the ART of ETHICS

Ensure you are representing your client competently. 7

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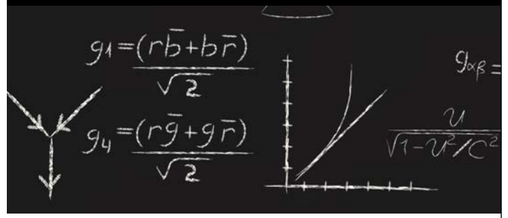

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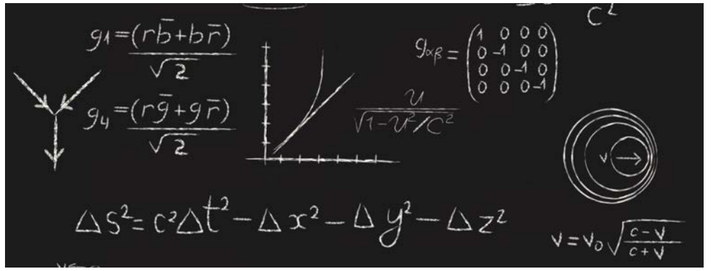

by Cletus M. Weber

Many lawyers joke about why they became lawyers—because they were not good at math (or were afraid of blood). Whether you like it or not, math intersects immigration practice quite frequently, as can be seen in the following examples:

Asymptotes

An asymptote is a line that approaches but never actually reaches another, sort of like a descending airplane that approaches an infinitely long runway, but never actually lands.

In immigration law (or any office, for that matter), asymptotes appear as this: you ask an information gatherer (either client or subordinate) for 25 items, but you receive only 14; when you ask for the remaining 11, you receive only seven; when you ask for the remaining four, you receive only two, etc. You never really seem to get everything you need.

One way to prevent such asymptotic behavior is to paraphrase Sir Isaac Newton: every inaction should be met with an equal and opposite inaction. Specifically, ensure that the client or employee knows that you will not be able to start moving forward until you receive everything you need—*i.e.,* that you cannot work piecemeal. Make it clear that no work will be done. Also, ensure that your instructions, checklists, etc., are as tailored, focused, and clear as possible to prevent a search for infinity. Frequently, a quick preliminary discussion can eliminate hours of wasted time spent hunting for low-value information.

B > 20G

The pain of one bad client outweighs the joy of 20 good ones (*i.e.,* B > 20G). It only takes a few bad ones in the mix to make for a consistently unpleasant practice overall. First, recognize a bad case up front (*e.g.,* last-minute contact, uncooperative, unwilling to pay, all previous problems were the fault of the last attorney(s), etc.). Second, if you make a mistake, take action immediately: stop, refund, and move on—if you can do so without prejudicing the client's case. Third, recognize that bad relationships are not always the client's fault. Ensure you know the client's expectations. Ask about his or her expectations for (1) submitting documents and information to you; (2) filing dates; (3) and receiving payments before you start the work.

Always under-promise and over-perform. Work harder to develop your overall practice in order to reduce your need for every "potential" client in the first place.

Sudoku

When asymptotic behavior and Bs become too much, take a break for one—and only one—Sudoku or other math puzzle. Then return to the pile of work that is adding up.

CLETUS M. WEBER is co-founder of Peng & Weber, PLLC, based in Mercer Island, WA. He is a senior editor of Immigration Options for Investors & Entrepreneurs, 3rd Ed. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Contentment After Switching to an Appellate Practice

by Rob Heroy

For more than seven years, I suffered headaches and lost sleep over difficult clients and frustrating dealings with USCIS. Anguished, I was on the brink of closing my immigration practice. Then I decided to convert my practice to an appellate practice, which took time, but it was well worth it in the end.

Strangely, those clients at the end of the rope are significantly lower-maintenance than those clients facing no urgency in their cases. As I cut down on the daily grind of long-awaited EADs, 1-800 numbers that got me nowhere, and the constant sense of urgency stemming from my clients persistent calls, I started to enjoy the challenge of the appeals that were still kicking around. I began referring out the cases that gave me headaches and started receiving referrals for appeals and post-conviction relief.

Far Less Intimidating

The appellate process is far less intimidating than most practitioners think, and it is one of the most orderly immigration functions. Many non-U.S. citizens consult with me following a denial by the

Board of Immigration Appeals (BIA). Some clients are severely limited by the Illegal Immigration Reform and Immigrant Responsibility Act's jurisdiction-stripping provisions. INA §242(a)(2)(B) provides that federal courts lack jurisdiction to review denials of discretionary relief. This provision eliminates reviewability of the lion's share of BIA appeals involving questions of discretion, particularly cancellation denials based on hardship or good moral character, as well as adjustment of status.

But if the client decides to appeal to a circuit court, the next step involves electronically filing a petition for review and paying the filing fee. Circuit courts have their own requirements for docketing statements. However, that process generally can be accomplished in just an hour or so. Once filing is complete, the government does much of the work by preparing the administrative record of the agency proceedings. Next, the court sets a briefing schedule and then you file your brief. Most courts are fairly liberal in granting extensions. Once the Office of Immigration Litigation responds, a reply brief may be appropriate or the court may call for oral argument.

I file motions to reconsider or for en banc review as a matter of course. A motion to reconsider asks the BIA or the court to review its previous decision based on errors in their analysis, such as failure to offer a reasoned explanation for a decision or an inconsistency with a previous decision. These motions act as "free rolls" in the sense that a foreigner has little more to lose if the motion is denied.

"The appellate process is **far less intimidating** than most practitioners think, and it is one of the most orderly immigration functions."

By filing a motion to reconsider or a petition for review, a noncitizen waives any benefits associated with a voluntary departure agreement. However, subject to the whims of the administration, and assuming that the client is not a particularly serious offender, a non-detained foreigner will likely maintain his or her freedom pending exhaustion of the process. Counsel should provide updates and copies of filings to Enforcement and Removal Operations, and, in return, your client is unlikely to receive a bag-and-baggage letter.

Once all options have been exhausted, your client may still seek a stay or an order of supervision, which would enable him or her to remain in the United States for a certain amount of time until U.S. Immigration and Customs Enforcement issues a removal order.

Appellate work can generate substantial revenue for your practice. However, there are factors to consider when setting fees. Filing fees typically run between $400 and $500, and the costs of hiring a printing company to bind your brief and the record can exceed $1,500. These companies also handle the tables of contents and formatting for a (worthwhile) fee. Travel may also be necessary.

Finding Contentment

The switch to appellate work has done wonders for my practice and for me. I've found that appellate practice forces me to become intimately familiar with controlling authority. I find myself shutting down opposing counsel or even the court (or at least getting a little more respect). Additionally, due to jurisdiction-stripping provisions, I confront a variety of issues, which has helped keep me sane. That being said, there are some downsides, such as working from home at night after my kids have gone to bed because it is impossible to write a brief during the workday between court appearances and phone calls. But I'm okay with it because the work is more rewarding, the stakes are higher, and the clients know where they stand. They also appreciate my assistance.

ROB HEROY is a partner with Goodman, Carr PLLC in Charlotte, NC, where he handles matters involving criminal defense, post–conviction relief, and immigration appeals. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

E-Verify Use = Increased Government Scrutiny

by Christine D. Mehfoud

News flash! The government agencies responsible for immigration-related matters are talking to each other. They are monitoring your E-Verify use and referring anomalies for investigation.

As discussed in a recent post, companies participating in E-Verify expose themselves to increased government scrutiny. The USCIS E-Verify Monitoring & Compliance Branch (M&C) regularly monitors use of the system to ensure compliance with the E-Verify statutes and guidelines. And, in its own words, M&C "refers instances of possible fraud, discrimination, and illegal or unauthorized use of the system to other federal agencies, such as DHS's Immigration and Customs Enforcement (ICE), the Department of Justice, and/or the Office of Special Counsel (OSC)."

Nowhere is the active referral process more evident than in the relationship between M&C and OSC. Through a Memorandum of Understanding (MOU) effective in March 2010, M&C "*will refer* [to OSC] all matters that may involve an individual act or a pattern or practice of employment discrimination on the basis of national origin or citizenship status; document abuse; or retaliation" and "*will also refer* all matters that may involve the misuse, abuse, or fraudulent use of E-Verify that can result in the adverse treatment of employees" (emphasis added). Likewise, OSC will share "information relating to suspected employer or employee misuse, abuse, or fraudulent use of E-Verify" with USCIS.

M&C's MOU with ICE states that M&C "*will refer* suspected employer and employee misuse, abuse, and fraudulent use of E-Verify to ICE for investigative consideration concerning matters within ICE's jurisdiction" (emphasis added).

Recent settlements announced by OSC make clear that the referral process is alive and well. For example, OSC's settlement with Real Time Staffing Services, LLC, in which the staffing company agreed to pay a $230,000 civil penalty and set aside $35,000 to compensate damaged parties, was based on a referral from USCIS, presumably via M&C. Likewise, OSC's recent lawsuit against Louisiana Crane Company stemmed from the company's alleged noncompliance with E-Verify.

While many employers mistakenly believe that participation in E-Verify will reduce their exposure to worksite enforcement, the opposite may in fact be true. M&C's increasing involvement in enforcement highlights the need for E-Verify employers to ensure that they are using E-Verify correctly and that their underlying Form I-9 process will withstand scrutiny.

CHRISTINE D. MEHFOUD is a director at Spotts Fain PC in Richmond. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

by Elizabeth Rompf Bruen, Meghan Moore, and James A. Bach

The rules of professional responsibility require attorneys to represent clients competently. Competent representation begins by knowing your case well—by gathering the facts and undertaking thorough research and legal analysis.

Scope of Representation

Begin by clearly outlining the scope of representation in the client's representation agreement. Advise clients at the beginning of representation of their duty to inform counsel and the immigration court of all address changes. Include this responsibility in the client's representation agreement.

Ask your client to complete a detailed intake sheet, which elicits all relevant information pertaining to the client's immigration history, criminal history, good moral character issues, education, employment, inadmissibility issues, and potential forms of relief. Review the information carefully with your client prior to the client's first court hearing.

Encourage clients to file Freedom of Information Act requests with the Executive Office of Immigration Review (EOIR), U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and any other relevant government agency. Identifying that your client is in removal proceedings in these requests is important to encourage an expedited response. If your client was ever fingerprinted by a law enforcement or immigration agency, request a records check from the FBI either directly or through a third party.

Finally, request a review of the EOIR's record of proceedings by filing a written request with the local immigration court, along with your EOIR-28.

Practice Pointer: Take detailed notes when reviewing records of proceedings. Some immigration courts limit the number of copies a representative is permitted to make when reviewing a file. Allot a significant amount of time for file review, as audio recordings of the hearings may be long. Review the results of your investigation with the client and note any inconsistencies. The rules of professional responsibility require attorneys to communicate with their clients in a manner that permits the client to make informed decisions about their case. Attorneys should use translators when needed to ensure clear communication with clients. In addition, the agreed-upon case strategy should be outlined in writing to the client with a copy kept in the client's case file.

Practice Pointer: Additional ethical duties may apply when attorneys represent certain clients, including children. Attorneys should review the ethical rules relating to diminished capacity when determining when it is appropriate to substitute the attorney's judgment for that of the client. In addition, attorneys must be mindful when communicating with third parties about a child-client's case, regardless of whether the third party is represented by independent counsel. When appropriate, use written waivers to record a client's permission to speak to third parties regarding case issues.

Cases involving removal proceedings may take years to conclude. Attorneys should utilize tickler systems to manage case deadlines and ensure consistent communication with clients throughout the process.

Non-Paying, Uncooperative Clients

Given the complexity of and potential length of removal cases before EOIR, attorneys rightly expect a lot from clients, both in terms of cooperation and payment of legal fees. These expectations, combined with a client's failure to fulfill them, can create conflict between your legitimate interests and your ethical obligations to the client and to the court. What happens when the client fails to cooperate with your office? What are your obligations when the client stops paying legal fees? There are a number of things you can do at the onset of representation in order to avoid these issues.

First, consider your legal fee structure. In cases that can take years to litigate, the client's limited resources may lead you to offer payment plans or payment options after a client makes an initial down payment. Unfortunately, cases that drag on for years provide opportunity for clients to fail to make payments. To avoid the predicament of doing work for which you are not being paid, consider accepting only payment in full before work is commenced. Given the potential difficulty of withdrawing from representation in removal proceedings, it may be best to require full payment in advance of your initial appearance before EOIR. That is, after all, the time when the client is most motivated to pay and has the least opportunity to find a reason not to pay.

Do not neglect applicable rules regarding lawyer trust accounts. Even if you are paid in full at the outset of the case, defer to your state's rules of professional conduct to determine requirements for keeping legal fees in a trust account throughout the pendency of a removal case, which may take years to complete. You may find you have a duty to keep an advance fee paid by your client in a trust account until you have earned it all or have reached previously identified and recorded milestones in the course of the case.

Make your expectations and your client's obligation

to participate in the case clear to him or her from the outset. In your engagement agreement, spell out the client's responsibilities clearly. Include the documents and information he or she will need to provide, a timeframe in which the documents will need to be provided, and the consequences of his or her failure to cooperate (*i.e.,* your withdrawal from the case). Have the client initial or sign that specific paragraph in the agreement and provide the client a copy of the agreement. Send a copy of it as a reminder if you sense he or she is being uncooperative.

Lay out a clear paper trail of your attempts to contact the client and request information and documentation from him or her. Send a letter after every phone call or attempted phone call in which you try to get the client to cooperate. Get an e-mail address at the beginning of the case (even that of a friend or relative) so you can create a record of reminders by e-mail. You will need this documentary evidence should you decide to withdraw.

Sometimes the need to withdraw is unavoidable. As a starting point, remember that EOIR does not recognize limited appearances simply for bond hearings. A motion to withdraw as counsel is required. Follow the EOIR rule as outlined in Chapter 2.3(i) of the EOIR Immigration Court Practice Manual to give the immigration judge as much reason as possible to grant your motion.

"**Sometimes the need to withdraw is unavoidable.** As a starting point, remember that EOIR does not recognize limited appearances simply for bond hearings. A motion to withdraw as counsel is required."

Immigration courts are currently burdened with an overwhelming backlog of removal cases, so it is in the court's interest to ensure that respondents have legal representation, and to deny motions to withdraw where the only issue is non-payment of fees. To overcome this bias, relate your client's non-payment or non-cooperation to your ability to ethically and adequately represent him or her. Has there been a breakdown in communication? Has the client's refusal to cooperate so deteriorated the client/attorney relationship that it has affected your ability to provide diligent representation? Do you and your client diverge on strategy such that continuing representation would constitute a violation of applicable ethics rules?

In the midst of a withdrawal, bear in mind your duties of confidentiality toward the client and candor toward the tribunal. Balancing these ethical duties along with your own interest in being relieved from the case may prove difficult, especially when you are frustrated with the uncooperative or non-paying client.

Finally, be familiar with local practices. You may find that what is acceptable in your local court as grounds for withdrawing will not win in another venue.

If your motion to withdraw is granted, you may still find yourself as the attorney of record for the limited purposes of service of an order of removal. Do not close the file and forget about it after you receive the judge's order. Calendar it for after the next known hearing and look in the mail for a potential in absentia order. Send it to the client with the appropriate legal advice in order to fulfill your ethical obligations.

This article is an excerpt from "Ethics in Litigation," originally published in *Mastering the Art of Removal Defense* (2014 AILA Fall Conference Handbook). Footnotes omitted but appear in original. **ELIZABETH ROMPF BRUEN** is an immigration attorney with Scott D. Pollock and Associates, P.C., in Chicago. **MEGHAN MOORE** is a founding member of Avanti Law Group, PLLC in Grand Rapids, MI. **JAMES BACH** was a full-time litigator in the immigration court and in federal courts; his current practice focuses on business immigration in San Francisco. The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Must the Court Have 'Reason to Believe'?

by Martin R. Robles-Avila

At first blush, it may seem preposterous that notwithstanding the dismissal of criminal charges, or even the vacature of a drug-related conviction on constitutional grounds, an individual still may be subject to removal as a drug trafficker. That, however, is precisely the case when dealing with the fanciful ground of inadmissibility at INA §212(a)(2)(C)(i).

In Chavez-Reyes v. Holder, No. 10-70776 (9th Cir. Jan. 27, 2014), the Ninth Circuit sustained removal as an "illicit trafficker," despite the court having overturned the petitioner's conviction on appeal "on the ground that the officers lacked sufficient suspicion to make a traffic stop." Likewise, in Garces v. U.S. Attorney General, 611 F.3d 1337, 1345 (11th Cir. 2010), the Eleventh Circuit reversed the immigration judge's (IJ) illicit trafficking determination but found "the vacature of [Garces'] conviction did not end the matter" because "the charge on which he was found removable does not depend on a criminal conviction."

The statute under which these two cases were decided is peculiar in that, unlike its aggravated felony counterpart at INA §101(a)(43)(B), it does not require a conviction.

Rather, the applicant is deemed inadmissible on the basis of the suspicion of a consular officer—or the generic titular sovereign, the attorney general.

In its present iteration, INA §212(a)(2)(C)(i) classifies a "[c]ontrolled substance trafficker" as anyone

> "who the consular officer or the Attorney General knows or has reason to believe … is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so."

But What About Intent?

One of the more overlooked components of the illicit trafficking ground is its scienter, or intent requirement—specifically, the requirement that the accused "know[ingly]" engage in particularized activity in furtherance of trafficking. Therefore, to be found inadmissible as an illicit trafficker, the applicant must either actually "illicit[ly] traffick[ ] in any controlled substance" (the actus reus); or, he or she must "knowing[ly]" engage in specified activity in furtherance of trafficking (the mens rea).

Practice Pointer: The mens rea precondition has practical consequences for advocates, namely, that the adjudicators analyzing the circumstances of the case must consider the testimony of the accused if it is proffered. This may provide a separate avenue of defense for practitioners.

By way of example, in the first of three decisions, Pichardo v. INS, 188 F.3d 1079, 1081, 1082 (9th Cir. 1999), the Ninth Circuit noted "that drug trafficking has an element of intent," and so it reversed the agency's "reason to believe" determination, in part, because the petitioner "consistently denied having any knowledge of the drugs and he had no prior record of involvement with drugs"; and the IJ found his "testimony reasonably credible." The court later withdrew and vacated its decision at 216 F.3d 1198, 1199 (9th Cir. 2000) and decided the petition on different grounds, expressly declining to "reach the issue of inadmissibility under [INA §212(a)(2)(C)]." However, the initial reversal shows the positive impact that credible testimony can have on a trafficking determination.

Also, in Gomez-Granillo v. Holder, 654 F.3d 826, 838 (9th Cir. 2011), the Ninth Circuit expressly remanded the case "for further proceedings to evaluate the credibility of petitioner's testimony that he did not know he was transporting marijuana, and the effect of that determination on the question of whether the IJ or [Board of Immigration Appeals (BIA)] had 'reason to believe' in light of all the evidence placed before the IJ during the course of these proceedings."

Finally, in Lopez-Umanzor v. Gonzales, 405 F.3d 1049, 1050, 1058 (9th Cir. 2005), the Ninth Circuit again remanded proceedings "for a new hearing because the IJ refused to allow [p]etitioner to present relevant expert testimony that bore on [p]etitioner's credibility" as to both domestic violence and a "drug-related credibility dispute."

Practice Pointer: The decision whether to offer the testimony of the accused in removal proceedings is necessarily fraught with peril: A finding that the accused is not credible may taint the proceedings similar to an adverse credibility determination in the asylum context. But a plausible denial disavowing responsibility when weighed against nothing more than police reports can result in termination of proceedings.

Case in point: The Eleventh Circuit in *Garces* addressed such a factual scenario finding, "[a]bsent corroboration, the [police] reports by themselves do not offer reasonable, substantial, and probative

evidence that there is reason to believe Garces engaged in drug trafficking." 611 F.3d at 1350. The court reversed the BIA's decision, even though the IJ "found that Garces was 'not a particularly credible witness.'" The Board had relied solely on his "guilty plea as an admission by him … corroborat[ing] the allegations in the arrest reports." 611 F.3d at 1342, 1350.

A Much Lower Standard

Because of its subjective character, government counsel often mechanically invoke the "reason to believe" ground when a controlled substance is present but a conviction is not. The Department of State's *Foreign Affairs Manual* (FAM) notes that because the "reason to believe" threshold "is substantially lower than that required for a conviction," it may be satisfied "even though criminal charges against the alien [that] relate to the facts forming the basis of ineligibility as a trafficker have been dismissed." 9 FAM 40.23 N1.1(b). A "reason to believe" may, therefore, be established "by a conviction, an admission, a long record of arrests with an unexplained failure to prosecute by the local government, or several reliable and corroborative reports." 9 FAM 40.23 N2(b). The officer must "assess all evidence," and that evidence may include the "conclusions of other evaluators"; however, the FAM cautions, "no matter how trustworthy" those conclusions might be, they "cannot alone support a finding of inadmissibility." 9 FAM 40.23 N2(c). This admonition should be cited when government counsel attempt to prop up the government's case with hearsay-rife police reports or I-213 forms (Record of Deportable/Inadmissible Alien).

To a limited extent, common sense plays some role in the illicit trafficking determination. Worth noting, the U.S. Supreme Court has emphasized on several occasions the "commonsense conception" of the aggravated felony term of "illicit trafficking." Moncrieffe v. Holder, 133 S. Ct. 1678, 1693 (2013), *quoting* Lopez v. Gonzales, 549 U.S. 47, 53 (2006). *See also* Carachuri-Rosendo v. Holder, 130 S. Ct. 2577, 2585 (2010).

Obviously, facts involving a large quantity of any controlled substance will give rise to the "reason to believe" trafficking charge (provided it is a "listed chemical" under section 102 of the Controlled Substances Act (21 USC 802). To sustain inadmissibility, there still must be some demonstration that the controlled substance is one "defined in section 102 …" *See, e.g.,* Ruiz-Vidal v. Gonzales, 473 F.3d 1072 (9th Cir. 2007), and Hamid v. INS, 538 F.2d 1389, 1391 (9th Cir. 1976). (the petitioner challenged whether "hashish" was encompassed by the phrase "in any of the aforementioned drugs" under the predecessor statute, 8 USC §1182(a)(23)).

Practice Pointer: Cases involving smaller quantities of a controlled substance always should be challenged, as the BIA has expressly referred to "an exception to a finding of trafficking where the evidence establishes that the illegal substance was intended for personal use as distinguished from intent 'to be used in traffick.'" Matter of Davis, 20 I&N Dec. 536, 546, n. 5 (BIA 1992), *quoting* Matter of Rico, 16 I&N Dec. 181, 186 (BIA 1977).

While the Board has found that receiving on "[three] occasions from a dealer … about 15 or 20 marijuana cigarettes … to deliver to the dealer's customers" constituted illicit trafficking, *Matter of R-H-*, 7 I&N Dec. 675 (BIA 1958), it also has found that possession of six marijuana cigarettes did not bring the applicant within the ambit of the statute. *See* Matter of McDonald and Brewster, 15 I&N Dec. 203 (BIA 1975). In an unpublished case, Candido Noyola-Montalvo, A023 006 885 (Dec. 5, 2005), the BIA also found that "cultivation of 15 marijuana plants and some seedlings" was consistent with personal use and reversed an IJ's conclusion to the contrary.

MARTIN ROBLES-AVILA is a solo practitioner in San Francisco. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

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Can the Workshop Model Be Improved?

by Melissa Indish

When I hear the word "workshop," zealous advocates, grassroots campaigning, and the deep desire to help everyone come to mind. It also, however, conjures an image of an assembly line of non-lawyer volunteers pre-screening potential applicants in a large room, helping them complete forms, and then passing those forms to an attorney to briefly review before the applicants mail those documents to the government—pro se. While many believe this format is the best way to serve certain populations, one has to wonder if this model can be improved to truly meet clients' needs.

Problems and Resolutions

PROBLEM: One size does not fit all. A workshop, by nature, is designed to uniformly serve a large number of people. But neither people nor their cases are the same. As a result, applicants lose out when their cases don't fit the workshop mold because the format fails to give individuals a personalized, case-by-case analysis in a confidential setting.
RESOLUTION: Clients should be offered the opportunity to speak with an attorney in private.

PROBLEM: Long-term consequences. A person's marital status is not always a straightforward issue. When an individual is addressing this matter in a questionnaire or with a volunteer without a thorough follow-up, it increases the risk of misinformation, which can lead to harmful and devastating consequences that may not materialize until years later.
RESOLUTION: Immigration attorneys should conduct initial screenings instead of non-lawyer volunteers.

PROBLEM: No roadmap. Workshops are one-day events, so they do not provide ongoing case assistance should things go wrong. For example, whether it is a Request for Evidence or a Form N-14 following a difficult naturalization interview, the applicant is left to confront these setbacks alone, or obtain representation after the fact.
RESOLUTION: A Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, could be filed to ensure adequate follow-up.

PROBLEM: Simplification. Workshops perpetuate the myth that immigration law entails just filling out forms. It also undercuts the complexity of this area of law and catches the applicant unaware when problems do arise.
RESOLUTION: Referrals should be made for more complicated cases.

PROBLEM: Free? Generally, there is little to no cost for workshop participants because organizers strive to reach the most vulnerable populations. But for an elderly refugee seeking to naturalize, who requires a medical waiver, he or she would not be helped at a workshop. This is precisely the kind of circumstance where one-on-one pro bono representation would be appropriate and beneficial for the client.
RESOLUTION: Outcome statistics should be maintained to gauge whether the workshop was truly effective and met community needs.

Should we shift from a model that has proven to be quite popular and helpful for many, or, at a minimum, alter it to more adequately address its drawbacks? Now would be the time to launch a proactive strategy.

MELISSA INDISH is a nonprofit immigration attorney who has been practicing in Lansing, MI, since 2007. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Detention and Deportation: AILA Answers a Call for Help

by Anu Joshi

The first families from Central America began arriving at the newly opened family detention facility in Artesia, NM, on June 27, 2014. Less than two weeks later, of those families who had arrived, 40 mothers and children were placed on the first plane from New Mexico destined for Central America, as part of the first wave of rapid deportations. The second and third planes headed for Central America within the week. All of this happened before any of these families were given access to a legal orientation program or any viable legal services. This hasn't always been the way the United States has treated immigrant families seeking refuge.

In 2009, the country took a marked step away from detaining immigrant families for one reason: it simply didn't work. That year, the Obama administration shut down a large for-profit family detention center in Texas, the T. Don Hutto center, due to the harsh conditions and abuses that were exposed by litigation and the press. After the disgrace of Hutto, the administration moved away from detaining families as a matter of course, only operating a small 90-bed facility in Berks, PA.

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ON THE GROUND IN ARTESIA

AILA President-Elect Victor Nieblas spent a week on the ground in Artesia volunteering with the Artesia Pro Bono Project. In this Quicktake, he shares his experiences on his Tour of Duty. You can help, too! You can sign up to volunteer on the ground, or feel free to donate to help the volunteers.

... "[T]hese families had no possibility of making meaningful claims for protection. **That's when AILA members from around the country began answering the call for help.**"

However, in response to the refugee situation in Central America, President Barack Obama made the shocking decision to completely reverse the national policy on the detention of immigrant families by planning to increase capacity to detain families by more than 4,000 percent by the end of the year.[1] In fact, in July 2014, Department of Homeland Security (DHS) Secretary Jeh Johnson told the Senate Appropriations committee that it was DHS's plan to make it clear to these mothers and children that they are not welcome in this country. "We are building additional space to detain these groups and hold them until their expedited removal orders are effectuated. Last week, we opened a detention facility in Artesia, NM, for this purpose, and we are building more detention space quickly."

Unfortunately, the administration proved too quickly its intention to follow through on this promise. In August 2014, the for-profit detention center in Karnes, TX, run by the GEO Group, was converted to a family detention center. And in early September, the administration announced that it was planning a new, massive 2,400-bed, for-profit family detention facility in Dilley, TX (run by Corrections Corporation of America, the same corporation that ran the now-defunct Hutto facility).

In furtherance of Secretary Johnson's comments, DHS began using a rapid deportation system for the families in Artesia that denied due process and forcibly returned asylum-seekers to life-threatening situations. While detention, in and of itself, creates serious barriers to due process by making it very difficult to find and work with legal counsel, and to build cases for asylum or other forms of legal relief, detention in a remotely located facility, progressing at break-neck speed with zero pro-bono legal service providers, meant that these families had no possibility of making meaningful claims for protection. That's when AILA members from around the country began answering the call for help.

On July 18, 2014, AILA members and staff began organizing an official response to address the lack of legal representation at the remote family detention facility in Artesia. Although the initial effort was small—two or three AILA members representing

individual clients inside the facility—the news spread quickly that pro bono representation was desperately needed, and the numbers began to increase. Since then, hundreds of AILA members have traveled to Artesia, often on their own dime, to represent these families in their credible fear interviews and redeterminations, bond hearings, and ultimately in their asylum merits hearings.

The results have been overwhelming. In what may come as a surprise to Secretary Johnson, the AILA Artesia Pro Bono Project has proven, beyond a doubt, that these mothers and children have legitimate claims to protection. The project now represents more than 400 Artesia family detainees; and nine of the families represented by AILA members have been granted asylum by an immigration judge! Read about a Honduran woman and her children who fled an abusive husband. And read about an El Salvadoran woman fleeing an abusive situation with her 15-year-old daughter by her side. More successful asylum cases are being presented and prepared as the project continues.

The government can lawfully detain an individual for immigration purposes only if he or she poses a public safety threat or a flight risk. Absent such factors, every individual should be considered for release from detention. But DHS is denying the release of mothers and children to send a message that it wants to deter more Central American families from coming to the border. Using detention as deterrence closes America's borders to refugees and violates our laws.

Detention is harming the emotional and physical well-being of these families. Jailing refugees is no way to honor this nation's tradition of welcoming and protecting those fleeing danger and violence. It's long past time for President Obama to shut down Artesia, Karnes, and Dilley, and instead provide real due process to these families fleeing for their lives.

1 There were 90 beds in only one facility in Berks, PA, in May; soon, there will be 2,400 in Dilley, TX, 600 in Karnes, TX, and 700 in Artesia, NM.

ANU JOSHI is AILA's grassroots advocacy associate.

VIDEO SERIES

Hundreds of AILA members have traveled to Artesia to represent families in their credible fear interviews and redeterminations, bond hearings, and in their asylum merits hearings. Hear our members' moving stories.

How to Sleep Like a Yogi

by Danielle Polen

As a yoga instructor who enjoys the quieter practices, I like to remind my students that, "if settling into true stillness is challenging for you to do, then that's probably what you need the most." And this maxim is particularly true as we move toward the frenzied holiday season.

Yoga nidra, sometime called "yogic sleep," is a type of yoga in which the practitioner is guided toward systematically relaxing the body, thereby allowing the mind to enter a state of deep, meditative awareness. During a typical class, teachers use a variety of techniques to aid relaxation—from guided imagery to body scanning to breath awareness. While it's not unusual to fall asleep the first few times you experience yoga nidra, with practice, you'll eventually learn to remain in a state of conscious, relaxed awareness.

Research has shown that yoga nidra can help with insomnia, anxiety, depression, addiction, and chronic pain. A 2006 study conducted at the Walter Reed Army Medical Center demonstrated it may help relieve the symptoms of post-traumatic stress disorder in soldiers.

While yoga nidra classes aren't as abundant as other types of yoga classes, the Integrative Restoration Institute (IRI) has a listing of teachers trained in the "iREST" form of yoga nidra. If no local classes are available, yoga nidra can be practiced on your own, as all you really need is a comfortable place to lie down and an instructor's voice to guide you. One of my favorite teachers, Rod Stryker, offers a sample guided sequence online. Jennifer Reis, another well-known instructor, offers yoga nidra-related products and events.

"We live in a chronically exhausted, overstimulated world," says Stryker. "Yoga nidra uniquely unwinds the nervous system, which is the foundation of the body's well-being."

DANIELLE POLEN is AILA's associate director of publications. She also practices and teaches yoga in Washington, D.C.

WHAT'S HAPPENING

AILA regrets the passing of Washington, D.C. Chapter member and former chapter chair **ROBERTA FREEDMAN** (right) on November 2, 2014, and of So. Calif. Chapter member **JOHN R. ALCORN** on October 31, 2014.

NY Chapter member **MYRIAM JAÏDI** has started her own practice in New York, NY.

Nor. Calif. Chapter member **MARIETTE "JET" J. STIGTER** has joined the San Francisco office of Duane Morris LLP.

So. Calif. Chapter member **PAUL R. HERZOG** was recently quoted in The Daily Beast in a story about the marriage fraud case involving Oregon Governor John Kizhaber's fiancée. And in July 2014, Herzog wrote an op-ed in The Press Enterprise.

Phila. Chapter member **H. RONALD KLASKO** of Klasko Immigration Law Partners, LLP, was the keynote speaker at the 2014 Overseas Investment & International Wealth Management Forum in Beijing.

The AILA 8 for ailalink

by Leslie A. Holman

Driven by paranoia, I actually subscribed to Lexis, Westlaw, and AILALink. However, over the years, my Lexis and Westlaw subscriptions languished, but I found myself relying on AILALink every day. And I still do to the point where I can't imagine practicing without it. And here's why:

1 AILA CONFERENCE HANDBOOKS: Search AILA conference handbooks for valuable insight into the ever-changing trends in immigration practice and adjudication, since we practice in an area where discretion and change through FAQ and/or whim abound. Frankly, access to conference handbooks, alone, is the reason I would subscribe to AILALink.

2 QUICK AND EASY LINKS TO LAWS AND REGS: INA and CFR provisions can be easily searched through the designated search field in AILALink. They're also hyperlinked within thousands of other documents contained within AILALink.

3 GOVERNMENT MANUALS: If you use only the government agencies' websites, you have to go from website to website to compare agency guidance. It's easier and much more efficient to research all the manuals on AILALink simultaneously.

4 NEARLY $4,000 WORTH OF AILA PUBLICATIONS: AILALink gives users the ability to search various AILA titles at the same time. Search queries can be limited to certain books, or even certain chapters of large books, such as *Kurzban's Immigration Law Sourcebook*. This ability to narrow sources helps attorneys avoid the frenzy of flipping through multiple books, as those deadlines quickly loom.

5 NOTE-TAKING FUNCTIONS: The ability to create notes and bookmarks and file them into folders named after clients or projects saves significant research time. Also, it keeps on record my comments on interpretations and applications of the law.

6 SAVED SEARCHES: Re-run your searches as many times as you'd like without paying per transaction, saving you and your clients valuable time and money. Also, enjoy access to all available materials produced during a search without having to pay a premium or extra for materials that aren't offered by your "plan."

7 BACKUP FORMS PROGRAM: AILALink provides fillable PDFs of almost 300 government forms, which come in handy if your usual form provider or the government's websites are fraught with technical difficulties. Such was the case a few years ago when four days before April 1, my forms program wouldn't work and I had to scramble to file H-1B petitions subject to the cap. AILALink literally saved me.

8 VALUE: While $725 for a 12-month AILALink subscription is not insignificant, it is a bargain, considering all the resources available at your fingertips. After all, AILALink is a portal to relevant statutes, regulations, government manuals, myriad conference handbooks, government forms, Fastcase Premium (offering access to decisions from AAO, BALCA, OCAHO, and DOL's ARB/ALJ), all Board of Immigration Appeals decisions, and a cadre of AILA publications. Simply stated, the $725 that I spend is worth every penny, and then some.

AILA President **LESLIE A. HOLMAN** is the founder of Holman Immigration Law in Burlington, VT. She is also a recipient of AILA's Sam Williamson Mentor Award.

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EDITORIAL

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

ABOUT

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@AILANATIONAL