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SYMPOSIUM - BOB DYLAN AND THE LAW

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## BOB DYLAN'S LAWYERS, A DARK DAY IN LUZERNE COUNTY, AND LEARNING TO TAKE LEGAL ETHICS SERIOUSLY

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# BOB DYLAN’S LAWYERS, A DARK DAY IN LUZERNE COUNTY, AND LEARNING TO TAKE LEGAL ETHICS SERIOUSLY

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## **Abstract**

This article examines the life of Bob Dylan and how his views can be used to improve legal ethics. Bob Dylan’s views are applied to the legal ethics issues faced by the juvenile justice system in Pennsylvania and the Pennsylvania’s Interbranch Commission on Juvenile Justice’s call “to get serious” about legal ethics. “If we are, however, to get serious about legal ethics, then we will first have to see if we can “make any sense of it,” “pull it apart,” and see if any of it can fit back together in a meaningful way, in other words, do the kind of stuff to legal ethics that Dylan has been doing to the parts of life that matter for almost half a century.”

**KEYWORDS:** Bob Dylan, legal ethics

## BOB DYLAN'S LAWYERS, A DARK DAY IN LUZERNE COUNTY, AND LEARNING TO TAKE LEGAL ETHICS SERIOUSLY

*Randy Lee\**

*"Some of us'll wind up to be lawyers and things."<sup>1</sup>*

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### INTRODUCTION

One afternoon, one of my Professional Responsibility students shared with me how she had decided that she wanted to be a lawyer. Bob Dylan has written about times where “[i]t’s getting dark, too dark for me to see,”<sup>2</sup> times where “[r]eality can be overwhelming,” or even “a shadow, depending on how you look at it,”<sup>3</sup> and those were the kind of times she had been going through when she had made her decision.

It had been shortly before her sixteenth birthday. Her parents had just divorced. Her loving mother had emotionally collapsed and had

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\* Professor of Law, Widener University School of Law, Harrisburg Branch. The author wishes to thank Bruce Green and Samuel Levine for their work bringing this conference to fruition, Professors James Diehm and Robert Rodes for their helpful comments on drafts of this Article, and his family for introducing him to the fullness of Bob Dylan.

1. BOB DYLAN, *Walls of Red Wing, on THE BOOTLEG SERIES, VOLUMES 1–3 (RARE AND UNRELEASED) 1961–1991 (Columbia Records 1991).*

2. BOB DYLAN, *Knockin’ on Heaven’s Door, on PAT GARRETT & BILLY THE KID SOUNDTRACK (Columbia Records 1973).*

3. BOB DYLAN, *CHRONICLES 171 (2004) [hereinafter CHRONICLES].*

had to stay for a time at a mental health facility to recover. Her dad, who had been searching for work, had ended up having to move several hours away from her and her mother to take a job in another town. She told me that she had “left a trail of memories from a small town in Pennsylvania” as she had had to go off to live with her grandmother.

That summer, with all that swirling about her, my student had received an invitation to vacation for a few days at the beach with her aunt and her aunt’s family. Her aunt was a lawyer. I remember my student’s description of the last day of her vacation with her aunt:

My aunt waved me over to where she was sitting on the beach. The vacation provided me with the rest that I needed; yet, I was still concerned about returning home and wondered what lay ahead for my family. My aunt was sitting in a chair with her feet touching the small waves. On her lap, a book was half-finished. I sat next to her, and for about an hour, we peered out into the ocean, the silence blanketing us. She gazed out into where the water met the sky, and I stared at her profile. Softly, she told me something that I carry with me every day. “Everyone has tough times in their lives. You can be overwhelmed, exhausted, hurt, and you can cry out in pain. But never lose hope. Hope is how people survive.” She told me that the dust will settle and that there will be a time of peace. She looked back over the ocean, and I did the same.

By sharing those words with me, she attested to the power of hope and courage. I began to believe that life would change for the better. I began to want to be for others what my aunt was for me.

In 2007, another girl about sixteen years old would meet another lawyer. This time, however, they would not meet on a beach, but in a courtroom in Luzerne County, Pennsylvania. Still, here again, the lawyer would address the problems the girl was encountering and intervene in her life. Like my student, this girl, who would come to be known as Ms. J.,<sup>4</sup> would also end up going on to college and wanting to be a lawyer. Thus, in a sense the two girls’ stories are very much the same. Yet, in another sense, their stories are very different because, although my student decided she wanted to be a lawyer so she could be everything her aunt was, Ms. J. decided that she wanted to be a lawyer so she could be everything the lawyer in her story was not.

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4. INTERBRANCH COMM’N ON JUVENILE JUSTICE, FINAL REPORT 23 (May 2010) [hereinafter INTERBRANCH].

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The lawyer Ms. J. encountered was Judge Mark A. Ciavarella. Ms. J. was a junior in high school when she met Judge Ciavarella. He presided over her delinquency hearing. Ms. J. had been arrested for possession of drug paraphernalia: “a lighter and a pipe which, she said, belonged to a friend.”<sup>5</sup> Ms. J. insisted that she had always been a good student and, until that time, “had never been in trouble at school, let alone in trouble with the law.”<sup>6</sup> Ms. J. insisted that “no one [that day] asked her if she understood that she had a right to a lawyer,”<sup>7</sup> and she appeared before Judge Ciavarella without one. Ms. J. testified:

The court officer read the charges and asked me how I intended to plead. . . . I thought my only option was to plead guilty, so that is exactly what I did. No one asked me whether I understood my right to contest the charges, whether I understood the consequences of my admission, or whether I had discussed my admission with my parents or lawyer.

Ciavarella declared that I would be sent away, but he didn't say where or for how long. I was immediately handcuffed and escorted out of the courtroom to a small waiting room by a sheriff. I did not even have a chance to say goodbye to my father.<sup>8</sup>

Judge Ciavarella sent Ms. J. to a residential facility for three months. Ms. J. said she tried to keep up with her schoolwork there, but “found it difficult because the quality of teaching at the facility was poor.”<sup>9</sup> When she returned to her high school, she caught up on her studies but not with her friends and “was frequently humiliated by being summoned from class to be searched for drugs.”<sup>10</sup> Ms. J. said her encounter with Judge Ciavarella had left her with “a deep mistrust of the American legal system.”<sup>11</sup>

Were it not for what happened two years after Ms. J. and Judge Ciavarella met, one might still accept the stories of Ms. J. and my student simply as examples of two different ways in which lawyers save: sometimes they can be gentle and nurturing, but sometimes they must be harsh and stern. Although Ms. J. never became a fan of Judge Ciavarella's methods, she did end up in college and advancing toward

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5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

law school, and Judge Ciavarella did have others who were his fans. “[P]arents and teachers would come to the courtroom and thank him.”<sup>12</sup> Children he had adjudicated delinquent would return to tell him things like, “I was addicted to pain killers, and I was traveling down the wrong road, and you saved me.”<sup>13</sup> In fact, during the time Judge Ciavarella sat in Luzerne County Juvenile Court, the county’s “delinquency recidivism rate went down.”<sup>14</sup>

On January 26, 2009, however, the United States Attorney for the Middle District of Pennsylvania charged Luzerne County Common Pleas Court Judges Mark A. Ciavarella, Jr. and Michael T. Conahan with defrauding the public of the right to honest service by elected public officials.<sup>15</sup> With the subsequent conviction of the two judges, the opportunity to reconcile the stories of my student and Ms. J. as complementary ways that lawyers save was irretrievably lost.

According to the charges brought against Judges Ciavarella and Conahan, the two judges had received \$2.6 million in payoffs from the owner and builder of two juvenile detention facilities after entering into “agreements guaranteeing placement of juvenile offenders” in those facilities.<sup>16</sup> During this time, “Ciavarella, as the juvenile court judge of Luzerne County, had been placing large numbers of juveniles in detention at those facilities.”<sup>17</sup> During this same period, 1866 juveniles had appeared before Judge Ciavarella without attorneys<sup>18</sup> and none of these juveniles had “knowingly and intelligently waived his/her right to counsel,” according to a separate investigation ordered by the Pennsylvania Supreme Court.<sup>19</sup> The Supreme Court investigation further concluded that “Judge Ciavarella knew he was violating the law and court rules by failing to conduct any, or legally adequate, waiver of counsel colloquies for the juveniles appearing before him.”<sup>20</sup>

In addition to sending children to juvenile detention for being adjudged delinquent, Judge Ciavarella also sporadically presided over a proceeding known as “fine court,” in which “juveniles who had not paid court-ordered fines or restitution were summoned to appear be-

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12. *Id.* at 33.

13. *Id.*

14. *Id.*

15. *Id.* at 9. The two were also charged with federal tax violations. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 10.

19. *Id.* at 11.

20. *Id.*

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fore the judge.”<sup>21</sup> These juveniles were subsequently “ordered into detention” if they still failed to pay.<sup>22</sup> Children as young as ten were led out of fine court in handcuffs. Very few, if any, of these children were represented by counsel, although sometimes a prosecutor would attend.<sup>23</sup> The proceedings were brief, and once in detention, the youths would remain there until their fines were paid.<sup>24</sup> Ultimately, the county director for Human Resources was able to get fine court closed because “as a business operation it didn’t make any sense for us to be trying to collect \$400 by placing someone in a facility at \$200 a day.”<sup>25</sup>

In August 2009, Pennsylvania created the Interbranch Commission on Juvenile Justice “to investigate the juvenile justice scandal in Luzerne County and to develop appropriate recommendations for reform.”<sup>26</sup> In its final report, the Commission described fine court as “one of the most Dickensian of Ciavarella’s judicial practices,” and as a proceeding by which the county’s juvenile detention facilities “became a debtor’s prison for children.”<sup>27</sup>

In response to its investigation of Judges Ciavarella and Conahan, the Pennsylvania Supreme Court “directed that adjudications and consent decrees involving all juveniles who had appeared before Ciavarella between January 1, 2003 and May 31, 2008, be vacated and the records expunged.”<sup>28</sup> While this order sought to rectify injustices that Judge Ciavarella had imposed on these youths, it also meant that “stay-away” orders he had issued to protect other children from juveniles who had attacked them no longer would be in effect. In addition, records no longer existed “to look back to in the event of a future attack by the violence-prone student,” and restitution orders were vacated for the victims of thefts, arson, and vandalism.<sup>29</sup> Children and parents who had been encouraged to come forward and “do the right thing in seeking justice in the juvenile justice system” found their efforts “had been in vain.”<sup>30</sup>

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21. *Id.* at 37.

22. *Id.*

23. *Id.*

24. *Id.* at 38.

25. *Id.*

26. *Id.* at 1. After receiving testimony from sixty-eight witnesses, this Commission filed its report in May of 2010. *Id.*

27. *Id.* at 37.

28. *Id.* at 12.

29. *Id.* at 21.

30. *Id.*

Pennsylvania's Interbranch Commission began its account of what went wrong in Luzerne County by describing the petition that the Juvenile Law Center of Philadelphia filed with the Pennsylvania Supreme Court on April 29, 2008. The petition "contended that a matter of urgent importance was at hand in Luzerne County in the violation of constitutional rights of youths who appeared on delinquency matters before Judge Mark A. Ciavarella, Jr." and asked the court to "exercise its King's Bench Power or Power of Extraordinary Jurisdiction 'to end the practice of the Luzerne County Common Pleas Court of conducting delinquency hearings without counsel for children—or without lawful waivers of counsel.'"<sup>31</sup> This petition ultimately failed to lead to vacation of all Judge Ciavarella's juvenile court adjudications. Instead, the Supreme Court denied the Juvenile Law Center's petition "and decline[d] to exercise its King's Bench Power" on January 8, 2009,<sup>32</sup> just eighteen days before the two judges were indicted in federal court.

Pennsylvania's Attorney General's Office and Department of Public Welfare filed amicus briefs in support of the petition, "urging the Supreme Court to undertake a review based on statistics of the Pennsylvania Juvenile Court Judges' Commission showing that approximately 50 percent of all juvenile defendants in Luzerne County were unrepresented by counsel."<sup>33</sup> According to the Juvenile Court Judges' Commission, in any given year this percentage may have been seven to ten times higher than the state's.<sup>34</sup> The Commission's data also showed that in both 2003 and 2007, Judge Ciavarella's courtroom accounted for over twenty percent of Pennsylvania's juvenile placements, even though Luzerne County "represented less than 3 percent of Pennsylvania's population."<sup>35</sup>

Meanwhile, the District Attorney of Luzerne County opposed the petition arguing that "a factual record documenting a broad pattern of abuse had not been established" and that the law center "should not be permitted to bypass the lower courts where such a record could be developed."<sup>36</sup> Ironically, assistant district attorneys routinely were present in Judge Ciavarella's courtroom when the court failed

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31. *Id.* at 8.

32. *Id.*

33. *Id.*

34. *Id.* at 40.

35. *Id.* at 39. In these years, Judge Ciavarella's rate of juvenile placement also was two and two-and-a-half times the state average, respectively.

36. *Id.* at 8.



to conduct the required colloquies, but “they assumed the written waiver and the judge’s method [were] acceptable.”<sup>37</sup> “No one complained,”<sup>38</sup> apparently because, as one former assistant district attorney indicated, “[t]he only thing we saw was the success. So that is the reason I think it didn’t alarm anyone.”<sup>39</sup> At least one concern had arisen in the Luzerne County Public Defenders Office, but the county’s chief public defender felt compelled to assume the waivers were proper because the office had neither “the time [n]or the manpower to intervene.”<sup>40</sup>

Previously, on September 28, 2006, the Pennsylvania Judicial Conduct Board had received “an unsigned eight-page letter of complaint . . . listing 33 accusations of purported ‘glaring violations of ethics which are occurring in the Luzerne County Courthouse.’”<sup>41</sup> This complaint focused primarily on Judge Conahan, but also named Judge Ciavarella in “several points.”<sup>42</sup> The members of the Judicial Conduct Board never received copies of this complaint, nor was it forwarded to a law enforcement agency, as was normal practice. Board members did, however, receive a detailed memorandum about it on May 14, 2007 in anticipation of the board’s June 4, 2007 meeting.<sup>43</sup> The memorandum recommended a full investigation. The matter was tabled at the June 4th meeting until the October meeting—in deference to a pending proceeding against another Luzerne County judge—but failed to make the October agenda and ultimately fell “through the cracks.”<sup>44</sup>

How can a system with so many safeguards go so wrong?

How can two lawyers, a lawyer and a judge, working in the same system see their work so differently?

How can the lives of two young women take such different courses to the same end?

### I. WHERE’S BOB, *CHRONICLES*, AND LEARNING TO BE LIKE HIM

I am not sure whether any of this has anything to do with Bob Dylan. Then again, I am not sure that I am anything more than a poser

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37. *Id.* at 32.

38. *Id.*

39. *Id.* at 33.

40. *Id.* at 34.

41. *Id.* at 27.

42. *Id.*

43. *Id.* at 28.

44. *Id.* at 29.

at this symposium, anyway. Admittedly, I have never been among those who would have camped out at Dylan's home in Woodstock, New York waiting for the next messiah to re-emerge, and for much of my life, I struggled to get Dylan's music. In fact, in high school I appreciated Peter, Paul, and Mary's cover of *Blowin' in the Wind*<sup>45</sup> and the Turtles' version of *It Ain't Me Babe*<sup>46</sup> far more than Dylan's originals.<sup>47</sup> There was a time in my late twenties when I thought I might be developing an affinity for Dylan's music, but then he stiffed me at a concert<sup>48</sup>: he played bored for less than an hour and then left the stage. I actually heard more Dylan music on my radio that night trying to get out of the stadium parking lot than I heard at the concert.<sup>49</sup> I vowed I would never attend another one of his shows, a vow only my children would ultimately cause me to break.<sup>50</sup>

Yet, if I would not come to Dylan for entertainment, I would come to him for insight, perspective, or a sense of how the pieces go together when I'm convinced the picture in the puzzle can never match what's on the box. In spite of my struggles to get Bob Dylan the entertainer, Dylan still has managed to bring me to a point where I have gotten his life, or, rather, where I have realized he has captured mine.

The turning point for me was reading Dylan's sort-of autobiography, *Chronicles*.<sup>51</sup> *Chronicles* is history as only Dylan could capture it. Dylan's autobiography is a story that runs from beginning to beginning and can only be understood that way. It is "a million stories . . . if you wanted to focus in on them . . . always right out in front

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45. PETER, PAUL & MARY, *Blowin' in the Wind*, on BLOWIN' IN THE WIND (Columbia Records 1963).

46. TURTLES, *It Ain't Me Babe*, on IT AIN'T ME BABE (White Whale Records 1965).

47. BOB DYLAN, *Blowin' in the Wind*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1963); BOB DYLAN, *It Ain't Me Babe*, on ANOTHER SIDE OF BOB DYLAN (Columbia Records 1964).

48. See DYLAN, CHRONICLES, *supra* note 3, at 155 ("Promoters didn't want to touch me, either. They'd been burned often in the past and the anger hadn't gone out of them.").

49. *Id.* at 148 ("I had no connection to any kind of inspiration . . . . My own songs had become strangers to me, I didn't have the skill to touch their raw nerves, couldn't penetrate the surfaces . . . . The glow was gone and the match had burned right to the end. I was going through the motions. Try as I might, the engines wouldn't start.").

50. My children made me go to a Dylan concert with them twenty years later. In an ironic twist of intergenerational poetic justice, I sat through the concert frustrated because I couldn't hear any of the lyrics, and they stood mesmerized because they didn't need to hear the lyrics: they knew all the songs by heart, even Dylan's new stuff.

51. DYLAN, CHRONICLES, *supra* note 3.

of you, blended together, but you'd have to pull it apart to make any sense of it."<sup>52</sup> In *Chronicles*, Dylan seeks to articulate his life in 290 pages, and then, as only Dylan could or would, he devotes twelve of those pages to exploring the books in someone else's library.<sup>53</sup>

*Chronicles* is what it is because both in his life and in his music, Dylan has deconstructed what we assume to be the "natural order" of things and then put things back together in a way that makes sense. In this process, time may matter, but chronological order may not. Thus, we learn that even in the 1960s, Dostoyevsky and Tolstoy were more Dylan's contemporaries than were the people who in that decade happened to be sharing New York with him;<sup>54</sup> much as we lawyers sometimes insist Marshall and Holmes are more our contemporaries.

In *Chronicles*, Dylan hungers after *shalom*, which is to say that in *Chronicles* Dylan pursues shalom or, rather, the book springs forth from the essence of shalom in Dylan's Jewish identity. Shalom is an expression of peace that transcends the mere absence of war or isolation. It presupposes wholeness, completeness, and "everything together," and it achieves not just peace, but also joy through a divine ordering in truth and justice. Shalom is not merely a destination, but a process of journey.<sup>55</sup> Thus, even in its myriad of rapid-fire and sometimes seemingly random stories and images, *Chronicles* is about recognizing how much sense everything can make and journeying in hope.

After reading *Chronicles*, I couldn't help feeling that, in spite of temporal, economic, experiential, and geographic differences, Dylan and I had been in similar places in our lives: that we had shared similar questions that had transcended answers; had shared a common sense that everything that ever was, is now, or ever shall be "real" in this world is somehow related or at least co-exists; and that a soul needs, at least, to confront that common existence (even if we can't understand or explain it). In *Chronicles*, Dylan convinced me that his life was my life, not in the sense that we shared any commonality of events or experiences, but in the sense that we necessarily shared, or

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52. *Id.* at 32.

53. *Id.* at 35–46.

54. *Id.* at 38–39 ("Dostoyevsky was accused of writing socialist propaganda. He was eventually pardoned and wrote stories to ward off his creditors. Just like in the early 70's I wrote albums to ward off mine.").

55. *Shalom*, WIKIPEDIA.ORG, <http://en.wikipedia.org/wiki/Shalom> (last visited Aug. 23, 2011).

ought to share, a hunger for something real in this world, on this side of the veil, and a common confusion about how one gets at that.<sup>56</sup>

Yet, even if I have somehow managed to connect with Dylan personally, that does not explain any connection between Dylan and felonious juvenile court judges in northeastern Pennsylvania or aunts at the beach. For that explanation, one must turn again to Pennsylvania's Interbranch Commission on Juvenile Justice. Among its many recommendations, the Commission indicated "[t]hat courses which are offered to satisfy the ethics continuing legal education requirement provide meaningful and inspirational programming."<sup>57</sup> Some have suggested that this was a call "to get serious" about legal ethics. If we are, however, to get serious about legal ethics, then we will first have to see if we can "make any sense of it," "pull it apart," and see if any of it can fit back together in a meaningful way, in other words, do the kind of stuff to legal ethics that Dylan has been doing to the parts of life that matter for almost half a century.

## II. WOODY GUTHRIE, *THE LOST LAND*, AND SEEKING A POET IN LAWYERS

Bob Dylan insists that early in his career, he was a "Woody Guthrie Juke Box."<sup>58</sup> Once, while Dylan was visiting Woody Guthrie in the hospital, Woody said to Dylan of songwriting: "The words are the important thing. Don't worry about tunes. Take a tune — sing high when they sing low, sing fast when they sing slow, and you've got a new tune."<sup>59</sup> Dylan seemed to take that advice to heart. As Mo Dallas, an artist who has hand-carved over one-thousand one-of-a-kind Noah's Arks over the last decade, put it, "Dylan was a master of ideas — he didn't let the music (or himself) get in the way."<sup>60</sup>

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56. Cf. CHRIS RICE, *Deep Enough to Dream*, on DEEP ENOUGH TO DREAM (Rocketown Records 1997):

A clumsy fly is buzzin' around  
He bumps the screen and he tumbles down  
He gathers about his wits and pride  
And tries again for the hundredth time  
'Cause freedom calls from the other side  
And I smile and nod, and slowly drift away.

57. INTERBRANCH, *supra* note 4, at 46.

58. Mathew Zuckerman, *Dylan influences*, <http://www.expectingrain.com/dok/div/influences.html> (last visited March 31, 2011).

59. *Id.*

60. I was listening to a lever harpist with some Mennonite guys at an antique home renovation show outside of Philadelphia when Mo Dallas walked by me, saw

Dylan embraced Woody's songs because Dylan said "[t]hey had the infinite sweep of humanity in them."<sup>61</sup> I embraced ancient Scottish law reporters for that same reason. It was during the darkness that might otherwise have been October during my first year of law school that I embraced these reporters. At the time, I was having what one might call a *Cathedral* experience—so named for the time Graham Nash found himself “flying in Winchester Cathedral,” encountered a tombstone with his birthday on it, and “went spinning back in time.”<sup>62</sup> I was waiting that afternoon or evening outside my legal methods instructor's office in the deepest sub-basement of the law school library. Having an indeterminate excess of time at that moment and nothing else with which to occupy it, I began leafing through the ancient Scottish law reporters that also had been banished there. As I did so, it occurred to me that every one of those cases, now centuries old and reduced to words on crumbling paper, had begun as two human beings. From there, it's not a massive leap to wonder whether we, as lawyers, really are called, necessarily, to be so different from Dylan or Guthrie or any other poet out to capture “the sweep of humanity,” whether what we seek to do is anything different from what they do. It's not a massive leap to question whether “taking legal ethics seriously” means that one must ignore what poets have to say.

Lawyers have rules with elements that divide the world into what's legally relevant and what's not. Dylan the poet, meanwhile, divides the world into what's real and what's not. Maybe there is a difference there, but sometimes I can't help thinking there shouldn't be one. As lawyers, our divides are neater than Dylan's. What we deal with is smaller and tidier; we like to call it more “objective.” What's left on Dylan's side of the line is bigger sometimes, wilder, less easily ordered, unrelated, and yet undeniably all part of the same whole. Some of what we think is legally relevant doesn't make it on his side of the line, and a lot of what he thinks matters doesn't make it into our realm.

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the copy of *Chronicles* under my arm, and said that to me. These things happen. More on Mo Dallas can be found at <http://www.modallas.com>.

61. DYLAN, CHRONICLES, *supra*, note 3, at 244.

62. CROSBY, STILLS, AND NASH, *Cathedral*, on CSN (Atlantic Records 1977) (“And now I'm standing on the grave of a soldier that died in 1799/And the day he died it was a birthday/And I noticed it was mine./And my head didn't know just who I was/And I went spinning back in time.”)

Victor Hugo wrote *Les Misérables*<sup>63</sup> to show that our lines can be flawed, to make us ask, “Does it matter that a man stole the bread to feed his starving family?” In a more modern day scenario, Hugo might seek to make us ask, “Does it matter that a woman lied so her children might be able to attend a school where children can actually learn?”<sup>64</sup> Dylan’s divides challenge us to revisit such questions and to ask, “Would we try to figure any of that out before we put either in jail?” If we wouldn’t, is it worth a song?<sup>65</sup> In *Chronicles*, Dylan wrote: “A song is like a dream, and you try to make it come true.”<sup>66</sup> A law is like a way of life, and it ought to be worth making it come true. Although lawyers don’t write songs themselves, their work determines what songs are left to be written.

Lawyers, I hope, write words because we think that by doing that, we can change lives for the better. Dylan does the same thing. Dylan wrote *Hurricane*<sup>67</sup> to get a man he believed to be innocent out of jail. There were lawyers on the case who wrote briefs to do the same thing. Henry Kissinger wrote the *Paris Peace Accord* to end a war; Dylan wrote *Blowin’ in the Wind*,<sup>68</sup> in part, to end a lot of wars. Dylan wrote *Dark Eyes* because he saw a girl coming toward him as he came out of a hotel elevator who

had blue circles around her eyes, black eyeliner, dark eyes. She looked like she had been beaten up and was afraid that she’d get beaten up again. In her hand, crimson purple wine in a glass. “I’m just dying for a drink,” she said as she passed [him] in the hall.<sup>69</sup>

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63. VICTOR HUGO, *LES MISÉRABLES* (1862).

64. For a discussion of the way in which children may and may not be registered in a school district other than the district in which their parents live, see *Self Help Legal Center, How to Enroll a Child in School When You Are Not the Parent or Guardian*, <http://www.siu.edu/selfhelp/info/children/enrolling%20a%20child%20in%20school%20as%20a%20Non-Parent.pdf> (last visited April 3, 2011).

65. Justice Michael Eakin of the Pennsylvania Supreme Court responded in verse in a dissenting opinion after a majority of the Pennsylvania Supreme Court had decided that a bride had not been reasonable in relying on her fiancé’s representation that her wedding ring was worth \$21,000 when in fact the ring was a fake. *Porreco v. Porreco*, 811 A.2d 566, 575 (Pa. 2002) (Eakin, J., dissenting). For a discussion, see Mary Kate Kearney, *The Propriety of Poetry in Judicial Opinions*, 12 WIDENER L.J. 597 (2003), reprinted in 38 INTERNATIONAL SOCIETY OF BARRISTERS 475 (2003).

66. DYLAN, *CHRONICLES*, *supra* note 3, at 165.

67. BOB DYLAN, *Hurricane*, *on* DESIRE (Columbia Records 1976).

68. BOB DYLAN, *Blowin’ in the Wind*, *on* THE FREEWHEELIN’ BOB DYLAN (Columbia Records 1963).

69. DYLAN, *CHRONICLES*, *supra* note 3, at 210.

Dylan thought she had “a beautifulness but not for this kind of world.”<sup>70</sup> He was afraid she was “doomed to walk this hallway for a thousand years,”<sup>71</sup> thought that would be a tragedy. That’s why he wrote the song. Hopefully, the statutes civilizations have been writing for centuries, touching the lives of such girls, have been written for the same reason.

Perhaps the poet believes he can persuade us or inspire us to heed his words while the formal lawmaker believes, more often than not, that he can force us to follow his words. Yet, their purpose—to use words to mold life—remains the same. The Christian songwriter Rich Mullins used to find a similar commonality of purpose between songs and sermons, and then he would explain why he had chosen to write songs, instead of sermons:

People say “Why do you write music?” and I always say “Well, how many of Wesley’s sermons do you know?” And I’ve talked to a lot of good Methodists and they don’t know any of them. Then I say, “Well, how many of Wesley’s hymns do you know?” and most churchgoers know at least a good solid dozen hymns that Wesley wrote. Most pagans know at least a couple. And I kind of go, that is why I write music and not sermons.<sup>72</sup>

Lawyers might similarly ask themselves: “How many Holmes opinions can you quote, other than *Buck v. Bell* and ‘Three generations of imbeciles are enough’?”<sup>73</sup> Yet, at least twenty-four judges can

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70. *Id.*

71. *Id.*

72. John Rivers, *20: The Countdown Magazine Remembers Rich Mullins*, <http://www.kidbrothers.net/words/interviews/20-the-countdown-magazine-oct1197.html> (last visited Nov. 4, 2011) (The hymns and sermons were not written by the same author. John Wesley was the writer of the hymns while his brother, Charles Wesley, was the writer of the sermons).

73. *Buck v. Bell*, 274 U.S. 200, 207 (1927) (citation omitted) (“We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.”). In Justice Holmes’s defense, he also wrote many lines that should be more memorable in opinions, some of which Dylan, himself, might well have been interested in quoting, such as, “A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and time in which it is used.” *Towne v. Eisner*, 245 U.S. 418, 425 (1918).

quote, “You don’t need a weatherman to know which way the wind blows” from Dylan’s *Subterranean Homesick Blues*.<sup>74</sup>

I wonder how Dylan would respond to the accusation that he writes like a lawyer. Undeniably, he tries to write about the intangible, amorphous, cutting, twisting, bleeding, imperfect moments of a broken life in a fallen world, a world which, for all its limitations, can still see dimly through a veil at paradise, still feel like it’s somehow “knockin’ on Heaven’s door”<sup>75</sup>—and isn’t that what lawyers do? Bob Dylan wrote of his experience with Woody Guthrie as a young man: “Through [Woody’s] compositions my view of the world was coming sharply into focus.”<sup>76</sup> Shouldn’t lawyers say as much about the compositions of the Supreme Court? Confronted with *Palsgraf v. Long Island Railroad Co.*,<sup>77</sup> the most famous tort case of modern times with an opinion written “by the most justly celebrated of American common-law judges, Benjamin N. Cardozo,”<sup>78</sup> Judge John Noonan suggested, however, that rather than bringing things more sharply into focus, our writing may even “blind.”<sup>79</sup>

The alternative to lawyers and Dylan doing the same thing is a little scary. What if all our order is, as Aldous Huxley insisted, just our way of using words to “suppress[] and distort[] the truth” to “protect our sensitivities and preserve our self-esteem;”<sup>80</sup> and all Dylan’s disjointed connections are what’s real because in the end, all the disjointedness is really part of a same, single picture: it is our world just beyond our comprehension?

I would not, however, suggest we lawyers are any more or less successful at what we do than Dylan or other poets. In fact, Dylan admits that he doesn’t get “the legal and moral aspect of things.”<sup>81</sup> He never aspired to be “a citizen having special responsibility for the quality of justice”<sup>82</sup> any more than he sought to be “the voice of the

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74. BOB DYLAN, *Subterranean Homesick Blues*, on BRINGING IT ALL BACK HOME (Columbia Records 1965).

75. BOB DYLAN, *Knocking on Heaven’s Door*, on PAT GARRETT & BILLY THE KID SOUNDTRACK (Columbia Records 1973).

76. DYLAN, CHRONICLES, *supra* note 3, at 246.

77. 162 N.E. 99 (N.Y. 1928).

78. JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW: CARDOZO, HOLMES, JEFFERSON, AND WYTHE AS MAKERS OF THE MASKS 111 (1976).

79. *Id.* at 151.

80. ALDOUS HUXLEY, *Politics*, in COLLECTED ESSAYS 245, 246 (1958).

81. DYLAN, CHRONICLES, *supra* note 3, at 196.

82. MODEL RULES OF PROF’L CONDUCT Preamble (2010).



martyred man of constant sorrow.”<sup>83</sup> In fact, Dylan had the chance to be god for a generation and turned down the gig to hang out with his kids.<sup>84</sup> Imagine that. Then again, Patricia Wald got a similar invitation out of law school and did the same thing; years later, she ended up a judge on the D.C. Circuit and an inductee into the *American Lawyer Hall of Fame*.<sup>85</sup>

### III. ARCHIBALD MACLEISH, *THE NEW MORNING*, AND PROVIDING THE LIGHT OF PERSPECTIVE

Bob Dylan's father died at a bad time. Dylan's new home in Woodstock, New York was being overrun by “rogue radicals looking for the Prince of Protest.”<sup>86</sup> “[G]ate-crashers, spooks, trespassers, demagogues were all disrupting [his] home life . . . .”<sup>87</sup> Demonstrators were parading in front of his house demanding that Dylan “stop shirking [his] duties as the conscience of a generation.”<sup>88</sup> “[T]he organized press was stirring things up;”<sup>89</sup> his friends and fellow folk musicians were handing him over.<sup>90</sup> Dylan was drowning in the truth that few actually have to live with, that “privacy is something you can sell, but you can't buy it back.”<sup>91</sup> “Everything was wrong, the world was absurd. It was backing [Dylan] into a corner.”<sup>92</sup>

While the world wanted to call Dylan out to play conscience, Dylan was only interested in getting rid of “the whole shebang” and being a dad instead.<sup>93</sup> The choice to him didn't even seem close. “I had,” Dylan stressed, “a wife and children I loved more than anything else in the world.”<sup>94</sup> Rather than spending time being the conscience of a

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83. DYLAN, CHRONICLES, *supra* note 3, at 220.

84. *See id.* at 114 (“Having children changed my life and segregated me from just about everybody and everything that was going on. Outside of my family, nothing held any real interest for me . . .”).

85. *Awards: The Honorable Patricia M. Wald*, AMERICAN INNS OF COURT, <http://www.innsofcourt.org/Content/Default.aspx?Id=321> (last visited Nov. 4, 2011) (“For almost a decade, Judge Wald stayed at home, devoting her energies to launching the lives of the couple's five children and doing occasional legal research and writing.”).

86. DYLAN, CHRONICLES, *supra* note 3, at 116.

87. *Id.* at 117.

88. *Id.* at 118.

89. *Id.* at 114.

90. *Id.* at 115.

91. *Id.* at 118.

92. *Id.* at 117.

93. *Id.* at 109.

94. *Id.* at 115.

generation, Dylan wanted to invest his life in the people and life that he experienced as real and concrete. As Dylan explained, “In my real life I got to do the things that I loved the best and that was all that mattered—the Little League games, birthday parties, taking my kids to school, camping trips, boating, rafting, canoeing, fishing . . . .”<sup>95</sup>

On top of all that, Dylan’s father’s death confronted Dylan with concerns about what he and his father together had been and what they now would never be, images of how different they were and even how alike. As Dylan put it:

[M]y father was the best man in the world and probably worth a hundred of me, but he didn’t understand me. The town he lived in and the town I lived in were not the same. All that aside, we had more in common now than ever—I, too, was a father three times over.<sup>96</sup>

Dylan was Dylan, and Dylan’s father had been “plain speaking and straight talking.”<sup>97</sup> Still, at the time of his father’s death, “there was a lot that [Dylan] wanted to share, to tell him,”<sup>98</sup> things that had never been spoken, and “now there would be no way to say what [he] was never capable of saying before.”<sup>99</sup> Further, Dylan now “was in a position to do a lot of things for [his father],” things which now necessarily could never be done.<sup>100</sup>

In Dylan’s sense of time, the temporal moment is not more important than the transcendent; indeed, one does not sacrifice the transcendent moment for the one that is passing. As it pursued saviors and consciences, the world might well have conceded that much.<sup>101</sup> The world’s sense, however, of what moments are transcendent and which are temporal and where being a dad or a son fits in seemed radically at odds with Dylan’s. Admittedly, being the prophet of the enlightened world can be a pretty big thing, but sometimes little things can be bigger, more transcendent, than even the big, cosmic, global things.

Perspective is the art of distinguishing “the important from the trivial, the better from the worse, the permanent from the transient, the

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95. *Id.* at 123.

96. *Id.* at 108.

97. *Id.* at 107–08.

98. *Id.* at 108.

99. *Id.* at 107.

100. *Id.* at 108.

101. *See supra* text accompanying note 55.

questions of paramount importance from those of passing interest.”<sup>102</sup> Perspective can say that all the ‘70s prophet and new world order stuff was as much “stuff” as had been “the older order of things” that Dylan had left behind in his father’s town of Hibbing, Minnesota when Dylan had ventured out in search of “some more lit place, some unknown land downriver.”<sup>103</sup> It was just different stuff. Perspective can say that, in spite of all the stuff, the most important things in Dylan’s life could still be burying his dad and playing ball with his son. Sometimes people need a lawyer to provide or validate perspective. This was a time in Dylan’s life when he needed someone to help him with perspective and to help him say the things he didn’t know that he could articulate. It was a time in Dylan’s life when Dylan needed a lawyer.

Dylan had gone back to Hibbing to bury his father. When he returned home to Woodstock, he found a letter, an invitation, waiting for him from the poet Archibald MacLeish. It was serendipity. At a time when Dylan was looking for perspective, MacLeish was one of three poets, along with Carl Sandburg and Robert Frost, who Dylan believed “had put everything in perspective.”<sup>104</sup> Dylan had just buried his father, and here he had a letter from “the poet of the night and the quick earth.”<sup>105</sup> It was fitting that Dylan would go see him.<sup>106</sup> MacLeish was writing a Broadway play called *Scratch* and was looking for songs for it. MacLeish thought Dylan could have something to add to the play and wanted to meet with him at MacLeish’s home.

The play ultimately didn’t work out for Dylan. His visit to MacLeish’s home almost didn’t work out, either. First meetings with clients can go that way. Initially, MacLeish was wrong in what he thought Dylan needed from him or in what he thought he had to offer Dylan.

MacLeish initially talked to Dylan about serious authors, some of whom Dylan had read, some of whom he understood, some of whom had been (according to MacLeish) “[h]ard men,” and one of whom Dylan recognized as a “Nazi sympathizer in World War II.”<sup>107</sup> That was one of the ones Dylan hadn’t read.<sup>108</sup> MacLeish told Dylan that

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102. William T. Braithwaite, *Hearts and Minds: Can Professionalism Be Taught?*, 76 A.B.A. J. 70, 73.

103. DYLAN, CHRONICLES, *supra* note 3, at 108.

104. *Id.* at 107.

105. *Id.*

106. *Id.* at 109.

107. *Id.* at 110.

108. *Id.*

MacLeish “consider[ed] [Dylan] a serious poet,” who would be “a touchstone for generations after.”

Working with MacLeish on a Broadway play offered Dylan the opportunity to prove not only his seriousness, but also his legitimacy. This would not be Dylan’s only opportunity to prove his legitimacy, however. Princeton, for example, would try to legitimize Dylan by giving him an honorary degree as “the authentic expression of the disturbed and concerned conscience of America.”<sup>109</sup> Dylan would take David Crosby with him to the ceremony; Dylan described Crosby as “an obstreperous companion,” someone who “could freak out a whole city block all by himself,” and someone whom Dylan “liked a lot.”<sup>110</sup> It turned out to be “a strange day.”<sup>111</sup> As MacLeish directed the conversation toward those “serious topics” that “constitute chit-chat,”<sup>112</sup> Dylan found himself looking out the window beyond MacLeish at a “jackrabbit scamper[ing] past the scattered chips by the woodpile.”<sup>113</sup> The rabbit, at least, was real.

MacLeish was enough of a lawyer, however, to figure out what Dylan needed to hear — what wisdom Dylan needed — and MacLeish ultimately shared that with Dylan. After all, MacLeish “possessed more knowledge of mankind and its vagaries than most men acquire in a lifetime.”<sup>114</sup> MacLeish told Dylan “that the worth of things can’t be measured by what they cost, but by what they cost you to get it”; “that if anything costs you your faith or your family, then the price is too high”;<sup>115</sup> that Michelangelo had just wanted to be left alone;<sup>116</sup> “that a lot of things that were happening when he was young had blown over;”<sup>117</sup> “that there are some things that never wear out;” that for an “authentic poet,” “a few masterpieces last across the years.”<sup>118</sup>

Bob Dylan’s most frequently quoted line in judicial opinions is, “[y]ou don’t need a weatherman to know which way the wind blows.”<sup>119</sup> Even Dylan knows it’s not true. Dylan needed a weatherman when he went to see MacLeish — someone to help him be sure

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109. *Id.* at 133.

110. *Id.* at 132.

111. *Id.*

112. *Id.* at 129.

113. *Id.* at 112.

114. *Id.* at 129.

115. *Id.* at 112.

116. *Id.*

117. *Id.*

118. *Id.* at 113.

119. DYLAN, *Subterranean Homesick Blues*, *supra* note 74.

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which way the wind was blowing. Sometimes people go to see lawyers for that same reason. As Dylan's life felt absurd when he went to see MacLeish, our clients' lives can appear to be a puzzle of disjointed pieces when they come to see us. The lawyer, just like the poet and the bard, can help his clients feel that the pieces do fit together.

Another of my students had been confronted with a divorce several years before he came to law school. At the time, he had three children, ages two, five, and nine. As my student described it:

Life, the divorce, was a little rocky at first, but my lawyer told me, "Divorce is really hard on kids, but it's even harder on adults. Now you have a two year old, but twenty years from now, you'll have a twenty-two-year-old, and he will either say, 'my parents really worked together and made it much easier' or he will say, 'my parents always fought, and that really made it hard.'" When she said that, I had an epiphany.

Like MacLeish, lawyers sometimes initially misread or misunderstand their clients. Sometimes they just have to help the client to figure out what she wants in a bigger sense. Perspective teaches that "[s]ometimes the things that you liked the best and that have meant the most to you are the things that meant nothing at all to you when you first heard or saw them."<sup>120</sup>

In *Chronicles*, when Dylan begins and ends with the same story, he ends up telling the same story twice. Each time, however, it's a different story. You don't even fold them over to see if they match up. It's like the joke about the law professor who argues both sides of the same case before the Supreme Court and doesn't notice that it is the same case until he has to make the respondent's argument; the two sides just look so different to him.

In real life, the same experience not only can look different, but it can also be different, even to the same person, and sometimes lawyers need to help people to their best experience. The experience of my first student's life had been real. Still, on the beach, her aunt the lawyer offered to her that it was time for a new experience of her life, an experience that my student could grow in and then transcend—like a cocoon—rather than be smothered by. Simply put, my student needed an experience with hope. Hope is a perspective, a lens through which we see life. Hope does not necessarily allow one to see

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120. DYLAN, *CHRONICLES*, *supra* note 3, at 221.

the destination, understand it, or articulate it, but hope reminds us we can still trust in that destination.

Just as my first student's aunt and my divorcing student's lawyer did, good lawyers put it all in perspective. They articulate the complexities of life when their clients can't. Lawyers help their clients find that "more lit place"—that place where life "moves."<sup>121</sup> Of course, life does not always move fast enough for us; sometimes we have to wait on it. Sometimes lawyers have to wait with their clients.

When I represented inmates in prison disciplinary matters, our clients evaluated the quality of their lawyer by how well the lawyers waited. Six hearings would be scheduled for ten o'clock, and six would be scheduled for one o'clock, and the inmates who had lawyers had their hearings last. The hearing might last only twenty minutes, but the waiting could go on for almost three hours. Waiting, therefore, constituted a major portion of the job, and our clients decided how good of a lawyer you were by how you waited with them. Clients' hearings were the most important things going on in their lives at that moment. They wanted us to be there with them, not just physically, but also mentally and even spiritually.

People are people. The expectations of prison inmates are not so different from those of corporate officers or teenage girls. It may be said, for example, that my student at the beach had thought her aunt was a good lawyer because of how well she waited with her.<sup>122</sup> Clients will, of course, know whether you won or lost for them, but they will also attribute some of the result to the audience—the judge (my clients used to console me, even apologize to me, after we lost). It is also possible that a lawyer can perform so poorly that a client will recognize that. But more likely than not, clients will not be able to evaluate your legal performance, and when they try, frequently, they simply will not understand. For example, when you have deftly recognized the need to leave a question unasked, a client may well think you were sloppy. A lawyer I knew who was retiring and destroying old case files with all his notes, annotations, and strategies could not help realizing that only he would ever know all of the thought that had gone into everything he had ever done for his clients. Your clients, however, will know how well you waited.

As much as Dylan was in need of a lawyer when he met MacLeish, MacLeish needed Dylan to be a lawyer for him as well. MacLeish

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121. *Id.* at 108.

122. *See supra* text accompanying notes 1–2.

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called Dylan for help because MacLeish recognized, “his play needed another voice, another angle—that sometimes we become too content.”<sup>123</sup>

MacLeish’s play was dark, and he thought he wanted Dylan to help make it darker. At one point the title character, Scratch, says:

I know there is evil in the world—essential evil, not the opposite of good or the defective of good but something to which good itself is an irrelevance—a fantasy. . . . [P]owerful nations suddenly, without occasion, without apparent cause . . . decay. Their children turn against them. Their women lose their sense of being women. Their families disintegrate.<sup>124</sup>

As Dylan put it, “From there on, it only gets better.”<sup>125</sup>

MacLeish was right: he needed another perspective, but not one that could add more darkness. Dylan knew MacLeish’s play wouldn’t sell. More importantly, he understood its flaw:

The play itself was conveying some devastating truth, but I was going to stay far away from that. Truth was the last thing on my mind, and even if there was such a thing, I didn’t want it in my house . . . . Oedipus went looking for the truth and when he found it, it ruined him. It was a cruel horror of a joke. So much for the truth. . . . [I]f I ever did stumble on any truth, I was gonna sit on it and keep it down.<sup>126</sup>

For all its “truth,” the play lacked something Dylan understood clearly: “being true to yourself, that was the thing.”<sup>127</sup>

In *The Silver Chair* by C.S. Lewis, a marshwiggles named Puddleglum and his human companions are trapped in an underground world by an evil witch. Through enchantments, the witch tries to deceive them into believing that her dark cavern world is all that truly exists and that everything else—the sun and sky, and everything of the surface world, including the lion king, Aslan—is a fantasy. Puddleglum, however, resists her spells and insists:

Suppose we *have* only dreamed, or made up, all those things—trees and grass and sun and moon and stars and Aslan himself. Suppose we have. Then all I can say is that, in that case, the made-up things seem a good deal more important than the real ones. . . . I’m on Aslan’s side even if there isn’t any Aslan to lead it. I’m going to live as

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123. DYLAN, CHRONICLES, *supra* note 3, at 131.

124. *Id.* at 124.

125. *Id.* at 124.

126. *Id.* at 125–26.

127. *Id.* at 115.

like a Narnian as I can even if there isn't any Narnia. So, thanking you kindly for our supper, if these two gentlemen and the young lady are ready, we're leaving your court at once and setting out in the dark to spend our lives looking for Overland. Not that our lives should be very long, I should think; but that's a small loss if the world's as dull a place as you say.<sup>128</sup>

Dylan knew the truth about which MacLeish was writing and of which Dylan, himself, was called to be the "concerned conscience." Dylan just didn't believe it was worth living out, worth buying into, worth being.<sup>129</sup> He had "left that court," "set out in the dark" with his wife and kids to find "trees and grass and sun and moon and stars and Aslan himself";<sup>130</sup> and even if it turned out that none of those things really did exist, well, at least they were worth a lifetime of looking for, at least they were from Dylan's perspective.

A brave lawyer would've told MacLeish all of that even if he was Archibald MacLeish. Dylan didn't. Maybe Dylan thought MacLeish already knew it or questioned who he was to tell MacLeish what to write about. Sometimes lawyers ask themselves, "Who am I to offer to a client what to do?"<sup>131</sup> Then again, "*Scratch* opened on Broadway at the St. James Theatre on May 6, 1971, and closed two days later on May 8."<sup>132</sup>

Ultimately I took to Dylan because of his way of connecting things that seem to have nothing to do with each other. Dylan comes from the intersection of Highway 61 and the Mississippi River.<sup>133</sup> Maybe that gives him perspective.

#### IV. DANNY LANOIS, *OH MERCY*, AND THE KISS OF JUSTICE

Danny Lanois was a record producer working out of New Orleans when he and Dylan met. Lanois, however, could have been a lawyer. As Dylan described him, Lanois "didn't have any colossal ego, seemed disciplined—nothing wheeler-dealer about him, and he had an extraordinary passion for music."<sup>134</sup> Lanois was "the kind of cat who, when he work[ed] on something, he did it like the fate of the

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128. C.S. LEWIS, *THE SILVER CHAIR* 159 (1970).

129. See RICH MULLINS, *Creed, on A LITURGY, A LEGACY, AND A RAGAMUFFIN GOSPEL* (Reunion Records 1993) ("I believe what I believe./It makes me what I am./I did not make it./No, it is making me.").

130. See *supra* note 128 and accompanying text.

131. MODEL RULES OF PROF'L CONDUCT R. 2.1 (2010).

132. DYLAN, *CHRONICLES*, *supra* note 3, at 141.

133. *Id.* at 239–41.

134. DYLAN, *CHRONICLES*, *supra* note 3, at 178.



world hinged on its outcome,” the kind of cat who “had the light,” and could get it “turn[ed] . . . on.”<sup>135</sup> Lanois “cared a lot” about a project,<sup>136</sup> “wanted to jump in and go deep,”<sup>137</sup> “had the confidence to try anything” to make it work.<sup>138</sup> Simply put, Lanois had all the attributes of a lawyer.

Even though Dylan and Lanois had taken the time to make sure “they were both on the same page— both right side up” before they had started,<sup>139</sup> their musical collaboration did not come easily: they had to take “circuitous ways,”<sup>140</sup> and there was “a clashing of spirits at times.”<sup>141</sup> It took Dylan forty-eight pages in *Chronicles* to memorialize their efforts to record what would be less than an hour of music on the album.<sup>142</sup> Still, Dylan was thankful for Lanois’s participation and was “satisfied” with the final result. Dylan admitted, however, that the record he and Lanois produced was not necessarily the record Dylan had “wanted.”<sup>143</sup>

Forty-eight pages worth of effort and, at the end of all that, Bob Dylan didn’t even get the album he wanted. How could that happen? After all, Bob Dylan is Bob Dylan, and if Bob Dylan can’t get everything he wants in an album, who can? One possible explanation is that although Danny Lanois had the tools and temperament to be a lawyer, he wouldn’t have made a very good one. After all, lawyers get clients what they want, and Lanois couldn’t even get Bob Dylan what he wanted— on Dylan’s own album no less!

Dylan, however, had a different take on it. As Dylan explained, “getting what you want isn’t always the most important thing in life.”<sup>144</sup> In this particular case, it was sufficiently unimportant that Dylan would choose to record again with Lanois ten years later, “once more in a rootin’ tootin’ way.”<sup>145</sup> According to Dylan, instead of expecting to get what you want, “[y]ou live with what life deals you. We have to make things fit.”<sup>146</sup>

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135. *Id.* at 179.

136. *Id.* at 194.

137. *Id.* at 195.

138. *Id.* at 194.

139. *Id.* at 178.

140. *Id.* at 218.

141. *Id.* at 217.

142. *Id.* at 174–221.

143. *Id.* at 218.

144. *Id.*

145. *Id.* at 221.

146. *Id.* at 220.

If Dylan is right and life is more about making things fit than about getting what we want, then maybe law and the legal system aren't about getting what we want, either. In addition, maybe the success of lawyers in the spirit of Danny Lanois can't be measured by the extent to which they get people what they want, but must be measured by the extent to which such lawyers can help clients make things fit. If this is all true, then maybe we need to reconsider what we mean by justice. Perhaps we need to find for justice a role in *shalom*.<sup>147</sup>

Two sisters I know were best friends, so much so that they wanted not only to share everything that siblings share, but they also wanted to share a business about which both could be passionate. In time, however, the pressures or passions of the business divided the sisters' interests, and each sought a lawyer to get them justice. To pursue justice, the lawyers brought the matter to court. No doubt the lawyers expected one of the sisters would get all, or most, of what she wanted there, but the sisters have not spoken in more than a decade since they called the lawyers. Nothing in their lives fits any more. One sister got something from the court, maybe even something she wanted, but it came at a price she never imagined. Today, both sisters insist they didn't get justice from their lawyers or from the court. Justice would have made them sisters again.

In contrast, the Mennonites tell the story of two friends, John and David, who sought justice after a misunderstanding arose between them about the boundary between their farms.<sup>148</sup> After much time and discussion, John and David agreed that they could not agree on their own and "rather than allow any ill-feelings among themselves," they decided to take their dispute to court.<sup>149</sup> As David traveled down the road on the day of their hearing, however, he found his neighbor, John, in his fields "hilling his potatoes."<sup>150</sup> David called to John to come with him to court, but John could only apologize, shake his head, and continue working. John shared with David that his potatoes would "suffer if they are not hilled today," and then added: "You go to court and tell the story. You know all about our differences and can tell them as well as I. First put your side before the

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147. *See supra* text accompanying note 55.

148. RICHARD P. CHURCH, *FIRST BE RECONCILED: CHALLENGING CHRISTIANS IN THE COURTS* 92–93 (2008) (quoting Mennonite Paul Erb).

149. *Id.* at 93.

150. *Id.*

court, and then mine. Stop on your way home and tell me the verdict.”<sup>151</sup>

David did as John requested. On his way home that night, as John came “to meet him halfway,” David told his neighbor, “Brother . . . I went to court and put both sides before them, and the court decided in your favor.”<sup>152</sup> Then, so the story goes, “David continued on his way humming a little folk melody – *Mary Graybill*.”<sup>153</sup> Although justice had denied David the land to which he had thought himself entitled, justice had given him truth and the peace that comes with it and had restored to him his friendship.

In *The Merchant of Venice*, William Shakespeare suggests that justice might be getting what one wants or even getting what one deserves, but Shakespeare ultimately rejects both possibilities. Shakespeare even rejects the possibility that justice is a goal at all. Instead, in *Merchant*, justice is a tool to accomplish healing, remediation, restoration, and salvation. Furthermore, justice is not a tool to be wielded in isolation. Rather, Shakespeare portrays justice as the complement to mercy, and it is through the appropriate use of the two in tandem that wounds are healed, problems remedied, relationships restored, and lives saved.<sup>154</sup>

In the prime of his judgeship, armed with his “zero-tolerance” policy, Judge Ciavarella would have insisted that Shakespeare was wrong, and most of Luzerne County would have agreed. Judge Ciavarella’s goal was justice, justice demanded that those who came before him should get what they deserved, and “[e]verybody loved it.”<sup>155</sup> Judge Ciavarella went to local schools at the start of each school year to tell students that if they came before him, he “would send [them] away,” and he kept his promise.<sup>156</sup> As a result, “[s]chools got rid of all their problems,”<sup>157</sup> the police “knew every arrest they made[,] the kid would get sent away,”<sup>158</sup> district attorneys “were getting convictions,”<sup>159</sup> and a public defender’s office who didn’t have “the time or

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151. *Id.*

152. *Id.*

153. *Id.*

154. See generally Randy Lee, *Who's Afraid of William Shakespeare?: Confronting Our Concepts of Justice and Mercy in The Merchant of Venice*, 32 U. DAYTON L. REV. 1 (2005).

155. INTERBRANCH, *supra* note 4, at 35.

156. *Id.* at 24.

157. *Id.* at 35.

158. *Id.*

159. *Id.*

the manpower” had to contend with few trials.<sup>160</sup> Juveniles came in, confessed, got admonished, condemned, and sentenced,<sup>161</sup> were “shackled . . . and handcuffed,” and “taken off to the side.”<sup>162</sup>

Although Luzerne County “represented less than 3 percent of Pennsylvania’s population,” Judge Ciavarella “was responsible for 22 percent of the placements throughout all of Pennsylvania.”<sup>163</sup> “In 2007, one of every four juveniles determined to be delinquent in Luzerne County—25.8 percent—were sent to out-of-home placements. That was more than double the statewide average,”<sup>164</sup> but maybe that just meant that Luzerne County was twice as effective at achieving the goal. The county also had a consistently declining juvenile recidivism rate.<sup>165</sup> Justice meted out what the unjust deserved, and condemnation went out to those whose behavior fell short.

But what if Shakespeare is right, and the success of courts must be measured by more than effective enforcement and condemnation? What if we actually have courts so that the gifts and talents of people should not be taken lightly nor lost to their communities if they can be preserved, and justice and mercy are tools to that end? Would the penal system be different if we knew one unknown person in it had the untapped and undiscovered ability to cure cancer? When she testified before the Interbranch Commission, Ms. J. asked the Commission, “If a judge applies the same sentence to every case brought before him, then what is the point of a trial or a judge at all?”<sup>166</sup> Why do we have judges if the harsh side of justice is always the appropriate response?

If Shakespeare is correct, then the challenge of being a judge is not in knowing whether to use justice or mercy always, but in knowing which to use when. Could it be that we have judges because someone has to be wise enough to distinguish those who need justice from those who need mercy?

I have a friend named Roger Stuart who is a judge in juvenile court in Oklahoma City, Oklahoma.<sup>167</sup> Judge Stuart appreciates the inviolable human dignity of each person he encounters in his courtroom.

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160. *Id.* at 34, 35.

161. *See, e.g., id.* at 21–24.

162. *Id.* at 22.

163. *Id.* at 39.

164. *Id.* at 24.

165. *Id.* at 33.

166. *Id.* at 23.

167. Randy Lee, *Judaism and John Paul II: Coming to Grips with What Law Means in the Hands of God*, 45 J. CATH. LEGAL STUD. 415, 451 (2007).

He knows himself to be in community with the families he serves. He recognizes them as his neighbors. As Judge Stuart applies the law, he agonizes over every child who comes through his court. He agonizes over how he can save them. He considers what they need; what he can do; what he should say; whom he can involve; what services, punishments, and resources he should access. He struggles so much, and he feels hurt so much because he loves so much and because he wants to use the law to save those kids so much. And sometimes he does save one.<sup>168</sup>

Are all judges called to do likewise?<sup>169</sup>

#### V. JOHN HAMMOND, *RIVER OF ICE*, AND BEING A REASON TO STAND

A guy named John Hammond signed Bob Dylan to his first recording contract.<sup>170</sup> As Dylan put it, “Hammond had believed in me and had backed up his belief, had given me my first start on the world’s stage . . . .”<sup>171</sup> That was Hammond’s way. Hammond came from that breed of men who “knew where they belonged and . . . had the guts to back up whatever their beliefs were.”<sup>172</sup> He wasn’t “a bureaucrat or egomaniac,” but he was the kind of man who could demand autonomy at Columbia Records.<sup>173</sup> Dylan noted, “whatever your dreams were, guys like these could make you realize them.”<sup>174</sup> In fact, Hammond was the kind of guy who made you want to help him to help you realize your dreams. When Dylan met Hammond, “[e]verything was in transition and [Dylan] was standing in the gateway.”<sup>175</sup> That’s probably true of clients generally, but they don’t always see it. Lawyers like Hammond inspire people to transcend their circumstances, realize their dreams, see the gateway and step through it.

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168. *Id.*; see also INTERBRANCH, *supra* note 4, at 39 (James F. Anderson, Executive Director of the Juvenile Court Judges’ Commission, noted that “many of Pennsylvania’s finest judges regard their work in juvenile court as the most meaningful and rewarding work they do because they know they can make a difference in the lives of the children and families who come before them.”).

169. See *Luke* 10:37 (Jesus instructing the lawyer at the conclusion of the *Parable of the Good Samaritan*, “Go and do likewise.”).

170. DYLAN, CHRONICLES, *supra* note 3, at 6.

171. *Id.* at 289.

172. *Id.* at 288.

173. *Id.*

174. *Id.* at 289.

175. *Id.* at 288.

The biggest manager in Greenwich Village once tried to get Dylan to break an agreement with Hammond, but Dylan refused to do it, and would not have done it if he “had been offered a fortune.”<sup>176</sup> Hammond was the kind of guy “[y]ou didn’t want to let . . . down.”<sup>177</sup> His example, his very presence made you want to do the right thing, stand tall, and follow his lead.

In *The Empire Strikes Back*, C-3PO protests Han Solo’s flight into an asteroid field by pleading, “But Sir! The possibility of successfully navigating an asteroid field is approximately 3720 to 1!” to which Solo responds, unyielding, “Never tell me the odds.”<sup>178</sup> For C-3PO, hope was a statistical probability. For Han Solo, hope was an attitude and a way of life. The challenge for the lawyer is to understand hope as both.

A friend of mine got a call at 4:30 one afternoon. The caller asked him to represent parents pro bono in a parental rights hearing at 9:00 the next morning. He took the representation because he understood that he had a duty to take unpopular cases,<sup>179</sup> and he couldn’t imagine a more unpopular case under those circumstances. As he said, “Who else would they find for free at that hour?”

The hardest part of the representation, however, had nothing to do with the timing of the hearing. Rather, the hardest part of the representation was sitting down with the parents afterwards to help them see that this point in their lives was an asteroid field through which they had no choice but to navigate and to help them to figure out how to do so. As my friend guided the parents through the files, reports, and pictures that, for whatever reason, had never sunk in before, he pressed them to see that there was in their journey no room for hopelessness nor despair, no room to insist that the caseworkers, who had actually been very patient, were persecuting them, no room to give in to the odds. Even if the odds of the father finding a job were “approximately 3720 to 1,”<sup>180</sup> Children and Youth Services and, more importantly, his own children still needed him to look. The house needed to be cleaned and made safe. New habits had to replace old ones.

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176. *Id.* at 289.

177. *Id.* at 288–89.

178. *THE EMPIRE STRIKES BACK* (20th Century Fox 1980).

179. MODEL RULES OF PROF’L CONDUCT R. 6.2 cmt. 1 (2010) (“An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters of indigent or unpopular clients.”).

180. *See supra* note 178 and accompanying text.

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It was not the first time the parents had heard this message. Nevertheless, my friend decided that he believed in this family, that he would back up that belief, and that he would make sure that this family realized its dreams. He was a lawyer in the same way John Hammond was a lawyer, and he worked as effectively with the parents as Hammond had worked with Dylan. In the end, my friend got the call from Children and Youth Services that the family's file had been closed. The family had crossed through the gateway, navigated the asteroid field, and embraced a better life.

My student's aunt understood what it takes to be a lawyer like John Hammond. As my student described her aunt:

[She] was someone who would bring books for me to read and journals in which to write my thoughts. She would listen intently to my questions and offer her advice. I was a kid, and she was a woman, but she would speak to me as a colleague. She respected my viewpoints and opinions. She saw me. When she listened, her face was calm and her mouth relaxed, not eager to interrupt. Her eyes evaluated, pondered what I said and left unsaid.

A former colleague of mine was a corporate lawyer before he became a law professor. When the time came to close down his corporate practice, he called each of his clients into his office, indicated his intention, and explained the steps he had taken to protect their interests. As he was going over all this with one long-time client, the client began to cry, an occurrence that made my colleague uncomfortable. My colleague quickly offered, "I'm certain you'll be able to find someone to represent you as well as I have." It was the perfect comment because it made the client laugh.

"Rod," the client smiled, "with all my money, I can find a lawyer a lot better than you," but then he added, "but I will never find another lawyer who will care as much about me as a person as you have."

Not all lawyers consider being John Hammond as part of their job description. I was at a personal injury conference once where plaintiffs' lawyers were showing what they called "pre-settlement conference videos" of quadriplegic clients. They produced them to show to defense counsel before trial in an effort to improve their clients' bargaining positions. The lawyers were discussing whether it was more advantageous to present one's quadriplegic client as someone who aspired to get up or was paralyzed in being down. I wasn't sure what kind of video I would have made, but I knew what kind Hammond would have made.

Saint Ives was a Franciscan priest and is the patron saint of lawyers in the Catholic Church.<sup>181</sup> During his legal career, Saint Ives resisted unjust taxation by the king.<sup>182</sup> He was a champion for fairness and what we commonly think of as justice. Yet, after his death and at his canonization, it was observed that the greater reason Saint Ives was “[a] marvelous thing to the people”<sup>183</sup> was that “under him ‘the people of the land became twice as good as they had been before.’”<sup>184</sup> The most profound fruits of this life, which sought perfectly after justice, were not just laws made better, but people made better in their own lives.

John Hammond became part of Dylan. My colleague became part of his corporate client. My student’s aunt became part of my student. Judge Ciavarella became part of Ms. J. And we will become part of each of our clients, which part, better or worse, will be based in part on what we seek to be.

God named the Holy Spirit, that part of the Trinity of God that descends on people to comfort and empower them, to make them healers and restorers, creative forces and communicators, and all encompassingly to help them live, the *Paraclete*.<sup>185</sup> The name means *lawyer*.

Lawyers like Hammond don’t just help their clients through the gateway. They inspire their fellow lawyers, guide them through the darkness. The thing that scares me most about what happened in Luzerne County is that it might have been me, not that it might have happened to me, but that, if placed in that position, I might have been one of the people who made it happen.

Three weeks into law school, I found myself inside the wall handling my first prison discipline hearing. It was not only the first hearing I’d ever handled, but it was also the first hearing I had ever seen. It was only my second trip inside the wall.

We taped all of our hearings. I remember the guy chairing the disciplinary hearing starting the hearing by reaching across the table, picking up the microphone on my tape recorder, and carefully articu-

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181. John H. Wigmore, *St. Ives, Patron Saint of Lawyers*, 5 FORDHAM L. REV. 401 (1936).

182. *Saint Ives*, CATHOLIC NEWS AGENCY (Oct. 27, 11:52 AM), <http://mail.catholicnewsagency.com/saint.php?n=242>.

183. *Ivo of Kermartin*, WIKIPEDIA.ORG, [http://en.wikipedia.org/wiki/Ivo\\_of\\_Kermartin](http://en.wikipedia.org/wiki/Ivo_of_Kermartin) (last visited Nov. 1, 2011).

184. Some have more cynically suggested that Saint Ives was to be marveled at because he was “[a] lawyer and not a thief.” *Id.*

185. *See, e.g., John* 16:7.



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lating into it, “Let me begin by making it clear that the Constitution of the United States does not apply to any disciplinary hearing I chair.” I remember wondering why it didn’t.

Things got worse from there. I went back to the office that night and played the tape of the hearing for my supervisor, Marty Gideonse. When the public defender assigned to Judge Ciavarella’s courtroom reported to his boss that there were “a lot of kids not being represented” probably without “proper waivers,” his boss told him:

I’m not going to put up a sign and say, “Please come in here, and we’ll represent you.” We have to assume there’s a proper waiver going on. We have to assume the judge has a waiver. We have to assume the District Attorney knows the rules and the waiver and the juvenile probation office is doing the waiver. And we don’t have the time or the manpower to intervene.<sup>186</sup>

In contrast, my boss told me, “The Constitution goes over barbed-wire and through stone walls, and it applies everywhere.” Two days later, he had filed a suit in federal court on my client’s behalf. Within a week of the filing, the Department of Corrections happened to be recalculating my client’s good time and realized he was due for release that day. His release mooted our lawsuit. It is not just clients who have John Hammonds. Lawyers have them too, and that day, Marty Gideonse was my John Hammond.

As I was talking to a friend one evening, I happened to mention that I had once been appointed to represent a sociopath. Although I had intended this as only a passing detail in the story, my friend fixated on my characterizing my own client in such a way. He repeatedly forced our conversation back to the question, “How could you represent someone you thought was a sociopath?” For him, the question was rhetorical. He was sure that I had betrayed this client. After all, how could I have fulfilled my obligations as a zealous advocate<sup>187</sup> if I truly believed my client to be antisocial and beyond conscience? Certainly, I must have had a personal conflict under such circumstances, which should have disqualified me under Rule 1.7<sup>188</sup> or mandated my withdrawal under Rule 1.16(a) of the Rules of Professional Conduct.<sup>189</sup>

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186. INTERBRANCH, *supra* note 4, at 34.

187. MODEL RULES OF PROF’L CONDUCT Preamble (2010).

188. *Id.* at R. 1.7(a)(2).

189. *Id.* at R. 1.16(a).

Ultimately, my friend's impassioned response managed to entangle my own imagination in his question but not as a rhetorical one. I knew in retrospect that I had "zealously asserted the client's position"<sup>190</sup> and had not allowed the representation to be compromised by my feelings nor even by the costs that had come with the representation. In fact, although my duties under Rule 1.2(d)<sup>191</sup> did cause me to limit the degree to which I would allow myself to be used to wreak havoc in the lives of others, I ultimately proved effective in preventing my client's actions from bringing irreparable legal harm upon his own life. A lawyer who was called in to review the case's implications for a subsequent matter felt my representation sufficiently impressive that he offered me a job on the spot. Another lawyer familiar with the case described my efforts as "eloquent." Although my friend had been troubled by what he was certain I could not have been able to do, what suddenly haunted me was what I had been able to do. Given all my reservations, how had I been able to effectively represent this person?

Robert Coles has attributed similar phenomena to a "demanding conscience—a voice within that (at a minimum) said there is no pathway but *this* pathway,"<sup>192</sup> a voice that left its hearer to say simply, "I can't *not* do as I'm doing."<sup>193</sup> Others might attribute it to an inevitability of role or of creation. Thus, the poet might well point out that the flowers begin each day by raising their faces and petals to the light and to the heavens because that is what they were made to do, and lawyers zealously stand up for their clients because that is what they were made to do.

All that may be true for others, but I do not think it was true for me. I think I did what I did because I wanted at the end of the representation to be able still to stand with my fellow lawyers, whom I respect, and know that I was still worthy of being in their company. I wanted to be able to say what a dying King Theoden says on the battlefield in the film *Return of the King*: "I can stand with my fathers and know no shame."<sup>194</sup>

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190. *Id.* at Preamble.

191. *Id.* at R. 1.2(d).

192. ROBERT COLES, HARVARD DIARY 115–16 (1988).

193. *Id.* at 115.

194. RETURN OF THE KING (New Line Cinema 2003). In the book, Theoden says, instead, "I go to my fathers. And even in their mighty company I shall not now be ashamed." J.R.R. TOLKIEN, THE RETURN OF THE KING 117–18 (Houghton Mifflin ed. 1988).

Antoine de Saint-Exupery tells the story of a mail pilot who managed to walk out of the peaks of the Andes Mountains after a crash during the dead of winter. It was a journey that took days, and he had no food and little to protect him from the incomprehensible cold and wind.<sup>195</sup> The pilot described the trek as one “no animal would have gone through,” and it left the pilot’s body “dismantled, burnt, and shattered.”<sup>196</sup> He continued, however, until he reached safety because he realized, “The boys all think I am on my feet. They have faith in me. And I am a skunk if I don’t go on.”<sup>197</sup>

### BEGINNING AGAIN

*Chronicles* begins and ends with the same story only different, and so do I.<sup>198</sup> Maybe that’s because I’m only copying Dylan, or maybe it’s because I’m a lawyer and it’s inevitable that lawyers bring everything back around. After all, as we sit with our clients trying to piece together their present, there’s a future forming, and we’ll never be able to understand the present without seeing what that present meant to the future and seeing what light the future ultimately shed on the past.

On the day Judge Ciavarella was convicted of twelve counts at his federal racketeering trial, the mother of one of the kids he’d sent to juvenile detention confronted him on the courthouse steps.<sup>199</sup> Judge Ciavarella insisted he couldn’t remember the mom. He’d sent her son to prison, but he couldn’t remember her.<sup>200</sup> The son committed suicide six years after Judge Ciavarella sent him off for what would have been his senior year of high school.<sup>201</sup> The son never saw the age of twenty-four. Judge Ciavarella didn’t remember that either, I suppose.

When Dylan wrote the story of his life, he also wrote of Roger Maris, Charles Lindbergh, F. Scott Fitzgerald, Sinclair Lewis, and Eddie Cochran, all fellow Minnesotans.<sup>202</sup> He did so because, as Minnesotans, their stories were his story. Even more, he did so because they were stories we were supposed to care about now; their stories were

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195. ANTOINE SAINT EXUPERY, WIND, SAND, AND STARS 37 (1965).

196. *Id.* at 36.

197. *Id.* at 34.

198. See DYLAN, CHRONICLES, *supra* note 3, at 111 (MacLeish telling Dylan that with Dante and Donne, “you always come out where you went in.”).

199. Michael Rubinkham, *Mother Lashes out at Convicted Judge*, HARRISBURG PATRIOT-NEWS, Feb. 23, 2011, at A3.

200. *Id.* at A4.

201. *Id.*

202. DYLAN, CHRONICLES, *supra* note 3, at 291–92.

somehow our story, too. When the Interbranch Commission wrote the story of Judges Ciavarella and Conahan, they began with warring settlers, nineteenth century coal barons, greed-induced mine floods, and economic depression.<sup>203</sup> The Commission did so because they believed Scranton's story was the judges' story; the two were "products" of it.<sup>204</sup> They also did it, however, knowingly or not, because Scranton's story and the judges' story are our story. They are, therefore, stories we need to care about now. I did not realize that when I began to read the report. Maybe I figured it out when I saw myself in the young public defender.<sup>205</sup>

Judge Ciavarella will go to prison some day, perhaps, and when he does, he will go believing that he did nothing wrong. He will go debunking the popular myth that he was essentially working on commission—that he got a kickback for every kid he sent to detention. He will go insisting that "[h]e never took a kickback, he never took a bribe . . . . This is not a 'cash for kids' case," and he's probably right.<sup>206</sup>

There probably wasn't a child whom Judge Ciavarella sent to prison for financial gain. He sent them to detention, child after child, hundreds of children a year, at a rate between two and three times the state average;<sup>207</sup> he sent them there without the benefit of counsel at a rate more than seven times the state average,<sup>208</sup> without anything resembling an opportunity for a defense or any inquiry into their lives, because he believed that's where they belonged.<sup>209</sup> In 2003, "in a county that represented less than three percent of Pennsylvania's population, [Judge Ciavarella] was responsible for twenty-two percent of the juvenile placements throughout all of Pennsylvania."<sup>210</sup> He sent kids out of his courtroom in shackles because he believed they needed to learn a lesson.<sup>211</sup> He went to the schools in his county each year at the beginning of the school year to tell children if they found their way to his courtroom, he would exercise zero tolerance.<sup>212</sup>

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203. INTERBRANCH, *supra* note 4, at 13.

204. *Id.*

205. *See supra* text accompanying note 186.

206. Rubinkham, *supra* note 199, at A4.

207. INTERBRANCH, *supra* note 4, at 39–40.

208. *Id.*

209. *Id.* at 40.

210. *Id.* at 39.

211. *Id.* at 21–24.

212. *Id.* at 24.

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His approach to justice was popular.<sup>213</sup> He would have had no problem being retained.

As much as he embraced sending children to juvenile detention, Judge Ciavarella saw problems with the county facility. He thought it was “an absolute dump and absolute disgrace.”<sup>214</sup> He didn’t like sending kids there so he went to a local businessman and assured him that if the businessman built an appropriate facility, he could be confident that this no-nonsense judge would keep it filled, and he did.<sup>215</sup> Somehow, after that, the money started flowing. Judge Ciavarella will go to prison believing that the subsequent payments he received were merely gifts from a grateful businessman whom he had apprised of a community need and an opportunity; they were “finder’s fees.”<sup>216</sup> Judge Ciavarella will insist if he had never been paid a dime, he still would have meted out the same fate to every child who ever entered his courtroom. The same child would have died, the same mother would have been forgotten, and somehow then, everything would have been all right.

And if everything Judge Ciavarella believes is true is true, we should still be ashamed: ashamed that there were those in the DA’s office who knew and deferred to the judge, ashamed that the public defender knew but did nothing because he already had too many cases, ashamed that the Pennsylvania Judicial Conduct Board received notice of the problem but lost it between the cracks, ashamed that the Juvenile Court Judges’ Commission knew that the data was out of touch with the rest of the state and felt helpless, ashamed that, were it not for Judge Ciavarella’s indictment, we would still be embracing the work of a judge who had so little memory for the consequences of his actions and the mothers of the children he put away, ashamed that our own counties are still filling the very facilities built with that judge’s blessing.

At least twenty-four courts have quoted Bob Dylan for the proposition that “[y]ou don’t need a weatherman to know which way the wind blows,”<sup>217</sup> but only one has quoted him for the line from *Hurricane*,<sup>218</sup> “Couldn’t help but make me feel ashamed to live in a land

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213. *Id.* at 24 (“Ciavarella took a hard line on juvenile crime which was well-received in the community, particularly by school administrators, teachers and police.”); *see also id.* at 34–35.

214. *Id.* at 14.

215. *Id.* at 14–15.

216. *Id.* at 13.

217. DYLAN, *Subterranean Homesick Blues*, *supra* note 74.

218. DYLAN, *Hurricane*, *supra* note 67.

where justice is a game,”<sup>219</sup> and that in dissent. Another court, however, borrowed a line from *Long Time Gone* to support the proposition that “[a] family court judge’s task is not easy, but it is terribly important, and at the end of the day those judges ‘remember children’s faces.’”<sup>220</sup>

In *The Lonesome Death of Hattie Carroll*,<sup>221</sup> Dylan tells the true-life story of William Zantzinger killing Hattie Carroll with a cane because Ms. Carroll, a barmaid, failed to bring Mr. Zantzinger’s drink immediately.<sup>222</sup> Mr. Zantzinger got six months for the crime.<sup>223</sup> There are those who listen to *Hattie Carroll* and think the villain is Mr. Zantzinger. When I hear that song, I can’t help thinking at least one villain is me even if I never struck Ms. Carroll with the cane. I can never get beyond the lines:

[Hattie] carried the dishes and took out the garbage  
And never once sat at the head of the table  
And didn’t even talk to the people at the table  
Who just cleared up all the food from the table  
And emptied the ashtrays on a whole other level.<sup>224</sup>

We know that Ms. Carroll’s death would have been different if Mr. Zantzinger had not been a villain, but I can only wonder how much different her life might have been if I had not been one.

There are those who listen to *Talkin’ John Birch Paranoid Blues*<sup>225</sup> and think the song makes fun of members of the John Birch Society. When I hear that song, I can’t help thinking that the John Birch Society member in the song has the last laugh on all of us. After all, having exhausted every possible place to look for Communists, he ul-

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219. State v. Middleton, 640 S.E.2d 152, 172 (W. Va. 2006) (Starcher, J., dissenting).

220. Kirk v. Kirk, 770 N.E.2d 304, 306 n.3 (Ind. 2002) (quoting Bob Dylan, *Long Time Gone*, on THE BOOTLEG SERIES VOL. 9: THE WITMARK DEMOS: 1962–1964 (Columbia Records 2010)). For an example of a family court judge who does “remember children’s faces,” see Randy Lee, *Judaism and Pope John Paul II: Coming to Grips with What Law Means in The Hands of God*, 45 J. CATH. LEGAL STUD. 415, 451 (2007) (discussing the Honorable Roger Stuart).

221. BOB DYLAN, *The Lonesome Death of Hattie Carroll*, on THE TIMES THEY ARE A-CHANGIN’ (Columbia Records 1964).

222. *The Lonesome Death of Hattie Carroll*, [http://en.Wikipedia.org/wiki/The\\_Lonesome\\_Death\\_of\\_Hattie\\_Carroll](http://en.Wikipedia.org/wiki/The_Lonesome_Death_of_Hattie_Carroll) (last visited Nov. 4, 2011).

223. DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 221.

224. *Id.*

225. BOB DYLAN, *Talkin’ John Birch Paranoid Blues*, on THE BOOTLEG SERIES, VOLUMES 1–3 (RARE AND UNRELEASED) 1961–1991 (Columbia Records 1991).

timately sees the need to be “investigatin’ [him]self” for the source of the problem.<sup>226</sup>

Luzerne County has changed since Judge Ciavarella left office. Reforms have been instituted in juvenile court, the district attorney’s office, and the public defender’s office.<sup>227</sup> The Judicial Conduct Board has also sought to make changes in their operations.<sup>228</sup> On March 1, 2011, the Supreme Court of Pennsylvania issued *A Progress Report on Implementation of the Recommendations of the Interbranch Commission on Juvenile Justice*.<sup>229</sup> In this report, the Court indicated “that Pennsylvania’s Unified Judicial System and the Supreme Court have not let this report ‘gather dust on a shelf,’” that their “work will continue,” and that the Judiciary “will improve the juvenile justice system in every feasible way and provide further reports as [they] progress.”<sup>230</sup> All these efforts are to be applauded.

Still, being a lawyer or a judge is a confusing job with high stakes, and pull it apart and put it back together, I still don’t know that I know how one gets serious about legal ethics. I suspect, however, that what happened in Luzerne County cannot cause lawyers to get serious about legal ethics in a meaningful way if all it causes us to do is to judge the behavior of others and to seek to find a way to change someone else. If what happened in Luzerne County is to make me get more serious about legal ethics, it must cause me to ask questions and then look for the answers inside myself.

Nina Deutsch, the classical pianist Dylan licensed to record his work, once observed that Charles Ives wrote music that tells people how to behave; Dylan “teaches people to look at behavior more closely through his music.”<sup>231</sup> It is an important distinction. As Dylan described himself, “I really was never any more than what I was—a folk musician who gazed into the grey mist with tear-blinded eyes and made up songs that floated in a luminous haze.”<sup>232</sup> On *Lay Lady Lay*, Bob Dylan exhibits a rich singing voice. If Dylan had wanted *Blowin’ in the Wind* to be a beautiful lullaby, he would’ve sung it that way,

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226. *Id.*

227. INTERBRANCH, *supra* note 4, at 31, 33, 35.

228. *Id.* at 30.

229. SUPREME COURT OF PENNSYLVANIA, A PROGRESS REPORT ON IMPLEMENTATION OF THE RECOMMENDATIONS OF THE INTERBRANCH COMMISSION ON JUVENILE JUSTICE (2011).

230. *Id.* at 4.

231. Nina Deutsch, *Humanism through music*, myspace (Jan. 9, 2011, 7:15 PM), <http://myspace.com/ninadeutsch/blog/541288428>.

232. DYLAN, CHRONICLES, *supra* note 3, at 116.

and if he'd wanted it to be about answers, he would've provided them. He wrote it the way he wrote it and sang it the way he sang it because on that song he got what he wanted and what he wanted was a song that would confront us with questions that were haunting him, questions that were real. When confronted with the expectation of perfection, Dylan had both the honesty and the humility to respond, "It ain't me, babe,"<sup>233</sup> but he also has shown himself willing to try to transcend the place he is in.

There are those who listen to *Subterranean Homesick Blues* and think it's a collection of random, unrelated images.<sup>234</sup> For example, following the lines:

Ah get born, keep warm  
 Short pants, romance, learn to dance  
 Get dressed, get blessed  
 Try to be a success  
 Please her, please him, buy gifts  
 Don't steal, don't lift  
 Twenty years of schoolin'  
 And they put you on the day shift

are these:

Look out kid  
 They keep it all hid  
 Better jump down a manhole  
 Light yourself a candle  
 Don't wear sandals  
 Try to avoid the scandals.<sup>235</sup>

When I hear that song, I can't help thinking that Dylan wants us to understand the images are related—they are at least real things in the same world—and he's challenging us to make sense of them, to understand how hard it is to make sense of life.

A friend of mine did a great job representing a woman in a workers' compensation case and won her a large judgment. His client got the check, brought it home, and showed it to her boyfriend. Her boyfriend killed her and stole it. Now my friend is trying to pull it all apart and make sense of it.

In our work, we are tempted to believe that the lives in old Scottish law reporters are not real and that how we do our jobs will not affect

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233. BOB DYLAN, *It Ain't Me Babe*, on ANOTHER SIDE OF BOB DYLAN (Columbia Records 1964).

234. DYLAN, *Subterranean Homesick Blues*, *supra* note 74.

235. *Id.*



who or what will come after us. But we know that's not true. We know, like it or not, that our work becomes part of people's lives, for better or for worse, admit it or not, and we know the pieces of what's real go together whether we can make sense of them or not. We know that the judge who agonizes and the judge who has zero tolerance; the lawyer who was too busy and the lawyer who embraced a pro bono hearing at 4:30 the afternoon before; the lawyer who could represent a sociopath and the lawyer who inspired her niece; my student and Ms. J.; the lawyer who represented the client who died and the lawyer who represented the client who found her life reborn, all co-exist in the same world, and we have to decide which ones we want to be like. We know, with apologies to Chief Justice Marshall, that we may be "a government of laws, and not of men,"<sup>236</sup> but laws are no better than the people who write them, the people who use them, and the people who use them on others.

I went to see my student from the beach the other day. I wanted to make sure I had her permission to use her story. She's working for Legal Services now. She told me that she had recently had her own *Cathedral* experience.<sup>237</sup> She had met with a new client, a young woman exactly her own age, whose reality was "overwhelming," swirling about her, maybe even "a shadow, depending on how you look at it."<sup>238</sup> She was a young woman "concerned," "wondering what lay ahead," not sure where the first step could be.<sup>239</sup> The two of them started talking about how the young woman had gotten where she was, and my student recognized how incredibly similar their lives had been, even if they now found themselves on opposite sides of the desk. My student told me, "The only difference between us was that I had had a lawyer who believed in me." My student paused and then added, "And now, I can be that lawyer for her."

People say stories like that are "sentimental," "soft-hearted," "wrong-headed," and they're probably right. It's just that they're also still true. As Dylan would say, they're still real. The greatest crime Judge Ciavarella committed had nothing to do with money. It was that while he was a judge, one-thousand-eight-hundred-and-sixty-six times, he denied the kid before him the opportunity to have a lawyer who believed in him. MacLeish told Dylan that for "an authentic

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236. *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

237. *See supra* text accompanying note 62.

238. *See supra* text accompanying notes 2–3.

239. *See supra* text accompanying notes 2–3.

poet” “a few masterpieces last across the years.”<sup>240</sup> That’s true for lawyers as well, and when Judge Ciavarella denied those kids legal representation, he was also denying a lot of lawyers their shot at a masterpiece.<sup>241</sup>

Bob Dylan had, has, one never can tell with Bob, his Christian identity, and the Bible tells us that among the lineage of Jesus were a barren woman,<sup>242</sup> an unloved wife,<sup>243</sup> a prostitute,<sup>244</sup> a Moabite,<sup>245</sup> an adulteress,<sup>246</sup> and a virgin.<sup>247</sup> The Bible strings them all together but leaves us to figure it out. I don’t get it. I know, however, that they are part of the same reality, the same pathway, the same plan. Put them all together, figure it out, and you’ll know how the world works. And the marshwiggles in me says I might as well try.<sup>248</sup> After all, in a world such as this, maybe “some of us’ll end up to be lawyers and things.”<sup>249</sup>

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240. See *supra* text accompanying note 118.

241. See, e.g., Bernard Grimm, *Connecting with the Boss: Listening as a Person and Becoming the Lawyer I Ought to Be*, 14 WIDENER L.J. 935, 950 (2005) (“And on those nights, I think maybe I could be a George Shannon or a Steven Seitchik to a kid of any age, who is as I was. I think maybe I could touch a life, innocent or guilty in the eyes of the law, and help him hear what George helped me hear: that he matters and that he belongs someplace better. I think maybe I could do my job to give him a chance as Steve did his job to give me a chance. And I think if I don’t bother to try or if I fail, the world may lose another prophet like Tony, so incredibly wise and so tragically unable to benefit from his own wisdom.”)

242. *Genesis* 21:7 (Sarah).

243. *Id.* at 29:31 (“not loved” Leah is the mother of Judah).

244. *Joshua* 2:1; *Matthew* 1:5 (the “harlot” Rahab).

245. *Ruth* 1:4 (Ruth).

246. *2 Samuel* 13–14 (Bathsheba).

247. *Luke* 1:26–38 (Mary, the mother of Jesus).

248. See *supra* text accompanying notes 127–29.

249. DYLAN, *Walls of Red Wing*, *supra* note 1; see also HARPER LEE, *TO KILL A MOCKINGBIRD* (1961) (“Lawyers, I suppose, were children once.”).