“MAKE GOOD TROUBLE”\textsuperscript{1}

LEGAL SERVICES OF ALABAMA STATEWIDE CONFERENCE

SEPTEMBER 28, 2022

FLORENCE WAGMAN ROISMAN\textsuperscript{2}

“Let us never forget how eternal slavery looked at the time John Brown was hanged, and how soon afterwards Union soldiers were on the march.” Charles Hamilton Houston, The Baltimore Afro-American, Sept. 11, 1948, quoted in Patricia Sullivan, Days of Hope: Race and Democracy in the New Deal Era 272 (1996).

I TRULY WAS HONORED WHEN MICHAEL ASKED ME TO SPEAK TO YOU ALL. I THINK THAT BEING A LEGAL SERVICES LAWYER IS ONE OF THE NOBLEST ROLES A HUMAN BEING CAN PERFORM. ONE DOES SEVERAL IMPORTANT THINGS AT THE SAME TIME – HELPS OTHER HUMAN BEINGS, SHAPES OUR GOVERNMENTAL SYSTEMS TO BE MORE JUST AND MORE EFFECTIVE, AND EDUCATES OTHERS (NOTABLY JUDGES AND OTHER GOVERNMENT OFFICIALS) ABOUT THE VALUES THAT OUGHT TO SHAPE WHAT THEY DO AND HOW THEY DO IT. THE LEGAL SERVICES PROGRAM IS A PRECIOUS RESOURCE, AND I HOPE TO ENCOURAGE YOU TO MAKE THE VERY MOST OF YOUR EFFORTS.

MY OWN TIME IN LEGAL SERVICES REALLY DEFINED ME PROFESSIONALLY AND PERSONALLY. I WORKED FOR THE DC NEIGHBORHOOD LEGAL SERVICES PROGRAM FROM FEBRUARY 20, 1967 UNTIL SOME TIME IN 1970; I THEN WORKED, IN ONE WAY OR ANOTHER, WITH THE NATIONAL HOUSING LAW PROJECT UNTIL 1993. OVER THOSE YEARS, I’VE DONE A FAIR AMOUNT OF TRAINING FOR LEGAL SERVICES LAWYERS, IN EITHER FEDERAL LITIGATION OR HOUSING, AND I’VE HAD THE PRIVILEGE OF GIVING A FEW SPEECHES LIKE THIS.\textsuperscript{3} IT’S BEEN A WHILE SINCE I’VE DONE THAT, THOUGH, SO THIS HAS CHALLENGED ME TO THINK ABOUT THE CURRENT STATE OF THE COUNTRY, THE LAW, AND THE COURTS.

\textsuperscript{1} These words have been attributed to the late civil rights icon, Representative John Lewis. He is reported to have said them at the Edmund Pettus Bridge in Selma, Alabama, on March 1, 2020 and in a “tweet” in June 2018. See Rashawn Ray, Five things John Lewis taught us about getting in “good trouble,” Brookings Institution, July 23, 2020, http://www.brookings.edu/blog/how-we-rise/2020/07/23/five-things/john-lewis-taught-us-about-getting-in-good-trouble/ and Deanna O’Brien, Getting into “Good Trouble,” Braille Monitor, April 2021, https://www.nfb.org/images/nfb/publications/bm/bm21/bm2104/bm210407.htm

\textsuperscript{2} I dedicate this speech to the memory of my dear friend and colleague, C. Christopher Brown, Esquire, of Baltimore, MD. Chris had been a clerk on the U.S. Court of Appeals for the D.C. Circuit, then a Reggie (a Reginald Heber Smith Fellow) with the D.C. Neighborhood Legal Services Program, then an attorney with Baltimore Legal Aid, then a professor at the U. of Maryland Thurgood Marshall School of Law and a founding partner of Brown, Goldstein, & Levy. He also was General Counsel to the ACLU of Maryland for many years and authored a book, “The Road to Jim Crow.” He was a great and good man. See Jacques Kelly, C. Christopher Brown, retired attorney who was a champion of the underdog, dies, Baltimore Sun, Dec. 23, 2021.

\textsuperscript{3} See, e.g., Florence Wagman Roisman, Thirteen Principles for Effective Advocacy, 63 Rutgers L. Rev. 985 (2011) (Speech to Legal Services New York City); Florence Wagman Roisman, Using International and Foreign Human Rights Law in Public Interest Advocacy, 18 Indiana International & Comp. L. Rev. 1 (2008) (Speech to NLADA Litigation & Advocacy Directors Conference).
THIS MEANS THAT WHEN YOU ARE ADDRESSING ONE PERSON WITH A PROBLEM, YOU WANT TO ASK NOT “HOW CAN I PUT A BANDAID ON THIS PROBLEM?” OR EVEN “HOW CAN I SOLVE THIS PROBLEM?” BUT “WHY DOES THIS PROBLEM EXIST – NOT ONLY FOR THIS PERSON BUT FOR MANY OTHER PEOPLE AS WELL?” AND “HOW MIGHT I (WORKING WITH OTHERS) ELIMINATE THIS PROBLEM?” TO USE A METAPHOR MADE FAMOUS BY PHILOSOPHER PETER SINGER, IF YOU ARE STANDING NEXT TO A RIVER THAT IS FULL OF BABIES WHO ARE DROWNING, WHILE YOU MIGHT STAND DOWNSTREAM AND DRAW OUT OF THE WATER AS MANY BABIES AS YOU CAN REACH, YOU WOULD DO BETTER TO GO UPSTREAM AND STOP WHATEVER – OR WHOEVER – IS THROWING THE BABIES INTO THE RIVER.⁶

THIS MEANS THINKING EXPANSIVELY ABOUT WHATEVER PROBLEM YOU ARE TRYING TO ADDRESS. MNEMONICS ARE ADMIRE, SO I’VE PUT THIS INTO THREE “CS” – COLLABORATION, CREATIVITY, AND CONTINUITY.

1. WORK COLLABORATIVELY, COLLEGIALY. DON’T TRY TO DO THIS ALONE. THE CONSIDERATION SHOULD BE WITH YOUR CLIENT (OR CLIENTS), AT LEAST SOME OF YOUR COLLEAGUES, AND WITH OTHERS WHO HAVE, OR MIGHT BE BROUGHT TO HAVE, AN INTEREST IN THE PROBLEM AND POSSIBLE SOLUTIONS. THE “WORKING WITH OTHERS” IS IMPORTANT, BOTH BECAUSE YOU WANT THE IDEAS OF OTHERS AND BECAUSE YOU WANT TO LEVERAGE YOUR LABOR BY INCLUDING THE EXERTIONS OF OTHERS – CERTAINLY YOUR CLIENT AND OTHERS RELATED TO YOUR CLIENT, AND OTHERS WHO ALSO ARE INTERESTED IN ELIMINATING THE PROBLEM – PEOPLE WITH VALUES SIMILAR TO YOURS AND THOSE WHO MAY BE ONLY TEMPORARY BEDFELLOWS. AT LEAST SOME PART OF THE FAITH COMMUNITY PROBABLY WILL BE ON YOUR SIDE, AS WILL SOME TEACHERS OR MEDICAL PROFESSIONALS OR WORKERS’ ORGANIZATIONS OR WOMEN’S GROUPS OR SOCIAL WORKERS. SOMETIMES PEOPLE WHO USUALLY ARE OPPONENTS WILL BE COLLEAGUES ON PARTICULAR ISSUES – FOR EXAMPLE, SOME REAL ESTATE DEVELOPERS WANT TO SEE ZONING RESTRICTIONS LOOSENEO; NEIGHBORS OF SUBSIDIZED HOUSING WANT THAT HOUSING’S MAINTENANCE AND SECURITY TO BE ADEQUATELY FUNDED; LANDLORDS BENEFIT WHEN EFFICIENT RENTAL ASSISTANCE IS PROVIDED ON BEHALF OF TENANTS.

2. WORK CREATIVELY. DON’T STOP WITH OBVIOUS SOLUTIONS – WITH HOUSING CASES, E.G., TO DELAY OR PREVENT THE EVICTION OF ONE FAMILY. CONSIDER WHAT ARE THE PROBLEMS IN THAT BUILDING, OR WITH THAT LANDLORD, OR IN THAT NEIGHBORHOOD, OF FOR THAT FAMILY. WHAT LIKELY – OR UNLIKELY – BEDFELLOWS MIGHT GIVE YOU SOME SUPPORT? IN EARLIER ADVICE TO LEGAL SERVICES ADVOCATES, I’D EXPRESSED THIS AS – “THINK BIG; BE GREEDY; BE UNREASONABLE,” OTHER WAYS OF SAYING THIS ARE: BE FLEXIBLE; BE RESILIENT; BE IMAGINATIVE.

3. WORK CONTINUOUSLY. YOUR THINKING MUST BE DYNAMIC, NOT STATIC. WITH YOUR GROUP, REVIEW WHAT’S HAPPENING AT REGULAR INTERVALS OR AS THINGS CHANGE.

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I’VE TRIED TO THINK OF SOME SPECIFIC EXAMPLES, THOUGH I’M HAMPERED BY MY VERY LIMITED KNOWLEDGE OF ALABAMA LAW AND THE FACT THAT MY OWN FOCUS HAS BEEN ALMOST EXCLUSIVELY ON HOUSING. HERE ARE A FEW THOUGHTS:

1. I KNOW THAT HOUSING IS A HUGE PROBLEM HERE AS IT IS EVERYWHERE, AND I KNOW ABOUT THE DECISION IN CITY OF CENTER POINT V. ATLAS RENTAL PROPERTY. I SEE THAT YOU CAN READILY IDENTIFY SOME LANDLORDS WITH RELATIVELY EXTENSIVE RENTAL OFFERINGS THAT ARE SERIOUSLY OUT OF COMPLIANCE WITH LOCAL CODES. IF LEGAL SERVICES ALABAMA REPRESENTS SOME OF THE TENANTS OF THOSE LANDLORDS, WHY SHOULD NOT LSA (OR ANOTHER GROUP) ASK THE CODE ENFORCEMENT PEOPLE TO INSPECT THE PROPERTIES? AND IF THE CODE ENFORCEMENT STAFF RESIST, WHY SHOULDN’T LSA (OR ANOTHER GROUP) ASK A COURT TO ORDER THAT THE INSPECTIONS BE EFFECTED? AND WHY SHOULD NOT LSA (OR ANOTHER GROUP) SUE UNDER SECTION 35-9a -204 OF THE ALABAMA UNIFORM RESIDENTIAL LANDLORD-TENANT ACT TO REQUIRE CORRECTION OF ALL CONDITIONS INCONSISTENT WITH LOCAL HEALTH AND HOUSING CODES?

2. THE BOTTOM LINE OF THE HOUSING PROBLEM IS A GROSSLY INADEQUATE SUPPLY OF DECENT, AFFORDABLE HOUSING, EXACERBATED BY RACIAL DISCRIMINATION AND SEGREGATION IN THE SITING OF HOUSING. AN EFFECTIVE REMEDY IS THE LOW INCOME HOUSING TAX CREDIT PROGRAM, IF THE FUNDING WERE USED FOR FAMILY UNITS IN COMMUNITIES THAT HAVE GOOD SCHOOLS AND EMPLOYMENT OPPORTUNITIES. SURELY A GROUP OF UNHOUSED OR UNDERHOUSED TENANTS IN ALABAMA WOULD BENEFIT FROM ADVOCACY WITH THE STATE HOUSING FINANCE AGENCY TO ENCOURAGE THE DEVELOPMENT OF HOUSING THAT WOULD ALLOW LOW INCOME FAMILIES OF COLOR TO LIVE IN PREDOMINANTLY WHITE COMMUNITIES WITH GOOD SCHOOLS, GOOD JOBS, AND OTHER DESIRABLE PUBLIC AND PRIVATE FACILITIES.

3. YOU MIGHT CONSIDER A LAWSUIT HERE LIKE THE SUIT BROUGHT BY THE INCLUSIVE COMMUNITIES PROJECT IN DALLAS AGAINST THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS – A SUIT WON, 5-4, IN THE SUPREME COURT IN 2015.7 (THE PRINCIPAL LAWYER FOR ICP, BY THE WAY, WAS A FORMER LEGAL SERVICES LAWYER, MIKE DANIEL.) IN THE WAKE OF THAT DECISION, A PREDOMINANTLY WHITE SUBURB OF DALLAS HAS JUST – VERY RELUCTANTLY – AGREED TO A ZONING CHANGE TO ALLOW AN AFFORDABLE HOUSING DEVELOPMENT TO BE BUILT IN THAT COMMUNITY. PERHAPS YOU ALL COULD PUT TOGETHER A SIMILAR COLLABORATION.

4. WHEN YOU HAVE A CLIENT WHO NEEDS DECENT HOUSING – WHICH PROBABLY IS EVERY CLIENT YOU HAVE – YOU MIGHT ASSIST THAT CLIENT TO APPLY FOR HOUSING IN TAX CREDIT DEVELOPMENTS. THIS MIGHT BE ESPECIALLY EFFECTIVE IF YOUR CLIENT HAS A HOUSING CHOICE VOUCHER. UNLESS ALABAMA IS VERY DIFFERENT FROM THE REST OF THE COUNTRY. TAX CREDIT DEVELOPMENTS HERE REFUSE TO TAKE VOUCHER HOLDERS EVEN THOUGH THAT’S A VIOLATION OF FEDERAL LAW. YOU COULD OPEN UP A SIGNIFICANT SUPPLY OF DECENT, AFFORDABLE HOUSING BY ENFORCING THE LAW THAT PROHIBITS TAX CREDIT DEVELOPMENTS FROM DISCRIMINATING AGAINST VOUCHER HOLDERS.

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5. YOU ALSO MIGHT USE OTHER FAIR HOUSING REQUIREMENTS, PARTICULARLY THE MANDATES IN THE FEDERAL FAIR HOUSING ACT AND VARIOUS FEDERAL HOUSING LAWS THAT IN ALL FEDERAL AND STATE HOUSING PROGRAMS FUND RECIPIENTS ACT “AFFIRMATIVELY TO FURTHER” THE PURPOSES OF THE FAIR HOUSING ACT, DESEGREGATION, INTEGRATION, AND NON-DISCRIMINATION.\(^8\) I’M GOING TO TAKE A WILD GUESS THAT FEW ALABAMA CITIES, COUNTIES, OR AGENCIES SATISFY THIS MANDATE.


7. YOU ALSO MIGHT THINK ABOUT USING THE ALABAMA CONSTITUTION. THERE’S BEEN A LOT OF CREATIVE ACADEMIC WORK DONE ON THE 13\(^{TH}\) AMENDMENT, WITH ARGUMENTS ON BEHALF OF WORKERS, WOMEN, LGBTQ+ PEOPLE AND OTHERS ANALOGIED TO ENSLAVED PERSONS; YOU MIGHT USE SOME OF THOSE UNDER SECTION 32 OF THE ALABAMA CONSTITUTION. AND I RATHER LIKE THE SOUND OF SECTION 13, THAT “EVERY PERSON, FOR ANY INJURY DONE HIM, IN HIS LANDS, GOODS, PERSON, OR REPUTATION, SHALL HAVE A REMEDY BY DUE PROCESS OF LAW, AND RIGHT AND JUSTICE SHALL BE ADMINISTERED WITHOUT SALE, DENIAL, OR DELAY.” I’D LIKEN THESE STATE CONSTITUTIONAL GUARANTEES TO INTERNATIONAL HUMAN RIGHTS STANDARDS, NOTABLY THE UN CHARTER, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, THE AMERICAN CONVENTION ON HUMAN RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS. NO, I DON’T EXPECT YOU TO SECURE SWIFT ALABAMA ENDOREMENT OF SUCH ARGUMENTS, BUT I DO THINK THAT THE PROCESS OF EDUCATING THE JUDICIARY AND OTHER MEMBERS OF THE LEGAL PROFESSION AND ALL THOSE WHO OBSERVE LEGAL PROCEEDINGS IS CRUCIALLY IMPORTANT.

I CAN’T SEE INTO THE FUTURE. BUT I ABSOLUTELY KNOW THAT THE WORK OF LEGAL SERVICES LAWYERS IS ESSENTIAL TO BEND THE ARC OF THE MORAL UNIVERSE CLOSER AND CLOSER TO JUSTICE. LEGAL SERVICES LAWYERS TRACE OUR LINEAGE BACK THROUGH THE CIVIL RIGHTS AND WORKERS’ RIGHTS MOVEMENTS TO THOSE WHO INSISTED ON AN END TO HUMAN SLAVERY. IT’S APPROPRIATE, THEREFORE, FOR ME TO END BY QUOTING WILLIAM LEE MILLER’S BOOK, ARGUING ABOUT SLAVERY. I THINK THAT WHAT HE WRITES IS TRUE OF SLAVERY’S MANIFESTATIONS TODAY – RACIAL AND ECONOMIC INJUSTICE:

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\(^8\) 42 U.S.C. Section 3608(e)(5); see Heather R. Abraham, Fair Housing’s Third Act: American Tragedy or Triumph?, 39 Yale L. & Pol’y Rev. 1 (2021), available at https://digitalcommons.law.buffalo.edu/journalsarticles/1002
“FOR SLAVERY TO BE ENDED THERE HAD TO BE . . . SOME PEOPLE – A VERY SMALL NUMB ER, ON THE MARGIN OF SOCIETY, CONDEMNED AND HARASSED – WHO NEVERTHELESS MADE IT THE FIRST ORDER OF THEIR LIFE’S BUSINESS TO OPPOSE AMERICAN SLAVERY, AND TO INSIST THAT IT WAS A GROTESQUE EVIL THAT SHOULD BE ELIMINATED, AND . . . IN A LITTLE OVER THIRTY YEARS, IT WAS.”

LEGAL SERVICES LAWYERS ARE IN THE VANGUARD OF THOSE WHO SEE TODAY’S ECONOMIC, SEXUAL, AND RACIAL OPPRESSION AS GROTESQUE EVILS AND WILL ELIMINATE THEM. I SALUTE YOU ALL.

THANK YOU VERY MUCH.

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