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Law As Social Work

Jane Aiken*
Stephen Wizner**

"THIS ISN'T LAW, IT'S SOCIAL WORK"

In our work as lawyers for low income clients and as clinical teachers, we are sometimes told by our professional counterparts in private practice—especially those who work in large corporate firms—that what we do "isn't law, it's social work." Similarly, our students sometimes complain that the work they do on behalf of low income clients "isn't law, it's social work."[1]

In the past we have tended to respond to this "social worker" charge defensively. We insisted that what we and our students do *is* "law," that it is really no different from what private practitioners do for their paying clients, and that in many ways it is even more legally complex and sophisticated than much of what private lawyers do.

While this response is superficially true, on a deeper level it tends to obscure an important dimension of our work as both lawyers and clinical teachers. Our work does have an important social function. At its best, law is more than a business or trade by which lawyers use their education, training, professional license to earn a comfortable living by pursuing and protecting the personal—and typically, economic—interests of the clients who retain them, whoever those clients might be.

We have come to realize that our defensive response to the

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1. This assertion could mean that the kinds of cases handled by poor people's lawyers do not involve complex commercial, financial, or tax matters of the type handled by some private law firms. It could mean that the kinds of problems that low income clients bring to lawyers are more "social" than "legal." It could also mean that poor people's legal problems require lawyers to respond to clients' emotional issues and complex social needs.

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accusation that what we do is social work is the wrong response. What we should be saying is: "You're right. What *we* do *is* social work, and that is why it is so challenging and so important." As poor people's lawyers and as clinical teachers we should embrace and celebrate the truth of the claim that what we do is indeed social work.

Of course, simply saying that our practice of law is, or ought to be, "social work," is something of a play on words. There are significant differences in the professional education, training, expertise, practice, and professional ethics of lawyers and social workers. While we do not wish to ignore or minimize these differences, we do want to argue that there is much in social work education, ethics, and practice that can and should be adopted by lawyers. These qualities are especially important for those who represent, and those who teach others to represent, both low income and disadvantaged clients.

THE ETHICAL WORDS OF LAWYERS AND SOCIAL WORKERS

It is commonly accepted that the professional expertise of lawyers is limited to "legal" issues: those involving the identification, interpretation, and application of relevant legal rules and concepts. Lawyers provide legal advice, counsel, representation, and advocacy to and on behalf of individual clients in private legal settings and public legal arenas. Pursuing social justice is not an explicit goal of the legal profession.

If lawyers think about social justice at all, they will see it as emerging from counseling and advocacy by individual lawyers on behalf of individual clients within the adversary system. Most lawyers do not view the pursuit of social justice as an obligation or function of their professional work.

The closest that lawyers' ethical rules come to articulating a social role for lawyers is found in the non-mandatory Preamble and pro bono provision of the Rules of Professional Conduct.[2] The Preamble serves as a general introduction to the rules and as an overview of lawyers' professional responsibilities. It makes reference to "the legal

2. MODEL RULES OF PROF'L CONDUCT (amended 1993).

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profession's ideals of pubic service."[3] However, it neither spells out what these ideals are, nor imposes any particular professional obligation that lawyers must perform.[4] Similarly, the ethical rule regarding pro bono representation of those who are unable to afford legal services reads as an aspiration or recommendation, not an enforceable ethical duty.

In contrast to the generally accepted, narrowly legal and individualistic professional role of lawyers, social workers have adopted a broad, flexible, and multi-faceted professional role. This role not only focuses on the individual client, but also on the client's family and community, including the social, economic, racial, ethnic, and religious factors affecting the client's life. In addition, social justice is an explicit ethical norm of the social work profession, not only in process, but also as a substantive outcome.

The term "social work" often connotes a profession composed of caseworkers employed by public or private non-profit agencies whose work is limited to counseling and assisting primarily poor individuals and families to solve immediate "social work" problems. This role is similar to the narrow and individualistic role of lawyers with respect to legal problems. Yet the profession itself defines a much broader role for social workers, in that it encompasses not only individual casework, but also group work, community organizing, and social reform. The pursuit of social and economic justice and reform are as central to the professional obligations of social workers, as is the problem solving for individual clients and the empowerment of individuals, groups, and communities.

The Code of Ethics that guides the professional practice of social workers sets forth the pursuit of social justice as a "core value":

> *Social Workers challenge social injustice.*
>
> Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. Social workers' social change efforts are focused primarily on issues of poverty, unemployment, discrimination,

3. *Id.* at 5 ¶ [6].
4. *Id.* at R. 6.1.

> and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Social workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.[5]

In their education and training, social workers learn skills that are invaluable in their professional relationships with clients. Their clients include the poor, immigrants, children, the elderly, and individuals with serious illnesses, or those with physical, mental, or emotional disabilities. These skills include empathic interviewing, listening, and counseling; cross-cultural awareness and sensitivity; identification of the causes of clients' problems; assisting clients to formulate goals and strategies for achieving them; crisis intervention; group work; and community organizing.

Social workers employ a systems theory approach in their work, which means that they consider all aspects of a client's life and that they view clients in their social environment. Social workers consider not only the immediate problem faced by a client (as a lawyer might do), but also the "system" within which the client exists. In particular, social workers consider family, community, and other social and economic forces that affect the client, such as poverty, discrimination, and educational and employment opportunities.[6]

Except in law school clinical programs, lawyers typically do not receive instruction in the skills of interacting with clients, particularly those from different economic, social, racial, ethnic, or religious backgrounds. There is no professional expectation or ethical rule that requires a lawyer to learn these professional skills, other than the general rule requiring lawyers to be "competent."[7]

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5. Code of Ethics of the National Association of Social Workers (NASW), approved by the 1996 NASW Delegate Assembly and revised by the 1999 NASW Delegate Assembly, *available at* http://socialworkers.org/pubs/code/code.asp (last visited July 1, 2002).

6. *See generally* Brigid Coleman, Note, *Lawyers Who Are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients*, 7 WASH. U. J.L. & POL'Y 131, 134-35, 139-40 (2001); Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L.REV. 2123, 2126-35, 2140-47 (1999).

7. MODEL RULES OF PROF'L CONDUCT, R. 1.2 (2002).

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In contrast, one ethical principle of the social work Code of Ethics provides that "[s]ocial workers respect the inherent dignity and worth of the person."[8] The Code further expounds on this principle by stating that:

> Social workers treat each person in a caring and respectful fashion, mindful of individual differences and cultural and ethnic diversity. Social workers promote clients' socially responsible self-determination. Social workers seek to enhance clients' capacity and opportunity to change and to address their own needs . . . .[9]

As lawyers for low income clients and as clinical teachers, these social work ethical principles are ones that we can not only accept, but should embrace wholeheartedly. They are entirely consistent with what we see as effective lawyering on behalf of low income and disadvantaged clients.

A PASSION FOR JUSTICE

Many law students are initially drawn to the study of law by popular images of lawyers as idealistic, courageous champions of justice. This is the dominant cultural image of the lawyer portrayed in novels,[10] in plays,[11] and especially in film.[12]

The film industry depicts the legal world as a world of human drama: the courtroom as a theater, and lawyers as heroes. Films tend to portray attorneys not only as business counsellors or corporate lawyers, but as social actors. In the movies, we see lawyers fight for clients who are unjustly accused, unfairly treated, and are generally caught in difficult circumstances. Such films have the ability to generate emotional responses, and to evoke feelings of identification

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8. NASW, CODE OF ETHICS, § 3.2 Ethical Principles (1996).
9. *Id.*
10. *See, e.g.*, HARPER LEE, TO KILL A MOCKINGBIRD (Perennial 2002) (1960).
11. *See, e.g.*, JEROME LAWRENCE AND ROBERT E. LEE, INHERIT THE WIND (Dramatist Play Service 2000) (1955).
12. *See, e.g.*, TO KILL A MOCKINGBIRD (Pakula-Mulligan, Brentwood Productions; Universal International Pictures 1962); A FEW GOOD MEN, (Castle Rock Entertainment, Columbia Pictures Corporation, New Line Cinema 1992); ERIN BROCKOVICH, Universal Studios, 2000); THE VERDICT (Twentieth Century Fox 1982).

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with both the victim of circumstances and his legal advocate.

In the classic 1962 lawyer-as-hero movie, *To Kill a Mockingbird*,[13] the story takes place in the deep, segregated South. It is a racially and socially stratified society in which the status of blacks is totally subordinate to that of whites. At center stage stands Atticus Finch, a white lawyer portrayed by Gregory Peck. Finch is asked by a local judge to defend a young black man who is wrongly accused of raping a white girl. Finch accepts the appointment and, despite the social hostility he encounters, believes in the young man's innocence, defends him vigorously in court, and ultimately demonstrates that the girl has lied. Nevertheless, the all-white jury finds the defendant guilty, and he is shot by the local police before Finch can appeal his conviction.

In perhaps the most moving scene of the film, all of the blacks who are seated in the segregated balcony of the courtroom rise to their feet when Finch, the lawyer as fair-minded champion of justice, enters the courtroom.[14]

In the 1992 movie *A Few Good Men*, the lawyer, Daniel Kaffee, played by Tom Cruise, is assigned by the Navy to defend two soldiers who are accused of causing the death of their peer while participating in a "code red" procedure.[15] The two soldiers are accused of stuffing rags into the victim's mouth and of beating him as a form of discipline. During this "treatment," the soldier suffered an internal hemorrhage and died. The question at the center of this film is whether the powerful and charismatic division commander, played by Jack Nicholson, in fact ordered the "code red."

Throughout the legal drama the two soldiers, powerless figures in the military hierarchy, confront the influential division commander, who steadfastly denies having ordered a "code red" procedure. As a result, the opposing parties are positioned at two extremes of the military hierarchy. Kaffee, the young, dynamic lawyer, dares to challenge this hierarchy and to question the truthfulness of the division commander's testimony. At the climax, he calls the commander to the witness stand. After a tense, highly confrontational

13. TO KILL A MOCKINGBIRD, *supra* note 12.
14. *Id.*
15. A FEW GOOD MEN, *supra* note 12.

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interrogation, Kaffee makes him admit that he ordered the "code red." At that dramatic moment, the defense lawyer eliminates the enormous power differential between the defendants and the commander. In effect, he employs his legal power to equalize the two sides of the legal battle.[16]

The 1991 movie *Class Action* crystallizes the image of the good lawyer.[17] The story is about a father and a daughter, who argue against one another in the two sides of a legal dispute. The father, Jebediah Ward, played by Gene Hackman, has a reputation as a defender of victims of both large corporations and the state. "This firm was built on David and Goliath cases," he says. Jebediah fights to get compensation for victims of car accidents involving defective cars. Ward's daughter, Maggie, played by Mary Elizabeth Mastrantonio, is a young and promising attorney who works for a large corporate law firm and represents the manufacturer. Maggie begins her role as an ardent representative of her rich corporate client. After she experiences an intense inner struggle over the professional path she has chosen, she crosses the line at the climax to help her father win the case for the injured victims. She undergoes a process of awakening, and ultimately alienates herself from the archetype of the big firm lawyer, instead pursuing the model of a lawyer portrayed by her father, who fights for the interests of the "little guy" against corporate power and greed.[18]

The 1994 film *Murder in the First* tells the story of Henri Young, played by Christian Slater.[19] Young is an inmate at Alcatraz who has been accused of murdering a fellow prisoner.[20] James Stamphill portrays the public defender assigned to represent Young. He has just graduated from law school and represents Young as his first case. The guilt of the accused seems clear and, at least initially, the case appears simple. The lawyer's superiors expect him to serve the system by disposing of the case in a quick and efficient manner. Stamphill, however, is determined to provide his client with a proper

16. *Id.*
17. CLASS ACTION (Twentieth Century Fox 1991).
18. *Id.*
19. MURDER IN THE FIRST (Warner Studios 1994).
20. *Id.*

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defense, and instead explores the story of his client's life.

Young was orphaned at the age of ten, and raised his little sister on his own. At the age of seventeen he applied for a job in a local store, where he was rejected. Out of despair, he reached into the cash box and took five dollars, and consequentially, was arrested. Because the store doubled as the town's post office, Young was indicted for the federal offense of mail theft, and was convicted and sentenced to Alcatraz. After a failed attempt to escape, he was placed in solitary confinement for a period of more than three years. During his confinement he can only see the sunlight once a year for thirty minutes. When he is finally was released from solitary confinement, he was in a catatonic condition. In a psychotic rage, he attacked and killed his accomplice who had informed on him in the failed escape attempt.[21]

The film portrays the lawyer, Stamphill, as one who exposes to sunlight the story of a prisoner whom society abandoned in his dark dungeon. In doing so, Stamphill refuses to yield to the existing social order and fights to make the system listen to the voice of his silenced client. The film stresses the story of the close relationship that develops between the lawyer and his client. Throughout the film, Young asks his lawyer to fill him in on baseball scores, and on the performance of his favorite player, Joe Dimaggio. Through hours of card games, the two draw close to one another, and develops into a warm friendship between them.[22]

The cinematic portrayals of lawyers converge into a single image: the lawyer as social hero who advocates for the marginalized and the disadvantaged. This is the image common to the character of Atticus Finch, who represents the young black man in an unequal society, to Daniel Kaffee, who closes the gap between the two poles of the military hierarchy, to Maggie Ward, who forgoes the advantages of working in a big law firm in order to follow her sense of justice, and to James Stamphill, who gives a voice to the personal story of his prison client. Many other movies, including . . . *And Justice for All*,[23]

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21. *Id.*
22. *Id.*
23. . . . AND JUSTICE FOR ALL (Columbia/Tristar Studios 1979).

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Philadelphia,[24] *Amistad*,[25] and *Erin Brockovich*[26] present similar images of lawyers. These images, whether consciously or unconsciously, inspire many law school applicants. People are drawn to the legal profession, at least in part, by the heroic image of the lawyer. Idealistic aspirations of pursuing justice are an important source of motivation for people who choose to become lawyers.

For the past several years, Alan Stone, a psychiatrist who teaches at the Harvard Law School, has offered a film seminar to Harvard law students. Stone's seminar employs films to evoke from students an emotional and moral response to justice issues in both the law and in legal practice. Stone writes:

> The search for justice is not just an intellectual pursuit; the failure to deal with justice concerns has profound psychological importance. Our "sense of humanity" requires a moral order that will not give way to skepticism. There are conflicting theories about the origins and significance of these moral impulses, but no student of the human psyche would deny they exist. And certainly for many young people drawn to the study of law, there is an intellectual interest in justice driven by a moral passion. Technical law is not enough to satisfy this higher impulse. Idealism is more often tested than strengthened by legal education.[27]

In ONE L, Scott Turow reports that law students complain of "being limited, harmed, by the education, forced to substitute dry reason for emotion, to cultivate opinions, which were 'rational' but which had no roots in the experience, the life they'd had before. They were being cut away from themselves."[28]

Stone rationalizes teaching his film seminar to Harvard law students because "it engages students who have become alienated from the law school classroom. As a psychological-moral problem,

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24. PHILADELPHIA (Columbia/Tristar Studios 1993).
25. AMISTAD (Universal Studios 1997).
26. ERIN BROCKOVICH, *supra* note 12.
27. Alan A. Stone, *Teaching Film at Harvard Law School*, 24 LEGAL STUD. F. 573, 581 (2000). *See also* Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971).
28. SCOTT TUROW, ONE L 75 (Warner Books 1977).

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this alienation is . . . the greatest failing . . . of legal education."[29]

If we, as law teachers, were to teach law as social work, we would promote what Stone characterizes as "an intellectual interest in justice driven by a moral passion."[30] We can all agree with Stone that "technical law is not enough to satisfy this higher impulse."[31] As law teachers we need to nurture and encourage in our students "the moral ambitions that brought them to law school," to "reengage their moral passions by way of dialogue [and] debate and [to urge them to] defend their own sense of justice."[32]

At their best, social workers have both the moral passion and ambition that Stone writes about. This is a passion and ambition to serve the poor and oppressed, to use their professional skills to struggle against injustice, to help strengthen groups and communities, and to imagine better worlds and engage in social action to try to realize them.

Of course not all, or even most, social workers are motivated by such moral passion and ambition. Nor do they conduct their professional lives in a manner that reflects a commitment to social justice. Likewise, most lawyers do not and will not do so. Viewing and teaching law as "social work," in the aspirational sense of that term, would provide a good theoretical and practical model for us to follow. Social workers and lawyers, at their best, not only provide caring support and advocacy for the poor and powerless but contribute their professional knowledge and skills to the struggle against social injustice and economic exploitation. In function, they work for social change.

The social work profession manages to train its professionals with little of the disengagement that Alan Stone finds in legal education. Rarely, if ever, is the social worker challenged with a statement of, "that's not social work, that's law." Service to clients and the pursuit of justice are professional values that lawyers and social workers hold in common. Nevertheless, there are differences between law and

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29. Stone, *Teaching Film at Harvard Law School*, *supra* note 27, at 589. *Cf.*, Stephen C. Halpern, *On the Politics and Pathology of Legal Education (Or, Whatever Happened to that Blindfolded Lady with the Scales)*, 32 J. LEGAL EDUC. 383 (1982).

30. *Id.*

31. *Id.*

32. *Id.*

social work that influence the differing experiences of law students and candidates for social work degrees. Legal training has little to do with fostering a passion for social justice. The law school curriculum is designed to neutralize that passion by imposing a rigor of thought that divorces law students from their feelings and morality. The law student is taught to be a dispassionate evaluator of both the client's case and the law governing it. By contrast, social work programs are apprentice based and require substantial hours in the field, by working with clients. All of this work with clients requires students to learn much more about their own values, beliefs, prejudices, and how they influence their interactions with clients. The ethical standards of social work mandate that social workers develop cultural competence, as well as a knowledge of social diversity and oppression as a prerequisite for practicing social work. The closest educational opportunity in a law school setting for this is within a clinical program.

In contrast to the typical educational experience of a law student, a social work student has had hundreds of hours of supervised clinical experience by the time he completes a graduate social work program. He has had to confront his own personal background and experience, and must evaluate their effect on his ability to interact with clients. He has learned that in order to serve clients well, it is most often necessary to view the larger picture. This results from seeing enough institutional problems to learn that there are systemic and structural roots to most client problems. Indeed, he is likely to have taken courses that help him identify the ways in which political, social, and economic forces create and sustain many problems of the poor. He may even have thought about ways in which he can contribute to collective efforts to remedy some of the problems of the poor and to empower disadvantaged individuals and communities.

We believe that teaching law students about the role of lawyers in challenging injustice and working for social change is an appropriate—indeed, obligatory—concern of legal education. Social justice education has the potential for inspiring students of law to engage in committed social work on behalf of the disadvantaged and powerless.

We are not saying that all lawyers can or should be social workers. We are only saying that social work skills and values, and

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the social work commitment to social and economic justice, should be part of the lawyer's repertoire of skills, values, and commitments. Further, the professional and social role of lawyers should be broadened to incorporate a social work dimension.

In arguing that lawyers should see themselves not only as legal technicians, but also as social workers, we are not unmindful of certain significant differences in the ethical obligations of lawyers and social workers, such as those obligations pertaining to confidentiality and mandatory reporting.[33] As important as those differences may be, we want to emphasize the commonalities between law and social work practice, especially on behalf of socially and economically disadvantaged clients.

When social workers learn the law that governs the areas of their practice, and act as advocates on behalf of their clients, no one claims that what they are doing is "law, not social work." Rather, they are seen as broadening their knowledge and skills in order to be better social workers. That is what we aspire to for lawyers. We wish to help lawyers develop their "social work" knowledge and skills, and adopt social work values, in order to become better lawyers.

THE LAWYER AS SOCIAL WORKER

The lawyer we envision, one who manifests the characteristics of the lawyer as social worker, looks remarkably like the celluloid heroes that we referred to earlier. She is competent within the field of law in which she practices and possesses a high level of specialized knowledge and skill. She has chosen her field of practice because she sees it as instrumental in achieving justice for her clients. She demonstrates a passion for her work and a dedication to excellence. She spends time with her clients, listening empathically to their accounts of the problems they face. She strives to understand the context in which the problems arose, and assists her clients to decide upon realistic goals and the best methods of achieving them. She

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33. *See* Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2135-40 (1999); Jean Koh Peters, *Concrete Strategies for Managing Ethically-Based Conflicts Between Children's Lawyers and Consulting Social Workers Who Serve the Same Client*, KY. CHILD. RTS. J., Mar. 1991, at 15.

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recognizes that though adversarial litigation may be available, in many cases, it might not be in the clients' best interest.

The lawyer we envision attempts to grapple with the multitude of issues that the client might be facing. She attempts to look for root problems and solutions, and serves her clients holistically. She develops cultural competence and respect for difference. She seeks to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion and mental or physical disability. She is aware of the ways in which her own experience affects her perceptions of the client, the client's problem, and the possible solutions.

She makes efforts to empower the client by promoting the client's socially responsible self-determination. She treats each client with dignity, and in a caring and mindful fashion. She takes her role as a counselor seriously, which is to help each client clarify his or her goals for the short run and the long term. She considers the impact of the law on the client and the client's community when determining what might be a good legal outcome. She notes common patterns and seeks legal law reforms that might address on a systemic level the individual problems that clients bring to her.

She recognizes the connections between her personal choices and her clients' choices or lack of choices. She makes efforts to lend her privilege to more vulnerable individuals and groups. She engages in social and political action to ensure that all people have access to the resources, employment, services, and opportunities that they require to meet their basic human needs and to develop their potential.

The lawyer as social worker recognizes that all problems arise within a community and that even those problems that appear purely individual have a basis within that community. The problem may arise as a result of the community. For example, a disabled child may be having difficulty obtaining special education assistance because there are no advocacy organizations to ensure that children with special needs are accommodated. The problems that individual clients encounter certainly have an impact on the community, and the lawyer as social worker is sensitive to those effects. While helping a parent negotiate the intricacies of the special education laws and bureaucracy, the lawyer may think about policy initiatives that could

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provide broader help to other parents, who may not be able to obtain a lawyer. The lawyer may assist in bringing together the parents of children who are victimized by a school's zero-tolerance policies, and she may assist them in identifying legal, social, economic, and political interventions. The lawyer as social worker might offer training in lay advocacy and education about parents' and children's rights.

The lawyer as social worker spends a good deal of time with the client, and also in the community to gain insight into the context in which problems may arise. She establishes a trusting relationship with her clients by being reliable, following problems through completion, being a good listener, and being committed to client empowerment. She is attentive to the many constituencies within the community that work toward that community's goals. She provides assistance to community groups, but may also facilitate links between individual clients and those proactive organizations. For example, a client who seeks an order of protection might be interested in organizations challenging welfare to work, in child care cooperatives, and in community economic development organizations that might provide her with employment. A client with an eviction problem might be interested in joining a tenant union, assisting in community economic development, and in groups advocating for affordable housing.

Social work identifies client empowerment and client investment in problem solving as one of the primary goals of the social worker/client relationship. There is no reason why this should not also be true of the lawyer/client relationship. The lawyer recognizes that unless the client is a partner in problem solving, the best that the lawyer can do is obtain a "legal solution" to a narrowly defined problem, a problem often defined by the lawyer as being limited to the solutions provided within existing law. Such a response may isolate the client and insulate the problem from its context. It may thus imply that the legal problem is idiosyncratic, and will dissuade engagement in the larger dialogue about justice.

The lawyer as social worker who works with groups recognizes that she is merely a resource, not the director of the activity. Once again, client empowerment is the goal and the use of coalition as a powerful tool. The lawyer assists the group in gaining access to

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courts and legislatures, in drafting legislative materials, and in researching available options. The lawyer can also facilitate the growth of the organization by referring potential clients to the group. The lawyer can offer insights into what kinds of class actions or legislative changes are necessary to meet the needs of the group.

TEACHING LAW STUDENTS TO BE SOCIAL WORKERS

The Council on Social Work Education has promulgated a Curriculum Policy Statement ("Policy Statement") for programs in social work education.[34] It contains standards for the teaching of "social work values and ethics" that legal educators, particularly clinicians, could do well to adopt. It states:

> Programs of social work education must provide specific knowledge about social work values and their ethical implications and must provide opportunities for students to demonstrate their application in professional practice. Students must be assisted to develop an awareness of their personal values and to clarify conflicting values and ethical dilemmas. [These values and ethical principles] must be infused throughout every social work curriculum . . . .[35]

The Policy Statement identifies specific professional values that "must" be taught to social work students,[36] and mandates that social work educators instill in their students the professional obligation to pursue social and economic justice:

> Programs of social work education must provide an understanding of the dynamics and consequences of social and economic injustice, including all forms of human oppression and discrimination. They must provide students with the skills to promote social change and to implement a wide range of interventions that advance the achievement of individual and

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34. Commission on Accreditation, *Curriculum Policy Statement for Baccalaureate Degree Programs in Social Work*, COUNCIL ON SOCIAL WORK EDUCATION, *in* HANDBOOK OF ACCREDITATION STANDARDS AND PROCEDURES 97 (4th ed. 1994).

35. *Id.* at B6.3.

36. *Id.* at B6.3.1-B6.3.6.

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> collective social and economic justice. Theoretical and practical content must be provided about strategies of intervention for achieving social and economic justice and for combating the causes and effects of institutionalized forms of oppression.[37]

As one social worker observed, "[A]n effective educational experience influence[s] the student's ideas, habits, attitudes, interests, ways of thinking, modifying his values and behavior patterns."[38] If this is so, and we believe that it is, then as legal educators we need to influence our students' ideas, attitudes, interests and ways of thinking. We need to find ways to modify their values and behavior patterns. The goal of this effort should be to instill in our students an understanding of their personal obligations as lawyers to promote individual and collective social and economic justice.

Professional knowledge and skills do not exist in a moral vacuum. They function in social milieu; they implement and implicate social values. As Roy Lubove wrote:

> Knowledge and techniques [are] not isolated entities, divorced from the practitioner's personality and conception of his profession's role, particularly in social work, where the relation between worker and client [is] significant. . . . the worker's own attitudes and values [have] to be shaped in accordance with the accepted norms and values of the profession. . . . Professional education, in short, introduce[s] the neophyte to the directives of the [professional] subculture, equip[s] him with the skills and personal attributes needed to function effectively, and perpetuate[s] the collective norms of the group.[39]

Law teachers need to recognize and act on their responsibility for introducing law students to the aspirational norms and values of the legal profession. This includes, in particular, the responsibility of

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37. *Id.* at B6.5.

38. Ralph W. Tyler, *Distinctive Attributes of Education for the Professions*, 33 SOC. WORK J. 57 (1952).

39. ROY LUBOVE, THE PROFESSIONAL ALTRUIST: THE EMERGENCE OF SOCIAL WORK AS A CAREER, 1880-1930 137 (1965).

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lawyers to contribute to efforts to provide access to equal justice for the poor and powerless. This is not a responsibility that can or should be relegated to a single course in legal ethics. It is one that members of a law faculty, especially clinicians, must share.

Law teachers must also confront some of the assumptions that lawyers make that contribute to their alienation from justice. Lawyers and social workers assume very different things about the world in which they work. Law assumes a level playing field, and as such, lawyers often define justice according to whether a procedure is fair and applied equally. Social workers, on the other hand, come to their profession with an abiding sense that the playing field is not level and that their job is to search for justice as a substantive matter. This is reflected in the ethical codes for lawyers and social workers. Lawyers are governed by professional rules that stress zealous advocacy on behalf of their clients while remaining ever aware of their role as "officers of the court." Social workers' professional code specifically addresses the ethical mandate to work for justice.

The lawyer primarily sees legal action as providing individual service to clients. As long as the client's goals are within the law, the client's lawyer must pursue those goals even if the lawyer believes that those goals will harm the larger community. If need be, the lawyer can choose against taking the case. Of course, the lawyer can also act as a wise counselor and advise against such action and educate the client about his or her social responsibility. Nevertheless, a lawyer's professional standards do not preclude the representation of a client in a legal but socially corrosive action. In fact, the standards may require such assistance. By contrast, the social worker's code of ethics precludes assisting clients in matters that may have a negative impact on the community.

Social workers obtain their clients in a significantly different way than lawyers. Generally, the client does not pay for the social worker's services. This means that the social worker and agency are able to determine what a community might need and how individual service might assist in reaching that social goal. The NASW Ethical Code states that:

> Social workers should promote the general welfare of society, from local to global levels, and the development of people, their communities, and their environments. Social workers

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> should advocate for living conditions conducive to the fulfilment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.[40]

Even after commencing services, a social worker may refuse to provide services if he or she believes that the client's interests are inconsistent with the needs of the greater community. As Ethical Standard 1.01, Commitment to Clients, says:

> Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supercede the loyalty owed to clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others).[41]

Lawyers, unlike their social work counterparts, can hide behind the adversarial nature of the law. In a legal setting there are generally opposing parties, as well as a third party decision maker. The law concerns itself with results that often culminate with winners and losers. Thus, conflict is inherent in the legal process. Lawyers make no effort to identify the content of social justice. The social content of a lawyer's acts is a function of the efficiency of the adversary system. This gives lawyers an "out" when it comes to the moral content of their positions. It is the third party decision maker who has the responsibility for ensuring that there is social justice; it is not the duty of the adversary. Social workers operating within realms in which results are often intangible or progressive will challenge social injustice. It is an evolving and continuing goal. The NASW Ethical Code describes this ethical principle:

> Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. Social workers' social change efforts are focused

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40. NASW, *supra* note 8, at § 6.1.
41. *Id.* at § 1.1.

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> primarily on issues of poverty, unemployment, discrimination, and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Social workers strive to ensure access to needed information, services and resources; equality of opportunity; and meaningful participation in decision-making for all people.[42]

There is no third party decision maker to insulate social workers' moral choices. Ironically, in the vast majority of legal cases, there is also no third party decision maker because the cases are either settled or pleaded out. This phenomenon does not appear to affect the ways in which lawyers approach social justice. In a very real sense, as negotiators of these pleas and settlements, lawyers play a much more direct role in affecting social justice than we are willing to acknowledge.

Another fundamental difference between the legal and social work professions is that the students who come to law school differ in their expectations of the role they will play in working toward social justice. Most students seeking social work degrees have made the commitment to work for the poor. They have defined their role as necessarily connected to social and political action for vulnerable, disadvantaged, oppressed and exploited people and groups. Those who have not made this moral commitment typically do not apply.

It is not a prerequisite for law students to have embraced a commitment to social justice, though some of them do (more when they begin law school than when they graduate). However, the range of choices of how one might want to be a lawyer is so broad that one cannot make generalizations about the kind of moral commitments that a law student will make. Lawyers make no effort to identify the content of social justice. Indeed, lawyers often make efforts to distinguish themselves from social workers, and, in effect, will say "I'm not a social worker."

Perhaps the greatest challenge for legal educators is confronting these differing assumptions. We know that the playing field is not level and that justice must have substantive content. Despite the

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42. NASW, *supra* note 8.

rhetoric of the efficiency of the adversarial process, we know that the difference in resources between parties and the inherent pressure to settle their cases make the "third party" overseer absent. That absence only reinforces injustice if law is to move forward case-by-case.

As educators of social working lawyers, we need to train our students to become effective organizers, to recognize the strength in numbers, to see law merely as one of many tools but not the "answer," and to recognize that the legal education that offers them the keys to the court house is a privilege that they must accept and use responsibly. We must embrace the principles stated in the social worker's code of ethics: "to help people in need and to address social problems . . . to challenge injustice . . . to respect the inherent dignity and worth of the person . . . to recognize the central importance of human relationships and to behave in a trustworthy manner."[43] In short, our students should leave law school proudly recognizing that law is social work.

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43. *Id.*

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