



## REMARKS AT MIE'S 2008 NATIONAL FUNDRAISING CONFERENCE — "SCALING NEW HEIGHTS: JUSTICE AND RESOURCE DEVELOPMENT"

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I must confess that it is a bit intimidating to talk about fundraising to a group of professional fundraisers. As a lurker on the MIE fundraisers listserv, I know



that this is very sophisticated group. What I want to do is offer a perspective on the enterprise of anti-poverty lawyering and the importance of the work of development professionals. I hope it is useful.

I'd like to start by recognizing that the job of raising resources for legal services lawyers is a challenging one. Significantly, you must raise money from lawyers, who are not necessarily the most generous bunch. In my first job as an executive director, I ran a small legal services organization that litigated prisoner civil rights cases. We lived very hand-to-mouth. The project relied mostly on grants and attorneys fees to survive, both of which were speculative, shrinking and hard to get. My board encouraged me to try and raise money from firms and lawyers. If you think it is hard to get people to give to poor people, imagine what it is like to ask for money to help convicted adult felons.

In any event, they gave me a list of folks who were likely prospects. The first person I got an appointment with was a very well-off tort lawyer. I went to his office and about three minutes into my pitch about the importance of the project and the type of work we do, he cut me off.

"Are you here to ask for money?" he asked.

"Uhhhh, yes," I stammered.

"Don't you do your research before you ask someone for money? If you had, you'd know that I have a very sick mother and she needs a kidney transplant and has no health insurance."

"I am very sorry," I started to say, but he cut me off.

"And I have a brother who is an alcoholic who does not work and needs to go to a very expensive treatment center," he continued.

"I am so sorry to have bothered you," I said, starting to get up.

"And my daughter is learning disabled and will never be able to support herself." He would not stop.

He was just about shouting at me at this point. He finished: "And so, if I won't give money to my family, why do you think I will give it to you?"

### Funding Lawyers for the Poor is Hard

Asking for money to hire more lawyers is often a singularly unattractive proposition to funders. The problem is compounded by the fact that the money is not just for lawyers, but for lawyers for the poor. As the long-time director of Colorado Legal Services, Jon Asher, often says, "The only thing less popular than a poor person is a poor person with a lawyer."

We can sometimes dress up our fundraising appeal by suggesting that we are raising money for domestic violence victims, for children and families facing eviction, to improve access to health services or prevent consumer fraud. However, at some point, we must say we want the money to pay for lawyers to bring or defend litigation. That is what we do and no matter how client centered we are, it is hard to hide that fact.

This problem, in my view has a two part answer.

- FIRST, we need to conceptualize the role of legal services lawyering as an activity with an agenda to end poverty, eliminate discrimination and achieve justice — not just access to lawyers and to the courts. Access to the system is not enough unless we also care about the substance of the justice that the system delivers. In other words, we should be about ensuring that the process functions at a high

◎ REMARKS AT MIE'S 2008 NATIONAL FUNDRAISING CONFERENCE, *Continued from page 19*

level of efficiency by protecting procedural rights, but only if we also give utmost priority to the substantive interests of our clients.

- SECOND, it is important to be certain that development activities and the program agenda are integrated. The way we do our legal work — honestly, publicly, finding partners where we can, at a high level of quality — all help raise money. Even people that might disagree with the position taken in a particular case can and will be donors if the work is done well and with integrity. At the same time, fundraising is all about communication. Donors tend to be people who have the power not only to give money, but to effect change in the world. It is incumbent on us to be certain they not only open their checkbook, but they are also our allies on mission and agenda. Development messages are an important part of advancing our mission. We must make the lives of our clients real and the issues of our clients urgent. Money and action go hand in hand.

### Legal Aid is about Ending Poverty and Discrimination

My comments today are based on the premise that legal services lawyers are engaged in a cause, not just providing a service. As advocates, we must be guided by the goals set by individual clients when they seek our help. That work, however, is done against a backdrop of structural unfairness that is built into the economic and justice systems. That structural unfairness keeps our clients in poverty. The writer William Gaddis said, "In this life you get law, in the next life you get justice." I suggest that everything we do be based on a fundamental rejection of that premise. I prefer to think that Dr. King was right when he said, "We are called upon to help the discouraged beggars in life's marketplace. But one day we must come to see that an edifice which produces beggars needs restructuring."

### Crisis in Equal Justice

I think it is fair to say that there is no greater challenge confronting the legal profession today than the challenge of equal justice. The American legal system promises equality. As we all know, for far too many, this great promise remains a hollow one — not just because of a lack of counsel, but due to the nature of the institutions themselves. The courts are often distant and

remote places that are unavailable when needed and ordinarily hostile to the interests of persons living in poverty. Most people living in poverty are exposed to the courts only when the system is being worked against them: their landlord seeks an eviction, a business seeks to collect a debt, or the State seeks to take their children or expose them to criminal penalties. In those matters Oliver Goldsmith's cynical observation is a reality: "Laws grind the poor and rich men rule the law."

### System Keeps Families Poor

For nearly twenty-five years, I have been a civil rights and anti-poverty lawyer. Time and again, I have been shocked to watch the mechanisms of the legal system function to keep poor families poor. The structural inequities at play in the legal system are powerful. Approximately twelve per cent of the people living in the United States live below the federal poverty line — a measure that is wholly inadequate to describe what it actually takes to secure adequate nutrition, shelter, health care and other basic needs.

When hurricane Katrina hit New Orleans, at the same time that it tore the roofs from buildings and flooded streets, it exposed in ways that even the most resolute denier could not reject, that there is injustice in income inequality. Without in any way, diminishing the horror of Katrina and its aftermath, I suggest that poor communities across the country are in the midst of a long lasting and slow moving storm that batters them daily. Because the crisis has unfolded over time, and not in a dramatic week, it is not seen as urgent.

I do not need to tell you that the burden of poverty is born disproportionately by children, women, African Americans, Latinos and other minorities. There are almost 37 million poor persons in the United States. African Americans and Latinos collectively making up less than 25 percent of population but more than 50 percent of poverty. Much of this poverty is a legacy passed from one generation to the next.

The picture is starker for female heads of households: thirty percent of families with only the mother present live in poverty. For white households headed by women, the rate of poverty is twenty-one percent, more than twice the average for all whites. Families headed by African American or Latino women are poor at a rate of nearly forty percent.

As a result of this disparity, racial minorities and women are significantly more likely to have a legal problem related to their poverty and less likely to have a lawyer when needed. Subtle and not-so-subtle racial and gender biases continue to plague the legal system.

While bias can be hidden and difficult to quantify, it is oppressive nonetheless. It manifests itself as language inaccessibility, lack of transparency in decision-making, and the lack of respect that the tribunal shows for the time litigants spend away from work or for which they need childcare.

*Pro se* litigants dominate the civil dockets of most courts. In many specialized courts, such as those that hear landlord and tenant and family law cases, the overwhelming majority of cases have at least one unrepresented party. Despite the volume and the demands created on judicial resources by *pro se* litigants, these “poor person” courts tend to be the most neglected in the system.

In many urban areas, where the litigants are overwhelmingly racial minorities, the poor person courts are the worst. It is hard to measure whether the courts commit the fewest resources to the cases involving poor litigants because they are poor or because they are disproportionately black and brown. The effect is the same: clerk offices are understaffed, personnel are poorly trained and overworked, courtrooms are crowded, judges are impatient, dockets are rushed, and justice becomes a commodity that values efficiency over substance. Since all litigants are treated with equal disrespect, bias is hidden behind apparent, although not altogether benign, neutrality.

The legal problems experienced by poor families often relate to the very basics of life, including housing, health care, income, and family stability. The inability to resolve these issues further exacerbates economic inequality and perpetuates racial and gender disparities in income and wealth.

### Individual Representation

For a moment, I want to just focus on individual representation — I do not intend to diminish the critical role of systemic advocacy, lobbying and litigation to address structural issues. While big picture cases and projects are important and much more work is needed in these areas, the bulk of legal aid work is case-by-case and each case offers an opportunity for change.

When we think about our work, it is important to note that virtually every case handled by a legal aid lawyer will have economic consequences. Routine matters frequently have cascading adverse economic affects. The following are but a few of the thousands of scenarios that illustrate this point:

- If a woman is fired because her abuser threatens her at work and she does not have a lawyer get her

job back, she and her children are now without an income.

- If a child is improperly denied Medicaid, she could go untreated for common conditions, like ear infections, exposure to lead paint, or mold, that will later impair her ability to learn.
- If a family is evicted when it could be avoided and the family is rendered homeless, job loss, disruption of education and other setbacks are a predictable consequence.
- If an illegal debt collection practice results in the repossession of a car, the owner could lose his job and his family’s income.

In addition, persons living in poverty are vulnerable to fraud, predatory practices, and other abuse. Significantly, home ownership is the single greatest sources of wealth creation for low— and medium-income families in the United States. Protecting equity in a home might provide the necessary resources to move a family from poverty — to pay for a college education, to create security in old age. The loss of the equity may consign the next generation to poverty.

There are really two ways to look at the subprime crisis. We can protect the procedural rights and remedies of borrowers. However, the issue is only fully understood against the backdrop of a financial industry that is designed to transfer wealth from the poor to the rich. Something of a reverse Robin Hood.

These observations may lead to the conclusion that legal aid lawyers should be seeking changes in the laws and bringing more class action litigation. I agree with that conclusion. However, I think the implications are much deeper. The idea that communities and poor individuals need lawyers, and that those lawyers should provide the same representation that people get when they pay a fee, can be part of the DNA of the entire program.

In 1919 Reginald Heber Smith published his seminal work: *Justice and The Poor*.<sup>2</sup> He summed up the point I am trying to make as follows:

*First, there can be no political, or economic equality, no democracy, unless the substantive law by fair and equitable rules gives reality to equality by making it a living thing. Second, the substantive law, however fair and equitable itself, is impotent to provide the necessary safeguards unless the administration of justice, which alone gives effect and force to substantive law, is in the highest sense impartial. It must be possible for the humblest to invoke the protection of the law... or freedom and equality vanish into nothingness.*

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In short, to do our job as equal justice advocates, we must be as concerned with making the law just as we are with ensuring that it is applied in a fair manner. Neither is enough without the other.

### Fundraising in Aid of Equal Justice

Ok, so what does this have to do with fundraising? I think there are significant implications for the way we raise money. Some are obvious:

- We must put clients first. Our programs are in service to our clients and donations are to achieve justice for the client, not to advance the institution.
- In furtherance of this idea, we can talk in real and concrete terms about the difference a lawyer makes. We should shy away from what a lawyer does, and embrace what she can achieve. We do not “win” cases, we “keep families housed, we secure benefits and we ensure safety from violence.”
- We must never shy away from the unmet need. Because of the demands of funders, there is a tendency to want to say we help everyone, even if that help is just advice. We cannot be afraid to say to our donors — “Advice is not enough when representation is required.” High case loads are not necessarily a measure of impact if clients are not given the services they deserve.

In addition, I suggest that there is value in seeing fundraising itself as part of the advocacy strategy. Our message to donors about the need for support can include our substantive views on the issues we are trying to address. Existing social conditions matter. We must tell our donors about the underlying problems confronting our clients. We should not be afraid of demystifying poverty and proudly standing for change. Fundraisers become, in this way, equal justice advocates as much as anyone else in the program.

This is not always easy to implement. We have worked to incorporate these ideas in our development program at Legal Aid. We have a fifty member Board of Trustees mostly from large corporate law firms or significant businesses. The day-to-day work of our lawyers is unfamiliar to many before they join the Board. As a result, while they recognize the importance of our efforts, legal services cases have a popular image of being small and legally simple.

This came as a surprise. Shortly after I was hired at Legal Aid, I began an effort to increase staff salaries.

When speaking with several long term Board members, I was told that the prevailing philosophy on the Board was to keep salaries low with the expectation that we would hire the best lawyers we could, work them hard for two years and expect them to leave for more challenging work. One member said “After all, the cases are all the same, you just need to change the names on the pleadings.”

As all of you know, the legal issues in anti-poverty cases are complex and require the best lawyering skills to be successful. To overcome this challenge, my Board Chair and I developed a scheme to educate the Board on our work. At the beginning of each meeting, a staff member made a substantive presentation on a case or law-reform project, highlighting not only the impact the case had on the life of our client, but the complexity of the legal issues. It changed everything and, I think, made a material difference in the willingness of Board members to help raise money. In the eyes of many, we went from a charity to a real law office.

We have also tried to integrate the development and the program staff. Just as everyone is an advocate, everyone supports fundraising. Development staff are invited to attend subject matter unit meetings so they are well-versed in the issues we are working on. We have leaned hard on line staff to help us create a client story bank so that we can tell our story through the eyes of the clients we represent. Staff lawyers are sent to law firms to talk about their work which leads to increased donations and pro bono.

None of these are especially new ideas. They have worked for us, however, because we been intentional. We try and design our messages so that program and development staff are talking from the same page.

### Resolving the Tension between Rich Donors and Poor Clients

I am certain that you will be shocked to learn that executive directors, especially those of us who came up as litigators, are not fond of fundraising. It is generally seen as a necessary evil. We feel ambivalent about asking for money, especially money to pay our own salaries. Asking for money can be uncomfortable and make you feel like a supplicant- additionally, we signed on to do the work, not worry about where the dollars come from.

This is especially a conflict for me every year when we plan our Awards dinner. We hold the event at a fancy hotel, serve great food, have an open bar and congratulate ourselves and our donors for Legal Aid's good work. At the same time, many of our clients will

be hungry that night. Not a dinner goes by that I do not imagine the noses of poor children pressed to the glass looking in at our elegant party.

It is absolutely true that the dinner is necessary. We raise up to twenty-five per cent of our budget that night and create enormous good will with firms. But it runs the risk of being a “necessary evil.” To address this tension, we try to see the dinner not just as a fundraiser, but as an opportunity to advance our substantive agenda.

While we are not always successful, in recent years the event program has evolved to highlight not only our work, but the issues in our clients’ lives. One year, a client served as a speaker, we created an award that recognizes a non-lawyer in the community who has done substantial work to promote justice, and we target awardees that illustrate the impact of equal justice work and who we can rely on to tell the story. I try and focus my comments that evening on the need, rather than the successes of our efforts.

It is still an uneasy compromise and we have a great deal of room to improve, but now we get more from the dinner than donations and it is more than the celebration of the institution. We try and raise the level of the debate and create allies for the issues in our justice system that are most pressing.

### **Getting Government Funding While Securing Allies for Change**

Possibly a better illustration of the point, but in a different context was our recent success in getting the District of Columbia government to support civil legal services. In recent years, state and local governments have become the largest funding source for legal aid programs — eclipsing even the money made available by the Legal Services Corporation. Until recently, the District government appropriated no funding for legal services beyond the use of certain funds raised from assessments on criminal defendants and used for services to domestic violence survivors.

When our Access to Justice Commission was formed three years ago, getting an appropriation became the first order of business. But instead of seeking a blanket appropriation for general legal services, we bound our request to three specific targeted projects, thus allowing us to focus the Council’s attention on the substance of what we were trying to accomplish. In this way we combined our request for money with advocacy on a set of issues we thought we important. The three issues were:

- Increased representation of tenants facing eviction

or displacement as a result of gentrification;

- Creation of legal services in communities of highly concentrated poverty; and
- Linguistic accessibility for language minorities.

These areas were not only funding priorities, but substantive priorities. Our pitch for the money centered around the need to address gentrification, the impact of generational poverty and the injustices being experienced by new immigrants. The distinction I am drawing sounds subtle, but I think it is important to lead with the injustice at a structural level and follow with the role lawyers play. We enlisted our clients in the lobbying effort. We told their stories, but they also testified about their experiences with the legal system and the value of having counsel.

The Council gave our IOLTA program \$3.2 million, which is the highest per capita appropriation of local dollars in the country. Interestingly, the only skeptical question we received was from a Councilmember who asked from the dais: “What are you going to do that will change the lives of your clients so that legal services will no longer be necessary?”

### **The Goal is, and Always Will Be, Equal Justice**

While I know nothing I have said is particularly new, it remains hard to achieve. Everything we do as equal justice advocates, properly conceived, is an opportunity for social and economic change. Whether it be the way we handle our individual cases or the systemic matters we chose to pursue; whether it be our values that clients be treated with dignity and how that translates into the way we keep our waiting room; whether we include clients in our priority setting or in our advocacy.

Importantly, it must be part of the way we raise money.

I would like to end where I began, with two intertwined ideas:

- FIRST, legal services lawyering is about ending poverty and discrimination. We must be certain that both the substance and the process are fair, and
- SECOND, fundraising can be substantive advocacy on important issues while at the same time developing financial support.

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*Continued on page 55*

REMARKS AT MIE'S 2008 NATIONAL FUNDRAISING CONFERENCE, *Continued from page 23*

1980 with a BA in philosophy from the University of Maine at Orono and received his Juris Doctor from Antioch School of Law in 1984. From 1984 to 1989, Jonathan was an associate at the Alexandria Virginia civil rights firm of Victor Glasberg & Associates, where he litigated cases on a broad range of issues including, police brutality and misconduct, employment discrimination, discrimination in public accommodation, voting rights and free speech. In 1989, he joined D.C. Prisoners' Legal Services Project as its first staff attorney and helped open the office. In 1991, he became the Project's Executive Director. From 1998 until 2002, Jonathan was the Executive Director of the Public Justice Center in Baltimore, Maryland, where he worked on a range of issues including juvenile justice reform, workers' rights, the rights of language minorities and housing. Jonathan has served on the D.C. Access to Justice Commission since its inception in 2005. In 2006, Jonathan received the Gelman Rosenberg & Freedman Excellence in Chief Executive Leadership (EXCEL) Award for outstanding leadership in the areas of innovation, motivation, community building, ethical integrity and strategic leadership. Also in 2006, Jonathan, along with Legal Aid, received the Justice Potter Stewart Award recognizing those who have made a significant contribution to the administration of justice. Jonathan may be reached at [JSmith@legalaiddc.org](mailto:JSmith@legalaiddc.org).

- 2 Reginald Heber Smith, *Justice and the Poor*, The Carnegie Foundation for the Advancement of Teaching, 1919, <http://books.google.com>.



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