



Harvard Immigration & Refugee Clinical Program

30th Anniversary Celebration: 30 Years of Social Change Lawyering

Harvard Law School

June 17, 2014

—*with*—

Welcoming Remarks by **Deborah Anker** and **Dean Martha Minow**

Plenary Panel: Reflections on 30 years of Social Change Lawyering
moderated by **Bernard Wolfson** with **Ira Kurzban**, **Margaret Stock**, and **David Thronson**

Plenary Panel: Immigration Representation and Access to Justice*
moderated by **C. Mario Russell** with **Hon. Robert A. Katzmann**, **Hon. Robin E. Feder**, & **Ethan Taubes**

Keynote Address by **Hon. John Thomas Noonan Jr.**

on *Lazo-Majano v. INS*—Alive, Well, and Thriving at 27

Lunch Panel: How has HIRC Shaped Alumni?

moderated by **Rebecca Maxey** with **Eleanor Pelta**, **Rosemary Byrne**, & **Nicole Flores**

Plenary Panel: Strategies for Advancing Immigrants' Rights
moderated by **Deborah Anker** with **Stephen Legomsky**, **Lee Gelernt**, & **Mark Fleming**

Breakout Sessions

Direct Representation with **Spring Miller** and **Martin Musinguzi**
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Closing Remarks by **Nancy Kelly** and **John Willshire Carrera**

*All government panelists spoke in their individual capacities.

About the Conference:

This one-day celebration was held in honor of HIRC's 30th anniversary. It provided a forum for leading advocates, federal appellate court judges, immigration judges, government officials, and distinguished scholars to come together with the alumni, clients, and friends of the clinic to celebrate HIRC's work over the last 30 years and to discuss strategies for advancing immigrants' rights in the years ahead.

Since its inception, HIRC has represented nearly a thousand immigrants, trained hundreds of students, engaged in ground-breaking administrative and federal court litigation, and contributed enormously to the evolving scholarship on immigration and asylum law. HIRC's client-centric approach informs its advocacy at every level—local, national, and international. HIRC is a leader in lawyering for social change.

Comprised of a series of panels, breakout sessions, and a keynote address by the Honorable John Thomas Noonan Jr. of the Federal Court of Appeals for the Ninth Circuit, the conference offered a variety of perspectives on immigration and refugee law, past and present. Throughout the day, the speakers emphasized the need to learn lessons from the past and apply them to future challenges. The rich diversity of speakers and attendants was a testament to the wide reach that clinical co-founders **Deborah Anker**, **Nancy Kelly**, and **John Willshire Carrera**, as well as the entire HIRC staff, have had in their work.

Except where otherwise noted, all presenters spoke in their individual capacities and their views did not represent those of the agency or organization to which they belonged.

8:30 Welcoming Remarks

The conference began with remarks from Morgan and Helen Chu Dean and Professor of Law, **Martha Minow**, and Clinical Professor of Law and Director of the Harvard Immigration and Refugee Clinical Program (HIRC), **Deborah Anker**. Both reflected on the importance of HIRC not only to Harvard, but also to the larger community that it has served over the last 30 years.

Dean Minow praised the clinic's fierce dedication to justice. "I have always wondered," Minow said, "why they are called law schools? Why aren't they called justice schools? The Harvard Immigration and Refugee Clinic is a *justice* school." She highlighted several of the clinic's historic achievements: outlining a clear and cogent law of asylum, drafting regulations and legislation, and establishing gender-based violence as a basis for asylum. HIRC, she said, truly represents some of the world's most vulnerable and admirable people.

Minow praised Deborah Anker's commitment to the clinic and its clients. "This organization is Deborah Anker's creation. It reflects not just her brilliance, not just her tenacity, but her humanity." She then went on to say, "Deborah's ability to build relationships ... infuses this clinic with what I think justice really is: the recognition of the humanity of the other."

Deborah Anker began with a favorite quote from Martin Luther King Jr. "We must come to see that human progress never rolls in on wheels of inevitability. It comes through the tireless efforts and persistent work of men willing to be co-workers with God, and without this hard work time itself becomes an ally of the forces of social stagnation. We must use time creatively, and forever realize that the time is always ripe to do right." This persistence in pursuit of what is "right," she said, defines HIRC. Anker also spoke about Dean Minow's own commitment to social justice and her leadership in the legal services movement. "Under Martha's leadership we've grown incredibly," said Anker. She thanked Minow for her commitment and dedication to the cause of the poor and disenfranchised.

9:00 Plenary Panel: Reflections on 30 Years of Social Change Lawyering

The conference continued with a panel reflecting on HIRC's influence on refugee law and the craft of social justice lawyering over the past thirty years.

The panel began with the deeply personal testimony of moderator **Bernard Wolfsdorf**, managing partner at Wolfsdorf Rosenthal LLP and past president of the American Immigration Lawyers Association (AILA). Wolfsdorf explained how his decision to pursue immigration law as a career owed much to his personal experience as a refugee from South Africa thirty years ago. In the immediate aftermath of the Soweto riots, he learned he was to be drafted into the military. Instead of joining the state apparatus tasked with enforcing apartheid, he fled the country with a single suitcase, making his way to Boston. Wolfsdorf was granted political asylum in 1979, represented by Professor Anker; his interviewing officer described the case as “the best he’d ever seen.”

Immigration lawyer **Ira Kurzban**, a partner in the law firm of Kurzban, Kurzban, Weinger, Tetzeli & Pratt P.A. and author of *Kurzban's Immigration Law Sourcebook*, was the next panelist to speak. Kurzban has been involved in countless landmark class action lawsuits that have won critical rights for immigrants and refugees—including the right to work. “When we started,” Kurzban said, referring to himself and other pioneering practitioners like Professor Anker, “there *was* no U.S. asylum law—all we had was the Refugee Convention and the UN Protocol on the Status of Refugees.” Kurzban explained that his passion for creating systematic change in U.S. immigration law could be traced to his experiences with individual clients: “The model was always to ask what the client wanted.”

The next speaker, **Margaret Stock**, a 2013 MacArthur Fellow and a retired lieutenant colonel in the U.S. Marine Corps, began by challenging the famous Aristotle maxim, “law is reason free from passion.” After over twenty years of practice, she explained, she has arrived at a quite different conclusion: that effective lawyering requires passion and reason alike. Stock explained that practitioners who devote themselves to immigration law can bring about systematic change. She outlined her scholarship and work, which has focused on correcting a systematic error in U.S. immigration policy post-9/11: the relentless focus on keeping people out, rather than letting the right people in. Her most famous initiative to this end was designing the Military Accessions Vital to the National Interest (MAVNI) program, which allows an expedited path to citizenship for certain foreign nationals who perform military service.

Ms. Stock explained that she was able to push through this progressive initiative because of her institutional knowledge of the Pentagon and the U.S. Armed Forces, as well as her understanding of the strategic reasons for the program. Stock added that an equivalent program could be feasible for youth eligible for Deferred Action for Childhood Arrivals, a form of discretionary relief for certain youth in the United States.

The final panelist, **David Thronson** '94, Associate Dean for Academic Affairs and Professor of Law at Michigan State University, described how his work with Haitian clients as a HIRC student informed his scholarship and career, including co-founding the Immigration Law Clinic at Michigan State University. He praised HIRC for always letting clients drive cases and organizational priorities, and for fostering a mix of “passion, advocacy, and scholarship” in students. Thronson noted that an important part of HIRC's legacy is the wide variety of immigration clinics that have followed in its steps at other law schools. He concluded by highlighting the need for clinics to focus on advocating for systematic changes to the law that address the needs of the most vulnerable people, like the unaccompanied minors now seeking refuge at the U.S. border.

10:25 Plenary Panel: Immigration Representation and Access to Justice

The panelists highlighted various methods and strategies for improving legal representation for immigrants. All government panelists spoke in their personal capacity. The **Honorable Robert A. Katzmann**, Chief Judge for the Federal Court of Appeals for the Second Circuit, spoke about his efforts to increase access to representation in New York. The **Honorable Robin E. Feder** of the Executive Office for Immigration Review, Boston Immigration Court, shared her perspectives on representation before the immigration court and what makes a good immigration lawyer. **Ethan Taubes**, Supervisory Asylum Officer with the Newark Asylum Office, addressed the evolution of asylum adjudication and the asylum officer corps over the past 30 years. The panel was moderated by **C. Mario Russell**, Senior Attorney at Catholic Charities and adjunct professor at St. John's University School of Law in New York.

Mr. Russell gave opening remarks, identifying “quality and quantity” as the “informal title” of the panel. He shared an anecdote about an immigration hearing in which, only after many minutes of questioning, the lawyer realized and informed the judge that the woman sitting before the court was not his client. This case, for him, epitomized both the “quality *and* quantity” problems that plague the immigration system. The conference, Russell said, was a recognition and celebration of HIRC as a model for (1) believing in and (2) actually *doing* the hard work “to create a more just and compassionate society.” We are facing a “paradigmatically new refugee crisis,” he said, urging listeners to think “beyond ‘competent’ responses” to find new and creative solutions.

Chief Judge Katzmann spoke first, applauding Deborah Anker for her work on these issues over the year. He shared the origins of his interest in immigration law as the son of refugees from Nazi Germany and the grandson of immigrants from Russia. He focused on his efforts to make “sure that noncitizens here have a shot at the American Dream. ...We are doing what morality requires.” Chief Judge Katzmann then reflected on the evolution of immigrant representation over the course of his tenure as a judge, beginning in 1999, when immigration cases were few in number.

Following 9/11, the immigration case load swelled to 40% of the docket (it is now in the 20% range). The quality of representation in those early years was, according to Chief Judge Katzmann, “extremely deficient.” He remarked on the critical importance of good attorneys in immigration cases to help draw out the stories and illuminate the “human on the end of every case.” Chief Judge Katzmann began galvanizing the Bar, clinics, and nonprofits in 2007, to “dramatize the problem.” “That problem,” he said, in many cases is “not just the quality of representation; it’s the absence of representation.”

Chief Judge Katzmann called for the legal community to step up pro bono work and improve access to effective representation. He then turned to the history and current status of one of his personal projects: the Immigrant Justice Corps (IJC), which he has spearheaded in New York. The program places bright, motivated young lawyers into action working for immigrants’ rights. IJC just announced its choices for first class of 25 attorneys, including HIRC’s own Palmer Lawrence and HIRC/HIP students Scott Coomes ‘14 and Tanika Vigil ‘14.

Next **Judge Feder** described her views on effective strategies of representation before the immigration court. She praised the remarkable increases she has seen in rates of representation in immigration cases: up from 39% in 2009 to 59% nationwide. In evaluating the quality of legal representation, Judge Feder spoke of a “bad lawyer-good lawyer” continuum, and of her views on what constitutes effective representation.

First, she said, a lawyer has to do the “easy: work: show up, translate documents, etc. Next, to be effective, a lawyer must show that he or she cares: “caring [about the client] is half of what makes a good lawyer.” She congratulated everyone in the room for demonstrating their care by virtue of their attendance. In addition, she noted, “there are little ways in which everyone can strive to be better,” introducing her “Goldilocks Theory of Lawyering”: with everything, don’t do too much, don’t do too little, do *just* the right amount. This metaphor, she explained, applies to nearly every aspect of lawyering: asking just the right number of questions and advocating with just the right amount of vigor. Most importantly, she said, “be circumspect in what you submit to the court.” Finding that “just right amount,” said Judge Feder, allows the court to really dig into the material presented and not to waste time reading duplicative documents. She also suggested asking for a pretrial conference. Judge Feder commented that two important positive changes she has seen in recent years are (1) the provisions for mandatory representation of “incompetent” individuals in immigration proceedings and (2) government efforts to connect juveniles with pro bono counsel.

Last, **Ethan Taubes**, who like Chief Judge Katzmann is the child of World War II refugee parents, spoke on immigrant justice and his personal perspective as a Supervisory Asylum Officer with the Newark Asylum Office. Mr. Taubes noted great advances in asylum law and institutions over the course of his career. He began by describing the key “victories” that have improved asylum adjudication and gradually shifted the agency’s “conceptual paradigms.” These include: (1) the ABC “revolution” that formalized implementation of adjudication procedures and depoliticized the asylum process; (2) the U.S. Gender Guidelines, drafted by HIRC, that have now been enshrined in administrative guidelines and training materials; (3) training materials that emphasize adjudicators’ responsibility to understand the psychological effects of trauma (memory problems, distortion, etc.) on asylum applicants; (4) implementation of a more “enlightened pedagogy” in asylum officer training aimed at “getting out of the parochial box” through greater cultural literacy; (5) the pre-assignment of cases to officers to allow greater time to prepare and share resources, including country condition information and institutional knowledge; (6) collective action to bring a more “reasonable interpretive gloss” to post-9/11 legislation, including “domestication” of the Patriot Act to reflect more humane standards; (7) the evolution of the interpretation of the “particular social group” ground in the refugee definition brought about by advocates, led by HIRC, who pushed the envelope in this regard; and (8) expansions with respect to other parts of the refugee definition.

Mr. Taubes then shared a personal anecdote from his time as an asylum officer where he asked a question that elicited a woman applicant’s description of the “unforgettable detail” of her persecutor’s necklace made of human eyeballs, which for Mr. Taubes, demonstrated the importance of good interviewing techniques to find the details that establish credibility.

Mr. Russell then opened the panel up to questions from the audience:

Judge Feder answered a question about the tension between (1) adequately preserving the record for judicial review and (2) trying to present a manageable volume of case documents in court. “Obviously you have to make your full case,” she said, but still urged advocates to avoid filing unnecessary duplicative materials and to avoid materials from unidentified or unfamiliar sources or publications.

Mr. Taubes responded to a question about credible fear screening and adjudication on the border. The credible fear docket has ballooned, with rising numbers of asylum cases. Various agencies are currently “collaborating in an ad hoc manner” and it will be interesting to see how the culture “adjusts.” He noted that unaccompanied minors are not subject to credible fear screening proceedings. In terms of allowing attorney presence in credible fear interviews, Mr.

Taubes explained that it is a huge logistical problem. Sometimes the agency does not even learn that an individual is represented until the day of the interview.

11:45 Keynote Address: *Lazo Majano v. INS* — Alive, Well, and Thriving at 27

The **Honorable John T. Noonan, Jr.** of the U.S. Court of Appeals for the Ninth Circuit delivered the keynote address by videoconference. In his address, Judge Noonan reflected on the case of *Olimpia Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1987), 27 years after writing the landmark opinion. In *Lazo-Majano*, the Ninth Circuit, in an opinion written by Judge Noonan, famously overruled a decision of the Board of Immigration Appeals and granted asylum to a Salvadoran woman fleeing physical, sexual, and emotional abuse by finding that her defiance of violent machismo constituted a “political opinion” in the asylum law context. The decision, which is “alive, well, and thriving,” was widely celebrated as a turning point in asylum law.

Judge Noonan began by describing the details of Olimpia’s case and his personal approach to her hearing, attentive “to the being at the center of the case.” As a 34-year-old mother of three, Olimpia had been living alone since her husband was forced to flee the country, wanted by the government for his political affiliation. Shortly after her husband’s departure, Olimpia was contacted by a local sergeant in the Armed Forces, Rene Zuniga, who began to abuse and dominate her, threatening to have her tortured as a “subversive” if she retaliated.

Judge Noonan recounted the horrific details of Olimpia’s persecution at the hands of Zuniga and noted that the challenge in Olimpia’s case, was demonstrating “that she had a political opinion for which she was persecuted by Zuniga.” The legacy Immigration and Naturalization Service (INS) contended that Zuniga and Olimpia’s relationship was “deplorable but personal.” But Judge Noonan determined “that there was more to be considered.” First, he said, “Zuniga had maintained his hold over Olympia by attributing to her a political opinion,” which—regardless of her actual beliefs—was a central reason for the persecution she suffered. Second, and more striking, Judge Noonan and the Court found another independent reason for granting relief:

Zuniga was asserting the political opinion that a man has a right to dominate a woman. ...Olimpia was not permitted by Zuniga to hold an opinion to the contrary. When by flight, she asserted one, she became exposed to persecution for her assertion. Future persecution threatened her because of this political opinion.

Judge Noonan then turned to various critiques of the *Lazo-Majano* opinion, including the spirited dissent written by Judge Harry Pregerson and the government’s petition for rehearing en banc (which was denied). Despite recurrent challenges, Judge Noonan emphasized that, “the central holding remains the law; the political opinion the persecutor attributes to his victim is decisive in determining on what account the asylum-seeker has been persecuted,” even if the opinion in question has been invented by the persecutor.

This year, in an uncommon reconnection of judge and litigant, Judge Noonan tracked down Olimpia Lazo Majano with the help of a Phoenix court librarian. “On May 9,” he said, “I had the distinct pleasure of speaking to her. She responded graciously, even complimenting my elementary Spanish.” For Judge Noonan, “the climax” of their conversation was learning that, “on August 21, 2008, she had become a citizen of the United States.”

Following his reflections, Judge Noonan returned “to the macro level,” quoting the staggering figures of backlog and deportation rates that portend the immigration challenges that lay ahead. He praised the analysis and recommendations of the 2010 Arnold and Porter study, titled “Reforming the Immigration System,” and called for the necessary federal resources to implement these reforms. “At the root is the immunity of elected lawmakers from those who cannot vote. ...The consciences and the consciousness of our legislators need to be invigorated,” and, just as *Lazo-Majano* did, “individual cases serve this purpose.”

Judge Noonan closed with a quote from the Honorable Learned Hand who, reflecting on the 1945 *United States v. Alcoa*, antitrust case, said that “the power and its exercise needs coalesce.” Judge Noonan added, “our legislators have the power. Let the coalescence commence.” The audience gave Judge Noonan a spirited standing ovation.

12:50 Lunch Panel: How has HIRC Shaped Alumni?

The lunch panel was moderated by **Rebecca Maxey**, an immigration attorney who operates her own law firm in Alaska. Ms. Maxey opened the panel by telling the audience a story about one of her first asylum cases as a private practitioner. Professor Anker helped her prepare and file the supporting documentation, then flew to Alaska to show her support at the hearing itself. As soon as the presiding Immigration Judge saw Professor Anker in the audience, he announced that he was inclined to grant the applicant asylum. Maxey explained that this episode was a testament not only to Professor Anker's continued influence in the immigration world, but also to her willingness to continue supporting and mentoring her former students, even long after they graduate.

Eleanor Pelta '86, past President of the American Immigration Lawyers Association (AILA) and a partner in the labor and employment law practice of Morgan Lewis & Bockius, explained how she started law school intending to become an estate planner because "it involved people," but changed her plans entirely upon meeting Professor Anker and becoming involved with HIRC. Pelta, who was part of the first class Professor Anker taught at Harvard Law School, recalled two particular cases from her time at the clinic that taught her important lessons. The first involved the wife of the former head of Ethiopia Airlines, who fled to the United States after the coup. Professor Anker asked Pelta to investigate the possibility of a labor certification for the client to work at a local Ethiopian restaurant, which succeeded in spite of the fact that the only evidence of her client's skills Pelta could collect was highly informal. Pelta explained how she learned from this case that at times, business immigration law can offer an alternative pathway to asylum for those who need shelter in the United States.

Another memorable case from Pelta's time at HIRC involved a Trinidadian welder who was picked up for a minor criminal offense and put in deportation proceedings. Lacking any employment-based or family-based avenues to stay in the United States permanently, and being ineligible for asylum, suspension of deportation, or any other defensive remedy, the man was deported. Pelta recalled Professor Anker stressing that although the man's situation was tragic, they needed to be realistic about the fact that "there was no case, and we couldn't present one;" it would be even more tragic to lose credibility before the immigration judges and be less effective advocates for future clients HIRC would represent.

The next speaker was **Rosemary Byrne '92**, an Associate Professor at Trinity College Dublin School of Law. She described the training she got as a student at HIRC as "incredibly versatile," drawing upon the intersection of important principles from administrative law, human rights law, and criminal law. Byrne praised HIRC in particular for pushing an expanded relationship between gender and refugee law. She also noted that the work she did as a clinical student still informs her present scholarship, part of which touches upon how the procedures used to adjudicate asylum claims can evolve in order to account for the impact of trauma.

Finally, **Nicole Flores '11** spoke about how her involvement in Professor Anker's first-year reading group, along with her time as a clinical student, has informed her work as a government lawyer. Flores now works as an Associate Counsel in the U.S. Citizenship and Immigration Services (USCIS) Central Law Division in Chicago, and credits HIRC with showing her that immigration proceedings turn not only on doctrine, but on the personal lives and stories of the petitioners. Flores fondly recalled that the best aspects of HIRC are its people—clients from all over the world, mentors like Professor Anker, Nancy Kelly, John Willshire Carrera, Sabi Ardalan, and her fellow students. Flores noted that the ability to "imagine the people behind the case files" is a crucial skill she developed at HIRC that has helped her be fair in her current position, especially when certain cases before her seem "messy."

2:10 Plenary Panel: Strategies for Advancing Immigrants' Rights

The panelists highlighted the different strategies to advance immigrants' rights, drawing on concrete examples in their own work. The panelists then highlighted recommendations for lawyers and students engaged in ongoing work to advance immigrants' rights.

Mark Fleming, a partner in the Boston office of WilmerHale, spoke about his pro bono work on immigration appeals. **Stephen Legomsky**, the John Lehmann University Professor at the Washington University School of Law in St. Louis, Missouri and former chief counsel at the United States Citizenship and Immigration Services (USCIS), spoke about internal advocacy on immigration reform within the government. **Lee Gelernt**, Deputy Director of the American Civil Liberties Union's (ACLU) National Immigrants' Rights Project and Director of the Project's Program on Access to the Courts, spoke about client-driven litigation. **Deborah Anker** stood in for **Sheela Murthy**, founder and president of Murthy Law Firm, and acted as moderator of the panel.

Mark Fleming, a self-proclaimed "generalist in big law," spoke about his pro-bono work on immigration cases. He explained that through his experience with Debbie's class and the clinic, he found that, "just by being a lawyer, you can make a big difference if the alternative is no lawyer at all." For this reason, he was drawn to pro bono appellate work. Fleming explained that he brought his passion for immigration law into his work at a private firm. He urged listeners to "use your big law firm skills [in immigration cases] and you may be surprised at what you can get done." He went on to add, "Don't let immigration fall aside if it is something you are passionate about."

Stephen Legomsky spoke next, sharing his vision regarding a government lawyer's role in advocacy. Drawing on his years in academia and his time at USCIS, he shared valuable lessons from his experiences. He talked about the importance of doing what he believed was truly just, emphasizing that "government lawyers should take into account the direct impact their efforts will have on the lives being affected." He pointed out that, "it is not necessarily the job of the government lawyer to plead the government's case, but to do whatever is necessary to faithfully follow the law and to do justice." Legomsky remarked that given the different agencies and offices involved in immigration policy, immediate consensus is rare and consensus takes a very long time to build.

Legomsky went on to outline several practical lessons for listeners. He said that first and foremost, a lawyer must have patience. Second, it is important for lawyers to enlist input at an early stage. Third, he told the audience members to fight for what they believe in and to be strategic. "Don't waste time and political capital on something that you absolutely cannot change," Legomsky said. He added that courteous, calm, logical, and convincing persuasion is a powerful weapon for advocates. Finally, he concluded that sometimes you are going to lose, and he remarked, "Learn to accept defeat graciously."

Lee Gelernt was the last panelist to speak. He began by highlighting the importance of the "generalist" perspective, one that Fleming brought to the discussion at the beginning of the panel. He explained that when preparing a case, it is crucial to get other perspectives. He then went on to speak about the role of the ACLU in advancing the rights of immigrants through client-driven litigation. He first explained that litigation cannot be issue driven, but rather has to be client driven. Strategic planning also plays a large role in the process. A lawyer must be careful about how best to use the resources available. Finally, he noted the importance of protecting the right to judicial review.

3:35 Breakout Session: Direct Representation

Led by **Spring Miller '06** and **Martin Musinguzi '09**

This breakout session served as an opportunity for people to reflect on and share advice about the unique considerations in representation of individual immigrants. HIRC alumni Martin Musinguzi and Spring Miller addressed their first direct engagement with clients as clinical students. Miller recalled one of her first days as a clinical student at GBLS when she was sent by John Willshire Carrera to speak with a potential client—a woman from Zimbabwe—alone. She remembers being “scared, disoriented, and overwhelmed” at first, confused by John’s single piece of advice: “start with the harm.” Over the course of her career as a lawyer, Miller said she has come to understand this advice and the more fundamental message of, “figuring out how you can use the law to protect your client,” an approach that she has taken at every step of her career. She has tried, she said, to “push the envelope on employment law in the same vein as Debbie and the GBLS clinicians did in asylum law.”

Session participants then discussed their own experiences working with clients and the challenge of deciding which clients to take on, how many to take on at a time, and how to allocate scarce resources. Musinguzi talked about time, money and “conviction about the situation” as factors he considers when deciding whether to represent a client. One participant said she struggles with turning away cases and setting limits so that she can provide quality representation. Many felt pulled between wanting to push the law forward by taking hard cases while simultaneously wanting to help as many people as possible.

Participants discussed strategies for tackling these hard questions. Deborah Anker, who sat in on the session, encouraged people to push the margins with challenging cases, citing the work of John Willshire Carrera and Nancy Kelly in the New Bedford factory raid cases. “[The risk] paid off—it has changed the law and the culture of the immigration court in Boston.” Another participant drew a comparison with the college application process and said he likes to balance “reach,” “target,” and “safety” cases to ensure that the “nutrition of the case load” is rich and complete. Many said that the connections they have made with others in and outside of immigration law have helped them serve clients better. One participant encouraged others, “don’t fear to reach out to clinics and individuals with more experience and/or resources.”

In discussing how direct representation can “become something with a bigger impact,” people agreed that the culture of government institutions has changed in recent years to accommodate new legal theories. Ethan Taubes, a Supervisory Asylum Officer at the Newark Asylum Office, said “the law is always behind historical development; your job is closing that gap.”

Overall, the group agreed that direct representation in immigration cases was uniquely fulfilling and transformative as an immigration lawyer. The relationship with the client, his/her trauma, family, and thoughts matter, both personally to the lawyer and in advancing the law.

Breakout Session: Legislative Advocacy

Led by **Jennifer Rosenbaum '02** and **Shannon Erwin '10**

The bulk of the session involved accounts from **Jennifer Rosenbaum** and **Shannon Erwin** about efforts in their respective states—Louisiana and Massachusetts—to advance immigrants' rights via a wide variety of organizing and political strategies.

Rosenbaum, the legal and policy director of the National Guestworker Alliance and the New Orleans Workers Center for Racial Justice, recalled the campaign to end compliance with Immigration and Customs Enforcement (ICE) detainers in New Orleans. Her coalition adopted a multi-front strategy. They lodged a lawsuit in Federal District Court on behalf of plaintiffs held longer than the statutory maximum of 48 hours, in order to engage the public and increase the willingness of the local police department to negotiate. The coalition also provided the community with resources for removal defense, so that the people most affected by injustice could lead the campaign. Finally, the coalition facilitated meetings between the Sheriff of Orleans Parish and local advocacy organizations to negotiate a settlement. Ultimately, they succeeded both in settling the case—ending compliance with ICE detainers by police in Orleans Parish except for very serious crimes, collecting damages and acquiring U-Visas for the class action plaintiffs—*and* in converting the local sheriff from an adversary into an advocate of immigration reform. Rosenbaum specifically highlighted the development of community leaders as the campaign's greatest success. Meeting with these leaders, who all had direct experience with the ICE detainer policy, ultimately changed local authorities' minds—more so than the threat of litigation.

Erwin, the State Policy Director of the Massachusetts Immigrant & Refugee Advocacy (MIRA) Coalition, detailed several bills in the Massachusetts legislature that would markedly improve the lives of immigrants in Massachusetts. These initiatives include the Massachusetts Trust Act, an anti-detainer bill currently in the Senate Committee on Ways and Means, a bill that would amend Massachusetts family law to raise the age limit for Special Immigrant Juvenile (SIJ) status to 21, and a safe driving bill that would allow undocumented immigrants to obtain drivers' licenses. Erwin also noted that she must be vigilant in monitoring the efforts of anti-immigrant legislators to subtly attach damaging provisions as amendments to must-pass bills; the most recent example of this involves proposed changes to state public housing that would exclude undocumented immigrants.

During the question and answer session, Rosenbaum and Erwin discussed the future of immigration enforcement in the wake of the successes of the anti-detainer movement. Both cautioned the audience that ICE has begun to compensate for setbacks in its detainer policy by increasing home and workplace raids, as well as using “mobile biometrics,” which is very likely unconstitutional. They warned that immigration enforcement strategies may expand in coming years with the dramatic growth of the national security surveillance apparatus.

3:35 Breakout Session: Public/Private Partnerships

Led by **Steven Schulman** and **Joshua Sekoski '12**

This breakout session addressed the role of private law firms in asylum and immigration cases.

Steven Schulman, a pro bono partner at Akin Gump Strauss Hauer & Feld, explained that there is often a gap within the firm between excitement about immigration and asylum work and actual knowledge of immigration and asylum law in the firm. He noted that the pro bono work is popular, whereas there is not as much knowledge of asylum law in the firm itself. Schulman then posed the question, “Why is pro bono asylum work so big?”

He explained affirmative asylum cases “fit well with the rhythm of a law firm.” There are only two deadlines: the one-year deadline and the day of the interview. There is no discovery, and no artificial deadlines or motions practice. With affirmative cases, there are very high stakes, and the cases are very compelling. Lawyers tend to connect well with clients in asylum cases. Lawyers are more willing to take on the cases because they learn so much that is applicable to other areas of their work. Asylum cases are intellectually challenging and lawyers learn tremendous amounts about other parts of the world, to which they would not otherwise be exposed.

Joshua Sekoski, an associate in the labor and employment practice at Akin Gump Strauss Hauer & Feld and a HIRC alum, expanded on why asylum work is so attractive to attorneys at private firms. He explained that lawyers are often drawn to asylum work, and then realize that they are not simply representing a specific client, but also learning about the client’s home country, in many dimensions. He placed emphasis on this idea of cultural enrichment.

Sekoski then posed the question of “Where will the next step take us?” He raised the possibility of pro bono involvement by in-house attorneys at corporations, and noted that despite what an outsider may expect, there is not much controversy in taking on pro bono immigration work in big law firms today. Moreover, he suggested that in immigration and asylum cases, firms can also engage in litigation and policy-making.

One participant asked how budget considerations weigh in a firm’s decision to provide representation in asylum and other immigration cases. Schulman stated that often budgetary concerns weren’t an issue. Another question addressed challenges presented in co-counseling arrangements between NGOs, clinics, small practitioners, and big firms. Schulman noted that whether the relationship exists across law firms or between non-profits and firms, tensions may arise given differences in perspective in how to approach cases. Sekoski emphasized, however, that the co-counseling relationship can bring about positive results. This is because non-profit partners often provide high-quality training to firm attorneys and co-counseling with firms often provides additional resources.

3:35 Breakout Session: Legal Scholarship

Led by **Gerald L. Neuman '80** and **Fatma Marouf '02**

This breakout session addressed the role of legal scholarship and offered specific advice for those wanting to engage in legal scholarship. Session participants introduced themselves and briefly spoke about their interest in legal scholarship. The introductions revealed a broad range of persons interested in scholarship, including direct service practitioners, published academics, and non-governmental organization staff interested in policy-making.

Fatma Marouf then shared the role that legal scholarship has played in her career. She said her strategy in choosing topics has been to focus on themes she saw emerging in casework. **Gerald L. Neuman** then spoke of how he has often questioned the balance between scholarship and advocacy in his work. He encouraged everyone in the room to always thoroughly investigate and consider all sides of an issue. He has often found that amicus briefs offer the best compromise between advocacy and scholarship.

Various types of legal scholarship were discussed including quantitative and qualitative data analysis, policy reports, law review articles, amicus briefs, and practice advisories. Many reiterated that the roles of lawyer, client, and audience shift depending on the type of scholarship and its goals. The importance of scholarship to advocacy was also emphasized. Some commented that though having their work cited in briefs or other advocacy documents was an important goal, they were also happy to know that their work helps practitioners frame or understand their claims.

A significant portion of the session was devoted to discussion of topic selection. Many in the room said that, like Fatma, they had been successful in scholarship by choosing topics from issues they encountered in their case work. Others commented that scholarly interest in certain topics could help influence case selection. Several people also commented that personal connection to the issue helps to keep them motivated throughout the long research and writing process.

Differing views were offered as to whether it was best to choose a more obscure topic on which no one has yet published, or if it was better to publish in an area where there is already scholarly interest. Publishing in an unknown area may be an especially wise move for someone new to scholarship since it gives the writer an opportunity to stake out an interest area. Some suggested that newer legal scholars may benefit from joining in dialogue with well-established academics in choosing a topic. It was stressed that no matter the strategy, scholarship should be driven by what interests a person most.

Closing Remarks: Where Do We Go From Here?

The closing remarks were given by **John Willshire Carrera** and **Nancy Kelly**, who reflected on their 30+ years of immigration work with the clinic at Greater Boston Legal Services. They shared a history of their work, “sprinkled with facts and thank yous.”

First they talked about the Haitian cases in the late 1980s and early 1990s, when large numbers of Haitians coming through Guantanamo ended up in Boston. Eventually, thanks to advocates like John and Nancy, many individuals were granted protection. Willshire Carrera remarked that over the course of a generation, these original refugees have formed a core, developing into a thriving Haitian middle class in Boston.

Second, they talked about their work on gender and asylum law, which later became the basis for the legacy INS gender guidelines. This was an area, according to Kelly, in which many said that “the law was not ready.” Transformation, she said, required “getting people to slow down and listen to the stories” of the women. She spoke about the first Board of Immigration Appeals case—that of a Haitian woman raped during the coup—in which rape was identified as torture.

Next, they spoke about their efforts following the 2007 New Bedford factory raid, when the clinic “jumped in” to stop the transport of individuals who were being detained at a military base and shipped to the border for removal hearings. “I learned as an attorney your best legal research tool is a telephone,” said Kelly; “within days they had gathered 179 willing plaintiffs for a federal suit and more than enough eager advocates.” Though their federal suit was unsuccessful in stopping the shipping of individuals to the border, they were able to obtain release from detention for many and ensure that they had access to counsel. They represented the New Bedford plaintiffs in many individual cases, and, said Willshire Carrera, “many of these families have [since] been saved.”

They then spoke about how the law of asylum has continued to evolve with the latest wave of cases from Guatemala and the emergence of “independent women’s claims,” claims of women challenging and fleeing domestic violence. Women from across the war-savaged parts of Central and South America whose husbands and fathers have been taken or killed are being “targeted as single providers, deviating from the old social structures.” Willshire Carrera noted that the law will need to continue to shift to respond to these women’s claims.

Finally, Kelly and Willshire Carrera turned to what lies ahead in the *next* 30 years. An unprecedented border crisis is facing the country, they said, with huge numbers of children needing representation. “It is not the lawyer’s fault, it is not the court’s fault,” said Kelly, but there will be new challenges ahead for both as they try to deal with increasing numbers of refugees in an already under-resourced system. Once again Kelly wondered, “is the law ready” to give these unaccompanied minors from Central America the protection they need? Because “a lot of them will die if they go back.” Willshire Carrera spoke about those fleeing gangs (which are increasingly organized and akin to informal armies) in these countries as in many cases ex-members and cultural conscientious objectors and he emphasized the legal challenges they will face.

Moving forward GBLS and HIRC will continue to build cases and push the law, as they always have, from the ground up. To thank the HIRC staff and present the HIRC Pro Bono Award to Cleary Gottlieb Steen & Hamilton LLP, Willshire Carrera and Kelly invited Deborah Anker up to the podium. The three closed the conference

together and thanked everyone in the room for their courage and persistence, and the staff at both HIRC offices for all their work and continuing the struggle into the future.

Harvard Immigration and Refugee Clinical Program Pro Bono Award

During the Closing Remarks, Cleary Gottlieb Steen & Hamilton LLP, a leading international law firm, was awarded the Harvard Immigration and Refugee Clinical Program Pro Bono Award. Cleary is a nationally recognized leader in pro bono services it provides to immigrants and refugees. Jonathan S. Kolodner, a partner based in the New York office, accepted the award on behalf of the law firm. The Harvard Immigration and Refugee Clinical Program is extremely grateful to Cleary for its work with the Harvard Immigration Project and its continued sponsorship of the Cleary Summer Fellowship.