STEADY WORK: A PRACTITIONER'S REFLECTIONS ON POLITICAL LAWYERING[1]

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In many ways, this Symposium and the conference that preceded it simply carry forward an ongoing debate about the direction and definition of that elusive activity that we have called "political lawyering." It is a debate that has often foundered on miscommunication and imprecision, in which each formulation of the idea dissolves, and each of its projected futures blurs even as they are articulated. The problem is not our analytic weaknesses, but the opportunistic, strategic, and *political* character of our subject.

I surely recognize my own legal career in the term "political lawyering," particularly when I reflect on the cases and causes in which I have been engaged. I also strongly share the need, expressed by others at the conference, to exchange and examine examples, concrete experiences, and particularized strategies, if we are ever to make sense of what is usable in our past and what is, for better or worse, just past. In this Essay, I hope to clarify the subject of the conference, this Symposium, and our work by reflecting on a few examples from my own experience of politics through law.

• Between 1962 and 1964, a number of us at the Legal Aid Agency for the District of Columbia (now the Public Defender Service) embarked on a series of interlocutory appeals challenging police and prosecution practices related to the use of undercover agents in narcotics investigations, the questioning of suspects following arrest, and the conduct of preliminary hearings. Each brief, trial record, and request for review was designed and linked, not only to obtain a particular legal result, but to educate the appellate judges of the D.C. Circuit about the widespread lawlessness that pervaded the administration of criminal justice in the District of Columbia. Our hope—imperfectly but partially realized—was to alter the way they would read and understand the records of the many post-conviction cases that would follow.

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[1] A man, sitting on a box outside the gates of a Jewish ghetto in sixteenth century Poland, was approached by a recent visitor to the settlement: "Every day I see you sitting here," the visitor said, "are you waiting for someone?" "Oh yes," the man replied. "I'm waiting for the Messiah. It is my job here." "Your job?," said the visitor. "Are you happy with your job?" "Well," the man replied, "the job has its ups and downs. But it's steady work, you know." *See* IRVING HOWE, STEADY WORK: ESSAYS IN THE POLITICS OF DEMOCRATIC RADICALIZATION, 1953–1966 (1966).

• Between 1963 and 1965, I was part of an ad hoc group of lawyers working at a variety of federal agencies that orchestrated a set of conferences, speeches, alliances, meetings, and intra-agency agreements that led to the establishment of the federal legal services program under the Office of Economic Opportunity.[2]

• From 1966 to 1968, my colleagues at California Rural Legal Assistance, a federally funded legal services program, and I brought a series of class action suits against officials of the State Department of Corrections, the State Department of Education, and the U.S. Department of Labor. These actions, filed at critical moments during the United Farm Workers struggle to win bargaining rights in California, were designed to tighten the labor market for agricultural workers by preventing the illegal use of prisoners, students, out-of-state workers, and foreign nationals as laborers. During the same period, hundreds of individual cases all over the state were handled in ways that encouraged clients to give mutual aid to others in similar situations, to join or create organizations that permitted them to act collectively in pressing their grievances, and to educate themselves about the systemic nature of many of the problems they encountered. These efforts, not surprisingly, brought large numbers of new members into the farm workers' union.[3]

• Between 1968 and 1970, lawyers working with me at the Western Center on Law and Poverty took over forty depositions of Los Angeles Police Department (LAPD) officers accused of harassing members of the Black Panther Party and their supporters, often within a week of the incident involved. The availability of the deposition procedure was a major factor in our decision to bring a difficult-to-win class action against the LAPD. We sought, and obtained, immediate exposure of police officer conduct that would otherwise have remained invisible.[4]

• From 1973 to 1975, staff at the Children's Defense Fund and the Massachusetts Advocacy Center handled dozens of school discipline cases arising in the Boston schools. These activities were paralleled by an intervention in the *Morgan*[5] case that focused not on judicially imposed

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[2] For a description of the founding of the Office of Economic Opportunity's Legal Services Program, see EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM (1978).

[3] For a description of the United Farm Workers struggle, see JOHN GREGORY DUNNE, DELANO, THE STORY OF THE CALIFORNIA GRAPE STRIKE (1967) and RICHARD GRISWOLD DEL CASTILLO & RICHARD A. GARCÍA, CÉSAR CHÁVEZ: A TRIUMPH OF SPIRIT (1995).

[4] For a description of the conflict between the LAPD and the Black Panther Party during this period, see JO DURDEN-SMITH, WHO KILLED GEORGE JACKSON? (1976).

[5] Morgan v. Kerrigan, 379 F. Supp. 410 (D. Mass. 1974) (finding Boston schools to be racially segregated), *aff'd*, 509 F.2d 580 (1st Cir. 1975); *see also* Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass.) (ordering desegregation plan), *aff'd*, 523 F.2d 917 (1st Cir.

relief but instead aimed to create a dialogue between Boston school officials and administrators from other cities about alternative approaches to school discipline. The resulting code of discipline, which we helped write, was used to persuade teachers and administrators to see discipline problems as opportunities for intervention rather than occasions for punishment.[6]

• From 1981 to 1985, staff at the Legal Services Center (LSC) in Jamaica Plain, a clinical facility of the law schools of Northeastern and Harvard, conducted countless negotiations with local welfare and Social Security office personnel concerning a wide variety of issues arising from denials and terminations of benefits by those offices. Often, the daily presence and assertiveness of the LSC staff, by itself, was enough to produce changes in office practices, particularly where other advocacy agencies were making similar interventions. Toward the end of this period, LSC, negotiating at the institutional level, persuaded several hospitals and health centers to do a "legal check-up" of patients. Our aim in this case-by-case strategy was to produce changes in local practice and perspective that had proven very hard to alter in more judicially and legislatively focused challenges to the same problems.[7]

• From 1984 to 1989, the same staff undertook a variation of this "focused-case" strategy in an effort to stop evictions and slow down speculation in a rapidly gentrifying area of Boston. We designated an "eviction-free zone," took as many eviction cases from that area as possible, and pressed the cases in ways that not only sought to preserve tenants' possession of the property, but communicated directly to landlords the risk of increased cost and exposure that would accompany efforts to empty substandard residential property for redevelopment. These efforts were accompanied by attempts—still ongoing—to affect the attitudes and behavior of court and other personnel toward both our clients and the much larger number of tenants who appear without representation.[8]

Not included in the above examples are many other types of "political" efforts, such as legislative lobbying, administrative rule making, and various forms of alternative institution building in which lawyers like myself have been involved. And, of course, many of the contributors to this volume could add an even longer and richer list of illustrations.

1975). For a judicial history of the Boston school desegregation litigation, see Morgan v. O'Bryant, 671 F.2d 23 (1st Cir. 1982).

[6] For a general description of the turmoil surrounding school desegregation in Boston, see J. ANTHONY LUKAS, COMMON GROUND: A TURBULENT DECADE IN THE LIVES OF THREE AMERICAN FAMILIES (1985).

[7] *See* Gary Bellow & Jeanne Charn, *Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice*, 83 GEO. L.J. 1633 app. at 1659–63 (1995).

[8] *See id.* at app. 1664–68.

Still, the sampling of cases described above provides enough variety to frame my questions. What do these instances have in common? What can they tell us about the people we served, the problems we addressed, and the identities and motives of those of us who participated in them? In what sense do they fall within our understanding of the political?

I. Common Threads

Certainly, if one focuses on the strategies employed in these examples, few uniformities emerge. In some of the efforts, we sought rule changes or injunctive relief against a particular practice on behalf of an identified class. In other situations, we pursued aggregate results by filing large numbers of individual cases. Some strategies were carried out in the courts. At other times we ignored litigation entirely in favor of bureaucratic maneuvering and community and union organizing. Even when pursuing litigation, we often placed far greater emphasis on mobilizing and educating clients, or strengthening the entities and organizations that represented them, than on judicial outcomes. And always, we employed the lawsuit, whether pushed to conclusion or not, as a vehicle for gathering information, positioning adversaries, asserting bargaining leverage, and adding to the continuing process of definition and designation that occurs in any conflict. Like politics itself, it is doubtful that political lawyering can be defined easily by the means it employs. Rather, what the examples seem to have in common is a particular, "politicized" orientation to the goals, commitments, and relationships reflected in the following strands of a practitioner's approach to legal work.

A. An Oppositionist Social Vision

In each of these efforts, the legal work was done in service to both individuals and larger, more collectively oriented goals. We were not detached professionals offering advice and representation regardless of consequences; we saw ourselves responsible for, and committed to, shaping those consequences. Indeed, we made each move and maneuver with an eye to its impact on adversaries, decision makers, various parties concerned with the particular dispute, and our own clients. Moreover, the visions we embraced, particularly those that sought radical extensions of democracy, equality, and racial justice, were focused on deep-seated, structural, and cultural change. This was, in turn, fed by a generational rebellion against prevailing cultural practices and styles and, for many of us, a difficult-to-articulate dissatisfaction with the lifestyles and relationships that we inherited from our elders. Experienced in this way, it is virtually impossible to have been involved in any of the examples I have set out and not have thought of our law work as politics.

Inevitably, there were many more contradictions, hierarchies, and hypocrisies in our hopes than any of us recognized. And, more often than I wish were the case, our vision, or more particularly, the policies, practices, and programs that we believed our vision entailed, was flawed or shortsighted. Even when such policies, principles, and programs made sense, we compromised and adapted them to new circumstances less often than we might have—but such are always the pitfalls of passionate politics.

What has always puzzled me in my efforts to teach and recruit other lawyers to this perspective is the often made claim, and related unease in less articulated reactions, that there was some deep impropriety connected with our view of how and to what ends our legal skills should be employed. Law should not be practiced, used, or instrumentalized in this way, it was said.[9]

Yet, the practice of law always involves exercising power. Exercising power always involves systemic consequences, even if the systemic impact is a product of what appear to be unrelated cases pursued individually over time. Lawyers influence and shape the practices and institutions in which they work, if only to reinforce and legitimate them. Clients, similarly, bring to their legal advisers and representatives claims and concerns that arise from and are examples of underlying institutional arrangements and culturally created controls. It would be a poor corporate lawyer who did his or her work without regard to the long-term systemic and aggregate effects on clients and others of any particular course of action or strategy. In many ways, we did no more than that, and we argued with those of our contemporaries who shared our politics and our commitments that they should do no less.

Social vision is part of the operating ethos of self-conscious law practice. The fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo. Self-conscious practice appears to be less important, and is always less destabilizing, when it serves what is, rather than what ought to be. The kind of political lawyering embedded in the foregoing examples is distinguishable from general law work by the degree to which it was fueled by a more dissatisfied and change-oriented self-consciousness

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[9] For early articulations of this view as a guiding framework for the Legal Services Program, see Geoffrey C. Hazard, Jr., *Social Justice Through Civil Justice*, 36 U. CHI. L. REV. 699 (1968–1969) (arguing that social justice through law is expensive and antidemocratic); Geoffrey C. Hazard, Jr., *Law Reforming in the Anti-Poverty Effort*, 37 U. CHI. L. REV. 242 (1969–1970). *See also* Spiro Agnew, *What's Wrong with the Legal Services Program*, 58 A.B.A. J. 930, 931 (1972) ("What we may be on the way to creating is a federally funded system manned by ideological vigilantes, who owe their allegiance not to a client, not to the citizens of a particular state or locality and not to the elected representatives of the people, but only to a concept of social reform."); Marshall Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C. L. REV. 282 (1982).

than the law practice of most of our contemporaries. Whether the goals and projects we pursued were right or "progressive" I leave to others. It surely requires a new generation to define an adequate social vision and self-consciousness for today's complicated times. It seems enough here to say that "vision-making" work is fundamental to the activist strategies political lawyering inevitably embodies.

B. An Enduring Alliance Between Server and Served

Any animating social vision held by a lawyer inevitably shapes and influences relations with those whom she serves. Particularly where those served are poor or otherwise vulnerable, the patterns of influence in the relationships formed can be asymmetrical and even exploitative. Power is always a heady experience, even, or especially, for those who serve the "greater good." Similarly, choice in any lawyer-client undertaking is never equally allocated. Choice often follows the power dynamics that frame and shape it. My colleagues who have written eloquently about the potential abuse of power relations in political lawyering have done all of us a service in pointing out this pervasive problem.[10]

Nevertheless, at least for me, an emphasis on lawyer influence and authority in politicized legal work does not fully capture the sort of mutuality between myself and those I served that I experienced in the examples discussed above. I did, in a sense, choose my clients and could withdraw from most cases if I wished. But I also made commitments to my clients and their ends, commitments that were supported by life choices concerning where I lived and with whom I spent my time. Those commitments made my choices far more constrained and dependent than a less contextualized analysis would suggest. I surely influenced and argued with those I served, often loudly and long. But I, in turn, was influenced

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[10] For an early article containing this insight, see Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975). *See also* ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION (1990); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-1988); Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987). Indeed, these insights have spawned a useful internal debate about the uses and abuses of lawyer influence in change oriented efforts. *See, e.g.*, Ruth Buchanan & Louise G. Trubek, *Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687 (1992); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-1988).

and argued with as well, and felt justified in asserting my views only because I also felt open to being overruled or outvoted.

Alliance seems as good a word as any to describe this relationship because alliance generates bonds and dependencies and is grounded, at least in aspiration, in forms of respect and mutuality that are far more personal and compelling, for many of us who do political legal work, than the demands of some notion of client-centered lawyering, no matter how strongly held.[11] Alliance also seems to offer an ideal that permits us to talk seriously about purposive judgment—when and whether to intervene or to seek influence—in situations in which one has unequal power in a relationship. The ideal of alliance avoids oversentimentalized and categorical attitudes—my client, the victims, the hero—toward clients. Such an orientation seems necessary in any honestly mutual relationship and is especially important when working with groups in which issues of which faction one serves constantly arise, and where humor, patience, and a genuine fondness for and realism about the individuals involved are often all one has to maintain one's bearings until some particular storm subsides.[12]

Nor is such a notion of common cause with clients an unfamiliar phenomenon in ordinary legal work. Alliance, as a descriptive term, aptly fits many lawyer-client interactions. Most lawyers share the aspirations, financial circumstances, and general world view of their clients, whatever their disagreement on particular actions. The influence of lawyers on their clients is a familiar characteristic of most lawyer-client relationships, explicitly supported in the profession's ethical codes.[13] Indeed, influence is a fundamental element of respect and mutuality, not its adversary. What

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[11] The "client-centered approach" to law was crystallized in DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991). Gerald López's vision of "rebellious" practice most closely approximates my hope for an "alliance" between lawyer and client. *See* GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 1–10 (1992).

[12] This is not to say that there are not inevitable contradictions and trade-offs in any relationship in which influence can overwhelm choice or in which "the greater good" can be invoked to override individual needs. This is probably why I have always been so attracted to case-by-case focused litigation rather than class actions. The former strategy makes any individual representation far less charged with group responsibilities than does lawyer work for groups and large aggregates. Although we sometimes imagine the reality we desire, I find that there are, despite the ever growing literature on its dangers, many more opportunities for reconciling individual and collective ends in politically motivated legal work than either its friendly critics or its avowed opponents might suppose.

[13] *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-8, 7-9 (1994); MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2 cmt. (1992). Many commentators on corporate law practice, however, argue that lawyers now exercise less influence on their clients. *See, e.g.*, LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION (Robert L. Nelson et al. eds., 1992); Marc Galanter & Thomas Palay, *The Many Futures of the Big Law Firm*, 45 S.C. L. REV. 905 (1994); Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1 (1988).

distinguishes alliance in political lawyering is the social distance that often must be bridged between lawyer and client, and perhaps, the greater danger of excessive influence. Only a conception of clients as much weaker and manipulable, however, dictates a level of subservience that leaves the lawyer without her own vision and stake in the outcomes being pursued.

Although paternalism can be real and ugly, I do not believe it is the primary issue with which the next generation of political lawyers will have to deal. Indifference and distance, drift and visionlessness are much more salient concerns. If these barriers are overcome, alliance with clients seems an appropriate model for the kind of relationships that will be needed, despite or because of the differential circumstances, commitments, and needs that will bring new opportunities for political lawyering into being.

C. Persistent Engagement with Adversaries and Decision Makers

Finally, a word needs to be said about a surprisingly neglected aspect of political work in law: relations with power holders. Power holders include a wide array of individuals—judges, legislators, city council members, opposing counsel, contending parties, colleagues, and allies. What makes these relationships so central to what I understand as political lawyering is the change-oriented focus of the enterprise. In each of the above examples, there were times when we bargained and argued only for marginal positional gains, increased negotiating leverage, or some public relations advantage. Sometimes compensation or vindication was all that was possible. But we were always pursuing larger aims: a genuine changing of minds or an enduring alteration of the circumstances in which the conflict arose. Whatever else the enterprise embodied, the social goals we were seeking reached not only across large numbers of people, but from the present into some altered version of the future.

Relations with power holders are surely the source of many of the most complex tensions in this kind of work. Lawyers engaged in politicized efforts spend a great deal of time with adversaries and, if they do their job well, even more time talking about and trying to understand them. We "work" the systems in which we lobby and litigate. We nurture relationships, search for coalitions, and worry about polarization and retaliation against ourselves and our clients.

Sometimes, our strategic efforts "on their behalf" are misunderstood by those we serve. Sometimes, such efforts are the beginning of a seductive process that turns us into political power brokers, rather than loyal allies, in the struggles that we joined. Nowhere are the ambiguous roles lawyers play in the "fights of others" more sharply focused than when they work in the worlds of their adversaries and the power holders to

whom they, as legal strategists, must often appeal. My students are often surprised at the degree to which effective advocacy depends on knowledge of, involvement with, and empathy for one's adversaries. Lawyers continually nurture reputation, relationships, and insider knowledge. As Mark Galanter points out, these resources—peculiarly available only to repeat players in legal processes—become the key to "coming out ahead" in future conflicts.[14]

When "coming out ahead" means engendering changes in attitudes, actions, and arrangements of an existing system of power and privilege, the need for thoughtful, long-term, strategic engagement with that system is highly magnified. When we first sought to integrate our politics with our legal training, few of us understood how long and how much effort such engagement would take, how hard it would be to sustain even the victories we won, and how much these realities could drain our energies and undermine the trust and commitment that we sought to earn from those we served.

The difficult nature of that task is, perhaps, the reason for the flight from politics and from daily engagement, bargaining, and compromise (to either dogmatic utopianism or disillusioned withdrawal) of so many of us who sought to make common cause with the disadvantaged. Faced with the dilemmas of outsider ineffectiveness and insider ambivalence, the best of us have become less impatient with ambiguity, more realistic about the disrepair and disarray likely to be found on any road to change, and much more appreciative of what knowledge and influence within the status quo offers to outsiders if it can be genuinely shared with and used by them. This seems a posture well worth emulating. It is certainly a critical part of any political lawyering story worth telling.

II. Common Quandaries

Just as there are common themes in what we have labeled political lawyering, there are also common dilemmas. Some of those conflicts are inherent in the relationships the work entails. It is no simple matter to reconcile commitment to both clients and a larger social vision or to navigate the boundary between the insider and outsider communities in which political lawyers work. Other concerns grow out of the institutional realities of the enterprise. I raise here only three such issues of particular concern in the current climate in which we function.

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[14] Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 *passim* (1974).

A. Doubt and Defeatism

It needs no detailed elaboration of the politics of the present to acknowledge the rise of Republican Party conservatism, the retreat of Democratic Party liberalism, and the widespread antagonism in the country to what Newt Gingrich has described as "the regulation, the litigation, and the taxation which are crippling us today."[15] In such an atmosphere, cases are harder to win, legislation is harder to enact, allies are harder to elect, and publics are harder to mobilize. Such shifts of political consensus have always been critical to the oppositional social vision on which political lawyering of the sort I have described depends. The process of linking strategy to political vision always requires adaptation and a detailed understanding of particular contexts for its effectiveness.

I mention this problem here because in many of the subcommunities of political lawyers that exist today, these new political configurations and the complex economic and cultural realities that drive them have seeded a kind of enervating doubt among lawyer-activists. Faced with declining opportunities for action, they have embraced a far too constricted definition of both the possible and desirable in law-oriented interventions than is, in fact, dictated by the rightward turn of national and local politics.[16]

Doubt and defeatism, in the sense of overly pessimistic assessments of action possibilities, are recurrent experiences in oppositional politics, whomever the political actors may be. They require hard-headed assessments of what works and why; a willingness to relinquish strategies and goals born of different possibilities and particularities; greater attention to the information-gathering, problem-defining, and remedy-forming aspects of political practice; the embrace of a highly localized and incremental form of political activism; and a general willingness to build connections and community around tentative commitments and action in the face of uncertainty. Doubt and defeatism produce powerful spirals that can only be broken by acts of will and leaps of faith.

B. The Decline of Institutional and Financial Support

The loss of financial support for the enterprise further exacerbates the sense of declining political possibilities. The reduction of funds for legal services programs and the severe restrictions likely to be imposed on them are the most graphic illustrations of a more general problem of

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[15] 140 CONG. REC. H2208-01, H2213 (daily ed. Apr. 12, 1994).

[16] I have written often about this phenomenon in legal services practice. *See* Bellow & Charn, *supra* note 7; Gary Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337 (1980); Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 BRIEFCASE 106 (1977). I will leave, perhaps mistakenly, to another day a detailed analysis of this tendency.

our declining ability to produce stable funding for political lawyering efforts.

Every example detailed at the beginning of this essay was carried out by advocates who were being paid by some outside foundation or funding source. Indeed, the nature of the causes and individuals we served made financial reliance on such sources an inevitable reality of our work. That support, both public and private, has significantly eroded over the past decade. We have to come to grips with this reality. Although I have no ready solution here, this retrenchment surely means that we need to develop new private funding sources while struggling to preserve existing ones. We must also maximize the possibilities for fee shifting in litigation work and again make the case for government funding for an essential component of the sort of political lawyering I hope to see continued. Meanwhile, our shrinking financial base may also mean that we have to rethink our belief that the activities and efforts that I described as political lawyering cannot be joined, or in part carried out, by large numbers of lawyers in private practice, even in large firms. This is where the advocacy money is.[17]

There are over 800,000 lawyers in the United States who make only a minuscule commitment to pro bono service. Whether such pro bono commitments can be enlarged and, more problematically, turned to political ends, requires an analysis of the bar as a social grouping, as well as the ambitions and self-images of its organizations and the nature of its dissatisfactions.[18] It would also require new experiments that enlist at least some members of the private bar and private bar support in politicized legal efforts. Although the problematics of such an effort abound, there are many such examples across the country. Indeed, in more than half of the cases described at the beginning of this essay, the outcomes were achieved with significant involvement of the private bar.

If we let go of a unidimensional vision of the bar and its discontents, we might find more ways to "do politics" with private lawyers and law firms than we have in the past. One lesson that might be gained from the examples set out above is that we did not take possibilities for alliance and support off the table too quickly. The same counsel is worth following today.

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[17] When asked why he targeted banks, the famous bank robber Willie Sutton replied, "Because that's where the money is." *See* WILLIE SUTTON, WHERE THE MONEY WAS (1976).

[18] Louise Trubek begins such an analysis in this Symposium. *See* Louise Trubek, *Embedded Practices*, 31 HARV. C.R.-C.L. L. REV. 415 (1996).

C. The Problem of Generational Continuity

Finally, a word needs to be said about those who, I hope, will follow us. One of the many consequences of the loss of financial support for public service advocacy has been the decline in the number of available jobs. Thus, unlike the 1960s and 1970s, it is much more difficult to bring younger advocates into our work. This retrenchment in job opportunities is further exacerbated by the lack of funds for meetings; conferences, and other forms of networking that formerly enabled political lawyers to recruit and teach those who might follow. Indeed, such opportunities permitted many of us who came to political lawyering thirty years ago to challenge and displace those who hired and mentored us. The history of legal services and many policy advocacy organizations is a chronicle of such conflicts.

Unfortunately, I see no such process occurring today. We, the seniors, have neither encouraged it nor have we allocated admittedly scarce resources to foster such developments. We have not defined continuity—that is, continuity of general purpose, not specific goals and methods—as a problem, nor have we left an adequate written legacy for our work to be carried forward beyond our own careers. Often, we add to the sense of defeat and doubt that so inhibits legal activism today by presenting a nostalgic and distorted picture of what was done in the 1960s and 1970s.

This neglect of continuity and romanticization of the past needs to change even as it becomes more and more difficult to do so. We who feel we run things (perhaps more than we actually do) must cede more authority and initiative to our junior colleagues than we believe they may be ready for. Younger political lawyers need to shape their own visions of what political lawyering will be in the next decades, giving less deference to their elders, perhaps less deference than the elders might believe they deserve. And all of us have to find ways to broaden the number of advocates engaged in such a dialogue at the same time that we make the dialogue about mistakes and periodic faithlessness more concrete and more honest than it has been.

These are tasks that cannot any longer be deferred or ignored. In many ways, none of the difficult quandaries we face seem more important or more daunting than this complex undertaking.

III. Looking Ahead—Looking Within

Whether the sort of politics embodied in the examples at the beginning of this essay will continue despite many undermining and constraining forces remains an open question. I know that there are many who believe it will not and some, among my own friends and allies, who believe it should not. Indeed, my examples may embrace more paternal-

ism and antidemocratic tendency than I see or have been willing to acknowledge.

My own judgment, however, is that the use of law and legal skills in the pursuit of social ends is a critical component of a complex democracy, particularly one that treats so many in its populace so unfairly and inhumanely. I also believe that the country will come around to a more positive view of government and a more skeptical view of private power than is currently evidenced by polls or voting patterns. But that's another story for another time.

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I felt honored to participate in this Symposium, the Political Lawyering Conference, and the dinner that followed it because so many of those who have written for this Volume and who participated in the conference brought to the table concerns that derive from a personal set of convictions that I deeply share. As I said at the dinner, these convictions are captured best by some simple advice my grandmother often repeated to all of her grandchildren: "Wherever you go," she said, "try to make what you find better than it was before you came." She left the definition of "better" to us. But I knew then, and I know now, full well what she meant. Reaching out to, and on behalf of, others is the way that you find out who you really are. It is the way that you express and realize the possibilities of your own humanity. It is the way you keep faith with those who went before you and those who will follow.

In various forms, I think this idea of connection and continuity, and the emotions it evokes, transcends and unifies all of the complexities I have described here. Political lawyering, or whatever we choose to call it, simply describes a medium through which some of us with law training chose to respond to the need for change in an unjust world. Of course, the values and the faith that drive such efforts go well beyond law and lawyers. They embrace a community of men and women who try to make things "better than they found them." I and many others I saw and thought about that conference day are grateful that as we assess the work we do we can be fairly included among them.