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Jean Koh Peters
Yale Law School

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Habit, Story, Delight: Essential Tools for the Public Service Advocate

Jean Koh Peters*

It is truly a joy to be at Washington University School of Law. I am especially honored to visit Washington University, whose clinical faculty is second to none in their national contributions to the clinical law teaching movement. From my point of view, a student-centered law school with a client-centered clinic is truly nirvana.

This speech is a compilation of stories and reflections about the life of a public service lawyer. I imagine that past speakers came to this series to exhort you to join the ranks of public interest lawyers. I am not here for that purpose. Instead, I want to tell you about the life of a public service lawyer and to offer you solutions that some of my colleagues and I have developed for the challenges encountered in the daily life of a public service lawyer.

I use the term “public service lawyer” to describe lawyers who represent individual, often poor clients. Such lawyers usually represent a great number of clients, unless they are, like me, lucky enough to be a clinical teacher (in which case they may represent a smaller number of clients with the help of very able law students). I would like to offer you some skills that will stand you in good stead for such a career.

Sometimes I see the public service lawyer in the predicament of Indiana Jones, who, at the end of “Indiana Jones and the Last Crusade,”¹ needed to cross a huge abyss as long as a football field to save his dying father. With no other options available, and knowing he was bound to fail, he leapt and fell towards the abyss—only to land on an invisible walkway across the chasm. The public service lawyer faces many such dilemmas at the edge of many ominous

* Clinical Professor of Law, Yale Law School. The following speech is based on a presentation in the Public Interest Law Speaker Series at Washington University School of Law on November 8, 2000.

1. INDIANA JONES AND THE LAST CRUSADE (Paramount Pictures 1989).

yawning caverns; I'd like to describe them for you, and let you know of the walkways we have found helping us across. The current state of public service lawyering confronts us with three major dilemmas: (1) judgment; (2) context; and (3) stamina. Unfortunately, those who try leaping from the dilemma side over to what I will call "the resolution side" justly fear falling into the chasms (1) bias; (2) stereotype; and (3) burnout. Public service advocates who take the walkways of (1) habit; (2) story; and (3) delight find themselves with visible support for the journey across the chasms.

The Zen aspect of this advice is: the way to cross successfully is also the destination. Habit, story, and delight are not only the daily walkways to cross, but they are also what is on the other side. Let me describe three examples of research that I recently finished regarding the three dilemmas for the public service advocate.

TO RESOLVE THE PARADOX OF JUDGMENT, USE HABITS OF NONJUDGMENT TO AVOID THE PITFALL OF BIAS

We will start with the first dilemma: the dilemma of judgment. As lawyers, we live in a world of judging and seek to use good, wise judgment in our work with our clients. Public service advocates also know, however, that our clients are already receiving more than their share of harsh judgment, suspicion, and skepticism from most around them, in the system and otherwise, and we are most unwilling to join that chorus. We neither want to sugarcoat the world and be blind to the legal realities are clients face, nor do we want to join those who would condemn them. Wrestling with this dilemma of judgment, we risk tumbling into the abyss of bias. Many in public service advocacy now feel stymied by the bias of those who judge our clients, by the bias of our clients themselves, and—most sadly and frustratingly—by our *own* biases.

I doubt that it surprises many of you that the system in which poor people are adjudicated and seek justice is not yet a system that consistently values our clients' humanity and dignity. I also do not think it will surprise you that these systems often act on the basis of biases and stereotypes we would have hoped had been long extinguished. The question is: how do we exercise wise judgment without tumbling into the abyss of bias?

The first walkway is habit. Here are three examples of habits that will be useful in fighting against the unjust systems that face us. These habits are also, I believe, the *modus operandi* of the better world that we hope to achieve. All three of the habits ask the lawyer, in a profession of judgment, to exercise strategic non-judgment.

My first example involves five habits of cross-cultural lawyering that I teach in collaboration with my beloved colleague, Sue Bryant, from the City University of New York School of Law.² They enable lawyers to identify assumptions and biases that hamper their work with clients. As a result, the lawyers can replace those assumptions with facts. One habit, “parallel universes,” is relatively simple. When faced with behavior that appears bewildering or confusing, imagine multiple explanations that account for the behavior. For instance, if your client repeatedly misses appointments and you are *sure* she could care less about her case, imagine alternative explanations for her absence.

I use this example because I recently failed to take my own advice. The first time our client missed an appointment, I taught my student the habit and we brainstormed. “She missed the bus, she did not get the letter we sent out, or she thought it was another time.” The second time, my student gave me the news and looked at me. In a faint singsong, he said, “Maybe she had a family emergency or maybe she is on the way.” The third time, we were more than a little annoyed. Through gritted teeth, he recited, “Perhaps her child is sick, perhaps *she* is sick” The fourth time, I pounded my fist on the desk in frustration and declared with utter certainty that, this time, it was positively her indifference that led to her absence. You can imagine my surprise when she appeared the next day in court—with a newborn baby.

I have taught my students parallel universes thinking for several years in the clinic, and what I love most about it is the way it re-opens us to the client, to the vastness of our lack of knowledge about her world, and to a sense of humility and perspective about our relative importance in her life. This method’s critical quality of non-judgment is a welcome antidote to the default tendencies of our

2. JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS §§ 6-1-6-8 (2d. ed. 2001).

profession. On a very practical level, however, it also provides an immediate, concrete contribution to our practice. It prevents us from lawyering based on a misguided certainty about a reality we do not yet grasp.

Thinking in terms of parallel universes can be done efficiently hundreds of times daily. It takes but a moment to realize: “Perhaps, she simply missed the bus today.” Clearly, I do not expect lawyers to brainstorm the correct parallel universe explanation for every behavior. For example, I did not hold myself responsible for not knowing my client was delivering a baby (though I did wonder about my powers of observation). Instead, I held myself responsible for lacking the proper humility to acknowledge the limits of my knowledge.

Bias too often fills in, prematurely and through previous assumptions, the unknown. If we could all learn to do the parallel universe analysis when we are inclined to rush to judgment, we would make ourselves more open to the world as it is—not as we assume or fear it is.

A second example of habit: some of you have heard of Stephen Covey’s book *7 Habits of Highly Effective People*.³ I particularly favor one imbedded sub-habit which Stephen Covey calls “being faithful to those who are absent.”⁴ The idea is that you do not speak about someone who is not present in the room in a way that you would not be willing to speak if the person were in the room. When I read about this idea, I wondered how different my life in juvenile court would be if no one there spoke disrespectfully about clients.

I feel sad to think of how many times I have heard people, including myself, say derogatory remarks about clients to the effect of “What a flake!” or “What a stupid move!” Would I ever say that in front of a client? If I would not have said it in front of her, what right do I have saying it about her behind her back? If I had a valid point, wouldn’t I find a respectful and constructive way to offer it to her? We must understand that our clients do not have the luxury of firing counsel that undermine them in front of others. We are the last resort.

3. STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE: POWERFUL LESSONS IN PERSONAL CHANGE* (1990).

4. *Id.* at 196.

It is our job to act as well, or better, than the first resort.

We could adopt today the habit of “being faithful to those who are absent.” I challenge each of you to spend a day without saying anything about anyone that you would not say in front of them and observe whether or not it alters your conversations. This habit is a walkway across the chasm and is also the way I believe life is on the other side.

A third example comes from the movie *Apollo 13*.⁵ The movie documents a brilliant moment when three astronauts unexpectedly find refuge in the lunar rover module after the rest of the ship is seriously disabled. NASA’s mission control solved the problem of the astronauts return, but then realized that the men might still die; the carbon dioxide levels were rising rapidly in a lunar rover module that was never designed to have three men breathing oxygen in it.

The engineers in Houston knew that they had to filter the carbon dioxide in some fashion. While there were multiple ways to filter the carbon dioxide using damaged parts of the vessel, the problem was that they need a square fitting. They basically had to put a square peg in a round hole. One of the engineers took a box and put everything that he knew to be in the module in it. He put in frozen hot dogs, socks, the tops of space suits, a manual, and duct tape. Then, he went into a room with fifteen people, dropped the box, and said, “We have to figure out how to get that square filter into this round hole—and this is all we have.” At a triumphant moment in the movie, an engineer emerges with an object similar to a child’s craft project with a hose connecting to the square side, which saved the life of the astronauts.

I am thinking of calling this habit “solving in the shoes of the other person.” What would happen if every public service advocate would start problem solving with only the resources that their clients actually possessed? Instead of saying, “Ugh, my client should just go get therapy,” what would happen if he considered his client’s lack of transportation, child care, time, or understanding? How many times do we say, “Hmm, let’s see, my client gets a welfare payment of \$362 a month. She has an apartment that has heat about a third of the

5. APOLLO 13 (Universal Studios 1995).

time that she needs it, and she has three children going to school in a place that is not giving them the education they need.” How many times do we try to problem solve in that mind-set? If we did problem solve in that mind-set, would our clients realize that we were actually trying to see things from their point of view? Would we advocate for the missing pieces with a renewed understanding of how critical those pieces are?

These are three habits, but hundreds more exist. I would love for you to help me think of them and collect them because I believe that these are the small things we can do in our daily lives that are walkways across the chasm as well as the destination to which we aspire. The key to all of these habits is “non-judgment.” What do I mean by “non-judgment?” I mean withholding your evaluatory or critical faculties before you know all the facts, and perhaps withholding them after you know the facts. The concept is to focus on fact, not conclusion; to accept reality, *as it is*, without judging it. Non-judgment is critical if we intend to surpass our biases.

Non-judgment begins at home. Those biases that we observe in our past behavior should be understood as facts in our past, as opposed to labels that brand and predetermine our future. We then have a hope of using the habits discussed today to confront our own biases and move beyond them. If we proceed in the spirit of judgment, the paradigmatic scheme of our profession, we have no hope for this progress. It is ironic that our corrective impulses—the part of ourselves that seeks to rid prejudice and bias—can hamper our bias identification skills. If I am terrified that I will find anti-Semitism in my own action, then I will often simply not see it, even if it is there. Expecting harsh judgment, we simply do not see what is actually there. If we continue in a spirit of judgment in these cross-cultural matters, we will not progress. The paradoxical answer is that there must first be non-judgment. We must deal with the fear of finding out the negative and realize that there is a safe place for it, as a fact of the past.

TO RESOLVE THE DILEMMA OF CONTEXT, TELL STORIES IN THE
CLIENT'S VOICE TO AVOID THE PITFALL OF STEREOTYPE

The second abyss that confronts a public interest lawyer is stereotype. Stereotype seems similar to bias, except that stereotype is a story about someone. Stereotype assumes that a black person that I just met has the same story as another black person that I know or heard about somehow. What is true about the people you know is not true about the individual in front of you. Therefore, stereotype fails my fact-finding, non-judgment test.

Many public service lawyers may observe, in the high volume public service work we do, that stereotype becomes an easy way to fill in the gaps of knowledge that we lack because our case load is too high. How do public service lawyers figure out a way of progressing in their work without relying on stereotype? The pitfall is stereotype, but I think the bigger problem is context. How do we learn context about our clients in order to be able to fully rely on textured, individualized knowledge of them, as opposed to the stereotype that we bring to the case from our other work?

The walkway we need is story. Storytelling is a major aspect of lawyering. Genuine storytelling in the voice of the client advances the process of justice. I believe that genuine storytelling in the voice of the client is part of justice in the better world that we hope to create. In the pitched battles for justice today, telling compassionate, three-dimensional, nonjudgmental stories in the client's voice is a critical arrow in our quiver. Litigators and clinical teachers have long touted developing a theory of the case, the vision of reality that explains the contested facts in any given case. Advocates have long understood that the theory is the engine for advocacy and that every case, from the simplest claim to the most complex multi-year litigation, stands or falls on the strength of its theory. Even if we only care about winning in the current scheme, we must tell more three-dimensional stories. In a straight contest between cartoon caricatures on the one hand, and a richly told story that resonates with personal experience on the other hand, the second will usually prevail. Even in our present context, the story transcends one-dimensional understanding. Like the habit example, story is a leap of power and a clear utility in our daily work. Like parallel universes, it offers clear

solutions for today's problems while pointing toward a world where compassionate understanding of life and the experiences of others in three dimensions is the norm rather than the exception.

There are, however, currently, at least two problems with story. First, critically, there are a hundred stories that I would love to tell today, but I cannot because I have a duty of confidentiality to my clients. Second, some people in the world in which I work are asked to tell stories in much richer and deeper detail than others. My clients are forced to reveal details about their family lives that I have never been asked to reveal. My asylum clients are asked to describe traumatic events and to justify life decisions in a way that my refugee family was never asked to do. I know that story is part of the process, and I know that story is on the other side, but I do not know how we are going to overcome the fact that poor people are asked to both divulge more information and to limit the stories that they are allowed to tell.

In the middle of this dilemma are two kinds of stories that I believe we should start telling immediately. Since I cannot share the stories of my clients, let me give you an example of one of those kinds of stories. It is based on the book *The Mists of Avalon*.⁶ This book is about the Arthur legend, written from the point of view of Morgan LeFay, the half sister of Arthur.

Traditionally, Morgan LeFay is depicted as Arthur's half-sister, who bore Arthur's only son, Mordred, had an affair with the Merlin, the most holy man of the realm, and then had another affair with her own stepson. She is not our prototypical heroine. What is astonishing about the book, for me, was the way in which the book imagined her day-to-day life and invited me into her head and heart. Within fifty pages of thinking in her shoes, I not only found her actions understandable: I wondered if I wouldn't have found myself doing the same things. You cannot stop thinking that you would likely make the same choices that she made.

I do not mean that you must read the book and have the same reaction to decide that this opinion is your view of advocacy. This story was, however, the first time I experienced having someone take

6. MARION ZIMMER BRADLEY, *THE MISTS OF AVALON* (1982).

my strongly held, negative stereotypes and convert me by telling me the story from that person's point of view in that person's authentic voice. I began to wonder if this storytelling strategy could be our goal as advocates.

Could I ever convince a juvenile judge that a caring parent can also be a person who used cocaine? Could I ever help a judge understand that a person who once hurt their child is actually the best caretaker for them? Could I ever help an asylum officer understand why a desperate refugee mother was forced to leave her infant children behind? These are all stories that, currently, our courts and decision-makers often will not begin to entertain. I hope that the world on the other side of the abyss is a world that both allows people's subjective stories to be heard thoughtfully, completely, and without judgment and then, renders judgment only when absolutely necessary.

TO RESOLVE THE DILEMMA OF STAMINA, CULTIVATE DAILY DELIGHT AND HOPE TO AVOID THE PITFALL OF BURNOUT

The third abyss that confronts us is burnout. Public service lawyering is a grueling job where you often lose. How do you get up every day? How do you do your best knowing that your client will not prevail? How do you do it day after day and week after week?

This dilemma of stamina causes many to fall into the abyss of burnout. I have seen it as a lawyer in practice and as a clinical teacher, in myself, my colleagues, and my students. It seemed, at first, like a daily logistical problem. When I saw it in my students, I thought I had failed as a teacher. The same students who entered the clinic with optimism and excitement had their spirits broken in the span of a month.

When I began to look more closely, I found that their work was uniformly exemplary, but that their daily life was eroding sharply. I asked one student who exercised regularly before coming to the clinic why he stopped his routine. He told me that it did not make sense to do bicep curls when he knew he could be working on a brief to help a client that had been tortured in the Congo. How could he improve his body when his client's had been so violated? This response resonated with me. I do not know how many times I have wondered, as a legal

services lawyer and as a clinical teacher, how Providence could have showered upon me the priceless gifts of family, lovely children, a wonderful husband, and a beautiful home, while my clients are struggling every day for their daily bread and a chance to see their children's faces?

Our work brings us close to trauma, and it also brings an unexpected answer to our dilemma. In the last decade, researchers explored what is known as post-traumatic stress disorder and related afflictions. In the last ten years, however, scholars investigated a parallel process that manifests in people who serve traumatized individuals. The cumulative experience of working with traumatized people leads to what is known as "vicarious traumatization." Just as a great loss can shatter a survivor's universe, exposure to the losses of many people, or a few people in an intense setting, can alter the universe of those who experience the victim's loss with them.

Laurie Pearlman and Karen Saakvitne describe vicarious trauma as "the transformation in the inner experience of the helper as a result of empathic engagement with survivor clients and their trauma material."⁷ As I read their work, I started to wonder if the sense of quiet despair that we began to feel results directly from empathic engagement with our client's loss of hope. Trauma directly attacks the ideas of good in human nature and safety in the world. It started to attack ours as well.

Those of you who have worked in public interest have probably dealt with this phenomenon firsthand. As we work harder and harder, fueled by concern for our clients, our universe will start to shrink, almost imperceptibly, but remarkably swiftly, to our work. We learn all of the intricacies of those things that we fight against. For instance, the death penalty opponent knows all the methods of death by lethal injection and the electric chair. Child protection advocates know about the different ways that caretakers can maltreat children. Human rights advocates deal daily in the details of torture and know each form by their indigenous names. We can too easily forget that the world is larger than our crusade and that, despite all odds, beauty and hope still flourish in the world. Albert Camus actually described

7. LAURIE A. PEARLMAN, TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS 31 (1995).
https://openscholarship.wustl.edu/law_journal_law_policy/vol7/iss1/3

this trauma in a fabulous essay entitled “Return to Tipasa.”⁸ He wrote:

Violence and hatred dry up the heart itself. The long fight for justice exhausts the love that, nonetheless, gave birth to it. In the clamor in which we live, love is impossible and justice does not suffice.⁹

A strategy for dealing with vicarious trauma is necessary because the illness will not abate on its own. Essentially, vicarious traumatization is a recurring, occupational hazard, as it results from empathic engagement with another person. Since we would never want to lose that empathy, which can be our greatest offering to our clients, we must accept that vicarious trauma will always be with us. The approach that Camus and the trauma therapists endorse is to seek delight in our daily lives. When our world threatens to devolve into an overwhelming preoccupation with the evils we most fervently oppose, we must constantly remind ourselves that life is more than the injustices we seek to eradicate. Thus, for my students to keep the perspective, the energy, and the hope needed to carry their client’s cases to fruition, it is crucial, it is indeed their *ethical imperative* to preserve the things that give them personal, deep joy. This joy is the essential ammunition in the fight against the despair and fragmentation that trauma brings.

To this end, I encourage my students throughout the semester to go to the gym to play basketball, to weave their dried flower wreaths, to escape from work after a big deadline, to take the evening off, *and to do it all for their client’s sake!* If it gives them joy, if it reminds them of the brighter world that we are all fighting for, if it reminds us that our work offers beauty as well as suffering, then that activity is the best thing they can do for their clients. And, ultimately, we can offer the hope and beauty we rediscover back to our clients.

Therefore, it bears repeating that the ethical imperative of every public service lawyer is to hang onto those things that bring her joy. Camus and the trauma scholars also believe that delight in daily living is important because vicarious trauma is an occupational

8. ALBERT CAMUS, *THE MYTH OF SISYPHUS AND OTHER ESSAYS* (1969).

9. *Id.* at 201.

hazard in the struggle to make the world less unjust and more true. Refusing to fully engage in our clients' struggle against the world's injustices, as Camus noted, is not a real option:

If one forgoes a part of what is, one must forgo being oneself; one must forgo living or loving otherwise than by proxy. There is thus a will to live without rejecting anything of life, which is the virtue I honor most in this world. Inasmuch as few epochs require as much as ours that one should be equal to the best as to the worst, I should like, indeed, to shirk nothing and to keep faithfully a double memory.

Yes, there is beauty and there are the humiliated. Whatever may be the difficulties of the undertaking, I should like never to be unfaithful either to one or to the others.¹⁰

Additionally, Camus recommends that, to emerge from vicarious trauma, "One needs a special grace, a self-forgetfulness or a homeland."¹¹ This advice applies to us all and may particularly help advocates of color. The only thing I know for sure about heaven is that it has a fantastic Korean restaurant, where my grandmother is probably the chef. I also think of Barbara Kingsolver's *Pigs in Heaven*.¹² One of the protagonists is Annawake Fourkiller, a second-generation Cherokee lawyer who fights to take back a girl that she believes was kidnapped from the Cherokee nation. At one point in the middle of her fight for justice, Annawake Fourkiller finds a footlocker of her family's old things. She finds a medicine book of incantations written in the Cherokee script that she wishes that she could read. As she looks over the content of the footlocker, she realizes that she should have taken these things to law school with her. Kingsolver writes, "In that air-conditioned universe of mute law books she was terrified that she might someday fail to recognize her own life."¹³

This possibility is my biggest fear for you all; the fight for justice will consume you in a way that makes you lose, even briefly,

10. *Id.*

11. *Id.* at 197.

12. BARBARA KINGSOLVER, *PIGS IN HEAVEN: A NOVEL* (1993).

13. *Id.* at 60-61.

yourself. If you forget what delighted you originally, what made who you are, what made this school want you to come here, then you deprive yourself and your clients of the best part of you. Rather, I urge each of you to engage empathically with your clients, and then, fortify yourselves with delight and joy for the hard work that empathy entails. True delight—true joy in your life—affirms the goals of your struggle. As Sister Wendy writes, in the struggles we choose to engage, “joy assures us that it will be victory, and allows us to taste of it beforehand.”¹⁴

HABIT, STORY, AND DELIGHT IN DAILY LIFE

If I have convinced you that the walkways of habits, story, and delight are both possible and worthwhile, then the only remaining obstacle is logistics. As usual, there is both bad and good news. Parallel universes, for instance, can be done anywhere and instantly. Still, the logistics of developing our daily practice can often seem daunting, especially when time seems scarce. Within that context, I can report two modest and illustrative recent successes. Early last year, I was driving home after eight hours of consecutive meetings and classes. I noticed how drained I felt. Out of nowhere, I realized that I found little time to play the flute since the semester started. Two seemingly unrelated problems with the same focal point—not enough time in the day. Or was there? I considered if I would be able to take my flute to work and play between meetings. At first, I was a bit nervous as I set up the music stand in my office and laid out the silver instrument next to my printer. I worried that I would disturb my neighbors, that I would play badly, and that people would find this behavior an unacceptable intrusion into office life. I even wondered if I should force myself to play Bach instead of the theme from *Jurassic Park*.¹⁵ Two semesters later, the unusual has become the norm. One student asked me if I was all right, when she noticed that my flute had not been in the office for a week. The second practice that I incorporated is taking a twenty-four hour weekly Sabbath from my office work. I have discovered that I needed to read

14. WENDY BECKETT, *SISTER WENDY'S BOOK OF MEDITATIONS* 140 (1998).

15. *JURASSIC PARK* (Universal Studios 1993).

a book, usually a novel, at the beginning of each Sabbath. At first, I did not understand this need. Then, I realized that, for me, someone else's story takes me out of my universe in a way that will remind me that there is more to the world than the work I did that week. It is now my weekly habit and my weekly delight to read stories.

Brainstorm more delight into your days. Even if there seems to be no time, look at your time management problems together. Your shyness may throw up more imaginary barriers than any outer force would. It is important to remember that small changes like the ones I am asking you to embrace today are excellent preparation as we each attempt to alter the current standards of reasonableness. As a person of color, I remember how mystified I was by the "reasonable man" standard in torts? If our day-to-day behavior starts reflecting more of the norms of a brighter world instead of what is unreasonably accepted as normal now, we can leap over pitfalls for generations to come.

A lecture about public service advocacy should always end with hope. I see hope as I look out at each of you. All of you, by being here, have identified yourselves as believers in the hope for the better world. If any of you are like the students that I have been privileged to teach for the last fourteen years at Columbia Law School and Yale Law School, your kindness, your intellect, your heart, and your energy are our best hopes in the struggles ahead. Thank you for inviting me, and thank you so much for coming.