

Personally Professional: A Law Student in Search of an Advocacy Model

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Introduction

As I prepare to embark on a legal career, my professional role model is still my childhood pediatrician, Dr. Rosemary Casey. My memories of Dr. Casey range from the heroic to the mundane. She saved my younger brother's life by diagnosing his meningitis; she always took time to ask me about violin lessons, or cross-country races, or favorite classes before commencing my physical examination; she took meticulous notes in careful, cursive handwriting, but never failed to look at me when I was speaking to her; she could generate the diagnosis for a sick child faster than the most eager medical student. These snapshot memories capture a spectrum of attributes and skills that Dr. Casey was able to employ in concert, a repertoire that continues to inspire me today. I do not know whether Dr. Casey has ever set foot in a courtroom, cracked open a *United States Reporter*, or drafted a legal memorandum. I do know that she demonstrated for me the essential components and the astounding privilege of becoming a problem-solving professional—the opportunity to spend a working life applying knowledge and analytical skills in an effort to form meaningful connections with people while simultaneously making a positive contribution to the community.

The examination of these basic components of problem-solving professionalism is what captivates and concerns me. Yet, this is an area of inquiry that feels notably absent from law school discussions, both in classroom and in clinical settings. This conversation may be unspoken because it is so contingent on areas of practice, interpersonal dynamics, and individual tastes, but I suspect that the silence owes more to a lack of scrutiny than to a preference for private consideration.

I may be caught up with this concern because I approach my legal career as someone who planned for many years to be a physician.¹ On this prior path, I researched the doctor/patient relationship by speaking with and working for physicians, reading fictional and biographical ac-

* My heartfelt thanks to the C.R.-C.L. editing team—Sonu Bedi, Ayn Ducao, Elissa Hendler, Kristin Sostowski, Jonathan Soros, and Rose Kob—for their insightful substantive guidance and editorial assistance.

¹ Dr. Casey's example resonated so deeply that it was years before I could imagine finding meaningful professionalism by working as anything other than a pediatrician.

counts of physicians and patients, writing about the interplay between gender roles and medical malpractice suits, imagining myself in the role of a physician, and experiencing, from time to time, the role of a patient. Perhaps I give too much credit to modern medical training and the degree to which discussions about the doctor/patient relationship, *the* relationship, are woven into the educational and professional experience. Yet, the absence of such critical consideration in the law school curriculum is striking.²

The gap between the standard law school pedagogical approach and the actual content of most lawyers' professional lives reflects legal education's conflicted perspective on practice-based training.³ Personally, this educational gap leaves me feeling at sea, constantly questioning what it means to be a professional in the legal context. What professional aspirations are realistic for an attorney? Does my desire to connect with people evidence a constitution ill suited for the analytical rigors of practicing law? Is providing direct service and advocating for systemic change, in truth, an either/or proposition? Is collaboration with clients a panacea for professional-status guilt rather than a feasible and useful possibility?

This Essay is an account of my search thus far to find a model of advocacy that is at once personally and professionally satisfying. Given the

² See William L. F. Felstiner, *Justice, Power, and Lawyers*, in JUSTICE AND POWER IN SOCIOLEGAL STUDIES 55, 71 (Bryant G. Garth & Austin Sarat eds., 1998) (analyzing the manner in which law school indoctrination excludes the actual parties to legal cases by reducing them to "token pieces" and by considering them only as disposable conduits from which the issues of the case can be extracted).

³ The format of legal education has undergone a remarkable transformation from apprenticeship to classroom education during the last century. Currently, only 8 of the 55 admitting jurisdictions in the United States (Alaska, California, Maine, New York, Vermont, Virginia, Washington, and Wyoming) permit initial bar applications from aspiring attorneys who have completed law office study but have not graduated from law school. See *Comprehensive Guide to Bar Admission Requirements 1999*, 1999 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR & NAT'L CONF. B. EXAMINERS 10-12 (Margaret Fuller Corneille & Erica Moeser, eds.). Only two states, Delaware and Vermont, require applicants to complete law office apprenticeships or judicial clerkships prior to admission to the bar. See *id.* at 14. South Carolina is the only state that requires proof of trial experience (eleven trial experiences completed any time after obtaining one-half of the credits required for law school graduation) for initial admission to the bar. See *id.* For a humorous perspective on the thicket-like history of the bar examination, see Robert M. Javis, *An Anecdotal History of the Bar Exam*, 9 GEO. J. LEGAL ETHICS 359 (1996). The American Bar Association's Task Force on Law Schools and the Profession identified communication and counseling as among the ten "fundamental lawyering skills" and suggested that these skills might be gained through clinical coursework. See *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR 121-22, 256-57 (Robert MacCrate, ed.). However, the ABA does not require law schools to offer coursework targeted at these skills. Despite the suggestion that law students "undertake practical or clinical learning," the opportunity to do so in an extended manner is often curtailed by institutional barriers. See, e.g., *Clinical Legal Education*, HARVARD LAW SCHOOL CATALOG 1999-2000 (President and Fellows of Harvard College, Cambridge, Mass.), 1999 at 92 (permitting only 12 of the 52 required credits during the second and third years of law school to be allocated between clinical courses, cross-registration, and written work, and limiting students to four clinical credits per semester).

current focus of legal education, it is not surprising that, during my law school experience, it is only outside the classroom that I have encountered models of advocacy that might begin to answer these questions: Service-Is-Subservient, Plaintiff-as-Proxy and Lawyer-as-Justice-Seeker. Although these models share some common elements, such as their intended client populations and the broader sociopolitical aspirations of their proponents, they differ strikingly in the types of interaction that they allow between an advocate and one advocated for. None provides a magic bullet—some perfect combination of analytical skills, advocacy strategies, empathy, rapport, and social mission—but all three offer valuable lessons, independently and in comparison with one another. The conversation that they start is one that I need to continue, for I came to law for the same reason that I was drawn to medicine—the opportunity to pursue the problem-solving professional project's triumvirate: providing service to and forming connections with individuals, while applying analytical skills and contributing more broadly to the community.

Service Is Subservient

The first model, which I term the *Service-Is-Subservient* approach, was explicated at a training session convened by the Project on Law and Organizing, a law student group interested in the intersection between law and community organizing. This model elevates organizing above legal advocacy, largely rejects the provision of legal services, and regards attorneys as limited skill providers. Its underlying attitude towards attorneys is negative and is grounded in the premise that the permitted contribution of attorneys to an organizing effort should be inversely proportional to their traditional social status. Although the critiques it offers are well founded, the model leaves me unsatisfied because it fails to envision a meaningful role for lawyers in social change movements and dismisses the need for traditional legal services advocacy. I sensed little room under the Service-Is-Subservient model's umbrella for a fledgling advocate committed to providing legal services and hoping to do so while pursuing both personal connection and societal change.

In the spring of 1999, the Project on Law and Organizing sponsored a one-day training session to begin building a bridge between traditional legal advocacy⁴ and traditional organizing advocacy.⁵ We were well

⁴ As a group, our conception of traditional legal advocacy seemed to depend upon the client's social position. For clients in relatively powerful positions, we assumed that the attorney functioned as the client's agent, translating the client's various goals into the legal language of rights and obligations, and pursuing strategic advocacy to realize those goals. For clients in less powerful positions, we feared that the attorney functioned simultaneously as the client's principal and agent, determining both what the client's goals might be and how to go about achieving them; through this dynamic the client's autonomy would be undermined, if not eliminated.

⁵ See, e.g., ADVOCACY IN AMERICA: CASE STUDIES IN SOCIAL CHANGE (Gladys Walton

versed in the prevailing critiques of traditional legal advocacy, especially those highlighting the tendency of even legal advocates for social change to reenact, in their relationships with clients, the oppressive power dynamics that they ostensibly wish to challenge.⁶ However, we were law students and were committed politically, financially, and philosophically, to varying degrees, to legal advocacy. We hoped that by taking a multidisciplinary approach, by combining law and organizing, we could have our cake and eat it too: slaying the dragon of professional-power exploitation while still drawing from the arsenal of legal rights and remedies. We hoped that substantive and theoretical insights from experienced practitioners would mediate the apparent divide between law and organizing and yield new advocacy strategies.

The training session began with a role-playing exercise in which students took on the parts of community members and attorneys. The community members were facing eviction from their apartment building because the landlord wanted to rehabilitate the property and raise rents. The attorneys were members of a local law firm named Way, Way, & Way (for the "third way" between law and organizing). After the initial meeting between community members and attorneys, the trainers strongly encouraged the attorneys to think beyond legal remedies, to question the community members about their broader aspirations, and to identify resources for collective and effective action. In sum, the trainers challenged us to put on our organizer hats and cast away our attorney ones.

This rejection of legal remedies set off warning bells in my mind, and I raised the objection to the group that shunning legal challenges to the landlord's action was not only foolhardy, but also patronizing. Because we, as third-way advocates, were invested in a certain model of advocacy, we were deliberately, but not transparently, going to steer our potential clients away from the legal system and toward traditional organizing. Because we did not think that legal remedies were necessarily in their best interest, and because we wanted them to act in a particular "empowered" way, we were not going to advocate for them in the manner that they had requested, which had proven effective in the past. The meaningful difference between this manipulation and the power dynamics underlying traditional lawyering was not at all clear to me.

Hall et al. eds., 1987); KIMBERLY A. BOBO ET AL., *ORGANIZING FOR SOCIAL CHANGE: A MANUAL FOR ACTIVISTS IN THE 1990s* (2d ed. 1996); *ORGANIZING DISSENT: CONTEMPORARY SOCIAL MOVEMENTS IN THEORY AND PRACTICE* (William K. Carroll ed., 2d ed. 1997).

⁶ See, e.g., Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *BUFF. L. REV.* 1, 4 (1990) (discussing the manner in which cultural and legal norms construct the subjective perspectives and speech of socially subordinated individuals as inferior to those of dominant groups). See generally Felstiner, *supra* note 2, at 55 (reviewing social science research in an effort to assess whether lawyers engage in socially constructive counseling and how they treat their clients).

The trainer responded to my disruptive question by sharing his “dirty laundry” fable. He asserted that once I started doing people’s dirty laundry, even if I aspired to do their tailoring or their clothing design, I would soon be swamped by the entire community’s dirty laundry, and would therefore be unable to accomplish my broader original goals. While my heart wanted to call out “but the laundry needs to get done,” I realized that I was in the wrong training session. I am quick to admit that the traditional organizing model, as exemplified by the labor movement, has achieved substantial and unexpected successes. Furthermore, I readily acknowledge that the standard critique of legal services provision—namely that legal services providers are often overextended, underfunded, and trapped in cycles of putting out fires rather than taking proactive preventive measures—contains valid points. Yet, it seems to me that when we turn to deeper questions about the relationship between the attorney and the community member, the “dirty laundry” parable assumes too much, and the outright dismissal of legal services advocacy expects too little.

By all but precluding the use of legal advocacy, the trainer’s conception of a third way uncritically accepted and perpetuated the traditional lawyer-as-powerful and client-as-controlled paradigm. This paradigm has been challenged by recent sociological studies of the legal profession that reveal a more dynamic and negotiated attorney/client interaction.⁷ In addition, the trainer’s “third way” saw so little connection between attorneys and community members that it would make it hard to envision the possibility of people who are both community members and attorneys. While this may not be the norm, it is a possibility that strikes me as a powerful and concrete way to construct a professional and personal life grounded in community, congruence, and collaboration.

The trainer’s “third way” collapses in on itself when applied to attorneys. On one hand, we should not use the legal system because we are fundamentally compromised by the traditional power dynamics of the attorney/client relationship. Furthermore, using the legal system would only enable us to provide immediate and addictive fixes for our clients’ entrenched problems, thereby preventing our clients from taking broader self-generated collective action. On the other hand, this model dictates that attorneys be ready and willing to be taken out of the organizers’ toolbox at will and, on these infrequent occasions, put to work for limited purposes. This schema makes no room for meaningful participation by attorneys in law and organizing work and reinforces a false dichotomy between the two realms. It is grounded in problematic, albeit subtle, assumptions about the organizers’ own role definition and their ability to divine a community’s best interests. Finally, it unnecessarily overlooks the possibility of multifaceted, strategic legal advocacy.

⁷ See Felstiner, *supra* note 2, at 61–62.

Although this model did not offer me a meaningful way to combine legal services advocacy and organizing, it did not leave me hopeless. Our group's intuition that a third way exists suggests that the challenge of creating it is not an insurmountable one.

Plaintiff as Proxy

In contrast to the Service-Is-Subservient model, the traditional impact litigation approach, which I term *Plaintiff-as-Proxy*, venerates and is dependent upon the legal system—at times even at the expense of the individuals participating in that system. This advocacy pursues broad-based change through lawsuits filed on behalf of individual plaintiffs, or certified classes of plaintiffs, with similar legal claims. The plaintiffs are proxies for the problem: by agreeing to participate in the lawsuit, they are offered the hope not only of achieving their own goals, but also of facilitating broader social change and progress. Although this model builds upon the collective action philosophy of traditional organizing, it differs by its deep investment in the preservation and authority of the legal system. The impact litigation approach is rooted in the premise that challenging prevailing oppressive and illegal practices from a position of strength in numbers and breadth of purpose is more effective than seeking piecemeal solutions. This form of legal advocacy has borne remarkable fruit in the past, most notably in twentieth-century civil rights victories.⁸ Yet, two recent experiences, one in a legal setting and one not, have illuminated for me some of the limitations of using this method to press for social change or to form connections between attorney and client. The following critique springs not from a deep-seated opposition to class action litigation, but from my quest to find a personal model of advocacy.

The Welfare Law Center is a national advocacy support center that was created in the 1960s at the inception of the legal services movement to assist local advocates across the country in developing and implementing litigation campaigns addressing welfare issues. Three decades later, the Center is still actively pursuing this mission and, if anything, is more needed than ever as it confronts the twin specters of welfare reform and congressional restrictions on Legal Services Corporation activities.⁹ I

⁸ The seminal impact litigation example is *Brown v. Board of Educ.*, 347 U.S. 483 (1954), with its far-reaching desegregation remedies. In the years following *Brown*, a series of Supreme Court decisions cleared the way for collective legal action by recognizing the rights of individuals to obtain legal assistance collectively and of private organizations to advise their members on legal matters. See *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576 (1971); *United Mine Workers of Am. v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967); *Brotherhood of R.R. Trainmen v. Virginia*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963).

⁹ See generally Jessica A. Roth, *It Is Lawyers We Are Funding: A Constitutional Challenge to the 1996 Restrictions on the Legal Services Corporation*, 33 HARV. C.R.-C.L. L. REV. 107 (1998); Recent Legislation, *Constitutional Law—Congress Imposes New Re-*

spent a summer as an intern at the Center, drawn to it for both substantive and procedural legal reasons. Welfare seemed like a crucial issue to be advocating around and, based on my rudimentary grasp of legal history and theory, impact litigation seemed to be the way to be a social change lawyer. Although my work included a great deal of library research, I also met with and drafted affidavits by several clients in a class action lawsuit brought by the Center and the Legal Aid Society. The suit challenged the legality of the government's termination of Medicaid coverage for people under workfare program sanctions.

The experience of working on the case was educational far beyond the legal theories learned or the skills developed. The obvious lesson was that impact litigation usually involves very little interaction with clients. Furthermore, attending to this limited contact is not always a priority for the attorneys, who are most likely overwhelmed with other components of the advocacy task, such as memorandum drafting, argument crafting, and strategy development. A second lesson, one that was brought home to me only later, was that impact litigation is not primarily about advocating for the named plaintiffs. For instance, even though most of the clients in this case were dealing with constellations of problems and concerns, when interviewing them I only wanted to hear about one specific issue, namely, the termination of their Medicaid coverage. After convincing clients to join the lawsuit as named class members (often by downplaying their valid concerns about the possible consequences of challenging the government), and getting their affidavits drafted and signed, our primary remaining client-focused concern was whether they would moot out of the class before we filed the case in court.¹⁰ Looking back, I am dumbfounded that I fell so easily into this stance. I was losing sleep worrying that our clients would get their Medicaid reactivated.

While this is neither an original nor a devastating observation, it is a personally meaningful one. Impact litigation advocacy, while at times able to achieve dramatic and important victories, seems plagued by small, accumulating defeats and insults. More to the point, often these wrongs are worked by the attorneys on their clients via the reinforcement

strictions on Use of Funds by the Legal Services Corporation, 110 HARV. L. REV. 1346 (1997).

¹⁰ For the purpose of the lawsuit, we defined class members as individuals who had or would have their Medicaid benefits terminated in the manner that we alleged was illegal. This definition was necessary, in part, so that we could include in our prayer for relief a request for a far-reaching injunction, the standard remedy in civil rights class action litigation. The injunction would prohibit the defendants from terminating Medicaid benefits to any welfare recipient until they could demonstrate that they were no longer terminating benefits in the challenged and allegedly illegal manner. However, if any of our named plaintiffs had his or her Medicaid benefits reinstated before the case came to court, that plaintiff would no longer have an ongoing harm for which to seek injunctive relief, would no longer meet the definition of class members, and would therefore be mooted out of the case. This was of special concern because we filed the case with only a handful of named plaintiffs.

of power structures, the legitimization of top-down agenda setting, and the objectification and "simplification" of clients' lives. The dissonance between the ends and means of this type of advocacy is one that I find difficult to gloss over, especially in the face of powerful exhortations to pursue ends and means that are both, and at once, participatory and transformative.¹¹

The resolute critic in me has an instinct to question the legitimacy of, and the power presumptions underlying, a call to exercise such transformative counseling. This internal voice asks, "Who am I, the advocate, to tell my client how to see herself? Why do I think that I have a privileged perspective on human dignity?" In my experience, this sort of power repudiation has the tendency to devolve into a paralyzing cycle. Thankfully, Gary Bellow's thesis that the practice of law inevitably involves the exercise of power offers a way to sidestep this trap and to clarify my discomfort with the Welfare Law Center's lawsuit.¹² Looking back, I view the basic shortcoming of our advocacy work as our failure to address or even consider the power dynamics and instrumentalist dimensions at work. Although the Center's lawsuit was intended to vindicate our clients' important legal rights, our stance toward our clients was far from client-self-empowering, or -challenging, and our conception of them almost an absurd deviation from a recognition of their full human dignity.

The disjunction between ends and means that characterizes the Plaintiff-as-Proxy approach is not, of course, narrowly confined to the legal realm. The Spring 1999 Harvard Law School Black Law Students

¹¹ See, e.g., Martin Luther King, Jr., *Nonviolence and Racial Justice*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 5, 8 (James Melvin Washington ed., 1991) ("[N]oncooperation and boycotts are not ends themselves; they are merely means to awaken a sense of moral shame The end is redemption and reconciliation . . . the creation of the beloved community . . ."); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 303 (1996) ("Alliance seems as good a word as any to describe this relationship because alliance generates bonds and dependencies and is grounded, at least in aspiration, in forms of respect and mutuality that are far more personal and compelling, for many of us who do political legal work, than the demands of some notion of client-centered lawyering, no matter how strongly held."); Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. L. REV. 311, 312 (1996) ("The strategies of advocacy that we employ must be designed not only to vindicate a client's legal rights, but also to challenge the client to see herself with the full human dignity that is hers.").

¹² See Bellow, *supra* note 11, at 301.

Yet, the practice of law always involves exercising power. Exercising power always involves systemic consequences, even if the systemic impact is a product of what appear to be unrelated cases pursued individually over time. Lawyers influence and shape the practices and institutions in which they work, if only to reinforce and legitimate them. Clients, similarly, bring to their legal advisers and representatives claims and concerns that arise from and are examples of underlying institutional arrangements and culturally created controls.

Association conference, "For the Common Good: Continuing the Tradition of Legal Activism," provided another stark case study in the power and danger of the well-intended advocacy process, this time as carried out through nonfiction writing. The conference's afternoon session included a reading from a book called *The Good Black* by Paul M. Barrett.¹³ This recent book had generated a great deal of media attention in the months prior to the conference, in no small part because of the dynamic between its message and its messenger.

The author was a Harvard Law School-educated reporter for *The Wall Street Journal* and a white man. The subject was Larry Mungin, a law school classmate and friend of Barrett's, and an African American man. Mungin had been passed over for partner review by his employer, the Washington, D.C. branch of a large Chicago law firm. When Mungin thereafter sued his firm for employment discrimination, he received a \$2 million jury verdict in his favor, which was overturned on appeal. Barrett uses Mungin's example as a template upon which to base his cautionary tale about the subtle and pervasive barriers racism continues to pose in America, even for those African Americans who play by and ostensibly excel under the white majority's rules.¹⁴ Mungin had granted Barrett some interviews during the researching of the book but had not been an active collaborator. Even though Mungin participated in some of the initial publicity for the book—appearing in joint interviews with Barrett—by the date of the conference, he had "gotten sick" of such efforts, had stopped making promotional appearances, and had withdrawn from any endorsement of the book.¹⁵ The depth of his dissatisfaction would become clear only when he appeared in person, however.

On the afternoon in question, the tension in the packed lecture room seemed to ratchet up with each paragraph of Barrett's reading, as the audience readied itself for the question and answer period to follow. What made our experience striking was that Larry Mungin was present a mere ten feet from Barrett's podium, that the audience was ninety-nine percent African American, and that the questions posed revealed fault lines on both sides of the color line. Most of all, though, we were given pause by Mungin's anger, frustration, bitterness, and conflicted suffering, emotions that filled the room. As Mungin crackled with spite, members of the audience seemed at times tormented, torn between asking questions skewering Barrett's unrepentant take on his justification and authority to write about his former classmate and questions challenging

¹³ PAUL M. BARRETT, *THE GOOD BLACK* (1999).

¹⁴ See *id.*

¹⁵ In his comments to the conference audience, Mungin did not offer specific factual repudiations of Barrett's book. Rather, he framed his critique as a more fundamental complaint that due to the structure of and publicity for Barrett's book, readers would assume that they knew more about Mungin than they actually did. His premonition was clearly borne out in the context of the conference.

Mungin on what he could or should have done differently to avoid a career implosion, the threat of which seemed to hang over the group.

Put simply, Barrett's intended good purpose—telling about how even a “good black” could fall prey to the polite racism of modern corporate settings—was fundamentally compromised by the way in which he went about the task of fulfilling it. The revelation was that, as many audience members noted, we came to the reading thinking that we knew Mungin—his personality, his perspective, his purpose—having read excerpts from Barrett's book, but our assumption soon dissolved as both author and subject appeared together before us. Our assumption may have been based on the high regard in which we hold the written word, or, perhaps, on the book's initial publicity campaign, which featured Mungin and Barrett. Even more worrisome, our assumption may have sprung from the *carte blanche* that we accord a work whose message is, at base, an agreeable one, a latitude encouraged by our fear that castigating such work would at once alienate our power-possessing allies and benefit our opponents.

What should have been a readily apparent truth—namely, that its very lack of authorization spoke volumes on the subject of for and about whom Barrett's book actually could speak—was only brought to light for us in the unique circumstance of the conference. Our noncritical “default” mode was exposed and its consequences made painfully clear: a man, Larry Mungin, standing in front of a crowded room of people trying to convince us that we did not, in fact, know him (a man also deeply and understandably averse to revealing the sort of details and emotions that would enable us to know him differently or better).

The shortcomings of good intent in these cases are clearer when the Welfare Law Center's method of advocacy is placed side-by-side with Paul Barrett's method of advocacy. In these examples, the failure springs not from the broader mission, but from the manner in which people, the plaintiff proxies or subjects, are used as vessels and distorted voices to achieve the arguably admirable ends. The purpose and the process become incongruent. Although effective legal advocacy and gripping writing may both depend upon “comprehensible narratives . . . expressed in the appealing language of transhistorical right and wrong,”¹⁶ advocates and writers surely sacrifice some legitimacy of mission and some measure of success by deploying their claims and words “efficiently” but carelessly, by hearing and amplifying only those narratives that align with the conceptualized task at hand. Instead of a picture of human experience, we see control and convenience.

¹⁶ Cicchino, *supra* note 11, at 313.

Lawyer as Justice Seeker

The third advocacy model that I encountered, which I call the *Lawyer-as-Justice-Seeker* approach, was one proposed by Professor William Simon in his recent book *The Practice of Justice: A Theory of Lawyers' Ethics*.¹⁷ Simon prefaced his Lawyer-as-Justice-Seeker theory of advocacy by noting a moral anxiety that seems to dog the legal profession, a malaise created by the dissonance between the "practical tasks of lawyering and the values of justice that lawyers believe provide the moral foundations of their role."¹⁸ This diagnosis of a malaise in the profession appealed to me because it seemed to recognize the disjunction that sometimes arises between the legal rules that we obey and the legal outcomes that we strive to create. The gap is especially glaring when our perspective suggests that it differentially harms the more vulnerable members of society. For the individual advocate, the contrast between the mythic role of Lawyer-as-Justice-Seeker and the real-world role of lawyer as institution sustainer, transaction facilitator, or claim defeater can engender profound discomfort.

Simon's prescription is a *contextual view* of advocacy that departs from the categorical decision making of the prevailing *dominant view* (zealous advocacy for clients) and *public interest view* (informed resolution of conflicts based on the substantive merits). Operating under the contextual view, attorneys would "take such actions as, considering the relevant circumstances of the particular case, seem likely to promote justice."¹⁹ Through this exercise of contextual judgment, attorneys working in particular contexts would simultaneously engage with and participate in shaping general norms. In summary, Simon argues that attorneys are bound by the spirit of legal rules, rather than by the letter of the law, and are therefore entitled, if not duty-bound, to adduce and pursue in a given situation the course of advocacy that would achieve a just outcome.

A lack of experience and confusion about relativism most likely accounted for my initial, almost visceral, aversion to this remedy.²⁰ My

¹⁷ WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* (1998).

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 9.

²⁰ Recently, Peter Cicchino gave a warning that penetrated this relativistic morass:

It is ironic that at the very moment when, among progressive intellectuals, there is widespread hostility toward comprehensive, systemic narrative, there is a lack of confidence about normative claims of any sort; there is an exaggerated awe of the complexity of social reality that makes even the most modest and empirically well-founded generalizations about that reality meet with resistance and suspicion; there is an emphasis on difference to the point of undermining the principle of empathy itself and its necessary correlate—the idea that all *Homo sapiens* have identifiable common needs and interests, what was once called "human nature."

guard was immediately raised in hearing what sounded like a siren call for attorneys to do what they think is just in any given situation. I wondered whether, in Simon's experience, the just outcome is always or even usually apparent. I wondered about the depth and breadth of a vision of justice around which a nonnegligible group of attorneys could reach consensus. I wondered about attorneys who have experience with the sort of injustice that they can neither alleviate nor even meaningfully challenge in their daily work.

In his chapter entitled "Legal Professionalism as Meaningful Work," Simon challenges the fiction of a universal conception of professionalism. Drawing on sources as diverse as George Eliot's *Middlemarch* and Louis Brandeis's 1905 speech to Harvard undergraduates, Simon outlines and then critiques a progressive/functionalist vision of meaningful work, itself a response to late nineteenth-century alienation critiques of modernity.²¹ Simon acknowledges that this professional ideal was more of a "political possibility" than a "historical inevitability,"²² and then admits that, left to its own devices, the legal profession will not converge toward a "transparent 'national scheme'"²³ consistent with each practitioner's personal values or broader social purposes. Especially in light of this admission, which seems sound, Simon's subsequent contention that his Justice-Seeking model will resolve the profession's conundrum troubles me for two basic reasons. First, the actions that seem likely to promote justice in a given situation may in fact be ones that harm the particular client, and pursuing such actions would thereby compromise the "psychological satisfaction" that the individual attorney derives from "personal service to concrete individuals."²⁴ Even if this scenario rarely came to pass, its very possibility points to a serious disjunction. Second, I foresee difficulty not only in deducing what would be the just outcome of a given conflict, but also in recognizing the specific advocacy steps that would lead to that outcome. This challenge is exacerbated by operating within a larger, national legal system that may not conform with the indi-

Cicchino, *supra* note 11, at 313.

²¹ See SIMON, *supra* note 17, at 109-37.

Here are precisely the elements of meaningful work. "Identification by way of skills" and "shared mysteries" provide a basis for cooperative relationships that overcome isolation. "Specialized needs" requiring individualized service means that the practitioner will have a sense of control over her work and of creativity in adapting her general knowledge to the particular circumstances of the client. And the ability to place one's skills in a transparent "national scheme" means that the practitioner will have a sense of how her acts relate to larger social purposes.

Id. at 124.

²² *Id.* at 137.

²³ *Id.* at 124.

²⁴ *Id.* at 122-23.

vidual attorney's commitment to, or vision of, justice in the particular context.

As conceded above, these questions and criticisms may stem from my inexperience, and practice-based scenarios might vindicate Simon's analysis.²⁵ However, in practice, I believe that there would still be a number of serious concerns about Simon's Justice-Seeking model. First, justice-based results are not always the sufficient or appropriate ones, as they may overlook deleterious real-world consequences. Second, attorneys, acting as independent agents, may be ill equipped either to recognize the shortcomings of these results or to take a broader perspective on a desired and realized outcome, a view that encompasses non-legal advocacy. Third, the single-minded focus of Simon's Justice-Seeking attorney tends to recreate some of the troubling power dynamics of the Plaintiff-as-Proxy approach. Perhaps even more worrisome, under the Justice-Seeking model, the focus of the attorney is fairly self-centered: seeking justice not to vindicate the rights of the group to which the client plaintiff belongs, but to further the individual attorney's personal point of view. An advocacy experience during my first semester of clinical coursework highlights these concerns.

I walked out of the Suffolk County Probate Court in Boston on a Tuesday morning in December of 1998, with a spring in my step. It was the final day of my first semester working in the Family Workgroup of the Legal Services Center, and Cindy's hearing had gone well.²⁶ The judge had entered the agreement that we had reached with Cindy's former partner, Jim, and his child support payments to their disabled son were scheduled to begin the following week. Cindy seemed pleased with the outcome, and we expected to close her case within a month. In Simon's framework, it was a just result: legal rights were realized and legal remedies provided. However, I would soon learn that it was not a lasting, effective, nor transformative result. It was only five months and numerous hearings later, when my work on her case came to a close, that it became clear how much Cindy had taught me not only about strength and courage, but also about what effective, sustainable, and participatory legal advocacy must entail. Foremost, Cindy showed me the empowering potential of the law and the valuable outcomes that could be gained aside from my Justice-Seeking as an advocate. Cindy's case also made it clear that legal advocates should view real-world problems through a wide lens, with an eye toward developing comprehensive and collaborative approaches. To envision and advocate for the just outcome in a given

²⁵ Even though the advocacy challenges set forth in the book were based on historical examples, they were not particularly compelling or convincing to me because, as Simon wrote about the personal and moral meaning of being an advocate, he offered few, if any, examples of advocacy based on his personal experiences. *See id.* at 4-7.

²⁶ Parties' names have been changed to respect their privacy and advocate/client confidentiality.

case, even if that outcome is defined in participation with the client, may not suffice. The advocate must methodically work back from the desired outcome to the present moment, contemplating not only legal theories and remedies, but also the many obstacles posed by institutions, third parties, and even the clients and attorneys themselves.

Cindy was under many pressures that winter: moving with her young son from a supervised residence to her first apartment, completing job training, and coordinating her son's medical treatment and child care. This heavy burden was made more manageable by her strong support system, which included her older sister and several committed social-service providers, but Cindy seemed weary and silenced in the courtroom that December morning. Yet, as we worked together over the following months to enforce the court's order, Cindy gained familiarity with the family law system and confidence in her ability to advocate on her own behalf. In April, after she obtained a temporary restraining order against Jim, Cindy decided to handle the hearing to obtain a "permanent" one-year order on her own. Her success at that hearing was a testament to her remarkable spirit and demonstrated a beautiful synthesis by which the process and outcome of pursuing her rights transformed her sense of herself and of her stake in the legal system.

In this case, because Jim did not have a steady source of income, obtaining a just outcome—the court's order for child support—was not enough. If Cindy had not had sufficient income from other sources, stable housing, and an existing social support system, the gulf between the court's formal endorsement of her legal rights and the actual enforcement of these rights could have yielded devastating consequences. An attorney who is single-mindedly focused on Justice-Seeking might not be able, or chose, to recognize such real-world consequences, as their existence highlights the limitations of legal advocacy. The lesson from these possible consequences was not lost on me: I now know to talk with clients not only about their immediate legal needs but also about available resources and planning for long-term stability. Perhaps this is still in keeping with Simon's conception of Justice-Seeking, but it entails looking to nonlegal consequences, remedies, and forms of advocacy—an expansive view that is not endorsed by prevailing legal pedagogy.

My legal education has emphasized the professional duty that I owe to my clients to advocate for their legal rights. Simon has encouraged me to use the concept of justice to seek a broad and true conception of my clients' rights. Finally, and most importantly, Cindy has taught me that I also owe my clients a personal duty to realize that advocacy does not end at the courthouse steps or with my conception of justice. Cindy taught me that holistic solutions are the only ones that acknowledge the complexity of our lives. By complicating and reorienting Simon's call to seek justice, Cindy confirmed for me that the goal of balancing and meeting

these broader duties would be at once the challenge and the joy of a professional lifetime as an advocate.

Conclusion: Lessons from Advocacy, Lessons from Medicine

Given the questioning of these three models, it seems important to reconsider them in the context of generating a path forward. From the Service-Is-Subservient model, I am reminded of the power of collective action, the availability and effectiveness of non-legal tactics, and the opportunity to build relationships with my clients that spring from collaboration and seek to broaden the base of participation. The Plaintiff-as-Proxy teaches me to challenge systems and seemingly intransigent problems, and reminds me of the compelling power of individual narratives writ large. Finally, Simon's vision of Justice-Seeking encourages me not to hide behind the anonymous veil of professional moral ambiguity, but to participate in and, if need be, to initiate serious conversations about what it means to be an attorney, about the current and potential connection between the content of my work and the aspirations that brought me to it, and about what justice I might do. But despite these lessons learned, I still feel the lack of a clear vision of how to act, how to advocate, how to be an attorney in the world.

Reasoning by analogy and role projection is one way to progress, so I return my gaze to medicine, to Dr. Casey in particular. Perhaps, like most law students, I have not had any significant experience as a client. I am therefore at something of a loss when trying to tap into that perspective to guide my work as an attorney. On the other hand, I have had a great deal of experience as a medical patient. There are notable parallels between the medical and legal professions, especially with respect to how they structure their relationships with laypeople. Given these similarities, I can learn something about how to be a legal advocate by positioning and remembering myself in the patient role, analogizing to my client's position, and then deducing what stance and advocacy steps might seem at once comforting, empathic, and effective to my client.

Before engaging in that personal role analysis and reversal, I would like to consider briefly some of the parallels between law and medicine, a digression in which I find myself alternatively identifying as professional and as layperson. The two professions have followed similar trajectories in their codification of professional knowledge, transformation of professional training into a tool to provide beneficial services, and aspiration to and achievement of self-regulation.²⁷ More importantly, these professions have been undergirded traditionally, or even justified normatively, by a

²⁷ See, e.g., PAUL STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE* 15 (1982); Robert W. Gordon, *Professionals and Professionalism: An Overview*, 1 (1999) (unpublished article) (on file with author).

particular relationship between professional and layperson. The medical and legal professions established their claims to authority not only upon the bodies of knowledge on which they respectively relied, but also upon the modes of thinking through which that knowledge was comprehended, advanced, and applied. Patients and clients must broach multiple defenses to gain access to, and engage with, this professional knowledge. First, as laypeople, we encounter the specialized language through which professions code lived experience, translating *breathing* into "unaided respiring," and *hitting* into "the tort of battery." Second, we face demanding methodological forms and forums: the scientific method and the *Journal of the American Medical Association*; reasoning from precedent and the *Harvard Law Review*. Third, we confront the individual professional, whose stock pile of defenses includes not only the aforementioned standard-issue armor, but also the barbs of interpersonal relationships, private and privileged information, and the threat of abandonment.

I am stranded in the no-man's-land between professional and layperson. On the one hand, I will soon enter the legal profession, gaining access to the authority that it traditionally entails. On the other hand, I will continue to interact with the medical profession from the subordinate position, as a layperson-patient. From this split perspective, I am left to wonder why we, as professionals, are invested in defending our forts of knowledge by preserving the traditional model of professional/layperson interaction. The inability to provide a universally acceptable answer to this query may help explain why there is no law school course to satisfy my quest for an advocacy model. A jaundiced answer would point to our pursuit of social status and financial compensation. First, this answer would argue that medical and legal professionals have perpetuated the motivational fictions of healing and justice in order to solidify our claims to social respect and respectability and to divert closer examination of our means and ends. Second, it would argue that we have simultaneously created monopolies whereby our codification of supposedly specialized knowledge and methods precludes challenge by competitors (for example, by nurses or faith-based healers, accountants or paralegals).

Alternatively, a generous answer would contend that our professional effectiveness depends in large part upon the faith of the layperson in the professional, and that this faith is inextricably bound up with our justified claims to specialized knowledge and methods as professionals. After completing the rigorous and institutionalized pre-access training required to enter our professions, we call upon information that is beyond the comprehension of the laity, and develop modes of analysis that differ markedly from the common sense anyone could deploy. By these mechanisms, we professionals are uniquely equipped to deal with the medical and legal problems that people cannot solve on their own. People submit to us because they trust our knowledge and recognize it as different from their own. This submission and its motivating faith may even augment

the efficacy of our services to them. We deserve laypeople's deference to our protected authority on two grounds: we have earned it, and the success of the layperson's recovery or representation depends upon it.

I feel that I am in no position to formulate a generalized answer to this question of professional/layperson interaction. However, a standard retort offered by both the medical and legal professions to the call for us to share our professional power—through informed consent or participatory decision making with our patients and clients—lies closer to the cynical perspective. The argument is that, because our patients or clients eventually defer to the professional advice that we offer them, the attempt to craft an inclusive decision-making process is futile.²⁸ As with the Plaintiff-As-Proxy and Justice-Seeking models discussed above, this analysis is overly ends-focused. It ignores the potential value gained by both parties from the participatory process and it ignores the value of the patient's or client's experience and values. It rings in tones of efficiency ("If you're not going to make the decision after all, don't waste my time by having me explain this all to you"). Furthermore, it presumes a closed system of knowledge in which we professionals have all of the key information before beginning our conversation with the layperson. Finally, its subtext includes two important negative assertions about conversations with laypeople: (1) that they will not enhance our ability to perform our professional task; and (2) that, unless they result in different outcomes, they are not worth having. These assertions evidence a disturbing underestimation of our patients' or clients' potential contributions and an unawareness of their realms of concerns. These assertions ring false to me as a soon-to-be professional for the reasons discussed when considering the advocacy models above. Even more strongly, they ring false to me as a patient and a potential client.

The strength of this reaction suggests to me that I could better fulfill my professional function by considering the experience from the perspective of a patient or client. Recently, I was propelled into the role of patient by a personal and traumatic situation. Even after entering the treatment fold, I remained an isolated individual cabined by my suffering, hurt, and fear.²⁹ This interaction with a medical professional can in-

²⁸ The argument appears to make the following logical leap: (1) studies show that when patients (and, by analogy, clients) are offered the opportunity to make decisions about their treatment (and, by analogy, their advocacy), most chose not to do so; (2) patients and clients, therefore, do not want to participate in decision-making. See, e.g., Atul Gawande, *Annals of Medicine: Whose Body Is It, Anyway?*, NEW YORKER, Oct. 4, 1999, at 84, 90.

²⁹ See JOHN BERGER & JEAN MOHR, *A FORTUNATE MAN: THE STORY OF A COUNTRY DOCTOR* 69 (Vintage International 1997) (1967).

In illness many connexions [sic] are severed. Illness separates and encourages a distorted, fragmented form of self-consciousness. The doctor, through his relationship with the invalid and by means of the special intimacy he is allowed, has to compensate for these broken connections and reaffirm the social content of the

struct me in two ways. First, the memory of my experience as a patient at each stage in the schematic arc of the professional/layperson relationship (approach, analysis, action) can help to shed light on my clients' experiences. Second, comparing the medical professionalism that I encountered recently with what I experienced previously with Dr. Casey can yield insights into effective professional advocacy.

Paradigmatically, I initiated my role as a patient by offering up a medical problem to a physician in the hope of securing his specialized assistance. At this point of exposure, I was required to suppress personal privacy norms and reveal intimate details in constructing my illness narrative, simultaneously exaggerating my self-consciousness at a time when the last thing that I wanted to talk about was myself. The lens on me was at once projected outward and magnified inward, all against a background scrim of disruption, worry, and isolation. Thus, although I initiated the dance, the revelatory imbalance that I experienced at its start either created or confirmed my expectation that the professional would lead from that point forward.

Operating within the traditional medical framework, I accepted this revelation-followed-by-submission as the price of admission, the necessary prerequisite to the analytical movement in which the professional would display the well-rehearsed steps in the expert's repertoire. But this traditional dance had the dangerous potential to devolve into a solo performance by the professional—leaving me standing alone on the side of the stage, barely clothed under the theater lights.

This period in waiting, during which the professional divination was performed, came at a personal cost. On one level, the professional contributed to my isolation by monopolizing the analytical task. On a deeper level, the professional's contribution to my isolation was disproportionately intense due to the intimate access that I had already accorded to him and the way in which he disappointed my expectation of recognition.³⁰ From this exposed stance, I hoped that the professional would pirouette back from his specialized steps—that was the initial bargain after all—but had no guarantee that his action would be forthcoming or in keeping with my true wishes. I had been socialized as a polite person. Now, in my role as a patient, this socialization meant awaiting his prescription for action, keeping my fears under wraps, cooperating and complying.

invalid's aggravated self-consciousness What is required of him is that he should recognize his patient with the certainty of an ideal brother. The function of fraternity is recognition.

Id.

³⁰ The expectation of recognition may trace deeper roots, and its disappointment may exact a costlier price, in medicine than in law, since, in medicine, it rests upon a longer and more diverse tradition of healing relationships.

The process of informed consent offered a potential antidote to this isolation. By sincerely conversing with me just before the point of action, the physician had a final opportunity to rescue the dance by performing a fraternal recognition function. At the last moment, I might have gained some share of ownership over the final steps. Whether or not I spun off into a brief solo of my own—by making the explicit treatment decision, by moving against my physician's directions—may be beside the point. The fraternal recognition would have been accomplished by the professional's extended hand. I would thereby be less isolated, having been invited into a joint endeavor with the professional and reincorporated into a social web that embraced fundamental and powerful traditions and institutions. Yet, in my recent experience, my proffered informed consent was rendered meaningless. The information that the physician shared with me was not the whole story, and it glaringly omitted some undesirable aspects of the treatment that he prescribed. The consent that he obtained probably was not coerced, but it certainly was not informed; the decision made may have been in my best interest, but it was not made in a participatory manner.

The disappointment created by this patient experience is exacerbated by my memory of Dr. Casey. Unlike the physician described above, Dr. Casey possessed a kind of perceptiveness that enabled her to assess in an instant what was at stake, how to build an appropriate path forward, and how to truly recognize her patients. In framing the problem at hand, her purview extended beyond a child's fever, a baby's failure to thrive, or a preemie's irregular breath sounds, to embrace her patient and her patient's other care providers. She considered her patients and their care providers as stores of knowledge. Moreover, she took into account their concerns about their current crises. In discussing options, Dr. Casey displayed a remarkable ability to share information, even complex medical data. Her generosity was not borne of some obligation to an informed consent mandate. Rather, Dr. Casey was passionate about science and desired, if not to engender the same excitement in her patients and their care providers, then at least to remove some knowledge-based barriers between physician and patient. Finally, while providing treatment, Dr. Casey made room for uncertainty in a way that, perhaps unexpectedly, strengthened her patients' faith in her as a medical professional and in the course ahead. Dr. Casey invariably probed for, and acknowledged, patients' concerns, both medical and nonmedical in nature. Even when it was not possible to lay those concerns to rest, the opportunity to air them was meaningful to her patients. Moreover, by offering reassurance without guaranteeing a particular outcome, Dr. Casey helped to keep expectations realistic and reduce disappointments.

Through remembering myself as a patient, analogizing to what my clients might be concerned about and want from the advocacy relationship, and considering why Dr. Casey was such an effective and beloved

physician, the advocacy vision becomes clearer. Three concrete actions seem essential: (1) assessing the individual client's situation in a manner that invites participation by the client, and, to the extent desired by the client, his or her dependents, care providers, kinship network, and community; (2) openly discussing our attorney/client relationship, sharing information to create collaborative and effective advocacy, recognizing the gaps in my store of knowledge, and creatively attempting to fill those gaps if possible; and (3) engaging in honest and continuous conversation about expectations and likely outcomes, remaining open to mid-course changes in strategy and situation, and stepping out of role to consider our actions and agenda critically and holistically.

Looking back on these advocacy experiences and their comparison with medicine, I feel that something more is at stake than my search to find a comfortable model of advocacy. It seems to me that the possibilities extend past what I can do as an individual attorney for my clients or for myself, to what we can all do for each other and ourselves. The problem-solving legal professionalism suggested above may be the most effective and consistent way to press for Dr. Martin Luther King, Jr.'s utopian "Beloved Community."³¹ Our professional project offers the possibility of transforming, at once, our community and ourselves, through a reconstructive and participatory social action program that mediates the divide that we often perceive between theory and practice (or lived experience). In the spirit of Simon, we can work to transform society by enforcing legal rights as part of a broader program to achieve justice, equality, and respect for humanity. These legal rights are clearly not self-effectuating, and, given the additional barriers posed by discrimination and disenfranchisement to their realization for oppressed members of society, attorneys have an essential role to play. In the spirit of the organizing movement and Dr. King's vision, we can press for these remedies via participation and empowerment. Our advocacy program thus progresses informed and strengthened by multiple perspectives, and with congruence between its process and its substantive aims. We can experience personal transformation by acknowledging the limits of our knowledge and filling these voids when possible, while, at the same time, making peace with some indeterminacy. By pressing ourselves to recog-

³¹ MARTIN LUTHER KING, JR., *Stride Toward Freedom, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 417, 487 (James Melvin Washington, ed., 1991).

Court orders and federal enforcement agencies will be of inestimable value in achieving desegregation. But desegregation is only a partial, though necessary, step toward the ultimate goal which we seek to realize But something [sic] must happen so to touch the hearts and souls of men that they will come together, not because the law says it, but because it is natural and right.

nize our limitations, we are more open to reaching out to others and considering innovative strategies.

This path entails struggle. We cannot be content with any one model of advocacy, best practice, or "third way." Yet, what Dr. King dared to imagine for us all, what Dr. Casey often created with her patients, and what a professional advocate might dream to do, still shimmers in the distance. They set my sights on real connections between people, on reinforcement and reciprocity that spring from open-heartedness and grace, and on those breath-catching moments when, despite ourselves, despite our failed prior efforts, despite our critical consciousness, we bridge the gulfs and fill the space between us with something meaningful and sustaining.

