

THIRTEEN PRINCIPLES FOR EFFECTIVE ADVOCACY

*Florence Wagman Roisman**

John Payne was a powerful, creative, effective advocate for racial and economic integration and justice. He also was a renowned, respected expert in the fields of land use and constitutional law. His extraordinary combination of action and scholarship made him a central figure in the seminal, prophetic development of the *Mount laurel* doctrine, rooted in litigation and then restricted by legislative, agency, and executive action. He had played a vital role in the development of the doctrine, and then his scholarly writing—wise, prescient, persevering, and ever faithful to fundamental principles—called every actor to maintain the integrity of the constitutional principle *Mount Laurel* had established.¹

What I offer here as a tribute to him is a speech I gave to legal services advocates, reflecting a perspective gained in decades of legal services work.² I have organized this into thirteen principles; all are related to one another, but I discuss them separately to make them more clear. Perhaps they all can be captured in these maxims:

Think big,
Be greedy,
Be unreasonable,
Be creative, and

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1. See, e.g., John M. Payne, *Reconstructing the Constitutional Theory of Mount Laurel II*, 3 WASH. U. J.L. & POL'Y 555 (2000); John M. Payne, *Fairly Sharing Affordable Housing Obligations: The Mount Laurel Matrix*, 22 W. NEW ENG. L. REV. 365 (2000); John M. Payne, *Lawyers, Judges, and the Public Interest*, 96 MICH. L. REV. 1685 (1997).

2. I delivered this speech to Legal Services New York City (LSNYC) on January 10, 2008. For inviting me to give the talk, I am grateful to Andrew Scherer and Raun Rasumussen, who then were, respectively, the Executive Director and Chief of Litigation and Advocacy of LSNYC.

Be strategic.³

These suggestions all relate to relief. When a group of us put together the first federal litigation manual, we started with the principle that “relief is what a lawsuit is all about”⁴ When we did training for legal services lawyers, we always said: think about relief first.⁵ Writing a proposed order is not just a technical requirement; it’s a crucial way of focusing attention on the central point of a lawsuit. Proposed relief should be reviewed periodically, whether in litigation or in any other form of advocacy, throughout the representation.

The first principle is: Expand the client’s expectations; enlarge the client’s vision of what’s possible. Not unreasonably, clients often don’t expect much from the legal system. We all know that when a client comes in with a writ of execution for an order of eviction and says that what she wants is just a few more days in which to move, we have to expand her sense of what’s possible, to make her understand that she may be able to fight the eviction altogether, may be able to require that the home be put into decent condition, may be able to secure a rent rebate or damages. Often we are able to establish new rules in defending garden-variety service cases—as happened with the cases establishing the implied warranty of habitability,⁶ the

3. For other expressions of this perspective, see Florence Wagman Roisman, *The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time*, 19 ST. LOUIS U. PUB. L. REV. 237 (2000), reprinted in REPRESENTING THE POOR AND HOMELESS: INNOVATIONS IN ADVOCACY 21 (Sidney D. Watson ed., 2001); Florence Wagman Roisman, *Aggressive Advocacy*, XVII MANAGEMENT INFORMATION EXCHANGE 21 (2003) (reprinting the keynote speech given at the June 23, 2002, national Legal Aid and Defender Association (NLADA) Litigation and Advocacy Directors Conference at Snowbird, Utah, available at <http://indylaw.indiana.edu/instructors/roisman/utah.pdf> (last visited Apr. 1, 2011)); Florence Wagman Roisman, *Using International and Foreign Human Rights Law in Public Interest Advocacy*, 18 IND. INT’L & COMP. L. REV. 1 (2008), presented at the National Legal Aid and Defender Association’s 2006 Litigation and Advocacy Directors Conference.

4. FEDERAL PRACTICE MANUAL FOR LEGAL SERVICES ATTORNEYS 2 (Michael R. Masinter ed., 1989) (crediting Luther Granquist of the Legal Aid Society of Minneapolis). For a history of legal services’ federal litigation manuals, see Florence Wagman Roisman, *Foreword* to FEDERAL PRACTICE MANUAL FOR LEGAL AID ATTORNEYS xi (Jeffery S. Gutman, ed., 2d ed. 2004), available at http://www.lsnec.net/special/Federal_Practice_Manual_2004.pdf.

5. Roisman, *supra* note 4, at xii (discussing federal litigation training).

6. See *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970). For a full discussion of *Javins*, see Richard H. Chused, Saunders (*a.k.a.* Javins) v. First National Realty Corporation, 11 GEO. J. ON POVERTY L. & POL’Y 191 (2004). A shorter version appears in PROPERTY STORIES 121 (Gerald Korngold & Andrew P. Morriss eds., 2004).

doctrine of retaliatory eviction,⁷ the due process rights of tenants in public and subsidized housing,⁸ and consumer rights.⁹

The second principle is: Look for common elements in the problems you're addressing. John Bouman, a brilliant benefits lawyer who is the president of the Sargent Shriver National Center on Poverty Law, has spoken and written about the intricate connections between service work and impact work, and the ways in which service work informs and shapes law reform efforts.¹⁰ If all of the tenants in a building are being evicted, if you want to stop displacement from a neighborhood, then you want to address the elements that are common to all of the individual situations for which you want to provide remedy.

The third principle is: Assess the extent to which various forms of prejudice or discrimination are underlying causes of the problems you're trying to solve. This is partly because identifying such discrimination may make additional legal tools available. For example, years ago we litigated a case in which we tried to stop a landowner from evicting all the residents of a development, which the owner said it was doing in order to rehab the buildings and turn them into "luxury" units.¹¹ Based only on the fact that most of the tenants were Black or Latino, we argued that the displacement violated the Fair Housing Act. We had planned to make a case of disparate racial and ethnic impact, but the judge held, erroneously, that we would have to prove intentional racial discrimination. In the course of discovery into the owner's marketing, advertising, and other plans, we realized that we had strong evidence of intentional

7. See *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).

8. See *Escalera v. N.Y.C. Hous. Auth.*, 425 F.2d 853 (2d Cir. 1970); *Caulder v. Durham Hous. Auth.*, 433 F.2d 998 (4th Cir. 1970); *Carter v. Md. Mgmt. Co.*, 835 A.2d 158, 164-65 (Md. 2003) (holding that good cause for eviction is required in Low Income Housing Tax Credit developments); NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS' RIGHTS § 14/2 (3d ed. 2004) [hereinafter HUD HOUSING PROGRAMS] (discussing the evolution of due process rights); NATIONAL HOUSING LAW PROJECT, RHCDS (FMHA) HOUSING PROGRAMS: TENANTS' AND PURCHASERS' RIGHTS, ch. 14 (2d ed. 1995) [hereinafter RHCDS (FMHA) HOUSING PROGRAMS] (discussing the requirements for housing programs of the U.S. Department of Agriculture). For a summary, see Florence Wagman Roisman, *The Right to Remain: Common Law Protections for Security of Tenure: An Essay in Honor of John Otis Calmore*, 86 N.C. L. REV. 817, 831 (2008).

9. See *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

10. John Bouman, Keynote Speech at the Norman Amaker Midwest Public Interest Law Retreat (Feb. 25, 2004) (outline on file with Florence Wagman Roisman and John Bouman); see also, John Bouman, *The Power of Working with Community Organizations: The Illinois FamilyCare Campaign—Effective Results Through Collaboration*, 38 CLEARINGHOUSE REV. 583 (2005).

11. *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106 (D.D.C. 1987).

racial and ethnic discrimination—strong evidence that the way in which the owner went about the evictions and rehab work was heavily influenced by the owner's desire to replace the tenants of color with white, non-Hispanic people. In the decades since that litigation, study and experience have persuaded me that usually when there is a disparate racial or ethnic impact, there was intentional racial or ethnic discrimination motivating the action.¹²

I understand that displacement and gentrification are enormous problems for your clients. When the people who are being displaced disproportionately are people of color, I think it would be very useful to brainstorm about potential Fair Housing Act claims. Housing-related actions with disparate impact on racial or ethnic groups or women are highly vulnerable to Fair Housing Act claims, and the statute has a powerful mandate to government agencies to act "affirmatively to further" not only non-discrimination, but integration.¹³

In their very important book, *American Apartheid: Segregation and the Making of the Underclass*, Douglas Massey and Nancy Denton write that "racial residential segregation is the principal structural feature of American society responsible for the perpetuation of urban poverty and represents a primary cause of racial inequality in the United States."¹⁴ In 2002, *Clearinghouse Review* had a special double issue on race and poverty, offering many articles about how to attack problems at the intersection of race and poverty. In my own article in that issue, I wrote that

housing advocates should look closely at every predominantly white community that has good schools, employment opportunities, security, and other public and private facilities and services and ask two questions: what keeps poor people of color out of that community, and what would be the most effective way to get poor people of color into that community?¹⁵

12. See Elizabeth K. Julian & Michael M. Daniel, *Separate and Unequal—The Root and Branch of Public Housing Segregation*, 23 CLEARINGHOUSE REV. 666 (1989).

13. See 42 U.S.C. § 3608(d), (e) (2006); see also Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 353-88 (2007); *United States ex rel. Anti-discrimination Ctr. of Metro N.Y. v. Westchester Cnty.*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007).

14. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* viii (1993). See also John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1955 (1999) ("When race and space are synergistically involved with poverty, race-neutral or color-blind poverty practice is naively wrong-headed.")

15. Florence Wagman Roisman, *Housing, Poverty, and Racial Justice: How Civil Rights Laws Can Redress the Housing Problems of Poor People*, 36 CLEARINGHOUSE

We also should be advancing prohibitions on discrimination on such bases as source and amount of income.¹⁶ And we should be arguing for expansion of Fourteenth Amendment protections, using state constitutional provisions, and making full use of statutory protections.¹⁷

The fourth principle is: Use human rights discourse. What we know as “civil rights” began as part of human rights discourse and then got diverted into the narrower, more specific, stream by red-baiting that identified “human rights” with communism.¹⁸ We should re-link our anti-racist, anti-poverty work to human rights work.

Andy has been a pioneer in this respect.¹⁹ Even the current Supreme Court majority—the majority of the Roberts-Alito court—has shown its willingness to consider human rights doctrine.²⁰ Justice Breyer has said:

Neither I nor my law clerks can easily find relevant comparative material on our own. The lawyers must do the basic work, finding, analyzing, and referring us to, that material. I know there is a chicken and egg problem. The lawyers will do so only if they believe the courts are receptive. By now, however, it should be clear that the chicken has broken out of the egg. The demand is there.²¹

REV. 21, 26-27 (2002).

16. See *State, Local and Federal Statutes Against Source of Income Discrimination*, POVERTY & RACE RESEARCH ACTION COUNCIL, http://www.prrac.org/pdf/Source_of_Income_Summary.pdf (last visited Apr. 4, 2011).

17. See Helen Hershkoff, *State Courts and the “Passive Virtues”: Rethinking the Judicial Function*, 114 HARV. L. REV. 1833 (2001); Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131 (1999); William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977); Helen Hershkoff, *Transforming Legal Theory in the Light of Practice: The Judicial Application of Social and Economic Rights to Private Orderings*, in *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD* 268, 294-99 (Varun Gauri & Daniel M. Brinks eds., 2008).

18. See generally CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944-1955* (2003); MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

19. See, e.g., Maria Foscarinis et al., *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 CLEARINGHOUSE REV. 97 (2004).

20. See, e.g., Florence Wagman Roisman, *Using International and Foreign Human Rights Law in Public Interest Advocacy*, 18 IND. INT’L & COMP. L. REV. 1, 4-13 (2008); Martha F. Davis, *Human Rights in the Trenches: Using International Human Rights Law in “Everyday” Legal Aid Cases*, 41 CLEARINGHOUSE REV. 413, 413-15 (2007); Connie de la Vega, *Using International Human Rights Law in Legal Services Cases*, 22 CLEARINGHOUSE REV. 1242, 1244 (1989); Connie de la Vega, *Protecting Economic, Social and Cultural Rights*, 15 WHITTIER L. REV. 471, 479 (1994).

21. Stephen J. Breyer, *The Supreme Court and the New International Law*,

Legal services advocates should be talking human rights talk to the courts and other decision-makers, and to the public.

The fifth principle is: Consider many different forms of relief. Litigation—individual, group, or class; federal or state; aggressive or defensive—is only one form of advocacy available to us. Others include:

Legislative and agency work,
Media and other public relations work,
Public education,
Use of the internet, and
Direct action.

Think about *why* your clients are suffering, what has to change in order to end or at least alleviate that suffering, and how to make those changes. Ask who has to do what, and what and who influences those people. Decision makers are very much influenced by what's around them—by T.V., the press, and the internet—by the zeitgeist.

We've seen two recent instances of the "power of the press." The first was with respect to the unsatisfactory work of immigration judges. Several federal courts of appeals expressed concern about how immigration judges were handling their cases, but it wasn't until the media gave prominence to those complaints that action was taken to improve the conduct of the immigration judges.²²

The second illustration involves the egregious delays in deciding disability cases. A front page story in the *New York Times* evoked almost immediate improvement.²³

With respect to what we in legal services used to call "multi-

Address at the Ninety-Seventh Annual Meeting of the American Society of International Law, Washington, D.C. (April 4, 2003), available at www.supremecourtus.gov/publicinfo/speeches/viewspeeches.aspx?Filename=sp_04-04-03.html; see also Ruth Bader Ginsburg & Deborah Jones Merritt, *Affirmative Action: An International Human Rights Dialogue*, 21 CARDOZO L. REV. 253 (1999); Editorial, *A Respect for World Opinion*, N.Y. TIMES, Aug. 2, 2010, at A22 (endorsing Justice Ginsburg's views).

22. See Rachel Swarns, *U.S. May be Mishandling Asylum Seekers, Panel Says*, N.Y. TIMES, Feb. 8, 2007, at A17; Nina Bernstein, *Immigration Judge is Reassigned to a Desk Job*, N.Y. TIMES, Mar. 13, 2007, at B1; Julia Preston, *Wide Disparities Found in Judging of Asylum Cases*, N.Y. TIMES, May 31, 2007, at A1; Nina Bernstein, *Judge Who Chastised Weeping Asylum Seeker Is Taken Off Case*, N.Y. TIMES, Sept. 20, 2007, at B1; see also Linda Kelly Hill, *Holding the Due Process Line for Asylum*, 36 HOFSTRA L. REV. 85, 103-09 (2007) (describing the unacceptable intemperance displayed by immigration judges towards asylum seekers).

23. Erik Eckholm, *Disability Cases Last Far Longer as Backlog Rises*, N.Y. TIMES, Dec. 10, 2007, at A1.

forum advocacy,” it’s edifying to consider how the battle against the death penalty is being conducted. Opponents are using academic reports, state legislatures, state courts, and media.²⁴ They are making incremental changes—securing prohibitions of capital punishment for juveniles²⁵ and for people who are mentally retarded.²⁶ The death penalty is enduring death by a thousand cuts.²⁷

The sixth principle is: Look for structural remedies; try to create change that isn’t just a band-aid but makes it less likely that precisely the same kind of problem will arise for other people. This is true for individual service work, as well as for what’s been called “impact litigation” or “policy work.” In the landlord-tenant and consumer areas, for example, some of the most important “impact” work has been done in the context of defending individual service cases—in cases such as *Williams v. Walker-Thomas*²⁸ and a host of landlord-tenant cases, including those that involve the implied warranty of habitability,²⁹ retaliatory eviction,³⁰ and the due process rights of tenants in public and subsidized housing.³¹

24. See Ken Armstrong & Steve Mills, *The Failure of the Death Penalty in Illinois*, CHI. TRIB., Nov. 14, 1999, at 1 (the Governor imposed a moratorium on capital punishment in Illinois due to reporting which stated that at least twelve innocent men were sent to death row); *Chicago Tribune Emery A Brownell Media Award*, NLADA CORNERSTONE, Fall 2000, at 8, available at www.nlada.org/DMS/Documents/998323598.89/Fall%202000%20%20Cornerstone%20Final.pdf (Ken Armstrong and Steve Mills, reporters at The Chicago Tribune, won the Emery A. Brownell Media Award, for which they were nominated by Marshall Hartman, Illinois State Deputy Appellate Defender). The authors have also received or been finalists for other numerous awards such as the George Polk Award, the Thurgood Marshall Journalism Award, and the Goldsmith Investigative Reporting Prize. See *Previous Winners of the George Polk Awards*, LONG ISLAND UNIVERSITY, <http://www.liunet.edu/About/News/Polk/Previous.aspx#1999> (last visited Apr. 4, 2011); *Thurgood Marshall Journalism Award Winners*, DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/thurgood-marshall-journalism-awards> (last visited Apr. 4, 2011); *Investigative Reporting Prize*, HARVARD KENNEDY SCHOOL, http://www.hks.harvard.edu/presspol/prizes_lectures/goldsmith_awards/investigative_reporting.html (last visited Apr. 4, 2011).

25. *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (barring capital punishment for juveniles).

26. *Atkins v. Virginia*, 536 U.S. 304, 320-21 (2002) (barring capital punishment for people who are mentally retarded).

27. At the time of this speech, the use of lethal injections was being challenged, but the Supreme Court rejected that challenge in *Baze v. Rees*, 553 U.S. 35, 61-62 (2008) (upholding lethal injections as a manner of execution).

28. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

29. See *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970).

30. See *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969).

31. See *supra* note 8.

The *Jiggetts* litigation is a wonderful example of this kind of advocacy.³² And *Jiggetts* teaches another lesson, too—that what looks like slight relief may turn out to be much bigger than was thought. When *Jiggetts* first was decided, some people said, “well, this isn’t a big deal, because the legislature can frustrate all relief simply by changing the statute.” This was true—but the legislature didn’t do that. Similarly, in many cases, one might win “just” a temporary restraining order or preliminary injunction, which looks like only temporary relief, but the temporary restraining order or preliminary injunction may in fact turn into permanent relief.

Unless things have changed since I used to do landlord-tenant work, one of the big challenges for people who are doing eviction defense is figuring out where clients can live if the eviction defense is unsuccessful. In this regard, we want to be thinking about how to gain admission to developments that can provide decent housing to clients—which often means developments financed by the Low Income Housing Tax Credit (LIHTC) program. Great litigation in this regard is being done by the Fair Housing Justice Center, South Brooklyn Legal Services, and the law firm of Relman & Dane. The Court House Apartments case involves housing in New York’s 80/20 program;³³ that same kind of litigation, challenging more onerous requirements for disabled poor people of color than for market-rate tenants, could be brought with respect to LIHTC developments.³⁴

It is important also to challenge impediments to admission to well-served neighborhoods. New developments in neighborhoods of opportunity should be subject to inclusionary requirements.³⁵

The seventh principle is, explicitly: Be unreasonable. The society in which we live is brutal, primitive, inhumane. What is considered “reasonable” is to deny to many people decent housing, a sound education, good health care, and other necessities.

The “mainstream” values property over people. When we challenge the mainstream, we have to take ourselves out of our intellectual and social environment, to change the fundamental rules to which we’re accustomed.

What the “mainstream” offers is choices that are unacceptable—

32. *Jiggetts v. Grinker*, 553 N.E.2d 570 (N.Y. 1990).

33. *Woodard v. Court House Apts., Two Trees Mgmt.*, 1:07-cv-04215-BMC-KAM (E.D.N.Y. filed Oct. 10, 2007) (dismissed with prejudice on July 24, 2008).

34. See Elizabeth K. Julian, *Recent Advocacy Related to the Low Income Housing Tax Credit and Fair Housing*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 185 (2009) (arguing that programs like LIHTC are undermined by a lack of protection for the civil rights of low-income people of color).

35. See Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65, 77-85 (2001) (discussing inclusionary requirements in Massachusetts, New Jersey, and elsewhere).

for example, either segregated subsidized housing or none at all.³⁶ We should not accept the choices; our choice should be: “none of the above.” We ourselves must—and we must encourage others to—think “outside the box.” Give yourselves quiet time to expand your thinking, to get away from the dominant discourse, to be greedy and unreasonable.

We should recognize that it will be difficult to achieve substantial relief, that we’ll be pushing uphill with a powerful boulder on our hands, challenging the mainstream, the status quo. Be unreasonable; be greedy.

I’ll offer a small, personal example of this. I recently wanted to write an article that would promote security of tenure for tenants in privately-owned housing, to advance the notion that tenants should not be evicted except on a showing of good cause. I myself—a tenant advocate for forty years, considered by many to be a “radical” (whatever that means)—had a huge amount of trouble wrapping my own mind around the notion that a landlord should not be able to evict a tenant when the landlord’s only reason for doing so is that the landlord could make more money by putting the property to another use. I really had to steep myself in the New Jersey and European and other conceptual systems to beat down the idea that a landowner’s desire to make money is more important than a tenant’s desire to maintain a homeplace.³⁷

We need to push for new doctrines:

- *to insist on a sounder interpretation of the Fourteenth Amendment, making poverty a suspect classification and such rights as housing, fundamental rights;
- *to develop the jurisprudence and expand the breadth of the Thirteenth Amendment;³⁸ and

36. See *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971) (holding that the discriminatory practices of the U.S. Department of Housing and Urban Development violated the Due Process Clause of the Fifth Amendment); see also Arnold R. Hirsch, *Searching for a “Sound Negro Policy”: A Racial Agenda for the Housing Acts of 1949 and 1954*, 11 HOUS. POL’Y DEBATE 393 (2000) (discussing the legislative history of the 1949 Housing Act, when “liberals” defeated a proposal to ban segregation in public housing because they recognized that the ban had been proposed in order to defeat public housing altogether. New York Congressman Vito Marcantonio supported the ban).

37. See Roisman, *supra* note 8; see also Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 750 n.185 (1988) (stating that we need a paradigm shift, an “abnormal discourse” that puts homelessness and poverty beyond the pale).

38. See Florence Wagman Roisman, *Constitutional and Statutory Mandates for Residential Racial Integration and the Validity of Race-Conscious, Affirmative Action to Achieve It*, in *THE INTEGRATION DEBATE* 67, 77-79 (Gregory D. Squires & Chester Hartman eds., 2010).

*to use state constitutions as a basis for protecting more people, following suggestions made in Helen Hershkoff's pathbreaking articles.³⁹

When we make these arguments and lose, we must keep making them. The NAACP and other civil rights lawyers attacked racially restrictive covenants for decades, losing most of the cases until *Shelley v. Kraemer* and *Hurd v. Hodge*.⁴⁰ The battle against the death penalty has been slow and incremental.⁴¹ We're in this struggle for the long haul.⁴² Another way of putting this principle is: do the thing that's scary.⁴³

The eighth principle is: Support progressive groups and individuals whenever you see them acting against perceived injustices and claiming entitlements. One never knows what individual or group protest is going to spark effective change. Rosa Parks wasn't the first African-American to refuse to move to the back of a bus;⁴⁴ Montgomery wasn't the first city where Blacks had tried to mount a boycott of segregated buses.⁴⁵ But the presence of swift legal aid for Mrs. Parks and the Montgomery bus boycott helped to make Montgomery a crucial source of new movement. It was vitally important that Fred Grey and Clifford Durr had established relationships with Mrs. Parks and E.D. Nixon, head of the local NAACP. Because of these established relationships, they were

39. See *supra* note 17.

40. *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Hurd v. Hodge*, 334 U.S. 24 (1948).

41. See *supra* text accompanying notes 24-27.

42. The Right has been arguing to restore *Lochner* and eliminate footnote 4 of *Carolene Products*. See, e.g., Letter from José Juárez & Holly Maguigan, Co-Presidents of the Society of American Law Teachers, to the Honorable Arlen Specter and the Honorable Patrick Leahy (Mar. 22, 2005) (on file with author) (discussing the views of Judge Janice Rogers Brown). These seem like fruitless arguments, but the Right has learned that perseverance pays. Who would have thought that the doctrine of *Brown v. Board* could be undermined as it has been in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701 (2007)? See *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 803 (2007) (Stevens, J., dissenting) ("The Court has changed significantly since it decided *School Comm. of Boston* in 1968. It was then more faithful to *Brown* and more respectful of our precedent than it is today. It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision."); see generally, STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT* (2008).

43. "Let us never forget how eternal slavery looked at the time John Brown was hanged, and how soon afterwards Union soldiers were on the march." PATRICIA SULLIVAN, *DAYS OF HOPE: RACE AND DEMOCRACY IN THE NEW DEAL ERA* 272 (1996) (quoting Charles Houston, *BALTIMORE AFRO-AMERICAN*, Sept. 11, 1948).

44. See *Morgan v. Commonwealth of Virginia*, 328 U.S. 373, 374-75 (1946); see also PHILLIP HOOSE & CLAUDETTE COLVIN: *TWICE TOWARD JUSTICE* (2009) (detailing the story of an Alabama woman who refused to follow bus segregation rules).

45. See TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63*, at 120-23, 127-31 (1989).

trusted when immediate action was called for after Mrs. Parks's arrest.⁴⁶ Michael McCann, who has studied how social change happens, has written that liberating movements "most often evolve incrementally through a series of more limited local struggles over quite concrete, often trivial ends . . . [T]hey often provide rehearsals of opposition that prepare the way for bolder challenges in more propitious moments."⁴⁷

The ninth principle is: Pay special attention to young people. We can teach them, and they can teach us. Their energy and low tolerance for oppression will bring new boldness to our advocacy, and they should be enabled to stand on our shoulders and not have to reinvent the wheels on which we've been spinning.

The tenth principle is: Be collaborative. With respect to any issue, ask who else cares about this issue. Who else might benefit from the kind of relief we're seeking for our clients?

Your colleagues produced a good illustration of this in *Jiggetts*, making use of the fact that landlords, as well as tenants, benefit when the tenants receive housing subsidies. Public housing authorities as well as tenants benefit when more money is provided by HUD. State and local agencies, as well as clients, benefit when federal agencies provide money for social services—for example, when children who are in foster care receive SSI.

Ask these questions also within your program—linking those who do service and impact work, and across areas of specialization. Ask this with respect to other programs and organizations in the city, the state, the region, and nationally.

Take advantage of training and other conferences. Meeting people is very important.⁴⁸ To take a personal example, I have learned many valuable lessons from my longstanding relationships with Andy, Raun, Chip Grey, Steve Banks, Scott Rosenberg, and many others whom I met at Legal Services or related conferences or meetings.

The eleventh principle is: Educate, educate, educate. Recognize that what you know, what is obvious to you, is not obvious to others, is not known by others. Tell the stories of your clients, and people who are like your clients. Tell your family (especially those who keep wondering when you are going to "get a real job"). Tell your friends, judges, students, and the public—through op-ed articles, letters to

46. *Id.* See also JOHN A. SALMOND, *THE CONSCIENCE OF A LAWYER: CLIFFORD J. DURR AND AMERICAN CIVIL LIBERTIES, 1899-1975*, at 171-77 (1990); *OUTSIDE THE MAGIC CIRCLE: THE AUTOBIOGRAPHY OF VIRGINIA FOSTER DURR* 278-81 (Hollinger F. Barnard ed., 1990).

47. MICHAEL W. MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* 307 (1994).

48. See Roisman, *supra* note 3, at 249 & n.60, 250.

the editor, the internet, on blogs; talk at your place of worship (if you worship). As appropriate, you might take as your theme the “covenant to overcome poverty” adopted by the National Council of Churches and other religious leaders, declaring that “[j]ust as some of our religious forebears decided no longer to accept slavery or segregation, we decide to no longer accept poverty and its disproportionate impact on people of color.”⁴⁹

These may seem small things to do—though they’re difficult. (I think that speaking to one’s family may be the most difficult kind of advocacy—and sometimes we shouldn’t do it.) In those conversations, I think we need to be rather as Howard Zinn, quoting Wendell Phillips, described the abolitionist leader Angelina Grimke, who exhibited “serene indifference to the judgment of those about her.”⁵⁰

In support of the importance of doing such things, I would cite Gandhi, who has been quoted as saying: “almost everything you do will seem insignificant, but it is important that you do it.”⁵¹ I would cite also William Lee Miller’s wonderful book, *Arguing About Slavery*, in which he said—citing John C. Calhoun—that:

If there is a constant drumbeat of moral argument . . . eventually it begins to have its effect, even upon those who initially reject the argument A group of people, a culture, certainly has many ideas on the same topic, diverse and contradictory, simultaneously present. Argument and persuasion, and the changing of the cultural atmosphere, can elevate one idea and subordinate another.⁵²

We’ve seen dramatic changes in our lifetimes—the end of apartheid, the fall of communism, the denigration of smoking, and now reactions to climate change. And we’ve certainly seen the strong beginnings of shifts with regard to race and with regard to the position of women in society. There is every reason to believe that there can be such a major societal shift with regard to poverty and inequality, if people like us work hard to make that change happen. To quote Gandhi again: “We must be the change we wish to see.”⁵³

49. Gustave Niebuhr, *Christian Groups Urge a Vast, Coordinated Attack on Poverty*, N.Y. TIMES, Feb. 17, 2000, at A18; see also *Covenant to Overcome Poverty – NCCCUSA Story*, WORLDWIDE FAITH NEWS (Feb. 16, 2000, 8:10 AM), <http://www.wfn.org/2000/02/msg00111.html>.

50. Howard Zinn, *Abolitionists, Freedom-Riders, and the Tactics of Agitation*, in THE ANTISLAVERY VANGUARD: NEW ESSAYS ON THE ABOLITIONISTS 417, 432 (Martin Duberman ed. 1965).

51. *Mahatma Gandhi Quotes*, THINK EXIST, http://thinkexist.com/quotes/mahatma_gandhi/3.html (last visited Apr. 4, 2011).

52. WILLIAM LEE MILLER, ARGUING ABOUT SLAVERY: THE GREAT BATTLE IN THE UNITED STATES CONGRESS 507–08 (1996).

53. THE YALE BOOK OF QUOTATIONS 299 (Fred R. Shapiro, ed. 2006).

The twelfth principle is: Take the long view. Be impatient in your advocacy, but patient in assessing the results of your advocacy.

A sense of history is very important for this. It's true that we don't like today's Supreme Court or its doctrine as well as we liked the Court and its doctrine in the 1960's, but it's also true that we like today's Court and doctrine much more than the Court and doctrine of a hundred years ago. A hundred years ago, there were race riots in Springfield, East St. Louis, Chicago, and many other places. *Plessy v. Ferguson* was the governing doctrine.

Fifty years ago, there were no civil rights acts of 1964, 1965, or 1968; no Titles II, VII, VIII, or IX; no Voting Rights Act; no ADA; no food stamp, Medicare, Medicaid, etc., programs.

The federal courts are conservative, but so were they well through the 1950s, when much important change was made. There were few very progressive people who sat on the Supreme Court before the 1950s. You've had a few in the New York State courts, but not a huge number.

The big challenge—part of what makes our work hard and professionally gratifying—is to convince judges and other decision-makers who start out unsympathetic to us and our clients. I began in legal services in 1967, in D.C. We had a great federal court of appeals, but very bad local courts—and we legal services lawyers had nowhere near the extent or sophistication of legal services advocates today.

Part of what helps is to squeeze in time for some reading that will provide perspective on your work and your life. I am sure that most of you are trying to find time for what's already in your life—starting, but not ending, with family and work, not to mention entertainment and exercise. It probably sounds bizarre for me to be urging you to add something to your schedule. But I do think it's healthy—indeed, essential—to read things that provide context for your work. I do think we all should read fiction and poetry, but I think we also should read the important books of history and social science that help us to understand the problems we're addressing professionally.

The thirteenth and final principle is: Persevere. Everything worth doing takes time—a great deal of time. Think about the campaign to establish a right to counsel in civil cases—when did Andy write the first of those articles about a civil *Gideon*?⁵⁴ Think about *Jiggetts*, and Steve Banks's work on behalf of homeless people.⁵⁵ The

54. See Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. C.R.-C.L. L. REV. 557 (1988).

55. See, e.g., Julie Bosman, *Shortage of Beds for Homeless in City*, N.Y. TIMES, Dec.

Gautreaux litigation in Chicago has marked its fortieth anniversary and is still actively in litigation.⁵⁶

There are prospects for success. There are reasonably progressive political figures in New York State and the city. Nationally, the prospects are even better, with the recent increase in the minimum wage and the likelihood of progressive victories in November.

I want to conclude by suggesting that what was true for ending slavery in the United States, and then for ending *de jure* racial segregation in the United States, is true also for ending *de facto* segregation and grievous poverty in the United States. I quote from William Lee Miller's book, *Arguing About Slavery*. He tells us that, "[t]hinkers and statesmen and leaders and realistic politicians of all stripes and attachments believed that American slavery could not be ended—not by deliberate human action."⁵⁷

* * *

[In 1836 t]he support for abolition was minuscule; the abolitionist orators were being stoned and mobbed even in the North; the poll results (if polls had existed in those days) would have shown very meager support for trying to abolish slavery even in the District of Columbia, and overwhelming detestation personally for those obnoxious abolitionists, who tried to force people to think about subjects they did not want to think about. They didn't have any support.⁵⁸

* * *

Certainly the abolitionists after 1831 would be subjected to the most severe and insistent and constant derogation, of every kind, which to some extent continued into history-writing in the twentieth century.⁵⁹

* * *

For slavery to be ended there had to be some individual human

9, 2009, at A32.

56. See generally LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* (2000).

57. MILLER, *supra* note 52, at 15.

58. *Id.* at 120-21.

59. *Id.* at 182; see also *id.* at 143 ("Almost everybody denounced the abolitionists; it was a politically safe position.").

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beings who did what they did. . . . [T]here were some people—a very small number, on the margin of society, condemned and harassed—who nevertheless made it the first order of their life’s business to oppose American slavery, and to insist that it was a grotesque evil that should be eliminated, and . . . in a little over thirty years, it was.⁶⁰

You all are the “small number” of people, harassed if not also condemned, who make it “the first order of” your life’s business to end poverty and invidious discrimination.

Go to it!

60. *Id.* at 513; *see also* DON E. FEHRENBACHER, *SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL PERSPECTIVE* 9 (1981) (stating that the eighteenth century anti-slavery movement “failed . . . not because its supporters lacked *sincerity*, but rather because they lacked the *intensity* of conviction that inspires concentrated effort and carries revolutions through to success”).