The Right to Immigration Institute

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The United Nations Special Rapporteur
on the Independence of Judges and Lawyers (IJL),
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> *Professional lawyering no less than lay lawyering involves participation in the practices of living and in the relationships through which people construct and contest their differences. . . . Still, our inability to grasp and describe [legal] practice should not serve as the basis for valuing professional lawyering more highly than the rest of our problem-solving methodologies. We all do it—"privilege" professional lawyering in this way—lay people and professionals alike—and we're all wrong for doing it.*[1]

The Right to Immigration Institute (TRII) is a modest, all-volunteer and immigration and human rights movement law shop in Waltham Massachusetts in the United States. TRII is built on a platform of a law school clinical legal education program to train, collaborate with and seek Federal accreditation for forced migrants to represent migrants in immigration proceedings, bond hearings, trials and appeals as well as supporting migrant communities in human rights causes. TRII seeks to eliminate the barriers for refugees to provide legal representation. Through its refugee advocates and other nonlawyer volunteers, TRII provides creative high quality representation in a wide variety of civil justice issues—broadly defined—for a budget of about $25,000 a year.

[1] GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 44 (1992).

Most persistent human rights abuses in the West are sustained by bar-enforced lack of access to the levers of justice. The statistics are familiar, but they do not include the great majority of access-to-justice issues that end in people lumping gross human rights violations, avoiding situations in which they can arise or abandoning areas of conflict. That is, the sustained pains of human rights abuses in the United States, at least, can be laid squarely at the feet of the judiciary and bar, and their joint maintenance of lawyers' monopoly on access to justice through vicious enforcement of Unauthorized Practice of Law (UPL) statutes, as well as cultural hegemony purposefully mystifying the practice of law. This is more a problem in the U.S., where admittance to the bar follows a racially and ethnically and especially class-based exclusionary undergraduate and post-graduate (but graduate level) law schools, costing well over half a million dollars for spots that are filled predominantly by societal elites. There is less enforcement of UPL laws, and law school is an undergraduate endeavor elsewhere in America, but the access-to-justice challenges of fighting to establish and enforce rights to safe housing, public benefits, legal residence, education for their children, or often-contingent or under-the-table jobs remain. The cries of immigrant communities about the informal and formal threats from immigration enforcement—and harassment and exploitation beyond the formal legal system— sheriffs, storage companies, debt collectors, police and security forces that cause people to suffer, lump or leave from human rights abuses, are rarely treated as civil access-to-justice problems in the United States. If they were acknowledged, as policy makers do in erecting private systems of violence and disadvantage, lawyers would have to admit, not only that lawyers can never meet the unmet needs for civil legal services, but that most human rights abuses occur in places in which lawyers' bar cards are effectively barriers to entry into the field at all.

All of us who work with immigrants are forced to turn down most very needy potential immigration clients, despite knowing that there is nowhere else for them to go. To fill in the gaps, many hold meetings, conduct know-your-rights or organizing sessions, or try to write about complex immigration law issues in ways that people can understand—all of which make us feel better because we think it might do some good or narrow the breach in our unkept promise of fairness, due process of law, or the dignity of human possibility.

The very few lawyers who do human rights work meet people every day who have been refugees, are seeking asylum, or have otherwise encountered, say, the immigration system—and who, given the chance and a little training, could do lawyer's work least as well as immigration and human rights attorneys. Indeed, we at TRII have found that refugee advocates not only could provide universal representation at much cheaper costs by eliminating lawyers' monopoly rents (and hence cure legal systems distorted by decades of only one side of the "vs." in the case caption being represented) but they find ways to do that work differently, to provide more authentic representation and force law to meet the needs of non-elites, and infuse law into the dark spaces in which fear and false promises oppress marginalized communities on the cheap.

Many of TRII's advocates—despite their credentials—now work at what they perceive as menial jobs if they can find jobs at all. All are activists in some sense, with deeply resonant political voices. If refugees were armed with training in law, opportunities in reflective legal practice, and the legitimacy that legal advocacy roles confer, could they find ways to dissemble the entrenched power hierarchies that construct access-to-justice problems in the first place? In a world of dire needs and ever-changing challenges, lawyers have a duty, ethical if not legal, to cede their privilege to elevate marginalized voices to real decision-making roles in access-to-justice debates. The late Deborah Rhode implored that "[w]hat Americans want is more justice,

not necessarily more lawyering."[2] Given a say, would communities of forced migrants choose to blow scarce societal resources on the monopoly rents of elite lawyers for a few amongst their numbers (and disrupting class solidarity that *could* lead to real change)?[3]

Rebecca Sandefur contends that access to justice is a problem created by lawyers to secure their elite status and claims to esoteric knowledge to justify their monopoly rents: "[t]he access to justice crisis is bigger than law and lawyers. It is a crisis of exclusion and inequality. . . . Justice is about just resolution [of shared challenges,] not legal services. . . . Solutions to the access-to-justice crisis require a new understanding of the problem."[4] Rather than thinking in terms of unmet legal needs, Sandefur cautions, "we have the option of formulating the access-to-justice crisis as being about, well, access to justice."[5]

Having a law school degree and passing a paper test does not give the public greater assurance of quality than accreditation and supervision within a DoJ-recognized non-profit organization. Indeed, AR community-based representation will be better than representation using attorneys. Some take formal classes like the free one offered by TRII; others self-educate through on-the-job training, but all are required to have experience working with immigrants in the immigration law settings in which they will practice—far more than what is required of lawyers in the United States.

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[2] DEBORAH L. RHODE, ACCESS TO JUSTICE 81 (2004).

[3] *See* CLIFFORD WINSTON, ROBERT W. CRANDALL & VIKRAM MAHESHRI, FIRST THING WE DO, LET'S DEREGULATE ALL THE LAWYERS, 5, 55–56 (2011); Herbert M. Kritzer, *Rethinking Barriers to Legal Practice*, 81 JUDICATURE 100, 100–03 (1997) (finding that the only purpose of unauthorized practice of law proscriptions is the protection of lawyers from competition and illustrating one's view of the profession as a "'greedy lawyer cartel' that sells justice to the highest bidder"). Kritzer finds that "[t]here is no evidence that the presence of a disciplinary body actually reduces the number of errors of legal service providers." *Id.* at 100. Regulatory authorities with whom Kritzer spoke reported no indication of more problems with nonlawyers' representation than with representation by lawyers. *See id.* at 101. Kritzer concludes that lawyers' resistance is the main barrier to expanding access to justice by authorizing nonlawyers to practice. *Id.* at 103; *see* RICHARD L. ABEL, AMERICAN LAWYERS 60, 72, 75, 113 (1988) (demonstrating that the bar has used its monopoly power over access to justice to limit the supply of lawyers through entry barriers, including law school and bar exam requirements, while limiting external competition through unauthorized practice of law (UPL) rules).

[4] Sandefur, *supra* note 3, at 49.

[5] *Id.* at 50.

Law school alone is insufficient preparation legal practice, and research shows that nonlawyers specializing in varied civil realms have performed equally well or better than lawyers in terms of efficacy and accountability—even when evaluated by lawyers. TRII's initial expectations that adequately trained refugees and other forced migrants would be better asylum advocates than even the best lawyers have proved out in practice over the past six years.

Authentic advocacy by impacted communities stands a better chance of realizing justice than traditional advocacy, partly because of inherent and acquired characteristics of lawyers: the limitations of lawyering roles arising out of how law school training and professional socialization limits perception of the scope and sources of social problems and what can be done about them. Authentic advocates will leverage their identities as leaders in impacted communities to bend the contours of the "ambient carceral state:" the threats, rumor mills, discourse, and private violence that form key components of the policy platform that subjugates immigrant communities and forces them into "self-deportation." An assessment of TRII's work so far confirms evidence from authentic nonlawyer advocacy outside of the United States indicating authentic advocacy's potential impact on justice—not just lawyers.

The differences between well-meaning lawyers and well-trained and rigorously reflective, supervised nonlawyer advocates and activists might boil down to: (1) differences in storytelling conventions; (2) time frames; (3) voice; (4) context; and (5) risk averseness.[6] First, lawyers' narratives typically focus on the peculiarity of their client's situations to convince legal decision-makers that granting their clients the relief they seek will not impinge on the prevailing social order, an order upon which legal decision-makers (including the lawyer) sit atop. This is

[6] Christine Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: An Immigrant Rights Case Study*, 35 GEO. IMM. L. J. 431, 443, 449, 498 (2021).

because the Refugee Convention/Protocol and U.S. refugee law insist on proof that individuals were targeted for their peculiar characteristics or histories and are at greater risk because of it.

Effective nonlawyer advocates, movement organizers, and activists, by contrast, provoke collective action by listening to members of impacted communities tell stories to show that each individual's apparently idiosyncratic problems are deeply connected to the arc of the whole world; that there is no way to relieve their distress without disrupting the prevailing order, a story that drives both nativist privilege and the best of identity-based organizing.[7] The same notion of storying-based communities has been described by Margaret Levi as "communities of fate:" the idea of a community organized around a common ideal, a common threat, a common enemy, or a shared goal that comprehends a deeply-felt understanding that the community is bound by a common fate.[8] In the words of Clay Shirky, "[c]ollective action . . . is the hardest kind of group effort, as it requires a group of people to commit themselves to undertaking a particular effort together, and to do so in a way that makes the decision of the group binding on the individual members."[9]

Second, lawyers are normally uncomfortable with engaging in immediate action in the service of lasting change—an organizer's "moving at the speed of trust," in what is sometimes called "timeless time," connecting the demands of today with prospects for tomorrow. Activists urge immediate action but rarely expect lasting change on the spot, or even in their lifetimes.

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[7] KEVIN ESCUDERO, ORGANIZING WHILE UNDOCUMENTED: IMMIGRANT YOUTH'S POLITICAL ACTIVISM UNDER THE LAW 52 (Pierrette Hondagneu-Sotelo & Victor M. Escuedero eds., 2020) (describing an identity mobilization model in which undocumented immigrants' organizational culture is built on an intersectional movement identity that recognizes shared oppression of undocumented immigrants while acknowledging activists' intersectional lived realities); Cimini & Smith, *supra* note 6 at 439–440; HEATHER MCKEE HURWITZ, ARE WE THE 99%? THE OCCUPY MOVEMENT, FEMINISM AND INTERSECTIONALITY, 62–65 (2021).

[8] *See* JOHN S. AHLQUIST & MARGARET LEVI, IN THE INTERESTS OF OTHERS: ORGANIZATIONS AND SOCIAL ACTIVISM 2 (2013).

[9] CLAY SHIRKY, HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS 51 (2008).

Third, lawyers tell client stories in an elite voice that legal decision-makers recognize, which performs the neat trick of translating clients' on-the-ground stories into legally cognizable issues while they legitimize the law and its institutions. So, transforming clients' stories is, as folks say, a feature and not a bug of the legal system of the United States: the law can transform big, messy, highly contextually-dependent social problems into resolvable issues of law by lopping off all that messy societal context and individual resonance that animates clients' inner lives and generates their relationships in their community. Legal systems' legitimacy persists in the face of uncertainty and injustice while reinforcing lawyering's claim to professional status and esoteric knowledge that justifies their monopoly on access to justice and relies on transforming on-the-ground disputes into legally cognizable issues.

TRII's authentic advocates can do all of that too, though. Authentic advocates share at least similar commitment and tend to devote even more time to their cases and causes borne of their own experiences and identities, and their commitment to securing asylum for their clients as people who have gone through the process themselves. Authentic advocates from TRII often speak the same language, "get" cultural references and understand the stock stories of clients through their experience. Community leaders are trusted and listened to and are therefore able to authentically hear their clients' stories and relate them in a voice that is integral to the client who has trusted their story to the advocate, as well as the legal decision-makers.

In short, a model like TRII's could be expanded the disrupt elite lawyers' monopolies on access to justice to provide universal representation at do-able costs (providing jobs to marginalized advocates), providing marginalized communities with more committed advocates, more trusted (and language and culture savvy) advocates, more creative, authentic advocates who would bring community disputes to powerholders with less lawyerly distortions, and

advocates who have access to communities as well as the keys to the halls of justice, and hence can engage the struggle for human rights beyond the courts in the dark crevices of the ambient carceral state. The very presence of authentic non-lawyer advocates in courts and legislatures cannot help but bend the cultural assumptions and implicit bias that renders even advocacy by trained lawyers a mostly lost cause.

We provide our experience at TRII as a case study in why authentic nonlawyer advocacy works now, it adjacent potential to make justice systems more accountable to the marginalized and as an object lesson in the absolute and urgent need to bury UPL laws and legal enforcement of elite lawyers' monopoly rents to access justice as a precondition to seeking justice for all in the United States and beyond.

Thank you.

Hopefully,

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