

# TOO LONG NEGLECTED: EXPANDING CURRICULAR SUPPORT FOR PUBLIC INTEREST LAWYERING

LOUIS S. RULLI\*

I. INTRODUCTION .....	547
II. LAWYERING IN THE PUBLIC INTEREST:	
THE COURSE .....	551
A. <i>The Course Begins</i> .....	552
1. Broad-Based Public Interest Advocacy.....	554
2. A Practice Problem: Placing Students in Nonprofit Governance Roles While Exploring Competing Obligations.....	555
B. <i>Universal Themes Confronting Public Interest         Lawyers</i> .....	559
1. Overview .....	559
2. Scarcity of Resources .....	560
C. <i>Informal Justice and Court Observations</i> .....	564
1. Observing the Resolution of Landlord-Tenant Disputes in Informal Courts .....	565
2. Designing Informal Courts That Administer Justice Fairly.....	567
D. <i>Anatomy of a Public Interest Lawsuit</i> .....	568
E. <i>Research, Writing, and Student Presentations</i> .....	571
F. <i>Reflections of a Public Interest Lawyer</i> .....	573
III. CONCLUSION.....	575

## I. INTRODUCTION

Many students apply to law school expressing a strong desire to pursue public interest law, but then decide to abandon or substantially delay their intended career goals once they become enmeshed in the standard law school routine. While the reasons are complex, this change of heart is most often attributed to strong financial

---

\*Practice Professor of Law, University of Pennsylvania Law School (“Penn Law”). I wish to express my sincere thanks to my colleagues at Penn Law, and especially to the members of the clinical faculty for their unwavering support, collaborative spirit, and active participation in the development of a course called *Lawyering in the Public Interest*, which is described in this article. I am also deeply grateful to Catherine Carr, executive director of Philadelphia’s Community Legal Services, who has been an extraordinary colleague, friend, and co-instructor in *Lawyering in the Public Interest*, where she has proven to be a stellar teacher and role model. Finally, I am indebted to two talented Penn Law students, Mark Ladov and Jeff Gorris, who provided valuable feedback and research assistance in the completion of this project.

disincentives, such as high student loan debt, large salary disparities between law firm and public service employment, and uncertain or delayed hiring opportunities in the public sector as a result of reduced funding. One reason not often discussed, however, is the chilling sense of isolation that many public interest students feel as they progress through their law school experience.<sup>2</sup>

Of course, financial stress and feelings of isolation are not unrelated. Public interest students watch nervously as their classmates accept high-paying and secure law firm jobs early in their employment search, while they face an uncertain future competing for a handful of highly coveted public interest fellowships or for limited openings in public interest organizations which are unable to make hiring decisions with the same speed or certainty as private employers. As the hiring search drags on, public interest students feel increasingly isolated from their classmates as they pursue what seems like a risky employment strategy. Moreover, they know that even if successful in their job hunt they must still figure out how to pay off student loan obligations and make ends meet on what will certainly be a low starting salary.<sup>3</sup> Public interest students begin to doubt themselves, questioning whether they can afford to pursue their preferred career path.

Still, feelings of isolation are caused by more than just financial considerations. Student doubts are reinforced by subtle, and sometimes explicit, signals from the academy itself. Some law school placement offices steer students to law firm employment while marginalizing public service options. Students interested in law firm jobs receive generous amounts of visible institutional support buttressed by serious “wining and dining” inducements from law firms, while public interest students are largely on their own in identifying and pursuing hiring strategies. Without a community of support around them, public interest students need more institutional encouragement and support if they are to realize their career goals. This is unlikely to occur, however, so long as placement offices continue to refer to public interest employment as “nontraditional” career alternatives.<sup>4</sup>

Public interest students also routinely witness striking contrasts in the level of institutional support provided to students seeking post-graduate judicial clerkships from that provided to their own job searches. Law schools establish faculty clerkship committees that actively promote the value of clerkship opportunities and

---

<sup>2</sup>See Richard L. Abel, *What Does It Mean to Practice Law “In the Interests of Justice” in the Twenty-First Century?: Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 *FORDHAM L. REV.* 1563, 1566 (2002) (noting an increased sense of isolation and alienation as one possible reason for a declining commitment to public interest careers in law school).

<sup>3</sup>While not the focus of this article, the tight financial bind that public interest students confront underscores the importance of post-graduate loan repayment assistance programs administered by law schools, employers, and governmental entities, as well as the urgent need for public interest scholarships that reduce the amount of student loan debt that students incur while in law school.

<sup>4</sup>It is very disappointing, but telling, that law schools label public interest employment as a nontraditional career option. The dominant law school culture presents private sector employment as the norm. See, e.g., Jenee Desmond-Harris, “*Public Interest Drift*” Revisited: *Tracing the Sources of Social Change Commitment among Black Harvard Law Students*, 4 *HASTINGS RACE & POVERTY L. J.* 335, 392 (2007). This choice of language conveys a powerful message to students, even if unintended.

identify promising students in order to make sure that students consider judicial clerkships and receive needed institutional support. Faculty members readily accept these responsibilities, writing letters of recommendation on a strict timetable and contacting judges to promote the merits of promising students. These well-organized efforts reflect core institutional values that result in tangible benefits to clerkship applicants, including interested public interest students, while also serving the needs of the judiciary. They also demonstrate the positive impact that law schools can have on student choices when linking supportive resources to an institutional message that touts the enhanced value of certain post-graduate opportunities.

At the same time, law schools sometimes convey a message to students that public interest work is less prestigious or academically rigorous than other types of post-graduate employment, especially law firm employment.<sup>5</sup> Perhaps this message is most powerfully conveyed by the content of the mainstream law school curriculum where the institution's values are expressed most directly to students. As students select courses each semester, they readily understand which subjects are regarded as most essential to their education and which subjects are largely missing from the fabric of graded courses taught by distinguished faculty. The dearth of public interest law courses in the standard curriculum misses the opportunity to express to students that such work is as intellectually challenging as other areas of legal study and that public service careers are vitally important to our society.

This article calls for greater integration of public interest lawyering courses into the core of the curriculum and suggests ways to build meaningful educational opportunities that will provide needed support for public interest students.<sup>6</sup> To its credit, the academy is already taking important steps to recognize and support public interest work. Many law schools encourage students to perform *pro bono* work outside of class by strongly recommending or even requiring public service while in law school.<sup>7</sup> This is an important addition to legal education that helps demonstrate

---

<sup>5</sup>See, e.g., David C. Vladek, *Hard Choices: Thoughts for New Lawyers*, 10 KAN. J. L. & PUB. POL'Y 351, 354-55 (2001) (contending that law schools disfavor public interest work in non-overt ways by conveying a message that such work is less prestigious and less rewarding than law firm employment).

<sup>6</sup>Some contend that the modern law school curriculum affirmatively steers students away from public interest practice. See, e.g., Daniel B. Rodriguez, *Taking The Offensive: Foreword: Public Interest Lawyering and Law School Pedagogy*, 40 SAN DIEGO L. REV. 1, 2 (2003).

<sup>7</sup>Tulane is generally credited with being the first law school to adopt a mandatory *pro bono* program when its faculty voted in 1987 to require that law students perform twenty hours of service in order to graduate. In 1989, Penn Law became the first national law school to adopt a mandatory public service program, requiring that its students complete seventy hours of uncompensated public service as a condition of graduation. Since then, more than twenty other law schools have adopted some form of mandatory *pro bono* program. See Sabrina A. Hall & Tammy R. Wavle, *A Vision for the Future: Mandatory Pro Bono Programs in Texas Law Schools*, 38 HOUS. LAW. 18, 22-23 (2001). See also A.B.A., LAW SCHOOL PUBLIC INTEREST AND PRO BONO PROGRAMS - SUMMARY CHART (2007), [http://www.abanet.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html](http://www.abanet.org/legalservices/probono/lawschools/pb_programs_chart.html) (listing law schools with pro bono or community service graduation requirements).

to *all* students that they can, and should, integrate public service into their future employment. Even more importantly, law schools now offer an expanding range of clinical courses that entrust students with legal representation of real clients, often in public interest settings. These courses are vital to preparing students for the demands of the profession and to sensitizing students to social justice issues. As important as these modern developments are, however, the law school curriculum as a whole still lags seriously behind in offering academic courses devoted to the study of public interest law.

In order to prepare for public interest careers, students need additional opportunities to synthesize the lessons of doctrinal and clinical courses with valuable out-of-class work experiences they are gaining in summer and *pro bono* employment. Students especially need to prepare more intensely for the legal and emotional challenges of public interest employment. This can be accomplished through individual courses or, preferably, through certificate programs or concentrations of relevant courses that link academic studies to comprehensive programs of support that integrate subsidized summer employment, post-graduate placement initiatives, fellowship mentoring, financial planning, and other essential components needed today to launch successful public interest careers.

In short, as the academy sends more students than ever to corporate law firms,<sup>8</sup> law schools need to do more to cultivate, nourish, and prepare the next generation of public interest lawyers. By making public interest lawyering more prominent in the curriculum, and offering students greater opportunity to work with faculty and students of similar interest on public interest issues, the academy can take an important step forward toward helping students overcome feelings of isolation and survive the formidable obstacles that discourage public interest careers.<sup>9</sup>

This article describes one such course, *Lawyering in the Public Interest*, which is offered as an upper-class seminar. The course uses traditional and innovative group learning strategies to give students a greater understanding of institutional issues that confront full-time public interest lawyers. The course prepares students to be leaders in serving the public interest and, most importantly, to feel empowered to do so despite financial and other obstacles in their way. In addition, it gives students who intend to pursue different career paths a meaningful opportunity to work together in the classroom on collective ways to fulfill the helping functions of the legal profession.<sup>10</sup>

---

<sup>8</sup>See Vladeck, *supra* note 5, at 352 (noting that a majority of lawyers in America now work for corporate law firms and represent institutions and not people).

<sup>9</sup>See Abel, *supra* note 2, at 1571 (urging that law schools do more to support students who want to do the “right thing”).

<sup>10</sup>While legal education needs to ready all students for these challenges, public interest students must be especially prepared for public-private collaborations in problem-solving, sophistication in legislative and administrative advocacy, and a greater understanding of how to apply international norms to domestic issues. See Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the “New Public Interest Law,”* 2005 WIS. L. REV. 455, 461, 467 (2005) (discussing a new framework for public interest law and the need to train students in law school for the challenges of changing dynamics in the real world).

## II. LAWYERING IN THE PUBLIC INTEREST: THE COURSE

*Lawyering in the Public Interest* is primarily directed at students who plan to pursue full-time public interest careers. Many public interest organizations do not have the resources to provide sophisticated training to new attorneys that large private law firms are able to offer their newly hired associates, yet public interest lawyers are likely to be assigned greater client responsibilities at an earlier stage of their careers than their private sector counterparts. Public interest students need to hit the ground running.

The course is also aimed at students heading for private law firms, but who are very serious about *pro bono* activities. These students recognize that their time will be extremely limited, so they want to maximize the impact of their volunteer efforts and be able to build networks within their firms that will support their *pro bono* activities. In short, these students recognize that public interest work is important and rewarding, and they are eager to integrate such satisfying work into the fabric of their private employment.

Finally, the course seeks to attract students who want to pursue government service. Sometimes these students feel the most unsupported in law school. Like their public interest counterparts, they find that they do not have the vast resources of the private sector available to them, but at the same time not everyone embraces government lawyering to be within the public interest.<sup>11</sup> By attracting this diverse mix of students to the course, students can share ideas and strategies on how to use their collective talents and unique perspectives in serving the public good. Ultimately, this diversity may encourage and facilitate successful collaborative work after law school aimed at expanding access to justice and improving the administration of justice for the benefit of all citizens.

From its inception, the course has been a collaborative effort among clinical faculty in both planning and implementation.<sup>12</sup> After an initial experimental run in which five clinical faculty members actively participated, the course has been taught jointly by a full-time clinical professor (the author of this article) and the executive director of a large, urban legal services program. This joint teaching approach presents an important link between the academy and the public interest community, offering students tangible benefits that neither world alone could probably offer as well. Additionally, the course serves as a gateway for students to learn more about in-house clinical courses, externships at public interest organizations and government entities, public service opportunities at law firms, and a range of other

---

<sup>11</sup>See Steven K. Berenson, *The Duty Defined: Specific Obligations That Follow from Civil Government Lawyers' General Duty To Serve the Public Interest*, 42 BRANDEIS L.J. 13, 13 (2003) (discussing the public interest serving role of government lawyers).

<sup>12</sup>The launching of this course was truly a collaborative effort shared by all members of the Penn Law clinical faculty, with each contributing important ideas about the course's content and participating directly in the teaching and supervision of the inaugural class. I am indebted to my clinical colleagues: Alan Lerner, Dveera Segal, Nancy Kraybill, Colleen Coonelly, Diane Wender, and especially to Douglas Frenkel, Penn's clinical director, who provided enthusiastic support and guidance in the shaping of this course.

student-run initiatives and experiential learning opportunities available to law students outside of the curriculum.<sup>13</sup>

In the sections that follow, this article describes several segments of the course. The selected segments are intended to illustrate how the course challenges students to utilize lessons learned in other courses and diverse practice experiences, while building a community of support for students who share many of the same goals. Hopefully, this will help students appreciate the overall public obligations of the profession and instill in them the confidence to lead the legal profession in tackling some of the most difficult and important challenges confronting our justice system. Along the way, we also hope to reinforce or rekindle the special passion and enthusiasm that brought so many students to law school in the first place.

#### *A. The Course Begins*

The course begins with several readings that ask students to reflect upon the reasons they chose to come to law school. We assign several short readings authored by public interest lawyers who describe the circumstances or events that attracted them to a career in the law.<sup>14</sup> In these readings, for example, Professor Lani Guinier, a former civil rights lawyer, shares an early, vivid remembrance of Constance Baker Motley escorting James Meredith into a University of Mississippi building as he was about to become the first African-American to attend “Ole Miss.” While Guinier was only twelve years old at the time of this historical event, she wrote that she distinctly recalled being struck by Motley’s “erect and imposing figure” and her proud determination in the face of crowd epithets. This influential experience convinced her that she could be a civil rights lawyer. In another reading, civil liberties lawyer Jerold S. Auerbach reveals that he had no lawyers in his own family to emulate, and instead credits his public interest roots to television recollections of attorney Joseph Welch’s staunch indignation directed at Senator Joseph McCarthy. Remembering the abuses of the McCarthy period in American history, Auerbach candidly writes that something about protesting against illegitimate authority drew him to law school.

With these and several other personal stories assigned for class discussion, students are asked to share a seminal moment in their own lives, perhaps a personal observation, a confrontation with injustice, recollections of a role model, or something far less dramatic, that inspired them to come to law school. For students now in their second or third year of law school, this is generally the first time since writing admission essays that they have been asked to identify the reasons for wanting to study law. We question the class to find out if students still feel the same way as they did before entering law school or whether they have found that their perspectives or goals have changed while in law school.

---

<sup>13</sup>It is very important to have public interest students develop connections as early as possible with public interest lawyers and nonprofit organizations. This will expose students to the academic challenges and satisfying rewards of the work, and give them role models from which to draw support, encouragement, and guidance in their future employment searches.

<sup>14</sup>See MARTHA R. MAHONEY ET AL., *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW* 10-14 (2003).

Some students express remorse that they have strayed from the initial intentions stated in their admissions essays.<sup>15</sup> For students who have remained true to their original aspirations, the classroom discussion is reaffirming. For students who have not, the discussion generally focuses on institutional forces, such as student loan debt or law firm salaries, that have altered their employment plans. Some students choose to continue this discussion in private with faculty or with other students in order to reconsider whether dismissed options are still possible for them. It is a beginning.

We also assign an article by Ralph Nader on the role that public interest law has played in the development of consumer protection and product safety,<sup>16</sup> as well as writings by Thomas Stoddard, Patricia Wald, and Julius Chambers who each share their personal views on the meaning of public interest law.<sup>17</sup> On the whole, these prominent lawyers associate public interest advocacy with representing relatively powerless minorities, advocating for neglected interests widely shared in the population, opening doors to the legal system, doing for the poor what elite firms do for corporate clients, enforcing existing laws, securing access to justice, and legitimizing democracy. The impressive range of accomplished lawyers and role models from which we draw selected readings is tangible proof of the enormous public good that can be accomplished with a legal education, and, we hope, it serves as a powerful inspiration for students contemplating their future career plans.<sup>18</sup> [CMLaw1] It also demonstrates that many of the brightest and most creative lawyers in America are public interest lawyers, thus debunking the myth that public interest law is less academically demanding or prestigious than other areas of legal study. Finally, in this segment, we show a short video taken from the “First Monday in October” series, in which Eleanor Norton Holmes, Scott Turow, and other well-

---

<sup>15</sup>Students frequently state that they chose to come to law school to help disadvantaged people, but after two years of law school, or less, decide to defer public interest plans. See Howard M. Erichson, *Doing Good, Doing Well*, 57 VAND. L. REV. 2087, 2123 (2004) (describing a similar exercise that produces similar results).

<sup>16</sup>Ralph Nader, *Summit, Taking the Offensive*, 40 SAN DIEGO L. REV. 7 (2003).

<sup>17</sup> See Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. REV. 967 (1997); Patricia M. Wald, *Whose Public Interest Is It Anyway?: Advice for Altruistic Young Lawyers*, 47 ME. L. REV. 3 (1995); Julius L. Chambers, *A Tribute to Justice Thurgood Marshall: Thurgood Marshall's Legacy*, 44 STAN. L. REV. 1249 (1992).

<sup>18</sup>After facilitating this discussion, we disclose to the class that all of the assigned authors—Nader, Stoddard, Wald, and Chambers—are “honorary fellows” of Penn Law School, chosen by the faculty in past years and invited in their year of selection to speak to the senior class at graduation ceremonies. Since 1965, the Penn Law faculty has designated an honorary fellow of the Law School who has “distinguished himself or herself in combining an active professional career with public service in law-related fields such as defense of civil liberties, promotion of law reform, aiding the indigent to obtain justice.” Descriptive statement of Penn Law Honorary Fellow Program (on file with author). In addition to Stoddard, Wald, Chambers, and Nader, the list of honorary fellows includes such outstanding lawyers and role models as Charles Morgan, Jr., Marion Wright Edelman, Jack Greenberg, Jerome Shestack, Morris Dees, Cruz Reynoso, and Tony Amsterdam, to name just a few. The faculty’s stated purposes in designating honorary fellows are to affirm the Law School’s ideal of combining professional life with public service and to inspire students to emulate these men and women. *Id.*

known figures add their views on the definition and meaning of public interest law.<sup>19</sup> The goal is to diminish any student feelings of isolation through the presence of so many inspiring “nontraditional” lawyers.

### 1. Broad-Based Public Interest Advocacy

A discussion of public interest lawyering usually elicits strong interest in pursuing broad-based, meaningful change to remedy systemic injustices that students have already observed while in law school. We assign an article written by Thomas Stoddard, a lawyer and activist, which offers valuable personal insights on different paradigms for accomplishing meaningful change.<sup>20</sup> In *Bleeding Heart: Reflections on Using the Law to Make Social Change*, Stoddard reflects upon his travels to New Zealand and his disappointment at finding the country to be less tolerant and progressive toward gays and lesbians than what he originally anticipated based on his pre-visit study of New Zealand’s strong anti-discrimination laws. To help understand this discrepancy, Stoddard developed a conceptual framework that distinguished lawmaking’s several different goals, paying special attention to laws he called “rule shifting” (accomplishing traditional functions of law by creating new rights and remedies for victims, altering conduct of government and of citizens and private parties) and “culture shifting” (accomplishing transformative social change that goes beyond rulemaking by expressing a new moral ideal or standard, changing cultural attitudes and patterns). In his article, Stoddard identifies the Civil Rights Act of 1964 as an example of legislation that did more than simply re-craft applicable rules and remedies, but rather changed the culture and overturned doctrines embedded in American life for centuries. Stoddard’s point is that legislation should be favored over litigation because it is through legislative reform that real change (culture shifting) is possible. To achieve lasting change, Stoddard urges public interest lawyers to connect with the public, which he advocates can best be achieved in the legislative process through public awareness and discourse.

The Stoddard article is intended to be provocative, and, not surprisingly, it has its detractors.<sup>21</sup> Nonetheless, the article challenges students to consider the many ways that lawyers can use their legal skills to accomplish broad-based change, and to consider that, at times, less-comfortable paths such as legislative and administrative advocacy are preferable to more familiar paths such as reform litigation in the courts. Students are eager to debate the merits of this framework and to apply it to some of the leading social and legal issues of our time. The article serves as a catalyst to encourage student thinking about injustices they have observed in their own practice settings and how they might best plan, along with their clients, for meaningful and lasting change.

Stoddard’s heavy reliance on legislative change also challenges the popular perception, reinforced by the curriculum’s heavy dependence on the case method, that meaningful legal change occurs mostly in appellate courts. Public interest lawyers must become skilled in diverse methods of advocating for the interests of

---

<sup>19</sup>ALLIANCE FOR JUSTICE, *FIRST MONDAY: FIGHTING FOR JUSTICE IN THE 1990’S* (1995).

<sup>20</sup>Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. REV. 967 (1997).

<sup>21</sup>See Nan D. Hunter, *Lawyering for Social Justice*, 72 N.Y.U. L. REV. 1009, 1011-17 (1997) (expressing some disagreement with the conclusions in Stoddard’s article).



poor and vulnerable clients who reside outside the mainstream of society, and they must decide, along with their clients, whether the legislative process offers a superior path toward accomplishing lasting change. In the end, the goal of the discussion is to expand the students' horizons to consider a full range of advocacy tools that, in combination, are essential to successful public interest advocacy.

## 2. A Practice Problem: Placing Students in Nonprofit Governance Roles While Exploring Competing Obligations

The opening segment of *Lawyering in the Public Interest* draws to a close with the introduction of a practice problem, the first in a series of exercises based upon real problems that are specially designed to place students in the roles of trustees, directors, and managers of nonprofit legal advocacy organizations serving the public interest. Law school pedagogy is good at preparing students to identify the full universe of possible theories to support a stated position, but often fails at disciplining students to exercise sound, practical judgment upon which ordinary individuals and institutions must rely.

When students are placed in governance roles and pressed to make decisions as to what *they* would do to resolve a difficult problem, the discussion materially changes from an open-ended and unfocused brainstorming session to a more productive and constructive weighing of viable options. Practice problems are intended to force students to wrestle with issues in the classroom as they would actually be called upon to do as lawyers and managers in real practice settings. Students are expected to follow basic parliamentary procedures, make motions regarding proposed actions, explain and defend proposed choices, and ultimately decide (usually by voting) on the best course of action a public interest organization should pursue. In this way, the exercise is intended to replicate, as much as possible, real world governance settings in the academic environment.<sup>22</sup>

The first practice problem asks students to be managers and trustees of a small and struggling non-profit legal advocacy organization that has been granted §501(c)(3) charitable tax status and whose stated mission is to eradicate racial

---

<sup>22</sup>A more effective way to explore the dynamics involved in non-profit governance of public interest legal advocacy organizations may be to invite real public interest managers and lawyers, clients, and board members into the classroom to conduct an actual board meeting and to give students an opportunity to "second-chair" these players, being fully prepared to speak on agenda items and to wrestle with difficult programmatic and policy issues. Law schools often invite courts to hold hearings or appellate arguments at their facilities in order to give students greater opportunity to experience real world advocacy and judicial decision-making. It would be beneficial for law schools to do the same in the arena of non-profit governance. The roles that boards and their individual members play are of critical concern to the well-being of our society, and law schools can do more to prepare lawyers for the substantive and ethical challenges of non-profit governance. For example, in a recent semester, we assigned a *New Yorker* column that commented on efforts by Hewlett-Packard Corporation to snoop on board members as a way of stopping board leaks to the media. The article suggests that such efforts stifle independent thinking by directors and may make it more likely that boards will be filled with cronies selected by chief executive officers to the detriment of the corporation. See James Surowiecki, *Zip It*, THE NEW YORKER, Oct. 9, 2006, at 31. The independence of board members and their interactions with executive directors are critical issues in non-profit governance, and much can be learned from study of the for-profit sector.

discrimination in rental housing. The organization represents a low-income woman who alleges that she was victimized by racial discrimination in rental housing at the hands of a large, institutional landlord in her neighborhood. After fourteen months of pre-trial litigation, the discovery process has revealed a great deal about the landlord's alleged discriminatory practices that have adversely affected the client and oppressed an entire community. Formal discovery has produced tangible documents that are harmful to the landlord and arguably demonstrate discriminatory practices. Recognizing its vulnerable legal position, the landlord has made an attractive cash settlement offer to try to resolve the litigation quickly, conditioned upon the tenant executing a confidentiality agreement promising to never reveal the existence of a settlement, or any of its terms, and agreeing that discovery documents produced in litigation be kept from public view. The tenant has mounting unpaid bills and finds this generous cash offer to be very attractive, just as the landlord's attorney fully anticipated when making the offer on behalf of the landlord.

The staff attorney at the public interest organization has expressed uncertainty on how to proceed. She empathizes with the client, recognizing that the financial settlement is generous and would greatly help the tenant, but she is also concerned that the settlement terms appear contrary to the mission of her organization and to the public good in general. In addition, she realizes that if the proposed settlement is accepted by the tenant, the organization will lose any claim of statutory attorney fees to which it might be entitled in litigation, assuming the case went to trial and the plaintiff prevailed (as the evidence strongly suggests). The landlord is adamant about requiring a waiver of fees as part of any settlement and, frankly, the organization was counting on fees from this and other cases to help pay salaries to its lawyers and to expand services to clients.<sup>23</sup> Most importantly, she feels that a public trial and verdict would shed needed light on the landlord's discriminatory practices that continue to oppress a low-income community.

The staff attorney's experienced supervisor, to whom the front-line lawyer turns initially for guidance, is adamant against the proposed settlement and communicates

---

<sup>23</sup>The default rule in the United States is that a prevailing party is not entitled to collect attorney's fees from the losing party, but this rule may be altered by contract or by statute. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245 (1975). Where a statutory right to fees exists, a defendant may request that a plaintiff waive his or her right to statutory attorney's fees as a condition of settlement, and it is not an ethics violation to conduct simultaneous negotiation of attorney's fees and liability on the merits of the action. *See Evans v. Jeff D.*, 475 U.S. 717, 730-32 (1986). In the practice exercise used in class, if the settlement offer of the landlord is accepted by the client, the public interest organization will not be able to seek court-ordered statutory fees from the adverse party calculated at prevailing market rates, assuming that the case had proceeded to trial and the client was ultimately deemed to be a prevailing party. Here, the landlord has offered one sum to settle the case, which the tenant and her attorney may divide between them as they may ultimately agree. Of course, if the public interest organization tried to recoup from the client's settlement all the attorney's fees to which it would be entitled for years of pre-trial litigation, there would likely be nothing available for the client. As a result, public interest organizations often find that they must waive any prospect of attorney's fees or, in the alternative, substantially compromise their fees down to a very low level that permits the client to receive a satisfactory level of compensation. When the client is indigent, an attempt by the lawyer to require more from the client through contract frequently fails because of the economics of the relationship. This is frequently referred to as the *Jeff D.* problem.

these feelings to her. At the same time, however, the staff attorney is the one closest to the client who understands acutely the immediate financial needs of the tenant, and she highly respects the independence of her client. As a relatively new lawyer, she is conflicted about her professional responsibilities and in need of further guidance. She turns to the organization's litigation committee, which originally approved the filing of this litigation at her request. She recalls going before the litigation committee fourteen months earlier strongly advocating for litigation approval to help this client, stating at that time that litigation was needed to achieve the client's goal as well as to meet the community's need to end pernicious rental discriminatory practices of this large landlord.

We use class time to convene a litigation committee meeting and undertake review of the dilemma presented by the staff attorney. Some students are eager to focus on the narrow question of the lawyer's professional obligation to her client, while others want to explore more broadly the organization's obligations to the larger community. Still other students want to defer substantive discussions in order to inquire about procedural and organizational questions. These students typically ask process-related questions: "Who is the litigation committee?"; "What authority does it have?"; and "Are clients represented on the committee?" Students begin to express discomfort in their assigned role of manager or trustee (and especially as decision maker). As the discussion progresses, we attempt to shed more light on the respective roles and inherent tensions among the various players, focusing on the staff attorney, supervising attorney, clients, trustees, and the organization itself. We also examine Internal Revenue Code regulations governing charitable, non-profit organizations as well as professional guidance opinions that discuss the exercise of a lawyer's professional judgment in the context of litigation decision making and the importance of safeguarding the attorney-client relationship from outside interference. While some students have previously observed board meetings outside of law school, the exercise helps all students to appreciate more deeply the difficult and essential role that governing bodies play in non-profit legal advocacy organizations.

After some discussion, we attempt to move beyond considerations of process to reach the central substantive question of whose case it really is and who has, or should have, final authority over the terms of the settlement. Students discuss the legitimate interests of the client, the overall needs of the community, and the dire needs of a struggling, well-intentioned organization whose future funding depends upon successful results in combating discrimination and being able to publicize tangible examples of its successful legal advocacy. Students who have already taken an ethics course in law school share an admittedly hazy recollection of how Model Rule 1.2 is intended to be protective of client autonomy. Other students appear more inclined to protect the fledgling organization, especially when we underscore that it may not be able to meet payroll for its lawyers in the very near future. Students are eager to discuss not only the professional conduct rules that apply, but also the policy considerations behind such rules and whether these considerations apply with equal force to public interest organizations as they do to private law firms.

Before long, class discussion turns to the initial understandings and arrangements between the lawyer and the client at the outset of representation. Did the organization place limitations on its representation when the client engaged the organization's services? Did the client consent to such limitations? The practice problem description is intentionally silent on this question, so students ask to examine the retainer agreement that was signed by the client in this case. This

launches a general discussion about retainer agreements and the functions they serve in the attorney-client relationship. We ask students about their own practice experiences outside of the classroom. Have students reviewed their employer's retainer agreement and, if so, were they responsible for making sure clients signed the agreement? How long and complex were the retainer agreements that they used? How clearly and carefully did they explain the contents of the retainer agreements to their clients? How much time was available for discussion of retainer agreement provisions in busy offices? What understandings did clients take from these discussions, and what choices did clients really have if the legal organization was a provider of last resort?

We inform students that there is no written retainer agreement in this case. This fact leads some students to conclude that they must honor the wishes of the client this time, but they express concern that unless the organization does something different in the future it will find itself in the same unfortunate situation over and over again. They ask each other, as co-directors, what the organization can do to avoid this problem from occurring again?

This presents an opportunity to assign students their first written assignment. For the next class, students are required to draft a retainer agreement provision that they will propose for adoption by the organization as a whole in response to this problem. Students generally volunteer that they have never drafted a retainer agreement, and some admit that they have never actually seen a retainer agreement (even though they have successfully completed a professional responsibility course). We require students to submit their proposed retainer agreement provisions in advance of the next class, and we direct that they may not do outside research or consult with each other in completing this assignment. We want them simply to express in writing their own ideas of what a retainer agreement might say on this issue, without being influenced by what others have already done.

In the next class, we select language from their retainer agreements and highlight student positions and language choices. To do this, we organize PowerPoint[CMLaw2] slides along a continuum that ranges from student expressions of complete client autonomy to absolute lawyer dominance, with many shades of gray in between. Students are surprised to see such a wide divergence of views among "like-minded" students and do not hesitate to reconsider their positions. Frequently, students who have chosen total lawyer control, in which the client is expected to surrender at the outset of the representation her right to control her own settlement, express dismay that they have usurped so much client autonomy in trying to meet the needs of their legal organization. The exercise helps students learn more about themselves as they struggle in good faith to reconcile competing interests. We finish this segment by reviewing a leading professional guidance opinion which, under somewhat similar circumstances, expresses the dominant view that a retainer agreement may not require a client to waive his or her right to accept or reject a settlement offer.<sup>24</sup>

---

<sup>24</sup>See Ethics Op. 289 of D.C. Bar Legal Ethics Comm'n. (1999) (finding that third-party client interests represented without fee by lawyers engaged in "cause" litigation remain clients and are entitled to be treated no less favorably by counsel than any other client), available at [http://www.dcb.org/for\\_lawyers/ethics/legal\\_ethics/opinions/opinion289.cfm](http://www.dcb.org/for_lawyers/ethics/legal_ethics/opinions/opinion289.cfm). The guidance opinion instructs that client rights in litigation cannot be subject to outside control; they cannot be required to waive their right to confidentiality, and their right to accept or reject a

This practice problem highlights the need for carefully considered organizational policies and draws into sharp focus the role of an organization's board of trustees. Students display a genuine interest in governance issues and ask many more questions that go to the composition, selection, and loyalty obligations of board members. Unfortunately, limited class time will only allow us to scratch the surface in exploring these questions. As a general principle, we try to gently guide the discussion while mostly trying to get out of the way, so that students will feel personal responsibility while serving in a governance capacity. While not all of these questions will receive extended treatment in class, the discussion serves another important purpose of helping students to identify issues that they may want to research further and choose as a topic for their required paper in the course.<sup>25</sup>

The problem discussed above is only the first practice problem in the course. Before the semester is over, students will work through five additional practice problems that pose real and difficult issues from public interest settings and require students to engage in group problem solving while serving in non-profit governance roles.

### *B. Universal Themes Confronting Public Interest Lawyers*

#### 1. Overview

The heart of the course is an examination of universal themes that confront all lawyers who engage in public interest advocacy and that transcend any one area of substantive practice. This is a *lawyering* course that is designed around the expectation that students have already gained some familiarity with the substantive law affecting their clients and that they have experienced, or will soon experience, common issues and problems that apply to all areas of public interest practice regardless of subject matter. It is our hope that through an examination of overarching themes, students will teach each other substantive law and benefit collectively from individual practice experiences as they struggle to apply their own direct experience to a series of real and recurring problems in public interest practice.

There are many common themes in public interest lawyering worthy of serious study, but time constraints permit us to select just a few each semester. Minimally,

---

settlement offer must be inviolate. *Id.* This practice problem also presents many other important issues. For example, students are asked to consider the consequences of commonly utilized settlement practices in which a party demands the removal of information revealing discriminatory or illegal practices from public view through contractual requirements of confidentiality or sealing of documents. This discussion draws strong student reactions. Faced with imperfect choices, some students express a desire to withdraw their representation rather than participate in the sealing of such information. This prompts pointed questions about existing limitations or constraints that apply to a lawyer's ability to withdraw from the representation of a client. We discuss conflict of interest questions relating to settlement authority, client confidentiality, and the waiver of attorney's fees, to mention just a few. These questions reveal a degree of complexity not immediately evident to students upon a first reading of this practice problem.

<sup>25</sup>As a postscript to the first practice problem in the course, we recommend that students read Derrick Bell's seminal article for further exploration of the inherent tensions between public interest lawyers and their clients in litigation decision-making. See Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976)

we try to integrate the following core topics into the syllabus: (1) client voice and autonomy, examining the inherent tension between intrinsic and instrumental goals; (2) scarcity of resources, exploring what it means for the public interest lawyer and fundamental decisions about who will get the services of the public interest lawyer; (3) competing delivery service models, contrasting different models of legal advocacy involving individual representation, law reform, community lawyering, rebellious lawyering, legislative advocacy, and others, with critiques of different approaches; (4) third-party intrusions into the attorney-client relationship, reviewing congressional restrictions placed upon federally-funded legal services lawyers and discussing other types of influences or constraints imposed by public and private funders, the legal profession, and opponents; and (5) common funding mechanisms, looking comprehensively at both traditional and newer funding sources, such as governmental funding, interest on lawyers' trust accounts (IOLTA), user fees, and a variety of other potential funding sources that might hold promise for the future.

This article discusses one of the overall themes covered in the course—scarcity of resources—in order to highlight the teaching methods we employ in all of the segments of the course. As a general matter, we try to combine contemporary readings from leading theoreticians and practitioners in the field, classroom discussions drawing upon actual and diverse practice experiences, video segments dramatizing key aspects of the problem that associate a real face with an issue, and a group problem-solving exercise that places students in leadership roles working collaboratively to formulate needed organizational policies or potential solutions to selected public interest problems.

## 2. Scarcity of Resources

Scarcity of resources is a dynamic force that impacts every aspect of public interest lawyering.<sup>26</sup> First and foremost, scarcity attaches to the clients themselves who lack the financial resources, education, family support, and networking opportunities that routinely assist middle and upper income individuals to successfully navigate difficult legal and financial challenges in their lives. Impoverished individuals face a paucity of options when seeking free legal assistance.

Second, scarcity attaches to the very public interest organizations trying to assist impoverished individuals, and it has consequences that affect almost every aspect of their operations. For example, scarcity affects the salaries they can pay to their lawyers and non-legal staff, the amount they have to spend on litigation, their access to the latest technology, the number of chairs in their waiting rooms, the amount of time that can be spent on computerized research, and the number of experts that can be engaged. The reality is that legal services must be rationed, and there are moral implications and dire consequences from the resource allocation decisions that are made.

We underscore this problem by asking students to identify from their practice experiences one concrete example of scarcity, and we go around the room providing each student with an opportunity to add to a growing list that is outlined on the

---

<sup>26</sup>See Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337, 380 (1978) (discussing the scarcity of public interest lawyers and concluding “there will necessarily be a permanent condition of scarcity in the availability of lawyers”).

board. Once the suggestions start flowing, students are reluctant to stop adding items, generally finding at least some measure of humor in the degree to which scarcity plays out, as if each student is trying to best the next student in what he or she has experienced in the practice world. We stop when we reach the mundane level of no paper clips, yellow pads, or toilet tissue. In the midst of this exercise, students who have experienced legal practice in large firms usually offer dramatic comparisons that frame a helpful contrasting discussion of how law is practiced based upon available resources. Students with government experience, especially in state or local government, tend to report experiences that fall in between these two extremes, ultimately identifying more closely with the examples of scarcity offered by students in public interest practice than examples of abundance of resources offered by students in large firms.

While scarcity holds important consequences for all aspects of public interest lawyering, there is usually consensus in the class that scarcity is implicated most urgently by overwhelming client demand for services that cannot be met with existing resources, forcing public interest organizations to make extremely difficult decisions about who will or will not obtain the limited resources of the full-time public interest lawyer or the *pro bono* volunteer. Informed by readings on this subject, the class discusses how our legal system has historically measured scarcity and the goals that have been set for achieving acceptable levels of access to justice.<sup>27</sup> We contrast these goals with actual practice and compare them with what is available to more affluent segments of our population.<sup>28</sup> Because of scarcity, legal services will be given to some while denied to many more. This allocation of resources will occur either in planned, thoughtful ways, or, just as likely, in unplanned, random ways. It is among the most serious problems confronting public interest lawyers and deserves close attention from every lawyer concerned about access to justice in our society. Many public interest lawyers report that the hardest part of their jobs is having to turn away a client who they know they could help and for whom their help would make a vital difference, if only they had the resources to do so.

There are many ways to underscore the practical, ethical, and emotional dimensions of this problem. We use a familiar exercise discussed in legal and

---

<sup>27</sup>We assign, for example, readings by Bellow, *supra* note 26; Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1999); and Justine A. Dunlap, *I Don't Want to Play God – A Response to Professor Tremblay*, 67 *FORDHAM L. REV.* 2601 (1999).

<sup>28</sup>Federal funding to the Legal Services Corporation increased from approximately 321 million dollars in 1981 under President Reagan to 400 million dollars in 1995 under President Clinton. See *LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 2* (2005), available at [http://www.lsc.gov/press/documents/LSCJusticeGap\\_FINAL\\_1001.pdf](http://www.lsc.gov/press/documents/LSCJusticeGap_FINAL_1001.pdf). The "Gingrich Congress" that was swept into power as a result of the 1994 mid-term elections imposed the largest single-year reduction ever in the history of the federally-funded legal services programs and reduced funding to just 278 million dollars in 1996. Since then, funding has returned to 1981 levels in absolute dollars, but lags seriously behind when adjusted for inflation. Without adequate funding, poor people have very limited access to legal representation. Where there is one lawyer for every 525 people in the United States, there is only one legal services lawyer for every 6861 low-income persons. *Id.* at 16. At best, only 20% of the legal needs of the poor can be met with current resources. *Id.* at 18.

philosophical circles, involving five people adrift in a boat who have no reason to expect any rescue and who will likely die from starvation unless four eat the flesh of the fifth person.<sup>29</sup> We divide the class up into groups of four or five students each and ask them to meet to decide how they will act when confronted with this problem. Each group is required to select a reporter who will inform the entire class of the group's deliberations and decisions. After each group confers privately to decide what it will do, we reconvene the class and have a reporter from each group go to the classroom board to reveal his or her group's decisions. Students often report that they are very uncomfortable with this exercise, but, when pressed, are willing to reveal the outcome of their private discussions. While each succeeding class offers its own unique twists, group decisions generally include such options as doing nothing and waiting to see what may happen, asking for sacrificial volunteers, drawing lots to decide who will sacrifice life or limb, taking affirmative action against the weakest member to make something happen, and engaging in a deliberative process to assess the relative "merits" of each individual in the boat.<sup>30</sup>

After each group has reported its decisions and has aired its own controversial choices, which may, at times, offend individual or collective notions of ethics and morality, we ask the class as a whole to report what they have learned from this exercise. This prompts a spirited discussion of the respective merits involved in adopting different courses of action in the face of scarcity, from just letting things happen to adopting planned and thoughtful guiding principles. As well, students necessarily discuss who should decide these questions and just how decisions should be made.

With strong philosophical and emotional feelings shared by the groups, we turn to translating these lessons to the legal world and the kinds of scarcity problems the class has already identified from their public interest experiences. As in the lifeboat exercise, students identify a range of potential options for addressing scarcity in public interest practice, but now they more readily discuss the ethical and practical dimensions associated with each choice. We attempt to lend practical dimensions to this discussion by going around the room a second time to ask each student to identify the most important type of legal problem he or she has experienced in a public interest setting. Students usually volunteer legal problems with which they are most familiar, and this list grows long; it usually includes loss of housing, employment, or public benefits, domestic violence, child custody, racial discrimination, and immigration, to mention just a few.

When we are done going around the classroom, we have a long list of compelling legal problems that almost everyone agrees needs and deserves the help of a lawyer. We then announce that because of scarcity of resources our *full service* public interest law firm will only be able to accept cases in one-half of the identified categories of legal need. The class must now confront the difficult task of applying

---

<sup>29</sup>See, e.g., Eric Rakowski, *Taking and Saving Lives*, 93 COLUM. L. REV. 1063, 1141-44 (1993).

<sup>30</sup>In assessing the "merits" of each individual, students attempt to develop criteria such as whether the person has children, is the person already in poor health, is the person the oldest or the weakest in the group, does the person possess a special gift that might one day be helpful to all of mankind, etc.



its range of available options to the actual needs of clients in substantive areas of law about which students are deeply committed.

The exercise is not perfect, by any means, at replicating the difficult task of developing workable intake policies for legal services and public interest organizations, but it does give students a taste of the enormous difficulty of being a decision maker where final decisions must be made to allocate scarce resources. We compare the students' decisions with the advice offered by experienced commentators and lawyers.<sup>31</sup> Students gain a new-found appreciation of the important role case acceptance policies play in the public interest world. Students who have interned in large law firms and have worked only on small parts of large litigation or transactional projects generally do not have an appreciation of how firm clients actually became clients, beyond perhaps an ability to pay or standard conflict checking. In contrast, we find that students with public interest experience are keenly aware of unmet client demand and have a rudimentary understanding of case acceptance principles. They understand that busy waiting rooms bursting at the seams are everyday aspects of many public interest practices and, frequently, resemble the difficult demands of triage experienced in the busiest emergency rooms of large, urban hospitals. Judge Learned Hand's admonition that justice should not be rationed seems particularly apt as the discussion unfolds.<sup>32</sup> Students begin in earnest to develop "rational" principles for allocating scarce resources, but the work is hard and emotional. It cannot be concluded in the limited class time we have available, but students take from this exercise the sobering knowledge that they will confront these challenges again if they choose to do public interest work.

Before leaving this subject entirely, we turn to the case acceptance decisions of one federally-funded legal services program that resulted in civil litigation being filed against it as a result of its resource allocation choices. Some years ago, California Rural Legal Assistance decided to reject entirely or substantially limit its representation in domestic relations cases in order to concentrate limited resources on legal challenges to the practices of growers and the adverse impact these practices had upon migrant farm workers. These case acceptance policies were later challenged in a state court lawsuit that contended that the program's decisions discriminated against women in violation of state law. We discuss this litigation and the underlying programmatic decisions which are brought to life by two published newspaper articles, one supporting and the other criticizing the program's decisions. This dispute highlights that even well intentioned resource decisions can split client

---

<sup>31</sup>For example, we assign Professor Tremblay's thoughtful article that offers potential principles for guiding the triage process: principles of legal success (where resources make a difference), conservation (smaller amount of resources needed to assist), collective benefit (affects larger group of clients), most serious legal matters (retaining one's housing over repairing one's credit rating), long-term benefit (favoring lasting change over short-term benefit). See Tremblay, *supra* note 27, at 2490-93. Tremblay also offers principles of excluded criteria, such as relative poverty (avoid favoring extreme poor over moderate poor), social worth (deserving poor, favoring working poor over subsidized poor), constituent demand, and attorney preferences. *Id.* at 2493-98.

<sup>32</sup>Learned Hand, *Thou Shalt Not Ration Justice*, 75th Anniversary Address to the Legal Aid Society of New York (Feb. 16, 1951), in *QUOTE IT COMPLETELY!* 530 (Eugene C. Gerhart ed., 1998) ("If we are to keep our democracy there must be one commandment: Thou shalt not ration justice.").

communities and therefore it is essential that careful thought be given to how, and by whom, such decisions are made.<sup>33</sup>

We are careful to make sure that our discussion of triage principles in allocating scarce resources does not neglect prospective clients who need legal help but do not, or cannot, enter the waiting room because of disability or confinement. On this score, we show the class a short film, *Representing the Forgotten*[CMLaw3],<sup>34</sup> which chronicles the work of four legal services programs providing legal assistance to clients who are institutionalized. The clients are prisoners, juvenile delinquents, seniors living in nursing homes, and disabled individuals requiring special assistance. The film underscores the need to include institutionalized clients when adopting case acceptance policies, and students readily understand the importance and difficulty of serving these complex needs with overburdened and scarce resources.

Ideally, the combination of assigned readings, group exercises, video, class discussion, and collective brainstorming gives students a better appreciation of the significant impact that scarcity and resource allocation questions have on access to justice in our society. In many non-profit organizations, executive directors and managing attorneys struggle daily with how best to meet overwhelming client demand while trying to reform systemic practices that hurt individual clients who may, for different reasons, never seek legal help. Lawyers in private practice sometimes ask where they should invest their limited available time for *pro bono* activities, just as government officials necessarily ask where public resources should be concentrated to have maximum impact. The goal is for students to leave this segment of the course valuing the importance of collaboration in trying to solve difficult resource problems which hold such dire consequences for those in need. Ultimately, the solutions to these questions are for the legal profession as a whole, or rather, for all of society, and not just for those who dedicate their careers to full-time public interest lawyering.

### C. *Informal Justice and Court Observations*

Scarcity of resources also has a direct impact upon the functioning of our courts. This segment of the course examines the concept of informal justice by looking at the inner workings of courts that are specially designed to administer justice in high volume settings. In many states, voluminous case filings and limited court resources threaten to clog access to the courts for all citizens. To help remedy this problem, many states have established *informal* courts that dispose of large numbers of cases rapidly by adopting relaxed procedures that encourage ordinary citizens to speak for themselves, unfiltered by lawyers, in legal matters that are usually perceived to be uncomplicated (e.g., landlord-tenant) or that involve only modest amounts in

---

<sup>33</sup>See Rael Jean Isaac, *When Legal Aid's No Help*, WALL ST. J., Dec. 12, 1996, at A12; see also Douglas S. Eakeley, Letter to the Editor, *Legal Aid Deals with a Tragic Reality*, WALL ST. J., Dec. 12, 1996, at 7. This exchange also raises the important question of whether resource allocation priorities are best made at the local level by boards of trustees or at the national level by governmental funding sources. See 45 C.F.R. § 1620 (2006) (governing priorities in the use of Legal Services Corporation resources).

<sup>34</sup>Video tape: *Representing the Forgotten* (Evergreen Legal Servs. Apr. 11, 1994) (on file with author).

controversy (e.g., small claims).<sup>35</sup> These courts are commonly referred to as “peoples’ courts” or “small claims courts,” and they are depicted in popular television shows that frequently revolve around the personality of the presiding judge.<sup>36</sup> In these television courts, the litigants speak for themselves without any involvement of lawyers. In real courts, however, parties with superior wealth or power are often represented by counsel, even in informal courts, and some informal courts may actually require that corporate litigants be represented by counsel.<sup>37</sup>

#### 1. Observing the Resolution of Landlord-Tenant Disputes in Informal Courts

In this course we have chosen to focus most heavily on landlord-tenant disputes where the stakes are quite high for the litigants. To introduce this segment, students are assigned several readings that discuss the purposes of informal courts and their intended goals, such as eliminating formal barriers that may obstruct amicable resolutions of disputes, providing relaxed atmospheres that emphasize conciliation over adjudication, and simplifying standard court procedures that impede the ability of ordinary citizens who are untrained in the law to present claims or defenses. As a result, these courts are able to dispose of large numbers of cases unimpeded by pleadings (beyond simple, plain-English complaints), discovery, motions, jury trials, and other time-consuming features of formal courts. Over the past few decades, these courts have been widely hailed for their ability to administer justice in a swift, cost-effective manner.<sup>38</sup>

Some of the assigned readings, however, challenge the popular view that informal justice empowers ordinary citizens to speak up on their own behalf in legal disputes. Authored by practitioners who often appear in these courts, the readings suggest that legal formalism is better suited than informality at protecting the rights of the poor. These writings contend that without basic protections associated with formal court procedures, especially in such areas as landlord-tenant and consumer disputes, courts appear to assume the role of collection agents for wealthy, powerful, or institutional interests.<sup>39</sup> Worse yet, without lawyers in the courtroom to enforce

---

<sup>35</sup>The Philadelphia informal court is the Municipal Court of Philadelphia, a court of limited jurisdiction with 25 law-trained judges. 42 PA. CONS. STAT. ANN. § 1121 (West 2007). It has jurisdiction over criminal offenses carrying maximum sentences of incarceration of five years, small claims cases where the amount in controversy is \$10,000 or less, landlord-tenant cases with unlimited dollar amounts, and real estate and school tax cases where the amount is \$15,000 or less. 42 PA. CONS. STAT. ANN. § 1123 (West 2007).

<sup>36</sup>These television programs feature such popular judges as Judge Judy, Judge Brown, and Judge Hatchett, among others.

<sup>37</sup>See PHILA. MUN. COURT, SMALL CLAIMS COURT (2001) (stating that corporations must have an attorney unless the matter is less than \$2500), available at <http://courts.phila.gov/pdf/brochures/small-claims-court.pdf>.

<sup>38</sup>See generally Tal Finney & Joel Yanovich, *Expanding Social Justice Through the "People's Court"*, 39 LOY. L.A. L. REV. 769 (2006); Suzanne E. Elwell & Christopher D. Carlson, *The Iowa Small Claims Court: An Empirical Analysis*, 75 IOWA L. REV. 433 (1990).

<sup>39</sup>See, e.g., Mark H. Lazerson, *In the Halls of Justice, the Only Justice Is in the Halls*, in THE POLITICS OF INFORMAL JUSTICE 119 (Richard L. Abel ed., 1982); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992); Julie Becker, Editorial, *Gimme Shelter: For Renters, a Trip to*

the legal rights of the poor, these courts routinely fail to apply established legal principles to meritorious legal claims and defenses asserted by the poor. Instead of empowering the poor, these commentators conclude that ordinary citizens are silenced by unrestrained treatment at the hands of judges, clerks, and bailiffs.<sup>40</sup>

Critics also contend that the heavy insistence on dispositional speed in informal courts, seen as a measure of success in evaluating their effectiveness, pushes too many disputes from the transparency of the public courtroom to private negotiations in courthouse halls and to back-room, court-sanctioned mediation sessions where poor and unsophisticated litigants are often over-matched by repeat players on the other side. It is here that unsophisticated litigants routinely and “willingly” give up valuable legal rights without understanding the consequences of their actions.

After reading contrasting viewpoints on informal courts, the students are required to observe a courtroom in the local municipal court for a morning or an afternoon. Students are required to spend enough time at the court to enable them to observe the arrival of litigants, announcements of court personnel directed to litigants, the first call of the list of the cases on the court docket, court instructions urging litigants go into the halls to discuss their cases with opposing parties to try to reach agreements, the referral of cases to voluntary mediation services down the hall provided by the court, the administrative disposition of “no shows” or settled cases by a trial commissioner, and ultimately the adjudication by the presiding judge of the few unresolved disputes remaining at the end of the list. Students are asked to carefully observe everything that happens in the courtroom and, wherever possible, outside the courtroom and to record the things they observe. We do not suggest in advance that they observe any particular feature or practice of the court.

The goal is to have students participate in a one-time, elementary court observation project, a new experience for many students. We find that students return to class after court watching energized by their observations and eager to report upon them. To facilitate this discussion, we go in order around the classroom at least once, and sometimes twice, having each student identify and comment upon a single memorable feature, practice, or event that the student directly observed. The comments are broad-ranging and often begin with case-specific issues that raise substantive claims or questionable rulings. The observations invariably include comments on systemic issues or practices, such as how few lawyers represent low-income litigants, how little time is used by the court to explain important matters to litigants, how little time litigants have to present their claims and defenses, and how quickly disputes are “amicably” resolved, again with little explanation. The speed at which things happen in informal courts stands out most clearly in student accounts.

Students report on many other observations. They describe public interactions between court personnel and litigants that either create a welcoming tone or a hostile environment for litigants. Students comment on the racial, gender, and ethnic composition of litigants and court employees, and the impact that the lack of diversity has on the appearance of justice. They express concern about the manner in which poor litigants are pushed into mediation or informal hall discussions with their opponents, sometimes under express threat that they will be there all day if they do

---

*the District's Landlord and Tenant Court Can be an Unjust and Degrading Experience*, WASH. POST, Oct. 27, 2002, at B8.

<sup>40</sup>See Bezdek, *supra* note 39, at 538-39; Becker, *supra* note 39, at B8.

not come to some agreement. In other instances, students report that courtrooms appear to take on the personalities of the presiding judge. In courtrooms that are presided over by judges who are patient and respectful, students are likely to give higher marks to the workings of informal justice; on the other hand, students who observe judges who are disrespectful to litigants or who seem preoccupied with little more than how fast they are able to conclude their list for the day, leave the courtroom with a very different conclusion. However, most students tend to agree that overall the informal court appears to silence, rather than empower, unrepresented litigants.

Students usually report that informal courts appear to operate under a default presumption that the landlord, the creditor, or party with power is entitled to some relief (payment of rent, possession of the premises, etc.). This is reinforced by student observations that landlords obtain default judgments when tenants do not appear in court but that listed cases often get continued when landlords do not appear in court. It is further reinforced by questions from judges that seem to be intensely interested in whether a tenant has lived up to her leasehold requirement of paying rent when due, but which express far less interest in whether a landlord has lived up to its contractual obligation of providing housing conditions that satisfy warranties of habitability. Furthermore, students voice discomfort with the open familiarity between court personnel and landlords (and their lawyers or agents), which appears to be condoned or even encouraged by the court even though it substantially impairs the appearance of fairness and neutrality in the disposition of justice. This is especially troubling to the students when taking into account the demographics of litigants in informal courts, where tenants tend to be disproportionately women and people of color.

## 2. Designing Informal Courts That Administer Justice Fairly

After discussing student observations, we share with the class the findings of an actual court observation research project which was conducted at the same court almost a decade earlier by a university researcher at the request of a tenant advocacy organization.<sup>41</sup>[CMLaw4] It is unsettling that many, if not most, of the students' observations from their half-day of court watching are largely consistent with the detailed findings of this decade-old research project that monitored court proceedings over the span of twenty-eight days.<sup>42</sup> This prompts a comparative discussion of court structures and procedures and the lawyer's role in improving the administration of justice. Students who have observed federal courts, formal state courts, or other similar forums in their summer clerkships are quick to offer comparisons with what they have now observed in municipal court. Ultimately, the goal is to have students reflect upon the design of courts and the procedures they

---

<sup>41</sup>His The report found that most tenants facing eviction in the local municipal court were in fact evicted; tenants were steered away from hearings and toward non-appealable agreements; hearings were very short, most lasting for only five minutes in length; testimony by tenants was routinely precluded, with their evidence often not entered into the court record; and warranty of habitability case law was rarely applied. See DAVID ELDRIDGE, TENANTS' ACTION GROUP, COURT WATCH: A PILOT STUDY OF TENANTS' EXPERIENCE IN PHILADELPHIA'S LANDLORD/TENANT COURT, 3-8 (1996) (on file with author).

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

employ, in order to understand better the impact that all of these attributes have on access to justice for low-income and disadvantaged litigants. The discussion is also intended to underscore that lawyers, who are most familiar with what should take place in a courthouse, have a professional obligation to improve the administration of justice for all litigants. Students are asked to consider how they would design a municipal court that properly balances the need for prompt disposition of claims in high volume courts with the concern that unrepresented parties receive adequate information needed to make informed judgments about their cases.

Law school has sharpened the critical skills of students, but this exercise challenges students to assume the less familiar role of builder in the hope that they will take seriously their professional obligation to improve the administration of justice. We ask the class to consider the differences, if any, the presence of lawyers in the courtroom might have on the practices they observed and, specifically, whether and how judges and court personnel might act differently if the courtroom were frequented by influential lawyers instead of unrepresented parties. This highlights the important role that lawyers play in judicial accountability since lawyers, by their training, experience, and expectations, hold courts accountable and utilize aspects of legal formalism to insure that their clients are treated fairly.

Lawyers also have the power to improve the functioning of courts by serving on bar association and court rule committees and through their writings in legal and general publications. Not surprisingly, courts that often receive the highest ratings from lawyers for fairness and efficiency are those in which lawyers are intimately involved and in which litigants are sophisticated enough to demand fair and well-functioning courts.<sup>43</sup> This exercise also reinforces, once again, the importance of having access to counsel and it renews needed discussion about adopting a civil *Gideon* rule for indigent clients when important interests are at stake.<sup>44</sup>

#### D. Anatomy of a Public Interest Lawsuit

Each year, we select a large-scale problem as context for an examination of how public interest lawyers think about and plan for broad-based litigation. We refer to

---

<sup>43</sup>One example is Philadelphia's relatively new Commerce Court Program, which was created to give businesses a highly skilled and receptive forum to resolve business disputes. See, e.g., COMM. OF SEVENTY, STUDY AND ANALYSIS OF THE PHILADELPHIA COMMERCE PROGRAM I (2005). The new court was established within the Court's Complex Litigation Center where it could be given highly regarded judges, ornate courtrooms, and substantial resources needed to meet the judicial needs of well-heeled litigants and leading members of the bar. Influential lawyers are attentive to these forums and their involvement has a significant impact upon the quality of proceedings held in these tribunals.

<sup>44</sup>In 1963, the U.S. Supreme Court held that a person accused of a crime is entitled to the assistance of counsel. See *Gideon v. Wainwright*, 372 U.S. 335 (1963). The Court reasoned that in an adversarial system, in which the government is represented by lawyers, an accused who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. *Id.* at 344. There are recent efforts to extend *Gideon* principles to civil cases. See, e.g., AMERICAN BAR ASSOCIATION, HOUSE OF DELEGATES, RESOLUTION 112A (2006) (urging federal, state, and territorial governments to provide legal counsel as a matter of right when important interests are at stake), available at <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf>. But see Russell G. Pearce, *Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 *FORDHAM L. REV.* 969, 974-75 (2004).

this segment as “the anatomy of a public interest lawsuit.” Our purpose is to have students give careful thought to the goals of impact litigation as a means of achieving social change and to consider the procedural, substantive, resource, and ethical questions that competent public interest lawyers must answer before filing such a lawsuit. Our discussion explores some of the essential components of this planning process, covering such topics as pre-filing investigation, litigation financing, legal theories of the case, party and forum selection, and the nature of relief sought.

In past years, we have chosen several different problems. For example, we have discussed litigation planning aimed at stopping municipalities from sweeping homeless persons from the streets of a downtown business district,<sup>45</sup> assisting municipal efforts to hold gun manufacturers responsible for escalating violence involving hand guns in their jurisdiction,<sup>46</sup> and preventing a community hospital from closing its doors to the surrounding neighborhood upon very short public notice.<sup>47</sup> These are all challenging issues that defy easy solutions and require thoughtful planning by public interest lawyers when advising clients who are interested in turning to the courts for redress.

On occasion, we have looked at litigation planning in the context of efforts to obtain slavery reparations for African-Americans. We begin this discussion with a brief historical introduction by looking at successful efforts to obtain public acknowledgement of government wrongdoing and financial remuneration for Japanese-Americans interned during the Second World War.<sup>48</sup> We compare that effort with the long-standing and, thus far, unsuccessful effort in the House Judiciary Committee to enact reparations legislation for African-Americans. We also review the Ninth Circuit’s decision in *Cato v. United States* that affirmed the dismissal of a reparations claim brought *pro se* by an African-American seeking damages in federal court for the enslavement of African-Americans.<sup>49</sup> In upholding a dismissal of the plaintiff’s complaint, the Ninth Circuit discussed some of the legal difficulties involved in trying to prosecute a reparations action based upon claims of constitutional or statutory violations. The *Cato* opinion underscores quite effectively that litigation to compel slavery reparations through the courts is a very difficult task. If success on a complex litigation claim such as this is to come from the courts, it will not likely be the result of a *pro se* effort by a single litigant.

The primary reading assignment for this discussion is an intriguing *Harper’s Magazine* article which records the free-wheeling exchange of four experienced class-action lawyers who strategize collectively about the possibilities and

---

<sup>45</sup>See, e.g., Benjamin S. Waxman, *Fighting the Criminalization of Homelessness: An Anatomy of an Institutional Anti-Homeless Lawsuit*, 23 STETSON L. REV. 467 (1994) (describing litigation planning involved in challenging a municipality’s efforts to sweep homeless persons from downtown streets).

<sup>46</sup>See David Kairys, *Public Nuisance Claims of Victims of Handgun Violence*, 43 ARIZ. L. REV. 339, 340 (2001).

<sup>47</sup>See *In re St. Mary Hosp.*, 86 B.R. 393 (Bankr. E.D. Pa. 1988).

<sup>48</sup>See, e.g., Civil Liberties Act of 1988, 50 U.S.C. app. § 1989 (2006).

<sup>49</sup>See *Cato v. United States*, 70 F.3d 1103 (9th Cir. 1995). In *Cato*, the Ninth Circuit Court of Appeals upheld the district court dismissal of the plaintiff’s claims as frivolous under the federal *in forma pauperis* statute. *Id.* at 1111.

difficulties of bringing litigation to obtain reparations for African-Americans.<sup>50</sup> *Harper's Magazine* chose class action lawyers for this discussion because, in its view, the "class-action lawsuit has become the dominant form of litigation to resolve bitter disputes over collective guilt and innocence that not so long ago played out in Congress."<sup>51</sup>

There are many important lessons conveyed by the lawyers in this forum, but perhaps none more useful than the sage advice that every great lawsuit tries to tell a story of injustice in a way that will resonate with the courts, the press, and the public. With this statement as a guiding foundational principle of any proposed litigation plan, the four lawyers then discuss how they might go about framing causes of action, identifying potential plaintiffs and defendants, and enumerating the legal relief they would seek in litigation. Acknowledging the difficulties associated with such litigation, the lawyers speculate that a lawsuit might prove most effective by serving as a catalyst prompting action by the other branches of government.

We supplement the *Harper's* article with a short segment from *60 Minutes* that thoughtfully probes how the legal system could place a value on a remedy for slavery.<sup>52</sup> In this broadcast, proponents of reparations talk movingly about "giving people what is their due," while also cautioning that although money is a major part of the answer, the answer "must begin with an acceptance of responsibility." The broadcast concludes with an expression of hope by one participant that African-Americans can prevail on this issue as they have on "other great human rights issues."

With a profound appreciation of the difficult legal hurdles involved, we then divide the students into three or four groups and assign each to be a legal team from different public interest law firms. We ask each group to strategize separately about their proposed litigation plan and to report back to the whole class with their tentative recommendations and supporting reasons. As with other in-class exercises, each group selects a reporter who goes to the board and summarizes the group's deliberations and decisions.

At times, the reports from the groups differ significantly. Some groups may choose broad-ranging actions with multiple causes of action, while others may choose limited actions with a single, narrowly-tailored legal claim. Some groups may opt for broad-based relief, requesting huge sums of money and other expensive items, while others may choose to pursue non-monetary remedies exclusively. This engenders a lively discussion that highlights how different public interest lawyers might approach the same task, but it also teaches students, once again, a great deal about themselves, their philosophies, their tendencies, and even their judgment in the context of litigation problem-solving. Admittedly, the exercise is materially incomplete because, at a minimum, it is done entirely without the participation of clients. Still, it is a valuable tool for discussing litigation planning and exploring the limits of the law through traditional means.

We conclude this topic by summarizing actual efforts to advance litigation strategies on the subject of reparations and by comparing student ideas on litigation

---

<sup>50</sup>Jack Hitt et al., *Making the Case for Racial Reparations*, HARPER'S MAG., Nov. 1, 2000, at 37.

<sup>51</sup>*Id.*

<sup>52</sup>*See 60 Minutes: The Trillion Dollar Question* (CBS television broadcast Apr. 8, 2001).



planning with litigation (and non-litigation) strategies that are currently underway in the real world.<sup>53</sup> We confidently predict that this discussion will not be concluded in the courts any time soon.

#### *E. Research, Writing, and Student Presentations*

Each student in the course is required to submit a research paper of publishable quality that incorporates original, reflective thinking on a subject related to public interest lawyering. While students must obtain faculty approval for their topics, students are encouraged to select a topic that holds great interest for them and to use this opportunity to make a valuable contribution to the field of public interest law. We require students to submit a brief description of their proposed topic for faculty approval by the third week of the course. We review each submission and offer students our thoughts about directions they might want to take in their research and writing. On rare occasions, we reject a proposed topic if we do not believe it fulfills the goals of the course.

The paper assignment has several requirements. First, the selected topic must relate directly to public interest *lawyering*; a traditional case note will not suffice. Second, the paper must include substantial research demonstrating familiarity with the published writing of leading academics and practitioners on the selected subject, and it must be properly documented and cited according to law review standards. Third, we expect the paper to be well-written and carefully organized. Fourth, we encourage students to conduct research that goes beyond traditional academic research and that requires students to leave the library (or their laptops) in order to interact with public interest lawyers, judges, social workers, community groups, and others who might be helpful on their selected topics. Finally, we expect the paper to analyze their research and integrate original, reflective thinking that evidences creativity and insight.

Students usually have many questions about this writing requirement. While some students know almost immediately the topic they want to explore, others are very unsure and ask what *we* are looking for. The question gives us an opportunity to underscore that we want students to pursue a subject that is of genuine interest to them. We suggest that they consider topics that arose while they were engaged in public interest work over the summer, but which limited time did not allow them to explore more fully. Alternatively, we suggest that students review the syllabus topics and assigned readings for additional ideas. We frequently find that as the course progresses, some students will request permission to change their topics based on evolving class discussions or developing legal issues in the public interest community. We are pleased to approve such changes if it means that a change will engender even more student interest or passion in the final product.

Students frequently ask what we mean by “reflective” writing. While some students are familiar with such writing and feel comfortable with it, others find it to be a new experience and are unsure what is expected of them. We find it helpful to answer this question by identifying concrete examples of articles that succeed at this task, some of which appear as assigned readings on the syllabus. For example, we

---

<sup>53</sup>See Charles J. Ogletree, Op-Ed., *Litigating the Legacy of Slavery*, N.Y. TIMES, March 31, 2002, § 4, at 9; see also Kevin Orland, *Slavery-Reparations Suit Dismissed*, PHILA. INQ., July 7, 2005, at C3 (reporting on U.S. District Judge Charles Norgle’s dismissal of a federal lawsuit brought against fifteen companies seeking slavery reparations for African-Americans).

often identify an article written by Lucie White, a law professor and former legal services lawyer, who describes her representation of an indigent mother in a welfare overpayment case.<sup>54</sup> The article contains the author's thoughtful observations about the attorney-client relationship, and reflects upon several important themes such as client voice, lawyer-filtering of client stories, and tensions that arise between lawyer and client in developing and implementing a theory of the case. In the process, White offers powerful observations on race, gender, and class, and on administrative institutions that hold considerable power over poor people. The article sets the bar high, but offers an excellent example of reflective writing.

In assigning a research paper of publishable quality on public interest lawyering, we have many goals in mind. Over the years, public interest students have lamented that law school courses and legal writing classes infrequently use public interest topics when giving out writing assignments. As a result, students interested in pursuing public interest careers may not have writing samples on subjects germane to public interest practice which could prove helpful to their job searches. In addition, we believe that scholarly writing in public interest law would benefit greatly from having fresh, student input. We encourage students who submit the best papers in this course to continue working on their papers and to consider publishing them in the future. Even if they decide not to do so, some students elect to expand their papers under faculty supervision in order to satisfy the law school's senior writing requirement.

Students who undertake original writing on public interest topics can benefit when competing for highly selective post-graduate fellowships or public interest employment. Students report that public interest interviewers found their work to be interesting and relevant, and that their research and writing on public interest lawyering topics gave them a level of confidence that came across effectively in interviews. Moreover, students with advanced degrees in different disciplines, or who are pursuing joint degrees while in law school, can use this assignment as an opportunity to engage in interdisciplinary or empirical research on law-related, public interest topics. Some of the best papers submitted in the course have been from students writing about the intersection of social work and law, or medicine and law, in public interest practice.

The paper is not due until after classes have ended. During the final four weeks of the course, we require each student to deliver an oral presentation in class while the paper is still a work in progress. Each student has ten minutes (strictly timed with a student volunteer acting as timekeeper) to present the paper's thesis and to describe initial research and findings. The short presentation time forces students to organize thoughts carefully and to use limited time effectively. Many students choose to enhance their oral presentations with PowerPoint slides. Presentation skills are important lawyering skills, as attorneys are routinely called upon to educate judges, legislators, government officials, community groups, and others, about their cases or the issues at stake. They need to be able to do so in a clear, concise, and effective manner. After ten minutes of presentation, we ask all students to react to the ideas of the presenter and to offer candid feedback or suggestions. Students

---

<sup>54</sup>See Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

generally report that they find the input of their peers very helpful in completing the final stages of their work.

While these presentations are time consuming and require that we give up valuable amounts of class time that might otherwise be spent on thematic subjects, we believe that student presentations are definitely worth the investment of time. We believe that students benefit greatly from having to go before their peers to describe their work and to take responsibility for their research, findings, and conclusions. This process helps students to be more precise in the use of their language and to sharpen their organization and communication skills. After all, lawyers must be effective educators and this assignment helps students to improve these important skills.

There are other benefits as well. Students learn about a broad range of diverse public interest topics that are interesting to their peers and that could not otherwise be covered in the limited class time that is available. In addition, students obtain a chance to observe different presentation and communication styles by fellow students, which helps them to find a style that works well for them. In many ways, student presentations resemble faculty workshops at which professors present their own works in progress and benefit substantially from the input of their peers. Law schools should give students more opportunities to engage in active teaching and presentations of original work.

#### *F. Reflections of a Public Interest Lawyer*

As the final week of the course approaches, we turn our attention to a final look at the professional and personal lives of experienced public interest lawyers, just as we began the course with the aspirations of future public interest lawyers. We summarize briefly some of the many contrasts explored during the semester. These generally include feelings of depression or even a sense of defeatism that sometimes accompanies the discussion of scarcity of resources in the face of overwhelming client demand, countered by optimism and hope that accompanies the development of new funding sources that expand services and obtain rewarding achievements for large numbers of impoverished people. It extends to difficult barriers that impede litigation in increasingly unreceptive courts, with promising opportunities that arise through expanded advocacy in diverse forums, including, at times, state legislatures or local agencies.<sup>55</sup> And it certainly includes limitations of traditional, adversarial-based delivery models, countered by the possibilities for change ushered in by new partnerships in collaborative, community-based initiatives.

The concluding segment of the course focuses on job satisfaction and what all lawyers, but especially public interest lawyers, need for sustenance over a long and demanding career. Students welcome the opportunity to discuss this important subject in a classroom setting. We assign an article by a former law clerk to Justice William Brennan who observed that Justice Brennan's "greatest overall job satisfaction came from the simple act of devoting a career to working on cases and

---

<sup>55</sup>See Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547 (1998) (arguing that the landscape is different today for poverty lawyers and that public interest lawyers must turn to different forums, including the states, in the absence of a federal statutory safety net).

causes that he thought made a difference.”<sup>56</sup>[CMLaw5] According to his law clerk, Justice Brennan felt deeply the obligation that every lawyer should feel: “the obligation of each lawyer to find his or her own way of working ‘on the side of the angels’ – not his, not mine, not anyone else’s.”<sup>57</sup>

Students eagerly inquire about the attributes they should search for in post-graduate employment, especially if they are choosing to sacrifice salary for uncertainty and risk in public interest law. We repeat the guidance offered by one experienced public interest lawyer, Alan Morrison, who in an earlier speech to students urged them to seek legal work in an environment that is intellectually challenging, offers excellent legal supervision, provides the freedom to do what you want, is surrounded by supportive colleagues, and is a place where you can have fun.<sup>58</sup> Admittedly, Morrison’s list is a not an easy one to achieve fully, but it is valuable advice nonetheless. We add our own personal thoughts on the many paths to doing good and remind students that whatever paths they choose, the world needs their passion for fairness, their intolerance of injustice, and their commitment to creative, ethical, problem-solving.

Many of the students enrolled in the course are Sparer Fellows, individuals selected by the law school to receive summer funding to work in public interest employment while at the law school. The Sparer Fellowship program is named after the late Edward V. Sparer, a professor of law and social work at the University of Pennsylvania, who was widely respected and admired for his “compassion for the powerless and his commitment to their empowerment.”<sup>59</sup> His pioneering work inspired both lawyers and law students to pursue progressive social change through law. We choose to end this course on a special note remembering the legacy of Professor Sparer and his enormous contributions to social justice. In an eloquent law review tribute by Professor Sylvia Law, students are reminded that Ed Sparer founded both Mobilization for Youth and the Columbia Center on Social Welfare Policy and Law, the nation’s first neighborhood legal services program and support center for legal services, respectively. Professor Law praises Sparer’s commitment to the most oppressed, writing that Sparer “was grounded in his endless empathy with others and his conviction that the problems of poverty are solvable.”<sup>60</sup> Until his untimely death, Professor Sparer was one of the nation’s most powerful voices in the academy for social change, and his legacy remains an inspiration to all public interest lawyers.

As time runs out on another semester of *Lawyering in the Public Interest*, we share our own personal and professional recollections with the class, and we warmly offer our best wishes to another talented group of prospective public interest lawyers eager to make a difference in the world. For one final time, we return to Ed Sparer’s

---

<sup>56</sup>Michael Rubin, *Dedication, The Role of a Lawyer: A Tribute to Justice William J. Brennan, Jr.*, 31 LOY. L.A. L. REV. 753 (1998).

<sup>57</sup>*Id.* at 757.

<sup>58</sup>Morrison spoke to the student body at Penn Law School on November 6, 2003.

<sup>59</sup>*Dedication, In Memoriam*, 132 U. Pa. L. Rev. 421 (1984)

<sup>60</sup>Sylvia A. Law, *Dedication, Edward V. Sparer*, 132 U. PA. L. REV. 425 (1984). Professor Sparer died on June 21, 1983.

own words for a departing expression of wisdom and inspiration to carry this class forward in their legal careers:

We cannot build a new society of caring human beings, if we do not act to help our fellow humans now. However small the ways, we are what we do.<sup>61</sup>

### III. CONCLUSION

The law school curriculum should provide greater academic and emotional support to public interest students. As commercialization increasingly dominates the legal profession while huge segments of our population have little or no access to legal help, the academy must do more to encourage and sustain student interest in serving the public good. This article describes the teaching methodology used in one course that seeks to nurture future public interest lawyers and to prepare students for effective leadership in meeting the unique challenges presented by public service. Hopefully, this description will prompt continued curricular innovation that resonates with the aspirations earnestly expressed in admission essays by so many students who were eager to explain why they wanted to come to law school in the first place.

---

<sup>61</sup>Edward V. Sparer, *Fundamental Human Rights, Legal Entitlements and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 *STAN. L. REV.* 509, 574 (1984).