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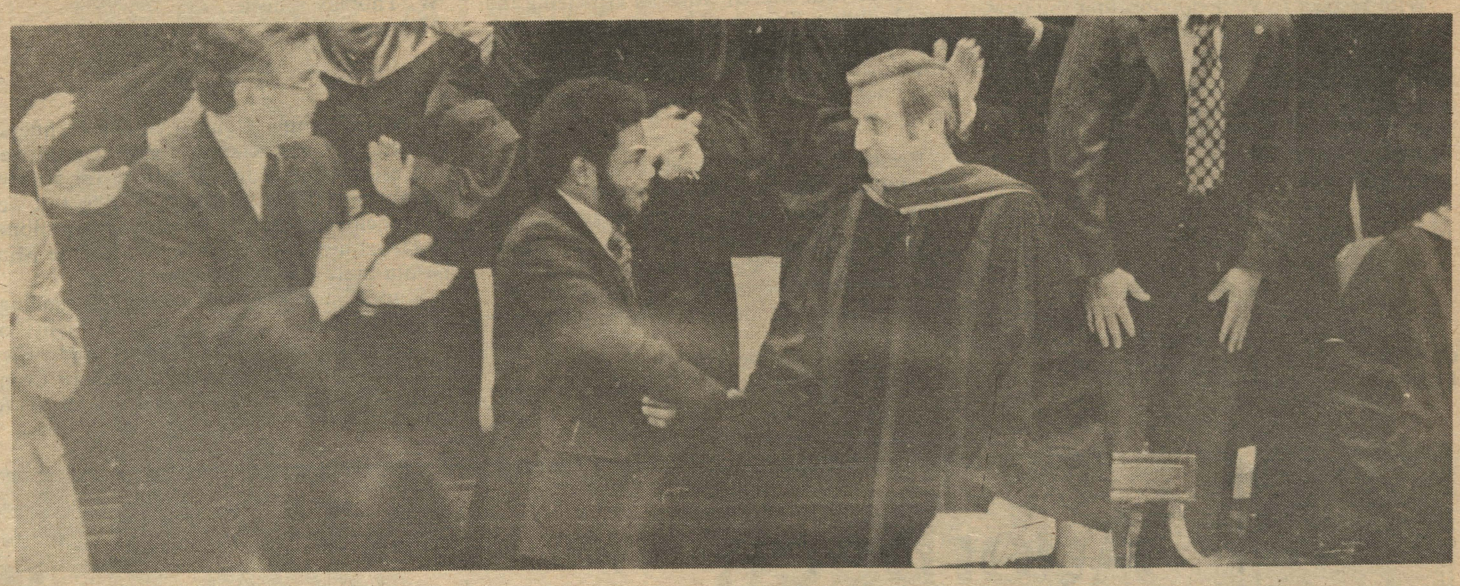
And they called it "the law building"



The new law school building was dedicated on April 4 in ceremonies held in Willey Hall. The program was marked by calm lawyer-like method. Perhaps the most remarkable aspect of the Dedication for the 1400 members of the audience was that the building was not named.

Academic gowns were in evidence but the event was not notable for excess hoopla. Two honorary degrees were awarded by University President McGrath and Regents' Chairperson Moore to Vice-President Mondale and Chief Justice Burger. The degree was an added plaudit for Mondale, a past editor of the Minnesota Law Review. Mr. Chief Justice Burger joked that it was his first degree from Minnesota. Although he attended the University's night school he completed his studies elsewhere.

The program was quite simple. The Chief Justice gave a speech. Governor Perpich spoke briefly for the people of Minnesota. Chief Justice Sheran, speaking for the Minnesota judiciary, praised the new facility and anticipated the high quality attorneys it will assist in producing. Mr. Kelton Gage, President of the Minnesota Bar, struck a note of caution in his remarks. The Bar, it seems, is burgeoning in Minnesota. Senator Anderson also spoke. The Vice-President gave the dedicatory address which is reprinted below.

The most provocative comments of the day were made by student body President, Marcus Williams. In a forthright presentation, Mr. Williams reminded the audience of the commitment lawyers must make to alleviate society's ills and inequities.

A Counter-dedication also took place on April 4. Many people wondered aloud why there are no minority faculty members and why the Supreme Court seems to be ignoring civil rights. Outside Willey Hall, a group protested Chief Justice Burger's appearance at the Dedication ceremonies and urged a reversal of Bakke.

Mondale says mail-opening stopped

Thank you very much President Magrath, Wenda Moore, for that high honor, Dean Auerbach, to Mr. Chief Justice Burger, of the United States Supreme Court, who honors us so much by being with us personally today, to Governor Perpich, Senator Anderson, Chief Justice Sheran, Attorney General Warren Spannaus, faculty, ladies and gentlemen. I especially want to recognize two people here today who have been of great importance to my legal career—Dean Pirsig, who admitted me to this school despite my qualifications, and Bill Lockhart who kept me here despite my grades.

This is a day of great fulfillment, no doubt, to Dean Auerbach. He worked unbelieveably hard to cause this new building to be constructed. And finally in the closing moments of the debate, he even called me in Washington, and asked me if I wouldn't call a close friend of mine in the Minnesota State Senate, and the request I was to make of him was that it would be appreciated if he would sit down and keep his mouth shut the next time the issue came up.I did and he did and a building was born. It was this kind of example of the genius of parliamentary democracy that I think Bismarck had in mind when he said: "He who likes sausages and laws should never ever watch either being made."

I want to particularly react to, in the spirit of friendship and understanding, my friend Sen. Anderson, who remarked on the behavior of members of the Minnesota Law Review. I don't think he has it right, never once, while I served on the Law Review, did we deal unfairly with those less gifted than we. And what about the special kind of contribution of Law Review journalism and scholarship. Will any of us forget that golden year of legal scholarship represented by volume 40 of the MN. L.R. Is there anyone here who has failed to read the celebrated article on the impossibility of establishing a workable system of public campaign financing? Of course not. And this helps underscore that vital contribution of scholarship here at the Univ. of MN.

I'm happy to be back, and I accept this award as a symbol of the principles for which this great institution has always stood. As long as I have been associated with this school, it has been and placed no higher objective than teaching students about their special obligation to society as lawyers. It was here that I first learned the difference between rules of law and the rule of law. It was here that I first read Blackstone, who said that law is the living embodiment of the moral sentiments of the people. There's always been a special focus here upon legal ethics and professional responsibility. It's fitting that the new law school building should be dedicated to a renewal of that distinguished tradition.

And today that tradition is more essential than ever. For perhaps the most compelling lesson of our recent Constitutional crisis, was how fragile our laws and legal institutions are, when our highest officials decide to ignore them. And what was most frightening was that Watergate was only the crest of a larger wave.

For a year and a half, I served on the Select Committee on Intelligence Activities. And chaired a subcommittee concerned with the Constitutional Rights of American citizens. And while Watergate commanded the attention of American people, our subcommittee heard testimony which demonstrated the depth of official illegality. It started really, back in the Cold War. Somehow we got the notion that the only way to confront our adversaries, was to adopt their methods. And for 25 years, that rationale was a rationalization for a reckless, covert adventurism abroad. It made attempted assassination a tool of our policy. It fostered efforts to influence free elections to subvert freely elected governments, and to violate the rights of privacy of their citizens. And like the schemes of MacBeth, the tactics came home to plague the inventor. They became the in-

MONDALE *(continued on page 12)*

Back then, nobody wanted to study in Minnesota

By John M. Roth

Ninety years ago, in 1888, the University of Minnesota established a law department with the election of William S. Pattee as dean. The beginning years were lean. However, by 1920, a mere 32 years later, the department had transformed itself from an infant prairie school with rather weak academic standards to a school of national prominence and scholastic excellence.

At the time the department was established, Minnesota was still a frontier state; only 25 years earlier, in fact, Little Crow and the Santee Indians had fought their final battle against the whites at New Ulm. Formal legal training for lawyers also was far from common. Most Minnesotans seeking a profession in law gained their training informally through individual study or apprenticeships in existing law offices. Even the dean of the school had no formal legal training. Admission to the bar required only good moral character and the taking of the necessary exams.

The establishment of a law school under such circumstances was a difficult and demanding task, and it took a man of great dedication and skill to accomplish it. The importance of Dean Pattee in the creation of the school cannot be underemphasized. In many respects, he was to be the University's law school until his death in 1911. For the first three years he was the only full-time professor, and by his death he was joined by only a few more.

Pattee was a solemn and dignified man, and a firm believer in a natural, God ordained order of the universe. The role of the lawyer and the legal system, in his view, was to find and "reenact those [natural] laws in human form, so far as they are capable of human enforcement, and within the warrant of state action." The function of law school, however, he felt should be practical.

While it is well for the student to comprehend the breadth and the importance of the science he studies, it must ever be remembered that in a course of legal training for the practice of law the chief object is to learn the law as it is, not as it might be, or perhaps should be . . . . Speculation and theory may have their place, but a certain knowledge of legal rights and obligations is the object of prime importance of the student.

Practical considerations, indeed, were the dominating force in the Pattee administration. This was perhaps underscored by the requirement that the school be self-sufficient. The Dean's $2,500 yearly salary and all other school expenses had to come from student tuition and fees. With per student fees of a mere $10 for matriculation, $30 annually for tuition and $10 for a diploma, the school had to be attractive to students for its survival.

To encourage student enrollment, the state legislature helped the school by exempting its graduates from further examination requirements for the state bar. The school also established an egalitarian admissions policy which allowed admission to virtually any person, provided they were 18 years old and of good moral character. Entrance was certain for any graduate of a college, a university, state normal or state high school. Only non-graduates had to take an entrance exam—and even then, passing marks were not absolutely necessary. A student who performed poorly could be admitted conditioned upon his or her making up the deficiency. A further incentive for enrollment, and probably the most significant, was the establishment of a high school and a program for special non-degree students. This opened up the school to working students and existing lawyers, and represented a major force in the operation of the law school throughout the Pattee administration.

The encouragement of women to attend the law school, however, was not a concern of the University administration. As University President Cyrus Northrup stated in 1910:

I do not prepare any woman for a career at the University of Minnesota . . . . Careers cannot make a happy home nor a good mother. Let the girls study higher mathematics or history or English or what they will, for this means mental enlargement, but let them study for that reason and not with hopes of carrying out a career for themselves.

Few women, at the most three per class, attended throughout the Pattee administration.

The efforts of the school to accommodate male students, however, was highly successful. Student enrollment rose within 10 years from 67 the first year to 528. Revenues from this enrollment also soon exceeded the operating costs of the school, hence guaranteed the continuance of the school at the University. By 1906 the school had earned and returned to the University at large over $60,000 beyond its necessary operating expenses.

With the establishment of a firm student base, the next orders of business for the new school were to obtain a building, library and expanded faculty. The building, Pattee Hall, was the first to come. It was completed in 1889 at a cost of $25,000. Sixteen years later it was already outgrown, so a $30,000 addition was constructed. This building with its addition still stands on campus, housing the School of Education.

The library's beginning was more modest. Initially, all the school could offer was the dean's own library, which comprised only the reports of Minnesota, New York and Massachusetts, the session laws of Minnesota, and a line of textbooks. Gradually,

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Mondale

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strument of a lawless assault, on the First Amendment, usually under the guise of "national security."

Our officials spied on lawful organizations, opened mail and telegrams, illegally, and monitored tax returns. They tapped phones, broke into homes and businesses and established liaison on one occasion with organized crime. They also conducted a systematic program to arrest political opponents by destroying careers and reputations, breaking up marriages, and sabotaging campaigns. Almost every intelligence agency had its purpose and function—the FBI, the CIA, the Army, the IRS, the NSA, and the White House staff itself. But all of them were spoken of as a single wheel, and the center of that wheel was the Oval Office. What permitted its success was the power of elected officials to act without the knowledge of the people who elected them.

Our committee found that abuse thrives on secrecy. We recommended the limited necessity for certain essential forms of covert conduct. But these actions were secret not for tactical reasons but because of the way our own people would react if they knew the truth.

When that happens, secrecy is no longer an instrument of national security. It is in fact the profoundest threat to liberty and security. And in a free society secrecy of that kind is destined to be uncovered. That may be the most neglected message of all of the revelations. That in our society that kind of conduct works directly against our best interests. It is flatly and unquestionably counterproductive, so the cloak of secrecy was nothing but a modern patchwork of the emperor's new clothes. It hid far less than we pretended and exposed this nation to peril. And if we have problems in the world today, and we do, it is not because we have been inept at doing what is wrong in fearful imitation of our adversaries. Rather, we have been remiss in doing what is right in confident observation of our basic principles.

It is not easy for a great nation to admit a mistake. But it is perhaps a definition of greatness that it can. As one of his first acts in office, President Carter asked me to work with others to help translate the lessons of our hearings into official policy. What followed was the most extensive and high-level review of foreign intelligence activities ever conducted here or anywhere else. It produced last January a comprehensive reorganization of executive intelligence agencies. And it is not merely an effort to seek greater efficiency and careful budgeting, it is also the program of a moral leader seeking confidence, common sense, and most of all accountability to the law. The details are legalistic and technical, but the mandate is very clear. This administration will not make intelligence agencies partners in politics. There will be no harassment, no domestic security investigations of political opponents, and no contention that intelligence activities are above the law. That means the highest level of scrutiny of all intelligence activities and it means a framework of disclosure to the Congress.

Brandeis once said that sunlight is the best of disinfectants. And in the final analysis, it is the system of checks and balances which proved our strongest bulwark against the arrogance of power.

We intend to preserve that system not as a transient magnamity of one administration, but as a legal imperative for all administrations under the law.

All of these reforms are vitally important within the executive (branch) in its relationship with the Congress and legal strictures enforced by the courts. They are what James Madison once called auxilliary precautions in Federalist Paper 51. His words, "They correct by opposite and rival interest the defect of better motives," in short, they preserve our system of checks and balances.

This nation is composed of many strengths, but none is more important than its political stability and political health, which stem directly from a constitutional system which is open, which is just, and is of necessity a combination of conflicting views. The openness of that system is the bedrock of our security, especially in a dangerous world.

President Roosevelt once said that if the fires of freedom and civil liberties burn low in other lands, they must be made to burn brighter in our own. These reforms can help to keep the fires burning, but they are not enough. Most of the activities we uncovered were illegal at the time they were committed. At least in our highest offices, there is always a reservoir of power which permits those most entrusted to most abuse that trust.

Judge Learned Hand once said that liberty lies in the hearts of men and women and when it dies there no constitution, no laws, no court can save it.

Changes in law are important, not only as a set of sanctions, therefore, but because they symbolize the moral character of a people. Reforms in our intelligence laws can have no higher purpose. They must state beyond speculation the guiding principles which our highest officials should have known without them.

What truly makes a difference, what holds the key to our survival as a free nation, is not just the rules of law, which you can find in the U.S. Code, it is above all the rule of law found in the collective consciousness of our people. The rule of law is not the excuse of higher officials that they tiptoed skillfully on the outer edges of legality. It is rather the knowledge of public servants that they acted in the deepest meaning of its spirit. The rule of law is not the false efficiency of a controlled press or of leaders who define dissent as treason. It is the strength of a people who love their country and serve it willingly. The rule of law is not those voices who echo the worst and bloodiest words in this century—that they were only following orders. It is the inner voice of public leaders asking not just how to avoid crime, but how to do justice. That is the voice which is echoed through the corridors and classrooms of this great institution defining its highest purpose.

There is on this campus a sense of professional responsibility transcending the mastery of craft or process. It will not be found in memorizing the Rule Against Perpetuities. If any student can now recite those provisions, and I want you to know I never could, I assure you that they will disappear like magic in three and one-half minutes after your final exam. But what does not disappear is the pride in our profession and the belief in its essential rightness. For each of us as lawyers, that belief can make the difference between a government of laws and a government of men.

We've seen the clear evidence in our time for the bad and for the good. At every level of government there are now men and women who change the system by their very presence as its leaders. This is the task for all of us, to match our talents and intellects with an active consciousness and the instinct for truth and fairness.

In private practice, in public life, in the shelter of college or the clamor of cities, our character as a nation will depend upon the allegiance of lawyers to that princple. It will depend on the stands they take, the lines they draw, and the choices they make. And I've always been very proud to claim allegiance to this law school because it has placed no objective higher than the service of moral judgment and courage.

Today, as the president of the student body mentioned, is April 4th, and we meet to dedicate a new institution. (April 4th marked the 10th anniversary of Martin Luther King's assassination.) That Martin Luther King was a special person made the offense so obvious, but what made it so wrong was first of all that he was an ordinary person. And in America, the proudest title any of us can bear is the ordinary one: that we are the citizens of a free society. It is the highest obligation of all of us that we keep that society free. And I am proud to join with you in dedicating the new law school building as a living and enduring symbol of that sacred purpose.

Footnotes

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3 Chief Judge Charles D. Breitel in a Law Day address, May 1, 1977, at Albany, N.Y. warned that law practice has become so profitable that it "tends to attract in certain sectors persons motivated by greed." He said that self-interest rather than social responsibility is a motivating factor, holding that if lawyers do not recognize their social responsibility society may turn to an expansion of the no-fault concept, settling disputes outside the court room. "Just grab, grab, grab . . . they may be killing the goose that lays the golden egg." New York Times, May 3, 1977, p. 1, col. 1.

4 The rubric, apparently lacking a sound statistical base but ratified by repetition, is that 10 percent are rich enough to pay lawyers' fees, 20 percent are too poor, and the remaining 70 percent are "our forgotten clients." 57 American Bar Association Journal 1092 (1971).

5 "The Legal Needs of the Public: The Final Report of a National Survey," a joint ABA and ABF undertaking, Chapter Six. This survey is said to be the most comprehensive of its kind.

6 Cited in, "Nader's Advice to Big Business: Don't Pay Those High Legal Bills," by Ralph Nader and Mark Green, N.Y. Times Magazine, November 20, 1977. The discussion was also widely publicized contemporaneous with the ABA 1977 summer convention in Chicago and the ABA public relations department issued a press release on it. The chief protagonist was William Johnson, board chairman of I.C. Industries.

7 E.g. Norman F. Dacey's best-seller, "How to Avoid Probate" and its progeny, including probate reform statutes. No-fault automobile insurance, so-called no-fault divorce and the possibility of no-fault product liability bespeak the trend which had its roots in workmen's compensation. Criminal law is beyond the scope of this paper, but devices such as pretrial diversion are relevant, although, of course, they would be arranged by lawyers. This is an example of "delegalization" that changes lawyers' roles without making them obsolete, thanks to Gideon and Miranda. The adversary process will decline as a way to settle disputes, especially where the government is not one of the parties.

8 Chief Justice Warren E. Burger, State of the Judiciary Address, ABA Midyear Meeting, New Orleans, February 12, 1978. The text incorporates by reference his figures on incompetency. For a statement on the extent to which nuts-and-bolts advocacy should be taught in law schools (i.e. never), see "The Education of the Trial Lawyer: What Should the Law School Do?," by Dean Carl A. Auerbach of the University of Minnesota Law School, "Bench and Bar of Minnesota," January 1978, 19 et seq.

9 Ramsey County Municipal Judge Joseph P. Summers, "Regulations of the Bar: A Whimsical Approach," QUAERE, November 1976. The legal department of Mobil Oil Co., with more than 200 lawyers ranks in size with the nation's biggest law firms. In 1973, "Fortune" reported corporate law departments were the fastest growing part of the law business.

FOOTNOTES