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Five Who Got It Right

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FIVE WHO GOT IT RIGHT

Richard Zitrin*

"Before we become lawyers, we are human beings."

~Incoming University of San Francisco law student Damien Cox, on his second day of orientation, Fall 1997.

"Even after we become lawyers. . . ."

~University of San Francisco law professor's reply

In our 1999 book *The Moral Compass of the American Lawyer*, Carol Langford and I criticized lawyers far more often than praised them, excoriated the conduct of many while only rarely singling out exemplary behavior. And yet, I too am a lawyer; I both teach and practice my profession, and I'm proud of it. There are tens of thousands of great American lawyers, ordinary people who are each extraordinary, conducting their professional lives in a way that makes them worthy of the highest praise. We have all been privileged to know some of these lawyers personally. I have had this pleasure, and my writing, teaching, and law practice has given me the good fortune to meet many more. They are what American lawyers can and should be.

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Here are the stories of five exemplary lawyers. Their narratives, while edited, are presented in their own words. Each story is unique, but none stands alone. If it is a slight overstatement to call these lawyers "heroes"—a term each of the five would strongly object to—it is not overstating at all to say that these five lawyers "get it," and they've been getting it right for a long time. There are thousands of others like them.

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THE TENTH BLACK LAWYER IN GEORGIA

Howard Moore, Jr.

Moore & Moore, Oakland, California

Lawyers from under-represented communities often talk of someday "giving something back" to their community. A black man in the segregated South, Howard Moore, Jr. could not even attend law school in his own state. But after his exile, he came home to give something back to the people of Georgia. Today, some have the impression that the term "civil rights lawyer" came into existence in the early 1960s and was obsolete by the end of the 1970s. Neither supposition is accurate. While we don't hear the term used as often today, civil rights lawyers still exist. Howard Moore has been one for over forty years.

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I am originally from Atlanta, Georgia. The neighborhood I grew up in was mixed, some very educated well-to-do African Americans, people who were not so well-to-do, and people down in Buttermilk Bottom who were poor and worse. There were tenements there—not tenements like you think of in New York, but what we call shotgun houses where the streets are unpaved. During the war, when I was twelve or fourteen, I had a job in Buttermilk Bottom throwin' the *Atlanta Journal*. My Aunt Fannie was teaching me to speak proper English, so I'd knock on somebody's door and say, "It is I, your *Atlanta Journal* paperboy." They'd say, "What?!" Then they'd open the door, see me, and say, "Why didn't you say you was here?"

I think the paper cost thirty-five cents a week. I always collected. I don't remember a single bad customer. In fact, I don't remember a bad day as a child, until my Aunt Fannie died in 1945.

My father was a tailor and a semi-pro ballplayer; he'd leave in May and come back in September. My mother was a practical nurse, salt of the earth. But Aunt Fannie did a lot of my raising. She was a school principal. She knew something about everything, and she'd teach it to me. I would have been a schoolteacher except for her—I thought you had to be brilliant. She was an ace!

I wasn't thrilled with school then, but I had a friend named Nat who lived up on Boulevard next to Dr. King's family, where a lot of wealthy blacks lived. Nat went on to Exeter and Harvard, and it seemed like if Nat was going on, I should too. As long as I could remember, I was going to Morehouse College. There was no discussion in my family about me going any place else.

I took some English literature classes at Morehouse. I had a teacher who was intent on exposing us to the "great works" rather than books that were more relevant to me. For example, she had us read *The Great Gatsby*. When you are a black kid in the South in the 1950s, *The Great Gatsby* is not in your world.

Then one day I went to a political science class. I really liked it. Remember, this was a time when Africans in the South and elsewhere couldn't even register to vote. There was not a single black officeholder in the "Deep South." And you could count the others on one hand: Adam Clayton Powell and the guy from Chicago, Dawson. They represented all of the blacks, Negroes, colored people in America. Two congressmen. The idea of holding office was a greater fantasy than *The Great Gatsby*.

I decided I wanted to be a lawyer after hearing Thurgood Marshall speak. The NAACP came to town for a convention. I had never heard Thurgood Marshall speak before, but I knew him from a distance. When he came to town, he would work out of A.C. Walden's office. I used to call A.C. "Colonel." He had been a colonel in World War I, but he was also a colonel because he was a Negro who was a member of the Georgia Bar, and the courtesy title for a Negro of that Bar was not Mr., or Esq., but "Colonel." A.C. would see us boys walking down the street from the Y.M.C.A. and have us run and get some sandwiches for him and Mr. Marshall. We'd bring

the food, and A.C. would say, "This great man here is fighting for you."

I don't remember what Thurgood said at that convention, but I liked the way he said it. I said to myself, "I can talk like that." The next morning, I went to talk to Dean Brazil at Morehouse. He said, "Mr. Moore, what are you in here for?" I said, "I decided I want to be a lawyer. What do I have to do to be a lawyer?" The dean scratched his mustache, looked at me and said, "Mr. Moore, you gotta pull up on your record." I thanked him and left.

What he told me was very positive and affirmative. He hadn't told me something like "There is not much for a Negro lawyer to do. He can't even go to the courthouse in a lot of places. Maybe you might think about becoming a preacher or schoolteacher or something like that." What he told me was something within my control. It was a brief conversation, but it was a very memorable one. I made sure I was on the honor roll from then on.

I went to Boston University for law school. I had no choice. There was no law school I could go to in Georgia. It was "separate but equal." Under the "separate but equal" doctrine, the state would pay the difference between my tuition at Boston and the tuition at the University of Georgia, plus my round-trip train fare. They didn't want black lawyers in Atlanta. When I went back in 1962, I was the tenth black lawyer in the whole state.

I originally wanted to be a labor lawyer, but when I graduated from law school, there were no opportunities. The unions didn't have blacks, and the National Labor Relations Board wouldn't hire you. So some lawyers I volunteered with when I was in law school tried to fix me up clerking for a judge. One morning in February 1961, I got a phone call. My mother would probably say that God was guiding my hand, because usually at that time I'd answer the phone and say, "What's happenin'?" followed by an expletive. But this day I didn't. This cultured voice asked to speak to Howard Moore, Jr. Then he said, "This is Judge Charles Wyzanski, Jr. I saw your resume, and I would like you to come down for an interview. Could you come this afternoon?" I said I would come the next day; I needed to go to the cleaners to make sure I had clean clothes.

Judge Wyzanski was the first solicitor in the Labor Department and an ace of a labor lawyer. In 1942 Roosevelt appointed him to be a judge in the federal district court. When I met him, he had been

sitting for nineteen years and was a venerated man. I was surprised when I met him because I had read his opinions in law school, and I didn't have any idea he was this little short dude! But I felt immediately comfortable with him. The next day I was hired.

I stayed with him maybe a year and a half, but then I decided to go home. I had taken the Georgia bar, and I got a call from Don Hollowell, who said, "Howard, when are you coming home? We need you." Hollowell & Ward was the preeminent black law firm of the Southeast. In 1966, Mr. Hollowell was the first black person since Reconstruction appointed to head a federal agency in the South, and in 1978, his partner Horace T. Ward was appointed the first black federal judge in Georgia. The firm handled criminal cases and people on death row, and they were fighting to desegregate the University of Georgia. I went back to living at home with my mom, and I made seventy-five dollars a week.

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My first criminal case was in a farming town about forty-five miles south of Atlanta: a fifteen-year-old boy named Herman was charged with assault with intent to murder. The moment I got in the courtroom, the judge directed the clerk to give me a copy of the indictment that the grand jury had returned just a few minutes before. I protested that I had not interviewed my client or any witnesses. I asked for a continuance, but the judge denied it. In no time we had a jury—all white, though blacks were forty percent of the county's population. As the evidence developed during the day, I learned what had happened: Herman chopped cotton for a white farmer; he and the farmer's son got into a fight with hoes, and the blade of Herman's hoe slid down the handle of the other boy's and almost chopped the boy's hand off.

Well, I asked a lot of questions and objected to just about everything, including the prosecutor's argument, which went something like this: "Some people say Negro, others say nigger, but I say something in between, 'Nigra.' Oh, how I wish I could sing and dance like they do. But this boy Herman has gone up to Atlanta and come back down here with rebellious ideas." Herman was convicted only of a lesser offense, misdemeanor assault and battery, and he was released pending appeal. About two years later, the appeals court

reversed Herman's conviction because of the prosecutor's prejudicial argument. They never did retry him.

I started representing people who were arrested in sit-ins organized by the Student Nonviolent Coordinating Committee, a civil rights group we called SNCC. I got paid one dollar a head, but I never collected. Pretty soon, SNCC work was almost all that I did. In 1966, I represented Stokely Carmichael when he and several other SNCC officers were charged with "insurrection" after a black man had been assaulted by police in Atlanta. Stokely went out and talked to people about "Black Power," which was becoming part of the vocabulary. But all he did was speak; he didn't throw rocks or anything. Well, the federal court ruled that the insurrection statute was unconstitutional.

That same year, I represented Julian Bond after he was elected to the Georgia House of Representatives. They refused to seat him because he had joined in SNCC's statement condemning the Vietnam War. Well, I served in the military; I never would have agreed to that statement. But I felt Julian had an absolute right to express his belief. The case went to the United States Supreme Court, the first time the Court ruled that elected officials had the same free speech rights as anyone else. When I got up to argue the case, I was shaking, but as soon as I answered Justice Harlan's first question, it was like talking to the boys on the corner.

Those were interesting times to practice law. I never made much money, but I had a good time. I had a good life, a nice house, a beautiful wife and two beautiful children, a nice office, and good clothes. I wasn't wealthy, but I had enough. I was from Atlanta and people knew me, so I always had business. But I was also run off the road, shot at. I appeared before judges who'd as soon call me "nigger" as look at me. One time in court, a prosecutor picked up a chair to hit me. When I called the judge's attention to it, he damn near put *me* in contempt.

I left Atlanta in 1971 to work on Angela Davis's case in California, and I just never went back. My wife decided to go to law school, so we stayed. In about 1981, Maynard Jackson wanted to make me Atlanta City Attorney, but by then I didn't want to go back. Part of the reason was that I would be defending police officers. I figured that wasn't my cup of tea. When you represent someone you're supposed to be on their side one hundred percent, and if you are half-stepping, you're not doing your job.

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With the death of Martin Luther King, progress in human rights in this country came to a halt. Now, we have people who say you can continue being punished after you already served your sentence because you have some kind of mental abnormality or personality disorder. Everyone in prison has a personality disorder; seventy-five percent of the people in the world have a personality disorder. A personality disorder is who you are. It's a struggle to continue fighting in this climate, but if you believe in something, you have to continue to pursue it.

I believe the public good can't be just the fallout of private greed. It has to be planned, organized, and developed. Until you do that, you can't really grow spiritually and cohesively as a community. When human interaction is reduced to one person exploiting another, we have a spiritual deficit, and people have no ethical restrictions whatsoever. What is wrong about evicting people who can't pay their rent? What is wrong with making the most profit? What is wrong is charging more than they can pay and much more than you need? But our society makes us out to be fools if we don't look out for ourselves and take advantage of others.

I still do civil rights work. Except now, the cases are employment discrimination and police misconduct. The cases are hard because the law is so stacked against you, and they're so expensive. It's more difficult to win now than it was then.

But I have to live my life on terms that are acceptable to me, and it is unacceptable to me to exploit people at every opportunity. It is not agreeable to me to turn my back on people who come in here and are in pain. Even if I don't take their case, at least I can talk to them. People who come to this door are suffering, usually about something they cannot change. You cannot change the fact that you are a woman, or that you are an African-American or Asian or Hispanic. Oftentimes, people feel helpless when they are lied about, ostracized, or exploited by being underpaid even though they do their jobs. So they come in here.

What would I tell new law school graduates? I'm not sure they'd listen. But I'd tell them not to become a lawyer so that they can buy a Mercedes or a home in the suburbs, because they can do that without becoming a lawyer. People should decide to become lawyers because

they want to contribute something to society. Each person must identify what they want to give. I am not religious in the sense of organized religion, but in the end, it's a spiritual quality. When you come face to face with yourself, you don't have very much in life except life itself. So you have to make it meaningful.

* * * * *

Howard Moore was last seen by me leaving the Alameda County (California) courthouse in July 2003, having just finished a jury trial on a police misconduct case. He continues to practice law with his wife, Jane Bond Moore, in Oakland. His beliefs have not changed, nor has the force of his opinions.

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THE TRUE BELIEVER

Robert Doggett

Texas Rural Legal Aid, Austin, Texas

In the 1970s, many legal aid offices had federal funding, and young, idealistic law graduates could get fellowships that gave them the opportunity to spend a few years representing poor people. Some stayed on as staff lawyers. But the days when the needs of the poor were a high funding priority are long gone. Many legal services agencies have closed, and financial woes are a constant strain for those that remain.

Today's legal aid lawyers must accept personal costs if they want to represent the poor. They will be grossly underpaid. They will be overwhelmed with work. Far more people will need their services than even the best of them can possibly handle. Yet, some still seek this work. Those few who, like Robert Doggett, decide to make a career of representing poor people make a long-term commitment to personal sacrifice.

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My clients are poor people. They have problems they don't deserve and didn't cause. Most aren't well educated and have little power. They're the least likely to complain or have the resources to change their situation. But they're the ones who need help the most. My job is to help as best as I can.

When I got out of law school, I went to work for the Dallas Tenants Association. Part of my job was to try and keep people from being homeless, and we were very effective at that. In court I'd see people representing themselves and getting evicted in about ten seconds. So I'd jump in and say "Excuse me, judge; just a moment." I'd walk up to the person and say, "It seems like you need some help; I'm free, and I'd be happy to help you." The judges just hated that! It would slow down their docket and the eviction process. But when I got involved, they would actually have to hear evidence on the issues. I still did some of those cases long after my job changed because I just couldn't stop—I hear such horrible stories.

Now, a lot of people tell me they're against what I'm doing. But if you tell people the facts of a particular case, then they say, "Of course, that's different." Once I worked on a tenant's action where the people in a housing complex lost their utilities and air conditioning for two months. It was a hot Texas summer, and the landlord was doing nothing. He even threatened to call the cops on us. It was so bad we got some good TV coverage.

Anyway, it's getting extremely ugly when I get a call at home at 8:00 on a Saturday morning from the landlord's lawyer. He says, "It's fixed, I promise, it's all fixed. So I want you to call off Monday's hearing." We call to check with the tenants and it's true; after sixty-three days, the problems are fixed! So my cocounsel and I get back on the phone with the landlord's lawyer, and he says, "I want to put somebody on the line named Dorothy and I want you to do me a favor. Just confirm the truth." Then he says, "Now, Dorothy, can you hear? I have the tenants' lawyers on the line."

It turns out Dorothy is the owner's mother-in-law. It seems she saw the stories on TV, realized it was one of her son-in-law's complexes, and felt shamed. The attorney told me that at Shabbas dinner—they're Jewish—she blew a gasket and said to fix the problems, no matter what the cost. So the lawyer wanted me to

confirm that everything was fixed. It's funny, we like to think that we're the saviors, that it's our great legal work that fixes things, when this time it was the defendant's mother-in-law.

I worked four years at the Tenants Association. I was their only attorney. My first year, I worked for \$25,000, and then they raised me to \$30,000. My student loans? I never really liked to add them up back then, but they were in the \$50,000 zone. It wasn't real good; I just couldn't afford to pay them. But I was lucky. My rent was low, and my wife's law school had a loan forgiveness program for public service. Last year I paid the loans off. It only took twelve years!

When I started law school, I was on the standard career track. If somebody had said, "You're going to be doing legal aid work," I'd have said, "No way." But I quickly realized that there were things happening out in the real world that I had never been exposed to before. A friend invited me to help him interview applicants for a free legal clinic.

Maybe it was meeting these people and understanding what they had been through. They'd tell me their whole life story hoping I'd help. We had to tell a lot of people that we couldn't help them, and that was very disturbing to me. They poured their guts out, and nothing was going to come of it just because there weren't enough volunteer attorneys.

So I got involved with the law student *pro bono* committee at Southern Methodist. I pulled just about every trick in the book to get students to do volunteer work. One time I wrote an article for the school newspaper called "This Has Nothing to Do with Sex." It didn't! It was about *pro bono* work. I know, it's a cheap trick.

I interviewed with the big firms. I ate at all the fancy places in town my last year. I had one offer from a good firm. But I knew fighting for an insurance company or a big bank wouldn't really get me going, and if I don't get excited about what I'm doing, I'm not going to do as good a job. Besides, living from vacation to vacation was not my idea of life.

I tried hard to find a way into the legal aid community, but Legal Services wouldn't talk to me. They were too busy to recruit lawyers. So when I turned down the offer from the firm, I had no job. That was the most difficult part. My father wasn't thrilled when I told him.

My parents were both puzzled. They knew I had a lot of student loans. I got a birthday card a few years ago saying something like,

"We are proud of what you are doing. We are still not really sure why." For years, my mom wondered why I do what I do. She would like to feel she doesn't have to worry about me anymore. When I worked in Dallas, every once in a while when she wanted to do me a favor, my mom would have my dry cleaning done. She'd pick up my suits and shirts, have them cleaned, and bring them back, just to save me a little money.

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I finally did get to work for Legal Services of North Texas. In one of my first cases there, I represented some low income folks on a hazardous waste problem, something Legal Services traditionally hasn't done. But the environment is an issue that affects poor people more than most. They have a hazardous waste blender in West Dallas that is an extreme danger to the community right across the street, and the state agency had the audacity to say that we didn't have the right to be heard in the permit process. All we were after was the same level of protection as anyone else.

The homes across from the plant are owned by the residents. They're all Hispanic. Most of them speak broken English at best, and they generally don't get involved in lawsuits, but the stench coming from the plant was so bad they couldn't go outside. They were afraid for their kids. We had testimony about the stench, but the agency still said, "Sorry, it doesn't prove the odors come from the plant." We finally got a court opinion saying it's absurd for a state agency to deny us the right to be heard.

Poverty work comes down to benefits, family issues, and housing and consumer issues. At this point, I am not scared of any issue. Just get me up to speed on it, let's find the problem, and go after it.

Usually, though, Rule No. 1 is "Don't file a lawsuit." You have to break Rule No. 1 once in a while, but it's a rule you start with. Lawyers are trained to be technicians, to look to the law to solve problems. But I was trained to think of more creative ways. If we sue and lose, the other side will claim that everything they were doing was fine, even if that's not what the judge said. I walk into a room full of people and say, "How many of you think a judge is going to solve your problems today? I am dying to file a lawsuit." Nobody raises their hand.

Race? It's absolutely part of my cases. A lot of people look at blacks in Dallas and say, "You're just complaining and whining." When a group of blacks living in a tenement complex doesn't have utilities, white people figure it's not their problem. They just think "They'll move and they'll be all right." Sometimes when people I know call me with a problem, they're resentful, like "You're helping those people; why won't you help me?"

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Bill Bridge, my evidence professor and a very good listener, taught me something. I said, "Hey, I'll just get one of these regular jobs and do *pro bono* work on the side, and I can pay off my student loans in a couple of years." He looked at me and said, "You know what's going to happen if you do that? You'll work your butt off, come home at 9:00 at night, and there is no way you're going to have time to do *pro bono* work. Don't fool yourself."

I went from a small country town to Plano, a nice suburb, but hardly a cultural melting pot, graduated from Texas A&M, then to SMU law school, and I turned out like this! After ten years of practice in two legal aid jobs, I was thirty-three and living in the same apartment I had when I was in law school. I lived there for thirteen years. The price was right!

My parents were both conservative Republicans, but we were always taught "do unto others." Until my dad died a few years ago, he worked for a refrigeration company. I remember going with him to people's houses at 3:00 a.m. holding a flashlight while he repaired a busted refrigerator. He was always willing to help people no matter when, day or night.

Personal life? Frankly, it's hard to have time for one. But I finally found someone who lived in Austin. Raman moved to Dallas to start at the Public Defender's office. She and I got married a few years ago. We're compatible because we're both very intolerant of intolerance.

Raman never much liked Dallas, so we eventually went to Austin. She works part-time for the Texas Innocence Project and part-time for Texas Appleseed. We both love what we do. A family? Let's say we don't have kids yet but we're in intense negotiations.

It was hard to move. Today, I still feel I get a lot done, but because we're a statewide organization, my clients are all over Texas. I don't have the personal relationships with clients that I used to. I miss that, the human contact, the direct involvement in people's lives. But regardless of where I live or exactly what I'm doing, I don't have any intention of stopping this work, ever.

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Robert Doggett is a long way from the novice attorney straight out of law school who began his career with only his student pro bono experience as training. He's now a recognized expert in housing and environmental issues involving poor people. In late 1999, he took a break from his legal aid service to serve a stint working with the Dallas City Attorney. His job was to teach staff attorneys the techniques he had developed to successfully sue slumlords. Having completed this task, he returned to legal aid. His job in Austin is his third as a legal aid lawyer, he considers himself a "lifer."

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THE DEFENDER

Arlene Popkin

Legal Aid Society of Westchester County, White Plains, New York

Most people accused of crimes can't afford to hire their own lawyer. They are represented by public defenders and legal aid lawyers appointed by the court and paid at public expense. In some ways, these lawyers have the worst of several worlds. While many make decent salaries, they'll never get close to rich, and they often suffer from a lack of resources that makes more than bare-bones representation difficult.

Many people, even other lawyers, see this work as the lowest form of the profession. The public has little sympathy for what these lawyers do, and even less appreciation of how their work benefits society. And many of their own clients regard them with suspicion. It is the rare public defender who has never been called "public

offender," or heard a client exclaim, "I don't want a legal aid lawyer; I want a real lawyer." Being a career defender like Arlene Popkin takes both fortitude and certitude. It's a job in which only the strong survive.

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I naturally defend people. My instincts are to defend everybody, all the time, against almost all perils. When I do the work I do, I'm defending rights under the Constitution. But it's much more than that. The nature of criminal defense work is that a particular human being has been given to me to protect, to defend, to champion.

Every human being has intrinsic worth. No one should be relegated to the status of "less than human." That includes a defendant in a criminal case. If someone does harm to another, I cannot undo that harm. It is my function to prevent additional harm to my client. When people ask how I defend a person I believe is guilty, I answer, "to the best of my ability." I don't judge my clients as either evil or capable of evil. I am not in the "Who is evil" business. I am in the "This is a person with rights" business.

Let me put it this way: It is illegal to sleep on the bus in some cities, but if I sit down on the bus and close my eyes, the probability of someone arresting me is zero. If I am wearing four sweaters, three skirts, and carrying everything I own in two shopping bags, the probability of me getting arrested is a whole lot greater. That is abuse of the law.

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I was shy when I was growing up. I didn't feel socially adept. I was the smart little girl in class, and I felt nobody wanted to associate with me. It's still true to an extent. Like artichokes, I'm an acquired taste. I haven't mellowed much over the years, although it helps to have a husband and three kids who are all good human beings.

Unlike me, my parents were both extremely gregarious. Everyone liked them immediately. More important was that I never heard either of them lie. It was outside the realm of discussion to look someone in the eye and make a statement that you knew to be false. My father was an engineer who ran a small manufacturing company in Brooklyn that his father had founded. My mother was a housewife

until my father died when I was nineteen, and she took over the business. My father was a naturally rational man. A lot of evil is inherently irrational. You need to make irrational assumptions to reach evil conclusions, or to assume that one kind of people has less moral value or less inherent intelligence than others. That's hard to do if you just don't have any irrational receptors.

My mother's parents lived with us, so there were a lot of old world Jewish values: "You care for people, you don't harm anyone." There is no word in Hebrew for charity. The word *tzedaka* means "righteousness." *Tzedaka* means you give to someone who has less than you because it is the right thing to do. Every day, my grandfather would express disgust at people who wouldn't help someone else. He was personally affronted at the concept that a Jewish person would not see to it that someone he came across had enough to eat. Those are my values.

When I was a teenager, I got involved in social and political issues, civil rights work, and civil liberties. My parents always encouraged me. I'd always wanted to be a scientist, so I thought of myself as a scientist who was taking some time away from scientific study to go register voters. When I got out of college, I was supposed to do graduate work to be a chemist, but it rapidly became clear that I couldn't withdraw from the political work I was doing. A lot of people I cared about a great deal were deeply committed and asked me for help. One of my rules is that if a friend says, "I need you to come help me with this," I go help. So I stopped being a graduate student.

My mouth always ran—I would argue anything, and still do—so people said, "You ought to be a lawyer." At first I said, "I don't want to be a lawyer; there are too many lawyers already." But I finally decided one more couldn't hurt. My goal was either to be counsel for the Civil Liberties Union or to sue the telephone company. At that time, the telephone company had you by the short hairs and always let you know it: "You want a telephone? Sit by the door for four days and if we show up, we show up. Don't bother calling us again!"

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To an extent, I see my role as a check on the power of law enforcement, the police, and the District Attorney, which is consistent

with my belief in civil liberties. I have a number of friends in law enforcement and many others with whom I share a mutual respect. Some cops have told me that a good defense lawyer is quality control for their profession. Knowing that I'll be closely watching what they do makes them do it more carefully. I believe most cops want to serve and protect the public. That means the ones who do it wrong are a great offense to the ones that do it right, as well as to society.

Take drug sale cases. Undercover officers in drug sale cases will testify, "I bought drugs from that guy right there. We were standing right next to each other. It happened three other times." It's always somebody's word against somebody else's word, a credibility contest that the cop usually wins. But it's a contest the police can severely abuse. Sometimes cops lie. They simply observe so-called "known dealers" on a street corner and then say they're the ones who sold the drugs. The police go out of their way to avoid any independent verifying system, so there's no evidence except the undercover cop—no second person and no pictures.

One time, they had the undercover cop wired for sound, and they trolled around the neighborhood in a van, ready to come to her aid if anything bad happened. They had a tape recorder in the van but never used it. When I cross-examined the cops about why they hadn't taped the drug sale, they said that they had been instructed not to by the chief of narcotics.

The jury not only acquitted my client, but when the prosecutor tried to suggest that the client was a known bad guy and the jury had done the wrong thing, he never got to open his mouth. The jury jumped all over him about how disgraceful it was, how they should have a tape recording and photographs, that no one should be convicted without that clear proof. It isn't just the citizens of Los Angeles who believe that not all police officers walk on water, make no mistakes, and tell no lies. My county is largely white middle class. I don't think there were three people of color on that jury. These were white-haired ladies berating that D.A.

I represent the underdog. When some poor slob is sitting in jail because he can't make the \$1500 bail and the people of the State of New York with all their resources are arrayed against him, then it's not an even match. It makes what I do all the more enjoyable. Whether a client is guilty makes no difference in terms of how I

represent that person. When I'm asked if most of my clients are guilty, I say, "Not if I can help it!"

Now we have the death penalty in New York. These are cases you have to do right or not at all. But the period of recovery from doing a death penalty case is so great that I can't imagine any lawyer doing it over and over.

The law is not meant to deal with death cases. No lawyer's skill level is adequate. Including me? Especially including me! The idea that someone's life should depend on my ability to *persuade* is sick.

I feel great tension whenever someone's future well-being is in my hands. But it's worse when my heart knows the person didn't commit the crime. The surer I am, the less sleep I get. If they go to jail, it's my fault. Am I being hard on myself? Yes. Why shouldn't I be hard on myself? Who is going to hold me to that kind of standard if I don't?

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Arlene Popkin remains a committed public defender. She also remains deeply troubled by death penalty cases; she found her first to be the most emotionally draining experience of her professional life, though her client's life was saved. She remains opinionated, outspoken, and unrepentant, speaking out against other "atrocities," such as post-9/11 detentions without counsel and military tribunals. She is able to act and speak on principle, in no small measure, because of the steady hand and unwavering support of her husband of thirty years, internist Stephen E. Hirschberg, M.D., and the rest of her close-knit family.

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THE GENTLEMAN LAWYER

Horace Green

Barger & Wolen, LLP, San Francisco, California

The pressures on lawyers to turn litigation into war remain great. When the lawyer is a litigation partner in a large nation-wide firm, those pressures are magnified. Many lawyers swear they will

not engage in war games despite the adversarial culture they work in. But it's quite another thing to live up to this promise. The reality is that lawyers, who insist on always acting in a manner consistent with their personal beliefs, can lose business and opportunities for promotion, even, as happened to Horace Green, their largest clients. It's an unfortunate truth about the legal profession that lawyers like these, who should be the rule, remain the rare exception.

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Why did I become a lawyer? It sounds corny, but I used to watch Perry Mason. I thought that Perry Mason was cool because he didn't use his fists, he didn't use a gun, he didn't use a knife. He solved cases by the power of his intellect. That was much more impressive than taking up a gun.

My philosophy of being a lawyer is simple: My clients deserve my best. If I give them less, I'm cheating them. But I also believe that the advocacy system is set up to be fair to both sides. That only works if *I* am as fair and reasonable as I can be. I can't control how other people litigate. The only thing I can control is how *I* litigate. If I do something that is unfair and inconsistent with my values, then it's my fault that the system doesn't work. If I do what I should and somebody else doesn't, the system may not work, but not because of something I could change.

I consider myself a member of an honorable profession. I don't want to be a lawyer at the cost of losing who I am as a person. I'm a lawyer when I'm working, but I'm always Horace Green the person.

Some battles have to be fought; there are legitimate disputes. But I don't believe it helps the system to create disputes where none need exist. It makes cases more expensive for my client, and then I'm not serving my client's interests. I work for businesses, and businesses work on a fundamental principle: bring as much money in as you can and pay out as little as possible. I'm an expense to them. Being fair and reasonable with the other side won't conflict with my client's interests. It is *consistent* with those interests.

I know many lawyers disagree because they see litigation as a war of attrition. If you kill 10,000 of theirs and they kill 10,002 of yours, that's a good day for them because the numbers work out in their favor. But they are not keeping the big picture in mind. I won't

fight over every piece of paper I give to the other side. If there's a document that should be turned over, ultimately you're going to have to do it. If you fight about it, you magnify its importance. You can't wish bad documents away, so you don't shred it, you don't hide it, you just deal with it.

Certain clients don't like this. They want their lawyers to use every trick in the book. One of my biggest clients fired me because they wanted me to do some things I wasn't comfortable with. I had discovered some documents at their plant that I felt had to be turned over to the other side. The client didn't agree. The documents weren't a "smoking gun," but they contradicted my client's position that their product had never behaved in this one particular way. Ultimately, we turned over the documents. I had trouble sleeping when I was working for this client, and for the first time in my life I had back problems. When they fired me, my billings took a nosedive, and it took me about a year to recover. But all of a sudden my back problems went away, and I was sleeping better. So whatever I lost in terms of hours, I gained more.

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I've worked for four law firms, and each had a different culture. I started at a fifty-lawyer firm in Santa Monica with offices overlooking the ocean. I got to be really good buddies with a guy named Tom. One day someone from the firm came into my office and said, "Horace, you know that fellow Tom is doing really well. They really love him over there. You are going to have to bust your tail to keep up with him." I said, "I certainly will. Thanks." Then he walked straight down to Tom's office and said, "You know, that Horace Green over there, they really like him, he's really doing well and you're going to have to bust your tail." Tom and I talked on the phone that night, and we were dying laughing.

That was the kind of environment it was. We were encouraged to compete with one another for promotions, for salary, to be partner, to get clients. People were pit against one another. They thought that was like sports—competitive. But when I played sports, it was about teamwork. When I moved on, I found that other firms believe in a group effort, with everyone part of a team, including the client and the secretary. I spent many good years with a firm that had close to

four hundred lawyers, but we still had a sense of professionalism and mutual respect.

When I left Santa Monica for a firm in San Francisco, I went to the new firm's retreat. Someone got up and told a racist joke: "What do you call a black skin diver? Jacques Custodian." The next Monday, I started work. I was the firm's only African-American lawyer. We had telephones that displayed your name if you made a call inside the firm. I programmed mine to read "Jacques" instead of "Horace Green." People thought that was funny. I thought it was a good way to show that I didn't have a chip on my shoulder.

You see, I started my first year at Stanford Law with twenty-four African-Americans. We graduated only eight. I had a sense I had gotten to a place where the air is pretty rare for black folks. So when a guy tells a joke like that, I don't take it personally. That guy doesn't know me. The joke may be indicative of his views on black people, but it is not about me. I don't view myself as being the center of the universe. There are tons of people who see me and immediately have a bad opinion, who fear me or hate me because I'm a black male. It's not my job to go out and change their minds; they will change if and when they decide to.

Here's what I mean. I represent an insurance company. Once, I was on the phone talking with somebody from the company about how a particular piece of evidence could decide the whole case, and the guy said, "Well, yeah, that's the nigger in the woodpile." Now, he had never seen me. When I had to visit him a few weeks later, he offered to pick me up. I said, "I'll be the only guy wearing a suit and carrying a briefcase." I didn't tell him I was black. I will always remember getting off the plane and him looking at me. He only went pale for a moment, but I saw it. That was my way of dealing with the situation. I didn't get in his face. The best way to get the point across was to let him take another look at his own attitudes. The case was resolved extremely favorably to his company, and we became friends. I hope the way I handled it gave him something to think about.

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Most of my values came from my mother. My mother grew up in rural Georgia, and got a bachelor's degree and a teaching credential at the age of twenty. She moved out to San Francisco in the mid-1950s.

She got up and went to work every morning, made sure the bills got paid. Without a California teaching credential, she worked as a department store sales clerk, and at night, she'd go down to the clubs, take people's photographs, and then ask them if they wanted to buy a picture. Later, she got a job with a union helping the members with their benefit claims. It's ironic that I now do benefits litigation except I help companies deny the claims. I think she'd be jumping in her grave until she remembered that it means I have a regular job, and then she'd rest easy again.

My father was gone all the time in the Merchant Marines. He was very soft spoken, very gentle, and very kind. He was also an immaculate dresser. But he was an alcoholic. He adored my mother, but he was one of those people who had private feelings. It was hard for him to give of himself. That was a lot of why he drank. He didn't become boisterous or loud; he only did things that harmed himself. He died when I was about thirteen, alone in a hotel room.

Now I have two children. I made a conscious decision to spend more time with them. I knew that would cap the number of hours I could bill. I have made less money, but that's a fair exchange. When my kids are older, I can make more money. But no amount of money would make up for missing this time with them.

It's a little pretentious for me to give advice to young lawyers starting out. But I believe that they should find something they love. I worked on a *pro bono* case for the NAACP. That gave me the opportunity to work for an organization for which I had tremendous respect. So, find something in law about which you feel passionate. If you do it out of love and passion, the money will follow. If you do it for the money, you'll never find the passion or the love.

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Two years ago, Horace Green changed firms, still looking for the perfect fit between large firm culture and his unshakable personal and professional philosophy. He continues to work hard, make a good living, and keep his principles and priorities intact. For many years, he has been primary care-giver to his children. He recently remarried, gaining an extended immediate family, with whom he continues to spend as much time as possible.

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PAT WAGNER**Part of the Solution**

Heller, Ehrman, White & McAuliffe, Seattle

Many lawyers talk about spending some of their time giving free legal services to those who otherwise would be unrepresented. But doing pro bono work is one place where there's a wide gulf between talking the talk and walking the walk. Not enough lawyers give their time to free legal services. Fewer still do what Pat Wagner has done, spending half her time doing pro bono work while recruiting her colleagues to join her despite the considerable pressures of their large firm practice. Her work takes dedication, perseverance, persuasiveness, and an abiding belief that there is more to practicing law than just making money.

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I'm the daughter of a Lutheran minister. The longest my father stayed anywhere was six or seven years. Then the church would move him on. My family believed that everybody is responsible for everybody else, and you must take care of the poor and the homeless. One of my father's first jobs was running a Depression bread line. My mother was right in there with him. My father was one of the most satisfied people I have ever known, and the most he ever made in his whole life was \$7500 a year. Now, he got a house and a car in addition, but there wasn't much cash around when I was growing up.

Of course, things don't work out exactly as planned. After law school, I remarried, but I couldn't find a job. No firms in Durham, North Carolina were hiring women, so I became in-house counsel for Duke Medical Center. I spent ten years there, but it wasn't what I'd hoped for. When my second husband was recruited to Seattle, I followed him and joined a wonderful little firm that had a strong community commitment, and then they merged with Heller.

At Heller, I did a lot of trial work for years—business, medical malpractice, construction, and environmental law. I also served on the boards of community organizations—a YMCA that works with inner-city kids, the Community Psychiatric Center. That was important, and

they were good organizations. But even though I was doing some pro bono family law cases, I felt the need to do more hands-on work. When I reached the age of sixty, I sat down and thought about it. I no longer needed to prove anything to anybody and it was time to do what I really wanted. So we started our own little poverty law program. We focus on family law, mostly representing battered women, because that's where the greatest need is. Of course nobody at Heller did family law for a living because we're a commercial law firm. But we learned how to do it.

We represent women from places like Russia and some African countries who are in abusive relationships. They come over with their husbands, but once they get here, they're easily isolated because they don't speak English. The husbands start hitting them, and they don't know where to go. One man tied his wife up with a belt and left her on her father's front door! Often, there are children involved, and that can be the hardest part. We help the women get out of the relationships, go to school, get a divorce, and get started again. We do parenting plans, protective orders, whatever they need.

Often, we face both language and cultural barriers. Many of these women feel strong pressures not to report the men who batter them. The families can be really ugly, and the women are expected to grin and bear it. I don't try to impose my values on clients; I just try to listen. We try to give them support, shore them up. The biggest challenge is showing them they don't have to tolerate it.

Many of my clients are courageous and gutsy. I know one Hispanic lady who is learning to be an electrical repair person because she figured out she'd make more money that way than in a traditional woman's job. It's wonderful to be able to help people who are willing to fight back and make something of their lives.

You have to be part psychologist to do this work. One of my first clients was a young man whose wife left him, taking their three kids. She married a guy and had another baby. My client was out of work, had lost his job, couldn't pay the child support. He was ready to give up. I simply wouldn't listen to him moaning and groaning. I told him that he had to get moving. He got into a program as a truck driver, and he sent me a photograph of him standing by his truck, grinning from ear to ear. He had turned his life around. That's one I feel really good about.

I've had other clients who were severely disturbed. One was so distrustful of everybody that she fired me a few days before her hearing, after accepting a settlement that we all agreed was best for her. I knew that she needed help, but I couldn't persuade her.

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When I came to Heller Ehrman, I had to get used to big firm culture and billing pressures. Practicing in a large firm makes it difficult to do pro bono. You work long hours, and then you are supposed to go out and drum up business, so it doesn't leave a lot of time. But several years ago, Heller committed to the goal that everyone should spend five percent of their hours doing pro bono work.

So setting up this program wasn't hard. I didn't do much more than send an e-mail around the firm. People were very interested. We have from six to fifteen lawyers at various times depending on schedules, partners and associates, as well as several secretaries and paralegals. It's been a real bonding experience.

The young associates deserve the credit. I can teach them the courtroom skills, but they're the ones with the large billable hour requirements. I negotiated with the firm so I could cut my billable hours in half. Obviously, my salary has decreased. But I'm lucky because my husband is a physician and very supportive, and my kids are all through college. So I'm at a stage where making money is not such an important thing anymore.

In pro bono cases, sometimes the other side has a lawyer and sometimes they don't. The lawyers often resent the fact that the client has all the might of Heller Ehrman behind them. We had a case with a threatening husband on the other side. We took a videotaped deposition of him. His lawyer went berserk and said, "You're making this into a General Motors case, and that's unfair to my client." But we are not ashamed to use our firm's might if that's what you have to do to protect against a bad husband.

I like problem solving, and I no longer feel that litigation really solves problems. In a lot of cases, it is better just to agree to resolve the problem and let people get on with their lives. I've taken mediation training the last five years and I get a lot of satisfaction out of that. After I get certified in family law mediation, I can do some

pro bono or reduced fee cases. I think that where children are involved, it's a better way to go.

I believe that people who make the time to do pro bono work learn a lot. But if a firm isn't "friendly" about it, you'd better look for another one. You have to work with supportive people. What do I get out of it? Interaction with dedicated associates that I love, and a sense that I am doing something that helps. We are privileged to practice in this profession. This world is full of problems. I was brought up that instead of contributing to the problems, you try to be part of the solution.

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The programs started by Pat Wagner at Heller, Ehrman, White & McAuliffe and the work the law firm has done in conjunction with Columbia Legal Services and the King County Bar Association were recognized by the American Bar Association's Section on Litigation, in its 2002 John Minor Wisdom Public Service and Professionalism Award. Not surprisingly, given her propensity for sharing credit, while Pat Wagner's name was prominently mentioned in the award's citation, the award itself was not given to her but to the entire Seattle office of her law firm.

