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ADVOCACY STRATEGIES IN SOCIAL WELFARE POLICY: HOMELESSNESS

BARBARA SARD¹

I currently direct the homelessness unit at Greater Boston Legal Services after having been a welfare lawyer for fifteen years. I have been working on homelessness issues for almost three years. When I first started teaching at Harvard about six years ago, I taught a course on Welfare Law.

There is a value in teaching homelessness law as a discrete topic rather than lumping it under the traditional topics of welfare law or housing law. After several years of low enrollment in the Welfare Law course we thought perhaps the problem was that students could not get as far as W in the alphabets of the course catalogue and so having a course named Welfare Law might not be such a good idea. We came up with a new title for the course that was called "Advocacy Strategies in Social Welfare Policy" because it had the big advantage of beginning with A. It worked. The course enrollment tripled after we changed the name from Welfare Law to Advocacy Strategies so that is one hint for those of you seeking to increase the enrollment in your courses.

The other advantage, more seriously, is no one knows what Advocacy Strategies in Social Welfare Policy means. Therefore you can teach anything you desire. That means that you do not have to get the permission of the law school bureaucracy to change the content of your course.

With those advantages, we thought we might be able to convince Harvard Law School to put money into supervising students in a law school clinic on homelessness. We therefore changed the content of the Advocacy Strategies course from a Welfare Law focus course to a homelessness focus. Harvard funds approximately half the salary of an attorney who works with me at Greater Boston Legal Services (GBLS). The law students are placed in our unit in GBLS.

The clinical students see me in two roles. First they see me as a teacher in the class and then they see me running around my office trying to do ten things at once. Only about one third of the students enrolled in the Advocacy Strategies course take the homelessness clinic because of the limits on how many students we can supervise effectively. This year, for reasons I cannot ascertain, the enrollment in Advocacy Strategies has an all-time high of 35. While it would create certain advantages to teach the course solely for students in the clinic, because it would make a lot more sense to talk about the things the clinic students do if everyone in the course was doing them, we have noticed that many students take the basic course as a sequence to other clinical courses or

¹ Attorney, Greater Boston Legal Services. Beginning in the '93-'94 term, Harvard Law School has dropped the course described in this talk.

a sequence to life experience. I am struck by how many students take the course because they have worked on homeless issues in the past largely as volunteers, including within non-legal frameworks. They have a desire and a need to reflect on their own experiences. What they bring to the course is at least as useful as what the clinical students bring and this is why we do not restrict the classroom component to clinical students. The course also allows policy students from the Kennedy School to register. It is an enormous contribution to the law students to have others in the class because the public policy students ask the questions about law that the law students are afraid to ask because they think they should know the answers, and vice versa.

Initially, when I started teaching at Harvard, my goal was to impress the students with the fact that a poverty law subject like Welfare Law was as complicated doctrinally as anything else that they might learn and that I was as smart as any other professor they might have. Because of this, I lectured a great deal about the content and material. I also attempted in my two hour per week, thirteen week class, to make up for everything I thought they should have learned in law school because I had wished I had learned it in law school. I soon became a little more humble and a little more confident. I realized that in twenty-six classroom hours there was no way I could make up for what I thought law school ought to do. I decided to use my time to do what, perhaps, I could do somewhat better than the regular professors the students might have in their other more traditional courses.

What I have come down to is focusing my goals into two main areas, values and role. Very few of my students are ever going to be legal services or public interest lawyers. For those who do, I wish I could teach them much more than I am able. But only a very few of them will become such lawyers. My hope, however, is that all of them will in one way or another be contributing members of our society in ways that will have a substantial influence on the quality of our system. The most important thing I can do is expand their understanding of the nature of poverty and injustice in this society and the role the legal profession can play in resolving those problems. I start out by making it very clear that this is not a value neutral course, that I do not believe any course is a value neutral course, and that I am not even going to pretend that I am teaching the course simply because I do the work. I do the work because I am committed to it. I explain that if they cannot handle the fact that I have strong biases they should not take the class, but that nonetheless I encourage different points of view and that I think that it is very important that no matter what people think, they learn to respond to different opinions. That approach always convinces several students to drop out, which is a great relief.

Secondly, about half the readings are non-legal materials. I select the non-legal materials not simply for the policy perspectives they bring, although that is also important to me, but I choose them for particular fact situations that I hope will grab the students emotionally. I am convinced it is only by penetrating to students' emotions that you are able to get down to the level on which people really think. For example, for several years I began the class with

Jonathan Kozol's book *Rachel and Her Children*.² I do not think there is a single human being who cannot help but be powerfully affected by that book. We read an article published in *The Nation* in 1988 along with some responses by a woman named Theresa Funicello who used to be a welfare rights organizer in New York.³ Her article is an angry indictment of all the social welfare and legal professionals who have worked on homelessness issues. These articles invariably engender heated discussions. There are also writings by people who have been homeless about what it is like to live in shelters and how they hate it and despise it.⁴ There is a terrific article by one of Steve Wizner's colleagues at Yale guaranteed to provoke anyone with any sense to think better about the homeless.⁵ Even when I try to teach about more dry stuff like the derivation of the poverty line, I use an excerpt from Michael Harrington's book *The New American Poverty*⁶ so that students can understand that even something as apparently technical as the drawing of the poverty line is a creation of the political process.

I use real examples from my own work, as when we consider whether we should concentrate on transitional housing versus permanent housing. I use a statement from the board of a shelter with whom I work in Massachusetts, about how they came to be against transitional housing as a goal. I also use cases that graphically describe the facts. Different courts write their opinions in different ways. Some are heavier on the facts than others and it is important to make the students read the facts. It seems to be a consistent truth about law students that they never read for facts, they always read for holdings. It does not matter whether they have read the case or not because when you take them back to the facts you will find they missed them. For example, in the homelessness area, there are opinions from the various Appellate Courts in New Jersey which are terrific for the views they provide about who are homeless people and why we should or should not help them.⁷ A case from the Federal District court in Illinois concerning child welfare issues and homelessness describes the lives of two different women and their families in enormous detail in the magistrate's findings.⁸ This allows us to talk about them as real people. There is an appellate division decision in New York about the case of Billy Boggs, the woman Mayor Koch decided to make into an example

²JONATHAN KOZOL, *RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA* (1988).

³Theresa Funicello, *Give Them Shelters*, *THE NATION*, April 2, 68, at 469.

⁴Jim Harris, *Pine Street*, *STREET MAGAZINE*, Spring 1990, at 28.

⁵Robert C. Ellickson, *The Homeless Muddle*, *THE PUBLIC INTEREST*, Spring 1990, at 45.

⁶MICHAEL HARRINGTON, *THE NEW AMERICAN POVERTY* (1984).

⁷*Williams v. Department of Human Services*, 561 A.2d 244 (N.J. 1989).

⁸*Norman v. Johnson*, 739 F. Supp. 1182 (N.D. Ill. 1990).

of why she should be in a mental hospital instead of permitted to be on the streets.⁹

I also attempt to develop the role of facts. We discuss it in the context of how we use facts as lawyers. Students are provided with complaints and other case materials and shown how facts are used in complaints. I doubt very much that readings such as those I have described are in fact any substitute for real life experience. I would prefer to bring students to the Welfare Office to accompany a client. I would prefer to bring them to the Housing Authority. I would prefer to have them assist a chronically mentally ill homeless person and help them struggle to get at what the students want.

On the other hand, however, I have also come to recognize that there is a real role for using these kinds of readings, in addition to the kinds of experiences I just described, because they broaden the life experiences of any individual student. They also help put those experiences in a context. On their own, students do not always jump into the context in which occurs the experiences of the individual they may be representing. The readings we use can help them do this.

We also seek to develop awareness through class discussions. I rarely lecture anymore. Once in a while the students say, "Well, are there any facts about this? Will you tell us about those?" I want the students to try to get at what *they* think. Some examples of the kinds of discussions that have worked best have been a debate about whether one might wish to pursue shelter as a goal versus adequate income as a goal versus adequate housing as a goal. We try to go beneath these issues to develop what each means and what implications are involved in pursuing each goal. This analysis helps students to think about issues of the worth of various human beings and the implications of different approaches for personal worth. It makes them think about what the society and the law are willing to do for people. Particularly in the homelessness context, we examine the implications of solutions that are at a minimum versus solutions that aim at human decency. Through some of the housing issues, we are able to have students think about the overall economic picture and their values, such as belief in the private market versus individual control in the market. The best discussion we have had this year is an interesting example where one of the students in the class challenged me for my economic analysis of homelessness, saying:

But wait a minute! Aren't we ever going to discuss the role of individual choice here and how people need to take control of their own lives and learn to be self-sufficient? Why are you saying that everything is so deterministic? Maybe we all would have been just better off if this temporary solution of shelter never happened. People would have dealt with things for themselves.

⁹ *Boggs v. New York City Health and Hosp. Corp.*, 523 N.Y.S.2d 71 (N.Y. App. Div. 1987), *appeal dismissed*, 524 N.E.2d 879 (N.Y. 1988).

The next class he raised this point again. We spent 45 minutes brainstorming about what the world would look like today if the government response of providing shelters for homeless people had never happened during the last 10 years. We tried to make students think about this in ways none of them wanted to think about instead of just dealing with the issue on an abstract plane. I tried to make the issues more concrete to force students to recognize the fact that increased deaths among homeless people was, for example, one of the likely implications of that suggested approach.

I also try through the reading material to give students a very broad picture of the kinds of things lawyers do and how they do them. One of my goals is to help students recognize that there are many different ways to be a lawyer, but that the choices one makes about how to be a lawyer have real implications for what kinds of things you get to work on and how you get to work on them. When we look at cases and litigation, we talk about the clients attorneys represent. Examples include, single homeless men on the Bowery in the first homelessness case versus people who chose to work with families, or other choices as to clients. This role assessment includes examining cases representing individuals, versus representing groups, versus representing class plaintiffs and attempting to discern why the lawyers may have made those choices. We also examine which issues lawyers in the cases chose to look at.

In the process of understanding the various roles of lawyers, we develop some of the limitations on working as a lawyer. One is that you must build from something to create something else. Some of the unfortunately conservative implications of working in litigation is that you can only build bit-by-bit. In this whole area, law is often a very blunt tool that is of limited use in working toward the ends we want to achieve. I try to help students understand that litigation is only one thing lawyers do. Even to be successful in the litigation forum, you must either work on or defend your gains in the legislature and with agencies and, most particularly, in the media. We talk from my own experience about how different kinds of cases get out into the press. We use bills and statutes and regulations and talk about the role of drafting and what different choices emerge for lawyers operating in those roles. One thing I do in class discussions is to have students pick the role of being the plaintiff's lawyer or the claimant before the agency, or the government's lawyer or policy maker talking to his or her lawyer, or the judge. This helps them understand the framework and limits of role and choice. This causes them to think about their roles in ways they have not considered previously. Why, for example, does government have an interest in doing some of the horrible things it does and why and how can we get around the consequences of that behavior?

One of the points I want to leave with you concerning the discussion of role is that of our responsibility to help students recognize society's choices about whether to put resources in public interest law. There are considerable resources in public interest law compared to resources put toward advocacy and empowerment for poor people. Compared to other tools for poor people, we in public interest law are big business. We need to help students think about the issue of whether litigation would have had to be such a primary component in anti-homelessness advocacy if the same amount of resources had gone into hiring organizers for the poor and the homeless. Why was that not done?

