

The Prosser Letters: 1917–1948

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I. INTRODUCTION

William Lloyd Prosser was one of the most accomplished and influential scholars of the 20th century. When he died in 1972, his colleagues described him as “a great Master of Torts.”¹ Prosser was synonymous with his subject: “Rarely in the history of American legal education has one author’s name been so clearly identified with his subject as the name of William L. Prosser is with the law of torts.”² *The Washington Post*, in 1986, described Prosser as “a

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1. Laurence H. Eldredge, *William Lloyd Prosser*, 60 CALIF. L. REV. 1245, 1251 (1972).
2. Craig Joyce, *Keepers of the Flame: Prosser and Keeton on the Law of Torts (Fifth Edition) and the Prosser Legacy*, 39 VAND. L. REV. 851, 852 (1986) (book review).

scholar and author who was to torts what Dr. Spock is to child care.”³ Even today, he retains a considerable reputation; the Association for American Law Schools Torts and Compensation Systems Section named its annual award for him.

His reputation and influence stem from multiple sources. First, and most significantly, there is his treatise, known as “Prosser on Torts.”⁴ The treatise has been celebrated far beyond the dreams of typical academic authors: “Prosser on Torts! It has a completed sound, a belonging sound, a natural sound, a sound to be remembered for years to come.”⁵ Two prominent academics recently stated the treatise was not only the most influential torts treatise, but for nearly 50 years, it “was arguably the leading single-volume treatise in American legal scholarship.”⁶ Second, Prosser served as the Reporter for the *Restatement (Second) of Torts*, which scholars have described as “the most influential of the American Law Institute’s volumes restating and reshaping American law.”⁷ Third, he authored a casebook that has gone through 13 editions, and, 43 years after his death, remains the leader in a highly competitive market.⁸

Through these works and a series of law review articles, Prosser exerted considerable influence on the development of several tort doctrines, most notably products liability, privacy, and the intentional infliction of emotional distress. In the products area, Prosser’s 1941 treatise called for strict liability for injuries caused by products⁹ three years prior to Justice Roger Traynor’s concurrence in *Escola v. Coca Cola Bottling Co.*¹⁰ His 1960 article, *The Assault*

3. T.R. Reid, *Litigation Loosens the Stiff Upper Lip*, WASH. POST (Feb. 24, 1986), <https://www.washingtonpost.com/archive/politics/1986/02/24/litigation-loosens-the-stiff-upper-lip/2805bd26-g104-43f6-ae7b-d6e8b5728b5b>.

4. The first edition, *Handbook of the Law of Torts*, was published in 1941. See WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS (1941) [hereinafter PROSSER, 1941 LAW OF TORTS]. Subsequent editions appeared in 1955, 1964, and 1971. See WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS (2d ed. 1955); WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS (3d ed. 1964); WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS (4th ed. 1971). A fifth edition was published after Prosser’s death in 1984. See W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS (W. Page Keeton ed., 5th ed. 1984).

5. John W. Wade, *William L. Prosser: Some Impressions and Recollections*, 60 CALIF. L. REV. 1255, 1255 (1972).

6. Kenneth S. Abraham & G. Edward White, *Prosser and His Influence*, 6 J. TORT L. 27, 28 (2013).

7. H. Alston Johnson, *So What Is a Ruminator, Anyway: Tales of Professor Wex S. Malone*, 56 LA. L. REV. 493, 493 (1996).

8. E-mail from Christopher Hart, Dir. of Sales and Account Mgmt., Found. Press, to author (Feb. 5, 2015, 14:44 EST) (on file with author). The first edition was published in 1952. See YOUNG B. SMITH & WILLIAM L. PROSSER, CASES AND MATERIALS ON TORTS (1952). The most recent edition was published in 2015. See VICTOR E. SCHWARTZ ET AL., PROSSER, WADE AND SCHWARTZ’S TORTS: CASES AND MATERIALS (13th ed. 2015).

9. PROSSER, 1941 LAW OF TORTS, *supra* note 4, at 688–89.

10. *Escola v. Coca Cola Bottling Co.*, 150 P.2d 436, 440 (Cal. 1944).

Upon the Citadel,¹¹ has been described as “a model of how legal scholarship can serve to further doctrinal change in a common law subject.”¹² Moreover, in drafting the products liability sections of the *Restatement (Second) of Torts*, especially § 402A, Prosser legitimized strict products liability.¹³ Regarding privacy law, Prosser’s scholarship established the division of the vague tort right of privacy into four separate causes of action.¹⁴ Prosser’s 1960 article, *Privacy*,¹⁵ followed by the privacy provisions in the *Restatement (Second) of Torts*, “came to supplant Warren and Brandeis’s work as the touchstone of privacy jurisprudence.”¹⁶ Finally, Prosser’s 1939 article on the intentional infliction of emotional distress¹⁷ legitimized that cause of action as an independent tort. In the article, Prosser announced that courts had created a “new tort;”¹⁸ one scholar notes: “Prosser’s statement had an element of accuracy. But it was also unnecessarily modest. A major contribution to the ‘creation’ of the ‘new tort’ had been made by Prosser himself.”¹⁹

In spite of these accomplishments, no full-length biography of Prosser exists. A major reason for the lack of such a volume is undoubtedly the absence of Prosser’s papers. A search of the National Union Catalog of Manuscript Collections at the Library of Congress did not reveal any institution holding Prosser papers;²⁰ moreover, “calls to . . . the four schools at which Prosser [served as] either a professor or dean confirmed Prosser did not leave his papers to any of those institutions.”²¹ The most likely explanation

11. See generally William L. Prosser, *The Assault upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099 (1960).

12. G. EDWARD WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* 169 (2003).

13. See RESTATEMENT (SECOND) OF TORTS §§ 402A–402B (AM. LAW INST. 1965). Tom Galligan has stated: “[T]he influence of the Restatement (Second) of Torts section 402A was unprecedented in American law. No other single Restatement section (with the possible exception of Restatement of Contracts section 90 on promissory estoppel) has been more influential in the development of American law.” Thomas C. Galligan, Jr., *A Primer on Cigarette Litigation Under the Restatement (Third) of Torts: Products Liability*, 27 SW. U. L. REV. 487, 498 (1998).

14. The four privacy torts are: (1) intrusion upon plaintiff’s seclusion or solitude; (2) public disclosure of embarrassing private facts; (3) publicity that places the plaintiff in a false light in the public eye; and (4) appropriation for the defendant’s advantage of the plaintiff’s name and likeness. RESTATEMENT (SECOND) OF TORTS §§ 652B–652E (AM. LAW INST. 1977).

15. William L. Prosser, *Privacy*, 48 CALIF. L. REV. 383 (1960).

16. Jonathan Kahn, *Bringing Dignity Back to Light: Publicity Rights and the Eclipse of the Tort of Appropriation of Identity*, 17 CARDOZO ARTS & ENT. L.J. 213, 223 (1999). For an appraisal of this development, see generally Neil M. Richards & Daniel J. Solove, *Prosser’s Privacy Law: A Mixed Legacy*, 98 CALIF. L. REV. 1887 (2010).

17. William L. Prosser, *Intentional Infliction of Mental Suffering: A New Tort*, 37 MICH. L. REV. 874 (1939).

18. *Id.* at 874.

19. WHITE, *supra* note 12, at 102.

20. The search was performed by Ed Sonnenberg, Reference/Government Documents Librarian at Widener University School of Law, on February 7, 2015.

21. Christopher J. Robinette, *The Prosser Notebook: Classroom as Biography and Intellectual History*, 2010 U. ILL. L. REV. 577, 581 (footnote omitted).

for the absence of Prosser's papers is that he destroyed many of them when he left the University of California, Berkeley for the University of California, Hastings in 1963.²² According to Thomas Reynolds, the former Associate Director of the Law Library at Berkeley, when Prosser left, "he certainly threw out some materials."²³

Recently, however, scholars have compiled shorter biographical information about Prosser. First, John C.P. Goldberg of Harvard Law School authored a brief biography for a compilation of American law biographies.²⁴ In 2010, based on archival research and interviews, I published a short sketch of Prosser's life as part of an article discussing a student's notebook from Prosser's 1938–1939 Torts course at the University of Minnesota.²⁵ In an article published in the *Journal of Tort Law*, Kenneth Abraham and G. Edward White, both of the University of Virginia School of Law, provide further details of Prosser's life as part of a piece that focuses on his use of language as a source of his influence.²⁶ Abraham and White hoped to take a step to fill the biographical gap, but call on scholars to progress even further.²⁷

Such progress is possible thanks to the existence of three collections of Prosser's letters. The first collection is a series of 75 letters from Prosser to his mother written between 1948 and 1958, while Prosser was dean at Berkeley. Richard Prosser, William Prosser's second son, provided these letters to the Berkeley Law Library.²⁸ The second collection of 50 letters, mostly from Prosser to his mother, but also including other family letters, date from 1919 until 1953. Douglas Strand, who purchased some of Prosser's letters at a yard sale in the Berkeley area, provided this second collection of letters to the University of Minnesota Law Library in 2012.²⁹ The third collection of six letters, between Prosser and his theatre professor at Harvard, date from 1917 until 1922. Collectively, these letters allow us to learn more about Prosser's life than any other known source and provide Prosser's (often extraordinarily) candid thoughts about a tremendous range of subjects. I have divided Prosser's life into two parts: before and after he became dean of the University of California, Berkeley in 1948. This first essay will focus on Prosser's life between 1917, the date of the first letter, and 1948, when he is

22. *Id.*

23. *Id.* (citing e-mail from William Bennemann, Archivist, Univ. of Cal., Berkeley (Boalt Hall), to author (July 2, 2008, 12:46 PDT) (on file with author) (quoting correspondence with Thomas Reynolds)).

24. John C.P. Goldberg, *Prosser, William L.*, in *THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW* 439, 439–41 (Roger K. Newman ed., 2009).

25. *See generally* Robinette, *supra* note 21.

26. *See generally* Abraham & White, *supra* note 6.

27. *Id.* at 29.

28. Robinette, *supra* note 21, at 581–82.

29. E-mail from Ryan Greenwood, Curator of Rare Books & Special Collections, Riesenfeld Rare Books Research Ctr., Univ. of Minn. Law Library, to author (Jan. 29, 2015, 13:23 EST) (on file with author).

a professor at Harvard Law School and about to be appointed as Berkeley's dean.

After the Introduction, the Essay proceeds through Prosser's life chronologically. Part II will cover Prosser as a young man and is divided into three subparts. Subpart A will briefly cover Prosser's childhood, college, and military careers, partially clearing up some confusion as to where Prosser grew up. Subpart B covers Prosser's time as Secretary to the U.S. Commercial Attaché in Brussels, Belgium, immediately following World War I. He is focused on his future. One of the letters contains a remark about Prosser's honesty, which is provocative given the controversy surrounding Prosser's method of influencing the course of the law. Subpart C focuses on Prosser's graduate education at Harvard. This Subpart includes an explanation for the discrepancy in accounts over whether Prosser started law school in 1920 or 1921 and features his thoughts on first-year pedagogy. Part III focuses on the evolution of Prosser's career and is also divided into three Subparts. Subpart A covers Prosser as an upper-level law student at the University of Minnesota. Subpart B describes Prosser's life as a practitioner in Minneapolis in the period when the Great Depression sets in. He describes the rites of passage of a litigator, including depositions, his first solo trial, and appeals. Subpart C then covers Prosser's early life as an academic. The letters are rich with details about Prosser's struggle with the decision to leave practice. It is clear that Prosser had strongly mixed feelings about teaching law at the time he committed to the profession. The second half of the Subpart describes his reactions to joining the academy. He initially found the profession detached from reality and admitted candidly that he knew very little about how to teach. The Part concludes with a 1948 letter while he is a professor at Harvard Law School and surveying potential places to live if he were to remain on that faculty. Part IV concludes with a general assessment of what Prosser's letters between 1917 and 1948 reveal, and fail to reveal, about his life, career, and personality.

Readers should be aware that Prosser makes liberal use of ethnic references and I have included several in the text.

II. FINDING HIS WAY: PROSSER AS A YOUNG MAN

A. CHILDHOOD, COLLEGE, AND THE MILITARY

"William [Lloyd] Prosser was born on March 15, 1898 in New Albany, Indiana to Charles Allen Prosser and Zerelda Ann Huckeby Prosser;"³⁰ he would be their only child.³¹ Prosser's father, Charles, was highly educated, and

30. Robinette, *supra* note 21, at 582 (footnote omitted).

31. John Gadell, Charles Allen Prosser: His Work in Vocational and General Education 8 n.1 (Aug. 1972) (unpublished Ph.D. dissertation, Washington University in St. Louis) (on file with author). William Prosser wrote a letter to Gadell dated May 3, 1967 and sat for a four-day

attained a master's degree while teaching high school.³² Prosser's father also held a law degree and a Ph.D.³³ Prosser's mother, Ann, was a kindergarten teacher.³⁴ At the time of Prosser's birth, Charles Prosser taught History and Physics at New Albany High School.³⁵ In 1900, Charles attempted a brief, and unsuccessful, experiment in practicing law in Joplin, Missouri; he was gone for three months and did not take his family with him.³⁶ Fortunately, in the same year, Charles was appointed superintendent of the New Albany school system, a position he held until 1908.³⁷ During his tenure as superintendent, Charles also served as a part-time judge.³⁸

In 1908, Charles took a leave of absence from his position as superintendent and moved to New York City to pursue a doctorate in Teachers College, Columbia University.³⁹ During his doctoral work, he was heavily influenced to pursue vocational education by one of his professors, David Snedden.⁴⁰ When Charles received his doctorate, he was hired as deputy commissioner of Industrial Education in Massachusetts by Snedden, who had become commissioner several months earlier.⁴¹ In 1912, Charles accepted the position of Secretary of the National Society for the Promotion of Industrial Education in New York City, a position he held for three years.⁴² In 1915, Charles Prosser became the principal of the Dunwoody Industrial Institute in Minneapolis, Minnesota,⁴³ a vocational school created by philanthropic bequest a year earlier.⁴⁴ Charles held this position until his retirement in 1945,⁴⁵ with the exception of a period during 1917–1919, when he took a leave of absence to serve as the first Director of the Federal Board for Vocational Education.⁴⁶

Charles believed in the separation of vocational and general education; he pursued this idea and became a proponent of federal funding for

interview with him in September 1967. *Id.* at 8 n.1, 12 n.9. This is a marvelous source of information on Prosser's father and other ancestors.

32. *Who Was CA Prosser*, PROSSER CAREER EDUC. CTR., <http://prosser.nafcs.k12.in.us/who-was-ca-prosser> (last visited Jan. 10, 2016).

33. *Id.*

34. Gadell, *supra* note 31, at 19.

35. *Who Was CA Prosser*, *supra* note 32.

36. Gadell, *supra* note 31, at 25–26.

37. *Id.* at 42, 46.

38. *Id.* at 42.

39. *Id.* at 46.

40. *Id.* at 131.

41. *Id.* at 160.

42. Abraham & White, *supra* note 6, at 30 n.7; *Who Was CA Prosser*, *supra* note 32.

43. Abraham & White, *supra* note 6, at 30; *Who Was CA Prosser*, *supra* note 32.

44. Gadell, *supra* note 31, at 209–12.

45. *Id.* at 226.

46. *Id.* at 194, 200.

vocational education.⁴⁷ Charles drafted and was instrumental in the passage of the 1917 Smith–Hughes Act, which authorized the first federal funding for vocational education.⁴⁸ His work at the pioneering Dunwoody Industrial Institute helped shape many of the vocational education concepts used today.⁴⁹ Based on Charles Prosser’s successful advocacy for funding and development of education techniques, he is known as the “Father of Vocational Education.”⁵⁰

Charles Prosser’s work history and remarks in two letters make it possible to recreate the location of much of William Prosser’s childhood. The first ten years of Prosser’s life were spent in New Albany, Indiana while his father was a teacher and superintendent. Charles left New Albany in 1908 to pursue a doctorate at Columbia University, and the Prosser family lived in or near New York City from 1908 until 1910.

William Prosser and his mother, but not necessarily Charles, lived in Newtonville, Massachusetts for five years. In a 1948 letter to “Butch,” Prosser refers to “our old house in Newtonville.”⁵¹ More significant are remarks written by Prosser’s mother to his father in 1943. She wrote that she has been spending her evenings reading “Prosser on Torts” and remarked, “That son of ours can certainly ‘sling the King’s English.’”⁵² She continues: “I marvel at his freedom of expression and the way he cuts through the language to make his meaning clear.”⁵³ She then attributes Prosser’s skill to her work with him: “The results of all those long evenings I spent reading aloud and talking about the reading to him, during the five years he and I spent most of the time alone in Newtonville, turn up in this book”⁵⁴ It seems reasonable to infer that the

47. *Id.*

48. *Id.* at 190. The inspiration for the Act is a report and recommendation authored by Charles Prosser entitled *Report of the National Commission on Aid to Vocational Education*. *Id.* at 189–90, 189 n.27. Prosser “recalled watching his father write the ‘proposed legislation’ on ‘the dining room table.’” *Id.* at 190 n.28 (citing Interview with William L. Prosser, in St. Louis, Mo. (Sept. 1967)). Woodlawn High School, in Carroll County, Virginia, became the first public secondary school to offer agricultural education classes under the Act. CARROLL CITY BD. OF SUPERVISORS, WOODLAWN SCHOOL RESOLUTION, http://carrollcountyva.org/docs/bdpkt/2013/June/03g_WOODLAWN_SCHOOL_RESOLUTION.pdf (last visited Jan. 10, 2016).

49. *Who Was CA Prosser*, *supra* note 32.

50. *Id.*

51. Letter from William L. Prosser to “Butch” (Feb. 23, 1948) (on file with author). Prosser provides further description: “I drove past our old house in Newtonville, which is still standing, although somebody has now painted it the inevitable chocolate with yellow trim. All of the houses around it are unchanged.” *Id.* He describes changes to the “old high school” and notes, “The old tennis courts are still there, on which Dad and I used to have those battles.” *Id.*

52. Letter from Zerelda Ann Huckeby Prosser to Charles Allen Prosser (June 20, 1943) (on file with author).

53. *Id.*

54. *Id.* She continues: “If I hadn’t been so interested in watching Bill develop and in following his progress through high school during those years I would have spent a very lonely time. On the other hand I managed to make it part of the most interesting time of my life. And I think it wasn’t altogether wasted.” *Id.*

Prosser family moved to Newtonville, which is suburban Boston, when Charles took the position of deputy commissioner of Industrial Education in Massachusetts in 1910. Charles Prosser returned to New York City in 1912 as secretary of the National Society for the Promotion of Industrial Education. Prosser and his mother appear to have remained in Newtonville while Prosser finished attending Newton High School.⁵⁵ Prosser entered Harvard as a freshman in 1914.⁵⁶

In 1915, Charles Prosser accepted a position as principal of the Dunwoody Industrial Institute in Minneapolis. Prosser moved with his family to Minneapolis and spent his sophomore year at the University of Minnesota.⁵⁷ He returned for his junior and senior years and received a B.A. from Harvard University in 1918.⁵⁸ The notice released by the University of California after Prosser's death stating that he spent most of his childhood in Minnesota is false.⁵⁹ He did not live in Minnesota until his sophomore year in college in 1915–1916. There is not much known about Prosser's undergraduate career, and only one of the letters is from that period of his life. Prosser's records indicate he was an English major who earned mostly B's.⁶⁰ He was in the Reserve Officers' Training Corps and was on the debate teams at both Harvard and Minnesota.⁶¹

Upon graduation, with World War I ongoing, "Prosser enlisted as a gunnery sergeant with the Aviation Detachment of the United States Marine Corps on July 18, 1918"⁶² Prosser apparently spent his time in the Marine

55. Harvard University Undergraduate Record of William Lloyd Prosser, A.B. 1918 (on file with Harvard University Archives) (stating Prosser attended "Newton High"). Prosser graduated second in his class and edited the school newspaper in his last year. Letter from William L. Prosser to George Pierce Baker (July 1, 1917) (on file with author). The letters between Prosser and Baker are available at bMS Thr 639, Houghton Library, Harvard University.

56. Harvard University Undergraduate Record of William Lloyd Prosser, A.B. 1918, *supra* note 55; *see also* William L. Prosser, *My Philosophy of Law*, 27 CORNELL L.Q. 292, 293 (1942) (book review) (beginning a sentence by writing, "Back in 1914, when I was a freshman at Harvard . . ."). Prosser "was one of the ten who passed the highest entrance examinations." Letter from William L. Prosser to George Pierce Baker, *supra* note 55.

57. Harvard University Undergraduate Record of William Lloyd Prosser, A.B. 1918, *supra* note 55 ("Oct. 17, 1916—'On recommendation of the Comm. on Admission, to credit Prosser with a year's work at Harvard, by reason of his work at the University of Minnesota.'"). Prosser's sophomore year grades, unlike his freshman, junior, and senior grades, are not listed in the Harvard records.

58. Robinette, *supra* note 21, at 583.

59. *See* Press Release, Univ. of Cal. (System) Acad. Senate, University of California (July 1975), <http://texts.cdlib.org/view?docId=hb9t1nb5rm&doc.view=frames&chunk.id=div00055&toc.depth=1&toc.id=>

60. Harvard University Undergraduate Record of William Lloyd Prosser, A.B. 1918, *supra* note 55 ("Concentration. Subject: English"). Of the grades listed on the transcript, Prosser earned 13 B's, 2 C's, and 2 A's. *Id.*

61. Letter from William L. Prosser to George Pierce Baker, *supra* note 55.

62. Robinette, *supra* note 21, at 583.

Corps in Miami, Florida as a student in training to be an aviator.⁶³ Prosser explains his failure to respond to a letter during that time period: “At the time I was working twelve hours a day building coral roads in a Florida swamp that was called an aviation field, and I didn’t have the energy to write again.”⁶⁴ Prosser did, however, learn to fly an airplane. In a 1953 letter discussing a visit to the Ford Museum in Dearborn, Michigan, Prosser commented on seeing “the Curtiss JN-4 training planes I used to fly during the first war.”⁶⁵ After the end of the War, Prosser “was commissioned as a second lieutenant on December 5, 1918,”⁶⁶ after his first solo flight.⁶⁷

Once Prosser left the Marines, he traveled “more or less about the country . . . looking for a job. The original plan was newspaper work, but I lost all desire for that sort of thing in the marines, and I have been hunting for something else.”⁶⁸ Finally, Prosser “landed a position with the Bureau of Foreign and Domestic Commerce They are sending a ‘trade commission’ to each of the European countries which has been torn up by the war, with the idea of getting a report on the opportunities for American exporters during the period of reconstruction.”⁶⁹ The assignment was temporary and its duration was unknown, but Prosser believed he would return in about six months.⁷⁰ Thus, Prosser traveled to Europe.

B. SECRETARY TO THE COMMERCIAL ATTACHÉ IN BRUSSELS, BELGIUM

The first letter from Europe is written nearly a year later, in December 1919, when Prosser is Secretary to the United States Commercial Attaché in Brussels, Belgium.⁷¹ At this point, Prosser is 21 years old. As with nearly all of the letters in both major collections, Prosser is writing to his mother. Only one of the letters is to his father⁷² and one is to “Family.”⁷³ Christmas is approaching and he is considering options for where to spend it. He lists

63. Letter from Charles Allen Prosser to George Pierce Baker (Dec. 17, 1918) (on file with author) (“William has just been discharged from the marine aviation camp at Miami, Florida, where he was a student in training as an aviator.”).

64. Letter from William L. Prosser to George Pierce Baker (Feb. 5, 1919) (on file with author).

65. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Sept. 16, 1953) (on file with author).

66. Robinette, *supra* note 21, at 583.

67. Letter from William L. Prosser to George Pierce Baker, *supra* note 64.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* A “commercial attaché” is a person posted to a foreign embassy to promote the economic interests of his or her home country. Michael Knes, *Commercial Attaché*, REFERENCE FOR BUS., <http://www.referenceforbusiness.com/encyclopedia/Clo-Con/Commercial-Attach.html> (last visited Jan. 10, 2016).

72. Letter from William L. Prosser to Charles Allen Prosser (Sept. 18, 1948) (on file with author). The letter is sent two days before Charles Prosser’s birthday. *Id.*

73. Letter from William L. Prosser to “Family” (June 17, 1930) (on file with author) (requesting to know their plans for the summer).

several places in Germany, but doesn't "very much like the idea of spending Christmas among the Heimies."⁷⁴ He is also ready to return home: "Darned lonesome in this man's country. Bring on July first."⁷⁵

The collection contains five letters Prosser writes from Belgium. Some of the content is predictable; Prosser discusses his work and, as an American in Europe, makes several cultural observations. Prosser also offers amusing anecdotes about his time in Belgium, such as his purchase of a Browning automatic revolver. Certain themes are established that will recur in his letters over the decades; among them, his enjoyment of movies⁷⁶ and art museums.⁷⁷ Of most interest to scholars are Prosser's musings on his future as he prepares to return to the United States.

Not surprisingly, some of his focus is on his job. In March of 1920, Prosser states that "[t]hings have been going on so fast lately that I can't see straight."⁷⁸ He then describes a typical personnel change in which one trade commissioner, Mr. Herring,⁷⁹ is to be replaced by another, Mr. Wood,⁸⁰ so Mr. Herring can become Assistant Director in the Bureau.⁸¹ This was not amusing to the Ambassador,⁸² who Prosser said "seems to be a temperamental sort of man," because the Ambassador "ha[d] taken a considerable liking to Mr. Herring" and would not welcome Mr. Wood "until he had had a good long look at [him]."⁸³ "The next lightning occurrence was the decision that Mr.

74. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (n.d.) (on file with author). References to Christmas in this letter and references to lace discussed in this and a subsequent letter allow dating of the letter as December 1919. As will be seen, Prosser makes liberal use of ethnic references. They are jarring and offensive, but likely more common in the time period.

75. *Id.*

76. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (July 16, 1920) (on file with author) (noting that he "saw a Douglas Fairbanks movie").

77. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Mar. 22, 1920) (on file with author) ("I prefer Spain, as it is more romantic and less tourist-ridden, and the art galleries and cathedrals and things are far superior to most of those in Italy. The guide book informs me that there are 67 Velasquez paintings in the Prado in Madrid, and more Titians and such than in any one gallery in Italy. With the possible exception of the Dresden gallery, and of the combination of two galleries down in Florence, the Prado is the greatest art gallery in the world.").

78. *Id.*

79. C.E. Herring. *See Report of the Director, Bureau of Foreign and Domestic Commerce, in REPORTS OF THE DEPARTMENT OF COMMERCE 1920: REPORT OF THE SECRETARY OF COMMERCE AND REPORTS OF BUREAUS* 243, 253 (1921) ("On July 1, 1920, C.E. Herring, who had been a trade commissioner conducting a general commercial and economic investigation in Belgium, became First Assistant Director.").

80. Charles P. Wood. *See generally* CHARLES P. WOOD, INDUSTRIAL MACHINERY IN FRANCE AND BELGIUM (1920). The report on machinery is authored by "Charles P. Wood, Trade Commissioner." *Id.* Prosser notes that Wood "seems to know everything there is to be known about machinery." Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77.

81. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77.

82. Brand Whitlock. *See* Branden Little, *Whitlock, Brand*, 1914-1918-ONLINE, http://encyclopedia.1914-1918-online.net/article/whitlock_brand (last modified Nov. 26, 2015).

83. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77.

Herring . . . ought to make a tour of inspection of all the European offices, and see what the conditions and problems were in each of them. In other words, a grand joy ride.”⁸⁴ It was Prosser’s job to set up this tour that would cover nearly every major city in Europe: “Believe me, I know all there is to be known about European trains. It nearly drove me crazy with envy. . . . It isn’t very often that a man takes a ride like that at government expense.”⁸⁵ Thus, Mr. Herring left: “So I am here alone at present, sitting in the office with my feet on the stove (figuratively—actually it is too hot to put your feet on the stove) and doping out reports to send the Bureau.”⁸⁶ Until Mr. Herring’s return, “I am the Trade Commission to Belgium again. . . . I think the Bureau is pretty darn careless about whom it leaves in charge of its offices.”⁸⁷ Prosser was not fond of such solitude: “My solitude has endured two days, and I am at the end of my rope already.”⁸⁸

As discussed, Prosser makes several cultural and historical observations. Prosser closes a February, 1920 letter with the following: “French are much exercised over a posters [sic] some of the doughboys had printed and stuck up in Coblenz. To the following effect: ‘We’ve PAID our debt to LAFAYETTE WHO THE HELL DO WE OWE NOW?’”⁸⁹ Prosser appears to agree: “Them’s [sic] my sentiments.”⁹⁰ At one point, Prosser draws a contrast between the French and Americans (then operating under Prohibition) on attitudes regarding alcohol:

You can’t blame the French for their confirmed opinion that all Americans are crazy. First we go dry and then Pussyfoot Johnson arrives in France and gets a lot of publicity advocating prohibition in France (which sounds about as reasonable to a Frenchman as if somebody ordered him not to eat bread) and then the first official act of every American who comes over here and gets through the passport barrage safely is to take a room at a hotel and order them to send up everything in the cellar, with some ice and a shaker. . . . I have repeatedly been assured that I am the only American that has ever been seen in public in Brussels drinking water.⁹¹

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Feb. 6, 1920) (on file with author).

90. *Id.*

91. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Apr. 12, 1920) (on file with author).

Prosser also comments on post-War negotiations with the Germans. In a letter written on his way back to the United States,⁹² Prosser states there is “[m]uch agitation about the Spa conference breaking up.”⁹³ The Spa Conference was a meeting between the Allies and Germany in Spa, Belgium between July 5 and 16, 1920, in which German disarmament and War reparations were discussed.⁹⁴ Prosser observes: “I believe myself that some of the Allies’ demands are impossible . . . but it is dead certain that the Germans would have acted as they have in any case.”⁹⁵ In his opinion, “[t]he Allies have got to make good their bluff of military occupation beyond the Rhine at least once before they will get good behavior from Berlin.”⁹⁶

Not all of Prosser’s focus is on such weighty matters. He playfully tells his mother about his purchase of a gun: “I regret to report that I have fallen a prey to one temptation. . . . A salesman nailed me, and proceeded to show me the sweetest little automatic revolver you ever saw in your life. It was a regular Browning gun”⁹⁷ Prosser is enthused: “Twelve shots with one load, thirty-two calibre [sic], suitable for American or English ammunition, and as good as any Colt or Savage ever invented.”⁹⁸ He chides his mother:

All my life I always wanted a gun, to shoot at tin cans in the alley, or blow holes in policemen, or something. I never got it. What is it that all fond parents are always anxious for a boy to learn to play a piano or waltz divinely, and don’t care a rap whether he ever learns to shoot, or fight, or ride a horse, or swim half a mile, or do any of the other important things of life?⁹⁹

After he actually purchased the gun, he reports he took it on a trip into the country, but without much success: “I took my new revolver along, and we took turns blazing away to the extent of twenty-five cartridges on the walk from Rochefort to Han. The result was negative. We didn’t hit anything.”¹⁰⁰

Even though he treats the topic playfully, Prosser feels the gravity of imminent decisions about his life. A week after his 22nd birthday, Prosser writes his mother: “I shall be loose upon the country. . . . Anyhow, I shall hit America . . . some time before the first of August. I shall have a suit of clothes

92. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 76. Prosser indicates he is “[a]float in the North Sea.” *Id.*

93. *Id.*

94. See Edwin L. James, *Germans Jolted by Allies at Spa*, N.Y. TIMES (July 6, 1920), <http://query.nytimes.com/mem/archive-free/pdf?res=9403E7DF163BE533A25755CoA9619C946195D6CF>.

95. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 76.

96. *Id.*

97. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77.

98. *Id.*

99. *Id.*

100. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 91.

or two, a trunk full of junk, and some \$700 in cash clear on the year . . .”¹⁰¹ After a discussion of a road trip Prosser would like to take, he states, “About the first of September I shall come to my senses, and begin to worry about a job.”¹⁰² Apparently, Prosser’s mother had asked whether he would go back to Harvard. He responds that the only reason he could think of to return was to focus on playwriting, but this was strictly for amusement.¹⁰³ Prosser states, “I have no intention of writing plays for a living, any more than I intend to do teaching or the ministry or newspaper work or any of the other things my highly expensive education has fitted me for.”¹⁰⁴ In essence, Prosser would become a “dilettante . . . I would like to do this, but I can’t afford it, because I have my living to earn.”¹⁰⁵ Prosser rejects the idea of having his family pay for such a luxury and states: “The only alternative that I could see would be to get some sort of job requiring no brain work in Boston which would keep me in board and laundry for nine months while I gave my main attention to play writing. . . . Jobs like that don’t grow on every bush . . .”¹⁰⁶

Prosser states he “might as well begin to figure out how I am going to earn my living.”¹⁰⁷ He then notes his dad, who works in “employment management an[d] such things,”¹⁰⁸ may be able to help. Accordingly, Prosser drafts the following facetious resume:

Physical assets: poor to fair.

Physical condition: fair to middling.

Business assets: Ability to run an Underwood typewriter, not scientifically, at average rate of speed. Ability to take Gregg shorthand unscientifically, at rate of some 50 words a minute, and read it back with numerous mistakes. Ability to translate French language with a good dictionary, with some accuracy and fair rate of speed. Ditto with German language, barring rate of speed, which is much slower. Rudiments of Spanish, but not good enough for business purposes. Can write neither French, German, nor Spanish fluently or correctly. Good knowledge of English literature and ability to write English language. One year spent in office in Belgium, but not much contact with Belgians, and no contact with commercial methods or commercial people. Rudiments of chemistry, almost forgotten. Can drive auto.

101. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 77.

102. *Id.*

103. *Id.* Abraham and White note that Prosser wrote plays. See Abraham & White, *supra* note 6, at 35–36.

104. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 77.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

Business liabilities: Profound disinclination to have anything to do with literature or any job involving shorthand, translation, or typewriting. Lack of experience in meeting people, and innate awkwardness when confronted with strangers which is serious handicap. No physical strength; no mechanical training, no engineering knowledge, no idea of business other than that obtained from reading Saturday Evening Post. Probably distorted idea of finance and economics obtained from college course. Likely to blow up under prolonged irritation, and inclined to be too critical of superiors. Gets grouchy when lonesome. Eats onions occasionally.¹⁰⁹

In light of the fact Prosser spent much of his adult life in the academy, his negative attitude about teaching is notable. In the same letter, Prosser is even more dismissive of professors specifically. He writes his mother about a “particularly clever”¹¹⁰ article entitled “The Importance of Being a Professor, by One.”¹¹¹ No author is listed, but Prosser says: “[B]y the general tone and content of the thing I am very much inclined to believe it was Hocking,¹¹² as I don’t suppose it is possible that there could be two philosophy profs in the country with a sense of humor.”¹¹³ Prosser states the author of the article argues that the reason that a professor gets paid less than a janitor is that he is less valuable than the janitor: “[T]hat everybody could get along quite comfortably if all the professors alive were killed off with an ax, but that in this era of steam heat janitors are a necessity.”¹¹⁴ Prosser seems to agree: “When I write a textbook on education, I am going to make that my opening sentence.”¹¹⁵

In the letter he writes on the way back to the United States, Prosser mentions an opportunity one of his friends put forth: “He wants me to come down to Cuba with the United Fruit Company—says there is a great opportunity, and he can get me an opening.”¹¹⁶ Prosser appreciates the effort; it is comforting to know there are people who care whether he “teach[es] English or clean[s] sewers.”¹¹⁷ The United Fruit Company is not, however, exciting to Prosser: “[T]he idea of three more years out of the United States

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* As a freshman in 1914, Prosser was in a philosophy course taught by Hocking. Prosser, *supra* note 56, at 293.

113. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 77.

114. *Id.*

115. *Id.*

116. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 76.

117. *Id.*

doesn't appeal to me right now, I don't know anything that does, but that doesn't."¹¹⁸ Yet "in the absence of anything else it is worth considering."¹¹⁹

Two traits that have been associated with Prosser in the career he ultimately selected—one positive and one negative—feature in the letters from Belgium. On the positive side, Prosser is known for his attention to detail. The footnotes in his hornbook are voluminous. He "collected a vast number of cases (more than 15,000 in the footnotes of the First Edition) He frequently used examples and hypotheticals to show graphically the operation of the rules upon various fact patterns rather than simply stating the doctrine at issue abstractly."¹²⁰ Such attention to detail is already obvious in Prosser at age 21. While in Belgium, Prosser procures lace at his mother's request. The level of detail at which Prosser learns about Belgian lace is mind-numbing. He spends three pages in his first letter categorizing and describing types of lace.¹²¹ He resumes the theme in his letter of February 6, 1920, in which he spends approximately eight more pages discussing lace.¹²² Prosser is frustrated at his mother for not providing him sufficient details to make purchases,¹²³ so he asks her five series of questions.¹²⁴ A portion of one of the series of questions is sufficient to make the point:

"Some rose point"—well, rose point is almost the same as your collar and Christmas lace—it is the same as Point de Bruxelles. Do you want some more of this? How much? What width? What kind of edges? Do you mean Royal Point, which is a mixture of Point de Bruxelles and Duchess? Or do you mean Rosaline? I should strongly recommend getting your lace by the yard in Rosaline instead of Duchess—or both. Rosaline is much finer, although very similar. It has complicated little circles worked into it, and it is hard to wash clean because the threads are so complicated, so it is no good for handkerchiefs and table linen, but will do for collars and dress trimmings. You can't put Rosaline on the same dress as the Duchess collar, because Duchess is white and Rosaline is cream-colored.¹²⁵

The second trait, briefly mentioned in the letters from Belgium, is Prosser's honesty. Prosser's critics have accused him of various shades of dishonesty, particularly regarding his treatise.¹²⁶ Abraham and White

118. *Id.*

119. *Id.*

120. Joyce, *supra* note 2, at 856.

121. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 74.

122. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 89.

123. *Id.* ("In your letter which came today, you mentioned only two things at all definitely").

124. *Id.*

125. *Id.*

126. See, e.g., Philip P. Frickey, *Transcending Transcendental Nonsense: Toward a New Realism in Federal Indian Law*, 38 CONN. L. REV. 649, 653–54 (2006); George L. Priest, *The Invention of*

summarize this criticism: “Over the years, in conversations and elsewhere, we have heard it said that he mis-cited cases; that he benefitted from what might be called ‘bootstrapping’ . . . and that he had a tendency to see ‘trends’ in the law of torts that had surfaced more in his own mind than in the case law.”¹²⁷ In their careful linguistic analysis of Prosser’s treatment of intentional infliction of emotional distress and privacy in his treatise, Abraham and White do not find much evidence of those particular charges.¹²⁸ They do, however, find “Prosser sometimes created an impression of doctrinal intelligibility and coherence that amounted to more than his sources reflected. . . . [H]e managed to give the impression that there was more backing him up, that there was more law in motion and that its governing principles were more clearly articulated, than actually was the case.”¹²⁹

In light of this controversy, Prosser’s comments about how to get the aforementioned lace back to his mother are provocative. He states: “As for getting the things home, if necessary I can smuggle them in in [sic] the government supply truck. I haven’t any conscience about beating the government out of money, because it strikes me that is all I have been doing since July, 1918 anyhow.”¹³⁰ Reflecting on his plan, he continues, “I always knew there was some inherited dishonesty in me anyhow. Maybe I got it from Uncle Joe Prosser.”¹³¹ It is hard to know how seriously to take this, and many of Prosser’s remarks. Many of his statements can be described as sarcastic. Prosser, however, seemed to be serious about many of the thoughts that he communicated in a sarcastic tone. He communicated information while at the same time being humorous. This statement fits into that pattern. He told his mother that he would ship lace out in a government supply truck if needed. And his analysis of that plan is accurate. It is, at least, a bit dishonest.

C. GRADUATE EDUCATION AT HARVARD

In July of 1920, William Prosser was sailing back to the United States and pondering what to do with his life. He would attend Harvard Law School for a year beginning in the fall of 1921.¹³² What did he do in the intervening year?

Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law, 14 J. LEGAL STUD. 461, 512–18 (1985).

127. Abraham & White, *supra* note 6, at 28. “Bootstrapping” means “asserting doctrinal propositions based on scant authority, being cited by subsequent courts, and then citing these courts to prop up his earlier assertions.” *Id.*

128. *See id.* at 29 (noting that it appears that Prosser destroyed most of his personal papers).

129. *Id.*

130. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 89.

131. *Id.* Prosser spoke at length about Joseph Prosser in the interview with John Gadell. *See Gadell, supra* note 31, at 12–13. Joseph Prosser was the eldest brother of Prosser’s grandfather and Charles’s father, Rees Prosser. *Id.* Known as the “disreputable Uncle Joseph,” he “alternated between periods of relative stability as a ‘steel man’ in New Albany, and periods of mysterious travel elsewhere. . . . He was the subject of much gossip in New Albany. . . .” *Id.*

132. Robinette, *supra* note 21, at 583.

In his March, 1920 letter, he discusses going to Harvard to write plays.¹³³ He provides more specifics: “I can think of only one inducement to go back [to Harvard]—namely, to take a special course consisting of Baker’s play course, and devote all my time to it.”¹³⁴ Prosser references the class by its course number “English 47”¹³⁵ and its nickname, “the Workshop.”¹³⁶ The “Baker” Prosser referenced is George Pierce Baker, a giant on the Harvard faculty.¹³⁷ Baker is credited with being “a central figure in the revival of the American theater that had” started prior to World War I.¹³⁸ The course itself, English 47, “was nationally renowned for over thirty years” and its students included “some of the greatest names in American letters.”¹³⁹

Prosser was more serious about writing plays than has been recognized. In high school, he “wrote a five-act play, entitled, ‘Checkmate,’ which won . . . a competition, and was produced as the Senior class play.”¹⁴⁰ Prior to his senior year at Harvard, Prosser applied for admittance into English 47; his transcript states that students must obtain permission to enroll in the course.¹⁴¹ Prosser wrote and submitted a play to Baker as part of the process for admission.¹⁴² It appears Baker liked the play, for Prosser writes, “I was agreeably startled to learn that you considered it one of the best handed in this year.”¹⁴³ Baker allowed Prosser to enroll.

Baker spent a lot of time and energy on each student. Enrollment was generally between 10 and 12 students, who were known as the “Baker’s Dozen.”¹⁴⁴ Baker was serious about focusing his resources on promising playwrights. Not only is initial admission to the course difficult to attain, an invitation to the second year is not automatic. Of the 11 students starting in 1920, only six were asked to return for a second year.¹⁴⁵ Correspondence between Prosser and Baker reveals that Prosser, who earned an A in the course,¹⁴⁶ intended to return for a second year of the Workshop and Baker

133. See Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77.

134. *Id.*

135. *Id.*

136. *Id.*

137. John D. Leonard, *George Pierce Baker: Prism for Genius: Writings by O’Neill, Wolfe Reflect Debt Owed to His Personal Influence*, HARV. CRIMSON (Nov. 6, 1957), <http://www.thecrimson.com/article/1957/11/6/george-pierce-baker-prism-for-genius/?page=1>.

138. DAVID HERBERT DONALD, *LOOK HOMEWARD: A LIFE OF THOMAS WOLFE* 67 (1st ed. 1987).

139. Leonard, *supra* note 137.

140. Letter from William L. Prosser to George Pierce Baker, *supra* note 55.

141. Harvard University Undergraduate Record of William Lloyd Prosser, A.B. 1918, *supra* note 55.

142. Letter from William L. Prosser to George Pierce Baker, *supra* note 55.

143. *Id.*

144. DONALD, *supra* note 138, at 66.

145. *Id.* at 81.

146. Harvard University Undergraduate Record of William Lloyd Prosser, A.B. 1918, *supra* note 55.

would have welcomed him. In February, 1919, Prosser writes: “I shall be almost certain to return by September; and if I do, I should like to come back and have another try at English 47 in 1919–20. That is, of course, if you want me back.”¹⁴⁷ Baker responds: “If I do not decide to take a semi-Sabbatical for the first half of next year, I hope you will return for work then, and if I do I hope you will return for the second half-year.”¹⁴⁸ In August 1919, Prosser writes that his position is being extended and he will not be able to return to Harvard in the fall; he states, however, “I shall be back for another try at English 47 in October, 1920.”¹⁴⁹ Prosser was serious enough about plays that his father wrote Baker a letter asking for his appraisal of Prosser’s prospects as a playwright: “I would like to ask you, if you will be so good as to do it, to send me your frank estimate of William and his possibilities as a playwright, after further training in your department.”¹⁵⁰

Returning to Baker’s course was one of the options Prosser considered as he returned to the United States and there is corroboration that Prosser pursued writing plays. In his September 27, 1921 letter, Prosser is writing to his mother upon his return to Harvard to begin law school.¹⁵¹ He references several plays he has written and also makes references to “Baker” and “Prof. Baker.” In the letter, Prosser discusses having lunch with a woman “who is Prof. Baker’s secretary this year, and running the Workshop,” and that he is going “to [have] lunch with Baker tomorrow.”¹⁵² Moreover, it is clear that Prosser has written several plays—“The Shuberts in New York¹⁵³ want to put ‘Free Speech’ into their vaudeville circuit and have offered \$35 a week. I have been paralyzed ever since I heard it. I hope it goes through and runs five years. Baker is handling it for me.”¹⁵⁴ He asks his mother to send copies, not

147. Letter from William L. Prosser to George Pierce Baker, *supra* note 64.

148. Letter from George Pierce Baker to William L. Prosser (Apr. 2, 1919) (on file with author).

149. Letter from William L. Prosser to George Pierce Baker (Aug. 2, 1919) (on file with author).

150. Letter from Charles Allen Prosser to George Pierce Baker, *supra* note 63. Baker’s response was not preserved.

151. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Sept. 27, 1921) (on file with author).

152. *Id.*

153. *Id.* “The Shuberts” is probably part of the Shubert Organization, America’s oldest theatre company. *History*, SHUBERT ORG., <http://www.shubert.nyc/about-us/history> (last visited Jan. 10, 2016). “During the teens and twenties, the Shubert brothers built many of Broadway’s most important theatres . . . By the mid-twenties, [they] owned, operated, managed, or booked over 1,000 houses across the United States.” *Id.*

154. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 151. “Free Speech” was a play Prosser wrote in his senior year at Harvard and is not evidence that he was writing plays in 1920–1921. See *Performance of Four Plays by 47 Workshop Tonight*, HARV. CRIMSON (Mar. 8, 1918), <http://www.thecrimson.com/article/1918/3/8/performance-of-four-plays-by-47>. The passage does illustrate his focus on plays. See *id.* Prosser’s dreams of monetary success would be short-lived. In a later letter, he states: “By the way, credit me with \$16.97, royalties on the publication of ‘Free Speech.’ Nothing more from the Shuberts. I guess it is all up with the vaudeville idea.” Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Nov. 12, 1921) (on file with author).

“marked ‘First Draft’ on the back,” of two plays.¹⁵⁵ The first, “The Road to Dresden,” is also being considered by “[t]he Shubert man,” and the second, “Plain German,” is a one-act play that Prosser wants to revise.¹⁵⁶

Despite this evidence, the Harvard University Archives have no transcript reflecting Prosser’s enrollment in English 47A, the second year of Baker’s course, in 1920–1921.¹⁵⁷ One possibility is that Baker allowed Prosser to work with him informally, without the expense of enrolling in the course. Prosser may have done so while he worked for a living. In a November 12, 1921 letter, Prosser references items from the previous summer as “paid for by the sweat of the brow of an honest railroad slave.”¹⁵⁸ Perhaps, consistent with his earlier statement to his mother,¹⁵⁹ Prosser worked for a railroad and spent his spare time writing plays with Baker. Based on the available evidence, it is not possible to determine precisely how Prosser spent his time from the fall of 1920 until the fall of 1921. If Prosser was working with Baker, he may have encountered Thomas Wolfe, who was enrolled in English 47 fresh out of his undergraduate work.¹⁶⁰ Prosser would continue to write plays¹⁶¹ and, as letters in the collection indicate, attend the theatre the rest of his life.

After a summer in which Prosser likely toured Yellowstone Park, he returned to Cambridge in late September 1921 to attend Harvard Law School.¹⁶² He rented a room at 45 Oxford Street, “two blocks from the two law school buildings—Austin and Langdell—and the same distance from Memorial, where I am eating.”¹⁶³ His surroundings were spare: “It is furnished with a bed, a bureau, a desk, a table, three chairs, and a bookcase. On looking around I don’t notice anything else, except a radiator.”¹⁶⁴ Already a tennis player for years,¹⁶⁵ Prosser notes his room “looks out on the tennis courts.”¹⁶⁶

155. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 151.

156. *Id.*

157. E-mail from Robin Carlaw, Researcher, Harvard Univ. Archives, to author (June 4, 2015, 9:23 EST) (on file with author).

158. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 154.

159. *See* Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77. It is also possible, however, that Prosser only worked for the railroad as a summer job.

160. DONALD, *supra* note 138, at 65–67. Wolfe’s senior year at the University of North Carolina was 1919–1920. *Id.* at 62–64. He decided over the summer that he wanted to go to Harvard. *Id.* at 63. His mother, Julia, told him in the early fall that she would pay for it. *Id.* He arrived at Harvard and convinced Professor Baker to accept him into English 47 on the strength of the recommendation of one of his professors who was a former student of Baker’s. *Id.* at 66–67.

161. *See* Abraham & White, *supra* note 6, at 35–36.

162. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 151.

163. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Oct. 4, 1921) (on file with author).

164. *Id.*

165. When describing his Newtonville neighborhood in a 1948 letter, Prosser states: “The old tennis courts are still there, on which Dad and I used to have those battles.” Letter from William L. Prosser to “Butch,” *supra* note 51.

166. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 163.

In his September 27, 1921 letter, after discussing his circumstances¹⁶⁷ and requesting the plays,¹⁶⁸ Prosser announces, “The law is getting under way.”¹⁶⁹ His course schedule would be familiar to first-year law students today: “[I] [a]m taking courses on Property, Torts, Procedure, Liability, [and] Contracts [from] Professors Warren,¹⁷⁰ Hudson,¹⁷¹ Scott,¹⁷² Beale¹⁷³ and McLain¹⁷⁴ respectively.”¹⁷⁵ Prosser comments: “They all come at 9.00 A.M. and 12.00 noon. This interferes with breakfast and lunch.”¹⁷⁶ Each of the courses met for two hours a week.¹⁷⁷

Prosser was almost taught by two legends of legal education, but the first-year class of 1921 was “out of luck.”¹⁷⁸ “Dean Pound,¹⁷⁹ who usually gives Torts, is away on his sabbatical year, and Professor Williston,¹⁸⁰ who usually gives Contracts, has had to double up on so much of Pound’s work that he can’t handle the first year course.”¹⁸¹ Prosser found the courses to have “several

167. See Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 151 (“Please send me a check for two hundred dollars, and cas[h] in my Liberty Bonds to reimburse yourself” is the opening sentence in the letter.).

168. See *supra* text accompanying notes 155–56.

169. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 151.

170. Edward Henry Warren. See *Harvard University Descriptive Catalogue 1920–21*, in 17 OFFICIAL REGISTER OF HARVARD UNIVERSITY 452, 454 (2d ed. 1920). Warren specialized in both property and corporate law. See Zechariah Chafee, Jr., *Edward Henry Warren: A Biographical Sketch*, 58 HARV. L. REV. 1109, 1112 (1945).

171. Manley Ottmer Hudson. *Harvard University Descriptive Catalogue 1920–21*, *supra* note 170, at 452, 454. Hudson was an international law specialist. See Hudson, *Manley Ottmer*, 1 MISSOURI BIOGRAPHICAL DICTIONARY 331–33 (3d ed. 2001).

172. Austin Wakeman Scott. *Harvard University Descriptive Catalogue 1920–21*, *supra* note 170, at 452–53. Scott specialized in the area of trusts. See Angel Castillo, *Austin Scott, Harvard Professor and an Authority on Trust Laws*, N.Y. TIMES (Apr. 10, 1981), <http://www.nytimes.com/1981/04/10/us/austin-scott-harvard-professor-and-an-authority-on-trust-laws.html>.

173. Joseph Henry Beale. *Harvard University Descriptive Catalogue 1920–21*, *supra* note 170, at 452, 454. Beale authored treatises in varying areas of the law, including but not limited to criminal law, taxation, and corporations. Samuel Williston, *Joseph Henry Beale: A Biographical Sketch*, 56 HARV. L. REV. 685, 687 (1943).

174. Chester Alden McLain. *Harvard University Descriptive Catalogue 1920–21*, *supra* note 170, at 452, 454. McLain was a professor of Torts during his time at Harvard. See *Reports of the President and the Treasurer of Harvard College, 1919–20*, in 18 OFFICIAL REGISTER OF HARVARD UNIVERSITY 163 (1921).

175. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 151.

176. *Id.*

177. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 163.

178. *Id.*

179. Roscoe Pound. *Harvard University Descriptive Catalogue 1920–21*, *supra* note 170, at 452. Pound “is acknowledged as the founder of sociological jurisprudence.” *Who is Roscoe Pound?* POUND CIV. JUST. INST., <http://www.poundinstitute.org/node/3> (last visited Jan. 10, 2016).

180. Samuel Williston. *Harvard University Descriptive Catalogue 1920–21*, *supra* note 170, at 452. Williston specialized in the law of contracts. See Mark L. Movsesian, *Samuel Williston: Brief Life of a Resilient Legal Scholar: 1861–1963*, HARV. MAG., Jan.–Feb. 2006, <http://harvardmagazine.com/2006/01/samuel-williston.html>.

181. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 163.

novel features.”¹⁸² First, “[n]o one cares whether you come to classes or not, and they keep no attendance records.”¹⁸³ Second, “[n]o examinations are given until the finals at the end of the course, and if you flunk those you become one with Nineveh and Tyre.”¹⁸⁴ Prosser is not exaggerating; he relates a meeting in which Harvard President Abbott Lawrence Lowell addressed all of the first years. Lowell “remarked that there were 361 men in the entering class last year, and that only 234 of them were permitted to return for the second year.”¹⁸⁵ Moreover, “of the 234 only 197 had a record which if not improved would enable them to get a degree at the end of three years.”¹⁸⁶ Lowell told the first-years, “we believe in the open door.”¹⁸⁷

Of his observations, the most intriguing is his description of the classroom environment: “All classes seem to be run on the understanding that everybody interrupts the professor or anybody else whenever he feels like it”¹⁸⁸ Moreover, “there is an unwritten understanding that it is the duty of the professor to prove everybody in the class an imbecile if he can, and vice versa.”¹⁸⁹ Prosser wryly comments: “This is all right when you don’t have more than eighteen talking at once, but beyond that number it grows confusing.”¹⁹⁰ Years later, when plotting his own teaching style, he recalled the teaching of two of his Harvard professors. “Of all the law I had at Harvard ten years or so ago, I find that the teaching that I remember most of is Hudson’s insolent system of disputing everything and making you justify everything, no matter how obvious.”¹⁹¹ By comparison, “Scott was by long odds a better teacher—the best I have ever seen in any classroom—but of all of his brilliance I seem to recall very little.”¹⁹²

Prosser complains of the expenses of attending law school:

The expenses around here have left me pretty groggy. I have had to spend so far almost twice what I had expected The cost of an annual contract for pressing suits has gone up from five to fifteen dollars, and my washing is going to cost me ten dollars a

182. *Id.*

183. *Id.*

184. *Id.* This is a reference to Rudyard Kipling’s poem “Recessional.” See Rudyard Kipling, *Recessional*, POETRY FOUND. (1897), <http://www.poetryfoundation.org/poem/176152> (“Lo, all our pomp of yesterday / Is one with Nineveh and Tyre!”). In turn, Kipling is referencing cities that were destroyed, giving the phrase its meaning. See WARREN W. WIERSBE, *THE BIBLE EXPOSITION COMMENTARY: OLD TESTAMENT PROPHETS* 406 (2002).

185. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 163.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Oct. 28, 1930) (on file with author).

192. *Id.*

month. . . . Board at [the] Memorial has risen to eight dollars a week, and even at that they have abolished the table-cloths, and we are eating on the bare boards.¹⁹³

Yet, “[t]he blow which broke the camel’s back was the necessity of buying \$41 worth of legal text-books to start the year with.”¹⁹⁴ Prosser states he has “weathered the storm so far, but my reserve fund is almost gone, which is why I wrote you for the check.”¹⁹⁵

From the beginning, Harvard Law School encouraged its students to organize into “law clubs” for informal discussions of, and formal arguments over, questions of law.¹⁹⁶ Prosser notes, “[e]verybody is expected to join a law club, of which there are thirty-two left over from last year, and more now being formed.”¹⁹⁷ He further explains, “[t]here are twenty-four men in each club, eight from each year. They elect the eight first-year men at the start of the year, and elections are now going on.”¹⁹⁸ Prosser ends his October 4, 1921 letter with breaking news: “Time out. Bill Holbrook just dropped in, and informed me that I have been elected a member of the Bruce Wyman law club. He says it is a very old one, and highly honorable, and not Hebrew. It’s all right with me.”¹⁹⁹

One of the activities that took place in law clubs was moot courts. Prosser describes his first law club moot court argument in detail: “The famous law club case came off a week ago About eighteen members gathered in 33 Perkins Hall, around three gallons of cider and enough indigestible doughnuts to sink a barge.”²⁰⁰ Prosser was matched against another first-year, and his friend, Bill Holbrook, on an issue about property ownership.²⁰¹ He explains that the chief justice “was supposed to interrupt at every opportunity and question us. . . . theoretically to make us explain our arguments in detail; but in practice in the law clubs it becomes a matter of . . . trip[ping] you up

193. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 163.

194. *Id.*

195. *Id.*

196. Erwin N. Griswold, *The Harvard Law Review—Glimpses of Its History as Seen by an Aficionado*, HARV. L. REV.: CENTENNIAL ALBUM, Jan. 17, 1987, <http://harvardlawreview.org/1987/01/glimpses-of-its-history-as-seen-by-an-aficionado>.

197. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 163.

198. *Id.*

199. *Id.* As stated earlier, Prosser makes numerous ethnic references throughout the letters. See *supra* note 74 and accompanying text. He makes several remarks about Jewish people during his time at Harvard Law, and they are more acerbic than his other ethnic references. For example, Prosser was surprised and pleased with the ease of registering for law classes: “I went staggering out, repeating to myself ‘Can this be Harvard?’ It wasn’t till I attended the class and saw the Hebrews in it that I was reassured.” Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 163. The worst remark is: “There are a few human beings around here among the ocean of Yiddish, but they are hard to find.” *Id.*

200. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 154.

201. *Id.*

in every possible way.”²⁰² Prosser states that both advocates “had [the] chief difficulty with a third-year man named Averbeck, who had a bad habit of putting his finger on weak spots.”²⁰³ “Holbrook started out merrily for some four minutes, and then Mr. Averbeck rose up in his path and hit him with a large and exceedingly jagged club.”²⁰⁴ After Holbrook “was kept on his feet an hour and a half,” Prosser “arose to [his] feet, and promptly got [his] quietus.”²⁰⁵ He was questioned for “over two hours and ten minutes, so you can see that the questioning was pretty lively.”²⁰⁶ In the end, Prosser won in a unanimous decision: “The court said it was a very well argued case for first year men, especially as it was the first case of the year, and we were both green at it.”²⁰⁷ Prosser would have to argue again in a week: “No rest for the wicked.”²⁰⁸

Prosser is not socially isolated during this period. Even though he is beginning his first year of law school, he appears to know a number of people in the area, both inside and outside of the law school: “Rexie is taking work at the engineering school William Sumner Holbrook turned up in first year law, also Starr and Sax, two Jewish members of that Freshman debating team I coached.”²⁰⁹ Prosser has plenty of opportunities to socialize: “Austin Frey is instructing in Math over at Tech, and wants me to play bridge, chess, golf and tennis with him—for none of which I shall have any time. . . . The King family are still here, and I have a standing dinner invitation from them”²¹⁰

Though he claims not to have a lot of time, Prosser engages in his lifelong love of theatre and sports while a first-year law student. He describes going to the Workshop plays put on by Professor Baker’s students, as well as plays at “the Plymouth.”²¹¹ Not only did Prosser find time to attend football games at Harvard, he even travelled to Princeton to see Harvard play.²¹² Prosser enjoyed his trip to Princeton, which included a visit to “the Snedden ranch.”²¹³ The Sneddens are close family friends of the Prossers and the family of Charles Prosser’s mentor, David Snedden.²¹⁴ Prosser may have been

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 163.

210. *Id.*

211. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 154.

212. *Id.*

213. *Id.* (“There was a crowd of very drunk Harvard students on board, who paraded through the halls of the boat all night, consigning Yale, Princeton et al. to hell at the top of their lungs. . . . It was a wild night.”)

214. See *supra* notes 40–41 and accompanying text.

romantically involved with David's daughter, Hope, when he was younger,²¹⁵ but by the time he is in law school, she is engaged to another man.²¹⁶

It is not clear why Prosser did not return for his second year of law school at Harvard, but there is an indication he was not particularly happy with his chosen path in life. Prosser describes to his mother the situation of one of his friends, often mentioned in his letters: "Pulsy has a good job with the Valentine Varnish Company, manufacturers of Valspar, and seems to be started somewhere at last. Wish I had his luck."²¹⁷ In a November 1922 letter to Professor Baker, Prosser writes: "I have been kept out of law school a year in order to acquire practical experience of labor troubles in the shopmen's strike. The life of a railroad man these days is nothing if not dramatic, but there are things more pleasant."²¹⁸ This sounds more like Prosser's sarcastic edge than an explanation of why he left law school. Prosser's grades likely had an effect on his decision; he did not perform well in his first year. Prosser's average after his 1L classes was a 63.²¹⁹ There is a notation on his transcript, "315,"²²⁰ which may be his class rank. Interestingly, his worst grade, a 59, was in Torts.²²¹

Regardless of the reason, Prosser would not return to Harvard in the fall of 1922. A biographical statement at the University of Minnesota Archives provides that Prosser worked from 1922 until 1926 as a sales manager for Russell-Miller Milling Co. in Minneapolis.²²² In light of his statement to Baker,

215. See Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 77 ("Hope Snedden seems to be taking more time than should be necessary trying to figure out who sent her that Valentine. Maybe Dad camouflaged it too well; horrible thought. . . . I may decide to start a Hope Chest (pun unintentional) . . .").

216. See Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 151 ("P.S. Hope Snedden is announcing her engagement to Leonard Carlsmith. It isn't supposed to be known outside the family, so don't put it in the Tribune."). Prosser mentions her again years later when recounting a visit to Stanford: "I was something of a guest of honor, and was lodged over night in the women's dormitory. I don't know whether I had Hope Snedden's old room, and did not bother to inquire." Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (July 19, 1950) (on file with author).

217. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 154.

218. Letter from William L. Prosser to George Pierce Baker (Nov. 20, 1922) (on file with author). The Railroad Shopmen's Strike of 1922 started in July 1922 in response to a wage reduction and work rule changes on the railroads. *Railroad Shopmen's Strike (1922)*, WORLDHISTORY.BIZ (Mar. 4, 2015, 10:18), <http://www.worldhistory.biz/modern-history/83542-railroad-shopmen-s-strike-1922.html>. It was national in scale and lasted into 1923. *Id.*

219. Harvard Law School Record of William Lloyd Prosser (on file with Harvard University Archives).

220. *Id.*

221. *Id.* His grades: Civil Procedure 70; Contracts 60; Property 61; Torts 59; Criminal Law (one semester) 33; Liability (one semester) 32. *Id.*

222. Copy of William Lloyd Prosser's Short Biographical Statement (on file in Prosser Biography File, University of Minnesota Archives and with author). Russell-Miller Milling Co. can be traced to Hiram Walker's 1879 construction of a mill in Valley City, North Dakota. *Russell-Miller Milling Company*, BARNES COUNTY HIST. SOC'Y, <https://barnescountyhistoricalsociety.wordpress.com/2011/05/22/%E2%80%A2russell-miller-milling-company> (last visited Jan. 10, 2016).

however, Prosser spent some portion of that time period working on the railroad.²²³

III. THE EVOLUTION OF A CAREER

A. LAW SCHOOL AT THE UNIVERSITY OF MINNESOTA

For the next four years, Prosser worked for the railroad, perhaps other organizations, and Russell-Miller. Not much is known of his work and none of the letters in the collection date to this period. During his Russell-Miller tenure, “on September 19, 1925, Prosser married Eleanor Sewall” of Minneapolis.²²⁴ Whether the marriage affected him, whether Prosser got bored, or some combination thereof is uncertain, but in the fall of 1926 Prosser returned to law school, this time at the University of Minnesota. Prosser transferred from Harvard Law School as an “advanced standing” student;²²⁵ he would graduate with an LL.B. in 1928.²²⁶ The collection contains four letters and a telegram from Prosser’s time as a law student at the University of Minnesota. The themes of these letters are those of a newly married man in his late twenties: finances, the purchase of a home, and young children. Prosser also consistently discusses the weather and various sports. Most significantly, the letters offer a glimpse of Prosser working his way through law school. He achieves a high average in his inaugural year at Minnesota and he works on the *Minnesota Law Review* and a moot court case.

Prosser intended to finance his legal education with certain “securities” he owned.²²⁷ This was unnecessary as he told his mother, “owing to the fact that you have given us \$2000, that Eleanor earned some money, and that I have made a little this summer.”²²⁸ Instead, Prosser weighs using the securities

The company moved its headquarters to Minneapolis in 1907 to take advantage of the large stock of select wheat. *Id.* The company was in an expansive period right before and during the period Prosser was an employee. *Id.* In 1919, the firm increased its milling capacity in Minneapolis. *Id.* In 1924, the firm moved out of its traditional territory by constructing a mill in Buffalo, New York. *Id.* In 1925, the firm acquired Everett Aughenbush & Company. *Id.*

223. See Letter from William L. Prosser to George Pierce Baker, *supra* note 218.

224. Robinette, *supra* note 21, at 583.

225. E-mail from Univ. of Minn. Law Sch. Registrar’s Office to author (Mar. 5, 2015, 16:24 EST) (on file with author).

226. Robinette, *supra* note 21, at 583.

227. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Aug. 7, 1927) (on file with author). The securities totaled \$4500 at the time of this letter. *Id.* It is not clear if he earned this money during his tenure at Russell-Miller.

228. *Id.* Prosser was unable to obtain legal employment after his first year at the University of Minnesota: “The various prospects as to jobs do not seem to pan out with any success.” Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (July 15, 1927) (on file with author) [hereinafter Letter to Zerelda Prosser (July 15, 1927)]. He apparently earned money helping his father with lesson sheets: “I am working at Dunwoody, on the lesson sheets. . . . I have got out about \$ 20 or \$ 25 worth so far.” Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (July 2, 1927) (on file with author) [hereinafter Letter to Zerelda Prosser (July 2, 1927)]. “I am still working on the stencils at Dunwoody, and have made something over \$ 50 to date. There is

to purchase a house. Prosser, his wife, and his newborn son have been renting a house at 2856 Irving Avenue South, but Prosser notices a house for sale at 2824 Irving Avenue South, half a block away.²²⁹ “The latest development hereabouts is that we have fallen into bad company. I mean real estate agents.”²³⁰ Prosser offers his mother a lengthy description of the house²³¹ and potential ways to finance its purchase.²³² Four days after describing the financing options, Prosser sends his mother a telegram with the final offer and requests her opinion.²³³ Prosser purchased the house; subsequent letters are sent from 2824 Irving Avenue South.

One reason for the purchase may have been Prosser’s growing family. Prosser’s first child, Reese Trego Prosser, was born on May 18, 1927.²³⁴ Prosser devotes a lot of time to writing about his children over the years. He tells his mother many details about Reese, nicknamed “Rip” in the law school letters. In particular, Prosser is focused on his weight: “Reese Prosser is still gaining weight. . . . [H]is official figures were ten pounds and a quarter of an ounce. He has gained some four ounces since then in the last two days”²³⁵ Prosser sounds like a proud father: “The doctor says he is making very good progress. Eleanor says she thinks he is getting a faint crop of new hair. (William, J. dissenting). . . . I think he is going to be a good tough kid.”²³⁶ Consistent with his earlier letters, Prosser uses several ethnic references when describing his son. Reese eats like the Chinese: “He took to it like the proverbial Chinaman to a laundry”²³⁷ Reese sounds like an Italian: “Eleanor says he is a pig. He makes noises like one while he eats. It sounds like forty-three Italians all eating vermicelli soup at the same time.”²³⁸ And he

enough work to keep me going there until about August 15th in a pinch.” Letter to Zerelda Prosser (July 15, 1927), *supra*.

229. Letter to Zerelda Prosser (July 15, 1927), *supra* note 228.

230. *Id.*

231. *Id.* (“It is very attractive in its location and general features, and seems to be in very good condition. Eleanor takes a half block stroll about every hour and a half to see if the house is still there and the ‘For Sale’ sign up.”).

232. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 227. One interesting note is his assertion that, at that time, banks “ha[d] a fixed policy of lending on real estate mortgages less than 50% of the value of the property as they estimate it.” *Id.*

233. Telegram from William L. Prosser to Zerelda Ann Huckleby Prosser (Aug. 11, 1927) (on file with author).

234. Reese’s CV is available from Dartmouth College’s website; he became a prominent mathematician. See REESE T. PROSSER: PROFESSOR OF MATHEMATICS, DARTMOUTH COLL., https://math.dartmouth.edu/activities/prosser-lectures/Reese_T_Prosser.pdf (last visited Jan. 10, 2016).

235. Letter to Zerelda Prosser (July 2, 1927), *supra* note 228; see also Letter to Zerelda Prosser (July 15, 1927), *supra* note 228 (“Rip continues to gain weight.”); Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 227 (“Reese is still doing well. . . . He was weighed at noon today, and the scale registered twelve pounds and six and three-quarters ounces.”).

236. Letter to Zerelda Prosser (July 15, 1927), *supra* note 228.

237. Letter to Zerelda Prosser (July 2, 1927), *supra* note 228.

238. *Id.*

looks like a German: “He is also getting fat, especially in the face. He has developed jowls like a German delicatessen keeper. I still can’t see that he looks like anybody I ever saw before. Unless it is Von Hindenburg.”²³⁹

Also consistent with earlier letters is Prosser’s focus on sports. Prosser follows baseball, particularly Minneapolis: “[T]hey went more or less crazy and won three straight games from Kansas City.”²⁴⁰ He follows football: “I took the afternoon off yesterday and listened to football games over the radio at the University Club. Harvard lost to Yale, but Minnesota won from Michigan for the first time in eight years, much to the joy of all and sundry.”²⁴¹ And he continues to play tennis: “Ronald Kent got home the early part of last week, and has proceeded to clean me nine sets of tennis out of eleven”²⁴² Unlike in earlier letters, Prosser is very conscious of the weather. He consistently reports weather conditions: “[t]he Prosser family came through the heat pretty well,”²⁴³ “oppressive heat,”²⁴⁴ “[t]he weather has been excellent,”²⁴⁵ “[w]e have had something of a thaw.”²⁴⁶

Most significantly, Prosser is progressing through law school. Following his first year at Minnesota Law, he tells his mother: “I got a very pleasant letter from Ed Strand offering congratulations on the 92.9 average”²⁴⁷ This was an especially strong average in a year in which averages were lower than the year before, and it meant Prosser would be on the law review: “He also called attention to the fact that the very low averages in the Freshman class may mean very few Law Review men—a top limit of seven . . . instead of some 12 as [of] this year”²⁴⁸ Prosser states: “This probably means trouble in getting out the paper, and more work for everybody. However, we can worry about this when we get to it.”²⁴⁹ Get to it, he would. Several months later, he states, “I am still working on my Note for the second issue of the Law Review”²⁵⁰ Not only was he a member of the law review, he served as the note editor for

239. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 227.

240. Letter to Zerelda Prosser (July 2, 1927), *supra* note 228; *see also* Letter to Zerelda Prosser (July 15, 1927), *supra* note 228. Prosser’s father, who played baseball in college and semiprofessionally under an assumed name during summers took Prosser to a lot of baseball games when he was a child. Gadell, *supra* note 31, at 16–17; *see also* Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Dec. 7, 1952) (on file with author) (“It seems very strange to have Dad gone. I find myself remembering so many things out of my childhood that I had not thought of for years, such as . . . all the baseball games we went to . . .”).

241. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (Nov. 19, 1927) (on file with author).

242. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 227.

243. Letter to Zerelda Prosser (July 2, 1927), *supra* note 228.

244. Letter to Zerelda Prosser (July 15, 1927), *supra* note 228.

245. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 227.

246. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 241.

247. Letter to Zerelda Prosser (July 2, 1927), *supra* note 228.

248. *Id.*

249. *Id.*

250. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 241.

volume twelve.²⁵¹ His high average would help him get elected to the Order of the Coif and graduate first in his class.²⁵²

Prosser also participated in moot court cases. In a November, 1927 letter, he tells his mother: “The honorable Terence Slattery and I have been assigned our first imaginary case in the Practice Court.”²⁵³ Prosser describes the case as “an involved and difficult mess having to do with the delivery of some coal by mistake to a steam-shovel contracting company digging a sewer in southeast Minneapolis.”²⁵⁴ He was worried about jurisdiction: “All the defendants are out in North Dakota, and not even in the state, and one of our first problems is going to be getting them into court at all.”²⁵⁵ He was not optimistic: “[A]s far as I can see we are licked before we start.”²⁵⁶

B. THE PRACTICE OF LAW

When Prosser graduated from Minnesota Law in 1928, he passed the Minnesota bar and joined the Minneapolis firm of Dorsey, Colman, Barker, Scott & Barber.²⁵⁷ In some ways, not much changed for Prosser. He remained with his growing family and even stayed in the same house. His focus and interests were also similar to earlier periods of his life, and many of the themes from the letters written during his time as a practitioner are familiar. Prosser, the proud father, still spends a lot of time writing about his kids. Reese’s nickname has evolved from “Rip” to “Binx” or “Binks,”²⁵⁸ and Prosser describes his first sledding trip (“He looked like one of the old pictures of the Russian peasant in his droschka.”),²⁵⁹ his advances in speech (“Binx is doing nicely. He talks paragraphs rather than sentences.”),²⁶⁰ and various anecdotes

251. Robinette, *supra* note 21, at 583.

252. *Id.*; E-mail from Univ. of Minn. Law Sch. Registrar’s Office to author, *supra* note 225.

253. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 241.

254. *Id.*

255. *Id.*

256. *Id.*

257. Robinette, *supra* note 21, at 583. The firm is now Dorsey & Whitney.

258. *See, e.g.*, Letter to Zerelda Prosser (July 15, 1927), *supra* note 228; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Jan. 5, 1929) (on file with author) [hereinafter Letter to Zerelda Prosser (Jan. 5, 1929)]; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Feb. 10, 1929) (on file with author) [hereinafter Letter to Zerelda Prosser (Feb. 10, 1929)].

259. Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258.

260. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Mar. 11, 1930) (on file with author) [hereinafter Letter to Zerelda Prosser (Mar. 11, 1930)]. Prosser’s emphasis shifts from weight to speech, and approximately half the letters in this period reference Reese’s speech. *See* Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Apr. 7, 1929) (on file with author) [hereinafter Letter to Zerelda Prosser (Apr. 7, 1929)]; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (May 2, 1929) (on file with author) [hereinafter Letter to Zerelda Prosser (May 2, 1929)]; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (July 14, 1929) (on file with author) [hereinafter Letter to Zerelda Prosser (July 14, 1929)]; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Jan. 19, 1930) (on file

(“The other afternoon Binx invented the pastime of spitting on the window pane and then rubbing it with his finger.”).²⁶¹ Prosser’s second child, Richard S. Prosser, was born in the late spring of 1930. Richard, who is also called “Dinx,” made his first appearance in the collection in a letter dated June 17, 1930.²⁶² As with Reese, Prosser spends a lot of time describing Richard and keeping up with his weight.²⁶³

Prosser still plays tennis²⁶⁴ and follows baseball.²⁶⁵ He and Eleanor frequently attend the theatre, including opera; Prosser often includes lengthy descriptions of plays he has seen.²⁶⁶ As during the time he was in law school at Minnesota, most of Prosser’s letters reference the weather, many of them in some detail.²⁶⁷ One theme from Prosser’s time in practice is politics; Prosser begins commenting on local political issues such as bribery scandals and elections.²⁶⁸

Prosser had been in practice approximately six months at the time of his January 5, 1929 letter. Like many associates before and after him, Prosser finds himself quite busy: “The office is busy,”²⁶⁹ “I have been busy on the law, with some night work this week,”²⁷⁰ “I have been putting off writing to you . . . because of the pressure of work and such social events as I have not been able to avoid. . . . The work has never been heavier.”²⁷¹ With busyness came profit for Dorsey: “The revenue of the firm last year was a public scandal. There was

with author) [hereinafter Letter to Zerelda Prosser (Jan. 19, 1930)]; Letter to Zerelda Prosser (Mar. 11, 1930), *supra*.

261. Letter to Zerelda Prosser (Feb. 10, 1929), *supra* note 258.

262. Letter from William L. Prosser to “Family,” *supra* note 73. Mirroring his father’s interest in railroads, Richard wrote the first book tracing the history of Minnesota’s railways in the 1960s. *See* RICHARD S. PROSSER, RAILS TO THE NORTH STAR: ONE HUNDRED YEARS OF RAILROAD EVOLUTION IN MINNESOTA (1966). For more information on the book, see *Rails to the North Star: A Minnesota Railroad Atlas*, U. MINN. PRESS, <https://www.upress.umn.edu/book-division/books/rails-to-the-north-star> (last visited Jan. 10, 2016).

263. *See* Letter from William L. Prosser to Zerelda Ann Huckleby Prosser (July 2, 1930) (on file with author).

264. *See* Letter to Zerelda Prosser (Mar. 11, 1930), *supra* note 260.

265. *See id.* (referencing boxing also); Letter from William L. Prosser to “Family,” *supra* note 73; Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 263.

266. *See* Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258; Letter to Zerelda Prosser (Feb. 10, 1929), *supra* note 258; Letter to Zerelda Prosser (Apr. 7, 1929), *supra* note 260; Letter to Zerelda Prosser (Mar. 11, 1930), *supra* note 260.

267. *See* Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258; Letter to Zerelda Prosser (Feb. 10, 1929), *supra* note 258; Letter to Zerelda Prosser (Apr. 7, 1929), *supra* note 260; Letter to Zerelda Prosser (May 2, 1929), *supra* note 260; Letter to Zerelda Prosser (July 14, 1929), *supra* note 260; Letter to Zerelda Prosser (Mar. 11, 1930), *supra* note 260.

268. *See* Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258; Letter to Zerelda Prosser (Feb. 10, 1929), *supra* note 258; Letter to Zerelda Prosser (Apr. 7, 1929), *supra* note 260; Letter from William L. Prosser to “Family,” *supra* note 73.

269. Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258.

270. Letter to Zerelda Prosser (Feb. 10, 1929), *supra* note 258.

271. Letter to Zerelda Prosser (Jan. 19, 1930), *supra* note 260.

one check from the First National alone for \$49,000, for this consolidation work. What we will get from the Foshay receivership after two or three years of work . . . will certainly be over \$100,000.”²⁷²

A substantial portion of Prosser’s work involved representation of the Chicago Great Western Railway, a client that came to the firm at the same time as Prosser. In his January 5, 1929 letter, Prosser writes: “The office is busy taking over the legal business of the Chicago Great Western, for the state of Minnesota. We are now being swamped with data from the Association of Railway Claim Agents, and have our hands full.”²⁷³ A month later, Prosser reports: “The Great Western Railroad turns over about one new case a day to us, and I get most of them to look into. I never knew such a variety of things could happen to get a railroad into trouble.”²⁷⁴

Prosser’s love of vivid fact patterns in his treatise can be seen in his description of the facts from his railroad cases. The cases

range from [one] where a man dying of heart trouble at Rochester telephoned the station to reserve a berth on a train home, and they didn’t hold it for him, down to cases of blundering Swedes who try to raise windows in day coaches and shove their fists through the window and cut their hands.²⁷⁵

Prosser then states: “The latest brainstorm involves a gentleman who hanged himself on one of the Great Western’s bridges . . . The [railroad] took him down . . . and carried him to the next town,” where the “authorities made considerable difficulty, and the widow didn’t get the body for about two weeks.”²⁷⁶ Prosser continues: “She is now suing the railroad and wants fifteen thousand dollars as compensation for mental anguish and what not. There isn’t any law on the matter that I can find, but it is going to be rough on the railroad, whatever happens.”²⁷⁷ He mentioned the case to a colleague and asked if he had ever had a case like it representing another railroad. The colleague

said they had one case where the railroad killed a man and paid some damages to his widow, and then during the funeral the hearse stalled on the railroad track and the railroad came along and hit him again. He said counsel were quite nasty about it at the trial.²⁷⁸

272. *Id.*

273. Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258.

274. Letter to Zerelda Prosser (Feb. 10, 1929), *supra* note 258.

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

After describing his railroad cases to his mother, Prosser concludes: "It's a great life."²⁷⁹

Along the way, Prosser writes of the milestones that litigators attain. He discusses being sworn into federal court: "Ed Strand and I are to go into the Federal court at the same time on January 14th, both of us being duly presented and admitted with proper ceremony. The two cases have nothing to do with each other."²⁸⁰ Prosser tells his mother about depositions. One deposition he defended consisted largely of laying the foundation for numerous documentary exhibits; he facetiously explains that it mostly proceeded as follows:

Q: I hand you plaintiff's exhibit No. 16 and ask you what it is.

A: That is a letter from the Eclipse Plumbing Supply Company to the Plumbers Woodwork Company, dated July 1, 1926.

Q: Plaintiff offers in evidence Exhibit 16.

Mr. Prosser: I object to the admission of Exhibit 16, upon the ground that it is incompetent, irrelevant and immaterial, inadmissible under the pleadings, not the best evidence, not sufficiently identified, without proper foundation, self-serving and hearsay.²⁸¹

Prosser also tells his mother about his first solo trial: "The first trial case which I have been given to handle by myself turns out to be against Kozlak, who is in Paul Jaroscak's office."²⁸² Fittingly, the case is a tort case, and a typical one at that: "It is the usual automobile collision, in Southeast Minneapolis, and our client is the Pittsburgh Coal Company. Up to date I have done nothing except go out and look over the scene of the accident. It looked like any other street corner to me."²⁸³ Approximately a year later, Prosser reports of trying a case "involving an insurance premium of \$45, which took all day to try, and covered more points of law than the university course on insurance takes up in eight months."²⁸⁴ Prosser won: "It was before Paul Carroll, and after I had picked out one point of law that was in my favor out of a forest of contrary ones, he gave judgment for our side."²⁸⁵ Then, as now, most cases never made it to trial: "I have been slated to try several other cases, but they all get settled before they get anywhere."²⁸⁶

279. *Id.*

280. Letter to Zerelda Prosser (Jan. 5, 1929), *supra* note 258.

281. Letter to Zerelda Prosser (May 2, 1929), *supra* note 260. Prosser's interest in railroads is also evident in this letter. He describes in detail his trip to and from the deposition: "My trip was a study in degeneration of railroad equipment." *Id.* The letter again contains ethnic references: "The car was full of Jews and Swedes and all of them snored." *Id.*

282. Letter to Zerelda Prosser (Apr. 7, 1929), *supra* note 260.

283. *Id.*

284. Letter to Zerelda Prosser (Mar. 11, 1930), *supra* note 260.

285. *Id.*

286. *Id.*

In addition to solo trials, Prosser argued solo appeals: “I have successfully defended an appeal myself, in the famous case of Erickson vs. Erickson Furniture Company”²⁸⁷ He was not, however, impressed with himself, as the case “was more or less foolproof and couldn’t have been lost even if we had put in no brief at all.”²⁸⁸ As a practitioner, Prosser engaged in work besides litigation: “I have been working on the valuation of the Minneapolis Street Railway properties, for purposes of taxation.”²⁸⁹ In so doing, he faced an issue of statutory construction: “It took me nearly two weeks to evolve a definition of ‘track.’ The statute provides that ‘the track, roads and bridges’ of street railways are personal property and not real estate. If you think ‘track’ is a simple little word, try looking it up some time.”²⁹⁰

As a lawyer, the only thing worse than being too busy, is not. In March of 1930, Prosser reports: “Things have slackened up a little at the office. It has been over a week since I stayed down at night.”²⁹¹ By itself, that seems positive, but Prosser continues in an ominous manner: “I hear from other men outside that the general business in the legal profession has never been worse in Minneapolis.”²⁹² Prosser’s firm was affected: “Very little new matters are coming into the office, and we are running on the big cases left over from last year. Even the automobile injuries for the Ocean insurance company have quit coming in.”²⁹³ The Great Depression was settling into the legal business in Minnesota, a circumstance that may have affected Prosser’s view of a major decision he was facing.

C. THE ACADEMY

1. The Decision to Teach

Within a year of graduation, while simultaneously practicing law, “Prosser was back at the University of Minnesota Law School as a part-time lecturer. He was appointed an ‘Instructor in Law’ on February 25, 1929 to fill in ‘[w]hen Professor Fletcher became ill’ at the rate of \$20 per lecture.”²⁹⁴ Prosser must have impressed quickly; in a little over two months, he is discussing an offer to join the full-time faculty: “You have probably heard from Dad most of the news about Fraser’s famous offer. He led me up to the top of a mountain and exhibited a lot of territory, and I had some little difficulty in

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.*

294. Robinette, *supra* note 21, at 583 (footnote omitted) (quoting Prosser Faculty Record (on file in Prosser Biography File, University of Minnesota Archives and with author)).

finding the proper Biblical response.”²⁹⁵ Prosser rejected the offer: “I finally declined, with thanks, and an endeavor to keep my foot inside the door as much as possible.”²⁹⁶

Prosser is clearly conflicted: “In many ways I believe I was a good deal of a chucklehead to turn the thing down.”²⁹⁷ His first reason is money: “It would mean an immediate and rapid increase in salary, running up to a top limit of around \$7000 in a rather short time—say five years or so. This is . . . quicker than I will ever reach that figure in a law office, where it will very likely take ten.”²⁹⁸ Part of his financial reasoning involves having more children, in which case “it may reasonably be argued that an immediate \$3500 a year with rapid promotion to twice that figure is more important . . . than a distant and problematical \$15,000 per annum fifteen years hence.”²⁹⁹ Prosser has other reasons to be conflicted: “All this is without regard to the greater leisure time, the freedom from hurry or pressure, the long vacations, and all the rest of the lazy man’s attractions that go with teaching.”³⁰⁰

Why did Prosser decline the offer? He states:

However, a number of things acted as deterrents—a feeling that I am too young to take the veil; a natural desire to get into court and raise a little hell for the fun of it; the native tendency inherited from yourself to shoot for the moon rather than anything in reach; my profound distaste for the general manners, morals, intellect, education, system and president of the University of Minnesota; and most important of all, the realization that the jump can be taken only in one direction, and never back, since no teacher can ever return to practice except at a great loss of income and starting at the bottom, while up to a certain point you can, if they ask you, always leave practi[c]e and teach.³⁰¹

Yet Prosser thought the issue would come up again, and, “[w]hat I shall do then will depend entirely on what happens in the meantime.”³⁰²

That summer, Prosser takes stock of his law firm, and expresses some anxiety. First, the firm has expanded by three attorneys to a total of ten; one “bad feature” of this is that “three new men have been cut in ahead of men

295. Letter to Zerelda Prosser (May 2, 1929), *supra* note 260. Everett Fraser was dean of the Minnesota Law School from 1921 to 1948. *History*, U. MINN. L. SCH., <https://www.law.umn.edu/about/history> (last visited Jan. 10, 2016).

296. Letter to Zerelda Prosser (May 2, 1929), *supra* note 260.

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

who have served the firm faithfully for a good many years.”³⁰³ These developments may have been particularly galling to Prosser as the most junior attorney in the firm. He has, however, a bigger concern: “the entire future, business and prestige of the organization now hinge entirely upon John Junell. If anything should happen to him, . . . it is quite certain that neither Oakley, Driscoll nor Fletcher could ever hold the thing together.”³⁰⁴ In short: “I think if Junell died today the entire outfit would disintegrate inside of three weeks.”³⁰⁵

Despite rejecting Fraser’s offer of a full-time faculty position, Prosser returned to Minnesota Law for the 1929–1930 academic year as an “Instructor,” receiving a fixed salary of \$1100.³⁰⁶ By January of 1930, Prosser announces: “The right honorable Everett Fraser is on my trail again. He has increased his previous offer, and I can now start in at a clear salary of \$3500, plus whatever I could make in the summer.”³⁰⁷ There was an “additional bait” tentatively suggested that Prosser might have a year in Europe as a fellowship offered by “some social science foundation, with more money than judgment.”³⁰⁸ On the value of the fellowship, Prosser was dubious: “Just what they think anybody might learn on the continent that would be of any value teaching law at Minnesota I don’t know, but naturally nobody asks them any questions.”³⁰⁹

To illustrate the importance of money in Prosser’s decision, he segues next to a discussion of an expected raise at the firm and the firm’s finances.³¹⁰ He continues:

There are frequent intervals when something which may be common sense comes over me, and I am impressed with the profound and utter foolishness of a man thirty-one years of age, with a wife and two children,³¹¹ muddling around working himself to death on any such slow and uncertain proposition as the practice of law with a large organization appears to be in this town, and living off of you and Dad in the meantime, when he can be comfortable and at least self-supporting at his own option any time along the way. Apparently it will be about five years more at least before I will be making as much in the office as I should start in with over at the

303. Letter to Zerelda Prosser (July 14, 1929), *supra* note 260. In another six months, the firm would be up to 18 attorneys. Letter to Zerelda Prosser (Jan. 19, 1930), *supra* note 260.

304. Letter to Zerelda Prosser (July 14, 1929), *supra* note 260.

305. *Id.*

306. Robinette, *supra* note 21, at 583.

307. Letter to Zerelda Prosser (Jan. 19, 1930), *supra* note 260.

308. *Id.*

309. *Id.*

310. *Id.*

311. Eleanor was pregnant at this point. *See supra* text accompanying note 262 (Prosser’s second child made his first appearance in a letter dated June 17, 1930).

university. After that, of course, the rate of increase will be much greater in the office, assuming the firm continues to grow and I continue to progress. The ultimate possibilities are practically unlimited. If I have to work as hard for it as Fletcher, for instance, is working now, I may be dead by that time, but that is a small matter.³¹²

Shifting from money, Prosser notes: “On the other hand, the University of Minnesota is a second-hand dump, L.D. Coffman runs it, and Fraser won’t stay there forever.”³¹³ He then reiterates his opinion that the jump to teaching is one-way: “Also, it will always be possible to jump from practice into the teaching, as long as Fraser continues to suffer from the delusion that he has another Williston at hand, but the return jump is not possible.”³¹⁴ Prosser found Fraser unsettling: “This man Fraser is very disturbing. He leaves me uneasy in my mind.”³¹⁵ At this point, Prosser was still not ready to teach: “If I had to make up my mind today, I suppose I should turn Fraser down and continue the experiment another year.”³¹⁶

It appears Prosser declined the position again. In a March letter, he states: “There is no news as to the choice of jobs. The Dean offered the teaching job to the Honorable John Hougen, but he is apparently going to run for governor next fall, in the hope of being selected as Lieutenant Governor if he makes enough of a showing.”³¹⁷ Prosser continues:

What with his indecision and mine, the whole affair is being stalled along, until sooner or later there will be an ultimatum from Everett, requiring somebody to make up his mind. I am not certain what I will do about it. I wish you and Dad were here to confer.³¹⁸

These comments appear in the same letter in which Prosser discusses the decrease in legal business.³¹⁹

2. Professor Prosser

Eventually, for whatever his reasons, Prosser accepts Fraser’s offer. For the 1930–1931 academic year, Prosser is appointed Assistant Professor at the University of Minnesota Law School.³²⁰ He is assigned to teach Sales³²¹ and

312. Letter to Zerelda Prosser (Jan. 19, 1930), *supra* note 260.

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.*

317. Letter to Zerelda Prosser (Mar. 11, 1930), *supra* note 260.

318. *Id.*

319. *See supra* text accompanying notes 291–93.

320. *See Robinette*, *supra* note 21, at 584.

321. Prosser had taught Sales before, as recently as the preceding spring semester. *See* Letter from William L. Prosser to “Family,” *supra* note 73 (“I put in all of the evenings last week correcting final examinations in Sales.”). He has, however, changed casebooks. Letter from

Insurance³²² in the fall, and Damages in the spring.³²³ Once again, much of Prosser's life remains stable as he transitions from practitioner and part-time teacher to tenure-track professor. And, once again, the themes in his letters reflect that consistency: Prosser discusses his children in detail,³²⁴ sports (mostly football, because these are fall letters;³²⁵ Prosser is also learning to play squash), theatre (and also a classical music concert), politics, and the weather.³²⁶

Prosser's early letters from the transition to teaching emphasize two impressions. First, he believes there is significantly less pressure in the academy than in practice. Second, he believes the academy is somewhat detached from reality. A week into the fall semester, Prosser provides his mother an update.³²⁷ He begins by explaining why he is not writing on Minnesota Law stationery: "This being the advanced hour of 4.30 P.M., everybody around here has gone home, and the Dean's office, where they keep all the stationery, is locked up . . . Pressure is unknown, and there is never any hurry about anything. Just at present Rottschaef^{er},³²⁸ McClintock,³²⁹ Cherry³³⁰ and I knock off work at 1.30 and go over to the Union and listen to the World's Series on the radio."³³¹ Prosser reports he is in class four hours a week: "The rest of the time I can do about what I like. I put in most of it trying to get a lead on the class in my two subjects. I have started out on Sales from

William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 191 ("[T]he new casebook I am using turns out to be pretty good . . .").

322. Insurance is a new preparation for Prosser. *See* Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 191 ("Insurance is an entirely new proposition to me, but it has been made much easier by two new texts which came out this year—one of them by Vance.").

323. *See* Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Oct. 7, 1930) (on file with author).

324. *See id.*; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 191; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Nov. 30, 1930) (on file with author) [hereinafter Letter to Zerelda Prosser (Nov. 30, 1930)]; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Aug. 1, 1935) (on file with author) [hereinafter Letter to Zerelda Prosser (Aug. 1, 1935)]; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Aug. 8, 1935) (on file with author).

325. *See* Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 323; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 191; Letter to Zerelda Prosser (Nov. 30, 1930), *supra* note 324.

326. *See* Letter to Zerelda Prosser (Nov. 30, 1930), *supra* note 324.

327. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 323.

328. Henry Rottschaef^{er} was a specialist in tax and constitutional law. *See generally* Edward S. Bade, *A Tribute to Professor Henry Rottschaef^{er} on His Retirement*, 42 MINN. L. REV. 1 (1957).

329. Henry L. McClintock was a specialist in equity. *See generally* HENRY L. MCCLINTOCK, HANDBOOK OF EQUITY (1936).

330. Wilbur H. Cherry was a specialist on evidence. *See* George W. Pugh, *The Federal Rules of Evidence: Symposium: Foreword*, 36 LA. L. REV. 62 & n.17 (1975) (noting that Cherry was on the Model Code of Evidence Committee as one of "[t]he great evidence law men of the day").

331. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 323.

a new angle, and it has taken considerable time.”³³² Prosser estimates he is “about ten days ahead of the gang in each course.”³³³ He finds the entire faculty “very friendly” and notes: “Outside of the unquestionable fact that it is about the ugliest gang of mortals that ever lived, they are not a bad bunch.”³³⁴

Three weeks later, a month into his first semester on the tenure-track, Prosser again discusses being a professor.³³⁵ In general, he is doing fine: “I am getting along all right at the university.”³³⁶ But his reaction to the academy is mixed: “The atmosphere in this place is very curious; in many respects it irritates me, and in others I like it.”³³⁷ Specifically, Prosser states:

There seems to be even in the law school a fairly complete detachment from the world. . . . The fact that a lot of low-browed individuals are shaking their fists under each other’s noses down in the District Court and that a set of numbskulls like Judge Salmon who never ought to have been elected are trying to figure out the law and lay it down is regarded as more or less immaterial.³³⁸

Relatedly, as Prosser noted in his earlier letter: “There is never any hurry; everybody has all the time in the world for everything, and nothing has to be done at any particular date as long as the classes go on.”³³⁹

These features have two specific negative consequences according to Prosser. First, “everybody is very chatty; the faculty drop in . . . to discuss the football games, the play at the Shubert, and the high cost of living. Even the janitor who comes in to fix the radiator stays to tell you about his nephew who has been having trouble with his neck.”³⁴⁰ Second:

Minor problems such as whether Mr. Benson of the Junior class shall be permitted to start . . . late because he is engaged in the fish business . . . and will lose a lot of revenue if he comes to Minneapolis before the lake freezes up are discussed in faculty meetings at great length.³⁴¹

Prosser concludes: “[Y]ou can do pretty much as you want to; demands on your time are not heavy, and if you don’t let the general abstraction get you, it isn’t a bad life.”³⁴²

332. *Id.*

333. *Id.*

334. *Id.*

335. Letter from William L. Prosser to Zerelda Ann Huckeby Prosser, *supra* note 191.

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.*

342. *Id.*

Transitioning to teaching itself, Prosser admits: “Of course I don’t know much about teaching; if there is a science of Education I never came in contact with it.”³⁴³ He reveals his strategy thus far: “About all I can do is to try to set the class bickering over the cases and join in the argument myself as much as is necessary to keep it from getting out of hand.”³⁴⁴ Prosser seems to have modeled his teaching, in part, after his Torts professor at Harvard Law School: “Of all the law I had at Harvard . . . I find that the teaching that I remember most of is Hudson’s insolent system of disputing everything and making you justify everything, no matter how obvious.”³⁴⁵ Prosser plans to conduct an empirical study in teaching to determine what works: “I propose to try different systems in different parts of the course, and see what turns up on the final examination. No doubt any such empirical method is educational heresy, but nobody supervises the classroom, and I can do what I like.”³⁴⁶

Finally, Prosser mentions the social circuit among the faculty. He states that the professors take turns having each other over for elaborate dinners.³⁴⁷ After describing a list of who has invited them over and been invited in return, Prosser states: “It appears that law school faculty dinners are all formidable affairs—why the Lord only knows. You dress, and the hostess has in a cateress, and something unusually gold-and-amethysts in the way of food is provided.”³⁴⁸ A “curious little detail” of these affairs is that, after dinner, the gentlemen and the ladies would separate by gender for a very long period of time.³⁴⁹ Prosser notes: “The origin of this curious Polynesian custom is lost in the mists of antiquity around the law school. It suits me all right, because I would rather talk to the men than their wives, but it is a little rough on Eleanor.”³⁵⁰

Thus, Prosser settled into his position at the University of Minnesota Law School. He would be promoted to full professor in a mere three years.³⁵¹ Consistent with his course package, “Prosser’s early scholarship focused on sales, insurance contracts, and a ‘mortgage moratorium’ in Minnesota.”³⁵² He would not teach the subject to which his name is so attached, Torts, “until the 1934–1935 academic year.”³⁵³ “His first publications on torts were book reviews in the *Minnesota Law Review*.”³⁵⁴ In the next few years, Prosser would

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

351. Robinette, *supra* note 21, at 584.

352. *Id.* (footnote omitted).

353. *Id.*

354. *Id.*

write articles on *res ipsa loquitur*, proximate cause, and joint and several liability.³⁵⁵ One of his articles on *res ipsa loquitur* would be brought to the attention of Harvard Law professor Warren Seavey, then one of the most influential torts scholars in the nation.³⁵⁶ Seavey, who served on the editorial board of the West Publishing Company's casebook series, recommended Prosser to author its treatise on the law of torts.³⁵⁷ By the end of 1936, Prosser had signed a contract to write the torts treatise for West, "even though he was only in his second year of teaching Torts."³⁵⁸

In addition to the treatise, Prosser would write other influential torts scholarship in this period. "[I]n 1939, Prosser published an article on the intentional infliction of mental suffering³⁵⁹ that is widely regarded as [legitimizing] the status of a tort now actionable in every American jurisdiction."³⁶⁰ Numerous schools showed interest in hiring Prosser away from Minnesota during the 1930s,³⁶¹ but he remained in Minneapolis. Prosser, however, taught summer school at the University of Iowa in 1932, the University of Colorado in 1935, and the University of Texas in 1941.³⁶²

In 1942, after the United States' entry into World War II, Prosser took a leave of absence from the University of Minnesota to serve as state counsel for Minnesota's Office of Price Administration. A year later, Prosser returned to

355. *Id.*

356. Abraham & White, *supra* note 6, at 32–33.

357. *Id.*

358. *Id.* at 33.

359. *See generally* Prosser, *supra* note 17.

360. Robinette, *supra* note 21, at 585 (footnote omitted).

361. *Id.*

362. *See* Letter to Zerelda Prosser (Aug. 1, 1935), *supra* note 324; Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Oct. 12, 1952) (on file with author) ("I did a short article on it for the Texas Law Review back in 1941, when I taught at Texas for the summer . . ."). The 1935 letter is written on University of Colorado School of Law letterhead. *See* Letter to Zerelda Prosser (Aug. 1, 1935), *supra* note 324. In it, Prosser states: "I have a class of about twenty, and the course is easy. I am doing no work, but simply repeating the course I gave at the summer school in Iowa three years ago." *Id.* The Iowa and Colorado summer courses were Damages. *See* BULLETIN OF THE STATE UNIVERSITY OF IOWA: COLLEGE OF LAW: ANNOUNCEMENT 1932–1933, at 23 (1932); 35 UNIVERSITY OF COLORADO BULLETIN: CATALOGUE: SUMMER QUARTER, 1935, at 101, 104 (1935). Thanks to Eric Andersen at Iowa and Jane Thompson and Maria Lynn Walton at Colorado for their assistance with the bulletins. The Texas summer course was Sales. *See* THE UNIVERSITY OF TEXAS PUBLICATION: SUMMER SESSION, 1941: MAIN UNIVERSITY: CATALOGUE NUMBER 119–20 (1941). Thanks to Elizabeth Hilkin at Texas for confirming this information.

There is also a reference to Prosser "visiting" the University of California, Berkeley. *See* Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Apr. 17, 1952) (on file with author) ("McBaine retires in June, and that will leave only two (Barbara Armstrong and Warren Ferrier) out of the old faculty who were here when I visited in 1936."). There is, however, no record of Prosser teaching at the school during this time. At a faculty meeting on January 21, 1937, the list of faculty members present ends with: "Mr. Prosser, of Minnesota, was a visitor." E-mail from William Benemann, Archivist, Univ. of Cal., Berkeley (Boalt Hall) to author (Apr. 23, 2015, 14:11 EST) (on file with author). It appears that Prosser was not a formal visitor, but simply stopped in at the school. *Id.* Thanks to William Benemann for providing this information.

private practice, as a partner, with the same firm he had served as an associate prior to entering law teaching.³⁶³ Prosser remained in practice for four years, returning to the academy as a professor at Harvard Law School in the 1947–1948 academic year.³⁶⁴

There is a large gap in the letters from 1935 until 1948,³⁶⁵ and the next letter finds Prosser during his year at Harvard.³⁶⁶ He is scouting out potential places to live.³⁶⁷ At one point, he describes some attractive houses, but “[n]one of them had any ‘For Sale’ signs up.”³⁶⁸ He discusses that a particular town has good schools and is on a commuter run.³⁶⁹ And he states that another town “usually has been mentioned as a possible place to live.”³⁷⁰

Prosser also reports on how his classes are progressing:

I am beginning to draw large numbers of auditors for my classes. Part of it, I think, is curiosity aroused by the famous lawsuit; some of it is to have a look at the guy that wrote the Torts book; some of it is Seavey’s students coming to hear what I have to say about his unanswered questions.³⁷¹

Prosser was hearing positive feedback: “Reese reports that quite a few of the undergraduates from the Arts college have been coming over, and that reports are favorable.”³⁷² Then, Prosser wryly adds: “No faculty have shown up yet. I hope they don’t.”³⁷³ The letter concludes on the exact same note as the first letter in the collection: “Rather a lonesome existence.”³⁷⁴

363. Robinette, *supra* note 21, at 585–86. He returned and became a partner at Dorsey in the same year that future Supreme Court Justice Harry Blackmun was made a general partner. LINDA GREENHOUSE, *BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN’S SUPREME COURT JOURNEY* 17 (2005). Note Prosser’s return to practice belied his fear that one could only go from practice to teaching and not vice versa. *See supra* text accompanying notes 301, 314.

364. Robinette, *supra* note 21, at 586.

365. In terms of substance, the gap is really from 1930 until 1948.

366. *See* Letter from William L. Prosser to “Butch,” *supra* note 51.

367. *Id.*

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.* The lawsuit reference is explained by Abraham and White. They describe an incident from the first day of Prosser’s Fall 1947 Torts class in which Prosser took a \$5 bill from a student, asked what legal steps the student could take to recover the money, found the student’s response inadequate, and kept the money. Abraham & White, *supra* note 6, at 34. The next day, the student and a lawyer served a summons on Prosser for conversion of the student’s property. *Id.* The suit was regarded as a “teaching moment” and formal proceedings were held on campus with a judge presiding. *Id.* at 34–35. Abraham and White conclude: “The incident, however, apparently made Prosser something of a laughingstock with the Harvard faculty . . .” *Id.* at 35.

372. Letter from William L. Prosser to “Butch,” *supra* note 51.

373. *Id.*

374. *Id.*

Prosser's correspondent for this letter is "Butch."³⁷⁵ Subsequent letters demonstrate that "Butch" is none other than Robert Sproul, the president of the University of California.³⁷⁶ Prosser was already being recruited for a deanship.³⁷⁷

In a few short months, Prosser would leave his professorship at Harvard Law School and become dean of the University of California, Berkeley School of Law.³⁷⁸ His deanship is covered much more thoroughly in letters than any of the preceding parts of his life.

IV. CONCLUSION

William Prosser's influence on modern tort law is both substantial and pervasive. In terms of shaping doctrine, John Goldberg calls him "the most important American torts scholar of the twentieth century."³⁷⁹ The lack of his papers deprives us of a systematic, intimate view of Prosser during the course of his life. The discovery of his letters, however, allows that gap to be filled, at least to an extent. The letters provide a first-person account from Prosser during crucial periods of his life. Moreover, the letters resolve contested accounts about Prosser, such as where he spent his childhood, when he started Harvard Law School, and, to a degree, what he did during the 1920–1921 academic year. Unlike any other source, the letters take readers into Prosser's confidence as he questions his own honesty, wrestles with the decision to become an academic, and candidly assesses his chosen profession.

Beyond that, the letters reveal a complicated man behind the prolific and prominent tort scholar. In the early letters, Prosser seems to be creating a persona: he is the wry observer of life.³⁸⁰ He coats many of his statements to his mother in sarcasm. In the letters from Europe, the sarcasm is mixed with self-deprecation, particularly in regard to Prosser's abilities and career prospects. Prosser's mock resume references his ability to take shorthand with "numerous mistakes," his Spanish "not good enough for business purposes,"

375. *Id.*

376. See Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (July 10, 1949) (on file with author); Letter from William L. Prosser to Zerelda Ann Huckeby Prosser (Sept. 26, 1949) (on file with author).

377. The inference comes from the fact that Prosser is exchanging letters with the president of the University of California. See *supra* note 376 and accompanying text.

378. See Robinette, *supra* note 21, at 586.

379. Goldberg, *supra* note 24, at 440.

380. Two legal historians, Al Brophy and Ted White, independently analogized Prosser to Nick Carraway, the narrator of F. Scott Fitzgerald's *The Great Gatsby*. The novel was written and published in the same general time period (early to mid-1920s) that Prosser wrote the earliest letters. Not only is the wry observer stance similar, both Prosser and Carraway are from the Midwest, attended college at an Ivy League school, and fought in World War I. See F. SCOTT FITZGERALD, *THE GREAT GATSBY* 2–3 (1925).

and his chemistry “almost forgotten.”³⁸¹ Moreover, he has “[n]o physical strength, no mechanical training, no engineering knowledge, no idea of business.”³⁸² The reader can sense real anxiety from Prosser about how he will earn a living. The self-deprecation recedes as he succeeds in law school, practice, and teaching, but the sarcasm remains.

Prosser is ambivalent and restless, a natural consequence of adopting a detached attitude. He frequently lacks firm direction, and often changes his plans once he finally chooses a course of action. He struggles with career goals as he prepares to return to the United States. He focuses on play writing and then tries law. He leaves Harvard Law School after a year, while remarking how lucky one of his friends is to have a position with a paint company. After a stint on the railroad and in sales, he returns to law school. He practices for a brief period of time and then considers teaching. He is conflicted about the decision for more than a year. Once he becomes an academic, he likes the atmosphere, but it also irritates him. He eventually returns to practice. Then he goes back to teaching. Prosser is not alone in his restlessness; indeed, it is a trademark of the “Lost Generation” of people coming to age during World War I.³⁸³ As one scholar notes, “*lost* means not *vanished* but *disoriented, wandering, directionless*—a recognition that there was great confusion and aimlessness among the war’s survivors in the early post-war years.”³⁸⁴

Prosser is skeptical of “high” theory.³⁸⁵ In a sense, this is a specific application of his ambivalence. Prosser is an intellectual, but not too much of an intellectual. In this attitude, he may have been influenced by his father, who believed in the separation of vocational from general education and that general education should be made more “practical.”³⁸⁶ He is dismissive of professors generally.³⁸⁷ He discusses their detachment from the real world; the life of a professor is one of abstraction.³⁸⁸ Prosser sees himself as worldlier and more grounded. Unlike others who “take the veil,”³⁸⁹ Prosser knows that

381. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77; *see supra* note 109 and accompanying text.

382. Letter from William L. Prosser to Zerelda Ann Huckleby Prosser, *supra* note 77; *see also id.* (“I think the Bureau is pretty darn careless about whom it leaves in charge of its offices.”).

383. *See generally* ERNEST HEMINGWAY, *THE SUN ALSO RISES* (1954). Hemingway attributed the epigraph—“You are all a lost generation”—to Gertrude Stein. *Id.* at epigraph. The “Lost Generation” restlessness furthers the analogy with Nick Carraway. *See supra* note 380.

384. SAMUEL HYNES, *A WAR IMAGINED: THE FIRST WORLD WAR AND ENGLISH CULTURE* 386 (1990).

385. I thank John Goldberg for this point.

386. Gadell, *supra* note 31, at 2–3.

387. *See supra* notes 110–15 and accompanying text.

388. *See supra* note 342 and accompanying text.

389. *See supra* note 301 and accompanying text.

the law is about “a lot of low-browed individuals . . . shaking their fists under each other’s noses down in the District Court.”³⁹⁰

Prosser craves attention. He needs people. He complains about loneliness repeatedly: “Darned lonesome in this man’s country,”³⁹¹ “My solitude has endured two days, and I am at the end of my rope already,”³⁹² “Rather a lonesome existence.”³⁹³ In his mock resume, one of his liabilities is “Gets grouchy when lonesome.”³⁹⁴ Unfortunately, one of his other liabilities keeps him away from people: “Lack of experience in meeting people, and innate awkwardness when confronted with strangers.”³⁹⁵ Prosser notes this is a “serious handicap.”³⁹⁶ Prosser’s desire for attention is consistent with his enjoyment of performances, such as teaching, and may explain his attraction to plays and the theatre. Sadly, Prosser eventually took this craving too far. After his death, Wex Malone stated that Prosser “badly needed people to love him—not just to admire him.”³⁹⁷

Prosser remains mysterious. Despite the biographical progress made possible by the discovery of the letters, aspects of Prosser’s life still puzzle. It remains unclear why Prosser left law school in 1922 or returned to it in 1926. Similarly, it is unknown why Prosser left academia in 1942 and returned to it in 1947. What was Prosser seeking? And would he find it as the dean at the University of California, Berkeley? The next piece takes up those themes.

390. See *supra* note 338 and accompanying text. Prosser struck the same tone in another context. He was cool to the idea of playing the piano or waltzing divinely, but instead preferred to shoot, fight, ride a horse, or swim. See *supra* note 99 and accompanying text.

391. See *supra* note 75 and accompanying text.

392. See *supra* note 88 and accompanying text.

393. See *supra* note 374 and accompanying text.

394. See *supra* note 109 and accompanying text.

395. See *supra* note 109 and accompanying text.

396. See *supra* note 109 and accompanying text.

397. Wex S. Malone, *More in Sorrow than in Anger*, 60 CALIF. L. REV. 1252, 1254 (1972).