MOBILIZATION ON THE MARGINS OF THE LAWSUIT: MAKING SPACE FOR CLIENTS TO SPEAK

LUCIE E. WHITE*

INTRODUCTION

During the 1960s and early 1970s, impact litigation became a powerful instrument for welfare reform.[1] During this period, lawsuits were typically filed for the explicit purpose of compelling systemic change. Such lawsuits were often focused on defendants and their practices rather than on plaintiffs, their injuries, and their needs.[2] Litigation was typically controlled by welfare specialists working out of "back-up" centers, rather than by neighborhood

* Acting Professor of Law at University of California (Los Angeles) Law School. B.A., 1972, Radcliffe College; J.D., 1981, Harvard University.

I wish to thank all of the colleagues who have helped me reflect on poverty, lawyering, and participation, especially Alison Anderson, David Binder, Kimberle Crenshaw, Isabelle Gunning, Joel Handler, Kenneth Karst, Carrie Menkel-Meadow, and Steven Yeazell. Mark Greenberg challenged my utopianism when it threatened to get out of hand. Dona Montgomery and John Malpede enabled me to work with them briefly and talked to me about their work. Jane Wheeler provided research assistance, and the UCLA Academic Senate provided research funds. Finally, I want to thank the UCLA Law School for allowing me and my students to work with homeless people and their advocates as part of our education as lawyers.

1. "Impact litigation" refers to litigation oriented toward the change of institutional norms or practices, rather than the resolution of individual problems. Such litigation aspires to "advance major reform objectives and affect the interests of many people." R. MNOOKIN, IN THE INTEREST OF CHILDREN: ADVOCACY, LAW REFORM, AND PUBLIC POLICY 45 (1985). For the classic analysis of the contrast between public interest litigation and the traditional bipolar private lawsuit, see Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976). For discussion of the distinction between "impact" and "service" approaches to poverty litigation in particular, see J. Dooley & A. Houseman, Legal Services History ch. 3, at 34-43 (2d draft, Nov. 1985) (unpublished manuscript on file with Professor White, U.C.L.A. Law School); Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337, 343-44 (1980); Sullivan, *Law Reform and the Legal Services Crisis*, 59 CAL. L. REV. 1 (1982).

2. *See* R. MNOOKIN, *supra* note 1, at 51-55.

advocates.[3] The individuals who served as named plaintiffs in these lawsuits sometimes had little contact with their lawyers or involvement in the lawsuit after the complaint was filed and their depositions recorded.[4]

As a weapon in the war against poverty, impact litigation was remarkably successful.[5] Litigation led to sweeping changes, particularly in the Aid to Families with Dependent Children (AFDC)[6] program, where lawsuits forced states to enforce federal eligibility standards and procedural rules.[7] These changes opened up the program to Southern Blacks for the first time and led to a rapid expansion of AFDC.[8] At the same time, recipients gained a new array of procedural protections.[9] Because the remedies granted in their lawsuits were so potent, welfare lawyers did not feel the need to explore other, less direct ways that litigation might help make change.

Times have been harsh for poor people and their advocates in the 1980s.[10]

---

3. Back-up centers are public interest law offices which are part of the federally funded legal services network. According to J. Dooley & A. Houseman, *supra* note 1, at 12, the back-up centers were "national programs, initially housed in law schools, organized around substantive areas (like welfare or housing) or a particular part of the eligible population (like Indians [sic] or the elderly) [which] . . . provided leadership on key substantive issues and worked closely with the national poor people's movements of the early legal services years . . . ."

4. For accounts of the involvement of the named plaintiffs in a series of five public interest cases, see generally R. MNOOKIN, *supra* note 1.

5. *See generally* Sard, *The Role of the Courts in Welfare Reform*, 22 CLEARINGHOUSE REV. 367 (1988). William Simon is among the scholars who have critiqued the ultimate effect of rights-based litigation on welfare policy and administration. *See* Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431 (1986) [hereinafter *Rights and Redistribution*]; Simon, *The Invention and Reinvention of Welfare Rights*, 44 MD. L. REV. 1 (1985); Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 YALE L.J. 1198 (1983).

6. *See* 42 U.S.C. §§ 601-615 (1982).

7. *See, e.g.*, King v. Smith, 392 U.S. 309 (1968) (striking down Alabama's "man in the house" rule, which disqualified a family from AFDC if the mother was living with a man, even if he had no legal obligation to support her children); Alexander v. Hill, 549 F. Supp. 1355, *aff'd*, 707 F.2d 780, *cert. denied*, 464 U.S. 874 (1983) (requiring state and county administrators to comply fully with federal laws stipulating that applications for AFDC must be processed within forty-five days, or where disability is claimed, within sixty days, and ordering defendants to pay each applicant a remedial fine of fifty dollars for each week of delay without "good cause").

8. For the history of discrimination against Southern Blacks in the AFDC program, see W. BELL, AID TO DEPENDENT CHILDREN 181-94 (1965).

9. The case that initiated this "due process revolution" was Goldberg v. Kelly, 397 U.S. 254 (1970) (AFDC recipients have the right to an oral hearing before their benefits can be terminated).

10. *See generally* F. BLOCK, R. CLOWARD, B. EHRENREICH, & F. PIVEN, THE MEAN SEASON: ATTACK ON THE WELFARE STATE (1987) (essays analyzing the ideological attack on the welfare state launched by conservatives in the 1980s). *See also* M. BURT, TESTING THE SOCIAL SAFETY NET: THE IMPACT OF CHANGES IN SUPPORT PROGRAMS DURING THE REAGAN ADMINISTRATION (1985); J. CHUSID & M. HOROWITZ, BROKEN PROMISES: A REPORT ON THE STATE OF THE ELDERLY DURING THE REAGAN ADMINISTRATION (1984); AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, THE STATES, THE PEOPLE, AND THE REAGAN YEARS: AN ANALYSIS OF SOCIAL SPENDING CUTS (1984); S. ROUSSEAS, THE POLITICAL ECONOMY OF REAGANOMICS: A CRITIQUE (1982); F. PIVEN & R. CLOWARD, THE NEW CLASS WAR: REAGAN'S ATTACK ON THE WELFARE STATE AND ITS CONSEQUENCES 16-19 (1982).

In addition to the swing to the right in the government, courts and public opinion,[11] funding for poverty lawyers has been drastically reduced.[12] Funding cuts and programmatic restrictions have weakened the back-up centers and limited the capacity of legal aid lawyers to design and litigate class action lawsuits.[13] Likewise, procedural rules enacted in the 1980s subject lawyers to sanctions for pursuing "frivolous . . . [or] . . . unwarranted" litigation,[14] and recent doctrinal developments make it more difficult for public interest lawyers to recover attorneys' fees under fee-shifting statutes.[15] So, while impact litigation remains a viable strategy in the 1980s in some contexts,[16] poor people's advocates can no longer assume that a 1970s-style impact lawsuit will be the optimal response to every issue.

In this changed climate, where litigation no longer consistently produces systemic reform, poor people's advocates must be creative and flexible in responding to their clients' needs. They cannot simply "file a lawsuit" to solve

11. But several indicators suggest that the tide may be shifting. *See generally* Garland, *A Return to Compassion?*, BUSINESS WEEK, Feb. 1, 1988, at 63, 64 (part of a cover story giving an overview of the Reagan legacy). This trend is reflected in public opinion polls which, since 1986, have shown that many Americans feel that government assistance to the homeless is inadequate. *See, e.g.*, Shipp, *Do More for the Homeless, Say Half of Those Polled*, N.Y. Times, Feb. 3, 1986, at B3, col. 5; Ingwerson, *Homeless Activists Press Candidates*, Christian Sci. Monitor, Feb. 29, 1988, at 3, col. 1 (reporting that a 1987 Gallup Poll estimated that sixty-seven percent favored more spending for the homeless and a poll by the Campaign to End Hunger put the figure at seventy-five percent in 1988). Another indicator of a shift in the political climate was the surprising performance of Jesse Jackson in the 1988 presidential campaign. *See Why Jesse Jackson's Message Has Such Appeal*, N.Y. Times, Apr. 8, 1988, at A34, col. 3.

12. In 1982, Congress cut the Legal Services Corporation's appropriation by nearly twenty-five percent. *See generally* J. Dooley & A. Houseman, *supra* note 1, at 25. Subsequently, as a result of an intensive lobbying effort, the funding was restored to the 1981 level.

13. New regulations and policies have also restricted Legal Services lawyers from engaging in lobbying, community organizing, or public education. *See* 45 C.F.R. § 1612 (1987) (restricting the advocacy activities of Legal Services Corporation grantees). *See also* J. Dooley and A. Houseman, *supra* note 1, at 37; Hanzalek, *Financing One's Opponents*, N.Y. Times, Feb. 26, 1984, § 23 (Connecticut Weekly edition), at 22, col. 1.

14. *See* FED. R. CIV. P. 11 (as amended in 1983). *See also* Note, *Plausible Pleadings: Developing Standards for Rule 11 Sanctions*, 100 HARV. L. REV. 630 (1987); Grosberg, *Illusion and Reality in Regulating Lawyer Performance: Rethinking Rule 11*, 32 VILL. L. REV. 575 (1987) (both discussing the possibility that the risk of Rule 11 sanctions might "chill" public interest lawyers from raising innovative or controversial claims).

15. *See, e.g.*, Evans v. Jeff D., 475 U.S. 717 (1986) (The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 (1982), permits a defendant to offer a settlement package granting relief to plaintiffs provided that their attorney relinquish her own statutory right to collect attorney's fees.).

16. One example of such litigation is the case described by Barbara Sard in *The Role of the Courts in Welfare Reform*, Sard, *supra* note 5, at 382-88, Massachusetts Coalition for the Homeless v. Secretary of Human Services, 400 Mass. 806, 511 N.E.2d 603 (1987). Another context where impact litigation was successful in the 1980s was in challenging the Reagan administration's policy of terminating large numbers of disabled persons from the Social Security disability program. *See, e.g.*, Lopez v. Heckler, 725 F.2d 1489 (9th Cir.), *vacated and remanded*, 469 U.S. 1082 (1984) (the case was vacated and remanded after Congress enacted protective legislation, Social Security Disability Benefits Reform Act of 1984, 42 U.S.C. § 423(f)); Hyatt v. Heckler, 579 F. Supp. 985 (W.D.N.C. 1984), *vacated and remanded*, 757 F.2d 1455 (4th Cir. 1985), *vacated and remanded sub nom.*, Hyatt v. Bowen, 476 U.S. 1167 (1986).

every problem. When they do litigate, lawyers cannot always expect relief in the form of a sweeping injunction, or even to have their fees awarded. Rather, welfare lawyers of the 1990s must explore the many dimensions in which litigation might contribute to progressive change. For example, a well-crafted lawsuit might have an educative impact on plaintiffs, their lawyers, and the public at large, as well as a coercive impact on defendants; a lawsuit might be an occasion for plaintiffs and their allies to learn about their own powers to make change.

This Article explores the potential of welfare litigation to become an occasion for the education and mobilization of poor people and their advocates. Ambitious images of litigation as empowerment appeared in the writings of welfare advocates during the 1960s and 1970s, even if conditions seldom drove that generation of lawyers to grapple with those aspirations in their practice. After describing those images, I identify two features of our legal culture that hinder advocates from crafting litigation into an opportunity for education as well as a weapon for coercion.

Two case studies in which advocates responded to these obstacles in innovative ways are then considered. Through the two cases, I suggest that litigation can be an occasion of participatory, educative experiences for clients and their advocates. In some circumstances, the engagement of clients in this fashion contributes to the lawsuit's narrowly instrumental goals. In other situations, the mobilization of clients and advocates happens outside of the formal boundaries of the litigation. I argue that, to make litigation an occasion for empowerment in this fashion, advocates must understand the systemic obstacles to client participation, appreciate the cultural norms and practices in their clients' own communities, and respond flexibly in each political and institutional context.

I.
LITIGATION AND MOBILIZATION: GRAND VISIONS AND REALISTIC OPENINGS

A. The Idea of Litigation as Politics

In the last two decades, several scholars and advocates have described public interest litigation as a complex, multi-dimensional form of political action.[17] As politics, it has the potential to further the social agendas of the poor on many levels. In periods when courts are receptive to claims of distributive justice, such litigation can result in court orders that transfer money or coerce

17. *See* J. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE 192-221 (1978). *See also, e.g.*, Cahn & Cahn, *Power to the People or the Profession — The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970); Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970); Note, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970); J. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976).

changes in institutional behavior.[18] But, even at times when the courts are not likely to issue sweeping remedial orders, litigation can pressure institutions in other ways to accede to poor people's interests.[19] The costs of the litigation process — in institutional disruption, time and money — and the negative publicity that a lawsuit might bring are two obvious dimensions in which litigation can give poor communities political leverage against powerful adversaries.[20]

Litigation can also work effects in the political sphere that go beyond the circle of formal parties to the lawsuit. For example, it can raise public consciousness about the experience of poverty. By making a record of concrete ways that the welfare system hurts people, litigation can focus public concern on systemic problems and create momentum for legislative or administrative change.[21]

There is one further dimension in which litigation, viewed as politics, might stimulate social change that benefits the poor. In addition to coercing adversaries and informing wide audiences about the realities of poverty, group litigation might also work changes in and among advocates and poor people themselves.[22] Litigation provides a setting — a set of experiences — which might enable poor people to become more politically effective in their own

18. For literature which discusses the capacity of court orders to change institutional functioning, see Chayes, *supra* note 1; Chayes, *The Supreme Court, 1981 Term — Foreword: Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4 (1982); Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 DUKE L.J. 1265.

19. *See* J. HANDLER, *supra* note 17, at 210 (discussing several indirect results from law reform activity, including leverage, publicity, legitimacy, and consciousness-raising).

20. *Id.*

21. An excellent recent example of this function of litigation occurs in the context of homelessness. Homeless advocates have consciously crafted lawsuits to be vehicles for presenting detailed stories to a broad public of how the system's failure has injured people. *See, e.g.*, Declaration of Carl Graue in Support of Motion for Preliminary Injunction, Rensch v. County of Los Angeles, No. C-595155 (Cal. Super. Ct. Apr. 10, 1986). Information compiled for such lawsuits has been incorporated in literature directed at the general public. *See, e.g.*, J. KOZOL, RACHEL AND HER CHILDREN (1988) (relying in part on litigation documents to report to a general readership about the plight of homeless families). Litigation also served to expose government misconduct to the general public and Congress in the handling of the Social Security Disability crisis of the early 1980s. *See* Lauter, *Congress Moots Nearly 40,000 U.S. Court Suits*, Nat'l L.J., Oct. 1, 1984, at 5, col. 1. For general background on that crisis, see *infra* text accompanying notes 51-60.

22. Some theorists view education and mobilization of socioeconomically oppressed individuals as an aspect of politics. *See, e.g.*, A. GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 26-43 (Q. Hoare and G. Smith ed. and trans. 1971); P. FREIRE, PEDAGOGY OF THE OPPRESSED (1970); S. LUKES, POWER: A RADICAL VIEW (1974). The insight that relationships between individuals are political has been at the center of much feminist writing. *See, e.g.*, A. JAGGAR, FEMINIST POLITICS AND HUMAN NATURE 254 (1983) ("By contrast with traditional political theorists, radical feminists emphasize the experiential quality of human relations . . . [M]any of their proposals for social change concern the reorganization of the . . . private [sphere of personal relations]."). Some theorists of legal advocacy have suggested that law might be a means of deepening the political consciousness of subordinated people. *See generally* Hodgkiss, *Petitioning and the Empowerment Theory of Practice*, 96 YALE L.J. 569 (1987); Wexler, *supra* note 17; Kenyatta, *Community Organizing, Client Involvement, and Poverty Law*, MONTHLY REV., Oct. 1983, at 18.

lives.[23] Participating in a lawsuit might help a group to better understand the workings of dominant institutions as well as to sharpen their skills at the tactical planning and coalition-building which are required for subordinate groups to achieve their political goals. Participation in their own lawsuits might build confidence in their ability to become more politically active in their communities during, and after the completion of, litigation. For poor people's advocates, litigation should be an occasion for working with poor people as coequals rather than supplicants, for listening to their clients' histories and learning about their skills, their priorities, and their ideas.[24]

Two features of group litigation suggest this educative potential. First, a group lawsuit is a community event as well as a legal proceeding; it offers a medium for testimony and confrontation. Actions such as bearing witness and holding corporate actors accountable for the injuries they cause might mobilize speakers, even as the words that are spoken create a factual record. Second, the production of a lawsuit is a complex task that can often encourage innovative methods of collaboration between plaintiffs and advocates. Involving poor people in the litigation process — broadly defined — might give the plaintiffs new insights into the welfare system's inner workings as it gives their lawyers new respect for the acquired wisdom and skills of their clients. Such a project could also help advocates and community members learn methods for creating structures for cooperation outside of the courtroom.

B. Empowerment through Litigation: Realistic Hope or Impossible Dream?

This educative dimension of welfare litigation — its potential to be a learning space where poor people and their allies can gain self-confidence, group solidarity, political skills, and theoretical insights — has never been realized on a comprehensive scale in the day-to-day practice of welfare litigation. On the contrary, welfare litigation has often undermined rather than accomplished this goal. In spite of lawyers' theoretical commitment to the goal of client empowerment, they have rarely succeeded in linking their complex, technical lawsuits to their clients' own efforts to name and pursue their own interests.

A good example of this failure comes from my own experience as one of the plaintiffs' lawyers in the recent AFDC sibling-deeming litigation in *Bowen v. Gilliard*.[25] In that series of lawsuits, welfare lawyers across the country

23. Such activities might include involvement in electoral politics, lobbying for legislative changes, the formation of issue-oriented membership organizations, direct negotiation with local institutions such as welfare offices for changes in practices or personnel, or the establishment of "self-help" institutions such as cooperative retail establishments, health-screening clinics, or child care centers to meet community needs directly.

24. For one vision of what this renegotiated relationship might look like, see G. Lopez, Everyone Here Lawyers (Sept. 1987 draft manuscript) (on file with Professor White, U.C.L.A. Law School).

25. 483 U.S. 587 (1987) (challenging a provision of the Deficit Reduction Act of 1984 amending AFDC eligibility requirements at 42 U.S.C. § 602(a)(38) to reduce grants on the basis of child support or other income received by children in the household who did not need or

reluctantly concluded that the litigation could not be made a vehicle for educating or mobilizing the plaintiff communities. We hoped that our lawsuits would empower clients indirectly, by restoring money that had been cut from the federal AFDC budget and by restoring applicants' control over whom to include in their welfare grants. We dutifully took the named plaintiffs to Washington, D.C., to watch nine godlike persons debate their fate in a foreign tongue. Beyond that gesture, however, we made no attempt to empower our clients through the litigation process itself.

Given our limited resources for handling the technical aspects of the case, trying to activate clients through the litigation seemed a foolishly unfeasible idea. As the case inched higher in the appellate system, we felt the case making greater demands on our own energies and getting more remote from our clients' communities. Though we felt misgivings about what was happening, we could see no way to seize the opportunity that the case presented as *politics* and to engage the clients more personally in the underlying issues.[26]

1. Two Grand Visions of Success

In reflecting on the sibling-deeming lawsuit and others like it, I think that our strategic imagination as advocates has been limited by the myths we share about our past. The decade of the 1960s left us with two contrasting images of lawyering toward the goal of client empowerment. The first is an image of a public, frankly political trial. It is an image of the clients capturing the courtroom itself and transforming it into a platform for talk and ritual that would confront all authority, challenging the legitimacy of the rule of law itself.[27] In many, but not all settings in the 1980s, such an image makes no practical

---

want AFDC assistance). This complex provision mandates that independently supported children share their own meager income with their indigent brothers and sisters. My knowledge of this litigation comes both from serving as one of the attorneys on the *Gilliard* case and from talking with other attorneys throughout the country who litigated the sibling-deeming issue in other jurisdictions. *See, e.g.*, Gorrie v. Bowen, 809 F.2d 508 (8th Cir. 1987); Johnson v. Cohen, 836 F.2d 798 (3d Cir. 1987); Childress v. Bowen, 833 F.2d 231 (10th Cir. 1987).

26. The one aspect of the litigation that gave the clients something of a voice was their submission of a series of affidavits to the district court to document the multiple injuries that the challenged provision had caused to the clients and their families. *See* Joint Appendix at 63, 136, 139 (Affidavits of Arvis Waters and Declaration by Carol Stack), Bowen v. Gilliard, 483 U.S. 587 (1987) (Nos. 86-509, 86-564).

27. The trial of the Chicago Seven is the paradigm case. In 1968, a group of Viet Nam era anti-war activists were charged with inciting riots during the Democratic National Convention in Chicago. During their trial, the defendants staged a variety of antics to voice their political views and to challenge the authority of the court. *See In re* Dellinger, 461 F.2d 389 (7th Cir. 1972) (trial court's contempt citation reversed, with remand for re-trial by a different judge). For further history of the contempt issue in that case, see 357 F. Supp. 949 (N.D. Ill. 1973), *on remand to* 370 F. Supp. 1304 (N.D. Ill. 1973), *aff'd*, 502 F.2d 813 (7th Cir. 1974), *cert. denied*, 420 U.S. 990 (1975). The appeals court eventually reversed the trial court's convictions on all criminal charges. *See* 472 F.2d 340 (7th Cir. 1972). The transcripts of the trial are collected in CONTEMPT: TRANSCRIPT OF THE DOCUMENT CITATIONS, SENTENCES, AND RESPONSES OF THE CHICAGO CONSPIRACY 10 (H. Kalven ed. 1970). *See also* R. COVER, O. FISS & J. RESNIK, PROCEDURE 1298-1315 (1988).

sense.[28]

The second image of lawyers encouraging client empowerment was premised on the existence of large grassroots organizations of poor people.[29] Such groups could guide lawyers in conducting litigation. The roles of lawyers would then be to carry out the directives of the clients according to the traditional professional model and to act as "corporate counsel" for poor people's organizations.[30] It may be that the mobilization of the poor and their allies is re-emerging on a large scale in the late 1980s in some areas.[31] In settings where this is happening, litigators have the luxury of serving as counsel to movement organizations, taking their orders from their clients. But such conditions did not prevail among AFDC recipients during the litigation of the sibling-deeming cases. Even where organizations of welfare recipients are present, it is not always possible for lawyers to both strengthen the collective and empower individual clients.[32]

Our imagination as advocates has been fixed on these two grand visions. As a result, we tend to think about client empowerment in all or nothing terms. The images call for the clients to take over the whole advocacy enterprise, to impose their speech and culture on the courtroom and their agenda on the lawyers. Where the clients cannot rise to this standard, nothing seems possible. Blinded by these aspirations, advocates may have failed to see — and take a role in shaping — more realistic empowerment strategies.

2. *Two Recurring Themes of Failure*

a. *Poor People and Litigation: A Clash of Cultures*

There are at least two factors that make litigation an unlikely setting for mobilizing clients. First, and most significantly, the majority of poor people perceive litigation as an alien or even hostile cultural setting. The talk and ritual of litigation constitute a discourse[33] and a culture[34] that are foreign to

28. The Community for Creative Non-Violence (CCNV), a group of homeless advocates located at 425 Second Street, N.W., Washington, D.C., 20001 ((202) 393-4409), has treated courtroom proceedings as political events by organizing groups of homeless persons to attend courtroom proceedings. However, none of the CCNV's activities have constituted a frontal assault on the legitimacy of the law and the courts themselves.

29. In the late 1960s and early 1970s, this image had a realistic basis in the National Welfare Rights Organization. *See*, F. PIVEN & R. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 264-361 (1977).

30. For one statement of this view, see Bachmann, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984-85). *See also* Abel, *Lawyers and the Power to Change*, 7 LAW & POL'Y 5 (1985).

31. For example, homeless persons are organizing in Massachusetts, Philadelphia, and other cities. *See, e.g.*, SARD, *supra* note 5.

32. For a discussion comparing individual and group interests in the context of school desegregation, see Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

33. For an excellent definition of "discourse," see M. FOUCAULT, HISTORY OF SYSTEMS OF THOUGHT, IN LANGUAGE, COUNTER-MEMORY, PRACTICE: SELECTED ESSAYS AND INTERVIEWS 199 (D. Bouchard ed., D. Bouchard & S. Simon trans. 1977).

Discursive practices are characterized by the delimitation of a field of objects, the

most poor people.[35] Poor people obviously do not speak in the same dialect that lawyers, judges, and elite businesspeople use.[36] Furthermore, their courtroom speech[37] is routinely interrupted by lawyers and judges who use threatening tones in ordering them when not to talk and what not to say. Their stories are interpreted by black-robed authorities on the basis of rules that are rarely explained and norms that they seldom share.[38]

In addition to these features of courtroom discourse having the effect of silencing poor people, the very idea of a courtroom, a judge, or "papers" (i.e., legal pleadings), evoke feelings of terror for many poor people; they associate the courthouse with jail and eviction more often than justice.[39] Even for those

---

definition of a legitimate perspective for the agent of knowledge, and the fixing of norms for the elaboration of concepts and theories. Thus, each discursive practice implies a play of prescriptions that designate its exclusions and choices.

34. For an overview of the anthropological concept of culture, see, for example, THE INTERPRETATION OF THE CULTURES: SELECTED ESSAYS (C. Geertz ed. 1973). The conventions of dispute resolution are analyzed as cultural systems by legal anthropologists. *See, e.g.*, THE DISPUTING PROCESS — LAW IN TEN SOCIETIES (L. Nader & H. Todd, Jr. eds. 1978). For application of this perspective to issues of lawyering in the American context, see, for example, Miller & Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525 (1980-81); Mather & Yngvesson, *Language, Audience, and the Transformation of Disputes*, 15 LAW & SOC'Y REV. 775 (1980-81); Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984-85).

35. *See* O'Barr & Conley, *Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives*, 19 LAW & SOC'Y REV. 661 (1985); O'Barr & Conley, *Lay Expectations of the Civil Justice System*, 22 LAW & SOC'Y REV. 137 (1988); O'Barr & Conley, *Rules Versus Relationships in Small Claims Disputes*, in CONFLICT TALK (A. Grimshaw ed.) (forthcoming 1989) [hereinafter *Rules Versus Relationships*]. These articles are based on an empirical study analyzing storytelling practices of litigants in small claims courts. The study demonstrated that patterns of talk which socially powerless people typically use in informal courts may not "articulate" well with the logic of the law. *See also* O'Barr, Conley & Lind, *The Power of Language: Presentation Style in the Courtroom*, 1978 DUKE L.J. 1375 (earlier work arguing that a witness whose testimony is framed in speech patterns typical of socially powerless groups may make a poor impression on fact-finders).

All of these works point to a disjuncture between the standard language of the courtroom and the everyday speech of poor or socially powerless litigants. This gap creates two handicaps for poor people in litigation. Not only is their testimony less likely to be comprehended and believed, but they are also less likely to feel the personal satisfaction that follows from a sense of having been heard. See E. LIND & T. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988) for research into the question of litigants' subjective satisfaction with their participation in adjudicatory rituals.

Sociolinguist John Gumperz has done pioneering studies to document, more generally, that the language used in official public settings is significantly different from the language of powerless groups. His research has shown that poor people are at a disadvantage in a variety of bureaucratic encounters because of this language difference. *See, e.g.*, J. GUMPERZ, DISCOURSE STRATEGIES (1982); LANGUAGE AND SOCIAL IDENTITY (J. Gumperz ed. 1982); Gumperz, *Dialect and Conversational Inference*, 7 LANGUAGE & SOC'Y 393 (1978).

36. *See* the works of John Gumperz cited *supra* note 35.

37. By "courtroom speech," I refer to all official communication by poor people in litigation, including testimony at depositions and hearings, as well as the preparation of affidavits and declarations.

38. *See Rules Versus Relationships*, *supra* note 35.

39. I heard about such fears on a daily basis in my practice as a Legal Services lawyer in Union County, North Carolina, from 1982 through 1984.

clients who use "rights talk" to express their frustration with the political system,[40] a courtroom is often not a place where they feel free to speak those feelings, or indeed, where the judge would allow their "ramblings" even if they dared raise their voices.[41] In short, the courtroom is not a setting where the poor are likely to feel any command over their own voices.[42]

b. The Education of Lawyers: Learning to be a Social Engineer

There is a second reason that the courtroom is not a likely arena for client mobilization. Not only do poor people feel intimidated by the strange culture of the courtroom, but the professional culture of legal training and practice leads advocates to compound the isolation and dependency that clients already feel. This need not be the case. The legal culture might define the attorney's core role as that of a translator who serves to shape her client's experiences into claims, arguments and remedies that *both* the client and the judge can understand.[43] Ultimately, every advocate must perform this translator function. However, the work becomes more challenging as the social and cultural distance between the client and society's elites becomes greater.[44]

This work is not easy, however; indeed, it may not always be possible. The gap between what poor people want to say and what the law wants to hear often seems enormous. Legal education does not prepare lawyers for this daunting task, and the profession does not encourage or reward such efforts. Reform-oriented lawyers have been taught to read statutes, question bureaucrats, and analyze policy. They have not learned to listen and talk to poor

40. For discussion of "rights talk" in the everyday language of poor people, see Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 J. AM. HIST. 863 (1987); Haskell, *The Curious Persistence of Rights Talk in the "Age of Interpretation,"* 74 J. AM. HIST. 984 (1987); Hartog, *The Constitution of Aspiration and "the Rights that Belong to Us All,"* 74 J. AM. HIST. 1013 (1987). *See also* Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

41. Even the most sympathetic judges are bound by rules of relevancy to restrict the ways that a socially subordinate speaker might seek to express herself. *See, e.g., Rules Versus Relationships, supra* note 35. For more general discussion about how the marginalization of the language and culture of minority groups helps maintain their political subordination, see Gates, *Authority, (White) Power and the (Black) Critic: It's All Greek to Me*, 7 CULTURAL CRITIQUE 19 (1987); G. DELEUZE & F. GUATTARI, KAFKA: TOWARD A MINOR LITERATURE (D. Polan trans. 1986); P. FREIRE & D. MACEDO, LITERACY: READING THE WORD AND THE WORLD (1987); Giroux, *Introduction: Literacy and the Pedagogy of Political Empowerment*, in P. FREIRE & D. MACEDO, LITERACY: READING THE WORD AND THE WORLD 1-28 (1987).

42. This alienation of poor people from the official language is not limited to the legal sphere; it pervades all aspects of the modern welfare state. *See* J. GUMPERZ, *supra* note 35. For an innovative analysis of how the elevated discourse of expertise and therapy shapes the substantive politics of welfare, see Fraser, *Talking about Needs: Interpretive Contests as Political Conflicts in Welfare-State Societies*, 99 ETHICS 291 (1989).

43. Legal education could further this goal by centering on the theories and skills of listening to clients that have been developed by clinical legal educators. *See, e.g.*, D. BINDER & S. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977). However, these skills are rarely brought into mainstream "academic" law teaching, and they are not perceived by the legal establishment as the core task that a lawyer should perform.

44. *See* Lopez, *supra* note 34; Abel, Felstinger & Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980-81).

people. The patience and imagination that such an effort would demand seem overwhelming. The lawyer might feel it a waste of resources to immerse herself in the endless, chaotic stories of suffering that individuals might want to tell when she sees so many clients with enormous — and apparently similar — needs.

Therefore, in practice, welfare litigators often subordinate their clients' perceptions of need to the lawyers' own agendas for reform. They rarely design litigation[45] to respond to their clients' own priorities and ideas. Rather, litigation is designed to effect broad reforms that will benefit the whole class of welfare recipients.[46] One result of this approach is that lawyers typically choose their plaintiffs strategically. The main criterion is how good the story will look to the court, how closely it will comply with a "fact pattern" that will compel the desired legal remedy. This approach compounds the alienation that poor clients already feel toward the legal process. Not only do clients feel incapable of speaking and acting freely in the strange language and culture of the courtroom; in addition, their own lawsuits are often framed to render their perceptions and passions irrelevant to the legal claims.

3. *Relocating Client Participation: Parallel Spaces*

Thus, two factors converge to make the poor feel irrelevant in welfare litigation: the alien culture of the courtroom and their lawyers' habit of disregarding the lived experiences of the clients as they draft their claims. And yet, even though welfare lawsuits often fail to give voice to the stories the poor would tell, litigation does give them the formal standing to be heard regarding breaches of their legal rights and claims for judicial intervention. Therefore, a lawsuit provides some opportunity for mobilization. For those plaintiffs who learn that litigation has been filed on their behalf, this knowledge can jar the dreary inevitability of the status quo. It can confirm that the conditions of their lives are not fair and give them hope that things need not remain as they have always been.[47] As such, a lawsuit might be an occasion for poor people

45. *See supra* note 1. My critique of impact litigation is not meant to imply that it is without value to clients. On the contrary, group cases have brought about many significant changes in laws and institutional practices. Rather, I address the narrow point that impact litigation is rarely designed to give voice to the clients' own perceptions of their needs. Instead, the goals of the litigation are typically predetermined by the lawyers' own policy analyses. Clients rarely deliberate with the lawyers, as equals, in formulating these goals, and clients' personal feelings of injury are seldom the primary data that counsel respond to. For variations on this critique, see Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984); G. Lopez, *supra* note 24.

46. *See supra* notes 18-20 and accompanying text, discussing institutional litigation.

47. *See generally* F. PIVEN & R. CLOWARD, *supra* note 29, at 7-9, for discussion of the conditions that support the mobilization of poor people. Among these conditions is the structural tension between different sectors of the society's elite. A lawsuit on behalf of the poor announces that the state's policies toward the poor are in violation of society's legal norms. As such, it marks a point of such tension, that can coincide with a moment of disruption, protest, or mobilization. It is because lawsuits often signal such underlying structural tension that it makes strategic sense to view them as an occasion for mobilization.

to join together, outside of the formal boundaries of the litigation, in spaces that are parallel to it, to engage among themselves in reflective conversation and strategic action.

In these "parallel spaces," clients could speak their own stories of suffering, accountability and change, free from the technical and strategic constraints imposed by the courtroom. They would be free to speak in their own language and act in their own cultural forms on the subjects that are important to them. These rituals would not be instrumental in the narrow sense of causing a court to order change. But they would serve the broader goals of teaching others about themselves and their reality and giving the participants a momentary experience in the exercise of power.

Unless the lawsuit coincides with wider political disequilibrium, such localized mobilization is not likely to gain any sustained momentum of its own. Nonetheless, the clients' experience, no matter how brief, will become a part of their history that they can call upon in the future. Furthermore, that brief involvement will alter their relationships with their lawyers, the public and the state. These events will confront the audience with spheres of perception, vision and power that have been excluded from the bureaucratic, legalistic universe of the courtrooms and the welfare offices.[48]

II.
TWO EPISODES OF MOBILIZATION ON THE MARGINS OF LITIGATION

In both of the following case studies, poor people came to feel moments of power by participating in group activities that emerged in the shadow of welfare litigation. In both situations, litigation was an occasion for poor people to create public events in a cultural medium and language that was familiar to them. These moments of engagement became possible because their architects — lawyers and lay advocates — recognized that their clients felt intimidated by the discourse and culture of formal litigation. They also recognized their own tendencies to channel clients' energies into the lawsuit while maintaining rigid control over every aspect of the case. These advocates then consciously focused their imagination to the boundaries of the litigation. They looked for spaces where clients could speak together with fluency and confidence, describing their injuries and needs in their own terms.

In the first case, public "speak-outs"[49] were culturally familiar to clients.[50] In the second case, clients found theater to be culturally accessible, not because they had any prior experience with acting, but because the genre was

48. For an analysis of how structures of domination repress difference, rendering it as a sign of inferiority, see Minow, *Engendering Justice: The Supreme Court 1987 Term - Foreword*, 101 HARV. L. REV. 10 (1987). There is extensive literature on hierarchy in professional and bureaucratic relationships. *See, e.g.*, K. FERGUSON, THE FEMINIST CASE AGAINST BUREAUCRACY (1984); I. ILLICH, DISABLING PROFESSIONS 11-41 (1977).

49. *See infra* text accompanying notes 64-66.

50. *See infra* text accompanying notes 67-68.

radically open: its rules and traditions were improvised by the participants as they engaged each other. To take part in these events poor people did not have to learn the language and rituals of the bureaucracy or the legal elite. Rather, they needed only to call on their own cultural and personal knowledge.

In neither case are the effects of the parallel activity or its relationship to litigation easy to evaluate. In one case, parallel activity seemed to enable some clients to be more effective plaintiffs in the formal lawsuit. In the other case, parallel activity educated lawyers and others about their clients' lives. In neither, however, did the parallel events evolve into any sustained political initiative by the clients themselves. Nor has the impact of the activity on participants' consciousness been the subject of any systematic empirical inquiry. Therefore, in the case studies, I rely on narrative and qualitative evidence when I suggest that self-confidence and group solidarity might have increased, even momentarily, through participation.

A. Rituals of Testimony by Disability Recipients

1. The Setting

The first case comes out of the Social Security disability crisis of the early 1980s.[51] During this period lawsuits were filed throughout the country to challenge the Reagan administration's policies and practices for administering the Social Security disability programs.[52] In North Carolina, a statewide class action was filed in the summer of 1983 to challenge the Social Security Administration's policy of "non-acquiescence" with court judgments, as well as the agency's pattern of arbitrarily denying Social Security claims.[53]

---

51. In March 1981, the Reagan Administration, pursuant to congressional directive, began a systematic review of all persons receiving Social Security or Supplemental Security Income (SSI) disability benefits. The Administration departed from the congressional mandate, however, by using the review process as an occasion for the termination of thousands of eligible persons from the disability program. Note, *Social Security Administration in Crisis: Non-Acquiescence and Social Insecurity*, BROOKLYN L. REV. 89, 95-96 (1986). In the first sixteen months of the review, forty-six percent of those reviewed, or more than 212,000 persons, were cut off the disability rolls. The terminations were effected through the Administration's policy of "non-acquiescence" with the federal appeals courts' rulings which interpreted the statutory criteria for disability. From 1982 to 1984, a wave of class action lawsuits across the country challenged the Administration's practices. Eventually, in 1984, Congress responded to the crisis by passing legislation to correct many of the abusive administrative practices of the previous three years. Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794 (1984) (codified in scattered sections of 42 U.S.C.). *See also New Disability Legislation Enacted*, 18 CLEARINGHOUSE REV. 819 (1984). *See generally* Note, *supra*; Froehlich, *Administrative Nonacquiescence in Judicial Decisions*, 53 GEO. WASH. L. REV. 147 (1984); Maranville, *Non-Acquiescence: Out-law Agencies, Imperial Courts, and the Perils of Pluralism*, 39 VAND. L. REV. 471 (1986); S. MEZEY, NO LONGER DISABLED: THE FEDERAL COURTS AND THE POLITICS OF SOCIAL SECURITY DISABILITY (1988); Estreicher & Revesz, *Nonacquiescence by Federal Administrative Agencies*, 98 YALE L.J. 681 (1989).

52. *See* Title II of the Social Security Act, 42 U.S.C.A. §§ 401 *et seq.* (1983 & Supp. 1988). Eligibility for disability benefits is covered in sections 421(a)(1), 423(f), and 1382.

53. Hyatt v. Heckler, 579 F. Supp. 985 (W.D.N.C. 1984), *vacated and remanded*, 757 F.2d

The North Carolina class action followed the typical pattern of impact litigation.[54] The lawyers studied the statutes, regulations and cases to determine which practices were vulnerable to legal challenge. They then went through their own service docket to find sympathetic cases that would exemplify each legal claim. This litigation was but one part of a broader strategy of political and legal action, however. For several reasons, these activities became an occasion for client mobilization.

First, many of the individuals who had been hurt by Reagan's disability policies were white people with a solid work history who firmly believed that they had earned their right to Social Security.[55] Even before they were invited to join in group protest, many of these people had taken personal steps to get relief.[56] Because of their racial and class advantage, these people were less fearful of engaging in protest than poorer people might have been. They had natural political allies among all working people who might one day seek to draw on Social Security. Their sense of confidence in their own position made it likely that they would engage in group action when their disability benefits were threatened. Furthermore, their position in the community made it likely that their protest would be politically effective.

Second, a lawyer working in a local legal aid office had a background in community organizing and continued to view the political mobilization of poor people as one of her own goals. Although legal services funding restrictions limited what she could do toward this end in her job,[57] she was still looking for ways to support clients who showed some interest in organizing themselves.

The final and perhaps most important reason that the North Carolina disability litigation became the occasion for client mobilization was the pres-

1455 (4th Cir. 1985), *vacated and remanded sub nom.*, Hyatt v. Bowen, 476 U.S. 1167 (1986) (challenging agency's practice of denying and terminating Social Security disability benefits in cases involving diabetes, hypertension, and pain). *Hyatt* was filed as an action for judicial review of an individual claim pursuant to 42 U.S.C. § 405(g) and was subsequently certified as a class action. 579 F. Supp. at 996. As a result of the litigation, thousands of persons had their claims reviewed under the court's supervision.

54. My analysis of the situation in North Carolina and the work of the Alliance for Social Security Disability Recipients is based in large part on my work as a Legal Services attorney in Union County, North Carolina, from 1982 through 1984. During that period, I had the privilege of meeting and working briefly with Ms. Dona Montgomery, the founder of the Alliance for Social Security Disability Recipients, and of representing a number of Alliance members on Social Security claims.

55. For discussion of the ideological differences between Title II, which is a social insurance program, and SSI, which is a welfare program, see *Rights and Redistribution*, *supra* note 5. When Reagan attempted to cut the Social Security benefits of the elderly in 1981, a huge outcry from the elderly made it politically impossible for him to do so. *See* Pierce & Choharis, *The Elderly as a Political Force*, NAT'L J., Sept. 11, 1982, at 1559. In contrast, welfare recipients have not been able to mobilize successfully to prevent similar cuts in their benefit programs.

56. An aggrieved individual might either file an individual administrative appeal of her termination pursuant to 42 U.S.C. § 405(b)(1) (1982) and the provisions in Hearing Before an Administrative Law Judge, 20 C.F.R. §§ 404.929-404.941 (1988), or protest to elected officials.

57. Restrictions on Lobbying and Certain Other Activities, 45 C.F.R. § 1612 (1987).

ence of a woman who was able and willing to take the lead in the effort. She was not disabled herself; rather, it was her husband's disability insurance that had been denied. She was not content merely to file an administrative appeal of his case but was determined to make some trouble for the people who were responsible.

She was a natural leader, a large woman with a booming voice and a mothering manner who was not used to getting the run around from anyone. She went to legal aid to get help with the appeal of her husband's individual disability claim. There she met the lawyer who had a background in community organizing. The lawyer could not devote any of her work hours to direct organizing, but she was free to talk with her client's wife, which she did. She introduced this woman to other disabled families and linked her to a newly formed local resource center that had funds to support grassroots groups of elderly and disabled people.[58]

With this encouragement, the woman, in January 1982, set up a membership organization, the Alliance for Social Security Disability Recipients. The Alliance eventually gained national recognition. It began to speak for the disabled in coalitions, before legislative committees, and in several lawsuits of national scope.[59] It had a formal structure, with a mailing list, a newsletter, and periodic meetings. It established organizational links with disability coali-

58. The Carolina Community Project, Inc., 2300 E. 7th Street, P.O. Box 9586, Charlotte, North Carolina 28299.

59. The Alliance filed amicus curiae briefs in several lawsuits, including Schweiker v. Chilicky, 108 S. Ct. 2460 (1988); Bowen v. Yuckert, 482 U.S. 137 (1982); Heckler v. Day, 467 U.S. 104 (1984) (a statewide class injunction requiring the Department of Health and Human Services [hereinafter HHS] to adjudicate all future disputed disability claims without delays and within established deadlines); and Heckler v. Ringer, 466 U.S. 602 (1984) (challenging the HHS' policy of restricting medicare benefits for surgical procedure of Bilateral Carotid Body Resection). It was an organizational plaintiff in Lopez v. Heckler, 725 F.2d 1489 (9th Cir. 1984), *vacated and remanded*, 469 U.S. 1082 (1984) (challenging policies and procedures for termination of Social Security benefits), and an intervenor in American Medical Ass'n v. Bowen, 659 F. Supp. 1143 (N.D. Tex. 1987), *vacated and appeal denied*, 857 F.2d 267 (5th Cir. 1988). Alliance members have offered testimony at numerous legislative hearings including: *Staffing Reductions, Service Delivery, and Management of the Social Security Administration: Hearings on Management of SSA Before the Subcomm. on Social Security of the House Ways and Means Comm.*, 100th Cong., 1st Sess. 239 (1987) (statement of Eileen Sweeney, representing ASSDR); *Implementation of the Social Security Disability Amendments of 1984: Hearings on Pub. L. 98-460 Before the Subcomm. on Social Security of the House Ways and Means Comm.*, 99th Cong., 1st Sess. 156 (1985) (statement of Eileen Sweeney, representing ASSDR); *Judicial Review of Agency Action: HHS Policy of Nonacquiescence. Hearings on SSA Policy Before Subcomm. on Administrative Law and Governmental Relations of the House Judiciary Comm.*, 99th Cong., 1st Sess. 44 (1985) (statement of Dona Montgomery, founder and Exec. Dir., ASSDR); *Social Security Disability Insurance Program: Hearings on S.476 Before Senate Finance Comm.*, 98th Cong., 2nd Sess. 348 (1984) (submitted written statement by ASSDR); *Social Security Disability Reviews: A Federally Created State Problem. Hearings on CDI Before the House Select Aging Comm.*, 98th Cong., 1st Sess. 228, 362 (1983) (statement of Dona Montgomery, founder and Exec. Dir., ASSDR); and *Social Security Disability Insurance Program: Cessations and Denials. Hearings on Disability Insurance Before House Select Aging Comm.*, 97th Cong., 2nd Sess. 64 (1982) (statement of Dona Montgomery, founder and Exec. Dir., ASSDR).

tions in other states, such as Stop the Abuse in Disability (SAD) in Boston and Disabled American Workers Security (DAWS) in Denver.[60] The Alliance became an important symbol in the effort to challenge Reagan's disability policy — both in North Carolina and the nation. Yet in reality, the lawyers, the organizers and the leader gave continuity to the group. Its activities were oriented primarily toward the media and the government. For the rank and file disabled people who joined the Alliance, getting put on a mailing list and being solicited for dues were not in themselves empowering experiences.

2. The Speak-Out Event

There was, however, one activity which the Alliance organized that engaged the members in a different way — at least momentarily. Usually the Alliance would put on the event for its own members and their communities, in a living room, a church, or some other local gathering place. On a few occasions, though, the same event was taken to a different setting, labelled a public hearing of some sort, and addressed to an audience not of fellow sufferers, but of the general public or policy makers.

For instance, in the summer of 1983, while the class action litigation was being designed, the Alliance lobbied the state legislature to establish a special Review Commission to address the disability crisis.[61] The legislation passed because the state's lawmakers saw the disability crisis as an effort by Reagan and his staff to shift financial responsibility for the disabled back onto the states.[62] The Commission held a series of open hearings throughout the state about the crisis. The Alliance used this occasion to repeat the same speak-out event, with a few changes, that it was accustomed to producing in less formal settings.[63]

What did this "speak-out" event look like?[64] Essentially, it was a se-

60. Gault, *Grassroots Groups Fight Cuts*, In These Times, Jan. 12-18, 1983, at 7 (describing activities and organizational links between the Alliance, SAD, and DAWS). *See also* V. Vossen, The Cost of Compassion: Legality, Efficiency, and Discretion in the Social Security Disability Program 3-4 (1984) (unpublished manuscript on file with Professor White, U.C.L.A. Law School) (describing formation and activities of SAD).

61. *See* N.C. GEN. STAT. § 143b-403.1 (1987) ("Governor's Advocacy Council for Persons with Disabilities").

62. For discussion of the conflict between federal and state governments over the financing of relief for the poor, see F. PIVEN & R. CLOWARD, *supra* note 10.

63. In addition, on several occasions Alliance members presented testimony to congressional committees. Twenty-seven Alliance members accompanied Dona Montgomery to testify before the House Select Committee on Aging on June 20, 1983; forty-one Alliance members went to Washington to testify before the Senate Finance Committee on January 25, 1984; their testimony was accepted in written form. *See* sources cited *supra* note 59. *See also* Alliance for Social Security Disability Recipients, Inc.: Funding Proposal 15 (Jan. 31, 1984) (unpublished funding proposal submitted to Campaign for Human Development, on file with Professor White, U.C.L.A. Law School) [hereinafter Funding Proposal].

64. The following account is based on the author's observations of Alliance members speaking out about their experiences in several settings in 1983 and 1984. The interpretation of the emotion conveyed by these events is subjective. It is, however, informed by discussions with other observers and speak-out participants.

quence of monologues by disabled people with grievances against the Social Security Administration. Each speaker would rise spontaneously from the audience and come forward to recite his or her experience. The stories were strikingly similar; they were all variations on the same basic narrative. At the beginning of their stories, the speakers described themselves as dependent and powerless, as "cripples" or "invalids," sustained only by public charity. Suddenly, with no warning, the government changed face, withdrawing their disability stipends. This reversal caught them completely off guard. No one had suspected that President Reagan, who talked like a grandfather, could have harbored such evil designs. They were in despair, without any strength to combat the evil power that had assaulted them.

Then, seemingly out of nowhere, like a miracle, these lost souls stumbled upon the Alliance of Disability Recipients and its leader. This chance encounter changed their lives. Through the Alliance, they came to see their predicament clearly. They came to feel in themselves the strength to stand up to the government, to contest their terminations, to demand their benefits, to file a lawsuit.

The details of each speech were different, but the basic narrative and oratorical style repeated itself in every presentation.[65] As one speaker followed the next, the emotion seemed to build. Speakers who had seemed timid when they approached the podium began to command respect as they spoke. Their voices filled the room with welling cadences and ornate phrases. Their stories sounded the theme of redemption, of transformation. Their speeches both described and displayed their journey toward salvation, their discovery in themselves of the power to stand up against evil. It was a moving spectacle; indeed, for the occasionally attending observers from the Social Security Administration, it was chilling.

How did these people, so isolated and vulnerable at the outset, call forth such rhetorical powers at the speak-out events? From where did their sudden sense of presence — their eloquence and confidence in their own voices — come? Their feeling of power did not come from their formal affiliation with the Alliance — from paying dues and getting a monthly newsletter. Nor did their strength come from their status as plaintiffs in a lawsuit. The formal association and the lawsuit provided a context, a frame, within which the speak-outs took place, but those circumstances do not account for the changes that people displayed as they participated. The speakers seemed to generate collective energy at these events; they produced a moment of mobilization.[66]

65. The founder of the Alliance, Dona Montgomery, reports that no transcripts were made of these speak-outs. Telephone interview with Dona Montgomery, Alliance for Social Security Disability Recipients (July 6, 1988).

66. By "mobilization" I mean a transformation of consciousness and behavior on two levels. On the first level, the dominant ideology, "the system," loses its legitimacy. Subsequently, participants lose their fatalistic sense that they are trapped within the system; they come to believe that they have "rights" and can change their situation. On the second level, participants violate traditions, discount sources of cultural authority, and act collectively, rather

This sense of power happened as the participants came together to speak publicly about a shared experience of injury in a language that they considered their own. At the speak-outs, in contrast to administrative hearings or trials, these people were received as authorities on their personal experience. They were invited to tell their stories in a language and ritual that they had used all of their lives in their religious practice. The language—indeed, the art form—of the speak-outs is part of the cultural tradition of radical Protestantism.[67] When the speakers described their involvement with the Alliance and demonstrated the inner strength that this encounter gave them, they were giving religious testimony. They were speaking in a discourse that they had practiced since childhood at church services, revivals, and camp meetings. Through the speak-outs, the disabled reclaimed a cultural frame for themselves within which they were no longer bureaucratic objects — welfare recipients, legal services clients, or even Alliance members.[68] Rather, they were human souls, who could attain a state of grace, a transfiguration, through their own language and movement.[69]

3. *Surveying the Effects*

Any attempt to talk about one's troubles in one's own voice is likely to feel empowering.[70] At the speak-outs, Alliance members were drawing on a

than as isolated individuals. For further discussion of the phenomenon of mobilization, see F. PIVEN & R. CLOWARD, *supra* note 29, at 1-40; N. SMELSER, THE THEORY OF COLLECTIVE BEHAVIOR (1962); M. GRUENEBAUN, THE EMERGENCE AND TRANSFORMATION OF PROTEST MOVEMENTS: A STUDY OF THE WOMEN'S MOVEMENT IN THE UNITED STATES (1980); J. LOFLAND, PROTEST: STUDIES OF COLLECTIVE BEHAVIOR AND SOCIAL MOVEMENTS (1985).

67. The Alliance maintains no official records of the ethnic background of its membership. *See* Funding Proposal, *supra* note 63, at 3. However, based on conversations with Ms. Montgomery, as well as my own experience working with the organization and representing individual Alliance members, it was apparent that the group flourished in rural areas of central North Carolina, where the majority of the population, both Black and White, are affiliated with Protestant denominations which have evangelical traditions of worship. *See* BUREAU OF THE CENSUS, STATISTICAL ABSTRACTS OF THE UNITED STATES 1988, Rep. No. 79 (1987). (In 1980, 53.9% of the population of North Carolina were active followers of Protestant denominations.)

For discussion of the oral culture of evangelical Christianity, see Patterson, *Word, Song, and Motion: Instruments of Celebration among Protestant Radicals in Early Nineteenth-Century America*, in CELEBRATION: STUDIES IN FESTIVITY AND RITUAL (V. Turner ed. 1982); C. JOHNSON, THE FRONTIER CAMP MEETING (1955); J. ORR, THE FLAMING TONGUE: THE IMPACT OF TWENTIETH CENTURY REVIVALS (1973); W. MCLOUGHLIN, REVIVALS, AWAKENING AND REFORM: ESSAYS ON RELIGION AND SOCIAL CHANGE IN AMERICA 1607-1977, at 21-22 (1978); E. WEISS, CITY IN THE WOODS 3-26 (1987); S. DIMOND, THE PSYCHOLOGY OF THE METHODIST REVIVAL 74-136 (1926).

68. For one provocative analysis of how religious fundamentalism is an expression of cultural values that are threatened with obliteration by the modern bureaucratic state, see Peller, *Reason and the Mob: the Politics of Representation*, TIKKUN, July-Aug. 1987, at 28.

69. The social psychology of evangelism has been the subject of some scholarly inquiry. *See generally* M. ARGYLE, THE SOCIAL PSYCHOLOGY OF RELIGION (1975), and sources cited *supra* note 67 and *infra* note 71.

70. Without the opportunity to articulate a narrative of one's own life, "there is a loss of identity and self-understanding that diminishes and victimizes us. Our feelings are never collected and ordered, and our sense of self contracts in the measure that we forget or avoid our stories." P. KING & D. WOODYARD, THE JOURNEY TOWARDS FREEDOM 22 (1982) (analyzing

cultural tradition that they considered their own. Their ease with the discourse made them feel competent to speak, to analyze, to formulate plans for action. Hearing others use the same language and style to tell of their woes showed everyone their common origins. During the speak-outs, the participants felt an immediate sense of connection, of solidarity; they realized that group action might not be out of the question.

Furthermore, their use of a specifically religious discourse enhanced this feeling of power. The basic logic of the conversion ritual is a movement from weakness and isolation to connection and grace.[71] By framing their stories as religious testimony, they constructed their own experience as a revelation of profound strength within and between them. While they were within the spell of this experience, the silencing culture of bureaucracy and legalism was temporarily held at bay, and their own thoughts and passions on the subject of disability could begin to emerge.[72]

The Alliance and the class action litigation were two independent responses to a political crisis. Yet the two initiatives complemented each other. The lawsuit was an occasion for bringing disabled people together. It shaped their grievances into affirmative claims, and compelled the state to respond to them. Thus, it provided some basic structure — a constituency, an agenda — around which the Alliance could develop.

In addition to shaping the litigation, the lawyer took several further steps to encourage clients to organize on their own. First, she referred her clients to the Alliance when they asked what more they could do. Second, she kept her eyes open for the resources — money and experienced people — that could help sustain the Alliance as an independent organization. Finally, she approached the litigation as one of many possible strategies for responding to the crisis, rather than the only show in town. She urged Alliance members to devise other actions that could be coordinated with the litigation process. Thus, the lawyer helped set the conditions in which the Alliance could grow. But the Alliance succeeded at mobilizing rank and file disabled people only because it gave them occasions to speak and act against the problem in their own linguistic and cultural forms.

The participants experienced the speak-outs as moments of mobilization. But what did this mean? Did the speak-outs have any enduring effects that went beyond the energy that was generated among those present? Although this question cannot be answered with certainty, several changes seemed to

---

the practice of liberation theology). For further discussion of the significance of narrating one's own life to the process of empowerment, see Coss, Segal & Sklar, *Separation and Survival: Mothers, Daughters, Sisters — The Women's Experimental Theatre*, in THE FUTURE OF DIFFERENCE (H. Eisenstein & A. Jardine eds. 1987); C. HEILBRUN, WRITING A WOMAN'S LIFE 43-45 (1988).

71. For theories of the psychology of conversion experiences, see W. MEISSNER, PSYCHOANALYSIS AND RELIGIOUS EXPERIENCE (1984); V. B. GILLESPIE, RELIGIOUS CONVERSION AND PERSONAL IDENTITY: HOW AND WHY PEOPLE CHANGE (1979).

72. For a discussion of the marginalization of the language and culture of minority groups, see sources cited *supra* note 41.

follow in the wake of the speak-out events. The most visible of these changes was the effect of the speak-outs on some clients' performance at litigation-related events. I can best illustrate this point with my own experience in representing a former speak-out participant in an administrative appeal of his own disability termination.

Prior to 1983, the client had received disability for about ten years for back and shoulder pain brought on by an injury and exacerbated by anxiety and depression. In my first meeting with him to prepare for his hearing, he was soft-spoken and self-effacing. He was a small man who walked with a limp. The pressure on his spine was so severe that he had lost the use of his right arm and hand, which were drawn up protectively against his chest. His voice waivered when he spoke. He seemed very intimidated by me and by the prospect of testifying about his condition before an administrative law judge. When I asked him to tell me about the pain he felt, he seemed bewildered. After a long silence, I coaxed him to whisper his assent to my leading questions. His discomfort at drawing so much attention to himself seemed contagious. I began to dread going with him to the hearing.

Between this first interview and his disability hearing, he joined the Alliance and began to take part in its events. When I happened to hear him speak at a public hearing in which Alliance members gave testimony, I saw a remarkable transformation. As he described his impairment, his years on disability and his sudden termination, words seemed to come easily to him. He sounded almost self-righteous as he described how he discovered the Alliance and came to realize that he was not the only person who had been terminated. As he spoke, his whole demeanor seemed to change. His body seemed larger than I had remembered, less burdened with pain. He raised his arms — both of them — at the end of his speech, in a gesture of defiance.

When I met him again in my office the following week, some of that new aura remained. He found it easier to talk to me about his pain, about how it interfered with his life, leaving him unable to do his former job. He spoke in a stronger, more confident voice and used graphic, even colorful language. When we went to the hearing the following day, he got nervous again as the judge looked down on us from his huge desk. But he was much more self-possessed, more articulate — stronger — than the person I had met at our first meeting the month before.

In addition to improving existing clients' performance in official forums, the speak-outs helped draw new clients into the Alliance, the lawsuit and the disability rights movement. Perhaps because people put themselves "on the line" during the speak-outs, they seemed to come away feeling connected to each other and committed to winning their individual disability claims and *their* class action lawsuit. The speak-outs were a place where people could trade stories about the progress of their lawsuit and hear the latest news about similar litigation around the country. People began to follow the litigation and to feel a stake in its success. The speak-out "regulars" became a loose

network that the lawyers could consult to find out about the latest street-level practices in the local Social Security offices, the names of good witnesses, and the best methods for getting notices to class members or for motivating them to re-open claims that had been terminated or denied. Alliance members began to come to court to watch hearings in the class action case. Some responded to calls to demonstrate at the local Social Security office, and a few even traveled to Washington to lobby Congress and meet with Administration officials.[73]

This heightened visibility of disabled people affected all of the actors in the litigation. Their presence in the courtroom and their fluency as witnesses appeared to make the judge more aware of the human impact of the disability cuts. The defendant-agency began to perceive the disabled as a formidable political force. Elected officials began to view the Alliance as a voter bloc with more clout than their numbers might suggest. Members of Congress began to offer disability advice and advocacy to their constituents.[74] And the Social Security Adminstration itself began to react to the disruption and embarrassment that these articulate, angry clients threatened to cause.[75]

The speak-outs had one further effect. The personal strength and competency that some participants expressed through the speak-outs presented a paradox which arose from the tension between disability doctrine and personal empowerment. The statutory definition of disability is in many ways a negation of self-empowerment.[76] According to the logic of disability doctrine, a client who presents herself as a powerful actor undermines her claim of entitlement to disability benefits. Some of the individuals who were mobilized through involvement with the Alliance resolved the paradox personally, by redefining themselves as able to work. They re-entered the job market with a new understanding of their potential. In large part because of the new skills

73. Funding Proposal, *supra* note 63, at 14-16.

74. As a legal aid attorney in North Carolina, I sometimes consulted with the local staff of Rep. James Martin (R., N.C.) regarding his constituents' disability problems.

75. Ultimately, Congress enacted amendments to the Social Security Act to address some of the administrative practices that had caused the crisis. *See* Social Security Disability Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794 (1984).

76. The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than [twelve] months." 42 U.S.C. § 423(d)(1)(a) (1982). The statute further provides that "[a]n individual . . . shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work is in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." *Id.* § 423(d)(2)(a) (1982). *See* Liebman, *The Definition of Disability in Social Security and Supplemental Security Income: Drawing the Bounds of Social Welfare Estates*, 89 HARV. L. REV. 833 (1976) (suggesting principles for future legislation concerning federal aid to the disabled); D. STONE, THE DISABLED STATE (1984); C. LIACHOWITZ, DISABILITY AS A SOCIAL CONSTRUCT: LEGISLATIVE ROOTS (1988).

and new contacts that they had gained through Alliance work, some of these people succeeded in finding employment.

Others reacted to the paradox less individualistically. They began to question the social policy and legal doctrine that had constructed their medical condition as "disability." Their experience of themselves as articulate and powerful actors at Alliance events led them to think that an entitlement program for them should have very different contours. It might define all persons as productive. Instead of mandating disability stipends for some individuals, the program might require the creation of suitable employment positions for all citizens — positions in which all people could use their unique abilities.

People did not articulate this vision in a legally sophisticated way. They did not suggest that the statute itself be rewritten along the lines, for example, of the Education for All Handicapped Children Act.[77] Rather, they enacted this critique by showing themselves to be competent people, effective at politics, even if they could not fit into the narrow range of jobs available for them in the "national economy."[78] By their collective actions, they demanded that the universe of work be expanded to permit them to enter into it.[79]

The speak-outs did not produce any of these effects in isolation. Rather, the speak-outs, and the Alliance itself, developed within a welfare program with a unique political character. The broad class composition of disability recipients, the image of Social Security as insurance rather than a welfare pro-

77. *See* 20 U.S.C. §§ 1400-85 (Supp. IV 1986). The Act mandates that educational programs be designed to meet the needs of every child, regardless of how profound her disabilities may be. Thus, the educational system is itself placed under a duty to adapt to the unique requirements of disabled children so as to enable them to be "productive" learners and achieve their full human potential. *See* Comment, *The Meaning of Appropriate Education to Handicapped Children under EHCA: The Impact of Rowley*, 14 SW. U.L. REV. 521, 523 (1984). The author of the Comment views the statute as an effort to prepare all children to live in, and contribute to, society. By adapting the educational system to the special needs of the disabled, the costs of welfare and institutional care will be reduced, and each handicapped individual will be aided in developing a sense of self-esteem as she becomes a contributing member of the community.

78. *See supra* note 76. 42 U.S.C. § 423(d)(2)(a) (1982).

79. A second question raised by the disability mobilization reflects an internal conflict inherent in the Protestant-evangelical culture which provided the pattern for the speak-outs. This culture is grounded in the contradictory norms of self-realization and solidarity on the one hand and an absolute deference to authority on the other. The tension between these norms is apparent in other social movements which have drawn upon this religious tradition, such as the civil rights movement. *See* G. WILMORE, BLACK RELIGION AND BLACK RADICALISM: AN INTERPRETATION OF THE RELIGIOUS HISTORY OF AFRO-AMERICAN PEOPLE (1984); M. MANNING, BLACKWATER: HISTORICAL STUDIES IN RACE, CLASS CONSCIOUSNESS AND REVOLUTION 40 (1981); H. BAER, THE BLACK SPIRITUAL MOVEMENT: A RELIGIOUS RESPONSE TO RACISM 200-04 (1984).

There is no easy method for resolving this internal tension. If a social movement aspires to a participatory form of activism, its leadership and members must be careful, in drawing upon evangelical culture, to affirm its democratic aspirations and avoid its authoritarian assumptions. This task is very difficult, conceivably impossible; the tension between participatory and authoritarian tendencies in religious discourse may ultimately limit social movements that are linked too closely with it.

gram,[80] and conflict between state and federal interests regarding disability expenditures[81] all supported a widespread coalition opposing the Reagan-era disability cuts. Yet, through the Alliance, and specifically the speak-outs, poor people — disabled individuals and families with little political clout — personally engaged in this challenge. Perhaps their involvement was not necessary to the coalition's success at reversing some of the Administration's policies. However, the speak-outs did force the elites to confront many particular stories of injustice, and the gatherings appear to have changed the speakers themselves.

B. A Theater Group of the Homeless

1. The Search for an Open Discourse: People's theater?

The second case is set among the homeless of Los Angeles. In sharp contrast to rural people in North Carolina whose lives and communities are grounded in traditional values and cultural practices, the homeless in Los Angeles are a community of people who are united only by their shared poverty and a common experience of "disaffiliation."[82] People come from a wide range of backgrounds. Harsh experience has led many in this group to submerge past connections altogether.[83] They have no common language or culture through which to share stories and make emotional connections.

In spite of these obstacles, homeless people in Los Angeles have on occasion been drawn into collective action. Unlike the Alliance events, their activities have not been patterned on forms of ritual already familiar to the participants. Rather, to mobilize homeless people, activists have searched for an "open" discourse, one that people who felt separated from their own histories could nonetheless "pick up" easily and enter into on an equal footing with others. Such a discourse would enable speakers to fashion new forms of collective speech, new patterns of culture from their diverse, fragmented histories. This search for a discourse that would be open to culturally stranded individuals led to a version of theater.

Theater encompasses a number of distinct traditions. The theatrical style that worked as a vehicle for mobilizing the homeless of Los Angeles has been described by the Peruvian theorist Augusto Boal as "theater of the oppressed."[84] In his writing, Boal contrasts three genres, or paradigmatic styles,

80. *See Rights and Redistribution*, *supra* note 5.

81. *See generally* F. PIVEN & R. CLOWARD, *supra* note 10.

82. *See* M. ROBERTSON & R. ROPERS, THE HOMELESS OF LOS ANGELES COUNTY: AN EMPIRICAL EVALUATION 19 (Basic Shelter Research Project Document No. 4, UCLA School of Public Health) (1985); H. BAHR & T. CAPLOW, OLD MEN DRUNK AND SOBER 55 (1973) (introducing the concept of "social disaffiliation" as the unifying characteristic of the homeless).

83. *See* F. REDBURN & T. BASS, RESPONDING TO AMERICA'S HOMELESS: PUBLIC POLICY ALTERNATIVES 13-32 (1986).

84. *See* A. BOAL, THE THEATRE OF THE OPPRESSED (1979). There is a large literature on different approaches to political theatre. *See, e.g.*, U. DUTT, TOWARDS A REVOLUTIONARY THEATRE (1982); E. PISCATOR, THE POLITICAL THEATER (1963); V. UNGER, THE LIVING BOOK OF THE LIVING THEATER (1971); C. ITZIN, STAGES IN THE REVOLUTION: POLITICAL

of theater which he labels Aristotelian tragedy, Brechtian political theater, and improvisational revolutionary theater.[85] He understands tragedy as a drama of submission to authority personified in gods and kings. In the ritual of tragedy, characters and spectators imaginatively release the pain that such supplication entails, thereby defusing potentially revolutionary frustration. Boal understands Brechtian theater to portray revolutionary activism, but through an image of deference to a vanguard. The actors dramatize the themes of class-based exploitation, but then pronounce to the spectators what sense they should make of it, and what actions they should take to challenge it. Just like in Aristotelian tragedy, it is only the elite on the stage, and not the victims of class oppression — either on stage or in the audience — who are assumed to have the capacity for human agency.

While Aristotle's audience was intended to experience catharsis, a passive release of narrative tension, the role of Brecht's audience was to absorb the teacher's analysis of reality and follow his prescription for change. Thus, this theater did not leave the spectators any better off than Aristotelian tragedy, any more confident of their own capacity to make change, to participate actively in the critique and reconstruction of their social world.[86] Like religion, these two forms of theater are essentially templates for a hierarchical society. They vest the powers of creation and judgment — the authority to speak — in a higher being. The fundamental role of humans is to obey, to defer to the commands of that higher being.

Boal contrasts these two styles of theater with what he calls revolutionary theater, or people's theater. By this he means an extended improvisation, rather than a set-piece, in which poor people participate from the audience — as critics, commentators, playwrights and occasionally even actors. The script emerges from workshops in which participants experiment with different themes, characters and roles.

Even in "performances," where spectators are invited to join the actors, the event remains fluid. The action continually takes surprising turns, and barriers between actors and spectators are continually disrupted. It is a theater in which there are no rules of style or structure. Within the boundaries of each performance, the group can create a discourse for exploring how their lives intersect. Everyone, no matter how cut off from his own cultural background, takes part. Precisely because this style of theater assumes no common cultural ground among the participants, it might be a vehicle through which homeless people can confidently raise their voices.

THEATRE IN BRITAIN SINCE 1968 (1980); D. SAVRAN, THE WOOSTER GROUP 1975-1985: BREAKING THE RULES (1986); K. HERMASSI, POLITY AND THEATER IN HISTORICAL PERSPECTIVE (1977); I. LEVINE, LEFT-WING DRAMATIC THEORY IN THE AMERICAN THEATER (1985).

85. *See* A. BOAL, *supra* note 84.

86. I use the term "world" to refer to the perspective on reality that a person or group acquires through their social and cultural location and their active participation in, and intepretation of, their experience. *Cf.* N. GOODMAN, WAYS OF WORLDMAKING (1978).

2. *An Experiment: The Los Angeles Poverty Department*

The "Los Angeles Poverty Department" (LAPD) is a theater group of homeless people that suggests Boal's idea of revolutionary theater.[87] Started in 1985 by performance artist John Malpede and supported by various arts grants, the group is a loose connection of about twenty sometimes-homeless persons from the Skid Row area of Los Angeles.[88] There are no entry-barriers for the theater group; everyone who appears at rehearsals is welcome to participate. The actors have all lived through homelessness with its associated poverty, isolation, mental illness, violence and incarceration. Many of them continue to face these problems and the threat of homelessness. They are the same people who come to the Inner City Law Center as clients for solutions to their welfare problems and to provide affidavits in various class action lawsuits that have been filed on their behalf.[89] Although some of the participants have had acting experience, none are professionals, and many are unaccustomed to working on a discrete project with a group of peers.

The theater workshop meets twice a week at Inner City. During the sessions, the group does improvisations with the goal of working out ways, through words and movement, to present themselves to each other. In these exercises, the participants might begin by telling stories from their own lives.[90]

---

87. This account of the LAPD is based largely on interviews with John Malpede and my attendance at LAPD performances in March 1988. The LAPD has been reviewed in several publications, including: Apple, *Where the Sidewalk Begins: John Malpede's Poverty Department Isn't Acting*, L.A. Weekly, July 4-10, 1986, at 21; Solomon, *Unaccommodated Men — And Women*, The Village Voice, May 20, 1986, at 99; Burnham, *Hands Across Skid Row: John Malpede's Performance Workshop for the Homeless of L.A.*, TDR: THE DRAMA REV., Summer 1987, at 126 [hereinafter *Hands Across Skid Row*]; Burnham, *Los Angeles Poverty Department*, 9 HIGH PERFORMANCE 76 (1986); Hughes, *Street People Find a Home in the Theater*, Wall St. J., July 22, 1986, at 28, col. 1.

88. Malpede himself also works as a paralegal for the Legal Aid Foundation's Homeless Litigation Unit, out of the offices of the Inner City Law Center. Inner City is a non-profit law office serving poor people in the Skid Row area of Los Angeles. Malpede has recruited workshop participants by spreading the word at the Law Center and on the streets.

89. In Los Angeles, a coalition including the Legal Aid Society of Los Angeles, the Inner City Law Center and several law firms has filed a series of class action suits to challenge policies of the city and county toward homeless people. *See generally* Blasi, *Litigation on Behalf of the Homeless: Systematic Approaches*, 31 WASH. U. J. URB. & CONTEMP. L. 137 (1987); Blasi, *Litigation Concerning Homeless People*, 4 ST. LOUIS U. PUB. L.F. 433 (1985); Blasi, *Strategies for Litigating Subsistence Issues in Times of Retrenchment*, 16 N.Y.U. REV. L. & SOC. CHANGE 591 (1987-88). Among the cases that the coalition filed are: Eisenheim v. Board of Supervisors of Los Angeles County, No. C-479453 (Cal. Super. Ct. filed Dec. 20, 1983); Blair v. Board of Supervisors of Los Angeles County, No. C-568184 (Cal. Super. Ct. filed Oct. 2, 1985); Bannister v. Board of Supervisors of Los Angeles County, No. C-535833 (Cal. Super. Ct. filed Feb. 25, 1985); Paris v. Board of Supervisors of Los Angeles County, No. C-523361 (Cal. Super. Ct. filed June 27, 1986); and Rensch v. County of Los Angeles, No. C-595155 (Cal. Super. Ct. filed Apr. 10, 1986). These cases were consolidated in City of Los Angeles v. County of Los Angeles, No. C-655274 (Cal. Super. Ct. filed Oct. 19, 1987), in which a class of homeless persons joined the City of Los Angeles to sue Los Angeles County for a wide range of bureaucratic practices that are claimed to deprive the homeless systematically of welfare entitlements.

90. For instance, in one exercise, Malpede asked each person to act out some experience that had made her feel "really good." The group eventually staged a performance, "South of

As members have gained facility in the monologue form, they have begun to experiment with sustained interactive theater pieces.

Over the two years it has been in existence, the group has done several works for a wider audience. It has set up a performance space on a street corner in Skid Row where it has staged open-mike talent shows. It has performed a set piece, "South of the Clouds,"[91] based on monologues of group members. And it has devised a more or less cohesive picaresque drama, "No Stone for Studs Schwartz." The group's work has received rave reviews in the Los Angeles area.[92]

"No Stone" is not political theater in any conventional sense. It does not give a packaged analysis of homelessness or poverty. Rather, it is the rambling, chaotic history of one homeless person, as he travels about the country and beyond. It evolved out of improvisational play on the actual life story of Jim Beame, one of the members of the cast. According to the playbill that the group wrote:

> The piece follows small time operator Studs Schwartz as he flees the mob from Jersey to the Caribbean, with side trips to Israel and Vietnam. A dozen LAPD performers tackle (and exchange) 20 characters. The piece experiments with narrative, form, time, character and just about anything else it comes across, and the story changes a little with every performance.[93]

Each performance plays out differently, with the actors engaging each other from the stage and the sidelines, commenting in a very unruly way on the action as it progresses. Its dramatic tension comes from what goes on among the characters in each vignette.

The play has won artistic praise for conveying the energy of street life and eliciting from each of the actors a strong, complex character. As one reviewer wrote:

> [E]ssentially [the play is] a rambling rap you might hear from any of

---

the Clouds," based on the elaborate monologues that emerged. *See Hands Across Skid Row*, *supra* note 87, at 135-37.

91. *Id.* The play was reviewed in Stayton, *Outcasts' Hits Home With Skid Row Actors*, L.A. Herald Examiner, June 27, 1986, at 36, col. 1.

92. *See, e.g., id.* ("What Malpede wants is what his performers do on the streets every day of their lives: survive by their wits. What emerges is a striking insight behind the mythology of the dispossessed and homeless. These people can't be mere amateurs, can they?"); Stayton, *LAPD Leaves No Stone Unturned*, L.A. Herald Examiner, Jan. 16, 1987, at 33, col. 1; Stein, *Los Angeles Poverty Department: No Stone for Studs Schwartz*, 10 HIGH PERFORMANCE 82 (1987); Burnham, *LAPD: No Stone for Stud Schwartz*, ARTFORUM, Summer 1987, at 129 ("Although the ensemble careens close to chaos at times, the flexible structure allows hilarious patter, intense interactions, and moving soliloquies. . . . The improbable successes of LAPD amount to good performance work that flows with some of the best current theater thinking. More than that, its social context makes it an examination of the dynamics of some frequently overlooked aspects of American life.").

93. Mimeographed program notes distributed by LAPD at performances of "No Stone for Studs Schwartz" in March 1988 (on file with Professor White, U.C.L.A. Law School).

> the impassioned orators who wander the streets outside the theater, looking for someone who will listen. It's a manifestation of the neighborhood's character.[94]

But even if the LAPD produces good art, does its approach to theater have any significance as politics? Has it mobilized the actors or audience politically, even for a moment, or does such a question ask too much of these confusing spectacles? What impact does this theater have on the lawyers who might see it, or on the wider public? Should it be placed beside the disability speak-outs, as a second example of poor people finding a voice for themselves in a cultural/discursive space parallel to formal litigation? Or is it entirely different? These questions are not easy to answer.

In contrast to the clear judgment of critics about the artistic value of the LAPD performances, there seems to be no similar clarity — among Malpede, the other actors, or the spectators[95] — about what the LAPD is or does as politics. Malpede insists that the theater group is not the same thing as community organizing,[96] but he nevertheless believes that it does "intersect" with social change-oriented work.[97] He started the group "primarily as a way to generate a community in an isolated, dangerous environment."[98] Through their work together, the actors can "articulate the reality of their lives for themselves, each other and, eventually, the outside world."[99] Malpede hopes that by making connections among themselves the participants will eventually be able to engage in action that is more clearly political in nature.[100] At the least, however, it can help break down the isolation that "crushes the spirit of the already socially and materially deprived."[101]

According to the testimony of participants, the theater group has affected their personal lives by connecting them to each other and helping them to speak out.[102] Thus, it may have given some a faint hope that agency and community are indeed possible, even within the overwhelming constraints of the Skid Row environment.[103] In the words of one LAPD member, Joe Clark, the theater experience "can increase your self-esteem incredibly, and it fills the need to describe and make sense of your world."[104] In the words of another

94. Burnham, *supra* note 92, at 129.

95. I have had conversations with several lawyers and law students who attended performances of "No Stone for Studs Schwartz" in March 1988.

96. *See* Burnham, *supra* note 87, at 146.

97. *Id.*

98. *See* Apple, *supra* note 87, at 22.

99. *Id.*

100. *See* Solomon, *supra* note 87, at 99.

101. *See* Apple, *supra* note 87, at 22.

102. *See* Burnham, *supra* note 87, at 147. It has also helped people to seek economic assistance and has motivated others to get their lives organized. It has helped some keep mental illness in check.

103. Malpede describes Skid Row as "an apartheid situation, a prison without walls. . . . It's like a Roach Motel — they can check in, but they can't check out." Apple, *supra* note 87, at 22.

104. *See* Burnham, *supra* note 87, at 146.

member, "it saved my life."[105]

In addition to these changes in the self-understanding of the participants, the theater has worked in the public sphere as well. For Skid Row audiences, the street-corner talent shows give them a chance to assume center stage for a change, making the action and commanding attention. In the set-pieces, people see their neighbors working together to produce something lively and interesting that sounds themes familiar in their own lives. As spectators, they get invited not only to comment on the action, but to enter into it from the sidelines as well.

For the wider audience of advocates and allies, who come expecting to see disciplined, comprehensible political theater — giving back to them all of the assumptions about the homeless they already held — the experience is one of disruption. The audience does not hear any "line" about homelessness or poverty. Rather, spectators are confronted by strong, clever, talented people who are homeless and in pain, but who are also visibly charged up about the project of shaping this play together and who will not sit still or stay quiet long enough to be cured, punished, or dismissed. The experience suspends the social structure of the spectators' everyday world, in which homeless people are confined to the role of supplicants or deviants, the objects of other people's pity or fear, if, indeed, they are noticed at all.[106] It brings the audience into an imaginative community where the social patterns are radically different.

In this space, homeless people assume the power to define social reality for a moment. They act out a story that does not conform to the audience's cultural rules. It abides by its own narrative logic and generates its own aesthetic energy. It engages mainstream audiences in an unfamiliar, indeed, disorienting way. Unlike the images of homeless people in the dominant culture, these actors do not beg from the audience, or hustle them, or shrink from their view. Rather, they make a radical, even threatening assertion that, in spite of their pain, or rather through it, they will create the terms of their own lives. The theatrical experience demands that the mainstream spectators enter the world of the actors, making sense of a pattern of feelings and aspirations that are not shaped to respond to the audience's greater socioeconomic power. Although this theater disrupts the presumed relation of dependency and domination between actors and audience, it works as art, and perhaps also as politics, because, through their very act of defying the stereotypes, the homeless command respect and empathy from the audience. To the spectator who can

105. This remark was made to spectator Wayne Morrow by one of the members of the cast of "No Stone for Studs Schwartz" immediately after a performance in March 1988 in Los Angeles. The speaker described how participating in the theater group had helped motivate her to overcome severe depression and seek treatment for drug addiction. For reasons of confidentiality, I have not identified her by name.

106. For excellent analysis of the ways that the images of homeless people are constructed by the dominant culture, see J. KOZOL, *supra* note 21; Marcuse, *Neutralizing Homelessness*, SOCIALIST REV., Jan.-Mar. 1988, at 69; *The Chronic Calamity*, THE NATION, Apr. 2, 1988, at 465 (reviews of Kozol's *Rachel and Her Children* by Kai Erickson, Robert Fitch, Theresa Funicello and Jacqueline Leavitt).

remain open after her own privilege is challenged, the theater experience reveals that these pitiable, frightening others are human beings, with capacities for defiance and imagination that cannot be confined by the diagnoses and remedies that are engineered for them.

The connection of this theater to the advocacy effort, at least in its current early stage of development, is very attenuated. But two themes emerge. Unlike the disability speak-outs, this theater may not enable homeless clients to assist their lawyers with specific tasks in the litigation. Yet, as an activity among the homeless, the theater can help change their often harsh images of themselves, empowering them to see their own capacities and identify their needs. An equally important potential of the theater is to give advocates, other allies of the homeless, and the more general public some sense of how some homeless people experience the world. Thus, the theater may not produce clients who can collaborate with lawyers on shaping the technical details of litigation. More importantly, however, it can challenge the assumptions that their lawyers relied on to design that litigation in the first instance. By shaking up the lawyers' images of who their clients are, the theater experience might open them to a more genuinely collaborative approach to their own work.[107]

CONCLUSION

Much of the welfare advocacy of the 1980s has demonstrated that litigation can be a multidimensional political strategy. In this work, however, one potential benefit has not been fully developed. That is the potential for litigation to be an occasion for the education and mobilization of clients, their advocates and the larger community. Litigation might "spin off" opportunities for clients to speak and act out their grievances and aspirations from their own perspective, even if it is rarely feasible for clients to turn the courtroom into a space for their own expressive action. Within the broad frame of litigation, advocates can help clients locate public spaces to speak and act through their own linguistic and cultural traditions. These events can sometimes support the litigation effort directly. But, more importantly, they deepen the solidarity among poor people, their advocates and their allies. Such activities might also give poor people a momentary feeling of dignity, community and power that is too often lacking in their encounters with the law.

I do not claim that it is either appropriate or possible to spark activity of this type around every lawsuit. Nor do I address the question of how this activity relates to broader strategies for consolidating the political power of the poor. Though I share Piven and Cloward's skepticism about the strategic place of formal, bureaucratized organization in the mobilization of the poor,[108] I do not suggest that the episodic expressive activity that I have described is a substitute for more sustained, programmatic work.

107. *See* G. Lopez, *supra* note 24.
108. *See* F. PIVEN & R. CLOWARD, *supra* note 29.

Finally, I do not resolve the role of the lawyer in supporting this parallel action. At a minimum, lawyers must be sensitive to the fact that their litigation can draw poor clients into a culture and a discourse that is likely to seem strange and intimidating. This creates a danger that their clients will be silenced rather than encouraged to speak out. But attorneys should also be alert to the opportunities that litigation will sometimes present. Because a lawsuit gives voice to injuries and gives shape to aspirations, it might sometimes focus clients' attention on a shared problem, or awaken their hope of change. Thus, a lawsuit might sometimes give clients the incentive and energy to produce events in their own spheres which address the same basic grievances and hopes as those brought out in litigation. Lawyers cannot make such events happen. But they can get to know their clients' communities and cultures. They can try to sense when such opportunities are present and suggest cultural forms that parallel events might take. In addition to this vigilance, lawyers can sometimes identify resources to support such events.[109]

A single moment of mobilization has some value, even when it makes no concrete contribution to the litigation effort. For the clients, it creates a history, a context, for further action in the future. And for the lawyers, if they listen carefully, these moments can make them aware of their clients' worlds, of the power and visions that their clients can bring to a shared project for change.

109. In many cases, however, legal and professional barriers will prevent lawyers from going even this far in aiding clients' efforts. One example of such a barrier is the Legal Services Corporation's restrictions on community organizing and various forms of training. *See* 45 C.F.R. § 1611 (1987).