Can a Single Masterpiece Sustain a Lawyer's Lifetime and Other Questions that Cross a Lawyer's Way

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Not all are called to be artists in the specific sense of the term. Yet, as Genesis has it, all men and women are entrusted with the task of crafting their own life: in a certain sense, they are to make of it a work of art, a masterpiece.¹

A while back, I was speaking to a group of lawyers and the subject of masterpieces came up. We were actually talking about Bob Dylan and what Dylan has to offer lawyers, but one issue that Dylan had struggled with, at one point in his life, was how many masterpieces are enough for a career. At the time of his struggle, Dylan had had plenty, enough that Princeton University had honored Dylan with an honorary degree for being “the authentic expression of the disturbed and concerned conscience of America,”² and enough that the protest movement,³ most of his friends in the folk music scene,⁴ and the “organized press”⁵ all had felt they had the right to demand he write more. The only problem was that Dylan had not felt like writing masterpieces anymore. Dylan, at that moment, had only been interested in “getting rid of the whole shebang, [and] being a dad instead.”⁶ Still Dylan had felt backed “into a corner”⁷: how can one give up being the conscience of a generation, “a serious poet” who would be “a touchstone for generations after.”⁸

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³ Id. at 117.
⁴ Id. at 115.
⁵ Id. at 114.
⁶ Id. at 109.
⁷ Id. at 117.
⁸ Id. at 111.
As I told this story, I explained to the lawyers how Dylan, in the midst of his struggle, had gone to visit the poet Archibald MacLeish, one of the three poets, along with Carl Sandburg and Robert Frost, who Dylan believed “had put everything in perspective.” MacLeish was someone who, Dylan believed, “possessed more knowledge of mankind and its vagaries than most men acquire in a lifetime.” As the two had sat together in MacLeish’s study, MacLeish had assured Dylan that Michelangelo had just wanted to be left alone, and that for an “authentic poet”, “a few masterpieces last across the years.”

Dylan’s story struck a chord with one of the lawyers present at the talk, and afterwards that lawyer approached me. He acknowledged to me that he had made a lot of money for a lot of clients while practicing law and that he had even made a lot of money for himself. He told me, though, that he was wondering if something was missing from his career because, despite all the money, he “had never had a masterpiece.” As soon as he said that he had never had a masterpiece, he stopped himself, paused, and then changed gears. “Actually,” he added, “I take that back. I had one. I had one masterpiece.” Then he continued, “Is one masterpiece enough?”

I did not have a ready answer for his question. Trapped as I had been for weeks in the maelstrom of Dylan’s mind, life, and music, it had never occurred to me to ask what would be a sufficient number of masterpieces for those of us who are mere mortals, or even what a lawyer’s masterpiece would look like. Consequently, this lawyer and I were left to struggle together trying to figure out what to make of his career. I tried to reassure him that it was enough that he had been able to abandon his original position that his career had been completely devoid of

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9 Id. at 107.
10 Id. at 129.
11 Id.
12 Id. at 113. MacLeish evidently was introduced to this concept by a poet he, himself, admired, Carl Sandburg. In Sandburg’s Preface to "Complete Poems of Carl Sandburg," a volume for which MacLeish wrote an Introduction, Sandberg observed, "A few masterpieces last across the years. . . . A few masterpieces are enough. Why this is so we do not know."
masterpieces and he had been able to identify at least one masterpiece he had created, but he wanted authority for the proposition, and the best I could come up with to assure him that the shift from zero to one marked a significant qualitative distinction was an analogy to a line from the cartoon Frosty Returns: “One friend is a lot different than no friends.”¹³ I could tell, as we parted, that this lawyer wanted something more than Frosty.

For some reason, this question of masterpieces has continued to stalk me. Recently, for example, I was at a home restoration show and met a couple who buy broken-down old houses, move in, restore them, and then sell them. The couple have restored seven homes in the last thirty-five years. Although restoring and selling these homes is how they support themselves, each restoration, for them, is still a labor of love. When they told me about locating, obtaining and installing authentic, time-period cabinets and windows for their latest project, they spoke of how the cabinets and windows had “come home.” When they told me about finding beautiful, antique rope moulding they could put around the perimeter of the great room, they told me how they had bought and begun installing the moulding without ever having measured how much of it there was. They just had bought it all, and ultimately used all of it in the room but one foot. “It just fit,” they told me. In fact, when the couple had finished with the house, everything fit. Sitting in the home, they said, was “like sitting inside a smile.” The home was a masterpiece.

For this couple, a masterpiece was creating a world where everything fit, a place that could be like sitting inside a smile. Then again, they dealt in houses. Lawyers, unfortunately, do not deal in houses. We deal in lives and people; therefore, with our work, everything is not going to fit. We seldom have the opportunity to create moments that are like sitting inside a smile. In fact, many lawyers insist that in their line of work, the best one can hope for is that

¹³ Frosty Returns (Bill Melendez Productions 1992).
when they are done with a matter, they can find something to smile about. Under such
circumstances, can there even be such a thing as a *masterpiece* in a lawyer’s work?

In *Wind, Sand, and Stars*, 14 Antoine de Saint-Exupery insisted that in his life as a pilot,
he had been able to find masterpieces, but, like the lawyer at my Dylan talk, he had not found
them in financial reward from his profession. Instead, Saint-Exupery had found them in more
palpable things that “no wealth could have procured”:

If I draw up the balance sheet of the hours in my life that have truly counted, surely I find
only those that no wealth could have procured me. One cannot buy the friendship of a
Mermoz, of a companion to whom one is bound forever by ordeals suffered in common.
There is no buying the night flight with its hundred thousand stars, its serenity, its few
hours of sovereignty. It is not money that can procure for us that new vision of the world
won through hardship—those trees, flowers, women, those treasures made fresh by the
dew and color of life, which the dawn restores to us, this concert of little things that
sustain us and constitute our compensation. 15

Saint-Exupery observed that his masterpieces were to be found in the people, challenges, and
perspectives that populated his profession. When I ask my law school students, however, to
encounter Saint-Exupery’s observations about aviation and find parallels in the practice of law,
the lawyer’s equivalent, for example, of “the night flight with its hundred thousand stars,” too
many of them shift uncomfortably and begin to wish, I suspect, that they had opted to become
pilots rather than lawyers.

Such discomfort is not restricted to law students. Indeed, I have lawyer friends who are
probably even less optimistic about their chosen profession, although some have had, from my
perspective, very intriguing careers. One of these, in particular, had embraced during law school
the rather unlikely idea that he could support himself in law school by doing folk art. He had
talent, however, and came up with a great business plan so that by the time he graduated, his art

15 Id. at 26.
was paying so well that he had the flexibility to practice law the way he wanted, handling only the cases he wanted. Given this opportunity, he seized his chance to become Atticus Finch.\textsuperscript{16} He took only those cases that meant the most to him, worked for whatever people could afford to pay him, and accepted payment in everything from stove wood to hickory nuts.\textsuperscript{17}

My friend specialized in domestic abuse cases, representing women at Protection from Abuse (PFA) hearings, and he never lost a case. He threw open the door of his life and was taking client phone calls and listening to their stories at 2:00 a.m. He trusted that he was doing work that mattered, and hoped he was handling cases where the boyfriend would understand the order and take it seriously. His law practice made for a great story, and, recognizing that, the galleries made it part of his identity as an artist and, not by his choice, began to use his story to market his art. It all lasted about ten years before he finally decided he had to get out of the practice of law. As he saw it, he had framed the practice in the best way that he knew how, and in ten years of practice, he just had not been able to find a masterpiece in it.

My friend had made adjustments along the way. He had stopped taking the 2:00 am phone calls and had “learned boundaries” for his clients and his practice, but he still ultimately had to get out. As he explained it, “You’re doing something noble, and the judges disdain you. They disdain you, your client; they’ve heard it all before. The other side delays and delays and delays you. And in a year, your client ends up back in your office with a different boyfriend but the same abuse.”

Such feelings are not restricted to lawyers who work in domestic relations. Another of my friends worked for twenty-six years as a civil defense lawyer before finding himself moving over to the plaintiff’s side. As he told me about regretting his change in circumstances, I asked

\textsuperscript{16} HARP\textsc{e}R L\textsc{e}, TO K\textsc{i}LL A M\textsc{o}CK\textsc{i}NG\textsc{b}IRD (Warner Books Paperback ed. 1982).
\textsuperscript{17} \textit{Id.} at 20.
him why he felt he was so ill-suited to this new side of litigation. At first he said it was because
his temperament liked defense: he liked responding and reacting; in chess he always took the
black pieces. Finally, however, he admitted:

When I did defense work, I didn’t bring anyone into the system. I didn’t make
any promises about what the legal system, not the justice system but the legal system, is
and what it isn’t. My defense clients were already in it. Now, as a plaintiff’s attorney, at
least implicitly, when I file an action, I am making representations about what this all is
and what it can do.

When I defended a client, if they broke something and they wanted to fix it, I
could help them figure out what that meant and how they could fix it. If they didn’t want
to fix it, I could tell them there were probably better lawyers for them than me. When
they hadn’t broken anything, when they’d just been dragged into this system, I would
invest all my talents into proving that they weren’t the wrong-doer, but I never pretended
my efforts and their innocence would bring us all to a happily-ever-after ending through
the legal system. I never brought anyone in to this; I only helped them try to get out.

To me, that’s an important distinction. When you bring them into the system and,
win or lose, it fails them, what do you tell them, that they hired the wrong lawyer?

Of course, two lawyers certainly do not represent a statistically reliable sampling of the
profession,18 and just as there are lawyers who insist that there are no masterpieces to be had in
our line of work, there are also lawyers to insist that there are. We just are prone to miss the
masterpieces because we insist on believing that it is not a masterpiece unless everything can be
made to fit. The Honorable Roger Stuart, a juvenile court judge in Oklahoma County,
Oklahoma, is an example of a lawyer who believes there are legal masterpieces but understands
how hard they are to recognize:

Recently, I’ve been trying to express to others in the system that the world’s
definition of success and Child Welfare's definition of a “positive outcome” often set us
up for failure and disillusionment. Our system is made up of people who want to help,
who want to save and want to make a difference in the lives of kids and their families.
But we measure our success by worldly standards, which define success as a normal,
middle class life where the pain a child suffers is supposedly minimized. Thus, the

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18 In 1993, Anthony Kronman did recognize more generally within the legal profession a “crisis in morale” and
“growing doubts about the capacity of a lawyer’s life to offer fulfillment to the person who takes it up.” ANTHONY
THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICA 14 (1994) (noting a “grip of great sadness”
surrounding the legal profession).
world's measure of a good outcome is not often realized, and as time goes by, the folks in the system become cynical and burned out, thinking they have not made a difference because the child they sought to save ends up in prison or is ensnared by drugs. They have made a difference, of course, just not in the way they expected.

Of course, we cannot undo the past; we cannot take away the pain and sorrow inflicted on children; we cannot guarantee that we can make things better. We have a very small handle, if any, on the future. We can, however, think in terms of today, that during this day we can be a blessing to someone else whether through an act of kindness, employing our professional skills, or by simply being with them, waiting with them.

In my own times of cynicism I've compared what we do with the United States during the Vietnam War. We can always win a battle against a cold and heartless system, but like the Viet Cong, the system eventually wears us down. But it has dawned on me that it is the battle that is important, not the winning, because the world always will be what it is. But when we decide to give something of ourselves, invest our time and love, it changes us as well as those we serve. We are healed by learning how to love more and love better.19

In law school, I used to do pro bono prison work, mostly prison disciplinary hearings and parole rescission and revocation hearings. It was not a context in which one had the opportunity to win many cases, and I never thought of it as a context in which I was likely to have any masterpieces. Disciplinary boards, for example, were made up of two guards and a social worker, and more often than not, the social worker would be a less sympathetic audience at the hearing than were the guards. In fact, it was a sufficiently hopeless environment that clients measured the quality of their legal representation not by their outcomes, but by how well their lawyer could wait with them in the hallway for the hearing to begin.

Arthur was one of my prison clients, although I do not remember exactly what kind of case I had with him when we got started. I do remember that when our relationship began, Arthur and I disagreed on his principal need for my services. I thought Arthur needed me to represent him on a prison disciplinary ticket, coincidentally the matter which had been posted in our office and for which I had been lured to the prison. Arthur, however, thought otherwise. Arthur showed up at our initial meeting with a jailhouse lawyer, and the two of them insisted that

if I followed their orders and filed some magic form, Arthur could be out of prison before the sun set that evening. It was clear neither of them had any regard for my thoughts on the matter. Despite his current status in prison, Arthur seemed confident that he had the keys to life pretty well wired. Neither he nor his jailhouse lawyer saw a need after the meeting to thank me either for the time I had invested in the representation or for what I might ultimately invest.

Although our initial meeting had been a complete waste of time, I did return for additional meetings with Arthur, and somehow, over time, I succeeded in convincing him that the magic form did not exist. Arthur ultimately dismissed the jailhouse lawyer, and together we even took to preparing for his upcoming hearing. Somehow, Arthur and I prevailed before the disciplinary board.

Even though Arthur was not allowed to have me represent him at a parole hearing, we began working together on his case for parole. We got good at waiting together. During this time, Arthur told me he wanted to change. He told me he would never make it if he went back to his old world so we set out to put together a new life. He wanted to be busy when he got out, and he wanted to be far from his old life. We figured out a new place for him to live, found him a job, identified an educational program, and reflected about a return to his faith.

The parole board granted Arthur his parole unanimously. Then just before his release date, he got haled into court. The conviction for which he had just been paroled had actually violated the conditions of a probation he had received for an earlier conviction. A judge revoked the probation, and Arthur was shipped to maximum security. I learned of all this through a phone message Arthur left me. Arthur's last words in his last phone message to me were simply, "Tell Randy, ‘Arthur says, “Thanks.””" At the end of my representation of Arthur, everything

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didn’t fit, nothing felt like a smile, and no normal, middle class life where the pain is minimized had been achieved.

They say a classic is any work that stays with us for a generation, twenty-five years. I wonder if a masterpiece is like a classic because more than twenty-five years later, I can still remember those last words Arthur communicated to me. Yet, if, somehow, my work with Arthur was a masterpiece, it wasn’t one I painted, just one I bought and brought home, more one Arthur’s brushstrokes left on me than mine on him. Arthur was very bright, and it would have been a shame for all of us to lose him, but I don’t remember thinking in those terms at the time. He was just someone I was walking with, one step at a time.

For the longest time Arthur’s story bothered me because I felt as though someone should have cared that for the first time in a long time Arthur had had dreams that were worth realizing and a plan to attain them, and now he didn’t. Then I finally realized someone did care: it was me. Certainly, it would have been better if it was more people or even more powerful people, but sometimes Frosty is right, and one is a lot different than none. Maybe the masterpiece in our work as lawyers is not what the world is but what the world would be if we stopped being a lawyer.

The most famous child custody case in history is the case of the two mothers before King Solomon. In fact, it is probably the most famous legal case in history. More than famous, however, lawyers should find the case odd because it came out correctly even though neither woman had a lawyer. Of course, the case did have a wise and perfect judge and a noble, reasonable, candid, unselfish, and, hence, perfect client, and, thus, the lesson to be drawn from the case: when we have perfect judges and perfect clients, the right outcome can be reached

without lawyers. Indeed, if everything were perfect, lawyers would be obsolete. But everything is not perfect, and there’s no reason to suspect it ever will be. That’s why we need lawyers.

If the legal system is not perfect, and it doesn’t always yield perfect answers, then maybe the measure of a lawyer is not how far from perfect his world is but what the lawyer’s world would be like if he ever did quit doing what he does. In a world where no one cares and no one is working to make something happen for the better, there is no chance for a masterpiece, but in a world where someone cares and someone is working, then there is always at least a chance.

Rabbi Lawrence Hoffman tells a story of being a student of Professor Samuel Atlas.22

Professor Atlas held Talmud class for his three students

in his crowded dusty office, equipped with exactly four chairs, a desk, several weighty tomes of Talmud, and a telephone. One day he informed [the class] that he was engaged in a long-term suit over something relatively petty, a case hardly worth his or his lawyer's time. He made it a point, however, to bother his lawyer about it on occasion, just to keep the case going. I suspect you all know the type: first degree nuisances whose case you took and wish you had not.

“But Dr. Atlas,” [Hoffman] asked him, “if you yourself know it is not worth your time, and if your lawyer concurs, why do you not quit?” “Because,” he said, “I am right, and I have a religious obligation to do nothing that would cast doubt on the ultimate justice of the universe.” With that, he made his obligatory call to the lawyer, whose secretary was no doubt armed with instructions never to let the old man's call go through. She would take a message, however. “Tell him,” said my teacher, “that Professor Atlas wants to know if there is justice in the world.”

I do not know what the poor overworked lawyer made of that message, but I know what Dr. Atlas was thinking. He opened a volume from memory, handed it across the desk to us, and commanded, “Read!” And this is what [Hoffman] read:

The evil generation of Noah's flood said, “God will not judge me.” Rabbi Akiba cited Scripture: “[T]he wicked say in their hearts, You [God] will not call us to account” (Ps. 10:13) meaning, “There is no judge and there is no justice.” In truth, there is a judge and there is justice.

Rabbi Hoffman concludes the story by recognizing that all that stand between “the

Jewish horror that society might sink once again to the level of the generation of the flood

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because it concludes *leit din v'leit dayyan*, ‘There is neither judge nor justice’” are those lawyers willing to insist that “[i]n truth, there is a judge and there is justice.”

The Cathedral of the Holy Assumption in Siena, Italy is a masterpiece. It is this massive cathedral the people of Siena started building in 1196. It took one hundred years just to finish the structure, and it took another five hundred years to “decorate” it, to make everything fit and make it smile. It is so monumental that in 1956, the builders were still working on doors.

This cathedral is so magnificent today that we forget the day they started building the cathedral, laborers showed up to dig the foundation. No doubt, at least one laborer looked at his foreman that day, and asked, “So how long is this church going to be?” And, no doubt, in response, the foreman simply started roping off the foundation.

The foreman pounded a stake into the ground, tied a string to the stake, and then began to walk, and walk, and walk, until finally standing a long way off, the foreman pounded a second stake into the ground and wrapped the string around the second stake. The laborer could not believe how long the foundation was supposed to be, and, a little awestruck, he asked, “Well, how wide is this church going to be?”

The foreman simply took a left turn at the second stake and then began again to walk, and walk, and walk, until finally he drove a third stake into the ground and wrapped the string around it. As the foreman finished walking off the last two corners of the new church, the laborer, in amazement, called to him, “How high do they think this church is going to be?”

When the foreman answered him, the laborer realized, “I will never hear the bells of this church ring; my children will never hear the bells of this church ring; my grandchildren will never hear the bells of this church ring. In fact, this church may never be finished. But if it

23 *Id.* at 1165.
never is, if no person ever worships in this church, it won’t be because of me.” And the laborer spent the rest of his life working on that church, and he ended up with a masterpiece, not just in the church but in his life.

What distinguishes me from that laborer, of course, is that I quit and the laborer didn’t. Someone told me once that scientific research had proven that if you drop a rat in an aquarium, the rat will swim indefinitely. Indeed, as long as the rat can see a way out, light above the aquarium, the rat will keep swimming, but the minute a board is placed on top of the aquarium, the rat will stop swimming and sink.

There were good reasons I quit on Arthur: the matter was over; I hadn’t been retained on a new matter; there wasn’t a new matter I could work on; I couldn’t get out to his new prison. Still, the laborer figured out how to get marble blocks hundreds of feet in the air, but I couldn’t figure out a way to get from Cambridge to Walpole, Massachusetts. I couldn’t even figure out how to get to the post office to send a card to a guy who didn’t have anyone else to believe in him. Given that I managed to mail my phone bill every month, one would’ve thought I could have mailed Arthur a card now and then.

I wonder what it might have been like if I had: Arthur receiving mail in prison and his cellmate asking, “What’s that?”

“It’s a card,” Arthur might have responded.

“Who’s it from?”

“This lawyer. He’s got this crazy idea I matter, that I can still make it.”

I wonder sometimes whether I was the only light above Arthur’s aquarium.
I understand sending a card every month to a client like Arthur is a “law professor idea.” After all, we’re all busy. Who has time for things like that? Then again, you don’t have to do it for everybody. You only have to do it for the people you want to become masterpieces.

When I first heard the news about Arthur, it was the first time as a lawyer I had felt, to borrow the line from Bruce Springsteen’s *Jungleland*, “wounded, not even dead.”25 Wounds, like masterpieces, however, can be funny things for lawyers.26

Perhaps, as I was feeling wounded over my efforts on behalf of Arthur. I felt how *Jane Eyre*’s Mr. Rochester felt immediately after having been so “sadly hurt” in the fire at his home at Thornfield, that, though still alive, “many [thought] he had better been dead.”27 We are told, in that masterpiece novel by Charlotte Bronte, that Mr. Rochester was never “handsome” even when he had “all [his] limbs and all [his] features like any other man.”28 Even when Jane felt herself “thrilled along every nerve [she] had” by the sound of his voice,29 she insisted that she had to be repulsed by the picture on the canvas of Mr. Rochester’s life. It was only when, in the fire, Mr. Rochester had become wounded, blind in one eye, lost the other eye, and had his hand crushed and crippled, that he became handsome. It was only after he had had the opportunity,


“Sitting there in South Boston, I surmised that on the night Anthony had been murdered, “the streets [of Harrisburg had been] on fire—in a real death waltz”; I wondered if anyone watched “when the ambulance pulled away”; and I thought of Anthony’s mother going to Anthony’s room, looking around, and then “shut[ting] out the bedroom light.” As I received the news about Anthony Burton, I knew I was not dead, but realized that I had been “wounded.” “[That] night in Jungleland.”

*Id.* at 735.

26 Lee, *supra* note 20, at 877-78 (“[I]f you confront the violence of this world, you’re going to get wounded. But in that woundedness, that brokenness, is the power to heal.”).
28 *Id.* at 118.
29 *Id.* at 272.
without guilt or blame, to rid himself of everyone and everything in his life that was inconvenient and chose, instead, to risk his life to save those who sought to kill him, that his life became a masterpiece. Ironically then, Mr. Rochester’s wounds were not disfigurements or invitations for “pity”; they were the visual manifestations of his “courage” and “kindness,” proof that he was a man who “wouldn’t leave [a burning] house till every one else was out before him.”

Lawyers seek to attribute that ability to transcend their own self-interest to themselves. In the Model Rules of Professional Conduct, for example, the bar speaks of being able to rise above its own “parochial or self-interested concerns” and structure the nature of their profession exclusively “in the public interest.” Perhaps, then, a lawyer’s wounds, like Mr. Rochester’s, are signs of his success, the marks of his masterpiece.

A friend of mine once got a call from his attorney son. The son’s supervisor had just been fired. For months the supervisor had been trying to get the officers of their corporate employer to address the company’s problems, exercise good judgment, and come clean. Now that everything the supervisor had been warning the executives about for months had begun to come home to roost, the executives had decided to try to save themselves by pinning the responsibility for their own poor judgment on the supervisor.

The son needed to figure out what he should do and called his father. It did not hurt that my friend, the father, happened to be an expert on Human Resources. The son respected his supervisor and, up till then, had backed him up and been loyal to him. It was not clear what the company would do to the son. Everything was in motion. It was possible the son would be

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30 Id. at 386. See also KRONMAN, supra note 18, at 145 (“A courageous lawyer is prepared to take risks for what he or she believes is right”).

31 MODEL RULES OF PROF’L CONDUCT Pmbl. [12] (2012). See also KRONMAN, supra note 18, at 299 (describing “self-forgetfulness” as the requirement that “a lawyer must be able to lose himself in that other person’s situation”).
fired, but it was also possible he might be offered the supervisor’s job. The son, however, was convinced the treatment of his supervisor, his mentor and friend, had been wrong.

My friend advised his son, whatever he did and whatever he might want to do, not to quit his job. He explained how it would be better for him legally to be fired if that was what the company had planned for him, and in any event he needed to know what his options were before he made any moves. The son needed to know what the company might offer him to stay and what they might offer him to go away.

The next day, after the son disregarded his father’s advice and quit his job, he called his father back to tell him. The son could hear the father’s frustration in the silence at the father’s end of the phone and tried to address it. “Dad,” he began:

before you get mad, just listen to what I was thinking. I listened to everything you told me yesterday, and I understand that there are some rights, some options, some benefits, I may have just lost by quitting. But when I was growing up, you also always taught me to do the right thing, and what they did to my boss was wrong, and quitting was the right thing to do. In the end, I just thought, “If I quit, what’s the worst thing that will happen to me: I’ll go home, live in my parents’ basement, eat my parents’ food, and find another job.” I don’t have a family to support. I won’t be out on the street. Dad, I’m at a point in my life where doing the right thing is easy, and if I can’t do the right thing now when it’s easy, when will I ever be able to do it?

In the practice of law, you can lose your job and still find a masterpiece because integrity, when you use it, leaves a mark, just as it did on Mr. Rochester. As my friend retold his son’s story, he paused. “I wished he would have listened to me, but what could I say to that: ‘Your sister came home last week; the basement’s taken’”?

Charlotte Bronte insisted that friends seek “to grow about the roots” of such men as Mr. Rochester turned out to be “because they take delight in their bountiful shadow; and as they grow, they lean towards [them] and wind about [them] because [their] strength offers them such
a safe prop.”  Perhaps at least some clients will do the same. A friend of mine who is the
patriarch of a family band, which has gotten popular enough to require a lawyer, remarked to
me how cautiously he was approaching the task of selecting one. “My lawyer,” my friend
observed, “is going to use my name. He will speak on my behalf. He will represent me and act
for me. I have to be careful whom I ask to do that.”

No doubt, Charlotte Bronte would have encouraged my friend in his caution and warned
him that not all even “good” and “great” men are likely to create a masterpiece on the life of
another. Indeed, her Jane Eyre tells us that there are those good and great men who “forget[]
pitelessly, the feelings and claims of little people, in pursuing [their] own large views. It is
better, therefore, for the insignificant to keep out of [their] way, lest, in [their] progress, [these
great men] should trample them down.”

Jane, no doubt as well, would explain that the lawyer capable of creating a masterpiece in
another is one like those who created a masterpiece in Jane: a lawyer like Jane’s friend Helen,
who bears things, learns from the criticisms that are valid, recognizing that sometimes the wrong
person can say the right thing, and is strong because she chooses to be strong not because she is
without fear; or Jane’s friend Diana, who has “instinct with both power and goodness,” whose
“compassionate gaze” inspires courage and the response, “‘I trust you,’” and inevitably must be
“met with a smile.” Jane might even choose to advocate for the attributes of her cousin Saint
Jean, one who could allow a situation to unfold, act with patience and prudence, and resist the
temptation to give in to his client’s sense of emergency. And as a lawyer, Jane, herself, is one

32 BRONTE, supra note 27, at 400.
34 BRONTE, supra note 27, at 374.
35 Id.
36 Id. at 303.
37 Id. at 302 (Saint Jean watching secretly how Hannah responds to Jane’s honest and desperate, but not necessarily
credible, pleas on his family’s front porch).
who would see her client’s blemishes and, yet, never be deceived into believing that those blemishes are what they are not; Jane would never allow her clients to rob her of what she is nor allow them to settle for less than what they are.

For all of this, however, I still cannot help thinking a lawyer’s masterpieces have to be more than a lawyer’s wounds or a lawyer’s character. At some point, clients’ lives have to be the canvas of a lawyer’s masterpiece because clients are a lawyer’s reason to exist, and lawyers have no capability to exist without them. Yet, I remain uncertain whether a masterpiece can be envisioned, even on a client’s life, as always getting the client what he wants, or, perhaps more to the point, getting a client what he doesn’t deserve. If “justice” truly is justice, if justice is always a good thing for anyone to get, and if we are indeed “citizens having special responsibility for the quality of justice,” then would justice be the measure of a masterpiece, whether a client is satisfied with it or not?

Tom McGough, associate counsel to the Senate committee investigating the Iran-Contra affair and a former clerk for Chief Justice William Rehnquist, once showed me a You Tube video entitled Old Lawyer Fight, in which a client begins a deposition by observing to opposing counsel, “You have a case of insipient verbal diarrhea.” I wondered if 400,734 hits later, the client was still pleased he had said that. Immediately after showing me the video, Mr. McGough also shared with me that sometimes a masterpiece is taking your client out of the room and telling him that he can waste a lot of money having you defend his right to embarrass himself, or he can choose to have the two of you do something that is productive. Sometimes a masterpiece

38 I obtained this piece of wisdom from my friend Bob Davis, former Acting Chief Disciplinary Counsel for the Commonwealth of Pennsylvania.
42 Id.
is getting your client beyond what he thinks he wants. A masterpiece can be getting one’s client to leave Fantasyland when they would prefer not to, when they are more comfortable in Fantasyland than in the real world.43

Robert Louis Stevenson used to say, “Don't judge each day by the harvest you reap but by the seeds that you plant,” and Mother Teresa would point out, “The seed never sees the flower.” I am told lawyers are prone to say, “My work could not have made a difference because no one said, ‘Thank you.’” A former clinician colleague of mine, the Honorable Nathaniel Nichols, now a Common Pleas Court judge for Delaware County, Pennsylvania, used to scold his students when they fell prey to such “implicit assumptions.” He would insist to them that just because a client never thanked them, they couldn’t assume they hadn’t changed the client’s life.

For all his talk of being healed himself,44 my friend Judge Stuart is a lawyer who longs to change the lives of others for the best. He appreciates the inviolable human dignity of each person he encounters in his courtroom and believes 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 wants their lives to become all that they were ever intended to be. He wants to use the law to make their lives masterpieces, and sometimes he succeeds, whether he realizes it or not.45

A few years ago, I was invited to speak about justice at a church near Judge Stuart’s

43 KRONMAN, supra note 18, at 129 (discussing what the “responsible lawyer” would do when confronted with the “‘impetuous’” client).
44 See supra text accompanying note 19.
45 Randy Lee, Bob Dylan’s Lawyers, a Dark Day in Luzerne County, and Learning to Take Legal Ethics Seriously, 38 FORDHAM URB. L.J. 1323, 1348-499 (2012).
home in Oklahoma City, and because I planned to talk about Judge Stuart and his work in my talk, I asked him if he would attend. Judge Stuart informed me that he had other engagements that evening but that he would try to make my talk, and we left it at that.

After the talk, my hosts ushered the attendees through a receiving line of which I found myself a part. One of the people who came through the line was Judge Stuart. He introduced himself to me, as I knew him only by reputation, and we spoke briefly before he indicated that he did not want to hold up the rest of the line. He said that perhaps we could talk more later and then stepped graciously out of line.

Shortly thereafter, a woman came through the line. She took my hand and thanked me for mentioning Judge Stuart in my talk. She said that several years ago her life had been a mess and the State of Oklahoma had wanted to take away her children. She had become a regular in Judge Stuart's courtroom during this period, and at her hearings, Judge Stuart quite frequently had said to her things she did not want to hear and had insisted on her making changes she had not wanted to make.

“I wasn't always happy with him at the time,” she told me, “but thanks to Judge Stuart, my life got better. I can't tell you that I'm perfect now or my life's always easy,” she continued, “but I was able to keep my kids, and I'm on the right track, and we're really a family.”

The woman paused for a moment, and then added:

I work down by the courthouse, and sometimes, when I'm walking by, I think I should go in and thank Judge Stuart for what he did for me and for my children, but then I remember how busy he is and how he wouldn't really have time to talk with someone like me, and I just keep walking, but someday, I would like to thank Judge Stuart for what he did for us.

It was at that moment that I interrupted the woman and asked her if she was serious about wanting to thank Judge Stuart. She looked at me curiously and then indicated that she was, at
which point I said, “Well if you really want to thank Judge Stuart, he's standing right behind you.” The woman turned and gasped, and then threw her arms around the neck of the Honorable Roger Stuart and hugged him.46

If a tree falls in the forest and no one is there to hear it, does it make a sound? If the woman hadn’t come to church, or Judge Stuart hadn’t come to the talk, or I had never been invited, would Judge Stuart still have had a masterpiece? It may not be that there was no reason to thank you: it may be that the thank-you note has been sitting on their desk for two years, or resting in their heart.

Of course sometimes, it is true that there has been no “thank you” because no one else has seen the masterpiece. Sometimes, regardless of how beautiful the masterpiece is, only the lawyer will be able to see it. More likely than not, even a lawyer’s clients will never be able to evaluate a lawyer’s legal performance. A lawyer I knew once told me about how he felt on the brink of retirement as he sat destroying old case files with all his notes and annotations and strategies and realized that only he would ever know all the thought that had gone into everything he had ever done for a client. His story reminded me of a time I came across a great song by an obscure artist on You Tube. As I was listening to this incredible song, I looked down and saw it had less than 1200 hits in two years, almost nothing as musical hits and masterpieces go, barely a quarter-of-a-percent of what Old Lawyer Fight had.47 When I saw that, I had to wonder, “Why doesn’t anyone else get this song? This song is so good; why isn’t this viral? What if I were this artist, and I had done this, and no one got it? How would I feel?” Then I remembered this Hollywood agent advising my songwriter daughter once, “Sometimes, it’s just got to be enough that you wrote a great song.”

47 See supra text accompanying notes 41-42.
But whatever a masterpiece is, is one enough? There’s a story about a little boy who came out to the beach the morning after a great storm.\footnote{See, e.g., Matt Kelly, The Rhythm of Life 279-80 (2004).} The storm had caused what looked to be thousands of starfish to be washed up on the shore, and now they were just lying there on the shore with no way to get back to the sea. When the little boy saw that the starfish could only wait to die, the boy started running along the shore, picking up the starfish one at a time, and throwing them into the sea. A man watched him for a while, and then he walked over to the boy and started to follow him. “It’s no use,” the man kept saying to the boy. “There’s too many of them, you know. You’ll never save them all,” but the little boy kept picking them up and throwing them back, picking them up and throwing them back.

Finally, the man said to the boy, “Look at the beach. For all your work, it’s still covered. You’re not making any difference.”

And the little boy leaned over and picked up one more starfish, tossed it back into the ocean, and then said to the man, “Made a difference to that one.”

Another friend of mine got his start as an advocate doing bail hearings in night court. In the 70’s, he and some of his fellow law students would go over to the courthouse and stay there all night representing people in bail hearings because none of those people had representation.

At first everyone hated them, the guards, the judges, the cops, the DAs, but eventually the students and the staff got to a grudging respect, a professional rapport. As my friend put it, “We found that we could laugh at the same stuff.”

One night, a guy was picked up for something trivial—loitering perhaps, my friend argued for him, and then the judge set bail at a dollar. Now, to this guy, his bail might as well have been set at a million dollars because, of course, the guy didn’t have a dollar, but to everyone else it was only a dollar, and everyone thought it was pretty funny, and they all were
laughing and joking about this guy’s bail just being a dollar. And the guy was standing there not in on the joke, looking around, trying to figure out some way that he could somehow come up with what should have been such a small amount of money when suddenly my friend reached into his wallet, took out a dollar, and slapped it down on the table because, as my friend put it, “This is America, and no one should have to stay in jail in America for a dollar. That’s Dickens. That’s Somalia.”

At first the courtroom was quiet, but then everyone started calling my friend a “schmuck.” “You’ll never see that dollar again,” they told him. Then, the guy asked for my friend’s address, supposedly so he could pay my friend back the dollar, and under the circumstances, my friend felt as though he had to give the guy the address, all of which only made the joke better to everyone else.

 Needless to say, the next day my friend was looking for a little positive reinforcement so he wouldn’t feel so bad about his good deed. When he told his advisor, however, his advisor patted him on the head and told him he shouldn’t have done it, he would never see the dollar again, and he certainly should never have given the guy his address. And, of course, my friend, deep down, knew his advisor was right.

 A long time passed, and my friend didn’t get repaid. None of that mattered to him, however, because even after you’ve realized that in this world you can’t save them all,49 it’s still just wrong to keep someone in prison over a dollar.

Then one day my friend got this brown paper bag in the mail: not an envelope, but a brown paper bag. It was from the guy. My friend could tell from the writing on the bag that writing didn’t come easily for the person who had sent it, but there it was, a brown paper bag, and inside the brown paper bag was a letter, and inside the letter was a dollar.

49 See supra text accompanying note 48.
I heard once that being a lawyer can be tough because even when you’re noble, they disdain you, they disdain your client,\textsuperscript{50} and I wonder what it would be like to have to stand in court and have public servants insisting you can’t be trusted for a dollar, you’re not good for a dollar, your freedom isn’t worth a dollar. I wonder what it would be like to have to take that without a lawyer. Is one masterpiece enough? I think if you asked that client after that bail hearing, he would have said it was.

A different friend went to a two-week leadership conference, and on the last day of the conference, each participant was given three paper cups and told to give the cups to three people at the conference who had impacted his or her life during those two weeks. My friend said they all immediately got caught up in giving out their cups. There was a woman there named Betty, and Betty was an incredible person. Everyone there liked Betty, and everyone immediately went to Betty and gave her one of their cups. There was also a man there named John. John was a nice enough guy; everyone liked John, but John just wasn’t Betty.

As the activity progressed, this giant wall of cups literally formed around Betty. People turned their cups upside down and stacked them as you do when you’re building a pyramid from cups except Betty’s pyramid not only went up; it also kept going out in both directions. One couldn’t see Betty over the wall of cups, but one knew she was back there, very surprised, humbled, and overwhelmed.

John, meanwhile, had not gotten a single cup and was devastated. The people who organized the conference asked John how he felt, but apparently none of them felt moved to give him a cup. I wonder if John would have spent his time at the conference differently had he known the cup activity was coming. Maybe my analogy to \textit{Frosty Returns} was not so

\textsuperscript{50} See supra text accompanying notes 16-18.
misguided—maybe one masterpiece is a lot different than none—certainly it was to John and to
the starfish and to the client who paid back the dollar.

The other night while I was working on this talk, I ordered out Chinese, and at the end of
the meal, the fortune in my fortune cookie read, “Incredible things will happen to you
tomorrow,” and it made me wonder: if my friend from Penn had gotten the same fortune when he
was in law school, would he have thought, “Wow, I bet tomorrow I’ll get that dollar back; that
would be incredible.” Maybe he would have, but I bet he wouldn’t have thought anything like
that. Yet, forty years later, he still has the letter, and he insists getting it was the best thing that
happened to him in law school

In *Harry Potter and the Deathly Hallows*, the last of the Harry Potter books by J.K.
Rowling,\(^{51}\) we learn that goblins believe that “the rightful and true master of any object is the
maker, not the purchaser. All goblin-made objects are, in goblin eyes, rightfully theirs.”\(^{52}\)
Whatever a goblin creates may be *rented* to others, but those objects will always belong to the
goblin who made them.\(^{53}\)

So it is with lawyers and what they create as well. The marks of our brushes, chisels,
blades, and pens will ultimately cover our own lives and the lives of all those we encounter. As
they do, we will be accountable for the images those marks come together to create. Those
images will forever belong to us. That is why we lawyers have been entrusted with making sure
our marks become “a work of art, a masterpiece.”\(^{54}\) We are among the few artists called to paint
upon the canvas of human life.

\(^{52}\) Id.
\(^{53}\) Id.
\(^{54}\) Pope John Paul II, *supra* note 1.
I worked once as a summer associate in Pittsburgh, and my primary assignment that summer was to read and summarize everything that had ever been written about negligent interference with contractual relationships. It was a huge assignment, but my time was relatively cheap, and the issue was at the center of a case worth tens, if not hundreds, of millions of dollars. The client, therefore, wanted to make sure that the firm left no stone unturned.

It was a summer before computer-aided research, and most of the books I needed to read were down at the county law library, shelved in dark and dusty corners to which few others ever needed to resort. I began each day that summer walking down Grant Street from the firm to the library and finished each day walking back. I needed to start and finish each day at the firm in case anyone in the office needed to get in touch with me. No one ever did.

One evening, as I was returning to the office with a friend who on that particular day also had had reason to go to the county law library, I noticed a homeless man caught in the street in front of a curb on Grant Street. This was before Title II of the Americans with Disabilities Act\textsuperscript{55} and curb cut-outs\textsuperscript{56} so Grant Street still had very high curbs. The man had stepped down into the street at the crosswalk seeking to cross, but having done so, he had not been able to raise himself up onto the curb on the other side. The man was walking with two canes, one in each hand, and he had placed the canes like crutches on that opposite curb, but try as he might, he could not find the strength to raise himself out of the street and onto the sidewalk. The bottom of his foot could not clear the top of the curb.

Because it was quitting time, the sidewalks along Grant Street were flooded with people pouring out of the skyscrapers on either side of the street. The river of people was wide and


solid and took in my friend and me as it swept down Grant Street toward the homeless man. As my friend and I approached the man, I managed to observe that as this torrent of humanity approached him, it parted in the street, passed him by, and then reformed on the sidewalk just beyond the man, creating a diamond shaped space around him. My friend and I were busy, engaged in conversation, as we reached the man, but I still managed to enter the diamond, wrap both arms around his waist, lift him onto the sidewalk, and pass him by. Before I was able to pass him, however, I remember he turned his head, and I saw his face.

The whole time, I don’t remember stopping my conversation with my friend, but I do remember after we had gotten a few steps beyond the man, my friend commenting, “That was a very nice thing to do,” to which I responded, “Not really. I’ve been at the library all day so I was already pretty dirty.”

I didn’t think about the man during the remainder of the summer as I worked on my one-hundred-thirty-page memo for my multi-million-dollar case, but as I packed up my things at the end of the summer, I realized that I could still see his face. And it never left me. More than three decades later, I have lost the memo and forgotten the client’s name, but I still remember the man’s face.

If Saint Exupery came back today and bragged to me about his night flight with a million stars, I think I would tell him about that man’s face. I would tell him that when the rest of the world was walking over that man and around that man and even through that man, it was a lawyer, perhaps absent-mindedly but still a lawyer, who picked him up and started him walking again.

57 See supra text at note 14.
“And on some have compassion, and make a difference.”\textsuperscript{58} Such a small and insignificant thing to be a masterpiece. It’s not a house; it’s not a flight; it’s not a cathedral. Yet, it’s still a masterpiece, still our masterpiece.

We live in a crazy, broken world, and it will still be crazy and broken tomorrow. The lawyer who asked me whether a single masterpiece was enough contacted me recently to tell me that he and his wife had bought an old farmhouse, much in need of work but with a beautiful fireplace dominating the living room. He also bought a 1986 pickup. He needed the truck because he and his wife were planning to restore the farmhouse, but only on weekends. During the week he will continue to practice law. He’s convinced that he has masterpieces left in him and that it only takes one masterpiece to make this world a more beautiful place.\textsuperscript{59}

\textsuperscript{58} \textit{Jude} 1:22.
\textsuperscript{59} \textit{See} KRONMAN, \textit{supra} note 18, at 381 (referring to a masterpiece as “a prize of infinite value”).