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Righting the Law: Seeking a Humane Voice

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I. INTRODUCTION

I have been asked to write about my approach to public interest law as well as to convey what personally motivated me to pursue public interest law.[1] I will address the second part of this request first. In so doing, I will try to resist the temptation to "deliberately" rewrite my own personal history. Of course, in even attempting this effort, I

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1. At some level, our collective interest in sharing the personal is recognition that the personal is seldom purely personal in the sense of being limited to the individual, but instead reaffirms our connection to one another and, in so doing, informs meaning. For a more comprehensive account of the life of a public interest lawyer, I suggest reading, GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

admit that there will be some rewriting. I have been in public interest law for much of my adult life, and my memory may seize the role that I am denying to my conscious.

II. CONNECTEDNESS: WORK FOR OTHERS, WORK FOR SELF

My decision to become a lawyer was generated by a particular perception of the world and of myself. Simple altruism did not attract me to public interest law. What originally drew me to practice public interest law, and what continues to be my central focus, was a profound understanding that working for those who were marginalized by society meant working for myself. The major question for me, then, was how I could most effectively serve those who had limited economic means.

I started college in 1965, a time of social upheaval and public concern for the direction in which society was heading. I had been selected to go to Stanford, one of the most prestigious schools in the country. While I was happy to be able to attend college, it was clear to me that many others were passed over.

It was also clear to me that the special training and skills one received at places like Stanford were generally not available to those people who needed help the most. For example, I am part of a large family with limited economic means. Alumni of prestigious colleges did not work for or with families like mine. Without completely understanding how or why, I knew that many of the graduates of elite universities ended up working directly for the economically advantaged, frequently aligned against the economically least powerful. I questioned the trickle-down theory that advocated improving society from the top down. I favored what I called a "bubble-up" approach which seeks justice by building from the bottom up.

In addition, to these considerations, I also was aware that I was, in some sense, connected to others in society, in ways both obvious and subtle.[2] This interconnectedness was not apparent at first; it was

2. Many theoretical schools and academic disciplines recognize that individuals in society are fundamentally connected to one another. This notion of connectedness, for exam-

strange to be coming from a relatively poor background to a university with the wealth and resources of Stanford. I had not even imagined such a setting prior to starting college. Further, I was troubled that too many of the problems and issues which students discussed in Stanford's plush setting seemed far removed from the experience of my childhood and all but devoid of human reality. Nonetheless, despite this apparent distance, I sensed the existence of a fundamental and important relationship between the bucolic surroundings of the Palo Alto suburbs and the ghettoes of Detroit. I realized that society cannot be compartmentalized into distinct, independent entities, but is connected in some fundamental manner. This realization also helped chart my course.

Other factors in my life at the time had a more affirmative impact on why and how I entered public interest law. On one level, I wanted to fundamentally change the structure of society for the benefit of myself and others who were denied economic or political opportunity. On a deeper level, though, I found much of the current structure of society not just unequal and exploitative, but also personally unappealing. One must remember that this was a time of tremendous cultural and social ferment. There were the Temptations and Jimi Hendrix, both of whom had difficulty finding playtime on the airwaves. While the Temptations occasionally were heard on emerging black radio programs, Jimi Hendrix was, at this time, truly an underground artist. This was also the era of Malcolm X and Dr. Martin Luther King, Jr., of the Black Panthers and John Coltrane. It wasn't simply that the structure of the dominant society was fundamentally unfair, it was also that the dominant society simply did not resonate to me or to thousands of others like me. While I could immerse myself in Coltrane or Hendrix, I simply could not get excited about the Beach Boys.[3]

The search for what I now would call my own "voice," as well as for something that was fundamentally fair in society, pushed me in the

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ple, is a major theme of much feminist jurisprudence, *see, e.g.*, Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988), as well as environmentalist and spiritualist thinking.

3. The effort to include a more diverse cultural mix than what was traditionally recognized by the dominant society is part of the multicultural debate.

direction of public interest law. However, at the time I attended college, the motivation to practice public interest law specifically was still too ill-defined for me to know precisely what I wanted to do. I had a better sense of what I would not do. I would not serve the status quo. I would not violate my own emerging sense of personal integrity nor would I silence my own voice in search of a career.

Of course, thinking this way when you are nineteen or twenty years old was, in many ways, common then and continues to be so now. Unfortunately, more people think about doing public interest work than actually do so. Even many of those who initially enter the public interest sphere often don't stay actively committed for long. Understand, I do not maintain that those who stayed in public interest law are particularly more noble or selfless than those who chose either not to go into public interest law or those who went into public interest law and left.[4] I seek only to explain that in many ways my personal decision to enter and stay in public interest law is not so much a function of choice as a function of who I am and who I desire to be. My personal integrity, shaded by my experiences, my family, and my sense of self, continues to give my life and work meaning and direction but limits my choices.

In the late 1960s, some key events more sharply defined my focus on public interest law. In particular I mention the assassinations of Robert F. Kennedy and Dr. King and the subsequent riots and explosive frustration which disrupted the country in the wake of their deaths. I can remember city after city burning, as I saw the riots unfold on television. Amidst the chaos, I watched thousands of young people of color being herded off to jail where they were detained for extended periods with neither the resources to effectively help themselves nor the opportunity to have their voices heard. After the embers cooled, I saw what was left of America's great urban communities. Neighborhoods and lives were devastated. Those left to survive in the riot-torn areas continued to live in squalor, trapped by diminishing opportunity in places referred to at Stanford as "inner-cities."

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4. Nonetheless, I think society, as well as disempowered individuals, benefit from more lawyers and other professionals being public interest minded and involved.

Before going to law school, I hadn't heard of such things as the right to due process or the right to counsel, and even now I do not believe that these legal tenets are determinative. However, I knew that people without great power in this country—without money, without a column in the newspaper or a team of professionals to stake their claims in court, were not the people best served by the law. Instead, they are policed and regulated in order to keep them dispossessed and effectively disenfranchised.[5] They existed, and still exist, on the margins of society. This was the public whose interests I committed myself to serve.

It was the personalization of these thoughts, reflections and realizations that crystallized my own commitment to go into public interest law. My purpose for going to law school was to gain access to tools that could be used to make society responsive to the needs of all people, and not just to the powerful.

I remember leaving sunny California in 1969 in a Volkswagon bug with a friend named John Haygood, heading across the country to Yale Law School. Yale Law School was going to be our opportunity to learn a professional skill with political and community value. However, Yale was not the solid step toward social change that I had expected. On arriving at Yale, I found that I had underestimated the alienation and distance which existed between the law and me and my goals. Not only was Yale a strange and different place from Stanford, in many ways it was hostile. I often found both the faculty and the subject matter at Yale to be incredibly callous and indifferent to my needs and to the needs of the people for whom I wished to work.

The hostility at Yale, though, was not generated by personal animosity. Indeed, I would say that many of the people I met at Yale, like many who have been at the center of the legal power structure, were simply oblivious to those living at the margins of society. I found New Haven to be a socially conservative environment compared to the West Coast. I also found myself in a level of despair, wonder-

5. *See* FRANCIS FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR; THE FUNCTIONS OF PUBLIC WELFARE (1971).

ing if I would survive the three years it would take to get a diploma from Yale.

My fate at Yale was sealed by the trial of Bobby Seales, which had just started in New Haven. It was not just the trial, it was my fellow students' reaction it. Again there was a strange distance between the students and the discussions on campus and the reality of what I was experiencing. I decided that in order to make the future in which I wanted to live, I had to find a present environment in which I could live. Yale was not it. I left and went back to my hometown of Detroit and worked for the remainder of the school year.

III. THE DIFFICULTY OF GOING HOME

Back in Detroit, I found work as an in-take worker at a social welfare office. I quickly ran into trouble with the powers that be for trying to interpret the rules and regulations as broadly as possible to assist those who had been put out of work in the auto industry. At one point, my immediate supervisor came to me and told me that, although I had not done anything wrong, I had ruffled a lot of feathers and it would be wise for me to look for another job.

I looked for another job and found one teaching students who had been pushed out of the public school system. These students had been labeled "emotionally disturbed." Virtually all of the students I taught were of color and poor. They ranged in age from fourteen to nineteen and most of them could neither add nor read. While many people talked about these students as being failures, it was clear to me that *we* had collectively failed *them.*

Within a relatively short period of time, I bonded very strongly with them. They were much like the people I had known growing up, and I had some sense of what frustrationed them. They reminded me of friends with whom I had gone to high school, some of whom were in jail and some of whom had been killed. Although these kids could neither read nor write, they were extremely bright, and in many ways, were simply unmotivated to achieve in school.

One student in particular I still consider to be one of the brightest students with whom I've had contact. I remember that I once went to

his home after he had missed school for several days to find out why he hadn't attended classes. When I got to his house, in the dead of winter, I saw a gaping hole in the side of his house, covered by a sheet of plastic that was big enough to put a couch through. I met his family and discovered that there was no push by his parents or siblings for him to even attend school, much less to succeed.

Over the period of time I worked with the students, we were able to create a community. The students began to enjoy coming to school, and after several weeks, some of them actually started to take an interest in reading, writing, and math, frequently exhibiting exceptional skill. The student whose house I had visited was starting to do work that exceeded his appropriate grade level. When I approached the administration about why this student was in "special ed," the answer I got back was completely incoherent. It was clear to me that the school administration had no interest in moving any of these students out of special education. To the school administration, the students were there to be warehoused, not to be taught or challenged; school was a holding tank that kept the students busy until, inevitably, they were jailed.

Almost all the students I taught had been exposed to drugs, many commonly came to school high. We talked about drugs in general and their use of drugs in particular. At some point word got to the administration that I was having such conversations with the students. I was fired in the middle of the semester. The students organized a protest and refused to allow anyone else into the classroom. Eventually, the school hired me back for the rest of the school year. After the school year was over and the students left, I was fired again.

The experiences of going to Yale and working as a social worker and teacher taught me some important lessons. First, these experiences highlighted some of the frustrations felt by poor people of color when working on societal problems. Second, problems were more intractable and difficult than I had originally understood, in part because the larger society seemed more intent on maintaining the existing structure than I had realized. Finally, when I left California to attend Yale, I had a certain cynicism about large, white, and powerful institutions. I felt that they were all the same. While most powerful white institutions in this country are problematic by definition, they are not all the

same. There are differences, and the differences, for personal and non-personal reasons, sometimes matter. Thus, I decided to go back to the West Coast and attend Boalt Hall.

IV. GOING THROUGH LAW SCHOOL

While my experience at Boalt was immensely better than Yale, it could hardly be described as positive. In fact, sometimes I found law school so difficult, I would literally walk backwards in order to approach the school building. This act did not go unnoticed by many of the students and faculty. Some people assumed that I was high on drugs. They simply could not fathom the degree of difficulty and frustration that I encountered at Boalt Hall. This was particularly striking since I considered it a marked improvement over Yale.

The difficulty I had with Boalt was mutual. Late in my first year, the school started a procedure to kick me out. The stated reason was that I had missed more classes than was allowed by school regulations. Of course, a number of students had missed as many classes as I had and certainly enough to violate the policy of the school. One of the black staff members at the law school, with whom I had become friends, told me that the school had intended to keep me out from the beginning. They had gotten word from Yale that I was a trouble maker. However, in the admission process, the school had gotten my name and John Haygood's name confused and had cut him out and let me in. They were now trying to correct that mistake. They allowed John in for the second year and tried to put me out.

One of the professors who came to my defense was Stefan Riesenfeld. Professor Riesenfeld was a property teacher and spoke with a heavy German accent. He was considered one of the more difficult and traditional teachers in the school. He also wielded an exceptional amount of power at Boalt Hall. While I may not have agreed with all of his views on social issues, I gained a great deal of respect for his integrity. With his help, I was not kicked out of law school. After this experience, I took as many classes as I could from Professor Riesenfeld. I would stay in law school and finish.

V. WORKING INTO LAW

While I never would learn to like law school as a student, I quickly grew to appreciate law as a practitioner. My first job was with the Navaho and Hopi tribes in Tuba City, Arizona. The tribes had sent people to recruit at Boalt Hall at the end of my second year. They had several slots open for law clerks and interns. Only two people signed up to be interviewed. I had signed up to be interviewed by the Navaho and Hopi tribes and also a number of other organizations, including Legal Services of Alameda County. I decided to work with the former, reasoning that if I didn't go there, the slot would go wanting, whereas if I did not go to Alameda County, there were still a number of people who would fill the slots.

Although my interest in public interest law had been largely defined by a sense of working with and for those who had been marginalized, I had not specifically thought in terms of Native Americans. The summer that I worked on the Navaho and Hopi reservation both confirmed a commitment to public interest law and started to shape my approach to it. While working on the reservation, I saw several cases in which clients were cheated in the purchasing of pick-up trucks or other consumer goods. It was obvious that the lawyers and law clerks who worked at DNA were making a difference to individual lives. It was not so obvious that we were challenging the structure that helped create and sustain these problems.

The short time that I spent on the reservation would not just change my approach to law, it would also change who I was. I grew to love the land and the people for and with whom I worked. With the little time that I spent with the Navaho and Hopi people, I made many friendships that touched me deeply. It reawakened in me a deep sense of spirituality about life and connectedness on one hand and the complexities of exploitation and injustice on the other. I saw Native Americans beaten up for no other reason than for being Native American. I played on a basketball team with Native Americans where the Anglos would, as a matter of course, deliberately punch us. I saw blacks in the Army come onto the reservation perpetuating negative stereotypes about Native Americans. I had Native Americans walk out

of my office telling my supervisor attorney that they did not want to be represented by "a nigger attorney." I saw Mormons doing missionary work on the reservations who still clung to a doctrine of the inferiority of Native Americans, and yet Mormonism was the fastest growing religion on the reservation. I saw struggles and hostility between the Hopis and Navaho, and I saw poverty and despair that was even deeper than what I had seen in Detroit.

All the while, the law continued to support the structure of exploitation and misery, only occasionally enabling minor changes at great cost. The law was being used in the 1970s as it had been used in the 1860s; to maintain a structure of hierarchy and exploitation, while still using terms like fairness, due process, equality and justice. I knew then that not only would I go into public interest law, serving those at the margins of society, but that I would also try to reform the law. The law was both too important and too wrong to be left alone if we were to even think about having a just society. I now understood at a much deeper level, that the problem with law was not just procedural questions such as equality of access or communication, even though those would be issues. It was about creating substantive justice too.

It was out of this experience that I started developing my approach to public interest law. But I felt that before I could proceed, there was at least one piece missing: experience with the criminal justice system. Many poor people have their first and most serious contact with the law through the criminal justice system; I needed to better understand this system. Therefore, after law school, I decided to try to fill in this missing piece. I spent my first few years out of law school working and practicing as a public defender.

Practicing law has helped me crystallize and develop my approach to public interest law from the way the law is situated to the way the profession is structured. There are few places that I can fit in comfortably both in terms of my personal needs and my personal goals; law felt much too restricted. In fact, as I worked at the public defender's office, a number of people suggested that maybe I had chosen the wrong profession, that I should do something else. But the reality is and was that for what I really wanted to do, there was no pre-packaged structure. Part of my work would have to be making a place for

myself and those like me who wanted to see substantial change, beyond the bounds of the existing structure and existing law.

VI. DEVELOPING AN APPROACH TO PUBLIC INTEREST LAW

After leaving the public defender's office, I went to work in civil legal services. In legal services, there was a very conscious and deliberate discussion as to the purpose and structure of our work. Was it to serve the needs of the individual clients? Was it to serve the needs of the client community? Was legal services a "change agency," trying to alter the structure of the lives of our clients and, therefore, society as a whole? Or was it more of a "process entity," wanting the client to gain access to the law and to the structures of the law, but basically to leave the status quo between the rich and the poor intact. I believe that the dominant society sees and saw legal services as giving the poor access to the existing legal structure.[6]

During my time in legal services, I sensed a definite bias toward individual representation at the expense of legal reform. There seems to be a tacit understanding that if legal service lawyers focus only on individual needs and on gaining access to the legal system, that the present power relations will not be disturbed. Indeed, as society has moved farther and farther away from the concept of a "war on poverty," legal services has been attacked as being an advocate of social change. In reality, Legal Services has seemed to move toward a position of accommodation of poverty. Instead of eradicating poverty and exploitation in our society, the focus has shifted to how we can treat the poor fairly, but nonetheless, maintain the structure that will keep them poor. I was and am critical of this position.

This is not to undervalue or understate the importance of representing individual clients. Indeed, I think at the other extreme there are those who fail to see the individual while fighting for changes in

6. There has been much discussion by conservatives, especially over the last fifteen years, indicting legal service agencies, such as the Legal Services Commission, as being impermissible change agencies. This indictment fueled much of the initiative by the Reagan Administration to emasculate the power and scope of the Legal Services Commission in the 1980s.

society. They work on causes or labor under some abstract concept of rights and somehow lose contact with humanity. Humanity for them becomes an amorphous ideal without a human face.[7] It is easy in such a situation for people to become less important than abstract ideals. It's important to look at the individual needs of the clients, but also to situate them in the larger context of their community and society. The most powerful forces in society are often the least visible.[8] Part of the role of those who advocate for change is to help make these invisible forces visible.

If one's goal is to produce real change in the status quo, one must work to question laws, norms, and the structure of the law—as well as one's role within society. Success can only be measured by the impact of the desired change. This attitude is something that has to a large extent developed over the last twenty years in my involvement in public interest law. It has also been informed by some of the critical work that has gone on in law in the last twenty years. Specifically, I'm thinking of critical race theory,[9] the work of the fem-crits,[10] and the critical legal studies movement,[11] as well as some of the more far reaching theories of traditional liberals such as Ronald Dworkin and John Rawls.[12]

There are a number of ways in which one can think of the law as suggested above. I will try to give some concrete examples. One can think of law in relation to the needs of the poor as primarily giving them a lawyer so that they have representation. This approach affords the client apparent access to the legal system.

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7. *See* Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

8. For a good discussion on this point, *see* Martha Minow, *The Supreme Court 1986 Term, Forward: Justice Engendered*, 101 HARV. L. REV. 10 (1987).

9. *See, e.g.*, Richard Delgado & Jean Stetanic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993).

10. *See, e.g.*, FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katherine Bartlett & Rosanne Kennedy eds., 1992).

11. *See, e.g.*, MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987).

12. *See* RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1977); JOHN RAWLS, A THEORY OF JUSTICE (1971).

The assumption of this approach is that the major problem poor people have in the law is that without a lawyer, the safeguard of the legal process is limited. This approach, of course, does not look at the structure of the legal system or even the structure of representation.

For example, if landlords can evict their tenants at will upon completing a certain procedure, then the tenant really has limited substantive protection. Yet, when I started practicing law in the 1970s, the defenses against unlawful evictions were almost always procedural defenses. Even if the house in which the tenant lived had habitability problems, or the tenant followed all the terms and conditions of the lease, the protection afforded the tenant under such processes was very limited.

This struggle over process and substance has ramifications throughout the law. Indeed, many of the more conservative members of the Supreme Court have pushed for limiting substantive improvements and changes to the law, especially in regard to improving the rights of the poor and helping to strengthen anti-discrimination law. For example, the most well know anti-discrimination case, *Brown v. Board of Education*,[13] has been substantially denuded of any substance by the Burger and Rehnquist Courts. While we consider *Brown* as marking the formal demise of *de jure* segregation, the Court continues to effectively support and maintain *de facto* segregation in areas such as education and housing.[14] Many victories in the name of formal equality have come at great cost to substantive equality, yielding minimum benefits and often leaving the conditions of the dispossessed even more intractable.[15]

An alternative way to approach the law is law reform. This approach begins with the assumption that, at times, laws themselves are unfair or insensitive to the legal claims of poor and marginal groups.

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13. 347 U.S. 483 (1954) (Brown I); Brown v. Board of Educ., 349 U.S. 294 (1955) (Brown II).

14. *See* GARY ORFIELD, NAT'L SCHOOL BD. ASSOC., THE GROWTH OF SEGREGATION IN AMERICAN SCHOOLS: CHANGING RATES OF SEGREGATION AND POVERTY SINCE 1968 (1993).

15. *See* Derrick A. Bell, Jr., *Racial Realism*, 24 Conn. L. Rev. 363 (1992); john a. powell, *Racial Realism or Racial Despair?*, 24 CONN. L. REV. 533 (1992).

Law reform, then, entails a strategy to change the law as well as alter how it is implemented. Such strategies can involve direct judicial or legislative intervention. Law reform can focus on the individual needs of a client or the broader needs of the community. As I suggested earlier, I think an appropriate approach recognizes a relationship—a fundamental connection—between the individual and the community. Indeed, as I discuss later, there are some community needs that affect the individual in important ways that can only be addressed through a more comprehensive approach.[16]

In the final analysis, the debate about the relationship between and relative effectiveness of impact work and direct service work is misplaced. The distinction between the two creates a false dichotomy. It is not either/or. Rather, both impact work and direct service work must be pursued. The question is how to structure impact and individual client work to most effectively respond to the needs of clients.

The last approach I will describe, in terms of explaining my approach to public interest work, I will call the reflective approach. This approach requires that we do not start with the law at all. Rather, we begin with the needs of the client or client community and the experiences of the client and client community in relation to the larger society.

Many of the needs that the clients have may not appear to be legal problems at all. Nonetheless, I would caution not to move too quickly to the conclusion that something is, or is not, a legal need. In fact, in many ways, the law is an evolving language. That it may not speak to the needs of our clients might, in and of itself, suggest an area of focus, change, and improvement.

I use the term "client" here loosely. I am not suggesting that someone walks into a lawyer's office and says, "I am homeless, what are my legal rights?" or "There is a toxic waste dump near my neighborhood, what can done about it?" In some ways, to be truly sensitive to client needs, one must have an affirmative strategy to find out what is happening in that community. Then, move beyond that strategy, and

16. *See* john a. powell, *Race and Poverty: A New Focus for Legal Services*, 27 CLEARINGHOUSE REV. 299 (Special Issue 1993).

interact with the community. A public interest lawyer must both investigate people's needs and help people to articulate and define their conditions and needs.

A poignant example of this technique is provided by a case that came out of my work at Evergreen Legal Services in Washington state. I was working in Evergreen's housing unit. Like many legal services programs, we quickly came to the conclusion that a lack of affordable housing constituted a major problem. Yet, most strategies that we pursued had little to do directly with improving the availability of affordable housing. The dilemma had been defined as a market problem[17] beyond the scope of legal services, public interest lawyers, and the law itself. After a great deal of work, thinking, and interacting with the community and others, Evergreen Legal Services got involved in strategies to produce additional low-income housing.

VII. STARTING WITH CLIENT NEED

I think it is fair to say that the program has been quite successful in helping to generate literally hundreds of units of low-income housing. This effort required not only a reformulation of the law, but also necessitated a reformulation of the role of the lawyer. It was not simply going to court, but entailed acting more as an advocate in the true sense of the word. What skills the lawyers at Evergreen lacked were either made up for by extra learning or outside help. Sean Blech, one of the lawyers in the program, went back to school to get an LLM in tax. Also, the program worked very closely with traditional law firms to help create the development structure to produce low-income housing.

There may be some situations where, even after the needs of the client and client community have been identified, the public interest lawyer will not have the capacity to meet them nor will the law be

17. This type of response largely ignores the relationship between the market and the law. I am not suggesting that the law can do everything or provides us with *the* answer. However, the reach and power of the law, especially in regard to addressing the needs of marginalized groups, is often undervalued as an efficacious and effective first step in the right direction.

responsive to them. Nonetheless, I believe that it is critical that one begin by assessing the needs of the client and the client's community instead of starting with the law. While it is true that the law is a tool, it is not *just* a tool. It is also a language. The law is the way in which we talk about things and is the way in which we talk to each other. Furthermore, the rights the law recognizes are constantly evolving. One of the functions of the public interest lawyer is to ensure that this language evolves in a manner responsive to the needs of our entire society and not just to the needs of those with money and power.

VIII. RACE AND POVERTY AT THE ACLU

I used this approach when I was National Legal Director of the American Civil Liberties Union. When I accepted the position of legal director, I discussed my desire to develop an affirmative race and poverty docket with Ira Glasser, the ACLU Executive Director at the time. Ira supported this effort. My intention was to try to develop a docket that was responsive to the needs of those trapped at the intersection of race and poverty in our society. Over the next several years, in thinking about this issue, it became clear to me that the existing law was unresponsive to the needs of this community. For example, a recent study by Gary Orfield demonstrates that, despite school desegregation litigation over the last forty years, America's schools are more segregated today than they were in the 1960s.[18] A book by Doug Massey and Nancy Denton illustrates the extreme inequality between races in housing, health care, education, and political power.[19] The inequality is greater for those living at the intersection of race and poverty, and yet many of the legal avenues seemed closed. And finally, in a similar vein, Andrew Hacker[20] chronicles much of the extreme segregation and inequality among racial lines in the United States.

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18. *See* ORFIELD, *supra* note 14.

19. DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID (1993).

20. ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, AND UNEQUAL (1992).

Despite these efforts, neither society nor much of the public interest world has focused on these issues. This is true, in part, because there is not a cogent understanding of the condition of those at the intersection of race and poverty and, in part, because the intersection between race and poverty is not seen as a legal issue. Law is seen as being well-settled in the area of poverty law and wealth discrimination.[21] While at first this statement seems accurate, it seems to me the start of a conversation or start of a strategy as opposed to a conversation ending observation.

At the ACLU, while working with some attorneys, in particular the associate legal director, Helen Herschoff, we tried to develop a strategy that would be responsive to some of these conditions. We decided to focus on three primary areas: education, housing, and health. To a large extent this effort was experimental. We did not know if we could get the law to be responsive in a way that could potentially impact on this area or even, if the law was responsive, what the long term effects would be. We only knew that the effort had to be made.

Considering the dire conditions of the urban racial poor in the United States, it was clear there had to be a challenge to the status quo. We recognized that the federal courts had moved away from substantive equality gains in anti-discrimination law and education.[22] Despite the status of the law, ACLU lawyers were able to begin developing a new legal language that focuses on the conditions of those trapped at this intersection. In particular, we focused on the right to adequate education. We surveyed every state in the country and found that virtually all had, in either their constitution or in their statutes, a guarantee to their students of a right to an adequate education.[23] The

21. *See, e.g.*, Dandridge v. Williams, 397 U.S. 471 (1970); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

22. I blame much of our inability to eradicate educational disparities on the Court's decision in Milliken v. Bradley, 418 U.S. 717 (1974), and Congress' work on anti-busing legislation. As a result of these, the potential of region-wide initiatives to fight educational disparity is seriously inhibited in federal court.

23. Although this type of language existed in almost all state constitutions, neither courts nor advocates had attempted to give effective meaning to it.

one state that had repealed its constitutional right to adequate education was Alabama.

Yet, it was clear that most states were not providing adequate education to a large number of students. In order to put this into effective legal language we would need a more precise measurement to determine what an adequate education is. Indeed, we had to help create this language. Some fortuitous events occurred in the 1980s, although at the time we did not appreciate them as such. Many of us had fought the implementation of educational standards in various states in the 1980s, a program promoted by then-Secretary of Education William Bennett. As a result of his actions, every state passed educational standards setting out criteria for students to meet in order to receive an adequate education. Using this standard, it became clear it was no longer necessary for us to define an adequate education. The states had already done so.

While the states were bemoaning the fact that the students were not achieving those standards, we set out to develop a connection between what the states were doing in education and the failure of students to achieve those standards. Using literature from educational experts and developing new theories, we were able to put into legal language the kinds of necessary inputs that a state would have to consider in order for a student to have a reasonable chance for an adequate education. In doing so, we found that a number of issues we thought had been foreclosed were directly implicated. For example, on the issue of funding, it was clear that inner-city schools districts need greater funding than non-inner schools because of the greater needs of the students and the greater social problems. Yet, in most cases, these school districts got less funding. Instead of working to equalize funding, we argued that the funding to these school districts ought to be higher than in others, an equity ideal as opposed to equality ideal. Such a strategy starts with assessing where the students are educationally, as opposed to relying on an abstract concept of equality.

Looking at educational equity had other advantages as well. Many experts have found that when students are segregated by race and poverty, their ability to learn is greatly diminished. So by focusing on equity, one not only addresses the funding issues, but one also begins

to look at issues of segregation by both class and race. One final note. When states recognize the right to an adequate education and promulgate standards defining an adequate education, the failure to provide the necessary support and funding does not require a showing of intentional discrimination or an intentional failure. What is required is a strong showing that the students have not been given the necessary support to have a reasonable chance to achieve an adequate education. Although the first such suit has gone to trial and produced a victory, it is too soon to tell if it will produce the kind of substantive change in the lives of the students that generated this suit in the first place.

Public interest lawyers who are sensitive to the needs of the population they serve cannot be satisfied with winning a lawsuit. Ultimately, one must look beyond the lawsuit, to work to change the law and ensure that the lawsuit produces substantial and tangible change in the everyday lives of the individual clients and the client community. If it fails to do so, then it has not been effective.

An approach that is sensitive to the needs of the community requires a sophisticated way of involving public interest lawyers, social scientists, and community members in an effort to define and redefine what those needs are. It is not appropriate for the lawyer to passively wait for the community to articulate its needs. Nor is it appropriate for the lawyer to define those needs without interacting with the community. It must be an interactive process. As the language of rights and entitlements and definitions of justice and unfairness develop, our understanding of client needs and possible strategies will also develop.

Currently, my work focuses on the intersections of race and poverty. I believe the most serious threat to our cities, and indeed, possibly to our nation, is what is happening at the intersections of race and poverty and our failure to respond to it.[24]

In terms of different approaches to public interest law, I've set up at least three different approaches. One is focusing on individual needs of the client, one is focusing on law reform and impact work, and one is focusing on needs in a larger context. Obviously these three ap-

24. *See* powell, *supra* note 16.

proaches are not mutually exclusive. All are necessary, and an effective public community organization must distribute its resources in a way that is responsive to all of these.

My own bias is to claim that our major failure has been in the latter category; focusing on client needs in relation to the larger context of the community. We have a number of attorneys focusing on individual needs of clients and a number of attorneys focusing on impact work. We don't have attorneys effectively trying to help define the critical needs of the larger community in an interactive and sophisticated manner. I believe that ultimately the individual needs of clients are very much bound up in this latter process. For example, when one lives in a community where there is extreme violence and poverty, there are both individual needs and a larger need. It is doubtful that a lawyer can effectively impact individual needs unless he or she also understands the larger needs.[25]

IX. CONCLUSION: NOT WINNING BUT REFUSING TO LOSE

There is a quote I saw several years ago in a newspaper that I think is worth mentioning. It compared the 1960s with the 1980s. The gist of it was in the 1960s we thought all things were possible, in the 1980s we thought nothing was possible. It seems to me that both positions are clearly wrong, but that the more dangerous of propositions is the latter.

Before concluding, I would like to spend at least a little time discussing burnout. A number of people have asked me how to avoid burnout. Certainly, a number of friends and colleagues with whom I started in the public interest world eventually left it. When I started practicing law in the early 1970s there was a great deal of idealism. I think many people thought we were very close to eradicating the more difficult problems in our society and that within a few years time, we would achieve racial justice and eradicate poverty. Many of us thought we would live in a society where race and gender would no longer be important in terms of distributing social resources. We thought that the

25. *Id.*

War On Poverty would end in decisive victory. Obviously, we were wrong.

I think that the frustration of working on a community's problems, at times not only seeing the lack of progress, but the loss of past victories, disheartened many people. Many left public interest work for this reason. I think there was a mood of cynicism that not only affected people's professional lives but affected them personally as well.[26] The hope generated in the 1960s and early 1970s was dashed in the late 1970s and 1980s. I think the frustration and sadness that the latter period ushered in caused many people to leave the public interest world.

Of course, many of us during the 1960s and 1970s also could not see ourselves getting older. We could not see ourselves having families and kids and experiencing stiff joints and failing vision. In the end, we had not only anticipated unrealistic change in the world, we had also anticipated a lack of change in ourselves.

However, it seems to me, that if one takes a more sober attitude, it is possible to do work in this area for a lifetime without burning out. First of all, as I suggested earlier in this paper, one must see the work one is doing as not simply helping others, but as responding to one's own sense of integrity and humanness. If some see this work as an expression of the self, burnout is less likely.

Certainly, I've had my days when I have been stunned by the realization that after twenty years of working on issues of poverty and racism we, in many ways, seem further from the goal than we were 20 years ago. And as I think about my own children, I sometimes wonder if I have contributed anything at all to making the world a better place for those who inhabit it or those who will inhabit it in the future.[27] Ultimately, I continue to go forward, for two reasons. One is

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26. *See* DERRICK A. BELL, JR., AND WE ARE NOT SAVED (1989); john a. powell, *Racial Realism or Racial Despair?*, 24 CONN. L. REV. 533 (1992).

27. My daughter, Saneta, recently expressed a sense of hopelessness, in part because her mother and I have worked on issues of racism, sexism, and poverty for all of her life, and she does not see much in the way of improvement. This reminded me that I felt that my parent had also failed in eradicating racism and injustice from our society. I do not generally experience a sense of hope or hopelessness, but a feeling that this is good work.

my basic caring about humanity. When I first started public interest work, I was certainly motivated by a sense of justice and a need for change, but much of the motivation was also bound up in my personal frustration and anger. As I've gotten older, there's been a diminished sense of anger, and I would hope, an increased capacity of compassion and humility.

I would like to think that my work is bound up much more closely with a deep sense of caring. But even this by itself sometimes is not enough. I believe it is important periodically to interact most directly with the problems and people and conditions that one is working on. I've tried to structure my work so that I do this. And when I see rows and rows of atrocious, substandard subsidized housing on the south side of Chicago, where elevators don't work, where the maintenance is non-existent, and where there hangs a choking stench of urine and garbage, I am affected very deeply.

Unfortunately, as I return to my home, at some point the images start to fade. Therefore, it is important for one to renew one's contact with the part of the human family we often call clients and believe that we are all profoundly connected in obvious and subtle ways. I think to keep in touch with this, given the way our lives are structured, we need specific efforts and strategies.

The second reason is more closely tied to who I am and how I need to be in the world. Ultimately, I don't know if my efforts have made the world better for others or will make the world better for my children. Hopefully, it will produce a change for the better. But I know this is not a job or even a career; the work I do is an expression of who I am and at some fundamental level, given the conditions of our society, I feel that I've been fortunate to have had the opportunity to try make the world safe for humans. I do not know if the world is any better for my effort, but I certainly am.

If we live in a troubled world, there seems no place to go execpt foreword—recognizing the world as it is while we try to tranform it—and ourselves. My approach to public interest law is very much my approach to life and how I want to be in this world.