

Public Service and Private Interests: A Chronicle of the Professional Life of Philip B. Perlman

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Philip B. Perlman was a Maryland lawyer who mixed government service with private practice and lobbying throughout his professional life. For his efforts he was showered with accolades and bombarded with brickbats: His supporters praised his skills as a lawyer and lauded his public service and devotion to human rights, while his detractors accused him of influence-peddling and conflict of interest. A look at Perlman's checkered career sheds light and casts shadows on the profession of law, the practice of politics, and the politics of race.¹

Perlman was born in 1890 in Baltimore, Maryland. Following education in Baltimore public schools, he joined the staff of the *Baltimore Sun* newspaper. He worked as a court reporter while taking evening classes at the University of Maryland School of Law. Perlman passed the bar in 1911, but stayed on at the *Sun* and became the city editor in 1913.²

When reform Democrat Albert Ritchie took office as Attorney General of Maryland in 1917, he appointed young Phil Perlman as an assistant. Perlman drafted bills and argued cases. In 1920, when Ritchie was elected governor, he appointed Perlman as secretary of state. The salary was only fifteen hundred dollars, but the appointment permitted Perlman to establish a private practice. Perlman's government work involved the drafting of progressive legislation to redeem pledges Ritchie had made in his campaign. Laws were enacted establishing a merit system, reforming workmen's compensation, and extending suffrage to women.³

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Philip Perlman was a good friend of Howard W. Jackson, a regular Democratic politician serving as register of wills in Baltimore. When Jackson was elected mayor for a term beginning in 1923, he prevailed upon Perlman to join him as the city solicitor. Perlman resigned as secretary of state and temporarily suspended his private practice.⁴

One of Perlman's first tasks was direction of Jackson's committee on segregation. Baltimore claimed the dubious distinction of having pioneered, in 1910, the enactment of a residential segregation ordinance. The law divided the city into white blocks and black blocks. A predecessor city solicitor had opined that the ordinance was constitutional because "wherever negroes exist in large numbers in a white community . . . irritation, friction, disorder and strife" invariably resulted, and because "a State has the right under its police power to require separation of the two races wherever the failure to so separate then injuriously affects the good order and welfare of the community."⁵

The "Baltimore idea" for promoting residential segregation had proved so popular among white majorities that it was quickly adopted in other Southern and border cities. Atlanta, Georgia; Greenville, South Carolina; Richmond and Norfolk, Virginia; Winston-Salem, North Carolina; and Louisville, Kentucky soon had similar laws. Indeed, the success of these ordinances was the catalyst for the emergence of the National Association for the Advancement of Colored People as an effective counterforce. The NAACP was founded in 1909, but its membership and political power grew as it established local branches to press court challenges to the segregation ordinances.⁶

The United States Supreme Court test case came from Louisville, Kentucky. In *Buchanan v. Warley*, the Court held that the "difficult problem arising from a feeling of race hostility" was an insufficient basis for depriving citizens of their rights to acquire and use property. Hence, the Court determined that the *de jure* segregation of residential housing was unconstitutional.⁷

Baltimore's Mayor Jackson answered with a committee to promote *de facto* racial segregation in housing and made City Solicitor Perlman the head. The plan was simple. It was a conspiracy in restraint of the sale or rental of housing to Negroes in white neighborhoods. Co-conspirators included representa-

tives from the real estate industry, the City Building Office, the City Health Department, and white neighborhood associations. Perlman encouraged neighbors, government officials, and real estate agents to use peer pressure, harassment, and suasion to enforce *de facto* segregation.⁸

Perlman undertook the other formal duties of city solicitor with verve and enthusiasm. Among his most important lawsuits was the defense of a newly enacted zoning ordinance. Zoning laws were sweeping the country, and Baltimore had enacted a law which divided the city into residential, business, or manufacturing districts. Zoning was touted as stabilizing property values and as protecting businesses from unhealthy competition. It also had the intended side effect of keeping the under-classes—immigrants and blacks—out of upper class neighborhoods. Since zoning was conceived and implemented to keep everyone in their social place, it was vulnerable to the same type of constitutional challenge that had been used to strike down the segregation ordinances a decade before.⁹

The first constitutional challenge to Baltimore's zoning was brought by Daniel Goldman, a Jewish immigrant from Russia who was denied permission to operate a tailor shop in the basement of an elegant town house. Goldman was joined in his attack on zoning by the street railroad monopolists, who resisted regulation of any sort.¹⁰

Perlman was unsuccessful in his first defense of zoning before the Maryland Court of Appeals. The court found that a clean and quiet tailor shop posed no legitimate threat to the general prosperity of a residential neighborhood. However, Perlman had already prepared, and the city council had enacted, a second ordinance, which denied Daniel Goldman permission to operate his tailor shop. The court subsequently struck down this second ordinance as an open defiance of its previous decree, but Perlman remained undeterred. He prepared, and the city enacted, a third ordinance, which the Maryland Court of Appeals reluctantly approved.¹¹

In 1926, soon after his final victory in the zoning cases, City Solicitor Perlman resigned. It was a good time for him to return to the private practice. His old mentor, Albert C. Ritchie, was still governor, and his friend, Howard W. Jackson, was still mayor. The clients were not long in coming. Among the first was the

streetcar monopoly (soon to become the Baltimore Transit Company). Having lost a skirmish to Perlman in the zoning cases, the utility hired him as its special counsel. Perlman's other major clients included the Baltimore and Ohio Railroad, the Automatic Voting Machine Company, and the Mutual Chemical Company.¹²

Between 1927 and 1947, Phil Perlman mixed private practice, Democratic politics, public service, and the good life. He was successful at all four. His law practice prospered. In 1932 he received a fee of twenty-five thousand dollars from the Baltimore Transit Company for a case in which he brought about a reduction in their gross receipts tax. His retainer from the Baltimore and Ohio Railroad yielded fees in excess of thirty-seven thousand dollars. From the Automatic Voting Machine Company, he received an annual retainer in excess of six thousand dollars—in return for which he convinced Baltimore City to purchase fifty voting machines.¹³

In 1932 Perlman headed the Maryland campaign for Franklin Delano Roosevelt. He remained an active supporter of Roosevelt in the next three campaigns. Perlman also sponsored the rising lights in the Maryland Democratic Party. He established a working relationship with Attorney General William Preston Lane, who had gubernatorial aspirations.¹⁴

Philip Perlman lived the good life. He was a life-long bachelor who bred horses on his ninety-acre farm located on "My Lady's Manor." A collector of *objets d'art*, he served on the board of the Baltimore Museum of Art. He was so successful in attracting public funds that a disappointed employee of Baltimore's public library proposed that Perlman be made a trustee so that it would get its fair share of government largesse.¹⁵

As World War II came to a close, Philip Perlman looked for an opportunity to cap his distinguished career. The office of the Solicitor General of the United States was one of the most important legal jobs in the country, and there was always some possibility that it might serve as a stepping stone to the United States Supreme Court. When the position became vacant in 1947, President Truman heeded the advice of Maryland Governor William Preston Lane and nominated Perlman as Solicitor General of the United States.¹⁶

While his nomination awaited Senate approval, Phil Perlman

agreed to provide yet another public service for the State of Maryland. At Governor Lane's request, he agreed to present a legislative package to the 1947 session of the Maryland General Assembly. As the governor's man in Annapolis, he lobbied for revenue, education, health, and welfare reforms. At that same legislative session, he lobbied on behalf of his long-time client, the Baltimore Transit Company.¹⁷

Senate approval of the nomination for solicitor general took five months. Senator Ferguson (R-Michigan) argued that Perlman was unfit to serve as the "Nation's Lawyer." Hearings were held in which critics charged that Perlman was a Democratic Party "boss" and "political fixer" who acted as a "go-between," linking corporate interests and elected politicians. However, in the closing minutes of the congressional session, the Democratic majority overcame a Republican filibuster to confirm Philip B. Perlman as Solicitor General of the United States by a vote of fifty-eight to thirty-one.¹⁸

Philip Perlman served as Solicitor General of the United States from 1947 through 1952. His tenure is mostly remembered for one case which he personally argued before the Supreme Court in 1948. Perlman intervened on behalf of the government in *Shelley v. Kraemer*,¹⁹ a private lawsuit that challenged the constitutionality of private restrictions prohibiting the sale of houses to Negroes. Perlman convinced the Court that the judicial enforcement of such restrictions was repugnant to the constitution and void.²⁰

The case signaled the beginning of the civil rights movement which was to eliminate the *de jure* segregation of American society. According to the recollections of his then young assistant, Philip Elman, the argument of the case was a transforming experience for Perlman. National civil rights leaders called to express their profound gratitude, and Perlman became committed to the struggle for African-American rights.²¹

In 1952 Perlman tendered his resignation as Solicitor General of the United States. Washington scuttlebutt had it that Perlman quit because he was disappointed that President Truman had passed over him when picking a new attorney general. Ironically, Philip Perlman's greatest impact on American history may have been through his resignation. According to Philip Elman, the solicitor general's office was then considering whether

to intervene in cases challenging the racial segregation of public schools. Perlman was adamant in his opposition, thinking that the racial mixing of black children and white children was contrary to the general welfare. His timely resignation freed the United States Attorney General to file a brief in support of school desegregation in what came to be the landmark case of *Brown v. Board of Education*.²²

Perlman again returned to the private practice of law, this time in Washington as the senior partner in his own law firm. His last years were filled with accolades and achievements. He was honored as the "1952 Champion of Human Rights." He remained active in party politics and in 1960 wrote the controversial civil rights plank in the platform for the Democratic National Convention, which advocated voting rights and open housing for all citizens.²³

Philip Perlman maintained his Maryland ties. During the week he lived in the Shoreham Hotel in Washington. On weekends he returned to his Maryland home. He died of a heart attack in his room at the Shoreham in the summer of 1960.²⁴

When it comes to the final reckoning, it seems that Philip Perlman's greatest professional strength was his dogged and loyal pursuit of his clients' interests. His tenacity is best illustrated by his defense of zoning in the Maryland Court of Appeals. When the court struck down a first zoning as an unconstitutional "taking" of Daniel Goldman's property, Perlman prepared a second prohibition. When the court struck down the second, Perlman prepared a third, at which point the court compromised its precedents and sustained the expansive delegation of regulatory power. Meanwhile, Goldman had been unable to pay his mortgage and lost the property to foreclosure.²⁵

The rule of law proved no match for Perlman's persistent use of governmental power. Perlman knew, and Goldman found out the hard way, that officials had little to lose from unconstitutional police power regulations. Even if the overzealous conduct was judicially overturned, the officials could simply re-regulate at very little out-of-pocket cost to the government.

Perlman's loyalty is best illustrated by his long-time relationship with various incarnations of the Democratic Party. At the behest of elected Maryland Democrats in 1923, he spearheaded the efforts to exclude Negroes from white Baltimore neighbor-

hoods, and in 1926 he convinced the Maryland Court of Appeals to allow the city to engage in economically exclusionary zoning. In 1948, on behalf of the Truman Administration, he convinced the United States Supreme Court to open white communities to Negro newcomers, and by 1960 he was writing a strong civil rights plank for the Democratic National Committee.²⁶

Perlman had switched sides on the “race question,” but not his allegiance to his client. Roosevelt’s New Deal had brought Negroes into the Democratic Party, and the leadership had pledged to meet some of the demands of the African-American members. The party had changed its mind, not Perlman. He was the loyal advocate, not the ideologue.

Detractors put a different spin on Philip Perlman’s career; they labeled him a “go-between” and a “fixer,” who delivered corporate favors to politicians. Concerns over the legitimacy of such practices persist yet today. Citizen-advocates claim that the political game is rigged to let private gain trump public interest. President Clinton has warned that “special interests” have “lined the corridors of power with high-priced lobbyists.” Clark Clifford, who is in the direct line of succession from Perlman as a “godfather” of the Democratic Party, narrowly escaped criminal conviction for an alleged conspiracy of conflict of interest and bank fraud.²⁷

When it came to “influence-peddling,” Perlman was a pacesetter and a go-getter. He practiced government law at all levels—as City Solicitor of Baltimore, Assistant Attorney General of Maryland, and Solicitor General of the United States. After each period of public service, he went through the “revolving door” back into the private practice of law and lobbying. On behalf of railroads, public utilities, polluters, and the Democratic National Committee, he used his power of persuasion and political leverage to seek favored treatment. When in private practice, he was devoted to the special interests of his clients.²⁸

Following his death in 1960, Philip Perlman was widely eulogized. He was remembered for his “brilliant mind and crusading spirit,” his patronage of the arts, his “glittering string of victories” in the Supreme Court, and his battle “for the elimination of the evils of discrimination.” The strong civil rights plank which he drafted for the 1960 Democratic Convention was said to be his “crowning accomplishment.” Rabbi Abraham Shaw

summed up Perlman's life by saying: "From first to last he was a public servant."²⁹

Nowhere mentioned in this out-pouring of praise were the conflicts of interests and influence-peddling that stained Perlman's reputation. This selective memory is perhaps understandable. In the course of a single professional life, from 1910 to 1960, Perlman had changed from an advocate of racial segregation to a champion of the rights of African-Americans. More importantly, his change of heart was symptomatic of a metamorphosis in the body politic—a movement away from discrimination and toward racial equality had begun.

The civil rights movement needed heroes and the untarnished Philip B. Perlman filled the bill.³⁰

In his funeral eulogy for Julius Caesar, Mark Anthony observed:

*The evil that men do lives after them,
The good is oft interred with their bones.*³¹

The outcome of this life story seems quite to the contrary—the good that Philip B. Perlman did lived after him, the evil was interred with his bones.

ENDNOTES

1. "Philip B. Perlman," Maryland Vertical File, Baltimore Enoch Pratt Free Library.
2. "Perlman," *supra* note 1.
3. *Id.*
4. *Id.*
5. Garrett Power, "Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913," *Maryland L. Rev.* 42 (1983): 289 (citing Memo from Edgar Allan Poe to Mayor J. Barry Mahool, Baltimore City Archives, Mahool Files, File 451 (Dec. 17, 1910); S.S. Field, "The Constitutionality of Segregation Ordinances," *Virginia L. Rev.* 5 (1917): 81.
6. Power, "Apartheid Baltimore Style," *supra* note 5, at 310-11.
7. *Buchanan v. Warley*, 245 U.S. 60 (1917).
8. Power, "Apartheid Baltimore Style," *supra* note 5, at 316-20; Garrett Power, "Pyrrhic Victory: Daniel Goldman's Defeat of Zoning in the Maryland Court of Appeals," *Maryland Historical Magazine* 82 (1987): 275.
9. Power, "Pyrrhic Victory," *supra* note 8, at 280-282.
10. *Id.* at 275-279.
11. *Id.* at 279-282.
12. "Perlman," *supra* note 1.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Shelley v. Kraemer*, 334 U.S. 1 (1948).
20. "Perlman," *supra* note 1.
21. Philip Elman and Norman Silber, "The Solicitor General's Office, Justice Frankfurter, and Civil Rights Litigation, 1946-1960: An Oral History," *Harvard L. Rev.* 100 (1987): 807.
22. *Brown v. Board of Education*, 347 U.S. 483 (1954); Elman, "The Solicitor General's Office," *supra* note 21, at 826-27.
23. "Perlman," *supra* note 1.

24. *Id.*
25. Power, "Pyrrhic Victory," *supra* note 8, at 282-286.
26. Power, "Apartheid Baltimore Style," *supra* note 5.
27. Gay Jerve & Stuart Taylor J., "From Statesman to Front Man: How Clark Clifford's Career Crashed," *American Lawyer* (November 1992): 49.
28. "Perlman," *supra* note 1.
29. *Id.*
30. *Id.*
31. William Shakespeare, *Julius Caesar*, III, ii, 79.