Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness

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Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness

MICHELLE S. JACOBS*

I. INTRODUCTION

A cornerstone of our legal system is the right of all clients, including poor ones, to full and zealous representation. This belief is reflected in our professional public pronouncements and is incorporated in our doctrinal law.1 Similar exhortations are included in the rules and guidelines for Legal Services lawyers and public defenders.2 Despite these public pronouncements and the supporting law, the handling of legal matters on behalf of the poor regularly falls short of what would constitute acceptable advocacy on behalf of clients who can afford to pay for counsel.

In prior writings, I have asked whether lawyers expect the standard of zealous representation to apply to their representation of the poor.3 I have also explored the ongoing resistance among lawyers to

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1. See, e.g., Gideon v. Wainwright, 372 U.S. 335 (1963) (indigent defendant entitled to counsel in criminal trial to ensure constitutional right to a fair trial).

2. See, e.g., STANDARDS RELATING TO THE ADMINISTRATION OF JUSTICE: THE DEFENSE FUNCTION STANDARD § 4-1.2(h) (“Once representation has been undertaken, the functions and duties of defense counsel are the same whether defense counsel is assigned, privately retained, or serving in a Legal Aid or defender program.”).

The persistent acceptance of two standards of justice, one for those who can pay and another for the poor, demands a more systematic probing of the reasons why the disparate conditions are allowed to continue. The disparities are widely known. Yet efforts to resolve them are not universally supported or generously funded. Possibly, the equalization of quality representation remains stalled because lawyers do not really value the poor and therefore do not see them as being entitled to the same quality of representation as the wealthy.

As a practicing lawyer assigned to indigent clients, I was sometimes disturbed by comments made by my colleagues about the clients to whom they were assigned. Their voices would often be tinged with disrespect and, frankly, disgust towards their clients. Although these observations made me uncomfortable at the time, I saw them as their clients’ problem more than my own. However, during my tenure as a clinical professor I have also heard many students express similar attitudes toward their clients. I find the phenomenon deeply disturbing.

Most of the students are “traditional” law students. They come to law school straight from college, with little work experience and very limited life experience, yet they feel free to cast judgment on people whose lives are more complicated than they can imagine. Worse, these students will become the legal community of the next

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6. Not all assigned lawyers react in this way. I had the pleasure of working with many fine lawyers in New York City and that experience remains one of the best that I had as a practicing lawyer. Nonetheless, I remember many an off hand comment made by some lawyers about their clients, including one where the lawyer had apparently gotten so comfortable in my presence that he referred to his client as “that nigger . . .,” a comment which elicited a sharp response from me.

7. It is also important to note that I never heard any of the Federal Public Defenders in the Southern District of New York speak of their clients in this way. I have, on the other hand, overheard many state public defenders and Legal Aid or Legal Services lawyers speak disparagingly and condescendingly of and to their clients.
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generation. Through personal conversations, review of student journal entries and class discussions, I learned that many of the students believed their clients should be grateful for the students' willingness to take on their cases. On many levels, the students believed that the clients were not even worthy of having the students represent them.

The belief that poor clients must demonstrate worthiness before they become entitled to the same benefits the non-poor enjoy is not exclusive to lawyers and law students, but rather reflects a view found in society as a whole. In order for lawyers to begin providing first-class service to indigent clients, we must first identify the beliefs and values that prevent us from seeing the indigent as worthy of full representation.

What values are lawyers and students supposed to have? The American Bar Association commissioned a task force to conduct a study on legal values, now called the "MacCrate Report." The task force studied professional development in the legal community, and concluded that all lawyers should possess the following skills and values:

8. The concept that the client should be grateful is fascinating, particularly when you contrast it with the reason why many students take clinic. The primary reason for enrollment is to gain trial skills. Assistance to the poor is a secondary and sometimes a distant tertiary goal. Comparable motivation is given as the reason why law graduates choose to take jobs in the public defender office. See Lisa McIntyre, The Public Defenders: The Practice of Law in the Shadows of Repute (1987). Since the students are not undertaking the work as a result of some magnanimous feelings toward the clients, one wonders why the clients are expected to be grateful.

9. In the fall of 1996, I visited at Columbia University and co-taught in their Fair Housing Clinic. As one of the role modeling exercises early in the semester, the students were led to believe that one of their clients would be coming by the clinic to be interviewed during class time. At the appointed time, the client did not appear and the class waited. The exercise was structured so that the faculty could engage the students in a discussion about their feelings toward the client and his failure to appear. While we were in class, the students got a phone call from the client. As part of the exercise, they attempted to find out why he did not show up or rearrange the appointment. As it unfolded, the students learned that the client had called earlier to cancel but the message was never forwarded to them. The client's daughter had become ill and he needed to stay at home to take care of her. In addition, the client said the time of the interview was generally inconvenient for him. After several students attempted to resolve the dilemma, the interview was rescheduled. The class discussed the event. My co-teacher, Mary Zulack, and I were both surprised at the intense student reaction against the client. Two or three students wanted to terminate him from the clinic program. Despite the fact that he attempted to get a message to them and canceled for a compelling reason, some characterized his failure to attend as "irresponsible," and wondered whether we should continue to waste further clinic resources on him. Because this was an initial interview, I was puzzled by the students' opinion that the client was not worthy of their time and attention.

10. See infra Part II.A.

Provision of competent representation;
Striving to promote justice, fairness and morality;
Striving to improve the profession; and
Professional self-development.\textsuperscript{12}

As part of the commentary expanding the meaning of "striving to improve the profession" of law, students were to be encouraged to help ensure that adequate legal services are provided to those who cannot pay.\textsuperscript{13} Included within the concept of "striving to promote justice" was the exhortation to treat other people (including clients, other attorneys and support personnel) with dignity and respect.\textsuperscript{14} The commentary, however, does not engage in a discussion of whether it is important to value the client herself, as opposed to just being courteous to her.

Lawyers and scholars have continued to build upon the work of the MacCrate Report's discussion of skills and values.\textsuperscript{15} Recommendations have been made to encourage teaching law students that public service is a central tenet of lawyering.\textsuperscript{16} Other recommendations include providing opportunities for law students to express concerns about conflicts between ethical requirements and personal values in forums where they can be fully discussed.\textsuperscript{17}

Discussion of lawyer values in scholarly literature is increasing, but the term itself is rarely scrutinized. Apparently, our profession assumes a common understanding of what "value" means.\textsuperscript{18} We may assume that there is agreement on the basic values, which all lawyers should believe are important to lawyering. If so, these assumptions are subject to challenge. The common definition of "value" is a "principle, standard or quality regarded as worthwhile or desirable."\textsuperscript{19} An-
other meaning of “value” is “to regard highly” or “to hold in esteem.” The use of the word “value” in the MacCrate Report and other literature emphasizes the first definition — that lawyers regard service to the poor as a worthwhile or desirable end. Thus, it is consistent with public pronouncements spoken of above, for law schools and law students to be encouraged to reflect that “value.”

While it is laudable to call for adoption of the four skills and values enumerated in the MacCrate Report, focusing exclusively on the four skills leads to an unnecessarily narrow scope of values which law students and lawyers should be encouraged to reflect. The balance of this article seeks to expand the scope of our understanding of values and their connection to the work of poverty lawyers.

In Part II.A of this article, I explore the literature on poverty and moral worthiness. One prevalent theme throughout the literature is the belief that poor people are not morally worthy. Their poverty is viewed as the manifestation of a moral defect. Further, some commentators reflect a belief that the poor do not possess the same values as the non-poor. However, I have not seen how such commentators define “values,” nor have I seen any studies substantiating the notion that the poor are morally defective. In order to bring clarity to the discussion, I examine social science research on values in Part II.B, defining “values” and detailing how they can affect behavior.

In Part III.A, I describe the reactions of some of my clinical students to a classroom exercise, which asked them to describe the legal representation they would provide to hypothetical clients. The clients differed in race and class. Their responses to the exercise suggested that some students would give different service to a poor client versus a client whose parent had financial means. I began to question whether there were general societal views about poverty and moral worthiness, and if so, to what extent would students and lawyers be influenced by these views.

Part III.B describes my first attempts to experiment with the collection of statistical data. With the help of a psychologist, a pilot study was constructed to study two issues: (1) whether law students engage in value ranking; and (2) whether a correlation could be shown between value rankings and a student’s perception of zealous representation of the poor. The preliminary results indicate that, as to the first issue, law students do engage in value ranking. Study results also sug-
gest interesting differences between the value rankings of students of color and white students at the University of Florida Law School. The law students' value rankings were contrasted with a national sample to assess whether they were similar to those of people sympathetic to the poor, anti-poor, or in between. The preliminary data indicates that some students endorse value rankings, which Rokeach has linked with anti-poor attitudes. As to the second issue, it became clear that the survey instrument needed more development before conclusions could be drawn about students and “zealous advocacy” for a poor client.

If law students’ beliefs may affect their relationships with clients, there may also be a link between broader societal beliefs and practices of the bar itself. Part IV describes how the link between students’ values and broader societal beliefs affect the practices of the bar. Students’ descriptions of the poor as undeserving clientele parallel the experience of poverty practice. Concepts of client worthiness may significantly affect the bar’s response to the needs of poor people. Part IV also explains the history of the bar’s relationship with poor people and concludes that the bar reflects the dominant societal view that poor people are unworthy. The institutional view that the poor are unworthy significantly affects the morale of lawyers whose work is primarily or exclusively in the poverty area.

In Part V, I discuss the proposition that the legal community will continue to see the poor as unworthy of full legal representation until society can envision the poor as part of our moral community. Finally, I offer suggestions for fuller studies into whether poverty itself encourages lawyers to temper the quality of representation given to the poor.

II. HOW SOCIETY VALUES THE POOR

A. Poverty and Moral Worthiness

Attitudes toward the poor and of poverty have been dominated for centuries by three main issues: (1) the categorization of the poor, (2) the impact of poor relief on work motivation, labor supply and family life, and (3) the limits of social obligation. Early in the nineteenth century, public officials attempted to distinguish the able-bod-

ied poor from the impotent poor. A few decades later, the categories had transmuted into distinctions between the worthy and the unworthy, or the deserving and the undeserving poor. When considering the labels used to describe the poor, the hostility to them is apparent and their assumed deviance is built into the words themselves. Most labels for the poor have been specific, although the people to which they are given are sometimes thought so dangerous or flawed that people labeled with one word are accused of having other faults, until finally the label is broadened into an umbrella encompassing more than one fault.

It is questionable whether more than a small segment of society has ever been benevolent toward the poor, particularly when the poor in question are viewed as being “undeserving” or “unworthy.” On the other hand the worthy poor are treated with compassion and respect. Michael Katz believed the difference in treatment between the worthy and the unworthy poor, in its full spectrum could be seen in the public’s reaction to homelessness. He claimed, initially when the plight of the homeless became widely known, it evoked a generous response from the public. Early examination of the homeless problem

22. *Id.* at 12 (citing Josiah Quincy’s report on the poor laws of the Commonwealth of Massachusetts in 1821). The “impotent” poor were those wholly incapable of working through old age, infancy, sickness or disability; the poor were those who were capable of work, although the degree of their capacity to work might differ. Quincy distinguished the poor from paupers (those receiving public relief). Although poverty carried no stigma, pauperism did. As the distinction between poverty and pauperism hardened, commentators increasingly attributed the latter to moral sources. *Id.* at 13; see also HERBERT GANS, THE WAR AGAINST THE POOR: THE UNDERCLASS AND ANTI-POVERTY POLICY 14 (1995) (indicating that the beginning of the distinction between worthy and unworthy may have begun as early as the 14th century, when responsibility for the English poor was given over from centralized church to locally governed parishes).

23. KATZ, supra note 21, at 5; see also JOEL F. HANDLER & YEHESKELL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA (1991) (stating that “the distinction between the ‘deserving’ poor and the ‘undeserving’ poor is a moral issue: it affirms the value of the dominant society by stigmatizing the outcasts.” Moreover, the authors trace the historic connection made between concepts of individual responsibility and work ethic to the evaluation of the conditions of poverty and ranking of the poor as worthy and unworthy).

24. See KATZ, supra note 21, at 5 (noting that words which reflect societal connotations of individual defectiveness of the poor are: ne’er-do-wells, feeble minded, morons, culturally deprived. Poor who are perceived as dangers to public health are referred to as: ragged and dirty, are said to live in slums, and use needles and illegal drugs. The mobile poor are labeled as hobos, vagrants, bums, tramps, shiftless, drifters, loiterers, and more recently, homeless. Finally there are the poor who are viewed as having fallen out of the class structure; they are referred to as the residue, dregs, lower-lower class, and the underclass).

25. See GANS, supra note 22, at 16 (noting the interchangeability of defects. Gans uses a welfare recipient as an example of one who is accused of being economically dependent and lacking in family “values” (e.g., failing to get married, being sexually promiscuous, raising school dropouts and delinquent youngsters, and giving birth to another generation of unmarried mothers who will turn to welfare dependence)).

26. See *id.*
reflected an appeal to the “gift relationship.” Discourse on the homeless stressed “their almost saint-like spirit,” and “docility and gratitude,” rather than anger and suspicion. The approach frustrated policy development as it frustrated long term solutions, looking towards volunteerism to ameliorate homelessness rather than focusing on policy development against poverty on a broader scale. Neither were poor people encouraged to take aggressive action on their own behalf. Sociologists predicted that if homeless people began to be viewed as becoming more aggressive, rather than docile and appreciative, they would sink into the ranks of the undeserving and the public would be less tolerant of them. This indeed happened as media began to portray homeless as violent people who threatened public safety. Media portrayals of drug-addicted men were meant to create the image of the homeless as threatening. Currently, the homeless are no longer seen as deserving poor.

The concept that there was a group of poor that were “undeserving” became entrenched in Europe and America in the 1800s. The distinction between the working poor (respectable) and the pauper requesting public assistance (morally discredited) spread with industrialization and urbanization. Characteristics of racial, genetic, and psychological inferiority were used to describe the poor who conservatives believed could work but did not. Poverty took on meanings that exceeded a description of economic conditions of a segment of

27. KATZ, supra note 21, at 193 (noting that the historic role of charity extended beyond the alleviation of poverty; it served to bind classes together to reinforce social relations based on deference and obligation).
28. Id.
29. See id. at 194.
30. See id. at 192.
31. Compare the treatment of the challenge to vagrancy statutes in Pottinger v. Miami, 810 F. Supp. 1551 (S.D. FL 1991) (stating that homelessness is a status, and therefore, the statute prohibiting vagrancy is unconstitutional) with Joyce v. United States, 846 F. Supp. 843 (N.D. Cal. 1994) (disagreeing with the proposition that homelessness is a status). See also Homeless Facing Removal from City, ATLANTA CONSTITUTION, Sept. 15, 1995.
32. See Jack Katz, Caste, Class, and Counsel for the Poor, 1985 AM. B. FOUND. RES. J. 255 [hereinafter Caste]; see also KATZ, supra note 21, at 15 (indicating that the predispositions toward a moral definition of poverty found support in Protestant theology during the antebellum period; after the Civil War in the work of Darwin and early hereditarian theory; and in twentieth century eugenics theory. Marx incorporated the moral definition of poverty into his writing about the lumpen proletariat, and the concept survived through the Depression despite the great numbers of people unemployed at the time).
33. See Caste, supra note 32, at 15 (stating that the moralistic characterization of poverty was limited to a conservative ideology. Even liberals buy into the description of poverty as affecting only deviants); see also KATZ, supra note 21, at 166-84.
society and became a description of the moral characteristics of individuals.\footnote{See GANS, supra note 22, at 27-57 (describing the process by which the description of under-class began as a specific economic description without an assigned negative moral value, and became, through misuse by journalists and social scientists, a term referring to a permanently disenfranchised, alienated class of the population, which is perceived by others to be primarily young black and Latino males, and young black teenage mothers on welfare); see also Dorothy E. Roberts, Welfare and the Problem of Black Citizenship, 105 YALE L.J. 1563 (1996) (book review).}

For reasons of convenience, power, or moral judgment, society selects from among a myriad of traits and then sorts people, objects and situations into categories, which we then treat as real.\footnote{See GANS, supra note 22, at 78.} Adherence to the mythology that the poor are undeserving continues as a strong source of political rhetoric. The question that must be asked is why the public and politicians insist on holding on to representations of the poor as morally deviant, despite evidence to the contrary. It has been suggested that the better-off classes perceive the poor to be threatening to their legitimacy.\footnote{See id. at 82.} The poor are perceived to threaten their safety, political influence, economic security, and moral values.\footnote{See id.} This article concerns the last of these four, the perceived threat to moral values. This is the stumbling block for many young lawyers.

Moral value threats are perceived dangers to what is believed to be culturally and morally proper.\footnote{See id. at 78-82.} Those who assiduously practice mainstream values, sometimes on religious grounds, may feel personally attacked by behavior that threatens their moral values. Threats to values can actually be seen as threats to safety.\footnote{See id. at 82.} But what does the general population know about the values of the poor? Relevant social science data has been collected regarding the values of the poor, but our American mythology ignores the data because it establishes that the poor have values similar to our own. The mythology depends on the assumption that most behavior is caused by the holding and
practicing of values, with good behavior resulting from good values and bad behavior from bad values. The poor, then, are poor because they have bad values. Economic, political, social, and other structural complexities are not factored into whether the poor have the ability to carry out mainstream values. There is no question that the poor and the more affluent engage in many of the same behaviors that threaten moral value. The difference for the poor is that they cannot mask their inability or unwillingness to practice mainstream behavior, whereas the middle and upper classes can cloak such behavior. The inability of the poor to shield themselves from the gaze of judgmental middle and upper classes leaves them vulnerable to devaluation by others.

B. What are Values and How Do They Determine Who Is Worthy?

Societal values, attitudes, and stereotypic beliefs dominate our thinking about the poor. The cultural belief that poverty is a result of some personal moral failure of the individual as opposed to a factor of some external conditions is highly significant. Despite the fact that empirical evidence fails to demonstrate any difference between the objectives and values of poor people as compared to others with means, people stubbornly hang on to the belief that poor people can be divided into groups that are deserving and undeserving. Beliefs

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40. See id. at 83.
41. See id. (pointing out that those who constitute the mainstream feel sure that their values are mainstream. And since they know nothing about the values of the poor, they have no way of determining whether what they perceive as moral value threats from the poor, have anything to do with the values).
42. See id. at 83-84 (postulating that a middle-class woman going through a break up of her marriage may be able to rely on a network of family for economic and social backup until finances stabilize, whereas a poor woman will not have that option. A drug addict from a well-to-do family will be able to use health insurance to deal with addiction, or will use drugs in the privacy of his or her living room, rather than out in public. Upper-class men who have inherited wealth, and do not wish to work, can live off interest income, whereas poor men who do not want to work are merely labeled lazy).
44. See, e.g., Chandler Davidson & Charles M. Gaitz, Are the Poor Different? A Comparison of Work Behavior and Attitudes Among the Urban Poor and Non-Poor, 22 SOCIOPROBLEMS 229 (1974) (study showed that poor and non-poor had similar attitudes towards work, and that poor would continue to work in situations where the non-poor would stop); see also Katherine S. Newman, What Scholars Can Tell Politicians About the Poor, in RACE, CLASS AND GENDER IN THE UNITED STATES: AN INTEGRATED STUDY 249-54 (1998) (describing a study where working poor in Harlem were tracked over a period of time. The study revealed that despite lack of adequate job opportunities, the working poor continued to search diligently for employment).
about how society should be organized and operated are rooted in our basic values and norms.45 The connection between values, group attitudes and behavior was extensively developed by psychologist Milton Rokeach.46 He defined a value as “an enduring belief that a specific mode of conduct or end-state of existence is personally or socially preferable to an opposite or converse mode of conduct or end-state of existence.”47 Rokeach believed that values have cognitive, affective, and behavioral components: that the mind conceives them, they can cause one to be emotional, and that they can lead to action.48 His research established that a person’s value system organization could be a reliable predictor of individual behavior.49 In his research Rokeach identified thirty-six values, which he considered representative of the core values held by people.50 Of these thirty-six values, he categorized half as “terminal” values,51 those worth pursuing for their own sake, and the other half as “instrumental” values, those useful for achieving terminal values.52 These thirty-six values were used to form the Rokeach Value Survey.53 Rokeach surveyed a large segment of the American public during the late sixties to determine its views and

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45. See Milton Rokeach, The Nature of Human Values 19 (1973) (noting that values are distinguished from norms for three reasons: (1) values refer to mode of behavior or end-state existence, whereas norms only refer to behavior; (2) a social norm is a prescription or proscription to behave in a specific way in a specific situation, while values transcend specific situations; and (3) a norm is consensual and external to the person, whereas a value is more personal and internal).

46. See id. at 7.

47. Id. at 5.

48. See id. at 7 (noting the differences between a moral value, which is a narrower concept, from a general value. Moreover, he defines a moral value as referring only to certain kinds of instrumental values with an interpersonal focus. When violated, moral values arouse pangs of conscience, or feelings of guilt for wrongdoing).

49. See id. at 5 (“[A] value system is an enduring organization of beliefs concerning preferable modes of conduct or end-states of existence along a continuum of relative importance.”); see also id. at 18 (stating that “an attitude differs from a value in that an attitude refers to an organization of several beliefs around a specific object or situation”).

50. See id. at 28; see also id. at 11-12 (noting that theorists have offered various estimates for the number of core values. Rokeach arrived at the number thirty-six by asking participants in studies to list important principles, then by cross-matching the lists to determine which principles were always stated. Those principles constitute his thirty-six core values).

51. See id. at 28 (stating that the terminal values are: a world at peace, family security, freedom, happiness, self-respect, wisdom, equality, salvation, a comfortable life, a sense of accomplishment, true friendship, national security, inner harmony, mature love, a world of beauty, social recognition, pleasure, and an exciting life).

52. See id. at 28 (stating that the instrumental values are: being honest, ambitious, responsible, forgiving, broad-minded, courageous, helpful, clean, capable, self-controlled, loving, cheerful, independent, polite, intellectual, obedient, logical, and imaginative).

53. See id. (noting that a subject taking the Rokeach Value Survey is asked to rank the values. The most important value is numbered one, and the least important is numbered thirty-six).
From the gathered data, Rokeach sought correlations between the survey participants' value systems and their attitudes toward issues such as civil rights, crime, religion, the Vietnam War, student protest, and political parties. Rokeach concluded that there were certain single values, which were significant in determining attitudes. In the civil rights area, for example, he found that there was a strong correlation between subjects who gave a low rank to equality and those who demonstrated intolerance toward blacks. Rokeach also deemed “salvation” and “being obedient” as significant values to societal attitudes. These values have been closely associated with conservatism and endorsement of the Protestant Work Ethic (PWE). Values associated with PWE have central importance in North American society. Studies have examined the relationship between PWE and attitudes towards the poor. PWE is positively related to negative attitudes toward the poor. Endorsers of PWE assign more importance to values such as

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54. See id. at 55 (noting that in 1968, the National Opinion Research Center administered the Value Survey to adults over the age of twenty-one).

55. See id.

56. See id. at 68; see also Kwan Chun Lee, The Problem of Appropriateness of the Rokeach Value System in Korea, 26 INT'L J. OF PSYCHOL. 299-310 (1991) (arguing that the Rokeach approach to values and the significance that single values play in predicting behavior is ineffective in cross-cultural environments. Lee notes the difficulty in using the measure when the culture has values that are not included within the thirty-six. However, despite the criticism, the Rokeach Value Survey is still used as the basis of much of the work on values).

57. See ADRIAN FURNHAM, THE PROTESTANT WORK ETHIC: THE PSYCHOLOGY OF WORK-RELATED BELIEFS AND BEHAVIORS 176 (1990) (stating that laziness and idleness — any condition of worklessness — grow out of a source of evil and a failure to impose discipline. The Protestant Work Ethic (PWE) stresses the virtue of hard work, self-discipline, the denial of pleasure for its own sake, and individual activism as a person attempts to fulfill his or her own calling or vocation); see also N.T. Feather, Protestant Ethic, Conservatism, and Values, 46 J. OF PERSONALITY AND SOC. PSYCHOL. 1132-41 (1989) (noting that while religious views do have a bearing on PWE, the ethic itself is not derived from the specific beliefs of any one particular religious group). See generally Herbert L. Mirels & James B. Garret, The Protestant Ethic as a Personality Variable, 36 J. OF CONSULTING AND CLINICAL PSYCHOL. 40-44 (1971) (stating that the terms conservative and PWE are used to mean persons endorsing the values associated with the terms. In this sense, the terms themselves are value free. However, I realize the difficulty of extracting words from what may be their known social context. I encourage the reader to refrain from taking offense at the use of the terms as they are recognized by the social sciences as terms that describe valid phenomenon).

58. See Kenneth L. Karst, The Coming Crisis of Work in Constitutional Perspective, 82 CORNELL L. REV. 523, 531 (1997) (noting that as far back as colonial New England, work has been invested with an almost religious character).


60. See id. at 120 (stating that subjects who strongly endorsed PWE were negative in their attitudes toward the poor).
salvation, being obedient and self controlled. They have a worldview that sees progress as taking place within the context of a legitimate authority. From this view, order and predictability are fundamental. For a person who endorses PWE and embraces stereotypes of the poor, the disorderly work of a poor person would threaten normative values and evoke resentment.

The interaction between values and worldview may be highly relevant to the work of the poverty lawyer. In general, lawyers assume that for most purposes their clients' lives are orderly. The client who has the financial resources to pay a lawyer only comes to see a lawyer when the unusual or unexpected disrupts the orderly task of living. Once the interfering or upsetting factor is resolved, with the lawyer's assistance, the client returns to an orderly life. The client living in poverty does not fit that description. The lack of sufficient economic resources can inject a constant level of instability and chaos into the client's life. This may be overwhelming to a lawyer, and may even inhibit the lawyer's ability to understand how or why the client's situation does not materially improve after the lawyering interaction.

Rokeach also polled subjects nationwide about their attitudes towards benefits for the poor. The ranking of equality was again

61. See Feather, supra note 57, at 1135 (noting that subjects who strongly endorsed PWE also tended to rank the value of equality lower); see also McDonald, supra note 59, at 121 (suggesting that the low ranking of equality is consistent with the Calvinist doctrine of the elect, i.e., specific persons were prechosen by God for salvation, hence, men are not equal at birth. Also, the accumulation of wealth was taken as a sign that one was a member of the elect).
62. See Feather, supra note 57, at 1140.
63. See id.
65. See id.
66. See id.
67. See infra comments in Part III.B (regarding the inability of Legal Services lawyers to materially affect their client's lives); see also Robert Rader, Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants, 1 Clinical L. Rev. 299 (1994) (noting clinical student's frustration with depth of clients' problems).
68. See Rokeach, supra note 45, at 103-04 (noting that in addition to completing the Value Survey, the participants were asked a series of questions about the use of public funds to aid the poor. For example, Question #8 asked: "which is more to blame if a person is poor - lack of effort on his own part or circumstances beyond his control?" The choices were: circumstances, both, or lack of effort. Respondents were then classified according to the range of scores. The possible scores ranged from -10 to +10. Those scores ranging from +4 to +10 were considered "sympathetic to the poor"; "in between" ranged from -3 to +3; and "unsympathetic to the poor" ranged from -4 to -10.
69. The national study asked the participants to evaluate ten statements that were constructed to elicit reactions about the poor and their right to medical and dental care, education, and minimum standards of living. Question #4 asked "whether every person has a right to adequate housing even if he can't afford it." The participants had five choices: agree strongly, agree somewhat, don't know, disagree somewhat or disagree strongly).
found to be a discriminating value. Rokeach categorized the responses as being sympathetic to the poor, in between, or unsympathetic. Responses in these three categories correspond with participants whose average rank for equality was fifth, tenth, and thirteenth respectively among Rokeach's eighteen terminal values. Rokeach determined how the value patterns of those with unsympathetic views towards the poor were strongly correlated with levels of those who value salvation, and only somewhat correlated with levels of affluence and education.

As the value system theory continued to develop, Rokeach proposed that there was a connection between values and group attitudes toward group members. He theorized that prejudice is based on group belief that members of an outgroup do not hold the same values as the ingroup. The theory, called "belief congruence," remains an important concept in the literature on the causes and explanations of racism. Other scholars have attempted to build on the Rokeach the-

69. See id. at 103.
70. See id. (noting that the respondents unsympathetic to the poor ranked as high-in-priority the "values of a sense of accomplishment, national security, salvation, wisdom, being independent, responsible and self-controlled").
71. See id. at 105 (stating that the results should not be read as indicating that the affluent and the salvation-minded are generally unsympathetic to the poor, but rather, that a certain segment of each group was less sympathetic than the general population. Similarly, Rokeach found that the value systems of those prejudiced against blacks were not the same as those who were unsympathetic to the poor, although there were some similarities between the two).
72. See Milton Rokeach & G. Rothman, The Principle of Belief Congruence and the Congruity Principle as Models of Cognitive Interaction, 72 PSYCHOL. REV. 128-42 (1965) (noting that a similar concept in law is interest convergence); Derrick A. Bell, Jr., Brown v. Board of Education and the Interest-Convergence Dilemma, 93 HARV. L. REV. 518 (1980) (arguing that whites permitted some civil rights advancement because it was in their best interests to do so. When remedies ceased to coincide with the interests of whites, they ceased to support them).
73. See, e.g., John B. McConahay, Modern Racism, Ambivalence, and The Modern Racism Scale, in PREJUDICE, DISCRIMINATION, AND RACISM 91-125 (John F. Dovidio et al. eds., 1986) (noting that McConahay used the Rokeach Value Survey as a tool to help demonstrate the existence of what he calls modern or symbolic racism. A separate instrument, called the modern racism scale, is employed along with the Value Survey to determine whether the survey will be predictive of the behavior of those who scale high in anti-black feelings on the Modern Racism Scale (MRS)); see also Irwin Katz & R. Glen Hass, Racial Ambivalence, Value Duality, and Behavior, in PREJUDICE, DISCRIMINATION, AND RACISM 35-59 (John F. Dovidio et al. eds., 1986) [hereinafter Racial Ambivalence] (explaining that Katz and Hass used the Rokeach Value Survey to explore a concept they call "racial ambivalence." Essentially, the theory is that Americans have at least two types of core value systems that conflict with each other: individual values as reflected in the PWE, which lead to anti-black feelings, and humanitarian/legalitarian, which lead to pro-black feelings); Irwin Katz & R. Glen Hass, Racial Ambivalence and American Value Conflict, 55 J. OF PERSONALITY AND SOC. PSYCHOL. 893-905 (1988) [hereinafter American Value]; Samuel L. Gaertner & John F. Dovidio, The Aversive Form of Racism, in PREJUDICE, DISCRIMINATION, AND RACISM 61-89 (John F. Dovidio et al. eds., 1986) (noting that Dovidio and Gaertner have developed the concept of aversive racism. Here it is believed that many Americans have strong egalitarian self-concepts, which should lead them to be non-prejudiced. How-
ory to create a general theory, which explains prejudice towards any outgroup. Two propositions are currently being presented that define which values are likely to be implicated in outgroup attitudes. The first proposition suggests that humanitarianism/egalitarianism are a prejudice antidote in that they are values that are negatively associated with all measures of prejudice and discrimination. The second proposition is that the values implicated in outgroup rejection will depend on the content of dominant stereotypes of a particular outgroup. If the stereotype of any group suggests that members do not uphold a particular value, then an individual’s endorsement of that value will predict rejection of members of that outgroup. When the stereotype suggests that a group does not support a particular value, then the endorsement of that value by an individual will predict a higher degree of negative feeling towards that group for the individual. “Consensual” stereotypes are shared beliefs possessed by members of a social group, ascribed characteristics for which there is considerable agreement. “Individual” stereotypes include all characteristics that an individual attributes to members of a social group, whether consensual or idiosyncratic. In addition to general and idio-

74. See Monica Biernat et al., Values and Prejudice: Toward Understanding the Impact of American Values on Outgroup Attitudes, in The Psychology of Values 155 (Seligman et al. eds., 1996).

75. Id. at 155 (stating that the humanitarian/egalitarian value orientations are those that embrace democratic and humanitarian precepts such as equality); see Racial Ambivalence, supra note 73, at 42 (noting that the other core value orientation is individualism, which has an emphasis on personal freedom, self-reliance, devotion to work, and achievement).

76. See Bern P. Allen, African Americans’ and European Americans’ Mutual Attributions: Adjective Generation Technique (AGT) Stereotyping, 26 J. of Applied Soc. Psychol. 884, 890 (1996) (stating that “stereotype” is defined as a trait or label that individuals attribute to members of a group when the attributers are free to select any trait word in their descriptive repertoires. The individuals perceive it to be a trait possessed by the group members, individually or collectively”).

77. See Racial Ambivalence, supra note 73, at 42.

78. See id. (noting that the authors give examples of stereotypes that homosexuals are often perceived as violating traditional “family values” and fat people as violating moral values concerning discipline, hard work, delay of gratification, and will power).

79. See id. at 156.

80. See Victor Esses et al., Values, Stereotypes, and Emotions as Determinations of Intergroup Attitudes, in Affect, Cognition, and Stereotyping 137 (Diane Mackie et al. eds., 1993).

81. See id. at 139 (explaining that consensual beliefs are ones that are held as a result of group consensus; that is, all members of the group hold the view. An idiosyncratic view is held
individual beliefs about specific characteristics possessed by members of a social group, more general, abstract beliefs may contribute to inter-group attitudes. See id. "Symbolic beliefs," for example, are those that social groups violate or uphold as cherished values and norms. See id. at 139 (noting that symbolic beliefs include the PWE and humanitarianism/egalitarianism); Racial Ambivalence, supra note 73, at 43 (noting that additional values may include the belief that the poor threaten the moral fiber of society).

84. A colleague was fond of saying that if how we trained law students was compared to training medical students, it would be comparable to showing a medical student a book on brain surgery and then allowing her, without ever having practiced the procedure, to perform surgery the day after graduating. There has been criticism of the failure of legal education to expose law students to the realities of practice, see MacCrate, TASK FORCE, supra note 11, at 240; see also Roger C. Cramton, Professional Education in Medicine and Law: Structural Differences, Common Failings, Possible Opportunities, 34 CLEV. ST. L. REV. 349 (1985-86) (noting that 50% of medical school training is clinical whereas in law school a miniscule numbers of hours of clinical education are permitted but not required); id. (estimating that most law schools devote substantially less than 10% of student credit hours to clinical education).

85. See Duncan Kennedy, Legal Education as Training for Hierarchy, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 38, 65 (David Kairys ed., 3d ed. 1990) (describing traditional law school skill teaching as being done in isolation from actual lawyering experience, and pointing out the marginalization of courses, such as the clinics, where alternate teaching methodologies are employed).

III. THE STUDY AND THE FUTURE

A. Values and the Law Student Study

As a clinician, I am concerned about the attitudes and value judgments which my students make about their clients. After graduation, and without further clinical training, many of these students will actually represent people. Worse, students need not participate in any clinical practice prior to graduation. See id. Most students get no training on learning to appreciate or value clients. See id. For that reason, the attitudes and values a law student has while in school are very important because they are likely to persist into practice. In class exercises, I have experimented with hypotheticals that asked students to describe the service they would render to specifically described clients. For example:

1. What if you have an elderly black client who has been arrested for the second time in an eighteen-month period for DUI. He
missed several appointments, so you send an investigator to the client’s house. It turns out the client’s spouse is bedridden and the costs of her health care are stretching the couple’s meager resources to the limit. The investigator suspects the client may have a problem with alcoholism . . . you agree with the investigator that the client is an alcoholic. For purposes of representing the client on the current DUI charge, how would you deal with the issue of his alcoholism? Specify the steps you would take in representing this client.

2. Imagine that you have completed clinic successfully. To your surprise you are hired by a decent sized firm that is building up its criminal defense practice. The firm does both civil and criminal work. One of the BIG clients (brings in lots of money to the firm) has a son who has been arrested for possession of drug paraphernalia. It’s the son’s second arrest in the past two years. The son is approximately 19 years old and is a student in the state university system. Other than his previous arrest, he is basically a good kid, but it appears that he may have a drug addiction. Your senior partner knows you completed clinic, so you are assigned the case. What steps would you take to provide zealous representation to this client?

The clients have different racial and class characteristics but their legal problems are very similar. Initially, when I developed the hypothetical I wanted to determine whether a student’s reason for providing different levels of representation could be pinpointed. If it could be pinpointed, what qualities about the client triggered the willingness to give different levels of representation? Most semesters, at least one third of the class offered a lesser level of service to the older black man. The students took a much less aggressive stance in terms of providing counseling recommendations. When asked what they would advise regarding the drinking problem, the students said they would “encourage” him to seek treatment for his alcoholism or “advise” him of the availability of treatment. For the young male client however, the language was aggressive: they would “get” him in a drug treatment program. When asked to discuss the difference in the language in

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86. See Exercise 37 for University of Florida Criminal Clinic (finding that most students will, after assuring themselves that it is both necessary and safe to do so, express a willingness to go to the client’s house) (on file with the author).

87. Id.

88. See Example Student Answer (on file with the author).
class, the students had a hard time explaining why they chose different language. One student commented: “If we don’t go all out for the old man, nothing will happen to us.” It seemed to be a revelation to the class that they associated a cost to themselves if they do not provide aggressive service to the young male.\(^9\) My question concerning the cost to the old man for less aggressive service produced an uneasy silence. They have not assigned a cost to themselves for not providing aggressive service to the old man, so it will be difficult to admit that they accept the possibility that the poorer client will pay the price of a harsher sentence, extended probation and/or a lengthier criminal record. The results of this exercise suggest that the students do make value judgments about their clients and that those values cause them to act in a way that dictates a difference in the quality and quantity of service to be rendered to clients when nothing objectively requires differential rendering of service.\(^9\)

That some law students believe poor clients do not deserve quality service strongly suggests that some lawyers may believe the same. The idea that poor clients are less worthy does fit the widely held belief that the poor are generally unworthy or undeserving because of their own moral deficiencies.\(^9\) Lawyers, however, are supposed to stand above personal predilections and promote the best interests of their clients.

I consulted with a psychologist, Lisa Brown,\(^9\) to devise a study to measure a law student’s value priorities, ability to tolerate difference, and anxiety in dealing with groups that were different.\(^9\) Three instru-

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89. See, e.g., Ann Southworth, *Lawyer-Client Decision-making in Civil Rights and Poverty Practice*, 9 GEO. J. LEGAL ETHICS 4 (1996) (citing a study conducted with public interest lawyers in Chicago. Many lawyers admitted that they feel entitled to engage in decision-making that does not involve the client when the client is not paying, as opposed to when the lawyer is dependent on a fee).

90. As yet, it is not totally clear why the older man receives less service. It could be because he is black or because he is poor. It could be some combination of the two. There is a possibility that his status as a senior might provoke the reaction; however, I believe this less likely since the elderly are generally seen as deserving. Another possibility might be a value judgment about the client's alcohol addiction. However, the young male may have a drug problem. The possibility of drug use was viewed as highly suspect by the students. They seemed willing to believe that drug addiction was a ruse and that the male really did not have a drug problem. Perhaps in this they compared him with their own college experiences and were willing to see the drug use as experimental or recreational. This led to some skepticism about whether the male deserved advocacy of drug treatment. Nonetheless, doubts were cast to his benefit.

91. *See supra* Part II.A.

92. Assistant Professor of Social Psychology at the University of Florida.

93. Dr. Lisa Brown graciously adapted a study she was conducting among undergraduates at the University of Florida to include the law students. The results of the larger study are contained in an as yet unpublished manuscript. My own interest in these areas was piqued while
ments for measuring such attitudes were suggested: the Rokeach Value Ranking, the Protestant Ethic Scale, and the Humanitarian-Egalitarian Scale. These instruments comprised "Survey 1" of the pilot study, which also contained some Gallup Poll-style questions concerning political orientation and an open-ended expression of the participant's perceptions of a selected outgroup.

"Survey 2" inquired into outgroup perceptions and contacts. It comprised the Intergroup Anxiety Scale and a confidential request for information about the student's ethnicity. Participants of color received questions about their perception of racism and discrimination in the U.S., while white participants received the Modern Racism Scale.

"Survey 3" contained six scenarios describing a lawyer's interaction with a client, designed to test my hypothesis that the students' attitudes toward the poor would lead them to provide less than full levels of representation. After reading each scenario, the students were asked to what degree the lawyer provided zealous representation.

The pilot study was conducted at four schools between October 1994 and April 1996. In total, sixty-nine surveys were completed. The participation of the schools is indicated in Table I. Procedural safeguards were designed to ensure anonymity, voluntariness, and incompleting the research for an article about the absence of any discussion concerning race and class in the client-centered counseling materials. See Michelle S. Jacobs, People From The Footnotes: The Missing Element in Client Centered Counseling, 27 GOLDEN GATE L. REV. 345, 391-401 (1997) [hereinafter Jacobs, People] (exploring the possibility that lawyers value priorities and intergroup anxiety may affect the ability to render counseling services).

94. See Rokeach, supra note 45, at 1.
95. See Racial Ambivalence, supra note 73, at 75.
96. See id.
97. For students of color, the outgroup was European Americans. For the white students, the outgroup was African Americans.
99. See McConahay, supra note 73, at 98 (proposing that the Modern Racism Scale was developed to measure whether whites continued to hold stereotypical beliefs about blacks after the civil rights era ended).
100. See text and notes infra, pp. 282-85 for discussion of the hypotheticals. See Jacobs, People, supra note 93, at 422, Appendix, Table 6, for the full list of hypotheticals. A copy of Survey 3 is on file with the author. Students participating in the full study prior to April 1995 did not receive Survey 3.
101. Each study was identified by school only; there was no way to tie an individual response to an individual student. The anonymity was important because the Modern Racism Scale included a free response section, in which each student was asked to write about how they felt when interacting with the outgroup.
dependence. As designed, the study sought to demonstrate two things: (1) a meaningful quantitative model of law students' systems of values and (2) a link between students' value systems and their perceptions of zealous representation. The study was administered to a total of seven clinical courses.

B. The Students' Value Ranking

The pilot study was comprised of sixty-nine surveys completed between October 1994 and April 1996, representing four law schools:

<table>
<thead>
<tr>
<th>LAW SCHOOL</th>
<th>PARTICIPANTS</th>
<th>PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Florida College of Law (UF)</td>
<td>46^104</td>
<td>66.7</td>
</tr>
<tr>
<td>Golden Gate University School of Law (GG)</td>
<td>10</td>
<td>14.5</td>
</tr>
<tr>
<td>University of San Diego Law School (USD)</td>
<td>6</td>
<td>8.7</td>
</tr>
<tr>
<td>Brooklyn Law School (BLS)</td>
<td>7</td>
<td>10.1</td>
</tr>
</tbody>
</table>

The students in the total sample were predominantly white, reflecting the reality of enrollment in American law schools, excluding the historically black institutions. The numbers of black students at the two California schools and Brooklyn Law were too small to obtain individual school data specifically on the black students.  

102. I solicited volunteers by announcing the study on the clinical list server, and by promoting the project at various clinical conferences. The study was directed toward law students in clinical programs, because clinical students are self-selected. The clinical courses are not mandatory, and many clinical students are likely to be candidates for public interest positions. Each participant was told that the participation was voluntary, and that they were not required to complete the study in order to obtain class credit. Not all participants finished the study and some refused to answer questions, which was permitted.

103. No student's course grade was dependent upon participation in the study and all students could terminate participation at anytime. Where possible, the study was administered at the beginning of the semester to limit "tainting" from the students' exposure to their clinical professor's personal philosophy.

104. The students at the University of Florida were all third year law students. At the remaining schools, the students were second and third year law students.

105. The ethnic breakdown of the total sample was as follows:

<table>
<thead>
<tr>
<th>ETHNICITY</th>
<th>Frequency</th>
<th>PERCENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afr.-Am./Caribbean</td>
<td>11</td>
<td>15.9</td>
</tr>
<tr>
<td>Asian American</td>
<td>1</td>
<td>1.4</td>
</tr>
<tr>
<td>Biracial/Multi</td>
<td>3</td>
<td>4.3</td>
</tr>
<tr>
<td>Euro-Am./White</td>
<td>39</td>
<td>56.5</td>
</tr>
<tr>
<td>Latino/Hispanic</td>
<td>1</td>
<td>1.4</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>4.2</td>
</tr>
<tr>
<td>Not Disclosed</td>
<td>11</td>
<td>15.9</td>
</tr>
<tr>
<td>Total:</td>
<td>69</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Even with the small sample size, the study achieved its first goal—determining how law students ranked values.106 The Rokeach research demonstrated equality was a pivotal value, and that its ranking against other values could predict behavior.107 In the law student sample, the mean ranking for equality was 9.5, tied for ninth among the eighteen values.108 This was consistent with attitudes towards the poor that are neither sympathetic nor anti-poor.109 Six values, including happiness, received maximum rankings that were lower than equality, meaning those six values were perceived to be more important than equality.

### TABLE II
**RANKINGS OF VALUES FOR THE TOTAL SAMPLE**

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean110</th>
<th>Std Dev111</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-respect</td>
<td>5.04</td>
<td>3.63</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>Happiness</td>
<td>5.81</td>
<td>4.11</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>True friendship</td>
<td>6.03</td>
<td>2.92</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>Freedom</td>
<td>6.65</td>
<td>4.21</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Family security</td>
<td>6.66</td>
<td>3.94</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>Mature love</td>
<td>6.71</td>
<td>4.01</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Inner harmony</td>
<td>7.15</td>
<td>4.82</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Wisdom</td>
<td>8.52</td>
<td>4.53</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Equality</td>
<td>9.55</td>
<td>4.98</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>A sense of accomplishment</td>
<td>9.85</td>
<td>3.76</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>A comfortable life</td>
<td>10.73</td>
<td>4.64</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Pleasure</td>
<td>11.12</td>
<td>3.69</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>A world at peace</td>
<td>11.19</td>
<td>5.42</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>An exciting life</td>
<td>11.61</td>
<td>4.14</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Salvation</td>
<td>12.63</td>
<td>6.73</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Social recognition</td>
<td>13.42</td>
<td>3.33</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>A world of beauty</td>
<td>13.74</td>
<td>3.46</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>National security</td>
<td>14.91</td>
<td>2.88</td>
<td>7</td>
<td>18</td>
</tr>
</tbody>
</table>

106. Results of the total sample are contained in Table II.
107. See id.
108. Equality ranked as high as first and as low as eighteen. Only two other values, salvation and a world at peace, varied this much.
109. Using the same eighteen categories, Rokeach's national study showed that those sympathetic to the poor ranked equality fifth, and that those with anti-poor attitudes ranked equality thirteenth. The middle position, neither sympathetic nor anti-poor, ranked equality tenth.
110. The mean is the numerical average of the student's rankings. Note that lower numbers indicate a higher ranking and a greater importance.
111. Standard deviation (“Std Dev”) is an indicator of the data's variability from the mean. The larger the standard deviation, the more variability.
When the schools were examined individually, differences in the equality rankings began to appear. At the University of San Diego, equality was ranked tenth. No San Diego student ranked equality highest or lowest, but the standard deviation indicated more variability than any other value. The variation in student attitudes toward equality even exceeded that of salvation, which was typically the most variable among Rokeach’s eighteen “terminal” values. The mean rank among the San Diego students, however, reflected a middle view of the poor, consistent with Rokeach’s national survey.

Golden Gate Law School students ranked equality as the fifth most important value. This ranking was more consistent with views sympathetic to the poor. In both California schools, the values associated with hedonistic interest – a comfortable life, an exciting life, and pleasure – all ranked below equality.

### TABLE III

**RANKING OF VALUES FOR UNIVERSITY OF SAN DIEGO STUDENTS**

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean</th>
<th>Std Dev</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-respect</td>
<td>3.67</td>
<td>1.75</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Inner harmony</td>
<td>4.00</td>
<td>2.68</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>True friendship</td>
<td>5.17</td>
<td>.98</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Happiness</td>
<td>5.60</td>
<td>4.39</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Freedom</td>
<td>6.83</td>
<td>4.54</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Family security</td>
<td>7.00</td>
<td>5.02</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Mature love</td>
<td>7.00</td>
<td>1.58</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>A world at peace</td>
<td>7.00</td>
<td>4.34</td>
<td>1</td>
<td>12, 18</td>
</tr>
<tr>
<td>A sense of accomplishment</td>
<td>7.50</td>
<td>2.26</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Equality</td>
<td>9.67</td>
<td>5.68</td>
<td>2</td>
<td>17</td>
</tr>
<tr>
<td>Wisdom</td>
<td>10.67</td>
<td>4.89</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>A comfortable life</td>
<td>12.00</td>
<td>2.19</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>An exciting life</td>
<td>12.83</td>
<td>2.93</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>A world of beauty</td>
<td>13.17</td>
<td>4.02</td>
<td>7</td>
<td>18</td>
</tr>
<tr>
<td>Pleasure</td>
<td>13.83</td>
<td>1.47</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>Social recognition</td>
<td>15.00</td>
<td>1.67</td>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>National security</td>
<td>15.67</td>
<td>3.14</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>Salvation</td>
<td>15.83</td>
<td>4.36</td>
<td>7</td>
<td>18</td>
</tr>
</tbody>
</table>

Students at Brooklyn Law School ranked equality ninth among the values, consistent with the national sample and with the law school total sample. Equality tied with “a comfortable life,” for the highest standard of deviation. As with USD, no one ranked equality as the

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112. See Table III for the USD results.
113. Results for Golden Gate University School of Law appear below in Table IV.
TABLE IV
RANKING OF VALUES FOR GOLDEN GATE LAW STUDENTS

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean</th>
<th>Std Dev</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-respect</td>
<td>4.80</td>
<td>3.99</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>True friendship</td>
<td>5.00</td>
<td>2.21</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Family security</td>
<td>6.40</td>
<td>3.31</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Freedom</td>
<td>6.60</td>
<td>2.91</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Equality</td>
<td>6.90</td>
<td>5.38</td>
<td>1</td>
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</tr>
<tr>
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<td>7.00</td>
<td>4.00</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>Inner harmony</td>
<td>7.10</td>
<td>5.84</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>Happiness</td>
<td>7.33</td>
<td>5.24</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>Mature love</td>
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<td>2</td>
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</tr>
<tr>
<td>Pleasure</td>
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<tr>
<td>An exciting life</td>
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<td>A world at peace</td>
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<tr>
<td>A sense of accomplishment</td>
<td>11.30</td>
<td>3.33</td>
<td>7</td>
<td>18</td>
</tr>
<tr>
<td>A world of beauty</td>
<td>11.90</td>
<td>3.81</td>
<td>3</td>
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</tr>
<tr>
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<td>5</td>
<td>18</td>
</tr>
<tr>
<td>National security</td>
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<td>7</td>
<td>17</td>
</tr>
<tr>
<td>Social recognition</td>
<td>14.30</td>
<td>2.36</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>Salvation</td>
<td>16.56</td>
<td>2.24</td>
<td>11</td>
<td>18</td>
</tr>
</tbody>
</table>

most important value but no student ranked it as the least important either. Only one hedonistic value was ranked above equality – a comfortable life. However, eleven other values received maximum rankings that were lower than the maximum ranking for equality. If there is a perception that the East Coast is more liberal than other parts of the country, the rankings of these students did not bear that out.

At first blush, the rankings of the students at the University of Florida appeared similar to the other schools. For all UF students combined, equality ranked tenth, consistent with the total law student sample. Compared with the national results, the students' ranking of equality reflected attitudes that were neither sympathetic to the poor nor anti-poor. The white students ranked equality as high as one and as low as eighteen. The University of Florida did not rank among the top three in the size of the standard deviation. All three hedonistic values ranked lower, that is, they were perceived to be less important, than equality. The results of the total UF sample are contained in Table VI below.

Since such a large number of responses were from UF, it was possible to break out the rankings of the students of color from the white students. The difference in the rankings was startling. When the stu-
TABLE V
RANKING OF VALUES FOR BROOKLYN LAW STUDENTS

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean</th>
<th>Std Dev</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inner harmony</td>
<td>4.86</td>
<td>3.02</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Self-respect</td>
<td>5.14</td>
<td>4.95</td>
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<td>12</td>
</tr>
<tr>
<td>Family security</td>
<td>5.57</td>
<td>1.90</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>True friendship</td>
<td>5.86</td>
<td>4.14</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>Mature love</td>
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<td>4.41</td>
<td>1</td>
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</tr>
<tr>
<td>Happiness</td>
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</tr>
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<td>A comfortable life</td>
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<td>5.65</td>
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<tr>
<td>Freedom</td>
<td>8.14</td>
<td>4.45</td>
<td>1</td>
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</tr>
<tr>
<td>Equality</td>
<td>8.57</td>
<td>5.65</td>
<td>2</td>
<td>17</td>
</tr>
<tr>
<td>A sense of accomplishment</td>
<td>9.14</td>
<td>2.34</td>
<td>6</td>
<td>13</td>
</tr>
<tr>
<td>Pleasure</td>
<td>10.14</td>
<td>3.98</td>
<td>6</td>
<td>15</td>
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<tr>
<td>Wisdom</td>
<td>11.57</td>
<td>2.88</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>A world at peace</td>
<td>12.86</td>
<td>4.56</td>
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</tr>
<tr>
<td>An exciting life</td>
<td>13.00</td>
<td>5.39</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>National security</td>
<td>13.57</td>
<td>3.41</td>
<td>9</td>
<td>17</td>
</tr>
<tr>
<td>Social recognition</td>
<td>14.14</td>
<td>2.61</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>Salvation</td>
<td>14.29</td>
<td>4.86</td>
<td>5</td>
<td>18</td>
</tr>
<tr>
<td>A world of beauty</td>
<td>14.29</td>
<td>4.35</td>
<td>7</td>
<td>18</td>
</tr>
</tbody>
</table>

Students of color were removed from the total UF sample, equality's ranking plummeted dramatically. The white students ranked it thirteenth. According to the national study, a ranking of thirteen placed these students in the spectrum of those endorsing anti-poor attitudes. Pleasure and a comfortable life were ranked as being more important than equality. The results of the data for white UF students are contained in Table VII below. On the other hand, the students of color at UF ranked equality fifth, the same as GG students. Interestingly, no UF student of color ranked equality as the most important value, but none ranked it below thirteenth. Among the white students, however, some students had selected equality as the most important while others selected it as the least important. The students of color ranked all of the hedonistic values below equality. The results of the value rankings for UF students of color are found in Table VIII below. Without the students of color, the UF students reflected what could be interpreted as a very conservative and potentially anti-poor ranking. Their low endorsement of the value of equality may indicate less tolerance of outgroups. The preliminary data show interesting findings in the ranking of humanitarian/egalitarian and conservative values. Salvation, ordinarily associated with conservative values, was strongly
endorsed by the UF students of color. No other student group ranked salvation in the top half of the values. Because conservative values and PWE can be good predictors of many beliefs including intolerance of outgroups and anti-poor attitudes, the results here raise a few questions and are worthy of a further look.

TABLE VI
RANKING OF VALUES FOR ALL UF STUDENTS

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean</th>
<th>Std Dev</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
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<td>Self-respect</td>
<td>5.27</td>
<td>3.58</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>Happiness</td>
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<td>Freedom</td>
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<td>4.85</td>
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<td>Wisdom</td>
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<td>17</td>
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<td>4.08</td>
<td>3</td>
<td>18</td>
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<td>Equality</td>
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<td>4.62</td>
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<td>18</td>
</tr>
<tr>
<td>A comfortable life</td>
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<td>4.65</td>
<td>1</td>
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<tr>
<td>Salvation</td>
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</tr>
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<td>A world at peace</td>
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<td>5.35</td>
<td>1</td>
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<tr>
<td>Social recognition</td>
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<td>3.72</td>
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<td>7</td>
<td>18</td>
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<tr>
<td>National security</td>
<td>15.20</td>
<td>2.69</td>
<td>8</td>
<td>18</td>
</tr>
</tbody>
</table>

While the individual school results and the total sample are very interesting, the size of the pool does restrict what broad principles can be deduced from the data. These rankings reflect the priorities of 69 law students. However, presently there are 179 ABA approved law schools with a combined student population of approximately 128,000. The results of the pilot study cannot be used to attribute value hierarchies to all schools. Even if the universe of students was restricted to clinical students, the sample is still not large enough. Yet, even if one considers the 69 individual responses alone, interesting questions for future research are raised. The low salvation ranking by the two California schools and the New York school seems noteworthy. Does it reflect a more liberal school population or do these three schools have unusually liberal students? Would rankings in the Midwest be similar to those in the South? And, are those students really

TABLE VII
RANKING OF VALUES FOR EUROPEAN-AMER./WHITE UF STUDENTS

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean</th>
<th>Std Dev</th>
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</tr>
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<tbody>
<tr>
<td>Self-respect</td>
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<td>15</td>
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<td>Happiness</td>
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<tr>
<td>True friendship</td>
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<tr>
<td>Family security</td>
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<tr>
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<td>10.88</td>
<td>4.57</td>
<td>1</td>
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<td>Equality</td>
<td>11.32</td>
<td>4.63</td>
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</tr>
<tr>
<td>An exciting life</td>
<td>11.40</td>
<td>3.52</td>
<td>4</td>
<td>17</td>
</tr>
<tr>
<td>Social recognition</td>
<td>13.00</td>
<td>3.61</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Salvation</td>
<td>14.04</td>
<td>5.76</td>
<td>1</td>
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</tr>
<tr>
<td>A world of beauty</td>
<td>14.21</td>
<td>3.26</td>
<td>7</td>
<td>18</td>
</tr>
<tr>
<td>National security</td>
<td>14.60</td>
<td>2.81</td>
<td>8</td>
<td>18</td>
</tr>
</tbody>
</table>

The equality ranking at USD and BLS reflected a rather centrist leaning. Would students at a historically black law school such as Howard or North Carolina Central have value rankings similar to the coastal schools or would their ranking more closely resemble those of white southern students? Salvation ranked very highly for the black UF students. How does that fit into the value structure of those who endorse the Protestant Work Ethic? Is it inconsistent that black students who values equality so highly could also strongly endorse a value that was integral to the PWE? A greater number of black respondents would be helpful in understanding differences in value hierarchies and their potential relation to anti-poor or anti-black attitudes.

The second goal of the pilot study was to determine whether a link could be found between a student's value system and her perceptions of zealouosity. Survey 3 contained the six descriptions of lawyer-client interaction. The following scenario is an example of what the students were given:

Lawyer Davis has a client who lives in a town far outside of the city where the Legal Services office is located. Davis has some papers the client needs to review and sign so that they can be filed in court before a hearing scheduled for the end of the week. Davis asks the client to come into the office to review the papers. Client tells Da-
vis he does not have the bus fare to come into the city twice in one week. Davis insists that the client come into the office.

The students were then required to select a description of the lawyer's action. Five descriptions were available:

Lawyer went beyond what was needed for zealous advocacy.
Lawyer represented client zealously.
Lawyer represented client better than adequately but not zealously.
Lawyer represented client adequately.
Lawyer did not represent client adequately.

Each scenario was assigned a “correct” answer based on a comparison of the lawyer’s described behavior and my own conception of zealous representation. In the scenario described above the correct answer was the last option: the lawyer did not represent the client adequately. The rationale is that when representing a poor client, a lawyer must take the client's circumstances into consideration when scheduling the time and location of appointments. If the papers had to be signed, the lawyer should have sought out an alternative method

### TABLE VIII
**RANKING OF VALUES FOR UF STUDENTS OF COLOR**

<table>
<thead>
<tr>
<th>Value</th>
<th>Mean</th>
<th>Std Dev</th>
<th>Highest</th>
<th>Lowest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salvation</td>
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<tr>
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<td>Family security</td>
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<td>2.94</td>
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<td>Freedom</td>
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<td>4.44</td>
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<td>3.89</td>
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<tr>
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<td>Happiness</td>
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<td>Wisdom</td>
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<tr>
<td>True friendship</td>
<td>8.00</td>
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<td>A world at peace</td>
<td>10.00</td>
<td>4.81</td>
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<tr>
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<tr>
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</tr>
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<td>An exciting life</td>
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<td>A world of beauty</td>
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</tr>
<tr>
<td>National security</td>
<td>16.70</td>
<td>1.95</td>
<td>13</td>
<td>18</td>
</tr>
</tbody>
</table>
to get the papers to the client.\textsuperscript{115} I had predicted that students whose value rankings predicted anti-poor attitudes would select representation that was only adequate or even less than adequate as zealous representation. This would be consistent with a belief that poor people are only entitled to minimal representation. However, as I discussed the language of the scenarios with colleagues I arrived at the conclusion that some of the hypotheticals constructed to test zealous representation were too complicated and raised ambiguities. In those cases it was possible to select an answer, which zealously protected the client's interests but, at the same time, was different from the answer that I had deemed correct.

It is not at all surprising that my choice of zealousness would complicate matters. The word itself, at least in legal parlance, is ambiguous. The ABA requires all lawyers to act zealously, but has never defined exactly what zealous means.\textsuperscript{116} It is sometimes used to mean competent or minimally competent.\textsuperscript{117} In the my view the two are not the same.\textsuperscript{118} Zealousness implies something significant beyond "minimally competent." While definition of the word eludes even me, perhaps it would be possible to identify factors that lawyers believe would be included within the framework of zealousness. For example, in a litigation context, it could be agreed that "zealous representation" would require that the lawyer at least understand the way that poverty impacts a litigant's ability to participate in the process. Or perhaps,

\begin{footnotesize}
\textsuperscript{115} Other scenarios were more complicated:
Lawyer Brown represents a black woman who has been accused by her former employer of stealing company property. Client was acquitted of the charges at trial. The company has now filed a civil action against the client for the value of the missing property. Brown counterclaims against her employer for malicious prosecution. After discovery and pretrial hearings have taken place, the employer dismissed its action against client. Client wants to go forward with the counterclaim even though Brown advised her that she has slightly less than a 50\% chance of prevailing at trial. The client, who has been unable to get a job since she was fired, feels strongly about pursuing the claim. She believes the employer has harassed her, and she must go forward to restore her dignity. Brown tells client it is pointless to go to trial on "principle," and that it would be a waste of time and money for everyone. Brown impresses upon client that the office is a Legal Services office, and has to serve many deserving clients. Brown strongly suggests client drop the counterclaim.

As before, the correct answer is that the lawyer did not represent the client zealously. Dignity interests of a client are a perfectly permissible basis for hired attorneys to go to trial; belittling a client's interest and asserting that going to trial was "pointless" was clearly not zealous representation.

\textsuperscript{116} See Jacobs, Legal, supra note 3, at 98 (noting that the Model Code of Professional Responsibility does not provide a definition of zealousness).

\textsuperscript{117} See id. at 102 (noting that a similar process occurred with the definition of "effective assistance of counsel").

\textsuperscript{118} See id. at 103 (arguing that the bar expects only adequate, but not zealous, representation).
\end{footnotesize}
commitment to full representation in the face of an uncooperative cli-
ent could be viewed as a factor of zealousness. Before drawing defini-
tive conclusions on the connections between values and zealousness,
Survey 3 should be revised to eliminate as many ambiguities as possi-
ble and think further about whether factors common to the represen-
tation of poor people could be identified as zealous traits.

This pilot study demonstrates that the Rokeach Value Survey
could be given in the law school context and that other instruments
developed and used in association with the Survey have the potential
to tell us much about how our students and potentially how actual
lawyers approach the task of representing the poor.

IV. LAWYERING AND VIEWS OF THE POOR

A. The Bar's Complicity in Devaluing Poor Clients

The pilot study suggests that law students' attitudes toward the
poor can affect the level of representation provided for indigent cli-
ents. But will their values and attitudes be moderated by the influ-
ence of the licensed bar? There are no studies that focus exclusively
on lawyers' attitudes and beliefs toward poor clients. The bar's histor-
ical relationship with the poor, however, sheds some light on lawyers' attitudes toward the indigent. Despite steadfast support by bar lead-
ers for protection of poor people's right to full access to justice, the
support of the majority of individual lawyers is, and has been, elusive.
The private bar has generally viewed lawyers who work on behalf of
the poor with displeasure. Private lawyers argued against expansion
of the services for the poor, stating that Legal Aid organizations
would take away their bread and butter clients.\(^\text{119}\) Opposition to the
formation of Legal Services from the organized bar was initially for-
midable.\(^\text{120}\) Even today, an echo of the antagonism towards legal
work performed on behalf of the poor is reflected in public comments
and law review articles that oppose mandatory pro bono.\(^\text{121}\) The bar,
of course, has made numerous efforts to secure the rights of poor peo-
ple. The hostility to poor people can most vividly be seen through
lawyers' reactions to these efforts.

\(^\text{119}\) See Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in

\(^\text{120}\) See id. at 42.

\(^\text{121}\) See David L. Shapiro, The Enigma of the Lawyer's Duty to Serve, 55 N.Y.U. L. Rev. 735
The first efforts to establish a reliable source of legal representation for the indigent in this country began in 1876 in New York City.\textsuperscript{122} Initially this project was the brainchild of a group of German American lawyers. They established a committee, the \textit{Deutscher Rechts-Schuts Verein}, to help newly arrived German immigrants.\textsuperscript{123} The lawyers assisting the new immigrants helped with legal matters: primarily laborer’s claims against unscrupulous employers. They also represented the new immigrants in actions brought by unscrupulous merchants who tried to take advantage of the immigrants’ naivete and inability to speak English. The lawyers also participated in group teaching sessions and distributed mass literature to provide as much information to the immigrants as possible.\textsuperscript{124} This included not only legal information, but also educational access and language training to help their newly arrived German compatriots’ economic development.\textsuperscript{125} Developing the knowledge and skills of the immigrants would hasten their ability to assimilate into established society thereby removing them from the stigma of being part of the poor.\textsuperscript{126} The motivation of the German lawyers was not altogether altruistic. They understood that the fate of their newly arrived countrymen would affect the fate of those already established. If the newly arrived fared poorly, their status would drag down the status of all Germans, including those who were lawyers.\textsuperscript{127} Therefore, it was in the best interests of the entire German community to ensure that the immigrants succeeded in making the transition into American society. They knew it was impossible to separate the legal rights of an individual from his general living conditions.

The “anglicized offspring” of the German committee became known as the New York Legal Aid Society.\textsuperscript{128} Its objectives were somewhat narrower than the committee’s. The Society was to “render Legal Aid and assistance . . . gratuitously, to those of German birth, who may appear worthy thereof, but who from poverty are unable to

\begin{itemize}
\item \textsuperscript{123} AUERBACH, supra note 119, at 53.
\item \textsuperscript{124} See id.
\item \textsuperscript{125} See id.
\item \textsuperscript{126} See id.
\item \textsuperscript{127} See Houseman, supra note 122, at 1670.
\item \textsuperscript{128} See Auerbach, supra note 119, at 53.
\end{itemize}
Shorty after the New York Legal Aid Society was formed, similar efforts were undertaken in other areas of the country. In Chicago, the Protective Agency for Women and Children was formed in 1886 and the Bureau of Justice was formed in 1888. The two organizations merged to form what became known as the Chicago Legal Aid. It mainly represented individuals in individual cases. There was no overriding purpose of attempting to lift those served out of poverty. Chicago Legal Aid relied upon the organized bar and the charity of individuals for any funds it received. There was no recognition of entitlement to legal assistance, other than the lofty and aspirational belief that the law was for every man. In several other areas of the country, bar leaders adopted the blue print of Chicago Legal Aid and of some portions of the New York Legal Aid Society. By 1917, there were thirty-seven cities with forty-one different Legal Aid organizations. With the advent of World War I, anti-German sentiment within the country was whipped into a fervor and forced the German American lawyers to give up control of the New York Legal Aid Society. The society's management was transferred into the hands of a new board of lawyers. The new board changed eligibility standards so that all people were eligible to be represented and steered its activities towards individual representation and away from the secondary education function.

The form of organization and the management of the Legal Aid offices differed but they all had two things in common. First, re-

129. Id.
130. See McIntyre, supra note 8, at 31 n.1 (noting that the Protective Agency "was formed for the purpose of protecting young girls from seduction under the guise of proffered employment." The Bureau of Justice was sponsored by the Society for Ethical Culture and was "to serve the non-criminal legal needs of the poor, regardless of nationality, race or sex." In 1905, the two agencies joined to form the Chicago Legal Aid Society. McIntyre, in discussing the differences between the public defender service and the Chicago Legal Aid Society, points out that "Legal Aid was a charitable enterprise and its founders were careful to disassociate themselves from the 'unworthy poor').
131. See Caste, supra note 32, at 270 (pointing out that American Legal Aid societies were dominated by business class lawyers and business executives. They were not open to an advocacy role for legal assistance in promoting social change).
132. See Reginald Heber Smith, Justice and the Poor 3 (1919): Freedom and equality of justice are twin fundamental conceptions of American jurisprudence. . . . A system which created class distinctions, having one law for the rich and another for the poor, which was a respecter of persons, granting its protection to one citizen and denying it to his fellow, we would unhesitatingly condemn as unjust, as devoid of those essentials without which there can be no justice.
133. MacCrater, Task Force, supra note 11, at 48.
134. See Auerbach, supra note 119, at 54.
sources were inadequate.\textsuperscript{135} "Offices were usually so poorly funded that they had to set very strict eligibility standards in order to keep down the caseload limit."\textsuperscript{136} As a result, eligible clients were severely under-represented.\textsuperscript{137} They avoided community education or publicity so that their work schedules would remain tolerable. For many Legal Aid clients, access to the legal system consisted of only one interview with a Legal Aid lawyer.\textsuperscript{138} In addition, early generations of lawyers who supported the notion of Legal Aid, supported it only to the extent that the "worthy" poor could receive Legal Aid.\textsuperscript{139} "The 'unworthy' poor – those without jobs – were disregarded; the chosen 'beneficiaries were not people who always [were] poor but only people 'who are made poor for the time being by the wrongful acts of others'."\textsuperscript{140}

For moralistic reasons, Legal Aid offices established guidelines concerning the types of cases they would accept.\textsuperscript{141} Family law cases generally comprised a large percentage of the case load, though divorces were rarely handled.\textsuperscript{142} Among the cases that were frequently declined were: adoptions, bankruptcies, civil mental commitment hearings, juvenile proceedings, and administrative hearings.\textsuperscript{143} The second most common category of cases was landlord-tenant, especially in major metropolitan areas. "Consumer problems were numerous; they included installment purchases, repossession of merchandise, and fraudulent sales."\textsuperscript{144}

Essentially, clients were perceived and treated as recipients of charity at the Legal Aid societies, like a welfare office.\textsuperscript{145} Not only did the Legal Aid societies restrict representation to those deemed

\textsuperscript{135} See Houseman, supra note 122, at 1671 (noting that as of 1919, of the six Legal Aid offices where records were available, only one – Newark, New Jersey – had over ten percent of the bar association supporting the local Legal Aid office).

\textsuperscript{136} See Lawyers, supra note 122, at 19.

\textsuperscript{137} Houseman, supra note 122, at 1671 (stating that "it was estimated that the legal aid organizations reached less than 1% of those needing representation").

\textsuperscript{138} See Lawyers, supra note 122, at 19-20.

\textsuperscript{139} See Auerbach, supra note 119, at 56.

\textsuperscript{140} Id.

\textsuperscript{141} Lawyers, supra note 122, at 19; see also Allen Redlich, Who Will Litigate Constitutional Issues for the Poor, 19 Hastings Const. L.Q. 745, 750 n.30 (1992) (stating that community mores and the mores of the contributors dictated both the types of cases handled and the attitude of the lawyers).

\textsuperscript{142} See Lawyers, supra note 122, at 19 (stating that divorces were considered a "luxury," and therefore not to be offered to the poor); see also Houseman, supra note 122, at 1671.

\textsuperscript{143} See Lawyers, supra note 122, at 19.

\textsuperscript{144} Id.

\textsuperscript{145} See Redlich, supra note 141, at 750 n.30.
worthy, but fear of offending the organized bar led them to restrict the
types of cases handled for the worthy poor. Even if a worthy poor
person came to them with a viable legal claim, the society could reject
the client if it felt the claim was too large.\textsuperscript{146} Thus, the interests of
indigent clients never superseded the interest of unconnected mem-
bers of the organized bar. Legal Aid emphasized service to individu-
als exclusively. Emphasis on individual services stemmed from the
assumption that the law was the same for everyone. The problems the
poor had were merely ones of access. Logically, "the more lawyers
who made time available to the poor (on an individual, one-on-one
basis), the more likely it was that the legal system would operate
fairly."\textsuperscript{147} There was no law reform or class action litigation; only
minimal effort was made to uncover the problems of the poor and
sensitize society to legal needs.

Thirty-five years after the establishment of the first Legal Aid of-
fices, Reginald Heber Smith in his landmark book, \textit{Justice and the
Poor}, remarked on the failure of the legal profession to help provide
access to justice for the poor.\textsuperscript{148} Inspired by a 1906 Roscoe Pound
speech to the American Bar Association that criticized the bar's re-
sponse to providing legal services to the poor, Smith undertook a
study of the problem of providing access. He concluded:

The administration of American justice is not impartial, the rich and
the poor do not stand on an equality before the law, the traditional
method of providing justice has operated to close the doors of the
court to the poor, and has caused a gross denial of justice in all parts
of the country to millions of persons.\textsuperscript{149}

Smith pointed out that the majority of American lawyers viewed
the situation of the poor with indifference.\textsuperscript{150} Smith believed the
difference in access was not the fault of the law itself, which he believed
to be "eminently fair and impartial,"\textsuperscript{151} but rather to defects in the

\textsuperscript{146} See Auerbach, supra note 119, at 56-57.
\textsuperscript{147} Lawyers, supra note 122, at 19; see also Houseman, supra note 122, at 1671 (stating that
the needs of the poor were irrelevant to the legal aid societies, the societies' goal was to provide
service to clients, it just happened to be that those clients were poor).
\textsuperscript{148} See generally Smith, supra note 132.
\textsuperscript{149} Id. at 8 (quoting comment from a lawyer: "it is the harsh fact that, with all our prating
about justice, we deliberately withhold it from the thousands who are too poor to pay for it").
\textsuperscript{150} See id. at 9.
\textsuperscript{151} Id. at 14-15 (noting that the belief in the fairness and impartiality of the law is one of the
most persistent and amazing myths of the American legal jurisprudence. It is a belief cherished
by the majority of American lawyers, despite the overwhelming evidence to the contrary). See
Leon A. Higgenbotham, In the Matter of Color (1978) (describing the conscious effort by
lawmakers to insure that the rights of Africans and their American born children were denied
administration of justice.\textsuperscript{152} Still, after promising descriptions of new opportunities, Smith points out the most significant problem the Legal Aid societies had was a lack of funding.\textsuperscript{153} Smith recognized that the Legal Aid work was entirely dependent upon periodic appeals to the public and the bar – which had been wholly unsuccessful, given the importance of the work done by the agencies. He identified two reasons: inability of the boards to raise money\textsuperscript{154} and the disfavored nature of the work in comparison to that of other charities. The Legal Aid societies had to deal with the perception that their clients were wrecks and failures of civilization.\textsuperscript{155} Smith described the Legal Aid recipients as “self-respecting, self-supporting persons . . . [T]hey represent the common people.”\textsuperscript{156} Therefore, it was clear that by the time of Smith’s work, the concept of client unworthiness was firmly entrenched in the legal profession’s thinking.

The bar had indeed established a tradition of charitable legal work for the poor, but, though the tradition was supported by the elites of the profession, it remained in the backwaters of professional interest.\textsuperscript{157} These legal rights efforts were paternalistic, moralistic, and limited in the services they delivered. They conceived their role as handling problems thrust upon them rather than seeking ways to assist the poor in finding long-term solutions to the problems produced by poverty.

As the Legal Aid Societies entered into the 1960s, they were still struggling with inadequate funding and a lack of universal support among the bar and the legislature. On the political front, President Johnson had initiated the War on Poverty, which led to the establish-

\textsuperscript{152} See Smith, supra note 132, at 15 (identifying three defects: delay, court costs and fees, and expense of counsel. He also explores the development of agencies and approaches, which could help alleviate the problems of administration. \textit{Id.} at 37. Small claims courts, conciliation (which we would today call mediation), arbitration, administrative courts, administrative officers, and domestic courts were mentioned as possible solutions. \textit{Id.} at 38-39).

\textsuperscript{153} See id. at 193 (noting that the lack of funds was seen as causing depression among workers and preventing the agencies from accepting the great opportunities which awaited).

\textsuperscript{154} See id. at 195-96 (stating that the author believed the board of directors or the executive committees of the various Legal Aid offices were “sadly lacking in imagination and enterprise,” and thus “failed to arouse the interest in legal aid work”).

\textsuperscript{155} See id. at 196.

\textsuperscript{156} See id.

\textsuperscript{157} See Lawyers, supra note 122, at 21; Tigran W. Eldred & Thomas Schoenherr, The Lawyer’s Duty of Public Service: More Than a Charity, 96 W. Va. L. Rev. 367 (1993-94) (describing the bar’s ambiguity over whether service is just charity or whether it is a duty).
ment of the Office of Economic Opportunity. At the same time, a new critique of the failure of the profession to provide legal services to the poor was raised. Challenges were made to the nature of the Legal Aid's focus on individual service on a “first come, first serve” basis. Lawyers interested in helping the poor encouraged the bar and the government to take a new approach to resolving the dilemma of insufficient access to the law. These new lawyers believed that systematic and institutional change was needed. Lawyers also recognized that they needed to help poor people become empowered so that they could begin to take care of their own problems, rather than remaining dependent on handouts for protection of their rights. Lawyers who wished to use the law as a tool of reform were successful in influencing the OEO to incorporate the provision of Legal Services to the poor into the agenda of the War Against Poverty.

It was hoped that the new organizations would be the catalyst for significant legal change for poor people. Each office was free to construct the type of service it would provide to its constituent community, as long as it followed the basic guidelines established by the OEO. The Legal Services organizations distinguished themselves from Legal Aid based on the elements they viewed as critical to effective legal services. All programs had to include five basic elements:

1. accountability to the client community;

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160. See Edgar S. Cahn & Jean C. Cahn, Power to the People or the Profession? – The Public Interest in Public Interest Law, 79 YALE L.J. 1005 (1970) (hereinafter Cahn, Power) (criticizing Legal Aid for retaining an approach to lawyering that mimicked survival behavior among Third World economies. The Cahns believed all of the resources of Legal Aid societies went into day-to-day survival, which left none for planning and improvement of services).
161. See id. See generally Wexler, supra note 64.
163. See Cahn, Power, supra note 160, at 1012; Wexler, supra note 64, at 1055.
164. See Ruth Buchanan, Context, Continuity, and Differences in Poverty Law Scholarship, 48 U. MIAMI L. REV. 999 (1994); Houseman, supra note 122, at 1673 (crediting the Cahns and Bellow with influencing Clint Bamberger to include Legal Services within OEO and to fight for its funding).
165. See Houseman, supra note 122, at 1684.
166. See id. (noting that most Legal Services offices formed to serve communities as a whole as opposed to just indigent individuals).
(2) right of clients to participate in board decision making; when the Legal Services organizations were authorized there were no mandatory qualification guidelines and offices were authorized to represent community groups as well as individuals.

(3) pursuit of law reform to address historic inadequacies; They established due process rights for public housing residents. Many of the protections against creditors that all consumers now enjoy were won through the efforts of Legal Services attorneys. Procedural due process rights for the mentally ill, landlord tenant protections, and other consumer rights were established by Legal Services lawyers.

(4) response to legal need rather than demand; and

(5) provision of a full range of service and advocacy tools.

When the Legal Services programs were responsible for almost all of the procedural due process rights established for welfare recipients. They established due process rights for public housing residents. Many of the protections against creditors that all consumers now enjoy were won through the efforts of Legal Services attorneys. Procedural due process rights for the mentally ill, landlord tenant protections, and other consumer rights were established by Legal Services lawyers.

The birth and initial successes of Legal Services exacted a high price. At its birth, the concept of Legal Services was attacked by the bar itself and by the Legal Aid Societies. Arguments were made that Legal Services would take work away from lawyers in private

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167. See id. (explaining that the new lawyers recognized the right of clients to control decision-making that affected them. Client representation on local boards was advocated to give clients a voice in decisions, which affected selection of case, matters, and allocation of resources).

168. See id. (noting that it was the intention of the lawyers to use law reform as the tool to achieve significant systematic changes to policies that adversely impacted the poor).

169. See id. (stating that in this way the new lawyers attempted to address the Legal Aid practice of representing whomever came in the door on a first come-first serve basis. The Legal Services programs wanted to commit resources to identifying critical needs of the client community as a whole, and finding solutions to those problems, rather than limiting themselves to solving individual problems).

170. See id. at 1685 (noting that the Legal Services programs offered litigation, including appeals and representation before agencies. They also engaged in legislative advocacy and rule drafting).


175. See the history of the Magnusson Moss Warranty Act, 15 U.S.C. §§ 2301-12 (noting that California was the first state to seek protection of consumers who purchased new cars which were plagued with defects. Eventually, all fifty states adopted bills providing consumers with warranty protection. These laws came to be known as “lemon laws.” The California case was filed by a Legal Services lawyer).
practice and that the existence of a governing body would remove the
independence of the lawyers.\textsuperscript{177} Fortunately, the early attacks
withered or were successfully defeated by maneuvering around the
opposition. As Legal Services became more effective in compelling
the federal government to comply with its own laws, the organizations
began to irritate elected officials and members of the bar.\textsuperscript{178} President
Reagan did everything within his power to limit and destroy the ongo-
ing ability of Legal Services organizations to represent poor people.\textsuperscript{179}
Congressional limitations on the type of work Legal Services organi-
izations could perform, the client populations they could represent,
and the money they received were constantly under attack during the
twelve-year period of the Reagan and Bush administrations.\textsuperscript{180}

Though the overt attack ended when Clinton was elected, attempts to
restrict Legal Services’ sphere of operation continue to this very
day.\textsuperscript{181} While the leadership of the American Bar Association has vig-
orously defended funding of the Legal Services Corporation, individ-
ual lawyers have not stepped up to help absorb the numbers of clients
left without counsel as a result of government funding cutbacks.

Many local “Legal Services” offices continue to do valuable and
substantial work for their client populations despite the restrictions
imposed upon them. Other offices closed or reduced services; many
fell short of the original five elements and failed to sustain the prom-
ise of the early Legal Services founders.\textsuperscript{182} Some offices have been

\begin{footnotes}
\item[177.] \textit{See id.} (recalling that the irony of the Legal Aid Society objections at first glance seem
surreal. But when viewed in the context that they were primarily engaged in individual repre-
sentation, that did not disturb the status quo).
\item[178.] \textit{See id.} at 1687 (noting that as early as 1967, senators were trying to ban suits against the
government and governors vetoed controversial programs).
\item[179.] \textit{See Buchanan, supra} note 164, at 1016 n.60. (stating that Reagan’s battle against Legal
Services is well known and documented. Beginning in 1981 and continuing throughout his term,
he appointed board members who were in favor of dismantling the Legal Services Corporation).
\item[179.] \textit{See} The Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (codi-
fied as amended at 42 U.S.C. § 2996 (2000)). During this period of time, numerous restrictions
were placed on the nature of representation that Legal Services offices were permitted to under-
take. They were forbidden from representing aliens and barred from cases challenging access to
abortion \textit{for poor women}. Mandatory qualification guidelines were established, setting qualifi-
cation requirements below the poverty line; such that now, only the truly destitute can qualify
for services, leaving the rest of the poor with no alternatives for legal access.
\item[180.] \textit{See Constitutional Law – Congress Imposes New Restrictions on Use of Funds by Legal
whether new restrictions imposed restraints upon Legal Services that violated the clients’ consti-
tutional rights).}
\item[182.] \textit{See Houseman, supra} note 122, at 1696-99 (noting that some Legal Services offices did
adhere to the original goals of the program, and that comparisons across programs are difficult
to make. However, because of a combination of factors, LSC agencies have failed to involve the

\end{footnotes}
criticized from within for failure to provide a meaningful voice to the client community on allocation of resources.\textsuperscript{183} Legal Services has been subjected to the criticism that it too, is prone to race, class and sex discrimination, both in its hiring and in its treatment of clients.\textsuperscript{184} Many programs are now indistinguishable from those that were criticized 30 years ago in that there is no overriding commitment to help better the condition of the poor through providing access to the law and legal institutions.\textsuperscript{185} Disdain for clients and the kind of legal assistance they require has crept into the thinking and planning of local offices.\textsuperscript{186}

Eighty years after the publication of \textit{Justice and the Poor}, the Legal Services organizations matched the description of the Legal Aid Societies: under-funded, underpaid, living from year to year, not knowing whether their organizations would exist through the next legislative session.\textsuperscript{187}

Legal Services offered the hope of a new order that was based on the concept that the indigent client population had value and that it was important to rework legal institutions so that the concerns of the indigent were recognized and valued in those institutions. Its bright client populations significantly in decision-making, and have failed to establish goals and priorities coherently and, above all, have not remained flexible to creative solutions to help relieve conditions of poverty).


\textsuperscript{185} We even see a return to questions of moral worthiness. Divorce work, for example, is generally frowned upon by Legal Services. It is frequently seen as less important than other legal needs. Lawyers resent having to do the work; they view it as routine. See Elizabeth McCulloch, \textit{Let Me Show You How: Pro Se Divorce Courses and Client Power,} 48 \textit{Fla. L. Rev.} 481 (1997) (commenting on the willingness of lawyers to develop pro se divorce courses to encourage women to represent themselves in some divorces).

\textsuperscript{186} See id. (describing Legal Services lawyers' resistance to performing matrimonial work for poor women as being unimportant, routine matters. \textit{Id.} at 498. Professor Mary Zulack, a former Legal Aid lawyer, added that the imposition of rigid financial qualification guidelines injected an air of suspicion into the dynamic between lawyer and client, as offices studied each client's eligibility claim in order to determine whether they were "cheating" and trying to obtain services they did not deserve. Telephone interview with Mary Zulack, (June 8, 1997)).

\textsuperscript{187} See \textit{AuERBACH, supra} note 119, at 116 (stating that xenophobic Americanism of World War II led the bar to dismiss the implication of Smith's findings). The aggressive assault on LSC funding was successfully blocked after the 1995 legislative session. By then, Legal Services had lost 30% of its budget. While there are no longer vocal calls to eliminate LSC, the lost money has not been restored. Legal Services, now, more than ever, must rely on partnerships and the good will of the private bar to survive. See, e.g., Lawrence J. Fox, \textit{Legal Services and the Organized Bar: A Reminiscence and a Renewed Call for Cooperation,} 17 \textit{Yale L. & Pol'y Rev.} 305 (1998).
vision is at risk of being extinguished. Why is this so? Poor people still need access to the law. Legal Services, particularly in its heyday, made substantial strides towards achieving concrete goals. Yet, the dismantling continues. The drive towards dismantling, I believe, is driven by deeply held views that the client populations do not deserve access to the full range of legal tools and services.

B. The Worthiness of Lawyers Representing the Poor

If public sentiment towards the poor affects decision-making, can it also affect the perceived value of the lawyer representing the poor? As a result, might the lawyer representing the poor feel less professional? If so, will that impact on the lawyer's ability to give the poor client full representation? These are difficult questions. There is some scholarship on the alleged low morale among lawyers who work on behalf of the poor. For example, it is argued that the turnover rate in Legal Services and public defender offices is high. Caseloads are extremely high which leaves staff attorneys little time to do research, investigate facts, or litigate. In part, the Legal Services Corporation is responsible for the state of poverty practice. The Corporation has been accused of caring little about quality of representation, choosing to focus more on having high volumes of cases and clients. In fact, it has been argued that lawyers who represent the poor routinely provide superficial and inadequate representation.

Even the most ardent supporters of poverty lawyers admit that lawyers may now be suffering from indifference to clients and the need for social justice. That indifference is the product of a combination of factors. Certainly the slashing of funding for programs dealing with the poor and the attendant loss of jobs and job opportunities caused by reduced funding makes it difficult to motivate young law-

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188. See Redlich, supra note 141, at 749-50.
189. See id. at 750.
190. See id. at 749.
191. See Mark Feldman, Political Lesson: Legal Services for the Poor, 83 GEO. L.J. 1529, 1534-38 (1995). But see Gary Bellow & Jeanne Charn, Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice, 83 GEO. L.J. 1633 (1995) (questioning the data Feldman used to support his conclusion, stating that there was no agreement within supervisory level attorneys that staff attorneys provide inadequate representation); Rodney Uphoff, The Criminal Defense Lawyer as Effective Negotiator: A Systematic Approach, 2 CLIN. L. REV. 73, 80 (1995) ( contesting similar claims made against public defenders).
192. See Bellow, supra note 162, at 304 (stating that paternalism is not the main problem for today's lawyers. The main problems are indifference, distance, drift, and visionlessness).
The structure of Legal Services organizations plays a factor. Offices are either too small to enable lawyers to take on complex cases, or specialized units that have been established to handle “big” cases have siphoned off talented local attorneys. Many lawyers share the belief that legal representatives of the poor are “low” status lawyers who perform that kind of work because they cannot get other jobs. When interacting with poverty lawyers as adversaries, private lawyers often show annoyance when Legal Services lawyers or public defenders represent their clients zealously and aggressively. Even public interest lawyers themselves frequently think of themselves as low status. Lawyers who do what looks to be more traditional “lawyer type” work, i.e. performing legal research on complicated issues, writing briefs and arguing motions on substantive point of law are considered to have higher status.

In the surveys of Legal Services lawyers conducted by Handler to measure turn over in the Legal Services area, one of the areas the survey examined was lawyer satisfaction. Legal Services lawyers who handled individual case representation reported less job satisfaction than did lawyers working in public interest law firms or those lawyers in Legal Services whose work was primarily law reform oriented. Both in criminal and civil fields, lawyers who work on behalf of the poor acknowledge that they are troubled by the lack of respect they receive from judges, adversaries, and clients.

After struggling through three years of law school, it would be easy to see how a young lawyer, who does not fully understand the

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194. See Redlich, supra note 141, at 775 (noting that this practice leaves remaining staff attorneys feeling confined to low level work, and because a unit exists to handle big cases, the staff attorneys cease to look for the legal issues that generate the big cases).
195. See McIntyre, supra note 8, at 64 (explaining that many of the lawyers who represent the poor do have other employment opportunities, but have chosen the field of poverty law. By the same token, there are more poverty lawyers who are women and people of color – groups who are not reflected in large numbers in corporate firms); see also Kennedy, supra note 85, at 51-52 (stating that in law school, students are channeled into a hierarchy that dismisses practices alternative to corporate practice as suspect).
196. See Comments from Andrea Williams and Siobhan McGowan, both from Bergen County Legal Services (stating that so long as they are just settling or pleading, their work is acceptable. Should they attempt to get discovery or file motions, lawyers complain that the Legal Services lawyers are costing hard working, law-abiding people more money).
197. See LAWYERS, supra note 122, at 63.
198. See id. at 63-64, 83.
199. See id. at 87.
complexities of the practice, might tire of work on behalf of the poor when that work appears "routine." And while the work does not necessarily have to be routine, Legal Services lawyers face expectations that the work will be routine because the social status of their clients is believed to be insignificant.\textsuperscript{200}

Worse still, lawyers who represent the poor encounter disrespect from the bench. In a survey of public defenders in Chicago, the biggest surprise the lawyers encountered was the lack of respect given to them from judges.\textsuperscript{201} Although they felt that everyone treated them with a lack of respect, they found it difficult to accept that judges often treated them as second-class lawyers.\textsuperscript{202} Judges will often criticize public defenders and Legal Services lawyers for asking for adjournments. In many courts, these lawyers are viewed as attempting to sabotage the swift administration of justice, yet rarely are prosecutors taken to task for not providing the discovery, which prompts the delay in the first place. It is common to hear judges disparage Legal Services and public defenders in open court.\textsuperscript{203} Even seasoned lawyers find it difficult to work under such denigrating circumstances. A new lawyer who is not yet certain of her own abilities may view the judicial reflection of disdain as validation of the belief that her clients and she, as their representative, are not worthy of the law's respect.

Attitudes within the bar towards the poor and the lawyers who represent them are complex. Client dissatisfaction with Legal Services lawyers or public defenders is reflected in the oft-repeated phrase, "I want a real lawyer." Some clients have a good reason not to value the services of their lawyers,\textsuperscript{204} but sometimes the dissatisfaction is totally unwarranted and fueled by the myth of incompetence which follows poverty lawyers.\textsuperscript{205} The myth of incompetence paints

\textsuperscript{200} See Jack Katz, Lawyers For The Poor In Transition: Involvement, Reform, and the Turnover Problems in the Legal Services Program, 12 Law & Soc'y 275, 284 (1978) (discussing the internal and external pressure toward routine handling of Legal Services casework).

\textsuperscript{201} See id. at 88 (noting that public defenders complained that judges took private lawyers' cases first, so they could get back to their offices to make money, inferring that the public defenders' time was not as valuable. Some judges sent them to run errands and treated them like gophers).

\textsuperscript{202} See id. at 88; see also Jacobs, Legal, supra note 3, at 99-102.

\textsuperscript{203} See Wexler, supra note 64, at 1052 (stating that "judges often scoff at poverty lawyers, calling their arguments 'garbage' and 'nonsense'").

\textsuperscript{204} Cf. Uphoff, supra note 191, at 78-80; see Wexler, supra note 64, at 1052 (stating that there are legitimate differences "in income, education, frustrations, and anger about failures as well as a host of cultural and psychological differences that tend to divide rather than unite poor people and their lawyers," and which fuel the myth of incompetence and create dissatisfaction); see also McIntyre, supra note 8, at 89 (stating that the public's perception of public defender
the poverty lawyer as an unfeeling, perfunctory machine of the state whose major obligation is to process great numbers of cases without performing any real legal service.\textsuperscript{206} The myth presumes that poverty lawyers are generally unsuccessful in their efforts to obtain a result that is good for the client because they are incompetent.\textsuperscript{207} In reality, the success rate of poverty lawyers is comparable with that of the private bar.\textsuperscript{208} The myth is partially sustained because poverty lawyers are between the proverbial “rock and a hard place.” If their successes become too well known, as happened with Legal Services, the organizations become the object of political attack.\textsuperscript{209} Yet, the failure to advertise success makes fundraising among sympathetic audiences more difficult and allows the myth of incompetence to flourish unchallenged. Finally, clients reflect values and judgments about poor people themselves. If society does not hold impoverished people in high esteem, it will be difficult for the impoverished client to hold the representative of that population in esteem, even if she is a member of that clientele.\textsuperscript{210}

V. TRANSFORMING OUR VISION OF CLIENTS FROM “THEM” TO “US”

Lawyers and law students are not immune from preoccupations with seeing poor clients as “them” versus “us.” As long as poor people are “them,”\textsuperscript{211} or “those people,”\textsuperscript{212} they will remain outsiders, objects of pity, scorn, or study, but never as full citizens and members of the larger community.\textsuperscript{213} As long as poor people remain “them,” there is no incentive to help better the conditions that produce poverty. Indeed, it is often politically expedient for the ruling class to

\textsuperscript{206} See Johnathan D. Casper, Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender, 1 YALE REV. L. & SOC. ACTION 4 (1971).
\textsuperscript{207} See McIntyre, supra note 8, at 62-64; Uphoff, supra note 191, at 77-78.
\textsuperscript{208} See McIntyre, supra note 8, at 64.
\textsuperscript{209} See id. at 65-72 (stating that public defenders are particularly vulnerable. Advertising successes will give the public the impression that criminals are being allowed to walk the streets, as opposed to believing that innocent citizens have been vindicated in the courts).
\textsuperscript{210} See volume 46:2 of the J. OF SOC. ISSUES (1990) (explaining the many ways expectancies impact behavior).
\textsuperscript{211} Katz, supra note 21, at 236.
\textsuperscript{212} Id. (quoting remarks of former Vice-President Dan Quayle).
\textsuperscript{213} See id.
have a group that can be identified as the bottom rung of society.\textsuperscript{214} The less fortunate can successfully be used as a political scapegoat to blame for higher taxes, high crime rates and general lack of economic security.\textsuperscript{215} The poor become the root of social problems as opposed to social problems being seen as the root of poverty.\textsuperscript{216}

If we could transform how we think about poor people, it could change the face of legal practice. If poor people could be seen as part of “us” it would force us to adjust our thinking. Resolution of economic deprivation of the poor would benefit everyone because it would reduce the drain on the costs of social services to the poor and the costs of securing everyone against crime committed by the poor.\textsuperscript{217} We should support educational spending because better education would benefit all of us. Employers would have more knowledgeable and skilled workers. More gainfully employed workers mean more disposable income to pump into local economies. More incomes mean better services and living conditions, which translate into safer communities. The Germans who formed Legal Services understood the benefit of making the new immigrants “us.” Consequently, they chose to offer more comprehensive assistance to the poor.\textsuperscript{218} Yet most of us are afraid to be identified with the poor. We think we lose something valuable when that happens.\textsuperscript{219} At the same time, we enjoy the protection of rights that were gained as a result of advocacy for the poor.\textsuperscript{220} And poor people are “us.” As the studies showed, poor

\textsuperscript{214} See Derrick A. Bell, Jr., \textit{Racial Realism – After We’re Gone: Prudent Speculations on America in a Post-Racial Epoch}, 34 St. Louis U. L.J. 393 (1990).
\textsuperscript{215} See Karst, supra note 58, at 523.
\textsuperscript{216} See, \textit{e.g.}, Linda Gordon, \textit{Pitied But Not Entitled} 31-32 (1994).
\textsuperscript{218} See supra Section IV.A.
\textsuperscript{219} See supra Section IV.A.
\textsuperscript{220} See supra Section IV.A.
people have the same range of values, beliefs, and aspirations as do other members of society, sometimes to their own disadvantage.\textsuperscript{221} The reasons for the persistence with which we distinguish ourselves from the poor has complex roots in our psychological make up and in our political and legal theories of jurisprudence. At the most basic level, human nature may be at the very root of the problem. Social scientists ask whether there is a fundamental human need mandating that we view others as either allies or enemies.\textsuperscript{222} People who are viewed as existing outside the boundaries of our own moral values, rules of fairness and sense of justice are excluded from our moral community.\textsuperscript{223} They are viewed as non-entities or undesirables and can therefore be harmed or exploited at will.\textsuperscript{224} Some psychologists believe moral exclusion is latent in all people.\textsuperscript{225} It is a product of being raised under conditions that inhibit our ability to fully integrate good and bad components of others and ourselves.\textsuperscript{226} Deutsch describes a process in which the bad parts of self are projected onto others with whom one is in conflict. He states that, through this process, conflict is turned into a win/lose struggle in which the interest of self and the interests of the other are seen as completely opposed.\textsuperscript{227}

\textsuperscript{221} See supra Part II.B (noting that some poor people ranked high in PWE values, which leads to extreme frustration and depression because their economic condition prevents them from attaining what their value system tells them is the only thing by which to measure their own worth); ROKEACH, supra note 45, at 68 (analyzing data that showed black people and white people shared some important values, except in the area of equality).


\textsuperscript{223} See Susan Opotow, \textit{The Editor's Page}, 46 J. OF SOC. ISSUES 1 (1990) (introducing issues of the journal devoted to the study of social justice issues in psychology).

\textsuperscript{224} See id.


\textsuperscript{226} See id. at 23 (describing a process whereby people learn to reconcile both the good and bad parts of themselves and others during childhood. When the process is disturbed, bad attributes of the self are projected onto others. Conditions, which may inhibit the integration process, are superiority claims based on race, gender, culture, religion or origin, which justifies treating others as having inferior moral status and lack of contact between members of the community and those that they seek to exclude).

\textsuperscript{227} See id. at 24.
The other becomes both an enemy who deserves to lose, as well as a threat to the interest of oneself. When this split occurs, the other side is seen outside of the one’s moral community.

The belief that others have different morals and values threatens the in-group’s belief in the goodness of their own identity and group, and their comprehension of reality. There is a history of devaluing specific groups, in this case the poor. History “pre-selects” them as potential victims, who under certain conditions become likely objects of scapegoating and identification as ideological enemies. Psychologist Ervin Staub states that these groups are excluded from the range applicability of moral values. Moreover, he argues that the “fear of being harmed by the group now defined as the enemy, even if their power is minimal, and the moral outrage that results from derogating them and coming to see them as evil, can be added motivation for violence against them.”

Psychologist Daniel Bar-Tal links the concept of delegitimization of the excluded to moral exclusion. Delegitimization is the process by which a group is categorized into “extremely negative social categories that are excluded from the realm of acceptable norms and values.” Bar-Tal identifies five common means of delegitimizing groups:

1. dehumanization, which occurs when the group is characterized as different from the human race;
2. trait characterization- where groups are described as possessing extremely negative traits that are unacceptable in a given society, such as aggressors, idiots, or parasites;
3. out casting – categorizing members of a group as transgressors of pivotal norms such that they should be excluded from

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228. See id.
229. Psychologists refer to this phenomenon as splitting into “we” and “they.” Id. This is the same as the use in this article of the terminology “us” and “them.”
231. See id. at 54.
232. See id.
233. Id. at 55.
235. Id. at 65.
236. Id. at 66.
society and/or institutionalized – e.g. murderers, thieves, psychopaths or maniacs;237

(4) use of political labels describing the group as a political entity that threatens the basic values of the given society, is a danger to the system, and is therefore totally unacceptable;238

(5) group comparisons – labeling with the name of a group that is negatively perceived, such as vandals.

Bar-Tal believes each society has a cultural repertoire of groups that serve as symbols of malice, evil or wickedness.239 Our society regularly and openly engages in four of the five means of delegitimizing poor people. They are assigned trait characterizations of being lazy, poorly educated, or freeloaders. They are categorized as outcasts whose behavior borders on criminal, and are seen to be without morals. In the case of some poor who are homeless, they are associated with the mentally ill. Political labels for the poor abound. The very public welfare debate in Congress over the threat single women with children pose to our basic values is but the most recent example. Group comparisons most frequently occur when we are talking about the poor who come from somewhere else, such as when we refer to illegal aliens.

The most extreme product of moral exclusion is genocidal activity undertaken by the people who believe themselves to be morally sound individuals.240 Moral exclusion, however, produces behavior across the full spectrum of human possibilities.241 “Different people have moral communities that vary in their degree of inclusiveness.”242 In our society the more extreme calls for violence against out-groups are rarely heard.243 But, we do engage in moral exclusion, as is demonstrated by the “tendency to see poverty as the fault of the poor, school failure as the fault of the children whom school has failed or violence

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237. Id.
238. Id.
239. Id.
240. The near extermination of Native Americans, slavery of Africans brought to the Americas, lynching of African Americans, internment of Japanese Americans, the Holocaust, rape and slaughter of Bosnian people, and the atrocities in Rwanda, are but a few examples of genocidal acts committed. See Albert Bandura, Selective Activation and Disengagement of Moral Control, 46 J. OF Soc. IssuEs 27, 28 (1990).
241. See Deutsch, supra note 225, at 21 (illustrating the range of behaviors).
243. The two exceptions to this that come to mind immediately are the encouragement of violence by pro-life opponents to abortion and the increasing violent activity of members of American militia, e.g. the bombing of the federal building in Oklahoma City.
as the fault of the victim of a violent act.”244 “At times a group in power or a majority may seek to enhance their power and wealth by partially or wholly excluding some group from the moral universe.”245 Staub states that exclusion makes discrimination in education, employment and the restriction of civil rights possible.246 “In addition to protecting material self-interest, exclusion serves to protect an elevated self-concept, maintain one’s existing view of reality, which justifies a privileged status.”247

The struggle to understand the causes of human behavior also has relevance in our understanding of the law. Law’s involvement in constructing images of poverty should not be surprising as law is the tool which the majority in power uses to protect its interests. Despite obvious inequities in the wealth and living conditions of the poor in our society, the law has not reached a satisfactory resolution of how to help resolve the imbalance. Because Anglo-American law is represented as being neutral and objective, the courts cannot acknowledge disparity and use it as a basis to support a decision.248 The new style of legal representation adopted by the Legal Services organizations of the 1960s and 70s attempted to use the law to solve the problems of the poor through the redistribution of wealth and power.249 Their attempts were criticized by politicians and members of the bar.250 Redistribution has been characterized as theft.251 The work of Legal Services organizations has been criticized as judicial engineering.252

244. Crosby & Lubin, supra note 242, at 163.
245. Staub, supra note 230, at 56.
246. See id. (noting that the ongoing attempts in California and Texas to eliminate affirmative action programs speak to moral exclusion); see also Michelle Fine, “The Public” in Public Schools: The Social Construction/Constriction of Moral Communities, 46 J. OF SOC. ISSUES 107 (1990) (discussing efforts by affluents in three communities to exclude poor children of color and females from access to public education).
247. Staub, supra note 230, at 57 (noting that many varied world views and ideologies, including both communism and capitalism, use exclusion to justify existing social arrangements).
248. See Antonio Ind. Sch. Bd. v. Texas, 411 U.S. 1 (1973) (holding that class was not a suspect category. The decision was rendered despite the overwhelming evidence that poor people are legally disadvantaged because they are poor).
249. See Bellow, supra note 162 (describing the desire to help create a new vision of the world as the motivation behind “political lawyering”); Martha Minow, Political Lawyering: An Introduction, 31 Harv. C.R.-C.L. L. Rev. 287 (1996).
251. See, e.g., Richard Epstein, Takings: Private Property and the Power of Eminent Domain (1985) (arguing that taxing the wealthy to provide for the poor was taking without compensation); see also Christine P. Blade, Pro Bono - Pro and Con, 77 A.B.A. J. 10 (1991).
252. See Ronald H. Silverman, Conceiving a Lawyer’s Duty to the Poor, 19 Hofstra L. Rev. 885, 1066-67, nn.378, 380 (1990-91) (stating that even “liberal” lawyers may be skeptical about
Further, legal professional and academicians have questioned whether redistributive goals discourage the poor from seeking and engaging in productive work.\textsuperscript{253} Legal economists have also derided the concept of redistribution of wealth.\textsuperscript{254}

In addition, some core values that are central to American legal identity hamper our ability to reach some resolution on the issue of poor clients. The most obstructive is the valuing of individual rights over all others.\textsuperscript{255} The spirit of individualism protects the right of the individual against the rights of society as a whole. The weight of our system favors protecting individuals unless the state can establish a basis for imposing upon their rights.\textsuperscript{256}

Liberty entitles us to do what we want, when we want to do it. American whites consistently rank the value of freedom highly, as it reflects the liberty interest. And, it has been demonstrated that the value orientation of individualism can adversely affect attitudes to the poor. Equality refers to the value of being treated fairly and the same as others. There is debate over whether our system really values equality or whether it would be more correct to say equity, where equity means that a person gets what they deserve.\textsuperscript{257}

The problems of the clients living in poverty are complex and firmly entrenched in economic, political and moral struggles that have been going on for a long time. Solutions to these problems will not be easily found. It is always much easier to document the misery as op-redistribution); Gary Bellow & Jeanne Kettelson, \textit{From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice}, 58 B.U. L. REV. 337, 380 (1978).

\textsuperscript{253} See Silverman, supra note 252, at 1066 n.379 (citing \textsc{Charles Murray}, \textit{Losing Ground: American Social Policy 1950-1980} (1984). The argument that redistribution reduces the incentive to work defies study results, which show most of the poor want to work. In other contexts, similar arguments would be ludicrous. If a municipality gives a corporation a tax cut to lure its business, does that give the corporation less incentive to come in and do well? It also vividly highlights the connection between law and social values of the majority).


\textsuperscript{255} See \textsc{Robert D. Cooter}, \textit{The Best Right Laws: Value Foundations of Economic Analysis}, 64 NOTRE DAME L. REV. 817 (1989).

\textsuperscript{256} See \textsc{Dorothy E. Roberts}, \textit{The Priority Paradigm: Private Choices and the Limits of Equality}, 57 U. PIT. L. REV. 363 (1996) (noting that the inherent assumption of liberalism is that individual autonomy is privileged over social justice).

\textsuperscript{257} See \textit{id.} (noting that the objections to affirmative action types of remedies for people of color is that they interfere with the autonomy of individual whites. There is no expectation that individual rights will be weighed in order to achieve remedying of societal ills. In addition, the dominant belief that individual hard work alone produces rewards works against dominant acceptance of affirmative action policies).
posed to fixing it. After all, as a profession, we know that discrimination against black and Latino clients exists, as was confirmed most recently by studies of racism in the federal court system.\footnote{258. See Benjamin Weisser, Study of U.S. Courts Finds Race and Sex Bias Common, N.Y. Times, Jun. 11, 1997, at B6 (stating that the special task force found bias in the Second Circuit); Courts Called Fair to Women but Wanting in Racial and Ethnic Diversity, N.J. L.J., May 26, 1997 (reviewing findings of the Third Circuit task force).} We know that poor people routinely stay in jail longer than clients who have private counsel because they cannot afford to post bail.\footnote{259. See Uphoff, supra note 191, at 86 n.47 (noting that “studies demonstrate that bail practices exert considerable pressure on criminal defendants to enter guilty pleas, especially if the defendant’s ability to make bail is coupled with a delay in appointment of counsel”).} We know that despite procedural advances made on behalf of welfare recipients and tenants in the 1960’s and early 1970’s that poor people are still living in substandard housing where landlords fail to make timely or adequate repairs. And, finally we know that some of the lawyers who choose to represent the poor have not always had the best interests of their clients at heart.\footnote{260. See Cahn, Power, supra note 160, at 1042; see also Gary Bellow, Turning Solutions into Problems: The Legal Aid Experience, 34 Nat’l Legal Aid Defenders Ass’n Briefcase 106, 108 (1977).} There is nothing new about any of the things mentioned above. Yet, for the most part, lawyers seemed resigned to accept the seemingly hopeless morass of “poverty law” and the dreariness of our client’s lives. For all the talk of empowering our clients,\footnote{261. See, e.g., Linda S. Durston & Linda G. Mills, Toward a New Dynamic in Poverty Client Empowerment: The Rhetoric, Politics and Therapeutics of Opening Statements in Social Security Disability Hearings, 8 Yale J.L. & Feminism 119 (1996); Martin Guggenheim, A Paradigm for Determining the Role of Counsel for Children, 64 Fordham L. Rev. 1399 (1996); Andrew Goldfarb, Client Autonomy and Clinic Guidance, 3 Geo. J. on Fighting Poverty 97 (1995); Joel F. Handler, Community Care for the Frail Elderly: A Theory of Empowerment, 50 Ohio St. L.J. 541 (1989).} we seemed to have settled for business as usual.

VI. A POSSIBLE AGENDA FOR FUTURE RESEARCH

One of the ways we can help law students and lawyers who represent the poor transform their thinking about poor people is to help legal professionals become more aware of the way they actually relate to poverty. The first step in correcting any problem is to become aware of the problem. And if, in fact, we can demonstrate that students, lawyers in general, and poverty lawyers specifically, do hold beliefs that push them to devalue the client, then we can begin to do something about it.\footnote{262. See Jacobs, Legal, supra note 3, at 105-07 (discussing the possibility of changing value and value driven behavior); Fran Quigley, Seizing the Moment: Adult Learning Theory and the Teaching of Social Justice in Law School, 2 Clinical L. Rev. 37 (1995) (using the clinical experi-
who reject the premise of hopelessness and shrug off business as usual. In order to begin the job, those who are the self-designated (either in reality or in theory) representatives of the poor must begin by examining our own behavior and motivation for doing the work we do. No one enjoys being critiqued. As clinicians, we know this from watching our students' resistance to our critiques of their work. However, constructive criticism can only be good. In this regard, I believe clinicians and legal service providers are sometimes hypersensitive to criticism. The hypersensitivity is quite understandable given the full assault which Legal Services providers have had to endure from political forces over the past twelve to sixteen years, the critique of ex-Legal Services lawyers, and the continued resistance in many law schools towards the establishment of skills-relevant course work. By failing to permit criticism, however, clinicians and legal service providers fall into the trap that liberals find themselves in on the "race issues." Serious criticism of liberal positions on matters of race are suppressed because liberals do not want to face the racism that is inherent in their own activities. Our clients cannot afford for us to engage in such delusions. I have argued in other places that we need to do more holistic lawyering on behalf of the poor. But first, we must begin to understand why we, as lawyers who work on behalf of the poor, think the way we do about our clients. We must evaluate

cence of exposure to client's life as a way of helping law students expand understanding of others): Joel W. Grube et al., Inducing Change in Values, Attitudes and Behaviors: Belief System Theory and the Method of Value Self-Confrontation, 50 J. OF SOC. ISSUES 153, 153-71 (1994); see also Stuart W. Cook, Toward a Psychology of Improving Justice: Research on Extending the Equality Principle to Victims of Social Injustice, 46 J. OF SOC. ISSUES 147 (1990) (exposing people to the outgroup research that looks into encouraging the expansion of moral communities). But see Crosby & Lubin, supra note 242 (asserting that though expanding moral community is good, it is also difficult and entails certain risks such as producing uncertainty and insecurity; at some point a decision to close the community must still be made). 263. See generally William F. Harvey, LSC - The Greatest Fraud Ever?, in LEGAL SERVICES FOR THE POOR: TIME FOR REFORM 81 (1990) (explaining that Harvey was a former LSC board chairman appointed by then president Ronald Reagan. His critique of Legal Services was used as a justification for Republican attempts to eliminate funding). See Buchanan, supra note 164, at 1016 n.60 (discussing the decline in funding for Legal Services which occurred during the Nixon, Reagan, and Bush administrations). 264. See Feldman, supra note 191. 265. Liberals are frequently offended when people of color disagree or challenge them on their positions on race issues. The recent O.J. Simpson trial as well as the perpetual debate over whether Minister Louis Farrakhan of the Nation of Islam is worthy of support are just two examples of this tension. For a critique of the treatment of Minister Farrakhan and recognition of his First Amendment rights, see Jeanne M. Woods, Travel That Talks: Toward First Amendment Protection for Freedom of Movement, 65 GEO. WASH. L. REV. 106 (1997) (noting that white liberals have convinced themselves that they do not harbor racism; when they are then accused of racist behavior, they experience dissonance). 266. See Jacobs, Legal, supra note 3, at 110-11.
whether our value driven behavior inhibits our ability to help place the client in a materially better legal position when they leave us than before the client encountered us.

The pilot study raised enough interesting questions that it appears worthwhile to repeat it on a larger scale with both law students and lawyers. Several obstacles need to be resolved to successfully accomplish a further study. The students in the pilot study completed the surveys during the clinical instruction hour. Many clinicians were reluctant to give up an hour of class time. One possible solution would be to allow the subjects to complete the study after class or at some time that was convenient for the students. Alternatively, it may be possible to establish a web site where students could complete the study at any time. Procurement of grant funding would assist in providing compensation to the individuals required to administer the study and perhaps to the subjects as well.

Potential items to include in a scenario would be fact patterns involving clients that are late for appointments or who miss them altogether. Inquiries can be made about the responsibilities of those providing representation when the client does not seem to care about her predicament. Client behavior can be contrasted against how thoroughly the lawyer prepared for meeting the client or for the court appearance in question. These issues trouble clinical students, particularly if the students believe the client behavior demonstrates irresponsibility. Many students, including those who identify themselves as liberal, can be severely judgmental towards the client when they think the client is not “helping” to better her situation. It would be intriguing to attempt an inquiry, which would allow the student to define zealousness or at least components of it.

There is a developing body of research that indicates when resources are scarce, both liberals and conservatives make resource allocations on the basis of worthiness. The clinical application is

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267. The web alternative is intriguing but presents problems of confidentiality. In addition, students completing the study on the web would need to agree not to discuss the study with any student who had not yet completed it.

268. Payment, even if small, may encourage a higher rate of completion. However, there is disagreement in the psychology community as to whether subjects should be paid.

269. See Linda Skitka & Philip E. Tetlock, *Allocating Scarce Resources: A Contingency Model of Distributive Justice*, 28 J. OF EXPERIMENTAL SOC. PSYCHOL. 491-522 (1992). In the study, subjects were asked to allocate resources such as AZT treatment for AIDS victims when resources were scarce. Both liberals and conservatives considered the cause of the recipient's illness in making allocation decisions. If the recipient was perceived as causing his own illness, he was denied assistance. *Id.* at 519. However, when there was no scarcity of resources, liberals
readily apparent. Clinics can only serve a few clients each semester. All clinical students are aware of restricted intake process at their own institutions. In addition, the students enrolled in clinic have other classes and personal responsibilities that compete for their time. They, like other poverty lawyers, view their time as their scarcest resource.270 Creating hypotheticals of this nature could help produce a clearer set of data to use in evaluating whether student value ranking can predict evaluations of zealous representation.271

More data on law students would certainly be instructive for clinicians in helping us to develop course material that will guide the students toward a better appreciation of the worth and value of their clients.

Lawyers who practice in the poverty area could benefit as well. In this regard, a study of poverty lawyers would produce valuable insight for the lawyers into the realities of their own perception about their client population. Many Legal Services, Legal Aid and public defender offices have thousands of suitable subjects.272 In addition, a conversation can be initiated within the bar itself about zealousness, particularly with regard to the representation of poor people. Should we attempt to define “zealousness” more precisely? It seems that would be difficult to do. Further, we run the risk that in an effort to become more concrete, the bar would actually create standards that do, in fact, reflect minimally competent behavior. Finally, the adop-

allocated resources without regard to cause. Conservatives continued to consider the recipient’s self-exposure. Id. at 517; see also Linda J. Skitka & Philip E. Tetlock, Providing Public Assistance: Cognitive and Motivational Processes Underlying Liberal and Conservative Policy Preference, 65 J. OF PERSONALITY & SOC. PSYCHOL. 1205-23 (1993). The authors conducted a series of three studies where participants were asked to make resource allocations. The recipients’ moral characteristics were manipulated to test whether liberals and conservatives would respond to recipient worthiness. In this series of studies, both conservatives and liberals were asked to make allocation decisions based on whether the recipient had taken personal responsibility for his behavior and reformed. The findings indicated that the generosity of liberals was strained when confronted with an irresponsible claimant. Id. at 1220. Conservatives, on the other hand were more willing to assist those who had taken responsibility and reformed themselves. Id.

270. See supra note 9 (noting that the allocation of scarce resources of both clinical space and student time may have played a role in the reaction the students had to the client “missing” his appointment).

271. In the larger undergraduate study conducted by Dr. Brown, the thoroughness of a tutor’s preparation for the tutoring session (contrasted with a student’s preparation) was evaluated. In the scenarios where the students being tutored failed to prepare for the session seriously, or where the subjects perceived the student to be less serious, the subjects were less willing to criticize the tutor’s own lack of preparation. See Brown, supra note 93.

272. See, e.g., Daniel L. Greenberg, A Modest Proposal to Clinicians from the Legal Aid Society, 3 CLINICAL L. REV. 249 (1996) (noting that Greenberg, a former clinician, offered the approximately one thousand lawyers on his staff a research lab for those clinicians interested in developing scholarship on lawyers and the practice of law).
tion of standards may lead to the imposition of penalties for failure to meet those standards. I would not want to see the adoption of penalties as it would chill lawyers’ willingness to handle indigent work.

A different approach might entail establishing “competencies” for fields of practice as has been done in psychology and sociology. In those fields practitioners are urged to develop competencies to help ensure they are qualified to counsel in particular fields.

Another potential group for study would be the graduates of Antioch Law School, the D.C. School of Law and CUNY Law School. These three law schools were founded with the intention of changing the face of legal education and the faces of those practicing law. All three hoped to produce graduates who were committed to working on behalf of the dispossessed. Comparisons of value priorities between those graduates and other traditionally trained lawyers may yield clues about whether values are consistent across the profession.

An exploration of lawyer motivation may help to prevent the subsistence method of lawyering. If lawyers believed that their clients were worthy of a more creative approach to legal problem solving, perhaps creative solutions would be generated on a larger scale and with less resistance from lawyers. Recent efforts to try creative new approaches have been successful, but they are still few and far between. Many of the new approaches to attacking issues of poverty could have great application across clinical fields and have the opportunity to provide far better and quicker solutions to real


274. My thanks to Professor Mary Zulack for the suggestion of such a study.

275. See Cahn, Power, supra note 160.

276. See Southworth, supra note 89 (noting that lawyer resistance to change is most noteworthy in the Legal Services arena where many programs have failed to create realistic and substantive opportunities for community input on the issue of allocation of resources and case matter prioritizing); See Houseman, supra note 122, at 186; see also Lee & Lee, supra note 184; Christine Zuni Cruz, [On The] Road Back In: Community Lawyerin in Indigenous Communities, 24 AM. INDIAN L. REV. 229 (2000) (describing the ways in which culture and knowledge impact on rendering legal service to a community).

problems than governmentally-regulated legal services could ever hope to accomplish. Yet, in order to visualize such solutions, lawyers have to believe that there is something untenable about representing a client multiple times for a simple, fixable offense. The lawyer would have to believe that the client, as a human being, deserves to have every possibility explored to put her in a better space. The lawyer would need to believe that the client has value and is worthy of having full representation.

278. For example, in the criminal context I am intrigued with the concept of time dollars, not necessarily as payment for lawyer services as Cahn suggests, but as an alternative to multiple misdemeanor or municipal criminal violations which are essentially financially driven. Take a defendant who is given a ticket for reckless driving. The sentence imposed is completion of a safe driver course and the payment of a fine of $100. The defendant completes the course, remains out of trouble, but does not keep to the fine schedule. Administratively, his driver's license is revoked for failure to pay the fine. Defendant continues to drive back and forth to work and is eventually charged with driving while his license is suspended. More fines are added on, which the client cannot pay, and he receives additional probation, etc. It would be interesting to see if a program could be developed with a church or other community based organization where defendant can have initial fine paid in return for time dollars. Defendant comes through the legal system once, as opposed to multiple times.