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David A. Logan

Roger Williams University School of Law

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Reflections on the Tenth Anniversary

Looking Back and Looking Ahead

David A. Logan*

In a very real sense, the idea of a law school in Rhode Island shares much with the principles of freedom of thought espoused by the state's founder, Roger Williams. Because of enforced orthodoxy in Old Europe and even in the American colonies, Rhode Island was conceived as a "lively experiment," and became home to heretics and other freethinkers.¹ Rhode Island was the first colony to declare independence and the last to ratify the Constitution (because it lacked a Bill of Rights to protect freedom of conscience),² so it is only fitting that when Thomas H. Roberts (Chief Justice of the Rhode Island Supreme Court 1966-76) called for the establishment of a law school in the state, he sought more than a local training ground for practitioners; he also recognized the need for an independent academic voice for law reform.³

Chief Justice Roberts did not live to see his dream realized, but eventually Roger Williams University stepped forward and, with the help of far-sighted citizens, a law school was established in the East Bay that has done much to respond to Chief Justice

* Dean and Professor of Law, Roger Williams University School of Law.

1. See Edward J. Eberle, *Roger Williams' Gift: Religious Freedom in America*, 4 ROGER WILLIAMS U. L. REV. 425, 468-69 (1999).

2. Eric Parnes, 43 SANTA CLARA L. REV. 495, 509 n.60 (2003); R.I. GEN. ASSEM., RHODE ISLAND HISTORY: CHAPTER IX, THE REVOLUTIONARY ERA 1763-1790, at <http://www.rilin.state.ri.us/studteaguide/RhodeIslandHistory/chapt3.html> (last visited May 11, 2004).

3. Thomas H. Roberts, *The Necessity for a Rhode Island Law School*, 21 R.I.B.J. 4 (1973).

Roberts' call. In its first decade the School of Law has trained an excellent cadre of lawyers, now numbering almost 1,000, many performing public service for the needy as all or at least part of their practices. This is no surprise, as our Feinstein Institute for Legal Service, as well as our clinics in Providence, not to mention the terrific law faculty, inculcate in our students an understanding that professionalism is rooted in the desire to serve. Consistent with this, many of our graduates are already assuming important leadership roles in their communities, in Rhode Island and, increasingly, across the country.

Chief Justice Roberts also believed that a law school would be a boon to Rhode Island because of the need to "improve the quality of government on every level" and "improve the quality of justice in our courts."⁴ Again, Roger Williams University School of Law responded to the challenge, as the school has provided many opportunities for the bench, bar and public to gain a better understanding of important public issues. Among many examples of this leadership are the hosting of a gubernatorial debate,⁵ a discussion of whether Rhode Island should abandon its idiosyncratic separation of powers regime,⁶ and, most recently, the Thurgood Marshall Lecture Series, which brought to campus leaders in the fight for racial justice.⁷

The faculty has not been hiding their lights under a bushel, either. From the school's inception, members of the faculty have staked out their own positions on a dizzying array of issues, from matters unique to the Ocean State, like the selection process for state judges,⁸ to problems of global concern, like the fight against terrorism.⁹ Many of my colleagues are sought out by the media and even Congress to explain and comment upon the issues of the

4. *Id.*

5. Liz Anderson, *Candidates Weigh Public's Right to Know*, PROVIDENCE J., Apr. 30, 2002, at A1.

6. Doane Hulick, *Separation of Powers Debate Leaves Legal Scholars Divided*, PROVIDENCE SUNDAY J., Apr. 26, 1998, at E1.

7. Edward Fitzpatrick, *Black Lawyers Examine Progress*, PROVIDENCE J., Apr. 15, 2004, at B1.

8. See Michael J. Yelnosky, *Rhode Island's Judicial Nominating Commission: Can "Reform" Become Reality?*, 1 ROGER WILLIAMS U. L. REV. 87 (1996).

9. See Peter Margulies, *The Virtues and Vices of Solidarity: Regulating the Roles of Lawyers for Clients Accused of Terrorist Activity*, 62 MD. L. REV. 173 (2003).

day, from the fire at the Station nightclub¹⁰ to biodiversity.¹¹ In short, this is a faculty of fiercely independent scholars who "call 'em as they see 'em."¹²

The School of Law also decided to sponsor a law review. Law reviews have been an aspect of the landscape of American legal education since the late nineteenth century, and they are an institution unique to law schools. "Students control every aspect of the law review, including article selection [and] publication Even though law schools provide financial support, office space, and professors as advisors, the students on the law review have a great deal of autonomy and discretion."¹³ In its first decade, the student editors and staff of the *Roger Williams University Law Review* have contributed much to public debate on a range of topics, from publishing notes and comments on land use and other timely local matters,¹⁴ to publishing the works of academics and practitioners on issues of national scope, like fisheries law and policy.¹⁵

With the tenth anniversary of the School of Law came an opportunity to bring these two resources together, the faculty who have made Bristol their professional home, and our student-edited journal. A large majority of the full-time faculty agreed to conceive and research their own distinctive projects and then publish the results in the *Law Review*. Their efforts make up what follows: an eclectic mix of articles and essays, some short, some long, some

10. Pam Belluck, *3 Men Are Indicted in Fire at Rhode Island Nightclub*, N.Y. TIMES, Dec. 10, 2003 (quoting Associate Professor Andrew Horwitz).

11. *National Security Readiness Act: Hearing on H.R. 1835 Before the House Comm. on Resources*, 108th Cong. 117-19 (2003) (statement of John C. Kunich, Associate Professor of Law, Roger Williams University School of Law).

12. See *Western Bank v. RaDec Constr. Co.*, 382 N.W.2d 406, 413 (S.D. 1986) (Henderson, J., concurring) ("To an umpire, sometimes it's a strike and sometimes it's a ball. Sometimes it just shaves the plate. You call 'em as you see 'em.").

13. Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 43 (1996).

14. See, e.g., Matthew D. Sleprow, *Shoring Up the Limits of Rhode Island's Public Trust Doctrine: Greater Providence Chamber of Commerce v. State of Rhode Island Makes It as Simple as One, Two, Fee*, 1 ROGER WILLIAMS U. L. REV. 183 (1996).

15. See, e.g., Symposium, *National Fisheries Law and Policy*, 8 ROGER WILLIAMS U. L. REV. 1 (2002).

narrow, some broad, and yes, some which are going to be controversial, in Rhode Island and abroad.

Of course, to publish a piece is not to endorse its content or conclusions.¹⁶ In fact, it is uniquely the role of a law review to provide a forum for such diversity of viewpoint. And all citizens, not least individual members of a school of law faculty,¹⁷ must be unafraid to challenge conventional wisdom in order to fully participate in the "marketplace of ideas" upon which our nation was founded.¹⁸ The same search for truth, though often difficult and halting, is no mere quaint notion given lip service by ivory-towered academics.¹⁹ The freedom of faculty to conceive, research

16. It is well-established that neither the school of law nor the university with which a law review is associated endorse the positions taken by the authors whose work is published. See Michael L. Closen, *A Proposed Code of Professional Responsibility for Law Reviews*, 63 NOTRE DAME L. REV. 55, 59-60 (1988).

17. See generally Robert R. Kuehn, *A Normative Analysis of the Rights and Duties of Law Professors to Speak Out*, 55 S.C. L. REV. 253 (2003).

18. See *Abrams v. United States*, 250 U.S. 616 (1919).

[T]he ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which . . . [the Founders] wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.

Id. at 630 (Holmes, J. dissenting).

19. The modern notion of academic freedom has its roots in the 1915 *Declaration of Principles* of the American Association of University Professors (later revised as the 1940 *Statement of Principles*). These guidelines, now adopted by virtually all universities and law schools, specifically acknowledge, indeed applaud, a trial and error approach to the advancement of knowledge: "[A true university is an] intellectual experiment station, where new ideas germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the intellectual food of the nation or of the world." Ashley Packard, *Copyright or Copy Wrong: An Analysis of University Claims to Faculty Work*, 7 COMM. L. & POL'Y 275, 287 n.65 (2002) (citing the American Association of University Professors, *Declaration of Principles* (1915), reprinted in ACADEMIC FREEDOM AND TENURE app. A, 157-76, 167-68 (L. Joughin ed. 1969)). See also Rita L. Liberwitz, *The Marketing of Higher Education: The Price of the University's Soul*, 89 CORNELL L. REV. 763, 778 (2004) (book review); Donald J. Weidner, *Academic Freedom and the Obligation to Earn It*, 32 J.L. & EDUC. 445 (2003).

Academic freedom is the freedom of a teacher or researcher in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions . . . without interference from political or ecclesiastical authority, or from the administrative officials

and write, without interference from the law school with which he or she is affiliated, is a core value of the institutions that control the very fate of law schools – the American Bar Association and the Association of American Law Schools.²⁰

From Distinguished Visiting Professor Robert Kent's *Rhode Island Civil Procedure – Some Problems*,²¹ with its state law focus, to the national law concerns of Professor Diana Hassel's *Lawrence v. Texas: Evolution of Constitutional Doctrine*,²² this issue of the *Roger Williams University Law Review* contains convincing evidence that there is now an independent academic voice for law reform that has its roots in Rhode Island and its sights on the nation and, indeed, the world.

I hope you are engaged by the fruits of this effort and will join in the debate.

of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics.

Id. at 447.

20. See American Bar Association Standards for Approval of Law Schools Standard 405(b) ("A law school shall have an established and announced policy with regard to academic freedom and tenure."). The Appendix to Standard 405 states: "Institutions of higher education are conducted for the common good. . . . The common good depends upon the free search for truth and its free expression. . . . The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties." See also Bylaws of the American Association of Law Schools 6-1b(ii) ("Core values. The Association expects its member schools to value: Scholarship, academic freedom, and diversity of viewpoints."); Section 103 of the Roger Williams University School of Law Faculty Handbook ("The faculty of the School of Law are entitled to freedom to pursue research and to publish the results of that research.").

21. Robert B. Kent, *Rhode Island Civil Procedure – Some Problems*, 9 ROGER WILLIAMS U. L. REV. 429 (2004).

22. Diana Hassel, *Lawrence v. Texas: Evolution of Constitutional Doctrine*, 9 ROGER WILLIAMS U. L. REV. 565 (2004).

