Ed Sparer was a legal services pioneer. I first met him back in the mid-'60s when he was running Mobilization for Youth in New York City. His program was a flagship for the newly-launched War on Poverty. The litigation strategies he developed in the heart of the inner-city slums broke ground for the more than 100 cases—mostly successful—that a new breed of legal services lawyers would argue before the Supreme Court over the next decade.¹

I too became a legal services lawyer in 1968, arguing poverty law reform cases in the old D.C. Circuit, before judges like Dave Bazelon, Skelley Wright, Carl McGowan, Harold Leventhal and Spottswood Robinson—not a bad lineup. In those heady times, we legal services lawyers felt confident in "going for it," raising constitutional issues freely—almost profligately, winning exciting "first wave" issues, like unconscionable consumer contracts, warrants of habitability and the right of poor women to divorce without prepaying court fees.

But the 1980s ushered in sobering changes. The courts became less responsive, less accessible to the poor and their advocates; the Supreme Court progressively less willing to expand constitutional rights for the poor or anyone else—except maybe property owners. At the same time, substantive programs for the poor—from AFDC to housing assistance to legal services—fell into disfavor, as indeed did the poor themselves. Anatole France told us that two things are always with us: the poor and taxes. In the 1980s, one was about as popular as the other.

Today, the tide may again be turning. The election of a new President raises hopes—guarded hopes—for a more committed and compassionate approach toward the poor. The President himself, while calling for a "new responsibility" on the part of the poor, has also called for greater job opportunities and job training and social services funding and national health insurance; he is launching a national community service program. The new Secretary of Agriculture will presumably know the difference between catsup and a vegetable in a child's school lunch, and the new Attorney General will not be heard to declare that "there are no hungry people in America."

Of special significance, the Legal Services Corporation should now finally enjoy a ceasefire from the previous administrations' open, and subterranean, attacks on its agenda and its very existence. Freed from rearguard actions to fend off restrictions on

¹ The author is a United States Circuit Judge for the District of Columbia Circuit. She was an attorney at the Neighborhood Legal Services Program from 1968 to 1970. Portions of this address were previously delivered at a training institute for legal services lawyers and appear in the May 1993 issue of Clearinghouse Review.
their funding or on the way they represent their clients and from onslaughts of monitoring visits and audits, legal services lawyers can, we hope, once again devote the bulk of their energies and creativity to their primary mission: serving the needs of their clients and the communities in which their clients live.

For many of you, it is as if the Cold War has ended; the Berlin Wall has tumbled. But peace ushers in new challenges, new tasks of rebuilding, of fashioning and implementing new models and new approaches to serve the legal needs of the '90s. And you don't start with a clean slate: your ranks have been reduced by casualties, your infrastructure has peels and cracks, and your coffers have been depleted. But you are survivors—seasoned veterans of the 1980s War Against the Poor, kindred spirits to Ed Sparer, of whom Howard Lesnick wrote: "[It was] part of Ed's genius that neither the crest of popular support and optimism nor the whirlpool of despair overcame his clarity of insight and purpose. Easy court victories...never deluded Ed into thinking that the task was any less far-reaching or controversial. And a rising tide of mean-spiritedness and legitimated greed left undamaged his central faith and hope."

And reinforcements are on the way: you new lawyers of the '90s, gathered here today, bursting out of Penn and dozens of other law schools, armed with enthusiasm, idealism, and dedication—and—I hope—a penchant for Budget Gourmets and the newly-fashionable "grunge" look.

I feel confident that, having weathered the stormy years, Legal Services can regain its importance and effectiveness in the more hospitable climate of 1993. But it will not happen automatically. You have to plan your strategy carefully, reexamining, and perhaps recasting, your role in a new era, marked by greater sympathy for your cause, but not necessarily by greater funds. In undertaking a probing inquiry into your purpose, mission, and priorities, you are following a fundamental Sparer role. For in his writing, as in his life, Ed called for bold inquiry into [what he called] new institutional bases for social movement, . . . institutions . . . rooted in non-alienated work opportunities and/or the provision of superior social and health services to people; which are decentralized and controlled by the people they serve; which unite people across the divisive barriers created by [old] social welfare programs; and which are financially viable without being dependent on grants from government or foundations.³

A big order, indeed, requiring all of us to confront the hardest of questions. What is the social movement or movements of the 1990s to which we should pledge our professional talents and personal comforts? What are—or should be—its institutional bases?

In suggesting a few areas of inquiry, I am humbly aware of the sophisticated analyses of poverty law that abound in legal journals, and I will not try to summarize or compete with them. I do not speak with the insights of an insider in the incoming administration. I offer, instead, the views of a sometimes frustrated federal judge, an "inside the Beltway" voyeur of changing political winds, and an old-time legal services
lawyer whose heart is still with those of you who, in Ed Sparer’s words, are struggling to make a difference "out there." It is a limited perspective, but I hope not a totally irrelevant one.

In my days—in the 1960s and 1970s—the legal services movement was largely about defining social problems in legal terms so that the courts could be used as avenues of social reform. Ed Sparer aggressively helped poor mothers define their rights and entitlements, including in Goldberg v. Kelly, the right to a hearing before their welfare benefits were cut off. The Mental Health Law Project, where I worked on test case litigation in the 1970s, forced onto the legal stage the piteous plight of institutionalized victims of mental illness and retardation. That search for legal recognition of the still-buried skeletons in society’s graveyard continues today—consider the current initiatives on behalf of the homeless, abused children, gays, and disabled people. But translating unmet social needs into legal demands is only a first step. The heavy lifting part of the job is to find more dignified, less isolating ways to serve those needs, to move the outcasts and downcasts back into mainstream society as swiftly and as surely as possible. How can that be done?

Certainly, one role—albeit a limited one—for organizations serving the poor, newly available in a warming political climate, is to become a kind of private auxiliary to government agencies, supporting their efforts where deserved and working closely with them to shape desirable solutions to the problems of the poor. As more of your public interest colleagues and soulmates move into the administration, this may become an increasingly viable option. Right now, a White House Task Force, we are told, is preparing a multi-agency program to enhance the lot of poor children. Constructive "before the fact" input from poor children’s advocates into such worthy efforts could be worth a raft of damage control lawsuits afterward. This is not to say that you can ever relax at the wheel; you may well need to keep even the "good guys" honest, assuring that those who enter public service with noble purpose are not sidetracked or coopted by their new powers. During the Carter Administration, in which I served, many public interest advocates frequently and forcefully performed this "thorn in the flesh" function. Ralph Nader, for one, did not hesitate to lash out at his former deputy Joan Claybrook, then general counsel in the Department of Transportation, when he thought she did not take consumers' concerns seriously enough. But how fast or how far—or how stridently—should advocates for the poor push their demands now that a favorable response is more likely? That is a critical question, to which I will come back later.

Your most effective role as a legal advocate of the poor will of course vary with the issue, the circumstances, and the nature of your organization. "Lobbyists," such as the Children’s Defense Fund, who specialize in amassing data, drafting policy statements, and shopping them around the Hill and the agencies, are prime candidates for the role of auxiliary to the newly installed government policymakers. "Litigators," on the other hand, tend naturally toward the watchdog role, barking and
occasionally biting administrators until they live up to their obligations. Most of you will have to be both at one time or another. The trick is to know which role to play when, and to avoid being permanently pigeonholed into one or the other.

Another question, crying out for a 90s answer, is the extent to which legal services and other initiatives for the poor should be decentralized and controlled at the local level. Should housing benefits, job training and education reform policies be developed principally at the local scene, or coordinated in national strategies from specialized backup centers or Dupont Circle interest-group headquarters?

A corollary question is whether legal support centers need to be tied into a constituency, as the backup legal services centers were, or whether they can be independent groups of committed lawyers not beholden to any particular constituency, as the Mental Health Law Project and other so-called "public interest" law firms have tended to be. In the lean years of the last decade, the advocacy groups that prospered most were those that acted not directly for a constituency, but on behalf of the causes in which their supporters believed. Such groups, particularly the environmentalists and the ACLU, were blessed with dedicated middle class supporters. But it may be that client-dedicated organizations, while still remaining responsive to their clients' needs, can search for ways to broaden their base of support, to find new allies for reform programs that benefit not just their clients but other societal groups as well.

However these questions get answered, I believe legal services programs must take this armistice period to redefine long-term goals, short-term priorities and strategies, and their relationships with governments—local, state and federal—as well as the rest of society and its aspirations. Apart from the exhortation to look afresh at your clients and their needs, and at your delivery mechanisms and the political environment in which you serve those needs, the most I can offer you is some personal observations and suggestions about four of the fora in which you serve your clients, and what changes you might expect to encounter there: the Legal Services Corporation, federal agencies, the federal courts, and finally, your allies, natural or fortuitous.

I. THE LEGAL SERVICES CORPORATION

First, the Legal Services Corporation itself: You can realistically hope for more sympathetic board members, the loosening of restrictions on your administrative and legislative "advocacy," and perhaps eventually, if not immediately, more funding. Just slipping the leash of artificial restrictions on class actions, lobbying and other activities could expand lawyering options and boost morale. I continue to wonder why administrations avowedly committed to efficiency and cost-saving nonetheless relegated legal services lawyers to the case-by-case adjudication of the 18th century common law. It was, if nothing else, a triumph of sentiment against the poor and their advocates over law and economics. Legal Services lawyers should be given back the tools of their trade, not forced to fight with one hand tied behind their backs.

If we have, in fact, reached the end of
the internecine war between the Corporation and the field offices, your support centers should be liberated—and revitalized—to your advantage. You will need their increased access to and ability to analyze economic, political, and demographic data to help you identify emerging legal issues that will affect your clients. How, for example, will the new welfare and health reform proposals of the Clinton administration affect your clients in terms of child support enforcement, education, child care, and employment? Are these effects overall good or bad? How can the programs be improved? Can the drug "epidemic" be expected to yield a harvest of clients who are unable to care for their own children and who need advice about and assistance in locating foster care? This kind of information can forewarn you of a client population's changing needs and give you a jump-start on fulfilling them.

At one time, the Corporation had a Research Institute of its own equipped to do the kind of systematic research that underlies effective inquiry into new trends and developments in poverty and in poverty law. Today, however, this in-house Research Institute has been disbanded and the Corporation is statutorily barred from contracting out for "broad, general legal or policy research unrelated to the representation of eligible clients." The word "unrelated" may be subject to a broader interpretation now, or legislative action may be required, but whatever it takes, the Corporation should be permitted to compile and analyze the kind of informed data that a modern legal services, like any other service worth its salt, needs to plan ahead.

You may also want to engage in some reconceptualizations. The storefront legal clinic and the prepaid legal insurance plan were offspring of the '60s and '70s. Today it may be that these vehicles reach only the older, traditional type of clients, and still more informal avenues must be set up to reach newer and younger clients, to respond to the increasingly rootless urban world, and to our media-conscious society. In one experiment in the medical field, closed-channel TV is beamed to all new mothers who have just given birth in hospitals, telling them about child care and relevant community facilities and programs. Legal services programs might do something similar in schools, in emergency waiting rooms, or in soup kitchens, homeless shelters and other places where poor people congregate, perhaps even on cable.

Another aspect worth revisiting is the use of nonlawyers as service providers. Although the positive assaults on legal services may subside, you are unlikely to recapture immediately the more than $800 million that you would need to restore your services to their 1980 level. For a while yet, you will have to continue doing more with less. Inevitably, that means looking harder for expanded and more creative ways to use trained volunteers and nonlawyers for outreach, education, intake, case investigation, clerical work, psychological evaluations, housing appraisals, and lots more—perhaps even dispute mediation itself.

My last point about the functioning of the Legal Services Corporation and its lawyers is, I realize, controversial. For decades, a debate has raged as to whether a legal services lawyer has the same unqualified obligation as a private attorney or a
public defender to do everything, make every plausible argument, on her client's behalf. Some argue that there should be no overlay on the lawyer's judgment about what is best for her client. In today's world of limited resources, I'm not sure that concept can go unchallenged. If there is not enough money to go round to meet all the needed day-to-day client services as well as to finance the high-impact efforts, I think the balance should tilt toward the latter, with two caveats. First, "high-impact" efforts should be just that, not lengthy and expensive class action suits with only a peripheral effect on the lives of the poor. Second, the choice to cut back on client services must be informed by those who deal in the daily lives of the clients who are left out, not as Ed Sparer once said, only by those who inhabit the "comfortable world of doctrinal analysis and [never] enter the strained world of small political efforts . . . ."

II. THE AGENCIES

Looking next to the agencies--I know the federal scene best of course--what difference will the new administration make to you? For starters, we all hope, but of course cannot promise, that federal agencies will provide significantly better enforcement of your clients' existing statutory rights. At the very least, we should not see any sequel to the wholesale disability denials of years past.

But you will still need to be vigilant watchdogs of the administration's actions affecting your clients, both in the enforcement of existing rights, and perhaps more importantly, in the creation of new programs, new rights and new responsibilities. Take, for example, education and employment training programs for welfare recipients. Experience unfortunately teaches that even the best-intentioned programs are often not tailored to fit the real needs of the poor. Job training programs--government and voluntary--have historically had their greatest success with the "easy cases" of individuals temporarily down on their luck, needing only a little retooling or placement assistance. They have rarely provided the kind of intensive services that are needed by those for whom low skills, lack of transportation, child care, and racial or gender discrimination have produced a seemingly intractable unemployment record. There is a culture of poverty and chronic unemployment that can be overcome only by heroic efforts, and these efforts are costly, at least in the short run. But if job programs become a universal requirement for public assistance programs, an increasing percentage of your clients will be affected by the way they operate and their success rate, making it a high priority for you to participate in the design and implementation of such programs, so that your clients' participation will be to their lasting advantage, not just another futile detour on the way to nowhere.

As Alan Houseman recently pointed out, the consensus for these job training programs has emerged from two sources: on the one hand there are those wishing mainly to upgrade welfare recipients' employability, and on the other, those wishing mainly to cut down free-riders by imposing mandatory, work-related requirements. In the abstract, both motivations are legitimate and
compatible. But consider the significance of who gets the upper hand in program design. If the first group controls, the program will focus not only on the recipients' obligation to work, but on the government's obligation to deliver quality education and training with supportive services, perhaps in voluntary settings. If the second group controls, the emphasis will more likely be on the mandatory nature of the work-related requirements, with perhaps far too little attention to the government's obligation to provide meaningful education or training. Your early involvement in the debate will help shape a balanced program, one that will truly help, not harm, your clients. Similarly, some of your younger clients may be well-served if you work to ensure that the proposed national service program allows participation for young men and women not yet motivated to go on to college, but who definitely need the structure and experience of community service. You also need to be alert that such programs not displace current workers dependent on those jobs.

The important thing is that you not make the mistake of sitting back and waiting for a government agency to act, relying on legal challenges if its action turns out to be adverse to your clients. By waiting, you risk bypassing the first—and more receptive—forum only to lose big or win small in the second. Agency actions are ripe for court review only when they are final, when the die is cast. At this point, courts are required to give great deference to these determinations. In a 1984 case called *Chevron v. Natural Resources Defense Council*, the Supreme Court said, in a nutshell, that unless the court finds that the agency's interpretation of a law flaunts a clearly expressed congressional intent, the agency wins, even if its interpretation is not the most plausible or natural one. This means that, when you challenge an agency action entitled to this *Chevron* deference, even the most sympathetic court—if you chance upon one—may be powerless to grant the relief you seek.

The premier route by far is to make your views heard at the agency level and to attempt to forge responsible relationships with new policymakers at every level. One of my favorite law clerks—first a legal services lawyer and now a clinical law professor—remembers that in the '80s, taking advantage of the opportunity to "notice and comment" in a federal rulemaking was generally perceived as only a necessary prelude to a legal attack on the final rule. In this Administration, the opportunity must be taken more seriously; the comment may indeed count.

To make the most of your opportunities for administrative advocacy, try to avoid a litigator's reflexive adversarial stance with your potential friends. In the early days of the Carter Administration, I was rudely awakened to the fact that, as in the Pogo cartoon, the enemy was now us. Organizations which had been my allies and even my clients were now poised for battle, if their wish list was not granted as they walked through the door. They later admitted that the compromises we proposed were far better than anything they could hope for in the later years, but by then it was too late for both of us. Without abandoning your ideals or goals, be realistic about what any new administration can give you and in what
time frame. Finding the right balance between fighting for your clients and strategizing for the do-able is harder than drafting a complaint, but the potential payoffs justify the effort.

Finally, as you redirect your energies toward administrative agencies, you should become familiar with the finer points of administrative law. Learn the basic principles of notice and comment hearings, the subtleties of "aggrieved party" status, and the perils of administrative waiver. Make sure your record abounds with all the facts necessary either to win at the agency level or to bring home to a court how disastrous the agency’s actions are for your client. Knowledge of these and other staples of arcane administrative law will, I predict, become even more essential in the fast-changing world of federal and local benefit programs.

III. THE COURTS

The courts today can no longer be counted on as the advocates and protectors of the poor and hapless that they often were in my day. Today, the barriers a poor litigant must clear just to get into court—including standing and heightened pleading requirements—have assumed, at least in many federal courts, almost insurmountable proportions. Recent developments in the law of private rights of action, sovereign immunity, section 1983 jurisdiction, abstention, and issue preclusion, to name only a few, have made poverty law more complex and remedies more limited than in the ‘60s and ‘70s. In short, times have changed—not for the better—in the three decades since Justice Brennan said that "litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."16

Nonetheless, you will, of course, still need to go to court, albeit selectively. There will be situations where a well-conceived, strategically planned lawsuit in a log-jam situation will accomplish more than months of wrangling with bureaucrats. And the credible threat of litigation is necessary, even in settlement fora, where the poor can be well-represented only if their lawyers have the capacity to go forward when the mediation or arbitration does not work.

In that spirit, let me offer some pointers on litigating in federal courts. First, make it count. With swollen caseloads and civil calendars running a year or more behind, district and appellate judges—whatever their philosophical coloration—are increasingly impatient with vague facial challenges to statutes or rules that do not have serious, demonstrable real-life consequences for real folk. And similarly—I will be candid—most judges are reluctant to take on long-term supervisory or monitoring functions over agencies, institutions, schools, or broad programs. Many of the Wayne Justices or Frank Johnsons willing to devote years of oversight to recalcitrant governmental institutions have also been drowned in the tidal wave of litigation flooding the federal courts.

Second, wherever you litigate, avoid the "Gotcha" lawsuit. By that I mean the lawsuit based on some technical nonobservance of a law or regulation whose consequences are undocumented, and at best speculative. We judges search for meaning in what we do. Convince us that the law or the regula-
tion is important in poor people's lives. Give us--on the record--the facts, the real-life conditions, the actual practices underlying a legal challenge.

Third, take your victories where you can. Don't disdain settlements. Relief for your clients is your goal; cooperate in ADR programs, mediation, early neutral evaluation, reg-neg at the agency level. Learn to be a good negotiator, a creative settler. I realize that alternative dispute resolution for the poor has often had a "second class justice" connotation; it has too frequently been offered up as a substitute for "real litigation." Most recently it was put forward as an additional hurdle that migrant farm-workers would be required to clear before they could proceed to court. But the rising popularity of arbitration and mediation among the most well-heeled and powerful litigants should go some distance in dispelling lingering fears that ADR is reserved for the poor. The fact is that--as the Civil Justice Reform Act of 1990 shows--all federal trial courts will be utilizing it. They have to keep abreast of their docket, and the experience in our two federal courts in D.C. suggests that, with conscientious and trained mediators, the poor will not be losers by any means. The trick with ADR of course is to use it judiciously--in situations where the poor and their advocates have sufficient bargaining power--as an adjunct, not an obstacle, to litigation. But just as legal services programs must soul-search about the optimal balance between client services and law reform, they must also consider how much of their scarce resources to devote to litigation. Make no mistake, in most courts you will have to try ADR; the real question is whether you design your own programs or work with a community-based one before you even go to court.

In a related vein, don't undervalue procedural victories. Of course if you win on procedural grounds, that is all you get, new procedures, but if you have other arrows in your quiver, say a new law or a new agency head in the offing, the procedural victory may help.

Fourth, remember that litigation should be only a part of an overall game plan that furthers your priorities. Litigation should be conceived and executed in a context of community or governmental efforts that are advancing in the same direction, not pursued in isolation by readers of the fine legal print, no matter how benevolent their motives. The coming years may present many opportunities for this kind of fusion. Don't miss out on them.

Fifth, make the Chevron doctrine of judicial deference to government agencies work to your advantage. Translated: If you win a fair housing case before the agency, Chevron deference gives the landlords an uphill fight to reverse it in court. Chevron will also help when you are suing state or local governments for not abiding by federal requirements, if the feds are on your side. In sum, when the agency tables are turned, a restrained court will help, not hinder you.

Finally, don't expect overnight changes in the federal courts. They are now dominated by Reagan-Bush appointees, who are, on the whole, a more conservative lot than most of you. That will not change right away, despite the new President's unprecedented opportunity to appoint well over a hundred new judges immediately. And even
as the Reagan/Bush majorities give way, their legacy will linger; courts will still be bound by the law and precedents they forged over the past decade. You will have to live with and work around those precedents; there will be no return passage guaranteed to the halcyon days of the Warren Court. Legal services lawyers don’t get to go home again. But gradually there should be a greater number of federal judges who have sympathy for what you are trying to accomplish, if you make artfully crafted, well-documented, realistic claims. In the '90s, there will be more legal victories for advocates of the poor, but you will have to earn them.

IV. FINDING AND ENLISTING ALLIES

Once you have mapped your goals and strategies for the coming years, you may want to invest extra efforts in identifying and enlisting new allies for your cause. Pooling, polling and pulling will be required: pooling your efforts with other like-minded groups, polling your communities for clients and causes, and pulling new recruits into your struggle.

Legal services lawyers are no strangers to pooling efforts or building coalitions. My ideal for a poverty lawyer is not the lone crusader against all odds, but the respected partner in community-wide efforts to advance the hope of a better life for many. This conference recognizes the synergistic power of community activists, social workers, lawyers, academics and just plain citizens coming together for a common purpose.

You may also want to seek out creative opportunities to join forces with more broad-based organizations. Last week, for example, the NAACP Legal Defense Fund announced that it was expanding its agenda from traditional areas such as job discrimination and voting rights to include more claims of environmental and health care discrimination, areas in which LDF’s director sees "the intersection of poverty and race." Even in the area of drugs and crime-fighting, there is room for cooperative efforts which can benefit the poor who have to live in the drug-infested housing projects and neighborhoods, whose children fall victims to drive-by shootings and whose adolescents are vulnerable to the lure of quick fixes and easy money. Defining the overlapping areas of interest, or even the discrete issues the poor have in common with others, is well worth the time.

There is an added benefit to teaming up with new and different organizations and citizens in your communities. As communities and their spontaneous interest groups change with demographics and with the problems of the times, depending on the same old stable of allies can be fatal, if power and clout in the community is shifting elsewhere. Moreover, your old supporters--both the troops and the populace--may well be battle-fatigued. An infusion of energized new supporters--from other walks and schooled in other causes--may rally your old faithfuls.

Another potential source of new allies lies in the dispute resolution and neighborhood justice centers springing up around the country. If you do decide to integrate ADR into your repertory, you may want to collaborate with a dispute resolution center in a
two-way venture: Neighborhood justice centers providing volunteer mediation for poor people, in domestic disputes, housing, and consumer issues, and legal services lawyers ensuring that these poor participants resolve their disputes with a full understanding of their legal rights. Trained mediators might also teach some of their skills to legal service lawyers and clients, for use in their own practice.

Forging new relationships with old allies, like law school clinics, also comes to mind here. Although I realize that there has been some opposition over the years to the diversion of scarce LSC funds to law school clinics, those clinics can play—and on many occasions have played—a valuable role in the overall provision of legal services to the poor—provided again they function as adjuncts to, and not substitutes for, legal services field offices. Granted, clinics may lack the sophistication, the continuity, and the flexibility required for complex cases; there is still no reason energetic, conscientious students—well-supervised—cannot handle many aspects of the routine cases—divorces, landlord-tenant disputes, and the like—freeing up the main legal service program’s lawyers for other clients or for law reform.

Your polling efforts, as the new administration enacts changes in programs and eligibility, include making sure that eligible persons hear about and take advantage of the new opportunities. Educating a community about new programs means alerting it to pitfalls, as well as giving pointers. Recently, for example, a growing number of welfare recipients, attempting to satisfy the educational requirements of the JOBS or "workfare" program of the Family Support Act of 1988, have taken out student loans to attend proprietary trade schools. But, too often, these schools fold or fail to provide a worthwhile educational experience, leaving the client with a significant debt, no benefit, and a frustrated skepticism about starting over again in a more meaningful program. Helping your clients navigate their way through a maze of federal and local programs doesn’t get headlines, but it does prevent lots of defensive and zero sum lawsuits.

Polling for new funding sources may also be more productive in the new political climate, as there should be less controversy—and hopefully no retaliation from the LSC—if you use private funds for purposes permitted by federal law, such as participating in abortion litigation and ballot initiatives. This means that funding from United Way agencies, foundations, and bar associations may be more attractive both to you and to the donors. As for pulling new recruits into the legal corps, the University of Pennsylvania Law School and the larger Philadelphia community appear to have much to teach the rest of us. The law school’s pioneering pro bono program is one of the most extensive in the nation. Your experiences could certainly help guide state and local bar associations as they consider whether and how to implement the ABA’s recent decision to include a 50-hour minimum pro bono requirement in the Model Rules of Professional Conduct. Significantly, the rule states that a lawyer should "provide a substantial majority" of this 50-hour commitment "to persons of limited means or . . . organizations . . . designed primarily to address the
needs of persons of limited means." ABA approval, I should caution, came on a close vote, signalling that not all states are prepared to jump on this pro bono bandwagon. But even where the local bar does not adopt the rule, the ABA's approval of it can lend persuasive moral force to your own efforts to recruit pro bono lawyers.

Adoption of this 50-hour rule may produce a mixed blessing for legal services: a new influx of attorneys, many bright and accomplished, but inexperienced in poverty law and willing to make only a finite commitment to your work. What can you do with them? You might try and get them to pool their efforts. Convince a firm that, instead of lending you the occasional associate to staff your office, it should devote its extensive discovery apparatus to one particular case. Or a law firm can "adopt" a deserving institution, such as a homeless shelter or a counseling center, serving basically as its in-house counsel. In D.C., our legal services program has had some success with networks of "cooperating" attorneys, such as those used by the ACLU and the NAACP Legal Defense Fund. New times and new opportunities command new solutions. Insanity has been defined as doing the same thing over and over again and expecting a different result. Don't let that happen to us.

CONCLUSION

In closing, I have a special word for the law students here today. Those of you who enter legal services or public interest careers will, I am confident, find that the rewards outweigh the sacrifices. Professionally, you can participate in public interest law's coming of age, as its practitioners become ever more recognized as experts in an important field of law. Marian Wright Edelman and Hillary Clinton made their mark promoting children's legal rights, and the major part of Thurgood Marshall's career was as a civil rights lawyer. There is plenty of room in that roster for those in your generation with enough idealism and stamina to tackle Act II of the War Against Poverty. Private sector lawyers too will have many opportunities not only to devote individual efforts to the struggle, but to enlist their firms and businesses in the cause. Whichever path you pursue, remember Ed Sparer's admonition that, "[h]owever small the ways, we are what we do." For all of you advocates of the poor "out there," it is a time of transition, a good time. You are on the side of history; the political branches of the government may listen more carefully to your pleas on behalf of the ignored and cast-out segments of our society, especially if your positions are legally sound and fit into an economically and sociologically sound program for uplifting the nation as a whole. As we emerge from the "me first" eighties, the nation's attitude is cautiously hopeful, different from, but in many ways just as exciting as, the brief, passionate idealism of the sixties. You must be wary and wily to serve your clients, cost efficient and compassionate, dedicated and disciplined. Ed Sparer was all of those.

The Don Quixotes were wonderful in their time, but now we need the Moseses who can lead their flock to the Promised Land, where they can live and flourish among the rest of us. I think your task in
these coming years is harder, more exhilarating, and, yes, more important for the future of legal services than ours was back in the 1960s. Sometimes—but only sometimes—I wish I were young again.
ENDNOTES


5. See 45 C.F.R. § 1612 (1992) (regulating legislative and administrative advocacy, training, organizing and other activities).

6. See, e.g., California Rural Legal Assistance v. LSC, 917 F.2d 1171 (9th Cir. 1990) (enjoining regulation barring representation of aliens who were in the process of applying for lawful permanent residence under the general amnesty program); National Senior Citizens Law Center v. LSC, 581 F. Supp. 1362 (D.D.C. 1984), aff'd, 751 F.2d 1391 (D.C. Cir. 1984) (successful challenge to LSC's efforts to restrict activities of national support centers); Western Center on Law and Poverty v. LSC, 592 F. Supp. 333 (D.D.C. 1984), 592 F. Supp. 338 (D.D.C. 1984), and 601 F. Supp. 415 (D.D.C. 1984) (successful challenges to LSC's denial of refunding and termination of a regional training grant); National Center for Youth Law v. LSC, 794 F. Supp. 1013 (N.D. Cal. 1990) (enjoining LSC's attempt to reduce funding to support center that used IOLTA funds to participate in an abortion case). But see Texas Rural Legal Aid v. LSC, 940 F.2d 685 (D.C. Cir. 1991) (upholding regulation barring all representation and activity on redistricting with LSC or private funds).

7. See Nan Aron, Liberty and Justice for All 65 (1989).


11. Sparer, supra note 3, at 567.


13. See id.


17. See Michael K. Lewis, Alternative Dispute Resolution, in LEGAL SERVICES FOR THE POOR, supra note 10, at 107; TRANSITION MEMO, supra note 10, at 45.


22. See Tull, supra note 8, at 22 n.23.

23. See 42 U.S.C. § 2996e(d)(f); TRANSITION MEMO, supra note 10, at 26; see also National Center for Youth Law v. LSC, 794 F. Supp. 1013 (N.D. Cal. 1990) (enjoining LSC's attempt to reduce funding to support center that used IOLTA funds to participate in an abortion case).


25. Sparer, supra note 3, at 574.