Public Defenders and the ABA Assist Detained Immigrants

By Hope Mirski

Many legal assistance organizations have adjusted their operations to help with the increased number of detained immigrants. This includes the ABA and several public defender offices. With the recent policy changes, lawyers across the nation are stepping up to fill the void.

Public Defenders

Unlike criminal defendants, indigent detained immigrants do not have a right to an attorney under the U.S. Constitution. The representation of detained indigent immigrants by public defender offices is a relatively new development. One example of this trend is the New York Immigrant Family Unity Project (NYIFUP). Founded in 2013, NYIFUP was fully funded in 2014 by the New York City Council, providing universal immigrant representation to “…every low-income immigrant facing deportation in the City of New York, as well as to detained New Yorkers facing deportation in the nearby immigration courts in New Jersey.”

Some of its major partnerships include the Vera Institute of Justice and the Independent Democratic Conference, which awarded the NYIFU $4 million. The program is comprised of three public defender organizations: Bronx Defenders, the Legal Aid Society, and Brooklyn Defender Services. NYIFUP has prevailed in over 500 cases, according to Nyasa Hickey, a BDS supervising attorney, in testimony to the New York City Council in July of 2018. In the same testimony before the NYC Council, the organization committed themselves to reuniting separated immigrant families by sending attorneys to supervise the interviews of detainees and provide legal representation for them.

Other states have followed the model of NYIFU. The Office of the Alameda County Public Defender launched California’s first embedded immigration representation unit in 2014. Raha Jorjani, a supervising immigration defense attorney and the founder of the project, states that the unit “has served as a model for immigration representation embedded in public defense, inspired by the idea that a public defender office can provide holistic representation that involves going beyond direct representation in criminal proceedings.” Focusing on the intersection between criminal defense and immigration defense, the Alameda County Public Defenders Immigration Unit is currently representing noncitizen clients in over 100 legal matters with an estimated success rate of about 75 percent of the motions or pleadings filed. One of the unique aspects of the unit’s work is that it regularly takes post-conviction relief cases that involve vacating or modifying prior convictions in order to mitigate or avoid the immigration consequences stemming from those convictions. The unit also engages in federal litigation when necessary to protect the constitutional rights of detained immigrants. Jorjani cites the work of attorney Su Yon Yi, who, for one client, filed an emergency stay motion, got a case reopened, and won the principle case against the deportation in a matter of days.

In 2017, the San Francisco Public Defender Office (SFPDO) launched its Immigra-
tion Unit. Jeff Adachi, the San Francisco Public Defender, works closely with attorney Francisco Ugarte, who heads the unit. On average, the unit handles about 300 immigration cases each year out of the 25,000 people that the SFPDO represents. There are currently about 1,000 detainees in the San Francisco area and the team of eight attorneys and three support staff is able to represent about one-third of those who are detained. Adachi notes that many of the detainees have been in the country for ten years or longer, often with a spouse or relative who is a United States citizen. The SFPDO boasts a 60 percent success rate in bond hearings, citing their personalized approach that ensures that each client’s compelling background and story are heard. For Adachi, not only is the SFPDO’s work important for individual immigration cases, but for the immigration system as a whole. “When an immigrant has access to an attorney, it not only helps the immigrant understand the legal process, but reduces the backlog in immigration cases,” he said. “This is something that judges have been supportive of as well.” He hopes that the model inspires similar programs throughout the country.

ABA Efforts

The ABA’s immigration effort is multi-faceted and includes five programs to assist immigrants and attorneys working in this area of the law. The Children’s Immigration Law Academy serves as an educational resource for legal service providers and pro bono attorneys representing children in Texas immigration proceedings.6 Funded by the Vera Institute of Justice and the Texas Access to Justice Foundation, the staff of three attorneys focuses on providing extensive resources to unaccompanied children in immigration proceedings.7 The resources included are extensive: web and live trainings for attorneys, issue-based technical assistance, and training to legal service providers at Emergency Reception Centers.8

ProBAR (the ABA’s South Texas Pro Bono Asylum Representation Project) represents asylum seekers in Texas.9 Robert Lang, a staff attorney for the ABA’s Commission on Immigration, explained that ProBAR’s work is important because, “immigrants have a five times greater chance of winning asylum cases if they have a lawyer.” Lang recounted the case of a pair of clients, two undocumented cousins from El Salvador, who attempted to immigrate to the U.S. after having experienced the death of at least 11 family members by guerrilla fighters. Through extensive research into the family’s history in El Salvador, the ProBAR attorneys created a detailed family tree, noting who had been killed by the guerrilla fighters. Through this approach, the attorneys presented evidence documenting the danger that the cousins would face should they be forced to return to El Salvador.

Another example of ProBAR’s work involved a Kurdish woman from Iraq. Kicked out of her house for adopting westernized culture and converting to Christianity, she was forced onto the streets and subsequently arrested for both minor and serious felonies. ProBAR attorneys helped her to file for a Convention Against Torture (CAT), citing that if she was were forced to return to Iraq she would face grave persecution. She was granted a withholding from deportation and ProBAR continues to support her after the government appealed the withholding.

ProBAR has recently added 10 more frontline attorneys to bring families back together after separation. Further, ProBAR helped the Vera Institute of Justice obtain a dedicated phone number for parents to call to help locate their children. The institute also posted the numbers of the various consulates available for the detainees in the detention centers, to facilitate easier access to legal representation.

The Detainee Correspondence Project communicates through calls and letters with over 200 detention facilities in the United States. The immigration hotline, run by ABA employees and interns, provides
information about legal rights and a method to report mistreatment in detention facilities. Under the supervision of Robert Lang, interns talk to clients and provide resources to help them understand their legal rights.

Another project, the Fight Notario Fraud Program, was founded to help raise awareness of fraudulent immigration representation or “notarios.” These “notarios” present themselves as valid professionals who can help guide people through the immigration process. In fact, they do not possess the proper legal credentials to do so and many people are swindled. The program has resources and information for immigrants, a depository of pleadings and forms, and referrals to pro bono attorneys who can provide representation against unscrupulous notarios.

The Detention Standards Implementation Initiative 11 is based on making sure that ICE maintains immigrant detention facilities up to legal standards. The standards are based on those established in 2001 and include proper legal services and medical care for detained persons.

Lang notes that the ABA and its interns have worked hard for many years to “inspect facilities to make sure that they are in compliance with the standards set in the DSII.” A recent inspection found a lack of separation between criminal detainees and ICE detainees, inaccessible hotline information, and lack of medical interpreters.

An Evolving Situation

In June, ABA President Hilarie Bass wrote a letter to Attorney General Jeff Sessions and Department of Homeland Secretary Kirstjen Nielsen expressing opposition to the separation of families as a deterrent to illegal immigration. 12 This is evident from the ABA employees and volunteers who have travelled nationwide to get boots on the ground in key states impacted by increased immigration standards, deportation measures, and family separation policies. Attorneys across the nation have gone above and beyond to give an individualized type of representation to those who otherwise would not receive any representation at all. Their work ensures that immigrants’ voices are heard in our legal system. 13

Hope Mirski served as an intern to GPSLD during the summer of 2018. Mirski is a senior at the George Washington University double majoring in Political Science and International Affairs with a concentration in International Politics.

Endnotes
4. Id.
5. Id.
6. See www.cilacademy.org/about/history.
7. Id.
8. Id.
10. Detainee Correspondence Project. See www.americanbar.org/groups/public_services/immigration/projects_initiatives/detainee_correspondenceproject.html.
Division Delegate Report

By Gregory G. Brooker and Alexander W. Purdue

The 141st meeting of the ABA House of Delegates took place at the ABA Annual Meeting in Chicago on August 6 and 7, 2018.

In addition to debating several important resolutions and policy changes, the House of Delegates heard remarks from both the outgoing and incoming ABA presidents.

Remarks by Outgoing ABA President Hilarie Bass

On the first day of business, outgoing ABA President Hilarie Bass addressed the House and recapped her year as president. Bass spoke about her involvement and work with children who had been separated from their parents at the border when the families sought asylum. Bass commended the many volunteers lawyers affiliated with the ABA who worked on the asylum cases and on cases seeking the reunification of families.

Bass highlighted several of her other initiatives, including the Commission on the Future of Legal Education, and the Legal Needs of Homeless Youth which aims to engage and equip the legal community to advocate for homeless youth and improve outcomes for this vulnerable population. Bass also discussed her initiative “Achieving Long-Term Careers for Women in Law” which sponsored two national summits that focused on the unique issues and career dynamics facing women lawyers in practice for over 20 years, and explored the reasons for their disproportionately high rate of attrition.

Bass concluded her remarks by saying, “The American Bar Association has never been more important in the United States and in the world. We must continue to stand up for the independence of the judiciary, and to ensure that our profession lives up to its ideals.”

Remarks of New ABA President Bob Carlson

Hilarie Bass passed the gavel to new ABA President Bob Carlson. Carlson indicated he plans to market the new ABA dues structure and raise awareness of member benefits, including ABA Blueprint, ABA Insurance, and ABA Leverage. Carlson plans to build on the momentum of Hilarie Bass’ Future of Legal Education initiative and the ABA Center on Innovation, and “build on our national leadership to encourage pro bono and legal aid for veterans, homeless youth and other vulnerable communities.”

Carlson and ABA President-Elect Judy Perry Martinez are planning a trip to Harlingen, Texas, to see firsthand the work of the many volunteer lawyers representing separated families and other migrants.

Carlson concluded his speech by saying that some consider the ABA “passé.” He responded that anyone thinking that should ask a recipient of legal aid services, an active military member or a veteran, a victim of a natural disaster, the lawyers and judges around the world benefiting from the ABA Rule of Law Initiative, or an unaccompanied minor at the border. They could tell those skeptics what “America’s lawyers do through this association.”

Resolutions of Interest to GPSLD

The House of Delegates considered many resolutions at its two-day meeting in Chicago. Here is a recap of the resolutions of most interest to the GPSLD. Resolution reports addressed by the House of Delegates at its Chicago 2018 meeting, can be found here.

Resolution on New ABA Dues Structure (Resolution 177). The House adopted a far-reaching new ABA membership dues plan. The new structure reduces some dues at the highest level and cuts the different membership price points from 157 to five. Under the plan, which takes effect September 1, 2019, ABA members will have access to more and better content, including hundreds of free CLEs and information curated and delivered according to members’ individual interests and specifications. Under the new categories, dues for government lawyers will be $150. Law students will still receive free membership.

Resolution on Unanimous Juries (Resolution 100B). The House passed a resolution urging Louisiana and Oregon to require unanimous juries to determine guilt in felony criminal cases and reject the use of non-unanimous juries where currently allowed in felony cases.

Resolution on Military Equipment to Local Police Departments (Resolution 104A). The House passed a resolution urging Congress to enact legislation that implements President Obama’s Executive Order, dated May 2015, that implemented the “Law Enforcement Equipment Working Group Recommendations,” which places strict limitations on what types of military equipment federal agencies can provide to state and local law enforcement agencies.

Resolution on Gun Violence Withdrawn (Resolution 109). The sponsors withdrew this resolution urging governments to enact statutes, rules, or regulations that allow individuals to voluntarily submit their names to databases used for gun background...
checks and to remove themselves from those systems. The sponsors will continue to work with other ABA groups prior to the Midyear Meeting, where a revised resolution may be submitted.

**Resolution on LSAT Requirements Withdrawn (Resolution 111D).** Although the House approved four legal education resolutions, including one expanding the opportunity for online legal education under the ABA Standards and Rules of Procedure for Approval of Law Schools, a fifth resolution, which would have relaxed the requirement for a "valid and reliable" test, like the LSAT, in the law school admissions process, was withdrawn.

About two dozen law schools now allow for the GRE, and the challenge for the Council of the ABA Section of Legal Education and Admissions to the Bar (the national accreditor of law schools), is how to determine what constitutes a "valid and reliable" admissions test. The sponsors will continue to work with other ABA entities and may present a revised resolution at the ABA Midyear Meeting.

**Resolution on New Guidelines for Court Fines and Fees (Resolution 114).** The House approved a resolution urging the adoption of the black letter and commentary to the ABA Ten Guidelines on Court Fines and Fees. The resolution seeks to minimize the imposition of court fees for non-violent offenses and the arrest for nonpayment of such fees.

**Resolution on the Suspension of Young Grade School Students (Resolution 116B).** This resolution, which was approved by the House, urges all governments to enact laws that prohibit the use of out-of-school suspension and expulsion of pre-kindergarten through second grade students.

**Resolution on Transgender Military Personnel (Resolution 118).** The House approved a revised resolution urging the federal government not to discriminate against transgender persons who are otherwise eligible for military service if the discrimination is based solely on their gender identity.

**Resolution on the Commission on Immigration (Resolution 119).** The House approved a resolution adopting the 2018 ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States, which will replace the 2004 Standards.

**Resolution on Separation of Families at the Border (Resolution 10C).** Concluding the 2018 ABA Annual Meeting, the House approved Resolution 10C, which asks the Executive Branch and Congress to fix the border situation and ensure a policy of family separation is never reinstated. In introducing the resolution on behalf of the Minnesota State Bar Association, Minnesota State Senior Judge Cara Lee Neville summed up the message to the government this way: “Stop it. Fix it. And don’t do it again.” “This is not a political issue,” she said. “This is a civil rights issue. This is a humanitarian issue.”

The House of Delegates will next convene at the ABA Midyear Meeting in Las Vegas, Nevada, in February 2019.

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Gregory G. Brooker is an Assistant United States Attorney for the District of Minnesota. He was the Division Chair in 2014-2015. Alexander W. Purdue, Colonel, USAF (ret.) of Santa Fe, NM, was Division Chair in 2013-2014. Both serve as Division delegates.

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  - Greehan Taves & Pandak, PLLC
  - Woodbridge, VA

- **Vice-Chair:** Steve Vieux
  - Shook Hardy & Bacon, LLP
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- **Secretary:** Edward Monahan
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- **Treasurer:** Wendy J. Muchman
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**Division Delegate**

- Alexander W. Purdue
  - Santa Fe, NM

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- Joan M. Burke
  - State Board of Medical Examiners
  - Trenton, NJ

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**Charles Stertz**
Outagamie County
District Attorney's Office
Appleton, WI

**ABA Entity Representative**

- Gilda Mariani
  - NY County District Attorney's Office
  - New York, NY

**Section of International Law**

- Regina Nassen
  - Office of the Pima County Attorney
  - Civil Division
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**Arizona Bar Association**

- Howard A. Pohl
  - Hollywood, FL
  - *The Florida Bar*

**Affiliated Organization Representative**

- Liani Reeves
  - Bullard Law
  - Portland, OR

**National Asian Pacific American Bar Association**

- Outagamie County
  - District Attorney's Office
  - Appleton, WI

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Military Spouse JD Network: Working to Improve Professional Lives

By Brooke Nattkemper

What brings you to this state so far from where you went to school/grew up/have roots? This is an all-too-common question for military spouse attorneys seeking a job outside their home state. And while it can be danced around with answers like, “Oh, my spouse’s job,” everyone knows the real answer: “The military sent us here.” Knowing that, the doubts and questions follow. How long will you be here? How committed are you to this job? Are you worth the time, effort, training, and money?

Applying for jobs after jobs and going to interviews is hard knowing there will be a hesitancy to hire you because of the military’s intimate involvement in your life. I have personally experienced this in my own job hunt over the years. It can leave you feeling so defeated.

Thankfully, I am part of a strong group that understands this and works to improve the lives of military families in the same situation—the Military Spouse JD Network (MSJDN.) We all have the fear of our resumes screaming “temporary” or “military.” As a group, we work to combat the negative connotations that may come with that, and provide change.

Our mission is to “support spouses in the legal profession by advocating for licensing accommodations for military spouse attorneys; educating the public about the challenges faced by career-minded military spouses and their families; encouraging the hiring of military spouses; and providing a network connecting military spouse attorneys with each other and their supporters.” To accomplish this, we have volunteers who spend countless hours lobbying states for rule changes to allow spouses to practice where they have been stationed without having to take another bar exam (we have members who have taken four, five and six bar exams) and others working to build connections with employers to show them the value and benefit of military spouse attorneys. Our members work hard, hit the ground, make calls, and do all the leg work to inform others about the challenges we face. The importance of this work cannot be underestimated, particularly when you consider the value it adds to the lives of many military families.

To date, 30 U.S. states and the U.S. Virgin Islands have recognized the challenges and value of military spouse attorneys and taken steps to help. The ABA recognized this and passed supporting resolutions. Employers are starting to recognize this and give spouses a chance.

I have benefitted from these collective efforts. I have been licensed in Florida since 2012, and stationed in Kansas with my husband since 2014. I helped with the rule change efforts here in the Sunflower State. Rule 712A allows an attorney who has been admitted to practice law in another state or the District of Columbia, and who is married to a military service member stationed in Kansas, to be admitted to practice law in the state without the need for an additional bar exam. They must be employed as an attorney by or with an active Kansas attorney in good standing to qualify under the rule. When this rule passed in 2016, I finally looked forward to the possibility of returning to the legal field.

During my two years away from practice, I started my family and spent precious hours with my daughter. But I kept an eye out for opportunities: chances to work remotely that never materialized, federal work that I was too far away from, and taking another bar exam as a last resort. I mention the bar exam as a last resort because, as all attorneys well know, bar exams are expensive, time intensive, and incredibly stressful. When you are a military family, you never know with certainty when you might receive orders to move again, so putting all that time, money, and sanity into a test that may or may not benefit you is a hard gamble to make.

That was my situation. But when Kansas passed their military spouse rule, it felt like the legal world had opened up to me once again. I could immediately begin my job search without having to take the Kansas bar first. I finally obtained a legal job in Manhattan Kansas, I had so many emotions, but mostly, I felt incredibly proud. I was gratified that my work and the work of so many others helped make this possible for myself and others like me. It felt good to be back.

MSJDN provides support, professional opportunities, mentoring, and encouragement to me and so many military families. It helps us not lose our own identities to that of our military-member spouse. Trust me—that is precious.

Brooke Nattkemper is a Florida, U.S. Supreme Court, and Kansas-licensed attorney who graduated from Stetson University College of Law, cum laude, in 2012. She is currently living in Manhattan, Kansas, with her daughter and husband, who is an Army Infantryman. Her family has been stationed at Fort Riley, KS since 2014. She was licensed in Kansas under their military spouse rule in June 2018. While currently engaged in general civil practice, including corporate law, banking law, landlord/tenant matters, and trusts and estates, Nattkemper has experience in dependency, immigration, and criminal law. She is active with her local military community, an advisor for Kappa Delta sorority, and the Governance Director for MSJDN.
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TechTips

Best Free Password Managers

I f you are still using 12345 or Password1 as a password, it’s time to make a change. In this digital age, no one can remember all their passwords and sticky notes kept in desk drawers or even stuck on the side of PCs or laptops are NOT a good idea. To avoid drowning in passwords, use a password manager. You can pay for this service but there are also some remarkably good free apps as well. Check out these top-rated apps.

● Lastpass – this password manager gets big praise from PC Mag because it has no limit on the number of passwords a user can save. It works on Windows, macOS, Android and iOS systems. It includes features not normally found on free password managers including a password strength report and automated password changing.

● LogMeOnce Premium – this password manager has a new, streamlined interface that is clean looking and easy to use. The Secure Wallet feature fills out credit card data and displays card images, handy for online shopping. The app contains a huge number of features, but some users claim that the many features are overwhelming. Syncs across Windows, macOS, Linux, iOS, and Android systems.

● Myki Password Manager – this password manager is strictly for mobile use and data is kept local rather than in the cloud which eliminates the worry that the company could get hacked or go rogue. The password strength report is for iPhone only, not Android. Works on all platforms.

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Former Division Chair Receives Lifetime Achievement Award

Congratulations to former GPSLD Chair Major General Kenneth D. Gray (US Army, Ret.) who recently received the Judge Advocates Foundation Chief Justice John Marshall Lifetime Achievement Award!

Upcoming Division Events

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October 26, 2018
Washington, D.C.
See p. 7 for more information

ABA Midyear Meeting
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