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Narrating Justice

Client-Centered Media Advocacy

BY SOREN DAL RASMUSSEN & KEVIN DE LIBAN

Our clients viscerally endure the various kinds of poverty-related injustice that legal aid organizations are meant to tackle. Within these struggles, clients' stories of resistance, persistence, kindness, courage, and fierceness inspire us as advocates each day. Still, too often, these powerful stories are left untold to a broad audience, most often mediated by advocates to fit within the limited confines of court rules, policy discourse, and donor appeals. Thus, while people in poverty bear the brunt of injustice, they do not have a platform to bear witness to it publicly. When these narratives and lived experiences are not a part of the public discourse, people experiencing poverty are deprived of positive visibility and a powerful advocacy tool, rendering them even more vulnerable to pervasive stigmatization and unjust outcomes. Legal aid organizations can change this by developing expertise and infrastructure to help clients broadcast their stories with targeted advocacy goals in mind.

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Although the benefit of intentional media advocacy may seem obvious—well-told stories of client experiences can actually get things done—undertaking such advocacy scares many in the legal aid community. Some of the fear is founded on legitimate concerns about the possibility of exploiting clients or on the less justified worry that clients might say what advocates think is the wrong thing. Organizations funded by the Legal Services Corporation (LSC) have the additional fear that media advocacy would run afoul of various restrictions about attempting to influence legislative or executive action, engaging in grassroots lobbying, or conducting training sessions advocating particular public policies.

Here we briefly recount a two-year media advocacy effort from Legal Aid of Arkansas as a basis from which to analyze the possibilities and pitfalls of media advocacy. After illustrating that the benefits justify the effort needed to manage the risks—including a review of pertinent LSC guidance—we offer practical advice on developing the infrastructure to launch media advocacy and on engaging with reporters.

The Arkansas Campaign Around Cuts in Medicaid Home- and Community-Based Services

The call came in February 2016: "Kevin, you said they'd be fools to mess with us again. I guess they're fools." Bradley Ledgerwood, a man in his mid-30's with cerebral palsy, had faced cuts in his Medicaid home-care hours the previous year due primarily to the Arkansas Department of Human Services' misunderstanding

of a new overtime regulation issued by the U.S. Department of Labor. After our work together, his home-care hours had been restored to eight hours per day, which was both the maximum allowable and the amount he had been receiving for his 15 years on the program. Since his condition would never get better, we expected that to be the last of the issue.

However, something changed in February 2016. Bradley said that the nurse told him that she had to cut his hours because of a computer program. Within a week, another client called us with the same story. Two weeks later, a couple more clients called. People were receiving drastic cuts in their hours—25 percent to 50 percent—even though their conditions had not improved in any demonstrable way. The cut in hours would threaten their independence and force them into nursing homes. And they had no idea why. For more than 15 years, nurses had decided the number of hours someone would receive by evaluating their abilities and needs. Now, even nurses could offer no explanation apart from a vague, sometimes apologetic, reference to a computer.

Prohibited by LSC regulations from filing class actions, we filed suit in federal court on May 2, 2016, with two plaintiffs. We issued a press release, framing the suit as a response to the state's unexplained and unjustified attempt to cut benefits to people with physical disabilities.[1] The state's main newspapers agreed that the cuts were newsworthy and started covering the story, focusing on whatever aspects—a local person affected, the context of wider Medicaid policy issues, or sympathy for people experiencing poverty—were of particular interest to their readership.[2]

For these clients, storytelling was a form of solidarity.

Driven partly by the news coverage, more clients called with the same issue. Although we tried to add more plaintiffs to the lawsuit, the judge denied our request and, motivated by the seriousness of the issue, put the litigation on an expedited schedule, setting trial for three mere months after granting us a preliminary injunction. He also secured from the Arkansas Department of Human Services a promise to implement any remedy systemwide in the event that we prevailed.

For our part, we now had dozens of clients with the same issue. Because our central claims were based on due process principles, we knew that, if we did eventually win the lawsuit, any remedy would likely be a temporary fix as the department corrected the procedural deficiencies. Meanwhile, we had learned that the "computer" driving the cuts was actually an algorithm that sorted individuals into groups of supposedly similar acuity and that the department had assigned irrationally low allocations of hours to these groups. Basically, people with cerebral palsy, quadriplegia, or various other conditions limiting nearly all physical functioning were limited by the algorithm-based system to a maximum of 5.5 care hours per day. This low amount resulted in people lying in their own waste, skipping meals, falling, developing more bed sores, experiencing more anxiety, and being detached from outside interaction.

The challenge then was to help current clients retain their hours as long as possible, inform other affected people about their rights and our services, gain a better understanding of how the algorithm worked, and prepare ourselves for an eventual direct attack on the algorithm and its insufficient allocation of hours. To these ends, we represented individual clients in administrative hearings and worked to understand how the algorithm operated. We also started actively talking to clients about their willingness to engage with the media—a process involving several conversations over time, a media release, and plenty of assurances that we would treat their case the same whether or not they wanted to talk with the media. Some clients declined media coverage; we interpreted that as a sign that our process was not exploitative. Meanwhile, we invited the media to profile those clients so inclined, who excitedly told their story because they understood that so many other people were in the same situation. For these clients, storytelling was a form of solidarity.

On October 27, 2016, we won the federal case after a three-day trial. Although we did not get everything we wanted, the Arkansas Department of Human Services was forced to fix deficient notices for all program beneficiaries. By our calculations, the suit prevented or delayed cuts to at least 1,000 individuals. We hoped that the victory, the likelihood of a big attorney fee award, the possibility of continued media coverage, and the prospect of more litigation with ready plaintiffs and legal theories would persuade the state to negotiate substantive improvements on the algorithm-based system to meet our clients' needs for adequate care and transparency. We were wrong.

1 Press Release, Kesia Morrison, Legal Aid of Arkansas, Legal Aid Files Lawsuit Against DHS (May 4, 2016).

2 See, e.g., Max Brantley, *Still More Harm to the Needy Alleged in Lawsuit*, Arkansas Times (May 3, 2016).

On January 26, 2017, in state court with seven plaintiffs we filed suit alleging that the Arkansas Department of Human Services failed to comport with state rulemaking requirements in adopting the algorithm.[3] A week later we won a preliminary injunction protecting our plaintiffs.[4] The state promptly appealed.[5] By this time we had worked on over 100 cases involving cuts in home-care hours. With the injunction protecting only our seven plaintiffs and the appeal slowing things down, we were faced with the prospect of more clients losing their care. While the press coverage was persistent and positive, we needed to do something more to reach more people in need of our services and educate the public about the use of a black-box computer algorithm to make critical decisions affecting humans. This was the start of an intensified media campaign.

Our executive director, Lee Richardson, authorized a modest sum to produce professional videos showing the lives of four clients facing this issue.[6] We coordinated the release of the videos on social media with the launch of a statewide public-education campaign to inform beneficiaries, caregivers, and providers about the home-care program, the operation of the algorithm, and the legal rights that individuals had to protect their care.[7] The client videos were shared hundreds of times and gained roughly 20,000 views. The sessions were live-streamed on Facebook and attended in-person by dozens of individuals, including some community activists not directly affected by the issue and, without invitation, lawmakers. Print journalists covering the education events had compelling narratives already present in the form of the client videos, and the clients were ready to engage because of the experience of going through video production.

As a result of the videos and education campaign, an investigative television journalist in the state's largest media market took an interest in the issue.

As a result of the videos and education campaign, an investigative television journalist in the state's largest media market took an interest in the issue at the start of September 2017. Because we had figured out how the algorithm worked, we tracked all of the absurd outcomes it produced for clients and were able to show her the ways the algorithm itself appeared arbitrary. For example, a difference of one point on one item out of 286 questions in the assessment could mean a loss of 49 care hours per month. We had also discovered a systematic error in the algorithm's software. For the nearly two years of its use, the algorithm was failing to take into account a diagnosis of cerebral palsy, which is a material factor that can yield someone dozens more hours per month. Although we had presented the error to the department's attorneys in late July and early August 2017, they ignored a systemic fix and chose instead to abandon the cuts for our few clients with cerebral palsy. Our resources were stretched such that a separate lawsuit to fix the actual software problem would have been nearly impossible.

The three-part television investigation aired during sweeps week in November 2017.[8] Within three weeks of airing, the department fixed the software problem and restored the hours of all 150 people with cerebral palsy who were hurt by the error, yielding them an average of 25 more hours per month. The media accomplished what we could not.

In addition, the series led more people to contact us and caused some legislators to ask questions about the algorithm publicly.[9] The television coverage meshed well with our then-recent unanimous Arkansas Supreme Court victory in the state's appeal of the preliminary injunction.[10]

Two months later, in January 2018, a reporter from the *Verge* interested in algorithms read the various stories on our work in Arkansas and contacted us. In March 2018 he published a 4,000-word story that highlighted for a national audience the lives of our clients and the problems such algorithms pose.[11]

Our clients' lives are now part of a larger conversation that includes academics and non–legal aid attorneys about the problems of using algorithms to replace professional human judgment. Also, we have gained access to experts who can

3 See Complaint, *Ledgerwood v. Arkansas Department of Human Services*, No. 60CV-17-442 (Pulaski Cty. (Ark.) Cir. Ct. Jan. 26, 2017).

4 See Temporary Restraining Order, *Ledgerwood v. Arkansas Department of Human Services*, No. 60CV-17-442 (Pulaski Cty. (Ark.) Cir. Ct. Feb. 7, 2017).

5 See Notice of Appeal, *Ledgerwood v. Arkansas Department of Human Services*, No. 60CV-17-442 (Pulaski Cty. (Ark.) Cir. Ct. Feb. 16, 2017).

6 See Legal Aid of Arkansas, Inc., Facebook (Aug. 25, 2017) (Shannon Brumley); *id.* (Aug. 17, 2017) (Tammy Dobbs); *id.* (June 16, 2017) (Mike Altieri).

7 See *id.* (Aug. 25, 2017); *id.* (June 16, 2017); *id.* (June 7, 2017).

8 Marci Manley, *Working 4 You: Computer Program Determines Critical Care*, KARK.com (Nov. 15, 2017).

9 See *id.*, *Working 4 You: Formula for Care—Lawmakers Concerned About Changes*, KARK.com (Nov. 17, 2017).

10 See *Arkansas Department of Human Services v. Ledgerwood*, No. CV-17-183 (Ark. Nov. 9, 2017).

11 Colin Lecher, *What Happens When an Algorithm Cuts Your Health Care*, Verge (March 21, 2018).

help us in future battles centered around the irrationality of the algorithms.

Meanwhile, the battle on the ground in Arkansas continues. In May 2018, a state court judge invalidated the algorithm.[12] After unsuccessfully trying to reimplement the algorithm through emergency rulemaking procedures that the state court found invalid, the state now plans to replace the invalid algorithm with a new one that is not expected to produce any more care to our clients. Although this means advocacy will have to continue, the conditions for a positive outcome are much more auspicious than in the past. Our choice to engage with the media has better prepared us. Legal Aid is ready with clients aware of their rights and our services, possible legal theories, knowledge of algorithms, and established channels of community organizations, social media, and journalists through whom we can permissibly educate and inform. For those activities we cannot undertake, there is now a robust public record of facts, a cadre of interested journalists, a number of legislators who apparently know something of the issue, and, most important, an activated community of affected people.

Indeed, one of the most hopeful and gratifying developments from this two-year campaign is that clients have felt empowered to advocate on their own in ways that Legal Aid cannot. Without any encouragement by Legal Aid, clients have contacted elected officials and agency heads, shown up at legislative committee meetings, formed Facebook groups, started petitions to send to the governor, contacted the media for coverage about those efforts, and actively shared their stories in churches, community outlets, and social media. Intentionally including clients as advocacy partners in a long-term campaign around the algorithm has encouraged affirming self-advocacy in unexpected ways. Whatever happens, the state will not get to sneak the new algorithm by the way it did in 2016.

Concerns from Advocates

Thoughtful advocates will have a mix of concerns about bringing clients and their stories to the media.

Is This Exploitative?

As advocates, we must be careful, in advancing organizational goals, not to pressure clients into media attention that they do not want. This kind of exploitation can be prevented by a thoughtful, deliberate process that occurs over a span of time and is founded on positive attorney-client relationships. Advocates can talk about possible media coverage from the start, talk about why it would be important, talk about the risks of media exposure (especially if the issue is controversial), gauge client reactions, refrain from asking for an ultimate decision until a client has ample time to consider, and, if the client indicates any apprehension, let the topic go. Even when clients agree, they should feel that they can opt out at any time with confidence that the organization will immediately comply with their wishes and continue to handle their case with equal vigor. Of course, any client depicted in photos or videos should drive the content and must review and approve the material before publication.

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Another ethical concern is that we as attorneys are still acting as gatekeepers to the media. Given that reporters might not have time to talk to or report on every media-inclined client, we are left as the arbiters of whose story gets told. Advocates' personal biases about what is compelling could influence the resulting narratives. There is no hard-and-fast rule here. At Legal Aid of Arkansas, we wanted to involve clients who could somehow represent other clients. In the context of home care, that meant featuring clients with different disabilities, different functional limitations and acuity levels, different care arrangements (e.g., family involvement, agency care, or a mix), different histories on the program, and different background stories. Still, from the great number of willing clients, we had to decide who would come across the best. Would a former tattoo artist inked from his neck to toes and gun replicas on his wall be appropriate? What about someone who could not verbalize but spoke slowly through a computer program where he typed one letter at a time with a barely functioning hand holding a chopstick that he often dropped? Or someone who liked to talk about the coming apocalypse and widespread societal decay? Or who readily expressed support or opposition to particular politicians during election season? Or who did not speak English? Or whose family had rigged his electric wheelchair so that he could still hunt or fish with a functioning hand? Legal Aid advocates worked through these issues by talking as a group about the messages to be conveyed and making hard choices about who could best convey them, giving critical thought to the ways stereotypes about poverty, disability, and who

12 See Memorandum Order, *Ledgerwood v. Arkansas Department of Human Services*, No. 60CV-17-442 (Pulaski Cty. (Ark.) Cir. Ct. May 14, 2018).

deserves sympathy could structure our decisions. Some sort of group decision-making process by clients would have been wonderful, but distance and lack of connective technology made that unfeasible.[13]

Notably, some of these vexing ethical concerns were sometimes resolved by simple logistics. Arkansas is a rural state with significant travel distances between clients. Reporters have deadlines and limited time. We had to exclude some compelling clients simply because we could not fit them in the amount of travel or filming time available.

What If a Client Says Something Wrong?

The question, what if a client says something wrong, is motivated partly by the compulsive anxiety of advocates who want a case presented perfectly. Certainly, media statements pose real risks to clients with active litigation, but the risk is usually manageable if media coverage makes sense and no adequate alternatives are available. Apart from litigation considerations, some advocates wrongly mistrust clients' abilities or sensibilities.

Clients have proven to be incredibly adept at interviews. We work with them to figure out what they think is most important and use simple memory strategies such as lists and role playing to reinforce their readiness to articulate. The work is much like preparing a witness for trial—we should already know the details of a client's story, understand how the client tells it, and let the client know what questions are likely to be coming. The most important thing here is to help clients get comfortable expressing ideas in their own words. This leads to accuracy, comfort, and the sincerity lacking in force-fed messaging. It also respects the client's agency.

13 Facilitating a group decision-making process could potentially implicate prohibitions on organizing (see Organizing, 45 C.F.R. § 1612.9(a) (2018)).

LSC regulations do not prevent disciplined, fact-based media engagement that refrains from supporting or opposing—or encouraging the public to support or oppose—a particular policy.

Advocates can minimize risk by preparing reporters well. Though time-consuming, educating reporters by reciting facts (especially dates), sharing and reviewing documents together, and outlining the most relevant parts of a client's story all help reporters narrow their focus and questions. They are certainly free to ask other things, but they usually do not want to waste their time or clients' time by going into unproductive areas. Often, reporters end up asking questions that our clients have answered for us over and over.

Advocates can be present at interviews to ensure that the conversation does not stray too far, although this may not be necessary with media-experienced clients and trustworthy reporters.

What About LSC Regulations?

LSC regulations do not prevent disciplined, fact-based media engagement that refrains from supporting or opposing—or encouraging the public to support or oppose—a particular policy. Note that none of our media communications ever involved a direct opinion about whether the algorithm-based system was good or bad on principle (we noted that the harm it caused to our plaintiffs and clients motivated the legal advocacy), never suggested what should happen to it (outside the remedies sought in the lawsuit), never encouraged anyone to contact policymakers, and never attempted to mold public opinion toward any specific policy outcome. Rather, we referred to the lawsuit, gave facts about clients and the algorithm, and connected the public to our clients' stories, whether through self-produced social media videos or journalists. Clients themselves might have talked about what it felt like to experience the cuts, offered doubts about or criticism of state agency decisions, or expressed a preference for the system based on nurse discretion that existed before the algorithm. They did not lobby or engage in grassroots lobbying with Legal Aid support.

Although no LSC regulation directly governs conduct with the media, communications should be analyzed with respect to the four central restrictions on advocacy. First, subject to specific exceptions, LSC-funded programs "shall not attempt to influence the passage or defeat of any legislation or constitutional amendment" and "shall not participate in or attempt to influence any rulemaking."[14] Second, LSC-funded programs "shall not engage in grassroots lobbying."[15] The regulations define grassroots lobbying as

> any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or

14 Prohibited Legislative and Administrative Activities, *id.* § 1612.3(a), (b).

15 Grassroots Lobbying, *id.* § 1612.4.

> any decision by the electorate on a measure submitted to it for a vote.[16]

Third, LSC-funded programs "may not support or conduct training programs that (1) advocate particular public policies; (2) encourage or facilitate … the development of strategies to influence legislation or rulemaking; [or] (3) disseminate information about such policies…."[17] Fourth, LSC-funded programs may not "initiate the formation, or [ ] act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity."[18]

LSC has interpreted the regulatory framework through extensive guidance documents. For the broad "attempts to influence" restriction, LSC notes that impermissible actions "usually involve some statement about what decision the government should make with regard to adopting or rejecting proposed policy."[19] Thus, in any situation outside a remedy sought in litigation or litigation-related negotiation, "an LSC recipient may not express an opinion about what action the government should take regarding" the legislative, regulatory, or executive actions covered by the regulations.[20]

While these prohibitions are broad, the regulations contemplate efforts by LSC-funded programs to complement direct legal assistance with robust possibilities for distributing meaningful information. LSC-funded programs can offer "communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations."[21] They can "infor[m] clients … about new or proposed statutes, executive orders, or administrative regulations."[22] And they can train "clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them: (1) [t]o provide adequate legal assistance to eligible clients; or (2) [t]o provide advice to any eligible client as to the legal rights of the client."[23]

Both the audience for and content of such communications do not unreasonably limit thoughtful communication strategies. Reasoning that "[t]he attempt to influence prohibition focuses not on the audience, but on the information conveyed," LSC highlights that "[t]he permissible provision of information and education activities may extend to other relevant audiences, such as community groups or other stakeholders."[24]

Content could include, for example, "what the legislation does, the changes it would make in existing laws, the problems which the proposed legislation addresses, and who would be affected by the proposal."[25] When confronted with the question of whether communications made pursuant to the "reporting on … or explaining" exclusion could violate the "attempt to influence" restrictions, LSC reasoned:

> For this exclusion to have any meaningful effect, it cannot be overridden simply because it could also implicate the "attempt-to-influence" provisions. Otherwise, reporting concerning proposed legislation or regulations—which is explicitly permitted by the grassroots lobbying exclusion—would be eliminated anytime such reporting could be characterized as an "attempt-to-influence" the governmental proposals that are the subject of the reporting, and recipients would be effectively foreclosed from making factual statements about the content and consequences of enacted and pending legislation and policy.[26]

Consequently, LSC programs should focus on fact-based communications, heeding LSC's caution that "'recipients could not prepare communications which encourage the public to support or oppose proposed or pending legislation [or other covered government actions].'"[27]

Summarized then, LSC programs—outside the context of litigation—are prohibited from communications about what *the government should do* and communications about what *individuals should do* in response to the information presented.[28]

Nonetheless, programs can inform clients in broad terms about their rights to political participation. An LSC-funded program can "advis[e] a client of the client's right to communicate directly with an elected official" and provide contact information of elected officials. And programs may also "advise their clients about their right to participate on their own behalf in agency rulemaking proceedings."[29] When informing clients of these rights, a program must be

16 Definitions, *id*. § 1612.2(a).

17 Training, *id*. § 1612.8.

18 Organizing, *id*. § 1612.9(a).

19 Legal Services Corporation (LSC), Advisory Opinion 2014-005 (June 9, 2014). See Ronald S. Flagg, LSC Vice President & General Counsel, Program Letter 13-5 (Dec. 3, 2013) ("Restrictions on Lobbying and Other Activities"); *Id*., Program Letter 13-3 (Sept. 12, 2013) ("Restrictions on Lobbying and Other Activities"); LSC, Advisory Opinion 2013-10 (Dec. 10, 2013).

20 Legal Services Corporation, Advisory Opinion 2014-005, *supra* note 19.

21 Definitions, 45 C.F.R. § 1612.2(a)(2).

22 Permissible Activities Using Any Funds, *id*. § 1612.5(c)(3).

23 Training, *id*. § 1612.8(b).

24 Legal Services Corporation, Advisory Opinion 2014-005, *supra* note 19.

25 *Id*.

26 LSC, Advisory Opinion 2013-10, *supra* note 19, at 18.

27 Legal Services Corporation, Advisory Opinion 2014-005, *supra* note 19 (quoting 62 Fed. Reg. 19400–401 (April 21, 1997) (preamble to the final rule)).

28 Communications in the context of litigation are different. Litigation involves seeking specific relief from a court, and communications to that end are not covered by Part 1612, or from an agency through litigation, and communications to that end are permitted by Section 1612.5. In communications to the public about the lawsuit, an LSC-funded program should be able to recite comfortably what relief the lawsuit is seeking.

29 LSC, Advisory Opinion 2013-10, *supra* note 19, at 21–22 (quoting 62 Fed. Reg. 19402 (April 21, 1997)).

Advocates who engage clients as equal partners in advocacy will form trusting relationships that lend themselves well to media advocacy.

mindful to avoid grassroots lobbying, the hallmarks of which are a "clear, explicit appeal," "a direct call to initiate contact," or "some affirmative language facilitating contact with policy makers."[30]

How to Do It

For organizations thinking more about media strategies, here are some basic tips.

Master LSC Restrictions

Look at LSC restrictions all the time. Analyze how a particular activity is justified. Let the executive director know the risks. Take any steps you need to take to ensure that you do not stray into prohibited activity (written statements, talking points, editing, etc.).

Focus on Positive Client Relationships

Advocates who engage clients as equal partners in advocacy will form trusting relationships that lend themselves well to media advocacy. Media engagement can be a way for a client to develop advocacy skills. By contrast, burnt-out advocates, negative client interactions, or the sense that a client is being used to advance an organizational priority are all going to manifest badly.

Be Strategic

Identify organizational priorities based on clients' needs, resolve to advocate around those priorities, and consider how to fit in different types of the media. Not every issue needs a full media campaign around it (one-off stories can be fine, or total avoidance of the media may be appropriate), and not all media need to be framed as oppositional. Consider how the media could work against you by focusing negative attention on clients or the kind of attention on the organization that could threaten its reputation or a vulnerable funding stream. Think about whom you are trying to educate and whether this particular outlet gives you the best chance of getting their attention. A local blog can sometimes be a better venue than the statewide paper.

Do Your Research

Most pitches today fail because they are not sufficiently personalized.[31] Understanding a reporter's beat, what type of stories the reporter covers, and what the reporter's audience reads is the most important aspect of modern media relations. No flashy subject line or perfectly crafted press release can replace that. How many clients come to you with legal problems that do not fit what you do? Reporters are no different. Give them an immediate sense that you have done your homework, that you are following their coverage, and that you understand what they do. Good things will follow.

Understanding a reporter's beat, what type of stories the reporter covers, and what the reporter's audience reads is the most important aspect of modern media relations.

Story-Bank from the Start

On key issues, keep spreadsheets of client names with essential facts so that you can quickly supply examples and possible interviews. In some keyword-searchable case management software, you can include terms that will make a client or issue easier to find later on. Ask clients about typical availability and their comfort level with broadcast media.

Understand Working with the Media as a Long-Term Investment

Educating reporters takes time and does not always yield short-term results. Your organization, client, or information might not appear in a story about which you spent an hour talking to a reporter. But if you are seen as a reliable and thoughtful source of quality information, either that reporter or the reporter's colleague will eventually reach out or be open to story ideas from you.

Draft Pleadings with the Media in Mind

Summaries at the beginning of complaints, good narrative flow, and clear requests for relief help journalists understand the issue and allow you to speak factually about what the lawsuit is seeking without veering into LSC-prohibited activities. Affidavits can be used for client quotes to the media. Do not put anything in a court filing you would not want to see on the front page of your local newspaper. Include maps or graphics, if appropriate. The Atlanta Legal Aid Society included a map in a complaint, and the map ended up being featured in the *Atlantic*.[32]

30 LSC, Advisory Opinion 2013-10, *supra* note 19, at 9. See Definitions, 45 C.F.R. § 1612.2(a)(1); Grassroots Lobbying, *id*. § 1612.4. A full discussion of the grassroots lobbying prohibition is beyond our scope here.

31 See Jessica Lawlor, *New Muck Rack Survey: 72% of Journalists Say They Are Optimistic About the Future*, Muck Rack (May 31, 2017).

32 See Alana Semuels, *A House You Can Buy, But Never Own*, Atlantic (April 10, 2018).

Maintain Healthy Relationships with Journalists

Understand that not every story is going to be told exactly as you would like. Some reporters are more sympathetic to your cause, and the younger generation of reporters tends to be more advocacy-driven. But every reporter is different. The only rule of thumb you can count on is that a reporter's allegiance is to the audience. Do not try to exert pressure to have the journalist tell something a certain way. Give a fair representation of the other side's position when explaining your own. Offer thoughtful feedback, and compliment journalists when they do something really well. Let them know when their story made a difference. Let them know how the client felt about a story. Try to be fair among the various journalists covering a particular story so that they do not feel that you are playing favorites. At the same time, be loyal to those who have a solid track record.

Capitalize on the Media Attention You Get

Do not let the story's publication be the end of your effort. Consider how you can use the story in service to clients. Post about the stories, and consider paid boosts to spread them wider so that new clients can come to you or so that existing clients have something they can share or use on their own behalf. If you appear in print media, flag your appearance in print media for local radio stations with an offer about doing an interview. If you are not LSC-restricted, consider sending the story to elected officials with an offer to give them some background.

Be Creative

Do not wait for traditional media to come to you. You can generate low-cost content in the form of an in-office educational video recorded on a cell phone. You can create professionally filmed videos of clients' lives. You can start episodic-style engagement. You can live-broadcast a community meeting or event to Facebook, YouTube, or wherever your audience is. Consider local media's social accounts as separate outlets. Sometimes a reporter cannot justify doing a story, but social media managers would be happy to use the content. In some media markets, getting a video published on such an account can get you in front of more people than a reported story.

Do not wait for traditional media to come to you.

Tell a Good Story

A story is not a subject. Reporters frequently observe that advocates will come to them and say: can you cover the poverty rate or payday lenders? Reporters will most likely say no. Stories that are news have people doing something with a specific goal in mind. Also, the story is rarely about you. A common mistake in media pitching is putting your organization as the protagonist. What you do can be newsworthy. If you file a lawsuit, issue a report, or are concerned about a new trend in your community, you should not hesitate to make that the news hook. But your hosting a clinic is not as interesting in itself as is the impact the clinic will have, the help that people can get, or the problem you are trying to remedy. Lead with that.

A common mistake in media pitching is putting your organization as the protagonist.

Just Do It

A final word of advice: the first step to being good at media relations is developing healthy habits and a positive mind-set. Do not blame the media if they reject a story. Instead take it on yourself to find a way to make your client's story interesting to that reporter's audience. The rejection can also be a simple matter of timing. And remember that reporters want to speak to you. You are the experts. You know the community. You are not the public relations person that most reporters deal with every day. No reporter worth engaging will mind hearing from you.

Clients do not have a ready outlet through which to share broadly lived experiences of injustice in a way that might make things better. Legal aid advocates can change that. Although we cannot build direct connections between clients and the wider public, we can enthusiastically assume the role of intermediaries in ways that allow clients to advocate more forcefully for themselves while furthering our ability to get things done on their behalf.

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The Latest Messaging Research by Voices for Civil Justice

By Elizabeth Arledge, Deputy Director[1]
Voices for Civil Justice

Starting in 2013, Voices for Civil Justice has commissioned several rounds of public opinion research on civil legal aid and the civil justice system. All of the research was made possible with the generous support of the Public Welfare Foundation. This article focuses on highlights of the report of Voices' 2017 messaging research, Building a Civil Justice System that Delivers Justice for All.[2]

When the team at Voices for Civil Justice decided to commission its latest round of public opinion/messaging research, we knew a few things already.

From our initial research in 2013, we knew that civil legal aid is largely unknown among American voters,[3] yet, when they understand what civil legal aid is they are highly supportive (on par with motherhood and apple pie). We also knew that voters embrace a broad definition of civil legal aid, ranging from individual representation to self-help tools.

In 2017, it was time to check in on those and other findings, to build on them, and to learn what messaging strategies would work best today.

We were also eager to gauge the voting public's appetite for civil justice reform.

The results are very good news for civil legal aid advocates. But — as always — *this new knowledge will work only if we use it.*

Like our earlier research, the latest study was led by Lake Research Partners[4] — this time with the involvement of a cognitive linguist, Anat Shenker Osorio.[5] The addition of language analysis informed our choices about what messages to test, and gave an added layer of understanding to the findings.

The results are from an online survey of 800 likely 2018 voters, plus a sample of civil justice "activists." The likely voters fell into three categories. Here's a very broad overview of what we learned about them:

Base (40 percent of sample)

- Strongly support increasing state funding to build a civil justice system that allows all people who need it effective assistance for their civil legal problems.
- Disagree with the idea that more funding for civil legal aid will contribute to more frivolous law suits.
- Extremely strong support for the concepts of "equal justice under law" and "justice for all" as a right for all Americans.
- Tend to identify as Democrats.

Opposition (24 percent of sample)

- Largely opposed to or undecided about whether their state should increase funding for a more accessible civil justice system.
- Agree that it is becoming more common for Americans to threaten legal action when things go wrong, and that free legal help will only contribute to this problem.
- Believe that states would be better off investing resources in other areas (e.g., infrastructure) than increasing funding for civil legal aid.
- Tend to identify as Republican, and to be white and college educated.

Persuadables (36 percent of sample)

- Support increasing state funding to build a more accessible civil justice system, though with much less intensity than the base.
- Also agree with the opposition argument that funds for civil legal aid might be spent better elsewhere.[6]
- Tend to be younger, slightly less white, more southern, and more college educated.

We also surveyed 278 *activists* who, not surprisingly:

- Strongly support increasing state funding to build a more accessible civil justice system.
- Disagree with all arguments pushed by the opposition.

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- Overwhelmingly white, female, college-educated and identify as Democrats.

(Why spend precious resources surveying "the choir"? Because even the best messages are only helpful if activists like them well enough to use them.)

Drilling a Little Deeper — Key Findings

The findings are very encouraging:

- 84 percent of voters believe it is important for our democracy to ensure everyone has access to the civil justice system — an enormous level of support, indicating this is a core value on which to build support for civil justice reform and civil legal aid.
- 82 percent of voters agree that *"equal justice under the law is a right, not a privilege."* Again, this level of support signifies a core value and an opportunity.
- Voters believe low-income individuals — especially those living in rural areas — and people struggling to make ends meet, face the most difficulty in obtaining legal help.
- Voters strongly favor reform of the civil justice system, with half saying it needs to be rebuilt completely or fundamentally changed.
- Strong majorities of voters support increasing state funding to build a more accessible civil justice system, and surprisingly *that support remains robust even when tied to the notion of raising taxes to do so.*
- Voters overwhelmingly support the most traditional and familiar form of service to ensure access to the civil justice system — namely, having a lawyer. They also strongly support a wide range of services that comprise a holistic approach to ensuring justice for all.

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The key research findings, combined with guidance from cognitive linguist Shenker-Osorio, point us to messages that emphasize shared values, are rooted in lived experience, provide tangible solutions, and end with a clear call to action.

Here are a few messaging tips based on the research:

- **The value of equal justice under the law is widely held.** Voters strongly support enhancing access to the civil justice system, whether it is framed as "legal representation" or "legal help." Note that "assistance" does not test as strongly as "representation" or "help."
- **Language rooted in real-life experiences your audience can relate to is more engaging and persuasive.** Examples: "A veteran denied hard-earned benefits." "A family facing the loss of a home due to job layoff or medical catastrophe." When you use "a" to bring the experience down to the level of an individual, your audience is likely to see in their mind's eye a specific person; this makes it harder for them to revert to negative stereotypes. Also, describing a person or a family as "struggling to make ends meet" is more effective than "low-income."
- **Focus on solutions.** Your audiences have plenty of things to worry about already, so they don't want to hear about more problems. Emphasizing solutions is more persuasive than just a litany of what is wrong. Our research found that the base and persuadables strongly support an array of services in a system that enables everyone to get access to the information and effective assistance they need when they need it and in a form they can use. Among the most popular: simplifying court processes, allowing trained non-lawyers to provide some forms of legal help, offering online tools and

other self-help services, and providing screening to guide people to the type of help they need.

The Role of Cognitive Linguistics in This Research

In preparation for this latest round of research, we asked Shenker-Osorio to conduct a language analysis of how our issues — civil legal aid and civil justice reform — are currently talked about. She examined more than 600 unique expressions in public communications, including legal aid program websites and materials, the courts, the media, the opposition's arguments, and in popular culture. Her analysis revealed a few frames we can use to describe the problem we want to solve, and the story we tell about its origins.[7]

Here are her three key findings and recommendations:

1. Frame Problems as Legal

Shenker-Osorio reminds us that frames and metaphors matter. They influence not just how we speak, but the ways we unconsciously decide what ought to be done about an issue. Research has shown, for example, that groups primed with a metaphor of crime as "disease" (*plaguing* our communities) favor preventative solutions such as after school programs and preschool for all. Those presented with a metaphor of crime as "opponent" (*fight* crime, *get tough on* crime) thought harsher punishments were the way to go.

One of the most consistent findings in each phase of Voices' opinion research is that Americans have little understanding about the kinds of cases the civil justice system addresses. This is consistent with research from Rebecca Sandefur that suggests a key barrier to Americans getting legal help for their civil legal problems is their failure to perceive their problems as legal in nature.[8]

To address this challenge, Shenker-Osorio recommends that we bring the courtroom into the frame. Courtrooms have a prominent place on television, but our advocacy for legal aid often pushes them to the background. By using terms like "legal aid lawyer" and phrases like "having your day in court" and "appearing before a judge," we can activate this familiar frame and help our audience recognize, for example, that a dispute with a landlord or getting hounded by a bill collector is actually a legal problem with a potential legal solution.

2. Put the Actors into Our Story

When we don't make clear that problems are created when *people* do things, what we suggest instead is that harms are mysteriously visited upon people, and solutions similarly fall from the sky. The reality is that harms are the result of deliberate decisions by people, and it takes deliberate actions by people to correct them. Unless we convince our audiences that people making intentional — and at times nefarious — decisions are behind the outcomes we seek to change, we can't make a strong case that other outcomes are possible. In her analysis, Shenker-Osorio found that we tend to shield from view the actors who create the harms we target, and we fail to give our audiences the clarity they need to "get" the origin of the problems we describe.

Shenker-Osorio concludes that by "passivizing" problems, we are falling prey to the common tendency of implying that bad things "just happen." Her memo enumerates many examples of this that you'll readily recognize — and can easily fix.[9]

3. Avoid "Gap" Language

We know this will be a tough change for the legal aid sector, but there is more harm than good in using the term "justice gap." The "gap" metaphor, while popular right now, fails in every domain where it has been tested, including health care access, educational achievement, income, and now justice. The primary problem is that the word "gap" says there is a difference but conveys no origin story about how or why it came to be, nor does it offer a clue about what needs to be changed in order to fix it. In contrast, using the word "barrier" suggests something that is person-created, and therefore can be person-removed.

Shenker-Osorio's advice to avoid the "gap" metaphor is somewhat complicated by our desire to cite and publicize data in an important Legal Services Corporation (LSC) report about unmet legal needs, titled *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans.* While we should certainly utilize the contents of the report, we are well advised to minimize and eventually eliminate the use of the "justice gap" metaphor as a way of explaining the problem we're trying to fix.

Interested in more on the application of cognitive linguistics to messaging for civil justice? You can read Anat Shenker-Osorio's full memo here.[10]

What Language Should We Be Using?

The guidelines provided here, and in the full report, are just that — guidelines. But they do provide useful information on what language works, and what kinds of stories and examples are most persuasive. The national poll included dial testing of several

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messages. In dial testing, survey participants listen to audio recordings of messages while continually adjusting a dial to reflect how they react to specific words and phrases. The report includes detailed analysis of the three most effective messages tested. In this audio recording of her July 2017 presentation, Celinda Lake also discusses the dial test results.[11] We recommend viewing the report while you listen to the recording.

Here is an example of language that Voices crafted based on what we have learned from all of the Voices' research. It opens with a strong shared value, uses specific examples rooted in lived experience, is clear about the causes of the problems we want to solve, offers concrete solutions, and includes an action step. Not every message can include all of these, but we offer it as an example of how the research can be applied:

> *Equal justice is an American ideal. Civil legal aid helps ordinary Americans escape an abusive partner, stop a wrongful foreclosure, and defend against a fraudulent debt collector. But too often, ordinary people who seek to protect their families, their homes and their livelihoods must face court without legal help. Finding yourself in court alone can be terrifying, but that is exactly what's happening today in three out of four civil court cases. As certain politicians threaten deeper cuts to civil legal aid funding, some states are stepping up to respond. They provide self-help services and court navigators; access to information through online forms and referrals to social services; offer reforms that reduce paperwork, and train judges to use plain and understandable language. This help provides access to the legal information and help people need, when they need it, and in a form they can use. By expanding legal help, these approaches produce significantly faster and better results — and at a cost savings. All states should follow this lead, ensuring that equal justice is a right for all Americans, not a privilege.*

What Next?

This is a strong foundation on which to continue building and intensifying support for civil justice reform and civil legal aid. But the messages will only work if we proactively use them — every day, integrated as much as possible into our way of communicating. Voices offers tools, training (including a National Communications and Media training in conjunction with MIE), its JusticeVoices network, and other resources to help you. We encourage you to visit our website, www.voicesforciviljustice.org, and reach out to us at team@voicesforciviljustice.org.

1 Elizabeth Arledge is the Deputy Director of Voices for Civil Justice, and a veteran of nonprofit communications, fundraising, training, and program development. Since 2000, she has led communications for civil legal aid organizations that include the Legal Services Corporation, NLADA the Legal Aid Justice Center (Virginia), and Disability Rights Oregon. She began her career as a reporter and columnist for an independent daily newspaper in her home state of North Carolina. Elizabeth may be reached at *arledge@voicesforciviljustice.org.*

2 https://voicesforciviljustice.org/wp-content/uploads/Voices-2017-Messaging-Researc-Findings-LRP-ASO-Report-July-2017-Slides.pdf

3 https://voicesforciviljustice.org/for-advocates/messaging/civil-legal-aid-messaging/

4 http://lakeresearch.com/

5 http://asocommunications.com/

6 Celinda Lake notes that Americans have no problem holding two contradictory beliefs at the same time, but deeply resent having it pointed out to them.

7 A frame, in linguistics, acknowledges that words exist within and thus evoke pre-set packages of meaning, determined by our common knowledge, assumptions and beliefs. In short, words occur in contexts. As such, usage of even a single word brings with it a whole host of associated meanings, actors, and objects that come into play whether or not the speaker desires.

8 https://voicesforciviljustice.org/wp-content/uploads/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project-2011.pdf

9 https://voicesforciviljustice.org/wp-content/uploads/Voices-for-Civil-Justice_Language-Analysis_aso.pdf

10 https://voicesforciviljustice.org/wp-content/uploads/Voices-for-Civil-Justice_Language-Analysis_aso.pdf

11 http://bit.ly/voices2017research