The End of Politigation

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Are you still perplexed by Hillary's non-concession speech last Tuesday night? Still confused by Bill's finger-wagging campaign fusillades? Throughout this primary season, did the Clintons look like they were playing Monopoly when everyone else was playing mah jong?

Well, they were playing a different game. Everyone knows the Clintons "don't quit" and "fight till the end." But there's a more elemental explanation. To most people, politics is politics. To the Clintons, politics is litigation.

Lawsuits are contests between two parties. So are elections. Litigation is war. Litigators never surrender a single piece of ground until they're compelled to do so. The litigator's job is to preserve all rights, claims, demands, and leverage -- and never admit liability. Litigators go for the jugular. Their goal is to prevail with the judge or jury or to weaken their adversaries so severely that they capitulate or settle.

From the rise to power of the "Comeback Kid" until June 12th -- when the last dog died -- that is how the Clintons played the game. It's how Bill prevailed over Newt Gingrich when the government shut down. It explains the president's testimony in the Paula Jones case. And it was behind his strategy throughout the Starr Chamber proceedings. Who else but a litigator would say "it depends on what the definition of 'is' 'is'?

For a decade and a half, "Politigation" has differentiated, distinguished, and delivered for the Clintons. Their legend grew, provoking the "can you believe them?" protestations of opponents, who came to realize they were bringing knives to a gun fight. That is, until Karl Rove rode into town and strode up to the bar. "Bush's Brain" took politics-as-litigation to new -- and deeply disturbing -- depths. The Republicans didn't give a partisan, polarizing inch on war, wiretapping, trickle-down-taxes, environmental regulations, and global warming. They have contempt for anyone who reaches across the aisle.

Unlike Bill and Hillary, "W" isn't a lawyer. But he plays one -- on the campaign trail and in the White House. As a policy maker, Clinton tended to triangulate. Bush politigates. On the campaign trail, he sailed with swift boats. In office, he used and abused intelligence to sell the war in Iraq and slam Ambassador Joseph Wilson, a witness for the prosecution. Politics-as-litigation runs through the Republicans' approach to power. The "unitary theory of the presidency" and "signing statements" are based on the arguments of lawyers (like John Yoo), who simply ignore evidence of the Founders' views of the Executive Branch.

Not surprisingly, then, Hillary Clinton inherited the wind -- and reaped the whirlwind -- of Politigation. During her entire presidential campaign, she exhibited "tenacity" and a "relentlessness and refusal to say die." She's a "killer" lawyer, the kind you'd hire if someone stole your mother's inheritance. Hillary reserved the right to take the decision of the Democratic National Committee allocating delegates to Florida and Michigan to the convention floor -- the way a tough lawyer threatens to sue. After the South Dakota and Montana primaries, she said "I rest my case," neither granting nor waiving any ground. And then used all means at her disposal, including withholding an endorsement, for maximum advantage. Perhaps to gain help retiring her debt. Or the vice presidency. Or a seat on the Supreme Court. Or some as-yet-to-be-determined-something. It now seems clear she was as likely to concede last Tuesday night as Johnny Cochran at the end of the O.J. trial.

The Clintons can't understand why saying "Jesse Jackson won South Carolina twice" provoked charges that they were "playing the race card." Surrogates like James Carville repeatedly wondered why Obama supporters couldn't get a thicker skin. In their day, the Clintons and their surrogates would have been right -- after all, isn't a campaign a war? But the ground had shifted under the Clintonistas' feet.

Pundits focusing on the mistakes of Hillary's campaign have it wrong. The Clintons have been the Clintons. It's the game that changed -- a fact presciently understood by the Obamanistas. This was no longer high stakes litigation funded by the fat cats. It's the internet, stupid. And just as fat cats are giving way to netizens, Politigation is giving way to a new approach.

Barack Obama has touched a nerve in the American electorate. It isn't simply an embrace of "change." Or enthusiasm for an "outsider." As the Republicans discredited politics-as-litigation by applying it to governing, Obama connected with people who have become as sick of it as they are of courtroom torts, contortions, distortions, and divisions. People who are ready to say, with the poet John Milton, "Litigious terms, fat contentions, and flowing fees."

Political hardball is not something that started with Bill Clinton nor will it end with George W. Bush. But Americans want -- or think they want -- the case to be
over. No more fighting, no more partisanship or polarization: the flowing fees and costs of Politigation. No more leaders who wag the dog, bluff, bludgeon, bluster or muster outrage. Americans think they're ready to move on (though not necessarily at the dot org website). They like Barack Obama because he is the "Un-litigator".

"Politics ain't beanbag," as we all know. But in 2008, the country seems ready to leave litigation behind and embrace a Harvard-educated, mixed-race, liberal let's-make-a-dealer, who says "we all can get along." Someone who looks and sounds like a stylish facilitator -- more "fancy attorney" than "shark." Someone who can bring the era of Politigation to an end. Let's hope he's a rainmaker. And that at least for awhile, the country doesn't need a litigator-in-chief.

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Loved the article! . . . Yes, it is the game that changed and not the players. . . . Bush simply became OVER-RIPE, and began to really STINK UP THE PLACE, and America said "NO MORE OF THIS KIND OF CRAP EVER AGAIN!". Slowly but surely we will get all those old horrid nasty players out of the game -- starting this November!

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