

HOW MY PRACTICAL IMMIGRATION EXPERIENCES IMPACTED CLINICAL IMMIGRATION LAW: THE COLORADO EXPERIENCE AS AN EXAMPLE

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INTRODUCTION

In 2019 it is hard to imagine that there was a time that immigration, and thus immigration law, was a relatively unknown and unstudied area of law. President Trump's use of Executive Orders to rewrite immigration law and policy,¹ and the rise in nativist populism,² has impacted the focus, role, and understanding of immigration law in the United States today. Vitriol against "the other" is not a new concept, as it existed throughout the history of immigration in the United States,³ but the use of executive orders and the threats to allies who are deemed to be insufficiently deterring immigration to the United States does pose new challenges.⁴ Thanks to work that was built on the emergence of immigration-related doctrinal courses and clinical programs in law schools, lawyers have been better able to respond to the denials of due process, and fight for the rights of immigrants, refu-

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¹ See <https://www.whitehouse.gov/issues/immigration/>, (last visited July 27, 2019) containing over 20 webpages of press releases and actions regarding immigration.

² See R.D. Nordgren, Ph.D., *Age of Turmoil: Surging Nativist Populism and Its Possible Impact on Public Education*, <http://www.csueastbay.edu/el/files/docs/arriaza-2017-journal.pdf#page=8> (October, 2017) and Marcus Walker & Valentina Pop, *Europe's Nativist Swing Casts Shadow Over Establishment*, Wall St. J. July 5, 2018. Available at: <https://www.wsj.com/articles/eus-nativist-swing-casts-shadow-over-current-structures-future-1530806660>.

³ Kevin R. Johnson *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L. J. 1111, (1998). Available at: <http://www.repository.law.indiana.edu/ilj/vol73/iss4/2>.

⁴ See Priscilla Alvarez & Geneva Sands, *U.S. Signs Asylum Agreement with Guatemala* <https://www.cnn.com/2019/07/26/politics/guatemala-us-immigration/index.html> (July 26, 2019), noting that agreement was reached after President Trump threatened tariffs and restrictions on remittance fees.

gees, and asylees. This power derives from the development of lasting institutional programs that came into existence simultaneously with the emergence of clinical education in U.S. law schools. The practical experiences of clinicians expanded the ways in which immigration was introduced into the curriculum. Clinicians like me, understood that the legal issues affecting immigrants were not limited to immigration status. Addressing the needs of immigrants crossed doctrinal areas of law. Immigrants faced unique legal concerns in areas such as: employment law (fair wage, discrimination, and unemployment); domestic violence (as victims often forced to forego reporting); civil forfeiture (having property such as vehicles subject to confiscation if they were used to move immigrants), and criminal law (due to collateral consequences). Immigrants were also subject to regulation by the Immigration and Naturalization Act (INA),⁵ which governs admission to, and exclusion from the United States.

This article traces my initial experience as a young lawyer learning about and practicing immigration law and law for immigrants, and subsequently as a law professor in developing experiential opportunities that led students to create an institutional response to address the needs of immigrants in detention. I conclude with a brief commentary on how the history of experiential immigration and clinics in Colorado were not an isolated event. In fact, the legacy of clinics and clinical work continues today to assist students, professors, and community members in responding in concrete ways to the needs of immigrants. Moreover, the emergence of stand-alone organizations founded by former law students has enabled communities to quickly respond when immigration actions such as the “Muslim Ban,” are initiated.⁶

ACQUISITION OF IMMIGRATION LAW KNOWLEDGE AND PRACTICE

Prior to 1990, Immigration Law was not a subject at most U.S. law schools. Schools that offered courses focused on Refugee and Asylum Law,⁷ in large part due to the sweeping changes adopted in

⁵ The Immigration and Nationality Act (INA) is the primary authority for U.S. immigration law, enacted in 1952, codified at Title 8 United States Code.

⁶ See *Yale Law Clinic Secures Victory in Challenge to Refugee and Muslim Ban Executive Order*, (January 29, 2017), <https://law.yale.edu/yls-today/news/yale-law-clinic-secures-victory-challenge-refugee-and-muslim-ban-executive-order> (describing the victory of the Yale Law School’s Worker & Immigrant Rights Advocacy Clinic (WIRAC) in coalition with leading civil rights’ groups after they challenged Executive Order 13769, titled *Protecting the Nation from Foreign Terrorist Entry into the United States* (January 27, 2017); 82 Fed. Reg 8977–8982).

⁷ One of the earliest clinics I am aware of was the Harvard Immigration and Refugee Clinical Program (HIRC), in partnership with Greater Boston Legal Services (GBLS), founded in 1984 by Deborah Anker. See: https://www.immigrationadvocates.org/nonprofit/legaldirectory/organization.392944-Harvard_University

the Refugee Act of 1980.⁸

To understand how different the law was at the time, 8 C.F.R. was only 252 pages long compared to the 1138 pages in 2018.⁹ Immigration Advocacy organizations were in their infancy. For example, The National Immigrant Law Center (NILC) was established in 1979,¹⁰ and the American Bar Association (ABA) established *The Coordinating Committee of Immigration Law* in 1983.¹¹ Further, lawyers were unaware of the immigration consequences of crime, and had no obligation to learn about and inform clients of those consequences.¹² Additionally, very few lawyers knew anything about U.S. asylum and refugee law.

A. Utah Legal Services

Against this backdrop I started my first job as the Migrant Attorney for Utah Legal Services, Corp., (LSC), in 1982. I immediately learned that my job included 80 immigration cases. The immigration caseload consisted primarily of Central American asylum seekers but also contained other interesting cases where the client was an immigrant and therefore the case was within my purview.

In addition to learning that my job included this new, foreign area of law, on my first day I was also informed that the salary I would receive would be cut by 10%.¹³ The pay cut was the result of a war on the LSC, which was fueled by President Reagan's longstanding dissatisfaction with the California Legal Service's successful litigation against the state of California when he was governor.¹⁴

Law_School_Immigration_and_Refugee_Clinic (last visited July 8, 2019).

⁸ Public Law 96-212, 94 Stat 102 (signed March 18, 1980, effective on April 1, 1980). The law defined two objectives: first, to create a permanent and systematic procedure for the admission to the United States of refugees of special humanitarian concern to the U.S., and second, to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees. The law also brought the U.S. procedure into alignment with the United Nations definition of refugees.

⁹ See Title 8 Code of Federal Regulations, Revised as of January 1, 1982. In contrast the 2018 version, revised as of January 1, 2018 is 1138 pages (<https://www.govinfo.gov/content/pkg/CFR-2018-title8-vol1/pdf/CFR-2018-title8-vol1.pdf>) and the 1990 version was 461 pages.

¹⁰ https://www.nilc.org/about-us/what_we_do/ (last visited July 24,2019).

¹¹ https://www.americanbar.org/groups/public_interest/immigration/About/ (last visited July 18, 2019).

¹² It wasn't until 2010 in *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010), that the Supreme Court would find that criminal defense attorneys were constitutionally obligated to inform clients about the immigration consequences of criminal pleas.

¹³ This reduction in salary was in response to the 25% reduction in funding by Congress, in response to pressure from the White House.

¹⁴ See Alan Houseman & Linda E. Perle, *Securing Equal Justice for All A Brief History of Civil Legal Assistance in the United States*, 29 (Revised May 2018) https://www.clasp.org/sites/default/files/publications/2018/05/2018_securingequaljustice.pdf noting that: "The

Since Immigration Law was not even a subject in the law school, I explained to the supervising attorney that I knew nothing about immigration law. In response, the 12-volume *Immigration Law and Procedure* treatise,¹⁵ was promptly wheeled into my office. Additionally, I was given a 16-inch stack of onion skin¹⁶ updates that needed to be made to the treatise. It was in updating the treatise that I taught myself immigration law. The immersion into the various facets of how immigration affects people stayed with me throughout my career and became an important aspect of my clinical teaching. Through this early exposure I came to understand that immigration law and immigrant needs were not synonymous. One was a legal structure to navigate, the other was a status that impacted every aspect of an immigrant's life, and could affect legal proceedings that had nothing to do with immigration law.

As noted above, most of the cases that were part of the caseload I was handed involved Central American Refugees. Therefore, I focused on learning about asylum law and the conditions in Central America. Most cases were won through the application process and those that weren't provided an amazing opportunity for me as a brand-new lawyer to go to court and make a record.

There are two non-asylum cases that stand out from that time. The first involved a forfeiture case. The Immigration and Naturalization Service, (INS) seized a truck belonging to workers heading through Utah to the state of Washington. The INS officer told me that I didn't have a chance of reclaiming the truck because forfeiture procedures always favored the government. In the end, those officers failed to follow the proper procedures and I not only had the truck

Reagan Administration was openly hostile to the legal services program. Reagan initially sought LSC's complete elimination and proposed to replace it with law student clinical programs and a judiciary system funded through block grants. In response to pressure from the White House, Congress reduced funding for the Corporation by 25 percent, slashing the appropriation from \$321 million in FY 1981 to \$241 million in FY 1982."

¹⁵ CHARLES GORDON & HARRY N. ROSENFELD (1980). This treatise continues to be used today, having been authored by various pairs of immigration experts over the years: Charles Gordon (1905-1999); Harry N. Rosenfield; Gittel Gordon; Ellen Gittel Gordon; Stanley Mailman (co-author from 1985 to 2011); Stephen Yale-Loehr and Ronald Y. Wada. The treatise is now a 21-volume "bible" of immigration law - *Immigration Law & Procedure*, that has been cited in over 450 federal court decisions in cases from across the U.S. circuit courts of appeals, federal district courts, and the U.S. Supreme Court. The current authors are Stephen Yale-Loehr and Ron Wada.

¹⁶ According to *Bookbinding and the Conservation of Books A Dictionary of Descriptive Terminology*, Onion skin paper is: "durable lightweight paper that is thin and usually nearly transparent—so called because of its resemblance to the dry outer skin of an onion. It is used for making duplicate copies of typewritten material, permanent records where low bulk is important, and for airmail correspondence." See <http://cool.conservation-us.org/don/dt/dt2375.html> (last visited July 26, 2019).

returned, but I was able to change the venue for the immigration hearings which allowed the clients to go through the immigration process closer to home where witnesses could be present.

A second non-asylum case involved the receipt of unemployment insurance. In 1982, there were no bars to employment in the INA and the statute governing unemployment allowed receipt of benefits if an alien was residing in the U.S. “under color of law.” My client had filed papers with the consulate in Mexico prior to his unlawful entry. His application was under the jurisdiction of the INS in Salt Lake City. After entering the country, he approached the INS about the status of the case thus, making himself known to the government. In response the INS issued a voluntary departure order and simultaneously an order placing him under docket control.¹⁷

Subsequently, he had applied for and received unemployment benefits and the state sued him for a return of the benefits and fines. I argued that the INS’s knowledge of his presence and their failure to act to remove him placed him the country under color of law. The Utah Supreme Court agreed and determined that:

At the time he applied for unemployment benefits in 1981 and 1982, the INS knew he was in the United States (since he was under docket control), knew where he was living (forms and notices were sent to that address) and took no action to deport him or to act on his application for immigrant status. [Thus, his] residence was therefore under color of law because the INS knew of it and acquiesced in it by exercising its discretion not to enforce the law.¹⁸

I enjoyed working at LSC and learning about immigration, but in 1983 restrictions passed by Congress, in large part guided by President Ronald Reagan, further limited the use of LSC funds for the representation of aliens by explicitly prohibiting the representation of certain categories of aliens.¹⁹

I left Legal Services to become a prosecutor, and immigration law followed me. It followed first upon the passage of the Immigration Reform and Control Act (IRCA),²⁰ and subsequently by the expansion of grounds of removal and the heightened collateral consequences of criminal convictions on immigration status.

¹⁷ Docket Control is a mechanism for tracking the case status of potentially removable aliens. As such, it indicates an awareness of the alien’s presence. See <https://www.uscis.gov/tools/glossary/docket-control>.

¹⁸ See *Antillon v. Department of Employment Sec.*, 688 P.2d 455, 459 (Utah 1984).

¹⁹ See *supra* note 14, Houseman *et al* at 30.

²⁰ The Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stst.3359 (1986).

B. Community Based Immigration Assistance

Having been steeped in immigration law at LSC, and being one of a handful of attorneys in the state of Utah who had any experience in the area, I worked closely with community partners when IRCA was adopted. IRCA contained three main provisions: legalization, employer sanctions, and anti-discrimination.²¹ The legalization provisions were meant to bring undocumented workers “out of the shadows” by providing a path toward citizenship. Successful applicants were placed in a status as temporary legal residents with an opportunity to eventually adjust to permanent residents,²² and ultimately to citizens.²³

Under IRCA, two groups of immigrants were eligible for legalization. First, were aliens who had been unlawfully residing in the United States since before January 1, 1982 (pre-1982 immigrants),²⁴ and second, were aliens employed in seasonal agricultural work for a minimum of 90 days in the year prior to May, 1986 (SAWs).²⁵ Aware that LSC would not be able to assist clients, I worked with the Utah Legal Aid Society²⁶ to provide training to volunteers and attorneys who assisted qualified applicants. I also worked on a pro bono basis with the Catholic Diocese of Utah to establish and support their status as a Qualified Designated Entity (QDE) which could process legalization applications throughout the state. Through this experience I learned about the importance of relying on community-based legal services and advocacy programs to reach populations that needed legal assistance.

A second part of the legislation was to create a disincentive for illegal migration by repealing an exemption in 8 U.S.C. § 1324(a)(3) known as the Texas Proviso,²⁷ which excluded employers from the illegal harboring provisions of the statute. IRCA established and required that both employers and employees demonstrate the lawful ability to work on the I-9 form which is still in use today.²⁸ The final provisions in IRCA were anti-discrimination provisions which included a provision that was to automatically sunset employer sanc-

²¹ See Cecelia M. Espenoza, *The Illusory Provisions of Sanctions: The Immigration Reform and Control Act of 1986*, 8 GEO. IMMIGR. L.J. 343 (1994).

²² *Id.* at 359 and notes 139-141 documenting the failure of legalization to accomplish its goals.

²³ INA § 245(A)(a), 8 U.S.C. §1255a(a) (1988 & Supp. II 1990).

²⁴ Section 245A of the Immigration and Nationality Act (INA).

²⁵ Section 210A of the INA.

²⁶ The Legal Aid Society, a community trust-based program, had established an immigration practice when the LSC restrictions on immigration services were adopted.

²⁷ Espenoza, *supra* notes 21, 22 at 346.

²⁸ *Id.* at 361 note 165, listing the documents that can be used on the I-9 to establish employment authorization and identity.

tions if an increase in discrimination occurred with the adoption of the law. Despite a documented rise in discrimination including new forms of discrimination, sanctions were not eliminated.²⁹

C. Immigration Law and Crime Intersections

The Anti-Drug Abuse Act of 1986,³⁰ expanded the definition of drugs that could form the basis of deportation to include “any law or regulation of a State, the United States, or a foreign country relating to a controlled substance,” and required the imposition of detainers as well as the expeditious removal of those convicted of controlled substance violations.³¹ The Anti-Drug Abuse Act (ADAA) of 1988,³² introduced the classification of “aggravated felon” for non-citizens charged with three specific crimes: murder, drug trafficking, and illegal trafficking in firearms and destructive devices or the attempt or conspiracy to commit those crimes.³³ At the time, the provisions were only prospective.³⁴ The Immigration Act of 1990³⁵ added to the list of aggravated felonies lesser drug crimes and crimes of violence with terms of imprisonment of five years or more. It also made persons imprisoned for more than five years for aggravated felonies ineligible for the following relief: section 212(c) waivers of deportation; suspension of deportation; voluntary departure; asylum; and withholding of deportation.³⁶

The Immigration and Nationality Technical Corrections Act of 1994, further expanded the definition of aggravated felonies to include fraud, burglary, and theft.³⁷ The passage of the Anti-Terrorism and Effective Death Penalty Act (AEDPA),³⁸ and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),³⁹ in 1996 retroactively eliminated judicial review of some deportation orders,⁴⁰ ex-

²⁹ *Id.* at 381 notes 322-347 and accompanying text discussing the rise of IRCA related discrimination against U.S. citizen Hispanic and Asian communities.

³⁰ Pub. L. No. 100-570, Subtitle M, Narcotics Traffickers Deportation Act Sec. 1751, 100 Stat.3207 (signed Oct. 27 1986).

³¹ *Id.* at 47-48.

³² Pub. L. No. 100-690, 102 Stat. 4181 (eff. Nov. 18 1988).

³³ Pub. L. No. 100-690, §§7342, 7344(a), 102 Stat. at 4469-4471.

³⁴ See INA §241(a)(4)(B), 8 U.S.C. § 1251(a)(4)(B) (1988). Additionally, § 7347(c), 8 U.S.C. §§ 1105(a), 1252(a) (1994) provided that the aggravated felony deportation ground, only applied to noncitizens convicted on or after the date of its enactment (i.e., November 1, 1988).

³⁵ Pub. L. No. 101-649, 104 Stat. 4978, (eff. Nov.29, 1990).

³⁶ *Id.* at §§ 501 and 602, 5048 and 5077-80.

³⁷ Pub. L. No. 103-416, §222, 108 Stat. 4305, 4320-22 (eff. Oct. 25, 1994).

³⁸ Pub. L. No. 104-132, §440(e), 110 Stat. 1214, 1277-78 (eff. April 24, 1996).

³⁹ Pub.L. 104-208, 110 Stat. 3009-546 (eff. Sept. 30, 1996) (IIRIRA).

⁴⁰ IIRIRA § 306, 110 Stat. at 3009-607-12. However, the U.S. Supreme Court in *INS v. St. Cyr*, 553 U.S. 289,314 (2001) held that this provision did not repeal the federal courts'

panded which crimes made an immigrant eligible for deportation by reducing the sentence from five years to one year, reduced the monetary threshold for fraud, deceit, and tax crimes, required mandatory detention for many noncitizens, and criminalized illegal entry and re-entry.⁴¹

Through my immigration work I was aware of the consequences of criminal convictions as they related to immigration status and I used this knowledge to teach this information to defense attorneys and prosecutors. Knowing that many criminal attorneys were unaware of the consequences of a criminal conviction on the immigration status of defendants, I worked with the Utah Legal Defender Association and the Statewide Association of Prosecutors to provide training on which crimes would trigger deportation. By understanding the broader implications of a plea many alternatives could be, and were, considered. Contemporaneously, other states and the ABA, were imbedding the client's right to know immigration consequences into professional obligations.⁴²

II. CLINICAL EDUCATION IN COLORADO

Both the University of Denver (DU) and the University of Colorado (CU) have longstanding traditions in clinical education. The University of Denver has been providing clinical experiences for 115 years.⁴³ According to the school's website, Dean Lucius W. Hoyt opened a "legal aid dispensary" in 1904, to serve poor and underserved communities, and DU became the first law school in the country to offer law students academic credit for representing poor persons.⁴⁴ However, despite the rise in immigration law as a critical need, as of the 110th anniversary in 2014, DU did not have an in-house immigration clinic.⁴⁵

habeas jurisdiction under 28 U.S.C. §2241.

⁴¹ IIRIRA § 321(a), 110 Stat. at 3009-627-28.

⁴² An early case establishing this obligation in Colorado was *People v. Pozo*, 746 P.2d 523, 529 (1987) noting: "When defense counsel in a criminal case is aware that his client is an alien, he may reasonably be required to investigate relevant immigration law." See *People v. Soriano*, 194 Cal. App. 3d 1470, 240 Cal. Rptr. 328 (1987). "This duty stems not from a duty to advise specifically of deportation consequences, but rather from the more fundamental principle that attorneys must inform themselves of material legal principles that may significantly impact the particular circumstances of their clients."); See also John J. Francis, *Failure to Advise Non-Citizens of Immigration Consequences of Criminal Convictions: Should This Be Grounds to Withdraw a Guilty Plea?*, 36 U. MICH. J. L. REFORM 691 (2003). Available at: <https://repository.law.umich.edu/mjlr/vol36/iss4/2>.

⁴³ See <https://www.law.du.edu/documents/student-law-office-clinical-programs/AnniversaryCelebration.pdf> (last visited July, 18, 2019).

⁴⁴ <https://www.law.du.edu/student-law-office/clinic/about-us/student-law-office-history> (last visited July, 18, 2019).

⁴⁵ *Id.* (noting the existence of five clinics: including: criminal defense, civil litigation,

The University of Colorado's history of clinical education is also deep. According to an article written on the 40th anniversary of clinical education at CU, the clinic was formed in 1948.⁴⁶ The school's website notes that the Criminal Defense Clinic was the first clinic in the country. Interestingly, the anniversary article also notes that students in the clinics in 1988 were involved in representation for clients who were part of the Mariel Boatlift.⁴⁷

III. THE UNIVERSITY OF DENVER EXPERIENTIAL EXPERIENCES IN IMMIGRATION LAW DURING THE 1990s

It was against this background that I began teaching at the University of Denver during the 1990's. My experience was extremely important as Congress continued to criminalize immigration during this time period. Understanding the consequences allowed me to integrate immigration law into the DU Criminal Law clinic by teaching criminal clinic students about the immigration consequences of criminal convictions.

When I was hired to teach law at the University of Denver in 1990, I was part of the rapidly rising dual appointed professoriate. The University of Denver wanted to hire faculty with practical experience. I was assigned both doctrinal and clinical classes. My doctrinal classes included Evidence, Criminal Law, and Immigration Law and my clinical assignment was in the Criminal clinic. My passion to take law to the community and answer the needs of this underserved community was a fundamental force in my choice to work at a school that offered the ability to integrate practical experiences with classroom learning.

In light of the rise of immigration-related issues and the expansion of immigration detention facilities, located a few miles from the

civil rights, community economic development and environmental law.)

⁴⁶ Robert J. Dieter, *Legal Aid Clinic Marks 40th Anniversary*, (1988), located at: <https://lawweb.colorado.edu/law/clinics/legalaid/cu-legalaidclinic-history.pdf> (last visited July 8, 2019).

⁴⁷ "Between April and October of 1980, approximately 125,000 Cubans seeking refuge from Fidel Castro's regime packed into a total of 1,700 boats in Mariel Harbor, Cuba, and journeyed to southern Florida." <https://www.floridamemory.com/blog/2017/10/05/the-mari-el-boatlift-of-1980/> (last visited July 19, 2019); In the mid 80's and early 1990's advocates sought to obtain release for approximately 2,700 who were being held in indefinite detention. See <https://www.latimes.com/archives/la-xpm-1989-08-27-mn-1741-story.html> (last visited July 19, 2019); and in the 2005 U.S. Supreme Court case of *Clark v. Martinez*, 543 U.S. 371 (2005), the court found that indefinite detention of inadmissible immigrants during the deportation process was not allowed. The Court extended the findings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and stated that the government can detain aliens beyond a 90-day removal period if it is necessary for deportation. For example, if travel documents for the country where the alien is being removed to are being obtained the 90-day period can be extended. However, if deportation is unforeseeable then the immigrant must be released.

law school, it was clear to me that the University needed to develop an immigration clinic or, at the very least, clinical or experiential opportunities in immigration law. I lobbied the school to add an immigration clinic but was unsuccessful in obtaining a freestanding immigration clinic or in expanding the work of the criminal clinic to address the intersectional issues of crime and immigration beyond the overview information I provided each semester.⁴⁸

Nevertheless, in the larger legal community, there was consensus that there was a great need to obtain assistance and that hands-on experience in immigration law was a great gateway to elevate immigration law practice. Moreover, the need for pro bono assistance in the area of immigration was and is extreme because the Immigration and Nationality Act states that a person in removal proceedings, “shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”⁴⁹ Since immigration proceedings are not criminal in nature, the government is not required to provide free immigration lawyers.⁵⁰

A. *Development and Description of the Hands-On Immigration Offerings*

In an effort to expand clinical immigration experiences I met with community stakeholders and developed four outplacements and one direct supervision opportunity that were called internships. At the time that I was developing these opportunities, I became aware of the increased standards and developments of experiential education. The approach I took is consistent with the practices of the day, the constraints on such offerings, and the evolution of clinical education generally.⁵¹

As the supervisor of the immigration internships it was my job to identify the placements, then interview and place students in one of the internships, and award final credit.⁵² These options could only be

⁴⁸ Drawing upon the training I provided to the criminal bar in Utah, I offered CLE programs on the immigration consequences of criminal convictions through AILA, the Colorado Bar, and the Colorado Hispanic Bar. Additionally, students in the Criminal Clinic provided better counsel to clients because they had an understanding that a “good deal” was a very “bad deal” if the consequence of a plea was actually a ground for deportation.

⁴⁹ Immigration and Nationality Act (INA) § 292, 8 U.S.C. § 1362 (2018).

⁵⁰ *Orantes Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990) (finding that immigrants have a due process right to obtain counsel of their choice at their own expense).

⁵¹ See Sudeb Basu & J.P. “Sandy” Ogilvy, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 CLIN. L. REV. 1, 3 fn 2.

⁵² The description of each of these placements is located in notes from my tenure appli-

accessed by students who had first completed the basic immigration course. To obtain credit the students also had to submit monthly reports to me about the nature of the work they were doing and each student had an entrance and exit interview.

Initially, I acted as a supervisor for independent study with outside organizations.⁵³ I worked with: the local American Immigration Lawyers Association (AILA) chapter to identify willing attorneys; local agencies whose work was focused on immigration practice and advocacy; the local Immigration and Naturalization Service (INS) to offer experiences with the trial attorneys; and the Immigration Court to offer clerkships with the Judges. The direct supervision of the case work in each of these settings was carried out by attorneys who assigned the students to do research and handle at least one case. In this way these initial experiences were the field placements that preceded other experiential learning that would follow.⁵⁴

Contemporaneous notes describe the placements as follows:

- Private Attorneys affiliated with the American Immigration Lawyers Association

Private attorney placements are available with practitioners who emphasize immigration in their practice. Two main firms, Alterman and Kowalski, and the law offices of Robert Heiserman are currently accepting students. In exchange for having student interns each law office is committed to have the student engage in direct representation of a client.

- Agency Internships

Working with the attorneys and boards to ensure that there are attorneys on staff who can supervise students. Placements exist at three organizations: Catholic Immigration Services, Justice Immigration Services, and Colorado Rural/Refugee Services.

- Immigration and Naturalization Service Trial Attorneys

This placement allows students to view immigration work from the perspective of an INS trial attorney and provides appellate and trial experience.

cation (on file with the author). As I look back on the work that I was doing it would be more appropriate to call these placements externships because I farmed out the direct supervision to the attorneys who worked in the location of the assignments.

⁵³ This model is still used in immigration “clinics” offered today. *See e.g.*, descriptions of the following clinics: Boston College Law School; St John’s University Law School; Santa Clara University School of Law; University of California, Hastings College of Law; and University of Massachusetts School of Law-Dartmouth located at https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_pi_clinics/ (last updated July 18, 2018).

⁵⁴ *See* Law School Admission Council & Am. Bar Ass’n, *Aba-LSAC Official Guide To ABA-Approved Law Schools* 70 (2012), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2012_official_guide_for_web_authcheckdam.pdf noting that: “Field placements refer to those cases in which someone other than full-time faculty has primary responsibility to the client. . .” (last visited July 6, 2019).

- Immigration Court Clerkships

Offered in years where the immigration court does not have a full-time clerk, students act as clerks to the Executive Office of Immigration Review, Immigration Court.

B. Direct Representation

In addition to the field placements, under my direct supervision, students were offered the opportunity to provide direct representation to clients located at the Wackenhut Detention facility.⁵⁵ The direct representation internship differed from the others as it was modeled on the work that I did as a clinical professor. Representation was requested through referrals from the INS trial attorneys, the Thursday Night Bar intake, and immigration attorneys.

One of the most memorable cases, spanned several years and four sets of interns.⁵⁶ At the time we were able to obtain relief from removal for the client. Today his case would be a non-starter as he would be deemed an aggravated felon and barred from any type of relief.⁵⁷ The case began just before Christmas in 1992, when I received a call from one of the INS trial attorneys, describing a case she had encountered at the master calendar hearing that morning. The client was placed in exclusion proceedings, and she described him as an individual that had been brought to the United States as a child from Vietnam during the evacuation of Saigon. She believed that even though he had a serious conviction, his circumstances would benefit from representation. He had been transferred to the Denver detention facility from Indiana after pleading guilty but mentally ill and

⁵⁵ In 1990 immigration detention was serviced by Wackenhut Corrections Corporation (WCC) which was formed as a division of the Wackenhut Corporation (now a subsidiary of G4S Secure Solutions) in 1984. It was awarded a contract to house immigrants in Aurora, Colorado in 1986 and opened with an initial capacity of 150 in 1987. It was incorporated as a Wackenhut subsidiary in 1988. In July 1994, WCC became a separately traded public company. In 2003, WCC management raised funds to repurchase all common stock held by G4S, changing its name to the GEO Group, Inc. See <https://www.geogroup.com/FacilityDetail/FacilityID/31> (last visited July 27, 2019).

⁵⁶ The case was opened in the fall of 1992 and closed in the fall of 1996. The extended length of representation necessitated the assignment of many different students and presented problems that were discussed in Naomi R. Cahn & Norman G. Schneider, *The Next Best Thing: Transferred Clients in a Legal Clinic*, 36 CATH. U. L. REV. 367 (1987). Available at: <https://scholarship.law.edu/lawreview/vol36/iss2/6> Ultimately, the successful completion of the case was secured by my representation.

⁵⁷ The aggravated felony definition was amended by § 321(b) of the IRRIRA to make the terms of the expanded definition applicable to every qualifying conviction regardless of whether the conviction was entered before, on, or after September 30, 1996. Additionally, section 602 of the Immigration Act of 1990 has been interpreted as superseding the effective date restriction set forth in section 7344(b) of the ADAA of 1988. See *Gelman v. Ashcroft*, 72 F.3d 495 (2d Cir. 2004); *Lettman v. Reno*, 207 F3d 1386 (11th Cir. 2000); *Lewis v. INS*, 194 F3d 539 (4th Cir. 1999); *In re Truong*, 22 I.& N. Dec. 1090 (BIA 1999).

completing five-years of a ten-year sentence for burglary, robbery while armed, and confinement with a deadly weapon. Since he was in exclusion proceedings he was not charged as an aggravated felon but was charged with committing a crime of moral turpitude.⁵⁸ After an initial intake, the first intern was able to locate his biological mother who posted a bond for his release.

Through discovery, the student attorney determined that his mother was married to the U.S. Serviceman who helped her and her two sons escape. They were all paroled into the United States as refugees. His stepfather precluded any of them from adjusting their status by withholding their I-94 forms, which documented entry as paroled conditional entry. The U.S.-citizen stepfather obtained custody of the boys in a divorce and was misinformed by the Texas judge that he could have a Texas birth certificate issued. He never attempted to do so, nor did he adjust their status with the INS. Upon his death, the I-94 forms were recovered from a safe deposit box and his mother obtained legal residency and became a citizen.

Our client indicated that he was sexually abused by the stepfather and escaped by joining the military. During the course of representation, we also learned that he had suffered a severe head injury as a result of a bike accident when he was a child. He had not graduated high school when he left his father.

Over the course of representation several strategies were pursued. Initially, he submitted an application for asylum, before the immigration judge, which was denied, based on a finding that his criminal convictions constituted particularly serious crimes that barred him from asylum.⁵⁹ The second student assigned to his case filed an appeal to the Board of Immigration Appeals, challenging the retroactive application of the bar and asserting that the guilty but mentally ill

⁵⁸ The criminal grounds of inadmissibility applicable to exclusion proceedings do not include aggravated felonies. Instead, INA § 212(a)(2) lists the following criminal grounds: Any person is inadmissible who (1) was convicted of or admits to committing a “crime of moral turpitude” or a controlled substance violation; (2) was convicted of two or more offenses of any type and received aggregate sentences of five or more years; (3) trafficked or assisted in the trafficking of controlled substances, or knowingly benefitted from a spouse or parent’s trafficking activities; (4) is coming to the U.S. to engage in prostitution or commercialized vice; (5) previously departed the U.S. as a condition of receiving immunity from prosecution for a serious crime committed in the U.S.; (6) engaged in severe violations of religious freedoms as an official in a foreign government; (7) has engaged in trafficking in persons or knowingly benefitted from a spouse or parent’s trafficking; or (8) has engaged in money laundering or is coming to the U.S. to launder money.

⁵⁹ 8 C.F.R. 208.14; 243(h)(2)(B) and 208.16(c)(ii) mandated a denial of asylum and withholding, if the applicant “having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community.” According to the decision, the prohibition applied retroactively even where a conviction preceded the enactment of the bar.

plea was not a conviction for immigration purposes.

Simultaneously, while the appeal was pending, a third student and I reviewed the facts of the case and determined that since the client was seeking admission, his mother could file a new I-130, family visa petition, and he could apply for a 601 waiver of inadmissibility and thus become a Legal Permanent Resident (LPR).⁶⁰ The waiver was based on hardship to his U.S. citizen and LPR family members and an exercise of discretion by the INS District Director who balanced the favorable and unfavorable factors in the case.

The client's favorable factors included the ties he had to his family and a demonstration that his time in prison had resulted in rehabilitation. The client acknowledged and took responsibility for his crime. He also explained that incarceration had provided an opportunity to change his life. While incarcerated he completed his GED, obtained certification as a barber and attended classes offered through an extension program with the local college. He also attended counseling to address the depression which led to his criminal act. Post release, he volunteered in the community, returned inappropriately issued ATM money (\$100.00) to a bank, and made a one-thousand-dollar donation to a youth program from proceeds of an accident in which he had been a victim.

Meanwhile, I was working with the San Francisco Immigration office since they had determined that our client's brother was eligible for admission as a refugee in a RE6 status. This provision was part of an Immigration and Naturalization Service (INS) policy that applied to all entrants fleeing Vietnam. To obtain his status after gathering all of the factors in favor of discretion and a waiver, a fourth student and I filed for adjustment both *nunc pro tunc* as a refugee and as an immediate relative. The relief sought, admission and adjustment, were granted. He received his status as a family-based legal permanent resident. However, the client has never been able to naturalize, since even though he was given a waiver and granted relief, the ever-expanding definitions relating to aggravated felonies, and their retroactive application, create a risk that new grounds of removal would be charged against him should he seek naturalization.

C. *"Know Your Rights" Presentations and the Birth of the Rocky Mountain Immigrant Advocacy Network*

As the nascent offerings in experiential immigration practice grew, and relationships in the community expanded, so did the deten-

⁶⁰ The waiver was available under 8 C.F.R. §212.7 (1990).

tion facilities in Colorado.⁶¹ A new detention space that expanded the number of detained individuals was opened and a new population with unmet legal needs emerged. In response, University of Denver (DU) students developed an intake internship. Students interviewed detainees to determine if they had a case that could be referred to volunteer attorneys. While the internship provided a valuable service, standing alone it was insufficient to justify clinic or intern credit because the students were not utilizing any legal skills, and they were not representing clients. However, as a result of the work done by the students, the local American Immigration Lawyers Association (AILA) chapter suggested a partnership, between AILA, DU, and the University of Colorado (CU). I represented DU as the doctrinal immigration professor and Hiroshi Motomura represented CU. Ari Weitzhandler represented AILA. Students and recent graduates also joined the group and an immigration coordinating committee was formed.

The committee met monthly with interns and developed continuing legal education programs as a way to train and recruit volunteer attorneys who had worked with the program as students. One of the most enduring aspects of this work was the creation of “Know Your Rights” presentations. The genesis of these presentations had been the initial intake internship but the crafting of the presentations was a major endeavor of the coordinating committee.

In 1997, I left DU to teach at St. Mary’s University School of Law in San Antonio, Texas. Upon my departure, DU’s involvement with the program was diminished but the program itself continued to grow. The coordinating committee eventually consisted of more lawyers than students even though a great number were recent graduates who had worked with the program as students. A core group of these lawyers would eventually establish the Rocky Mountain Immigrant Advocacy Network (RMIAN).

The RMIAN website notes that the founding of the organization dates back to the early 1990s. While the website notes that there was a group of volunteer attorneys who came together on an ad hoc basis to try to provide free attorneys for the most meritorious cases, the website fails to note that many of these attorneys either worked with the coordinating committee or had come to the project through the

⁶¹ When the facility opened in 1987 it housed 150, and in 1990 the facility housed 256. In the Fall of 1992, the facility expanded to 325 beds. In February of 2019 the facility was expanded by an additional 423 beds, *See* <https://www.denverpost.com/2019/02/06/aurora-ice-detention-center-additional-beds/> (last visited July 8, 2019), and on July 26, 2019, the website indicates that the capacity is 1,532. <https://www.geogroup.com/FacilityDetail/FacilityID/31>.

“Know Your Rights” presentations.

The website also notes that the attorneys encountered adults in detention, including long-time lawful permanent residents, asylum seekers, and others, forced to confront a hostile immigration court without the benefit of legal counsel and without the due process recognized as a cornerstone of our country’s justice system.⁶²

The group formed a Colorado nonprofit corporation with 501(c)(3) tax-exempt status on October 6, 2000.⁶³ Since 2003, RMIAN has had a daily presence at the immigration detention center in Aurora, Colorado. The fundamental work of the RMIAN, conducting “Know Your Rights” presentations, individual intakes, and training of and referrals to volunteer attorneys can be traced directly back to the early internship developed by students at the University of Denver and the activities developed by the coordinating committee.

As the program grew, staff was hired and services were expanded to include self-help workshops for detained individuals; direct legal representation for detained individuals unable to afford private counsel; appointment as counsel for detained individuals found incompetent by the Immigration Court through the National Qualified Representative Program; a Social Service Project that provides wrap-around, supportive social services to particularly vulnerable individuals in detention; assistance to pro se individuals; and a hotline for detained individuals and their family members to request assistance and information about immigration detention and removal proceedings.⁶⁴

RMIAN launched its Children’s Program in 2005 to provide free legal services to immigrant children and to disseminate information regarding immigration issues to professionals working with children in Colorado. The Children’s Program has become a tremendous resource to undocumented youth, their families, and the numerous service providers throughout Colorado who serve them.

In a manner of coming full circle, Sarah Plastino, who is a Senior Staff Attorney in the Detention Program of RMIAN, now teaches an Asylum Law and Advocacy Practicum at DU.

⁶² <https://www.rmian.org/about-us> (last visited July 18, 2019).

⁶³ Information obtained from the Colorado Secretary of State website: <https://www.sos.state.co.us/biz/> ID number 20001195249 (last visited July 18, 2019). The incorporator of the organization, Jeff Joseph, was one of my students. Original Board of Directors included, Laura Lichter, Patricia Medige, Hiroshi Motomura, Carol Lehman, Ellen Polsky and Ari Weitzhandler.

⁶⁴ <https://www.rmian.org/about-us> (last visited July 18, 2019.)

IV. IMMIGRATION CLINICS IN COLORADO

A. The University of Colorado

In 1995, Juliet Gilbert began to teach in the Civil Clinic at the University of Colorado (CU). She indicated that immigration removal defense was one of the types of cases students assigned to her section of the civil clinic handled. This addition to the offering happened because Ms. Gilbert had previously taught in the political asylum and immigration clinics at Southern Methodist University Law School in Dallas. As a result, she wanted CU students to be exposed to defensive asylum cases. According to Ms. Gilbert, she and one of her former students, Jami Vigil, did workshops on asylum. She also went to Frisco, Colorado to present a workshop she designed for Mauritians who were expelled to Senegal and fled to the US seeking asylum. Because the attendees did not speak English, she secured pro bono interpretations in Fulani and French.

A stand-alone CU Immigration clinic officially began to offer programs in 2003. According to Ms. Gilbert the clinic was launched with the support of Hiroshi Motomura, Rebecca French and then Dean Hal Bruff. The Clinic worked on asylum defensive applications before the Denver Immigration Court, the Board of Immigration Appeals, (BIA) and or appeals and petitions for review in the 10th Circuit. When David Getches became Dean, the CU students had an appeal before the Board that was granted oral argument. The dean approved funds to travel to Falls Church for the oral argument before a panel of the Board and the student representing the asylum seeker was able to personally appear before the Board. Unfortunately, the appeal was dismissed but it was a great experience for the student to argue before the Board.

Presently, under the umbrella of the Immigration and Citizenship Program, the school offers two distinct clinical experiences in immigration. The first is in the civil practice clinic under the direction of Professor Emeritus, Norman Aaronson in which students receive training in asylum law and Special Immigrant Juvenile Status (SIJS) cases.

The second clinic focuses on the intersection of crime and immigration. According to Associate Clinical Professor Violeta Chapin,

Law students in my Criminal & Immigration Defense Clinic work closely with noncitizen clients who are navigating a variety of different legal issues. We have defended clients in both state and federal court on criminal and immigration matters, and litigated affirmative petitions for Deferred Action for Childhood Arrivals (DACA) status, naturalization applications and motions to vacate criminal

convictions because of a lack of legal advice about immigration consequences.⁶⁵

B. *The University of Denver*

Despite the early adoption of clinical education at the University of Denver, and my attempts to launch an immigration clinic in the 1990s, the Immigration Law and Policy Clinic (ILPC), was not established until 2018. The clinic was not established through the faculty, but rather was a result of a concerted push by students to fund and add an immigration clinic. It was students who advocated to the Dean and Associate Dean for Student Affairs from 2013-2018 about the critical need to offer a stand-alone immigration clinic. Their persistence paid off and the ILPC exists.

According to the DU website, students enrolled in the semester-long Immigration Law and Policy Clinic will appear in immigration court representing indigent, detained clients in removal proceedings. Students are further informed that:

the Immigration Law and Policy Clinic requires a substantial time commitment. The clinic will be very intensive and you should expect to spend at least 25 hours per week working on client-related matters. This time commitment will vary somewhat with the ebb and flow of your client matters, and you may be required to devote considerable additional time as you prepare for significant events. In addition to the time spent serving your clients, you will spend at least four hours each week in class and at least five hours each week performing class-related work, preparation, supervision meetings with faculty, and other clinic assignments.⁶⁶

Professor Chris Lasch initially came to DU to teach in the Criminal Defense Clinic and his initial work draws on a history that integrates Criminal and Immigration Law. As a result, today's immigration students continue to provide consultations with student counsel in the Criminal Defense Clinic on the immigration consequences facing clients.

The intersectionality of crime and immigration is taught in the doctrinal classes as well, and the subject matter is now coined with the term "crimmigration." Professor César Cuauhtémoc García Hernández, publishes *crimmigration.com*, a blog about the convergence of criminal and immigration law and has published extensively on the subject.⁶⁷

⁶⁵ <https://www.colorado.edu/law/academics/areas-study/immigration-and-citizenship-law> (last visited July 8, 2019).

⁶⁶ See: <https://www.law.du.edu/student-law-office/clinical-programs/immigration-law-and-policy-clinic> (last visited July 8, 2019).

⁶⁷ See César Cuauhtémoc García Hernández, *Deconstructing Crimmigration*, 52 UNIV.

CONCLUSION

Contextualizing Colorado's Immigration Clinics history with the rest of the country, I looked at the 2007-2008 and 2016-2017 reports of the Center for the Study of Applied Legal Education.⁶⁸ Admittedly the response rate on the first report was very low, but in that first report only 5.3% of schools indicated that they had an Immigration Clinic and an additional 2.4% had an Asylum and Refugee Clinic. In contrast, with a much higher response rate, in 2016-17, 47% had Immigration Clinics and 16% had an Asylum and Refugee Clinic. Interestingly, none of the Immigration Clinics in Colorado were listed.

The American Bar Association's Directory of Law School Public Interest Programs, which was last updated on July 18, 2018, identifies 83 immigration related clinics.⁶⁹ The focus of the clinics are varied and while the majority (61) simply list the clinics as immigration or refugee and asylum law, twenty-two specifically identify intersectional topics such as: the Violence Against Women Act (VAWA), crimmigration, citizenship, workers rights, women and children, health care, human trafficking and organizational support for non-profits as areas of focus.

Reflecting on the twenty-five years since the Clinical Law Review was established and the history of immigration practice and clinical education in Colorado, I am reminded of the feelings I had as I updated the treatise on immigration law. At the time I wondered if I would ever understand all the aspects of this foreign area of law. The opaque onion skin paper reminds me of the fragility of those currently seeking refuge in the United States. I know that the rise in nativism and xenophobia is not new, because U.S. immigration policy began with targeting the Chinese through the 1882 Chinese Exclusion Act.⁷⁰ As I look back on my early career at LSC and the work I did in immigration and criminal law, I now see the direct correlation to those cases and the clinical teaching that followed. If I had not experienced so many aspects of the ways in which immigration status affects the lives of clients, I would not have understood how to translate the

CALIF. DAVIS L. REV. 197 (2018); U Denver Legal Studies Research Paper No. 18-38 (2019) (available at SSRN: <https://ssrn.com/abstract=3326202> or <http://dx.doi.org/10.2139/ssrn.3326202>); César Cuauhtémoc García Hernández, *Creating Crimmigration* (February 10, 2014), 2013 BYU L. REV. 1457; U Denver Legal Studies Research Paper No. 14-12, available at SSRN: <https://ssrn.com/abstract=2393662> or <http://dx.doi.org/10.2139/ssrn.2393662>.

⁶⁸ http://www.csale.org/files/Report_on_2016-17_CSALe_Survey.pdf (last visited July 8, 2019).

⁶⁹ https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_pi_clinics/ (last visited July 18, 2019).

⁷⁰ Act of May 6, 1882, ch. 126, 22 Stat. 58.

depth of the needs that clients have to students hungry for a practical experience.

The knowledge that the legal academy has embedded immigration law into stand-alone doctrinal areas and subjects like family law, criminal law and constitutional rights is a light in the midst of the chaos which surrounds immigrants and immigration today. The hope in the face of this reality is that several generations of law students have joined the ranks of immigration attorneys. Student have also become the drivers for change. I was excited to learn that it was through the advocacy of students that DU established an Immigration Clinic. The existence of organizations like RMIAN indicate that when seeds and knowledge are planted in law school, attorneys will use those tools to address the problems they encounter when they graduate. Today in Denver, Colorado RMIAN fights for rights and I am glad that the DU/CU and AILA chapter planted seeds for its success.