



Supreme Court of Kentucky

State Capitol, Room 231
700 Capitol Avenue
Frankfort, Kentucky 40601

Daniel J. Venters
Justice of Kentucky

Frankfort 502-564-5444
Somerset 606-677-4248

Justice Daniel J. Venters speech for 2009 Law Day “Our Legacy of Liberty”

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Kentucky Capitol

May it please the Court: Mr. Chief Justice, Madam Clerk, my fellow Justices, Judges, and distinguished guests:

We gather, as we do each year on May 1st, to celebrate the Rule of Law. This year, we also observe the 200th anniversary of the birth of Abraham Lincoln, a native son of Kentucky and a lawyer. And today, we also celebrate the 143 new lawyers admitted to the practice of law in the Commonwealth of Kentucky. They sit here brimming with untried knowledge, like a brand new volume of ALR 6th. They seem, as one wiser than me once said, “Sharp enough to stick in the ground and green enough to grow.” To our new lawyers: we know that you are well prepared and well aware of the responsibilities your license imposes upon you. Today, I will charge you with one more.

A client once asked me, in a not very flattering tone, why we had so many lawyers. To him, they seemed to be everywhere, like weeds in garden. I reminded him that ours is complex society that believes in the rule of law; that if we were governed by the movement of the planets, we undoubtedly would have lots of astrologers and astronomers; and if we made decisions based on magic we have a glut of sorcerers. Having a lot of lawyers is a good thing for a society that values Liberty and the Rule of Law. People feel frustrated, even annoyed, by the burdens sometimes imposed by the legal processes implicit in the rule of law. But we should not be surprised or offended that citizens, who would send their children around the world to die protecting or securing other people’s rights, would not hesitate to assert their own rights in a court of law.

As a young lawyer, not yet 30 years of age, Lincoln spoke of our faith in the Rule of Law, when he said: “Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; Let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation; and let the old and the young, the

rich and the poor, the grave and the gay, of all sexes and tongues, and colors and conditions, sacrifice unceasingly upon its altars.”

Later, at Gettysburg, Lincoln would remind us of the national creed set forth in our founding documents: that we are dedicated to the proposition that all men are created equal, endowed by the Creator with certain inalienable rights. Lincoln knew that, although the nation was “conceived in liberty,” our legacy of liberty did not begin with the Declaration in 1776. In demanding the King’s respect for their God-given rights, Adams, Jefferson, Hamilton, Madison, Henry and the other Lawyers that founded this Country were following a precedent established by their English ancestors: protecting Liberty in its struggle against the powers that would suppress it. Before proclaiming independence, the American colonists protested the violation of their rights as Englishmen. Thomas Paine, a year before he argued for independence in Common Sense, wrote to Philadelphians, “The American colonies are entitled to all the privileges of British subjects ... Liberty is the glory of every Briton. He does not forfeit it when he crosses the ocean. He carries it with him into the most distant parts of the world, because he carries with him the immutable laws of nature.”

Our legacy of liberty is ingrained in our English cultural heritage, because planted in English soil nearly a thousand years ago was the idea that the government’s power was limited and that its subjects had rights that the King could not override. In the year 1100, King Henry the 1st acknowledged a “Charter of Liberties,” by which he yielded to his subjects certain liberties. A century later, because of his abuse of those liberties, King John was met by armed subjects and compelled at the point of a sword to fix his seal to *Magna Carta*, the Great Charter, binding himself and his successors to the principle that the king’s authority was limited by law, and that his subjects had rights that neither he nor his successors could disregard. The Great Charter, by our standards, would be deficient in many respects, but its paragraphs contained the forerunners of the basic liberties that we claim as our own – a right of habeas corpus; a right to be tried by a jury of one’s peers; the creation of a council of citizens whose approval must be given for laws and taxes; the establishment of jurisdiction for courts of law; and others. King John would later appeal to the Pope that the Charter was invalid because it was executed under duress. Perhaps it was, but the die had been cast, and the rights he had acknowledged, given by God, were not his to grant or deny. Liberty in Law, if not yet carved in stone, was at least set on parchment and became firmly fixed in the hearts and minds of the freemen of England. The centuries that followed were punctuated by the persistent struggle between liberty and tyranny, culminating in the English civil war in the 1600s. It was then that people began leaving England to find refuge on the shores of this continent. They brought with them their language and religion, their traditions and customs, including their belief in the immutable law of nature that that liberty was an inherent right, and that no government was above the law.

To those who do not see the current influence of the English tradition of liberty and law, I would offer the following observation: when the New World was opened to empires of Europe, France sent priests to lead the Indians to Christianity and trappers to obtain furs for France; Spain sent armies to conquer the Indian civilizations and to extract gold for

Spain. The English sent families – to build homes, churches, towns – and courthouses. Today, other than Quebec, there is virtually no French influence in the New World; the Spanish-speaking nations have only recently begun to emerge from centuries of instability and dictatorship. But wherever the English common law tradition was transplanted, freedom found it safest harbors.

In the dark ages of European history, knowledge of the science, art and literature known to the ancient civilizations was lost. It was, as historian William Manchester described, “a world lit only by fire.” For hundreds of years, scribes and clerics laboriously copied and recopied by hand the ancient texts, to keep alive the flame of knowledge until it could be rekindled by the renaissance in a world ready to learn again. Like those scribes and clerics, lawyers, in the common law tradition, have kept alive the flame of liberty and the rule of law, each generation passing the knowledge on to the next, for hundreds and hundreds of years.

You, the newest members of the Bar, will soon engage yourselves in the mundane affairs of your career. You will prepare deeds and wills. You will negotiate pleas in criminal cases, settle estates, and divide marital property. Occasionally, you may try a case before a judge or a jury. You will make differences, great and small, in the lives that are touched by your practice. Judge Learned Hand wrote, “Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it.”

It is the work of the lawyer, however great or mundane it may seem, that for the past nine centuries has kept the idea of liberty and the rule of law alive in the hearts of men and women. That is the legacy of liberty passed to you. Your charge is to keep it and preserve it, and deliver it safely to the next generation.