

Washington University Journal of Law & Policy

Volume 59 *Access to Justice: The Social Responsibility of Lawyers*

2019

Attorney as Accompagnateur: Resilient Lawyering When Victory is Uncertain or Nearly Impossible

Margaret Reuter

Director of Field Placement Programs and Associate Clinical Professor at University of Missouri-Kansas City School of Law

Stephen A. Rosenbaum

Frank C. Newman Lecturer, School of Law and Visiting Researcher Scholar, Haas Institute for a Fair and Inclusive Society, University of California, Berkeley; and Regional Director of Advocacy, California Rural Legal Assistance, Inc.

Danielle Pelfrey Duryea

Director of the Health Justice Law and Policy Clinic and Assistant Dean for Interprofessional Education & Health Law Initiatives, University at Buffalo School of Law, State University of New York; Associate Director, University at Buffalo Center for Successful Aging; and Research Assistant Professor, Jacobs School of Medicine & Biomedical Sciences

Follow this and additional works at: https://openscholarship.wustl.edu/law_journal_law_policy



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Margaret Reuter, Stephen A. Rosenbaum, and Danielle Pelfrey Duryea, *Attorney as Accompagnateur: Resilient Lawyering When Victory is Uncertain or Nearly Impossible*, 59 WASH. U. J. L. & POL'Y 107 (2019), https://openscholarship.wustl.edu/law_journal_law_policy/vol59/iss1/10

This Article is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Journal of Law & Policy by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

Attorney as Accompagnateur:
Resilient Lawyering When Victory is Uncertain or Nearly
Impossible

Margaret Reuter, Stephen A. Rosenbaum and Danielle
Pelfrey Duryea*

My clinic students devoted long hours, conducted deep and creative research, educated themselves on archaic administrative law practices at our public benefits office, and developed great empathy and appreciation for their client and her struggles. The students learned about their client’s life, loves, goals, and values. They were thoroughly convinced of the “right” of their client to “win” and they loved fighting for her. But they didn’t win. Their client’s life will not be better. Their client’s life will be harder. Dejected, they wondered what their value was.

– A clinical law teacher’s lament

Social justice lawyers come to the profession intending to make a difference through the instruments of law. And gloriously, they often make a difference in people’s lives for the better. They make our world a more just, compassionate, and tolerant place. But there is no denying that, in poverty law practice,¹ legal success can be illusive, ephemeral, or

*. Margaret Reuter is Director of Field Placement Programs and Associate Clinical Professor at University of Missouri-Kansas City School of Law. Stephen A. Rosenbaum is Frank C. Newman Lecturer, School of Law and Visiting Researcher Scholar, Haas Institute for a Fair and Inclusive Society, University of California, Berkeley; and Regional Director of Advocacy, California Rural Legal Assistance, Inc. (2016-17). Danielle Pelfrey Duryea is Director of the Health Justice Law and Policy Clinic and Assistant Dean for Interprofessional Education & Health Law Initiatives, University at Buffalo School of Law, State University of New York; Associate Director, University at Buffalo Center for Successful Aging; and Research Assistant Professor, Jacobs School of Medicine & Biomedical Sciences. We are very grateful to the former clinic and externship students who allowed us to share their stories of accompaniment as part of this article: Kelsey Berkley, Anjelica Mantikas, Erin McMullan and Victoria Pontecorvo. We also thank our fellow participants in the 2017 *Clinical Law Review* Writers’ Workshop—Colleen Shanahan, Deborah Archer, Briana Beltran and Joseph Pileri—for their thoughtful comments on an earlier draft.

1. See generally, e.g., Lillian Salinger, *Poverty Law: What Is It?*, 12 LEGAL REF. SERV. Q. 5 (1992) (defining poverty law as the practice where the clients are financially poor in their day-to-day lives, relating to public benefits law, health care law, housing law, education law, elder law, family law, juvenile law, employment law, social security law, consumer law, immigration law, and/or domestic violence law).

perhaps a mirage. How does that lawyer feel when the legal remedies at her disposal, even if “successful,” fail to mitigate the injustices suffered by her clients? Are there definitions of professional satisfaction and success that are enduring, even if legal success or social justice is not attainable?

This article comprises a set of essays that explore the lawyer’s capacity to persevere in the face of legal loss that is so regular that pessimism, indifference, and exhaustion set in.² Our quest is to describe the contours of a lawyer’s role that gives the poverty lawyer professional identity and purpose, despite repeated loss. That role is the *accompagnateur*.³

Our hypothesis: a lawyer’s internalization of her role as *accompagnateur* to her clients can gird and enable her to sustain motivation to fight the good fight. Namely, the first or foundational professional value is to *accompany* her client—stand beside, stand up for, and give respect and voice to the client’s story—irrespective of victory. In so doing, the lawyer’s deepest source of professional identity and purpose is in accompanying the client well. It is more about serving as an *accompagnateur* than it is about legal victories and vanquishing injustice, per se. That sounds harsh. Our thesis is that accompaniment, done well, makes one a better lawyer for her client and simultaneously nourishes the lawyer enough to withstand inevitable losses.

This collection of writings from students, a veteran public interest lawyer, and practice faculty (clinic and field placement) explore aspects of the accompaniment role for lawyers working on behalf of clients from marginalized communities, with a special focus on individual

2. See Danielle R. Cover, *Good Grief*, 22 CLINICAL L. REV. 55, 63 (2015) (tracing the pressures on lawyers to hide emotions in the name of maintaining a professional demeanor; revealing the myriad ways lawyers and law students experience loss; and suggesting methods to develop resilience to address the emotional burdens of such loss).

3. We borrow here the Haitian Creole term used by physician and public health activist Paul Farmer and others for the community health worker who engages in accompaniment of HIV and other primary health care patients. See, e.g., *infra* notes 5-16 and accompanying text; J. Gregory Jerome & Louise C. Ivers, *Community Health Workers in Health Systems Strengthening: A qualitative evaluation from rural Haiti*, AIDS (2010), <https://insights.ovid.com/pubmed?pmid=20023442>.

representation.⁴ The collection traces an arc of a career: from the vantage of a decades-long career of a public interest lawyer encrusted with ennui to the perspectives of the wide-eyed law students energized and empowered by their ability to use newly acquired legal skills to serve their clients. Other essays in the collection speak to a set of skills that help the practitioner and law student to be client-effective and personally resilient through the *accompagnateur* role.

I. ACCOMPANIMENT: FROM PUBLIC HEALTH TO LEGAL SERVICES

Margaret Reuter

Paul Farmer, a physician and public health activist, coined the terms accompaniment and *accompagnateur*.⁵ Farmer was a medical relief physician in squatter settlements in Haiti in the early 1980's. He returned to Haiti in the aftermath of the 2010 earthquake. The conditions he encountered on his return caused him to re-examine his role and utility as a relief worker. His work felt ephemeral and incomplete.⁶ In a 2011 commencement address at the Kennedy School of Government at Harvard University, Farmer articulated the role of *accompagnateur* for medical relief workers. His definition is profound and exemplifies a deep commitment to the people he seeks to serve.

To accompany someone is to go somewhere with him or her, to break bread together, to be present on a journey with a beginning and an end. ... [W]e're not sure exactly where the beginning might

4. Our focus is on individual legal services, e.g., Legal Services Corporation-funded organizations, public defender practice, and private public interest practices. We acknowledge that the principles of accompaniment also serve public interest lawyers dedicated to institutional reform and class action litigation as well as policy and political advocacy. Lawyers in public interest practices of all types face similar challenges to their emotional strength and endurance. We focus on individual representation because it raises special challenges to the ideal of accompaniment—it is client-by-client, not large-scale, comprehensive, legal, political, or policy reform-oriented.

5. Paul Farmer, *Accompaniment as Policy*, Commencement Address, Kennedy School of Government, Harvard University (May 25, 2011), <http://www.lessonsfromhaiti.org/press-and-media/transcripts/accompaniment-as-policy/> (last visited Mar. 4, 2019). Farmer chairs the department of global health and social medicine at Harvard Medical School (HMS) and is chief of the division of global health equity at Brigham and Women's Hospital in Boston.

6. *Id.*

be, and we're almost never sure about the end. There's an element of mystery, of openness, in accompaniment: I'll go with you and support you on your journey wherever it leads. I'll keep you company and share your fate for a while. And by "a while," I don't mean a little while. Accompaniment is much more often about sticking with a task until it's deemed completed by the person or people being accompanied, rather than by the *accompagneurs*.⁷

Farmer reframed his professional identity and redefined his "patient."⁸ It was not a person with a medical issue queued at the clinic door; rather it was a community in need of a viable health care system.⁹ He co-founded Partners in Health ("Partners"), a global health NGO, with this vision.¹⁰ Partners' mission is to build health care systems, in settings where they are largely working from scratch.¹¹ These are places of "privation and disarray."¹² To carry forward the accompaniment vision, Partners is guided by four principles: "We go. We make house calls. We build health systems. We stay."¹³ They undertake their work with "solidarity, rather than charity alone."¹⁴

Farmer's vision has resonance with lawyers in social justice and personal strife practices. The authors wanted to draw on that inspiration, but adapt it to legal services. Farmer rejected the model of physicians treating a single patient at a time.¹⁵ We do not reject the model of lawyers

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

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

12. Farmer, *supra* note 5.

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

14. *Our Mission*, *supra* note 11.

15. Farmer, *supra* note 5.

representing a single client at a time.¹⁶

Like Farmer, poverty lawyers work in places of privation and disarray. Their clients similarly struggle with diverse challenges in their daily lives that impinge on the legal matters at hand, and with innumerable non-legal dimensions as well.¹⁷ For these legal services organizations and their lawyers, it is inescapable that there are more clients with legitimate claims

16. For Farmer, the “patient” is the community in which his organization operates, rather than individual patients *per se*. For lawyers, the Rules of Professional Conduct impose some limitations. A client is an individual or an organization, it is not a community. The professional responsibility rules are framed generally that the attorney-client relationship has a beginning and a natural conclusion. *Cf.* MODEL RULES OF PROF’L CONDUCT R. 1.3, 1.9, and 1.16 (2018). Both the start and end of the relationship have important ethical and professional responsibility consequences. *See* Eric J. Miller, *Keeping It Real: Empathy and Heroism in the Work of Charles J. Ogletree, Jr.*, 22 HARV. BLACKLETTER L.J. 131, 135 (2006) (If there’s an answer to the ethical problems presented by representing indigent clients, “it is precisely to represent individuals, not causes.”).

Farmer’s view is that the accompaniment is broadly encompassing, multi-disciplinary, and inventive. For an important segment of poverty law practitioners, namely those working in Legal Services Corporation-funded non-profit law offices, that multi-disciplinary vision is expressly prohibited. LSC law offices are subject to substantial statutory and regulatory rules that prohibit them from undertaking numerous types of legal claims, using numerous legal tools, and representing many types of clients. 42 U.S.C. § 2996 (2018).

They are restricted from deploying political, legislative, rulemaking or policy advocacy. They cannot encourage protest and public demonstration or calls for action. *See* 45 C.F.R. § 1608.1 (2018) (political, electoral, ballot measures, voter activities); 45 C.F.R. § 1612.1 (public demonstrations, lobbying, rulemaking), 45 C.F.R. § 1617.1 (class actions), 45 C.F.R. § 1632 (census, redistricting). Additionally, LSC-funded lawyers may not handle matters involving public school desegregation (42 U.S.C. § 2996f(b)(9)); welfare reform (45 C.F.R. § 1639.1); military service (42 U.S.C. § 2996f(b)(10)); assisted suicide (45 C.F.R. § 1643.1); or abortion (42 U.S.C. § 2996f(b)(8); Pub. L. 104-134, Tit. V, § 504(a)(14)). Legal services organizations may not represent criminal defendants (45 C.F.R. § 1613.1) or prisoners (45 C.F.R. §§ 1615.1, 1637.1). With very limited exceptions, they may not represent people who are not US citizens (45 C.F.R. § 1626.1).

In response, LSC-funded law offices have two tracks of legal services: “service cases” assisting an individual client with her immediate legal issue and “broad relief litigation” using a single client’s legal issue to advocate for larger governmental changes that will be beneficial to other similarly situated individuals as well. Non-LSC-funded legal aid offices engage in class actions, welfare reform advocacy, or representation before legislature and administrative bodies; and provide assistance to aliens and prisoners. In 14 states and more than 20 large- or medium-size cities, two or more parallel LSC- and non-LSC-funded legal service providers operate in the same or overlapping geographic service areas. Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, CTR. FOR LAW & SOC. POL’Y 43 (3d ed. 2013).

17. *See, e.g.*, Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1049 (1970).

than any legal services organization can possibly handle.¹⁸ Like medical relief work, scaling and triage is an ever-present challenge.

Our efforts to define the contours of the accompaniment role for lawyers starts with the premise that we cannot cure all ills. We must pose and answer the question: How do we define our roles as lawyers to be true, ambitious, just, and sustainable? Our working definition of accompaniment embroiders Farmer's definition, and adapts it to the legal services environment.¹⁹

Be present; make a human connection: To accompany a client is to go somewhere with him or her, to break bread together, *to be present*.²⁰ This requires engagement, conversation, listening and perceiving acutely to understand a client in her or his own terms and as people well beyond the legal problem that brought them to our doors.²¹

Be open; share the journey and its uncertainty: There's an element of mystery, of openness, in accompaniment: I'll go with you and support you on your journey wherever it leads. This requires the lawyer to have

18. Legal Services Corporation has studied—and raised alarm bells about—the disparity between the legal needs of low-income people and the supply of legal services. LSC's Justice Gap Report projected that in 2017, low-income Americans will approach LSC-funded legal aid organizations for help with an estimated 1.7 million civil legal problems. Only a quarter to a third of the clients' legal problems will receive enough legal help to fully address their legal needs; more than one million people will suffer legal issues alone or with limited educational materials. See Lewis Creekmore, et al., THE JUSTICE GAP: MEASURING THE CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS, LEGAL SERVS. CORP. 6 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>. Eligibility for legal services is limited to individuals or households with income no more than 125% of the federal poverty guidelines. In 2015, that was \$14,713 for an individual, and \$30,313 for a family of four. See *Who We Are*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> (last Mar. 4, 2019).

19. Our principles and practices of accompaniment are consonant with the self-generated "codes of lawyering" chronicled in Lauren Bartlett's 2017 article, *A Human Rights Code of Conduct: Ambitious Moral Aspiration for a Public Interest Office or Law Clinic*, 91 ST JOHN'S L. REV. 559 (2017). Following the example of a local legal aid office, she and her students used UN Human Rights principles and the rules of professional conduct to develop an agreed-upon set of principles and practices that were then used to punctuate and animate their discussions in rounds, supervision, and clinic evaluations. Its principles detailed practices of Openness, Equality, Integrity and Best Judgment, Dignity and Respect, Kindness, and Empowerment. *Id.*

20. See Farmer, *supra* note 5.

21. See Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 334-36 (2015).

2019]

Attorney as *Accompagnateur*

113

emotional availability and empathy, to see the world as your client does.²² It also requires honesty about the challenges ahead. Reflection and mindful presence are essential skills for listening assiduously and practicing empathy.²³

Tell the client's story authentically: When we understand our client's circumstances, values, and goals, we can use legal skills to be their representative and speak on their behalf honestly. We can help equip them to speak for themselves.²⁴

Practice non-directive lawyering; abstain from pity: Commit to undertaking your work in solidarity with your client, rather than charity. This requires banishment of the arrogance of expertise, relying instead on the skills of collaboration.²⁵

This definition of accompaniment answers the following question: Are there definitions of professional satisfaction and success that are enduring even if legal success or social justice is unattainable? With these precepts of accompaniment in mind, we see enduring dividends. First, client-centeredness is good lawyering.²⁶ Second, accompaniment is a value to one's clients distinct from legal success. And, finally, the skills of accompaniment serve as a source of refreshment for lawyers. Reflection and mindfulness are skills that can be used to improve listening to and empathy for a client. These skills can also be put to use to identify and tap

22. See Kristen B. Gerdy, *The Heart of Lawyering: Clients, Empathy, and Compassion*, available in 3 LIFE IN THE LAW 189, 194 (Galen L. Fletcher & Jane L. Wise, eds., 2013), (also available online at: https://digitalcommons.law.byu.edu/life_low_vol3/24/) (adapted from Kristen B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1 (2008)); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1271–72 (arguing for empathy as a main motivation for sustainable career as public defender); Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 276 (championing empathetic engagement that combines appreciation of the client's social and cultural world with an understanding of the client's perceptions of the legal world).

23. See generally, e.g., Gerdy, *supra* note 22; Genty, *supra* note 22; DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (2nd ed. 2004)

24. See Sarah Buhler, *Painful Injustices: Encountering Social Suffering in Clinical Legal Education*, 19 CLINICAL L. REV. 405, 410 (2013); Genty, *supra* note 22, at 274 (tracing clinical work to recognize and bridge the disparity between the clients' views of themselves and their circumstances, and the agencies' and judges' views of the clients).

25. See generally, e.g., Anthony Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991)

26. See *infra* note 28 and accompanying text.

into one's personal reservoirs of strength and resilience.

The elements of accompaniment beckon empathy, community, and a shared sense of hopefulness, uncertainty and loss.²⁷ Indeed, accompaniment mirrors the precepts and aspirations of client-centered lawyering that “strives at once to be client-directed, holistic, respectful of client narrative, client-empowering, and partisan.”²⁸ We use this collection of essays to illustrate how the role is captured in the practice environment.

Be present: The ethos of the public interest lawyer is to be present for her clients. To give one's full attention and presence requires an acute ability to listen and perceive. This element of accompaniment echoes the Peace Corps saying, “sit by the well and listen” and after a year, you may be ready to offer assistance that is genuinely useful to the community.²⁹ The adage reminds us that patience is part of listening well. Several of the essays touch on this core element of accompaniment—presence and human connection. In an essay by Anjelica Mantikas, a clinical law student, she describes in emotional detail her work with two Salvadoran boys, interviewing and conversing over chips and fruit while learning about their lives, the horrors they endured, and their family.³⁰ In another essay, Kelsey Berkley, a public defender extern, recounts her visits to jail

27. See, e.g., Cover, *supra* note 2, at 55; Gerdy, *supra* note 22, at 189.

28. Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 372 (2006). See also generally, Susan L. Brooks, *Using a Communication Perspective to Teach Relational Lawyering*, 15 NEV. L. J. 477 (2015). In addition to rendering traditional legal services, “perhaps the most important service” a lawyer renders is “being a comforter and friend.” Gerdy, *supra* note 22, at 199. See also Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering With Multiple Clients*, 22 CLINICAL L. REV. 145, 149 (2015); Robert A. Baruch Bush, *Mediation Skills and Client-Centered Lawyering: A New View of the Partnership*, 19 CLINICAL L. REV. 429 (2013) (relating the “interactional support skills” required for the transformative—as opposed to problem-solving—model of mediation to client-centered advocacy skills).

29. Peace Corps volunteers were trained that their first year should be dedicated to listening deeply and acutely to the people of the service community, in order to develop a genuine understanding of their service community, sufficiently well to identify, plan, and implement a consensus community development projects during their second year of service. See Jeffrey Blumberg, *Sitting by the Well: The Case for Intercultural Competency Training in International Experiential Learning*, 43 U. BALT. L. REV. 395 (2014) (recounting an interview with Swaziland and Ethiopia Country Director Sally Collier, Peace Corps).

30. See Gerdy, *supra* note 22, at 195 (“[I]awyers can gain a level of understanding and empathy by meeting their clients in ‘their environment’ rather than in the sterile law office.” “[B]eing in the client’s environment helps the lawyer see firsthand what the client experiences.”); see also Genty, *supra* note 22, at 282 (“venturing into the client’s world should increase the likelihood of developing a critical understanding of power and privilege.”).

2019]

Attorney as *Accompagnateur*

115

to get to know her clients on a “level that is not simply their case number or what happened to land them in jail. Getting to know them as people is why I love this work.” Steve Rosenbaum, a veteran public interest lawyer and part-time academic, recounts an instance in which he “made a house call and broke bread” with his clients. He also uses this essay to make an honest accounting of how he regretted not being present with each client in his practice. He describes a personal reckoning where he had so little time with a new client that there was scant connection on a human, non-legal level.

Openness and shared uncertainty: Conceiving public interest law practice as a shared journey is spot on. It is why Farmer’s term, accompaniment, has such meaning to social justice lawyers. This element encompasses several layers of extended commitment—to an individual client, to a community, and to a set of ideals. Recognizing and sharing the uncertainty of the journey is core. The attorney can offer perspective, strength, and comfort. That extended commitment demands both emotional availability and honest boundaries to allow for sustainability.³¹

In the student essays, the reader can feel the optimism of the rewards of public interest practice and their newfound ability to connect with people who come from far different circumstances than they. Steve Rosenbaum’s essay captures his almost four-decade career dedicated to legal service for marginalized communities. His commitment to the long haul is patent; he is also war-weary. Danielle Pelfrey Duryea’s essay describes techniques of mindful meditation to help lawyers sustain their emotional capacity to labor in such difficult practice settings for the long haul.

That shared journey has to be built on honesty. The *accompagnateur* has to be clear with her clients about the probabilities of legal success (including failure and adverse consequences) and the boundaries of the commitment she is making to their cause. That sounds less whole-hearted than Farmer’s ideal of accompaniment.³² Attorney burnout and compassion fatigue are real risks.³³ In order to have the emotional bandwidth to be present and share the client’s journey, the lawyer has to

31. See Cover, *supra* note 2, at 67.

32. See *supra* note 16 and accompanying text.

33. Ogletree, *supra* note 22, at 1241.

maintain a healthy balance.³⁴ That includes setting limits on hours worked in a week as well as number and types of cases one will handle. In her essay, Kelsey Berkley shares grave concerns about her ability to set boundaries. She writes about becoming friends with some of her clients. She worries about moving from a student-sized small caseload to a public defender-sized caseload. Will she ever feel she has come to know her clients well enough; will that pursuit eat her up? Berkley describes her personal professional development challenge is to learn how not to over-identify with her clients.

In a conversation with “low bono” immigration attorney,³⁵ Angela Williams, she recounted the story of her hero and role model, a death penalty lawyer.³⁶ On his 50th birthday some fellow attorneys asked his clients, and clients’ families, if they wanted to send a birthday note to their lawyer. The notes and cards poured in. His clients had little chance of acquittal and faced the most severe punishment. As their lawyer, he could offer them little optimism on the legal front. His clients’ tributes made obvious that his value as a lawyer was the manner in which he engaged with his clients. He was honest with them, hopeful with them, and treated them as worthy of dignity. Often, he was the only person left who cared. His honest accompaniment, not his legal victories, provided the wellspring for their gratitude.

Authentic storytelling: When lawyers engage with clients openly, listen with acuity, seek to learn about their clients more holistically than the bare contours of their legal problem, they can more authentically speak for their clients with fidelity. In her essay about representing two refugee brothers from El Salvador, Anjelica Mantikas describes how she learned layers and layers of information about her clients’ flight from El Salvador. She came to understand them well enough that she could speak for them and

34. See Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 U.C. DAVIS L. REV., 1203, 1250 (2004) (explaining that motivation by respect for the client helps create a balance between burnout and emotional availability); Cover, *supra* note 2, at 67.

35. Low-bono attorneys use discounted fee arrangements with clients in underserved communities. See Luz. E. Herrera, *Rethinking Private Attorney Involvement Through a “Low-Bono” Lens*, 43 LOY. LA. L. REV. 1, 39 (2009).

36. Telephone interview with Margaret Reuter, Associate Clinical Professor, University of Missouri-Kansas City School of Law, of Angela Williams (June 7, 2018).

question them in court. She could prepare them well enough to survive cross examination and independent judicial examination. Core to Mantikas' version of accompaniment: helping her clients to tell their stories.

Partnership without pity or paternalism: Accompaniment requires the lawyers to work in solidarity and partnership with their clients; not as a savior and not in pity.³⁷ It is easy to fall into a trap where marginalized and disempowered clients abdicate decision-making to the lawyer as rescuer and expert.³⁸ Like Farmer, clinical law faculty ward against rescue fantasies.³⁹ Such clinicians have exposed and rejected the romantic notion of "white knights" who presumed to rescue victimized communities.⁴⁰ Rescue lawyering diminishes or vitiates client empowerment and decision-making that is an emblem of client-centered lawyering.⁴¹ The remedy is to empower client autonomy and storytelling, and to shed notions of the lawyer as an expert "knower" with special powers.⁴² Paternalism not only neuters a client, it risks a client's undue hope in the lawyer's abilities. Rosenbaum's essay regarding his work with the Artesi migrant workers tenants' council illustrates that practice approach. Learn from the community what they need, want, or hope for. Mold it into a legal claim. Advocate.

Vanessa Merton, who directs the Immigration Justice Clinic at Pace

37. See e.g., Sarah Buhler, "*I Am Not a Caped Crusader*": *Clinical Legal Education & Professional Identity Formation*, 49 U. B.C. L. REV. 105, 131-32 (2016). See generally, Buhler, *Painful Injustices*, *supra* note 24; Alfieri, *supra* note 25.

38. Buhler, *Painful Injustices*, *supra* note 24.

39. Buhler, "*I Am Not a Caped Crusader*," *supra* note 37; Buhler, *Painful Injustices*, *supra* note 24; Alfieri, *supra* note 25; Smith, *supra* note 34, at 1238 (argues that heroism as the sustaining motivational factor has many limits and often times "lawyer-heroes" run out of steam).

40. The critics of "white knight" lawyers fault their implicit claims of superiority of their judgment, born in expertise and worldliness; but acknowledge their motivation to do good. See Buhler, *Painful Injustices*, *supra* note 24, at 413-16.

41. See e.g., Lawton, *supra* note 28; Kruse, *supra* note 28, at 390-92. The Supreme Court has now specifically rejected an attorney's paternalistic approach to client counseling, at least as it applies in Sixth Amendment jurisprudence. See *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) (the lawyer must respect and follow his client's wishes regarding his defense, even if his wishes are more likely to result in the imposition of the death penalty in the counsel's experienced opinion).

42. See e.g., Buhler, "*I Am Not a Caped Crusader*," *supra* note 37, at 116; Buhler, *Painful Injustices*, *supra* note 24, at 5; Alfieri, *supra* note 25, at 2123; GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Kruse, *supra* note 28, at 400.

University School of Law, offered her sense of accompaniment in representation of her clinic's clients, poor immigrants with serious criminal convictions or repeated immigration fraud.⁴³ She differentiates her clients from "heartwarming asylum-seekers." To Merton, accompaniment is a deep process of representation, "of shared outrage, of explanation, of translation, of mutual education, of reconciliation, of warm acceptance and macabre humor, and sometimes a certain form of redemption." The process of representation, per se, is the source of her sense of accomplishment. She and her students use other professions, such as physicians caring for patients who suffer from virulent disease or incurable cancer, or patients rendered quadriplegic in traumatic events or patients who have been massively burned, as reference points. "Just because we cannot reasonably expect to 'win,' does not mean the lawyers can abandon or give short shrift" to the legal work to be accomplished. Per Merton, "[q]uite the contrary." The near futility "makes our diligence, our meticulousness, our ingenuity, our devotion all the more important. Our clients may end up deported, but they know in a pretty deep way that someone" cared and accompanied them.⁴⁴

Profound dividends flow from the practice of accompaniment.

First: Good lawyering.

Second: The dignity, respect, and connectedness achieved by serving as an *accompagneur* is a true display of a lawyer's professional success.⁴⁵ It is a value to one's clients, irrespective of whether the law or the lawyer made life better for his client.⁴⁶ Our definition expressly recognizes that the acts of accompaniment have value to the client separate and apart from the *accompagneurs'* success achieving legal victories (or in curing disease). The attorney's accompaniment includes the acts of standing beside the client, bringing the client's voice to light, and seeing her role as supporting the client's journey. The interleaved essays of Victoria

43. Posting of Vanessa Merton, to [Lawclinic] listserv, lawclinic-bounces@lists.washlaw.edu, "Accompaniment" Articles for Poverty Lawyers?, (Mar. 1, 2017) (on file with authors).

44. *Id.*

45. Smith, *supra* note 34, at 1243-44 ("respecting and embracing the client's dignity, autonomy, and humanity," may be the most important aspects of legal representation to a client); Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13 CLINICAL L. REV. 571, 581 (2006).

46. Smith, *supra* note 34, at 1243-44.

2019]

Attorney as *Accompagnateur*

119

Pontecorvo and Erin McMullan traces their journey with their clients with cognitive disabilities through a seemingly endless series of meetings and calls with a social service agency, government offices, opposing counsel, and court; knocking on closed doors that may not open; sitting in waiting rooms with little sense whether or when they would be seen; and translating legal forms to a language comprehensible to their clients. Even if their legal tools failed, their clients would feel cared for, supported, and advocated for.

Third: The skills of accompaniment—empathy, reflection, and mindfulness—serve as personal professional skills for attorneys to draw upon to renew their motivation and to foster their own resilience. Without diminishing the struggles of our clients, attorneys also face fatigue and defeat. If an attorney defines his professional worth merely in terms of providing a pathway to a client’s legal success or achieving a measure of justice, he can face failure after failure. He risks burn out and compassion fatigue.⁴⁷ His professional identity and sense of calling is at risk. Reimagining an attorney’s value as an *accompagnateur* may provide a pathway to develop resilience and sustain his motivation in the face of loss.

The following Parts—II, III, and IV—present in full the essays we have previewed here. Part II is an essay on accompaniment from a veteran practitioner’s perspective. Part III includes three essays from the perspectives of four law students. And Part IV is an essay by a clinical professor experimenting with a pedagogy of accompaniment skills. Part V serves as an epilogue.

Note: Our essay writers often refer to clients, fellow lawyers, and law students by name. All names are pseudonyms to protect privacy.

47. See, e.g., Jason M. Newell & Gordon A. MacNeil, *Professional Burnout, Vicarious Trauma, Secondary Traumatic Stress, and Compassion Fatigue: A Review of Theoretical Terms, Risk Factors, and Preventative Methods for Clinicians and Researchers*, 6 BEST PRAC. MENTAL HEALTH 57, 59 (2010); Stacey Wu et al., *Compassion Fatigue, Burnout, and Compassion Satisfaction Among Oncology Nurses in the United States and Canada*, 43 ONCOLOGY NURSING F. 161, 162 (2016).

II. THE PRACTITIONERS' PERSPECTIVE:
CONFESSIONS FROM AN *ACCOMPAGNATEUR LIMITÉ*

Stephen A. Rosenbaum

Stephen Rosenbaum has practiced for nearly 40 years in public interest law, largely focused on farmworkers, undocumented workers and clients with disabilities, most recently as a Regional Director for California Rural Legal Assistance, Inc. (CRLA).⁴⁸ His essay serves as the touchstone for this article, acknowledging that extended practice in poverty law can leave a lawyer flattened and in search of nourishment and sustenance. His essay is a reflection on the ideal of accompaniment, where it is missing, how its power can be re-injected into his practice.

It was an early evening in July when Enrique, a junior attorney colleague, and Jason, a legal intern, and I left our storefront office in downtown Stockton, the gateway to one of the most productive agricultural regions in the world, California's San Joaquin Valley. We drove onto the grounds of the Artesi III Migrant Farm Labor Center in the tiny town of French Camp. A crowd had gathered in and around an outdoor chapel of sorts. Enrique and I were escorted to a bridge table-cum-altar and seated in folding chairs. Jason sat nearby, with me giving him an intermittent English-language summary of the speech-making. Behind us were a crucifix and a painting of La Virgen de Guadalupe, Mexico's patron saint and unofficial icon of the United Farm Workers. The plastic

48. CRLA, Inc. is an amalgam of 17 quasi-autonomous civil legal services offices for indigent persons located throughout the state's Central Valley, Central Coast and Imperial Valley, funded in part by the Legal Services Corporation. *Office Locations*, CAL. RURAL LEGAL ASSISTANCE, <http://www.crla.org/office-locations> (last visited Mar. 4, 2019). Previously, I had been associated with CRLA as a field office staff attorney, litigation attorney and director of its sister Foundation's immigration project. I spent the next several years with disability rights advocacy organizations and a small plaintiff-side firm. As a part-time faculty member at Berkeley Law and Stanford Law, I have taught a social justice practice skills course, among others, and lectured, trained, taught law and developed clinical initiatives in West Africa, Asia, the Middle East, Australasia, Mexico and Europe.

bottles of cold water were welcome on that still and sweltering day.

I was struck by the idyllic nature of the camp. There were modest one-story duplexes, with trim little flower gardens planted in front and a wide expanse of lawn in between the shoe box-sized residences. On all sides of the canopied assembly, families sat or stood—potbellied fathers in jeans and cowboy boots, mothers in capri pants with painted toenails. Their teenage spiky-haired sons and gum-chewing daughters plugged into their smart phones were dressed in Hollister T-shirts or baggy shorts, and toddlers ran circles all around.

They had come to celebrate a seemingly simple act: the decision of the state’s Office of Migrant Services (OMS) to allow some 300 farmworker families to extend their occupancy beyond the statutory season, in this and two other labor camps.⁴⁹ This gathering was meant to celebrate the work of our rural legal services office for its advocacy and the tenacious activism of the camp presidents and residents.

Enrique and I turned Jason’s research into a letter to the Department of Housing and Community Development. We steered clear of any policy advocacy, which is *verboden* under Legal Services Corporation regulations.⁵⁰ And, on that day, under the watchful gaze of the Virgin Mary and a crucified Christ, speaker after speaker delivered congratulations to each other for their outspokenness vis-à-vis management. Many recounted the importance of a stable home—for almost everyone this “temporary housing” was the only residence they had—and the uninterrupted education of their children under federal and state migrant education laws.⁵¹ Before leaving, as a gesture of thanks, my fellow attorney, intern and I each received an armful of freshly harvested watermelons and cantaloupes.⁵²

In truth, the advocacy journey was a short one, and we were distanced

49. See CAL. HEALTH & SAFETY CODE § 50710.1 (2018) (establishing the occupancy period for migrant farm labor centers).

50. Extending the occupancy for camp residents was an exercise in statutory interpretation and arguably required new legislation. But, informal administrative advocacy with the state housing department director allowed a temporary fix. An artful dance was also required to get around the Legal Services Corporation’s prohibitions on lawyers’ lobbying and other communications addressing government actions. See 45 C.F.R. § 1612.3 (2018).

51. See, e.g., 20 USC § 6391(4); CAL. EDUC. CODE § 54440 *et seq.*

52. This visit demonstrated for me how “[b]eing in the client’s environment helps the lawyer see firsthand what the client experiences.” Gerdy, *supra* note 22, at 195.

from the day-to-day uncertainties felt by the families living in the labor camps. Enrique and I had first met with the camp tenant council presidents about two months earlier to learn of their plight and hopes. Even without a long relationship with these clients, the evening at Artesi III rekindled for me a feeling of pathos and accomplishment that I had not felt in some time.⁵³

Our client engagement with the Artesi council met our accompaniment ideals. We genuinely connected with our clients and understood their circumstances—from agricultural industry practices, to regulatory framework, and daily living challenges. We met with the community old-timers, the tenant council presidents. We knew of their migrant camp and CRLA had worked in the Central Valley for so long that we knew deeply about the lives of these farmworkers. We shared their hopes and empathized with the uncertainty of their fate. We were not their rescuers; we were partners with our clients. We had the legal skills and professional credibility to serve as their voice with OMS. They were the drivers. Their congratulations ceremony (for their leaders and for us) brought natural closure to our engagement.

But not all our client work meets that ideal. On the same day as the Artesi Camp gathering, another client, Barbara, sat in my office with her elderly mother and cried her heart out about her physical disability and long-term attachment to the neighborhood that she now had to leave. The landlord wanted to reduce the number of subsidized tenants in her apartment complex. My intern, Huan, offered her a tissue. That was the manifestation of our compassion and support, our empathy and presence. A goddamn box of Kleenex. That, and a tepid proposal to stay in her apartment rent-free for a few weeks and have the landlord's court costs and attorney fees waived. Our options did not even come close to meeting her needs. In the succeeding days Barbara would lash out at the property

53. About 18 months earlier, I had returned to poverty law practice in a legal services field office, as the directing attorney, after a few years of full-time teaching, including clinical teaching. On the value of clinicians becoming reacquainted with an individual service caseload, see Suzanne M. Rabé & Stephen A. Rosenbaum, "Sending Down" *Sabbatical: Lawyering in the Legal Services Trenches Has Benefits for Professor and Practitioner Alike*, 60 J. LEGAL EDUC. 296 (2010). For many years my law practice has been informed by part-time teaching and writing—which goes in the other direction as well. This *modus operandi* has not always endeared me to my principal employer, but I think it also provides what my co-author Meg Reuter refers to as "nourishment and sustenance."

management agent, then at Huan and, in a final phone call, at me. Barbara is one of a long stream of women evicted from their apartments. In the ensuing weeks, I conducted one interview after another of women in desperate need of secure housing, sometimes with tears, sometimes with a shroud of hopelessness. Often they had no meritorious legal defense, and at other times they signed stipulations against advice of counsel to prolong their tenancy, only to be caught up months later in a web of rules violations.

If Barbara's pending eviction crisis is an example of our limited legal tools, Zeke's mother represents a prime example of a barely engaged client with self-inflicted wounds. Zeke's mother came to us when Zeke was on the verge of expulsion from school. Her son was a perennial client of our poverty law office. This hardened, and arguably targeted, African American 14-year-old boy had a school discipline "rap sheet" that was as long as he was tall. While he provided plenty of test case material against the troubled Stockton Unified School District, it was difficult to both represent him and to try to get the services and support he needed to be successful. His mother was continuously "missing in action," supplying us with after-the-fact notices of one family exigency or another.⁵⁴ She was at times appreciative of what I was doing to bolster Zeke's Individualized Education Program and keep him safely clear of an alternative school placement ("I'm going to take you guys out to dinner"). And then she would fail to return vital forms to the school and ignore our phone messages.⁵⁵ How do I serve as *accompagnateur* when my client is MIA? How do I remain non-judgmental, non-directive and emotionally available?

Should I be surprised that a certain cynicism settles in among the poor, like a thin layer of dust? Over four decades ago, Stephen Wexler wrote in a now classic text that "poor people are always bumping into sharp legal

54. This is not to say the various funerals were fabricated, as their South Stockton neighborhood is notorious for shootings and other violent crime.

55. In contrast, an incidental gesture by another client demonstrated both appreciation and, actually, *mutual* admiration. An African American woman of a certain age unexpectedly used a complimentary Yiddish term in a phone conversation. She said: "And you are a *mensch*" after I had told her that she was a good advocate for her adult son, our client. (The son, who had a learning disability, was being evicted for failing to attend a subsidized tenant eligibility meeting with the apartment manager.)

things.”⁵⁶ And, when they do, the motivation is sucked out of them for finding ways to avoid those sharp things. The legal system is but a distraction or one more labyrinth to negotiate for people whose meager incomes mean that food, shelter, transportation and health care present a daily challenge.⁵⁷ Missed appointments and signing agreements against the advice of their attorney are all part of that haze of hopelessness or despair that envelops one’s life.⁵⁸ Whereas attorneys do not tend to place ourselves in the same shoes as the welfare department or housing authority case worker, our client may feel “caught between two bullies, both of us ordering her what to do.”⁵⁹

California Rural taught me in my early years as a poverty lawyer that my worth is not determined by the success of one individual’s claim. The evicted tenant will likely be ousted again, the expelled student may well be disciplined or fail academically once more, and the unemployed worker will suffer poor workplace conditions or probably be jobless again. That’s the first contrast between my clients at the Artesi Camp and my urban clients seeking housing and education aid. But I’m more struck by my sense of connection to these clients. Why did the labor camp experience move me so, but not the plight of individual tenants about to be evicted or the parent nonchalantly trying to save her troubled teenager from expulsion? I have practiced over 35 years on behalf of poor and marginalized clients, yet I have to examine deeply why I cannot easily shed myself of middle-class values or romanticized images of poverty. Are

56. Wexler, *supra* note 17, at 1049.

57. Danielle Pelfrey Duryea shares this observation in her essay, Part IV, *infra*. Whatever the nature of the problem that brings low-income clients to our doors, our work primarily is with people who “are already experiencing precarious economic circumstances, housing instability or homelessness, and/or systemic racism and other forms of discrimination or trauma.” Danielle Pelfrey Duryea, *Accompagnateurs Contemplatifs*, see *infra* Part IV (and accompanying note).

58. In a revelatory treatise for poverty lawyers and scholars, Lucie White deconstructed the relationship between a legal aid attorney and her welfare client where the unpredictable reactions of her client were explained by a host of factors ranging from racism and classism to misogyny and gender. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990). For instance, on why clients ignore their lawyer’s advice not to sign anything, White posits that persons dependent on government largesse for the necessities of life are always answering to bureaucrats, *id.* at 23-28, be they welfare workers, school discipline officers or legal aid attorneys.

59. *Id.* at 23. The client’s sometimes exasperating and contradictory conduct is perhaps intended to undermine the power and value that the lawyer sees in herself. *Id.* at 45-48.

the hard-working migrant laborers more deserving than tenants who couldn't pay the rent, or who fucked up their lease in some other way? What about the surly adolescent who cussed at and assaulted his teachers? Is it because the workers appear grateful for the assistance whereas the tenants and student's parent check-in, haphazardly or routinely, at the local legal aid "bureau" with their claims of little legal merit? Maybe it's not the acknowledgment that I am after so much as wanting the client to care as much—if not *more*—than me. There is no denying that gratitude is a motivational factor for me in my capacity as a lawyer.⁶⁰ There is also no denying that having legal tools that match the magnitude of the client's problems is energizing.

The onslaught of clients and the enormity of their burdens (legal and otherwise) left me with no time for reflection or mindfulness. The drive to find and pursue impact or test cases left less and less room for our individual service clients, and even less time to get to know them individually.⁶¹ I must confront the fact that I cannot always muster the requisite comfort, empathy, or friendship. I have found myself becoming immune to the hardships of living paycheck to paycheck. I am just a generation removed from my immigrant grandfather's abandonment of one Detroit neighborhood after another before the landlord came to collect, but I cannot claim to walk the walk of clients who earn little to nothing and are perennially late in their rental payments. I was adopting the same impassivity as the judges, located across the street in the sparkling new skyscraper courthouse, and even the public housing

60. In a recent quantitative and qualitative study of over 500 lawyers, the authors found that client gratitude and sense of purpose ("making a difference") were two factors that helped attorneys manage stress. Pamela Bucy Pierson, Ashley Hamilton, Michael Pepper & Megan Root, *Stress Hardiness and Lawyers*, 42 J. LEGAL PROF. 1, 65-67 (2018). Admittedly, practicing "stress hardiness" is not tantamount to fostering client empathy or accompaniment, but it is perhaps a complementary component.

61. After assuming a managerial position in the San Joaquin County field office, I was issued a dual mandate from the Central Office leadership to both increase "service case" statistics and file more broad relief litigation. This is not to suggest I am at odds with CRLA's historically exceptional—and courageous—stance among LSC grantees of privileging "impact cases" over routine individual client matters.

authority's lawyer,⁶² who have heard it all as they grind through the files of tenants scooped up in unlawful detainer⁶³ lawsuits, for the most mundane of lease violations.

These reflections about my practice, my clients, my motivators, and my de-motivators are a sign for me. I have taught in law school clinics at University of Washington and Golden Gate, where I tried to adhere to best practices in supervision, feedback and reflection. However, I see a yawning gap between what I have taught my students and how I have practiced law. I need to build into my practice a more mindful approach to relations with our clients—and to see that my colleagues and interns incorporate that approach as well. It is not enough to inculcate the fundamental clinical attitudes and habits⁶⁴ if we don't find a way to continue those upon leaving law school.

With each passing year, the effort to embed the accompaniment concept in a legal aid office should not face much resistance from one's colleagues who are increasingly graduates of best clinical practices during their law school tenure. Yet this entails a cultural shift that requires buy-in from more senior attorneys so that reflection or other support skills are not viewed as one more obligation that a busy lawyer must assume. Reflective lawyering is just a part of what Marjorie Silver calls the personal support

62. One of our office's greatest nemeses was the general counsel of the county housing authority. Discourteous in his manner and sloppy in his analysis, this arrogant and self-congratulatory attorney behaved more like the stereotypical landlord lawyer than the various private-sector opposing counsel we dealt with. He refused to speak voice-to-voice, limiting his communication to emails, all the while reminding my colleagues and me that he only worked part-time and expected the email traffic to respect those hours. He offered only cookie cutter settlements with clauses that unflinchingly would be breached by tenants, and he advanced cases to trial amidst ostensibly good faith negotiations. It was puzzling that the government housing provider responsible for offsetting private market forces for poor and impoverished renters was much keener on evicting tenants than finding ways to continue their tenancy.

63. CAL. CODE CIV. PROC. § 1161 (2018).

64. See, e.g., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 162-244 (Deborah Manville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López, eds., 2015). In this comprehensive tome, the authors stress the distinction between experiential learning and experiential education. *Id.* at 163. A focus on the latter "directs law schools and individual legal educators to their role in ensuring that maximum learning takes place beyond raw experience.... The way in which a law school designs and delivers a coherent array of courses to allow a student to progress from novice to (reasonably) competent professional in three short years will, more and more, define its efficacy, reputation, and leadership as a provider of legal education." *Id.*

2019]

Attorney as *Accompagnateur*

127

skills where intra-personal and inter-personal awareness can flourish.⁶⁵

Law students will always have the luxury of a low caseload and the bandwidth to give more time and emotional attention to each client. Lawyers in a real-time, full-time practice handle large caseloads in understaffed offices.⁶⁶ Without intentional effort, the accompaniment journey will likely be one of the casualties when there is scant time to develop empathy.⁶⁷

We have long-known the inadequacies of the band-aid approach to legal assistance, the fickleness of government funding and the shortcomings of

65. Marjorie A. Silver, *Supporting Personal Skills* at 11, n.8 (Nov. 2008) (unpublished draft manuscript) (on file with authors). I had actually begun an effort one recent summer to introduce reflective lawyering into the internship experience for students posted in the various field offices. CRLA does not have a formal law student program, although each office engages part-time or summertime interns or externs, and there is a well-developed process for recruitment and selection of post-graduate fellows. *Fellowships*, CAL. RURAL LEGAL ASSISTANCE, <http://www.crla.org/fellowships> (last visited Mar. 4, 2019). Only two students took me up on the offer, but that may be due to my belated and tentative proposition, and my desire not to tread on the toes of supervisory colleagues who might not embrace this lawyering component in a non-credit placement.

66. See, e.g., Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1329 (1992) (author's account of judge commenting on "the kind of time and effort and legal talent" that clinical students (vis-à-vis other practitioners) devoted to representation of defendant on petty criminal matter). Along the same lines, one emeritus clinician referenced the back-handed compliment delivered in a brief by counsel for New York City's housing authority, objecting to his law students "trying a case in a judge trial on the theory that it would be unfair since they would be so prepared." Posting of Paris Baldacci, baldacci@yu.edu, to [Lawclinic] listserv, lawclinic-bounces@lists.washlaw.edu (Jan. 19, 2018) [Law Clinic] Listserv (on file with authors). In a phone conference, my co-author Danielle Pelfrey Duryea expressed the level of clinical student assistance this way: "And, *boy*, are we helping people," a gratifying and positive recognition of the significant amount of time students often devote to a single case.

67. This is a particularly high risk in in the fast-moving world of unlawful detainers, where the landlord's possession can be quickly restored and the evicted tenant has nowhere to go. There is not much support the lawyer can lend beyond a murmured regret and a handout on oversubscribed low-income housing referrals.

the legal system itself.⁶⁸ Accompaniment, however, provides a framework to address these inadequacies. It keeps our eyes more on the client experience, and less on the avalanche of problems our clients face and the inadequacy of the legal tools to solve or mitigate them. How would I greet, interview, and communicate differently if I made the client experience pre-eminent, even when our time together is almost as short as a New York minute? I pose these questions for reflection. I do not pretend to know the answer. Yet.

III. ACCOMPANIMENT: THE PERSPECTIVE OF THE STUDENT PRACTITIONER

We have collected student essays that reflect their experiences in representing clients during clinics and externships. Each essay discusses the close connection that the law students achieved with their clients, the students' allegiances to the client's causes and needs, and the epiphany of the humbling and all-encompassing client need for an advocate's help to navigate intimidating and hostile terrain. If Rosenbaum's essay is a reflection of a war-weary advocate, these student essays are a reflection of idealistic drive. Each of them speaks to the value of time and emotional bandwidth to develop client rapport and connection.

The first essay, by Kelsey Berkley, illuminates the rewards of client connectedness and the concerns she has about her future in practice with lawyer-sized caseloads rather than the small, curated, student-sized

68. This awareness, however, is hampered by a more restrictive regulatory scheme. The CRLA I returned to after a 20-year hiatus was still feisty, but constantly looking over its shoulder for potential violation of the prohibitions on policy advocacy, or representation of undocumented immigrants and persons marginally above the poverty line. There was good reason for heightened vigilance, given an almost 50-year history of tamping down our bold advocacy through gubernatorial interference, federal audits and inspectors general investigations. See, e.g., Michael Bennett & Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 CHICANO L. REV. 1 (1972). See also José R. Padilla, *California Rural Legal Assistance: The Struggles and Continued Survival of a Poverty Law Practice*, 30 CHICANA/O-LATINA/O L. REV. 163 (2011). The reduced government subsidy has also made the organization more bureaucratic and dependent on grant deliverables. I used to gently chide the longtime executive director for referring to our network of community law offices as "the agency." In fact, over time CRLA has adopted more agency-like characteristics, with compartmentalized programs and projects, and a drive to increase individual case statistics. Turf battles, junior attorney turnover and limited collegiality have also taken their toll.

2019]

Attorney as *Accompagnateur*

129

caseload. She has a deep sense of both accompaniment and the reasons to know one's client more than on a legal basis. In Berkley's version of accompaniment, she absolutely intends to "break bread" with her clients, to support their journey wherever it leads, and to share their hopes, uncertainties, and debilitating losses. Her version is deep and time-intensive. She fears, however, that she will be unable to set boundaries and will become consumed by her personal commitment to her clients.

The next set of essays are by three law students, each of whom has had the great opportunity to stand side-by-side with their clients, endure setbacks and seemingly implacable forces, and emerge victorious. They describe their methods of accompaniment. In these essays, we see how these students shared the journey with their clients, including the mysteries, confusions and risks. They exhibit the idealism and optimism of lawyers in the early stages of their careers, without the years and layers of frustration and loss.

A. Accompaniment: Is Too Much Trust a Dangerous Thing?

Kelsey Berkley

*Kelsey Berkley interned at the Jackson County Public Defender's Office, Kansas City, Missouri, for the better part of her law school career. She graduated in May 2017 and moved to Colorado, her home state, to practice as a public defender. The typical externship arrangement at this public defender's office is to pair each law student with a single mentor attorney to train and guide her in criminal defense practice and in serving indigent clients. Berkley's mentor attorney is a fierce advocate herself, whose commitment to her clients runs very deep. Her mentor attorney voiced concerns she had for Berkley to her externship professor, co-author Margaret Reuter. The mentor's worry was Berkley's ability to set boundaries, and her risk of burnout. Reuter had multiple conversations with Berkley also, trying to help her reveal to herself ways she can manage her commitment to her clients and to herself. Berkley embraces the role of *accompagnateur*. She absolutely intends to "break bread" with her clients, to support their journey wherever it leads, and to share their hopes, uncertainties, and gut-punch losses. Her version is deep and time-intensive. Berkley undertakes to learn about her clients as whole persons,*

and not just learn about their legal face. She had developed essential skills of patience, listening acutely, and giving room for the client's story to come out. She also recognizes that high caseloads of a full-fledged defender will significantly and substantively constrain how deeply she will know her clients. She confronts that jarring reality without naïveté.

I would love to say that I learned the public defender's role in balancing between the roles of attorney and counselor. For many of my clients, I was their only point of contact (other than the two lawyers with whom I have worked). I had to find a balance between gaining their trust as a friend, and as an advocate. I am a personable individual. That is mainly why I love this field so much. I love getting to know each client and understanding exactly how he or she landed in these circumstances. The majority of the time, each client grew up in a completely different setting than I did. I learn from them and listen to them. In order to advocate for them, I have to know who they are.

But the difficulty that I find is that, as I get to know them as people, I am unable to find my place between advocate and confidant. I see my personable nature as a skill and strength, and believe that through time I will find a balance. My mentor attorney worked so closely with me on two particular cases and gave me so much freedom to meet with the clients, get to know them, come up with strategies, and talk to their family members and friends. These two clients have been the toughest to maintain that balance and develop the skills necessary to take a step back and not become so upset about their situations.

I make time to visit the men I work with and get to know them on a level beyond simply their case number or what happened to land them in jail. Getting to know them as people is why I love this work, but it's also proving to be the hardest part. Some of them have become friends, of sorts. Some are younger than I am; some are my age. We often share similar likes and dislikes. Others I have less in common, perhaps because they are significantly older than I am, or maybe they have an appearance or alleged criminal background that makes me nervous. Regardless, I am comfortable treating them like the people they are. My favorite quote is from Bryan Stevenson and says that "Each of us is more than the worst

2019]

Attorney as *Accompagnateur*

131

thing we've ever done."⁶⁹ we are all more than the worst thing we have done. I remind myself of this every day I see a new or old client. Spending time at the public defender's office reinforced why this is my favorite quote.

One client had just had his trial continued once again. I have gotten to know him well. We spend time talking about life, his likes, my likes, societal issues, and his perspective on the many problems facing our world. Based on the work I've done the past two years, I do not believe he committed this crime. Knowing I will not be able to see the end of his case truly hurts me. Since I have been along on this adventure with him he trusts me, and he constantly reminds me that my mentor attorney and I are his support system. The feeling that I am abandoning him is real as my graduation comes close. He jokes that people come in and out of his life, and he knows that I am a caring individual and will always be part of his life, even if he ends up serving prison time. He has started calling me a "care bear" because he knows I have a passion for not just the work, but for the people. That in itself means the world to me. He knows that I will show up for visits and that I will give him the chance to talk to me rather than simply come with legal information and leave.

Another client I have had for nearly two years was sentenced earlier in February. He also knows that I will always have time for general conversation, not just legal talk. It took so long for him to open up and tell us exactly what happened, and that he had indeed committed the crime. But that trust, and his ability to open up to me and trust me, allowed us to represent him in the best possible way. He would not have trusted me had I not made the time to go see him, if I had not listened to him, if I had not talked to him about topics other than his pending charges.

I realize now that the public defenders do not have enough time to get to know each client the way that I have been able. By balancing my time at the office between maybe five clients in depth, and ten on a shorter-term basis, I have more flexibility to spend time at the jail or talking to witnesses. I cannot imagine that I could ever believe I spent enough time with a client if I had a caseload of over eighty clients. Personally, that hurts me. In another clinic, I have worked with wrongfully convicted

69. BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 17 (2014).

individuals and know that our justice system negatively impacts them in ways that I still cannot grasp. I refuse to let a client slip through my care and be convicted wrongfully.

I recently watched the documentary, *Gideon's Army*⁷⁰ for the second time. (The first time was before working so intensively at the Public Defender's Office). The film traces the life and practice of a handful of new public defenders in the Southeast United States. One of them is Travis. He uttered a line that has really resonated with me: "either this is your cause or it ain't." This is the mentality I have adopted. Like Travis, I fear I cannot establish boundaries. He lives in the same building as the PD office, he sees his girlfriend infrequently, and he's ready to tattoo every client's name on his back for whom he did not secure an acquittal. Spending so much time on cases, working with so many clients, and having that strong belief that being a public defender is your cause are things I share with Travis. Travis was only in his first year of work at the time of this documentary. As I prepare to take the bar and start a job with the Colorado Public Defender, I fear having a life similar to Travis'. This is something I know I will constantly struggle with, but I need to be sure that I do not burn out.

Another lawyer in the movie, Brandy, discussed her burnout with respect to phone calls from incarcerated clients. She stated she went to the jail every time a specific client called, simply because she knew he needed someone to talk to. It burned her out when she could not physically visit him when he needed her because she had so many other clients to visit also. I see this in myself. In order to effectively represent someone, I think they need to be seen more than once a month, which is sort of the unspoken rule at the trial office. However, seeing a client more than once a month is impossible for many of the attorneys in the office. How can we provide effective assistance of counsel and the guiding hand of counsel to each client when we, as attorneys, cannot be there for them when they need us most? How can we advocate for these people when we are unable to spend enough time with them to get to know their story, their family, their friends, and what lead them to the charges facing them.

The lawyers in the film discussed defeat in terms of letting down a

70. *GIDEON'S ARMY* (HBO 2013).

2019]

Attorney as *Accompagnateur*

133

client because there just wasn't enough time, or there weren't enough resources to spend the necessary time working on their case. Is it possible to be effective when there isn't enough time? Is it possible to be effective when you work so much that you aren't doing your best work for each client? I fear the feeling of defeat. I fear the feeling of letting down a client that I become close with and learn so much about. When someone trusts you so much, as one of my clients does currently, I fear that there is too much trust and it can be a dangerous thing.

My mentor attorney feels emotions the same as I do. She is always available as a listening ear. She's available via text and phone when something difficult has happened, such as when I visit a client and learn he had been beat up in jail or received a sentence that hurt me to my core. Her supervision, work-style, and giving me the freedom to learn and make mistakes has made this externship invaluable. Her guidance has made me consider things that I haven't before—such as the reality that I can't change what happened before I entered the picture. I cannot rewind time and help these men avoid the lives that led them to their incarceration. If I want to succeed in the future, I need to take this into consideration with every person I represent.

Like my mentor attorney, the lawyers in *Gideon's Army* make me feel less alone; there is comfort in knowing others share my personal struggles and my justice struggles. Being surrounded by public defenders these last two years has been inspiring, but this documentary really hit me. There are so many people out there fighting this same fight. So many people who understand that the system doesn't give people accused of a crime the opportunity to actually be innocent until proven guilty. The right to counsel, specifically effective counsel, in a system where attorneys have so many clients just is not possible.⁷¹ It's a fight I am willing to fight. A fight I am dedicated to. It is also a fight that I will have to work on every single day to maintain a healthy lifestyle apart from the workplace.

71. See, e.g., Dan Margolies, *Kansas City Public Defender's Office Gets Another Shot to Argue It's Overworked*, KCUR (June 27, 2018), <http://www.kcur.org/post/kansas-city-public-defenders-office-gets-another-shot-argue-its-overworked#stream/0> (ongoing litigation in Kansas City, Missouri, on whether Jackson County public defenders' large caseloads unconstitutionally deprive defendants of the right to effective counsel).

B. My Clients Took Ownership of Their Story
Anjelica Mantikas

Anjelica Mantikas, St. John's School of Law, won a hearing to award her two clients Special Immigrant Juvenile Status. As described by her clinic professor, Mantikas' work was intense—her clients were in dire straits and the judge was hostile: Mantikas represented the boys, aged 17 and 19, who fled from El Salvador to New York after witnessing their brother murdered outside their home in 2012 for failing to pay gang protection money. The same night they began receiving death threats. The kids fled, separately, and made it all the way to another brother's apartment in Flushing (Queens NY). After extensive investigation, preparation, mock examinations and arguments, and adjournments, Mantikas did an extraordinary job in the hearing, keeping her composure and sticking to the plan despite the Court's vigorous efforts to discredit, in dozens of ways large and small, each of the witnesses. Through tearful, translated testimony, the boys recounted their experiences, and the Court ultimately sided with them, granting them the orders they needed to proceed with their immigration applications. Mantikas' rendition of accompaniment allowed her clients to tell their own story and find their own voice. Given the language barriers and her sympathy for the terror her clients experienced she felt the tug to tell their story, to save them from reliving the horrors. Rather she was self-conscious not to jump in, usurp, and speak in their stead. Patience and sharing snacks were key. More seasoned lawyers may be able to use client conversation time more productively, but there may be an irreducible minimum.

After my first year of law school, I was able to participate in St. John's Child Advocacy Clinic. The clinic represents children in family court as well as immigration court, many of whom are unaccompanied minors. For law students, a clinic is an invaluable opportunity because it is often our first step into the world of being an attorney. We get to work on real cases with real clients. For me, it brought excitement and anxiety. I knew my clients would be non-English speaking and young. I wondered how I would form any sort of bond and connection with them. Beyond the

2019]

Attorney as *Accompagnateur*

135

basics, my Spanish and French vocabularies are limited to food and greetings.

Although I initially thought a language barrier would create distance between the client and student-attorney, it did not in my situation. Usually over a bowl of fruit or tortilla chips, my clients and I would meet, and I would nod along as the children spoke in their foreign language. I wanted to show I was listening and observing their body language as the different emotions came through their stories. Then, my interpreter would translate what he or she had said. I would offer words of encouragement after every story that the client told because I knew how difficult it is to open up to someone about such traumatic situations. Soon, we began sharing laughs and I felt like the barriers were definitely coming down as each meeting progressed.

Our job as aspiring attorneys is to give our client the ability to take control of his or her narrative after experiencing moments of trauma. Trauma is silencing. Trauma can steal a client's voice, make a client's body twitch on the recall of a memory, and cause irrational behavior that seems out of the client's character. The signs of trauma may be easy to identify, but it is difficult to have a client, especially a child, open up about the trauma that he or she endured. My professor taught our class that when the wall comes down between student attorney and client, a student attorney could help a client take ownership of their narrative. Our questions provide the vehicle for the child to share [his/her] experiences and take control of [his/her] story. With every meeting agenda, question, and direct examination that I drafted, I reminded myself of that purpose that our questions are the vehicle.

I watched two of my clients become more comfortable and stronger in telling their heart wrenching stories while preparing for a June 2017 family court hearing. These two boys fled gang violence in El Salvador following the murder of their brother and death threats against their own lives. Following the murder, the gang called their house and informed neighbors that they wanted to "terminate the family." At the start of the preparation, both clients were introverted and soft spoken. They had nervous twitches when they spoke of their brother's murder. With each meeting, both boys became more comfortable speaking to me and opened up more about the intricate details of their stories. It took a while, but I slowly worked on breaking down the barriers. At the hearing, I was able to

do the direct examinations for both boys under the supervision of my professor. They answered confidently and gave detailed answers all in loud, clear voices to every question. I watched as the judge interjected to ask questions of the boys and sometimes re-word their stories in a way that was contradictory. The boys took control of their narratives and corrected the judge if the judge misunderstood something and tried to twist their words around. The outcome of the hearing was successful.

Of course, not every hearing will be a success as I enter the field. As a young law student, I wonder what will happen to my client-attorney relationship when I lose or fail to deliver legal success for an immigrant client. With the anti-immigrant sentiment in this country, fueled by our Government's leaders, adults and children may feel like their existence is illegal. I view my role as one that supports the client in their quest for their value and worth. My hope is that even if the end-result is not what was desired, my client would still have the sense of agency that I was able to help him or her discover. I hope that they know that I believe in their potential as human beings because they are worthy of so much more than the hand that they had been dealt by life.

*C. Our Clients Needed a Lawyer's Voice to Surmount The Barricade
Victoria Pontecorvo and Erin McMullan*

In the 2016-17 academic year, Victoria Pontecorvo and Erin McMullan were 3L students and case partners in Brooklyn Law School's Disabilities and Civil Rights Clinic. Both wrote insightful reflective essays about the experience of representing their clients. We have interleaved the two essays to present them more as a conversation, each embellishing on the other's comments. In this amalgamated essay, they describe the path of their representation of two sibling clients and their observations on the fates of individuals without advocates. Their clients were adult twins, with mild intellectual disabilities, at risk of immediate eviction for non-payment of rent. As Pontecorvo and McMullan navigated a large social services municipal bureaucracy, charitable organization, recalcitrant landlord, and a skeptical judge, they were hemmed-in on multiple fronts and often felt less-than-confident that they could bring their clients through safely. One of the students described the scene at the social services agency and realized the value of their roles as accompagnateurs:

2019]

Attorney as *Accompagnateur*

137

A group of approximately twenty people stood huddled around a locked door with the smallest of windows labeled “HRA Office.” An older gentleman pushed towards the door in order to grab a ticket from a ticket dispenser that could barely stand upright. Every time the door opened, the busy halls of Brooklyn Housing Court would be filled with silence. A number would be called, and soon after you would see one amongst the crowd race through the unlocked door before the HRA worker could change his or her mind. This metaphorical “locked door” has stood and will stand in the path of many individuals, including our clients, on a daily basis. My case partner and I were lucky enough to get our clients through this locked door. When two legal interns in suits knocked on the door, we were afforded the courtesy of a face-to-face conversation. Not everyone standing outside the door that day was as fortunate as we were.

Pontecorvo’s and McMullan’s essays show their deep appreciation of their need to be tenacious accompagnateurs for clients’ whose stories and needs would not have been addressed, but for two law students in suits. They sat side by side with their clients through the chaos of the housing office bureaucracy, which teemed with scores of people pleading for help at a locked door, that opened only occasionally and only for a scant minute. They shared the clients’ astonishment, dismay, and uncertainty. Their clients knew they were not alone. Pontecorvo and McMullan also experienced the caseload and impatience of agency staff which offered little opportunity for a client with developmental disabilities to participate personally and fully in the negotiations. Client empowerment is not easy.

On the Clients

[Victoria Pontecorvo] Our client’s brother, Dan, came to our offices unannounced to tell us that his twin siblings, our clients Jane and John, were served an eviction notice. Jane and John have mild intellectual disabilities. They had not paid rent since July 2016 and had no money saved up to pay off these arrears. Dan was confused, upset, and had no idea which way to turn next. He needed a plan fast due to his fear that his siblings would be on the street or put in separate group homes. They would have been put in separate homes because Jane has a son. In

addition, trying to relocate them would have been difficult because their rent was a reasonable price for a three-bedroom apartment in their area and they could not afford to pay more.

[Erin McMullan] Yes, Jane and John do have mild intellectual disabilities, but that does not paint a full picture. Jane Doe is an independent and bubbly woman who loves to catch concerts at the Barclays Center with friends and who aspires to work in retail. She is also a single parent, constantly showering her 14-year-old son Mike with love and respect. Her twin brother John Doe is a gentle and shy man who loves to attend sporting events and can talk about every pro-wrestler known to mankind. Because of the speed and intensity of the case, it was difficult to form strong and meaningful relationships with our clients on the fly. My case partner, Victoria, and I really tried our best to learn as much about our clients as possible, while simultaneously racing against the clock to work out a resolution before our clients were evicted.

On the Clients' Dilemma

[McMullan] Our case could really be boiled down to three main players with three needs that were contingent upon the action (or inaction) of the other major players. The three players were a disgruntled landlord, a busy government agency, and a hesitant nonprofit. The landlord refused to give our clients a lease renewal unless he was paid the entirety of the back rent, totaling \$11,700, and unless he was given some sort of reassurance that they could pay the rent going forward. The Human Resource Administration (“HRA”),⁷² would in theory provide \$11,700 in emergency aid to satisfy the rent arrears, but only if the siblings had a copy of the lease in their name along with assurance that the rent would be paid going forward. Quality Services for the Autism Community (“QSAC”) is a direct services non-profit founded to support adults and children with autism. QSAC would facilitate a separate grant to pay a portion of all future rent

72. The New York City Human Resources Administration (“HRA”) is the largest local social services agency in the country, administering more than twelve major public assistance programs. In a program coordinated with the NYC Department of Homeless Services, individuals may apply for a one-time Emergency Rental Assistance grant where the back rent would prevent eviction, so long as a number of conditions are met. See <https://www1.nyc.gov/site/dss/hra/hra.page>, (last visited March 28, 2019).

2019]

Attorney as *Accompagnateur*

139

for the entirety of their tenancy, only if QSAC had a copy of the lease with our clients' names on it and documentation from the HRA agreeing that they would take care of the back rent. The court was concerned that our clients were not "capable" of signing a lease due to their intellectual disabilities, and this implicated all three major players, as practically all of them needed a lease naming our clients as the tenants. All three parties were extremely hesitant to take steps forward, as we could not fulfill the wishes of one of these parties, let alone all three, throughout most of our case.

[Pontecorvo] [Between the "non-negotiable" demands of HRA, QSAC, and the landlord, it was important my case partner, Erin, and I understood] exactly what we needed to do and what steps to take next. It took some time for us to fully understand all the issues and how each issue was contingent on each other. It was helpful to have each other because we were able to talk everything out a number of times to ensure we had a full understanding of everything before dealing with these agencies.

Setting the stage: Conditions at HRA

[Pontecorvo] Erin and I took our clients to the HRA office. The minute the elevator doors opened, it was pure chaos. There were numerous people scurrying around in confusion and disappointment. For example, one lady was screaming at a worker telling the worker how this was the third time she had been there and every time she is told to wait. She continued to say that every time she had been to the HRA, she waits and before she can be seen, the office closes for the day. She was by herself and had no one to help her so she came and went, for the third time, making no progress.

[Pontecorvo] We went to the office door and there was a ticket generator where you had to pull a number. It felt like I was in a deli waiting for a butcher to take my order; however here, it was not certain if our "order" was ever going to be taken. Soon after grabbing a number, we helped our clients find seats on a bench, squished between other individuals.

[McMullan] [It turned out, the ticket dispenser—the first of many keys needed to have your case handled by HRA staff—was temporary.] At around 3:00 pm, the door opened, and an annoyed gentleman we had seen earlier came outside and grabbed the ticket dispenser. Although the office

closed at 5:00 pm, only those fortunate enough to arrive before 3:00 pm would be speaking to a representative that day. About a half hour later, I noticed a young mother with three small children asking everyone where to get the tickets, as she needed to speak to someone at the HRA. Once she was informed that she would have to come back tomorrow, I could see her whole body involuntarily slump. Had we not reached out to Ms. Jackson [our faculty advisor's contact in the agency], we would have never known what time to arrive or who to ask for assistance.

Our experience with Jane and John at HRA

[McMullan] [With our clients seated in one of the nearby benches,] Victoria knocked on the door for a solid thirty seconds, until an annoyed HRA worker opened the door. We informed him we had an appointment with Ms. Jackson, and he told us she would call us when she was ready. In the meantime, he presented us with a forty-page packet to start filling out information necessary for the emergency rental assistance. We all huddled together on a bench, waiting for our number to be called. This packet contained pages of questions ranging from the generic to questions about finances and public benefits. Victoria and I were overwhelmed as we read these questions.

[Pontecorvo] This packet was both intimidating and difficult to understand. Thankfully, our clients had Erin and I, two law students, to assist in filling out the paperwork since it was no easy task. My client was prepared with her and her brother's social security cards, birth certificates, and other relevant documents. I think it would have been extremely difficult for our clients to figure out how to properly complete the forms without assistance.

[McMullan] We had to leave a number of these questions blank. Even with the input of our clients, we simply did not know the answers. I am not even sure I could fill out a packet for myself independently. We were informed it was a prerequisite to being seen by someone at the HRA, so we filled out the packet to the best of our ability.

[Pontecorvo] After we filled out the paperwork, we went back to the locked office door where I proceeded to knock a handful of times and wave to someone to get them to open the door so we could talk to a woman with whom we had an appointment. I told the individual that we

2019]

Attorney as *Accompagnateur*

141

had an appointment and a few minutes later we were able to go in there so speak with her.

[McMullan] Almost three hours after we got to the HRA, the concrete door swung open and Ms. Jackson invited us to sit down to talk about our case. We handed Ms. Jackson our packet and told her we tried to fill it out to the best of our ability. She essentially threw the packet to the other end of her desk and informed us she was caught up on why we were there so there was no need to read the packet. Ms. Jackson asked us a number of questions about the case that my partner and I were capable of answering. Our clients seemed intimidated and quiet in the face of Ms. Jackson's questions. It was clear that Ms. Jackson was under serious time constraints, and she wanted to send us on our way as soon as possible, but this resulted in the majority of the questions and discussion aimed towards my partner and me. She gave us a laundry list of things we needed in order to secure Emergency Rental Assistance, and we soon found ourselves being shown the door.

[Pontecorvo] [The HRA odyssey continued.] We had to stand on another line for about 30 minutes to explain to someone the reason we were there. I had to clarify some details because there was confusion in the HRA's system. They kept thinking we were applying on behalf of Jane's son. I kept telling the worker that I was not applying for him, but was applying for my clients. After that, the worker told us to go upstairs. There, we were given another number and waited for about 30 minutes. When we were called, the next worker tried to ask Jane a question and, understandably nervous, she did not answer it clear. I cleared the question up for the worker and we were given another number and waited another 30 minutes. We finally got called into the office and started explaining to a different worker why we were there. He said he needed to make a photocopy of a document and disappeared for about 15 minutes. Jane and John were getting hungry and impatient and I reassured them that everyone is trying to move as quickly as they can. The worker came back and told us that the previous HRA worker had made a mistake and sent us to the wrong office.

[Pontecorvo] We were ushered back out into the waiting room and I explained to Jane and John that one of workers made a mistake. I spoke to the workers at the desk to ensure they had our information correct and would not make a mistake again considering we had been there at that

point for over 4 hours. They said they now put the information in to send us to the right room and we would just have to wait a little longer.

[Pontecorvo] I called our client's brother to tell him I had to leave Jane and John there if we were not seen within the next few minutes. He told me to explain to the worker that John has behavioral problems and gets triggered when he is hungry and said that may help the HRA workers to speed the process up. I talked to the workers at the desk and told them what their brother told me and I added John had not eaten much all day since they had been there since 8:30 a.m. and it was now 1:30 p.m. They said they will get Jane and John in as quickly as possible.

On the landlord's attorney

[Pontecorvo] Dealing with the temperamental landlord's attorney was something that, if not handled properly, the case may not have been settled. The landlord's attorney did not like to work with us and only wanted us to satisfy his demands. Some of what he wanted was extremely unfair to our client and if they did not have people advocating for them, it is safe to say that they most likely would have been evicted. He rarely responded to our emails. He also regularly yelled at me on the phone and I had to remind him that we are just trying to work together to come to a settlement and to please give me the respect that I was giving him. He was adamant that his client was doing our client a favor. He was one of the most stubborn individuals I have ever encountered. I cannot imagine how much worse the situation would be if our clients were personally dealing with this attorney.

On the need for an advocate

[Pontecorvo] When dealing with agencies such as HRA, individuals who have an advocate to guide them through the process have an extreme advantage, including our minimal role to ensure we were going to be seen at the HRA. Bureaucracies, such as the HRA, are generally intimidating and hostile. Assistance in navigating these difficult waters gives the client a sense of ease. The attorney can take charge and talk to workers to push their clients' cause ahead. It is important to be assertive in these situations because individuals get lost in the sea of people just waiting to be heard

2019]

Attorney as *Accompagnateur*

143

from anyone that could help them.

[Pontecorvo] It was imperative that the staff at the HRA understood everything and filed all the paperwork correctly so we could move forward. We could not afford to have any misunderstandings in this process because of an impending court date. If we had to restart the process, it is unlikely the court would have ruled in our favor because we would not have brought proof of anything to court to ensure that the rental arrears were going to be paid off.

[McMullan] When I recall this experience, I notice the number of accommodations we received. We were able to make an appointment to see a worker at the HRA, therefore we only wasted a few hours instead of a few days trying to discuss our case. Our packet was not scrutinized for a lack of information or inaccurate information, which might have been a deal breaker for another individual. We knew exactly what was needed to secure the ERA because my partner and I knew the right questions to ask and the information Ms. Jackson would need. Our experience was completely different than everyone else waiting outside the HRA office door that day, and I believe it stems from having an advocate present. When they knocked on the door, more often than not, no one acknowledged their presence. When my partner and I, two legal interns in suits, knocked on the door, we were afforded the courtesy of a face-to-face conversation.

[McMullan] I am extremely proud of the work my partner, my supervisor, and I were able to accomplish this semester, and there was no better feeling than to inform our clients that they would not be evicted. However, I recognize and understand that most cases do not have “happy endings.” After our experience, I can most certainly understand why, as navigating an eviction and securing both back rent and future funding was unbelievably difficult. I understand our case was really in the minority in terms of result, and I honestly believe that this is due to the large array of resources we had at our disposal. Our clients had a strong and large support network, both in terms of family and advocates. Other individuals in the same positions as our clients likely would not have a contact at the HRA who could make us an appointment, or a contact at a nonprofit organization who was ready and willing to make dozens of phone calls. I believe our trip to the HRA really puts in perspective what kind of luxury it is to navigate these channels with a support network.

[McMullan] I left the HRA that day under the impression that not only does our current public benefits and housing systems fail to accommodate individuals with disabilities, but it also does not tolerate poor individuals, individuals of color, single parents, the elderly, nor individuals of every other represented group who eagerly waited outside that door that day.

The outcome

[McMullan] Going into this clinic, I was extremely apprehensive and nervous about the prospect of handling my own case. I have completed a handful of internships, but never an experience where I was given full control. Housing and public benefits were also foreign territory to me as well, as my background is rooted primarily in criminal defense work. Due to the timing of the eviction notice, I never had the opportunity to dwell on my insecurities. We were flying at 100 mph forward, racing against the clock to save the only apartment our clients had ever called home.

[Pontecorvo] Erin and I navigated the system [HRA, the non-profit, court] and opposing counsel well enough to ensure our clients attained the relief they needed. In order for us to get the best result for our clients, it required intense negotiation from two legal interns and two supervising attorneys to obtain a proper and fair lease for our clients. Working on this case showed me just how important and helpful it is for clients with intellectual/developmental disabilities to have individuals advocating for them.

[McMullan] After weeks of pushing these parties forward, we eventually obtained a court ordered stipulation of settlement, which gave our clients a year lease, paid off \$11,700 in back rent, and secured the non-profit QSAC grant that would subsidize the majority of their rent for the duration of their tenancy.

2019]

Attorney as *Accompagnateur*

145

IV. THE PERSPECTIVE OF THE CLINICAL EDUCATOR/COACH:
ACCOMPAGNATEURS CONTEMPLATIFS
Danielle Pelfrey Duryea

Danielle Pelfrey Duryea had been a Georgetown Law Clinical Fellow before founding the University of Buffalo School of Law's Health Justice Law and Policy Clinic, a medical-legal partnership affiliated with a top-50 cancer hospital. The Clinic's clientèle face the challenges of crippling poverty and cancer diagnoses. In this essay, Pelfrey Duryea traces her epiphanies and strategies for creating an academic environment for students to become "accompagnateurs contemplatifs"—both to be good lawyers for their clients at such fragile times and to have the resilience to recover from the losses the students face. Her strategy of mindfulness meditation includes arriving exercises, as well as loving kindness and gratitude meditations. Her discovery is that, with this meditative foundation, her students are more open, ready to engage, and "hear" their clients more clearly. These student-attorneys also developed greater capacity to weather setbacks, both emotional and legal. In other words, they are readier to be resilient accompagnateurs.

About halfway through the first active semester of my medical-legal partnership clinic, one of our clients died suddenly. My students, Michelle and Miriam, had been trying to obtain rent support and other assistance for Hasan and his wife, recent family reunification immigrants from the Middle East. They had apparently been abandoned by their sole U.S. citizen family member after Hasan's cancer diagnosis. Hasan had been physically too weak to work, and the couple could not qualify for most public benefits because of their recent immigration status. The students had tenaciously pursued legal and non-legal avenues of assistance, but ultimately could only accompany the couple in an unavailing search for help. Upon news of Hasan's passing, these student-lawyers were highly concerned for Hasan's widow. She spoke almost no English and had not been able to find work in her language of origin. They could not locate her.

With previous clinic clients, both of these students had expressed a sense of pride in their developing abilities to help clients with their new legal knowledge and skills. Now the students were experiencing multiple

losses at once: the death of their client, whom they had so much wanted to help; their inability to use legal skills to secure housing and other support for Hasan and his wife; their lost contact with his widow; and their self-doubt about their efficacy as student-attorneys. As I talked with Michelle and Miriam about Hasan's death and their ongoing efforts to reach his widow, I heard notes of disengagement and a sense of powerlessness.

The University at Buffalo School of Law's Health Justice Law & Policy Clinic represents low-income patients of the local cancer center.⁷³ Health Justice Clinic student-attorneys meet each semester with dozens of patients who may be at any point in their experiences with cancer, from initial diagnosis to mid-treatment to survivorship to end of life. Most of our patient-clients have already endured precarious economic circumstances, housing instability or homelessness, and/or systemic racism and other forms of discrimination or trauma,⁷⁴ even before their cancer diagnoses. Our patient-clients often struggle with unexpected physical disabilities or mental health crises resulting from or exacerbated by their cancer diagnoses.

As I pondered how to launch this clinic, I faced the full array of clinic design decisions as any clinician would.⁷⁵ I was struck, however, with the imperative that I would have to help law students deal with death, as well as with the burdens of poverty. Knowing that our patient-clients would be

73. In 2015, the Health Justice Law & Policy Clinic and Roswell Park Comprehensive Cancer Center formed a medical-legal partnership called LegalCare at Roswell Park. Its offices are sited on the hospital's downtown Buffalo, NY campus. Each team of two student-attorneys works a regular weekly six-hour shift at the hospital "triaging" new referrals and determining the best legal and/or nonlegal resources for each patient. Each team of two then provides ongoing representation to at least three patient-clients over the course of a semester on matters ranging from advance health care directives to public benefits to employment discrimination. In addition, Health Justice Clinic student-attorneys train hospital staff to recognize legal issues and work on systems-level projects to improve population health, such as adult guardianship reform. See *Health Justice & Law Policy Clinic*, BUFF. L., <http://www.law.buffalo.edu/beyond/clinics/health-justice.html> (last visited Mar. 20, 2019).

74. See, e.g., Buhler, *Painful Injustices*, *supra* note 24. I fully concur with Buhler: without a critical "pedagogy of suffering," clinic students may easily collapse suffering clients' experiences into a private, individualized frame that obscures systemic injustice.

75. I designed the Health Justice Clinic along the lines of the so-called "Georgetown model," as a higher-credit (six credit hours per semester), intensively-supervised clinic in which students authorized by the state courts to practice law under a limited license take the lead attorney roles in matters that can typically be completed within one semester. See generally, Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505 (2012).

facing cancer, and that many would come from communities marginalized and traumatized by poverty, racism, and other systemic factors, I recognized that the effects of “stress” for my students might well include secondary traumatic stress and/or compassion fatigue.⁷⁶ Even when not facing a terminal diagnosis, many patient-clients would be acknowledging their own mortality. Student-attorneys whose family members or friends have suffered with or died of cancer might feel those losses anew. There is so much that neither our patient-clients nor our student-attorneys could control or change. All this before we even consider the potential for losing an actual legal case or otherwise failing to accomplish a client’s goals.

I had known that a first client death surely would be coming, if not when. In the seven semesters that the medical-legal partnership has now been fully operational, most students will have worked with at least one client who died during or soon after representation. Indeed, a student-attorney may experience the deaths of multiple clients.

To help navigate these rocky emotional shoals, I decided to incorporate mindfulness meditation techniques into my new clinic practice.⁷⁷ I knew from my own experience,⁷⁸ and from a growing (if imperfect) body of evidence, that mindfulness meditation could be a powerful tool for reducing excessive stress and improving well-being.⁷⁹ Implicitly I felt such techniques would enable my students to be more open with their clients in

76. See, e.g., Newell & MacNeil, *supra* note 47, at 57.

77. Following common practice in mindfulness circles, I will use the terms “contemplative,” “mindful,” and “awareness-based” more or less interchangeably. It is nevertheless important to note that these terms encompass a significant range of different practices.

78. I began meditating regularly in 2013, while coping with a major depressive episode and the onset of an anxiety disorder. I attended Tara Brach’s weekly meditation classes in the Washington, D.C., area and listened to her online-guided meditation recordings. See Tara Brach, GUIDED MEDITATIONS (Sept. 3, 2018), <https://www.tarabrach.com/guided-meditations/>. In 2014, I participated in Georgetown University Law Center’s weekly Lawyers in Balance program, in which experienced facilitators work with small groups to practice mindfulness techniques, including meditation. GEORGETOWN LAW, *Lawyers in Balance* (Sept. 3, 2018), <https://www.law.georgetown.edu/your-life-career/health-fitness/center-for-wellness-promotion/mind/lawyers-in-balance/> (last visited Mar. 04, 2019).

79. See, e.g., Charity Scott, *Mindfulness in Law: A Path to Well-Being & Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635 (2018); Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, & Leadership?*, 55 HOUS. L. REV. (2017); Shailini Jandial George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness*, 53 DUQ. L. REV. 215 (2015).

a range of ways—to become the *accompagneurs* I hoped they could be.⁸⁰

I was fortified in my vision by reading a 2015 article *Good Grief* by Danielle Cover. Cover observes that our lawyering culture “has a normative set of beliefs, values, and behavioral expectations that include rationality, logic, detached analysis, and application of what are posited as neutral rules to every situation.”⁸¹ Accordingly, she argues, “[l]awyering culture, more than any other, epitomizes a lack of comfort with—and distaste for—emotional vulnerability” that poorly equips lawyers to handle the various kinds of loss and irresolution that every attorney will experience in the course of a career.⁸² And *grieving* such losses, rather than suppressing them, is not something for which legal education typically prepares students.⁸³ Losses big and small are inevitable: From being on the losing side in litigation to wondering what has happened to a client who suddenly stops returning your phone calls, from declining to represent a prospective client with legal needs outside your practice area, to discovering that the law offers no good solution for your client’s problem, from experiencing the death of a colleague, to simply wrapping up work at the natural end of a matter.

That’s where I perhaps had an advantage. My UB Law colleague Stephanie Phillips is a national advocate for mindfulness practices in the law and offers a popular course on mindfulness and professional identity

80. See, e.g., Angela P. Harris, *Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, & Professional Identity*, 61 J. LEG. EDUC. 647 (2012); Angela P. Harris, Margaretta Lin, & Jeff Selbin, *From “The Art of War” to “Being Peace”*: *Mindfulness & Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073 (2007); Silver, *supra*, note 65. The essays of Nathalie Martin’s 2018 volume *Lawyering from the Inside Out* elaborate on notions of good lawyering and well-professional development through inter- and intra-personal awareness. See generally, NATHALIE MARTIN, *LAWYERING FROM THE INSIDE OUT: LEARNING PROFESSIONAL DEVELOPMENT THROUGH MINDFULNESS & EMOTIONAL INTELLIGENCE* (Cambridge Univ. Press 2018).

81. Cover, *supra* note 2. Cover’s article was inspired by reflecting on the sudden heart attack death of a clinic student and her feeling that she and other clinic faculty had lacked adequate resources to support their surviving students.

82. *Id.* at 55-56.

83. See *id.* By contrast, many social work programs explicitly train their neophytes to expect limitations and irresolution in the course of their professional lives and to cope with their own responses. See, e.g., Pilar Hernandez, David Engstrom, & David Gangsei, *Exploring the Impact of Trauma on Therapists: Vicarious Resiliency and Related Concepts in Training*, 29 J. SYSTEMIC THERAPIES 67-83 (2010).

that explicitly addresses issues of racial and socioeconomic justice.⁸⁴ I had hoped that braiding mindfulness and awareness-based techniques with traditional verbal reflective practices in my clinic would benefit Health Justice student-attorneys and their clients.

I incorporated several types of mindfulness practices, and several practices seem to enhance the combination of inter- and intra-personal awareness essential to the role of the *accompagnateur*. First, I started each of our twice-weekly clinic seminars with a short awareness-based “arriving exercise,” working up to five- to seven-minute guided meditations, such as body scan meditations,⁸⁵ over the first half of the semester.⁸⁶ I primarily chose to spend precious early-semester seminar time on them in order to normalize meditation for students unfamiliar with contemplative practices. That strategy has proved important in many ways.

Two contemplative exercises have emerged as particularly powerful: a “loving-kindness” or compassion meditation that appears to improve students’ capacities both to critique themselves and to take another’s perspective; and a gratitude meditation for coping with the big and little losses of our practice.⁸⁷

In the first—loving-kindness meditation—the student assignments proceed in two parts. First, in a memo the students examine a miscommunication with someone, dissecting the differences in understanding, contributing factors, and how the student or the other person might have averted the misunderstanding.⁸⁸ Later in the week,

84. See Harris, *Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, & Professional Identity*, *supra* note 80 (describing the course as co-taught by Harris and Phillips at UB Law in 2010). Phillips’s course continues to grow in popularity.

85. A body scan meditation “systematically and intentionally mov[es] our attention through the body, attending to the various sensations in the different regions” to help the meditating person to focus on the present moment-by-moment. JON KABAT-ZINN, *COMING TO OUR SENSES* (2005). For an example, see Greater Good Science Center, *A 3-Minute Body Scan Meditation to Cultivate Mindfulness*, MINDFUL, <https://www.mindful.org/a-3-minute-body-scan-meditation-to-cultivate-mindfulness/> (last visited Mar. 23, 2019).

86. I explain to students that they need not participate in seminar-opening exercises if they preferred not, as long as they sit quietly and do not disturb anyone else participating in the exercise. To my knowledge all students have consistently engaged in these arriving exercises.

87. Both meditations are reprinted in the appendix at the close of this article.

88. This part of the exercise is based closely on a reflection prompt in DEBORAH EPSTEIN, JANE H. AIKEN, & WALLACE MLYNIEC, *TEACHING THE CLINIC SEMINAR* 69-70 (Am. Casebook Series ed., West Academic Publ’g 2014).

students listen to a fourteen-minute “loving-kindness” mediation by Emma Seppälä or to me leading an adapted version in person.⁸⁹ In the compassion meditation, the student-mediator practices “softening” their thoughts and feelings in a progressive series of prompts about extending their (the mediator’s) care and concern toward a widening circle of others—from someone who loves them very much, to others who care about them, to someone they do not know well or feel neutral toward, to someone that it is difficult for them to feel positive about, and finally to humanity as a whole.⁹⁰ Once the meditation concludes the student is asked immediately to write down whatever comes to mind about the miscommunication experience that she described in the earlier memo assignment. Next the student reviews the first memo and reflects on the differences in their thoughts at the two points in time about the miscommunication incident.

The students’ responses for the first assignment tend to focus on what the other person could have done differently to improve the communication, and they have trouble identifying factors that might have contributed to the misunderstanding. In their second post-meditation reflective essays, however, students regularly generate clearer insights into both systemic and individual factors that contributed to the misunderstandings on which they are reflecting. Most indicate greater recognition of how they themselves could have avoided or ameliorated the miscommunications and improve in their ability to describe the assumptions they brought to those situations—insights that most clinicians hope for their students to reach in reflective practice.⁹¹

That is, most students seem to experience the compassion meditation as

89. Emma Seppälä, *A Gift of Loving Kindness Meditation*, (Sept. 3, 2018), <https://www.youtube.com/watch?v=auS1HtAz6Bs> (last visited Mar. 4, 2019). Seppälä is a psychology researcher at Stanford and Science Director of Stanford’s Center for Compassion and Altruism Research and Education. She has used this particular meditation in her research at Stanford on reducing stress among health care providers. See *id.*; E.M. Seppälä, *et al.*, *Loving-Kindness Meditation: A Tool to Improve Healthcare Provider Compassion, Resilience, & Patient Care*, 1:5 J. COMPASSIONATE HEALTHCARE 1 (2014).

90. A transcript of the Seppälä meditation can be found at Greater Good Science Center, *A Loving Kindness Meditation to Boost Compassion*, MINDFUL (Mar. 31, 2016), <https://www.mindful.org/a-loving-kindness-meditation-to-boost-compassion/> (last visited Mar. 4, 2019). My own practices are secular, but in Buddhist traditions, this practice of cultivating friendliness toward and compassion for others is also called *metta bhavana*. See, e.g., PETER HARVEY, AN INTRODUCTION TO BUDDHISM: TEACHINGS, HISTORY & PRACTICES 318-19 (Cambridge Univ. Press 2012) (1990).

91. E.g., EPSTEIN, AIKEN, & MLYNIEC, *supra* note 88, at 77-79.

2019]

Attorney as *Accompagnateur*

151

a route, even a shortcut, to conscious insights related to the crucial elements of accompaniment that we have identified in this set of essays: attention, presence, listening with care and perceptiveness, and openness to other experiences. Once students have practiced this two-step method in written reflections, the compassion meditation becomes a tool to which they can return, either on their own initiatives or with me in supervision. Through compassion meditation paired with verbal reflection, my students are practicing the qualities and skills essential to accompanying their clients—openness towards and empathy for others, more fluid ability to take the client’s perspective and therefore to tell the client’s story more authentically, the greater tolerance of uncertainty and ambivalence required to share another’s journey—however limited in conventional “wins”—in solidarity.

Compassion meditation also seems to allow students to soften toward *themselves* such that they feel less defensive when reflecting on their own limitations. That is, it seems to allow them to see at the same time both their own value as professionals and *accompagnateurs* and their own shortcomings and blind spots.⁹² By releasing themselves from self-judgment, students appear to improve at self-critique.

Using the loving-kindness or compassion meditation in clinic is designed to allow students to be better listeners and perceivers. A second meditation, gratitude, is designed to help students overcome loss, especially the death of a client. Michelle and Miriam, and the other students who have followed in their footpaths, needed further support. Michelle and Miriam told me that they were “dealing with it”—Hasan’s death and the lost contact with his widow. I soon realized that merely talking with the two students about the client and the spouse was insufficient. Their fellow students expressed compassion for the team, but they too seemed caught off-guard and uncertain how to support their colleagues.

To provide a kind of opportunity for the student-attorneys to mourn and

92. For some students with hegemonic identities, this enhanced capacity to hold ambivalent feelings about themselves also allows them to explore with some candor their own participation in structural biases, such as gender and racial stereotyping. I have therefore begun to use loving-kindness meditation in conjunction with readings on health inequities and discussions of justice to help students to deepen their conscious reflections on difference and to respond productively to systemic injustices.

to feel the support of their colleagues, I adapted a gratitude meditation by the teacher and Buddhist monk Jack Kornfield.⁹³ As in a loving-kindness meditation, a gratitude meditation progressively guides the meditator's thoughts and feelings in a sequence that extends or widens their circle of appreciation and thankfulness—from ancestors, family, friends, community, learning, well-being, health and the like, and then to pass this gratitude towards others in their lives.

This adapted gratitude meditation was a guess. But it seemed to benefit both Michelle and Miriam, and the whole group, both in the moment (when a few tears were shed) and in later written and oral reflections. In this group, and with students with whom I have repeated this exercise in subsequent semesters, most report a greater sense of resolution with the losses that they bring to mind in the course of the exercise.⁹⁴

In retrospect, I came to believe that these students—and, I now think, most of my students—experience what K.J. Doka identified as disenfranchised grief: the emotions “persons experience when they incur a loss that is not or cannot be openly acknowledged, publicly mourned or socially supported.”⁹⁵ Surely many *accompagneurs* experience this sense of not being entitled to feel anything about the loss and irresolution in the work; we are not our patients' or clients' friends or family, yet we may know them deeply over time. How much less socially recognized and recognizable is grief for lawyers, who, as Cover explains, are professionally not “supposed to” experience loss, let alone mourn it? And for student-attorneys in the process of professional formation, how confusing and dislocating this experience of disenfranchised grief?

Let me be clear: the student-attorneys' ability to cope with loss is not more important than the death of the client; nor what this client's death meant to this spouse; what further losses this spouse has likely since

93. Jack Kornfield, *Meditation on Gratitude and Joy*, <https://jackkornfield.com/meditation-gratitude-joy/> (last visited Mar. 4, 2019).

94. As with the compassion meditation, in some semesters, I have conducted this exercise in a journal prompt with a recorded meditation (Relax for A While, *Gratitude Meditation*, YOUTUBE (Oct. 11, 2013), <https://www.youtube.com/watch?v=nCq5MkNem6k>) and a short written reflection, but think it is more powerful as a shared in-person experience.

95. See C.A. Corr, *Revisiting the Concept of Disenfranchised Grief*, in K. J. DOKA, *DISENFRANCHISED GRIEF: NEW DIRECTIONS, CHALLENGES & STRATEGIES FOR PRACTICE* 39-60 (Research Press 2002) (quoting Doka) (cited in Jennifer E. Simpson, *Grief & Loss: A Social Work Perspective*, 18 J. LOSS & TRAUMA 81, 83 (2013)).

2019]

Attorney as *Accompagnateur*

153

endured; nor what losses our clients and their families endure from semester to semester. But the student-attorney's ability to acknowledge the loss, to name it, and to learn from it may be crucial to the ability to continue the work, both of legal service and of "mere" accompaniment, across time and across the representations that accumulate into a career. So, in this and other contemplative exercises, I hope to offer the emerging lawyers in my clinic some tools for that long journey.

V. ACCOMPANIMENT: EPILOGUE

Margaret Reuter

We started this piece with Paul Farmer, who articulated a vision of relief health care worker as an *accompagnateur*. We saw parallels to law practice, especially to the practice representing individual people at the economic margins of our communities. We also saw in that vision a reservoir of sustenance for the lawyers. Accompaniment is the first and core service that we provide as lawyers. If a lawyer does that well, she can count herself as a good lawyer, even if she cannot deliver legal victory or social justice.

The role of *accompagnateur* as defined here—being present, sharing an uncertain journey that may well end in loss, listening perceptively enough to tell the authentic story, shorn of pity—has a certain poetry and nobility. It expects a lawyer to exhibit deep respect of the client, listening well, making a genuine connection to the client, and yielding to the client's innate intelligence, perspective, and judgment. It gives clients dignity, even in the face of systemic forces of hardship and injustice.

When we (the authors) considered the role of accompaniment, we felt stories explain it best. Accompaniment is a story of a lawyer and a client.

Steve Rosenbaum showed us the challenge to accompaniment. After years in practice, he experienced the ruts that can develop from a practice with high caseloads and the intractable problems that persisted year over year. After decades in the trenches, it is hard for a lawyer to see each client with fresh eyes, and to connect person to person. Steve shows us the way to re-engage with reflective practice to help restore his innate capacity to be a lawyer for each of his clients.

At the energized and optimistic start of her career, Kelsey Berkley easily extols the virtues of getting to know her clients in their own right,

not simply the details about the criminal charges they face. To the bone, she feels that the connections she makes with her clients, makes her a better-motivated and more deft lawyer. Berkley instinctively shares the uncertainty of the journey with her clients, and feels the pain of the losses. She grapples with setting boundaries with her clients; how much to allow herself to develop friendships; and how to calibrate the “right” level of professional distance. Like Rosenbaum, she worries how she will be able to get to know her clients well enough to be a good lawyer when she starts to carry her own heavy caseload.

Like Berkley, Anjelica Mantikas’ clients needed time to reveal their story. It was not a quick download. She and they needed to share time and tortilla chips in order to explain and understand the horrors and threats these teenagers and their families face in El Salvador. Mantikas viewed her role as giving credence to her clients’ dignity and value. The trust she built enabled her to prepare and support them through the special juvenile immigration status hearing with a hostile judge. Her accompaniment made it possible for her clients to tell their own story and find their own voice. Patience was key.

The exigencies of an impending eviction gave little time for Victoria Pontecorvo and Erin McMullan to get to know their clients. But they did. They learned about favorite past times and about Jane’s parenting style. As Pontecorvo and McMullan escorted their clients from one office to the next, they came to appreciate a tension. The more they spoke, the less the clients could. Given the chaos, Pontecorvo and McMullan used their status as legal advocates unabashedly, but kept communication active with their clients, careful not to render their clients invisible or mute. As they experienced the inscrutable bureaucracies, overworked staff, skeptical judge and hostile landlord, they felt fully grateful that their accompaniment (and perseverance) was essential to the clients’ housing security.

Danielle Pelfrey Duryea reminds us that the types of loss a lawyer might experience are not just legal losses. It can include a client dying. Or a client who has faded into the ether, unresponsive to the lawyer’s attempts to gain her full participation in the matter at hand. That’s what happened with her students. She devised practices in her clinic that integrate meditation, with special exercises for the most difficult times. Her early successes make us all hopeful.

2019]

Attorney as *Accompagnateur*

155

Our version of accompaniment is with honesty about the difficulties encountered.

If listening and patience are hallmarks, then lawyers need fair time with each client. High caseloads give scant time. It's not just quality time, it is also quantity of time. Lawyers practicing accompaniment are entreated to see and connection with each client as an individual, with her own story, values, and priorities, not as a cookie-cutter version of the dozens of clients who came before. But many of the legal forces these clients face are nearly identical to hundreds of others, at least in terms of legal proscriptions and possible remedies. With such sameness, it becomes harder and harder to see a client as unique, rather than one more victim on the same conveyor belt. Accompaniment expects the attorney to be *present*, attentive, and in tune with her client. By definition, that is only possible if the client is *present* too. When clients fall off the radar, stop responding, and/or fail to engage in their part of the legal process, accompaniment is frustrated.

Some of these difficulties can be mitigated, not overcome, by employing techniques of mindfulness. Some can be mitigated by the atmospherics of how clients are received in the law office and methods to help the client's relaxation and openness. But mostly these difficulties, and others, are occupational hazards. Accompaniment cannot be achieved with perfection.

Our exploration of accompaniment is not simply to characterize a good attorney-client relationship, but to characterize a good lawyer—a lawyer who is honorable, whether or not legal successes can be achieved or justice delivered. When we accompany our clients, stand beside, stand up, and give voice to our client's story—we have provided the core goodness of our profession. We can't vanquish all foes. We can show our clients deep respect for them as persons and for the plights they face.

VI. APPENDIX: GUIDED MEDITATION EXERCISES

*A. Compassion (Loving-Kindness) Meditation.*⁹⁶

Close your eyes. Sit comfortably with your feet flat on the floor and your spine straight. Take a deep breath in; and then breathe out. No need to strain or concentrate; just relax and gently let me guide your thoughts. Take another deep breath in, and breathe out. One more deep breath in; pause a moment when your lungs are full, and gently release your breath.

Keeping your eyes closed, think of a person with whom you are close, someone who loves you. It could be a parent, a sibling, someone from the past or the present; someone still in life or who has passed away. In your mind's eye, imagine that person is standing to your right, sending you warm wishes—for your safety, for your well-being, for your happiness. Feel the kindness and care coming towards you from that person.

Now bring to mind someone else you have known, someone for whom it is easy for you to feel love and respect. Perhaps you are thinking of a parent, a grandparent, a teacher, or a spiritual guide from your past or present. In your mind's eye, see that person standing to your left, sending you wishes for your wellness, for your health and happiness. Feel the kindness and warmth coming to you from that person.

Now imagine that you are surrounded on all sides by all the people who have loved and cared for you throughout your life. Picture them standing all around you, sending you wishes for your happiness, well-being, and health. Bask in the warm wishes and love coming toward you from all sides.

Now bring your awareness back to the person standing to your right. Begin to send the warm wishes and love that you are feeling back to that person. You and this person are similar. Just like you, this person wishes to be happy. Send all your care and affection to that person. Addressing that person silently, repeat the following wishes to them:

May you live with ease, may you be happy, may you be free from

96. Adapted by Danielle Pelfrey Duryea from Emma Seppälä, *A Gift of Loving-Kindness Meditation*. See Greater Good Science Center, *A Loving Kindness Meditation to Boost Compassion*, MINDFUL (Mar. 6, 2017), <https://www.mindful.org/a-loving-kindness-meditation-to-boost-compassion/>; see also Emma Seppälä, *A Gift of Loving Kindness Meditation*, YOUTUBE (May 27, 2014), <https://www.youtube.com/watch?v=auS1HtAz6Bs>.

2019]

Attorney as *Accompagnateur*

157

pain May you live with ease, may you be happy, may you be free from pain May you live with ease, may you be happy, may you be free from pain

Now turn in your mind to the person standing to your left. Begin to direct the care and warmth within you to that person. Send all your love and kind feelings to that person. That person and you are alike. Just like you, that person wishes to have a good life. Addressing them silently, wish that person well with these words:

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Now think of someone in this room⁹⁷ toward whom you have good feelings. It doesn't matter who comes to mind. This person, like you, wishes to have a good and happy life. Begin to direct all your care and kindness toward that person, repeating these words silently to them:

May you be safe, may you be healthy, may you be free from all pain

May you be safe, may you be healthy, may you be free from all pain

May you be safe, may you be healthy, may you be free from all pain

Now bring to mind an acquaintance toward whom you don't have any particular feelings one way or another. It could be a neighbor, a colleague, or someone else that you see around but do not know very well. Like you, this person wishes to experience joy and wellbeing in their life. Send all your good wishes to that person, silently repeating the following phrases:

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Just as I wish to be, may you be safe, may you be healthy, may you

97. Here, I am asking the students each to identify with one of their clinic colleagues.

live with ease and happiness

Now think of someone for whom it is not so easy for you to have positive feelings.

This person, like you, wishes to have a good and happy life. Send your good wishes to that person, repeating these phrases silently to them:

May you be safe, may you be healthy, may you be free from all pain

May you be safe, may you be healthy, may you be free from all pain

May you be safe, may you be healthy, may you be free from all pain

Now expand your awareness and picture the whole globe in front of you as a little ball. Send warm wishes to all living beings on the globe, who, like you, want to be happy and well:

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Just as I wish to be, may you be safe, may you be healthy, may you live with ease and happiness

Take a deep breath in. And breathe out. And another deep breath in and let it go. Breathe in, and out. And again, in, and out. Take a moment and notice your state of mind. And, when you're ready, you may open your eyes.

*B. Gratitude Meditation*⁹⁸

Close your eyes. Sit comfortably with your feet flat on the floor and your spine straight. Take a deep breath in; and then breathe out. No need to strain or concentrate; just relax and gently let me guide your thoughts. Take another deep breath in, and breathe out. One more deep breath in; pause a moment when your lungs are full, and gently release your breath.

98. Adapted by Danielle Pelfrey Duryea from Jack Kornfield, *Meditation on Gratitude and Joy*; Cf. Jack Kornfield, *Meditation on Gratitude & Joy*, <https://jackkornfield.com/meditation-gratitude-joy/> (last visited Mar. 04, 2019).

2019]

Attorney as *Accompagnateur*

159

Begin the practice of gratitude by feeling how year after year you have cared for your own life. Now let yourself begin to acknowledge all that has supported you in this care:

With gratitude I remember all the people and animals whose existence has been a gift in my life.

With gratitude I think of the planet that sustains my existence.

With gratitude I remember the care and labor of the generations of ancestors who came before me.

I offer my gratitude for the safety and well-being I have been given.

I offer my gratitude for the natural world that I have been given.

I offer my gratitude for the measure of health I have been given.

I offer my gratitude for the family and friends I have been given.

I offer my gratitude for the community I have been given.

I offer my gratitude for the teachings and lessons I have been given.

I offer my gratitude for the life I have been given.

Now bring to mind someone you care about, someone it is easy to rejoice for. Picture them and feel the natural joy you have for their well-being, for their happiness and success. With each breath, silently offer them your grateful, heartfelt wishes.

May you be joyful.

May your happiness increase.

May you not be separated from great happiness.

May your good fortune and the causes for your joy and happiness increase.

Sense the sympathetic joy and caring in each phrase. When you feel some degree of natural gratitude for the happiness of this loved one, extend this practice to another person you care about. Holding that person in your mind's eye, silently offer them your heartfelt appreciation:

May you be joyful.

May your happiness increase.

May you not be separated from great happiness.

May your good fortune and the causes for your joy and happiness increase.

Now think of someone in this room toward whom you have good feelings. It doesn't matter who comes to mind. Sending them your warm feelings of appreciation, silently offer your gratitude to that person:

May you be joyful.

May your happiness increase.

May you not be separated from great happiness.

May your good fortune and the causes for your joy and happiness increase.

Thank you for allowing me to work with you.

Thank you for giving me the opportunity to—and fill in the blank here for yourself with whatever comes to mind that you've been able to do because of working with this person.

Thank you for teaching me—and again complete this sentence with whatever comes to mind that you have learned from working with this person.

Now think of some specific loss that you have experienced in the course of your clinic work. It can be anything, big or small, that has left you with some sense of irresolution. Bring to mind a person involved in this experience—maybe the client, or a client's family member, or a social work, medical, or clinic colleague.

Holding that person in your mind's eye, silently address them:

Thank you for allowing me to work with you.

Thank you for giving me the opportunity to practice—and fill in the blank here to yourself.

Thank you for teaching me—and complete the sentence to yourself with whatever comes to mind that you have learned from working with this person.

And now silently repeat those words of appreciation to the person you have brought to mind:

Thank you for allowing me to work with you.

Thank you for giving me the opportunity to practice [_____].

Thank you for teaching me [_____].

Thank you for allowing me to work with you.

Thank you for giving me the opportunity to practice [_____].

Thank you for teaching me [_____].

2019]

Attorney as *Accompagnateur*

161

Now just keep breathing for a few more moments, concentrating your attention wherever in your body you most naturally feel your breath entering and leaving your body. When you're ready, you may open your eyes.