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Nineteenth Century Visions of a Twenty-First Century Bar: Were Dickens's Expectations for Lawyers Too Great?

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NINETEENTH CENTURY VISIONS OF A TWENTY-FIRST
CENTURY BAR: WERE DICKENS'S *EXPECTATIONS* FOR
LAWYERS TOO *GREAT*?

Randy Lee*

In 1962 the typewriters in a lawyer's office were manual. Copies were made with carbon paper. A lawyer's research was done in books. Documents moved by mail, not overnight and never by fax or email. Phones stayed in one place. Law firms were housed in a single building in a single city, normally on a single floor. American lawyers realized that there were lawyers in other countries, but what these foreign lawyers did and how they did it were of little concern to America's lawyers, the only real exception being the behavior of the English bar whose thinking, if not their wardrobe,¹ would occasionally guide the law here. The United States Supreme Court was exclusively white and exclusively male; the bar as a whole was only slightly different. Legal ethics had been reduced to canons.

Over the next forty-four years, manual typewriters morphed into electric typewriters, then self-correcting typewriters, then memory writers, then word-processors, then desktop computers, and then laptop computers. The books came to share time and space with the Internet. Office copiers replaced carbon paper. The mail gave way to faxes and emails. Office phones gave way to cell phones and instant messaging.

America's larger law firms outgrew their floors, their buildings, and their cities. Some even outgrew their country, sending out missionary lawyers to establish offices overseas. Yet, even as the geographical expanse of the law office grew, the lawyer of the Twenty-first century shed the confinement of

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¹ Charles M. Yablon, *Judicial Drag: An Essay on Wigs, Robes and Legal Change*, 1995 WISC. L. REV. 1129.

physical office space, much as a butterfly sheds a cocoon, to embrace the concept of the virtual office, a series of new technologies, which allowed the lawyer to carry his office with him.

The bar became less white and less male. Blind and deaf lawyers joined the bar.

Government lawyers had their Watergate in 1974. Corporate lawyers had their Enron in 2001. The Code replaced the Canons in 1969. The Rules replaced the Code in 1983. In 2004, Ethics 2000 revised the Rules.² Somewhere along the way, the bar acknowledged a problem with substance abuse and then with mental illness, more recently, with a decline in professionalism.³

Confronted by all this change in a lawyer's world, one might assume that in the forty-four years from 1962 to 2006, the practice of law and its ethical landscape have changed dramatically. That assumption would most certainly invite the related assumption that the ethical landscape of the practice of law will experience equally great changes over the next forty-four years to 2050. Both of these assumptions, however, would be wrong. In fact, despite all the technological advances that are always altering the settings of a lawyer's work, the questions that define the core of who a lawyer is and what a lawyer does remain unaltered by time.

As much as a lawyer's world may seem to have changed since 1962, that world has changed more since the Nineteenth Century. Today, for example, lawyers no longer ride the circuits on horseback, and scribes have long since given way to first carbon paper and then copying machines. Thus, if changes in a lawyer's world marked changes in lawyers' ethics, one might expect that the ethical issues that haunt the lawyers of Charles

² For a discussion of the history of legal ethics in America, see Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 241 (1992); Charles W. Wolfram, *Toward a History of the Legalization of American Legal Ethics-I. Origins*, 8 U. CHI. L. SCH. ROUNDTABLE 469 (2001); Charles W. Wolfram, *Toward a History of the Legalization of American Legal Ethics-II. The Modern Era*, 15 GEO. J. LEGAL ETHICS 205 (2002).

³ See MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICA* 85-87 (1994); Russell G. Pearce, Brian Danitz & Romelia S. Leach, *Revitalizing the Lawyer-Poet: What Lawyers Can Learn from Rock and Roll*, 14 WIDENER L.J. 914-15 (2005).

Dickens's Nineteenth Century novels would be very different from those haunting lawyers today. Yet, recently, an email, of all things, caused me to realize how similar the hard questions for lawyers have remained over the last 150 years. The email, without intending to, spoke to healing the ethical wounds of one of Dickens's most famous lawyers.

In *Great Expectations*,⁴ Dickens introduces us to the lawyer Mr. Jaggers, an incredibly successful, stunningly capable, and conspicuously and explicitly amoral lawyer. Mr. Jaggers does what his profession requires and avoids any emotional or subjective entanglements. His business is the law rather than the lives that he encounters.

Yet, we learn near the book's end, that it was not always so for Mr. Jaggers. In one case, many years before, he represented a woman on a murder charge. This woman had a very young daughter.⁵

The woman was physically strong, impulsive, and prone to violence. She was married to a perpetual con man, and worse, a man who was not above cheating on his wife. The woman, ultimately, killed a mistress of her husband's in a fight.

Jaggers was confident he could get the woman acquitted, but he worried, uncharacteristically, about what would happen to her daughter. The daughter was a beautiful, little girl, still full of life, but she was growing up in a home with a criminal father and a mother capable of killing another human being with her bare hands. Jaggers could not help feeling, despite his best efforts to avoid doing so, that all this was his concern.

About this time, another of Jaggers's clients indicated to him the desire to adopt a little girl. The client was a wealthy woman, who could open up to any child all the opportunities English society had to offer. At the same time, the woman seemed somewhat despondent, even to Jaggers, and, thus, there was every reason to believe that the company of a child would benefit not only the child but the woman as well.

Thus, it was that the attorney Mr. Jaggers set out to do something good in the context of his otherwise amoral career. He

⁴ CHARLES DICKENS, *GREAT EXPECTATIONS* (Barnes & Nobles Classics ed. 1998) (1861).

⁵ For Jaggers's own telling of this story, see *id.* at 393-94.

agreed to represent the accused woman, but his fee was to be the woman allowing Jagers to make the woman's daughter available for adoption. Jagers would then facilitate her being adopted by his client of substantial means.

Initially everything went as Jagers had planned. He won an acquittal for the woman, the daughter was adopted by his wealthy client, and the criminal father was none the wiser. Ultimately, the father was convicted of yet another crime and banished for life to Australia.

Yet, even the *great expectations* of one so accomplished as the attorney Mr. Jagers can be disappointed. Despite his best efforts to do good, everything Jagers set in motion appeared to turn out for the worse. After the loss of her daughter, Molly, Jagers's passionate client, grew ashen and lifeless. Despite the presence of the child, Miss Havisham, Jagers's wealthy client, grew vindictive and resentful. In her lavish but cold home, Estella, the child, grew up understanding herself to be haughty and incapable of loving anyone else. Magwitch, her father in Australia, became a productive and devoted father without a child, a father who fantasized a child to replace the one he no longer believed he had. Perhaps because of such consequences, Jagers apparently never again allowed sentimentality to affect his work.

The email I received, from my friend the Honorable Roger Stuart, a juvenile court judge in Oklahoma County, Oklahoma, ironically offered perfect advice to Mr. Jagers although the email was addressed to present day professionals who attempt to use the law to protect the children of our day. As Judge Stuart's words demonstrate, despite 150 years of progress, we still have children all too often all too similar to those of Mr. Jagers's day, and the issues that surround trying to serve such children remain the same as the issues that haunted Jagers:

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 world's measures 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—as you expressed it, waiting with them.⁶

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 while reading your article and the story of Arthur,⁷ it 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.⁸

Mr. Jagers attempted to save Molly from what we now call a dysfunctional home. He had his great expectations for a "positive outcome" measured in terms of worldly success and middle class lifestyle. By those measures Jagers failed, and he became disillusioned. He escaped to becoming good at what he did, without concerning himself with whether he was doing good for those for whom he was doing it. In light of parallels such as these,

⁶ Randy Lee, *Bruce Springsteen's Hope and the Lawyer as Poet Advocate*, 14 WIDENER L.J. 867, 875 (2005).

⁷ *Id.* at 874-77.

⁸ E-mail from the Honorable Roger Stuart, Juvenile Court Judge, Oklahoma County, Oklahoma, to Randy Lee, Professor of Law, Widener University School of Law, Harrisburg, Pennsylvania (Feb. 24, 2006) (on file with author).

which persist in the lives of lawyers who attempt to heal people, do copying machines, cell phones, and globalization really change the profession all that much?

Mr. Jaggers would have been well-served, 150 years ago, to hear that he could not change the past and had only "a very small handle, if any, on the future." It would have been good for him to hear that as lawyers we need, instead, to "think in terms of today," to remember "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." Perhaps, had he heard that advice back in his own time, he might have stopped trying "to wash his hands" of his clients' lives and embraced them as sources of healing.

Navigating through a desire to do good is not the only ethical struggle that Mr. Jaggers shares with modern lawyers. He also struggled with the pursuit of honesty. Jaggers, for example, took a rather pragmatic approach to telling the truth. He knew, for example, that as a lawyer he must be truthful. He also knew, however, that if he came to know too much about a client's situation, there might be certain things that he would need to be able to say or do for a client that he would not be able to say or do and still be truthful. Thus, to protect his ability to be truthful, Jaggers made it clear to clients that he was not one to be "curious" about those things he could not know.⁹

Mr. Jaggers is not the only character in *Great Expectations* to struggle with what it means to be honest. Each of the novel's characters, in fact, had his own approach to the truth. Miss Havisham, for example, would not tell a lie, but she also felt no compulsion to correct obvious misunderstandings influencing the behavior of those with whom she dealt. While Miss Havisham restricted herself to implicit deceptions, she, herself, was taken in by Compeyson, a con man who found no problem with resorting to the explicit lie. Both the characters Pip and his Uncle Pumblechook were prone to deceive themselves with distortions of reality designed to nourish their own dreams or interests, a

⁹ DICKENS, *supra* note 4, at 319 (Jaggers making sure that Pip does not disclose to him anything about an escaped convict).

tendency Pip, unlike his uncle, ultimately outgrew. Pip's friend Bidly, meanwhile, sought to uncover and confront reality.

For those who might think that such characters as these lived only at the time of Dickens and are no longer with us, even a passing encounter with the Model Rules of Professional Conduct would argue otherwise. While obviously rules like Rule 4.1, which require a lawyer not to "knowingly make a false statement of material fact or law,"¹⁰ are designed to regulate the Compeysons of our time, rules like Rule 4.3, which require a lawyer to speak affirmatively to clear up misunderstandings,¹¹ certainly speak to our Miss Havishams as well. Furthermore, our Pips and Pumblechooks, lawyers who conform reality to their own wishes, can find no protection in their fantasies because of rules like Rule 1.7 (b)(1), which require that a lawyer's beliefs be "reasonable" before they can be acted upon.¹² The Model Rules, in fact, seek to regulate even Mr. Jaggers himself, by, for example, in Rule 1.0 pointing out that even on those issues involving what a lawyer "actually" knew, one can infer a lawyer's actual knowledge "from circumstances."¹³ Recognizing this potential that a court or disciplinary panel might one day view his circumstances in hindsight and proceed to infer from them what the lawyer must have known, a Mr. Jaggers in our day might well feel more shy about believing he can insulate himself from reality simply by ignoring it.

Beyond the compulsions of truth and goodness, other issues for the lawyers of Dickens still face their modern counterparts. Mr. Jaggers's assistant Wemmick desperately sought to be one person at home and another at work. It is a battle that more modern writers like Harper Lee¹⁴ and Tom Shaffer¹⁵ continue to address today. In *A Tale of Two Cities*,¹⁶ Dickens's lawyer Mr. Stryver suffered from

¹⁰ MODEL RULES OF PROF'L CONDUCT R. 4.1(a) (2004).

¹¹ *Id.* R. 4.3.

¹² *Id.* R. 1.7(b)(1).

¹³ *Id.* R. 1.0.

¹⁴ HARPER LEE, *TO KILL A MOCKINGBIRD* 267 (Fawcett Popular Library ed. 1962) (1960).

¹⁵ Thomas L. Shaffer, *On Living One Way at Home and One Way in Town*, 31 VAL. L. REV. 879 (1997).

¹⁶ CHARLES DICKENS, *A TALE OF TWO CITIES* (Barnes & Nobles Classics ed. 2001) (1859).

ambition and a thirst to acquire the trappings of success. Mr. Stryver's primary interest in others, however, related only to their ability to help him get what he wanted, and he had little interest in developing his own skills as a lawyer or being able to take pride in a job well done. Sydney Carton, Mr. Stryver's associate for lack of a better term, was a talented lawyer struggling with hopelessness, despair, a lack of self-worth, and alcoholism. While at first glance the two may appear quite different, Dr. Robert Coles has noted how they are quite the same. Although one still pushes for "money and influence" while the other lacks any desire to bother, both share a "mutual cynicism," both are "in many respects burned out—morally, for sure, and psychologically as well."¹⁷ Each lawyer, in his own way, illustrates the "grip of great sadness" that Mary Ann Glendon has noted surrounding the profession today,¹⁸ and the current crisis in the profession that Anthony Kronman has associated with "growing doubts about the capacity of a lawyer's life to offer fulfillment."¹⁹ Were one, as Dr. Coles suggests, to seek to help Sydney, would one really expect that help to be to facilitate his resuming "work with the Stryvers of this world?"²⁰

Dickens, however, was not content to leave his lawyers to be accountable only for their own behavior; he also required that they be accountable for the law. In that capacity his lawyers often face their harshest judgments.

The law for Dickens was always a character more than a setting. It was alive. It could be an amorphous monster, or it could be simply blind and directionless in its incidental cruelty. It was sometimes wrongheaded, sometimes no headed, but it was never wise, never heroic. It was for Dickens, as Dr. Robert Coles put it, an "awesome, pervasive, perplexing presence."²¹

For Dickens, the law was also a foggy and muddy presence, which "can't abear to part with anything [it] once lay[s] hold of."²²

¹⁷ Robert Coles, *Charles Dickens and the Law*, 1983 VA. Q. REV. 564, 579.

¹⁸ GLENDON, *supra* note 3, at 14.

¹⁹ ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 2 (1993).

²⁰ Coles, *supra* note 17, at 579.

²¹ *Id.* at 567.

²² CHARLES DICKENS, *BLEAK HOUSE* 18, 67 (Signet Classics 150th Anniversary ed. 2003) (1853).

It existed exclusively "to make business for itself"²³ and could tolerate no improvement in the world around it. Hence, it could not tolerate having "any sweeping, nor scouring, nor cleaning, nor repairing going on about" it.²⁴ One could expect that in its care youth, hope, and beauty would be casually devoured.²⁵

In drips and drabs, Dickens would have us know that the law would condemn a man for his father's sins,²⁶ would rush to convict a man so it could execute him before he died,²⁷ could fail to realize the poverty within its domain, a poverty great enough to kill an infant struggling at its mother's breast,²⁸ would imprison a man without realizing he "loves to see the sun shine,"²⁹ and would refuse the testimony of a child because his name's all wrong and his grammar is a "terrible depravity."³⁰ It would refuse that testimony when all the child sought to say was that a dead man that the world thought was no one had been "wery good to me."³¹ Dickens leaves us to hope that, to the mind of a lay person, such actions would "seem[] very strange, as there must be right somewhere," and "an honest judge in real earnest" should be "able to find out through all these years where it is."³²

It would be most comfortable to be able to think the law of our time incapable of engaging in such actions as these, to think that such a law and its judgments must be confined to Dickens's Nineteenth Century, a product of an Industrial Revolution era far removed from our own. Yet, thousands of Dickens's readers today would deny such a confinement of that author's observations. Dr. Coles, for example, has observed that "[i]n the Victorian legal system—its workings, its possibilities for some, its constraints and

²³ *Id.* at 555.

²⁴ *Id.* at 67.

²⁵ *Id.* at 48.

²⁶ DICKENS, *supra* note 16, at 330-31 (the conviction of Charles Evermonde for the crimes of his father and uncle).

²⁷ DICKENS, *supra* note 4, at 432.

²⁸ DICKENS, *supra* note 22, at 123-26.

²⁹ *Id.* at 92.

³⁰ *Id.* at 162-63.

³¹ *Id.* at 163.

³² *Id.* at 73.

worse on others—Dickens keeps managing to embody our century's moral dilemmas."³³ As Dr. Coles has explained,

[t]he law still offers many of those caught in its exertions any number of frustrations, confusions, delays. Men, women, and children still find themselves irritated, then confounded, then outraged, and finally maddened by cases which affect them deeply, and seem to go on and on and on—maybe not for generations, as happened in *Jarndyce v. Jarndyce*, [the law suit that haunts the pages of *Bleak House*] but long enough for particular children to suffer in extended custodial fights, and for particular workers and their families to suffer while the responsibility for, say, dangerous environmental pollution is argued in court for months which become years.³⁴

Today in the face of a world too like Dickens's own, the legal profession, itself, calls lawyers to be what Dickens wished they would more frequently have been in his day, "a public citizen with a special responsibility for the quality of justice."³⁵ In his books, Dickens presented us with lawyers responding to or ignoring this role in a variety of ways: lawyers on the move, lawyers who simply do their job, lawyers who seek to be good and decent in how they do their job even if they cannot be held accountable for the consequences of their profession, lawyers who seek to do their job in the service of good, and lawyers who act in the service of a wrong good. Lawyers today must choose from these roles just as lawyers had to choose from among them in Dickens's day, and the choice is no less important today than it was then. As Dr. Coles puts it, lawyers are called to "struggle with this life's hardships, its terrible lack of justice, a curse for so many" and to "struggle, also, to figure out how to change that state of affairs—through (among other ways) laws written, through laws challenged, through laws argued and argued, through interventions here and there on behalf of one person, then another."³⁶ In 2050, one can only hope that lawyers will still seek to embrace such struggles.

³³ Coles, *supra* note 17, at 574.

³⁴ *Id.* at 567.

³⁵ MODEL RULES OF PROF'L CONDUCT pmb1. ¶ 1 (2004).

³⁶ Coles, *supra* note 17, at 584-85.

Sometimes Dickens is criticized because, it is said, "he saw wrongs, but he failed to give us an overall scheme to right them" particularly a scheme that comports with one of the "various all-encompassing ideologies we have seen at work in this century—ones offering personal and social rehabilitation on the grandest scale."³⁷ It is true, that the world is never perfected at the end of a Dickens novel, but ultimately in those novels, a heart is educated, bettered, or perhaps healed, and for some reason that feels the same to Dickens's most devoted readers.

Thus, for example, from one perspective, the hopeless Sydney Carton was a lawyer who deceived the law when he surreptitiously substituted himself for a man on death row and, even so, did nothing to soften the reign of La Guillotine. From a different perspective, however, Sydney Carton was a lawyer who transcended the law: Carton died for the sins of a law, which had falsely condemned a man, and in doing so, Dickens tells us, Carton brought to the world mercy, hope, and a little justice. Beyond that, however, in his act of sacrifice, Carton was healed himself, and his action won for him more than he had ever dreamed he could have.

Similarly, the upwardly mobile and self-deceiving Pip, addicted to the world, ultimately learned to value that which is truly good and to love without great expectations for what might be in it for him. Though Pip associated with the rich, the worldly, the learned, and the powerful, he learned that his greatest teachers were a humble blacksmith with a pure heart and a convict who saw Pip's acts of kindness in a light more divine than that to which those acts had a right to expect.

It is true that Dickens did not see an accessible solution to saving the world, but that did not prevent Dickens from recognizing that a person might still find a little salvation in this world. Dickens knew that wisdom is more important than information. He knew that truth is accessible and that it matters. He knew that the truth can be that beneath the shell of a convict can be an abused child, a father who has lost a child, and a man who can ultimately still have a good heart. He knew that all of that matters. Dickens knew that the most important lessons are often taught in lowly places and that the wisest and best teachers are

³⁷ *Id.* at 584 (acknowledging but not endorsing these criticisms).

often the broken and humble. He knew that our treatment of the weak is the most accurate measure of who we are as a people and that our callousness to the poor will ultimately punish itself. "Exploitation," as Dr. Coles has pointed out,

cuts both ways—that those who coldly manipulate others, or bring up their children to do so, will pay a stiff price, indeed: the fear, the suspiciousness, the nervous, self-justifying smugness, the isolating arrogance which, in sum, amount to a vision of the blind leading the blind, the meanly powerful worrying about the sadly hurt.³⁸

Dickens knew that even the hearts of lawyers can be healed by serving others. I hope that in forty-four years such knowledge will still be relevant to the bar.

Dickens is not the only Nineteenth Century legal voice who found in his time lessons for ours. Here in America, for example, Abraham Lincoln also articulated moral callings that have proven timeless. For example, in an 1850 lecture Lincoln delivered on lawyering, he highlighted the qualities of "diligence, perseverance, preparedness, poise, peaceableness, morality, honesty, and monetary fairness in one's work."³⁹ Lincoln advised that one should "[n]ever stir up litigation. A worse man can scarcely be found than one who does this," and cautioned "if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer."⁴⁰ On the issue of truth, Lincoln proved willing to play Bidly to an idle brother-in-law's self-deceiving Pip when he advised that relative,

[n]ow do not misunderstand this letter. I do not write it in any unkindness. I write it in order, if possible, to get you to face the truth, which truth is you are destitute because you have idled away all your time. Your thousand pretenses deceive nobody but yourself. Go to work is the only cure for your case.⁴¹

³⁸ Coles, *supra* note 17, at 580.

³⁹ J. Robert McClure Jr., *On the Practice of Law, A. Lincoln*, A.B.A. J., Oct. 1990, at 98, 99.

⁴⁰ *Id.*

⁴¹ *Id.* at 99.

Lincoln, also like the lawyers of Dickens, knew the challenges presented by being a minister of justice in a legal system that is less than just. Lincoln, himself, acknowledged that "I have always hated slavery. I consider it a great moral evil to hold one-sixth of the population in bondage."⁴² Yet, as a lawyer Lincoln worked in a legal system that recognized slavery. He navigated the tension probably differently than Dickens would have instructed him, certainly different than did the surreptitious Sydney Carton, but as best as he, according to his own conscience, could. Lincoln conceded that as long as slavery was constitutional and where slavery was legal, people opposed to slavery had no right to interfere with the rights of slave owners. Lincoln explained,

[l]et me not be understood as saying there are no bad laws, or that grievances may not arise for the redress of which no legal provisions have been made. I mean to say no such thing. But I do mean to say that *although bad laws, if they do exist, should be repealed as soon as possible, still while they continue in force; for the sake of the example they should be religiously observed.*"⁴³

On a more personal level, Lincoln once found himself representing a slave owner. The owner, Robert Matson, was trying to send back into slavery in Kentucky a mother and her children who claimed to have been emancipated by virtue of Matson having brought them temporarily to Illinois. Lincoln sought to win the case on procedural grounds. When that failed and the issue moved to the merits, "[h]is arguments in behalf of a cause he detested were spiritless, half-hearted, and devoid of his usual wit, logic, and invective."⁴⁴ Lincoln lost the case, and when a fund was started to allow the now emancipated family to emigrate to Liberia, one of the first donors was Lincoln's law partner.⁴⁵

Unless one can characterize a spiritless and half-hearted representation as "competent and diligent," let alone zealous, it would seem that Lincoln's attempt to religiously observe bad laws

⁴² ALBERT A. WOLDMAN, *LAWYER LINCOLN* 64 (1936).

⁴³ *Id.* at 65.

⁴⁴ *Id.* at 64.

⁴⁵ *Id.*

while they are yet laws not only fell short of Lincoln's religious standard but also of the standards the bar has set for lawyers today.⁴⁶ It also would seem that in representing Mr. Matson, Lincoln found himself in a place where it was easier to articulate one's views than to live out those views and their consequences. Of course lawyers must still confront that same place today, and needless to say, that place will still be waiting for members of the bar in 2050.

Caught as we are between two milestone years, the beginning of the new millennium and the middle of the Twenty-First Century, what are lawyers to learn from our own history, recent and otherwise, and what are we to learn from the likes of two Nineteenth Century voices like Dickens and Lincoln. I think most importantly we are to learn that a lawyer's world will be very different forty-four years from now in 2050 but a lawyer's life and the ethical answers that define a lawyer will not be. Then, as now, we will have our opportunities to become dispirited like Mr. Jaggars, but we will also have our opportunities to be redeemed like Sydney Carton. We will have our opportunities, as did so many characters in so many Dickens novels, to respond to truth and to be an instrument of mercy, and we will receive our own invitations to embrace a special responsibility for the quality of justice. And each time we will have to decide what to do with these opportunities.

Dr. Victor Frankel, a psychiatrist, observed from his experience as a prisoner in a Nazi death camp,

[w]e who lived in concentration camps can remember the men who walked through the huts comforting others, giving away their last piece of bread. They may have been few in number, but they offer sufficient proof that everything can be taken from a man but one thing: the last of the human freedoms—to choose one's attitude in any given set of circumstances, to choose one's own way.⁴⁷

As we are confronted, both today and in 2050, with our moments to decide how to respond to our opportunities to do truth

⁴⁶ MODEL RULES OF PROF'L CONDUCT R. 1.7(b)(1) (2004).

⁴⁷ Coles, *supra* note 17, at 585.

and justice and mercy, essentially our opportunities to be lawyers, we would do well to remember this lesson learned not only by Dr. Frankel but by Dickens's Pip as well: that as much as our world may change around us, it is always each one alone who controls how he will behave and what he will value in his new surroundings. Each lawyer will always be called upon to choose his own way.