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**Address by the Honorable Edward H. Levi Attorney General of the United States before the triennial meeting of United Chapters of Phi Beta Kappa. 7:00 PM. Sunday, December 5, 1976. Conference Center, Williamsburg, Virginia.**

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# Department of Justice

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ADDRESS

BY

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

BEFORE

THE TRIENNIAL MEETING OF UNITED CHAPTERS  
OF PHI BETA KAPPA

7:00 P.M.  
SUNDAY, DECEMBER 5, 1976  
CONFERENCE CENTER  
WILLIAMSBURG, VIRGINIA



I am honored to have been asked to speak at this anniversary banquet of the Bicentennial Council of Phi Beta Kappa. When I was asked to do so many months ago by John Hope Franklin, I immediately remarked that I might not be Attorney General at this time. He responded -- if I recall correctly -- "So much the better."

This ambiguous, though gracious -- I trust -- answer, has one threatening overtone. It appears to recognize the disqualification to mind and mouth which public office, such as it is, sometimes brings. The disqualification in part would come from the distortion and preoccupation which goes with these jobs; the world looks different from them. I would like to think this distortion and preoccupation can have their uses if one is conscious of them and not totally engulfed.

You will, I am sure, recognize the distortions if they exist. But lack of balance is not, I think, limited to temporary appointed public office holders. Sometimes, indeed, I have thought, it was the stuff out of which

scholarship or at least discoveries were made, and it is therefore to be cherished. Surely each of us has traveled, or been brought to our own Lilliput and Brobdingnag; some of us have resided in Balnibari, subject to the sovereignty of the floating Island of Laputa -- a kind of precursor of the Office of Management and Budget (which has its counterpart in many organizations) hovering in the sky. We have conjured up Glubbudubdrib to give justice to commentators and chroniclers, among others. We see ourselves in relationship to the small and to the large. We exaggerate the number of arrows; we describe them as pinpricks. We record our deeds -- the fires we have put out -- recognizing that 'sometimes what we have done (or the way we have done it) is bound to cause comment, even trouble. Under these fantasies of pressure we emphasize the smallness, meanness, and inconsequence of human efforts. I prefer to believe that few among us reach the country of the Houyhnhnms, although I have known one or two genuine scholars who probably did. Then the human virtues are in the horses, brutishness is in us -- or at least in the rest of us, and the hero sits by himself upon his return. It serves him right.

Gulliver's Travels suggests we share and cannot escape distortions. But I have been drawn to the Travels because it is a reminder of a persistent set of problems. These

problems are relevant to a celebration of this organization, which is committed to a particular set of standards of excellence. They are also relevant to the bicentennial of a republic founded in part on a belief in human reason. While one no doubt can find room in the allegories for different messages -- the misuse of reason having this capability -- they are profoundly concerned about the values which must exist within the society if the power of the mind is to be used for the public good. The values set forth are not surprising. They have many names, and Swift uses most of them. Friendship and benevolence seem to come first. The concern of the central theme of the message then is a simple one. It is about the setting which the higher capabilities of mankind should create so that these higher capabilities may grow, be maintained, make sense, and not be used, as they can so easily be, to speak -- in the language of the Travels -- "the thing which was not." The Travels are not only about the human condition; they are about the condition required for its improvement.

The Houyhnhnms had a naive difficulty in understanding what Swift termed lying and false representation. The master Houyhnhnm thought, you will recall, that "the use of speech was to make us understand one another, and to receive

information of facts." He therefore concluded that "if one said the thing which was not, these ends were defeated." The consequence was that in his country doubting or not believing, and controversies in dubious propositions, were little known. I need hardly comment that for us such a condition would be destructive of our way of life. Our scholars spend a considerable portion of their lives hoping to discover things thought not so. Doubting is a necessary commitment and test for discovery. We are blessed with the means and the fact of considerable communication among us. The academy of Lagado is now really grand, but so are the disciplinary barriers which divide us. As learning and knowledge have increased, so have the educated -- perforce uninitiated -- among us. The existing knowledge attempts to populate the world of the unseen, but much of what is said to be known is inaccessible to most of us in the form of knowledge. This has not decreased fear; it has given rise to new misunderstandings. To tell the truth, for many of us, new mythologies have to be created. This is not strange -- for that always has been one of the functions of myths. Nor should we pretend we easily reach, in this enlightened and favored land, a sufficient level of common understanding of problems which touch the public weal. It is inevitable a selection be made of what we effectively read, hear, and see. A society as large and diverse as ours, which believes in shared reasoning, has to work very hard

to get at the facts and the theories about the matters which can make a difference.

I am always reminded of the difficulties of explaining what we know and of understanding what we don't, when I recall how scholars were discussed and proposed for honorary degrees at The University of Chicago. The scientists often -- not always, of course -- had difficulty in finding out just what it was that a humanist had discovered. Some of the humanists were pleased, I believe, to say they shared this difficulty. When a scientist was presented, both the presentation, and sometimes even the citation, had to go through challenges to unintelligibility -- the presentation sometimes being saved by a kind of shop talk (which the right faces in the audience would indicate they understood) -- the citation relapsing into a kind of banality where I could pronounce the words. I exaggerate, of course. But then distortion is the way to tell the truth.

In fact, I think we did quite well. But there is an interesting although minor point. The University's policy of only giving honorary degrees in regular course to scholars, chosen by scholars, for most exceptional intellectual attainment -- a resulting roster which for more than forty years is a most select company -- has gone largely unnoticed. Perhaps this is because the policy is wrong.

It does not fit the expected category; it is not believable. The absence of large donors and public figures removes a measure of importance; the varying standards of the disciplines and professions may make the standard unattainable in some pure sense. Still, a Queen of England was not offered a degree because it was asked what she had written, even though it was pointed out she stood for the Common Law and spoke necessarily through her judges. The fact of the policy has been given only momentary credibility when Senator Benton would urge from time to time that the policy be changed. I suppose the underlying question is how a university can communicate its primary concern without acknowledging and adopting other values -- speaking of some things which were not what it had originally meant to say. In all walks of life, and surely in the public walks, there are these problems of communication.

The administration of justice has to be concerned with the image which it makes justice mean. The social problems with which the administration of justice necessarily deals -- perhaps increasingly deals -- are enormous. They tap the life of the everyday and of different segments of the communities, and reflect pressures, and call for cures as to which social scientists are in disagreement. The description of the problems and the proposed remedies mirror the hierarchy

and fences among the disciplines. The points of progress are made notable by occasional admissions of ignorance. The discussions of the problems and what should be done about them are matters of public opinion -- where deeply held views, ease of rhetoric, and programs for political action are all factors. The language for thinking things through is, at the same time, the language for persuasion. There is nothing unusual about this.

The proper administration of justice may seem to be set apart. It deals with those problems which come to it in a structured way, with the help of the special mechanisms and the language of a discipline. Both access to the system (or the reaching out of the system) and the conclusions finalized at the end of the process have to be within some legitimizing mandate. The process itself is one of categorizing for the purpose of simplifying and explaining the issues -- although I realize it is often thought lawyers do the opposite.

Whether or not the law is mysterious, it is a most human science. The picture of isolation is obviously too simple. Not only does the law incorporate into its own language the ambiguities and conflicting ideas of its time, but the acceptance of law -- essential to its administration,

and the meaning of the law -- essential if it is to perform its function, depend upon the larger perception of how it is being used. The reason of the law, and the actions of the administration of justice, will be importantly seen as exemplifying certain values. There is thus a necessity for the public discussion of attempts to interpret important doctrines or to formulate rules through legislation or otherwise. There are other items which relate to the way the system performs its functions which should be matters for public awareness, although some matters -- as for example, the inside concern of how escape from a given penitentiary might be achieved -- may be properly regarded, I would hope, as not appropriate for publication.

The consequence is that much of what is involved in the administration of justice, broadly speaking, is bound to be involved in controversy, and should be. One can think of items about gun control, or electronic surveillance, or school desegregation, or the proper control of investigatory methods, or the codification and reformation of the criminal code, or the role of the federal courts in safeguarding constitutional rights, or the necessity for some cooperative balance of function between the Executive and the Congress. Each of these topics is freighted with ambiguities, where one must work hard to avoid speaking the

thing that is not -- indeed, to avoid hearing that which has not been said.

But there are other items in a zone where at least a word of caution is appropriate. It is a matter of long standing, in American jurisprudence, that on-going criminal investigations, so far as the system of justice is concerned, are not conducted in public. Observance of this rule is essential if the investigation itself is not to have a further in terrorem effect, if the rights of individuals and the integrity of the very process are to be protected. Partial disclosures, inevitably often most inaccurate and misleading -- but whether inaccurate or not -- do not in the short or long run help the criminal justice system. There are all kinds of reasons for temptations to make such disclosures, or plant such stories. The reasons do not justify the results. At other times these results would have been an invitation for all kinds of efforts, which we do not use, will not use, and which are rightly regarded as abuses, to detect the sources of this practice.

Much of what the administration of justice represents has to be seen and read from its formal actions. I have assumed the most important aspect was to try to make pervasive a certain sense of fairness and responsibility -- and adherence

to the law -- and a clear denial of partisan political use, and this with a willingness to try to confront more squarely the law's proper role in certain controversial areas. I knew the second might defeat the first, but I thought both were necessary. Fairness and responsibility, which may sound bland and easy, but are not, after all assume a proper use of the instrument, and law has a part to play in clarifying and helping to maintain the values involved in the solution of many problems. Both would have been impossible without the backing of the President, which has always been given.

For many reasons, this had to be a transition time. Our country was in the aftershock of Watergate. But prior to that there had been other shocks as well -- an unpopular, undeclared war, among them, and movements for social justice which confronted and shook the meaning of law itself. There were the remnants -- and possibly more than the remnants -- of an enormous amount of distrust, of a view of history as a getting even, of law as a manipulative device, of reason as a sham, of excellence as something to be avoided. These are familiar themes. The universities and colleges knew them well. The achievement of this subsequent period has been, I hope, to help reestablish the conditions for the continuing American experiment.

For some reason during the last two years I have thought of Victor Turner's account of the movement of the Barotse

royal barge in which the king and his ministers moved from a capital in the Zambesi Flood Plain to one of its margins during the annual flood. As the barge moved, if I remember correctly, the drummers were privileged to throw into the river any of the government ministers who had offended the drummers' sense of justice during the past year. I am sure that something of this sort is needed to make a society work. But that was an authoritarian society. For some reason I think it is better if we can use other methods. Probably it is most important to count upon the persuasive influence of groups such as this, to help maintain that friendship and benevolence -- or friendship and morality, of which your insignia speaks, while always insisting upon a standard of excellence, which will enable reason -- and the controversy of reason -- to flourish, and the American experiment to proceed further on the long, long road toward its fulfillment.