



A CASE FOR LEGAL POTPOURRI

AN ODE

Aaron J. Walayat

I humbly provide my contribution.
This topic deserves whack at solution.
This verse was written, in hopes to increase
Discussion upon the following piece:

Bridget J. Crawford, “SSRN and
The Arbitrary Determina-tian
Of ‘Scholarly Merit,’” Twenty-Two Green
Bag Second, Two-Oh-One (Twenty Nineteen).¹

A lawyer today expected to have,
The qualities of a renaissance man.
Expected to dance, to paint, and to sing!
Lewd populist and philosopher-king!

As most the professions all seem to share
A base medium of something that’s there.
In like do we spackle, and carve, and saw
This foundational thing we call the law.

Aaron J. Walayat served as a judicial law clerk for the Honorable William S. Stickman IV of the U.S. District Court for the Western District from 2019 to 2020. Copyright 2020 Aaron J. Walayat.

¹ Bridget J. Crawford, *SSRN and the Arbitrary Determination of “Scholarly” Merit*, 22 Green Bag 2d 201 (2019).

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And so springs the scholar's great enterprise
Cerebral estates that consume the minds
Of lawyers, themselves still proud undergrads
Who left unclosed curiosity's tab!

So toil he does, the bright lawyer, tears
Through books, to jump-start, he hopes, his career.
Remembering school, through his classmates' sobs
"Damn," sights set frontward, "that's a cushy job."

Some legislate to write laws with their friends!
Some become judges, rewrite it again!
Some litigate so to wallow in fog.
The best complain about it on their blogs!

An article that will merit his worth
It tells to doubters, to all, of his mirth
Through dabble and dabble, detour and pace
His choice not to practice was not a waste!

At last! They bestow a room in the hall
And tenure, he prays, takes Pentecost's fall
The books are all placed, he closes the door
To meet the deadline, he must write some more!

What must he write in the annual spin?
Stockpiles of old school assignments run thin!
Will the gods accept this offering send?
Beseech thee, good god!, Great SSRN!

Oh who shall carry this child that I bore?
To keep her well fed (and read) in their stores?
Prestige is a factor - few abide by
The maxim: "If it's on Hein, then it's fine."

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And lo! It's rejected! That's nine lost months!
And, alas!, poor he, returns to the hunt!
"Oh who will copy my sweet creation?
In Journal Notes with min'mal citation?"

Hidden with others at bottom of page!
Footnoted sarcophagus to be laid!
Respect juxtaposed, left ever pious
To those who confirm the author's bias.

Or just to account of current affairs,
Forgetting sections where my soul laid bare!
But why, good god, did you reject my piece?
Oh, it didn't fit your categories."

"This piece," spake god, "satirical garble!
Surely, professor, you've lost your marbles!
Opinion? Advocacy? No home here!"
"Oh, dear," spake he, "but what's left then, I fear?"

Looking around, I surmise without words
So much of life, we will find, is absurd!
It then only makes sense, through the guffaws,
That we use the same to write of the law!

For many the first philosophe they knew
Was he the great sage, he, Winnie-the-Pooh.
His insight on life hidden in his tone,
Still whittles at truth, so secretly known!²

What more comedian's humorous speech?
Expanding more minds, a noteworthy feat!
Does this make it less than highbrow smarts feigned,
In the same way that Arnold hated Twain?³

² See, e.g., Benjamin Hoff, *The Tao of Pooh* (1983).

³ See Matthew Arnold, *A Word About America*, 11 *The Nineteenth Century* 680 (1882).

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Less study of rhetoric, threats posing,
To which American minds seem closing!
Hated, then sold, accused destroyer
Rhet'rics defenders ought to be lawyers!

So much of life is drenched in agenda,
Might as well learn now sugar from Splenda!
Satire is fun! And opinion, well that's
Something that we already read en masse!

And another thought, I ask you now nurse:
"Can scholarship come in the form of verse?"
Sight of poem's form may harken a tease
But other days would bestow laurel wreaths!

The analytics I fear now have deemed
Only a fanciful place for maxims.
"Redress for every inj'ry" twas said⁴
Now Blackstone replaced, instead it is read:

"If B equals A at c, then it seems
It follows at c, if A, then is B
But if at c-star, should A equal D
A must be D at c-star and not B!"

Alas! It is true! But see, here's the thing
The stanza above is lacking that ring,
That warrants repeat throughout all the times,
And Straussian thoughts hidden 'tween the lines.⁵

⁴ 1 William Blackstone, Commentaries on the Laws of England 23.

⁵ See generally Leo Strauss, Persecution and the Art of Writing (2013 [1952]) (discussing the esoteric writing of great philosophers in preliberal societies); but also see Catherine Zuckert & Michael Zuckert, The Truth About Leo Strauss 115-154 (2006) (criticizing the accusation that Strauss was an esoteric writer).

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But now to suggest my category
Perhaps introduce “Legal Potpourri!”
So much is scholarship riddled with those,
Who form but do not breath life in their prose.

But then out in practice, so many find
To their good clients, the issue’s alive!
Yes, write for the judge, the honor’ble court
Also the judges, spectating the sport!

Writing’s dynamic and changes to speak
To persons perchance it happens to meet!
Many forget where they’re situated,
Writing’s meant to be communicated!

“Legal Potpourri” - a troubling phrase.
Can any young student write on a-blazed?
Dilemma is false! Allay your fears!
For sweet nothings only fall on deaf ears.

Also I propose with audacity –
“A paper defined by its company.”
Researchers pay with too much deference
Known scholars lists, ejusdem generis.

Publishing is a familiar game
Scholars, as all, hold celebrity fame
E’en quibbles are published, quickly, we know
If it’s discovered the writer’s Nino.

Flexible standards all muddling about,
No hint at the benefit of the doubt!
Oh, let the good writer try it as well!
(And let his work try to speak for itself!)

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Do works fail to give, when words seem to dance,
The brevity that the issue demands?
What matters is that someone takes a smudge
'fore returning to quote a cite-able Judge!

But what of our law and its majesty?
Dumbed for the sake of readability?
Dumbed down? I say not! It speaks with a gust!
A legal Emmanuel, "Law with us!"

Today's publications cannot compete,
With that type of writing written to reach!
Lest we forget the preeminent seed
Is his, Eugene Volokh's, Conspiracy!⁶

And this, the good Bag, by color of Green!
With history back to Nineteen-Thirteen
(And earlier I just needed the rhyme.
Such a shameless stanza, now where was I?)

So much to be written! Much to convey!
Erasers are mulch, a pen is a spade!
And write in a way that doesn't fall flat,
When so much legal writing just "ain't that."⁷

A written profession, indeed, an art,
In John Newman's words, should "heart speak to heart."⁸
And reclaiming rhet'ric, a worthwhile fight
Merry Christmas to all, to all, Good Night!

⁶ Preston Lerner, *Right Side of the Law: Eugene Volokh's Global Influence*, Los Angeles Magazine, Apr. 1, 2015, www.lamag.com/citythinkblog/right-side-law-eugene-volokhs-global-influence/.

⁷ LawProse with Bryan A. Garner, *Hon. Frank H. Easterbrook, U.S. Circuit Judge (Chicago): On Reading Journalism*, YouTube (Dec. 25, 2014), www.youtube.com/watch?v_7h1H7C8me8Y.

⁸ Robert P. Imbelli, *Heart Speaks to Heart*, Commonweal, May 30, 2008, www.commonweal-magazine.org/heart-speaks-heart.