

7-1-2012

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Recommended Citation

Carlson, David R. (2012) "Multimodal Advocacy for Social Justice," *Seattle Journal for Social Justice*: Vol. 11 : Iss. 1 , Article 12.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol11/iss1/12>

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Multimodal Advocacy for Social Justice¹

David R. Carlson²

In a video interview with Professor Gordon Hirabayashi, during which he reflected on the advocacy in which he engaged during his life to address the injustice of the curfews and relocation of Americans of Japanese ancestry during World War II, he posed the question, “When does justice take place?” This is an especially important question for any advocate of social justice to consider because reaching our goal is not as simple as achieving justice through providing adequate due process and a voice to a single person in an individual legal proceeding. What we are talking about here is the more systemic concept of social justice. Professor Hirabayashi’s question, posed on behalf of Americans of Japanese ancestry, was first asked in 1942, and finally answered by the courts in 1986. Justice often

¹ This article originates in David Carlson’s February 2012 presentation at The 25th Anniversary of the *United States v. Hirabayashi Coram Nobis* Case: Its Meaning Then and Its Relevance Now, a conference hosted by Seattle University School of Law’s Fred T. Korematsu Center for Law and Equality.

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takes time. The extreme length of time it may take for a person or a people to realize social justice has been noted by many seeking systemic change. For example, nineteenth-century abolitionist Theodore Parker, twentieth-century civil rights leader Martin Luther King Jr., and twenty-first-century President Barack Obama, each pointed out that “the arc of the moral universe is long, but it bends toward justice.”³

These sentiments about the time it takes to achieve justice do not urge complacent patience. Rather, they highlight the amount of work that is required before the ultimate goal of lasting justice can be realized. To further highlight this concept in contemporary social justice lawyering, I will first discuss an example of a young reporter whose work inspired systemic justice where a politically powerful lawyer’s work failed. Then I will present two additional cases that I was initially unsuccessful in litigating, but that ultimately resulted in justice after a multimodal approach was used.

³ *All Things Considered: Theodore Parker and the “Moral Universe”* (NPR radio broadcast Sept. 2, 2010), <http://www.npr.org/templates/story/story.php?storyId=129609461>. Parker wrote:

I do not pretend to understand the moral universe. The arc is a long one. My eye reaches but little ways. I cannot calculate the curve and complete the figure by experience of sight. I can divine it by conscience. And from what I see I am sure it bends toward justice.

Id. King adapted that metaphor when he answered the question, “How long will it take to see social justice?” He said, “How long? Not long because the arc of the moral universe is long, but it bends toward justice. How long? Not long.” *Id.*; *Candidate Obama’s Sense Of Urgency*, CBS NEWS (Nov. 15, 2009), <http://www.cbsnews.com/stories/2007/02/09/60minutes/main2456335.shtml>. As a presidential candidate, Barack Obama told college students,

The arc of the moral universe is long, but it bends towards justice. It bends towards justice. . . . But here’s the thing, young people, it doesn’t bend on its own. It bends in that direction because you decide you’re gonna stand up to a war that should have never been waged. It bends because you decide that we need a healthcare system for all Americans.

Id.

I. THE POWER OF INDEPENDENT ADVOCACY

In 1972, Geraldo Rivera did some excellent investigative reporting about conditions at a New York institution called Willowbrook.⁴ At Willowbrook, there were individuals with intellectual disabilities who were lying naked on the floor, in their own feces, all day long.⁵ Staff did not have enough time to actually go through and help people who had difficulty swallowing and eating independently.⁶ Staff would shovel as much food as they could into each individual's mouth and move on to the next individual.⁷ This was all recorded on undercover cameras.⁸ Geraldo also snuck some of the residents out of the institution to interview them with the help of a doctor who worked there.⁹

After the footage was released, Congress finally recognized there was a problem with how such institutions were being operated across the country.¹⁰ Truthfully, the government was already aware of the conditions before Geraldo reported them¹¹—just as it was aware that it was wrong to implement curfews and detain Americans during World War II.¹² After wartime activities, advocacy and education work were necessary for justice to sink in with the general public, policy makers, and the courts, and it took more than just a few legally knowledgeable people to point it out. After wartime activities, advocacy and education work were necessary for justice

⁴ Geraldo Rivera, *Willowbrook: The Last Great Disgrace* (WABC-TV New York, 1972), available on *Unforgotten: Twenty Years After Willowbrook* (City Lights 2002).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Our History*, NAT'L DISABILITY RTS. NETWORK, <http://ndrn.org/en/about/about-ndrn/26-our-history.html> (last visited June 1, 2012).

¹¹ Rivera, *supra* note 4.

¹² *Hirabayashi v. United States*, 828 F.2d 591, 600–04 (9th Cir. 1987). US military publically claimed curfew and relocation were a military necessity while it, with the help of the US solicitor general, withheld the true reason for these decisions, which were based on racial and ethnic stereotypes and prejudices. *Id.*

to sink in with the general public, policy makers, and the courts, and it took more than just a few legally knowledgeable people to point it out.¹³ Similarly, several years before Geraldo's work on Willowbrook, Robert Kennedy went to the same institution, held a press conference at the front door, and said "this is a snake pit," but no one took action.¹⁴ Not until Geraldo went in and actually showed the general public and policymakers what was going on did Congress take action.¹⁵ The conversation changed when it was no longer just at the front door on which Robert Kennedy held his press conference years before, but instead moved passed the threshold and into the institution through the power of video. The world finally got to see what actually happened beyond that front door.

We must focus on how, as lawyers, we can help facilitate a deeper understanding of the need for justice—an understanding that goes beyond just pointing out legal violations. This is how we get to the next step, where we can create, sustain, and achieve systemic change. The story I just recounted resulted not only in redress of the specific injustice that Geraldo exposed, but also in the creation of an infrastructure to identify other injustices and to provide a means to address them.¹⁶ Congress mandated the

¹³ In 1942, Gordon Hirabayashi refused to follow the curfew and relocation orders of the US government because he thought the rules were unjust. He was convicted for failing to abide by the wartime orders and appealed his conviction all the way to the US Supreme Court, which upheld his conviction in 1943. In the 1987 *coram nobis* case, the Ninth Circuit discussed the historic significance of Professor Hirabayashi's case:

[It] never occupied an honored place in our history. In the ensuing four and a half decades, journalists and researchers have stocked library shelves with studies of the cases and surrounding events. These materials document historical judgments that the convictions were unjust. They demonstrate that there could have been no reasonable military assessment of an emergency at the time, that the orders were based upon racial stereotypes, and that the orders caused needless suffering and shame for thousands of American citizens.

Hirabayashi, 828 F.2d at 593 (internal footnotes omitted).

¹⁴ Rivera, *supra* note 4.

¹⁵ *Our History*, *supra* note 10.

¹⁶ 42 U.S.C. § 15001(b) (2000).

creation of an independent advocacy group in each state to make sure that injustices like those at Willowbrook would never happen again.¹⁷ In Washington State, this organization is Disability Rights Washington, where I work.¹⁸

How do we get our movements to achieve similar levels of results today? I think it takes a lot of coordination, and it takes more than just legal training, which tells you to think very linearly and syllogistically. Policymakers and the general public do not change their minds and actions because of an incredibly logical argument. To be truly persuasive, it is not enough to point out that if we have A and B, then we necessarily have C. This type of reasoning may not even work in a courtroom, as we saw in the initial cases dealing with curfews for, and relocation of, Americans of Japanese ancestry. The following pages present a couple of cases where the standard litigation model did not result in the desired outcome, but where other modes of advocacy needed to be implemented alongside litigation to achieve justice.

II. BOLSTERING THE LIMITATIONS OF COURT

A. *McClarty v. Totem Electric*

The Washington Law Against Discrimination (WLAD)¹⁹ is a state law that prevents discrimination against people with disabilities and a broad spectrum of other people falling into protected classes, including race, religion, national origin, sex, veteran status, and sexual orientation (a class to which Washington extended its antidiscrimination laws before almost all other states).²⁰ At the same time that the legislature was expanding the scope of the WLAD, the Washington Supreme Court, in *McClarty v. Totem*

¹⁷ 42 U.S.C. § 15043 (2004).

¹⁸ *Services & Eligibility*, DISABILITY RTS. WASH., <http://www.disabilityrightswa.org/about/services-eligibility> (last visited June 1, 2012).

¹⁹ WASH. REV. CODE § 49.60.010 *et seq.* (2007).

²⁰ WASH. REV. CODE § 49.60.030 (2007).

Electric, decided that it would contract the definition of disability under the WLAD.²¹

McClarty was a fairly typical employment discrimination case that worked its way up to the Washington Supreme Court.²² In considering what to do with the case, the Washington Supreme Court held that the definition of covered disabilities was too broad.²³ The court thought that the old definition, which protected any individual with a condition that was medically cognizable or diagnosable, was problematic.²⁴ The law said that an employer should not be allowed to fire an employee because it learned of a medical condition.²⁵ That seems straightforward, but the supreme court questioned the rule, asking, “what about people with receding hairlines?”²⁶ A doctor could say that a receding hairline is medically cognizable; a doctor can recognize it and diagnose it as a receding hairline. The court concluded, therefore, that it would be flooded with people suing for employment discrimination after being fired due to their receding hairlines. It was a specious argument.²⁷ Washington had protected people with disabilities from discrimination for three decades, and not a single case based on a receding hairline had ever been presented. Despite this fact, the Washington Supreme Court decided to narrow the definition of disability in the WLAD to make it conform with the federal Americans with Disabilities Act (ADA), which, at the time, included a much narrower definition.²⁸ The ADA definition did not cover disabilities that were episodic or conditions

²¹ *McClarty v. Totem Elec.*, 157 Wash. 2d 214, 226–30 (2006).

²² *See id.* at 217–31.

²³ *Id.* at 228.

²⁴ *Id.*

²⁵ *Id.* at 227–28,

²⁶ *Id.* at 227.

²⁷ *Id.* at 229–30.

²⁸ *Id.*; Michelle Parikh, *Burning the Candle at Both Ends, and There is Nothing Left for Proof*, 89 CORNELL L. REV. 721, 723 (2004) (while the ADA provides protection from discrimination to some people with disabilities, it does not protect all individuals with disabilities).

that could be ameliorated.²⁹ Under the ADA, many people with legitimate disabilities were not necessarily protected from discrimination.³⁰ This unprotected group included people with various physical and mental conditions.³¹

The Washington Supreme Court ruled on the issue of the definition of disability without any briefing or oral argument from the parties. Disability Rights Washington had not weighed in because it was not representing Mr. McClarty, and none of the parties knew that the supreme court was

²⁹ See Respondent's Memorandum in Support of Reconsideration, *McClarty v. Totem Elec.*, 157 Wash. 2d 214 (2006). Because of *Toyota Motor Mfg. Ky., Inc. v. Williams*, 534 U.S. 184 (2002) and *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999), the ADA definition was narrowed considerably to only those individuals with permanent disabilities that could not be ameliorated through medication or treatment. *Id.*

³⁰ *Id.*

³¹ As the Washington Employment Lawyer's Association's amicus brief in *McClarty* pointed out to the Washington Supreme Court, numerous conditions had been found at various times to not meet the definition of disability under the ADA. See *Albertsons, Inc. v. Kirkingburg*, 527 U.S. 555 (1999) (vision impairments); *Wong v. Univ. of Cal.*, 410 F.3d 1052, 1067 (9th Cir. 2005) (dyslexia and other learning disabilities); *Calef v. Gillette Co.*, 322 F.3d 75 (1st Cir. 2003) (attention deficit hyperactivity disorder); *Sheehan v. Gloucester*, 321 F.3d 21 (1st Cir. 2003) (hypertension); *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002) (diabetes); *Rinheimer v. Cemcolift, Inc.*, 292 F.3d 375 (3d Cir. 2002) (pneumonia); *Hooven-Lewis v. Caldera*, 249 F.3d 259 (4th Cir. 2001) (hand tremors); *Marinelli v. City of Erie*, 216 F.3d 354 (3d Cir. 2000) (shoulder, arm, and hand injuries); *Pack v. Kmart Corp.*, 166 F.3d 1300, 1305 (10th Cir. 1999) (depression); *Colwell v. Suffolk Cnty. Police Dep't*, 158 F.3d 635, 644 (2d Cir. 1998) (chronic back pain); *McKay v. Toyota Motor Mfg.*, 110 F.3d 369, 373 (6th Cir. 1997) (carpal tunnel syndrome); *Bridges v. Bossier*, 92 F.3d 329, 334 (5th Cir. 1996) (hemophilia); *Heilweil v. Mount Sinai Hosp.*, 32 F.3d 718, 724 (2d Cir. 1994), *cert. denied*, 513 U.S. 1147 (1995) (asthma); *Bolton v. Scrivener, Inc.*, 36 F.3d 939, 943-44 (10th Cir. 1994) (back and leg injuries); *Turner v. Sullivan Univ. Sys.*, 420 F. Supp. 2d 773, 784 (D. Ky. 2006) (cancer); *Ruhlmann v. Ulster Cnty.*, 234 F. Supp. 2d 140, 177 (N.D.N.Y. 2002) (bipolar disorder); *Sink v. Wal-Mart Stores, Inc.*, 147 F. Supp. 2d 1085, 1095 (D. Kan. 2001) (strokes); *Epstein v. Calvin-Miller Int'l, Inc.*, 100 F. Supp. 2d 222, 229 (S.D.N.Y. 2000) (holding that although heart conditions, including coronary artery disease, is not a disability under the ADA, heart disease was a disability under New York law, which has a definition similar to Washington's former definition); *Tedeschi v. Sysco Foods of Phila., Inc.*, 2000 WL 1281266 (E.D. Pa. 2000) (post-traumatic stress disorder); *Hazeldine v. Beverage Media Ltd.*, 954 F. Supp. 697, 705 (S.D.N.Y. 1997) (morbid obesity); *Graver v. Nat'l Eng'g Co.*, 1995 WL 443944 (N.D. Ill. July 25, 1995) (arthritis resulting in a severe limp); *Riblett v. Boeing Co.*, 1995 WL 580053 at 6 (D. Kan. 1995) (visuopraxis).

considering drastically narrowing the definition of disability. After the decision came down, a group of lawyers from the plaintiffs' bar, including Disability Rights Washington, tried to come up with solutions. We thought of filing a motion for reconsideration, accompanied by several amicus briefs, to describe the unintended consequences that would result from the Washington Supreme Court's decision. We thought that the court obviously did not intend for this to happen, that it must not have known what its decision would mean for broad groups of people with disabilities. Although a motion to reconsider is usually a long shot, we thought that if the court was ever going to reconsider its decision, it would be here.

Unfortunately, the briefing did not work. The supreme court let its decision narrowing the definition of disability stand. So what did we do? We did not throw our up hands and say, "that's just the way it is." Disability Rights Washington immediately contacted a number of community organizations and engaged in community advocacy. We did not just approach the usual suspects—those people who were already plugged into advocacy groups and knew about disability rights. We went to the King County Martin Luther King Day Celebration that happens every year. Before the annual march, they hold a great educational event designed to teach people about a variety of issues related to civil rights. We used this opportunity to show those attending that the "disability issue" was everyone's issue. Washington had always prided itself in having the broadest antidiscrimination protections of any state in the union, but we had now become one of the worst, alongside all of the other states that provided only minimum protection for people with disabilities as required by federal law. We got a lot of support from individuals and groups. A coalition of about fifty different advocacy organizations rallied behind this issue.

Disability Rights Washington also approached media outlets to inform even more people, like those who might not have self-identified as civil rights advocates, but who could still see the injustice of the Washington Supreme Court's decision. Disability Rights Washington and the

Washington State Human Rights Commission co-hosted a public forum to ensure that we would have a record to take to legislators to show them that Washingtonians did not want to limit the types of disabilities protected from discrimination.

It is important not to lose sight of the additional advocacy modalities that we, as lawyers, can use in addition to litigation. The legislators heard the community of people who gathered to support antidiscrimination protection for a greater number of people with disabilities. Six short months after the initial court ruling, the legislature passed a law clarifying that it wanted a very inclusive definition of disabilities, one that broadly protected against discrimination.³² What followed in the wake of *McClarty* demonstrates that even when a particular legal battle is lost, we can still move forward and affect change.

B. Not Guilty by Reason of Insanity

The limitations of courts came up again in the context of a case dealing with people who had been found not guilty by reason of insanity. The not guilty by reason of insanity defense is not used very often, and, when it is, the defense is usually only used by an individual who has done something really bad and is looking at a very long sentence.³³ Therefore, you have individuals whom a judge, or a jury of their peers, has determined did not have volitional control over their actions and should not be punished.³⁴ As

³² See WASH. REV. CODE § 49.60.040 (2007). The legislature found that the Washington Supreme Court, in its opinion in *McClarty v. Totem Electric*, failed to recognize that the law against discrimination affords to state residents protections that are wholly independent of those afforded by the federal ADA, and that the law against discrimination has provided such protections for many years prior to passage of the federal act. 2007 Wash. Legis. Serv. ch. 317, § 1.

³³ *A Guide to Mental Illness and the Criminal Justice System: A Systems Guide for Families and Consumers*, NAT'L ALLIANCE ON MENTAL ILLNESS 25, available at <http://www.nami.org/Content/NavigationMenu/NAMILand/CJguidetomentalillnessandcjsystem.pdf> (last visited July 27, 2012).

³⁴ See *Jones v. United States*, 463 U.S. 354, 363, 369 (1983).

a result, the judges or juries find such defendants not guilty.³⁵ Because of the mental illness that contributed to their actions, however, such defendants are committed to secure psychiatric hospitals to receive treatment until their mental illness is cured or they are no longer considered dangerous.³⁶

Coming to the conclusion that a person who admits to doing something especially heinous should receive treatment instead of punishment is just as difficult for jurors as it is for the general public because jurors *are* the general public. It is, therefore, a very high standard to prove to a jury of your peers that you should go get treatment instead of being punished. In Washington, about two hundred individuals have successfully used the not guilty by reason of insanity defense.³⁷ While courts have determined that these individuals should not be punished, they are still an easy group of people to pick on if you are a public policy individual, in either the executive branch or the legislative branch and you need a scapegoat for some problems. Unfortunately for them, some problems started to arise.

The problems started in late summer when an individual who had been receiving treatment at a state psychiatric hospital walked away from a supervised outing to a county fair.³⁸ More than twenty years before, he had been found not guilty of a murder by reason of insanity, and in the intervening decades, he had received extensive inpatient treatment, and had been released from the hospital to live in the community a couple of

³⁵ *Id.* at 363–64.

³⁶ *Foucha v. Louisiana*, 504 U.S. 71 (1992).

³⁷ Richard C. Veith et al., *State Psychiatric Hospital Safety Review Panel—Final Report 6* (2009), <http://www.dshs.wa.gov/pdf/EA/121509SafetyReview.pdf>. It should be noted that this interdisciplinary team was convened to come up with recommendations to address the perceived need for reforms to the treatment of patients who had been found not guilty by reason of insanity and nowhere in the report does the committee recommend moving the patients into prisons. *See id.*

³⁸ Shawn Vestal, 'Criminally Insane' Killer Escapes, SPOKESMAN-REV., Sept. 17, 2009, <http://www.spokesman.com/stories/2009/sep/17/police-searching-fairgrounds-escapee/>.

times.³⁹ He was in and out of the hospital periodically to get treatment.⁴⁰ Here, the individual had been living in the community just a couple months earlier. Walking away from a community outing is not the same thing as a highly dangerous individual, who is kept under lock and key, digging out of his cell and scaling razor-wire fences. If you are a journalist, though, how do you report on this relatively uneventful, unauthorized leave from supervision while at an outing to the county fair? You write, “‘Criminally Insane Killer’ Escapes.”⁴¹ And so the panic starts. The public becomes fearful that there is an “insane killer” roaming around the community, with no context about the fact that, although he had killed a person over two decades prior, just six months before the inflammatory headline was published he was living in an apartment on his own.

The individual turned himself in three days later,⁴² but damage had already been done. The fear and stigma around mental illness were now top of mind. Unfortunately, a couple of months later, four police officers were killed in Lakewood, WA, while drinking their morning coffee.⁴³ The individual who killed the officers was subsequently killed by police, so there was never really a full exploration of whether mental illness even contributed to the killing of the police officers.⁴⁴ It was assumed, however, by many—including the media—that the killer must have had a mental illness that contributed to his actions because he had engaged in some

³⁹ Vieth, *supra* note 37, at *i*.

⁴⁰ *Id.*

⁴¹ Vestal, *supra* note 38.

⁴² *Schizophrenic Killer Back at Eastern State*, KNDO/KNDU YAKIMA (2009), <http://www.kndo.com/Global/story.asp?S=11168833>.

⁴³ *4 Lakewood Officers Slain; Ex-Con Sought for Questioning*, SEATTLE TIMES, Nov. 29, 2009, http://seattletimes.nwsourc.com/html/localnews/2010382767_webfourdead29m.html.

⁴⁴ *Lakewood Police Shooting Suspect Killed by Officer in South Seattle Early Today*, SEATTLE TIMES, Dec. 1, 2009, http://seattletimes.nwsourc.com/html/localnews/2010393433_webarrest01m.html.

unusual behavior prior to an earlier arrest.⁴⁵ Those killings added to the stigma and negative impressions that the general public had about people with mental illness, and created the impression that people with mental illness were running rampant killing people. No reporting was done on the fact that the vast majority of people do not commit crimes and, similarly, the vast majority of the subset of people with mental illnesses also do not commit crimes.

The police killings occurred immediately before the legislative session opened. Although no one had been working on issues related to the defense of not guilty by reason of insanity for years, it became a top priority in the legislature that year. The legislature was going to do something about people who are not guilty by reason of insanity. It came up with a plan that allowed the secretary of the Department of Social and Health Services (DSHS), who runs the state hospitals in which patients who are found not guilty by reason of insanity are placed, to transfer such patients to prisons operated by the Department of Corrections.⁴⁶

Your average lawyer would ask how these people, who have not been found guilty, can be put in prison. This did not concern the legislature—it can just write down a law and it becomes so. Disability Rights Washington partnered with advocates for civil rights and individuals with disabilities, and we went to the legislature to inform it of the constitutional problems with punishing people after they have been found not guilty.

⁴⁵ *Documents Say Clemmons Had Bizarre Visions, Threatened Jail Workers*, KIROTV (Dec. 1, 2009), <http://www.kirotv.com/news/news/documents-say-clemmons-had-bizarre-visions-threate/nDRD6/>. The shooter had, however, been evaluated by a mental health professional prior to being released on bail and had been found to not have a mental illness. *Id.*; *Psych Report Found Clemmons Risk to Public Safety*, ASSOCIATED PRESS (Dec. 1, 2009), <http://www.komonews.com/news/local/78250182.html>.

⁴⁶ ESB 6610 § 2 (2010), available at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Passed%20Legislature/6610.PL.pdf>.

Despite this advocacy, the law passed. The same coalition went to the governor to ask her to veto the provision.⁴⁷ The governor had pushed for the adoption of the law, so she ignored the request for a veto. Instead, the governor held a press conference in Lakewood, WA, where she signed the bill surrounded by law enforcement.⁴⁸ We had let her know that if she signed this bill into law we would take legal action.⁴⁹ Therefore, the same day she signed it, Disability Rights Washington filed a lawsuit.⁵⁰ We knew that filing a lawsuit that quickly, before a single person had ever been moved from a hospital to a Department of Corrections facility, might be a problem because the court could find there was not yet a case or controversy since we did not know which individual patients would be moving. However, we knew all patients were at risk of being moved, and we did not want a single person transferred to prison.

Under this law, there is no due process for an individual who wants to challenge a move from a hospital to a prison.⁵¹ Since transfer to a prison is up to the sole discretion of the DSHS secretary, she could decide one morning that a particular patient was going to prison, and that patient would have no opportunity to stop his immediate transfer. We wanted to get in quick, get a preliminary injunction, and have the law ruled invalid on its face. We briefed a lot in that case. In just three months, before we got to the very first hearing, the docket consisted of over one hundred documents. We partnered with an international law firm, Skadden Arps; both their Boston

⁴⁷ Letter from Mark Stroh, Exec. Director, Disability Rights Wash.; Shankar Narayan, Legislative Director, American Civil Liberties Union–Washington; Christie Headman, Exec. Director, Washington Defender Association; Teresa Mathis, Executive Director, Washington Association of Criminal Defense Lawyers for Governor Chris Gregoire (March 17, 2010) (on file with author).

⁴⁸ Press Release, Office of the Governor, Gov. Gregoire Signs Legislation to Enhance Safety for Communities, Law Enforcement Officers (Mar. 31, 2010), *available at* <http://www.governor.wa.gov/news/news-view.asp?pressRelease=1467&newsType=1>.

⁴⁹ Letter, *supra* note 47.

⁵⁰ Moore v. Gregoire, No. CV-10-00088-EFS, 2010 WL 3222801 (E.D. Wash. Mar. 31, 2010).

⁵¹ WASH. REV. CODE § 10.77.091 (2010).

and New York offices worked with us. We also partnered with three different disability rights groups across the nation, each of which filed an amicus brief for the case.

However, as feared, the court ruled the case was not yet ripe.⁵² The court indicated from the bench that it understood the serious legal issues briefed by Plaintiffs, and if the DSHS secretary were to create a plan or otherwise take steps to implement the new law, we would have a lot more to talk about. But until we get to that point, the case is not yet ripe.

All was not lost, however, because while doing legislative, administrative, and litigation advocacy we had been hitting the media pretty hard with a television, radio, and print media campaign about how bad this law is.⁵³ We were actually finding receptive media outlets and positive public opinion, whereas, less than a year before, media outlets had been uniformly critical of our clients. We also still had a cadre of lawyers lined up to sue the state if it ever attempted to use the law. While the law remains on the books for a few more years until it sunsets in 2015,⁵⁴ the state has said it has no plans to use it.

III. CONCLUSION

As Professor Hirabayashi found, and these examples further illustrate, simply informing a court that your legal rights are being violated is often insufficient to redress injustice. He refused to accept that he should give up, even as he suffered a significant setback in the form of a criminal conviction. Decades passed before he was exonerated. The team of lawyers who ultimately got his criminal conviction overturned spent a lot of time developing their legal theories and crafting effective arguments. They also devoted time and resources to educating and engaging the community and

⁵² *Moore*, 2010 WL 3222801, at *2.

⁵³ *See Not Guilty By Reason Of Insanity: Balancing Public Safety With Disability Rights* (KUOW radio broadcast Mar. 13, 2010), <http://www.kuow.org/program.php?id=20216>.

⁵⁴ WASH. REV. CODE § 10.77.091(3).

employed a media strategy. Commitment over the long-term while using multimodal advocacy strategies is clearly transferable to any cause, and can be used in social justice lawyering engaged in today and into the future.