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## THE LAWYER AS CONFIDENCE-MAN

David A. Skeel, Jr.\*

Four former associates of a prominent New York City law firm are bringing each other up to date when the sound of a tourist boat on the Hudson River suddenly interrupts their conversation.

“What’s that noise?” asked Jansen.

From a distance we could hear the sound of a band becoming louder and louder, until a boat with a salsa band on it—people on the boat dancing to the music—passed by on the river. The music then receded, disappearing as the boat went up the Hudson.

“What . . . was that?” asked Voorhees.

“The *Fidele*,” said Urquart. (P. 50.)

As Urquart explains to her puzzled former co-workers, *Fidele* is the name of the steamer that serves as the setting for *The Confidence-Man: His Masquerade*, the last novel Herman Melville wrote before abandoning in frustration his career as a novelist.<sup>1</sup> Urquart recognizes the boat’s name because she has just started reading the book, having turned to it after finishing Melville’s story “Bartleby, the Scrivener,” in which a Wall Street lawyer chronicles his late former clerk’s repeated response, when asked by the lawyer to assist, that he “would prefer not to.”<sup>2</sup> The *Fidele* vanishes from sight almost as quickly as it had arrived, but its appearance prompts an extended discussion both of “Bartleby” and of Melville himself. Urquart points out, much to her friends’ surprise, that Melville’s father-in-law was the famous nineteenth century Massachusetts judge Lemuel Shaw; they also learn that Melville’s father and brother practiced law (p. 52). As this episode suggests, Melville and his work are an important presence in *Lawyerland*. With its lower Manhattan setting and preoccupation with the professional world of Wall Street, *Lawyerland* might even be described as a contemporary version of “Bartleby.”

I will return to these echoes of “Bartleby” later on in this Essay, but the links between *Lawyerland* and *The Confidence-Man* are equally profound and are the ones that will concern me most. Let me begin, then, by describing the novel that ended Melville’s literary career.

*The Confidence-Man* begins on the first of April, when a man “in cream-colors,” who is both deaf and mute, steps on board the steamer *Fidele* as it stops at St. Louis on its way to New Orleans.<sup>3</sup> In keeping with the date, April Fools’ Day, very little in the novel is as it seems. Although

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1. Herman Melville, *The Confidence-Man: His Masquerade* (Hershel Parker ed., Norton 1971) (1857) [hereinafter Melville, *The Confidence-Man*].

2. Herman Melville, *Bartleby, the Scrivener*, in Billy Budd, *Sailor and Other Selected Tales 3* (R. Milder ed., Oxford Univ. Press 1997) (1856) [hereinafter Melville, *Bartleby*].

3. Melville, *The Confidence-Man*, supra note 1, at 1.

the name of the ship, *Fidele*, means fidelity or faithfulness, the steamer is full of the kinds of “confidence-men”—swindlers who win their victims’ trust and then defraud them—who seemed to flourish along the margins of the Mississippi River in Melville’s time.

The novel unfolds as a series of forty-five often disconnected vignettes. Almost the only common thread is that each of the vignettes centers on a confidence-man and his interactions with his fellow passengers. The man in cream colors, who holds up a placard proclaiming with the Apostle Paul that “[c]harity thinketh no evil,” is the first of the confidence-men; he reappears as, among others, the Black Guinea (a beggar who catches the pennies tossed by benefactors in his mouth); a man with a “weed” on his hat; an Herb-Doctor; and a Cosmopolitan.<sup>4</sup> In each of these incarnations, the confidence-man extolls the virtues of “confidence,” of trusting him and others under even the most dubious of circumstances.

Melville’s attempt to, among other things, satirize the pervasive optimism of nineteenth century philosophy and theology,<sup>5</sup> was widely and loudly panned after its publication in 1857. “[W]e close this book,” wrote the reviewer for the *New York Dispatch*, “finding nothing concluded, and wondering what on earth the author has been driving at.”<sup>6</sup> For nineteenth century and many twentieth century readers, the absence of a single, unified central character or a discernable plot made *The Confidence-Man* something less than a real novel. Even now, readers often find it bewildering. When I mentioned to a particularly well-read colleague that I planned to read *The Confidence-Man*, he assured me I would abandon the effort without finishing so much as a single chapter. Why does *Lawyerland*, a late twentieth century story about New York lawyers, draw such explicit attention to Melville’s eccentric, much maligned novel? The answer is both substantive and formal, and will take us to the multiple levels at which *Lawyerland* functions.

The most obvious connection (the “substantive” one) is that lawyers can be seen as the confidence-men of our time. As I write this, I am reminded of a joke I encountered in the Congressional Records of a debate on U.S. bankruptcy law that took place more than a century ago. A Congressman asks his colleagues “[w]hy a lawyer [i]s like a restless man upon a bed.” After a pause, he answers, “[b]ecause he lies first on one side and then turns and lies on the other.”<sup>7</sup> As the joke suggests, lawyers are reviled as manipulative and dishonest, much as stock market speculators, purveyors of herbal remedies, and other confidence-men were in

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4. *Id.* at 2, 7–8, 14, 66–67, 115.

5. It is now generally accepted that Melville based several of the confidence-men in the novel on Ralph Waldo Emerson, Henry David Thoreau, and their transcendentalist philosophy. See, e.g., Hershel Parker, Foreword to Melville, *The Confidence-Man*, supra note 1, at ix (describing commentary).

6. Hershel Parker, Reviews of Melville, *The Confidence-Man*, supra note 1, at 269.

7. 28 Cong. Rec. 4752 (1896).

Melville's day. Yet the disdain is invariably mixed with a measure of admiration. As with confidence-men, we don't trust lawyers, but we also find them somehow irresistible.

At a formal and aesthetic level, the connections between *Lawyerland* and *The Confidence-Man* are equally striking. Both books feature an endless series of characters, rather than a single central character. The characters are distinct individuals, yet somehow connected to one another. In each book, this tension raises questions about the nature of identity and of the self. Is it meaningful to speak generally about confidence-men or lawyers, for instance, as if they have a common, collective identity, or should we treat each of them as an isolated individual? Somewhat related is the question of whether and how our individual identity—our sense of self—is shaped by social, professional, or political pressures.

I begin with the formal questions. Since Lawrence Joseph has long wrestled with issues such as the nature of self in his poems, I briefly consider his poetry at the outset, paying particular attention to the poems that feature lawyers or law. I then trace these same issues to *Lawyerland*. Once the formal and aesthetic issues are clearly in view, we can turn to the substantive question of whether *Lawyerland's* lawyers really are confidence-men.

## I.

Joseph is a poet. Each of his three books of poems<sup>8</sup> is preoccupied with the relationship between private and public identity. A recurring question is, in the words of his poem "An Awful Lot Was Happening," whether "memory [is] structured by public events."<sup>9</sup> Joseph's poems explore this and related questions with a complex set of personal and social motifs, which include, among others, Detroit, New York City, his Levantine heritage, social and economic issues, his family's Catholicism, and, of particular note for this Essay, lawyers and the law.

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8. Lawrence Joseph, *Before Our Eyes* (1993); Lawrence Joseph, *Curriculum Vitae* (1988); Lawrence Joseph, *Shouting at No One* (1983). Joseph's poetry has generated significant critical attention and often lavish praise. A reviewer of *Shouting at No One* wrote that the poems "possess . . . terror and intensity of experience" and "gleam with the sharp edge of their truth; they are hard to forget." James Finn Cotter, *Poetry Encounters*, *Hudson Rev.* 711, 712 (1983-1984). The review of *Curriculum Vitae* in the *Village Voice* marveled at Joseph's "graceful touch and virtuoso timing" as he "wheels through descriptions of Lebanese massacres, family reminiscences, points of law, questions of religious doctrine, erotic memories—all of it as raw-nerved and vivid as insomniac ruminations should be." Matthew Flamm, *Upscale Tale*, *Village Voice*, Nov. 29, 1988, at 66. In terms that resonate with some of the issues I explore in this Essay, the *MultiCultural Review* characterized Joseph's writing in *Before Our Eyes* as "an aesthetic of inner and outer, public and private, physical fact and abstract speculation. This melding of opposites is appropriate for a poet who embodies many of the contradictions of American society today." Reagan Upshaw, *MultiCultural Rev.*, June 1994, at 77, 77.

9. Lawrence Joseph, *An Awful Lot Was Happening*, in *Curriculum Vitae*, supra note 8, at 39, 39.

Throughout Joseph's poetic career, classical assumptions about the nature of personal identity, or the self, have been under relentless attack. In literature, the traditional view that the authorial self can be distinguished from the world implied that the author or poet controlled the nature and meaning of the work she had created. Decades of literary criticism have now called this comfortable assumption into question. Stanley Fish's postmodernist manifesto, *Is There a Text in this Class?*, is perhaps the best known example of this critique.<sup>10</sup> Fish insists that meaning comes as much from the readers of a work as from the author, and that the perspectives of both are determined by the social context in which they find themselves. At any given time, he argues, the readers of a text comprise an "interpretive community" that determines whether and why a particular work is significant.<sup>11</sup>

Like other contemporary writers, Joseph has long been aware of these developments in the critical avant garde. In an essay entitled "Theories of Poetry, Theories of Law," Joseph notes, more with wonder than dismay, that "the romantic writer's belief in the self's power to shape reality through language, and the realist's sense of language as an accurate expression of factitious reality," were abandoned as untenable by the twentieth century modernist poets.<sup>12</sup> Joseph's own poetry reflects this complicated relationship between poet and text, and between self and world. While Joseph's poems continually call these longstanding distinctions into question, however, the distinctions are never abandoned altogether. The narrative "I" is frequently "decentered" in Joseph's poems, and it is constructed in important part by public events, but it never vanishes entirely.<sup>13</sup>

"You breathe yellow smoke," Joseph writes in "When You've Been Here Long Enough," a poem from *Shouting at No One*, his first book.<sup>14</sup> "[Y]ou breathe lead / beside the river, talking out loud to no one."<sup>15</sup> The speaker of the poem is, on one level, an observer, distinct from the gritty realities of Detroit that he describes: the "streetcar in the snow"; the waitress insisting that the streets would be safer if troublemakers were simply hanged; and the woman who gently touched the speaker's head

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10. Stanley Fish, *Is There a Text in this Class?: The Authority of Interpretive Communities* (1980).

11. *Id.* at 2-3 (describing role of reader in creating meaning); *id.* at 10-11 (emphasizing influence of community norms); *id.* at 343-44 (describing shifts in meaning among different communities of interpretation). Fish has elaborated on his views in a series of articles applying these insights to the interpretation of legal texts. See, e.g., Stanley Fish, *Working on the Chain Gang: Interpretation in Law and Literature*, 60 *Tex. L. Rev.* 551, 555-57 (1982) (criticizing Ronald Dworkin's theory of interpretation).

12. Lawrence Joseph, *Theories of Poetry, Theories of Law*, 46 *Vand. L. Rev.* 1227, 1230 (1993).

13. As we shall see, these same questions of identity, and the relationship between the narrative "I" and the world, also permeate *Lawyerland*.

14. Lawrence Joseph, *When You've Been Here Long Enough*, in *Shouting at No One*, *supra* note 8, at 49, 49.

15. *Id.*

when he was a child and later slashed her wrist in the La Moon Manor Hotel.<sup>16</sup> On another level, however, the speaker's intense awareness of social reality is not simply an observation. The sights and events that the speaker describes have become part of the very fabric of his self. "Alone, early morning, on the Wyoming Crosstown bus," Joseph writes in the poem's closing lines, "you feel the need to destroy, like everyone else, / as the doors open and no one comes on."<sup>17</sup> In a more recent poem, the narrator states simply: "[E]verything attaches itself to me today."<sup>18</sup>

Joseph has often used lawyers and legal practice to explore these issues of personal and social identity. "Do What You Can," one of several poems in *Shouting at No One* in which legal motifs figure prominently, describes the jury in a criminal case as being "instructed / on the Burden of Persuasion and the Burden of Truth."<sup>19</sup> By capitalizing these terms, and including a burden (the Burden of Truth) that does not appear in any lawbook, Joseph alerts us that moral and ontological issues are at stake, not just technical legal ones. The truth of the legal system, at least as the characters of the poems experience it, is often oppressive. Thus, when the defendant in the poem receives a twenty to thirty year sentence and says, "I can't do that kind of time," the judge responds, "[t]hen do what you can."<sup>20</sup>

The law is not simply an ominous presence in *Shouting at No One*, however. The narrators' familiarity with the judicial system also serves as a source of countervailing power, even hope. In "I Think About Thigpen Again," the narrator reads in "the record of the criminal court" about Thigpen, a basketball star from his high school who was later murdered, and who left behind poems about "babies / in frozen tenements" and "the love a woman makes."<sup>21</sup> Thigpen's dream of becoming "the poet of this hell" was snuffed out with his murder, but the narrator's access to the court records enables him to make sense of Thigpen's death, on some level, and to speak out on Thigpen's behalf. When the narrator of a subsequent poem says, "I am the poet of my city,"<sup>22</sup> we cannot help but remember Thigpen, whose story has become part of the narrator's own identity and magnifies the testimony of the poems.<sup>23</sup>

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16. Id.

17. Id.

18. Lawrence Joseph, In the Age of Postcapitalism, in *Curriculum Vitae*, supra note 8, at 3, 3.

19. Lawrence Joseph, Do What You Can, in *Shouting at No One*, supra note 8, at 52, 53.

20. Id. at 53.

21. Lawrence Joseph, I Think About Thigpen Again, in *Shouting at No One*, supra note 8, at 11, 11-12 [hereinafter Joseph, I Think About Thigpen Again].

22. Lawrence Joseph, There is a God Who Hates Us So Much, in *Shouting at No One*, supra note 8, at 42, 44.

23. As we will see, the same events depicted in "I Think About Thigpen Again" resurface in the concluding section of *Lawyerland*, "McKnight Was Murdered" (pp. 201-25).

2001]           LAWYERLAND: *LAWYER AS CONFIDENCE-MAN*           1755

In *Curriculum Vitae*, the legal frame of reference expands to encompass civil as well as criminal law. In "Any and All," an associate in a prominent New York firm ("No. 54/Wall Street") recounts the breathless pace of a corporate deal. "Polen," he says:

wants you in his office immediately.

The lawyers from Mars and the bankers  
from Switzerland have arrived to close the deal,

the money in their heads articulated  
to the debt of the state of Bolivia.<sup>24</sup>

The power in this poem and throughout *Curriculum Vitae* is the power of money—the pressure that capitalism exerts on language and on individual lives. As with the criminal justice system in *Shouting at No One*, Wall Street legal practice is both constitutive of the narrator's identity and a social reality that he subjects to sustained moral and linguistic critique.<sup>25</sup> The life of a law firm associate does not come off well in these poems. "You're a monkey and you work for him," is how the associate in the poem just mentioned sums up his relationship with a partner in the firm.<sup>26</sup> Despite their precarious status within the firm, the narrators' facility with the language of elite law practice empowers them in other contexts; and, for better or worse, both of these social realities are integral to their private identities, their sense of self. "When . . . the renowned poet and critic / professor is quoted decrying / the demise of English forms," the narrator points out with dry irony in another poem, "I write Esquire after my name."<sup>27</sup>

The poems of *Before Our Eyes*, Joseph's third book, call attention to their status as language, as aesthetic objects, more explicitly than either of his previous books.<sup>28</sup> But we see the same tension between personal and social reality, and the same motifs. Both "Material Facts" and "Admissions Against Interest" take a legal term of art as their title and pursue its implications as language, as legal directive, and as an aspect of the narra-

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24. Lawrence Joseph, Any and All, in *Curriculum Vitae*, supra note 8, at 49, 49 [hereinafter Joseph, Any and All].

25. The words Joseph uses to describe the poetry of Hans Enzensberger also apply to Joseph's own poems. Enzensberger, Joseph writes, was determined to "resist any subordination of individual consciousness and conscience to mass-created collectivizations, whether in the form of the 'state,' 'culture,' or 'society.' . . . As a moralist, . . . he'd insistently infuse considerations of right and wrong and good and evil in his work, with aphoristic concision." Lawrence Joseph, Preface to Hans Magnus Enzensberger, *Kiosk*, at ix, x (Michael Hamburger & Hans Magnus Enzensberger trans., 1999) (1995). Joseph also notes that Enzensberger's poems (again, like Joseph's own) deal with "the political economy of finance capital (an imaginative concern Enzensberger shares with Dante, Ezra Pound and Goran Sonnevi)." Id. at xi-xii.

26. Joseph, Any and All, supra note 24, at 51.

27. Lawrence Joseph, I've Already Said More Than I Should, in *Curriculum Vitae*, supra note 8, at 13, 13 [hereinafter Joseph, I've Already Said More Than I Should].

28. See David A. Skeel, Jr., Practicing Poetry, Teaching Law, 92 Mich. L. Rev. 1754, 1754-56 (1994).

tor's sense of identity. Each of the poems draws particular attention to the deeply unstable but nevertheless real boundaries between the narrator's self and the "outside" world. In "Material Facts," the narrator of the poem, the "I," is decentered almost completely into the social realities of the poem, which include a gunshot on the subway, a man flirting with a server at Caffè Giotto, and a child imitating Popeye the Sailor.<sup>29</sup> The narrative "I" surfaces only briefly, to say "I'm cool," and is distanced still further when Joseph subtly shifts pronouns from "I" to "you" in the final two stanzas of the poem.<sup>30</sup> In "Admissions Against Interest," the narrator makes an explicit, darkly comic reference to the status of the narrative "I."<sup>31</sup> "Mind you," he says, "my primary rule: never use the word 'I' unless you have to, / but sell it cheaply to survive."<sup>32</sup>

Although most of the legal motifs in *Before Our Eyes*—the "sentencing" power of the criminal law, the connection between law and high finance—are familiar from Joseph's earlier poems, the language of the poems is more refractive than ever before. As in the two poems just described, the narrative "I" is an increasingly unstable vantage point from which to view the exterior world. The lawyer narrators are treated as both subject and object. Even more than in Joseph's previous books, the narrators both shape and are shaped by the swirl of events around them, by the pressures that reality brings to bear on the self.

## II.

This brings us to *Lawyerland*. What, we might ask, do the poems have to do with a prose book about lawyers? As much as the reviewers of *Lawyerland* have puzzled over its form—is it nonfiction, a novel, or perhaps a nonfiction novel?<sup>33</sup>—no one has called it poetry. Nor should they. What is more surprising is that *Lawyerland*'s readers have not looked to the poems for insights as to what Joseph is up to. As we have seen, Joseph's poetry reflects an imagination acutely conscious of form. The poems in each book, and the books themselves—clearly imagined as books of poems, rather than simply collections—are intricately interconnected. We can be sure both that *Lawyerland* uses and extends the poetic project

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29. Lawrence Joseph, *Material Facts*, in *Before Our Eyes*, supra note 8, at 7, 7–9.

30. *Id.* at 7, 9.

31. Lawrence Joseph, *Admissions Against Interest*, in *Before Our Eyes*, supra note 8, at 10, 11.

32. *Id.* at 11.

33. See, e.g., Christopher Lehmann-Haupt, *Tort and Retort: Lawyers v. Lawyers*, N.Y. Times, May 29, 1997, at C20 (characterizing the book first as "eight nonfiction pieces in the form of short stories," then as "essays"); Phillip Lopate, *Court and Spark*, Esquire, June, 1997, at 30, 30 ("Joseph's book defies category—it is part anthropological report, part performance piece."); Vijay Seshadri, *Law Talk: Revealing a Profession's Private Language*, New Yorker, July 14, 1997, at 82, 82 ("[I]t isn't long before we begin to wonder whether we're in the hands of a writer driven by the occult agendas of fiction rather than the more straightforward ones of journalism.").



2001]      LAWYERLAND: *LAWYER AS CONFIDENCE-MAN*      1757

in some way, and that prose opens avenues that would not be available to Joseph in verse.

Indeed, the lawyers in *Lawyerland* all but tell us this themselves. Go back to the passage we considered at the outset of this Essay, the conversation among four former law firm associates. After their brief discussion of *The Confidence-Man*, Urquart—who has time to read, she says, because she “[doesn’t] play golf”—gives her three male friends a brief lecture on “Bartleby” (p. 51–53). Urquart is fascinated by Melville’s reference to the Wall Street address where Bartleby works:

His office is at number-dash—capital N, small o, period, for number, then a long dash—Wall Street. I love the dash, don’t you? That’s the way it’s written in the story. Melville didn’t want to say exactly where the office was. His father and brother, apparently, were lawyers. His brother’s firm was located at 10 Wall. (Pp. 51–52.)

Urquart’s paeon to Melville’s dash calls attention to Joseph’s own use of this punctuation mark throughout *Lawyerland*. It is hard to think of another literary work that is so full of dashes this side of the *Collected Poems of Emily Dickinson*.<sup>34</sup> Dashes are everywhere: There are ten on the page just quoted, page 52, alone. The dashes serve both to intensify the lawyers’ dialogue and to speed it up, splicing from one thought to the next. “Mallorn was it for me,” Urquart says, recalling her decision to leave the prominent firm where they “worked at number-dash Wall Street.”

I got assigned to—he was the senior associate—this horrendous real estate case. The client was this old-line real estate family, the Godwins, an old client. A *God-awful* case. Tons of documents, terrible minutiae—I don’t know if I’ve ever told you this. We were plaintiffs—Brownwell Elliot was on the other side. I can’t remember a thing about it—it had to do with the terms of a ground lease. A twenty-million-dollar case. Mallorn was in way, I mean way, over his head. (Pp. 53–54.)

Urquart’s reference to “number-dash Wall Street” reinforces the fictional dimension of her account, and her comments on Melville’s use of the dash alert us to the formal effects of the dashes in *Lawyerland* itself.<sup>35</sup> Although formal considerations are central to *Lawyerland*, just as with Joseph’s poems, the overall effect is remarkably different when Joseph shifts from poetry to prose. Joseph’s poetry is highly compressed, and calls at-

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34. *Collected Poems of Emily Dickinson* (Mabel Loomis Todd & T.W. Higginson eds., Gramercy Books 1982) (1890).

35. Joseph also alludes to Melville’s “number-dash Wall Street” in one of his poems, “Any and All.” As noted earlier, the narrator in “Any and All” works for a firm located at “No. 54/Wall Street.” Joseph, *Any and All*, supra note 24, at 49. Like “number-dash Wall Street,” “No. 54” is a fictional address. Joseph has described “Any and All” as an attempt “to reinvent, in a poem, the equivalent moral and social impact of Melville’s ‘Bartleby the Scrivener.’ (A legal scrivener in Melville’s time served the same function as an associate in a law firm today.)” *For A Living: The Poetry of Work* 383 (Nicholas Coles & Peter Oresick eds., 1995).

tion to its status as words on a page. By contrast, the voice-driven prose of *Lawyerland*, its endless “talk” (for lack of a better word) zips along the surface, giving at least the appearance of transparency.

Because of this transparency, and because each of *Lawyerland*'s lawyers speaks in his or her own voice, it is not immediately obvious that *Lawyerland* shares the same obsession with the nature of identity as Joseph's poems. But it does. *The Confidence-Man* once again serves as a useful guide. Melville's readers had great difficulty with this novel, in no small part because it lacked an obvious central character. Yet Melville's “masquerade” did have a central character, Satan, *the Confidence-Man*; and the tension between his single, unified self and his many masks lies (in both senses of the word) at the heart of the novel. A reader of *Lawyerland* should not make the same mistake as Melville's audience, reading the book as a series of unrelated dialogues. As with the scam artists in *The Confidence-Man*, Joseph's lawyers share a common identity as well as distinct ones. Much like the confidence-men, the lawyers in *Lawyerland* can be seen as shifting, metamorphosing instances of a single, universal “lawyer.” It is as if, Joseph himself has said, “there's [a] lifting of masks, one after the next, through voices.”<sup>36</sup>

The most remarkable evidence of the complexity of identity comes with the narrator himself. Unlike the narrator in *The Confidence-Man*, who has no obvious connection to the wily scam artists he describes, Joseph is himself a lawyer, as well as the author and “interviewer” of *Lawyerland*. It is never quite clear whether we should view the narrator of the novel as Joseph, as one of the lawyers, as an outside observer, or as some combination of these identities. The narrator might tell us how to construe his role, of course, but he does nothing of the sort. Quite to the contrary, the narrator, and the narrative “I,” simply disappears into the lawyers' dialogue.<sup>37</sup> After figuring prominently in the first section, “Robinson's Metamorphosis,” the narrator becomes nearly invisible throughout much of the book. The narrator's former associates carry on as if the narrator did not exist in “Something Split,” the second section, and his voice is rarely in the foreground in the vignettes that follow. Yet, just when we have all but forgotten that he exists, the narrator reappears in the final section and recounts an important aspect of his own story, the same Detroit murder Joseph had written about in his early poem, “I Think About Thigpen Again.”<sup>38</sup>

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36. Interview by Joyce Jenkins with Lawrence Joseph, in San Francisco, Cal. (Oct. 5, 1997) (on file with the *Columbia Law Review*). This tension between single and multiple identity has intriguing implications for the suggestion by some readers that there is a sameness to *Lawyerland*'s characters.

37. In other works experimenting with the interview form, Joseph has employed the opposite technique: Rather than submerging his voice, Joseph has conducted interviews consisting entirely of his responses to imaginary questions from an imaginary interlocutor. See, e.g., Lawrence Joseph, Reflections on Law and Literature (Imaginary Interview), 59 *Saskatchewan L. Rev.* 417, 418–30 (1995).

38. Joseph, *I Think About Thigpen Again*, *supra* note 21, at 11–12.

A delicious irony in the narrator's silence is that Joseph has been described, and has described the "self" of his poetry, as a passionate and energetic conversationalist.<sup>39</sup> Several poems in *Curriculum Vitae* allude to this very lawyerly attribute. "[Y]ou could tell by the way I talked / I didn't know when to stop," says the narrator of one poem;<sup>40</sup> and another concludes, "I've already said more than I should."<sup>41</sup> The fact that the same "I" who has so much to say in these poems disappears for much of *Lawyerland* is both clever and deadly serious. Joseph continually explores the nature of identity in his poems, as we have seen, and the disappearance of the narrative "I" underscores that the same concerns are at work in *Lawyerland*. Each lawyer is imagined as a distinctive self; yet their private identities are also shaped both by public pressures and by the distinctive legal language they share.

### III.

Shortly after I wrote this Essay, we read and discussed *Lawyerland* in a seminar I teach called "Law, Literature, and Interpretation." As we worked through many of the issues I've just explored, the conversation kept turning back to a single question: Why do so many of the lawyers in *Lawyerland* seem dissatisfied? One student described the lawyers as "cynical and angry." Another noted that the book "present[s] a very unattractive portrait of lawyers." The lawyers come off, she concluded, as "disrespectful," manipulative, and unethical.

A few minutes later, when we read six or seven of Joseph's poems (including most of the poems described in the first part of this Essay), the reaction was quite different. There was general agreement that the narrative "I" of the poems—when adopting the voice of a lawyer—speaks in a voice that is compelling and appealing, clearly concerned about questions of value and meaning. I found, and find, myself wondering why the class found *Lawyerland* so disturbing as compared to the poems.

One reason may be, as the poet Wallace Stevens once said, that "[a] change of style is a change of subject."<sup>42</sup> The narrative "I" of the poems is interior and personal. *Lawyerland*, by contrast, is almost entirely one form or other of exteriorized talk. Because the narrative is constructed from the lawyers' conversations, and takes place on a plane that is, in a sense, external to the characters themselves, the personal is rarely in the foreground. The "interior" or the private is not a part of the book's language. Perhaps this is what makes the lawyers of *Lawyerland* seem more distant and detached, less intimate than the narrative "I" of the poems.

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39. See, e.g., Joseph, *Curriculum Vitae*, supra note 8, at back cover (quoting poet James Merrill describing Joseph as a "lively, fastidious, cosmopolitan talker").

40. Lawrence Joseph, *Curriculum Vitae*, in *Curriculum Vitae*, supra note 8, at 7, 7.

41. Joseph, *I've Already Said More than I Should*, supra note 27, at 15.

42. Wallace Stevens, *Opus Posthumous 197* (Milton J. Bates ed., 1989).

Added to this is the much narrower subject matter of *Lawyerland*. The lawyers talk almost entirely about the law, and only incidentally about spouses, children, or their nonprofessional lives. In class, someone asked whether we might react similarly to the shop talk of any group of professionals. Would a novel whose characters are all corporate executives or successful salesmen have the same kind of effect? In some respects, yes. No doubt the business talk and complaints about peers would seem impersonal, even soulless. But I also think there is something different about lawyers and the legal profession. The students, as future lawyers themselves, seemed to bring an edginess, a preexisting trepidation about legal practice, to their reading of *Lawyerland*.

Let me suggest several possible ways in which *Lawyerland* may have reinforced their preconceptions. In doing so, I will return to the theme of lawyers as the confidence-men of our time. A recurrent theme in *Lawyerland*, as in Joseph's poems, is the relationship between law and power.<sup>43</sup> Even more than the narrators of Joseph's poems, *Lawyerland's* lawyers seem to experience this power as violence on others, and as an assault on their ideals. Wylie, a partner in the firm deserted by the four associates mentioned at the outset of this Essay, is a particularly good illustration. After he recounts the suggestion by another partner's psychiatrist that lawyers engage in "deep moral compromise," Wylie tells the narrator: "We all know there are times when you're working on some deal that, if you were to think it through, you'd realize that it was going to ruin the lives of thousands of people and their families" (p. 41).

What many of *Lawyerland's* lawyers do, moreover, is manipulate truth. "Remember," a judge tells the narrator, "lawyers are the ones who invented spin. Spin's a public-relations term for what every lawyer knows how to do—if you have to, you change the story" (p. 74). Spin is a nice, or at least somewhat neutral, word for what others might call lying. That, in fact, is precisely how one of the judge's doctor friends sees things. The single most important characteristic of lawyers, he tells her, is that they are liars (p. 68).

So *Lawyerland's* lawyers perceive themselves, or are perceived by others, as immoral and dissembling, just like the confidence-men of Melville's time. To make matters worse, both *Lawyerland's* lawyers and Melville's confidence-men operate in an atmosphere of apparent fellow feeling. In *The Confidence-Man*, Melville's characters constantly beseech their victims to have trust. "Charity believeth all things," says one version of the deaf-mute's placard in the opening vignette;<sup>44</sup> and the Cosmopolitan, a subsequent confidence-man, tells a barber, who has a sign saying "No

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43. Joseph has also explored the connection in other contexts. See, e.g., Lawrence Joseph, On Kronman's 'Rhetoric,' 67 U. Cinn. L. Rev. 719, 725 (1999) ("Then there is power. Lawyers possess it. The source of this power is in no small part a result of access to a language and knowledge system that operates within (and actively defines) political power.").

44. Melville, *The Confidence-Man*, supra note 1, at 2.

Trust" (which means that the barber accepts cash only, not credit), that the sign is an "insult" that "[takes] the whole haughty race of man by the beard. Surely, you don't mean to say, in so many words, that you have no confidence," he complains.<sup>45</sup> Lawyers, too, trade on trust. Clients place their trust in their lawyers, and lawyers' oath of fidelity to the law implies that they will deal with opposing lawyers in a trustworthy fashion. Yet *Lawyerland's* lawyers often seem disaffected with the system in which that trust is placed. Robinson, a criminal defense lawyer, recounts, for instance, how an Assistant U.S. Attorney who had been the victim of an attempted burglary used a "very sexy thirty-two-, thirty-three-year-old D.A. . . . to seduce the grand jury into indicting" the Chinese Serbian defendant for attempted murder and a slew of other offenses (pp. 8–10).

Yet I'm not sure the vision of *Lawyerland* itself, as opposed to our worst fears about lawyers, is entirely pessimistic. For all their disaffection, many of *Lawyerland's* lawyers long for something beyond their self interest. Nor do all of the lawyers express uneasiness about themselves and their profession. Urquart, for instance, the lawyer who gives her three friends the brief lesson on Melville, worries about the "acceleration" of the law and forthrightly refers to a former colleague in morally pejorative terms. But she does not appear to see herself as a lawyer negatively. "Everything's moving so fast!," she exclaims to the narrator. "It takes so much energy just to find time—any time—to just slow it all down a little. I know that sounds a bit dire, but that's not how I mean it" (p. 56). Urquart now works as an associate counsel for a securities firm, is happily married, and has a two-year-old child.

Why in the midst of the dissatisfaction are there hints of hope? Is it because law is a necessary social system, and lawyers solve problems and help people within that system? Perhaps there is something collectively fulfilling in being part of a group of people constantly trying to adjust to, and guide themselves and their clients through, an ever-changing maze of social and moral issues. Law and the legal system by their very nature involve scarcity and pain. Often justice is not done, but sometimes it is. And when it is, lawyers invariably play a part.

As Urquart and the other three lawyers are walking toward the southern tip of Manhattan at the end of their conversation, they notice an inscription quoting Walt Whitman, the famously optimistic poet. "CITY OF THE WORLD FOR ALL RACES ARE HERE ALL THE LANDS OF THE EARTH MAKE CONTRIBUTIONS," Voorhees reads (p. 57). After they are distracted briefly, Urquart asks Jansen to read the remainder of the inscription, and he does: "CITY OF THE SEA . . . PROUD AND PASSIONATE CITY METTLESOME MAD EXTRAVAGANT CITY WALT WHITMAN" (p. 58).

The reference to the poet Walt Whitman at the end of a conversation that began with the novelist (and poet) Herman Melville suggests

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45. *Id.* at 194.

that there is room in the New York legal world of *Lawyerland's* lawyers for both pessimism (the Melvillean side of the American psyche) and optimism (the Whitmanesque side). Urquart herself seems to retain her values and moral focus, despite the confusion of contemporary legal practice. We see this desire for meaning elsewhere in *Lawyerland*, too, as with a lawyer who rhapsodizes about the "desire to be perfectly at one with another human being" (p. 187).<sup>46</sup>

Notice how the thirst for meaning distinguishes the lawyers of *Lawyerland* from confidence-men. A confidence-man who refuses to play on his victims' credulity is no longer a confidence-man, but a lawyer who craves meaning does not cease to be a lawyer. For all their carping about the difficulties and moral compromise of legal practice, not one of *Lawyerland's* lawyers has left the legal profession. Indeed, we can construe the very unhappiness of the unhappiest of the lawyers as evidence that they expect a great deal of themselves and their profession. I am reminded of a statement by William Howard Taft, the early twentieth century President and Supreme Court Justice: "I love judges, and I love courts. . . . They are my ideals, that typify on earth what we shall meet hereafter in heaven under a just God."<sup>47</sup> It is hard to imagine any of the lawyers of *Lawyerland* making this statement, yet surely their aspirations for the law are not dissimilar. They bicker and complain, but they seem to yearn for meaning in their own lives, and they never entirely abandon their confidence that within the depths and complexities of the law, they just might find it.

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46. Another lawyer is fascinated by the Confucian inscription on a statue, which states, in part: "When the Great Principle prevails the world is a Commonwealth in which rulers are selected according to their wisdom and ability" (p. 192) (capitalization omitted).

47. Nathan Miller, *Theodore Roosevelt: A Life* 485 (1992) (quoting William Howard Taft).