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## Asian Law Journal Symposium on Labor and Immigration

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# Asian Law Journal

## Symposium on Labor and Immigration

Hina Shah<sup>†</sup>

I'm going to address the role of attorneys as organizers. Usually when you think about attorneys, you don't think about attorneys' roles as organizers or as part of the broader struggle of the community. Where I work, at the Asian Law Caucus, the two worlds really do meet: we try to fuse our litigation with being active outside the litigation to empower and organize immigrant workers. I'm going to talk about the framework we use at the Asian Law Caucus and how I specifically use it in the employment and labor project to empower immigrant workers.

There are basically four steps to empowerment in organizing immigrant workers. These are empowerment through education, through community organizing, through litigation, and through coalition building. All of these steps are intertwined; they are not separate things and you can't think about them productively in separate contexts. You do want them to depend on each other. We try to do all of them together and that's a hard task, but a productive one. Whenever you're going after an employer and advocating for immigrant workers, you try to use a multi-pronged approach. Lora Foo talked about it this morning: you've got to attack a problem from all sides instead of using the narrow focus that law school teaches you to think about, which stresses only litigation and legal solutions. At the Asian Law Caucus we really try to find a broad-based solution. But without thinking outside of that litigation/lawyer box, we are not really going to be able to empower or organize workers.

In empowering immigrant workers, education is one of the most basic needs we address. We strive to provide education on their legal rights, education on what they can do to advocate for themselves and for their fellow workers. Most immigrant workers come from countries that have poor labor laws. They come from countries where government agencies are not friends of the workers or friends of the poor. They are often accustomed to dealing with corruption. A lot of immigrant workers are afraid

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to come forward even to an organization like the Asian Law Caucus. So many times in our monthly clinic, workers leave because the first thing we ask them to do is fill out an intake form. Asking them to identify themselves is an incredibly intimidating and scary thing to do.

Overcoming this barrier is a key struggle for immigrant workers and for those of us in nonprofit employment and labor law. I can't do my job if I don't have workers to represent. But if workers don't know that what's happening at their workplace is illegal and that they're entitled to better treatment, they're not going to come forward and say, "I've got a problem at the workplace. What can I do?" So it's really important that even before they come to us, we go out into the community and make presentations at different organizations where workers may be, telling them about what their rights are.

The first thing in working with immigrant workers is to provide them with the basic tools for understanding what they can do for themselves. You have to teach them what their rights are so that even if you're not there, or the Asian Law Caucus isn't around in twenty years, they know what their rights are. And through that kind of education you can help them advocate for themselves. The reality is that organizations like the Asian Law Caucus, the Employment Law Center, and the ACLU can't take every case that comes through our doors. So there are a lot of workers who are not being represented by nonprofits and who have to be their own advocates.

In terms of education, bilingual material is the key. If you're ever working at an organization that claims to work for immigrant workers, yet only has information in English, you've got a problem. You cannot communicate with either monolingual or limited English speaking workers with materials that are only in English. At the Asian Law Caucus, not only do we have bilingual materials in Chinese, Vietnamese, and other Asian languages, but we also have translators, paralegals who can communicate directly with the workers and advocate for these workers in settings where there are no other translators. It's vital for workers to have access to information, and one of the ways to provide access is through bilingual staff and bilingual materials.

Another component of what we do is going out and speaking where the workers are. We go to community halls, churches, and worker centers to talk about workers' rights. A lot of workers and even attorneys don't know how the minimum wage law functions, or what the minimum wage is currently. For those of you who don't know, in California it's \$5.75. It's really important that when you go out, you provide that type of basic information.

Coupled with the education of immigrant workers is the education of the public. Without consumer awareness, and without consumer action, workers wouldn't have made a lot of the advances that we've heard Stacy

Kono and Lora Foo talk about. For example, consumer activism has been a key to advancement in the garment industry. So you've got to go out and take your message to the community. One of the things that we are doing currently is a community informational picket of a restaurant. Last November, we had eight workers come into the Asian Law Caucus, all from a restaurant called Ton Kiang in the outer Richmond district of San Francisco. All of the workers had minimum wage and overtime claims. When we sat down and calculated the wages, the total was over a hundred thousand dollars owed in back wages and overtime. This is not including interest, penalties or anything else. Only two of the workers who came to us were still working at the restaurant. And as soon as we helped these two workers file labor commission charges, they were terminated, within four days. One of the workers was specifically asked, "Are you part of this team that went and filed labor charges?" And when he answered "Yes," the owner said, "Don't come back."

Now what we've done is we've filed a lawsuit against the employer for back wages and also for wrongful termination against public policy. But the other thing that we're trying to do is to launch a parallel community awareness campaign against this restaurant. It's a very popular restaurant. Ten o'clock on Sunday morning it's packed for dim sum. It's been written up in the *San Francisco Chronicle* as one of the best dim sum restaurants. There are a lot of consumers who eat there and like that restaurant. And one of the things that we hope will be effective is to get out there and tell the consumers what the owner and the restaurant are doing in their treatment of workers. So we're launching our picket on Chinese New Year, February 16. We would really like to have all of you come out and support the workers. This is a unique case. We have eight workers who are not only very aware of their rights, but who are not afraid to be out in front of that restaurant in a picket line. A lot of times, immigrant workers are very scared, even if they are no longer working at a given business. If they are working in the same industry, they can be threatened, blackballed, and blacklisted. So it can be really difficult for them to come forward and say that they are going to take some action. This is a great case of eight workers who still work in the restaurant industry, who are publicly saying that what this restaurant is doing to us, and what other restaurants are doing to other workers, is unacceptable. They want and need support in taking this action. So it would be great if the community could really come out there and support them in the informational picket.

Consumer education is an incredibly powerful tool. There's been a lot of discussion about apathy among consumers. It's not apathy. People are just uninformed. They don't know what's going on or what they can do about it. But when you go out there and show consumers what's happening, they do take action and they can be an effective ally for immigrant workers in this country.

Aside from education, another aspect of what we do at the Asian Law Caucus is one that all of you attorneys or law students already know quite a bit about: litigation. When we pursue empowerment through litigation, we handle both individual representation and impact litigation, where you pick and choose the appropriate cases so that you can hopefully set a positive precedent or overturn a negative one. In our impact litigation, we try to pick issues where there's a dearth of caselaw or where we're trying to push the envelope further to protect immigrant workers. I'm not going to talk further about impact litigation because the morning panel really did a great job of showing how impact litigation not only empowers the one worker who files suit, but also creates a great precedent for advocating for immigrant workers' rights in the future.

In terms of representing individual clients, litigation on behalf of immigrant workers involves issues that attorneys in other fields may not encounter. What you really have to understand is the fear generated by the kind of environment that immigrant workers work in. Most workers, even those with legal immigration status, work under great fear of being retaliated against, or their families being retaliated against. In this country, we have maintained an "us against them" mentality toward immigrants, which has intensified in California in the last five years. If you are an immigrant worker, regardless of what your documentation is, you are automatically an "other." You are taking jobs away from "real Americans," whoever they may be. As a result of this atmosphere, immigrant workers are especially scared to call attention to themselves by saying, "I have a job where I am being mistreated, where the laws are not being applied to me fairly." So when you're working as an attorney for immigrant workers, one of the things you have to do before you go out and file a lawsuit is to sit down and talk to the worker, and really go over the possible consequences of filing a lawsuit or filing an administrative charge.

With undocumented workers you have an even greater responsibility. Bill Tamayo earlier said that you're committing malpractice if you're not asking what your client's immigration status is. Because it does matter. A case I worked on recently involved representing a restaurant worker in an administrative labor commission charge for his back wages. He had gotten legal immigration status three years earlier, but he told me that when he first started working for the employer, he didn't have the proper documentation, and he was worried about coming forward and filing the charge. As it turned out, the employer really used that against the worker. Right before we went to the hearing, the employer called the worker, without calling me first, and said, "Listen, you have this whole issue about how you first started working here, and I think you should just accept my settlement offer." And the settlement offer was an ungodly low amount. It was a lowball amount, where the worker was going to recover a lot more at the hearing if he went forward. Luckily, the worker called me first, rather than

accepting the offer, and said, "I'm really scared. I'm afraid this whole issue is going to reach the INS." It wasn't even an implicit threat. It was more like, "Take the settlement offer or some people are going to know about your prior work history."

For someone like me who doesn't practice immigration law, it was really up to me to go and get the necessary immigration knowledge, to make sure I knew what I was talking about. Then I could go back to the worker and talk it over with him, after telling him, "I cannot guarantee you that there aren't going to be issues, but it's a choice that you have to make." And that's something you always need to remember when you work with immigrant workers. For those who are undocumented, you can never guarantee that the threat or the reality of deportation will not be an issue. So it's ultimately up to the worker to say, "I'm going to go forward even with that threat in the background," or, "I'm not going to risk it at this point." As an attorney, it's really vital that you give your client all of the information he or she needs to reach a decision, and discuss the implications of pursuing a claim. Then it's time to let the client choose what to do.

Along with education, organizing, and litigation on behalf of immigrant workers, one more key goal of the Asian Law Caucus is coalition building. I think a lot of times lawyers forget that there are other people out there in the same struggle and that you are one participant in the broader civil rights struggle. I think as attorneys you must realize that when you're on a discussion panel or sitting in a coalition meeting, you are not the only answer. Litigation is a one powerful tool in the civil rights struggle, but non-lawyers have other tools that can be equally effective. The Caucus in its twenty-five year history has had a great deal of success in coalition building, working with groups like Asian Immigrant Women Advocates and other organizing groups out there.

I just wanted to share with you a coalition-building success story that we had at the Caucus recently, to show how working together outside of the litigation model, going out to community organizations, can create this collective energy where you're working from more than one angle to really push something forward. When I first started at the Caucus, a small group of Chinese immigrant workers came to our office to talk about their situation. This was a really unique case. All of them worked at home for an employer in Benecia, California, sewing dog toys and baby pillows. When we started talking to them and talking to some other organizations, we found a whole network that this company, Air Creations, was using to employ illegal home workers. They were basically "subcontracting" their work out to individual employees, so they didn't have to provide workspace or pay overtime, and getting away with it by calling the workers "independent contractors."

When we started looking into this case, we got a call from the Asian Pacific Environmental Network (APEN), which is based in the East Bay.

They told us that a lot of Laotians were coming to them and telling them that they were independent contractors working for this company, sewing at home as much as twenty hours a day trying to meet the production deadlines. Through the help of APEN, we were able to do some community education activities in the Laotian community and we ended up having three Laotian members join our lawsuit, along with the Chinese workers. The angle that we ended up taking in this case was not necessarily strictly a litigation angle, although we did file a lawsuit in Solano County. But we found that the company, Air Creations, was selling these baby pillows to another contractor, who would then sell them to Toys R Us. We had a big-name connection all of a sudden. The unique thing is that Toys R Us has their own internal code of conduct saying that they were only going to contract with people who pay decent wages and don't run sweatshops. They were also on the board of directors of a national SA8000 Code of Conduct for the Council on Economic Priorities. They had created this whole code of conduct saying manufacturers and retailers have a responsibility not to contract or subcontract with sweatshop contractors.

Here, the immediate contractor of Toys R Us was not running the sweatshop. It was the subcontractor who was employing these workers under "independent contractor" status, while setting all the standards for production: when they had to pick up, how they sell the finished product, and what the turnaround time was. Workers often worked twenty hours a day trying to meet the production quota. We received some help from Global Exchange, an organization in San Francisco that does a lot of community organizing around sweatshops. Global Exchange took us on as a project and did a great job of organizing groups and individuals into writing to Toys R Us, saying "Toys R Us, you're on this Code of Conduct panel, you have your own internal code of conduct, take a look at what's happening in one of your subcontractor's shops." Through that community organizing and through that community pressure, Toys R Us finally contacted us and said they'd take a look at it and talk to the subcontractor. They basically pushed the subcontractor to sit down at a table with us and show us all their books, to actually own up to what was owed to the workers. Through the roles that APEN, Global Exchange, and the Caucus played, we successfully resolved that case. Not only did the company pay the four workers that we represented, but entered into a settlement agreement with all thirty workers to compensate them as well.

I just want to end on that note, saying that when you take a broader approach, combining education, community organizing, litigation, and coalition building to empower and organize immigrant workers, there are some good success stories.