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Lawyer Presents

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THE LAWYER PRESENTS—

The Role of the Supreme Court in the American Constitutional System is the product of a symposium which convened at the Notre Dame Law School in April. Recognizing the current assaults on the Supreme Court as "too serious to ignore" and "the responsibility on the part of the legal profession to do something about it," Dean Joseph O'Meara of the Notre Dame Law School summoned this group of distinguished members of the profession to consider the Court in its proper constitutional perspective.

Opening the first session Dean O'Meara introduced Mr. David Maxwell, immediate past-president of the American Bar Association and partner in the Philadelphia law firm of Obermayer, Rebmann, Maxwell and Hippel, who presided during the remaining sessions. As an active leader of the profession which must share this burden of attack with the Court, the selection

of Mr. Maxwell to chair the symposium was a fitting one.

The next speaker, in the symposium proper, was Mr. Carl McGowan, General Counsel of the Chicago and Northwestern Railway Company and member of the firm of Ross, McGowan, and O'Keefe in Chicago Illinois. Mr. McGowan, who is also a member of the New York, Illinois and District of Columbia bars and former Professor of Law at Northwestern University, was well qualified to place the problem in its historical perspective and discuss the generic causes which have so often given rise to these attacks on the Court. Focusing the problem as one caused by the difficult role of the Court as final arbiter in our constitutional system, Mr. McGowan provided the point of departure for the next paper delivered by Mr. Robert A. Leflar, Distinguished Professor of Law at the Arkansas Law School.

Professor Leflar, former associate justice of the Supreme Court of Arkansas and Dean of the Arkansas Law School, gave the symposium first-hand experience on the "Task of the Appellate Court." Answering the question, "Do judges make law?," Judge Leflar clearly refutes those who assign a purely mechanical and pre-determined function to the judge in the decision-making, albeit law-making, function with the clear thrust that the judicial function of necessity is a creative one.

This creative function of the Court, however, has not been universally received as a principle of necessity in the American system. Those who contend that such a self-assumed function on the part of the Court, or judge, is undemocratic are answered by the third paper, delivered by Dean Eugene V. Rostow of the Yale Law School. Dean Rostow has a long record of public service in addition to his academic positions. He served as a State Department advisor from 1942 to 1944 and as assistant executive secretary of the United Nations' Economic Commission for Europe during 1949-50. Basing his justification of the Court's creative role in a democratic society upon the protection of values which only a body removed from the conflicting pressures of the moment can secure, Dean Rostow's paper out-

lined by implication the reasons against the current rash of Court-curbing proposals, which provided the subject of the last address.

Dr. Sheldon D. Elliott, Director of the Institute of Judicial Administration at New York University and Secretary of the American Bar Association's Section of Legal Education and Admissions to the Bar, draws upon history and a current analysis to illustrate the democratic dangers latent in these proposals to curtail the powers of the Court.

As Dean O'Meara has indicated, "much of the abuse of the Court is purely partisan, but a good deal of it results from a misunderstanding of the Court's function and of the conditions under which it necessarily operates." We believe that this symposium is a significant contribution to a better understanding of the difficult role the Court must play. The *Lawyer* wishes to express its appreciation to the participants for such an inspiring event, and is pleased to share this inspiration and insight with its readers.

The index for current Volume XXXIII of the *Lawyer* will be found in this issue. We hope it will prove to be of assistance to our readers in their future reference work.