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Only Words: Scott Turow on Law and Literature

by David J. Perlman*

"It's Only Words: Thoughts of a Lawyer and Novelist" was the title to Scott Turow's November 11 AJEI lunchtime presentation. Weaving anecdote, theory, and fiction, Turow described two modes of discourse, legal and literary. Each, he observed, offers its vision of truth. Each has its force and effect. Each has its limitations.

Turow opened with an anecdote about his Amherst English Professor, Theodore Baird. A friend of Robert Frost's—who also taught at Amherst—Baird viewed literature through the lens of "new criticism." Analogous to the lawyers' "four corners" interpretive method, "new criticism" locates meaning in the words of the text alone. "It doesn't matter, " Turow quipped, "that the writer was a cross-dresser raised in a cage or that a nuclear bomb exploded outside of his house."

In his opening class, Baird drove home his point with idiosyncratic pedagogy: he patrolled the room striking students on the head with a pencil, asking each to name the object in hand.

"A pencil," was the first answer.

"No," Baird said.

"An oblong yellow instrument," was another attempt.

"No."

Finally, Baird enlightened the young initiates: "It's a weapon."

Baird's message, Turow said, was that words have dramatic implications. Call a pencil a weapon, and it may become one. Or use it as a weapon, and it may be called one. Law, like literature, concerns the power to choose the word and hence define reality, with all the consequences thus entailed.

Turow invoked another student of Baird's, founder of the law and literature movement, James Boyd White. In White's view, the language of law, like the language of literature, interprets experience and confers meaning. As White wrote in *The Edge of Meaning*, law translates "mute and inexpressible experience to another plane, where it acquire[s] significance of a new kind. It [is] a way of giving meaning to life." As Turow observed, the law thrusts into public discourse private issues otherwise lack-

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ing a forum.

But the languages of law and literature are markedly different. For one, law is impermanent. The statements, pronouncements, rules, opinions—the writings of law—sacrifice permanence to achieve their pragmatic end; they are swept away, into the dustbin of history, to make room for new, more workable legal statements. Turow commented that Seventh Circuit Judge and literary stylist Richard Posner considers his opinions to last only so long as they are useful, which may not be long at all. While Shakespeare remains vital, Tudor reports are historical oddities. The law, Turow said, is a fluid accommodation between opposing forces, not an expression of abiding truths.

Yet, law's mutability, rather than repelling Turow, fascinates him. Before attending law school, he was a writing fellow at Stanford, surrounded by a coterie of talented writers. At the time, his own fictional endeavor hinged on the lawyerly subject of the implied warranty of habitability. Turow said he was intrigued by the law rejecting the original English concept that a tenant rented only the ground beneath a structure with no assurance that the structure was fit for human habitation. He found it compelling that the law could shift course to achieve a pragmatic, political objective—that it could "turn its back on itself" and become an instrument to resolve differences between people separated "by a power differential."

Yet, to remain effective, Turow observed, the law "fudges" certain truths. He cited a study of the factual records underlying the classic textbook appellate cases. The study revealed that the famous opinions "glossed over messy facts" that would have undercut the outcome. "Law is not literature," he said. "It must be unambiguous to bind human behavior. It must pretend that there are no contradictions or ambiguities." Every case is result driven, he concluded, for the facts must fully justify the rule of law. Ultimately, however, he said the drive toward absolutism undermines law's authority and erodes its permanence.

In addition to being fleeting, law, unlike literature, speaks in an impersonal, institutional voice. While law consists of verbal formulations, Turow observed, the lawyer is denied access to his personal vocabulary. Judges and lawyers speak on behalf of an unfeeling entity, while creative writers cultivate a voice — an application of diction, syntax, tone, rhythm, indeed, of all the aspects of language — to convey an individual personality.

Yet, literature, like law, still has its limitations, which Turow suggested through an anecdote. He disclosed that *Presumed Innocent's* first draft didn't identify the murderer. He had narrowed the suspects down to two, thinking this uncertainty was comparable to a not-guilty verdict when the evidence is insufficient to convict one of a number of suspects. This resolution corresponded to Turow's experience as a prosecutor. It was an outcome possible at law, a principled

means of containing indeterminacy. But ultimately, it was an outcome Turow found incompatible with art.

"Mystery novels don't leave things hanging like the reality of courtrooms," he said. Realizing that mystery novels must observe their own conventions to sustain their meaning, Turow revised the ending to identify a murderer. Ultimately, we resort to literary art for relief from incongruity, contradiction, and uncertainty; as Frost famously said, a poem is "a momentary stay against confusion." Or as Turow said, explaining his revision and his own literary genre: "The mystery novel is the antidote to our inability to reclaim the past."

Turow concluded by reading from *Limitations*, his 2006 novel about an appellate judge named George Mason. Beset by personal problems, Mason was the swing vote on a three-judge panel. The legal issue concerned the statute of limitations. But the case, a rape case, was uniquely consequential, for it touched Mason's own festering guilt over his participation, many years before, in a student gang rape.

Citing Mason, Turow described judging as a complex personal process in which judges always hold some concealed stake in their decisions. He said that judging implicates personal meanings that the law can never acknowledge in its detached, institutional voice. The law's objective rules, he said, may be driven off course by individual needs, conflicting moral imperatives, or a remoteness from emotion. Yet, he said that he does not write about law from a judgmental or imperial standpoint.

"I love the law," he said, "even though I'm resigned to its failures."

Editors Notes

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