

PROFILES IN THE LAW

Over Four Decades, D. Michael Dale has Fought for Workers' Rights

A Labor of Love

By Ira Zarov



Photo by Doug Yarrow

Michael Dale at Northwest Workers' Justice Project's Celebration of Worker Justice, 2015.

If you Google “D. Michael Dale, Oregon lawyer,” the first result tells you that Dale won the Hans A. Linde Award in 2015. The honor, from the American Constitution Society for Law and Policy, recognizes “Oregonians who promote the values of human dignity, individual rights and liberties, genuine equality and access to justice,” and was based on Dale’s lifelong “efforts in protecting the rights of immigrant, low-wage and contingent workers.”

If you refine the search, you learn that Dale, the executive director of the Northwest Workers Justice Project, was presented the prestigious Kutak-Dodds Prize earlier this year at the gala dinner of the National Legal Aid and Defender Association in Washington, D.C. That award accepts nominations from across

the country and chooses recipients from among the foremost public-interest lawyers in the U.S. The announcement of the award reported that Dale was recognized “for more than 40 years of impactful litigation and advocacy that has significantly improved the lives of farmworkers and other low-wage workers across the nation.”

While the rest of the Google search has numerous other entries for Dale — references to legislative testimony, cases argued and organizations he has been involved with — the search will not describe the body of work that led to his state and national recognition.

Dale began his career in legal services in 1975 after graduating from law school at the University of California’s Boalt Hall. He entered Boalt Hall after

finishing his degree at University of Cincinnati, where he had been an engineering major before switching to philosophy in his junior year. Dale, a self-described “child of the ’60s,” explains that the radical switch in majors was influenced by events of the turbulent Vietnam War era and notes that both disciplines have proved useful to him as a lawyer. Engineering taught him something not taught in liberal arts curricula — that there are objective answers to many problems if one thinks rigorously and persistently enough — while philosophy taught him how important the gradients of language are and about the necessity to use language in precise ways to tease out slightly different concepts.

When he began at Boalt, a career in legal services wasn’t firmly in Dale’s mind. He had been student body president as a senior in a year that saw building occupations and, ultimately, an early end to the school year because of protests, and as he entered law school, he harbored a vague notion that he would enter electoral politics. But at Boalt Dale had two experiences that propelled him into his career in poverty law. First, he was exposed to the limitations that politicians faced regardless of the worthiness of their goals, specifically the need to make compromises to ensure reelection. And second, during a law school externship at Public Advocates in San Francisco, he worked with an inspirational lawyer who had formulated a theory that funding school districts on the basis of local property taxes was a denial of equal protection.

Working in his garage, the lawyer developed data showing that the funding of districts with high numbers of students of color was far lower than whiter districts, and that performance was also lower. The



Dale explains pending legislation at Oregon Coalition to Stop Wage Theft's 2015 advocacy day in Salem.

result was *Serrano v. Priest*, a landmark case establishing the principle of funding equalization. Discovering the power of the law — and the power of advocates who mastered the law — Dale recalls thinking, “I could do this. I would enjoy this.”

A Voice for Farmworkers

After law school, Dale received a prestigious Reginald Heber Smith Community Lawyer Fellowship that placed him with a legal services office in Danbury, Connecticut, where he worked on housing issues, civil rights issues and other traditional legal services cases. But Dale, “a westerner at heart,” was attracted by an advertisement for a managing attorney position in Ontario, Oregon. He knew that Oregon Legal Services was an inventive and ambitious program that would allow him to make good use of his advocacy tools, and, as a bonus, Ontario reminded him of his rural roots in the desert town of Alamogordo, New Mexico.

Dale recalls that practice in Ontario was both challenging and rewarding. It also had its entertaining moments. In a case that challenged a local hospital's failure to fulfill an obligation to provide free hospital services to low-income patients, an opposing counsel had been scheduled to come to Ontario for deposi-

tions. On the scheduled day and as the Ontario staff waited and waited for the attorney's arrival, they finally received a call from the lawyer. He had just landed in Ontario and couldn't find the hospital's address. Much to his chagrin, the attorney's secretary had routed him to Ontario, California.

Dale found Ontario to be a socially rich community. For entertainment, there was swing dancing at the Golden Palomino, drinks at Midget Mary's and, in the summer, staff volleyball games. More noteworthy, he met his wife, Seferina Deleon, in Ontario, and two of their three girls, Angelica and Liliana, were born there. Another daughter, Paloma, followed after the family moved to the Willamette Valley. She is now a third-year law student at Willamette University.

In Ontario and later as director of the Oregon Legal Services farmworker program, Dale established himself as a creative and effective advocate on behalf of migrant workers and low-income clients. Ron Byers, then the executive director of Oregon Legal Services recalls, “Michael was the right person to lead the farmworker program, fluent in Spanish, thoughtful and creative, with a proven litigation record and a reputation as being totally dedicated to his clients.”

Under his leadership, the farmworker program successfully litigated cases that had far-reaching impacts. For example, in *Bresgal v. Brock*, a case in which Dale was lead counsel, the 9th U.S. Circuit Court of Appeals ruled that the Migrant and Seasonal Agricultural Worker Protection Act covered forestry workers and entered a nationwide injunction requiring the U.S. Department of Labor to enforce the act with respect to forestry workers. *Rauda v. Oregon Roses* established the right of agricultural workers not covered by the National Labor Relations Act to sue for wrongful discharge for taking collective action. *Salazar v. Smith*, a class action challenging discrimination against Latinos and single female heads of households in a rural subsidized housing loan program, resulted in millions of dollars in additional funding for low-income rural households to purchase homes in Oregon.

Dale made full use of the range of his advocacy skills, including his understanding of the legislative process. Working with a coalition of farmworker and labor organizations, he was instrumental in proposing and passing legislation critical to protecting the rights of farmworkers. Among the program's legislative successes were bills that that ensured minimum standards for field sanitation facilities on Oregon farms; ensured the right of farmworkers to make complaints about working conditions without fear of retaliation; and, perhaps most importantly, granted rights of access to labor camps by visitors invited by camp residents and by publicly funded service providers, including legal services. The access rights were pivotal and came after several instances in which farmworker outreach workers needed law enforcement officers' protection while visiting farmworker labor camps, and several instances where Dale and the farmworker program worked with the U.S. Department of Justice to investigate peonage cases in Washington and Clackamas counties.

Influence Beyond Oregon

In 2002, legal services programs were still recovering from substantial cuts in federal funding and newly limited by aggressive restrictions prohibiting federally funded programs from utilizing a number of traditional legal remedies. Dale was faced with a choice: work within the new

limitations or find an alternate way to deliver legal services. He chose to leave the relative safety of the legal services community to start a nonprofit, the Northwest Workers' Justice Project.

Given all his considerations, Dale says the choice was relatively easy. His efforts as a legal services attorney with farmworkers in Ontario and as statewide migrant farmworker project director had convinced him that protecting workers' wages was key to protecting the quality of life of migrants and other low-wage workers. He knew from his work as the primary author of Oregon's seminal legal needs study, sponsored by the Oregon State Bar, the Oregon Supreme Court and the Office of the Governor, that only one in five eligible clients would receive representation from existing providers of legal services.

Dale also had observed the beginning of a sea change in the character of many low-wage jobs; migrant farmworkers were settling out and moving to jobs in nurseries and the construction industry, which meant that the migrant program could not serve that population. And to compound the challenges, the Legal Services Corporation's prohibitions and resource limitations would make it impossible for him to employ the broad range of advocacy tools necessary to protect low-wage workers. As he conceived its structure, the Northwest Workers' Justice Project would free him to use any advocacy tool he could conjure to improve the working conditions of Oregon workers.

Among friends and colleagues, Dale is known as an amateur magician who can pull quarters from behind people's ears and sometimes out of thin air. That skill might well have been in the back of his mind as he began NWJP. He admits that even though the decision to start the project "was a little crazy, I just trusted things would work out." Fifteen years later, he can afford to chuckle as he notes that his wife, Seferina, had serious concerns.

The workers justice project began with a fellowship from Echoing Green, which was attracted to the idea of a project that "would protect the rights of low-wage, immigrant and contingent workers in the Pacific Northwest by providing high-quality legal services and training." Once established, the project's activities

reflected Dale's commitment to a broad range of advocacy strategies that include litigation, legislation and support for labor organizing.

For example, Dale successfully represented the Northwest Treeplanters and Farmworkers United (PCUN) in its historic negotiations with agriculture over the future of collective bargaining in the state. Ramon Ramirez, the president of PCUN, calls Dale "a priceless resource to farmworkers throughout Oregon," and adds that, "Frankly, all the work that PCUN has done couldn't have been done without a legal strategy. Success happens when you combine a legal strategy and an organizing strategy. Michael helped provide the legal strategy."

NWJP's influence is national in scope and can be traced back to the tense politics during Newt Gingrich's 1996 efforts to defund legal services for farmworkers nationally. Dale was the community's conduit to Sen. Mark Hatfield, who held the powerful position of chair of the Senate Appropriations Committee. Dale's efforts helped preserve both dedicated funding for the farmworker program and funding for the national Legal Services Corporation. One national lobbyist was quoted as saying that without the Oregon law community's work and relationship with Sen. Hatfield, an Oregon Republican, there might not have been a national farmworker legal services program or even a national legal services program.

Currently, Dale and the NWJP are involved in a number of national projects, including inventing and driving the Low Wage Worker Legal Network, which numbers 450 advocates in 147 organizations and 33 private firms in 34 states, D.C. and Mexico.

Persistence and Creativity

The hallmarks of Dale's approach to providing legal services is to mentor new lawyers, build coalitions and approach issues from as many angles as possible with unmatched tenacity. Early in his career, U.S. District Judge Marco Hernandez was a farmworker attorney when Dale was the farmworker director. Judge Hernandez echoes a theme that underscores Dale's tenacity: "Michael has never lost an argument because he has never given

up on an argument. Even when I ruled against him, he did not lose the argument. I am not sure how that worked, I am just sure it is true."

Although Dale has been involved in advocacy for low-income workers for four decades, his celebrated tenacity and single-minded commitment to his work remains as strong as ever. Asked what he would be doing if he wasn't at NWJP, he jokingly replies, "I'd be a backcountry ranger at Yosemite." But then he backtracks, saying, "That isn't really true. I don't really know how to answer that. I'm doing exactly what I want to do. This is satisfying and fulfilling. It's been really fun too. Obviously, someday I will retire, but I don't see that in the near future."

National Employment Law Project Deputy Director Rebecca Smith has worked closely with Dale. With new problems for the project's clients arising regularly, she identifies Dale as one of the first people she goes to for new ideas. She also provides the definitive description of his qualities: "Michael embodies a combination of creative lawyering and a real understanding of workers' lives, and knows how to use all the tools in the box." She adds, "Some people have vision, some people can get things done. Michael can do both."

Dale recognizes that "NWJP needs to be an institution that is capable of moving into the future." He believes that's especially true given the current turmoil around immigration. He notes:

Hardly a week passes that we don't read something in the Spanish-language media about ICE picking up people at the courthouse. I am convinced that this is because ICE is following criminal dockets and not the usual civil litigant, but that point isn't made clear and the situation is generating fear. If we get to the point where people are afraid to redress legitimate issues through the courts, then we have lost a lot.

Ira Zarov is the former CEO of the OSB Professional Liability Fund (2000-14) and former executive director of Legal Aid Services of Oregon (1989-2000). He has reviewed approximately 200 books for Publishers Weekly in the past 10 years and hopes to expand his freelance writing.