

Experienced Advocates Share Insights on Legal Services Practice

[Editor's note: John Bouman, Wendy Pollack, and Margaret Stapleton, who are advocacy attorneys at the National Center on Poverty Law, Chicago, Illinois, sat down for a roundtable discussion about some of the experiences they have had and the lessons they have learned during more than seventy aggregate years of representing low-income clients. Marcia Henry, a Center staff attorney–legal editor, moderated the discussion. Excerpts from their remarks follow.]

The Real World

Marcia Henry: What would you like new legal services attorneys to know about the real world of representing low-income clients and the challenges and rewards of this work. Anyone?

Margaret Stapleton: I think it's really important that attorneys like their clients. Clients come to us often so used to being put down and ignored and disrespected. But I think that people should make an effort to have a relationship of respect with their client. Legal services lawyers are often very harried and want to get to the point and might be inclined to cut the client off when they want to talk about other things. But I'd urge people to consider how they'd feel if the situation were reversed and they were the client.

John Bouman: For a lot of clients, the legal services program is just the

next bureaucracy, the next caseworker or interviewer or bureaucrat, and so you need to establish some degree of openness and frankness.

Wendy Pollack: Clients may think you are some branch of the government and don't necessarily understand what your role is. Just explaining who you are and what you could do for them, and possibly the role that legal services can play is important. The other thing that happens a lot is that, as an attorney, you may know what you need to win a case but that isn't always what the client wants to talk about or even thinks is the most relevant. It's important to give people a chance to talk. I think there has been a push in the last several years to take a more holistic approach to dealing with clients. If they came in for a housing issue, they also might have some other kind of issue. Clients aren't used to getting someone in a position of authority to listen to them and hear them out.

J.B.: One of the hardest things early on was giving bad news. It's easy to find yourself with a docket full of lost causes because you couldn't deliver the bad news that a case isn't viable or that you aren't in a position to do it because if you win, it will be ten dollars, or something like that. So there are hard resource-allocation issues that really can be tough news to give to

people. The other thing that's hard to avoid is the temptation to give social advice or be a therapist instead of a lawyer. And sometimes the stories you hear beg for a comment, like "Why don't you just get rid of this guy?" Sometimes you can't avoid that escaping your mouth. It comes up a lot in cases where it's obvious that there is a recurring need for the same legal services. You know, like clockwork, every four months or so, there is an eviction, or a utility shut off, or a period of homelessness, or recurring trouble with a child welfare agency caseworker wondering if the children are okay. If you're not trained to do that, you really shouldn't provide the therapy or the advice. You can suggest to someone to get advice, and you can give them a phone number, but then you move on to the legal issue.

M.S.: I think that people really have to keep in mind that, just as John said, they aren't trained to do that kind of work. It's very tempting because we do it with our friends and with our families. But with a client, it's really over the line.

W.P.: When I was in a neighborhood office, some of the women I represented were domestic violence victims. That's particularly difficult, and one good thing that's happened is that more legal services offices that deal with domestic violence claims also have social workers or someone on staff to play that role, so that the lawyers don't have to. But with all the referrals and even driving clients to shelters or counseling or things like that, very few followed through on those referrals. They really relied on me to not only be their attorney but also their counselor and their friend and their advisor. I think sometimes you do have to play that role. It's a hard role, and some attorneys might be more comfortable with it than others. It's a hard line to find, I think, especially if your office doesn't have other means of help.

Drawing Fine Lines

M.H.: It sounds to me like you are talking about a different kind of line. There

is the "don't be a therapist" line, but there is also the issue of doing things for people like driving them places. Any comment on that?

J.B.: Well, it's something to be careful about. I'm sure we have all done it. You give people rides, or you get more involved with a particular client than with others. And any time you are doing something other than strictly attorney-client, you have to know that you are on tricky turf. Sometimes you are going to have to go get the person and bring them to the courthouse or to the deposition or into your office, or you are going to have to arrange to have their children watched during the proceedings. It can be a hazy line, and I think the most important thing is to be aware that there is a line there.

M.S.: And some clients will have a good legal case, but because of circumstances in their lives, they are so beaten down that, unless you give them more support, they are not going to be able to pursue the case. You are going to have to make the arrangements to come and get them, or they are not going to be able to get to court because their life is so chaotic. And sometimes you feel like you are there with your finger in the dike, and if you don't do all these things, very dire things will happen. They are going to lose their house, they are going to lose their kids, or whatever. And then you have to ask: Whose case is this? Is it their case or is it my case? I personally think it's okay to do some things to help some clients, but with others you find that you are going to have done a great deal of legal work and a great deal of nonlegal work, and the case is still going to dissolve into nothing.

Clients' Competency to Make Decisions

M.H.: What about clients whose competency to make decisions about their legal options may be a question?

J.B.: I think that that is another one of these tricky judgment areas. A lot of times when somebody makes a decision that you think is stupid, after

you've told them all the pros and cons, they have some emotional reason for it or they are just making a bad call. That doesn't mean that they are incompetent. Competence is understanding things well enough to appreciate the arguments on both sides and then you make the call and you live with it. I think you have to assume they are competent, and it's always the client's decision. You've got to explain the options as best you can and then let them choose. Sometimes it emerges that the whole issue is made up, you know, invented. I had a guy once who wanted me to sue the Department of Public Aid. I think he had been denied about \$10 worth of food stamps. But he wanted me to sue them for \$40 million so he could create the Raquel Welch Center for the Poor. At that point, I knew that we could cordially conclude the conversation. I gave him the *pro se* instructions on how to appeal the food stamp decision, and bade him good day. And a week or so later, I got a summons; he had used that advice to sue me. The complaint started with tiny little words in the middle, and it was written out in a spiral. We had to go to the malpractice provider for our agency, and they got the complaint dismissed, but it was interesting. So some situations are clear.

M.S.: Talking about giving people options in the context of decision making, I think it's very important, when you are talking about settlements or going to trial, to have a very frank talk with clients about what kind of relief they can expect. Clients may have expectations about the emotional satisfaction they are going to get, but their impression is that the other side is going to be converted to see that they had treated the client badly, to apologize to them, and they are going to leave the courtroom feeling vindicated and loved and restored. And I have never seen that happen in any trial that I have done. And I've won a lot of cases. You win money, or you win an injunction, but being in litigation is draining emotionally. I think that's particularly true in family matters. And I've found it to be

absolutely true in discrimination cases, employment discrimination, housing discrimination. Those things take tremendous tolls on plaintiffs.

J.B.: And the important thing there is that you don't take the case if you are not ready to go the distance. It's a common pitfall, I think, that the lawyer's own insecurity about taking a matter to trial drives in part the conclusion that settling is the right thing to do, and you move heaven and earth to convince the client to do it. But if the client, understanding all of that, still wants to go for it, you've got to be ready to do it. You may be sitting there thinking to yourself "we are going to get killed," but you can't dress it up as "we don't have the resources to go forward with this because it's a lost cause." You shouldn't be there if you are not prepared to proceed. Now, that's a general statement, and I'm sure there are exceptions. But if it's a matter of a chancy proposition at trial versus a modest settlement, and the client wants to go to trial, you have to trust that decision and go for it. If you are not prepared to do that, it will color the representation, and it will essentially take the decision away from the person. I've seen it happen a lot. If you turn the page back to what Margie was saying about discrimination cases, those are the hardest ones to make that judgment about early on.

W.P.: Before I was a lawyer, I was a union carpenter, and I was involved in some discrimination cases. I've been on the other side, so I really understand what a personal toll it is to go through that, and what drives the need to go forward regardless of the merits of the case. Especially in terms of discrimination, you may feel personally so abused and undermined, and personally attacked, and maybe this has been going on for a long time, that there is kind of a psychic issue about what needs to be won. It could be just revenge, it could be a kind of righting of wrong. And it gets to something Margie said, about what people really get out of these cases. I've had clients say to me, "I didn't even get to talk. I

thought it was going to be more like Judge Wapner.” So part of it is explaining to clients not just what could happen, but what it means to go forward and the toll that takes, and also what it might mean not to go forward and can you give that up. In retrospect, in my own experience, as hard as it was to go forward, and as miserable as I was while it was going on, it’s a decision I never regretted because it was the right thing to do. And if I hadn’t done it, I always would have regretted not doing it. So there is a lot more going on than just the merits of the case, and I think as a lawyer you have to understand that, too.

Defending the Legal System

M.H.: Have you felt that you sometimes end up having to defend the legal system because people expect it to be one way and it isn’t?

J.B.: Well, just because it’s the law doesn’t mean it’s justice. It’s just the rules. And it’s not always fair, but we have to deal with what the reality is. So it’s not defending it so much as being honest about it.

M.S.: I think that’s one of the hardest things for newer lawyers or any lawyers because, all of a sudden, you’re seen as part of the problem. You can sense when it happens in an interview. You’re going along and explaining something and, all of a sudden, the client articulates something that they want, that you know the law does not provide for. All of a sudden, you are part of the problem and you are not on their side any more.

W.P.: One thing that’s important is really helping the clients tell their own story. I mean, that’s really empowering for clients and empowering for you as an attorney. One case stands out in my mind; I had a client who’d applied for unemployment insurance, and he was fired for alleged misconduct. He worked in a manufacturing plant, and there was an accident. The whole point was to show that it wasn’t his fault. I was able to help him tell the story at a hearing, and we won that hearing. I think that you do have to figure out

how much time and energy you spend on any one case. But the idea of really allowing clients to be able to tell their story, and understanding how important it is for them to be able to convey that so that they can then convince the trier, is really important. Once this client was able to tell the story in a way that made sense, it was so clear that he had become transformed.

When Clients’ Stories Are Implausible

M.H.: What do you do with clients’ stories that sound inherently implausible?

M.S.: Let me just say that, in my experience, an awful lot of those stories are a hundred percent correct—as implausible as they sound.

J.B.: Because who could ever make it up? The made-up stuff tends to be the most plausible, but there are little holes in it.

M.S.: Do you want an example? I was a young lawyer, and I was doing a deposition in a prison conditions case, and our clients had given us this little piece of paper, badly typed on an old typewriter where the keys were smudged and didn’t always print, that said “Do not criticize the institution.” It might have even been misspelled. And the client says to us, “They put this on our letters. They won’t let our letters go out.” And I thought, “This is not true. I mean, the institution is not saying, in this badly typed little thing, do not criticize the institution, and taping and stapling it to the letter and returning to the plaintiff.” And I’m wondering, at the deposition can I actually ask the institution if they are doing this. And I just took a big breath and handed it to the woman who handled the mailroom and asked, “Have you ever seen this before?” “Oh, yeah,” she said, “I have a whole stack of those. If they are saying something bad about the institution, I don’t let that go out.” I was sure my clients were making it up. They were not. But the real question is, what if they are lying to you? I don’t have an answer.

W.P.: All you can do is tell people that you are relying on them to tell you the truth, and your representation is

based on what they tell you.

J.B.: And sometimes you first hear just the client's version, like the notice from the landlord says, loud music every night for a week, and the client's story is "I always go to bed at 9:00 o'clock." So the stories are widely differing. You can say, "Well, now, the landlord says so and so. What do you say about that?" "Well, do you even have a record player or a CD player?" I'm showing my age there. You get to the point where you can say to the person, "Look, this will come to a trial, and it will be your word against everyone in the building, and backed up by the police reports that were filled out on several nights in a row, and I don't think we can win a case like that." That's a different question than finding yourself in a situation where the person has told you lies, as opposed to just their rose-colored glasses' view of whatever happened. The temptation is to say that if someone has lied to you, you should withdraw from the case; and sometimes you do that. But if it's at a more preliminary stage, you can have a frank conversation with the person and see if you can move on from there. People will give you what you want to hear and what they wish were true, or they won't show you a certain document because they are worried that it might hurt their case, which it does. A lot of times you can get past that if you can catch it soon enough.

M.S.: One of the things that I find really hard in interviewing people is that there are so many things that you want to tell clients at the beginning, that it's almost overloading them with information. You can spend twenty minutes explaining legal services, explaining that you are a lawyer—you spend a ton of time before they have gotten to say a word, which is really off-putting for a client. But one of the things I think you do say to clients early on is the importance of them telling you what really happened, the good and the bad. I will usually say to clients that if people tell me the truth about what really went on, and show me all the documents, then I will be

able to make the best case that we have out of this, and maybe have a good chance of winning. But if they don't tell me everything, or if they tell me things that are not correct, it's almost a guarantee that we won't win because it will fall apart. I think that clients really don't understand that you don't have to be perfect to prevail. You don't even have to be nice. But you have to have a 20-20 view of what went on, or what the facts were leading up to it. Then a good lawyer can deal with that and move ahead.

W.P.: I think it gets hard when you don't know at what point a client starts lying. I can think of a particular client in a domestic violence situation that became a custody issue. I don't think she started off lying, but over the course of time there was an assumption that she had the child, and it turned out that she didn't. The father had the child, and that was nothing she ever reported to me. It also, quite frankly, didn't even occur to me. In the course of things, I asked about how visitation was going and things like that. So, clearly, she was lying to me, but I never was led to believe that she was lying about the father having custody. That became a huge issue, and I could no longer be her attorney. I was called in by the court to testify, and I talked to ethics experts. So you can find yourself kind of in a difficult situation and I basically told the client, "You have to get another lawyer."

The First Time

M.H.: Are there any stories or memories you have about your first few interactions with clients? Did you feel like you didn't know what you were doing?

J.B.: I think it's fair to say I didn't know what I was doing. If you feel that way, you are normal. And the only way to fix it is to observe and get some training and advice, but then just do it.

W.P.: I think it all becomes more natural as you come along. It becomes less of an interview and more of a conversation with your client as you get more experience. I've always thought that both the downside and the upside

of legal services is that you are thrown to the wolves pretty early. While that is kind of scary at first, even at the beginning I think I knew I was going to appreciate getting this under my belt real fast. And I did. I did appreciate that.

J.B.: One thing I've always been glad about is my law school federal practice clinic. Going from there to direct service in a legal aid agency, I always had in mind the interface between the client who walks through the door and the reality of the experience they describe, and how that might translate into broader issues. You know, Mrs. Kelly walked through the door in a legal aid agency in New York with a squabble with her caseworker that grew into *Goldberg v. Kelly*. So it's exciting that the person describing their story to you might be a test case. Because of my law school experience, I had that little electricity below the surface of all these interviews, eagerly looking for those kinds of issues. That's never left me.

W.P.: You have the opportunity to see patterns in what's happening, especially on the administrative level. In my practice representing domestic violence victims, I started seeing a pattern of domestic violence being triggered or furthered by the requirements to cooperate with the welfare department in child support. So I called our family law section and asked, "Do you see this?" And they hadn't, but when they looked at it, they started seeing a pattern also. That led me to think differently about those issues, and I got more interested in welfare law. You really can spot issues that are larger problems than just the individual walking in your door.

If You Had Known

M.H.: A final question: Is there anything else you know now that you wish you had known then?

M.S.: Actually, there was something that I knew then, that I'm not sure that people now know. When I started, I was in a three-person office in a very rural area. There were two of us green people and the supervisor had maybe a very good ten years of experience. We were doing civil rights work, and it involved a pretty heavy federal case with a prison. The supervisor very early on made us make that transition from being students, where there was another lawyer in charge, where we were helping another lawyer, to feeling that these were our clients and our cases and we were responsible for them. He was available twenty hours a day to talk, and we worked a lot, but I guess the point is that when people get their law license, they have to realize that that client is *their* client, and *they* are responsible for that client's case. Whether they have been trained or not, they are in charge of it, and the mistakes are theirs, and nobody else is responsible. You can talk about chains of supervision and the importance of a program giving supervision. All those things are true. But that's really your client. I've found a lot of people have trouble with that. They somehow think, "My legal services program, or my whatever hasn't trained me on this; I don't have to know it." And I don't buy that. I think if you are dealing with this issue for a client, you either don't take that case or, if you do take the case, you learn the law. It's very important that people don't just gather stuff into a file and then say, here it is, but I'm not really in charge of it. You really are in charge.