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## PURVI & CHUCK: COMMUNITY LAWYERING

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*Joseph Phelan of Organizing Upgrade sat down with Purvi Shah and Chuck Elsesser of the Community Justice Project based at Florida Legal Services in Miami in early April to discuss the role of lawyers in grassroots organizing, social movements, and building another world.*

### What is the relationship between lawyering and social justice?

Historically, while not always clearly articulated, different legal models have developed as to how to use the law to create social justice. The *civil legal-aid model*, believes that the major problem with the legal system is a lack of lawyers. It argued that if there were just enough lawyers to represent every single poor person, the courts would be able to administer a just result. The *test-case or impact litigation model*, believes that systemic social change can result from carefully targeted class action litigation. The *social-rescue model* believes that poverty is the result of failure of social and other support services, including, legal services.

The first two of these models believe in the underlying justness of the legal system – if you can simply have a lawyer to enforce the law, or have the right case argued to the right judge justice will result. The third model assumes that poor people are poor largely because of their own failings. They are simply “broken people” who need comprehensive services to be “fixed.” Not one of these models takes into account the long standing systems of class and racial discrimination and oppression, which have resulted in systemic powerlessness of whole communities. Many of the classic conflicts between organizers and traditional legal services lawyers can be attributed to this disconnect between their differing theories of social change. Traditionally, lawyers and organizers have vastly differently analyses on why our world is the way it is.

We believe that the poverty of our clients is simply a symptom of the larger disease of systemic oppression and conscious inequality. We use legal advocacy to build the power of communities to challenge and eradicate these systems of inequality. In this model, rather than saviors or gatekeepers, lawyers are tacticians in the struggle for change. We call it community lawyering.

### Can you break down your model a little more?

Similar to the different schools of thought in organizing (community vs. union, Alinsky vs. ideological), community lawyering has many different strains. What sets community lawyers apart from each other boils down to their answers to

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We expect the “solutions” to social problems to be found within the community, and yet community groups, more often than not, work beyond their communities’ boundaries. Why? Because they see...

the following three questions: Who do you work with? What do you do for them? And how do you work together? Similar to organizing, the answers to these questions vary depending on the political orientation of the lawyer and the theory of social change they ascribe to.

Our particular brand of community lawyering believes in supporting community organizations and other organized groups of people (i.e. worker/tenant associations, community coalitions, and unions) that shift power through collective action and strategic campaigns. Like many organizers, we believe sustainable change comes through building large-scale, democratic organizations focused on building the power and conscious leadership of poor and working people. By using legal advocacy to support organizing, community education, and leadership development, community lawyering allows lawyers to have a much larger impact than any one lawsuit.

That brings us to the “what.” This is the area of our work that is least regimented. Pretty much anything is fair game. Depending on the campaign goals and our relationship with a particular organizer/organization, we will support a campaign with a variety of tactics including litigation, policy advocacy, research, community education, and infrastructure/institution building. In the past we have: conducted know-your-rights trainings; presented at public forums to advance campaign demands; worked with members to develop their public-speaking and writing skills; litigated individual cases on behalf of workers and residents; litigated actions on behalf of classes of workers, tenant associations or the base-building organizations itself; drafted policies or legislation; researched and provided technical assistance to develop a campaign strategy; and provided transactional and corporate advice to new and existing organizations. Our goal is to increase our clients' participation and control over complicated and time-consuming legal processes that can otherwise be alienating. But perhaps more important than what we do, is what we aim not to do. We aim to transfer knowledge and skills to organizers and clients so that we are not relied on all the time. Through every case, we hope to be expanding the collective knowledge base within the organization.

For us, the “how” comes down to accountability. We believe that our clients (whether organizational or individual) are partners—not just in name—but in leadership, control and decision-making. The lawyer-client relationship is rife with power dynamics that do not evaporate simply because the long-term goals of the lawyer are aligned with that of the organizer or client. Therefore, we also believe that community lawyers must be engaged in a regular practice of self-scrutiny and self-reflection. If lawyers want to practice law in respectful, responsible and accountable manner, we believe you have to be constantly evaluating your work to determine if it perpetuates racism, sexism, homophobia, classism and elitism. To that end, we believe that community lawyers should be engaged in a process of political study and growth collectively with organizers. Poor communities of color face multiple and intersecting injustices and good lawyering requires a deep understanding of race, class, and power.

#### **How are you as lawyers able to encourage collective power building?**

The legal system in the United States is very individualistic. It tends to atomize disputes, which works against an organizing model. The legal system is designed to address disputes between a single plaintiff and a single defendant. Because of this, many ethical and procedural rules make it incredibly difficult to use litigation to achieve collective goals. For example, when you settle a lawsuit, attorney-client privilege only applies if you don't involve a third-party in the discussion—which means organizers cannot be in the room when you discuss settlement with your client. The obvious solution would be to try to represent a group rather than individuals. But sometimes the rigorous procedural rules of litigation force disputes to remain individualized, because for whatever reasons we don't have standing to represent the worker association nor tenant union as a whole. These rules and many others are serious obstacles to utilizing a collective approach to grievances.

Lawyers that are battling these obstacles have to constantly be thinking of mechanisms to both obtain positive results for their individual clients while furthering the goals of the client's organization. We struggle with this challenge constantly and work with clients to reinforce their understanding of both their dispute as a collective grievance and the legal strategy as simply a tool in a collective response. Hopefully, the clients themselves will want to share their learning experiences and their increased understanding of the problem by continuing to participate in the organizational campaign. But poor clients and their families are burdened with enormous pressures so it doesn't always work that way. However, we are constantly working in an educational way to foster that collective understanding of the problem.

Another common experience is that clients will be offered a settlement agreement that, while of marginal benefit to the collective, offers substantial benefit for the individual. We've seen this tactic used time and time again to split off

individuals from the collective. Many lawyers handle these situations by simply communicating the offer to the client without any conversation about its benefits/detriments to the collective goals. Though we agree that ethical rules require lawyers to allow the client to make all settlement decisions, the rules do not prohibit honest and frank discussions between lawyers and clients about the individual and collective benefits of any possible settlement. We are not shy about reminding clients about the collective goals they had at the beginning of the case and that the individual settlement being offered to them doesn't reflect their original goals. In this way, lawyers can work refocus clients back towards their initial collective vision.

**What are some lessons you have from being lawyers and engaging in that level of consciousness raising, encouraging people to engage in collective action or understanding? What are the limitations that law puts on you in engaging in this type of work?**

One of our major observations is that most people, regardless of their personal history, expect the legal system to deliver justice. Our educational system, T.V., pop culture, all reinforce the idea that ultimately if we have the opportunity to tell our story to a judge, justice would result. Initially, it is also important to remember that very, very few poor people ever get the opportunity to tell their story to a judge (at least on the civil side.) The number of poor people actually represented in civil disputes, such as landlord-tenant matters, is infinitesimal. However, so many people believe that if they could just get that "champion" lawyer, they would be able to obtain justice and fairness.

But the reality is that most of the harms experienced by poor and working people in this country simply are not illegal. Even if represented by the best lawyer, any poor person who goes into court will be outgunned by overwhelming resources. In addition, they face the systemic biases of both the substantive law and the judicial decision makers whether judge or jury. As such, the law quite literally is designed to protect private property and capital investment and not to render justice.

None of this is to say that we do not believe in challenging and pushing the law to change—reform struggles in the law can be incredibly important in highlighting contradictions and challenging the dominant narrative. We often engage in counter-hegemonic conversations with our organizer counterparts and our clients in order to set reasonable expectations around what type of justice is possible to obtain from the legal system. We consistently have to remind people that the law is a tactical tool, not a solution. We often times have shift perspectives from seeing winning the lawsuit as victory to seeing the lawsuit as simply an opportunity in a larger strategy.

In addition, we constantly remind the client and the group that the court is just another political venue. The truth is, sometimes we have to remind ourselves as well. Experience has taught us that when you pack the courtroom with thirty people, you transform that venue back into a political one where success is influenced by collective power. Judges like any other political entity respond to this. As people associate the political struggle with the legal victory it demystifies the whole process of the lawyer winning a case. You get something that is a response to the collective struggle and presence.

**This model sounds like it is directly in line with this model of organizing that is paired with political education and leadership development of grassroots communities. What is the response to this coming from other lawyers? Is it growing in popularity?**

This style of lawyering has been around. It has been present in different movements and different struggles but it remains fairly uncommon due to the challenges and obstacles to institutionalizing this approach. The first of these challenges is that, amongst lawyers (and the public), there is lack of understanding of what organizing is. A lot of lawyers out there simply don't understand what organizing is. It is this lack of a common language that often perpetuates the divide and disconnect between organizers and service providers. Part of it is that people are speaking different languages and can't see how to connect the dots. However, historically (and rightfully so), there has been considerable distrust of "community" lawyers. All organizers can recount examples of where lawyering in support of communities or in the name of communities has been done wrong and has created a lot more harm than good. Lawyers can take up a lot of space. Power can gravitate to lawyers. If both lawyers and organizers are not hyper-vigilant about managing and passing along that power, lawyers can be destructive for community organizations or organizers.

An additional challenge is that, unfortunately, young lawyers are not being taught community lawyering in law schools. If you are a progressive or left lawyer, there are not many places to get training to figure out how to lawyer in support of

community organizing. There is a dearth of mentors and elders to train the next generation of community lawyers. Many progressives who decide to attend law school end up being frustrated and choose to never practice law. Like anything else, a community-based practice of law is something that has to be taught. Our project is working to bridge this gap by teaching in clinical programs at local law schools and running a summer institute for law students to train the next generation. Also, though there are a number of lawyers across the country engaged in the practice of community lawyering, the theory on community lawyering is, at best, embryonic. Those of us engaged in the practice have simply not been able to effectively distill and document our experiences in a cohesive and clear theory.

Finally, for those lawyers who believe in this type of work, most are housed in institutions that tie their hands because of limitations from funding sources. The vast majority of lawyers that represent low-income people are housed in legal-services/legal-aid organizations many of which are funded by the Legal Services Corporation Grants from the federal government. These LSC grants put specific limitations on the type of legal work grantees can engage in, the most notable being that LSC-funded lawyers cannot bring class actions and cannot engage in lobbying. These limitations, as they were designed to do, have had a stifling effect on community-based legal work. As a result, part of our work at CJP has been to build new partnerships and identify clear opportunities for community lawyering to occur within existing legal-services institutions. We firmly believe that the individual legal representation that traditional legal-services organizations engage in is still really important work. However, there are no funding restrictions that prevent that same work from being done in partnership with sophisticated community organizations. If just a small part of that resource could be redirected to lawyering support of organized communities that could have a huge impact.

When you go back and look at the history of the various models we have talked about they were all models that were led by people who had a belief they would work to affect social change. They were based on all sorts of ideas about how social change comes about at different points in our history. While one could argue their efficacy in the past, there is general agreement that they are no longer effective. Indeed the past decade has seen a dramatic retrenchment in the ability to bring social change cases into court. Simply getting past procedural challenges has become an almost impossible barrier. And substantive challenges then confront an increasingly hostile judiciary and legislature. Lawyers who do this type of work are looking for more alternatives, and looking again at some of the ideas that were considered secondary when the appellate courts were more supportive, where the federal courts were much more open, where you used to be able to go into court and obtain a hearing and have an impact. That is not the case now. Models that take this change into account and internalize it and say that lawyers can still effect change become more attractive. This is a clear opportunity for community lawyering.

**Can you tell us about some of your most effective collaborations with community organizations or community organizers?**

We have worked on a number of different collaborations with local groups. But when you are in a defensive mode success is relative. But certainly we would say our collaboration with the Miami Workers Center around the Scott Homes Campaign was successful. [Scott Homes was a public housing project in Miami that was demolished using federal funds through the HOPE VI program]. Miami Workers Center and Low-Income Families Fighting Together waged an 8 year campaign to defend former residents' rights, and build back the projects. We worked with LIFFT and MWC throughout that campaign both as litigators and as advisors. We used the courts to: create a forum, a space, to push out a different perspective on HOPE VI; to bolster the political power of the residents; to slow down the project to some extent; and to provide organizers with knowledge of opportunities to insert themselves in the development process. We see it as a successful collaboration even though the projects have yet to be built back.

One of the enormous benefits of working with organizers is that they focus on a set of clear and specific demands. Those clear and specific demands in the Scott campaign were one-for-one replacement and the right to return. These demands dramatized and underlined what was wrong with HUD's existing program and highlighted the need to fix it. That, over time, is what allows for a change in the political climate. It is not individualized responses in different places it is a clear and cohesive response that makes change. That is an organizing approach and not a lawyer approach.

One of the other reasons that this was, and continues to be, a successful collaboration is because we [CJP and MWC] have been able to shift the debate in the policy world. The demands that came out of this campaign (and others like it) have infiltrated the U.S. Department of HUD. We recently attended a conference where the Secretary of HUD highlighted the right to return and one-for-one replacement as the crown jewel of a new HUD program. Whether HUD will truly honor and enforce these demands is up in the air (and probably unlikely), however, it is undeniable that the Scott

fight and other similar fights like it across the country significantly shifted the debate and dialogue at the federal level. Rather than arguing about whether public housing residents should have the right to return when their homes are demolished, the conversation with HUD now is about *how* to truly ensure that public housing residents have the right to return.

That ability to shift the debate, and shift the conversation around policy really is the opportunity for lawyers and organizers. Whether we win our concrete campaign demands or not, the collaboration between lawyers and organizers creates real opportunities. Lawyers can pull organizers into spaces we have access to where these discussions are happening. Over time, these on-the-ground fights shift the general understanding of what true wealth and strength is in low-income communities, and change common sense to be that there is plenty worth preserving in low-income communities.

One of the challenges with campaigns like Scott and others we have been involved (such as Power U's Crosswinds campaign) is that victory is the absence of destruction. Even if we get one-for-one replacement, Scott will still never be back, that community will never be back and what we end up with is the least worst of the alternatives. Many organizing struggles in recent history have been strictly oppositional struggles focused on stopping the destruction of a community by unrestrained development and capital. One of the real challenges for organizers and lawyers and everybody that are fighting these campaigns is figuring out how to shift from these defensive battles where all we are trying to do is get the least worst result to battles that look at the creation of positive alternatives. This is something we all have a great deal to learn about.

#### **What role can lawyers play in putting forward an alternative progressive vision?**

Community organizers looking to build progressive social movements need to have a fairly sophisticated understanding of how the government works. This role is one that lawyers can play since lawyers, unfortunately, are the priests and priestesses of power. Our daily work involves engaging within systems of power. We can thus contribute to social movements a different perspective and analysis from within "the system."

Ultimately, it all depends on the relationship between the organizers and the lawyers. As relationships grow and as trust develops lawyers can be very important to have in the room as you are doing campaign planning and campaign development. We can see opportunities; we speak in the language of power. We can identify forums for the political dialogue. There is a real shared dialogue that can happen in a fruitful way. There are certain things that only lawyers can do. But there is also a whole bunch of things that lawyers can do in support of communities that communities can do for themselves as well. The way we see our role if we know how to do something we try to pass that on, to allow people to be in more control of information. As individuals deal with different situations they have an expanded vision of how to tackle what is going on in front of them.

In addition, when folks come up with alternative solutions, lawyers can figure out how to craft and implement solutions in a manner that truly changes people's lives. Is there something unlawful or illegal that's happening? Is there some way to advocate that the system function differently? Are there rights that are being trampled on? That is the main role lawyers can play. One thing we can do is break down the legal rule in a way that helps groups to facilitate their own power. We can say in particular project that there needs to be a hearing because the law says there needs to be a hearing, and we can help draft the language to the hearing. This has little substantive relevance but it does create a forum for political power and interface with whoever the government power is. We can interpret the rules in a way that allows the expression of the power and the will of the community to better impact the government.

While lawyers certainly are not central to change, lawyers have skills that throughout history have been useful for progressive and revolutionary movements for change. Gandhi and Mandela were both lawyers. And while being a lawyer is not what made each of these individuals most helpful or insightful, their legal training and legal skills were no doubt assets to the movements for a free India and a free South Africa.

#### **Are there any legal openings or shifts in policy that ground organizing groups are not taking advantage of?**

We could propose a couple from our experience. Our analysis is that most community organizations have been in a very defensive mode, they have been using all of their resources just to give up as little as possible. That leads to a certain

type of organizing which is oppositional. There is a particular type of lawyering that goes along with that, which blocks projects that try to maintain the status quo. That has grown out of the objective reality of the past decade.

We think that the political conditions and the political moment have changed. The economic recession has stemmed the tide of the gentrification and the gobbling up of land, temporarily easing the pressures that were leading to the outright destruction of our communities. In addition, many organizers have played out the limits of that oppositional approach. We have seen the extent of which how much power that position can build. The trick now is to figure out how to take the next step that can affirmatively build power and institutions. We don't have a lot of examples because our clients have been so deeply involved in the defensive strategy. But people, at very low-levels, have been trying to build affirmative institutions and governing institutions. People are trying to figure out how to build successes that don't just maintain the status quo but that quantifiably improve the material conditions. That is a shift in the mode of organizing and lawyering.

We think this is the time for organizers and lawyers to develop solutions. To think deeply about how to design policies and programs that would work differently, to engage the hard practice of figuring what does work. Coming up with solutions is hard work. It requires all of us to engage in levels of conversation that we are not used to. We are used to protesting. We are used to bite-sized slogans and critique. But if we breakthrough our habits and begin coming up with true alternatives, there are opportunities right now to implement these ideas. There are opportunities to amass more power and a larger base through providing services and tangibly changing the landscape of communities.

How to get in the game, when you have been shut out of it for so long, is the difficult thing. Therefore, we think it is still critical for organizers to engage in some bread and butter organizing. We still need political power to move ideas and capitalize on the opportunities out there right now. But overall, there is an increasing sense that opposition to gentrifying projects, destructive projects, destruction of communities is not enough in and of itself to build a significant movement. There has to be more than that to excite people, to build the kind of power that people need. Lawyers and organizers need to work together to inspire people to take action from their heart and souls.

The Community Justice Project was founded in 2008 to provide legal support to grassroots organizations in Miami's low-income communities. Rooted in the law and organizing movement, CJP's lawyering style has many names—community lawyering, political lawyering, movement lawyering—but fundamentally we believe that lawyers are most effective when they assist those most impacted by marginalization and oppression lead their own fights for justice.

*For the last eight years, **Purvi Shah** has worked for economic and racial justice at various organizing, legal, and policy organizations across the country. Purvi joined the staff at Florida Legal Services in 2006 to provide litigation and policy support to community organizations fighting gentrification in Miami's urban neighborhoods. In 2008, she co-founded the Community Justice Project, to develop and advance the theory and practice of community lawyering. Over the last four years, Purvi has litigated numerous cases on behalf of community organizations in the areas of affordable housing, racial justice, community development and tenant's rights. Purvi is also a law professor at the University of Miami, School of Law, where she co-directs the Community Lawyering Clinic. She serves as corporate attorney to the Miami Workers Center Board of Directors and a resource ally to the Right to the City Alliance. Purvi received her dual degree in Social Policy and Political Science from Northwestern University in 2002 and a law degree from the University of California, Berkeley School of Law (Boalt Hall) in 2006.*

***Charles Elsesser** has almost 40 years of experience in lawyering for the poor. Early in his practice in the he represented poor people in California as a part of California Rural Legal Assistance, doing double duty as a Clinical Instructor of Law at University of Southern California Law Center in Los Angeles. Following this early training he served as the Director of Litigation at Legal Aid Foundation of Los Angeles, was awarded the Award of Merit by the Legal Assistance Association of California, served as Senior Consultant to the California State Senate Rules Committee, and the Director of the Housing Department of the City of Santa Monica, Ca. In 1992 he relocated to Miami, Florida. Initially he was employed as an attorney at Legal Services of Greater Miami, Inc. and, since 1997, he has worked at Florida Legal Services, Inc. where he has been involved in civil rights and housing litigation and advocacy, and where he co-founded the Community Justice Project along with Purvi Shah and Jose Rodriguez.*

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