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### The Power of the Public Defender Experience: Learning by Fighting for the Incarcerated and Poor

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## The Power of the Public Defender Experience: Learning by Fighting for the Incarcerated and Poor

Patrick C. Brayer\*

In writing this Essay, three influences informed my understanding of how students grow and develop professionally because of their interaction with incarcerated individuals and a public defender community that struggles to preserve the freedom of the poor. First, I reflected upon my twenty-six years of supervising public defender interns and Washington University School of Law Clinic participants. I recalled how deeply changed students are by their visits to jails and penitentiaries. Second, I was impacted by Professor Bryan Stevenson's personal rendition of his first visit to a correctional facility, meeting his first incarcerated client.<sup>1</sup> Last, the story of John Marshall's rise to prominence influenced my consideration of how early exposure to the plight of individuals experiencing desperation and bewilderment can influence character and values.<sup>2</sup> Marshall, like many of my students and Professor Stevenson, personally and professionally evolved because of his struggle to achieve the perceived unwinnable cause of liberation for a voiceless population.<sup>3</sup> In writing this piece, I came to realize that—in the evolution of a lawyer—there is no greater experience than engaging with others in the insurmountable task of winning a person's or people's freedom.

My realization forced me to understand how the public defender experience forever changes the professional personas and personal

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\* Patrick Brayer is the Deputy District Defender of the St. Louis County Trial Office. He has served as the St. Louis area regional coordinator of law students and interns for the Missouri State Public Defender System, where he is a twenty-eight year veteran of the trial division. This Essay represents his personal opinions and beliefs. Special thanks to Kaitlyn Parker and Kathleen Cadigan, two successful veterans of the public defender experience, for their input and suggestions.

1. BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 3 (2015).
2. *See* ROSEN, *infra* note 17, at 12.
3. *See* STEVENSON, *supra* note 1, at 18.

values of students and new attorneys. Lawyers working for Fortune 500 Companies and major law firms continue to be deeply impacted by their experience in the jails and penitentiaries of Missouri.<sup>4</sup> I have never fully understood what it was about their time as an intern for the Public Defender or as a Washington University Criminal Justice Clinic student<sup>5</sup> that caused countless past participants to seek me out, years after their term, to discuss how their experience was life changing. This occurrence has been mentioned in other articles, prompting me to realize this phenomenon, as it exists in the legal field, was worth further reflection.<sup>6</sup>

I venture forward—not by attempting to review all the scholarship in this field—but rather by traveling down a road of observation and professional indulgence. I seek to make sense of why the public defender apprenticeship impacts participants who joined others in a fight to free another human being, marginalized by issues of poverty and class. I first explore the tangible advantages achieved by future professionals when they worked for a public defender organization, early in their training, and what practical skills they obtained and transferred to their evolving careers. In the second part of this Essay, I speak to the powerful internal growth and evolving quality of professional service, interaction and focus from students that assist any of the nearly 2.3 million voiceless individuals (a large percentage being people of color) who are incarcerated today.<sup>7</sup> Before this Essay veers into an analysis of the stated issues, a look at how Chief Justice John Marshall evolved professionally can surprisingly inform and illustrate the educational power of the public defender experience.<sup>8</sup>

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4. Email from Amy Xu, Associate, Sutherland, Asbill & Brennan LLP, to Patrick Brayer, Author (Sept. 1, 2016) (on file with author).

5. See *Criminal Justice Clinic: Faculty and Facilities*, WASH. U. SCH. L., <http://law.wustl.edu/crimjustice/pages.aspx?id=414> (last visited Jan. 31, 2017) (“Attorney and Intern Coordinator, Pat Brayer”).

6. Meredith J. Ross, *A “Systems” Approach to Clinical Legal Education*, 13 *CLINICAL L. REV.* 779, 797–98 (2007).

7. See STEVENSON, *supra* note 1, at 15 (“One in every fifteen people born in the United States in 2001 is expected to go to jail or prison; one in every three black male babies born in this century is expected to be incarcerated”).

8. Unlike my past students, John Marshall was deeply flawed, as he directly benefited from the evils of slavery. See HARLOW GILES UNGER, *JOHN MARSHALL, THE CHIEF JUSTICE WHO SAVED THE NATION* 42, 46 (2014). However, historians have noted something deep inside

THE FIRST AMERICAN LEGAL CLINIC EXPERIENCE: JOHN MARSHALL  
AND THE REVOLUTION

Few individuals in legal and political history match John Marshall's impact on the Constitution and the United States government.<sup>9</sup> He redefined the role of the federal judge, he crafted a separate and equal third branch of government, and for that branch he seized the power of judicial review.<sup>10</sup> He personally transformed the Supreme Court from an institution that was weak and ineffectual, to a team that re-shaped and defined the Constitution in a way that impacts our government and our lives to this very day.<sup>11</sup> He established an independent Supreme Court that policed both Congress and state legislatures, and he struck down all laws that violated the Constitution. Marshall was an individual who used the power of his personality to change the course of a young nation.<sup>12</sup>

Like many historic icons, Marshall carried his past experiences with him to the bench. In fact, scholars have noted that his "classic Court decisions are treated as the fulfillment of moral and political lessons that Marshall had internalized years earlier and that he derived more from experience than reading."<sup>13</sup> Arguably, two experiences in particular molded his success. First, leading a group of

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Marshall moved him to: grant relative autonomy to his enslaved servants, fight in court and in the legislature for the wrongly enslaved, represent people of color in post conviction efforts, and become a voice "for equal justice under the law." *Id.* at 73–75. While his rulings on the Court failed to abolish the pain of countless enslaved Americans, something in his moral center moved him to defy his fellow Virginia land owners and declare slavery as "contrary to the law of nature." *The Antelope*, 23 U.S. (10 Wheat.) 66, 120 (1825) ("That it is contrary to the law of nature will scarcely be denied"). I leave it to the reader to decide if Marshall's slow, but apparent progression away from supporting slavery was impacted by his early, desperate battles for freedom. As I continue to observe public defender apprentices interact with incarcerated individuals, I become more convinced of this historical connection.

9. See JEFFREY TOOBIN, *THE NINE: INSIDE THE SECRET WORLD OF THE SUPREME COURT 2* (2007). I observed many students, over years of supervising public defender interns, develop both legal and leadership skills comparable to traits many historians have attributed to Marshall.

10. See LAWRENCE FRIEDMAN, *A HISTORY OF AMERICAN LAW* 117 (1973).

11. TOOBIN, *supra* note 9, at 2.

12. FRIEDMAN, *supra* note 10, at 117.

13. Joseph J. Ellis, *Maximum Justice*, N.Y. TIMES (Dec. 1, 1996), <http://www.nytimes.com/1996/12/01/books/maximum-justice.html> (reviewing JEAN EDWARD SMITH, *JOHN MARSHALL: DEFINER OF A NATION*).

elite back-woods rifleman through most of the Revolutionary War developed his leadership and relationship skills.<sup>14</sup> Second, confronting the possible death and incarceration of his fellow soldiers developed his resolve and empathy in times of strife.<sup>15</sup> These early experiences taught him the much-needed skills that he later utilized to build unanimous decisions on the Court.<sup>16</sup>

At Valley Forge, “the shortage of clothing, food, shoes and blankets led to widespread starvation and disease—more than 3000 troops were said to have died—and Marshall never forgot the images of suffering that resulted from the failure of the state legislators to respond.”<sup>17</sup> The experience of facing the desperation and bewilderment of his fellow soldiers made him a strong nationalist impacting his jurisprudence and his life-long battle for national unity and a strong federal government.<sup>18</sup> Marshall built allegiances and alliances on the Court in the same fashion that he had experienced and orchestrated survival at Valley Forge.<sup>19</sup> He built power with his interpersonal skills, which he used to join and lead an intellectually and politically diverse group of judges.

Additionally, through 1777 and 1778, Marshall likely confronted the possibility of death or incarceration on a daily basis.<sup>20</sup> During the Valley Forge winter, one of Marshall’s mess-mates and fellow captains was a Charles Porterfield, and one of his superior officers was Daniel Morgan.<sup>21</sup> Porterfield and Morgan had been captured two years earlier in Quebec and were held as British prisoners for close to

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14. *Id.*

15. See EDWARD SMITH, JOHN MARSHALL: DEFINER OF A NATION 64 (1996); see also Robert Cotner, *John Marshall—American Patriot, from battlefield to Supreme Court and Beyond*, CAXTON CLUB (Oct. 2002), <http://www.caxtonclub.org/reading/2002/Oct/marshall.htm>; UNGER, *supra* note 8, at 21–22.

16. SMITH, *supra* note 15, at 286–87.

17. JEFFREY ROSEN, THE SUPREME COURT: THE PERSONALITIES AND RIVALRIES THAT DEFINED AMERICA 12, 42 (2007).

18. *Id.*

19. Compare SMITH, *supra* note 15, at 286–87, with SMITH, *supra* note 15, at 64. See Cotner, *supra* note 15 (“This interpersonal intelligence developed over the years and became the central ingredient in the great achievement of the Marshall Court.”).

20. See UNGER, *supra* note 8, at 21–22.

21. JOSEPH A. WADDELL, *Diary of a Prisoner of War at Quebec, 1776*, VA. MAG. HIST. & BIOGRAPHY, Vol 9, No. 2, 144–45 (Oct. 1901).

a year before their release in a prisoner exchange.<sup>22</sup> It is uncertain if their proximity had an impact on Marshall, but at the very least we know that Marshall—in the most desperate of conditions—was in close quarters and sharing scarce rations with fellow officers who had been recently incarcerated. He also faced the daily prospect of incarceration if his weakened, weather-beaten army surrendered. If he failed in his job as an officer, his men were likely to face death or imprisonment. This mantle of responsibility is not foreign to public defenders who fight every day to alleviate the suffering of their bewildered, desperate, and at times condemned incarcerated clients.

Today, students working in any public defender office or legal aid society continue this tradition of learning from their interactions: interactions with other individuals fighting for freedom, and interactions with clients in search of justice and deliverance from suffering. Like Marshall, the students who experience this work continue to demonstrate resolve (advocacy), empathy, and leadership (communication skills) through their diverse professional endeavors.

#### THE PRACTICAL SKILLS OF PUBLIC DEFENDER WORK

This section outlines how a set of skills usually identified with public sector performance are instilled in many professionals by their first interaction with a public defender work environment. Being productive but detail-oriented, disciplined but open to input, engaged in a shared vision but creatively autonomous are some of the work traits learned by apprentices. The public defender experience forces many new workers to develop a strong work ethic, become organized, embrace diversity, and achieve a complexity of mind required when they confront issues of tomorrow.

Law firms and legal institutions were not immune from the past nine years of economic hardship that impacted the nation.<sup>23</sup> Many firms were forced to push back start dates for associates, reduce summer programs for law clerks, and curtail general recruiting

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22. *Id.*

23. Cynthia K. Heerboth, *Missouri's Lawyers: Striving to Survive*, PRECEDENT 8 (Spring 2009), <http://www.mobar.org/uploadedFiles/Home/Publications/Precedent/2009/Spring/Missouri's%20Lawyers%20Striving%20to%20Survive.pdf>.

operations in order to compensate for falling revenues.<sup>24</sup> For many years, law firm interviewers—who traditionally sought the best and the brightest from law schools—eliminated summer associate programs; this left a smaller number of firms, government agencies, and public interest organizations with the enviable task of finding placements for a national pool of top legal talent.<sup>25</sup> As revenues returned and law firms resumed more traditional modes of hiring, recruiting, and mentoring, I observed an entire group of law students and recent graduates who had developed new talents and permanently adopted a new professional personality. For me, many past public defender interns (some who are quoted in this Essay) represent a new wave advocate; demonstrating the educational power and impact of working for an ever-growing number of marginalized and incarcerated clients.<sup>26</sup>

This lost generation of recruits was not waiting idly for firm placements; rather, they had accepted positions with agencies and organizations experienced at developing student and attorney talent in a quick and efficient way.<sup>27</sup> In St. Louis, public defender offices had partnered with law school clinics at Washington University (decades before the economic downturn) to share and experiment with cutting-edge training and teaching techniques.<sup>28</sup> Student coordinators from the public defender endeavored to train a raw group of novice practitioners in being smarter and more efficient workers and

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24. See Emily Watkins, *Tough Market for Law School Grads*, ABC NEWS (Nov. 26, 2019), <http://abcnews.go.com/Business/tough-market-law-school-grads/story?id=9120629>; see also Heerboth, *supra* note 23, at 8.

25. See Watkins, *supra* note 24 (“a growing number of students is seeking alternatives, such as firms in smaller markets, opportunities in government and jobs with public interest groups.”).

26. This observation is based on years (before and after the economic downturn) of the author evaluating and supervising students at the public defender’s office in St. Louis County. See generally Catherine Martin, *Big Firms Crack Door for Law School Grads*, MO. LAW. WKLY. 1, 1 (2014) (discussing how some law firms have resumed traditional hiring and recruiting practices following the economic downturn).

27. Matt Villano, *Law-School Grads See Promised Jobs Put on Hold*, TIME (Mar. 26, 2009), <http://content.time.com/time/business/article/0,8599,1887270,00.html#ixzz0hrjicpT>.

28. See Patrick C. Brayer, *A Law Clinic Systems Theory and the Pedagogy of Interaction: Creating a Legal Learning System*, 12 CONN. PUB. INT. L.J. 49, 64 n.70 (2012); see also *Criminal Justice Clinic*, WASH. U. SCH. L., <http://law.wustl.edu/crimjustice/index.aspx> (“Tips on Experiences, Time, and Expectations”).



advocates.<sup>29</sup> The mission was clear and students understood, “[y]ou simply did not have time to waste when your clients’ lives are in your hands.”<sup>30</sup>

Many apprentices, for the first time professionally, experienced the complexity of legal work in the context of a case and client when they worked for a public defender office. New attorneys and interns “learned how to parse through mountains of data about a case, identify the most important pieces, and use those pieces to create a story that minimizes the weaknesses and emphasizes the strengths of” the client’s narrative.<sup>31</sup> One former public defender intern recently wrote:

Because I work in-house at a Fortune 500 company now, everyone I tell is shocked to learn that I interned for the Office of the Public Defender while I was in law school. They are even more shocked when I tell them how many skills carry over from the Office of the Public Defender to office of the corporate defender.<sup>32</sup>

Traits including productivity, thoroughness, and attention to detail are all part of this evolving skill set.

Those who successfully completed their public defender apprenticeship retained a series of proficiencies that defined them as quality team members with strong work personalities. Participants possessed skills and professional traits such as: a strong work ethic that recognizes the need for institutional and individual discipline,<sup>33</sup> and an ability to see and participate in a shared vision with the firm, but at the same time maintain a sense of autonomy that promotes creativity and ethical behavior.<sup>34</sup> Additionally, new recruits learned

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29. See *Criminal Justice Clinic*, *supra* note 28; see also Brayer, *supra* note 28, at 70–72, 86.

30. See email from Amanda Wolter, Corporate Attorney, Monsanto Company, to Patrick Brayer, Author (Aug. 31, 2016) (on file with author).

31. *Id.*

32. See email from Amanda Wolter, *supra* note 30.

33. See Patrick C. Brayer, *Opposition to Clinics Tests Attorney-Client Privilege*, NAT’L L.J., 20 (2010).

34. See Catherine Gage O’Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 486 (1998); compare Brayer *supra* note 28 at 65, 75–77, with *Criminal*

how to create strong professional relationships helping them develop an individual plan for seeking out mentors and professional role models.<sup>35</sup> New recruits also learned new methodologies of problem solving and creative thinking helping them move past the simple obstacles that diminish individual productivity.<sup>36</sup>

Public defender agencies trust students to act as certified practitioners. This trust stems from the agencies' ability to train and require their practitioners to develop documentation and time management skills.<sup>37</sup> When students work with clients they internalize the reality that an individual exists behind the case number. Their work, if not clearly documented and completed efficiently and effectively, can negatively impact a life. The same principles apply to the challenging world of large firms. New attorneys are accountable for billable hours. This task requires efficiency, accuracy, documentation of time, and accountability for any mental lapses. Additionally, it stems from the agencies trust that their practitioners learn a strong work ethic. No work place is immune from the bright, talented individual who just cannot perform in a work setting.<sup>38</sup> The traditional recruit, ranked top in their class and featuring an impeccable writing style, may fall short of success in a work environment. They may be deficient in basic work habits, such as showing up on time, attending important meetings, and making deadlines.<sup>39</sup> As public interest organizations gave students greater responsibilities in representing clients, they demanded that their students act as true professionals.<sup>40</sup>

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*Justice Clinic: Experience*, WASH. U. SCH. L., <http://law.wustl.edu/crimjustice/pages.aspx?id=407> ("Students are assigned to work with a group of three to six attorneys, with one lawyer in the group being designated as the lead attorney. The lead attorneys are available to assist the students with obtaining a range of lawyering experiences in the clinic."); *see also* email from Brian N. Connors, Chief Deputy State Public Defender, Colorado Public Defender, to Patrick Brayer, Author (Dec. 7, 2016) (on file with author).

35. Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 CLINICAL L. REV. 105, 122 (2007).

36. *See* Brayer, *supra* note 28, at 86.

37. *See* email from Brian Connors, *supra* note 34.

38. Young & Blanco, *supra* note 35, at 118–19.

39. *See, e.g., id.* at 121–22.

40. *Id.*

Today, clinic students and interns across the nation continue to serve incarcerated clients as part of a public defender team. However, over the past thirty years, the issues have evolved in complexity. Advocates for the poor and incarcerated require an increased level of expert knowledge to achieve an acquittal or pursue mitigation on behalf of a client.<sup>41</sup> Modern public defenders litigate issues on the cutting edge of science, technology, mental health, psychology, biotechnology and medicine<sup>42</sup> and I have observed clinic students and interns heavily engaged in assisting lawyers in presenting these complex issues at hearings and trials. In my experience, it is not unusual for an intern to interview a pathologist or to prepare a deposition strategy (in Missouri) and then assist at the deposition of a medical examiner.<sup>43</sup> In Texas, an intern was lauded in the press for collaborating with her public defender supervisor when researching, investigating, and working in the fields of false confession, eyewitness identification, DNA, and ballistics.<sup>44</sup> Public defenders and their student apprentices are meeting the daily challenges of accessing, reviewing and interpreting large caches of data to match the ever-evolving technological advances available to law enforcement.<sup>45</sup> In this evolving landscape, interns are crafting legal arguments and advancing changing philosophies. Through their briefs, memorandums, and pleadings, they help to educate trial courts

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41. See James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154, 196–97 n.125 (2012).

42. See *Professor Scheck Organizes the First Public Defender's Forensics College*, CARDOZO L. (June 12, 2014), <http://www.cardozo.yu.edu/news/professor-scheck-organizes-first-public-defenders-forensics-college> (demonstrating how public defenders are becoming educated in a number of scientific disciplines).

43. See, e.g., email from Eleanor Gourley, 2014 Missouri State Public Defender Intern, to Patrick Brayer, Author (Sept. 12, 2016, 3:33:15 PM CDT) (on file with author).

44. "I am fortunate to have Julpa Dave, the ultimate intern and Texas Wesleyan law student." Jennifer Emily, *Dallas County's New Public Defender Dives into Wrongful Conviction Caseload*, DALL. MORNING NEWS (Nov. 23, 2011), <http://www.dallasnews.com/news/news/2011/11/23/dallas-countys-new-public-defender-dives-into-wrongful-conviction-caseload>.

45. See email from Brian Connors, *supra* note 34. This statement is also based on years of the author observing and discussing experiences with numerous current and former public defender interns who have served in offices across the nation.

as appellate rulings race to keep up with the changing face of litigation.<sup>46</sup>

Firms across the country faced the challenge of recognizing and effectively utilizing this work personality that had been developed in many of their new associates and summer clerks. For one major law firm, a student who experienced public defender work and later became a partner had a greater appreciation for the power of individual differences and diversity in co-workers, clients, and juries, drawing from her experiences with assisting the poor and marginalized.<sup>47</sup> Understanding how students and new lawyers developed skills in the public sector played an important role in how the private sector attracted and retained future legal talent. One partner on the litigation team that recently secured an \$8.9 million plaintiff's verdict for basketball legend Michael Jordan<sup>48</sup> said of her public defender experience, "That summer also provided motivation for my *pro bono* practice today. I accept court appointments, so that I can give back and use the lessons I've learned."<sup>49</sup> In 2017 when a large firm, Fortune 500 Company, or federal court hires a successful former public defender assistant, they will find in that new hire a sophisticated legal mind, a strong work personality, and a creative team member who is ready to analyze the most advanced and challenging legal issues.

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46. See email from Brian Connors, *supra* note 34. This statement is also based on years of the author observing, and discussing experiences with, numerous current and former public defender interns who have served in offices across the nation; see, e.g., *supra* note 43.

47. *Infra* note 49.

48. *Schiff Hardin Secures \$8.9 Million Verdict in Favor of Michael Jordan*, SCHIFF HARDIN LLP (Aug. 23, 2015), <http://www.schiffhardin.com/insights/news/2015/schiff-hardin-secures-8-9-million-verdict-in-favor-of-michael-jordan>.

49. Email from Ann MacDonald, Partner, Schiff Hardin LLP, to Patrick Brayer, Deputy District Defender, St. Louis County Trial Office (Aug. 29, 2016) (on file with author); see also *Ann H. MacDonald*, SCHIFF HARDIN LLP, <http://www.schiffhardin.com/professionals/attorneys/j-m/macdonald-ann-h>.

## THE POWER OF INTERACTING WITH AN INCARCERATED PERSON

When you are arguably one of the best lawyers in America how do you start a book about your career-long quest for justice and mercy?<sup>50</sup> Do you grab the reader with one of your five appearances before the United States Supreme Court?<sup>51</sup> Do you tell the impactful tale of how you were harassed and disrespected as a young African American lawyer by the police in Midtown Atlanta?<sup>52</sup> Or do you hook the reader with the visual of you and your staff celebrating the day you heard your advocacy resulted in a ruling that children being sentenced to life imprisonment without parole for non-homicide crimes was unconstitutional?<sup>53</sup> After twenty-six years of observing interns, clinic students, and new attorneys depart and return for the first time, to and from the St. Louis County Jail, I was not surprised to see Bryan Stevenson starting his 2014 bestselling memoir with his first visit to a correctional facility as a young legal intern. One of Stevenson's first impressions was that the young African American man he met on that day in 1983 was not different from many of his lifelong friends.<sup>54</sup> This incarcerated and condemned adult was well groomed, polite, appreciative, married, a father, joyful at times, and interesting.<sup>55</sup> Stevenson reflects, "In that moment, Henry altered something in my understanding of human potential, redemption, and hopefulness."<sup>56</sup>

Meeting an individual who is incarcerated is one of the most impactful experiences of any legal education.<sup>57</sup> I am always amazed to hear past public defender interns ask, as if they were inquiring

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50. Bryan Stevenson, author of *STEVENSON*, *supra* note 1, "is the founder and Executive Director of the Equal Justice Initiative in Montgomery, Alabama. Mr. Stevenson is a widely acclaimed public interest lawyer who has dedicated his career to helping the poor, the incarcerated and the condemned." *Bryan Stevenson*, EJI, <http://eji.org/bryan-stevenson> (last visited Feb. 1, 2017).

51. *STEVENSON*, *supra* note 1, at 350.

52. *Id.* at 41.

53. *Id.* at 295 (discussing his win in the landmark case, *Graham v. Florida*); *see also* *Graham v. Florida*, 560 U.S. 48 (2010).

54. *STEVENSON*, *supra* note 1, at 9.

55. *Id.* at 9–12.

56. *See id.* at 12.

57. *See* Ross, *supra* note 6, at 797–98.

about a past friend, how clients (confronting very serious cases) are doing. Some students have followed the progress of cases for years online, cheering me on when they see progress or victory for a client. Client interaction is a rare educational opportunity that is at the heart of the public defender experience. Its impact reverberates to all quarters of the legal system as students journey into all sectors of the profession. Career public defenders learn and grow from this experience, evident from their vocational choice to serve the poor, the marginalized, and the underserved. However, what amazes me the most is how, even in fields outside those dedicated to public service, practitioners maintain values and character traits from their previous interactions with incarcerated individuals.<sup>58</sup> What follows are a few thoughts on why this experience has such an impact and why this experience promotes, in future lawyers, the professional skills of advocacy, communication, and empathy.

The first and most predominant reaction from a student assigned to meet with a client in jail, alone, is fear. Consistent with Professor Stevenson's reaction to his assignment in 1983, students are rarely fearful for their safety. In my experience, students are fearful of not being prepared, hurting another human being in some way, or that they will not succeed in their task and harm the client's case.<sup>59</sup> This reality—that an imprisoned individual is dependent on them professionally for the first time in their careers—is a sobering and maturing event.<sup>60</sup> Few other experiences have the ability to focus the mind and emotions of a developing professional like this one interaction. For one associate at a prestigious Washington D.C. law firm, her previous “work at the public defender taught” what “it truly means to be an advocate.”<sup>61</sup> In working for incarcerated clients she

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58. See email from Ann MacDonald, *supra* note 49.

59. See, e.g., STEVENSON, *supra* note 1, at 8 (describing how Bryan Stevenson was apprehensive about his lack of preparation when meeting his first incarcerated client as a student); see also email from Sarah Rockefeller, public defender intern for Missouri State Public Defender System and Colorado Public Defender, to Patrick Brayer, Deputy District Defender, St. Louis County Trial Office (Dec. 12, 2016) (on file with author).

60. This statement is based on years of the author observing, and discussing experiences with, numerous current and former public defender interns who have served in offices across the nation, see, for example, email from Sarah Rockefeller, *supra* note 59. See also email from Brian Connors, *supra* note 34.

61. Email from Amy Xu, *supra* note 4.

“learned to think about creative solutions for devising a defense and to advocate vigilantly under all circumstances.”<sup>62</sup> For possibly the first time in their lives, students realize that their actions are not about maximizing their own benefit. Their attention shifts to an external focus, to the reality of another individual being dependent on their skills, intelligence, and personality.<sup>63</sup> At that moment, law becomes less about advancement, promotion, and money, and the priority switches to the advocacy of a fellow human being.

When comparing the experiences of John Marshall and Bryan Stevenson, I noted one dominant similarity in their professional development. The power of conversation is an early lesson learned by both lawyers. Marshall emerged from the Valley Forge winter with an ability to connect with fellow professionals in a very powerful way; he then translated his skill for discussion to judicial dialogue years later.<sup>64</sup> Stevenson demonstrated in his work with incarcerated clients an ability to connect and humanize clients, demonstrating the importance of turning “short meetings” into three-hour casual conversations.<sup>65</sup> The ability to converse and create dialogue is a dominant skill possessed by most, if not all, effective advocates.

As the legal profession becomes more digitally based, lawyers are less dependent upon face-to-face communications and unfortunately less skilled in the proficiency of human interaction.<sup>66</sup> Now, more than ever, new lawyers who possess the dexterity to converse with clients, peers, superiors, and subordinates will stand above others in their quest for professional success. A partner at Schiff Hardin in Chicago

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62. *Id.*

63. See Ross, *supra* note 6, at 789, 793.

64. Compare SMITH, *supra* note 15, at 286–87, with SMITH, *supra* note 15, at 64. See Cotner, *supra* note 15 (“This interpersonal intelligence developed over the years and became the central ingredient in the achievement of the Marshall Court.”).

65. See STEVENSON, *supra* note 1, at 10.

66. See Mark Bauerlein, *Why Gen-Y Johnny Can't Read Nonverbal Cues*, WALL ST. J. (Aug. 12, 2009, 12:01 AM), <https://www.wsj.com/articles/SB10001424052970203863204574348493483201758>. Mark Bauerlein is also the author of the 2007 book *THE DUMBEST GENERATION: HOW THE DIGITAL AGE STUPEFIES YOUNG AMERICANS AND JEOPARDIZES OUR FUTURE (OR, DON'T TRUST ANYONE UNDER 30)*; see also M. H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory and Multi-Tasking in a Multi-Media World*, 16 J. LEGAL WRITING INST. 419, 420 (2010); Patrick C. Brayer, *The Connected Lawyer: The Evolving “Operating System” of the Networked Professional*, 37 FORDHAM INT'L L.J. ONLINE 84, 92–94 (2014).

reflected on how her ability to “communicate with clients who might not be familiar with the legal system,” was learned in her summer as a public defender intern.<sup>67</sup> When visiting an incarcerated individual, aspiring professionals realize, when locked down in a small room with another human, with no smart devices allowed, they are compelled to engage and interact in a way that reveals client’s fears, concerns, motivations, and aspirations. Students learn how to ask questions in a compassionate way, building “trust with the clients” and gaining “valuable information in formatting” a legal strategy.<sup>68</sup>

Communication is a gateway skill that leads to the development of the equally if not more important expertise of finding a humanity or locating the face of humanity in all clients, including corporations and governments. After a student returns from a visit to jail or a correctional facility, I ask them to share their impression of their new client. Traditionally, I hear similar responses: they are just like me, they are “like everyone I’d grown up with,”<sup>69</sup> or they are just like my family. “Whether your client is an indigent individual or a large multi-national corporation, serving as defense counsel means that you see your client in their most vulnerable time of need.”<sup>70</sup> Experiencing another human being behind bars and hearing about the pain of their family focuses the developing mind of a professional to find good in a perceived evil and to find the face of humanity in all future clients. In a society that is increasingly polarized on many issues, I find solace when I hear my former students finding human potential in the most unlikely of places. Successful participants in the public defender experience have a strong understanding of activism, human diversity, and the problems we face in this world. However, it is the early and upfront exposure to the face of incarceration that has helped many developing legal minds understand the universal need for empathy: empathy that extends to all—even organizations whose component parts are real people.

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67. See email from Ann MacDonald, *supra* note 49.

68. See email from Amy Xu, *supra* note 4.

69. See STEVENSON, *supra* note 1, at 9.

70. See email from Amy Xu, *supra* note 4.



## CONCLUSION

Instead, when a young man who was born in the ghetto and who knows little of life beyond the walls of his prison cell and the invisible cage that has become his life, turns to us in bewilderment and rage, we should do nothing more than look him in the eye and tell him the truth.

—Michelle Alexander<sup>71</sup>

This passage made clear to me, after years of meeting thousands of incarcerated individuals, especially young men of color, how impactful confined dialogue had been on the hundreds of students who accompanied me to the jails and prisons. Like Marshall—in his early experiences at war—when he looked cold, sick and starving young soldiers in the eye, students who look into the desperate faces of incarcerated people are forever impacted by those sobering moments. The public defender experience focused and matured many aspiring professionals in their quest to become productive and impactful lawyers who realize the seriousness of their calling. For many public defender apprentices, their moral center is forever influenced by their visit to a jail, as they begin their life-long quest to bring advocacy, understanding, empathy, and justice to all sectors of the legal profession.

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71. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 261 (2012).