

**In the Public or Private Interest?  
Rethinking the Role of the Legal Aid Lawyer**

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### **Rethinking the Role of the Legal Aid Lawyer**

In the summer of 1998, after my first year of law school, I secured a job as an Americorps-sponsored law clerk at a legal aid office in Harrisonburg, Virginia. I enjoyed the variety of work, was impressed by the level of professionalism, and was thrilled to have frequent client contact and a surprising degree of responsibility. Of my many experiences, most of them pleasant, one stands out as troubling. The incident may sound a bit innocuous, but it left me a little taken aback, as I'll try to explain.

A client -- I'll call her Jill -- came to our offices complaining of a used car she had purchased from a local dealer. The car was important to this person: she needed it to get to and from work every day. The car was in very poor condition, however, and she had missed work on several occasions because the car would stall or fail to start. Jill was on the verge of losing her job. Through our assistance (and a few nasty letters), we were able to arm-twist the used-car dealer into refunding most of her money and giving her another car for her use. We were thrilled, and so was Jill.

As I copied some documents for her records, Jill watched quietly, smiling with satisfaction. She suddenly spoke up: "Mr. Brown, can I ask you a question?" "Sure," I responded. "Do you have to have a high school diploma to be a lawyer?"

It was an innocent question, and easy enough to answer, but I was stunned by the gap between our client's understanding of lawyering and my own. I then began to appreciate a very real possibility: that Jill had no good idea of the events that had transpired--only that she had "won" for once, and it took a lawyer to achieve this. Such a perspective has profound implications: after all, a

client with no true sense of what has occurred may benefit in the short-term from the result, but does she benefit from the process? Is it the duty of the legal aid lawyer to pursue band-aid solutions, or is there more to the mission of lawyering in the 'public interest'?

This essay attempts to examine a theoretical question from a practical standpoint: is it possible, or even desirable, for the legal aid lawyer to pursue a greater mission-and if so, what should that mission be? It is my hope that by analyzing the attorney-client relationship, one might discover an approach to legal aid lawyering that is more enriching to both client and counselor: one that not only helps clients achieve their 'private', short-term goals, but also serves a community interest consistent with 'public' service aspirations. I will approach this subject by examining three basic areas: the roles of lawyer and client, how those roles play out in the attorney-client relationship, and finally how lawyers might be able to square the tension between seeking justice for the client (as an individual) and having a positive impact on larger issues of social justice.

## **I. The Attorney**

At a minimum, legal aid attorneys are approved to practice law by the licensing board of the state, usually the state bar. In virtually every case (with rare exception),<sup>1</sup> the attorney will have graduated from a law school approved by the American Bar Association (ABA). Often, the legal aid attorney will be responsible for conducting initial interviews with a person seeking legal assistance (the "client"). After this initial intake interview, the attorney will decide whether to take

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<sup>1</sup> One such exception is Virginia, where, as in a handful of other eastern states, one may 'read the law' (typically as an apprentice to a practicing attorney) in lieu of attending an ABA-approved law school. In addition, several states will permit students from in-state unaccredited law schools to sit for the bar examination. In any event, once licensed, the attorney will be bound by the rules of professional conduct promulgated by the state bar and patterned after the ABA Model Rules of Professional Conduct (or its predecessor canons).

the case and, in consultation with her client, will determine how to proceed. A licensed attorney is bound by the ethics rules of her state bar.

Literature on the allocation of the decision-making authority between lawyers and clients primarily looks to the formal pronouncements of bar ethics rules.<sup>2</sup> These rules, which are designed to constrain a lawyer's conduct and to provide standards of professional conduct, attempt to strike a balance between client autonomy and lawyer control of what is, at its essence, a legal process.<sup>3</sup>

One legal aid lawyer describes his approach this way: "I see clients who come in, lay out their case and say 'what should I do?' My immediate response is, look, this isn't my choice-I can advise you what the choices are-help you choose which way to go. Admittedly, sometimes I have to wrestle with my own decisions because [the client's idea of how to proceed] may not be the way I'd prefer to handle a situation. But it's not my choice!"<sup>4</sup>

This philosophy is largely consistent with the ABA model rules of professional conduct, which advise that a lawyer's decision-making power is strictly circumscribed by client goals.<sup>5</sup> An attorney must present a settlement offer to a client, and should counsel the client with regard to whether to accept the settlement, but the attorney may not foreclose the client from making the

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<sup>2</sup> See Ann Southworth, *Lawyer-Client Decisionmaking in Civil Rights and Poverty Practice: An Empirical Study of Lawyer's Norms*, 9 GEO. J. LEGAL ETHICS 1101, 1104 (Summer, 1996) (discussing how state rules of professional conduct typically allocate certain duties to client and others to attorney).

<sup>3</sup> See, e.g., Judith L. Maute, *Allocation of Decisionmaking Authority Under the Model Rules of Professional Conduct*, 17 U.C. DAVIS L. REV. 1049 (1984) (describing the Model Rules of Professional Conduct (Model Rules) as both a restatement of the law on decision-making authority and a normative vision of the attorney-client relationship as a "joint venture").

<sup>4</sup> Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (Mar. 6, 2000).

<sup>5</sup> See ABA Model Rules of Professional Conduct, 1.2(a) (demanding attorney deference to client goals in specified areas of decision-making).

ultimate decision about settlement.<sup>6</sup> Although there is considerable ambiguity in bar rules with respect to the allocation of decision-making authority, the rules generally provide that attorneys have greater responsibility over "means" than "ends."<sup>7</sup> Thus, courts have interpreted bar rules as giving lawyers discretion to decide such matters as what witnesses to call, what evidence to present, what issues to raise on appeal, and the like.<sup>8</sup> Clients are free to determine the larger purposes of representation including such matters as whether to appeal, or whether to settle a case.<sup>9</sup>

While the rules demand a certain amount of client autonomy, they do not take into account how a lawyer's own observations might affect her understanding of what role the lawyer should play in making important decisions affecting client interest.<sup>10</sup> Interviews with legal aid attorneys reveal a powerful conflict about their roles. Legal aid attorneys say they see themselves as lawyers, first and foremost. But understanding the special needs of indigent clients requires "a lot of social worker skills. [Legal aid attorneys] have a lot of conversations about whether we're lawyers or social workers."<sup>11</sup>

Consider, for example, the dilemma facing a legal aid attorney counseling a client on whether to agree to an out-of court settlement proposed by an opposing party. On the one hand, a client (particularly an indigent client) may wish to settle to obtain financial compensation with less delay,

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<sup>6</sup> See *id.* (outlining scenarios in which attorneys must defer to clients in course of representation).

<sup>7</sup> Southworth, *supra* note 2, at 1108.

<sup>8</sup> See *id.* (discussing how courts have understood range of lawyer discretion under state ethics rules).

<sup>9</sup> See *id.* at 1108-09. (equating client 'goals' with 'purposes of representation').

<sup>10</sup> Telephone Interview with Chris Russell, Attorney, Piedmont Legal Services (Lexington, VA) (Mar. 7, 2000).

<sup>11</sup> *Id.*



despite the attorney's belief that the case would command a greater amount of relief commensurate with the injury if brought to trial. On the other hand, a client may wish to press forward to trial against the advice of her attorney in hopes of getting a windfall or 'to get even' (even if the case has a poor chance of succeeding at trial). These are considerations in any settlement scenario, and it is certainly the job of the attorney to offer advice and suggestions. But the model rules indicate that the "ultimate decision rests in the hands of the client."<sup>12</sup>

Should the attorney ignore her own observations about the ability of her client to make a good decision? Is the client capable of making a sound decision? What is in the interests of third-parties who may also be involved (or affected) tangentially, such as children? Because the poor frequently have more urgent economic needs, or because they may lack the education requisite to make an informed or sophisticated decision, some lawyers are reluctant to 'leave it up to the client'. The client herself may feel unable to engage in the decision-making process.

## **II. The Client**

While it is a mistake to assume that legal aid clients are all the same,<sup>13</sup> most legal aid attorneys will concede that there are certain characteristics of legal aid clients which may be fairly called typical. You might say Jill 'fit the bill'—or, at the very least, had a profile similar to the vast majority of clients who sought our services that summer of 1998. She was Caucasian and 40-something. Two grown boys, one living in the area. A third son was still at home, just starting high

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<sup>12</sup> Comment to ABA Model Rule 1.2.

<sup>13</sup> I am extremely grateful for the admonition that "(i)t is a vast mistake to assume that all [legal aid clients] fit into molds." Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (March 6, 2000).

school. Jill's mother lived with the two of them in half of a rented, slightly run-down, but still fairly comfortable, duplex.

Jill was twice divorced. Since her second husband abandoned her some 8 years earlier, Jill had held a number of jobs from fast-food clerk to evening custodian for the local public school system. She half-heartedly described why she'd bounced around from job to job—her explanations seemed vaguely connected to unexpected illnesses in the family and unfriendly bosses. Only three months before she came to our office, Jill had answered an ad in the local newspaper and obtained her latest position: a municipal bus driver for the City of Harrisonburg. This was a job Jill was proud of. She made what she considered to be good money, too: \$6.00 an hour. "And I love driving", I still remember her saying—with a look on her face as if it were the ultimate scam: to be paid for something you enjoyed doing.

Jill qualified for free legal assistance because she lives in a household with an income below the government poverty guideline.<sup>14</sup> Like Jill, many clients may have some assets, in fact, some may own a home, and many own (or at least have household access to) an automobile. The circumstances of poverty are such that a history of drug abuse in the household is not infrequent among many legal aid clients. A majority of legal aid clients receive welfare. An increasing number are employed at least part-time.

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<sup>14</sup> The poverty guidelines are issued annually by the Department of Health and Human Services. For the year 2000, the poverty level for a 3-person household has been set at \$14,150. (The guideline is increased by \$2,900 for each additional person in the household.) Annual Update of the HHS Poverty Guidelines, 65 Fed. Reg. 00-3478 (2000).

Clients typically come to a legal aid office in an attempt to bandage a situation in the context of civil law<sup>15</sup> that has already become bad: a landlord-tenant dispute, a threatened eviction, hounding creditors, a denial of government benefits, or a consumer fraud matter. But almost 50 percent of all legal aid cases are family law matters.<sup>16</sup>

"I have a situation right now that troubles me," says one legal aid attorney.<sup>17</sup>

There's a woman I'm working with who's going through a very ugly domestic violence and custody battle with an abusive husband. They've been married for close to 20 years. After working with this woman for a month, it came out that she didn't know how to get around the city-didn't know how to use a map-didn't know how to drive anywhere (but in her small, rural hometown). She explained that her husband didn't let her get out of the house. This was a major issue in the custody proceedings, because we needed to show the court that the mother was capable of getting her daughter to the hospital, where the child could be treated for a rare skin condition. It was clear that issues of education combined with years of emotional and physical abuse could have an effect on the custody decision.<sup>18</sup>

This situation outlines the tangle of issues frequently at play in a legal aid matter. The client, in this case a mother, wants to escape an abusive relationship. But there are serious questions about whether the mother is capable of meeting her daughter's needs. If not, is the daughter better off in the custody of her father, or perhaps a foster home? If faced with the choice of having to relinquish custody of her daughter to be free of her husband, how would the client wish

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<sup>15</sup> Most legal aid offices do not engage in criminal defense work (because of program restrictions imposed by Congress on the recipients of Legal Services Corporation funding). 42 U.S.C. 2996(b) et seq. (1988) (establishing Legal Services Corporation). "There is established . . . a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in *noncriminal* proceedings or matters to persons financially unable to afford legal assistance." *Id.* (emphasis added).

<sup>16</sup> See BLUE RIDGE LEGAL SERVICES, INC., ANNUAL REPORT 14 (1996) (diagram illustrating distribution of cases by legal category).

<sup>17</sup> Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (March 6, 2000).

<sup>18</sup> *Id.*



to proceed? Is the client, particularly one who has pressing economic and emotional needs and who is lacking in certain basic skills, capable of making a responsible choice about how to proceed?

### **III. The Relationship**

When Jill came into our office in early June, she did not meet an attorney, but a full-time paralegal. The paralegal handed Jill a form—two pages on a formica clipboard to be completed in the waiting room. The form asks for detailed personal information including the size and income of the household, marriage and employment status and history and the like. The form includes a list of common legal problems to be circled if applicable: ‘Landlord/Tenant’, ‘Consumer Fraud’, ‘Debt Collection’, and so on. Most don’t circle anything—they write in the margin. I can imagine what Jill might have written. “I have a car case. Do you do car cases?” The last line on the form warns that completion of the form “does not mean Blue Ridge Legal Services has agreed to represent you.” This often prompts a slightly angry question from the prospective client—and a response from the paralegal to expect a call within a few days, after an attorney has a chance to review the information.

If the client meets income eligibility guidelines, an attorney (or supervised law clerk) will conduct a basic interview in which the client is asked to explain the particulars of her situation. After this initial interview, the office director or the legal aid staff as a whole will make a determination as to whether the case is meritorious (worthy of accepting) and at this initial phase, a general strategy may be loosely drafted. Then the legal aid attorney may make her first contact with the client by inviting her in to the office for a formal consultation.

Jill's 'car case' appeared to be a fairly straightforward consumer matter. Her \$850 car developed a water leak 3 days after she purchased it on credit. The car came with a 30-day warranty. She took it to the dealer, who advised that he would need a week to complete repairs. Jill could not do without the car for a week—she feared she'd lose her job. She drove her car home, did the repairs herself, and wrote an angry letter to the dealership demanding compensation for the cost of parts. Two days later, the car overheated and stalled. She called the dealer, who towed the car to his shop.

The car had been at the shop for 15 days before Jill came to see us. The car had not been repaired, and Jill was running out of friends to give her rides to work. She'd already missed two scheduled shifts—she couldn't miss another. Worse yet, the dealership was demanding payment for towing services before repairing or returning the car. Jill could not pay for towing charges—and she needed a car that actually ran. And she needed it now. Jill told us if she could just get the car out of the dealer's lot, she could probably 'fix it' again herself, or have a friend assist her.

We reviewed the Virginia statutes and recognized that at the time of sale, the dealer had a duty to disclose all material defects in the car and, under terms of the warranty, to repair the car at the dealer's own expense. Failure to do either was a violation of consumer protection statutes and could even subject the dealership to criminal liability and stiff sanctions far in excess of the value of the automobile. Since Jill didn't really need a broken-down car, we decided it would be best to demand another car—by not-so-gently advising the dealer of his obligations under Virginia law.

Jill did not understand the subtleties of the strategy. She told us she was going to go home and call the dealer and tell him "you'll be hearing from my attorneys." Jill was angry with the

dealer for 'stealing' her car, and she wanted to 'teach him a lesson'. She also thought that a threatening call from her might get the message across that she was 'serious'.

We urged her not to contact the dealer. "That would only make things worse," I said. "Play it cool. He'll get a letter from us and that'll make him sit up and take notice. Don't call him." She fought on this point more than I expected she would. I tried to appeal to some sense of 'sneakiness' I thought I'd sensed in our initial conversation—something to the effect of 'He'll be blown away when he gets the letter out of the blue from the law office'. We tried to explain that if we proceeded carefully, we were sure to prevail. She had a hard time believing this would work, much less that she'd get another car out of the deal—but if we could make that happen, well, that's what she really wanted.

I don't recall that we arranged anything with respect to how Jill would get to work for the next several days. We had a goal: let's make sure Jill gets a decent car. If we have to get the Commonwealth's Attorney in on this, then we'll stick it to this guy.

Says one legal aid attorney, "I view the relationship as a 'contract' that's being made in the interview process. They're coming to me with a problem. It's all about communication and understanding."<sup>19</sup> That's certainly what we thought we'd done in Jill's case: she communicated her circumstances to us, and we felt that we understood both the problem and what action need to be taken.

But while communication and understanding may sound like laudable goals on the surface, scholars examining the relationship between legal aid attorneys and indigent clients have identified at

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<sup>19</sup> Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (March 6, 2000).

least three dangers inherent in the way legal aid attorneys and clients settle into their roles. The first has to do with the hierarchical relationship between attorney and client, which may promote the notion of subordination.<sup>20</sup> The second critique pertains to client autonomy: on the one hand, well-meaning legal aid lawyers may be inclined to wrest control of the matter from the client; on the other hand, the client may not, in fact, be in the best position to make a sound judgment about how to proceed.<sup>21</sup> The third critique (somewhat related to the first two) relates to how the lawyer develops, and perhaps distorts, the client's narrative.<sup>22</sup>

### *Notions of Hierarchy*

Since the 1970's, when the nation experienced a sudden growth in 'poverty lawyers', scholars have worried about "the balance of power" between advocates and their clients.<sup>23</sup> Specifically, the concern has been expressed that lawyers have been willing to impose their own definitions of client's problems (interpreting the way a situation looks to through the eyes of the lawyer) and to develop solutions around that perspective.<sup>24</sup> Some critics claim that clients too

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<sup>20</sup> See, e.g., Anthony Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987/1988) (discussing persistent, undesirable social stratification between legal aid attorneys and clients).

<sup>21</sup> See, e.g., William L. F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (Sept. 1992) (examining, from a 'real-world' perspective, who controls what in the attorney-client relationship).

<sup>22</sup> See, e.g., Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (Fall, 1990) (discussing importance of client narrative in effective representation, and possible unforeseen side-effects).

<sup>23</sup> Southworth, *supra* note 2, at 1103.

<sup>24</sup> See *id.* (reviewing scholarship examining socio-economic layering in attorney-client relationship).



frequently submit to a lawyer's control as the price of access to the courts and legal power.<sup>25</sup> These arguments assert that a subtle form of oppression pervades professional conventions and language and that "lawyers may be unable to avoid dominating their clients" because of the nature of the services rendered.<sup>26</sup> One critic has gone so far as to say that "when a client asks a lawyer to intervene in his life, he seeks help at the risk of further subordination..."<sup>27</sup>

An extreme example of this phenomenon in action is what one lawyer calls the "Knight on a Charger Syndrome."<sup>28</sup> In such a case, a well-meaning advocate approaches the attorney-client relationship from the perspective of one who believes herself specially 'enabled' by her legal education to right an injustice (or to make this case part of a larger crusade for social justice in general). This approach subordinates the needs of the individual client for what the attorney believes to be "larger issues at stake." Such a posture often leads to disappointment, and seldom leads to achieving the goals of the individual client.<sup>29</sup>

A more pernicious problem exists because of issues of traditionalistic notions of professionalism which can result in "lawyer domination" of the attorney-client relationship.<sup>30</sup> The

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<sup>25</sup> See, e.g., JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE (1978) ("Strong, rich, and confident clients direct their lawyers; on the other hand, lawyers dominate the relationship when clients are poor, or deviant, or unsophisticated. Lawyers offer the opportunity to use the legal system, but, along with the courts and other legal institutions, exact their price.") *Id.* at 25.

<sup>26</sup> Southworth, *supra* note 2, at 1103-1104.

<sup>27</sup> Carl Hosticka, *We Don't Care About What Happened, We Only Care About What Is Going to Happen: Lawyer-Client Negotiations of Reality*, 26 SOC. PROBS. 599, 604 (1979).

<sup>28</sup> Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (March 6, 2000).

<sup>29</sup> "The client is often left disappointed, and ultimately, so is the attorney." *Id.*

<sup>30</sup> Felstiner & Savat, *supra* note 21, at 1451.



lawyer, a professional providing a service, is in the practice and position of 'speaking for' the client, thereby proscribing the silence of the client herself.

Then there is the socio-economic distance between the attorney and her client. Many legal service offices and staffers are located outside of low-income communities.<sup>31</sup> Few legal aid staff members actually live in the communities they serve.<sup>32</sup> Lawyers dress differently and speak differently than most of their clientele.

Legal ethics scholar Anthony Alfieri suggests there is a danger that the attorney-client relationship "effectively consigns the poor to the status of 'dependent other'."<sup>33</sup> Says one lawyer, "many clients come in beaten down by the bureaucratic parade, bounced from desk to desk, or all around the charity circle. As far as they know, we're just another part of the chain."<sup>34</sup> To the extent that the client perceives herself as the 'dependent', the attorney-client relationship is a non-neutral encounter that subtly stigmatizes the client.<sup>35</sup>

Taken to the next level, this stratification may make the attorney seem even more distant, to the point of client isolation. "I think there's a real danger that we're seen as part of the system," adds another legal aid attorney.<sup>36</sup> "I had a client whose friends told her I wasn't fighting for her.

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<sup>31</sup> See Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L. J. 1669, 1696 (April, 1995) (discussing effect of distance between low-income communities and legal aid offices).

<sup>32</sup> See *id.* (suggesting distance between lifestyles of legal aid lawyers and clients indicate important differences in perspective, values, preferences, and priorities).

<sup>33</sup> Alfieri, *supra* note 20, at 672.

<sup>34</sup> Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (March 6, 2000).

<sup>35</sup> "Objectively manifested as docility, passivity and malleability, client dependence nevertheless is a social construct reified by the attorney/client hierarchy." Alfieri, *supra* note 20, at 672.

<sup>36</sup> Telephone Interview with Chris Russell, Attorney, Piedmont Legal Services (Lexington, VA) (Mar. 7, 2000).

That I was 'in' with Social Services (the state agency responsible for removing children in certain cases from the custody of their natural parents). And after all, I look more like the Commonwealth's attorney than I do my client or her friends. And so the client loses. And she (the client) thinks I'm 'one of them'.<sup>37</sup>

### *Autonomy*

"Autonomy as that word is usually used means that everybody's their own tyrant—there's no moral influence," says legal ethicist and scholar Thomas Shaffer.<sup>38</sup> "I prefer to think of it this way: [autonomy means] understanding that a person has significance in his own right. To use Kantian language, you can't use a human as the means to someone else's end."<sup>39</sup>

Perhaps because of the drift many legal aid lawyers feel between their roles as legal advocate and social worker, the autonomy of legal aid clients is often jeopardized.<sup>40</sup> A recent survey of legal aid lawyers reported that most legal services lawyers admitted to sometimes choosing strategies

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<sup>37</sup> *Id.*

<sup>38</sup> Telephone Interview with Thomas L. Shaffer, University of Notre Dame School of Law (March 23, 2000).

<sup>39</sup> *Id.*

<sup>40</sup> This is not to suggest that social workers do not, in truth, respect client autonomy; rather, this comment reflects the limited perspective of many legal aid attorneys who are conflicted by modern legal ethics rules (which pull lawyers in the direction of helping the client reach her own legal goals) and an impulse to act 'in the client's best interest' as the lawyer, herself, sees it. Strictly speaking, use of the term 'social worker' may be inaccurate here, and it is certainly inconsistent with the social work aspirations of the New Deal era 'urban progressivists' (who, in fact, resisted paternalism).

without consulting clients.<sup>41</sup> These lawyers often explained that their clients lacked 'sophistication' and that they "relied on lawyers as experts who could tell them what to do."<sup>42</sup>

In thinking about Jill's situation in retrospect, it troubles me that our approach might fairly be described as that of the 'experts' telling Jill what to do. We certainly thought we were doing the right thing. But for whatever reason—and I suspect it might have something to do with a subtle prejudice based on her background—we didn't take the time to explore options with Jill. In effect, we told Jill what we thought was best course of action, offered a fairly cursory explanation of the benefits of our approach (with an accent on the 'payoff'), and asked for her to give us the 'go-ahead'.

Many scholars point out that current legal aid practice can be very paternalistic.<sup>43</sup> They claim that legal aid lawyers often "exclude client voices and the power of clients to speak for themselves", both in terms of client-attorney interaction, and in terms of the way pleadings are prepared and cases are handled, which reflect only the lawyer's perspective.<sup>44</sup> More fundamentally, the critique runs along the lines that existing practice "privileges lawyer views of dispute resolution technique, and excludes client voices as irrelevant or interfering with that

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<sup>41</sup> See Southworth, *supra* note 2, at 1106 (discussing research on lawyer's 'real-world' role in decision-making).

<sup>42</sup> *Id.*

<sup>43</sup> See generally, Alfieri, *supra* note 20. (arguing that lawyers frustrate poor clients' struggles against poverty by encouraging them to passively rely on lawyers).

<sup>44</sup> Houseman, *supra* note 31.

technique and, as a result, focuses lawyer and client energies on litigation-based remedies that perpetuate and reinforce client powerlessness."<sup>45</sup>

While there exists "a sharp theoretical line . . . between paternalism and client autonomy", as a practical matter, these two paradigms can blend in legal aid work.<sup>46</sup> Consider another sort of threat to autonomy that may exist in a situation in which an attorney is willing to relinquish all control to the client. This approach, sometimes known as the "client-centered" approach,<sup>47</sup> attempts to rise above paternalistic impulses by focusing on the desires of the client. The lawyer is to remain neutral and non-judgmental. But some scholars, notably Thomas Shaffer of Notre Dame, argue that this approach has a distinct downside of influencing clients to make self-serving choices.<sup>48</sup> The lawyer and the client consider alternatives in light of consequences for the client-and not with a broader view of the consequences for others, whether opposing parties or third parties.

Two leading advocates of the Client-Centered Approach, Robert M. Bastress and Joseph D. Harbaugh, illustrate how the client-centered approach might work in practice.<sup>49</sup> In their hypothetical, Ralph Kratzer is a long-time friend and neighbor of the client. Kratzer has opened a

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<sup>45</sup> Paul K. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 128 (1992) (footnotes omitted) (discussing work by Lucie White, Anthony Alfieri, and Gerald Lopez); see, e.g., GERALD P. LOPEZ, *REBELLIOUS LAWYERING* (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Lucie E. White, *Goldberg v. Kelly and the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (1990).

<sup>46</sup> Southworth, *supra* note 2, at 1107.

<sup>47</sup> See generally, ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* (1990) (discussing desirability of importing aspects of so-called 'client-centered' approach in medicine to legal practice).

<sup>48</sup> See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 21 (1994) (examining limitations of 'client-centered' approach).

<sup>49</sup> See BASTRESS & HARBAUGH, *supra* note 47, at 246-49 (offering hypothetical application of 'client-centered' lawyering in 'Kratzer' example, discussed below).

bar next door to the client which may violate a zoning ordinance, and the client has come to the attorney for help. Bastress and Harbaugh suggest that prior to the interview with the client, the attorney should prepare a counseling plan.

Their proposed counseling plan is set up in this manner:

<u>Alternative</u>	<u>Consequences for Client</u>	<u>Probing Subjects</u>
File Civil Action	Strain on friendship	How important is this friendship?

The proposed plan lists several other consequences for the client such as "time and effort involved in pursuing the suit," "money to pay for fees and expenses," and "exposure to deposition and trial examination."<sup>50</sup> But note: the consequences are all considered in light of the effect on the client.

There is no independent moral significance to the decision-making process.

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Even assuming that morality should not be a consideration (a topic to which I will return), there is a considerable distortion in the consequences faced by the legal aid client. For starters, time and effort may be the only thing the indigent client has to invest in the case; therefore time and effort may not be a real consideration. Because legal aid clients typically do not have to pay money and (most) fees for legal services, cost may be no deterrent to filing suit either. Likewise, exposure at trial often is limited: the legal aid client frequently has little to lose either at deposition or on the stand.

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<sup>50</sup> *Id.* See also, SHAFFER & COCHRAN, *supra* note 48, at 20 (discussing the 'Kratzer' hypothetical as an example of client-centered counseling).



Worse still, the client may not know precisely what she needs to know to make decisions for herself. Ironically, then, the lawyer may not be promoting autonomy by treating her client as "autonomous."<sup>51</sup>

### *Getting the Story Straight*

A client seeks legal assistance because she believes she is in need of relief from some threat—eviction, loss of benefits, or some other urgent matter.<sup>52</sup> Because these objectives usually require persuading some kind of decision-maker such as a judge or an agency administrator, the attainment of the client's goal depends on casting the claim in a form that is comprehensible and compelling, "both in terms of the equities involved and the legal framework employed by the decision-maker."<sup>53</sup>

Legal aid lawyers often face special challenges in shaping a client's narrative. Whether because of a lack of education, severe emotional/physical trauma, or a general lack of "sophistication," clients "may not be able to articulate their stories" effectively.<sup>54</sup> In our first conversation, Jill's insistence that her car had been 'stolen' made it difficult for us to understand the underlying facts which led to her situation. Jill's attorney spent more than an hour drawing out information, which, when pieced together, made a story presenting a clear legal issue. Legal aid

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<sup>51</sup> See Southworth, *supra* note 2, at 1106. This is also a point stressed by Harlan Beckley, Director of the Shepherd Program for the Interdisciplinary Study of Poverty at Washington and Lee University. Clearly, someone lacking (for whatever reason) the ability or skills necessary to make informed choices cannot exercise autonomy; deference to a client unable to exercise autonomy cannot be said to promote autonomy in any meaningful way.

<sup>52</sup> See Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401, 1429 (May, 1995) (discussing common needs of legal aid clients).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

attorneys are often skilled in translating the accounts of poor clients into claims that can be persuasive to decision-makers separated from legal aid clients by vast economic, social and cultural barriers.<sup>55</sup>

Notwithstanding this skill, there exists a danger that techniques developed by poverty lawyers to 'extract the story' from the client in fact rob the client of "an important degree of personal autonomy."<sup>56</sup> This is because such techniques depend on strategies that, in effect, "substitute the lawyer's version of events for those of the client" herself.<sup>57</sup> Some lawyers may approach the client as a 'biased source of information' from whom scattered fragments of a story must be pieced together with details gleaned from other sources in order to form a "more believable" narrative.<sup>58</sup>

For example, "clients may be kept in the dark about the lawyer's goals and objectives if a line of questioning is framed in a particular manner."<sup>59</sup> Consequently, "clients are unable to act as equals in the construction of their own stories, since they are only responding to what is asked of them."<sup>60</sup> Likewise, by controlling the topic or not following up on information the client may feel

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<sup>55</sup> See Clark Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992) (discussing methods of extracting and composing client narrative).

<sup>56</sup> Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1751 (1994).

<sup>57</sup> *Id.*

<sup>58</sup> See, e.g., Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769, 811-12 (1992) (critiquing techniques for developing client narratives in legal aid context).

<sup>59</sup> Gay Gelhorn, et al., *Law and Language: an Interdisciplinary Study of Client Interviews*, 1 CLINICAL L. REV. 245, 251 (Fall, 1994).

<sup>60</sup> *Id.*

is important, lawyers effectively silence their clients while reinforcing the asymmetrical relationships in which many of those clients are embedded.<sup>61</sup>

Or the lawyer may be inclined to stress the weakness and victimization of the client--inadvertently perpetuating stereotypes of poor people as helpless and dependent.<sup>62</sup> Either way, in the words of one scholar, "the poverty lawyer takes the client's dignity."<sup>63</sup>

Our letter to Jill's car dealer was tersely written. We were careful not to threaten to seek criminal charges, but we nonetheless made it clear how 'exposed' the dealer was in this case. We cited Virginia consumer protection statutes, and we recited the sanctions. We demanded that he contact us immediately. I got a call from the dealer the very next day. I did not have the authority to negotiate with him, I explained—I was a law student. But I could have the attorney call back tomorrow. He unloaded a lot of anger and resentment toward Jill. He explained that she had become a nuisance. He said Jill was supposed to make weekly payments, and that she had failed to do so the previous week. I took notes, and told the dealer to expect a call from Jill's attorney the next day.

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<sup>61</sup> Austin Sarat, a scholarly advocate of clinical legal education, has conducted research on the formation of client narratives. In his study of 40 divorce cases, including 115 taped attorney-client sessions, Sarat concluded that the "emotional unresponsiveness and the cynicism of divorce lawyers serve(s) to enhance their power and control over (their) clients." Austin Sarat, *Lawyers and Clients: Putting Professional Service on the Agenda of Legal Education*, 41 J. LEGAL EDUC. 43 (1991).

<sup>62</sup> See Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861, 944-45 (1992) (discussing phenomenon of legal aid lawyers tailoring client stories to fit stereotypes in order to match expectations and prejudices of decision-makers).

<sup>63</sup> Alfieri, *supra* note 56.

I discussed the case with the attorney, who planned to return the dealer's call with a proposal: give Jill another used car plus \$1000 for her trouble, and we'd call it even. I was instructed to call Jill, and inform her of our contact with the dealer.

Jill was elated. She wanted to call the dealer immediately and tell him how much hot water he was in. I was beginning to sense how the dealer could feel frustration with Jill. I again stressed that everything was perfectly on track, and that if she continued to play it cool, things would work out for the better. She reluctantly relented.

### *Re-examining the Legal Aid lawyer's Role*

While most critics have discreetly addressed the failings and pitfalls of specific aspects of the attorney-client relationship in the legal aid context, there are few proposing a radical reexamination of the lawyer's role. One way to begin reconsidering the lawyer's role might involve re-evaluating the central concerns facing the legal aid advocate as she prepares for an initial meeting with a client. No matter what the specifics of a client's problem might be, the advocate in every instance must answer two core questions prior to beginning her conversation with her client: 1) who is to control the client's representation, and 2) do the interests of persons other than the client matter?<sup>64</sup> Taking these two questions together, there are four different permutations of responses:

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<sup>64</sup> See SHAFFER & COCHRAN, *supra* note 48, at 3 (proposing these two initial questions as central in guiding scope and course of representation).

Permutation:	1	2	3	4
Who Controls?	Atty.	Client	Atty.	Client
Other interests matter?	No	No	Yes	Yes

Thomas Shaffer and Robert Cochran suggest that these four permutations correlate with what they identify as the four different roles of an attorney. Permutation number 1 is the 'godfather', who seeks client victory (winning the case).<sup>65</sup> Permutation 2 is the 'hired gun' who leaves control to the client, while ignoring the interests of others.<sup>66</sup> Permutation 3 is the 'guru' who controls moral choices in light of what the lawyer believes to be in the best interest of the community or society as a whole.<sup>67</sup> Permutation 4 is the 'friend' who recognizes and raises moral issues with the client and seeks to resolve those issues in a partnership.<sup>68</sup>

The ABA model rules, with their emphasis on client autonomy, seem to lean toward the 'hired gun' paradigm, while strongly admonishing lawyers to steer clear of the 'godfather' role.<sup>69</sup> But note that paradigms 1 and 2 (the godfather and the hired gun) fail to take into account broader interests including what might be termed "moral" or even communitarian values. It can be argued

<sup>65</sup> See *id.* at 5-14 (depicting 'godfather' as attorney primarily concerned with 'winning the case' at all costs, without regard for client goals or third-party/community interests).

<sup>66</sup> See *id.* at 15-29 (discussing 'hired gun' as attorney who promotes client goals while sublimating her own observations or desires and without taking into account third-party/community concerns).

<sup>67</sup> See *id.* at 30-39 (examining 'guru' as attorney seeking to promote her own vision of 'the greater good' while sublimating client's individual goals).

<sup>68</sup> See *id.* at 40-54 (describing 'friend' as attorney who keeps client goals paramount while contemplating third-party/community interests in course of representation).

<sup>69</sup> See Comment to ABA Model Rule 1.2 (directing lawyers to respect client choice in 'goals' of legal representation).



that the adversarial system, itself, encourages a focus on individual rights by requiring zealous advocacy for particular clients. As David Luban has suggested, the system allows behavior which "excuses lawyers from common moral obligations to non-clients."<sup>70</sup>

Clients like Jill may feel they need a godfather or a hired gun. One cannot ignore the fact that most clients seeking legal aid have a material objective of unusual personal importance, such as avoiding eviction, maintaining critically needed health benefits...or even getting a car back. To quote the memorable title of an essay by Carl Hostika, some clients might fairly be quoted as saying, "We Don't Care About What Happened, We Only Care About What Is Going To Happen."<sup>71</sup>

To convince the client that there may be other considerations to take into account may be difficult, at best. One legal aid lawyer puts the dilemma this way: "(A client is) coming to me with a problem. Part of the problem, really, is that they're coming to me with a 'problem'."<sup>72</sup> This is not to suggest that the client has no interest in broader issues of social justice or moral consideration--only that short-term goals may appear most urgent and pressing to the legal aid client.

The challenge, then, becomes squaring the client's independent objectives with a broader mission: one that seeks to address the needs of the poor in the context of interdependence. To put the question in terms of Shaffer-Cochran's paradigms, should the legal aid attorney be a guru --or a friend?

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<sup>70</sup> DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 20 (1996).

<sup>71</sup> 26 *SOC. PROBS.* 599 (1979).

<sup>72</sup> Telephone Interview with Bruce Perrone, Attorney, Charleston (WV) Legal Services (Mar. 6, 2000).

#### IV. Retooling for a New Relationship

It should be mentioned from the outset that there is a tremendous body of literature examining how best to bring about long-term positive social change through the legal system.<sup>73</sup> This research breaks down roughly into two separate paths: law reform (or impact litigation) and direct service to poor clients.<sup>74</sup> In terms of the Shaffer-Cochran paradigms, one might say that the approach of the law reformer parallels that of the lawyer as 'guru', while the direct service advocate is more akin to the lawyer as 'friend'.

The guru may well take into account the moral responsibilities of her client to others, but the client plays a limited role in the representation, that is, in determining what those responsibilities are. The guru makes moral choices for her client. Atticus Finch was a guru.<sup>75</sup> In Harper Lee's *To Kill a Mockingbird*, Finch insisted that his client, Tom Robinson, go to court to tell the truth about his encounter with a white woman whom Robinson was accused of raping. You may recall Robinson lost the case—and lost his life. Finch's strategy was based on an intensely personal moral conviction: that truthfulness should—and would—carry the day.<sup>76</sup>

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<sup>73</sup> See Jeff Streiffer, *If You Can't Get There From Here, Then That's Not Where You Need To Go: Epistemological Priority, Cultural Action, and Lawyering for Social Change*, 14 *HAMLINE J. PUB. L. & POL'Y* 397, note 8 (Fall, 1997) (discussing proliferation of scholarly research on theoretical approaches to poverty lawyering).

<sup>74</sup> *Id.* The distinction turns on the difference between activity which promotes the interests of the poor in the aggregate (such as filing class action suits, organizing low-income communities, etc.) and providing one-on-one legal service to individual clients.

<sup>75</sup> See SHAFER & COCHRAN, *supra* note 48, at 32 (discussing Atticus Finch as emblematic of the morals of the "gentleman lawyer").

<sup>76</sup> See HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

William Simon echoes this sense of moralism in his 1988 Harvard Law Review article “Ethical Discretion in Lawyering.”<sup>77</sup> Simon contends, “The lawyer should take those actions that, considering the relevant circumstances of the particular case, seem most likely to promote justice.”<sup>78</sup> Simon suggests that lawyers should approach the issue of justice as judges and prosecutors do.<sup>79</sup> The client, according to Simon, should defer to the lawyer’s conscience.<sup>80</sup>

Simon’s approach does not assume moral superiority, but instead is based on legal ideals; discerning those ideals requires legal training. But while a client’s case may be an important vehicle for justice, one may ask whether the Simon’s approach leaves any room for the client in the moral conversation. In the words of Georgetown’s Alan Houseman, “problem solving should . . . look beyond narrow legal conceptions and approaches.”<sup>81</sup>

Morality is not the province of experts. There is no reason to believe that the client does not have moral values nor that the client will not act in accord with them. Like all people, clients may struggle with moral issues, and may need help in identifying those issues. A client may even want the lawyer’s assistance in clarifying moral issues—and help in wrestling with them.

That’s what friends are for.

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<sup>77</sup> 101 HARV. L. REV. 1083 (1988).

<sup>78</sup> See *id.* at 1090 (suggesting a substitution of legal ethics for moral ethics).

<sup>79</sup> See *id.* at 1090-91 (proposing that like judges and prosecutors, lawyers are uniquely trained to discern legal ideals). This notion implies that legal ideals are connected to objective ‘truths’; that, for example, there should be no distinction between legal guilt (whether the state has met its legal burden of ‘proving’ that the accused committed the offense for which she is charged) and ‘guilt’ as it is commonly understood (as a statement of whether someone in fact did the act of which she is accused).

<sup>80</sup> See *id.* at 1120-22 (discussing primacy of lawyer’s conscience in directing course of legal representation).

<sup>81</sup> See Houseman, *supra* note 31, at 1707 (critiquing legalistic approach in building attorney-client relationship).

While some may wish to deny it, the conversation between attorney and client “is almost always a moral conversation,” says Shaffer.<sup>82</sup> “Legal claims rest on normative considerations as well as objective rules. And when clients or their lawyers take advantage of the rules, they have decided that they ought to take advantage. If it is possible for a serious conversation between a lawyer and a client in a law office to be without moral content, (I) cannot think of an example.”<sup>83</sup> There should be nothing shocking about the existence of a moral component in the practice of law.

In the Shaffer-Cochran paradigm, the term ‘friend’ turns on the Aristotelian notion of a friend as someone with a shared commitment to good.<sup>84</sup> As a practical matter, this means developing a relationship centered on client goals which takes into account certain moral aspects of friendship including collaboration.<sup>85</sup> In a recent conversation with Shaffer, it became clear that by friendship, he does not intend for the attorney-client relationship to be merely analogous to friendship. “I mean friend. There really are no limits to the possibility of being a friend.”<sup>86</sup> He concedes that most lawyers don’t act in this way towards their clients—perhaps out of deference to a traditional distance in professional relationships, whether doctor/patient, teacher/student, or lawyer/client. Shaffer responds this way: “I think ‘professionalism’ is mostly a pretense, a way to push people away. I would say [a true professional is] someone who is able to see things clearly and objectively. It is a way of treating the person ‘virtuously’. Now, it’s true, I may not want to

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<sup>82</sup> SHAFER & COCHRAN, *supra* note 48, at 1.

<sup>83</sup> Thomas L. Shaffer, *The Practice of Law as a Moral Discourse*, 55 NOTRE DAME LAWYER 231, 232 (1979).

<sup>84</sup> This view is presented in Book Eight of Aristotle’s NICHOMACHEAN ETHICS, and discussed in SHAFER & COCHRAN, *supra* note 48, at 47.

<sup>85</sup> *Id.*

<sup>86</sup> Telephone Interview with Thomas L. Shaffer, University of Notre Dame School of Law (March 23, 2000).

be as intimate with some as with others, but I don't think you can draw the line between friends as those who are your next door neighbors, or your colleagues."<sup>87</sup>

I will confess that I have a hard time accepting this notion of true friendship (as friendship is commonly understood) in the professional context. I think it is a legitimate critique of Shaffer's approach that it may be socially inappropriate or even awkward to develop friendships with clients. As a simple matter of fact, very few legal aid attorneys actually come from backgrounds similar to those of their clients; I suspect that in many instances, neither attorney nor client would be personally comfortable developing a relationship that approximates what we commonly think of as friendship.

Having said that, I think it is worth contemplating a peculiar professional inconsistency: in the world of for-profit lawyering, it is not at all unusual for attorneys and clients to play a round of golf together, or for attorneys to invite clients to pro football games, social functions, or even dinner. That legal aid lawyers would not similarly engage their clients suggests that 'professionalism' may be but a mere excuse to maintain a socially comfortable distance.

Notwithstanding this reservation, one should not discount the power of friendship as an analogy. The friendship I envision is not 'mock friendship', but instead is a sincere desire for both the client and the attorney to be and to become better people because of what they accomplish together. It requires an initial 'investment' in the client—a genuine effort to connect on some

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<sup>87</sup> *Id.*



human level that bridges the gap between attorney and client. To distinguish what I envision from Shaffer's 'true friendship' model, I would describe the paradigm as the 'lawyer's role as friend'.<sup>88</sup>

In practice, the lawyer in her role as a friend is a listener.<sup>89</sup> She wants to know her client's story, and wants to give her the room to tell it. The lawyer in her role as a friend is also truthful, providing insight that enables the client to know what is going on, and perhaps, to enable the client to learn about herself.<sup>90</sup> The lawyer in her role as a friend can help the client be a better person—and vice versa. This not only enhances the experience for the client, but enriches the experience of the lawyer.<sup>91</sup> As this relationship develops, the client learns to care for the lawyer as the lawyer cares for the client. Through the lawyer, the client learns to care for others.

Client autonomy is preserved in that the client still directs the ultimate course of the representation, but that decision-making process is supported by a firm foundation: the attorney-client relationship. To offset the inherent inequities of the law office, which seem to separate the

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<sup>88</sup> SHAFER & COCHRAN refer to the "lawyer as friend" and the lawyer as having various "roles." My use of the phrase "the lawyer's role as friend" here is merely for the purposes of stressing what I believe to be a useful distinction between a lawyer who develops a bonafide friendship with a client (as friendship is commonly understood), and the lawyer who uses the friendship model as an approach in developing her relationship with her client.

<sup>89</sup> See SHAFER & COCHRAN, *supra* note 48, at 47 (discussing importance of lawyer allowing the client to talk, not just for purpose of 'venting', but as a means of affirmatively recognizing client's validity and to permit lawyer to understand client's perspective.).

<sup>90</sup> *Id.* (describing significance of candor as lawyer's recognition of client's dignity, and as important tool enabling client in decision-making process).

<sup>91</sup> I do want to underscore my belief that the lawyer stands to gain from this relationship, and not just the client. Although it is beyond the scope of this paper, it may be worth considering whether the lawyer's learning curve might lead to a more penetrating understanding of the thematic universe and social reality faced by legal aid clients in general. Although lawyers working in LSC-funded offices are expressly prohibited from engaging in a broad range of organizing activities, it is conceivable that there are other collateral public benefits as a result of a lawyer expanding her understanding and appreciation of her client's perspective. 'Lawyers in their roles as friends' could gain valuable insights not only improving the quality of their advocacy on behalf of future clients, but perhaps also laying the groundwork for new scholarship focusing on how the law can address the needs of the poor.

professional from the person in need of legal aid,<sup>92</sup> the focus of the conversation between attorney and client should be on the moral values of the client. As Shaffer-Cochran put it, “the lawyer should be trying to enable the client to bring all of the client’s moral resources to the fore and the lawyer should be offering the client the lawyer’s moral resources. Our experience and observation is that the result of such a conversation will be a mutual moral direction for the work to be done. That is the usual outcome, the ordinary and expectable thing. It sometimes involves a direction the lawyer might not have taken if the lawyer had controlled the process, rather than joined in it.”<sup>93</sup>

There is still, of course, the possibility that the morality of legal aid lawyers and their clients may be so vastly different that moral discourse may be difficult.<sup>94</sup> But there is advantage in difference, too. From such conversations come unique moral insights and other unexpected opportunities; one gains an ability to see situations from a different point of view. At the very least, the lawyer grows by learning about the client’s experiences, and the client may discover things, too . . . like you need to be a high school graduate to become a lawyer.<sup>95</sup>

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<sup>92</sup> See *supra* notes 22-37 and accompanying text.

<sup>93</sup> SHAFER & COCHRAN, *supra* note 48, at 51.

<sup>94</sup> It might seem reasonable to ask whether, at some point, the lawyer might determine that the ‘moral divide’ between attorney and client is so great that it cannot be crossed. In a ‘true friendship’ relationship, such a gap might mean ‘the end of the friendship’. SHAFER & COCHRAN suggest that in such a case, the attorney should continue to represent the client and follow her lead (up to the point where the representation becomes so repugnant that under the ABA Model Rules, withdrawal would be permissible). *Id.*

<sup>95</sup> Or perhaps not. As a general rule, law schools will not consider applicants who do not have completed secondary education. Thomas Shaffer, however, recalls that while he was Dean at Notre Dame Law School, the school accepted the application of a woman who happened not to be a high school graduate, but whose life experiences were such that she appeared to be a good candidate. Shaffer acknowledges, of course, that this situation was extraordinary. Telephone Interview with Thomas Shaffer, University of Notre Dame School of Law (March 23, 2000).

## V. Afterword

I wish I could remember her real name. I would like to know how she is, and whether she ever got her radio back. I recall that after we managed to settle with the used-car dealer, she was upset that she had been forced to surrender her old car with the radio she had installed still intact. It had been an ugly struggle with the dealer; I didn't think she'd ever see that radio again. And God help her if this 'new' car broke down. There'd be no way the dealer would honor a warranty. She'd burned too many bridges phoning the dealer and threatening to 'get her lawyers' on him. We won the battle. But the war?

I am greatly indebted to Blue Ridge Legal Services for that memorable summer of '98. I am also grateful for the opportunity to work for almost a year with the law school's Alderson Legal Clinic, serving the needs of incarcerated women at the Federal Prison Camp in Alderson, West Virginia. Both of these experiences have strengthened my desire to do legal aid, and, perhaps, to be better at it. Through these experiences raw techniques learned in the classroom came alive for me; ivory-tower theories took on human dimensions. I could begin to reflect on what it meant to 'represent a client'.

Shaffer, now a director of a clinic at Notre Dame Law School, understands this feeling completely. "Law students learn to be lawyers by exposure to the clinical perspective. I see what law students do when I put them in front of real people who need help. They begin to be themselves—they begin to learn through their own hearts—they develop what I'd call 'real lawyer attitudes'."

More than one attorney with whom I spoke suggested that law schools can be instrumental helping develop those attitudes. Said one practitioner, "There needs to be more of an emphasis on

clinical opportunities. I know law schools already provide some classes like immigration law, family law, elderlaw, and ethics. But law schools ought to ask the question, 'are there ways to incorporate the problems of the poor a lot more than we do now?' Sometimes I feel that law schools lose sight of that."<sup>96</sup>

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<sup>96</sup> Telephone Interview with Chris Russell, Attorney, Piedmont Legal Services (Lexington, VA) (March 7, 2000).