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The editors of the *Villanova Law Review* have asked me to write an introduction to their survey of selected Third Circuit opinions. I must preface my remarks by noting that, while my colleagues join me in congratulating the *Review* on this undertaking, which I understand is to be an annual affair, they may not wish to be seen as joining in my remarks in their entirety. Having participated in only two of the cases selected for consideration by the *Review,* one of which is to be reviewed by the United States Supreme Court, I am writing from a position of greater security than my brethren. It is, thus, with a sense of no longer being the pitcher of record that I comment on the *Review's* project.

My remarks will, of necessity, be limited to my thoughts on the scope and direction of the survey, since I make these comments without knowledge of what will be said in the individual reviews. The members of the *Review* responsible for this project have, I believe, wisely limited themselves to categories of cases having a distinctly federal flavor. Without being overly ambitious, they have chosen a cross section of cases that will provide *Review* readers a good picture of the depth and breadth of our work.

Having carefully determined their focus, the members of the *Review* face the more difficult task of delivering on their promise. Reviewing judicial opinions is not an easy task, or at least reviewing them well is not. Any first year law student can state the facts of a case and its holding. A law review, however, can and should be expected to go far beyond that, developing the merits or uncovering the flaws in each opinion, relating a decision to the precedent that may control or conflict with the instant decision, and evaluating the impact a decision will have on the law and on our society.

The first real task of the reviewers, criticizing and analyzing the individual decision, is their easiest. Disraeli is credited with the observation that it is much easier to be critical than to be correct. While this is undoubtedly so, I do not wish to detract from the importance of critical analysis. Their analyses of legal problems have

provided the law reviews' greatest contribution to the law. In analyzing opinions, however, the reviewers must be aware that there are a number of constraints operating on the judges' freedom to make decisions. Precedent, the contentions of the parties before them, and the state of the record reaching them may foreclose a cleaner and simpler approach than that taken. Traditional ideas of judicial restraint may prevent a court from reaching a question that is logically, as well as in fact, before it.

These observations are not meant as apologies for any of our decisions. The limitations on judges' freedom in deciding cases do not necessitate decisions that are internally inconsistent or illogical, or that fail to distinguish conflicting or marshal supporting precedent, or that decide unnecessary or avoid essential issues. I would simply caution the reviewers to keep in mind the restrictions on judicial decisionmaking so that their critiques can better focus on the particular faults or virtues of each decision.

At the same time, the reviewers must realize that their own mandate is broader than ours. If a decision is correct, but the statute that controls it illogical, the reviewers are obligated to bring to light the harmful consequences that should require legislative action. Such "in terrorem" arguments are often made by attorneys to dissuade judges from following admittedly controlling law. It is as proper for law reviews to employ these arguments in calling for legislative change as it would be improper for judges to accede to them in deciding cases. Similarly, law reviews are free to call for the reversal of a precedent that, if made by our court, binds our panel or, if a Supreme Court decision, binds our circuit en banc as well.

In making this charge to the reviewers, I am certainly asking them to perform a difficult task. I am, however, certain that the task I have set for the reviewers is no more difficult than the one they have set for themselves. The entire Third Circuit joins me in looking forward to the *Review's* product that, combining analysis with perspective, will be of value both to the judiciary and to the law.