

**Fifth Annual Trina Grillo Public Interest & Social Justice Law Retreat
Poverty, Wealth, Status & Inequality:
Social Justice Lawyering in Theory and in Practice
March 15-16, 2003
Santa Cruz, California
Report on Proceedings
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Saturday, March 15

Welcome

Dean Mack Player, *Santa Clara University School of Law*

Remembering Trina Grillo

Stephanie M. Wildman, *Santa Clara University School of Law*
john a. powell, *Institute for Race and Ethnicity in the Americas, Michael E.
Moritz College of Law, Ohio State University*

Plenary I:

New Strategies for Economic Equity and Self-Sufficiency

Gary Blasi, *UCLA School of Law*
James Head, *The National Economic Development & Law Center*
Bernida Reagan, *Port of Oakland Division of Social Responsibility*
Moderator: Sudha Shetty, *Seattle University School of Law*

Legal advocates for community economic development are developing strategies to build assets in the community. These strategies implicate employment, housing, and community benefits, including public and private sectors. This panel considered other ingredients for developing a healthy economy and social capital, including the systems of education and community infrastructure.

James Head highlighted economic strategies which further community economic development. Shifting the focus of policy issues to economics is beneficial for a number of reasons. Economic parity is tied to racial tensions. Awareness of the connections between race and economic parity yields to prioritization of goals.

Increasing the quality of jobs which are available, including better benefit packages and higher compensation, and spreading the notion of asset building and wealth development in the community are paths toward economic self-sufficiency.

Bernida Reagan mentioned the importance of sector projects and general job development as well as contracting opportunities. As she explained, sector work and sector development are methods of providing services to those who are generally

excluded from high paying jobs in the construction industry. In addition, Reagan stressed the importance of providing legal services to those who wish to be a part of a sector project for help with the structure of the collaborative, to develop legal policies, and to help with a general understanding of the law. Sustainable wages are necessary for self-sufficiency and sound legal advice can help to give bargaining power to the workers. Furthermore, Ms. Reagan also highlighted the importance of asset building within a community and noted that contracting opportunities are a way for communities to build equity. As she stressed, asset building is crucial for participation in the economy.

Gary Blasi spoke about the connection between education and economics. He noted that economic capital alone is not enough and that education is also a key area of focus. Schools do not provide an adequate foundation for many high school students to go to college, and thus, provide a barrier to further economic development and self-sufficiency. As he mentioned, one possible strategy to help promote educational opportunities to many disadvantaged children is to set up equity funds in order to ensure the opportunity to go to college.

Remembering Ralph Santiago Abascal

Hon. Cruz Reynoso, UC Davis School of Law (King Hall)

The Honorable Cruz Reynoso noted how there are more students interested in full time public interest and social justice law than positions are currently available. He suggested that one way for students to tackle this shortage is to combine their commitment to public interest and social justice law with private practice.

Justice Reynoso honored Ralph Abascal's memory as a "poverty warrior." He recalled the cases Ralph Abascal had worked on such as ensuring that public notice was provided to Spanish speakers and finding that the University of California had a land grant duty to serve everyone, including farm workers.

Ralph Abascal was an optimist, always looking to the future to be better, Ralph as an individual and as a lawyer was significant because his work went to the core of poverty, education, and opportunity in the workplace.

Ralph Santiago Abascal Memorial Address

Examining Wealth: The Importance of Asset Formation

Melvin L. Oliver, *Ford Foundation*

Moderator: Margalynne Armstrong, Santa Clara University School of Law

Measuring comparative wealth and poverty by income alone tells only a partial story. Serious wealth disparities relate to assets beyond income. While middle class blacks earn seventy cents for every dollar earned by middle class whites, they possess

only 15 cents for every dollar of wealth held by whites. Oliver discussed how an asset development perspective helps social justice lawyers combat economic inequity.

Melvin Oliver's discussion centered around how the acquisition of assets impacted status and opportunities available in society. Those who do not have assets, which are often provided or acquired through family, are at a societal disadvantage. Professor Oliver spoke of how assets became a living reality for him when he was an assistant professor at UCLA in 1978. He noticed that his colleagues had different housing and living options than he did based on wealth and family backgrounds.

Oliver stated that poverty as an income indicator was not adequate. Assets are integral in understanding the role of wealth in America.

Those who have assets have a head start in life and consequently even individuals who have equal opportunity and education are still not competitive. It is essential to look at structure of inequality in America and the traditional indicator of inequality is parental/family income. The ratio of family income is 59 cents for African Americans for one dollar for white families. However, once you look at the relation between net worth (savings, equity) – liability (credit debts), this figure is reduced to 10 cents for African Americans in comparison to one dollar for whites. Furthermore, when looking at how much of these assets are liquid assets, this ratio is reduced to 9 cents: \$1.

Oliver also discussed how wealth gives confidence and protects against the hard times. In American society very few people can survive without steady income. He described assets as being a head start for the next generation. Today, even if individuals start off with less and are doing well, they are still hindered by the lack of acquisition of assets.

He also described how assets cause one to think about and relate to the world differently. Assets are "hope in concrete form," enabling a lot more risk. Conversely one has a more conservative approach in the absence of assets, which could cushion risk.

Career Strategy Lunch

Participants met with these social justice lawyers to discuss their work and how they came to do it. They considered strategies for entering social justice practice.

David Ackerly, Legal Aid Foundation of Los Angeles

Chris Daley, Transgender Law Center

Gail K. Hillebrand, Consumers Union

Victor Hwang, API Legal Outreach

Danielle R. Jones, Housing Rights Center

Sharonda Mann, Equal Justice Works

Sonia Mercado, Mercado and Associates

Samuel Paz, Law Offices of R. Samuel Paz

Bernida Reagan, Port of Oakland Division of Social Responsibility

Moderator: Nancy Wright, Santa Clara University School of Law

Plenary II:

Equal Justice Society Roundtable

Structural Racism: Examining the Intersection of Race and Poverty

Beverly Moran, Vanderbilt University School of Law

Michael Omi, UC Berkeley

Manuel Pastor, UC Santa Cruz

john a. powell, University of Minnesota Law School

Moderators: **Margaret Russell**, Santa Clara University School of Law

Susan Serrano, Equal Justice Society

Federal government support for white property ownership through taxation, transportation, and housing policy has been well-documented. Structural racism continues to pervade society and remains an obstacle challenging social justice advocates. Panelists examined structural racism and discuss strategies for combating it.

This panel was sponsored by the Equal Justice Society, a national organization of legal academics, practicing attorneys, think tanks, civil rights advocates and students dedicated to implementing a positive vision of equal justice through the development of progressive legal theory and practice.

john a. powell discussed generally how different racial groups and their status in society are determined by structures. An example of this structuring is the “black-white paradigm” and how whites allocate power in society. This black-white paradigm does not account for the complexity and structural differences between (and within) Latino and Asian American communities.

Michael Omi spoke about racial disparities as the result of historical outcomes and that these outcomes have been fundamentally shaped by white supremacy. This phenomenon has occurred most recently during the campaigns targeted at immigrants in California, Propositions 187 and 209, which only served to exploit conflicts between groups. He gave the example of Asian Americans as a group that is been labeled the “model minority,” a myth that Asian Americans are seen as hard working and as a desirable minority group because of their success. In all, viewing Asian Americans as the model minority is divisive and defeats attempts at creating unity among racial groups.

Manuel Pastor spoke next about the effects of structural racism in the Latino community. He expressed the need for a “multi-cultural framework” because issues do not present themselves vertically, but intersect at a multiplicity of angles. To overcome these issues, Pastor focused on communication at three levels: face-to-face, race-to-race, and space communication. Taking issues affecting our community, such as regionalism and suburbanization, environmental justice, and leadership requires us to build coalition and forge alliances, to lead rather than dominate. Pastor next used the

analogy of playing chess or building a jigsaw puzzle. Working together to build a jigsaw puzzle helps make our community fit together in a beautiful tapestry, whereas playing chess involves victory of one group at the expense or defeat of another.

Beverly Moran next emphasized the prevalence of race in our society and especially in our law school classroom. She focused on how the effect of a race-free discussion in the classroom is a way to enforce silence. She argued that race is everywhere and affects everything, and yet our American legal system imposes a racial color-blindness. This silence reinforces structural racism at an unconscious level. To illustrate, Moran offers an example of the structural racism imbedding in our tax codes. While it is not intentional to punish African Americans for saving their income as rational economic actors, creating a tax structure that favors wealth and assets implicitly is favoring whites with more disposable income.

The session met in small groups and reported back.

After Dinner Address

Samuel Paz, Law Offices of R. Samuel Paz

Sonia Mercado, Mercado and Associates

Moderator: **Dean Jeffrey Brand**, University of San Francisco School of Law

Samuel Paz discussed his background as a civil rights advocate by explaining his start in law school thirty years ago. He and about eight other progressive young people in his law school met and figured out what to do with their passion and skills. They realized they had to have a plan and he stated that the time to plan is while students are in law school. They visited different progressive firms and decided in their second year to start their own firm. Thousands of lousy lawyers had done it, and law students should not feel intimidating about doing so.

Sonia Mercado spoke of being a young practitioner and questioned the law students, that if they didn't take on public interest and social justice cases that would? She described her initial work as a lawyer with 10-15 hour days and how she learned how to be constructive for herself by using paying clients to finance clients who could not afford to pay for legal help. She spoke about one case she took on where a mother whose seventeen year old son who had died from tonsillitis in the criminal justice system. She also mentioned that important cases that were being worked on by others in the legal community in Los Angeles from inadequate transportation, slum lords, and elder abuse.

Sunday, March 16

Plenary III:

Reflections on Social Justice Lawyering

John O. Calmore, *University of North Carolina School of Law*

Eric Wright, *Santa Clara University School of Law*

Moderator: **Stephanie M. Wildman**, *Santa Clara University School of Law*

Celebrating the publication of SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW, the panelists discussed bringing social justice lawyering issues to participants' law school, practice, and community.

Stephanie M. Wildman opened the first Sunday Morning Plenary with a statement about the current status of Law Schools. Students interested in pursuing social justice find it difficult and disheartening because there is nothing in law school to help them maintain a desire to participate in change.

John O. Calmore reiterated these comments by telling the audience to stay the course and keep their high aspirations. He conveyed a message Cornell West delivered to students at North Carolina; Be not an optimist, but a prisoner of hope. Quoting Jesse Jackson, he said that it is important to "keep hope alive." These are the "Social Justice Reflections of a Prisoner of Hope." Some days work can feel overwhelming or distressing, but it is important to stay hopeful. Hope is the most important tool that we have. Hope is deep within our soul and gives us the desire to try things even in times like these. He stressed the importance of not giving up too soon and keeping on with the fight.

Sometimes it is hard to keep fighting because of the constraints on social justice lawyering. Some of the constraints are:

1. Legal Education
2. Professional Role and Socialization
3. Convention/Tradition
4. Professional Standards of Practice
5. Self-Preservation
 - a. Conformity
 - b. Don't rock the boat
 - c. Expediency
6. The Tools of advocacy
7. Liberalism
8. Culture and Social Distance
9. The Judiciary and other power centers
10. The Limited job opportunities
11. Environment
12. Right-Wing Politics
13. Discursive Hegemony

Progressive lawyers, he countered, act to transgress the boundaries of constraints. While legal education socializes students to think and act conservatively, legal education can also prepare students to face the challenges of progressive lawyering. Calmore offered two suggestions for doing this--teaching practical progressive lawyering skills such as how to work with the media and politicians and challenging students in their preparation of pleadings to put the issues of disparity and injustice before the courts in their pleadings. He calls this "progressive professionalism"

which promotes a balance between being putting forth professional decorum before the court yet for each advocate to be willing to push the boundaries of legal pleadings to document the suffering of their clients.

Calmore assigns his students to write an Eastman-like complaint. Eastman complaints go beyond the traditional type of complaint and include photographs and testimony about the ramifications of injustice. Recently, one of his former students, aided by a current student, filed an Eastman-like complaint. Calmore encourages everyone to write these types of complaints and to challenge the system that restrains us. The Eastman complaint can be found in Herbert A. Eastman's article, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763 (1995). Remember to be a prisoner of hope.

Eric Wright began with a disclaimer that the talk was going to be mostly negative and would focus on the first constraint on Calmore's list, Law School. There are problems with Law School that prevent Social Justice lawyering. Quoting a cartoon, he stated that "We have met the enemy and he is us." Law School is the enemy.

He identified ten barriers legal education poses to students with the desire to be progressive lawyers.

1. Too much emphasis on teaching the law and not enough on how to make laws.
2. Too much emphasis is placed on looking at the law in a neutral way. Professors neuter themselves in the classroom depriving students of their points of view.
3. 3. Too much emphasis on case law and not enough of the real world. Wright urges more focus on the legislative process, the regulatory process, and consideration of what makes laws effective and ineffective.
4. Too much abstraction, not enough reality. There is not enough discussion of what law does to people and not enough real instruction of real skills. In fact, media and interviewing skills are treated as non-legal skills.
5. Teaching and testing does not reflect real-world practice. While legal education focuses on individual performance in teaching, testing and ranking, real practice, particularly in the progressive lawyering context, involves collaboration.
6. Not enough on the practical issues such as how to make money and how to practice.
7. Privilege, class, and history are never discussed.
8. While there are ways for progressive lawyers to earn a good living, students don't learn about this and so are discouraged from the progressive lawyering path. Placement officers don't make it comfortable to pursue jobs in meaningful areas.

Despite the barriers, Wright concluded that there are positive developments in legal education. .

1. The new book, SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW offers a way to bring much neglected issues into law school classrooms.
2. Emerging programs for first year students enable them to meet successful practitioners and learn about progressive lawyering and social justice issues early on in their law school careers.

3. SALT provides a forum for legal educators seeking ways to effectively bring issues of social justice and progressive lawyering to their classrooms.
4. The growth of clinical education which enables students to do real work early in their education experience.

Professor Wright stated that we must have hope for change, but that faculties are a part of the problem and are in some ways resistant to change.

The Plenary ended by breaking into small groups to further discuss how to overcome the constraints on social justice lawyering, followed by reports back.

Plenary IV:

Approaches to Funding Social Justice Practice

James Bell, *W. Haywood Burns Institute, Youth Law Center*

James Gilliam, *3L, Loyola University School of Law*

Gail Hillebrand, *Consumers Union*

Marion Standish, *The California Endowment*

Moderator: **Angela Riley**, *Santa Clara University School of Law*

The need for progressive legal work remains constant and funding this work can be daunting. Panelists from different perspectives considered approaches to funding social justice practice.

James Gilliam emphasized that seeking funding to do social justice work can begin during law school. Gilliam reported his success in securing funding to cover his entire undergraduate and legal education, as well, as his successful and creative efforts to dramatically increase funding for Loyola's Public Interest Law Foundation ("PILF"). The PILF, which raised over \$100,000 in the past two years, has expanded its program to include bar stipends and travel for fellowship applicants in addition to summer stipends. Fostering relationships with private firms led to the donation of a full year's tuition as an auction item benefiting the PILF.

Gilliam offered four social justice fundraising strategies. First, develop and nurture relationships. He emphasized building relationships particularly beyond the public interest and social justice sector. Second, proactively search for funding sources. Don't stop at the traditional fellowships. Look to firms, organizations and individuals. Realize that finding the money can take you to private firms. Third, be a cheerleader for your cause. Find a cause and become associated with it in the minds of those with whom you interact so that when opportunities arise you are positioned to take advantage of them. Finally, articulate the benefits of supporting your cause to your donors. Match the needs of the donor to the needs of your project. Be sure to regularly inform donors of the progress toward the goals and interests served by their contributions.

Gilliam concluded that fundraising for social justice during law school provides practical skill training needed by those who seek to do social justice work in practice.

James Bell, who raised \$1.2 million in 14 months for the Hayward Burns Institute, offered guidance on fundraising for social justice. He observed that from a funding perspective direct services are often at odds with advocacy services. Success, he said, may require re-characterization of direct services.

Developing grant proposals is only one way to generate funds for social justice. Bell suggested looking for ways to generate funds by “selling” expertise. In generating funding for the Institute, Bell found ways to “sell” the services of youth clients as consultants to agencies addressing youth issues. Funding strategies can also include pooled savings generated by sharing rent and securing favorable rates for benefits such as health insurance coverage.

Bell says that the best strategy for securing funding is to have an idea that you believe in and not change it to please donors. He advised against changing focus to satisfy donor’s priorities. Let the donors know that you are doing your work because it needs to be done, not because it is the funding “flavor of the month,” he urged.

Finally, he said that social justice work requires humility. Good ideas come from trusting your project’s clients. By doing so, Bell concluded, you will keep your program responsive to the needs of the community.

Gail Hillebrand said that social justice work is hard and worth it. In addition to agreeing with Gilliam that learning to fundraise in law school provides excellent and essential training for future public interest and social justice lawyers, she offered eight ways to fund social justice work. The first strategies included getting hired by a non-profit firm, conducting fundraising events, and securing funds from individual donors. Hillebrand explained that initial event fundraising can begin with small house parties where friends and acquaintances are invited to contribute. This modest step provides the foundation for a donor list. Even when starting out it is important not to overlook individual donors. An individual donor strategy might include encouraging individual tort lawyers to work with clients to secure a contribution of a percentage of punitive damage awards. With all donors, success depends upon providing value.

Funds for public interest and social justice practice can also be found in statutory attorney fees provisions, administrative attorney fees, and *cy pres*. Hillebrand indicated that in structuring a new practice to benefit from attorney fees provisions it is essential to learn from those who know about effective ways to keep time records, structure cases, and plan for collection. Administrative attorney fees can be especially attractive since the proceedings are faster, more flexible, and the standard for awards is lower than in trial practice. Hillebrand offered that *cy pres* can provide large amounts of funds for difficult to fund needs such as overhead and legislative work. She further believes that *cy pres*, regularly available in consumer class actions, can be generated in other types of class actions as well.

Approaches to foundation funding include securing research grants and requesting funding at a level within the discretion of the fund director. Hillebrand explained that most foundation directors have some discretionary funds. Often amounts within the discretionary decision making authority of the director can be granted to a good project that may not come entirely within the fund's general narrow guidelines. Advocacy programs that do not respond to a crisis can be difficult to fund through grants, however. Nonetheless, Hillebrand advised those seeking funds be honest about what they do, what is needed, expected results, challenges, and how long the project work will take. A good plan will include an exit strategy—a plan for what will happen to the program at the end of the grant funding. Hillebrand concluded that doing fundraising will make those seeking to fund their public interest and social justice work better advocates.

Marion Standish offered advice from the perspective of a fund director. The California Endowment's mission is to serve the health care needs of the underserved. Health is a social justice issue from the perspective of Endowment, not just an issue of health care. Thus, Standish explained that issues of health are broadly defined to include issues of access, the development of cultural competency among health care providers, increasing diversity in the health care workforce, and addressing disparities in health.

Standish pointed out that advocacy to most foundations is a dirty word. Community organizing approaches are more favored. Litigation can be a part of a larger strategic effort, but is often considered problematic because of the uncertainty of outcomes, the lengthiness of litigation, and that the impact is limited to individuals.

In responding to the availability of discretionary funds mentioned by Hillebrand, Standish offered that proposals under \$1 million are within her discretion. Further, typical grants from the Endowment average \$300,000 annually over a multi-year proposal.

Finally, in considering philanthropic sources for social justice funding Standish made several observations:

1. Philanthropy gets public interest and social justice work going;
2. The composition of boards of directors can present a challenge, particularly for family or small foundations whose members may have narrow interests;
3. Philanthropy professionals talk to each other so maintaining a strong unvarying commitment to your work can lead to funding even if the first donor turns you down;
4. Law students can prepare themselves for seeking funds in the future by joining the board of a non-profit where they can learn about non-profit management issues;
5. Connecting with an existing organization as a volunteer will also provide expertise and insight; and
6. In writing a fundable proposal, it is essential that the approach to the issue is not be limited only to legal strategies.

Concluding Remarks

Catherine Wells, *Boston College School of Law*

Catherine Wells began with a remembrance of the late Trina Grillo for whom this retreat is named. She expressed that the social justice focus, the beauty of the surroundings, the opportunity for old and new friends to gather would have made Trina very happy. She would have agreed with much expressed during the retreat about the connectivity of issues of race and justice.

Wells observed that networking and friendship are important to social justice, that everything is connected, and that everything we put our hands on involves injustice. She also emphasized that social justice work is very demanding and requires a lot of our time. We each wear many hats and have a million things to do. Relating it back to Trina Grillo, Wells recounted Trina's helping a Vietnamese man with his legal problem even though she did not have time.

Wells stated that she entered social justice work under false pretense. At a very young age, she believed that in order to correct injustice, one need only look at the unjust laws and set them right. However, she realized that injustice is systematic, institutionalized, and complicated. Injustice is not just one thing, but that injustice emanates from outside forces and from within us.

Wells acknowledged that doing social justice work could be very lonely and taxing to the spirit. We feel alone, surrounded by ignorant people, discouraged, dispirited, and fragmented. To overcome these feelings, we need love and to love unconditionally; we need to be teachers and combat ignorance; and we need to be persistent in our social justice struggles. In the end, social justice work is not all about changing the entire world, but making us want to work for and care about justice. We stand at this stressful crossroad and we stay here, because it is partly spiritual, partly personal, and partly political. Through compassion and new insights, we will become the agents for social change and heal the world.