

Michigan Law Review

Volume 51 | Issue 3

1953

Horsky: The Washington Lawyer

Richard D. Rohr

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Law and Politics Commons](#)

Recommended Citation

Richard D. Rohr, *Horsky: The Washington Lawyer*, 51 MICH. L. REV. 460 (1953).

Available at: <https://repository.law.umich.edu/mlr/vol51/iss3/20>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

THE WASHINGTON LAWYER. By Charles A. Horsky. Boston: Little, Brown and Company. 1952. Pp. 179. \$3.75.

One of the major developments in the past two decades of American history is the fact that the federal government has become a brooding omnipresence in the affairs of its citizens. While some may attribute this phenomenon to an alien social philosophy and evoke with nostalgia the Jeffersonian ideals, perhaps the more realistic view is that big government was a necessary concomitant to the growing intricacy and interdependence of our economic life. Whatever its origins, it would seem that big government is here to stay, if only because of the vast demands of the free world upon the wealth and energies of this nation. One by-product of this process of centralization has been the development of a special type of legal practice, conducted by "the Washington lawyer." It is the burden of Mr. Horsky's discussion, originally delivered as the Julius Rosenthal Lectures at the Northwestern University School of Law in 1952, to describe the activities of the Washington lawyer, to suggest his positive contributions to the process of government, and to consider the very real ethical problems which are loosely subsumed in the daily press under the heading of "influence-peddling."

Mr. Horsky's focus is primarily upon private lawyers dealing with the federal government on a day-to-day basis in Washington, perhaps because they are the subject of his own personal experience and acquaintance, but much of what he says has immediate practical significance to lawyers throughout the nation whose clients' interests are affected by the activities of the federal government. It may be observed in passing that the author's description of the pattern of legal practice in Washington should have considerable value for the law student or young lawyer who is faced with vocational choice within this broad and diverse profession. Of more general interest to the Bar, however, is his consideration of the expansion of legal techniques caused by the rise of big government. The immense scope of federal intervention in the conduct of affairs, especially through administrative agencies, has made it imperative for the responsible lawyer to do more than cope with a statute or an administrative ruling as a *fait accompli*, interpreting it to the client for his guidance, or seeking a favorable interpretation, when conflict arises, before a tribunal. These functions remain and are important, but the Washington lawyer finds it necessary to supplement them with a creative, active role in the process of lawmaking itself, representing his client's interests in congressional committee hearings, conferences with the various administrative agencies, and various other stages in the legislative or rule-making process. This is not to suggest that the government and its ministers are unduly

susceptible to the demands of the self-seekers, but rather that a client may have a legitimate claim or interest which is being overlooked or inadequately represented and that action before the legislative decision has marked advantages. The hue and cry about "influence peddling" attests in part to the success of this technique of active intervention in the legislative process, and poses the problem of the ethical limitations on such conduct.

Mr. Horsky, in dealing with the influence problem, is not concerned with the clearly culpable practice of purchasing a government official's favor, for he feels that this is not representative of the average Washington lawyer's conduct and further, that larger and subtler issues command attention. For example, to what extent can a lawyer represent his client's interest in the lawmaking process where public interests are also involved? Justice Brandeis posed this problem many years ago in his strictures on the legal lobbyist, differentiating their activity here from the normal adversary proceeding in a courtroom where both sides are represented. Mr. Horsky feels that a real problem exists here, but points out that there are few clear-cut cases of opposition with the public interest, and indeed, few areas in which there is not confusion or serious debate as to *what* will best serve the public interest. Moreover, he feels that there is an adversary system in fact, if not in form, in most areas of administrative law, and that trust may be reposed in the caliber and integrity of government counsel. Following out this view, Mr. Horsky warns that any drastic attempts to preclude government lawyers from entering private practice in their respective fields might well diminish the attractiveness of government service to young lawyers of high ability, who regard government service not as a lifelong career, but as a valuable source of experience. Although he does not feel that present statutory regulation of the ex-government attorney¹ is completely adequate, he suggests that Canon 36 of the Canons of Professional Ethics² is important enough to be given criminal sanctions. Space does not permit a complete review of the author's suggestions on this problem of influence; suffice it to say that his discussion of the subject provides a refreshing contrast to the uninformed and unimaginative "throw the rascals out" approach so prevalent in recent months. Mr. Horsky suggests no final answers; indeed, he is quite aware of the difficulty of legislating good morals. His contribution lies in presenting an informed and rational discussion of the many aspects of the problem.

Richard D. Rohr, S.Ed.

¹ 5 U.S.C. (1946) 99; 18 U.S.C. (Supp. III, 1951) 284.

² Canon 36 provides: "A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."