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The Arthur Fisher case

Sheila MacDonald Stearns

The University of Montana

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THE ARTHUR FISHER CASE

By

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>111</td>
</tr>
<tr>
<td>CHAPTER I</td>
<td>1</td>
</tr>
<tr>
<td>CHAPTER II</td>
<td>14</td>
</tr>
<tr>
<td>CHAPTER III</td>
<td>33</td>
</tr>
<tr>
<td>CHAPTER IV</td>
<td>48</td>
</tr>
<tr>
<td>CHAPTER V</td>
<td>66</td>
</tr>
<tr>
<td>CHAPTER VI</td>
<td>89</td>
</tr>
<tr>
<td>EPILOGUE</td>
<td>102</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>105</td>
</tr>
</tbody>
</table>
INTRODUCTION

The Arthur Fisher Case hardly stands out in the list of academic freedom controversies at the University of Montana. Indeed, it has been almost entirely overlooked or ignored by historians. It is partly the purpose of this thesis to dust off the Fisher case and to restore to it the disgrace it deserves in the chronicle of Montana higher education. More than that, however, this thesis is meant to disentangle all of the causes for the dismissal of Fisher from Montana State University, for it is probably the most complicated and least understood case in the school's history.

Speculations on the suspension of Fisher resemble the confused conclusions of the proverbial blind men upon examination of an elephant. For example, the new president of Montana State University in 1921 heard several complaints about the quality of Fisher's teaching, so he concluded that the Board of Education merely discharged an ineffective teacher, and that other issues attending the case were largely irrelevant. The editors of the Daily Missoulian and the Helena Independent viewed the case even more simply: was the Board or was it not going to permit the radical, socialist, agitating professor to continue his propagandizing in a Montana school. An Independent newspaper editor in the Bitterroot Valley announced that obviously, the mighty Anaconda Copper Mining Company had flexed its muscles, and had crushed out a last vestige of academic independence at the University. An editor of the New Republic peered into the murky case from afar; and saw that the American Legion had touched it off with charges against Fisher's patriotism in the great War. The editor
thought that clearly this was another post-World War I witch hunt, characteristic of the time when America's spirit of tolerance almost expired. Each of these interpretations embraced but a fraction of the whole case.

It is, therefore, the purpose of this thesis to explore each of the factors in the dismissal of Arthur Fisher, to assess the causal force of each, and to prove that the suspension did indeed trample the ideal of academic independence from external political and personal pressures. It also should vindicate the tribulations of the abrasive but admirably idealistic man that was Arthur Fisher.
CHAPTER I

On September 18, 1921, the Montana Board of Education dismissed Assistant Professor of Law Arthur Fisher from his teaching duties at Montana State University in Missoula. The Board couched the dismissal in a terse resolution that passed by one vote:

BE IT RESOLVED, That Mr. Fisher be considered on leave of absence with pay during the remainder of the time of his contracted appointment until September 1, 1922.

The Board continued the salary of the professor only to avoid suit for breach of contract. The action stemmed from American Legion charges regarding Fisher’s patriotism in World War I, from newspaper allegations that he engaged in radical outside activities in Missoula, and from adverse administration reports on the quality of his teaching.

A sub-committee of the Committee on Academic Tenure of the American Association of University Professors censured the University of Montana and the Board of Education for accepting the charges as a basis for dismissal, and for prohibiting the professor from meeting his classes without a statement of reasons for the action. The committee castigated the Board most severely for ignoring the conclusions of its own faculty committee on the case.

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1Minutes of the Montana Board of Education, September 18, 1921, p. 112.
2Helena Independent, September 20, 1921, p. 4.
Censorship by the leading body of educators in the country was not a new experience for the University of Montana. In the first six years of its existence, the A.A.U.P. reviewed three substantial complaints against the University of Montana, a phenomenal record in A.A.U.P. annals. The three University of Montana cases are somewhat similar. In each one, the influence of commercial or corporate interests indirectly or directly effected a suspension.

The first of the cases occurred in 1915. In June of that year the Board of Education fired President Edwin Boone Craighead of Montana State University in Missoula. The Board fired President Craighead without a hearing and without a statement of charges, largely because he campaigned for consolidation of the far-flung units of the University of Montana. Governor Samuel V. Stewart, originally of Bozeman, and at least one Missoula businessman, J. H. T. Ryman, adamantly opposed consolidation for fear of the economic impact on their respective hometowns if the consolidated university located in another city. Ergo, they also opposed the champion of consolidation, President Craighead. The Missoula businessman insisted that the Board fire Craighead, and he prevailed. In this case the Investigating committee of the A.A.U.P. called the action of the Board unsound and unjust. E. B. Craighead remained in Missoula and established an independent weekly newspaper, the New Northwest. In February of 1919 the University gained national notoriety as a result of the suspension of economics professor Louis Levine. Professor

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Levine wrote a monograph entitled *The Taxation of Mines in Montana*. The monograph, which was scheduled for publication by the University of Montana Press, emphasized the inequity of mine taxation in the state. It pointed out that while mining gross income was almost double farming gross income, the mines paid only 8.79% of the total state taxes compared to the farmers' 32.14%. The state constitution sheltered this imbalance with a provision for the collection of taxes only on the net proceeds of mines.

Earlier, Chancellor Edward C. Elliott had requested Levine to study taxation in Montana and subsidized his work, largely because state educational institutions suffered from shortages of appropriated money. The study obviously diagnosed one cause of the state's financial malaise, but its conclusions startled the wary Chancellor. His administrative motto was, "Watch your timing and be entirely neutral." For the University Press to publish Levine's manuscript in a legislative year and in a period of copper ascendancy was not the Chancellor's conception of neutrality or good timing. Professor Levine therefore published his work privately. Under pressure from mining company executives, Chancellor Elliott suspended him for

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6 Report of the Tax Investigation Committee of the Senate, Fifteenth Legislative Assembly (Helena, Mont., 1917), pp. 6-7.


The indignation of the faculty and the scorn of the national press shamed the Board of Education into reinstating Dr. Levine. Nevertheless, the A.A.U.P. Committee on Academic Freedom and Tenure investigated the Levine case, and found that the administration of the University of Montana had infringed upon the right of Professor Levine to study and to publish the fruits of his research.

In the Fisher case, as in the Craighead and Levine cases, the investigating A.A.U.P. sub-committee based its conclusions on the Association's "1915 Declaration of Principles." The Declaration stressed that if a scholar must be investigated for any reason, the investigation should be conducted by members of the academic profession. It insisted that the intervention of non-academic groups ".. can never be exempt from the suspicion that it is dictated by other motives than zeal for the integrity of science...."**

In accordance with the Declaration, Chancellor Elliott and the Board of Education established a Faculty Committee on Service in 1919 to review complaints and charges against faculty members. The Chancellor and the president each selected a faculty member for the

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committee, and the faculty elected a third representative. The Faculty Committee on Service convened to review the Fisher case at the request of both Arthur Fisher and the new president of the University, C. H. Clapp. Upon investigation the Committee found "... no valid reason for terminating the contract of Mr. Fisher...."[12] The A.A.U.P. sub-committee therefore censured the Montana Board of Education in the Fisher case mainly for ignoring the advice of its faculty committee.[13]

The failure to accept the conclusions of the Faculty Service Committee constituted a procedural violation of academic freedom. The Board also violated two other, even more serious procedural safeguards. First, the Board did not determine the guilt or innocence of Professor Fisher in regard to the American Legion charges against him. Nor did it settle whether or not the charges, even if true, constituted grounds for dismissal. Second, a statement of reasons for suspension was notably absent from the Board's final resolution on the Fisher case.

The procedural violations stemmed directly from the Board's internal strife and vacillation on substantive issues. The Board did not state its reasons for placing Professor Fisher on leave of absence because the members could not agree on which, if any, of the charges constituted a legitimate basis for suspension.[14] If the

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complaints against Fisher concerned only his conduct in World War I, the case would have been considerably simpler. The American Legion charges were, in fact, confined to Fisher's war record. But the charges had their foundation in personal antagonism, not patriotic fervor. Chancellor Elliott flatly informed the Board of Education at its September meeting that the specific charges preferred by the Legion against Fisher were a "direct product" of personal animosity aroused by Fisher's activities in Missoula in 1921, not in Chicago in 1917.15

This assertion suggests the nature of the substantive core of the academic freedom case against the Board of Education, as well as of the case against Arthur Fisher. Professor Fisher's extramural activities in Missoula aroused sufficient opposition to incite an attempt to have him fired. With the assistance of the Montana Board of Education, the attempt succeeded.

Remarkably, Arthur Fisher aroused the "personal antagonism" that undid him in only one year. He came to Montana in September of 1920 from Chicago, where his father was a distinguished attorney. Walter L. Fisher, his father, had served in the cabinet of President William Howard Taft as Secretary of the Interior. A man of great integrity, the elder Fisher replaced Interior Secretary R. A. Ballinger, who had been accused of fraud in the purchase of public lands. President Taft's administration was brief, however, and therefore the Fisher family lived for most of Arthur's boyhood in Chicago, where his father assisted in city reform efforts. Arthur Fisher later testified

that his father's participation in public life and community service fostered in him a sense of public service, and accustomed him to the fact "... that the price of vigorous leadership was usually opposition and often personal attacks." It is possible that his father's career also prevented Arthur from assessing accurately the power of the opponents of a community reformer.

Fisher's concern with community problems originated in his college days. As a student at Harvard he worried about the problems of "... social ameliorization and the betterment of the lot of the American laborer and his family, both in the city and on the farm." Professors Felix Frankfurter, Roscoe Pound, and others imbued in him a belief in the increased teaching value of a professor who combined practical effort in his chosen field with its academic aspect. In addition to his studies, Arthur worked with boys clubs in slum districts, at a boys' camp, and with family cases for the Boston Associated Charities. While in law school, he served as Director of the Prospect Union, a 'workingman's college,' which related Harvard to the industrial population around it. He also helped to organize and served on the faculty of the Boston Trade Union College, which offered short courses primarily to union officers.

Arthur Fisher was also editor of the Harvard Daily Crimson. He


17 ibid., p. 6.

18 ibid., p. 7.
claimed that he conducted a "...vigorous editorial policy on topics of
international policy and war and peace," for which many accused him of
"trouble-making." 19 Although complaints about college editors are
notoriously common, it is very credible that Fisher had many critics,
for he was almost as abrasive as he was articulate. In any case, he
maintained that subsequent world events vindicated the editorial pol-
icy on the Crimson.

After his graduation and before the war, Fisher worked for a
year for the American National Livestock Association. In this posi-
tion he helped conduct an economic and legal analysis of the market
total control of meat packers in Chicago and elsewhere. He later wrote an
article on the basis of this experience, and he claimed that livestock
producers distributed the article "...as evidence of work that has been
deemed moderate, clearly reasoned, and effective." 20 Arthur Fisher
was a brilliant, but not a particularly modest, man. His article
explained the nature of the monopoly in the meat packing industry, and
argued that competitive organization of the industry could be at least
as efficient as was the monopoly. 21

At the start of the war, Fisher worked as a law clerk for a Chi-
cago firm. After his selective service board exempted him from active
service because of a dislocated shoulder, he worked for the Bureau of
War Risk Insurance. He returned to Harvard to attend law school after
the war. In May of 1920, shortly before his graduation, he received

19 ibid., p. 8.
20 ibid., p. 9.
pp. 3007-822.
from President E. O. Sisson of Montana State University an offer of a position in the Law School teaching Constitutional Law. President Sisson made the offer on the recommendation of Dean C. V. Leaphart of the Law School, who frequently recruited teachers among outstanding law graduates at Harvard.22 Fisher accepted partially because of an early interest in Montana.

Summer employment in northwestern mountains had sparked Fisher's interest in Montana while he was still in his teens. He had spent several summers, in high school and college, working with a United States Geological Survey in the Colorado Rockies and as a forest ranger in Glacier National Park. One summer he had assisted R. B. Marshall, Chief Geographer of the United States, in writing a report on Estes Park, Colorado. The report later resulted in the declaration of the area as a national park. His enthusiasm for western Montana derived from his summer in Glacier National Park. An avid outdoorsman, he looked forward to new opportunities for physical activity and adventure in the mountainous Missoula area.

Arthur Fisher sought physical activity in ways that often appalled less hardy or less courageous souls. As a young man he undertook two perilous canoe voyages in the Canadian wilderness, and part of them he made alone. The first community project he fostered in Missoula was for the establishment of a skating rink. On his way to a meeting in Billings in late November, he stopped for a short swim in a mountain stream, which would be a chilly dip even in mid-summer. A colleague of Fisher's recalls frequent walks in which he clambered breathlessly

up Mount Sentinel behind Fisher's effortless stride. He said, "Whatever the physical disability that exempted Arthur Fisher from the service, it certainly was not his legs." ²³

When Fisher arrived in Montana in September of 1920, he walked directly from the train depot to the home of a former Chicago family, the Martin J. Hutchens. A mutual friend of the Hutchens and the Fishers had written a letter of introduction for Arthur to Mrs. Hutchens. Mrs. Hutchens understood from the letter that Fisher was highly intelligent, well-meaning, but radical and hasty. Because the friend had asked Mrs. Hutchens to advise the young man, she urged him "...to keep his mouth shut; to take no initiative; to praise but not to criticize for at least a year before attempting to reform Montana." ²⁴

Her stern advice stemmed from personal experience with the facts of life in Montana, the foremost of which was the grip of the Anaconda Copper Mining Company on the production of wealth, on the determination of public policy, and on the dissemination of news in the state.

Copper interests began their domination of Montana's economic and political life in the 1880's, when Marcus Daly's crews completed the big smelter in Anaconda. The smelter swelled Anaconda's production of copper enormously; by the turn of the century Anaconda had become the greatest copper mine in the world. The wars of the copper kings, Marcus Daly and William Andrews Clark, spread the influence of the

²³ Edmund Freeman, private interview, Missoula, Montana, April 18, 1969.

copper companies into the political and publishing spheres. To fight their battles over Clark's Senate aspirations and over the location of the state capital, the titans purchased newspapers and editorial writers, they bought legislatures; they even used five dollar bills for campaign literature on street corners in Butte.25

The battles taught the mining interests the value of political power and press control. In 1920 the Anaconda Copper Mining Company owned, among other papers, the Daily Missoulian, in Montana.26 The masthead of the Missoulian said that Martin J. Hutchens owned and edited the paper. It is possible that, at first, Hutchens thought he did own it. Mrs. Hutchens recalled that her husband was "staggered" when he discovered that the Company held the Seattle bank notes that represented the money involved in the paper's purchase.27 Hutchens and two colleagues from the Chicago Evening Journal, Lester Jones and George Rice, purchased the paper in 1917 from Joseph M. Dixon. The details of the sale remain obscure, particularly the part played by the Anaconda Company; but the Hutchens eventually learned that their newspaper was at the financial mercy of the Company.

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27In Lella Hutchens Memoir.
It is doubtful that Mrs. Hutchens communicated the details of the ownership of the Daily Missoulian to the earnest young man from Chicago. She could, however, have warned him candidly about the mood of Montana in 1920 when she warned him "...to keep his mouth shut," for it was tense and angry.

Montana had suffered a virulent case of the war fever that infected most of the country. The intense patriotism of the period, coupled with a deep fear of revolution aroused by the Russian Revolution in 1917, prompted incredible acts of intolerance in the state. The state legislature established the Montana Council of Defense to expose slackers and seditionists.\(^\text{28}\) The Council investigated citizens and officials with abandon in its short existence. It even censured United States District Attorney Burton K. Wheeler in 1918 for insufficient vigor in the prosecution of war slacker cases. The war fever that inspired this chauvinism had not entirely abated by 1920. Indeed, an equally hysterical fear of Bolshevism replaced it.\(^\text{29}\)

Drought and depression augmented the unrest in the state. In June of 1920 the Nonpartisan League nominated former District Attorney Burton K. Wheeler for governor. Wheeler recommended to the League that it enter the primary of one of the established parties. The Nonpartisan slate entered the primary and captured every state office on the


Democratic ticket. Wheeler's motto in the campaign was, "If elected I will not put the ACM out of business, but I will put it out of politics." The Republican nominee was Joseph M. Dixon, former owner of the Daily Missoulian. Company newspapers supported Dixon and snarled at Wheeler. It was a very bitter campaign, and Arthur Fisher arrived in Montana just as it was starting. Mrs. Hutchens wisely cautioned him to keep quiet for awhile, but he was not made that way.

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CHAPTER 11

Arthur Fisher leaped right into community life. He attended most city council meetings, usually to argue in favor of a moderately non-controversial skating rink. But he also made frequent recommendations to the city fathers on other topics. Almost every night he visited the Hutchens to "report" on his activities. He was, said Mrs. Hutchens, "unquenchable," but "adaptable and likable."¹ He asked to room with the Hutchens, but as they did not have room for him they found a place for him with a University faculty family, the Morton J. Elrods. Despite his friendship with the Hutchens family, Fisher became increasingly irritated by the editorials of Martin J. Hutchens. Fisher's early concern with the problems of farmers and laborers led him to support Burton K. Wheeler for governor, the candidate despised by the Missoulian and by most newspapers in the state. Hutchens portrayed Wheeler as a model of incarnate Bolshevism.

Fisher therefore gravitated toward the other newspaper in Missoula, the New Northwest. It was a financial and editorial rival of the Daily Missoulian, and had been since Craighead published its first issue in 1915. The Missoulian called the New Northwest "a little hybrid Bolshevist sheet:" the New Northwest called the Missoulian "a copper-colored sheet."² The enmity of the two papers antedated Hutchens' ownership of

¹ In Lella Hutchens Memoir.
the Missoulian. It began when Joseph H. Dixon owned the Missoulian and when Craighead was president of the University. The two quarreled about a University catalogue printing job. Craighead's establishment of a rival newspaper cemented their enmity. The rivalry did not flag when Hutchens and the Company purchased the paper, for Craighead and Hutchens also developed a hearty hate for one another. Arthur Fisher vigorously supported the editorial stands of E. B. Craighead and complained often to Mrs. Hutchens' about her husband's editorials. He even urged her to join the staff of Craighead's paper, and was probably oblivious to the incongruity of his suggestion. Common sensical lapses were not uncommon with Arthur Fisher.

In the midst of the bitter Wheeler-Dixon campaign, Craighead died of apoplexy. His passing drained the New Northwest of much of its vibrancy, and Craighead's sons of their spirit to continue the paper. Moreover, the Democratic-Nonpartisan slate lost the election by an enormous margin. Martin J. Hutchens crowed that his newspaper had been vindicated by the election, and that the rival paper had lost its raison d'être. The future of the New Northwest seemed doubtful.

Shortly before Thanksgiving in 1921, the owners of the New Northwest advertised a meeting for readers interested in a reorganization of the paper. Arthur Fisher aided in the reorganization, at the suggestion of Paul C. Phillips of the History Department, but he could

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4 In Lella Hutchens' Memoir.
5 Barclay Craighead to author, June 16, 1969.
not attend the meeting. He traveled to Billings for another meeting, the convention of the Montana State Teacher's Association. There he crossed swords with the Company for the first time.

The teachers' convention promised to be a quiet one. The executive committee of the organization planned for S. R. Logan, superintendent of schools at Hardin, Montana, to succeed F. L. Cummings as president of the association. F. L. Cummings of Lewistown had been a forceful president, and had conducted a vigorous campaign to acquaint communities with the inadequacy of funds for education and about the inequities of the existing property tax law, mainly in mining taxation. Because this campaign could stir up pressure for tax reform, the Company plotted to oust Cummings from the presidency. Ironically, the effort was completely self-defeating. President Cummings had been planning to resign.

Company representatives attended the convention and made available "pretty women and honest whisky." Their largesse was not appreciated. It spurred several teachers, including Arthur Fisher, to nominate Cummings for the post he wished to resign. When the president asked for nominations, Fisher won the floor and delivered a "rousing" nominating speech for the surprised Cummings. S. R. Logan seconded the nomination, President E. O. Sisson of Montana State University moved that the nomination be unanimous, and the entire assembly arose in a 

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7 Ibid.
prolonged ovation for Cummings. The sudden election subverted Company efforts at the convention.

Arthur Fisher attracted even more attention at the convention, for he proposed to the teachers that they listen to representatives of the American Federation of Labor. The assembly opposed this, but on Fisher's insistence President Sisson moved that the convention give the floor to the state president of the American Federation of Labor for five minutes "as a matter of courtesy," and also to Fisher for five minutes. Fisher urged the teachers to appoint a committee to report to the next annual meeting on the possible results of organization with the American Federation of Teachers. He did not favor, he said, coercive measures such as strikes, but he believed that the "educational value" of contact with organized labor would be very great, and that affiliation would help protect the "...Independence and democratic development of the entire teaching profession." The convention buried Fisher's recommendations in committee. Nevertheless, Fisher's suggestions in regard to affiliation with organized labor attracted more attention from disapproving newspaper editors than any other action of the convention. One newspaper accused the Montana teachers and Arthur Fisher of "...Improper, un-American and dangerous" flirtation with the American Federation of Labor.

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9 F. L. Cummings to Billings Gazette, February 29, 1921, in Fisher File.
11 "Teacher Body Tactless," (unidentified newspaper clipping), Cummings to President E. O. Sisson, February 28, 1921). In Fisher File.
President F. L. Cummings defended the Montana State Teachers Association against editorial charges about its association with organized labor:

The charge that Montana teachers negotiated with the American Federation of Labor is an absolute falsehood. Professor Fisher of the University of Montana, alone and on his own responsibility, tried twice to bring about some union of the Association with the American Federation of Labor, but his proposition was unanimously rejected both times...Mr. Fisher had been in Montana scarcely three months and to say that his action was representative of the teachers of the state is no nearer the truth than to say that some pro labor statement issued by some labor publication represents the views of the press of Montana.  

Because of his recommendations at the convention, Arthur Fisher returned to Missoula a better-known, more controversial figure than when he left.

Fisher returned to Missoula in time for Thanksgiving dinner with the family of Martin J. Hutchens. The Hutchens invited twelve unmarried university faculty members to the dinner. The guests teased Fisher about his prominence at the Billings convention, but he was unperturbed. After the dinner he circulated among the guests speaking earnestly to each. The following day an indignant guest returned to tell the Hutchens that Fisher had "...spent his time after dinner urging [the] guests to buy stock in the Craighead paper which was 'going to put the Missoulian out of business!'" The reorganization plans of  

12 Cumings to Billings Gazette, February 28, 1921. In Fisher File.

13 In Lella Hutchens Memoir. (John K. Hutchens appended to the memoir: "The Thanksgiving dinner, which I remember vividly, was as my mother reports it. Her sense of outrage equalled my father's. After Mr. Fisher returned to Chicago, she received chiding letters from mutual friends of hers and Mr. Fisher's about his Montana experience. She replied with details of his conduct at our home, which Mr. Fisher had refrained from mentioning to their Chicago friends.")
the New Northwest included a stock issue to finance purchase of the paper from the Craigheads. The publication would become a "community newspaper," managed by a board of directors elected by the stockholders, and by managing editor appointed by the directors. Fisher tactlessly sought stock subscribers at the home of the New Northwest's arch-rival. His abuse of the Hutchens' hospitality appalled the family. Mrs. Hutchens later wrote, "That man could accept another man's Thanksgiving dinner invitation, use his house and hospitality as foraging ground for his destruction will always be my best example of warped ethics."14 Martin J. Hutchens never forgave Arthur Fisher.

As plans for the reorganization of the New Northwest solidified, Hutchens stepped up the Missoulian's attacks on the smaller paper. The Missoulian editor consistently argued that the paper was merely an organ for radicals, and that it could not sustain itself financially. The blasts became more personal and bitter after Fisher incurred Hutchens' wrath at Thanksgiving. Fisher's first appearance in the editorial column of the Missoulian was unfavorable to him and to his father. In it Hutchens said,

There is nothing so uninteresting or useless as propagandist newspapers between campaigns, especially if the newspaper has been tried and has failed to win the confidence of the public or to pull business for advertisers.

The Non-Partisan league is wise in conserving its money for the maintenance of its organization, rather than burning it up in the publication of daily newspapers headed for the ashcan. Relieved of the incubus of Butte Bolshevism, the league may come back.

This attitude of the league may be of interest to callow and embryonic university professors who haven't been in Missoula long enough to locate Hell Gate canyon. Probably this desire to reform everything between trains is the inheritance of a paternal instinct for reforms that carry

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14 Ibid.
salaries, but with the present condition of the newspaper business, as well as of other businesses in Missoula, we think that desire should be restrained, unless the newspaper in question may be financed from the traction trough of Chicago with which the Fishers are not unfamiliar. We think, also, that this subject might be of interest to the university authorities who should not find it difficult to keep these tender footed goo-goo's employed along certain definite lines and thus avoid further injury to the university from the mixture of the education of our youth with the stew of Montana politics. 15

The reference to his father in this editorial infuriated Fisher.

He insisted that the rumor about the New Northwest's financial support from the Chicago traction graft was a "malicious falsehood." He said,

Through his newspaper work in Chicago Hutchens was thoroughly familiar with the fact that my father has spent the better part of his life representing the public and the city as against the traction companies, and at a fraction of the remuneration which would have resulted from a retainer by the companies....But apparently Hutchens believed these facts would not be known to western Montana, and that by attacking the new-comer to Missoula he could capitalize local pride. 16

In any case, the Missoulian editorial was Hutchens' first hint that he hoped to rid Missoula of Arthur Fisher. To the extent that his concern with Fisher was commercial, it received some justification the day following the appearance of the Missoulian editorial about Fisher.

The New Northwest published an editorial entitled, "A Community Newspaper." The byline read, "Contributed to the New Northwest by A. F." 17

Barclay Craighead, editor at that time, recalls that the initials were Fisher's. 18 The editorial manifests Fisher's sense of mission in regard to the establishment of an independent newspaper in Missoula. It said,
Clearly no institution in the community performs a more vital or sacred function than that of the daily newspaper. If the great end of life be the search for truth and action upon truth when found, the service of the newspaper should constitute a trust as consecrated perhaps as that of the church.

While the need for voluntarily supported churches, free of the control of special interests and subordinated to business or other ulterior motives, is now at least recognized, the sources of daily information touching every aspect of the lives of men and women whereby they are guided in their most important personal [decisions] and community newspapers are left exposed to the most corrupting contaminations.

[How important] that the press should be recognized as a community affair, confided in some fashion similar to the church or the school to the hands of those whose leadership may be both trusted and respected.

These truths are today recognized and acted upon to the fullest extent by the largest business organizations in the country. Nowhere is this more true than in Montana. Large aggregations of capital whose true concern has no relationship whatsoever with the running of a newspaper nevertheless deem it desirable to maintain newspapers, even if they must be subsidized at a loss, in order thus to influence the minds of the men and women who depend upon them for their information. As a result of increasing centralization of business power in the news gathering and distributing fields as elsewhere this tendency for the daily press to become a subordinate adjunct of large scale business must continue until such day as the community itself controls its own eyes and its own ears and its own voice.

Has not such a day arrived in Missoula and, indeed, for the whole of western Montana?

The answer to this question depends wholly upon you, Individual Citizen of Montana. No community newspaper can be published until you yourself decide that your daily press shall be subject to no control but your own, until you as an individual contribute your effort to the placing of your own newspaper, financed partly by your small contribution, into the hands of your chosen representatives who will carry out your ideals of a free press and be subject to no other control whatsoever.

Editor Will Campbell of the Helena Independent composed the response of the copper press to Fisher's editorial and to his efforts for the New Northwest, at the behest of a Missoula correspondent. Entitled "Time to

Clean House," the editorial charged that the University of Montana harbored socialist professors, a condition that Montanans would not abide once concerned newspaper editors called attention to it. The expose said,

... In a special dispatch to the Independent from Missoula Saturday morning, it is learned that two of the professors, drawing salaries from the state of Montana, are engaged in organizing a socialist newspaper, or rather in reorganizing the paper started by the late K. S. Craighead. To get control of this newspaper and use it for spreading their socialist propaganda, these employees of the state have formed a partnership with the radical labor element of Missoula and are soliciting stock subscriptions at $10 per share in their newspaper enterprise, among the students of the university and the I.W.W. in the railroad shops and lumber camps.

Further, it is learned that Professor Arthur Fisher, of the university law school, after being in the state but a few weeks, advised his law class to support B. K. Wheeler, ...the Dunn-Townley candidate for governor, and Professor N. J. Lyness, [sic] professor of mathematics, devoted a good bit of his time to the organizing of a "Wheeler for Governor" club.

...Montana had a close escape in November. We ought to be thankful for it, and appreciating the fact that we did escape, let's clean house and begin with the university professors who are devoting their energies to promoting radical newspapers and spreading the poison of red card socialism.20

Without any reflection on the identity of the Missoula correspondent for the Helena Independent, the Missoulian reprinted the "Time to Clean House" editorial. Arthur Fisher ignored the attack. Professor Lennes, however, wrote to the Missoulian that he was not even a member of the Wheeler for Governor club, and that he had not sold stock or assisted in the reorganization of the New Northwest. He had purchased a stock subscription in the paper and that was all. Professor Lennes believed, he said, that the editorial raised an important question about the rights of a professor acting as a private citizen. Should a

professor "...be allowed free expression of opinion on political matters and free participation in political affairs if such participation [did] not interfere with his work in the university?" he asked.21 Professor Lennes concluded from the editorial that the Independent would deny him those rights.

The Helena Independent quickly and righteously replied to Lennes' letter:

...Professor Lyness [sic] has the same right to buy stock in a radical newspaper which the mother of a family of four growing girls would have to invite notorious libertines and lustful degenerates to her home and introduce them to her daughters....

...Professor Lyness has the same rights in the matter of the company he keeps as a federal judge would have to consort with a bunch of ambulance-chasing, whiskey ring lawyers, and no one is going to deny the individual and personal rights of any of these people to do just as they please with their minds, their bodies, their stomachs or their preparations for the future. It is simply a matter of whether or not the people of Montana will tolerate men and women with perverted tastes to hold positions where they can pass along their ideas to the boys and girls of this state....

Professor Lyness has the wrong mental attitude toward life generally, toward the government and organized society in general or he would not buy stock in a newspaper which supported the Dunn crowd, advocates of the Soviet government and supported a convict for the president of the United States.

...Professor Lyness has 'rights' as an individual which no one will deny, but the fathers and mothers of Montana also have the right to remove poison spreaders from the company of their children the same as they would defend them from the evil influences of the Fagans who lure boys and girls into thievery and prostitution.22

The Independent soon intensified its attacks on Arthur Fisher. Three days after the appearance of its first editorial on professors Fisher and Lennes, it fired a second volley at Fisher. Entitled


22 "Wrong-mindedness," Helena Independent (reprinted in the Daily Missoulian), December 27, 1920, p. 4.
"Soaked In Socialism," the editorial berated the university for sheltering socialist professors like Arthur Fisher. It recorded the outrage of other citizens in regard to Fisher:

'Well, I've heard of some of the University of Montana professors speak, and I gasped as I heard them deliver socialist lectures and sentiments which will not help build up the state of Montana,' said a Helena minister, when asked what he thought of Prof. Arthur Fisher of the University of Montana law school becoming the promoter of the New Northwest, a Nonpartisan, socialist paper, which supported the defeated Dunn crowd in the recent election.

...The question now before the senate is whether or not we shall clean the University of Montana at Missoula of the socialist members of the faculty, who, while drawing state money, devote their energies to socialistic campaign clubs and the selling of stock in a socialistic newspaper determined to tear down the university and promote class consciousness?...Given a little more rope and the professors who are behind the scheme to continue the publication of a radical newspaper in Missoula, will demand that only those in harmony with the parlor bolsheviks be employed on the faculty of the University of Montana...

Let's clean house NOW, and not prolong the settlement of the question. The professors who are devoting energies to the organization of radical newspapers would leave before it is too late.23

The New Northwest soon countered the Missoulian and Independent broadsides with one of its own:

An institution where faculty members are not entitled to the same rights and privileges as other citizens cannot by any stretch of the imagination be called a university.

An when editors of such papers as the Helena Independent or the Missoulian are permitted, without formal protest from the people of the state, to lie about and attempt to browbeat prominent members of the faculty, it is disgraceful and humiliating, but it is nevertheless true, that we have not yet developed in Montana a real university.24

Pressure mounted on university officials either to dismiss Fisher for his alleged misdeeds or to defend him against slander. But the


administration remained silent about Fisher until after the start of the new year.

Before the year 1920 ended, the Daily Missoulian revealed another cause for its campaign against the New Northwest. Commercial rivalry between the two papers had always augmented the political and personal differences of the publishers, and this fact manifested itself again in the midst of the fight against Fisher. In mid-December, 1920, the County Commissioners accepted the county printing bid of the New Northwest in preference to the bid of the Missoulian. Based on 1920 earnings, the loss of county printing diverted at least sixteen thousand dollars from the gross income of the Missoulian. County printing was not, perhaps, a crucial account for the Missoulian, but its loss could not pass unnoticed.

Aware of the commercial, if not the personal, impetus for the attack on Fisher, President E. O. Sisson was outraged by the Independent editorials. The press pressured him to take action in the Fisher case and, indeed, that was exactly what he wanted to do. He wanted to act, not against Fisher, but against the newspapers. Chancellor Elliott, however, advised Sisson against taking any action. The Chancellor's reasons for ignoring the case initially are unclear. Certainly, the notoriety of the newspaper charges did not escape him. In fact, his office filed most of the editorials regarding Fisher in a faculty investigation file. As if for emphasis, he even underlined some passages in the editorials. But he did nothing.

Missoula, Montana County Commissioners, Commissioners Journal, Volume K, Jan., 1918 to April, 1922, pp. 276-422.
Meanwhile, the attacks on Fisher did not abate. The Livingston Enterprise, a Company newspaper, reprinted the Independent's "Soaked In Socialism" editorial, and accompanied it with a demand for an investigation of the State University by the legislature, mainly to "Investigate the activity of radical teachers at the State University."

The editorial explained its investigation demand:

...Take the individuals against whom this attack was directed by the Helena Independent. One is a newcomer to the state who did everything in his power at the Billings convention of teachers to force the teachers to come under the wing of President Ely of the Montana State Federation of Labor. Mr. Ely is heart and soul with the radical wing of labor.

This professor is a socialist and is attempting to teach socialism as he in his missionary zeal sees it. Furthermore it is reported he has proposed to his students that they attend Sunday classes so he can carry on his propaganda week days. Is that serving the state as a teacher?

The incredibility of the Independent's editorials, and their popularity with other papers, finally spurred President Sisson to deny the charges. Fisher still ignored the editorials and urged his friends not to dignify the attacks by answering them. He also prevailed upon his associates at the New Northwest to avoid the subject in print, for he desired to keep the journalism of the city free from personal bickerings. For a month the Missoulian received only two refutations for the charges. One came from Professor Lennes, whom the Independent promptly accused of having perverted tastes. The second came from the Law School association, which sent a letter to the editor of the Missoulian flatly denying that Professor Fisher had urged them in any way...
President Sisson concluded that the Law School Association letter should be supplemented by official outrage at the accusations. He had refrained, with difficulty, from responding to the Independent because the Chancellor advocated a policy of silence on the part of the University, and because he had assured Sisson that he had the names of the citizens quoted by the Independent editorial. President Sisson asked for the names so that he could reply personally to their charges, and he told the Chancellor that he believed it was unwise to respond mildly to charges which could ruin a man's career. Every specific charge had been "nailed as false," he said, and the motives for the charges had been shown to be commercial and personal. "In neither case," he wrote, "has the University been in any way at fault." He stressed his doubt about the wisdom of a "permanent and continuous policy of silence on the part of the University in such cases."30

Three days after Sisson wrote to the Chancellor, Hutchens again opened fire on Fisher. The editorial panned a bill before the Senate known as the Paul Bill which would require teachers to take loyalty oaths, but it also said that the bill reflected widespread sentiment in the state regarding the teaching of socialism in the schools. It said,

...The basis for Paul's bill actually is that at Bozeman and Missoula there is a group of radical professors in open and announced sympathy with the Non-Partisan league and other socialist organizations...

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29 Sisson to Elliott, Jan. 11, 1921. In Montana Archives.
The question then is how far is it within the province of lawmakers or any other body of citizens to question...the right of a university professor to hold these views or to determine to what degree he may assert them.

Holding the beliefs is not cause for dismissal. Advocating them to influence minds of students is. That is the issue.

...Among the newcomers to the faculty of the law school this year is a Professor Arthur Fisher, a restless young man from the east who regards it as his mission to reform everything and everybody in Montana. Employed to teach certain branches of the law, but most active in exploiting radicalism...Fisher cannot resist an impelling desire to proselytize. Lately he has been travelling about the town from office to office, soliciting stock subscriptions in a scheme to take over a dying radical daily newspaper in Missoula and reorganize it to be operated by a board of which he is to be a member. While his value as an instructor of law is questionable, he proposes to extend the growth of radicalism in Missoula through the aid of a propagandist newspaper that has failed to establish itself after almost a year of effort.

We submit that the people of Montana have a clear right to insist that students should be kept free from all influences of that character. Professor Fisher has no more right to engage in this work while he is connected with the university than he would have to promote a newspaper for the teaching of a pagan religion. He should be dismissed from the faculty without the slightest hesitation and if investigation uncovers others like him, they should go too.

The day after this editorial appeared, Sisson dispatched another angry letter to the Chancellor. He stated that his feeling of the impossibility of adhering to a policy of silence..."on the campaign of abuse and slander being fostered by the Independent and the Missoulian..." had become a conviction. He said that his relation to the university and to the staff "made it imperative" for him to answer the charges. Also, he felt certain that continued silence "...may at any moment be proclaimed admission of guilt." He composed a letter to the Missoulian and delivered it in person, accompanied by three prominent Missoula lawyers and by three University faculty members, including Dean C. W. Leaphart of the Law School. Sisson explained to the Chancellor that he arranged the group

meeting with Hutchens because he thought it would cause Hutchens "to get a sense of the vital importance of the matter" to the community and to the University. He said,

The burden of our message to Hutchens was that the Missoula home paper was expected to avoid aiding and abetting attacks on the home institution.

...Any way it is not worth while to go on as at present, taking buffets and pursing our lips. So far as the Missoulian is concerned we have plenty of hand grenades left; a fact which we gently intimated in the course of the visit....

As to the Independent, it will be remarkable if Fisher does not file suit for slander; the editor might escape by pleading complete ignorance of the significance of the charge he made so blithely. If true it would of course cut off a law professor's career for all time.31

Along with this communication to the Chancellor, President Sisson enclosed a copy of the letter that he had delivered to Hutchens, and which subsequently appeared in the Missoulian. In the letter he declared that "...the good name of the State University has been taken with impunity long enough." Sisson charged that neither the Missoulian nor the Independent had even attempted to verify their attacks on faculty members. He emphasized again the seriousness of the charge against Fisher that he had counseled his classes on political matters. Sisson agreed that if true this action would be "...an absolute breach of university ethics" and would require discipline. But, the Law School Association had passed a resolution of absolute denial of the charges. The president also defended the very presence of controversy in the university, for without it "...there might be a suspicion that [the University] was not much of a vital force for either education or the common welfare." Sisson declared that the University was not and never had been socialistic, and then concluded with this statement of the rights of a faculty member as a citizen:

Every member of the staff will be held to his duty to the University, and to his duty as a law-abiding, loyal citizen; but every member of the staff is also a person and a free citizen, and may not be gagged, muzzled, or intimidated; the sons and daughters of Montana cannot be taught truly by underlings; if the children of the University are to be free themselves, they must learn at the feet of men and women who are also free. What a pitiful spectacle would be a faculty at the State University timidly listening for the mandates of the daily press as to what they might or might not say or teach or do, and living in fear lest some irate editor might demand their ejection for differing with his opinions or hindering his personal ambitions.

President Sisson ordered two hundred copies of his letter to the Missoulian and sent them to Chancellor Elliott for distribution to members of the legislature. Sisson feared that the controversy had attracted legislative attention, but that the legislators had heard no rebuttal to the charges.

A reply from the Missoulian accompanied the publication of Sisson's letter to the editor. Editor Hutchens protested that he did not know why Sisson did not send his letter to the Great Falls Leader, the Livingston Enterprise, and to the Helena Independent, for they had said the same things he had. Moreover, he insisted, by the "encouragement of socialism," he meant the "...promotion of socialistic newspapers by university instructors." Hutchens questioned the authority, discipline and intelligence of the university officials for arguing that an instructor need not be removed for such activity.

Arthur Fisher also reflected on the Sisson letter to Hutchens, but not publicly. He wrote in a letter to his father,


"As to the newspaper game, Hutchens went too far the other day and called forth replies from Sisson and others.... The whole point of the matter is that Hutch is trying to destroy any competition to his paper--or, rather, the paper he manages for the Anaconda Copper Co. In supporting the New Northwest one should understand it has to buck the most powerful competition in the state--and must rely on the loyalty of the liberal working class and farming population as its chief asset. The community newspaper idea will be hard to carry out in the fullest sense because there is no doubt but that the business elements of town would like to get rid of the New Northwest which supported the Non-Partisan League--and would be content with an Anaconda Copper newspaper monopoly. At least they would prefer that to an aggressive paper which "stirred-up the labor group." 34

Fisher also reported to his father that he had met Governor Joseph M. Dixon in Helena at a meeting. He said that the Governor advised him to "...keep away from the New Northwest," and that it could only lose money, but he was friendly to the idea of an independent newspaper. Fisher said he believed the Governor in regard to losses, "...either the Missoulian or the New Northwest will have to go to the wall. Hutchens has frankly said it is a matter of life or death with him--and that justifies his methods...." 35

Three days after the exchange between Sisson and Hutchens, the Senate voted on the Paul Bill. If Sisson intended for his letter to satisfy the legislature, it apparently failed. The Paul Bill, which Hutchens maintained was a response to Fisher's socialistic activities, passed. 36 Governor Dixon vetoed the bill, however, and Hutchens approved his action on the ground that teachers should not be singled out for oaths of allegiance to the state. But in his last editorial

35 Ibid.
tirade against Fisher for several months, he urged the university to remove "...all further excuse for a repetition of such proposed legislation." 37

The New Northwest reported the controversy with a surprising air of detachment. It summarized President Sisson's letter to the Missoul-ian and then concluded, in a magnificent understatement, that "...the local newspaper situation is said to have precipitated the controversy." 38

37 Ibid.

38 New Northwest, Jan. 19, 1921, p. 8.
CHAPTER III

President Sisson's visit to Hutchens did not end Hutchens' war on Fisher, but it did change its course. Gone were the great editorial blasts against the professor which President Sisson said he would not tolerate. Deterred from that strategy, Hutchens turned to a form of guerrilla warfare. From February to June Hutchens regularly clipped editorials from the New Northwest, forwarded them personally to Chancellor Elliott, insisted that Arthur Fisher had written them, and demanded that the Chancellor fire Fisher.

In mid-February Hutchens reported to Chancellor Elliott that Fisher had addressed a meeting of "radicals" in Missoula. The citizens in attendance considered the problem of establishing a free newspaper in a company-controlled community. Fisher told the group that his expulsion from the University had been demanded because he assisted in the development of a free newspaper in Missoula. He claimed that the Missoullan attacks on him helped him make more friends "...in the past two months than I would have been able to under ordinary circumstances in two years." He also told the meeting that the competing press had better finances and facilities to report labor meetings than did the New Northwest, but that the "capitalized press" refused to fight for the laborers when it came to something the workers really wanted, such as a new tax law. Finally he told the men at the meeting:

...if you want to control your paper you will have to pay more for it than for the paper down the street whose policy is dictated either directly or indirectly by the advertisers. Are you willing to pay a little more for a paper that prints
the truth than for a paper that prints or kills copy with the idea of pleasing the advertisers constantly in mind?"1

The New Northwest's description of Fisher's role at the meeting differed from Hutchens'. It said that Fisher told the group of the aims of the board of directors of the New Northwest Publishing Association, and that he urged them to support the campaign for the sale of stock in the paper. Also, he explained the democratic board of control devised by the directors so that the board would represent every group in the country, and so that no one group would be able to make it a "purely individual organ."2

Hutchens added a revealing note to his report of the meeting for Chancellor Elliott:

I gather that from our conversation at Helena, you are in agreement with me in this matter and I had your assurance at our last meeting that the case of Mr. Fisher would be disposed of satisfactorily and that I need not worry about it. I am disposed to be patient in this matter and to await your action but in view of Mr. Fisher's continued activities along the line of the meeting last evening, I do not think I am unfair in asking you to move up on him with the least possible loss of time. I desire to protect the University so far as possible in this controversy but I must protect my own business in which my money is invested, first of all.

I made no reference whatever to Fisher's part in last evening's meeting, in the Missoulian's report of the meeting this morning but I think that you understand the sentiment of the legislature well enough to know that if this were brought to the attention of the legislature in a public way or through a speech of one of its members, the State University of Montana would come under a very severe criticism for permitting this condition of affairs.3

1"Remarks of Professor Arthur Fisher at Union Hall Meeting," Hutchens to Elliott, Feb. 16, 1921. In Montana Archives.
3Hutchens to Elliott, Feb. 16, 1921. In Montana Archives.
If Chancellor Elliott replied to any of Hutchens' letters, he did not make copies of any of his communications.

In early March Fisher heard that his newspaper activities had irritated the Chancellor. Fisher probably did not know that Hutchens had written the Chancellor about him, but he concluded anyway that he should explain his outside activities thoroughly to Chancellor Elliott, so that the Chancellor would not have a one-sided view of the situation. He understood that the Chancellor considered his situation as "one which might become difficult," and he wished to secure from the head of the University an expression of opinion and some guidelines in regard to his actions. He admitted that he held his views very firmly and occasionally expressed them dogmatically, but he claimed that he subjected them to constant reexamination and would therefore appreciate advice from the Chancellor. He composed a long letter to the Chancellor stating his whole case as he viewed it. The epistle is notable for its prose, for its clear thought, and for both the Idealism and the arrogance of its author.

Fisher said, first of all, that his case did not seem to him to contain any difficult features "...if one keeps clearly in mind the fundamentals of academic freedom." The tactless implication is that the Chancellor overlooked the fundamentals. To remind Elliott of them, Fisher repeated a statement of the principles of academic freedom that had been enunciated in a Charter Day address at the University three weeks earlier. The speaker, Tom Stout of Lewistown, Montana, urged the recognition of the rights of teachers as citizens to participate in affairs of the community. Fisher quoted the core of the speech:

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*Fisher to Elliott, March 12, 1921, p. 1. In Montana Archives.*

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The recent effort to compel teachers in this state to subscribe to a loyalty oath is but an example of the befuddlement produced in the minds of some of our people by the efforts of our teachers to interest themselves in public affairs and by their daring to express views on matters of a more or less controversial character. It is not unusual that the real motives of such patently foolish actions are deftly concealed from public view or so skillfully camouflaged by plausible argument as to be unrecognizable by the average citizen....Free education presupposes educators free to pursue their work unhampered by an insidious form of pique, spite, or selfishness, either political or industrial.5

Fisher said that the approval of Stout's speech by the audience and by the "conservative press of Missoula" led him to believe that it contained the principles which "...would guide a member of the faculty, ...not merely to be repeated verbally, but to be applied also to concrete situations." If the Chancellor agreed with him on the principles of academic freedom expressed by Stout, then they could proceed to the "simpler problem" of applying the principles to the facts of the case.6

The first fact of his case, he said, was that there had been no intimation from anyone that he had neglected his work at the University, and he denied the Missoullan statement that he had been selling stock to the New Northwest in the city. His principal contribution to the reorganization, he said, was the idea of the "community paper," and he had endeavored to prevent "the establishing of either a radical and narrowly dogmatic labor paper or a newspaper owned and dominated by one family or group." He conferred with about a "dozen" Missoullians over


6Fisher to Elliott, March 12, 1921. In Fisher File.
a four month period on "methods of broadening the foundations of
the paper," and he donated a "certain amount" of legal advice to it.7

Fisher also told the Chancellor that he had conferred with Presi-
dent Sisson about the newspaper question in February, and that Sisson
advised him not to assume any managerial position which opponents could
say conflicted with his professional duties. Sisson also emphasized,
however, that he would not tolerate any coercion of faculty members
"...in asserting their prerogative as citizens to deal in a practical
way with political, social and economic questions affecting the com-
munity." Fisher claimed that he had acted in accord with the lines
drawn at the meeting with Sisson and with the proprieties of the sit-
uation. In addition, he received Sisson's "hearty endorsement" as to
the need of a community paper.8

Fisher admitted that he had foreseen difficulties in assisting
the paper, but that did not seem to him sufficient reason to quit aiding
the community newspaper plan. He said that he was surprised at "the
lengths of vulgarity and dishonesty" of the plan's opponents, and he
pointed out that he had not returned the attacks. He once spoke of
Hutchens at a meeting, the one reported by Hutchens to Elliott, but
only to warn the group of methods that might be used against them for
supporting a community-owned paper.9

Fisher maintained to the Chancellor that if, in the mind of the
community, he seemed to be the leader in the attempt to establish a

7 ibid.
8 ibid.
9 ibid.
community paper, it was because the Missoulian had made him the figure-head, not because he spent more time on the paper than several other citizens not regularly employed by it. For the Chancellor's benefit, Fisher speculated about Hutchens' reasons for focusing the attacks on him. First, he suspected that Hutchens feared his emphasis on the "community aspect" of the plan, and second, because of Hutchens' "...plaque at finding a few meals at his house had not purchased my freedom of action."

Fisher thought a third reason might be a "transferred hostility of long standing" to his father, Walter Fisher; and fourth, because Hutchens probably believed that the young law teacher was "the most vulnerable person to attack."10 If Fisher knew how he had offended the Hutchens family, he refrained from mentioning it to the Chancellor.

Fisher also included in his explanation a statement of his economic beliefs and a qualified apology:

In conclusion I would like to say that I do not believe my general economic views are especially radical. I have never been a socialist, nor had much sympathy for any political dogma. I have never had any use for a philosophy which says things must be made worse in order that they may later be made better....I am rather sorry to have come so much into the lime-light, but that was part of the carefully arranged plan of attack. When I see anything which seems to me very much worth doing, as I feel the establishment of an 'unowned' newspaper in this community is just how very much worth doing, I am not likely to hesitate just because it means unpleasant notoriety and a struggle. Nor have I much sympathy with those who advise waiting until one is middle-aged or until, in these days of frequent change of abode, one has lived several years in one place, before commencing the struggle.11

Fisher concluded his explanation by saying that he hoped that if the Chancellor still viewed the situation as problematic, that he trusted

10Fisher to Elliott, March 12, 1921, p. 3.
11Ibid., p. 5.
the Chancellor would be as frank as he had been in telling him quickly where he was at fault. He added that the letter had been reviewed by President Sisson and that it had been approved, he thought, in substance by the president. 12

Chancellor Elliott was out of town when Fisher's letter arrived in his office. His executive secretary replied to Fisher that Elliott would be absent from his office for nine or ten days, and that Fisher's letter would be brought to his attention immediately on his return. 13

On March 31, twenty days after Fisher wrote his letter, the Chancellor replied that

...In the midst of pressing work of the University budgets which must be considered by the State Board of Education at its meeting next Monday, it is not feasible to prepare the extended reply which your letter deserves. Moreover, I am not convinced that the solution of your present personal problem can be simplified by any written exchanges. Would not a personal conference serve a better purpose? This I hope will be possible within a short while. 14

The proposed visit never materialized, although Fisher wrote to the Chancellor once more trying to arrange it. If Elliott disapproved of Fisher's newspaper activities, he did not communicate his feelings to Fisher. He did not, in fact, take a firm position on the case in his correspondence for either Hutchens or Fisher, both of whom pressured him privately to do so.

Since his code was to watch his timing and to be neutral, the Chancellor no doubt realized that March, 1921, was not a good time to

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12 ibid., p. 6.

13 University of Montana Executive Secretary to Arthur Fisher, March 15, 1921. In Montana Archives.

take a stand on the principles of academic freedom. Down the hall from his office in the capital building, an angry legislature convened in special session to consider Governor Dixon's request for a tax commission. Elliott did not want to undermine legislative confidence in the University at a time when it might pass a tax reform measure. A subdued threat by Hutchens in February suggested that the Fisher situation might be called to the attention of the legislature. To avoid that, Chancellor Elliott simply ignored both the newspaper editor and the faculty member who clamored for his favor.

When Arthur Fisher received the evasive note from Chancellor Elliott, he had just executed a contract between Edwin and Barclay Craighead and the temporary board of the New Northwest Publishing Association, thus deepening his involvement with the paper. In the contract the Craigheads agreed to sell all the property of The Northwest Press to the New Northwest Publishing Association (the community newspaper) in return for 550 shares of preferred stock and 10,000 shares of common stock in the new corporation. The total value of the Craighead shares equalled $15,500.00. The contract specified the indebtedness for which the old and the new corporations were responsible, and it listed the new directors for the first year. They were E. F. Gross, Roy H. Loman, Fred T. Parker, E. O. Peltz, Thomas R. Lynch, F. A. West, E. B. Craighead, Barclay Craighead, and Arthur Fisher. One clause of the contract stated that the purchase did not include any books or bookcases in the Northwest office except for copies of the New Freedom and Louis Levine's Taxation of Mines in Montana. Ironically, another...

15 Hutchens to Elliott, February 16, 1921. In Montana Archives.
clause added that "the GOOD WILL of the Northwest Press is transferred unconditionally to The Northwest Publishing Assn." The contract made no provision for the bad will against the paper, for example.

On the same day that Fisher executed the contract concerning the community paper, Dean C. W. Leaphart of the Law School forwarded his salary recommendation for Fisher to President Sisson. He recommended that if the University advanced the minimum salary of a full professor to $3,000.00, that Arthur Fisher should earn that amount. Fisher earned $2,760.00 his first year. On April 14, 1921, the president of the University of Oregon wrote to President Sisson inquiring about Professor Fisher. He wished to know if an offer to Fisher by the Oregon Law School would occasion any embarrassment to the University of Montana, and he wanted an estimate of Professor Fisher "as a man and a teacher." Oregon did not, he said, want to "rob [the University] of a good man," but they understood that Fisher was interested in Oregon. Fisher promptly contacted President Sisson to explain that he had not solicited competitive bids. He said that it appeared to him that his future, either in Montana or Oregon, depended on Sisson.

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17 Leaphart to Sisson, March 30, 1921. In Fisher File.

18 P. L. Campbell, president of the University of Oregon, to Sisson, April 14, 1921. In Fisher File.

19 Fisher to Sisson, April 18, 1921. In Fisher File.
In a few days President Sisson replied to the Oregon president's request for a recommendation of Fisher. He called him a "very able and talented man" and said that he had a "brilliant, energetic and aggressive mind," but added that the University of Montana would not wish to block his advance. The recommendation continued:

He is Intensely interested in problems of education and social progress. He rather surprised us by attending the meeting of the State Teachers' Association and taking an active part. As a matter of fact, his action and some of the things he said rather disturbed some of the more conservative people. On the other hand, I feel that his warm interest in the problems of general education and of the community as a whole is an admirable quality. He has no little ability as a writer, and I fully expect that he will do some rather distinctive work in that field.

Sisson mentioned that he was recommending to the Board of Education a salary increase for Fisher, but not as much as Dean Leaphart recommended, nor as much as Fisher thought he should receive. He also mentioned to President Campbell that even if the University increased Fisher's pay, it could not give him a salary comparable to that offered by Oregon. 

In spite of the competitive bid, Chancellor Elliott vetoed Sisson's salary recommendation for Fisher even before it reached the Board of Education, saying that the value of Fisher's teaching did not warrant a raise. Surprisingly, Fisher turned down the higher Oregon offer. He suggested to President Sisson that he stayed because the needs of Montana's Law School still challenged him, and because he was still interested in helping with the establishment of a "community newspaper" in Missoula. Fisher also explained his decision to his family:

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20Sisson to Campbell, April 21, 1921. In Fisher File.


22Fisher to Sisson, April 18, 1921. In Fisher File.
Have just decided to stay in Montana. Chief reason was didn't feel like abandoning the newspaper when I might be of use to it; also Oregon is further away from where my heart is—so far as people are concerned; and Oregon is awfully wet with no skating in the winter.... I also got my board of directors to agree to pay me enough for my work on the paper to more than equal the Oregon pay, so I feel I foxed the A.C.M. to that extent.  

Fisher also told his parents about plans for the paper. He said that with the aid of a "picture service," that the board of directors thought that an eight page paper could be published as cheaply as a four-page paper, provided that they could buy paper by the carload. Fisher told his father that he had received an advantageous offer to buy a carload of paper, and asked his father if he could lend the paper $3,000 to buy the carload. Fisher also mentioned in the note to his parents that he found life in Montana rather lonely.

Fisher's letter to his father indicated that his involvement in the New Northwest went beyond legal advice. He served as secretary of the board of directors, and procured financing for the operation. But he did not manage the newspaper. The directors hired an assistant professor of journalism from the University, Walter Christensen, to manage the paper. Christensen later testified to the Faculty Committee on Service that each of the directors had the privilege of submitting editorials to himself, the editor, who could print them at his discretion. But Arthur Fisher could not interfere individually with the management of the paper. Nor could Fisher, according to Christensen, influence the editorial policy of the New Northwest, except through official action of

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\[23\] Fisher to Walter L. Fisher, May 21, 1921. In Fisher Correspondence.

\[24\] Ibid.
the board of directors.\textsuperscript{25}

Nevertheless, Martin J. Hutchens of the Missoulian did not relax his efforts in regard to Fisher. Only a week after Fisher signed a new contract with the University, Hutchens fired off another letter to Chancellor Elliott about the law teacher. He enclosed a clipping of a New Northwest editorial dated May 6, 1921. The editorial argued that teachers' wages should be comparable to that offered in private industry for similar talent. It concluded that the way teachers could clearly demonstrate their value to the people was by participating in community and state problems more, not less.\textsuperscript{26} This was doubtless a hair-raising conclusion in the opinion of Hutchens, who figured that Arthur Fisher already had a surfeit of extra-curricular activities. Hutchens wrote to the Chancellor:

\textit{...You will readily see that [the editorial] is an appeal to the members of the faculty of the State University to join the Fishers to agitate for socialism. It is a certainty that this man will make trouble in one form or another for the University as long as he is here.}\textsuperscript{27}

In late May Hutchens sent another New Northwest editorial to the Chancellor stating that it had been written by Arthur Fisher for the "Bolshevik" paper.\textsuperscript{28}

In early June Arthur Fisher heard that Chancellor Elliott had visited Missoula but had made no effort to visit with him. Fisher

\begin{enumerate}
\item \textsuperscript{25}Walter E. Christensen to Committee on Service, September 1, 1921, "Documents," p. 23. In Fisher File.
\item \textsuperscript{26}Clipping of New Northwest editorial, May 6, 1921, Hutchens to Elliott. In Montana Archives.
\item \textsuperscript{27}Hutchens to Elliott, May 7, 1921. In Montana Archives.
\item \textsuperscript{28}Hutchens to Elliott, May 23, 1921. In Montana Archives.
\end{enumerate}
therefore wrote to the Chancellor expressing disappointment that the "...promised conversation is again postponed," and he again requested an appointment at the Chancellor's convenience. Fisher also understood that the Chancellor disapproved of an editorial in the *New Northwest* which discussed "...discriminatory action towards members of the faculty who had taken part in liberal community undertakings." Fisher told the Chancellor that he also disliked the editorial, and that he had known nothing of it until it appeared. He said that he was "...weary of the personal bickerings which go on in Montana," and that he had "...not the least use for half-said whisperings" of the sort that reported editorials to the Chancellor that Fisher had not even written. Finally, he emphasized that he did not feel responsible for the articles and editorials in the *New Northwest*:

"...so far as actual management or censorship is concerned I frequently don't go near the office for a week at a time. So it was not strange that an editorial, even concerning the University appeared without my being in any way consulted. If I had been I would not have let the one in question get by."

Meanwhile, Hutchens increased his letters to the Chancellor. On June 10, 1921, the day after Fisher wrote his letter to the Chancellor, Hutchens forwarded to Helena another editorial allegedly written by Fisher. He said,

I call your attention to a editorial in the *New Northwest* of this evening, written by Mr. Fisher. I think you will agree that that sort of agitation will not be helpful to the university. Nor do I think it good policy of the university authorities to permit an instructor in one department to write editorials in a radical newspaper as to the duties of another department, or in this case, the Department of

29Fisher to Elliott, June 9, 1921. In Montana Archives.
Economics. I happen to know that Mr. Fisher sits up nights composing this stuff on his typewriter. Not long ago, at a meeting of the Civics Department of the Women's Club, he told the members that the professors in the university did not dare conduct an economic survey in Missoula, because they would lose their jobs by attempting it. You will find that the longer this young man remains with the university the more trouble he will create for you.

I would be glad if you would advise me personally of his status at the university, and whether he will be employed as an instructor in the Law Department next year. 30

The editorial in question recommended that the economics department serve the public in more practical ways, chiefly by engaging in "practical" research, in experimental farming, and by conducting an economics survey of the whole state. 31 In another letter to the Chancellor, Hutchens insisted that Fisher had a large share of responsibility for the policy of the paper, and he reminded Elliott that he had promised "...to come to Missoula and get rid of [Fisher] following the adjournment of the special session of the legislature." 32

In a letter to Hutchens in mid-June, Chancellor Elliott made his first recorded statement about Fisher. Even then, however, he decided not to mail the letter. In it Elliott evasively said that as far as he knew, Fisher would continue his service to the Law School. He regretted that Fisher's "childly adventures in journalism" annoyed Hutchens, and suggested that if Hutchens considered Fisher's actions detrimental to the public interest, that he could prefer charges against him before the State Board of Education at their meeting on July 11. The Chancellor

30 Hutchens to Elliott, June 10, 1921. In Montana Archives.
32 Hutchens to Elliott, (undated letter). In Montana Archives.
signed the letter, but decided not to mail it. Instead he added a note to it asking an assistant to advise Hutchens to let the Fisher matter rest for a time. Then, if an *active connection* between Fisher and the New Northwest could be established, the matter could be presented to the Board of Education. Thus it was Chancellor Elliott who dropped the first hint that Fisher might have to face charges before the Board of Education.

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CHAPTER IV

According to the Faculty Service Committee, Martin J. Hutchens informed Missoula Post No. 27 of the American Legion in mid-June that Arthur Fisher had been active in a Terms of Peace meeting in Chicago in 1917.¹ Hutchens was an editor of the Chicago Evening Journal when the war broke out, and he recalled Fisher's advocacy in Chicago of a declaration of peace terms by President Wilson. Friends of Fisher's had forewarned him of Hutchens' intentions in regard to the American Legion,² but Fisher refused to desist from his support for the New Northwest. Fisher told the committee:

...I do know that for some time previously to the Montana Legion's acquaintance with the question Hutchens stated privately he was going to "get me" by the means now being tried; and that it has been through Hutchens and his other Montana newspaper affiliations that the matter has continued to be agitated....In other words, I believe there is no doubt but that if Hutchens had not been involved, there would have been no issue with the Legion.³

Hutchens' information did indeed prompt the Missoula post to send to Chicago for photographic copies of Chicago news stories about the Terms of Peace meeting in which Fisher participated.⁴

¹ "Findings of the Committee on Service of the Montana State University in the Case of Arthur Fisher," September, 1921, p. 5. In Fisher File.


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Articles from the Chicago Sunday Tribune and the Chicago Daily Journal stated that Arthur Fisher served as secretary of a Permanent Conference Committee for Peace in the spring of 1917. The chairman of the committee was Dean Robert Morss Lovett of the English Department of the University of Chicago. At a meeting in mid-May of 1917, the committee decided that the United States should be called upon to define exactly its war aims and on what terms it would make peace. The committee also resolved to promulgate its demands at a mass meeting of citizens the following week. Dean Lovett released to the press an explanation of the aims of the meeting:

The meeting will be in no sense a protest against the present war. This country is not to be placed in the role of an enfant terrible demanding peace terms now. The meeting will prove futile if it should demand peace or criticize the United States for going to war. What we want to know is concrete peace terms and not glittering generalities. The purpose of the war must be made clear to the people. I hope out of the meeting will grow a movement which will have as its object the peaceful adjustment of all international controversies and the eventual democratization of the world in universal brotherhood.

Arthur Fisher also affixed his signature to this statement.\(^5\)

A week later the Chicago newspapers reported the actual Terms of Peace meeting, and it is these articles which probably were forwarded to the Missoula post of the American Legion. Headlined "America Falls to Thrill 4,000 at Peace Meet," the article reported that the audience remained seated while a band played patriotic songs, "America, the Beautiful." Outside the Chicago Auditorium an overflow crowd scuffled with police. The chairman of the Peace Terms Conference

\(^5\)Chicago Sunday Tribune, May 20, 1917, p. 1
under whose auspices Dean Lovett's committee planned the meeting in the Auditorium, later issued a statement that the Conference claimed responsibility only for the mass meeting held inside the Auditorium. He said, "The Conference is determined, while exercising all our rights under the law, strictly to observe all our obligations under the same."\(^6\)

The Daily Missoulian quoted the headline of the above article when it reported the meeting in connection with the investigation of Fisher, but it did not quote the statement made by the chairman of the Peace Terms Conference. Instead, the Missoulian reprinted a paragraph from an article in the Chicago Daily Journal. The article quoted a Chicago minister, Frank W. Gunsaulus, who appeared in the Chicago Auditorium a few hours before the Terms of Peace meeting convened there. He said,

If you approve of the shooting of Edith Cavel, the English nurse, attend the [Terms of Peace] meeting. If you disapprove the sinking of the Lusitania, stay away. If you prefer to have the Hohenzollerns dictate terms at Washington instead of having President Wilson dictate, attend the meeting.... The meeting this afternoon is as unpatriotic as a meeting in 1776 would have been to ask terms of peace in place of reading the declaration of independence.\(^7\)

The Chicago Daily Tribune reported more of the proceedings of the meeting. According to it, Arthur Fisher spoke to the assembly and emphasized that "...plans for an early, just, and honorable peace [would be] the best weapon uncle Sam [could] wield." The article also quoted the chairman of the meeting, Dean Robert M. Lovett, who said,

This meeting has been called to assert our right to think peace, to speak peace, and to pursue it even to war.

\(^6\)Chicago Daily Tribune, May 28, 1917, p. 4.

We have heard much of the motto, 'In time of peace, prepare for war.' Now we have the right to say, 'In time of war, prepare for peace.'

When the Missoulian reported the Terms of Peace meeting to its readers four years later, in the midst of the Fisher controversy, it neglected to report Dean Lovett's explanation of the purposes of the meeting. Instead, it quoted only the provocative headline of the Tribune article ('America Falls to Thrill...'), and the indignant address of the Reverend Frank Gunsaulus that had appeared in the Journal. Considering the Missoulian's distorted report of the Terms of Peace meeting and Arthur Fisher's role in it, it is no wonder that Fisher seemed radical to Montanans.

Upon receipt of the photocopies of Chicago news articles pertaining to Fisher, the Missoula post of the American Legion composed a resolution charging that he was "...an undesirable person to be connected with the educational institutions of the State of Montana...." The Legion also had ferreted out the information that Fisher had filed for an exemption from the Selective Service on claims that he was a conscientious objector and had a physical disability. The Legion resolution therefore noted that Fisher's conscientious objector claim and his service as secretary of the Terms of Peace meeting "...tended to discredit the war activities of the United States...and to lessen the Nation's war strength...." The Missoula post resolved further that the American Legion, Department of Montana, should investigate the accusations and, if it

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9 Daily Missoulian, July 13, 1921, p. 1.
10 Great Falls Tribune, July 12, 1921, p. 1. (The Tribune stated, "Professor Fisher...Is reported to be extremely radical In his views.")

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substantiated them, should demand the immediate dismissal of Fisher from the faculty of the University. The resolution proposed that the Legion consider the Fisher case at its annual state convention, which was held in Lewistown at the end of June that year.  

But the American Legion Convention heard nothing of the Missoula post's charges. The Montana Executive Committee of the Legion later explained that it thought Mr. Fisher would prefer that a committee, rather than the convention, investigate his case. The six top-ranking officers of the Montana Department of the American Legion comprised the Executive Committee. The 1921-22 members of the committee, elected at the June convention, were C. Thomas Busha, Jr., Helena; L. J. Molumby, Great Falls; W. G. Ferguson, Helena; E. Y. Poore, Wolf Point; O. C. Lamport, Helena; and J. J. Davey, Townsend. The six officers convened for their first meeting in Helena on Sunday, July 10, 1921. The committee invited Fisher to the meeting to testify in his own behalf. Fisher was appalled at the extra-legal nature of the American Legion Investigation, although he replied to the Executive Committee in what he called "...an unofficial and friendly interchange of view...." He added,

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I wish, however, to make it quite clear that anything I may say shall not be construed as countenancing the catechizing of teachers or any other private citizens on a matter of belief, and shall not form a precedent or even an implication that there is any necessity for such individuals replying to the criticisms of such organization.

The Executive Committee agreed to investigate three matters in regard to Fisher. First, it wanted to know if Fisher sought exemption from the service on the ground of "...conscientious scruples against engaging in war with Germany." Second, it wanted to know if he acted as secretary to the Terms of Peace meeting, at which the crowd sat "still and silent" during the rendition of patriotic songs. If the crowd had not acted that way, the committee wanted to know why Fisher, as secretary, did not publicly deny the statements of the press. Third, the Board wished to ascertain Fisher's attitude toward the war; whether it was true, for example, that he would not fight until "...he knew what the United States was fighting for." The committee specifically queried Fisher on these points.

No one recorded the interview between the American Legion committee and Arthur Fisher, but in its results it distinctly resembled an interrogation far more than a "friendly interchange of view." Fisher did try to convert the committee to his point of view on international issues, but his arguments failed to appease his inquisitors. The committee was interested only in Fisher's conduct and attitude in the months of May and

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16 Ibid., p. 11.

June, 1917.

Following its Sunday afternoon meeting with Fisher, the American Legion committee composed a letter to the Montana Board of Education. The Board was meeting in Helena, not coincidentally, the following day. In its letter to the Board, the committee listed five admissions allegedly made by Fisher in the course of its meeting with him. The Legion based its charges on these "admissions." They were:

1. That when [Arthur Fisher] submitted his questionnaire on June 5th, 1917, he claimed every legal ground of exemption which he felt the facts would warrant.

2. That his reason for so doing was that while he would not resist the draft, he would not go to war unless compelled to do so, until the United States made a clear statement of its purposes in the war, such as he contends were finally embodied in the fourteen points.

3. That he did not definitely remember the attitude of the crowd during the "Terms of Peace" meeting, but he did not believe that they so conducted themselves as purported in the Chicago papers, and that he never made any public denial of the truth of the charges contained in the Chicago Tribune above-mentioned with reference to the meeting.

4. That he believed it was within his province in May and the early part of June, 1917, and that it was the duty of each individual, even after war was declared, to determine for himself the propriety of the participation of this country in such war. That each individual has the right to aid, or refuse to aid, in such war according to his individual beliefs, regardless of the action of the Government under the constitutional right to declare war. That he believed that it was his province to exercise that right, or at any time in the future if he believes the Government has not made a just decision in declaring war.

5. That if the United States should enter the war in the future while he was an instructor in a public school that he would so advise any of his pupils seeking his advice.

This Committee is of the opinion that any person entertaining such views has not the proper conception of the primary
duty of a citizen when his country is at war, and that to subject the youth of this state to the influence of his teachings is to permit the undermining of the very foundation of our national safety.  

The American Legion committee recommended that the Board demand Fisher's resignation and, if he refused, that it dismiss him summarily. Led by State Commander C. Thomas Busha, Jr., the committee delivered its letter to the Board of Education the next morning.

The Board had not expected the American Legion charges against Arthur Fisher when it convened for its quarterly meeting Monday morning, July 11. The main item on its agenda was to consider a replacement for President C. H. Clapp of the Montana School of Mines in Butte. President Clapp succeeded President Sisson at Montana State University in Missoula. President Sisson resigned in April, ostensibly due to a desire to teach again. It is probably, however, that his disgust with Chancellor Elliott in both the Levine and Fisher controversies also prompted his resignation.

The accusations against Fisher complicated the July meeting of the Board. The Board quickly decided to make its deliberations on the Fisher case "star chamber," which naturally stunted newspaper accounts of the meeting. Officially, the only action taken by the Board was to "receive" for investigation the charges against Fisher, and to request Chancellor Elliott to present evidence on the case at the Board's September meeting.

The placid summation of the meeting in the Board's Minutes concealed a long and heated debate about the charges. The entire executive

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committee of the American Legion attended the meeting, as did Professor Fisher. In fact, Fisher had hastily composed a written statement for the Board, and delivered it personally. The night of the meeting Fisher had eaten dinner at the home of Governor Dixon. The Governor and his daughter tried to persuade Fisher to attend a party at the Broadwater Hotel that evening instead of the Board of Education meeting, but he refused to take their advice. He insisted on delivering his written statement in person.

Fisher's statement questioned the legitimacy of the American Legion's investigation. That the Board of Education would accept the Legion's accusation even for examination appalled him. He commented,

It is of course highly proper to take informal cognizance of any matter relative to university instruction or administration. But to permit of inquisition into matters of belief of university faculty or school staff, especially when not related to the particular field of instruction of the teacher in question, and to give encouragement to such heresy hunting...by admitting that it forms a basis for a formal hearing...is contrary to all principles of academic independence and personal freedom.... It is entirely contrary to the spirit and ideals of American democracy, and is more nearly like the autocracy of the Germany before the war.

After making clear his view of the proceedings, Fisher did attempt to elucidate and justify his wartime beliefs. He believed, he wrote, that America should have demanded dissolution of the Entente's secret treaties as the price of her participation in the war. In their place, America and her allies could then have constructed a clear statement of the war aims later elaborated in the Fourteen Points. He believed it

20 Mrs. Virginia Dixon Dean to author, July 17, 1969.

was the right and the duty of an American citizen to work for this policy, and also that it would have had great military value in strengthening the morale of the Entente. Wilson's failure to secure open adoption of his policy by the allies resulted, Fisher thought, in the repudiation of the Fourteen Points.  

He explained that all of his political activities in the spring of 1917 "...could in no way be construed as obstruction to the prosecution of the war." He said that for the Terms of Peace meeting the Chicago Auditorium was decorated with flags, and that the entire audience sang patriotic songs. "

"Any newspaper stories to the contrary are absolute falsehoods and were based on a combination of the attempt to capitalize [on] war hysteria and the blind attitude that during the war terms of settlement should not even be discussed."  

Fisher substantiated this by giving to the Board a copy of a letter reflecting the Chicago Tribune charges. The letter appeared in the Tribune three days after the mass meeting. It said that the audience sang patriotic songs vigorously, and cheered expressions of patriotic devotion.  

Fisher's explanation of his exemption claims are inconsistent, which is remarkable in view of his precise account of other matters. First, he said, "Under the draft, I am not wholly clear, but believe I checked off all possible grounds of exemption." Clearly, that would

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22 Ibd., p. 15.  
23 Ibd., p. 16.  
Include conscientious objection. He objected, he said, to the policy of sending troops to France before specific war aims had been settled upon. In the next paragraph, however, Fisher emphasized that he never was a conscientious objector.\(^{25}\)

The appearance of draft claim legerdemain worried the Board of Education. Board member Joseph W. Freeman from Great Falls insisted on yes or no answers from Fisher on two questions. First, Freeman asked if Fisher had claimed exemption as a conscientious objector as well as for a physical defect. Fisher replied in the affirmative. Then Freeman asked the law teacher if he did, in fact, have such objections. Fisher tried to explain, but Freeman interrupted to demand a yes or no answer. Fisher uncomfortably said, "No." However, Fisher later injected that as he understood the question on his draft registration, he had answered it fairly.\(^{26}\)

As a matter of fact, Fisher did claim exemption as a conscientious objector,\(^{27}\) on political rather than religious grounds. His draft board did not adjudicate the conscientious objection claim because his exemption for a physical defect rendered the other claim superfluous. The Faculty Committee on Service, in its review of the Legion charge that Fisher had "claimed every legal ground of exemption which he felt the facts would warrant," concluded that Fisher "...did what he had a legal right to do." It said,


\(^{26}\)Missoulian, July 12, 1921, p. 1

\(^{27}\)Selective Service registration records of Arthur Fisher, Federal Records Center, General Services Administration, Region 4, Atlanta, Georgia. Carlton L. Brown, Manager, to author, May 14, 1969.
...Clearly the elaborate rules for exemption from military duty would not have been promulgated had it not been intended that exemptions should be claimed by those legally entitled thereto....Many did this and were neither considered disloyal or slackers. Some went beyond the facts, but it is not alleged that Mr. Fisher did so, and this committee has no evidence that he tried to do so.\textsuperscript{28}

Chancellor Elliott expressed doubt to the Board about Fisher's sincerity in regard to the draft questionnaire, but even he admitted that

...the outstanding fact is that this questionnaire was dealt with by the proper civil and military authorities, and Mr. Fisher exempted from active military service on account of physical disability. The wisdom of reviewing these decisions of the authorities in charge of the Selective Service Act may be seriously doubted.\textsuperscript{29}

In his written statement Arthur Fisher explained to the Board that subsequently he did engage actively in war work, won largely by "the great words of Wilson." In his humble way he asserted that his work for the Bureau of War Risk Insurance was of "...the very highest affirmative assistance;"\textsuperscript{30} but letters of recommendation indicate that he did not exaggerate his worth. The assistant to the director of the Bureau attested, in a letter of recommendation, that Fisher had an "exceptionally trained legal mind," that he was "original and independent," that his work for the Bureau was "...of the highest calibre," and that he would be of great assistance in any position requiring 'clear thinking and persistent application.'\textsuperscript{31} Another letter

\textsuperscript{28}Findings of Faculty Committee on Service," p. 6. In Fisher File.


\textsuperscript{31}Gilbert Bettman, Assistant to the Director of the Bureau of War Risk Insurance, to the State Department, April 29, 1918. In "Chancellor's Memorandum," p. 18. In Fisher File.
testified to Fisher's "...complete grasp of the problems presented," and to his "...ability and conscientious performance of duty."  

The last topic explored by Fisher in his statement to the Board of Education was his alleged radicalism on economic and political matters. This had nothing to do with the specific Legion charges, but everything to do with the foundation of the accusations against Fisher. His lofty principles are evident in his conclusion:

...I believe thoroughly in an extension of the principles of democracy to industry and to the general economic sphere. I believe, however, that such an attitude is thoroughly conservative in the best sense of the word -- conservative of the ideal of American democracy, of equality of opportunity, and of social justice....[U]ntil persuaded by reason and fair argument of the error of these views I intend not merely to hold to them tenaciously but to endeavor to translate them into action by any means consistent with the principles of my profession and the rights and duties of a free American citizen.

In spite of Fisher's impassioned conclusion, the Board determined to continue its deliberation on the law teacher at its next meeting in September. Although he supported Fisher, Governor Dixon was furious with his young friend. A Board member had asked Fisher if he approved of the Constitution of the United States, and Fisher had answered that yes, he did, but that he thought the form of the British Constitution was preferable to America's. His answer worried several members of the Board, and it was the main reason the Board voted to "receive" the Legion charges.

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34 Mrs. Virginia Dixon Dean to author, July 17, 1969. (See also President Alfred Atkinson to Clapp, September 10, 1921. In Fisher File.)
The state press enthusiastically printed every snatch of information about the Board of Education meeting that it could glean. The executive session naturally impeded the reporters, but it did not deter them. Disjointed accounts of the Board meeting indicate that the reporters hovered in the Capitol corridors outside the closed doors of the Governor's conference room, and wrote their articles from coffee-break interviews. As a result, their stories are almost comically confused, and therefore, so were the citizens of the state of Montana.

The news articles were mildly amusing, but the editorials definitely were not, for they harshly demanded an end to Fisher's career as a teacher. Each newspaper editor extracted a bit of information about the Board of Education meeting that appealed to his bias, and emphasized it to the exclusion of other information. The Missoulian and the Helena Independent played up the Fisher-Freeman exchange about conscientious objection, and the fact Fisher "watched the war from a swivel chair." They also reported that Governor Dixon appeared to support Fisher.35

Will Campbell, editor of the Independent, also unearthed an article by Vice President Calvin Coolidge in a magazine called the Delineator.36 Entitled "Enemies of the Republic: 'Are the Reds Stalking Our College Women?'", the article mentioned the names of dozens of men who had a reputation for being radical. Fisher's fault was that he spoke to the Radcliffe Radical Club, and allegedly made this statement:

35 Missoulian, July 13, 1921, p. 1.
A revolution which will put industry in the hands of labor is sure to come, yet charity is necessary as a palliative in the interval just as hospitals are necessary until preventative medicine is developed. Fisher subsequently denounced Vice President Coolidge's quote as "utterly unfounded and false." He insisted, in all discussion with radical labor I have never failed to make it plain that, while I might sympathize with the pitiful condition of much propertyless, familyless, often jobless and homeless labor and feel that the attitude of the established part of the community towards it was thoroughly wrong and un-Christian, that nevertheless I believed any talk of violence or illegality or sudden overturns was futile and helped to defeat the very ends of greater equality of opportunity and a wider distribution of happiness and prosperity which we had at heart.

The Independent did not, of course, print Fisher's private refutation of the Delineator article. Indeed, that Fisher had been called, by implication, an "enemy of the republic" by the Vice President of the United States lent credibility to the whole of the Independent's attack on Fisher.

The Billings Gazette castigated the Board of Education for holding an executive session, but otherwise withheld judgment. The Great Falls Tribune, a notably Independent newspaper, was more intemperate. It said, there is one opinion that the Tribune feels like expressing, even before complete information is at hand. Professor Fisher...is said to be managing on the side a publication in Missoula which has been decidedly radical in its opinions upon public questions. The board of education should only need ten

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37Calvin Coolidge, "Enemies of the Republic: Are the 'Reds' Stalking Our College Women?", The Delineator (June, 1921), p. 67.

minutes to decide that this situation is not to be tolerated....A college professor with a side line is a bum stunt. This expression is vulgar, but it brings out what we have in mind.39

Even more rabid was the response of the Livingston Enterprise, a notably dependent newspaper:

...[W]e are firmly convinced that the people of Montana are sick and tired of the constant harm being done to our state schools by the half-baked theories and long hair parlor Bolshevism of this young Missoula professor. And we believe that the average Montanan feels that Fisher should be started toward Moscow or other fields on his general reputation as a mental light weight, loose tongued instructor who takes himself too seriously and who belongs in Greenwich Village and not in Montana....[l]f he is permitted to breath [sic] air without prison walls a single minute of his life in this country [he] is getting more privileges than he is entitled to. Just on his general reputation for disturbing the peace, if for nothing more, Mr. Fisher should be taken off the state pay roll as a college instructor.40

At its annual convention at the end of July, the Montana State Press Association applauded the American Legion executive committee for pressing charges against Arthur Fisher. But the action of the Association infuriated one Montana newspaperman, Miles Romney of Hamilton. Romney edited an independent weekly newspaper, the Western News. Ordinarily, Romney was an enthusiastic Legionnaire. He happily extolled American Legion activities in column after column of his paper. But he took angry exception to the charges against Arthur Fisher. In an editorial which the New Northwest reprinted, and which eventually found its way into the Faculty Service Committee's documents on the Fisher case, he asserted:

39Great Falls Tribune, July 13, 1921, p. 1.
40Livingston Enterprise, July 13, 1921, p. 4.
...Four thousand ex-service men of Montana knew nothing of the [American Legion] action and will repudiate it if ever given an opportunity. And the resolution Indorsing the action of this committee was promulgated by a little group of editors and business managers of Anaconda Company controlled newspapers, masquerading as the "Montana State Press Association."\(^{41}\)

In a paragraph that the New Northwest omitted from its reprint, Romney ascribed the attack on Fisher to his efforts as secretary of the New Northwest community newspaper. Romney also claimed that the resolution to investigate Fisher was "...put over a Legion committee of six by a busy Butte lawyer, closely connected with the political department of the great Anaconda company...," but he did not substantiate this. It appears, in fact, that he delved as much into the realm of theory colored by his own suspicions as did the Independent, Enterprise, and Missoulian editors whom he opposed. The real force behind the investigation of Fisher was Martin J. Hutchens, who did have connections with the Anaconda Company, but whose motives were primarily personal. Nevertheless, Romney was the only state editor, other than the New Northwest's, to allude to the role of the Missoulian in the American Legion charges against Fisher. The conclusion of his incensed editorial was rather eloquent:

> University professors must be men, unafraid to take exception; they must be men of strength and initiative ready and eager to take issue with one another—or even with the Missoulian! They must not be thoughtless, cringing members of the mob. The state university is once more the football of politics. Let us keep it out of the mire. Fisher stands for academic freedom. Fire Fisher and the foes of a great free university will cut another notch in the stick.\(^{42}\)


\(^{42}\)Ibid.
The World War Veterans and the Montana Federation of Labor also supported Fisher, but otherwise he had few defenders.

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43 Vernon, Bulletin, p. 159.
CHAPTER V

Arthur Fisher agreed with Miles Romney that his ordeal was a classic case of academic freedom under fire. In early August he wrote about his case to Professor Morton J. Elrod, with whom he had lived throughout the school year. Professor Elrod also participated in extracurricular journalism as editor of a monthly Montana education magazine, the Inter-Mountain Educator. Most important to Fisher in August of 1921, however, was that Dr. Elrod was chairman of the University's Faculty Committee on Service, which reviewed complaints against faculty members. The service committee convened at the request of either the administration or a faculty member, under the auspices of the Chancellor of the University and the State Board of Education. Fisher formally requested Dr. Elrod to assemble the committee, which he chaired, for the purpose of reviewing the American Legion allegations and the earlier Missoulian Independent attacks.¹

Professor Elrod customarily spent his summers with his family and with associates at the University's Yellow Bay Biological Station on Flathead Lake. Fisher's letter to Yellow Bay telling of heresy hunts and academic disgrace disrupted the serene and majestic Flathead scene. Dr. Elrod understandably hoped he could postpone the faculty investigation of the Fisher affair until September, when he would put the Biological Station and the beauty of Yellow Bay behind him for another year.

¹Elrod to Clapp, August 31, 1921. In Fisher File.
A letter from the new president of Montana State University, C. H. Clapp, exploded his hope. President Clapp apologized for interrupting Elrod's summer, but insisted that the charges against Fisher required immediate attention. Speed was imperative, he said, for the service committee to complete its investigation prior to the mid-September meeting of the Board of Education. President Clapp feared that any delays would result in unrest and inefficiency in the Law School. Dr. Elrod replied to the president that he would return to Missoula as quickly as possible. He did not conceal his disappointment; "Have no great joy in the business presented, but we will wade through."\(^2\)

Arthur Fisher, meanwhile, continued busily to write letters and seek supporters for the September showdown. He spent part of the summer visiting his family in Chicago, but distance did not deter him from communicating with many Montanans about his case. Far better for him if he had written no one, for he had an uncanny ability to irritate even his friends. Possibly it would have been better for him only if his profession meant more to him than his principles. It did not.

Before leaving for Chicago, Fisher met with a member of the Board of Education, A. J. Violette of Missoula. Violette suggested that the Board of Education would benefit from a brief statement about academic freedom by President Clapp at its meeting. Fisher, of course, thought this was a fine suggestion, and he eagerly passed it along to President Clapp in a letter from Chicago. As usual, however, Fisher failed to accommodate, if only with words, to the sensibilities of his superior. His first letter to the new president was, to be sure, innocuous and

\(^2\)Ibid.
even gracious in essence, but somehow it aroused the antagonism of President Clapp. It is impossible to know why. Possibly President Clapp found the conclusion to the letter from Fisher slightly patronizing:

"It seems to me that there should not be great difficulty in separating the issues of my views on the war or international affairs in general from that of freedom of opinion in the University."  

Perhaps he just felt a personal aversion to the young professor. In either case, the president scrawled on the bottom of Fisher's letter: "Troublemaker—not going to tolerate!" Clapp's reaction was crucial, for it sharply cut Fisher's chances for exoneration by the Board of Education.

In President Clapp's reply to Fisher's letter, he said he would attend the meeting of the Board in September, and that he would gladly present his views on academic freedom to the Board. He did not say, however, what his views were. He did reveal to Fisher his growing disapproval of him:

"I must confess that my attitude toward your value as a teacher has changed greatly during the last three weeks. You understand that whereas I am in sympathy with your primary aims, I do not approve of your methods of attaining them. It is perfectly obvious that you have through your methods created a great deal of opposition and trouble-making, which is not consistent with effective teaching.

I am therefore requesting the Service Committee of the State University to make a report to me and to the Chancellor and the State Board of Education regarding your effectiveness as a teacher and with regard to the participation of the faculty in partisan activities, as your participation in newspaper work seems to me to be."

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4 Clapp to Fisher, August 10, 1921. In Fisher File.
Professor Fisher responded with a long, explanatory letter somewhat similar to the one he had sent to Chancellor Elliott in March. In this letter Fisher asserted that the attack on him was actually an attack on the University, a situation the administration should not tolerate. He explained that he had consulted closely with President Sisson on every action he had taken during the year, and had attempted to consult with Chancellor Elliott. He argued that a university which restricted itself or its faculty to purely non-contentious problems rendered but a fraction of its potential service to the people of the state. As he had in the letter to Chancellor Elliott, he pointed out examples of faculty participation in controversial matters at other universities, in this case, the University of Wisconsin's Professor John R. Commons, who proposed a program of remedies for unemployment for the state. Furthermore, Fisher argued, no matter how undesirable and troublesome his actions seemed to parts of the community (the Missoulian), they nevertheless attracted friends for the University in other areas, among the farmers and laborers, for example. Even if there were no such assets in his case, thought Fisher, should not a person "...continue forward so long as the action itself is right?" Fisher may have been insufferable to some people, but he obviously was a principled man.

But a principled man, like Molière's misanthrope, might accomplish very little for all of his ideals. Fisher realized this, and he responded with much concern to President Clapp's suggestion that his teaching methods alienated his students. He insisted that he knew of few

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5Fisher to Clapp, August 16, 1921. In Fisher File.
difficulties in his relationships with his law students except in regard to the Legion charges, and possibly in connection with his adoption of three unpopular teaching methods which the law faculty "...had agreed were right in principle, or at least not improper to adopt." These three measures he listed as his requirement of note-taking as a condition of taking final examinations; his refusal to admit students to lectures if they had not read their cases, and his thoroughgoing application of the Langdell case system. Fisher stated that in regard to the first of these measures, note-taking, Dean Leaphart of the Law School had told him in the spring that he hoped to have the entire law faculty adopt "...some uniform plan in the same direction," which would, of course, support Fisher's action. However, Fisher devoted most of his defense to justifying his use of the Langdell system. He said,

...I have always found that the most 'popular' law teacher with the students is the one who lays down the law most dogmatically and makes the least use of what to my mind is the real case system, that is, the mere development of the facts and the setting forth of alternative propositions of law out of which the student is required to phrase his own legal propositions. The dogmatic statement is far the easier task both for teacher and student, and therefore most popular with all but the ablest students. But I do not consider it as valuable a legal or mental training; and in as much as the thoroughgoing Langdell system has not been fully applied by the other members of the law faculty it has seemed to me desirable for at least one teacher to use it, even at the expense of student popularity. I had not thought that student popularity was the test of the effective teacher. I recall Langdell's own experience at Harvard when at one time he had no more than four or five students—but he was really the greatest teacher and leader in legal education any American law school has yet produced.6

in spite of his rigorous teaching methods, Fisher firmly believed that his

6 ibid.
relationships with his students were "most cordial," at least until Hutchens stirred up the American Legion. He agreed with President Clapp that unpopularity was not an asset, but then denied that he was very unpopular. But his conclusion was almost plaintive, especially for Arthur Fisher. He said,

...Please believe that I am not unmindful of the desirability of avoiding unnecessary friction and of removing opposition and any form of criticism of the University--compatible with what seems to me the very big principle in the case.7

In his letter to President Clapp Fisher enclosed Miles Romney's editorial as it was reprinted in the New Northwest, and he also enclosed a comment about his case that had appeared in the New Republic the same day he wrote his letter to Clapp. The New Republic article condemned the emergence of the American Legion as a "...sort of super-censor of patriotic morality," a role marked by its appearance against Arthur Fisher of Montana State University. The magazine made its objections to the Legion quite clear:

...This is a clear case in which the American Legion assumes that its function is to act as an extra-legal or super-legal authority--and its position is as impossible in a general conception of civil rights, as its censorship of education is intolerable. As to Mr. Fisher's interest in the movement to secure a definition of war aims from the Allied and Associated Powers...do even the master minds of the American Legion deny that the war would have been shortened if Mr. Wilson's political offensive had started in May 1917, instead of eight months later, and that the errors of Versailles would have been avoided if the United States had thus early described and obtained acceptance of the cause for which she was fighting, in terms specifically abrogating the secret treaties?8

7 Ibid.
This was probably the only defense of Arthur Fisher that discussed the American Legion charges alone. It would have been difficult, of course, for a New York writer to ascertain that the accusations had been instigated by someone other than a Legion official for reasons other than patriotism. Montanans knew it, and no newspaper of public official in the state discussed the case without stressing Fisher's Missoula newspaper activities rather than his peace terms advocacy. But Fisher's eastern defenders were unaware of the nuances of the case.

The young law professor also enclosed in his letter to President Clapp a letter from Charles W. Elliot, President-Emeritus of Harvard University. Fisher appended to it the remark that since President Elliot was "...generally regarded as the dean of American higher education," President Clapp might value his opinion. The former Harvard president said,

While I disagreed then, and still disagree, with the policies you were advocating in the spring of 1917 in respect to American action in the War, I do not see that the opinions you then held, and presumably still hold, justify any attack on you as a Professor of Law in the University of Montana.

...If the present authorities at the University of Montana knew how much the authority and influence of state universities have been damaged in our country by political influences brought to bear on Boards of Trustees or faculties, they would pay no attention to the representations of the American Legion on your case. Perhaps that is too much to expect in the State of Montana, where the Legislature has been accustomed to yield to the wishes of powerful industrial corporations and to temporary popular impulses.

You are welcome to show this letter to President Clapp, if you would like to do so.5

President Clapp was not pleased with the reflections of the distinguished Harvard educator, nor by any aspect of Fisher's lengthy letter.

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5Charles W. Elliot to Fisher, August 10, 1921. Copy to President Clapp, August 16, 1921. In Fisher File.
On the contrary, the letter infuriated him. A week before the Board of Education was to meet to conclude the Fisher case, Clapp returned a scathing letter to Fisher. He stated that he had been influenced in his low judgement of Fisher's teaching methods only by members of the law school faculty, by two or three other members of the University staff, and by

"...some law school students who may have been 'seen' by those who you state are determined to break up the development of any tradition of academic freedom at the University of Montana...."

He made his complaints about Fisher's "methods" more specific, although his remarks pertained not in the least to classroom policies:

"...With regard to your methods, it at least appears that you believe you can best accomplish this aim by allying yourself with 'labor' leaders and by attacking the 'capitalist,' that is you are assuming a partisan attitude which is just as unfair and absurd as that held by those whom you attack ever was.

President Clapp also wrote that the charges against the Anaconda Company in the Western News editorial by Miles Romney were as absurd as any Missoulian charges ever levied against Fisher. He said he could not believe that Fisher or academic freedom were under attack by the Company, although he agreed that Hutchens "...will do his best to prevent the establishment of another newspaper in Missoula...."¹⁰ Both President Clapp and Professor Fisher made the error of equating the policies and motives of the Anaconda Company with those of Martin J. Hutchens without qualification. The qualification in the Fisher case that Clapp and Fisher overlooked consisted in the very personal hate by Hutchens for Fisher. Obviously, the Company had nothing to do with Fisher's

¹⁰Clapp to Fisher, August 16, 1921. In Fisher File.
Thanksgiving bad manners, nor could it effect Hutchens's outraged response. Not even the Company could do that.

President Clapp indignantly defended Hutchens against Fisher's suggestion that he would destroy academic independence if he could. It should be noted that Martin J. Hutchens was indeed a respected, well-liked man in Missoula, and that his editorials generally were fairly independent for a Company editor. President Clapp said he would not blame Hutchens for using the same methods on Fisher that Fisher had used on him in his February meeting at Union Hall. That was the meeting at which Fisher spoke of the tactics used against advocates of the community newspaper. It appears from President Clapp's confusion of cause and effect in the public utterances of the newspaper antagonists that he was unaware of Hutchens' attacks on Fisher in December, two months prior to Fisher's only public mention of Martin J. Hutchens. Moreover, the only report of Fisher's February remarks possessed by President Clapp was the one composed by Hutchens for one of his surreptitious dispatches to Chancellor Elliott. When President Sisson showed the report to Fisher earlier in the year, he called it "seriously inexact," especially in its language. It is safe to assume, in any case, that Hutchens' account was not free from bias.

11 Martin J. Hutchens' son, John K. Hutchens, worked for the Missoulian in the early twenties. He recalls that "...It enjoyed a distinct degree of autonomy, even while it was regarded as a Company paper. [His was], according to [Mrs. Hutchens], the only Company paper in the state to present Dr. Levine's side of the story in 1919. (John K. Hutchens to author, July 10, 1969). The Company fired Hutchens in 1927. He then conducted a vigorous anti-Company editorial policy for the Montana Free Press in Butte until his death in 1929.

12 "Remarks of Arthur Fisher at Union Hall Meeting," February, 1921. (Pencilled comment in the margin signed "A.F." and "Return to Chancellor.") In Montana Archives.
President Clapp agreed with Fisher that many distinguished educators involved themselves in "contentious activities, but "...do not do it by extreme partisanship, insinuations, or grand stand plays such as your own methods appear to make use of." President Clapp also cited two statements made by Fisher in a private conference in Helena with members of the administration, which demonstrated his undesirability as a teacher in Clapp's eyes. President Alfred Atkinson of Montana State College of Bozeman reminded President Clapp of Fisher's remarks in a letter in which he advised that Fisher should be dismissed. President Clapp, in turn, reminded Fisher of the statements, even using President Atkinson's wording. At the Helena conference, which followed the July meeting of the Board of Education, the administrators suggested to Professor Fisher that he retire from the University staff to carry on his "crusade" unhindered by the University. Fisher apparently replied that a position on the University staff helped him gain his ends. President Clapp pointed to this as evidence that to Fisher the "good of the University is of a secondary nature." In the second offensive answer, Fisher apparently justified to the administrators a remark he had made to the Board of Education about the fallibility of the United States government by saying that he was more concerned with the impression his answer would make upon his friends in the East than with the opinion of the Board of Education. Arthur Fisher never acknowledged having made these statements, nor did he correct their interpretation by the two presidents. They continued to rankle with President Clapp.

In his August letter to President Clapp, Fisher had declared that

13President Atkinson to Clapp, September 10, 1921. In Fisher File.
14Clapp to Fisher, September 14, 1921. In Fisher File.
the real issue in his case was whether or not teachers "...might be gotten rid of by successful agitation for their removal." Rather, according to the president, "...It should not be possible for inefficient teachers to shield themselves behind the screen of 'academic freedom.'" It was unfortunate, said the president, that trouble arose in regard to Fisher, because "...it is bound to color any action that is taken by the State Board of Education with regard to your efficiency." President Clapp said that for that reason he would recommend to the Board that Fisher should not be dismissed at least immediately, but that his contract should not be renewed unless "...marked change is evident in your teaching methods and general attitude." President Clapp's last paragraph indicated to Fisher very precisely his evaluation by Clapp, if he had not ascertained his attitude from the previous remarks:

From what I can learn of your teaching there is an apparent lack of system in your methods. You evade direct questions, and in attempting to merely present the facts of a case you leave the student with no definite conclusions. This leads some of the students to doubt your knowledge of the subjects you are teaching, and naturally lessens their confidence in your ability. As to your requiring note books as a condition of taking final examinations and of not allowing students to come to lectures without having read their cases I presume that you have learned the value of both these things by what is reported to have been your own procedure during your last six months at Harvard when you did not attend classes regularly but spent your time reading reports and legal magazines. Some of the students also charge you with being erratic, antagonistic, sarcastic, conceited, condescending and tactless. Frankly I must agree with them to some extent for it seems to me, as I have written to the Service Committee, as if it would be impossible for you to lay aside like an overcoat your tactless, erratic, antagonistic one-sided personality and what appears to me your lack of judgment when you enter the classroom.

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15 Fisher to Clapp, August 16, 1921. In Fisher File.
16 Clapp to Fisher, September 14, 1921. In Fisher File.
Hutchens' flank attack on Fisher had worked beautifully. Fisher's two superiors in the University believed firmly by late summer that Fisher had nothing to recommend him as a teacher. Yet the two administrators had met with the law teacher only once, after the July Board of Education meeting in Helena. Two men in a better position to evaluate Fisher's competence, former President Sisson and Dean Leaphart of the Law School, emphasized to the Faculty Service Committee Fisher's "...enthusiasm, initiative, and high teaching ideals." President Sisson admitted that Fisher had "some weaknesses," as a teacher which could be assessed primarily to inexperience.\(^{17}\)

President Clapp disagreed with his predecessor's opinion of Professor Fisher. In his letter to Professor Elrod asking for an investigation by the Faculty Service Committee, he asked the committee to review in particular "...Professor Arthur Fisher's effectiveness as a teacher in view of his well known tendencies as a trouble maker."\(^{18}\) Fisher had anticipated that President Clapp might reach this conclusion, and had warned him against it. His warning only increased Clapp's irritation with him. Fisher had said,

> The remedy [to my situation] seems to me to make it clear once and for all that members of the faculty of the University of Montana cannot be gotten rid of by successful agitation for their removal--or the same end attained by the equally effective but more subtle device of continuously stirring up trouble against them until the impression has been created that they are 'trouble-makers,' and should therefore be removed. If academic freedom means anything, it should mean freedom from one form of coercion as much as the other; and when the more disreputable and insidious

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\(^{17}\)Sisson to Committee on Service, September 10, 1921. "Documents," in Fisher File.

\(^{18}\)Clapp to Elrod, August 10, 1921. In Fisher File.
method is used of attempting to injure a man’s teaching effectiveness, I naturally feel that the teacher is entitled to the even more vigorous and unflinching support of the university executives. 19

But President Clapp had already formed his opinion: the brash young lawyer was a trouble maker.

Professor Elrod, chairman of the service committee, questioned President Clapp in regard to the source and meaning of a label such as “trouble-maker.” He wrote a chiding letter to Clapp requesting more information:

The committee wishes you to give some specific instances of his trouble making, so it may have something to work on. Such a general and sweeping statement should be accompanied by definite complaints or charges to be investigated. 20

Elrod added that the service committee also would investigate Fisher’s association with the New Northwest. In compliance with Clapp’s request.

President Clapp replied to the service committee that he was not knowledgeable on the details of Fisher’s trouble-making, which was why he asked the committee to report on it. But he said it was obvious that trouble attended Professor Fisher. He cited several examples:

...To say nothing of his trouble before coming to Montana there has been in the last year, 1, his affair with the State Teachers Association at Billings; 2, his general unpopularity with the law school students with consequent threatening of student strikes; 3, his trouble with the Missoulian and Helena Independent; and 4, his trouble with the American Legion.

It seems to me that these facts indicate a lack of common sense and understanding—and a lack of judgment which I do not believe he can entirely lay off when he enters the

19 Fisher to Clapp, August 16, 1921. In Fisher File.

20 Elrod to Clapp, August 31, 1921. In Fisher File.
class room. It is perhaps not the function of the Service Committee to determine whether or not he is guilty of trouble making but to determine whether or not his erratic antagonistic personality and lack of judgment do follow him into the class room with consequent ineffective teaching. 21

The service committee immediately began collecting statements and evidence on the American Legion charges, on Fisher's teaching efficiency on his relation to the New Northwest, and on his trouble-making. Professor Fisher filed with the committee Miles Romney's editorial from the Western News, the item from the New Republic, a copy of the letter he had written to Chancellor Elliott in March, and the letters of recommendation from his wartime superiors in the Bureau of War Risk Insurance. The committee received another testimonial for Fisher from Dean Robert Mors Lovett of the English department at the University of Chicago. Dean Lovett had directed the Chicago Terms of Peace meeting in 1917 for which Fisher served as secretary. He defended the patriotic nature of the meeting:

...The suggestion made by certain newspapers that a part of the audience took advantage of the occasion for a disloyal demonstration was entirely unfounded; and it was answered by correspondents of the papers in question, one letter I remember being by Mrs. Mary H. Wilmart. I never knew of any criticism directed against me by the University of Chicago. I am still connected with the institution as professor of English, although at present on vacation. 22

Dean Lovett's letter refuted a Helena Independent assertion that he had been fired by the University of Chicago for his actions. Another letter


In the Chancellor's Memorandum on the Arthur Fisher case refuted the Chicago Tribune description of the Terms of Peace meeting as unpatriotic. Five women who had attended the meeting wrote to the Tribune after it published its erroneous account, and insisted that the "entire audience rose and sang "America" with the greatest enthusiasm and that the singing was followed by vociferous applause." 23

The service committee, upon receipt of the above letters and after consideration of the American Legion charges, methodically refuted them one by one. First, the committee noted that no one, not even the Legion, alleged that Fisher went beyond the facts in his exemption claims. His relation to the Selective Service should be a closed incident, concluded the committee, since his draft board had settled the case in 1917 in accordance with the law and the facts. 24

The second American Legion charge was that Fisher would not fight unless compelled to do so until the United States announced its purposes for fighting. The service committee answered that Fisher's position was not surprising since President Wilson had been elected only seven months earlier on the pledge to keep the country out of war. Moreover, the committee pointed out that not even the American Legion thought that Fisher would have resisted the draft unlawfully. The third Legion charge concerned the veracity of the Tribune account of the Terms of Peace meeting. The committee barely stifled its scorn of this charge. It wrote, "It is difficult to see how a man's failure to deny publicly a newspaper story should be ground for dismissal." The committee did point out that Fisher had denied that the meeting was unpatriotic, and

24 "Findings of Faculty Committee on Service," p. In Fisher File.
that his denial was corroborated by the letter from Dean Lovett and by the letter of correction to the Chicago Tribune.25

The fourth American Legion statement accused Fisher of believing that "...each individual has the right to aid or refuse to aid (within the limits of the law), in such war according to his individual beliefs...." The committee called this charge merely an "...academic discussion of a theoretical question;" a statement regarding a man's beliefs rather than his acts. A slightly sarcastic question again revealed the committee's attitude toward the Legion allegations:

...If Mr. Fisher did not take his academic quibble about "rights" seriously enough to violate the law or resist the draft, why should any one else squander time four years afterward in giving it serious consideration?26

The fifth charge of the American Legion executive committee in its "statement of facts" said that if the United States entered war in the future, Professor Fisher would advise students of his belief if they sought his advice. The service committee patiently answered that the students would have to seek out Fisher to obtain his opinion in such a case, and therefore the advice would not be imparted in the classroom. Fisher's right to state an opinion outside the classroom, explained the committee, was "...no more than the right one man has to tell another his personal views on a political question...and it should not be denied to a teacher any more than to anyone else." The committee concluded its consideration of the American Legion charges with a statement of support for Fisher. It wrote,


26Ibid., p. 8.
...[Fisher] acted with sincerity and courage, in accordance with the law, and with a marked degree of patriotism. We have no evidence that he attempted to evade or violate any law, or misrepresent any fact....he was disqualified for military duty by reason of physical disability.... We therefore find no ground for dismissal in the facts and charges presented by the American Legion. 

Before considering any further complaints against Arthur Fisher, the committee agreed to discuss the conditions under which a teacher might be discharged before the end of his contracted term. In connection with this question, the committee queried former president Sisson about the nature of the University's contract with Fisher. Sisson replied that Fisher's appointment and his appointment notice from the University specified a duration of one year. However, said Sisson, administrative memorandum 100 explicitly provided for a minimum term of two years for the initial appointment of professors. Therefore, the University clearly intended Fisher's appointment to continue for two years, which was why the administration approved the reappointment in April of 1921 without question. 

In view of President Sisson's statement, the service committee concluded that a suspension of Fisher in September required a recision of a former action of the administration, without facts other than the American Legion complaint to justify the recision. A September suspension, said the committee, would be justified only by charges that were "...very weighty and...very serious." The American Legion complaint did not meet that criterion, according to the committee. Perhaps President

27 Ibid., p. 10


Clapp's suspicion that Fisher's "trouble-making" impaired his teaching effectiveness would, upon examination, prove to be very weighty and very serious.

The investigation of Fisher's teaching effectiveness proved to be a complicated task. The committee had to assess his knowledge and ability, the effect of his personality on the law students, the alleged expression of his economic and political views to his students, and the effect of his support for the New Northwest on his professional duties. For this aspect of its investigation the committee depended on the testimony of President Sisson, Dean C. W. Leaphart of the Law School, and on the law students themselves.

In regard to Arthur Fisher's knowledge and ability, Sisson said he relied on the judgment of Dean Leaphart, in whom he professed full confidence. He noted that Dean Leaphart had recommended in April a considerable increase in salary for Professor Fisher. Sisson added that Fisher did have "some weaknesses as a teacher," but they did not justify in his opinion any action against him. Moreover, he said, they "...were probably the weaknesses of youth and inexperience and are likely to be overcome." 30

Dean Leaphart tended to agree with Sisson. He said that he recommended Fisher for reappointment in April because his failures, "...if such he has made, have been due to lack of judgment rather than anything else." He pointed out that no fault could be found with Fisher's scholarship. In his opinion Fisher's legal knowledge was on a par with the "...better trained law students from our leading law schools who have had

a college education preceding their law training."\textsuperscript{31}

For the most part neither did the law students question the knowledge and ability of the constitutional law teacher. The service committee canvassed the opinion of the students with a questionnaire in regard to Professor Fisher. Twenty-six of forty-two law students returned the questionnaire to the committee. A compilation of the returns indicated that eighteen of the students replied favorably with respect to Fisher's knowledge and ability. Two returned unfavorable responses, and one claimed to be doubtful or neutral.\textsuperscript{32}

The law students reversed their opinion of Professor Fisher as far as his personality was concerned. Only four men indicated that they liked his personality, and sixteen students said they did not like him personally. No one claimed to be neutral in regard to Arthur Fisher.\textsuperscript{33} Dean Leaphart admitted that Fisher had a remarkable capacity to arouse antagonism when he least intended to, and when he was quite unconscious of having done so. The Dean also explained the attitude of the law students and some causes for their hostility:

...One reason for the personal antagonism is that he has not yet learned that our students expect to be treated like grown up men, and respond best to such treatment. One or two violations of this attitude, such as sending a student from class room for lack of preparation, stirred up hostility in other than the offender. Cutting remarks with no idea of the fact that they were cutting, have added to the flames. In short, the personal antagonisms come from very small things and are caused by the manner of


\textsuperscript{32}Summary of Opinions of Twenty Six Students of law, in the Case of Arthur Fisher, Committee on Service, September, 1921. In Fisher File.

\textsuperscript{33}Ibid.
acting rather than the act itself... I believe the
personal dislike will be less with the beginning of
the fall term than it was at the close of the spring.

Dean Leaphart also explained a cause for the students' dislike of
Fisher's teaching. He believed that Fisher failed to realize that
students needed "...something to work from." The average student
felt too often that he learned nothing in his hour in the classroom.
The Dean thought the problem stemmed from Fisher's "...carrying to
extremes the idea of having the student work his results out for him-
self." One or two of the very best students, however, were among those
who liked Professor Fisher's methods.34

More serious than Fisher's unpopularity with his students was the
question of whether he had injected his personal economic or political
beliefs into classroom discussion, as the Missoulian and the Helena
independent had alleged. The Law School Association had denied this
allegation earlier in the year. The law school students did so again
in response to the service committee questionnaire. The service com-
mittee summary states that the students were unanimous in their defense
of Fisher on that point.35

The last question for the committee to consider in connection with
Professor Fisher's efficiency as a teacher was the effect of his assoc-
iation with the New Northwest on his professional duties. Dean Leaphart
believed that Fisher's connection with the newspaper was detrimental to
the Law School and to the University. He felt that the Law School and

34 Leaphart to Committee on Service, Sept. 13, 1921, "Documents,"
p. 20. In Fisher File.

35 Summary of Opinions, Committee on Service. In Fisher File.
the interest of the University should precede in Fisher's priorities the welfare of the newspaper, but that Fisher lost sight of this. President Sisson said that he never saw any reason to object to Fisher's acting as an officer of the executive board of the newspaper. Indeed, thought Sisson,

...Fisher has exercised a most beneficent and admirable influence upon it ever since he was connected with it; he has insisted upon the highest standard of newspaper ethics, especially in personal matters; he has discouraged and opposed all excessively radical or revolutionary tendencies. For all this, in my judgment, he deserves nothing but credit.

Obviously, Sisson and Leaphart disagreed to an extent as to the propriety of Fisher's association with the New Northwest. But neither of them even hinted that Professor Fisher neglected his classes to devote more time to the paper.

The service committee therefore agreed that Fisher's efforts in behalf of the New Northwest did not impair his efficiency as a teacher. The committee posited that even if Fisher's relation to the newspaper had been harmful to the University in the opinion of the administration, the relation nevertheless would not justify dismissal, since his actions violated no staff directive and since he had fully informed President Sisson and Chancellor Elliott of his activities. The service committee flatly stated that Fisher's support for the New Northwest did not constitute an activity with which the administration could legitimately interfere in any way. In an aside, and with an eye to Fisher's critics, the

37 Sisson to Committee on Service, Sept. 3, 1921.
committee members officially disclaimed any financial or other connection with the New Northwest, and they stressed that their interest was confined to the principles involved in the case. 38

The service committee also concluded that President Clapp's fears about Fisher's efficiency were unfounded, in spite of the relative unpopularity of Fisher's teaching methods and his personality. In any case, the possibility of some "inefficiency" on Fisher's part certainly would not justify the University in breaking its contract with the professor.

The service committee then reviewed the last general complaint which might require the release of the law professor. That was President Clapp's assertion that Fisher was a trouble-maker. The committee had already dispensed with the American Legion charges and with Fisher's alleged "trouble" prior to his coming to Montana. In regard to Fisher's role at the State Teachers' Convention in Billings, the committee found that the incident had been "...more or less colored and magnified in the press," that it was "regrettable," and that it "...doubtless [would] never occur again." Fisher's "trouble" with the Daily Missoulian and the Helena Independent probably were due, thought the committee, to the fact that Fisher aided in the establishment of a rival newspaper. Finally, the committee found no evidence of student strikes in the law school. In the questionnaire a few students had expressed an intention to avoid enrolling in Fisher's classes, but the committee could find no information that a "strike" had been threatened by any students as President Clapp had suggested. The committee therefore summarized its conclusions in

regard to the Fisher case:

We have now disposed of all the points and items presented in the letter of Mr. Fisher and the two letters of President Clapp. Taking all the evidence into consideration, we see no valid reason for terminating the contract of Mr. Fisher, as is evidently proposed. 39

Arthur Fisher's future with Montana State University was now in the hands of President Clapp, Chancellor Elliott, and the Board of Education.

CHAPTER VI

The Montana Board of Education normally convened four times a year to direct and to review the operations of the various units of the University of Montana. It devoted one-half of its second meeting in 1921, in July, to a consideration of American Legion charges against Arthur Fisher. In September, it devoted most of its meeting to the same case.

The Board met Monday morning, September 17. Governor Dixon presided at the meeting, and State Superintendent of Schools May Trumper kept a sketchy record of it. Other Board members in attendance included John Dietrich of Helena, a principal; Frank Elliel, a Dillon merchant; Whitfield W. Spain of Gallatin, a graduate of Montana State College and a farmer; Judge Sidney Sanner of Butte; James W. Freeman, a former United States attorney from Great Falls; Charles H. Foot, a lawyer and a Flathead County farmer; Robert C. Line of Columbus, a graduate of Montana State University and Harvard University; Wellington Rankin, the Attorney General of Montana; and A. J. Violette of Missoula, whom Governor Dixon considered "...one of the most liberal men in western Montana." In fact, Governor Dixon considered the whole board as "...the most liberal minded" the state had ever had.¹

The Board disposed of routine business in the morning and turned to the Arthur Fisher case in the early afternoon. Before discussion began, Chancellor Elliott distributed copies of the "Memorandum re the American

¹Governor Joseph M. Dixon to S. R. Logan, at that time Superintendent of Schools in Hardin, Montana, October 5, 1921. (In the possession of S. R. Logan, Charlo, Montana).
Legion Charges Against Arthur Fisher," which had been assembled by his office. The Memorandum presented the conclusions of the Faculty Committee on Service, and the documentary evidence that had accompanied the service committee report. It also contained two significant additions to the service committee material. The first was the Chancellor's "general comment" on the case, the first and only public statement made by the Chancellor in regard to the storm that had raged about the professor for most of the year.

The Chancellor commented that a satisfactory adjustment of the situation created by the American Legion charges had been impossible. He ascribed this to "...the uncompromising attitude of mind displayed by Mr. Fisher," although it would seem that only Fisher's resignation could have adjusted the situation to the satisfaction of the American Legion. Of course, Fisher's resignation would have solved Chancellor Elliott's and the Board's difficulties in the case, but that would have been a demeaning solution for the professor. Nevertheless, the Chancellor thought that Fisher was most uncooperative. He wrote,

"It would appear that he is much more interested in creating a mock dramatic situation, with himself as the chief actor, than in performing conscientiously his designated duties in the University and in cooperating to the fullest possible extent for the up-building of the institution."

With respect to the American Legion charges the Chancellor said that most "normal minded citizens" would support the Legion charges. He felt that the Legionnaires rightfully resented governmental employment of any man who "...caviled with legal technicalities" to avoid service, or who debated political abstractions at home instead of serving his country actively.

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But in spite of Fisher's "...attitude of supercilious superiority in matters of loyalty and patriotism," the Chancellor urged the Board to notice that the prime question raised by the American Legion charges was the culpability of a faculty member for his private opinions and beliefs. The Chancellor stated unequivocally, for once, that the fundamental welfare of the University could not be conserved if any authority imposed arbitrary restrictions upon the beliefs and opinions of teachers. He added,

...If the Board of Education should determine upon a policy different from this, then it may be doubted whether or not the state of Montana can ever develop a University worthy of the confidence of those who view civilization and progress as a constant search for truth.3

This warning pertained in the Fisher case, said the Chancellor, because no one had accused Fisher of any unlawful overt act. Therefore the Legion complaints against him remained in the realm of theory.

The Chancellor believed that the question of whether a faculty member should be permitted to serve "...in an active capacity with a partisan newspaper..." was more fundamental to the welfare of the University than the charges of the American Legion. Chancellor Elliott did not think Fisher had that right, if its exercise would subvert the larger interests of the University. This was consonant with his policy in the Louis Levine case also, in which he fired the economics professor for insubordination, for putting his own case before the interest of the University. The Chancellor clearly explained this philosophy as it pertained, in his opinion, to Arthur Fisher. He said,

Mr. Fisher is one of a certain few men found in many institutions who, under the thin guise of self-assumed rights would

3 Ibid., p. 3.
jeopardize and sacrifice the larger interests of the institutions they are supposed to serve. Every instance, such as the present one, involving the conduct of a member of the faculty tends to destroy the confidence in the policy of guaranteeing to members of the faculty security of tenure. Mr. Fisher seems to forget the great difficulties of developing a University in this pioneer region. With a supreme egotism he presumes to disregard entirely the caution, the courage, and the foresight always necessary to maintain a public university free from the destructive complication of class interests and partisan politics. For a generation the American people, the country over, have striven to conduct their public schools and other higher institutions of learning free from political interference. The existing tenure regulations for the University were adopted to secure to the members of the faculty protection from these influences. In spite of this Mr. Fisher, for the satisfaction of his notoriety seeking impulses, demands the right to ally himself with a single political faction and to carry on, through a newspaper and room the neutral ground of the University vigorous partisan propaganda.

It appears from this statement that Chancellor Elliott denied Fisher's right to engage in contentious extra-mural activities, on the basis that such activities endangered the University's independence from political interference. Fisher, on the other hand, firmly believed that as a citizen he had the right to support controversial projects if he did not neglect his teaching duties, and also that faculty members should serve the community as well as their classes. Elliott thought Fisher's actions undermined the University's hard-won safeguards of tenure security; Fisher thought that the safeguards were the sine qua non of a true University, and existed precisely for cases such as his own, in which outside forces demanded suspension for reasons other than academic incompetence.

The Chancellor's position and Fisher's personality explain the divergence in their points of view. As the liaison officer between the

University units and the state government, Elliott was accustomed to compromising; to appeasing an irate legislator while asking for an appropriation. Fire-brand faculty members complicated his task considerably. Fisher, on the other hand, tenaciously pursued his vision of what was right, without so much as a nod to the art of compromise. The two men were bound to clash.

In regard to Fisher's teaching, Chancellor Elliott told the Board that the law teacher had been "...content to render unsatisfactory and mediocre service to his students." He based his conclusion, he said, upon the service committee's investigation. He did not, however, communicate all of the service committee's judgment, which had stated,

...[since] those who are presumed to know most about his work consider that he is improving in teaching, the Service Committee believes his weaknesses as a teacher are not sufficient to justify dismissal. He has abundant energy, a keen mind, high teaching ideals, courage, initiative, and a knowledge of law which must be placed to his credit in weighing the case.

Meanwhile, President Clapp and Dean Leaphart wrote another letter regarding Professor Fisher's teaching, after the service committee had concluded its investigation. The two delivered a harsher judgment to the Board of Education than Dean Leaphart had individually to the committee:

...With respect to Mr. Fisher's teaching it seems to us that to date his work has not been satisfactory. His lack of tact and of sound judgment and his unconscious antagonism have served to stir up the same sort of resentment among the students that he stirs up in his extraneous activities....Nevertheless we believe that with further experience, acquisition of more common sense, and with a modification of his teaching methods as well as of his methods in dealing with other than strictly University matters, he may become a useful and excellent teacher....

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5 Ibid., p. 5.
A handwritten draft of this letter in the Fisher File indicates that President Clapp composed the letter.

The other significant additions to the service committee evidence in the Chancellor's Memorandum, other than the Chancellor's general comment, were drafts of two resolutions. Presumably, Chancellor Elliott composed the resolutions and hoped the Board would dispose of the Fisher case with one of them. The first resolution stated that the American Legion charges related to Fisher's beliefs and opinions and were not supported by any overt, unlawful act. Therefore, the Board should resolve to thank the American Legion for "...its spirit of watchfulness," it should regret that any University faculty member acted unpatriotically in the early days of the war, and it should promise to observe carefully future actions of Fisher's which might be prejudicial to the interests of the University.  

The second resolution dealt more severely with the law professor. It proposed to require Fisher to devote himself "...more assiduously and with greater success..." to his teaching duties, to sever his connection with the New Northwest, and to avoid entangling himself in local controversies. This resolution also would have the Board place Fisher on probation with the University, and would make his further appointment a special order of business for the Board at its April, 1922, meeting. The resolution also would authorize Chancellor Elliott or President Clapp to dismiss Fisher whenever it appeared to them that he had not "...faithfully observed the spirit and intent of this resolution," and it would have the Chancellor report at the December meeting of the Board on the

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quality of Fisher's teaching service.

The Board debated for five hours on Chancellor Elliott's proposed resolutions, but it could not settle on one of them. The following day J. W. Freeman, the Great Falls attorney, introduced a third resolution. It read,

"Whereas, the state board of education has had under serious consideration the whole matter of the standing and service of Mr. Arthur Fisher as a member of the faculty of the law school of the state university, and

Whereas, the state board of education has reached the conclusion that the welfare of the university and the interests of the students therein require that Mr. Fisher be relieved of any further active service as a teacher, therefore

Be it resolved, that Mr. Fisher be considered on leave of absence with pay the remainder of the term of his contracted appointment until September 1, 1922."

Freeman introduced the resolution, he said, because he believed the reputation of the Board of Education was at stake in the case, and that the Board should let the people of Montana know that it would not condone the teachings of a radical professor. C. H. Foote of Kalispell echoed that he could tolerate conscientious objectors but not the teaching of their beliefs in Montana schools. Governor Dixon then interjected that the Board should definitely determine the relationship of the American Legion charges to Fisher's teaching. Judge Sanner agreed that the Board should settle whether or not Fisher maintained the right to teach his beliefs. If he did, said the Judge, no law school in the United States would hire him. Freeman answered Judge Sanner that as far as he was concerned, Fisher was guilty of all the Legion charges against him, and


10The Service Star, October, 1921, p. 5.
of that charge in particular.11

Governor Dixon pleaded with the Board to let the Fisher case rest until Fisher's contract came up for review in April of 1922, and then to let the situation adjust itself. He asked, "Aren't you inviting another storm for the University by passing these resolutions?" Freeman retorted to the Governor that the resolution gave Fisher even more consideration than he deserved. But Judge Sanner objected repeatedly to Freeman's resolution on the ground that it obscured the reasons for Fisher's dismissal. May Trumper, the Superintendent of Schools, agreed with the Judge that the resolution was too vague. She thought that Fisher should either earn his salary teaching, or not be paid to agitate full time.12

Finally, after several members called for the question, Governor Dixon called for a vote on the adoption of the resolution. Freeman voted in favor of his resolution along with Dietrich, Rankin, Ellel, Line, and Spain. Governor Dixon, Miss Trumper, Judge Sanner, Foote, and Violette voted against it. The resolution passed by one vote.13

The dismissal of Arthur Fisher ruffled few feathers in Montana. The Law School Association actually passed a resolution urging that the Fisher case not be reopened in December, since the students liked Fisher's successor, one Mr. Colvin.14 Fisher hoped that the Montana State Teachers Association would come to his rescue, but the annual convention ignored the case. The case simply did not precipitate a vigorous protest as had the

11 ibid.
12 ibid. See also the Daily Missoulian and the Western News, Sept. 20, 1921
13 Minutes of the Montana Board of Education, September 18, 1921, p. 111
suspension of Professor Louis Levine in 1919. The faculty, to be sure, forwarded an indignant resolution on the matter to the Board of Education, but the Board did not meet again until December. The faculty resolution requested from the Board a statement of reasons for the dismissal, by which to guide their own outside activities in the future. The faculty insisted that the Board could not justify Fisher's dismissal on the basis of the American Legion charges. It also argued that President Clapp's and Dean Leaphart's recommendation for the Board to ask Fisher to "...sever immediately his official relations with...the New Northwest..." was an unjust limitation on the right of professors to partake in any legitimate activity. This resolution constituted the whole of the fairly docile faculty response. 15

The Missoulian and the Helena Independent clucked happily about the firing of Fisher. It should have been done long before, they remonstrated, but at least the University was finally rid of the radical. The Miles City Star expressed pleasure that the Board of Education had finally "canned the pacifist." 16 In fact, the Board action pleased most of the newspaper editors in the state. A noisy exception to this was Miles Romney, editor of Hamilton's Western News. He published an editorial entitled, "Wanted: Safe and Sane Professors," and he reminded his readers that if Fisher had refrained from any connection with the New Northwest that his position on the faculty would have been secure. 17 But the

15 Formal Resolution of the Faculty of Montana State University to the Montana Board of Education, September, 1921. In Montana Archives.
16 Miles City Star, Sept. 19, 1921, p. 1.
dismissal provoked no flood of letters from angry citizens. It hardly even rippled the still waters of a Montana autumn in an off-election year.

Since the Montana reaction to the suspension was subdued, it is not surprising that national awareness of the incident was almost non-existent. The Board of Education did not have to sweat in the scornful glare of national attention as it had after the suspension of Professor Louis Levine in 1919. This was mainly because Arthur Fisher's actions offended corporate interests less obviously than had Levine's book on mining taxation, even though Hutchens' machinations left far more traces in the Fisher case than did the Company's efforts in effecting the suspension of Levine. But Louis Levine was a mild-mannered scholar; Arthur Fisher was an aggravating advocate of a controversial newspaper. At no time before or after the September meeting of the Board of Education did Arthur Fisher's case inspire an impassioned defense by any influential group. Consequently the brief and evasive September resolution by the Board of Education had closed the case permanently in Montana.

A sub-committee of the Committee on Academic Tenure of the American Association of University Professors investigated the Arthur Fisher case in 1923, in response to an earlier request by Fisher and three of his former colleagues at Montana State University. It reviewed the report of the Faculty Committee on Service and other documentary evidence submitted by Fisher. The Board also wrote President Clapp requesting a statement from him on the case. President Clapp excused himself but defended the action of the Board. He wrote,

As you probably know, this whole matter came up before I was formally in charge of the State University of Montana, although action was taken by the Board of Education after September 1, 1921, when my appointment here began. You are, of course, aware that Mr. Fisher was not dismissed
from the University, but that the contract with him was fulfilled, although he did not teach during the last year of his employment; during the last year of his employment he drew his salary without rendering any service for it. In any case, Mr. Fisher's contract with the University would have been terminated when it was, as his teaching was unsatisfactory as well as his outside relations harmful to the University.  

Nevertheless, the sub-committee found the Montana Board of Education "...guilty of a grave dereliction" in prohibiting a professor from meeting his classes without a statement of reasons for such action. It added,

This dereliction is seriously augmented by the noteworthy circumstance that this action of the Board overruled the Service Committee of the University Faculty which it had itself created to deal with matters of tenure. We profoundly regret that the Board should have set aside the unanimous findings of a University committee at the instance of an outside organization and of an organization without experience in educational matters.  

The committee could find no adequate reason for "...negating a contract professionally even though it be honored financially." It concurred in the Montana service committee's refutations of the American Legion charges, and it agreed that the charges related directly to Fisher's newspaper activity. The committee did not disentangle the details of the relationship, but it argued that it should be impossible to appoint a professor on the condition that he refrain from any partisan activity. The committee concluded,

Academic freedom is here not directly under consideration. There is no charge that Mr. Fisher intruded partisan opinions into his classroom. The evidence indeed shows that he was scrupulous in excluding political discussions from his classes. But surely no teacher in a republic can be expected to unclothe himself of his interests and activities as a citizen of the State. Participation in outside activities should be left to the
good judgment of the individual instructor....

Since the Board fired Arthur Fisher because of his outside interests and activities, the dismissal violated what has come to be known as the academic freedom of the faculty member as a citizen. The American Association of University Professors defined this in its 1940 Statement of Principles as the right of a faculty member to be free from institutional discipline or censorship when he speaks or writes as a citizen. The Board of Education denied Arthur Fisher that right, in addition to violating at least three basic tenets of academic due process of law. The first violation was that the charges were of such a vague and shifting quality that no proper defense against them could have been made. Second, the Board failed to determine Professor Fisher's guilt or innocence of the charges, and third, the Board failed to state the reasons for the suspension.

Arthur Fisher's efforts for the New Northwest violated no condition of his employment for the Montana State University, nor did it cause him to neglect his faculty responsibilities. The effect of Fisher's activities on the University might have been deleterious, but not even the officers of the institution could agree on that point. Moreover, supposing that Fisher's support for the community newspaper did alienate a faction of the community, it did not follow, according to the A.A.U.P. investigating committee, that the Board should have dismissed him therefore. Nor did the American Legion

20 ibid., p.


charges justify suspension, as the service committee, the University faculty, the administration, and the A.A.U.P. all agreed. The Board of Education could not, in fact, settle upon a specific cause for the discharge because none of the complaints against Professor Fisher sufficed for suspension.

The Montana Board of Education fired Arthur Fisher primarily because he irritated its members. His ability to annoy people, like that of a pesky fly, seemed all out of proportion to his apparent value. As a result, and almost as casually as it would swat a fly, the Board dispensed with the services of Arthur Fisher. The Board continued Fisher's salary, to be sure, but that tactic was a poor procedural diversion from its indecision on substantive issues. The fact that Martin J. Hutchens and Will Campbell conceived, manipulated, and expanded Fisher's image as a nuisance naturally augments the disgrace of the case. The A.A.U.P. had stipulated in 1915 that the dispensation of academic discipline should depend on the conclusions of members of the teaching profession, for the action of other groups might not be motivated by "...zeal for the integrity of science." The Fisher case exemplifies the pitfall of violating this direction, for no matter how understandable was Hutchens' personal grudge, it could not by any wild leap of the imagination be equated with zeal for the integrity of science. Consequently, the Montana Board of Education fired Arthur Fisher for concerns that were, at their source, personal and commercial. For these motives the Montana Board of Education denied Arthur Fisher his rights, through the principle of academic freedom, to tenure security, and to his personal political beliefs.

EPILOGUE

After his dismissal from teaching duties, Arthur Fisher assisted Walter Christensen in editing the New Northwest for several months, all the while expressing to his father a desire to work and travel abroad. He had much of his personal fortune invested in the community newspaper, however, and spent considerable time extricating himself from the financial difficulties of the newspaper. But for at least a year, he told his family, he refused to abandon Montana to the enemy, so he continued in an effort to build an independent, progressive press in the state. In mid-1922 he moved to Billings, Montana, to edit a weekly organ of the Midland Empire cooperatives, the Billings Searchlight.

In 1923 an opportunity arose for him to conduct an economic study of central Europe. He left Montana in the spring of that year slightly embittered but not beaten. As he rode out of Montana on the Northern Pacific he assembled his reflections on the state for publication. His article in the Nation, entitled "Montana: the Land of the Copper Collar," asserted that six months was the longest one could live in Montana without deciding whether to be "for the Company," or "against the Company." In spite of its title, the article did not completely condemn the shackled natives. He wrote,

"...in a personal way the Company's officials and subordinates are for the most part "good fellows" who have risen from the ranks; something of the free and easy ways of the mining camp or the open range still clinging to them; and Montana is still too young and too near to the frontier to have yet produced that worst of human products: the snobbery and the glowering resentment of a long-submerged people. In Montana one may still speak to a man as a friend--before drilling him or his business

-102-
or his reputation full of holes.

After Fisher's journey through Europe, he returned to the United States to lobby for a recovery-oriented foreign policy toward the war-torn countries. He wrote to S. R. Logan in Montana that, in his opinion, the European situation related closely to the bad conditions of the farmers throughout the Northwest. He said,

Washington thinks the farmers and the West are isolationist. I don't believe it. And I know their economic as well as moral interest is for the restoration of peace in Europe and the prevention of a new military outbreak. But the people and their leaders and organizations are not vocal enough....I am spending Christmas Day in this practical effort to create a little Peace on Earth and Good Will Among Men. After one has been in the Ruhr it is hard to rest.

He asked Logan to line up letters from concerned Montana organizations supporting American economic assistance in Europe.

Fisher maintained his interest in the problems of labor and farmers. He reviewed the possibilities of a farmer-labor party for the New Republic in 1923, and wrote several articles for that magazine and others in the 1920's. Walter T. Fisher explains that his brother's interest in labor and farm groups was part of a lifelong dedication to the public interest and a feeling of responsibility for improvements in social conditions generally. Arthur Fisher was, for example, a pioneer in the Chicago chapter of the American Civil Liberties Union, and he aided it actively the years that he lived in Chicago. A more significant accomplishment, according to his brother, was his determined, unyielding pressure on the state of Illinois to acquire the land of the shore of Lake Michigan which has become the Illinois Beach State Park.

Until the end of the 1930's Fisher practiced law in Chicago. During World War II he managed a regional department of the War Production Board. He continued government service after the war as the Associate Register of
Copyrights for the Library of Congress. From 1951 until his death in 1960 from leukemia, he was the Register of Copyrights for the Library of Congress. Here he exerted his high legal capacity in behalf of a law for the international protection of literary property. His efforts contributed significantly to the passage of the treaty known as the Universal Copyright Convention, and earned him national and international eminence in the field of copyright law.

The Convention was the first worldwide treaty in the field and the first clear agreement on copyrights between the United States and the countries of Europe. The Washington Post said of him,

"Known as a negotiator of great drive and skill, Mr. Fisher had also long worked to revamp United States copyright law. In the face of inertia and opposition, he tirelessly wrote, argued and discussed reform of statutes which have been largely unchanged since 1909. Before his death Arthur Fisher had conceived and directed a series of studies which are being published by the Senate Judiciary Committee as a basis for a modern copyright law.

In spite of his positions in metropolitan areas, Arthur Fisher never forsook his preference for outdoor activity. He operated a dairy farm near Boston at one time, and purchased another one in Maryland when the copyright position called him to Washington, D.C. Much of the physical labor required on these farms he did himself.

Fisher remained in the copyright position until his death. The Washington Post concluded its memorial to him with a tribute to his lifelong tenacity:

"A man of intense personal courage, Arthur Fisher continued to work for the causes in which he believed even after he knew he had leukemia."1

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