Urgent Memo to Ourselves: Legal Services is Not the Peace Corps (Addressing the Salary Chasm Now)

by John Tobin, Executive Director[1]
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Consider the contrast between the two following lists, one about our long-term aspirations and obligations as the stewards of legal services programs, and the other about the current realities that we tolerate, with varying degrees of awareness and resignation.

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The legal services programs that our clients deserve

Our purpose, enshrined in our nation's core documents, is to ensure equal justice under law for the poor, marginalized, and powerless in our local communities and across our country.

The leadership (and the staff) of our legal services programs are fiduciaries for the present and future low-income communities of our cities, towns and states. Our programs belong to those communities and exist to serve them.

Our highest duty is to preserve and strengthen our programs for the long haul, so that poor people now and in the future will have the most effective and successful legal advocates working with them and for them, as our society struggles to become more just.

The essence of any legal services program is its staff. And, if justice is to be truly equal, our clients, as much any powerful private corporation, government agency, venerable university, or wealthy individual, deserve the "best and the brightest" as their advocates. We should accept nothing less than the most creative, skilled and dedicated people as participants in our clients' cause.

We know that an effective legal services program, like a successful private law firm, contains a blend of highly experienced lawyers who have strong skills and great credibility in the legal community with mid-level and new advocates who bring new perspectives and fresh energy.

In order to create, develop and maintain a vibrant staff of varying backgrounds, experience levels, and skills, any organization must provide its staff with a livable middle class standard of living, not so they can become wealthy, but so they can pay off their school loans, buy an average home, raise children if they choose (and contribute meaningfully toward those children's educations), and prepare for a decent retirement. This modest version of the American Dream is consistent with our clients' aspirations for themselves, and it is not greedy or selfish but decent and fair.

Many of the most effective and enduring private non-profit institutions in our society, such as hospitals and colleges, have long recognized the necessity of building an enduring staff to ensure the long-term quality of their services to their "customers," and their staff and leadership alike assume a culture of decent compensation and long-term staff development.

To meet our responsibility to our clients to make their legal services programs the best they can be, we must make sure that our funds (the operating money we gather and spend in trust for the clients) are well-spent. Most of our budgets are spent on staff. We must have the courage to humanely but diligently manage and improve our organizations, using supervision and evaluations to nurture talent and weed out those who are ineffective.

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What our programs actually look like: We (and others) implicitly devalue our work (and therefore our clients)

All too frequently, new legal services lawyers have second jobs at night or on weekends, waiting on tables, teaching night classes, or working as sales clerks to pay off their loans and make ends meet.

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Legal services staffs are becoming disproportionately female. We must ask ourselves what role we are unwittingly playing in a culture that conditions women to work for less. Our society promotes a division of labor in which men have jobs which are financially well-rewarded and women often do the "do-gooder" work that is supposedly held in high esteem but in fact is devalued. And the women doing the "do gooder" work find themselves in unequal dependent relationships with their partners who are making the money that supports their households/families. That is not a fair or healthy phenomenon. And our salary structure reinforces it.

Another related consequence of our salary structure is that legal services programs bears a disproportionate burden of employing the primary child caregivers who are the secondary earners. The important family/work balancing that this large percentage of primary caregivers must do comes out of legal services. This is another one of those implicit bargains — we pay less, so we have to be more flexible. More flexibility for families by employers is very important and positive from a moral/political/psychological/spiritual perspective. But the employers who are paying our staffs' partners more money get off easy — and legal services has to do more than its share.

Lateral recruitment of mid-level or highly experienced staff is extremely difficult, except from other legal services programs, because mid-level or senior legal services salaries lag far behind those of private firms, the federal government, other successful non-profits, or even state and local government.

Recruitment and retention of racial/ethnic minority staff is also problematic because of our inadequate salaries.

Many people in legal services are resigned to the "Peace Corps" view of our programs that is prevalent in the outside world. Under this vision, all but a few of those who join us will devote a few years to our cause, living a life of temporary semi-poverty, but will then depart for a "real job" that will provide financial stability, if less personal satisfaction. The perpetuation and internalization of this view leads our programs to accept as inevitable a constant burden of turnover and training of new staff.

At the same time, low salaries in many legal services programs have helped to create an implicit "civil service" tradeoff with some experienced staff. Under this unspoken bargain, the management of the program will not raise issues of burnout, stagnation, low productivity, and lack of leadership unless they become extreme, because the staff person with these problems is willing to live with a low salary.

Notwithstanding the hardship we have seen afflicting many of our elderly clients who must live on Social Security benefits, legal services programs have been very slow to create retirement plans for their staff, even though a number of staff have served for several decades and are approaching retirement age.

When legal services programs gain new money, they almost always add staff, before fully or even partially addressing the great and growing salary disparities. This is an understandable and even laudable decision from a short-term perspective, because there is an immediate increase in the volume of services delivered to clients. But the failure to use the opportunity to address the larger structural problem of salary disparities and non-livable pay exacerbates the long-term trend. Our programs slip ever further behind in salaries, with a slow and quiet but inevitable diminution in the quality and effectiveness of the staff, to the client community's ultimate detriment.

When legal services directors and boards do contemplate increasing salaries, they often look almost exclusively to other legal services programs for comparison, having implicitly or explicitly abandoned any hope of comparability with other public sector legal employers, let alone private firms.

Some legal services organizations have belatedly begun to address one aspect of the salary gap through Loan Repayment Assistance Programs. An LRAP can help with recruitment and retention of newer lawyers, but it doesn't do anything for more experienced lawyers or paralegals or support staff. This benefit is very valuable for getting and keeping good new lawyers, but it does not by itself create the reorientation we need. And focusing on loan assistance alone reduces interest in and momentum for an honest and comprehensive look at the ever-worsening gap we have allowed to develop.

Trying a different approach: Balancing short-term risks against the need to make significant change

Over the past year, the Boards of the two staff attorney programs in New Hampshire, New Hampshire Legal Assistance (NHLA) and the Legal Advice & Referral Center (LARC),[2] with encouragement and education from their executive directors,[3] have decided to create a new long-range plan for salary improvements.[4]

The Board's first step was to recognize the gravity of the problem. Board members were disturbed by the loss of promising attorneys to other public sector employment at significantly higher salaries. They were shocked by the harsh reality of young staff attorneys with heavy loan burdens who were working at night and on weekends as waitresses, even though the New Hampshire Bar Foundation has operated a loan repayment assistance program for three years, providing an average of $3,700 in annual assistance. At the point these discussions began, the starting attorney salary at both programs was $31,000, a level comparable to that at many legal services programs in New England and around the country, except in the largest cities.

As a second step the Board reviewed salary data from a range of private and public sector legal employers in New Hampshire, including the New Hampshire Bar's comprehensive private firm survey, the New Hampshire Attorney General's office, county attorneys, public defenders, non-profits, etc. The Board also obtained New Hampshire-specific cost of living data that showed, for instance, that a minimally decent standard of living for a single parent with two children cost over $39,000 per year, well above the salaries of many legal services employees, including attorneys with less than 7 years' experience.

After considering all of this information, the Board decided to reject its old standard of salary comparability with legal services programs in the other Northern New England states and replace it with a standard of comparability to public sector legal employers in New Hampshire.

The Board concluded that to bring our salaries into the range of comparability with other public sector legal employers, our salaries would have to be raised by 20%, not including adjustment for cost of living increases (which had never been provided in either program). They considered a five-year plan to reach this goal, but decided that it should be accomplished in three years instead. Assuming a cost of living increase of about 3% per year for three years, along with the 20% baseline increase, the Board adopted a plan that will raise salaries 10% per year for three years. At the end of the three year period, starting salaries for new lawyers will have increased from $31,000 to $41,261, and top level attorney salaries will go from $55,000 to $73,200[5]. The first stage of this plan was implemented on September 1, 2002.

The Board recognized that neither program had the funds to implement these increases at current staffing levels and decided that they would pursue new funding to meet these goals, especially through a private attorney campaign that had already begun.

Throughout their deliberations, the Board recognized that implementing salary increases without certainty as to funding sources to pay for them involved a level of risk-taking. However, the Board decided that the time had come for NHLA and LARC to re-orient their approach to salaries through a more realistic long-term approach.

In particular, the Board understood that over the short-term during this transition, there may be some shrinkage in staff size required in order to set salaries at a level of long-term sustainability. This approach does not limit the programs from finding new funding sources which might require new staff commitments (which would be planned for at the new salary levels). Instead, it would simply mean that NHLA and LARC will use their existing funding sources (IOLTA, LSC, United Way, etc.) to set realistic and sustainable salary levels before adding new positions that are funded from these sources. In order to fund the first year of the plan, NHLA did not fill several vacant attorney positions.

Within a month of the implementation of the first set of increases, the plan was tested by a budget crisis at

NHLA precipitated by the loss of two demonstration grants. The Board resolved to proceed with layoffs if necessary rather than rescind the first round of increases or delay the second round in 2003. While some staff members were initially inclined to roll back the increases to save jobs, the majority saw the wisdom of strengthening the program for the long term by taking action to more adequately support the talented and experienced staff that is the heart of our program. Fortunately, vigorous fundraising and timely assistance from the New Hampshire Bar Foundation enabled us to avoid any layoffs for now. But the possibility of further short-term shrinkage is a price we will pay, if we must, to put our program on a more realistic footing for the long haul.

The Boards and staff recognize that completion of this plan will be at best a partial solution to the enormous salary gap that legal services programs like ours have allowed to build up over more than two decades. Our need to further expand, diversify, and stabilize our funding is ever more urgent. But this plan has given us a concrete set of long-range goals and a renewed philosophical commitment to sustaining a healthy program, while recognizing and rewarding, at a modest level, our staff's skill, dedication and success for our clients. Our staff will be paid more fairly, and our clients will benefit for years to come from the stronger program that we are building for them.

1 John Tobin is executive director of New Hampshire Legal Assistance. Prior to becoming executive director, he served as managing attorney of NHLA's North Country office and then as director of its elder law program. He has been active in education funding litigation and Bar leadership, and he serves as a court mediator. He graduated from Cornell Law School.

2 These Boards, while legally and financially separate, work together in an integrated fashion with the permission of LSC, LARC's primary funder.

3 The role of the executive director in such a structural and attitudinal transformation is multifaceted and vitally important: gathering data, presenting the board and staff with a coherent "big picture" view, proposing and testing solutions, acknowledging to all parties the risks and trade-offs, instilling confidence in staff, educating funders, etc.

4 Having created an employee retirement plan on the executive directors' recommendation several years ago, with a low initial level of contributions (3% of gross salary), the Board later decided to increase the level of contributions to 5%.