



Fantine and the
Damned:
Ethics and
Parental Defense

Travis R. Marker, JD, LLM

The Scrivener's Quill





“As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.”

Preamble - ABA Model Rules

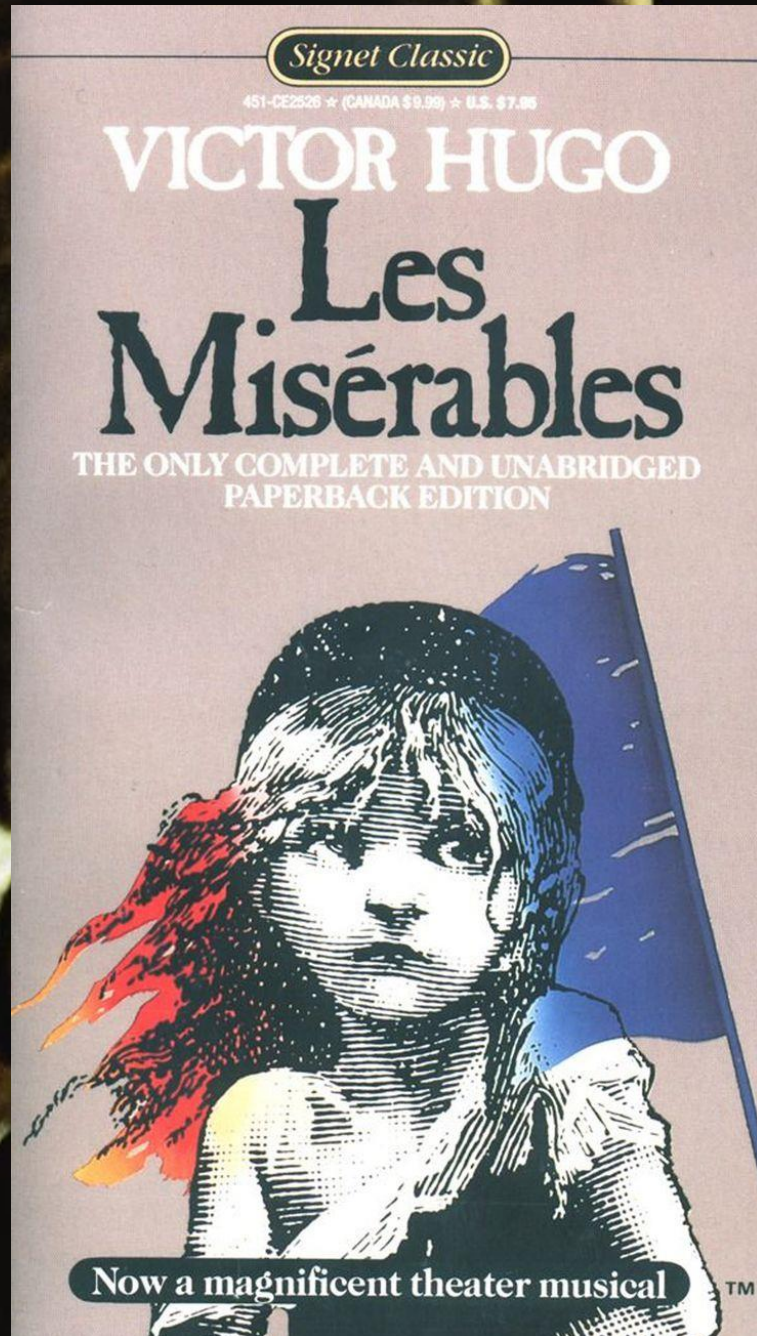


"A hundred francs," thought Fantine. "But in what trade can one earn a hundred sous a day?"

"Come!" said she, "let us sell what is left." The unfortunate girl became a woman of the town."

— Victor Hugo (*Les Misérables*)



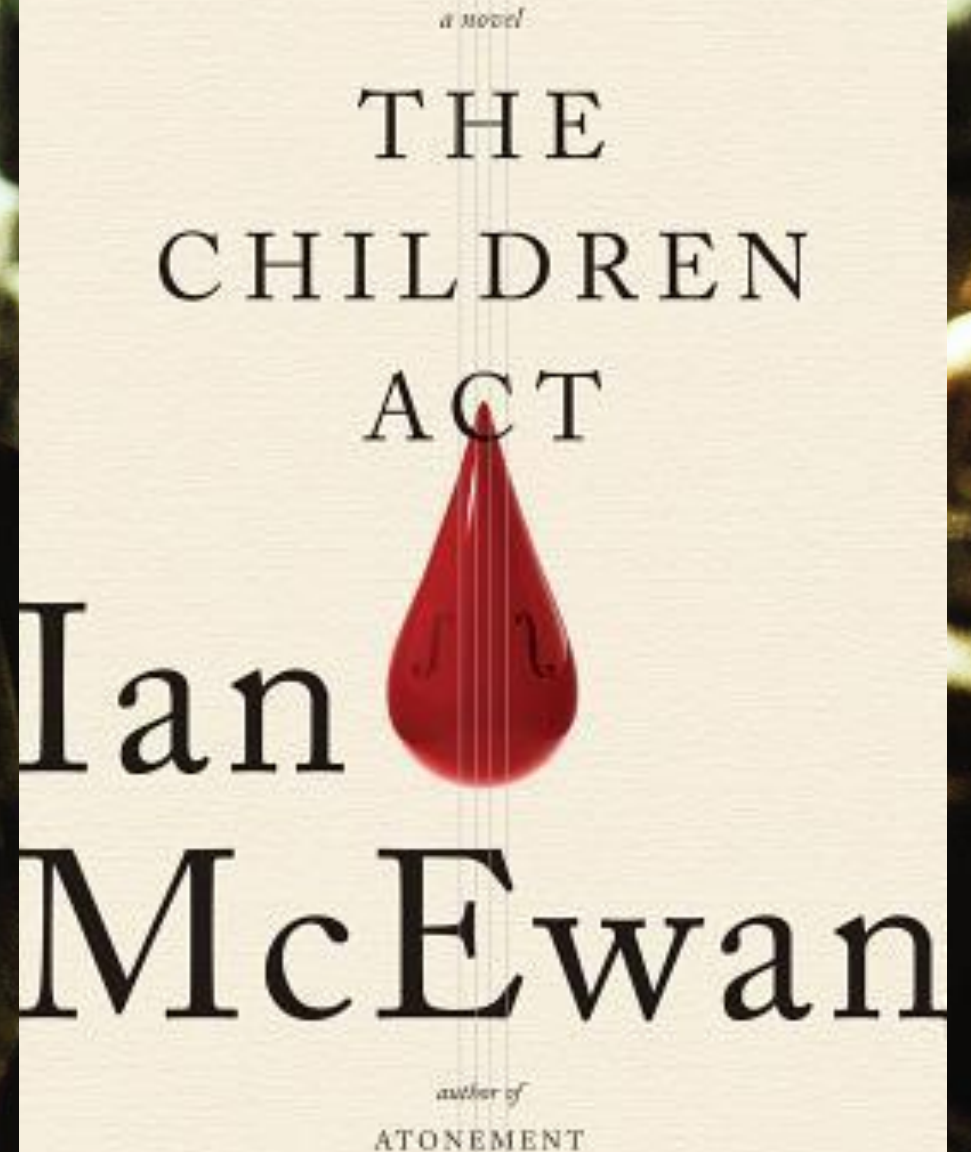


“What is the true story of Fantine? It is the story of society's purchase of a slave. A slave purchased from poverty, hunger, cold, loneliness, defenselessness, destitution. A squalid bargain: a human soul for a hunk of bread. Poverty offers and society accepts.”

— Victor Hugo, *Les Misérables*

“Blind luck, to arrive in the world with your properly formed parts in the right place, to be born to parents who were loving, not cruel, or to escape, by geographical or social accident, war or poverty. And therefore to find it so much easier to be virtuous.”

— Ian McEwan, *The Children Act*





“The opposing barristers were in tactical agreement (because it was plainly the judge’s view) that the issue was not merely a matter of education. **The court must choose, on behalf of the children,** between total religion and something a little less. **Between cultures, identities, states of mind, aspirations, sets of family relations, fundamental definitions, basic loyalties, unknowable futures.** In such matters there lurked an **innate predisposition in favor of the status quo, as long as it appeared benign.**”

— Ian McEwan, *The Children Act*

“It was not until **1875** that the world’s first organization devoted entirely to child protection came into existence – the **New York Society for the Prevention of Cruelty to Children.**

Prior to 1875, many children went without protection, although there has never been a time when children were completely bereft of assistance.

Criminal prosecution has long been used to punish egregious abuse.”

“A Short History of Child Protection in America,”
John E. B. Myers, 42 Fam. L. Q. 449 (2008-2009)





“As nongovernmental child-protection societies popped up across the country, another important innovation appeared: **juvenile court**. The world’s first juvenile court was established in Chicago in **1899**. Juvenile courts quickly spread quickly, and by **1919** all states but three had juvenile courts.”

“A Short History of Child Protection in America,” John E. B. Myers, 42 Fam. L. Q. 449 (2008-2009)



A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.

Preamble – ABA Model Rules



“It was the Great Depression . . . that stimulated the sea change in the federal government’s role in social welfare. In 1935, as part of President Roosevelt’s New Deal . . . Congress passed the **Social Security Act**. . . .

“A Short History of Child Protection in America,” John E. B. Myers, 42 Fam. L. Q. 449 (2008-2009)





“Tucked away in the [Act] was an obscure provision that authorized the Children’s Bureau ‘to cooperate with state public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, [child welfare services] for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent.’”

“A Short History of Child Protection in America,” John E. B. Myers, 42
Fam. L. Q. 449 (2008-2009)

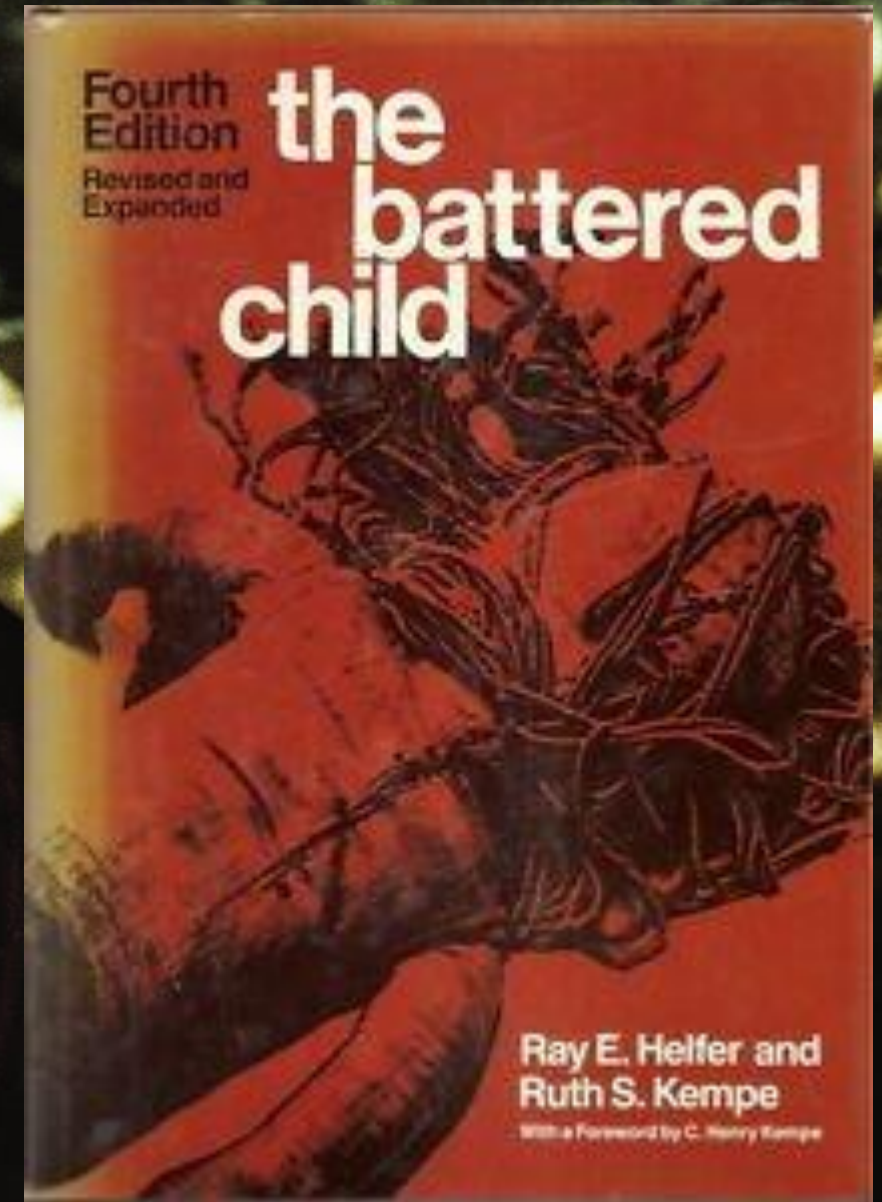


The Battered Child Syndrome by pediatrician Henry Kempe and his colleagues [1962], plays a leading role in bringing child abuse to national attention during the 1960's and 1970's.

...

Prior to 1962, there was little professional research and writing about abuse. . . . **Following publication of *The Battered Child Syndrome*, a trickle of writing became a torrent that continues to this day.**

“A Short History of Child Protection in America,” John E. B. Myers, 42 Fam. L. Q. 449 (2008-2009)



A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

Preamble - ABA Model Rules



In addition to sharpening the focus on child protection, the 1962 amendments [to the Social Security Act] required states to pledge that by **July 1, 1975, they would make child welfare services available statewide**. This requirement fueled expansion of government child-welfare services, including protective services.

...

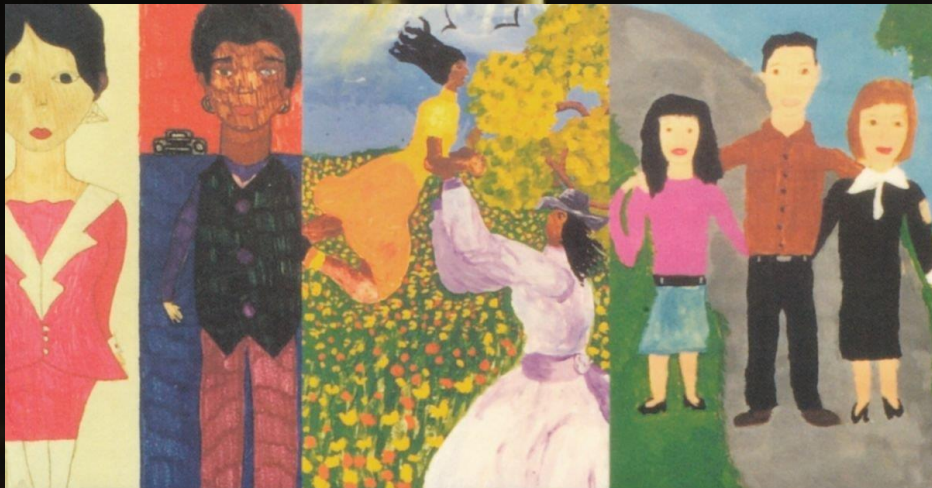
Due in substantial measure to **Walter F. Mondale's** efforts, Congress assumed a leadership role with passage of the **Child Abuse Prevention and Treatment Act of 1974**.

...

[Results in **25-35 percent of Native American children being removed** to non-Native American homes.]

1978 Congress enacted the Indian Child Welfare Act.





**SYLVIA ANN HEWLETT
& CORNEL WEST**

the war against parents

"This splendid book tells more about the crisis our children face today and what we as a nation must do about it than anything I have read."

DORIS KEARNS GOODWIN

MARINER BOOKS

**Joseph Goldstein,
Anna Freud, Albert J. Solnit**

BEYOND THE BEST INTERESTS OF THE CHILD

New Edition with Epilogue

By the Authors of
**BEFORE THE BEST INTERESTS OF THE CHILD
VOLUME II**
and
**IN THE BEST INTERESTS OF THE CHILD
VOLUME III**



“They were highly distrustful of the capacity of judges to make intelligent decisions about custody arrangements. They wanted courts to have very limited authority to intervene in a family.”

Martin Guggenheim, professor of law at New York University, on Goldenstein, Freud, and Solnit’s books: *Beyond the Best Interest of the Child*; *Before the Best Interest of the Child*; and *In the Best Interests of the Child* (The New York Times, “Joseph Goldstein, Authority on Family Law, is Dead at 76,” by Eric Pace, March 15, 2000.)

CHARLES DICKENS



OLIVER TWIST



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“We view much of what the authors say as extraordinarily helpful. The exhortation that courts would ordinarily do best to leave well enough alone – to distrust their capacities for bettering even apparently harmful family situations, and consequently to follow a policy of repose – is forcefully grounded and long overdue.”

Peter Strauss; Joanna B. Strauss; Reviewed Work: Beyond the Best Interest of Child by Joseph Goldstein, Anna Freud, Albert J. Solnit, Columbia Law Review (1974).



“Their guidelines derive from a recognition of the importance for a child’s development of stability and continuity of psychological ties between children and the adults who take care of them. . . .”

Review of *Beyond the Best Interest of the Child and Before the Best Interest of the Child* by Andre P. Derdeyn, *American Journal of Orthopsychiatry*, (1981).

David Copperfield

Charles Dickens



“If one accepts for the most part these authors’ views regarding the current limited degree of helpfulness of state intervention . . . then the books make sensible suggestions. If one thinks of the state’s activities in these areas as largely proper and helpful, then the reader may react negatively and conclude that the authors are abandoning children to their families.”

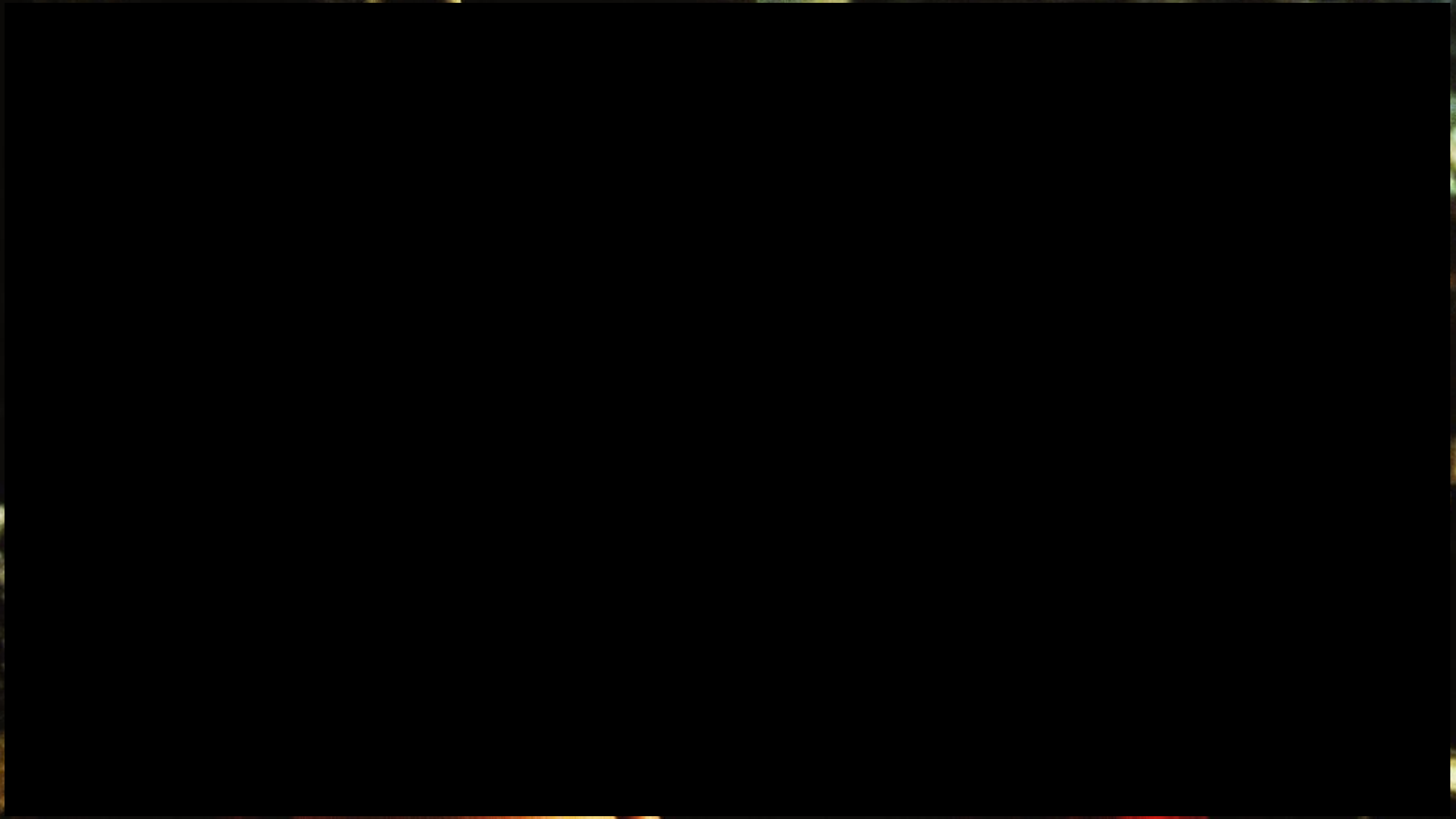
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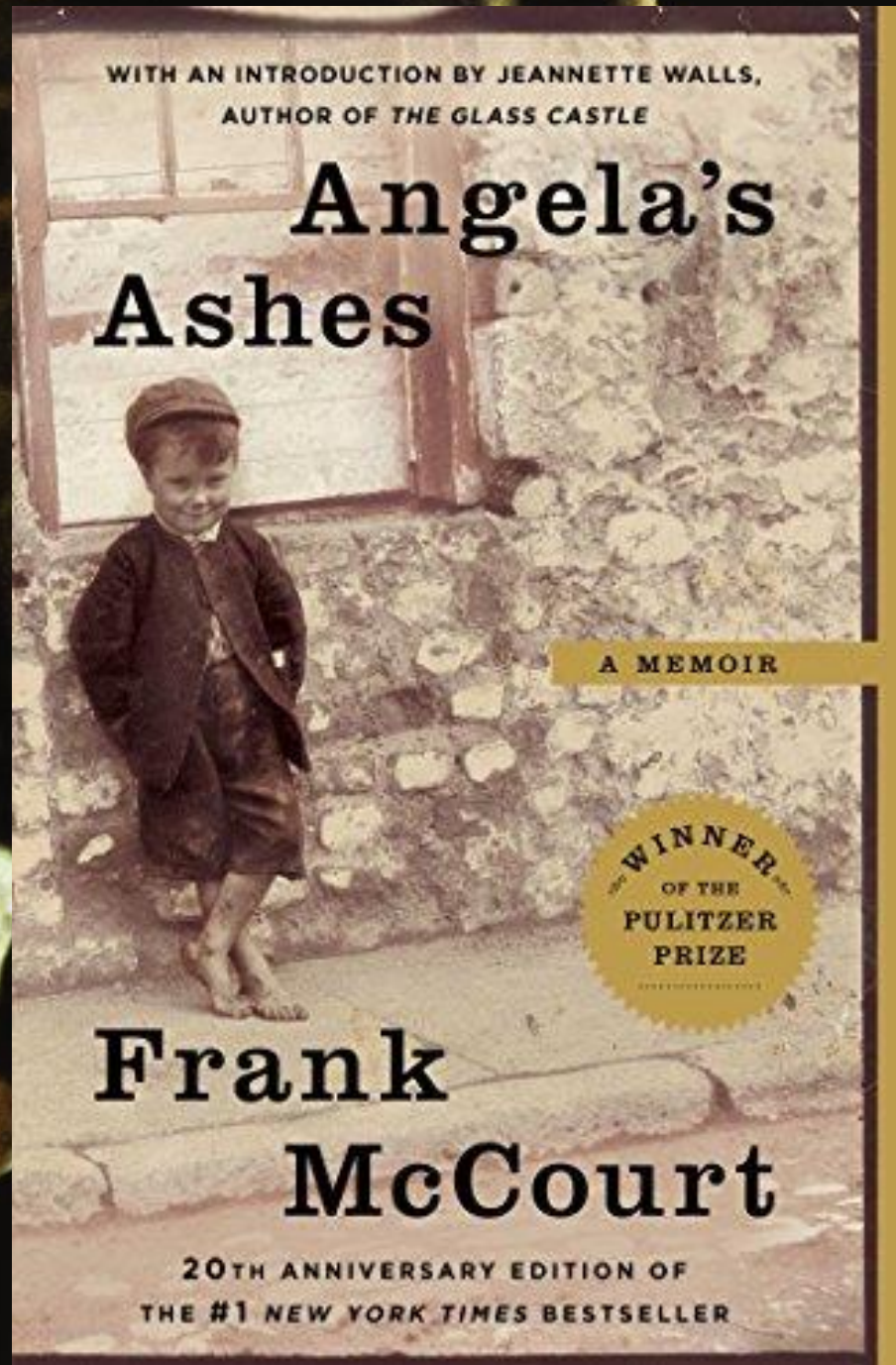


A lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

Preamble - ABA Model Rules







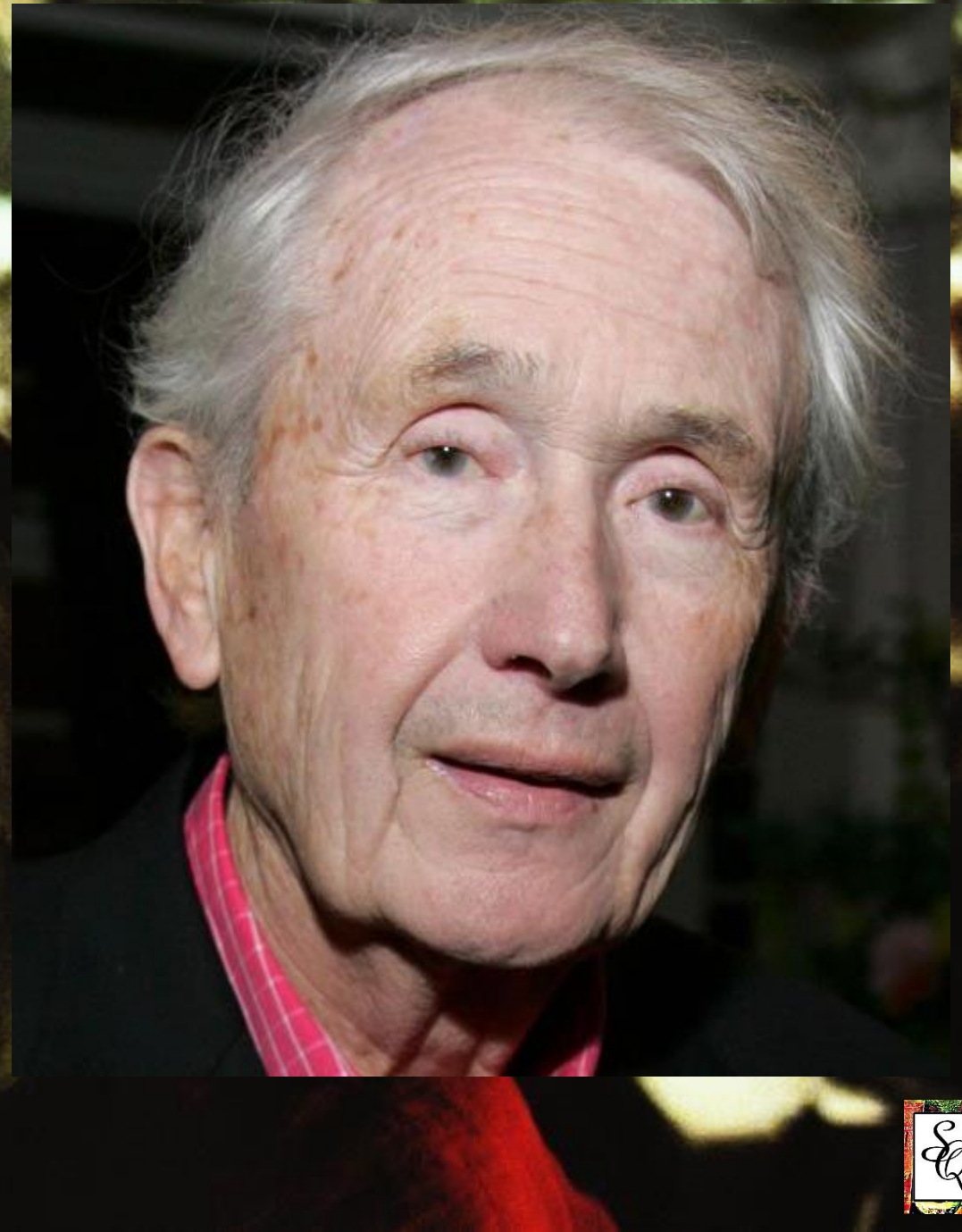
“People everywhere brag and whimper about the woes of their early years, but nothing can compare with the Irish version: the poverty; the shiftless loquacious alcoholic father; the pious defeated mother moaning by the fire; pompous priests; bullying schoolmasters; the English and the terrible things they did to us for eight hundred long years.”

“Above all – we were wet.”

Frank McCourt, *Angela's Ashes*

“Angela McCourt had challenged her son's recollections before her death in 1981. Frank and his brother Malachy had persuaded her to attend *A Couple of Blackguards*, their stand-up memoirs, in a Manhattan theatre. Angela interrupted the tearful renditions of their childhood, standing up and shouting at the stage: ‘It didn't happen that way. It's all a pack of lies.’”

“Frank McCourt,” *The Telegraph*, 20 July, 2009.



“Winds in the east,
mist coming in,
Like somethin' is brewin'
and bout to begin.
Can't put me finger on
what lies in store,
But I fear what's to
happen all happened
before.”

- Mary Poppins and Saving Mr. Banks.





Helen Lyndon Goff, known within her family as Lyndon, was born on 9 August 1899 in Maryborough, Queensland, Australia. Her father, Travers Robert Goff, was of Irish descent and born in 1864. He was unsuccessful as a bank manager due to his chronic alcoholism, and was eventually demoted to the position of bank clerk. The family lived in a large home with servants in Maryborough until Lyndon was five years old, when they relocated to Allora in 1905. Two years later, Travers Goff died at home at the age of 43.



"Mary Poppins," He
cried, "you'll never leave
us, will you?"

"I'll stay till the wind
changes," she said"

— P.L. Travers (Mary Poppins)



