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Access to Justice: The Social Responsibility of Lawyers

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Access to Justice: The Social Responsibility of Lawyers

Introduction

Karen Tokarz*

This publication originated over half a century ago, in 1968, as the *Urban Law Annual*, focused entirely on issues surrounding land use, urban development, and other legal concerns of urban communities.¹ The scope broadened in 1983 when the *Journal* expanded and became the *Journal of Urban and Contemporary Law* to encompass a broader range of topics while still emphasizing urban communities and land-use law.²

In 1999, the *Journal* once again broadened its scope to become the *Washington University Journal of Law & Policy*. The new *Journal* was designed as a symposium-based publication, committed to bringing together communities of scholars through a mutual and collaborative student and faculty process; to emphasizing interdisciplinary and multi-cultural visions of the law; to exploring the implications of technology and the consequences of economic globalization; and to influencing law and social policy. Over the past two decades, the new *Washington University Journal of Law & Policy* has been enormously successful and has met its initial goals many times over.

One unique tradition of the *Journal* are volumes dedicated to “Access to Justice: The Social Responsibility of Lawyers,” specifically emphasizing interdisciplinary and multi-cultural visions of law and lawyering, with the goal of influencing law and social policy.³ This volume marks the

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1. See *Table of Contents*, 1968 URB. L. ANN. ix (1968).

2. See Dennis P. Birke, *Preface*, 24 WASH U.J. URB. & CONTEMP. L. (1983).

3. See, e.g., 1, 4, 7, 10, 12, 16 19, 22, 25, 31, 37, 38 WASH. U. J.L. & POL'Y 1 (1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2009, 2011, 2012). All volumes are available at https://openscholarship.wustl.edu/law_journal_law_policy/.

thirteenth Access to Justice volume published by the *Journal of Law & Policy* since the first volume in fall 1999. Like the prior Access to Justice volumes, the articles and essays in this volume are written by prominent practitioners, academics, and authors, from diverse backgrounds in areas such as civil liberties, elder abuse, policing, the economics of poverty, racial justice, conflict resolution, and clinical legal education, who share a commitment to improving access to justice for all.

PATRICK C. BRAYER: *ROGER NASH BALDWIN AND THE ST. LOUIS CIVIL LIBERTIES TRAIL: CELEBRATING 100 YEARS OF THE ACLU AND A SEARCH FOR THE ORGANIZATION'S CONCEPTUAL FOUNDING*⁴

Patrick C. Brayer is the Deputy District Defender of the St. Louis County Trial Office, a veteran trial attorney, and published author. The impetus for his essay is the 100th anniversary of the American Civil Liberties Union (ACLU). In his narrative, Brayer traces the St. Louis experience of Roger Nash Baldwin, one of the founders of the ACLU and the executive director of the ACLU until 1950. Brayer notes locations, people, and events in St. Louis City that identify and highlight Baldwin's evolution from Harvard graduate to national civil rights advocate, highlighting an "interactive journey through St. Louis (that) provides advocates of civil liberties and basic human rights a roadmap on how to create a favorable social architecture for change."⁵

Brayer recounts stories about important people with whom Baldwin interacted while on his way to and residing in St. Louis. The first person whose advice dispatched Baldwin to St. Louis was the future U. S. Supreme Court Justice Louis Brandeis. Brayer notes the impact Brandeis had on Baldwin, and the impact St. Louis had on both men who were accustomed to the more orderly Boston. Brayer further recounts Baldwin's

4. Patrick C. Brayer, *Roger Nash Baldwin and the St. Louis Civil Liberties Trail: Celebrating 100 Years of the ACLU and a Search for the Organization's Conceptual Founding*, 59 WASH. U. J.L. & POL'Y 9 (2019).

5. *Id.* at 10.

interactions with other St. Louis residents and speakers, such as birth control activist Margaret Sanger. On Sanger's behalf, Baldwin entered his first public fight in the free-speech arena, which would become a focus of his life's work. When a scheduled Sanger speech was cancelled in St. Louis because of her views, Baldwin interceded and arranged for Sanger to speak at two public venues the following day. Brayer concludes that Baldwin's civil liberties trail in St. Louis "represents the skills, ideas, and experiences specific to Roger Baldwin and his exceptional brilliance that brought to life the American Civil Liberties Union."⁶

LEONARD A. SANDLER & BRIAN KASKIE: A *PROTOCOL FOR EXAMINING AND MAPPING ELDER ABUSE PATHWAYS IN IOWA*⁷

In this article, Len Sandler, Director of the Law & Policy in Action Clinic at the University of Iowa School of Law and Brian Kaskie from the University of Iowa College of Public Health report the findings of their U.S. Department of Justice study on Rural and Tribal Elder Justice. Sandler and Kaskie conducted an in-depth examination of instances of elder abuse in the east-central Iowa corridor to generate recommendations for improving how Iowa and other states address elder abuse. The goal of their report was to "guide and empower rural communities to map out, evaluate, and bolster the network of organizations, advocates, and governments to help combat elder abuse and neglect in all forms." The authors detail how the U.S. Center for Disease Control definition of abuse differs from that of various states including Iowa and how Iowa's more restrictive definition results in less prosecution of elder abuse. The authors demonstrate how the definition of elder abuse can determine how cases move from occurrence to resolution. The authors conclude that an effective pathway to address elder abuse must include public awareness, identification and reporting, intake and referral, criminal investigation and legal remedies.

6. *Id.* at 25.

7. Leonard A. Sandler & Brian Kaskie, *A Protocol for Examining and Mapping Elder Abuse Pathways in Iowa*, 59 WASH. U. J.L. & POL'Y 27 (2019).

MARGARET REUTER, STEPHEN A. ROSENBAUM & DANIELLE
PELFREY DURYEA - *ATTORNEY AS ACCOMPAGNATEUR:
RESILIENT LAWYERING WHEN VICTORY IS UNCERTAIN OR
NEARLY IMPOSSIBLE*⁸

Three clinical law professors, Margaret Reuter, Associate Clinical Professor, University of Missouri-Kansas City School of Law; Stephen A. Rosenbaum, John & Elizabeth Boalt Lecturer, University of California, Berkeley School of Law; and Danielle Pelfrey Duryea, Director of the Health Justice Law & Policy Clinic, University at Buffalo School of Law, join forces in this article to examine the dynamics of resilient public interest lawyering through a collection of essays from a number of different perspectives. The authors embrace and endorse the Creole term of *accompagnateur*, as demonstrated in the work of Dr. Paul Farmer, the founder of Partners in Health, a well-known, international health organization. According to Farmer, it is insufficient to merely be a doctor treating a patient for an illness; rather, a doctor must be an *accompagnateur*, which calls for “solidarity, rather than charity alone.”⁹

While the authors acknowledge some limits of translating this model for the legal profession, they demonstrate through the essays of a clinical law professor and his students that this perspective on solidarity with clients can work in legal practice. They cite, as one example, a practitioner who worked with legal aid organizations and California Rural, who used the *accompagnateur* approach as a way to partner with his clients and share their experiences. According to the authors, understanding and empathizing with the client is as important as the success of a given representation. The authors embrace the teaching of inter-personal and intra-personal awareness as essential to the role of the *accompagnateur* and effective resilient lawyering, and conclude with guided meditation exercises for clinical law professors and students.

8. Margaret Reuter, Stephen A. Rosenbaum & Danielle Pelfrey Duryea, *Attorney as Accompagnateur: Resilient Lawyering When Victory Is Uncertain or Nearly Impossible*, 59 WASH. U. J.L. & POL'Y 107 (2019).

9. *Our Mission*, PARTNERS IN HEALTH, <https://www.pih.org/pages/our-mission> (last visited Mar. 4, 2019).

SHAPHAN ROBERTS: *A TOOL FOR IMPROVING MEDIATIONS:
INFORMED PAIRINGS AND PREDICTIVE OUTCOMES*¹⁰

In this article, Shaphan Roberts, Director, Los Angeles City Attorney's Dispute Resolution Program, discusses the Community Police Unification Program, a collaboration between the Los Angeles Police Department and the Los Angeles City Attorney's office. Under this program, which developed out of a desire to encourage positive relationships between community members and the Los Angeles Police Department, community members can register complaints about discourteous or biased police behavior and are given the opportunity to resolve the complaint in a mediation session with the officer involved.

The author highlights the crucial importance of effective pairings in these mediations, such that parties feel heard, validated, and understood, creating a better likelihood of the desired relationship transformation. He discusses a tool that was developed to pair mediators and parties, which analyses and categorizes each mediator's style using a grid developed by Professor Len Riskin, a renowned mediation expert. He also describes a questionnaire given to the community and police participants to determine the difficulty of the negotiation. The mediator with the style best suited to the participants is then assigned to the mediation and the level of success of the mediation is tracked and analyzed. The author highlights the need to continue to refine the program's approach to accomplish even more effective pairings, and demonstrates weaknesses yet to be addressed, including a limited supply of mediators, the fact that the questions used to assess the parties may lack depth, and the fact that mediation styles may evolve after the initial assessment.

10. Shaphan Roberts, *A Tool for Improving Mediations: Informed Pairings and Predictive Outcomes*, 59 WASH. U. J.L. & POL'Y 163 (2019).

JAMES H. STARK & MAXIM MILYAVSKY: *TOWARDS A BETTER UNDERSTANDING OF LAWYERS' JUDGMENTAL BIASES IN CLIENT REPRESENTATION: THE ROLE OF NEED FOR COGNITIVE CLOSURE*¹¹

This article by James H. Stark, Roger Sherman Professor of Law Emeritus and Oliver Ellsworth Research Professor of Law, University of Connecticut School of Law, and Maxim Milyavsky, Senior Lecturer, Faculty of Business Administration, Ono Academic College, Kiryat Ono, Israel, builds on previous research that shows law-students (and presumptively lawyers) are prone to overconfidence and bias when assigned representative lawyering roles in simulations. The authors focus on traits that make individuals susceptible to these biases. The authors assert that partisanship may poorly serve a client's interests if the lawyer's advice is distorted by biases of which he or she is unaware.

The authors reviewed students' scores on a Need for Cognitive Closure (NFCC) exam, a five-factor scale that tests for different motivational factors that may each contribute to an individual's general need for closure, and measures the extent to which individuals tend to prefer an answer—any answer—to ambiguity or confusion. The authors used a sample of 468 law students to determine whether NFCC scores affect the extent to which students display bias in their judicial prediction and fair settlement value predictions for a simulated personal injury case. They also tested whether NFCC scores have any impact on the efficacy of “consider-the-opposite” mitigation techniques. The authors concluded that a need for closure does increase bias in both judicial prediction and fair settlement value axes. The study underscores the importance of teaching law students to be self-aware about the unconscious biases that may cloud their judgment when they begin to take on representative lawyering roles.

11. James H. Stark & Maxim Milyavsky, *Towards A Better Understanding of Lawyers' Judgmental Biases in Client Representation: The Role of Need for Cognitive Closure*, 59 WASH. U. J.L. & POL'Y 173 (2019).

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CONCLUSION

This volume of the *Journal*, dedicated to Access to Justice, provides through the words and stories of real leaders and advocates, an inspirational look at the social justice aspirations of lawyers to foster access to justice for all.