

Doing Justice to the Potential Contribution of Lyric Poems

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No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry

Felix Frankfurter³

A good advocate makes all the right points, but a great one inspires an audience to listen and reflect upon them. Law school teaches the proto-lawyer⁴ how to think; the student learns to make the right points, but not necessarily how to make *others* think.⁵ This faculty is difficult to define or explain; some advocates seem to have a natural ability to connect with readers and listeners, while others rarely extend beyond conveying concrete principles. The following essay offers lawyers a way to tap into the art, not simply the mechanics, of persuasion. We contend that lawyers can become more compelling advocates by reading lyric poetry.

Let us acknowledge from the outset that we anticipate a bit of skepticism. Poetry may sound too “artsy” to have an impact on the practice of law, but the belief that style is important to legal discourse, and that poetry can contribute to style, is not novel. Quintilian, one of the earliest known instructors of legal

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³ Felix Frankfurter, *Advice to a Young Man Interested in Going into Law*, in 2 *THE WORLD OF LAW* 275 (Ephraim London ed., 1960).

⁴ We thank Kenneth Ledford for coining this term.

⁵ “The difficult task, after one learns how to think like a lawyer, is relearning how to write like a human being.” Floyd Abrams quoted by TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER’S GUIDE TO WRITING WELL* 4 (1989).

rhetoric, made the point nineteen centuries ago: "Discourse ought always to be obvious, even to the most careless and negligent hearer; so that the sense shall strike his mind, as the light of the sun does our eyes We must study, not only that every hearer may understand us, but that it shall be impossible for him not to understand us."⁶

Everyone must admit, however, that some advocates have a more persuasive style than others. In fact, many commentators lament the poor advocacy skills that are too commonly found in the legal profession.⁷ Lawyers sometimes seem unable or unwilling to think seriously about their own persuasive acumen. Part of the problem may be arrogance,⁸ time pressure,⁹ intellectual laziness, or simply the result of being uninformed.¹⁰ Some law schools give short shrift to written and oral advocacy: professors seldom teach it directly. Perhaps style, unlike the pure mechanics of the law, cannot be taught in a classroom at all.

Quintilian would have agreed with an observation made by Terri LeClercq: "The real progress will occur through daily, deliberate, repeated experiments with technique."¹¹ He himself maintained that "it is *habit* and *exercise* that chiefly beget facility."¹² Our aim is to present poetry as a lawyer's source material, for reading poems can give advocates the opportunity to evaluate their own persuasive skills. To reflect on poetry allows an attorney to consider not only the ideas a poem conveys, but also the linguistic form in which they are expressed.

Our argument takes shape around two types of source material. First, we have chosen lyric poems that we find compelling. Our discussion of these selections exemplifies the sort of reflection upon poetry we prescribe for lawyers. We realize, of course, that poems mean different things to different people. Ours is but one set of lessons to be drawn from these works. Second, we have excerpted some poets' views about what poems are, what they can do, and how we ought to approach them. We

⁶ Quoted in Hugh Blair, *LECTURES ON RHETORIC AND BELLES LETTRES* 185 (Harold F. Harding ed., 1965). Quintilian (40?-95? C.E.) taught and practiced law and is best known for his 12-volume *INSTITUTO ORATORIA* or *THE EDUCATION OF THE ORATOR*. In Ancient Rome, orators were pleaders, in other words, lawyers.

⁷ See generally FRANK M. COFFIN, *A LEXICON OF ORAL ADVOCACY* (1984).

⁸ HENRY WEIHOFEN, *LEGAL WRITING STYLE* ix (2d ed. 1980).

⁹ TERRI LE CLERCQ, *EXPERT LEGAL WRITING* 3 (1995).

¹⁰ *Id.* at 16-17.

¹¹ *Id.* at 7.

¹² *QUINTILIAN ON THE TEACHING OF SPEAKING AND WRITING* 155 (James J. Murphy ed., 1987) (emphasis in the original).

offer these as guidance for the attorney who is unclear as to what benefits can be drawn from reading lyric poetry.

Before presenting our argument, one scholar bears mentioning as an inspiration for this project. In her book *Poetic Justice*, Martha Nussbaum considers how reading literature affects one's ability to incorporate empathy into reasoning.¹³ She explicitly leaves open the question of poetry's contribution in that regard.¹⁴ Nussbaum argues that realist novels help their readers, and judges in particular, to grow in empathy and therefore make more enlightened and humane decisions.¹⁵ She is convinced that realist novels have the potential to make a contribution to the law.¹⁶

What Nussbaum says about the possible benefits of reading novels can be said about poetry — dramatic and epic, especially lyric.¹⁷ However, we will focus not on lyric poems' potential effect on fair adjudication but on their potential contribution to persuasive advocacy, whether written or oral, before judges or juries. In so doing, we will follow Joseph Brodsky's cue that writers of prose have much to learn from poetry.¹⁸ This essay will thus describe the salutary effects of lyric poetry's language,

¹³ MARTHA NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* (1995).

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 31. Much as we would like this assertion to be true, reality questions its validity. After all, for literary narrative to promote justice might require a certain moral predisposition. George Steiner contends that there is little evidence that the reading of literature in and of itself sharpens moral perception. For example, he reminds us that "when barbarism came to twentieth century Europe . . . knowledge of Goethe [and] a delight in the poetry of Rilke, seemed no bar to personal and institutionalized sadism." *LANGUAGE AND SILENCE* 83 (1979). Steiner even goes so far as to suggest that reading literary texts may diminish "our actual moral response." He maintains that by giving "psychological and moral credence to the imaginary, to the character in a play or novel, to the condition of spirit we gather in a poem, we may find it more difficult to identify with the real world." *Id.* Be that as it may, for the purpose of this essay, we will give Nussbaum, to some extent, the benefit of the doubt and argue that lyric poetry can be beneficial to those in the legal profession.

¹⁶ NUSSBAUM, *supra* note 13, at 4. First, she maintains that they "embody and generate . . . [the] ability to imagine nonexistent possibilities, to see one thing as another and one thing in another," and in so doing foster empathy, and second, that the emotions they portray, when "properly limited and filtered," can guide reasoning.

¹⁷ Nussbaum has acknowledged the potential of lyric poetry when discussing the contribution of literature to ethics in *LOVE'S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* 46 (1990). Lyric poems express a poet's personal view or emotions, rather than recount external events.

¹⁸ JOSEPH BRODSKY, *LESS THAN ONE: SELECTED ESSAYS* 177 (1986). Russian poet in exile Brodsky (1940-1996), who won the Nobel Prize for literature in 1987 and was named American poet laureate in 1991, lists focused thinking, omission of the self-evident, harmony, and laconism as lessons poetry teaches.

intensity, and form, features that make poems sharp tools for better lawyering.¹⁹ We will examine how the concrete language of lyric poems expands the imagination, then how its emotional intensity serves critical reflection, and last how its form encourages effective legal advocacy.

I. LANGUAGE: THE WONDER OF IMAGES

What we lack is not a will to believe but a will to wonder.

Abraham Joshua Heschel²⁰

There are no images — parent and progeny of wonder — without imagination, and no imagination without intellect. Plato and Aristotle saw clearly that philosophy and knowledge begin in wonder. The former acknowledged that one cannot stop marveling at the significance of things,²¹ while the latter pointed out that we all start “by wondering that things are as they are.”²²

A. Concreteness

Poets, like lawyers, are impelled by the precise and specific, by the tangible and concrete. But poets and philosophers wonder, and lawyers do not always do so, for “wonder is content to view things in their wholeness and full context”²³ and pause. In that contemplative pause, poets use imaginative language to “[transcend] the everyday world.”²⁴ Being concrete is often considered the first “powerful technique” in legal discourse. Thus, the study of law shares at least this fundamental ground with poetry.²⁵

¹⁹ We will not discuss the alleged similarities between judicial opinions and poetry, what one form can learn from the other (see Walker Gibson, *Literary Minds and Judicial Style*, 36 N.Y.U. L. REV. 915 (1961) and JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1985)). Neither will we address how poetry serves to illuminate legal thought (see George Gopen, *Rhyme and Reason: Why the Study of Poetry Is the Best Preparation for the Study of Law*, 46 COLLEGE ENGLISH 333 (1984)) or tackle literary and legal theories (see Lawrence Joseph, *Theories of Poetry, Theories of Law*, 46 VAND. L. REV. 1227 (1993)).

²⁰ ABRAHAM JOSHUA HESCHEL, *GOD IN SEARCH OF MAN: A PHILOSOPHY OF JUDAISM* 46 (4th ed. 1980) (1955).

²¹ Plato, *Theaetetus*, in *THE BEING OF THE BEAUTIFUL* 55, I.18-I.19 (Seth Benardete trans., 1984).

²² ARISTOTLE, *METAPHYSICS* 16, 983a14-15 (Hippocrates G. Apostle trans., 1966).

²³ JAMES S. TAYLOR, *POETIC KNOWLEDGE: THE RECOVERY OF EDUCATION* 169 (1998).

²⁴ JOSEPH PIEPER, *LEISURE: THE BASIS OF CULTURE* 74 (Alexander Dru trans., 1963).

²⁵ LOUIS J. SIRICO, JR. & NANCY L. SCHULTZ, *PERSUASIVE WRITING FOR LAWYERS AND THE LEGAL PROFESSION* 27 (1997).

William Carlos Williams, a full-time physician, once described his other calling as follows:

Outside
outside myself
there is a world,
. . . subject to my incursions
—a world
(to me) at rest
which I approach
concretely—²⁶

Williams's words accurately reflect what attorneys do each time they take on a new case. Every cause of action is itself an incursion into a world at rest. Legal advocacy urges one of two options: either leave the world at rest or use the law to change it. As these positions do battle time and again, lawyers must be dexterous in their statement of facts and explain their client's situation concretely. It is of no use to seek legal recourse solely by invoking fairness or justice or principle. The lawyer must rely upon specific facts to justify the solution he seeks. That much is readily apparent, but is often not enough.

The challenge for advocates is to assemble the facts of a case into an engaging narrative. The skillful lawyer provides enough detail so that no crucial portion of the story remains untold, and does so with a sense of wonder. To be effective, the attorney must emerge from within the voice of the client and present that voice within the context of the law.

To read lyric poetry is to exercise one's capacity to treat a third party's thought process (the poet's) as one's own. After all, lyric poets speak more directly than novelists or playwrights. Theirs is the most personal voice, one not often hidden behind the masks and complexities of fictional characters and situations. Helen Vendler has observed that "a lyric . . . wants us to be its speaker. We are not to 'listen' to the speaker, but to 'make ourselves into' the speaker. We speak the words of the poem as though we were their first utterers. The speaker's past is our past; his motivations are ours, his emotion ours, his excuses

²⁶ William Carlos Williams, *Sunday in the Park from Paterson*, in THE WILLIAM CARLOS WILLIAMS READER 75 (M.L. Rosenthal ed., 1966). For over forty years, Williams (1883-1963) specialized in the care of children in Rutherford, New Jersey. His PICTURES FROM BREUGHEL won the 1963 Pulitzer Prize for poetry.

ours”²⁷

Thus, lyric poems enable readers to draw upon their own sense of empathic wonder. Even more important, as far as the attorney is concerned, is mastering the power to kindle an audience’s sense of wonder. Lyric poems embody that very skill.

Czeslaw Milosz once defined poetry as “a passionate pursuit of the Real.”²⁸ He has more recently elucidated that writing poems is “an attempt to break through the density of reality into a zone where the simplest things are again as fresh as if they were being seen by a child.”²⁹ In other words, poets write with precision and amazement, defeating dullness as they marvel at reality. Octavio Paz maintains that “[a] poem is a verbal object in which two contradictory properties are fused: the liveliness of the sensation and the objectivity of things.”³⁰ Wallace Stevens puts it squarely: “poetry is an interdependence of the imagination and reality as equals.”³¹ Attorneys can profit from this fusion and interdependence.

Although legal quandaries can be engaging, even fascinating, many are rather dry and complex. It is often a daunting task to keep judges and jurors interested and even more so to persuade them. Milosz, Paz, and Stevens capture this challenge perfectly: to rekindle, with liveliness and imagination, the curiosity usually found solely in children’s eyes. Almost always, language is the advocate’s sole medium. Lawyers must infuse their argument with frequent factual references in order to keep questions of law from becoming too abstract and remind readers and listeners of what is truly at stake. Weaving in some level of concrete imagery while maintaining a personal connection is essential to the task.

To convey the law concretely while maintaining a personal connection is to drive home the fact that cases are not abstractions but concrete readings of real objects and real people.³² The

²⁷ HELEN VENDLER, *POEMS, POETS, POETRY* 176-77 (1997).

²⁸ *Quoting* French poet Oscar Milosz in CZESLAW MILOSZ, *THE WITNESS OF POETRY* 25 (1983). Milosz (1911-), winner of the 1980 Nobel Prize for literature, maintains that a poem should universalize personal experience; he therefore disapproves of poetry that is no more than “a little solitary exercise.”

²⁹ CZESLAW MILOSZ, *A BOOK OF LUMINOUS THINGS: AN INTERNATIONAL ANTHOLOGY OF POETRY* 5 (1996).

³⁰ OCTAVIO PAZ, *ON POETS AND OTHERS* 16 (Michael Schmidt trans., 1992). Paz (1914-1998) received in 1990 the Nobel Prize for literature.

³¹ WALLACE STEVENS, *THE NECESSARY ANGEL* 27 (1951). Stevens (1879-1955) won the 1955 Pulitzer Prize for poetry.

³² See SIRICO & SCHULTZ, *supra* note 25, at 14.

same is true of poems. W.B. Yeats said that poetry "bids us touch and taste and hear and see the world, and shrinks from . . . every abstract thing, from all that is of the brain *only*."³³ When arguing before judges, lawyers have an important opportunity to coax the imagination. The common law evolves because someone is able to draw out subtle similarities and distinctions among different cases. Lawyers rarely fail to rely upon precedent; however, they tend to lack the ability to draw the appropriate fact-driven analogies. Yeats points out that poetry calls for something more concrete than abstract metaphor. So, too, does the law.

Nowhere is this talent more important than in persuading a jury. Rather than making connections to precedent in an attempt to import another court's reasoning, the aim for an attorney addressing a jury is to provide links to a juror's own life experience. An advocate must show jurors how they can think about a legal issue in the same way they deal with everyday problems. This requires the skill, much like that of the poet, of conveying the concrete in a way that is ascertainable and enables jurors to place themselves in the shoes of the litigant.

Both lawyers and poets are responsible for the presentation and interpretation of facts and emotions. Without doubt, legal advocacy and lyric poetry are ultimately nonfiction. Lyric poems do not merely evoke reality; they transform it, making it palpably immediate and memorable. Their clear and instructive language may lead lawyers to pause and empathically wonder. Their concreteness provides a key to making the facts of a case come to life, and it allows others to better grasp a stranger's situation.³⁴

B. *Metaphor*

If the goal of persuasive advocacy is to convince a judge or a jury, then the use of images, in the form of similes and meta-

³³ Quoted in MAY SWENSON, *MADE WITH WORDS* 91 (Gardner McFall ed., 1998) (emphasis added). W.B. Yeats (1865-1939) was awarded the Nobel Prize for literature in 1923.

³⁴ Those aware of the hollowness, flippancy, and total subjectivism that today characterizes a certain amount of writing that goes under the name of lyric poetry, may find Williams's, Milosz's, Paz's, Stevens's, and Yeats's observations surprising. But, as our selections will demonstrate, poems can be readable and intelligible. For an illuminating distinction between subjectivism and subjectivity, see TAYLOR, *supra* note 23, at 72-73. Briefly put, subjectivism is indifferent to reality, but subjectivity, the realm of one's inner life, is a person's engagement with reality.

phors, of symbols and allegories, is indispensable. In Paz's words, "The American language is a buried seed which can only come to fruition if irrigated and shone upon by poetic imagination."³⁵

Poetry is source material from which lawyers can borrow techniques to wheedle the imagination. The "speech of fancy" that Nussbaum attributes to realist novels is the language of poetry itself.³⁶ Indeed, no less a figure than Robert Frost defines poems — "momentary stay[s] against confusion" — as metaphors, as "simply made of metaphor," and metaphor as "saying one thing and meaning another, saying one thing in terms of another, the pleasure of ulteriority."³⁷

Lawyers use metaphor differently. Meanings must be explicit; clarity and proximity, rather than ulteriority, contribute the best approach. Still, reading lyric poetry may help develop important mental skills. Cultivating the ability to comprehend multiple interpretations, lawyers exercise the critical thought process needed when comparing and distinguishing precedent, and when casting legal problems in terms that the lay person can handle.

Consider "A Sort of a Song," where William Carlos Williams pronounces his purpose to reconcile people and stones through metaphor:

*Let the snake wait under
his weed
and the writing
be of words, slow and quick, sharp
to strike, quiet to wait,
sleepless
—through metaphor to reconcile
the people and the stones.
Compose. (No ideas
but in things) Invent!*

³⁵ PAZ, *supra* note 30, at 19.

³⁶ NUSSBAUM, *supra* note 13, at 40. Nussbaum writes that "the speech of fancy has . . . a flexible and acrobatic circus body, a surprising exuberant variety. It loves the physical texture of language and plays with it, teasing and caressing the reader." *Id.*

³⁷ Robert Frost, *The Constant Symbol* and *The Figure a Poem Makes*, in WHITE, *supra* note 19, at 216-23. Frost (1874-1963) won the Pulitzer Prize for poetry in 1924, 1931, 1937, and 1943. In 1960, Congress voted him a gold medal "in recognition of his poetry, which has enriched the culture of the United States and the philosophy of the world."

*Saxifrage is my flower that splits
the rocks.*³⁸

Persuasive writing is sleepless in that each and every word is deliberately selected. Williams reminds poets and lawyers that language must be active if it is to strike readers or listeners. Whether language is written or spoken, timing is crucial. Advocates must anticipate when their words will impress most memorably. When a judge or jury is skeptical, the lawyer must speak and write with the delicate determination of that stubborn flower in Williams's poem, saxifrage. The creeping language of incremental logic may crack through an uninterested or unsympathetic audience.

To Williams's intention of reconciling people and stones, Stevens might simply add: "to make [my] imagination theirs."³⁹ Indeed, Stevens, himself a lawyer who spent most of his professional life heading the surety claims department of a fire insurance company,⁴⁰ believed that a poet "fulfills himself only as he sees his imagination become the light in the minds of others."⁴¹ For him the "acute intelligence of the imagination" has "the power to possess the moment it perceives."⁴² Osip Mandelstam illustrates the point in his poem "Notre Dame," where a cathedral, through his poetic vision, teaches him (and others) what to do with haunting or oppressive sorrow:

*But the more attentively I studied,
Notre Dame, your monstrous ribs,
your stronghold,
The more I thought: I too one day shall create
Beauty from cruel weight.*⁴³

Lawyers strive to make a listener or reader see things their client's way. Stevens is right to characterize that process as one having as much to do with imagination as it does with pure

³⁸ Williams, *supra* note 26, at 46-47.

³⁹ STEVENS, *supra* note 31, at 29.

⁴⁰ See THOMAS C. GREY, *THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY* (1991).

⁴¹ STEVENS, *supra* note 31, at 29.

⁴² *Id.* at 61.

⁴³ OSIP MANDELSTAM, *SELECTED POEMS* 17 (James Greene ed. and trans., 1991). We quote only its final stanza. Mandelstam (1891-1938) published three volumes of poetry, *KAMEN* (1913), *TRISTIA* (1922), and *POEMS* (1928). He was persecuted by the Soviet authorities for lack of ideological conformism and died on the way to a Siberian labor camp. See NADEZHDA MANDELSTAM, *HOPE ABANDONED* (Max Hayward trans., 1974).

unencumbered reason. A fertile legal mind will transpose that to which Mandelstam aspires: to build a compelling argument from the weight of responsibility and legal complexity. The beauty of advocacy, then, may lie chiefly in eloquent communication.

Images, the essence of poetry, make an argument clearer, fuller, more intelligible. In her poem "Poetry," Marianne Moore declares:

*I, too, dislike it: there are things that are important
beyond all this fiddle.*

*Reading it, however, with a perfect contempt for it, one
discovers in it after all, a place for the genuine:
hands that can grasp, eyes that can dilate,
. . . hair that can rise if it must.*

*These things are important not because
a high-sounding interpretation can be put upon them
but because they are useful.*

*When they become so derivative as to become unintelligible,
the same thing may be said for all of us, that we
do not admire what we cannot understand: the bat
holding on upside down or in quest of something to eat,
elephants pushing,
a wild horse taking a roll,
a tireless wolf under a tree,
the immovable critic twitching his skin like
a horse that feels a flea,
the baseball fan, the statistician —
(. . .)*

*One must make a distinction however:
when dragged into prominence by half poets,
the result is not poetry.*

*Not till the poets among us can be
'literalists of the imagination'—
above insolence and triviality and can present
for inspection, 'imaginary gardens with real toads
in them,' shall we have it.
In the meantime, if you demand on the one hand,
the raw material of poetry in
all its rawness and*

*that which is on the other hand
genuine, then you are interested in poetry.*⁴⁴

The raw material of poetry, life in all its intricacies, is the raw material of law. And it is through language that both the poet and the lawyer attempt to encapsulate life — the poet in utter disinterest; the lawyer on behalf of a client or a cause; the poet names, discovers, or reorders inner and outer worlds, the lawyer expounds and explains hoping to persuade. In “Poetry,” Moore does both. She reflects on why she and others both like and dislike poetry and then accounts for its absence, ending nonetheless on a hopeful note. Poets (and lawyers) are realists, in her words, “literalists of the imagination” presenting for inspection “imaginary gardens with real toads in them.” Lawyers may be more fortunate than poets, though: they always have a real garden — the law.⁴⁵ Yet both through metaphor can present real convincing toads, in other word, reality.

The way Moore reads poems is reminiscent of the way judges and their clerks consider legal briefs: they are aware of the unabashed one-sidedness of the genre, but search for the genuine within them. Legal persuasion, like poetry, is not valuable for any “high-sounding interpretation” it might provoke but simply for its usefulness. Legal advocacy clarifies facts, issues, and arguments; lyric poems illuminate life. Just as the unintelligibility, insolence, and triviality of “half-poets” fail to produce poetry, the lack of clarity and commitment of half-hearted lawyers will fail to persuade.

Metaphor also makes one sensitive to the many ways in which something can be said. Helen Vendler reminds us that the first seventeen of Shakespeare’s sonnets convey a similar message in multiple different ways, and often “the same thing” is said twice — the first time “neutrally,” the second with emotion.⁴⁶ Vendler’s observation is relevant to legal persuasion: main points must be reiterated.⁴⁷ Judges and clerks skim briefs, and listeners daydream during arguments; some ideas inevita-

⁴⁴ MARIANNE MOORE, *COLLECTED POEMS* 40-41 (1951). Moore (1887-1972) received the 1952 Pulitzer Prize for poetry.

⁴⁵ Is this necessarily more fortunate?

⁴⁶ See HELEN VENDLER, *THE ART OF SHAKESPEARE’S SONNETS* 67 (1997). The first seventeen of Shakespeare’s 154 sonnets speak of his friend’s beauty and insist that he should marry and have children in order to perpetuate that beauty beyond death. In Sonnet 5, “time leads summer on to hideous winter” is said first neutrally, then with emotion.

⁴⁷ See WEIHOFEN, *supra* note 8, at 123, 318-19.

bly slip by unnoticed. To make a point, one often has to reemphasize it. Lyric poetry may provide guidance in fashioning a middle ground between repetition and redundancy.

In addition, through metaphor the past may be remembered or refashioned. For example, Edgar Lee Masters, another poet who like Stevens practiced law, here recreates the dead Anne Rutledge's⁴⁸ voice, and the reader discovers a republic blooming from the dust of a dead woman's bosom:

*Out of me unworthy and unknown
The vibrations of deathless music;
"With malice toward none, with charity for all."
Out of me the forgiveness of millions toward millions,
And the beneficent face of a nation
Shining with justice and truth.
I am Anne Rutledge who sleeps beneath these weeds,
Beloved in life of Abraham Lincoln,
Wedded to him, not through union,
But through separation.
Bloom forever, O Republic!
From the dust of my bosom.⁴⁹*

Like Masters, lawyers frequently engage in the reconstruction of another person's thoughts and feelings. Because a juror cannot truly know why a party acted in a particular way, lawyers are responsible for offering suppositions. From lyric poetry advocates may learn how to capture human emotion and motivation with sharp images. In essence, lyric poems are windows into the feelings and thoughts of another human being: readers of poetry look into another person's soul and make that image their own. When lawyers read poems, they should evaluate the poet's technique for distilling and then communicating human experience.

C. Epiphany

Czeslaw Milosz says that poems are often epiphanies, moments in which people, things, or situations reveal something

⁴⁸ Ann Rutledge (1813-1835) was the daughter of the innkeeper in New Salem, Illinois, where Abraham Lincoln lived for a time. She accepted his marriage proposal, but shortly thereafter became ill and died.

⁴⁹ EDGAR LEE MASTERS, SPOON RIVER ANTHOLOGY 225 (1962). Spoon River is the name of Master's (1868-1950) imaginary Midwestern village. Each poem is spoken by a former resident now dead and buried in the Spoon River cemetery.

essential not noticed before; they unveil reality through the wonder of images.⁵⁰ Poetry “awakens and enlarges the mind itself by rendering it the receptacle of a thousand unapprehended combinations of thought.”⁵¹ John Keats emphasizes the surprise element: “Poetry should surprise by a fine excess . . .”⁵² We saw how Moore’s “Poetry” accomplished that —her first line is pure surprise: a poet bluntly confessing dislike for poetry. Epiphanies themselves are characterized by surprise, no matter how subtle, as in Jean Follain’s “Music of the Spheres:”

*He was walking a frozen road
in his pocket iron keys were jingling
and with his pointed shoe absent-mindedly
he kicked the cylinder
of an old can
which for a few seconds rolled its cold emptiness
wobbled for a while and stopped
under a sky studded with stars.*⁵³

Although Follain’s poem is striking, and he himself was a practicing lawyer and, later, a judge, its lesson for the attorney can be problematic. The imagery is superb, and the sky is a refreshing surprise; however, legal persuasion can ill afford buried revelations. The epiphanies sparked by legal advocacy come from prefatory conclusions supported by clear language and followed by incremental reasoning. Paragraphs begin with an assertion and end with its restatement. The real insight comes between the two: the facts, the law, and the policy that buttress one’s assertion. Even in oral argument, judges want to hear short, direct answers to their question, and then lawyers ought to explain their reasoning. Building up to one’s meaning is of no use when the next question may be hurled at any moment. “Context first, details later.”⁵⁴

⁵⁰ MIŁOŚZ, *supra* note 29, at 5.

⁵¹ Percy Bysshe Shelley, *A Defense of Poetry*, in PEACOCK’S FOUR AGES OF POETRY 33 (H.F.B. Breit-Smith ed., 1967).

⁵² Letter to John Taylor (Feb. 27, 1818), in LETTERS OF JOHN KEATS 69 (Robert Gittings ed., 1970).

⁵³ Jean Follain in MIŁOŚZ, *supra* note 29, at 7 (Czeslaw Milosz and Robert Haas trans.). *LA MAIN CHAUDE* (1933), *EXISTER* (1949), and *APPAREIL DE LA TERRE* (1964) are books of poems by Follain (1903-1971). In addition, he published studies reflecting such diverse interests as ecclesiastical slang and Napoleonic history. Follain was accidentally killed by an automobile in Paris while crossing Place de la Concorde.

⁵⁴ WEIHOFEN, *supra* note 8, at 262.

Keats writes that a poem “should strike the Reader as a wording of his own highest thoughts, and appear almost a Remembrance.”⁵⁵ Lawyers would do well to heed this advice. The most persuasive arguments are the ones that invite judges or juries to follow their own intuitive reactions. The tone cannot be pushy or preachy. Effective advocates frequently appeal to *and defer to* their audience’s reasoning.

Emily Dickinson is startlingly original but nonetheless leads us to believe that her poem is our own intimate remembrance, an epiphany of disappointment, disillusion, perhaps even betrayal:

*It dropped so low — in my Regard —
I heard it hit the Ground —
And go to pieces on the Stones
At bottom of my Mind —*

*Yet blamed the Fate that flung it — less
than I denounced Myself,
For entertaining Plated Wares
Upon my Silver Shelf—⁵⁶*

For the most part, advocacy consists of maximizing one’s advantage. Dickinson may bring to mind what every lawyer must confront: the weaknesses of a client’s position. Rarely is a litigant absolutely blameless; rarely is a legal argument irrefutable. Law students are taught early on that, since judges and jurors will try to approach an argument critically and impartially, searching for “holes,” admitting vulnerabilities up front enables advocates to gain credibility. By acknowledging counterarguments, lawyers can do two things. First, they will echo more closely the thought process of a critical audience. As Keats suggested for poetry, legal reasoning should strike readers or listeners as a wording of their own thoughts. Second, by providing a host of possible rejoinders, the lawyer may minimize the audience’s impulse to come up with other weaknesses. One’s vulnerabilities must be addressed immediately.

Crucial to effective legal advocacy, then, is the establishment of a client’s desert. Regardless of law, judges and jurors

⁵⁵ KEATS, *supra* note 52, at 69-70.

⁵⁶ THE COMPLETE POEMS OF EMILY DICKINSON 747 (Thomas H. Johnson ed., 1960). Dickinson (1830-1886) wrote over 1,700 poems, but only seven were published during her lifetime.

will think one party deserves to win. Henry Weihofen makes the point sharply: "Judges, like ordinary mortals, can be made to feel the righteousness of a cause. They are not impersonal hacks grinding out a slot machine justice."⁵⁷ Advocates should weave some level of imagery through epiphany into their arguments. There must be something worth watching out for; otherwise, a river of words will ineffectually flow past a judge or a jury.

As literalists of the imagination, lawyers must constantly remind judges and jurors of the ways in which a particular decision will affect their client. Effective persuasion can make use of concreteness, metaphor, and epiphany — language accurately conveying reality through the wonder of images — to enable others to imagine the consequences of their judgment. These are the devices that are employed in lyric poetry. Images must remain realistic, however. Judges or juries must not get the impression that they are being asked to imagine solutions and conclusions based on exaggeration rather than evidence. Reality and imagination, objectivity and wonder, must work in unison: neither is persuasive when it comes at the expense of the other.

II. INTENSITY: CRITICAL REFLECTION AND CREATIVE INTUITION

Our most disastrous lacks — delicacy, awe, order, natural magnificence and piety . . . everything that is neither bought, sold, nor imagined on Sunset Boulevard or in Times Square

Randall Jarrell⁵⁸

I credit poetry . . . both for being itself and for being a help, for making possible a fluid and restorative relationship between the mind's centre and its circumference . . . I credit it because credit is due to it, in our time and in all time, for its truth to life, in every sense of that phrase.

Seamus Heaney⁵⁹

⁵⁷ WEIHOFFEN, *supra* note 8, at 268.

⁵⁸ RANDALL JARRELL, *POETRY AND THE AGE* 125 (1973). Jarrell (1914-1965) won the National Book Award in 1960 for his book of poetry *THE WOMAN AT THE WASHINGTON ZOO*.

⁵⁹ Seamus Heaney, *Crediting Poetry: The Nobel Lecture*, *THE NEW REPUBLIC*, Dec. 25, 1995, at 28. Heaney (1939-) was awarded the Nobel Prize for literature in 1995.

Metaphorical language is the vessel of poetic intensity: images communicate heightened emotion — be it joy, love, or gratitude, sorrow, fear, or anger. Thus it is hardly possible to draw a bright line between a poem's language and its emotional intensity. As is widely recognized, lyric poems are not mere accounts of external events but expressions of a poet's thoughtful emotion or intuitive knowledge. The terms "thoughtful emotion" and "intuitive knowledge" are not necessarily contradictory, for emotions can comprise good reasoning, and knowledge can be rooted in intuition. Greek philosophers distinguished four kinds of knowledge: rhetorical (when we are persuaded by evidence without conclusive proof, as when we vote for a political candidate), the dialectical (when we favor one of two opposing arguments beyond a reasonable doubt, as when a drug is deemed safe for human use), the scientific (as when we know that motion presupposes agency), and the poetic.⁶⁰ As Part I showed that reality and imagery are not at odds, Part II presents the interaction between intellect and emotion, thinking and feeling.

A. *Thinking Like a Poet*

For Jacques Maritain, poetic knowledge proceeds from interaction between intellect and feeling. It is reality finding an interpretive home in the poet's sensibility or subjectivity.⁶¹ Maritain insists that poetic knowledge "is in no way a merely emotional or a sentimentalist theory," that the emotion of which he is speaking is in no way "brute or merely subjective emotion" but inspiration, creative intuition, "an intellectual flash" which brings forth the poem as idea.⁶²

Such creative intuition can help lawyers embrace competing theories and interpretations without assuming that they are mutually exclusive. As thoughtful listeners and detectives, advocates must approach cases with an open mind, accepting without jumping to conclusions all evidence and points of view. They must possess what Keats called "negative capability,"⁶³ that is, be willing to tolerate uncertainties, mysteries, contradictions, and doubts. After all, there may be not one but three persuasive

⁶⁰ TAYLOR, *supra* note 23, at 8, quoting JOHN SENIOR, *THE RESTORATION OF CHRISTIAN CULTURE 194-95* (1983).

⁶¹ JACQUES AND RAISA MARITAIN, *THE SITUATION OF POETRY 66-67* (Marshall Sutner trans., 1968).

⁶² JACQUES MARITAIN, *CREATIVE INTUITION IN ART AND POETRY 119-20, 123* (1953).

⁶³ Letter to George and Tom Keats (December 21, 27(?), 1817), *supra* note 52, at 43.

lines of reasoning and much to learn from an opponent's possible arguments. Each side of a dispute will articulate and defend a legal theory knowing full well that the resolution it seeks is not necessarily the only just one. This lawyering may be "the miraculous kind of reason that the imagination sometimes promotes."⁶⁴ Thus the initial phase when tackling legal conundrums must entertain incompatible or conflicting elements. Poems often do this, sometimes explicitly:

*And yet whiteness
can be best described by greyness
a bird by a stone
sunflowers
in December*

. . . .
*the most palpable
description of bread
is that of hunger*

. . . .
*a transparent
source-like description
of water is that of thirst*

. . . .⁶⁵

In addition to enabling lawyers to exercise negative capability, such as that evidenced in this poem, creative intuition allows lawyers to consider the relationship between the subjective and the objective. Maritain refers to Arthur Rimbaud's "Je est un autre" ("I is another"), explaining that in creative intuition "objective reality and subjectivity, the world and the whole of the soul, coexist inseparably," the poet grasps the "reality of things" under the spell of a definite emotion.⁶⁶

Lawyers take a subjective perspective (*i.e.* their clients') and present it in a form that is suitable to their audience. Both emotion and intellect figure into this task. "The most potent stimulus for true eloquence . . . is a burning conviction of the righteousness of one's cause."⁶⁷ While attorneys cannot become too

⁶⁴ STEVENS, *supra* note 31, at 165.

⁶⁵ Tadeusz Rozewicz, *A Sketch for a Modern Love Poem*, in MIŁOSZ, *supra* note 29, at 233 (Czeslaw Milosz trans). Rozewicz (1921-) received the Jurzykowski Foundation Prize in 1966, and the Union of Polish Writers Abroad awarded him a poetry prize the following year.

⁶⁶ MARITAIN, *supra* note 62, at 124-25.

⁶⁷ WEIHOFEN, *supra* note 8, at 2.

emotionally involved in a case, some level of feeling serves as an internal motivator. Maritain suggests that emotional involvement may lead to a creative “intellective flash.” To the extent that poetry reminds lawyers that the soul can be a boon to the mind, so much the better.

Furthermore, jurors or judges may unconsciously allow their own subjective emotional responses to shape what they will accept as reasonable. Lawyers must decide how to frame arguments that will resonate with those intuitive reactions, especially with juries. Poetry teaches how to infuse emotion into one’s reflection upon reality. Finally, a lawyer might agree with the ancient Greeks, Maritain, and Nussbaum that reason or knowledge has an emotional component. If that is the case, an advocate may use emotional appeals to push an audience toward a state of critical reflection, as well as to influence the way in which judges and juries evaluate claims as they reflect upon them.

B. *Writing and Speaking Like a Poet*

Exploring poetry also sharpens a lawyer’s eye and ear for the type of language that encourages critical reflection. Poetry teaches lawyers not to dilute their language. Intense arguments, especially when they stoke the emotions, are most persuasive because they focus both the mind and the heart. Intensity can be expressed with wit, wisdom, or humor. In any form, appeals to reason are fused with reliance upon emotion and imagination.

A poem’s intensity or naked truth — its wit, wisdom, or humor — should help lawyers insightfully question what they hear, see, or read. In turn, they can incorporate such potency into their own written and oral arguments. For example, Laura (Riding) Jackson’s “In Nineteen Twenty-Seven” teaches gentle wit:

*Fierce is unhappiness, a living god
of impeccable cleanliness and costume
In his intense name I wear
A brighter color for the year
And with sharp step I praise him
That unteaches ecstasy and fear.*⁶⁸

⁶⁸ LAURA RIDING, *SELECTED POEMS: IN FIVE SETS* 37 (1973). (Riding) Jackson (1901-1991) believed there was “an ultimate of perfect truth to reach, and poetry was the way.” *Id.* at 14.

Wit might best be reserved for oral argument where it can defuse an aggressive judge or keep the discussion interesting; there, tone and facial expression assist in making the point. As for writing, there is a fine line between cleverness and acerbity. Sarcasm is seldom appropriate, not only because it shows a lack of seriousness but also because it invites misinterpretation if taken literally. On the other hand, *subtle* wit demonstrates confidence and recaptures a judge's or juror's attention. It is difficult to teach lawyers how to use wit without undermining their credibility. Poems like "In Nineteen Twenty-Seven" may be the best guide since they expose a reader to deep truths in a delicate balance between concrete images (unhappiness presented as a clean and well-groomed god) and repartee (the poet "with sharp step" praising the "unteacher" of ecstasy and fear).

There is unassuming wisdom in "The Forgiven Past," where Jackson outlines "the transformation of old grief / Into a present grace of mind,"⁶⁹ and "difficult decorum," self-respect and questioning resignation, in "After So Much Loss," where she concludes:

*After so much loss —
Seeming of gain,
Seeming of loss —
Subsides the swell of indignation
To the usual rhythm of the year.*⁷⁰

Here, the poem hones in on the emotional evolution by which human beings recover from tragedy and grief. Translating a legally cognizable injury into one that a judge or juror *feels* is a crucial persuasive step. Particularly in opening and closing statements at trial, an advocate can focus the audience's attention by reference to common human experience. Poetry is perfect teaching material for the lawyer because its wisdom comes in concentrated kernels — just the sort that can be woven into legal arguments.

As for humor, the mischievous question posed by Paz's "In Defense of Pyrrho" comes to mind:

*For Julian, ex-prefect of Egypt
(Palatine Anthology 7.576)*

⁶⁹ *Id.* at 91-93.

⁷⁰ *Id.* at 86-87.

Julian, you've cured my fears, but not my doubts.
 Against Pyrrho you said: *The skeptic*
didn't know if he was alive or dead. Death knew.
 And you — how do you know?⁷¹

Paz pokes fun at Julian's disdainful critique of Pyrrho of Elis (361?-270? BCE), one of a group of Ancient Greek philosophers known as Sceptics, and in doing so unmasks Julian's arrogance.

Generally, humor has no place in legal arguments. But for the great advocate, such rules can be selectively broken. A smile or a chuckle will rejuvenate an audience's desire to read and to listen. The best place for a bit of humor is in a wry rejoinder to an opponent. Of course, if the response is substantively hollow, the use of humor will only illuminate one's weakness. But-tressed with sound reasoning, however, lawyers should occasionally trade barbs with their opponents; humor is better than bitterness. A retort like Paz's teaches that lawyers can use short, intense language to amuse, leading the audience toward critical reflection.

C. *Inspiring Critical Reflection*

Joseph Brodsky has said it well: the intensity of poetry lights up one's consciousness.⁷² Dickinson does so in

Tell all the Truth but tell it slant —
Success in Circuit lies
Too bright for our infirm Delight
The Truth's superb surprise

As Lightning to the Children eased
With explanation kind
The Truth must dazzle gradually
*Or every man be blind—*⁷³

This poem captures the proper mix of ethical obligation, strategic argument, and audience comprehension. Dickinson's opening words can be read to command lawyers to uphold their professional duty to the court: to tell the truth. After all, if words are capable of explaining the crackle of lightening to a child, surely

⁷¹ OCTAVIO PAZ, *A DRAFT OF SHADOWS AND OTHER POEMS* 161 (Eliot Weinberger ed. and trans., 1979).

⁷² BRODSKY, *supra* note 18, at 193.

⁷³ DICKINSON, *supra* note 56, at 506-07.

lawyers can use them to confront a thorny precedent or the unfavorable details of their client's position. Dickinson may be encouraging advocates to shed the best light on the facts of their case: truth should be conveyed from a slant, "as Lighting to the Children eased / With explanation kind." "Truth must dazzle gradually," for sometimes incremental revelation can prove the most illuminating. Facts and arguments must be explained simply, urging a judge or juror toward a vantage point from which lawyers' premises and conclusions appear reasonable. Lawyers may forget to be subtle, to dazzle listeners and readers gradually. The most compelling truths are the ones that lawyers present, but judges and juries feel they have realized on their own. The best advocate, then, appears to be but a guide.

In the struggle to persuade, lawyers sometimes face the challenge of defending a client with whom a judge or jury will be unsympathetic. In such cases, they must overcome their audience's retributive impulse. In "The Shield of Achilles," W.H. Auden shows how one might empathize with those whose experience has rendered them indifferent and cold-hearted:

*A ragged urchin, aimless and alone,
Loitered about that vacancy, a bird
Flew up to safety from his well-aimed stone:
That girls are raped, that two boys knife a third,
Were axioms to him, who'd never heard
Of any world where promises were kept.
Or one could weep because another wept.⁷⁴*

From words as penetrating as these, telling of worlds where promises are broken, and no one is moved by the misery of others, an advocate can learn how to expand the frontiers of critical reflection. After all, lawyers must often enable judges and juries to make the most difficult of mental leaps: cloaking themselves in the perspective of an accused.

In their intensity, poems also foster critical reflection by appealing to the past. They find correspondences, cite precedents, and trace resemblances. Carl Sandburg and Jorge Luis Borges prove that in poetry, as in law, precedent illuminates and is difficult to reverse. Jonah's example guides Sandburg in "Losers:"

⁷⁴ SELECTED POETRY OF W.H. AUDEN 135-36 (1958). Auden (1907-1973) won the Pulitzer Prize in 1948 for his poem *The Age of Anxiety*.

*If I should pass the tomb of Jonah
I would stop there and sit for awhile;
Because I was swallowed one time deep in the dark
And came out alive after all.*⁷⁵

Sandburg reminds advocates that human beings are often moved by parables, but mere recitation of the past does not suffice to capture its lessons. Understanding its significance is key.

Citing precedents serves this purpose. Borges's "Possession of Yesterday" contains a valuable lesson for lawyers as they work within the constraints set by binding case law:

*I know that I've lost the yellow and the black and I think
of those unreachable colors
as those who are not blind cannot.*

*Only those who have died are ours, only what we have
lost is ours.*

Ilium vanished, yet Ilium lives in Homer's verses.

Israel was Israel when it became an ancient nostalgia.

Every poem, in time, becomes an elegy.

The women who have left us are ours,

free as we are now of misgivings,

from anguish, from the disquiet and dread of hope.

*There are no paradises other than lost paradises.*⁷⁶

Advocates constantly have the opportunity to alter the substance upon which judges and juries reflect. As Borges suggests, they have power over the past because they can recharacterize it. The ability to apply old propositions of law to new facts allows lawyers to take past cases and make them their own. An advocate invites a judge to revisit the past not for nostalgia but for the opportunity to rethink and to reapply another judge's reasoning.

Poetry is a powerful teacher because, through intensity, it penetrates both mind and conscience, awakening critical reflection and creative intuition. Obviously, lawyers seldom recite lyrics, but they can read poems as an exercise in the nuances of

⁷⁵ POEMS FOR EVERY MOOD 54 (Harriet Monroe ed., 1933). Carl Sandburg (1878-1967) received the 1951 Pulitzer Prize for poetry.

⁷⁶ Jorge Luis Borges, *Possession of Yesterday*, in Roberto ALIFANO, TWENTY-FOUR CONVERSATIONS WITH BORGES 157 (Nicomedes Suarez Arauz trans., 1984). This poem is also a fine example of negative capability. In 1961, Borges (1899-1986) shared with Samuel Beckett the first International Publishers Prize.

emotion and the lessons of wit, wisdom, and humor. The poet's ability to communicate with intensity thought-provoking correlations⁷⁷ can teach lawyers to be better writers and speakers.

III. FORM: MUSICAL BREVITY

The form of the poem, in other words, is crucial to poetry's power to do the thing which always is and always will be to poetry's credit: the power to persuade the vulnerable part of our consciousness of its rightness in spite of the evidence of wrongness all around it.

Seamus Heaney⁷⁸

The progression seems clear to me: from Reverence for Life to Attention to Life, from Attention to Life to a highly developed Seeing and Hearing, from Seeing and Hearing (faculties almost indistinguishable for the poet) to the Discovery and Revelation of Form, from Form to Song.

Denise Levertov⁷⁹

A. Succinct Advocacy

Some books point to brevity as the first absolute rule in legal writing; they plead for compact sentences and short paragraphs as well as for the avoidance of legal "mumbo-

⁷⁷ In *Mimi, the Near-Suicide*, Derek Walcott (1930-) evokes Virginia Woolf's suicide as well as that of Shakespeare's Ophelia:

Somebody told her she had sad interesting eyes.
After that, that was it. She stopped by the bridge.
She studied the river's coiled interesting dyes.
Must drop in for a visit. Good career move:
Ophelia, Mrs. Woolf, and that *feministe garbage*.
A much better ending than plain, provincial love:
a sodden sidewalk, a soaked brown paper bag.

THE ARKANSAS TESTAMENT 77 (1994).

⁷⁸ Heaney, *supra* note 59, at 34.

⁷⁹ Denise Levertov, *Origins of a Poem*, in CLAIMS FOR POETRY 263-64 (Donald Hall ed., 1998). Levertov (1923-1997) is the author of more than twenty collections of poems. She received a Lifetime Achievement Award in 1994 from the Conference on Christianity and Literature.

jumbo.”⁸⁰ “Good legal writing is short, as short as possible consistent with clarity and completeness.”⁸¹ The same almost always could be said of a lyric poem. In fact, Edgar Allan Poe maintained that a long poem is a contradiction in terms, for if a work is “too long to be read at one sitting,” it risks losing “unity of impression.”⁸² In other words, the poem’s brevity and the intensity of its content are inseparable.⁸³ It is not always possible to write briefs that can be read at one sitting, but a “long brief” remains somewhat of a contradiction in terms.

In their brilliant brevity, the following poems, each quoted in its entirety, achieve “unity of impression” or what we prefer to call “memorable effect.” In addition, our selections offer insight into particular persuasive essentials. In both substance and technique these poems illustrate succinct advocacy. For example, prosecutors or plaintiff’s attorneys might wish to echo at some point the words of Juana Rosa Pita:

*Let a paint brush tell
you the color of our joy
before we were uprooted.*⁸⁴

Rather than focus exclusively on a defendant’s culpability, the effective advocate presents a sense of the world as it existed before the defendant’s alleged conduct caused “uprootedness.” It is as though Pita was prescribing vivid language so that judges and juries may see what they read or hear. To borrow the terminology of novelists, a prosecutor or plaintiff’s attorney should not underestimate the persuasive value of the setting by dwelling exclusively on the particulars of the plot. The more a judge or jury identifies with the world as it existed before a defendant acted upon it, the easier it will be to convince them to restore it.

⁸⁰ See LUCY V. KATZ, WINNING WORDS: A GUIDE TO PERSUASIVE WRITING FOR LAWYERS 4 (1985).

⁸¹ *Id.* at 3.

⁸² Edgar Allan Poe, *The Philosophy of Composition* and *The Poetic Principle* in LITERARY CRITICISM OF EDGAR ALLAN POE, 22, 33 (Robert L. Hough ed., 1965). The posthumous reputation and influence of Poe (1809-1849) have been remarkable.

⁸³ “Even in poetry, where many of us are disposed to assume that the effect is to be attained by luxuriant verbiage, poignant emotion can be invoked with extreme simplicity.” WEIHOFEN, *supra* note 8, at 61.

⁸⁴ JUANA ROSA PITA, SORBOS DE LUZ/SIPS OF LIGHT 13 (Mario de Salvatierra trans., 1990). Pita (1939-), a Cuban poet in exile, won the 1987 Alghero Prize in Italy for ARIE ETRUSCHE/AIRES ETRUSCOS and the 1993 Letras de Oro Award in the United States for UNA ESTACION EN TREN.

With that prior “joy” portrayed, the advocate must next convey the gravity of the legal injury. W.S. Merwin uses sharp language to make his point in “Separation:”

*Your absence has gone through me
Like thread through a needle.
Everything I do is stitched with its color.*⁸⁵

Merwin’s words remind lawyers that an injury often seems worthier of compensation, particularly because its effects are pervasive. Advocates would do well to tease out how a particular legal harm disrupts various aspects of their clients’ lives.

Fine points can be influential in that regard. Consider Langston Hughes’s “The Dream Keeper:”

*Bring me all your dreams,
You dreamers,
Bring me all of your
Heart melodies
That I may wrap them
In a blue cloth
Away from the too-rough fingers
Of the world.*⁸⁶

Ordinary, generic experiences are seen (a blue cloth) or felt (too-rough fingers) when language includes momentary sensory appeal. Hughes shows how brevity and pointed concreteness are not at odds.

Succinct poetry contains lessons for defense lawyers as well. With linguistic precision, an advocate can point out the good (or at least the not so bad) effects of his client’s conduct. Levertov captures the proper approach girding this style of defensive advocacy in “Venerable Optimist:”

*He saw the dark as a ragged garment
spread out to air.*

⁸⁵ THE NORTON ANTHOLOGY OF POETRY 1296 (Alexander W. Allison et al. eds., 1983). W.S. Merwin (1927-) received the 1971 Pulitzer Prize in poetry for his collection THE CARRIER OF LADDERS. He is also the renowned translator of works in French, Spanish, Latin, and Portuguese.

⁸⁶ THE COLLECTED POEMS OF LANGSTON HUGHES 45 (Arnold Rampersad ed., 1995). Hughes (1902-1967), who received the NAACP’s Spingarn Medal in 1960, had won the 1953 Anisfield-Wolf Award for the best book of the year on race relations. There is ample commentary on Hughes’s “inclination . . . to respond to . . . subtle cadences of language” and on his poetry’s link to blues and jazz. See ONWUCHEKWA JEMIE, LANGSTON HUGHES: AN INTRODUCTION TO THE POETRY x (1976).

*Through its rents and moth-holes
the silver light came pouring.*⁸⁷

By reflecting on these lyrics, advocates may consider how to weave mitigating factors into their argument. Poets regularly use short lines to plant the seeds of deep thought; likewise, defensive advocacy is best when it plants subtle seeds of doubt as to a defendant's culpability or a plaintiff's desert. Poetry teaches lawyers how to balance brevity with persuasive detail. Pita, Merwin, Hughes, and Levertov instinctively discard the superfluous.

B. *Rhythmic Advocacy*

Brevity in lyric poetry and legal prose is not enough. Cadence, rhythm in the flow of sounds, is also a must. That the word lyric comes from the Latin *lyre* for lute, a musical instrument, and means "songlike" is no accident. Levertov asserts that the deployment of the poem on the page is the equivalent of a score, giving visual instructions for auditory effects, that the most obvious function of line-breaks and indentations is rhythmic.⁸⁸

Appreciating the musical essence of poetry is important when it comes to the order of words in a list, of clauses in a sentence, of parallel construction in a paragraph, in short, when it comes to writing clear arguments. Pay close attention to May Swenson's "Question" — quoted also in its entirety and reminiscent of St. Francis of Assisi, a poet who himself nicknamed his body "[my] Brother the Ass."⁸⁹ Try to answer Swenson's melodious query:

*Body my house
my horse my hound
what will I do
when you are fallen
Where will I sleep
How will I ride
What will I hunt*

⁸⁷ DENISE LEVERTOV, *EVENING TRAIN* 52 (1992).

⁸⁸ Denise Levertov, *On the Function of the Line*, *supra* note 79, at 266.

⁸⁹ G.K. CHESTERTON, *ST. FRANCIS OF ASSISI* 12-13 (Image Books 1990) (1924).

Where can I go
 without my mount
 all eager and quick
 How will I know
 in thicket ahead
 is danger or treasure
 when Body my good
 bright dog is dead

How will it be
 to lie in the sky
 without roof or door
 and wind for an eye
 with cloud for shift
 how will I hide?⁹⁰

Together rhythm and brevity guarantee a central focus and guard against wordiness and redundancy.

Brodsky further brings up the dynamics of poetic language as “essentially the dynamics of song” when discussing “obsession with intonation” in Marina Tsvetaeva’s prose.⁹¹ To achieve verisimilitude in prose, whether written or oral, Brodsky calls attention to the use of “dramatic arrhythmia” — “interspersing nominative sentences among . . . complex ones.”⁹²

Excellent legal prose should “rise and fall like wind in tall pines . . . swell and recede like waves on a shingle.”⁹³ There are no formulas for rhythmic prose, but reading poems, whether in meter or free verse,⁹⁴ trains the ear. Some will say that nothing can substitute for a gifted ear on the part of the reader or listener, but one should immerse oneself in Edward Lear’s “The Owl and the Pussy-Cat” or Poe’s “The Bells,” or Walt Whitman’s “O Captain! My Captain!” and see. When listening to the “majestic music” of Matthew Arnold’s “Dover Beach,”⁹⁵ one recalls

⁹⁰ MIŁOZ, *supra* note 29, at 229. May Swenson (1919-1989) was awarded a MacArthur Foundation Fellowship in 1987.

⁹¹ BRODSKY, *supra* note 18, at 180.

⁹² *Id.* at 181.

⁹³ *Id.* at 30.

⁹⁴ “[O]nly a bad poet,” T.S. Eliot (1888-1965) has written, “could welcome free verse as a liberation from form. It was a revolt against dead form, and a preparation for new form or the renewal of the old; it was an insistence upon the inner unity which is unique to every poem, against the outer unity which is typical.”] THE MUSIC OF POETRY 26 (1942).

⁹⁵ See *Matthew Arnold* in GEORGE ANASTAPLO, THE ARTIST AS THINKER: FROM SHAKESPEARE TO JOYCE 150-65 (1986).

that poetry was originally intended to be a spoken art.

Thus, reading poetry may do most for oral argument skills. How else can advocates sensitize their own capacity for rhythmic speech patterns? Pita offers the ideal:

*With its melodic cargo
voice traverses drizzle
without wetting the song.*⁹⁶

Lawyers must eliminate any aspect of their delivery that distracts a listener from the substance of the argument. With a host of potential interruptions (e.g. objections, questions from the bench), they must be able to return smoothly to their train of thought. After a question, good advocates return to the right part of their argument. Great oral advocates do the same, yet the cadence of their speech patterns continues without a jarring verbal pause. Reading poetry aloud coordinates one's thinking and speaking skills with a critical ear evaluating one's own delivery. In addition to stylistic improvement, an advocate learns to avoid an all-too-common pitfall of oral argument: redundancy, as opposed to effective repetition.⁹⁷

In sum, legal advocacy should be brief; its language rhythmic.

*Poetry's great mystery is
this: it defeats silence
without breaking it.*⁹⁸

Advocates will produce clear, engaging arguments when they strive for the lean cadence of poetry. Lawyers' words must never clutter or drown out the audience's thought process. Economy of language is the essence of eloquent persuasion.

CONCLUSION

Brodsky was right to assert that art "is not an attempt to escape reality but the opposite, an attempt to animate it."⁹⁹ Though, of course, poetry was not designed to help attorneys with their writing, reading poems is relevant to legal reasoning and writing. It opens doors to psychological depth and to con-

⁹⁶ PITA, *supra* note 84, at 21.

⁹⁷ Judge Lee Rosenthal of the Fifth Circuit pointed this out to the authors during her visit to the University of Chicago Law School in May 1999.

⁹⁸ PITA, *supra* note 84, at 39.

⁹⁹ BRODSKY, *supra* note 18, at 123.

crete and rhetorical possibilities. Poems express facts, ideas, and emotions in a style more imaginative, intense, and compact than that of ordinary legal prose. The imagery, intensity, and brevity evident in lyric poems can revive legal prose and refresh tired lawyers (as well as the judges, clerks, and juries who read their briefs or listen to their arguments). After all, lawyers should bring to their task more than an account of facts, issues, and case law. Their calling is not to be neutral but engaged and committed. To persuade they should, like poets, present something true, surprising, and memorable. The poems we have included in this essay probe the mind, touch the heart, and tickle the ear.

Nussbaum has written that “[t]here is something about the act of reading that is exemplary for conduct.”¹⁰⁰ Marina Tsvetaeva’s definition of reading as “complicity in the creative process” is certainly one important aspect.¹⁰¹ And there is something else: Nussbaum points out that many novels address “human needs that transcend boundaries of time, place, class, religion, and ethnicity.”¹⁰² It happens that like most lyric poems, the ones presented here transcend the boundaries in Nussbaum’s list, as well as those of race and gender. In so doing, they are a constant reminder of all that humans hold in common. Reading poems should certainly mark the lawyer humanly turned accomplice — the longing for beauty and understanding that characterizes lyric poems should ultimately affect more than the structure, syntax, and style of a lawyer’s argument.

But reading poems for the sheer pleasure of their intrinsic worth may turn out to be wiser than doing so for utilitarian purposes — especially for any lawyer on the road to burn-out. It might suffice to read a poem a day just as one takes a daily walk or dose of vitamins.¹⁰³ Needless to say, less time is needed to read a lyric poem than a realist novel. Ultimately, this article is an introduction, an invitation. We urge lawyers to let poetry be a vehicle for their own creative persuasive potential.

¹⁰⁰ NUSSBAUM, *supra* note 13, at 48.

¹⁰¹ BRODSKY, *supra* note 18, at 179. In exile in Berlin, Prague, and Paris, Marina Tsvetaeva (1892-1941) read and wrote prolifically. Her literary activities stopped when she returned to her native Russia at the height of the Stalin purges. See RONALD HINGLEY, *NIGHTINGALE FEVER: RUSSIAN POETS IN REVOLUTION* (1981).

¹⁰² NUSSBAUM, *supra* note 13, at 45.

¹⁰³ See THOMAS E. FOSTER AND ELIZABETH GUTHRIE, *A YEAR IN POETRY* (1995) AND KAREN MCCOSKER AND NICHOLAS ALBERY, *A POEM A DAY* (1996).