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A TRIBUTE TO PAUL KAUPER†

*Robben W. Fleming**

PAUL KAUPER was one of the giants of The University of Michigan. It is therefore a privilege to speak of him, even in this hour of sadness. Professor Kauper's career at The University of Michigan began in 1929, when he enrolled in the Law School. He graduated in 1932, but because of the severe economic depression remained on the staff as a research assistant during 1932-1934. Thereafter he joined the distinguished New York law firm of White & Case, where he remained until 1936.

In 1936 Paul returned to The University of Michigan, where, but for a leave during World War II and a term spent teaching at the University of Heidelberg, he remained for the rest of his life. From 1965 on he held the Henry Butzel chair in the Law School.

Paul displayed all of the normal indicia of success in his profession. He was the author of one of the most widely used textbooks on constitutional law. He published classic books on civil liberties and the Constitution, and religion and the Constitution. He won the American Bar Association's Ross Essay award for his work, "First Ten Amendments." His many law journal articles represent in themselves a major contribution to the field of law.

Along with Paul's scholarly activity went superb teaching. He was generous beyond measure with his time, a master of analysis, able to command vast amounts of data, and possessed of a capacity for total recall of all that his students had ever done for him. For those of his students who aspired to a teaching career, he furnished the grand model. It is not surprising that the profound respect he held for his students was returned in full measure by them.

Among his fellows, Paul Kauper was a source of guidance and a tower of strength for the younger faculty. When tough decisions loomed on the horizon his colleagues wondered what Paul thought; his analyses were key factors in the ultimate decisions. While his stature would have enabled him to wield tremendous power, he was gentle and restrained. It would have been inconceivable to him to utilize power for personal advantage or in ways that might harm others.

The respect in which the law faculty held him was reflected by

† This tribute was originally delivered as an oration at the funeral of Paul Kauper on May 25, 1974.—Ed.

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the larger faculty of the University. He won a distinguished faculty achievement award in 1959, the coveted Henry Russell lectureship in 1971, and he received honorary degrees from a number of institutions, including the University of Heidelberg.

Beyond the confines of the University, Paul was a public servant of uncommon talent. He served on the Ann Arbor Charter Revision Commission, the City Planning Commission, and numerous committees of the State Bar Association. He was a consultant to the Michigan Constitutional Convention. Within the University, Paul was a member of the Board of Directors of the Musical Society, the Committee for Honorary Degrees, the Board of Governors of Religious Affairs, the Board in Control of Student Publications, and, at one time or another, he served on every major committee of the Law School.

Aside from his professional accomplishments, most of us will remember Paul best for his human qualities. A deeply moral man, he was, in a sense, the product of another era, when life was simpler, institutions less subject to attack, and the difference between right and wrong seemingly more evident. For a lesser individual the years of student turbulence and upheaval might have been cause for a retreat into the past. It was a measure of this extraordinary man, whose own value system was so firm and deeply rooted, that he both understood and accepted those who either differed with him or rejected his views.

In one of his last essays, written in anticipation of our national bicentennial under the title, "The Higher Law and the Rights of Man in a Revolutionary Society," Paul said:

Basically our problem is a moral problem—a problem addressed to the minds and hearts of the people. The pessimism which is an important ingredient of our constitutional thinking is balanced by an optimism—a faith that men can work together to achieve common goals in a society held together by a sense of civic righteousness. This is the faith we must again recapture and cultivate. But a later generation cannot continuously harvest the fruits from trees others have planted and cultivated. This means for our day a restoration of faith in the basic institutions that have served us so well and which constitute what Walter Lippman has called the public philosophy. It calls for continued vigilance in the nurture of ideas and institutions which are our higher law heritage—the notion of limited power, of representative government as the fundamental check on power, the right to vote, the freedoms of speech and press, the freedom of dissent, the protection of minorities, access to courts for the vindication of our liberties; for renewed appreciation of our heritage of rights and freedoms and renewed insistence on the premises underlying the conception of natural right. It calls for restoration

of a moral sense of integrity in the affairs of government; for decency in public life and for civility and reasoned discourse in the great debate on issues of public concern. It calls for sensitivity, compassion, and generosity in response to human needs. It calls for self-restraint and responsibility in the claim to and in the exercise of freedom lest liberty degenerate into licentiousness and freedom into anarchy. It calls for an appreciation and affirmation of moral values which undergird the public order. It calls for assessment of our rights and liberties as more than negative restraints but as positive means for self-development and service to others. Freedom uncanalized by purpose, discipline, and regard for the common good is self-destructing.¹

There are all too few Paul Kaupers among us, and we have lost him all too soon. But we are a better University, a better community, and a better world because he kept constantly before us the shining example of a rational, civilized, and profoundly moral man.

1. Kauper, *The Higher Law and the Rights of Man in a Revolutionary Society*, 18 LAW QUADRANGLE NOTES, Winter 1974, at 8, 16-17.