

3-1-1995

Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement

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DECONSTRUCTING RECONSTRUCTIVE POVERTY LAW:
PRACTICE-BASED CRITIQUE OF THE STORYTELLING
ASPECTS OF THE THEORETICS OF PRACTICE
MOVEMENT*

Cathy Lesser Mansfield†

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This is a reference to Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991). For other critiques of the theoretics of practice movement see Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D. C. L. REV. 123 (1992).

† This Article was researched and written while I was an Associate Professor of Law at Washburn University School of Law, Topeka, Kansas. I would like to thank various members of the Washburn School of Law faculty for their support, especially Bill Rich and Nina Tarr; the University itself for financial support; the law firm of Lewis and Roca, in Phoenix, Arizona, for providing me with office space in which to work; Marianne Deagle and Joe Booth for providing research assistance; Ed Mansfield, Cheryl McNish and Wendy Axton for giving support and help with the family while I worked on this Article; Peter Margulies, and other members of the St. Thomas University School of Law faculty for brief but potent encouragement; and Julie Kowitz for incisive editing.

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INTRODUCTION

“My ex-husband is ‘whopping’ my daughter.”

One day several years ago an upset and frustrated Ellen Smith¹ came to her appointment at my legal aid office. She explained that her eight-year old daughter had complained that her father, who had been granted custody in Ellen’s earlier divorce, had begun disciplining her daughter by hitting her with a belt until she had black and blue marks. Ellen wanted custody to be changed.

Over the course of our interview I learned that until several years earlier, Ellen had a severe alcohol addiction problem. The state child welfare agency had taken away her first several children. She had abused many of them. Ellen initially had lost custody of the eight-year old daughter because of alcoholism and parenting problems. One day, when she had hit the lowest point she thought possible, she decided to end her addiction. From that time forward her story took on the drama and achievement of a made-for-television movie. Ultimately, she had more children and became a responsible, caring parent. She also established ties with some of her older children, began earning a degree in early childhood education, and counseled other addicted and abusive parents. Over the course of her case, I developed an intense personal respect and regard for this client.

“We’re being kicked out of our home.”

John and Jane Baker came to my office complaining that their mortgagee, to whom they owed fees for services rendered to them, was trying to foreclose on their home. I represented them against their mortgagee. We ultimately decided to settle the matter by selling the home to the mortgagee.

By the time I had finished representing the Bakers, I had learned about the reality of their marriage. John had a drinking problem and had, in the past, beaten and abused Jane.

¹ I use no client names or identifiable dates in this Article to protect the identity of my clients and their families.

John was even arrested for domestic violence and jailed during the course of my representation of the Bakers.

At times, both of these cases made me question my role in these clients' lives. During the Bakers' case, had I not met the termite inspector when the Bakers did not, the sale of the house would not have closed, and their case would not have settled. Was it my responsibility as their lawyer to go to their home to meet the termite inspector? What was my role and responsibility in regard to the domestic abuse issues faced by these clients?

There was no denying the significance of my role in the lives of Ellen Smith and her daughter as I tried to console myself after an early ruling sent the daughter back to her abusive father. If I didn't do my job well enough, make the right choices, or tell the right story, a little girl would be belted. Now, as an academician, I look back on these and other cases and ask myself what my role *should have* been in my clients' lives.

A recent trend in legal scholarship has been to condemn poverty lawyers for interpreting the client's² story into a paradigm dictated by lawyer understanding.³ By so doing, these scholars argue, the poverty attorney silences the client's voice,⁴ appropriates the client's story,⁵ and portrays the client

² Much of the literature in this area refers to a client's story as "client story" and to the client's voice as "client voice." See generally, Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L. J. 2107 (1991). I have chosen not to use these terms of art both because they are awkward and because to my mind they objectify the client's story and imply disownership by the client of herself and her story: an implication which this Article disputes.

³ Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861 (1992); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 950 (1992) [hereinafter "Rebellious Lawyering"]; Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) [hereinafter "Subordination"]. See also Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989). But see, Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 524-529 (1994); Paul R. Trambly, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123 (1992) [hereinafter "Tragic View"]. For criticism of poverty lawyers for failure to use welfare litigation to educate and mobilize, see Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88) [hereinafter "Mobilization on the Margins"].

⁴ Alfieri, *supra* note 2, at 2118; Anthony V. Alfieri, *Speaking Out of Turn: The*

as a dependent and inferior object.⁶

The most overtly critical scholar in this area has been Professor Anthony Alfieri.⁷ He and others have called for reformative practices which involve greater use of the client's story in representation of the client. For example, Professor Alfieri suggests that rather than interpret the client's story, the poverty lawyer should "integrat[e] . . . client narratives into storytelling."⁸ Lucie White suggests "a practice of lawyering that would continually cede to 'clients' the power to speak for themselves."⁹ These visions of appropriate poverty law practice involve, in large part, a greater use of client-told story rather than lawyer-told story and greater control by the client over the case.

The authors of this narrative literature identify and address political and social benefits to a client, such as individual empowerment, when these sorts of reconstructive practices are employed by the poverty attorney. But these same authors do not address the impact of such practices on the results reached for the individual client.¹⁰ Neither does this literature consid-

Story of Josephine V., 4 GEO. J. LEGAL ETHICS 619, 636-37 (1991). For a condemnation of courtroom discourse as silencing of poor people, see White, *Mobilization on the Margins*, *supra* note 3, at 543-44; Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 536 (1992).

⁶ Alfieri, *supra* note 2, at 2146; Alfieri, *supra* note 4, at 632.

⁷ Alfieri, *supra* note 2, at 2121; see also, Alfieri, *supra* note 4, at 629.

⁸ Alfieri, *supra* note 2; Alfieri, *supra* note 4; Anthony V. Alfieri, *Stances*, 77 CORNELL L. REV. 1233 (1992) [hereinafter "*Stances*"]; Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88) [hereinafter "*Antinomies*"].

⁹ Alfieri, *supra* note 2, at 2139; see also Alfieri, *supra* note 4, at 652.

¹⁰ Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 863 (1990).

¹⁰ For similar criticism, see Tremblay, *Rebellious Lawyering*, *supra* note 3, at 959 ("rebellious writers have overlooked the risk clients incur in rejecting technical lawyer expertise"); Tremblay, *Tragic View*, *supra* note 3, at 134, 136 ("The Critical View literature implies that intrinsic and extrinsic goals [intrinsic goals are "the storytelling function," extrinsic goals "accomplish . . . the results sought when the client consulted a lawyer"] are not in conflict and may even dovetail . . . It tends not to capture the choice at all, in that it sees client collaboration as instrumentally effective as well as intrinsically effective"); Miller, *supra* note 3, at 517 ("The term *case theory* is noticeably absent from critical writing"). But see, Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1326 (1992) for an example of cross-examination by a client. In this case, Clark Cunningham perceived "some higher risk of conviction." *Id.* at 1327.

er the client as a factor in the workability of such proposals.

After reflection on my own recent legal services practice,¹¹ informed by my study of the work done by others in the area of poverty law, I have come to believe that application of a theory of poverty law such as the one conceived by the theoretics of practice movement fails to take into consideration certain realities of poverty law practice;¹² derives from a singular, romanticized view of the poor; and actually may frustrate client goals by eviscerating the *raison d'être* of the attorney-client relationship.

I. LAWYER INTERPRETATION AND DISPLACEMENT OF CLIENT STORY

A. *Functional Storytelling and Theoretical Assumptions—Why Clients Tell Us Their Stories*

When both Ellen Smith and the Bakers came to our office, they told their stories, first to our paralegal, and then to me. In both interviews, the clients told their stories in a narrative form that was at times chronological and at times disjunct; that was at times controlled by emotion and at times controlled by logic; that was at times proud and at times shameful; that was at times grammatically correct and at times not.

Undoubtedly, each client's whole story, in the client's own words and with the client's individual nuances, was relevant to an attempt at holistic knowledge of the client, or an understanding of the client's normative context. But neither Ellen Smith nor the Bakers sought my help because they wanted me to know and understand every aspect of the normative reality of their lives. The Bakers came to see me because they did not want to be homeless. Ellen Smith came to see me because she did not want her daughter to be hit anymore. This is what brought these clients into my office. This is what they wanted from me. This is why they told me their stories.

Any applied theory of poverty law must recognize the

¹¹ I was the staff attorney and then managing attorney of the Urban Indian Law Office of Community Legal Services in Phoenix, Arizona from March 1989 until June 1992.

¹² See Tremblay, *Tragic View*, *supra* note 3, at 133, 140.

reasons why poverty clients come to see poverty lawyers.¹³ The essential assumption of representational narrative scholarship¹⁴ is that poverty lawyers become players in the lives of their clients in large part so that their clients' stories can be told.¹⁵ For example, Professor Anthony Alfieri refers to "the very story [Mrs. Celeste] retained me to tell."¹⁶ Christopher Gilkerson speaks of a more perfect practice of law "in which the strategic goal is to enable clients like Mrs. G."¹⁷ to tell their stories and state their legal claims in their own narratives.¹⁸

From this basic assumption, various narrative scholars, either explicitly or implicitly, have critiqued poverty law storytelling for its failure to actually tell the client's story.¹⁹ Professor Alfieri asserts that by failing to give voice to the client's story, infused with normative content (which he defines as the "meaning and images of the client's social world"²⁰), the poverty lawyer silences the client's voice,²¹ "client integrity is tarnished,"²² and client story is lost²³ and distorted.²⁴ Professor Alfieri identifies this displacement of client narrative by attor-

¹³ For a discussion of why poverty clients seek out the services of poverty lawyers see, Austin Sarat, ". . . *The Law Is All Over*": Power, Resistance, and the Legal Consciousness of the Welfare Poor, 2 YALE J.L. & HUMAN. 343 (1990).

¹⁴ By use of the term "representational narrative scholarship," I refer to scholarship which addresses the use of narrative in client representation. I do not address in this Article the questions raised by Daniel A. Farber & Suzanna Sherry in *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993). In that article the authors address the merits of narrative as legal scholarship.

¹⁵ In other works Professor Alfieri has recognized the abolition of poverty as the goal of poverty law. See Alfieri, *Antinomies*, *supra* note 7.

¹⁶ Alfieri, *supra* note 2, at 2130. Mrs. Celeste is the client about whom Professor Alfieri writes.

¹⁷ This reference is to the client in White, *Subordination*, *supra* note 3.

¹⁸ Gilkerson, *supra* note 3, at 914.

¹⁹ See, e.g., Alfieri, *supra* note 2, at 2107; Alfieri, *supra* note 4, at 627, 629; Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459 (1989); Gilkerson, *supra* note 3; White, *Subordination*, *supra* note 3; White, *supra* note 9.

²⁰ Alfieri, *supra* note 2, at 2111.

²¹ Alfieri, *supra* note 2, at 2118; Alfieri, *supra* note 4, at 636-37.

²² Alfieri, *supra* note 2, at 2119 (1991); see also, Alfieri, *Stances*, *supra* note 7, at 1234.

²³ Alfieri, *supra* note 2, at 2119; see also Alfieri, *Stances*, *supra* note 7, at 1234.

²⁴ Alfieri, *Stances*, *supra* note 7, at 1234.

ney narrative as interpretive violence against the client by the poverty lawyer.²⁵ Christopher Gilkerson echoes this sentiment: "In transforming their clients' narratives and substituting their own compositions, lawyers engage in an act of story interpretation that may further disempower and silence."²⁵

If theoretics of practice scholars have assumed correctly the purpose for which poverty lawyers are told clients' stories, then their critique of traditional poverty law practice is valid. If poverty clients enter the legal process, and engage us for the purpose of public storytelling of their struggle, then traditional poverty law practice—admittedly an ends-oriented endeavor—²⁷ is likely to fail them. But if, as I believe, poverty law clients tell their stories to poverty lawyers for the same simple reason corporations tell their stories to their lawyers—so that a certain result can be obtained—then traditional practice²³ may be not only defensible, but the only appropriate vision for poverty lawyers.²⁹

By assuming that clients tell their stories to poverty lawyers so that their stories might be told, theoretics of practice

²⁵ Alfieri, *supra* note 2, at 2118 n.36, 2125-26. For a discussion of Professor Alfieri's use of the word "violence" to describe the interpretive stance of poverty lawyers, see Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853, 856-859 (1992).

²⁶ Gilkerson, *supra* note 3, at 914.

²⁷ Professor Paul R. Tremblay argues that the poverty attorney's focus on the goal in any given case, as opposed to the greater long-term needs of the community, is due to the "tendency of care providers to favor the present and identifiable over the future and unnamed." He terms this tendency as a preference for the "rescue mission." Tremblay, *Rebellious Lawyering*, *supra* note 3, at 950.

²⁸ I do not refer here to problems caused by underfunding, understaffing, elimination of necessary caseloads through limiting priorities, and a low eligibility cutoff that under-defines poverty. Rather, I refer to the practice methods used by poverty attorneys in any given case.

²⁹ John Griffiths has observed, based on empirical research, that:

Clients go to lawyers because it is otherwise impossible to secure a divorce, not because they want to invoke the legal system as a regulatory and conflict-resolving institution. That the law concerns itself with the substance of their relationship is an adventitious circumstance for most divorcing couples, and they generally give the impression of being quite content to leave as much as possible of this aspect of the process in the hands of their lawyer. The interviews with divorcing parents confirmed our observations that on the whole clients are quite satisfied with this state of affairs; we found little of the alienation that might be expected on the basis of the "transformation" and "legalization" literature.

John Griffiths, *What Do Dutch Lawyers Actually Do In Divorce Cases?*, 20 LAW & SOC'Y REV. 135, 155-56 (1986).

scholars take one of the many relationships in which clients are involved—the lawyer-client relationship—and value it as the most important relationship in the client's life. The lawyer-client relationship becomes the medium through which the client will be empowered by serving as the catalyst that will give public voice to the client's story: a story which would otherwise go unheard. But this vision of the poverty client disempowers the client's voice by over-emphasizing lawyer role in client storytelling: by suggesting that somehow, if we do not give voice to the client's story as told by the client in the legal setting, that voice will be silenced.³⁰ It assumes that in order for the client to have an audible voice the lawyer must use that voice in the advocacy setting, even if complete use of the client's story might not be the most efficacious strategy in light of the client's desired result.

More importantly, this assumption—that poverty lawyers are told clients' stories so that those stories might be given public voice—leads to reformative suggestions which subordinate the *raison d'être* of the attorney-client relationship by de-emphasizing the legal content of a client's story. We are attorneys, not journalists, not politicians, not doctors or ministers. We are given the privilege of hearing clients' stories because we can try to turn those stories into client-dictated legal results, in spite of economic circumstance.

In forging any theory of poverty law, we cannot forget the functional reason why we are chosen to hear a client's story, and why we are asked to re-tell that client's story. To think that we have the privilege of hearing clients' stories for a greater purpose than to achieve legal results, and therefore that we become caretakers of or conduits for uninterpreted and unabridged client story, aggrandizes and yet eviscerates the role of the poverty lawyer in the life of the poverty law client.

³⁰ Indeed, Robert Dinerstein has recognized, "The theoretics movement must also avoid its own form of essentialism in which poor clients are seen as all-powerful individuals awaiting only their lawyers' assistance to unleash their potency." Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992).

B. *The Essence of Legal Paradigm*

Undeniably, poverty lawyers engage in the process of imposing legal paradigms on their clients' stories.³¹ The real question is not whether this process occurs, but whether it signifies subconscious application of case theory³² to and justified adaptation and translation of the client's story,³³ or whether this process wreaks interpretive violence³⁴ or is suppressive,³⁵ tragic,³⁶ or domineering.³⁷

I begin my analysis here with the assumption, as discussed above, that poverty clients come to see poverty lawyers to obtain certain results. If this is why they come to see us, then we have a responsibility to see that their story is used to realize the legal goal that they cannot or do not want to accomplish without our assistance. How, then, are we to do what we are asked to do?

³¹ Professor Alfieri suggests that the poverty lawyer, if asked, would deem his interpretation of client story neutral. Alfieri, *supra* note 2, at 2121; Alfieri, *supra* note 4, at 630. I believe that most poverty lawyers probably recognize that their interpretation of client story is not neutral, but rather is based on application of legal construct to story.

³² Binny Miller has criticized that "in the rush to embrace client voice, these [critical and client-centered] scholars have virtually ignored the critical role that case theory can play in linking client stories to the narratives that lawyers tell on behalf of clients." Miller, *supra* note 3, at 487. She defines case theory as "a lens for shaping reality, in light of the law, to explain the facts, relationships, and circumstances of the client and other parties in the way that can best achieve the client's goals." Miller, *supra* note 3, at 487.

³³ Cunningham, *supra* note 10. See also, Cunningham, *supra* note 19, at 2483, 2490-91 (The translator should not silence the speaker but rather seek to enhance the speaker's voice by adding her own.).

³⁴ Alfieri, *supra* note 2, at 2118.

³⁵ Alfieri, *supra* note 4.

³⁶ Alfieri, *Stances*, *supra* note 7, at 1234, interpreting James B. White, *Translation as a Mode of Thought*, 77 CORNELL L. REV. 1388 (1992).

³⁷ Alfieri, *Antinomies*, *supra* note 7, at 691-92; White, *supra* note 9; Carl J. Hosticka, *We Don't Care About What Happened, We Only Care About What Is Going to Happen: Lawyer-Client Negotiations of Reality*, 26 SOC. PROBS. 599 (1979). Other authors have viewed the poverty attorney's tendency toward traditional practice as motivated by caring for the immediate good of the individual client over the good produced by larger, socio-political concerns. See Trambly, *Rebellious Lawyering*, *supra* note 3, at 967-68; see also James F. Smurl, *Eligibility for Legal Aid: Whom To Help When Unable to Help All*, 12 IND. L. REV. 519, 530-31 (1979).

1. Utilitarian Control of Story

Professor Alfieri, one of the only theoreticians of practice scholars to make relational suggestions designed to reach the goals enunciated by this movement, suggests that poverty lawyers should engage in reconstructive practices to end the silencing and displacement of client narrative.³⁸ These reconstructive practices include: play ("the deliberate act of shifting the dominant-dependent hierarchy of the lawyer-client relation,"³⁹ or the "shifting of power" to the client);⁴⁰ metaphor (forcing fuller understanding and telling of client story);⁴¹ collaboration ("integration of client-spoken narratives into the public storytelling of advocacy");⁴² redescription ("retelling client story consonant with the voices of client narratives"),⁴³ and "emplacement" of the client in problem resolution through direct client participation (such as direct client/caseworker negotiation).⁴⁴ Each of these reconstructive practices envisions greater client control over the dispute resolution process. The stated goal of such practices is to "overturn lawyer narrative and install a self-proclaimed client narrative."⁴⁵

The ideological underpinning of Professor Alfieri's vision of reconstructive practice, indeed of the whole theoretics of practice movement, is the notion that as control over client story in the legal setting is taken away from the poverty attorney, it is given back to the client. This view, however, fails to distinguish between utilitarian control, or the use of story to achieve a legal goal, and the illusion of control that may accompany the right to be heard.⁴⁶

³⁸ Alfieri, *supra* note 2, at 2119 ("The intent of this Essay is to understand and rectify the loss of client narratives in lawyer storytelling.")

³⁹ Alfieri, *supra* note 2, at 2136. This sort of practice is referred to as role modification as well as "play" in Alfieri, *supra* note 4, at 635, 646-47.

⁴⁰ Alfieri, *supra* note 2, at 2137.

⁴¹ Alfieri, *supra* note 2, at 2138-39.

⁴² Alfieri, *supra* note 2, at 2140; *see also* Alfieri, *supra* note 4, at 635.

⁴³ Alfieri, *supra* note 2, at 2141.

⁴⁴ Alfieri, *supra* note 2, at 2130, 2145.

⁴⁵ Alfieri, *supra* note 4, at 632.

⁴⁶ By choosing the word "utilitarian" here, I do not mean to imply economic success at all costs. Rather, I refer to the utilitarianism of reaching an end envisioned after consideration of economics, emotions, relationships, self-image and the like. Use of story becomes utilitarian only when these factors have been considered

Ellen Smith and the Bakers, like most other poverty law clients, faced problems which, with or without my involvement, were likely to be resolved by use and application of the law. By the time both clients came to my office, it was clear that the issues would not be resolved by the parties without resort to some sort of tribunal.⁴⁷ The mortgagee in the Bakers' case was threatening judicial foreclosure. Ellen and her former husband could not amicably agree to a change in her former husband's behavior or to a change in custody. Thus, the legal resolution of their cases unavoidably would involve placing legal construct on the stories they told: a construct which would likely dictate the result they would obtain from the legal system.⁴⁸

Since resolution of any legal issue, for a poverty client or otherwise, involves placing legal construct on the client's story, the party that is allowed to place legal construct on the client's story becomes the party vested with utilitarian control of that story. The question then becomes this: If the poverty attorney does not place legal construct on the client's story, does the power over this role default to the client or to someone else?

Based on studies of non-lawyer, small claims courts by William M. O'Barr and John M. Conley,⁴⁹ Lucie White has observed:

Litigants who use a relational framework [which emphasizes status and relationship in story rather than rules and laws] do poorly in court because the logic of their stories clashes with the rule-breach-injury logic in which judges have learned to conceptualize legal

in determining client goals. *See infra* part II.

⁴⁷ I use the term "tribunal" to encompass all legal decisionmakers, including mediators, arbitrators, administrative judges, and state and federal judges.

⁴⁸ Clark Cunningham has observed, "The lawyer cannot change the client's raw memories of the experience but can and indeed must alter the client's knowledge of 'what happened' by reconstituting that experience into a different symbolic form." Cunningham, *supra* note 19, at 2482-83. Robert Dinerstein has acknowledged that, "Clients need lawyers not only to hear their stories, but also to help them shape those stories to make them as effective as possible within the existing legal milieu, or to collaborate with them to devise the best means to transform it. Put differently, lawyers and clients must of necessity look at client stories in an at least somewhat instrumental manner." Dinerstein, *supra* note 30, at 935.

⁴⁹ John M. Conley & William M. O'Barr, *Rules Versus Relationships In Small Claims Disputes*, CONFLICT TALK 178 (Grimshaw ed., 1990); William M. O'Barr & John M. Conley, *Litigant Satisfaction Versus Legal Adequacy in Small Claim Court Narratives*, 19 LAW & SOC'Y REV. 661 (1985).

claims. . . . Thus, on the level of story as well as sentence, powerless speakers tend to use speech strategies that increase their disempowerment.⁶⁰

In other words, disempowered litigants, such as the poor, cannot place legal construct on their own stories, and so if they are unrepresented the judge performs this task.

The control vested in the client under the reconstructive practices suggested by Professor Alfieri does not implicate utilitarian control of story. Neither "shifting the dominant-dependent hierarchy of the lawyer-client relation,"⁶¹ nor fuller telling of client story,⁶² nor "integration of client-spoken narratives into the public storytelling of advocacy,"⁶³ nor direct client participation in the dispute resolution process⁶⁴ involves placing legal construct on the client's story. Thus, under these reconstructive practices, the role of imposing legal construct is left unassigned.

If the poverty lawyer does not take an interpretive editorial role in the presentation of the client's story through the imposition of legal construct upon it, utilitarian control over the story is forfeited to other entities, such as the tribunal or the opposing attorney, neither of whom are as closely affiliated with the client's interests as the poverty attorney. Although it may be "beyond the lawyer's epistemological and interpretive reach"⁶⁵ to fully identify with the client's normative reality, the poverty lawyer certainly is more likely to impose a client-friendly legal construct on the client's story than an unaffiliated tribunal or adversary-affiliated counsel.

Furthermore, failure to impose a legal paradigm can lead to the presentation of an obtuse case to the tribunal. This omission can de-emphasize important elements of a case through juxtaposition of legally relevant information with holistically relevant, but legally irrelevant, information about

⁶⁰ White, *Subordination*, *supra* note 3, at 17. For observations of the powerlessness of pro se litigants in Baltimore's landlord-tenant courts, see Bezdek, *supra* note 4, at 583-90.

⁶¹ Alfieri, *supra* note 2, at 2136.

⁶² Alfieri, *supra* note 2, at 2138-39.

⁶³ Alfieri, *supra* note 2, at 2140.

⁶⁴ Professor Alfieri calls this practice "emplacement." Alfieri, *supra* note 2, at 2145.

⁶⁵ Alfieri, *supra* note 2, at 2111.

the client.⁵⁶ Such an approach can consume more of the court's time than an already focused case.⁵⁷ In essence, failure to impose legal paradigm can compromise the client's legal goals in the name of complete presentation of the client to the tribunal.⁵⁸

I do not suggest here that placing legal construct is a neutral practice. Undoubtedly, traditional legal interpretation leads many poverty lawyers to reject socially contextualized legal arguments without giving them enough consideration. For example, in my own practice I failed to use in advocacy the fact that my client, a Navajo, thought that he had been evicted when his landlord told him, "If you don't like my rules, you can leave." Constrained by my narrow and traditional interpretation of the word "evicted," I concluded that he was liable for the balance of the rent owed on his apartment because he had abandoned the apartment before termination of his lease. Had I been willing to consider the usability of my client's interpretations in advocacy, I might have been able to handle the case in a way that would have been more beneficial to my client and would have validated his understanding of the forces working in his world.⁵⁹ On the other hand, it is likely that

⁵⁶ John M. Conley and William M. O'Barr label these two storytelling styles "relational" and "rule oriented" in their essay *Rules Versus Relationships in Small Claims Disputes*:

A *relational* account emphasizes status and relationships, and is organized around the litigant's efforts to introduce these issues into the trial. A *rule oriented* account emphasizes rules and laws, and is tightly structured around these issues. . . . Rule-oriented accounts mesh better with the logic of the law and the courts. . . . [They] concentrate on the issues that the court is likely to deem relevant to the case. . . . By contrast, relational accounts are filled with background details that are presumably relevant to the litigant, but not necessarily the court, and emphasize the complex web of relationships between the litigants rather than legal rules or formal contracts.

Conley & O'Barr, *supra* note 49, at 178-79.

⁵⁷ See Julie Shapiro, *Snake Pits and Unseen Actors: Constitutional Liability for Indirect Harm*, 62 U. CIN. L. REV. 883, 887 (1994) ("Lawyers routinely transform multi-dimensional client stories into focused narratives that can be told in court.").

⁵⁸ See Alfieri, *Stances*, *supra* note 7, at 1239, interpreting Cunningham, *supra* note 10, at 1362 (communicating full client story may "interfere" with "effective" representation).

⁵⁹ For example, use of this misinterpretation by my client of what it meant to be evicted could have allowed my client to tell the court about prejudiced or mean-spirited behavior by the landlord leading up to the "eviction." This could have both given voice to my client's feelings at facing this type of behavior and

even had I considered and presented this argument, it might have failed in the face of the court's technical definition of "eviction."

Professor Alfieri argues that the lawyer's pre-understanding of the client's world leads to unwarrantedly narrow use of client struggle and context in the legal setting.⁶⁰ This view suggests that if poverty lawyers could just understand the normative aspects of their clients' lives, they would be able to use these aspects in dispute resolution. But as the eviction story suggests, the real challenge, even for poverty lawyers who hear and understand their clients' struggles, is to be able to suspend their pre-understanding of the traditional boundaries of rules of law when imposing legal paradigms on their clients' stories. In other words, an unwarrantably narrow understanding of the boundaries of law, not of the client's world, may be the culprit.⁶¹

Professor Alfieri also suggests that poverty lawyers "pre-suppose that narratives of client struggle are unusable in advocacy."⁶² But the act of placing legal construct on a client's story demands productive, selective use of narratives of client struggle.⁶³ Thus poverty lawyers must pre-suppose that not *all* narratives of the client's struggles are productive toward obtaining the client's legal goal, and must choose what discourse of struggle must be omitted from the client's story as told in the legal setting. This choice may not always be exercised perfectly. For example, the story which Professor Alfieri tells to demonstrate that he, like all poverty lawyers, assumed that his client's struggle was not usable in advocacy evidences to my mind a poor choice of what narrative of struggle is usable rather than an out-of-hand dismissal of the usability of

helped to explain why he thought he had been evicted.

⁶⁰ Alfieri, *supra* note 2, at 2123.

⁶¹ See Hosticka, *supra* note 37, at 609, for a discussion of poverty attorneys' failure to consider legal courses of action.

⁶² Alfieri, *supra* note 2, at 2123; see also Alfieri, *supra* note 4, at 644.

⁶³ For an example of aspects of story's relation to desired result see, William N. Eskridge, *Gaylegal Narratives*, 46 STAN L. REV. 607 (1994). In this article Professor Eskridge tells a fuller story of gays in the military. But he does not simply retell the story. He demonstrates why pieces of that story are productive and relevant to contesting the military's "don't ask, don't tell" policy. This connection between story and its relevance is the connection often missing in theoretics of practice literature.

struggle in telling the client's story.⁶⁴ That this choice leads to the omission of some discourse of struggle, and is not always exercised perfectly, must not lead to the conclusion that poverty attorneys assume that *all* narratives of client struggle are unusable in advocacy.

Placing legal construct on a story may involve adaptive interpretive stances appropriate to the forum, the judge, the opponent, the opposing counsel and a host of other factors which may shift and change during the course of a case. It may involve interpretive stances objectionable to the lawyer. It may involve interpretation and re-interpretation, adaptation and re-adaptation.

These interpretive stances are not falsification of the client's normative reality,⁶⁵ but facilitation of client story toward client goal.⁶⁶ This is the very same navigational interpretation performed by all lawyers on all clients' stories.⁶⁷ It empowers client narrative by selectively relating interpreted client narrative appropriate to serving the purpose for which the story is told in the first place. It is the professional act of constructing out of the bricks and mortar that are our laws a bridge between the client's story and the client's goals.⁶⁸ It is

⁶⁴ Professor Alfieri asserts that most poverty lawyers would view as unusable in advocacy information regarding his client's frustrations and hardships from dealing with her social security caseworker. Alfieri, *supra* note 4, at 643. As proof of this, he explains how he omitted this discourse of struggle from his story of the client's legal issues, forcing the client to raise this narrative of struggle herself before the administrative law judge. Alfieri, *supra* note 4, at 643. I personally do not know many poverty lawyers who would exclude this discourse of resistance in their rendition of this client's story. I am sure there are some poverty attorneys, including myself, who would even provide Mrs. V. with the space to make her entire statement without interruption in the form of questions. For a similar criticism see Miller, *supra* note 3, at 528.

⁶⁵ Alfieri, *supra* note 2, at 2111.

⁶⁶ Indeed, Clark Cunningham has observed that the "change in meaning [involved in lawyer translation of client story] need not result in 'misrepresentation,' if . . . the lawyer engages both the client and the law-speaking other party in dialogue that enable each to expand what they know so as to meet on common ground." Cunningham, *supra* note 19, at 2491.

⁶⁷ For a similar description using the word "translation" instead of navigation see Cunningham, *supra* note 19, at 2491; Cunningham, *supra* note 33, at 1299-1300 ("Translation offers both an image of the constraints upon a lawyer's ability to represent fully his client's story and a model for recognizing and managing the inevitable changes in meaning in a way that may empower rather than subjugate the client.").

⁶⁸ Clark Cunningham has observed that "the lawyer must identify and cross

the only means to assure that utilitarian control of story remains with the client.

Even when poverty lawyers do expand and reconsider their presuppositions regarding the limits of legal argument they still must accept and reject facts and legal arguments as they impose legal paradigm on the client's story and begin the process of distilling client story toward client goal. For example, it was my job as the Bakers' lawyer to at least consider the impact of domestic violence and alcohol abuse on their case, and whether any information about these issues belonged in the legal content of their mortgage story. My first consideration had to be a recognition of the Bakers' domestic situation.⁶⁹ My next consideration had to be whether a judge or jury would care if one of the reasons the Bakers had defaulted on their mortgage payments might have been that alcoholism and abuse had kept the Bakers from earning a large enough income to make the payments. I most certainly had to consider whether information about the Bakers' domestic situation, if included in the legal content of their story, would most likely hurt or help the outcome they desired (i.e., not to be kicked out of their house with no money to find replacement housing). Finally, I had to consider whether the Bakers wished to make public this aspect of their lives.

The act of applying legal construct to a client's story must take into consideration social context, systemic limits on the usability of social context, and the costs of using social context

the gap between what the client says and what can be said in the language of the law." Cunningham, *supra* note 19, at 2491. He has also observed that "[b]y speaking through a translator, one can be heard and understood in places where otherwise one is mute." Cunningham, *supra* note 10, at 1299.

⁶⁹ Recognition of circumstances like those facing these clients is not always easy. Early in my representation of them, the Bakers did not give any indication of the alcoholism or domestic violence affecting their lives, and I did not begin my relationship with them assuming their marriage involved domestic violence and alcoholism. I only discovered these problems when Mr. Baker was arrested during a domestic dispute and Mrs. Baker called me to ask if I could help Mr. Baker. I suppose the most any attorney can do is hope to create a space where it is safe for the client to reveal this sort of embarrassing information. Yet, it may not be possible for the attorney to do this in cases such as the Bakers', where I met with both the husband and wife together and they were both my clients. Also, needless to say, it is common for people who are alcoholics or drug addicts to be in denial. No amount of "safety" can encourage disclosure of something the client does not even recognize.

in argument. There are undeniable limits on the extent to which socially contextualized argument can impact outcome, and public airing of social context is not without its costs. Thus, the poverty attorney who has broadened his or her horizon and considered non-traditional facts and legal arguments may still reject the usability of aspects of the client's story or the attainability of aspects of the client's goal.

That the attorney performs this final act of determining the boundaries of the story to be presented in advocacy should not necessarily lead to an indictment of the poverty attorney. It is not in the client's best interest for the poverty lawyer to completely abandon her experientially derived knowledge and expertise and become merely a conduit for the telling of the client's story by defaulting to the client's definitions of relevancy. The *act* of having considered nontraditional elements of the client's story and having applied broadly considered legal paradigms to the client's story should be the goal of reconstructive practice, not necessarily the reflexive use of these elements of story in advocacy.

If clients, poverty-stricken and otherwise, were able to place legal construct on their own stories they would not need attorneys, except perhaps as procedural guides.⁷⁰ Interpretive selection and omission of pieces of a client's story is the application of attorney expertise to the client's story. To seek to impose this role on the client abdicates the responsibility of the poverty lawyer and disregards the reasons why the client has come to the poverty lawyer in the first place.

It is my belief that the very job of the poverty lawyer, or for that matter any lawyer, is to take utilitarian control of a client's story toward achieving the client's legal goal. Failure to do so gives the client only illusory control, turns utilitarian control over to entities not aligned with the client, and eviscerates the lawyer's paramount role in the client's life.

⁷⁰ See White, *Mobilization of the Margins*, *supra* note 3, at 542-43 ("The talk and ritual of litigation constitute a discourse and a culture that are foreign to most poor people. Poor people obviously do not speak in the same dialect that lawyers, judges, and elite business people use.").

2. Ownership of Story

What is left to the client if, by imposing legal construct, the poverty lawyer exercises control over the form and substance of the client's story in the legal setting? Professor Alfieri suggests that what takes place when, through the imposition of legal construct, lawyer narrative displaces client narrative is no less than a de facto transfer of absolute ownership of the client's story from the client to the lawyer: "[T]he cost[s of poverty law advocacy are] . . . paid for by the lawyer's purchase of the client's story, and with it, her voice and narrative."⁷¹ But this vision treats story as if it were a thing or object capable only of singular placement.

The notion of clients' stories as things to be placed with either client or lawyer fails to acknowledge the multifaceted role of any given story. The lives of most poverty clients, like those of all clients, are rich with complex relationships and alliances. As with all individuals, poverty law clients tell their stories in different settings for different reasons. They may tell their stories to a family member for emotional support; to others in the same position for political reasons; to their religious leaders for guidance, strength or forgiveness; to their children as lessons; to their employers to justify absences. In each setting, the client may distill the story in furtherance of the purpose for which the story is being told.⁷² Over time, the client's own understanding of his or her story may change and transform.⁷³

In the legal setting, the story poverty lawyers construct is a distillation of legal content in furtherance of the legal pur-

⁷¹ Alfieri, *supra* note 2, at 2146. In a later article he speaks of the client's surrender of her voice and story in exchange for legal aid. Alfieri, *supra* note 4, at 632.

⁷² In fact, the story that we hear from clients may already be a client-based, legal distillation of client story. For a study of how clients perceive their own legal problems, see Sarat, *supra* note 13, at 365-374. We should not believe that we hear the same client story that, for example, the client's spouse or minister might hear. Professor Gerald Lopez articulates various stories that could be told in various settings around the same problem. Lopez, *supra* note 3.

⁷³ See, e.g., Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475, 2476 (1993) ("The story told by a battered woman on one day may be different two days later, after she has separated from the batterer.").

pose. Does this act implicate a transfer of ownership of story from client to lawyer? I do not believe so.

The paper out of which we cut our narrative of a client's story is, for lack of a better analogy, not the original manuscript, but a photocopy. We are asked to take our copy and cut and paste until the story can be used to achieve the client's legal goal. In this construct, original client story, consisting of normative, moral, religious, political, social *and* legal content, is never transferred to the poverty attorney. The ownership of story is unaffected. Ownership is left intact and in the client's control for selective use in other settings. The story can be re-told, adapted, modified or concealed in all private and public aspects of the client's life by the client, unencumbered and uncontrolled by the attorney.

That client story remains intact and within the client's control, even when client narrative is displaced in the legal setting by lawyer narrative, is demonstrated by Professor Alfieri's description of Mrs. Celeste's use of aspects of her own story "in welfare and utility company offices, foster parent meetings, and administrative hearings,"⁷⁴ and in her sharing of a "fuller story of her struggle" in her foster care meetings.⁷⁵ Undoubtedly, these were not the only arenas in which Mrs. Celeste told her story.⁷⁶

Lucie White recommends this use of story, outside of litigation over the same story, as a parallel space, "in the shadow of welfare litigation," where "clients could speak their own stories of suffering, accountability and change, free from the technical and strategic constraints imposed by the courtroom."⁷⁷ Clearly, this parallel space continues to exist despite the narrative interpretation and imposition of legal construct

⁷⁴ Alfieri, *supra* note 2, at 2131.

⁷⁵ Alfieri, *supra* note 2, at 2144.

⁷⁶ Similarly, by publishing *Letter from a Birmingham Jail*, Dr. Martin Luther King, Jr. proved that he retained ownership of the story of his civil disobedience and arrest in Birmingham, Alabama in 1963, despite the stories told by his lawyers and a juridical record fixing in history a judicial determination that he had committed a crime. Compare Martin Luther King, Jr., *Letter from a Birmingham Jail*, in *WHY WE CAN'T WAIT* 77 (1963) with *Walker v. City of Birmingham*, 388 U.S. 307 (1967). See also David Luban, *Difference Made Legal: The Court and Dr. King*, 87 MICH. L. REV. 2152 (1989) (contrasting the Court's decision in *Walker* with *Letter from a Birmingham Jail*).

⁷⁷ White, *Mobilization on the Margins*, *supra* note 3, at 546.

performed by the poverty attorney. Thus, the poverty attorney does not have the omnipotence to appropriate or lose client story, only the power to lose the client's case.⁷⁸

3. Images of Dependence and Inferiority in Story

In poverty practice the majority of my clients told stories that often made me wonder how human beings could live with themselves while engaging in a course of conduct that involved such victimization of others. I handled countless cases for students who had been promised and had paid for an education by private vocational schools that closed or severely failed to educate them. I handled countless cases of clients who traded in their cars for new ones that didn't make it through the first week of ownership. I repeatedly faced landlords who kept security deposits, failed to maintain safe premises, and pursued my clients with vindictiveness. In these, and other types of cases, the clients I represented were very different from each other. Collectively and individually they portrayed every opposing cliché used to describe "the poor": they were weak, they were strong, they were hard-working, they were lazy, they were strongly devoted to their families, they didn't care about their families, they were addicted to drugs and alcohol, they abstained from the use of drugs and alcohol, they were educated, they were uneducated. The one way in which they were all similar was that the stories they told—the stories which had brought them to my office for help—usually contained elements of dependence and victimization. I believed then, and still believe, that a poverty lawyer must not hide aspects of dependence and victimization in a client's story when that victimization or dependence is an integral part of explaining "what happened."

Theoreticians of practice scholars criticize images of dependency used in poverty law advocacy for presenting clients as inferior, dehumanized objects. Once again, Professor Alfieri makes the most vehement criticism. To Professor Alfieri, images of dependency in lawyer narrative of a client's story position the client as inferior: "an object acted upon but incapable of

⁷⁸ For a discussion of the permanent inscription of story in published judicial opinions, see generally Luban, *supra* note 76.

action.⁷⁹ But dependency is not always synonymous with inferiority or even with marginalization. The meaning of dependence can range from the positive dependence of relying on others to help us when we do not know how, to a debilitating lack of ability to handle any aspect of our lives, including everything in between. Some form of dependence likely plays a part in the stories told by clients embroiled in legal disputes.

A client (or attorney for that matter) who is divorced and granted visitation of his or her children depends in a very real way on the good faith of the other parent in facilitating visitation. A welfare recipient depends all too often on the good graces of welfare office workers to continue receiving benefits trouble-free.⁸⁰ Tenants depend on the willingness of their landlords to comply with housing codes. People like me who don't know anything about cars depend on mechanics to tell us the truth about the problem and to repair only what is wrong.

Various colleagues with whom I shared the ideas in this Article insisted that the dependence I experience when I deal with, for example, an auto mechanic, differs somehow from the dependence my clients experience when they encounter the same mechanic. The essence of this view is that I am better able to manage unfamiliar situations because of my education, because of my income level, because I am white: essentially because of all of the things that would not categorize me as a minority or as disadvantaged. The converse conclusion is that in some ways my dependence on a mechanic resembles my clients' dependence because I am a woman. These assumptions lead inexorably to the conclusion that because poverty clients are always powerless, they are always dependent, and that because it is their poverty—and possibly their minority status—that makes them necessarily dependent, that dependency inexorably equates with inferiority.

The story conclusion drawn from these observations is that the dependency I experience is not infused with inferiority, while the dependency experienced by my client is. Hence the dependency in my client's story should somehow be omitted from tribunal storytelling, while my own dependence, should I

⁷⁹ Alfieri, *supra* note 2, at 2128; see also, Alfieri, *supra* note 4, at 625.

⁸⁰ This condition is recognized in White, *Mobilization on the Margins*, *supra* note 3.

need to resort to a tribunal, or even the inferior negotiating capabilities of a small business dealing with a large corporation, can be used in tribunal storytelling without connoting inferiority.⁸¹

I believe that drawing storytelling conclusions based on this presumed power position of poverty clients is misguided. I do not believe that individuals or groups of individuals have a single level of powerfulness that places them in the same position of power in every encounter they have. I cannot claim to be better positioned to handle an auto mechanic than my client who is an auto mechanic simply because I am educated and white. I can claim to be in a better position than my client in dealing with a landlord who has unlawfully kept my security deposit because I know that the law requires return of the security deposit and I can file a lawsuit without paying for an attorney. Essentially, I do not believe that decisions whether to include images of dependency in storytelling can or should be based on the economic circumstance, race, gender, or national origin of the client.

That all of us, poverty clients and poverty lawyers alike, are dependent in certain circumstances does not suggest a wholly dependent or inferior existence. By the time most poverty law clients see a lawyer they have been forced into a dependent position by the very entity whose power they seek to challenge through the lawyer.⁸² They have been abused by a spouse, treated unfairly by a car dealership or their employer or the government, or forced to live in squalid conditions. The situational dependence that inevitably accompanies predicaments such as these is real. Any version of the client's story which includes this dependence is not the result of a false imprimatur of dependence, but acknowledgment of dependence that already exists. Similarly, describing the client as having been acted upon where this is the case is not interpretive violence, but interpretive honesty.⁸³ Mrs. Celeste, the client about whom Professor Alfieri writes, *was* "[a]s a foster par-

⁸¹ See generally Alfieri, *supra* note 2; Alfieri, *supra* note 4, at 629.

⁸² See Hosticka, *supra* note 37, at 602.

⁸³ Professor Alfieri speaks in several articles about lawyers portraying their poverty clients as objects being "acted upon." See Alfieri, *supra* note 2, at 2128-29; Alfieri, *supra* note 4, at 631.

ent . . . trained, licensed, and inspected⁸⁴ and “[a]s a food stamp recipient . . . certified, budgeted, and issued benefits.”⁸⁵ The Bakers *were* acted upon by their mortgagee. Ellen Smith *was* dependent on her ex-husband’s good faith in complying with visitation. A story inclusive of these facts does not have to suggest that this dependence permeates all aspects of the client’s life.

A paradigmatic interpretation of the client’s story which recognizes that this limited and situational dependence exists cannot by itself “conjure . . . the image of the client as a dependent and inferior object.”⁸⁶ In other words, an inferior image of the client is not a necessary corollary to recognizing that some level of situational dependence exists in the story the client has been a part of. To tell their stories as if Mrs. Celeste or John and Jane Baker were not dependent and acted upon in their particular situations would be to falsify their stories. That a client is taken advantage of by a car dealer, beaten by a spouse, evicted by a landlord, caused injury by another party, defrauded, licensed, unlicensed, issued an order to pay overpayments, or recruited to a fraudulent vocational school does not suggest inferiority, but merely the dependence that can accompany being victimized. It is not possible to tell these stories without the element of dependence. More importantly, it may not be wise for us, as lawyers, to tell these stories absent the elements of dependence and victimization, since these factors play a role in explaining the equities of a case.

The images of dependency that often accompany a poverty client’s story recount one aspect of one relationship in the client’s life in which the client has lost, or perhaps never had, equal power. These images of dependency accurately reflect dependency arising from the situation in which the client finds himself or herself. These images are essential to productive and honest advocacy. Recognition that these uneven circumstances exist in the client’s life does not necessitate creating an image of complete social dependence and inferiority. Furthermore, acknowledgement of situational dependency is not inherently more embarrassing or disempowering to a poverty client

⁸⁴ Alfieri, *supra* note 2, at 2128.

⁸⁵ Alfieri, *supra* note 2, at 2128.

⁸⁶ *Contra*, Alfieri, *supra* note 2, at 2121; Alfieri, *supra* note 4, at 629.

than it would be to a wealthier client who has been taken advantage of or victimized. Most importantly, these reality-based images of dependency do not require that the poverty lawyer conjure up or convey the image of a fully dependent or inferior being, but of a dependent circumstance in the multifaceted and multi-positioned life of the client. In the end, the judge, jury or adjudicator may, because of personal biases, view the presented situational dependence in a manner that is denigrating to the client's personhood. But this risk cannot keep the poverty lawyer from describing situational dependence that is an integral part of the client's story. We must be certain we are not conjuring irrelevant images of inferiority and dependence, but we cannot omit relevant facts for fear that through those facts, others will conclude that our clients are inferior.

The stories clients tell us usually contain aspects of both dependence and independence, competence and incompetence, superiority and inferiority. These elements of story necessarily comprise part of the lawyer-narrated whole and the client-narrated whole. They need not merely appear in oppositional pairings caused by competing lawyer and client narrative images,⁸⁷ with lawyer-told narrative using only the negative aspects of these oppositional pairings. Dependence and incompetence sometimes must appear in narrative images because they are present in the life and incident being described, and because they are almost always relevant to legal relief. A client who has been forced into a dependent position by an unfair opponent is much more likely to win the sympathies of the tribunal than one who presents a sanitized story that fails to fully convey the impact the opponent has had on the client's life.

If lawyer incorporation of real dependency into lawyer narrative is not the cause of imaging and portraying the client as a dependent and inferior object, then what is? Undoubtedly some poverty law attorneys view, treat and portray their clients as "dependent and inferior object[s]."⁸⁸ But this problem does not emanate from a legal services paradigm that recognizes situational dependence. Rather, the stigmatized vision of a

⁸⁷ Alfieri, *supra* note 2, at 2136.

⁸⁸ Alfieri, *supra* note 2, at 2136.

dependent and inferior poverty client is rooted in negative generalizations about the poor, undoubtedly exacerbated by burnout and case load: a problem separate and apart from recognition of the existence of situational dependence.⁸⁹

The poverty lawyer able to avoid negative generalization is unlikely to treat her clients as dependent and inferior objects and can see dependence where it actually exists in a client's story and life. Without generalization, the poverty lawyer is likely to find some clients who, despite the elements of dependency and being acted upon in their stories, are powerful and independent. On the other hand, there will be clients who are dependent on drugs or alcohol, who engage in criminal behavior, or who abuse their spouse or children. While these client traits may lead the poverty lawyer to a subtextual conclusion that a client is dependent or inferior, this conclusion is distinct from the dependency found in the story of the client's legal problem.

The dependency found in a client's story should not be rejected simply because it is a form of dependency. Inferiority is not a necessary companion to stories with elements of dependence, and failure to recognize and use elements of dependence in a client's story is more likely to lead to falsification of the client's story than lawyer narrative of the client's story. We are all dependent when we are victimized. The dependence that Professor Alfieri speaks of, the dependence synonymous with inferiority, is not the same as the elements of dependency found in a client's story. Rejection of the dependence synonymous with inferiority does not mandate rejection or ignorance of the real dependence that may exist in a client's story.

Poor or not, we are all forced into dependent roles at times. Recognizing this situational dependency, and using it in advocacy on behalf of a client, cannot by itself marginalize and subordinate the client unless recognition of dependency is also accompanied by negative generalization and failure to recognize the client as an individual.

⁸⁹ For a critique of poverty lawyering that focuses on the legal services milieu, rather than poverty attorneys themselves, see Trémbly, *Rebellious Lawyering*, *supra* note 3, at 950. See also Dinerstein, *supra* note 30, at 983.

4. Normative Content of Story: When Bad Things Happen to Bad People⁹⁰

Some scholars who suggest using client-told story instead of lawyer distillation of the client's story in advocacy demonstrate this point by telling the stories of poverty clients whose full stories contain hegemonically valued normative content, such as love of family and children,⁹¹ or respect for religion.⁹²

In *Reconstructive Poverty Law*, Professor Alfieri speaks extensively of the virtuous elements of his client's story that he omitted in his re-telling of her story—the elements of Dignity, Caring, Community and Rights.⁹³ The stories of the clients about whom he has written in other articles all contain similar virtuous elements.⁹⁴ Similarly, in *Notes on the Hearing of Mrs. G.*,⁹⁵ Lucie White examines whether her lawyering silenced her client's story, which valued the purchase of church shoes as a necessity of life.⁹⁶

Although Professor Alfieri disclaims an essentialist portrait of poverty client story,⁹⁷ he uses Mrs. Celeste's story to demonstrate that lawyer-told client story, by its very interpretive nature, is antithetical to client story imbued with normative meaning and values such as "selfhood, family, community, love and work."⁹⁸ In essence, he suggests that virtuous or pos-

⁹⁰ This is a word play on HAROLD S. KUSHNER, *WHEN BAD THINGS HAPPEN TO GOOD PEOPLE* (1981).

⁹¹ See generally Alfieri, *supra* note 2, at 2107; Alfieri, *supra* note 4, at 652.

⁹² See generally White, *Subordination*, *supra* note 3. But see Dinerstein, *supra* note 30 (reflecting on a case in which the client may have had psychiatric problems).

⁹³ Alfieri, *supra* note 2, at 2114-18.

⁹⁴ Professor Alfieri has written about a two-year-old client with sickle-cell anemia who was excluded from the WIC nutrition program in Alfieri, *Antinomies*, *supra* note 7, at 693, and a young mother in need of diapers and formula for her baby. Alfieri, *supra* note 4.

⁹⁵ See generally White, *Subordination*, *supra* note 3.

⁹⁶ But see generally Lucie E. White, *No Exit: Rethinking 'Welfare Dependency' from a Different Ground*, 81 GEO. L.J. 1961, 1974-75, 1999-2000 (1993), in which Professor White discusses the need for liberal scholars to consider all welfare recipients, even those who conform to the lazy, able-bodied poor image of conservative discourse, in discussions of welfare policy.

⁹⁷ Alfieri, *supra* note 2, at 2122. But see Alfieri, *supra* note 4, at 632 ("These strategies affirm a client world infused with the values of autonomy, community, and participation. Such values are always immanent.").

⁹⁸ Alfieri, *supra* note 2, at 2119; see also Alfieri, *supra* note 4, at 634, in which

itive images of these values and elements are necessarily present in, and then omitted by lawyer distillation of client story.⁹⁹

By choosing to write about Mrs. Celeste, Professor Alfieri is able to show how, in her case, his traditional interpretive practice forced omission of essential elements of his client's struggle as a human being. He then extrapolates from his omission a criticism of traditional poverty law practice in general for its failure to present story in the course of advocacy that is imbued with normative content. The subliminal message is clear. Traditional advocacy fails to convey a holistic image of the client, favoring instead presentation of a limited glimpse of the client's reality, and thereby ignoring the virtuous and righteous aspects of a client's story.

Daniel Farber and Suzanna Sherry have warned that "[i]f the story is being used as the basis for recommending policy changes, it should be typical of the experiences of those affected by the policy."¹⁰⁰ One of the major defects with a poverty law theory that advocates as standard practice the telling of clients' stories imbued with normative content is its reliance on a romanticized and biblically based¹⁰¹ generalization of the poor that fails to recognize the normative, moral, ethical and legal differences in individual client's stories.¹⁰² Not all poverty clients can tell stories like Mrs. Celeste's,¹⁰³ imbued with

Professor Alfieri speaks of his client's "daily acts of autonomy and community."

⁹⁹ Alfieri, *supra* note 2, at 211-13. Peter Margulies recognizes the homogeneous perception of descriptively similar groups in *The Mother with Poor Judgment*, 88 NW. U. L. REV. 695, 699, 714-15. The differences among the "welfare poor" are explored in Sarat, *supra* note 13, at 348; *see also*, Lopez, *supra* note 3, at 1716 ("[T]he subordinated, for all their apparent solidarity in certain struggles, are not in any sense homogeneous.").

¹⁰⁰ Farber & Sherry, *supra* note 14, at 838.

¹⁰¹ Luke 6:20-21, 24 (King James) the Holy Bible containing the old and new testaments set forth in 1611 and commonly known as the King James Version. "And he [Jesus] lifted up his eyes on his disciples, and said, blessed be ye poor: for yours is the kingdom of God. Blessed are ye that hunger now: for ye shall be filled . . . But woe unto you who are rich! for ye have received your consolation."

¹⁰² Binny Miller has criticized that "[c]ritical lawyers proffer a naive vision of clients, all of whom are pure of heart and eager to speak. . . . [C]ritical lawyers mostly write stories about idealized clients." Miller, *supra* note 3, at 528. Miller adds that "The critical analysis in recognizing only clients that make the job of lawyering easy, provides little frame of reference for client stories that are neither noble nor empowering." Miller, *supra* note 3, at 526.

¹⁰³ Alfieri, *supra* note 2, at 2110.

Dignity, Caring, Community and Rights,¹⁰⁴ or like Mrs. G.,¹⁰⁵ who spent some additional money she received one month on the children's Sunday shoes, and not on alcohol. Unfortunately, the content of the client's story in many poverty law cases involves alcoholism, drug addiction or abusive conduct.

Unquestionably, many poverty clients tell stories that are full of elements of virtuosity and struggle. But an entire theory of poverty law and the conveyance of clients' stories cannot ignore that this group is not necessarily representative, and in many cases, relation of a client's story imbued with normative content may have prejudicial or embarrassing effects on the client. In a case where, for example, the client is addicted to drugs, it is imperative that the poverty lawyer interpret and narrate the client's story. Without doing so, the poverty lawyer cannot assure the client that resolution of the client's legal issues will be untainted, or at least uncontrolled, by the negative realities of the client's life.¹⁰⁶

In these cases, the poverty lawyer's very job is, strictly speaking, to "falsif[y] the normative content of [the client's] story."¹⁰⁷ Through this method of story-telling, the lawyer serves as the funnel through which relevant and unbiassing pieces of the client's story can flow. If the attorney fails to erect this interpretive barrier between the client and the decision-making entity, the poverty lawyer has failed to perform one of her most crucial roles: making sure that bias against the poor, the addicted, the abusive, and the like does not enter into a decision where it does not belong. Through this editing process, the legal needs of the client can be presented; while the other realities of the client's life, which might lead a tribunal to conclude that the client does not "deserve" relief, can be left out of the resolution process.

In these cases, the reconstructive practice of metaphor suggested by Professor Alfieri,¹⁰⁸ in which a more complete

¹⁰⁴ Alfieri, *supra* note 2, at 2111, 2114-18.

¹⁰⁵ White, *Subordination*, *supra* note 3, at 21.

¹⁰⁶ Of course I do not mean that the lawyer should lie to a tribunal about a client's realities when those realities are relevant to determination of the legal issue involved.

¹⁰⁷ Alfieri, *supra* note 2, at 2111.

¹⁰⁸ Alfieri, *supra* note 2, at 2138-39.

account of the story is told, may be more harmful than helpful to the client. Not all stories will include normative content telling of a client's "struggle to survive while providing for nine natural and foster children."¹⁰⁹ I had clients whose stories included normative content of abuse and consequent loss of custody of as many children. This content did not dictate that these clients were undeserving of relief under the Truth in Lending Act, or were not entitled to general assistance or unemployment compensation. Had I included normative content in my narrative of their stories, these clients' cases might not have been as persuasive, although ideally this content should have played no role in the outcome of their cases. Similarly, the reconstructive practice of redescription suggested by Professor Alfieri,¹¹⁰ which "discredits traditional images of client dependency by crediting client narratives of daily struggle,"¹¹¹ may be inappropriate where the normative content of the client's story involves substantial elements of dependency or addiction.

It is my belief that no formulaic approach to the presentation of a client's story can be suggested. In cases such as Mrs. Celeste's, Mrs. G.'s or Ellen Smith's, where the client's story imbued with normative content presents a picture of an archetypal "deserving"¹¹² poor person, the poverty attorney still must decide what "deserving" aspects of the client's story should be conveyed to the tribunal in order to achieve the client's goals. Where the client's story imbued with normative content depicts a person whom society might judge as undeserving because of addictive or other behavior, but who remains legally entitled to relief, extraneous normative content must be omitted for the benefit of the client. This approach does not admit a traditional presupposition "that narratives of client struggle are unusable in advocacy,"¹¹³ but rather a recognition that the poverty attorney must selectively use narratives of client struggle in advocacy. The decision must be made on a case by case basis, taking into consideration the realities

¹⁰⁹ Alfieri, *supra* note 2, at 2138.

¹¹⁰ Alfieri, *supra* note 2, at 2141.

¹¹¹ Alfieri, *supra* note 2, at 2141.

¹¹² Alfieri, *supra* note 2, at 2122 n. 55; Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499 (1991).

¹¹³ Alfieri, *supra* note 2, at 2123.

of the individual client's life.

C. *Earning the Right to Take Utilitarian Control of Story and Situational Power over the Client*

The act of taking utilitarian control of a client's story by placing legal construct upon it is legitimate only if the attorney distills and interprets the client's story toward the client's goal.¹¹⁴ Thus, the reconstructive practice of metaphor suggested by Professor Alfieri,¹¹⁵ which strives for fuller understanding of the client's story, is particularly essential in the early stages of the lawyer-client relationship.

It is imperative that the poverty attorney avoid the process of imposing legal construct on the client's story until the client has determined her goal. This determination may at times force the lawyer to take a less aggressive or public position than the lawyer would like.¹¹⁶ For example, the poverty lawyer may see the same bad conduct repeated by a potential class defendant willing to settle individual cases. It is incumbent upon the poverty lawyer not to file a class action until she finds a client willing to take on the role of class representative, even though a class action might be more efficient and make more sense.¹¹⁷

Even more significantly, the client's goal may not be obtainable through the legal system,¹¹⁸ or may place nonremu-

¹¹⁴ See DAVID A. BINDER, ET AL., *LAWYERS AS COUNSELORS* (1990); DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING* (1977).

¹¹⁵ Professor Alfieri describes the reconstructive practice of metaphor as forcing fuller understanding and telling of client story. Alfieri, *supra* note 2, at 2138-39.

¹¹⁶ For example, Professor Alfieri mentions that he might have discussed with his client "whether federal litigation best served her needs as a food stamp recipient and her aspirations as a foster parent." Alfieri, *supra* note 2, at 2139. Certainly this question should have been asked in the very early stages of developing a legal strategy. Professor Lucie White observes that "in practice, welfare litigators often subordinate their clients' perceptions of need to the lawyers' own agendas for reform. . . . [L]itigation is designed to effect broad reforms that will benefit the whole class of welfare recipients." White, *Mobilization on the Margins*, *supra* note 3, at 545. See also Carrie Menkel-Meadow, *Lying to Clients for Economic Gain or Paternalistic Judgment: A Proposal for a Golden Rule of Candor*, 138 U. PA. L. REV. 761, 776-77 (1990).

¹¹⁷ Of course, more public avenues for addressing repeat conduct are often available, such as reports to state or federal agencies.

¹¹⁸ See, e.g., William L. F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L.

nerative values over remunerative ones.¹¹⁹ Moreover, the relative importance of certain values may shift during the course of a legal matter. For example, in one of her articles Lucie White wrote about her client, Mrs. G.¹²⁰ Mrs. G. clearly had multidimensional and conflicting goals.¹²¹ She thought she did not want to repay, and certainly was not able to repay, her alleged AFDC overpayment.¹²² She felt a strong need to communicate to the welfare bureaucracy and her attorney that she did not mean to do anything wrong.¹²³ She felt the need to justify her expenditure of her insurance money as money spent on necessities, as defined by the welfare bureaucracy. Mrs. G. satisfied these needs by explaining that she had purchased new shoes for her children because their old shoes were worn out.¹²⁴ But Mrs. G. also wished to confirm her own definition of necessity, which she accomplished when she explained for the first time in her hearing before an administrative law judge that she had bought her children new shoes because they needed shoes for church.¹²⁵ Undoubtedly, both reasons for the shoe purchases were, at least in part, true.

Lucie White and Anthony Alfieri probably would agree that an attorney needs to make efforts to create a space in which a client can communicate values such as the necessity of church shoes.¹²⁶ But Professor Alfieri would likely condemn as interpretive violence a decision by Professor White, had she

REV. 1447, 1460-61 (1992).

¹¹⁹ For example, a client may be willing to face the possibility of "losing" the case in exchange for not forcing her child to testify on her behalf. See, e.g., Miller, *supra* note 3, at 508. A client may not want to jeopardize the safety of an undocumented co-worker. Lopez, *supra* note 3, at 1625. For a criticism of "The Critical View" for its failure to address the costs of reflexively valuing nonremunerative goals (intrinsic goals), see, Tremblay, *Tragic View*, *supra* note 3, at 134. ("What must be addressed, however, is the tradeoff that may result in any given lawyer/client encounter between intrinsic and instrumental ends.")

¹²⁰ White, *Subordination*, *supra* note 3.

¹²¹ Paul Tremblay has observed that Mrs. G.'s character and history was "complex and in flux." Tremblay, *Tragic View*, *supra* note 3, at 130.

¹²² Aid to Families with Dependent Children, 42 U.S.C. §§ 601, 615 (1982 & Supp. III 1984); White, *Subordination*, *supra* note 3, at 21-31.

¹²³ White, *Subordination*, *supra* note 3, at 26, 29.

¹²⁴ White, *Subordination*, *supra* note 3, at 30.

¹²⁵ White, *Subordination*, *supra* note 3, at 31-32.

¹²⁶ Again, not all clients will take this space despite the attorney's efforts. For a study critical of poverty attorneys for failure to make this space see Hosticka, *supra* note 37.

been given the choice, not to emphasize the story in which Mrs. G. bought the shoes for church, but to focus on the story in which Mrs. G. purchased the shoes because the children's other shoes were too old and worn.¹²⁷ Poverty attorneys should only be condemned, however, for the storytelling choices they make if those choices are made without regard to client-dictated priorities.

Based on Mrs. G.'s communicated primary desire to overturn the alleged AFDC overpayment and communicate that she had not meant to do anything wrong, Professor White set out to impose the AFDC legal paradigm on her client's story of the expenditure of the insurance check. This choice, to present the "my kids' old shoes were worn" story, was based on the client's communicated priority. This choice should not lead to a reflexive condemnation of Professor White's poverty practice, even though the client's need to communicate her value on church shoes, and not to contest the welfare power structure, emerged as paramount in the hearing.

Professor Alfieri also would likely condemn Professor White's practice for her failure to hear and to provide an avenue for her client's story and voice, suggesting that had she done so the "church shoes as necessity" value would have emerged as paramount prior to the hearing and would have controlled decisions made in Mrs. G.'s case.¹²⁸

Criticism of Professor White for not knowing and presenting the "church shoes" story suggests that, if given the opportunity, Mrs. G. could have assessed and presented stagnant needs that would have remained constant throughout the course of Professor White's representation. But I pose the alternative analysis: that poverty clients, like all people, have mutable and sometimes conflicting needs, all of which cannot

¹²⁷ In fact, Lucie White questions her own choices throughout the article. White, *Subordination*, *supra* note 3.

¹²⁸ Professor Alfieri also believes that the priority choices initially made by Mrs. G. were not made of her own free will. Alfieri, *supra* note 2, at 2129 (the poverty lawyer mistakenly "views client obedience as a free and rational choice elected by the client to maximize her well-being."). In earlier drafts of this Article, I began to address the idea that clients can never determine and present their needs because of their socio-economic and other power-dictated relation to their attorney. I ultimately decided that this issue was complex, massive and discrete enough that it deserved to be addressed individually, and not as part of an article on client story.

be met in the course of a lawsuit.¹²⁹ Therefore, the goal of representation needs to be constant recognition of the changing needs of a client, and strategy change and counsel in response to these changes.

For example, if Mrs. G.'s church shoes story had emerged as the story she would tell in the hearing, Professor White's role, as Mrs. G.'s attorney, would be to recognize this choice and to caution Mrs. G. that in the lawyer's best judgment, this story might lead to an affirmation of the overpayment. Moreover, a discussion of the various conventional "needs" that would be more likely to lead to a decision that there was no overpayment would be necessary.¹³⁰ But to merely allow Mrs. G. to tell her church shoes story without advising her of the potential consequences of telling that story would be a total abdication of Professor White's role as Mrs. G.'s attorney. Mrs. G. can only be said to have made a real choice once she is advised of the likely legal consequences of the story choices she thinks she wants to make.

This presentation of consequences gives the power of choice to the client. Do the attorney and client tell the story that is most likely to "win"¹³¹ or a story that may or may not lead to a "win"? The client must make a judgment, informed by the lawyer, as to whether story or assuredness of result is more important.¹³² That the client might accede to the

¹²⁹ James B. White has observed, "It is important to recognize that the client or witness often has not one single story, which will be translated well or badly, but a variety of possible ways to tell his story, among which choices must be made." White, *supra* note 36, at 1396, n. 11. Similarly, Conley and O'Barr have observed in their study of small-claims litigants that at any particular point in time the dispute is the account being given at that time. Each new account that the disputants give reflects somewhat different understandings, beliefs and emphases. Thus, any account is both determined by what has gone before and determinative of the present and future shape of the dispute. Conley & O'Barr, *supra* note 49.

¹³⁰ Julie Shapiro has observed that "[a] client's story can be presented as many cases, some of which may win, while others will probably lose." Shapiro, *supra* note 57, at 887. She further observes: "More accurately, there may be several winning cases and several losing cases contained in any client's story." Shapiro, *supra* note 57, at 887 n. 12. For discussion of the word "win" see *infra* note 131.

¹³¹ I use the word "win" here in a conventional sense. The conventional definition of a win in an overpayment hearing is to have the overpayment decision overturned so that the client does not owe the government the money that otherwise would have been deducted from the client's ongoing benefits.

¹³² For an example of this choice between stories of varying effectiveness see, Richard Delgado, *Storytelling For Oppositionists and Others: A Plea for Narrative*,

lawyer's judgment and tell a traditional story of need, and suppress for purposes of the overpayment hearing her definition of church shoes as a necessity, does not mean that the lawyer has silenced the client's voice. It means that the lawyer has realistically outlined the possible consequences of speaking different stories.

In order to hear and promote the telling of a client's story in the early stages of the lawyer-client relationship, the lawyer must, to some extent, adapt to the different storytelling styles of her clients. Hearing client story, however, does not implicate a complete abdication of direction by the lawyer. In many cases, the client's storytelling may leave out pieces that are indispensable to legal analysis of the client's problem. The client may organize his or her story randomly rather than chronologically. He or she may use pronouns instead of nouns, or skip over incidents that seem irrelevant to him or her. These modes of storytelling are not susceptible to placement of legal construct, though not problematic in other settings.

Environmental realities affecting client storytelling undoubtedly must be taken into consideration. It would be unrealistic to think that being in a law office, in front of a lawyer, has no impact on storytelling by the client. It is entirely possible that events in the legal aid office, such as the intake interview, may cause the client to tell her story in an oblique or halting style, such as that described by Professor Alfieri.¹³³ But a client's withholding or distorting elements of his or her

87 MICH. L. REV. 2411 (1989). In one case Delgado discusses, the client chose to pursue a strategy that systematically attacked the prison discipline system, as opposed to mounting a procedural challenge to the discipline assessed against him. *Id.* at 2467. Similarly, Robert Dinerstein writes of a case where the client's expressed desire was to tell her story, which presented a defense to battery not recognized by the law, even though telling her story greatly increased her chances of a prison sentence. Dinerstein, *supra* note 30, at 973. See also Miller, *supra* note 3, at 503-04, 513. Paul Tremblay speaks of this choice by the client as "informed consent." Tremblay, *Tragic View*, *supra* note 3, at 135-37. For a discussion of the importance of the lawyer's role in encouraging the client to explore issues such as what needs can be met through representation see, Lopez, *supra* note 3, at 1613.

Binny Miller has criticized that "clients are nearly always assumed to want to win, whatever the trade-offs." Miller, *supra* note 3, at 501. She recommends a greater role for the client in shaping goal and case theory towards achieving client goal. Miller *supra* note 3, at 501-02.

¹³³ Alfieri, *supra* note 2, at 2122. For consideration of lawyer conduct leading to the invention of memories the client believes the lawyer seeks see, Stephen Ellman, *Lawyers and Client*, 34 UCLA L. REV. 717, 742-43 (1987).

story cannot be viewed as the pure consequence of lawyer conduct.¹³⁴ Other individual or cultural factors cannot be discounted. For example, many of my Native American clients did not tell linear or chronological stories. Even at the first interview, I often had to place their stories on a timeline in order to analyze their legal claims. Thus, while the poverty attorney must be aware of her conduct with clients in an effort not to silence the client, the conduct of the poverty attorney should not be viewed as the only factor leading to client conduct in storytelling. It would be egocentric to think that poverty lawyers are the cause of every client behavior.

Even in the goal-defining stages of the lawyer-client relationship, power over client story, through control over defining relevance and irrelevance, must be shared by the client and the lawyer. The story the client tells must be the story that the poverty attorney first hears,¹³⁵ although it may not be the same story that ultimately is told in advocacy. But if, after hearing completely the client's story, the lawyer does not seek to embellish the story with legally relevant information, the later control over relevance and irrelevance, speech and silence that I believe is an integral part of the lawyer's role loses its legitimacy.

The lawyer direction needed to obtain from the client all the information necessary to legal analysis differs from the paradigmatic re-telling that will necessarily occur later, once the client's goals have been defined and possibly re-defined. The lawyer must not impose legal paradigms under the guise of obtaining information necessary to applying legal theory. The lawyer must seek to bring out those aspects of the client's story meaningful to the client, and those aspects of the client's story meaningful to legal interpretation, so that the two can be brought together to distill continuously client goal and legal content of story in furtherance of that goal.¹³⁶

This process can be performed in a way that silences and marginalizes if the lawyer silences the client's notion of rele-

¹³⁴ Professor Alfieri suggests that "[the client's] withholding is engendered by the lawyer." Alfieri, *supra* note 2, at 2126; *see also*, Gilkerson, *supra* note 3.

¹³⁵ Professor Alfieri condemns his own practices for not hearing the story told by his client *and* for not telling the story told by his client. Alfieri, *supra* note 2, at 2110. I believe his self-criticism is valid only in regard to the former assertion.

¹³⁶ Lopez, *supra* note 3, at 1614.

vance rather than encouraging the client through questioning. A lawyer who repeatedly asks "Do you understand?"¹³⁷ conveys an expectation of low intelligence and truncated, yes-or-no answers. On the other hand, the storytelling process can be synergistic, resulting in a picture of the client's story consisting of normative interpretation by the client and lawyer expertise.¹³⁸ It is essential to this synergy that the lawyer and client not seek to establish a common interpretive standpoint.¹³⁹ Given the experiential differences between the two, this result is impossible. Rather, they should each seek to bring their full knowledge to each other, ready to have their preconceptions modified by the other.¹⁴⁰ When the client and the lawyer

¹³⁷ Alfieri, *supra* note 2, at 2112-13.

¹³⁸ See Lopez, *supra* note 3, at 1613. Clark Cunningham refers to this attorney practice as being a good translator through collaboration. Cunningham, *supra* note 30, at 1301.

¹³⁹ Alfieri, *supra*, note 2, at 2141.

¹⁴⁰ See Felstiner & Sarat, *supra* note 118, at 1454-55; Alfieri, *supra* note 2, at 2141-42. It should be noted that the "initial interview" I speak of here is not the eligibility interview required by the Legal Services Corporation. It is an unfortunate but unavoidable fact of poverty law practice that many people who desperately need legal representation will be turned away before they even have a chance to tell their story, and that those who will eventually be given a chance to tell their story will first be faced with a barrage of seemingly meaningless questions regarding income, household size, employment status, and the like.

Although this eligibility interview delays the telling of client story, and in some cases may deny a person the status of client altogether, it is disingenuous to suggest that this constitutes part of a sinister methodology that ignores client need and seeks to squelch client story. Alfieri, *supra* note 2, at 2112; Gilkerson, *supra* note 3, at 895. Rather, this eligibility grilling is a by-product of governmental definition of poverty and worthiness, a separate but unrelated problem to that of lawyer-client dynamics.

Furthermore, in my experience, the eligibility interview customarily is conducted by someone other than the attorney or paralegal who will perform the first substantive interview. It is not customary for the initial substantive interviewer to re-ask all of the eligibility questions. This practice can perpetuate and exacerbate the frustrations caused by focus on eligibility in the initial client contact with legal aid, and further delays impartation of the client's story. Alfieri, *supra* note 2, at 2113. By writing of his re-inquiry into eligibility, Alfieri creates the image of an impersonal, well-oiled machine where eligibility information continues to be more important than client story. In my experience, this emphasis on technical eligibility questions is not the norm. *But see*, Hosticka, *supra* note 37, at 603-04. There is also no reason to force clients to wait half a day in the legal aid office, as they do in the welfare offices, between the eligibility interview and their first substantive interview unless they have a problem that requires legal attention that day (such as a hearing the next day or an immediately effective reduction in or termination of benefits). Alfieri, *supra* note 2, at 2112. I know that this is a common problem in large urban legal aid offices. In future works I hope to study the

bring together their knowledge—the client of the story and the lawyer of the law—lawyer control over tribunal story-telling is legitimized. It becomes a tool for assisting, rather than oppressing, the client.

II. A PRACTICAL APPLICATION OF RECONSTRUCTIVE PRACTICES

The final analytic step to any theory of practice must be practical application itself.¹⁴¹ Because Professor Alfieri has posed suggestions for practice to realize the ideologies expressed by theoretics of practice scholars, I have in this section applied the specific practice suggestions regarding story made by him in his article, *Reconstructive Poverty Law Practice*.¹⁴²

Professor Alfieri describes some application of his theory to Mrs. Celeste's case; but how would the various reconstructive practices he suggests play out in the two disparate cases I describe at the beginning of this Article? The first client about whom I write, Ellen Smith, might be thought of as the classic "good" poor person of biblical and political rhetoric. She grew from being an alcoholic who could not take care of her children into a woman with strong family ties, a good job, and prospects for continued growth. She worked hard, had a purpose in her life, and remained poor nevertheless. She was capable of extensive participation in her lawsuit to regain custody of her daughter. The other clients about whom I write, John and

methodologies of legal services offices and make suggestions for eliminating these dehumanizing aspects.

I do not address in this Article the issues raised by case acceptance policies dictating choices between eligible clients. Although traditional interpretive practices clearly play a role in this process, I do not believe that legal aid staffs choose cases based primarily on which *clients* are worthy of representation, as suggested by some authors, but rather choose their cases after trying to determine in which cases a lawyer is most likely to be able to effectuate a result for the client. Alfieri, *supra* note 2, at 2122; Gilkerson, *supra* note 3, at 895. In a number of cases, nothing can be done through the legal system for the client. Regarding resource allocation in legal services see Anthony V. Alfieri, *Impoverished Practices* 81 GEO. L.J. 2567 (1993); Tremblay, *Tragic View*, *supra* note 3; Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101 (1990).

¹⁴¹ Conventional critical practice theory has been criticized for its emphasis on theory over practice. See Margulies, *supra* note 99, at 697, 715; *see also*, Catherine MacKinnon, *From Practice to Theory or What is a White Woman Anyway?*, 4 YALE J. L. & FEMINISM 13 (1991); Miller, *supra* note 3, at 489.

¹⁴² Alfieri, *supra* note 2.

Jane Baker, were entitled to relief in their dispute with their mortgagee. Nonetheless, the normative content of their lives included domestic violence, alcoholism and an inability to participate in meaningful aspects of finalizing their case (such as showing up to meet the termite inspector before the sale of their house closed).

If I had engaged in "play"¹⁴³ with each of these clients, the results would have been strikingly different. In my relationship with Ellen, the act of play would have been viewed by her, I believe, as an abdication of my duty to make suggestions to her. She did not know what options were available to her when she sought legal advice, and if I had asked her to propose options, as opposed to asking what she wanted, she probably would not have come to trust me as she did. Our relationship involved synergy rather than play. She told me she did not want her child to go back to the child's father. I told her about emergency temporary orders, the legal requirements before a substantive hearing would be held, and what kinds of witnesses we should try to find to present to the court. We worked together every step of the way. Perhaps this process mirrors what Professor Alfieri refers to as play.

In the case of John and Jane Baker, had I engaged in a practice that left decisionmaking to the clients, no resolution of their case would likely have been reached because, like many of my clients, they had other, more immediate and essential issues to deal with on a daily basis. It was very difficult to get them to focus on the details of resolving their case when they were consumed by the effects of alcohol and domestic violence.

Similarly, my ability to tell fuller client story¹⁴⁴ or to integrate client-spoken narrative into the public storytelling of advocacy¹⁴⁵ differed in these two cases. In Ellen's case, her chances of winning increased with inclusion of aspects of her story. But in the case of the Bakers, certain aspects of the normative content of their lives had no place in the resolution

¹⁴³ Play is defined by Professor Alfieri as reordering the "discursive and decisionmaking arrangements (for example who poses questions and recommends options)." Alfieri, *supra* note 2, at 2137.

¹⁴⁴ Professor Alfieri refers to this practice as "metaphor" and "redescription." Alfieri, *supra* note 2, at 2138-39, 2145.

¹⁴⁵ Professor Alfieri calls this practice "collaboration." Alfieri, *supra* note 2, at 2140.

of the issues raised by their foreclosure. In fact, I spent some time trying to keep their domestic issues out of resolution of their foreclosure since I felt these issues would only embarrass and hinder them. In Ellen's case, fuller client story helped reach her goal. In the Bakers' case, fuller client story would have made it hard to attain their goal.

In Ellen's case, emplacement¹⁴⁶ actually played a significant role in the case when she asked to make a statement to the judge on her own before the judge's final custody decision. Her expressed desire for custody of her daughter, her description of the work she had done in her life since losing custody of her daughter, and her plea for a change of custody were more eloquent and effective than any closing argument I could possibly have made. This does not mean that she would have wanted to be emplaced in any other aspect of the case, such as negotiation or examination of witnesses.

In the Bakers' case, I do not think, in my professional judgment, that emplacement would have been productive towards their expressed goals. This conclusion was certainly a value judgment on my part, but the clients asked for my help partially so that they could avail themselves of my experienced judgment regarding what tactics should and should not be used. In any event, I do not believe these clients wanted to engage in direct negotiation with the mortgagee. They had already tried direct negotiation. This is why they hired me in the first place.

CONCLUSION

By hearing the client's story, understanding the client's goals, and interpreting the client's story by placing it in a legal construct, the poverty lawyer is providing his or her client with the very same service that client might expect if he or she was paying for legal services. By doing so, the poverty lawyer protects the client by making sure that legal construct is placed on the client's story by the party most attuned to the client's desires.

When imposing legal construct on the client's story in the

¹⁴⁶ Professor Alfieri defines this practice as direct case work by the client. Alfieri, *supra* note 2, at 2145.

act of representation obtains the objectives of safeguarding a client's rights,¹⁴⁷ the client's opponent is subject to the leveling effect of representation in the legal arena. There is no question that the cost of doing so is usually presentation of truncated or interpreted client story. But given the choice between presentation of full story regardless of its impact on legal outcome, and presentation of interpreted story, distilled for legal content, I believe most clients would choose presentation of a distilled story.

In my experience, the legacy of winning a case for a client is empowerment through access to the "hired guns" that others can afford.¹⁴⁸ Because the act of legal representation gives the attorney only situational power over the client and utilitarian control of story, the attorney does not have the power to tarnish client integrity,¹⁴⁹ lose client story,¹⁵⁰ or render the client powerless.¹⁵¹ Put simply, the roles we play in our clients' lives—even essential roles such as preserving housing or helping a client obtain or retain custody of a child—are not integral to the self-definition of the client, although the results we procure for our clients may have lasting effects. The greatest and most dangerous power we have is not the power to redefine the client, but the power to lose the client's case and make the client's life harder.¹⁵²

If I learned anything in legal services practice, it is that poverty, like all things, has many faces—industriousness and languor, kindness and harshness, virtue and vice, honesty and

¹⁴⁷ In his article, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, Professor Alfieri observes that despite his self-proclaimed interpretive violence, the tactics and strategies he employed "satisfied the twin objectives of safeguarding [the client's] entitlement to food stamps and invalidating federal regulations abrogating the entitlement." Alfieri, *supra* note 2, at 2110.

¹⁴⁸ See White, *Mobilization on the Margins*, *supra* note 3, at 545. (The knowledge that litigation has been filed on their behalf "can jar the dreary inevitability of the status quo. It can confirm that the conditions of their lives are not fair and give them hope that things need not remain as they have always been.")

¹⁴⁹ Alfieri, *supra* note 2, at 2119.

¹⁵⁰ Alfieri, *supra* note 2, at 2119.

¹⁵¹ Alfieri, *supra* note 2, at 2147.

¹⁵² This calls into serious question Christopher Gilkerson's conclusion that "[t]he [poverty] lawyer . . . needs to accept that litigation failure may result paradoxically in representational success." Gilkerson, *supra* note 3, at 916. If the litigation is undertaken based on the client's desires then litigation success will be representational success.

deceit, intelligence and stupidity, dependence and power.¹⁶³ Through my clients, I learned that no formulaic way exists for poverty lawyers to deal with poverty clients, except to try to treat them with the same respect and individuality given by non-poverty lawyers to their clients. I do not believe that poverty attorneys should, in the name of client empowerment, fail to perform the role of attorney by failing to decide relevance and irrelevance in tribunal storytelling, failing to impose legal paradigm on client story, failing to provide leadership in case-related decisionmaking, or failing to make ultimate strategic decisions.

Poverty law clients seek out poverty attorneys because they have legal problems, and because poverty attorneys are trained as lawyers. Poverty law clients need poverty lawyers to obtain for them the legal results to which they are entitled. To assume that poverty clients also need poverty attorneys for normative validation and conveyance, or to assume that if poverty attorneys take control in the legal setting poverty clients are disempowered and marginalized in all other settings, conceives for poverty attorneys a paternalistically greater role than poverty attorneys have in their clients' lives. Most dangerously, these assumptions lead to practice suggestions which ignore the very reason clients seek the help of poverty attorneys—because they are attorneys.

¹⁶³ Peter Margulies has observed, "No orthodoxy captures the richness of the stories which walk into a law school clinic." Margulies, *supra* note 99, at 704. The same could be said for a legal aid office.

