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Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories

by

CHRISTOPHER P. GILKERSON*

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A state welfare agency is about to evict homeless women and their children, AFDC recipients, from emergency housing. The bureaucracy has decreed by regulation, and is now ready to enforce, a one hundred day limit for AFDC “special needs” housing assistance. Welfare motel residents tell legal clinic staff members this alarming news during outreach. Stark, opposing images arise: mothers and their children at risk of being thrown out on the streets with nowhere to go; a faceless welfare bureaucracy that understands the words of its own regulations and the fiscal bottom line, but fails to comprehend the lives and risks involved. Homeless women are interviewed, their stories are told and received, lawyers prepare for legal battle.

Prior to the start of litigation, the state agency sends a letter to emergency housing residents, identifying for each an apartment purportedly available through the federal “Section 8” low-income housing program:

This apartment will be inspected and will be decent, safe, and affordable housing, and meet all Section 8 housing code specifications.

We are attempting to place a large number of families by the [emergency housing] deadline and due to this emergency, will be unable to offer you any additional apartments. You must leave [your current] motel or emergency apartment by [next week’s] deadline, even if you do not accept the above listed apartment.

If you do not accept this apartment, it will be your responsibility to find another one within the Section 8 time limits as described at your [previous] briefing session.

At the hearing to enjoin the state’s termination of emergency housing assistance, the women speak out about the state’s broken promises, the unresponsive bureaucratic treatment they have endured, and the obligations and rights at issue. Tori M. takes the stand and tells the following story:

I am eighteen years old. I have a daughter. She's seventeen months. I'm expecting a child in June. I looked for apartments, but my income [from state assistance] is too low for a two-bedroom apartment for me and my daughter. [After eviction from emergency housing] my social worker told me I could be placed in a shelter [in another town]. I didn't [accept it] because I'm attending school to get my GED and I'm also—I go into premature labor a lot and I need to be near a hospital and I'm on medication.

I was given an apartment with my [Section 8] certificate, but I called and the man told me that the apartment that I was given was already rented a week before. [I was told] that if we didn't accept it, we had to find our own. You know, I'm still looking.

I went back to my grandparents and asked them if I could stay there. It would just be crowded there. Me and my grandmother and my daughter, we'd be in one bed.2

Relying on client stories such as Tori's, the lawyers prove irreparable harm and win an injunction. Before the appellate court, however, the clinic legalistically argues:

The legislature has imposed a legal duty on the Commissioner of Income Maintenance to provide assistance to AFDC families to enable every dependent child to be supported in a home.

The legislature, through an express statutory requirement . . . has required that the AFDC program be administered in such a way that every child in the program be supported "... in a home in this state, suitable for his upbringing, which [the child's] relative maintains as his own." . . . The trial court's decision does nothing more than require that defendant obey the law as expressed by the legislature.3

In its decision, the appellate court notes the stories of the women and their children only in passing, adopting the clinic's narrow, legalistic interpretation of issues and claims. But the court refuses to adopt the clinic's reading of the applicable statute and finds for the state, commenting:

The interpretation of the provision of § 17-85 relied upon by the plaintiffs wholly ignores the context in which it is placed. Section 17-85 is entitled "Eligibility. Consideration of stepparent's income." The first, second, third and fifth sentences of subsection (a) set forth various conditions relating solely to the eligibility of AFDC recipients, and subsection (b) similarly establishes an additional eligibility criterion.4


4. Savage, 214 Conn. at 274, 571 A.2d at 706.
From frustrated and frightened families arbitrarily denied promised state action, to a potentially empowering experience of having their voices and stories heard in court, to a technical argument about statutory context and duty. Something, it seems, got lost in translation. Unfortunately, there is no reason to think that this case is singular. It reflects a familiar dissonance in poverty law practice, an overriding tension between poor clients' lived experience and the manner in which that experience is perceived and acted upon by poverty lawyers who feel constrained by the strictures of law and the limits of legal argument.

Introduction

In critical exploration of the dissonance between law, lawyers, and the disempowered, recent inquiries have given rise to new, enriched theories about the knowledge and discourse of the poverty lawyer. Critical scholars and practitioners are now engaged in a search for alternative theoretical and practical approaches to working for and with clients whose different perspectives, needs, and values do not fit neatly into traditional conceptions of legal process and doctrine. Critical theory questions the authority of definitional limits that are revealed by the context of real experience, a context often rendered invisible by the bounds of legal discourse.

Poverty lawyers necessarily participate in this discourse. The project of critical practice and theory, however, is to develop theory rooted in practice in order to learn from and about, and then improve upon, the lawyer's participation as representative of those who are disempowered by the operation and interpretation of law. This requires not just the integration of practice and theory, but also the integration of different critical theories and different methods of practice. By design, if not by definition, the project must be accessible to practitioners as well as schol-

5. Throughout this Article I refer interchangeably to "disempowered" and "poor" people. Although people are subjugated for many reasons other than poverty, the subjects of this Article are persons who are disadvantaged, oppressed, and exploited because of their class and economic standing. I acknowledge that this includes a diverse group of subjects: women, children, and men, people of all races, sexual orientations, and physical and mental capabilities. Thus, I recognize the fragmentation and division among poor people. See Austin Sarat, "... The Law is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor, 2 YALE J.L. & HUMAN. 343, 348 (1990).


ars, and those who think and write about new approaches to practice must critically examine scholarly works to assess the practicality and effectiveness of theoretical ideas and visions. Advancing the project requires avoiding the "postmodern version of the relation between theory and practice[: discourse unto death [where] theory begets no practice, only more text." Critical practice and theory must begin by addressing the traditional hesitancy of both practitioners and scholars to deal faithfully and consistently with specific and overlapping client, lawyer, and lawyer-client contexts.

In this Article I undertake a critical storytelling approach\(^\text{10}\) to poverty law practice\(^\text{11}\) that centers on the contexts of law and legal practice. This approach conceptualizes law as both: a social institution through which people tell stories about their relationships with others and with the state; and an authoritative language, or discourse, with the power to

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10. Storytelling is a useful heuristic for law and legal institutions. See generally Symposium, Legal Storytelling, 87 MICH. L. REV. 2073 (1989); Symposium, Pedagogy of Narrative, 40 J. LEGAL EDUC. 1 (1990). Storytelling can be a method for revealing realities of experience and oppression often hidden by legal principles and process. See Derrick Bell, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); Williams, supra note 6. For a critique of legal storytelling method, see Toni M. Massaro, Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?, 87 MICH. L. REV. 2099 (1989). For reasons why "voice" or storytelling scholarship is important to nontraditional members of the legal community, see Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 MICH L. REV. 2411 (1989) [hereinafter Delgado, A Plea for Narrative]; Richard Delgado, When a Story is Just a Story: Does Voice Really Matter?, 76 VA. L. REV. 95, 109 (1990) ("[V]oice scholarship can sharpen our concern, enrich our experience, and provide access to stories beyond the stock tale. Heeding new voices can stir our imaginations, and let us begin to see life through the eyes of the outsider.").

11. At the outset I confess my empathy with lawyers who practice poverty law, despite the engulfing context of resource constraints. See, e.g., Richard L. Abel, AMERICAN LAWYERS 127-41 (1989) (discussing various means through which legal services may be provided to those unable to afford them). The point of this Article's critique is to further the project of joining theory with practice in order to enhance understanding of law, enrich lawyer practice, and improve client representation.
suppress stories and experiences not articulated in accepted forms. Contextualization is fundamental to legal storytelling; the storyteller must be able to provide enough information about herself and her situation to transfer to the story receiver—through meanings and images—her perspective, beliefs, and values. The storytelling dilemma in law arises when authoritative discourse and knowledge impede the transfer of the storyteller's meanings and images. Hence the receiver's interpretive understanding of the story often is at odds with the message intended by the teller.13

Stories are a medium of communication linking the law, poverty lawyer, poor client, and legal decisionmaker. From the perspective of the poverty lawyer, there are four different, though related, types of stories: (1) stories told by clients (and received by lawyers); (2) stories told by lawyers (and received by legal decisionmakers such as judges, hearing

12. Lucinda M. Finley, Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning, 64 NOTRE DAME L. REV. 886, 888 (1989); see Sally Engle Merry, The Discourse of Mediation and the Power of Naming, 2 YALE J.L. & HUMAN. 1, 3-4 (1990) ("discourse" is a distinct way of talking about and interpreting events that includes categories and vocabulary for naming events and explaining actions and relationships). Law and literature scholars understand the project of law as the creation of stories. "[Law] is a way of telling a story about what has happened in the world and claiming a meaning for it by writing an ending to it." James Boyd White, Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life, 52 U. CHI. L. REV. 684, 691-92 (1985).


officers, and legislators); (3) universalized narratives in the law (composed of positive elements such as rules and principles as well as dominant assumptions and stereotypes reflected in and reinforced by law) that assign characteristics and define people in certain ways based on their positions or circumstances; and (4) stories told by legal decisionmakers to justify their decisions (legal opinions or "judgment stories").

My approach to the above storytelling typology is twofold. First, it is descriptive: to explain and understand the causes and effects of universalized narratives and how lawyers initially hear and then transform client stories. Second, it is normative: to prescribe awareness of universalized narratives and how lawyers should receive and translate client stories. The underlying normative questions include: Whose story should be told in advocacy and why? Who should narrate the story and from what perspective? Who should play what role in telling, translating, and interpreting a client's story? I do not attempt to draw a clear distinction between the normative and the descriptive, except in my concluding case study, which demonstrates how a critical storytelling approach would have revealed the sources and consequences of lawyer interpretations of client stories and the laws and bureaucratic practices that affected those stories.

No "correct" substantive norms for poverty lawyering follow from my analysis. Instead, critical storytelling in the context of poverty law practice is a way of thinking about and then acting upon the interconnections between the law, lawyer, and poor client. It entails both examin-

16. I distinguish "universalized narratives" from "judgment stories" in that the latter consist of single decisions in specific cases, while the former are more general, implicated by questions such as, "What does the law say about this situation?" In rendering a judgment story, a judge finds guidance in universalized narratives woven into past cases. For analysis of the interpretive acts of judges, see RONALD DWORKIN, LAW'S EMPIRE (1986); Robert M. Cover, The Bonds of Constitutional Interpretation: Of the Word, the Deed, and the Role, 20 GA. L. REV. 815 (1986) [hereinafter Cover, The Bonds of Constitutional Interpretation]; Thomas Ross, The Richmond Narratives, 68 TEX. L. REV. 381 (1989). Because the poverty lawyer acts as direct participant in only the first three story types, I deal with the fourth type only in reference to the lawyer goal of structuring, constraining, and influencing the judgment story.


19. Because the purpose of critical storytelling in the practice of poverty law is to locate knowledge in the particulars of the law and in client experience, critical storytelling is both
ing the law from the client's perspective and examining the client from the law's perspective.\textsuperscript{20}

In Part I, I analyze how universalized legal narratives affect poverty lawyers in their practice and poor clients in their everyday activities. These narratives, manifest in the interactions of legal texts, practices, principles, rules, precedents, and language, decontextualize both events and people. Fundamental to authoritative legal discourse, universalized narratives constrain the way lawyers can tell client stories to legal decisionmakers. As a result, the voices and narratives of poor clients often go unspoken and unrevealed. Because feminist accounts of law illuminate and explicate the effects of universalized legal narratives, I have drawn on several examples from feminist scholarship. In particular, I look at the three related legal narratives of "victim," "family," and "work."

Legal narratives control the "storylines" of poor people, regulating their lives in contradictory ways. These contradictions exemplify the influence of universalized legal narratives by revealing the dissonance between the lived experience of disempowered people and the dominant values and perceptions reflected in the law. Because my concluding case study is a story about homeless women and their children, I focus in particular on "welfare mother contradictions" arising from state bureaucratic practice and substantive welfare law.

Part II investigates how poor clients tell and poverty lawyers receive stories. I describe the storytelling context in the practice of poverty law and list the narrative elements of a client's telling of her story. Disempowered clients attempt to persuade both themselves and their lawyers about the rightness of their position with "rights talk" that connects the client's background and experiences to the legal dispute and injury. But the lawyer's previously formed understanding of the client and her world often acts as a cognitive and social barrier to receiving the client's story. In order to create space for the client to speak out and tell her story, that barrier must be acknowledged and overcome. This space can be created by attempting to adopt the client's perspective when interpreting her story and by engaging the client in dialectic interaction.


\textsuperscript{20} Cf. Robin West, Jurisprudence and Gender, 55 U. CHI. L. REV. 1, 67 (1988) (feminist narrative critique explores the rule of law from women's point of view; feminist interpretive critique aims to explore women from point of view of the rule of law).
that fits whichever universalized legal narrative the lawyer believes is advantageous for winning the case. In contrast, as a legal storyteller, the lawyer acts as "translator" for the client and is thus guided and constrained by the client's narrative perspective. Under the translation approach, poverty law practice incorporates an ethic of storytelling that requires the integration of legal claims with the personal integrity of the client and her narrative. The power for law reform lies in infusing the story told in advocacy with the client's narrative purpose. I conclude Part III by exploring practical openings for translation, which are found in the judicial functions of hearing, balancing, and discretion.

In the last Part I return to the stories briefly introduced at the beginning of the Article. The case, *Savage v. Aronson*, provides a study for critical storytelling analysis. Although my participation in the case affords me insight into the lawyer-client relation that developed, the lessons I glean arise from application of the storytelling typology. In *Savage* client narratives spoken at the temporary injunction hearing poignantly demonstrated the requisite irreparable harm—homeless mothers and their children being forced back out on the streets due to the expiration of emergency housing assistance—thus enabling the lawyers to win. I conclude, however, that the lawyers did not perceive and learn from client narratives and that this resulted in a failure to translate fully the meaning of the rights and obligations at issue, perhaps contributing to the Connecticut Supreme Court's eventual overturning of the injunction. The story of *Savage* thus provides warnings and indicates possibilities for storytelling in the practice of poverty law.

**I. Universalized Legal Narratives**

Law constitutes roles and relationships of poor people in two primary ways. First, at points of contact between disempowered people and state authority, the form and substance of legal discourse (and here I

22. I was a member of the Yale Law School Homelessness Clinic that represented the plaintiff class in *Savage v. Aronson*, and I helped draft several of the briefs in the temporary injunction phase of litigation, prepared clients and witnesses for the hearing, and questioned one client and two other witnesses during the hearing. The lessons I learned from *Savage* came as a result of undertaking a critical storytelling analysis long after the case had been decided; I do not claim lessons learned directly from my own participation in the case. *Contra* Alfieri, *Reconstructive Poverty Law Practice*, supra note 14 (lessons of poverty lawyering learned through specific experience as lawyer); Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 Mich. L. Rev. 2459 (1989) [hereinafter Cunningham, *A Tale of Two Clients*] (same); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 Buff. L. Rev. 1 (1990) [hereinafter White, *Sunday Shoes*] (same).
include bureaucratic discourse) constrain the telling, receiving, and interpretation of stories intended to explain, justify, and claim. These constraints are embedded within "universalized legal narratives." Second, positive manifestations of universalized narratives—rules, regulations, and practices—intrude upon action and consciousness, shaping the directions of poor people's lives—their "storylines." In this Part I detail the origin and composition of universalized narratives, provide examples of such narratives as revealed in feminist practice and theory, and examine how law intervenes in and directs the storylines of disempowered people. Because the subjects of the case study in Part IV are poor women and their lawyers, I focus on contradictions governing the lives of women on welfare to highlight the effects of universalized narratives in the context of the state welfare bureaucracy.

A. Composition

Universalized legal narratives emerge from the central tenet of liberal legalism: the "rule of law." Under liberal legalism, rules of law expand relationships and empower people to act. Authoritative interpretations of legal rules, principles, and definitions, however, often rely on unsettled or controversial conceptions of justice and the good, and doctrinal disputes are often resolved on political or moral grounds. Critics of liberalism focus, in part, on this breakdown of the political/legal distinction in the realm of legal interpretation. For example, critical legal studies (CLS) scholars believe that the breakdown of the law/politics distinction results in indeterminate outcomes in legal arenas, and the preservation of power in political ones. To facilitate these outcomes, positive law and its interpretations abstract individuals and human events in or-

23. For stylistic variation, I refer to "universalized legal narratives" alternatively as "legal narratives" or "universalized narratives."

24. To introduce the concept of law's control over the storylines of the poor, I can do no better than quote Spencer, a 35 year old man on public assistance and a contributor to Austin Sarat's illuminating ethnographic study of the welfare poor in New England: "For me the law is all over. I am caught, you know; there is always some rule that I'm supposed to follow, some rule I don't even know about that they say." Sarat, supra note 5, at 343.

25. See, e.g., DWORKIN, supra note 16, at 93-94 (rule of law of a community is based on past political decisions establishing rights and responsibilities and enforced by coercive means); LON L. FULLER, THE MORALITY OF LAW 209-14 (1964) (under rule of law government applies general rules which it has previously declared to be determinative of rights and duties and which legitimize its assertion of authority).

der to promote behavioral regularity necessary to foster and protect dominant values.  

The concept of universalized legal narratives incorporates both the liberal premise and the CLS critique of the rule of law. As recurring accounts of social interactions located within legal texts, precedent, and language, legal narratives are made up of socially constructed meanings arising from the interaction of social, cognitive, and rhetorical forces. Once implanted in legal discourse, they become normative (value-laden) interpretations of people and events that are difficult to dislodge, but easy to manipulate. When legal recognition or authority is given to an experience or outcome, it becomes the basis for future abstraction and idealization about similarly perceived experiences. In other words, universalized legal narratives are the result of the dominant method of legal reasoning—abstraction and reduction of meaning to principles and rules.  

As authoritative stories told in the law, legal narratives assign characteristics and roles to people, constructing the positions from which they speak. Such narratives have the power to close off dialogue by locating certain substantive inquiries outside of the law. By restricting ways of framing questions and arguments, universalized narratives exclude alternative voices and perspectives. Legal narratives, however, are not universal in the abstract: they reflect and incorporate a larger,
not always revealed context.\textsuperscript{32} The content of universalized narratives is restricted to the experiences, perspectives, and images of those with power. "[A]pparently neutral and universal rules in effect burden or exclude anyone who does not share the characteristics of privileged, white, Christian, able-bodied, heterosexual, adult men for whom those rules were actually written."\textsuperscript{33}

The law thus constrains and limits possible stories a lawyer can tell on behalf of a disempowered client whose experiences, perspectives, and images are absent from the dominant legal narratives.\textsuperscript{34} Concepts such as "family," "work," "equality," and "welfare" incorporate a pre-established set of meanings that make alternative meanings difficult to see and hear.

[The law reinforces certain world views and understandings of events. Its terms and its reasoning structure are the [vehicle through] which supplicants before the law must express their needs. Through its definitions and the way it talks about events, law has the power to silence alternative meanings—to suppress other stories.\textsuperscript{35}]

As a constraining discourse, the law and its institutions establish form and substance requirements for stories that claim rights or express needs. Elements include a specified vocabulary for invoking claims, a paradigm of argumentation, formulae for proof, and narrative conventions for reconstructing individual and collective stories. The convergence of static and exclusive categories, definitional polarities, bright lines (separating rights from needs, the moral from the immoral, the public from the private), and idealized unmediated voices expressing univer-

\textsuperscript{32} See Stanley Fish, Introduction: Going Down the Anti-Formalist Road, in Doing What Comes Naturally 22 (1989) ("[A]bstract laws are never abstract or universal but are always reflections of some (albeit unacknowledged) context; and an understanding of context will never be simply inductive, but will always be produced by principles (themselves contingent and transformable) already in place."); Martha Minow & Elizabeth V. Spelman, In Context, 63 S. Cal. L. Rev. 1597, 1602-06, 1627-28 (1990).

\textsuperscript{33} Minow & Spelman, supra note 32, at 1649; see Catharine A. MacKinnon, Toward a Feminist Theory of the State 188 (1989) ("[I]n . . . law, the way the male point of view constructs a social event or legal need will be the way that social event or legal need is framed by state policy."); Kathryn Abrams, Feminist Lawyering and Legal Method, 16 L & Soc. Inquiry 373, 391 & n.36 (1991) (neutrality of liberal legalism disguises inevitable perspectivity of legal rules); Phyllis Goldfarb, A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education, 75 Minn. L. Rev. 1599, 1642 (1991) ("[D]octrinal categories presenting themselves as neutral and objective often exclude the perspectives of many while enshrining a particular view.").

\textsuperscript{34} See Minow, Interpreting Rights, supra note 13, at 1912; see also Zillah R. Eisenstein, The Female Body and the Law 43 (1988) ("[T]he study of law as a discourse is not limited to specific laws or to the activity of litigation or litigators; rather it is the study of these laws as they operate as symbols for what is legal, honorable, natural, objective, and so on.").

\textsuperscript{35} Finley, supra note 12, at 888.
sal truths, conceals subjectivities and maintains the illusion that the underlying principles are neutral, unbiased, and unmanipulable. Law’s reproduction of rhetorical structures establishes a dominant way of construing events, naming problems, and determining solutions.

Law’s predictable patterns, or “coherence,” enable lawyers to develop a sense of legal arguments that win cases, given particular sets of facts. Poverty lawyers also grasp, however, that legal discourse limits what can be said on behalf of their clients. In order to win cases, poverty lawyers must fit their clients’ stories into law’s established terms by squeezing client identities, histories, and problems into universalized narratives. The reliance on precedent by both judges and lawyers blocks the recognition and understanding of stories told that do not fit with past authoritative accounts. The method of fit and the pull of precedent produce rigid boundaries that are difficult to transgress. Only questions formulated within the confines of the legal narrative are addressed by the legal forum; questions determined to be outside the narrative are ignored or discarded as irrelevant.

Legal narratives are “universalized” when applied to nonempowered subjects—those disempowered by the differences of race, class, disability, sexual preference, or gender. Universalization occurs when legal narratives are applied to diverse individuals in the assumption (or imposition) of a unified world view, and when differences are acknowledged but then dismissed as naturally occurring and legally irrelevant. The effect of universalized narratives is the exclusion of norms, values, and experiences deemed to be different. For the poverty lawyer, the result is a “legal blindness” to the perspective of those who come to the legal services office in search of assistance.

B. Feminist Revelations

Feminist scholars explore the ways in which universalized legal narratives constrain what is known and said about the experiences of histori-
cally marginalized and subordinated people. In feminist theory, knowledge is contextual, based upon perspective and experience. One discovers the meanings and values of rules and doctrines, therefore, only by understanding their effects on the people subject to them. A primary purpose of feminism is to expose and analyze the exclusion of women from the traditional scientific and social bodies of knowledge upon which legal rules and doctrines are premised.

Feminists examine the connection between possession of knowledge about a subject and the resulting power over it, as well as the unstated assumptions made in the application of knowledge to subject. They inquire into the ways in which legal discourse turns explanations posited by the powerful into purportedly objective doctrines encompassing everyone. Along with exposing the falsity of doctrinal objectivity by tracing women's ongoing resistance and denial of the applicability of universalized legal narratives, the feminist goal is to redevelop the law by infiltrating legal doctrines with alternative narratives.

41. See Cynthia Farina, Getting from Here to There, 1991 DUKE L.J. 689, 707 (1991) [hereinafter Farina, Here to There].

42. A recent conference at Yale, "Feminism in the 90s: Bridging the Gap Between Theory and Practice," exemplifies the diversity within feminist thought and action. There are multiple feminist perspectives on how to "bridge the gap" between theory and practice, a gap stretching across differences of class, ethnicity, race, and sexual orientation. Preface: Conference Issue, 4 YALE J.L. & FEMINISM (1991); see bell hooks, Theory as Liberatory Practice, 4 YALE J.L. & FEMINISM 1, 4 (1991) (efforts of women of color to deconstruct category "woman" insist on recognition that gender is not the sole factor determining constructions of femaleness); MacKinnon, From Practice to Theory, supra note 8, at 20-22 (building theory, out of diversity of all women's experiences, based on oppression of women as women encompasses oppression of women on other bases); Celina Romany, Ain't I a Feminist?, 4 YALE J.L. & FEMINISM 23, 29 (1991) (to remain a liberation project, feminist legal theory must recognize its distorted universalizations and draw upon narratives that capture a multiplicity of identities). For a discussion of different strands of feminist legal thought, see, e.g., Abrams, supra note 33; Deborah L. Rhode, Feminist Critical Theories, 42 STAN. L. REV. 617 (1990); Deborah L. Rhode, The "No-Problem" Problem: Feminist Challenges and Cultural Change, 100 YALE L.J. 1731 (1991) [hereinafter Rhode, "No-Problem"]. Robin West, The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, in BOUNDARIES, supra note 39, at 115.

43. Besides excluding the perspectives of women and other disempowered groups, traditional bodies of knowledge also devalue and denounce alternative perspectives as biased and unreliable. See MacKinnon, supra note 33, at 99.

44. The falsity of universalized narratives is evidenced by the legal "double bind" women often face. For example, if lawmakers legislate "special treatment" for pregnant women, such as paid pregnancy leave and subsequent child care, employers may not hire women (or may do so grudgingly) because of the perceived short-term financial cost. Alternatively, if pregnant women are not granted such treatment, they may not be able to retain their jobs. The dilemma of the double bind only exists because of the universalized narratives of pregnancy and work embedded within the dominant conceptual framework. For a discussion of the "double bind," see Radin, supra note 19, at 1699-1704 (1989).

The danger to be avoided in feminist legal theory is replacement of current dominant
Feminist scholarship explores the silencing and exclusionary effects of legal narratives and how those narratives influence and legitimate the organization and understanding of everyday life. The influence and effect of universalized narratives are revealed through a method of inquiry that asks and searches for answers to "the woman question": Which experiences of women are addressed and which are ignored by the law? What are the assumptions, descriptions, and claims the law makes with respect to those experiences? What and whose interests does the law protect? How will various legal solutions and reforms affect women's experience? The power to reveal universalized narratives lies in asking these questions with respect to all who are disempowered; such inquiry forms the basis of receiving and translating client stories in poverty law practice.

Although legal narratives influence and shape behavior, they often ring false when applied to individuals and groups about whom the narratives are supposedly told. Contradictions arise when universalized narratives oppose or reduce real experience. For example, in bringing any type of sex-based claim, whether civil or criminal, a woman is required to represent herself in a way that may contradict her experience. To demonstrate harm and win relief, she must recount her ordeal and oppression by fitting her story within a legal narrative of "victim." The narrative imposes the costs of a further loss of individual power and self-esteem and compounds the trauma of having to identify a "perpetrator" narratives with new, though less offensive, universalized narratives. See Elizabeth V. Spelman, Inessential Woman: Problems of Exclusion in Feminist Thought (1988); Rhode, "No-Problem," supra note 42, at 1790 ("Feminism has increasingly become 'feminisms,' which complicates the search for theoretical coherence and political cohesion.").

45. See Eisenstein, supra note 34, at 43 ("Recognizing law as a discourse calls attention to how law establishes regulations, thoughts, and behavior and institutes expectations of what is legitimate and illegitimate behavior, what is acceptable, . . . what is rational and irrational, what is natural and unnatural."); MacKinnon, supra note 33, at 238 ("Through legal mediation, male dominance is made to seem a feature of life, not a one-sided construct imposed by force for the advantage of a dominant group.").


47. I focus on these two parts of the story typology in Parts II and III, infra.
who has imposed his will. The necessity of playing the role of victim is most pronounced in cases involving sexual violence.\footnote{48}

In her study of the New Bedford, Massachusetts gang rape trial, Kristin Bumiller analyzes the roles of the media, prosecution, and defense in constructing and reconstructing the complainant.\footnote{49} In studying the woman's testimony at trial, Bumiller observes "how [the woman's] speech in [the] courtroom both conform[ed] to legal ways of understanding violence and yet embodie[d] resistance to accepted modes of expression."\footnote{50} A trial within a trial occurred, in which the woman was re-attacked by the defense lawyers who attempted to prove that she did not possess the qualities of victimization required by the legal narrative of rape.\footnote{51} Defense lawyers tried to show that she did not possess the moral qualities of innocence, good judgment, consistency, sobriety, responsibility, and fidelity. Consequently, the defense focused on the following "facts": The woman had been drinking at the time of the attack; the attack occurred late at night in a tavern; the woman was single but lived

\footnote{48}{People who suffer from any form of discrimination are required to play this role. The harm caused by the role may be greater than the harm to be remedied. As Joel Handler puts it:

Under antidiscrimination law, a person must acknowledge that she has been victimized, but these people are reluctant to take on this role. . . . To claim victimhood publicly threatens their sense of control, a self-identity that has allowed them to cope. In addition, they fear the law and power of their opponents and believe that they will ultimately fail to be vindicated.

Joel F. Handler, "Constructing the Political Spectacle": The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History, 56 BROOK. L. REV. 899, 960 (1990) [hereinafter Handler, Political Spectacle].

Universalized narratives also have the effect of denying that there are any victims at all. As Catharine MacKinnon asserts: "Rape law assumes that consent to sex is as real for women as it is for men. Privacy law assumes that women in private have the same privacy men do. Obscenity law assumes that women are already socially equal to men." MACKINNON, supra note 33, at 169.

\footnote{49}{Kristin Bumiller, Fallen Angels: The Representation of Violence Against Women in Legal Culture, in BOUNDARIES, supra note 39, at 95.}

\footnote{50}{Id. at 96.}

\footnote{51}{Compare the requisite of victimization in rape cases with traditional self-defense doctrine requiring "equal force" in response to grave and imminent bodily threat. See, e.g., Elizabeth M. Schneider, The Dialectic of Rights and Politics: Perspectives From the Women's Movement, 61 N.Y.U. L. REV. 589, 606-07 (1986) (analyzing case in which a Native American woman shot a white male, and the trial court refused to account for her perspective as a Native American woman). Under potentially contradictory universalized narratives in the criminal law, a woman must demonstrate the qualities of "victim" after suffering a sexual attack, limit her actions during an attack to those deemed "reasonable," and once the attack is over must refrain from taking any physical actions against her attacker. For a discussion of the problems of male bias in the criminal justice system in the context of homicidal crimes, see Laura E. Reece, Women's Defenses to Criminal Homicide and the Right to Effective Assistance of Counsel: The Need for Relocation of Difference, 1 UCLA WOMEN'S L.J. 53 (1991).}
with the father of her two children; earlier in the evening she had ignored her girlfriend’s advice to “go home”; she could not remember how many men actually raped her or what she had said immediately after the incident. In what amounted to victimizing the victim, the judicial process held the woman up to the universalized narrative of rape, and then made her accountable for her inability and unwillingness to fit that narrative.

Legal narratives of victim are related to other narratives subordinately inscribed in legal discourse, such as those written in the connected and overlapping areas of family and work. Legal narratives of family and work are premised on two seemingly fundamental principles: (1) there is a normal or natural division of labor based on gender in both the workplace and the family; and (2) family roles are private while employment sector roles are public. Concepts of gender and the distinction between private and public privatize women’s family responsibilities and devalue the work women do in the marketplace.

52. Bumiller, supra note 49, at 101-07. In addition to rape, women are victimized by acts of incest, sexual harassment, pornography, and prostitution. When the experience is one of physical force, women are more apt to fit the legal narrative of victim. When the experience is one of economic or authoritative, but not physically violent, coercion, it is more difficult for a woman to fit her story into the required legal narrative and show harm. Cf. MacKinnon, supra note 33, at 113 (arguing that rape, incest, sexual harassment, pornography, and prostitution are primarily sexual abuses of women, not just expressions of physical coercion).

53. The narrative of victim pervades most official accounts of encounters between those who have power and those who do not. Rhode, “No-Problem,” supra note 42, at 1775-77. Official accounts justifying violence against disempowered people often include the rhetoric of “victim responsibility.” See Williams, supra note 6, at 142. See generally Kristin Bumiller, THE CIVIL RIGHTS SOCIETY: THE SOCIAL CONSTRUCTION OF VICTIMS (1988). The focus on the victim rather than society’s pathologies is prevalent in poverty law and is the essence of the worthy/unworthy distinction that determines who is granted assistance and who is denied it. See Lucie White, Representing “The Real Deal,” 45 U. MIAMI L. REV. 278, 298-99 (1990-91) [hereinafter White, “The Real Deal”]; infra notes 83-94 and accompanying text.

54. Private/public distinctions designate boundaries within many universalized narratives beyond which the law will not intrude. See David Kairys, Law and Politics, 52 GEO. WASH. L. REV. 243 (1984). A fundamental assumption in liberal legalism, the private/public distinction defines the world and orders the way people relate to one another and the state in their daily lives. What is “private” is deemed irrelevant and insignificant within legal narratives: “When the line between public and private is crossed, [legal] community concern for the outcomes produced by social life ceases because those outcomes are conceived as merely the result of private choice.” Alan Freeman & Elizabeth Mensch, The Public-Private Distinction in American Law and Life, 36 BUFF. L. REV. 237, 243 (1987). Like all boundaries within legal narratives, the private/public distinction “can be turned inside out precisely because it has no logical content at all.” Id. at 248.

55. The work/family and private/public distinctions are characteristic of societies focused on commercial production. See Linda Gordon, Family Violence, Feminism, and Social Control, in WOMEN, THE STATE, AND WELFARE, supra note 36, at 178, 194; Gwendolyn Mink, The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State, in WOMEN, THE STATE, AND WELFARE, supra note 36, at 94-95. The conceptual separation of work and home in capitalism has generated a male standard of productivity and indepen-
The woman's role is as primary care giver in the family and secondary breadwinner in the workplace. This is not merely a complementary division of equal tasks; it is a patriarchal division valuing the market over the family, thereby ensuring male dominance even in the primarily female sphere of the family. In turn, the workplace structure presumes and requires a worker with a nonprimary care giver family role, imposing on women the sometimes impossible burden of accommodating work and family responsibilities. Universalized narratives of women in the family "form underneath" and act as a foundation for legal doctrines and rules pertaining to family law, employment, property, commerce, education, and welfare, while defining and reenforcing social functions and experiences.

dence, and a male image of a female standard based on servility and economic dependence. See Mink, supra, at 94-96. Eli Zaretsky makes the point that both patriarchal and capitalist ideologies are based on the illusion that there is a private sphere where private life takes place protected from hostile outside forces. Eli Zaretsky, Capitalism, the Family, and Personal Life (1976). Public/private role distinctions become especially tenuous and strained when legal narratives attempt to deal with sexual relations in the marketplace and economic relations in the family.

56. Dowd, supra note 45, at 117, 132-33; see also Clare Burton, Subordination: Feminism and Social Theory 33-56 (1985) (subordination of women based on their confinement to the domestic sphere, whether or not they labor in the market); Rhode, "No-Problem," supra note 42, at 1746-50 (subordination of women in family and society based on conservative religious and sociobiological premises). The private/public distinction between family and market has a negative bearing on the rights of women. See, e.g., Ruth Colker, Pornography and Privacy: Towards the Development of a Group Based Theory for Sex Based Intrusions of Privacy, 1 LAW & INEQ. 191 (1983) (arguing that women stand to lose more than gain from traditional private/public distinction). For example, reproductive choice is conceived within legal narratives as a "private right," isolating individual women with private burdens of pregnancy, birth, abortion, and child care. The legal narrative of private choice excludes public demands for community assistance. See Freeman & Mensch, supra note 54, at 239-40. Similarly, the private/public distinction protects acts of greed, competition, and acquisition, legitimizing gross disparities in wealth between men and women as the natural product of free will and private choice. See id. at 246.


58. Universalized legal narratives of family and work are thus critical for understanding legal narratives about women on welfare. See infra Section I.D.; see also Deborah Maranville, Feminist Theory and Legal Practice: A Case Study on Unemployment Compensation Benefits and the Male Norm, 43 HASTINGS L.J. 1081 (1992) (case study revealing how unemployment compensation system based on male head-of-household worker discriminates against women).

The construction of the family—gender roles, child rearing, and socialization—are integral parts of this political economy, as are race and ethnicity. Thus, poverty policy is influenced by and, in turn, influences labor discipline, gender and family roles, socialization, and race and ethnicity. All are part of the ideological construction of welfare policy.

Handler, Political Spectacle, supra note 48, at 906. Handler argues that in the nineteenth century a domestic code developed in which the role of women became firmly entrenched in the private family. The code had serious consequences for poor mothers who had no alternatives
Because men and women today are publicly considered equals, liberal family law focuses on equal rights between marriage partners. Examples of this "equal treatment" are most prominent, however, at the end of the legal relationship of marriage in the way property and children are distributed among the "equal" former marriage partners. But there is "a problem with treating men and women as the same in divorce when the social expectations that have defined their life in marriage have not done so."60

For example, the new equality-based doctrines of child custody ignore the underlying and pervasive inequalities in the market and society at large. In recent years, the presumption of maternal custody for the most part has been replaced by the doctrine of "best interests of the child" and joint custody.61 It is now no longer assumed that childrearing is solely the woman's responsibility. The reversal of that assumption may be laudable from an equality perspective.62 Upon application, however, the new "gender neutral" equality-based factors upon which child custody decisions are based, such as economic status and lifestyle, may not fairly adjudge the experience of some women.

At first glance, joint custody seems like the ideal solution for equally distributing childcare responsibilities after a marriage ends. With the possible benefits, however, can come heavy costs. Men may use the threat of joint custody as a bargaining tool to avoid or reduce child and spousal support or to decrease the woman's share of marital property. Furthermore, in joint custody arrangements, the woman is typically the residential parent with day-to-day burdens and responsibilities, while the

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60. EISENSTEIN, supra note 34, at 69.


man retains effective veto authority over the woman's decisions. For the woman, this can cause insecurity, a reduction in autonomy, or even more severe problems if the man is a former or current batterer or abuser.63

In a recent article, Christine Littleton recounts a story that demonstrates how supposedly equal and neutral custody criteria such as length of residence and economic status have negative effects on women.64 A woman who had sole physical custody of her son was twice thwarted in her attempts to move out of state for family and career reasons by her ex-husband (who had joint legal custody) and by a family court judge. The woman later received her ex-husband's permission to relocate within the state to take advantage of a career opportunity, and the two worked out a three week/one week custodial arrangement. After the son reached school age, the court declared that the son's residence had to be in his father's home county to enable the boy to attend a single school during the year. The court's order forced the woman to leave her new job and move back to her ex-husband's home town in order to maintain primary custody. The court, in effect, perceived the woman as the one disrupting the status quo because it was she who had moved away from the site of the marriage. It mattered little to the court that the woman had always been the primary custodial parent; however, it did matter that her ex-husband maintained a thriving ten-year-old business whereas she was beginning a new career. In essence, the fact of the divorce had little bearing on the traditional narrative of the wife following the husband for his convenience and for the "good" of the family.

This story demonstrates how child custody factors such as economic status and parental lifestyle place many women in a conundrum. Divorce law's conceptual severance of family and market leads courts to undervalue women's noncommercial contributions to the home and to


This dilemma is compounded for women who receive AFDC. AFDC recipients are required to cooperate in child support enforcement actions under the Title IV-D Child Support Enforcement program. 42 U.S.C. §§ 652-659 (1988). A common tactic of men attempting to evade child support responsibilities is to counterclaim or threaten to counterclaim for joint custody or increased visitation. The woman may have no choice but to accept this risk and endure such threats since she is required by AFDC laws to participate in enforcement actions and to testify against the child's father if necessary. See Amy E. Hirsch, Income Deeming in the AFDC Program: Using Dual Track Family Law to Make Poor Women Poorer, 16 N.Y.U. REV. L. & SOC. CHANGE 713, 721-25 (1987-88).

overlook gender inequalities in the workplace. If a woman emphasizes her economic independence in the story she tells to a family law judge, she may fall prey to a suspicion that she does not have time to be a "good mother" or primary custodian because she works full time, while her husband still may be the greater wage earner and enjoy a higher economic status. She thus loses on both factors. If, on the other hand, she emphasizes her time and commitment to take care of her children, she will have to admit dependency on her ex-husband's resources to make a "suitable" home. Because the law pushes women to choose one of two opposing narratives, a woman may be forced to narrate her story in a way that contradicts her experience and perspective. To claim she is both breadwinner and caregiver may cast doubt on her rationality; under the law, it seems, a woman cannot be all things at once.

As breadwinners in the marketplace, women are forced to contend with the difference in the range of occupational choice and employment status between men and women. The limit in occupational choice arises from perceived work/family responsibility conflicts and their impact upon employee roles, which are defined in relation to the male standard. Work/family conflicts are in large measure structural features that result from facially neutral policies and rules. Research shows that the difference in employment status is the consequence of gender bias resulting in systemic patterns of undervaluation, rather than quantifiable differences arising from conflicting family roles. These structural features of

65. See Deborah L. Rhode & Martha Minow, Reforming the Questions, Questioning the Reforms: Feminist Perspectives on Divorce Law, in DIVORCE REFORM AT THE CROSSROADS, supra note 59, at 191, 193.

66. Economic discrimination and double standards as to what makes a good mother and what makes a good father are reasons that women today often lose litigated child custody battles. E.g., National Center on Women and Family Law, Sex and Economic Discrimination in Child Custody Awards, 16 CLEARINGHOUSE REV. 1130, 1130-34 (1983). A recent study shows that in hotly contested custody disputes, women receive sole custody only 46.2% of the time. See Robert H. Mnookin et al., Private Ordering Revisited: What Custodial Arrangements are Parents Negotiating?, in DIVORCE REFORM AT THE CROSSROADS, supra note 59, at 37, 54. Women also may fare no better in child custody mediation due to a rigid orthodoxy about appropriate conduct and what may be said in the mediation setting. See Trina Grillo, The Mediation Alternative: Process Dangers for Women, 100 YALE L.J. 1545 (1991). In both family court and mediation women who are not prepared to give, or who simply cannot give, one hundred percent to their children may be considered undeserving mothers, while men who are prepared to give only a little may be perceived as deserving fathers. See Littleton, "Women," supra note 64, at 43 (citing PHYLLIS CHESLER, MOTHERS ON TRIAL 50 (1986)).

67. See Dowd, supra note 45, at 114; Fineman, supra note 59, at 136; see also Mary Joe Frug, A Postmodern Feminist Legal Manifesto (An Unfinished Draft), 105 HARV. L. REV. 1045, 1059-62 (1992) (discussing legal rules which "maternalize" women by encouraging their family roles while discouraging their market roles).

68. See Rhode, "No-Problem," supra note 42, at 1757-59 (summarizing criticism of
choice and status are present in, and legitimized by, universalized legal narratives of work.

In *EEOC v. Sears*\(^6^9\) the court examined sex segregation in the workplace and interpreted it as free choice. Vicki Schultz persuasively argues that the court in *Sears* merely followed legal narratives about women in the workforce by viewing the absence of women in commission sales as a reflection of women's lack of interest.\(^7^0\) Schultz identifies two distinct narratives flowing through judicial interpretations of employment law doctrine: the "conservative story of choice" and the "liberal story of coercion."\(^7^1\)

In conservative judgment stories jobs are gendered. Nontraditional women's blue-collar work is described in terms such as "hot," "heavy," "dirty," and "physically demanding," and thus "unattractive" and "unappealing" to women. "Once the court describe[s] the work in reified masculine terms, women's lack of interest follow[s] merely as a matter of 'common sense.'"\(^7^2\) Nontraditional women's white-collar work is described in social and psychological terms, with courts invoking the universalized narrative of the woman's role in the family as evidencing a social cause for women choosing lower paying positions.\(^7^3\) Once the court invokes the narrative of the woman's private role in the family, her preference for a complementary role in the workplace is "logical."\(^7^4\)

Unlike the conservative narrative, the liberal one attempts to suppress differences in work preferences between men and women. The liberal narrative rejects the conservative assumption that connects private family roles to the preference for public work roles. Instead, it invokes the image of the woman as victim—the modern woman who is looking for nontraditional work but is irrationally rejected in an otherwise non-discriminatory labor market despite her individual qualifications.\(^7^5\) By

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human capital theories, under which women meet competing job and family demands by making a lower career investment).

69. 628 F. Supp. 1264 (N.D. Ill. 1986), aff'd, 839 F.2d 302 (7th Cir. 1988).


71. *Id.* at 1800, 1806. Deborah Rhode notes that the two opposing narratives result from the perceived need to provide simple causal explanations for complex employment patterns. See Rhode, "No-Problem," *supra* note 42, at 1769.

72. Schultz, *supra* note 70, at 1801-02 (citation omitted).

73. *Id.* at 1802-03.


casting individual women as isolated victims, the liberal story presents plaintiffs as workers unaffected by familial responsibilities or aspirations. Further, it presents defendant employers as independent actors unaffected by deeper social processes that actively shape women's aspirations in the workplace. The liberal antidiscrimination narrative of victim thus ignores social constructions of gender and the resultant work/family role conflicts women often do face.

Universalized legal narratives of victim, work, and family impede and constrain the stories that can be heard in legal fora. Moreover, legal narratives also have a direct, everyday impact on the lives of the poor. I now turn to explore the ways in which the law both shapes and controls the everyday lives of disempowered people who must constantly confront and conform to its dominating presence.

C. Power Over Storylines of the Poor

Universalized legal narratives script the storylines of poor people—their past, present, and future—by influencing their self-perceptions and controlling their lives. Positive manifestations of legal narratives—rules, regulations, and laws—shape the way poor people live, prescribing and deterring actions through law’s presence, absence, and application. Legal principles and categories affect how people define their problems and whether they perceive those problems as disputes involving competing claims or rights. Even when perceiving a dispute as involving a legal problem, disempowered people—who are most likely to suffer injustice—are least likely to seek legal redress. Self-blame coupled with an accurate perception of the trauma of invoking legal processes often deter those who may need legal assistance the most. Additionally, many poor peo-

76. Dowd, supra note 45, at 1809-11.

77. For a classic study of how welfare law controls the lives of the poor, see Frances Fox Piven & Richard A. Cloward, Regulating the Poor (1971). See also Mimi Abramovitz, Regulating the Lives of Women: Social Welfare Policy From Colonial Times to the Present 313-52 (1988) (discussing how welfare programs affect the daily lives of poor women). The understanding that law acts both directly and indirectly on people's lives, prescribing consequences even through its absence, is a fundamental principle of legal realism. E.g., Morris R. Cohen, Property and Sovereignty, 13 Cornell L.Q. 8, 11-12 (1927).

78. See Joel Handler, The Conditions of Discretion 24-25 (1986); Bumiller, supra note 49; White, Sunday Shoes, supra note 22, at 21. The fear of claiming also derives from the treatment of the disempowered as less than autonomous subjects. When coming into contact with state authority, disempowered people have been, and still are, made objects of interventions that override their interests as they define them. See Heller, supra note 30, at 184; see also infra Section III.A. (traditional lawyer practice is to override client perspective and purpose and transform client story into one that fits lawyer perception of legal narrative and harm).
ple, aware of their own financial, social, and perhaps physical and mental vulnerabilities, may not be willing or able to enter into the new dependent relationships necessary to put forth a legal claim.  

The unwillingness of disempowered people to take action on their legal claims or rights is particularly troubling given that many, if not most, aspects of poor people’s lives are affected and constrained by public policy, as enacted and enforced through statutes, rules, and regulations. There is a connection between the hesitancy of disempowered people to assert their claims in authoritative arenas and the control law has over their lives. Because public policy is a reflection of pervasive and dominant preferences, attitudes, and values, the claims of those who are subordinate or marginalized are likely to perish upon contact with the legal system.  

In order to have their claims considered, the disempowered often must adopt (or pretend to adopt) dominant values and attitudes. When they refuse to enlist legal assistance or conform their stories to dominant values and expectations, their narratives remain unheard and their perspectives go unrevealed.  

Rules and regulations controlling poor people are tailored toward bureaucratic administration of their lives in the form of legal entitlements. What is regulated—food purchases, housing space, medical treatment—is “embedded in the context of . . . life-histories and . . . concrete ways of life; it has to be subjected to violent abstraction not merely because it has to be subsumed under the law but in order that it can be handled administratively.” Assistance is granted to those deemed to be worthy—a determination based on universalized narratives and categories that act as proxies of moral worth and need.  

The line dividing the worthy from the unworthy poor (which determines how much and what kind of assistance, if any, the state will grant) is based on attributes that justify public support and protection on the one side, public indifference and sanction on the other. Formal categories of deservedness generally include the disabled, blind, and elderly.

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79. Cf. Handler, Dependent People, supra note 27, at 1082 (noting reluctance of elderly poor to enter into community care health programs due to their multiple vulnerabilities).
80. See, e.g., Harlan Hahn, Public Policy and Disabled Infants: A Sociopolitical Perspective, 3 Issues L. & Med. 3, 14-15 (1987) (negative attitudinal environment of disabled people is reenforced by public policies that historically have allowed disabled persons to perish).
81. For law reform to take place, the narrative perspective and purpose of poor people must be revealed to legal decisionmakers. See infra Section III.D.
82. Habermas, supra note 15, at 203, 210. As bureaucratic social regulation, welfare is a part of the political economy and the federal system. Tensions, ambiguities, and contradictions within welfare regulation of the poor are both caused by and played out in each of these systems. See Handler, Political Spectacle, supra note 48, at 939-43.
83. The worthy/unworthy distinction draws a line between those who are respectable
Formal categories of undeservedness generally include nonworking “employable” single people and heads of households. Many of the presumptively undeserving are single black mothers, and race in conjunction with gender plays a defining, although unofficial, role in state assistance decisions. “[P]eople will greet [ ] black femaleness as unreliable, untrustworthy, hostile, angry, powerless, irrational and probably destitute.”

Those whom the state deems undeserving must work or comply with directives in order to receive any assistance.

For example, homeless persons desiring public assistance must comply with strict regulations that have the dual purpose of control and treatment. Failure to comply with the regulations leads to withdrawal of assistance. If forced back out on the streets, the homeless face further state regulation and harassment for undertaking private acts deemed improper in public. Cities have enacted regulations specifically to prohibit the homeless from undertaking daily survival activities such as sleeping, washing, urinating, defecating, and begging in public spaces, the only areas the homeless—by definition—can be. This policy of containment is an attempt to make public spaces as uninhabitable for the homeless as possible with, for example, fewer and fewer public toilets, barrel- and those who are not. See generally Michael B. Katz, The Undeserving Poor: From the War on Poverty to the War on Welfare (1989).

Traditionally, the distinction between deserving and undeserving poor women has been drawn in terms of their relations to men. Widows are deserving, while abandoned or unmarried mothers are undeserving or at least suspect. Linda Gordon, The New Feminist Scholarship on the Welfare State, in Women, the State, and Welfare, supra note 36, at 18 [hereinafter Gordon, The Welfare State].

WILLIAMS, supra note 6, at 147; see also Marie Ashe, The “Bad Mother” in Law and Literature: A Problem of Representation, 43 Hastings L.J. 1017 (1992) (exploring narratives of the bad or unfit mother in law and literature).

To receive shelter in New York City, for example, homeless persons must accept assignment to segregated shelters that divide the homeless according to “population types” such as the employed, mentally ill, aged, disabled, drug or alcohol dependent, children, and veterans. CITY OF N. Y. HUMAN RESOURCES ADMIN., SEGMENTATION AND ASSIGNMENT TO SHELTER 1-3, 11, 19 (1988) (on file with author) (guide for city social service agencies drafted in pursuance of five year plan for housing and assisting homeless). Under the segmentation system, assignment is mandatory; refusing assignment results in forfeiture of shelter. Id. at 11.

Although this regulated system may enhance administrative ease and control as well as some residents’ safety and comfort, a strict program of segmentation and regulation treats people according to universalized dependency characteristics in a manner that may further destabilize their homeless condition. Due to the oppressive physical and regulatory conditions of shelters, many homeless persons find they have no choice but to seek alternative forms of shelter and assistance. See, e.g., COALITION FOR THE HOMELESS, A FALSE SENSE: A STUDY OF SAFETY AND SECURITY ISSUES IN NEW YORK CITY’S MUNICIPAL SHELTERS FOR MEN 47 (1989); Gary L. Blasi, Litigation on Behalf of the Homeless: Systemic Approaches, 31 J. Urb. & Contemp. L. 137, 141 (1987).
shaped subway seats to prevent sleeping, refuse containers protected by locks and spikes, and park sprinklers turned on at random times during the night. Law's power over homeless persons is pervasive: it denies them the most basic acts of subsistence thereby denying them their basic dignity and freedom.

Because of law's inherent ambiguities and contradictions, individuals administering rules and regulations retain powers of discretion, interpretation, and most importantly, action. Drawing upon organizational theory, Joel Handler has observed that public assistance administrators wield great power and control over recipients and applicants because of their monopoly over benefits distribution. They can use their power to select recipients who satisfy their biases and serve their ideological and professional interests. Individual perceptions, framed by bureaucratic practice, are critical to an applicant's prospects. Those who do not demonstrate required characteristics of dependency or worth may be rejected, terminated, or allowed to wander the bureaucratic procedural maze. The higher an applicant's or recipient's adjudged social worth and prospects for rehabilitation, the more likely aid will be forthcoming and sustained, and the more likely a welfare bureaucrat or caseworker will consider the poor person her client and go out of her way to provide help.

Welfare state interventions in the individual lives of the poor produce many contradictions. For example, to receive assistance, prospective grantees must engage in required expressions of dependence, whether true or not. Stereotypical images within universalized narratives of the poor cause the subjects of those narratives to assume—in order to fit the narrative and put forth an acceptable claim—what for many are

89. The power of action is especially critical for those who are participating in entitlement programs. Because many aspects of their spending and consumption are regulated by welfare rules and requirements, recipients are in perpetual contact with representatives at lower levels of welfare bureaucracy to deal with problems and changes that occur in daily life. Without an empathic and available contact (generally a caseworker), the regulated life of a recipient becomes even more frustrating and tangled.
90. Handler, Dependent People, supra note 27, at 1050-56; cf. infra Section II.A. (discussing lawyer's power of "triage" in deciding whether poor client's case will be accepted).
92. See Handler, Dependent People, supra note 27, at 1054-56.
false characteristics of those images. Some conform their lives to the state-designated mode of dependence; others publicly falsify their private situations to meet the state's requirements.\(^9\) Those who are given assistance are told exactly what and how much they need. As prescribed treatment by bureaucratic experts, welfare often seems to contradict the professed aim of state assistance—the promotion of self-reliance and independence. Instead of complementing the individual and complex contexts of recipients' lives, welfare regulations control, shape, and formalize the lives of recipients.\(^9\)

In conforming their behavior to dominant assumptions and images, the poor adopt an instrumentalist strategy in order to gain access to resources or assistance that would otherwise be denied. When a poor person refuses to play her assigned role or manifest ascribed traits, she "expresses a subtle critique of those stereotypes" by communicating her individuality in the oppressive context of daily survival.\(^9\) When she plays the role, her aim is to please, to avoid confrontation, and thereby to make the best of a bad situation.\(^9\) The specific legal conditions under which state assistance will be granted and subsequently extended pressure her to redefine herself and her relationships.

Women receiving AFDC generally must define themselves as single mothers who live alone and depend on the state to provide their children with the means for subsistence. Thus, publicly the father of the children may be reported unknown or absent, while privately he may be present on a daily basis. Publicly the woman must show she cannot provide a good home for her children without the grace of the state, though privately she may be independent, resourceful, and exhibit the strength necessary to keep her family together and provided for.\(^9\) The tension

\(^{93}\) "There is always resistance on the part of the poor. They have to survive. They struggle to assert themselves, to claim benefits; they try to manipulate the system. [They] experience in their daily lives the contradictions and injustices of the dominant discourse." Handler, Political Spectacle, supra note 48, at 937.

\(^{94}\) Habermas, supra note 15, at 216-17.

\(^{95}\) White, "The Real Deal," supra note 53, at 308.

\(^{96}\) Handler, Dependent People, supra note 27, at 1059 (quoting KATHY E. FERGUSON, THE FEMINIST CASE AGAINST BUREAUCRACY 98 (1984)).

\(^{97}\) I do not intend to imply that single women on welfare have some special power or trait that gives them inherent independence or control. My claim is simply that most poor women have the ability to adapt to circumstances in order to survive and care for their families. Nor do I adopt the myth of "Black Matriarchy" in my focus on welfare mothers in the Section that follows. The image of the powerful Black matriarch was created and sustained by white men in a racially tainted attempt to explain a social situation for which they had great use but no real understanding or experience. See BELL HOOKS, AIN'T I A WOMAN 51-86 (1981). Such images contribute to the contradictions I explore below.
between private realities and public pretenses and requirements forms the core of state welfare contradictions.

D. "Welfare Mother" Contradictions: The Stories of Poor Women

Most Americans think of women—single mothers—when they think of welfare. Nevertheless, when experts, and especially scholars, have examined welfare they have either described it as an ungendered program or as if the sex of those involved in it made no difference.98

"Welfare mother" contradictions arise primarily from ambivalence about public support for nonworking single mothers. They are apparent in programs that offer or condition assistance without regard to what "mother" means; they are manifest in "work for welfare" programs that attempt to prepare recipients for work in a labor market that may pay less than the welfare benefit. These contradictions are expressed in social values and commitments: a single mother's dependence on the state is decried, while a wife's dependency on her husband is not; wealthy married mothers take opportunities to stay home with children, while poor single mothers are forced to work to decrease their dependency on the state. Private dependence is seen as natural, while public dependence is seen as suspect and a drain on the fisc. When poor mothers do not or cannot work, they are subject to government "entitlement" programs that require them to exhaust all resources before applying and then keep them in poverty with subsistence level benefits administered through a stigmatizing and humiliating system.99

"Work for welfare" approaches to mothers' dependency on the state are based on the "male pauper" model derived from the poor laws of England, which presupposed that the poor were poor solely because they did not work. Under the pauper model, the solution to poverty and the way to get freeloaders off the rolls is to force them to work. The model is based on a universalized narrative of the able-bodied white male. Contemporary advocates of the model generally ignore concrete realities of what it means to be a poor single mother in the workplace: prevalent race and sex discrimination in the labor market; sole responsibility for children even while at work; the need for supplementary training and

98. Gordon, The Welfare State, supra note 84, at 9. From a public policy perspective, this blindness to recipient needs is troubling, given that the number of poor households maintained by unmarried women has been dramatically increasing, while the number of poor households maintained by single men or married couples has been decreasing. See, e.g., Diana Pearce, Welfare Is not for Women: Why the War on Poverty Cannot Conquer the Feminization of Poverty, in WOMEN, THE STATE, AND WELFARE, supra note 36, at 265, 265 & n.3 (citing U.S. BUREAU OF THE CENSUS, MONEY, INCOME, AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE UNITED STATES: 1988 (1989)).
education; and needs such as health insurance, day care, and a flexible work schedule. Under the work for welfare rationale, poor mothers must choose between low paying, unrewarding jobs that limit time for family care and development, and continued unemployment and dependency. "Either choice perpetuates her poverty, both of income and of life."

The tension between private choices and public assistance requirements can be seen in a welfare reform effort, the Family Support Act of 1988 (FSA or Act). FSA's primary emphasis is on work rather than income level and family well-being. Supporters of the Act hope it will make single mothers self-sufficient. They focus on a universalized narrative of dependency; their goal is to treat and cure. Some critics of the Act assert that it is based on a dominant vision that equates "independence" with a job, and that it will force poor single mothers to relinquish primary, daily care of their children for low-paying jobs and inadequate childcare. They focus on a universalized narrative of motherhood; their goal is to give poor mothers a choice of whether to work or not.

As Johanna Brenner notes, these competing narratives ignore the possibility of promoting women's independence as individuals while supporting them as mothers. The centerpiece of the FSA is the Job Opportunities and Basic Skills Program (JOBS) which must be operational in every state by October 1992. In the state run JOBS programs, AFDC recipients will receive an assessment of their work skills and then may participate in a wide range of training, education, and work-related activities. The end goal, of course, is to move mothers off of welfare and into permanent jobs. Those

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100. See Pearce, supra note 98, at 269-70.
101. Id. at 275.
106. Id. at 125-29. Brenner calls the competing perspectives a conflict between a "politics of equality" and a "politics of difference." Id. at 102.
who receive jobs are eligible for “transitional” child care assistance and medical care coverage.\textsuperscript{107}

JOBS is a comprehensive “work for welfare” program reflecting a social bargain struck between liberals and conservatives: welfare mothers will have to work under the supervision and command of the state; the state will provide education, training, job placement, day care, and health insurance to make mothers’ participation both possible and meaningful and to ensure their ultimate independence.\textsuperscript{108} Thus, in return for AFDC recipients’ labor, the state is to provide various supports and opportunities. This reform consensus was forged out of a frustration over seemingly open-ended entitlements, a feeling that welfare without strings attached encourages dependency in mothers, which is passed on to their children, and a belief that in tough economic times citizens ought to contribute and not just receive.\textsuperscript{109}

Joel Handler has identified five broad themes running through the Act: responsibility, work, family, education, and state discretion.\textsuperscript{110} Although the five themes sound sensible enough, the universalized narrative on which they rest is based on stereotypes and assumptions: jobs are available for those willing to take them, but welfare enables recipients of government largesse to maintain high standards about what jobs are acceptable. This understanding comports with the male pauper narrative and focuses on individual character flaws rather than structural conditions.\textsuperscript{111}

Thus, although the provisions of the FSA are infused with the rehabilitative purposes of personal development, independence, and responsibility, the rehabilitative rhetoric is contradicted by increased discretionary control and regulation of recipients’ personal lives and their families.\textsuperscript{112} Without adequate funding and wholehearted implementation by the states—not mandated by the FSA—the JOBS work requirement may burden poor mothers without guaranteeing them necessary supports and opportunities.\textsuperscript{113}

\textsuperscript{107} For a fuller description of the JOBS program, see Greenberg, \textit{supra} note 103, at 432-44.
\textsuperscript{108} See Handler, \textit{Transformation of AFDC, supra} note 91, at 463.
\textsuperscript{109} See \textit{id.} at 466-67.
\textsuperscript{110} \textit{Id.} at 506.
\textsuperscript{111} \textit{Id.} at 489, 509.
\textsuperscript{112} \textit{See id.} at 466-67.
\textsuperscript{113} \textit{See id.} at 520; Greenberg, \textit{supra} note 103, at 441; Paul Taylor, \textit{Moynihan Urges Training for Welfare Recipients, Bill Offered as Challenge to Administration, WASH. POST, Feb. 29, 1992, at A14} (noting that “welfare dependency” has been a focus of resentment in 1992 presidential election campaign, but that states have used only 75\% of available federal funds for JOBS program).
For example, in the JOBS program states have sweeping discretion to decide who must participate in the program ("workfare"), and who is allowed to participate in the program. Failure to participate when commanded to do so will result in serious sanctions; failure of the state to provide adequate education and job opportunities under the Act may prove difficult to challenge. By allowing states to exercise virtually unbridled discretion, the Act invites bureaucratic application of universalized narratives regarding the worthy and unworthy poor to individual program decisions. The likely result:

The overwhelming majority of recipients will somehow be shunted out of the system. They will be declared "inappropriate for referral" or put on hold, and the bureaucrats will go on as before. Faced with fewer policy options because of reduced funding, agency staff will either have to try to force recipients into unpleasant choices or impose sanctions.

A welfare work program that purports to provide supports and opportunities for poor mothers (and hence a better life and opportunities for their children), but which in operation cannot guarantee beneficial choices (and hence autonomy), is contradictory to the professed goals of family support and independence.

114. See, e.g., 42 U.S.C. § 602(a)(19)(E)(i) (1988) (state required to provide learning program only if "State resources otherwise permit" and custodial parent has not yet completed high school); id. § 602(a)(19)(F)(iv) (state determines what amount of day care and transportation costs are necessary and eligible for federal reimbursement); id. § 602(g)(1)(A)(i)-(ii) (each state must "guarantee" child care, but only to extent determined by state); id. § 682(b)(1)(A) & (B) (state must make individualized "employability plan" for each participant based on assessment of prior work experience and skills as well as on educational, child care, and other needs; such plan need only reflect preferences of participant "to the maximum extent possible"); id. § 682(e)(2)(C) (state may adjust standard of need in "work supplementation program" based on state's determination of what is necessary); id. § 682(e)(3)(B) (state determines who may participate in work supplementation program); id. § 684(a)(4) (in assigning participants in work program and in providing support services state need only ensure conditions of participation are "reasonable"); Greenberg, supra note 103, at 439-41, 444 (although JOBS requires states to implement certain programs, there are no resource, participation, or quality of services requirements); Handler, Transformation of AFDC, supra note 91, at 502-06, 515-16 (under FSA states retain discretion to decide who will participate, and Act's waiver and option policies give local programs incentive to reduce costs by requiring work without providing full supports and opportunities possible, but not required, under Act).

115. Greenberg, supra note 103, at 432-42. "There have always been many more volunteers, even among the so-called hard to employ, than slots and jobs [under work for welfare programs]." Handler, Transformation of AFDC, supra note 91, at 516.

116. Handler, Transformation of AFDC, supra note 91, at 518. For an assessment of what is necessary to turn the "paper success" of the FSA into reality, see id. at 516-18. On storytelling possibilities and imperatives under a welfare system dominated by individual discretion, see infra Section IV.C.
The FSA's structure and requirements are an example of law's pervasive regulation and dominance over poor mothers' lives. Lucie White identifies three themes of this pervasive legal control: intimidation—the fear that assistance may be terminated at any time, preventing the initiation of any actions which might displease the regulators; humiliation—the stigma of receiving welfare and being dependent, causing a lack of confidence to assert claims and make defenses; and objectification—the position of being a categorical recipient and having others ordain what is required and relevant. The fear and intimidation lies not just in the threat of having assistance cut off, but also in having children removed by the state on the ground that their mothers can no longer meet state-imposed standards of care. Poor mothers may be placed in a catch-22 situation: desiring to call on the state for assistance for their children but dreading to do so for fear of calling attention to their impoverishment. The resulting contradiction is that the intimidation, humiliation, and objectification suffered by women receiving welfare may cause them to take actions least conducive to eventual independence from the state. Instead of holding out for educational opportunity and a good stable job, they may be forced to turn back to an abusive or unreliable male supporter or to accept a bad or unsafe job with low pay and no opportunity for advancement.

Despite the public control over their lives, there is evidence that women on welfare retain private dignity in their daily struggle to survive. A

117. The extent of control and regulation is determined in part by the type of assistance awarded. In-kind benefits, rather than cash assistance, give the state maximum control over recipient behavior. Gender often plays a role in policy decisions regarding which form of assistance is granted. See Brenner, supra note 105, at 105.

118. White, Sunday Shoes, supra note 22, at 32-44.

119. See, e.g., Gordon, The Welfare State, supra note 84, at 189 (child protection regulations make poor women vulnerable by calling into question the quality of their mothering); Stanley S. Herr, Children Without Homes: Rights to Education and to Family Stability, 45 U. MIAMI L. REV. 337, 359-60 (1990-91) (homeless mothers avoid contacting state welfare agencies for assistance out of fear of having children removed to more "stable" foster care); Hirsch, supra note 63, at 733-34 (problems arising from financial vulnerability create risk of state charges of neglect).

Marie Ashe retells the biblical story of King Solomon, in which two unnamed women ("harlots") and their competing claims of being the one true mother of a baby are brought before the King. By invoking the dual power of word and sword, Solomon decides which is the true mother—the one who unselfishly gives up her claim rather than allow the King to divide the baby in two. Marie Ashe, Abortion of Narrative: A Reading of the Judgment of Solomon, 4 YALE J.L. & FEMINISM 81, 83 (1991) (quoting 1 Kings 3:16-28 (King James)). Ashe asks, what if the other woman, the one who refused to give up her claim, was the true mother? "What if she was misjudged? The question strikes us almost as unthinkable." Id. at 88. Like the state today, Solomon had the power to decide the fate of two women and a child by transforming complex relationships and claims into simple, certain, absolute choices.
large part of that struggle is exerted in unrecognized work as facilitators in the welfare economy.

[W]elfare clients must work to collect their entitlements, and women do a disproportionate amount of this work . . . . Medical aid, aid for the disabled, programs for children with special needs, indeed educational institutions altogether assume that women will be available to make it possible for the aid to be delivered: to drive, to care, to be at home for visits, to come to welfare offices.\(^{120}\)

On occasion women speak out about the frustration, indignation, and humiliation they must endure in their struggle as welfare facilitators.\(^{121}\) But usually they do not; for in order to protect themselves in their interaction with the welfare state, women learn to play the subordinate role the state expects, and perhaps even demands. That assigned role perpetuates their subordination, transmuting characteristics such as caring, accommodation, and altruism into evidence of dependency requiring alleviation through state assistance.\(^{122}\)

Frances Fox Piven points out that despite the domination and control of welfare regulations and bureaucratic processes, welfare can provide an opportunity for women to exercise power and autonomy absent from dependent relationships with men.\(^{123}\) This reverse contradiction highlights the weak position of women in the family and the market and suggests that the limited protection women receive from their state entitlements helps to offset their deteriorating private and economic status. State entitlements reduce fears that mothers and their children will go hungry and homeless if the mother gets fired, quits her job, or ends a private dependent relationship to escape abuse or neglect. Thus, individual and collective acts of speaking out may not be the hopeless expres-
sions of helpless people; they may be the demands of people who believe both in their rights and in their ability to assert those rights.124

Women on welfare living in the same housing project or on the same block, or in related but physically distinct households, also engage in private collective actions of mutual self-help. Network help arrangements provide shared meals, transportation, child care, clothing, cash, and food stamps for getting through daily struggles or specific emergencies.125 Because of this reliance on community assistance, administrative relocation of women on welfare that separates them from established help networks is particularly damaging, though typically ignored or overlooked by both bureaucratic experts and poverty lawyers.126 In the next Part, I reflect on some of the reasons why poverty lawyers often fail to observe such details in their clients’ lives and stories.

II. Receiving Client Stories

For the poverty lawyer pressed for time and resources, the poor client is often but a file number or case name. Except for the immediate events leading up to the client’s legal problem, the lawyer typically does not inquire about the client’s life and history. Entanglement with the details of poor clients’ lives is perceived as too costly in terms of time and energy, outside the lawyer’s role, and an impediment to the lawyer’s job. As a result, the poverty lawyer may not comprehend the relevance of the narratives that compose the stories of poor clients’ lives.

A. The Storytelling Setting

Poor clients come to poverty lawyers because they have no other choice.127 Although there are mutual trust problems in any attorney-

124. Id. at 258; see Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2117-18 (recounting Mrs. Celeste’s faith in and invocation of rights); Sarat, supra note 5, at 346 (poor people retain power to respond to welfare state intransigence and injustice); infra Section II.B.(2) (“rights talk” of poor clients).

125. See CAROL B. STACK, ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY 90-107 (1974); Fraser, supra note 36, at 215-16; see, e.g., Alfieri, Speaking Out of Turn, supra note 121, at 640-41 (recounting how Josephine V. turned to community of family and friends when welfare fell below level necessary to meet needs of herself and baby).

126. Cf Pearce, supra note 98, at 273 (geographic isolation of poor single mothers in housing projects and segregated communities limits employment opportunities of women and educational opportunities of their children).

127. Corporate and other paying clients often utilize lawyers and the law as means to increase their own welfare or to defeat like-minded people who are attempting to do the same at their expense. Corporate clients typically go to their law firm saying, “I want to do this, tell me how.” In contrast, poor clients go to a legal services office asking, “This is what they are doing to me, what can I do?”
client relationship, the indigent client is placed in a particularly vulnerable position: on the one hand, she has no choice but to place her trust in the legal services office; on the other hand, the legal services office looks and acts suspiciously like the welfare bureaucracies in which the client likely has become entangled.

At the legal services office, the poor client typically stands in line, receives a number, fills out forms, waits in a crowded reception area, and deals with several levels of personnel before talking to a decisionmaker (if she talks to one at all). She is asked a standard set of background questions that may only scratch the surface of her story and problem and may be given little opportunity to expand on her answers or respond with her own questions. The core of the relationship, if established, is lawyer control and client compliance, lawyer dominance and client subordination.

Prospective poor clients are often screened out and sent away through the process of "triage," a method of case selection necessitated by resource and time scarcity. In triage only the "best" cases or most worthy clients are selected. Practitioners and scholars have attempted to construct a principled method of client selection, given resource constraints. These attempts focus on normative dilemmas and efficiency concerns of the lawyer; consideration is rarely given to the effects on the

128. See Robert A. Burt, Conflict and Trust Between Attorney and Client, 69 Geo. L.J. 1015 (1981). Burt points out an intrinsic disharmony of interest between the lawyer and paying client—as the client's trouble and woe increase, so too does the lawyer's potential enrichment. Id. at 1021. A similar disharmony exists in the poverty law context; the worse the situation is to the client, the "better" the case may be for the reform-minded poverty lawyer.

129. See Sarat, supra note 5 (recounting stories of poor people in search of legal assistance); Paul R. Tremblay, Toward a Community-Based Ethic for Legal Services Practice, 37 UCLA L. Rev. 1101, 1104-1110 (1990) [hereinafter Tremblay, Toward a Community-Based Ethic] (discussing phenomenology of legal services practice as "street-level bureaucracy").

130. See Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2111-13 (detailing interaction in legal services office).

131. Tremblay, Toward a Community-Based Ethic, supra note 129, at 1104 ("[T]riage [is] a practice of distinguishing among several clients in determining which should receive what level of service, acknowledging that each cannot receive an unlimited delivery of service.").

132. See, e.g., Gary Bellow & Jeanne Kettleson, From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice, 58 B.U. L. Rev. 337 (1978) (offering justification for case, issue, and client selection and denial based on norms and principles in Model Code of Professional Responsibility); Marshall J. Breger, Legal Aid for the Poor: A Conceptual Analysis, 60 N.C. L. Rev. 281 (1982) (advocating neutral selection criteria for choosing clients regardless of perceived comparative utility of cases); Tremblay, Toward a Community-Based Ethic, supra note 129 (arguing for "community-based" selection criteria grounded in lawyer's perception of values and needs of pool of clients served); see also Paul R. Tremblay, Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy, 43 Hastings L.J. 947 (1992) (advocating future oriented approach to poverty law practice that sacrifices "short-term" gains for individual clients in favor of "long-term" benefits for communities of disempowered peo-
lawyer-client relation and how "triaxe mentality" influences both lawyer and client perceptions of the client's problem and the issues at stake. Although the lawyer may feel some connection with clients who meet the law office's definition of "worthy"—most likely based on community norms as determined by the law office—satisfaction with the value of cases is different than understanding poor clients' stories and therefore their needs.

Triage is made possible by the dominant/subordinate positions of the poverty lawyer and her poor client. Both the prospective client and the lawyer understand that the client can give the lawyer no material compensation for time and resources. This grants the lawyer total control over the initiation, duration, and direction of the lawyer-client relationship; it also stands in contrast to the power position of the paying client who comes to a lawyer willing and able to pay for legal assistance. The prospect of monetary exchange encourages the lawyer to hear the prospective client's entire story before deciding whether to take the case. The relationship between the client's money and the lawyer's willingness to listen provides at least a partial balance of power at the initiation of the relationship.

In traditional poverty law practice, answers to a standard set of preliminary questions usually determine whether prospective clients have claims meriting the legal staff's time and energy. A client's failure to give the right answers, or her insistence on telling her story in a manner inconsistent with the question and answer pattern, may result in her being turned away as hostile or uncooperative. If accepted, a client is subjected to second-order triage: she is classified as a case-type and continues to compete with other clients for scarce time and office resources. If the lawyer determines that a new case is more urgent or poses a greater threat to higher values, a client may be "reallocated" or "deprioritized." It is in this setting that the client attempts to tell her story.

B. Client Narrative

A poor client's visit to the legal aid office is but one moment in her life history—a history composed of an unfolding chain of stories that...
may be retold through a series of interconnected narratives. In telling
her story, a client speaks in a narrative form that draws upon past events
and experiences embedded in other stories composing the text of that
client's life. The story the client attempts to tell the lawyer has a plot
already configured and characters already cast. Although the whole of
the client's story might not seem rational, or legally relevant to the law-
yer, to the client the story is organic, if not certain and logical.

(1) Elements of the Client's Story

The narrative perspective from which the client tells her story is
grounded in an amalgamation of experiences and multiple identities.
"[R]ealities experienced by [a] subject are not in any way transcendent or
representational, but rather particular and fluctuating, constituted within
a complex set of social contexts."137 A client's social context includes
various overlapping roles and identities. For example, a client who walks
into a legal services office might be: impoverished, African-American, a
single mother, a food stamp recipient, a run-down tenement resident.
Attached to each role and identity are interwoven experiences and en-
counters which compose that client's subjective essence. The narrative
perspective through which she tells her story draws upon images and
experiences contextualizing the events surrounding the legal problem and
connecting them to other events in her life.

The client has come to the legal services office because she has iden-
tified (or someone has convinced her that there is) some type of legal
problem involved in her story—a problem she believes is addressable by a
lawyer.138 The legal problem precipitating the visit to the lawyer's office
could be a child welfare agency's attempt to place a child in foster care, a
food stamp reduction, a denial of AFDC, or an eviction notice. Because
the legal problem is not an isolated event, the story the client tells about
the problem necessarily intersperses narrative material drawn from each
role and identity of the client's life, giving meaning and context to the
legal problem.

136. Thomas L. Shaffer, Christian Lawyer Stories and American Legal Ethics, 33 MERCER
137. Katharine T. Bartlett, Feminist Legal Methods, 103 HARV. L. REV. 829, 877-78
138. But cf. Cunningham, A Tale of Two Clients, supra note 22, at 2482 ("[The client's]
inability to speak the language of the law prevents her from knowing her experience as a legal
event.") (emphasis in original). While the client may not know if she has a good case or claim
before talking to the lawyer, her act of coming to the lawyer must be because she has some
sense that she needs to invoke "the law," whatever it may be.
The legal problem is an outward manifestation of an interaction, relationship, or brief encounter that became a dispute. The dispute is a social construction built from the relative social positions of the client and the person or authority with whom the dispute has arisen. The origins of the dispute are traceable to events occurring prior to the notice of eviction, entitlement reduction or denial, or hearing notice. The beginning of the story is not the point where the dispute became unresolvable. Lawyers, recognizing this, conduct interviews with clients about past communications and interactions.

In focusing the interview on the legal problem, however, the lawyer may elicit a story from the client that imposes an artificial beginning, middle, and ending on the client's narrative of the dispute. The beginning of the story from the client's perspective may lie well before the point of contact with the welfare agency or landlord. Instead, the natural narrative beginning might be a job loss, departing spouse, fire at a previous apartment, or numerous and frustrating attempts to communicate with an uncaring or uncomprehending caseworker. How the lawyer elicits the client's story will influence what story the lawyer hears, which in turn will prescribe the legal strategy chosen and the form and effect of any legal remedy obtained.

The legal strategy chosen by the lawyer focuses on possible remedies for the client's injury or prospective harm. The lawyer's understanding of the client's injury is derived from the story the client tells during interviewing sessions. Bent on extracting the most efficient account of the client's story, the lawyer hurriedly moves the client along her narrative stream, stopping to glean bits of information about the legal problem, casting away narrative "static" about aspects of the client's life the lawyer perceives as immaterial. The lawyer typically understands the client's injury or prospective harm to be what traditional legal remedies might cure. Although the client went to the law office looking for legal assistance, the client's injury or prospective harm—from the client's per-

140. See Kim Lane Scheppele, Foreword: Telling Stories, 87 MICH. L. REV. 2073, 2094 (1989); infra Section II.C.
spective—may be far more complex than simply a denial of benefits or the prospect of eviction.\footnote{142}

(2) Rights Talk

Like most clients, poor clients attempt to tell their stories to lawyers in order to persuade them that they are in the right and the other side is in the wrong. Understanding their public disempowerment, poor clients speak the language of rights as a way to make claims against others and to convince themselves of the rightness of their claims.\footnote{143} Realizing their dependency on the lawyer and sensing (or being informed of) the poverty law office's triage structure and mentality, poor clients use the language of rights to make pleas for lawyer attention, time, and commitment. The "rights talk" of clients has the potential for providing a common ground (if not a common language) for communication and can infuse lawyer-client conversation with a dialectic quality.\footnote{144}

When poor clients make public claims, they tell stories about the unjustness of the injury they have suffered (or may suffer) arising from the deprivation of fundamental needs such as housing, food, security, education, or respect. Not all need deprivations can be transformed into formally cognizable constitutional, statutory, or common-law rights claims. Only needs or interests whose satisfaction is secured by a corresponding duty of others are rights in the formal legal sense.\footnote{145} But any

\footnote{142. See, e.g., Alfieri, Speaking Out of Turn, supra note 121, at 643 (statement of client in administrative hearing describing indignation and frustration she suffered at hands of income maintenance workers who ignored requests for additional assistance, failed to provide information regarding possible emergency assistance, and put her through numerous hardships as a result of rude and uncaring treatment); Clark D. Cunningham, Representation as Text: Towards an Ethnography of Legal Discourse, The Lawyer as Translator, 77 CORNELL L. REV. (forthcoming 1992) [hereinafter Cunningham, The Lawyer as Translator] (manuscript at 31-35, on file with author) (statement of African-American client explaining that his real injury was assault on dignity and honor committed by white police officers who arrested him on charge of disorderly conduct); Cunningham, A Tale of Two Clients, supra note 22, at 2466-67, 2492 (insistence of inmate client that his case was about fundamental unfairness of prison disciplinary system and not about procedural violations during disciplinary action taken against him); Sarat & Felstiner, Law & Social Relations, supra note 141, at 764 (indicating that clients of divorce lawyers have strong need for moral vindication as well as no fault settlement).

143. See Sylvia Law, Some Reflections on Goldberg v. Kelly at Twenty Years, 56 BROOK. L. REV. 805, 816-17 (1990) [hereinafter Law, Reflections on Goldberg v. Kelly] (poor clients like rights more than "fairness" and "empathy" because of their fixed nature); Minow, Interpreting Rights, supra note 13, at 1867. Rights claims of poor clients are often demands for respect, dignified treatment, or the simple right to know. See Sarat, supra note 5, at 359-65.

144. Handler, Dependent People, supra note 27, at 1096; cf. White, Sunday Shoes, supra note 22, at 46 (lawyer talk of rights and justice may offer client vindication as well as remedy).

claim phrased in the language of rights is grounded intuitively in at least two perceptions. The first is that the deprivation is an unjust constraint on a personal and legitimate interest; the second is that the claim outweighs any counterclaim. In recognizing that a dispute may involve a legal problem and in coming to the legal services office for help, clients exhibit a belief that what is being done to them (the injury) is wrong and that they have claims to assert in defense. The substance of the connection the client makes between her perspective, the dispute, the legal problem, her injury, and her rights is the narrative material of the client's claiming story.

"Rights" have a dual character and meaning. The first is the traditional judicial reading of socially and politically recognized claims backed by the threat of state coercion: a recognized claim brings state intervention on the claimant's behalf. This first meaning of rights isolates and identifies rights claims as counterposed and competing. A valid claim is one that can be abstracted and fit into an authoritative legal category that places a demand for action upon the state or another.

Critics of rights have argued that the diversion of claims or competing interests into abstract categories of rights serves two useful purposes for the powerful: diffusion of social discontent into theoretically or doctrinally based conflicts (thereby impeding social movements and social progress); and legitimization of indeterminate dispute outcomes. Because rights are believed to be at the core of both social and individual-state relations, individuals tend to view their interactions with others and the state as enabled by and contingent upon the existence of rights. Rights thus mediate direct interpersonal connections, impede constructive dialogue, and promote alienation by acting as impersonal channels for action. Critical scholars have exposed the resulting liberal "myth" welfare state are "distributive rights." Such rights differ from other types of rights because they interfere with the unregulated allocation of goods and services in society and protect the less powerful from the more powerful through government intervention. Id. at 163.


148. See, e.g., MARY ANN GLENDON, RIGHTS TALK: THE IMPoverishment of PolitIcal Discourse (1991). Martha Minow has observed that, in his opinions Justice Powell treated rights as "defining and accentuating the distances between people" and as creating "conflict and adversarial relations between" claimants. MINOW, supra note 40, at 290 (citing Goss v. Lopez, 419 U.S. 565, 584 (1975) (Powell, J., dissenting)). The invocation of rights, however, is evidence of conflict, not the cause of it. Id. at 292-93.

Under the traditional liberal vision of rights as protecting the individual against abuses of
about rights: to seek community redress, one first must secure state recognition of a right. Only then is a petition for redress considered valid, and only then is harm remedied through enforcement of the secured right. The result is a linkage between individual action, conflict, rights, litigation, and remedy.\textsuperscript{149} The critical account of rights is thus one of universalized legal narratives. It is an account of how law constitutes roles and shapes the way people view their relationships with each other and the state.\textsuperscript{150} It is also an account whereby lawyers, constrained by legal doctrine and principles, must fit client struggles and claims into established categories that are based upon abstracted past experiences.

The problem, however, is not that rights discourse is constricting; it is that the discourse takes place in a restricted universe.\textsuperscript{151} Rights critics are as amiss as liberal positivists for failing to incorporate the unconstrained, everyday meaning of rights grasped by disempowered clients who walk into the offices of poverty lawyers. This second meaning of rights is more tentative and colloquial, and is referred to spontaneously, often far away from legal institutions.\textsuperscript{152} There, rights are assertions expressing self-definition and affirmation connecting individual claimants to the larger community and society.\textsuperscript{153} "For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of humanity: rights imply a respect which places one within the referential range of self and others, which elevates one's status from human body to social being."\textsuperscript{154} The experiential, everyday meaning of rights encompasses the belief that one should not be abused, mistreated, taken advantage of, harassed, insulted, or denied access to the means for securing life's necessities without adequate justification.

the collective, the personal nature of rights isolates disempowered individuals, negating their right to call on the community for help, and "transform[s] the social reality of poverty into a believed fantasy about autonomous choice, in which poverty results from individual failure." Freeman & Mensch, supra note 54, at 239.


\textsuperscript{150.} See supra Section II (discussing composition, consequences, and power of universalized legal narratives).

\textsuperscript{151.} \textsc{Williams, supra} note 6, at 159.

\textsuperscript{152.} See \textsc{Minow, supra} note 40, at 308; Barbara Yngvesson, \textit{Inventing Law in Local Settings: Rethinking Popular Legal Culture}, 98 YALE L.J. 1689, 1692 (1989) ("In a culture dominated by a liberal legal ideology of rights, there are many ways in which 'rights' can be used and understood.").

There are other conceptions of rights that may not fit neatly into the two meanings I have identified here. \textit{See}, e.g., Winter, \textit{supra} note 30, at 1214-17 (under "source-path-goal schema," legal rights understood in terms of appropriate behaviors designated by law).

\textsuperscript{153.} \textit{See}, e.g., Schneider, \textit{supra} note 51, at 611, 620-22.

\textsuperscript{154.} \textsc{Williams, supra} note 6, at 153.
In this sense, rights are about actions of real people as they make their way through life, and are meaningful only when located in lived experiences. Expressed in the language of poor clients, rights talk communicates meaning, purpose, and dissatisfaction, and affirms human value, dignity, connectedness, and identity. It is this second meaning of rights that gives normative power to client-asserted stories, a power often overlooked in the lawyer's rush to identify and isolate legal problems.

By coming to the law office, poor clients express a willingness to participate in public resolution of their disputes while demanding consideration and justification of detrimental actions taken against them. Their rights claims are both linked to and dependent on corresponding obligations and responsibilities of others in the community or society. Because of this dependence and linkage, rights as claims are to a degree contestable, indeterminate, unstable, and necessarily contextualized and dialectic. The instability and uncertainty of the client's own perception of her rights, the context giving rise to her claim, and the best argument she can muster under the circumstances to persuade others of the rightness of her position are intertwined components of the narratives through which the client tells her story.

C. Eliciting and Receiving the Client's Story

When a potential client walks into a poverty lawyer's office, she brings with her an agenda and perspective different from the lawyer's. The client may be angry, scared, frustrated; the lawyer hurried, distant, observational. At the initial interview, the client is uncertain what her role will be in the interaction that will follow; the lawyer, however, has a set routine designed to get information from the client necessary to decide whether or not there is a "case." As the client begins to tell her

155. In this respect, rights "articulate a vision of entitlements, of how things might be." Hunt, supra note 149, at 325-26. This is the motivating force behind the growth of the international human rights movement over the last fifty years. See, e.g., Christopher P. Gilkerson, Human Rights and Refugees in Crisis: An Overview and Introduction, 2 INT'L J. REFUGEE L. 1 (special issue 1990) (advancing human rights perspective of refugee crises based on perspectives of refugee populations and individuals); Charles A. Reich, The Individual Sector, 100 YALE L.J. 1409, 1444-45 (1991) (observing that human rights causes have in common an upward evaluation of the individual within a more diversified, inclusive community).

156. See Handler, Political Spectacle, supra note 48, at 999-1113; Minow, Interpreting Rights, supra note 13, at 1867, 1884; Simon, Invention and Reinvention, supra note 147, at 29; Roberto M. Unger, The Critical Legal Studies Movement, 96 HARV. L. REV. 561, 597-615 (1983) (arguing that assertion of rights can lead to social transformation by identifying interrelationships between individuals and their communities).
story, the lawyer joins with the client in an interpretive act that shapes the form, substance, and meaning of the story told and heard.\textsuperscript{157}

The method the lawyer employs to elicit the client’s story shapes the story’s substance and conclusions.\textsuperscript{158} The lawyer-client interpretive interaction defines and redefines their individual perceptions of the legal problem, dispute, and injury—perceptions shaped by each participant’s expectations and preconceptions of the other.\textsuperscript{159} The lawyer hears the story in her own narrative voice, arising from a perspective that is shaped by legal training and practice, as well as personal bias and history. In this way the lawyer filters the client’s story through her own experiences and hears a story that may be different from the one the client intends to tell.\textsuperscript{160}

Part of the lawyer’s filter is her knowledge of, and previous encounters with, universalized legal narratives. By focusing on the legal problem, the lawyer selectively hears and amplifies information pertinent to universalized narratives she believes are implicated by the client’s story. Other aspects of the client’s story are seen as irrelevant and are ignored as static impediment to the client’s narrative flow. Clark Cunningham gives one such example. He tells the story of a former client who was arrested for disorderly conduct after two police officers first stopped him for running a red light and then frisked him.\textsuperscript{161} Cunningham immediately perceived the encounter as an improper “stop and frisk” that had escalated into a pretextual arrest. By focusing on the legal problem, Cunningham circumscribed his advocacy strategy in an effort to best fit his client’s case into a legal narrative of improper search and seizure.\textsuperscript{162}

Cunningham reports that upon a lengthy reexamination of the case (prompted by the client’s announced dissatisfaction with the way his lawyers, the judge, and the judicial process had treated him), he found that


\textsuperscript{158} Cf. Bartlett, supra note 137, at 844-45 (discussing way in which legal methods shape substance and determine outcomes).

\textsuperscript{159} See Felstiner et al., supra note 139, at 645-47.

\textsuperscript{160} See Naomi Cahn, Defining Feminist Litigation, 14 HARV. WOMEN’S L.J. 1, 19 (1991) [hereinafter Cahn, Feminist Litigation].

\textsuperscript{161} See Cunningham, The Lawyer as Translator, supra note 142.

\textsuperscript{162} \textit{Id.} (manuscript at 8-14, 118).
he had overlooked much in the client's original telling of his story. For example, Cunningham failed to take full account of his client's narrative perspective as an African-American determined to receive respectful treatment when pulled over by white patrolmen in a wealthy white community at 4:30 in the morning. In fitting the client's story into a narrative of improper search and seizure, Cunningham realized that the best chance of winning the case was to establish a defense that would succeed even if the police officers' version of the facts were accepted as true. He thus failed to notice details about the dispute between the officers and his client that tended to demonstrate that the police were lying about the confrontation and possibly covering up an improper racial motive.

By focusing solely on what he perceived to be the legal problem, Cunningham failed to recognize that the client's perception of his injury was not the misdemeanor citation for disorderly conduct. Rather, the injury was the injustice of having his honor and dignity violated. As Cunningham himself puts it, he failed to understand his client's fundamental complaint: The troopers had stopped him because he was Black.

The above case is an everyday example of the imposition of lawyer pre-understanding onto client narratives. "Pre-understanding is a method of social construction" through which the poverty lawyer applies universalized legal narratives to events and meanings in the client's story. Legal discourse and knowledge focus the lawyer's attention on one aspect of the client's narration of her story—the legal problem. Through identification and isolation of the legal problem, the lawyer commits an interpretive act of naming the client and the harm to be remedied. The law and legal training provide the lawyer with a holistic way

163. Id. (manuscript at 101-03).
164. Id. (manuscript at 8-9).
165. Such details included how the troopers behaved, how the client felt about the confrontation, that the pretext later given by the troopers for stopping the client—running a flashing red light—was never told to the client at the time of the incident, and problems the client had been having with his clutch which caused the client to be certain that he in fact had come to a complete stop at the light. Id. (manuscript at 111-12).
166. Id. (manuscript at 31-42).
167. Id. (manuscript at 112-15).
168. Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2123 (citing Paul Ricoeur, Hermeneutics and the Human Sciences 81, 89-90, 110, 178, 243 (1981)); cf. Stanley Fish, Consequences, in Doing What Comes Naturally, supra note 32, at 315, 316-17 (describing "local hermeneutics" as standard rules of thumb whose application varies with contextual circumstances); Stanley Fish, Introduction: Going Down the Anti-Formalist Road, in Doing What Comes Naturally, supra note 32, at 1 (discussing "presupposition" as element of speaker's interpretation about what he is saying) (quoting Ruth Kempson, Presupposition and the Delimitation of Semantics (1975)).
of talking about client events—a discourse—in which semantic categories define and divide social interactions into legal problems. The client story the lawyer constructs is an account rendered to fit within universalized narratives selected from the lawyer's professional knowledge of semantic categories embodying assumptions and core beliefs.169

Furthermore, the hierarchical relationship between dominant lawyer and dependent client affects the client's telling of her story. The client's narrative is continually halted and reordered as the lawyer interrupts and questions in order to zero in on the legal problem as defined by the lawyer. It is the lawyer who controls the flow of the story, devaluing as narrative static details deemed irrelevant. In the lawyer-client interaction, the lawyer has the power to consign the client to a singular role, such as food stamp recipient, tenant, or welfare mother, and to identify the client with an assigned universalized character trait such as "dependent," "incapable," "helpless," and "passive."170 It is the lawyer who names the client, legal problem, and harm to be remedied.171 In response the client, knowingly dependent on the lawyer, may conform her story to the one the lawyer is attempting to elicit, and may accept her assigned role and identity without argument.172 Thus the lawyer may misapprehend what the client wants and needs, and may instrumentally silence the client's narrative in order to establish a legal problem and solution (and hence goal) familiar to the lawyer.

In order to recognize what disempowered clients mean, want, and need, the poverty lawyer must relax her interpretive stance in order to

169. See Cunningham, The Lawyer as Translator, supra note 142, (manuscript at 64) (discussing "ethnomethodology," a blend of linguistics and ethnography); cf. Geertz, supra note 17, at 141 ("The pretense of looking at the world through . . . a one way screen, [of] seeing others as they really are . . . is itself a rhetorical strategy, a mode of persuasion . . .").

The connections between narrative, language, and discourse have been studied in the context of other bodies of knowledge as well. See, e.g., Suzanne Poirier & Daniel J. Brauner, Ethics and the Daily Language of Medical Discourse, HASTINGS CENTER REP., Aug.-Sept. 1988, at 5 (structure of medical case report and biomedical language of diagnosis and treatment constrains and distorts substance and meaning of patient stories).


171. See, e.g., Merry, supra note 12, at 4 (naming action or event is act of power); Lucie E. White, Goldberg v. Kelly on the Paradox of Lawyering for the Poor, 56 BROOK. L. REV. 861, 862 (1990) [hereinafter White, Lawyering for the Poor] (poverty lawyers appropriate poor clients' power to name their own world).

172. Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2125 ("The poverty lawyer lacks the critical distance from pre-understanding to grasp the machinations of client manufactured dependence.") (footnote omitted).
discover client narrative voice. To do so, the lawyer takes account of the client's narrative perspective in analyzing the legal problem, dispute, and harm to be remedied. Client narratives hold the power to explain the client's world. They provide natural contextualization for client stories; the imposition of law's universalized narratives displaces this contextualization. Receiving the client's story requires discerning individual differences, identities, and experiences, and accepting her narrative as "accurate, reasonable and potentially understandable given the conditions under which [she lives]."

There are two requirements for this approach to story reception. First, the lawyer must leave room in the lawyer-client relation for the client to develop and present her story in her own narratives—the client must be given room to speak out in the lawyer's office. Second, the lawyer must assume a nontraditional interpretive stance, one grounded in client context and perspective rather than lawyer pre-understanding. Seyla Benhabib calls this interpretive stance the "standpoint of the concrete other." This relational approach is fundamental to feminist theory and methodology. It requires consideration of "the other" when interpreting and eliciting the client's story: What are the class, race, sex, gender, and ability differences that shape this particular client's perspective? How have they shaped the client's telling of her story and affected her experiences, relationships, and perceptions about her legal problem?


174. Lawyer pre-understanding cannot be cast away, nor should it be. Its proper place is in recognizing law's universalized narratives and how they marginalize and subordinate the client's voice and experience.

175. SEYLA BENHABIB, CRITIQUE, NORM, AND UTOPIA: A STUDY OF THE FOUNDATIONS OF CRITICAL THEORY 340-41 (1986). Part of this interpretive stance is empathic understanding. As Charles Reich has stated:

[Empathy is] the ability to hear and understand the feelings of others, the capacity to imagine what it is like to be poor, or black, or a mother on welfare, or a woman encountering job discrimination. Empathy rests on the ability to recognize and rise above the "subconscious loyalties" of one's own position and privileges in life.


176. See, e.g., MINOW, supra note 40, at 173-224 (outlining social relations approach to law); Bartlett, supra note 137, at 880-87 (describing interpretive stance of "positionality," in which truth is conceived as situated and partial and individual understanding is based on limited perspective); Carrie Menkel-Meadow, Portia in a Different Voice: Speculations on a Women's Lawyering Process, 1 BERKELEY WOMEN'S L.J. 39, 57 (1985) (because lawyer and client may not have the same world view, it is necessary for lawyer to examine closely client's perspective).
dispute, and injury? Such an interpretive stance places the lawyer in the multiple role of empathic receiver, collaborator, and participant in the telling of the client's story.\textsuperscript{177}

Creating space in the lawyer-client relation for clients to speak in their own narratives and for lawyers to assume the client's standpoint requires lawyer self-discipline and restraint.\textsuperscript{178} Narrative dialogue cannot take place unless the lawyer is conscious of her power over client storytelling, holds that power in check, and informs the client of what will be transpiring during their conversations.\textsuperscript{179} It requires the mutual recognition and sharing of interpretive power and local knowledge; it requires consciously putting aside the lawyer's privileged position\textsuperscript{180} and allowing the client to name her experience, pain, injury, and self.\textsuperscript{181}

Once pre-understanding has been held in check and space has been created for the client, the client's story can be elicited, told, and received through a dialectic interaction. This vision of practice is of a dynamic

\textsuperscript{177} In feminist terms it means asking the "woman question" in the context of a particular client's story. See supra text accompanying note 46; cf. Handler, Dependent People, supra note 27, at 1086-87 (describing Rawls' "morality of association" as relationship in which "individuals strive to put themselves in the place of others"); see also Cahn, Styles of Lawyering, supra note 134 (feminine connection in lawyer-client relation requires lawyer to empathize and to make ways to listen to client rather than imposing pre-understanding).

\textsuperscript{178} Because the poverty lawyer controls the environment and method of storytelling and reception, it is up to the lawyer to initiate and sustain such a relation. See Bartlett, supra note 137, at 881-82. Further, "[b]ecause client narratives may be unspoken at the outset of the advocacy relation, the lawyer must employ an interpretive paradigm which immediately affirms client voice and narrative." Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2140 (footnote omitted).

\textsuperscript{179} See Cahn, Feminist Litigation, supra note 160, at 17-18.

\textsuperscript{180} The lawyer's privileged position is composed of her knowledge of, and practice in, law's universalized narratives, the informal or unspoken rules and procedures that make up legal culture, see Sarat & Felstiner, Lawyers and Legal Consciousness, supra note 157, at 1670-84, and the client's subordinate, non-paying status, see supra Section II.A. Given these bases of lawyer power, a "dissident telling may be seen as an invasion of the establishment position, every commentary on the authoritative version as a critique." Bruner & Gorfain, supra note 157, at 60.

\textsuperscript{181} See Cahn, Defining Feminist Litigation, supra note 160, at 8-12; Cunningham, A Tale of Two Clients, supra note 22, at 2471-72 (quoting Carl J. Hosticka, We Don't Care About What Happened, We Only Care About What Is Going to Happen: Lawyer-Client Negotiations of Reality, 26 Soc. PROBS. 599 (1979)); Minow, Interpreting Rights, supra note 13, at 1902 n.177; White, Lawyering for the Poor, supra note 171, at 863-64. As Tony Alfieri points out, granting the client power in the lawyer-client relationship takes power away from the lawyer to silence the client and bring familiar order to the relationship. He believes both the lawyer and client tendency to lapse into traditional dominant/dependent relations may be overcome by entering into an explicit "collaborative" relationship established at the first interview. Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2140-41. Others have written about the need and possibility of entering into lawyer-client relations consisting of shared visions and goals. E.g., Gerald López, Lay Lawyering, 32 UCLA L. REV. 1 (1984); William H. Simon, Visions of Practice in Legal Thought, 36 STAN. L. REV. 469 (1984).
and dialogic relation, a flowing and ongoing interaction between lawyer experience and knowledge and client experience and knowledge.\textsuperscript{182} The goals and method of dialectic interaction are different than the goals and method of persuasion in everyday conversation. "Its object is to engage each person at the deepest level . . . . One’s concern is not with what people generally think but with what one thinks oneself and what the other thinks."\textsuperscript{183} Within the interaction, both lawyer and client voice and perspective must be respected. Once the client’s narrative perspective is deemed critical to the client’s story, the lawyer can discover the client’s narrative contextualization and illumination of the legal problem.

Practitioners and scholars have pointed to several paths that may lead to the discovery of client voice and narrative within the client’s story. First, poverty lawyers must recognize that disempowered clients do not speak the language of lawyers or of the law. The language of poor clients consists of at least two general forms: private, colloquial language used in everyday life and in private encounters and conversations; and public, “subordinate language” used in encounters and conversations with those who hold some kind of power over the speaker. In the latter context, disempowered people may employ a subordinated language that utilizes a “polite” style intended to make connection with the listener. This style of speaking “hedges” questions, answers, and demands with intonations, ambiguous phrasings, and tag questions that reenforce the dominant listener’s position.\textsuperscript{184}

By not threatening the listener’s dominant position, the subordinate speaker may be protecting her own tenuous position, which could be further threatened by provoking the dominant listener. In this respect, subordinate language is not a natural characteristic of inferiority, but a necessary rhetorical survival strategy.\textsuperscript{185} Ultimate expressions of this strategy may be silence or even complete refusal to seek assistance from those in positions of authority. In conversation, the strategy may go unnoticed, since subordinate language may conform to both lawyer pre-

\textsuperscript{182} See Cunningham, The Lawyer as Translator, supra note 142 (manuscript at 47).
\textsuperscript{184} White, Sunday Shoes, supra note 22, at 14-19 (citing ROBIN T. LAKOFF, LANGUAGE AND WOMAN'S PLACE (1975)).
\textsuperscript{185} Id. at 45-48.
understanding about client dependency and the universalized legal narrative in which the lawyer attempts to fit the client’s story.\textsuperscript{186}

In addition to recognizing the causes and effects of the subordinate language through which client narratives are spoken, lawyers must recognize that they do not speak the language of their clients. The lawyer’s misunderstanding of client language includes the failure to recognize client survival strategies, dissimilarities in vocabulary and syntax, and disparities in social knowledge due to class, race, gender, sex, age, and ability differences. For example, from the traditional lawyer interpretive stance, the “worst fear is a rambling client.”\textsuperscript{187} Although the most recent textbook on the topic of lawyer-client relations recognizes that “rambling” may actually provide important information, it misses the simple point that the client is rambling only from the lawyer’s perspective.\textsuperscript{188}

It also fails to consider that client rambling may signify an attempt to tell a story despite the lawyer’s interruptions and narrow focus on the legal problem, or that rambling may consist of distinct but intertwined narratives attempting to explain the complex nexus between the teller’s perspective, dispute, legal problem, and harm. Another way poverty lawyers may misunderstand their clients is in holding to the prevalent belief that inconsistency or implausibility in a client’s story indicates fabrication.\textsuperscript{189} An inconsistent story may simply reflect the contradictions and falsifications that typically attend a poor client’s story and life.\textsuperscript{190}

In order to see through client rhetorical survival strategies and to attempt to comprehend client narratives, Tony Alfieri recommends the deliberate practice of “metaphor” in which “the lawyer imagines that events composing client story may signify a double meaning.”\textsuperscript{191} The

\textsuperscript{186} In \textit{Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction}, 100 YALE L.J. 1329 (1991), Mari Matsuda eloquently analyzes the meaning and effects of the way one speaks. Accent and manner of speech carry the story of one’s history and identity, and deviation from a supposed norm is often seen by those fitting the norm as representing inferiority. “To tell people they cannot express themselves in the way that comes naturally to them is to tell them they cannot speak.” \textit{Id.} at 1388.


\textsuperscript{188} See \textit{id.} at 246-47.

\textsuperscript{189} See \textit{id.} at 251. I do not mean to imply here that poor clients never lie. There is no reason, however, to believe that poor clients lie more than rich clients.

\textsuperscript{190} See, e.g., supra Section I.D. (discussing “welfare mother” contradictions).

\textsuperscript{191} Alfieri, \textit{Reconstructive Poverty Law Practice}, supra note 14, at 2138. For the classic work on metaphor and cognitive process, see George Lakoff & Mark Johnson, \textit{Metaphors We Live By} (1980).
double meaning in client narratives is a kind of "double-voicedness" resulting from "the shifting consciousness which is the daily experience" of disempowered people. One meaning of a client's story may lie in the frustrations of dealing with prosaic events, such as benefit terminations. A deeper meaning, however, may be the client's struggle for dignity, search for community, and belief in rights in the face of the welfare system's blindness, rejection, and oppression. When the lawyer concentrates solely on the former meaning, the client's narration of her story contextualizing the dispute and harm goes unheard.

Finally, while eliciting the client's story, the lawyer can engage the client affirmatively to support the expression of client narratives. Positive dialectic interaction requires collaborating with the client in sorting out claims and attributing blame, recognizing and encouraging the client's sense of self-empowerment (the realization that the client has or should have responsibility and control over the fundamental decisions affecting her life), and demystifying the role of the lawyer and acknowledging the contradictions and falsities in law and bureaucratic regulation.

To recognize or encourage the articulation of client demands or needs that may be couched in subordinate or unfamiliar language, the lawyer can engage poor clients in rights talk that may not entail using the word "rights" at all. Lawyers who speak from traditionally privileged positions must become multilingual in rights talk in order to understand alternative perspectives. Different people have different conceptions about what their rights are or should be. Further, poor clients will express their belief in, and understanding about, their rights in ways differ-

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194. See HANDLER, THE CONDITIONS OF DISCRETION, supra note 78, at 22-27; Felstiner et al., supra note 139, at 641.
196. See Gabel & Harris, supra note 13, at 376 ("power approach" to law practice requires demystification of state and professional authority). But cf. Sarat & Felstiner, Lawyers and Legal Consciousness, supra note 157, at 1665, 1688 (lawyers demystify law in order to control clients).
197. See, e.g., Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2117-18 (recounting client narrative about rights never using the word "rights").
198. WILLIAMS, supra note 6, at 148. Lucie White has observed that when rights are ambiguous, the lawyer and client are on more equal interpretive footing. White, Lessons from Driefontein, supra note 183, at 740. Demystification during rights talk entails talking about rights as having meaning while acknowledging that the court or the state may not recognize or enforce them.
ent from a lawyer who has studied and practiced law. Through positive dialectic interaction, the lawyer gains the power to translate, rather than transform, the client’s story for an authoritative decisionmaker.

III. Translating Client Stories

On the vision of lawyers’ translating, rather than re-presenting, client stories, Clark Cunningham has said:

[T]he lawyer as translator . . . suggest[s] an image of “speaking for another” that is not inherently silencing of that other. Rather, to the contrary, a translator enhances voice, enabling it to be heard and understood in places where it would otherwise be mute. At the same time that a translator strives to make a speaker heard and understood, though, the translator does inevitably change what the speaker says, a process in which meaning may be both lost and gained.199

On the failure of lawyers to grasp fully the limits of traditional representation, Robert Dinerstein has observed:

By seeking to accept currently-constructed legal categories as the sole basis for determining the viability of the client’s story, [lawyers] unwittingly may contribute to the lawyer’s and client’s too-willing acceptance of the status quo. Such an acceptance not only makes legal reform more difficult, but it also may obscure the degree to which current legal categories themselves reflect quite contestable assumptions about race, gender, and class.200

In this Part, I explore the interconnections between the limits of traditional representation and the possibilities of the translator approach to poverty law practice.

A. Traditional Practice: Transforming and Recomposing

In our adversarial legal system, stories are tested against other stories. To make their stories convincing, lawyers draw favorable comparisons to successful (winning) stories previously told by others about similar situations and actors.201 Such stories are part of a line of precedent that reflects a universalized narrative. Accordingly, traditional lawyer practice is to fit client stories into set patterns. Like any lawyer, the poverty lawyer would be remiss not to take any opportunity to serve her client’s interests; she too exploits law’s limited openings, trying to

199. Cunningham, The Lawyer as Translator, supra note 142 (manuscript at 1-2).

200. Dinerstein, Clinical Texts, supra note 9, at 724.

201. See, e.g., William M. O’Barr & John M. Conley, Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives, 19 LAW & SOC’Y REV. 661, 662 (1985); Shaffer, supra note 136, at 886-87. This legal frame of mind is exhibited by the following questions commonly heard in law offices and government buildings: “What facts do we need to show in order to make our legal argument?” “How can we distinguish our case from this unfavorable one?”
squeeze clients and their experiences into already accepted narratives. She tells a prototypical story, one that resonates with dominant values, to evoke a desired response such as pity, contempt, or admiration.\textsuperscript{202}

This method, however, \textit{transforms} the client's narrative into a story that best fits the story law tells about a person in the client's general circumstance and position.\textsuperscript{203} A standard law reform litigation approach, the class action lawsuit, can be an extreme example of the "fit" method. Once reform-minded lawyers find a seemingly pervasive legal problem, they then go about the business of finding plaintiffs to establish a class. Prospective clients whose stories do not fit the facts required by the legal theory of the case are excluded from participation. The poor client's dependence, in conjunction with the lawyer's skill of fitting client stories into abstract, universalized narratives, empowers the poverty lawyer to shape and narrate the client's story to satisfy the lawyer's own law reform interests or agenda.\textsuperscript{204} Some forms of feminist litigation are inherently client narrative transforming, because the story the lawyer tells in advocacy fits with the lawyer's political goals and is based upon the lawyer's and not just the client's experience.\textsuperscript{205}

When a lawyer subordinates a client's perspective of her dispute, legal problem, and harm—her narrative—the lawyer transforms the client's story by \textit{recomposing} it. In essence, the lawyer fits the client with a "stock story" or script, which the lawyer then recites to the court. The script may follow closely a universalized narrative or may manipulate the universalized narrative in order to advance the lawyer's own interests in

\textsuperscript{202} See Schlag, supra note 18, at 859-60.

\textsuperscript{203} This transformation may be effected consciously or unconsciously. In receiving the client's story, the lawyer may manipulate the telling of the story so that it conforms with the story the lawyer wants to hear, or the lawyer simply may ignore information and details she believes are irrelevant to the legal problem as framed by the precedents or principles she sees implicated. Lawyers also attempt to evoke favorable images of their clients in order to locate them on the "worthy" side of the worthy/unworthy distinction. See White, "The Real Deal," supra note 53, at 301-08.

\textsuperscript{204} See, e.g., Felstiner et al., supra note 139, at 645-49; Hunt, supra note 149, at 318; Stephen Wexler, Practicing Law for Poor People, 79 YALE L.J. 1049, 1062 (1970); Lucie E. White, Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 545 (1987-88) [hereinafter White, Making Space for Clients].

the case. Because of the disparities of power and knowledge between lawyer and client, the client usually has no choice but to submit to the recomposition of her story.

Lucie White’s account of her representation of “Mrs. G.” provides an example of lawyer composing that invokes universalized narratives that subordinate the client as a means to obtain relief. The story of Mrs. G., however, is also a striking example of the ability of poor clients to transcend the formal boundaries of the lawyer’s script.

Mrs. G. sought legal assistance after receiving a letter from the local welfare office stating that she had received an overpayment of AFDC benefits. The welfare office took the position that an insurance award Mrs. G. had collected and spent after her involvement in a minor car accident should have been treated as a “lump sum” payment applicable to Mrs. G.’s budget. The welfare department demanded that she pay back the sum of the insurance award, despite the fact that Mrs. G. had obtained approval from her caseworker and an assurance that it would not affect her AFDC budget.

Based on these facts and her knowledge of welfare law, White determined that there were two possible client stories that could be told in an administrative hearing. The first was the story of estoppel: Mrs. G.’s reliance on bad advice obtained from her caseworker. The second was the story of “life necessities,” requiring a showing that Mrs. G. had spent the insurance award on essentials, and thus qualified for a waiver of recoupment. White gauged that the second story required scripting Mrs. G. in the role of dependent, helpless, and pitiable, while the first story scripted Mrs. G. in the role of an accuser, “turning the county into the object of scrutiny.” Not comfortable with the implications of the two stories and somewhat frustrated with her client’s ambivalence, White decided to script parts of both stories for the hearing. At the hearing, however, Mrs. G. departed from her lawyer’s script and asserted in her own voice and from her own perspective why the “Sunday shoes” she had bought for her five daughters with the insurance award constituted

206. See, e.g., Delgado, A Plea for Narrative, supra note 10, at 2421 (“[The stock] story picks and chooses from among the available facts to present a picture of what happened: an account that justifies the world as it is.”); López, supra note 181, at 3 (“To solve a problem through persuasion of another, we . . . must understand and manipulate the stock stories the other person uses in order to tell a plausible and compelling story—one that moves that person to grant the remedy we want.”).
207. See White, Sunday Shoes, supra note 22.
208. Id. at 21-25.
209. Id. at 27.
210. Id. at 27-28.
211. Id. at 28-30.
“life necessities” to sustain needs of dignity and self-worth. As White summarizes: “My lawyer’s language couldn’t add anything to what she had said.”212 In the case of Mrs. G., the client’s narrative emerged in the hearing despite the lawyer’s scripting.

Drawing upon the work of Robert Cover, Tony Alfieri has observed that suppression of client narratives in lawyer scripting of client stories is a form of “interpretive violence.”213 In the way that legal interpretation by judges is bound up with the threat and practice of violent deeds by the state,214 so too is client story interpretation by poverty lawyers. Poor clients typically face terminations of food, shelter, health care, and other life necessities, and confront assaults on their security, dignity, and identity. The lawyer may be all that stands between the client and concrete pain and suffering.215 Furthermore, when lawyers ignore or subordinate their clients’ narratives they may do violence to their clients’ normative values and beliefs. In transforming their clients’ narratives and substituting their own compositions, lawyers engage in an act of story interpretation that may further disempower and silence.216 The question for the poverty lawyer is whether instrumentalist and efficiency grounds are sufficient to justify a representative role that adds to the poor client’s subjugation, or whether there is another approach to practice in which the strategic goal is to enable clients like Mrs. G. to tell their stories and state their legal claims in their own narratives.

B. The Storytelling Approach: The Lawyer as Translator

As the client’s gatekeeper to legal institutions, the lawyer holds great power over the telling of the client’s story. As advocate and representative, the lawyer has the power to reveal or conceal the client’s voice

212. Id. at 31. Although Mrs. G. officially “lost” the hearing, the county dropped the case on grounds of “fairness.” Id. at 32.
215. See White, Piece-Work, supra note 9.
216. Compare the following statement by Robert Cover:
Legal interpretation may be the act of judges or [others]. Each kind of interpreter speaks from a distinct institutional location. . . . But considerations of word, deed, and role will always be present in some degree. The relationships among these three considerations are created by the practical, violent context of the practice of legal interpretation, and therefore constitute the most significant aspect of the legal interpretive process.

Cover, Violence, supra note 13, at 1618. Just as judges of the state are “jurispathic”—empowered with the ability to “kill the diverse legal traditions that compete with the State,” id. at 1610, so too are lawyers: they have the power to “kill” client narratives that compete with their pre-understanding and universalized legal narratives.
and narrative. Critically examining how universalized narratives constrain the stories of the poor and constructively engaging the client in eliciting and receiving her story opens up new ways of envisioning poverty law advocacy. Lawyering for the poor can be an “activity of generating narratives that illuminate, create, and reflect normative worlds, that bring experiences that might otherwise be invisible and silent into public view.” To do so requires telling client stories as illuminated by client narratives.

Drawing upon the work of James Boyd White, Clark Cunningham and others have begun developing the concept of the “lawyer as translator.” White defines translation in the following way:

[T]ranslation is an art of recognition and response, both to another person and to another language... carrying the translator to a point between people... where the differences between them can be more fully seen and more nearly comprehended—differences that enable us to see in a new way what each one is, or perhaps more properly, differences in which the meaning and identity of each resides...

The lawyer as translator strives to recognize and see differences between her client’s story and universalized legal narratives. She does not ignore those differences as irrelevant to legal strategy, nor does she conceal differences in order to fit the client’s story neatly into previously cast legal arguments. Instead, she attempts to discern how universalized legal narratives fail to take account of her client’s perspective and searches for opportunities to highlight the law’s failure by telling the client’s story through the client’s voice and narrative. “By thinking of herself as a translator, the lawyer becomes aware of how, in the process of representing a client to others, meaning is created and lost.”

219. See Cunningham, The Lawyer as Translator, supra note 142; Cunningham, A Tale of Two Clients, supra note 22. Cunningham may use the term “translation” more broadly than I do, and at times seems to use it as a synonym for “interpretation” (and bad interpretation at that): “this translation [of his client’s encounter with the police as a Terry stop]... caused me to ignore much of my client’s narrative....” Cunningham, The Lawyer as Translator, supra note 142 (manuscript at 108); see supra text accompanying notes 161-167.
220. WHITE, supra note 218, at 230. White has been criticized for failing to account for and engage critical scholars who are currently writing about and exploring perspectivity and contextualization. See Sanford Levinson, Conversing about Justice, 100 YALE L.J. 1855, 1873-75 (1991). This Article is one attempt to engage and integrate various strands of critical literature in the application of the translation concept.
221. Cunningham, A Tale of Two Clients, supra note 22, at 2491. The translation approach to lawyering exemplifies a feminist “social relations” approach to law: categories, fixed status, and ascribed traits are suspect; assumptions underlying assignments of difference are challenged; and it is presumed that the “name of difference is produced by those with the
“Translation” captures a cognitive approach to law as a human activity grounded in experience and imagination; its promise lies in the opportunity to change the underlying experiences in which meaning is grounded. Under the translation vision, the lawyer as storyteller is directed by the client’s experience as viewed through the client’s narrative perspective. The lawyer-translator’s task is to reveal her client’s narrative despite the distortion of legal language and procedure through which the story must be told during advocacy. This requires the lawyer to have equal knowledge of law’s discourse and rituals on the one hand, and the client’s language, meanings, and values on the other. The client’s narrative goal, expressed in the telling of her story, may not always be attained through traditional measures of success. “Winning the case” is not always what disempowered clients want and need—how the client’s story is told and how the client’s harm is named may be more important. The lawyer as translator needs to accept that litigation failure may result paradoxically in representational success.

While the lawyer speaks for the client, the goal of translation is not for lawyer and client to “speak with one voice.” Rather, the goal is for power to name and the power to treat themselves as the norm.” Minow, supra note 40, at 110-11.

222. See Winter, supra note 30, at 1112, 1230.

223. “[N]o narrative version can be independent of a particular teller . . . we may assume that every narrative version has been constructed in accord with some set of purposes or interests.” Barbara Herrnstein Smith, Narrative Versions, Narrative Theories, in On Narrative, supra note 14, at 209, 215, quoted in Ross, supra note 16, at 383, n.11.

224. See White, supra note 218, at 260-62; White, Making Space for Clients, supra note 204, at 542-46. There are difficulties inherent in this dual responsibility, given that the law may not have an appropriate vocabulary for the client’s experience, and because the use of different language changes the meaning of that experience. The reduction or ignorance of different experiences, however, is the fundamental barrier raised by universalized legal narratives. The lawyer’s goal is to expose, not succumb to, this difficulty. “[T]he work [of the translator] becomes more challenging as the social and cultural distance between the client and society’s elites becomes greater.” Id. at 544.

225. See, e.g., Cunningham, A Tale of Two Clients, supra note 22, at 2492 (observing that client was more interested in how case was argued than in attaining favorable outcome); Hunt, supra note 149, at 320 (noting that transformative litigation may be propelled forward despite litigation setbacks); cf. Cunningham, The Lawyer as Translator, supra note 142, (manuscript at 101-04) (discussing how attorney goal of winning case based on legal narrative of Fourth Amendment search and seizure conflicted with client’s purpose in asserting demand for respect and dignity).

226. Contra Cunningham, A Tale of Two Clients, supra note 22, at 2461. As Tony Alfieri points out, such mutuality of perspective and identity is not truly possible given the multiple differences between poverty lawyer and poor client. Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2140-41. Furthermore, lawyer-client identification may not be desirable from the client’s perspective, given the inherently dominant/dependent nature of the lawyer-client relationship and the lawyer’s power to impute client goals.
the lawyer to position the client’s voice within the legal proceeding, to evoke rather than re-present the client’s narratives. The lawyer as translator also does not act as mere intermediary between the client and the legal system. Instead, the lawyer acts as facilitator, one who enables dialogue across lines of social difference between the client, law, and legal decisionmaker. As translator, the lawyer abandons her formal role at strategic moments in order to establish connection and understanding between clients and decisionmakers by confronting the latter as human beings susceptible to enlightenment. Although the lawyer as translator may be a useful metaphor for all types of lawyering, it is an imperative for poverty law practice. As Lucie White has stated: “The gap between what poor people want to say and what the law wants to hear often seems enormous.” The job of poverty lawyers should be to fill that gap.

When the universalized narrative does not fit, when there is a gap or contradiction revealed by the client’s story, the lawyer has a choice: to give in to the universalization or challenge it. A challenge requires not only critique and resistance, but also holding the state and the law accountable by offering a new interpretation, a new version embodying the normative commitments of the client. It means examining poor clients’ narrative accounts of their injuries and asking what it would mean for the law and the legal system to take those accounts seriously. Although it is the client who should speak of and name the injustice at hand, it is the lawyer who must discover the deep processes through which the injustice occurs, who must expose the myths in the law underlying the universalized narrative. This entails the lawyer’s role as translator: interpreting, understanding, and then revealing the relationship between the client’s perspective and the law.

227. See Alfieri, Reconstructive Poverty Law Practice, supra note 14, at 2145 (discussing technique of “emplacement”: infusing lawyer dominated contexts with empowering images and voices of clients).

228. Cf. Geertz, supra note 17, at 136 (“The whole point of evoking rather than ‘representing’ [as an ideal for ethnographic discourse] is that it frees ethnography from mimesis and the inappropriate mode of scientific rhetoric that entails ‘objects,’ ‘facts,’ ‘descriptions,’ ‘inferences,’ ‘generalizations,’ ‘verifications,’ ‘experiment,’ ‘truth,’ and like concepts . . . .’”).

229. See Abrams, supra note 33, at 395; cf. Geertz, supra note 17, at 147 (purpose of ethnographic texts is to enable conversation across societal lines).

230. White, Making Space for Clients, supra note 204, at 544.

231. See Minow, supra note 40, at 310; Abrams, supra note 33, at 397, 400; Catharine A. MacKinnon, Reflections on Sex Equality Under Law, 100 YALE L.J. 1281, 1324-28 (1991) [hereinafter MacKinnon, Reflections on Sex Equality].

232. An excellent example of the lawyer as translator approach to representation is the Center for Constitutional Rights’ challenge of the universalized narrative of self-defense in State v. Wanrow, 88 Wash. 2d 221, 559 P.2d 548 (1977). In Wanrow a jury convicted a Native
In translating a client’s story the lawyer must expose unstated assumptions in universalized narratives in order to reveal the dissonance of the client’s narrative. It is the lawyer who directs the legal forum’s attention to an alternative mode of storytelling; it is the lawyer who frames the perspective and purpose of the client. The lawyer cannot be just a mouthpiece for the client, however, and merely re-present the narrative account the client originally told to the lawyer. Legal doctrine and procedure inhibit and impede such a telling, leaving undisturbed universalized legal narratives to counter and mute the client’s narrative. In contrast, when the lawyer challenges universalized narratives as open to transformation, she adopts a method of practice that can uncover missing perspectives and can explore the reasons for the exclusion. Poverty law practice, so conceived, becomes grounded in the narrative contextualizations of the disempowered subject.

C. Ethical Storytelling and Upholding Client Integrity

Under a critical storytelling approach to poverty lawyering, the lawyer is responsible for legal strategy, but is constrained and guided by the client’s narrative perspective and purpose. Conceiving of the lawyer’s power and duty as guided by an “ethics of storytelling” safeguards both the client’s voice and the lawyer’s responsibility. The root of ethical storytelling is the integration of legal argument and reason with the personal integrity of the client. Preserving and advancing the integrity of the client’s story and voice requires providing the legal forum with a

American woman of second degree murder for the shooting and killing of a white man whom she believed was attempting to harm her and her children. The trial judge instructed the jury to consider only the circumstances immediately preceding the incident and to apply the equal force doctrine which defines and limits wholly justifiable self-defense to responding to an assailant with equal force. The Center's lawyers obtained a reversal of Wanrow's conviction by arguing an alternative interpretation and understanding of their client’s story, one that did not fit the universalized narrative of self-defense and equal force. They argued the jury instructions were flawed because they precluded the jury from judging the reasonableness of the defendant's action from her perspective—a temporarily disabled Native American woman defending her child against a white man who was a reputed child molester. Schneider, supra note 51, at 606-10. See also Goldfarb, supra note 33, at 1635 (understanding particular women and nonfit between their experiences and responses of specific institutions is basis of feminist critical theory). By relying on their client's narrative perspective and experience, the Center was able to reveal sex and race bias in the criminal justice system.

233. See, e.g., O’Barr & Conley, supra note 201, at 665-72 (describing legal inadequacy of pro se narratives in small claims courts due to constraint of formal setting and rules).

234. I borrow and adapt the term from Ross, supra note 16, at 411; see Cunningham, The Lawyer as Translator, supra note 142 (manuscript at 53-54) (discussing translator's ethic); see also WAYNE C. BOOTH, THE COMPANY WE KEEP: AN ETHICS OF FICTION 216-23 (1988) (discussing “ethics of narration” in interaction between reader and author).
contextualized presentation of the client, her situation, and her experience.

Even when directed by the client's narrative purpose, the lawyer has the power to choose among several interpretive subplots in telling the story. The ethic of storytelling focuses that choice on the subplots that preserve and translate the client's normative history and identity. Just as "legal integrity" requires fitting current legal judgments into an ongoing political narrative consistent with both past principles and future commitments, upholding client integrity requires fitting the client's story and legal claim into her ongoing life narratives consistent with her normative history and present identity.

Linking client integrity to legal claims also serves the more instrumentalist purpose of providing a means to persuade those who hold power about injustices faced by disempowered clients. The purpose of the linkage is to join the client's narrative perspective with legal interpretations in order to be persuasive legally as well as responsive to the client's narrative purpose. This "provides a way of talking about those who are left out or objectified, and a way of criticizing the law on that basis." For example, the communicative medium of rights provides a linkage between client narratives and the law in a form familiar to legal decisionmakers. Rights claims demand attention and hold the potential to make the powerful hear, if not respond. In this sense, deploying rights

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235. See Bruner & Gorfain, supra note 157, at 62 (citing Jacques Derrida, The Law of Genre 55 (1980)); Littleton, Perspectives, supra note 173 (discussing complex choices facing those who characterize battered women at trial). Such interpretive choices are similar to those a judge faces when deciding which more or less equally applicable set of principles to rely upon in her judgment story. See Michelman, supra note 17, at 67.

236. Cf. Michelman, supra note 17, at 35 (analyzing Justice O'Connor's narrative choices in her dissent in Goldman v. Weinberger, 475 U.S. 503 (1986)).

237. Dworkin, supra note 16, at 225-28. Dworkin seems to want to exclude from his jurisprudential theory anything that might destabilize a judge's thoughtful dialogue with her predecessors regarding the integration of a particular case with the general law. See Schlag, supra note 18, at 920-25. Under the translation approach, client integrity is linked to legal integrity in an effort to disturb that false stability and to force dialogue, either actual or metaphorical, between the judge and the disempowered client.

238. The translation approach to lawyering thus requires both "communicative action," in which participant interaction is oriented toward reaching mutual understanding, and "strategic communication," in which the prior goals of participants are furthered through interaction. See Jürgen Habermas, Communication and the Evolution of Society 117-20 (1979).

239. White, supra note 218, at 223; White, The Ethics of Argument, supra note 183, at 872 ("[I]t is the function of the lawyer . . . to persuade about the just and the unjust . . . and to do so . . . among those who have power—in the courts, legislatures, and assemblies."). In the same vein, Margaret Radin urges the pragmatist "to take the commitment to embodied perspective very seriously indeed, and especially the commitment to the perspective of those who directly experience domination and oppression." Radin, supra note 19, at 1710.
as a familiar concept and symbol in order to facilitate communication between those with and without power is instrumental. The goal, however, is not to fit client stories and needs into universalized narratives of rights, but to infuse rights with new meanings derived from the client’s narrative purpose and perspective. The translation of client rights talk into legal argument merges the language and images of the client’s daily struggle with society’s aspirational pronouncements in order to form a vision of how things might and should be.240

Maintaining fidelity to both the client and the law requires demonstrating the nonfit between client claims and universalized legal narratives. Lawyers can correct universalized narratives only when they assert advocacy stories as alternatives to prevailing stock stories that do not fit the client’s narrative.241 Systematic juxtaposition of client and universalized narratives is a method that can demonstrate the incompleteness (and thus falsity) of universalization by highlighting the absence and importance of the client’s perspective.242 Client narratives therefore hold the potential to make judges aware of and acknowledge the perspective of those excluded, and can empower lawyers with the ability to breathe life into stale, abstracted legal rules and doctrines.243 Grounding legal discourse in the narratives of disempowered clients thus endows legal institutions and decisionmakers with new accounts of the problems disempowered people face, often on a mass scale:

Failure to translate for the client not only risks a dissatisfied client; it also impoverishes the law. Like all forms of knowledge, law arises out of experience. Clients are the source of that experience. Their understanding of that experience is likely to retain elements lost in the legal understanding, elements that might enrich our legal knowledge.244

240. Catharine MacKinnon takes such an approach to sex discrimination, one that both challenges and claims rights to equality: “Equality allows critique of the social partiality of standards as well as opportunity to live up to existing ones. The contextual nature of the equality right seems to me a strength: what it seeks is always real, because it is real for someone.” MacKinnon, Reflections on Sex Equality, supra note 231, at 1326.
241. See Abrams, supra note 33, at 376; Goldfarb, supra note 33, at 1630-34.
242. See Abrams, supra note 33, at 392-93.
243. Cf. WHITE, supra note 218, at 257-69 (justice as translation entails making new texts in response to prior texts); Winter, supra note 30, at 2274-77 (when legal categories don’t fit, lawyer has opening to make transformative argument grounded in nonfitting experiences of clients). The rectifying function of client narratives is a form of Aristotelian practical reasoning whereby an individual situation is first adjudged without resort to general rules. If the general rules fail to take account of the individual situation, the universal can then be corrected by reference to the specific. Practical reasoning is a fundamental aspect of feminist methodology. See Bartlett, supra note 137, at 849-63; Goldfarb, supra note 33, at 1636-41.
244. Cunningham, A Tale of Two Clients, supra note 22, at 2493 (emphasis in original).
In sum, stories told in client narratives can unsettle preconceived explanations of experience based on cultural stereotypes and assumptions, and can begin to supplant them with authentic accounts. They hold power to reform the law.

Telling client stories to fill gaps in legal knowledge and experience entails providing narrative context that may be politically charged. Some critical legal studies scholars have specifically called on lawyers to practice a litigative strategy of "politicization." Politicization as they describe it, however, runs the risk of turning the lawyer into a political opportunist who "discovers" for the client the political issues and values at stake. The lawyer-as-political-radical approach to representation invests the lawyer with power to manipulate the client's perspective, to treat the client as a political opportunity, and to subordinate client narratives to a political story scripted by the lawyer.

In contrast, the lawyer-as-translator approach reveals social and political aspects of client claims to legal decisionmakers on the basis of the client's perspective, as subplots running through the narrative of the client's story wrapped up in the client's history and identity. It may be

245. See, e.g., Minow, supra note 40, at 200, 230 (feminist narratives contest traditional narratives that treat women as passive victims holding devalued roles and status); Schultz, supra note 70, at 1815-39 (giving an alternative account of gender and work); Stephen Wizner, Passion in Legal Argument and Judicial Decisionmaking: A Comment on Goldberg v. Kelly, 10 CARDOZO L. REV. 179, 183 (1988) (countering administrative procedure with "facts of life").

246. The increasing social and judicial acceptance of the sexual harassment claim demonstrates the law reform potential of ethical storytelling and the translation approach to practice. Catharine MacKinnon, writing thirteen years ago, stated:

The strictures of the concept of sex discrimination will ultimately constrain those aspects of women's oppression that will be legally recognized as discriminatory. At the same time, women's experiences, expressed in their own way, can push to expand that concept. Such an approach not only enriches the law, it begins to shape it so that what really happens to women, not some male vision of what happens to women, is at the core of the legal prohibition. Women's lived-through experience . . . [should] provide the starting point and context . . . .


247. E.g., Gabel & Harris, supra note 13, at 379-94.

248. See id. at 395-410 (discussing various ways lawyers can politicize "nonpolitical" cases). But cf. White, Lawyering for the Poor, supra note 171, at 872 ("Legal remedies that are designed by lawyers to impose improved conditions upon the poor aren't likely to do much to challenge subordination in the long run.").
crucial to talk about a "fist in the face"; but it is the reality of a particular fist in this client's face, rather than a political statement about power, that must be translated.\textsuperscript{249} Employed as an aspect of narrative contextualization, politicization is properly limited by the storytelling ethic of client integrity.

\textbf{D. Spaces for Translating Client Narratives: Balancing, Hearing, and Discretion}

It is the genius of the law to provide a place in which unheard voices can be heard and responded to; it is [the] task [of] lawyers to realize this possibility.\textsuperscript{250}

To be successful, translation must connect the perspective and purpose of the disempowered client to the perspective and purpose of the empowered decisionmaker. To do so, the poverty lawyer needs to identify and use spaces available in legal rituals for translating client narratives. Such possibilities arise in hearings and in the judicial and bureaucratic acts of balancing and discretion.

Despite its defects,\textsuperscript{251} the administrative hearing can empower individuals with an opportunity to be heard, a chance to "bring the [bureaucratic] apparatus to a halt for a moment."\textsuperscript{252} In the environment of the hearing, the lawyer as translator can bring client and decisionmaker together in face-to-face dialogue. The crux of the dialogue is the integration of client integrity with legal arguments reinforced by the client's own direct participation. Lucie White's story of Mrs. G. demonstrates the possibilities of the hearing when the client departs from traditional

\textsuperscript{249} See MacKinnon, \textit{Reflections on Sex Equality}, supra note 231, at 1285.
\textsuperscript{250} White, supra note 218, at 267; see White, \textit{Lawyering for the Poor}, supra note 171, at 865 ("[L]aw [is] an irregular terrain, rich with unlikely sites for poor people to act out moments of resistance.").
\textsuperscript{251} In Goldberg v. Kelly, 397 U.S. 254 (1970), the Supreme Court answered the question of what process is due for AFDC recipients before the termination of their benefits by declaring that such a determination must balance "the precise nature of the government function involved [with] the private interest at stake." \textit{Id.} at 263 (citation omitted). \textit{Goldberg} gave rise to a bureaucratic regime of administrative hearings steeped in the legal formalism of procedures, rules, and regulations. The formal procedures, however, protect only those who can demand them; they do little to deter systematic welfare agency intransigence and do even less to compel wholesale restructuring or reform. See Cynthia R. Farina, \textit{Conceiving Due Process}, 3 YALE J.L. & FEMINISM 189, 236 (1991) [hereinafter Farina, \textit{Due Process}]; White, \textit{Lawyering for the Poor}, supra note 171, at 865-69. The remedy of the hearing has reinforced the distinction and separation between adjudication at the hearing level and frontline bureaucratic administration. The former is characterized by fairness in procedure, if not substance; the latter is characterized by clerical tasks constrained by rigid rules and regulations. William H. Simon, \textit{The Rule of Law and the Two Realms of Welfare Administration}, 56 BROOK. L. REV. 777, 782-88 (1990).
\textsuperscript{252} White, \textit{Lawyering for the Poor}, supra note 171, at 869.
scripts written for the dependent, passive, and victimized. Making room in the hearing for clients to speak out in their own voices may compel the decisionmaker to hear the meanings and values within unrestrained client narratives. Formal or informal adjudication of the client’s claim can be an opportunity for legal decisionmakers to learn from the client’s perspective as they decide what is right and just in the context of the client’s experience.

The hearing as a forum for translating client narratives has become increasingly important as substantive developments in poverty law in the 1980s have shifted decisionmaking from federal regulatory practice to state program, design, operation, and control. For example, under the JOBS program of the FSA, states are supposed to provide employment, education, training, and child-care opportunities to qualified AFDC recipients. Recipients have a right to information about these services and a right to a “dispute resolution” hearing if they disagree with their assignment or lack of assignment in the program. Because of the discretion given to states in administering the program, the fair hearing process will be a significant means for both contesting and compelling state action. As welfare programs shift to the states, proponents and analysts of the “new welfare”—which, for example, sometimes offers and sometimes requires education and job training—are recognizing that administrators in many cases will have to make individualized program decisions. Thus to be effective, poverty lawyers will need to do more outreach, provide more individual advice and representation, and bring more cases calling for individualized decisions. Client narratives hold

253. See supra text accompanying notes 207-212. While recognizing that her client spoke out at the hearing despite the traditional script prepared by the lawyer, White focuses her concluding recommendations in Sunday Shoes on “relocat[ing] bureaucratized governance in participatory institutions.” White, Sunday Shoes, supra note 22, at 57. Although that is certainly a necessary public policy goal, she fails to underscore that her client, Mrs. G., demonstrated that there in fact may be room for client narratives in bureaucratic hearings as they are now structured; the lawyer simply fails to grasp the opportunity.

254. See Farina, Here to There, supra note 41, at 708 (feminist method and theory can recreate administrative law by approaching adjudication as value generating and learning experience). On the legitimization and participatory values of face-to-face hearings in a bureaucratic context, see Jerry L. Mashaw, Bureaucratic Justice: Managing Social Disability 198-202 (1984).


256. See supra text accompanying notes 102-116.


259. Id. at 835, 844-45, 851-52.
the potential to inform those bureaucratic decisions with context and meaning.

Even when decisions are structured and disciplined by rules, those rules often present choices for those who, in applying them, give the rules their ultimate meanings.\(^2\) While rules of law are intended to curb discretion and prevent arbitrary results, there are few rules so formal that they limit the judgment stories decisionmakers can tell to justify a result.\(^2\) This is why discretion in nonformal or bureaucratic settings is often cursed as unjust and as the source of subjective, biased results. Such dissatisfaction gave rise to the formal bureaucratic hearing: process was prescribed in an effort to provide accountability, justification, and legitimation for government decisions impacting upon individual rights and interests.\(^2\) But mere insistence that rules be applied in accordance with procedural safeguards does little to challenge the universalized legal narratives in which the rules are embedded. Properly viewed, discretion provides an opening for lawyers to make such challenges through the translation of client narratives.

The "dilemma of discretion" is that it extends the opportunity for individualized justice, fairness, and responsiveness, but also increases the danger of arbitrariness, unpredictability, and inconsistency.\(^2\) Despite the dangers, there is an inevitable link between discretion and empathy, the means for connecting the perspectives of client and decisionmaker. Once it is accepted that discretion is fundamental to our legal system even in formal due process settings, the lawyer can focus more on translating client narratives and less on exploiting and challenging technicalities of due process requirements and formulae.

In translating client narratives, the hearing (whether formal or informal) should be neither the means nor the end of the representational strategy; rather, the hearing is the setting for bringing together client and decisionmaker in an effort to call upon the latter to take account of and

\(^2\) See supra note 251.
\(^2\) See supra note 211-16, 2118-19; James Boyd White, Law as Language: Reading Law and Reading Literature, 60 TEX. L. REV. 415, 435-36 (1982). Some legal rules direct decisionmakers to focus on context either as a basis for applying an exception to a rule or to give meaning to the operative term of a rule, such as "totality of the circumstances." See Minow & Spelman, supra note 32, at 1644.

\(^2\) See, e.g., Sarat & Felstiner, Lawyers and Legal Consciousness, supra note 157, at 1676 ("[J]udges are portrayed [by divorce lawyers] in ways that suggest that they are capable of making decisions on grounds that have nothing to do with facts or rules."); Scheppele, supra note 140, at 2085 ("[T]here are few formal legal rules providing guidance on how the lawyer or judge should structure stories.").

\(^2\) See supra note 211-16-20; Simon, Invention and Reinvention, supra note 147, at 33.
learn from the former's perspective and voice. The substantive goal is to enable decisionmakers to act with enhanced knowledge of the law and client; the process goal is empathic decisionmaking.264

By understanding hearing, balancing, and discretion as opportunities to translate client narratives in a process of empathic decisionmaking, the lawyer adopts a "humanist vision" of judicial and bureaucratic justice, in which procedural fairness "is a normative horizon rather than a technical problem."265 The humanist vision takes account of the disjuncture between equal and meaningful participation by treating client participation in legal institutional processes as an opening for client narratives; what is asserted is the right to be heard and not merely the right to a hearing. Hence, the lawyer's translation is an attempt to compel the decisionmaker to hear the client's voice, understand the client's perspective, and feel the client's injury.

The lawyer's role, thus conceived, recalls Frank Michelman's notion of "reconciliatory projects" involving themes of dialogue, history, responsibility, and identity.266 What is sought to be reconciled is legal and client integrity. What is emphasized is the possibility of reconciling the client's narrative perspective and the law—not by manipulating the client's story to fit universalized legal narratives, but by highlighting its nonfit and offering a counterstory with an alternative outcome. The decisionmaker must be convinced that the alternative story is authentic,267 one that investigates, questions, considers, connects, criticizes, and challenges competing perspectives and stories.268

In contextualizing legal arguments with the client's perspective, the lawyer highlights how the client has been treated. The focus on treatment comports with traditional due process concerns of protecting individual expectations.269 In translating client narratives, however, what is

264. Farina, Due Process, supra note 251, at 273-78.
265. White, Sunday Shoes, supra note 22, at 3 (emphasis in original).
266. Michelman, supra note 17, at 31-34. "There are themes of dialogue: conversation, inclusion, and recognition; themes of history: narration and continuation; themes of responsibility: contextuality and immediacy; and themes of identity: shared humanity (including difference) and common good (including confrontation with difference)." Id. at 33.
267. On this point, Clifford Geertz, speaking of ethnographic literature, is instructive: [T]o persuade readers ... that what they are reading is an authentic account by someone personally acquainted with how life proceeds in some place, at some time, among some group, is the basis upon which anything else ethnography seeks to do—analyze, explain, amuse, disconcert, celebrate, edify, excuse, astonish, subvert—finally rests.

Geertz, supra note 17, at 143-44.
268. This is the essence of the feminist relational approach to legal analysis. See Minow, supra note 40, at 213.
269. Farina, Due Process, supra note 251, at 227-33.
taken from the client—the interest at stake—is a part of, not separate from, that treatment. Cynthia Farina has observed that the images of "entitlement" and "largess" are often invoked to define and separate interest from treatment, in order to simplify and universalize the relationship between government and citizen. The image of entitlement is the simple picture of a rightful demand by a citizen and the corresponding absolute duty of a public official. The image of largess is the simple picture of a benevolent and powerful government dispensing privileges out of generosity. Although each opposing image conflicts with our day-to-day understanding of the complex government-citizen interaction, each is invoked to portray a set of universalized assumptions about government, people, power, and the law. Client narratives can dispel such universalized assumptions by calling upon a decisionmaker's inherent discretion to look at the intrinsic connection between treatment and interest in a particular case.

Drawing strength from the disempowered client's own previously silenced voice, translated client narratives hold possibilities for empathic understanding not normally available in authoritative legal discourse. The goal of translation, however, is not to evoke sympathy from the decisionmaker. Sympathy for the poor and oppressed is part of the liberal universalized legal narratives of victim, dependency, and passivity. Rather, empathic understanding entails comprehension and identification with "the other"—her perspective, identity, history, motives, and purpose. Empathic understanding—the goal of lawyer translation of client narratives—calls upon the inherent abilities of decisionmakers to hear, balance, and use discretion.

IV. A Storytelling Case Study: *Savage v. Aronson*

I now return to the case of *Savage v. Aronson* and examine the universalized legal narratives invoked by the lawyers for each side. The ex-
amination illustrates how representatives of the plaintiffs received client stories but failed to draw upon the meanings within client narratives essential for translating those stories in advocacy. Savage thus stands as an example of both the possibilities and limits of the critical storytelling approach to poverty law advocacy.

The Homelessness Clinic of the Jerome N. Frank Legal Services Organization at the Yale Law School was one of the first legal organizations in the country to do outreach on a regular basis to homeless people at shelters, soup kitchens, and welfare motels. Outreach to potential clients is necessary because the homeless almost always lack cars, telephones, and other means for obtaining and retaining legal assistance. Between the Clinic’s founding, in 1986, and 1989, one of the fastest growing segments of the New Haven area population served by the Clinic consisted of homeless families receiving Aid to Families with Dependent Children. In addition to receiving basic grants for food, shelter, and other necessities, women receiving AFDC in Connecticut were eligible for up to 180 days of emergency housing assistance under an AFDC “special needs” program administered by the Commissioner of the Department of Income Maintenance (DIM).

Women and children receiving such assistance were relocated and assigned to welfare motels or short-term lease apartments until the State could obtain for them rent subsidies for permanent housing through either the State-administered Rental Assistance Program (RAP) or the federal Section 8 program. Up until the beginning of 1989, the State through its various agencies had placed all recipients of emergency housing in permanent housing before their “special needs” funding ran out. In May 1988, however, DIM changed its regulation and reduced the

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275. Savage v. Aronson, 214 Conn. 256, 259, 571 A.2d 696, 699 (1990). In its state plan required by federal AFDC regulations, DIM defined the special need of emergency housing as “housing which serves as a temporary shelter until permanent housing is secured, including but not limited to, commercial lodging, shelters for the homeless and shelters for victims of domestic violence. Emergency housing shall not include temporary residence with a friend or relative.” Connecticut Dep’t Income Maintenance State Plan filed pursuant to 45 C.F.R. § 201.2 (1991) under Title IV of the Social Security Act, Attachment 2.3A at 7(b) (May 1, 1988).
maximum period for receiving emergency housing assistance to one hundred days. At the same time, funding for RAP and Section 8 rental subsidies was drying up, and low income housing was growing scarcer. The new regulation did not take effect until January 1, 1989, meaning that those already in emergency housing on that date would have to find permanent housing by April 10 or face eviction.276

In early March, during their weekly outreach to welfare motels, Clinic members learned that women had begun receiving notices from DIM informing them about the impending termination of their emergency housing assistance and instructing them to meet with a Department of Human Resources (DHR) caseworker for assistance. After meeting with officials from both DHR and DIM, Clinic members and their clients were assured that alternative housing would be provided prior to any eviction. However, after further outreach to the welfare motels, Clinic members learned that many emergency housing recipients were being offered lodging in congregate shelters far from New Haven, while others were being offered no relocation assistance at all. As the April 10 deadline neared, the Clinic decided to take action and filed suit to enjoin the state from discontinuing its emergency housing assistance until recipients could be guaranteed appropriate permanent housing.

Members of the Clinic fashioned their litigation strategy without any real input from the clients they were representing. This approach to representation was necessary for two reasons: time constraints imposed by the impending April 10 deadline; and the fluid, almost amorphous nature of the potential client base. Although Clinic members had made contacts and established lawyer-client relations with various welfare motel residents in the three or four months prior to the lawsuit, ongoing contact and representation were difficult due to the clients’ homeless condition. While unavoidable, the lack of interaction and dialogue between lawyers and clients prior to the decision to litigate resulted in a primary focus on a narrowly-defined legal problem (the failure of DIM to live up to the statutory language in Connecticut’s child welfare statutes) and a partial disregard for the clients’ perspectives of the dispute and the harm that required remedying. In short, client stories, while compelling and moving, were only elicited to fit the chosen legal narrative.

276. Savage, 214 Conn. at 259, 571 A.2d at 699.
A. Universalized Legal Narratives

(1) Narratives Invoked by the Clinic

From the beginning, the Clinic's litigation strategy centered on statutory language and administrative agency duties. The stories clients told to Clinic members were received only as factual background. Members of the Clinic chose not to argue that homeless families in Connecticut have a "right to shelter," because of the lack of hospitable language in the state constitution. It was only after client stories were elicited and the original complaint was filed that the Clinic amended its complaint to include rights claims by the homeless plaintiffs: a federal constitutional claim based on the fundamental right to family integrity, and a state constitutional claim based on the right to education. The primary reason for invoking the constitutional claims was tactical: combining constitutional rights claims with statutory duty claims ensured that the latter would not be dismissed based on state defenses of sovereign immunity and failure to exhaust administrative remedies.

Client stories formed the core of litigation strategy only at the temporary injunction stage. There, client narratives spoken in client voices had the desired impact of showing irreparable harm, moving the judge to grant the crucial temporary injunction. In subsequent stages, however, client stories were marginalized, making only an occasional appearance in legal reasoning and claims. On appeal, the legal battle turned on what DIM could or could not do based on interpretations of statutory and regulatory language.

In challenging DIM's regulation limiting emergency housing to one hundred days, the Clinic relied primarily on two statutes governing the administration of AFDC: Connecticut General Statutes sections 17-82d(a) and 17-85(a). Section 17-82d(a) provides that the Commissioner of DIM shall grant aid "as is needed... in the case of aid to dependent children, to enable the relative to support such dependent child or children..."

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278. For an analysis of fundamental rights of children to education and a stable family environment, and of the harms of homelessness to children, see Herr, supra note 119.

279. See Savage, 214 Conn. at 264-70, 571 A.2d at 701-04.
and himself, in health and decency . . . ”280 The Clinic argued that section 17-82d(a) established a nondiscretionary “minimum floor [of assistance] below which the Commissioner [could] not go.”281 Section 17-85(a) provides that:

any relative having a dependent child or dependent children, who is unable to furnish suitable support therefor in his own home, shall be eligible to apply for and receive the aid [AFDC] authorized by this part . . . . Each such dependent child shall be supported in a home in this state, suitable for his upbringing, which such relative maintains as his own.282

The Clinic argued that section 17-85(a) was a “command from the legislature that AFDC recipients receive such aid as will allow them to raise their dependent children in their own home.”283

Because the Clinic’s strategy focused on the above statutory language and DIM’s consequent duties, the Clinic attempted to fit the situation of its homeless clients within the language of the statute. The Clinic argued that failure of DIM to continue paying for emergency housing would result in the failure of the homeless women to keep their children—as mandated by the two statutes—in “health and decency” and in a “home . . . suitable for [their] upbringing.” This approach, which I call the “failure-dependency argument,” was consistent with established Connecticut case law. For example, in Langs v. Harder284 the Connecticut Supreme Court found that:

The [AFDC] policy . . . is to provide a means of support for children dependent on relatives who are unable to furnish suitable support. In providing this aid, “need” has been established as the standard of eligibility, and has been legislatively determined as that financial situation not capable of providing a “reasonable standard of health and decency.”285

The failure-dependency argument also had a proven track record. Homeless advocates in a number of other states had successfully argued

283. Plaintiffs’ April 10 Memorandum, supra note 281, at 6.
that state AFDC statutes and child welfare laws gave state agencies the duty to provide assistance in sufficient amount and duration to prevent recipient mothers from failing to keep their children in health and decency. To demonstrate the risks of unhealthiness, indecency, and unsuitability, the Clinic invoked the universalized legal narrative of the welfare mother as "incapable" and "dependent," while largely overlooking the contradictions within state policy, law, and action.

In order to obtain the temporary injunction, the Clinic had to show that irreparable harm would result without a court order freezing the status quo. The Clinic decided that the harm they should attempt to prove was the risk of homelessness. Based on the method of fitting client situations into statutory words, the Clinic argued that the "health and decency" requirement of section 17-85 required DIM to provide a grant level "sufficient to avoid homelessness." This put the Clinic in the awkward position of contending that housing women and their children in welfare motels would prevent the plaintiffs from becoming homeless: "If a temporary injunction is not issued to prevent [DIM] from discontinuing payment for plaintiffs' emergency housing, plaintiffs will become homeless."

By claiming that their homeless clients were in fact not yet homeless, the Clinic embraced the State's own definition: "Homeless person means any person who does not have overnight shelter or sufficient income or resources to secure such shelter." This definition of "homeless" reduces and decontextualizes the complex situation of homeless families to a single characteristic—not having a roof over their heads during the night. Based on this definition, and the Clinic's failure to challenge it, the State argued that the "cases cited by plaintiffs [for support] are readily distinguishable from [this] case. . . . Many [of those cases] involve assistance to homeless persons. Defendant would point out, once again, that . . . none of the plaintiffs in the instant action are

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287. Plaintiffs' June 29 Memorandum, supra note 285, at 5.
288. Plaintiffs' April 10 Memorandum, supra note 281, at 1-2 (emphasis added).
'homeless'-overnight shelter will be found for them if they request it...

With respect to the constitutional claims, in asserting that termination of emergency housing benefits threatened their clients' rights to family integrity, the Clinic argued that such a termination could result in "a parent being unable to care for her child—thus the child can be found to be neglected or uncared-for." To support the proposition that termination of emergency housing assistance violated the state policy of child protection under the State's child welfare laws, the Clinic coupled the image of the welfare mother as incapable with a plea for state intervention to rescue children from their homeless mothers: "a child or youth may be found 'uncared for' who is homeless or whose home cannot provide the specialized care which his physical, emotional or mental condition requires." Although invoking such images had the desired effect on the trial judge, they were contrary to the claiming narratives of rights and dignity spoken by the women in court.

(2) Narratives Invoked by the State

To counter the Clinic's demonstration of plaintiff harm due to DIM's failure to fulfill its statutory duty, the State invoked images derived from the legal narrative of welfare mothers as the unworthy poor with an overabundance of demands. This strategy was buttressed by continual emphasis on a public/private distinction: the unfortunate circumstances of the plaintiffs were the result of individual private deeds or misfortune, distinct from the public acts of DIM. The State argued that the cause of the unfortunate situation in which the plaintiffs now find themselves is not properly attributable to the one hundred day limitation (and plaintiffs' exhaustion of that limitation) of DIM's special

290. Defendant's May 23 Memorandum, supra note 289, at 28.
292. Plaintiffs' April 10 Memorandum, supra note 281, at 10 (quoting CONN. GEN. STAT. § 46b-120). "Once homeless, these children are—in the eyes of the State Legislature—'uncared for' and at risk of removal from the family by the State." Id. at 11.
293. See September 20 Decision, supra note 285, at 25-26 (finding that DIM regulation terminating emergency housing assistance after one hundred days violates state child welfare policy by rendering plaintiffs' children homeless and thus uncared for).
294. See supra text accompanying note 2; infra text accompanying notes 317-319, 333-334.
needs emergency housing benefits. Each of the plaintiffs in this action lost her permanent housing some months ago for diverse reasons such as eviction, natural catastrophe, lock-out or other involuntary cause. Those were the reasons plaintiffs [found] themselves without permanent housing. It was not attributable to the defendant DIM . . . .

The State placed blame on the homeless mothers for failing to obtain permanent housing on their own during the one hundred day period. Drawing the inference that requests by the plaintiffs for more than one hundred days were unreasonable, and depicting the emergency housing program as "temporary," the State reasoned that "[o]ne can surely understand why an emergency program is of short duration. The fact that a family may not be able to care for its internal needs after this durational period is surely not of DIM's doing." The State went so far as to claim that the purpose of the one hundred day limitation was "to better aid [DIM's] clients in attaining self-sufficiency." Under this interpretation, forcing homeless mothers and their children out of emergency housing by enforcing the one hundred day limitation served the therapeutic function of "curing" welfare mothers of their dependency on DIM.

DIM's reasoning was blind to the plaintiffs' reliance on the State's previous promise to assist them in locating permanent housing and to provide them with rental subsidies—a promise the State would fulfill only if plaintiffs first endured the hardships of residing in welfare motels. DIM's argument was framed in a vacuum, uninformed by social science data and the opinion of many experts that homelessness is not a temporary emergency experienced by a few isolated individuals, but a systemic socioeconomic problem requiring comprehensive solutions.
The State's justification and rationale for the one hundred day limitation also ignored the context in which assistance was being withdrawn: mothers struggling daily to survive and provide their children with food, shelter, protection, education, and other forms of care. Ignoring the consequences of withdrawing assistance and relocating homeless families to overnight shelters, the State obtusely asserted:

[Dim] indicated [its] sympathy for plaintiffs . . . but, it is submitted, that persons, such as the plaintiffs herein, who had been involuntarily displaced from their permanent housing and are living in temporary emergency housing, should not reasonably expect not to suffer some hardship and inconvenience until they once again find permanent housing.301

The contextualization provided by client narratives voiced at the hearing for temporary injunction was dismissed by the State as "imagery that has no relationship to the record."302 In countering the Clinic's arguments that Dim's actions were creating a larger homeless population, expelling families from emergency housing, and subjecting AFDC recipients to multiple housing transfers, the State focused on the "simple fact" that Dim itself did not create the homeless population or evict homeless families.303 This restricted view of state action is based on rigid private/public act distinctions that ignore cause and effect and the impact of state inaction as well as action.304

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4-10 (1986); Peter H. Rossi, Down and Out in America: The Origins of Homelessness (1989).

In equating "emergency" with "short duration," the state relied upon a (then) proposed federal rule that advocated doing away with emergency housing assistance under the AFDC special needs program and limiting all forms of emergency assistance to 30 days. The "Family Support Administration," which proposed the regulation change, supported its recommendation by asserting that the purpose of the emergency assistance program was "to enable State welfare agencies to act quickly to provide families with children with short-term assistance and/or services to meet needs arising from emergencies." 52 Fed. Reg. 47,420, 47,421 (1987) (to be codified at 45 C.F.R. pt. 233) (proposed Dec. 14, 1987) (emphasis in original). The proposal failed to explain why "emergencies" necessarily last less than 30 days or why the ceiling of 30 days assistance is sufficient to remedy all "emergencies." This type of "skewing of policy" has institutionalized emergency relief as the permanent state response to homelessness. See White, "The Real Deal," supra note 53, at 296-98.

301. Defendant's May 23 Memorandum, supra note 289, at 27. Another example of this type of decontextualization is provided by the state's rebuttal to the Clinic's argument that transferring plaintiffs to distant overnight shelters violated the state constitutional right to education. The state attempted to trivialize the effects of such transfers on impoverished children, stating: "At most plaintiffs [sic] testimony and evidence at the hearing was to the effect that the temporary dislocation that living in temporary housing often causes, makes it difficult for some of plaintiffs [sic] minor children to attend school as regularly as they would like . . . ." Id. at 35 (emphasis added).


303. Id. at 9-10.

304. See supra notes 54-55 and accompanying text.
Thus, in the State’s story DIM’s enactment of the one hundred day emergency housing assistance limitation (decreasing the previous maximum by eighty days) without providing for any exceptions was not state action causing unjustifiable harm; neither was DIM’s enforcement of the regulation by stopping payments to welfare motel owners, despite the foreseeable effect of forcing mothers and children to “double-up,” to accept overnight shelter in remote locations, or to find other ways to fend for themselves. DIM looked to the statutory text and administrative regulations and found no obligation to locate housing or make any exceptions for members of the plaintiff class: DIM’s responsibility was merely to pay owners of welfare motels for housing homeless mothers and their children. According to the State’s story, the fact that many of the plaintiffs had not moved on prior to the end of the DIM-imposed one hundred days was not the result of any action taken by DIM.305 The State concluded that “[t]he [state] interference with family structure alleged...is too remote, too indirect and too tenuous to constitute a violation of the plaintiffs’ asserted rights to ‘family integrity.’”306

B. Receiving Client Stories

As I noted, the Clinic was extremely successful at the temporary injunction stage of the lawsuit in showing the irreparable harm faced by the plaintiffs as a result of DIM’s planned enforcement of the one hundred day limitation. But as I also noted, members of the Clinic originally elicited those client stories subsequent to making the strategic decisions about litigation. This chronology is not uncommon in class action and law reform litigation. Given the Clinic’s resource and time scarcity—common to all legal services organizations—the sequence may have been necessary. However, in eliciting client stories for the purpose of fitting client facts into universalized legal narratives that the Clinic had already chosen, the Clinic transformed and recomposed its clients’ stories.307 The result was that the Clinic did not fully translate its clients’ stories in

305. Defendant’s May 23 Memorandum, supra note 289, at 10, 14-16.
306. Id. at 30, 36 (citing Rosado v. Hecder, No. H-85-171, slip op. at 21 (D. Conn. 1986) (holding that change in AFDC conditions of eligibility did not violate plaintiffs’ constitutional rights)).
307. [In Savage] we began by brainstorming, listing all possible causes of action, then breaking down each cause of action into its elements and each element into facts we would have to prove....

The factual aspect of the case [was] a top priority, with students developing individual stories and expert testimony to establish [our] conclusion[s]. Solomon, supra note 274, at 19-20 (emphasis added).
advocacy, and failed to highlight the inherent contradictions in the State's arguments and actions.

Before the Clinic decided to file suit against DIM, members of the Clinic had made regular outreach visits to residents of three or four welfare motels in New Haven. Clinic members had gone door to door, talking with residents, asking if they were having any problems with their caseworkers or the motel owners. Although occasionally rewarded with a "case" (typically entailing phone calls on a client's behalf regarding a late benefits payment or an inquiry as to a client's eligibility for additional benefits), the presence of Clinic members put motel owners and residents alike on notice that the Homelessness Clinic was monitoring the conditions at the motels. Clinic members performing this outreach generally referred to residents of the motels as their clients, despite the absence of formal, agreed upon lawyer-client relations. This perspective may partially account for the Clinic's willingness to impute to clients litigation goals, including choice of strategy.

The standard outreach questionnaire used by members of the Clinic demonstrates its preoccupation with and primary focus on legal problems devoid of contextualization provided by other elements of client stories.308 The questionnaire begins with requests for necessary information such as name, room number, and caseworker. It continues with a series of questions about reasons for moving to emergency housing, interactions with the motel owner, food arrangements, room conditions, and problems resulting from the burdens of emergency housing such as difficulties locating permanent housing and obtaining housing subsidies.309 Though direct and to the point, the questionnaire gave welfare motel residents little opportunity to reveal their histories, beliefs, identities, and narrative perspectives.310

308. On elements of client stories, see supra Section II.B.(1).
309. YALE LEGAL SERVICES ORGANIZATION, HOMELESSNESS CLINIC MOTEL OUTREACH QUESTIONNAIRE (Spring 1989) (on file with author).
310. The interviewing questionnaire structured initial interviews between Clinic members and clients in a manner consistent with interviewing tips and information distributed to all Clinic members at the beginning of the semester. I believe the packet of information was borrowed from New Haven Legal Assistance. The information resembles that which might be distributed at a legal services "how-to" workshop for attorneys.

Although generally sensitive to the impact of interviewing method on the story received, the information packet emphasizes that it is the lawyer's job to determine what is relevant and irrelevant, to teach the client what is expected of her during the interview, and to judge what the client is saying and how she is saying it in order to assess the client's reliability. YALE LEGAL SERVICES ORGANIZATION, HOMELESSNESS CLINIC INTERVIEW EXERCISE PACKET 16-23 (distributed Spring 1989) (on file with author). "The object of maximizing [lawyer-client] communication is, after all, to enable the attorney to obtain the information s/he needs to solve the client's problem." Id. at 23. On how this traditional approach to interviewing
After the Clinic decided to litigate the DIM regulation, members began searching for clients who fit the litigation strategy to demonstrate immediate irreparable harm. Clinic members searched for hotel residents who would make "good" clients, meaning those who could evoke sympathy from the court and attest to prospective harm involving the risks of unhealthiness, indecency, and unsuitability—the infirmities AFDC laws governing DIM were intended to prevent and cure. The Clinic thus adopted a method of triage client selection. This had the harmful effect of excluding many prospective clients who did not fit the desired profile. The effect was harmful because those not included as class representatives did not benefit from direct participation in the hearing for temporary injunction. Furthermore, they lost the opportunity to receive direct notice and follow-up attention from the Clinic regarding class member rights under the court's orders.

C. Translating Client Stories

At the hearing, plaintiffs told compelling stories of hardship and harm, moving the court to grant the temporary injunction. By creating space in the hearing for their clients to tell stories in their own narratives, the Clinic integrated client narratives with legal claims of harm, may overlook or suppress client narratives contextualizing the client’s problem to the detriment of both lawyer and client, see supra Part II.

312. On triage, see supra notes 131-135 and accompanying text. The Clinic devised a special outreach form entitled: "Emergency Housing Questionnaire: Lawsuit Testimony." The Clinic structured the questionnaire to solicit quickly the following information: (1) Deadline for leaving emergency housing; (2) alternative places to stay; (3) whether a caseworker had informed the resident of possible places to go after the deadline expired; (4) whether relocation after the deadline would pose any extra problems for locating permanent housing, obtaining transportation, or getting children to doctors or schools.

To be accepted as a client, an interviewee needed to give at least some of the following answers: (1) Her deadline for emergency housing had expired or soon would; (2) she had no alternative places to stay or was trying to "double-up" with another AFDC or public housing recipient; (3) her caseworker had not referred her to any alternative housing, she had been promised but had not yet received a housing voucher, she had received a voucher that was unusable due to lack of available housing, or she had been offered overnight shelter at a distant location; (4) relocation to an alternative shelter would disrupt her search for a permanent home or her children's schooling or healthcare.

313. See Hearing Transcript at 213-15, Savage v. Aronson, No. CVNH-8904-3142 (Conn. Super. Ct. Hsing. Sess. Apr. 14, 1989), rev'd, 214 Conn. 256, 571 A.2d 696 (1990) [hereinafter April 14 Hearing Transcript] (colloquy between lawyers and judge indicating the logistical difficulties of proposed class-wide notice plan); April 18 Hearing Transcript, supra note 2, at 93-94 (testimony by plaintiff that subsequent to issuance of temporary injunction and order for class-wide notice her caseworker had failed to inform her about her rights under the order).
314. See September 20 Decision, supra note 285, at 37.
thus translating client stories in advocacy.\textsuperscript{315} Altogether, seven different women spoke out in court, painting a "vivid portrait of the plight of those who found themselves and their children facing homelessness" and providing testimony the trial judge found "eloquent."\textsuperscript{316}

Dawn E. told her story about an endless search for an apartment, eviction from a welfare motel room, frantic search for someplace to spend the night, temporarily sharing cramped quarters at her parents, the uselessness of a Section 8 housing voucher, worthless housing referrals from her caseworkers, having to quit her job training program to search for an apartment, consequently losing her opportunity for regular employment, and her son's worsening health condition and school performance.\textsuperscript{317} Melissa H., a twenty-year-old mother of four children, told her story about her inspection of the only prospective permanent apartment assigned to her, and her discovery of boards on the windows, garbage in the yard, and drug dealers in the neighborhood. She also told how her caseworker offered overnight shelter in another city without offering transportation for her oldest daughter to get to school or her sick baby to get to her doctor's appointments.\textsuperscript{318} Maria C. told her story about being denied a Section 8 housing subsidy because of an unsettled dispute with a former landlord, her caseworker's suggestion that she should either go "back to" Puerto Rico or accept overnight shelter in another city, her fear that without permanent housing in New Haven she might lose visitation rights to her four children then in foster care, her battle to overcome drug addiction, and her long, fruitless search to find an affordable apartment with enough bedrooms to reunite her family.\textsuperscript{319}

Despite the Clinic's success at the injunction stage, it ultimately lost on appeal to the Connecticut Supreme Court. It is not my purpose to speculate on whether an alternative litigation strategy would have produced a different result.\textsuperscript{320} Obviously, the most important goal from the

\textsuperscript{315} Each testifying plaintiff was asked questions extending beyond the immediate legal problem, including questions about her living conditions prior to emergency housing, why and how she ended up in emergency housing, and problems she had encountered in the search for permanent housing. This line of questioning enabled a client's narrative perspective to emerge during testimony and provided the judge with a sense of the client's identity and history. Thus, members of the Clinic were quite successful in finding space for their clients to speak out during the hearing, despite the state's constant objections of "irrelevancy." See, e.g., April 14 Hearing Transcript, \textit{supra} note 313, at 138, 156 (state's objections to questions about conditions suffered by plaintiffs and Clinic's responding offer of proof); April 18 Hearing Transcript, \textit{supra} note 2, at 62-63, 69-71, 91 (same).

\textsuperscript{316} September 20 Decision, \textit{supra} note 285, at 11, 30.

\textsuperscript{317} See April 14 Hearing Transcript, \textit{supra} note 313, at 135-53.

\textsuperscript{318} \textit{Id.} at 154-81.

\textsuperscript{319} April 18 Hearing Transcript, \textit{supra} note 2, at 58-76.

\textsuperscript{320} The Connecticut Supreme Court, keenly aware of the state's fiscal crisis, \textit{see} Savage \textit{v}.
clients' standpoint was to prevent the state from stopping emergency housing payments before they could find permanent housing.\(^3\) It is clear, however, that the Supreme Court failed to apprehend the meaning of the client stories it only briefly noted in its opinion.\(^3\) It is also clear that the Clinic did not attempt to translate its clients' narratives and thereby demonstrate the contradictions of the State's actions and their harmful impact on the clients. The Clinic failed to link the rights talk of its clients to the purposes underlying state policy and action. Instead, the Clinic chose to focus its argument on what DIM could or could not do under the statutes.\(^3\) Although on appeal the Clinic was without the benefit of its clients' eloquent in-court testimony, which convincingly brought to life experiences and claims, those narratives could have enlightened the abstract technical legal arguments in the Clinic's appellate brief.

The court decided the case on the textual interpretation grounds the Clinic argued, merely adopting the State's interpretation over the Clinic's. The court held that the regulation limiting emergency housing assistance to one hundred days did not conflict with Connecticut General Statutes sections 17-82d and 17-85(a). The court found that section 17-82d's language requiring AFDC in an amount sufficient to "support such dependent child or children and himself, in health and decency" did not "specifically relate to housing as compared to other necessities of life" and was not "related to emergency housing or the duration of its availability."\(^3\) The court further found that section 17-85(a)'s language stating that "[e]ach . . . dependent child shall be supported in a home in this state, suitable for his upbringing" was a condition of recipient eligibility, and not a mandate requiring DIM to provide emergency housing assistance until relocation to permanent housing.\(^3\)

In narrowly construing the statute, the court adopted the State's definition of "emergency," reasoning that the housing of homeless families in welfare motels must be temporary and a last resort. The court also

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\(^3\) Aronson, 214 Conn. 256, 276-77, 571 A.2d 696, 707 (1990), might have found for the state no matter what argument was put forth.

\(^3\) As Steve Wizner points out, theoretical or long-term policies or goals are of little relevance to the homeless person's immediate needs, and the advocate's perspective must be framed by the client's perspective. Wizner, Homelessness, supra note 274, at 390-91, 400. For the plaintiffs in Savage, the case was won with the granting of the temporary injunction.

\(^3\) See Savage, 214 Conn. at 281-84, 287, 571 A.2d at 710-11, 712-13.

\(^3\) On the importance of linking the integrity of the client and her story with legal claims, see supra Section III.C.

\(^3\) Savage, 214 Conn. at 272-73, 571 A.2d at 705 (citing CONN. GEN. STAT. § 17-82d) (emphasis in original).

\(^3\) Id. at 274-75, 571 A.2d at 706-07.
dismissed the constitutional claims, adopting the State's rigid distinction between private and public actions: "The financial circumstances of these plaintiffs, which are the root cause of their inability to obtain 'permanent' homes, have not been produced by any state action, an essential requirement for invocation of the due process clauses of both our federal and state constitutions."326

Information revealed in client narratives pointed out that a number of contradictory state actions were, in fact, immediate causes of plaintiffs' homelessness, and that an attempt to find a single "root cause" was nonsensical. Although being poor led to homelessness, client narratives revealed market forces, broken promises by landlords and caseworkers, and conflicting regulatory requirements as contributing causes. For example, evidence at the hearing clearly established that DIM and DHR had expected that, at the end of one hundred days, emergency housing recipients would either find permanent housing with Section 8 vouchers, accept relocation to overnight shelters, or double-up with family or friends.327 These expectations, however, were contradicted by realities explained in client narratives.

Clients spoke of receiving housing subsidy vouchers only days before the State expected them to vacate their emergency housing. But a voucher did not facilitate immediate transfer to permanent housing. Client narratives told of long and frustrating searches for permanent housing, of weeks spent traveling from apartment referral to apartment referral to find an apartment in the condition required by the housing voucher: available, decent, safe, and affordable.328 The purpose of the emergency housing program was to allow recipients an opportunity to locate permanent housing, almost always with the assistance of a subsidy. State actions delaying the issuance of the subsidy vouchers until the day before emergency housing expired, combined with the State's knowledge that it often took weeks to locate available and qualified housing, clearly contradicted the purpose of DIM's own emergency housing program.

Clients explained why it was not possible for them to accept relocation to far-away overnight shelters. Their narratives are infused with ac-

326. Id. at 284, 571 A.2d at 711 (rejecting plaintiffs' right to family integrity claim); see also id. at 287, 571 A.2d at 713 (rejecting plaintiffs' right to education claim on same ground).
328. E.g., April 14 Hearing Transcript, supra note 313, at 136-43, 161-65, 177-79; April 18 Hearing Transcript, supra note 2, at 92-93, 119-21.
knowledgment and acceptance of parental responsibilities to provide adequate health care, suitable home environments, and sufficient educational opportunities for their children. DIM’s actions compelling the plaintiffs to accept distant relocation endangered their children’s well-being and were contrary to child welfare laws enforced by another arm of the State, the Department of Children and Youth Services.\textsuperscript{329} Clients reported how their caseworkers advised them to move in with parents or friends, despite the knowledge that their parents and friends were themselves recipients of government housing subsidies. The clients knew that such advice was contrary to state-enforced regulations that prohibit families from doubling-up in public housing.\textsuperscript{330}

Furthermore, “rights talk”\textsuperscript{331} within client narratives revealed other contradictory state actions that helped perpetuate plaintiffs’ homelessness. For example, the State argued that the purpose of the one hundred day regulation was to “better aid its clients in attaining self-sufficiency.”\textsuperscript{332} The State’s strict enforcement of the regulation without exception, appeal, or hearing, violated its very purpose. Dawn E., the client who was forced to leave her job training program when her emergency housing expired, poignantly depicted this contradiction:

[I]t’s not fair that you can give somebody a helping hand and then snatch it back because you don’t want to take the responsibility to give them adequate time—okay? I’ve been in school from 9:00 to 5:00; there are people out there who are looking for adequate apartments. There are people out there who are going to school. I was going to school. I was going from 9:00 to 5:00. On my lunch hour, I did not eat. I was looking for apartments.

After school, I was looking for apartments. Here I am today with no apartment, no place to go in two weeks. You people didn’t have to pull this from under our legs; that was not right. That wasn’t right.

And all I ask is that somebody says; “This is enough. You can’t put children out on the street. You can’t put parents out on the street like that. Give them adequate time or give them someplace to stay” until you can help them find something.\textsuperscript{333}

The fundamental policy behind emergency housing was to afford recipients time to find permanent housing. The failure of the State to issue housing subsidies within the required one hundred days (or, alterna-
tively, the fact that the one hundred days was not enough time to issue the housing subsidies) frustrated that policy. The rights talk of Melissa H., who did not receive her Section 8 voucher until the very end of her one hundred days, points out this contradiction:

[My] landlord said [that] [p]eople who are receiving Section 8 could stay [here]. There is a lady down below me [a former recipient of emergency housing] who is going to keep the apartment that she is in [because she received Section 8]. I called the landlord and asked him if I can keep my apartment, but he said no because he had rented it out to somebody else, and I thought that was wrong because I should have first priority to that apartment.334

Rights talk within client narratives also demonstrated that the plaintiffs had done everything the State had required of them to receive safe, decent, and affordable housing, and that it was the State that had failed to live up to its promises and responsibilities under its own emergency housing program. The one contradiction in state policy the Clinic relied upon, the “dependency-failure” argument, actually projected the plaintiffs in an extremely vulnerable, dependent, and incapable role. By arguing that conditions of homelessness might be sufficient to bring charges of child neglect and deprivation, the Clinic turned an inherently discriminatory welfare mother contradiction335 against its own clients instead of the State.

Although the Clinic argued that state actions enforcing the one hundred day regulation would violate plaintiffs’ statutory and constitutional rights, the arguments focused on abstract statutory and constitutional language, unenlightened by client narratives. Those narratives had the power to contextualize what those rights meant to their bearers and to show how DIM’s treatment of homeless women and children was inseparable from their interests at stake. Instead, the Clinic implied that an abstract right to housing or shelter was lurking within vague statutory and constitutional language.336 The Clinic established that DIM interpreted its own emergency housing program as an “entitlement,”337 a conclusion the Clinic argued was mandated by sections 17-85(a) and 17-82d(a). In its brief to the Connecticut Supreme Court, the Clinic argued that those statutes established the State’s “unqualified obligation” to en-

334. Id. at 159.
335. See supra Section I.D.
336. See, e.g., April 14 Hearing Transcript, supra note 313, at 168-71 (colloquy between Clinic’s supervising attorney, state attorney, and judge regarding whether or not plaintiffs’ claim was for right to housing).
337. See April 25 Hearing Transcript, supra note 327, at 2 (testimony of DIM Commissioner that emergency housing is an entitlement).
sure that plaintiffs had housing. That obligation could have been qualified by referencing state contradictions and client rights talk revealed by plaintiff narratives. The failure to do so resulted in the court’s focus on the absolute demand of “entitlement” and the plaintiffs’ seemingly insatiable need for public assistance.

In essence, the Clinic failed to translate what DIM’s obligation to the plaintiffs meant to the plaintiffs themselves. The client narratives revealed that the State’s obligation was both more and less than a weekly payment to owners of welfare motels; it was an obligation to uphold the State’s own expressed policies, purposes, and promises to the plaintiffs, and an obligation to consider the individual circumstances of recipients who in good faith had attempted to find permanent housing in order to move beyond their “emergency.” Rather than affirmatively invoking client narratives and translating them into legal arguments, the Clinic briefly summarized client narratives and segregated them from the legal arguments in the body of the appellate brief. Client narratives merely provided a factual backdrop to evoke sympathy and to demonstrate the clients’ desperate circumstances and dependency on the State. Those client narratives, however, when interpreted in their full context, told another story: the story of dignity in dealing with caseworkers and a bureaucracy seemingly bent on frustrating its own goals, of daily struggle involving care, love, and sacrifice for children, and of belief in the right to provide children with safe and decent homes and to get a fair shake at becoming independent from the State.

338. Plaintiff-Appellees’ Brief, supra note 3, at 12. Entitlement to housing is a solution to homelessness often demanded by advocates for the homeless. See, e.g., Curtis Berger, Beyond Homelessness: An Entitlement to Housing, 45 U. MIAMI L. REV. 315, 324 (1990-91). For a discussion of the connection between government treatment and citizen interest and the deficiency of the “entitlement” image for illuminating that connection, see supra text accompanying notes 269-271.

339. Failure to qualify entitlements by reference to concrete client-state interactions “reifies] individual rights and state power as distinct and opposed entities.” Simon, Invention and Reinvention, supra note 147, at 29. Winning recognition of the entitlement becomes an all-or-nothing proposition. Client narratives, expressing real, nonabstracted rights and needs, can define related state obligations. “In order to ward off frustration, welfare programs may not need to satisfy clients’ full ‘material’ needs, even as the clients themselves define them. But those programs must treat poor people with dignity.” White, Lawyering for the Poor, supra note 171, at 874. See also Law, Reflections on Goldberg v. Kelly, supra note 143, at 810 (stating that poverty lawyers in Goldberg could have focused more on state’s infirm reasons for actions taken and plaintiffs’ individual claims to subsistence benefits).

Conclusion

Thinking about the poverty lawyer's work through the storytelling typology—recognizing universalized narratives, receiving client stories, translating client stories, and influencing judgment stories—reveals both the power and limits of legal discourse. Critical storytelling analysis—integrating feminist and other critical theories that examine the relationship between the law and disempowered people—provides a compelling critique of how the law and the lawyer can marginalize and ignore the narratives of poor people, enforcing and contributing to their disempowerment. Such critical analysis is premised upon the belief that the poverty lawyer should oppose, rather than contribute to, structural forms of subordination.

Universalized legal narratives shape and constrain both lawyer and client understandings of events by imposing a standard, universalized account of human experiences and relationships. Assumptions and stereotypes within such narratives exclude knowledge of the supposed subjects of those narratives and often ring false when applied to real life situations. As authoritative explanations of what has happened in the past, legal narratives can silence alternative meanings and suppress client voices.

But legal principles, rules, and categories suffusing universalized narratives do more than just affect how poor people publicly define themselves and their problems; they control and regulate private daily life, shaping and influencing the storylines of the poor—the future direction of their lives. In the bureaucratic tangle I have highlighted, “welfare mother contradictions” enmesh poor mothers and their children in welfare programs that are supposed to encourage independence by providing “family support” and opportunity, but instead may increase recipients’ vulnerability and objectification. Despite the public control over their lives, women on welfare exhibit strength and dignity in their daily struggles to survive. A reverse contradiction is that state assistance can empower women, partially liberating them from abusive, dependent private relationships and a subordinate market status.

To discover public contradictions and private acts of strength, the lawyer needs to take account of the client's narrative perspective, and recognize that the lawyer-client interaction defines and redefines perceptions of the legal problem, dispute, and injury at issue in the client's claiming story. Disempowered people speak a language of rights to convince both themselves and others that they have suffered injustice. Client rights talk may not fit within the formalized or abstracted discourse of
lawyers; it may, however, express meaning, purpose, and value critical to making a convincing claim.

To discern client differences and normative commitments, the lawyer must relax his privileged interpretive stance and create space for the client to speak out in the lawyer's office, to develop and present her story in her own narratives. Such dialectic interaction is a touchstone of feminist method and practice. When lawyers misinterpret or subordinate client narratives, they disregard the client's narrative purpose and her perspective of the harm to be remedied, and may do violence to the client's normative values and beliefs.

The lawyer holds great power over the telling of the client's story. To be effective in advocacy and serve the client's real interests, the lawyer's role should be to act as a translator in order to reveal the client's narrative version despite the distortion of legal language and procedure. In this respect, the lawyer acts as a facilitator, enabling dialogue across lines of social difference that divide the client, law, and legal decisionmaker. Translation entails stating unstated assumptions in universalized narratives and exposing their nonfit with client narratives. By linking the client's personal and narrative integrity with legal claims in the judicial spaces of balancing, hearing, and discretion, the lawyer can infuse legal categories with new meanings and supplant false stereotypes and assumptions.

In integrating different strands of critical storytelling thought and literature, my purpose has been to take a contextualized, comprehensive look at the different ways stories are lived and told under the rule of law. I harbor no illusions that my outline and discussion of the story typology will somehow transform the difficult, resource-starved practice of poverty law. It is my hope, however, that practitioners and scholars will see the value and efficacy in critically viewing the receiving and telling of stories as the medium of communication between the law, poverty lawyer, disempowered client, and legal decisionmaker. Such an approach may enhance representation and contribute to the ongoing project of integrating practice and theory for the purpose of better serving the human rights and needs of disempowered people.