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# A Home of Its Own: The Role of Poverty Law In Furthering Law Schools' Mission

## **Cover Page Footnote**

My thanks to my colleague Angie McCaffrey, for reading and commenting on this manuscript, and to my research assistant, Melanie Bormett, and my library consultant Barbara Kallusky, for their critical research assistance.

## A HOME OF ITS OWN: THE ROLE OF POVERTY LAW IN FURTHERING LAW SCHOOLS' MISSIONS

Marie A. Failing\*

Eighteen years ago, I (perhaps optimistically) suggested that poverty law was “home at last” in the legal academy.<sup>1</sup> At that time, the American Association of Law Schools (“AALS”) Section on Poverty Law was growing, which suggested that poverty law had arrived as its own discipline.<sup>2</sup> Also, Loyola New Orleans School of Law’s emerging poverty law program—which was designed to engage every student in that school in the subject of poverty law—promised to provide a model for a bold new beginning for the discipline of poverty law in American law schools.<sup>3</sup> Yet, only recently, other members of the Section on Poverty Law and I were wondering why the Section’s Annual Meeting Program on the exciting new “Civil Gideon” effort in several states<sup>4</sup> went largely unattended by the mainstream academy.

To the nostalgic, we might seem light years away from the heady days of the late 1960s and the early 1970s, when scholars like Jean and Edgar Cahn asked questions like “Power to the People or the Profession?” in distinguished publications, such as the *Yale Law Journal*.<sup>5</sup> Indeed, more recent arrivals to the discipline of poverty

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\* Professor of Law, Hamline University School of Law. My thanks to my colleague, Angie McCaffrey, for reading and commenting on this manuscript, and to my research assistant, Melanie Bormett, and my library consultant, Barbara Kallusky, for their critical research assistance.

1. See Marie A. Failing, *Home at Last: Poverty Law Returns to the Academy*, 34 *LOY. L. REV.* 1, 1 (1988).

2. *Id.* at 2 (noting the syllabus exchange of the poverty law section in the AALS).

3. See Catherine L. La Fleur, *Surveying Poverty: Addressing Poverty Law in a Required Course*, 42 *WASH. U. J. URB. & CONTEMP. L.* 147, 149-50 (1992) (describing how Loyola University founded the Gillis Long Poverty Law Center, and required a poverty law course for graduation).

4. The Civil Gideon movement is a new national movement in over thirty states to extend the right to counsel first recognized in *Gideon v. Wainwright*, 372 U.S. 335, 343-44 (1963), to indigents in civil cases. See Mary Deutsch Schneider, *Trumpeting Civil Gideon: An Idea Whose Time Has Come*, 63 *BENCH & B. MINN.* 22, 26 (2006), available at <http://www2.mnbar.org/benchandbar/2006/apr06/gideon.htm> (describing the national movement and special projects, such as Maryland and Washington’s projects to obtain the judicial right to counsel). There are currently about 120 advocates from over thirty states. *Id.*

5. See Edgar S. Cahn & Jean Camper Cahn, *Power to the People or the Profession? The Public Interest in Public Interest Law*, 79 *YALE L.J.* 1005, 1005 (1970). *But*

law may even yearn for the early 1990s, when academics attempted to produce textbooks, scholarship, and curriculum plans for substantive poverty courses, and to organize an “Interuniversity Consortium on Poverty Law” with the support of the Ford Foundation.<sup>6</sup>

Lawyers and academics dedicated to poverty law, however, cannot afford to be a nostalgic lot. As the saying goes, the poor are always with us, and the interest of the legal academy in poverty law tends to wax and wane as regularly as society’s interest in skinny ties or short skirts. One response to that reality might be for poverty law scholars to dig in their heels and promise themselves that they will not give up their commitments and their courses, no matter what their enrollments, and no matter how isolated they may feel in their institutions or within the wider academy. So long as mortality, and even retirement, are facts of life, however, the success of that response depends upon the fortuity that there will continue to be enough young legal services and public interest lawyers who want to succeed them in the move from practice to the academy. It also depends upon the presumption that those lawyers’ dedication to their former clients and practice colleagues will be strong enough to sustain that self-promise as faculty politics, decadal demands, and the allure of recognition and rewards from teaching and writing in other fields exert their influence on the shape of their professional lives.

A second, ultimately more promising response, I believe, is a two-fold strategy. First, law professors and lawyers who are committed to the teaching and practice of poverty law need to “get under the skin” of their law school environment. Poverty law academics, both classroom and clinical teachers, can play a leadership

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see Fred Cohen, *Law, Lawyers and Poverty*, 43 TEX. L. REV. 1072, 1093 (1965) (discussing the California Law and Poverty conference, sponsored by the Office of Economic Opportunity (“OEO”), and its failure to stimulate proposals for legal services programs).

6. See Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199, 199-200 (1993) (describing the consortium’s attempt to increase law school scholarship and teaching in poverty law through networking among schools, creation of a poverty advocacy reader, and publication of the newsletter, *Consorting*). To the best of my knowledge, this consortium no longer exists, though a review of the curriculum of the participating schools suggests that many of the original projects described in that article continue to be offered, albeit sometimes in altered forms. The Ford Foundation, the foundation of the Ford Motor Company, continuously supported Legal Services programs since the 1960s. See Ford Foundation, History, <http://www.fordfound.org/about/history.cfm> (last visited Apr. 25, 2007); see also Nat’l Legal Aid & Defender Ass’n, History of Civil Legal Aid, [http://www.Nlada.org/About/About\\_HistoryCivil](http://www.Nlada.org/About/About_HistoryCivil) (last visited Apr. 27, 2007).

role in integrating poverty law courses into the life and distinctive missions of their law schools in such a way that their law school faculty will be as hard-pressed to imagine a curriculum without poverty law as they would be to contemplate legal education without Torts or Civil Procedure. Second, if there is one thing that practicing and teaching poverty law has taught the academy, it is that aging poverty law faculty have a moral obligation to serve as community-building “elders” for newer poverty law scholars in the academic community.

While the practicalities of keeping together this larger community of poverty law scholars are beyond the scope of this Article, I will propose that the first objective—“getting under the institution’s skin”—is not necessarily the impossible goal it might seem to those who have struggled to keep poverty law alive and visible in their law schools. To them, such a proposal may seem as unthinkable as the suggestion that poverty lawyers could convince political parties to make an anti-poverty platform the central ongoing theme of election politics. Poverty advocates who are willing to carefully attend to their law school’s mission and vision and willing to give careful thought to how poverty law may play an important role in achieving that vision, may win a more lasting place for poverty law in the curriculum than it has heretofore managed to achieve in most law schools.

In this Article, I will argue that poverty law can be a key piece in the curriculum of law schools who define their mission, at least in part, as educating lawyers according to one of five paradigms: 1) lawyers as public citizens and leaders; 2) lawyers as skilled technicians of the law; 3) lawyers as skilled counselors; 4) lawyers as advocates on behalf of a cause in legal institutions; and 5) lawyers as transformational partners with the poor.

### I. PRELIMINARY WORDS ABOUT THE IMPORTANCE OF HUMILITY

Before I sketch these various scenarios that might include poverty law in the curriculum and some of their potential drawbacks, I would underscore Matthew Diller’s 1995 plea about the importance of humility in undertaking any such integration project.<sup>7</sup>

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7. See Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401, 1430-31 (1995) (reviewing MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* (1993)), and noting that “[t]hirty years of experience demonstrates that poverty lawyers should approach their work with a degree of realism and humility about what they can accomplish. Lawyers must think

First, I should admit the modesty of this particular sketch itself: the visions of lawyering that drive legal education are largely traced in the literature, with much more care, depth, and thought than I will be able to describe or footnote here. On clinical programs alone, much more seasoned lawyer-scholars have produced reams of literature.<sup>8</sup> And the contours of “substantive poverty law,” once taught in a single course or general clinic in some law schools, have happily morphed into many specialties, such as disability law, mental health law, children and the law, elder law, government assistance, landlord tenant law, and consumer protection, as well as broader vision courses with such titles as “Politics of Law Practice Course.”<sup>9</sup> While many of the approaches I sketch almost seem to demand an experiential component for the students, placing them in a setting where they can interact with poor people in some way, I will focus on poverty law conceived more broadly than just clinical education.

Moreover, I will not try to demonstrate here that poverty law is the only, or even the best, vehicle for teaching law students to visualize their professional lives within the models of lawyering that I will sketch. It may be that, say, Torts or Corporations works just as well as poverty law in teaching these lessons; I leave that argument to others with more depth in these other courses. Rather, I will offer an overbroad typology of these visions for practice as a way of thinking about the role and design of substantive poverty law courses or emphases in the curriculum. The course outlines and materials to make the role of poverty law in these visions viable, as well as the critique and refinement necessary to create a living, breathing institutional integration of poverty law, remain to be completed.

A second note about modest expectations: any law teacher who establishes a poverty law integration project that will survive in the legal academy needs to be humble about the limits of lawyering itself. The largest and most self-defeating temptation facing both poverty advocates and scholars is to imagine a quasi-salvific role for the law or lawyers in the complex and intractable social, eco-

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in terms of chipping away at poverty bit by bit, rather than sweeping it away in a tide of reform”).

8. See J. P. Ogilvy, *Clinical Legal Education: An Annotated Bibliography*, 11 CLINICAL L. REV. 1, 1 (2005) (providing an extensive bibliography of clinical education publications, including previous bibliographies compiled by the authors).

9. See Susan S. Bower, *Challenging Legal Culture from Classroom to Practice: A Case Study of New College's Politics of Law Practice Course*, 4 B.U. PUB. INT. L.J. 363, 363-64 (1995).

conomic, and spiritual problems that face most of the poor. Many of the histories of these experiments tell us as much. Though Bill Quigley has recently sent out a passionate and compelling battle-cry for a poverty lawyer revolution<sup>10</sup> that needs to be taken seriously, in my view, the heady days in which the Cahns,<sup>11</sup> Ed Sparer,<sup>12</sup> and others<sup>13</sup> imagined that lawyers would participate in movements to radically improve social life for the poor are gone. Their over-large expectations were ultimately self-defeating for lawyers who have tried to sustain a poverty law practice that can withstand the times of lean resources and invisibility.<sup>14</sup> By themselves, no lawyer and no legal system can deliver the sort of transformational change in the social, political, and economic life of the nation that these early pioneers hoped would bring true justice to the poor. To sell that bill of goods to young poverty lawyers or academics is to invite despair and to doom the practice and study of poverty law.

Similarly, poverty law academics need to be realistically optimistic about how much transformation of individual law students can be accomplished in the three years of law school. To imagine that a poverty law class or clinical curriculum by itself has the power to revolutionize the practice of law among one's graduates—indeed, even among one's graduates who go into public interest—is also self-defeating. Perhaps the highest accomplishment of students

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10. See William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL'Y 101, 102-03 (2006) (stating there are enough lawyers protecting and guiding existing racist, militaristic, and materialistic institutions, but there is a need for lawyers to heed Martin Luther King, Jr.'s call to be revolutionaries to "dismantle and radically restructure our current legally protected systems").

11. See Cahn & Cahn, *supra* note 5, at 1023-24, 1044 (describing the creation of new forms of public accountability, new institutions in which individuals could advocate for themselves, and the "reallocation of legal manpower necessarily to institutionalize representation for all those interests . . . which have gone unrepresented . . .").

12. See Diller, *supra* note 7, at 1401 (describing Sparer's litigation strategy at the Center for Social Welfare Policy and Law "to establish what Sparer called a 'right to live'").

13. See, e.g., Cohen, *supra* note 5, at 1072-73 (describing the important role that lawyers should play in the war on poverty).

14. Stephen Loffredo notes how changing times, in the wake of the Reagan revolution, coupled with increasingly entrenched poverty, and liberals' "increasing lack of faith in the idea that law—at least in its judicialized form—could meaningfully resolve problems of inequality and deprivation," made such heady expectations less realistic. Stephen Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. PA. L. REV. 173, 180 (2001) (discussing a 2001 case study of City University of New York ("CUNY") participation in the welfare reform movement in New York).

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who survive the law school admissions process is that they have successfully integrated the assumptions, norms, and practices of mainstream social life so that they can be successful in that world. In addition to learning how to conform to social expectations, avoid risk, and maximize their social and economic status, they have likely embraced simplistic and perverse generalizations about the poor and accepted social norms that justify the higher worth they place on their own lives and pleasures.

Moreover, many law students are likely to have internalized a centuries-old social perspective that the poor deserve their fate<sup>15</sup>—why else would the poor be always with us? At the least, most have come to believe that the problems of the poor are not our responsibility or business, and become detached or even indifferent to their tragic circumstances. Some scholars suggest that law school “does this” to law students,<sup>16</sup> embarrassing them out of their commitment to public interest practice, making it difficult for them financially to take a public interest job, or suggesting that working for poor people will be boring.<sup>17</sup> A more likely explanation is that these law school reinforcements simply give law students the justifications to yield to pre-existing life habits that were already in con-

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15. See, e.g., Michelle S. Jacobs, *Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 *How. L.J.* 257, 258-59, 261-62 (2001) (describing students’ views that poor people are unworthy of having legal representation, and how their value rankings correlated with anti-poor attitudes); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law Schools*, 2 *CLINICAL L. REV.* 37, 53 (1995) (noting that many law students have no significant exposure to victims of injustice, and assume that poor people are “marginal and somewhat blameworthy for their living condition”).

16. See, e.g., Quigley, *Seizing the Disorienting Moment*, *supra* note 15, at 42 (stating that law school “crush[es law students] under the weight of the rule of law instead of helping them to integrate their ideas and values with the law”); Henry Rose, *Law Schools Should Be About Justice Too*, 40 *CLEV. ST. L. REV.* 443, 444 (1992) (noting that law school disengages students from their altruism and provides no subculture of support for them). R

17. See, e.g., Cohen, *supra* note 5, at 1092 (stating that it would be unusual for a top law student to give up elite law firms, clerkships, or teaching careers for a poverty law practice, and noting that public interest recruits are more likely to be found among those “who are not in the upper echelons of their class”); Rose, *supra* note 16, at 445 (quoting Howard Erlanger and Robert Stover’s findings that “student anxiety related to financial compensation and job satisfaction leads many” to more lucrative career paths and “what is perceived to be more craft satisfaction than public interest work”); Stephen Wexler, *Practicing Law for Poor People*, 79 *YALE L.J.* 1049, 1051-52 (1970) (noting that poverty lawyers stay in the practice a short period of time because they cannot earn enough money, cannot advance, their jobs are eliminated by the government, and much of the work is “not intellectually stimulating . . . dull and routine [while] the rest is exciting but requires little in the way of ‘brains’”); Stephen Wizner, *What Is a Law School?*, 38 *EMORY L.J.* 701, 706-07 (1989) (noting how “money fuels career decisions and forces career choices”). R

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flict with their desire to help others, a conflict not apparent to them until they had to make hard choices about their careers.

To demand that a poverty law course or even an infusion of poverty issues in the curriculum must undo all of this social conditioning in three years is to ask for the curricular experiment to fail and then unravel. Of course, the upshot of this observation is that law schools need to consider lifelong learning among all of their alumni, particularly lifting up the needs of the poor as a moral and ethical obligation. They should neither give up on their alums who enter lucrative practices, nor leave it to Legal Aid offices to recruit and train pro bono attorneys.

Third, poverty law academics and lawyers need to be modest about the number of goals they seek to achieve with their introductions to poverty law. As a teacher of first-year law students, I am pleasantly surprised when most of my students at the end of the year achieve even the most modest of law schools' goals: the ability to define legal issues well and state the law precisely, to use case analogies, to make policy arguments about why one legal rule is better than another, and so forth. If our law students need essentially full-time repetitive immersion in these fairly basic lawyering skills to become minimally competent, the more visionary set of skills that some poverty lawyers have proposed for students by the time they leave law school—an ability to counsel clients compassionately, be excellent litigators, good mediators, effective public policy analysts, and transformational leaders—is likely to be a work in progress. Even if one could be sure to master all of these skills with full-time immersion in poverty law and practice for three years, given the institutional pressures to conform law school curriculum to mainstream standards imposed by accreditation standards and U.S. News and World Report rankings, that prospect seems virtually impossible for all but the most renegade law school.<sup>18</sup>

Rather than try to achieve all goals with all people, it seems to me important that poverty law teachers isolate a small handful of realistic goals for many law students, like Loyola's poverty law course;<sup>19</sup> and/or adopt an ambitious set of goals for very few stu-

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18. See, e.g., Jeffrey E. Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 *IND. L.J.* 229, 242-43, 246 (2006) (noting that the U.S. News & World Report's rankings discourage diversity, specialization, curricular innovation, and clarity about the complexity of law school goals).

19. See La Fleur, *supra* note 3, at 148-51.

dents in an intense immersion experience, like Catholic University Law School's domestic violence clinic.<sup>20</sup> For example, a modest goal of the poverty law curriculum effort might be to make all students competent in the basic eligibility requirements of the major federal programs relied on by the poor. This goal would help students properly refer poor clients to federally-funded programs, and might help change a few students' stereotypes about who the poor are and how they live.<sup>21</sup> Unless poverty law faculty members become more modest about their goals, law faculties will tag these overly complex and ambitious programs as failures, and send the poverty law project into the wastebasket until poverty law is trendy again.

Humility in identifying the goals of poverty law in the curriculum goes hand in hand with a law school's necessary humility about where it sits in the wider institution of legal education as a whole, and how it can make a distinctive contribution to that wider enterprise. Unfortunately, market and social pressures, as well as universities' and law faculties' aversion to risk, have largely conspired to push law schools toward uniformity in their programs. For example, no law school wants to be ranked as having among the worst student law school admissions test scores, even if that means the law school may be screening out applicants who may be sorely needed by working and lower-income clients for routine legal services in the impoverished community where the law school is located.<sup>22</sup> Similarly, virtually no law school is willing to forego the U.S. News and World Report peer ranking that depends upon prolific scholarship by its faculty in order to invest the faculty's time in skill-building with students, even if that region's client population would be much better served.<sup>23</sup> And few want to be known as the law school in their jurisdiction that only turns out "bread-and-butter" lawyers, or even public interest or public service lawyers,

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20. See Margaret M. Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 *How. L.J.* 135, 145-46, 155-58 (1994) (describing non-litigation skills that lawyers must learn, and how such skills are taught in Catholic University Law School's clinic, as well as in clinical programs at other schools).

21. See La Fleur, *supra* note 3, at 148 (noting that the majority of students who took the mandatory poverty law course at Loyola New Orleans Law School changed their opinion of the poor and of poverty law). R

22. Cf. Stake, *supra* note 18, at 252 (noting the effect of U.S. News & World Report rankings on law school applicants' selection of schools). R

23. See *id.* at 260 (noting a possible skewing of investment into faculty scholarship rather than into teaching).

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whether or not consumer demand for these kind of lawyers is high.<sup>24</sup>

Until law school faculties, deans, and university directors gain the courage to forego the reputation rat race for a distinctive mission that concentrates on client and social needs, and not on national status, poverty law integration faces an uphill battle. That courage, however, requires these institutions to truly believe that the students they send into the world are performing just as valuable work in sustaining their local communities through law as the lawyer who runs a Fortune 500 company or who serves the President.

Humility in envisioning the role of law and legal practice in the lives of the poor, and the power of the poverty law curriculum to change students' visions, does not necessarily mean that poverty lawyers and academics have to accept the status quo or throw in the towel on decisive changes for the poor. To describe for young lawyers a positive role that they can play in systemic change is a realistic and worthy goal, especially if they are taught the need to seek appropriate partners among their clients and "fellow travelers" in unions, religious organizations, and other mediating institutions, as well as among other academics and professionals who serve the poor.<sup>25</sup>

Just because poverty lawyers cannot change the whole world does not mean that they cannot make a major impact on their clients' lives; indeed, the contemporary history of American poverty law is full of seemingly impossible successes, such as the implied warranty of habitability. As the studies on poverty law courses show, both clinical and academic poverty courses can have an important impact in encouraging lawyers to provide pro bono services, even if they are not practicing poverty law.<sup>26</sup> Perhaps as

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24. *Id.* at 255-56, 265 (stating that schools mistakenly focus on bar passage rates to the exclusion of developing other skills); *see also* Rose, *supra* note 16, at 447-48 (noting that many law schools fail to encourage students to focus on pro bono or community service activities). R

25. *See, e.g.*, Barry, *supra* note 20, at 146 (noting the importance of teaching "community analysis, group collaboration, cooperation with other professionals, consensus building, and forging solutions that express group objectives"); Louise G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 *FORDHAM URB. L.J.* 801, 807 (1998) [hereinafter Trubek, *Reinvigorating Poverty Law Practice*] (describing importance of collaboration between professionals, client groups, and lawyers). R

26. *See* La Fleur, *supra* note 3, at 157 (stating that Loyola New Orleans students who took the mandatory poverty law course "[o]verwhelmingly . . . felt that the course had changed their attitude about the poor and about doing pro bono work"). R

importantly, these courses can teach students to work as partners with their clients, and to use their creativity to bring meaningful change that withstands periods of social backlash.<sup>27</sup> Part of the role of aging poverty lawyers is to tell these stories, to celebrate successes as much as teach defeats, as well as to encourage younger teachers—who may not have lived in a time when social change was a trendy opportunity—to be ambitious enough and persistent enough that these changes in their law school environments are noticeable and permanent.

## II. CATEGORIZING VISIONS FOR LEGAL EDUCATION

Law schools' broad mission statements seldom betray a distinctive vision for the lawyers that they train. Or, perhaps more correctly, they are vague enough to permit visions as multiple and as broad as the number of stakeholders in the institution. Frequently, law schools attempt to sell themselves as capable of delivering on multiple visions of law practice. The reality, however, is that in their day-to-day work, because of institutional traditions and practice, most law schools can make good on only a few visions for lawyering.

By exploring the institutional culture and signature programs of particular law schools, one can capture some sense of the distinctive vision or visions that animate the real life of law schools. Sometimes these visions of law practice are shared by only a minority of committed faculty members constituting a sub-community within the institution. In some schools, such visions are noticeable only in particular institutional sub-organizations, such as the clinical program or a law school institute. In other law schools, a vision operates as a subtext, rarely articulated in official documents or faculty gatherings, yet operating as a set of shared norms used to select faculty, reform curriculum, and even identify which faculty projects and scholarships are praised and supported by the institution. Indeed, most faculty members may not even realize that they share this vision until a new group of faculty members or an administrator sets out to institutionalize a sharply different vision.

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27. See Stacey Brustin, *Expanding Our Vision of Legal Services Representation—The Hermanas Unidas Project*, 1 AM. U. J. GENDER SOC. POL'Y & L. 39, 58 (1993) (describing how teaching students to partner with client organization participants has helped the students gain skills “to effectively facilitate, educate, and organize” and taught them how to empower their clients); see also Wexler, *supra* note 17, at 1064-67 (describing how Wexler learned to partner with welfare recipients, rather than lead the advocacy).

Poverty law can, in my view, usefully inform most of the standard visions if its advocates are committed and perceptive enough to identify their own institutional self-perception and its salience with poverty law objectives.

### A. The Lawyer as Public Citizen-Leader

One vision that some law schools employ in educating their students is the lawyer as a public citizen-leader.<sup>28</sup> In this vision, the law school's primary purpose is not to impart complex practice skills, or even a wealth of substantive information about the law, although teaching skills and law that will prepare the students to pass the bar is no doubt still a *sine qua non* of the school.<sup>29</sup> Rather, in this vision, the lawyer is a very well-educated public citizen, who possesses the knowledge, humane vision, and skills that we would ideally hope that all citizens in a democratic polity possess, coupled with the ability to lead public opinion toward just political solutions to social problems.<sup>30</sup>

Philosopher Martha Nussbaum has described one version of a legal education that prepares students to be citizens of the world—whom she calls “cosmopolitans.”<sup>31</sup> In her ideal legal education, three core values would animate the curriculum. First, she advocates for “the capacity for critical examination of oneself and one's traditions”;<sup>32</sup> and second, the “ability [of lawyers] to see themselves not simply as citizens of some local region or group but also, and above all, as human beings bound to all other human beings by ties of recognition and concern.”<sup>33</sup> Third, she calls for a narrative imagination, “the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person's story, and to understand the emotions, wishes and desires that someone so placed may have.”<sup>34</sup> With these virtues, such a law school would educate students to influence public policy in multiple roles, from serving in public and private leadership positions, such as government offices and nonprofit boards, to representing clients whose successes will achieve a broader justice. Indeed, such a law school might even emphasize counseling institu-

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28. Martha Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 266-67, 271-72 (2003).

29. *Id.* at 271.

30. *Id.*

31. *Id.* at 266.

32. *Id.* at 269.

33. *Id.* at 270.

34. *Id.*

tional clients out of taking actions that will have broad social repercussions, such as despoiling the environment or creating massive unemployment in a community.

Such a vision might describe the lawyer as a well-educated generalist who has a broad, critically-informed understanding of the social, economic, and cultural forces that work in tandem with law to shape the lives of the average citizen. In this view, the citizen lawyer is prepared to employ that understanding on behalf of everyone in the local and broader communities she is bound to “by ties of recognition and concern.”<sup>35</sup> So educated and imbued with a sense of broad responsibility, the lawyer as public citizen has both the knowledge base and wisdom to identify the common good, and the skills that will enable her to move public opinion toward that good in various public and professional settings, from town meetings to courts. This vision builds from the assumption that law students are coming to us poorly educated in multiple dimensions of the social sciences and humanities that bear upon good legal decision-making.

The humane lawyering movement, building upon Nussbaum’s third virtue, a narrative imagination, utilizes the work of other disciplines to enable lawyers not simply to be more competent in the “facts” of a culture, but to broaden and humanize their perspectives on the world.<sup>36</sup> This vision hopes to build upon students’ innate compassion for others by introducing them to the inner worlds and communities of others who live in times and places far removed from their own experiences, primarily through fictional and non-fictional narratives.<sup>37</sup> An oft-cited example of this approach is the ethics text, *Becoming a Lawyer, A Humanistic Perspective on Legal Education and Professionalism*.<sup>38</sup> This reader not only borrows from the intellectual work of other disciplines, such as the work of psychologist Victor Frankl<sup>39</sup> and sociologist Robert Bellah,<sup>40</sup> but also includes “walk in my consciousness” materials, from

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35. *Id.*

36. *Id.* at 277-79.

37. *See id.* at 278.

38. ELIZABETH DVORKIN, JACK HIMMLESTEIN & HOWARD LESNICK, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (West 1981).

39. *Id.* at 79-83 (quoting VICTOR FRANKL, *MAN’S SEARCH FOR MEANING* (Beacon 1962)).

40. *Id.* at 52, 181 (quoting Robert N. Bellah, *The New Religious Consciousness and the Secular University*, in *DAEDALUS* 110-15 (1974)).

Bolt's *A Man for All Seasons*,<sup>41</sup> and Capra's recovery of Taoist thought to understand modern life.<sup>42</sup>

Poverty law represents an excellent opportunity for training lawyers as public leaders. Perhaps thanks to the frustration of modern liberals with the desperation and intractability of poverty, the psychological, economic, and social conditions of the class of the poor and its various subgroups—poor African Americans, single mothers, disabled people, children—have been extensively studied. Numerous think-tanks, such as the University of Minnesota's Institute on Race and Poverty<sup>43</sup> and the University of Wisconsin's Institute for Research on Poverty,<sup>44</sup> have already probed systematically over decades the relationship between legal rules, institutions, and various aspects of poverty.<sup>45</sup> Nussbaum's call for comparative approaches to teach these broader perspectives<sup>46</sup> is a "slam-dunk" in the area of poverty, specifically where there are comparative studies not only of the conditions of the poor and the law's effects on them, but also of the success of various forms of subsidized legal aid in helping people out of poverty.

Requiring only a modest collection of these resources, law students could easily acquire an interdisciplinary understanding of the conditions in which this client base lives while at the same time gaining an understanding of the research methods and limits of analysis of these other disciplines.<sup>47</sup> So armed, they will be more competent, not only to employ such resources as they enter public

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41. *Id.* at 79-83 (quoting ROBERT BOLT, *A MAN FOR ALL SEASONS* (Vintage Books 1962)).

42. *Id.* at 164-65 (quoting FRITJOF CAPRA, *THE TAO OF PHYSICS* 114-17 (Shambhala 1975)).

43. See Inst. on Race & Poverty, Homepage, <http://www.irpumn.org/> (last visited Apr. 17, 2007).

44. See, e.g., Inst. for Research on Poverty, Homepage, <http://www.irp.wisc.edu/> (last visited Apr. 25, 2007) (stating the Institute's purpose to perform "interdisciplinary research into the causes and consequences of poverty and social inequality in the United States").

45. See generally, e.g., *How Do Welfare Sanctions Work? New Findings from Wisconsin and Illinois*, FOCUS (Inst. For Research on Poverty, Univ. of Wisconsin-Madison, Madison, Wis.) Winter 2004, at 1, <http://www.irp.wisc.edu/publications/focus/pdfs/foc231f.pdf> (describing the effect of state welfare sanction regulations on work activity and earnings of Temporary Assistance for Needy Family ("TANF") recipients, and harms to families from work sanctions); INST. ON RACE & POVERTY, UNIV. OF MINN. LAW SCHOOL, *THE CHOICE IS OURS: EXPANDING EDUCATIONAL OPPORTUNITY FOR ALL TWIN CITIES CHILDREN* (2006), [http://www.irpumn.org/uls/resources/projects/CIYFinalReport\\_topost.pdf](http://www.irpumn.org/uls/resources/projects/CIYFinalReport_topost.pdf) (describing failure of court-ordered desegregation in Twin Cities schools).

46. See generally Nussbaum, *supra* note 28.

47. See generally Quigley, *Seizing the Disorienting Moment*, *supra* note 15, at 38.

debate, or work to improve these intractable problems, but they will also be more likely to ask, and more capable of seeking out, professionals from these disciplines when they encounter a public problem that has not been analyzed. This is because the law school would have taught them that it is “okay” to incorporate learning from other disciplines to inform legal responses to difficult public problems.<sup>48</sup>

Moreover, the interdisciplinary analysis available within the poverty literature is capable, perhaps better than any case analysis, of teaching the skill of critical examination of tradition and habit that Nussbaum advocates for a world citizen.<sup>49</sup> If there is any law-related area where the failures of the law to accomplish its purposes have been extensively documented, it is in poverty law, whether it is an analysis of the effectiveness of poverty programs in reducing family instability, or the studies of the effects of under-enforcement of civil rights law.<sup>50</sup>

Finally, it is hard to think of many other substantive areas of law which boast such a rich body of literature, both fictional and not, that can invoke in students the “narrative imagination” that Nussbaum calls for—“the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person’s story, and to understand the emotions, wishes and desires that someone so placed might have.”<sup>51</sup> We could begin with the most direct and literal examples of this literature, which vividly recount the experiences of real Legal Aid lawyers and clinical professors encountering the vastly different worlds in which their clients live—from Lucie White’s humbling encounter with Mrs. G’s desire to buy her daughter some red shoes,<sup>52</sup> to Anthony Alfieri’s encounter with the bitter middle-aged neighbor who cynically tells him how the neighborhood calls urban renewal

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48. *Id.*

49. Nussbaum, *supra* note 28, at 276. It is notable that Nussbaum calls for the study of poverty law within such a comparative curriculum. *See id.*

50. *See, e.g.,* Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work’s Empowerment Approach*, 13 CLINICAL L. REV. 459, 460 (2006) (describing how clinical students can learn the built-in biases about the “deserving” poor in the social security system through a Supplemental Security Income (“SSI”) case, and can learn the ways in which landlord-tenant laws are designed to benefit the propertied).

51. Nussbaum, *supra* note 28, at 270.

52. *See* Lucie White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (described in, *inter alia*, Ruth M. Buchanan, *Context, Community, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1061 (1994)).

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“nigger removal.”<sup>53</sup> Slightly less directly, teachers like Gerald Lopez and Richard Delgado have offered fictional paradigms of the difficult relationships between lawyers and their poor clients in critiquing “do-gooder” activists and academics in a way that permits both the self-critical and the compassionate approaches that Nussbaum calls for.<sup>54</sup> And, finally, the international classical literature on poor people’s encounters with the law is extensive—from *The Grapes of Wrath*,<sup>55</sup> to the work of many South African authors documenting the oppression of legal apartheid from the perspective of the oppressed.<sup>56</sup>

Moreover, as my colleague Angela McCaffrey reminds us, the subject of poverty law may be critical in training citizen-leaders because of another relatively unnoticed fact: in many law schools, a number of students come from disadvantaged backgrounds.<sup>57</sup> As Professor McCaffrey notes, these students may feel ill at ease in the law school classroom because they have had no life experience with some of the basic legal concepts that others may take for granted—i.e., they and their families may have never signed a contract, owned any real property or assets that were the subject of written instruments, and so forth.<sup>58</sup> As Stephen Wexler reminds us, “[p]oor people are not just like rich people without money. Poor people do not have legal problems like those of the private plaintiffs and defendants in law school casebooks. People who are not poor are like casebook people.”<sup>59</sup> Thus, law schools’ focus on the

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53. See Anthony Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1748 (1994) [hereinafter Alfieri, *Practicing Community*] (reviewing GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE (1992)).

54. See Alfieri, *Practicing Community*, supra note 53, at 1753-54. Delgado has written a number of critical “chronicles” through the eyes of his character, Rodrigo. See, e.g., Richard Delgado, *Rodrigo’s Thirteenth Chronicle: Legal Formalism and Law’s Discontents*, 95 MICH. L. REV. 1105, 1108 (1997). R

55. For a description of John Steinbeck’s poverty-related narratives, including the 1939 *GRAPES OF WRATH*, see Amazon.com, John Steinbeck (1902-1968), <http://www.kirjasto.sci.fi/johnstei.htm> (last visited Apr. 11, 2007).

56. For a description of these works, including ALAN PATON, *CRY THE BELOVED COUNTRY* (1948) and NADINE GORDIMER, *A WORLD OF STRANGERS* (1958), see South Africa.info, Homepage, <http://www.southafrica.info> (last visited Apr. 11, 2007).

57. Conversation between Angela McCaffrey, Professor of Law, Hamline Univ. School of Law, and author (Nov. 22, 2006) (transcript unavailable).

58. *Id.*

59. Wexler, supra note 17, at 1049. Wexler’s point that most “casebook” people lead relatively “harmonious and settled lives” until some law-related incident threatens that existence and that poor people “are constantly involved with the law in its most intrusive forms,” *id.* at 1049-50, is generally correct, but some casebooks seem to be getting better at including poor people. R

legal lives and problems of the rich may signal to students that they are excluded from the public leadership role that this model attempts to encourage by virtue of their personal history or “class background.”

The introduction of poverty law topics may, however, not only signal to students from underprivileged backgrounds that the legal concerns of their communities are important and included in the law school curriculum. It can also make them aware that they possess insight and competence into some legal problems that their classmates have not faced—for example, they may be quite familiar with legal problems such as eviction and consumer rip-offs, or dealing with welfare bureaucracies in administrative hearings. Moreover, including legal subjects that affect underprivileged communities can show students from such communities that they have a direct role to play as citizen-leaders in the lives of those communities rather than escapees to the lawyering middle class. They may come to see that at least some of the problems that compound their families’ or communities’ woes have legal solutions empowering them as persons as well as lawyers, and giving them a sense of integrity in their former and future lives.

The ways in which poverty can be infused into the life of a law school that trains its students to be public citizens are manifold. The most visible model is Loyola University New Orleans’ Law and Poverty requirement for the Juris Doctorate degree (“J.D.”), which originally required students to visit a poverty site and spend time with a poor client.<sup>60</sup> The program also requires students to learn the substance of basic poverty law programs, and to engage in critical assessments of these programs.<sup>61</sup> Virtually any interdisciplinary course, from law and economics, to law and sociology or law and psychology, can educate the lawyer-citizen about the problems of the poor in their encounters with the law, and these courses are likely to draw students who are not already committed to public interest practice. Moreover, law and humanities classes are easy places to introduce these narratives of poor people’s encounters with the law, while extracurricular reading groups or

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60. See La Fleur, *supra* note 3, at 150-51. Now, students at Loyola New Orleans take this course in their third year. See Loyola Univ. New Orleans College of Law, Juris Doctorate Degree Requirements, <http://law.loyno.edu/jdrequirements.html> (last visited Apr. 11, 2007). La Fleur notes how such courses can change typical law student attitudes about the poor, and further the mission of schools that wish to inculcate a “preferential option for the poor.” La Fleur, *supra* note 3, at 159, 162.

61. See La Fleur, *supra* note 3, at 150-51.

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movie nights sponsored by student groups offer other options to widen the scope of students exposed to these issues.

Perhaps most importantly, a law school that accepts the “lawyer as public citizen-leader” conception cannot think that its obligation to educate its community stops at the bar exam or at the student body’s edge. Whether it does so directly or by putting pressure on bar associations and continuing legal education (“CLE”) programs to educate lawyers on the problems of people in poverty, a “public citizen” law school should not consider its job done until it can demonstrate that it is ensuring lifelong learning for its graduates on these issues. Part of this effort may involve convincing CLE accrediting bodies that interdisciplinary courses that educate lawyers on how the legal and political systems interact to deepen or alleviate poor people’s social and economic problems are “real law” courses that should be recognized for continuing education credit.

### **B. The Lawyer as Technician**

A second vision for legal education, which is rarely touted in the academic literature anymore, but which is likely to inform much day-to-day curricular practice in most law schools, is the education of the lawyer as technician. As described by ethicist William May, the professional as technician model focuses on the virtue of excellent technical performance of lawyering skills.<sup>62</sup> Contraposed to a utilitarian vision of professional practice, this vision prizes the excellent performance of the lawyer’s skill as intrinsically valuable, even aesthetically inviting, even while it expresses humility about the limits of the lawyer’s art.<sup>63</sup> The virtuous lawyer-as-technician sublimates her own needs and desires to the perfection of the art, disciplined and persevering in her attempt to master the art of lawyering.<sup>64</sup> The profession uses ostracism and shame to discourage mediocrity and status, and praise to encourage outstanding performance.<sup>65</sup> As applied to public defender lawyering, Abbe Smith has described this lawyering vision as one that “requires, among other things, knowledge, skill, experience, creativity, tenacity, and passion. It is a craft that requires careful attention to detail, sound judgment, and an ability to communicate.”<sup>66</sup> While

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62. See WILLIAM F. MAY, *THE PHYSICIAN’S COVENANT: IMAGES OF THE HEALER IN MEDICAL ETHICS* 89 (2d ed. 2000).

63. *Id.* at 96-97, 99-100.

64. *Id.* at 102-03.

65. *Id.* at 105.

66. Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203,

Professor May has criticized this image insofar as physician-technicians tend to remove themselves from personal encounter with their patients, May attests that the virtue of striving for excellence may ensure that professionals practice with skill and not simply according to their self-interest.<sup>67</sup>

Introduction of poverty law themes into a curriculum largely focused on technical excellence may not seem immediately fruitful. But, if faculty members in most law school courses are giving students the implicit message that public interest and poverty law practice are dull or foolish,<sup>68</sup> then securing the commitment of those faculty members to introduce poverty law themes into the heart of the curriculum becomes that much more important.

Furthermore, poverty law has some distinct advantages over some other subject matters in teaching the technical skills of the profession, such as the need to precisely define rules, to argue both sides of a case effectively, to investigate both facts and factual assumptions that drive legal decisions, and to work on creative alternatives to the existing solutions. Poverty law tends to suffer from rules that are either too broad to be useful, or too narrow to be usefully adapted to serve the ends of justice. For example, in probing the implications of the doctrine of unconscionability in *Williams v. Walker-Thomas Furniture Co.*,<sup>69</sup> faculty members who are teaching technical excellence can demonstrate the difficulty of applying broad terms consistently to varying fact patterns. Or, conversely, they can probe the effectiveness of technical building codes as the basis for implied warranty of habitability claims in establishing safe and sanitary housing for those who cannot afford to break their leases and move elsewhere.

At the level of factual investigation, poverty law cases often give faculty members the opportunity to push students to uncover what hidden assumptions about litigants must inform judges' decisions for those decisions to be rational and consistent with other case

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1251 (2004) (arguing that the respectful public defender who takes pride in her craft and has a sense of outrage is more likely to last in public defense work than Charles Ogletree's empathetic, heroic public defender).

67. MAY, *supra* note 62, at 97, 102-03.

68. See Richard Kahlberg's description of his experience at Harvard Law School in Robert W. Gordon, *Bargaining with the Devil*, 105 HARV. L. REV. 2041, 2043-44 (1992) (reviewing RICHARD D. KAHLBERG, *BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL* (1991)), and describing "left" teachers' views that lawyers cannot do much good in the legal system, as well as Kahlberg's sense that "even [p]overty [l]aw, taught by the charismatic Gary Bellow, has 'boring' rules and offers influence only 'on the margins'").

69. 350 F.2d 445 (D.C. Cir. 1965).

law—why, for example, the North Dakota appeals court in *State v. Norman* would permit a battered woman to kill her sleeping abuser as a matter of self-defense while other defendants are required to prove an imminent threat to their lives.<sup>70</sup> Assumptions that judges make about the lives of impoverished people rarely show up on the pages of the textbook version of the case; they require skill in hunting and positing plausible explanations, and testing those explanations against the alternatives. Moreover, without exercising tenacity and passion aimed at the problematic story that the law poses for the poor, students can come away with a sense of powerlessness about the ability of the law to “solve” its own problems.

Introducing poverty law into a lawyer-as-technician vision of legal education is at once perhaps the easiest and most difficult of the integration projects. On one hand, it requires the cooperation of a large number of colleagues, many of whom may not be sympathetic to either the problems of the poor or the effectiveness of cases like *Walker-Thomas*, which they may regard as wrongly decided or even peripheral to the main themes of the course. Moreover, it requires overcoming the inertia of faculty members who are used to teaching from standard cases and casebooks that may ignore these problems altogether. These colleagues do not want to go to the trouble of creating materials to focus on poverty problems, particularly if they are also trying to meet demands that they also teach law and economics, race and gender critiques, lawyering skills, and a host of other topics.

For the problem of faculty inertia, at least, there are an increasing number of solutions. Many traditional casebook authors, such as Joseph Singer in *Property*, include cases and materials that put a poverty law slant on core concepts in their disciplines.<sup>71</sup> Moreover, special curriculum efforts, such as the Minnesota Justice Foundation’s poverty law project that has developed several one-day “modules” applying core disciplinary concepts to the particular

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70. See *State v. Norman*, 366 S.E.2d 586, 591-92 (N.C. Ct. App. 1988), *rev’d*, 378 S.E.2d 8 (N.C. Ct. App. 1989); see also Veryl V. Miles, *Raising Issues of Property, Wealth and Inequality in the Law School Contracts and Commercial Law School Courses*, 34 *IND. L. REV.* 1365, 1366 (2001) (discussing how bringing poverty issues into the classroom brings “the face of diverse clients” to the attention of students, requires them to learn how to provide effective representation, and enhances their analytical and advocacy skills).

71. For an example in Singer’s texts, see, for example JOSEPH SINGER, *PROPERTY LAW: RULES, POLICIES AND PRACTICES* 30-32 (2006) for a description of efforts to recognize a right to the fulfillment of basic needs.

problems of people in poverty, are available with virtually no time or monetary cost to faculty.<sup>72</sup> These materials can be particularly effective if the instructor is astute enough to illustrate how the legal rules in cases primarily affecting the poor differ in scope and effectiveness from those in areas affecting the wealthy.

A second drawback in employment of poverty issues in a standard “technician” curriculum is that the lessons poverty lawyers would like students to learn may be hidden. Students may focus so intently on learning the doctrine in these cases that they skip over the human impact of the doctrine on people who are so unlike them. As a result, the true implications of the legal doctrine may remain unclear. How important, after all, is the doctrine of unconscionability likely to seem to a middle-class law student who can buy her furniture anywhere with low-interest credit terms, and refuse any contract of adhesion? Students exposed to distinct problems plaguing poor people in standard courses are unlikely to understand how oppressive or even missing legal regulations work together to confine the average poor person’s life—how the overbearing welfare worker, the absentee landlord, the boss who refuses to pay overtime, and the rip-off merchant create a fragile web out of the client’s existence.<sup>73</sup> Yet, while single-day treatments of the problems of poverty in unconnected courses are unlikely to transform the vision of the average law student, repetition of these issues several times over the semester in most courses in the curriculum may minimally cause students to “know them when they see them” in practice. Cumulatively, they may have a sensitizing effect on the students who will battle real poverty lawyers over these issues some day.

Most importantly, law teachers’ focus on technical excellence and curricular inertia is likely to be the poverty law academic’s friend in these areas in terms of educating those students most in need of exposure to poverty law. Once poverty advocates are able to secure the commitment of other faculty members to include cases or themes involving poverty into their courses, there is a greater likelihood that they will be built into the long-term fabric of the institution, unlike the curricular demonstrations, confer-

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72. See Minn. Justice Found., Poverty Law Curriculum Project, [http://www.mnjusticefoundation.nonprofitoffice.com/index.asp?Type=B\\_BASIC&SEC={58AA22BE-6721-4E1D-9998-3AEEB3362769}&DE=](http://www.mnjusticefoundation.nonprofitoffice.com/index.asp?Type=B_BASIC&SEC={58AA22BE-6721-4E1D-9998-3AEEB3362769}&DE=) (last visited Apr. 11, 2007) (providing lesson plans to supplement core first-year courses—such as Civil Procedure, Criminal Law, and Torts—with poverty law and public interest issues).

73. See, e.g., Cahn & Cahn, *supra* note 5, at 1025 (stating that law school “enerates moral indignation and inculcates intellectual and moral timidity”).

ences, soft-money clinical efforts, and other “innovations” that come and go. Moreover, as traditional law faculty members begin to teach these issues in their courses, the chances that their casebooks will reflect those cases only increase, sending the message to the next generation of law teachers that poverty law issues are as much a part of the standard curriculum as any other. As just an example of this principle, it is hard to imagine a contemporary Contracts teacher who would not teach the unconscionability doctrine, or a Property teacher who would not teach the implied warranty of habitability, even though both of those doctrines were just coming to the forefront when the senior people teaching these classes began their legal careers.<sup>74</sup>

### C. The Lawyer as Skilled Counselor

Both the clinical practice and the legal ethics literature are replete with the theme that law schools have largely failed to teach law students how to create humane and ethical relationships with their clients when they are doing their work. In the legal ethics literature, one rubric for an antidote to this problem is “client-centered counseling.”<sup>75</sup> In the clinical literature, there are any number of ways in which this problem has been described, perhaps most famously in Gerald Lopez’s distinction between regnant and rebellious progressive lawyers.<sup>76</sup>

The literature in both of these fields tells a similar basic story about lawyers. Thinking that they are smarter and better educated and skilled than their clients, lawyers tend to construct strategies that will secure justice as they see it and talk or pressure their cli-

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74. See Note, *Landlord and Tenant: Implied Warranty of Habitability Derived from Contract Principles*, 1970 DUKE L.J. 1040-41 (describing advent of implied warranty of habitability in *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970)); Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1174, 1191-92 (1983) (describing *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965), and the creation of the doctrine of unconscionability).

75. For a discussion of the client-centered counseling debate, and a list of advocates of this movement, see generally Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990). A key text about this movement is DAVID BINDER & SUSAN PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

76. See generally GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LEGAL PRACTICE* (1992) (described in Alfieri, *Practicing Community*, *supra* note 53, at 1753-64); see also Cahn & Cahn, *supra* note 5, at 1033-36.

ents into following their lead.<sup>77</sup> What they do not do is to listen to their clients, respect their clients' ability to understand their own problems, respect their clients' ability to make good and informed choices of strategies and ends, and/or work side by side with their clients to achieve those ends.<sup>78</sup>

This complaint about progressive poverty lawyers is as old as the literature describing the field. Indeed, those who are revered as icons in the field of poverty law—the Cahns, among others—first arrived in the hallowed halls of mainstream elite law reviews as critics of the very lawyers who were serving the clients whose cause they espoused.<sup>79</sup> Their successors—those like Lopez, Alfieri, White, and others whose works have become virtual classics on this theme—may be prescribing slightly different antidotes, but their diagnoses are very similar.<sup>80</sup>

These concerns about lawyer-client relations with poor people would not initially seem to implicate poverty law except that in some schools, the chief place where poverty law is consistently taught over time is in clinical programs where counseling issues are critical. Indeed, clinicians who may also teach the substantive poverty courses have more scholarly opportunities to explore ethics problems than other non-practicing faculty members. Classroom ethics faculty members have also found issues involving the poverty lawyer-client relationship to be intriguing, and resonant with lawyer-client relationships with other clients.<sup>81</sup> But these issues

77. See Brustin, *supra* note 27, at 57-58; Wizner, *supra* note 17, at 706 (stating that "the lawyer is taught that she cannot rely exclusively on the system [to achieve goals for her clients] but must still respect it").

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78. See, e.g., Brustin, *supra* note 27, at 43-44 (stating that public interest lawyers do not encourage clients to solve their own problems); Diller, *supra* note 7, at 1428-29.

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79. See, e.g., Cahn & Cahn, *supra* note 5, at 1035-36, 1040 (describing how public interest lawyers manipulate clients, usurp group decision-making processes, and use clients for their own agendas); Cohen, *supra* note 5, at 1089-90 (discussing why having a client board for legal services programs is important to permit meaningful participation of the poor); Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101, 1101-03 (1990) (describing Gary Bellow and Bea Moulton's critique of this phenomenon).

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80. See Anthony Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narratives*, 100 YALE L.J. 2107, 2125-26 (1991) [hereinafter Alfieri, *Reconstructive Poverty Law*]; Diller, *supra* note 7, at 1410-11 (describing Lopez's claims); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 159-60 (1994).

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81. See, e.g., Thomas L. Shaffer, *Should a Christian Lawyer Sign up for Simon's Practice of Justice?*, 51 STAN. L. REV. 903, 905-08 (1999) (describing a legal aid clinic case involving grandmother adoption and how biblical justice might influence ethical decisions); Paul R. Tremblay, *The New Casuistry*, 12 GEO. J. LEGAL ETHICS 489, 495

also appear in stand-alone poverty courses and textbooks,<sup>82</sup> perhaps because of these teachers' assumptions that many students who take the courses will end up practicing law for the poor and need to understand how their ethical behavior will affect their strategic success.

The fact that these issues are raised most regularly in poverty law clinics and Legal Aid settings is not simply a product of the fact that so many clinics are dedicated to serving the impoverished. In fact, people in poverty pose an especially complex challenge to the teachings of the "client-centered counseling" movement, and law students may be a good test subject for the movement's thesis.

The client-centered approach, as described by David Binder and Susan Price, identifies client autonomy as the highest value, and maximal client satisfaction with the representation as the optimal objective.<sup>83</sup> As Robert Dinerstein has suggested, the legal client-centered approach cannot exactly duplicate its psychological (Rogerian) counterpart.<sup>84</sup> Rogerian therapy assumes that the patient's objective is inner change, and that the therapist's "unconditional positive regard" for and empathetic understanding of the client coupled with non-directive listening will enable the client to, essentially, heal himself.<sup>85</sup>

By contrast, a poor legal client's objective is generally focused on getting others to change their existing behavior or compensate the client for their past behavior. In the legal counseling situation, the client is not confronted only with her own concerns, but also the "pushback" of adversaries, judges, others who have some stake in the outcome, and, indeed, the lawyer herself, whose ethical responsibilities to the court, the profession, her firm, and herself may require a course of action quite different from the one that the client "autonomously" might choose.<sup>86</sup>

Dinerstein also notes that, unlike the psychological setting, in a lawyer-client counseling situation, decisions need to be made,<sup>87</sup>

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(1999) (highlighting the plight of a young legal services lawyer to illustrate difficulties in making discretionary ethical decisions).

82. See, e.g., LESLIE BENDER & DAAN BRAVEMAN, *POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER* 565-94 (1995); JULIE NICE & LOUISE TRUBEK, *POVERTY LAW THEORY AND PRACTICE* (1997).

83. BINDER & PRICE, *supra* note 75, at 261; see also Robert F. Cochran, Jr., *Client Counseling and Moral Responsibility*, 30 PEPP. L. REV. 591, 596 (2003) (discussing Binder and Price's client-centered approach).

84. See Dinerstein, *supra* note 75, at 540.

85. *Id.* at 539-40.

86. *Id.* at 540-41.

87. *Id.* at 540.

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sometimes under significant time constraints—with tenants facing immediate eviction, or a short period of time to file a notice of appeal, as examples—and the lawyer may need to exert pressure to ensure that some decision is made so that action can be taken.<sup>88</sup> Indeed, even the professional's work with the client's inner reality takes a different cast, because effective legal advocacy requires that the lawyer challenge the client's understanding of the situation as much as accept it; while the lawyer may provide unconditional regard for the client herself, the lawyer cannot afford to unconditionally accept the client's version of the facts that landed her in a legal quagmire.<sup>89</sup>

Even if lawyers choose to practice with this more constricted notion of client autonomy, however, poor clients pose an especially difficult challenge. As many law review articles have documented, many of these clients will not have had any experience working with a professional who expects them to act as an autonomous person, making decisions about what is best for the client based on objective risk assessment information from the lawyer.<sup>90</sup>

Because poor clients live complex lives—for example, many have also gained impressive survival skills in chaotic environments<sup>91</sup>—a professional encounter with them may not proceed in any particular “textbook” manner. While some clients whose lives have been largely organized by others because of institutionalization or domestic abuse may be excessively passive,<sup>92</sup> even refusing to make independent decisions in the face of their lawyer's pres-

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88. *Id.* at 540-41.

89. *Id.* at 541.

90. See, e.g., Anthony Alfieri, *Stances*, 77 CORNELL L. REV. 1233, 1236-39 (1992) (describing Clark Cunningham's client's accusation that he had been disempowered by Cunningham's patronizing and “guardian” attitude during the course of a criminal representation); Robert F. Cochran, Jr., *The Rule of Lawyers*, 65 MO. L. REV. 571, 592 (2000) (reviewing WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* (2000)), and noting that poor clients “tend to defer to their lawyers”); Dinerstein, *supra* note 75, at 519-22 (describing Bellow and Wexler's critiques of “clients' experience of powerlessness” with lawyers and others with whom they interacted because of the failure of professionals to treat them as empowered participants in their own cases); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 423 (2006) (stating that poverty lawyers or lawyers for battered women have been attracted to a “client empowerment” model because these clients' “experience of political or social subordination is seen as having created passive or accommodating patterns of thinking and behaving, which may need to be confronted or changed before a client has the capacity to make truly autonomous choices”).

91. See generally Quigley, *Seizing the Disorienting Moment*, *supra* note 15.

92. See, e.g., Anthony Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769, 824-27 (1992) (describing how the social security system and disabled wo-

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sure to do so, others may react quite differently to a professional whose behavior they perceive as inconsistent with their expectations. Some will be suspicious that the lawyer is actually trying to manipulate them in a more sophisticated way as “part of the system” and refuse to cooperate.<sup>93</sup> Others may react instinctively to what seems like the most inviting short-term solution without paying attention to the cost-benefit information they are receiving,<sup>94</sup> still others will try to please the lawyer by repeating what they think the lawyer wants to hear. Moreover, poor clients may be more likely to bring others with them—family members, friends who drove them to the interview, or even other professionals—whose presence complicates the dynamic between lawyer and client.

A law student’s encounter with a poor client, thus, may take a number of unanticipated turns. The uncertainty of that dynamic can do wonders for exploding the student’s stereotypes. As a skill-building exercise, a poverty client’s case may require much more adaptability from a middle-class student than work for a middle-class client who may understand expectations for the professional relationship much like the middle-class student has come to understand them. This challenge of interviewing poor clients, then, may require the student to lay aside her preconceptions and employ both intuition and fast thinking to adapt her interview and counseling style to the behaviors she is observing, thus gaining experience in a variety of relational methodologies instead of simply one.

Indeed, a law student’s first counseling experience with a low-income client may be more successful than a practicing lawyer’s first encounter. Law students are more likely to understand the limits of their ignorance about both the client and subject matter than attorneys in practice.<sup>95</sup> They are likely to be more open to learning different ways of interacting with clients without the peer pressure of other attorneys demonstrating more paternalistic or coercive models of counseling. Moreover, because they will feel less pressure to prove that they are competent professionals “in charge” of a case, and will be more concerned about practicing interviewing and counseling skills in conformity with their teachers’

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men’s lawyers collaborate to create victims out of women); Cohen, *supra* note 5, at 1073 (describing how clients surrender to their circumstances). **R**

93. See, e.g., Alfieri, *Practicing Community*, *supra* note 53, at 1747-48. **R**

94. Cf. Brustin, *supra* note 27, at 41 (noting how such clients can be “overwhelmed by a plethora of ‘non-legal’ concerns”). **R**

95. *But see* Cahn & Cahn, *supra* note 5, at 1026 (arguing that law school discourages students from speaking from partial knowledge or from uncertainty). **R**

expectations, they are more likely to give poor clients space to exercise their autonomy both in telling their stories and in choosing a course of action from those offered.<sup>96</sup> Clients, sensing the law student's tentative approach to the problem, may be less resistant to cooperating with the student attorney unless they believe that their lawyer will "save" them from their adversary.<sup>97</sup> Law students may welcome the security of knowing that their clients are co-responsible for the outcome, instead of feeling burdened with the sole responsibility for the outcome of the case.<sup>98</sup>

The law school that places much of its mission focus on lawyer-client relationships thus has a wonderful opportunity to use poverty law to give its students varied and versatile counseling skills. While traditionally most of this counseling has occurred in traditional poverty law clinics, a law school dedicated to this vision has a wealth of other opportunities to expose students to these practices. For example, short-term income tax clinics operated through student groups or national and student organizations' short-term trips to counsel Hurricane Katrina victims are just some of the ways in which students can gain extracurricular counseling experience.<sup>99</sup>

Even within classroom poverty law courses, as Loyola's Law and Poverty course shows,<sup>100</sup> inventive faculty members who have

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96. See Steven Zeidman, *Sacrificial Lambs or the Chosen Few? The Impact of Student Defenders on the Rights of the Accused*, 62 BROOK. L. REV. 853, 890-91, 894 (1996) (stating that "[a]ppointed counsel typically fail to create such a bond [with their clients during their initial interview]. Part of the problem is due to clients' distrust of lawyers generally, and part is endemic to being an institutional indigent criminal defense attorney," and that "[l]aw students are better situated to gain the trust and confidence of their clients").

97. See *id.* at 894-96 (stating that, for various reasons, "[l]aw students are better situated to gain the trust and confidence of their clients" and that "[u]sing techniques such as active listening, students try to convey empathetic understanding and thereby encourage their clients to participate thoroughly in the interaction").

98. Cf. *id.* at 899 (stating that "students tend to channel their energy and enthusiasm into obtaining the best possible plea and sentence," unlike public defenders who have to focus on institutional players and concerns).

99. See, e.g., News Release, Univ. of N.C. Chapel Hill, Law Students to Spend Winter Holiday Helping Hurricane Katrina Victims with Legal Issues (Dec. 9, 2005), <http://www.unc.edu/news/archives/dec05/winterprobono120905.htm>; St. John's Univ. School of Law, St. John's School of Law Students Provide Legal Assistance to Katrina Victims: Taking Learning Beyond the Classroom, [http://www.stjohns.edu/academics/graduate/law/news/pr\\_law\\_070129.sju](http://www.stjohns.edu/academics/graduate/law/news/pr_law_070129.sju) (last visited Apr. 11, 2007). An extensive list of law school public interest projects, from the Volunteer Income Tax Assistance ("VITA") tax program to refugee counseling, is found at American Bar Ass'n ("ABA"), Directory of Law School Pro Bono and Public Interest Programs, [http://www.abanet.org/legalservices/probono/lawschools/pb\\_student.html](http://www.abanet.org/legalservices/probono/lawschools/pb_student.html) (last visited Apr. 11, 2007).

100. See La Fleur, *supra* note 3, at 156-57.

strong ties to the community can create opportunities for students to interview poor people, whether through simulated case counseling experiences or even research projects on legal issues affecting the poor, such as in Minnesota's Legal Scholarship for Equal Justice ("LSEJ") class.<sup>101</sup> While interviewing poor clients primarily for research purposes may not require the wide range of skills needed to counsel a client when the stakes are real and the choices limited, Loyola's and the LSEJ's experiences suggest that even research-based interviewing permits students to confront their stereotypes about the competence, wisdom and autonomy of the poor.<sup>102</sup> With this exposure, they can better appreciate why a partnership relationship with their clients is more likely to be successful than a paternalistic approach to the problem of client counseling. Moreover, with wise "teaming" of students from low-income or minority communities and majority middle or upper-class students, law teachers can create opportunities for deep and enriching dialogue among students about their encounters with the poor.

#### D. The Lawyer as Advocate

The mission for classic mainstream American law schools is centrally focused around teaching students to navigate successfully as advocates in the legal system.<sup>103</sup> While client counseling may be a preferred skill, the central teaching mission of such a law school is focused on imparting skills of analysis and advocacy, that is, preparing students to interact competently with other legal professionals, including attorneys and judges, to pursue a predetermined client goal. Beginning with skills in legal analysis, rhetoric, and writing during the first year, the model continues to emphasize the acquisition of substantive knowledge, analytical and expressive oral and written skills, and likely trial and appellate advocacy, negotiation, and perhaps other alternative dispute resolution skills

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101. See Minn. Justice Found., Homepage, [http://www.mnjustice.org/index.asp?Type=B\\_BASIC&SEC{2747729C-777B-4BCE-BB14-8E9674E9626C}](http://www.mnjustice.org/index.asp?Type=B_BASIC&SEC{2747729C-777B-4BCE-BB14-8E9674E9626C}) (last visited Apr. 11, 2007) (describing the Minnesota Justice Foundation's Legal Scholarship for Equal Justice class); Minn. Justice Found., Legal Scholarship for Equal Justice, <http://www.lsej.org/> (last visited Apr. 11, 2007).

102. See La Fleur, *supra* note 3, at 156-57. I have similarly observed this phenomenon the year that I taught the LSEJ class.

103. See CATHERINE CARPENTER, A SURVEY OF LAW SCHOOL CURRICULA (2003), <http://www.abanet.org/legaled/publications/curriculumsurvey/executivesummary.pdf>; Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 543, 550 (1991) (describing the case method and its focus on legal analysis as the predominant model for modern American legal education).

primarily involving law-trained professionals as adversaries.<sup>104</sup> This law school model hardly needs to be described further, since it continues to be the predominant model for legal education in the United States.<sup>105</sup>

The utilization of poverty law to further the mission of such law schools may seem pro forma. After all, most schools espousing this mission offer so-called “live-client” clinics where students can practice these skills, most with low-income or vulnerable clients of some kind.<sup>106</sup> Where once these clinics were likely to be primarily the bailiwick of students interested in working with disadvantaged clients or on public interest causes, most students now see the value of the clinical experience in honing the variety of skills they need to be effective advocates in the legal system. As many other articles have documented, law students who have their first client experiences with the poor are more likely to enter public interest work (holding on to their first year idealism) or to do pro bono work than students who do not have such a clinical experience in law school.<sup>107</sup>

Besides the clinical opportunities for students to practice with a population that would otherwise not be represented by counsel, substantive poverty law cases offer students preparing to be advocates some distinctive advantages over other cases. Beginning in the first year classroom, poverty cases may teach students some unique and important lessons about how the law really works. First, as suggested, many (perhaps most) of the problems that poverty clients bring to lawyers are not resolvable by the simple application of traditional legal rules to the client’s problem.<sup>108</sup> As many standard textbook treatments demonstrate, poor clients may have no legal remedy or a relatively useless legal remedy for their problem and the real remedy, such as lack of money, is out of reach of

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104. See generally CARPENTER, *supra* note 103.

105. See Weaver, *supra* note 103, at 543-44.

106. Indeed, ABA Standard 302(b)(1) on curriculum mandates that accredited law schools require “substantial opportunities” for instruction in live-client clinics. See Am. Bar Ass’n, Section of Legal Education & Admissions to the Bar, <http://www.abanet.org/legaled/standards/chapter3.html> (last visited Apr. 11, 2007); see also Wizner, *supra* note 17, at 711-12 (noting how Harold Lasswell championed the in-house law firm model for legal education in the 1970s).

107. See La Fleur, *supra* note 3, at 158.

108. See Cahn & Cahn, *supra* note 5, at 1009-10 (noting that the “vast quantity of lesser injuries . . . deserve redress” but there is no legally recognized remedy for them); Wizner, *supra* note 17, at 705.

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the law.<sup>109</sup> Such cases can teach students about the disinterest of the law in resolving the problems of the truly needy. They can interest the student in probing more deeply into why the law works for some, and not for others.

Conversely, for traditional teachers who are willing to develop the historical materials to illustrate this fact, poverty law cases can teach students how much can be done through the law if lawyers are willing to be creative and persevere. The incorporation of standard doctrines, such as the implied warranty of habitability and the unconscionability doctrine, represent examples of lawyering at its finest—the successful advocacy of legal requirements previously hardly imagined by creditors, lenders, or even judges, much less the clients who suffered under oppressive practices.<sup>110</sup> Indeed, several of the legal doctrines emerging out of poverty law advocacy efforts since the 1960s are excellent illustrations of the ways in which cutting-edge legal norms become implicitly accepted social norms. It is hard to imagine, for example, an American child who does not work with some conception of “due process rights” in her encounters with school officials or even her disciplining parents. Yet, less than fifty years ago, poverty advocates were fighting to normalize this legal concept in such poverty law cases as *Goldberg v. Kelly*<sup>111</sup> and *Goss v. Lopez*.<sup>112</sup>

Yet, because so many problems of the poor lack legal solutions, poverty clients’ cases can teach students the need to work in cooperation and coalition with other professionals, from welfare workers to psychologists, to help the client resolve her problem and move forward with her life. Even in the standard first-year classroom, teachers can take advantage of the lacunae in effective legal doctrines for the poor to push students to imagine creative collaborations they need to have with other professionals and their clients. In clinical settings, law students who work with poor clients learn

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109. See, e.g., Brustin, *supra* note 27, at 42 (describing her client’s focus on getting her work permit, which she overlooked, in order to meet her primary need to survive). R

110. See Cohen, *supra* note 5, at 1079-82 (describing tenants’ difficulties with the property rule that lease covenants were dependent, and difficulties with contracts of adhesion); see also Diller, *supra* note 7, at 1423 (discussing the successes of attacks on Reagan administration’s attempted cut-off of thousands of Social Security disability recipients); Loffredo, *supra* note 14, at 190-97 (discussing a 2001 case study of CUNY participation in welfare reform movement in New York). R

111. 397 U.S. 254 (1970) (holding welfare recipients, whose benefits were terminated, entitled to due process rights). R

112. 419 U.S. 565 (1975) (holding suspended high school students entitled to due process). R

quickly about the advantages of non-litigation solutions for people who often need a quick remedy that does not antagonize their opponents—something that the traditional adversary system will rarely supply.<sup>113</sup>

Thus, law students working on poverty law cases can gain valuable “triage” skills in understanding what remedies the law can be made to give, what problems are beyond their ability to resolve, and what problems are better attended to by other professionals.<sup>114</sup> These are skills that any lawyer who intends to practice primarily in litigation needs to learn quickly, both to serve her clients, and to make the most beneficial use of her time. Indeed, the ability to understand the limits of the lawyer’s ability to help is identified in most “skill lists” that have been developed as models for advocacy-based law schools.<sup>115</sup>

Poverty law cases also can provide students with a low-impact litigation experience. Unemployment compensation and welfare denial hearings give students litigation practice experience in a setting in which some of the necessary skills that trip lawyers up, such as good knowledge of the rules of evidence, are not as essential to winning cases. At the same time, such settings may demand flexibility and versatility from students, as they learn how their advocacy skills and rhetoric need to be changed to respond properly to the nature and experience of their audience (their adjudicator), the rules of that venue, and expectations about what evidence is relevant to a decision. For example, in many administrative hearings, particularly involving the poor, such as in unemployment, welfare, and Social Security disability cases, witness credibility may be crucial. The student attorney will learn a lot both about what kinds of witnesses and types of evidence are considered credible, and how to spot credibility prejudices of the adjudicator. That, in turn, may lead the student attorney to ask why her client, whom she has gotten to know as a complex person who has earned her respect, is treated so poorly or so cursorily by an administrative judge who does not know the client.

Moreover, poverty law cases put significant pressure on a student attorney to achieve a positive outcome for the client. While

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113. See generally Wizner, *supra* note 17, at 714.

114. *Id.* at 713-14; see Wexler, *supra* note 17, at 1049 (describing the needs of poor clients for non-traditional lawyering).

115. Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 134-35 n.119 (2001) (stating a partial list of skills required of students at New England School of Law).

all students want to do well in their clinical experiences for their own sake, student attorneys for low-income clients may be particularly motivated to do well by the fact that the clients have nowhere else to turn. Such students quickly learn that technical excellence isn't sufficient, that good lawyering takes creativity, the willingness to push beyond the limits of what the law will give, and to work harder and perform better than "good enough" if they are going to achieve a positive outcome for their clients.

Finally, to the extent that advocacy is an exercise in story-telling, poverty clients pose an especially challenging dilemma to students as well as lawyers. A fair amount of the critical literature has focused not only on the counseling questions—i.e., whether poverty lawyers do and should fully listen their clients' stories and defer to their objectives.<sup>116</sup> It has also probed whether lawyer-advocates should re-tell those stories in the client's own "tongue" or re-translate the stories into the idiom of the law and thereby risk subordinating their clients.<sup>117</sup> Cathy Mansfield has forcefully engaged the argument that lawyers fail their clients' humanity if they try to push the client's story into a legal paradigm, noting that "placing legal construct" on the client's story is necessary for the client to retain control of her own story rather than outsiders, and for system players to pay attention to that story in a way that serves the client's ultimate objectives.<sup>118</sup> Unlike a business client, who may have not only more clear but more simple objectives, and who may be acculturated to the ways in which lawyers translate stories for the legal system, poverty clients may experience the significant re-translation of their stories as another form of bureaucratic suppression or failure to hear.<sup>119</sup> Moreover, they may be more likely to be misheard by young lawyers so recently taught to separate the relevant from the irrelevant, lawyers who have not yet learned that they need to go back from what they learned in the first year about evidentiary relevance to re-introduce parts of the client's story critical to gaining the sympathy of a decision-maker. Gaining the pov-

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116. See Cathy L. Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 *BROOK. L. REV.* 889, 899-901 (1995).

117. See Steve Berenson, *Politics and Plurality in a Lawyer's Choice of Clients: The Case of Stropnick v. Nathanson*, 35 *SAN DIEGO L. REV.* 1, 50-51 (1998) (describing Ruth Buchanan's contrast of the "lawyer as translator" and "lawyer as shadow" models).

118. Mansfield, *supra* note 116, at 899-901.

119. See Alfieri, *Reconstructive Poverty Law*, *supra* note 80, at 2124 (describing how independent lawyer narratives silence client narratives and create substitute narratives of dependency).

erty client's voluntary and knowing assent to the re-translation of her story, and then providing a fair translation in an advocacy setting, is a challenging task. This difficult exercise taxes not only lawyers' legal analysis capacities but also the rhetorical skills they need to size up and correctly respond to the knowledge base, unrecognized assumptions, and character of both the client and their adjudicator audience.

Again, poverty law "client encounters" in law schools whose mission is primarily to train advocates for individual clients need not be limited to live-client clinics. Most easily, poverty law faculty members can make sure that their field placement or practicum programs include placements in poverty settings, or help recruit field supervisors. Moreover, poverty law teachers can assist their colleagues who are developing skills courses by creating simulations involving poor clients' problems, and work with Legal Aid and public defender programs to recruit real poor people to play interview and counseling subjects, as well as clients, witnesses, or jurors in mediation, negotiation, litigation practice, and appellate advocacy classes.

In a simulation course with some flexibility, poverty clients already represented by other lawyers could be interviewed about their real legal problems early in the semester, with subsequent exercises in the class designed around the narrative conflict that emerged from those interviews. While there may be logistical challenges in matching poor clients with simulation classes because of transportation and other challenges, the payoff for students in having to work with clients who are not "scripted" to tell their story according to predetermined conventions, as law students posing as clients often do, is potentially significant.

Moreover, there are also less conventional ways of exposing students to the experience of working with the poor as potential clients. Professor Miles has offered her debtor-creditor classes a peek into the lives of poor consumers by showing videos of debtors' personal experiences in distressing times, videos that moved the students significantly.<sup>120</sup> Some substantive poverty law faculty members already invite indigent people to speak to their classes on their experiences with the welfare system or housing authorities. Poor people with experience as legal clients or lay advocates in quasi-legal settings, such as welfare offices, can be particularly effective at teaching law students the roles of both client and advo-

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120. See Miles, *supra* note 70, at 1370.

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cate. Modifying these “guest lectures” so that law students are instead interviewing these clients on their experiences or engaging these guest clients in a dialogue, perhaps by taping those interviews for critique, can create additional skills exercises in a substantive course. These innovations also open up the potential of inviting clients who are not experienced speakers and may be intimidated by being asked to lecture to law students about their experiences.

Thus, work on poverty cases, from case analysis in the first year curriculum to simulations and live-client clinical representation, forces law students to exercise a wide panoply of advocacy skills that they might not have the opportunity to practice with standard textbooks and “fake” simulation clients.

### **E. The Lawyer as Transformational Leader**

A final mission model in which law schools may train their students is the model of lawyers as transformers of the culture in which they reside. Much of the critical literature on poverty law has been devoted to critiquing the other models that I have discussed and championing this model of lawyering practice for poverty advocates.<sup>121</sup> Yet, it must be admitted that this model of lawyering practice requires a complicated interplay of insight, a knowledge base, what we might call transformational virtues, and a plethora of skills to be effective.

The insights necessary to this model of lawyering practice are gained over a long period of immersion in both client culture and the wider culture, coupled with the concomitant ability to maintain perspective on what the lawyer is seeing when she experiences those cultures. Those who study transformative adult learning in a mediation setting emphasize the importance of daily learning experience “‘in the real world in complex institutional, interpersonal, and historical settings,’”<sup>122</sup> that uses “‘a prior interpretation to construe a new or a revised interpretation of the meaning of one’s experience in order to guide future action.’”<sup>123</sup> Such transforma-

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121. See, e.g., Diller, *supra* note 7, at 1424-25 (discussing the literature).

122. Susan J. Becker, *Many Are Chilled, But Few Are Frozen: How Transformative Learning in Popular Culture, Christianity and Science Will Lead to the Eventual Demise of Legally Sanctioned Discrimination Against Sexual Minorities in the United States*, 14 AM. U. J. GENDER SOC. POL’Y & L. 177, 201 (2006) (quoting Jack Mezirow, *Learning to Think Like an Adult: Core Concepts of Transformation Theory*, in LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVES ON A THEORY IN PROGRESS 3, 24 (2000)).

123. See Jack Mezirow, *Contemporary Paradigms of Learning*, 46 ADULT EDUC. Q. 158, 162 (1996).

tive experiences can produce a “dramatic, fundamental change in the way we see ourselves and the world in which we live,”<sup>124</sup> demanding “both an emotional journey and a cognitive one.”<sup>125</sup> According to Jack Mezirow, this transformation usually requires a dilemma “like the loss of employment, death of a loved one or other major event that the individual cannot fully process using past beliefs, assumptions or coping strategies.”<sup>126</sup>

Such transformation can only be achieved by a willing and careful observer—one who evaluates her own life and others with honesty and compassion. As Mezirow suggests, the complex emotional and cognitive journey necessary for law students to experience and then practice transformation requires, first, the intentional practice of closely watching and interpreting clients’ culture and actions.<sup>127</sup> Such careful reflection requires broader (sometimes academic, sometimes anecdotal) research into those cultural phenomena to determine whether they are culturally embedded norms, aberrations, or representative of a change in the cultural base. And the lawyer attempting to gain those insights must think reflexively, between the client’s culture (and in some case, several subcultures in which a client thrives) and the wider culture of which she is a part as a lawyer.

Using just an individual case example, one can see how complicated this practice of gaining insight can be. For example, a young minority male client who has been named as the father in a paternity action will make decisions under pressure from any of a number of subcultures in which he participates. He will, perhaps, be influenced by the culture of young males he hangs out with, the culture of the elders in his extended family, the culture defined by the family and friends of his girlfriend, perhaps a school culture, and perhaps even a wider racial or ethnic or religious culture with its expectations about fatherhood, personal bonding between fathers and children, financial responsibility for one’s children, the age of responsibility, and so forth. These expectations may be at direct odds with each other or may exercise different levels of influence over the young father at any one time. Indeed, as an autonomous actor, the young man may have rejected most or all of

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124. See Becker, *supra* note 122, at 202 (quoting SHARAN B. MERRIAM & ROSEMARY S. CAFFARELLA, *LEARNING IN ADULTHOOD: A COMPREHENSIVE GUIDE* 318 (2d ed. 1999)).

125. *Id.* at 202.

126. *Id.* at 203.

127. See *generally id.* (applying Mezirow’s research to the lawyer/mediation settings).

these expectations in favor of his own ideas about his place in the world, and what will make him happy and allow him to respect himself.

The successful transformational lawyer needs to understand not only the law, not only how these same sorts of cultural expectations influence this client's adversaries, but also the legal system's actors such as social workers, prosecutors, and the judge, all of whom hold this same complex set of expectations. Indeed, such a lawyer needs to understand how those cultural expectations are influencing who she is, herself. Moreover, a truly transformational lawyer will look farther than what she can intuit based on personal experience. Such a lawyer will seek a broader knowledge base—a deep, interdisciplinary perspective about how social, economic, cultural, and political forces that are barely visible to even the astute observer reinforce what she is able to observe about how these cultures work.

A transformational lawyer needs not only a deep understanding of the context in which she acts, but also the skills and the personal character to exercise a positive influence on the situation. This complex set of sophisticated lawyering skills includes not only those I have previously described—skills that law schools are used to passing on—but also others that traditionally have not had a place in the legal education of lawyers. In fact, as Ann Southworth's research has shown, poverty and civil rights lawyers do exercise more than the "traditional" skills of evaluation, counseling, and advocacy.<sup>128</sup> Southworth documents the very complex way in which such lawyers combine these skills with others: "lobbying for beneficial legislation and regulations, communicating with the press, organizing grass-roots campaigns and training clients seeking to influence the implementation of government policies, training other lawyers and defendants, and building coalitions and bargaining with other interest groups."<sup>129</sup> Exercising these roles requires, among other things, gaining competence in organizing and partner-

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128. Ann Southworth, *Lawyers and the "Myth of Rights" in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469, 481 (1998). Professor Ann Southworth is a professional responsibility professor at Case Western Reserve, with experience as a lawyer at the Department of Justice and the Washington Lawyers' Committee for Civil Rights. See AM. ASS'N OF LAW SCHOOLS, THE AALS DIRECTORY OF LAW TEACHERS 2006-2007, at 1036 (2006).

129. Southworth, *supra* note 128, at 481; see also Brustin, *supra* note 27, at 57-58 (noting poverty lawyers' need for training as a facilitator and legal educator); Cahn & Cahn, *supra* note 5, at 1017-18 (noting the need for mediation, lay advocacy training, juvenile-run juvenile courts, citizens' advice bureaus, and other non-judicial legal institutions for the poor); Trubek, *Reinvigorating Poverty Law Practice*, *supra* note 25,

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ing with groups, gaining an understanding of community development processes, learning how to write and speak for lay audiences, learning how to raise funds, gaining facility in economic skills as budgeting and projecting revenue, and handling personnel problems.

Perhaps most importantly, the critical lawyering literature has underscored the importance of the transformational lawyer's character. As Smith's lament about the quick exit that both law students and many new lawyers make out of poverty law practice<sup>130</sup> shows, all of the knowledge, understanding, and capability in the world will be for naught if lawyers do not have the prudence to utilize their wisdom and skills appropriately and to use the other virtues that permit them to grow in their practice.

While a full discussion of the virtues of transformational lawyers is beyond the scope of this Article, the literature on this subject suggests the following:

1. Appropriate humility about the limits of the ability of the lawyer and the law to transform social practice, yet humility commingled with the hope and belief that something useful can be achieved by and for the poor to break the vise of poverty;<sup>131</sup>

2. The willingness to transform the lawyer's own perspectives and habits in service of a larger vision;

3. The willingness to engage in fair but honest self-criticism of the existing legal system, particularly the legal profession's participation in that system. That willing self-criticism must, however, be aimed not at cathartic release of the lawyer's responsibility to do anything, but at naming what the law can do and does well, and admitting where it has failed to conform practice to ideals;<sup>132</sup>

4. The willingness (along with the skill) to engage others collaboratively in the goal of transforming the social, economic, and political life in which legal systems and doctrines are enmeshed. This willingness must include the willingness to meet poverty clients where they are, to take seriously their stories and the stories of

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at 806 (describing "unconventional" skills, such as community legal education, researching community institutions, and facilitating coalitions and group action).

130. Smith, *supra* note 66, at 1205-06.

131. See Diller, *supra* note 7, at 1428, 1430 (noting law's critical role in focusing officials and the public on poverty issues, and the need for poverty lawyers to be realistic and humble "about what they can accomplish").

132. *Id.* at 1428-29 (describing the ability of poverty lawyers to translate their clients' narratives, compellingly present their clients' claims, and influence actors in the political process).

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their communities, and to be inquiring and critical participants in the process of designing realistic visions and alternatives;<sup>133</sup>

5. An attitude of passionate and rebellious defiance at the oppression suffered by the poor—resistance to the system entwined with a wily clarity about the way in which lawyers must “play the game” of lawyering without succumbing to its temptations to go along with the status quo;<sup>134</sup>

6. The virtue of perseverance, both in circumstances where the lawyer finds herself doing work that may not be intellectually interesting or fulfilling and in circumstances where any progress on behalf of clients is difficult to see, indeed, where the lawyer may feel that the situation of the poor is regressing;<sup>135</sup> and

7. The virtue of compassion that does not degenerate into pity or helplessness at the enormity of clients’ problems.

Turning out a transformational lawyer is difficult for two reasons. One problem, pointed out by philosopher Richard Wasserstrom<sup>136</sup> and others, is that the practice of law as a conserving institution does not easily lend itself to this more radical vision of the role of a lawyer in a community. The second is that law schools are, by and large, ill equipped to teach their students how to be such lawyers.

### III. THE PRACTICE OF LAW AS A CONSERVATIVE INSTITUTION

Most immediately, one might think of transformational lawyers as those who come out of places like Harvard or Yale Law Schools, many of whom have a profound impact upon human events, both nationally and internationally. It is hard to deny that Yale lawyers Bill Clinton, George H.W. Bush, and Gerald Ford have had a significant hand in the progress of world events, not to mention the many critical national positions that other lawyers have held. Yet,

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133. See Brustin, *supra* note 27, at 43-44, 56-57; Diller, *supra* note 7, at 1406 (describing Cahns’ approach to poverty clients’ problems). R

134. See Alfieri, *Practicing Community*, *supra* note 53, at 1757 (describing Lopez’s argument). R

135. See Cahn & Cahn, *supra* note 5, at 1011 (noting that battles won at the national level often need to be refought at regional and local levels). R

136. Richard Wasserstrom is a lawyer and an emeritus professor of philosophy at University of California, Santa Cruz, who is known for his writings on affirmative action, the morality of law, and war. See Hamilton College, Levitt Center Speakers for 2006-2007, [http://www.hamilton.edu/levitt/speakers\\_2006\\_2007.html](http://www.hamilton.edu/levitt/speakers_2006_2007.html) (last visited Apr. 11, 2007).

Richard Wasserstrom's critique of lawyers as revolutionaries<sup>137</sup> bears repeating. Confronted with the prospect of lawyers advocating violence as a means to social change, Wasserstrom first noted that "[i]t is very much harder than we sometimes realize to be radical or revolutionary in respect to ends, as opposed to means," that is, to reframe social morality as a whole as opposed to illuminating the inconsistency between moral ideals and real practices.<sup>138</sup> Wasserstrom notes that even Malcolm X's call for human rights was "as unrevolutionary about the ends to be sought" as it was radical with respect to the means he advocated to get those rights.<sup>139</sup>

Similarly, most national and international lawyer-leaders are not transformational leaders in the sense that they are changing the nature of culture and its norms as we know it, in the way that Bill Gates has had a transformational impact on how we communicate with each other. While the consequences of their professional actions have been profound, most of their work has been dedicated either to stabilizing and preserving existing social, economic, and political life and norms, or attempting with some limited success to conform real legal practices to social norms already agreed upon.

In imagining what a law school that embraced a transformational mission might do, we would do well to at least heed Wasserstrom's argument for why lawyers are particularly unsuited for revolutionary activity. Apart from the fact that they demand specificity and clarification of problems, means, and goals, very unlike most revolutionaries,<sup>140</sup> Wasserstrom underscored that lawyers participate in a conservative institution, that "assimilates everything that happens to that which has happened," that trains lawyers to "look for the respects in which [any new] situation is like something that is familiar and that has a place within the realm of understood legal doctrine."<sup>141</sup> Moreover, Wasserstrom notes, lawyers play an institutional role with "explicit and implicit constraints upon [their] thought and action. As [lawyers], there are some things [they] simply cannot do—without ceasing to play the role of lawyers."<sup>142</sup>

Even in the daily practice of their profession, it is difficult for lawyers to revolutionize the social and economic stage on which

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137. See Richard Wasserstrom, *Lawyers and Revolution, An Address Given to the Annual Convention of the National Lawyers Guild*, 30 U. PITT. L. REV. 125, 128-32 (1968).

138. *Id.* at 126.

139. *Id.* at 127.

140. *Id.* at 128-29.

141. *Id.* at 129.

142. *Id.*

they play. For one thing, the ethical duty of zeal, that is, the very duty to secure their client's advantage, makes them inclined not to be critical of their client's position no matter how inimical it may be to achieving social justice on a broad scale.<sup>143</sup> Rather, that role as servant to the client's goals inclines lawyers to do whatever it takes to achieve those individual goals, including compromising ideal or long-range concerns, which is inconsistent with the radical single-minded passion characteristic of revolutions.<sup>144</sup> Such conservative predilections, while they can produce an implied warranty of habitability, cannot usually produce legal structures or rules that are truly unheard of and novel.

Indeed, a strong refrain in the poverty lawyering literature dating from the 1960s onward is that these conservative traits and habits of lawyers, demanded by the legal system if a lawyer is going to be credible, are both subversive of and essential to ethical poverty lawyering. They are, on one hand, subversive because they provide lawyers an excuse to shore up the inequities in the legal system by participating in business as usual.<sup>145</sup> Rather than expending the energy and taking the risks involved in transforming the legal system or the law itself on behalf of the poor, poverty lawyers can use the conservative nature of the profession to excuse their unwillingness to seek truly meaningful change for their clients. Much ink has been spilled about the many poverty law offices where lawyers have simply become bureaucratic rubberstamps of systemic injustice, taking in clients like parts on an assembly line and trying to mold their tragic situations to fit within some legal paradigm that permits them to claim that the client had due process if not justice.<sup>146</sup> Or, worse, such lawyers may simply participate in an unspoken consensus with judges and adversaries that the client must necessarily lose—they may, for example, refuse to demand a trial of an eviction or a misdemeanor charge, or raise a novel or complicated defense.

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143. *Id.* at 130.

144. *Id.*

145. See Wexler, *supra* note 17, at 1061 (describing how lawyers play the legal game in order to get other players in the legal system to see that they are doing something important).

146. See Cahn & Cahn, *supra* note 5, at 1013 (noting how poverty lawyers begin to live according to the crisis system of the poor and feel powerless); Diller, *supra* note 7, at 1425 (describing criticisms of poverty lawyers "as oppressors, as domineering . . . unreflective . . . or unfeeling bureaucrats," and citing Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 949 (1992)).

Conversely, as I have earlier suggested, these conserving traits of the legal profession have undergirded the critique of truly radical lawyering in the latter part of the 20th century.<sup>147</sup> Academic critics have illustrated myriad ways that lawyers, intent on “revolutionary” change, have used poor clients as essentially pawns in their chess game of test cases, brought to outsmart “the establishment” and secure a result preordained by the lawyers.<sup>148</sup> On this side of the critique, academic critics have charged poverty lawyers with lack of concern for their clients’ immediate needs and unwillingness to compromise on behalf of the client’s interests because of the lawyer’s personal disagreement with the client’s wish for a quick outcome.<sup>149</sup> This critique has pointed out the ways in which “revolutionary” lawyers have failed to respect their clients’ ability to understand their own situation, and to respect their clients’ ability to make moral and practical choices about what ends best serve them and the community of which they are a part.<sup>150</sup>

Law schools, themselves conservative institutions economically dependent on their appeal to students who plan to “work for the man,” can still see it as part of their mission to educate lawyers who have transforming visions about the problems of the poor. As suggested, however, transformation of legal structures and practices is not beyond the realm of possibility.

### A. Law School Limitations

Apart from the cultural norms which work against transformational lawyering, the institution in which lawyers are trained is generally ill-equipped to provide them with such an education. The critical literature has emphasized that poverty lawyers who are likely to be effective transformational lawyers are those who have chosen to live in poverty communities, raise their children there, and integrate their personal and professional lives in service of the poor.<sup>151</sup>

Indeed, it is difficult to know how any young lawyer could achieve the level of perspective she would need to train a critical eye on any local community in poverty without a deep immersion in the problems of the poor. Rarely, a student who has worked in

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147. See *supra* notes 137-40 and accompanying text.

148. See Diller, *supra* note 7, at 1409 (describing Sparer’s test case strategy).

149. See *id.* at 1411-13.

150. See, e.g., Alfieri, *Reconstructive Poverty Law*, *supra* note 80, at 2124-25.

151. See Alfieri, *Practicing Community*, *supra* note 53, at 1757 (describing Lopez’s characters, Sophie and Amos).

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these communities in some other capacity—as a community organizer, a social worker, a religious worker—will come to law school with the necessary insight, seeking only the power and skills that come with the practice of law. And, perhaps, law schools should make stronger efforts to recruit those activists who have a real understanding of the community’s problems and the non-legal skill set that is making a difference in the community.

Absent these students, however, it seems unlikely that an average law student, even one working with an individual client or two, is going to have that “dramatic, fundamental change” in how she sees herself, the client’s world, and the world they both live in. Indeed, it seems unlikely that a student who has not worked with a client in law school is going to have anything but an abstract understanding about the situation of the poor. Such an abstract understanding is unlikely to be translated into real-world insights, absent a lengthy and full immersion into the situation of the poor.<sup>152</sup> My evidence for that conclusion is the large number of academics who acknowledge that as lawyers for the poor, they were for many years clueless about what they were experiencing and how they were (poorly) interacting with their client communities.<sup>153</sup>

A serious immersion experience is not completely incompatible with a legal education, but the forms it might take are certainly discouraged by the current organization of most law school curricula. Apart from those few who have advocated organizing the legal curriculum to make clinical experiences a hefty part of students’ experience,<sup>154</sup> most law faculty members and their institutions have clung to a model of legal education in which required and bar courses take up well more than half of the curricular hours required of students. Intensive experiences, requiring a student to spend even a semester or year in a practice setting, are rare, partly because the low faculty-student (or attorney-student) ratio required to make those experiences meaningful and successful for the client is economically impossible for most law schools. Moreover, for many contemporary law students, the prospect of a semester or a year in a full immersion experience, where all of one’s

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152. See Quigley, *Seizing the Disorienting Moment*, *supra* note 15, at 45.

153. See Cahn & Cahn, *supra* note 5, at 1025-27 (describing the way in which law school teaches students to ignore moral issues, discourages them from speaking from incomplete information, avoids institutional activism, and is preoccupied with legal rules); see generally Alfieri, *Practicing Community*, *supra* note 53.

154. See Wizner, *supra* note 17, at 710-12 (discussing Frank’s view of the importance of having law offices in law schools and hiring practicing lawyers to teach, and Lasswell’s early championing of the clinical education movement).

credits were dedicated to the study and practice of poverty law, is incompatible with the many other demands they have on their time, from paid work to nurturing relationships with spouses, children, and family members.

Even if such an immersion experience were practically feasible in most law schools, it is not clear that a typical law student would be able to absorb all of the lessons she would need to absorb in order to become a competent transformational lawyer. Students in clinical settings often find that they are overwhelmed by learning the basics of practicing law as an advocate or counselor. While most law faculty members can tell stories of law students who truly “got it” after a clinical experience, it is unrealistic to expect that as a product of every clinical student’s course.

Substantive poverty law courses and clinics serving the poor can, however, function as a powerful vehicle to begin the education of lawyers capable of transformational legal practices. To the extent that transformative learning theory requires learners to immerse themselves in “complex institutional, interpersonal, and historical settings” to understand the “cultural orientations embodied in our frames of reference,”<sup>155</sup> it is hard to imagine any population group that has more to offer the traditional law student. Virtually all poor clients live complex lives, from the daily interactions they experience with governmental and private institutional actors, to family dysfunctions that make their choice of action difficult. It is hard to imagine, for example, a social structure that is more difficult to understand and to transform than the family of a batterer. It is hard to imagine someone more able to disorient a middle-class law student than a homeless man—from the very smells that he brings into the room to the way in which his homelessness is often a complete puzzle to his law student interrogator. To the extent that transformative learning depends on a disorienting experience that causes the learner to intensely examine her “sense of self” and critically reflect “upon the distorted premises sustaining [her] structure of expectation,”<sup>156</sup> it is difficult to imagine a more credible example than a male of color who has spent time in jail and lost his livelihood over the very behavior—smoking marijuana, drunken driving—the law student may well have engaged in herself. With the aid of the lawyering ethic that students are taught, i.e., to engage the client as a person and be prepared to accomplish

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155. Becker, *supra* note 122, at 201.

156. *Id.* at 202 (quoting JACK MEZIRIOW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING 167 (1991)).

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his goals, it is difficult to imagine many other experiences in which the law student will be more forced to reformulate a stronger inclusive, discriminating, permeable, and integrative perspective, and a decision and action process that depends upon such a perspective.<sup>157</sup>

The sort of holistic, profound change that can create an effective transformational lawyer cannot be trusted to a few courses in the three-year J.D. curriculum. Once again, bringing “the world” into the law school, in the form of encounters with poor people outside the formal curriculum, can reinforce for students that neither law school nor law practice is a cocoon insulated from the tragic and difficult situations in which the poor find themselves. For some urban law schools, such a need may be as challenging as asking whether the homeless that sleep on the streets by the law school can be teachers and partners with the students who walk by them every day. In other cases, faculty members may need to be catalysts to bring the poor inside their environs or to go out to where the poor live, so poor people can tell their stories. One might imagine how differently lawyers would think about the lives of the poor if, for example, program organizers made it a point to ask the disabled, the homeless, welfare mothers, or convicted criminals to speak on law school program panels that typically include only professionals and academics. Similarly, one might see the sort of self-examination that is the first step toward transformation if indigent clients were invited to participate as clients, witnesses, and jurors in moot court practices, or invited to participate in brainstorming sessions on emerging projects affecting their communities at the law school.

Ultimately, however, the key ingredient for educating transformational leaders missing in most law school programs is life-long professional learning and engagement in community. Very few law schools that I know encourage, or financially assist, students in taking post-J.D. graduate programs in sociology, economics, public administration, community organizing, or other areas critical to providing them with the knowledge base necessary to play transformational roles. Very few provide a thoughtful, organized course of continuing legal education designed to impart either the knowledge base or skills necessary to further the education of transformational lawyers.

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157. *Id.*

Similarly, few law schools provide support structures for groups of post- J.D. alums to come together regularly, whether informally or in a structured curricular setting, to have discussions about the challenges they have encountered and insights they have gained in their practice as they might in a clinical program. That is particularly disheartening given the fact that the first five or ten years of poverty law practice is probably the period that offers the most promise for transforming the lawyer's own understanding and habits, and when these lawyers might otherwise have the fewest "wise heads" to guide them in understanding what is happening to them and why.

The Law School Consortium Project is a promising exception to this rule, with many of its sixteen partners involved in supporting alumni and others who provide legal services for low-income clients.<sup>158</sup> For example, CUNY has organized practice groups that provide intense Continuing Legal Education ("CLE") training, monthly support meetings, a listserv, peer mentorship and support, and case referrals for about 180 solo and small firm alums, while the University of New Mexico has created an Access to Justice network that supports attorneys through inexpensive CLEs, externs, bi-monthly luncheons, and a listserv.<sup>159</sup>

The bar itself is a similarly important resource for young lawyers working on behalf of the poor. In many cities and towns, partners in some of the most prestigious law firms and some of the most high-profile public officials were once legal services lawyers or public defenders. Still other lawyers have worked as "fellow travelers" with poverty organizations, raising funds, sitting on boards of directors, taking occasional pro bono cases, and providing other support to these programs. Yet, even in communities where intra-firm mentoring programs are strong, inter-firm mentoring programs between members of the bar and legal services programs for the poor are in their early stages or non-existent. The ABA has encouraged both the involvement of law students in the delivery of pro bono legal services, which provides those early mentoring experiences, and law firm-legal services relationships that can bear such fruit as joint partnership self-help centers.<sup>160</sup>

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158. See Law School Consortium Project, Homepage, <http://www.lawschoolconsortium.net/about/mission.html> (last visited Apr. 9, 2007); see also Law School Consortium Project, Handout, [http://www.nlada.org/Training/Train\\_Civil/Equal\\_Justice/2005\\_Materials/121\\_2005\\_Dhillon\\_Handout1](http://www.nlada.org/Training/Train_Civil/Equal_Justice/2005_Materials/121_2005_Dhillon_Handout1) (last visited Apr. 9, 2007).

159. See *supra* note 158.

160. See Am. Bar Ass'n, 2005 Equal Justice Conference—Workshop Materials, [http://www.abanet.org/legalservices/ejc/workshop\\_preview\\_2005.html](http://www.abanet.org/legalservices/ejc/workshop_preview_2005.html) (last visited

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There are, of course, obvious resource challenges and other barriers to law school and law firm commitments to lifelong transformative learning for J.D. recipients. Clinics are possible because of the high tuition that students are willing to pay in order to better their social and economic prospects. Lawyers for the poor, however, are usually paying off that high tuition in their first decade of practice, and therefore tend not to have the money to invest in more education. They can scarcely find the time to attend staff meetings in their own offices, much less make a regular space in their lives to engage a community of other poverty lawyers in reflection about their lives.

Moreover, client confidentiality requirements make truly honest communication between poverty lawyers from different offices difficult. And, in the case of lawyer-to-lawyer relationships, poverty lawyers may be fighting court battles against the very lawyers who are potential mentors and confidantes for them. Indeed, in some cases, Legal Aid lawyers and public defenders have learned to cope with the bleak realities of their practice by imagining the organized bar as the enemy: for some poverty lawyers, some members of the private bar are out to “screw” poor clients while others are simply simpering lapdogs to the corporate and institutional interests that oppress their clients. Such a coping strategy makes lawyer-to-lawyer relationships particularly difficult.

Yet, for law schools and the legal community to abandon poverty lawyers to their own devices at the very time when they are most likely to be transformed into truly insightful, innovative leaders on behalf of the poor seems extremely short-sighted. The legal community has the financial resources and the law school community has the teaching resources to make such lifelong learning communities for poverty lawyers a realistic option. Poverty law organizations that value their lawyers and advocates as professionals insist that those professionals take the time to be nurtured and challenged in their practice, so that they can be better lawyers, even at the terrible cost of serving fewer clients. Together, these resources can make a practical difference in the continuing transformation of poverty lawyers, not simply sustaining them so that they can stay in

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Apr. 9, 2007) (describing 2005 conference workshops addressing involving law students in pro bono services and firms in training, taking cases that legal services programs cannot take, funding self-help centers, and creating corporate department-law firm-legal services relationships and partnerships between pro bono business lawyers and legal services workers).

the field, but also nurturing their souls and reshaping their vision through encounters and reflection on their client community.

#### IV. CONCLUSION

It is hard not to be taken as a snake-oil salesman when one proposes a curricular change that fits such a variety of visions for a mission as those I have described in this Article. Indeed, as I suggested earlier, for some missions, one might be able to make a similar case for international law, or the infusion of learning about racism and its kin into the entire curriculum, or clinical work that involves clients other than the poor. The poor in our society, however, pose a compelling challenge to the American legal community. Not only have they been the subject of intense academic study, not only do they live in one of the richest nations in human history (whose social, economic, and educational benefits are supposed to trickle down to them), but they also live in a country whose dedication to the protection of human rights through law is among the highest in history. In such a setting, the widespread existence of the desperate poor—working families who cannot withstand even a minor setback such as an extended illness or a failing car, single mothers whose ability to support and parent their children is stretched beyond possibility, elders who must choose between medicine and food—is a profound moral puzzle.

At the same time, the American bar is gifted with an unusual combination of optimism about the possibility of social change, pragmatism about the mechanisms needed to achieve it, a sense of responsibility for the world in which lawyers live, and passion about the importance of equal justice for all. There exists an underside to this professional imagination—inappropriate self-congratulation, persistent denial of reality, relenting refusal to take responsibility beyond family, friends, and clients, and skepticism about the responsibility of lawyers to change unjust social structures. In the war of opposites, whether the light or dark in this ambivalent imagination will be translated into social reality is uncertain. Whether law schools, as teachers to the bar, look upon their work as educating public citizens, skilled technicians, counselors, advocates, or transformational leaders, the infusion of poverty law and poor clients into the whole life of the law school offers some hope that passion, responsibility, and optimism will win out over denial, withdrawal, and skepticism. That, itself, should be worth the candle.