance for another two years. Citing the three objectives to which clinics should aspire, the majority maintained that each should be and was being met by the clinic’s offerings. They recommended expanding the

224. See Oliphant, supra note 222, at 150.
225. See Lockhart, supra note 223, at 158.
227. Id. at 549 n.10.
228. See Minutes of the University of Minnesota Law School Faculty (Mar. 27, 1969).
The minority report, submitted by two professors, was much more critical. Identifying the clinic's legitimate objective as that of skill training—teaching the "how-to-do-its"—it rejected as rationally indefensible the attempt to premise the clinical program "on the notion that certain kinds of social knowledge ought to be imparted to every graduate."\textsuperscript{230} Viewing the legal aid clinic as but one of a hodgepodge of clinical offerings within the curriculum (including, for example, legal writing, the estate planning seminar, the practice course, and the divorce counseling seminar), it suggested a major reevaluation of the objectives and effectiveness of the entire clinical curriculum. Looking specifically at the legal aid clinic, it raised a series of questions regarding its cost effectiveness, fearing that because of the inherently unpredictable nature of the experience received, its benefits might be spotty while its cost was high. And finally, the minority cautioned that to adequately supervise clinical work for all of the school's graduating class, at least 2 2/3 faculty positions would be required, positions that preferably should be filled on a rotating basis by members of the regular faculty.

In short, the minority report raised a number of questions—some concerning basic objectives of the clinic, others concerning the nature and direction of its potential growth—that needed to be addressed.\textsuperscript{231} Although the faculty adopted in substance the endorsement and recommendations of the majority report,\textsuperscript{232} and the clinical program of the school has grown rapidly and impressively since that time, some of the questions raised in the minority report continue to trouble the school. Perhaps because the clinic was a development uniquely spurred by forces (primarily student initiative and foundational support), outside of the faculty's ordinary curriculum development process, the clinic's place in the school's educational program, while solidly established, has eluded precise definition.\textsuperscript{233}

\begin{footnotesize}
\begin{itemize}
  \item[229.] See generally \textit{The Clinical Education Committee Report, appended to Minutes of the University of Minnesota Law School Faculty (Feb. 12, 1971).}
  \item[230.] Separate Statement on the Legal Aid Program—Report of Clinical Education Committee, at 1, \textit{appended to Minutes of the University of Minnesota Law School Faculty (Feb. 12, 1971).}
  \item[231.] \textit{Id.}
  \item[232.] See Minutes of the University of Minnesota Law School Faculty (Mar. 5, 1971).
  \item[233.] The next article in this series, which reviews the administration of Dean Carl A. Auerbach, more thoroughly analyzes the development of the legal aid clinic and the controversy surrounding it. See also Oliphant, \textit{Directing and Managing Legal Education in a Service Setting}, in \textit{Clinical Education for the Law Student} 356 (1973); Oliphant, \textit{When Will Clinicians be Allowed to Join the Club?}, \textit{Learning & L.}, Summer 1976, at 34.
\end{itemize}
\end{footnotesize}
In summary, the academic offerings of the law school during the Lockhart years were strengthened in three ways. First, the structure of the curriculum was revised by lengthening the required pre-law work and making the law school curriculum more compact and intensive. Second, the revised curriculum was further improved by making it more individualized, both in terms of the supervision of student work and of the student’s ability to select a personalized course of study. Finally, the clinical component of the curriculum was broadened by the development of a legal aid opportunity within the school itself. These curricular changes, and the efforts made to improve the quality of the school’s student body, were two of the respects in which the school moved to achieve its objective of improving its academic program. The third major factor in this improvement effort was to address once again Minnesota’s recurring concern with faculty retention and improvement necessary to keep the school’s scholastic standards at the highest level.

E. RETAINING AND IMPROVING THE FACULTY

No matter how well thought out and structured its curriculum, nor how talented its students, a law school is primarily dependent on the quality of its faculty to establish the level of achievement within the school. Minnesota, with one of the most outstanding records in the country for attracting first-rate professors to its faculty, has for much of its history suffered from an inability to retain them. As early as 1917, Minnesota experienced the devastating effects of faculty raids when Dean Vance and his faculty left for Yale. Dean Fraser, too, had faced a severe turnover problem during the first ten years of his administration but had stabilized his faculty through, in part, a policy of keeping a relatively well-paid but small group. Dean Pirsig had been highly successful at filling vacancies that occurred during his administration with young recruits of the highest scholarly promise by continuing the policy of paying fewer people more handsomely than most of Minnesota’s competitors. The result of this policy, however, was that Minnesota became locked into an unfortunately high student/faculty ratio. Further, as the promise of the school’s young faculty began to be realized, Minnesota’s competitors began to tempt them with attractive offers. Consequently, when Dean Lockhart took over in 1956, he faced the combined problems of a faculty much in need of expansion and very ripe for raiding.

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234. See notes 109-124 supra and accompanying text.
235. See Stein, The Vance Years, supra note 75, at 883-85.
236. See Stein, The Fraser Years, supra note 76, at 1171.
The storm broke first on the raiding front when many of the Pirsig faculty moved on quickly. The University of Texas was able to hire away Charles Allen Wright in 1955. In the next year, Monrad Paulsen and David Louisell left for attractive positions on other faculties, and Kenneth Anderson left to enter private practice. When Michael I. Sovern departed in 1957, only Kenneth Culp Davis and Leon M. Liddell were left from the ranks of the nine professors added during the Pirsig years. While it is possible that two of the Pirsig faculty were at least partially motivated to leave when their own candidacies to be Pirsig's successor proved unsuccessful, most of the others were simply hired away by financially lucrative offers and attractive research and teaching opportunities.

In any event, the high rate of turnover left the law school and the new dean with a large number of vacancies to be filled early in the new administration. Fortunately, Lockhart's first foray into the market place of law teachers (with the help of Acting Dean Louisell in the early part of the year) was highly successful; six new faculty members were added in the fall of 1956. Among this group was the school's first woman faculty member, Dorothy Oerting Lareau, a 1952 University of Minnesota Law School graduate who, in addition to teaching Legal Research, was Assistant to the Dean in charge of placement and student counseling services. Also in the group's number were Professors John J. Cound and Thomas L. Waterbury, who continue on the faculty of the law school at the present time; Professors James L. Hetland, Jr., a 1950 Minnesota graduate, and Allan H. McCoid, who served the school for seventeen years each; and Professor James F. Hogg, who taught at Minnesota for fifteen years.

239. See Lockhart, supra note 6, at 159.
240. Interview with Maynard E. Pirsig, Professor Emeritus, University of Minnesota Law School, in Minneapolis, Minnesota (Jan. 23, 1978).
241. The faculty additions of 1956 were indeed a unique group:
Professor John J. Cound, who had been a law clerk to Judge Learned Hand after graduation from Harvard Law School in 1952, is perhaps best known for his leading case book on civil procedure (with Friedenthal and Miller), CASES ON CIVIL PROCEDURE, published in 1968 and 1974.

Professor Thomas L. Waterbury, a University of Michigan Law School graduate, is widely known for his writing in taxation and in trusts and estates.

Professor James L. Hetland, Jr. had practiced law in Minneapolis and taught part-time at William Mitchell College of Law for five years before joining the Minnesota faculty in 1956. An authority on practice and procedure, he produced a three volume treatise, RULES OF CIVIL PROCEDURE ANNOTATED (1970), with Oscar C. Adamson, II, and taught the practice course for many years. Professor Hetland was also interested in the development of the clinical program and was very active in the bar and community. He was the first chairman of the Metropolitan Council (1967-1970). In 1973, he left the school to accept a position as Vice President for Community Affairs at the
These additions, of the same high quality as those added in the previous years, formed something of a nucleus within the faculty during the Lockhart years because of the longevity of their service. Their contributions to the University of Minnesota Law School in the classroom, in research, and in faculty deliberations have far exceeded anything that could have been hoped for upon their arrival in 1956.

Yet, successful as the recruiting year of 1956 had been, the school still had no basis for complacency. With a history of too few faculty members for the size of the student enrollment, and a pattern of losing its promising faculty early in their careers, there was much work yet to be done. Lockhart addressed these problems in a letter to President Morrill in the fall of 1956.22 Focusing first on the need for faculty expansion, Lockhart explained that during the past several years the general law school policy had been to use nearly all increased funds for salary supplements rather than faculty expansion.23 Improving legal instruction at the school, however, required a

First National Bank of Minneapolis.

Professor Allan H. McCoid, a classmate of Professor Cound's at Harvard, taught torts and law and medicine. The latter was a course that he developed, and a subject about which he wrote extensively. Professor McCoid was also extraordinarily active in faculty activities and was a pillar within that body until his tragic death in 1973.

Professor James F. Hogg received his B.A., LL.B., and LL.M. degrees at the University of New Zealand before coming to Harvard for graduate work leading to another LL.M. degree in 1954. He received an S.J.D. degree from Harvard in 1959. After returning to New Zealand for a year, Professor Hogg joined the Minnesota faculty in 1956 where he taught until entering private law practice in Minneapolis in 1971. He is currently Vice President and Associate General Counsel of Control Data Corporation. Specializing in trusts and estates, Professor Hogg also was an authority on international law.

Professor Dorothy O. Lareau taught legal writing and was an assistant to the dean until 1959. Subsequently, Professor Lareau had to discontinue her legal career due to illness.


242. Letter from Dean William B. Lockhart to President James L. Morrill (Sept. 20, 1956) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota) [hereinafter cited as Lockhart Letter].

243. See Survey on Enrollment, Number of Faculty and Graduates in the Law School from 1940 to Date (1973) (on file in the Office of Admissions and Placement, University of Minnesota Law School, Minneapolis, Minnesota) [hereinafter cited as Survey on Enrollment].

Both the faculty and the student body had been stable in size between 1951 and 1955. Faculty size had been constant at fourteen and student enrollment had ranged from 371 to 400—leaving a student/faculty ratio of between 26.5 and 28.6. Id.
sectioning of the first-year class, and that mandated the addition of at least three new law teachers. Furthermore, increasing the individualization of intensive work in the upper levels was dependent on adding a fourth faculty member. And, the growing library was also in need of additional staff.

Turning next to the raiding dilemma, Lockhart presented salary comparisons showing that the University "lagged $1,000 to $3,000 behind other schools of like standing and still farther behind the top three." In summation, Lockhart requested a twenty-eight percent budget increase (amounting to $82,134) which, in his words, was "necessary . . . to keep us from slipping from the ranks of the first class schools."245

Apparently, Lockhart's advocacy met with some success as three more professors—Harlan M. Blake, William Cohen, and Yale Kamisar—were added in the fall of 1957, while only two left Minnesota—Michael Sovern to Columbia and Henry Rottschaefer to retirement after forty-five years on the Minnesota faculty. The additions permitted the sectioning of the first-year class, discussed previously. Yet, Lockhart continued his campaign to impress on the University administration the drastic state of Minnesota's competitive position. In a 1957 memorandum, he included a chart of median law faculty incomes:

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244. Lockhart Letter, supra note 242.
245. Id.
246. See New Members of the Faculty, U. MINN. L. SCH. NEWS, Feb. 1958, at 1. Professor Harlan Blake graduated from the University of Chicago Law School and had practiced for several years in New York before joining the Minnesota faculty. In 1959, he left for Columbia University, where he is an authority on trade regulation and commercial law.

Professor William Cohen had graduated from UCLA in 1956 and then served a year as law clerk for Justice William O. Douglas before coming to Minnesota in 1957. Two years later he accepted a Visiting Professorship at UCLA, where he taught for eleven years before moving to the Stanford Law School faculty in 1970. Cohen is a well-known authority on constitutional law.

Yale Kamisar, a 1957 Columbia graduate, had practiced in Washington, D.C. for two years before beginning his teaching career at Minnesota. During his nine years at Minnesota, he collaborated with colleagues William Lockhart and Jesse Choper to produce the first edition of a widely used casebook on constitutional law. He is also a leading scholar in the area of criminal law. In 1965, Professor Kamisar left Minnesota to join the faculty of the University of Michigan Law School.

All biographical data is from 1977 Directory, supra note 241.
248. Rottschaefer to Retire, U. MINN. L. SCH. NEWS, Apr. 1957, at 1. See Stein, The Fraser Years, supra note 76, at 1193-94. Since the student lounges in Fraser Hall and in the new law school building have been named in Rottschaefer's honor, the name of the late professor is still familiar to students today.
249. See text accompanying note 180 supra.
Median Income — Law Faculties

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<tr>
<th>Institution</th>
<th>Median Income</th>
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<tr>
<td>Harvard</td>
<td>$16,000</td>
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<td>Yale</td>
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<td>Michigan</td>
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<td>Illinois</td>
<td>13,750</td>
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<tr>
<td>Northwestern</td>
<td>14,000</td>
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<tr>
<td>Minnesota</td>
<td>12,400</td>
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He then warned that "our young men are becoming known and next year we are going to be in trouble unless we can boost their salaries adequately and at the same time get our top salaries up nearer the level of the better schools." 250

In a responding letter, President Morrill made it clear just how much progress could be hoped for. "At no time in the near future," wrote Morrill, "can we hope to match the Harvard, Columbia, Yale and some of the other private institutional medians . . . but we do need to shoot at the Michigan and Illinois ones in whatever degree of improvement we can manage." 251

Enough improvement was managed in the next few years to enable Lockhart to report in 1958 that all members of the faculty were staying "after several narrow escapes from attempted raids by other schools." 252 In addition, a drop in enrollment occasioned by the change from the 2-4 plan to the 3-3 1/3 plan significantly reduced the faculty teaching load. In 1955, fourteen faculty members had labored with a 28.6 to 1 student/faculty ratio; in 1959, seventeen professors worked under a 15.1 to 1 ratio. 253 This markedly improved situation permitted not only continuation of the first year sectioning project but also individualization of the writing curriculum. 254

The drop in enrollment was, however, only temporary, and an increasing number of students soon exceeded the growth in the faculty. By 1963, the student/faculty ratio had risen to 23.1 to 1, again straining more personalized instructional approaches. Fortunately, though the school was losing ground in its student/faculty ratio, it

250. Letter from Dean William B. Lockhart to President James L. Morrill (April 22, 1957) (on file with the Presidents’ Papers, University of Minnesota Archives, Minneapolis, Minnesota).
251. Id.
252. Letter from President James L. Morrill to Dean William B. Lockhart (April 25, 1957) (on file with the Presidents’ Papers, University of Minnesota Archives, Minneapolis, Minnesota).
253. See Lockhart, supra note 180, at 167.
255. See Lockhart, supra note 190, at 168.
256. See Survey on Enrollment, supra note 243, at 1.
was faring better in its faculty retention efforts. Although reports of the early 1960s are replete with warnings that, without more assistance, Minnesota "could soon acquire the reputation for being a 'farm school' . . . for the schools with more resources," Lockhart's letters to members of the University's central administration indicate that most competing offers were successfully met.258

Indeed, the only loss in the teaching faculty between 1959 and 1964 was the very substantial loss of Kenneth Culp Davis to the University of Chicago in 1961.259 Since Professor Davis was appointed "at a fabulous price to a special chair,"260 one that Chicago meant to fill with the "outstanding legal scholar in the nation,"261 Minnesota could do little to compete. Finding his successor was an immediate concern. "We cannot hope to 'replace' Kenneth," read the Procurement Committee report, "but only to find another distinguished scholar who may encourage and inspire us as Kenneth has done."262 The faculty was clearly looking for a scholar of similar stature and reputation, a person not just of potential, but of accomplishment. They were therefore pleased to find that Carl A. Auerbach, professor at Wisconsin since 1947 and a widely published administrative law scholar, was interested in the position. After the faculty voted unanimously for his appointment, it was recorded "for the minutes that enthusiasm for Professor Auerbach as a member of the faculty ran


258. In 1962, for example, Dean Lockhart reported that the funds for salary improvement "served their purpose . . . [o]ur strong men turned down . . . opportunities at several of our best competitors." Letter from Dean William B. Lockhart to President O. Meredith Wilson (May 4, 1962) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota). In 1963, he told of success in retaining Kamisar despite offers from Harvard, Stanford, and Chicago; and Auerbach despite a deanship offer from Rutgers. Letter from Dean William B. Lockhart to President O. Meredith Wilson (Mar. 8, 1965) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean William B. Lockhart to President O. Meredith Wilson (Feb. 25, 1965) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

259. See Letter from Dean William B. Lockhart to William G. Shepard (Oct. 26, 1964) (on file with the Presidents' Papers, University of Minnesota Archives, Minneapolis, Minnesota).

260. Id.


262. Procurement Committee Report, appended to Minutes of the University of Minnesota Law School Faculty (Feb. 22, 1961).
very high.” Auerbach accepted the appointment and joined the
Minnesota faculty in 1961, later to become the school’s sixth dean in

In addition to its success in attracting Carl Auerbach and retain-
ing its existing faculty, the school continued, through the early 1960s,
its tradition of hiring new faculty members of the highest caliber.
During this period, Dean Lockhart and the law school attracted the
following outstanding scholars to the faculty: Robert J. Levy (1959),
John M. Gradwohl (1959), Bruno H. Greene (1960), Stephen B.
Scallen (1961), Jesse H. Choper (1961), Terrance Sandalow

Minutes of the University of Minnesota Law School Faculty (Apr. 14, 1961).

Professor Robert J. Levy, a graduate of the University of Pennsylvania Law
School, is a national authority on family law. He has authored (with Foote and San-
der) a leading casebook in the area, Cases and Materials on Family Law (2d ed.
1976), and was the Reporter to the Family Law Project of the National Conference of
Commissioners on Uniform State Laws (1967-1970). He also coauthored (with then-
Minnesota colleagues Lewis and Martin) Social Welfare and the Individual (1971)
and (with Minnesota colleague Feld) Rights of Minors (1977). Professor Levy contin-
ues on the Minnesota faculty at the present time.

Professor John M. Gradwahl, a graduate of the University of Nebraska
College of Law, received his LL.M. degree at Harvard before joining the Minnesota
faculty in 1959. In 1960, he left Minnesota to return to Nebraska, where he continues
to serve on the law faculty at the present time. See American Association of Law
Directory].

Professor Bruno H. Greene studied law originally at the University of Vi-
enna, in Austria. Upon moving to the United States during World War II, he first
received a B.S. degree from Columbia in 1948 and earned his law degree from Rutgers
in 1952, where he was Editor-in-Chief of the Rutgers Law Review. Professor Greene
came to Minnesota to replace professor and librarian Leon Liddell, who had left for
the University of Chicago Law School. Professor Greene taught courses in commercial
paper and comparative law, and was Director of the Law Library until his retirement
in 1973. After his retirement, Professor Greene taught first at Hastings College of Law
(1973-1974), then at McGeorge Law School, University of the Pacific (1973-1975), and
finally at Hamline University School of Law (1975-1976). As Professor Emeritus of the
University of Minnesota Law School, he still teaches courses in commercial paper and
comparative law.

Professor Stephen B. Scallen is a 1959 University of Minnesota Law School
graduate, where he was President of the Minnesota Law Review. Concentrating on tax
and real estate law, Professor Scallen continues to serve on the Minnesota faculty at
the present time.

Professor Jesse H. Choper, a graduate of the University of Pennsylvania
Law School, came to Minnesota after one year of service as law clerk to Chief Justice
Earl Warren. While at Minnesota, he collaborated with Dean Lockhart and Professor
Kamisar to produce a constitutional law casebook, now in its 4th edition. He is also
the author (with Frey, Leech, and Morris) of Corporations: Cases and Materials
(2d ed. 1977). Professor Choper currently teaches at the University of California at
Berkeley, where he has been on the faculty since leaving Minnesota in 1965.
In 1964, however, a new round of raiding began. Minnesota witnessed the departures of Arthur Miller and Lockhart's two casebook coauthors, Yale Kamisar and Jesse Choper, all in the fall of 1965. Professors Miller and Kamisar left for Michigan; Choper, for Berkeley. In the next year, Professors Terrance Sandalow and George Christie left—Christie to take a position in the Agency for International Development, and Sandalow to join Miller and Kamisar at Michigan, where Sandalow later became Dean. Reporting the losses, Lockhart noted that in "each instance a more attractive salary structure with greater promise of long range salary improvement was a strong motivating factor." But money was not the only consideration. Also listed were the availability of financial resources for research, attractiveness of the physical plant of competing schools, and "in at least two instances, the belief that a law school with a built-in residence facility for students would mean a more responsive and stimulating student body." Thus, while simple salary supplements had sufficed in the early 1960s, it was becoming increasingly apparent that the lack of research funds and the school's critical building needs were beginning to tip the balance against Minnesota.

Nonetheless, Minnesota made some headway. The continuing increase in student enrollment made necessary the creation of several new faculty positions throughout the 1960s. In 1963, Professors Ar-

269. A University of Chicago Law School graduate, a law clerk to United States Supreme Court Justices Harold H. Burton and Potter Stewart, and a leading scholar in the fields of constitutional law and local government law, Professor Terrance Sandalow taught at Minnesota for five years before leaving for the University of Michigan. He is now Dean of that law school.

270. Professor George C. Christie, a graduate of Columbia University Law School and an authority on international law and jurisprudence, taught at Minnesota for four years. He now is on the faculty of Duke University Law School.

271. An eminent scholar on civil procedure and other subjects, Professor Arthur R. Miller is coauthor (with Wright) of Federal Practice and Procedure: Civil, and (with Cound and Friedenthal), Civil Procedure—Cases and Materials. A graduate of Harvard Law School, Professor Miller taught at Minnesota for three years and at Michigan for seven years before joining the faculty of Harvard Law School, where he remains at the present time.


275. Id.
nold N. Enker and David L. Graven were added, with Professors C. Robert Morris and Robert A. Stein joining the faculty a year later. In 1965, Professors Thomas Lewis, Charles W. Wolfram, and Joseph L. Livermore were added; and in 1966 Professor David P. Bryden was the single addition. The following year, in a hiring


Professor Enker was a 1958 graduate of the Harvard Law School. After seven years on the Minnesota faculty he left to become Dean of the Bar Ilan Law School in Israel.

Professor Graven graduated from the University of Minnesota Law School in 1953, having served as President and Recent Case Editor of the Minnesota Law Review. After practicing law in Albert Lea, Minnesota for six years, he joined the Minnesota faculty in 1963, where he taught real estate law and practice and procedure. Professor Graven left the University in 1974 to enter private law practice in Minneapolis.


Professor C. Robert Morris, a 1951 Yale graduate, had taught for several years at Rutgers before joining the Minnesota faculty. An authority on corporate law and author (with Frey, Choper, and Leech) of CASES AND MATERIALS ON CORPORATIONS (2d ed. 1977), Morris continues to serve on the Minnesota faculty at the present time.

Professor Robert A. Stein is a 1961 University of Minnesota Law School graduate and served as a Case Editor on the Minnesota Law Review. After practicing for three years in Milwaukee, Wisconsin, he returned to Minnesota to join the law school faculty in 1964. Teaching and writing in the areas of probate law and estate planning, he is the author of STEIN ON PROBATE (1976 & Supp. 1978); and (with Casner) ESTATE PLANNING UNDER THE TAX REFORM ACT OF 1976 (1978). He is an advisor to the Reporter for the RESTATEMENT (SECOND) OF PROPERTY, and is a Commissioner of the National Conference on Uniform State Laws. Still a member of the law school faculty, Professor Stein is currently University of Minnesota Vice President for Administration and Planning.

Biographical information from 1977 DIRECTORY, supra note 241.

278. Professor Thomas Lewis, a University of Kentucky Law School graduate, is a national authority on labor law. He taught at Minnesota for seven years and, while there, he collaborated with colleagues Professors Levy and Martin to author SOCIAL LEGISLATION, SOCIAL WELFARE AND THE INDIVIDUAL (1971). He is now Dean of the University of Kentucky Law School.

279. Professor Charles W. Wolfram, a graduate of the University of Texas Law School and Casenote Editor of the Texas Law Review, teaches and publishes in the areas of civil procedure and the legal profession. He continues on the Minnesota faculty at the present time.

280. A graduate of Stanford University Law School and an authority on criminal law and procedure, Professor Joseph L. Livermore taught at Minnesota for eight years before accepting the deanship of the University of Arizona College of Law in 1973. He continues to serve on that faculty at the present time.

281. Professor David P. Bryden, a graduate of Harvard Law School and Case Editor of the Harvard Law Review, continues on the Minnesota faculty at the present time. He is a leading authority on land use planning and environmental law and has written frequently on those subjects.
effort reminiscent both in size and quality of Lockhart’s first year in 1956, six new faculty members were added. Those who joined in the fall of 1967 included Edward H. Cooper, Duncan E. Haynes, Peter W. Martin, Donald G. Marshall, Glen O. Robinson, and Ferdinand P. Schoettle, Jr. At the same time the student/faculty ratio fell to 21 to 1, a figure still, however, far above the ratio of 12.8 to 1 that the University had approved for its professional schools. And finally, the law school,

282. See Faculty Grows by Six, U. MINN. L. SCH. NEWS, Fall 1967, at 3.

Professor Edward H. Cooper, a Harvard Law School graduate, joined Minnesota after teaching for two years at Wayne State University College of Law. After five years at Minnesota, he left for the University of Michigan, where his father taught on the faculty before him. He continues there today. Professor Cooper is the author (with Wright and Miller) of FEDERAL PRACTICE AND PROCEDURE: JURISDICTION (1969).

Professor Duncan E. Haynes graduated from the University of California at Berkeley and practiced in San Francisco for six years before coming to Minnesota. After three years on the Minnesota faculty, he returned to private practice in San Francisco.

Professor Peter W. Martin graduated from Harvard Law School and joined the Minnesota faculty after a three year tour of duty in the U.S. Air Force. An authority on property and land use law, he left Minnesota to join the Cornell Law School faculty in 1971, where he continues at the present time. He is author (with Donahue and Kauper) of CASES AND MATERIALS ON PROPERTY (1974). He also coauthored (with Levy and Lewis) SOCIAL WELFARE AND THE INDIVIDUAL (1971).

Professor Donald G. Marshall, a Yale Law School graduate and Note and Comment Editor of the Yale Law Journal, came to Minnesota after six years of practice in his home state of New Jersey. A highly-regarded teacher in the fields of torts, evidence, practice, and corporate law, he continues on the faculty of the law school at the present time.

Professor Glen O. Robinson graduated from Stanford Law School and practiced in Washington, D.C., for six years prior to coming to Minnesota. A scholar in the fields of administrative and natural resource law, he left Minnesota when he was appointed a Commissioner of the Federal Communications Commission in 1974. He now serves as a member of the University of Virginia Law School faculty and on the staff of the Aspen Institute for Humanistic Studies.

Professor Ferdinand P. Schoettle, Jr., is a Harvard Law School graduate who, like Professor Coudey, was a law clerk to Judge Learned Hand after graduation. He then worked for the Office of Tax Legislative Counsel, U.S. Treasury, and served as an assistant to U.S. Senator Joseph S. Clark before going into private practice. He authored (with Oldman) STATE AND LOCAL TAXES AND FINANCE (1974). Specializing in tax law, Professor Schoettle continues on the Minnesota faculty at the present time.

Biographical data was compiled from 1977 DIRECTORY, supra note 241; ALUMNI DIRECTORY OF THE LAW SCHOOL, supra note 241.


through its fledgling Partners in Excellence drive, was aggressively seeking new ways to stabilize and improve its faculty position.286

Burdened by continuing enrollment increases in a greatly overtaxed facility, and pressed further by the ever-improving competition of other law schools, Minnesota struggled to maintain the traditions of excellence it had established. Much was accomplished in the early 1960s to retain the traditional excellence in the school’s faculty. Yet, in the late 1960s and early 1970s, the challenges became even greater. The Partners in Excellence Program was a dramatic and very helpful response, but there was no doubt that the inadequacies of the school’s physical plant were becoming a powerful drag impeding the school’s development—particularly in the matter of retention of faculty members.287

286. See notes 94-104 supra and accompanying text.

287. Nevertheless, the high quality of faculty hiring that marked Dean Lockhart’s administration continued through the following years.

Professor Bart Koeppen, a graduate of Stanford University Law School and Note Editor of the Stanford Law Review, came to Minnesota in 1968 after five years in private practice in San Francisco. An authority on business law, he continues on the faculty of the law school at the present time.

Professor Fred L. Morrison, a scholar of constitutional law, comparative law, and local government law, joined the Minnesota faculty in 1969. Professor Morrison, who received a B.A. (Juris.) from Oxford University, a Ph.D. from Princeton University, and a J.D. from the University of Chicago Law School, continues on the Minnesota faculty at the present time.

In 1970, Professor Leo J. Raskind, with a Ph.D. from the London School of Economics and an LL.B. from Yale, came to Minnesota after five years on the faculty of Ohio State. His fields of scholarship are taxation and trade regulation. He is the author (with Rose) of Advanced Federal Income Taxation (1978). Professor Raskind continues on the Minnesota faculty at the present time.

Also in 1970, Professor John Arthur Sebert, Jr., came to Minnesota. A graduate of Michigan Law School, Professor Sebert taught contracts and commercial law until he left Minnesota for the University of Tennessee Law School in 1974, where he continues today.

In 1971 there were four faculty additions: Professor Alan D. Freeman, a New York University Law School graduate, Editor-in-Chief of the New York University Law Review, and constitutional and property law scholar; Professor Joyce A. Hughes, a 1968 Minnesota graduate and teacher of practice and real estate law; Professor Loftus E. Becker, Jr., a University of Pennsylvania graduate and Editor-in-Chief of the University of Pennsylvania Law Review who came to Minnesota after clerking for United States Supreme Court Justice Brennan, and who taught constitutional law and criminal law; and Professor W. Douglas Kilbourn, Jr., an exceptional teacher in the fields of taxation and corporate finance. Professor Kilbourn, a Columbia Law School graduate, was Director of the Boston University Law School Graduate Tax Program before coming to Minnesota. Both Professors Freeman and Kilbourn continue on the faculty at Minnesota currently. Professor Hughes left for Northwestern University School of Law in 1975. See text accompanying notes 314-37 infra. Professor Becker left Minnesota for the University of Connecticut Law School in 1977.

Another significant development of the Lockhart years was the expansion of the
F. The Law School in the Late 1960s

As has been noted, many of the policies implemented and improvements made during the Lockhart years were forecast in the Self-Survey Report that Lockhart had prepared as chairman of a faculty committee in 1955. At that time, however, it was impossible to anticipate the nature and extent of a number of societal pressures and movements that were to have a significant effect on the school in the tumultuous period of the late 1960s. From the civil rights movement to the Vietnam War, and from student power to the women's movement, the era's powerful forces of change penetrated the law school and left their unmistakable mark. Some of the resulting changes were most welcome and were quickly ushered in. Others were more slowly accepted. On the whole, however, the school demonstrated a flexibility of approach and an adaptability of spirit that allowed it to emerge from the period a healthier institution.

1. Equalizing the Opportunity for Legal Education

Perhaps foremost among the major social changes that characterized the 1960s was the powerful civil rights movement. By exposing the many impediments that had prevented full participation by blacks and other minorities in the mainstream of American life, the movement presented a myriad of challenges to the nation's legal and moral conscience. Not the least of these was the challenge to the legal profession and its gatekeepers, the law schools, to respond to the critical underutilization of the judicial system by the country's minorities and the equally critical underrepresentation of minorities within that system. Essentially, this presented a challenge to the nation's law schools to develop and maintain programs to make the opportunity for legal education available to all.

school's administrative staff by the addition of an Assistant Dean and an Associate Dean. In 1959, Richard J. Fitzgerald, a Minnesota graduate, joined the faculty as Assistant Dean and Assistant Professor. His responsibilities included direction of the legal writing program and direction of the school's placement office, and he served in those capacities for two years. Then, after two years without a full-time Assistant Dean, John G. O'Brien, a retired Army Brigadier General, joined the faculty in 1963 as Assistant Dean in charge of admissions and placement, serving until his second retirement in 1970. Associate Dean Robert F. Grabb, a Harvard Law School graduate and retired Army Colonel, came to Minnesota in 1965 and still serves the school in the capacity of Associate Dean, with responsibility for development, admissions, placement, scheduling, and counselling. Richard W. Swanson (1970-1972) and Patricia A. Lydon (1972-1975), both Minnesota graduates, also served as Assistant Deans, responsible for the office of admissions and placement. Finally, Phyllis A. Sims provided leadership and efficiency for the administrative offices of the law school through fourteen years (1965-1979) of service as the law school office administrator.

288. See, e.g., text accompanying note 46 supra.
The University of Minnesota Law School's initial concern about minority admissions was to ensure that policies of overt segregation, which existed elsewhere but not at Minnesota, be eliminated. Through the Association of American Law Schools, the school attempted in 1957 to do its part by voting for a measure authorizing the censure of those schools discriminating against otherwise qualified applicants on the basis of race or color.\footnote{289}

As the civil rights movement grew in scope and sophistication throughout the next decade, however, the need to do more became obvious. The first official action came in 1968 when the faculty voted to formalize what was said to have been its existing practice by adopting the following resolution:

The Admissions Committee shall have the authority to admit applicants who do not meet [the established] admission standards, when it shall find that a student's LSAT score and undergraduate average may inadequately reflect the applicant's potential contribution to the school and to the bar, because of deficiencies in his schooling or cultural background, deficiencies which the Committee thinks will not prevent his successful completion of his law school studies.\footnote{290}

With this, the school's attempt to affirmatively open its doors to the country's disadvantaged was begun.

Perhaps, however, the event that really motivated the development of a comprehensive program for equalizing the opportunities for legal education at the law school was the submission to the faculty in February, 1969 of a provocative memorandum detailing both the extent of the problem and the necessary breadth of the required solution. The paper noted that, despite substantial efforts by many within the law school community, only two black students had been enrolled at the school during the prior three years. The solution suggested was an institutional commitment to the goal of equal representation, demonstrated by a comprehensive program affecting the recruitment, admissions, financial aid, curriculum, and placement policies of the school.\footnote{291}

This thoughtful memorandum, as well as the critical nature of the problem, prompted the faculty to create an ad hoc committee to

\footnotesize{289. See AALS Articles of Association, Article 6, Section 6-8A, 1958 AALS PROCEEDINGS, supra note 45, at 305; Minutes of the University of Minnesota Law School Faculty (Dec. 17, 1957).

290. Minutes of the University of Minnesota Law School Faculty (Apr. 10, 1968) (emphasis deleted).

291. See Toward Equal Representation Within the the Legal Profession, appended to Minutes of the University of Minnesota Law School Faculty (Feb. 7, 1969).}
make further study. Its report, submitted five months later, began with the following assessment of the school's current position:

During recent years, individuals and groups at the Law School have sought in diverse ways to increase the enrollment of minority students. In modest measure these efforts have borne fruit, yet by any objective standard the school is still failing to do its share to improve minority group representation in the legal profession. Even when compared to other law schools' achievements in this area, those of Minnesota rate poorly.292

Reporting on the experience of other schools that were "several years ahead of Minnesota" in tackling this problem, the committee underscored two important lessons to be learned: first, that an ambitious and thoughtful program could succeed in increasing the number of qualified minority students enrolled; and second, that the program, to be successful, must be comprehensive and must involve recruitment, admissions, financial aid, and curricular concerns.293 The committee proceeded to detail needed revisions in law school policies, the most significant of which were in the areas of admissions and financial aid.

Concerning admissions standards, the committee urged the school to "make full use of its discretion, and not hesitate to admit applicants whose grade point average and LSAT scores are below our normal standards."294 They also recommended that a paragraph be added to the application form that would advise minority students that the school was prepared to consider factors not reflected in the student's academic record.295 This information was requested to ensure that minority group applicants would be identified in order to be considered under the more flexible standards. This proposal, however, conceivably would have violated section 363.03(5)(3) of the Minnesota Statutes, which forbade educational institutions

[t]o make or use a written or oral inquiry, or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, creed, religion, or national origin of an applicant for admission, except as permitted by regulations of the department.296

Consequently, when the faculty as a whole considered the proposal, they amended the application supplement in order to delete any

292. See Report of Ad Hoc Committee on Minority Students, at 1, appended to Minutes of the University of Minnesota Law School Faculty (May 29, 1969) [hereinafter cited as Report of Ad Hoc Committee on Minority Students].
293. Id.
294. Id. at 3.
295. Id.
reference to the school's interest in the applicant's minority status. Instead, the form merely requested information as to why the application alone might not accurately reflect the applicant's abilities.297

While the procedure for admitting minority students was one concern, equally important was the allocation of financial aid resources to minority students. The committee cited a recent study to support the proposition that "Law Schools which have begun aggressively to recruit minority group students have found that the principal limiting factor on their recruiting success is the amount of scholarship funds available."298

The school's existing scholarship program provided financial aid for twenty-five to thirty students per class, awarded partly on the basis of scholarship and partly on the basis of need. The committee recommended allocating at least ten of these scholarships to "minority group students with financial need, imposing no further scholastic qualification than that they have been admitted to the school."299 When fully implemented, this policy would require about $30,000 annually, about one-fourth of the total scholarship funds available each year. The committee failed, however, to provide specific language to be used to identify intended recipients. Consequently, the faculty as a whole improvised by reporting itself committed to reserving ten scholarships for the "highly economically disadvantaged," to be awarded based on need alone.300 Although this was a commendable start, evidencing a strong commitment to the endeavor, the vagueness of the description was later to embroil the faculty in an intensive debate about the entire program.

That debate came two years later when the reports of the Scholarship Committee, the Equal Education Opportunity Committee (successor to the ad hoc committee), and the Admissions Committee were submitted during the months of February and March, 1971. Ignited by the Scholarship Committee's dissatisfaction with the "extreme hardship" standards, the central issue of the debate surrounding these reports was the advisability and legality of the affirmative action program. The Scholarship Committee, which had for two years been administering the "highly economically disadvantaged" scholarships, confessed to having "encountered great difficulty and confusion because of the murkiness of the (legislative) history, and

297. See Minutes of the University of Minnesota Law School Faculty (May 29, 1969).
299. Id. at 4 (emphasis omitted).
300. See Minutes of the University of Minnesota Law School Faculty (May 29, 1969).
the uncertainty as to the factors which may appropriately be considered.” While all of the scholarships granted to date had been to minority group students, the report suggested that if the funds had been administered without regard to racial background, “considering only educational deprivation and student and parental financial statistics,” the scholarships might well have been granted elsewhere. In its embarrassment over this situation, it called for a “clear statement of policy from the entire faculty.”

In contrast to the Scholarship Committee, which was obviously somewhat uncomfortable with a program granting preferential financial aid treatment to minority students, the majority of the Equal Education Opportunity Committee was enthusiastic in its support of the affirmative action policy. That committee’s report detailed its position:

[S]ome form of reverse discrimination, whether direct or indirect, is essential to a successful minority student program. The only question, or so it seems to the Committee, is the extent to which the criteria relied upon are explicitly based on the race of the student or are based on criteria which while non-racial in form have the effect of aiding substantial numbers of minority students in application.

With their objective clearly in mind, the problem for the majority of this committee was one of drafting a facially neutral standard sufficient to overcome the obstacles presented by federal and state law, without losing the benefits of racially precise application.

One member of the committee took exception to this position, however, and submitted a dissenting report. The stumbling block for the dissenter was the feeling that the policy advocated by the majority was in violation of federal and state law forbidding discrimination on the basis of race. Although he did not doubt that the allocation of scholarship funds for “educationally and culturally disadvantaged” students was a classification of sufficient neutrality to pass legal scrutiny, he trusted that “no one of us thinks the verbal formula controls here, and that we should not look behind it to the clear import of the report and the intent of the committee. That import

301. Scholarships, Loans, or Prizes?, at 9, appended to Minutes of the University of Minnesota Law School Faculty (Jan. 29, 1971).
302. Id. at 10.
304. See id.
305. See Dissent to the Report of the Equal Education Opportunity Committee, appended to Minutes of the University of Minnesota Law School Faculty (Jan. 29, 1971).
and that intent," he observed, "is quite clear: the 'educationally and culturally disadvantaged' classification is chiefly camouflage for a benign quota based on race. He argued that a facially neutral classification which, by the clear intent of the committee, was to be allocated to minority group students exclusively, was both illegal and improper. It was one thing to challenge the law frontally, he argued. It was another to use legal craftsmanship to skirt the letter of the law while violating its spirit.

The issue framed by these conflicting reports surfaced first when the faculty considered the Equal Education Opportunity Committee's recommendation that "up to 50% of the available scholarship funds be allocated for scholarships to educationally and culturally deprived students based on need." This recommendation, given the committee's position, was intended to earmark the funds specifically for minority students. The faculty, cognizant of the dissenter's argument, instead adopted an amended recommendation that committed $70,000 annually (approximately one-half of the funds then available on an annual basis), to be awarded on "the basis of financial need both to minority group students and to students who are educationally and culturally disadvantaged, subject to the approval of each classification by the University of Minnesota Regents and a ruling of legality of each classification by the Attorney-General." This, of course, underscored the intended racial sensitivity of the scholarship allocation and made its legality more subject to attack. It also delayed implementation of the program by making its operation contingent on approval by the Regents and the Attorney General. On the other hand, however, this language more accurately reflected the intention of the faculty and thus can be described as a more candid approach.

The same issue, with the same alternative approaches, was again presented to the faculty a month later when it considered changes in the admissions requirements. The proposal under consideration was to change the special admissions standard from an authorization to the Admissions Committee to consider "deficiencies in . . . schooling or cultural background" when an applicant's academic record "inadequately reflect[s] [his] potential for contribution" to the school and the bar, to an authorization to "admit [no] more than 15 applicants as special risk admissions from among educationally and culturally disadvantaged students or members of minority

306. Id. at 1.
307. Minutes of the University of Minnesota Law School Faculty (Feb. 12, 1971).
308. Id. at 1-2.
309. Minutes of the University of Minnesota Law School Faculty, at 2 (Apr. 10, 1968).
groups who do not meet usual admission requirements, but do have a predicted first year average of 8.0 [minimum passing grade] or better. Because of its explicit acknowledgment of racial criteria, this proposal, like the scholarship proposal, was also to be submitted to the Regents and the Attorney General for approval. In order to avoid the delay incident to those submissions, it was moved that the proposal be amended by deleting the language referring to "members of minority groups" and substituting a provision that the Admissions Committee "may apply the standard in a racially conscious but not racially exclusive manner." This motion, however, failed to pass, demonstrating again the faculty's preference for candor in its attempt to achieve equal representation within the school and, more importantly, within the bar.

About a year later, the Attorney General of Minnesota issued an opinion upholding the school's minority student program; the faculty insistence on approval by the Regents was rescinded, and the scholarship and admission standards adopted in the spring of 1971 became fully operational. They were to form the foundation of the school's equal educational opportunity program throughout the early and mid-1970s until the Bakke decision was delivered in 1978.

Although the scholarship and the admissions policies were the most controversial aspects of the school's equal educational opportunity program, they were not the only efforts in the law school to increase opportunities for minority groups. They were supplemented, falteringingly, by an attempt to appoint minority race teachers to the faculty, and, more successfully, by a tutorial program for minority students.

When Professor Joyce A. Hughes, a 1965 Minnesota graduate, Order of the Coif member, and former clerk to Federal District Court Judge Earl Larson, joined the faculty in 1971 as the school's first black teacher, it became readily apparent that unusual demands would be made on her time. She quickly became an advisor to minority students and to many women students (as she was also then the only woman professor); a counselor to minority applicants; and a black representative on a host of law school and University committees.

310. Special Admissions Program, at 1, appended to Minutes of the University of Minnesota Law School Faculty (Mar. 12, 1971).
311. Minutes of the University of Minnesota Law School Faculty, at 1 (Mar. 12, 1971).
313. See Minutes of the University of Minnesota Law School Faculty, at 1 (Apr. 7, 1972).
In recognition of the heavy burdens being placed on Professor Hughes, as well as in the hope of bringing additional black perspective to the faculty and the school, the Appointments Committee submitted, in the spring of 1972, a list of six candidates for a visiting appointment at the school, all of whom were black. The faculty, however, rejected the committee's recommendation insofar as it had been partially based on the race of the candidates, and instructed the committee to prepare a new list by considering all candidates without regard to race or sex. Once again one can see the conflict between the faculty's goals of increasing minority group participation in the law school and operating under racially neutral standards.

At any rate, none of the candidates included in the original recommendation of the Appointments Committee was appointed and, while minority race faculty members have visited the school in subsequent years, none has stayed longer than the original one-year appointment. In the summer of 1974, Professor Hughes, citing a list of problems arising from what she described as racial and sexual biases in the law school, left the Minnesota faculty. The school has been without minority race representation on its regular faculty since that time.

Another aspect of the school's equal educational opportunities program was the development of the school's minority student tutorial program. In 1968, a voluntary and continuing tutorial program was established for all first-year students. Under the direction of several faculty members, tutors selected from the upper classes met with small groups of first-year students to help them make the transition from undergraduate instruction and examination to the vastly different approaches of the law school. As the special admissions policy began to bring disadvantaged students into the law school in

315. See Appointments Committee Report, at 1-2, appended to Minutes of the University of Minnesota Law School Faculty (Mar. 31, 1972).

316. See Minutes of the University of Minnesota Law School Faculty (Mar. 31, 1972).

317. The allegations of bias were denied by the Dean and other members of the law school faculty. See Law School Professor Claims Race, Sex Bias, Minn. Daily, Aug. 14, 1974, at 1, col. 1.

318. Several offers have been made, however, during this period to minority race teachers or teaching candidates. These offers were for visiting appointments, tenure track appointments, and, in one case, a tenure appointment. Those receiving offers included Professor John T. Baker, Indiana University School of Law; Professor Leroy D. Clark, New York University School of Law; Professor Harry T. Edwards, University of Michigan Law School; Professor James E. Jones, Jr., University of Wisconsin Law School; Professor Henry W. McGee, Jr., UCLA Law School; Professor Ralph R. Smith, University of Pennsylvania Law School; and Mr. Gerard Spann.

the fall of 1969, it was hoped that this tutorial system would prove sufficient for their special needs. But the first few years’ experience with the program demonstrated that it was failing to aid these students. If anything, the tutorial system aided most the more articulate and aggressive students, who least needed special help, while special admissions students were experiencing difficulty. 320

In response to this problem, the school’s Black American Law Student Association (BALSA), the effective voice of the law school’s minority student population, sent letters in the spring of 1972 to five faculty members whom it considered to be sensitive to minority student problems. Arguing essentially that it was inconsistent with the special admissions program to bring to the school students with a recognized disadvantage without providing the special help needed to overcome it, they requested help directed to their particular needs. Out of this request has grown a special tutorial program, operating on the same format as the 1968 program but aimed specifically at minority group students.

A further aspect of the law school’s response to the need for minority representation in the legal profession was its participation in the Association of American Law Schools’ (AALS) head start programs. With essentially the same purpose as the law school’s in-house tutorial program, the AALS, through the Council on Legal Opportunity (CLEO), 321 organized several regional summer institutes designed to remove some of the difficulties faced by minority law students by providing them a head start in their legal studies. By exposing minority students to the methods and rigors of legal education before they entered law school, the institutes were intended to ease the students’ transition into the critical first year of law school. Minnesota, along with other Big Ten Schools, sponsored several CLEO institutes and recruited students from them. 322 Minnesota also supported the institutes through the efforts of Dean Lockhart, who, as President-Elect and President of the AALS (1968-1969), made the development of the CLEO program the major focus of his administration of the AALS. 323

Evaluations of the law school’s controversial special admissions policy differ, and the conflicts expressed in its history continue. 324 But
the result has been that, throughout most of the 1970s, the school reserved 15 of its 250 first-year positions and half of its scholarship funds for minority applicants from culturally or economically disadvantaged backgrounds. From 1970 to 1978, the program has aided sixty-five minority students to graduation.\textsuperscript{325} By comparison, there were only five minority graduates in the previous decade.\textsuperscript{326}

2. \textit{Student Participation in Law School Governance}

In addition to the civil rights movement, campuses during the 1960s were also affected by a movement for increased student representation in collegiate decision-making processes. Perhaps the nation's students sought more direct participation in university decision making out of frustration over the lack of progress of other social movements. Perhaps this phenomenon was a reaction to the tradition of paternalism that seemed no longer appropriate in an age of increased emphasis on the rights of representation and procedural fairness as means of producing just regulations. Whatever the movement's origin, it affected many campuses, including that of the University of Minnesota Law School. Unlike the situation in many institutions, however, the development of student representation within the law school was generally a smooth transition, unaccompanied by the acrimony that characterized the struggle at other schools.

The beginning of the development at Minnesota was a Law School Council request, submitted to the faculty in May of 1966, that a student member be added to three faculty committees: Curriculum, Planning, and Scholastic Requirements. In response, Dean Lockhart appointed a committee consisting of the chairmen of those committees and himself. Five months later, that committee issued a report recommending the creation of a student advisory committee for each of the three faculty committees named. This would allow students to initiate proposals and express student viewpoints but would retain for each faculty committee the freedom "to have its own private sessions and to make its decisions independently, after giving consideration to the student viewpoint."\textsuperscript{327} Reportedly acceptable to the Law Council President, these recommendations were adopted by the faculty in

\textsuperscript{325} See Equal Opportunity Program (1978) (on file in the Office of Placement and Admissions, University of Minnesota Law School, Minneapolis, Minnesota).


\textsuperscript{327} Memorandum to the Faculty from Dean Lockhart (Oct. 11, 1966), appended to Minutes of the University of Minnesota Law School Faculty (Dec. 9, 1966).
December of 1966.328

In ensuing years, however, perceptions of the proper role of students in law school governance continued to change, both among students and faculty, making the advisory committee system seem inadequate. Less than two years later, Dean Lockhart, independent of any student request, brought up for faculty consideration "the question of greater student involvement in the affairs of the Law School."329 After "extended discussion," a new ad hoc committee was established, to be composed of both students and faculty, with the charge of considering the "development of more active participation by students in Law School matters."330

After four months of work, the committee, chaired by Professor Allan H. McCoid, submitted a comprehensive report recommending a policy that became the basis of student participation throughout the 1970s. Although it detailed a number of specific recommendations, perhaps the most significant aspect of the report was its endorsement of the following general policy statements:

There should be student representation on all standing and ad hoc committees of the law school which deal with matters affecting the student body directly or their legal education or the quality of legal education, unless there are either

a. positive disadvantages to the operation of the committee resulting from full participation of students as members of the committee, or

b. lack of any substantial student interest or concern with the matters within the committee's jurisdiction.331

The report proposed that this policy be implemented by the establishment of student participation on faculty committees as follows:

<table>
<thead>
<tr>
<th>Committee</th>
<th>Student Representation</th>
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<tr>
<td>Law Review</td>
<td>Equal with faculty representation</td>
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<tr>
<td>Legal Aid and Clinical Programs</td>
<td>Equal with faculty representation</td>
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<tr>
<td>Advisory Committee on Education for Professional Responsibility</td>
<td>Equal with faculty representation</td>
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328. See Minutes of the University of Minnesota Law School Faculty (Dec. 9, 1966).
329. Minutes of the University of Minnesota Law School Faculty (Oct. 3, 1968).
330. Id.
331. First Report of the Ad Hoc Committee of Faculty and Students on Student Participation in Law School Matters (Feb. 1969), at 2, appended to Minutes of the University of Minnesota Law School Faculty (Mar. 25, 1969) [hereinafter cited as First Report of the Ad Hoc Committee].
Student representatives, according to the report, were to be granted full membership rights on the committees, including, by amendment, the opportunity to attend and participate in faculty meeting discussions of matters within the purview of their committee.\(^3\) The report also explained, however, that final action on committee recommendations would be made by the faculty alone. It stated that under the terms by which the faculty’s authority had been delegated to it from the Regents in the University’s constitution, the actual exercise of the delegated authority must be held by the faculty inviolate.\(^3\)

The report, presented to the faculty in March of 1969, engendered considerable discussion, particularly with regard to student representation on the Tenure and Appointments Committees. Reconsideration of the proposal in these areas was urged,\(^3\) and by May a compromise had been worked out. Withdrawing proposed student

\(^3\) Id. at 3.
\(^3\) See Minutes of the University of Minnesota Law School Faculty (May 8, 1969).
\(^3\) See First Report of the Ad Hoc Committee, supra note 331, at 20.
\(^3\) See Minutes of the University of Minnesota Law School Faculty (Mar. 25, 1969).
representation on the Appointments and Tenure Committees, the ad hoc committee recommended the creation of a Teaching Evaluation Committee which, it was hoped, would be able to articulate student concerns about faculty teaching performance without encountering the "serious opposition" raised by the original proposal. While the members of the committee personally preferred full representation on the two faculty personnel committees, the compromise appeared to be necessary for the advancement of the entire program. With this modification, the proposals of the ad hoc committee were quickly adopted by the faculty and implemented during the next school year.

The currents that had made the advisory committee system seem inadequate within two years of its adoption continued to flow, however, prompting another move for more significant representation by 1971. In the spring of that year, the Law Student Council presented for faculty consideration a proposal for student participation in faculty meetings through voting membership for Law Council members and open meetings permitting all students to attend and participate in debate. The proposal already had received substantial student support; eighty-five percent of the two-thirds of the student body that voted in a student referendum favored the proposal. The wellspring of student dissatisfaction with the committee representation system was the feeling that, in controversial matters, student involvement was effectively eliminated by subsequent full faculty consideration of the issues. Moreover, students noted that since student committee representatives were appointed by the Law Council but not responsible to it, general student views might not be given adequate representation.

Again, a committee was appointed to study the issue. Their report, not submitted until a year later, addressed not only the student participation question but, more generally, whether law school governance ought to be reorganized by creating an executive board to handle the majority of decisions previously made by the faculty as a whole. In addressing the latter issue, the committee was responding to the concern, recently heightened by protracted faculty debate over

336. See Supplementary Report of Faculty-Student Ad Hoc Committee, appended to Minutes of the University of Minnesota Law School Faculty (May 8, 1969).

337. See Minutes of the University of Minnesota Law School Faculty (May 8, 1969).

338. See generally Memo re: Student Participation in Faculty Meetings; Memo re: An Explanation Concerning the Law Council Proposal to Increase Student Participation in Faculty Decision Making (both by the Law Student Council), appended to Minutes of the University of Minnesota Law School Faculty (Apr. 16, 1971).
line and letter of a scholastic requirements revision,\textsuperscript{339} that full faculty consideration of the many issues confronting the school was inefficient and cumbersome. The assumption underlying this concern was that the faculty had simply grown too large and the issues facing it too numerous and complex for full faculty consideration of each issue to be desirable.

The committee listed and ranked three alternative approaches to the problems it was addressing. The first, favored by the committee majority, retained the current committee system but replaced the larger faculty meetings with an eleven-member executive board composed of eight faculty members, two elected student representatives, and the dean. This board was to dispose of all matters other than appointment and tenure questions, which would be reserved for consideration by the faculty as a whole. The second preference of the committee's majority was simply to maintain the current decision-making structure but to add to the faculty's deliberative body two elected student representatives possessing full voting rights in all matters except appointment and tenure. Finally, the four faculty members of the committee recommended (two of them as their first choice, two of them as their last choice) retaining the present committee system with the addition of a nine-member executive board having no student members.\textsuperscript{340}

On May 25, 1972, at a lightly attended faculty meeting,\textsuperscript{341} the committee proposals were brought to the floor. After some discussion and several attempts to defer consideration of the proposals until October, a motion was made to approve the second alternative, authorizing the addition of two voting student members to faculty meetings. The vote on the motion resulted in a tie, broken in favor of the proposal by Dean Lockhart's vote. At that point, one of those disappointed by the outcome switched his vote from "nay" to "aye" in order to seek reconsideration at the next faculty meeting.\textsuperscript{342}

The opening motion at the next faculty meeting, held a week

\textsuperscript{339} See, e.g., Minutes of the University of Minnesota Law School Faculty (May 5, 1972); id. (Apr. 28, 1972); id. (Mar. 31, 1972); id. (Jan. 28, 1972).

\textsuperscript{340} See generally Memorandum, From Committee on Student Participation in Law School Governance (May 9, 1972), appended to Minutes of the University of Minnesota Law School Faculty (May 12, 1972).

\textsuperscript{341} Twenty members were listed as present out of thirty members on the faculty, and at least one member was unable to stay until the vote was taken. See Auerbach, Memorandum: Law School Government (May 31, 1972), appended to Minutes of the University of Minnesota Law School Faculty (June 1, 1972) [hereinafter cited as Memorandum: Law School Government]; Minutes of the University of Minnesota Law School Faculty (May 25, 1972).

\textsuperscript{342} See generally Minutes of the University of Minnesota Law School Faculty (May 25, 1972).
later, was for reconsideration of the Alternative II vote. Before action could be taken on the reconsideration motion, however, the Law Student Council President called to the faculty's attention the fact that two students elected by the student body sat ready to participate in the reconsideration vote. But a ruling of the chair, sustained by a faculty vote, rejected the students' claims and denied them voting privileges. The motion to reconsider then passed. Later, the faculty voted to defer further consideration of any aspect of the student participation issue until a newly constituted committee had restudied the problem.343

After cooling over the summer, the issue was quickly dispatched at the first faculty meeting in the fall of 1972, when the faculty approved the presence at its meetings of two non-voting Law Student Council representatives. This solution, which comported with the position of the new Acting Dean, Carl A. Auerbach,344 was also reportedly acceptable to the Law Student Council President.345 With this solution, the peak of the movement for greater student representation in law school governance had been reached. In the subsequent years, student representation has continued but agitation for greater student involvement has lessened.

3. The Vietnam War

The civil rights movement and the increasing interest in student participation in school governance were two currents of the late 1960s that affected the law school. A third was the national reaction to the Vietnam War. The cause of some of the nation's most disruptive campus unrest, the war and its increasing unpopularity in the late 1960s and early 1970s inevitably affected the law school as well.

Like other wars before it, the Vietnam conflict first affected the law school by altering its enrollment patterns. The Selective Service Act of 1967, which denied student deferments for law school study, was the initial cause of disruption. As many potential enrollees would likely be classified I-A and drafted before they could complete their first year of law school, enrollment predictably fell. And since the University offered to its current enrollees and successful applicants whose plans were interrupted by military service a guaranteed place in a later class,346 the subsequent influx of those deferred admittees

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343. See Minutes of the University of Minnesota Law School Faculty (June 1, 1972).
345. See generally Minutes of the University of Minnesota Law School Faculty (Sept. 29, 1972).
in 1970 through 1973 contributed to a bulge in enrollment during those years. The following graph illustrates these trends:

FIGURE ONE

Effect of Vietnam War on Enrollment at the University of Minnesota Law School 1965-1975

In addition to its demographic effects, the Vietnam War was met at times with vigorous protests that also affected the law school. This was particularly true in the spring of 1970 when American troops invaded Cambodia in an apparent escalation of the war. President Nixon announced the invasion of Cambodia on Thursday evening, April 30, 1970. By Monday, May 4, 1970, rallies and strike votes were scheduled on campuses everywhere. In one such rally at Kent State University in Ohio, four students were killed by National Guardsmen. This incident further aggravated the campus unrest throughout

347. The statistics depicted in Figure One were compiled from the Annual Reviews of Legal Education, 1965-1975, as published by the ABA Section on Legal Education and Admission to the Bar, and from statistics of the Office of Placement and Admissions of the University of Minnesota Law School, Minneapolis, Minnesota.
the country. Many schools suspended operations, and although the University of Minnesota remained open, the disruption was significant. At Minnesota, 5,000 students and staff of the University gathered, made plans to conduct “teach-ins” throughout the University and the state, and voted to strike. Varying in its intensity, the strike continued throughout the quarter, prompting the University’s Twin City Assembly to pass a resolution allowing students to make arrangements for alternative grading options, available at the choice of their professor, which would permit their participation in the ongoing antiwar protests.

In the law school, however, the strike movement was largely preempted by the development of plans for a “fly-in” to Washington, D.C. Motivated by the desire to take constructive action, concerned members of the law school community decided to lobby congressional leaders directly. A brief in support of the position that Congress had and should exercise the power to withdraw American troops from Southeast Asia was prepared and circulated within the law school and the Twin Cities legal community. A plane was chartered, and a fund-raising campaign initiated, aimed at lawyers who supported the law students’ position, or their methodology, or both. After raising $4,000, more than forty students, some Twin Cities lawyers, and the author contributed the rest of the expense themselves and took off for Washington on May 11, 1970. The faculty, noting that the dates of the “fly-in” occurred near final examinations, encouraged faculty members to assist participating students in making up work.

During the next week, the law school delegation contacted “in one fashion or another,” all but seventy-one congressmen and had interviews with ninety representatives and ninety-seven congressional or administrative assistants. They personally contacted the entire Minnesota congressional delegation, and extensive lists were prepared on the congressmen and their positions. Special efforts were made to contact those whose positions were unresolved. While many student groups were in Washington at the time, the author believes none were as well prepared or as effective in communicating their views as the Minnesota Law School delegation. In meeting after

349. Id.
350. See Recommendation of the Consultative Committee, appended to Minutes of the University of Minnesota Law School Faculty (May 15, 1970).
352. See Minutes of the University of Minnesota Law School Faculty (May 8, 1970).
353. See J. Olson, supra note 351.
meeting, Minnesota Law School students assumed leadership roles among the student lobbyists during this critical period, a period that saw the development of a national consensus that the United States' involvement in Vietnam had to cease.

These actions give some indication of the way in which the school was affected at the height of the antiwar protests. They do not, however, reflect the more subtle effects accompanying the personal confrontation by each member of the law school community—whether returning veteran, prospective draftee, student, or professor—of the moral and political challenges presented by the war and the protests. Although absent from the visible record, these effects stand out in the memory of the era.

4. Women in the Law School

A fourth dynamic in the social fabric of the late 1960s and early 1970s was the increasing involvement of women in all areas of society. In the law school, the change was dramatic. Before 1970, there had never been as many as ten women in a graduating law school class.\textsuperscript{354} In the class of 1978, however, there were 67 women among the 221 graduates. Prior to 1971, there had been only one woman on the law school faculty, and she served for only three years.\textsuperscript{355} In 1978, there were five women on a thirty-six member faculty.\textsuperscript{356}

The dramatic increase in the number of women students, which was achieved without special admissions or scholarship policies, was nonetheless not accomplished without difficulty. The legal profession was traditionally one of the most male-dominated segments of society and eroding the barriers to the full participation by women in the profession has been an arduous process. Nor can it be said that some of those barriers were not within the law school itself. University President Cyrus Northrup flatly stated, in 1910, "I do not prepare any women for a career at the University of Minnesota."\textsuperscript{357} Milton I. Holst, a 1924 graduate, recalls that at least one of his professors was apparently "not reconciled to the fact that women were potential lawyers" and made this known to the class by singling out women to report on the more lurid cases.\textsuperscript{358}

\textsuperscript{355} She was Professor Dorothy Oerting Lareau (1956-59), see text following note supra.
\textsuperscript{356} They were professors Barbara A. Banoff, Laura J. Cooper, Marcia R. Gelpe, Roberta Levy, and clinical instructor Frances Moore.
\textsuperscript{357} President Northrup Speaks of Careers for Women, Minn. Daily, Nov. 9, 1910, at 1, col. 1. See Stein, The Fraser Years, supra note 76, at 488.
The situation, seemingly, had not changed appreciably between 1924 and 1967 when a similar phenomenon was reported in "16 Invaders: A Minority Report," an article appearing in the Law School News:

[I]t is not uncommon for a professor to call on the girls early in the quarter so he can, no doubt, reassure himself as to their qualifications. It does seem strange, though, that these qualifications are almost always tried and tested by having her discuss the rape and illegitimacy cases.359

Again, in 1972, a similar note was sounded in a petition submitted to the faculty by the school's thirty-five women students. Politely, they sought to make the faculty aware of the degradation implicit in the repeated use of sexual stereotypes in classroom discussion.360

Barriers existed on a second front as well, that being the hiring of women faculty members. A curious portion of the draft of the 1955 Self-Survey Report provides an example. Speaking of the qualifications of the proposed position of Administrative Assistant to the Dean, the draft read:

The position should be filled by a man (although there are competent women who could fill it) since our faculty is all male, the student body is about 95% male, and the comparable administrators elsewhere in the University with whom our Administrative Assistant would deal are nearly all men.361

While these sentences were deleted by faculty action, there remains the perplexing question as to why they were ever proposed. While undocumented, it is possible that this language reflected the desire of some faculty members that particular members of the existing clerical staff should not be considered for the new post. There is some suggestion that the general dissatisfaction with the school's administration expressed in the 1955 Self-Survey Report was attributable, in part, to dissatisfaction with members of the administrative staff, and that this provision, by denying all women the job, would effectively deny these women advancement.

An alternative interpretation, however, is that the authors of this provision meant exactly what they said in giving the reasons for the male qualification. If it is true that some faculty members believed that a woman administrative assistant would be less than fully effective in the predominantly male environs of the law school, then the

360. See Minutes of the University of Minnesota Law School Faculty (Apr. 7, 1972).
barrier to women in obtaining faculty appointments would be even greater. While the faculty as a whole rejected this provision, the fact that it survived committee scrutiny to be included in the draft indicates that the sentiments expressed had at least some following.

Lest the significance of this incident be overstated, it should be noted that the school's first woman faculty member was appointed during the next year. She was Professor Dorothy O. Lareau, who served both in the classroom and as Assistant Dean until she left the school in 1959. Twelve years passed, however, before the next woman faculty member, Joyce A. Hughes, was appointed in 1971. A year later, Patricia A. Lydon, a 1971 graduate of the University of Minnesota Law School, a Note and Comment Editor of the Minnesota Law Review, and a member of the Order of the Coif, was appointed to the faculty position of Assistant Dean for Admissions and Placement. In the next six years, five more women were appointed. Both Hughes and Lydon, however, subsequently left the school. In

362. Professor Hughes, a 1965 Minnesota Order of the Coif graduate who clerked for Federal District Judge Earl Larson, joined the faculty in 1971 as the school's only black teacher.

363. See Lydon, Once More an Admissions Crunch, MINN. L. ALUMNI NEWS, Winter 1973, at 8. Dean Lydon left the law school to become Assistant Dean and Director of Admissions at Harvard Law School in 1974. She recently left Harvard to enter private law practice in New York City.

364. They were Professors Barbara A. Banoff, Laura J. Cooper, Marcia R. Gelpe, and Roberta Levy, and clinical instructor Frances Moore.

Professor Banoff graduated in 1973 from the University of Santa Clara School of Law, where she was Editor-in-Chief of the Santa Clara Law Review. After two years in private practice, she spent a year as staff counsel to the Senate Select Committee on Intelligence Activities and a year as a senior fellow at Harvard Law School before coming to Minnesota in 1977. She teaches in the areas of corporate law and securities regulation. See 1978 Directory, supra note 265, at 147.

Professor Cooper graduated from the Indiana University School of Law at Bloomington, where she was Executive Editor of the Indiana Law Journal. She clerked for Judge John S. Hastings of the Seventh Circuit Court of Appeals for a year before joining the Minnesota faculty in 1975. She teaches labor law, welfare law, and other subjects. See id. at 237.

Professor Gelpe, a classmate of Professor Cooper's at Indiana, was an Associate Editor of the Indiana Law Journal before her graduation in 1974. Having previously received her Masters in Biology, she had taught Biology at Trinity College in Washington, D.C., for four years. After law school, she worked for the Environmental Protection Agency for a year before coming to Minnesota. She teaches environmental regulation, property, and modern real estate. See id. at 330.

Professor Levy, a 1964 University of Minnesota Law School graduate, had been an assistant state public defender for six years and had been in private practice for four years before joining the law school faculty in 1975. See id. at 500. She left the school in 1978 to become a Municipal Court Judge in Hennepin County, Minnesota.

Instructor Moore is a 1976 University of Minnesota Law School graduate. She served as an attorney and instructor in the law school's clinical program for a year.
1978, women comprised fourteen percent of the faculty and about thirty percent of the student body.

While barriers of attitude were being confronted and overcome in the classroom and on the faculty, one of the largest hurdles for women law students was professional placement. In 1970, a Law School News article entitled "It's a Man's World(?)" attempted to counteract the influence of an earlier feature, "Co-Counsel of the Month," a pictorial of an attractive second-year woman student, by introducing more seriously several women students to the magazine's readership. "As the feminine contingent in the Law School increases," author Becky Knittle explained, "more and more women will be seeking employment with the firms of the state. We know that the qualifications and interests of these women make them good candidates for employment and we hope you will agree."

Nonetheless, women graduates in the class of 1970 reported meeting "a variety of subtle and blatant responses of negativism directed towards them because they were women." Noting the problem, the faculty created a student-faculty committee, which undertook an educational campaign to inform all recruiters of state and local laws prohibiting discrimination and of the University's policy of denying recruiting assistance to those who engaged in discriminatory practices. Through this and other measures, the Committee on Career Advancement for Women Lawyers worked to achieve its goal of extending to the sex classification the "concern and familiarity which lawyers have developed regarding equal employment opportunities regardless of race, color, creed, religion and national origin."

Undoubtedly, barriers to women in the law still exist, but the 1970s have witnessed a revolution in the nature and extent of women's involvement in the law school and the legal profession. Though there have been other times when strong women's movements have swept the country—for example, the suffrage movement

She now works for the Legal Aid Society of Minneapolis. See 1977 Directory, supra note 241, at 575.

368. The motion to create the committee was "without prejudice to the question whether differential hiring practices might sometimes be justified." Minutes of the University of Minnesota Law School Faculty (Feb. 24, 1970).
370. The dramatic numerical improvement in the position of women within the law school is primarily a phenomenon of the mid- and late-1970s, which will be discussed further in the next article in this series.
of the 1920s—there has never before been such a significant increase in women’s involvement in the country’s professional life. This would seem an optimistic indication that the barriers now falling will not soon be reconstructed and that the changes now being effected in the sexual makeup of the legal profession will be permanent.

5. The Admissions Crisis

Another phenomenon of the turbulent late 1960s and early 1970s, one which was in turn affected at least in part by several of the social movements already discussed, was the astounding increase in the number of law school applicants. The following graphs detail the expansion in student enrollment and applications during this period.
Figure Two is compiled from data contained in the Presidents' Reports (on file in the Office of Placement and Admissions, University of Minnesota Law School, Minneapolis, Minnesota).

371. Figure Two is compiled from data contained in the Presidents' Reports (on file in the Office of Placement and Admissions, University of Minnesota Law School, Minneapolis, Minnesota).
Figure Three is compiled from records contained in the Office of Placement and Admissions, University of Minnesota Law School, Minneapolis, Minnesota.
These statistics reveal that in 1958, shortly after the qualitative admissions standards had been adopted, four out of every five applicants were admitted to the law school. In 1965, about one out of every two was accepted; in 1969, about one out of three; and in 1973, only one out of every seven applicants was enrolled. In the early 1970s, the law school instituted an application fee, which had the effect of discouraging applications from persons who clearly had no chance of acceptance. Thus, while the number of applications seems to have leveled off by 1978 to a rate of approximately 5.4 applications for each admission, the academic qualifications of the admittees—measured by Law School Admission Test scores and grade point averages—have continued to rise dramatically. 373

The increase in applications for admission to the University of Minnesota Law School in the 1960s and 1970s is, of course, part of a national trend of rising popularity of legal education. 374 Several explanations have been advanced for this phenomenon. In part, the explanation is demographic, as the post-World War II “baby boom” reached the age for post-graduate and professional school education. Also, society’s increasing complexity has certainly been a factor, as the situations in which the services of legal counsel are advantageous have become more frequent. The economic success of many practicing lawyers has further contributed to the popularity of the profession. Moreover, the prominence of many lawyers in our country’s political and business life, and the nature of their contributions, have emphasized the value of legal education for those who want to assume positions of business or political leadership. And, finally, the explosion of increased participation in the profession by women has contributed to the greater number of applications for admission to law school. 375 Whatever the reasons, the phenomenal growth in demand for admission to Minnesota and the nation’s other good law schools is a fact that has profoundly affected legal education in the 1960s and 1970s.

A result of the rising popularity of legal education was that the school’s concern over the quality of its admittees shifted from active recruitment of highly qualified applicants to a recurring lamentation that the school could not accommodate all of the qualified students

373. The mean scores of first-year students have risen from a 3.11 GPA/633 LSAT in the fall of 1971 to a 3.61 GPA/676 LSAT in 1978. This information was gathered from the Office of Placement and Admissions, University of Minnesota Law School, Minneapolis, Minnesota.

374. In 1977, for example, there were 128,135 individuals taking the Law School Aptitude Test for the 39,676 first-year law school positions available nationally that year. See Association of American Law Schools, 1978-79 Pre-Law Handbook 21 (1978).

375. See text accompanying notes 354-70 supra.
who applied. In the fall of 1964, the faculty took its first action to limit enrollment by restricting the first-year class to 250 students. Since their experience with a 256-student first-year class in 1963, the faculty had become aware that the school, or more accurately, its building, had a limited student capacity. As the number of applications climbed, it became evident that applicants were being rejected, not because their prospects for success within the school were doubtful, but because there simply was no room for them. In 1970, the *Minnesota Law Alumni News* emphatically reported that “in the last year, TWO HUNDRED FULLY QUALIFIED MINNESOTA RESIDENTS WERE DENIED ADMISSION FOR NO BETTER REASON THAN SHEER LACK OF SPACE.” Two years later, Dean Lockhart observed that, in 1971-1972, 748 students occupied a law building designed for 450 and that out of the 1,726 applicants for admission, of whom at least 1,000 were “more than minimally qualified” to do law work, only 250 could be admitted.

By the time of these reports, the enrollment problem had been further exacerbated by the combined effects of three additional developments. First, the law student attrition rate had fallen from thirty-eight percent in 1965 to about twenty percent in 1970. Better students, keenly aware of the opportunity that law school provided, were proving to be more successful in and dedicated to their legal studies and, thus, fewer of them failed or chose to leave.

Second, great numbers of admittees who had been syphoned off by the Vietnam War in the late 1960s returned to the law school during the early 1970s. The class entering in 1968, for example, was significantly reduced by the effects of the draft. One report stated that the estimated first-year enrollment had been sixty percent of the limit of 250 students, but that, with 200 registrants, it was apparent that “many students decided to register despite the fact that they faced imminent draft.” By the time that report was published in the fall of 1968, fifteen of those 200 had left for military service.

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376. See Report of Admissions Committee re Admission Standards for Fall, 1964, appended to Minutes of the University of Minnesota Law School Faculty (Dec. 6, 1963).


380. *Class of '71*, U. MINN. L. SCH. NEWS, Fall 1968, at 11 [hereinafter cited as *Class of '71]*.

381. *Id.*
few years later, the problem reversed itself, as prior admittees completed their military service. By November of 1970, forty of the 250 positions available in the fall of 1971 were already filled by the guaranteed admission of returning veterans. This, of course, made competition for the remaining 210 positions even more intense.

Finally, there was a problem of accidental excesses in 1969 and 1970, when the enrolling classes were of 287 and 307 students, respectively. This resulted from too many students having qualified for automatic admission. The school’s practice, since the beginning of its use of qualitative admissions standards, has been to create three categories for its applications. These categories are based on an index of predicted law school success that, in turn, is based on the applicant’s Law School Aptitude Test (LSAT) score and undergraduate grade point average (GPA). Two lines are projected on a grid reflecting both the applicant’s LSAT score and GPA, thereby creating three categories. Applicants whose scores fall below the lower line are automatically denied admission; applicants whose scores are above the upper line are automatically admitted; and those who fall between the two lines are held in a deferred category from which selections are to be made to fill out all available positions. With the dramatic increase in the number and quality of applications, however, the faculty discovered that the entire first-year class of 1970 had been filled to overflowing with applicants in the automatically admitted category. No students from the deferred group could be considered.

This prompted the school to adopt a policy allowing students admitted in one year to defer admission to the next. In addition, the automatic admit line for the next year was raised. Even then, however, over two-thirds of the new places were filled automatically, leaving only about fifteen places to be filled from among the 806 applicants in the deferred category. Further adjustments were needed in order to achieve the intended result of automatically admitting one-half of the class while selecting the other one-half on the basis of factors in addition to GPA and LSAT, such as extracurricular activities, work experiences, and diversity of background.

While these adjustments were being made, the school had to suffer through the overcrowding caused by the excessive admissions. The frustrations of these years produced a move within the faculty

382. See also text accompanying note 377 supra.
383. Class of '71, supra note 380, at 11.
385. See Admissions Report, at 5, appended to Minutes of the University of Minnesota Law School Faculty (Dec. 15, 1972).
to further restrict first-year enrollment by reducing the number admitted to 220. The proposal was not motivated by dissatisfaction with the caliber of the students admitted, but rather because the overcrowding within the school was critically reducing the effectiveness of the entire law school instruction. With library seating that could accommodate only forty-six percent of the student body, a percentage far below the standards of the Association of American Law Schools, students were forced to find other places to study and converse. As the Admissions Committee candidly stated in 1970:

"Since we provide neither adequate library facilities or other facilities for student discussion of legal problems, we are not encouraging that community of scholarship among students which we are supposedly trying to promote. At the same time that we tell students to concentrate on their legal studies, we afford them no opportunity to work or talk in the law school building. By overcrowding we encourage the students to stay away from the Law School."

As accurate as these statements were and as critical as the situation was, there still remained political and moral considerations which militated against reducing the school's enrollment. In a memorandum responding to the Committee's recommendation, Lockhart (then a Law Alumni Professor, having retired as dean) noted first that:

"Politically such a decision would probably backfire and might very well be a significant factor in producing a negative decision against an appropriation for a new Law School building. Whether I was wise in doing so or not, for at least 6 years I have consistently stated to legislators that the law school has established a maximum of 250 as the most we can take care of in our present facilities, and that though this crowds us we are doing so to take care of as many as we can while awaiting a new building. That 250 figure is fixed in so many minds, and appears in so many documents and memoranda, that deviation from it now at a time of peak demand, could very well be viewed by many legislators either as attempted pressure or as reprisal for legislative inaction."

Lockhart further noted that:

"Apart from political considerations, on the merits we should continue to take 250 so long as we have prospects for a new law school..."
building appropriation in this coming session of the legislature. We cannot lightly decide to educate 30 less students when there is a fair chance that we will have a building of ample size by the time the 1973 entering class reaches the senior year. When you sit in Carl's [then Acting Dean Auerbach] seat—or the seat I occupied until recently—you realize that each individual who is denied admission in a cutback from 250 to 220 is potentially an excellent lawyer, whose career prospects will be either smothered or diminished by a decision to cut our enrollment to provide more breathing room in the Law School. These are the individuals who matter. Each is important. Each is promising.391

Professor Lockhart's appeal was successful, and the motion to limit enrollment to 220 failed by a faculty vote of thirteen to six.392 Nevertheless, the near success of the proposal demonstrates how critical was the need for space and how problematic were the admissions issues. Concern about the appropriate size of the student body and the resources required to educate them continues to the present time, even after the most urgent need for a new facility has been met.393

G. THE NEW BUILDING CAMPAIGN

A principal consequence of the enrollment crisis was the sense of urgency which it imparted to the campaign for a new building. As early as 1962, when the school's enrollment was 429, programatic developments, library growth, and the trend of increasing enrollment prompted Dean Lockhart to alert the University that a new addition or new building would be necessary in the near future.394 In succeeding years, enrollment quickly grew to over 700 students (before space limitations prohibited further enlargement), while the number of applicants rose to unprecedented heights.395 The library continued to grow beyond capacity at a rate exceeding 10,000 volumes per year.396 Furthermore, new teaching approaches were either shackled or untried due to the lack of the facilities they required. Thus, in all ways, the "outdated and inadequate physical plant continued to set finite

391. Id.
392. See Minutes of the University of Minnesota Law School Faculty (Dec. 15, 1972).
393. See Minutes of the University of Minnesota Law School Faculty (Jan. 26, 1976).
395. See Figure Three, accompanying note 372 supra.
396. See Law School Building Project: Update Report (June 23, 1972), at 6 (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).
limits on the law school possibilities for growth and development.  
While the frustration of turning away large numbers of qualified applicants added to the urgency with which the law faculty approached the situation, treatment of the law school building request by the University's central administration and the Minnesota Legislature reflected a much different appraisal. Thirteen years passed between the time the law school first expressed its need and the time the legislature finally authorized construction funds in the closing hours of the 1975 session. During the intervening years, the law school faculty labored to make its need known and appreciated not only by legislators but also by University administrators. The slow process once seemed very near to a successful conclusion when a 1972 election turnabout placed a new party (the Democratic-Farmer-Labor party) in control of the legislature for the first time in over a century.  
With new legislative leadership, the arduous process had virtually to begin again. Although more expanded treatment of the law school's new building campaign will appear in the next article in this series, the important developments occurring during the Lockhart years are briefly described here.

As mentioned previously, Dean Lockhart first articulated the law school's need for additional and improved space in 1962. In 1965, the University's central administration told the faculty that their "request for new physical facilities . . . will not be given serious consideration unless [they] accompany it with a projected academic program justifying the request." Consequently, the first step in the new building campaign was to charge a small committee of faculty members with the "task of preparing a detailed statement of current and future teaching, research and service activities." Noting that this statement would provide the basis for cost estimates and would be the source document for actual schematic planning when the project was funded, the administration warned that the "need for thorough and competent study at this time cannot be overstressed."  


399. See text accompanying note 394 supra.

400. Memorandum from the Planning Committee to the Faculty (Oct. 6, 1965), appended to Minutes of the University of Minnesota Law School Faculty (Oct. 7, 1965).

401. Memorandum from Vice President L.R. Lunden to Deans and Directors (July 3, 1967) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

402. Id.
The result was exactly that—a “detailed statement” following thorough and competent study. “The University of Minnesota Law School in the Decades Ahead,” as the report was entitled, was the product of two years of study by the Planning Committee under the chairmanship of Professor Carl A. Auerbach. Like the 1955 Self-Survey Report before it, the “Decades Ahead” report served as a blueprint for the school’s operation in its author’s subsequent administration. Adopted by the faculty on December 6, 1967, the statement contained many important predictions and recommendations, but the most important, in terms of the building needs of the school, were the following:

(1) that estimates of admission would require, and experience with placement of graduates would justify, planning for an enrollment of 1,000 students by 1980;
(2) that to handle adequately that number of students, the faculty would have to be increased at a rate of three positions per year between 1967 and 1980 to achieve the sixty-six teachers necessary to have a fifteen-to-one student/faculty ratio by that date;
(3) that the library should be designed to hold 500,000 volumes in the expectation that technological advances such as microfilm and computers would make it possible to hold the collection to that size;
(4) that a residence facility should be constructed near the law school to enhance the community of legal scholarship intended within the school; and
(5) that the law school facilities should house not only the Law Review, Legal Aid and Public Defender’s Office, but also a proposed Center for the Study of Law in Society, a new research office designed to encourage interdisciplinary approaches to problems of law and the social sciences.

Several of these proposals were subsequently sacrificed in revised planning necessary to make the project financially feasible. Several had to be stoutly defended. Each was, however, an important element in what the law faculty, if operating in the best of all worlds, would have made a part of the new facility.

With the school’s program objectives detailed in the “Decades Ahead” report, the next step was to translate those objectives into spatial requirements. A new committee, chaired by the author, was quickly appointed to make this translation by computing the space
requirements and equipment needs of the programs envisioned. Composed of eleven faculty members and five students, the Law School Building Committee divided itself into seven subcommittees to study each of the functional areas in the proposed new building—library, faculty facilities, administration, instruction, student activities, services to bar and community, and the residence hall. In each area, space and equipment needs were identified, and within four months the committee was ready to make its report. The result was a detailed exposition of the law school’s building needs (in some cases including such detail as the color of the walls and the type of telephone recommended). The estimated cost, exclusive of the residence hall proposal, was fourteen to fifteen million dollars.

Anxious to proceed on what was already perceived as a problem of critical dimension, the law school urged that it be included on the University’s new building priority list for the 1969 legislative session. Fearing that the large cost of the proposal might prove troublesome, the Building Committee agreed to the recommendation from the University’s central administration that the project be divided into two phases, an approach occasionally used by the University to spread out the large cost of major building projects over several legislative sessions. The law school proposal was, therefore, divided into an initial phase of approximately $12 million and a second phase of $3 million. With this arrangement secured in the spring of 1968, the University administration agreed to request half a million dollars in planning funds from the 1969 legislature.

At that time, in an attempt to assure coordinated planning for the state’s building program, construction requests were initially screened by a Legislative Building Commission. The battle had to be won in that body before the proposal could see the light of day in the legislature. Consequently, during the summer and fall of 1968 and the 1969 legislative session, the law school and its friends attempted to make their case to the Legislative Building Commission through hearing presentations and a letter campaign.

Their efforts resulted in a 1969 legislative appropriation of

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406. Memorandum from Professor Robert A. Stein to Building Committee Members (Apr. 5, 1968) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).

407. Designed to coordinate all of the state’s building needs and plans, the Legislative Building Commission reviewed the building requests of all state agencies before they were considered by the appropriate legislative committee. Composed of members of both houses of the legislature, the Commission was chaired in 1968-1969 by Representative Delbert Anderson.
$80,000 for preliminary or schematic planning for a law building for 1,000 students whose cost was not to exceed $8 million.\textsuperscript{408} The $80,000 appropriation,\textsuperscript{409} which was $420,000 less than the amount requested, represented a decision by the legislature to appropriate funds for preliminary planning only, rather than detailed working drawings. This decision was based on legislative uncertainty about the appropriate size of the project. The $8 million ceiling imposed on the building cost resulted from a significant legislative misunderstanding about the law school need for space for a law library inasmuch as the recently constructed Wilson Library was located nearby.\textsuperscript{410} At any rate, the restrictions imposed by the legislative appropriation prompted the first and most drastic paring of the law school's plans.

By consolidating the two-phased proposal and deleting, among other things, space for the Center for the Study of Law in Society, an auditorium for large law school convocations and continuing education of the bar, ten visiting faculty offices, library seating for 100 students, and library stack space for tens of thousands of volumes, the Law School Building Committee was able to reduce the proposal's spatial requirements by almost twenty percent.\textsuperscript{411} Further reductions were made by the architectural firm, The Leonard Parker Associates, retained by the University for the project in 1970. Increases in building costs caused by inflation, however, pushed the estimates for the 1971 proposal back up to about $14 million.

With the new proposal in hand, the law school prepared during the summer and fall of 1970 for another presentation of its case. Listed as the University's second priority on the Minneapolis campus, the school was requesting not only detailed planning funds but also a construction appropriation. In early 1971, the Legislative Building Commission recommended an appropriation for detailed planning for a $10 million building. Initially, this appeared to be a setback that not only denied an immediate construction appropriation but further reduced the project cost by $4 million. As the law school reacted to this recommendation, it became clear that there

\textsuperscript{409} The $80,000 appropriation was supplemented by a gift of $25,000 from the Law Alumni Association. This gift permitted the development of schematic plans by the architect to the point where a construction appropriation might be sought in the 1971 legislative session.
\textsuperscript{410} Letter from Dean William B. Lockhart to the Honorable C.A. (Gus) Johnson (June 29, 1970) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota); Letter from Dean William B. Lockhart to Regent John Yngve (Mar. 19, 1970) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).
\textsuperscript{411} See Law School Building Program (Apr. 3, 1970) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).
had been a misunderstanding of the $10 million figure. While law school supporters originally thought that this figure was to cover the entire project cost, it was actually a limit only on the building construction costs, excluding equipment and furnishings, and thus was not inconsistent with what had been proposed.\footnote{See Lockhart, Statement to Building Division, House Appropriations Committee (n.d.) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).}

In any event, the law school's lobbying effort on behalf of the original request continued before the 1971 legislature. Legislators opposing the project maintained that existing University buildings could be remodeled to satisfy the law school's needs. The law school's proponents tried to show that planning for the new building, including the appraisal of remodeling alternatives, had been complete. The legislators, uncertain about the remodeling-versus-new-construction issue, passed "sum sufficient" legislation, by which the decision on the school's proposal was again returned to the jurisdiction of the Legislative Building Commission. In pertinent part, the law read:

> In the event that the legislative building commission determines in favor of constructing a new law school building or an addition to the present building, the commissioner of administration is directed to transfer to the board of regents . . . an amount approved by the legislative building commission for working plans and drawings.\footnote{Act of June 4, 1971, ch. 963, § 8(2)(8), 1971 Minn. Laws 2104-05.}

This contingent authorization provided only for planning money, and the legislation, in effect, directed further consideration of proposals for additions to the existing law building, Fraser Hall, as well as proposals for a new building. The authorization thus demonstrated that the need for some new facility for the law school had been effectively communicated to the legislature, but that additional work was necessary.

Following the 1971 legislative session, the University directed The Leonard Parker Associates, architects for the project, to study and evaluate the feasibility and estimated cost of all proposals for expanding the existing building, Fraser Hall. Three proposals appeared to be most feasible—a link with a remodeled nearby Walter Library; a link with a remodeled nearby Wulling Hall; and a link with a remodeled nearby Appleby Hall. The University, upon reviewing these proposals, concluded that all were more costly and less effective programmatically than new construction. These data were delivered to the Legislative Building Commission, but the Commission took no action until late in 1972. At that time, the Commission agreed with the University findings in favor of a new building as proposed.\footnote{See Report of the Legislative Building Commission (Dec. 26, 1972) (on file}
the meantime, however, the 1972 elections had transferred control of the legislature from the Republicans to the Democrats, making the report of the commission a lame duck effort. Furthermore, the new legislative leadership in 1973 decided to abolish the Legislative Building Commission and consider new building requests directly in the money committees (the House Appropriations Committee and the Senate Finance Committee) in order to better coordinate appropriations for programs and new buildings. The law school consequently had to begin anew in 1973 to persuade a new generation of legislative leaders of the need for a new law school facility.

At the time of Dean Lockhart's resignation in June of 1972, therefore, the school had already experienced ten years of increasing dissatisfaction with its physical facility without prospect of any quick relief. Sadly, many of the advances Lockhart had accomplished over his tenure as dean seemed doomed to be interrupted as the building problem became more acute. Dean Lockhart noted in a 1971 report: "As an overall judgment, it must be said that in the years before a new Law School building is available, the state must necessarily conduct a holding action in legal education. Substantial growth and improvement is impossible."415

H. Conclusion

While in the final years of his administration the frustrations of the new law building drive were mounting, they cannot tarnish the unprecedented successes of Dean Lockhart's sixteen-year tenure. Throughout his deanship, he directed the school continually in the pursuit of excellence. He led the law school to an improved relationship with the bar, a revitalization of its curriculum, an improved student body, and sustained excellence in its faculty. Moreover, he shepherded the school through the tumultuous times of the late 1960s, helping it respond effectively to the call for equal opportunity within the profession and greater student involvement in its governance. And he did all this without losing his vitality as a scholar, without shirking his leadership responsibilities outside of the school, and without compromising his high personal standards of integrity.

415. See Law School Building Committee, Summary of the Need and the Planning for the New Law School Building at the University of Minnesota (Nov. 1, 1971) (on file with the New Law School Papers, University of Minnesota Archives, Minneapolis, Minnesota).
His leadership, necessarily more subtle than that of the school's earlier deans, was no less successful than any in the school's history. Following his retirement from the deanship, Dean Lockhart assumed for two years the Alumni Chair named in his honor on the Minnesota faculty. Upon reaching the mandatory retirement age of 68 while at Minnesota in 1974, he accepted a Visiting Professorship at Arizona State University College of Law during 1974-1975. Dean Lockhart has taught at Hastings College of Law in San Francisco since 1975. He is currently preparing the fifth edition of his constitutional law casebook. Dean Lockhart and his wife, Mary Lou, now divide their time between San Francisco and his beloved summer island on Burntside Lake near Ely, Minnesota.

During his years as dean, William B. Lockhart had the pleasure of seeing his son, William J. Lockhart, graduate from the University of Minnesota Law School in 1961 after serving as President of volume 45 of the Minnesota Law Review. William J. Lockhart is now a Professor of Law at the University of Utah College of Law.