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The Humanity of Advocacy

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The Humanity of Advocacy

Remarks of Barry Sullivan*

Let me begin with a story. Some time ago, when I was practicing law, I was asked to judge a high school debate competition. I said I would check my schedule. I did not know much about the current state of high school debate, let alone what kinds of skills a debater was supposed to show to win. I decided to investigate a little before I decided whether to sign on. I went to the web and immediately found a description of "team policy debate"—apparently the dominant form of high school and college debate:

> Team policy debate is focused on evidence gathering and organizational ability. Persuasiveness is not considered important—or at least, not as important as covering ground and reading plenty of evidence. The best teams have huge fileboxes packed to the gills with evidence on their own affirmative case and all the possible cases they might have to oppose. If you ever walk into a high-level team debate

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* Cooney & Conway Chair in Advocacy and Professor of Law, Loyola University Chicago School of Law. This lecture was delivered on April 27, 2010, when the author was installed as the inaugural holder of the Cooney & Conway Chair in Advocacy. Footnotes have been added, but the text remains in substantially the same form in which it was delivered orally. The author would like to express his gratitude to the Cooney & Conway firm, and to the Cooney and Conway families, for their generosity in establishing this Chair; to President Garanzini, to former Provost Wiseman, and to Dean Yellen and the faculty of the School of Law for inviting him to join the faculty as the initial holder of this Chair; to Judge Joan B. Gottschall, both for her thoughtful remarks at the installation ceremony and for a friendship that now spans thirty-five years; to many lawyers and judges too numerous to mention, but who include Rev. Robert F. Drinan, S.J., Alex Elson, Rt. Hon. Sir Ralph Gibson, Albert E. Jenner, Jr., Hon. Wade H. McCree, Jr., Marshall Patner, Edwin A. Rothschild, John C. Tucker, and Hon. John Minor Wisdom, for many lessons about both the humanity of advocacy and the advocacy of humanity; to many former colleagues at Jenner & Block and the Office of the Solicitor General of the United States, and to their respective clients, for many shared experiences in the practice of advocacy; and to his family, for their support. Finally, the author would like to thank Murray Dry and Winnifred Fallers Sullivan for thoughtful comments on an earlier draft of the lecture.

> round, expect to see debaters talking at extremely high speeds, reading out the content of page after page of evidence, gasping for breath between points, and using lots of jargon ("I cite Jorgensen, Jorgensen post-dates Bronstein, that kills PMR 4, flow that Aff!"). There is very little discussion of values such as freedom, justice, equality, etc.[1]

I had several reactions to this description. First, teaching research and organizational skills to students interested in public policy (which I assume most debaters are) is not a bad thing. Teaching students how to *evaluate* the evidence they uncover (for example, how many people expert in the field would agree with the description of team policy debate I found on the web) is also a good thing. Second, my reaction to the rest of the description was one of bewilderment. If all that work does not relate to the goal of persuasion, what is the point? Third, I wondered why I had been asked to be a judge of this activity. I saw little connection between what I did in my professional life and an activity that did not involve persuasion or values but required students to talk "at extremely high speeds"—something that I simply cannot do. Finally, I doubted very much that I would enjoy an afternoon spent listening to high school students "talking at extremely high speeds" and "gasping for breath."

My decision was not difficult, but the exercise was worthwhile. It led me to reflect on what it is that I actually do—what appellate advocates do—and the ways in which what we do as advocates is fundamentally different from what I have just described. I would like to share some of those reflections with you this afternoon.

My title might seem a bit puzzling. What, after all, is "human" about "legal advocacy"? It seems to me that there are three ways in which advocacy is related to what it means to be human. The first is grounded in the nature of legal disputes and in our expectations as a society about how such disputes are to be resolved. To be human is to have our own ideas and interests, which are often in conflict with those of others.[2]

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1. Glen Whitman, *Debate Formats*, DEBATE, http://www.csun.edu/~dgw61315/debformats.html (last modified Sept. 5, 2000).

2. *See* THE FEDERALIST NO. 10, at 58 (James Madison) (Jacob E. Cooke ed., 1961) ("As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter attach themselves . . . . The latent causes of faction are thus sown in the nature of man; and we see them every where brought into different degrees of activity, according to the different circumstances of civil society."); *see also* TOM BINGHAM, THE RULE OF LAW 85 (2010) ("In Utopia, it may be, civil disputes would never arise: the citizens would live together in amity, and harmony would reign. But we live in a sub-utopian world, in which differences do arise, and it would be false to suppose that they only arise where there is dishonesty, sharp practice, malice,

Moreover, when those conflicting ideas and interests present themselves for resolution as legal disputes, rather than in some other way (such as by compromise or force, for example), we expect them to be resolved in a way that is fair and just, even though we may differ as to what fairness and justice entails, either generally or in a particular case.[3] This, I think, is what Ken Geller meant when he said that an advocate's task is to persuade the court that the world will be a better place, in one way or another, by a little or a lot, if the court accepts the advocate's submission.[4]

Second, advocacy has to do with what it means to be human because of the fundamentally human character of the lawyer-client relationship, and of the act of sharing expert legal knowledge, judgment, and advice with another human being in need of those things. I have attempted elsewhere to describe the basic humanity of that relationship and of the lawyer's general obligation to provide counsel to those in need of it.[5] I would also add, however, that the essentially human character of this relationship also implies the necessity of certain limits, so that the act of providing legal counsel requires respect for the humanity and autonomy of both the client and the lawyer, and can never adequately be described, to use Marshall Field's words, as simply "giv[ing] the lady what she wants."[6]

The third way in which I think that legal advocacy has to do with humanity relates to the activity itself. Unlike "team policy debate," legal advocacy does have to do with persuasion, and persuasion, whether in a legal context or otherwise, is a quintessentially human activity. (What "team policy debaters" do is also human, of course, but

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greed or obstinacy on one side or the other. Those qualities are not unknown among litigants. But it is possible for perfectly reasonable and well-motivated people to hold very different views on the meaning of a contract or a conveyance or a will, or about the responsibility for an accident, or about the upbringing of children following their parents' separation, or about the use of a footpath, or the application of an Act of Parliament or the decision of a minister or local government officer.").

3. *See* STUART HAMPSHIRE, JUSTICE IS CONFLICT 79 (2000) ("There is one overriding moral principle that every citizen has good reasons to accept and to honor in practice: that is the principle of institutionalized fairness for the resolution of these conflicts.").

4. Stephen M. Shapiro, *Oral Argument in the Supreme Court of the United States*, 33 CATH. U. L. REV. 529, 538 (1984) (quoting remarks by Kenneth S. Geller at the Conference on Supreme Court Advocacy, Oct. 18, 1983).

5. *See generally* Barry Sullivan, *Private Practice, Public Profession: Convictions, Commitments, and the Availability of Counsel*, 108 W. VA. L. REV. 1 (2005) (arguing that the legal profession serves the dual purposes of providing legal representation to those who cannot represent themselves and of promoting societal justice).

6. LLOYD WENDT & HERMAN KOGAN, GIVE THE LADY WHAT SHE WANTS! THE STORY OF MARSHALL FIELD & COMPANY 223 (1952).

in another sense—in the sense of sport.) A legal dispute may be simple, or it may be highly technical and complex. The stakes may be large or small. The outcome may affect only the immediate parties; it may affect the immediate parties and a few others; or it may even affect the whole society. Indeed, in today's world, the outcome in some cases might affect the prospects for world peace, the stability of the world environment, or the health of the global economy. Whatever shape the dispute takes, the advocate must present it in a way that the decision-maker—whoever that might be—can understand both the facts and the equities, the cameo of the case and the diorama of the legal background. The advocate may be tempted by those false gods, jargon and prolixity, but they provide no cover; they are no substitute for explanation and argument. The decision-maker will need to be persuaded, according to certain rules and conventions to be sure, but also through the development of a deep, personal conviction as to what the facts are, what is true and what is not, who is right and who is wrong, and what is just in the circumstances. As Justice Frankfurter, that most austere of judges, said long ago, "[T]here comes a point where this Court should not be ignorant as judges of what we know as men."[7] It is this third way in which legal advocacy has to do with what it is to be human that I would like to explore this afternoon.

For some, legal argument is wholly artificial at best, deceptive and manipulative at worst. One sometimes has the sense that advocacy is the art (if it is an art) that dare not speak its name. One hears the charge that lawyers will argue anything for a price (usually a large one), or that the aim of advocacy is simply to persuade someone that what is true is false and what is false is true. Indeed, that view has ancient roots. In *Gorgias*, when Plato has Chaerephon ask Polus what art it is that his master, Gorgias the rhetor, practices, Polus responds by praising his master, but without answering the question:

> [E]xperience causes our life to proceed by art, whereas inexperience causes it to proceed by chance. Of each of these arts, various men variously partake of various ones, and the best men partake of the best; among these is Gorgias here, and he has a share in the finest of the arts.[8]

It is only when Socrates and Gorgias return to the conversation that there is any real attempt to answer the question. Gorgias asserts that his art consists of "being able to persuade by speeches judges in the law court, councilors in the council, assemblymen in the assembly, and in

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7. Watts v. Indiana, 338 U.S. 49, 52 (1949).

8. PLATO, GORGIAS 27 (James H. Nichols, Jr. ed., 1998).

every other gathering whatsoever."[9] But what is the relationship of such persuasion to real knowledge or truth, to morality or humanity? If the rhetor is better able than the physician to persuade a patient of the need for treatment, as Gorgias claims, is the rhetor's art simply "to appear to know more than those who know, to those who don't," as Socrates suggests?[10] Or, since "each group of men rejoice at speeches said in accord with their own character,"[11] is persuasion nothing more than flattery?

Aristotle teaches that different subjects admit different degrees of certainty, that they therefore warrant different modes of inquiry, and that different arguments about things that cannot be known with certainty necessarily will move different people in different ways and to varying degrees.[12] That is because people bring different knowledge and experience to the reckoning of those matters that cannot be known with certainty, but nonetheless require some sort of rigorous inquiry and the exercise of prudential judgment.[13] Thus, as even Plato acknowledges in *Phaedrus*, a speech must fit the audience.[14]

What is the best diplomatic or military strategy for our nation at the present time? There may or may not be one right answer to this question. Most likely, there is not. In any event, there is more to the formulation of public policy than simply getting the facts straight. There is a need for judgment and thus for persuasion. Churchill made this point with clarity in *My Early Life*, where he reflected on his early failures in the House of Commons, noting that he "was [then] so untutored as to suppose that all [he] had to do was to think out what was right and express it fearlessly."[15]

What is the most felicitous rule of law available to remedy a particular social problem? What is the best application of an accepted rule of law in certain specific circumstances? These are the questions

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9. *Id.*

10. *Id.* at 41.

11. *Id.* at 112.

12. NICOMACHEAN ETHICS: ARISTOTLE 18–19 (Martin Ostwald trans., 1962).

13. *Id.* at 157 ("Practical wisdom . . . is concerned with human affairs and with matters about which deliberation is possible. . . . [N]o one deliberates about things that cannot be other than they are, nor about things that are not directed to some end, an end that is a good attainable by action.").

14. *See* PLATO, PHAEDRUS 80–81 (James H. Nichols, Jr. ed., 1998) ("And, now . . . having arranged in order the classes of speeches and of soul and the things experienced by these, he will go through all the causes, fitting each together to each, and teaching through what cause one soul, being of such a sort, is of necessity persuaded by speeches of such a sort, and another remains unpersuaded.").

15. WINSTON S. CHURCHILL, MY EARLY LIFE: A ROVING COMMISSION 369 (1930).

that regularly concern legislators, executive officials, judges, and citizens, albeit in different ways and to different degrees. These also are questions that concern us as advocates. These questions are similar in kind, of course, to those that ask about a nation's best diplomatic or military strategy.

When questions of this kind are presented in the context of litigation, we are told by some that a definitive answer can always be found in the words of the relevant text. Others tell us that there is no way of ascertaining any principled answer, let alone a definitive one, and that judges inevitably will reach whatever result they like and then backfill with legal verbiage to justify the bias with which they began. Neither description is adequate. When questions of this kind are presented, an obvious answer may sometimes exist. But there may be no obvious answer. Or there may be more than one, and each may be wrong. Judges, like the rest of us, sometimes will have to make choices in the face of uncertainty. And those choices must be explained and justified, albeit in ways that can only be persuasive and not definitive. Otherwise, judges will not be able to do honestly what they must of necessity do.[16]

So what do I mean by "the humanity of advocacy," and what does it require of us who practice the art? By the "humanity of advocacy," I mean the essentially human quality of the activity of argument and persuasion, the process that aims to elicit honest judgment. What that entails, in the case of legal judgment, are the elements of intellectual inquiry, prudential calculation, and the ultimate exercise of authority, power, and will. Judges have the same training and the same toolboxes that we have as advocates. Like advocates, judges necessarily engage real problems, and they do so under conditions of uncertainty, where choices must be made—and justified—among plausible alternatives. But judges also have a broader view than many advocates. They have seen many cases and have heard many arguments. What may seem novel to an advocate may seem routine to an experienced judge. What may seem to an advocate to be egregious, sharp practice on the part of her opponent may well seem to be within the range of reasonable advocacy to a judge, or at least not worth the judicial time and effort it might take to get to the bottom of it.

Of course, judges also have the power to decide, which advocates do not have, and a special responsibility comes with that power. I like to

16. *See generally* H. JEFFERSON POWELL, CONSTITUTIONAL CONSCIENCE: THE MORAL DIMENSION OF CONSTITUTIONAL DECISION (2008) (arguing that the Constitution requires judges to engage in moral and good faith decision making and to be guided by individual conscience).

think that the work of judges, to borrow a phrase from Yeats, is "to hold, in a single thought, reality and justice,"[17] and to instantiate that thought. But judges cannot do their work unless we do ours. Thus, the humanity of advocacy also speaks importantly to the *ways* in which we argue and hope to persuade. We are beset by uncertainty, but we are morally obliged, as advocates and judges, to make choices among plausible alternatives, and to justify those choices. In doing so, we put ourselves at risk in service to an activity that is essential to our common humanity.

Let me talk a bit about the lawyer's task of persuasion in the appellate courts. To my mind, there are four great questions of appellate advocacy. First, how does one persuade an appellate court that the articulation, reiteration, or elaboration of a particular rule of law requires your client's position to be upheld, even though the apparent equities of the case point toward the opposite result? Alternatively, when the law seems to point against your client's position, how does one persuade an appellate court that, given the particular equities of the case, your client's position should be upheld, and that the court can do that without damaging the existing fabric of the law? More radically, how does one persuade such a court that the existing fabric of law does indeed need a fundamental overhaul? Or, in the face of strong evidence that the law does need such an overhaul, how does one persuade to the contrary? These questions may be complicated in a particular case, of course, by additional considerations, such as the proper allocation of the burdens of production and persuasion in the court of first impression or by the appropriate standard of review on appeal.[18] But these, without doubt, are the four great questions of appellate advocacy.

So how does one persuade? In *The Art of Rhetoric*, Aristotle famously identifies three elements essential to persuasion: logos, ethos, and pathos. In Aristotle's view, logos (knowledge or demonstration) is essential, but more than logos is required:

> [S]ince the objective of rhetoric is judgment (for men *give* judgment on political issues and a court case *is* a judgment), we must have regard not only to the speech's being demonstrative and persuasive,

17. SEAMUS HEANEY, CREDITING POETRY: THE NOBEL LECTURE 23–24 (1995) (quoting W.B. Yeats).

18. And these questions are obviously subject to further refinements. In some cases, the equities of a particular case and the existing law will point in the same direction, by a little or a lot, to the benefit or detriment of one's client. If they both point against one party or the other, the case probably should have been settled a long time ago.

> but also to *establishing the speaker himself as of a certain type* and *bringing the giver of judgment into a certain condition.*[19]

James Gould Cozzens echoes Aristotle in *The Just and the Unjust*, a novel of great insight about lawyers and their work. Cozzens comments on one advocate's courtroom performance:

> Bunting was not an eloquent speaker . . . . [U]nlike Harry, who could speak in many manners, and in all of them give the impression of naturalness and simplicity, Bunting had only one manner, and he unselfconsciously was natural and simple. Along with the virtue, he had the vice of unselfconsciousness. Absorbed in what he wished to say, he never thought of standing off and looking at himself to see how he was doing, or of asking himself if this were the way he would like to be talked to.[20]

Cozzens, of course, is talking about a lawyer's performance in a jury trial, and jury trials are different from appellate proceedings. But we make a mistake when we think that appellate arguments have only to do with "logos" and nothing at all to do with "pathos" or "ethos." Appellate judges may or may not be moved by the same arguments that move jurors, but we do know that they are not lifeless, mechanical beings. Certainly, appellate judges are not indifferent to the way in which they are "talked to." Nor are they immune to the emotions produced by boring, repetitive, fantastic, or ill-conceived written and oral presentations. And appellate judges are not indifferent to the appearance an advocate makes, not in the sense of appropriate clothing and grooming or demeanor and diction (though these will certainly carry weight with some), but in the sense of exaggeration or hyperbole or the apparent accuracy (or not) with which an advocate presents her client's case, both orally and in writing. Advocates who appear to exaggerate or prevaricate will not be believed. If they substitute such things for the hard work of thinking about how to persuade those who are to judge their case, they also risk losing sight of the realities of their case, to the detriment of their clients and their own self-interest. They may or may not be called out. Whether they are makes little difference, except, perhaps, in terms of embarrassment. The important thing is that, whether or not they are called out, their clients' cause—and their own reputations—may well be damaged.

But the challenge of advocacy is more subtle than that. Let me give an example. In the "enemy combatant" cases of the past decade, as in earlier cases involving executive power, the executive branch of

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19. ARISTOTLE, THE ART OF RHETORIC 140 (Hugh Lawson-Tancred ed., 1991).

20. JAMES GOULD COZZENS, THE JUST AND THE UNJUST 360 (1942).

government has made extravagant claims about the scope of executive power and the non-reviewability of its exercise.[21] Whether such extravagant arguments were necessary to provide an adequate defense for the government's policy is an issue I leave for another day. What interests me for now is the opening of the government's oral argument in one of those cases, namely *Rasul v. Bush*,[22] which involved the federal courts' jurisdiction over habeas cases brought by detainees at Guantanamo. As you will recall, the government's argument was made by the Solicitor General, Ted Olson, an experienced and respected appellate advocate. As respondent, he spoke second. He began in this way:

> Mr. Chief Justice, and may it please the court.
>
> The United States is at war. Over 10,000 American troops are in Afghanistan today in response to a virtually unanimous Congressional declaration of an unusual and . . . extraordinary threat to our national security, and an authorization to the President to use all necessary and appropriate force to deter and prevent acts of terrorism against the United States.
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> It's in that context that Petitioners ask this Court to assert jurisdiction that is not authorized by Congress, does not arise from the Constitution, [and] has never been exercised by this Court . . . .[23]

Justice Stevens then broke in with a series of questions intended to demonstrate that the government's legal argument did not really depend on the fact that "[t]he United States is at war"—a point that Olson was required to concede after several more questions. In other words, the opening, powerful as it may have seemed in the abstract, provoked one of the Justices to move the colloquy in a direction where Olson had nothing to gain and did not need or want to go. The opening was powerful from a rhetorical point of view; it probably reflected Olson's

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21. *See, e.g.*, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 582 (1952) ("The Government's position is that the order was made on findings of the President that his action was necessary to avert a national catastrophe which would inevitably result from a stoppage of steel production, and that in meeting this grave emergency the President was acting within the aggregate of his constitutional powers as the Nation's Chief Executive and the Commander in Chief of the Armed Forces of the United States."); *see also* Barry Sullivan, *Justice Jackson's Republic and Ours*, *in* LAW AND DEMOCRACY IN THE EMPIRE OF FORCE 172–74 (H. Jefferson Powell & James Boyd White eds., 2009) (discussing *Youngstown* and, in particular, Justice Jackson's test to measure the constitutionality of executive actions).

22. *See* Rasul v. Bush, 542 U.S. 466, 485 (2004) (holding that federal courts have jurisdiction to decide the habeas petitions of Guantanamo prisoners), *superseded by statute*, Detainee Treatment Act of 2005, Pub. L. No. 109-148, §§ 1001–1006, 119 Stat. 2680, 2739–44 (codified as amended at 10 U.S.C. § 801 notes, 28 U.S.C. § 2241(e), and scattered sections of 42 U.S.C. § 2000dd (2006)), *as recognized in* Rasul v. Myers, 512 F.3d 644, 663 (D.C. Cir. 2008).

23. Transcript of Oral Argument at 26, *Rasul*, 542 U.S. 466 (No. 03-334), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/03-334.pdf.

own deeply-held convictions; and it was likely to be appreciated both by Olson's clients and by those Justices who already were firmly in his camp. But it came a half hour into the Court's consideration of the case and it was not likely to resonate with any Justice who was not predisposed to accept the government's position.

It would not have been difficult to predict that one of the Justices would respond in the way that Justice Stevens did, or that the momentum of the argument would thus be broken. Perhaps, Olson thought that his message was important and that that risk was worth it. Hindsight, of course, is a great thing. But how should we evaluate this choice? Was Olson able to put himself in the place of the Justices, in terms of their likely understanding of the work they had to do in the case? Did he think about the figure he cut? Was this the way in which the Justices whose votes he needed wanted to be "talked to"? In a sense, the reminder was simply gratuitous: everyone in the courtroom knew that the nation was at war. Indeed, it was well-known to most people in the courtroom—and certainly to all of the Justices—that Olson's wife had been killed in the September 11 attack on the Pentagon. In these circumstances, was this an effective way to begin the argument? Given Olson's personal loss, and what the Justices knew about it, would a more understated beginning have been more effective? We had a spirited debate on that question in my class last fall.

In *Thinking of Others*, Ted Cohen, University of Chicago philosophy professor, writes: "Thinking of one person as another is a bemusing and mysterious enterprise, but if I am right, the ability to do this is a fundamental human capacity without which our moral and aesthetic lives would scarcely be possible."[24] Particularly critical, of course, is the ability to see oneself as someone else, not as that person would be if he were you, but as he is. That is a tall order. Taking an example from Genesis, Cohen suggests that it is impossible to "begin to grasp" the story of Abraham and Isaac without trying "to appreciate Abraham, and that means asking what it would be like to be Abraham."[25] Cohen compares Abraham's willingness to sacrifice Isaac to Agamemnon's sacrifice of Iphigenia. The difference, Cohen explains, is that Agamemnon had a choice, while Abraham did not. God had spoken to Abraham, and Abraham already had agreed to do whatever God required of him.

To understand Abraham, one must try and imagine what it is like to have God speak to you. Cohen writes:

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24. TED COHEN, THINKING OF OTHERS: ON THE TALENT FOR METAPHOR 13 (2008).

25. *Id.* at 53.

> Can you imagine what it would be like to be spoken to by God? Can you imagine believing God is speaking to you?
> I have heard it said, "I would not kill my son even if God told me to do it," or "I would not believe it was God asking me to kill my son."
> My first thought is yes, I too wouldn't believe it was God asking, and if I did, I wouldn't do what He asked. But then I think—what would it be like—really—to believe God was speaking to me?[26]

As Cohen suggests, we cannot begin to understand the story of Abraham and Isaac unless we try to put ourselves in Abraham's place and imagine having God speak to us in the way He spoke to Abraham.

But equally important is "the effort to appreciate how one may be appreciated by others."[27] This is particularly difficult because, as Cohen notes, it "requires . . . both leaving yourself and bringing yourself along."[28] This is what Bunting was not able to do in *The Just and the Unjust* and what Olson perhaps failed to do in the opening to his argument in *Rasul*. In conclusion, Cohen observes:

> [These metaphors of personal identification] are the entrées to human understanding, to the appreciation of one another. They demand to be grasped. Grasping them is part of one's commitment to being human, for being human requires knowing what it is to be human, and that requires the intimate recognition of other human beings.[29]

And so it is with advocacy. If we were not corporeal human beings—who love and lust and hunger and envy and feel and believe, as well as think—we might not need to worry about ethos or pathos. In that event, of course, we'd also have far fewer grounds for dispute, and far less work for advocates. But we are corporeal beings, and we do love and lust and hunger and envy and feel and believe.[30]

In our world, there are many requirements for effective persuasion. For example, we must have a theory of the case. We must know the points that we are willing to concede. We must know the points on

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26. *Id.* at 54.
27. *Id.* at 65.
28. *Id.*
29. *Id.* at 85.
30. *See* HARRY G. FRANKFURT, THE REASONS OF LOVE 64 (2004) ("There is a striking and instructive resemblance in this matter between love and reason. Rationality and the capacity to love are the most powerfully emblematic and most highly prized features of human nature. The former guides us most authoritatively in the use of our minds, while the latter provides us with the most compelling motivation in our personal and social conduct. Both are sources of what is distinctively humane and ennobling in us. They dignify our lives. Now it is especially notable that while each imposes upon us a commanding necessity, neither entails for us any sense of impotence or restriction. On the contrary, each characteristically brings with it an experience of liberation and enhancement.").

which we must stand fast at any cost. We must know the difference. And we must know at what point in the litigation we should be willing to waive or concede those points that are worth making, but are not central to our theory of the case. Those requirements, and others, are important to persuasion. But none is more important than striving to see the world, including our clients and ourselves, through the eyes of others.