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Birth of the Notre Dame Lawyer

Clarence J. Ruddy

Editor's Introduction

In June 1977, the class of 1927 of the University of Notre Dame will meet on the University campus for its fiftieth reunion. Among this group will be graduates of the Law School who founded the *Notre Dame Lawyer*. In honor of this occasion and the people who inaugurated this law review, the *Lawyer* is pleased to look back at its beginnings through this article by its first editor-in-chief, Clarence J. Ruddy.

THE BIRTH OF THE NOTRE DAME LAWYER

Clarence J. Ruddy

I. The Era

In order to get a proper perspective on the events that brought about the birth of the *Notre Dame Lawyer,* we must go back more than half a century, more than one quarter of our country's history, to a time when the nation was beginning to plan its sesquicentennial. We go back before Watergate, before Viet Nam and Korea, back even before World War II, Franklin D. Roosevelt's New Deal and the Great Depression. All of these crises, which are now history to younger generations, passed before the Notre Dame Law Class of 1927 as a series of current events in which we participated to varying degrees.

The period of 1924 and 1925 was serene. There were no wars and we believed there never would be anymore. After all, the World War, which ended when we were in high school, had been the "war to end wars." Calvin Coolidge was President and the country was prosperous.

The Class of 1927 entered Notre Dame Law School in the fall of 1924. We all had had one or two years of pre-law, having studied history, English, philosophy and other subjects which formed a basis for our legal studies. We were young, confident, ambitious, determined, and interested in many things, especially the law. We soon recognized that the system of law, which is defined perhaps too simply as a system of rules of human conduct, encompassed a broad spectrum consisting of much more than a collection of constitutions, statutes and cases set forth in countless books. The law became for us a transcription of the acts of human beings, encompassing history, philosophy, politics, and the mores of the times.

The Dean of the law school in our time was Thomas F. Konop, a white-haired, rosy cheeked professor who combined his experience as a practicing lawyer and a member of Congress with scholastic qualities, and who took a personal interest in the development of every law student. Other faculty members were Dudley G. Wooten, Clarence "Pat" Manion, Edwin Hadley and E. A. Fredrickson. All were competent and directed us towards our goals.

Judge Wooten first sowed the seed for the *Notre Dame Lawyer.* The Judge, who lived from 1860 until 1929, came to Notre Dame in the later years of his life. He was a remarkable man in every respect. A native of Texas, Judge

Wooten was permitted to practice law before he was twenty-one by a special act of the legislature. He later became a member of the state legislature, a member of the United States Congress, and a special judge of the superior courts and of the supreme courts of Texas and Washington. His appearance was awe inspiring. He had white hair, perceptive eyes, firm lips and a set jaw. He always wore a gates ajar collar, four-in-hand tie, frock coat, and striped trousers. He was courtly, articulate, and positive in his expressions of principles of law. He was indeed an inspiration to all his students.

In class one day in early 1925, Judge Wooten mentioned that it was a pity that a law school with the status of Notre Dame did not have a law review. A few days later a group of us called on him and said that we were willing to take on the project. He was happy to learn that his suggestion was to be adopted and assured us of his active cooperation and participation, a promise which he faithfully kept during the remaining two years of our study at Notre Dame and thereafter until his death.

So we started. Our first step was to obtain permission from the University to start the new journal. This was given by Father Matthew Walsh, President of the University, without hesitancy, subject to the understanding that the venture must pay its own way. This admonition did not deter us. We relied upon subscriptions and advertising to enable us to remain solvent. The positions of business manager and circulation manager were therefore important; indeed, half our staff was engaged in the business department. Fortunately, the response of advertisers was good. Restaurants, clothing stores and law book publishers all took space in the new publication.

To produce a law review that would be a credit to the law school, we solicited contributions from persons eminent in the law, writing to judges, professors and lawyers throughout the country. We wrote to the justices of the United States Supreme Court and were pleased and somewhat amazed to find sympathetic response. The inside back cover of the first issue of the new journal quoted letters from the Chief Justice William Howard Taft, and two Associate Justices, Louis D. Brandeis and Pierce Butler. The words of Justice Butler were particularly gratifying. He said: "I have long known of the good work and high standards of your college and hope that the magazine, the publication of which is about to be inaugurated, will succeed." Other judges and prominent lawyers favored us with significant articles on current legal problems. Nicholas Murray Butler, President of Columbia University, gave us encouragement and advice in words we were happy to publish.

II. The First Volumes

The first issue of the *Notre Dame Lawyer* appeared in November 1925. The first article was written by Ben B. Lindsey, who was then judge of the juvenile court in Denver, Colorado. His contribution, which was continued in the second issue, expressed ideas which brought about reform in the treatment of juvenile offenders as well as adult offenders who were guilty of such felonies as non-support and desertion. Judge Lindsey wrote about statutes recently enacted by

Colorado which gave district attorneys the right to prosecute juvenile offenders in the chancery court rather than the criminal court, provided the consent of the offenders was first obtained. He was concerned that often the offender's "rights" are of no value to him and believed that juveniles would be treated much more humanely in the chancery court. It was not until more than forty years later that the United States Supreme Court, in *In re Gault*,[1] laid down the rule that delinquency proceedings which may lead to commitment in a state institution must measure up to the essentials of due process and fair treatment. Thus, Judge Lindsey and the Supreme Court, separated by a wide period of time, both expressed concern for persons alleged to be juvenile delinquents.

What gave the new journal the impetus that assured its success was an article, also in the first issue, by Judge Wooten.[2] Early in 1925, the Tennessee General Assembly had enacted a statute which made it unlawful for teachers in public schools in that state to teach any theory that denied the story of the divine creation of man as taught in the Bible, and to teach instead that man had descended from a lower order of animal. John Thomas Scopes, a teacher in the public schools of Dayton, was accused of violating this statute. The case achieved national notoriety when Clarence Darrow of Chicago appeared for the defendant, and William Jennings Bryan became special prosecutor. Scopes had been convicted by a jury and the case was pending in the Tennessee Supreme Court when Judge Wooten wrote his article. He discussed the possible defenses that could be raised, analyzed the authorities, and in strong words expressed his opinion that the Tennessee statute was constitutional. Judge Wooten concluded that the Tennessee Legislature had full control of what may be taught in its public schools and had been vested with the function and authority to prescribe the teaching of subjects therein.[3]

Because of a natural hesitancy to assume more of a financial risk than was absolutely necessary, we underestimated the popularity of the new publication and consequently had not ordered enough copies. Letters came in from all over the country, most of them generously praising Judge Wooten's contribution. In the third and fourth issues we said that we would like to receive copies of the first issue, if there were any available and were not being kept for binding. Our request brought forth no copies and we were vain enough (or perhaps naive enough) to form the opinion that the reason was that our subscribers thought their copies were worth keeping. In the fifth number we stated that the supply of the first issue was completely exhausted but reported that the *Scopes Case* article was available in pamphlet form.

I must mention one more contributor to the first issue. He was Joseph

1 387 U.S. 1 (1967).

2 Wooten, *The Scopes Case*, 1 NOTRE DAME LAW. 30-31 (1925).

3 On January 17, 1927, the Supreme Court of Tennessee in Scopes v. State, 154 Tenn. 105, 289 S.W. 363 (1927), upheld the constitutionality of the statute. Two of the justices wrote to Judge Wooten complimenting him on his article. Grafton Green, Chief Justice, wrote that Judge Wooten had an accurate conception of the setting of the case, and the views that he expressed concerning it were in harmony with those of the majority of the court. Associate Justice Alexander Chambliss said that he was struck by the fact that the author predicted that the court would hold as it did with respect to the authority of the legislature to control the public school curriculum, and pointed out that the court relied on many of the authorities cited in the article. These letters were published in the February issue of the 1927 *Lawyer*.

Scott of Los Angeles, who was probably the most outstanding California lawyer of his day. A dedicated civil leader as well as a great lawyer, the citizens of Los Angeles, in recognition of his service to the community, erected a statue of him on the courthouse property. He received the Laetare Medal in 1917. He and Al Smith were the only two Catholic laymen to speak at the Eucharistic Congress in 1926. He was a busy man indeed, but yet found time to write a letter, which we published in full in which he gave this pertinent advice: "[T]he higher vocation is to be an advocate, to stand with your clients behind you, and face even the wrath of a self-opinionated judge, or a bulldozing adversary, or the wild shrieks of popular clamor or the ruthless attacks of the press, and still find your heart beating regularly and undaunted and unafraid when the odds are against you."[4]

The first issue also set forth our policy:

> We are the children of the law; and we honor our parent. Indeed, it would be unnatural not to do so. If students were to enter their own profession with disrespect, the laymen, *a fortiori,* would have a genuine right to ridicule both the profession and the student. When a child loses respect for his own parent, the child has suffered the ultimate disillusionment and the parent the ultimate degradation.
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> This then shall be our policy: to make the *Notre Dame Lawyer* synonymous with respect for law, and jealous of any unjust attacks upon it.
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> And we offer this magazine as the expression of the Notre Dame Lawyer.[5]

We had a definite philosophy. Although we were students in the oldest Catholic law school in the United States, we recognized that American jurisprudence was not tied to any particular religion or sect. Our religious preferences were diverse, because our staff was composed of Catholics, Protestants, and Jews. We all, however, were firm believers in Natural Law. A recognition of Natural Law as the guiding force of civilized society permeated the whole first two volumes of the magazine. In our pre-law days, our philosophy professors had taught us that there is a Divine Law which governs all things, and that everything, animate and inanimate, is subject to the law of its being. We had learned further that man's participation in the Divine Law is called Natural Law and, since man is a rational being, he must act rationally. In order to do this he must be free to act, and, therefore, he has certain natural rights.

When we entered law school, we found that the Doctrine of Natural Law had been made the foundation of the government of our own country. We

4 1 NOTRE DAME LAW. 9 (1925).

5 The editors of volume 50 of the *Lawyer* reprinted this sentiment as an introduction to the foreword of their first issue. It is pleasant to realize that the sentiments which we expressed a half century ago are still cherished by our successors of the present day.

learned that the Declaration of Independence gives specific recognition to those inalienable rights, and that the Constitution and the Bill of Rights specifically guarantee them. Conscious of the principles expressed in the Declaration of Independence, which had gradually evolved through the development of the common law, and proud of our profession, we adopted as the motto for the new magazine the ancient maxim of Lord Coke, "Law is the perfection of human reason."

The acknowledgment of the Doctrine of Natural Law and Rights as a basis for our legal system was consistently demonstrated throughout the first two volumes of the magazine in its articles, editorials, notes on recent cases and book reviews. Our ideas were best expressed by Clarence "Pat" Manion, our Constitutional Law professor, who later became Dean of the Law School. Professor Manion was concerned about a continual erosion of individual liberties by the Congress and expressed his criticism in an article entitled, *The Shrinking Bill of Rights.*[6] His ideas were more fully developed in *What Price Prohibition?*[7] in which he pointed out that the eighteenth amendment, instead of securing the inalienable rights of a person to liberty, took liberty away. The last sentence of the article read: "Formally or informally, in justification of our history Prohibition, with all of its contemptible un-American ramifications must go down—and it will go down."[8]

Other authors also expressed their dedication to the Natural Law. One of these was William D. Guthrie, then President of the New York City Bar Association. The fourth issue of Volume I published an address he delivered to the Association as a memorial to Cardinal Mercier. In that address he reminded his listeners that the moral philosophy that the Cardinal had taught at the University of Louvain for many years embodied the essence of those fundamental principles which are the basis of all systems of jurisprudence. He went on to repeat the statement of Blackstone that, "[m]oral philosophy, or what in his day was called the Law of Nature, was the best and most authentic foundation of all human law."[9]

Another author who shared our basic philosophy was our Dean, Thomas F. Konop. The last issue of our editorial career contained an article he wrote bearing the prosaic title, *Service of Process on Non-Resident Motorists.* In this article he quoted the language of the early English authority, Justice Fortescue, that "[t]he Laws of God and man give the party an opportunity to make a defense."[10]

The editors of the *Lawyer* also recognized that there are aspects of law which are sometimes odd, sometimes humorous. We therefore created a department called *Curiosities of the Law.* The articles generally had intriguing titles. One of them, by Judge Wooten, was called A Case in Punctuation.[11] The article discussed a case, decided during Reconstruction days, in which the Texas Supreme

6 Manion, *The Shrinking Bill of Rights,* 1 NOTRE DAME LAW. 150 (1926).
7 Manion, *What Price Prohibition?,* 2 NOTRE DAME LAW. 73 (1927).
8 *Id.* at 94.
9 Guthrie, *Memorial of Cardinal Mercier,* 1 NOTRE DAME LAW. 101, 104 (1926).
10 Konop, *Service of Process on Non-Resident Motorists,* 2 NOTRE DAME LAW. 181, 182.
11 Wooten, *Curiosities of the Law: A Case in Punctuation,* 1 NOTRE DAME LAW. 135, 136.

Court decided an important election upon the significance of a semi-colon.[12] Other titles were *James Fenimore Cooper and His Critics, The Misunderstood Mr. Burr: His Duel with Hamilton, The Ferocity of Oysters, The Origin of Property, Lucky Days,* and *Is the Tomato a Fruit or a Vegetable?* In the latter article we noted that one court said it was both.[13]

Our last editorial was called, logically enough, *Valedictory.* Here we confessed to confusion. We stated that throughout our scholastic life principle had been emphasized, but went on to say that the world seemed to pay little attention to principle, and much to expediency. May not this conflict still be said to exist today?

The April-May 1927, issue of the *Notre Dame Lawyer* brought our editorial career to a close. The first volume had contained 200 pages, of which the first issue supplied 34. Volume II contained 224 pages. We paid our bills and turned over to our successors a cash balance of $18.00, together with our files and correspondence. We are naturally happy to see that the infant magazine grew steadily to maturity and is now accorded recognition as a law review of distinction.

III. Choosing the Title of the Law Review

In keeping with our belief that the law is a reflection of all kinds of human activity, we believed a corollary followed: That a lawyer should be more than a repository of dry citations. He should be conscious of the many aspects of life around him. We thought that the words "Law Review" would indicate too narrow a scope and we sought a name which would demonstrate an interest in a full life, which would convey the truth that a lawyer, a good lawyer, a Notre Dame lawyer, has a feeling of warmth and concern for his fellow humans. We wanted the magazine to be the expression of the Notre Dame lawyer, and the selection of the title *Notre Dame Lawyer* for our journal was an expression of these ideas. Our editorials expressed our thinking, and dealt with many of the problems of the day.

IV. Conclusion

In this article I have perhaps dwelt too much upon the part played by the Class of 1927 in the founding of the new law review. I do not want to leave that impression. That class was not solely responsible. Members of the Class of 1926, Seniors at the time, were also tremendously interested and helpful. But for the most part they were deeply concerned with preparations for bar examinations and entering their careers, and could not undertake the detailed tasks of consulting with printers, reading proofs, and obtaining subscribers—all so necessary for a successful beginning. So for the most part, these tasks were carried on by the Class of 1927.

One word more. The experience gained while working on the *Lawyer,* in

12 *Ex parte* Rodriguez 39 Tex. 706, 709 (1873).
13 Massey v. City of Columbus, 9 Ga. App. 9, 70 S.E. 263 (1911).

research, writing, and contact with judges and practicing attorneys, proved invaluable in later life. All the staff members have enjoyed successful and rewarding careers in the legal profession. Each is worthy of the title of a Notre Dame lawyer.