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## Dedication Address

John Paul Stevens

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## DEDICATION ADDRESS\*

THE HONORABLE JOHN PAUL STEVENS

Thank you. President Collens,<sup>1</sup> Dean Matasar, fellow judges, and friends of the law school. There are many reasons why I'm very happy to be with you on this wonderful occasion. I will discuss only three, although there are several others.

First, of course, I am especially pleased to see the new courtroom dedicated by Chicago-Kent College of Law to my old friend Judge Marovitz,<sup>2</sup> who is with us today. I need not talk for long about Judge Marovitz because I endorse everything said yesterday when the City of Chicago renamed Plymouth Court after him.<sup>3</sup> President Reagan recently said, "I knew Thomas Jefferson;"<sup>4</sup> in a similar vein, let me suggest, as many of you may not realize, that Judge Marovitz actually discovered Plymouth Rock.<sup>5</sup>

Judge Marovitz and I have been good friends for many years, and I have always been impressed by his uncanny ability to settle cases. Others share my admiration for the Judge; the breadth of his support throughout the community is indicated by the fact that both the Daughters of the American Revolution and the Independent Voters of Illinois have bestowed honors upon him.<sup>6</sup> He always could see both sides of a difficult

\* This essay is based on the informal remarks by Justice Stevens at the Chicago-Kent Dedication Convocation, September 11, 1992. The Convocation concluded a week of events celebrating the dedication of the new Chicago-Kent College of Law; Illinois Institute of Technology, Downtown Campus. See also Ilana Diamond Rovner, *Dedication Remarks*, 68 CHI.-KENT L. REV. 11 (1992).

1. Lewis Collens, Dean, Chicago-Kent College of Law, 1974-90; President, Illinois Institute of Technology, 1990. See Richard J. Conviser, *Of Dreams and Cathedrals: A Tribute to Lewis Collens*, 65 CHI.-KENT L. REV. 661 (1989).

2. Senior Judge, United States District Court for the Northern District of Illinois; Kent College of Law, Class of 1925.

3. Plymouth Court runs between Van Buren and Jackson Streets in downtown Chicago. It terminates on the north at the Dirksen Federal Building, where Judge Marovitz holds court. See Robert Davis, *Judge Makes a Name that Lasts in Court*, CHI. TRIB., Sept. 9, 1992, Chicagoland, at 6.

4. Reagan's remark during his speech at the Republican National Convention was a clever play on Lloyd Bentsen's "I knew John Kennedy" quip from the 1988 campaign. See CHI. TRIB., August 23, 1992, Editorial, at 2.

5. Chief Judge William J. Bauer of the United States Court of Appeals for the Seventh Circuit once explained that Judge Marovitz is the only federal judge who was born in a log cabin that he built with his own hands. See Mara Tapp, *Abraham Lincoln Marovitz at Four Score and Five*, ILL. LEGAL TIMES, Mar. 1990, People, at 8.

6. Judge Marovitz received a special award for 60 years of outstanding public service. He was a state senator before becoming a federal judge. In 1950 he was the recipient of the IVI's first best-

issue.

Second, I'm happy to be here to greet your new dean, Richard A. Matasar. Much has been said about Dean Matasar, but I want to mention one additional detail. While preparing for another assignment, I found his article<sup>7</sup> about *Boyle v. United Technologies Corporation*,<sup>8</sup> a case in which a majority of the current Supreme Court created a new defense for government contractors against tort liability: the military contractor defense.<sup>9</sup> I dissented in *Boyle*,<sup>10</sup> suggesting that this kind of law-making is institutionally better suited for the legislature than for a free-wheeling judiciary.<sup>11</sup> The same sort of judicial law-making at work in *Boyle* occurred again recently, when the majority in *Keeney v. Tamayo-Reyes* responded to a perceived lack of legislation by itself changing the law of habeas corpus.<sup>12</sup> In his article, Dean Matasar wrote some unkind things about the free-wheeling judicial lawmaking in *Boyle*.<sup>13</sup> I would have been glad to sign his dissent.

The third reason, of course—the main reason I'm here today—is to celebrate this wonderful new building.<sup>14</sup> As President Collens mentioned, I am a native Chicagoan. My father had a part in contributing to the skyline of Chicago, so I'm always very proud of this city. Every major improvement in Chicago increases this great pride.

Concurrent with the Dedication Year of Chicago-Kent College of Law, Chicago is celebrating the twenty-fifth year of the Picasso sculpture in Daley Plaza.<sup>15</sup> Chicago-Kent's interests are broader than merely the law. Many universities now offer courses and programs in combined

legislator award. See Jody Temkin & William Recktenwald, *Phelan Tells His County Health Plan*, CHI. TRIB., Jan. 22, 1990, Chicagoland, at 1.

7. Michael D. Green & Richard A. Matasar, *The Supreme Court and the Products Liability Crisis: Lessons from Boyle's Government Contractor Defense*, 63 S. CAL. L. REV. 637 (1990).

8. 487 U.S. 500 (1988) (holding that federal tort immunity for government contractors preempts state laws that would impose liability on military contractors for product design defects).

9. *Id.* Because of *Boyle's* ambiguity as to its scope, Green & Matasar alternately refer to the defense as "the government contractor defense" and "the military contractor defense." See Green & Matasar, *supra* note 7, at 640 n.3.

10. 487 U.S. at 531 (Stevens, J., dissenting).

11. "When [a] novel question of policy involves a balancing of the conflicting interests [between a] governmental program . . . and the rights of the individual . . . I feel very deeply that we should defer to the expertise of the Congress." *Id.* at 532 (Stevens, J., dissenting).

12. *Keeney v. Tamayo-Reyes*, 112 S. Ct. 1715 (1992). In *Keeney*, in a novel application of the strict "cause and prejudice" standard, a 5-4 majority of the Court denied an evidentiary hearing to a habeas petitioner who had failed to develop his claim in state court proceedings, despite the petitioner's lack of procedural default or deliberate bypass. The petitioner, who did not speak English, pled guilty to manslaughter. He later claimed that he did not understand his interpreter. *Id.*

13. Green & Matasar, *supra* note 7, at 709-13.

14. See *supra* note \*.

15. See Elizabeth Chur, *How Bill Hartman Wooed Picasso and Won the Prize*, CHI. TRIB., Aug. 9, 1992, Arts, at 7.

subjects, such as literature and law, economics and law, and sociology and law. The Picasso sculpture suggests an additional hybrid interest: art and law.

One of the contrasts between art and law is that mystery, ambiguity, and suspense are virtues in art, but not in law. Each viewer of a work of art may interpret the artists's intent differently. Laws, however, must not be interpreted differently; instead, judges must strive for consistency. Also, in art, time often has a different dimension. The viewer may need time to understand a work of art; the artist's message may last for a long time. But in law, time should not have a different dimension, as readers of a statute must know immediately what is intended. Viewing the Picasso sculpture demonstrates the problems that can occur when judges interpret laws as viewers interpret art.

Everyone interprets the Picasso sculpture differently. It has no name, as you know. It has been variously assumed to portray a baboon, a vulture, a robot, a duck-billed platypus, a Viking ship, a phoenix rising out of the ashes,<sup>16</sup> the winged spirit of justice,<sup>17</sup> a bird, a lady's head, an Afghan hound, the abominable snowman, a cow, and a horse.<sup>18</sup> Many combinations of the above also are evident to viewers focusing on the wing-like projections seen when approaching the front of the sculpture.

Ambiguity in the meaning of a work of art may be a virtue, stimulating interest and discussion among viewers. If they all enjoy the work, it really does not much matter whether they all interpret it in the same way. Ambiguity in legislation, however, is by no means a virtue. No matter how difficult the task may be, the judge has a duty to strive to understand the intended meaning of ambiguous statutory provisions.

A statute with the same sort of ambiguity as the Picasso sculpture is Section 1144 of the Employee Retirement Income Security Program (ERISA).<sup>19</sup> This section occupies approximately 22 column inches of the U.S. Code.<sup>20</sup> The following excerpts convey the Picasso-like flavor of the entire statute:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and

16. This interpretation is particularly relevant in light of the Great Chicago Fire of 1871.

17. Picasso knew that the sculpture would be located in the plaza of the Cook County Circuit Courthouse. Mayor Richard J. Daley desired that the sculpture express justice. Chur, *supra* note 15.

18. This interpretation was suggested by Mark K. Johnson.

19. 29 U.S.C. § 1144 (1988).

20. See *id.* (occupying the equivalent of a full page of 8-point type).

not exempt under section 1003(b) of this title.<sup>21</sup>

\* \* \*

(2)(A) Except as provided in subparagraph (B), nothing in this chapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

(B) Neither in employee benefit plans described in section 1003(a) of this title which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purposes of providing death benefits), nor any trust established under such plan . . . .<sup>22</sup>

This spring, in *Morales v. Trans World Airlines*,<sup>23</sup> the Supreme Court decided that the State of Texas could not prohibit misleading advertising by airlines. Unbelievably, the Court found this answer by analyzing cases construing the Picasso-like ERISA text quoted above.<sup>24</sup> Again, I disagreed with the majority.<sup>25</sup>

Turning from the task of statutory construction to the task of artistic construction: to interpret the Picasso sculpture we might look at the contemporaneous context surrounding the creation of the work of art. The sculpture was produced by a brilliant artist who had a great, ironic sense of humor, and loved practical jokes.<sup>26</sup> Though frequently asked to do so, Picasso steadfastly refused to interpret the sculpture or to name it. Before he created this work of art, he had been given a great deal of information about the setting in which it would be placed—about Chicago and the community.<sup>27</sup> Surely he must have known about the Cook County version of the rule against perpetuities—or perhaps the rule *in favor* of perpetuities—that provides that the mayor of Chicago must be a Democrat for the next century or two.

Picasso knew that the sculpture would be placed in Daley Plaza, and knew the kind of man Richard J. Daley was.<sup>28</sup> This context sheds

21. *Id.* at § 1144(a).

22. *Id.* at § 1144(b).

23. 112 S. Ct. 2031 (1992) (holding that the Airline Deregulation Act of 1978, 49 U.S.C. App. §§ 1301 et seq., preempts states from prohibiting deceptive advertisements via enforcement of their consumer protection statutes).

24. *Morales*, 112 S. Ct. at 2037.

25. *See id.* at 2054 (Stevens, J., dissenting).

Today we construe a pre-emption provision in the Airline Deregulation Act . . . , a statute containing similar, but by no means identical, language [to ERISA § 1144]. Instead of carefully examining the language, structure, and history of the ADA, the Court decides that it is "appropriate," given the similarity in language, to give the ADA pre-emption provision a similarly broad reading. [citation omitted] In so doing, the Court disregards established canons of statutory construction, and gives the ADA pre-emption provision a construction that is neither compelled by its text nor supported by its legislative history.

*Id.* at 2055.

26. *See generally* Chur, *supra* note 15.

27. He was given memorabilia such as a White Sox uniform, a Bears jersey, a Native American headdress, and photographs of Chicago and its people. Chur, *supra* note 15.

28. *Id.*

light on the artistic interpretation of the sculpture. Looking very closely at the large wing-like projections, a viewer might first notice their resemblance to ears. Next, a viewer might notice that the nose, the centerpiece of the sculpture, appears to be a cleverly disguised trunk. So one might conclude that this great artist played a terrible practical joke on the Democratic Mayor of Chicago, who probably never would have agreed to install an *elephant* in the front yard of Daley Plaza.

That conclusion, however, would underestimate the good sense, the good judgment, and the basic intelligence of Richard J. Daley. As I'm sure Judge Marovitz would testify, very few people could ever get anything past the Mayor.

This, then, is the context in which we can best interpret the Picasso sculpture. If the sculpture really does portray an elephant, we must assume that the Mayor was well aware of that fact and, furthermore, realized that in due course the public also would come to understand Picasso's true meaning.<sup>29</sup> The likelihood that a leader with the power and vision of Richard J. Daley was willing to have the symbol of the opposition political party placed in the Plaza bearing his name, at the heart of the City of Chicago, demonstrates his exceptional tolerance. The Picasso sculpture interpreted so differently by so many and such diverse groups, should be recognized as a symbol of the tolerance that is characteristic of a great city.

Tolerance is really the theme of this dedication. As I have listened to the previous speakers, I have been impressed by the extent to which Chicago-Kent College of Law has set an example of tolerance in the study of law. My congratulations to Chicago-Kent for its important contributions to both the teaching and the practice of law in this community. Whether or not you agree with my critical interpretation of either statutes or works of art, I think you will agree with me that Chicago-Kent College of Law—and perhaps the Picasso sculpture as well—may appropriately be viewed as a powerful symbol of that profoundly important virtue—tolerance.

29. Mayor Daley wisely said that the sculpture was just what he had in mind. Chur, *supra* note 15.

