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A History of the Fordham Law School

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Chapter 4: The Great Depression & Educational Reform

As he was in the 1920s, Dean Wilkinson continued to be a leader in legal educational reform in New York State and at Fordham Law School. With the urging of Fordham University's President, he filed a motion in the New York Court of Appeals in 1934 and persuaded the court to adopt his motion to change its rules to permit a four year night law school program. Wilkinson modified Fordham Law School's night curriculum in September 1934 to comply with the four year night school program, bringing it into conformity with accreditation standards of the American Bar Association and satisfying membership requirements of the Association of American Law Schools. Again at the urging of the Fordham University President, Wilkinson continued to raise the Law School's academic standards and changed its faculty hiring practices in order to earn for the Law School the approval of the American Bar Association as an accredited law school in 1936 and membership in the selective Association of American Law Schools in the same year. He also re-established the *Fordham Law Review* in 1935. He was active in shaping the standards for admission to law practice in New York State.

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One of the major reforms Wilkinson accomplished in the 1930s was persuading the New York Court of Appeals to change its rules to permit law schools to expand their night programs by spreading the three year curriculum over four years. The need for this change first arose when the ABA and AALS adopted a resolution in the early 1920s that required part-time and night law programs to be the equivalent of full-time programs, but they were to be offered over four years instead of three years. The motivation behind this standard combined a concern to enhance professional standards and a desire to exclude poor urban immigrants from the profession. Fordham Law School's part-time, evening curriculum was the same as the three year day school curriculum. The need to adopt the four year night school curriculum became acute in 1929 when the state of Connecticut Board of Law Examiners decided to prohibit the graduates of Fordham Law School, New York University Law School, Brooklyn Law School and Temple University Law School of Philadelphia from taking the Connecticut bar examination after January 1, 1930. Its stated reason was that "these schools are regarded as part-time institutions." The deans of these law schools expressed "strong disapproval" of Connecticut's action, characterizing it "as an arbitrary discrimination whose effect would be to place the youth of small means, whose only recourse is a part-time school, under a new handicap, and to tend to restrict entrance to the profession to young men of means." A member of the Connecticut Bar Examination Commission, James E. Wheeler, rejoined that it was merely adopting the standards recommended by the AALS, the ABA's Council on Legal Education and the Carnegie Foundation.¹

¹"these schools," "Connecticut Bans 3 Law Schools Here," *The New York Times*, June 5, 1929, p. 1; "as an arbitrary," *id.*

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A spokesman for New York University Law School, Professor Henry B. Pogson, highlighted the arbitrary nature of Connecticut's action. In a statement that was equally applicable to Fordham and Brooklyn Law Schools, Professor Pogson asserted that Connecticut's exclusion of N.Y.U. Law School's *full-time graduates* "simply because they attend a university which also teaches part-time law students in separate divisions is neither intelligent nor intelligible." As for the part-time students, if they passed the same examinations as those students "who are able to devote all their time to study [law] there is no reason why they shouldn't be fitted to practice law." Perhaps anticipating Connecticut's action, N.Y.U. Law School adopted in April 1929 the ABA's and AALS's standards for part-time programs and extended its evening school to four years beginning with the entering class of September 1930.²

The New York Times defended Connecticut's decision on the bases of two distinct yet interrelated grounds. The editor cautioned that critics of the Connecticut Bar Examination Commission "should not overlook its commendable motive. The profession [of law] is crowded. It includes many incompetents. There ought to be stricter requirements for admission." According to the president of the New York State Board of Examiners, the editor reported, "most of the candidates who fail are lacking in intellectual ability." A former member of the New York Committee on Character and Fitness resigned because "the committee had no power to weed out 80 percent of the candidates [in]sufficiently educated to appear in court." He claimed that "Their general knowledge was sometimes so limited that they had never heard of great figures at the

²Professor Pogson's statements, "Connecticut Bans 3 Law Schools Here," *The New York Times*, June 5, 1929, pp. 1,16; N.Y.U. adopts 4 year evening program, "Says N.Y.U. Changed Law Requirements," *id.*, June 6, 1929, p. 18.

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bar.” The deficit of “general knowledge” could be remedied with educational prerequisites for admission to law school. *The Times* consequently suggested that admission to the bar be restricted to college educated candidates, a qualification that would exclude immigrants and their offspring. This effect notwithstanding, *The Times* editor maintained that bar examiners should “prevent the examination of young men who have not been trained to think and who are poorly informed about the history and government of their country. It is not enough for them to be able to repeat legal principles from memory.”³

The Times identified an arbitrary feature of Connecticut’s decision. Noting that “a student for three years in a law office is welcome in Connecticut,” *The Times* editor opined that “it seems an inconsistency for Connecticut to exclude a graduate of the institutions named and allow an office student of three years to be examined. An industrious student at these colleges and schools should be able to learn as much law as a worker in an office for three years, whose hours of study are limited.” To turn away an applicant “if he takes night or part-time courses of instruction must seem an injustice to many.” Unjust or not, *The Times* supported Connecticut because “there are overcrowding and incompetency at the bar, and something must be done to reduce both.”⁴

Part-time programs were under attack in New York State as well as Connecticut. A certain “local bar [association]” had petitioned the New York Court of Appeals to change its rules regarding part-time law schools, and Wilkinson believed that “the instigators of this movement” sought to eliminate part-time law programs entirely in New York State. He had

³“Admission to the Bar,” *The New York Times*, June 6, 1929, p. 19.

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persuaded some of the “instigators” that it was not possible to eliminate part-time law programs, and, even if it were possible, it would be undesirable to eliminate them “considering the public character of the profession of the law.” Wilkinson undoubtedly was thinking of the undemocratic and elitist effect of eliminating part-time law school programs, namely, excluding the working classes – comprised largely of Catholics, Jews and Southern and Eastern Europeans -- from attending law school and restricting the practice of law to those wealthy enough to attend law school without having to support themselves.⁵

Dean Wilkinson defended the three year night program by explaining why a four year curriculum “would be impracticable” under the current New York Court of Appeals rules. The four year program would impose an unreasonable and unfair burden on part-time students. The Court of Appeals did not distinguish between full-time and part-time law programs, or, as Wilkinson put it, between “day and night work.” It applied “the same minimum standard of weekly instruction” to both. All law students were required to take a minimum of ten class hours per week over 32 weeks per year for a minimum of three years. Wilkinson saw no benefit to night students to extend the night school to four years under these rules, because it would impose an additional year of a minimum of ten class hours per week over 32 weeks, requiring night students to attend 120 more class hours than the “day men.”⁶

⁴“Admission to the Bar,” *The New York Times*, June 6, 1929, p. 19.

⁵“a local bar association” and “the instigators of this movement, Dean’s Report, February 20, 1930, p. 7; “considering the public character,” *id.*, p. 8.

⁶“It would be impracticable,” “Connecticut Bans 3 Law Schools Here.” *id.*, June 5, 1929, p. 16; “day and night work” and “same minimum standards,” Ignatius M. Wilkinson to The Rev. Charles J. Deane, S.J., Fordham University, October 7, 1931 attached in Dean’s Report, January 28, 1932 as EXHIBIT “C”; “day men,” Dean’s Report, January 28, 1932, p. 18; New York Court

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There still was no generally accepted understanding of what constituted part-time and full-time law study. The New York “instigators” distinguished between them according to the time of day the courses were offered. Any law school operating principally before 4 p.m. was considered a full-time school, and any law school operating principally after 4 p.m. was a part-time school. If this distinction were adopted, Fordham’s morning and afternoon sessions would be considered full-time programs and would operate under the 3 year rule. The evening division in Manhattan and the Bronx would be considered part-time programs and would have to be extended to 4 years to satisfy ABA and AALS standards. Operating a three year night program, Fordham Law School consequently was not an ABA accredited law school or a member of the AALS.⁷

Wilkinson supported the extension of the part-time law school curriculum to four years if the Court of Appeals changed its rules to enable part-time students to take the same number of classroom hours over four years that full-time students took over three years. He thought the extra length of study could be of benefit to the night student. Wilkinson made his views known

of Appeals minimum requirements, Dean’s Report, January 28, 1932, p. 15. Wilkinson did not think the Connecticut decision would affect Fordham Law School’s curriculum. “Says N.Y.U. Changed Law Requirement,” *The New York Times*, June 6, 1929, p. 18. The Connecticut Bar Examination Committee had approved Fordham’s morning and afternoon divisions three years earlier. Wilkinson remarked that its approval “undoubtedly rests on the fact that the hours at which they are conducted stamp them as full time schools.” Unfortunately, Fordham offered its two credit hour course in Connecticut Practice at 6 p.m. Wilkinson asked the Connecticut Bar Examination Committee whether taking this two hour course in the evening division “would in any way militate against” a day student who took “thirty-four thirty-sixths of his three year course” in the day school and render him ineligible to sit for the Connecticut Bar Examination. Dean Wilkinson to Joseph L. Melvin, May 20, 1926, folder 1, box 12. The Committee’s reply could not be found.

⁷Dean’s Report, February 20, 1930, pp. 7-8.

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to William D. Guthrie, constitutional lawyer, Columbia Law School Professor, and former President of the Association of the Bar of the City of New York, who was to give an address on this subject to the New York State Bar Association at its annual meeting in January 1931.

Wilkinson told Guthrie that “the night man did not require more classroom instruction than his day brother but required more free time for preparation of his case material outside of class so as to put him on an equality with the day student.” Guthrie incorporated Wilkinson’s views in his speech, and in the discussion that followed Wilkinson declared his support for the four year night school and for a change in the Court of Appeals rules which clearly distinguished between full-time and part-time law study and that required fewer classroom hours per week for part-time students.⁸

Following the New York State Bar Association’s meeting, Wilkinson emerged as a leader in shaping the rules regulating part-time legal education in New York State. It was in his capacity as a member of the Association of the Bar of the City of New York, its Joint Conference on Legal Education, and as Dean of Fordham Law School that he influenced the course of legal education in New York State. In these capacities, Wilkinson drafted a resolution which the Association adopted that petitioned the New York Court of Appeals to distinguish between full-time and part-time law schools, to define what comprised a full-time and a part-time law program, and to authorize part-time programs to be spread over four years with a reduced number of weekly class hours each year. The New York County Lawyers Association joined in the petition, and the American Bar Association supported it by sending a representative to argue

⁸Dean’s Report, January 28, 1932, pp.15-17.

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to the Court of Appeals on its behalf. According to Wilkinson, every law school in New York State supported the change, save St. John's Law School in Brooklyn. Wilkinson, among other lawyers, appeared before the Court of Appeals to argue on behalf of the ABCNY petition on June 5, 1931. He also submitted a written brief on behalf of Fordham Law School.⁹

On July 15, 1931, the New York Court of Appeals denied the petition to change its rules. In a per curium opinion, the court explained that the proposed change “must be at least postponed until a more satisfactory definition can be worked out whereby to distinguish between full-time and part-time courses.” The distinction between the two kinds of programs was based on the time of day the courses were offered. A “full-time law school” was one in which two-thirds of the courses were offered after 9:00 a.m. and before 4:00 p.m. A part-time school “is defined as any other.” The court noted that the distinction, “Roughly speaking,” corresponded “to that between the day law schools on the one hand and the evening law schools on the other.” It thought this definition inadequate and thus concluded that its consideration of the proposed rules change must await “a more satisfactory definition . . . to distinguish between full-time and part-time courses.” The court thought that the proposed rule change would be “unjust to evening students” for two reasons. It found that many day students were “employed in gainful occupations during the night time and during free hours of the day,” and that night students

⁹Dean's Report, January 28, 1932, pp. 15-19. Wilkinson appended his brief as EXHIBIT “D,” *In the Matter of the Rules Relating to Admission to the Bar*, Memorandum on Behalf of Fordham University, School of Law, *id.* Wilkinson acknowledged that “the spokesman” for New York University made an argument, and *The New York Times* (“Hears Plea June 5 on Bar Standards,” June 1, 1931, p. 19) reported that Cornelius W. Wickersham and George A. Spiegelberg, chairs of the Committees on Legal Education of the ABCNY and New York County Lawyers Association were to argue on behalf of the petition along with representatives of the American Bar Association of the law schools in New York State.

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maintained “their standings in the law schools” and “their ratings” before the bar examiners. In light of these circumstances, extending legal studies to four years for all students would treat day and night students equally, the court opined, but this equal treatment would “operate harshly” on those students who had to work to support themselves while in law school. The Court felt “constrained at this time to deny the applications,” but it would reflect upon the “interesting data” the petitioners submitted, “and with the co-operation of the bar and of the faculties of the law schools may lead to action in the future.” The ABCNY remained determined to persuade the Court of Appeals to adopt its proposal, gathering “comprehensive statistics and data” to refute the arguments of the petition’s “opponent” and to support the arguments Wilkinson made.¹⁰

The ABCNY Joint Conference sent a survey to all ten law schools in New York State and four law schools outside of the state in the spring of 1932. It reported its findings in June 1935. All but three of the in-state law schools participated along with the four out-of-state law schools. The results are tabulated in Tables 4-1 to 4-3.

TABLE 4-1
Day Students Who were Full-Time & Part-Time & Hours Work/Week 1931-1932

¹⁰In the Matter of the Petition of the Association of The Bar of The City Of New York et al., for Amendment of the Rules of the Court of Appeals Relative to the Study of Law, 257 N.Y. 211, 177 N.E. 423 (1931); “comprehensive statistics,” Dean’s Report, January 28, 1932, p. 19.

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<u>Law School</u>	<u>Total Stud.</u>	<u># & % F-T No Work</u>		<u># & % Who Work 30+ hrs</u>		<u># & % Work 20-30 hrs</u>		<u># & % Work 01-19 hrs</u>	
SUNY Buffalo	206	125	61%	021	10%	028	14%	032	16%
Columbia	525	413	79%	004	01%	021	04%	087	17%
Cornell	139	100	72%	003	03%	009	06%	027	19%
Fordham	457	250	55%	095	21%	062	14%	050	11%
Harvard*	2807	917	33%	167	06%	204	07%	407	15%
N. Y. U.	561	316	56%	076	14%	066	12%	103	18%
Penn.	196	137	70%	005	03%	011	06%	043	22%
Syracuse	102	069	68%	005	05%	007	07%	021	21%
U.Va.	098	074	76%	005	05%	006	06%	013	13%
Yale**	235	214	91%	007	03%	010	04%	062	26%

*Harvard's enrollment was 1517 students. But these figures are based on 2807 replies, due to the questionnaire calling for replies for each of the three years. Dean Roscoe Pound asserted that the results, "while far from accurate, give a fair estimate of the work."

**Yale's enrollment was 318 students, but only 235 replied to the questionnaire.

Source: "Survey of Full-time and Part-time Law Students" conducted by the Joint Conference on Legal Education, Association of the Bar of the City of New York, June 15, 1935, included as Schedule C, Dean's Report, February 17, 1936.

TABLE 4-2
Night Students Who are Full-Time & Part-Time & Hours Work/Week 1931-1932

<u>Law School</u>	<u>Total Stud.</u>	<u># & % P-T No Work</u>		<u># & % 40 hrs</u>		<u># & % 30-40 hrs</u>		<u># & % 20-30 hrs</u>		<u># & % 01-19 hrs</u>	
Fordham	580	476	82%	289	50%	140	24%	024	04%	023	04%
N. Y. U.	254	242	95%	164	65%	056	22%	006	02%	016	06%

Source: "Survey of Full-time and Part-time Law Students" conducted by the Joint Conference on Legal Education, Association of the Bar of the City of New York, June 15, 1935, included as Schedule C, Dean's Report, February 17, 1936.

TABLE 4-3
Day Students & Average Hours per Week Devoted to Law Studies 1931-1932

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<u>Law School</u>	<u>F-T No Work</u>	<u>40 Hrs</u>	<u>30-40 Hrs</u>	<u>20-30 Hrs</u>	<u>10-20 Hrs</u>	<u>1-10 Hrs</u>
SUNY Buffalo	42	39.5	35.5	40	37	5
Columbia*	53	47	49	52	47	49
Cornell*	47	40	40	48	49	51
Fordham Day**	34.6	27.5	31	32.9	32.5	35
Fordham Night	33.1	29.6	30.8	32.2	32.5	34.3
Harvard	50	31	33	41	39	45
N. Y. U. Day**	36.1	30.6	31.1	32.6	34.4	34.5
N. Y. U. Night***	29.6	26.1	27.3	27.1	29.75	29.1
Penn.*	48.55	27.5	37.5	42.95	38.95	45.95
Syracuse	48	41	42	46	46	45
U.Va.	38.1	34.2	30	35.9	30	37
Yale*	47	40	47	42	47	46

Source: “Survey of Full-time and Part-time Law Students” conducted by the Joint Conference on Legal Education, Association of the Bar of the City of New York, June 15, 1935, included as Schedule C, Dean’s Report, February 17, 1936.

*Require 14 hours of class per week, which increases the time devoted to law study.

**Require 12 hours of class per week, which decreases the time devoted to law study.

***Require 10 hours of class per week, which decreases the time devoted to law study.

The vast majority of students in day schools were full-time students who devoted their entire time to their studies, and the vast majority of students in the night schools were part-time students who worked at jobs outside of law school for thirty to forty hours per week. The law schools with the best reputations offered only day courses, and, with the possible exception of Harvard Law School, they had the highest proportion of full-time students who devoted all of their time to their studies. The Fordham and N.Y.U Law Schools were the only law schools that offered night programs, and they had the smallest proportion of full-time day students. Not only did these law schools have the most part-time day students, Fordham day students worked more hours at outside jobs than those of any other law school, and N.Y.U day students worked almost as many. The overwhelming majority of night students at Fordham Law School and almost all of the N.Y.U. Law School night students were part-time students. One-half of the Fordham

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night students and two-thirds of the N.Y.U. night students worked at least forty hours per week, and another quarter of the Fordham night students and a bit more than a fifth of the N.Y.U. law students worked thirty hours or more per week.¹¹

The Joint Conference surveyed the number of hours per week students devoted to their legal studies. These data show that the time students devoted to law study varied substantially inversely to the time devoted to work other than law study. Law students at Fordham and N.Y.U., who worked at outside jobs devoted the fewest hours per week to their legal studies. Wilkinson calculated that Fordham Law School's full-time students studied about 2 hours for every hour of class, and part-time students studied only 1 1/4 hours for every hour in class. He believed these results offered "a compelling argument" to extend the evening course to four years in order to reduce the number of classroom hours and allow more time for study to the "evening men." Wilkinson predicted that this step would afford the majority of evening students who worked a full business day the opportunity to study that was enjoyed by day students. He also thought it should enable evening students to do better in their classes, which would permit the Law School "to demand greater scholastic proficiency" of students without establishing different scholastic standards in the different divisions or "over-taxing" evening students.¹²

The Joint Conference reported that nineteen states distinguished between day law

¹¹Dean's Report, May 15, 1934, pp. 23-24. *See* Tables 4-1 and 4-2. Wilkinson thought the 82% of evening students who worked at outside jobs was unusually low. In "normal times," 95% of "evening men" worked at some occupation during business hours. Conversely, Wilkinson thought the 17.9% of evening students who devoted all of their time to their studies was abnormally high, and he attributed this abnormality to the paucity of available jobs due to prevailing "business conditions." *Id.*

¹²Dean's Report, May 15, 1934, p. 25. *See* Table 4-3.

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programs and night law programs. The New York State Education Department also wanted to distinguish day law programs from night law programs and to extend the latter to four years. Such distinctions in full-time and part-time programs had become “prevailing practice in university circles generally,” that is, in other fields of study such as engineering. Brooklyn Law School, New York Law School and St. Johns Law School, which failed to distinguish between full-time and part-time programs and conducted both full-time and part-time programs on a three year basis were contrary to general educational practice. The Joint Conference reported that the results of its survey supported its conclusion that extending evening programs from three to four years of substantially the same number of hours of class work was “sound in principle.”¹³

Before the Joint Conference published its findings, Fordham University President, the Very Rev. Aloysius J. Hogan, S.J., directed Dean Wilkinson to place the Law School’s night program on a four year basis beginning with the entering class of September 1934 even though the New York Court of Appeals still required only three years. This was a gutsy move, because Wilkinson estimated that enrollments and revenues would decline significantly if Fordham adopted a four year night school when the state only required three years and two other law schools in New York City were still offering three year night school opportunities. Wilkinson predicted that, if Fordham adopted the four-year night school plan in September 1934, the likely reduction in student enrollments would be 35% of its 1933-1934 enrollment (a reduction from 1,094 to 711 students) and the loss of about 40% of its “gross revenues” revenues for that

¹³“prevailing practice,” Survey of Full-time and Part-time Law Students” conducted by the Joint Conference on Legal Education, Association of the Bar of the City of New York, June 15, 1935, p. 11, included a in Schedule C, Dean’s Report, February 17, 1936; “prevailing practice,” *id.*, p. 12; “sound in principle,” *id.*, p. 13.

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year (\$95,164 of \$237,910) over the first four years of operation. Pointing out the importance of the Law School to the financial structure of the University, Wilkinson recommended against adopting the change, noting that it portended a “serious effect” on the finances not only of the Law School but of the “University generally,” particularly with the continuing “bad business conditions” and “the hoped-for improvement” not materializing “as rapidly as had been expected.”¹⁴

Wilkinson also advised Father Hogan to bear in mind that the rules regulating night schools may not change for some time. In his opinion, “the Court of Appeals [was] not likely in the near future, to change the rules regulating law study to require part-time work to be done over a longer period.” Even if the Court of Appeals did approve of this change, “then the matter would have to be taken up, in all likelihood, with the State Education Department and with the representatives of the Section on Legal Education of the American Bar Association.” All of this would take time. Wilkinson recognized the possibility that the Law School could “survive the change without showing an operating deficit.” A 20% increase in tuition, from \$200 per year to \$240 per year beginning in the 1935-1936 school year, would “remove the hazard of an operating deficit and possibly enable the School to return a modest operating profit.”¹⁵

These data and the possibility of “greater scholastic proficiency” supported Father Hogan’s decision to place the Law School’s evening division on a four year basis. He directed Wilkinson in November 1933 to make the night school a four year program beginning in

¹⁴Dean’s Report, May 15, 1934, pp. 2-3; Dean Wilkinson to Very Rev. Aloysius J. Hogan, S.J., Oct. 17, 1933, attached as EXHIBIT “D” in Dean’s Report, May 15, 1934.

¹⁵Dean’s Report, May 15, 1934, pp. 2-3; Dean Wilkinson to Very Rev. Aloysius J. Hogan, S.J., Oct. 17, 1933, attached as EXHIBIT “D” in Dean’s Report, May 15, 1934.

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September 1934, provided that “the necessary State [Education Department] authorization can be secured.” He also directed Wilkinson “to make the necessary application on behalf of the School” to the New York Court of Appeals “for such amendments to its rules as you deem requisite to the end in view,” and to the New York State Education Department “to obtain approval of the re-arranged curriculum for the degree of LL.B.” In addition to “greater scholastic proficiency”, Father Hogan had a second reason for authorizing the four year part-time program even without any changes in the Court of Appeal rules relating to minimum class hours: getting Fordham Law School on the list of ABA approved law schools. After securing “favorable action” from “the above authorities,” Father Hogan directed, Wilkinson was to “proceed to negotiate with the proper authorities of the American Bar Association to the end that approval of the School by the Section on Legal Education of that body may be obtained as well.”¹⁶

Dean Wilkinson filed Fordham Law School’s petition to the New York Court of Appeals in late December, 1933 asking the court to amend its rules to enable law schools to spread their part-time curricula from three years to four years without requiring more class time than that required of the three year full-time programs. Wilkinson argued that this could be accomplished if the court were to reduce the minimum required hours of class per week from the current minimum of 10 hours for all law students to 8 hours for part-time law students. The petition asserted that Fordham Law School required all of day and evening its students to complete twelve class hours a week for three scholastic years, or thirty-six year hours in all, even though

¹⁶Aloysius J. Hogan, S.J. to Ignatius M. Wilkinson, Nov. 17, 1933, attached as EXHIBIT “D” in Dean’s Report, May 15, 1934.

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the Court of Appeals and the state of New York required only ten class hours a week over three years or thirty year hours. The rule change Fordham Law School requested would still result in the night students taking more total class hours of instruction than the minimum of thirty class hours the court presently required of all law students, “four (4) scholastic years of eight (8) hours weekly, or thirty-two (32) year hours of instruction.”¹⁷

The petition Dean Wilkinson filed on behalf of Fordham Law School was almost identical to the one he and others submitted in 1931 on behalf of ABCNY and the New York County Lawyers’ Association. There was an important difference, however, which Wilkinson emphasized in his memorandum of law. The earlier petition would have *required* all of the law schools in New York State to change their part-time programs to four years, whereas Fordham’s “requested amendment [to the Court of Appeals rules] is *entirely permissive* in character and would not require any law school to change its course in any way.” [Emphasis added.] Wilkinson pointed out that the opposition of St. John’s School of Law to the 1931 petition was due to the mandatory nature of the requested rule change, and that St. John’s would accept the requested change if it were permissive and left the decision whether to adopt a four year night program “to the discretion of the institution.”¹⁸

¹⁷*In the Matter of the Rules for the Admission of Attorneys and Counselors at Law*, Petition of Fordham University, attached as Exhibit “D,” in Dean’s Report, May 15, 1934. A copy of the Petition is in folder 8, box 14, Fordham Law School Archives.

¹⁸*In the Matter of the Rules for the Admission of Attorneys and Counselors at Law*, Memorandum in Support of Petition of Fordham University for an Amendment to the Rules, attached as EXHIBIT “D,” in Dean’s Report, May 15, 1934. “That New York University and Fordham,” and “the election to be left,” *id.*, *quoting*, In the Matter of the Petition of the Association of The Bar of The City of New York et al., for Amendment of the Rules of the Court of Appeals Relative to the Study of Law, 257 N.Y. 211, 177 N.E. 423 (1931); Reply Brief on

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Wilkinson's substantive argument focused on the need to provide part-time evening law students with more time to prepare for class and to do collateral reading and research in order to put them on a par with full-time day students. Part-time students must devote substantial portions of their working day to their outside jobs, and they were in class five nights per week. Consequently, they had difficulty in mastering their courses in three academic years because they did not have sufficient free time to study. Spreading their courses over four years would afford them the necessary free time, but, under current Court of Appeals rules, they would be required to attend 1440 class session hours over four years, whereas full-time students were required to attend only 1152 class session hours over three years. The Court of Appeals could eliminate this disparity if it were to change its rules to permit part-time students to attend fewer than ten class hours per week over four years. The great need was not to require part-time students to take more class hours of instructions. Rather, it was to spread the same number of class hours over a greater period of time to afford them enough free time adequately to prepare for class.¹⁹

On January 16, 1934, the New York Court of Appeals granted Fordham's petition in full, permitting part-time law study of at least eight hours of class per week over four years. Upon receiving the court's order, Wilkinson applied to the New York State Education Department for

behalf of St. John's College School of Law, 21.

¹⁹*In the Matter of the Rules for the Admission of Attorneys and Counselors at Law*, Memorandum in Support of Petition of Fordham University for an Amendment to the Rules, n.p., *quoting*, Memorandum of Law in Support of Petition of the Association of the Bar of the City of New York and the New York County Lawyers' Association, 12-13, attached as EXHIBIT "D," in Dean's Report, May 15, 1934. A copy of the Memorandum of Law is in folder 8, box 14, Fordham Law School Archives.

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approval of Fordham's proposed four year night program. He explained in his letter to Assistant Commissioner Harlan H. Horner that the law school required successful completion of "thirty-six (36) year hours of work for our degree," which it intended to continue, but it sought to divide these hours over four years for night school students, either nine year hours per week each year for four years or two years of eight hours per week and two years of ten hours per week, in accordance with the amended rules of the New York Court of Appeals. After submitting a detailed tentative four year curriculum, Wilkinson satisfied Horner that the proposed change merely involved "a revision and adaptation of the law school's current program." The Education Department quickly approved and registered Fordham's proposed four year evening program. Wilkinson reorganized the night school curriculum to require students to take eight hours of class per week for the first two years and ten hours of class per week for the last two years, for "a total of thirty-six year hours in all, the exact equivalent of the work now required of . . . the day students in their three-year curriculum of twelve hours weekly."²⁰

Extending the night school curriculum to four years in September 1934 produced a decline in Fordham Law School's part-time enrollments of 24% during the first year of the four year program. The decline was significantly greater at the Bronx campus than at the Woolworth Building. Part-time enrollments during the 1934-1935 academic year declined at the Bronx

²⁰A copy of Judge Cuthbert W. Pound's judgment order is in folder 8, box 14, folder 8, Fordham Law School Archives. Ignatius M. Wilkinson to Hon. Harlan B. Horner, Jan. 19, 1934, included in EXHIBIT "D," in Dean's Report, May 15, 1934. The amended rule is reprinted in Wilkinson to Horner, Jan. 23, 1934, included in *id.* The Education Department's approval was sent in Horner to Wilkinson, Feb. 27, 1934, *id.* See also, Horner to Wilkinson, Jan. 20, 1934, *id.*; Wilkinson to Horner, Feb. 7, 1934; Horner to Wilkinson, Feb. 9, 1934, *id.*; Wilkinson to Horner, Feb. 15, 1934, *id.*; Wilkinson to Horner, Feb. 26, 1934, *id.*; Wilkinson to Horner, Feb. 28, 1934, *id.*; "a total of thirty-six," Dean's Report, May 15, 1934, p. 12.

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campus by 48% and in the Manhattan division by 11%. There was a drop of 3% in the day school enrollments as well, leading Wilkinson to surmise that there would have been a drop off in the night school enrollments even without the change to the four year curriculum. The declines in night school enrollments were partially recouped in the 1935-1936 academic year, when night school enrollments at both campuses increased by 7%.²¹

Wilkinson was quite accepting of the reduced size of the student body, which he thought was the inevitable “net effect of the higher standards” and economic conditions. He also believed that the smaller student body was offset by gains in the scholarship of Fordham’s students and the “capacity of our graduates, as well as in the reputation which the School has achieved and continues to enjoy in the community.” The improvement in the Law School’s standards would further enhance its reputation and attractiveness to “the right type” of law student in the future. The loss of revenues the Law School sustained would be made up “in large measure” by a tuition increase Father Hogan authorized for the 1936-1937 academic year.²²

Law school enrollments suggest that Wilkinson was correct in thinking that declining enrollments were due to economic and social conditions as well as the four year evening program and its relatively high academic standards. The Law School’s total enrollments had declined from 1200 in 1930-1931 to 1077 the following year, and they remained between 1000 and 1100 through 1934-1935, the year Fordham instituted the four year night school program. In

²¹Dean’s Report, February 17, 1936, p. 4.

²²*Id.*, pp. 28-29. Interestingly, Wilkinson reported that N.Y.U. Law School’s entering classes “for the last two years has been only as large as our own entering class this year,” even though N.Y.U. had been on a four year night standard since 1930 “and does not, I believe, attempt any selection of its students.” *Id.*, p. 6.

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the following academic year enrollments dropped below 1000 for the first time since 1920, to 897, and in 1936-1937, the year Fordham raised tuition from \$220 to \$240, enrollments dropped again to 785. Wilkinson attributed the 1936 enrollment decline to the tuition increase and to “better business conditions generally which permitted prospective law students in some instances to pursue their law studies out of the city instead of in the city as had been necessary through the period of the depression.” Enrollments rebounded somewhat to between 800 and 900 through the 1940-1941 school year, but they did not return to pre-Depression levels until the late 1960s. The smaller student body was by design, and this will be explained momentarily.²³

The new Fordham University President, Father Robert I. Gannon, S.J., praised Dean Wilkinson and the Law School faculty in 1936 for limiting the number of students “in the interest of maintaining higher standards,” a policy which “represented his own ideas in the matter.” Father Gannon endorsed the law school’s objective of achieving quality rather than quantity. This emphasis on educational excellence fit Father Gannon’s character. Dean William Hughes Mulligan later described Father Gannon as “the Jesuit par excellence,” a man of “great style, great poise,” a “man of letters, a man of wit, a man of wisdom” and “an imposing appearance.” Yet, he was also “genteel, very caring. He was also a Republican,” Dean Mulligan commented. Interestingly, Mulligan also characterized Wilkinson as a man of Father Gannon’s

²³Faculty Meeting of June 6, 1935, Faculty Meetings, 1933-1944, folder 9, box 11, Law School Papers, Walsh Library, Fordham University; Faculty Meeting of September 19, 1935, *id.*; “better business conditions,” Faculty Meeting of September 17, 1936. Total enrollments are listed in “Registration by Years Since the Foundation of the School,” in Notebook of Memoranda, Fordham Law School Archives.

“caliber.” “Wilkinson was equally imposing.”²⁴

Wilkinson predicted in 1936 that declining enrollments in law schools and other professional schools would continue over the next ten years. He based his prediction on demographic patterns which showed declining populations in New York City. Elementary school enrollments were “falling off” for a number of reasons. These included “a shift of population to other boroughs,” immigration restriction, and “the general decline in the birthrate.” Wilkinson anticipated lower enrollments in high schools, colleges and “ultimately in the professional schools.” “If and when” this time of lower enrollments arrived, Wilkinson surmised, “the wisdom of having been in the forefront of the movement for reasonably higher standards in legal education will become apparent.” He predicted that “The law schools that will survive, without doubt, will be those schools which are recognized as the best schools,” and these “must be the ones which through the imposition of proper standards of matriculation, study, and scholarship have graduated students who, being well trained men of character must achieve positions of influence and importance at the bar.”²⁵

The New York Court of Appeals mandated the four year night school program for all law schools in the state in the summer of 1937, and Wilkinson again played a leading role in this decision. Because the Court of Appeals’ four year rule was permissive rather than mandatory, three of New York City’s six law schools – Brooklyn, New York, and St. John’s Law Schools -

²⁴“in the interest of maintaining,” Faculty Meeting of September 17, 1936; the descriptions of Father Gannon and Dean Wilkinson are in Interview of William Hughes Mulligan, September 20, 1988, Transcript No. 22, Book 3, pp. 4-5, Fordham Law School Oral History Project.

²⁵Dean’s Report, February 17, 1936, pp. 29-30.

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continued to operate their late afternoon and evening classes on a three year basis. They adopted the four year part-time curriculum in the spring of 1937 and put it into effect the following fall. Their decision to do so resulted from roundtable conferences of the Committee of Law School Deans of the Joint Conference on Legal Education of the State of New York. The Joint Conference was organized in 1932 and consisted of representatives of the state's ten law schools, bar associations, bar conferences, and members of character committees. Dean Wilkinson praised it for its contributions to improved standards in legal education. As a member of the Joint Conference's Committee of Law School Deans', Wilkinson succeeded in getting unanimous approval of the Deans of the law schools in New York State of a resolution mandating the four year night school. He then helped persuade the State of New York Education Department to require all law schools in the state to extend their part-time or evening curricula to four years effective September 1937. The Department made this decision after securing the agreement of the deans of Brooklyn, New York and St. John's Law Schools to conform their evening programs to the four year curriculum. This eliminated St. John's Law School's opposition to the four year requirement. With St. Johns having withdrawn its earlier opposition, Dean Wilkinson saw "no reason why the Court should not take the action desired." He drafted an amendment to the New York Court of Appeals rules which mandated the four year night school for all law schools operating in the state. He submitted the proposal to the court in the spring of 1937. The New York Court of Appeals, "with the consent of all of the law schools of the State," made the four year curriculum mandatory for part-time students in the summer of 1937. As a result, "no sub-standard evening school" was permitted to open or operate in New

York after 1937.²⁶

The combined effect of the four year night school requirement and higher academic standards tended to support Wilkinson's assessment that law schools with higher academic standards would lose fewer students than law schools with lower academic standards. He estimated that the increase in academic standards in New York State during the 1930s had "reduced [law student enrollments] in exact proportion to the increase in standards." In New York City, the law student population in 1928-1929 was 10,800, and it declined by one-half in the 1937-1938 academic year to 5,199. He noted that enrollments had declined by some 25% in the two years from 1936 to 1938, and, since the consensus of opinion was "that business conditions [had] been improving ever since 1932, this decline" could not be attributed to economic causes. Some 54% of the 10,800 New York City law students in the 1928-1929 school year were enrolled in the two Brooklyn law schools. They sustained the most drastic losses in the 50% decline in the student population since that time, and Wilkinson suggested that their enrollments would decline further because of the higher academic standards they had adopted.²⁷

And they did. In his dean's report for 1940, Wilkinson noted that "the three formerly

²⁶"no reason why," Ignatius M. Wilkinson to Dean Herschel W. Arant, April 26, 1937, appended in EXHIBIT "B," Dean's Report, February 28, 1938; Dean's Report, February 28, 1938, pp. 18-20; "no sub-standard evening school," *id.*, p. 20; Faculty Meeting of June 10, 1937, folder 9, box 11, Law School Papers, Walsh Library, Fordham University; Wilkinson to Will Shafroth, October 30, 1936, folder 2, box 13, *id.* "with the consent", Ignatius M. Wilkinson, "A Decade of Progress in Standards of Legal Education in New York," *Proceedings of the . . . Annual Meeting of the New York State Bar Association* (1940): 90, 92-93.

²⁷"reduced [law student enrollments]," Dean's Report, February 28, 1938, p. 20; "that business conditions," *id.*, p. 9.

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sub-standard schools in this city” continued to experience “a marked drop” in enrollments “due to the continuing effect of the increase in the standards.” Brooklyn, St. John’s and New York Law Schools became “standard” law schools when they adopted the four year part-time curriculum in September 1937. They also raised their tuition to Fordham’s level, which also contributed to a significant loss of students in these law schools and a modest gain in enrollments at Columbia, Fordham and New York University. Enrollments in New York City law schools are reported in Table 4-4. These figures show that Columbia and Fordham Law Schools experienced slight declines in enrollments in the last four years of the 1930’s. The three “sub-standard” law schools lost more than half of their previous enrollments when they increased their standards in September 1937 to comply with the four year night school curriculum mandated by the New York Court of Appeals. They also raised their tuition to levels comparable to Fordham’s. Wilkinson attributed almost all of their loss of students to the four year night school and tuition increases. He estimated that only about 10% was attributable to “the economic and other conditions of the times through which we are passing.” The only law schools that experienced a steady and the substantial decline in enrollments were the four law schools which, according to Wilkinson, continued to accept every applicant with minimum qualifications.²⁸

TABLE 4-4
New York City Law Schools’ Entering Class Enrollments 1936-1937 to 1939-1940

²⁸“the three formerly,” Dean’s Report, April 3, 1940, p. 3-4; “the economic and other conditions,” *id.* p. 4; Change to four year night school is in *id.*, p. 2.

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<u>School</u>	<u>1936-37</u>	<u>1937-38</u>	<u>1938-39</u>	<u>1939-40</u>	<u>Change</u>
Columbia	197	212	181	195	-01%
Fordham	300	320	292	292	-02%
N.Y.U.	<u>334</u>	<u>354</u>	<u>298</u>	<u>251</u>	-24.8%
Total	831	886	771	738	-11.1%
N.Y.L.S.	113	133	53	61	-46%
Brooklyn	412	185	185	165	-60%
St. John's	<u>676</u>	<u>377</u>	<u>344</u>	<u>300</u>	-55.7%
Total	1,201	695	582	526	-56.2%

Source: Dean's Report, April 3, 1940, p. 3.

Wilkinson believed the fact that Fordham was able to maintain enrollments during this period when the other city law schools, except for Columbia, were experiencing substantial declines was “a vindication of our policy of applying strict standards of admission to the School as well as strict internal scholastic standards to the students in the School.” Columbia, of course, also had “a strict selective entrance system.” Not only did Fordham maintain enrollment levels, it also experienced an increase in the number of applications. Wilkinson reported 456 applications for the entering class of 1938 and 474 for that of 1939. He also reported in 1940 that Fordham applied its selective admission standards “a little more strictly in the last two years.” It “accepted” only 64% and about 62% of the applications it received for the 1938-39 and 1939-40 school years respectively. As will be explained, Fordham capped its enrollments in order to comply with ABA certification and AALS membership regulations. Nonetheless, the increased number of applications to Fordham evidently enabled the Law School to maintain its desired registration numbers and higher admissions standards.²⁹

²⁹“the three formerly sub-standard,” Dean's Report, April 3, 1940, p. 3; tuition increases and enrollments, *id.*; “a vindication of our policy,” Dean's Report, April 3, 1940, p. 4; application figures, *id.*, p. 2; “a strict selective,” *id.*; “did not complete” and “did not enter,” *id.* p. 2.

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The more stringent admissions standards also helped Fordham to maintain enrollment levels after students were admitted. Wilkinson claimed that the school's selectiveness reduced first and second year failures. Table 3-2a tends to support his claim.

Table 3-2a
Drop out Rates in First Year

<u>Year</u>	<u>Enrol</u>	<u>Drop %</u>	<u>Dropped</u>	<u>%</u>	<u>Flunk</u>	<u>%</u>	<u>Total Left</u>	<u>%</u>	
1930-31	420	141	33.6%	64	15.2%	77	22%	279	66.4%
1931-32	464	120	25.9%	48	10.3%	72	17.3%	344	74.1%
1932-33	475	99	20.8%	44	09.3%	55	12.8%	376	79.2%
1933-34	425	107	25.2%	52	12.2%	55	14.7%	318	74.8%
1934-35	358	93	26.0%	48	13.4%	45	14.5%	265	74.0%

Source: for 1930-1032 entering classes, Dean's Report, May 15, 1934, pp. 2-3; for 1933 and

1934 entering classes, Dean's Report, February 17, 1936, pp. 2-3. The "Dropped" percentage is based on the original enrollment. The "Flunk" percentage is based on the original enrollment minus the number of "Dropped" students. The "Total Left" percentage is based on the original enrollment.

It shows that the failure rate of first year students for most of the first half of the 1930s fluctuated between 13% and 17%. In the 1930-31 entering class, the last year college graduates were admitted without presenting a college transcript, the failure rate in the first year class was 22%.

In 1931-32, the first year Wilkinson began applying the same selective admission process to college graduates as he had been applying to non-college graduates, the first year failure rate declined to about 17%, and it leveled off between 13% and 15% until Fordham adopted the four year night school program in 1934. After "further tightening" of the admission process "over the intervening years," he boasted, the failure rate of the first year class of 1938 dropped to about

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10% or 11%.³⁰

Drop out rates of third year students also continued to decline. The failure rate of third year students in 1932-1933 was 4%. It steadily dropped in 1933 to 2%; in 1934 and 1935 to 1%; and in 1936 it fell to 0%. Wilkinson concluded that, although the entering classes may have become smaller because of Fordham's "strict entrance standards," student retention was greater and that the overall number of students was not diminished as much as it appeared. Moreover, what the school lost in the smaller size of entering classes was "more than offset in the better scholastic results achieved with the selected student body."³¹

In April 1934, Wilkinson took up the issue of getting Fordham Law School placed on the ABA's list of approved law schools with John Kirkland Clark, President of the New York Board of Law Examiners and Chairman of the ABA's Council on Legal Education. They had "several conferences" in which they discussed the matter with Mr. Will Shafroth, an advisor to the ABA

³⁰Wilkinson's Dean's Report for 1940 made statements that were incorrect or, at least, inconsistent with earlier dean's reports. For example, he erroneously stated that 1939-40 was the last year in which college graduates were admitted to the law school without having to produce, and therefore, without a review of their transcript of their college record. Dean's Report, April 3, 1940, p. 12. However, he had earlier reported that the last year the academic records of college graduates were not reviewed was the 1930-31. He had also reported that the entering class of September 1931 was the first "completely selected" class in which the academic credentials of every applicant were evaluated, whether or not the applicant held a college degree. Dean's Report, May 15, 1934, p. 2. Similarly, Wilkinson said the first year failure rate of the entering classes of 1930 and 1931 were 23% and 14% respectively. But, in his 1934 report he placed these figures at 22% and 17.3%. Another 15% of the original class of 1930 left voluntarily during the first year, and about 10% of the 1931 class dropped out voluntarily in the first year. The attrition rates of the first year classes for these years, combining voluntary withdrawals and academic dismissals, declined from about one-third (33.6%) to one-fourth (25.9%). *Id.*, p. 2.

³¹Statistics are in Herschel W. Arant to Dean Ignatius M. Wilkinson, January 26, 1937, appended in EXHIBIT "B," Dean's Report, February 28, 1938; "more than offset," Dean's

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on issues relating to legal education. Clark arranged for Shafroth to spend four days at the law school in April 1934 to perform the required inspection for ABA approval.³²

The Jesuits were an important catalyst in Fordham Law School becoming an ABA accredited law school and a member in the AALS. In 1934, the Father General of the Jesuits established The National Jesuit Educational Association and created the office of Commissarius for Education which was held by the personal representative of the Father General. The Commissarius visited Fordham University and issued a report in February 1935 which stressed the importance of the Law School getting accredited by the ABA and becoming a member of the AALS. The three year part-time curriculum was a big obstacle to ABA accreditation and membership in the AALS. Having achieved the four year night curriculum, Wilkinson turned his attention to meeting the other standards required for ABA approval and AALS membership, and he had Fordham University's full support.³³

Apart from the four year night program, the ABA also had requirements relating to full-time teachers and the size and development of the law library, and it began to inquire about law school finances at the end of the 1920s. The "chief problem" standing in the way of Fordham's ABA accreditation became the full-time faculty requirement, although the law library at the Bronx campus also posed some difficulty, which the University resolved by closing the Bronx

Report, April 3, 1940, p. 12.

³²Dean's Report, May 15, 1934, pp. 13-14; Ignatius M. Wilkinson to John Kirkland Clark, April 19, 1934, copy appended as EXHIBIT "C" in *id.*

³³Gannon, *Up to the Present*, pp. 196-201; Dean's Report, February 20, 1930, p. 8; "chief problem," Ignatius M. Wilkinson to John Kirkland Clark, April 19, 1934, copy appended as EXHIBIT "C" in Dean's Report, May 15, 1934.

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night school in 1938. The Law School's finances also posed a problem, which the ABA avoided at this time.³⁴

Although most law professors in the early twentieth century taught on a part-time basis and pursued active law practices, the ABA and AALS began to require accredited and member law schools to employ full-time faculty shortly after World War I. In 1924, the AALS adopted a standard, against considerable opposition, that required at least one full-time instructor for every one hundred students. By 1930, the ABA brought its full-time faculty regulations for approved law schools into line with that of the AALS, requiring one full-time teacher for every one hundred law students. These professional standards undoubtedly contributed to the growing proportions of full-time faculties at law schools approved by the AALS and ABA. Even so, the Carnegie Foundation reported in 1928 that "It is now pretty generally conceded that the ideal faculty is one that includes both professional law teachers and practising lawyers. Each of these elements tends to be strong where the other is weak." With this perspective, it is not surprising to find that part-time teachers continued to represent significant portions of law school faculties to the late twentieth century. They comprised 33% of law faculties in 1930, and 39% over a half century later in 1984.³⁵

³⁴Gannon, *Up to the Present*, pp. 196-201; Dean's Report, February 20, 1930, p. 8; "chief problem," Ignatius M. Wilkinson to John Kirkland Clark, April 19, 1934, copy appended as EXHIBIT "C" in Dean's Report, May 15, 1934.

³⁵As early as 1892, the ABA recommended that every law school have at least one teacher who devoted "his life to the study and teaching of law as a science." The AALS adopted a standard in 1916 that took effect in 1919 that required member law schools to employ at least three teachers who devoted substantially all of their time to the school. In 1921, the ABA adopted the ambiguous standard that required accredited law schools to employ a sufficient number of teachers who devoted all of their time to the law school "to ensure actual personal

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What distinguished full-time from part-time faculty in the 1920s and 1930s was not the number of hours taught but whether the individual “devote[d] substantially all of his time to his teaching work.” Nevertheless, in the middle of the 1920's, the average teaching load of law teachers in most American law schools was less than eight hours per year, and in only fourteen law schools did teachers average ten or more hours per year. The “theory of requiring full-time teachers,” Wilkinson informed Fordham President, the Very Rev. Aloysius J. Hogan, S.J., in his Dean’s Report of 1934, “is that the teacher devoting substantially all of his time to teaching duties will be better prepared than the practitioner, who has only a casual interest in his teaching work, while at the same time he will be available for consultation with the students and thus be able to exercise a direct and beneficent influence upon them.” This principle had been “written” into the New York Regents’ rules governing the registration of new law schools in New York State. The state Education Department adopted a rule in 1929 that required registered law schools to employ at least three full-time professors, but the rule applied to new law schools and was not made retroactive to previously registered schools. If it were, Wilkinson thought Fordham could count as “full time men” the Fordham law teachers who taught 8 year hours.³⁶

acquaintance and influence with the whole student body.’ ” “His life to the study,” Alfred Z. Reed, *Present-Day Law Schools in the United States and Canada* (New York: The Carnegie Foundation for the Advancement of Teaching, 1928): 261; “substantially all,” *id.*; “ ‘to ensure actual personal,” *id.*, quoting Resolution (1) (d) of the 1921 American Bar Association Resolutions; “It is now pretty generally conceded,” *id.* Statistics on full-time and part-time faculty, Aaron I. Abell, *American Catholicism and Social Action* (Garden City, NY: Hanover House, 1960): 173; average teaching load, *id.*, pp. 263-66, 265, notes 2-5, 266, notes 1-5, 540-41; Dean’s Report, January 11, 1929, p. 12.

³⁶“devote[d] substantially all,” Dean’s Report, February 20, 1930, p. 9; “theory of requiring,” Dean’s Report, May 15, 1934, pp. 13-14; New York State Regents, *id.*, January 11, 1929, p. 12; *id.*, January 28, 1932, p. 10. Average teaching load, Aaron I. Abell, *American*

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In 1929, Wilkinson assessed how complying with the ABA and AALS requirement of one full-time teacher for every one hundred students would affect Fordham Law School. He estimated that this rule would require Fordham to hire about ten full-time law professors with a maximum teaching load of ten year hours at a salary of between \$8,000 and \$10,000 for the academic year. These salaries were considerably higher than the course hour rates at which Fordham faculty were paid. On these figures, the highest paid full professor would have received a maximum of \$6,000 for ten year hours of teaching and the lowest paid lecturer only \$3,000, amounts considerably below the estimated \$8,000 to \$10,000 full-time faculty would have commanded. Moreover, the typical Fordham law teacher taught less than ten hours a year. Wilkinson correctly concluded that full-time faculty “would add considerably to the teaching expense” of the Law School. Nonetheless, he advised Fordham President, Father Duane, S.J., in 1929 that good policy dictated “the establishment of some full time professorships.”³⁷

How many full-time positions Fordham should create was the question. Given Fordham’s enrollment of 1320 students in 1929-1930, Wilkinson estimated that he would have had to create at least ten full-time positions and require the occupants to devote all of their time to the law school in order to comply with the requirement of one full-time teacher for every one

Catholicism and Social Action (Garden City, NY: Hanover House, 1960): 173; average teaching load, *id.*, pp. 263-66, 265, notes 2-5, 266, notes 1-5, 540-41; Dean’s Report, January 11, 1929, p. 12.

³⁷Full professors received between \$500 and \$600 per year hour; associate professors who taught in the day division were paid between \$450 and \$500 per year hour and those who taught in the night school were paid between \$400 and \$450; lecturers in the day division earned between \$350 and \$450 per year hour, and lecturers in the evening school received between \$300 and \$400. Wilkinson did not explain what determined who received the maximum and minimum salaries, but it was probably geared to years of service. Dean’s Report, Dec. 10, 1925,

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hundred students. He believed that Fordham could get away with only six full-time positions if he could convince the ABA that a full-time faculty member who taught in the morning and afternoon divisions could be counted as full-time in both. He thought he might be able to persuade some of the current faculty to consider “devoting themselves entirely to their law school work.” This would entail establishing a separate office for each full-time faculty member, an ABA requirement, which Wilkinson thought could be done.³⁸

Father Duane consented to building a full-time law faculty, but he proposed the full-time faculty as an alternative to beginning a Law School endowment which Dean Wilkinson had requested in 1929 and 1930. With Father Duane’s consent, Wilkinson appointed two full-time teachers in the summer of 1930. Wilkinson persuaded two of the current part-time faculty to accept the full-time appointments, Professor Walter B. Kennedy and Associate Professor George W. Bacon. Wilkinson made these appointments not only to satisfy ABA and AALS standards, but also for pedagogical reasons. He agreed with the Association’s rationale for their full-time law professor standard, which was that teachers who spent all of their time at the law school afforded greater accessibility to students who wished to consult with them. At Fordham, full-time faculty also made possible “a voluntary system of law clubs,” which acquainted students with the art of law practice as distinguished from the “science of the law,” and a “voluntary course” in the use of the law library and legal research. Professor Bacon was in charge of the law clubs, and Professor Kennedy taught the course in legal research. Wilkinson reported that Professor Kennedy had interested “a considerable portion” of the students in this work, the

p. 10; “would add considerably,” *id.* Jan. 11, 1929, p. 12; “the establishment,” *id.*

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objective of which was to teach students the methods of finding answers to legal problems and the resources available for this purpose. The law school offered these activities to all students on an optional basis, but day students understandably took advantage of them more than evening students. Wilkinson did not require library work and research “because of the burden it would impose on men in the evening divisions.”³⁹

Wilkinson persuaded John Kirkland Clark and Will Shafroth that Fordham should not be required to employ one full-time law teacher for every one hundred students. For a school the size of Fordham, this rule would require ten full-time instructors, a number which Wilkinson asserted was “entirely unnecessary to achieve the purpose for which the standard and principle were intended.” Nine of the Law School’s part-time teachers who practiced “to a greater or less extent” taught “from seven to ten hours weekly.” Undoubtedly, they were “genuinely interested in their teaching.” They devoted so much of their workday to teaching that they had “to build” their activities as practitioners “around the work of the school.” In addition, four members of Fordham’s faculty were “full-time instructors in the strict sense of the word, all of whom are provided with adequate office facilities in the law school quarters.” Needless to say, they were completely devoted the Law School and its students. The four full-time faculty members were Walter B. Kennedy and George W. Bacon, appointed in the summer of 1930, and Eugene J. Keefe and Thomas L. J. Corcoran, appointed in September 1934. Moreover, it was not unusual

³⁸“devoting themselves,” Dean’s Report, February 20, 1930, p. 10.

³⁹“a voluntary system,” Dean’s Report, January 28, 1932, pp. 10-11; “because of the burden,” pp. 11-12. Full-time faculty as an alternative to a Law School endowment, Dean’s Report, February 20, 1930, pp. 11-12. For a discussion of the endowment issue, *see infra*, notes 69-77 and accompanying text.

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for part-time faculty to use their law offices for student conferences. Indeed, Wilkinson “frequently” sent students to their law offices to discuss school matters. These part-time faculty exerted “a genuine influence on the entire student body,” Wilkinson insisted, and he was confident that Mr. Shafroth, who had visited many of their classes, would agree that they were “capable teachers” and that Shafroth would so assure Clark. In addition, Wilkinson argued that it would be “anomalous” to require full-time teachers for night students. He pictured a scene in which the full-time teacher would be in his office all day waiting to consult with night students who would not arrive at the Law School until the evening hours because they were gainfully employed all day.⁴⁰

It simply was not practical to secure a full-time faculty in a city like New York which offered so many opportunities to capable lawyers for remunerative law practices. To satisfy the standard of one full-time teacher for every 100 students, the Law School would have to dismiss some of its “most experienced and dependable” faculty, because they “could not be induced” to accept full-time employment at the salary Fordham University could afford to pay. It was difficult to attract full-time law teachers at salaries that “would be proper or possible for a university to pay” who were willing “to forego absolutely the emoluments of private practice” and were also “equal in teaching skill” as the Fordham part-time faculty who had been teaching at Fordham “from eight to twenty-two years.” If the primary purpose of a law school was “to train men for the practice of law,” then practitioner-teachers strengthened the faculty and made a

⁴⁰Quotations are in Ignatius M. Wilkinson to John Kirkland Clark, April 19, 1934, copy appended as EXHIBIT “C” in Dean’s Report, May 15, 1934. Full-time faculty were named in Ignatius M. Wilkinson to Will Shafroth, October 16, 1935 and Wilkinson to Shafroth, November 29, 1935, appended in EXHIBIT “A,” in Dean’s Report, February 17, 1936.

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contribution “of great value” to the education of law students, one “which could not be had in the same way or to the same extent in a faculty composed exclusively of full-time men.”⁴¹

Fordham expected to add a fifth full-time teacher in the 1934-1935 academic year and one or two more in the 1935-1936 academic year, Wilkinson informed Clark. That would raise the number of full-time faculty to six or seven by 1936, a number “entirely adequate for the needs of the school,” in Wilkinson’s opinion. To add any more would not serve any useful purpose. To the contrary, it would “necessarily . . . result in the disintegration of a teaching faculty of genuine skill and years of service in the school,” Wilkinson concluded. Clark agreed with many of Wilkinson’s arguments, and he asked the Dean to put his views in a letter and to send it to him, which he did.⁴²

At Clark’s and Shafroth’s invitation, Wilkinson attended a meeting of the ABA’s Council on Legal Education held on May 9, 1934 and presented his arguments to this body. Mr. Shafroth, spoke in support of Fordham, and “stated frankly” that he had not found a part-time faculty at any other law school that taught “the substantial number of hours per week” as did “most of [Fordham’s] professors and associates.” Wilkinson reported to Father Hogan that “a number” of the members of the Council were “distinctly favorable” to Fordham’s position and conceded that the Fordham Law School was “sui generis.”⁴³

⁴¹“most experienced and dependable,” Dean’s Report, May 15, 1934, p. 14; all other quotations are in Ignatius M. Wilkinson to John Kirkland Clark, April 19, 1934, copy appended as EXHIBIT “C” in Dean’s Report, May 15, 1934.

⁴²“entirely adequate” and “necessarily . . . result”, Ignatius M. Wilkinson to John Kirkland Clark, April 19, 1934, copy appended as EXHIBIT “C” in Dean’s Report, May 15, 1934..

⁴³Dean’s Report, May 15, 1934, pp. 14-15; quotations are at p. 15.

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Nevertheless, the Council decided not “to recede from the strict interpretation” of its standard and its application to Fordham Law School. Based on the Law School’s enrollment of 850 to 950 students, Fordham would be required to have nine full-time teachers to satisfy the Council’s Standard of one full-time teacher for every one hundred students. Moreover, to be considered full-time, law school teachers, had to give “ ‘their entire time to the school.’ ” The Council had “always interpreted this as excluding anyone who practiced on the outside in any degree or had an outside office connection.” On this interpretation, Shafroth bluntly informed Wilkinson that he “would not be classed as a full-time teacher.” Indeed, when he inspected the Law School in the spring of 1934, Shafroth found only two faculty “who could indisputably be classed as full-time,” Professors Kennedy and Bacon. Fordham would have to hire another seven full-time faculty members to satisfy “a strict interpretation” of the ABA’s standard on full-time faculty.⁴⁴

However, interchanges with the ABA’s representatives led Wilkinson to believe that the issue of full-time faculty was negotiable. Shafroth thought that, in view of Fordham’s “situation and the attitude which the Council has displayed in the past toward your school,” it was his “personal opinion” that the Council would be willing to regard Wilkinson as a full-time teacher, and it might even include Father Pyne within this classification, though he could not give Wilkinson “any official assurance of this.” Even so, Shafroth reported that the Law School did not provide enough offices for full-time faculty, finding only four offices, including Wilkinson’s

⁴⁴“to recede from the strict interpretation,” Dean’s Report, February 17, 1936, p. 10; Full-time faculty negotiable, Dean’s Report, May 15, 1934, p. 15; other quotations, Will Shafroth to Ignatius Wilkinson, October 11, 1935, appended as EXHIBIT “A,” in Dean’s Report, February 17, 1936.

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and Father Pyne's, were available to full-time faculty. The Council would insist that each full-time teacher have a separate office. Shafroth was confident that Wilkinson could find the necessary office space, on an adjoining floor of the Woolworth Building if necessary.⁴⁵

Wilkinson won a unique and remarkable concession from the ABA regarding full-time faculty. He persuaded the Council to count Rev. John X. Pyne, S.J. as one of the Law School's full-time teachers. Father Pyne was the Law School's Regent and Professor of Jurisprudence, and he devoted all of his time to the law school, as the Council required. Wilkinson insisted that Father Pyne was a full-time member of the faculty, explaining that Father Pyne taught Jurisprudence in all four sessions of the Law School, for which his long training in philosophy made him "particularly well qualified to present this course." He was also the spiritual adviser of the Catholic students, who constituted a majority of the student body, and in this capacity he unquestionably exerted "an influence on the students with the fair intent of the Association's rule." The problem with Father Pyne from the ABA's perspective is that he was not a lawyer, and he did not hold a law degree. At first the Council resisted "under a strict interpretation of our rules." The ABA had "never in the past classed the Regent of a Jesuit school as a full-time teacher," Shafroth explained. If the Council agreed to count Father Pyne as a full-time member of the faculty, Wilkinson bargained, Wilkinson would comply with the Council's requirement of no substantial outside employment in order to secure his status as a full-time professor, "as the University will be willing to arrange that I sever my office association beginning with the year 1936-1937." The Council relented and "finally determined" to count Father Pyne as a full-time

⁴⁵Will Shafroth to Ignatius Wilkinson, October 11, 1935, appended as EXHIBIT "A," in Dean's Report, February 17, 1936.

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member of the law school faculty at its December 29, 1935 meeting in New Orleans. Wilkinson proudly informed University President Father Gannon that “This is the first time that a Jesuit Regent has been accepted by the Council as a member of the [full-time] faculty . . . and represents a distinct victory as it seems to me for our position in this regard.”⁴⁶

Fordham’s victory was much greater than satisfying the ABA’s numerical standard for full time faculty. The ABA’s acceptance of Father Pyne, a Jesuit who was not a lawyer, and his course in Jurisprudence was tantamount to the ABA’s legitimization of the Jurisprudence course and everything Catholic in the Law School. Father Pyne’s predecessor in the Jurisprudence course, Father Francis P. LeBuffe, S.J., published a digest of his lectures, which Father Pyne used. Father LeBuffe’s jurisprudence derived from Scholasticism, which attempted to reconcile the classical philosophy of thinkers such as Plato and Aristotle with the theology of medieval Christian theologians such as St. Augustine and St. Thomas Aquinas. Scholasticism, especially Thomistic Scholasticism, was the predominant philosophy of the Roman Catholic Church and its universities in twentieth century America. Reflecting Thomistic philosophy, Fordham Law School’s course in Jurisprudence, as described by Father LaBuffe, was “rooted in the doctrine of Natural Law and natural rights and consequently in an objective, real standard of justice.” Father LaBuffe argued that American political theory evolved from Roman Catholic thought, noting that the Declaration of Independence and the United States Constitution “have as their

⁴⁶“particularly well qualified,” “an influence” and “as the University,” Ignatius Wilkinson to Will Shafroth, November 29, 1935, appended as EXHIBIT “A” in Dean’s Report, February 17, 1936; “under a strict,” “never in the past,” and “This is the first time,” Dean’s Report February 17, 1936, p. 11; Shafroth informed Wilkinson of the Council’s decision regarding Father Pyne in Will Shafroth to Ignatius Wilkinson, December 31, 1935, appended as EXHIBIT “A” in Dean’s Report, February 17, 1936.

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foundation the doctrine of the Natural Law.” This “doctrine” identified God as the ultimate source of individual rights, of civil obligation as well as the government’s power to govern and compel obedience. Father LeBuffe relied on Catholic and religious sources to support his jurisprudence. However, he also based his lectures on a wide variety of secular authorities that included political philosophers and ethicists, legal thinkers and treatise writers, decisions of the United States Supreme Court and state appellate courts, and other authorities that were not associated with the Catholic Church and could be found in non-sectarian books on jurisprudence. Nevertheless, the Jurisprudence course reflected a distinctively Roman Catholic natural law philosophy of law.⁴⁷

⁴⁷“rooted in” and “have as their”, Francis P. LeBuffe, S.J., *Outlines of Pure Jurisprudence* i (New York: Fordham University Press, 1924). Religious sources included the Old and New Testament, St. Augustine, St. Thomas Aquinas, *Summa Theologica*; Bellarmine, *De Laicis*; Suarez, *De Legibus*; Pope Leo XIII’s encyclical, *The Condition of the Working Classes*. The secular authorities LeBuffe quoted and cited include Blackstone, *Commentaries on the Law of England*; Edmund Burke, *The French Revolution*; Wigmore, *The Law of Torts*; Lorimer, *Institutes of Law*; Kent’s *Commentaries on the Constitution*, Sir. Paul Vinogradoff, *Historical Jurisprudence*, Kinkead, *Jurisprudence, Law and Ethics*, Austin, *Jurisprudence*, Dillon, *The Laws and Jurisprudence of England and America*, Lord Shaw of Dunfermline, *The Law of the Kinsmen*, Roscoe Pound, *The Spirit of the Common Law*, Pollock, *First Book of Jurisprudence and Essays in the Law*, Holland, *Jurisprudence*; Burlamaqui, *The Principles of Natural and Political Law*, James Wilson, *Works*; Aristotle, *Politics*; Ryan and Millar, *The State*

INCLUDE WILKINSON'S AND KENNEDY'S SCHOLARSHIP HERE

The 1938 edition of LeBuffe's book on Jurisprudence reflected the philosophical debate that had arisen in the 1920s and raged in the 1930s between legal scholars who grounded their views of law on natural law philosophy, and the Legal Realists, whose views of law were based on scientific naturalism, philosophical pragmatism, and positivism. Although there were many strands of Legal Realism, by the late 1930s the critics of Legal Realism were alarmed at the moral relativism that flowed from the Realists' rejection of objective or absolute principles of law and morality as the foundation of legal doctrine. Critics characterized Legal Realism as a form of skepticism, nihilism, and moral relativism that was undermining American Democracy and could lead to the kind of totalitarian government that had arisen in Nazi Germany.⁴⁸

and the Church, Bouvier, *Law Dictionary*, Lorimer, *Institutes of Law*, Taylor, *The Science of Jurisprudence*, Austin, *Jurisprudence*, Bryce, *Studies*, Cicero, *De Republica*, The Declaration of Independence, President George Washington's "Farewell Address," President Warren G. Harding, "Inaugural Address", Joseph Story, *Equity Jurisprudence*; Holland, *Natural Law and Legal Practice*; Robinson, *Elements of American Jurisprudence*; Ritter, *Moral and Civil Law*; Rickaby, *Aquinas Ethicus, Political and Moral Essays*, and *Moral Philosophy*; Salmond, *First Principles of Jurisprudence*; Markby, *Elements of Law*; Spalding, *Introduction to Social Service*.

Compare LeBuffe's book with William A. Keener, *Selections on The Elements of Jurisprudence* (St. Paul: West Publishing Co., 1896).

⁴⁸This discussion is based on the superb study of Edward A. Purcell, Jr., *The Crisis of Democratic Theory: Scientific Naturalism & the Problem of Value* (Lexington, KY, The University of Kentucky Press, 1973): 159-78.

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Professor Edward Purcell reports that the “most severe and extreme attacks on legal realism and all forms of philosophical naturalism” in the 1930s were made by Catholic Thomists who thereby revived neo-scholastic jurisprudence. Fordham Law School Professor Walter B. Kennedy, who was “perhaps the most widely respected Catholic legal scholar in the country,” played a leading role in the Catholic opposition. Kennedy attempted to demonstrate the “imprecision and vagueness in both conception and analysis” of Legal Realism as well as the “naïve and uncritical acceptance to a number of dubious social science concepts” by Legal Realist scholars.⁴⁹

In his *Fordham Law Review* article entitled, “A Review of Legal Realism,” Kennedy sets out to show “four fundamental failures of Realism”:

1. Lack of consistent application of the scientific approach in its criticism of traditional law.
2. Overemphasis upon fact-finding and consequent submersion of principles and rules.
3. Absence of skepticism regarding the hypothetical theories of the social sciences.
4. The creation of a new form of word magic and verbal gymnastics.

Kennedy claims that Legal Realism isn’t really scientific. He contrasts the Legal Realists’ skepticism of classical law with their “amazing faith in unscientific and experimental hypotheses.” (p. 365) Although Kennedy acknowledges the value of extra-legal data in the legal process, he is critical of the unscientific “*method*” by which the Legal Realists acquired these data and their lack of skill and proficiency in using the data to improve legal rules and principles. He says they “conglomerate” “so-called scientific data, statistics and theories”, often untested

⁴⁹ Purcell, Jr., *The Crisis of Democratic Theory*, pp. 163-64.

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and unverified, from second-hand social science sources, and they weld them into loose generalizations, which they call science. Kennedy concludes that, “Realism, which worships at the altar of Scientism, has departed from the basic, essential practices of true scientific research.” p. 366.

Dean Wilkinson achieved national recognition for his opposition to President Franklin Roosevelt’s Court Packing scheme. His opposition to the plan, and to the New Deal in general were predicated, among other reasons, on his Thomistic philosophy and natural law jurisprudence. Wilkinson was one of eleven law school deans to testify before the U.S. Senate Judiciary Committee on the President’s plan. He argued, as did Chief Justice Charles Evans Hughes, that the Court did not need more Justices to enable the Court to keep up with its caseload. He also argued that the proposed plan would undermine the independence of the Court and was unconstitutional.⁵⁰

Most interestingly, Wilkinson warned that the Court Packing Plan could set a precedent that “may be used some time in the future to subvert the rights of the individual and the protection of minorities.” (p. 179) He noted that if the Supreme Court could be pressured to “respond always to the prevalent sentiment of the moment,” it would eventually “become wholly subservient to the pressure of public opinion.” (p. 183) Under the Legal Realist claim that whatever the law is is right (Purcell re Morris Cohen, p. 161), this could lead to the majority tyrannizing a minority. While the constitutional provisions at issue in the Court Packing episode

⁵⁰Ignatius M. Wilkinson, “The President’s Plan Respecting the Supreme Court,” *Fordham Law Review* VI (1937): 179 (Wilkinson’s statement before the Judiciary Committee of the United States Senate, April 7, 1937, with some additional footnote material).

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included the commerce clause, the due process clause, and the general welfare clause as they relate to social and economic issues, Wilkinson warned that other clauses of the Constitution that protect “the liberties of the citizen and the rights of minorities,” such as the Bill of Rights and the Fourteenth Amendment, might be at issue. The Supreme Court, he argued, stands “as the sole guardian of persons, often poor and insignificant in themselves, whose natural rights enunciated in the Declaration of Independence and guaranteed them by the Constitution, were in danger of being destroyed because of an objective which was thought to be desirable by a majority.” (p. 185) Although Wilkinson cited to cases involving First Amendment freedoms and the rights of racial minorities, the first cases he referred to as examples of the Court protecting the constitutionally-secured natural rights of Americans were *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, two cases that protected the right of Catholic parents to educate their children in Catholic schools. Wilkinson was a Republican and a political conservative, but his opposition to the President’s interference with the independence of the Court and to the New Deal was not simply an expression of political partisanship. It also stemmed from his Thomistic conception of law which encompassed absolute principles of natural rights.

The third obstacle to ABA approval was the question of the law library. Wilkinson acknowledged that there were gaps in the collection that needed filling. Deficiencies were attributable in part to the way in which the law school updated the library’s collection. Beginning in 1925, graduating classes of “the last several years” gave “annual gifts” which enabled the Law School to add to the library’s collection “as required” without having to use Law School funds. However, these “voluntary” gifts were not sufficient to develop and maintain the library to “its full usefulness.” Consequently, “sound policy” dictated that “a definite sum be

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appropriated annually” for necessary “additions and replacements.” A good working law library at the University for the “uptown section” was “a distinct problem.” Though “a good start already [had] been made” to build a law library in the Bronx, more attention would have to be given to it “for the next several years.”⁵¹

Wilkinson boasted in 1929 that the library in the Woolworth Building consisted of 12,500 volumes and was in compliance with any possible requirements the ABA and the AALS could impose. In that year, the AALS required at least 7,500 volumes “adequately housed and accessible to students” and the expenditure to expand the library’s holdings of \$7,500 over any five year period, but a minimum expenditure of \$1,000 each year. Unsurprisingly, Wilkinson recommended to Fordham President, Father Duane, that good policy dictated that the Law School set aside a definite sum in the neighborhood of \$1,500 each year to expand the collection. However, the law library at the Bronx campus was “considerably below the 7,500 volume minimum” required by accrediting agencies. Wilkinson thought it could be “brought up” to meet the minimum standard “without such a great expenditure as to render it impossible of achievement.”⁵²

By 1936, it was not the law library in the Woolworth Building but deficiencies in the Bronx campus law library, along with too few full-time faculty, that remained the chief obstacles to Fordham Law School gaining the approval of the ABA’s Council on Legal Education. Whereas the library in the Woolworth Building was in compliance with ABA and AALS

⁵¹Dean’s Report, December 10, 1925, p. 12.

⁵²“adequately housed,” Dean’s Report, January 11, 1929, p. 11; “considerably below,” *id.*, p. 12; “without such a great expenditure,” *id.*

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standards, the Bronx law library fell far short. The collection numbered only about 2,500 volumes. However, Governor Malcolm Wilson recalled that the uptown campus did not have a library “at all” when he was a student in the Bronx night division from 1933 to 1936. The library, “such as it was, was down in the Woolworth Building, and unless someone had access to a law office, where he or she could look up the law, you had to find time, going to law school at night and working daytime, to find your way down to Fordham, to the Law Library in the Woolworth Building.” Despite the Governor’s recollections, Shafroth informed Wilkinson in 1935 that the ABA’s Council on Legal Education would allow Fordham to operate the Bronx campus law school provided they increase the law library’s collection by 5,000 volumes to the minimum 7,500 volumes. These were maximum conditions that the Council required for its approval, but “less may be demanded finally.”⁵³

The faculty at the Bronx campus posed another problem since they were essentially part-time teachers. But, in an era of practice-oriented legal education, having practitioners as teachers was considered to be a good thing. Governor Wilson recalled that the faculty “were excellent.” In the “world of the practical,” he explained, “it was extremely useful to have men teach us who were out practicing law.” They were doing what the students were planning to do, which made for a greater “rapport between us and these men who were out in the world which we hoped to enter.” Nevertheless, the ABA and AALS demanded that Fordham “station” one

⁵³Interview of Honorable Malcolm Wilson by Robert Cooper, Jr. on March 14, 1989, Transcript No. 45, Book 3, p. 8, Oral History Project, Fordham Law School Archives; Will Shafroth to Ignatius Wilkinson, October 11, 1935, appended as EXHIBIT “A” in Dean’s Report, February 17, 1936.

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full-time teacher for every one hundred students at the Bronx campus.⁵⁴

Shafroth advised Wilkinson in October 1935 what Fordham would have to do to meet the requirements relating to the “uptown school.” If Fordham were to provide “a minimum library of 7,500 volumes at that school” in addition to an office and one full-time teacher there for every one-hundred students or major fraction thereof to provide “sufficient contact between those students and their faculty,” the Bronx campus “will not be an obstacle to your approval.” Even here, Shafroth again suggested that the Council might accept some lesser proposal, and he invited Wilkinson to offer any alternative suggestions, assuring him that they would “receive the careful consideration of the Council.” He conceded that “It may be true that no useful purpose would be served by keeping any faculty members at the uptown school during the day,” since the Bronx division was a night school, but he asked Wilkinson to demonstrate its futility, stating that the Council did “not want to make a useless requirement.” Indeed, he assured the dean that “we are anxious to meet you half way in this matter, and are very gratified that you are desirous of meeting our requirements.”⁵⁵

In a critical negotiation in the fall of 1935, Wilkinson held to some of his positions but bargained with Shafroth and the Council in offering what he characterized as his “counter proposals.” Increasing the Bronx campus law library to 7,500 volumes was acceptable to Wilkinson and Fordham’s President, although it required Fordham to add about fifty-five hundred volumes. And, since the student body in the Bronx night school was less than 150

⁵⁴Interview of Honorable Malcolm Wilson by Robert Cooper, Jr. on March 14, 1989, Transcript No. 45, Book 3, p. 16, Oral History Project, Fordham Law School Archives.

⁵⁵Will Shafroth to Ignatius Wilkinson, October 11, 1935, appended as EXHIBIT “A,” in

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students, only one full-time teacher was necessary to satisfy the ABA standard of 1 full-time teacher for every 100 students. If the Council insisted on a strict reading of the standard, he agreed to appoint a full-time faculty person for the Bronx campus, but he “strongly urge[d]” that there was “no real need” to have him sit in an office in the Bronx all day when students did not arrive on campus until shortly before the evening classes began at 6:30. Applying the full-time faculty standard to the Bronx evening students was anomalous, Wilkinson insisted, because “a full-time teacher detailed exclusively to the uptown school would sit alone all day with substantially no students with whom to consult.” In addition, he would have to do most if not all of the teaching in this division, requiring him to teach three to four evenings each week, which Wilkinson regarded as “distinctly undesirable.” The law school’s general policy was not to require or even to permit any faculty member, whether full- or part-time, to teach more than two evenings. If the Council was to demand a full-time teacher for the Bronx division, Wilkinson would provide an office for him there and make him available for student consultations beginning at 6:00 p.m., one half hour before classes convened, but only on evenings on which he was scheduled to teach there. At other times he would be available in his office in the Woolworth Building.⁵⁶

In another concession, Wilkinson expressed his willingness to add two more full-time teachers beginning with the 1936-1937 academic year. He noted that he had appointed two new full-time professors in September 1934. If the Council counted Wilkinson and Father Pyne as

Dean’s Report, February 17, 1936.

⁵⁶Ignatius M. Wilkinson to Will Shafroth, November 29, 1935, appended as EXHIBIT “A,” in Dean’s Report, February 17, 1936.

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full-time faculty, these appointments brought the total number of full-time faculty to eight. It would be unwise to add many more, Wilkinson cautioned, because a few more full-time teachers would require either materially reducing the teaching load of, or eliminating “some of the most dependable teachers we have, who have been members of our faculty for many years and who could not be interested in affiliating themselves with the school on an absolutely full-time basis.”

This would damage the “scholastic and faculty standards of the school,” Wilkinson warned. He proposed that, if two additional full-time faculty would satisfy the Council, assuming the student body did not exceed 850, “we are willing to provide them,” he conceded. To ensure that the student body did not exceed this number, Wilkinson informed Shafroth that the Law School had decide to limit the entering class of September 1936 to approximately 320 to 330 students, and continuing thereafter. With the normal attrition of students, this strategy would keep the student body within the 850 student limit. Limiting the entering class to this size would also make the law school’s selective admissions practices even more selective and yield “still better material with which to work.”⁵⁷

Shafroth informed Wilkinson that the Council would consider Fordham’s position at its meeting in New Orleans on December 29, 1935. He added that “the test” that should be applied to the “uptown school” was whether the students there received “every advantage which they would in any approved school.” Wilkinson quickly replied that the Bronx division was not operated as a separate law school, but was part of “the whole Law School.” The Bronx students were not isolated from the Manhattan campus. The four full-time faculty all taught courses in the

⁵⁷Ignatius M. Wilkinson to Will Shafroth, November 29, 1935, appended as EXHIBIT “A,” in Dean’s Report, February 17, 1936.

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Bronx along with other part-time faculty who taught at the Manhattan campus as well. Bronx students took their final examinations at the Manhattan campus, and their exams were the very same exams taken by the Manhattan students. Moreover, many of the Bronx students worked in Manhattan during the day and could see their full-time teachers in their offices in the Woolworth Building more readily than they could if these teachers had offices in the Bronx. Bronx students had full access to the law library in the Woolworth Building, but if the Bronx library were expanded to include the required 7,500 volumes, “there could be no question then” that the students in the Bronx division would have the same advantages as students in the other divisions of the law school.⁵⁸

Wilkinson was “happy” to report that his negotiations with the ABA’s Council on Legal Education to secure its approval “were successfully terminated” in May 1936 when the Council extended its provisional approval of Fordham Law School, effective in the fall of that year. The Council customarily granted provisional approval and then final approval after a re-inspection of the Law School within two years. Mr. Shafroth re-inspected Fordham Law School in May 1937, and the Council granted final approval in the same month. Approval required Fordham to add two more full-time faculty, bringing the total to eight, and to keep the total student body to no more than 850 students. The two additional full-timers were Joseph W. McGovern and William R. White. Wilkinson evidently had persuaded the Council that the presence of a full-time professor on the Bronx campus during the day was unnecessary, because he informed Shafroth

⁵⁸“every advantage,” Will Shafroth to Dean Ignatius M. Wilkinson, December 5, 1935, appended in EXHIBIT “A,” in Dean’s Report, February 17, 1936; “the whole law school” and “there could be no question,” Ignatius M. Wilkinson to Mr. Shafroth, December 9, 1935, *id.*

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that the three full-time professors assigned to teach classes in the Bronx division had scheduled office hours from 6:00-6:30 p.m. and from 8:30-9:00 p.m., one half hour before classes and one half hour after classes. Unfortunately, no students came to see these professors before class and only “a scattering number,” perhaps not more than one or two students per professor, came to see them after class during the spring 1936 semester. The Council made a concession on the Bronx campus law library, requiring an increase to only 5,000 volumes.⁵⁹

Having won the ABA’s approval for the law school, Father Hogan directed Wilkinson to “open negotiations” with the AALS to gain membership in the association. Wilkinson feared that the full-time faculty standard would present a greater problem with the AALS than with the ABA. The “difficulty” was that the AALS was “dominated by teachers employed on the full-time basis and which in consequence can see but one side of the question.” Interestingly, Wilkinson did not feel the need to have the AALS’s approval and did not think that the Law School would be hurt by not having its approval.⁶⁰

Wilkinson submitted Fordham Law School’s application for AALS membership in the fall of 1936, less than one month after the ABA placed the Law School on its list of approved

⁵⁹Will Shafroth to Dean Ignatius Wilkinson, May 7, 1936, copy of telegram, appended in EXHIBIT “A,” in Dean’s Report, February 28, 1938; “were successfully terminated,” Dean’s Report, February 28, 1938, p. 11; “full-timers,” Ignatius M. Wilkinson to Mr. Shafroth, April 28, 1936, appended in EXHIBIT “A,” in *id.* Ignatius M. Wilkinson to Mr. Shafroth, February 21, 1936, *id.* Conditions of the ABA’s provisional approval are set out in Will Shafroth to Dean I. M. Wilkinson, May 11, 1936, appended in EXHIBIT “A,” *id.* At the June 1936 faculty meeting, Wilkinson reported to the faculty that the ABA “had approved this school, the approval to become effective on the re-opening of the school in September, 1936.” Faculty Meeting of June 4, 1936, folder 9, box 11, Law School Papers, Walsh Library, Fordham University; Faculty Meeting of June 10, 1937, *id.*

⁶⁰Dean’s Report, May 15, 1934, pp. 14-15; quotations are at p. 15.

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law schools. Herschel W. Arant, Dean of the Ohio State University College of Law and the secretary-treasurer of the AALS, visited the Law School in December to perform the required inspection for the AALS. Like the adviser to the ABA's Council on Legal Education, Will Shafroth, Dean Arant "found [the Law School's] internal standards excellent and was particularly impressed with [its] selective entrance requirements." The main issues Arant raised were some of the same issues that had delayed the Law School's approval by the ABA. The AALS accepted the resolutions of these issues Wilkinson had negotiated with the ABA, including accepting Father Pyne as a full-time professor even though he did not have a law degree.⁶¹

As Wilkinson had predicted, the most troubling issue was that the Executive Committee of the AALS found the Law School "barely {complied} now with the full-time teacher requirement." Nevertheless, the Committee decided not to question the number of full-time teachers so long as Fordham capped its enrollment at 850. Dean Arant asked Dean Wilkinson to add one or two more full-time teachers as soon as possible even though the Executive Committee would not require it to do so. He had gone out on the limb for Fordham, assuring the Executive

⁶¹Dean's Report, February 28, 1938, pp. 12-13. To trace the details, *See*, Ignatius M. Wilkinson to Dean Herschel W. Arant, July 22, 1936, appended in EXHIBIT "B," Dean's Report, February 28, 1938; H. W. Arant to Dean Ignatius M. Wilkinson, July 23, 1936, *id.*; Ignatius M. Wilkinson to Professor George Gleason Bogert, June 24, 1936, *id.*; George G. Bogert to Dean I.M. Wilkinson, July 1, 1936, *id.*; H.W. Arant to Dean I.M. Wilkinson, July 14, 1936, *id.*; Ignatius M. Wilkinson to Dean Herschel W. Arant, July 31, 1936, *id.* Regarding Fordham's application, Dean Arant's inspection and the AALS's admission of Fordham Law School to membership, *see*, H.W. Arant to Dean Ignatius M. Wilkinson, November 10, 1936, *id.*; Ignatius M. Wilkinson to Dean Herschel W. Arant, November 12, 1936, *id.*; H.W. Arant to Dean Ignatius M. Wilkinson, December 4, 1936, *id.*; H.W. Arant to Dean Ignatius M. Wilkinson, January 26, 1937, *id.*

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Committee that the Law School would more than meet the AALS standards. Adding a couple of full-time teachers “would be comforting to me,” Arant explained, “since I recommended the school for admission” and assured the Executive Committee of “a willingness on your part to comply generously with our requirements rather than stop with the smallest measure of satisfaction or requirement that will get by.” Adding more full-time faculty would not only be “comforting” to Arant, it would also prevent any future AALS inspector who might be less sympathetic toward Fordham’s membership in the AALS from denying that Arant’s faith in Fordham “had been abundantly justified.”⁶²

Wilkinson assured Arant that Fordham intended fully to comply with the AALS’s standard for full-time faculty. The Law School’s current enrollment was between 750 and 760 students, and Fordham’s “definite policy” was to limit its enrollment to 850. Wilkinson understood that, should the school’s enrollment exceed this number, it would be necessary to add another full-time teacher. As they had discussed during Arant’s inspection to the Law School, the problem of adding more full-time faculty was finding “a place for them.” Moreover, the addition of full-time faculty would require Fordham “to dismiss competent men who [sic] while technically perhaps part-time teachers actually devote substantial time to the work of the school, as they teach not less than six hours weekly and who [sic] have been members of our faculty for from eleven to twenty-four years.” Yet, a resignation due to illness and a request for a reduced teaching load of another part-time faculty member enabled Wilkinson to hire the seventh full-

⁶²H.W. Arant to Dean Ignatius M. Wilkinson, January 26, 1937, *id.*

time teacher in the fall of 1937, bringing the total full-time faculty up to nine..⁶³

Gaining AALS membership was quicker and easier than Wilkinson had anticipated. Wilkinson filed the Law School's application for membership in November 1936. Dean Arant inspected the school on December 14, and the AALS admitted Fordham Law School to its membership two weeks later at its annual meeting on December 29, 1936. The Law School joined some eighty-three other members of the Association. Fordham became the third New York City law school to claim membership in the AALS, Columbia and New York University Law Schools being the other two.⁶⁴

Though the AALS admitted Fordham to membership, the Association's executive committee "reserved decision" on the size of the Bronx campus law library until Fordham University decided the future of this division. Wilkinson had informed them that it was "not entirely certain" that Fordham would continue this division indefinitely. In the end, Fordham

⁶³Ignatius M. Wilkinson to Dean W. Arant, February 2, 1937, appended in EXHIBIT "B," *id.*; Ignatius M. Wilkinson to Dean Herschel W. Arant, October 4, 1937, *id.*; H.W. Arant to Dean Ignatius M. Wilkinson, October 7, 1937, *id.*

⁶⁴Announcement to be inserted in *The Fordham Alumni Magazine*, February 1937 issue. Folder 9, box 10. The entire correspondence is the following: Ignatius M. Wilkinson to Dean Herschel W. Arant, July 22, 1936, appended in EXHIBIT "B," Dean's Report, February 28, 1938; H. W. Arant to Dean Ignatius M. Wilkinson, July 23, 1936, *id.* See also, Ignatius M. Wilkinson to Professr George Gleason Bogert, June 24, 1936, *id.*; George G. Bogert to Dean I.M. Wilkinson, July 1, 1936, *id.*; H.W. Arant to Dean I.M. Wilkinson, July 14, 1936, *id.*; Ignatius M. Wilkinson to Dean Herschel W. Arant, July 31, 1936, *id.* Regarding Fordham's application, Dean Arant's inspection and the AALS's admission of Fordham Law School to membership, see, H.W. Arant to Dean Ignatius M. Wilkinson, November 10, 1936, *id.*; Ignatius M. Wilkinson to Dean Herschel W. Arant, November 12, 1936, *id.*; H.W. Arant to Dean Ignatius M. Wilkinson, December 4, 1936, *id.*; H.W. Arant to Dean Ignatius M. Wilkinson, January 26, 1937, *id.*

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University decided to discontinue the uptown campus at the end of the 1937-1938 academic year and to “transfer the whole uptown evening school downtown beginning in September, 1938.”

This eliminated the need for further consideration of the Bronx law library.⁶⁵

Closing the Bronx night school in 1938 did not materially affect night school enrollments. The number of applications increased from 1937 to 1940, and the Law School’s rejection rate also increased. The entering classes of night students continued to be a majority of the total first year class in each year from 1936 to 1940. Wilkinson boasted that, despite declining enrollments in other New York law schools, Fordham Law School’s selective admission policy and high academic standards had enabled it to maintain qualitatively high enrollments and to attract as many students of “good scholastic caliber” as it wished to accept. Although the Law School could have accepted more applications, Wilkinson consciously kept total enrollments below 850 students to remain in compliance with ABA and AALS standards.⁶⁶

The Law School’s finances posed an additional potential obstacle to ABA accreditation and membership in the AALS, but these associations did not press the issue. Nevertheless, the ABA’s Council on Legal Education, announced in July 1928 that it had decided “ ‘the time has arrived when there should be a thorough investigation of the financial structure and practices of the law schools of the country.’ ” The Council sent a questionnaire that year to all law schools requesting financial information and, if the law school was affiliated with a university, the

⁶⁵“transfer the whole,” Ignatius M. Wilkinson to Dean Herschel W. Arant, April 26, 1937, appended in EXHIBIT “B,” Dean’s Report, February 28, 1938; H. W. Arant to Dean Ignatius M. Wilkinson, April 28, 1937, *id.*; Dean’s Report, February 28, 1938, pp. 12-13.

⁶⁶Dean’s Report, April 3, 1940, p. 5. Minutes of the Faculty Meeting of September 16, 1937, folder 9, box 11; Dean’s Report, February 28, 1938, pp. 9-10. The breakdown in the

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financial relationship between the law school and the university. Through its “pertinent inquiries,” the Council sought to determine whether the law school was “dependent on fees for support,” was “supported out of general funds” or was “specially endowed.” It also asked for the law school’s total income and expenditures for the preceding two years, the amount of any surplus or deficit for this period, and how any deficits were met and surplus funds disposed.⁶⁷

Wilkinson inferred from the Council’s questionnaire that “financial independence or dependence of an institution” is “an important element in the rating of a law school.” The Carnegie Foundation had expressed the same idea in its report of 1928, from which he freely quoted in informing Father Duane of this development. Although money alone did not make a good law school, the Carnegie report opined, an institution that was not tuition dependent “‘obviously’ ” had “‘a tremendous advantage.’ ” One of these advantages is that such law schools could determine the size of their student bodies, the amount of pre-legal academic requirements and subsequent legal training to serve their conception of public service. The Carnegie Foundation was clearly calling for law schools to become financially independent.⁶⁸

Wilkinson predicted in 1929 that the next requirement the AALS would impose on member law schools is that they have “some independent financial resources.” He thought this demand would cause bar associations and state regulatory bodies also to adopt this requirement some time in the future. Although he did not think this action would occur in the short run, he

entering classes for the period are reported in Table 4-5.

⁶⁷Dean’s Report, January 11, 1929, p. 14.

⁶⁸Dean’s Report, January 11, 1929, p. 14, *quoting* Alfred Z. Reed, *Present-Day Law Schools in the United States and Canada* (New York: The Carnegie Foundation for the Advancement of Teaching, 1928): 101.

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advised Fordham President Father Duane that they begin to prepare for it.⁶⁹

Wilkinson recommended that Fordham University establish an endowment fund for the law school out of the Law School's surplus revenues, which he estimated could make the Law School financially independent of tuition within a relatively short period of time. He thought an endowment would be easy to establish because, "For some years past[,] the school has been returning a substantial profit in its operations." Sound policy dictated that the University credit the law school's profit to the law school, and, "after deduction of the school's pro-rata share in general University overhead," to put the profit in a conservative investment and to use the interest thus generated to finance the Law School's operation. Wilkinson also suggested that, where the Law School's profits had been used by the University to finance other departments, those departments should be charged interest and amortization "as a running expense," and the University should credit these amounts to the Law School account as if these monies had been borrowed from a third party. Wilkinson estimated that, if the Law School's past profits were added to its future earnings, and if these funds were set aside and invested as a Law School reserve, at present levels of law student enrollments "a sufficient principal sum should be accumulated to make the school a financially independent unit for all time thereafter," and only "in a relatively few years."⁷⁰

Recognizing the interconnection between a law school's financial resources and its quality as an academic institution, Wilkinson affirmed the importance of an endowment to the quality of the Fordham Law School. He predicted that, if his financial plan were adopted, "the

⁶⁹Dean's Report, January 11, 1929, p. 15.

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future development of the [law] school scholastically will follow logically and naturally therefrom.” He elaborated the reasons he thought so, explaining that all of the signposts of an elite law school, such as a graduate school and “research work in the law,” in addition to future requirements imposed by professional associations, would “require an adequate reserve of capital behind the school.” He proposed the institution of an annual budget for the Law School which set out authorized expenditures for the forthcoming fiscal year. The financial plan Wilkinson outlined was dependent upon the action of the University’s Board of Trustees.⁷¹

If the University were to agree to reorganize the Law School’s finances along the lines Wilkinson proposed, “the next logical step” would be to institute a graduate program in law. He had proposed a graduate school shortly after he became dean, but this decision was wisely postponed because “it was impossible accurately to forecast” the effect on “the size and type of student body” stemming from the “changing entrance standards” of the period and the newly established night school on the Bronx campus. Barring the imposition of additional “onerous standards” by accrediting agencies, Wilkinson thought Fordham “should be in a position in the course of the next several years to institute graduate instruction, if your trustees deem such a course advisable.”⁷²

Wilkinson renewed his request to establish a Law School endowment in 1930, informing Father Duane that the ABA had begun to admonish universities not to use law schools as cash cows and to rate law schools, in part, on the basis of their finances. The ABA had recently

⁷⁰Dean’s Report, January 11, 1929, pp. 15-16.

⁷¹*Id.*, p. 16.

⁷²Dean’s Report, January 11, 1929, pp. 16-17.

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elevated N.Y.U. Law School to a “Class A” law school, and N.Y.U. Law School Dean Henry Sommer “intimated” to Wilkinson that N.Y.U.’s elevation “was bound up with the question of devoting a substantial part of the law school revenues entirely to law school betterment.”

Furthermore, William Draper Lewis, retiring chairman of the ABA Section on Legal Education, in a speech delivered at the Section’s 1929 Memphis meeting, admonished Section members against using law schools as cash cows, either for themselves or for the universities with which they were associated. Acknowledging that the desire to make money was a natural human desire and not in itself immoral, Lewis nonetheless declared that “ ‘it is not practicable for schools designed to prepare for the important public profession of the law to be conducted for the pecuniary profit of the management, irrespective whether that management operates the school primarily for their personal benefit, or to gain funds to be expended on other departments of the institution of which the law school is nominally a part.’ ” Lewis warned that, “ ‘Once this condition exists, the controlling motive in every decision in respect to the school is not the best interests of the law student.’ ” Wilkinson advised Father Duane that the ABA and AALS were demanding that law schools secure independent financial resources or at least use all of their revenue to develop their programs and not to use any of their revenues for other departments of the university. Dean Sommer’s experience suggested that the ABA was now insisting upon the latter requirement before conferring a “Class A” rating on a law school. Wilkinson therefore renewed his request for an endowment fund for Fordham Law School, which he thought could be created by crediting the Law School for its past profits plus interest and by investing future

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earnings as a separate fund for the law school.⁷³

The Fordham University administration suggested using some of the law school's surpluses to establish several full-time professorships as one way to begin moving toward a law school endowment. It would also represent a start in acquiring and building a full-time faculty and reorganizing the law school's financial structure in a way that would enable the law school to get the "Class A" rating of the ABA, if and when they decided to seek it.⁷⁴

By 1934, the ABA had made two unsuccessful attempts to get information relating to law schools' finances, and it was making its third try. In his 1934 Dean's Report, Wilkinson informed Father Aloysius J. Hogan, S.J., who had replaced Father Duane as Fordham University President in 1930, he had recently received an ABA questionnaire sent by the Chairman of the Committee on Legal Education of the New York County Lawyers Association. Among other things this questionnaire asked for the income and expenditures of the law school for the 1932-33 and 1933-34 academic years. It also asked what disposition was made of any surplus and how any deficit was met. It appeared that Father Hogan had decided in 1934 to credit the Law School's account for its "surplus earnings" which had been paid into the University's general funds over the years. But Fordham University did not return the Law School's surplus earnings; it continued to pay them into the University's general funds. Clearly, Fordham University had decided to continue to use the Law School to subsidize its other divisions and general operations. Although the ABA did not press this issue in the 1930s, the question of how much of the Law School's revenues Fordham University used to finance other departments became a hotly

⁷³Dean's Report, February 20, 1930, pp. 11-12.

contested issue with the ABA in the 1970s and 1980s.⁷⁵

BAR EXAMINATION

The bar examination became an effective obstacle to entering the practice of law. When they were introduced in the late nineteenth century, bar exams in most states consisted of a short, perfunctory oral interview with a local judge. States gradually changed the bar examination into an effective barrier to entry when they created central examining boards to replace judges and substituted lengthy written examinations for the pro forma oral interview. By World War I, 37 of 49 jurisdictions had central boards of bar examiners, and, although evidence relating to the difficulty of bar exams is lacking, bar passage rates declined over the first three decades of the twentieth century, precipitously in some states. Bar passage rates varied directly with the local bar's interest in limiting the number of lawyers. The largest declines occurred in the urban, industrial states. For example, between 1904-06 and 1922-29, the bar passage rate in New York declined from 74% to 47%, and in Connecticut, it dropped from 73% to 45%. New Jersey's bar passage rate was low and remained so, hovering around 50%. By the 1920's, the lowest passage rates occurred in states that contained large cities, significant and growing immigrant communities and many applicants for admission to the bar. The states with the highest pass rates were in the frontier states and states populated by small, homogeneous, rural communities that experienced little population growth, had small numbers of lawyers and relatively few entrants to

⁷⁴ Dean's Report, February 20, 1930, p. 12.

⁷⁵ Dean's Report, May 15, 1934, pp. 25-26. Quotations are in *id.*, pp. 25-27; continued to pay into the University's general funds, Ignatius M. Wilkinson to The Rev. Robert I. Gannon,

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the legal profession. In these states, passage rates ranged from 100% in Delaware, 84% in Iowa, and 82% in Wyoming, to a low of 70% in Tennessee.⁷⁶

Demographic trends and the downturn in economic conditions in the 1930's contributed to further declines in bar passage rates. Rapidly rising numbers of lawyers, particularly lawyers with immigrant backgrounds, and the contraction of the economy caused by the Great Depression led to lower pass rates. About three quarters of the Nation's jurisdictions failed a higher proportion of examinees, and the aggregate pass rate for all jurisdictions fell from 59% in 1927 to 45% in 1934. A comparison of law students bar pass rates to medical students medical board pass rates suggests a relationship between overcrowding and low examination pass rates. Whereas the number of medical students fell from 25,171 in 1900 to 21, 597 in 1930, the number of law students nearly quadrupled from 12,408 to 46,751, and the number of law students in 1930 was more than double that of medical students. Between 1935 and 1939, the pass rate of the 35,890 examinees who took the medical board examinations was 88.5%, but the bar passage rate of the 82,650 examinees who took the bar examination was only 48%. Part of this disparity may have been attributable to more selective medical school admission policies, but not all of it. Yale Law School Dean Charles Clark acknowledged that low bar passage rates were "obviously" attributable to quotas that bar examiners applied, and he asserted that such quotas were not only appropriate, but necessary.⁷⁷

A committee of the New York County Lawyers Association apparently agreed with Dean

May 15, 1941, folder 2, box 10; Wilkinson to Father Gannon, May 26, 1941, *id.*

⁷⁶Abel, *American Lawyers*, pp. 64-5, 72; Tables 15 and 16, pp. 266-68.

⁷⁷ Abel, *American Lawyers*, pp. 64-5.

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Clark, because it concluded in 1936 that the local bar was overcrowded, and it urged the imposition of quotas to limit the number of applicants admitted to the practice of law in New York. Dean Wilkinson opposed this finding and recommendation, and he presented evidence showing that the Association's view was based on misinformation about the number of law school graduates. He demonstrated that student enrollments in the six New York City law schools had declined by almost 50% during the preceding eight years, from 10,814 in the 1928-1929 academic year, just prior to the stock market crash in 1929, to 5,718 in the 1936-1937 school year. Wilkinson argued that, to the extent that there were too many lawyers in New York City, the overcrowding was attributable to unusually high law school enrollments during the 1920s, which he maintained were largely corrected. Moreover, Wilkinson noted that 54% of the 5,718 students enrolled in the New York City law schools, more than one-half, 3,085, attended the two law schools in Brooklyn, Brooklyn Law School and St. Johns Law School. In his view, there may have been too many lawyers in Brooklyn, but not in Manhattan.⁷⁸

The New York County Lawyers' Association was not convinced by Wilkinson's

⁷⁸Faculty Meeting June 10, 1937, Faculty Meetings, 1933-1944, folder 9, box 11, Law School Papers, Walsh Library, Fordham University. Wilkinson reported enrollments for the six New York City law schools:

1928-1929. . . .	10,814
1929-1930. . . .	9,248
1930-1931. . . .	8,481
1931-1932. . . .	6,215
1932-1933. . . .	5,835
1933-1934. . . .	6,610
1934-1935. . . .	6,452
1935-1936. . . .	5,905
1936-1937. . . .	5,718

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arguments, and it published a report in 1936 of a survey of New York City lawyers prepared by the Committee on Professional Economics, which was created in 1932 specifically to conduct the survey. The committee sent out the survey in September 1934 to all of the 15,000 lawyers practicing in New York City, and it received a total of 5,000 replies, 40% of which were from Association members. Among other data, the report asserted that the median income of the New York City lawyers in 1933 was \$2,990. Some 42.5% of them earned an income “below the respectable minimum family subsistence level of \$2,500 per year; one-third earned less than \$2,000 a year; one sixth earned less than \$1,000, and the income from practicing law for almost one tenth was at or less than \$500 per year.” The committee reported the startling fact that “a substantial number are on the verge of starvation, with almost ten per cent of the New York City Bar virtually confessed paupers, as indicated by applications for public relief.” The committee reported “that in 1935 about 1,500 or 10% of our bar qualified for relief under a pauper’s oath.” It concluded that “Overcrowding is largely responsible for this economic situation.”⁷⁹

Richard J. Bennett, class of 1942 and Chairman of Schering-Plough at the time of his oral history, recounted the difficult economic times when he was a night student. He was lucky to get job earning \$15 per week when he graduated from Fordham University in 1938. While he was a law student, each evening he would meet his future wife, who worked near the Woolworth

⁷⁹New York County Lawyers’ Association Committee on Professional Economics, *Survey of the Legal Profession in New York County* (New York: New York county Lawyers’ Association, 1936): questionnaires sent and replies received 6; median income 16; “below the respectable minimum” 57; “that in 1935” 16, footnote “*”; “overcrowding” 57. The median income of lawyers in 1933 of \$2990 is equal to \$44,758 in 2005 dollars. The respectable minimum family subsistence level of \$2,500 is equal to \$37,432 in 2005; \$2,000 is equal to \$ 29,938; \$1,000 is equal to \$14,969; and \$500 is equal to \$7,485.

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Building, and they would go to Chock 'Full O' Nuts. "I would permit her to have a cup of coffee for a nickel, always Chock 'Ful [sic] O' Nuts, and I would allow myself the cream cheese and nut sandwich and the coffee and one donut. I think that cost was twenty cent a day." Mrs. Bennett "still to this day remembers that she was confined to a cup of coffee at Chock 'Ful [sic] O' Nuts when she was also hungry. She would watch me eat the sandwich," Bennett concluded without any discernable expression of guilt.⁸⁰

The Committee on Professional Economics recommended several ways to reduce the number of lawyers in New York City, including "determining," that is, limiting "the number of new lawyers to be admitted, year by year" through a " 'quota system' whereby only so many new lawyers, chosen on a fair and impartial basis, are allowed admission as it is estimated the community will need." It also suggested better ways of testing for the character of applicants to New York's law schools. The committee thought that the state's educational standards were "commendably high as they stand," but, acknowledging the advancements in "the sciences of vocational and aptitude testing," it recommended that the Association "study all such methods" relating to "guidance or testing" of law school applicants. It also recommended expanding the content of legal education within law schools, suggesting "the use of compulsory clerkships or apprenticeships [and] the extension of law school curricula."⁸¹

Leaders of the New York bar were very concerned about the "lack of education and

⁸⁰Interview of Dennis McInerney, Esq., by Robert Cooper, Jr. on May 1, 1989, Transcript No. 51, Book 2, p. 12, Oral History Project, Fordham Law School Archives; Interview of Richard J. Bennett by Robert Cooper, Jr. on May 11, 1989, Transcript No. 55, Book 1, pp. 9, 22, Oral History Project, Fordham Law School Archives

⁸¹"determining the number" *Id.*, p. 60; "employed in other countries" *id.*; "commendably

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culture of many of the men” who were entering the legal profession in New York City in 1934, which led them to believe that “the profession is over-crowded because of an over-stimulation of men to pursue the study of law and of an over-supply of law school graduates.” Consequently, state and local bar associations gave legal education and entry to the profession their “continual attention.” A New York State Bar Association report on legal education in 1934 recommended the elimination of the June bar examination and a limitation on the number of times an applicant would be permitted to take the examination “to three and no more.” Law school deans generally approved eliminating the June bar examination, but Wilkinson thought that the second recommendation “was arbitrary in the extreme and vicious in the manner in which it was presented.” Wilkinson was able to get the issue deferred until the New York State Joint Conference on Legal Education acted on the issue, which was referred to a subcommittee chaired by Dean Wilkinson.⁸²

Wilkinson’s subcommittee’s findings are interesting. The New York Board of Law Examiners did not have a “fixed passing mark” for the bar examination. The method it used to determine a passing grade was “rather complicated,” but, the passing grade for the examinations given from 1931 to 1933 was slightly below 60%. The subcommittee concluded that the passing grade was “not excessively high.” The examinations were comprehensive and “sufficiently difficult to furnish a real test of the applicant’s knowledge of legal rules and principles and of his ability to apply the same to the practical problems confronting the practitioner.” It determined

high” *id.*, pp. 59-60; “the use of compulsory clerkships” *id.*, p. 60.

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the “severity” of the examinations and how they were graded by looking at the percentage of applicants’ success or failure. The results are as follows:

DATA AS TO FIRST TIMERS WHO PASSED BOTH GROUPS AFTER REVIEW

	<u>MARCH</u>		<u>JUNE</u>		<u>OCTOBER</u>	
	<u>No. Exam’d.</u>	<u>% Passing</u>	<u>No. Exam’d.</u>	<u>% Passing</u>	<u>No. Exam’d.</u>	<u>% Passing</u>
1929	248	47	2499	45	483	37
1930	273	45	2221	39	528	40
1931	231	47	2181	38	651	35
1932	237	40	1757	43	565	35
1933	214	38	1180	45	367	37
1934	175	42	1454	49	418	42

The report noted that the pass rate for first-time exam takers in each of these examinations never reached 50%, and in most examinations it hovered around 40%.⁸³

The study then inquired whether the low pass rates were due to the “poor caliber of the applicants” or to “the severity of the grading.” It examined the results of the October 1933 examination and found that 1,405 applicants took this test, of whom 367 were first-timers. Of the entire class, only 1% or 14 earned a grade of 70% or better, and 6% or 84 test takers earned a grade as high as 63%. The passing grade was 58.8% and was separated by only 11 points from the highest grade of 70%. A mere 41% of the class earned a passing grade. The committee

⁸²Dean’s Report, May 15, 1934, pp. 19-22.

⁸³Report of the Committee on Whether to Limit Applicants in the Number of Bar Examinations Permitted of the Joint Conference on Legal Education of the State of New York, p.

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concluded that the examiners graded the examination “with considerable severity.”⁸⁴

Wilkinson believed that the bar examination standards in New York State were “strict” and that the bar examiners used a quota to restrict entry into the legal profession. “There is no absolute passing mark,” he acknowledged. Rather, the passing grade “fluctuates depending on the results achieved by the particular group taking any examination.” Consequently, one’s examination was “marked not objectively on his own paper, but comparatively on the basis of the results achieved by the entire group taking the examination.” Although “the Bar Examiners do not admit this to be the case,” Wilkinson insisted, “it is obvious that in practice their methods result in their taking the top forty to fifty percent of a particular group and passing them.” He thought this was “evident from the fact that although the standards in the law schools of the state have been improved vastly in ten years, the improvement is not reflected in any great increase in the percentage of success on the bar examination.” The increased standards of all of the state’s law schools, even those “formerly sub-standard schools in this city,” improved “the quality considerably of any group taking a particular bar examination.” He was certain that the Bar Examiners were holding these better applicants “to a higher standard of performance to achieve a passing grade” and thus capping the pass rate at 40% to 50% of the group taking the bar examination.⁸⁵

Given the efforts of national and local bar associations to reduce the numbers of new lawyers by reducing the bar passage rate, which in New York State was below 50%, it was with

4; “sufficiently difficult,” *id.*, p. 5; pass rate table is in *id.*, p. 6.

⁸⁴*Id.*, p. 7.

⁸⁵Dean’s Report, April 3, 1940, p. 15.

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understandable pride that Dean Wilkinson found that Fordham Law School graduates were remarkably successful in passing the New York bar examination and being admitted to practice. For example, Wilkinson estimated that all of the 300 to 325 members of the June 1930 graduating class who were eligible to take the bar exam did take it at one of the three times it was offered in the nine months following their graduation. He found that 255 (78% to 85%) of these graduates passed the bar exam and were eligible for admission to the bar on satisfying the requirements of the Committee on Character. Wilkinson believed that the 1930 results were “substantially representative of the results in other years.”⁸⁶

A detailed analysis of the Law School’s graduating class of 1933 who took the bar examination revealed a direct correlation between law school grades and bar passage rates. Of the twenty-three members of the 1933 class who graduated with an average of B+ or better and indicated that they intended to take the bar examination in June 1933, twenty-two passed the bar. Wilkinson was unable to determine whether the twenty-third actually sat for the exam. If that person did not, then the bar passage rate for Fordham’s best students was 100%. If that person took the exam and failed it, the passage rate was still 95%, an extraordinarily high rate in normal times, it was an extraordinary rate when the New York Bar Examiners were failing over 50% of exam takers. On the other hand, students who barely maintained the required “C” average and insisted on taking the June exam did not do well, though Wilkinson did not report how well or badly they fared. He explained that good students were usually able to review their law school courses “in the three weeks which elapse between graduation and the bar examination.”

⁸⁶Ignatius M. Wilkinson to The Rev. Charles J. Deane, S.J., Fordham University, October 7, 1931, attached in EXHIBIT “C,” Dean’s Report, January 28, 1932.

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Students who did not do so well in law school find “this time too short but usually cannot be dissuaded from taking a chance.” If the poorer student waited until fall to take the October exam, Wilkinson mused, he would have “a very much better chance of passing the test,” provided, of course, that he prepared adequately.⁸⁷

Wilkinson surveyed the bar results of Fordham graduates in the classes of June 1934 and June 1935, and he again found a direct correlation between success in law school and success in passing the bar examination. He also found that “at least 85%” of the class of 1934 had passed the bar examination by the following March, and almost 75% of the class of 1935 had passed the bar examinations given in June and October of that year. Those who graduated with grades of “B” or better or who maintained a high “C” average had “little or no difficulty in passing” the bar. Students who “barely” passed their courses with a minimum “C” average continued to have difficulty.⁸⁸

There was a sharp decline in the bar passage rates of Fordham graduates in 1936, the year the New York County Lawyers Association concluded that the local bar was overcrowded. The lower pass rates continued to World War II. However, graduates who were B+ and B students continued to pass at relatively high rates. It was the C students who brought down the average. Counting those applicants who passed the entire or one-half of the June 1939 exam, 95.6% of the applicants who graduated with a B+ average passed the exam; 79.4% of the B group passed. Only 40% of graduates who maintained a C+ average passed, and 9% of the C- students passed.

⁸⁷Dean’s Report, May 15, 1934, pp. 16-17;

⁸⁸Dean’s Report, February 17, 1936, pp. 12-15; Dean’s Report, April 3, 1940, pp. 15-17.

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The overall pass rate of the class of 1939 who took the June 1939 exam was only 68%.⁸⁹

Despite their poor performance on the June 1939 bar exam, Wilkinson believed the “C” students had the capacity and the training to pass the exam. He attributed their high failure rate, especially that of the night school graduates, to insufficient time to prepare adequately for the June exam. The state administered this exam just three weeks after the students finished their law classes. Wilkinson thought that three weeks was not sufficient time for the “C” students to prepare for the bar examination, and he tried to persuade them to wait until the October exam. He was confident that much greater numbers” would pass on the first try, because they would have had “an opportunity of a thorough review of their entire law school curriculum.” Wilkinson tried to talk the “C” students out of taking the June exam, but he could not “overcome” the “tendency of a great many of them to gamble” on passing it, even “though they admit afterwards that they made no adequate review of their course.” The “great majority” of Fordham’s “C” students eventually passed the bar exam by the second or third try. This was crucial to Wilkinson’s claim regarding the competency of Fordham’s “C” students, because about one-half of the law school’s graduating class were “C” students.⁹⁰

Several commercial courses were offered that prepared law school graduates for the bar exam. Most students in New York took the course offered by Harold Medina in the 1930s and 40s. Most Fordham students took a course offered by Professors Blake and Finn, both of them Fordham Law faculty. These professors lectured over the course of about one month on subjects

⁸⁹Dean Wilkinson reported the June 1939 bar exam results in Dean’s Report, April 3, 1940, pp. 15-17.

⁹⁰All of the quotations are in Dean’s Report, April 3, 1940, p. 17; *see also id.*, pp. 16-18.

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that were parts of old Bar Exams. Students took notes and studied the notes and outlines.⁹¹

The pass rate of the Class of 1940 on the June bar exam was somewhat better than the class of 1939. Over 76% of the class passed both parts of the examination “in not over three and in most cases not over two tests.” The exams were given in June and October 1940 and March 1941. The “average success rate of the first-timers as computed by the State Board of Law Examiners for the year 1940 was 66%.” The class of June 1941 also did “particularly well in the June [1941] bar examinations,” Wilkinson reported to the faculty. As far as he “could discover[,] substantially 60% of the class had been completely successful in the tests.” Information relating to bar passage rates disappears from the Law School records until several years after the end of World War II.⁹²

In New York State in the 1920s, the Court of Appeals rules required law school graduates to serve a one year law office clerkship, unless the graduate had also graduated from college, in addition to passing the bar examination before being admitted to practice. In 1929, the Court of Appeals decided to require law school graduates who were also college graduates to serve a six month clerkship. A question arose in 1933 whether law school graduates who had also graduated from college should be exempt from the clerkship requirement. The Joint Conference on Legal Education, of which Dean Wilkinson was a member, conferred with the New York Court of Appeals on this issue, and Judge Frederick E. Crane of the Court of Appeals solicited

⁹¹Interview of Caesar L. Pitassy by Robert Cooper, Jr. on May 18, 1989, Transcript No. 56, Book 3, p. 14-15, Oral History Project, Fordham Law School Archives.

⁹²Minutes of Faculty Meeting of June 5, 1941; Minutes of Faculty Meeting of June 4, 1942.

Dean Wilkinson's views on the question.⁹³

The question of law office clerkships in the 1930s offers insights into the interactions among contemporary views of legal education, the state of legal specialization and its effects upon the career paths of law school graduates, law firm hiring practices, and economic market forces. Dean Wilkinson thought the clerkship requirement should be eliminated in its entirety, not just for college graduates. The law office clerkship was “easy to defend in theory,” Wilkinson conceded, since law schools did not purport to teach law students how to practice law. Law school graduates were expected to learn how to practice on the job. But, law firm clerkships did “not work out well in practice,” Wilkinson maintained. Requiring all law school graduates to serve a clerkship greatly increased the number of law graduates seeking clerkships, which made it more difficult “to secure satisfactory positions in reputable offices,” even in “ordinary times.” In the depths of the Great Depression, the difficulty was even greater. Moreover, this requirement created a buyer's market. Prospective employers in many law offices, knowing that young graduates must serve a clerkship, were exploiting law clerks by reducing their salaries, if they paid them any salaries at all. Wilkinson suggested that restoring the rule on clerkships to that in place prior to July 1, 1929, which exempted college graduates from the clerkship requirement, would lessen the demand for clerkships, which should end the exploitation of law clerks, and increase the feasibility of placing graduates in satisfactory law

⁹³Ignatius M. Wilkinson to Hon. Frederick E. Crane, February 24, 1933, appended as EXHIBIT “F” Dean's Report, May 15, 1934; Dean's Report, May 15, 1934, pp. 22-3; Dean's Report, April 3, 1940, p. 10.

offices.⁹⁴

Wilkinson agreed with an argument made by proponents of the current rule that “the law school graduate has little training in the art of practice, however well he may be versed in the science of law.” But the answer to this argument, Wilkinson maintained, was that, although “theoretically . . . correct, . . . in practice it by no means works out that way.” Few law graduates would “attempt to practice independently without some association with a law office . . . in order to gain such practical experience as may be necessary.” Furthermore, serving a clerkship in a law office did not ensure that the clerk would gain the kind of practical experience necessary to open his own law office. Even in 1933, law firms had become large enough to departmentalize, and some small law offices had become specialized in one particular field of the law. Placed in either kind of practice, the law clerk might spend all of his time doing specialized work without gaining any experience in the general practice of law.⁹⁵

Restoration of the older rule, under which college graduates were exempt from the clerkship requirement, would have an indirect benefit to the legal profession. Wilkinson argued that it would “stimulate men” voluntarily to complete their college education before entering law school. Whether Wilkinson’s arguments influenced the decision of the Court of Appeals is uncertain. However, the Court of Appeals amended its rules on March 25, 1933 and exempted college graduates from the law clerkship requirement. Wilkinson was happy with the court’s

⁹⁴Ignatius M. Wilkinson to Hon. Frederick E. Crane, February 24, 1933, appended as EXHIBIT “F” Dean’s Report, May 15, 1934; Dean’s Report, May 15, 1934, pp. 22-3; Dean’s Report, April 3, 1940, p. 10.

⁹⁵Ignatius M. Wilkinson to Hon. Frederick E. Crane, February 24, 1933, appended as EXHIBIT “F” Dean’s Report, May 15, 1934; Dean’s Report, May 15, 1934, pp. 22-3; Dean’s

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decision, not only because he thought it was the right decision, but also because it reduced the time required for a student to be admitted to the bar, an important consideration at the time because Fordham was preparing to lengthen the night division from three to four years. Early in 1940, the New York Court of Appeals made the decision Wilkinson had argued it should have made in 1933: it repealed the one year clerkship requirement for applicants to the bar who did not have a college degree.⁹⁶

New York bar associations displayed “almost continuous activity” in pushing for higher standards for law schools and admission to the bar in 1935 and 1936. Wilkinson attributed the causes to “the lack of education and culture of many men who enter the practice of law, the generally overcrowded condition of the profession, and a lack of sufficient legal business for those at the bar as a consequence of the depressed times through which the country has been passing now for six years.” He also noted that a small minority of lawyers lacked “those qualities of character” that were important in every profession and particularly “one of the fiduciary nature of that of the lawyer.”⁹⁷

The Joint Conference proposed limiting admission to the bar to law school graduates who also graduated from college. This proposal was predicated on the assumption that a college education was “the best means of acquiring the general education and fitness needed as pre-legal

Report, April 3, 1940, p. 10.

⁹⁶Ignatius M. Wilkinson to Hon. Frederick E. Crane, February 24, 1933, appended as EXHIBIT “F” Dean’s Report, May 15, 1934; Dean’s Report, May 15, 1934, pp. 22-3; Dean’s Report, April 3, 1940, p. 10.

⁹⁷“almost continuous activity” and “the lack of education,” Dean’s Report, February 17, 1936, pp. 21-22.

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requisites” and “a full course of study at an approved law school” was the “only method of obtaining adequate legal training” to practice law “under present-day conditions.” When Rollin W. Meeker, chairman of the Committee on Character and Fitness of the Third Judicial Department was appointed chair of the Joint Conference committee considering this proposal, and he solicited Wilkinson for his views on the matter.

Wilkinson replied with a lengthy discussion setting out his reasons for opposing the college degree prerequisite. Part of his argument was based on his experience as Dean of Fordham Law School. Seventy percent of Fordham’s students were college graduates, and Wilkinson found that a “college degree in itself [was] not a guarantee of the requisite intellectual or moral fitness” for the study of the law. Students who had only two-years of college and achieved good undergraduate academic records made better students, in Wilkinson’s experience, than college graduates with poor academic records. Instead of “an increase in quantitative requirements,” Wilkinson recommended “a proper selective process” of admitting students to law school as an effective method of recruiting high caliber students.⁹⁸

Perhaps a more important reason for retaining the two-year college prerequisite is that it was “supported by substance and reason,” that is, by a philosophy of education and a theory of personal development that he derived from the views of Dean Huger Wilkinson Jervey of Columbia University School of Law. College administrators had concluded that a “boy” completed his secondary education and became a “man,” at least “observably different from the boy that entered” college, by the beginning of his third year. Up to this point, the student was

⁹⁸Rollin W. Meeker to Ignatius M. Wilkinson, October 9, 1934, appended as EXHIBIT “B,” Dean’s Report, February 17, 1936.

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“being mentally disciplined and [was] absorbing information about the world.” As part of his general education, he was acquiring logical, mathematical, and language “tools,” learning about the natural sciences and “the aspirations of literature and art. Colleges recognized this change” at a student’s third year of college “by ‘developing a conscious change of attack’ to his education. The theory now is” that by his junior year the student, “under skillful guidance,” should begin “to find out things for himself, to specialize, to discover, to construct something with the tools and viewpoints he has gained.” The achievement of these latter objectives was what law schools offered. The first two years of college work consisted of “general training and in the last two the student begins to specialize.”⁹⁹

Deans Wilkinson and Jervey agreed that requiring a college degree as an educational prerequisite to law study was “unjustified. The two-year requirement is not a mathematical compromise. It has substance and reality behind it.” Wilkinson also cited as support for his position the study conducted by the University of Chicago Law School “several years ago” which demonstrated that students who entered law school with three years of college work did better than those who entered with a college degree. Requiring a college degree exceeded ABA requirements and the academic prerequisites of most of the Nation’s law schools, even the best law schools. Wilkinson concluded that “there is no great basis in fact” supporting advocates of a college degree requirement “as the solvent of the conditions which they believe should be corrected.”¹⁰⁰

⁹⁹Ignatius M. Wilkinson to Rollin W. Meeker, October 11, 1934, appended as EXHIBIT “B,” Dean’s Report, February 17, 1936.

¹⁰⁰Ignatius M. Wilkinson to Rollin W. Meeker, October 11, 1934, appended as EXHIBIT

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Consistent with Wilkinson's views regarding proper undergraduate preparation for law school studies, Fordham Law School had an arrangement with Fordham College in the 1920's and 1930's in which students who wished to go to law school and had successfully completed three years at the College were permitted to take their senior year at Fordham Law School. If they completed the first year of law school with "satisfactory marks," Governor Malcolm Wilson recalled, "they received their degree from the College. In other words, that was the substitute for the senior year at Fordham College." Apparently, this was a common practice in the 1920's and 1930s, because Governor Wilson claimed that "many" of his classmates entered the Law School under this arrangement.¹⁰¹

Wilkinson's last argument against the college degree requirement emanated from his view of American higher education in the 1930's and its corrosive effect on moral development. He was "no believer in the value of a college education alone to guarantee character," because he believed "that much that is taught in many of our so-called best colleges today is destructive of good character." Wilkinson singled out departments of philosophy as the culprits, condemning the scientific naturalism, physical determinism, and moral relativism they espoused. In many of these departments, Wilkinson complained,

students are taught that there is no essential difference between right and wrong;
that there is no such thing as mind, or if there is we cannot know anything about
it; that man is not possessed of a power within him of self-determination in view

"B," Dean's Report, February 17, 1936.

¹⁰¹Interview of Honorable Malcolm Wilson by Robert Cooper, Jr. on March 14, 1989, Transcript No. 45, Book 3, p. 1, Oral History Project, Fordham Law School Archives.

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of a known end, or what the law recognizes as free-will, but that all of his actions are conditioned reflexes determined by physical and chemical stimuli acting upon him from without, that there is no such thing absolutely as truth, not even mathematical truth; and similar philosophical rot. Many students hearing such stuff handed out by supposedly learned teachers do not fail to carry the lesson to its logical conclusion.

Rather than ensuring good moral character, America's colleges and universities were undermining it. "We have been sowing the wind for over a generation with many of these doctrines, and I am not surprised to find that now we are reaping the whirlwind," Wilkinson proclaimed. He favored the two-year rule and opposed compelling a student "to go on and be corrupted by theories" he had just described, because he was "certain that the moral character of many college graduates cannot help but be affected adversely by teachings of this kind." He believed that the "record of disbarments and disciplinary proceedings" in New York City, if examined closely, would probably "disclose that graduates of our best colleges and even of our best law schools are to be found among those who have violated the ethics of our profession as well as those who have not enjoyed these advantages."¹⁰²

Wilkinson's opposition notwithstanding, the committee recommended that the college degree requirement proposal be adopted. The Joint Conference did not adopt the committee's recommendation, however, but referred it back to committee for reconsideration and further

¹⁰²Ignatius M. Wilkinson to Rollin W. Meeker, October 11, 1934, appended as EXHIBIT "B," Dean's Report, February 17, 1936.

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study. New York State did not adopt a college degree prerequisite until after World War II.¹⁰³

On the eve of World War II, some of the law schools in New York State were either considering raising their admission standards, or they had already done so. Other law schools simply met the Court of Appeals mandated minimum two year college prerequisite, at least nominally. The two year standard had remained unchanged since the Court of Appeals put it into effect in 1927, and, in 1940, all of the law schools in New York State conformed to or exceeded this standard, at least nominally. Wilkinson believed that Brooklyn, New York, N. Y. U. and St. John's Law Schools accepted applicants who passed equivalency examinations in certain specified subjects instead of actually completing two years of college work, as was permitted by the New York Court of Appeals rules. N.Y.U. was thinking about increasing its requirement to three years, and Syracuse Law School did require three years of college. Columbia and Cornell Law Schools required the baccalaureate degree, except for students who were enrolled in a combined six year college and law school program. Columbia, like Fordham, applied selective admission methods, and its entire student body consisted of college graduates.¹⁰⁴

Fordham had "in fact increased our actual standards greatly by introducing and gradually applying with greater severity qualitative or selective standards of admission." In increasing its admission standards, the Law School was assisted by its obligation to keep its enrollments below 850 students in order to retain ABA accreditation and AALS membership. Employing higher

¹⁰³Rollin W. Meeker to Ignatius M. Wilkinson, October 12, 1934, *id.*; Dean's Report, February 17, 1936, p. 25.

¹⁰⁴Dean's Report, April 3, 1940, pp. 7-8.

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admission standards, the proportion of Fordham law students who entered the Law School with an undergraduate degree continued to increase “to a gratifying extent” through the 1930's. In the 1937-38 school, 70% of Fordham's law students had a college degree. The following year that percentage increased to 79%, and it reached 83% in the 1939-40 academic year. The colleges represented in the 1939 entering class numbered sixty-five, and the college graduates in the entire student body held their degrees from 108 colleges.¹⁰⁵

Noting that four-fifths of Fordham's students entered the Law School with college degrees, Wilkinson raised a question whether Fordham should increase its pre-law education requirement from two years of college to either three years of college or a college degree. Wilkinson proposed that, if Fordham were to increase its pre-law education requirement, it “should go the whole way and demand a college degree either in liberal arts or general science or an equivalent degree, and not merely add completion of an additional year of college work as our entrance requirement.” It is interesting that the New York Education Department listed these arts and sciences degrees as the only acceptable college degrees. Wilkinson suggested, however, that, if Fordham were to adopt a college degree prerequisite, it should follow the practice of law schools that had a degree prerequisite and accept graduates of schools of engineering who were “able to obtain a law student qualifying certificate because their courses have been found by the State Education Department to include at least two years of cultural work or its fair equivalent.”¹⁰⁶

¹⁰⁵“in fact increaser,” Dean's Report, April 3, 1940, p. 7; “to a gratifying extent,” Dean's Report, April 3, 1940, p. 6.

¹⁰⁶“should go the whole way,” Dean's Report, April 3, 1940, p. 8; “able to obtain,” *id.*

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Wilkinson conceded that there were some good reasons to adopt the college degree prerequisite for the entering class of 1941. It “would put us in the most select category of law schools in the country.” He listed only eight law schools that had a college degree prerequisite: Columbia, Catholic University, Georgetown, George Washington, Harvard, Pennsylvania, Pittsburgh and Yale. In 1940, Catholic University had only about fifty students and was “a negligible factor,” in Wilkinson’s opinion. Only two, Georgetown and George Washington, offered part-time programs. And, so far as he knew, only Columbia, Harvard and Yale “employ in addition qualitative standards of admission,” and “Harvard only within the last few years.” Confessing that he had to check with Georgetown and George Washington to verify that they did not apply “qualitative standards,” Wilkinson suggested that if Fordham were to adopt a college degree requirement, it could “boast . . . that we were the only law school conducting day and evening classes requiring a degree for admission and at the same time in addition selecting out students on the basis of their presumptive fitness for law study as indicated by their college records, and accordingly rejecting applicants with poor records.”¹⁰⁷

Joe McGovern taught at the Law School at this time, and he confirmed the high quality of Fordham’s students, particularly the night students. He considered the classes he taught then to be the best he had ever seen. “I don’t think in my overall thirty years of teaching, I ever saw a class superior to the night classes I had in say ’39, ’40 and ’41. Boy, they were sharp, and they were in there to get everything they could get out of it,” he boasted. “The students worked during the daytime. They weren’t there for fun, they were there to learn. Gee, they were

¹⁰⁷All of the quotations are in Dean’s Report, April 3, 1940, p., p. 11, except “boast . . . that we were,” which is at *id.*, pp. 11-12.

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brilliant kids.” McGovern believed the students’ superior performance “had a lot to do with the hard times.” With a law degree, they might earn “a little more on their job.”¹⁰⁸

This was a time of fewer applications and shrinking enrollments. Fordham was struggling to maintain its enrollments, which were declining to levels that made the school’s mission of providing excellent legal education precarious. To maintain its student body at 850, Fordham had to enroll at least 300 new students each year. “For the last three years we have not found it possible to achieve this registration,” Wilkinson informed Father Gannon in January 1941. The “principal cause” was the school’s inability to receive “a sufficient number of qualified applications (under our selective entrance standards) for the day school.” This inability was “undoubtedly . . . due principally to the times,” by which he meant the Depression. He reported that “diminution in law school registration” affected other law schools and was pervasive in the “Law School world generally in this city.”¹⁰⁹

Depressed economic conditions affected enrollments throughout Fordham University, forcing President Gannon to cut faculty salaries by five percent. In June 1941, Wilkinson explained the financial condition of the Law School to the faculty, which required him to ask them to take the five percent pay cut. Though the faculty regretted the salary reduction, they recognized its necessity, and they were “entirely cooperative.” The Dean passed onto President Gannon a few letters from faculty expressing their understanding of the “present necessity” and their willingness to accept the pay cuts. Professor Wormser was the most emphatic, writing that

¹⁰⁸Interview of Joseph W. McGovern, Esq., by Robert Cooper, Jr. on April 3, 1989, Transcript No. 49, Book 2, pp. 38-39, Oral History Project, Fordham Law School Archives.

¹⁰⁹**Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 7, 1941, folder 2, box

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“During twenty eight [sic] years of service to Fordham, I have been unswervingly loyal, and you may rest assured that my loyalty will always continue.” However, the reduction in “our paltry salaries” persuaded Joe McGovern to return to practice and to teach part-time. The salary cuts were university-wide, and they were not restored until after World War II. The United States’ entry into the War was almost six months to the day away.¹¹⁰

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¹¹⁰Minutes of Faculty Meeting of June 5, 1941; “entirely cooperative,” Ignatius M. Wilkinson to The Rev. Robert I. Gannon, June 12, 1941, folder 2, box 10; Maurice Wormser to Dean Wilkinson, June 4, 1941, *id.*; Francis J. MacIntyre to Ignatius M. Wilkinson, June 6, 1941, *id.*; Thomas E. Kerwin to Ignatius M. Wilkinson, June 10, 1941, *id.*; “our paltry salaries,” Interview of Joseph W. McGovern, Esq., by Robert Cooper, Jr. on April 3, 1989, Transcript No. 49, Book 2, p. 38, Oral History Project, Fordham Law School Archives; Robert I. Gannon, Memorandum to All Deans, Jan. 25, 1946, folder 3, box 10.

CHAPTER 5: WORLD WAR II & ITS AFTERMATH: 1941-1953

World War II profoundly affected law schools and legal education. After the United States formally entered the War in December 1941, hostilities greatly diminished the pool of male law students who were prime candidates for military service. Manpower shortages in the military and the risk of enrolled law students being drafted prompted law schools to adopt accelerated curricula which shortened the time to complete all of the requirements for the LL.B. degree. Accelerated curricula created a risk of lower standards.

The War cut deeply into student enrollments at Fordham Law School, as it did in law schools throughout the nation. The Selective Training and Service Act (the Burke-Wadsworth Bill) enacted in September, 1940 required the registration of all eligible men between the ages of 21 and 35. Between 1940 and 1943, enrollments in all American law schools dropped by 80 per cent. Columbia Law School Dean Elliott Cheatham reported to the New York State Bar Association at its annual meeting in January, 1943 that “the war has struck the law schools with greater severity than any other part of the universities.” All law students were of military age, and the Selective Service Board did not exempt law students from induction.¹¹¹

Fordham had been struggling to maintain enrollments in the last years of the Depression. The military draft sharply diminished the pool of potential law students even further as most qualified young men were called to military service. Men who were already enrolled in law school were drafted before they graduated. Many other men, both students and non-students,

¹¹¹ “the war has struck,” “State Bar Fearful of ‘Bootleg’ Law,” *The New York Times*,

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volunteered for military service. Although some draft boards deferred students until they finished law school, most did not. The military could not wait for student draftees to finish the school term in which their draft numbers came up. The armed services plucked them out of school during the academic semester.¹¹²

The New York Court of Appeals responded to the war emergency by adopting rules that attempted to accommodate departing law students and legal academic standards. Students who left school for military service during their last semester of law school were allowed credit for the full semester without taking final examinations, and they were allowed to receive their law degrees, provided they had completed at least half of the semester, were in good scholastic standing and had met all of the scholastic requirements up to the semester prior to their being drafted. In no case were they given credit if they had attended fewer than eight weeks of classes in the semester in which they were drafted. The New York Education Department endorsed the court's rule, which the New York bar associations also supported. Dean Wilkinson drafted the New York rule and thus continued to be an important player in setting standards of legal education in New York State.

Dean Wilkinson also continued to play a formative role in shaping national standards of legal education in the United States. He was elected to the AALS's Executive Committee in the fall of 1941, and he served on the Association's Committee on Legal Education. The Executive Committee worked closely with the ABA's Council on Legal Education. Not surprisingly, the

January 24, 1943, p. 30; **Wilkinson to Gilleran, August 6, 1942, folder 9, box 10. **Check cite**

¹¹²Minutes of Faculty Meeting of June 4, 1942, folder 9, box 11; some board deferments, Ignatius M. Wilkinson to Rev. Robert I. Gannon, July 21, 1941, folder 2, box 10.

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ABA's Council on Legal Education asked Dean Wilkinson to draft a regulation for this body that embodied the rule adopted by the New York Court of Appeals. He did, and the ABA adopted the regulation in June 1942. The ABA, AALS, the New York Court of Appeals, the New York Department of Education and the New York bar associations were all in agreement on the matter. Law students across the Nation who were drafted in the last semester of law school were granted their law degrees on the same bases that New York law students enjoyed. Wilkinson played a key role in establishing these rules.¹¹³

From June 1942 through February 1944, each third year class at Fordham Law School had some inductees who received their degrees under the special rule. There were no other benefitted graduates of Fordham Law School, presumably because students who were qualified for induction into the service were drafted before they reached their last semester of law school, and others who had intended to go to law school were drafted or enlisted before they had the opportunity to enroll, until two members of the October 1945 class were granted their degrees under the accommodation rule even though the War had officially ended.¹¹⁴

¹¹³Minutes of Faculty Meeting of June 4, 1942, folder 9, box 11; Albert J. Arno to Deans of Approved Law Schools, April 29, 1943, folder 2, box 13; Ignatius M. Wilkinson to Reverend Robert I. Gannon, April 17, 1946, folder 4, box 10; Wilkinson to Very Reverend Laurence J. McGinley, December 18, 1950, folder 6, box 10; Wilkinson to Dean Edwin R. Keedy, August 5, 1942, folder 7, box 8; ****only found letter 6/16/42 that references this letterNote not in WP version** Elliott Cheatham to Wilkinson, June 8, 1942, *id.*

¹¹⁴The June 1942 class of 141 included eight members who had to withdraw during their last semester but were allowed to graduate with their class, and the February 1943 class of fifty had seven such members. The number of drafted graduating students declined to three, two and two in the next three graduating classes, Minutes of Faculty Meeting of June 4, 1942, folder 9, box 11; Minutes of Faculty Meeting of January 28, 1943, folder 10, box 11; the June 1943 class had three accommodated graduates, the October 1943 class had two and the February 1944 class

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At its regular meeting on June 4, 1942, the Fordham law faculty extended the accommodation for graduating draftees to “students in the earlier years of the School” who were required to withdraw from school “by reason of their entry into the armed forces of the country.”

On furnishing proof of their entry into the armed services, either as inductees or as volunteers, they were awarded credit for the semester in which they withdrew, subject to the same conditions that applied to graduating seniors. The faculty decided “that this continue to be the policy of the School . . . until further Faculty action otherwise.” How many Fordham law students left the Law School to serve in the military is uncertain.¹¹⁵

There was also the question of the bar examination. Students in their last year of law school who were subject to the draft were permitted to take the bar examination while they were still attending classes. This meant that, in addition to their regular classes, they took the bar cram course on Saturdays and Sundays. Richard J. Bennett, who graduated in June 1942, “was the happiest man in the world to go into the service, because I figured that nothing could be worse than that six months of 1942.” He worked at an outside job full-time during the day, attended classes at the Law School at night and took the cram course on weekends. He found the whole experience of working and going to law school at night “absolutely horrendous in the

had two. Minutes of Faculty Meeting of June 4, 1943, folder 10, box 11; Minutes of Faculty Meeting of September 29, 1943, folder 10, box 11; Minutes of Faculty Meeting of February 10, 1944, folder 10, box 11; Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11.

¹¹⁵Minutes of Faculty Meeting of June 4, 1942, folder 9, box 11.

sense of the scheduling.” By the time he “got to the end of it, [he] was delighted to be going into Uncle Sam’s service just to rest up.”¹¹⁶

It was not until the end of the War that the New York Court of Appeals made an additional accommodation to veterans who were drafted out of law schools and thus prevented from taking the bar examination. Rule 3-A exempted these veterans from having to take the bar examination for admission to practice after they had received their law degrees. The “theory” behind this rule is that it would be “rather difficult” for one who had completed most or all of his legal education prior to his entry into military service to review for the bar examination when he returned some time later.¹¹⁷

Drastic reductions in students forced Fordham Law School to consider how it might recast its educational program in order “to weather the storm” of World War II. Wilkinson estimated annual deficits for the duration of the War in the neighborhood of \$60,000 to \$70,000, without taking into account “its pro rata share of general University expenses.” To meet this crisis, he recommended combining the morning and afternoon sessions into one day session. This reduced the need for faculty, and the decline in revenue required the Law School either to

¹¹⁶Interview of Richard J. Bennett by Robert Cooper, Jr. on May 11, 1989, Transcript No. 55, Book 1, pp. 18-19, 21-22 Oral History Project, Fordham Law School Archives.

¹¹⁷To qualify for the Rule 3-A exemption, applicants must have been drafted out of law school; they must have been honorably discharged after active military service for at least one year; they must have completed at least two-thirds of their legal education or have received a law degree from an accredited law school, and they must have filed an affidavit stating that they intended to practice law in New York State. “Veterans Spared on Tests for the Bar,” *The New York Times*, August 2, 1945, p. 21; Walter B. Kennedy to Edward P. Gilleran, October 2, 1945, folder 9, box 10; Ignatius M Wilkinson to Reverend Robert I. Gannon, May 3, 1946, folder 4, box 10.

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lay off about one half of the full-time faculty or substantially all of the part-time faculty. Neither option was good. Eliminating the full-time faculty, most of whom were the most recently appointed, was unfair to those who had given up their law practices to devote all of their time to teaching. On the other hand, eliminating part-time faculty would sacrifice some of the Law School's most experienced and distinguished faculty.¹¹⁸

Another option was the accelerated curriculum that enabled students to complete three semesters within one calendar year by adding a summer session as a regular third term. Dean Young B. Smith of Columbia Law School informed Dean Wilkinson that Columbia wanted to run a summer school "as a means of keeping the Columbia Law School functioning." But, an accelerated curriculum that included a summer session of sixteen weeks was "impracticable" under the current New York Court of Appeals rules requiring an academic year to consist of thirty-two weeks and the entire "course" to total of ninety-six weeks. Dean Smith asked Wilkinson to collaborate with him in drafting an amendment to the court's rules that would permit a law school term to consist of thirty weeks and the entire "law course" to extend over ninety weeks, but provided the total number of classroom hours not be decreased. Wilkinson drafted the amendment, which included a summer term consisting of the same number of classroom hours over fourteen weeks that comprised the fall and spring school terms of sixteen weeks and rolling enrollments in September, February and June. The New York Court of Appeals adopted it on January 6, 1942. On the Court of Appeals' adoption of Wilkinson's amendment, four other New York City law schools – Columbia, New York University, Brooklyn

¹¹⁸Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 13, 1942, folder 3, box

and St. John's – announced their intention of running a summer school term beginning in June 1942.¹¹⁹

Given diminished enrollments and anticipated financial deficits. Dean Willkinson and the Law School faculty believed that the Law School “had little choice” but to offer a summer session and an accelerated curriculum regardless whether they believed it to be “scholastically desirable.” Dean Willkinson surveyed student interest in an accelerated curriculum should Fordham decide to offer it. More than half of the day students and slightly less than half of the night students expressed interest, which supported the faculty’s belief that “a great many” of the Law School’s students would transfer to the other city law schools offering accelerated programs unless Fordham offered them the same opportunity to finish their legal educations on an accelerated basis.¹²⁰

Wilkinson learned that Harvard Law School had decided to begin an accelerated

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¹¹⁹*Id.*; Ignatius M. Wilkinson to Very Reverend Laurence J. McGinley, December 18, 1950, folder 6, box 10. Wilkinson initially opposed establishing a summer school, thinking that it was “unwise” from a “scholastic standpoint.” In the days before air conditioning, he did not believe “any worthwhile study can be accomplished during July and August, particularly in the case of evening students.” The longer classroom periods over the two week foreshortened summer term compounded the problem. Wilkinson set aside his opposition, however, because of “practical considerations.” If Fordham did not offer the same program that the other city law schools offered, it ran the “risk of losing a considerable number of our reduced quota of students to the other institutions.” A summer term had “one advantage,” an important advantage, in that it would enable Wilkinson to “find places for all of the faculty” and thus “avoid the difficulty” created by the temporary closing of the Law School’s afternoon division. Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 13, 1942, folder 3, box 10.

¹²⁰Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 29, 1942, folder 3, box 10.

curriculum in the summer of 1942, and entering students had the choice of beginning their classes in June, September or February. Harvard also provided for graduation three times a year to correspond with the three entering classes. Harvard Law School's example may have had a determining effect on Fordham, because it was "quite clear" to President Gannon and his "Consultors", where decisions relating to the Law School's program resided, that the Law School should discontinue the afternoon division and to begin an accelerated curriculum of three school terms with rolling enrollments, beginning with the 1942 summer term.¹²¹

Wilkinson thought the accelerated curriculum promised to strengthen the Law School's financial condition significantly. He calculated that it would increase in the Law School's revenue in 1942 by 32.6%, from \$67,500 to \$89,850. Wilkinson estimated that the Law School could operate "at an actual expense" of \$82,000, exclusive of "general University expenses ordinarily charged to us," if it reduced the part-time faculty's salaries by one half and the full-time faculty's salaries by one third "for the period of the emergency," provided he could persuade the Woolco Realty Company, manager of the Woolworth Building to accept an annual rental of \$20,000 with utilities or less, in addition to "reductions and economies" in other, smaller items. This reduction, combined with the "very considerable salary reductions for the Faculty" he had suggested, would lower the school's annual expenses to \$87,000, leaving a small surplus of \$2,850. If the Law School were to raise its tuition for day students from \$270 to \$300 and a pro rata tuition increase for night students, its revenues would increase by another \$9,200, producing a commensurately higher surplus. Wilkinson provided Fordham University's

¹²¹Ignatius M. Wilkinson to Robert I. Gannon, February 5, 1942, folder 3, box 10; Robert

President with all of this information in January 1942.¹²²

Father Gannon disagreed with Dean Wilkinson's budget analysis, calling the estimated surplus of \$2,850 "optimistic." The analysis failed to account for the ordinary charge from the University to the Law School, a charge of \$74, 312 in 1942 that could not be ignored, it included certain expenses that were "non-adjustables" and could not be eliminated, which brought the law school's "total expense" up to \$161,312. Father Gannon was "doubtful how much assistance the other Schools can give" to the Law School in these financially difficult times. "The College boys are dropping out right and left," and the University might have to "very much increase the burdens of the full time men 'for the duration.'" Still, Father Gannon decided not to raise the Law School's tuition.¹²³

The Law School adopted the accelerated program and opened a summer session in June 1942 with "approximately half" of the school's students having "filed notice of intention to pursue the accelerated course of studies." Frances M. Blake was one of the students who attended the Law School under the accelerated program. She completed Law School in two years, entering in 1943 and graduating in 1945. "Most everybody" accelerated their programs, Blake recalled. "Few people wanted to stay with the regular program. We dropped back and joined the incoming class that semester. Then the next semester we joined the class half a year

I. Gannon to Ignatius M. Wilkinson, February 20, 1942, folder 3, box 10.

¹²²Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 13, 1942, folder 3, box 10; Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 29, 1942, folder 3, box 10.

¹²³Quotations are in Robert I. Gannon to Ignatius M. Wilkinson, February 20, 1942, folder 3, box 10; see also Gannon to Wilkinson, February 26, 1942 and Wilkinson to Gannon, March 3, 1942, folder 3, box 10(11).

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ahead of us.” Throughout World War II, the Law School’s academic year was divided into three terms: summer, fall and spring. Students could enroll at the beginning of each term - in June, September and January - and they could graduate upon completing their studies at the end of each term. The three graduations were in June, October and February. Students had the option of taking an accelerated course by attending all three terms until they satisfied the course requirements for the LL.B. degree. Day students could complete their three academic years in two calendar years, and night students could complete their four academic years in two and two-thirds calendar years.¹²⁴

Students opted for the accelerated curriculum in substantial and accelerating numbers and proportions of the regular student body. Table 5-1 shows that 171 students were enrolled the inaugural summer session in 1942, which was about 25% of the regular year enrollment. Thereafter, summer school enrollments grew substantially each year: 126 in 1943, 154 in 1944 and 270 in the last wartime summer session of 1945. Using the enrollments of the preceding academic years as a base, summer school enrollments steadily grew in relation to the regular term enrollments from 25% in 1942 to 90% in 1945.¹²⁵

During the War, Fordham Law School’s enrollments were a fraction of their prewar levels, and yet it was one of the nation’s largest law schools. In the 1940-1941 academic year,

¹²⁴Minutes of Faculty Meeting of June 4, 1942, folder 9, box 11; Walter B. Kennedy to William W. Gager, July 8, 1943, folder 2, box 13; Interview of Frances M. Blake by Robert Reilly on October 18, 1988, Transcript No. 23, Book 1, p. 1, Oral History Project, Fordham Law School Archives.

¹²⁵“Registration by Years Since the Foundation of the School,” notebook memoranda, Law School Archives.

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the last year of peacetime in the United States, the law school's student enrollment was 815. In September 1941, even before the Japanese attacked Pearl Harbor on December 7, Dean Wilkinson predicted a total enrollment of only 700 for the 1941-1942 academic year, explaining that he was allowing for "draft absentees" in his prediction. The actual figure was 681. It could have been much worse. New York Law School had to suspend operations and transfer its students to St. John's University School of Law in September 1941. And other law schools in New York City "were not as favorably situated with respect to enrollment as" Fordham Law School. The Law School's enrollment dropped by almost one half to 334 in September, 1942. Surprisingly, even with this sharp decline, Fordham was the third largest law school in the country. St. John's Law School in Brooklyn had the largest enrollment at 446 students, and George Washington Law School in the Nation's capital had the second largest enrollment at 380. No other law school had an enrollment of 300 or more students.¹²⁶

Wilkinson estimated that the Law School could continue to operate so long as the student body numbered no fewer than 200 students. The Law School's enrollments fell to within twenty students of "rock bottom" in the 1943-1944 academic year. The 220 students enrolled during this school year represented a drop of 73% of Fordham's student population of 815 in the last year of peacetime. According to Frances M. Blake, who entered the Law School in 1943, there "were probably more women than men" among the students. Table 5-1 shows the sharp declines in student enrollments to 1944. But then enrollments sharply rose by 36% to 300 during the last

¹²⁶Minutes of Faculty Meeting of September 18, 1941, folder 9, box 11; Ignatius M. Wilkinson to The Rev. Robert I. Gannon, November 19, 1941, folder 2, box 10; Minutes of Faculty Meeting of January 28, 1943, folder 10, box 11; Ignatius M. Wilkinson to The Rev.

academic year of the War, 1944-1945, and it rose a modest 6% in the academic year 1945-1946 following the German and Japanese surrenders. According to an official report of the

TABLE 5-1

Fordham Law Student Enrollments During World War II

<u>School Year</u>	<u>1. Regular Terms, Change from Preceding Year</u>	<u>2. Summer School Enrollments</u>	<u>% of Col. 2 to Col. 1</u>
1940-1941	815	N/A	N/A
1941-1942	681 -16%	1942 171	25%
1942-1943	334 -51%	1943 126	38%
1943-1944	220 -34%	1944 154	70%
1944-1945	300 +36%	1945 270	90%
1945-1946	317 +06%	N/A	N/A
Total All Years	2,667		

SOURCE: “Registration by Years Since the Foundation of the School,” notebook memoranda, Law School archives.

American Bar Association, the three hundred students enrolled in the 1944-1945 academic year made Fordham the “largest accredited under-graduate law school in America.”¹²⁷

The spike in student enrollments in the spring of 1944 was attributable to several causes.

In contrast to the lawyers’ lament of too many lawyers in the 1930s, there seemed to be too few

Robert I. Gannon, January 4, 1942, folder 3, box 10.

¹²⁷Minutes of Faculty Meeting of January 28, 1943, folder 10, box 11; Ignatius M. Wilkinson to The Rev. Robert I. Gannon, January 4, 1942, folder 3, box 10; “were probably more,” Interview of Frances M. Blake by Robert Reilly on October 18, 1988, Transcript No. 23, Book 1, p. 2, Oral History Project, Fordham Law School Archives; “largest accredited,” Walter B. Kennedy to Rev. Robert I. Gannon, January 13, 1945, folder 3, box 10. George Washington University Law School had a larger enrollment, but it had a graduate school and its enrollment figure included its “post-graduate class and an extraordinary number of special students.” Its undergraduate enrollment was not as large as Fordham’s.

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lawyers in the 1940s because of the War. Wilkinson thought that “The dearth of lawyers had created an impetus to the study of law.” In addition, law school student populations began to flourish with war veterans who had been drafted out of law school and were returning from the War wanting to finish their legal educations. A third cause was the affordability of legal education due to “muster-out pay and other Government aids to rehabilitation of soldiers.”¹²⁸

The 317 students enrolled in Fordham Law School during the 1945-1946 academic year were still 61% below prewar enrollment figures. Table 5-2 suggests that the number of

TABLE 5-2
NUMBER OF FORDHAM LAW SCHOOL WARTIME GRADUATES

<u>Year</u>	<u>February</u>	<u>June</u>	<u>October</u>	<u>Total</u>
1941		208		208
1942		141		141
1943	50	24	28	102
1944	15	32	21	68
1945	18	26	31	75
1946	14	47	73	134
1947	4	136		140
1948		201		201
Total All Years				1069

SOURCE: “Number of Graduates of Fordham University School of Law During the Following Years, 1908-1965,” notebook memoranda, Law School archives.

graduates in each graduating class paralleled the reduced enrollments. The Fordham student body jumped up to 739 students in the 1946-1947 school year, but it would not reach the 800

¹²⁸Minutes of Faculty Meeting of February 10, 1944, folder 10, box 11; Walter B. Kennedy to Rev. Robert I. Gannon, September 19, 1944, folder 3(2), box 10.

level again for almost two decades following the end of World War II, when it reached 837 students in the 1963-1964 school year.¹²⁹

World War II deprived untold numbers of would-be Fordham law students of their opportunity to study law and become lawyers. What is known is that the wartime student enrollments of Fordham Law School were a fraction of those before and after World War II.

Table 5-3 shows the War's effect on the Law School's entering classes. Many of those who

TABLE 5-3
FORDHAM LAW SCHOOL ENTERING CLASSES 1939-1945

<u>Class</u>	<u>Morning</u>	<u>Afternoon</u>	<u>Evening</u>	<u>Total</u>
1939-1940	85	42	165	292
1940-1941	78	39	169	286
1941-1942	68	29	158	255
Summer1942	22		16	38
September1942	40		65	105
February1943	27		56	83
Summer 1943	5		13	18
September1943	17		46	63
February 1944	26		47	73
Summer 1944	18		36	54
September 1944	36		76	112
February 1945	37		107	144
Summer 1945				
				1523

SOURCE: figures stating enrollments in notebook memoranda, Law School archives. I included the entering class of 1939 because this was the first class whose graduation was affected by the war.

made it to Fordham were drafted out of law school before they could complete their studies to serve their county when it needed them. Again, the number is unknown. If one compares the

¹²⁹Enrollments are in "Registration by Years Since the Foundation of the School," notebook memoranda, Fordham Law School Archives.

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number of students who entered Fordham Law School with the number who graduated during the war years, it becomes clear that about one-third of enrolled students failed to graduate from the law school.¹³⁰

Events surrounding World War II led Fordham Law School to make student accommodations of another sort. After Adolph Hitler came to power in Germany in 1933, foreign educated lawyers began to appear with some frequency among the Law School's student body. To practice law in the United States, they had to pass a state's bar examination, like any other lawyer. But, to sit for the bar exam, these foreign educated lawyers were required to earn an LL. B degree in an American law school. They enrolled in Fordham and other law schools to qualify for the New York bar. European emigres who had studied law in European universities and matriculated through Fordham Law School were accommodated with special rules. Dean Wilkinson tailored each student's schedule to fill gaps in the student's prior education. Foreign educated lawyers usually completed their American law degree in two academic years. The first foreign educated lawyer enrolled in Fordham in 1931 and received his Fordham law degree in 1933, and a steady though modest stream of such lawyers matriculated through the Law School through World War II. The Law School matriculated "a number of students from Belgium, Holland and Germany." It also began to receive students from Italy in 1937, and a law graduate of the University of Rome sought to establish an "exchange scholarship" between Fordham and the University of Rome, unsuccessfully it appears.¹³¹

¹³⁰ See Table 5-2 and Table 5-3.

¹³¹ "a number of students," Dean Wilkinson to Edward P. Gilleran, Alumni Secretary, February 3, 1937, folder 9, box 10. The first foreign educated lawyer who was named in the

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One of these European emigres, Jules Weinberg, hosted a dinner on June 18, 1945 at the Stockholm Restaurant to honor the law school faculty and to pay tribute to Fordham Law School. Mr. Weinberg had received his Doctor of Laws degree from the University of Brussels and had attended the University of Louvain. He fled Belgium for the United States and took up residence in New York City during World War II. He attended Fordham Law School and graduated in June 1944. In hosting this dinner one year after his Fordham graduation, Mr. Weinberg expressed his gratitude to the Law School for receiving him as “a refugee.” Fordham symbolized for him “the freedom of American educational opportunity.” He announced that he was therefore establishing a “loan fund” for Fordham Law School students who needed financial aid.¹³²

Toward the end of World War II, Fordham accommodated one of a number of Polish jurists who had fled Poland during the war and established a Polish Law Faculty at Oxford University in England. These jurists were unable to return to Poland because they had been “warned on good authority that there would be no guarantee of their personal safety.” To the

faculty meeting minutes and recommended for a law degree from Fordham Law School was a Dr. Milde, a Doctor of Law awarded by the University of Breslau, Germany. He entered Fordham Law School in September 1931 and received his LL.B. in June 1933. Minutes of Faculty Meeting of June 8, 1933, folder 9, box 11. *See also*, Faculty Meeting of June 4, 1936, folder 9, box 11; Minutes of Faculty Meeting of June 9, 1938, folder 9, box 11; Minutes of Faculty Meeting of June 8, 1939, folder 9, box 11; Minutes of Faculty Meeting of June 5, 1941, folder 9, box 11; Minutes of Faculty Meeting of June 4, 1942, folder 9, box 11; Minutes of Faculty Meeting of January 28, 1943, folder 10, box 11; Minutes of Faculty Meeting of September 29, 1943, folder 10, box 11; Minutes of Faculty Meeting of June 1, 1944, folder 10, box 11; Minutes of Faculty Meeting of February 8, 1945, folder 10, box 11; Minutes of Faculty Meeting of March 15, 1945, folder 10, box 11; Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11; Minutes of Faculty Meeting of June 6, 1946, folder 10, box 11.

¹³²“Law School Notes,” n.d., folder 9, box 10.

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Contrary, “The deportations [in Poland] still continue, and this means that any one whom the Russian police choose to regard as pernicious is packed off to heaven knows what destination, and is probably never heard of again.” Dr. M. Z. Zedlicki was brought to the attention of Fordham University President Gannon by Oxford University Professor Francis de Zulueta, “Professor of Law and one of the leading Catholic figures in Oxford.” Dr. Jedlicki had been on the faculties of law at the Universities of Cracow and Poznan before fleeing to England, and he was teaching the History of European Law to law students at Oxford. Acting Dean Walter B. Kennedy arranged for Dr. Jedlicki to teach a course in European Law, and Father Gannon thought he could offer him additional courses in one of the University’s academic department’s.¹³³

Dean Wilkinson interrupted his deanship to assume the office of New York City Corporation Counsel in June, 1943. The Mayor who appointed him to this office was Fiorello LaGuardia. LaGuardia had earlier appointed Wilkinson as chair of a committee to study and recommend new ways for the City to set the wages of the City’s 32,000 employees and handle their grievances. Wilkinson impressed LaGuardia with the job he had done, and the Mayor appointed Wilkinson as Corporation Counsel for the duration of World War II. His appointment made Wilkinson the head of the “largest law office in the world.” William Hughes Mulligan identified the irony of the LaGuardia/Wilkinson collaboration. “The two men were one of the

¹³³“warned on good authority,” Professor Zulueta to Father Gannon, December 7, 1945, folder 3, box 10; “Professor of Law,” Father Gannon to Walter B. Kennedy, August 3, 1945, *id.* Kennedy to Father Gannon, August 7, 1945, *id.*; Father Gannon to Dean Kennedy, August 31, 1945; **Dr. M. Z. Jedlicki’s resume, enclosed with Professor Zulueta’s letter to Father Gannon, December 7, 1945, *id.* Kennedy to Father Gannon, September 4, 1945, *id.*

oddest combinations of all time. LaGuardia was small in stature, a man of the people, considered to be highly liberal. Wilkinson was tall, aristocratic and considered to be conservative.” Nonetheless, it was a successful collaboration.¹³⁴

Wilkinson appointed Professor Walter B. Kennedy as Acting Dean. Kennedy had been at the law school since 1923. He was respected by the students and faculty for his scholarship and student advisement, and he was also well regarded in the legal community for his expertise in labor relations. Kennedy consulted with Wilkinson frequently about law school matters, and Wilkinson regularly attended faculty meetings. Thus, while he was Corporation Counsel, Wilkinson continued to maintain his close involvement in the direction of Fordham Law School. He also continued his activity in professional organizations. For example, he was elected

¹³⁴Wilkinson was appointed to the committee in March 1943. His report proposed a major revision in the way wages were fixed for the system's 32,000 workers and the way grievances should be handled. These included an impartial arbitration committee (which the Board of Transportation did not want) and the appointment of a deputy commissioner to the Board to handle labor relationships with the city's transit system workers. LaGuardia selected Edward C. McGuire to hold this position. McGuire was 43 years old, a 1923 graduate of Fordham Law School, and experienced with labor matters. “Transit Report to Mayor Today,” *The New York Times*, April 28, 1943, p. 8. “Mcguire to Rule on Transit Labor,” *id.*, July 18, 1943, p. 28. **Wilkinson to Gilleran March 29, 1943, folder 9, box10; “The two men were,” “Interview of William Hughes Mulligan by Michael Sheahan,” September 20, 1988, Transcript No. 22, Book 3, p. 12, Oral History Project; “Thacher to Serve City for War Term,” *The New York Times*, January 10, 1943, p. 40; “Wilkinson Named as City's Counsel,” *id.*, June 7, 1943, p. 15; “Wilkinson in City Post,” *id.*, July 16, 1943, p. 19. “largest law office,” “Wilkinson Quits City Job,” *NY Times*, November 26, 1945, p. 23; William E. Nelson, *Fighting For the City: A History of the New York City Corporation Counsel* (New York: New York Law Journal, 2008): 163. Wilkinson's salary was \$17,500 a year. Thomas Kessner, *Fiorello H. La Guardia and the Making of Modern New York* (New York: McGraw Hill, 1989) **GET PAGE #**; Thacher 405, **GET CITATION FOR** Chanler 428, 540; Thacher, www.courts.state.ny.us/history/bios/thacher_thomas.htm. A small coincidence: LaGuardia and Wilkinson were both admitted to the New York Bar at the same term of court in 1910.

president of the New York County Lawyers Association in 1945, where he had previously served as a Vice President.¹³⁵

In 1943, financial exigencies caused Father Gannon and his Consultants to decide to move from the Woolworth Building to 302 Broadway. Wilkinson may have succeeded in negotiating a reduction in the annual rent, because Father Gannon reported that “the annual drain” from the University to the Woolworth Building was \$105,000, but the rent for the 1942-1943 academic year was “less than \$70,000.” The Law School’s portion of this “drain” was \$33,000, which suggests that the Law School was paying approximately one-half of the University’s annual rent.¹³⁶

Acting Dean Kennedy thought it was in the Law School’s interest to remain at the Woolworth Building, but University priorities trumped Law School interests, and, in October 1943, the Law School moved to 302 Broadway, its fifth home since 1905. William Waldorf Astor had built the fifteen story office building in 1899 at a cost of \$900,000, but its assessed value had fallen to \$440,000 when Fordham University purchased the property for only \$122,000 in the summer of 1943. Intending the building to serve as its downtown campus, the University, installed a chapel, an auditorium, libraries, a moot court room and a student lounge

¹³⁵“Appointed as Acting Dean of Fordham Law School,” *The New York Times*, June 14, 1943, p. 19; “Edison Dispute Arbiter Named,” *id.*, October 17, 1945, p. 14; Minutes of Faculty Meeting of June 1, 1944, folder 10, box 11; Kennedy to Gilleran, June 26, 1944, folder 9, box 10. (Word perfect version reads: “Appointed as Acting Dean of Fordham Law School,” *The New York Times*, June 14, 1943, p. 19; “Edison Dispute Arbiter Named,” *id.*, October 17, 1945, p. 14; Faculty Minutes, June 1, 1944, NYCLA, Box 10 F9, June 26, 1944, Kennedy to Gilleran.
CHECK THESE SOURCES AND PUT IN CORRECT FORM

¹³⁶Gannon, *Up To the Present*, pp. 239-40.

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at a cost of \$138,000, and it moved the Law School, the Graduate Schools of Education and Business to this location. The move from the Woolworth Building to the 302 Broadway afforded the University twice the floor space and a savings of \$50,000 a year. These savings paid for the \$260,000 investment in about five years.¹³⁷

Although the move from the Woolworth Building to the 302 Broadway saved Fordham University money, it was not a good move for the Law School. The space allotted to the Law School was smaller than the space it had at the Woolworth Building. Space limitations stunted the Law School's growth and contributed significantly to its decline among local and national law schools. The Law School occupied the 10th through 15th floors of the building, taking over the six floors as existing tenant leases expired. The small floor plate of the building required that the law library occupy the 14th and 15th floors connected by an interior staircase. Because of the tight quarters and inadequate library, students would do their research at the libraries of the local bar associations or the Practicing Law Institute.¹³⁸

The combination of a wartime economy and the labor shortage created by the induction of men into the military created ample job opportunities during World War II. Fordham Law students and graduates who remained on the home front had little difficulty finding positions in law in the war-created prosperity. The "great majority of our students are satisfactorily placed today," Professor Keefe reported in February 1945. The Placement Bureau was able to provide

¹³⁷Walter B. Kennedy to Father Robert I. Gannon, July 29, 1943, folder 3, Box 10; "Broadway Parcel Sold by Astor," *New York Times*, October 24, 1942, p. 28; "Building Acquired for Fordham Units," *New York Times*, September 12, 1943, p. 12; Gannon, *Up To The Present*, p. 240.

¹³⁸Edward B. Schulkind, "The President's Corner," *The Advocate*, 4 (Oct. 1954): 2.

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only eleven Fordham law students for the fifty-four openings in the law offices, legal departments or insurance companies, banks and commercial corporations about which Professor Keefe was notified. Indeed, most students obtained jobs without the assistance of the Placement Bureau. Moreover, Fordham could place a great number of night students at a minimum salary of \$35 per week if they were available. Part-time jobs went unfilled even for day students. The problem facing the law school was not the underemployment of its students, but their overemployment. Acting Dean Kennedy complained in June 1945 that “a great many day school students were working a disproportionate number of hours” at outside jobs. He felt compelled to talk with these students about the maximum number of hours they were permitted to work outside the law school and still remain day students.¹³⁹

In June 1944, Kennedy noted Fordham’s success in breaking into the “sacrosanct precincts” of the city’s elite law firms. Kennedy gloated, “one peculiar feature of the Placement Bureau, of which we are all aware, is that offices which were formerly closed to Fordham men have opened their doors wide to them and reports indicate that once in these individuals are making good with the prophecy that after the war they will continue to be welcomed in the same sacrosanct precincts.” In his June 1944 report on the Placement Bureau, Professor Keefe noted that it had placed Fordham students and graduates with firms such as Cadawlader, Wickersham & Taft and Lord, Day and Lord, among others. Other sources demonstrated that Fordham Law School graduates from the early 1920’s through the 1940’s had secured positions, including

¹³⁹“great majority of our students”, “A Brief Report on Placement Bureau From September, 1944 to date, February 6, 1945, folder 10, box 11; “law offices, legal departments of insurance”, *id.*; “a great many day school students”, Minutes of Faculty Meeting of June 4, 1925,

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partnerships in firms such as Cahill, Gordon, Reindel and Ohl; Clearly Gottlieb; Steen and Hamilton; Coudert Brothers; Davis, Polk, Wardwell, Kelley; Donovan, Leisure; Newton and Irving; Drye, Newhall, Maginnes and Warren; Kenyon & Kenyon, Milbank, Tweed, Hadley and McCoy; Patterson, Belknap and Webb; Paul, Weiss, Rifkind, Wharton, and Garrison; Shearman & Sterling; Sunderland and Keindl; White and Case; Wilkie, Farr, Gallagher, Walton and Ftizgibbon; Winthrop Stimson, Putnam and Roberts. A June 1944 report revealed placements in other law firms as well at salaries of \$35 per week.¹⁴⁰

Though “Fordham men” were very successful, Fordham women did not fare too well. “There still exists some difficulty in placing young women graduates,” Professor Keefe reported in 1945. As middle class women entered the work force in the 1940s, more women graduated from Law School, and they represented greater percentages of graduating classes during World War II even though they still comprised a minority of the law student population. The greater representation of women in law schools is attributable as much to the diversion of young men into military service as it is to women’s interest in becoming lawyers. Table 5-4 shows the spike in the percentage of women graduates of Fordham Law School in the middle of the 1940s, but it also shows larger numbers of female graduates in earlier years in which women were a smaller percentage of the number of graduates. The most women graduates in a class graduated in the

folder 10, box 11.

¹⁴⁰ “one peculiar feature”, Minutes of Faculty Meeting of June 1, 1944, folder 10, box 11; “to better themselves” and “There still exists”, “A Brief Report on Placement Bureau From September, 1944 tp date, February 6, 1945, folder 10, box 11. Placement Bureau Report, June 22, 1944, folder 11, box 11; Minutes of a Faculty Meeting of June 1, 2944, folder 10, box 11. The list of law firms is taken from a database of Fordham alumni who graduated prior to 1960.

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classes of 1923 through 1927, and the largest number of women in a single graduating class (30) before 1950 was in the graduating class of 1925. However, these women represented from 5.5% to 7.9% of their graduating classes. By contrast, fewer women graduated in the period of the Second World War, clustering between 16 and 18 graduates each year from 1943 through 1946. Yet, these women represented between 14.3% and 23.5% of the graduates of these classes. These were the only years in which women represented more than 10% of a Fordham

Table 5-4
Numbers and Percents of Women Graduates of Fordham Law School, 1921-1980

Year	Total Number of Graduates	Number of Female Graduates	Percentage of Female Graduates
1921	119	4	3%
1922	222	9	4%
1923	252	15	5.9%
1924	357	21	5.8%
1925	382	30	7.8%
1926	399	22	5.5%
1927	328	26	7.9%
1928	389	13	3.3%
1929	451	14	3.1%
1930	371	7	1.8%
1931	347	16	4.6%
1932	282	13	4.6%
1933	245	9	3.7%
1934	292	6	2.1%
1935	308	5	1.6%
1936	258	22	8.5%
1937	106	8	7.5%
1938	188	12	6.4%
1939	210	14	6.7
1940	187	9	4.3%
1941	208	11	5.3%

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1942	141	7	5%
1943	102	17	16.7%
1944	68	16	23.5%
1945	75	17	22.7%
1946	134	18	13.4%
1947	140	9	6.4
1948	201	11	5.5%
1949	217	10	4.6%
1950	156	17	10.9%
1951	158	11	7%
1952	155	3	1.9%
1953	155	10	6.5%
1954	161	7	4.3%
1955	152	9	5.9%
1956	178	12	6.7%
1957	180	8	4.4%
1958	167	3	1.8%
1959	203	10	4.9%
1960	180	3	1.7%
1961	190	6	3.2%
1962	163	4	2.5%
1963	158	7	4.4%
1964	196	5	2.6%
1965	201	5	2.5%
1966	199	10	5%
1967	216	12	5.6%
1968	221	14	6.3%
1969	209	10	4.8%
1970	136	11	8.1%
1971	190	19	10%
1972	236	17	7.2%
1973	268	18	6.7%
1974	331	25	7.6%
1975	300	40	13.3%
1976	291	56	19.2%
1977	315	65	20.6%
1978	326	92	28.2%
1979	322	98	30.4%

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1980	309	101	32.7%
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Source: Notebook, Fordham Law School Files.

Law School graduating class in the first half of the twentieth century. As was the case of women and jobs, women's presence in the law schools declined to pre-World War II levels when the G.I.s returned, and they did not represent a significant presence in law school student bodies until the 1970s. This post-war trend is also revealed in Table 5-4 which shows that women did not attend Fordham Law School in significant numbers and percentages after World War II until the mid-1970s.¹⁴¹

The New Deal's approach to government combined with some of the consequences of World War II to produce government assistance to returning veterans that greatly affected higher education generally and legal education specifically. In 1944 Fordham Law School entered into a contract with the Veteran's Administration in which the V.A. provided financial aid to veterans who were "disabled to the extent of ten percent, or more" to enable them to complete their legal education. This contract preceded the enactment of "the broader program now passing through Congress known as the 'G.I. Bill of Rights.'" Congress enacted the G.I. Bill and President

¹⁴¹On the history of women and work and women and law in the first half of the twentieth century, see, Chafe, William Henry, *The American Woman: Her Changing Social, Economic, and Political Roles, 1920-1970* (New York, NY: Oxford University Press, 1972); Virginia C. Drachman, "The New Woman Lawyer and the Challenge of Sexual Equality in Early Twentieth Century America," *Indiana Law Review*, vol. 28 (1995): 227; Lydia Yu-Yeh Wang, "American Women in Legal Education: A Historical Perspective," *EurAmerica*, Vol. 29, (1999): 197. For the period of World War II, see, Karen Anderson, *Wartime Women: Sex Roles, Family Relations, and the Status of Women During World War II* (Westport, CT, 1981); D'Ann Campbell, *Women at War in America: Private Lives in a Patriotic Era* (Cambridge, MA, 1984).

Roosevelt signed it into law in June 1944.¹⁴²

The G. I. Bill had a significant impact on the law school, as it did on institutions of higher education generally. Financial assistance from the government enabled returning veterans to attend law school on a full-time basis, and the Fordham Law School's day school enrollment began to outnumber the night school enrollment shortly after World War II ended. Exactly two-thirds of the 180 veterans who entered the Law School in February, 1946 were day students and one-third were night students. Significantly, "Nearly all" of the day school students were war veterans attending the Law School "under the privileges of the "G.I. Bill." Dean Wilkinson announced that the Law School was filled to capacity, making it "absolutely essential to maintain exceedingly high standards" and to eliminate "those not qualified" in order to make space available for entering students who "were qualified". Those admitted to the February, 1946 class had an "exceedingly high college scholastic record," and 83% were college graduates. All applicants to the September 1946 entering class, except for returning veterans, were required to have a college degree. This entering class was "registered to capacity, mostly with returning veterans."¹⁴³

¹⁴²Minutes of Faculty Meeting of June 1, 1944, folder 10, box 11. On the G. I. Bill of Rights, see, Keith Olson, *The G.I. Bill, the Veterans, and the Colleges* (Lexington: University of Kentucky Press, 1974).

¹⁴³Minutes of Faculty Meeting of February 8, 1945, folder 10, box 11. The proportion of day and night students enrolled in the preceding fall was just the reverse. Of the 370 students enrolled in September 1945, 107 were in the day school and 263 were in the night school. Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11. The quotations and February 1946 enrollments are in Minutes of Faculty Meeting of January 31, 1946, folder 10, box 11. On the proportion of day school and evening school enrollments, see Table 5-3, Entering Classes 1939-1945. On the September 1946 entering class, see Ignatius M. Wilkinson to Edward P. Gilleran, July 29, 1946, folder 9, box 10.

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But, enrollments were held below pre-war levels for two reasons. The first was the limited space at 302 Broadway. Although the student body doubled from 317 in 1945-1946 to 739 in 1946-1947, total enrollments fell back into the six hundreds until the mid-1950's. The second reason the Law School kept these enrollments low was to ensure that it complied with the ABA's and AALS's student/faculty ratio.¹⁴⁴

THE AFTERMATH OF WORLD WAR II

Student enrollments were not the primary concern of Fordham Law School during the last wartime school year. Rather, the faculty were looking ahead to the kind of law school Fordham might become with the return of peace. The AALS and ABA may have been a catalyst to Fordham's looking to the future, because these organizations were also busy exploring the administrative structure and intellectual content of legal education in 1944 and 1945. "Our main task," Acting Dean Kennedy informed Fordham University President Gannon, "is not to worry about students but to plan the type of law school that Fordham intends to build in the post-war period."¹⁴⁵

The Fordham law faculty engaged in its first substantive discussion of the nature and quality of the legal education they sought to offer in the post-war era at its September 1944 meeting. Fordham University President Robert Gannon, S.J. attended this meeting, and he urged

¹⁴⁴Minutes of Faculty Meeting of February 8, 1945, folder 10, box 11; Ignatius M. Wilkinson to Rev. Robert I. Gannon, January 7, 1947, folder 4, box 10. Enrollments are in "Registration by Years Since the Foundation of the School," notebook memoranda, Fordham Law School Archives.

¹⁴⁵Walter B. Kennedy to Rev. Robert I. Gannon, September 19, 1944, folder 3, box 10.

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the law faculty to adopt a college degree requirement for admission to the law school beginning with the entering class of September 1946. However, Father Gannon recommended that the degree requirement should not be applied to returning veterans, because he did not think it “just” to change admission requirements affecting military personnel while they were “in the military service of their country.” He also urged the faculty to eliminate the “unfit candidates” for Fordham law degrees by “correct[ing] examination papers with a courteous and sympathetic ruthlessness.”¹⁴⁶

The faculty accepted Father Gannon’s suggestions and increased the pre-law school academic requirement for admission to a college degree beginning with the entering class of September 1946. They also applied the two year college requirement to war veterans. The faculty excepted one other group from the college degree requirement: Fordham University undergraduates who had enrolled in the pre-law course under the assumption that only two years of college was required for admission to the law school and who “evidenced an intention of entering the School of Law at the conclusion of their pre-law course.”¹⁴⁷

Fordham Law School joined a select group of law schools when it adopted the college degree requirement for admission. Only eight law schools in the entire country required a college degree in 1946. Fordham was also one of the few law schools that also had a selective

¹⁴⁶See Walter B. Kennedy to Edward P. Gilleran, October 2, 1945, folder 9, box 10, Law School Papers. The other quotations are in Minutes of Faculty Meeting of September 28, 1944, folder 10, box 11. The faculty discussed Emergency Resolution No. 8 at its February 1945 meeting. Minutes of Faculty Meeting of February 8, 1945, folder 10, box 11.

¹⁴⁷Minutes of Faculty Meeting of February 8, 1945, folder 10, box 11, FLS, FUA; “evidenced an intention,” announcement of admissions requirements, n.d., folder 9, box 10; Robert I. Gannon to Father Mulcahy and Dean Wilkinson, January 3, 1946, folder 4, box 10.

admission policy, which, combined with the college degree requirement, set it apart from almost all of the Nation's law schools. Indeed, Wilkinson thought that Fordham Law School was the only law school with these high admissions standards that offered both day and night programs. He expressed his view of the Law School with the following auto analogy: "We prefer to build Cadillacs rather than Chevrolets. Both are good cars but they cater to different markets."¹⁴⁸

Even law schools with a college degree requirement made exceptions for outstanding students. Dennis McInerney, for example, returned from military service after World War II and resumed his undergraduate education at Fordham University. "I'd been accepted at Columbia [Law School] in 1947 after my Sophomore year" of college, McInerney related. "In those days, that was not very unusual. Columbia gave me an LSAT-type test and said that my mark was sufficiently high that they would take me right away without finishing college. I had that option when I graduated from Fordham, but I thought it would be somewhat disloyal to go to any other law school when I was on the Fordham [College] faculty," a reference to his position of Philosophy instructor under Father Joseph Donceel, chairman of the Philosophy Department. McInerney did not appreciate "that Wall Street firms might prefer a Columbia law degree. I may not have even known what a Wall Street law firm was, and I felt very comfortable going to Fordham" Law School. After graduating, McInerney became a partner at the Wall Street law firm of Cahill, Gordon & Reindel, a position he still held when he gave this interview in 1989. He understandably concluded, "Of course, it worked out just fine. I'm glad I made that

¹⁴⁸"We prefer to build," Wilkinson to Dean John G. Hervey, August 8, 1949, folder 4, box 13. **Get cite for only law school with selective admissions and college degree prerequisites. **I don't think an additional cite is required. (Word Perfect version uses *id***

choice.”¹⁴⁹

In addition to raising the quantitative standard of pre-law school college education to a college degree, the law school also raised the qualitative standard. By the end of the 1940's, Fordham raised the minimum acceptable college average of “C” to “B”. It also began to require marginal students whose undergraduate record averaged below “B” to take the Law School Aptitude Test administered by the College Entrance Board at Princeton, New Jersey. Fordham’s selective admissions policy became more selective.¹⁵⁰

At the end of World War II, Fordham was arguably still the second law school in New York City. With its placement and academic standards, the “popular estimate” of the law school, Acting Dean Kennedy reported to Father Gannon in November 1945, Fordham was “the most exclusive part-time law school in the metropolitan area and certainly in competition with Columbia.” He did not think Fordham was “in serious competition with either Brooklyn Law School or St. John’s.” The only other law school “of greatest interest to us” was New York University School of Law. It was “very close to ours in many ways including the approximate scholastic standards.” Nonetheless, Kennedy was confident that Fordham’s academic standards and selective admissions policy placed it “in a position to compete favorable with any law school

instead of “box 13”.

¹⁴⁹Interview of Dennis McInerney, Esq., by Robert Cooper, Jr. on May 1, 1989, Transcript No. 51, Book 2, pp. 10-11, Oral History Project, Fordham Law School Archives.

¹⁵⁰Ignatius M. Wilkinson to Rev. Henry O’Carroll, January 17, 1949, folder 5, box 10; Wilkinson to Rev. Gannon, June 2, 1953, *id.*

in the metropolitan district.”¹⁵¹

But Fordham’s fateful decision in the 1930s to continue using the Law School to subsidize the other divisions of the University, which perpetuated the Law School’s tuition-dependent financial structure, combined with the inadequate physical plant, forced the University’s President and the Law School’s dean to oppose certain administrative and financial changes to improve legal education that the ABA considered after the end of World War II. Dean Young B. Smith of Columbia Law School had recommended to the ABA that accredited law schools reduce their student/faculty ratio to one full-time teacher for every 50 students, one half of the then current requirement of one full-time teacher for every 100 students. Reflecting the growing importance of faculty scholarship within legal education, Dean Smith also recommended that law school libraries be developed, and he proposed that accredited law schools spend \$15 per student each year on their law libraries to achieve this goal. Acting Dean Kennedy thought Dean Smith’s proposals “doubtless represent the attitude of ivy law schools. The solutions in all his proposals, you will note, is obligatory disbursements of moneys, in order to reduce the ‘profit motive’ of proprietary or sub-normal law schools.” After he had resumed his tenure as Dean, Wilkinson attributed a different motive to Dean Smith’s proposals to raise these standards, namely, to avoid the “rush into the law schools” after World War II that occurred after World War I. Smith sought “to prevent schools in the large cities from expanding too rapidly by making it expensive for them to do so.”¹⁵²

¹⁵¹ Walter B. Kennedy to Rev. Robert I Gannon, November 21, 1945, folder 3, box 10.

¹⁵² Minutes of Faculty Meeting of September 28, 1944, folder 10, box 11; “doubtless represent,” Walter B. Kennedy to Rev. Robert I. Gannon, September 19, 1944, folder 3, box 10;

Father Gannon's objections to Dean's Smith's recommendations highlighted the predicament of "unendowed" law schools attempting to maintain standards that were being determined increasingly by institutions that were relatively heavily endowed. His objections to Dean Smith's 50 to 1 student/faculty ratio recommendation were pragmatic and echoed Dean Wilkinson's opposition to the 100:1 ratio during the 1930's. For Fordham Law School to adopt the 50:1 standard, Father Gannon asserted, "would necessarily eliminate the part-time teacher and thereby causing [sic] the law school to suffer the loss of experienced lawyers and very competent teachers." Also, Fordham simply could not afford Dean Smith's proposal for the library expenditures. It would require Fordham to spend "\$12,000 a year for books alone." Father Gannon suggested that this financial burden could mean the extinction of law schools like Fordham, and he "urged that the unendowed school must be preserved as well as the endowed school." Wilkinson, in addition, denied "any necessary relation between the number of students and standards." He maintained that such an assumption was simply "fallacious", which appears to have contradicted his earlier view that smaller classes would make teaching more effective.¹⁵³

The Law School's financial condition brightened as returning veterans and the G. I. Bill rapidly increased Law School applications and enrollments. For some years after World War II, and again after the Korean Campaign in the 1950s, the numerous military veterans who comprised large proportions of the student body were several years older than the students who had attended before the War. Judge Lawrence Pierce noticed that this greater "maturity level . . .

"to prevent schools," Ignatius M. Wilkinson to Rev. Robert I Gannon, January 7, 1947, folder 4, box 10.

¹⁵³Minutes of Faculty Meeting of September 28, 1944, folder 10, box 11.

was reflected in our class” when he was a student. He had enrolled in Fordham Law School in September 1948, after serving in Italy during the Second World War in a segregated unit where one of his friends was Benjamin Hooks, who later became President of the NAACP.¹⁵⁴

The “rush into the law schools” that Columbia’s Dean Smith feared in 1944 began with the rapid demobilization following the end of World War II. By the 1946-1947 school year, Fordham Law School’s enrollment jumped up to 739 students. Dean Wilkinson’s estimated budget for that school year was based on an enrollment of 700 students, and it showed a huge surplus of almost \$200,000. His estimated budget for the 1947-1948 school year projected another substantial, though somewhat smaller, surplus of \$145,000. With these huge surpluses derived from the Law School’s tuition and fees, Fordham University could easily have afforded the proposals the ABA considered in 1946 to improve student/faculty ratios and to develop law school libraries. That is, it could have afforded them if the University had used the Law School’s income to finance the Law School alone rather than divert the surpluses to subsidize the University’s other divisions.¹⁵⁵

Fordham Law School’s opulent financial situation and Fordham University’s diversion of Law Schools revenues to University funds were not unique. The ABA surveyed the Nation’s

¹⁵⁴“That usually makes a difference”, Lawrence W. Pierce Oral History, p. 10. Interview of Judge Lawrence W. Pierce by Robert Cooper, Jr. on July 26, 1990, Transcript No. 76, Book 3, p. 2, Oral History Project, Fordham Law School Archives.

¹⁵⁵Dean Wilkinson’s estimated revenues for the 1946 summer session and 1946-1947 academic year totaled \$298,878.75, and estimated expenses totaled only \$108,036. The estimated surplus was \$190,842.50. “Estimated Budget,” folder 4, box 10. His estimated budget for the 1947-1948 school projected expenses of \$112,462 and receipts of \$257,506.50 and a surplus of \$145,044.50. “Requested Budget for School of Law,” included in Ignatius M. Wilkinson to Rev. Robert I. Gannon, July 24, 1947, *id.*

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law schools in 1947 and discovered that exploding enrollments were producing “substantial financial surpluses.” It also learned that “in several institutions” these surpluses were being applied “to other university purposes” than the law schools. Evidently, the Council had learned that Fordham University was one of these institutions, because the Council’s Chair urged Dean Wilkinson early in 1947 to apply to the Law School’s operation each year “a sum at least equal to that derived from tuition and fees.” To do otherwise was “undesirable” and contrary to the ABA’s “general principle” that university administrations should devote surplus funds derived from law school tuition and fees exclusively to law school operations. This ABA communication was perhaps the earliest to inform Fordham Law School that the ABA considered Fordham University’s diversion of the Law School’s income to general university funds to be undesirable and in conflict with the ABA’s general principles.¹⁵⁶

Two years later, the ABA’s Council on Legal Education sent out another questionnaire to the Nation’s law schools touching on a variety of subjects, including law school and university finances. Fordham University President Gannon was “somewhat amazed” at the questionnaire’s questions, some of which he believed “are not the business at all of the American Bar Association.” Nevertheless, he informed Dean Wilkinson that he would provide answers if the dean felt they must be answered. Wilkinson did, and again reminded Father Gannon that the ABA was “somewhat insistent that in approved schools any surplus be devoted to the school rather than to general University purposes.”¹⁵⁷

¹⁵⁶Laurence W. DeMuth for Joseph A. McClain, Jr. to Dean Ignatius M. Wilkinson, March 13, 1947, folder 4, box 10, Law School Papers.

¹⁵⁷“somewhat amazed” and “are not the business,” Rev. Laurence J. McGinley to I. M.

Dean Wilkinson opposed the ABA and AALS proposals to lower student-faculty ratios and to increase library expenditures for practical reasons and, in his view, for their flawed theoretical soundness. Both presented the Law School with space problems because of the cramped quarters at 302 Broadway. The library proposal would have required Fordham to spend approximately \$13,750 a year, which, while “not prohibitive,” would have required the purchase of many new books which were “not needed in our library” and would have presented “problems of library space.”¹⁵⁸

It is revealing that Wilkinson did not think the Law School’s library needed to expand its holdings, because the law library did not have “the range of books that [Dennis McInerney] saw when [he] started in a Wall Street law firm.” Moreover, students did not use the school’s library to study as they do today. *Law Review* editors would often go to other local libraries, such as those at the Practicing Law Institute, the Association of the Bar of the City of New York, and the New York county Lawyers Association, all of which were better libraries, because of Fordham Law Library’s limited collection, limited work space, and limited hours of operation. Wilkinson’s opposition to expanding the library’s holdings and facilities suggest a view of legal education and academia that did not place much importance on student research and faculty scholarship.¹⁵⁹

Wilkinson, July 8, 1949, folder 6, box 10; “somewhat insistent,” Wilkinson to Very Reverend Laurence J. McGinley, July 7, 1949, *id.* See also Wilkinson to Rev. Robert I. Gannon, March 25, 1947, folder 4, box 10.

¹⁵⁸Ignatius M. Wilkinson to Rev. Robert I. Gannon, November 4, 1946, folder 4, box 10.

¹⁵⁹On student use of the law library, Interview of Dennis McInerney, Esq., by Robert Cooper, Jr. on May 1, 1989, Transcript No. 51, Book 2, p. 13.

Wilkinson led the opposition to the proposal to reduce the student/faculty ratio to 50 to 1 at consecutive AALS meetings. He made two arguments. Wilkinson argued from “the principle involved”, which was central to his theory of legal education. A “well-balanced faculty required a sufficient number of full-time men” as well as “a fair number of active practitioners” in order “to bridge the gap between the theoretical instruction in the law school and the actualities of practice.” As he “would not dream of urging” a AALS rule requiring part-time teachers, because each law school should be permitted to develop its own program, so would he oppose a rule requiring law schools “to maintain substantially only a full-time staff.” The proposal would have required “a very considerable cut in the part-time faculty,” who Wilkinson regarded as “an important part of the School.”¹⁶⁰

Wilkinson also opposed the student/faculty proposal on practical grounds. He focused on the impact this standard would have on law school faculties across the country. Harvard’s law faculty, for example, which numbered thirty-three full time teachers would have to add ten more. “What in the name of Heaven would Harvard or any other school do with such a number,” Wilkinson wondered. Looking at the enrollments and full-time faculties of AALS member law schools, Wilkinson calculated that the proposed rule would require these schools to add a total of sixty-seven full-time teachers in one year, and he questioned whether law schools would be able to find the sixty-seven new full-time teachers to comply with the proposed standard. Some of the Catholic law schools, most notably Loyola of Chicago, voted in favor of the proposal, but “Harvard and a number of the best schools in the Association stood with me in the matter,”

¹⁶⁰Ignatius M. Wilkinson to Rev. Robert I. Gannon, November 4, 1946, folder 4, box 10.

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Wilkinson reported to Fordham University's President, Father Gannon. In 1950, Wilkinson succeeded in getting the AALS to adopt a compromise student/faculty proposal of 75 to 1. He believed this ratio preserved the central role part-time law faculty played in legal education, especially at Fordham, and it required Fordham Law School to hire only one additional full-time teacher at current enrollments.¹⁶¹

Practical realities severely affected Wilkinson's views and partially explain his opposition to proposals that presaged the future of legal education. His opposition to enhancing professional standards was out of character for him, but the space limitations at 302 Broadway prevented the Law School from developing in the ways that he surely knew were occurring among first rank law schools. Unable to provide offices for full-time faculty, the Law School could not expand its full-time faculty and was forced to rely primarily on its part-time faculty for instruction. Its inability to add more classrooms also restricted the Law School in several ways. Pedagogically, the most serious problem is that it rendered impossible adding more courses and providing different methods of instruction. The seminar was emerging as an important method of legal instruction which, when done correctly, offered law students an opportunity to engage in scholarly research. The scarcity of classrooms also limited the size of the student body. Too few classrooms and forced limitations on student enrollments restricted the school's ability to expand its faculty as well as enrich its curriculum. Dennis McInerney recognized decades after his student days at 302 Broadway that conditions there were inadequate by today's standards. "It

¹⁶¹Ignatius M. Wilkinson to Rev. Robert I. Gannon, January 5, 1949, folder 5, box 10; Ignatius M. Wilkinson to Very Reverend Laurence J. McGinley, January 4, 1951, folder 6, box 10.

didn't occur to us that this was, in comparison to what the students now have, some kind of deprivation because we had no basis for comparison." Nevertheless, he stated that "We were in a building that probably should have been condemned years before – and I believe it was torn down not long after Fordham moved."¹⁶²

Dean William Hughes Mulligan agreed. The building at 302 Broadway "was an old office building which did not readily become adapted to school requirements," Mulligan remembered. The city's fire code required the installation of a second staircase, which took up about one quarter of the space the Law School had planned to use. "It was really a miserable place," Mulligan complained. "The elevators were archaic. The [sic] bounced up and down." But, the Woolworth Building had also been unsuitable for a law school. "Neither building was suited for our operation – thank God for Lincoln Center."¹⁶³

Financial considerations also pushed Wilkinson to oppose proposed reforms. It is not that the Law School's revenues were insufficient to finance the changes the AALS reforms would have required. Wilkinson acknowledged that this was not the case. Rather, the Law School was unable to absorb these costs because the University diverted the enormous surpluses the Law School produced to finance its general operations. For example, in the 1947-1948 academic year, the Law School's revenues totaled \$257,506.00 and its expenditures were

¹⁶²"It didn't occur," Interview of Dennis McInerney, Esq., by Robert Cooper, Jr. on May 1, 1989, Transcript No. 51, Book 2, p. 11, Oral History Project, Fordham Law School Archives; "We were in," *id.* p. 12.

¹⁶³"was an old office," "It was really," "The elevators," "Neither building," Interview of William Hughes Mulligan, September 20, 1988, Transcript No. 22, Book 3, p. 15, Fordham Law School Oral History Project.

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\$186,684.36, leaving a 27.5% surplus of \$70,821.64. It reported to the ABA's Council of Legal Education and Admission to the Bar that this surplus was "allocated to Plant expansion – and return [sic] to general University funds for deficits during war years." Fordham University declined to give any further details of how it allocated the Law School's surplus because the ABA's "report itself does not call for details," and the central administration asserted that these "details are for our own information." In addition to the surplus, the Law School's expenditures included "Indirect Expenses" of \$63,481.71 paid to Fordham University. The Law School generated a surplus of about \$54,000 in the 1951-1952 school year, and the University diverted it into its general funds.¹⁶⁴

The Law School's profitability was a mixed blessing. The costs of its operations were low for a variety of reasons that were undermining the stature Fordham Law School had achieved in its first half century. The law school was housed in a low cost but inadequate building that impeded its development. Faculty salaries were low in large part because most members of the faculty were part-time. Even full-time faculty salaries were relatively low. The most serious obstacle to the Law School's financial well-being and future development was the lack of an endowment that might have made the school independent of tuition and fees to finance its operations. Fordham Law School was one of the few leading law schools in the Nation that was entirely dependent on student tuition.

¹⁶⁴“allocated to Plant expansion,” “details are,” and “report itself,” Work Sheet Data for Figures Entered on Report For Law School To American Bar Association,” April 7, 1948, folder 4, box 13, FLS, FUA; Wilkinson to John G. Hervey, April 9, 1948, *id.* In the 1951-1952 school year, the Law School received \$246,101 in revenue and expended \$192,148.21 in expenses for a surplus of \$53,952.79. Report to Council, March 23, 1953, p. 6, folder 5, box 13; *see also, id.*, p.

World War II stimulated discussions among legal educators of administrative and intellectual aspects of legal education. The AALS saw the wartime disruption to legal education as an opportunity to assess law school curricula. In 1942, the Executive Committee of the AALS, of which Dean Wilkinson was a member, circulated a letter to law school deans asking them to undertake with their faculties a “comprehensive reexamination and appraisal of law school programs,” which the Committee considered long overdue. Dean Wilkinson, with the faculty’s approval, appointed a faculty committee in early 1943 known as the Post-War Committee to survey the Law School’s curriculum and consider possible changes for the post-war period, particularly the possibility of expanding course offerings in the field of public law.¹⁶⁵

The Post-War Committee reported that the Law School’s curriculum was “greatly in need of revision.” The faculty had made very few changes in the curriculum since its founding. The most recent change was the addition of three important electives in the 1938-1939 school year: Administrative Law, Labor Law, and Taxation. The faculty adopted these public law courses because of their “increasing importance in consequence of developments in government during recent years,” a clear reference to the New Deal and the expansion of the administrative state. Incorporating these electives was the most significant change in the Law School curriculum since the opening of classes in 1905. Earlier changes included moving Agency from second to

7. *Id.*

¹⁶⁵“comprehensive reexamination” and “best legal education,” Executive Committee to Law School Deans, November 30, 1942, folder 8, box 8; Minutes of Faculty Meeting January 28, 1943, folder 10, box 11. The “Post-War Committee” consisted of Professors Walter B Kennedy, Raymond D. O’Connell and George W. Bacon. *Id.*

first year; moving Bankruptcy from third to second year; dropping Carriers from second year and New York Code of Civil Procedure from third year, and adding Damages and Wills to second year and a second course in Equity and New Jersey Practice to third year. Notwithstanding these changes, students took the same courses for most of the law school's first half century, And despite the Committee's conclusion that the Law School's curriculum needed to be revised, the faculty took no action to revise it.¹⁶⁶

The Fordham University central administration also made substantive suggestions regarding teaching methods and formats and course content in 1945 that anticipated some of the most important developments in the intellectual content of legal education in the closing decades of the twentieth century. But their suggestions were incompatible with the University's reliance on the Law School to subsidize its general operations. They recommended that the case method be used only in the first two years of courses, a recommendation the faculty ignored. Fordham's

¹⁶⁶“greatly in need of revision,” Minutes of the Faculty Meeting of February 10, 1944, box 11, folder 10, FLS, FUA; “increasing importance,” Dean's Report, April 3, 1940, p. 13, *id.* Regarding the unauthorized practice of law, *see* Wilkinson to Leon Sarpy, February 25, 1947, box 13, folder 4, *id.*; Leon Sarpy to Wilkinson, February 19, 1947, *id.*; ABA Committee on Unauthorized Practice of the Law School Questionnaire, February 1947, *id.* Minutes of Faculty Meeting of February 10, 1944, folder 10, box 11; Minutes of Faculty Meeting of June 1, 1944, folder 10, box 11. *See also* correspondence relating to the faculty's recommendations in folder 3, box 10, Fordham Law School Archives. The curriculum was listed in the law school catalogue. In the 1950's, the faculty made modest curricular adjustments. In the first year, they dropped Criminal Law and Procedure and added Criminal Law; they divided Real and Personal Property into two separate courses, and they added a new course entitled Introduction to Law. In second year, the faculty dropped two courses, Bills and Notes and Bankruptcy, and added two courses, Negotiable Instruments and Creditors' Rights. Equity was dropped from the third year, and two electives were added: Trade Regulation and Connecticut Practice. Whether the faculty modified law courses to incorporate fundamental social science principles is uncertain. These conclusions are based on courses listed in *Fordham University School of Law Announcements*, 1909-1910, 1929-1930, 1940-1941, 1946-1947, 1955-1956.

President wanted to broaden the Law School's curriculum beyond technical law subjects. He "was particularly interested" in developing "more than pure professionalism in our students." Speaking on behalf of Father Gannon from his personal experience with medical schools, Father William J. Mulcahy, S. J., who had recently been appointed Director of the University's "City Hall Division," noted that the medical schools he knew "created excellent doctors who were ignoramuses" because of the narrowness of medical education. Father Mulcahy asserted that this was also true of law schools, but "to a lesser degree . . . because of the nature of the subject matter taught in the law schools." Nonetheless, he cautioned that lawyers who were educated "only along legal lines might well be dangerous to the community at large if they were totally ignorant of economic, political [sic] and sociological fundamental principles."¹⁶⁷

Father Gannon also urged law faculty to incorporate some of the social sciences into substantive law courses. Father Mulcahy on behalf of Father Gannon advanced a view earlier expressed by Roscoe Pound, that "much more work could be done" in teaching law students the "fundamental sociological, economical and political sciences." Especially at that time, Father Mulcahy admonished, "the lawyer . . . should have at least some basic knowledge of these very important subject matters." The Jesuits did not advocate adding courses in these subjects to the law school curriculum. Rather, they thought these principles and subject matters should be

¹⁶⁷"the prevailing method" ABA Questionnaire, December 6, 1949, p. 47, folder 3, box 13, Fordham Law School Archives; Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11; a subject matter," Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11; Laura Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* (Chapel Hill: The University of North Carolina Press, 2005): 18-28. Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11; ** (Cannot find this source, however all quotes appear in 9/27/45 and can be completely cited to that source>) Minutes of Faculty Meeting September 21,

taught within established law subjects. This was a surprising recommendation when one considers the opposition of Dean Wilkinson and Fordham's law faculty to Legal Realism. Perhaps the Jesuits' goal was to teach social science principles and subject matter as an antidote to Legal Realism as Father Shealy taught a Catholic perspective on Social Work and Sociology as an antidote to socialism. The Law School faculty chose not to infuse their courses with the social sciences, which was sound legal educational pedagogy at this time. Even the Legal Realists in their heyday before World War II and their intellectual descendants in the nineteen fifties, sixties and seventies stuck to traditional content in their law courses.¹⁶⁸

Father Laurence J. McGinley, S.J., who succeeded Father Gannon as Fordham University's President in 1949, repeated his predecessor's request to broaden the intellectual content of the Law School's curriculum. He "urged the faculty" in September 1951, "to direct their efforts not merely to training competent lawyers but wherever possible to developing graduates who would be leaders in legal thought." McGinley thought law students were too smug, lacked a sense of "social responsibility" and needed to develop "a greater sense of public obligation." He suggested that "we ought to reexamine our methods," presumably to produce leaders who would shape legal rules and the public policies they advanced. He suggested that some of the school's top students "should be actively promoted so that 20 years from now they

1950, Fordham Law School Archives.

¹⁶⁸Minutes of Faculty Meeting of September 27, 1945, folder 10, box 11. Dean Pound had urged that "the modern teacher of law should be a student of sociology, economics, and politics." N.E.H. Hull, *Roscoe Pound and Karl Llewellyn: Searching for an American Jurisprudence* (1997): 67; Kalman, *Yale Law School and the Sixties*, pp. 18-28. See also, *infra* note 103 and accompanying text.

could have some impact on the legal thought to counteract some trends” in the law.¹⁶⁹

Beginning in 1947, the Carnegie Corporation and the ABA subsidized a massive seven year survey of the legal profession, including legal education. The first director of the survey was Arthur T. Vanderbilt, the Dean of New York University School of Law at the time of his appointment. Some of the survey’s salient observations and conclusions are summarized below and serve as a measure of where Fordham Law School was situated within the contours of legal education.¹⁷⁰

The survey found that the aspirational vision of legal education was much different from that of earlier in the century, and it was similar to the vision expressed by Father Gannon and Father McGinley. The report stated that the objectives of legal education had evolved beyond merely training “men” for the legal profession, and that law schools should now provide “ ‘a center where scholars may contribute to an understanding of law and government and may participate creatively in their growth and improvement.’ ” The expanded roles of lawyers in public life required an expanded view of legal education beyond training to solve the problems of individual clients. The survey reported that, reflecting these goals, “historical, sociological, and even psychological data are now considered in the law-school classrooms as part of the training for the bar.” Some law schools, such as Columbia and Yale, appointed to their law school faculties scholars in the social sciences, particularly economics and political science and other

¹⁶⁹“urged the faculty,” “social responsibility,” “we ought to,” “should be actively,” “a visiting committee,” **Minutes of Faculty Meeting of September 20, 1951, FLSA.

¹⁷⁰Albert P. Blaustein and Charles O. Porter, with Charles T. Duncan, *The American Lawyer: A Summary of the Survey of the Legal Profession* (Chicago: The University of Chicago Press, 1954): v; “make a complete,” *id.*, p. vi; *see also*, p. 2.

fields such as philosophy and history with a consequent reorientation of legal research along more academic scholarly lines. But, these experiments in integrating the social sciences and philosophy with traditional law courses were quite limited and “decidedly irregular.” The survey found that law school curricula consisted of traditional, practice oriented courses designed to help law students pass the bar examination. Even the major schools suffered “from a kind of intellectual ennui.” Consequently, by far the greatest number of law schools around 1950 performed “the routine work of basic legal instruction well enough,” and they were “completely orthodox and conventional in their outlook.” Fordham Law School was in the mainstream of American law schools as these sources described them.¹⁷¹

ABA Inspectors reported that law schools were inadequately financed and suffered from the lack of funds required to study and develop curricula. Insufficient funding also contributed to pressures to mass produce lawyers and contributed to large classes and overcrowded conditions. As before World War II, metropolitan law schools offering part-time instruction were seen as the “problem children” of legal education. Investigators found that “the bulk of evening training” consisted of spoon feeding information to students to pass the bar examination, and they survey concluded that part-time evening programs were not adequate substitutes for

¹⁷¹Blaustein and Porter, with Duncan, *The American Lawyer*, p. 162, quoting a special committee of Harvard Law School; “but of the society,” *id.*, p. 162; “to stress the policy needs,” *id.*, p. 170; “decidedly irregular,” *id.*, p. 172; The curricula are fairly,” Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: The University of North Carolina Press, 1983): 210, quoting, Lowell S. Nicholson, *The Law Schools of the United States* (Baltimore: Lord Baltimore Press, 1958): 21; “major schools were suffering,” *id.*; “the routine work,” Blaustein and Porter, with Duncan, *The American Lawyer*, p. 173, quoting, Albert J. Harno, *Legal Education in the United States* (San Francisco: Bancroft-Whitney Co., 1953): p. 163.

full-time day programs. Even so, the legal profession generally agreed that part-time programs should be available, but their standards should be raised to full-time standards.¹⁷²

Another important development was a growing emphasis on higher qualitative as well as quantitative standards to measure the quality of legal education. Historically, professional associations emphasized quantifiable standards to assess the quality of law schools and legal education. They focused on such factors as years of pre-law school education; years of law study; the number of books in law libraries and the number of full-time faculty. Bar leaders were now placing greater emphasis on qualitative standards, such as the quality of the content of law courses and of the “mind and character” of law school graduates admitted to the practice of law. However, they did not make recommendations as to how to assess these factors or how to improve the substantive quality of legal education.¹⁷³

The Survey of the Legal Profession did make recommendations concerning the nature and quality of pre-law school education, which shed light on leading lawyers’ and judges’ conceptions of the ideal lawyer as a well-rounded, socially conscious public servant with a strong commitment to professional ethics and moral values. . Though they recognized the need for lawyers to be educated to meet new conditions of American life, they steadfastly refused to recommend prescribed courses in prelegal education. Judges and lawyers overwhelming agreed with this point. Still, their universal view was that law students were “woefully unprepared” in

¹⁷², “ ‘unless the full-time’ ,” Blaustein and Porter, with Duncan, *The American Lawyer*, p. 177, quoting Elliot E. Cheatham; *id.*, p. 177-78.

¹⁷³“mind and character,” Blaustein and Porter, with Duncan, *The American Lawyer*, p. 181.

subjects needed to study law, naming economics, government and history as examples. The Survey was critical of law students for failing to learn these subjects and of colleges for failing adequately to educate them in cultural norms and the liberal arts. It acerbically asserted that no law teacher in any class of any law school can refer “ ‘to Plato or Aristotle, to the Bible or Shakespeare, to the *Federalist* or even the Constitution itself with any assurance that he will be understood.’ ” The Survey was also critical of law students’ inability “to think straight or to write and speak in clear, forceful, attractive English.” It found that colleges did not “arouse in their students abiding interests in the physical, social, and ethical aspects of the world in which they live and in the best that art and letters have to offer.” They failed to stimulate “in their students any personal sense of responsibility for the destiny of the body politic.”¹⁷⁴

Fordham Law School’s curriculum and character at the time of the Survey of the Legal Profession was dominated by Dean Wilkinson’s imprint. Achieving his vision of the Law

¹⁷⁴“woefully unprepared,” Blaustein and Porter, with Duncan, *The American Lawyer*, p. 188; refer “ ‘to Plato or Aristotle’ ,” *id.* p. 189; “to think straight” and “arouse in their students,” *id.* The Survey also collected information from American law schools. Fordham Law School is not listed among those that participated. Chief Justice Vanderbilt’s committee did send the questionnaire to Fordham, but Dean Wilkinson was unable to submit the information in a timely manner. Laurence J. McGinely to Dean Wilkinson, January 6, 1951, folder 6, box 10, FLS, FUA; Wilkinson to McGinely, January 8, 1951, *id.*; McGinley to Wilkinson, January 15, 1951, *id.* “Report of Committee on Pre-Legal Education,” folder 9, box 11, FLS, FUA. Respondents declared that pre-legal education should emphasize “intellectual discipline” rather than information about “particular subjects;” colleges should educate would-be lawyers “to meet new conditions in life,” and develop the “capacity for independent thought and action.” The ideal pre-law college education was a liberal arts curriculum. The Survey yielded the following course recommendations, listed in order of highest score with the number of recommenders in parentheses: courses in English language and literature (72); government (71); economics (70); American history (70); mathematics (65); English history (63); Latin (60); logic (56); philosophy (50); accounting (47); American literature (45); physics (44); modern history (43); sociology (42); psychology (39); ancient history (38); chemistry (38); medieval history (37); ethics (34);

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School in the 1920s and the 1930s placed Fordham among the Nation's leading law schools. In the final years of his tenure, he worked to maintain this vision at a time when forces were pushing for educational change that would transform the profiles of the leading law schools. In the opinions of Dean Mulligan and Fordham University's President and Academic Vice-president, Father Edwin A. Quain, S.J., Fordham Law School was no longer among them by the 1950s.

New York University School of Law overtook Fordham as the second law school in New York City by the 1950's. Under Dean Arthur Vanderbilt, the N.Y.U. Law School acquired "various business enterprises which produced tax exempt income that financed the school's operations," setting it apart from the inadequately financed law schools. The best known of these businesses was the Mueller Macaroni Company, which provided N.Y.U. Law School with substantial revenues until it was sold in the 1970's. These business enterprises enabled N.Y.U. to build its new \$5 million law school building on Washington Square South, which it completed in 1951. This new facility opened many doors for N.Y.U. Law School, including Dean Russell Niles' plan "to attract superior students from the better colleges throughout the United States," Dean Wilkinson informed Father McGinley. Wilkinson was skeptical that Dean Niles would be able to attract such students, notwithstanding his "fine Law School building." He anticipated N.Y.U.'s current student body to "be one of his real problems," not only because it was "largely drawn from the City of New York and its environs," but because it was "a very different student body from the type which we have here at Fordham." With some hubris, Wilkinson suggested

biology (30); scientific method (25); physiology (21); French (20); Spanish (20).

that if Dean Niles “could induce some good Fordham material to matriculate with him it might serve as a leaven,” but he was “inclined to think that the lump with which he has to deal would be hard to make any impression on.”¹⁷⁵

Fordham Law School also had the opportunity of acquiring a business enterprise that could have financed its operations. Wilkinson had discussed “such a project” with Father McGinley in 1950. As with N.Y.U.’s Dean Vanderbilt, “a former client of my [law] office,” Wilkinson recounted, “came to me with the suggestion that Fordham purchase his flourishing manufacturing business from which he wanted to retire.” The name of the business is unknown, because Fordham University’s President and Law School dean “determined not to go into [the project] for various reasons.” Wilkinson also considered a “tax arrangement” with a business in which the Law School would benefit from business income that would be tax exempt to the Law School. Wilkinson and Father McGinley deemed this tax arrangement “most undesirable from a public relations standpoint.” So, Fordham Law School did not acquire a business that might have provided it with independent sources of income as did N.Y.U. Law School. Also unlike N.Y.U., Wilkinson and his immediate successors did not express any interest in recruiting students from the better colleges around the nation. By spring of 1951, Wilkinson acknowledged that N.Y.U. had joined Columbia as Fordham’s competitor.¹⁷⁶

¹⁷⁵“to attract superior students,” “fine Law School building,” “largely drawn from,” and “could induce some,” Wilkinson to McGinley, January 2, 1951, folder 6, box 10, FLS, FUA.

¹⁷⁶“a former client,” “came to me,” “determined not to,” “tax arrangement,” “most undesirable,” Wilkinson to McGinley, January 2, 1951, folder 6, box 10, FLS, FUA; Wilkinson to McGinley, March 5, 1951, *id.*; “when the benefits” and “will prove to be,” Wilkinson to McGinley, March 15, 1951, *id.*; Wilkinson to McGinley, March 9, 1951, *id.*; McGinley to Wilkinson, March 26, 1951, *id.*; Wilkinson to McGinley, March 27, 1951, *id.*; McGinley to

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Faculty governance was very limited under Dean Wilkinson. In the last years of the Wilkinson era, the faculty met at least twice per year, with part-time faculty joining full-time faculty as equal participants. All faculty members had full voting rights. The principal function and responsibilities of faculty meetings was to decide matters relating to admission standards, the nature of examinations and curriculum issues. The limited scope of faculty governance is reflected in the fact that only one of the three faculty committees at that time related to governance, namely, the Committee on Curriculum. The other two committees were the Committee on Law Review and the Committee on Moot Court. The curriculum was prescribed for the first two years, and students had very limited choice of electives in third year for day students and fourth year for evening students. The school offered no continuing education courses for practicing attorneys, but none of the other New York City did either. Continuing education courses were only offered by the Practicing Law Institute.¹⁷⁷

Under Dean Wilkinson, faculty played a limited, consultative role in matters affecting themselves. Procedures to determine questions of tenure, promotion and salary were largely not detailed, because the faculty was small and no problems arose around these issues. The faculty had an informal rather than an institutional role in matters relating to hiring, promotions and tenure. The dean solicited applications for teaching positions, and he and senior faculty interviewed interested candidates. The dean also consulted Law School alumni. If they reacted favorably to a candidate, he was invited to lunch with the entire faculty. If the faculty were also

Wilkinson, April 4, 1951, *id.*

¹⁷⁷ABA Questionnaire, December 6, 1949, pp. 23-24, 46-49, folder 3, box 13, FLS, FUA.

favorable, the dean recommended the appointment to the Academic Vice President, who then made the official recommendation to the University President. The Dean consulted faculty members individually, but he possessed the sole power to decide whether to recommend the appointment. Not one of the Law School deans' recommendations for faculty appointments was denied by the University for the period from 1947-1948 to 1957-1958.¹⁷⁸

The bases on which the decision to hire a new faculty candidate and decisions relating to promotion and salary were the usual considerations reflecting Fordham's vocational perspective on legal education, with certain exceptions that reflected the Law School's religious affiliation. The faculty candidate's education, law practice, interest in teaching, potential to become a good teacher, and recommendations all played a role. Because Fordham Law School was a Catholic institution, other factors were also considered. For example, "an attitude of irreligion or anti-religion would be a factor" in the hiring process. However, the Law School's Jesuit affiliation would "not prevent us from retaining non-Catholics on our faculty." Nor would a candidate's political affiliation or political activity, so long as it did not prevent him from devoting full-time to the Law School. But, the school "would not employ a member of the Communist Party" or anyone who would not swear allegiance to the United States. The "Nature of candidate's domestic life" was also considered, but race was not a consideration. These factors were also considered in decisions concerning faculty promotion along with considerations of "work and

¹⁷⁸**The hiring process is described in I. An Inquiry Into American Law Schools, October 31, 1957, pp. 88-94. *See also, id.*, p. 146a. Fordham University's President, in consultation with the Vice Presidents for Academic Affairs and Finance (?) set the starting salaries of law faculty. *see, e.g.*, Edwin A. Quain, S.J. to Professor George W. Bacon, December 22, 1953, folder 2, box 5, FLS, FUA; George W. Bacon to Reverend Edwin A. Quain, January 5,

length of service” and “Ability to work cooperatively with fellow faculty members.”¹⁷⁹

Dean Wilkinson recommended faculty salary increases after meeting with the individual faculty member. He recommended increases for the “lowest grades at least every second year and under present conditions [in 1949] every year,” a reference to the school’s attempt to make up for the decreases in faculty salaries during World War II. The only criteria for salary increases were “Ability to work cooperatively with fellow faculty members” and “continued interest in faculty commitments and duties.”¹⁸⁰

Faculty salaries were determined by the central administration. The dean sent his recommendations to the Academic Vice President who consulted with the Vice President for Business & Finance who, in turn, made the official recommendation to the University President. There was no known refusal of a salary increase in the period from 1947-1948 to 1957-1958. Consistent with Dean Wilkinson’s practice-oriented vision of legal education, the Law School

1954, folder 2, box 5, FLS, FUA.

¹⁷⁹***“an attitude of irreligion,” “not prevent us,” “would not employ,” “Nature of candidate’s,” I. An Inquiry Into American Law Schools, October 31, 1957, p. 92; *id.*, p. 103; Ignatius M. Wilkinson to William Hildebrand, Jr., August 9, 1950, folder 8, box 5, FLS, FUA; *see also*, Hildebrand, Jr. to Wilkinson, August 11, 1950, *id.*; Wilkinson to Hildebrand, August 14, 1950, *id.*; ***“as warranted,” I. An Inquiry Into American Law Schools, October 31, 1957, p. 104; ***“and usually more,” *id.*, p.98a; ABA Questionnaire, December 6, 1949, p. 49, folder 3, box 13, FLS, FUA; “without any real raise in rank,” Edwin A. Quain, S.J. to Professor Bacon, September 11, 1953, folder 2, box 5, FLS, FUA; Georg W. Bacon to Reverend Edwin A. Quain, August 6, 1953, *id.*; **Minutes of Faculty Meeting of September 24, 1953, FLSA.

¹⁸⁰“lowest grades,” ABA Questionnaire, December 6, 1949, p. 49, folder 3, box 13, FLS, FUA. *see also*, *Id.*, pp. 23-28, 51; ***“Ability to work cooperatively,” “continued interest,” I. An Inquiry Into American Law Schools, October 31, 1957, p. 112.

did not provide faculty sabbaticals for scholarly research and writing, but it encouraged younger faculty in particular to gain practical experience in private practice.¹⁸¹

Fordham's faculty at mid-century consisted of twice as many part-timers as full-timers, and it was inbred as most were Fordham Law School alumni. Of the seven full-time faculty, four were Fordham Law School graduates. Of the fifteen part-time teachers, thirteen were graduates of the Law School. The full-time faculty's maximum teaching load was only two hours per week greater than that of the part-timers, eight hours as against six hours. However, the part-timers' average weekly teaching load was only three hours. In 1949, the full-time faculty's average salary was \$7,464 and the median salary was \$8,550. However, these figures declined to \$6,620 and 7,050, respectively, in 1953. By 1953, all full-time faculty members received a pension contribution of 5% in addition to their salaries. Law faculty salaries were higher than those in the other departments of Fordham University. Maximum salaries of "full-time instructors" were "about 1/3 to 1/2 higher," and minimum salaries were "about 1/2 to 100% higher" than those of full-time faculty in other departments. In addition, salary increases of the Law School faculty were "generally more liberal."¹⁸²

¹⁸¹**"Ability to work cooperatively," "continued interest," I. An Inquiry Into American Law Schools, October 31, 1957, p. 112. The process for determining salary increases is described in *id.*, pp. 107-112; **II. An Inquiry Into American Law Schools, pp. 12-18; **I. An Inquiry Into American Law Schools, October 31, 1957, p. 104; "to recommend," *id.*, "as warranted," p.98a; "general usefulness," *id.* p. 102; "Rank of Professor," *id.*, p. 106; *see also id.*, p. 105, 110 and 98-112.

¹⁸²"In the law school," ABA Questionnaire, December 6, 1949, p. 51, folder 3, box 13, FLS, FUA; *see also* pp. 23-24, 46-49. **For the 1953 faculty salary, *see* Report to Council, Section of Legal Education and Admission to the Bar, American Bar Association [hereinafter cited "Report to Council"] March 23, 1953, p. 10, folder 5, box 13, *id.*

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The Law School and, presumably, the University subscribed to the tenure principles adopted by the American Association of University Professors in 1940. The Law School recognized tenure as a protected faculty status after four to five years of service, on average, and promotion to the rank of Associate Professor. Seventy percent of the full time faculty were tenured in the fall of 1957. Consistent with the AAUP Statement of Principle Number 32, which permitted termination only for adequate cause, retirement or financial exigency, this meant that a law teacher would be dismissed only for “grave cause” and after notice of the charges and a hearing before a faculty hearing committee at which the faculty member was entitled to legal representation. He had a right of appeal to the ultimate deciding authority, who was the president of Fordham University. The Law School did not have any procedure for terminating a term appointment prematurely or for reviewing the dean’s decision not to renew a term appointment.¹⁸³

Dean Wilkinson encouraged law faculty to write articles for the *Fordham Law Review*, but the Law School did not provide support for faculty scholarship. It did not have a “publication fund” to support faculty research and writing, and it did not give grants-in-aid or defray the expenses associated with faculty publications. Although Dean Wilkinson reported that secretarial assistance was available to the faculty, faculty “Stenographic assistance” was not separately budgeted. The Dean encouraged faculty to attend meetings of professional organizations and to participate in the educational activities of professional associations such as

¹⁸³**“grave cause,” I. An Inquiry Into American Law Schools, October 31, 1957, p. 113. The tenure principles and procedures are in *id.*, pp. 113-19.

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the ABA and AALS, but amounts expended for these purposes were very modest, ranging from \$65.41 in the 1945-1946 academic year to \$271.73 in 1947-1948.¹⁸⁴

Fordham Law School continued to maintain distinctively high admissions and academic standards in Wilkinson's last years as dean. It was one of eight law schools that required a college degree as the academic prerequisite for admission. Although Fordham Law School did not require course work in any particular pre-law subjects, it did "recommend that students pursue as far as possible the old classical education embracing the study of the 'humanities' so called." Wilkinson did not consider "Non-theory courses" in assessing whether the applicant satisfied the Law School's degree requirement and its required minimum college scholastic average, and the Law School did not accept degrees in technical subjects, such as engineering or business administration. The bachelor's degree itself was not sufficient. The law school's selective admission policy required that the applicant's college academic record demonstrate that s/he was capable of law study. However, from 1946-1947 to 1952-1953, Wilkinson's last year as Dean, the number of applications to the Law School declined, but more applicants were accepted and enrolled. Of the applicants who enrolled in 1952, five percent had undergraduate g.p.a.'s of A; thirty percent had a B average; and the great majority, some sixty-four percent, graduated college with a C+ average. Wilkinson, who made all admissions decisions, admitted three students with averages below C+. He preferred Fordham graduates over other "equally qualified students," and about one quarter of the students accepted to the Law School came from

¹⁸⁴***"of formal criteria," I. An Inquiry Into American Law Schools, October 31, 1957, p.

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departments within Fordham University. The other students enrolled in the 1949-1950 school year graduated from approximately 125 colleges and universities, most of which were located outside of New York State. Nevertheless, most of the Law School's students came from the New York metropolitan area and lived at home.¹⁸⁵

Drop out rates continued to be significant after World War II. In the academic year immediately following the conclusion of the war, 1945-1946, 34% of the day students and 43% of the night students dropped out. The greatest proportion of dropped students were in the first year, 17% of the day students and 21 % of the night students were dropped. Fewer students dropped out the next academic year, 24% of the day students and 36% of the night students. Fewer students still dropped out during the 1947-1948 academic year, 16% of the day students

113; ABA Questionnaire, December 6, 1949, p. 49-50, box 13, folder 3, FLS, FUA.

¹⁸⁵For example, the law school received 1152 applications for the 1946-1947 academic year. It accepted about 26% (296) of the applicants, and 226 or about 19.6% of the applicants enrolled in the school. In the following academic year Fordham accepted 44% (335 out of 758) of the applications it received and 30% (228) enrolled. In 1948-1949, it accepted 50% (345) of the 693 applications it received and 37% (257) of all applicants entered the Law School. For the 1952-1953 academic year, the Law School accepted 58% of the applications it received, and 32% (245) of all applicants matriculated. ABA Questionnaire, December 6, 1949, pp. 54, 63, folder 3, box 13, FLS, FUA; Report to Council, March 23, 1953, p.3, folder 5, box 13, *id.* Not surprisingly, day students tended to be younger than evening students. With a college degree prerequisite for admission, virtually all Fordham law students were at least twenty-one years of age. The overwhelming majority of the day students, 87%, were between 21 and 30 years of age. About one-third (32%) were between the ages of 21 and 25 and 50% were between 25 and 30. Only 10% were between 30 and 35, and 3% were over 35 years of age. Only 11% of the night students were between 21 and 25 years of age. The overwhelming majority, 77%, were between the ages of 25 and 35, 43% were between 25 and 30, and 34% were between 30 and 35. About 12% of night students were over the age of 35. ABA Questionnaire, December 6, 1949, p.64, folder 3, box 13, FLS, FUA. "recommend that," ABA Questionnaire, December 6, 1949, p. 57, folder 3, box 13, FLS, FUA; "equally qualified students," *id.*, p. 54; *see also* pp. 53-57. Some 75% of day students and 81% of night students were residents of New York state and lived at home. Report to Council, March 23, 1953, pp. 63-65.

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and 30% of the night students. Students who reached their senior year generally graduated, although a few either dropped out of school voluntarily or were failed out of school. Significant numbers of voluntary and involuntary withdrawals continued into the 1950's.¹⁸⁶

Wilkinson's view of legal education continued to be practice-oriented at a time when the Vanderbilt study revealed that bar leaders urged law schools to prepare lawyers not only to represent clients but also to become public leaders. His vision also conflicted with that of the Fordham University's central administration, which shared this view and urged the Fordham law faculty to become more interdisciplinary and academically-oriented. Leaders in legal education also urged these changes, and the better law schools eventually adopted them. Wilkinson, on the other hand, expressed his "firm conviction that the first and principal business of any good law school is to train men for the practise [sic] of their profession and not as it is contended to be in some places to equip men to staff Government agencies and become criminologists and the like." Indeed, he thought that "training a man to be a competent practising [sic] lawyer" would "equip him to engage in the other – governmental and otherwise – activities" in which lawyers had taken a leading role "throughout the history of our country." The law school's curriculum "necessarily takes into account the content of the New York bar examinations," Wilkinson reported to the ABA in 1949. He was satisfied with the relationship of the "curriculum and methods of the School to the bar examinations" and did not think any improvement was needed or desirable. He noted that there was "a high degree of conformity between bar examination

¹⁸⁶ABA Questionnaire, December 6, 1949, pp.60-61, folder 3, box 13, FLS, FUA.
**Report to Council, Section of Legal Education and Admission to the Bar, ABA, March 23, 1953 [hereinafter cited as "Report to Council, March 23, 1953"], pp. 1, 4, box 13, folder 5, FLS,

results and [law] school grades.” Wilkinson also clung to his vision of legal educators as experienced practitioners who served as part-time teachers and brought “into the classroom something of the actualities of practice and thus [bridged] the gap between the theory or science of the law and its art and practice.”¹⁸⁷

Dean Wilkinson’s vision of legal education explains his unyielding opposition to trends that were occurring in the better law schools in the mid-twentieth century. William Hughes Mulligan entered Fordham Law School as a student in 1939, and joined the faculty in 1946?. He later recalled his years as a student and as a faculty member when Wilkinson was Dean. As much as he respected Wilkinson for his remarkable accomplishments, Mulligan had to admit that Wilkinson “ran the school like a despot on a shoe string,” and he adamantly clung to “a curriculum which he would never change.” Wilkinson “considered the Law School to be his own project,” Mulligan opined. “They used to say that when Wilkinson died he left the Law School to the Jesuits[,] and I think that probably was the reason why [Fordham University President Robert] Gannon did not fully accept the excellence of the Law School.”¹⁸⁸

Wilkinson’s ideal law school professor was the practitioner who taught part-time. Faculty scholarship, to the extent that faculty published, reflected this pragmatic orientation,

FUA.

¹⁸⁷“firm conviction” and “training a man,” Wilkinson to John G. Hervey, December 7, 1948, box 13, folder 4, *id.*; **“necessarily takes into account,” “curriculum and methods,” and “a high degree of conformity,” Report to Concl, March 23, 1953, p. 45; “into the classroom,” Wilkinson to McGinley, January 4, 1951, box 10, folder 6, *id.*

¹⁸⁸Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Fordham Law School Oral History Project, p. 5.

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with important exceptions. The publications of Fordham law faculty consisted of law review articles and treatises intended for the practicing bar. Casebooks manifested a similar pragmatic quality. Through the 1950's and into the 1960's, Fordham law faculty did not engage in academic scholarly research, and the Law School deans did not encourage it. The full-time faculty devoted their time to teaching and to supervising and conducting extra-curricular activities, such as the *Fordham Law Review* and the Moot Court, and lawyering skills, such as legal drafting.

Fordham Law School experienced a decline in status following the Second World War. A number of factors disadvantaged the institution and contributed to its slippage from being the number two law school in New York City and among the top twenty law schools in the Nation. These factors included the following: the University's diversion of Law School surplus revenues away from the Law School to subsidize other divisions of the University; the Law School's financial structure which rendered it dependent on tuition and fees; the Law School's inadequate building which prevented its development and growth; Dean Wilkinson's vision of legal education, which served the Law School well before World War II but was quickly becoming obsolete in the post-War era; the failure of the Law School's faculty to produce the kind of academic legal scholarship that was becoming the hallmark of the Nation's best law schools. The Law School's decline became evident in the last years of Dean Wilkinson's tenure.

CHAPTER 6: DEAN MULLIGAN CONFRONTS THE NADIR OF FORDHAM LAW SCHOOL

Dean Wilkinson died unexpectedly on June 22, 1953. The selection and appointment of Wilkinson's successor demonstrated that the Law School's governance was completely in the hands of Fordham University's administration. Fordham University President Rev. Laurence J. McGinley, S.J. appointed Professor George W. Bacon Acting Dean until a new Dean could be selected. Professor Bacon was in his early 60s in 1953 and considered too old to be appointed the regular dean. In addition, Bacon was a Protestant, and he did not "believe that a Protestant should become Dean of a Catholic Law School." Bacon served as Acting Dean until June 30, 1954, when Father McGinley announced to the Law School faculty the appointment of Professor John F.X. Finn as the new Dean at a special meeting he convened after saying a memorial Mass in the Law School chapel on the first anniversary of Wilkinson's death. Father McGinley oversaw the search for the new dean, which was conducted by the University's central administration. Father McGinley also announced the appointment of Professor William Hughes Mulligan as Assistant Dean. Professor Mulligan succeeded Finn as Dean two years later, and he served as dean until June 1971.¹

¹“believe that a Protestant”, Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 14, Fordham Law School Oral History Project, Fordham Law School Archives [hereinafter cited “FLSA”]. *See* Correspondence regarding the dean's search in box 26, folder Correspondence: Candidates for Dean of Law School – Oct. 1953-July 1954, Laurence J. McGinley, S.J. Papers, FUA [hereinafter cited “McGinley Papers”]. Fordham University Vice President for Academic Affairs, Rev. Edwin A. Quain, S.J., told Assistant Dean Mulligan years later that Mulligan was the Search Committee's first choice, but they considered him too young. He was only 36 years old at that time. Even

Dean Finn symbolized the old order in legal education that mixed an active law practice with legal academia. But, Finn carried it to an extreme. “John had established that he was more interested in practicing law than Deaning,” Mulligan explained. Fordham University’s Academic Vice President informed the President in July, 1956 that Finn had not “decreased his active practice of the law to any notable degree since taking the Office of Dean” two years earlier. It was “common knowledge among downtown lawyers and faculty that the Dean [was] actively engaged in the practice of Law,” and he was “certainly absent from the Dean’s Office a great deal of the time.” This upset some of the Law School’s faculty and alumni, and Father McGinley thought that the Dean should be full-time. Nor was Finn “in any sense an administrator,” in Father Quain’s view, who believed he lacked “both the temperament and the judgment for the position.” Mulligan carried the whole burden of running the Law School. The Fordham President more or less fired Finn as Dean. Fordham University issued a press release on August 19, 1956 stating that Father McGinley had appointed Finn “co-ordinator of development” for the Law School, that Finn would continue as Professor of Law, but that he would “also resume private practice” at the law firm with which he had been associated since 1923, Lorenz, Finn and Giardino.⁴

after Mulligan was appointed Dean two years later, Mary Long called him “Billy”, and she still considered him “a child”, Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 20, Fordham Law School Oral History Project, FLSA; “Billy”, “a child”, *id.*, p. 18;

⁴“John had established”, Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 20, Fordham Law School Oral History Project, FLSA; “decreased his active”, common knowledge”, “certainly absent”, “in any sense”, “both the temperament”, Memorandum from Rev. Edwin A. Quain, S.J. to Father Rector, July 5, 1956, box 26, McGinley Papers, FUA; “co-ordinator of development”, “also resume private

Evidently, Father McGinley simply appointed Mulligan as Finn's successor. "Father McGinley called me in during the summer and told me that I was to be the Dean," Mulligan later recalled. There was no dean's search and no search committee. Mulligan, who had graduated *cum laude* from both Fordham College in 1939 and Fordham Law School in 1942, was a successful lawyer, having become a partner in the law firm of Manning, Hollinger and Shea before joining the Law School faculty in 1946. Mulligan's ties to Fordham were deep. He was a "collateral descendant" of Archbishop John Hughes, who founded Fordham in 1841. Mulligan's father told the priest at William's baptism that he named the boy "Hughes" after "Archbishop John Hughes who was the first Archbishop of New York, the builder of St. Patrick's Cathedral and the founder of Fordham University."⁵

In the half century of its existence, Fordham Law School declined from an elite institution of legal education to a trade school. Mulligan acknowledged this unfortunate fact on the occasion of the Law School's fiftieth anniversary in 1955. As Associate Dean, Mulligan informed Academic Vice-President, Edwin A. Quain, S.J., that he was "convinced that we are a 'trade school'." Mulligan attributed a large part of the blame for the Law School's decline to Dean Wilkinson, because he had "intended to run a 'bread and butter Law School'." Both men

practice", "Fordham News Service", "For Release Sunday, August 19, 1956," folder Faculty Minutes 1954-1960, FLSA.

⁵"Father McGinley called me", Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 20, Fordham Law School Oral History Project, FLSA; "Fordham News Service, "For Release Sunday, August 19, 1956", folder Faculty Minutes 1954-1960, FLSA; "Archbishop", Interview of William Hughes Mulligan, September 20, 1988, Transcript No. 22, Book 3, p. 2, Fordham Law School Oral History Project, FLSA.

agreed that it was not “desirable that this point of view be maintained for the future.”⁶

Father McGinley and the Fordham University administration also considered the Law School a bread and butter institution, though with a different meaning than Wilkinson’s. Father Quain’s view notwithstanding, this chapter will show that Fordham University continued to use the Law School as a cash cow, diverting the Law School’s surplus revenues to subsidize Fordham University’s other schools and divisions through the rest of the twentieth century. The University continued to house the Law School in an inadequate building, and this deficiency was not corrected until 1961, and then only temporarily. University budget priorities and space limitations precluded the Law School’s development and rendered the Law School incapable of regaining and improving upon its earlier stature among the Nation’s best law schools.

The Law School undoubtedly generated enough revenue to fund a first-rate operation, but empirical data demonstrates that it was under-funded. Like most law schools of the time, Fordham Law School was tuition-dependent. However, in its fiftieth anniversary year of 1955, its enrollment was the 10th largest of 125 reporting law schools, and its tuition for full-time students was the 15th highest in the Nation. Yet, the Fordham Law School Library ranked “77th out of 127 [reporting law] schools” in the size of its collection and “110th out of 127 schools” in the amount of its annual library expenditures to increase its collection. The Law Library’s expenditure per student was “about the lowest of any of the [ABA] approved schools,” according to John G. Hervey, adviser to the ABA’s Section of Legal Education and Admissions to the Bar.⁷

⁶All quotations are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA.

⁷All quotations except Hervey’s are in Rev. Edwin A. Quain, S.J. to Father Rector,

Because the Law School's tuition and student enrollment were among the highest in the country and the number of full-time faculty employed was relatively small, Fordham had the financial resources to recruit the highest quality faculty by offering premium salaries. But it did not. Mulligan lamented that the Law School's "salary scale is not as yet high enough to attract successful lawyers away from the lucrative practice of law," and Father Quain agreed. Although it was located in a city with one of the nation's highest costs of living, Fordham Law School's median faculty salary for the 1953-1954 school year placed it 84th out of 119 reporting law schools and 18th out of 34 reporting church-related schools. Its faculty salaries were "the lowest in the New York area," and its full-time faculty/student ratio was "the highest in the New York area," according to ABA adviser Hervey.⁸

Hervey informed Dean Finn in March, 1955 that his Section "expressed deep concern at the salary scale which prevails" at Fordham Law School. They were of the view "that there is a close relationship between salaries paid, the competency and stability of the staff, and the adequacy of the instruction offered." The Law School was a "professional one," Hervey opined, and "the earnings of competent law teachers should approximate the earnings of practitioners of equal ability." Fordham law faculty salaries were significantly below those of New York City

March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; "about the lowest of any", John G. Hervey to Dean John F.X. Finn, March 21, 1955, *id.*

⁸All quotations except Hervey's are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; "the lowest in", John G. Hervey to Dean John F.X. Finn, September 13, 1954, box 26, folder School of Law 1954, McGinley Papers, FUA.

practitioners.⁹

Fordham University's underfunding of the Law School and diverting the Law School's profits to subsidize its general operations sparked a conflict in 1955 between the ABA and Fordham University. Hervey concluded that the Law School did not have "any problems that money will not cure," and he believed that the Law School was generating the money to cure them. He warned Dean Finn that the ABA Council on Legal Education "will be most critical" of the University's siphoning off these surplus revenues, and that he would "have some harsh words to say about" Fordham University's financial arrangements with the Law School in his talk "before the administrative round-table on 'Things Monetary in Legal Education' " at the annual ABA meeting in December, 1955. This marked the beginning of a decades-long dispute between the ABA and Fordham University over the University's appropriation of the Law School's surplus revenues. The dispute became increasingly acrimonious in the 1970s. The members of the ABA's Council believed the University's financial priorities contributed to the decline of Fordham from the first rate law school it had been and prevented it from becoming again.¹⁰

The building that housed the Law School and its location in the legal district encouraged the Law School community to regard the Law School as a part-time institution. The school's physical plant was too small to educate all full-time students in one day division, forcing the

⁹All quotations are in John G. Hervey to Dean John F.X. Finn, March 21, 1955, *id.*

¹⁰John G. Hervey to Dean John F.X. Finn, September 13, 1954, box 26, folder School of Law 1954, *id.*; The conflict between the ABA and Fordham University regarding the Law School's surplus revenues is discussed *infra* Chapter Seven.

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Law School to split the day school into two separate divisions – a morning and an afternoon – in order to accommodate the large number of students it was required to enroll because of its total tuition-dependency and its role as the University’s cash cow. Of course, the third division was the night school, which enabled “a great many excellent young men” to get their legal education who would otherwise be deprived of this opportunity. The inadequate Law Library and the absence of other room for study forced day students to leave the Law School when they were not in class. Requiring day students to attend classes only in the morning or only in the afternoon was “almost an invitation to those students to work for the other half of the day.”¹¹

The school’s proximity to law offices was another “encouragement to students to become part-time students.” Thus, locating the Law School in lower Manhattan, the center of Manhattan’s law practice, which was an advantage when most law students worked in these offices and attended the Law School on a part-time basis, was now an impediment to quality legal education when the best law schools, indeed, most law schools offered only full-time programs to full-time students. The “three-session system” combined with “enticing employment opportunities” in nearby New York law offices and courts tended to “aggravate the problem.” Full-time students were required to sign a “certificate” stating that they would not work more than twelve hours at “outside employment”, but enforcement of this rule was “something of a problem,” and this pledge was not kept by many students. The teachers were not very demanding of the students, day students were “not taxed enough in their work at school, they [had] no place to study and lounge at the school, and gradually they become more and more

¹¹All quotations are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box

involved in work in Law offices downtown.”¹²

Mulligan made scheduling changes to cut down on outside employment by full-time day students and to end Fordham’s image as a part-time law school. He persuaded the full-time faculty to change the current “block” schedule of classes to a “checkerboard” schedule. The day classes were divided into two sections instead of morning and afternoon divisions. The students in the two sections attended classes on alternate mornings and afternoons. The Dean intended this change as a “method of forcing full time study.” Mulligan eased these changes into the course schedule during the 1958-1959 academic year.¹⁴

The Law School’s location also had “a deleterious effect on the full-time faculty.” Again, at the Law School’s inception and through most of its first half century, law school faculties consisted mostly of practicing lawyers who taught part-time. This began to change prior to World War II, and, by the middle of the twentieth century, the trend was toward full-time faculties who devoted all of their time to teaching and publishing legal scholarship. Fordham Law School’s full-time faculty were “in theory, permitted ‘an occasional brief or consultation’ in a downtown law firm.” However, Mulligan and Father Quain were “in complete agreement” that it had become “increasingly clear . . . that rule is not carefully observed because

26, folder School of Law 1955, McGinley Papers, FUA.

¹²All quotations except ABA Inspection Report’s are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; “aggravate the problem”, ABA Inspection Report, April 28-29, 1958, p. 7, box 26, folder School of Law 1958, McGinley Papers, FUA.

¹⁴“method of forcing”, Minutes of Faculty Meeting of November 15, 1957, folder Faculty Minutes 1954-60, FLSA; Minutes of Faculty Meeting of June 4, 1959,*id.*

the men inevitably become more and more involved in legal practice.” Some faculty felt compelled to supplement their low Law School salaries with fees they could earn practicing [law]. The faculty’s over-involvement in the practice of law accounted for their “failure . . . to write for legal journals and to produce books such as would bring prestige to the school.”¹⁵

The faculty’s failure to engage in legal scholarship was also attributable to the non-scholarly academic environment at Fordham. Fordham University’s criteria for promotion and tenure clearly did not require scholarly publications. Promotion and tenure determinations were made on the “candidate’s genuine service to the University.” In evaluating this “service”, the “qualities” considered included “years of service in rank, degrees held, previous teaching experience and the recommendation of departmental chairmen and deans.” “Other factors” considered included the candidate’s “influence on students and colleagues; mastery of the classroom and academic presentation; participation in learned societies; research; professional excellence in circles outside the University, etc.” The University’s “merit system” of salary increments adopted in the spring of 1958 also focused on teaching and personality. In 1967, Fordham University adopted the American Associations of University Professors’ (AAUP) 1940 Statement of Principles, which included the AAUP’s tenure policies and procedures, although the University still did not place much emphasis on scholarly publications. Law faculty were subject to Fordham University’s criteria and principles in tenure and promotion decisions. Dean Mulligan formalized the Law School’s tenure and promotion process by creating an advisory faculty tenure and promotion committee, and he wanted to place greater emphasis on

¹⁵All quotations are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box

scholarship, but this factor remained relatively unimportant in these decisions.²⁰

Deploring “the lack of faculty writings in the past,” Mulligan conceded that the solution to the problem of inadequate faculty publications was “not simple”, and he acknowledged that at least some of the difficulty was attributable to the absence of support given by the University to faculty scholarship, even though Father McGinley placed a great deal of “importance [on] having a full-time faculty who would write.” Inadequate “physical accommodations”, at 302 Broadway, “both librarywise and officewise”, had “a stultifying effect upon any academic efforts,” Mulligan confessed. So did the lack of research funds for “teaching fellows” and secretarial help that Mulligan tried unsuccessfully to get from the University. He admonished University Administration that hiring faculty “who are capable and inspired to become leaders in molding legal thought will further depend upon the facilities provided in large measure.” But, he

26, folder School of Law 1955, McGinley Papers, FUA.

²⁰“candidate’s genuine service”, “years of service”, “influence on students”, are in “Recruitment, Retention and Recompense of Faculty,” memorandum in box 11, folder Faculty, Tenure and Salary, 1949-61, McGinley Papers, FUA; “Memorandum from Rev. Edward F. Clark, S.J. to Rev. Arthur A. North, S.J., Dean W. H. Mulligan, et. al, March 21, 1958, box 5, folder 6, FLS, FUA; Memorandum on Rank and Tenure, n.d., Minutes of Faculty Meeting of February 27, 1958, folder Faculty Minutes 1954-60, FLSA; Paul J. Reiss to Professor Leonard Manning, October 13, 1970, box 6, folder Law School Dean 1970, Michael P. Walsh Papers, FUA [hereinafter cited “Walsh Papers”]; William Hughes Mulligan to Father Clark, January 28, 1957, box 5, folder 6, FLS, FUA; Rev. Edward F. Clark, S.J. to All Deans, July 25, 1957, *id.* On Dean Mulligan’s efforts, *see*, I. An Inquiry Into American Law Schools, October 31, 1957, pp. 102, 104-06, 110, and 98-112; ABA Questionnaire, December 6, 1949, pp. 23-28, 49, 51, box 13, folder 3, FLS, FUA; AALS Committee on Law School Administration and University Relations, “II. An Inquiry Into The Adequacy and Mobilization of Certain Resources in American Law Schools to Educate for the Legal Profession,” n.d. [hereinafter cited “T”I. An Inquiry Into American Law Schools,”], pp. 12-18, box 4, folder 8, FLS, FUA.

also continued to stress to the faculty “the importance of legal writing” and complained to them “that the great majority of the faculty have not in recent years cooperated in this respect.”²³

Mulligan acted against his interest in getting more faculty to publish, as did the University Administration. The first faculty fellowship awarded to a Law School faculty member appears to have gone to Professor Eugene J. Keefe in June, 1960, even though Mulligan thought that “Keefe was definitely not a scholar. He was a fun-loving bachelor who loved to hit spots like the Oak Room of the Plaza and the Stork Club. He was extremely well dressed, always wore gold cuff links which he would flash in class with a very distinctive gesture and proceed to conduct his classes.” No one had “ever accused him of being a Blackstone.” On the other hand, Keefe was “a great companion,” and he had a “wonderful sense of humor and he was loved by everybody.” Awarding faculty fellowships on the basis of fellowship rather than commitment to scholarship was sure to undermine Dean Mulligan’s goal of getting faculty publications.²⁴

Mulligan further impeded his goal of securing a publishing faculty by awarding the Law

²³“the lack of faculty”, “importance of having”, Minutes of Faculty Meeting of September 5, 1956, folder Faculty Minutes 1954-60, FLSA; *id.*, February 25, 1957; “not simple”, “physical accommodations”, “both librarywise and officewise”, “a stultifying effect”, William Hughes Mulligan to Rev. Edward F. Clark, S.J., December 17, 1957, box 5, folder 6, FLS, FUA; “teaching fellows”, Minutes of Faculty Meeting of December 20, 1957, folder Faculty Meeting Minutes 1954-60, FLSA; “who are capable”, Mulligan to Father Clark, December 17, 1957, box 5, folder 6, FLS, FUA; “the importance of”, Minutes of Faculty Meeting of September 12, 1957, folder Faculty Minutes 1954-60, FLSA.

²⁴Minutes of Faculty Meeting of June 2, 1960, *id.*; “Keefe was definitely”, “ever accused”, “a great companion”, “wonderful sense of humor”, Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 16, Fordham Law School Oral History Project, FLSA.

School's only endowed chair on the basis of seniority rather than scholarly production.

Professor Bacon was awarded the Alpin W. Cameron Chair in recognition of his able and faithful service during the course of his more than thirty years on the faculty. Bacon had not published anything for more than a decade, and Mulligan later acknowledged that Bacon was awarded the Cameron Chair “on the basis of his being the senior professor on the full-time faculty.” When Professor Bacon resigned his Cameron Chair, Mulligan recommended that it go to Professor Thomas J. Snee, who had genuine scholarly credentials by the standards of the 1950's. Nevertheless, it appears that the Cameron Chair went to Professor Snee “as the next senior man.” Seniority was also the determining factor in the award of the Law School's second endowed chair in 1961, the Agnes and Ignatius Wilkinson Professorship of Law. “In point of service,” Dean Mulligan was “the next senior full-time professor, followed by Professor Manning.” Apparently it was not considered appropriate for the Dean to receive this chair, and Mulligan recommended Professor Manning.²⁵

Despite the institutional obstacles to faculty scholarship, Mulligan continued to admonish the faculty to engage in scholarly research and writing. In 1958, Mulligan informed the faculty that “in the future rank, promotion and salary will depend to a great deal upon scholarly

²⁵ “on the basis”, William Hughes Mulligan to Rev. Laurence J. McGinley, S.J., November 6, 1961, box 25, folder School of Law 1961, McGinley Papers, FUA; concerning Professor Snee's chair, *see*, William Hughes Mulligan to Reverend Laurence J. McGinley, S.J., September 17, 1958, box 5, folder 5, FLS, FUA; Minutes of Faculty Meeting of June 6, 1957, folder Faculty Meeting Minutes 1954-60, FLSA; ; Thomas C. Cronin, S.J. to Mr. Henry J. Kennedy, October 18, 1961, box 25, folder School of Law 1961, McGinley Papers, FUA; Henry J. Kennedy to Rev. Thomas C. Cronin, S.J., October 16, 1961, *id.*; “Estate of Ignatius M. Wilkinson, Article Sixth”, enclosed in *id.*; “In point of service”, “the next senior man”, William Hughes Mulligan to Rev. Laurence J. McGinley, S.J., November 6, 1961, *id.*

achievements.” Mulligan’s statement was more aspirational than real, and he did not follow through. Father Charles Whelan served for many years in the 1960's and 1970's as chair of the faculty committee on appointments, promotions rank and tenure. He recalled that the most important consideration in hiring new faculty and in promotions and tenure was the candidate’s teaching. “Writing was applauded, but it didn’t play the important role it did with Feerick as Dean.” Although Deans Mulligan and McLaughlin stressed the importance of writing, “the emphasis was on teaching in and out of classroom.” Full-time faculty were expected to spend a substantial amount of their time with students. Although the written criteria for promotion included legal scholarship, as a practical matter it was so little regarded in personnel decisions that it played virtually no role in merit pay, promotion or tenure.²⁸

The 1958 ABA inspection report confirmed that the law faculty was “distinctly a teaching faculty” which gave “very little emphasis [to] research and scholarly production.” The faculty’s orientation was “almost necessarily so”, the inspectors reported, because of the “small full-time faculty, [the large] size of the student body, and the arrangement of the School in three divisions.” The report further concluded that “the full-time staff is too small to meet the needs of a multiple-division school of this size. Little can thus be expected beyond basic instruction in large classes.” Mulligan hoped that the new law school building at Lincoln Center that was in the planning stages would enable the Law School “to raise the sights a little more beyond the

²⁸“in the future”, Minutes of Faculty Meeting of February 27, 1958, folder Faculty Minutes 1954-60, FLSA; Minutes of Faculty Meeting of June 6, 1957, *id.*; “Writing was applauded”, “the emphasis was”, Whelan, Charles M., Personal Interview, September 20, 2006.

classroom in the direction of seminar and small group instruction and scholarly research.”²⁹

It must be stated, however, that the Fordham law faculty were not unusual in their low scholarship productivity and in the nature of the faculty’s publications during the Mulligan years. Law professors in the period from the forties into the seventies, Legal Historian Laura Kalman recently observed, “published little beyond casebooks, treatises, or the occasional doctrinal article, if that much.” This was the kind of publications Fordham faculty produced and Dean Mulligan appreciated. Despite the disincentives to engage in legal scholarship, the faculty responded to Dean Mulligan’s entreaties to publish by publishing. In September 1958, Mulligan proudly informed Father McGinley of faculty publications in the *Fordham Law Review*. But the nature of the publications did not distinguish the faculty as important legal scholars.³⁰

²⁹All quotations are in ABA Inspection Report, April 28-29, 1958, pp. 8-9, box 26, folder School of Law 1958, McGinley Papers, FUA.

³⁰“published little beyond”, Laura Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* (Chapel Hill: The University of North Carolina Press, 2005): 23; when Professor Thomas J. Sneec published a text book on Estate Planning, Mulligan held him up as an example to their colleagues. In the same vein, when Professor George W. Bacon reached the University mandatory retirement age of 65 in 1958, Dean Mulligan recommended that he be retained for several reasons, among which was his desire to publish a casebook in Contract Law. Mulligan wanted to afford Bacon this opportunity because he thought the casebook would add to his reputation “in the Law School world as an expert in contract and sales law.” Minutes of Faculty Meeting of February 25, 1957, folder Faculty Meeting Minutes 1954-60, FLSA; William Hughes Mulligan to Rev. Edward F. Clark, S.J., January 6, 1958, box 5, folder 6, FLS, FUA; Rev. Edward F. Clark, S.J. to Rev. Father Rector, January 31, 1958, box 26, folder School of Law 1958, McGinley Papers, FUA. Mulligan reported that Professor Leonard F. Manning published “a leading article” in the current issue, which also published a book review by Assistant Professor Robert A. Kessler. The journal’s next issue included “a leading article” by Associate Professor John D. Calamari, and Professor Kessler’s article on “clerkship” would soon appear in the *New Jersey Law Journal*. Professors Calamari and Raymond P. O’Keefe were planning to use research they completed in their capacities as research consultants to the New York State Law Revision Commission as the bases of future law review articles. “The long struggle for faculty publication is beginning to pay dividends,” Mulligan asserted with a sense of satisfaction.

Another factor contributing to the Law School's decline was its continued reliance on part-time faculty to keep teaching salaries low. Fordham's law faculty was primarily a part-time faculty at a time when Law faculties in the best law schools were expected to be full-time teachers and scholars who eschewed the practice of law. The practice experience and practical perspective part-time faculty brought to legal education that Dean Wilkinson and the legal academy valued so highly earlier in the century were increasingly devalued within the legal academy in the second half of the twentieth century. Moreover, the demands of their law practices gave part-time law teachers only rare opportunities to engage in academic scholarly pursuits. Unfortunately, Father Quain commented, the Law School's "location downtown has encouraged us to take on part-time men whose busy lives in practice do not make them ideal teachers in a *serious law school* even with full credit given to the eminence of some of them in their particular fields." The Law School's full-time faculty favored moving the Law School to Fordham University's Bronx campus in 1955. However, the current Dean, John F.X. Finn, and the alumni opposed the move, and the Law School remained at 302 Broadway.³³

In 1955, the Law School's ratios of full-time to part-time faculty and full-time faculty to students were both very poor. Father Quain reported to Father McGinley that Assistant Dean Mulligan "tells me that our ratio of 9 full-time to 15 part-time is exactly that of St. Louis University which has a total of 259 students," fewer than one-half of Fordham's student body.

All quotations are in Mulligan to Father McGinley, September 16, 1958, box 26, folder School of Law 1958, McGinley Papers, FUA.

³³All quotations are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; Minutes of Faculty Meeting of September 5, 1956, folder Faculty Meeting Minutes 1954-60, FLSA.

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The Law School “has, at the present time, about 675 students. There is no school of comparable size with so unfavorable a faculty ratio,” Father Quain lamented. The following year Fordham was “a bad last” among New York state’s AALS approved law schools in terms of full-time faculty. The ratio of students to full-time teachers was 65 to 1, placing Fordham Law School as the “second lowest of the entire 127 schools listed” among the law schools reporting to the ABA during the 1954-55 academic year. The Law School and University administrations recognized the need to increase and were “anxious to strengthen” the Law School’s full-time faculty. Although many faculty at the Law School and Fordham University President McGinley continued to believe that a “balance between” full-time and part-time teachers was “essential” and “extremely advantageous,” Fathers McGinley and Quain recommended that “steps be taken to replace” part-time men, who were “rather old”, with “full-time men”. The full-time faculty did not outnumber the part-time faculty until the 1959-1960 academic year. The “primary difficulty” in hiring more full-time faculty was that “they have no office space to give a full-time man if they took one on the faculty.” There was also an acute shortage of space in the law library as well. Fordham was “third from the last” among New York law schools in the number of books in the library. These conditions “cannot be ameliorated until we get larger quarters,” Mulligan maintained. Convinced this was true, Father Quain concluded that “Both of these items point once again, to the urgency of new and larger quarters for the Law School. (this quote needs a source)”³⁴

³⁴“tells me”, “has, at present”, Rev. Edwin A. Quain, S.J. to Rev. Father Rector, February 17, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; “a bad last”, William Hughes Mulligan to Father Rector, February 18, 1957, box 26, folder School of Law 1957,

In 1958, the ABA inspectors identified another problem with the faculty that detracted from the Law School's stature. It noted a "considerable remnant of inbreeding" on the Law School faculty that had "characterized the earlier school still exists." Inbreeding was not unusual among law faculties at this time. " 'Our faculties tend to reproduce themselves; and in the process may by the continual inbreeding be producing even narrower law students than they were themselves,' " Harvard Law School Dean Erwin Griswold complained. Only one of the six Fordham Law School alumni on the twelve member full-time faculty did graduate work in another law school, and he earned an LL.M. from New York University. The six non-Fordham alumni received their degrees from Yale, New York University, Harvard, Columbia, St. John's and St. Louis Law Schools (supplemented by a LL.M.). Of the seventeen part-time faculty, two were Jesuit priests who taught the course in Jurisprudence, and eleven were Fordham Law alumni. The four other part-timers earned their law degrees from Columbia, Syracuse, Yale and

McGinley Papers, FUA; "second lowest", This quote does not come from this source and I could not find the source> Mulligan to Father Clark, January 4, 1957, box 5, folder 6, FLS, FUA; "anxious to strengthen", Edwin A. Quain, S.J. to Professor George W. Bacon, December 22, 1953, box 5, folder 2, FLS, FUA. The discrepancy in the numbers of listed full-time and part-time faculty with the numbers Father Quain reported to Father McGinley may be resolved if Dean Finn were added to the fourteen regular part-time faculty and Assistant Dean Mulligan were added to the eight full-time faculty. "steps be taken", "rather old", "full-time men", Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; William Hughes Mulligan to Reverend Laurence J. McGinley, October 29, 1959, box 5, folder 5, FLS, FUA; "third from the last", "cannot be ameliorated", William Hughes Mulligan to Father Rector, February 18, 1957, box 26, folder School of Law 1957, McGinley Papers, FUA; Minutes of Faculty Meeting of September 5, 1956, folder Faculty Meeting Minutes 1954-60, FLSA. Father McGinley's views echoed those given to him in a hand written letter from Professor I. Maurice Wormser. *See*, I. Maurice Wormser to Father Rector, August 9, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA.

Cornell Law Schools. Mulligan sought to get away from the in-breeding by diversifying the faculty in terms of educational and religious backgrounds.³⁶

The Law School experienced a tremendous turn-over in the faculty during Mulligan's deanship. It lost many of its most "eminent and experienced" faculty through death and resignation during the 1950's and 1960's. In the 1950's, it lost Dean Wilkinson and Professors **get first names** I. Maurice Wormser, Butler and John X. Finn, all of whom died, and Arthur A. McGivney, Edward O. Carr, Victor S. Kilkenny and Schmidt, all of whom resigned. The "severe attrition" of the 1950s continued into the 1960's with the loss of Professors Julian Ronan, George W. Bacon, Eugene J. Keefe, Thomas J. Snee, Joseph McGovern, Bernard J. O'Connell and Doran. "Old timers" who remained on the full-time faculty included John E. McAniff,

³⁶"considerable remnant", "remnant of", ABA Inspection Report, April 28-29, 1958, p. 8, box 26, folder School of Law 1958, McGinley Papers, FUA; *see also, id.*, p. 2; "Our faculties tend", Laura Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* (Chapel Hill: The University of North Carolina Press, 2005): p. 27, *quoting* Joel Seligman, *The High Citadel: The Influence of Harvard Law School* (Boston: Houghton Mifflin, 1978): p. 122; Although Mulligan continued his predecessors' practice of appointing alumni, he did so with less frequency. A growing majority of the professors Mulligan hired received their legal education at some of the Nation's foremost law schools and their undergraduate educations at some of the Nation's most highly regarded colleges and universities. He was most strongly impressed by those candidates who had graduate degrees in law and other areas, because he believed their graduate degrees indicated their interest in academics. *See*. William Hughes Mulligan to Father Rector, January 3, 1957, box 26, folder School of Law 1957, McGinley Papers, FUA. Mulligan sought to diversify the faculty in terms of religious affiliations. For example, he made one appointment to the faculty in 1959, Martin Fogelman, a Jewish lawyer who had been teaching as an adjunct at the Law School for the preceding three years. In the 1960's, Mulligan tried to interest another Jewish lawyer, Carl Felsenfeld, to join the full-time faculty. Felsenfeld had impressed Mulligan with a paper he delivered at a Fordham Law School sponsored conference., and Mulligan wanted to hire him because of his professional qualifications and because he was "unlike most of the current faculty." Carl Felsenfeld declined Dean Mulligan's offer at that time, but he started teaching part-time and later joined the full-time faculty when he retired as general counsel for City Bank of New York. Felsenfeld, Carl, Personal Interview, September 27,

Leonard F. Manning (appointed in 1948), Raymond P. O’Keefe. John D. Calamari, appointed in 1952, became an “old timer” during this period.³⁹

Dean Mulligan “had great aspirations for the Law School,” Judge McLaughlin recalled. He decided that a new building “was the place to launch, to catapult, the School into national prominence.” Mulligan believed that the new Law School building in Lincoln Square would afford Fordham Law School the opportunity to match the Jesuit standard of preeminence in education, to become “without doubt the best Catholic law school in the United States,” and to “compete successfully with the so-called Ivy League schools.” Mulligan understood that national prominence was not possible without a faculty that produced scholarship. “In those days, very few of them wrote anything, and to do that, they had to be in the building. So [sic] Mulligan required the faculty to sign in and to sign out.”⁹⁵

Under Mulligan’s leadership, the faculty decided in the late 1950s to rebuild and expand the faculty by bringing in “young lawyers of proven ability and scholarship who would continue the tradition of excellence for many years to come.” They “rejected the idea of recruiting glamour ‘big names’.” This decision was based on the belief that “quality law faculty must be

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³⁹All quotations are in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 1, box 30, folder 1, Law School Papers, FUA.

⁹⁵“had great aspirations”, “was the place”, Interview of The Honorable Joseph McLaughlin by Robert Reilly, April 9, 1990, Transcript No. 107, Book No. 3, p. 17, Fordham Law School Oral History Project, FLSA; “without doubt” and “compete successfully”, William Hughes Mulligan to Rev. Edward F. Clark, S.J., March 26, 1957, box 5, folder 6, FLS, FUA; “In those days”, Interview of The Honorable Joseph McLaughlin by Robert Reilly, April 9, 1990, Transcript No. 107, Book No. 3, p. 18, Fordham Law School Oral History Project, FLSA.

built from within” by “established law teachers” retaining “qualified young lawyers” and helping them build their reputations on the “basis of effective teaching, research, publication and public service.” This policy bore fruit by the mid-1960's, when a AALS researcher who studied Fordham Law School as part of a research project on legal education commented about the “quality explosion” at Fordham due to the finding that faculty “research, publication and involvement in public service were all on the rise.”⁴¹

To achieve national prominence, the Law School needed greater funding from Fordham University. Mulligan believed the Fordham University administration supported the Law School's ambitions. In 1955, the University's Academic Vice-president, Father Edwin A. Quain,

⁴¹All quotations are in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 1, box 30, folder 1, Law School Papers, FUA. Mulligan hired many of the faculty who became notable “old timers” in the late twentieth century. His dear friend Joseph R. Crowley was one of them. They had been seminarians together at Cathedral College, but they both left before ordination and finished college at Fordham. Mulligan was the best man at Crowley's wedding during World War II. Mulligan said that Crowley was “probably the most popular professor at the Law School. . . . He was self-effacing, had a tremendous sense of humor and was in many scrapes with me in college and law school.” Cancer took Crowley's life suddenly and without warning on December 5, 1985. Mulligan always thought that Crowley was “a great man”, and he “miss[ed] him”. Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 19, Fordham Law School Oral History Project, FLSA. “Joseph R. Crowley Dies at 66; A Fordham Law School Dean.” *New York Times* 5 Dec. 1985. Robert Kessler was another full-time appointment. He was a graduate of Yale College and Columbia Law School, and Kessler was teaching at Rutgers Law School when Mulligan hired him in 1957. The info on Kessler is not from the interview and it needs a source. Among the professors Mulligan brought onto the Fordham faculty were Manuel Garcia-Mora, Joseph McLaughlin, Malachy Mahon, the first Fordham Law School graduate to clerk for a Justice of the United States Supreme Court, Justice Tom Clark, Rev. Charles M. Whelan, S.J., Rev. Thomas Quinn, S.J., Robert Byrn, Joseph Perillo, Constantine N. Katsoris, Edward F. C. McGonagle, Joseph Sweeney, Barry Hawk, John Sprizzo, Michael R. Lanzarone. Mulligan also appointed Robert Hanlon as Assistant Dean for Admissions ? in 1963 and William Moore Assistant Dean for Admissions in July 1970 to replace George McKenna who resigned. Do these

S.J. acknowledged that the Law School was underfunded, and he advised Fordham President Father Laurence J. McGinley that the University was going to have to provide it with more money. Quain observed that the Law School's library acquisitions were low, and the law library compared unfavorably in this and other respects with the libraries of St. John's and Georgetown Law Schools. Father Quain also recognized the growing importance of scholarships to attract the best students. "Judging from the statistics on scholarships available in Law Schools, it would seem that we will have to do something on this matter very soon," he advised Father McGinley. In light of all of this information, he informed Father Rector that "it seems certain that the Law School is for the next few years going to cost us considerably more money than it has in the past if we wish to bring it up to the level that our Law School ought to reach."⁹⁶

Father McGinley seemed to indicate in 1959 that he agreed with his Academic Vice-President's assessment of the Law School's need for greater financial support. He acknowledged that the law school's physical facilities were one of the primary reasons the Law School was unable to achieve its vision of excellence in legal education. Consequently, the University decided that the Law School and Law Library would be the first buildings constructed at Lincoln Square. Father McGinley conceded that the Law School had had to function from the start with an inadequate physical plant, and he assured Dean Mulligan that "Your Law School

need a source?

⁹⁶All quotations are in Rev. Edwin A. Quain, S.J. to Father Rector, March 1, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA. Whereas Fordham's law library for the 1953-1954 academic year had 26,484 volumes and spent \$4,300 for new books, St. John's law library had 32,000 volumes and spent \$24,000 for new books. Georgetown's law library had 46,640 volumes and spent \$10,500 for new acquisitions.

for the first time in its history will be given the physical facilities to permit it to produce great lawyers in the ‘grand manner’.”⁹⁷

The law school building at Lincoln Center was dedicated in 1961 at a ceremony in which Attorney General Robert F. Kennedy gave the keynote address and was followed with speeches by U.N. Ambassador Adlai E. Stevenson and Professor Arthur E Sutherland of Harvard Law School. Chief Justice Earl Warren of the United States Supreme Court laid the cornerstone of the building.⁹⁷

The Lincoln Center facility encouraged Dean Mulligan believed to believe that Fordham University supported his ambition to transform Fordham Law School into a first-rate law school, but his belief was ill-placed. The University refused to provide the necessary funding to achieve this goal. The University manifested its lack of support in the 1960s.

In 1965, Dean Mulligan recognized what Dean Vanderbilt of New York University Law School saw almost two decades earlier, that a law school “must emerge as a national rather than a local law school” if the Law School was to continue to improve its academic status. To become a national law school, Fordham Law School had to recruit students “beyond the normal

⁹⁷“Your Law School”, “ ‘grand manner’ ”, Laurence J. McGinley, S.J., Greetings From the University To our Fordham Law Alumni, Faculty, Friends delivered at an informal luncheon on January 20, 1959, enclosed in letter to Mr. William H. Mulligan, January 8, 1959, box 5, folder 5, FLS, FUA. Father McGinley’s reference to the “grand manner” was from Oliver Wendell Holmes. Quoting Justice Holmes, McGinley declared “that the function of the law school was the training of lawyers and that the function of the great law school was the training of ‘great lawyers in the grand manner.’ ”

⁹⁷Dean’s Annual Report to the Alumni 1989-1990, inside front cover, box 24, folder

geographic limits which have confined our interest for the past sixty years.” Mulligan understood that none of the law schools that ranked with Fordham in academic stature were “purely ‘local’ ”. Rather, they recruited “students on a national basis with a consequent broadening of influence on bench , bar and public service.” He realized that achieving this objective required “substantially increased student scholarship funds as well as convenient dormitory facilities” that took advantage of the “singularly attractive situs of the law school in Lincoln Square[,] which is the cultural center of the nation.” Mulligan noted that the “rate of progress” would depend “to a great extent” on “the continuing generosity of the alumni and friends of the law school.” But, he also believed that the University “encouraged these ambitions” to achieve national prominence and would support the Law School’s efforts by increasing the faculty salary scale and by supporting “eventual” dormitory construction and increased student scholarship assistance.¹⁰⁶

Again, the University declined to provide the needed funding. The Law School had to wait about thirty years before the student dormitory was completed and available to house law students. Rather than provide the needed scholarships to attract the best students, the University established a low ceiling on Law School student scholarship funds.¹⁰⁷

Dean’s Reports 1971-1989, Fordham Law School Papers, Walsh Library.

¹⁰⁶“must emerge”, “beyond the normal”, “purely ‘local’”, “students on a national”, “substantially increased”, “singularly attractive”, “rate of progress”, “to a great extent”, “the continuing generosity”, “encouraged these ambitions”, “eventual”, Dean’s Report to Alumni – 1965, attached to Mulligan to Father McLaughlin, January 10, 1966, box 6, folder Law School Dean 1966, Reverend Leo P. McLaughlin Papers, S.J., FUA [hereinafter cited “McLaughlin Papers”].

¹⁰⁷J.R. Cammarosano to Reverend Timothy S. Healy, January 14, 1966, box 6, folder

The small scholarship funds the Law School received it did not use to attract excellent incoming students. Rather, it used these scholarships to reward editors of the *Fordham Law Review*, which has “had an excellent effect upon the morale of the Law Review” Mulligan rationalized. Still, he complained, “We are competing with Columbia and New York University insofar as scholarships are concerned, and they for the most part are for the full scholarships, whereas many of our scholarships are only one-quarter and one-half scholarships.” The Law School’s inadequate student aid explained “the serious limitation” Fordham faced “in attracting the top-flight scholar by reason of our limited scholarship funds.” Mulligan informed Father McGinley in 1959 that he knew of “five Jesuit college graduates who are the sons of Law School alumni who were given Root-Tilden scholarships at New York University, which is indicative of the fact that we are losing the best boys who would normally be attracted to this school.”⁵⁴

Law School Dean 1966, McLaughlin Papers, FUA.

⁵⁴Dean Mulligan’s early attempts to get more scholarship funds and the University’s response are in Rev. William J. Mulcahy, S.J. to Rev. Laurence McGinley, S.J., March 29, 1957, box 26, folder School of Law 1957, McGinley Papers, FUA; Rev. Laurence McGinley, S.J. to Rev. William J. Mulcahy, S.J., April 11, 1957, *id.*; “has had an excellent”, Mulligan to Father Rector, March 29, 1957, *id.*; “We are competing”, Minutes of Faculty Meeting of June 5, 1958, folder Faculty Minutes 1954-60, FLSA; I cannot find this source in the 1958 or 1959 folders >“the serious limitation”, “in attracting”, “five Jesuit college”, Mulligan to Father McGinley, March 9, 1959, box 26, folder School of Law 1958, McGinley Papers, FUA. Fordham Law School’s scholarship fund in 1959-1960 compared unfavorably with most of the other law schools in New York City and New York state, as shown in Table 6-3

TABLE 6-3
NEW YORK STATE LAW SCHOOL SCHOLARSHIP FUNDS 1959-1960

<u>Law School</u>	<u>Scholarship Money</u>	<u>Number of Scholarships</u>
New York University	\$280,000	287
Columbia University	106,380	152
St. John's University	42,000	44
Syracuse University	29,242	41
Albany Law School	22,810	60
Fordham University	16,000	42
Brooklyn Law School	15,822	56
New York Law School	4,000	6

SOURCE: Memorandum Regarding Scholarship and Salary Information from John G. Hervey, Adviser to the ABA Section of Legal Education and Admissions to the Bar, January 11, 1961, folder Faculty Meetings 1961, FLSA. Note that Cornell University Law School did not report its scholarship information.

Many competitor Catholic law schools had significantly larger scholarship funds than Fordham Law School in 1959.

TABLE 6-5
LARGEST CATHOLIC LAW SCHOOL SCHOLARSHIP FUNDS 1959-1960

<u>Law School</u>	<u>Scholarship Money</u>	<u>Number of Scholarships</u>
Georgetown Law School	\$120,804	104
Notre Dame	\$45,000	33
St. John's University	\$42,000	44
Villanova Law School	\$39,600	35
Boston College	\$21,600	22
Fordham University	\$16,000	42

SOURCE: Memorandum Regarding Scholarship and Salary Information from John G. Hervey, Adviser to the ABA Section of Legal Education and Admissions to the Bar, January 11, 1961, folder Faculty Meetings 1961, FLSA.

When Catholic law schools are compared to the law schools with the largest student aid, only Georgetown of the Catholic law schools are in the same league.

Clearly, the caliber of applicants to Fordham Law School was adversely affected by the school's limited scholarship fund. An ABA report issued in February 1962 indicated that "the calibre of the students applying [to Fordham] – at least on the basis of LSAT scores – was under such schools as Boston College and Georgetown." Mulligan informed the faculty that "We are being rejected by some of the best applicants who are probably listing us as a second or third choice. We are losing to schools which are making much greater scholarship allowances." Mulligan proclaimed that "we need scholarship funds desperately." He asked the University for "additional scholarship help . . . which in the past has been neglected due to the pressing need for funds for the new law school." Fordham could not compete for the best students with law schools, especially Catholic law schools, that offered larger and more scholarships and that actively recruited applicants nationally. One of these law schools was Notre Dame. Its Dean, Joseph O'Meara, wrote to the Presidents of colleges and universities around the country asking them to encourage their "exceptionally talented students" to apply for available tuition

TABLE 6-4
LARGEST LAW SCHOOL SCHOLARSHIP FUNDS NATIONWIDE 1959-1960

<u>Law School</u>	<u>Scholarship Money</u>	<u>Number of Scholarships</u>
Harvard Law School	\$385,768	428
Tulane Law School	\$134,375	89
U. Pennsylvania Law School	\$121,800	165
Georgetown Law School	\$120,804	104
U. of Michigan Law School	\$106,794	162

SOURCE: Memorandum Regarding Scholarship and Salary Information from John G. Hervey, Adviser to the ABA Section of Legal Education and Admissions to the Bar, January 11, 1961, folder Faculty Meetings 1961, FLSA.

scholarships at Notre Dame. Mulligan was not in a position to make similar solicitations. Moreover, Fordham was not trying to recruit students nationally. Its applicants were primarily residents of the New York City metropolitan area, and most of them had graduated from Catholic colleges and universities. Fordham University graduates supplied the largest number, followed by Holy Cross, St. John's, Columbia, Manhattan, New York University, Iona, Notre Dame, St. Peter's, Villanova and Georgetown. One or more students were graduates of about seventy other schools, including Yale, Harvard, Princeton, Brown, Dartmouth, Vassar, Hamilton, Colgate, and Marymount.⁶⁰

Relations between the Law School and the Fordham University Administration began to sour in the summer of 1967. In July 1967, Dean Mulligan expressed his desire "to project Fordham into the mainstream of American legal education." The Dean and the Law School faculty believed that the first steps to make Fordham a "truly great law school" were to increase the size and the salaries of the faculty, "and most importantly, . . . to provide additional grants to students who will be pressed by any increase in tuition." Mulligan also required a fully qualified administrative staff.¹¹²

⁶⁰"the calibre", "in an effort", "additional scholarship help", Minutes of Faculty Meeting of February 15, 1962, folder Faculty Meetings 1961, FLSA<This is the incorrect source; "We are being rejected", "we need scholarship", untitled memorandum in folder Faculty Meetings 1961,*id.*; "additional scholarship help", Minutes of Faculty Meeting of February 15, 1962, *id.*; *see also* Minutes of Faculty Meeting of June 9, 1961, *id.*; "exceptionally talented students", Joseph O'Meara to Rev. Laurence J. McGinley, S.J., November 17, 1955, box 26, folder School of Law 1955, McGinley Papers, FUA; feeder colleges, William Hughes Mulligan to Mr. John J. O'Connor, October 1, 1958, box 26, folder School of Law 1958, McGinley Papers, FUA.

¹¹²John G. Hervey, Inspection Report Fordham University School of Law May 4-5, 1967, box 5, folder Law School Dean 1967, McLaughlin Papers, FUA This source does not relate the content of this paragraph; "to project Fordham ", William Hughes Mulligan to John J. Meng,

Rev. Leo McLaughlin, S.J., succeeded Father McGinley as Fordham University's President in 1965. He and his Executive Vice-President, John J. Meng, were not about to provide the financial support required to make the Law School truly great when they believed that Dean Mulligan and the law faculty were not capable of making Fordham Law School a truly first-rate law school. Reviewing proposed Law School faculty salary increases and Mulligan's proposal to increase the law faculty in March, 1967, Father McLaughlin wondered "how we justify increments which are so far above the average increments in the entire University," inasmuch as "we are agreed, I think, that the [Law School] faculty is not truly outstanding." He was even "more concerned about the fact that Dean Mulligan needs more than encouragement in getting some 'stars' on his faculty." He feared that giving Mulligan authority to hire associate professors at "the salaries authorized will merely encourage the continuation of the mediocrity." The Fordham President confided to Dr. Meng that "I sometimes have the fear that neither the Dean of the Law School nor the Faculty of the Law School have any real concept of what is meant by a truly great Law School." He asked Dr. Meng whether it was "too late to tell the Dean that he may have additional faculty only if the additional faculty are truly outstanding?"¹⁰⁹

Approving three or four additional faculty positions, Dr. Meng did urge Mulligan to hire stars. "In these appointments, top-flight quality and major faculty rank should be primary

July 20, 1967, *id.*; "truly great law school", Leo McLaughlin, S.J. to John J. Meng, March 7, 1967, *id.*; *see also* John J. Meng to William Hughes Mulligan, March 1, 1967, *id.*; John J. Meng to Dean Mulligan, July 26, 1967, *id.*

¹⁰⁹"how we justify", "we are agreed", "more concerned", "the salaries", "I sometimes",

considerations,” Meng advised. “Perhaps we can utilize the goodwill of some of the friendly ‘legal lights’ of New York to assist in such recruiting.” Mulligan and the law faculty disagreed with this approach to building an outstanding faculty. They preferred to hire young faculty with great potential as law teachers and legal scholars. This is the course they pursued.¹¹⁰

The Law School probably would not have been able to hire “stars” even if it had wanted to. The faculty salary structure was too low to pay what would have been required to attract a star to Fordham. In addition, the University did not provide research support for faculty scholarship, which would have dissuaded serious scholars from accepting a Fordham offer. Moreover, the Law School’s student/faculty ratio was so high that the faculty could only cover the basic courses. The top law schools were hiring scholars to do research in areas of their own interests, and they structured their academic programs to enable the faculty to engage in scholarship. Professors were required to teach one basic course that the law school needed to be taught and any other course or courses that grew out of their scholarly interests. Fordham Law School could not offer this kind of teaching package in the 1960s. Given the lack of strong fund raising and the terrible student/faculty ratio, it only had room in the curriculum and money in the budget to hire faculty to teach the traditional courses.¹¹¹

“too late”, Leo McLaughlin, S.J. to Dr. John J. Meng, March 7, 1967, *id.*

¹¹⁰ “In these”, “Perhaps we can”, John J. Meng to Dean Mulligan, March 1, 1967, box 5, folder Law School Dean 1967, McLaughlin Papers, FUA. For the law faculty’s attitude, *see supra*, note xx and accompanying discussion.?

¹¹¹ “stars”, Leo McLaughlin, S.J. to Dr. John J. Meng, March 7, 1967, box 5, folder Law School Dean 1967, McLaughlin Papers, FUA; “They used to say”, Interview of William Hughes Mulligan by Michael Sheahan, September 20, 1988, Transcript No. 22, Book 3, p. 5, Fordham Law School Oral History Project, FLSA.

Thus, the University Administration posed insurmountable obstacles to the Law School's ambitions by refusing to increase the Law School's salary structure to the level necessary to recruit "stars" to the faculty and by refusing to authorize a substantial increase in the size of the full-time faculty to comply with ABA/AALS standards by reducing the appallingly high student/faculty ratio. Mulligan informed Dr. Meng that the Law School's starting salary was below the "opening salary for law school graduates from \$10,000 to \$15,000 per annum" paid by Wall Street law firms. Consequently, the Law School's salary structure was utterly inadequate to "cajole" lawyers to teach students who will command a higher starting salary without experience than the beginning teacher with "experience and top-flight scholastic qualifications." The Law School would have to have "a substantial boost for all salaries if we are to continue to strive for excellence," Mulligan admonished.¹¹³

Given the Fordham University Administration's dismal view of the Law School, Dean Mulligan was unsuccessful in persuading the Administration that Law School faculty salaries were inadequate. Rejecting comparisons between the Law School's salaries and those of local law schools and the practicing bar in New York City, as the ABA standards directed, the Administration compared them primarily to Fordham University-wide faculty salaries and AAUP university averages and secondarily to national law school averages, which were not very relevant to the New York City area with its high cost of living. Yet, insofar as faculty salaries were concerned, Dr. Meng expressed the perspective of the central Administration when he told Mulligan: "I must frankly state my conviction that [the Law School's] salaries are not out of line

¹¹³All quotations are in William Hughes Mulligan to Dr. John J. Meng, February 8, 1968,

with those paid in other good institutions and that the increments provided to the Law School are among the highest in the University.”¹¹⁴

By the Spring of 1968, a breach opened between the Law School and the University Administration over the place of the Law School within the University, the mission of the Law School and the question of who should determine the Law School’s policies and priorities. On May 9, the law faculty unanimously adopted resolutions which proclaimed that the “Law School has entered a period of institutional and educational crisis” and that this crisis stemmed in significant part from the fact that non-law school personnel within other divisions of Fordham University were making decisions that “vitally affect the institutional and educational policies of the Law School,” decisions and policies that were within the Law School’s exclusive discretion. These decisions were interfering with the “consistent progress” of the Law School, and they

box 5, folder Law School Dean 1968, McLaughlin Papers, FUA.

¹¹⁴Meng informed Mulligan that the *Chronicle of Higher Education* in February 1968 had reported the national median salary for law school full professors at \$17,300 and associate professors at \$13,800. Fordham’s law faculty’s median salaries were \$18,250 for full professors and \$14,500 for associate professors. Meng argued that these figures supported the University’s refusal to increase law faculty salaries significantly. John J. Meng to Professor William Hughes Mulligan, February 19, 1968, box 5, folder Law School Dean, 1968, McLaughlin Papers, FUA; Meng further informed Mulligan that the “overall average compensation” of Fordham University’s full professors was “calculated to be \$19,114” for the 1968-1969 school year. The proposed average total compensation for the Law School’s full professor was above that average and “well above the ‘A’ rating of the AAUP for average compensation” of \$21,500, Meng insisted. Associate professors in the Law School would receive an average total compensation of \$16,500, which exceeded the AAUP “AA” average compensation of \$15,500 by \$1,000 and that of Fordham University-wide associate professors’ average of \$13,500 by \$3,000. Meng did not understand why Mulligan believed the proposed salary figures he gave to the Dean were inadequate. John J. Meng to Professor William Hughes Mulligan, March 7, 1968, *id.* “I must frankly”, John J. Meng to William Hughes Mulligan, July 26, 1967, box 5, folder Law School Dean 1967, McLaughlin Papers, FUA.

may have put in jeopardy the Law School's accreditation. The faculty further resolved that they were "charged with the primary responsibility for determining" the Law School's "educational policies," and they sought to meet with Father McLaughlin to discuss "these several pressing crises" and to reach "an understanding concerning the future status of the Law School within the University." There is no record that this meeting took place.¹¹⁵

Mulligan warned the administration that its "attitude of hostility" toward the Law School "can only lead to a rapid deterioration of faculty morale." He reminded University Vice-President for Academic Affairs, Arthur W. Brown, that Law School Assistant Deans Robert McGrath and Robert Hanlon had resigned in 1969. Hanlon had accepted a comparable position at the new Hofstra Law School, which, "Without alumni or students", was offering Hanlon "more money than Fordham where he has served in outstanding fashion." The central administration's disregard of Mulligan's recommended salary increases for Hanlon of the preceding two years "constitute [sic] the major reason for his departure." Mulligan also informed the administration that Professor Rice also "indicated his intention to leave the law school because of his inability to support a growing family on his present salary."¹¹⁶

Not only was the University underpaying Law School faculty and administrators, the Dean discovered that it was also charging the Law School for faculty salaries for which the University was compensated from other funds or was not incurring. The University was

¹¹⁵All quotations are in Faculty Resolution, attached to William Hughes Mulligan to Rev. Leo McLaughlin, S.J., May 10, 1968, box 5, folder Law School Dean 1968, McLaughlin Papers, FUA.

¹¹⁶All quotations are in William Hughes Mulligan to Dr. Arthur W. Brown, February 3, 1969, box 6, folder Law School Dean 1969, Walsh Papers, FUA.

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charging the Law School for Professor Leonard Manning's full salary even though the income generated by Professor Manning's endowed chair was "devoted entirely to supporting his salary." Mulligan argued that the amount should be credited to the Law School. The salaries of the two Jesuits on the law faculty were retained by the University. Mulligan believed it was not "equitable" to charge these against the lay faculty because they were "really a paper transaction" and represented "an expense which is not incurred." Perhaps even more inequitable was the University's charging Father Charles Whalen's entire salary to the Law School when one half of his salary was paid by *America* magazine, where he was an editor.¹¹⁷

Unmoved by Dean Mulligan's pleadings, the University reduced recommended increases in law faculty salaries in early 1969 as an economy measure to offset University deficits of the preceding three years. The Administration defended its action by noting that the law faculty's salaries were "the highest group of salaries within the University." Mulligan replied that law faculty salaries were the highest salaries in every university, except for those universities that had medical schools. "The reason for this is obvious," Mulligan maintained. "[L]aw teachers are professional attorneys and their worth has to be gauged on the basis of the competing salaries in the profession and in other law schools." He noted that the three full-time faculty he had hired the preceding year took "a considerable decrease in salary." Mulligan conceded that an English teacher should be paid at the same salary as a law teacher, in an ideal world, and he even understood the resentment the English teacher might feel "because he, in fact, is not as well compensated." But, the Law School "must compete in the real world in which we live," and, in

¹¹⁷*id.*; V.P. A.A., memorandum entitled Faculty Salary Increments by Percent 1969-1970,

this world, the faculty's salaries were not high, "but, at best, modest."¹¹⁸

Mulligan further argued that average faculty salaries were not the "sole criterion" on which to compare law schools. Other factors, such as the student/teacher ratio and tuition were "essential elements in making this determination." The real question was how many faculty at a law school received the average salary and how many students did they have to teach. When one analyzed the student/faculty ratio, tuition and average salary at other law schools, Fordham Law School was "in a very poor competitive position," Mulligan complained, and it was "lagging far behind" its competitors.¹¹⁹

ABA data on law school student populations, student/faculty ratios, full-time tuition, and student aid supported Dean Mulligan's position. Table 6-9 shows that Fordham Law School lagged far behind other law schools in these respects. St. John's University Law School, for example, had slightly fewer students than Fordham, a comparable number of faculty and student/faculty ratio, and it charged \$100 less in full time tuition, but its student aid fund was six times larger than Fordham's. Boston College Law School had almost a third fewer students, but its faculty was larger than Fordham's and its student/faculty ratio was substantially lower. B.C. charged \$100 more in full time tuition, but it had three and a quarter times more in student aid. Georgetown Law School's student body was one and one-half times larger than Fordham's and

March 11, 1969, *id.*

¹¹⁸ All quotations are in William Hughes Mulligan to Dr. Arthur W. Brown, February 3, 1969, *id.*

¹¹⁹ All quotations are in William Hughes Mulligan to Rev. Michael P. Walsh, S.J., March 21, 1969, *id.*

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its faculty one and four-fifths larger, and Georgetown had a substantially better student/faculty ratio. It charged \$150 more per year in tuition than Fordham, and its student aid was three and a half times greater. Fordham Law School was not even close to the New York City law schools it regarded as its competitors. Columbia and New York University Law Schools were simply in another league from Fordham's. New York University's student aid was almost ten times greater and Columbia's was almost eleven times greater than Fordham's. Both schools had student/faculty ratios that were about half of Fordham Law School's.¹²⁰

¹²⁰ABA Section on Legal Education and Admission to the Bar, Law Schools Charging Tuitions of \$1,600.00 or More, Table of Law Schools of Comparable Size, Table of Law Schools in New York State, attached to William Hughes Mulligan to Rev. Michael P. Walsh, S.J., March 20, 1969, box 6, folder Law School Dean 1969, Walsh Papers, FUA.

TABLE 6-9

LAW SCHOOLS, STUDENTS, FACULTY, TUITION & STUDENT AID 1968¹

<u>School</u>	<u>Students</u>	<u>Faculty</u>	<u>Ratio 1 to</u>	<u>Tuition</u>	<u>Scholarship, Loan, Grant Funds</u>
Boston College	546	21	21	1700	217,000
Catholic U.	429	16	26	1600	81,000
Columbia	902	41	21	1900	710,000
Cornell	407	24	17	1900	343,000
Georgetown	1146	34	34	1750	303,000
George Washington	1158	43	27	1620	329,000
Harvard	1581	65	25	1850	1,500,000
N.Y.U.	1003	59	17	2000	600,000
Pennsylvania	549	28	20	2150	404,000
St. John's	741	18	41	1500	400,000
St. Louis	342	17	20	1600	135,000
Santa Clara	213	12	18	1600	98,000
Stanford	433	24	18	1920	381,000
Yale	542	39	14	2150	825,000
Fordham	768	19	41	1600	66,000

SOURCE: ABA Section on Legal Education and Admission to the Bar, Law Schools Charging Tuitions of \$1,600.00 or More, Table of Law Schools of Comparable Size, Table of Law Schools in New York State, attached to William Hughes Mulligan to Rev. Michael P. Walsh, S.J., March 20, 1969, box 6, folder Law School Dean 1969, Walsh Papers, FUA.

The Law School's student/faculty ratio was problematical, as were other aspects of its teaching program. The ratio reported to the ABA counted as full-time faculty Dean Mulligan and Professor Ludwig Teclaff, the Law Librarian, neither of whom carried a full teaching load. It also included the semi-retired Professor Keefe and Father Whalen, who had "never taught a full program." The ABA required that in each law school "at least three-fourths of the hours of instruction . . . should be offered by full-time teachers." The Law School was in violation of this

rule. Forty percent of the fall semester courses in the second and third years in the Night Division were taught by part-time faculty. Part-time teachers taught sixty percent of the courses in the spring semesters of these years. The teaching assignments of almost one-half of the full-time faculty were in violation of another ABA rule that limited to two the number of different courses a law teacher may teach in one semester. The ABA standards also provided that a teaching load of five different courses in unrelated fields in an academic year was “ ‘prima facie unreasonable . . . and indicative of a faculty of less than adequate size’ .” Two of the Law School’s faculty carried unreasonable teaching loads by this standard.¹²¹

As soon as he received the ABA’s report of median and average law faculty salaries for 1969-1970, Mulligan forwarded it to Father Michael P. Walsh, S.J., who had replaced Father McLaughlin as University President in 1969. Mulligan highlighted fifteen law schools with which Fordham Law School “considered ourselves to be in competition,” and they are represented in Table 6-10. Mulligan included the size of their faculties as well. Mulligan noted that Fordham’s salaries were the “lowest of all except Villanova which ties us for median salary

¹²¹Report on Compliance with Standards of A.B.A. at Fordham Law School, March, 1968,*id.*

TABLE 6-10
COMPETITOR LAW SCHOOLS' SALARIES & FACULTY SIZE 1969-70

<u>Law School</u>	<u>Median Salary</u>	<u>Average Salary</u>	<u>No. of Faculty</u>
Columbia	\$28,000	\$25,850	37
Cornell	26,000	25,023	21
Michigan	25,750	24,992	36
Yale	25,000	24,679	46
New York University	25,000	24,625	48
Pennsylvania	24,500	24,780	27
Rutgers Newark	24,495	23,230	26
Virginia	21,000	20,254	36
N.Y. State-Buffalo	20,258	19,963	26
Boston College	20,000	19,550	19
Boston University	19,500	20,380	30
Georgetown	18,500	19,251	33
Fordham	18,000	18,655	17
Villanova	18,000	16,894	15
Harvard	—	—	—
Notre Dame	—	—	—

SOURCE: ABA Section on Legal Education, summarized in table prepared by Dean Mulligan, enclosed in William Hughes Mulligan to Rev. Michael P. Walsh, S.J., February 12, 1970, box 26, folder Law School, Joseph C. Finlay Papers, FUA.

and has a lower average.” Fordham’s salaries lagged behind those of Georgetown and Boston College, and the Law School was “particularly low in our number of full-time teachers.”

Mulligan maintained that, in light of the Law School’s high tuition, “it seems quite obvious that we are not receiving an appropriate allocation for faculty salaries.”¹²²

Despite the ABA data on salaries, Fordham Academic Vice-president Paul J. Reiss rejected Dean Mulligan’s claim that the law faculty were underpaid, and his position reflected the Administration’s perspective that Law School faculty salaries should be commensurate to

¹²²All quotations are in William Hughes Mulligan to Rev. Michael P. Walsh, S.J., February 12, 1970, box 26, folder Law School, James C. Finlay Papers, FUA [hereinafter cited “Finlay Papers”].

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those of other Fordham University faculty. He informed Father Walsh that Fordham Law School faculty salaries were “entirely consistent with the salaries which [Fordham University] is providing for the rest of its faculty.” The Law School’s ambition of getting its faculty salaries up to “the mid-point or higher” among its competitor law schools was unrealistic, Reiss argued. Fordham “University as a whole does not provide salaries at this level.” Reiss asserted that “we have to be realistic about our situation here. We are not in a good competitive position on salaries with respect to the universities” with which the Law School’s competitor law schools were associated. “It is unreasonable, therefore, for us to expect that the salaries for the Law School will be competitive.” He did not explain why Fordham was unable to pay competitive salaries to the law faculty when other Catholic law schools were better able to and especially when the Law School was generating large surpluses. Sadly, the University’s administration positioned itself in direct opposition to the Law School’s goal of enhancing its standing within legal education.¹²³

The law faculty began to explore the possibility of autonomy from Fordham University, “in view of the grave concern that the financial strictures now being imposed could and undoubtedly will jeopardize the professional standing of the law school.” Dean Mulligan found it “increasingly difficult to justify cut-backs [in proposed salaries] in the face of what seems to be a clear profit after all costs of some \$200,000 per annum to the law school.” A \$200,000 surplus was about one-third of the Law School’s \$638,140 budget. With the Law School increasing its tuition in the fall, “the students and faculty are understandably concerned about our

¹²³All quotations are in Paul J. Reiss to Rev. Michael P. Walsh, S.J., February 18, 1970,

professional accreditation,” the Dean informed Dr. Brown.¹²⁴

The Law School faculty and students met with Father Walsh in October, 1969 and proposed that “the Law School should be autonomous in every way.” Father Walsh’s reaction to the Law School’s demand for “fiscal autonomy” was to agree to “set them up as a separate school but they no longer will be called or be able to use the name Fordham University. If they were to separately incorporate, we would insist upon another name.” The meeting ended in stalemate.¹²⁵

The University’s “unresponsiveness” to the needs of the Law School, and the “growing University bureaucratization” prompted the Dean to appoint a Self-Study Committee chaired by Professor Robert M. Byrn. The Committee consisted of Professors Leonard F. Manning, John D. Calamari, E. Earl Phillip and Joseph C. Sweeney. Professor Barry Hawk served as the Committee’s Reporter. The Self-Study Committee and the Administration’s reaction to it reflected the deepening chasm between the Law School and the Fordham University Administration regarding the Law School and its place within Fordham University.¹²⁶

id.

¹²⁴All quotations are in William Hughes Mulligan to Dr. Arthur W. Brown, June 9, 1969, box 6, folder Law School Dean 1969, McLaughlin Papers, FUA; The budget figure is for fiscal 1968-1969. See John J. Meng to Professor William Hughes Mulligan, June 24, 1968, box 5, folder Law School Dean 1968, *id.*

¹²⁵All quotations from Michael P. Walsh, S.J. to Dr. Joseph Cammarosano, October 20, 1969, box 6, folder Law School Self-Study, Walsh Papers, FUA.

¹²⁶The quotes in this paragraph are not from this source. Robert M. Byrn to Rev. Michael P. Walsh, S.J., January 9, 1970, box 30, folder 1, Law School Papers, FUA. *See* Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, box 30, folder 1, Law School Papers, FUA.

Professor Robert Byrn, asked for complete detailed financial information relating to the Law School, including the portion of general University overhead expenses allocated to the Law School along with an explanation of the University's accounting procedures and the basis of the overhead allocation. He also asked for an accounting of total contributions made by Law Alumni and others.¹²⁷

Father Walsh and his Executive Vice-President, Dr. Joseph Cammarosano, were utterly uncooperative. Dr. Cammarosano distrusted and disliked the members of the Law School community. He was "opposed to placing this kind of [financial] information in the Law School's hands, for they would use it simply to exploit a political advantage." He believed that the Law School did not understand "that it is an integral part of the University and does not exist apart from it." It existed only so long as the University willed that it exist. It had "no sovereign power." This power was "reserved to the University." Moreover, the Law School could not have fiscal autonomy and still enjoy the benefits of its affiliation with Fordham University. Not only was it improper for an educational institution to "seek to maximize its return in every academic area," Cammarosano opined, some activities and some schools "may have to pay for others," because a University "must have balance." He deplored the Law School's "atomistic" conception of units within a university, because it would force the University to close unprofitable units, such as the Physics and Classics departments. He asserted that the Law School's thinking was "completely anathema to the idea of the University." Disclaiming any wish "to vulgarize the discussion further," he nonetheless maintained that "even the academic

¹²⁷Robert M. Byrn to Reverend Michael P. Walsh, October 16, 1969, box 6, folder Law

world needs a few ‘loss leaders’,” because a university must offer a “balanced program, even if it means that some areas cannot pull their own freight and must be subsidized by other areas.”

There the business analogy ended from the Law School’s perspective, as Cammarosano understood it. “A University cannot be likened to General Motors or some commercial firm which is quick to jettison its unprofitable operations.” His understanding of the Law School’s perspective led him to conclude that “the principle of fiscal maximization which is implied in the Law School argument would require just that.”¹²⁸

Fordham University unfortunately relied too heavily on revenues derived from tuition and fees and too little on revenue derived from fund raising and endowment income. This predisposed Father Walsh and Dr. Cammarosano to use the profitable Law School to subsidize Fordham University’s unprofitable programs. They were unwilling to return to the Law School the financing it required to achieve its goal of becoming a first rate law school in the changing world of legal education at the beginning of the 1970’s. With his understanding of a university and of university finances, Cammarosano smugly advised Father Walsh that the “people at the Law School are not terribly well versed in . . . [nor] understand the concept of a University.”¹²⁹

Cammarosano conceded that the Law School “may be bringing in more than it is paying out.” But, he suggested that its profitability may have been due less to its “standing” than to the “that of the entire University.” Fordham University was “a joint product”, he reasoned, and the

School Self-Study, Walsh Papers, FUA.

¹²⁸All quotations from Joseph R. Cammarosano to Rev. Michael P. Walsh, S.J., October 23, 1969, *id.*

¹²⁹*Id.*

Law School benefited from the “first rate undergraduate division” and other units of the University, and which rendered it difficult “to know precisely each unit’s true share of University income[.]” Cammarosano asked rhetorically, “Are not the people at the Law School willing to concede that their success may, in part, stem from other sectors of the University and that, therefore, they do not have full claim to what they bring in?” It seemed to him that “the Law School has gotten away with this kind of nonsense for too long a time.” Menacingly, he warned that “It had better start to pay some attention to the fact that it is not a merchant prince residing in some autonomous City State, but rather that it is a citizen of a larger entity and ought to start to behave accordingly.”¹³¹

Father Walsh waited one month before communicating his refusal to comply with Professor Byrn’s request for Law School financial information. He informed Byrn that he was unable to supply some of the requested information to the Self-Study Committee because “We have not yet done a sufficiently good study of the cost per unit of the University.” Although the Law School already had the requested “detailed breakdown of Law School income and the total Law School budget,” Father Walsh maintained, the University had not yet determined the “breakdown and detailed expenses allocated to the Law School.” He was similarly dismissive of Professor Byrn’s request for information regarding Law School alumni contributions, stating that “it would be almost impossible for us to determine the total contributions by Law School alumni.”¹³²

¹³¹Cammarosano to Father Walsh, October 23, 1969, box 6, folder Law School Self-Study, Walsh Papers, FUA.

¹³²All quotations in FMichael P. Walsh, S.J. to Mr. Robert M. Byrn, November 14, 1969,

The “restiveness” of the Law School’s constituent members “intensified” as they witnessed the “mushrooming University administrative bureaucracy” actively impinge on the Law School’s “internal self-governance”. The University conferred on “committees of faculty and students from other schools in the University” the authority to make decisions relating to matters as central to the Law School’s operations as its budget, which gave them the capability “of undermining” the Law School’s educational policies. For example, the University Budget Committee, consisting of faculty and students from other schools within Fordham University, had the power to review and veto items budgeted by the Law School, which took control over institutional and educational policies away from the Law School. Moreover, in reducing the Law School’s budget, faculty and students on the Budget Committee controlled the size of the Law School faculty and the holdings in the Law Library, both of which could “significantly affect the curriculum.” The Law School faculty and students believed that the University Budget Committee’s reductions in budgeted items “intrude[d] upon [the Law School’s] faculty control of institutional policies” and constituted a clear violation of ABA and AALS standards.¹³³

In December, 1969, the law faculty issued a bold declaration of exclusive self-governing authority. They affirmed AALS rules requiring ultimate responsibility for the internal governance of the Law School be in the law faculty, “a responsibility which the faculty must not surrender, under any circumstances” to the central administration or to any other group, such as a

box 6, folder Law School Self-Study, Walsh Papers, FUA.

¹³³All quotations in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, pp. 1-2, 4, box 30, folder 1, Law School Papers, FUA.

University faculty/student committee or the University Faculty Senate. For any of these to “arrogate to themselves” any of the Law School faculty’s responsibility “would literally endanger the continued existence of the Law School.”¹³⁴

The faculty approved the Self-Study Report, which expressed open hostility between the Law School and the University. It reported “a sharp deceleration of the Law School’s progress” in the second half of the 1960’s and attributed the principle cause to “dramatic reversals of University policy”. The Report asserted that the University refused to provide the Law School with needed “financial support for expansion in a number of vital areas,” and it maintained that the University lacked “a basic understanding . . . of the requisites for excellence in legal education.” Ironically, University administrators held the same view of the Law School’s Dean and faculty. The Law School’s faculty, students, and alumni were “increasingly concerned” over the University’s “apparently negative attitude” toward the Law School.¹³⁶

The Law School community was particularly troubled by Fordham University’s policy “of diverting Law School income to other programs in the University.” Even though the University refused to honor the Law School’s requests for detailed financial statements, the Self-Study Committee determined from the data available to it that, over the five fiscal years from July 1, 1965 to June 30, 1970, the University had “derived in excess of three-quarters of a million dollars in *profit* from law school tuition and fees alone.” These figures did not include donations and gifts by law alumni to the Law School, “all of which are presently diverted by the

¹³⁴*Id.*, p. 4.

¹³⁶*Id.*, p. 1.

University to programs outside the Law School.”¹³⁷

In calculating its “profits”, the Law School took into account the University’s charge for overhead. The University’s method of allocating overhead was to charge each school within the University 14.2% of total salaries. The effect of the University’s allocation was to charge divisions with relatively highly paid faculty, such as the Law School, more than those with lower salaried faculty, regardless of the amount of University resources they consumed. Obviously, this bore “no relationship either to actual total overhead or to actual utilization of administrative services by individual schools within the University.” In addition, the Law School had its own registrar and admissions and placement offices, which should have reduced the charge to the Law School for these services, but the University’s method of allocation did not provide for such reductions. Interestingly, a recent AALS study of legal education revealed that between 60 and 70 percent of the nation’s law schools were not charged overhead. The AALS found that most universities saw no need to “‘indulge the attribution of overhead’,” and the Association recommended “‘the majority practice’” as a better method for law schools to assess their financial position.¹³⁸

Almost all of the law schools that responded to the Self-Study survey (31 of 36) reported that they received from their universities funding that exceeded their revenues from tuition and fees. This was true of all of the state law schools (16 of 16), 73% (8 of 11) of the private law schools and 78% (7 of 9) of the Catholic-affiliated law schools. These results approximated

¹³⁷*Id.*, pp. 5-6.

¹³⁸*Id.*, p. 5.

similar findings by the AALS, which concluded that, among the Nation's law schools, there was "very little current concern with the possibility of a university drain on law student generated income for the benefit of other university operation." This was not the case at Fordham, where the Committee found that the University "consistently derived a profit from Law School tuition and fees and where the reasonable requirements of the Law School are not being met." The failure to meet the school's budgetary needs was a violation of ABA and AALS rules.¹⁵⁴

The Self-study Report accused Fordham University "of operating the Law School to produce a profit" for the University. Consequently, although the Law School generated the funds it required " 'to achieve a margin of excellence' ," it did not receive them. Moreover, other law schools surveyed by the Self-Study Committee acquired these funds through "separate law school fund raising." Fordham Law School did not have this source of funding, even though the Law Alumni were the "most generous and loyal of all of Fordham's alumni."¹³⁹

Deprived of adequate financial support and hampered by the interference of the

¹⁵⁴*Id.*, pp. 13-14.; "very little current concern", *id.*, p. 33.;*Id.*, Appendix A, Survey of Accredited Law Schools in the United States, pp. 28-29, 31-32;

¹³⁹All quotations in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 6, box 30, folder 1, Law School Papers, FUA. The Self-Study Committee approached its mandate "principally, but not exclusively, by comparing Fordham Law School to other university-affiliated law schools," particularly the fifteen or so law schools with which Fordham Law School competed for students. It sent out questionnaires to over one hundred accredited law schools and received replies from forty-nine. These included eighteen private law schools, eleven law schools affiliated with Roman Catholic Universities, and twenty state-supported law schools. Robert M. Bryn to Rev. Michael P. Walsh, S.J., January 9, 1970, *id.*; Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, *id.*, pp. 2-3; *Id.*, Appendix A, Survey of Accredited Law Schools in the United States, p. 23. The law schools are listed in *id.*

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University administrative structure, Fordham Law School compared unfavorably to other law schools in a number of critical areas reported to the ABA and AALS. One of Fordham's most serious deficiencies related to the sizes of the faculty and the student body. Fordham Law School was the fifteenth largest law school in the United States based on the number of students. Of thirty-two schools of comparable size, twenty-three had much lower student/faculty ratios. Of the nine schools with which Fordham compared favorably, several were unaccredited, and none had as good a reputation as Fordham's. The Law School ranked 18th in tuition, based on a tuition of \$1,600 in 1969, which was raised to \$1,900 for the 1970-71 academic year. Yet, its student/faculty ratio was the worst among the "top-charging 25 law schools." Most law schools had student/faculty ratios of 1/30 or lower. Fordham Law School's ratio of 1/41 placed it in the bottom 16% of all law schools. The ABA "encouraged" law schools to keep their student/faculty ratios between 20 to 30 students per full-time teacher. The Law School's shortage of full-time faculty prevented the faculty from devoting "sufficient time" to research, publication, and public service, prevented the Law School from providing faculty sabbaticals, and rendered the Law School "extremely hard pressed" if a teacher became ill.¹⁴⁰

Insufficient numbers of faculty had other adverse consequences for the quality of legal instruction. Each member of the full-time faculty taught "an average of 184 students per week," an excessive number. Furthermore, the Law School made "excessive use of part-time faculty." Indeed, the Night Division did not comply with an ABA Standard for Legal Education (Factor

¹⁴⁰"top-charging", "encouraged", "sufficient time", Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, pp. 6-7, box 30, folder 1, Law School Papers, FUA; "extremely hard

B:3:2), which required that at least three-fourths of the hours of instruction in each division be taught by full-time faculty. The Law School's accreditation was "in jeopardy" because of the Night Division's failure to meet this standard. The Self-Study deplored the "University policy, recommended to us in the past, of using part-time teachers as substitutes for badly needed full-time faculty members."¹⁴¹

Inadequate numbers of faculty prevented the Law School from fully implementing its "new curriculum", particularly its plan to offer more seminars and electives. The faculty's "desired goal" was to follow the example of the best law schools by allowing every faculty member to offer an elective or seminar in "his special area of competence." Unable to effectuate its revised curriculum, Fordham Law School was impeded from attracting serious young scholars to its faculty. The Self-Study Report concluded that "the most dramatic result of the University's failure to provide the Law School with a numerically adequate faculty" was the sacrifice of "a highly desirable tutorial writing program." The current number of faculty was simply too small to provide the "required close faculty supervision" the writing program demanded.¹⁴²

pressed", *id.*, Appendix C, Faculty Size and Curriculum, p. 54.

¹⁴¹"an average", "excessive use", "in jeopardy", Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 7, box 30, folder 1, Law School Papers, FUA; "University policy", *id.*, p. 15.

¹⁴²*Id.*, p. 8. A Committee of Faculty and Students had studied the curricula of twenty law schools from 1966 to 1967 and issued reports concluding that "an effective curriculum demanded fewer required courses and more elective courses relevant to the changing nature of the profession." Headed by Professor Calamari, the Committee proposed in April, 1967 "sweeping changes in the entire law school curriculum." The faculty adopted most of the

The lack of adequate numbers of faculty forced the Dean to employ a “judicious rearrangement of schedules” just to cover the required courses in the new curriculum. He succeeded in covering core courses “only by the most liberal interpretation of accepted academic practice” relating to the number of unrelated courses taught by individual full-time faculty and “the excessive use of part-time teachers.” Although the best law schools recognized that a law professor could not be “considered an expert in more than two fields,” one half of Fordham’s Law School faculty taught more than two unrelated course areas, and two of these taught five unrelated areas. The faculty expanded the number of electives only by violating AALS and ABA standards relating to teaching loads, and it still failed to offer as many electives as many other law schools.¹⁴³

In addition to unreasonably onerous teaching loads, inadequate University financial

Committee’s proposed curriculum revisions in May, 1967 and planned to implement them that September. “an effective curriculum”, *id.*, Appendix C, Faculty and Curriculum, p. 55; “sweeping changes”, Minutes of Faculty Meeting, June 6, 1967, FLSA.

¹⁴³“judicious rearrangement”, “only by the most”, “the excessive use”, Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, Appendix C, Faculty Size and Curriculum, p. 55, box 30, folder 1, Law School Papers, FUA. The Law School offered the following electives in 1969-1970: Accounting, Administrative Law, Admiralty, Advocacy, Bankruptcy, Close Corporations, Domestic Relations, International Law, International Business Transactions, Trade Regulation, SEC, Mortgages, Jurisprudence, Comparative Law, Insurance, Federal Courts, Suretyship, Estate Planning, Labor Law, Advanced Labor Law, Legislation, Law of the Urban Poor-Urban Education and Protection of the Environment. Electives offered at many other law schools which Fordham was unable to offer were: Patents, Corporate Reorganization, Business Planning, Municipal Law, Trademark & Copyright, International Organizations, Performing Arts, Oil & Gas, Business Taxation, Law & Medicine, Surrogates’ Practice and Land Use Planning. Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, Appendix C, Faculty Size and Curriculum, p. 55, box 30, folder 1, Law School Papers, FUA

support for research assistance and faculty secretaries also contributed to the law faculty's deficiencies in research, publication and public service. Whereas the Self-study Committee's survey revealed that thirty-four of thirty-nine law schools provided research assistance at an average cost of \$12,350 per year, Fordham Law School had "no budget at all for student research assistance." Many other law schools also provided, on average, one secretary for every professor. Fordham Law School's secretary/faculty ratio was 1 to 7 when fully staffed, but this ratio was 1 to 10 at the time of the Self-study Report.¹⁴⁴

¹⁴⁴ "no budget", Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 7, box 30, folder 1, Law School Papers, FUA. Functioning under these adverse conditions, some faculty members nonetheless contributed to legal scholarship and performed important public service. Their publications were directed to law practitioners. For example, Professors John Calamari and Joseph Perillo published their new Hornbook on the Law of Contracts; Professor Martin Fogelman again authored the Annual Review of New York Insurance Law and Professor Joseph McLaughlin authored the Annual Survey of New York Practice, both of which were published in the *Syracuse Law Review*; and Professor Robert Byrn published articles on New York Tort Law and on abortion. Several professors served as editors to legal newsletters and periodicals. Thus, Professor Thomas Quinn was the editor of the Uniform Commercial Code Law Letter; Professor Joseph Sweeney was the case notes editor of the *Journal of Maritime Law & Commerce*; and Professor Ludwig Teclaff was an associate editor of the *Journal of Maritime Law & Commerce*. Professor Byrn testified before a joint committee of the New York Legislature and submitted a statement to a legislative committee in the New Jersey Assembly investigating the legalization of abortion. He was also very active in "numerous debates, panels, TV and radio programs" on the subject, and, for these public services Byrn was awarded the Papal Medal – *Pro Ecclesia et Pontifice* – which Cardinal Cooke presented to him. Professor Quinn served as chairman of the Community Services Committee of the AALS and director of the Fordham Law School Urban Law Center. Professor Teclaff was elected President of the New York Law Library Association and served on a wide range of professional library positions, including the Committee for Liaison with the library of Congress for the Association of American Law Libraries, the Law & Political Science subsection of the Association of College and Research Libraries of the American Library Association, and secretary of the Committee on International Water Resources Law of the International Law Association. Teclaff also served as co-director of the Marine Environment Legal Research Project of the New York University Law Center. "numerous debates", Dean's Report to Alumni, 1970, attached to William Hughes Mulligan to Rev. Michael

Quoting the ABA Standards for Legal Education, the 1969 Self-Study Committee declared that “competitive compensation” was “the *sine qua non* for attracting and retaining a quality faculty.” Yet, the Law School’s faculty salaries were “markedly less” than those offered “at those law schools with which Fordham Law School most closely competes for students” and those its graduates reasonably could expect to earn in a Wall Street law firm after two years of practice. In “*all*” of the law schools with which Fordham competed for students, average law school faculty salaries were “substantially higher” than faculty salaries in their affiliated universities as a whole. In ten of thirteen of these schools that reported faculty salary information, law faculty salaries were “from 50% to 100% higher than university [faculty] salaries as a whole (including the law school itself in the latter average) for the year 1968-1969.” Fordham University refused to give the Law School information regarding faculty salaries in other schools and divisions of the University, so the Self-study Committee could not accurately specify the relationship of law faculty salaries and those paid to faculty in the other schools and divisions of Fordham University. But, the University’s policy was to keep the Law School faculty salaries as close to those other salaries as possible. It is highly unlikely that Law School faculty salaries were 50% to 100% greater than other Fordham faculty. Compared to the other reporting law schools, Fordham Law School faculty salaries ranked “last as to median salary, 12th [of 13] as to average salary, 12th as to maximum salary and 8th as to minimum salary for the year 1968-1969.” Median and average Fordham Law School salaries were lower than the salary of a second year associate at a Wall Street law firm. The effect of the Law School’s inability to

P. Walsh, S.J., December 4, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA.

pay competitive faculty salaries was unstated, but this must have been a substantial impediment to recruiting outstanding young scholarly professors, an impediment made more substantial by the onerous teaching loads the faculty had to carry and the absence of research support.¹⁴⁶

The lack of student aid and a dormitory continued to disadvantage the Law School in competing for bright students. The school's scholarship fund was \$70,000 when its full-time tuition was \$1,600 per year during the 1968-1969 academic year. Fifty-eight of 138 law schools in the United States had larger scholarship funds, and, of the 25 law schools with the highest tuition, Fordham's "scholarship loan funds" placed it second from the bottom. Of the 32 law schools whose student bodies were comparable to Fordham's, 23 had greater scholarship-loan funds, and only marginal schools had smaller funds than Fordham's. The Self-Study Committee compared the Law School's tuition and student aid with the ten law schools in New York state and thirteen church-related law schools and found that Fordham ranked in the top percentile in tuition and the bottom percentile in student aid. The difficulties in student recruitment were compounded when the University reduced the Law School's travel budget, which precluded Fordham Law School representatives from recruiting students from out-of town colleges. The consequence of this inadequate funding was that Fordham was "losing students to more competitive law schools."¹⁴⁷

¹⁴⁶"competitive compensation", "the *sine qua non*", Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 8, box 30, folder 1, Law School Papers, FUA; Wall Street second year associate salary, *id.*, pp. 19-20; "markedly less", "at those law schools", "all", "substantially higher", "from 50% to 100%", "last as to median", *id.*, Appendix A, Survey of Accredited Law Schools in the United States, p. 40.

¹⁴⁷All quotations from the Report of the Self-Study Committee of the Fordham

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The Law Library was also starved for funds. The size of its collection placed it 33rd among accredited law schools. It ranked “much lower” in the ratio of the number of students using the Library to the number of volumes available. Nevertheless, Fordham University reduced the Law School library’s book acquisition budget for the 1969-1970 school year from \$60,500 to \$41,000. Other law schools were upgrading their libraries. The allocation of only \$41,000 was just \$1,000 higher than the minimum required by the AALS for member law schools, and it was \$30,000 less than the estimated average for leading law schools according to the American Library Association. Interestingly, law students negotiated with the University and succeeded in getting a good portion of this cut, \$14,200, restored to the Library’s acquisition budget. However, reductions in the Library staff forced the Library to reject many gifts of books because it lacked the personnel to process them. The Self-study Committee anticipated “a rapid drop” in both the Library’s ranking and its usefulness.¹⁴⁸

Placement services and continuing legal education were suffering because of inadequate funding. The Self-Study Report claimed that Fordham law students “have never been more sought after” by law firms, but they were “stinted” in placement services because the Law School was operating without a placement director, essentially “because the salary offered is inadequate.” In addition to serving as the placement director, Assistant Dean Robert McGrath also supervised the Law School’s continuing legal education program. Unfortunately, “that program too has been in abeyance,” the Committee reported. However, in 1970, the Law School

University School of Law on the Status of the Law School in the University, December 1, 1969, p. 9, box 30, folder 1, Law School Papers, FUA.

¹⁴⁸*Id.*, p. 6.; *id.*, Appendix B, Library Report, p. 50.

hired Helen P. Solleder to the new position of Law School Director of Placement to replace Assistant Dean McGrath at a salary that was one-third greater than her predecessor's, although Brother Kenny "questioned this rather significant increase." But, the Law School placement service was still controlled by the University Placement Office. The Student Bar Association informed the Self-study Committee that "Fordham ranks poorly in financial support of extra-curricular student activities."¹⁴⁹

The Self-Study Committee proposed a plan to eliminate the deficiencies it identified, and each of its recommendations required substantially greater financial support. For the Library, for example, the Committee proposed increasing its holdings to 200,000 volumes within the next five years, increasing its annual book acquisitions budget to \$80,000 and its staff to five professional librarians, six clerks and "sufficient student help." Two hundred thousand volumes was the average for leading law libraries, according to the Association of Research Libraries, but an adequate staff for a library of this size was six professional librarians and nine clerks. The staffing recommendation would have left the Law Library inadequately staffed.¹⁵⁰

The Self-Study Report recommended an increase in faculty size to between 25 and 28 full-time professors in addition to the Dean and the Law Librarian, two teaching-research associates and "an adequate part-time faculty." The recommendation on the size of the faculty

¹⁴⁹All quotations except Kenny's are in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 9, box 30, folder 1, Law School Papers, FUA; "questioned this", James Kenny, S.J. to Rev. Michael P. Walsh, S.J., February 11, 1970, box 26, folder Law School, Finlay Papers, FUA.

¹⁵⁰"sufficient student help", Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, pp. 9-10, box 30, folder 1, Law School Papers, FUA; *id.*, Appendix B, Library Report, pp. 50-51.

was the minimum required to enable the Law School to implement curricular reforms. The curricular goal was to have “every faculty member teaching a seminar or an elective in his special area of expertise”, and to reinstate “the second year tutorial writing program under the administrative guidance of teaching research associates”, who would also be responsible for the first year research and writing course and coordination of all writing and moot court programs. It recommended an increase in secretarial support to a minimum of six secretaries, which would have reduced the ratio of secretaries to full-time faculty to 1 to 4 or 5. The Report recommended a student research budget of between \$10,000 and \$15,000, and “an adequate convention-travel budget.” The Report was unable to recommend specific goals for student aid without more study of necessary aid to the disadvantaged. Nevertheless, the Committee declared that doubling of scholarship-loan funds would be a “starting point”. And it urged funding for student recruitment.¹⁵¹

The Self-Study Report also made recommendations “designed to insure the internal self-governance of the Law School, to regularize” its position within Fordham University and “to provide procedures for closing the gap between our deficiencies and our goals.” The most important of these recommendations was to give the Law School Dean the authority to prepare and administer the Law School’s budget “according to his estimate of the” Law School’s “reasonable requirements.” This was the practice in 41 of the 42 law schools that responded to

¹⁵¹All quotations are in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, p. 10, box 30, folder 1, Law School Papers, FUA.

the Self-Study Committee's survey. This was also an ABA requirement for accreditation.¹⁵²

To advance the Law School's "quest for excellence", the Report further recommended that the Law School conduct its own "annual fund-raising appeal, separate from any other University fund raising venture." Separate law school fundraising was becoming the trend in the 1960's. Only 50% of law schools "engaged in active separate fund raising" in the 1950's, but 76% (31 of 41 responding schools) "in our current study" engaged in this practice. Of the ten schools that did not have separate fund raising appeals, six were affiliated with Catholic Universities. The Report acknowledged that problems associated with appeals to law school alumni were "particularly acute at Fordham," because Law School Alumni were aware that the Law School operated at a profit and that their contributions would "immediately be diverted" to a University program having no connection with the Law School and which they had no wish to support. The Committee asserted that the Law School and the University had to work out the "mechanics" of the Alumni appeal. If the donor specified a gift to the Law School for a "particular purpose", the gift should be used for this purpose and no other.¹⁵⁷

The University got around restricted gifts to the Law School by reducing funds the Law

¹⁵²*Id.*, p. 12.

¹⁵⁷All quotations are in Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, pp. 14-16, box 30, folder 1, Law School Papers, FUA. Many Law school Alumni sent checks made out to Fordham University, but they restricted their donations to the use of the Law School. *See, e.g.*, Caesar L. Pitassy to Dean William Hughes Mulligan, December 29, 1965, box 1, folder Alumni Association (Law), McLaughlin Papers, FUA; Leo McLaughlin, S.J. to Caesar L. Pitassy, January 3, 1966, *id.*; Leo T. Kissam to William H. Mulligan, Esq., December 19, 1965, box 4, folder Law Alumni Scholarship Fund, McLaughlin Papers, FUA; William Hughes Mulligan to Rev. Leo P. McLaughlin, December 13, 1965, *id.*; Leo McLaughlin, S.J. to Leo T. Kissam, December 29, 1965, *id.*

School would have received by the amount of the gifts. For example, alumni gifts to the Law School Scholarship Fund resulted in the University reducing the amount of scholarships it provided to the Law School. In light of this, Mulligan complained that “it is extremely difficult to honestly say to an alumnus that the law school will benefit from any gift since normally the University merely retains the check as part of the unrestricted funds.”¹⁵⁹

Finally, the Law School requested greater autonomy over decisions relating to the salaries, rank and tenure of individual law professors. The Report recommended that the University’s authority to change faculty salaries should be restricted only to salaries “as a whole”. This was the practice in the “great majority of responding schools.” Similarly, the “large majority . . . of private and Catholic-affiliated law schools” established their own criteria for faculty promotion. Sixteen of 21, or 76%, of these law schools reported that they “autonomously establish the criteria for promotion.” An even higher proportion of these law schools, 16 of 18 or 89%, reported that their criteria for promotion differed from those of other divisions of their universities. “The most reported differences in criteria were acceleration of law school promotion, lessening of publication requirement and a greater emphasis on public services.” The Self-Study Committee sought similar control over promotions for the faculty. It proposed that “[t]he University shall formally approve all faculty promotions recommended by the Law School.” The “overwhelming majority” of law schools, 32 of 39 or 82%, reported that their university administrations did not reject “a single faculty promotion” they recommended during the preceding three years. The Committee reported that these figures were consistent

¹⁵⁹ “it is extremely difficult”, William Hughes Mulligan to Rev. Leo McLaughlin, S.J.,

with the results of an AALS study, which found that 838 of 913 or 92% of law school recommendations for promotions were accepted by the university over a ten year period. However, this was not the case at Fordham Law School. During the preceding three years, the University rejected “several recommendations” for promotion submitted by the Dean.¹⁶⁴

“Fordham Law School stands at a crossroads,” the Self-study Report concluded. “Either we re-accelerate our progress in the quest for excellence or we go into a decline.” Decline meant “at best . . . mediocrity and at worst . . . loss of accreditation.” Mindful of the Law School’s traditions and the preferences expressed by the faculty, students and alumni, the Self-Study Committee “opted for excellence.” The question, however, was whether Fordham University would support the Law School’s quest for excellence.¹⁶⁶

Father Walsh’s initial response to the Self-study Report was quite negative. Father Walsh informed Byrn “how terribly disappointed” he was over “the narrowly limited scope” of the Self-Study, “especially the almost total concern for such self-interested problems as faculty compensation and other peculiarly temporary problems instead of long range, academic projections.” He had expected “a clearer statement” of the Law School’s “priorities”, a “more precise definition of [its] objectives, and an explanation of the various alternatives for achieving

December 20, 1968, box 5, folder Law School Dean 1968, McLaughlin Papers, FUA.

¹⁶⁴Report of the Self-Study Committee of the Fordham University School of Law on the Status of the Law School in the University, December 1, 1969, pp. 19-20, box 30, folder 1, Law School Papers, FUA. In 30 of 39 or 77% of these law schools, the recommended salaries of individual faculty members were not reduced by the university during the preceding three years. In only two of nine reporting Catholic-affiliated law schools did the university reduce individual salaries. *Id.*, p. 19.

¹⁶⁶*Id.*, p. 21.

those objectives.” He was “disappointed in not finding them.”¹⁶⁸

Father Walsh believed that the Self-Study’s real objective was to achieve the Law School’s “academic and fiscal autonomy.” He informed Byrn that the University could not grant this autonomy to the Law School without extending it to all units of the University. If it did so, the University would soon become “little more than a loose federation of autonomous, self-sustaining trade schools,” which “hardly accords with the concept of a university.” In Father Walsh’s view, the Self-Study Report’s demands were “unrealistic and to the rest of the University most unfair.” But, he accepted Professor Byrn’s invitation to discuss the Self-Study Report and arranged to meet with Law School representatives on March 20, 1970.¹⁷⁰

Prior to the meeting, Father Walsh discussed the Administration’s strategy with Executive Vice-president Commarosano and his Vice-president for Academic Affairs Reiss. He wanted “to take a positive approach” at the meeting, and he acknowledged to his team that he had “no doubt whatsoever” that the Law School “do need more faculty. Their student-faculty ratio is so much out of line with other law schools.” He hoped to “lift them up to the number 25”

¹⁶⁸All quotations are in Michael P. Walsh, S.J. to Professor Robert M. Byrn, February 9, 1970, box 6, folder Law School Self-Study, Walsh Papers, FUA. Professor Byrn sent the Self-Study Report to Father Walsh with a strongly worded cover letter insisting that achieving excellence for the Law School required it to maintain greater financial autonomy and retention of its revenue. Robert M. Byrn to Rev. Michael P. Walsh, S.J., January 9, 1970, box 30, folder 1, Law School Papers, FUA. There is a copy of this letter in box 6, folder Law School Self-Study, Walsh Papers, FUA.

¹⁷⁰ Michael P. Walsh, S.J. to Professor Robert M. Byrn, February 9, 1970, box 6, folder Law School Self-Study, Walsh Papers, FUA; Michael P. Walsh, S.J. to Professor Robert M. Byrn, February 25, 1970, *id.*

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over time, emphasizing that perhaps they could satisfy their faculty needs “by joint appointments of personnel in the behavioral sciences or other areas of the university.” He also was not opposed to independent Law School fund raising within certain guidelines they would have to work out to avoid conflicts with the “overall development plans of the University.” He favored more scholarship money, but, he was concerned that it would be given to editors of the *Fordham Law Review* rather than to recruit bright students. He also acknowledged that the Law School needed more travel money for “recruiting purposes” and for more faculty to attend annual conventions. As for the meeting with the Law School representatives, he cautioned Cammarosano and Reiss that “it is important for us to go there, keep our cool, and try to make it a more positive experience” than his initial response to the Self-Study Report. Father Walsh made a surprising admission, given the low regard the Administration had for the Law School. “Our Law School has an extraordinary reputation and, I notice, not from the faculty or Dean but from associates in other schools around this area and the general public.”¹⁷¹

The March 20, 1970 meeting proved to be quite productive. Representatives of the Administration and the Law School reached agreement on most of the Self-study Report’s recommendations and left some issues to be worked out in the future. The Administration agreed that the Dean shall be the Law School’s “budget administrator” and prepare the school’s annual budget according to “his estimate of the reasonable requirements of the Law School.”

¹⁷¹All quotations are in Michael P. Walsh, S.J. to Dr. Joseph R. Cammarosano, March 10, 1970, box 6, folder Law School Self-Study, Walsh Papers, FUA. *See also* Joseph R. Cammarosano to Reverend Michael P. Walsh, S.J., March 11, 1970, *id.*; Rev. Michael P. Walsh, S.J. to Members of the Law School Self-Study Committee, February 25, 1970, *id.*; Michael P. Walsh, S.J. to Dr. Joseph R. Cammarosano, February 25, 1970, *id.*; Dr. Joseph R. Cammarosano

The Administration also agreed that the Dean shall submit the budget to the “University Administrator(s)” with the “ultimate authority” over budgets prior to its submission to the Board of Trustees. But, the Administration refused to exempt the Law School budget from review by the University Budget Committee. This exemption would have to be extended to the budgets of all of the University’s departments, schools and units, which would have required the dissolution of the University Budget Committee. Father Walsh “doubt[ed] very much that the faculty and students” in those other areas of the University “would consent to a dissolution of this Committee.” The Administration suggested a compromise under which it would attempt to persuade the Budget Committee to review “only major categories and not examine individual items in each School and Department Budget.” Until then, “some items in the Law School Budget [would] have to be reviewed by them.”¹⁷²

The University’s position on the budget is puzzling. It refused to give detailed budgetary information to the Law School Dean at the very time it gave detailed budget information to a

to Reverend Michael P. Walsh, S.J., February 23, 1970, *id.*

¹⁷²“budget administrator”, “his estimate of”, “University Administrator(s)”, “ultimate authority”, Joseph R. Crowley to Father Walsh, April 10, 1970, *id.*; “doubt[ed] very much”, “would consent”, “only major categories”, “some items”, Michael P. Walsh, S.J. to Professor Joseph R. Crowley, April 30, 1970, *id.* The Self-Study Recommendations and the disposition of each item in the March 20, 1970 meeting are set forth, according to Executive Vice President Cammarosano, “in a very forthright and statesmanlike fashion,” in a memorandum prepared by Professor Joseph R. Crowley and sent to Father Michael P. Walsh. Dr. Joseph R. Cammarosano to Rev. Michael P. Walsh, S.J., April 22, 1970, *id.*, *See*, Joseph R. Crowley to Rev. Michael P. Walsh, S.J., April 10, 1970, *id.* The Administration’s view is set forth in the memorandum sent by Michael P. Walsh, S.J. to Professor Joseph R. Crowley, April 30, 1970, *id.* The Administrators’ internal discussion of these issues and Professor Crowley’s memorandum are expressed in Dr. Joseph R. Cammarosano to Rev. Michael P. Walsh, April 22, 1970, *id.*; Paul J. Reiss to Rev. Michael P. Walsh, April 27, 1970, *id.*

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university committee consisting of deans, faculty and students from other divisions in the University. The University also seems to have given the Budget Committee significant authority to review and adjust the budgets of the various schools, departments and units of Fordham University. It is difficult to explain this administrative process.

The Administration accepted all but one of the remaining recommendations on the budget process. It agreed not to reduce any item in the Law School budget without prior direct consultation with the Dean and to give primary consideration to the reasonable requirements of the Law School in such consultations. Cammarosano considered this concession “a significant compromise on the part of the Administration,” and he “remained unalterably opposed to” disclosing to the Law School Dean financial information regarding the Law School’s operations. Consequently, the Law School withdrew its request that, prior to the consultation, the University give the Dean “a complete financial statement of the Law School’s operations for the most recent fiscal year.” This represented a significant concession on the part of the Law School. The Administration agreed to the interpretation of ““reasonable requirements of the Law School”” that enabled it “to attain and maintain a high and competitive position” in relation to other accredited law schools in virtually all areas of the Law School’s operations, namely, full-time faculty/student ratio, student aid, student and faculty recruitment, curriculum, research assistance and secretarial support, faculty salaries and benefits, teaching loads, faculty promotions and leaves of absence, participation in professional organizations and conventions, library facilities and personnel, student extra-curricular activities.¹⁷³

¹⁷³“a significant compromise”, “remained unalterably”, Cammarosano to Father Walsh,

The Law School and the University Administration also reached substantial agreement on issues related to the Law School's independent fund raising activities. The Administration agreed to this in principle, with the understanding that the Law School's separate fund raising process would have to be worked out with the Administration, the University Development Office and the Law Alumni Association. The University also agreed in principle to the Law School's recommendation that unsolicited gifts designated by the donor for the use of the Law School would be delivered to the Law School and not diverted to other University uses.

In 1970, the University attempted to clarify the rules regarding fund raising for the Law School. It entered into a five year contract with the Law Alumni Association which provided that the Association would participate in the University's annual giving program. In return for annual financial support from the University of \$5,000 per year, the Association agreed to comply with the University's current fund raising practices when it solicited funds for the Law School. There could be trouble if the Law School solicited its alumni who had also graduated from one of the other schools of Fordham University. Executive Vice-President Joseph R. Cammarosano also wanted to avoid situations in which Law Alumni who might be administrators of trusts and estates "get the arm placed on them by Bill and his people" and siphon off funds to the Law School that might otherwise come to the University. This was "where we and the Development Office have to stay on our toes," he informed Father Walsh.¹⁷⁴

April 22, 1970, *id.*; "a complete financial statement", "reasonable requirements", "to attain and maintain" Professor Crowley to Father Walsh, April 10, 1970, *id.*

¹⁷⁴Renewal of contracts between the University and the Fordham School of Law Alumni Association - Agreement, Denis G. McInerney and Rev. Michael P. Walsh, S.J., July 1, 1970, box 6, folder Law School Dean 1969, Walsh Papers, FUA; "get the arm placed", "where we",

The University struggled with rules to determine the uses of unassigned gifts to the Law School and to avoid competition in fund raising between the University and the Law School. These rules provided that all gifts “specifically assigned by a donor to the Law School” would be “considered as a supplement to the budget and in no event shall be offset (‘washed out’) against any item in the budget,” except for income from an endowed chair, which could be credited to the salary of the chair’s holder. For donations restricted to the Law School but not “earmarked as to their use”, the University Administration and the Law School Dean would determine the use to which they would be put.¹⁷⁴

To avoid conflict between the University and the Law School in soliciting funds from law firms, the Law School’s “solicitation must first be cleared with the University Development Office.” The Law School was permitted to solicit its alumni “on a personal basis,” but the University’s Development Office was also free to solicit Law School Alumni who had also attended some other school of the University. The Law School agreed not to solicit funds outside its own Alumni unless the source was “uniquely concerned with the Law School or a Law School program” or “otherwise expressed a unique interest therein.”¹⁷⁵

Joseph R. Cammarosano to Rev. Michael P. Walsh, S.J., March 24, 1970, box 6, folder Law School Dean 1970, *id.*;

¹⁷⁴“specifically assigned”, Dr. Joseph R. Cammarosano to Rev. Michael P. Walsh, S.J., March 31, 1970, *id.*; “considered as a supplement”, Joseph R. Crowley to Rev. Michael P. Walsh, S.J., April 10, 1970, box 6, folder Law School Self-Study, Walsh Papers, FUA; “earmarked as to”, Dr. Joseph R. Cammarosano to Rev. Michael P. Walsh, S.J., March 31, 1970, box 6, folder Law School Dean 1969, Walsh Papers, FUA.

¹⁷⁵“solicitation must”, “on a personal basis”, Dr. Joseph R. Cammarosano to Rev. Michael P. Walsh, S.J., March 31, 1970, box 6, folder Law School Dean 1969, Walsh Papers, FUA; “that the Law School”, “first be cleared”, Michael P. Walsh, S.J. to Professor Joseph R.

Although the Administration agreed that the Law School Dean would give primary consideration to the “reasonable requirements” of the Law School in drawing up the School’s budget, it telegraphed that the University would not necessarily allow the use of Law School revenues exclusively for this purpose. This became apparent in the discussions regarding Law School tuition and fee increases. The Administration rejected the Law School’s proposal that its tuition and fees would not be increased to provide “a financial reservoir for other schools or programs in the University.” The Administration’s proposal, to which the Law School agreed, stated that tuition and fees would not be raised “unless the Law School derives a significant benefit from the increase.” This would permit tuition increases to provide “a financial reservoir” for the University, so long as the Law School received “a significant benefit” from the increase.¹⁷⁶

The Administration and the Law School made major concessions regarding faculty salaries and promotions. The Administration conceded that, in determining faculty salaries, primary, if not exclusive, consideration would be given to salaries in law schools with which Fordham competed for students and salaries in law firms from which the Law School recruited its faculty. The Law School and the Administration agreed that the Administration be permitted to change the salaries of individual law faculty, but not “without prior consultation with the dean’.” The Administration agreed to allow the Law School to establish the criteria for faculty

Crowley, April 30, 1970, box 6, folder Law School Self-Study, Walsh Papers, FUA; “uniquely concerned with”, “otherwise expressed”, Joseph R. Crowley to Rev. Michael P. Walsh, S.J., April 10, 1970, *id.*

¹⁷⁶“reasonable requirements”, “a financial reservoir”, “unless the Law School”, Joseph R. Crowley to Rev. Michael P. Walsh, S.J., April 10, 1970, *id.*

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promotions, so long as they were not inconsistent with procedures and criteria established by the University Promotions Committee. The Administration rejected the recommendation that would have required the University to approve automatically all faculty promotions recommended by the Law School. It retained the right to review promotions to ascertain whether the persons recommended met the criteria.¹⁷⁷

The test of the agreement was how well it was implemented. On that score, the future did not look very promising. The University's agreement to peg Law School faculty salaries to competitor law schools and law firms did not improve the salary structure before Dean Mulligan resigned as Dean. In his last year as, 1970-1971, law faculty salaries "dipped to the lowest point in comparison with other schools than at anytime in the last ten years," he informed Father Walsh. Tables 6-11 and 6-12 show that Fordham's median salaries were lower than all of its competitor law schools in 1969, and it fell even lower the following year. Fordham's median salary of \$18,500 was \$250 above the national median and placed it, along with seven other law schools, 63rd among the 140 reporting law schools. The other seven were state law schools, four of which were in the South and three of which were in the Midwest. Fordham also compared poorly to law schools in New York state. Mulligan complained "that all of the New York State schools, with the exception of New York Law School, are ahead of us." New York Law School's median income of \$18,000 placed it 78th and was just \$500 a year less than Fordham.¹⁷⁸

¹⁷⁷*Id.*

¹⁷⁸All quotations are in William Hughes Mulligan to Rev. Michael Walsh, S.J., November 30, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA.

TABLE 6-11
MEDIAN SALARIES FOR 1970 & 1969 FOR SELECTED LAW SCHOOLS

<u>School</u>	<u>Median Salary</u> <u>1970</u>	<u>Fringe Benefits</u> <u>1970</u>	<u>Median 1969</u>	<u>Difference</u>
2. Rutgers Nk*	29,624	—	24,495	+5129
3. Harvard*	29,000	4886.50	—	—
4. Columbia*	28,000	5600.00	28,000	no change
5. Cornell*	27,500	4125.00	26,000	+1500
6. N Y U*	27,000	3510.00	25,000	+2000
7. Yale*	26,500	4213.00	25,000	+1500
8. Boston U*	25,500	3060.00	19,500	+6000
10. Michigan*	25,200	3780.00	25,750	-550
15. St. John's	24,000	2640.00	—	—
18. Penn*	23,500	2509.00	24,500	-1000
21. Virginia*	23,000	4200.00	21,000	+2000
33. Geotown*	21,750	1784.00	18,500	+3250
34. UNY Buff*	21,728	3558.00	20,258	+1470
38. N Dame*	21,000	2100.00	—	—
41. Boston Col*	20,600	625.20	20,000	+600
46. Brooklyn	20,000	2520.00	—	—
58. Villanova*	19,000	1900.00	18,000	+1000
63. Fordham	18,500	1850.00	18,000	+500
63. Georgia	18,500	1850.00	—	—
78. N Y L S	18,000	1620.00	—	—

*Law Schools Dean Mulligan identified as Fordham Law School's competitors. Information for 1970 are in Median Faculty Salaries for Academic Year 1970-71, attached to Millard H. Ruud, to Deans of the Approved Law Schools, November 20, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA. Information for 1969 are in ABA Section on Legal Education, summarized in table prepared by Dean Mulligan, enclosed in William Hughes Mulligan to Rev. Michael P. Walsh, S.J., February 12, 1970, box 26, folder Law School, Finlay Papers, FUA.

TABLE 6-12
MEDIAN FACULTY SALARIES AT ABA APPROVED LAW SCHOOLS 1970-71

<u>School</u>	<u>Median faculty Salary</u>	<u>fringe Benefits</u>
1. U of California (Hastings)	29,624
2. Rutgers (Newark)*	29,624
3. Harvard*	29,000	4886.50
4. Columbia*	28,000	5600.00
5. Cornell*	27,500	4125.00
6. New York University*	27,000	3510.00
7. Yale University*	26,500	4213.00
8. Boston University*	25,500	3060.00
10. Michigan*	25,200	3780.00
15. St. John’s University	24,000	2640.00
18. Pennsylvania*	23,500	2509.00
21. Virginia*	23,000	4200.00
33. Georgetown*	21,750	1784.00
34. U of NY Buffalo*	21,728	3558.00
38. Notre Dame*	21,000	2100.00
41. Boston Col*	20,600	625.20
46. Brooklyn	20,000	2520.00
58. Villanova*	19,000	1900.00
63. Fordham	18,500	1850.00
63. Georgia	18,500	1850.00
78. N Y L S	18,000	1620.00

*Law Schools Dean Mulligan identified as Fordham Law School’s competitors. Median Faculty Salaries for Academic Year 1970-71, attached to Millard H. Ruud, to Deans of the Approved Law Schools, November 20, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA.

Even Father Walsh was “disturbed” that other Catholic law schools were “significantly ahead of us” in faculty salaries. He specifically mentioned Notre Dame, Georgetown, Santa Clara and Boston College. Father Walsh asked Mulligan how “our median faculty salary could be raised.” He would appreciate any suggestion apart from the “obvious one of raising every member of the faculty to a significant degree.” However, Table 6-13 shows that Fordham lagged

TABLE 6-13

1970 SALARIES BY NUMBER OF YEARS SINCE FIRST LAW DEGREE

0-5 YEARS SINCE FIRST LAW DEGREE

<u>School</u>	<u>High</u>	<u>Median</u>	<u>Low</u>	<u>No. of Faculty</u>
Boston College	\$17,760	\$14,985	\$14,430	3
Cornell	27,025	23,575	19,550	4
Georgetown	21,640	18,394	17,312	4
Fordham	16,800	16,700	16,000	3

6-15 YEARS SINCE FIRST LAW DEGREE

<u>School</u>	<u>High</u>	<u>Median</u>	<u>Low</u>	<u>No. of Faculty</u>
Boston College	\$30,525	\$22,200	\$15,260	7
Cornell	37,950	32,200	27,025	9
Georgetown	27,591	23,533	18,935	18
Fordham	28,300	18,500	17,000	8

OVER 15 YEARS SINCE FIRST LAW DEGREE

<u>School</u>	<u>High</u>	<u>Median</u>	<u>Low</u>	<u>No. of Faculty</u>
Boston College	\$23,587	\$23,000	\$22,366	2
Cornell	37,950	33,925	28,175	8
Georgetown	33,542	26,509	18,394	13
Fordham	27,500	20,500	17,000	8

Information is derived from ABA Section of Legal Education and Admissions to the Bar, Take-Off Compensation of Full-time Teachers for Academic Year 1970 by Number of Years Since Obtaining First Degree in Law, box 6, folder Law School Dean 1971-1972, Walsh Papers, FUA.

behind Boston College and Georgetown in every salary category based on the number of years since obtaining the first law degree, a measure used by the ABA.¹⁷⁹

Not only was Fordham University keeping law faculty salaries low, it continued to use the Law School as a cash cow and increased the funds it diverted from the Law School to help it balance its deficit-ridden Income and Expense Statements in 1970. Executive Vice-President

¹⁷⁹All quotations are in Michael P. Walsh, S.J. to Dean William H. Mulligan, December 4, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA.

Cammarosano employed two strategies to get more money from the Law School. One was to deduct from Law School revenues the amount of monies the University “made available” to the Law School for student aid rather than the amount of funds it actually expended for student aid, which amounted to \$21,187 in 1970.¹⁸⁰

Cammarosano’s second strategy to divert Law School income to general University operations was more significant and controversial. It was to charge the Law School rent for its building at Lincoln Center in addition to the \$192,000 the University charged the Law School for Physical Plant Expense. Interestingly, although Cammarosano insisted that the Law School should pay rent, Brother Kenny, University Treasurer and no friend of the Law School whom law faculty called “the Black Knight”, objected because the Law School had paid off the cost of the building. “I am aware of your argument that the building is free and clear of debt and was more than paid for by the ‘profits’ earned by the Law School prior to its move to Lincoln Center,” Cammarosano acknowledged in his discussion with Brother Kenny. Cammarosano countered, “But were these alleged ‘profits’ deposited in some kind of a building fund for the Law School or did the University use general funds received from all sources, including some of its other schools, to pay for this building?” The Executive Vice-President’s objective in taking these positions was simply to avoid returning the Law School’s current surplus revenues to the

¹⁸⁰“made available”, Joseph R. Cammarosano to Brother James M. Kenny, S.J., March 23, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA. For the ABA report, *see supra*, **TABLE OF LAW SCHOOLS STUDENTS, FACULTY, TUITION & STUDENT AID** and note 147 and related discussion. For the 1971 financial statement, *see*, School of Law Comparison of Operating Income and Expenditures: 1968-1969 and 1969-1970, box 26, folder Law School, Finlay Papers, FUA.

Law School. He candidly stated that “the point I want to make is that if we add another \$21,187 to the Law School’s Financial Aid program and make provision for an appropriate rental charge, the alleged Law School ‘profit’ would quickly evanesce.” And as the profit evanesced, so too would the University’s obligation under its agreement with the Law School to return these revenues to the Law School.¹⁸¹

Fordham University’s stated policies and practices prior to the move to Lincoln Center support Brother Kenny’s contention that Law School surpluses were used to pay for the Law School’s building. When the ABA inspected the Law School in 1958, it required the University to explain why it was using the Law School’s “substantial profit” for University funds and not the Law School. The University answered that it was taking the Law School’s profits on the “theory” that it would “shortly expend several millions in the erection of a new building for the School of Law.” The University’s justification, combined with the ABA Inspectors’ finding that the Law School “more than pay[s] its own way and that this has been the picture over a great many years,” explain why the inspectors thought it was “not surprising” that Fordham Law School was “primarily a ‘gate-receipt’ operation.” They questioned “whether the [Law] School gets its fair share of institutional resources or whether the current rate of profit turn-over indicates a kind of exploitation.” Fordham University did not make available the detailed financial information that would have enabled the ABA to answer this question in 1958. According to Brother Kenny in 1970, the Law School had paid off the Law School building, but the Law School did not have the financial records to show this. In what may have been an

¹⁸¹All quotations are in Cammarosano to Brother Kenny, March 23, 1970, box 6, folder

extraordinary presaging of Cammarosano's position in 1970, Mulligan mused in 1958 that the University's refusal to make available financial information "does point up the problem of our establishing eventually that the excess of tuition income over operating costs has in some way been allocated for the construction of the new Law School."¹⁸²

William Hughes Mulligan tendered his resignation as Dean on June 15, 1970, effective at the end of the 1970-1971 academic year. Father Walsh accepted his resignation "with a great deal of reluctance". Mulligan had served as Dean for fifteen years, and he had been on the faculty for twenty-five years.¹⁸³

Contrary to popular belief, Mulligan did not resign to join the federal bench. He resigned the deanship to become a full-time faculty member. "There was no talk of the bench at the time," according to Judge McLaughlin. Mulligan "had just had it with the student revolutions in the late 60s, and after the really big one in '70 he resigned." McLaughlin explained that Kent State happened within two weeks of the bombing of Laos and Cambodia, and students "all over the country went into an uproar over that." Students in the Northeast decided to march on Washington in protest. They agitated to be exempt from final exams, "demanding that we simply graduate them or pass them without exams." Fordham was the only law school in the

Law School Dean 1970, Walsh Papers, FUA.

¹⁸²"more than pay[s] its own", "shortly expend several millions", "not surprising", "primarily a 'gate-receipt' operation", "whether the [Law] School", ABA Inspection Report, April 28-29, 1958, pp. 5-6, box 26, folder School of Law 1958, McGinley Papers, FUA; "does point up", William Hughes Mulligan to Rev. Laurence J. McGinley, October 9, 1958, box 5, folder 5, *id.*

¹⁸³Mulligan to Rev. Walsh, June 15, 1970, box 6, folder Law School Dean 1970, Walsh Papers, FUA; "with a great deal", Father Walsh to Mulligan, June 19, 1970, *id.*

New York City “neighborhood” that refused. “NYU, Columbia, etc., capitulated,” McLaughlin related. Students from those other law schools picketed Fordham, and the faculty met with student leaders from 4:00 in the afternoon until 2:00 in the morning for “easily [sic] ten days.” The Court of Appeals convened in special session and declared that no one would be permitted to take the July Bar Exam who had not taken meaningful examinations to graduate law school. “We felt fully vindicated,” McLaughlin gloated, “But when that was all over Mulligan had had it, and he decided to return to the full time faculty as a professor.” Though Mulligan had intended to continue as a member of the faculty and to hold the Wilkinson Chair of Law, he was appointed to the Second Circuit Court of Appeals shortly after his resignation as Dean became effective in the summer of 1971.¹⁸⁴

Joseph McLaughlin succeeded Mulligan as the Law School’s Dean. He shared the perspective of the 1969 Self-Study Report. The challenge that confronted him was whether he would succeed in achieving the goals contained in that report.

¹⁸⁴All quotations are in Interview of The Honorable Joseph McLaughlin by Robert Reilly, April 9, 1990, Transcript No. 107, Book 3, pp. 21-23, Fordham Law School Oral History Project, FLSA.