

## FRED RODELL'S CASE AGAINST THE LAW

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The society of lawyers is doing quite well, thank you, what with a great many of this country's 900,000 lawyers paying their country club dues out of petty cash. Yet, for these proud toilers in the billable-hours trade—one attorney at law for every 300 Americans—and for the 50,000 new attorneys entering the legal profession annually, there's a lining not so silvery. Anti-lawyer elements, agitated by the mumbo jumbo that lawyers use to lord it over the common herd, are raising lawyer-bashing to record heights. Bombarded by these negative reviews, a nervous lawyer is surely tempted of late to do a Richard Nixon and announce: "I am not a shyster."

Lawyer-bashing has so numbed the legal-eagle clan that reform groups such as HALT (originally known as Help Abolish Legal Tyranny) are even winning a few battles to force lawyers to use plain English in writing deeds and contracts. And then there's the unpleasantness down in Little Rock, otherwise known as Hillary Clinton's Rose Law Firm, which all by itself is an argument for banning lawyers from holding high government office, a ban that would decimate Congress and leave the White House shy of a President and most of his Cabinet. A recent Reebok ad goes even further in seeking a "final solution" to the lawyer problem, concluding in lawyer-joke fashion that the perfect planet is a planet free of lawyers.

Law schools today are full of aspiring juris doctors made anxious (law school applications are down) by Reebok ads and movies depicting lawyers as sleazeballs. Law professors must put on rose-colored glasses and soberly assure legal neophytes that, despite the flak the bar gets, the law is still a noble profession—and not the school of sharks selling dirty tricks that so many think it is. Since lawyers are so unloved, perhaps law schools should offer a formal course preparing lawyer wannabees for the anti-lawyers' slings and arrows. The course title might be, with thanks to Carl Sandburg, "Why Does a Hearse Horse Snicker Hauling a Lawyer Away?"<sup>1</sup> The hearse horse's snicker, if the whole truth be told, would be a study in ancient history.

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1. Carl Sandburg, *The Lawyers Know Too Much*, in *THE COMPLETE POEMS OF CARL SANDBURG* 189 (1950).

But students of the case to be made against the legal crowd needn't look to mouldy history to uncover the bar's toughest critic ever, the iconoclastic Fred Rodell (1907-1980). This champion foe of legalism was, moreover, a legal insider, a law professor who for four decades aimed his pot shots at lawyers and their overblown rhetoric from the hallowed confines of the Yale Law School. Committed to knocking the legal elite off their high perches, Rodell incurred the enmity of the legal tribe, including the law teaching fraternity, with witty, biting, accessible books and popular magazine articles (*Fortune*, *Harper's*, *Life*, *Look*, *American Mercury*, *The Progressive*, *New York Times Magazine*, *The Saturday Review of Literature*) exposing the "pretentious poppycock" that, a pull-no-punches Rodell informed lay readers, the legally learned peddle under the name of "The Law."

Yale's Rodell published at age thirty-two his most famous book, *Woe Unto You, Lawyers!*<sup>2</sup> Here's a sample of how the essential emptiness of legaldom's abstruse language is laid bare in *Woe*, a 1939 critique of legal culture still in print:

Learning the lawyers' talk and the lawyers' way of thinking—learning to discuss the pros and cons of, say, pure food laws in terms of "affection with a public interest" as against "interference with freedom of contract"—is very much like learning to work cryptograms or play bridge. It requires concentration and memory and some analytic ability, and for those who become proficient it can be a stimulating intellectual game. Yet those who work cryptograms or play bridge never pretend that their mental efforts, however difficult and involved, have any significance beyond the game they are playing. Whereas those who play the legal game not only pretend but insist that their intricate ratiocinations in the realm of pure thought have a necessary relation to the solution of practical problems. It is through the medium of their weird and wordy mental gymnastics that the lawyers lay down the rules under which we live. And it is only because the average man cannot play their game, and so cannot see for himself how intrinsically empty-of-meaning their playthings are, that the lawyers continue to get away with it.<sup>3</sup>

*Woe Unto You, Lawyers!* is to lawspeak what Woodward and Bernstein's reporting was to the (lawyer-ridden) Watergate cover-up. Should a national movement to demystify legalism develop, *Woe* would be the natural choice for the movement Bible. Another

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2. FRED RODELL, *Woe Unto You, Lawyers!* (2d ed. 1957).

3. *Id.* at 15-16.

of Rodell's books still in print, *Nine Men*,<sup>4</sup> brings down to earth the high politics and constitutional lingo of U.S. Supreme Court justices. As a self-appointed watchdog over the legal politics practiced by the High Court, Rodell followed up *Nine Men* with scores of magazine articles detailing the annual sins, and occasional virtues, of the justices who, during the Warren Court era, rode herd over the Living Constitution.

In 1957, when I was halfway through law school, *Woe Unto You, Lawyers!* was reprinted for the first time. A family friend who lumped lawyers with the Antichrist handed me Professor Rodell's classic indictment of *The Law*. Woe's heretical trashing of legal gobbledegook would, my benefactor hoped, protect me from the brainwashing of goose-stepping professors of legal orthodoxy.

Even pre-Woe, I had an inkling that beneath the surface of law school's fancy word-play something phony lurked. But what did a novice law student like me know? So what if the shadowy common law seems to fall short of the "sum total of all human wisdom" preached by English legal priests in Blackstone's day. Still, it was hard to believe that legal science was other than a subject worthy of my (and Abe Lincoln's) attention. Yet, I couldn't shake off the unease that came with legal studies. It was as if the law school basement—whose dark recesses hide, or so law students imagine, the true rules that enigmatic professors refuse to reveal—concealed another mystery, this one monstrous, one that could besmirch hard-earned legal learning.

Then, I read the contraband *Woe*, and the basement monster revealed itself. *Woe* disclosed, in chapters such as "Modern Medicine-Men," the legal system shorn of its wordy, nice-guy camouflage. Instead of a legal science, *Woe* reduced *The Law* to a rather slipshod alien code full of fairy tales; *The Law* unmasked was merely a foreign language noteworthy for elasticity and the ease with which the legally adept bend it to support an argument that a horse chestnut is, well, a chestnut horse. Rodell opens *Woe* by setting the theme for his long-running case against *The Law*:

In tribal times, there were the medicine-men. In the Middle Ages, there were the priests. Today there are the lawyers. For every age, a group of bright boys, learned in their trade and jealous of their learning, who blend technical competence with plain and fancy hocus-pocus to make themselves masters of their fellow men. For every age, a pseudo-intellectual autocracy,

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4. FRED RODELL, *NINE MEN: A POLITICAL HISTORY OF THE SUPREME COURT FROM 1790 TO 1955* (1955).

guarding the tricks of its trade from the uninitiated, and running, after its own pattern, the civilization of its day.<sup>5</sup>

Woe Unto You, Lawyers! teaches that legal elites practice word-magic to curry favor with the rich and powerful. The ignorant, the trusting, the fearful must beware the rule of lawyers, warns Rodell. The legal trade, sums up the left-leaning, rakish, irreverent legal heretic (who insisted students call him “Fred”), is “nothing but a high-class racket.”<sup>6</sup> Rodell, a Philadelphia native temperamentally unsuited to being a “Philadelphia lawyer,” who after excelling as a law student at Yale refused to join the bar so he could remain free to call a pettifogger a pettifogger, lays out in Woe how legal concepts delight in chasing their tails around in a circle, and how legal palaver smacks of nothing so much as a “brand of professional pig Latin.”<sup>7</sup> Nonlawyers, concludes Rodell, should wrest “civilization out of the hands of those modern purveyors of streamlined voodoo and chromium-plated theology, the lawyers.”<sup>8</sup>

Fred Rodell’s words of Woe are very much in tune with the anti-lawyer sentiment of the 1990s. What made Rodell at mid-century maybe the nation’s best-known law professor was the novelty of a well-placed insider daring to blow the whistle—with clear, entertaining prose yet—on The Law’s slippery personality. In Rodell Revisited,<sup>9</sup> a 1994 reprinting of Rodell’s most memorable pieces, the “high-class racket” takes its final Rodellian lumps. As usual, Rodell from the grave ignores the usual niceties with which legal insiders soften any grudging admissions as to The Law’s less-than-perfect nature.

In a biographical introduction to Rodell Revisited, Loren Ghiglione suggests some of the roots of Rodell’s anti-lawyerism, including a strong aversion to bullshit, legal and otherwise. Personal biography aside, Rodell no doubt shared in the general suspicions about lawyers that go back to The Law’s theological period when legalistic reasoning was the hallmark of hair-splitting priests aiming to massage church text to produce—chestnut horses. From this priestly hair-splitting came, in time, the bar’s irritating mumbo jumbo, a professional jargon that contributes to the bad press given lawyers. Good lawyers after all are expert devils at complicating simple matters, at creating

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5. RODELL, *supra* note 2, at 7.

6. *Id.* at 16.

7. *Id.* at 11.

8. *Id.* at 19.

9. RODELL REVISITED: SELECTED WRITINGS OF FRED RODELL (Loren Ghiglione et al. eds., 1994).

muddy texts and technical roadblocks, all of which promote legal fog and lay resentment. In the midst of this fog sits the American Bar Association, laboring mightily to upgrade the lawyer's image as an independent selfless, honorable officer of the court who seeks after the public interest. ABA officials also preach the virtues of the lawyer-built adversary system. Yet courtroom battles, from the public's point of view, are all too often tedious, expensive, muddled affairs in which lawyers robed and otherwise manage to frustrate the truth. Opposing trial lawyers are seen to promote perverted versions of both factual history and legal precedent—and may the cleverer deceiver win the nod of judge and jury.

Lawyers, indispensable in a legalistic society where omnipresent codes written by lawyer-politicians and lawyer-administrators must be decoded, are therefore, like dentists, a necessary evil. As Rodell reminds, ours is “a government of lawyers, not of men”<sup>10</sup> and “[i]t is the lawyers who run our civilization for us—our governments, our business, our private lives.”<sup>11</sup> If pressed to name a political elite in this country, no group fits better into that category than those learned in The Law. And what better objects of resentment than those who use their clever way with words to run the big political show. So it is that even middle-class parents with little affection for the legal clan struggle with whether to send their offspring to law school, afraid that otherwise they are sending their young out into the world defenseless.

Lawyerly greed and arrogance rank high as well on the list of legal sins. Moreover, there is the specter of widespread incompetence among practitioners. Ironically, among victims of this era's litigious rush to personal injury court must be numbered the lawyers themselves. Legal malpractice suits have so proliferated that some trial lawyers do little else but sue or defend other lawyers. Finally, there are the headlines that make it ever more difficult to keep the semi-good name of The Law out of the mud.

The malodorous Rose Law Firm, for example, shares billing with John Grisham's *The Firm* (set in Memphis just a few miles from Little Rock on the opposite side of the Mississippi River) as the law firm least likely to name as a partner an independent, selfless, honorable, modern-day Abe Lincoln. In addition, reverberations from Richard Nixon's Watergate cover-up, with its cast

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10. RODELL, *supra* note 2, at 8.

11. *Id.* at 7.

of justice-obstructing, law-degree-toting characters, continue to taint the law trade. Then in the 1980s, the blue-chip legal talent lurking behind the savings and loan scandals reminded that have-gun-will-travel lawyering is par for the course. Today, well-fed trial lawyers spend millions lobbying legislators to keep hands off lucrative personal injury practices, a torts lottery, by the way, in which half of all accident victims recover no damages at all, and the other maimed half receive less than fifty cents on the liability insurance dollar. Meanwhile, over in the Wall Street section of the bar, high-flying corporate mouthpieces mastermind dog-eat-dog takeovers—and to hell with the job lay-offs and the junk bond fallout from such raiding tactics. Finally, there's the legal circus billed as the O.J. Simpson trial. As Clarence Darrow said, "The trouble with law is lawyers."<sup>12</sup>

Fred Rodell's successors in blowing the whistle on legal sinners have produced a constant stream of articles and books, and the occasional TV show, detailing the current failings of the legal community. Anti-lawyer titles of late include *The Screwing Of The Average Man: How Your Lawyer Does It*, *The Trouble With Lawyers*, *America's Lawyers: A Sick Profession?*, *A Plague Of Lawyers*, *The High Cost Of Lawyers*, and *First, Kill All The Lawyers*. Such Rodellian blasts suggest a role for lawyers far removed from the beneficent "leading part in the political society"<sup>13</sup> that an admiring Alexis de Tocqueville once forecast for what he termed the nineteenth-century linchpin for democracy, the American lawyer.

The author of *The Screwing Of The Average Man*, by the way, is Charles Peters, editor-in-chief of *The Washington Monthly* and a former lawyer with a Rodellian flare for exposing the warts on linchpins for democracy. Peters takes frequent and robust swipes against lawyers in his *Monthly* column, *Tilting at Windmills*, with examples of lawyerly money lust, obfuscations, and taxpayer-subsidized skiing vacations written off as attendance at continuing legal education conferences.

Even such a mild critic of legaldom as Harvard law professor Mary Ann Glendon is dismayed at what the competition for legal business has done to professional ideals of public service and independence from clients. Glendon, in her recent book, *A Nation*

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12. A DICTIONARY OF LEGAL QUOTATIONS 103 (Simon James & Chantal Stebbings eds., 1987) (quoting Clarence Darrow).

13. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 243 (J.P. Mayer & Max Lerner eds. & George Lawrence trans., 1966) (1835).

Under *Lawyers*,<sup>14</sup> laments the big-firm tendency toward unquestioningly carrying out a client's' desires. Professor Glendon longs for a return to the legal world of former lawyer-statesman Elihu Root, who reportedly said "About half the practice of a decent lawyer consists in telling would-be clients that they are damned fools and should stop."<sup>15</sup> Legal insider Glendon, however, is the flip side of insider Rodell. She would cure the ills of the legal profession by placing *The Law*—that Rodell so cavalierly disemboweled—back on a heavenly pedestal. In *A Nation Under Lawyers*, Glendon decries the demystification of legalism and argues that more not less faith in the rule of law is the answer.

Another piece of the anti-lawyer picture is the lawyer joke. Jokes with lawyers as the butt are countless as sharks in the sea—sharks that, as the joke goes, refrain from devouring the lawyer cast overboard out of professional courtesy. Even the World Wide Web stores collections of anti-lawyer jokes. The hostility toward lawyers that generates the jokes is the same hostility that in the movie *Jurassic Park* prompts the hungry dinosaur, when it does lunch, to gobble up the lawyer, naturally. Humor in the way the legally untutored view lawyers no doubt dates way back to when priests-turned-lawyers split their first hairs and produced the convoluted lawyer-speak that leads so many to view lawyers as a sort of people whose profession it is to disguise matters.

So it was that Mohammed (says a tradition) was convinced that at least two out of three judges would go to hell. In the New Testament Gospel of Luke, it's three out of three: "Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered."<sup>16</sup> Plato spoke of the lawyers' "small and unrighteous" souls,<sup>17</sup> and Keats, who guessed what lurks in the legal basement, said "I think we may class the lawyer in the natural history of monsters."<sup>18</sup>

That modern lawyers are a tad too money-mad is born out by a billable-hour corporate law firm culture that led in one extreme instance to an associate's billing a client for a "legitimate" twenty-seven-hour day. It seems the associate-soon-to-be-partner worked twenty-four hours around the (East Coast) clock, then hopped a flight from New York to California and billed for an ex-

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14. MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994).

15. *Id.* at 37 (quoting Elihu Root).

16. Luke 11:52.

17. Those #\*X/ !!! Lawyers, *TIME*, Apr. 10, 1978, at 56 (quoting Plato).

18. *Id.* (quoting John Keats).

tra three hours of in-flight paperwork.<sup>19</sup> Of course, being high-flying legal monopolists whose high fees close the door to legal services for most Americans is no way to win friends or rise in the polls. Shakespeare was not alone in thinking that lawyers use their magic with language to help the powerful stay in power, and that to “kill all the lawyers”<sup>20</sup> is a logical if impolite way to alter an inconvenient status quo. Law students in their first year of study are shocked to learn that The Law is not so much holy writ as it is an obscure alien tongue useful in shaping legal arguments in a form suitable for selling to either side in a lawsuit. Legal novices are taken aback by The Law’s ambiguity and adaptable nature even though there has been fair warning by, among others, Charles Dickens.

Charles Dickens’s place alongside Rodell on the honor roll of legal critics is secured by his fictional lawsuit in *Bleak House*.<sup>21</sup> *Bleak House*’s case of Jarndyce against Jarndyce is an English probate dispute of such interminable length and complexity “that no man alive knows what it means.”<sup>22</sup> Dickens surrounds his less than honorable English barristers and judges with a thick London fog that is unmistakably the legalists’ natural element. (I believe it was New York Times columnist Russell Baker who, perhaps taking his cue from *Bleak House*, once noted that any blow against fog is a blow against lawyers.)

In *Bleak House*, the annual fees extracted from the Jarndyce estate have become, for the English bar, veritable mother’s milk. Whole generations of lawyers and judges die out of and are born into Jarndyce against Jarndyce. Dickens’ treatment of English law is, of course, a burlesque. Yet lawyer-readers surely grow nervous and hear the hearse horse’s snicker when, at Temple Bar where “the dense fog is densest,” the nineteen Jarndyce barristers in attendance upon the Lord High Chancellor, who sits amidst crimson cloth and curtains “at the very heart of the fog . . . with a foggy glory round his head,”<sup>23</sup> proceed to nit-pick and further complicate the obscure points of the Jarndyce probate. As the legal nit-picking coagulates into ever-tighter legal knots tying up the diminishing resources of the Jarndyce estate, the fog enveloping the legal establishment becomes thicker and thicker.

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19. Stephanie B. Goldberg, *Then and Now: 75 Years of Change*, A.B.A. J., Jan. 1990, at 56, 60.

20. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH* act 4, sc. 2.

21. CHARLES DICKENS, *BLEAK HOUSE* (Doubleday 1953) (1853).

22. *Id.* at 3.

23. *Id.* at 1.



It was also Charles Dickens who gave us the immortal, “‘If the law supposes that,’ said Mr. Bumble, . . . ‘the law is a ass—a idiot.’”<sup>24</sup> And, in an earlier century, Dramatist Charles Macklin opined that “the law is a sort of hocus-pocus science.”<sup>25</sup> Yet, despite these and all the other pot shots aimed at lawyers and their hocus-pocus reasoning, and despite the record dearth of current law job openings, law school applications are down only slightly. It seems that neither famine, depression, war, nor hungry dinosaurs can impede the hatching out annually of fresh batches of juris doctors “skilled,” as the caustic Ambrose Bierce wrote, “in the circumvention of the law.”<sup>26</sup>

So why a roll of honor for anti-lawyer warriors? Does Fred Rodell deserve praise or condemnation for so wickedly thrashing The Law and its keepers? Surely lawyers, and the legal regime they administer, are here to stay. The rule of law, flawed though it may be by maxims full of weasel words and legalists full of hot air, is better than the rule of guns. Law is the civilized remedy for social chaos. Even if the rule of law is at bottom the rule of lawyers, the question is not whether to scrap law and lawyers. The question is whether the forked tongue of lawyers and judges can be transformed into an instrument of plainer English, and whether the legal system with its business regulations and probate procedures and tax laws that we can't live without can be improved upon. Rodell didn't really wish to rid the planet of lawyers. Rodell condemned using The Law as a smokescreen for medicine men to work their establishment magic, but in so doing he sought through his law teaching and writings, despite the fierceness of his rhetoric, to spur the legal community to use The Law to straightforwardly promote a wider sharing of wealth and power.

Critics such as Fred Rodell are a valuable public resource. Just as the press aspires to expose the failings of our governors and thereby guard the political health of the county, so do those who track and reveal The Law's semi-hidden operations aspire to keep legal people, well, semi-honest and semi-public-spirited. Lawyers, like all us sinners, need all the help they can get in rising above avarice, vanity, and hypocrisy. Lawyers, remember, must deal with clients anxious to escape their fair share of taxes, to soak McDonald's for selling scalding-hot coffee, to avoid alimony and child support, to win an acquittal for crime, to gain an advantage

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24. CHARLES DICKENS, *OLIVER TWIST* 399 (Oxford Univ. Press 1987) (1837).

25. *THE QUOTABLE LAWYER* 169 (David S. Shrager & Elizabeth Frost eds., 1986) (quoting Charles Macklin).

26. AMBROSE BIERCE, *THE DEVIL'S DICTIONARY* 187 (Stemmer House 1978) (1911).

by cleverly worded contract, and to delay justice by clogging the courts with pettifoggery. If clients were angels, perhaps lawyers could wear halos too.

Very likely the current increase in anti-lawyer feelings is due in part to the rise in negative attitudes toward government in general. Certainly the vigor with which Rodell in the 1930s attacked the pretensions of legal formalism had much to do with the legal politics surrounding the Great Depression. Rodell came of age professionally just as the nation experienced a loss of faith in (a pre-New Deal) government, especially judicial government. The legal establishment back then stood for the idea that government intervention was an inappropriate response to the human suffering brought on by economic collapse.

Following law school graduation in 1931, Rodell worked two years as legal advisor to progressive Pennsylvania Governor Gifford Pinchot, promoting a pre-FDR New Deal. As the New Deal in Washington got under way, and Rodell moved on to Yale to teach law, the legal establishment, from its base on Wall Street and on the Supreme Court, was stiffening its opposition to progressive New Deal programs. A conservative Supreme Court, throughout the 1920s and most of the 1930s, hid behind the vague formalisms of The Law to do its dirty work, as Rodell and other liberals saw it; pre-New Deal justices sought to derail liberal inroads on laissez-faire capitalism by declaring unconstitutional much of the progressive state and federal legislation that shocked the consciences of good conservatives.

As a youthful Rodell prepared to do battle, in the muckraking fashion common to the Depression era, with the dark (conservative) forces of legal formalism, this playful iconoclast suffered from no lack of confidence. He had excelled as an undergraduate at Haverford College, studied at the University of London, and then earned high honors as a Yale law student and staffer on the school's law journal. At Yale, Rodell was the student of law professors such as Justice-to-be William O. Douglas and Leon Green, realists who laid bare the gobbledegook content of legal language and revealed the judges to be political actors, a role judges cannot, despite all their wordy protestations, escape.

During Rodell's third year of law school, Yale Dean Charles Clark arranged to have a four-hour legal aptitude test given to faculty, law journal staffers, and first-year students with A averages. The Dean scored a seventy-six. The next highest grade was a seventy-nine. Except for Rodell's. He took only two hours to finish a test that took the others twice that time, and scored a

ninety-four.<sup>27</sup> Rodell's high school classmates were right to elect young Fred to the Octogenarian Society decades prematurely because "he was so abnormally bright."<sup>28</sup>

Ghiglione, writing in *Rodell Revisited* of Rodell's role as a "clever, sometimes curmudgeonly, critic of the American legal system," notes that Rodell not only wrote with the clarity of a journalist but also saw himself, in part, "as a Front Page reporter—irreverent, independent and, though not always apparent, idealistic."<sup>29</sup> At Yale, Rodell taught a writing course aimed at helping advanced law students drop their legalese and substitute plain English to get legal stuff across to lay readers (disclosure: as a graduate law student, I took Fred's legalese cure in 1964). Legalese is the disease that forces a lawyer to write, quipped Will Rogers, "so that endless others of his craft can make a living out of trying to figure out what he said."<sup>30</sup> As a prelude to writing *Woe Unto You, Lawyers!*, Rodell authored a law review article still famous, or infamous, around law schools. Called *Goodbye To Law Reviews*,<sup>31</sup> the article attacks the footnote-obsessed writing of legal academics. Such so-called writing, Rodell wrote, is composed for the most part in an "antediluvian or mock-heroic style"<sup>32</sup> and amounts in sum to "turgid, legaldegooky garbage."<sup>33</sup> Rodell begins *Goodbye* by noting that there are only two things wrong with legal writing: "One is its style. The other is its content. That, I think, about covers the ground."<sup>34</sup>

Anyone who is not a paid toady in The Law's keep will understand what Rodell means when he writes,

[I]t is in the law reviews that a pennyworth of content is most frequently concealed beneath a pound of so-called style. The average law review writer is peculiarly able to say nothing with an air of great importance. When I used to read law reviews, I used constantly to be reminded of an elephant trying to swat a fly.<sup>35</sup>

Fred Rodell didn't get by with his swatting-a-fly barbs without paying for it. Legal academics retaliated by pretending that Woe's

27. RODELL REVISITED, *supra* note 9, at xxv. Loren Ghiglione's biographical introduction to *Rodell Revisited* is the source of much of this Essay's detail concerning Rodell's background. See *id.* at xv-xli.

28. *Id.* at xxv.

29. *Id.* at xxv-xxvi.

30. Will Rogers, *The Lawyers Talking*, in 6 WILL ROGERS' WEEKLY ARTICLES 243, 244 (Steven K. Gragert ed. 1982).

31. Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936).

32. *Id.* at 38.

33. Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279, 288 (1962).

34. *Id.*

35. *Id.*

creator didn't exist, and to this day omit references from the law reviews' evermore copious footnotes to Rodell's unconventional writings on *The Law and the Supreme Court*. There is some justice here since Rodell abhorred the academic's love affair with footnotes, calling them the "Phi Beta Kappa keys of legal writing."<sup>36</sup> Once Rodell quit for life using footnotes, as he promised in *Goodbye To Law Reviews*, his writings, according to the snobbish academic code, could be labeled unscholarly and thus unworthy of professorial notice.

The Yale Law School, moreover, had by mid-century become a less than hospitable place for legal mavericks of a Rodellian stripe. The Yale faculty, which once proudly included on its roster such famous legal mavericks as, in addition to Douglas and Green, Thurman Arnold and Jerome Frank, had taken a turn toward orthodoxy, preferring that faculty criticism of *The Law*, if such were necessary, be couched in polite terms. Rodell in mid-career was passed over at Yale, as he put it, "like a left-handed third baseman, ten times in a row, while those ultimate academic accolades, charmingly called 'chairs,' were awarded his junior colleagues."<sup>37</sup> New Haven barber Joe Capasso, who appreciated Rodell's gift for composing limericks, believed that his poetic customer "had gotten a raw deal from Yale." Capasso named the No. 1 chair at his barbershop after Rodell, the plaque reading, "The Fred Rodell Chair of Law and Limericks."<sup>38</sup>

Yet some of Rodell's best friends were not only lawyers, but lawyers who sat on the highest court in the land. Justice William O. Douglas, for example, was a regular camping buddy. Justice Hugo Black and Rodell played tennis together. Rodell gave Justice William J. Brennan his first lessons in fly casting. Justices Byron R. White and Potter Stewart were friends as well as former students of Rodell. The fact is, when it came to *The Law* as created, manipulated, and applied by a liberal Warren Court, Rodell backed off considerably from his "nothing but a high-class racket" posture.

*The Law* as perceived by Chief Justice Earl Warren and his social-engineering colleagues was right up Rodell's political alley, and so escaped Rodell's hostile review. Rodell saved his big, caustic guns for juicier prey, such as the Harvard Law School, which in the 1920s and 1930s differed from the Yale Law School in the way that Protestant fundamentalism differs from liberal Christian theology. Once, when Harvard Law compiled a list of

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36. *Id.* at 40.

37. Rodell, *supra* note 33, at 288.

38. *RODELL REVISITED*, *supra* note 9, at xxxviii.

100 books for prospective law students to read, Rodell noted the list's penchant for the dull, the old-fashioned, the authoritarian, and opined "that if any potential law student should be lured to the law by reading these books or should prepare for the law by reading these books, I hope he goes to the Harvard Law School too."<sup>39</sup>

Fred Rodell's case against *The Law*, right or wrong or somewhere in between, was all Fred Rodell, no pussyfooting around with mealy-mouthed conventions. He stalked the truth by going his own way, damn the torpedoes. And he didn't stalk just the truth. Rodell's godson recalls that in 1980 on his last bedside visit to a dying, thrice-married, seventy-three-year-old Rodell, his godfather "pinched the girl I was with in the ass."<sup>40</sup>

University of Texas law professor Charles Alan Wright says Rodell was "a powerful and influential force for improvement in the law."<sup>41</sup> But even a friend such as Charley Wright admits to room for disagreement. One such dissenter is an English law teacher who in 1991 published a 12,000-word essay castigating Rodell's battle against legal legerdemain: "(Rodell) was generally regarded as an embittered nihilist who wished only to carp, having nothing constructive to say."<sup>42</sup> Others believe that Fred Rodell wasted his immense potential. I, who as a law teacher inject ample bits of Rodellian realism into *The Law* I teach, say Wright's right. Rodell helps us keep *The Law* in perspective, to see it not only as a sort of secular gospel, but also, in anthropological terms, as the quaint machinations of an odd sort of native people fond of hiding behind words.

In any event, the last word belongs to Fred, who late in life returned to his alma mater to deliver the commencement address. Fred's Haverford College address, given entirely in verse form, included this advice:

Not, then, for riches from your labors  
 Nor to keep face with faceless neighbors,  
     Employ your talents  
 For work—but none the less for play.  
 Why make, and never roll in, hay?

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39. Fred Rodell, *A List of Books for Prospective Law Students Now in Service Prepared by a Committee of the Faculty of the Harvard Law School* by Zechariah Chafee, Jr. and John M. Maguire, 54 *YALE L.J.* 897, 897-98 (1945).

40. *RODELL REVISITED*, *supra* note 9, at xxxix.

41. Charles Alan Wright, *Goodbye to Fred Rodell*, 89 *YALE L.J.* 1455, 1456 (1980).

42. Neil Duxbury, *In the Twilight of Legal Realism: Fred Rodell and the Limits of Legal Critique*, 11 *OXFORD J. LEGAL STUD.* 354, 358 (1991).

The point is—balance.<sup>43</sup>

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43. Fred Rodell, Haverford Commencement Address, 71 YALE L.J. No. 8, at vii (1962).