



IN/OUT IB EF **F** C



MEMORANDUM

To: Donna E. Shalala, President

From: Stephen Sapp
Chair, Faculty Senate 

Date: November 20, 2008

Subject: Faculty Senate Legislation #2008-13(B) – Additional Educator Faculty at the School of Law

On November 19, 2008, the Senate voted to approve the proposal for additional educator faculty at the School of Law as presented by Richard Williamson.

The proposal is enclosed for your information.

The legislation is now forwarded to you for your action.

SS/rh

Enclosure (proposal)

cc: /Thomas LeBlanc, Executive Vice President and Provost
Paul Verkuil, Dean, School of Law
/David Birnbach, Executive Vice President and Provost
Richard Williamson, Presenter, Professor, School of Law

Faculty Senate
1252 Memorial Drive, 325 Ashe Admin. Bldg.
Coral Gables, Florida 33146
Phone: (305) 284-3721 • Fax: (305) 284-5515
<http://www.miami.edu/FacultySenate>
email: facsen@miami.edu

PRESIDENT'S RESPONSE

APPROVED:  DATE: 11-25-08
(President's Signature)

OFFICE OR INDIVIDUAL TO IMPLEMENT: DEAN PAUL VERKUIL

EFFECTIVE DATE OF LEGISLATION: IMMEDIATELY
(if other than June 1 next following)

NOT APPROVED AND REFERRED TO: _____

REMARKS (IF NOT APPROVED): _____



MEMORANDUM

Paul R. Verkuil
Acting Dean and Professor of Law

To: University of Miami Faculty Senate
c/o Stephen Sapp, Chair

From: Paul R. Verkuil, Acting Dean
University of Miami School of Law

P. R. V

Date: November 13, 2008

Re: Request for Approval of Additional Educator Faculty for the Law School

On behalf of the law school faculty, I hereby request that the Senate authorize the law school to appoint additional educator faculty positions for the school, not to exceed 15% of the school's regular faculty. This request parallels the College of Engineering's proposal, which was approved by the Senate on August 27, 2008. All appointments made pursuant to this authority will require the prior approval of the law school faculty, in keeping with our traditions and the requirements of the American Bar Association, our accrediting body.

The law school presently has five educator faculty positions and each is filled with a clinician supervising our externship programs or supervising one of our existing clinics. We have an immediate need for one additional faculty member under the educator track to teach in and direct the newly-established immigration clinic, which was approved unanimously by the law school faculty on November 10, with the understanding that it would require such an additional hire. As set forth in greater detail in the attached memorandum, an immigration clinic at the law school will build on existing curricular strengths, address local community needs, enhance student learning and marketability and help keep the University of Miami School of Law competitive with peer schools.

Rather than request only one additional educator faculty position at this time, the General Welfare Committee suggested that our request be amended to follow the precedent of the College of Engineering, which we have done above.

We further request that the Senate adopt this proposal with immediate effect upon approval of the legislation by the President. Time is of the essence in this matter to permit us to post the position and conduct a national search for a highly qualified candidate during a time period that is consistent with other law schools' hiring calendars.

Office of the Dean
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E-mail: pverkuil@law.miami.edu

MEMORANDUM

TO: DEAN VERKUIL
ASSOCIATE DEAN COKER
CLINICAL COMMITTEE
CURRICULUM COMMITTEE

FROM: DAVID ABRAHAM
JONEL NEWMAN
STEPHEN SCHNABLY
IRWIN STOTZKY

RE: PROPOSAL FOR IMMIGRATION CLINIC

DATE: AUGUST 18, 2008

Justification: This proposal responds to an initiative identified in our strategic plan to provide additional opportunities for our students to gain integrated practical legal experience through expanding our live client clinical offerings in the area of immigration. An Immigration Clinic builds on our already existing faculty and curricular strengths, responds to expressed student and prospective student interests and demands, and meets local needs. As the attached letter from the Miami Assistant Chief Immigration Judge shows, there is a large need for these services and a ready source of cases for the Clinic. Funding may also be available to support some aspects of the proposed clinic through the Vera Institute of Justice and the Executive Office for Immigration Review. See attached Vera Report Summary which illustrates a significant gap in funding and services in Florida.

An Immigration Clinic also provides additional opportunities for community outreach and service, developing relationships with the local bench and bar and our alumni. As the field of immigration law continues to grow, particularly in Miami, the experience offered by an Immigration Clinic enhances student learning and marketability. See attached Washington Post article. Judges have long recognized the importance of law school clinics in the immigration field. Recently, for example, Second Circuit Judge Robert Katzmann has noted that several law schools in the Second Circuit offer immigration clinics, and that "they provide an

invaluable service not just in terms of needed representation, but also by demonstrating to students how important and dynamic the field of immigration law can be. In this way, they help to add new generations of well-trained immigration attorneys.”¹ Due to the importance of law school clinics in immigration courts, the Chief Immigration Judge has recently directed all U.S. Immigration Judges to give law school clinics and other pro bono representatives “priority scheduling at master calendars” and to be “cognizant of the unique scheduling needs of law school clinics” in the administration of case and court scheduling.²

An Immigration Clinic at the University of Miami School of Law is long overdue among our clinical offerings, and our failure to have one puts us at a competitive disadvantage. We have two full time tenured faculty (David Abraham and Irwin Stotzky) teaching, writing and lecturing in the field, as well as one of the country’s leading practitioners and authors (Ira Kurzban) as a regular adjunct. Ira Kurzban’s Immigration Law treatise is one of the most cited books in the field, and Kurzban and Stotzky are currently collaborating on a casebook for immigration law. The law school also frequently offers a class taught by local Immigration Judge Kenneth Hurewitz. Our existing clinical faculty (with whom the proposed clinic will work) also have rich experience in the immigration field. Bernie Perlmutter has been one of the leading advocates on behalf of unaccompanied immigrant children for many years. He and Kele Williams have been funded by the Children’s Trust to oversee a collaborative project with the FIU clinical program to deliver legal services to this population. JoNel Newman has an extensive background in immigration-related federal litigation. She is the former Chair of the Immigration Litigation Committee of the ABA’s Litigation Section and is presently a member of the ABA Immigration Commission where she works on national immigration policy related issues. All of the existing faculty have strong ties to local immigration services providers such as the Florida Immigrant Advocacy Center as well as to national figures. Finally, Miami is an extraordinarily rich environment for immigration law, and offers students a chance to practice at the cutting edge of what they learn in the classroom.

¹ Robert A. Katzmann, *The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 GEO. J. LEGAL ETHICS 3, 18 (2007).

² U.S. Department of Justice, Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 08-01: Guidelines for Facilitating Pro Bono Legal Services (March 10, 2008).

Description of Clinical Course: The Clinic will begin by providing services to indigent persons in individual asylum or deportation proceedings. The Clinic will accept referrals for services from the Immigration Court (see attached letter), Florida Immigrant Advocacy Center, other law school clinics and adjunct faculty such as Ira Kurzban. Enrollment in the Clinic will be offered to 2Ls and 3Ls who have successfully completed at least two semesters of law school and one of the Law School's introductory immigration law courses. Students concurrently enrolled in an introductory immigration law course and students in one of the law school's LLM programs may be considered on a case-by-case basis for enrollment. The Immigration Clinic will offer the same number of credit hours and have the same clinical seminar components as our existing in-house clinics. Students will be enrolled in the Immigration Clinical Workshop for 4 credit hours per semester with the expectation that they will attend weekly classes and supervision meetings (approximately 160 minutes) and complete 10 to 12 hours of client/case work per week. The class component of the course will include training in case and statutory law in the areas in which the students will be practicing.

Start Date: Fall semester 2009.

Staffing: The Immigration Clinic would be overseen by Professor Stotzky and the Center for the Study of Human Rights. The initial staffing requirements for the Clinic would be one full-time attorney who is licensed to practice in Florida and has experience in immigration. The position would be structured as a clinical faculty educator, though other options could be considered. The clinic would also have an administrative assistant.

Space Needs: The Immigration Clinic will require clinical office space similar to what is presently available for the existing clinics, i.e., 4-6 student work stations, space for files and office equipment, a secretarial work station, a clinical faculty office and a small client interview/conference room.

Transition: A supervising attorney could be hired as a visiting clinician for the first year in order to avoid delay in start time and to provide time to determine the appropriate status for the position. Also, it is possible that some of the space requirements (notably student work space, office equipment and file storage) could be phased in or shared with existing Clinics if necessary to avoid delay in starting the Immigration Clinic.



U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

333 South Miami Avenue
Suite 700
Miami, Florida 33130-1901

Professor Anthony V. Alfieri
Director, Center for Ethics and Public Service
University of Miami School of Law
1311 Miller Drive - G288
Coral Gables, FL 33146-8087
SENT VIA MAIL & EMAIL: aalfieri@law.miami.edu

September 11, 2007


Dear Professor Alfieri:

It is my understanding that University of Miami School of Law does not yet have an immigration clinic. However, I am writing to inform you about a proposed initiative at the Miami Immigration Court and solicit your feedback. We are exploring the scheduling of a special master calendar hearing for indigent respondents who are unable to obtain pro bono representation. Many cases will likely involve complex immigration and criminal law issues which may be suitable for advanced law students supervised by an attorney.

The special master calendar hearing would be scheduled once a month. The immigration judge presiding over the special master calendar would rotate. Law school clinics and volunteer agencies would be invited to attend the special master calendar. If the clinic or volunteer agency accepts a respondent as a client, then respondent's case would be set for an individual merits hearing.

Please let me know if one of the clinics at your law school would be interested in participating in this proposed special master calendar. If a clinic is interested, please indicate whether there are specific days of the month when it would not be possible for clinic participants to attend. I look forward to your response.

Sincerely,


David W. Crosland
Assistant Chief Immigration Judge
email: david.crosland@usdoj.gov

cc: Assistant Dean Marni Lennon
Pro Bono Director, University of Miami School of Law
1311 Miller Drive, Coral Gables, FL 33146

Improving Efficiency and Promoting Justice in the Immigration System

Lessons from the Legal Orientation Program

Nina Stulc • Zhifen Cheng • Arnold Son • Olga Byrne

REPORT SUMMARY • MAY 2008

Program Services

The LOP involves four levels of service:

- > **Group orientations** are presentations by attorneys or paralegals (under attorney supervision) that offer a broad overview of the immigration court process and basic information on relief from removal and ways to expedite the removal process.
- > **Individual orientations** are one-on-one meetings generally following the group orientation. In these meetings, detainees ask LOP attorneys and paralegals more detailed questions about specific defenses and forms of relief from removal, as well as about the court process.
- > **Self-help workshops** are small workshops led by LOP staff for detainees who will be handling their cases *pro se*. In these workshops, individuals can prepare and practice with other persons who will be pursuing similar defenses or applications for relief from removal.
- > **Referrals to *pro bono* attorneys** are made for some detainees who are unable to proceed *pro se* or whose cases could benefit from the assistance of legal representation.

Since 2005, the Vera Institute of Justice has worked with the Executive Office for Immigration Review (EOIR) and nonprofit legal service providers to carry out the Legal Orientation Program (LOP)—an innovative effort to inform immigrant detainees about their rights, immigration court, and the detention process. This brief highlights key components of Vera's work on the LOP and shares preliminary findings from our research.

RATIONALE FOR THE LOP

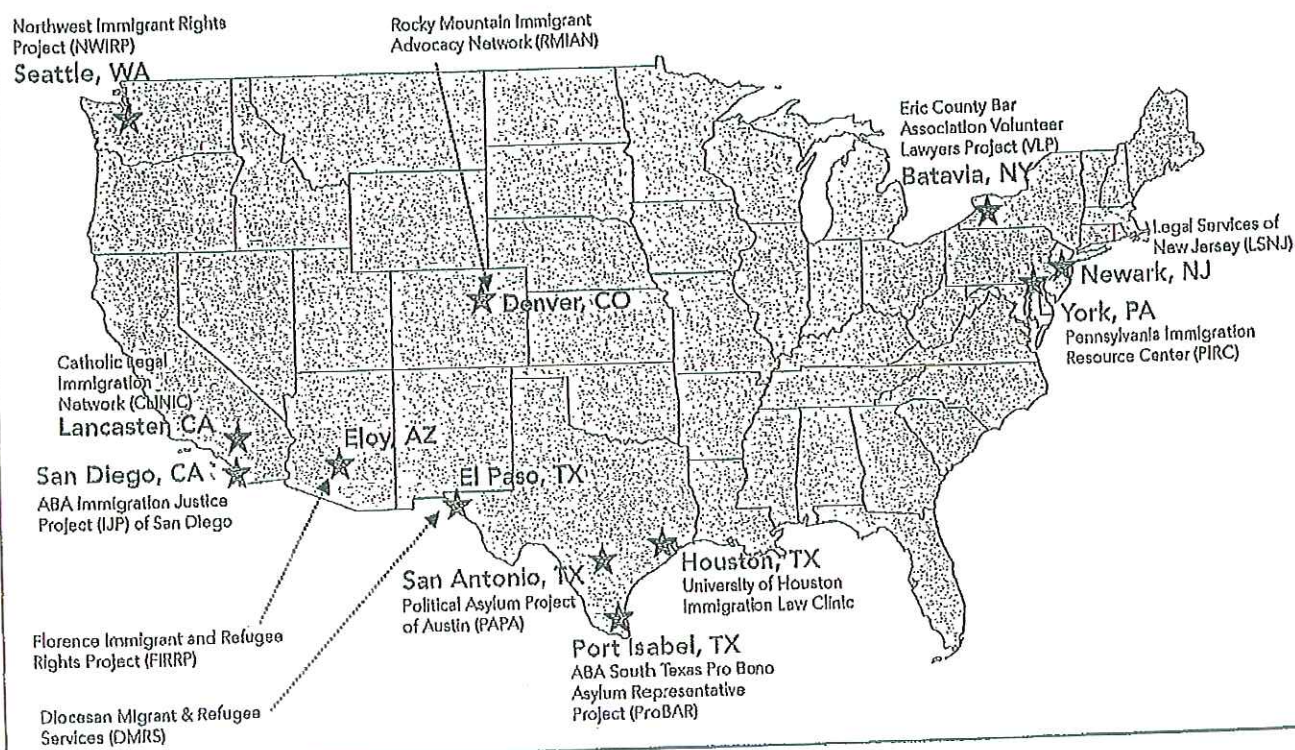
Unlike defendants in the criminal justice system, people who are in removal (deportation) proceedings in the U.S. do not have a right to free legal assistance. Those who cannot afford to pay for counsel have two options: either represent themselves (proceed *pro se*) or, in limited circumstances, obtain the services of a free (*pro bono*) attorney. According to EOIR—the Department of Justice agency that runs the nation's immigration courts—between October 1, 2006, and September 30, 2007, approximately 84 percent of detained respondents with completed immigration court proceedings lacked representation.

For many who face the possibility of removal, the stakes are high: they may have lived in the U.S. for a significant portion of their lives, are U.S. citizens or legal permanent residents, and/or have family members who are U.S. citizens. (In calendar year 2007, for example, LOP providers identified 322 people with potential claims to U.S. citizenship.) Yet, given the complexity of immigration law, few people are prepared to adequately represent themselves. As a result, immigration judges use court time to inform *pro se* respondents of their rights, ensure that they have properly completed required applications, and help them through the complicated removal process. This leads to inefficiencies in immigration proceedings and prolongs the time individuals spend before the court and in detention.

In response, since 2002 Congress has funded the LOP, which seeks to educate detained persons in removal proceedings so they can make more informed decisions, thus increasing efficiencies in the immigration court and detention processes. The LOP provides detained persons with basic information on forms of relief from removal, how to accelerate repatriation through the

Improving Efficiency and Promoting Justice in the Immigration System

Currently, the LOP is being provided in 12 court locations by nonprofit legal service organizations that work collaboratively with local immigration courts, detention facilities, and ICE.



removal process, how to proceed *pro se*, and how to obtain legal representation. The LOP is designed to provide this information to detained persons prior to the first court hearing in their removal proceedings.

The LOP is offered by nonprofit legal service providers who work collaboratively with local immigration courts, detention facilities, and Immigration and Customs Enforcement (ICE). In 2006, the LOP reached more than 25,000 detainees. From the program's inception in 2003, the program has reached more than 120,000 detained persons.

Since 2005, EOIR has contracted with the Vera Institute of Justice to manage the LOP. Vera subcontracts to nonprofit organizations to provide LOP services, and Vera staff monitor, oversee, and measure the performance of the LOP. As part of its contract, Vera was required to undertake a program evaluation to document LOP services, assess if the LOP is working as intended, determine any impact of the program and the significance and extent of any impact, and make recommendations for ongoing program improvements. This brief summarizes that preliminary evaluation of the LOP.

Improving Efficiency and Promoting Justice in the Immigration System

PRELIMINARY FINDINGS

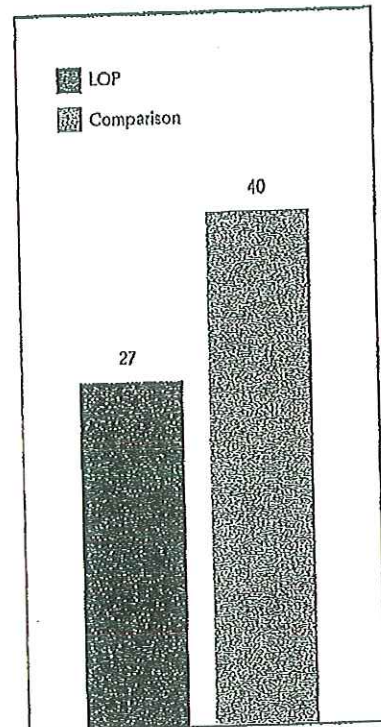
In conducting our analysis of the LOP, we identified trends in immigration court data, tracked LOP participants in the immigration courts, compared LOP participants and other detained persons, and conducted qualitative interviews with project stakeholders. This information indicates that the LOP has demonstrated several positive outcomes: faster case times, fewer *in absentia* removal orders, and more effective preparation for participants representing themselves.

> **LOP PARTICIPANTS MOVE THROUGH THE COURTS FASTER.** Detained LOP participants have immigration court case processing times that are an average of 13 days shorter than cases for detained persons who did not participate in the program. This suggests that the LOP may have important resource-saving benefits for the immigration courts and immigration detention system. The more quickly detained cases are completed, the sooner detained persons are eligible to be released from custody or removed from the U.S. This can free available bed space at detention facilities and substantially reduce costs for the federal government.

> **LOP PARTICIPANTS RECEIVE FEWER *IN ABSENTIA* REMOVAL ORDERS.** Very few detained persons are released on bond or recognizance. However, LOP participants who were released from detention prior to the completion of their immigration court cases appeared for court hearings at greater rates than comparison groups. Unrepresented people who participated in the LOP received 7 percent fewer *in absentia* removal orders than those who did not have access to the program. Low rates of *in absentia* removal orders were even more pronounced for those who received intensive levels of LOP service (meaning they participated in more than group orientations). Immigration court and enforcement agency stakeholders are concerned with reducing the number of persons who receive *in absentia* removal orders.

> **THE LOP CAN EFFECTIVELY PREPARE DETAINED RESPONDENTS TO PROCEED *PRO SE*.** The LOP is not a substitute for legal representation. However, some detained persons who received intensive LOP services (more than group orientations) and represented themselves achieved case outcomes approximating those associated with legal representation. LOP participants who represented themselves were also more likely to receive grants of voluntary departure than detainees who did not participate in the LOP.

Average Overall Case Processing Time in Days



What do LOP stakeholders think?

To complement our statistical analysis, we conducted qualitative interviews with various LOP stakeholders, including LOP providers, immigration court managers, judges, detention personnel, and people in detention. Highlights of this qualitative analysis are below.

> **Detention facility staff state that the LOP improves detention conditions.** Detention facility employees at LOP sites reported that they have observed a reduction in behavior problems when detainees have access to legal information. They also stated that the LOP makes detention safer and more humane.

> **Immigration judges state that the LOP increases immigration court efficiency.** Immigration judges at LOP sites report that respondents who have attended the LOP appear in immigration court better prepared and are more likely to be able to identify the relief for which they are statutorily eligible, to not pursue relief for which they are ineligible, and to have a better understanding of the immigration court process, thus helping to improve court efficiencies.

HISTORY OF THE LEGAL ORIENTATION PROGRAM

THE PROBLEM: In the early 1990s, a local immigration judge in Arizona was concerned that some immigrant detainees were at risk of having their statutory rights violated and recognized that *pro bono* attorneys from local firms could help ensure that detainees' rights were protected.

THE RESPONSE: The Florence Immigrant and Refugee Rights Project (a current Vera subcontractor) pioneered and refined a service model that encouraged people in detention to play an active role in their own cases, whether or not they were represented by counsel. Rather than focusing their limited resources on representing a small number of detainees, Florence Project attorneys strove to provide all individuals with accurate legal information from which to make more informed decisions about how to proceed with their immigration court cases. The project also worked to dispel common misconceptions about the immigration court process and thus decrease anxiety, confusion, and discomfort about immigration proceedings.

THE RESEARCH: A 1992 study by the General Accounting Office concluded that the Florence Project's model resulted in significant time savings for the government because detainees appeared in immigration court already familiar with the removal proceeding process and their eligibility for forms of relief from removal. Evaluations of a subsequent pilot program that reached three of the largest detention centers in the country also demonstrated cost savings and efficiencies in the immigration courts.

GOVERNMENT FUNDING: In fiscal year 2002, Congress appropriated \$1 million to develop and implement the LOP model. By fiscal year 2008, the appropriations had increased to \$3.7 million.

For More Information...

The Vera Institute of Justice is an independent nonprofit organization that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

Vera's Center on Immigration and Justice collaborates with government, nonprofits, and communities to develop evidence-based justice solutions for systems affecting immigrants and their families and to address the challenges presented by the increasing convergence of the criminal justice and immigration systems.

For more information on the LOP or the Center on Immigration and Justice, please email GLCoordinator@vera.org or download the full report on which this summary is based, *Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report* (fase.ll). Visit Vera's web site: www.vera.org/lopevaluation.

washingtonpost.com

Law Students Rush to Meet Needs In Booming Field of Immigration

By Karin Brulliard
Washington Post Staff Writer
Monday, July 7, 2008; B01

Ann Kim made monthly trips this year to a Richmond area immigrant detention center, trying to free a mentally ill Honduran man. He ended up being deported, but Kim got something out of it: more experience in the burgeoning field of immigration law.

"Immigration is becoming more and more complex, and it's going against immigrants rather than for them," said Kim, 27, a second-generation Korean American who took the Honduran's case as part of her immigration law clinic at American University's Washington College of Law. "There's a great need for lawyers."

A subject that three decades ago was a secondary, technical field delegated to adjunct professors is booming at law schools nationwide. Elective immigration law courses taught by tenured specialists are filling lecture halls, immigration clinics are expanding and student groups devoted to the subject are mushrooming.

The momentum is partly driven by a high-profile, rancorous immigration debate. But it is also the result of an era of mass immigration that has fueled demand from foreigners and businesses seeking help navigating U.S. immigration statutes and has created a generation of law students intimately familiar with the issue, often because they are children of immigrants or immigrants themselves.

"Immigration is just one part of a much broader story about globalization, of movement of goods and movement of people and movement of ideas, and what used to be a backwater of the law has become mainstream," said T. Alexander Aleinikoff, dean of Georgetown University Law School, who co-authored the first major immigration law casebook in 1985. "This is certainly a very, very hot topic."

Unlike undergraduates, law students do not pick majors, so there are no statistics on the number studying immigration law. But professors say there is no question about the explosion in interest.

When AU created an immigration division within its well-known human rights clinic three years ago, administrators struggled to fill it; now, as many as 32 students vie each year for 16 slots. "We have to beat them away with a stick," said Richard Wilson, a professor. Two years ago, the school added two more sections of a basic immigration law course.

At least 50 law schools offer immigration clinics, which usually give students the chance to represent indigent immigrants who have no right to court-appointed lawyers. More sprout each year: This year, clinics have been launched at the University of La Verne and Southwestern Law School in Southern California, as well as at schools in areas that have seen recent influxes in immigration, such as Penn State and the University of Arkansas, where students circulated a petition in support of the idea.

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Student teams can debate the finer points of the immigration code each year at the nation's first moot court competition, begun by New York University two years ago. The University of California at Davis started a second contest this year.

In the past three years, students at the University of Maryland, George Mason University and Harvard University have founded immigration law groups. At AU, an Immigrants' Rights Coalition formed by law students in 2005 has 50 members and has hosted a conference on a new visa category and panels of day laborers and refugees.

"We're a country of immigrants, and yet we're putting immigrants out," said the group's co-chairman, Amalia Greenberg, 29, who emigrated from Venezuela at age 6. "It's a continuation of the civil rights movement, and it feels like it's in our hands to do something about it."

Professors say the immigration law boom is part of a broader explosion of interest in human rights and international law, spurred by today's globally minded students. Immigration is by no means the hottest law school topic -- criminal law and litigation remain hugely popular, and environmental law is a new favorite.

And although practitioners' ranks are growing -- membership in the American Immigration Lawyers Association has nearly doubled since 2003, to more than 11,000, 15 percent of whom passed the bar exam within the past three years -- the majority of students in immigration law classes will not become immigration lawyers, professors said. Many students said they might specialize in another area and do pro bono immigration cases on the side.

But there is a growing realization, students and professors said, that policies on issues such as asylum and due process are evolving as never before, particularly since the Sept. 11, 2001, terrorist attacks. A growing immigrant population also means that legal status often complicates what might have once been simple criminal or labor cases.

"It's not just that people think immigration is important, but they're seeing that it affects everything," said Hiroshi Motomura, an immigration law professor who will join UCLA in the fall.

Many students said their studies had underscored how thorny immigration is. Jennifer Khouri recently graduated from George Washington University Law School. As a student, she successfully argued at Arlington Immigration Court that an illegal immigrant from Colombia should be allowed to stay in the United States with her young son, a U.S. citizen. As proud as Khouri is of that victory, she is starting a job this fall as a U.S. Department of Justice attorney representing the government in immigration court.

"On both sides, the reaction is too emotional. . . . There's not enough actually looking at the numbers, empirical evidence about how immigrants are affecting the country," said Khouri, 27, the daughter of a Lebanese immigrant father and Cuban immigrant mother. "The reason I want to work for the government is because I want to push for the middle."

The topic's ultra-political nature frustrates some. Asha Allam, who recently took GW's immigration clinic, said the experience made her decide against the field because she thought the immigration system was unfair, in part because of documented disparities of approval and denial rates among immigration judges. Stalled federal immigration legislation also means lawyers can offer little aid to illegal immigrants, she said.

"Lawyers are telling a lot of their clients, 'There's nothing we can do for you right now,'" said Allam,

23, who plans to work in global trade in hopes that someday people will not have to migrate for opportunities. "That's not really legal advice," she said.

The challenges have only energized Karlie Dunsky, a GW law student. Unlike many of her peers, she had little experience with immigrants while growing up in Ohio. But she's set on a career in refugee and asylum law.

"I'm going to have to get used to my clients' claims being denied, but the first one is always hard," said Dunsky, 24. But, she said, "what makes immigration so compelling is that it's a human issue. . . . It's not some vague entity that doesn't have a face. It really motivates you."

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