



Department of Justice

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ADDRESS

BY

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

AT THE

PAUL FREUND DINNER

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It is a strange but customary question to ask -- and believing wisdom may follow this compulsion I put the question to you -- "What is a lawyer doing among humanists?"

It was the son of a lawyer, naturally, who contributed greatly, although his help was hardly required, to the literature of derision descriptive of the learning and doings of the legal profession. It was Rabelais who provided in the library of St. Victor such titles on law and judges as I would not dare to recite.

Yet, among the books, I can safely report, was one on the "Flimflams of the Law." This was a natural title for the inventor of Judge Bridlegoose, who decided cases, as you all recall, by the toss of large and small dice -- an efficient method -- but only after tomes of pleading and paper had been provided and intricate procedures followed.

The question which is put is not why the use of the dice -- since the sense of that, being statistical and also final, is obvious -- but why the prior flimflam?

Bridlegoose gives four answers concealed among three. First, the formality is essential for the credibility of the result. Along with this is the obvious point that some times the formalities are able to destroy the substance. Then second, engaging in the procedures and formalities is fun, diverting in itself, like the game of muss. It can be taken like so much of learning or doing, for its own sake. Third,

all this procedure delays matters so that sifting, searching and examining creates a ripeness and maturity which win acceptance when the dice are eventually thrown.

Surely, any editor of one of your editions, if he lives that long and gets that far, will understand the point.

One might think the case for the humanism of the law had been made. But there is more to come. Rabelais has his principal character assure us that "Laws are excerpted out of the middle of moral and natural philosophy." But then, distinguishing between law and lawyers, he completely does away with the latter "since they have studied less in philosophy than [a] mule." Surely the analogy between law and the humanities has now been completed. But the action is threatening.

This forerunner of sociological surveys should give us pause. Should we impose a similar disqualification on humanists who have not studied philosophy? How many would be left? Law as a craft has often been deserted by those who, like John Donne, while ostensibly studying law in Lincoln's sun spent their time reading divines, philosophers, chroniclers and poets. Let us hope we can call them humanists rather than merely subjects for humanists despite the age of specialization which is ours. And let us hope that some we can call lawyers.

We might think for a moment of the development of law as a craft, created to write for others, and thus to speak for them, when few could write. Thus the servant for the soldier, or the servant for the man of affairs, until the servant becomes the action maker himself.

How does one give meaning and order to a world which has both regularity and unpredictability? So form becomes substance trying to get to the essence and to make use of the mysteries which surround us. Order is never completely possible, but order is sought, because order is the explanation and when order seems right, we call it justice.

The basic tool for the lawyer is the word -- the inherited word, the changing word which reflects, as Jefferson noted, the operations of the workshop of society in which language is formed and elaborated. The lawyer uses the word ultimately to explain that which, to some degree, as every lawyer must know, escapes complete explanation. "Like art," Paul Freund has written, "the law seeks to impose a measure of order on the disorder of experience, while respecting and drawing vitality from the underlying spontaneity, diversity, and disarray. Like science, the law seeks to find uniformities and interconnections, to build more general formulations that are simpler, more faithful to experience, and more serviceable; and then, if necessary, to break down the generalization into new particulars at the higher level of insight. The process is never ending. If it were to end, it would cease to be understood. And not ending

it must probe the mysteries,"

Archibald MacLeish, sharing the platform with Paul Freund on a previous occasion, explained how his poetic art and his legal education were joined. "The business of law," he said, "is to make sense of the confusion of what we call human life -- to reduce it to order but at the same time to give it possibility, scope, even dignity. But, what then, is the business of poetry? Precisely to make sense of the chaos of our lives. To create the understanding of our lives. To compose an order which the bewildered angry heart can recognize, To imagine man."

The occasion of the Jefferson Lecture this year celebrates not the return of law to its proper goals but a continuity of discipline and endeavor which law has always shared with other humanistic efforts. The sought-for achievement is to know mankind with its strengths, weaknesses and aspirations, and to help create and give vitality to that order which gives guidance to a community.

Robert Penn Warren last year in his Jefferson Lecture said, "If we conceive democracy as involved in our notions of civilization, then we must realize that democracy cannot exist in a society that is merely mechanical, that is not, in a deep sense, also a community of individual selves with common feelings, ideals, and conceptions of responsibility."

Those who would give this guidance must be interpreters.
They carry a heavy burden. They had better be humanists.

For those of us who claim to be of the lawyer's craft and who care deeply about the role of the humanities, we are proud Paul Freund has spoken for us. Grace, wit and learning are his possessions, not only for the feast of the Jefferson Lecture, but even when it becomes necessary, as it sometimes does in the everyday, in the tossing of the dice. But that is the stuff out of which poetry and law are made.