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PROCEEDINGS OF THE FOURTH NATIONAL CONFERENCE OF LAW REVIEWS

Held at the Washington University School of Law,
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KEYNOTE ADDRESS

MILTON D. GREEN†

It is a real privilege to welcome you to St. Louis and to Washington University. I think it is particularly fitting that the Conference opens here on Washington's birthday because this is also an historic day in the life of our University. Washington University derives its name from the fact that it received its charter one hundred and four years ago today—and so we are celebrating a birthday. The timing of the Conference is also significant in another way. When the First National Conference of Law Reviews met in 1950, it was as a result of the conviction that law reviews had common problems and that the Conference could serve as a clearing house for ideas and possible solutions to those problems. At that time, 1950, the *Index to Legal Periodicals* listed 177 law reviews but strangely, comparatively little had been written *about* law reviews—there were some articles, a few of which I will mention. Today, no doubt due to the influence of the Conference, in part at least, we are much more conscious of the importance of the law review in legal education. Today the *Index to Legal Periodicals* lists 240 law reviews—an increase of 33½ per cent. Today there is a great deal of literature about law reviews and today, law reviews are engaged in a critical self-appraisal which is similar to the ferment which started in legal education in the 1930's. It's a very healthy sign. I would like to quote from an article written by Professor Richard H. Lee of Miami University; he starts it out this way: "Authorities in the field of Legal Education are somewhat discontented with the law review both as a teaching tool and as a scholarly publication." And then I skip a few lines to where he is referring to some of the recent literature that has been written about law reviews. He states,

The law review has been accused of burying its nuggets under a pile of dross, thus compelling extensive prospecting. It has been charged with not having enough nuggets. It has been held ineffective because of an excess of faculty control, or because of too little of it. It has been damned as a waste of paper and commended as a great institution. It has been suggested by potent authority that about half of the nation's law reviews should be abolished; but others would make the law review the law school itself.¹

Comments such as these reflect the current ferment.

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1. Lee, *Administration of the Law Review*, 9 J. LEGAL ED. 223 (1956).

Law reviews perform several valuable functions. Professor Lee, in his article, has outlined what those functions are. Today I am going to talk very briefly about only one of those functions, which I consider to be a most important one, and that is the service which the law review gives to legal education. This service is threefold. First, the law review is a source or repository for instructional materials for use in the law school. Secondly, it is a medium for continuing education of practicing lawyers, and thirdly, it is an instructional device to supplement ordinary teaching methods. It is in effect a laboratory course in creative research and writing. These are the several services and each should be separately evaluated; otherwise, we are apt to be led into a non-critical, emotional, general reaction that law reviews are grand or that they are stupid. Both extreme positions have been taken."

Now I am going to examine these three services which law reviews perform in the cause of legal education. First, as a source or repository for instructional materials for use in the law school. There are other repositories as you well know—casebooks, treatises, encyclopedias, digests, and raw source material in the form of case reports and statutes. There are two problems here. The first problem: do the law reviews aid the instructor by furnishing him ammunition? And the second problem: do they aid the students in understanding other assigned material? On the first problem, I'd like to quote now from Professor Rodell, one of the extreme critics of the law reviews. He had been a constant contributor to law reviews and then he became disgusted with them and he wrote an article which was entitled "Good-bye to Law Reviews." It was his swan song in which he said he would never again waste his time writing for law reviews. I want to quote a few sentences from it:

This, then, is by way of explaining why I do not care to contribute further to the qualitatively moribund while quantitatively mushroom-like literature of the law.

There are two things wrong with almost all legal writing. One is style. The other is content. . . .

In the main, the strait-jacket of law review style has killed what might have been a lively literature. It has maimed even those few pieces of legal writing that actually have something to say. . . .

In what I have said about the stuffy style and fluffy filling of law review articles, I have not been referring exclusively to those elegant effusions in the front of the book known as "leading articles." The shorter fillers called "notes," "comments," and "recent cases," and similar apologetic terms come in for the same kicks in the pants as they pass in review. Usually written by students—and then rewritten by the editors—their subjects are

2. Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936); Westwood, *The Law Review Should Become the Law School*, 31 VA. L. REV. 913 (1945).

likely to be just as superficial and their style even more assiduously stilted. . . .

All of this raises another question about which I am curious. I wonder why all the law reviews, so far as lay-out and general geography are concerned, are as like as a row of stiffes in a morgue. . . . I have nothing in particular against the Harvard Law Review and I have nothing against the New York Times either, but it seems to me that if all the newspapers in the country had stepped all over themselves in an effort to imitate the stately mien of the Times, the daily press might well be as badly in need of a hypodermic as are the law reviews. Even at the cost of breeding a Hearst in their midst, the law reviews could stand a few special features, a few fighting editorials, a cartoon or two, and maybe even a Walter Winchell.³

Now, back to the first problem. Too much of the material in the law reviews is not suitable for student instruction. It is aimed at the Bar, or it is on the graduate level. When he was Dean of the University of Chicago Law School, Wilber Katz suggested that the law review could contribute more to legal education by publishing elementary articles that would be of value to students.⁴ Now on the second problem—there are not enough students who read them. They know that if they attend classes, brief cases, and take notes they can get by. And in the second place, there are not enough copies in the law school libraries for effective student use.

Now let's pass to the second service, as a medium of continuing education of practicing lawyers. Other media are of course bar conventions and legal institutes. In this area, it seems to me the law reviews are performing an excellent service. A few examples—the most obvious of course are the notes and comments on recent decisions and developments. Many lawyers find it extremely helpful to refer to law reviews and there they may find a brief on the point that they have in the office at the moment. Secondly, there are symposia or leading articles on new and growing areas in the law which help the practicing lawyer no end because those are things that he may not have had in law school—such as symposia on taxation, estate planning, labor law, procedural reforms, etc. And thirdly, the articles on re-evaluation of old areas are valuable to the lawyer. I'm thinking of articles like "Haddock v. Haddock Revisited," or "Erie Railroad v. Tompkins Ten Years After."

Now the third service, as an instructional device to supplement ordinary teaching methods. In other words, the law review as a laboratory course for legal research and creative writing. Here there is a strong temptation to depart from law reviews and talk about the

3. Rodell, *supra* note 2, at 38-45.

4. Reported in Comment, *Report of the First National Conference of Law Review Editors*, 44 ILL. L. REV. 676, 681 (1949).

deficiencies in legal education. I'm going to resist that temptation as much as I can, but I'm going to say that there are two things about much of legal education that could stand improvement. One is that we need more personalized instruction, and the second is we need more laboratory courses where students can learn by doing, and in both of these areas the law review does a magnificent job. Professor Marsh wrote that the education of a lawyer should include, under the heading "Use of Words," reading, speaking, and writing. Under the heading "Knowledge of the Body of Legal Dogma," he includes a minimum knowledge of legal doctrines memorized, some knowledge of the horizontal structure of the law, and some knowledge of the vertical structure of the law. And, under "Basic Techniques," he includes the researcher's technique, the advocate's technique, and the counsellor's technique, and then he has a last item, a knowledge of society and its organizational and its institutional forms and of the policies behind legal rules. That is Marsh's analysis of what lawyers should be taught. And he says this:

How did law review work supplement the curriculum in giving the lawyer these needed disciplines? It is apparent that the law review work gave the student very valuable training in these categories: writing, vertical structure of the law, research technique, and policy considerations. Certainly, these are extremely important disciplines for the lawyer, and disciplines which could not be acquired through the existing curriculum. Furthermore, this training was given under the most intense personal supervision and the greatest incentives to painstaking and accurate work. Small wonder that most law firms would hire no graduates except law review men.⁵

That was written at a time when the market for graduating lawyers was not as good as it is today.

Whatever criticisms are levelled at law reviews, there is almost unanimous agreement that the training received by the student in law review work is one of the most valuable, and many would say *the* most valuable, educational experience that he has while in the law school. There is also a rather widespread opinion that the law schools, not the law reviews, should be criticised for not making this type of training available to the whole student body rather than restricting it to the top ten or fifteen per cent of the class. And on this I would like to quote from Westwood's article entitled "The Law Review Should Become the Law School." He says, "that the best technique of education which our schools have devised should be limited to such an aristocracy is difficult to understand. The men on the Review least need the best; they could get along under nearly any system. The stu-

5. Marsh, *The Law Review and the Law School: Some Reflections About Legal Education*, 42 ILL. L. REV. 424, 438 (1947).

dents who need the best our schools can offer are the high C and low B men—from whom the profession is largely recruited.”⁶

Now despite Professor Rodell, law reviews are not all alike. There is a great deal more variety than meets the eye. To mention only a few of the many differences—first, in regard to organization, there is at the one extreme the faculty-dominated law review, and at the other extreme the law review which enjoys almost complete student autonomy, and in between all shades of differences. Secondly, on the question of form, there is the traditional format with the leading articles and the notes and the comments. However, there is a rapidly expanding group which is employing the symposium style, in which the issue is devoted to one topic, and there are all shades between the traditional and the symposium style. And then thirdly, on the question of sponsorship—some law reviews are sponsored, most are, by the law school; there are some which are sponsored by an interdepartmental mechanism—in other words, not only the law school, but other schools or departments in the university. And finally, there is the type of law review which has a Bar Association tie-in. Such arrangements may have originated in order to obtain financial support, but they sometimes lead to control of editorial policy by the Bar Association. So the law reviews are different, and they have different problems, but they do have many common problems and you are meeting at this Conference to discuss some of those common problems. I know you have an agenda laid out and I know that you have selected some of the problems which seem most important to you and I do not wish to amend or add to that agenda, but before you start I would just like to give you a few of the problems which I thought might prove fruitful for discussion, here or elsewhere.

First, the problem of faculty control, supervision, and student autonomy—what you do to get the best results. Second, the question of academic credit for law review work. Is it an incentive or is it a detriment, is it good or bad? Third, the criteria for selecting the student editors of the law review. How should that be done? Should it be based upon grades alone or should there be a competitive writing contest to determine qualifications? There are arguments both ways. Fourth, the problem of securing leading articles—do any of you have trouble with that one? Fifth, questions of editorial policy, the question whether the law review should have and does have a comprehensive manual of procedure so that your candidates can be adequately trained and know where they are going. Then there are the problems of business management—how do you finance the venture anyway? Do you get the money from the university, from the law school budget, from

6. 31 VA. L. REV. 913, 915 (1945).

subscriptions? How do you increase your subscription list? What about advertising, and what about the possibility of getting Bar Association support? These are only some of the problems that came to mind.

In conclusion, I wish you well in your search for better ways for doing an extremely important job. The law review is one of the most vital forces in legal education today. You have a great responsibility and a great opportunity.

RESPONSIBILITY OF LAWYERS ON THE DILEMMA OF SECURITY AND LIBERTY

RICHARD R. POWELL†

The reference to Columbia in Professor Carnahan's kind words of introduction brought back two things to me. The first of these was this—we had an anniversary there a couple of years ago. I was selected to be the Director of the Bicentennial. My colleagues pointed out that it was most appropriate that they should select someone to run it who had been there most of the two hundred years! In the second place, Professor Carnahan made reference to the number of students who have been in my classrooms. It is a fact that I cannot walk the streets of any city in this country or in Western Europe without encountering on the street someone whom I have known in that capacity. That's a great pleasure, but it also entails some risks. One has to be rather careful of many things that might occur, especially on the streets of the cities of Western Europe.

When I am at a dinner of this sort, I am impressed by the difference between the subject matters studied in physics and the subject matters encountered at a dinner. In physics the natural sequence is solid, liquid, gas; at a dinner the normal sequence is liquid, solid, gas.

This is a conference of experts and I join you in that term if you will let me define the term of "expert"—in the old-fashioned way of a very ordinary person a long ways from home. On that basis we are all experts together.

In thinking what I would talk about tonight I decided not to give my Texas Longhorn Speech—that one, you know, which has two points, broadly separated, and nothing but bull between. Rather I thought this was an occasion which deserves a serious topic. I hope that you will bear with me for that purpose as I speak to you on the responsibility of lawyers to find a solution for the preservation of both liberty and security.

This dilemma is not a new one, ladies and gentlemen. Jesus and Paul met death because the liberty they preached challenged the

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