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ON ENCOURAGING LAWYERS TO SERVE THE POOR

JOHN F. CASTELLANO*

Vast segments of our society hold a perception enunciated four hundred years ago by Shakespeare in *Henry VI*:

"The first thing we do, let's kill all the lawyers."¹

In our society, amidst so much cynicism towards and among attorneys and our culture's indifference to the poor, you have already set yourselves apart. You have crossed a crucial threshold by having joined the Volunteer Lawyers Initiative.² I congratulate you.

Let us explore the vision of our calling to be attorneys

* The author is the Managing Attorney of the Mercy Advocacy Program, recently created by and part of Mercy Haven, Inc., Islip Manor, New York. The Mercy Advocacy Program was founded to provide legal assistance to the poor for civil legal emergencies, such as the denial or loss of government-funded subsistence benefits, denial of access to health care under the Medicaid and Medicare programs and the prevention of homelessness. This article was in its original form the keynote address presented to the Volunteer Lawyers Initiative of Catholic Charities of the Diocese of Rockville Centre, New York, on April 23, 1996.

¹ WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH*, act 4, sc. 2 (Cambridge Univ. Press ed. 1991). Although this quote is often used to cast aspersions on lawyers, in reality, Shakespeare was suggesting the importance of lawyers in maintaining the rule of law, as the line was spoken by Dick the Butcher, who was advocating the overthrow of the government. Thus, the absence of lawyers would create a weakened, anarchic state. See Stephen W. Sather, *Shakespeare for Lawyers: First Thing, Let's Kill All the Lawyers*, 1995 AM. BANKR. INST. J. LEXIS 141, at *3; see also *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting) (noting the frequent misunderstanding of Shakespeare's phrase).

² The Volunteer Lawyer's Initiative is sponsored by Catholic Charities of the Diocese of Rockville Centre, New York. Its role is to provide legal services for the indigent by maintaining a roster of lawyers who have volunteered to provide such services. See Bill Kaufman, *Reaching Out to Give Legal Help*, *NEWSDAY*, Feb. 11, 1996, North Hempstead Edition, at A79, available in LEXIS, News Library, Curnws File.

working for the poor in our society. I hope to encourage you in your work by providing a deeper grounding of your own unique vision of what it means for you to have been called to be an attorney.

My own journey has been filled with opportunities for service and has shaped my vision of lawyering. As a youth I worked with groups of other students painting houses in the South Bronx, and worked as a summer volunteer in Missouri, laboring on a farm and functioning as a Chaplain's Assistant in a state mental hospital. After college I taught religion in a Catholic high school in Baltimore. As a law student I worked for the Legal Aid Society and Nassau Suffolk Law Services.

Since I was admitted to the bar almost twenty years ago, I have worked as a litigator, mentor, community educator, fundraiser, and manager in legal services programs for the poor in Suffolk, Nassau, and Westchester counties and in New York City. Presently, I am the Managing Attorney of the Mental Health Law Project of MFY Legal Services, a not-for-profit corporation located on the Lower East Side of Manhattan. The agency provides free legal services to the poor on civil legal emergencies such as preventing evictions and securing and maintaining subsistence income and other entitlements from government agencies.³ We assist clients in obtaining access to health care through Medicaid⁴ and Medicare,⁵ obtaining basic nutrition through Food Stamps⁶ and securing necessary and appropriate case management and social work services from the

³ Specifically, the Social Security Administration and the Department of Social Services of New York City. *See, e.g.*, 42 U.S.C. § 601 (1994) (authorizing federal monies for families with dependent children on public assistance), 42 U.S.C. § 1381 (1994) (Supplemental Security Income Program for aged, blind and disabled individuals) and N.Y. SOC. SERV. LAW § 157 (McKinney 1992) (providing public assistance under the "Home Relief" program).

⁴ "Medicaid is a cooperative federal and state program ... that finances health care for the poor." BARRY FURROW, ET AL., HEALTH LAW § 14-1, at 604 (1995). It is codified at 42 U.S.C. §§ 1396 *et seq.* (1994).

⁵ Medicare is a federal health insurance program which provides hospital and medical care for persons covered under the Social Security Act, codified at 42 U.S.C. §§ 1395 *et seq.* (1994). *See FURROW, supra note 4*, at 562-63.

⁶ The Food Stamp Program is a federally funded, state-administered program which assists indigent families to purchase food. *See 7 U.S.C. §§ 2001 et seq.* (1994). For a discussion of amendments to the program, see H.R. REP. NO. 104-651, at 62-101, 1996 U.S.C.C.A.N. 2195-2235. The program has been revised in the 1996 Welfare Reform Act, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 1996 U.S.C.C.A.N. [hereinafter Welfare Reform].

Adult Protective Services Division⁷ of the Department of Social Services.

I consider my career as a lawyer to be a vocation, my response to a call. My vision of myself as a lawyer is rooted in the Gospels and my experience, and maintained by prayer. I am continually discerning my calling and am striving to remain faithful to the vision.

I invite you now to reflect further on your own calling as a lawyer. Such reflection is necessary in our busy professional lives if we are to understand the importance of our work. The Gospels of the New Testament and the prophets of the Old Testament provide rich sources for interpreting our professional experience.

Consider the question which Jesus posed to his disciples:

"But ... who do you say I am?"⁸

I suggest first, that the answer to this timeless and fundamental question evolves with each person's life experience. Second, that reflection on Jesus' question, posed to us here and now, will reveal who Jesus is to each one of us. Finally, how a lawyer answers this question is a projection of how he or she sees himself or herself, and of who he or she is.

To answer Jesus' question, you may ask yourselves the following questions,

Do you see Jesus as Creator,⁹—
and yourself as someone who is being formed by experience?

Do you see Jesus as Savior,¹⁰—
and yourself as someone who needs to be saved?

Do you see Jesus as Redeemer,¹¹—
and yourself as someone who needs to be redeemed?

Do you see Jesus as Teacher,¹²—

⁷ N.Y. SOC. SERV. LAW § 473 (McKinney 1997).

⁸ *Matthew* 16:15 (The Jerusalem Bible).

⁹ "He was with God in the beginning. Through him all things came to be, not one thing had its being but through him." *John* 1:2-3.

¹⁰ "Today in the town of David a Savior has been born to you; he is Christ the Lord." *Luke* 2:11.

¹¹ "He will free the poor man who calls to him, and those who need help, he will have pity on the poor and feeble, and save the lives of those in need; he will redeem their lives from exploitation and outrage, their lives will be precious in his sight." *Psalms* 72:12-14.

¹² "There was one of the Pharisees called Nicodemus, a leading Jew, who came to Jesus by night and said, 'Rabbi, we know that you are a teacher who comes from

and yourself as someone who needs to be taught?
 Do you see Jesus as Brother,¹³ —
 and yourself as someone who is called to be a companion?
 Do you see Jesus as Wonder,¹⁴ —
 and yourself as someone who is full of wonder?
 Do you see Jesus as Counselor,¹⁵ —
 and yourself as someone who provides counsel?
 Do you see Jesus as the Suffering Servant,¹⁶ —
 and yourself as someone who suffers for justice?
 Do you see Jesus as Comforter,¹⁷ —
 and yourself as someone who provides comfort?
 Do you see Jesus as Prince of Peace,¹⁸ —

God; for no one could perform the signs that you do unless God were with him.”
John 3:1-2.

¹³ Jesus replied, “A man was once on his way down from Jerusalem to Jericho and fell into the hands of brigands; they took all he had, beat him and then made off, leaving him half dead. Now a priest happened to be travelling down the same road, but when he saw the man, he passed by on the other side. In the same way a Levite who came to the place saw him, and passed by on the other side. But a Samaritan traveler who came upon him was moved with compassion when he saw him. He went up to him and bandaged his wounds, pouring oil and wine on them. He then lifted him on to his own mount, carried him to the inn and looked after him. Next day, he took out two denarii and handed them to the innkeeper. ‘Look after him,’ he said, ‘and on my way back I will make good any extra expense you have.’ Which of these three, do you think, proved himself a neighbor to the man who fell into the brigands’ hands?” “The one who took pity on him,” he replied. Jesus said to him, “Go, and do the same yourself.”

Luke 10:30-37.

¹⁴ “For there is a child born for us, a son given to us and dominion is laid upon his shoulders; and this is the name they give him: Wonder Counselor, Mighty God, Eternal Father, Prince of Peace.”

Isaiah 9:5.

¹⁵ “I bless Yahweh, who is my counselor, and in the night my inmost self instructs me; I keep Yahweh before me always, for with him at my right hand nothing can shake me.” *Psalms 16:7-8.*

¹⁶ “Here is my servant whom I uphold, my chosen one in whom my soul delights. I have endowed him with my spirit that he may bring true justice to the nations.”
Isaiah 42:1.

[A] thing despised and rejected by men, a man of sorrows and familiar with suffering, a man to make people screen their faces; he was despised and we took no account of him. And yet ours were the sufferings he bore, ours the sorrows he carried. But we, we thought of him as someone punished, struck by God, and brought low.

Isaiah 53:3-4.

¹⁷ “Yahweh then replied with very consoling words to the angel who was talking to me.” *Zechariah 1:13.*

¹⁸ *See supra* note 14.

and yourself as someone who promotes peace?

And, perhaps most importantly, do you see Jesus as the Son of God¹⁹—and yourself as someone who is a Daughter or Son of God?

Our answers to these images of Jesus reflect how each one of us frames our professional calling. As attorneys volunteering to serve the poor, your commitment reflects who you are and who God is to you. Indeed, you have been called by God, individually, to bring the “good news”²⁰ to the poor, to free the oppressed, to release the imprisoned.

Furthermore, we have been called in the Beatitudes:²¹

to be poor in spirit;
to be meek;
to mourn;
to hunger and thirst for justice;
to be merciful;
to be pure of heart;
to be peacemakers; and
to be persecuted in the cause of justice.²²

As lawyers in the Volunteer Lawyers Initiative, you are providing legal advice and representation to impoverished individuals and families. Thus, we must ask some simple questions. Who do you see in the face of your client? If it is the Lord, then the Incarnation and Resurrection are happening for you. Who do your clients see in you? If they see the wisdom, empowerment and comfort of Christ, then the Incarnation and Resurrection are happening for your clients as well.

Know that in your very essence; trust it; perhaps most importantly, let this experience take you.²³

¹⁹ As soon as Jesus was baptized he came up from the water, and suddenly the heavens opened and he saw the Spirit of God descending like a dove and coming down on him. And a voice spoke from heaven, “This is my Son, the Beloved; my favor rests on him.”

Matthew 3:16-17.

²⁰ “He went about the whole of Galilee teaching in their synagogues, proclaiming the Good News of the kingdom and curing all kinds of diseases and sickness among the people.” *Matthew* 4:23.

²¹ See *Matthew* 5:1-12.

²² See *id.*

²³ “I tell you most solemnly, when you were young you put on your belt and walked where you liked; but when you grow old you will stretch out your hands, and somebody else will put a belt around you and take you where you would rather not go.” *John* 21:18.

While each of our journeys is wonderfully unique, there is another common, unifying context in which we practice law within our society. The United States Bishops teach us in their pastoral letter, *Economic Justice for All*,²⁴ of the way in which justice is to be viewed in a society. They note:

“Central to the biblical presentation of justice is that the justice of a community is measured by its treatment of the powerless in society, most often described as the widow, the orphan, the poor, and the stranger...in the land.”²⁵

The Bishops then speak further of the particular susceptibility of these groups.

“What these groups of people have in common is their vulnerability and lack of power. They are often alone and have no protector or advocate. Therefore, it is God who hears their cries....”²⁶

See yourselves as the very means for this prophecy to happen.

As lawyers, we have been called to and have chosen the vocation of the Advocate, another scriptural image of the Holy Spirit.²⁷ I encourage you to allow yourself to be taken to unexpected places, experiences and perspectives, when representing your clients. Your clients may be some or all of the following:

- ◆ the tenant (and family) facing an eviction and the abyss of homelessness;²⁸
- ◆ a mother, perhaps after a divorce, with young children, facing a denial or termination of public assistance, or a denial of emergency assistance to prevent an eviction or a utility shutoff;²⁹

²⁴ NAT'L CONF. OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* (1986).

²⁵ *Id.* at 21.

²⁶ *Id.*; “Yahweh will always hear those who are in need, will never scorn his captive people.” *Psalms* 69:33.

²⁷ *John* 14:16.

²⁸ See, e.g., *Report on the Governor's Proposed 1996-1997 Budget: Its Effect on Our State's Most Vulnerable Populations*, 51 *THE RECORD* 510, 511 (June 1996) (noting expected increase in homelessness due to budget cuts).

²⁹ See, e.g., H. Carl McCall, *Will Governor's Welfare Plan Work? No*, N.Y. L.J., Dec. 9, 1996, at 2, available in LEXIS, Legnew Library, Curnws File (noting welfare reform will require job training and job creation); Cheryl Winokur, *Welfare Benefit Restrictions Challenged--Again*, N.J. L.J., Sept. 8, 1997, at 7, available in LEXIS, Legnew Library, Nylawj File (discussing ACLU's efforts to challenge statutory provision denying benefits to children born to mothers on welfare).

- ◆ a disabled person or a recently unemployed parent trying to qualify for Medicaid for himself or herself or his or her children,³⁰
- ◆ a person addicted to alcohol or other drugs who is trying to qualify for Social Security Disability or, if there is no work history, for SSI;³¹
- ◆ an individual trying to qualify for or remain eligible for the Section 8 housing subsidy program³² (which renders housing affordable for few poor people), who on SSI subsists on \$566.00 per month³³ or on the Home Relief Program subsists on \$425.00 per month, including \$288.00 for shelter, here in our well-to-do and expensive Nassau County;³⁴
- ◆ an undocumented immigrant needing extensive medical services, who may have become disabled due to a job injury or emotionally traumatized due to the stress of being away from all that was once familiar (albeit dangerous), who is struggling to survive in our increasingly hostile United States, and whose children may be seeking an education.³⁵

From having seen the face of Christ in these brothers and sisters, you may be spurred to ask further questions:

Why so little of our abundance for these people?

Why is there systemic homelessness?

³⁰ See, e.g., William J. Dean, *New Initiative by American College of Trial Lawyers*, N.Y. L.J., Oct. 4, 1996, at 3, available in LEXIS, Legnew Library, Nylawj File (discussing efforts to litigate *pro bono* cases, including opposing attempts to reduce the number of disabled eligible for welfare benefits).

³¹ See Monica L. Haynes, *Addicts, Some Children Lose Benefits: Welfare Reform Means Disability Required to Get SSI Payments*, PITTSBURGH POST-GAZETTE, July 6, 1997, at A7, available in LEXIS, News Library, Curnws File (noting 1997 change eliminating drug and alcohol abuse from list of qualifying disabilities for SSI).

³² The Section 8 housing subsidy is enacted in 42 U.S.C. § 1437f (1997), which provides for payments to private landlords who rent to persons below certain income levels.

³³ See N.Y. SOC. SERV. LAW § 209(2)(a) (McKinney 1996).

³⁴ See N.Y. SOC. SERV. LAW § 131-a (McKinney 1992); 18 N.Y.C.R.R. § 352.3(a) (providing shelter allowance schedules organized by county).

³⁵ See *Plyler v. Doe*, 457 U.S. 202 (1982) (striking down a Texas statute that withheld state funds from local school districts which admitted children who were not legally in the United States); *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 787 (C.D. Cal. 1995) (holding that a provision in the California voter initiative, Proposition 187, denying primary and secondary education based on immigration status, conflicts with *Plyler* and was therefore preempted by federal law).

Why have those persons who are disabled due to substance abuse or alcohol addiction, which the medical profession defines as a disease,³⁶ been rendered ineligible by Congress for any Social Security Disability or SSI benefits?³⁷

Why is eligibility for the state Home Relief Program in danger of being limited to only two months when our fiscal year 1997 state budget passes?³⁸

Why are public assistance benefits at risk of being cut by twenty-five percent, knocking down that single Home Relief recipient's cash subsistence from \$425.00 per month by \$106.00 to \$319.00 per month?³⁹ Assuming that the recipient could find shelter for the pittance of \$288.00 per month, what will he or she do when his or her disposable cash, after paying for rent, is \$31.00 per month, and when eligibility will last for only two months?

What will the undocumented immigrant do for medical care?

What will the legal permanent resident do for Public Assistance, SSI, Medicaid and Food Stamps?⁴⁰

³⁶ See DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 182-204 (4th ed. 1994).

³⁷ See P.L. No. 104-121 § 105, 110 Stat. 853, 1996 U.S.C.A.N. (amending 42 U.S.C. § 1382(a)(3) to prevent SSI determination of a disability if the person's drug or alcohol problems are significantly involved in the disability); *Parham v. Chater*, 964 F. Supp. 432, 435-36 (D.D.C. 1997) (noting person may not rely on substance abuse problems in determining if person is disabled for purposes of SSI eligibility).

³⁸ The 1997 state budget, which passed on July 29, 1997, provides for the abolishment of the Home Relief Program for able-bodied adults, replacing it at the end of two years with a voucher system, and limiting participation to five years. See Kimberly Schaye & Jon R. Sorensen, *State Pols Finally OK a Budget*, N.Y. DAILY NEWS, July 30, 1997, at 2; see also Harvy Lipman, *Sense Outweighs Savings in Reform Push*, THE TIMES UNION, Three-Star Edition, Apr. 28, 1996, at A3, available in LEXIS, News Library, Curnws File (outlining welfare and home relief proposed program cuts and noting the minimal impact such cuts will have on the budget).

³⁹ See James Dao, *Pataki's Budget Plan in Brief: Amid Austerity, a Tax Break; Welfare*, N.Y. TIMES, Jan. 2, 1996, at A1 (discussing proposed 25% cut in Home Relief payments in 1996 state budget).

⁴⁰ See *Welfare Bill Becomes Law; Administration Works to Soften Immigrant Provisions*, HEALTH LEG. & REG., Aug. 28, 1996, available in LEXIS, Legnews Library, Curnws File (detailing the signing of the Personal Responsibility and Work Opportunity Act of 1996, P.L. 104-193, by President Clinton on August 28, 1996). The act curtailed the ability of legal immigrants to obtain public assistance and Medicaid benefits. See *id.* President Clinton after signing the bill issued a memorandum allowing those immigrants who had been receiving food stamps as of the date of signing of the bill to continue to receive them for up to one year. See *id.* In the 1997 federal budget, after protests by state groups, some of the lost health and disability benefits were restored. See Frank Shafroth, *Congress Gets Cracking on Balanced Budget*, NATION'S CITIES WEEKLY, June 16, 1997 at 1.

Why has the federal government abandoned its commitment to providing the poor with minimal access to the courts on civil matters by reducing national funding from \$420 million in fiscal year 1995 to \$280 million in fiscal year 1996⁴¹ and proposing to provide no funding whatsoever in October 1997?

There are many other profound questions for people who are open to hearing and responding to the call to be advocates for the poor.

May your experience be rich in serving the poor, may you see from your clients' experience the invitation and the need to define your own systemic questions to promote justice on behalf of your clients and, as CPLR Article 9⁴² and the Federal Rules of Civil Procedure⁴³ say, for those "similarly situated."

May you know that our God accompanies you as you walk back to Our Father along the same road with your client. You have already been told what is right and what Yahweh wants of you: to do justice and to love kindness and to walk humbly with your God.⁴⁴

By doing so, know that you will be doing nothing less than participating in a most noble and most worthy endeavor: building the Kingdom of God.

As you continue to build God's Kingdom of Justice and Peace, may you keep asking the basic question of who Jesus is to you. You will experience rich, if unexpected, revelations to this question, as has happened for me time and time again over my nineteen short years of practice.

⁴¹ See *MFY Legal Services Announces a Consolidation of its Offices to Better Serve Manhattan's Disadvantaged*, THE METROPOLITAN CORP. COUNS., Apr. 1997, at 54, available in LEXIS, News Library, Curnws File (detailing cuts to legal aid programs in the 1980's and 90's).

⁴² N.Y. C.P.L.R. art. 9 (McKinney 1992).

⁴³ FED. R. CIV. P. 23.1.

⁴⁴ *Micah* 6:8.

