

RONALD P. SOKOL

13540 PUYRICARD

FRANCE

Saturday, 21 July 1979

Dear Dan,

The photograph has come, and I am delighted! The "friendly observers" you refer to in your letter merit something of a reprimand. The photo is more than "all right." It is an excellent likeness, and I am very very happy to have it. I was especially pleased with your thoughtfulness in inscribing it and the aptness of your words which express my own feelings as well. I thank you for it!

The delay in my writing was due to my absence. I had a busy trip to the U.S. to attend to the possible sale of the family business and to put my son in camp in Wisconsin so that his fellow campers can coax him into speaking the local tongue more trippingly. When I visited him about ten days ago, the experiment was working well, and he was thriving in the North woods of Wisconsin and asked whether he could return next year. He is still there and not due back here until mid-August.

I was astonished that you thought my comments on the French legal system merited being shown to others. I have always thought that somewhere along the line about fifteen years from now I would have amassed sufficient information, experience, and impressions to say something perhaps useful about the two legal systems. Your reaction to my observations raised the question for me of whether I am not closer to that essay than I realized I was. I think I have answered that question yes and reduced the period from 15 to 5 years.

In the past few months I have been ruminating on the truth-finding aspect of the litigation process and the comparison between the French and U.S. approaches to this aspect. The judicial process in both systems uses the "correlation theory" of truth. That is, the system supposes that the court's version of the "facts" will correlate or correspond as closely as possible with what actually occurred. Putting aside the issue of what constitutes a "fact" which raises other problems not relevant to my present ruminations, I am struck by the radical difference between the two systems in the evaluation of each as to how much effort and resources ought to go into trying to find out "as closely as possible" the correlation. The U.S. system puts far more effort into the attempt to ascertain as closely as possible what actually happened, that is, what the facts were, than does the French system. Our whole system of evidence, of cross-examination, of pre-trial discovery, of highly-trained attorneys, etcetera have no parallel in the French system. I am constantly struck in the litigation I have undergone in the French courts at the fact that I can put anything into evidence and

that there is no standard of proof except the judge's good sense. There is really no standard for verifying or authenticating documents submitted to the court, no cross-examination, no limits on what the lawyer can say or put into his brief or into evidence. The procedure itself is unbelievably informal. The formality occurs at the display level only, that is the law where robes and there is the usual paraphernalia of justice, but the actual truth-determining process is about as unrigorous as you can imagine. The recent grounding of the DC-10 made me wonder whether or not the rigor and thoroughness of our investigation and our caution and precaution compared to ~~the~~ that of the rest of the world which was looking at the same airplane might not reflect something deeper about our culture. I'm not sure what. Distrust perhaps? Maybe nothing at all like that but simply better training in both the sciences and in law. Yet all this obviously has a profound relationship with the cost and delay of our legal system. The less effort society commits in its dispute-resolving machinery, to trying to find out exactly what happened the less costly the investment. Further evidence of the above observation is that we also go to much greater lengths than the French in trying to find out what the law is as well. Our doctrine of stare decisis only partly explains this because we go to great lengths to locate precedent (from other states, example) that will not be controlling. Would I be correct in concluding from your article on the English appellate judges that the British also commit large resources to ascertaining what actually happened when a factual dispute exists?

Well, the above is probably all a muddle to you. This is the first attempt I have made to write it out, and I don't know whether it will make any sense to you or whether, if it does, the observation will strike you as being of any interest.

I have taken on an associate who finished at Virginia in June of this year and I am very pleased with him thus far. I still have hopes of getting to Charlottesville for a visit. I hope you and your family are all well. I imagine you will be glad to get back to teaching for awhile. Thank you again for the photo and the inscription.

As ever,

