

THE STRUGGLE FOR IMMIGRANT RIGHTS AND COMMUNITY ACTIVISM*

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I want to provide an overview of the struggle for immigrants' rights including what this struggle encompasses now and has encompassed in the past. In particular, I will focus on advocacy areas within immigration: interaction with the immigration service, immigration laws, and the implementation of these laws.

Dr. Harry Pachon described the naturalization process and the various bureaucratic obstacles immigrants face when dealing with the immigration service. The general public would be shocked at the obstacles confronted and the treatment received by immigrants. Historically, the Immigration and Naturalization Service (INS) has denied immigrants both common courtesy and fair treatment. Even long-time legal residents and citizens experience a lack of service and an unfriendly atmosphere in most dealings with INS. This mistreatment is particularly prevalent in Los Angeles immigration offices and is especially troubling when one considers that 80% of all amnesty applicants live in Los Angeles.

The struggle for immigrants' rights, however, has and will always encompass much more than immigration law. Labor laws, access to education, housing, health services and even civil and constitutional rights are all areas that affect immigrants. Unfortunately, the laws in these areas tend to have a negative impact on immigrants. For example, while some laws entitle everyone to an education or access to public housing or health services, the same laws provide an exception for immigrants and undocumented people.

To legal workers, such an exception seems unconstitutional. However, the courts have not agreed with this analysis and have instead fully legitimized standards that provide less protection for immigrants and the undocumented. While the legal system remains a valid, albeit difficult, vehicle for change, our struggles

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within the system highlight the importance of alternative strategies, such as community activism. I will discuss some innovative and effective examples of community activism later.

Unfortunately, immigrant advocates must sometimes forgo efforts to create more just immigration laws in order to address other urgent needs. Most efforts have focused on fair implementation of existing laws and ensuring that the INS is accessible, responsive, or at a minimum delivering the services required by law. Although these efforts address only some of the problems faced by immigrants and undocumented people, unjust implementation of existing immigration laws and difficulties with the INS are persistent and, at times, uncontrollable problems.

Over the last 20 years, there have been different priorities in the efforts to protect immigrants. During the 70s and the early 80s, the struggle for immigrant rights focused on protecting against INS raids. Raids were common not only in places of employment, but also in neighborhoods. In conjunction with local police, the INS would cordon off streets or surround housing projects and conduct door-to-door raids. Although these sort of raids are still conducted, this was much more prevalent in the 70s and early 80s.

While the law states that undocumented people have no right to be in the United States, an advocate can contest the discriminatory method in which raids are conducted. An immigrants' advocate can also utilize rules of procedure to contest an INS detention or deportation. Because INS officials must have probable cause to enter a home, an advocate can contest whether the requisite probable cause is established when INS officials have entered a home without reason.

Immigrants' rights advocacy must also encompass community education. Information on how to respond to INS raids or detention is essential. Before the passage of the Immigration Reform and Control Act (IRCA),¹ the educational campaign centered around the importance of remaining silent. That right is one of the few constitutional rights that has not been eliminated for immigrants and undocumented people. However, it is difficult to convince immigrants and undocumented people that they have a right to refuse to answer any questions or to ask for an attorney.

This approach relies on rules of evidence, including the placement of the burdens of proof in immigration laws. First, the INS must prove that someone is in the United States without permission. If the INS meets this burden, the burden then shifts to

1. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C.).

the individual to prove a defense against deportation or a legal basis for being in the United States. The INS can satisfy their burden based solely on statements made by the individual when first questioned. The answers to questions such as "Where are you from?" and "Do you have papers to be here?" would satisfy the burden of the INS' case in chief. Without this evidence, however, the INS cannot succeed. Yet, this campaign requires individuals to be brave enough to maintain their silence while harassed and intimidated by the INS. In Chicago, San Francisco, and other parts of the country, this effort was very effective.

In Southern California, this approach was more tenuous because of the option of "voluntary departure" for INS detainees and because of the proximity of the border. If a detainee chose to depart voluntarily, that individual would be in and out of the entire process in a few hours. Thus detained people had little incentive to remain silent, await for an appearance in court, and meanwhile remain in custody for an extended period of time.

The passage of IRCA resulted in a change of focus for immigrant rights advocates. Immigrant rights advocates fought against the passage of IRCA for many years, and indeed helped stall its passage for over ten years. Congress wanted IRCA to establish employer sanctions and nothing more. However, a carrot was necessary to make this law a bit more palatable. Congress reluctantly added the amnesty program to IRCA, which gave long-time undocumented residents the opportunity to obtain legal residency.

Although immigrants advocates did not fully support the final version of IRCA, once passed, much energy centered on obtaining legal status for as many eligible people as possible. However, it would not be easy; advocates and amnesty applicants were confronted with an unruly bureaucracy. In fact, in 1993, seven years after the implementation of this program, tens of thousands of amnesty applications are still snared in the process. Even the statistics of the INS estimate that cases will not be finalized for several more years.

At the same time, the struggle against employer sanctions continued. Criticisms concentrated on the discriminatory effect of the law.² In response, a provision was added to IRCA, which mandated a study of the effects of employer sanctions.³ If the government agency conducting the study were to find a discrimi-

2. See, e.g., Michael Crocenzi, *IRCA-Related Discrimination: Is It Time To Reveal The Employer Sanctions?*, 96 DICK. L. REV. 673 (1992); Nancy S. Cowen, *The Employer's Dilemma Under IRCA: Is It Possible To Comply With I-9 Requirements Without Discriminating*, 6 GEO. IMMIGR. L.J. 285 (1992).

3. Immigration and Nationality Act § 274A(j)-(m), 8 U.S.C. § 1324a(j)-(m) (1988).

natory effect, employer sanctions could be repealed.⁴ Recognizing that a government agency might not provide an accurate picture, many immigrant rights activists also monitored the implementation of employer sanctions and generated their own reports and findings.

However, the Government Administration Office (GAO), which was enlisted to study the effect of employer sanctions, determined that the sanctions were in fact discriminatory.⁵ More surprising was Congress's response to the GAO report. Not even the members of Congress most sympathetic to immigrant issues were willing to activate the legislation that mandated the repeal of employer sanctions. Some members of Congress said that their constituencies would not support the repeal of employer sanctions, and that the responsibility to their constituencies required that they not enforce the change. Thus, the discriminatory sanctions were not repealed. The battle over the repeal of employer sanctions continues—at times actively, at other times sluggishly.

In the last few years, the theme in immigrant rights has been one of mere survival, especially for undocumented people. This has been exacerbated by the difficult economic times. During these difficult times, many look for someone to blame for the bad economy, and one of the easiest scapegoats is the immigrant community and undocumented people. Immigrants and undocumented people are subsequently forced to fight to maintain the few rights remaining for their protection. The battle becomes one of minimizing losses. For example, the undocumented recently lost the right to be classified as state residents for college tuition purposes. This prohibition does not take into account how long a student has been living in the state, although other students are considered state residents for tuition purposes after having lived in the state for only one year. Even undocumented students who have been attending California schools all their lives are now required to pay tuition as non-resident students. This ruling has eliminated the possibility for undocumented students to pursue a post-secondary education. In addition, beginning this year, a person cannot get a driver's license without a social security number; only people with legal status can obtain a social security number. This requirement is clearly an indirect abridgement of an undocumented person's ability to drive legally in the United States. Furthermore, there are bills pending at the state level that would disqualify undocumented *workers* for

4. *Id.*

5. GENERAL ACCOUNTING OFFICE, IMMIGRATION REFORM: EMPLOYER SANCTIONS AND THE QUESTION OF DISCRIMINATION (GAO/GGD-90-62) (1990).

workers compensation and severely restrict access to health care. It is a frightening, difficult time!

However, even in this difficult time, we have made some impressive gains, especially in Los Angeles. These gains have come about because of base support organization, litigation efforts, and use of the media. The effects of a front page story portraying the cruelty of the INS and its officials can have incredible effects; a lawyer can spend years litigating something that can be settled magically if one manages to get the ear of a reporter.

All strategies, however, must take into account the strength of the INS. Because the INS has an incredible degree of discretion in exercising its broad power, abuse and inconsistent adjudications are common. A case can be decided based on a person's appearance, the judge's mood, etc. While this kind of power is difficult to combat, it can be done!

Some recent cases illustrate that the struggle for immigrants' rights must incorporate imaginative strategies as well. For example, the organizing efforts of a group of drywall workers in Southern California demonstrates the power of unified coalitions. The organizing effort included drywall workers from over five counties. Existing unions in the same sector of the work force did not particularly embrace their organizing efforts. As a result, the drywall workers organized completely on their own, without the assistance of any union or community group (at least initially). They met on a weekly basis and at last called for a strike in June 1992, after employers slashed their wages.⁶ The strike and their independent organizing helped to mobilize support from community organizations and immigrant rights groups.

Their mobilization did not go unnoticed; the local police started to get involved. The police were present at every picket line and began to conduct mass arrests. After a large group was arrested in Orange County, the police contacted the INS in an effort to undermine the union's struggle. This event sparked the involvement of CHIRLA. In conjunction with other organizations, we defended approximately three dozen drywall workers in deportation proceedings. To prepare a defense, we had to determine whether undocumented workers can legally unionize and whether they are afforded protection by labor laws. Then we had to decide whether the tactics used by the police were legal.

Another remarkable immigrant group that demonstrates the strength of community organizing is the Street Vendors Association. Los Angeles is the only major city in the country that does not permit street vendors. As a result, street vendors have en-

6. Matt Lait, *Drywallers Sue Sheriff and County Over Arrests*, L.A. TIMES, Aug. 19, 1993, at 12.

duced years of harassment because they cannot obtain a vendor license. The great irony is that on any given day corner street vendors are arrested, while crack corners remain unchecked just one block away. The vendors have utilized the media and have testified before the city council. For the first time in the history of the city of Los Angeles, the city council held bilingual hearings on an ordinance that would allow street vending, which the Street Vendors Association along with merchants and homeowners coordinated to formulate. This is incredible work!

These extraordinary organizing efforts by community groups are examples of how innovative and effective strategies, together with the advocacy by immigrant rights organizations, can combat the anti-immigrant sentiments prevalent across the country.