

WHO IS MY CLIENT? CLIENT-CENTERED LAWYERING WITH MULTIPLE CLIENTS

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Many lawyers face the challenge of adhering to the idealistic principles of objective client-centered lawyering. This Article examines the additional conflict of client-centered lawyering when the attorney seeks to balance not only the attorney’s ethical obligations to the attorney’s individual corporate client, but also the attorney’s competing personal obligations to a cause and a group (such as members of a particular race). When an attorney’s sense of duty to a cause or the attorney’s race rises to the level where the advocacy for those groups becomes, in essence, that attorney’s cause client and race client, how does the attorney balance these obligations? The attorney, at that point, has an individual corporate client, a cause client, and a race client. This Article examines how a lawyer’s sense of duties to these non-legal clients impacts the attorney’s implementation of the utopic ideals of client-centered lawyering. How does an attorney remain objective in counseling the individual corporate client while torn by the duties to the cause client and race client? How does an attorney prevent the pursuit of these goals from influencing the choice of entities to accept as clients? Is it possible to provide client-centered objective advice to clients when an attorney has these competing personal duties that threaten to unduly influence the attorney’s actions?

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INTRODUCTION

For many years, I was a community lawyer helping low- and moderate-income tenant groups purchase their apartment buildings when the landlords listed those buildings for sale.¹ A rather unusual law in Washington, D.C. requires landlords of residential buildings to offer the residents of those buildings the opportunity to purchase the apartment buildings in which the residents reside.² I represented not the individual tenants in these properties, but the corporate tenants associations formed to acquire the properties on behalf of the individual tenants. My practice involved working to promote and preserve affordable homeownership for these primarily low- and moderate-income African-Americans residents. In my work, I sought to empower my corporate tenants association clients and help the individual tenants obtain financial stability and self-sufficiency by becoming homeowners. As a lawyer governed by a professional code of ethics, I have a professional obligation to my clients. However, because of my ardent belief in the opportunities provided by homeownership and my personal sense of obligation to my African-American community, I also have a deep sense of obligation and personal duty to these causes as well. I remain a fervent advocate for affordable homeownership—so much so that affordable homeownership became the legal policy cause for which I advocate. Because I feel a personal duty to empower members of my race as individuals and as a group, the cause of supporting and protecting members of my racial community as individuals and as a collective became my race client. I have, in essence, 3 clients—my individual corporate client, my cause client & my race client. Often, my ethical obligation to my individual corporate client & my personal duty to my two non-legal clients cloud my objectivity as an attorney.

I honor my ethical obligations to my individual corporate clients and I want them to accomplish their goals. I want to promote and

¹ See generally Julie D. Lawton, *Tenant Purchase as a Means of Creating and Preserving Affordable Homeownership*, 20 GEO. J. ON POVERTY L. & POL'Y 55, 55–57 (2012) (detailing the Tenant Opportunity to Purchase Act—a Washington D.C. statute).

² D.C. CODE §§ 42-3404.02 (2012) (“Before an owner of a housing accommodation may sell the accommodation, or issue a notice of intent to recover possession, or notice to vacate, for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the accommodation at a price and terms which represent a bona fide offer of sale.”).

preserve affordable homeownership for low- and moderate-income African-Americans. I want to support the financial stability and self-sufficiency of members of my fellow African-American community. I struggle with how these different goals impact the counseling I provide to my clients and whether the accomplishment of one goal undermines the accomplishment of another. How do I accomplish these goals while being an objective attorney to my clients? How do I not allow the pursuit of these goals to influence how I counsel my clients or impact the choice of entities I choose to accept as clients? Is it possible to provide objective advice to my clients when I have these competing personal duties that threaten to unduly influence my choices as an attorney?

This Article examines this conflict for an attorney faced with obligations to an individual client, a cause, and a group (such as members of a particular race). Part I discusses client-centered lawyering as a method of providing objective counsel to the individual corporate client. Part II includes an analysis of the challenges of client-centered lawyering. Part II also evaluates the struggle of being a client-centered attorney while lawyering to these three clients simultaneously. Part III details the three “clients” (1) the individual corporate client, (2) the cause client, and (3) the race client and the varied pressures they place on client-centered lawyering.

I. CLIENT-CENTERED LAWYERING

When considering how to best serve my clients, I am guided by the concept of client-centered lawyering. Client-centered lawyering is based on the idea that clients should be the primary decision-maker in determining the direction of their legal case or transaction, whereas attorneys should maintain the appearance of neutrality and provide legal counsel as objectively as possible. These ideals, in abstract, have always resonated with me; however, in practice, these ideals are much harder to follow. This Article examines one aspect of this challenge: attempting to provide client-centered lawyering when the attorney has competing obligations to multiple clients. In my role as an African-American attorney advocating for affordable homeownership for African-Americans living in predominantly African-American communities, I consequently serve multiple clients: the client that is the individual corporation, the client that is my cause of affordable homeownership, and the client that is my racial community. How do I serve my multiple clients without my obligation to one interfering with my obligation to the others? Is it possible to remain objective and neutral to all of my clients without unduly prejudicing at least one?

There remains a divide amongst lawyers about the role of the

lawyer in client counseling.³ When a decision needs to be made in a client's case or transaction, should the attorney direct the client's decisions or should the attorney provide objective advice and remain neutral during the client's deliberation? Some attorneys argue that clients seek out attorneys for our expertise and look to our experience to provide clients guidance to address their legal issues. Those attorneys would argue that such neutrality in counseling our clients would be a disservice to the clients.⁴ If an attorney does not use his or her expertise to direct the client to a reasonable, well-informed decision, the attorney is not providing the necessary counsel to the client. Those attorneys would also argue that the attorney should freely share with the client what the attorney, in her reasoned opinion, thinks the client should do. On the contrary, others argue that the client should make the decision without the attorney's interference, as it is the client who will suffer the consequences and receive the benefits of that decision.⁵ Client-centered lawyering generally advocates for the client's right to make a decision free from the attorney's personal, or even professional, preferences.⁶ While there is no single definition for what client-centered lawyering means, on the whole, client-centered lawyering refers to a "richly elaborated philosophy of lawyering that strives at once to be client-directed, holistic, respectful of client narrative, client-empowering, and partisan."⁷ Kate Kruse, Professor of Law at Hamline University Law School, describes the client-centered approach as relying on "techniques of lawyer neutrality to ensure autonomous client decision-making"⁸ Robert Bush, Professor of Law at Hofstra University, frames it as "the question of 'who decides' what should happen in the representation, and especially who determines the goals to be sought and outcome to be accepted – holding that these decisions belong to the client alone."⁹

³ See generally Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990) (explaining that the arguments for client-centered counseling may be divided into two broad categories: those directed toward analyzing the relationship between the lawyer-client dynamic and those delving into the lawyer-client relationship; further discussing the divide amongst the legal community with regard to the lawyer's role in client counseling).

⁴ *Id.* at 506 (describing the traditional model of client counseling).

⁵ *Id.* at 507–11 (describing the Binder and Price model of client counseling).

⁶ Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 371 (2006) ("Client-centered representation has been perhaps most commonly associated with an approach to legal counseling that seeks to minimize lawyer influence on client decision-making, relying on strategies of lawyer neutrality.").

⁷ *Id.* at 372.

⁸ *Id.* at 373.

⁹ Robert A. Baruch Bush, *Mediation Skills and Client-Centered Lawyering: A New View of the Partnership*, 19 CLINICAL L. REV. 429, 447 (2013). For a critical analysis of

Two of the foundational principles of client-centered lawyering are: (i) respecting the importance of the client's role in client decision-making; and (ii) respecting the importance of the attorney's appreciation for their clients' "perspectives, emotions and values."¹⁰ Client-centered lawyering requires attorneys to respect the "primacy of client decision-making"¹¹ and "client empowerment."¹² The presumption is that clients will have the better understanding of what is most important to the client and the client should be able to make the decision about their case based on the client's own understanding of what is best.¹³ Client-centered lawyering envisions attorneys maintaining the "appearance of neutrality" to avoid influencing a client's decisions, even subtly, by allowing the client to determine what is important and how the client's priorities interplay with the client's decisions.¹⁴ Client-centered lawyering does not prevent lawyers from offering legal counsel to the client for consideration, obviously; but it encourages lawyers to respect's the client's input, perspective and decisions.¹⁵

Clients come to attorneys for a variety of reasons, but client-centered lawyering is based on the idea that "clients come to lawyers, not to get answers to routine legal questions, but to get help solving problems that are deeply embedded within particular contexts."¹⁶ Clients come to us for help. While some of the more objective lawyering skills involve discerning a client's legal issues and analyzing the available courses of action, a more subjective lawyering skill is determining the how best to convey our legal counsel to the client. For attorneys who are invested in the outcomes of their clients' cases and transactions, the client-centered lawyering approach of respecting the "limi-

client-centered lawyering vs. lawyer-centered lawyering, see Rodney J. Uphoff, *Who Should Control the Decision to Call a Witness: Respecting A Criminal Defendant's Tactical Choices*, 68 U. CIN. L. REV. 763 (2000).

¹⁰ Kruse, *supra* note 6, at 377.

¹¹ *Id.* at 378.

¹² Bush, *supra* note 9 at 447. ("A third and arguably deeper meaning is given to the term by those who see a 'client-centered' approach as one of 'client empowerment,' i.e., maximizing the degree of client participation in all aspects of the case, not only to preserve client control over decisions and address non-legal problems, but to *strengthen the client's own capacity* for self-determination and agency.").

¹³ Kruse, *supra* note 6, at 378.

¹⁴ *Id.* at 379–80.

¹⁵ David Binder, Paul Bergman, Susan Price, *Lawyers as Counselors: A Client-Centered Approach*, 25 N. Y. L. SCH. L. REV. 29, 33 (1990). ("Inherent in the . . . definitions of counseling and advice giving is the idea that clients generally should have the opportunity to make decisions. This is not to say that you should never venture your opinion about which course of action a client should adopt, that you must never make a decision without consulting a client, or that you must always execute a client's decision. Our point is, with respect to the many decisions that typically must be made, you usually must give a client the opportunity to make the final choice.").

¹⁶ Kruse, *supra* note 6, at 374.

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tations of legal expertise”¹⁷ can be quite challenging. This approach encourages attorneys to respect the expertise that clients bring to the legal analysis. While attorneys have more knowledge about the law, clients have more knowledge about their lives and the potential impact legal decisions will have on their lives.¹⁸

Client-centered lawyering also involves the attorney’s ability to include a client’s non-legal considerations as part of the legal counseling, such as a client’s “economic, social, psychological, moral, political, and religious” issues.¹⁹ One legal ethicist has argued, “a paramount aspect of client-centered lawyering is in appropriate cases, advising the client about the morality of particular courses of conduct.”²⁰ When providing legal counsel to corporate clients, attorneys more commonly consider the consequences to the corporate client’s non-legal issues—such as revenue, reputation, and political connections—as part of legal counseling. Attorneys counseling individual clients can often be so consumed with the individual client’s stark legal challenges that they may not have the luxury to consider the other non-legal issues corporate attorneys frequently take into consideration.

I have generally adhered to the client-centered model of client counseling. One of my goals as an attorney is to help my clients become self-sufficient. There is no uniform means of accomplishing this goal; however, to the extent that my successes in life are connected to my ability to make good decisions, it is partly because I have been allowed to make my own decisions and see the result of that risk. Clients deserve the same opportunities. When attorneys make decisions for clients or ignore the clients’ preferences by inserting their own judgment in place of their clients’, attorneys deny clients the very learning experiences from which attorneys themselves benefit. Clients, like attorneys, are more able to become self-sufficient when they gain the skills to achieve it. Clients (as is the case with many of us) are better able to obtain those skills when they are given the opportunity to make their own decisions and receive the benefit, or suffer the consequences, of those decisions. To accomplish any of the goals of client-centered lawyering requires working through many of the challenges inherent in the practical implications of client-centered lawyering.

¹⁷ *Id.* at 377 (emphasis added).

¹⁸ *Id.* (“Clients have greater knowledge and ability to identify and predict the non-legal consequences of various alternative courses of action. Because the non-legal consequences are as important, if not more important, to achieving a satisfactory solution to the client’s problem, the client’s expertise is seen as ultimately more important than the lawyers.”).

¹⁹ *Id.*

²⁰ Monroe H. Freedman, *Client-Centered Lawyering – What It Isn’t*, 40 HOFSTRA L. REV. 349, 351 (2011).

II. CHALLENGES OF CLIENT-CENTERED LAWYERING

As an attorney, the individual corporate client is the vehicle through which I work to serve my cause client and my race client. As an affordable homeownership advocate, I facilitated the conversion of market-rate apartment units into affordable homeownership by helping tenants associations acquire and convert their apartment buildings. To serve my race client, I worked primarily with tenants associations comprised predominantly of African-Americans. Serving my individual corporate client, my cause client, and my race client all required working through the individual corporate client, and accomplishing any of these goals as a client-centered attorney required me to enable my corporate client to make a well-informed decision. Client-centered lawyering requires the attorney to provide objective counsel to the client, which in turn, enables the client to make a well-informed decision. As an attorney, a client's decision making is not simply about the client's willingness to provide direction about their project or case. It is fundamentally about the client's ability to make a reasonable and well-informed decision. One of the greatest challenges a client-centered attorney faces is determining how to communicate information to one's client in a manner that enables them to make quality decisions. Another challenge is evaluating what a well-informed decision looks like. This can be especially difficult when the attorney and client have very different decision-making processes and very different methods of communication.

Mutual communication is not intuitive. Our socio-economic backgrounds and our training impact our means of communication. I am trained as a practicing attorney and as a professor, which has required me to learn how to communicate with different audiences. My non-tenants association corporate clients, often led by a general counsel, required me to utilize a different communication skillset than my tenants association clients, many of whom had not graduated from college. A general counsel of a large corporation and I have been trained to think similarly and to evaluate risks similarly. When I provide counsel to these corporate clients, I have a clearer idea of what information they need for them—and me—to believe a well-informed decision can be, or has been, made.

I have no similar clarity in determining what my tenants association clients require in making a reasonable, well-informed decision. And, who makes the determination of whether the information and counsel provided is sufficient to make a reasonable, well-informed decision? Should it be the tenants association client whose members may assume that the information I provided is adequate because they are deferring to my expertise? Should I make that decision, which then

usurps the ability of the tenants association client to tell me what they need, undermining the client autonomy that we as client-centered attorneys hope to achieve? As the attorney for a tenants association, I frequently determine what information is provided and withheld. I make the determination of what information is necessary for the client's decisions. This very act of determining what is provided and withheld reflects the attorney's power over the client's decision-making process. When attorneys are counseling vulnerable populations,²¹ the very success of client-centered lawyering depends on the attorney's willingness to keep her power over the client constrained.

Client-centered lawyering rests, at least in part, on the assumption that attorneys are able to discern what information is sufficient to enable a client to make a well-informed decision. If that client and the attorney have similar experiences, training, and background, that assumption has some validity. Client-centered lawyering requires the attorney to conclude how much, and what type of, information the client needs to make a decision. It requires the attorney, informed by the client's input, to make conclusions about the client's priorities. When the attorney's life experiences are so divorced from the client's, how can the attorney make these conclusions in a manner that reflects that client's actual needs, not the attorney's interpretation of the client's needs?

I recall working with a tenants association who sought my assistance to help renovate a multi-family property so the tenants association could convert it to a condominium and sell some of the units to members of the tenants association at below-market prices and sell other units to non-members for market price. The commercial lender funding this project required all residents to complete a handful of tasks as a condition of closing the loan. First, the lender required the resident to contribute approximately \$200 toward the purchase of their unit. In addition, the lender required the resident to obtain a lender pre-qualification stipulating that the resident had sufficient income and credit to qualify for a mortgage loan to purchase the below-market condominium unit. Lastly, the lender required the resident to attend a free, one-day first-time homebuyer's counseling workshop. One of the residents who previously participated in the process to purchase a condominium became disengaged. At this point, as the attorney to the tenants association, I became concerned that one of the

²¹ See Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J.L. & FEMINISM* 1, 8 (2008). ("In discussions of public responsibility, the concept of vulnerability is sometimes used to define groups of fledgling or stigmatized subjects, designated as 'populations.' . . . Groups of persons living in poverty . . . are often labeled as vulnerable populations.").

members of the tenants association was now in danger of losing her opportunity to purchase her unit so I evaluated her progress. While the resident had not contributed the \$200, the tenants association agreed to advance this cost out of the tenants association's funds and have the money returned to the tenants association's account when the resident closed on the purchase of her condominium unit. Thus, the \$200 contribution requirement was fulfilled. The resident had already received her loan prequalification from an area lender. All that remained at that point was for the resident to attend the homebuyer's counseling workshop. Yet, the resident neither attended the workshop, nor reengaged in the process.

I tried to understand the quandary. Based on my analysis of the transaction and my understanding of the resident's priorities, I expected this to be an easy decision. Most of the residents who lived in this particular property were low- and moderate-income residents who never owned real property. This resident was no exception. She was a hard-working single mother who maintained two jobs to support her family. The condominium units were being sold to the tenants at a price tens of thousands of dollars below market price. The potential financial windfall from purchasing this condominium would have been significant for her family. Because of gentrification in the condominium's neighborhood, other similar units in the building were selling for almost double her purchase price. I expected the resident to be thrilled at the prospect of being able to purchase a home at such a discounted price. Even if she was uninterested in actually purchasing her home, she had the contractual right to assign her purchase right to a market-rate buyer for some negotiated financial consideration. All that remained was for the resident to attend the homebuyer's course and she could make her own choice.

I called. I emailed. I visited her home and left explanatory letters at her door. I met with her adult son to explain to him the importance of her participation in the process. Because the resident was not a native English speaker, my team and I left voicemail messages and sent letters in both English and her native language in the hopes of prompting the resident to participate. The resident remained unresponsive.

I assumed that if the client were fully informed, she would realize the importance of participating in this opportunity. I believed that if she were not participating it was because, I, as the attorney, had not properly informed her of the ease, importance, or financial potential of the transaction. I believed that if I could only talk with her, I could offer her sufficient information to appreciate the importance of this choice to enable her to make a well-informed decision. As lawyers, we

live in a world of narrative. We believe deeply in the power of persuasion and the power of prose. We believe in the ability to persuade others with the logic of argument and well-crafted reasoning.

In retrospect, I understand that I sought to offer counsel based on the items that I, as the lawyer for her tenants association, determined were necessary for my client to make a well-informed decision. The process of determining what information to provide required me to make conclusions about what was important to her and what she would need to finalize a decision. I naturally filtered these conclusions through my personal lens, which is tainted by my experiences, preferences, and socioeconomic circumstances.²² All of these factors informed my assumptions about my client's experiences, preferences and socioeconomic circumstances. I provided information about the financial impact of purchasing a condominium because I assumed that financial savings would be important to residents who are of low- and moderate-income. I informed her about the financial stability that comes from being a homeowner because I assumed a preference for controlling one's costs. I provided information about the small out-of-pocket costs required to purchase a financially valuable condominium because I presumed her desire to conduct a cost-return analysis, even on a rudimentary level. While none of this information was irrelevant, it was based on my analysis of what the resident would need to make the decision despite my being so very different from the residents on many levels. Client-centered lawyering can provide greater autonomy to the client, but the legal counsel provided is still based on the lawyer's interpretation of what information is needed for the client to make an informed decision, which in turn, is informed by the lawyer's experiences and personal preferences.²³

²² The financial, educational, and experiential differences between my clients and me undeniably inform how we see each other—even when we are of the same race. There are many articles written about cross-cultural lawyering between an attorney and clients of different races. See e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) (explaining the importance for lawyers to learn cross-cultural skills, competence, and concepts). My next article will evaluate cross-cultural lawyering in a less explored context—the challenges of cross-cultural lawyering when the lawyer and client are of the same race.

²³ In retelling this story over the years, I am frequently asked whether the resident ever reengaged, or if not, whether I ever determined the reasons for her disappearance. I never learned directly from her why she declined to pursue the opportunity nor learned whether she eventually became a homeowner. Her son, with whom I later spoke about the purchase opportunity, explained it simply as her need to work multiple jobs to care for her young children. I thought of the purchase opportunity as a means of addressing the financial strains that prompted her need to work multiple jobs, but she may have viewed it differently. Alternatively, she may not have thought that the financial benefit was worth the risk of taking off from work, or she may have distrusted the certainty of the purchase. These are all extrapolations of my evaluation of her behavior. In trying to discern the

The question of the similarities and differences between my clients and me, and their impact on my ability to be a client-centered lawyer, also extend to the means I use to assist my clients. Many problems experienced by the poor appear to be solvable by judicial intervention. Many of the legal problems of the poor are acute, including protection from foreclosure, eviction, employment termination, and unscrupulous lenders. Lawyers attempt to address these legal challenges by seeking protection in the courts to address these individual wrongs. There is an argument, however, that this is a futile endeavor. Some have argued that, “a program focused upon services to individuals will fail to deal with the legal and institutional sources of the grievances of the poor.”²⁴ Gary Bellow argued that seeking redress for these individual problems reflects a fundamental misunderstanding of the problem. He argued that the problems experienced by the poor and disenfranchised are because of an imbalance in political and economic power, and addressing an individual wrong is simply an ineffective and inefficient means of addressing the source of the problem.²⁵ I am an unintended beneficiary of this imbalance and my training in, and experience with, the judicial system give me a certainty about its ability and willingness to address my specific needs. This is not, as Bellow noted, the experience of the poor. There are many reasons why members of the same demographic have different outcomes in their lives. It is this difference in experience that contributes to a divergent sense of empowerment.

Client-centered lawyering can be particularly difficult for lawyers working with low- and moderate-individual clients or working with corporate clients comprised of low- and moderate-income clients who often make decisions that are sometimes, to us lawyers, based on a confounding logic seemingly understandable only to our clients.²⁶ This

rationale, I am yet again faced with the prospect of deciphering my clients’ decisions through my prism, which is so often starkly different from that of my clients.

²⁴ Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1074 (1970) [hereinafter *Public Interest Lawyers*].

²⁵ “The problem of unjust laws is almost invariably a problem of distribution of political and economic power; the rules merely reflect a series of choices made in response to these distributions.” *Id.* at 1077.

²⁶ See Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 539 (1992) (“Such a standard ‘access to justice’ analysis of the defects of this particular legal institution is flawed and incomplete, because it proceeds from a view of law and society in which law is distinct from the social and political realms, and because of its correlative image of law as imparting ‘legal protection.’ This conception promotes the illusory notion that law is a source of power and authority disconnected from other power structures in society.”); Bryant, *supra* note 22, at 56 (“Most importantly, non-judgmental thinking is required to develop connection to and understanding of clients. A cross-cultural anthropologist has referred to this as the capacity to enter the cultural imagination of another, or as ‘perceiving as normal things

confusion can be exacerbated by the fact that The Model Rules of Professional Conduct (“Model Rules”) instructs lawyers to respect a client’s decision even when the lawyer views the decision as problematic.²⁷ This is easier when the client is a large corporation whose only consequences of a questionable decision are administrative or financial challenges; however, restraining oneself from interfering with a client’s decision is particularly challenging for community development lawyers whose client’s questionable decisions could have a significant financial or social impact on their lives.

The ideals of client-centered lawyering are utopic in theory, but the practical application of these ideals, particularly for lawyers who work with low- and moderate-income clients, are wrought with complexity. This complexity exists in my responsibility to my client and the obligation I feel to my other constituencies. I struggle with these ideals when I have such a sense of responsibility to multiple constituencies, including the individual corporate entity, my cause client of promoting affordable homeownership, and my race client, the African-American community.

III. CLIENT-CENTERED LAWYERING WITH MULTIPLE CLIENTS

My ethical obligation and duty to my individual corporate client is clear. The Model Rules dictate that I must zealously advocate for my client.²⁸ My ethical responsibilities to my client are so great that I risk suspension from the practice of law or disbarment for violating them.²⁹ What then does it mean as a client-centered lawyer to have such a great sense of obligation to causes and other groups for which or for whom the Model Rules impose no ethical obligations? As attorneys, our corporate clients are not the only entities to whom we feel a sense of obligation. We have personal obligations to our families, communities, and chosen causes. What distinguishes our personal obligations from those other obligations that, in essence, become clients?

Each attorney must choose between those obligations that are personal preferences and those that rise to a sense of duty similar to that of our duties to our clients. My sense of duty to affordable home-

that at first seem bizarre or strange.”).

²⁷ MODEL RULES OF PROF’L CONDUCT R. 1.13 cmt. 3 (2013) (“When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful.”).

²⁸ *Id.* (“A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”).

²⁹ See MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT 10(1) (2002) (outlining the different sanctions a lawyer could be subjected to for misconduct (such as a failure to follow the Model Rules), including: “[d]isbarment by the court” and “[s]uspension by the court for an appropriate fixed period of time”).

ownership and low- and moderate-income African-Americans reflects a deep-rooted need to protect members of my race and to promote methods I genuinely believe will help African-Americans become more financially self-sufficient. My sense of duty compels me to act. When I felt that not advocating for a means to help members of my race achieve self-sufficiency was a violation of an almost sacred duty, I accepted that the African-American community became my race client and, as one of the means to achieving self-sufficiency, affordable homeownership became my cause client.

It is important to note, however, that my corporate clients and cause clients are clients of choice. I choose to be an attorney and I choose affordable homeownership as a cause worthy of my time and energy. My race client however, was not a conscious choice; as discussed in Section III(C), it often feels as though the decision to have my fellow African-American community as my race client was more about accepting my duty to us as a client, than choosing us as a client. The next sections of this Article explore my relationships with my individual corporate client, my cause client—affordable homeownership—and my race client—my African-American community.

A. Individual Corporation as My Client

In addition to the challenges of client-centered lawyering with multiple constituencies, being a client-centered attorney whose individual client is not an individual, but a corporate entity adds another layer of complexity. When a lawyer has an individual as a client, the lawyer offers counsel to, and takes direction from, the individual who is the client. Working with the individual client, the lawyer can appreciate the client's "perspectives, emotions and values"³⁰ and respect the client's knowledge about the client's life and the potential impact legal decisions will have on the client's life. Working with the individual corporate client, the corporation has no single perspective or value, nor a single opinion on the potential impact of legal decisions. The corporation, because it often has multiple officers and employees, will have multiple perspectives and multiple values all reflecting each individual's analysis and preferences. As a lawyer to a corporation, to whom does the lawyer listen? And, when making that decision to whom to listen, how does the lawyer exclude his or her own personal predilections about whether the speaker is a legitimate voice for the corporation? The decision to whom to listen requires subjectivity. On what basis is the attorney making this decision?

³⁰ Kruse, *supra* note 6, at 377.

1. *Lawyering To A Corporation With Many Voices*

As an attorney working exclusively with corporations and organizations, my individual client to whom I owe my ethical obligation is the corporate entity.³¹ Model Rule 1.13(a) states: “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”³² However, there is always the challenge of determining who are the organization’s constituents. This is particularly perilous when working with community development clients. While my individual client is a corporation, working as a community development lawyer in low- and moderate-income communities, my sense of allegiance and responsibility often is to the individual members of the corporation. While my ethical obligation is to my individual corporate client, there is the additional challenge of being a client-centered lawyer to a corporation comprised of many voices. I must take direction from individuals who allege that their position represents that of the individual corporate client. As an African-American attorney, the challenge of being a client-centered lawyer increases when the individuals from whom I am taking direction are more than just fungible faces in the corporation.

I look to the Model Rules governing my profession and it provides so little guidance on how to handle the ethical dilemma facing a lawyer with a corporate client.³³ This dilemma is even more challenging when the corporate client’s constituents are individuals who look to me, their lawyer, to help them navigate one of the most important financial decisions in their lives. In doing so, I faced the challenges many corporate lawyers face when working with an organization comprised of individuals with diverse goals and motivations.³⁴ As part of my practice, I counseled tenants associations who were buying their apartment buildings and converting them to affordable homeownership. My corporate clients were no longer simply faceless corporations conducting another business transaction. My corporate client was a vehicle for fellow African-Americans to accomplish their goals of

³¹ MODEL RULES OF PROF’L CONDUCT R. 1.13(a) (2013).

³² *Id.*

³³ George D. Reycraft, *Conflicts of Interest and Effective Representation: The Dilemma of Corporate Counsel*, 39 HASTINGS L.J. 605, 608 (1988) (“The Model Code of Professional Responsibility (Model Code) speaks, for the most part, to trial lawyers, providing guidelines for the ethical dilemmas faced in a litigation context. The Model Code fails to provide detailed guidelines for lawyers engaging in the practice of corporate or securities law.”).

³⁴ *Id.* (“In representing the organizational client, the corporate lawyer must often grapple with conflicting duties of loyalty, confidentiality, and zeal owed to the various ‘constituents’ or interest groups that make up the organizational client.”).

purchasing their apartment buildings and becoming first time homeowners.

Client-centered lawyering not only requires me, as an attorney, to identify who my client is, it also requires my clients to know who my client is. When the members of a corporate client imbue the corporate client with a racial identity,³⁵ and work with an attorney of the same race with a similarly defined racial identity, the goals of client-centered lawyering are that much harder to accomplish. I should see the corporate client as simply any other individual client in need of my counsel. However, my sense of obligation to these clients is starkly different. My ability to remain objective in my counsel to them becomes clouded.

The members of the corporate client also view me differently. They see me not just as any lawyer representing their corporation. The members see me as an African-American attorney coming to represent *their* corporation to accomplish *their* goals. Almost always, those goals are infused with the history of our race. The corporate entities with which I worked were formed as a tenants association to help low- and moderate-income African-Americans become homeowners in a country with a long history of residential segregation.³⁶ This was particularly prevalent in Washington, D.C. where I practiced, and many members of the tenants associations with which I worked grew up in, and resided in, neighborhoods with long histories of racial segregation. The members sought my assistance to combat the personal challenges they encountered as a result of their race. The corporation is, for them, not simply a vehicle through which they are able to become first-time homeowners. The corporation is a vehicle through which they are combating oppression, economic stagnation, discrimi-

³⁵ Alina Ball, a law professor at U.C. Hastings who introduced me to this topic and is also writing about it, argues that corporations are not race neutral at all. She argues that corporations are racial representatives as determined by the racial composition of its owners and members. She also argues that a corporation's race is particularly relevant when that corporate entity was formed by, and for, residents of underserved communities. Alina Ball, *Chartered, Incorporated & E-raced?: Bridging the Divide Between Corporate and Community Lawyering*, Presentation at the AALS Conference on Clinical Legal Education (May 29, 2014). See also Richard R.W. Brooks, *Incorporating Race*, 106 COLUM. L. REV. 2023, 2030 (2006) ("The attribution of race to a corporate entity is best understood as an act, or better yet a performance, which signifies the identity of the attributor and commits, or seeks to commit, the attributor or the corporation (or both) to certain ideas, associations, person, or practices. This performance may be undertaken by corporate agents promoting the entity or by third parties undermining it.").

³⁶ See generally Marc Seitles, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89, 89-95 (1998) (outlining the development of housing segregation in the United States and the government's role in creating housing segregation).

nation, and segregation they suffered as a result of their race.

The responsibility that comes with such an undertaking is not lost on me. Undoubtedly, my clients hired me, at least in part, because they expect that I, as an African-American attorney, will have a particular sensitivity to their goals. When I am honest, I admit to a strange mix of pride and resentment from this expectation. I am humbled and honored to be able to serve my race client and to have a deeper understanding of my corporate client's goals. I am pleased that I am trusted with such an important undertaking. I feel that I am, in a small way, repaying the debt I feel I owe to my ancestors. At the same time, I resent the expectation that I *should* understand and the assumption that I *do* understand. When the corporation hires me as their attorney, I often feel that the expectations of me as an African-American attorney are higher because we are of the same race. The immense responsibility that is placed upon me by my client's expectations can be overwhelming. I feel the weight of the additional expectations of me by my African-American clients that I will not only be an excellent lawyer because that is what is expected of all lawyers, but that I will bring an additional level of excellence because I am expected to know and understand their plight because of my race. But, *of course*, I have an enhanced level of understanding of their plight; *of course*, I have a different sense of the history that brought them to this place of needing a lawyer with a heightened sense of responsibility. Yet I struggle with the assumptions that underlie this expectation. Despite this struggle, or maybe at the end of it, I accept the responsibility of the additional level of excellence that is required of me and I accept the need to bury any attendant resentment.

My client-centered lawyering principles suggest that the purpose of my corporate client should not impact the objectivity of my counsel. However, because the corporate client is imbued with a racial identity, my obligations to my race client cloud my objectivity. The residents of the tenants associations I represented were overwhelmingly tenants of color and most often were African-American. The corporate tenants association was my client, but my representation was undeniably fully informed by the racial composition of its members.³⁷ As an attorney with a corporate client, it is clear I represent the corporation.³⁸ The Model Rules state that “[a]n organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.”³⁹

It is necessary to separate the voice of the client, the corporation,

³⁷ Ball, *supra* note 35.

³⁸ MODEL RULES OF PROF'L CONDUCT R.1.13 cmt. 1 (2013).

³⁹ *Id.*

from the voices of those corporate officers purporting to speak on its behalf. It is similarly important to separate the voice of the corporate client from the voices of the members whose interests the corporation represents. Attorneys must recognize this distinction is, in many respects, a fiction. The corporation does not speak without the voices and influence of the individuals running it. In the case of a tenants association seeking to purchase an apartment building, the corporation's members pursue their collective goal of becoming first-time homeowners through the corporation. When those members are primarily African-Americans, it has proven impossible for me to represent the corporation without feeling this sense of racial responsibility to this corporation that, ostensibly, is race neutral.

In this work, I also feel a sense of racial responsibility to those individual members of the corporate client. When working as a community lawyer, the corporate client is a distinct entity from the members only as a technicality. It is impossible to remain blind to the impact I have as an attorney on the lives of the individual members through my representation. In that regard, I connect to the corporate client as a vehicle through which I can protect its members. The corporation has become a representative of my race to whom I felt this sense of racial solidarity and responsibility.

The members often spoke of how they trusted me more because of my race. The trust later was cemented through close relationships we established through the often multi-year representation. However, the initial palpable relief I sensed from them was because they felt they found an ally in me *because of my race*. I felt that the members expected me to understand the importance to them not only of becoming homeowners, but the importance of their ability to rise above the systemic discrimination that stymied their paths. I was, I felt, expected to be part of a movement to empower the members through the corporate representation. I struggled with the goals of client-centered lawyering: to be objective in my counsel and not be swayed by my personal or professional preferences. In truth, when my clients are large corporations, I do not feel the same sense of responsibility and obligation as I do when my clients are corporations with low- and moderate-income residents as members. As an attorney, my responsibility to my clients' needs should not depend on their wealth and I remain uncertain as to whether my responsibility should fluctuate depending on my client's corporate race. However, as Charles Reich stated, "[T]he poor also need legal services *because they are poor*; the very fact of poverty fiercely intensifies an individual's need for legal

representation in almost all facets of his life.”⁴⁰ This need pulls at me to help clients as well as help them make what I hope are well-informed decisions.

B. Affordable Homeownership as My Cause Client

To evaluate my cause client of affordable homeownership, I must first understand from where this sense of duty arises. Ida Jamieson Junior, my paternal grandfather’s great grandmother, was enslaved on a plantation in a small town off the coast of South Carolina. My family’s ancestral church, Mt. Tabor Baptist Church, owned a number of acres of land in this small town and sold lots for housing, including to those men and women who had been enslaved in the area. My great-great-great grandmother, appreciating the value of owning a home, bought a house on Carroll Street from Mt. Tabor. This choice, the magnitude of which she may not have anticipated, provided my family permanence and stability. In that home, generations survived and thrived. From that home grew a family community. Other family members moved nearby. Across the street, a young pastor bought a house where he raised a daughter who, many years later, would marry Ida’s great-grandson, my grandfather. Her homeownership set a precedent for her descendants. Every direct descendant from Grandma Ida, including me, has owned a home.

The residents in the properties I represented often talked, not about the *goal* of homeownership, but about the *dream* of homeownership. One resident, Mr. Randall, lived in his apartment for forty years before I began working with the residents’ tenants association. The tenants association purchased their property and converted it into an affordable condominium. After forty years of living in the apartment building, Mr. Randall became a first time homeowner at ninety-five. During the closing, Mr. Randall shared with me that he never thought he would be able to own a home. He said that when he moved into the one bedroom unit forty years prior with his now deceased wife, he never knew that such an opportunity would arise for him. The child of sharecroppers, he thought homeownership was a hope of others not like him. Even at ninety-five, Mr. Randall valued homeownership. While he lived in his unit as a homeowner for less than five years before passing, during that time, he was not subject to many of the challenges of renting, including the fact his housing costs were not subject to annual increases in rent, nor the landlord’s willingness to renew the lease or fill vacant units with reputable neighbors.

My personal experiences and my work have shown me the impor-

⁴⁰ *Public Interest Lawyers*, *supra* note 24, at 1072.

tance of homeownership. This experience has demonstrated the many benefits of homeownership, though the personal, positive homeownership experiences in my life, my family, and in my work undoubtedly reinforce my strong belief in homeownership.⁴¹ Homeownership remains personal as I have experienced the tremendous value of homeownership.

Studies have shown the allure and many benefits of homeownership. Sixty-five percent of Americans say they would buy if they were going to move, compared to only twenty-eight percent who said they would rent.⁴² Part of the appeal of homeownership is that it is seen as a good investment.⁴³ Homeownership also is seen as providing more stability and control over the residents' living environment.⁴⁴ Homeownership is viewed as providing more mobility security than renting.⁴⁵ Homeowners also demonstrate greater residential satisfaction compared to renters and there is also a connection to greater psychological and physical health.⁴⁶ In the United States, homeownership remains a symbol of social and economic success.⁴⁷

This social and economic success is not as prevalent in the low- and moderate-income communities in which I have worked. Working in these communities and seeing the challenges that exist there, I feel a keen sense of responsibility to help stabilize these communities and homeownership is a powerful means of accumulating wealth and stabilizing neighborhoods. But for some twist of birth placing me in a family living in a safe neighborhood, this could have been I. This sense of responsibility is assuredly a sort of survivor's guilt even though I did not grow up in a poor neighborhood. Since I was not raised in poverty, there was no poverty from which to escape. But, I did escape

⁴¹ See generally William M. Rohe & Mark Lindblad, *Reexamining the Social Benefits of Homeownership After the Housing Crisis*, Presentation at the Harvard Business School Symposium: Homeownership Built to Last: Lessons from the Housing Crisis on Sustaining Homeownership for Low-Income and Minority Families 5 (Apr. 1-2, 2013), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/hbtl-04.pdf> ("We argue, however, that the perceived benefits of homeownership are also influenced by both direct and indirect experience with homeownership.").

⁴² *Monthly National Housing Survey: July 2015 Data Release*, FANNIE MAY (2015) <http://www.fanniemae.com/resources/file/research/housingsurvey/pdf/nhs-monthly-data-080715.pdf>.

⁴³ Rohe & Lindblad, *supra* note 41, at 2 ("One of the attractions of homeownership is that it has been seen as a good financial investment.").

⁴⁴ *Id.*

⁴⁵ *Id.* ("Homeowners were thought to be more secure than renters since they were not subject to landlords raising the rent or not renewing the lease.").

⁴⁶ *Id.* at 3 ("[R]esearch . . . has tended to support a positive relationship between homeownership and residential satisfaction. . . . Other research has tended to support a positive relationship between homeownership and both psychological and physical health.").

⁴⁷ *Id.* at 4-5 ("Homeownership is an important goal of a very large percentage of Americans and has become a cultural symbol of social and economic success.").

circumstance. Yes, I am the grandchild of grandparents with masters' degrees. But, that same grandfather is also the grandchild of former slaves. While that did not destine me to be poor, it certainly did not destine me to be affluent. A small twist of circumstance birthed me to a family with the resources, will, and opportunities to succeed. I was, through no contribution of my own, born to a family that raised me in stable, suburban neighborhoods far from the crime and pathologies of poverty that bedevil so many others seeking to find success. I did not escape poverty as a victim of it, but the circumstance of birth kept me from it.

While homeownership was not the sole reason for my ability to live in stable, suburban neighborhoods, owning our house certainly was a large reason for our ability to remain there. Homeownership provides owners with financial stability. On average, renters have more variance in their housing costs than homeowners.⁴⁸ With homeownership, the mortgage expenses on the residence remain fixed instead of fluctuating over time like rental expenses. Homeownership also provides owners with more location stability. As a renter, a resident's ability to remain in the rental unit is dependent on the landlord's willingness to renew the lease.⁴⁹ As an owner, a resident's ability to remain in the home is more reliant on the owner's ability and willingness to pay the costs of maintenance and related housing costs. Homeownership also provides an immeasurable sense of belonging.⁵⁰ Authors have noted homeowners' increased sense of community and commitment to that community.⁵¹ Lastly, homeownership provides owners a sense of accomplishment.⁵²

There are arguments against the promotion of affordable homeownership. One argument is that one of the major contributors to the Great Recession was the effort made to make homeownership affordable to residents who otherwise would not have been able to afford to purchase a home.⁵³ However, affordable homeownership as a govern-

⁴⁸ See U.S. Dep't of Hous. & Urban Dev., *Paths to Homeownership for Low-Income & Minority Households*, EVIDENCE MATTERS (2012), <http://www.huduser.org/portal/periodicals/em/fall12/highlight1.html#title> ("Renter households have seen their incomes fall and rents increase since the economic downturn . . .").

⁴⁹ The ability to remain in the rental unit is also subject to local laws governing landlord-tenant leases.

⁵⁰ Lorna Fox O'Malley, *Homeownership, Debt, and Default: The Affective Value of Home and the Challenge of Affordability*, in AFFORDABLE HOMEOWNERSHIP AND PUBLIC-PRIVATE PARTNERSHIPS 169, 169 (Nestor M. Davidson & Robin Paul Malloy eds., 2009).

⁵¹ Michael Diamond, *Affordable Homeownership and the Conflict of Competing Goods: A Policy Dilemma*, in AFFORDABLE HOMEOWNERSHIP AND PUBLIC-PRIVATE PARTNERSHIPS 1, 1-2 (Nestor M. Davidson & Robin Paul Malloy eds., 2009).

⁵² Julie D. Lawton, *Limited Equity Cooperatives: The Non-Economic Value of Homeownership*, 43 WASH. U. J.L. & POL'Y 187, 214 (2013).

⁵³ E.g., Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial*

ment priority is less to blame than the irresponsible means used to encourage homeownership in the name of making homeownership more affordable.⁵⁴ Regardless, the public and private pursuit of increasing homeownership has taken its toll. From 2007 until 2011, lenders initiated almost eight million foreclosure proceedings against homeowners.⁵⁵ At the end of 2010, more than eleven million homeowners owed more on their home than their home was worth.⁵⁶ During 2012, almost two million homeowners were in some state of foreclosure.⁵⁷ In the 1990s, approximately two percent of mortgages were ninety days or more past due or in the foreclosure process.⁵⁸ By 2012, that percentage had risen to over seven percent.⁵⁹ During the five-year period ending 2011, real net-household wealth dropped more than fourteen trillion dollars.⁶⁰ Despite this, almost sixty-five percent of Americans own their own homes.⁶¹ After the burst of the housing bubble, this homeownership rate is the lowest it has been since 1993.⁶² The homeownership rate is much lower for owners of color; homeowners of color have a homeownership rate twenty-five percent lower than that of whites.⁶³

Renters, particularly poorer renters, are facing challenges as well. Finding affordable housing is most acute for the poorest Americans as eleven million extremely low-income households competed for the

Crisis, 13 N.C. BANKING INST. 5, 16–19, 25–29 (2009).

⁵⁴ “[W]e don’t have a pro-homeownership system, we have a pro-home debt system. What we have largely done, again, I don’t want to force us to go back to Econ 101, in a housing market like San Francisco, for instance, where supply is inelastic, demand subsidies simply run up prices. Great for realtors, great for mortgage bankers, great for builders, not so good for homeowners and taxpayers. And, I do think we try. . .to essentially substitute for a lack of income growth and substitute for inelasticity in the supply in the housing market.” Mark Calabria, Presentation at the 2015 AALS Annual Conference: The Future of the Federal Housing System (January 4, 2015) (podcast available at https://memberaccess.aals.org/eweb//DynamicPage.aspx?Site=AALS&WebKey=a03153be-2618-4261-9821-ed9aab6a26bb&RegPath=&REg_evt_key=df152893-135a-4786-a79e-16d736c02168).

⁵⁵ *The State of the Nation’s Housing 2011: Fact Sheet*, JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV. 1, 3 (2011), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son_2011_fact_sheet.pdf.

⁵⁶ *See id.* at 2–5 (outlining the ongoing homeownership affordability issues).

⁵⁷ *The State of the Nation’s Housing 2012: Fact Sheet*, JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV. 1, 3 (2012), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son_2012_key_facts.pdf [hereinafter *Fact Sheet 2012*].

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *The State of the Nation’s Housing 2015, Key Facts*, JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV. 1, 1 (2015), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son_2015_key_facts.pdf [hereinafter *Key Facts 2015*].

⁶² *Id.*

⁶³ *Id.*

seven million units that were affordable to them.⁶⁴ With so few rental units available,⁶⁵ the cost of renting continues to increase.⁶⁶ As a result, affordable housing, and in particular, affordable homeownership, is still needed to help the poor obtain more financial stability. Financial stability often comes from wealth, which is primarily derived from homeownership. Home equity still remains a major source of household wealth⁶⁷—home equity represented eighty thousand dollars of the almost two hundred thousand dollars of median net wealth of homeowners compared to only \$5,400 of median net wealth for renters.⁶⁸ For the three-year period ending in 2013, the median net worth of homeowners increased four percent, while the median net worth of renters remained stagnant.⁶⁹

Homeownership helps individuals increase their wealth. Homeowners and renters agree that homeownership makes more financial sense than renting.⁷⁰ While income is an important factor for financial stability, wealth allows a family financial stability during income instability and to pass along that financial stability to subsequent generations.⁷¹ From 2000 to 2011, the aggregate net worth of Americans increased almost forty percent primarily as a result of the total

⁶⁴ *Id.* at 3 (“In 2013, 11.2 million extremely low-income households (earning up to 30 percent of area median) competed for just 7.3 million units they could afford, leaving a gap of 3.9 million units.”).

⁶⁵ *Id.* at 2 (“The national rental vacancy rate dipped to 7.6% in 2014, its lowest point in nearly 20 years.”).

⁶⁶ *Id.* (“Rents rose at a 3.2 percent rate last year—twice the pace of overall inflation.”).

⁶⁷ Alfred Gottschalk, et al., *Household Wealth in the U.S.: 2000 to 2011, I*, <https://www.census.gov/people/wealth/files/Wealth%20Highlights%202011.pdf>. (“Net worth (wealth) is the sum of the market value of assets owned by every member of the household minus liabilities owed by household members. The major assets not covered in this measure are equities in pension plans, the cash value of life insurance policies, and the value of home furnishings and jewelry.”). Assets include “[i]nterest-earning assets held at financial institutions, stocks and mutual fund shares, rental property, home ownership, IRA and Keogh accounts, 401k and Thrift Savings Plans, vehicles, and regular checking accounts.” *Id.* Liabilities include “[m]ortgages on own home, mortgages on rental property, vehicle loans, credit card debt, educational loans, and medical debt not covered by insurance.” *Id.*

⁶⁸ Key Facts 2015, *supra* note 61, at 7.

⁶⁹ See Jesse Bricker, et al., *Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances*, 100 FED. RESERVE BULLETIN OF THE BD. OF GOVERNORS OF THE FED. RESERVE SYS. 1, 1 (2014) <http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf>.

⁷⁰ Key Facts 2015, *supra* note 61, at 8 (“According to Fannie Mae’s National Housing Survey for the fourth quarter of 2014, 82 percent of respondents thought that owning made more financial sense than renting. Even among renters, 67 percent agreed with this statement.”).

⁷¹ Thomas M. Shapiro, *Race, Homeownership and Wealth*, 20 WASH. U. J.L. & POL’Y 53, 53–55 (2006) (“Wealth is a special kind of money because it represents ownership and control of resources; income is essentially earnings or payments that replace earnings. . . . Unlike education, jobs, or even income, wealth allows families to secure advantages and often is the vehicle for transferring inequality across generations.”).

amount of wealth from home ownership.⁷² Homeownership is particularly important for African-American households who have a significant number of members with no or negative net worth.⁷³ For the three-year period ending in 2013, the median net worth of White households increased 2.4%, while the median wealth of Black households fell almost 34%.⁷⁴ This shift corresponds with a decrease in the White homeownership rate of only two percent, compared to a 6.5% decrease in the homeownership rate in households of people of color.⁷⁵ It is important to remember that for Americans, particularly African-Americans, homeownership is a large driver of wealth.⁷⁶

My goal is not only to promote homeownership, but also to promote and preserve affordable homeownership. Homeownership only has value if it is affordable. Homeownership is only useful if the purchase price and subsequent maintenance costs are affordable to the owners. Maintenance costs are one of many reasons why low- and moderate-income residents lose their homes and lose value in their

⁷² Gottschalck, *supra* note 67, at 2. (“Between 2000 and 2011, U.S. aggregate net worth increased from \$28.9 trillion to \$40.2 trillion. A sizable part of this increase came from a change in the total amount of wealth that Americans held in their homes: in 2011, Americans held a total of \$10.1 trillion in their homes, an increase of \$1.5 trillion (17 percent) from 2000. The increase in housing wealth is largely explained by appreciation of home values, rather than by increases in home ownership rates, which have remained largely unchanged over this period.”).

⁷³ Rakesh Kochhar, et al., *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics*, PEW RESEARCH CTR. (July 26, 2011), <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/> (“Moreover, about a third of black (35%) and Hispanic (31%) households had zero or negative net worth in 2009, compared with 15% of white households.”).

⁷⁴ Rakesh Kochhar & Richard Fry, *Wealth Inequality has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RESEARCH CTR. (Dec 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/> (“From 2010 to 2013, the median wealth of non-Hispanic white households increased from \$138,600 to \$141,900, or by 2.4%. Meanwhile, the median wealth of non-Hispanic black households fell 33.7%, from \$16,600 in 2010 to \$11,000 in 2013. . . . For example, the homeownership rate for non-Hispanic white households fell from 75.3% in 2010 to 73.9% in 2013, a percentage drop of 2%. Meanwhile, the homeownership rate among minority households decreased from 50.6% in 2010 to 47.4% in 2013, a slippage of 6.5%.”).

⁷⁵ *Id.*

⁷⁶ Drew Desilver, *Black Incomes Are up, but Wealth Isn't*, PEW RESEARCH CTR. (Aug. 30, 2013), <http://www.pewresearch.org/fact-tank/2013/08/30/black-incomes-are-up-but-wealth-isnt/> (“Value of primary residence was the single biggest asset for both groups, but much more so for black households: On average, housing wealth accounted for 49% of black household assets, compared with 28% for the average white household. But, the average home value was far lower for black households: \$75,040 versus \$217,150.”); see also Michelle Singletary, *Equity in Your Home Doesn't Translate to Net Worth*, THE WASH. POST (Aug. 25, 2010, 8:32 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/25/AR2010082506598.html> (“Housing wealth represents a large component of total family wealth In 2007, the primary residence account for 31.8 percent of total family assets.”).

homes.⁷⁷ The inflexibility in the disposable incomes of low- and moderate-income residents often inhibits their ability to pay for the various costs involved in homeownership upkeep. Homeownership is a vital part of helping individuals, particularly African-Americans, obtain financial stability and wealth.

Increasing access to affordable homeownership is the cause that in many ways became my client. I have an individual corporate client and a “cause client”—affordable homeownership.

1. *What is Cause Lawyering?*

Lawyers with cause clients are common with the causes of school desegregation,⁷⁸ abortion advocacy,⁷⁹ or same-sex marriage equality.⁸⁰ Cause lawyers often choose a client that will advance the lawyer’s chosen cause. Martha Minow, Professor of Law at Harvard, calls it “Political Lawyering.”⁸¹ She argues, “political lawyering involves deliberate efforts to use law to change society or to alter allocations of power.”⁸² These lawyers often pursue their chosen causes through the courts. My chosen cause is the expansion of affordable homeownership. I lawyer and advocate for increasing affordable homeownership to more Americans, particularly African-Americans.

The challenges of client-centered lawyering increase when serving my individual corporate client conflicts with serving my cause client of affordable homeownership. I faced this dilemma a number of years ago. When one of my tenants association clients had the opportunity to purchase its apartment building, the low- and moderate-income member-residents needed to decide whether to resell the apartment

⁷⁷ Josephine Louie et al., *The Housing Needs of Lower-Income Homeowners* 19 (Harvard Univ. Joint Ctr. for Hous. Studies, Working Paper No. 98-8, 1998), <http://www.jchs.harvard.edu/research/publications/housing-needs-lower-income-homeowners>.

⁷⁸ See generally Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976) (reviewing the development of school desegregation litigation and the attorney-client relationship that evolved from such litigation).

⁷⁹ See generally Reva B. Siegal, *Roe’s Roots: The Women’s Rights Claims That Engendered Roe*, 90 *B.U. L. REV.* 1875 (2010) (discussing “movement lawyers” with regard to the pro-choice movement).

⁸⁰ See generally Arthur S. Leonard, *Going for the Brass Ring: The Case for Same-Sex Marriage*, 82 *CORNELL L. REV.* 572 (1997) (book review) (detailing same-sex marriage litigation).

⁸¹ See Martha Minow, *Political Lawyering: An Introduction*, 31 *HARV. C.R.-C.L. L. REV.* 287 (1996). Minow describes political lawyering as “a lawyer collaborating with disadvantaged people, not serving them from a distance.” *Id.* at 288. Further, “[p]olitical lawyers use litigation, legislation, mass media, and social science research, assessing the consequences of each particular approach by reference to long-term visions of freedom, equality, and solidarity. Political lawyers are partners, for the long haul, with clients and client communities in struggles for social justice.” *Id.* at 289.

⁸² *Id.* at 289.

building and generate a large cash profit to share amongst the members, or whether to purchase the apartment building and convert that building into a condominium or cooperative form of homeownership. If they sold the apartment building, they could make a large sum of money, which would have a major financial impact on their lives. While the residents would have an immediate cash surplus, they would still be faced with the challenge of finding another place to live. In the real estate market at the time, moving would likely have increased their housing costs. If the property were converted to a condominium, the goal of homeownership would be accomplished, but the benefits would only accrue to a few; the only residents who would have been able to stay were those residents whose income and credit scores were high enough to qualify for a mortgage. If the property were converted into a cooperative,⁸³ residents' ability to stay in the property would not be limited by their credit score or income, thus allowing more residents to stay in their homes. However, cooperative housing for low- and moderate-income individuals generally does not offer the same potential for equity appreciation as is found in condominium ownership. The residents were torn between wanting a large payout in cash, the ability to become an owner of real property at the expense of some residents being forced to relocate, and the ability to allow all willing residents to remain in the home as joint cooperative owners and forgo the potential for a financial windfall.

The residents looked to me for guidance. They, and I, recognized the opportunity to purchase their apartment building as a once in a lifetime opportunity that could provide them with a financial stability many of them had never known. I was torn by their dilemma. As a long-time advocate of homeownership, a large part of me wanted to convince the client to choose to purchase the apartment building and convert it to a condominium. I struggled to remain objective and to honor my responsibilities to my actual client without betraying my self-imposed responsibilities to my cause client. Ethically, my first obligation is to represent my individual corporate client, as the rules of professional responsibility do not recognize an ethical obligation to a cause client. My obligation to my cause client tempted me to counsel the tenants association to purchase the apartment building and convert it to a condominium. My responsibilities to my individual corpo-

⁸³ A housing cooperative is a form of homeownership where a corporate entity is formed to own and manage residential real estate for the residents who reside in the cooperative property. A cooperative is generally a multi-family property, though it can be multiple dwellings owned by the same cooperative corporation for multi-family use and ownership. See Julie D. Lawton, *Unraveling the Legal Hybrid of Housing Cooperatives*, 83 UMKC L. REV. 117, 118 (2015) (explaining what a housing cooperative is and the differences between cooperatives and other types of housing).

rate client tempted me to counsel them to pursue cooperative homeownership to enable the maximum number of residents to remain. My client-centered lawyering required that I do neither; that rather I support and enable the client to pursue its chosen goals. My sense of responsibility to my individual client and my cause client were in conflict not only with each other, but also with my responsibilities as a client-centered lawyer.

If the client chose to convert the property to a condominium, those residents who were able to qualify for a mortgage loan would benefit as well as those future residents who would need affordable homeownership. If the client chose to convert the property to a cooperative, all current residents would benefit from having affordable housing as well as the future residents who sought affordable homeownership. However, only the condominium model would provide the potential for the direct home equity that has been shown as so important to the financial stability that I seek to help my clients obtain. The condominium model would require those who could not qualify for a mortgage to relocate to another property, but be replaced with future low- and moderate-income residents who would also benefit from the potential for home equity, and thus, financial stability. While there were clear benefits to many of the current residents and the future residents, there would be an immediate negative consequence of relocation for those residents who were unable to qualify for a mortgage. In other words, to accomplish the goals of my cause client, some of the current residents of my individual corporate client would need to suffer.

While there was potential for the current and future residents to obtain the home equity, does entangling myself so deeply in my client's decisions inadvertently cause me to disempower my clients? Lawyering on behalf of the poor and disenfranchised is wrought with challenge because even well-intentioned lawyers can further disenfranchise clients by making them dependent upon lawyers and reinforcing a feeling of helplessness. This is seen in what is called "regnant lawyering"—a version of client-centered lawyering that relies more on immediate, short-term relief instead of on a longer-term goal of helping the client obtain self-sufficiency.⁸⁴ The ideals of rebellious law-

⁸⁴ Paul Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 953 (1992) ("Indeed, regnant lawyering may be perversely dangerous precisely because it is benign and well-intentioned. Its impact upon dependent clients is harder to resist because the subordination happens in a supportive and caring context, and the perpetrator of the subordination is one who the client views as a helper or champion."). Please note that my explanation offered here of regnant lawyering is an oversimplification of a very rich concept. For more in depth analysis, please see Angelo N. Ancheta, Essay, *Community Lawyering*, 81 CALIF. L. REV. 1363 (1993); John O. Calmore,

ying and regnant lawyering are helpful guides when analyzing such a conflict of client-centered lawyering for an individual client and a cause client. Rebellious lawyering, a term most notably written about by Gerald López, is the concept that lawyers should focus on solving the longer-term, greater group or societal needs, instead of, as many poverty lawyers are often accused of doing, focusing on the immediate, individual need of the individual client.⁸⁵ Regnant lawyering, another term from López, is the more common view of lawyering for the poor: “lawyering for poor people in a fashion that relies upon conventional remedies and institutions, and upon lawyer expertise and dominance, even while seeking the client’s ‘best interests.’”⁸⁶

Rebellious lawyering and client-centered lawyering have similar themes of focusing on the long-term impact of a lawyer’s interaction with a client instead of focusing on solving the client’s immediate short-term legal need. Cause lawyers often must operate with the long-term goal of greater societal change and forgo the client’s immediate need. Those cause lawyers who have a long-term goal of helping the client obtain some level of self-sufficiency must also recognize that this self-sufficiency also requires eventual independence from the lawyer.

When trying to counsel my client, I must recognize that I am evaluating these issues based on factors outside of the client’s legal needs. The Model Rules permit an attorney to render legal advice based not only on the law but also on “moral, economic, social and political factors.”⁸⁷ As a client-centered lawyer who is also a community development lawyer, much of the legal work that I do for my clients involve moral, economic, social, and political factors that might be relevant to my client’s situation. When my clients decide whether to convert their apartment buildings to condominiums knowing that the conversion will displace some of their neighbors, there is a moral consideration of protecting the many at the expense of the few. There is a moral con-

A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty, 67 *FORDHAM L. REV.* 1927 (1999); Nancy Cook, *Looking for Justice on a Two-Way Street*, 20 *WASH. U. J.L. & POL’Y* 169 (2006).

⁸⁵ Tremblay, *supra* note 84, at 948 (“The rebellious view builds upon an obligation to empower clients that largely translates into concepts of mobilization, organization, and deprofessionalization.”). For more in depth discussion of the concept of rebellious lawyering, please see GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONCE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Gerald P. López, *Living and Lawyering Rebelliously*, 73 *FORDHAM L. REV.* 2041 (2005).

⁸⁶ Tremblay, *supra* note 84, at 950 (“A generally overriding ‘ethic of care’ operates to hinder the efforts of individual, street-level providers to postpone offering immediate relief in order to enhance a later, and perhaps more effective, benefit. By contrast . . . regnant lawyering is better seen as the tendency of care providers to favor the present and identifiable over the future and unnamed.”).

⁸⁷ MODEL RULES OF PROF’L CONDUCT R. 2.1 (2013).

sideration of protecting the financial interest of those with higher incomes at the expense of those with lower incomes. When my clients decide whether to convert their apartment buildings from rental to homeownership, the decision whether to convert to condominiums with significant potential financial upside or to convert to limited equity cooperatives with much less financial upside involves economic considerations. As an attorney working in affordable housing on behalf of low- and moderate-income residents, I had to face, and help my clients manage, these non-legal social factors that impacted their attempts to become homeowners. But, how do I include these factors in the analysis of protecting my individual corporate client and my cause client?

Some argue that lawyers should not look exclusively at the legal needs of the client, but should have a broader view of the impact of the lawyer's actions on opposing counsel, the public and the pursuit of justice.⁸⁸ One author posits that a lawyer's responsibilities to his client should be subjugated to the lawyer's responsibilities to the pursuit of justice.⁸⁹ These arguments decry a lawyer's narrow view of exclusively examining the client's legal needs and not including other non-legal or personal factors in counseling a client.

2. *Lawyering for a Cause Client*

When one has a cause client, how do you define your client? How do you define a client when your cause is litigated or negotiated for years or when your cause reflects the needs of dozens, hundreds, or thousands of individuals and may involve significant changes to a public interest?⁹⁰ Is more required of me as a cause lawyer when I represent a group whose work advances my cause client's needs?⁹¹ What more do I require of myself? How do I avoid working harder, negotiating more skillfully, being a better lawyer when the goals of my individual corporate client mesh with the goals of my cause client? What factors influence my lawyering for my cause client?

As a cause lawyer, it is tempting to utilize the law to enact change, even if using the law undermines the change we, as cause lawyers, seek to obtain. Consider an example given by Steve Bachman, a

⁸⁸ See generally WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYER'S ETHICS* (1998) (examining questions about the ethics of lawyering).

⁸⁹ Robin West, *The Zealous Advocacy of Justice in a Less than Ideal Legal World*, 51 *STAN. L. REV.* 973, 974 (1998) ("The lawyer should indeed zealously advocate, but he should zealously advocate for justice, not for the satisfaction of the preferences of his particular clientele.").

⁹⁰ See e.g., Bell, *supra* note 78, at 471 (discussing the difficulties faced by civil rights lawyers).

⁹¹ *Id.*

partner in the law firm that was general counsel to The Association of Community Organizations for Reform NOW.⁹² Bachman poses the question of how to handle the need for a stop sign at an intersection that is causing traffic dangers, including endangering children.⁹³ A lawyer would typically address this by going to court or to the appropriate administrative agency to request a stop sign. This resolution, according to Bachman, addresses the short-term problem of traffic hazards, but exacerbates the longer-term problem of the residents' perceptions of powerlessness by learning, from this process, that lawyers are the medium for effecting change. As cause lawyers, we can be distracted by the pursuit of accomplishing the ultimate goal: school desegregation, the constitutional right to same-sex marriage, or the construction or renovation of affordable housing units. However, that pursuit can undermine what often is the ancillary goal—to empower the clients, restructure the power dynamic, help clients obtain self-sufficiency and to effect social change.⁹⁴

The professional conflict I felt is not new, nor is the difficulty in finding a standard for guidance. Similar to the challenges experienced by other lawyers advocating for systemic change, I not only feel a role confusion for what I feel I owe to the client, I also feel a role confusion for what I feel I owe to the cause. In a groundbreaking article, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, the late Professor Derrick Bell discussed his experiences working as a civil rights attorney for the school desegregation cases. “It is,” he states, “difficult to provide standards for the attorney and protection for the client where the source of the conflict is the attorney’s ideals.”⁹⁵ The NAACP and the NAACP’s Legal Defense Fund lawyers experienced this tension while representing families who sought improved educational opportunities for children in segregated schools while also representing the broader goal of ending school segregation nationwide.⁹⁶ The goals of the individual client often conflicted with the goals of the cause. In my case, the goals of the corporate tenants association often conflicted with the goal of the cause client, the preservation of affordable homeownership.

⁹² ACORN “is a non-profit corporation comprised of more than 50,000 low- and moderate-income families organized into neighborhood groups in over 40 cities across the United States.” Steve Bachmann, *Lawyers, Law and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1, 5 (1984).

⁹³ *Id.* at 6.

⁹⁴ *Id.* at 7. (“These concerns are less about what victories a lawyer might win than about what sort of groups might be created through social struggle. What is ‘won’ is secondary, if not irrelevant. The group that is developed is of primary concern.”).

⁹⁵ Bell, *supra* note 78 at 472.

⁹⁶ *Id.* at 512–15.

Cause lawyers advocating for immigration reform or domestic violence prevention or same-sex marriage likely experience this role confusion when trying to balance the needs of the individual client against the needs of the advocacy. Clients will determine the direction of their cases based on their specific needs. Cause lawyers will make decisions for the overall advocacy with the goal to promote the cause and obtain the widest relief. There is often an inherent conflict between the goals of the client, who is seeking immediate relief for a narrow wrong or pursuit of an immediate transactional opportunity, and the goals of the cause lawyer, who is seeking the broadest relief for a systemic wrong or the broadest relief from a single transaction.

Other factors make client-centered lawyering difficult when lawyering for a cause client. Trying to fund a lawyer's cause client also impacts a client-centered lawyer's ability to provide objective advice to the client. Professor Leroy Clark references this in his article in discussing the impact of funders' preferences on the types of cases cause lawyers choose. Professor Clark describes two clients of a civil rights lawyer: the litigant in the lawyer's case, and the funders of the lawyer's cases. He acknowledges that the cases' "appeal" and the lawyer's ability to show a "winning" record will undoubtedly impact the lawyers' choice of cases, and thus, his or her decisions in those cases.⁹⁷ Transactional lawyers also face these pressures. In my experience, funding for affordable homeownership is largely derived from non-profit organizations and government funding. Generally, these funders are willing to provide funding in a manner that maximizes the availability of affordable homeownership.

My clients, and more disturbingly, I, allow our decisions about the transaction to be influenced, and at times dictated by, the requirements of our funders. When one of my tenants association clients received notice of its right to purchase its apartment building, my clients often wanted to proceed with the transaction and acquire, renovate, and convert the property to homeownership. Such a transaction required funding, most often from a non-profit or government lender. When these lenders, to promote their causes, limited funding to only funding developments that remained rental buildings, how do I counsel my clients? My individual corporate client and my cause client both sought homeownership. The preferences of my clients conflicted with the preferences of our funder. The client-centered lawyer in me should provide the information about the funder's requirements objectively and dispassionately and allow the client to make the decision. However, without the funder's low-interest loans, financing the pro-

⁹⁷ Leroy D. Clark, *The Lawyer in the Civil Rights Movement—Catalytic Agent or Counter-Revolutionary?*, 19 U. KAN. L. REV. 459, 469 (1971).

ject would be very difficult. If I remain objective and my clients capitulate to the funder's preferences, neither my individual client nor my cause client achieves their goals. As the objective client-centered lawyer, am I to be indifferent to the outcomes; comforted only by the knowledge of my adherence to client-centered lawyering? The need to respect the preferences of the funder is real. What role do I allow our funders requirements to play in my client-centered lawyering's objectivity?

The funder's preferences interfere with my client-centered lawyering in other ways as well. If a funder for an affordable homeownership development is a lender, ultimately, that lender's goal is to earn a return on their investment to enable them to fund other developments. The lender will look to fund developments that provide a financial return. The goal of my individual client in an affordable homeownership development is to complete the development in a manner that minimizes costs. The goal of my cause client is to maximize the number of affordable homeownership units. As the attorney, I cannot ignore the need to please the funders as a means of accomplishing the goals of my individual client and my cause client. The ideals of client-centered lawyering and serving my individual corporate client and my cause client are yet again in conflict.

If my client rejects the funder's loan proposal because it does not enable the client to accomplish the client's goals, how long until the funder no longer sees me as a viable partner? I am also a return player with the government and community lenders that enable me to assist my clients.⁹⁸ While it is clear that my ethical responsibility is to my individual corporate client, I cannot, in honesty, completely ignore the requirements and demands of our funders. As Professor Clark stated: "No organization dependent on a large number of contributors can ignore the fact that the 'appeal' of the program affects fund-raising."⁹⁹

As a cause lawyer, I have at least two clients: the cause of advancing affordable homeownership, and the individual corporate client through whom I work to advance the cause. My role as an attorney makes clear that the only client of ethical importance is the person or entity with whom I have an established client-lawyer relationship. However, I feel a non-legal obligation to advance the cause of homeownership as that can accomplish the broader and more impactful goal of reducing poverty, increasing self-sufficiency and empowering my third client discussed below, my fellow African-American community.

⁹⁸ See generally Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV 443 (1996).

⁹⁹ Clark, *supra* note 97, at 469.

C. The African-American Community as My Race Client

My third client, my race client that is my fellow African-American community, is the client to whom my obligation most permeates throughout my work with my other clients. My race has always been an indisputable part of my identity. When I think of how I identify myself, there are many facets of my identity from which to choose—gender, marital status, family status, religion, or profession, to list a few. At the beginning of each semester with my students, I always ask them to list their communities in order of prominence in their identity. In asking myself this same question over the years, I always come back to my race as the most prominent aspect of my identity. Since I have a sense of obligation to my racial community that rises to such a level that it becomes a race client, I must first discern from where this sense of obligation arises and what is this responsibility I feel I owe them.

I, like many people of color, have always had a sense of my racial identity—often because my family's social experience forced it upon them, but also because society, from when I was very young, required me to understand that my racial community was different from that of others. My parents, both of whom graduated from a historically black college, experienced racism very early in life. Growing up, my father was prohibited from trying on shoes and clothes that he bought because the white storeowners did not want the clothes "tainted." My mother graduated from a segregated high school whose school mascot was the Rebels, in honor of the South Carolina rebel soldiers. My parents were students at historically black South Carolina State College, site of the Orangeburg Massacre where four students were murdered and over two-dozen students were injured by police responding to student protests of segregation in the small town of Orangeburg. My parents were insistent that I grew up with a strong sense of racial and self-identity. I was raised in affluent African-American neighborhoods. Our home's bookshelves overflowed with books by, and about, African-Americans. With this background, I was raised in Georgia and spent my summers with my grandparents in South Carolina where the confederate flag was prominent and racial slurs were common. I attended a predominantly African-American high school and college where I was taught my racial history. From all of this, I felt connected to other members of my race—a shared history of complicated emotions. I understood that I could not have accomplished my goals without the sacrifices of the men and women who struggled before me. I learned from my family that our individual accomplishments are a part of a broader struggle that requires each generation to protect the next. I accepted this responsibility and it has become an

integral part of every day of my life.

It would be easier, sometimes, to ignore the needs of my race client. When I am brutally honest, sometimes I want to. However, I feel a debt to those before me. Some may argue that a generation owes nothing to the generation before it. I feel a sense of responsibility to those whose sacrifices made my successes possible. It is easy to see the responsibility to my parents or to my grandparents. But, there is also this sense of responsibility I feel to those to whom I have no direct connection; strangers whose sacrifices positively influenced my ability to achieve my goals. I do think, were it not for those strangers, I would not have the same opportunities as I do. Their sacrifices of sending their children to college, of protesting injustices, of working in deplorable conditions may not, individually, have made a difference. Collectively, however, those sacrifices moved the pendulum. The aggregate of their action spurred social change. The social change created the opportunities for those in the next generation to pursue their goals without the threat of violence; or, at least, decreased the threat of violence.

In my efforts to follow the ideals of client-centered lawyering, I am torn by my sense of multiple responsibilities to my individual client, my cause client and my race client. My need to protect fellow members of my race interferes with my desires to remain neutral and objective in advising my clients.

As part of my practice, I frequently met with tenants groups who were looking for an attorney to help them navigate their ability to purchase, renovate, and convert their multi-family apartment buildings. I, and at times other colleagues, would meet with tenant groups in the hopes that the tenants association would hire us to represent them. On one such occasion, my colleague, a white female attorney, attended such a meeting with me. The tenants in this meeting were predominately African-American and elderly; the precise demographic to whom I have always felt a keen sense of responsibility and protection. The meeting was early on a Saturday morning and would involve representatives from the development company seeking to purchase and renovate their apartment building. We walked into the room bustling with tenants busy moving about and getting settled. Suddenly, an older female voice yells out, "I want the black lawyer!" My colleague and I both looked up to see an older African-American female face smiling at me; she was excited to see someone she felt she could trust.

In that moment, I felt conflicted. I was humbled that my elder felt she could trust me. I felt pleased that she would allow herself to

trust me enough to allow me to help her.¹⁰⁰ I was, at once, both pleased and disturbed by her willingness to trust me solely on the basis of my race, without knowing or feeling the need to discover my training, experience or skill. I felt some concern about her ambivalence to how her statement affected my colleague, even though I have been denied opportunities on the basis of my race many times. I felt exposed because this unspoken conversation is usually not held in public, although, in truth, there is no real reason not to. I felt a sense of solidarity to the group because of this expression of trust. But, mostly, I felt their expectation that I would protect them because we are of the same race. And, I did feel a heightened sense of responsibility to protect them because we are of the same race. Such feelings are a reminder that my sense of responsibility to other members of my race rises to creating a race client.

As an attorney, I am often asked to speak on behalf of my clients. When I am being honest, I often prefer to speak on behalf of my clients. Yes, I want their voices to be heard, but it is hard to dispute the narrative that as the repeat player attorney, our voices are received better.¹⁰¹ As a lawyer and as a real estate development consultant, I interacted with the same lenders, government officials and other developers that my clients would need to purchase their apartment buildings. It remained imperative that the client's story be told in a manner that the listener understood.¹⁰² It is in moments such as these that the ideals of client-centered lawyering are challenging. I would have to trust that my client's narrative could be communicated in a manner better than I could; I, who in that moment, am the bridge between my low- and moderate-income African-American clients and the often affluent white-dominated profession in which I labor.¹⁰³

To a certain extent, my challenge in representing my clients is not unique to race. For many of us, we enrolled in law school to be the protector. We wanted to feel as though we could protect the vulnerable from wrong and to help the disempowered gain power. However, once we begin practicing, it becomes clearer how simple and ill-

¹⁰⁰ As an attorney, one of our greatest challenges is learning how to enable our clients to trust us. See Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 *GOLDEN GATE U. L. REV.* 345, 353–61 (1997) (explaining the client-centered counseling model).

¹⁰¹ See Polikoff, *supra* note 98, at 456.

¹⁰² See generally, Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 *YALE L.J.* 763 (1995) (detailing the importance of telling the client's story).

¹⁰³ *But see* David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 *GEO. J. ON POVERTY L. & POL'Y* 55 (2005) (stressing the importance of emphasizing the clients narrative & ability to tell their own story).

informed this preference is. Many lawyers become confused trying to determine how best to help their clients and many become disillusioned with the idea that our best help might still be insufficient. The ideas of public interest lawyering, progressive lawyering, and community lawyering all rest, at least in part, on the idea that we, as lawyers, have a skill set that can be used to assist a client in need. This belief exists regardless of the race of the client or of the lawyer.

Attorneys of color who view fellow members of our race as our race client must learn to balance our sense of obligation to our race client with our obligations to our other clients. Our sense of obligation to our race client will continue to permeate our counsel to our individual corporate clients and our cause clients.

Part of my goal as an African-American attorney working in low- and moderate-income African-American communities is to help empower the residents by helping them become homeowners. But, I also am left to wonder whether I really am helping the residents to become empowered. To obtain this power, the tenants association must hire an attorney as well as convince lenders to fund their affordable homeownership developments. The residents become empowered not only because they chose to purchase their apartment building, but also because others in positions of power choose to help them. As Professor Bell argues in proposing the principle of “interest-convergence,” the interest of a group without power in achieving equality will be accommodated only when it converges with the interests of the group with power.¹⁰⁴

The interest-convergence theory proffered by Professor Bell supports the theory of granting power—if one group grants power to the other group while retaining the ability to rescind that grant, has the group actually relinquished or granted power? The granting group clearly has the power if it has the ability to bestow it upon others and it retains power with the ability to rescind it. So, when one group with power enables low- and moderate-income individuals’ ability to obtain some level of power by purchasing their homes, have the residents actually gained any power? The groups with power retain the ability to tax and, with it, the ability to terminate the residents’ homeownership for non-payment of that tax. The groups with power retain the rights of eminent domain and with it, the ability to terminate the residents’ ownership. If I, as an attorney, am a co-member of the group with power, when I help residents become homeowners, do I ever really relinquish my shared power particularly when I, as their counsel, determine what information is sufficient for them to make a

¹⁰⁴ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523–24 (1980).

well-informed decision? Or, am I, as a member of a group with influence, willing to assist low- and moderate-income individuals to become homeowners because our interests now converge?

CONCLUSION

My interests are those of an attorney hoping to be a client-centered lawyer equally true to my multiple clients. Ultimately, lawyers should not forgo their responsibilities to their personal clients, but should find a balance that respects the tenets of client-centered lawyering (if that is the guiding principal the lawyer chooses). Each lawyer will determine where that balance lies. But, the tenets of client-centered lawyering do not require us as lawyers to neglect those personal obligations that drive us to be cause lawyers or that guide our sense of obligation to our race client. That overwhelming pull that pushes us to dedicate more of our professional selves to an individual client because that client serves the needs of our cause client must be recognized as an integral part of our lawyering, yet balanced with achieving the long term goals of client self-sufficiency.

I have my ethical obligations to my individual client, my choice of obligations to my cause client, and my very personal sense of obligation to my race client. I am left to straddle these tensions without a clear sense of boundaries or even a clear goal. I am best, it seems, when the interests of these clients converge allowing me to serve them all well at once. I am left to struggle with how to serve them when the interests are no longer in alignment.

* * *