



MONEY TALKS: SOME THOUGHTS ON MAKING DEALS WITH GOVERNMENT

By Victor Geminiani¹

I came into my career with a generation of advocates who believed that the central mission of all legitimate legal services programs was to engage in aggressive and significant law reform litigation. We held a firm belief that it was a program's responsibility to represent the interests of poor communities in challenging laws that negatively affected the lives of our clients. As we have learned, the



implementation of this philosophical perspective found our programs in considerable and constant conflict with local, state and federal governments.

Over the past twenty-five years, an alternative mission described generally as "access to justice" has become the driving force behind program funding and most delivery system designs. Some of the reasons for this shift of missions include the politics historically and predictably played out around a "law reform" mission, the restrictions placed on Legal Services Corporation-funded programs activities because of that mission, the widely published results of state and national legal needs studies, the creation of state commissions on "access to justice" and other multi-party partnerships, the introduction of telephone hotlines as a core component of a efficient delivery system and the dramatic increase in state funding appropriated to provide some semblance of access to justice for the millions denied justice each week.

If we accept "access to justice" as a central program mission, it is hard to ignore how far we have to go to achieve even a minimally acceptable level of success. It also leaves programs with few options other than to aggressively approach government as a strategy to fund our work. Simply put, as with Willie Sutton's answer to why he robbed banks, it is where the real money is. Our community has been somewhat successful in generating both general and earmarked governmental funding. That approach, while essential, also has some

limits given periodic and predictable downturn in state economies, competition with other popular causes and some constant resistance towards funding programs that employ public interest lawyers.

My experience in Hawaii and Los Angeles suggests that programs can dramatically increase long term financial support from government by selling and successfully delivering a multitude of services to government that will improve our clients' lives while also often significantly improving the federal revenues available to each local or state government. We can deliver those services more efficiently and effectively than

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profit-making corporations (read Maximus) while, at the same time, improving and expanding relationships (read opportunities) with local and state government. My theory is that these forms of positive partnerships with government can also help withstand the tensions inevitably caused by programs pursuing an aggressive advocacy agenda that sometimes affects government. Partnerships which deliver an economic benefit to government, as a core result, can more easily withstand disagreements on other issues.

There are many examples where this win-win

contractual relationship with government can work. The best might be programs that access Supplemental Security Income (SSI) for eligible clients. In Hawaii, we have approximately 5000 disabled persons who receive monthly General Assistance (GA) payments of \$418 from the state. Most of these GA recipients are also homeless and the state pays additional expenses for shelter, medical and other costs associated with their needs.

In 1995, the Legal Aid Society of Hawaii (LASH) suggested that the state contract with our program to deliver statewide advocacy services for GA recipients to gain federally paid SSI for those eligible. Using a mainland model, LASH suggested that the Department of Human Services (DHS) enter into a contingency fee arrangement whereby LASH would only be paid by the DHS for each successful application, reconsideration or administrative hearing. At first, the Department showed little interest. This was caused by the normal inertia and limited creativity that unfortunately affects most governmental agencies. There was also great suspicion of LASH caused by its recent and successful aggressive advocacy against the Department's attempt to eliminate its entire GA program. The motive to eliminate the GA program was to save the state millions of dollars during a decade of economic decline in Hawaii. After a year of unsuccessful discussions, we decided to request a one-time legislative appropriation of \$150,000 to fund the experimental program. This appropriation request provided us with a vehicle to begin discussions with the finance committees of both the House and Senate to describe the significant economic benefits that the state would enjoy by implementing an SSI advocacy program. DHS found itself under pressure from the legislature to test out the SSI advocacy effort with LASH and finally agreed to issue a request for proposals. LASH successfully won the contract and has successfully rebid four times over the past eleven years.

Since the contract began, the economic benefits to both the state and our disabled clients have been significant including:

- Approximately 3500 disabled recipients have been successfully transferred from the state funded GA to the federally funded SSI program. Each of these successful recipients have increased their monthly income from \$418 in GA to \$580 in more permanent SSI payments.
 - Each year the state saves \$3 million in its GA program because of an annual average of 600 recipients becoming eligible for SSI due to LASH's representation.
 - Annually the state also receives approximately \$3 million in repayments by the federal government for all GA payments made to each of the 600 successful SSI recipients back to the date of their application for SSI.
 - Every year, each of the 3500 (and counting) successful disabled recipients brings in about \$7000 of federal SSI funding into the state. This represents about \$24 million last year to help prime the economy of the state.
 - Each successful SSI recipient becomes immediately eligible for the federal Medicaid program, which covers 54% of health costs for the recipient. This saves the state millions of additional dollars every year.
- The contract is structured to pay LASH a contingency fee for each successful effort. The amount paid is graduated depending on the level of advocacy that is required. Currently the fee structure is \$900 for each success at the initial application, \$1350 for each success at the reconsideration stage and \$1650 for each success at the administrative hearing stage. The state pays LASH nothing for an unsuccessful SSI advocacy effort. LASH is successful with 62% of the initial applications it submits, 65% of the reconsiderations it files and 71% of the administrative hearings.
- Once a GA recipient is determined to be eligible for SSI, the federal government repays the state for the entire GA amount it has paid to the recipient back to the date of the recipient's SSI application. The state uses part of this repayment from the federal government to reimburse LASH for the amount provided in the contract. The effective result of this arrangement means that:
- The state only pays LASH when it receives repayment from the federal government.
 - It pays significantly less to LASH than it receives in GA repayments and therefore makes a significant profit on each successful SSI application.
 - It would not receive any of the economic benefits but for the successful work that LASH delivers.
 - It takes no risk nor spends any funding from the state's budget.
- LASH operates the program throughout the state and on each of our six primary islands. The staffing includes a supervising attorney who works in Honolulu and nine paralegals that work in varying degrees on this and other governmental benefits programs. Video conferencing supplements periodic statewide meetings of those involved in the program. LASH receives approximately \$500,000 each year in payments under the

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SSI contract and usually makes a reasonable profit.

Recently, I have had the opportunity to have a similar effort in Los Angeles. In the process, I have learned a few new lessons. The need in Los Angeles for an aggressive, quality-based SSI advocacy effort dwarfs anything I saw in Hawaii. Instead of a homeless population of 5000, the city's homeless count indicated 91,000 people were living on the streets. There was a general acceptance that about 40 % of this homeless population was sufficiently disabled to qualify for SSI. Tragically, the Department of Public Social Services (DPSS) and a few non-profit providers filed only 4100 applications in 2006 and less than 2000 were approved. The county funded GA monthly benefits are a tragic \$218.

As in Hawaii, initial conversations with DPSS proved useless. Representatives were suspicious of trying a different approach and had a hard time understanding a contingency fee arrangement for payment. As with most other jurisdictions, they traditionally used a fixed cost grant process for delivering most social services. There were no incentives for saving money through innovative programs so that Department staff had spent little time considering the economic benefits to the Department's budget of an aggressive, quality-based program. Finally, the DPSS staff had traditionally been charged with processing the few SSI applications filed each year and were threatened with the possible loss of jobs if a non-profit based contingency fee contract proved successful.

As with Hawaii, after rejection by the DPSS, we began discussions with the members of the Board of Supervisors who oversaw the delivery of services by the various departments and all county expenses. Predictably, the staff and members of the Finance Committee were the most interested and energetic in their discussions with Department staff. Once those discussions were joined, progress with DPSS and the Department of Mental Health became easier. As of this writing, LA County is preparing an request for proposals to be issued to begin a new, expanded SSI effort. One additional potential partner in Los Angeles was the Department of Corrections who each year released over 20,000 homeless individuals to the streets without any meaningful attempt to qualify those likely to be eligible for SSI.

In Hawaii, once the financial success of the SSI advocacy program became clear, we were able to expand our new partnership with DHS to cover other similar

efforts to advocate for clients eligible for federal programs. In 2000, LASH expanded the SSI advocacy effort to include disabled foster children. This contract also operates on a contingency fee arrangement, but with a fee structure about 30% higher than our contract for GA recipients. A contract with DHS to advocate for the federal Medicare program to pick up medical costs for those dually eligible for both Medicare and Medicaid was not successful. The savings to the state proved not sufficient to cover LASH's expenses to operate the program. However, the vibrant partnership with DHS was successful in expanding the department's financial support for LASH by establishing two traditional fixed dollar contracts for a total of \$420,000 to supply the legal needs of abused children and those fleeing from domestic violence. Both contracts are based on a general desire by the state to save future expenses by strategically investing in legal services to stabilize lives and shift expenses, when appropriate, to federal programs.

Here are some lessons I have learned using this economic benefit approach to expand resources:

- Deals with government take a long time to develop. They often start small and grow over time as trust and respect grows. Do not get discouraged. LASH just received a contract from DHS for \$1 million over two years to help expand participation in the Food Stamp program by members of the low-income community. The Food Stamp program is completely funded by the federal government so that increasing participation helps our clients with their nutritional needs while bringing in more federal funding to help our local economy. This agreement with DHS took five years to develop and began with a joint effort with DHS to apply for a federal grant from the U.S. Department of Agriculture to increase the participation rate in Hawaii. We were unsuccessful in our three grant applications but, in the process, the state recognized the economic benefits and decided to fund the effort itself.
- Virtually all of the clients we serve through these various arrangements are eligible for our services and would be normally assisted but for the limitations on our program budget. Because they are eligible, LSC and most general state funding can be used to supplement the expense of providing the service if the sum contracted for falls short or the program needs start up resources before the funding is released. Most of these efforts are also attractive to foundations that are often interested in providing initial capitalization for efforts that have

long term funding streams.

- In all dialogues with the executive or legislative branches about expanding funding, stress the significant savings to the government directly attributable to the delivery of services being suggested and use existing models elsewhere to underline this position whenever possible. Successful discussions often depend on the ability to be specific about the size of the savings and stress the clear linkage between the services delivered and savings recognized.
- It is important to carefully track program income and expenses to determine the adequacy of funding provided for the services as well as negotiate for future increases to continue and expand the effort. Accurate budgetary tracking also provides a better framework for analyzing the benefit to the program and clients if other program funds are required to subsidize the effort.
- Much of this work requires programs to conduct targeted outreach to locate potential clients. The contracts traditionally pay for specific services to specific clients and normal program intake systems often are not capable of finding and referring the numbers required under the contract. Outreach and relationship building with the staff of other partner agencies are essential to locate and refer clients eligible for services under government contracts.
- Expanding projects funded by targeted governmental funding will increase a program's potential for professional growth of staff. Each new project provides opportunities to manage, conduct outreach, design delivery systems and deliver services. These challenges will appeal to staff members who are interested in expanding their abilities and interests.
- Contracts that save the state money are often protected from cuts when the state economy declines. Those in charge recognize the importance of continuing programs that both help people in crisis while gaining clear economic benefit for state revenues.
- There are already in existence many possible models for selling services. The work only begins with identifying those appropriate for your program's culture, talents and interests. Next comes a careful analysis of why they were successful elsewhere, creatively crafting their appeal to local need and designing the advocacy effort required to convince the appropriate governmental agency of their benefit.
- Never underestimate staff resistance to starting a project involving new activities. Most of these efforts require staff to gain new skills and accept the careful oversight required to ensure productivity and quality. Both are essential if the contract is to be cost effective and worth renewing or expanded. Any new effort will likely fail if staffed with people who are resistant to change or resentful about being supervised or evaluated for productivity. A better approach will be finding those in your program who appreciate the challenge that the new effort provides or hire new employees specifically for the project.
- Except at the beginning of implementation, virtually all of these efforts have been economically self-sufficient and have not required taking resources from other traditional program activities. This is an essential benefit to minimize disagreements within the program over using scarce general funding. Destructive internal program friction has also been significantly reduced because most of these efforts, over time, also earn a profit that could help stabilize and expand staff throughout the program.

I began this article describing a "law reform" mission as central to program activities in the "early" modern days of legal services delivery. I still believe that to be true. I have grown to believe that an "access to justice" mission is also essential to program relevancy, growth and power. Both are achievable within the same program. Actions requiring class action status or the ability gain needed resources from fee shifting opportunities are both allowed under LSC Regulation 1610 as long as they are conducted by a program's affiliate corporation. Read the regulation carefully and consider the many models already in existence. I believe that the historical governmental retaliation for conducting such an aggressive litigation agenda can be significantly mitigated by many of the economically profitable partnerships described above.

Good luck and be creative.

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