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Using the law to advance social justice

Thinking outside the boundaries of a trial may help to bring about true social reform.



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Lawyers determined to change society are redefining the ways they think about their work, and using tools that go well beyond the traditional legal skills involved in litigation and statute interpretation.

"We have to think outside the boundaries of a trial about who our clients are and what we're trying to achieve," said Dan Abrahamson, Director of Legal Affairs for the Drug Policy Alliance in Berkeley. The Drug Policy Alliance promotes alternatives to the war on drugs.

Abrahamson cited the example of a group of public defenders and criminal-defense lawyers in Seattle who realized that achieving systemic change would require more than individual representation. "They realized that people arrested and prosecuted for drug crimes were disproportionately African-American, and that most were arrested in two zip code neighborhoods in Seattle," he said.

"So they re-conceptualized their clients as an entire community rather than as individuals, and they developed a coalition to gather the data they needed to bring a class-action lawsuit to change police practices," he continued. The attorneys worked in concert with graduate students to gather and analyze information about drug use, arrest rates and prosecution. The data they collected showed that although drug use was roughly equivalent across race and class, the police focused enforcement on poor African-American communities.

In addition to broadening their perspective, the lawyers also redefined their goal to encompass more than a victory in the courtroom. "They held public hearings in the community to present their evidence and to get community buy-in that the police had to be held accountable, and they published their results and used the press to educate the public," said Abrahamson. "They also broadened their coalition to involve more stakeholders. They brought in the Washington State and King County Medical Associations to talk about the impact of the drug policy, and the Bar Association of Seattle took up the issue and began writing white papers that supported the need for reform.

"A simple court victory could have been fleeting without the community support to hold the police department accountable. Here the lawyers used litigation as a vehicle for community organizing that led to systemic change. They were able to take dispersed community frustration, channel it, and give it a productive outlet."

Working in partnership

Working in partnership with community members to realize social reform has become a popular strategy among public interest lawyers. Eric Cohen, Executive Director of the Immigrant Legal Resource Center in San Francisco, has made training lay advocates a central part of his work to encourage immigrants to vote.

"New citizens often come from countries where their vote didn't count, or where voters were intimidated. We have an immigrant voting project in the Central Valley that involves community outreach and education to teach people that their votes matter – especially in rural areas, where elections are often won by small margins," said Cohen. "We meet with community activists to train them to teach others about voting. We help them develop public speaking and outreach skills, and we give them flyers and DVDs they can use to persuade their colleagues and neighbors to register to vote.

"We conducted a training in Visalia for first-generation college students from farmworker families," Cohen added. "Afterwards, they developed a public

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service announcement where each student completed a sentence that began with 'I vote because…' It was very effective – they were able to take our training and use it in new ways."

Helping people create their own social change often requires a fundamental change in outlook from the way lawyers are trained. "Lawyers often work from the top down – they don't define their community or work with it, they don't take the time to assess needs," said Cohen.

Cohen believes his focus on community empowerment is having a greater impact than would be possible through direct representation. "I may not be able to change peoples' lives directly," Cohen explained, "but if I can train 200 lay advocates in the Central Valley, and each one of them persuades 20 people to vote, they can elect someone to the school board who is responsive to their needs.

Working collaboratively has proven effective not just in the community, but also in Cohen's workplace at the Immigrant Legal Resource Center, where staff members work on teams and exercise more autonomy than is typically found in hierarchical law offices. "Decisions take longer and are more thoroughly discussed, but the result is worth it," Cohen stated. "When people see how well collaborative decision-making works internally, they are more likely to practice it on the outside. Working this way produces less turnover, and that's important because it takes several years to get good at this work."

Working to combat racial bias

Working in close collaboration with others is a fundamental part of Kimberly Thomas Rapp's effort to combat unconscious racial bias in California schools with the California Teachers Association. Rapp is the Director of Law and Public Policy at the Equal Justice Society in San Francisco.

"We try to involve every member of the educational community to raise awareness, we go to schools and convene a series of learning communities," said Rapp. "We meet in small groups and create safe environments that allow people to explore what they don't know, and share what they think they know. We start by acknowledging our own individual biases as facilitators and participants. Every day is a chance to learn something new and to share it with others."

Rapp has also been working to educate the public about the impact of Proposition 209, a 1996 California ballot initiative that outlawed the use of affirmative action in public education, public employment, and public contracting. "The language of Prop 209 was misleading, and many voters didn't understand the impact it would have," Rapp pointed out. "We've been organizing coalitions to educate the public and the Legislature about what it's done via op-eds, town hall meetings, and workshops on college campuses. We also conduct polling and convene focus groups to understand how the public thinks about affirmative action: what it is, how it developed, and how it works as a tool for equal opportunity. We want to know whether the public perceives that equal opportunity exists, and gather suggestions for ways to achieve it that benefit everyone.

"I've taken a multi-disciplinary approach to my work. At the end of the day, it's important for all of us to understand the practical implications of our cases and our legislative battles. If bias is not always intentional, and if people can be unaware of their own bias, we need a legal strategy that can address it: a viable alternative to the 14th Amendment equal protection intent requirement.

"Even though we need legislative policies and grassroots movements, ultimately it's the laws that ensure rights and enable protection – we need to work on all fronts," concluded Rapp.

Progressive lawyering

Dan Abrahamson agrees that progressive lawyering requires a broad perspective that is often missing from traditional legal training. "Ineffective lawyers strike out on their own with single-minded vision that doesn't account for the many layers of law, politics and social organization that are at the root of the problem they're trying to address," Abrahamson stated.

Lawyers who work to effect social change must also learn to transform failure into victory. "A few years ago my organization teamed up with the American Civil Liberties Union to challenge student drug testing in schools – we thought it was a clear violation of the Fourth Amendment to impose suspicionless drug tests on students," recalled Abrahamson. "We found the perfect test case in Oklahoma and spent three years appealing it all the way to the Supreme Court, where we lost by one vote." (*Board of Education v. Earl* (2002) 536 U.S. 822.)

"In that defeat we realized we had an opportunity to create a community and student organizing effort to educate school districts, parents, and students about the dangers of drug testing," Abrahamson added. "We wrote articles and pamphlets and developed a rich Web site – we produced materials to help students and parents become their own lobbyists, and we built a national coalition that included pediatricians, psychologists, and educators.

"A win in the High Court would've been nice, but it would have shut down the conversation. This was better – we got people to think about drug policy in a sophisticated way that went beyond the issue of student drug testing to include the whole idea of criminalization and the right to privacy. Today there are more people studying drug policy in college – I know because they apply for internships to work with us," Abrahamson declared.

Readers interested in volunteering can find out more about the organizations mentioned in this column by visiting their Web sites: the Drug Policy Alliance Web site appears at www.drugpolicy.org, the Equal Justice Society site is www.equaljusticesociety.org, and the Immigrant Legal Resource Center's website can be found at www.ilrc.org.

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international nonprofit whose mission is to provide support to grassroots advocates worldwide working to persuade their nation to ratify and enforce the new United Nations disability rights treaty (more information is available at www.RatifyNow.org). She welcomes comments and ideas for future columns. Readers may reach her at mmagar@plaintiffmagazine.com.

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