

# FOREWORD: FORWARD!

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I am honored to have been asked to write the foreword to this Special Edition of Stanford's Journal of Civil Rights and Civil Liberties and to introduce you to the work of some of my colleagues, friends, and mentors on the Stanford Law School faculty. The focus of this edition is the role that law students and lawyers can play in protecting rights, liberties, and a healthy environment under a new president whose statements as a candidate and early actions indicate a significant retrenchment from gains made in these areas over the last several decades.

Public interest and public service lawyers hail from a variety of political perspectives and champion a breadth of causes.<sup>1</sup> What is clear, however, is that lawyers have played a critical role in representing under-served communities and causes,<sup>2</sup> and that that function remains as important in 2017 as it ever has.

Every year, I am fortunate to address the entering class at the law school during an orientation for new students. Every year, I feel compelled to remind our new students that as they begin the process of learning to “think like a lawyer,” they are not then excused from being the whole people they are as they enter law school, with a set of values and morals, a sense of self and compassion, with a broad view informed by more than legal precedent, and an understanding of right from wrong. As we evaluate our next steps as lawyers and law students, it might be tempting to focus on the slight comfort provided by familiar legal structures, organizations, and precedents, but as the authors of these inspiring essays remind us, the battles ahead will require much more, and simultaneously much less, of each of us.

What many of our authors highlight is the need for learning about and deploying numerous strategies, not all traditionally in the lawyers' toolbox, all at once. This has been a necessary response to proposed policies from various

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1. Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of “Public Interest Law”*, 52 UCLA L. REV. 1223 (2005).

2. AUSTIN SARAT & STUART A. SCHEINGOLD, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING (2004); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008).

administrations—those viewed as friendly to liberals or progressives included. As we each evaluate the roles we can and want to play, I will remind us that our whole selves, with our varying skills, concerns, and commitments, should be brought to identifying our answers.

#### CURRENT ISSUES AND CONCERNS AT THIS HISTORICAL MOMENT

In the essays that follow, the authors highlight current pressing issues related to this historical moment, their concerns about what may occur in key policy and legal areas, and their perspectives on how law students and lawyers can bring to bear their skills to protect hard fought gains, to help sustain organizations that are pivotal to the fights ahead, and to ensure that there is a pipeline of advocates who will be able to support communities and causes at risk under the Trump Administration.

Several of our authors remind us to not be ahistorical. Professors Sinnar, Sivas, and Srikantiah in particular point to past situations where lawyers and advocates have successfully fought against the kinds of rights violations and reduced government oversight we are watching this new administration roll out. They also remind us that approaches undertaken, even those that were not successful, have lessons to teach us, especially in relation to broader social mobilization. We must also remember that, while there is currently a feeling of urgency and concern that we face unprecedented challenges, in the pendulum swing of United States history, public interest lawyers have always been able to meet the trials and tribulations retrenchment has created. Many of the proposals offered by the new Administration are continuations, albeit some more extreme, of policies and proposals undertaken by the Obama, Bush, Clinton, and previous administrations.

Our authors also highlight the need to regain ground in the “values” arguments that seek to create narrow polemics within which legal, policy, and political debates occur. Professors Rhode and Sivas point out the ways that in the reproductive justice and environmental realms, there is a skewed perspective on what is at risk. Professors Sinnar and Srikantiah point out similarly the false dichotomies that have been presented in the immigration and human rights regimes. As they each describe, the options facing our society do not require us to make decisions between jobs or the environment or a humane immigration policy, between a sense of national safety or security and human rights, between “choice” or “life.” Changing the terms of debate requires a sophisticated analysis and also a willingness to engage in outreach and communication within multiple platforms. We must identify nuanced yet pithy means of dissecting false equivalents. Developing a strategy that can inform debate as well as move hearts and minds, must all be in service of protecting gains made and advancing reforms that serve communities. It must be an on-the-ground effort, utilizing social media, earned media, and bought media. And, this effort must include direct outreach and engagement with those whom public interest lawyers seek to serve.

Finally, most of our authors include in their recommendations to deploy multiple strategies an acknowledgement that mobilization and working with community organizers and community-based organizations must be at the core of the work ahead. It will always be tempting for lawyers and law students to “lead with law.”<sup>3</sup> This temptation must be resisted in order to achieve the kinds of broader social movements and change the authors in this Edition envision.

#### LAWYERING FROM THE MARGINS AND WITHIN THE MAELSTROM

This is not to say that there is no role for using the traditional skills of the lawyer in the battles ahead. As these essays describe, there will always be a need for smart lawyers who can use established legal and administrative processes, the courts, and litigation. Indeed, the scenes of makeshift law offices at airports across the country,<sup>4</sup> staffed by volunteers who wanted to help refugees and their families in response to President Trump’s “travel ban” executive order, showed that we can also be flexible enough to respond on an emergency basis to a quickly changing landscape.

Faced with already strained resources, the public interest legal field will need lawyers and law students who can represent individuals and classes in all manner of cases, assist with the intensive factual development of “as applied” challenges to potentially unconstitutional actions, provide counsel and representation to nonprofits (community-based, journalism-focused, legal, and advocacy) whose activities are subjected to a more targeted scrutiny and to whistleblowers within agencies, and engage in research and analysis of local or state opportunities for rights vindication should federal paths be foreclosed, among other kinds of efforts. We will also need to be able to work with others across divides of narrow substantive interests. As Professor Banks notes, many of the issues that we will need to address are intertwined and mutually reinforcing.

We will need policy experts poised with analysis about elected officials on both sides of the aisle who can be moved and messages that will move them. Lawyers must be able and willing to take on less traditionally litigation focused roles to engage in what Chai Feldblum identified as our roles as “legislative lawyers”<sup>5</sup> in order to effectively advocate for change.

But, as many of our authors and many others point out,<sup>6</sup> lawyering from the

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3. Sandra R. Levitsky, *To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements*, in SARAT & SCHEINGOLD, *supra* note 2, at 145.

4. Jonah Engel Bromwich, *Lawyers Mobilize at Nation’s Airports After Trump’s Order* N.Y. TIMES (Jan. 29, 2017), [https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html?\\_r=0](https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html?_r=0).

5. Chai Rachel Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 McGEORGE L. REV. 785 (2002).

6. *See, e.g., id.* GERALD P. LOPEZ, *REBELLIOUS LAWYERING* (1992); JOEL E. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995). *See also*

margins to address broad systems of oppression will be inadequate if we are not also engaged in supporting communities living in the maelstrom. These skills are not traditionally taught or learned in law school: collaboration with community-based groups and leaders, learning about organizing models and how to support them, understanding why not to advance a brilliant legal theory, remembering pre-law communication skills that allow better understanding and engagement. Not all of us will be good at lawyering at this level. Not all of us have or want to develop the skills of the community lawyer. To the extent that you feel badly about this, set that aside. Do what you can where you can as frequently as you can, with the skills and preferences you have—full-time or part-time, as a pro bono legal volunteer, as a donor or board member, as a witness to immoral acts who will speak out, as someone with privilege who can access power. Regardless of our roles, we must take the time to gain a better understanding of how systems of oppression operate, to see the context in which our individual case or action, op-ed or lobbying effort, is taking place.

#### LAWYERING AS OURSELVES

One of our authors looks at how systems of exclusion and discrimination intersect to help us identify where, when, and how we may want to enter the fray—upstream to address systemic issues or downstream to tackle the results of bad policies.

However, as we are reminded by our authors, we must make sure that we are up to the fight and engaging in self care in order to be effective. I caution especially those of us who identify with and are part of the communities that most fear targeting and reprisals in the years ahead to consider how we can best serve our community's interests. This will be a deeply personal decision. But do remember that if you are the lawyer, you cannot also be the client. You cannot advise your clients based upon your sense of what is needed alone.<sup>7</sup>

The path to hope and faith is built by action. It is paved and made walkable, useful, by meaningful works. While we each must identify what we can manage (without burnout or taking on commitments that we cannot meet), we each must also define work that will have an impact, that we will feel sustained by because it fulfills our need to help. The hearts and minds battle is one that must be fought within ourselves, too. To the extent that we can bring our whole selves to this endeavor, not only the part that thinks like a lawyer, we will be more likely to be able to build and pave the paths we need.

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Charles Elsesser, *Community Lawyering: The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375 (2013); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147 (2016).

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