

## To Love or Not to Love: The Possibility, Promise, and Peril of Mutually Transformative Attorney-Client Friendships

*David A. Singleton\**

*“Two [women] looked out from the prison bars. One saw mud, the other saw stars.” You as my attorney, advocate, and very dear friend have helped me to see the stars. –Tyra Patterson<sup>1</sup>*

INTRODUCTION .....	744
I. MY RELATIONSHIP WITH TYRA PATTERSON .....	747
II. THE MEANING OF TRUE FRIENDSHIP .....	756
III. THE MEANING OF LOVE .....	762
IV. THE PERILS OF MY FRIENDSHIP WITH TYRA.....	766
A. Countertransference.....	766
B. Loss of Objectivity .....	768
C. The Danger of Burnout.....	770
CONCLUSION .....	772

---

\* Associate Professor of Law, Northern Kentucky University Chase College of Law; Executive Director, Ohio Justice & Policy Center; A.B., Duke University; J.D., Harvard Law School. I am very appreciative of the time, insights, and assistance provided by the following individuals: Clark Cunningham, Janet Moore, Angelina Jackson, Steve Drizin, and Colin P. Pool. I would not have been able to complete this Article without the support of my wife, Verna Williams, and my daughter, Allison Singleton. Finally, I dedicate this Article to my client and dear friend, Tyra Patterson.

<sup>1</sup> E-mail from Tyra Patterson to author (Feb. 14, 2015, 10:44 PM) (on file with author) (quoting DALE CARNEGIE, HOW TO STOP WORRYING AND START LIVING 139 (trade paperback ed. 2004)).

## INTRODUCTION

I teach young attorneys and law students<sup>2</sup> to be client-centered.<sup>3</sup> Borrowing a phrase from my tenure with the Public Defender Service for the District of Columbia (PDS), I encourage them to “walk through fire for their clients,” PDS-speak for doing whatever it takes within ethical constraints to serve their clients’ interests.

But what if, in the course of walking through fire together, the attorney and client develop genuine affection for each other and become close friends? What if they feel love for one another? Should close friendships between lawyers and their clients be encouraged or should they be avoided?

Until recently I had not considered these questions. Although I have found something positive in almost all of my clients, I had never formed a close friendship with one until I met Tyra Patterson. Tyra is currently serving sixteen-years-to-life for aggravated murder and aggravated robbery. Since late 2012, I have served as the lead attorney in her bid to gain clemency from Ohio Governor John Kasich.

In his essay *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, Professor Fried describes the attorney-client relationship as a “limited” or “special purpose” friendship.<sup>4</sup> Fried’s “limited-purpose” friendship lacks the reciprocity of true friendships because the lawyer adopts the interests of the client as his own,<sup>5</sup> but the client owes no reciprocal duty of devotion to the lawyer’s interests.<sup>6</sup> Since Fried’s essay, numerous scholars have debated the merits of his lawyer-as-special-purpose-friend analogy. While some critics concede that lawyers may act as their clients’ friends when they help them make moral choices,<sup>7</sup> others question whether “friendship” is the appropriate description for a relationship that is conditioned on payment,<sup>8</sup> or maintain that attorneys are best understood as fiduciaries

---

<sup>2</sup> In addition to running the Constitutional Litigation Clinic at the Northern Kentucky University Chase College of Law, I have taught at Gideon’s Promise and the National Defender Training Project.

<sup>3</sup> A full discussion of what it means to be client-centered is beyond the scope of this Article. For such a discussion, see, for example, Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990).

<sup>4</sup> Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060, 1071–72 (1976).

<sup>5</sup> *Id.* at 1073–74.

<sup>6</sup> *Id.* at 1074.

<sup>7</sup> THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY 44–45 (1994).

<sup>8</sup> Edward A. Dauer & Arthur Allen Leff, *The Lawyer as Friend*, 86 YALE L.J. 573, 578–79 (1977); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 108.

and agents.<sup>9</sup>

While the academy has largely focused on whether friendship is the best way to conceptualize the attorney-client relationship in the abstract,<sup>10</sup> this Article instead explores the benefits and drawbacks of attorney-client friendships through my relationship with Tyra Patterson. Drawing upon our experience, I argue that close personal friendships between lawyers and their clients could help achieve the clients' legal objectives while positively impacting the client in manners unrelated to the representation. My point is not that every lawyer should develop such close friendships with her clients, but rather that true attorney-client friendships may be mutually beneficial.

Part I details the story of how our relationship began as a typical attorney-client relationship but transformed into something much deeper.<sup>11</sup> Part II then explores whether what exists between us is a true friendship as understood by Western culture. Ultimately, I conclude that our relationship meets this standard.

But is what I feel for Tyra also love, and if so, is that problematic? Part III attempts to answer these questions by discussing the four "loves" identified by Classical Philosophy: *agape* (love for God and mankind); *eros* (romantic and/or erotic love); *philia* (love of friendship); and *storge* (familial love).<sup>12</sup> I conclude that *agape*, *philia*, and *storge* all describe my feelings towards Tyra. On reflection, I further realize that something like *storge* has existed in many of my

---

<sup>9</sup> Robert J. Condlin, "What's Love Got to Do with It?"—"It's Not Like They're Your Friends for Christ's Sake": *The Complicated Relationship Between Lawyer and Client*, 82 NEB. L. REV. 211, 307–08 (2003).

<sup>10</sup> See, e.g., *supra* notes 8–9 and accompanying text.

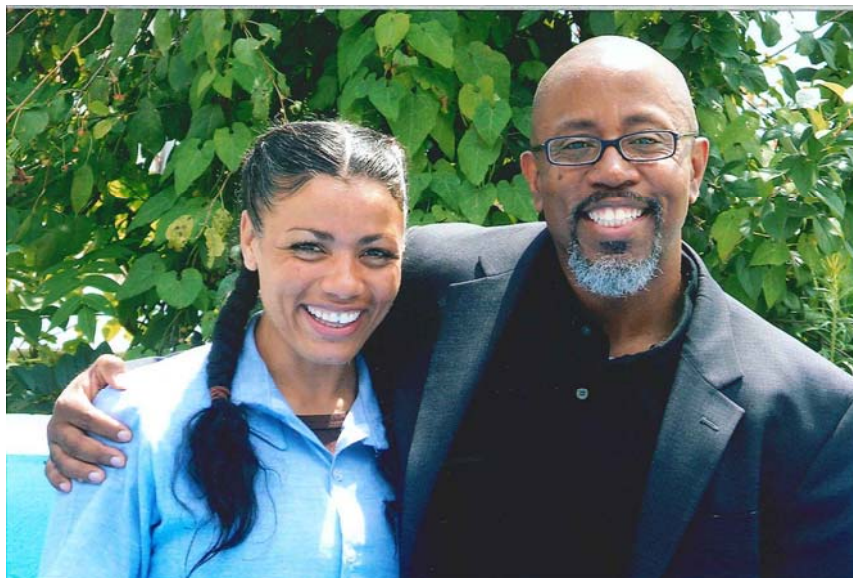
<sup>11</sup> I use narrative—i.e., storytelling—in this Article to discuss my relationship with Tyra. Narrative has been described as "a most effective method of persuasion" that can also serve "to supply information about the actual functioning of the law in real-world settings" and/or "challenge the notion of objectivity in law." Jane B. Baron & Julia Epstein, *Language and the Law: Literature, Narrative, and Legal Theory*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 662, 668–69 (David Kairys ed., 3d ed. 1998). I agree that the use of narrative in this Article serves these functions. For a powerful example of narrative, see Phyllis Goldfarb, *A Clinic Runs Through It*, 1 CLINICAL L. REV. 65, 86–91 (1994) (describing the author's representation of a death row inmate who was eventually executed).

Mindful of my ethical duty of confidentiality, I have consulted with Tyra for her permission and her feedback. She supports the Article enthusiastically and views our writing projects (*see infra* Part II) as an extension of our close friendship. Given Tyra's full support and collaboration, I have no ethical concerns regarding this Article, yet I recognize there are issues inherent in publicly telling a client's story. I refer the reader to Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000), for a thorough treatment of the topic as it is outside the scope of this Article.

<sup>12</sup> See generally C.S. LEWIS, *THE FOUR LOVES* (1991).

previous attorney-client relationships, particularly when I worked with PDS. My willingness to “walk through fire” for my clients—enduring abuse from judges and prosecutors, sacrificing my personal life to prepare for trials and appeals—is similar to the love I feel for my immediate family, for which I would literally run into a wall of flames. Of course there are differences between the love for my immediate family and the love for a client like Tyra, but I feel that she is a member of my family. As a result, I am prepared to do everything within ethical constraints so that we can one day walk out of prison together. Ultimately, I believe our deep reciprocal affection will continue long after she is released from prison and our fight has finished.

Part IV will discuss the potential drawbacks of close attorney-client friendships. Although our relationship has pushed me even harder to provide Tyra with the very best representation, there are potential perils inherent in such relationships. Yet, I conclude that our friendship has changed us both for the better and has been well worth any risks.



**Tyra Patterson pictured with author David A. Singleton, August 2013<sup>13</sup>**

---

<sup>13</sup> Although law review articles do not ordinarily contain photographs, I defend the use of one here. This Article is about a friendship I have developed with a woman many would write off based on her criminal conviction. It is easy to marginalize people that we do not get to know. Legal scholars refer to this as “othering.” See, e.g., Mick Gidley, *Representing Others: An Introduction*, in REPRESENTING OTHERS: WHITE VIEWS OF INDIGENOUS PEOPLES 1, 3 (Mick Gidley ed. 1992) (describing the “tendency, as James

## I. MY RELATIONSHIP WITH TYRA PATTERSON

My closest friendships have always developed spontaneously. While some work hard to cultivate new friendships, as an introvert I am content with the few dear friends I have and do not feel the need to acquire others. Accordingly, I never set out to become friends with Tyra Patterson, and in fact I resisted representing her at first. A former board member of the Ohio Justice & Policy Center (OJPC)—where I serve as Executive Director—told me there was powerful evidence of Tyra’s innocence and begged me to investigate the case. I replied that “OJPC doesn’t represent innocent people,” referring proudly to the fact that OJPC devotes its limited resources to pro bono advocacy for the currently and formerly incarcerated to ensure their humane treatment irrespective of their guilt or innocence. I put off meeting with Tyra for two years due to time constraints, but in November 2012 I finally agreed.

Before our meeting, I read the Court of Appeals decision upholding her conviction.<sup>14</sup> According to the court, Tyra and four codefendants surrounded the victims’ car and began rocking it.<sup>15</sup> The codefendants then began robbing the victims of various items, including jewelry.<sup>16</sup> At some point, one of the codefendants, a woman named LaShawna Keeney, brandished a gun and pointed it at Michelle Lai, who was in the front passenger seat next to the driver, her sister Holly Lai.<sup>17</sup> Keeney fired a single shot, fatally striking Michelle in the head.<sup>18</sup> According to two of the victims, Tyra urged Keeney to shoot the gun and had urged the victims to “check it in,” a street term for “give us your stuff.”<sup>19</sup> Tyra had also confessed to grabbing a necklace from one of the victims.<sup>20</sup> She was convicted of four counts of aggravated robbery and one count of aggravated murder.<sup>21</sup> The trial

---

Clifford put it, ‘to dichotomize . . . into we-they contrasts and to essentialize the resultant other’”). By including this photograph, I am pushing back against the tendency to “other” Tyra by forcing the reader to look at her face and try to visualize the humanity I see in her.

<sup>14</sup> State v. Patterson, No. 15699, 1997 WL 216576 (Ohio Ct. App. May 2, 1997).

<sup>15</sup> *Id.* at \*1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Patterson*, 1997 WL 216576 at \*3.

<sup>21</sup> *Id.*

judge sentenced her to forty-three-years-to-life,<sup>22</sup> more time than the shooter received.<sup>23</sup>

In 2011, Governor Ted Strickland commuted Tyra's sentence to sixteen-years-to-life,<sup>24</sup> apparently agreeing that her original sentence was excessive in light of the diminished role attributed to her at trial. Although Governor Strickland's commutation of Tyra's sentence made her immediately parole-eligible because she had served just over sixteen years at that point,<sup>25</sup> the Ohio Parole Board denied her release, setting her next release hearing for April 2018.<sup>26</sup>

I first met Tyra in the prison's makeshift interview room. I later incorporated what Tyra told me into the affidavit we filed in support of her clemency petition, to which I cite throughout this part of the Article. Her version of events bore little resemblance to the court's "official" version. Tyra admitted that she was present at the scene of the crime with her friend Rebecca; however, they were not part of Keeney's group, did not participate in the robbery, and had left the area before Keeney shot Michelle.<sup>27</sup> Tyra insisted that when Keeney and the others began to surround the car, Holly looked at Tyra and pleaded with her to "make them stop."<sup>28</sup> Tyra then walked up to Keeney and told her to leave the victims alone.<sup>29</sup> After Keeney cursed at Tyra, Rebecca and Tyra turned around to walk back to Tyra's apartment.<sup>30</sup> As they walked away, Rebecca pointed to a shiny object on the ground.<sup>31</sup> Tyra picked it up and saw that it was a necklace.<sup>32</sup> Although Tyra knew that the necklace did not belong to her, she decided to keep it anyway.<sup>33</sup>

---

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at \*9.

<sup>24</sup> Tom Beyerlein, *Strickland Shortens Killer's Prison Term*, DAYTON DAILY NEWS (Jan. 7, 2011, 11:22 PM), <http://www.daytondailynews.com/news/news/state-regional/strickland-shortens-killers-prison-term/nMnCL/>.

<sup>25</sup> OHIO DEP'T OF REHAB. & CORR., OHIO PAROLE BOARD DECISION, TYRA PATTERSON (Mar. 1, 2011).

<sup>26</sup> *Id.*

<sup>27</sup> Aff. of Tyra Patterson, *In re* Clemency Application of Tyra Patterson, ¶ 5 (June 30, 2013), <https://justice4tyra.files.wordpress.com/2013/07/tyra-newaffidavit.pdf> [hereinafter Patterson Aff.].

<sup>28</sup> *Id.* at ¶ 55.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at ¶¶ 57–58.

<sup>31</sup> *Id.* at ¶ 59.

<sup>32</sup> *Id.*

<sup>33</sup> Patterson Aff., *supra* note 27, at ¶ 60.

As Tyra and Rebecca walked towards Tyra's apartment, a shot rang out.<sup>34</sup> After hearing the shot, Tyra and Rebecca ran the rest of the way inside.<sup>35</sup> Once there, Tyra heard a "panicky voice" pleading for help because the speaker's sister had been shot.<sup>36</sup> Tyra called 911,<sup>37</sup> then flushed the necklace down the toilet out of fear it would connect her to crimes she did not commit.<sup>38</sup>

Tyra then told me that after she told the detective she had picked up the necklace, he pressured her into saying that she grabbed the necklace from the victim's neck.<sup>39</sup> She told me that the detective repeatedly screamed at her off camera,<sup>40</sup> called her a "fucking liar,"<sup>41</sup> and said it would be better for her to "go down" for robbery than it would be for murder.<sup>42</sup> Tyra told me that she confessed to robbery because she was scared and naively believed that the detective would let her leave if she told him what he wanted to hear.<sup>43</sup>

I recoiled as Tyra talked about her trial representation. Her attorneys never introduced the 911 call she made;<sup>44</sup> told her that she should not take the stand because she "didn't talk right";<sup>45</sup> did not challenge her confession as false, but rather conceded it was true despite her assertion of innocence;<sup>46</sup> and did not call Rebecca.<sup>47</sup>

The woman sitting across from me was impressive, appearing accomplished, educated, and well-spoken.<sup>48</sup> She told me how she had

---

<sup>34</sup> *Id.* at ¶ 61.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at ¶ 62.

<sup>37</sup> *Id.* at ¶ 63.

<sup>38</sup> *Id.* at ¶ 67.

<sup>39</sup> Patterson Aff., *supra* note 27, at ¶ 86.

<sup>40</sup> *Id.* at ¶¶ 77–78.

<sup>41</sup> *Id.* at ¶ 77.

<sup>42</sup> *Id.* at ¶ 86.

<sup>43</sup> *Id.* at ¶ 87. For a discussion of why people give false confessions, see JIM PETRO & NANCY PETRO, FALSE JUSTICE: EIGHT MYTHS THAT CONVICT THE INNOCENT 224–27 (2010) (attributing the phenomenon to known interrogation techniques and the lack of videotaped interrogations).

<sup>44</sup> Aff. of Ira Mickenberg, *In re* Clemency Application of Tyra Patterson ¶ 10(a) (July 1, 2013), <https://justice4tyra.files.wordpress.com/2013/07/mickenberg.pdf> [hereinafter Mickenberg Aff.].

<sup>45</sup> Patterson Aff., *supra* note 27, at ¶ 98.

<sup>46</sup> Mickenberg Aff., *supra* note 44, at ¶ 5; Aff. of Carl G. Goraleski, *In re* Clemency Application of Tyra Patterson ¶ 12 (June 27, 2013), <https://justice4tyra.files.wordpress.com/2013/07/201307120949.pdf>.

<sup>47</sup> Patterson Aff., *supra* note 27, at ¶ 101.

<sup>48</sup> *Tyra Patterson Speaks Out About False Confession*, DAYTON DAILY NEWS, <http://www.daytondailynews.com/videos/news/video-tyra-patterson-speaks-out-about-false/vCCxppq/> (last visited Feb. 10, 2016).

earned her GED and her steam engineer's license, and that while once functionally illiterate, she had become a sought-after prison tutor. Tyra had also developed into an accomplished jewelry maker and master craftswoman.

As I packed up to leave, I promised Tyra I would investigate her case. The fact that she had recently passed a polygraph examination<sup>49</sup> intrigued me. I thought we could make another run at clemency based on actual innocence, but I knew getting executive clemency would be even harder than unwinding a conviction in the courts.

Over the next eight months I investigated Tyra's innocence claim, devoting most of my professional time to her cause. I obtained the 911 call<sup>50</sup> from the prosecutor's files, in addition to copies of the police-conducted interviews of the codefendants and witnesses. I read every page of the transcripts and police reports and met with all four of Tyra's codefendants several times. Each codefendant was polygraphed, and all four were found to be truthful in their statements supporting Tyra's innocence.<sup>51</sup> OJPC also found all twelve of the jurors who heard the case. Of those twelve jurors, five refused to meet with us. Six of those who did meet with us agreed to give affidavits supporting clemency after hearing Tyra's 911 call for the first time.<sup>52</sup>

---

<sup>49</sup> Report from Frank J. Smith & Donald Clark, Ohio Polygraph & Assocs., on Polygraph Examination of Tyra L. Patterson to Bryan Perkins, Att'y (Mar. 29, 2012), [https://justice4tyra.files.wordpress.com/2013/07/polygraph\\_tyras.pdf](https://justice4tyra.files.wordpress.com/2013/07/polygraph_tyras.pdf).

<sup>50</sup> Justice for Tyra Patterson, *Tyra's 911 Call*, YouTube (July 10, 2013), <https://www.youtube.com/watch?v=WTb5hcWUcwE&feature=youtu.be>.

<sup>51</sup> Report from James L. Hammes, James L. Hammes Polygraph Inc., on Polygraph Examination of Joseph Letts to author (undated), [https://justice4tyra.files.wordpress.com/2013/07/polygraph\\_joes.pdf](https://justice4tyra.files.wordpress.com/2013/07/polygraph_joes.pdf); Report from Robert L. Patterson, Certified Polygraph Exam'r, Tri-State Polygraph Assocs., Inc., on Polygraph Examination of Kellie N. Johnson to author (Dec. 20, 2012), [https://justice4tyra.files.wordpress.com/2013/07/polygraph\\_kellie.pdf](https://justice4tyra.files.wordpress.com/2013/07/polygraph_kellie.pdf); Report from Frank J. Smith & Donald Clark, Ohio Polygraph & Assocs. and Clark-Dye & Assocs., on Polygraph Examination of Angela Thuman to author (Jan. 17, 2013), [https://justice4tyra.files.wordpress.com/2013/07/polygraph\\_angie.pdf](https://justice4tyra.files.wordpress.com/2013/07/polygraph_angie.pdf); Report from Frank J. Smith & Donald Clark, Ohio Polygraph & Assocs. and Clark-Dye & Assocs., on Polygraph Examination of LaShawna Keeney to author (Dec. 21, 2012), [https://justice4tyra.files.wordpress.com/2013/07/polygraph\\_lashawna.pdf](https://justice4tyra.files.wordpress.com/2013/07/polygraph_lashawna.pdf).

<sup>52</sup> Aff. of June Ackerman, *In re* Clemency Application of Tyra Patterson (June 17, 2013), [https://justice4tyra.files.wordpress.com/2013/07/aff\\_ackerman.pdf](https://justice4tyra.files.wordpress.com/2013/07/aff_ackerman.pdf); Aff. of Nancy Day, *In re* Clemency Application of Tyra Patterson (June 13, 2013), [https://justice4tyra.files.wordpress.com/2013/07/aff\\_day.pdf](https://justice4tyra.files.wordpress.com/2013/07/aff_day.pdf); Aff. of Steve Guy, *In re* Clemency Application of Tyra Patterson (June 25, 2013), [https://justice4tyra.files.wordpress.com/2013/07/aff\\_guy.pdf](https://justice4tyra.files.wordpress.com/2013/07/aff_guy.pdf); Aff. of Clarence New, *In re* Clemency Application of Tyra Patterson (June 14, 2013), [https://justice4tyra.files.wordpress.com/2013/07/aff\\_new.pdf](https://justice4tyra.files.wordpress.com/2013/07/aff_new.pdf); Aff. of Robert Reed, *In re* Clemency Application of Tyra Patterson (June 22, 2013), [https://justice4tyra.files.wordpress.com/2013/07/aff\\_reed.pdf](https://justice4tyra.files.wordpress.com/2013/07/aff_reed.pdf); Aff. of Sharon



Our ongoing conversations were raw and put Tyra in a vulnerable place. I learned that Tyra grew up in Dayton, Ohio with her parents and three brothers.<sup>53</sup> Her father was an alcoholic who died of cirrhosis when she was thirteen years old.<sup>54</sup> According to Tyra, her father was a “different man” when he drank, abusing her mother both physically and emotionally.<sup>55</sup> She further described her father’s inappropriate actions towards Tyra herself, including one incident that led Tyra’s mother to end the relationship.<sup>56</sup>

After her parents split up, Tyra’s life descended into chaos. She, her mother, and brothers were often homeless.<sup>57</sup> When they were able to find an apartment, they would often have to move to escape either her father or a man named Snake, her mother’s abusive boyfriend.<sup>58</sup> Poverty profoundly affected Tyra. Her mother, a high school dropout, had to work two menial jobs and would supplement her meager earnings by selling blood.<sup>59</sup> But there was never enough money to provide basic necessities.<sup>60</sup> Tyra told me how she and her brothers would fish in the Dayton River for their dinner many nights,<sup>61</sup> shoplifting food if their efforts failed.<sup>62</sup> She would also steal candy bars to trade for pencils with her schoolmates.<sup>63</sup> According to Tyra, she stole candy because she wanted to have something her classmates desired<sup>64</sup>: “[t]rading candy for pencils distracted other kids from teasing us about being poor and dirty.”<sup>65</sup>

Because Tyra’s mother was “tired all the time” from working, she paid no attention to Tyra’s education.<sup>66</sup> As a result, Tyra stopped going to school during her sixth grade year.<sup>67</sup> Tyra viewed school as pointless

---

Wilson, *In re* Clemency Application of Tyra Patterson (June 20, 2013), [https://justice4tyra.files.wordpress.com/2013/07/aff\\_wilson.pdf](https://justice4tyra.files.wordpress.com/2013/07/aff_wilson.pdf).

<sup>53</sup> Patterson Aff., *supra* note 27, at ¶ 8.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at ¶ 9.

<sup>56</sup> Tyra’s mother never knew the entirety of her father’s abuse. Writing to me later, Tyra said “only you know my deepest secrets.” E-mail from Tyra Patterson to author (Sept. 25, 2013, 7:27 PM) (on file with author).

<sup>57</sup> Patterson Aff., *supra* note 27, at ¶ 14.

<sup>58</sup> *Id.* at ¶¶ 11–14.

<sup>59</sup> *Id.* at ¶¶ 16–17.

<sup>60</sup> *Id.* at ¶ 17.

<sup>61</sup> *Id.* at ¶ 25.

<sup>62</sup> *Id.* at ¶ 17.

<sup>63</sup> Patterson Aff., *supra* note 27, at ¶ 19.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at ¶ 22.

<sup>67</sup> *Id.* at ¶ 23.

because she was not doing well and was tired of being teased about being poor,<sup>68</sup> rationalizing her decision to drop out by telling herself that her older brothers would care for her.<sup>69</sup> When she should have been in school, Tyra passed her time doing chores, fishing, and learning to cook.<sup>70</sup> She also smoked marijuana regularly because it helped her “forget the tough times.”<sup>71</sup> The only regular job Tyra ever held was at a Wendy’s.<sup>72</sup> Her manager assigned her to work the cash register because of her outgoing personality,<sup>73</sup> but Tyra did not know how to make change correctly and was too embarrassed to ask for help.<sup>74</sup> She left the job shortly thereafter to avoid confronting the source of her embarrassment.<sup>75</sup>

During one meeting with Tyra, she expressed interest in learning more about me. I told Tyra that we shared the common experience of a home life torn apart by marital discord. Although my parents did not physically abuse each other to my knowledge, they did so emotionally. Their arguments were particularly intense when my mother had too much to drink. Tyra later asked me if I had ever done anything I regretted. I could not answer at the time, but during our next visit I closed my eyes and recalled my teenage years after my father moved away and my brother left for college. I told Tyra that late one night my mother was standing outside my door, accusing me of being just like my father and asserting that I would never develop into a real man. Eyes still closed, I recounted how I tried to remain calm and pled with her to be quiet and let me sleep, but that she kept screaming at me. Feeling enormous shame, I described how, pushed to the breaking point, I opened my door, yelled “Shut the fuck up!” and slammed the door in her face. I told Tyra how this scene would sporadically repeat itself in my head and how I felt like I had taken my father’s place in the home.

When I opened my eyes, I saw Tyra studying my face, tears in her eyes. She thanked me for “opening up” and revealing a part of myself. It was a vulnerable moment. Aside from my wife and therapist, I had never talked with anyone about my relationship with my mother. Those limited times when I did were always accompanied by

---

<sup>68</sup> *Id.*

<sup>69</sup> Patterson Aff., *supra* note 27, at ¶ 23.

<sup>70</sup> *Id.* at ¶¶ 25–26.

<sup>71</sup> *Id.* at ¶ 27.

<sup>72</sup> *Id.* at ¶ 28.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Patterson Aff., *supra* note 27, at ¶ 28.

tremendous guilt, as if I were betraying my mother's memory. The truth was that people are complicated and my mother was no different. Upon reflection, I am not entirely sure why I chose to talk about my mother with Tyra. I could have picked anything from my past, but I selected the thing that most pained me. I suppose sharing such a dark part of my past could have made Tyra more comfortable revealing the difficult facts I needed to properly represent her. But really, I felt comfortable opening up to Tyra because she made me feel safe in a way few have.

During the initial phase of our work, we met regularly, usually two or three times per month. These were joyous times for us, as we believed we were building a case that could lead to her freedom. I consistently warned Tyra, however, that the path to release would be hard because there was no DNA evidence or other conclusive proof of her actual innocence. I told her that if we failed to get clemency, the Parole Board would likely deny her release when she became eligible because of her refusal to admit full guilt.<sup>76</sup> I explained that our journey together would be a roller coaster and that we would need to lean on each other to get through the difficult times.

Our first low came in January 2013. A few hours before I was supposed to visit Tyra with students from my Facts, Storytelling, and Persuasion class,<sup>77</sup> I received a troubling call that Tyra had been placed into administrative segregation—"the hole"—for a possible violation of prison rules. I saw Tyra the next day and learned that the prison was investigating her for trying to have a friend smuggle in Neurontin (Gabapentin), a non-opioid anticonvulsant and painkiller commonly used for treating diabetic neuropathy.<sup>78</sup> Tyra suffers episodically severe pain as a result of Crohn's disease, and prison doctors had prescribed Tyra Neurontin to control her pain. She had become dependent on the pills.<sup>79</sup>

Tyra could barely look me in the eyes during the conversation we had behind glass, a departure from the contact visits we were

---

<sup>76</sup> This concern was echoed by Daniel S. Medwed in his article *The Innocent Prisoner's Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings*, 93 IOWA L. REV. 491 (2008).

<sup>77</sup> Facts, Storytelling, and Persuasion teaches students the importance of developing a theory of defense and then using that theory to guide the lawyer's telling of the story at each stage of the trial. Tyra agreed to let me use her case as a teaching vehicle, in part because we hoped to recruit some of the students to become active supporters of her cause.

<sup>78</sup> See generally Kristen Jeffries, *Treatment of Neuropathic Pain*, MEDSCAPE, [http://www.medscape.com/viewarticle/730671\\_4](http://www.medscape.com/viewarticle/730671_4) (last visited Feb. 10, 2016).

<sup>79</sup> Patterson Aff., *supra* note 27, at ¶ 115.

accustomed to. She was sure that her misstep had blown her case. I told her that we still had a shot at clemency because her transgression was irrelevant to a petition based on actual innocence. Still, because whether to grant clemency is a political decision,<sup>80</sup> any fact that painted her in a negative light could make her eventual release more difficult to obtain. Tyra also believed that she had disappointed me and told me she would understand if I no longer wanted to represent her. Truth be told, I *was* upset at her for breaking such a serious prison rule and likely making our fight for clemency more difficult. But there was no way I would abandon her. I tried to reassure her that I believed in her, that I would not judge her for her mistake, and that I would keep fighting for her freedom. Tyra wound up spending seventy-five days in the hole. On two occasions, she refused to meet with me because she just wanted to be left alone. Wearing the orange jumpsuit that signified her segregation reinforced her shame. During this period, she leaned on me for emotional support, and I was glad to provide it.

In August 2013, the Governor's pardon attorney informed us that he would defer to the Parole Board's decision regarding whether to grant a hearing rather than ask the Governor to exercise his power to order the Board to do so. The news was devastating. Based on past experience, I worried that the Board would not take our innocence claim seriously and that without a hearing there would be little chance of success. I tried to sound reassuring when I told Tyra the news over the phone, describing it as a "temporary setback." She listened quietly and then began crying. But she sought to reassure me that she would be okay, and did so again, two days later via email: "I'm a soldier and have conditioned my mind into knowing what to do for survival."<sup>81</sup>

There were also occasions when I leaned on Tyra. We seemingly hit rock bottom in November 2013 when the Parole Board decided not to grant Tyra a hearing and as a result would recommend that the Governor deny her application. The news came as I was on my way to visit Tyra. She entered the visiting room all smiles, but she could tell from my expression that something was wrong. I sat her down and told her the news, explaining that it would make it much harder for the Governor to grant relief absent a hearing. I told her I would beg the Governor's office to delay its decision to give us time to develop additional support.

---

<sup>80</sup> See generally Rachel E. Barkow, *Clemency and Presidential Administration of Criminal Law*, 90 N.Y.U. L. REV. 802 (2015).

<sup>81</sup> E-mail from Tyra Patterson to author (Aug. 29, 2013, 6:47 PM) (on file with author).

2016]

*TO LOVE OR NOT TO LOVE*

755

It was not unusual for Tyra to cry during my visits with her. She would cry when she discussed the impact of her incarceration on her mother; when she discussed the tragedy of Michelle Lai's murder; and when she discussed the unfairness and hardships other prisoners suffered. But the tears she shed when I told her the Parole Board's decision revealed a deep pain I had never seen from her before. Her expression said what she did not verbalize: she had lost all hope. I was hurting too. I began questioning my professional judgment, wondering whether I should have dissuaded Tyra from seeking clemency on actual innocence grounds. Although we had discussed the risks of proclaiming innocence to a Parole Board, I worried that I should have more thoroughly explained the strategy's potential implications.

Before I left the visit, Tyra collected herself and explained that she had developed the ability to take a hard punch over the years, recalling her earlier "soldier" metaphor. She told me that she was more worried about me than herself. As long as I live, I will never forget how Tyra, during one of her most disappointing moments, cared more about me and how I felt than about her own predicament. It was one of the most heartfelt expressions of love that I have ever received from a friend.

We managed to persuade the Governor's office to keep the case open, and soon after, former Ohio Attorney General Jim Petro agreed to advocate for Tyra with the Governor's office. We won support from other conservative politicians who vowed to help after meeting with Tyra in person. Eventually, the Parole Board reversed course and held a hearing in January 2015. We await its decision and will continue to fight for Tyra's release regardless.

Tyra has made clear that when she is released, she would love the opportunity to use her recently earned paralegal degree to help OJPC reform the criminal justice system. She hopes to be a fierce advocate for incarcerated women and to use OJPC as a platform to educate young people about the dangers of using drugs and dropping out of school. I would eagerly hire her and hope that day will come soon. We share a vision of how we can work together to improve the lives of people who are in or at risk of entering the criminal justice system.

## II. THE MEANING OF TRUE FRIENDSHIP

There is no question that Tyra and I have a professional relationship. But is Tyra also my friend, and, if so, what kind? Plato explored the nature of friendship in *Lysis*,<sup>82</sup> finding its basis in reciprocity of feelings: “[I]f one person desires another . . . he would not desire him . . . as a friend unless he somehow belonged to his beloved either in his soul or in some characteristic, habit, or aspect of his soul.”<sup>83</sup> His pupil Aristotle wrote in the *Nicomachean Ethics*<sup>84</sup> that friendship “is most necessary for our life . . . . [N]o one would choose to live without friends even if he had all the other goods.”<sup>85</sup> Aristotle conceptualized friendship as “the mutually acknowledged and reciprocal exchange of goodwill and affection that exists among individuals who share an interest in each other on the basis of virtue, pleasure, or utility.”<sup>86</sup> He believed that friendships based primarily upon utility or pleasure “are easily dissolved[] when the friends do not remain similar [to what they were]; for if someone is no longer pleasant or useful, the other stops loving him.”<sup>87</sup> Accordingly:

[C]omplete friendship is the friendship of good people similar in virtue; for they wish goods in the same way to each other in so far as they are good, and they are good in themselves . . . . [T]hose who wish goods to their friend for the friend’s own sake are friends most of all; for they have this attitude because of the friend himself, not coincidentally.<sup>88</sup>

In short, Aristotle believed that true friends help each other to live virtuous and fulfilled lives.<sup>89</sup>

In the early modern era, Immanuel Kant defined friendship as “the union of two persons through equal mutual love and respect.”<sup>90</sup> He conceived friendship “to be an ideal of the practical and emotional concern displayed by each in the well-being of the other . . . . In such

<sup>82</sup> Plato, *Lysis: A Dialogue on Friendship* (Stanley Lombardo trans., 1991), in OTHER SELVES: PHILOSOPHERS ON FRIENDSHIP 3 (Michael Pakaluk ed., 1991).

<sup>83</sup> *Id.* at 26.

<sup>84</sup> Aristotle, *Nicomachean Ethics: Books VIII & IX* (Terence Irwin trans., 1985), in OTHER SELVES, *supra* note 82, at 30.

<sup>85</sup> *Id.*

<sup>86</sup> Nancy Sherman, *Aristotle on the Shared Life*, in FRIENDSHIP: A PHILOSOPHICAL READER 91 (Neera Kapur Badhwar ed., 1993).

<sup>87</sup> Aristotle, *supra* note 84, at 32–33.

<sup>88</sup> *Id.* at 33.

<sup>89</sup> Sherman, *supra* note 86, at 92.

<sup>90</sup> IMMANUEL KANT, THE METAPHYSICS OF MORALS § 46 (Cambridge Univ. Press 1996).

a humane friendship, the friends are united through a morally good will.”<sup>91</sup> More recently, Elizabeth Telfer has proposed three necessary conditions for friendship to exist: “shared activities, the passions of friendship, and acknowledgement of the fulfillment of the first two conditions, constituting an acknowledgment of and consent to the special relationship.”<sup>92</sup>

With respect to the first condition, shared activities, Telfer posits that there are three types of activities that true friends share: “reciprocal services, mutual contact, and joint pursuits.”<sup>93</sup> The second condition consists of two types of feelings: affection and passion. Telfer describes affection as “a desire for another’s welfare and happiness *as a particular individual*[.]”<sup>94</sup> specifically distinguishing affection from sense of duty and benevolence, which motivate us “to seek others’ good in general.”<sup>95</sup> She defines passion as the desire of the friends for each other’s company,<sup>96</sup> rather than “keeping company with another out of loneliness, or pity, or sense of duty,” or a longing for company more generally.<sup>97</sup> Telfer explains that we seek to be with particular people because either we like them<sup>98</sup> or share a bond.<sup>99</sup> Telfer’s third ingredient for true friendship—acknowledgement of the relationship—is really about “commitment and choice.”<sup>100</sup> Put simply, friends mutually acknowledge their relationship and choose to continue it.<sup>101</sup>

Social science also sheds light on the topic. Professors Brian R. Patterson, Lorraine Bettini, and Jon F. Nussbaum studied how elderly people conceptualized friendship.<sup>102</sup> The researchers interviewed twenty subjects to determine how they understood friendship. The researchers asked the subjects a series of questions and then sorted and compiled the answers into definitional clusters. The top three clusters reported in the study were devotion, commonality, and reciprocity.<sup>103</sup>

<sup>91</sup> H.J. Paton, *Kant on Friendship*, in FRIENDSHIP, *supra* note 86, at 136.

<sup>92</sup> Elizabeth Telfer, *Friendship*, in OTHER SELVES, *supra* note 82, at 250, 257.

<sup>93</sup> *Id.* at 251.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 252.

<sup>97</sup> *Id.*

<sup>98</sup> Telfer, *supra* note 92, at 253.

<sup>99</sup> *Id.* at 254.

<sup>100</sup> *Id.* at 255.

<sup>101</sup> *Id.* at 255–56.

<sup>102</sup> Brian R. Patterson, Lorraine Bettini & John F. Nussbaum, *The Meaning of Friendship Across the Life-Span: Two Studies*, 41 COMM. Q. 145 (1993).

<sup>103</sup> *Id.* at 150–51.

Within the devotion cluster, typical statements included: “A friend knows all about you and still loves you”; “If you have problems, you kind of find out who your friends are because they’re the ones that stick with you”; and “A friendship is accepting people as they are.”<sup>104</sup> Regarding the commonality cluster, the subjects’ statements “simply sa[id] that friendship is based on mutual interests. The specific statements typically deal[t] with activities or circumstances that they and their friends have in common.”<sup>105</sup> Typical statements in the reciprocity cluster included: “To have a friend, you must be a friend”; “We help each other”; and “[Friendship means] doing for others what I’d like for them to do for me.”<sup>106</sup>

It appears from this discussion that mutuality and reciprocity are at the core of true friendships,<sup>107</sup> but friendships potentially exist without these elements. In “The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation,” Professor Charles Fried analogized the attorney-client relationship to friendship in an attempt to answer his article’s fundamental question: “Can a good lawyer be a good person?”<sup>108</sup> Fried answered affirmatively and argued that a lawyer can be a “limited-purpose” friend to his client.<sup>109</sup> Contending that “[a] lawyer is a friend in regard to the legal system,”<sup>110</sup> Fried reasons that “like a friend [the lawyer] . . . adopts your interests as his own. I would call that the classic definition of friendship.”<sup>111</sup> According to Fried, attorney-client friendships differ from “natural” friendships in that natural friendships are ideally “reciprocal” while legal friendships are not. This is because, in the attorney-client relationship, “[t]he lawyer is said to be the client’s friend insofar as he is devoted to his client’s interests, but it is no part of the ideal that the client should have any reciprocal devotion to the interests of his lawyer.”<sup>112</sup>

Scholars have criticized Fried’s analogy on a number of grounds. Rejecting the idea that “an adequate conception of lawyer-client

---

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 151.

<sup>106</sup> *Id.*

<sup>107</sup> Dictionaries also reflect the importance of mutuality and reciprocity in defining the word friend. For example, the Oxford English Dictionary provides the earliest known definition of “friend” as “a person with whom one has a bond of mutual affection, typically one exclusive of sexual or family relations.” *Friend*, OXFORD ENGLISH DICTIONARY (12th ed. 2011).

<sup>108</sup> Fried, *supra* note 4, at 1060.

<sup>109</sup> *Id.* at 1071.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 1074.



relations can be grounded in an analogy to intimate personal relationships,”<sup>113</sup> Professor Robert Condlin argues that one problem with Fried’s comparison is the manner in which attorney-client relationships are formed<sup>114</sup>—i.e., for the attorney’s financial gain.<sup>115</sup> Thus, as Condlin notes, “[i]t is not wildly off base to say that, for Fried, lawyers make friends for money.”<sup>116</sup> Indeed, Professor William Simon expressed this very same objection, contending that Fried “has described the classical notion, not of friendship, but of prostitution.”<sup>117</sup> Professors Thomas L. Shaffer and Robert F. Cochran, Jr., are no kinder in their criticism of Fried’s analogy, denigrating Fried’s “friend” as a “hired gun.”<sup>118</sup>

Condlin also contends that Fried’s analogy lacks the reciprocity of true friendship,<sup>119</sup> a point other scholars have made,<sup>120</sup> and which Fried himself recognized.<sup>121</sup> It is true, Condlin observes, that attorney-client relationships have aspects of reciprocity to the extent clients are obligated to fulfill contractual obligations to their attorneys, such as paying a retainer.<sup>122</sup> But reciprocity arising out of contractual obligations is “very far removed from the spontaneous reciprocity of true friendship.”<sup>123</sup>

I do not object to Fried’s conceptualization of the lawyer as his client’s limited-purpose friend. Although true friendships require mutuality and reciprocity, other kinds of friendships apparently do

<sup>113</sup> Condlin, *supra* note 9, at 213.

<sup>114</sup> *Id.* at 268.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Simon, *supra* note 8, at 108.

<sup>118</sup> SHAFFER & COCHRAN, JR., *supra* note 7, at 44 n.3. Though Shaffer and Cochran disagree with Fried’s friendship analogy, they argue that lawyers and their clients “should deal with moral issues that arise in representation in the way that friends deal with moral issues.” *Id.* at 45. They posit that an attorney-client friendship “is a relationship in which the lawyer sees the client as a collaborator in the good.” *Id.* at 47. Thus, the essence of serving clients is to help them “become better people in many ways[,] . . . provid[ing] the truthfulness that enables [them] . . . to know [themselves]” in the Aristotelean sense and “determine the right thing to do.” *Id.* Condlin, however, characterizes Shaffer and Cochran’s friendship theory as “moral hectoring.” Condlin, *supra* note 9, at 295, that lacks mutuality and reciprocity. *See id.* at 295–96.

<sup>119</sup> Condlin, *supra* note 9, at 268.

<sup>120</sup> *See, e.g.*, HORST HUTTER, POLITICS AS FRIENDSHIP: THE ORIGINS OF CLASSICAL NOTIONS OF POLITICS IN THE THEORY AND PRACTICE OF FRIENDSHIP 20 (1978) (“The receiver of benefits in a friendship must reciprocate for the simple reason of avoiding the appearance that he might be in the relationship for the sake of the benefits rather than for the sake of his affection for the giver.”).

<sup>121</sup> Fried, *supra* note 4, at 1074.

<sup>122</sup> Condlin, *supra* note 9, at 269.

<sup>123</sup> *Id.*

not. For example, “friend” can mean “[a] person who wishes another, a cause, etc. well”<sup>124</sup> or “something that is helpful, reliable, or beneficial.”<sup>125</sup> Neither of these definitions seems to require mutuality or reciprocity. Thus, Fried is not wrong to analogize the attorney-client relationship as a friendship of sorts. To the extent the attorney works to achieve the client’s goals, then the attorney is someone who is “helpful, reliable or beneficial.”<sup>126</sup>

Nor do I object to Fried’s critics who complain that Fried’s concept of the attorney-client friendship lacks the reciprocity of true friendships of the kind we enjoy in our personal lives. They are correct. But what is missing from their critiques is acknowledgment that there is space for true friendships to develop between lawyers and their clients, and that such friendship can enhance, and not necessarily detract from, the professional relationship. My friendship with Tyra is an example of a relationship intertwined with professional and personal dimensions that are mutually reinforcing.

Unquestionably, my relationship with Tyra began professionally. If Fried’s analogy has force, then it is accurate to say that I was initially Tyra’s “limited-purpose” friend with respect to the legal system. But there came a point when our professional relationship evolved into one based on mutuality and reciprocity. I believe our relationship satisfies Telfer’s test.

First, though limited by her incarceration, Tyra and I nonetheless engage in mutual and reciprocal<sup>127</sup> “shared activit[ies],” Telfer’s first ingredient of friendship.<sup>128</sup> In addition to our frequent, occasionally intense conversations described *supra*, Tyra and I are writing a book about her story.<sup>129</sup> She asked me to share my experiences as her attorney in the book in the hopes that we will create something that we as friends can call our own.

---

<sup>124</sup> *Friend*, *supra* note 107.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Reciprocity was very important to Tyra: “I sometimes ask God why He favored me with the blessing of you and I don’t know why[.] I didn’t feel so deserving but WOW[,] this much? How could I ever repay? Reciprocate is what I will live for[.]” E-mail from Tyra Patterson to author (June 30, 2013, 7:33 PM) (on file with author).

<sup>128</sup> Telfer, *supra* note 92, at 251.

<sup>129</sup> Discussing her excitement about the book project, Tyra writes: “I absolutely would love to learn through our writing about what molded and motivated you to do what you do and things you’ve been through. You were supposed to have written this book years ago, but God knew someone else was coming into the picture, to help motivate you as well . . . . It’s going to be a therapeutic experience[.]” E-mail from Tyra Patterson to author (Mar. 20, 2014, 2:57 PM) (on file with author).

Furthermore, Tyra and I unquestionably have passion for the relationship. We have developed a great deal of affection for one another and enjoy each other's company. Our bond is strong. She cares about me and worries about my well-being, delighting when my wife scolds me for working on Sunday.<sup>130</sup> I consider Tyra a member of my family and try to reassure her that our team continues to work as hard as we can to free her and that I will continue to provide a shoulder for her to lean on during the tough times. We also acknowledge our friendship and choose to cultivate and maintain it, Telfer's third requirement for true friendship.<sup>131</sup> We talk often about how our friendship has grown beyond the bounds of the attorney-client relationship and how we expect to be close friends long after she is released.

Reflecting on my relationship with Tyra makes me wonder why our professional relationship managed to evolve into such a close friendship. I question whether it would have happened if I charged fees as in a traditional attorney-client relationship—"time is money"<sup>132</sup> certainly applies to attorneys.<sup>133</sup> But for most of my twenty-four-year legal career, I have not charged my clients.<sup>134</sup> If my representation of Tyra was dependent on legal fees, I would have faced enormous pressure to keep the non-professional portions of my meetings with her to a minimum. But the conversations we had when not discussing her case were the most valuable in terms of building our friendship. In Tyra's opinion, the fact that I did not charge her—or any other

---

<sup>130</sup> See, e.g., E-mail from Tyra Patterson to author (Mar. 5, 2014, 4:42 PM) (on file with author) ("I LOVE HER FOR YELLING AT YOU!!!! BC you do over work urself and you ALWAYS make up an excuse to work and then justify ur actions. I know why I wanted to make her something special [referring to her plans to make jewelry for my wife] bc she keeps you on ur toes!!!").

<sup>131</sup> Telfer, *supra* note 92, at 255.

<sup>132</sup> Benjamin Franklin coined this phrase. See BENJAMIN FRANKLIN, *ADVICE TO A YOUNG TRADESMAN* (1748), reprinted in *THE POLITICAL THOUGHT OF BENJAMIN FRANKLIN* 51 (Ralph L. Ketcham ed., 2003).

<sup>133</sup> See, e.g., Michael J. Farrell, *A Trial Lawyer's Bonanza: Business and Commercial Litigation in Federal Court*, W. VA. LAW., Oct. 1999, at 21 ("Time is money in the legal profession."); Charles N. Geilich, *Rich Man, Poor Man, Beggar Man, Thief: A History and Critique of the Attorney Billable Hour*, 5 CHARLESTON L. REV. 173, 178–89 (2011) (arguing that time is money if billed properly).

<sup>134</sup> After graduating law school, I worked for three years with the Legal Action Center for the Homeless (now known as The Urban Justice Center); two years with the Neighborhood Defender Service of Harlem; five years with the Public Defender Service for the District of Columbia; and now thirteen years with the OJPC. My only stint in private practice was the ten months I worked for a large law firm in Cincinnati, Ohio, shortly after my family and I moved from Washington, D.C.

client—was important to our friendship. She wrote: “I’ve never had an attorney who just fought for me from their soul without motive . . . .”<sup>135</sup>

Of course, I have other demands on my time, irrespective of whether I bill for it. I teach at a law school, I volunteer as Executive Director at OJPC, and I have a family that I too often neglect as a result of these other commitments. The fact that I am so busy should also have made developing a friendship with Tyra very difficult. But somehow we found a way to become friends, perhaps because true friendships have a mystical, unexplainable dimension to them.<sup>136</sup> Professor Condlin notes that friends, according to sixteenth century philosopher Michel de Montaigne, “were brought together as if by heaven, and partook of a union ‘so perfect and so entire that it is certain that few [exist] . . . . So many fortuitous circumstances are needed to make it . . . .’”<sup>137</sup>

But as Tyra’s attorney, our friendship makes me uncomfortable at times. I have wrestled with to what extent, if at all, it is appropriate for me to love Tyra or any other client. I have come to realize that the answer to this question depends upon the meaning of love.

### III. THE MEANING OF LOVE

Not all love is the same. For example, the love I feel for my wife is qualitatively different than the love I have for my daughter. I love both intensely and would die for them if need be. But I love my wife romantically, my daughter parentally. Additionally, although I do not always get along with my brother, I do love him. I love my true friends and delight in their company, but that love does not feel as strong as the love for my immediate family. Finally, I care deeply about mankind. Although I would probably not die for strangers, I empathize for those who are in pain and want to do my part to alleviate other people’s suffering, which is why I chose to become a lawyer. Is this caring a form of love?

---

<sup>135</sup> E-mail from Tyra Patterson to author (Nov. 13, 2013, 12:57 PM) (on file with author).

<sup>136</sup> Tyra seems to believe that fate brought us together. In response to my question as to why our friendship formed, Tyra writes, quoting Ralph Waldo Emerson: “Friends also follow the laws of divine necessity; they gravitate to each other, and cannot otherwise; when each the other shall avoid, shall each by each most enjoyed. Their relation is not made, but allowed.” E-mail from Tyra Patterson to author (Mar. 3, 2015, 7:59 AM) (quoting Ralph Waldo Emerson, *Character*, in RALPH WALDO EMERSON, WORKS 244 (1897)).

<sup>137</sup> Condlin, *supra* note 9, at 259 (quoting Michel de Montaigne, *On Affectionate Relationships*, in MICHEL DE MONTAIGNE, THE COMPLETE ESSAYS 205, 207 (M.A. Screech ed. & trans., 1991)).

These are not new questions. Those who have pondered the meaning of love—including in legal academia—have sought guidance from the ancient Greeks in defining the concept.<sup>138</sup> The author C.S. Lewis, in his well-known book *The Four Loves*,<sup>139</sup> explored the varieties of love based on ancient Greek definitions of the concept. Finding this conceptualization of love helpful, I will do the same.

The ancient Greeks primarily used four words to express love: *agape*, *eros*, *philia*, and *storge*.<sup>140</sup> *Agape* refers to “brotherly love, charity; the love of God for man and of man for God.”<sup>141</sup> The Gospel of John describes this type of love in the well-known verse: “For God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life.”<sup>142</sup> The Gospel of Matthew instructs that, in return, man “shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second *is* like unto it, Thou shalt love thy neighbour as thyself.”<sup>143</sup> This “Divine Gift-love,” C.S. Lewis wrote, “enables [man] to love what is not naturally loveable; lepers, criminals, enemies, morons, the sulky, the superior[,] and the sneering.”<sup>144</sup>

*Eros* refers to “that kind of love which lovers are ‘in.’”<sup>145</sup> The intensity and passion of romantic love can become all-consuming, as anyone who has ever been in love knows well, and may “sanction all sorts of actions [the lovers] would not otherwise have

<sup>138</sup> See, e.g., ALAN SOBLE, EROS, AGAPE AND PHILIA, READINGS IN THE PHILOSOPHY OF LOVE (1989); Barbara L. Atwell, *The Jurisprudence of Love*, 85 U. DET. MERCY L. REV. 495, 459 n.3 (2008); Linda Ross Meyer, *How Lawyers Love*, 28 QUINNIPIAC L. REV. 691, 692–95 (2010); Nelson P. Miller, *Lawlessness Revealed: The Supreme Court’s Man of Liberty Transcends Tort Law*, 66 LA. L. REV. 95, 116 (2005); Blake D. Morant, *The Teachings of Dr. Martin Luther King, Jr. and Contract Theory: An Intriguing Comparison*, 50 ALA. L. REV. 63, 75 n.50 (1998); Lynn D. Wardle, *All You Need Is Love?*, 14 S. CAL. REV. L. & WOMEN’S STUD. 51, 61 (2004).

<sup>139</sup> LEWIS, *supra* note 12.

<sup>140</sup> See, e.g., Roman Krznarik, *The Ancient Greeks’ 6 Words for Love (And Why Knowing Them Can Change Your Life)*, YES! MAGAZINE (Dec. 27, 2013), <http://www.yesmagazine.org/happiness/the-ancient-greeks-6-words-for-love-and-why-knowing-them-can-change-your-life>. The Greeks also used the words *ludus* to refer to “playful love” and *pragma* to refer to “longstanding love.” *Id.*

<sup>141</sup> H.G. LIDDELL & ROBERT SCOTT, AN INTERMEDIATE GREEK-ENGLISH LEXICON: FOUNDED UPON THE SEVENTH EDITION OF LIDDELL AND SCOTT’S GREEK-ENGLISH LEXICON 4 (2010).

<sup>142</sup> *John* 3:16 (King James).

<sup>143</sup> *Matthew* 22:37–39 (King James).

<sup>144</sup> LEWIS, *supra* note 12, at 128.

<sup>145</sup> *Id.* at 91.

dared[,] . . . [including] acts of injustice or uncharity against the outer world.”<sup>146</sup>

*Philia* is the love between true friends.<sup>147</sup> As discussed *supra*, it exists where two people share a strong bond based upon mutuality and reciprocity. Lewis characterized friendship as “the least *natural* of loves” because it is not necessary for procreation (*eros*), or child rearing (*storge*).<sup>148</sup>

*Storge* is familial love,<sup>149</sup> which Lewis describes as the “least discriminating of loves” because “almost anyone” can be loved by a family member: “the ugly, the stupid, even the exasperating.”<sup>150</sup> *Storge* is the instinctual love that would propel a parent into a burning building to rescue her child.

Upon reflection, I believe three of the four loves exist to varying degrees in my relationship with Tyra. But for *agape* love, I would have never met her. I went to law school because I wanted to make a difference in the lives of poor people who lacked the same opportunities I was blessed to have. As a Christian, I believe in the importance of helping others, and my work with OJPC is my calling, my ministry. As a prisoners’ rights litigator, the Gospel of Matthew speaks powerfully to me:

Then shall the King say unto them . . . , Come, ye blessed of my Father, inherit the kingdom prepared for you from the foundation of the world: For I was an hungred, and ye gave me meat: I was thirsty, and ye gave me drink: I was a stranger, and ye took me in: Naked, and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me.

Then shall the righteous answer him, saying, Lord, when [did we do these things for you]? And the King shall answer . . . [that] [i]nasmuch as ye have done *it* to one of the least of these my brethren, ye have done *it* unto me.<sup>151</sup>

Of course, I am not alone in feeling *agape* for my clients. I suspect that many public attorneys are motivated in part by a kind of *agape*—the

<sup>146</sup> *Id.* at 113.

<sup>147</sup> LIDDELL & SCOTT, *supra* note 141, at 317.

<sup>148</sup> LEWIS, *supra* note 12, at 58.

<sup>149</sup> LIDDELL & SCOTT, *supra* note 141, at 748.

<sup>150</sup> LEWIS, *supra* note 12, at 32.

<sup>151</sup> *Matthew* 25:34–40 (King James).

desire to help people—even if they are not Christians.<sup>152</sup> *Agape* is what inspires attorneys to serve those who many consider repugnant.<sup>153</sup>

But *storge* also connects Tyra and me; we are like siblings.<sup>154</sup> We share an especially close bond that partially explains my motivation to fight as hard as I can for her. I would walk through fire for Tyra, just as I would for a family member. I further realize that I have felt *storge* for many clients over the years, particularly those I have represented at trial. Something about the crucible of trial—with all of the pressure to win given the consequences of losing—brings client-centered lawyers closer to the men and women they represent. The outcome of the trial is often akin to “life-or-death” for the client even in non-capital cases, since conviction of even a misdemeanor can potentially impose lifelong consequences through collateral sanctions which limit the convicted person’s opportunities.<sup>155</sup> As an empathetic lawyer who cares deeply for my clients, thinking of them as family gives me the extra push I needed to do my very best to achieve their goals. After all, if I would not want to see a family member imprisoned for a lengthy period of time or denied employment because of a felony conviction, how could I allow the same thing to happen to a client who is like family?

*Storge* motivates me to fight as hard as I can for clients in the most difficult moments of their lives and allows me to see myself as what Professor Charles Ogletree calls the “heroic public defender.”<sup>156</sup> But

---

<sup>152</sup> Love of mankind is not what motivates all public defenders to continue their work. For some, it is simply a job that pays the bills, while crushing caseloads jades others.

<sup>153</sup> For the proposition that society often finds criminals and the accused repugnant, see generally HOW CAN YOU REPRESENT THOSE PEOPLE? (Abbe Smith & Monroe H. Freedman, eds., 2013).

<sup>154</sup> There are also elements of a father-daughter relationship with Tyra. Although I am only nine years older than Tyra, she has told me that she looks up to me and that if she ever marries, she would like me to walk her down the aisle to give her away.

<sup>155</sup> A “collateral sanction” is a “legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction . . . even if it is not included in the sentence.” *Collateral Sanctions and Discretionary Disqualification of Convicted Persons: Standard 19-1.1 Definitions*, AM. BAR ASS’N, [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_collateral\\_blk.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_collateral_blk.html) (last visited Feb. 10, 2016). A thorough exploration of the topic is available in CECELIA KLINGELE, JENNY ROBERTS & MARGARET COLGATE-LOVE, *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE* (2013).

<sup>156</sup> Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1275 (1993) (discussing how, following his sister’s murder, empathy for clients was not enough to sustain author’s desire to work as a public defender and author’s subsequent development of other “motivations that centered around how [he] envisioned [himself] and [his] task . . . under the rubric of

while a person loves her family for a lifetime, the *storge* I feel for clients is temporary. Over time, after the ordeal has concluded, our bond disappears—although I remain fond of most of my former clients.

Perhaps I bonded so closely with Tyra because winning her freedom is a particularly steep climb. Unlike my other former clients, I expect I will continue to love Tyra even after her eventual release—but as a true friend. This *philia* is why I expect our friendship to outlive our professional relationship.

The closeness of our friendship sometimes makes me uncomfortable. As Lewis warns: “When . . . two people . . . discover that they are on the same secret road [and] are of different sexes, the friendship which arises between them will very easily pass . . . into erotic love” unless they are “physically repulsive” to one another or if one or both of them “love[] elsewhere.”<sup>157</sup> I believe Lewis overstates this prediction, but my friendship with Tyra *is* intense and I sometimes worry how it will affect us—particularly her—in the future, as I will discuss *infra*.

#### IV. THE PERILS OF MY FRIENDSHIP WITH TYRA

Until now, I have not examined the possible risks of my close friendship with Tyra. I have identified three potential problems: (1) counter-transference, which creates the dangers of boundary crossing; (2) loss of objectivity; and (3) burnout.

##### A. Countertransference

Sigmund Freud introduced the concepts of transference and countertransference.<sup>158</sup> Transference occurs where a patient “directs towards the physician a degree of affectionate feeling . . . based on no real relation between them and which . . . can only be traced back to old wishful [f]antasies of the patient’s which have become unconscious.”<sup>159</sup> Countertransference is the unconscious redirection of the therapist’s feelings for another person towards the patient.<sup>160</sup> Both transference and countertransference exist in all human

---

‘heroism’”).

<sup>157</sup> C.S. LEWIS, *THE FOUR LOVES* 67 (1971).

<sup>158</sup> See generally SIGMUND FREUD, *THE FUTURE PROSPECTS OF PSYCHO-ANALYTIC THEORY* (1910), reprinted in XI *THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 139 (Standard ed. 1973).

<sup>159</sup> SIGMUND FREUD, *FIVE LECTURES ON PSYCHO-ANALYSIS: FIFTH LECTURE* (1909), reprinted in XI *THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD*, *supra* note 158, at 49, 51.

<sup>160</sup> FREUD, *supra* note 158, at 144–45.



relationships.<sup>161</sup> Although the phenomena of transference and countertransference originated in psychology, scholars have applied them in other contexts, including attorney-client relationships.<sup>162</sup>

Countertransference “is most notable and potentially problematic in those relationships involving an imbalance of power.”<sup>163</sup> As Professor Marjorie A. Silver notes, “[c]ountertransference, insufficiently understood, creates the danger of boundary violations, which both therapists and lawyers alike must avoid.”<sup>164</sup> Such boundary violations<sup>165</sup> are not limited to having sexual relations with a client but may also manifest themselves in other ways,<sup>166</sup> including the situation in which a lawyer’s love for a client impairs his professional judgment.<sup>167</sup>

I wonder to what extent transference and countertransference exist within my relationship with Tyra. She has told me on several occasions how much she admires me and that I have set a high bar for men who may enter her life romantically. Although her statements flatter me, I would never want my relationship with Tyra to keep her from finding a true life partner. I work so hard to free Tyra because I want her to be able to experience life fully; I want to love and support her upon her release without encumbering her.

I further worry that my friend-love for Tyra may cause her to develop an unhealthy dependence on our relationship. Undoubtedly, there is a power imbalance in our relationship.<sup>168</sup> Tyra is emotionally

---

<sup>161</sup> FREUD, *supra* note 159, at 51–52; Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 265 (1999).

<sup>162</sup> Silver, *supra* note 161, at 267–74.

<sup>163</sup> *Id.* at 265.

<sup>164</sup> *Id.* at 272.

<sup>165</sup> One must carefully distinguish between “boundary crossing” and “boundary violation.” As two scholars note: “Boundary *crossing* describes a departure from commonly accepted practice that may or may not benefit a client. A boundary *violation* is a departure from accepted practice that places the client and the professional relationship at risk.” Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 UMKC L. REV. 965, 996 (2007) (citation omitted).

<sup>166</sup> Silver, *supra* note 161, at 273.

<sup>167</sup> *Id.* at 277 (describing a hypothetical criminal defense lawyer who, because of his attraction to his female client, does not push her as hard as he would ordinarily push a client to take a plea; as a result, she rejects the plea offer, goes to trial, and is convicted and sentenced to twice as much time as she would have received had she taken the plea).

<sup>168</sup> Despite the power balance inherent in most attorney-client relationships, I remain committed to client-centered representation and as such aim to “enhance the autonomy” of my clients. William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones’s Case*, 50 MD. L. REV. 213, 213 (1991). Simon’s article provides an alternative

vulnerable. She has spent the past twenty-one years behind bars and is dependent on me to fight for her freedom. Whenever I finish our visits and go home to my family, she remains behind; and her life in prison is often degrading and dehumanizing.<sup>169</sup>

By showing Tyra love, I bring something into her life she does not receive on a day-to-day basis in prison. To be clear, I am not the only person who loves her. Her mother, family, and friends—all of whom love her dearly—visit her as frequently as they can. She also made friends with many other incarcerated women. But aside from Tyra's brothers, I am the only man who visits her regularly. I cannot help but wonder if Tyra sees me as more than a friend. Do I satisfy, albeit incompletely, her need for romantic love? Have I unconsciously countertransferred unresolved feelings of love for another onto her?

I do not know the answer to those two questions. What I do understand is the importance of not crossing certain boundaries with Tyra—specifically the prohibition against lawyers having sexual relationships with their clients.<sup>170</sup> Such a relationship with Tyra is out of the question for me not only because I love my wife and daughter but also because the ability to practice law is important to me. Without a law license, I would not be able to help Tyra or the many others who depend on me as a counselor and an advocate. My work is my ministry, and I do not want to jeopardize it. Tyra and I have never discussed our friendship's boundaries, possibly because neither of us has felt the need to. Until we do—and likely thereafter—I will wrestle with these questions.

### B. *Loss of Objectivity*

When representing a client, “a lawyer shall exercise independent professional judgment and render candid advice.”<sup>171</sup> To fulfill this function, lawyers are supposed to maintain professional distance from

---

view of the importance of client autonomy.

<sup>169</sup> See James M. Binnall, *Respecting Beasts: The Dehumanizing Quality of the Modern Prison and an Unusual Model for Penal Reform*, 17 J.L. & POL'Y 161, 162 (2008) (contending that “the managerial regimes that operate today’s prisons view prisoners as commodities, unworthy of rehabilitative efforts”); Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 893 (2009) (arguing that “the structure and culture of the contemporary American prison often operate to dehumanize prisoners in the eyes of prison officials”); Dora W. Klein, *The Dignity of the Human Person: Catholic Social Teaching and the Practice of Criminal Punishment*, 60 LOY. L. REV. 1, 17–18 (2014) (describing prisons as “inherently dehumanizing”).

<sup>170</sup> See MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (2013) (“A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”).

<sup>171</sup> MODEL RULES OF PROF'L CONDUCT R. 2.1 (2013).

their clients.<sup>172</sup> Although empathy with one's client can be beneficial, too much can be harmful. "Effective lawyers must be able to 'step back from the client's situation, in ways that the client often cannot, in order to provide the critical eye and assessments that are part of [the lawyer's] obligation to him.'"<sup>173</sup> As Professor Smith warns, getting too close to a client can lead the lawyer to exercise bad judgment.<sup>174</sup>

As discussed *supra*, I feel both *storge* and *philia* for Tyra. This fact raises an important question: If Tyra is like family to me, are there lines I *would* cross to win her freedom? After all, if I am willing to do almost anything to protect my family, would I do the same for Tyra or another client for whom I feel similar love? The short answer is that I see my role as a lawyer differently than my responsibility as a husband, father, or sibling. Although I would lie to protect my family, I would not do so for a client. Being a lawyer is important to me, and it is not worth losing for any reason. Good lawyers can fight hard for their clients without breaking the rules.

While I would not knowingly violate ethical rules in representing a client, my close relationship with that person may still affect my professional judgment. At times I have wondered whether my friendship with Tyra has negatively impacted my advice and counsel.

When Tyra first asked me to represent her I agreed to investigate her innocence claim. By the time that investigation finished several months later, we had become friends. As discussed earlier, I knew when I began representing Tyra that convincing the Parole Board to recommend her release on actual innocence grounds would be difficult. I also knew that if we lost Tyra's clemency bid, the Parole Board would likely refuse to release her until she agreed to the state's version of the crimes. Although we discussed this risk, I did not press her to forego seeking clemency on actual innocence grounds.

I do not believe my friendship with Tyra affected my judgment, but I cannot rule out that it did not. Nonetheless, I feel comfortable with the advice I gave Tyra because, as a client-centered lawyer, I strive never to let my feelings for a client, whether positive or negative,

---

<sup>172</sup> See Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 22 (2009) ("Effective lawyers must be able to 'step back from the client's situation, in ways that the client often cannot, in order to provide the critical eye and assessments that are part of [the lawyer's] obligation to him.'") (alteration in original) (quoting Robert Dinerstein et al., *Connection, Capacity and Morality In Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 767 (2004)).

<sup>173</sup> *Id.*

<sup>174</sup> Abbe Smith, *Defending Defending: The Case for Unmitigated Zeal on Behalf of People Who Do Terrible Things*, 28 HOFSTRA L. REV. 925, 945 (2000).

interfere with achieving the client's goals for the representation. Keeping the focus on achieving my client's goals is important to my identity as a client-centered advocate. Accordingly, I work hard not to let my personal views about the courses of action a client may take to influence the advice I give. I am Tyra's lawyer first and her friend second. Her primary goal is to win her freedom. All else is secondary. I would gladly give up her friendship to gain her release, though losing her as a friend would sadden me. Still, I am not perfect, and I cannot be sure that my friendship with Tyra and my wish to see her free did not affect my advice.

Ultimately, I believe that Tyra made the right decision to assert actual innocence in her clemency application because I was not the only lawyer advising her to do so. When I first got involved in Tyra's case, another lawyer was representing her and was preparing to file the application. Once I became involved, I brought on another attorney who believed that the case was strong. Likewise, I would advise any lawyer who has become close friends with a client—where possible and appropriate—to vet her strategic and tactical decisions through a more neutral attorney.

Nevertheless, I remain concerned whether Tyra made the right decision because I genuinely worry about what will happen to Tyra if the Governor denies clemency, and the Parole Board then refuses to release her for failing to accept responsibility or some other justification for keeping her behind bars. Though Tyra is strong, there are limits to how much she, or any person, can endure.

### C. *The Danger of Burnout*

In critiquing the friendship model of client representation discussed *supra*, Abbe Smith raises another concern: “[T]hat there are no clear bounds in friendship. There are no rules for how far one goes in the name of friendship, for how much one might give, for the limits of devotion or zeal.”<sup>175</sup> In other words: too much empathy leads to burnout.<sup>176</sup> Other scholars have raised similar concerns.<sup>177</sup>

One of my colleagues worries that I am at risk of burnout if the Governor denies Tyra clemency, fearing that the pain would be too

---

<sup>175</sup> Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1225 (2004).

<sup>176</sup> *Id.* at 1206–07.

<sup>177</sup> See Fines & Madsen, *supra* note 165, at 989; Marjorie A. Silver, Sanford Portnoy & Jean Koh Peters, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion*, 19 Touro L. REV. 847, 872–73 (2004); Smith, *supra* note 175, at 1205 n.3.

much for me to bear because of how deeply I have invested myself in her case and our friendship. Perhaps my colleague is correct.

Attorney burnout<sup>178</sup> is common, and a number of reasons have been identified for its occurrence including: caring too much for clients;<sup>179</sup> “blurring the line between lawyer and ‘friend’”;<sup>180</sup> trying to rescue clients;<sup>181</sup> experiencing a traumatic event that shakes the attorney’s faith in the system;<sup>182</sup> and working too hard without taking time for self care.<sup>183</sup> I readily admit that I fit into most, if not all, of these categories. While it is debatable whether I care “too much” for Tyra, I certainly care deeply about her and have blurred the line between being her lawyer and being her friend. There is no question that I see myself as a hero trying to rescue her. Additionally, I work too hard on her case and my other responsibilities, often seven days a week, and take little time for my family or myself. And if it happens, losing Tyra’s bid for clemency would be a very traumatic experience for me.

That said, I am not worried that I will “burnout” if we do lose. As both Professors Ogletree and Smith point out, it is important for lawyers to find motivations that sustain them through difficult stretches of work. For Ogletree, the concepts of empathy and heroism allowed him to continue working as a public defender after the murder of his sister.<sup>184</sup> Smith takes issue with Ogletree’s paradigm, contending that it is unworkable in public defender offices with high caseloads and instead proposes a three-pronged model of “respect for client, pride in craft, and a sense of outrage about inequality, injustice, and the routine abuse of power by those in a position to wield.”<sup>185</sup> Because I do not carry a high caseload, I find that Ogletree’s motivations of empathy

---

<sup>178</sup> See generally James J. Alfini & Joseph N. Van Vooren, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61 (1996); Fines & Madsen, *supra* note 165; Andrew P. Levin & Scott Griesberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245 (2003); Ogletree, Jr., *supra* note 156, at 1273; Silver, Portnoy & Peters, *supra* note 177, at 872–73; Meloney C. Crawford & Douglas S. Querin, *Burnout: Avoidable, Not Inevitable*, LAW PRAC., May–June 2012, at 28; Michael J. Sweeney, *The Devastation of Depression: Lawyers Are at Greater Risk*, FLA. BUS. NEWS, Aug. 1, 1998, at 17.

<sup>179</sup> Fines & Madsen, *supra* note 165, at 966 (identifying “caring too much” as a “risk[] to [an attorney’s] competency”); Smith, *supra* note 175, at 1207.

<sup>180</sup> Smith, *supra* note 175, at 1207–08.

<sup>181</sup> *Id.* at 1208.

<sup>182</sup> See generally Ogletree, Jr., *supra* note 156.

<sup>183</sup> See generally Tyger Latham, *The Depressed Lawyer: Why Are So Many Lawyers So Unhappy?*, PSYCHOL. TODAY (May 2, 2011), <https://www.psychologytoday.com/blog/therapy-matters/201105/the-depressed-lawyer>.

<sup>184</sup> Ogletree, Jr., *supra* note 156, at 1268.

<sup>185</sup> Smith, *supra* note 175, at 1208.

and heroism help to sustain me, but I suspect Smith is correct that they would be unworkable in high-volume practices. I also draw to a certain extent on Smith's "respect," "craft," and "outrage" model to get me through the lows of my career.

Furthermore, the recognition that I have the power to affect my clients positively even when I lose their cases helps me avoid burnout. Several clients, whose cases I lost, told me that for the first time in their lives they had someone fight hard for them. The fact that I stood with them in their most trying moments really mattered. Knowing that I have made a meaningful difference in a particular client's life pushes me to keep going even when the hurt from a loss is intense. For example, one such encouraging email from Tyra reads: "I[']m a better woman because [of having] you . . . [as] a guide and a teacher."<sup>186</sup> In addition to being a role model and a guide, I also give Tyra and my other clients hope.<sup>187</sup>

If the Governor denies clemency to Tyra, I will be very disappointed. But I also know that I have given Tyra my very best and that I have made a meaningful difference in her life. We have each given the other something very valuable: true friendship. I will comfort her in the event we lose, and I know she will do the same for me. If we do not succeed, we will march forward together as attorney and client, and as friends.

### CONCLUSION

My purpose in writing this Article is not to persuade the reader that every lawyer should become friends with his or her clients. Some attorneys, like my wife, are uncomfortable developing friendships with their clients. She and many others prefer keeping professional distance, and I suspect that they are the norm while I am the exception. Additionally, it may be impossible for many lawyers to develop close friendships with their clients. I probably would not have become friends with Tyra if I had a larger caseload, as I simply would not have

---

<sup>186</sup> E-mail from Tyra Patterson to author (Sept. 13, 2013, 8:35 PM) (on file with author).

<sup>187</sup> With respect to Tyra, see for example, *supra* text accompanying note 1; E-mail from Tyra Patterson to author (Nov. 4, 2013, 4:42 PM) ("[O]ur visit was one of the best bc it gave me hope[.]") (on file with author); E-mail from Tyra Patterson to author (June 30, 2014, 7:42 AM) ("Thank you for EVERYTHING especially the relief I feel that you are in my life!") (on file with author).

I also helped Tyra "breath[e]," E-mail from Tyra Patterson to author (Oct. 3, 2013, 5:29 PM) (on file with author), and "find her voice." E-mail from Tyra Patterson to author (Sept. 25, 2013, 7:27 PM) (on file with author).

2016]

*TO LOVE OR NOT TO LOVE*

773

had the time to get to know her at a level that made true friendship possible.

But mutually transformative friendships between lawyers and their clients, where possible, *can* deepen the attorney-client relationship in ways that enhance the lawyer's ability to serve his client. I believe that has happened during my representation of Tyra. Because she is my true friend, I am especially motivated to do all I can within the bounds of the law to achieve her release. While dangers exist, I believe they are insufficient reasons to conclude that I should have never become friends with Tyra, or that attorneys should generally avoid close friendships with their clients.

Upon reflection, I believe the profession overemphasizes maintaining professional detachment from our clients. While there are potential problems as I discuss above, attorneys can avoid them if aware of the risks. We should encourage young attorneys and law students to be open to such relationships where they naturally occur. We should also teach law students and lawyers that it is permissible to love their clients. While attorneys should follow their ethical obligations, there are appropriate ways to love our clients.

When I bring my students to meet Tyra, she often provides her perspective on the attorney-client relationship. She stresses the importance of lawyers gaining their clients' trust by not judging their clients and finding a way to empathize with them. She also talks about our friendship and how it has helped sustain her through her struggles. With this Article, I encourage the profession to heed her wisdom:

Having an attorney as a friend gives me hope and allows me to breath[e] and look forward to just another day because [it's] not a paycheck for him. He's given me a sense of purpose to just hold on. Only a friend has that kind of power. A friend supports your hopes and dreams. A friend prays with you and for you. My friendship with my attorney[] has given me the right to share my life.<sup>188</sup>

---

<sup>188</sup> E-mail from Tyra Patterson to author (Feb. 14, 2015, 10:44 PM) (on file with author).