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TRANSFORMATIVE CRIMINAL DEFENSE PRACTICE: TRUTH, LOVE, AND INDIVIDUAL RIGHTS—THE INNOVATIVE APPROACH OF THE GEORGIA JUSTICE PROJECT

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"A (client's) relationship with the Georgia Justice Project is a relationship for life. You are like one big family. You are creating pockets of . . . the Beloved Community."¹

I. BEN'S WEDDING

In the last month, I have been to three different weddings. The marriage ceremonies were for a co-worker, an old community-organizer friend, and a Georgia Justice Project ("GJP") client named Ben. All of the weddings were incredible. But it was the last one, our client Ben's wedding, that got me thinking.

Ben was married last month. Most of the GJP staff was there. We have worked with Ben for over ten years. Five years in prison and five years out of prison. He was imprisoned after being convicted of armed robbery. He was sixteen-years old and, quite unfortunately, he grew up in prison. We were with him throughout his case. We visited him during his mandatory five-year term in prison. He started working for GJP's in-house business (New Horizon Landscaping) within a week of being released from prison.

I would like to say that the past five years, since his release from prison, have been smooth sailing for Ben. But they have not. Going to prison. Growing up in prison. Having a serious felony on his record. Struggling with addiction. And just plain trying to make it in the free world. We have ridden the roller coaster with Ben. From successes to frustration and then back again.

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1. Congressman John Lewis, Address at the Georgia Justice Project's donor reception (Mar. 21, 2003).

There were many people at the wedding who have been part of Ben's success: counselors, role models, sponsors, and co-workers, in addition to friends and family.

At his wedding, ten years after interviewing a scared kid in jail, I felt nothing but pride. He is married the mother of his children and he is in the best place I have seen him in years. He successfully completed a drug treatment program. He enrolled in a local community college. And he has been a dependable part of our landscaping company; a job he left a few times only to find it much harder than he thought out there in the regular world of the free-market economy.

Seeing Ben, someone in whom we have invested so much, step into another phase of adulthood, of responsibility, was a blessing. For me, and many of our staff, Ben's wedding was a celebration of our work with him. Ten years of investment. Now, in the company of so many who have touched each other, it had become a community. That is what I saw when I looked around the rented hall. As Ben's grandfather performed the ceremony and about one hundred or so friends and family gathered around, I saw a community. I saw the lines blur between lawyer and client, employer and employee. Client turned counselor turned supervisor turned friend. I saw the breaking of old binds and the formation of community. It is this vision of community that keeps me going. After almost fourteen years of doing this work, Ben's wedding provided a glimpse—a confirmation, really—of our goal.

II. SOMETHING IS WRONG HERE: NOT-SO-EARLYWARNING SIGNS

Within my first few months of practicing law at GJP, I found myself in a packed courtroom. It was full of lawyers, almost all of them were criminal defense lawyers like me—though most had years of experience and I was the impressionable new guy. It was bond hearing day. There were no clients present. Just a few District Attorneys, a judge, and thirty criminal defense lawyers.

While waiting for "my guy's" case to be called, I sat, listened and tried to appear as if I knew what I was doing. The atmosphere was relaxed. The lawyers talked freely because there were not any witnesses, any family members, or any clients. I took notice of how the lawyers spoke about their clients in this "closed room" environment. As more lawyers spoke, it became easier for them to make comments about their clients. And so I heard their true opinions—the debasing and demeaning way that lawyers refer to their clients.

It was the classic "us" and "them." I heard one decades-long veteran comment, "I wouldn't want this guy in my house, Judge, but he surely should be let out of jail." Cascading layers of laughter rolled through this band of Defenders of the Constitution, as we (criminal defense lawyers) are apt to call ourselves. Each outburst grew more boisterous with each fresh, deprecating comment.

What I heard shocked me. I thought these were the "good guys"—the folks that cared about the forgotten and the downtrodden. What I remember experiencing for the first time, but certainly not the last, was the cynicism and alienation deeply embedded in my fellow attorneys. That realization has stuck with me for years. I expected it from prosecutors and police and from the average citizen, but not from those of us who stand *with* the criminally accused. We are supposed to think differently. Back then, I wondered if their example was the road that I was supposed to follow. Was this psychological distancing just a defense mechanism that, in the course of time, I too would employ to keep my sanity?

In the not too distant past, I recall an even more chilling encounter. I was at a Continuing Legal Education ("CLE") event that was attended by the criminal defense bar. The final speaker was of national fame. I had consulted his work many times over the years as I prepared for trials. He was an incredibly entertaining speaker. During the course of his two-hour presentation to the room of 300 criminal defense lawyers, he grew more comfortable and relaxed. His jokes were growingly made at the expense of his clients, our clients. More and more, as he was making his points about trial strategy, he would tell a story about how stupid his clients were. They were the scum of the earth, and we were the experts. Story after story, all heard by folks who "knew" what he was talking about. Stress relief, some might say. It is the camaraderie that fighting on the front lines creates in the foot soldiers—the soldiers defending the Constitution. Soldiers who stand between the poor and the government. How else can we—where else can we—laugh about what we see, what we do everyday, some might say.

As I listened that afternoon, I realized that "those people," in a direct or indirect way, put food on these lawyers' tables. "Those people," who were being ridiculed by criminal defense lawyers in the room, were not separate from our jobs, our careers, our means of providing for our families and ourselves. The word "honor" kept popping into my head. Is this honoring those you serve? Should not one honor those that respect you, look up to you, and

put their lives in your hands? Even if we want to reduce our clients to a means and a mechanism, then should not we honor the means and mechanisms of our success and professional identity and our very survival?

I believe the cause is more than a need for stress relief. It is healthy to laugh about the things that cause us stress. The horrific suffering and pain that criminal defense lawyers see and address on a daily basis certainly creates tension. We experience what tantalizes, fascinates, and frightens most of America.

We have all heard it. We have heard it from those closest to the fray, from defense lawyers: "It's a nasty job but someone has to do it" or "Sure my clients are society's refuse—that doesn't mean they don't have rights." What particularly concerns me, and should give alarm to those of us standing for and with our clients, is when this callous and distanced attitude mirrors the general public's attitude. This is a clue that something is wrong.

The majority of lawyers never venture into criminal law and they find what we criminal defense lawyers do abhorrent. Not to mention that the general public—the average Joe or Jane you talk to at a church picnic or a PTA meeting—has strong feelings on the subject of crime and alleged criminals. The saddest part is that almost everyone who pursues criminal defense as a vocation within the law does it out of a sense of wanting to help folks. If even we, those of us in the trenches, the "true believers" committed to the cause, become overwhelmed with a sense of cynicism and skepticism with our work and those we serve, then how can we expect anything more from those whom we meet at the cocktail party?

I have come to view this attitude, this response, as a casualty. It is the death of a dream; a dream of and a commitment to the "Beloved Community."² Lawyers have become warriors "defending the Constitution." We have become mechanisms (as well as mechanistic) instead of builders of a redemptive community. What got lost in the years of law school? What got beaten out of us in the practice of law?

A few years ago, I was at a cocktail party attended primarily by criminal defense lawyers. A highly respected lawyer touched me

2. The concept of the "Beloved Community" was central to Martin Luther King, Jr. It represents "a completely integrated society, a community of love and justice wherein brotherhood would be an actuality in all of social life." Kenneth L. Smith & Ira G. Zepp, Jr., *Martin Luther King Jr.'s Vision of the Beloved Community*, 91 CHRISTIAN CENTURY 361, 361 (1974), available at http://www.religion-online.org/cgi-bin/rel-search/dll/showarti.de?item_id=1603.

on the shoulder. She was very familiar with the work we do at GJP and a seasoned criminal defense lawyer herself. She turned me around and pointed me towards the crowd. "You see all these people?" she asked. "Everyone one of them, all of them" she said, "became a lawyer—they do what they do—to help folks. All of them!" She paused for effect. "But the reality is that we aren't really helping them. But you at GJP are."

Of course I was flattered by her assessment of our work. But I was more struck by her assessment of her fellow lawyers; their motivations as well as her implication about what actually constitutes help. What has been lost is not the desire. I suggest it is the process and the mechanisms of lawyering that have changed us. As Gandhi said, the means and the ends cannot be separated—they are intertwined.³ The process (i.e. means) of serving those accused of crime, not only has left many disillusioned, disheartened, and disconnected from their clients, but also the lawyering process has contributed to an end that is also disconnected and detached from the client's best interests. The current mechanisms have helped the criminal defense bar lose what brought so many to the practice in the first place. How did this happen? Can we get back a deeper sense of calling and unity and community that brought us to the work? Or better, is there another way of going about this business of being a criminal defense lawyer?

What I have also come to realize is that our approach of practicing law at the Georgia Justice Project is not only a privilege, but also it is a salvation. We are not just saving our clients from prison and from destructive lifestyles—we are saving a small part of our profession from a pernicious condition of the heart. We are saving ourselves from the effects of isolation, alienation, cynicism, and hopelessness.

III. WHAT IS THE GEORGIA JUSTICE PROJECT?

The GJP is a legal nonprofit organization in Atlanta, Georgia. The GJP's website describes GJP as "an unlikely mix of lawyers, social workers, and a landscaping company. GJP defends people accused of crimes and, win or lose, we stand with our clients while

3. Gandhi wrote in YERAVDA MANDIR: ASHRAM OBSERVANCES that "*Ahimsa* [practice of nonviolent means] and Truth [the end] are so intertwined that it is practically impossible to disentangle and separate them." Mohandas Karamchand Gandhi, *Gandhi's view on Ahimsa*, at <http://www.mahatma.com/OnAhimsa.htm> (last visited Oct. 22, 2003).

they rebuild their lives. We believe this is the only way to break the cycle of crime and poverty.⁴

The GJP's unique approach to criminal defense and rehabilitation is based on a relationship and community-oriented ethic.⁵ Founded in 1986 by John Pickens, a former corporate lawyer, the GJP's "street lawyering" for the poor and their long-term involvement with those in the criminal justice system are two of many aspects that make the program unique.⁶

Only the public defenders office and the GJP provide legal representation for the indigent accused in Atlanta's court system. The GJP is only able to take about ten percent of the people who come seeking legal assistance.⁷ The focus has been to accept clients who are willing to make a serious commitment to changing their lives. This helps to ensure that they move beyond the social, emotional, and personal challenges that may have contributed to their legal problems.⁸

A client is usually referred to the GJP because they have a criminal case pending and cannot afford to hire a lawyer. Usually clients are referred by former clients, word of mouth, or by other social services agencies with whom we partner. An admitted luxury of the GJP is that we do not represent individuals in domestic violence, child molestation, rape, or drug trafficking cases.⁹ After determining if the case qualifies for representation, two assessments are completed.

Although one would assume that the legal needs of the client should be an attorney's only priority, GJP's mission is different. While the legal intake assessment is first, it is only the beginning of the process. It is followed by a social service assessment. The social services staff meets with the client, evaluates the client's

4. Georgia Justice Project, *Who Are We*, at http://www.gjp.org/who_we_are.html (last visited Oct. 23, 2003).

5. Douglas B. Ammar, *Forgiveness And The Law—A Redemptive Opportunity*, 27 *Fordham Urb. L.J.* 1583, 1585 (2000).

6. Seventeen years ago, John Pickens pondered two worlds in sharp contrast during a walk in the Edgewood community. As a person of faith, he had been spending years volunteering in soup kitchens and shelters. As a high-powered corporate litigator, he was accustomed to plush offices and exalted salaries. It was during that walk when he decided to address the paradox of privilege and poverty and in April 1986 he founded the GJP in Atlanta, Georgia. *Id.* at 1592.

7. See Georgia Justice Project, *supra* note 4.

8. Margaret G. Tebo, *Full-Service Assistance*, A.B.A. J., Dec. 2001, at 26.

9. See Georgia Justice Project, *supra* note 4. We opt out of sexual assault cases because we are unwilling to employ defense tactics that are tantamount to "attacking the victim." Drug trafficking is often multi-jurisdictional, and would cause an enormous burden on our staff and resources.

strengths, needs, and goals in light of their current legal situation. If there is a good match between client needs and the GJP's resources, the client is accepted as a probationary client for a period of four weeks, during which she meets with the social service team to develop and implement an individualized treatment program.¹⁰ The agreements are contractual, and staff will terminate the contract if clients are not willing to work towards improving their life and complying with their service contract.¹¹

Transformation, both theirs and ours, begins when we meet our clients.¹² During the initial stage of legal representation, we establish the foundation of trust upon which all our programs are based.¹³ By providing quality and caring representation to the indigent, we are reversing the way legal services have traditionally been provided to the poor. We make sure that our representation is both thorough and personal, involving the client in all stages of the representation. This inclusion is the key to building the attorney-client relationship we need to be an effective advocate for our client.

Being relationship driven is the most unique and powerful aspect of the GJP's practice. At the GJP, we seek long-lasting, redemptive relationships with our clients. Attorneys and other staff delve deep into clients' lives to better understand their legal, social, emotional, and mental health background.

Often legal problems have a "snowball effect" and create a multitude of new problems for many of our clients. Often legal problems for indigent clients result in the loss or denial of public housing and other benefits, ineligibility for employment-related licenses, a change in immigration status, damage to one's reputation in the community, and a myriad of other problems that do not end at legal representation and disposal of the criminal case.¹⁴ Consequently, it is not unusual for the GJP staff members to spend time with clients whose legal cases have been resolved for years. Some of this time is structured (e.g. counseling or working with our landscaping company), but most of it is informal. Our clients know that

10. Here it is important to note that clients who come to GJP are eligible for representation by a public defender and will have access to legal representation if we do keep them as clients.

11. Patrick Jonsson, *Lawyers Defend Poor—If They Mend Their Ways*, CHRISTIAN SCI. MONITOR, Jan. 23, 2002, at 1.

12. Ammar, *supra* note 5, at 1593.

13. *Id.*

14. Cait Clarke, *The Right To Counsel: Gideon v. Wainwright At 40: Taking Alabama v. Shelton To Heart*, CHAMPION, Jan.-Feb. 2003, at 25-26 (2003).

we are a team of people who care about them. Many of our clients consider us to be their second family.

At the GJP, the attorney-client relationship is only the beginning of the relationship, not the end. It does not define the boundary of our relationship. In the realm of criminal defense and legal ethics, many assert that such amorphous boundaries cause problems in the attorney-client relationship and are beyond the scope of professionalism. We have found the opposite to be true. More permeable boundaries allow our clients to trust us more and begin to see us as true advocates.

In the end, it is the status of the relationships (attorney-client, client-victim, client-community) that creates the opportunity for restoration—restoration for defendants, victims, and the community.¹⁵ For restoration to be possible in the criminal justice system, the centrality of "relationship" is vital. Without establishing a trusting and genuine relationship with our clients and assuring them that we will work for their best interest, the GJP would be unable to provide the quality of legal representation that we do.

It is the broadness and depth of this relationship that allows GJP to achieve positive outcomes for our clients. It is not uncommon for a judge to release clients to our custody with the agreement that they seek treatment for their substance abuse, educational, or mental health issues. The GJP's social service staff provides many of these services or other community programs with whom we partner provide them. Implementing the social services plan often helps clients avoid a prison sentence, but not always. Members of the bench often want to keep offenders out of prison if it does not seem that prison will be the best option for them.¹⁶ This willingness on the part of the judiciary makes a restorative justice framework possible.

We begin working on the social service needs of a client as soon as we meet him, but even that relationship does not end when the case is over. We work with our clients before, during and after the adjudication of their cases. When our clients are convicted and sent to prison, we maintain our relationship: we visit, we write, we accept collect calls, we provide emotional support for their family, and we continue to express our faith in them and acknowledge

15. Ammar, *supra* note 5, at 1594.

16. See Developments in the Law, *Alternative Sanctions for Female Offenders*, 111 HARV. L. REV. 1921, 1929 n.65 (1998) (stating that surveyed judges found certain populations suitable for alternative treatments rather than incarceration).

their dignity as human beings.¹⁷ We advocate for their needs and their release. Once released "from prison or jail, we offer a variety of social services such as individual and group counseling, GED and literacy classes, monthly support dinners, and employment with our business, New Horizon Landscaping."¹⁸

While there are few places in the country where one can integrate lawyering and social service simultaneously, studies have shown that the underlying problems that brought the offender into the system—addiction, domestic unrest, mental illness, impulse control—are most successfully addressed by tapping the expertise of social workers, mental health experts, or other non-lawyer professionals.¹⁹ Providing these "wraparound" social services can be a form of crime prevention in that more people are working with an individual to prevent the future crime.²⁰ Since its beginning, the GJP has been providing these crucial services to the homeless and indigent populations of metropolitan Atlanta through an innovative team approach that breaks the destructive cycle of crime and incarceration.²¹ Lawyers, social workers, and a landscaping company work together to create a holistic approach to indigent defense and help clients establish crime-free lives as productive citizens.²²

IV. DIAGNOSIS: WHERE IS THIS PATIENT'S HEART?

A. Individual Rights: The Tool or the Master?

One of the many things wrong with the legal system, and more particularly our part in it, is the absence of truth and love and a warped glorification of individual rights. By "our" part, I mean criminal defense attorney's part. The practice of criminal defense law, for the most part, has placed the last of these concepts on the highest pedestal at the expense of the other two. Individual rights have uniquely shaped, if not defined, the practice of criminal defense. Our role is to defend the individual.

Yet this role, in an historic perspective, is rather young. With most criminal defendants being poor and with few criminal defend-

17. Ammar, *supra* note 5, at 1594.

18. *Id.*

19. Clarke, *supra* note 14, at 27.

20. *Id.*

21. Ammar, *supra* note 5, at 1593.

22. *Id.*

ants guaranteed the right to counsel until a paltry forty years ago,²³ the proliferation of criminal defense lawyers is a bit of a recent phenomenon.

The right to counsel in criminal cases²⁴ arose during the height of the individual-rights movement. Our society made significant strides due in large part to a focus on how laws or mores affect the individual. The Civil Rights Movement—the challenge to legalized segregation—owes its success, in part, to a focused analysis of how the practice of law affected an individual's rights.²⁵ But something has been lost in this calculus.

I am proud and humbled to have the GJP's office (a renovated garage) on the same block as the King Center, on the same block as the historic Ebenezer Baptist Church (where Dr. Martin Luther King, Jr. and his father and his grandfather preached), and on the same block (and directly behind) Martin Luther King's grave. My life has been, as the lives of everyone in this country, changed by a movement whose legal strategy utilized an American truism: the right of the individual.²⁶ I would not have grown up in desegregated schools, I would not have met my wife, and we would not have two beautiful sons if it were not for the Civil Rights movement. If it were not for such an individual rights "movement" my life, and the lives of every American, would be dramatically different.

Yet Dr. King's vision of the Beloved Community was much broader than individuality and the rights therein.²⁷ It was about togetherness.²⁸ The vision encouraged us to see our futures intertwined with our neighbors.²⁹ The vision was an attempt to reveal the interconnected nature of humanity.³⁰ The goal was partly to move us from our selfish and self-centered approach to life. Thus I

23. *Gideon v. Wainwright*, 372 U.S. 335 (1963). The case decided that indigent criminal defendants have a right to have counsel appointed for them and that right extends to state court.

24. *See id.* at 343.

25. *See, e.g., State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 351 (1938) (finding that the admission of an African-American student to the law school of the University of Missouri was a "personal right").

26. *Id.*

27. *See* Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 1034-35 (1990) (discussing the interaction between King's Beloved Community and individual rights).

28. *See id.*

29. *See id.*

30. *See id.*

believe the true spirit of the movement was separate from the individual-rights tools used to further the movement.

An individual-rights approach, used by so many of my heroes to advance the social and ethical evolution and thus shape the consciousness of this country in the last fifty years, has gone from being a tool, to being a goal. And in that goal, our culture, including the culture of lawyering, has been warped. The extreme focus on the individual has become a malignant cancer in our culture. Signs of its emergence are evident in the narcissism chronicled by Christopher Lasch³¹ and other social commentators. Signs of its infiltration into mainstream decision-making are evident through the selfishness that passes, seemingly unnoticed, in the corporate boardrooms across America. From Enron to urban sprawl, the accepted lens for political and individual analysis is "how does this affect me?"

What concerns me is that those of us committed to working for social justice have been infected in ways that are difficult to detect. It is time for a new ethic—a new ethic for social justice lawyering. We must join my friend Peter Gabel³² in advocating that we look outside the traditional boundaries of the law and incorporate tools that offer healing and transformation opportunities.

One of my law professors was fond of saying, "The law is a tool—don't let your tools become your idol." Sadly, I think that is exactly what so many lawyers have done. Our tools, once powerful and redemptive, could now be the cause of alienation, isolation, and suffering. In this idolatry, this elevating of law's tools, we stand to lose our souls. We stand in jeopardy of trading in our hearts—often unwittingly—in the pursuit of justice.

B. Truth

A few years ago, I was asked to do some training for indigent defense lawyers. The folks organizing the series of events planned for various sections to cover the representation of someone charged with a crime from the very beginning through the appeals process. They asked me to teach the first section, interviewing a client, because they thought that GJP has good relationships with its clients. Honored by the invitation, I accepted.

31. CHRISTOPHER LASCH, *CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS* (rev. ed. 1991).

32. Peter Gabel is the past President of New College of California and Founder of The Institute on Integrating Spirituality, Law, and Politics.

A few weeks before the event, I ran into one of the organizers of the event. Realizing what I thought would be an issue, I offered: "You know, during the interview process, we ask our clients what happened." The organizer did not miss a beat. "How do you feel about teaching voir dire?" I laughed and so did she. It is so ingrained in the basic, store-bought version of how to be a criminal defense lawyer that you do NOT ask your client what happened because it might limit your options if the case were to go to trial later.

What strikes me about this—above and beyond the ethical issues—is how do our clients feel? Going through a frightening system, with their freedom on the line, and never being asked what they know about the incident. How demeaning! How objectifying! The process depersonalizes our clients from the very beginning. This process is the basis of the relationship between the lawyer and her client. Is it any wonder that there is almost universal cynicism concerning a lawyer's role? Why should the public trust us?

1. *The Challenge of Truth and Love*

The norm in criminal defense representation is not to ask a client about the alleged offense. Contrary to this conventional practice, GJP believes that it is important to seek the truth from our clients. We ask them what happened. Instead of working towards negating what the state alleges happened, we work to affirm our client's version of what happened. We ask for their version and investigate the case aggressively, as a way of reinforcing the affirmation of our client. From the beginning, our legal strategy is consistent with our long-term relationship approach.

Some clients who come to us admit their involvement in the offense. They seek to receive the best deal possible. If there are suppression or other constitutional issues to raise, we raise them. But at the same time, we begin the process of helping our clients to accept responsibility for their actions and examine how they can rectify the harm that they caused to the individual and the community. If they say they are innocent, we believe our clients and advocate for their rights based on that premise. Yet, we are honest in dealing with our clients about the likelihood for success or failure based on that what they tell us and on the reality that ninety percent of criminal cases result in convictions.³³ Still, our clients do

33. David Lerman, *Restoring Justice*, TKKUN, Sept.-Oct. 1999, at 13, 14.

not feel that we are providing "meet 'em and plea 'em" legal representation to get them to plea out and appear successful.

We safeguard against such sentiment by seeking creative solutions and alternative sentences. While we are upfront in asking clients about their role in the accused crime, we investigate, research, and invest substantial resources into each client's case based on our belief in her innocence and our duty as defense attorneys to protect her rights.

Our method of providing "truthful" criminal defense is initially met with skepticism, and then it is challenged ethically. We are often reminded of the primary discourse among members of the criminal defense community, which we will examine some of that discourse later in this section. While we are well aware that the core of criminal defense hinges upon several principles on which defense attorneys rely to justify their ability to defend those accused of all manners of crime—particularly those accused of heinous crimes—we make no apologies or excuses for our work.

Frankly, the GJP is able to do the work that we do because: 1) we believe that truth is a powerful tool for helping our clients; 2) we believe in the dignity and humanity of all people; 3) we believe in the power of transformation; and 4) we maintain that truth and love are essential to accountability, redemption and reconciliation.³⁴ Thus, we have few qualms about asking our clients questions that could implicate them in crimes. Knowing their involvement has a profound impact on how we provide counsel, structure our defense, and plan to assist the client with the social services that she needs. Knowing if our client is guilty also helps us to begin our efforts at restorative justice early in the process; rather than later when we might have unintentionally alienated the victims while defending our client.

One of the difficult balances we seek in our office is the tension between a truth-based approach and an approach that protects our clients' rights. When there is an option to successfully challenge a "Terry-stop,"³⁵ a search, or a seizure, we pursue it. We win motions to suppress. We do not abandon our role to defend our clients to the fullest. But we do it in the context of pursuing the truth

34. See Michael A. Simons, *Retribution For Rats: Cooperation, Punishment, and Atonement*, 56 VAND. L. REV. 1, 33-41 (2003) (discussing the rationale for embracing programs that focus on reconciliation).

35. A Terry-stop is the same as a "patdown" or "stop and frisk." A police officer runs their hands lightly over the suspect ostensibly to determine if the person is carrying a concealed weapon. BLACK'S LAW DICTIONARY 1420, 1473 (6th ed. 1990).

and helping our clients reconcile their past with the potential of a crime-free future.

In alignment with restorative justice principles, our office seeks, where appropriate, to work toward healing, not just our clients, but the victim too. We often contact and include the victim in our legal case plan—even in violent cases. We have had instances in which the victim has become an advocate for our client, contacting us, contacting the prosecutor independently, and coming to court at our request.

In the traditional setting, the victim is seldom included in the process because, in theory, it is the state that has been harmed, not the victim. Too often the prosecutor sees the victim as "just another witness." Knowing of our social service program and long-term approach, occasionally victims have contacted us with the hope that we can represent and work with the offender to address the underlying issues that led to the offense. While Atlanta has not adopted victim-offender conferencing or similar programs, these programs have been a widely utilized attempt at restorative justice in other parts of the country.³⁶

Encouraging a client to accept responsibility is a challenge because of the potential for far-reaching consequences. We have found, however, that the early establishment of a relationship of trust enables the client to believe that we are working for his best interest and for the interest of the community. This is certainly contrary to the norms and practices of traditional lawyering that dictate that the client must be zealously represented at all cost, even to the detriment of the victim or the community. Restorative justice, while not antithetical to this ethic, cannot work in such a narrow paradigm of legal representation that allows the defense attorney to focus only on the client's legal needs while ignoring those of the victim and the community.

2. *Defending the Client's Rights in a Truth and Love Context*

While our clients trust us and believe that we love them, it is a love that normally pushes beyond a narrow love that intuitively says, "I am in trouble, rescue me." We provide a "tough love" that says, "When you are in trouble, we will rescue you as you deal with the trouble that you caused, but don't worry, we will stand with you." The balance that we strike in defending clients is to ensure

36. David Lerman, *Restoring Dignity, Effecting Justice*, HUM. RTS., Fall 1999, at 20, 20.

that their individual rights are protected while still pursuing restorative justice.

Legal ethics scholar Harry Subin asserts that the defense attorney has the right and the obligation to challenge the government's proof to assure its accuracy in the protection of a client's rights.³⁷ He also asks: should we as defense attorneys work to subvert the government's case when we know it is accurate?³⁸ Seeking truth is difficult because, as legal scholars and practitioners have argued, the attorney cannot "know" what the truth is and, therefore, the attorney is free to present any available defense theory to protect the rights of the client.³⁹ Subin seeks to demonstrate that the attorney can, in fact, know the truth.⁴⁰ He tells a story of a case in which he was involved:

I was prepared to stand before the jury posing as an officer of the court in search of the truth, while trying to fool the jurors into believing a wholly fabricated story, i.e., that the woman had consented, when in fact she had been forced at gunpoint to have sex with the defendant [his client]. I was also prepared to demand an acquittal because the state had not met its burden of proof when, if it had not, it would have been because *I made the truth look like a lie*. If there is any redeeming social value in permitting an attorney to do such things, I frankly cannot discern it.⁴¹

Others have discerned it, however, and while they have been criticized, they seem clearly to represent the majority view. They rely on either of two theories. The first is that the lawyer cannot possibly be sufficiently certain of the truth to impose his or her view of it on the client's case. The second is that the defense attorney need not be concerned with the truth even if he or she does know it. Both are misguided.⁴²

Subin is not alone in his distrust of the inability of lawyers to know or need to seek truth. In cases where we believe it appropriate, seeking truth with love translates into pursuing restitution and forgiveness—not sacrificing our client's legal rights in the guilt-innocence phase.⁴³ In other cases, it may be more appropriate to wait until later in the adjudicative process to ensure that the cli-

37. Harry I. Subin, *The Criminal Lawyer's "Different Mission": Reflections on the "Right" to Present a False Case*, 1 GEO. J. LEGAL ETHICS 125, 128 (1987).

38. *Id.*

39. *Id.*

40. *Id.* at 129.

41. *Id.*

42. *Id.* at 135-36.

43. Ammar, *supra* note 5, at 1596.

ent's rights are protected. For example, we often ask clients to think of what they would say or write in an apology to a victim but we have the client refrain from formally sending the apology to prevent the prosecution from acquiring evidence that may be used against the client.

V. LOVE

It is time for a new paradigm of lawyering. One that harkens to why most of us went to law school in the first place: To help folks, to do justice, to heal the brokenness of the world. This redemptive vision is often inadvertently limited by a fierce devotion to the mechanisms within the practice of law. We know that love and truth can change the world. But how can we do this? How can we do this as lawyers?

It is our custom at the GJP to have regular dinners for our clients and their families. We invite everyone who has ever been a client. The idea is to create community and offer support for our clients. It is a way of fostering long-term supportive relationships, which is one of our goals.

A few years ago, about fifty folks were sharing dinner. I was sitting beside Meg. Meg is married to Bill, a GJP client who had been out of prison for about a year. As I was sitting there, Meg started moaning—the kind of sound folks make when they have eaten something incredibly delicious. “Um, um, um.” I looked over at her. And she did it again. “Um, um, ummmm!” The intensity was growing. Now Meg is a good cook. And to this dinner she had brought her famed potato salad. I glanced and saw it on her plate. “What is it?” I asked. I thought she was commenting on the food. “Your potato salad sure is good.”

“No, it’s not that,” she replied. Then solemnly, deliberately, she said slowly, “I am having dinner with A LAWYER!”

I was taken back. From the perspective of a fifty-five-year-old African-American domestic worker in Atlanta, sitting beside a lawyer, sharing a Saturday evening meal was an empowering experience. Most of us attorneys do not think about our position. We take our status for granted and we see all too quickly those who stand above us on the social ladder. But for those of us serving the poor, the social distance is as great as is the opportunity to serve.

Cole was one of the first cases I worked on at GJP. He was eighteen years old. He was a drug dealer growing up and he sold his wares in a violent housing project. He was tried and convicted of shooting and killing a rival drug dealer. Right before his trial, he

had a baby boy. Cole received two life sentences and has been in prison for the last thirteen years, with the possibility of parole a distant and unlikely occurrence. As part of our mission of maintaining relationships with our clients, we have visited Cole about three times a year for the past thirteen years.

I went to see Cole a year or so ago. For the most part, GJP has one staff member who visits our clients in any one of the fifty prisons around the state and the legal staff visits occasionally. When I saw and talked with Cole, I was awed. He was a man who had worked through his demons, a man who had come to terms with his pain and his alienation. From prison, he found and then established a relationship with his father whom he had never known. From prison, he has maintained a relationship with his now teen-aged sons. He received his GED, was taking college classes, and was optimistic (not unrealistically) about his future. While sitting in Georgia’s most maximum-security prison, I was talking with a man who had become freer than he was on the streets of Atlanta. I was amazed.

I asked him how all this happened. I expected some canned answer—a jailhouse conversion or epiphany. Instead he said that in prison he started to believe in himself. I asked how that happened and Cole replied, “Because you and John⁴⁴ believed in me and continued to stick with me.”

What has stayed with me about this encounter is the opportunity that we have as lawyers to embrace others—others who might expect us to represent them, but they do not expect us to share meals together or drive four hours to visit them in prison. They do not expect us to love them, to embrace them as neighbors and friends—and too often we do not. Our station and position in American society, particularly in reference to the poor and the forgotten, gives us an often-overlooked opportunity. By sharing more than our legal skills with our clients, we can create opportunities for redemption, inclusion, and affirmation. Too often the practice of law overlooks the opportunity for embrace, the chance to love, and the occasion to break through traditional barriers. The Georgia Justice Project, by standing with our clients, by embracing them long after the legal case is resolved, not only humanizes our clients but also it offers the chance to humanize the lawyers as well.

44. John Pickens was GJP’s founder.

VI. CONCLUSION

I live in the Deep South. This is where the rubber meets the road in criminal defense. This is the part of the country where "law and order" are synonymous with patriotism and apple pie. This is the part of the country where plantations in some states are still being worked as state prisons. This is the part of the country that incarcerates a higher percentage of its populace than any other.⁴⁵ And it should not come as a surprise that this is the part of the country with the highest percentages of African-Americans.⁴⁶

The criminal justice system is broken. Certainly criminal defense is under funded and under staffed. But part of the problem lays in how lawyers approach their clients and their work. It seems that the more the system breaks, the more lawyers cling to their tools. According to the Department of Justice, in seventy-five of the biggest cities in this country, there is a seventy-seven percent conviction rate for the poor facing criminal prosecution.⁴⁷ Even more striking, according to the same study, is that there is a post conviction incarceration rate of seventy-one percent of all of those charged.⁴⁸ The tools of the trade, sworn to with defiant allegiance by my fellow members of the bar, are not producing great results for clients.

No one believes in, or is more committed to, justice than those who practice criminal defense. We love the David and Goliath confrontation. We are standing up to giants and, win or lose we have made a statement in court with our skills, our commitment, and our devotion to our clients. And Goliath is big and strong down in these parts. Yet, at GJP, an average of only five percent of

45. See HUMAN RIGHTS WATCH, PUNISHMENT AND PREJUDICE: RACIAL DISPARITIES IN THE WAR ON DRUGS, tbl. 1 (2000) (noting that the eight states with the highest incarceration rates are: District of Columbia, Louisiana, Texas, Oklahoma, Mississippi, South Carolina, Alabama, and Georgia), available at <http://www.hrw.org/reports/2000/usa/Table1.pdf>.

46. U.S. CENSUS BUREAU, DEPT. OF COMMERCE, STATISTICAL ABSTRACTS OF THE UNITED STATES 2002 (122d ed. 2002). The states with the highest percentages of African-Americans are District of Columbia (which is not actually a state and 60% of its population in African-American), Mississippi (36.3%), Louisiana (32.5%), South Carolina (29.5%), and Georgia (28.7%).

47. CAROLINE W. HARLOW, U.S. DEPT. OF JUSTICE, DEFENSE COUNSEL IN CRIMINAL CASES 6 (2001), available at <http://purl.access.gpo.gov/GPO/LPS11094>. These numbers are based on defendant case disposition in the seventy-five largest U.S. counties.

48. *Id.*

our clients receive incarceration.⁴⁹ In addition, about fifty percent of our client's cases end in dismissal or acquittal.⁵⁰

The success of the Georgia Justice Project can be correlated with many factors. We take neither court appointments nor government funding. We pick our clients from referrals from other non-profits as well as requests we receive from the local jails. We have expectations for our clients. It is not unheard of for us to fire clients as well. Our after-care and supportive network of services (e.g. counseling, GED classes, and the potential for a job with our own New Horizon Landscaping) give sentencing judges an alternative to further incarceration. All of these things are part of the equation that explain our clients' low conviction and low incarceration rates. It is easy to make the inevitable distinctions between the GJP and the public defenders office but GJP's example should be seen as more than just a different program. It challenges the current system to deliver services differently. It is time for a different way of lawyering. The current method serves the clients poorly and robs the lawyer of her humanity and compassion—the very traits that brought so many of us to this work.

Let me end with a story of a recent client, an unusual client. Her case is probably not uncommon. Yet it speaks to the brokenness, not of those we serve, but of the system that delivers "our" service. Joy was present when Tom, her eighteen-year-old, drug-dealing boyfriend, assaulted two men—one a buyer who owed Tom money. Joy and Tom were arrested. Tom's case went to adult court while Joy's case to juvenile court.

Three weeks later, Joy was on trial. The victims did not mention Tom in their testimony. The District Attorney ("DA") did not mention him nor that the office was prosecuting Tom in adult court. Neither did Joy's public defender ("PD") say anything about it. The fact that Tom caused the harm was never brought out although it was evident from the police report. Her PD did not do a thing. She did not ask one question. Not one statement in support of Joy. Joy's voice was never heard. There was zero advocacy.

Joy was convicted of aggravated assault and sent to juvenile prison. After her conviction, the PD's supervisor called the GJP asking us to represent Joy on appeal. This was an unusual request: unusual for the PD's office and unusual for the GJP to take it. Here, an entire system of justice had failed a child. Sometimes

49. This statistics are from an internal, unpublished report generated by Georgia Justice Project (on file with the author).

50. *Id.*

only those outside of the justice system can help steer it in the proper direction.

Last week Joy finally had her day in court. We showed that Tom's acts (and even his status as a co-defendant) were not shown to the trial court. He had committed the assaults. He had plead guilty to ALL thirteen charges against him. He received a five-year prison sentence. The DA's office failed to pursue justice, its ethical obligation; rather, it had pursued a victory. Joy's lawyer had failed to advocate for her.

It was a contentious afternoon in court—until the Judge realized what happened. He called us into chambers and said that the case could embarrass both the DA and the PD. A compromise was reached: we would dismiss our motion for new trial in exchange for Joy's immediate release to her mother.

By the end of the day Joy was home. Joy's mother, terminally ill with only a few months left to live, will have her daughter with her these last few days.

Upon leaving the bench the Judge commented, "It's not every day that I can go home and know that I have done something good. But today is one of those days."