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Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory

Kevin R. Johnson

Amagda Perez

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Articles

CLINICAL LEGAL EDUCATION AND THE U.C. DAVIS IMMIGRATION LAW CLINIC: PUTTING THEORY INTO PRACTICE AND PRACTICE INTO THEORY

Kevin R. Johnson*

Amagda Pérez**

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* Associate Dean for Academic Affairs and Professor of Law, University of California at Davis School of Law. A.B., University of California at Berkeley; J.D., Harvard University. We are indebted to many people. Thanks to George A. Martínez for facilitating our participation in this symposium and to the *SMU Law Review* for inviting us to contribute. Comments on a draft of this Article by Jim Smith, Rex Perschbacher, Linda Kelly, Cecelia Espenosa, and George A. Martínez helped improve this Article and prevented many errors. Sushil Narayanan provided much-appreciated research and editorial assistance. Heather Evans, Meredith Linsky, and Julie Turner-Lloveras took time away from important activities to collect information for this Article. Roberta Hulit offered editorial assistance during the final stages of the publication process. Thanks to Deans Bruce A. Wolk and Rex Perschbacher for their financial and other support for this research and, more importantly, for the U.C. Davis Immigration Law Clinic.

** Supervising Attorney, University of California at Davis Immigration Law Clinic; Executive Director, California Rural Legal Assistance Foundation. B.A., J.D., University of California at Davis.

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As the twentieth century comes to a close, clinical legal education is deeply entrenched in law school curricula across the country.¹ The American Bar Association's MacCrate Report, which chastised the law schools for failing to teach practical lawyering skills,² sug-

1. See Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945, 954 (1991) ("Clinical education—novel in the 1970s—has become mainstreamed today."); see also Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 185 (1989) ("Over the last twenty years, clinical education has become a fixture in the law school curriculum. Few still debate the question whether some form of instruction in client-oriented lawyering is a legitimate academic function . . .") (footnote omitted). For the history surrounding the development of clinical legal education, see George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEG. EDUC. 162 (1974). See also Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187, 1187-91 (1992) (summarizing recent developments in clinical legal education).

2. See SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, July 1992) (known as MacCrate Report because chair of drafting committee was Robert MacCrate); see also Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEG. EDUC. 612, 613-15 (1984) (contrasting "skills" taught through traditional legal education and clinical legal education). The report has not gone without criticism. See, e.g., Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994) (criticizing MacCrate report from academic sympathetic to clinical education).

The debate over skills-training in the law schools is part of a larger dialogue about the future of legal education in the United States. See Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications*, 50 U. MIAMI L. REV. 707, 708 (1996). Some complain generally about the "disjunction between legal education and the legal profession." Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); see Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991) (analyzing failure of legal education to prepare students for practice of law).

gests that demand for clinical legal education will remain. The emphasis on clinical education, however, raises questions going to the core of the law school mission.³ What is the purpose of legal education? What skills can law schools teach economically and efficiently? What can law schools do to prepare attorneys for practice in the twenty-first century?⁴

This Article examines clinical legal education and its implications for subordinated communities. Critics contend that the prospects for achieving meaningful social change through law are deeply limited.⁵ Some go so far as to contend that reliance on the law reinforces the very subordination under attack.⁶ This argument suggests that only mass misery and frustration will result in the political action necessary for social change.⁷ In contrast, advocates defend providing legal assistance to the underprivileged, through clinical legal education or other means. They argue that it promotes incremental change that in the long run will improve society.⁸ Such representation also serves humanitarian functions by providing legal aid to people in need.⁹ This Article examines the relatively modest ques-

3. For consideration of some of these issues, see Gary Bellows, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973).

4. See, e.g., Symposium, *The 21st Century Lawyer: Is There a Gap to Be Narrowed?*, 69 WASH. L. REV. 505 (1994) (analyzing ability of law schools to train lawyers for twenty-first century).

5. See CRITICAL RACE THEORY: THE CUTTING EDGE 1 (Richard Delgado ed., 1995) ("Virtually all of Critical Race thought is marked by deep discontent with liberalism, a system of civil rights litigation and activism, faith in the legal system, and hope for progress . . ."). Some claim that some Critical Race theorists are unduly pessimistic on the prospect for change, see, e.g., Alan D. Freeman, *Race and Class: The Dilemma of Liberal Reform*, 90 YALE L.J. 1880 (1981) (book review), and may discourage persons from pursuing social change at all. See John A. Powell, *Racial Realism or Racial Despair?*, 24 CONN. L. REV. 533 (1992).

For an applied critique of liberal solutions to the problem of dilapidated Mexican-American communities along the U.S.-Mexico border known as *colonias*, see Richard Delgado, *Rodrigo's Twelfth Chronicle: The Problem of the Shanty*, 85 GEO. L.J. 667 (1997). See also George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994) (analyzing limits of litigation in achieving meaningful social change for Mexican-Americans in United States).

6. See Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978); see also Richard L. Abel, *Lawyers and the Power to Change*, 7 LAW & POL'Y 5, 9 (1985) ("[L]egal means of resolving problems should be avoided whenever possible, for they tend to reinforce the client's experience of powerlessness."); Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 742 ("Litigation may falsely raise in the community the expectation that appeal to 'the law' can somehow give it power. Thus, the community may put its energy into litigation instead of the much more difficult work of organizing itself.").

7. See Girardeau A. Spann, *Pure Politics*, 88 MICH. L. REV. 1971 (1990) (contending that racial minorities should focus on political process, not courts, in seeking social change).

8. See, e.g., JACK GREENBERG, *CRUSADERS IN THE COURTS* (1994); John Denvir, *Towards a Political Theory of Public Interest Litigation*, 54 N.C. L. REV. 1133 (1976).

9. Ironically, the Association of American Law Schools-American Bar Association Guidelines for Clinical Legal Education state that "[t]he primary purpose of clinical legal studies is to further the educational goals of the law school, rather than to provide service." ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASS'N COMM. ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, GUIDELINES FOR CLINICAL LEGAL EDUCATION

tion whether clinical legal education, often implemented in programs providing legal assistance to subordinated communities,¹⁰ does any good for those communities.

To consider the potential of clinical programs to promote social change, we scrutinize how, besides providing for the representation of individual clients, clinical legal education may inspire students to pursue public interest careers. Some tout clinical programs as a way to maintain and promote public interest commitment among students.¹¹ Importantly, clinics may expose law students to the stark inequalities in this country and how law interacts with—at times reinforcing—those inequalities.¹² People of color are disproportionately represented among those who suffer from a myriad of social problems. Poor minority women are over-represented on the welfare rolls.¹³ African-American and Latino men constitute a disproportionate percentage of the prison population.¹⁴ The U.S. immigration laws disparately impact noncitizens of color.¹⁵ Through a clinical experience, a student may see how our justice system directly, and often adversely, affects racial minorities.¹⁶ One would hope that, at a minimum, clinical legal education raises consciousness among students about the devastating influence of race and class on modern social life in the

14 (1980) (emphasis added). This directive presumably stems from the fear that clinics might compete for business with the private bar.

10. See Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 *How. L.J.* 31, 32 (1993) ("Clinical education has been inextricably tied to serving poor people. . . . [A] major stimulus for many programs that developed during the 1960s and early 1970s was the desire to serve the needs of the unrepresented, to sensitize students to their ethical and moral responsibilities to society, to train students in poverty law practice, and to give law schools a role in their communities.").

11. For consideration of clinical education from a somewhat similar vantage point, see Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 *CLEVELAND ST. L. REV.* 555 (1980).

12. Proponents of clinical legal education often contend that clinics expose students to the plight of the underprivileged. See, e.g., *Report of the Comm. on the Future of the In-House Clinic*, 42 *J. LEG. EDUC.* 508, 515 (1992). See generally Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 *CLINICAL L. REV.* 1 (1997) (analyzing clinical education's possibility for inculcating students with sense of justice, fairness, and morality).

13. See Naomi R. Cahn, *Representing Race Outside of Explicitly Racialized Contexts*, 95 *MICH. L. REV.* 965, 967 (1997) ("[E]ven though blacks do not constitute the majority of public welfare recipients, welfare has a disproportionate effect on the African-American community.") (citations omitted).

14. See generally JEROME G. MILLER, *SEARCH AND DESTROY: AFRICAN-AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM* (1996); Margaret E. Montoya, "Of Subtle Prejudices," *White Supremacy, and Affirmative Action: A Reply to Paul Butler*, 68 *U. COLO. L. REV.* 891, 923-26 (1997).

15. See Kevin R. Johnson, *The New Nativism: Something Old, Something New, Something Borrowed, Something Blue*, in *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* 165 (1997) [hereinafter *IMMIGRANTS OUT!*] (analyzing historically discrimination directed at immigrants of color and efforts to restrict their entry into United States).

16. See Leslie G. Espinoza, *Legal Narratives, Therapeutic Narrative: The Invisibility and Omnipresence of Race and Gender*, 95 *MICH. L. REV.* 901, 927-36 (1997) (contending that attorneys fail to recognize significance of race in representing clients and illustrating point through recounting experiences in law school clinical program).

United States.¹⁷

In considering these questions, we focus on the experiences of the Immigration Law Clinic at the University of California at Davis School of Law (the Clinic). The authors approach the question from different vantage points, one a supervising attorney in the Clinic and the other a tenured professor who serves as an informal Clinic advisor. Established in 1981, the Immigration Law Clinic was one of the first immigration law clinics at a law school in the United States.¹⁸ Its creation in the early 1980s was no small feat. Until recent years, few law schools offered a course in immigration law, and legal scholarship in the field for the most part simply did not exist.¹⁹ Since 1981, the Clinic has served over 300 client cases²⁰ and has been the home-away-from-home for nearly 400 students.

17. See Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993) (analyzing various identity issues raised in law school curriculum, including Stanford's immigration clinic); see also Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 NW. U.L. REV. 695 (1994) (analyzing through lens of civic republicanism issues of difference between clients, attorneys, and students in law school clinical setting); Philip G. Schrag, *Constructing a Clinic*, 3 CLINICAL L. REV. 175, 183-84 (1996) (discussing objective of many law school clinics "to create opportunities for students to think about their own social values").

18. A survey published in 1979 states that two schools at the time had clinics that handled immigration cases, U.C.L.A. and U.S.C. See COUNCIL ON LEGAL EDUC. FOR PROFESSIONAL RESPONSIBILITY, SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION 1978-79, at 1-20 (1979). Golden Gate University School of Law established the first law school clinic devoted exclusively to immigration around 1980. Columbia established a similar clinic at about the same time. Today, many law schools have programs that provide legal assistance to noncitizens with immigration-related problems, including American, Arizona, Boston College, Boston University, Brigham Young University, Brooklyn, City University of New York—Queens, Columbia, DePaul, Georgetown, George Washington, Golden Gate, Hamline, Harvard, Hastings, Houston, Iowa, John Marshall, Michigan, Minnesota, New York University, New York, Northwestern, Notre Dame, Seattle, Seton Hall, Stanford, St. Mary's, St. Thomas, Tulane, U.C. Berkeley (Boalt Hall), University of Washington, Widener, and Yale. Thanks to those on the Immigration Law Professors listserve who responded to our request for information about immigration clinical programs.

The U.C. Davis Immigration Law Clinic is one of the few clinics representing clients in removal cases involving criminal convictions (as well as in related state court habeas corpus actions) and noncitizens seeking to naturalize, in addition to asylum and related forms of relief from removal. See *infra* text accompanying notes 37-38 (explaining representation provided by the Clinic).

19. See Michael A. Olivas, *"Breaking the Law" on Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes*, 52 U. PITT. L. REV. 815, 833-34 (1991).

20. The Immigration Law Clinic opens a "client case" file for each client in removal proceedings. In cases in which the cases of the spouse and children are consolidated with that of the primary client, the Clinic creates one file for the entire family. Consequently, the 300-plus client cases do not fully reflect the number of noncitizens actually benefitting from Clinic representation.

Besides representing clients, clinical assistants provide "advice and counsel" to those who contact the Clinic by telephone with immigration questions or problems, but whose cases are not accepted. Clinical assistants research the caller's problem and provide a detailed analysis of the case, which might entail considerable legal research. Since 1988, the Clinic has provided advice and counsel to over 400 callers.

It is not certain whether the Clinic will be able to assist as many persons in the future. Recent changes in the immigration laws severely restrict the discretion of the immigration

The Immigration Law Clinic unquestionably has made a difference in the lives of clients, students, supervising attorneys, and, to a lesser extent, the community at large. However, as it processes cases with an impressive win-loss ratio, many new cases continue to come in the door. To make the Clinic's job all the more difficult, the troubles facing immigrants in this country have worsened considerably over time. Indeed, the 1990s saw the worst outburst of nativism²¹ and restrictionist legislation²² since early in the twentieth century.

Part I of this Article focuses on the experience of the Immigration Law Clinic. Part II analyzes how the Clinic fits into theories of lawyering to achieve social change.

I. THE U.C. DAVIS IMMIGRATION LAW CLINIC

Through the Immigration Law Clinic, students provide foreign citizens advice and counsel on a range of immigration questions. In so doing, students gain a better understanding of the daily problems, legal and otherwise, of poor and working class immigrants.²³ The Clinic affords students the opportunity to explore complex substantive legal issues and to learn the practical aspects of case preparation. It also exposes students to immigrants of diverse nationalities representing the mosaic of Califor-

court to grant relief, particularly in cases involving criminal convictions. In such cases, the Clinic must seek relief in state and federal court as well as represent the client in removal proceedings. This ultimately will reduce the number of clients that the Clinic may represent. See *infra* note 38 and accompanying text (summarizing how restrictions in immigration laws have impacted Clinic students' work).

21. See generally IMMIGRANTS OUT!, *supra* note 15 (compiling essays documenting recent growth of nativist sentiment in United States). For historical analysis of nativism in the United States, see JOHN HIGHAM, STRANGERS IN THE LAND (3d ed. 1994).

22. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 [hereinafter AEDPA] (providing, *inter alia*, that noncitizens convicted of certain criminal offenses receive limited judicial review of removal orders and limiting relief from removal); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 [hereinafter IIRIRA] (taking steps, *inter alia*, to bar the poor from immigrating to the United States and restricting various forms of relief from removal available to noncitizens); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 400-451, 110 Stat. 2105, 2260-77 (limiting receipt of public benefits by legal immigrants). A few states also have made attempts to regulate immigration. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (invalidating portions of California's Proposition 187, which, among other things, would deny public benefits and education to undocumented persons). Compare Michael A. Olivas, *Preempting Preemption: Foreign Affairs, State Rights, and Alienage Classifications*, 35 VA. J. INT'L L. 217 (1994) (defending federal preemption of immigration regulation), with Peter J. Spiro, *The States and Immigration in an Era of Demi-Sovereignities*, 35 VA. J. INT'L L. 121 (1994) (contending that, contrary to conventional wisdom and longstanding precedent, states have legitimate role to play in immigration regulation).

23. We use the term "immigrants" not in a technical manner as used in the comprehensive Immigration & Nationality Act, Pub. L. No. 82-414, 66 Stat. 166 (1952) [hereinafter INA], but as the term is commonly used to refer to persons who have come to the United States from another country. We do so to minimize use of the word "alien," a term of art under the immigration laws, because of the negative connotations and impacts of that word. See Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction on Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97).

nia's immigrant population. Some Clinic alumni have subsequently pursued immigration or public interest careers after law school.

Last but not least, the noncitizen clients benefit concretely from the legal representation. Poor immigrants have many, often urgent, needs for legal assistance.²⁴ Despite the pressing and growing demand, free legal assistance for immigrants remains scarce. Congress worsened matters in the 1980s by restricting the ability of legal services organizations receiving national Legal Service Corporation funds to represent immigrants.²⁵ Because the immigrant community possesses limited legal resources, any program serving any immigrants serves a need. Counsel is all-important to a noncitizen facing removal. Immigrants represented by attorneys at removal hearings are much more likely to prevail than if unrepresented.²⁶

The Immigration Law Clinic serves the immigrant community in California's Central Valley. The harsh 1996 amendments to the immigration laws²⁷ made efforts to defend immigrants against attempts by the Immigration & Naturalization Service (INS) to remove them from the country more complex, difficult, and costly. As one of the precious few non-profit agencies in northern and central California representing immigrants in removal proceedings, the Clinic accepts complex cases requiring hundreds of hours of research and preparation. Unable to find low fee or *pro bono* attorneys locally, some clients travel long distances and spend many hours each week to meet with students and attorneys at the Clinic.

24. See Robert L. Bach, *Building Community Among Diversity: Legal Services for Impoverished Immigrants*, 27 U. MICH. J.L. REFORM 639 (1994) (presenting findings of empirical study of immigrant legal needs). Consequently, many clients who ultimately are represented by the Clinic on immigration matters initially sought advice on public benefits, employment, and housing problems, which the Clinic does not provide. Often, a client's immigration problems are not as pressing as the immediate need to feed and house his or her family.

25. See Omnibus Consolidated Rescissions and Appropriations Act of 1996 § 504(a)(11), Pub. L. No. 104-134, 110 Stat. 1321, 1326-27; 45 C.F.R. §§ 1626.3-1626.4, 1626.6 (1997); see also Margaret H. Taylor, *Promoting Legal Representation for Detained Aliens: Litigation and Administrative Reform*, 29 CONN. L. REV. 1647, 1651 (1997) ("[E]fforts to provide legal assistance to indigent aliens are hampered by government policies that limit the pool of available attorneys—including increasingly harsh restrictions on the use of Legal Service Corporation funds to represent noncitizens, and a Supreme Court decision that forecloses an award of . . . attorneys fees for legal representation in deportation hearings.") (footnotes omitted); *LSC Issues Regulation Implementing Alien Restrictions*, 74 INTERPRETER RELEASES 787 (1997) (explaining prohibitions on Legal Service Corporation-funded entities from providing representation to undocumented and other aliens); Ingrid v. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 434-35 (1998) (stating that restrictions imposed on Legal Service Corporation-funded entities contribute to their focus on traditional forms of legal practice as opposed to more innovative forms of lawyering designed to facilitate meaningful social change).

26. See Deborah E. Anker, *Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment*, 19 N.Y.U. REV. L. & SOC. CHANGE 433, 459 (1992) (recognizing that General Accounting Office study found that "asylum applicants represented by counsel are more than three times as likely to receive asylum in immigration court proceedings than are applicants unrepresented by counsel" and recommending that legal representation be provided to asylum applicants).

27. See *supra* note 22 (citing statutes).

Over the years, the Immigration Law Clinic has represented clients from all over the world, including Africa, Asia, the Caribbean, Central America, Mexico, and Eastern Europe. Not coincidentally, the Clinic attracts students from diverse backgrounds. In the last few years, students participating in the Clinic have included first and second generation immigrants from Argentina, China, Costa Rica, Korea, India, Japan, Mexico, the Philippines, Russia, Scotland, Taiwan, and Vietnam. Some students find themselves able to represent clients from similar cultural backgrounds. Racial and ethnic dynamics affect client representation. In commenting on Stanford's immigration clinic in a way that applies with equal force to the U.C. Davis Immigration Law Clinic, Bill Hing wrote that it

provides a real opportunity to compare the effectiveness of Latino students with Latino clients with that of non-Latino students with Latino clients. Often Latino students discern an advantage with Latino clients who may initially be more receptive. However, smart, sensitive, and skilled non-Latino students who devote some time to the study of the cultural backgrounds of the clients and practice dialogues during weekly case discussions generally do quite well.²⁸

A. HISTORY: FROM PAST TO PRESENT

When the U.C. Davis Immigration Law Clinic opened its doors in 1981, California was in the midst of a dramatic increase in its immigrant population. Even before this influx, the state's vast Central Valley had been home to a large immigrant population, including many undocumented immigrants working the fields. At the center of the agricultural heartland, U.C. Davis was well located to serve this community.²⁹

In 1981, James F. Smith proposed, and the law faculty approved, the establishment of the Immigration Law Clinic to teach students practical lawyering skills and to provide students the opportunity to work on com-

28. Hing, *supra* note 17, at 1818. The experiences of minority students representing clients in clinics has yet to be studied in depth. See Margaret E. Montoya, *Voicing Differences*, 4 CLINICAL L. REV. 147, 155-56 (1997). A number of students in U.C. Davis's Immigration Law Clinic, including immigrants and racial minorities, have been inspired by the Clinic to serve their community in a positive way. For non-minority students, the clinical experience encourages cross-cultural awareness.

Because the abolition of affirmative action in the University of California system jeopardizes the future diversity of the student body at the law school, see *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir.) (upholding Proposition 209, California initiative barring state from considering race and gender in state programs), *cert. denied*, 118 S. Ct. 397 (1997); Jeffrey B. Wolff, Comment, *Affirmative Action in College and Graduate School Admissions—The Effects of Hopwood and the Actions of the U.C. Board of Regents on Its Continued Existence*, 50 SMU L. REV. 627 (1997) (summarizing affirmative reaction retrenchment, including decision of the Regents of the University of California to abolish affirmative action in student admissions), the future diversity of Clinic students—and the impact on client representation—remains uncertain.

29. Consequently, the Clinic did not face as many impediments due to its semi-rural location as other fledgling clinics did. See John S. Bradway, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH. L. REV. 905 (1932) (observing problems associated with rural location in developing legal aid clinic at Duke University).

elling human rights issues. The stated goals of the Clinic are to: (1) teach lawyering skills; (2) offer supervised legal research opportunities to students on cutting-edge immigration law issues; and (3) provide outreach, education, and technical services to practicing attorneys and the immigrant community. To fulfill these goals, the Clinic allows second and third year law students to represent indigent immigrants in administrative proceedings in which the INS seeks to remove them from the United States.³⁰

By representing clients, students develop essential lawyering skills in client interviewing and counseling, legal research and writing, witness preparation, and trial advocacy. The supervising attorneys provide instruction in these skills through reading assignments, role playing, and seminar discussions about specific cases. Although supervising attorneys offer guidance throughout the process, Clinic students must assume responsibility for formulating the case, researching and developing legal arguments, collecting facts, and preparing clients for removal hearings.³¹ To do so, students interview clients and witnesses, conduct factual investigations, draft pleadings and motions, prepare legal briefs, and represent immigrants at hearings in the immigration court (which requires that they prepare witnesses for direct and cross examination).³²

Since 1985, the Clinic has received funding from the California State Bar's Legal Services Trust Fund Program.³³ Though outside funding for the Clinic remains uncertain,³⁴ the law school administration has pro-

30. See *infra* notes 48-62 and accompanying text (describing various tasks for Clinic in representing clients in removal proceedings).

31. Some cases require students to engage in other tasks. For example, in cancellation of removal cases in which the INS seeks removal of the alien based on criminal convictions, students may be required to litigate in state and federal court to, among other things, expunge convictions and file habeas corpus petitions. See *infra* note 38 and text accompanying notes 83-87 (explaining necessity for such work).

32. Regulations permit student representation of clients in removal proceedings. See 8 C.F.R. § 292.1(a)(2)(ii) (1998). Immigration Law Clinic clients are informed that they will be represented by law students working under the supervision of attorneys. Each signs a contract expressly consenting to this arrangement. To represent their clients in the immigration court, students file a statement declaring that they are under the direct supervision of a faculty member and a licensed attorney, in a clinic conducted by a law school, and that they are appearing without direct or indirect remuneration from the client. See *id.*

33. Interest on Lawyer Trust Account (IOLTA) "programs convert what traditionally were non-interest-bearing client trust accounts into interest-bearing accounts, which channel the new-found interest into programs promoting the public good, principally the provision of legal services to the poor." Frank Newton & James W. Paulsen, *Constitutional Challenges to IOLTA Revisited*, 101 DICKINSON L. REV. 549, 550 (1997). California's IOLTA program provides funding to be used for the provision of free civil legal services to the poor. See CAL. BUS. & PROF. CODE §§ 6210-6228 (West 1998). It also provides funding to clinical programs and internships administered by law schools. See *id.* § 6214.5. IOLTA programs like California's exist in all fifty states and the District of Columbia. See Newton & Paulsen, *supra*, at 550 (citations omitted). From 1994-97, the Clinic benefitted from a Title IX grant from the U.S. Department of Education that funded the hiring of a second attorney to assist in supervision of Clinic students.

34. See Tarr, *supra* note 10, at 36-38 (analyzing economics of clinical education). For example, monies from the trust fund program are tied to interest rates, which declined over the 1980s and 1990s and reduced the funding to recipients, including the Immigration Law Clinic. See STATE BAR OF CALIFORNIA, AND JUSTICE FOR ALL 9 (1996) (noting drop in

vided adequate support to maintain the Clinic's operations over the years.³⁵

Students in the Immigration Law Clinic have represented hundreds of noncitizens whom the INS has sought to remove from the United States.³⁶ The Clinic provides removal defense to noncitizens seeking asylum and nonreturn, two forms of relief available to those fearing persecution if returned to their native country,³⁷ as well as other forms of relief from removal, such as cancellation of removal.³⁸ Recurring legal issues,

IOLTA funding nationwide in the 1990s resulting from decline in interest rates). In addition, IOLTA programs have been challenged as unconstitutional. *See Philips v. Washington Legal Found.*, 118 S. Ct. 1925 (1998) (holding that, under Texas law, interest income on IOLTA accounts was "property" for purposes of the Takings Clause of Fifth Amendment); *see also* Newton & Paulsen, *supra* note 33 (reviewing arguments about constitutionality of IOLTA programs).

35. Besides money, the law school administration has provided other resources, including space in the law school, computers, telephones, and a facsimile machine. Like all law students, Clinic students have free access to LEXIS-NEXIS and Westlaw. The Clinic has a library with up-to-date information, including materials provided by the American Immigration Lawyers Association. The law school library also has an extensive immigration collection.

36. As the Supreme Court has recognized, deportation is a harsh remedy. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) ("[D]eportation . . . visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty—at times a most serious one—cannot be doubted."). Removal proceedings begin with the issuance of the Notice to Appear, the formal legal document that charges the noncitizen with being removable. The noncitizen is then scheduled to appear before an immigration judge. *See* INA § 240(a)(1), 8 U.S.C. § 1229(a)(1) (Supp. 1996). In removal proceedings, counsel for the INS, known as trial attorneys, present evidence on the issue of deportability and inadmissibility. *See* 8 C.F.R. § 240.2 (1998). Besides resisting the INS charge, a noncitizen may apply for relief from removal, including cancellation of removal under INA § 240A, 8 U.S.C. § 1229b, or for asylum and nonreturn, *see* INA §§ 208, 241(b)(3), 8 U.S.C. §§ 1158, 1231(b)(3). The noncitizen bears the burden of proving eligibility for such relief. *See* 8 C.F.R. § 240.8(d) (1998).

37. *See* INA §§ 208(b), 241(b)(3), 8 U.S.C. §§ 1158(b), 1231(b)(3) (providing for relief from removal known as asylum and nonreturn).

38. *See* INA § 240A, 8 U.S.C. § 1229b. Before drastic changes to the immigration laws in 1996, *see supra* note 22 (citing AEDPA and IIRIRA), the Clinic represented clients seeking suspension of deportation, INA § 244(a), 8 U.S.C. § 1254(a) (repealed 1996), and waiver of deportation, INA § 212(c), 8 U.S.C. § 1182(c) (repealed 1996).

INA § 240A(a), 8 U.S.C. § 1229b(a), replaced INA § 212(c) relief, a discretionary form of relief available to long-term lawful permanent residents in deportation or exclusion proceedings. To apply for cancellation of removal, an applicant must establish that he has been a lawful permanent resident for at least five years; continuously resided in the United States for seven years after having been admitted in any status; not been convicted of an aggravated felony; not previously been granted cancellation of removal or other relief from deportation; and that the positive factors for granting the cancellation of removal far outweigh the reasons for ordering removal. *See* INA § 240A(a), 8 U.S.C. § 1229b(a). Students preparing a cancellation of removal application must fully research the client's criminal history, assist the client with expunging convictions, if possible, and help the client establish rehabilitation and hardship in the event of removal.

In cases in which the client has been convicted of an aggravated felony, *see* INA § 101(a)(43), 8 U.S.C. § 1101(a)(43) (1994 & Supp. 1996), students prepare writs of habeas corpus and error coram nobis to challenge the validity of pleas entered without the client's understanding of the immigration consequences of the criminal conviction. Habeas corpus relief is appropriate when noncitizens were not advised of the specific immigration consequences of their conviction as required by CAL. PENAL CODE § 1016.5 (West 1998). Students preparing writs of habeas corpus review the state court criminal proceeding transcripts, investigate the deficiency in performance of defense counsel, prepare the veri-

ready availability of clients from many different countries, and the quasi-judicial proceedings make these cases ideal for a law school clinical program.³⁹

Clinical students represent clients in the immigration court located in San Francisco, California, a less than two hour drive from Davis.⁴⁰ As of the spring of 1998, the Clinic had won every case in which it sought a waiver from deportation due to criminal conviction.⁴¹ This success has come despite laws that single out certain "criminal aliens" for removal⁴² and have become increasingly onerous over time.⁴³ Over the same period, the Clinic prevailed in all but four of the hundreds of asylum cases at the immigration court level.⁴⁴ The Board of Immigration Appeals reversed three of the denials and granted a motion to reopen deportation proceedings in the fourth.⁴⁵

Through its years of success, the Immigration Law Clinic has established a national reputation as well as a solid working relationship with the immigration judges and immigration attorneys, including trial attorneys who represent the INS in removal proceedings. Immigration judges

fied petition and traverse or denial, file the documents with the state court, and appear at the evidentiary hearing. At that hearing, the petitioner carries the burden of proof by a preponderance of the evidence. See CAL. PEN. CODE § 1484 (West 1998); *Ex Parte Ancheta*, 181 P.2d 686 (Cal. App. 1947).

39. See Schrag, *supra* note 17, at 196-97.

40. The immigration courts are part of the Executive Office for Immigration Review, which is in the U.S. Department of Justice, but separate from the INS. See 8 C.F.R. §§ 3.0, 3.9-10 (1998); see also STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 1 (2d ed. 1997) (outlining various federal agencies responsible for administering immigration laws).

41. This relief was available under former INA § 212(c), 8 U.S.C. § 1182(c) (repealed 1996).

42. See generally AMERICAN IMMIGRATION LAWYERS ASS'N, IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS IN THE NINETIES: WHAT EVERY IMMIGRATION AND CRIMINAL LAWYER NEEDS TO KNOW (Mary E. Kramer & Amy R. Novick, eds., 1995) (summarizing increasingly harsh law of immigration consequences of criminal convictions).

43. For example, § 440(e) of AEDPA, *supra* note 22, and § 321 of IIRIRA, *supra* note 22, expanded the definition of aggravated felony in INA § 101(a)(43), 8 U.S.C. § 1101(a)(43). Aggravated felons are ineligible for cancellation of removal. See INA § 240A(a), 8 U.S.C. § 1229b(a). AEDPA and IIRIRA added new crimes and lowered the sentence required from five years to one year imprisonment for a crime to be classified as an aggravated felony. Section 322 of IIRIRA also broadened the definition of "conviction" beyond that articulated by *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988). See IIRIRA, *supra* note 22 (amending INA § 101(a)(48), 8 U.S.C. § 1101(a)(48) (1994 & Supp. 1996)).

44. This data was compiled from the Immigration Law Clinic's client roster listing all cases handled by the Clinic. The client roster describes the type of case, the relief sought, and the disposition of the case.

45. A party may file a motion to reopen deportation proceedings with the Board of Immigration Appeals (BIA) within ninety days of the immigration court's final removal order. Motions to reopen proceedings must be supported by affidavits and other documentation showing that the new evidence to be presented is material, was unavailable at the time of the original hearing, and could not have been discovered or presented at the original hearing. See 8 C.F.R. §§ 3.8, 103.5(a)(2) (1998). The BIA has great discretion on motions to reopen; denials of such motions are rarely disturbed by reviewing courts. See, e.g., *INS v. Doherty*, 502 U.S. 314 (1992) (affirming denial of motion to reopen); *INS v. Abudu*, 485 U.S. 94 (1988) (affirming denial of motion to reopen).

have complimented the quality of the Clinic's work.⁴⁶ The Clinic has attracted notoriety for its expertise in representing Guatemalan Mayan Indians seeking asylum. Newspaper articles have reported favorably on the Clinic's achievements.⁴⁷ The California State Bar awarded Directing Attorney James F. Smith, in large part for his work with the Immigration Law Clinic, the State Bar of California President's Pro Bono Service Award in 1989.

Many U.C. Davis law students view the Immigration Law Clinic as a valuable program for learning practical lawyering skills. Putting into practice legal theories they learn in the classroom, students deal with the practical realities of preparing cases for, as well as professional responsibility issues raised in representing, "live clients." By necessity, skills and trial practice classes use role-playing and fictitious clients. The full human dimension of legal representation, however, can best be experienced by supervised representation of real clients. In this sense, the Clinic resembles the medical school model of using a specific case as a teaching tool. At the same time, students have the advantage over most lawyers in focusing on only one or two cases.

The representation of clients in teams facilitates the learning experience. Many Clinic students establish close relationships with other students and staff. Students provide each other feedback on their cases, helping them better represent their clients. The supervising attorneys often lead discussions with all Clinic students about the problems raised by specific cases.

Besides teaching skills to law students, the Immigration Law Clinic serves other important functions. For many students, the Clinic stimulates their interest in law school classes. It raises consciousness about the influence of race and class on society and reinforces this consciousness for those students who already had developed this awareness. It provides students with the opportunity to learn about the relationships between race, immigration status, and poverty. It exposes students to the hardships of immigrants in the United States and the great need for represen-

46. Recognizing the Immigration Law Clinic's educational component, immigration judges often provide students with feedback on the presentation of their cases after the hearing. The judges have commented that the student briefs are clear, concise, and well-written; the direct examinations thorough and organized; and the witnesses well-prepared.

47. See Marcos Bretón, *47.5 Million Ruling in Guatemalan Terror*, SACRAMENTO BEE, Apr. 13, 1995, at A1; Elisabeth Sherwin, *Refugees Recall a Time of Terror*, DAVIS ENTER., Apr. 16, 1995, at A1; Marcos Bretón, *Long Struggle Bears Fruit*, SACRAMENTO BEE, Apr. 16, 1995, at A1; Robert Collier, *Bay Area Guatemalans Vindicated By Verdict*, S.F. CHRON., Apr. 26, 1995, at A9; Susan Kingshill, *Law Students Give Aid to Local Immigrants*, CAL. AGGIE, Aug. 26, 1993, at 1; David Ong, *Freedom in the Balance*, U.C. DAVIS MAG., Summer, 1992, at 16; Edgar Sanchez, *Davis Legal Clinic Seeks Redress for Guatemalan Killing*, SACRAMENTO BEE, June 21, 1992, at B1; Matt Smith, *How Fair is 'Family Fairness'?* INS May Deport Local Farmworker Youth, SACRAMENTO NEWS & REV., Sept. 14, 1990, at 19; Bruce Williams, *Pakistani Boy 'Sold' as Slave*, SACRAMENTO BEE, June 14, 1990, at 1; Elisabeth Sherwin, *Law Students Help Refugees Get Asylum*, DAVIS ENTER. Aug. 6, 1989, at A1; Nick Milich, *Asylum Granted to Guatemalan Refugee Who Resettled in Davis*, DAVIS ENTER., May 10, 1988, at A3; *Law Clinic Wins Asylum for Haitian Refugee*, DAVIS ENTER., Feb. 26, 1985, at 3.

tation by legal service attorneys sensitive to the cultural, economic, social, and political needs of various immigrant communities. The Clinic has proven to be especially attractive to students of color interested in representing clients from their own background or other disenfranchised immigrant communities. Moreover, the Clinic offers meaningful work to students who desire to "give something back" to the community, provides positive feedback, and builds confidence in a supportive environment, which some complain is lacking in the law school experience.

B. CLINIC OPERATIONS: A LAW OFFICE WITH STUDENTS

Functioning as a small law office, the Immigration Law Clinic is staffed by a directing attorney, supervising attorney, office manager, and two to three clinical assistants, law students employed by the Clinic. Directing attorney James F. Smith and supervising attorney Amagda Pérez supervise students. Smith, a senior lecturer with security of employment and an experienced immigration attorney, teaches immigration law at the law school and has directed the Clinic since its inception in 1981.⁴⁸ Professor Smith conducts immigration skills seminars, supervises mock hearings and immigration court hearings, and consults with the supervising attorney on Clinic matters. He also works with student teams directly on complex cases.

Amagda Pérez, an alumna of the U.C. Davis School of Law and the Immigration Law Clinic, has been the supervising attorney since 1994. Before joining the Clinic, she worked full time as a staff attorney with California Rural Legal Assistance, Inc. (CRLA)⁴⁹ on immigration law and civil rights matters and continued working part time in that position until August 1997. Pérez currently serves as the executive director of the California Rural Legal Assistance Foundation (CRLAF), where she works on immigrant and farmworker issues and directs the California Rural Citizenship Campaign.

As supervising attorney of the Clinic, Pérez guides the students

48. Smith has directed the Clinic continuously except for a one year Fulbright Scholarship in Mexico (1986-87) and a sabbatical in Asia (1997). Previously, Smith directed the U.C. Davis Prison Law Office, which represents prisoners; was staff attorney for California Rural Legal Assistance, specializing in immigration and civil rights law; and Managing Attorney for Northern California Legal Services. He has written numerous publications, including James F. Smith, *A Nation That Welcomes Immigrants? An Historical Examination of United States Immigration Policy*, 1 U.C. DAVIS J. INT'L L. & POL'Y 227 (1995) and JAMES F. SMITH, MIKE R. SNEDEKER, & STEVEN FAMA, CALIFORNIA STATE PRISONERS HANDBOOK (2d ed. 1990).

49. California Rural Legal Assistance, Inc. (CRLA) is a nonprofit organization providing free legal services to the rural poor in California. CRLA focuses on housing, education, labor, rural health and environmental justice, civil rights, public benefits (including welfare reform issues as permitted by federal law), community building, and economic development. See Minutes of Regular Meeting, Board of Directors, California Rural Legal Assistance, Inc., Feb. 21, 1998, at 7-8; see also Michael Bennett & Cruz Reynoso, *California Rural Legal Assistance (CLRA): Survival of a Poverty Law Practice*, 1 CHICANO L. REV. 1 (1972) (describing efforts to ensure CRLA's survival in face of governmental attacks). For discussion of CRLA's organizing efforts in rural communities, see RICHARD STEVEN STREET, ORGANIZING FOR OUR LIVES (1992).

through the preparation of their cases.⁵⁰ Students meet with her each week for a case conference to discuss the status of their case. At this conference, Pérez and the students discuss strategy, legal theories, and various problems presented by the case. Students are required to prepare a memorandum for the conference describing their work and the amount of time spent on the case. The assignment requires students to reflect on how a case is progressing and evaluate its progress.

The Immigration Law Clinic includes a classroom component. Clinic students must attend a weekly two-hour skills seminar with assigned reading on substantive immigration law, client interviewing and counseling, case investigation, professional responsibility, drafting, legal research and writing, direct and cross examination, and oral advocacy. In addition to instruction in these areas, the seminars provide a forum for students to exchange information about their case experiences and to brainstorm various issues. This is one of the most valuable parts of the seminar for students returning to the Clinic after a previous stint there.

For Clinic work, students receive from two to six semester units of academic credit. Students who have taken or are currently enrolled in the immigration law course must participate in the skills seminar and work at the Clinic for a minimum of eight hours per week (2 units) to receive credit. The minimum requirement for students not enrolled in the substantive immigration law course is 16 hours per week (4 units) of Clinic work.

1. Case Selection

The immigration court in San Francisco, legal services organizations, attorneys, and the immigrant community refer cases to the Immigration Law Clinic. Clinical assistants conduct initial interviews of prospective clients. Each week, the Clinic receives an average of five requests for representation and conducts ten telephone consultations. Clinical assistants and attorneys discuss the intakes and select cases.

In screening cases, the Clinic evaluates the client's income eligibility (to qualify for services, the client must have an income of less than 125% of the federal poverty level), availability of relief from removal, and a commitment from the client to attend interviews and hearings. Because of

50. In addition to the supervision offered by Smith and Pérez, several law school faculty informally advise the Immigration Law Clinic. Besides providing advice on professional responsibility, clinical legal education, and administrative issues, Associate Dean Rex Perschbacher, Director of Clinical Education, generally supervised all of the clinical programs and monitored the Immigration Law Clinic until July 1998 (when he became Dean of the School of Law). An evidence scholar of international renown, Professor Edward Imwinkelried provides advice on evidentiary questions for immigration court hearings. Professor Alan Brownstein offers insights on constitutional law matters. Professor Kevin R. Johnson, who teaches immigration law and a refugee law seminar, writes extensively in the area, and has represented noncitizens individually and in class actions, consults with Clinic attorneys and students. In 1996-97, 1997-98, and 1998-99, Visiting Professor Bill Ong Hing, an immigration and asylum law expert, advised the Clinic on various matters.

the limited resources and great need for representation, the Clinic seeks to ensure that it does not spend time and resources on clients not fully committed to their cases. At the same time, the Clinic tries to be sensitive to the many important demands on a prospective client's time.

The Immigration Law Clinic generally only accepts cases in which the INS has instituted removal proceedings against the client. Over the last few years, the Clinic has handled an average of ten removal hearings each academic year. A potential client must be eligible for a form of relief other than voluntary departure⁵¹ or adjustment of status,⁵² such as asylum or cancellation of removal; these claims ordinarily require an evidentiary hearing. The Clinic selects these cases because they are legally and factually challenging, thus maximizing the learning potential for the students. However, the Clinic avoids selecting cases that could easily be handled by an inexperienced attorney and those that would prove so difficult that they would demand excessive resources and might overly frustrate students. To diversify the caseload, the Clinic also looks for cases involving clients from countries that the Clinic has not traditionally represented. When considering such cases, the Clinic looks at whether the client comes from a marginalized community and whether the necessary resources are available to assist the Clinic, such as interpreters familiar with the culture and proficient in the client's particular dialect, experts to provide supporting evidence on country conditions, and objective information to corroborate the client's claim.

2. Case Preparation

The supervising attorney assigns two law students to each case accepted by the Immigration Law Clinic. Under the direction of the attorneys, students perform extensive interviews of their clients, clients' family members, and expert witnesses. They then prepare detailed declarations to support an application for relief from removal.

Immigration cases generally require thorough interviews of the clients to obtain the necessary facts. The client's ability to fully relay his or her story is vital to the success of any immigration case. Students must build rapport with their clients so that they will share the relevant facts.⁵³ To do so, the student must learn good interviewing techniques in a cross cultural setting.⁵⁴ The difficulties are particularly acute in asylum cases, in

51. See INA § 240B, 8 U.S.C. § 1229(c) (providing for relief of voluntary departure, which allows an alien to depart without negative consequences of removal order).

52. See INA § 245, 8 U.S.C. § 1255 (providing for relief allowing nonimmigrant to adjust status to that of lawful permanent resident).

53. See Jennifer G. Schirmer, *A Different Reality: The Central American Refugee and the Lawyer*, IMMIGRATION NEWSLETTER, Sept.-Oct. 1985, vol. 14, at 6; see also Hing, *supra* note 17, at 1817-18 (emphasizing importance in immigration clinic setting of students understanding client's culture in building rapport).

54. To help learn these skills, students read selections from DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING* (1977) in the seminar for the Clinic. For discussion of some of the cross cultural problems in asylum hearings, see Walter Kälin, *Troubled Communication: Cross-Cultural Misunderstandings in the Asylum*

which clients must provide specific details about unspeakable events, such as torture, the murder of family members or friends, rape, and other difficult-to-discuss subjects.⁵⁵ The asylum applicant bears the burden of establishing that he or she has suffered past persecution or faces a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."⁵⁶ The applicant's credible testimony alone may be sufficient to establish eligibility, thus obviating the need for corroborating evidence.⁵⁷ Accurate factual development is essential because often the immigration court must rely almost exclusively on the testimony of the applicant for many facts; the finding that the witness is not credible generally is the death knell of the case.⁵⁸ A court reviewing such a finding applies a deferential standard of review, which generally means affirmance.⁵⁹

Hearing, 20 INT'L MIGRATION REV. 230, 230 (1986) ("demonstrat[ing] how misunderstandings rooted in the difference between the asylum-seeker's and the official's cultural background can seriously distort the process of communication during the asylum-hearing and thus impair the ability of refugees from the Third World to make their asylum-claims credible.").

55. For an analysis of some of the problems attorneys face in eliciting information from asylum seekers, including post-traumatic stress disorder suffered by some, see David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. PA. L. REV. 1247, 1285-87 (1990). See also Neal P. Pfeiffer, Note, *Credibility Findings in INS Asylum Adjudications: A Realistic Assessment*, 23 TEX. INT'L L.J. 139 (1988).

For example, one student team in the Clinic experienced great difficulty persuading a client to tell her story because of the painful memories of being separated from her parents at the age of five as they fled Guatemala. She would cry uncontrollably when asked to explain why she was afraid to return there. Students worked with the client over three semesters to develop her trust and prepare her for the asylum hearing. By doing so, they obtained the facts necessary to substantiate her asylum claim. Despite careful preparation, as she was about to testify at the hearing, the client began to cry uncontrollably. The immigration judge stopped the hearing numerous times to allow her to compose herself. The immigration court ultimately granted her asylum on the ground that she had suffered past persecution.

As this suggests, student interaction with immigration clients is sensitive. Due to the personal nature of the cases, the Clinic attorneys instruct students at the outset on issues of professional responsibility, especially client confidentiality. The Clinic's procedures manual sets out the rule prohibiting the discussion of cases with non-Clinic students. In addition, the supervising attorney emphasizes the importance of client confidentiality in the seminars and case conferences.

56. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42); see *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). For nonreturn (formerly known as withholding of deportation), the burden is more onerous; the applicant must establish a clear probability of persecution. See INA § 241(b)(3), 8 U.S.C. § 1231(b)(3); *INS v. Stevic*, 467 U.S. 407 (1984).

57. See 8 C.F.R. § 208.13(a) (1998) ("The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration."). See, e.g., *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1984) ("Authentic refugees rarely are able to offer direct corroboration of specific threats. . . . Persecutors are hardly likely to provide their victims with affidavits attesting to their acts of persecution.").

58. See Henry G. Watkins, *Credibility Findings in Deportation Proceedings: "Bear[ing] Witness Unto the Truth,"* 2 GEO. IMMIGR. L.J. 231, 233 (1987) ("[I]n political asylum cases the ultimate resolution of the claim may turn on the credibility of the applicant.").

59. See *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992) (holding that fact finding of agency in asylum case will be reversed only if "the evidence . . . was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed") (citation omitted). More generally, success at the immigration court and the BIA has become in-

Fact gathering can be especially challenging in cases in which students must use interpreters to communicate with their clients. The lack of direct communication inhibits the building of trust between client and attorney. In addition, an intermediary in attorney/client communications creates the potential for errors in translation and misunderstandings that may ultimately result in adverse credibility findings.⁶⁰ To minimize such errors, the Clinic strives to find interpreters fluent in the client's particular dialect and familiar with the client's culture.

After interviewing clients and witnesses several times, students prepare applications for relief along with supporting declarations, documents, and other materials. An asylum application, INS Form I-589, is one of the lengthiest applications for relief and requires the most time and attention. In addition to providing personal biographic information, the applicant must state facts supporting the basis for the request for asylum. Accuracy in the applications is critical to the ultimate success of an asylum claim. Material inconsistencies between an asylum application, which is signed by the applicant under the penalty of perjury, and the applicant's subsequent testimony will result in a finding that the applicant is not a credible witness.⁶¹

After filing the application for relief, students draft a pre-hearing brief. Students work in teams to prepare the brief, the client's declaration, expert or other supporting declarations, and the necessary exhibits. Students must submit a draft of the brief a month before the hearing date to the supervising attorney for review and comment. The brief is then returned to the students for revision. The students also select, copy, and organize the exhibits to be submitted in support of their client's application. The brief, exhibits, and witness list are ultimately filed with the immigration court and the INS fifteen days prior to the hearing.

Students prepare clients and witnesses for the hearing by conducting mock hearings. The directing attorney plays the part of immigration judge, and a student team represents the INS trial attorneys. Over the years, the mock hearings have proven invaluable in revealing weaknesses in a case. A successful mock hearing is one in which the weaknesses in the presentation of the case are identified, analyzed, and corrected. Although sometimes demoralizing to students, the mock hearing is an excellent learning experience and an essential part of the process in preparing the case. After the mock hearing, the students and attorneys dis-

creasingly important because some agency decisions, such as denial of cancellation of removal, *see* INA § 242(a)(2)(B)(i), 8 U.S.C. § 1252(a)(2)(B)(i), are not subject to judicial review. *See* Lenni B. Benson, *Back to the Future: Congress Attacks the Right of Judicial Review of Immigration Proceedings*, 29 CONN. L. REV. 1411 (1997) (analyzing critically recent restrictions by Congress on judicial review of various immigration decisions).

60. *See* Anker, *supra* note 26, at 505-15; Kälin, *supra* note 54, at 513-14.

61. *Compare* Ceballos-Castillo v. INS, 904 F.2d 519 (9th Cir. 1990) (holding that discrepancy between application and testimony going to core of asylum claim justified adverse credibility finding), *with* Damaize-Job v. INS, 787 F.2d 1332 (9th Cir. 1986) (holding that minor inconsistencies between application and testimony could not justify an adverse credibility finding).

cuss the case. Students who observed the mock hearing also provide valuable feedback concerning the presentation of the case and examination of witnesses. Consequently, problem areas are usually anticipated and addressed before the hearing.

3. *The Hearing*

The students, with attorney supervision, represent their clients before a judge in the Immigration Court.⁶² At the hearing the students sit at counsel table with the supervising or directing attorney. Students make brief opening statements, conduct the direct and re-direct examination, and offer closing arguments. Before 1996, in approximately seventy-five percent of the Clinic cases, the immigration judges ruled from the bench at the conclusion of the hearings. The rate of decisions rendered at hearings has decreased since 1996 because of the complex retroactivity and other issues raised by the new immigration laws.

After the hearings, the immigration judges regularly offer comments on the students' presentation of the case, representation of the client, and quality of the brief. The judges consistently compliment the students and the Clinic. They recognize that the Clinic presents well-prepared cases in an organized fashion, thereby saving time and energy for all involved.

C. THE CLIENTS

Though our focus to this point has been on students, attorneys, and Clinic organization, the Immigration Law Clinic represents clients. The following is a brief sampling of the cases that the Clinic has handled over the years.⁶³ For confidentiality reasons, we have changed the clients' names.

62. See 8 C.F.R. § 292.1 (1998).

63. Clinic cases inspired some of the arguments in Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. REV. 1139, 1227-38 (advocating telling stories of immigrants in efforts to change the anti-immigrant political dynamic). See also Linda Kelly, *Stories From the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U.L. REV. 665, 665-67 (1998) (emphasizing need to tell stories of battered immigrant women to reveal the problems created for them by the Violence Against Women Act). At various times, stories of immigrants fighting removal have been picked up by the mass media and have been followed by improved treatment by the United States government. See, e.g., Celia W. Dugger, *Chinese Immigrants From Stranded Ship Are to Be Released*, N.Y. TIMES, Feb. 15, 1997, at A1 (reporting that Clinton Administration decided to release from detention Chinese immigrants who came to the United States on Golden Venture and had been detained for over three-and-a-half years, less than two weeks after an article on the immigrants appeared on the front page of the New York Times); Celia W. Dugger, *U.S. Frees African Fleeing Ritual Mutilation*, N.Y. TIMES, Apr. 25, 1996, at A1 (reporting release from custody of asylum applicant fearing female genital mutilation in Togo who had been detained for over a year, within two weeks of publication of New York Times article on her case). See also T. Alexander Aleinikoff, *Non-Judicial Checks on Agency Actions*, 49 ADMIN. L. REV. 193, 195-96 (1997) (former high level INS official stating that fear of adverse publicity, including how it would look if an INS decision "appeared on the front page of the Washington Post," serves as a "significant check on agency action") (citations omitted).

1. Suspension of Deportation for Disabled Mexican Citizen

In 1976, Francisco, a 21-year-old Mexican citizen, entered the United States without inspection. A monolingual, Spanish-speaker, he worked as a farm laborer in the California orchards. In 1978, Francisco was in an automobile accident that left him paralyzed and confined to a nursing home. In January 1982, an INS officer visited Francisco at the nursing home and later initiated deportation proceedings. Patient rights groups and the Immigration Law Clinic worked together to prevent Francisco's deportation to Mexico.

In Mexico, Francisco had neither a home to return to nor family members to care for and support him. Furthermore, medical care, therapy, and facilities comparable to those in the United States were not available to him in Mexico. Deportation to Mexico would likely have significantly decreased Francisco's life span.

Francisco's only available legal remedy was suspension of deportation. To prevail he had to show continuous physical presence in the United States for at least seven years, good moral character, and extreme hardship to either himself or to a lawful permanent resident or U.S. citizen parent, spouse or child.⁶⁴

Francisco's life as a migrant farm worker presented significant challenges for the Immigration Law Clinic in proving seven years of continuous physical presence. He never maintained a permanent residence, living in work camps and sometimes sleeping in the fields. To exacerbate these difficulties, the Clinic students were faced with arguing the case before an immigration judge who was known almost never to grant relief from deportation.

Clinic students compiled an array of documentation regarding Francisco's medical condition, the medical care available in Mexico, and Francisco's ties to the U.S. Although Francisco had no family members in this country, he had established many strong relationships with U.S. citizens throughout his recovery process. The immigration judge granted Francisco's request for suspension of deportation.

After his accident in 1978, Francisco began to study English. He received a bachelor's degree from California State University at Sacramento in 1996. Francisco recently naturalized and became a U.S. citizen.

2. Deferred Action/Adjustment of Pakistani Minor

Khan, a citizen of Pakistan, initially sought deferred action (basically an agreement that the INS would not institute deportation proceedings against him) and eventually sought adjustment of status as a special immi-

64. See INA § 244(a), 8 U.S.C. § 1254(a) (repealed 1996). The "extreme hardship" requirement was difficult to satisfy. See, e.g., *INS v. Wang*, 450 U.S. 139 (1981) (holding that reviewing court should defer to agency's conclusion that Korean adults failed to establish "extreme hardship" if returned to Korea, even though their two minor children were U.S. citizens).

grant.⁶⁵ Khan's parents sold him into slavery at the age of ten for a small sum of money to a man who brought Khan into the country claiming that Khan was his son. In the United States, Khan was mistreated, forced to eat food on the floor, prohibited from attending school, and beaten on several occasions. After one beating resulted in a skull fracture, Khan was left near the U.C. Davis Medical Center in Sacramento, California. The INS later instituted deportation proceedings against Khan. Removed from his family's custody, Khan was made a ward of the court. Khan ultimately applied for lawful permanent resident status as a special immigrant.

Before filing the application, students at the Immigration Law Clinic researched a number of possible theories to adjust Khan's status and even contacted the office of a member of Congress to inquire about assistance. Development of the case required a Clinic student to obtain documents from state juvenile authorities for Khan's adjustment application. The hard work paid off in April 1992, about two years after the Clinic accepted the case, when the immigration court adjusted Khan's status to that of a lawful permanent resident.

3. *Suspension of Deportation of Salvadoran Youth*

Javier's mother brought him to the United States in 1983 at the age of fourteen to escape the civil war raging in El Salvador and the daily abuse he suffered at the hands of his father and paternal grandmother. As a student in El Salvador, Javier was politically active as vice president in student government. He posted anti-military articles and publications expressing the Catholic Church's views on the civil war. The military frequently stopped Javier and told him that he should be carrying guns, not books. His paternal grandmother, a staunch military supporter, threatened to have the military kidnap and execute him. Shortly thereafter, Javier and his mother fled El Salvador.

In the United States, Javier attended school and served as a role model to his siblings and other young people around him. Javier had aspirations of attending college and earning a degree in sociology. Eligibility for scholarships and grants required regularization of Javier's immigration status. Although his mother, a lawful permanent resident, had filed a second preference family-based visa, he would have had to wait about three years until the immigrant visa might be issued.⁶⁶ Javier came to the Clinic for assistance in applying for political asylum. However, shortly

65. See INA § 245(h), 8 U.S.C. § 1255(h) (1994).

66. Because of per country limits on certain immigrant visas, noncitizens from some countries face much longer waits to immigrate to the United States than noncitizens from other countries. See Stephen H. Legomsky, *Immigration, Equality, and Diversity*, 31 COLUM. J. TRANS'L L. 319, 328 (1993); see also Jan C. Ting, "Other Than a Chinaman": How U.S. Immigration Law Resulted From and Still Reflects a Policy of Excluding and Restricting Asian Immigration, 4 TEMP. POL. & CIV. RTS. L. REV. 301, 308-17 (1995) (contending that per country caps, diversity visas, and selective enforcement discriminate against Asian immigrants).

after Javier applied for political asylum, he became eligible for Temporary Protected Status (TPS).⁶⁷ Although TPS allowed Javier to legally live and work in the United States, it failed to afford him the legal status necessary to attend college.

At the master calendar hearing, the Clinic requested asylum and suspension of deportation on Javier's behalf. The immigration judge wanted to close the deportation proceedings and have Javier apply for TPS. He reluctantly scheduled a hearing for Javier's claims.

Based on his close family and community ties in the United States, his exemplary moral character, and his commitment to bettering his life and the future of his family, the immigration court granted Javier suspension of deportation in 1991.

4. *Section 212(c) Waiver for Laotian Woman*

Lu is a Mien highland refugee from Laos. Her brother was a commander in the anti-Communist forces. After the United States abandoned these forces in the mid-1970s, Lu and her family escaped to Thailand, where she lived in a refugee camp for five years. In 1979, the Thai government threatened to return the Laotian refugees to Laos where they would face "re-education" camps and possibly death.

Admitted lawfully as a refugee to the United States, Lu and her family settled near Sacramento, California. In 1991, at the request of an elderly aunt, Lu picked up a package from a post office box that she later learned contained opium. Her aunt, like many elderly Laotians, used opium to relieve suffering from cancer. Cultural and language barriers proved decisive in Lu's trial. She was found guilty of possession of a controlled substance and served three and one-half years in federal prison. Upon her release from prison, Lu was placed in deportation proceedings.

The Clinic students convinced the immigration judge that Lu deserved a Section 212(c) waiver of deportation based on her close family ties, the length of her stay in the United States, the hardship to her lawful permanent resident son, and three U.S. citizen children should she be deported, and the fact that Lu did not possess the skills necessary to survive in Laos.

5. *Mexican Political Asylum Case*

Manuel, a Mexican citizen from the state of Chiapas, suffered persecution at the hands of the Institutional Revolutionary Party (PRI), the political party in power in Mexico for over sixty years. Manuel and his family lived in Chiapas, where his parents were involved in political protests against the Mexican government's oppressive treatment of the indigenous peoples. The Mexican authorities repeatedly jailed his father because of his political activities.

67. Section 303 of the Immigration Act of 1990, Pub. L. No. 101-649 (1990), granted Temporary Protected Status (TPS) to most Salvadorans who had lived in the United States since September 19, 1990. *See also infra* note 76 and accompanying text (describing TPS program).

Manuel supported himself by driving taxis for many years. In 1987 he tried to form a taxi cooperative, but the government refused to grant him a license because of Manuel's opposition to the PRI. In 1987 Manuel met Professor Hernandez, leader of the Cardenista Front, a group that supported an opposition party for the 1988 presidential elections. Manuel became Professor Hernandez's driver and right-hand man. Through this association, Manuel gained prominence in the opposition movement. He personally exposed PRI election fraud that resulted in the PRI losing credibility in his hometown.

In early 1990 the government arrested, tortured, and detained Manuel, Professor Hernandez, and eighteen other Cardenista Front activists for three weeks. In April 1991, Professor Hernandez was killed in an accident that Manuel described as a "set-up" by the PRI government. Many of the cooperative's taxi drivers were killed or mysteriously disappeared (and were presumed dead). An attempt also was made on Manuel's life. When the Zapatista uprising occurred in January 1994, Manuel feared that the government security forces targeted him along with the other opposition members. He fled the day after the uprising.

Two Clinic students helped Manuel to affirmatively apply for asylum⁶⁸ and accompanied Manuel to his interview with an asylum officer. Although the asylum officer seemed inclined to grant asylum, she sent the case to Washington, D.C. for additional INS review. One year later, Manuel was granted asylum and became one of the first Mexican citizens to affirmatively obtain asylum.

6. *Asylum Case of Salvadoran Fleeing Constriction*

Noe grew up in El Salvador during its recent civil war, a time when its National Army forcibly recruited young men indiscriminately.⁶⁹ In El Salvador, Noe and his family were active members of a local evangelical church. Committed to neutrality, the church refused to support either side in the raging conflict. After the pastor and secretary of the church were kidnapped, Noe and his family fled to another part of the country.

Two of Noe's older brothers fled El Salvador to the United States to avoid forced recruitment. Remaining in El Salvador, Noe worked as a bus driver where he often witnessed the army's violent conscription efforts along his bus route.

In May 1994, when Noe was seventeen years old, he was singled out by a Salvadoran army member for conscription. Ordered to report for mili-

68. Under the relevant regulations, an applicant may submit an asylum application with the INS, which is called an affirmative application, rather than simply wait for the INS to institute removal proceedings. See 8 C.F.R. § 208.2 (1998).

69. There were many cases involving young men who fled the Salvadoran government's conscription policy during the civil war in the 1980s and early 1990s. See *Cañas-Segovia v. INS*, 970 F.2d 599 (9th Cir. 1992) (holding that applicant established that refusal to join military would result in persecution on account of political opinion and thus was eligible for relief); *M.A. v. INS*, 899 F.2d 304 (4th Cir. 1990) (en banc) (denying relief in similar case).

tary service, he refused. Two days after the scheduled induction, three soldiers brutally attacked Noe. Beaten unconscious, Noe survived only because of the intervention of his girlfriend's father. Two months later, the military sent him another induction letter. At that time, Noe fled El Salvador.

Noe entered the United States in August 1994. Upon crossing the border, the INS arrested him for entry without inspection and placed him in deportation proceedings. One month after his flight from El Salvador, Noe received the devastating news that armed soldiers had murdered his girlfriend's parents. Noe was certain that the soldiers killed them because of his girlfriend's father's intervention on his behalf.

During the client interviews, the Immigration Law Clinic students noticed that Noe had memory problems and showed signs of post-traumatic stress disorder.⁷⁰ The students contacted Survivors International and had Noe assessed. Two psychologists found that Noe indeed suffered from post-traumatic stress disorder, and another specialist concluded that Noe experienced memory loss probably due to the blows to the head suffered at the hands of the Salvadoran soldiers. The information about Noe's mental and emotional condition provided valuable information to the students in helping them prepare and represent Noe at the hearing. The immigration judge ultimately granted asylum.

7. Conclusion

Without the thorough work of the Immigration Law Clinic, most of these immigrants would not have been represented and may well have been deported.⁷¹ Each case required the devotion of large amounts of time to factual development, legal research, witness preparation, and related tasks. At a time when removal defense has become increasingly difficult and resources more scarce, the Clinic provides first-rate legal representation that otherwise would be unavailable to the poor. Due to the elimination of important forms of relief from removal, increasing numbers of private immigration attorneys refuse to accept deportation defense cases because they are resource and time consuming.

D. OTHER LEGAL ACTIVITIES

Besides representing clients in individual cases, the Immigration Law Clinic has been involved in impact litigation at various times over the years. For example, in *Diaz v. INS*,⁷² the Clinic was co-counsel in a suc-

70. See *supra* note 55 (noting difficulties posed by post-traumatic stress disorder suffered by some asylum applicants).

71. See *supra* text accompanying note 26 (mentioning that represented asylum applicants are much more likely to prevail than unrepresented ones).

72. 648 F. Supp. 638 (E.D. Cal. 1986). *Diaz* effectively barred the INS from restrictively granting work authorization to asylum applicants, see Martin, *supra* note 55, at 1373-74, though its effectiveness was undercut somewhat by regulatory changes that went into effect in 1995 that permit the INS to deny work authorization to asylum applicants for six months after they apply for relief. See 8 C.F.R. § 208.7 (1998); see also Stephen H. Legom-

cessful class action brought on behalf of Central Americans and other asylum-seekers concerning the availability of work authorization during the processing of asylum claims.

The Immigration Law Clinic also served as co-counsel in the case of *Xuncax v. Gramajo*,⁷³ in which the victims of persecution by the Guatemalan military, under the command of former Defense Minister, General Hector Gramajo, sued him. The Center for Constitutional Rights in New York nearly abandoned the case because it could not locate the plaintiffs. The Center received a last-minute tip to contact the Immigration Law Clinic, and ultimately a number of the Clinic's Guatemalan clients served as plaintiffs. Clinic students successfully prepared detailed declarations and other necessary documentation for seven plaintiffs. By generating considerable publicity, this lawsuit increased public awareness of the Guatemalan government's miserable human rights record.⁷⁴ The district court entered a \$47.5 million default judgment against General Gramajo in favor of the plaintiffs.

The Clinic has attempted to assist in the implementation of other successful impact litigation. Following the settlement in the case of *American Baptist Churches v Thornburgh (ABC)*,⁷⁵ the Clinic, with the help of Catholic Social Services, organized workshops to facilitate registration of hundreds of Guatemalans and Salvadorans in the greater Sacramento area who were eligible for relief as members of the class, but were unable to obtain legal assistance. At these workshops, Clinic students provided information about ABC relief to the Salvadoran and Guatemalan communities and assisted participants in completing the necessary paperwork. In addition, the Immigration Law Clinic worked with the Refugee Rights Panel of the Volunteer Legal Services Program in Sacramento to recruit and train volunteer attorneys to represent ABC class members seeking political asylum.

The Clinic also has taken on ambitious projects with the hope of expanding its impact. Because of its expertise in Guatemalan asylum cases, the Clinic served as legal counsel for the Coalition for Temporary Pro-

sky, *The New Techniques for Managing High-Volume Asylum Systems*, 81 IOWA L. REV. 671, 686-88 (1996) (summarizing arguments for and against delay in providing work authorization to asylum applicants).

73. 886 F. Supp. 162 (D. Mass. 1995).

74. See Robert Collier, *Bay Area Guatemalans Vindicated by Verdict*, S.F. CHRON., Apr. 26, 1995, at A9; Marcus Bretón, *Long Struggle Bears Fruit*, SACRAMENTO BEE, Apr. 16, 1995, at A1; Elisabeth Sherwin, *Refugees Recall a Time of Terror*, DAVIS ENTER., Apr. 16, 1995, at A1.

75. 760 F. Supp. 796 (N.D. Cal. 1991). In that case, a class of Guatemalan and Salvadoran asylum-seekers claimed that the United States discriminated against them in processing their asylum claims. The settlement required de novo adjudication of most class members claims by INS Asylum Officers. The ABC case reflects long-expressed concerns with foreign policy biases influencing the Executive Branch's asylum decisionmaking. See Kevin R. Johnson, *A "Hard Look" at the Executive Branch's Asylum Decisions*, 1991 UTAH L. REV. 279.

tected Status. Clinic students drafted a TPS⁷⁶ petition for Guatemalans, which the Clinic submitted to the United States Attorney General in October 1992. Unfortunately, the Attorney General never designated Guatemala as a TPS nation.

Students enrolled in the Clinic prepared and distributed a report on the plight of Guatemalan Mayan refugees and current conditions in Guatemala. The report offers a brief political history of Guatemala since the 1950s, focusing on grave human rights violations, especially the persecution of Mayan Indians by the Guatemalan military. In describing the situation that existed in the early 1980s, the report states that "[t]he Guatemalan government's counterinsurgency program is a 'systematic campaign to murder Indian men, women, and children whom the army regards as supporting the insurgents or who resist army directives.' 'The Guatemalan army is committing virtually indiscriminate murder on the nation's Indian population in its bid to pacify the countryside.'"⁷⁷ The Clinic uses the report to support asylum applications. Other organizations across the United States working with Guatemalan refugees also use the report. As a complement to the report, Clinic students prepared a model brief that has been distributed to attorneys representing Guatemalan asylum-seekers.

E. COMMUNITY OUTREACH AND EDUCATION

The Immigration Law Clinic provides law students with community outreach and educational opportunities. Specifically, the Clinic coordinates its work with legal service providers to offer naturalization assistance. Further, it provides information to criminal defense attorneys on the immigration consequences of criminal convictions.

1. Naturalization

In the 1990s, the INS began efforts to increase the naturalization of lawful permanent residents.⁷⁸ The increase in naturalization rates also

76. INA § 244, 8 U.S.C. § 1254A (1994 & Supp. 1996) provides for Temporary Protected Status (TPS) for nationals of countries designated by the Attorney General as TPS nations because of ongoing armed conflict, natural disaster, and other extraordinary and temporary conditions. See LEGOMSKY, *supra* note 40, at 941-49 (describing TPS program). Under 8 C.F.R. § 244.2 (1998), an applicant for TPS may be granted relief if she establishes that she is a national of a state designated by the Attorney General. Section 303 of the Immigration Act of 1990 expressly provided for TPS for Salvadoran nationals, but not for nationals of other nations such as Guatemala. See *supra* note 67.

77. Andreas Garza & Christine Shen, *The Genocide of the Mayan Indians of the Villages of Western Guatemala* 1 (June 1996) (unpublished report on file with authors) (citations omitted).

78. See Doris Meissner, *Putting the "N" Back into INS: Comments on the Immigration and Naturalization Service*, 35 VA. J. INT'L. L. 1 (1994) (explaining Clinton Administration's efforts to promote naturalization); see also U.S. COMM'N ON IMMIGRATION REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY 46-58 (1997) (recommending increased efforts at naturalizing lawful permanent residents). Such efforts later resulted in controversy because some claimed that the Clinton Administration encouraged naturalization for partisan political ends. See *Rush to Mint Citizens Skips Checks, Raising Political Doubts*, N.Y. TIMES, Sept. 8, 1996, at 28. Indeed, one former Congressman

resulted from a response to several other factors, including California's Proposition 187,⁷⁹ congressional limitations on the public benefit eligibility of immigrants,⁸⁰ and new laws facilitating removal of noncitizens.⁸¹ Many immigrants feared the anti-immigrant political climate and sought to participate in the political process. Naturalization of immigrants, by increasing the number of voters able to fully participate in the political process, serves as an important, though slow, mechanism for social change.

The Clinic works in partnership with California Rural Legal Assistance, Inc., California Rural Legal Assistance Foundation (CRLAF), the Immigrant Legal Resource Center, the American Friends Service Committee, and other nonprofit organizations in the Central Valley Partnership for Citizenship, a comprehensive citizenship and civic participation campaign. This project promotes citizenship for immigrants in rural communities and encourages new citizens to actively participate in civic affairs. Attorneys, community outreach workers, Clinic staff, and students conduct outreach and community education on naturalization and assist immigrants in marginalized communities in completing naturalization petitions. As part of this program, the Clinic co-sponsored a naturalization program with CRLAF's California Rural Citizenship Campaign in the rural town of Madera, California to serve the Mixteco community, a group of indigenous immigrants from Mexico.⁸² Clinic students interviewed potential applicants, reviewed questions with each applicant, and assisted them in filling out the petition. Under the supervision of the attorneys, Clinic assistants reviewed the applications looking for "red flag" issues that might jeopardize the petitioner's lawful permanent resident status in the United States and subject the person to the risk that the INS might institute removal proceedings.

2. Community Workshops

The Immigration Law Clinic regularly advises public defenders from Sacramento, San Joaquin, Solano, Yolo, and other Central Valley counties on the immigration consequences of criminal convictions. The immi-

claimed that his re-election bid failed because immigrants who had not yet completed naturalization procedures, had voted. See Peter M. Warren, *'Unlawful' Votes Fail to Change Outcome*, L.A. TIMES, Apr. 10, 1997, at B1 (reporting that investigation revealed that any invalid votes had not changed election outcome).

Naturalization requirements are laid out in INA §§ 313(a), 316(a), 8 U.S.C. §§ 1424(a), 1427(a) (1994). For analysis of the propriety of the requirements, see Gerald L. Neuman, *Justifying U.S. Naturalization Policies*, 35 VA. J. INT'L L. 237 (1994).

79. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (invalidating portions of Proposition 187, the initiative passed by California voters that, among other things, denies public benefits and education to undocumented persons).

80. See *supra* note 22 (citing statute).

81. See *supra* note 22 (citing statutes).

82. See generally CAROL ZABIN ET AL., *MIXTECO MIGRANTS IN CALIFORNIA AGRICULTURE* (1993) (studying various problems faced by Mixtecos). The Central Valley Partnership is funded by the James Irvine Foundation.

gration consequences of a plea bargain, sometimes unbeknownst to criminal defense attorneys, may lead to the banishment of noncitizens from the United States, resulting in separation from their families and often the only lives they have ever known. Newly-passed "get-tough-on-criminal-aliens" legislation makes criminal convictions all the more significant.⁸³ For example, first time offenses for a possession of a concealed firearm and possession of a loaded weapon are misdemeanors in California carrying maximum sentences of one year in jail and ordinarily result in a \$100 fine plus ten days in a work furlough program in many localities⁸⁴; a misdemeanor domestic violence charge has a maximum sentence of one year in county jail and a \$2,000 fine, and in some jurisdictions usually results in a one-year suspended sentence and domestic violence counseling.⁸⁵ From a criminal defense attorney's perspective, such light sentences might seem like good plea bargains. However, a lawful permanent resident with a weapons or a domestic violence conviction is removable.⁸⁶ In addition, convictions with the imposition of a one-year sentence, regardless of whether the sentence is suspended or the defendant actually spends less than one year incarcerated, are considered "aggravated felonies," thereby making the immigrant ineligible for most forms of relief from removal.⁸⁷

The goal of the Clinic's criminal convictions project is to provide public defenders with information about the immigration consequences of criminal pleas so that they may properly advise their clients of the full consequences, immigration as well as criminal, of accepting a plea bargain. Under the supervision of the Clinic attorneys, clinical assistants conduct legal research and provide assistance to public defenders working with noncitizen defendants. The Clinic has developed educational materials in both Spanish and English and has held workshops in several public defenders' offices on this important subject.

Throughout the 1990s, the Immigration Law Clinic has co-sponsored continuing education seminars with public defender offices. The seminars provide information on the immigration consequences of criminal convictions and give immigration and criminal defense attorneys opportunities to brainstorm ways to fashion plea bargains that will not result in "aggravated felony" convictions. The Clinic has prepared a resource document entitled "Testing the California Plea Bargain" designed to assist

83. See *supra* text accompanying note 22 (listing some restrictions in new laws); see also Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1531-34 (1995) (examining historical efforts to exclude and deport criminal aliens).

84. See CALIF. PENAL CODE §§ 12025(a)(3), 12031(a)(1) (West 1998).

85. See CALIF. PENAL CODE § 243(e)(1) (West 1998).

86. See INA § 237(a)(2)(B), (E), 8 U.S.C. § 1227(a)(2)(B), (E).

87. See INA § 101(a)(43)(C), (E), (F), 8 U.S.C. § 1101(a)(43)(C), (E), (F); see also *supra* note 43 (explaining significance of expansion of aggravated felony definition).

public defenders in framing plea bargains that will have the least damaging immigration consequences.⁸⁸

In addition to community education on the immigration consequences of criminal convictions, the Clinic conducts educational seminars on the impact of the welfare and immigration reform laws on immigrants. These seminars, for advocates working in non-profit immigration assistance organizations in the Central Valley, have been instrumental in raising awareness of the increased risk that immigrants face whenever they apply for an immigration benefit. The Clinic stresses the importance of referring clients with complicated immigration problems to qualified immigration attorneys. In addition, the Clinic, in conjunction with the California Rural Legal Assistance Foundation, provides informational seminars for immigrants on the impact of the immigration reform laws on lawful permanent residents, the crime-related grounds for removal, the statutory bars to naturalization, and other topics of interest to the immigrant community.

3. *Indirect Impacts on the Immigrant Community*

Over the years, the Immigration Law Clinic has served as a center for law students dedicated to immigrant rights. Many students learned from their clinical experience that some of the stereotypes underlying Proposition 187 were false and became active in the protests that followed its passage. Some have been inspired to publish articles analyzing the law's treatment of immigrants.⁸⁹ Many have been involved in law school activities relating to immigrant rights. A large number of Clinic students participate in the Davis Refugee Aid Project, which sponsors educational programs about immigrants and refugees and raises funds in the community to assist refugees. Others are involved with the King Hall Legal Foundation (KHLF), which raises funds and grants fellowships to subsidize students working in public interest jobs during the summer. Several Clinic students have had summer immigration positions funded by KHLF grants.

In 1997, a group of Clinic students organized a trip during spring break to represent immigrants through the South Texas Pro Bono Asylum Rep-

88. This document should be available in the fall of 1998 on the internet at <http://kinghall.ucdavis.edu/pages/immigr.htm#legal>. A copy currently can be requested from Heather Evans at hevans@ucdavis.edu.

89. See Rebecca O. Bresnick, *Reproductive Ability as a Sixth Ground of Persecution Under the Domestic and International Definition of Refugee*, 21 SYRACUSE J. INT'L L. & COM. 121 (1995); Minty Siu Chung, *Proposition 187: A Beginner's Tour Through a Recurring Nightmare*, 1 U.C. DAVIS J. INT'L L. & POL'Y 267 (1995); Esther Rosenfeld, *Fatal Lessons: United States Immigration Law During the Holocaust*, 1 U.C. DAVIS J. INT'L L. & POL'Y 249 (1995); Mary Waltermire, *An Analysis of the Clinton Administration's Proposed Asylum Reform Regulations*, 1 U.C. DAVIS J. INT'L L. & POL'Y 1 (1995). Students prepared some of these papers in conjunction with Professor Johnson's Refugee Law seminar. Some Immigration Law Clinic students, such as Saul Garcia, Ming-Yuen Fong, Minty Siu Chung, Nipa Rahim, Mary Waltermire, Mark Windsor, Sushil Narayanan, Melissa Corral, and Christine Shen, have served as research assistants for Professor Johnson on his immigration work.

resentation Project (ProBAR). ProBAR, a project of the American Bar Association, the State of Texas, and the American Immigration Lawyers Association, "recruits, trains, and coordinates the activities of volunteer attorneys, law students, and legal assistants at the Los Fresnos detention facility near Harlingen, Texas."⁹⁰ Students returned from the Texas trip energized by the experience.⁹¹

Many students active in the La Raza Law Students Association are also active in the Immigration Law Clinic. The Association annually hosts the Lorenzo Patiño Banquet to recognize third year students for their commitment and contributions to the Association and the greater Latino community. One graduating student receives the Lorenzo Patiño Leadership and Community Service Award in memory of Judge Lorenzo Patiño, an alumni of U.C. Davis School of Law, for his or her outstanding leadership and service to the Latino community. Since 1990, the annual recipient of the Patiño Award has been an Immigration Law Clinic student.⁹² In addition, the Martin Luther King Jr. Service Award honors graduating law students who donated time to community service in the tradition of Martin Luther King, Jr. before and during their law school years. Many Immigration Law Clinic students have received these awards, such as Meredith Linsky in 1998, and some Patiño Award winners also won the Martin Luther King, Jr. Service Award, such as Amagda Pérez in 1991 and Marién Sorenson in 1997.

F. CLINIC ALUMNI

The Immigration Law Clinic plays a fundamental role in helping law students develop the practical and legal skills that will prepare them for a successful public interest career. Employers increasingly look for new attorneys experienced in client interviewing and counseling, legal research, drafting, and oral advocacy.⁹³ Seven of ten recent hires of California Rural Legal Assistance, Inc. (CRLA) have been graduates of the Clinic; two currently direct CRLA field offices. The California Rural Legal Assistance Foundation, Inc. recently hired three Clinic graduates, one as its executive director, and two to direct citizenship projects. Other students have worked for such groups as AYUDA, serving immigrant women, and a women's human rights organization in Bangladesh. In addition, Legal Services of Northern California, Inc., one of the largest providers of legal services to the poor in California, has hired a number of Clinic graduates.

90. Taylor, *supra* note 25, at 1694 n.166.

91. See Sushil Narayanan, *Spring-Break—DRAP Style*, KING HALL ADVOCATE, Apr. 1997, at 5.

92. These students are Lily Corzo and Allison Green (1990), Amagda Pérez (1991), Dario Frommer and Lynn Martinez (1992), Santos Gomez (1993), Saul García (1994), Olga Sánchez (1995), Andreas Garza (1996), Marién Sorensen and Frank Orozco (1997), and Ruben Villalobos (1998).

93. See *supra* note 2 and accompanying text (discussing significance of MacCrate Report).

One clinic alumnus, Dan Saxon, the 1998 recipient of the King Hall Distinguished Alumni Award, helped establish human rights offices in Guatemala providing legal assistance to victims of the civil war. He later served as a law clerk to the United National International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Former Yugoslavia and was part of a trial team prosecuting four Bosnian soldiers who operated a concentration camp. After a stint as a consultant to the Inter-American Human Rights Commission of the Organization of American States, Saxon currently is a fellow of the Open Society Institute, a foundation promoting democracy worldwide, where he is completing a book about human rights and U.S. policy in Guatemala.

Many Immigration Law Clinic graduates continue to represent immigrants. Many are members of the American Immigration Lawyers Association and provide consultations or pro bono representation to clients referred by the Clinic.

G. CONCLUSION

The U.C. Davis Immigration Law Clinic provides assistance to the immigrant community facing deeply complex and intensely personal immigration problems. Moreover, it affects future immigrants and other underprivileged people by invigorating and training students to represent the poor. However, while providing representation to needy clients and teaching students lawyering skills, the Clinic's ability to promote broad social change for the immigrant community is limited. Because of resource constraints, the Clinic cannot serve all poor immigrants. Indeed, some of the most desperate cases must be rejected because the chances for relief from removal are minuscule or nonexistent. Moreover, the cases keep coming, suggesting that the structural causes of immigrants' legal woes remain unchanged.

II. "REBELLIOUS LAWYERING,"⁹⁴ CLINICAL LEGAL EDUCATION, AND LEGAL LIMITS

Though deeply critical of the status quo, many Critical Race Theorists have not been forthcoming with positive prescriptions for concrete constructive change. This section of the Article considers how clinical legal education ties into critical theory and practice.⁹⁵ It also considers how clinical legal education suffers some of the limitations of liberal legal reform theory.

94. This is taken from the title to Gerald López's book. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING* (1992).

95. See Carrie Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education*, 4 ANTIOCH L.J. 287, 297 (1986) (observing great potential of "clinical education to unite worlds of theory and practice").

A. TEACHING ACTIVIST LAWYERING IN CLINICAL LEGAL EDUCATION: BEYOND FUTILITY

Critical theorists forcefully argue that deep social change cannot be achieved through the legal system.⁹⁶ A parallel development has occurred in the "critical lawyering" literature,⁹⁷ which attempts to incorporate critical thinking into practical lawyering. This scholarship focuses on the role of the lawyer in representing subordinated communities and how best to accomplish social change. Generally speaking, critical lawyering calls for the transformation of the traditional conception of the public interest lawyer to ensure that attorneys collaborate with clients and engage in political strategies for change.⁹⁸ Unlike the more extreme critical position, critical lawyering adherents believe that lawyers at some level may facilitate social change. In this vein, some have attempted to demonstrate the link between critical theory and clinical education.⁹⁹

Given their different visions about the role of law in accomplishing change, Critical Race Theory and critical lawyering scholarship are in tension.¹⁰⁰ The gap, however, is narrowing as some Critical Race theorists advocate tying theory to practice.¹⁰¹ This is consistent with Angela Har-

96. See RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF THE LEGAL IMAGINATION* (1994); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); GIRARDEAU A. SPANN, *RACE AGAINST THE COURT* (1993).

97. See Ruth Buchanan & Louise G. Trubek, *Resistance and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687, 687 (1992) (analyzing "critical lawyering" as "emerg[ing] field of lawyering for the disadvantaged"). For an early, and visionary, articulation of this view of lawyering, see Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1051 (1971).

98. See Buchanan & Trubek, *supra* note 97, at 690-92 (synthesizing central tenets of critical lawyering); see also LÓPEZ, *supra* note 94 (advocating reorientation of ways in which progressive lawyers represent subordinated clients, including collaboration between attorney and client).

99. See Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717 (1992); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991). For analysis of the need for Critical Race theorists to connect theory and practice, see Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 830-39 (1997).

100. See Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1752 n.12 (1994) (book review) ("Critical race scholars have lagged in their analysis of practice.") (citations omitted); see also Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 282-88 (1997) (summarizing link between Critical Legal Studies, Critical Race Theory, and other critical movements and "critical lawyering").

101. See Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 761-65 (1997) (describing "Critical Race Practice" clinic that focuses on Indian law); Martínez, *supra* note 5, at 611-18 (arguing that counterstories illustrating how Mexican-Americans have not enjoyed legal protection may be employed by activists seeking change); Yamamoto, *supra* note 99, at 873-95 (advocating "critical race praxis" in which critical theory is translated into progressive social action).

Some Critical Race theorists have begun to investigate the building of coalitions between subordinated communities to facilitate social change. See Charles R. Lawrence III, *Foreword: Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 828-47 (1995) (analyzing potential for multiracial coalitions); Francisco Valdes, *Foreword: Latino/a Ethnicities, Critical Race Theory, and Post-Identity Politics in*

ris's prescient observation that "Race-crits . . . are committed to transforming modernist paradigms as well as criticizing them."¹⁰²

The similarity of outlook between Critical Race Theory proponents and critical lawyering adherents facilitate the practical move. As Margaret Russell states:

the relationship between critical theories and lawyering for social change is in many respects inherently dialogical and interdependent: a thoughtful approach to progressive practice has the potential to engender valuable theoretical and pedagogical insights; genuinely critical scholarship, in turn, can reveal the complexity of issues about which legal precedent and professional discourse are narrowed, stultified, or simply nonexistent.¹⁰³

The difficult question turns out to be figuring out how clinical legal education fits into Critical Race Theory and critical lawyering. Consider the U.C. Davis Immigration Law Clinic. Many, if not most, immigration attorneys based on experience are deeply critical, perhaps even cynical, about the INS and the immigration laws. Some immigration scholars are as well. Critical Race and critical lawyering scholars criticize law generally and thus presumably would share the concerns with the immigration laws and the agencies administering them. Despite the similarities in vision, attorneys, immigration scholars, Critical Race theorists, and critical lawyers might have very different views about the utility of the legal system.

These differences can be seen in looking at the Immigration Law Clinic. Whatever its deficiencies, the Clinic has made a difference in individual lives. Immigrants in dire need of legal assistance have been able to obtain legal residence in the United States, a very real benefit to them and their families. Improving and gaining confidence in their lawyering skills, Clinic students maintain and expand their commitments to careers in the public interest through their work in the Clinic. Besides simply providing legal assistance, some Clinic students are so inspired by their experiences with immigrants that they become involved in political activities, whether through community organizing or other immigration work. Many Clinic alumni have devoted their legal careers to helping immigrants or the underprivileged generally.

Postmodern Legal Culture: From Practices to Possibilities, 9 LA RAZA L.J. 1, 30 n.118 (1996) (suggesting need for "sophisticated coalitional efforts" among different communities of color). One of the authors of this Article has explored the potential of coalition building in some specific settings. See Johnson, *supra* note 83, at 1553-58 (exploring various coalitions that immigrant rights groups might consider to improve law); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 66-67 (1995) (analyzing various coalitions that Latinos should consider in pursuing political strategies for change in civil rights and immigration laws).

102. Angela P. Harris, *The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 765 (1994).

103. Margaret M. Russell, *Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice*, 43 HASTINGS L.J. 749, 750-51 (1992) (citations omitted).

At the same time, however, the Clinic's impact finds itself limited by the conservative forces in the law, which is just what Critical Race Theory might predict.¹⁰⁴ Legal change is generally incremental. Moreover, the Clinic cannot represent all-comers and those who go unrepresented face the greatest legal impediments toward remaining in the United States; indeed, without legal help, they likely will be deported. Moreover, while the Clinic has succeeded at the individual level, the overall state of immigration law has worsened measurably from the perspective of immigrants during the 1990s.¹⁰⁵ As the Clinic successfully processes a few cases, hundreds more are at the door, including many immigrants who will not be able to obtain relief.

Teaching community lawyering through a clinic in a law school also proves confining. Political activism in a traditional law school environment is not always encouraged and may result in political troubles for the school.¹⁰⁶ Most do not see the central mission of the law schools as promoting social change. One therefore cannot expect the law school administration to be the source generating calls for such change. Indeed, one might fear that if a clinic is too successful, immigration restrictionists might pressure university administrators to limit the clinic's activities.

Nonetheless, long range social change goals can be promoted, if not accomplished, by clinical legal education. Clinical programs reinforce student interest in public interest work, which many observe tends to diminish during the three years of law school.¹⁰⁷ The U.C. Davis Immigration Law Clinic excites and energizes law students. Representing clients with a purpose refines and hones their legal skills. Inspired by the experience, many have pursued careers in immigration law and other public interest activities.¹⁰⁸

104. See *supra* notes 5-7 and accompanying text (collecting authorities on limits of law to bring about social change).

105. See *supra* notes 21-22 and accompanying text. Indeed, the impact litigation campaign pursued by the Clinic and other immigrant rights organizations, see *supra* text accompanying notes 72-75, has failed to cause the Executive Branch to remedy the structural flaws in the administrative agencies implementing the immigration laws. See Peter H. Schuck & Theodore Hsien Wang, *Continuity and Change: Patterns of Immigration Litigation in the Courts, 1979-1990*, 45 STAN. L. REV. 115, 177-78 (1992) (presenting findings of empirical study of impact litigation against the INS supporting this proposition); cf. Wes Daniels, "Derelicts," *Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFF. L. REV. 687, 732 (1997) (stating that "the true value of litigation should be measured by the extent to which the legal relief granted and the social programs that follow actually and significantly improve the lives of homeless people by dealing successfully with their real problems.").

106. See Susan Hansen, *Backlash on the Bayou*, AM. LAW., Jan.-Feb. 1998, at 51 (reporting on political backlash against Tulane's environmental clinic because of suit brought to block construction of chemical manufacturing plant and mentioning that other law school clinical programs had been subject to political pressure).

107. See generally ROBERT V. STOVER, *MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL* (Howard S. Erlanger ed., 1989) (analyzing diminution of interest in public interest work in law students based on study).

108. See *supra* text accompanying note 93.

Attorneys might look at the Clinic and praise its diverse successes. Critical lawyers might suggest that, although the Clinic has had some success, greater efforts should be made at client empowerment. They might consider the various impact and naturalization projects to be moves in the right direction. Some Critical Race theorists might suggest that the focus on law at all is a misplaced allocation of limited time and energy. There is some truth to each of these observations.

However it may appear from the outside, that the Immigration Law Clinic seeks to empower clients through providing them with legal representation. Staff attorney Amagda Pérez teaches students that they must collaborate with clients in formulating legal strategies. Emphasizing careful listening skills and sensitivity to client needs, she hopes that students, as well as clients, learn larger lessons. Students teach clients how to fend for themselves, an invaluable skill for dealing with legal problems that might arise in the future when attorneys may not be available. Clients teach students about the importance of collaboration, as well as about such things as racial, class, gender, and other inequities in U.S. society. Consequently, the Immigration Law Clinic's approach finds support in the critical lawyering literature and reflects the link between critical theory and practice.

B. THE IMMIGRATION LAW CLINIC AND NONCITIZENS ON THE MARGINS: EDUCATING STUDENTS ABOUT RACE

Critical Race Theory emphasizes the central importance of race to the social structure of the United States.¹⁰⁹ At a minimum, this growing body of legal scholarship has sensitized people to the issues of race implicated by the law. An offshoot of Critical Race Theory, Critical Latina/o, or LatCrit, Theory has attempted to analyze the issues of race centrally important to Latina/os in the United States.¹¹⁰ Because of the immigrant experiences of many Latina/os, immigration often has been an issue of importance to the Latina/o community. Immigration enforcement disparately impacts Latina/os, who are often perceived to be "foreign" to the nation's Anglo-Saxon core. Consequently, Latina/o theorists have focused on the role of race and immigration in the United States.¹¹¹

109. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1336 (1988) ("[R]acism is a central ideological underpinning of American society.").

110. See Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outside Jurisprudence and Latino/a Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997) (analyzing genesis of LatCrit theory and introducing symposium to first annual LatCrit Theory conference in 1996). For foundational works in this genre, see THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds. 1998) and Jean Stefancic, *Latino and Latina Critical Theory: An Annotated Bibliography*, 85 CAL. L. REV. 1509 (1997).

111. See Elvia R. Arriola, *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, 28 U. MIAMI INTER-AM. L. REV. 245 (1996-97) (studying impact of border enforcement on Mexican immigrants); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181, 1190-93 (1997) (analyzing importance of immigration issues to Latinos as opposed to African American community); Berta Esperanza Her-

Other noncitizens of color also are disparately impacted by the enforcement of the immigration laws. Asian immigrants are adversely affected by the operation of certain provisions of the immigration laws.¹¹² Asian Americans, as well as other groups classified as "foreign," often suffer from the presumption that they are immigrants, even if they can trace their ancestry in this country back for generations.¹¹³ Like Latina/os, persons of Asian ancestry often suffer disadvantage due to the operation of the immigration laws.¹¹⁴

One challenge to focusing attention on racial subordination in teaching immigration law in the classroom is that the law is facially neutral.¹¹⁵ Moreover, the doctrinal analysis of cases often obscures the racially disparate impact of the immigration laws. Much of immigration law scholarship ignores the disparate racial impact and treats racism in the immigration laws as a historical artifact.¹¹⁶ A formalist defense of the immigration laws contends that they discriminate against "aliens," not

nández-Truyol, *Natives, Newcomers and Nativism: A Human Rights Model for the Twenty-First Century*, 23 FORDHAM URB. L.J. 1075 (1996) (analyzing history of nativism and impact on U.S. immigration law and policy); Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995) (analyzing role of anti-Mexican sentiment in the passage of Proposition 187); George A. Martínez, *Latinos, Assimilation and the Law: A Philosophical Perspective* (Sept. 5, 1997 draft) (unpublished manuscript on file with author) (analyzing philosophical arguments that Latinos and Latino immigrants should assimilate).

Some LatCrit theorists have stressed that theory be tied to practice. See Sumi K. Cho, *Essential Politics*, 2 HARV. LATINO L. REV. 433 (1997); George A. Martínez, *The Legal Construction of Race: Mexican-Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997); Laura M. Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 HARV. LATINO L. REV. 375 (1997).

112. See *supra* note 66 (citing authority analyzing how per country ceilings create longer immigration lines for immigrants from certain nations).

113. See Keith Aoki, "Foreign-ness" and Asian American Identities: *Yellowface, World War II Propaganda and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. (forthcoming 1998) (on file with authors); Pat K. Chew, *The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 33-38 (1994); Cynthia Kwei Yung Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367, 429-38 (1996); Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, 'Foreignness,' and Racial Hierarchy in American Law*, 76 OR. L. REV. 261 (1997).

114. See generally BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990* (1993).

115. Cf. Cahn, *supra* note 13 (arguing for challenge to gender and racial stereotypes that underlie welfare reform, but are never made explicit).

116. See David A. Martin, *Disentangling the Strands of U.S. Immigration Policy Reform* (questioning whether nativism has significantly influenced recent changes to immigration law and policy), in *CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE* 101 (Wayne A. Cornelius, Philip L. Martin, & James F. Hollifield eds., 1994); Peter H. Schuck, *Alien Rumination*, 105 YALE L.J. 1963, 1966 (1996) ("I believe . . . that [although it is debatable] racism as such no longer plays a crucial role in immigration law; certainly it plays a less significant role than it did before.") (footnote omitted). Some criticize traditional immigration scholars for failing to see the relevance of Critical Race Theory to their analysis of the immigration laws. See Stephen Shie-Wei Fan, Note, *Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants*, 97 COLUM. L. REV. 1202 (1997).

any particular minority group.¹¹⁷ Nonetheless, the immigration laws and their enforcement have an undisputedly racial impact.¹¹⁸ Students at the U.C. Davis Immigration Law Clinic see this first-hand, even though not all Clinic clients are racial minorities. Both INS and the Border Patrol's policies disparately affect noncitizens of color, a fact evident from the clients represented by the Clinic. Many of the Clinic clients are people of color. Many live difficult lives and face the harsh sanction of removal from the United States if their legal efforts fail. The impact of the law on the lives of immigrants of color cannot be missed.

The Immigration Law Clinic is not unique in this regard. Yale clinic students received practical lawyering experience, including client contact, legal briefing, and political lawyering, in the litigation challenging Haitian interdiction and repatriation.¹¹⁹ The fact that the clients, recipients of some of the harshest treatment the U.S. government could offer, were black should not be lost.¹²⁰ Similarly, at the University of Houston, Professor Michael Olivas single-handedly organized a clinic in which students provided legal assistance to unaccompanied Central American children detained by the INS after fleeing widespread political violence.¹²¹ The race and class of the clients could not have been missed by the students.

The exposure of law students to the operation of the immigration laws is important, even if they ultimately do not practice in the area. The experience with immigrant clients may encourage students to do pro bono work in private practice. At a bare minimum, the experience may sensitize them to the difficulties facing immigrants. Indeed, a few students even have accepted positions as trial attorneys for the INS. Clinic experi-

117. See generally Johnson, *supra* note 23 (analyzing how "alien" terminology in immigration law facilitates few legal protections offered foreign citizens under U.S. immigration laws).

118. For an exploration of some of the impacts, see 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).

119. See Victoria Clawson et al., *Litigating as Law Students: An Inside Look at Haitian Centers Council*, 103 YALE L.J. 2337 (1994) (documenting experience). See, e.g., *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993).

120. See Joyce A. Hughes & Linda R. Crane, *Haitians: Seeking Refuge in the United States*, 7 GEO. IMMIGR. L.J. 747 (1993) (criticizing discriminatory treatment suffered by Haitians); Malissia Lennox, Note, *Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy*, 45 STAN. L. REV. 687 (1993) (contending that U.S. treatment of Haitians was racially discriminatory); *Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 451 (S.D. Fla. 1980) (stating that "possible underlying reason" why Haitians were treated differently than any other refugees fleeing repressive regimes was that they are black), *aff'd as modified sub nom.*, *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023(5th Cir. 1982); see also Janice D. Villiers, *Closed Borders, Closed Ports: The Plight of Haitians Seeking Political Asylum in the United States*, 60 BROOK. L. REV. 841, 904-15 (1994) (identifying racial, class, language, and cultural biases against Haitian asylum seekers). For analysis of the complex factors resulting in the President's decision to interdict and repatriate those fleeing Haiti, see Kevin R. Johnson, *Judicial Acquiescence to the Executive Branch's Pursuit of Foreign Policy and Domestic Agendas in Immigration Matters: The Case of the Haitian Asylum-Seekers*, 7 GEO. IMMIGR. L.J. 1 (1993).

121. See Olivas, *supra* note 19, at 820-35; see also Cecelia Espenosa, *Good Kids, Bad Kids: A Revelation About the Due Process Rights of Children*, 23 HASTINGS CONST. L.Q. 407 (1996) (criticizing policy of detaining undocumented immigrant children).

ence hopefully will allow them to better, and more judiciously, exercise professional judgment.

It is difficult to tell whether the clinical experience in immigration goes beyond individual consciousness-raising. Clinical legal education faces constraints in changing the status quo for immigrants.¹²² However, it does encourage the students and helps the clients that are served. Whether this matters in the larger scheme of things, or whether the status quo will simply keep re-inventing itself, is more difficult to tell.

Many immigration attorneys, Critical Race Theorists, and critical lawyers would praise the fact that the Immigration Law Clinic exposes the impact of the immigration laws on racial minorities. Practicing attorneys, however, might see little utility in changing the immigration bureaucracy through aggressively litigating individual cases. Critical lawyers would claim that this observation shows the need for focusing on empowerment strategies. Critical Race Theorists might contend that the consciousness-raising function performed by clinical education is simply the beginning of the road to social change. As we have seen, each of these assertions holds some truth.

The Immigration Law Clinic has not always found it easy to educate students about issues of race. Over the years, a few students have been insensitive to the needs of the clients, many of whom are racial minorities who have suffered hardships before and after coming to the United States. Clinic students occasionally dictate to, rather than collaborate with, clients. When the client is a member of a minority group and the student is not, such conduct unfortunately reinforces the racial subordination in the client's life. It also runs counter to the important goal of fostering racial sensitivity among students. By emphasizing empathy and listening skills, Clinic attorneys work to avoid situations in which students "tell" clients how their cases will be handled.

III. CONCLUSION

By focusing on the experiences of the U.C. Davis Immigration Law Clinic, we have offered some preliminary thoughts about the link between critical theory and clinical legal practice. Obviously, additional time and thought should be devoted to this subject in the hopes that the theories for change reflect real world realities and do not end up as wasted efforts.

Clinical legal education has both promise and constraints when it comes to facilitating social change. The experience of the Immigration Law Clinic reveals some of them. We must continue the study of clinical education, however, to determine whether the costs outweigh the benefits. Our hope, of course, in criticizing the world must be to move beyond futility.

122. See *supra* text accompanying notes 96-108.

