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PROGRESSIVE REFORM PANEL

SHAUNA MARSHALL, CHRIS DALY, MEDEA BENJAMIN,
AND BRAD SELIGMAN

SHAUNA MARSHALL: My name is Shauna Marshall and I will be the moderator for this panel, although it clearly needs no moderation. In fact I am not sure there is much I will be able to do to moderate.

Many of us who are schooled as lawyers often delve deeply in the substance and spend too little time really examining the strategies for bringing about the goals and qualities that we care so deeply about. Today we are really lucky because we have a group of panelists who work for the things we all care about: social equality, economic justice, peace throughout the world, maintenance of our civil liberties. But they do it from different vantage points and from a variety of perspectives.

I will briefly introduce them. We will begin with the local and then we will move globally.

The first person who will speak is the Honorable Chris Daly. Supervisor Daly is on our San Francisco Board of Supervisors and he represents our district here, District 6. That includes not only the Tenderloin, but it includes South of Market, South Beach, North Mission, and Treasure Island. He was first elected in 2000 and reelected in 2002. Supervisor Daly comes into politics as a grassroots organizer, really working on behalf of the low-income and the homeless. He has maintained his success as an elected official by maintaining close ties with that constituency. He will begin our discussion.

Our next speaker will be Medea Benjamin, who is the founding director of Global Exchange, an international human rights organization dedicated to promoting environmental, political, and social justice. Following 9/11, Ms. Benjamin traveled several times to Afghanistan and Iraq to lead and accompany U.S. delegations in their efforts to highlight civil casualties caused by our invasions.

And last but clearly not least, Brad Seligman will talk about using impact litigation to achieve social change. Mr. Seligman is the

executive director of the Impact Fund, which is a public foundation that provides financial, technical, and representational assistance to complex civil litigation, class-action litigation. He has litigated over 45 class-action cases, making him really one of the foremost class-action lawyers in this country, and is presently lead counsel on the historic sex discrimination case against Wal-Mart.

Before our panelists begin, I would just ask them to frame their discussion slightly and talk about when they are embarking upon their work, whether they think about their end goals, how they define their end goals, and then how they measure success. By success, I mean, have the lives and the communities they are intending to benefit truly changed and how do they measure that change?

* * *

SUPERVISOR CHRIS DALY: In thinking about how to win progressive social change, the first thing that I started thinking about is have I been involved in winning progressive social change? Honestly, there have been some wins that I have been a part of and I will talk a little bit about them, but I think that they have been limited or they have been tempered by wins that non-progressives have had in this city.

First of all, let me ask, just so I can get a read of the room, how many folks in the room would consider themselves progressives? All right, that is pretty good. So I should not worry about my opposition in here trying to get some trade secrets.

The easiest answer, or maybe the cheapest answer, to how to win progressive social change would be simply to organize progressive social change. But of course, it is when you start thinking about the task of carrying that out, of doing the organizing for social change that the difficulties arise.

To some extent, I will talk about state or national or international issues, because in San Francisco we consider ourselves a very international city. But obviously my expertise is local, so mostly I will focus on San Francisco.

In terms of thinking about progressive social change, first it is important to try and get a state of the progressive community or some sort of analysis of the lay of the land. One way to do that is just to put up a quick strengths and weaknesses chart.

Currently one of the strengths of progressives in San Francisco is our community work. In cities like San Francisco—across the country and definitely here—there are great folks in communities who may or may not call themselves progressives, but who are doing basically the progressive work of making sure that the mental

health clinics are opened and staffed and that the basic safety net is available. And there are folks who are active on environmental or environmental justice issues and trying to get wins for communities to improve the air or the water, and other environmental conditions. There are also folks who are performing child care services in our communities and who are watching after our seniors. Our strength in the progressive community comes from community-minded people that are taking care of the things that need to be watched after in their communities.

We have built on that, issue by issue with advocacy organizations. Certainly there are brand names. You think Sierra Club or League of Conservation Voters when it comes to environmental issues. And you think of the Children's Defense Fund on children's issues. And these issues have their either local affiliates or grassroots groups as well who are on their own doing the work. So you have issue by issue things that are built up, that are part of the progressive building blocks.

Another one of our strengths is the tactics that progressives use. The tactic of direct action is clearly a strength, especially if you look at this local international connection of San Francisco being one of the epicenters of the antiwar effort.

In a very dark time in this country when we went to an unjust and, I think, illegal war in Iraq, I actually was not in San Francisco. I was visiting my parents in the state of Virginia, which is not a place to be in terms of progressive politics. I was able to watch on CNN this pocket of resistance here in San Francisco, and that served as a beacon of light. So I do think that the tactics of progressives are strong—the community service, the direct action, and the issue advocacy.

With that said there is probably a greater or equal amount of weaknesses that we have. Clearly, if you have been involved in doing progressive organizing, one of the first obstacles you encounter is resourcing. Resourcing—money—how much do you need to be able to keep the office open? Are you able to hire staff or organizers? Do you have enough resources to get your message out?

Another weakness of progressives, especially here in San Francisco, is making the connections from one progressive issue to another progressive issue. This is directly related to our strength of issue-based advocacy, but it is certainly a weakness when you have labor and community that are not always united, and it is always a struggle to get labor and community together.

You have folks who are homeless advocates who are not indifferent to an environmental issue, but who are not coming out to speak out from a solidarity point of view because they are busy

doing what they have to do on their issue.

Interestingly enough, I think that the third weakness of the progressive community in San Francisco is our organizing efforts. It is related to resourcing directly and it is related to making the connections. When it comes to organizing multiple issues, I think back to when I was in college when I always talked about the interconnectedness of the issues. For some reason, when later in life I am involved in politics in San Francisco, very rarely do I talk about the interconnectedness of the issues.

Our organizing efforts in San Francisco need to build a progressive coalition where folks who are more interested in environmental issues than in children's issues, would still come out to speak out for progressive children's issues and vice-versa. That does not quite exist yet, although I know that there are some efforts underway right now to make that happen.

A fourth weakness, with the exception of some district supervisor elections, is elections. And clearly, that is the case on the national level. We are not even close in terms of electing progressives, or many progressives, into the federal government.

It is true on the state level, and it is true when it comes to the mayor of San Francisco. Keep in mind that the last three mayors of San Francisco are Frank Jordan; Willy Brown, who we thought might have been progressive, and probably was progressive when he was in Sacramento but—I think history will indicate—was not a progressive mayor of San Francisco; and, currently, Gavin Newsome, who has done some good things in his first year in office, especially gay marriage and coming out in favor of the hotel workers in the labor conflict, but is not really a progressive mayor. Oftentimes candidates who are more progressive end up losing the race. The answer to progressive social change and getting more progressives elected is doing a better job organizing.

MS. MEDEA BENJAMIN: I look at other countries around the world where I see many social movements having such a big impact and gaining the presidency, making major changes in social policies. And you see a number of common things.

One, they have progressive political parties that have some real strength and that do enter in coalitions with smaller parties. It would be as if we had a Democratic Party that really acted like an opposition party, instead of a Democratic Party that seems like the Republican-lite. So that is the big problem.

You also see that you have unions that are militant unions. Looking at the union strength, consider the unions in some of the countries in Europe—they are not any larger than they are in the United States, but they are militant. They will go out in the street.

They will take over the offices of their representatives until they get what they want.

There is much more of a sense of entitlement. That is something that we have lost in this country. We lack these coalitions that we need to build. I would say at this point, the coalitions we need to build are between the progressive wing of the Democratic Party with the Greens, with the Independents, with those who agree with us in general about our issues.

I often scratch my head post election about all this angst about what we stand for. I know what I stand for. I do not feel that it is so hard to know what we stand for. You could read the U.N. Charter—that is what we stand for. There are a lot of good documents out there that say people should have the right to healthcare and a living wage and a decent education and we should respect international law.

I think what we want is out there. The problem is building coalitions, and that is why we end up working on this issue-by-issue level. So let me go down to some of the issues, to talk about some campaigns that I think have been somewhat successful.

For example, I have been involved in the campaigns around sweat shops, which are really, really exciting campaigns, because everybody can look at their clothes and look at the label and see where the clothes come from and start questioning how they were made. This began in the 1990s in a big way. It took off in the student population and it became an issue that the press started to pick up on. And we brought workers from other countries to come and tell their stories.

You had a kind of synergy going that shamed a lot of the corporations. One of the other important elements was the lawyers who worked with us who started suing the companies. It is always great to have the kind of orchestration of strategies that includes a legal aspect.

We worked with a law firm that sued 24 different retailers for what we called indentured servitude in their factories. We ended up settling. What are some of the concrete things you get in settling? In that case, we actually got money to give to workers who were not paid their real wages.

What did we get in the sweatshop movement in general? I think we cleaned up around the edges, so that the living conditions are somewhat better. The workers are in dormitories, and they have clean water now. Oftentimes, we forced companies to pay workers for the extra hours they worked.

But we have to understand that with so many of the jobs moving to China right now, we have not really accomplished what we wanted, which was to have workers who produce our goods to

get a fair wage.

You look at a similar kind of campaign we had around coffee, pushing the idea of fair trade coffee. It was interesting in the case of Starbucks. We, as Global Exchange, and the groups that we work with who do direct action, had acquired—post World Trade Organization shutdown in Seattle—a reputation that when we focused on a company, that company should worry about it.

And Starbucks, as we were organizing a campaign and putting out our press releases that we had 50 groups around the country who were going to start protesting in front of Starbucks stores, immediately flew down to our offices in San Francisco to start discussing how they could begin to have fair trade coffee as part of their line.

What did we want? We wanted them to carry all fair trade coffee. What did we get? They said they would carry 5 percent fair trade coffee. What did they actually do? One percent.

So you never quite get what you want and you never quite know when to stop fighting because as both of our speakers have said so far, we never have the money that we need to keep these fights going. Of course, the companies know that well. So how long can you keep going?

I want to switch quickly to the issues post-9/11, which are the issues around first, the invasion of Afghanistan and then, Iraq. One of the things that we tried to do was get out the issue of how we can in good conscience say that we are trying to avenge the lives of all the innocent people who were killed on 9/11 by killing all sorts of innocent people in other countries. It was a very difficult thing to get out, because the media in this country really, even more so after 9/11, has given in to the government line, and, in the case post-9/11, the Pentagon line. So it has been very hard to get the stories of civilian casualties out into the media.

Some of the things that we have done to try to get that story out: take people who have lost their loved ones on 9/11 to Afghanistan with us to highlight the issue of civilian casualties there. We just recently, this January, took a group of parents, whose sons were soldiers that were killed in Iraq, to take humanitarian aid to the people of Fallujah after the U.S. military literally destroyed that entire town of 300,000 people.

These have been some tactics that we have used to try to get out the issue of civilian casualties. They have obviously not been successful in stopping the war, but they have been successful in building up the anti-war movement. Some of the things that we are trying to do now to build that movement include: one, looking at the issue of the cost of war; two, in terms of human lives, getting the parents who have lost their sons to say that they do not want any

other parent to go through what they have gone through; and three, having veterans who are coming back be the lead voices on this issue.

We are focusing on the cost of war financially. Most recently, last weekend, we picked the example in Salinas, California, where the entire public library system is supposed to shut down and we organized a really wonderful 24-hour read in where we started at one o'clock in the afternoon and read straight through the night until the next day in front of the Cesar Chavez Library.

We had Dolores Huerta come and join us. We had actors from Hollywood, like Mike Farrell from MASH and Hector Alizondo. We just got a call today from Bette Midler saying, "I heard about that. I want to do something."

But most important were the community people from Salinas, the young people who stayed with us all night long and read in the middle of the night, and were so excited that there was such a focus on their community. They have decided that they want to take, and they are taking, two bus loads of young people from Salinas to the capital on Tuesday to read in front of the office of Arnold Schwarzenegger to say, "Arnold, our community has paid \$83 million so far for the war in Iraq and we do not have \$3 million to keep our libraries open? Something is terribly wrong with that."

Lastly, another campaign that we want to get started, which our lovely Board of Supervisors helped us on, is one that focuses on the National Guard, and organizing state by state to say the National Guard was created to support and protect communities at home not to be sent off to fight in overseas wars. Our first effort in this in California was getting a resolution passed at the Board of Supervisors, calling on the governor to bring the National Guard home.

The problem in San Francisco is that it was too easy. We did not have a fight, and so we could not mobilize people. But now that it passed in San Francisco, we are going to be taking it all over the state to get those kinds of resolutions passed and bring that to the steps of the capital.

So these are some of what we are working on in terms of building up an anti-war movement. I will just close by saying that while this is a time where the progressive movement has been constantly losing battles, and certainly we lost a big one on November 2, 2004, what we do during this time of retreating and regrouping is important.

It is all about coalition building. We have to stop the in-fighting that we do and we have to get over that and really think about how are we going to build the big tent where everybody who does agree on basic things, like healthcare for all, like treatment with dignity to

all people in this country and in the world, can come together and work together. Thank you.

MR. BRAD SELIGMAN: How many folks here are lawyers or law students? Almost as many as the progressives. Okay. We have a wildly misguided sense of our importance of the world, us lawyers and law students. I want to talk a little bit about how misguided we have been and how we could get better guided and go back to really an older concept of us as lawyers.

Shauna asked the question initially, what is the goal in bringing litigations or movements and the like? It is all the same goal. The goal is to make effective change on the ground; to make lives better for people. If you are involved in litigation, your goal hopefully is to change corporate behavior so the work lives of the workers are improved.

If you accept that as your goal, then the question is how do you get that goal and what makes it? From when I was a young lawyer to when I was an older lawyer, a concept of a lawyer grew up, which is the lawyers as the masters of the universe: we know what is right, we can do it all, and it is going to happen in that courtroom. It is going to happen in that courtroom.

To some extent, we were aided by the fact that during the years this happened, there were years of a relatively progressive judiciary and a lot of idealism about some laws that had been passed. But here we are today and what happened? How come the entire universe did not change?

The model of lawyering that I think has any chance of being successful today is the oldest model of lawyering among the civil rights movement, going back to Thurgood Marshall and folks involved in the civil rights struggle, in which the lawyer had a much different role.

We are nothing more than tools. We are craftsmen, we are professionals, but basically we are a tool that is used as part of the movement. If we do our job well, we will help that movement go forward. If we do it badly, we will not. But we are not the movement. It is a huge mistake that we make when we believe that, and there are some good examples of that.

You can win, you can win a case, be the best damn lawyer in the world and win the case and make absolutely no difference in the outside world. Or better yet, or worse yet, the next day, the forces you defeated in that case go around and pass a law and undo your case. That also happens.

Winning does not necessarily mean winning the lawsuit. You can also lose the lawsuit and accomplish a tremendous amount. Losing does not necessarily mean the judgment that happens in that

court. There are a number of great struggles in which the actual outcome was a loss.

I cannot tell you how many cases Martin Luther King lost. He kept going to jail. They could not get him out. He violated court orders, they threw him in jail. That did not affect the ultimate movement. The litigation served the movement in a very important way.

That is the model that we, at the Impact Fund and a number of other lawyers that I work with, are trying to follow because we are not going to win any other way.

Part of that is based on a broader notion. Law is not some abstract archetypical thing that exists outside of our universe. Laws do not sit up there as some platonic ideal. Also, judges certainly do not act that way; they are exceedingly responsive to our society and the forces that are in our society.

The old line, the Supreme Court, reads the newspaper, they read the polls, they look at what is going on out there, and even with life tenure, there is some effect.

Very recently we saw a classic example of how big that effect had been in the Ukraine. The Supreme Court of the Ukraine was a conservative body which everyone expected was going to support the existing regime. But then there was a mass movement after the election and people were out in the street, and those Supreme Court Justices saw what was going on outside their window.

I am sure the lawyering was brilliant. I am sure the lawyering was brilliant in the election challenge, but it was what was happening outside the windows of that courtroom that made the biggest difference. So I want to bring us down to a certain level of humility we all need to have.

Having said that, everyone has been talking about coalitions; the same is true. You cannot affect meaningful change using litigation as part of it unless you are part of a broader struggle and unless you are using every tool in your arsenal. It will not happen with only the law; you have got to work with a much broader range of things.

Let us mention a few things that are important. Obviously the first is being part of the broadest possible grassroots struggle you can. That grassroots struggle, and all these elements feed in on each other.

Let me give a couple of examples. I will use the example I am working on, the Wal-Mart case. The Wal-Mart case exists today for a lot of reasons, but in the very beginning one of the necessary things that had to happen for this case to get off the ground was alliances that were built among labor, women's organizations, and folks that were deeply concerned with the role Wal-Mart played.

Without those alliances, there would have been no plaintiffs and there would have been no lawsuit. As good a lawyer as anyone thinks they are, you cannot get anywhere without plaintiffs. And you cannot get anywhere without starting to build that fire out there. So that was number one—we had to develop those alliances.

Number two—lawsuits do not happen just in the courtroom. People kept saying, “Are you trying this case in the press?” No. The jury is in the courtroom, but I may win this case in the press in terms of making effective change by getting the story out there.

At every step of the way, we developed a way to get the story to the media, which means defining the issue in a way that is important. It means being effective in getting out there, it means developing relationships with the media. It means working with our allies who have access to media also.

And that has several of effects. First of all, it raises the profile of the whole issue. It gets a discussion going in the society about what the issues in this lawsuit are. It helps the lawsuit itself. It brings you witnesses, it brings you plaintiffs, it lights a fire under the defendant.

Wal-Mart is hilarious right now. I do not know if you have read about the PR offensive that they are on right now. They have reached this envious role where they cannot say anything anymore about any critics without a newspaper printing an article that starts with, “Beleaguered by lawsuits...Wal-Mart started their PR offensive.” That is how every article starts, and it has made an effect.

The litigation has an effect, but it is the whole package of things out there. The company feels very much on the defensive. They do a lot of things for PR, they actually are doing some things internally. Maybe not for the right reasons, but they are doing some things which may actually have some positive benefits for people.

There is also the feedback from the litigation. When we litigate, we litigate, we try to win. But we also try to develop tools that help the people in the struggle. For example, the discovery process: we have unearthed a wealth of data, unbelievable data. We have all the payroll data at Wal-Mart going back ten years. No one has ever had this kind of information.

This data is all publicly accessible and it has been used by local communities, by union struggles, all the rest. How could we do that? We refused to do what the defendants ask in every single case, which is seek a protective order to seal all the data, so as to not let anything public. If it is not public, you cannot work with your communities—you have to have the data that is out there. It all feeds on each other. We give things out, people put things in, and there is now a broader and broader coalition.

We are terribly unorganized. I wish we were more organized. We may get there someday. It is getting better, but we are not quite the efficiency experts of the world.

Let me step back and talk about some of the barriers just for a moment. We are a tool, and the other side knows that. So they want to limit the effectiveness of the tool. They want to put limitations on class actions, they want to limit the judges—obviously, as to the whole struggle about filibusters and the like up in Congress right now, the worse judges you have, the less it is relevant what the law says.

So we have challenges that are out there. But that is not the first time this has happened in our society. People do not recall that Thurgood Marshall and the Legal Defense Fund (LDF) brought the *Brown* case before there was a modern class action law. There was a very primitive form of class action even though the very doctrine did not exist. They were dealing with southern judges back then. You could pick the worst judge in San Francisco and that does not compare.

I recall this wonderful story back then about one of the breakthroughs in the 1960s when some of the modern rules happened, and there were some removal rules to get some of these terrible judges out.

There is a story about somebody showing up in front of one of these southern judges with a big pile of papers. The judge said, "What's this?" The person said, "Well, it's a removal petition." The judge said, "Well, what does that mean?" The person looked at him and said, "It means, drop dead."

The removal rules did not exist back then. Thurgood Marshall and the LDF and the lawyers struggling for decades and decades were operating under the most terrible terrain possible, but they made progress. It took a long time, but they made progress. If they could do it in those days with no laws, with terrible judges, with everything stacked against them, defending people who had no rights whatsoever, we should be able to continue making progress at this point.

Having given this great altruistic speech, I want to be realistic here. Unless you can stay in the business of doing this kind of work, you do not do anybody any good. We, progressive lawyers, sometimes carry with us, a real double standard. We accept on some implicit level the fact that those fancy corporate lawyers with their beautiful views are better lawyers than us, and therefore we devalue our own work.

What happens is at the end of the case when you win the case, or when it comes time to talk about attorney's fees, or about financing these cases, we get too embarrassed to talk about it.

Well, people who get too embarrassed to talk about it are not around to bring the next case. So being able to do financing and being able to bring these cases, whether it is as a private attorney or as a publicly-funded legal services lawyer, or otherwise, it is critically important. That is another way that the other side knows they can eliminate the use of this tool.

If money cannot be generated to pay for that litigation, which is incredibly expensive, that tool is out of the arsenal. So do not be shy in terms of dealing with attorney's fees, in terms of fighting very strongly for legal services funding, in terms of when there are large settlements, ensuring that the money that is leftover when you cannot find the class member, does not go back to the defendant, but goes to fund the organizations that bring these kinds of cases.

It is very important we do not forget that there is nothing dirty about this money. This is the cleanest money that is out there.

The cleanest money. Thank you.

DEAN MARSHALL: I have a question. We need this unifying value-laden message that brings together our coalitions, and my question is, if we had this message, do you think we could actually then help move the Democratic Party to be something that is in opposition to the Republican Party? If there was a message that was value-laden and brought together constituents, do you think that would help bring about a change in the way that the party often reacts, in a Republican-lite way?

MS. BENJAMIN: Well, our electoral system is in and of itself a huge obstacle for progressive politics. I started out giving the example of changes that occur in other countries, but there is something that happens in those other countries which is that they have proportional representation systems. So that if you are a party, say the Green Party, and you get ten percent of the votes, you get ten percent of the seats in your legislature. We have a winner-take-all system and that makes it very difficult to do coalition politics and to really build a progressive movement in this country.

Given that obstacle, progressives are put into a bind. When you see that the Democratic Party at the national level, even now despite having Howard Dean there, continues to constantly move in a rightward direction, you really have to wonder if you can change the Democratic Party.

I totally agree with you that we should challenge conservative Democrats. I see in this most progressive area of the country, Nancy Pelosi just voted \$82 billion for war when the vast majority of people in her district are against this war. We really have to hold our elected leaders accountable. But I do think that because it has

become so difficult to move the Democratic Party, many of us have left the Democratic Party. I do think that the coalition building is important, and I am part of a group called Progressive Democrats of America that has opened up itself to invite Greens to be part of it, to try to put forward progressive Democrats to also be endorsing Greens when there is a good race but there is not a progressive Democrat and a Green running against each other. It is that kind of coalition building that is the answer to moving the Democratic Party.

MR. DALY: I just think that the political party dialogue is different in San Francisco than it is in Sacramento and Washington. In many respects, the Republican-Democrat debate is skewed left a good bit within the Democratic Party in San Francisco.

Speaking as a Democrat who is Green friendly, I think I was the first elected official to endorse Matt Gonzalez for mayor. He is a former President of the Board of Supervisors with a high profile; he made a high profile jump from the Democratic Party to the Green Party in his initial run-off election for the Board of Supervisors.

Matt Gonzalez, on that rainy November day a little over a year ago, got almost one-half of the Democratic vote in San Francisco, despite being outspent ten to one by the current mayor's campaign operation in that election. With Al Gore showing up a couple of days before the election to come in and try to buttress the Newsome campaign, which was supposed to be a walk-away, a little insurgent candidate with not a huge amount of money, who was a Green Party member, was able to go out and make it a very, very close race. Gonzalez actually won the vote total on Election Day, but he lost pretty badly in the previous vote by mail effort, where money and campaign operations sophistication can turn around a vote.

So things are a little bit different in San Francisco and I think that this insurgent Green Party candidate, supported by nearly half of the Democrats in San Francisco, clearly got the interest of the national Democratic Party. They sent their national leaders here to go into the wrong thing, in my opinion—they had to go and make the guy who actually made a donation to the Republican National Committee the mayor of San Francisco.

MS. BENJAMIN: I want to leave us on a positive note because I think a lot of people are active organizing and mobilizing. The coalitions will form and the Bush Administration will come down. Thank you.

DEAN MARSHALL: Thank you.

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