

Relieving the Tension: Lay Immigration Lawyering and the Management of Legal Violence

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The Recognition and Accreditation Program (R&A Program) authorizes certain non-lawyers, or “Accredited Representatives” (ARs), to practice immigration law out of non-profit or faith-based organizations. Drawing on interviews with practicing ARs, I describe how, at the center of this group’s approach to legal practice, is a firm commitment to their clients. ARs report being particularly attuned – thanks to their social position and life experiences – to the hardships many of their clients confront at the hands of a punitive U.S. immigration system. I find this translates, on one hand, into an *anti-formalist* legal practice: ARs describe performing emotional labor in order to take the edge off of formalism’s rigidity for their clients. Yet at other times, cognizant of the high costs associated with a legal error, ARs describe being much more formalistic, prioritizing legal tedium. The picture becomes more complex when considered in the context of devolution and immigration governance, where it seems the emotional and bureaucratic work ARs do to protect their clients may also be providing ancillary benefits to the state. I conclude by reflecting on the implications this research has for scholarship on the legal profession, for research on “access to justice,” and for understandings of immigration governance.

In an early morning raid on his home, ICE agents apprehended and detained Sister Louise’s¹ client. After determining his whereabouts, she took her client’s wife, sister, and two young children to visit him at the detention center where he was awaiting deportation proceedings. They arrived just a few minutes before the start of visiting hours to find a facility that was even less welcoming than they expected. The door was locked and “there was no waiting room or anything,” Sister Louise recalled when we

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spoke. Eventually an officer appeared and asked if they were there to visit. She confirmed, but he had bad news. Pointing to a sign on the wall, he informed the visitors of the facility rules: No one under eighteen-years-old is allowed to enter and only two adults are permitted to visit for a thirty-minute period. Sister Louise encouraged the man's wife and sister to go in and volunteered to stay back with the kids.

After the officer processed the women for entry and sent them inside, Sister Louise pleaded with him. "These children never had a chance to say goodbye to their father. Could they have two minutes to say goodbye?" "We don't allow no one under eighteen," he repeated. She told him that was cruel, to which he replied, "It's not cruel. It's the law." While the detainee spoke to his wife and sister through a window by telephone, she turned to his children and said, in a tone loud enough for the officer to hear, "There are God's laws and there's human laws, some are laws for good and some are not good and this one is not good, this is cruel."

After about twenty minutes, the man's sister opened a door, emerging from her visitation. "Come here," she motioned to the children, recognizing that, if they got the right angle, they may be able to see their father through the door, down a short hallway, and into the window. Perhaps swayed by Sister Louise's pleading, the officer did not intervene while the children got a glimpse of their father and exchanged a loving wave, tears rolling down their faces. The children's mother peeked her head out the door soon after that, urging Sister Louise to come speak with the man. She hesitated because she had not received clearance, but, emboldened by the exchange she just witnessed, went inside. After just a minute, there was a voice behind her: "Would you please sign the register?" It was the officer, who to her surprise was now quite polite. He did not even bother to follow protocol and ask her for identification.

"Get to their hearts in some way." That is how Sister Louis summarizes her approach to dealing with immigration officials as an Accredited Representative (AR). Once you do, she says, "They [get] human. The officers always get human." Her accreditation enables her to provide legal services to immigrants and refugees as a non-lawyer. She is one of about 2,200 ARs working in non-profit and faith-based organizations across the U.S. as part of the Recognition & Accreditation Program (R&A Program), which at the time of my research, was housed within the Bureau of Immigration Appeals (BIA) but has since been moved to the Office of Legal Access Programs (OLAP).² The Program is intended to increase access to legal services for indigent clients; the state

² See "Accredited Representatives Roster" (available at: <https://www.justice.gov/eoir/page/file/942311/download>, accessed May 8, 2017) and "Recognized Organizations and

accordingly requires Recognized Organizations (ROs) to charge only “nominal fees.” While the majority of ARs have “partial accreditation” (approximately 83 percent),³ which means that they mostly help immigrants and refugees fill out legal forms from the offices of their non-profit organizations, some, including Sister Louise, have full accreditation, which allows them to represent clients in immigration court.⁴

Demographically, the R&A Program looks a lot different than the legal profession. For example, approximately 74 percent of ARs are women – a figure that is considerably higher than the percentage of immigration attorneys who identify as women (57 percent) (Kozłowska 2017) and more than double the percentage of women who are practicing attorneys in the legal profession more broadly (36 percent) (American Bar Foundation 2017). Also, many, if not most ARs appear to be either immigrants, people with close ties to immigrants, or people with prior experience in immigrant advocacy (compare Levin 2009, who makes a similar observation about private immigration attorneys). Some ARs see their job as a stepping-stone toward a more traditional legal career, but more common are those who report that passion rather than professional aspirations drew them to this work. For many, those passions are faith-based. About 38 percent of ROs are religious, and most religious ROs are Catholic (about one-third of all ROs). Among non-religious ROs, some prioritize legal services and have ARs working alongside immigration attorneys; others deal primarily with related issues (e.g., domestic violence shelters) and offer legal aid as a supplement.

Accredited Representatives Roster” (available at: <https://www.justice.gov/eoir/page/file/942301/download>, accessed May 8, 2017).

³ The BIA informed me that they do not maintain demographic data (e.g., race/ethnicity, gender) for ARs. Therefore, in order to discern some basic information about the population of ARs, I analyzed a sample of 200 Representatives, drawn by selecting every 11th AR on the September 12, 2016 version of the alphabetized Accredited Representative Roster (which is on file with the author). The results are reported throughout the text but repeated here. Each should be read as approximations: 83% of ARs have partial accreditation, 17% have full; about 38 percent of ROs are religious, and most religious ROs are Catholic (about one-third of all ROs). In terms of gender, I estimate that 74% are women, although I was only able to do a crude analysis based on AR names. Given the obvious limitations of this approach, this figure is likely to vary; however, it nevertheless represents quite a stark difference between the number of women in the legal profession (36%) (American Bar Foundation 2017) and the percentage of immigration lawyers who identify as women (Kozłowska 2017).

⁴ Specifically, partial representatives “may represent noncitizens before the Department of Homeland Security (DHS) only” whereas full representatives “may represent noncitizens before both DHS and the Executive Office for Review (EOIR), which includes the immigration courts and the Board of Immigration Appeals (BIA)” (Office of Legal Access Programs, 2017). To gain accreditation, an applicant who works for an RO must possess “broad knowledge and adequate experience in immigration law, as well as character and fitness requirements” (Office of Legal Access Programs 2017).

For Sister Louise, it is a mixture of faith and experience that informs how she practices law and thinks about immigration issues. When we spoke, she rattled off a list of Bible verses pertaining to immigrants accompanied by complaints about racial profiling, legal roadblocks, and deportations. “The immigration system definitely needs reforming,” she insisted. Previously she spent more than seven years providing faith-based services to migrants at the U.S.-Mexico border. Upon returning to the Midwest, she noticed, “One of the most urgent needs for immigrants was the legal help.” Her observation is accurate: According to the American Immigration Council’s recent analysis, only 37 percent of immigrants facing removal were able to secure counsel (Eagly and Shafer 2016). Because law school would have meant sacrificing the pastoral nature of her work, Sister Louise instead spent several years shadowing an immigration attorney before applying for accreditation. For the better part of a decade since, she has offered legal services at a small religious non-profit that she helped establish. There, she has built close relationships with many of her clients, whose trust she works hard to earn. “The legal work is my foot in. But then I become almost like part of the family.”

Despite lacking a formal legal education, Sister Louise remains confident in her ability to provide high-quality legal services. In addition to years of job shadowing, she notes having received a “tremendous” amount of training from courses, webinars, and conferences. “I’m probably as well prepared as an attorney is for the type of work that I’m doing,” she told me. The demographics of the local population usually determine the type of services ARs offer, which range widely from citizenship applications to work authorization forms. Sister Louise mostly does family-based immigration work, and most of her clients are from Mexico and Bolivia. When it comes to cases that are overly complex and beyond her skill level, she has access to the Catholic Legal Immigration Network (CLINIC), which allows her to speak directly to an immigration attorney and receive guidance. She had CLINIC’s eight-hundred number committed to memory.

Sister Louise is one of 16 ARs I interviewed for this research. I asked them about their backgrounds, about their attitudes toward immigration law and policy, and, primarily, about their day-to-day experiences as ARs. With the exception of a relatively small debate within legal academia about its efficacy (e.g., Corcoran 2012; Gradilla 2013; Medina 2012; Shannon 2011; Unger 2011), the R&A Program has received surprisingly little attention from immigration and sociolegal scholars. To my knowledge, no empirical work assessing the Program has been published to date, which is especially significant, as Mark Noferi

(2013) observes, because “In the coming decade, the U.S. Supreme Court will not only likely consider the right to a lawyer in immigration proceedings, but as a fallback, the right to a *non-lawyer* representative.” The implications of this research also extend beyond immigration. Even though we have been seeing an increasing reliance on “lay lawyers” (Batlan 2015)⁵ in a variety of realms (e.g., Levin 2014), scholarship on this group remains on the periphery of socio-legal studies (but see, e.g., Batlan 2015; Ossei-Owusu 2014), with research on the legal profession in particular focusing almost exclusively on “traditional” attorneys.

Typically, debates about lay lawyering – in immigration (e.g., Medina 2012; Shannon 2011), as well as more broadly (e.g., Charn 2012–2013; Levin 2014; Rhode 2009) – are centered around a narrow conception of “effectiveness.” Will non-lawyer practitioners “win” as often as their professional counterparts will? Do they have sufficient skills to handle high-stakes cases? While these questions are important, the qualitative data I analyze here provide a richer look at how ARs operate behind-the-scenes in this very distinct “[corridor] of justice” (Heydebrand and Seron 1990, 115). Specifically, this article offers a detailed sketch of the *professional ideology* of ARs – that is, what they consider to be the “appropriate role of lawyers in society and the proper methods of conducting and organizing the practice of law” (Nelson and Trubek 1992, 180).

I find that who ARs are, where they practice, and their prior experiences with the immigration system shape how they approach their work. As a group, ARs are guided by a deep concern for their clients’ well-being as they confront an especially punitive immigration system. I show how, on one hand, this translates into a legal practice that is decidedly anti-formalist: ARs describe performing emotional labor in order to take the edge off of formalism’s rigidity for their clients. Yet at other times, cognizant of the high costs associated with a legal error, ARs describe a much more formalistic approach that prioritizes legal tedium. In this regard, my intent is not to explore whether ARs are “better” practitioners than, say, traditional immigration attorneys. Rather, I am focused on their perception of what “better” looks like. As Felice Batlan (2015, 8) put it, “[Lay lawyering] raises fundamental questions about what it means to practice law.”

⁵ I opted to use Batlan’s (2015) term “lay lawyers” rather than “non-lawyers” to acknowledge that ARs do in fact to “lawyer work” despite their lack of “official” training. This distinction is important, I think, given that lay lawyers have historically been relegated to the margins of the legal profession, if not outright excluded from it (see, e.g., Batlan 2015; Ossei-Owusu 2014).

When I go on to place the R&A Program in the broader context of the immigration system, however, the story becomes more complex. ARs seem aware that in many cases, they can only do so much for their clients. Often times, their offerings are limited to emotional support and/or the avoidance of potentially costly legal errors. As it turns out, from the perspective of the state, which, especially in the realm of immigration, has been devolving many of its essential tasks downwards to organizations and locales (e.g., Bosworth 2008; Bhuyan 2012; Lakhani 2014; Longazel and Fleury-Steiner 2013; Provine, Varsanyi, Lewis, and Decker 2016), the emotional and bureaucratic labor ARs provide may be quite beneficial. We learn from AR accounts that the system may be receiving clients who are more “emotionally primed” for the hardships that await, as well as clients whose eligibility has been predetermined by the clerical work ARs are doing at no cost to the government. An important question regarding “effectiveness” and “justice” thus arises: Do the individual-level benefits the Program provides outweigh any systemic reproduction to which it may contribute (compare Bellow and Kettleson 1978)?

I begin the article by expanding upon these theoretical ideas and their relationship to the R&A Program. From there, I briefly describe the study’s methodology before proceeding to my two-part analysis. The first part explores the anti-formalist aspects of ARs’ work and the second looks at their formalistic tendencies. In each section, I provide descriptions of the professional ideology of ARs, accompanied by reflections on how their work represents an example of devolution. Finally, I conclude with some thoughts on the implications this research has for scholarship on the legal profession, for the access to justice literature, and for our understanding of immigration governance.

The Professional Ideology of Accredited Representatives

Whereas many assume lawyer professionalism is constituted from the top down – taking the form of official statements from the professional bar, for example – Nelson and Trubek (1992, 179) call on scholars of the legal profession to be critical of “official pronouncements” and to examine other sources which contribute to the construction of professional ideology. Their focus was on “arenas of professionalism,” or “institutional setting[s] in which groups construct, explicitly or implicitly, models of the law and of lawyers” (179). Others have drawn attention to the significance of identity and experience in shaping professional ideology. Research in this area puts forth a compelling critique of what Sanford Levinson (1992, 1579) calls “bleached out” lawyering, which

presumes that “apparent aspects of the self as one’s race, gender, religion, or ethnic background... [are] irrelevant to defining one’s capacities as a lawyer.” As Lynn Mather, Craig McEwen, and Richard Maiman emphasize (2001, 8–9; see also Levin 2009), “different kinds of people are attracted to practice in different areas of law” and lawyers invariably reflect on their own values and experiences in part because they “cannot avoid sharing responsibility with clients for actions taken in law.”

Of course, this does not mean that there is something inherent about identity that makes people practice law in certain ways (e.g., Levinson 1992; Wilkins 1998), nor does it imply that one’s identity is necessarily the sole or even most important determinant shaping their legal practice. What it does suggest, quite simply, is that identity and experience – ranging from immigration status (Levin 2009) to religion (Pearce, Winer, and Jenab 2017; Tenney 2012) to race (Wilkins 1998) to gender (Menkel-Meadow 1995) to class (Carlin 1966) and beyond – are “constitutive aspects of the practice of law” (Levinson 1992, 1577).

Indeed, I found that at the center of AR professional ideology is a deep concern for clients’ well-being, which they recognize is threatened by the United States’ especially punitive immigration system. Although they used different language, my participants tended to describe such threats as akin to what Cecilia Menjívar and Leisy Abrego (2012, 1394, emphasis in original) call *legal violence*: “the various, mutually reinforcing forms of violence that the law makes possible and amplifies... [producing] immediate *social suffering* but also potentially long-term harm with direct repercussions for key aspects of immigrant incorporation.” Stated differently, most of the ARs I spoke with had a familiarity with the immigrant experience that extended well beyond any immediate legal repercussions their clients faced (e.g., dealing with family separation after deportation; managing day-to-day life as an undocumented person). And many were explicit about how their past experiences and social positions – as immigrants, as immigrant advocates, as women, and/or as people of faith – is what enables them to understand the social costs of immigration law and policy at such a deep level. Like Sister Louise, many also stated outright that they do the type of work they do and find it rewardingly meaningful *precisely because* it offers some reprieve to indigent immigrants navigating a harsh system. Most accordingly sang praise for the R&A Program, calling it “fantastic,” “amazing,” “a very successful tool,” and “a great service” that has “done a tremendous amount of good.”

To be more specific, I found that ARs’ concern for their clients’ well-being translated, on one hand, into a decidedly *anti-formalist* approach to legal practice. My interviewees talked a lot

about how formalism's "abstract, bloodless quality... [which is] devoid of... gritty details" (Stefancic & Delgado 2005, pg. 40) is heightened in immigration jurisprudence and politics, as simplistic legalisms (e.g., "illegal is illegal") supersede the far more complex – and *dangerous* – lived experiences of migration. For them, consistent with Lucie White's (1987–1988, 542) observation that marginalized groups often experience law as a "hostile cultural setting," it was as though excessive formalism amounted to a form of legal violence, or at least that it added insult to the law's "cumulatively injurious" (Menjívar and Abrego 2012, 1380) effects. ARs described how they perform emotional or affective labor (e.g., Betacourt 2010; Hardt 1999; Hochschild 1983; Pierce 1995) in response to this. As I will explain in more detail below, even in situations where the law prohibits ARs from helping their clients attain legal status, they report making concerted efforts to offer hope, support, information, and the like.

On the other hand, I found that a corresponding *embrace of formalism* also characterizes the professional ideology of ARs. They take pride in their legal knowledge, generally support measures that would formalize and professionalize the R&A Program, and tend to place checks on one another and themselves to assure that their clients are not getting poor advice. Interestingly, this vision seems to complement rather than contradict their anti-formalism, as it too is tied to their larger prerogative of protecting clients from legal violence. Recognizing the high-costs associated with a legal error, ARs describe devoting themselves fully to the tedium of their clients' life-defining legal forms as well as other legalistic aspects of their practice.

The R&A Program in the Context of Devolution and Immigration Governance

The admiration these lay lawyers have for the R&A Program should not be mistaken for naiveté. Their narratives also include, albeit less explicitly, sober acknowledgements of the systemic limitations they confront. The fact is, most of the pains associated with legal violence are beyond their grasp. In talking with ARs, it was clear that they wanted people to know that they are doing *something*; but also that they wish they could do more. It is a lot like "harm reduction": Knowing that the immigration regime is bound to cause harm that they are unable to put a stop to, ARs describe committing themselves to the prevention of *non-inevitable* suffering.

I do not think it is insignificant, for example, that Sister Louise included in her narrative the detail about challenging the

seemingly arbitrary rule that kept the children from going in to see their father. She may have been helplessly unable to stop the deportation, but at least she could protect her client and his family from a rule that only worsened the already-difficult experience they were going through. The same can be said of the formalistic aspects of their professional ideology. With most of the legal statuses their clients seek having predetermined eligibility requirements, ARs are hardly in a position to “battle” the state – unlike, say, cause lawyers who stand in direct opposition to the systems they aim to disrupt (e.g., Coutin 2001). Instead, as I will describe, they talk about their legalistic efforts as largely focused on avoiding *unnecessary mistakes*. From their descriptions, one gets the sense that it is not so much about “winning” cases; it is more so about *trying not to lose*, or, when that is not possible, trying to take the sting out of a loss.

Abraham Blumberg’s (1964) classic article, “The Practice of Law as Confidence Game,” provides useful insights for thinking more deeply about how lawyering, in this way, fits into a broader institutional context. Studying defense attorneys, he rallied against “the traditional legal conception of a defense lawyer based on the ideological perception of a criminal case as an adversarial, combative proceeding, in which counsel for the defense assiduously musters all the admittedly limited resources at [her or] his command to *defend* the accused” (1964, 8 emphasis in original). For Blumberg, taking the institutional context of the courthouse into consideration allows us to see how defense attorneys actually play a crucial role in carrying out the operations of the institution writ large (e.g., by convincing their clients to accept plea bargains perhaps more often than they should). The functioning of the courthouse, he suggested, is therefore dependent upon defense attorneys acting as what Erving Goffman (1961, 28) called “agent mediators,” “who help the accused redefine [her or his] situation and restructure [her or] his perceptions” (1961, 20).

I reference Blumberg not to imply that ARs are manipulative – indeed, it is quite clear that the opposite is true – but rather to set up a discussion of where ARs fit within the larger immigration system. My argument is that the systemic limitations ARs describe raise important questions about the broader pattern of devolution in immigration governance. Scholars have identified various ways in which the “limited sovereign state” (Bosworth 2008; Garland 1996) – in a climate characterized by austerity and a corresponding inability to carry out many essential functions on its own – has passed down a host of basic tasks to locales (e.g., Provine et al. 2016), organizations (Bhuyan 2012), lawyers (Lakhani 2014), and, often times, immigrants themselves (e.g., Longazel and Fleury-Steiner 2013).

To return to the case of Sister Louise: As Herculean and meaningful as her efforts at the detention center were, it is also worth noting that the *best she could do* was help change how the actors in the situation felt about what was happening. Her actions were subversive, yes – her voice teemed with pride when she told me that story – but in the end the deportation machine still plowed ahead with its agenda. And while her clients' family may have been genuinely grateful for all she did, we might also say that the officer – and by proxy, the state – got what he wanted: There was minimal resistance, the deportation proceeded, and he did not have to console the crying children on his own. In short, though ARs are nobly following their instincts and doing what they can to ease their clients' pain, they may at the same time be inadvertently helping the state “manufacture consent” (Burawoy 1979).

Scholars of emotional and affective labor have made similar observations. Despite the interpersonal benefits it provides, especially to marginalized people wrestling with pain and fear, affective labor can act as an enabler of structural violence in that its tendency to quell feelings of alienation, intentionally or not, also help reduce the likelihood of dissent (e.g., Betancourt 2010). Emily Ryo's (2017) work on procedural justice in immigrant detention further attests to this. Many detainees, she observes, possess a stronger-than-usual inclination to obey the law, which changes depending on the treatment of their detained peers. Applied here, one would accordingly expect that the emotional labor ARs provide enhances perceptions of procedural fairness among their clients, thus prompting acquiescence to impending legal violence.

My data point to a corresponding pattern on the formalist side of ARs' work. Interviewees explained how they devote a large percentage of their time to correcting errors made either by clients who attempted to fill out documents on their own or by unauthorized practitioners – namely, *notarios*, who have been accused of purposefully defrauding immigrants by taking advantage of a cultural ambiguity (in Latin America, *notarios* are legitimate legal service providers; in the U.S., the word translates to “notary publics,” which, obviously, are not). Of course, to reiterate, this sort of work is beneficial to clients in obvious ways. From the state's perspective, however, it seems that ARs' meticulous work also serves as a *bureaucratic filter* that eases the task of processing immigrants' applications. In this regard, it is worth asking about the extent to which the R&A Program acts as a mechanism through which the state can devolve clerical tasks down to committed advocates – notably paid by cash-strapped non-profits, not the state – who, in a passionate effort to do all they can for their clients, clean and correct sloppy or error-ridden documents, in

effect preparing them for a smoother transition through the immigration bureaucracy.

Research Methods and Analysis

The next two sections explore these themes in more detail via an analysis of qualitative interview data. I conducted 16 in-depth, semi-structured interviews over the telephone with ARs from across the U.S. between July 2012 and August 2014. I selected my sample from the full, publicly-available roster of ARs. To attain geographical diversity and avoid oversampling from highly-populated states, I assigned numbers to each state/territory and to individual ARs within each jurisdiction. Then I used a random number generator to select a state / territory and a particular AR within it, whom I contacted. Interviews lasted about 53 minutes, on average. Questions were divided into three parts. The first section asked about background information and what motivated respondents to become ARs, the second asked generally about their attitudes toward the immigration system, and the third and most substantial section asked questions about their day-to-day life as lay lawyers (see Appendix).

Among my interviewees, 13 (81%) were women (which is similar to my estimate that 74% of all ARs are women) and most (10, or 62.5%) were either immigrants themselves (3), had immediate family members (i.e., a parent or a spouse) who immigrated to the U.S. (4), or are U.S.-born but reported spending significant amounts of time either living abroad or working near the U.S.-Mexico border (3). Among those who spoke about their prior educational experience, two mentioned they had law degrees from outside the U.S., three mentioned having undergraduate degrees in relevant disciplines (i.e., Latin American Studies, Sociology, Spanish), one had an MSW, two had extensive theological training, and two others mentioned their experience in the social service industry (working on something other than immigration). Geographically, five of the ARs I interviewed were from the Northeast, three were from the South, five were from the Midwest, and three were from the West. Half of the ARs I interviewed work for faith-based groups; the other half work for secular organizations. Among the faith-based groups, five were Catholic. The secular ROs that make up the remainder of my sample include a domestic violence shelter, immigrant advocacy organizations, and legal aid organizations. The type of legal services offered by the ARs I interviewed varied widely, based, as mentioned, on the needs of the local population. My interviewees reported providing the following services with varying frequency:

family-based immigration, Temporary Protected Status, U-Visas, work authorization forms, citizenship applications, Deferred Action for Childhood Arrivals (DACA) applications, green card applications, and asylum cases.

My analytical focus was on how ARs make sense of their work and experiences as lay lawyers and on how they understand their place in the broader system. In the tradition of constitutive scholarship on law and rights, rather than focusing on objective measures of the “effectiveness” of their legal practice, I placed AR “stories, experiences, interactions, and rhetoric” at the center (Fleury-Steiner and Nielsen 2006, 1). Moreover, instead of trying to parse out difference *within* my sample (e.g., how immigrant versus non-immigrant ARs approach their work),⁶ I treated the entirety of my data as representing a collective “AR voice” (compare Kostiner 2006). This is consistent with Nelson and Trubek’s (1992, 179) assertion that lawyer professionalism is “not a fixed, unitary set of values, but instead... [a collection of] multiple visions of what constitutes proper behavior by lawyers.” In other words, I was interested in the ideology emanating from the R&A Program as an *accumulation* of diverse voices and norms more so than, say, whether a particular identity category has an “influence” on how ARs work. To be sure, identity still mattered to my analysis in that the “accumulation of voices” in this setting, given its composition, has inevitable differences from the accumulation of voices in other settings. But rather than focusing on in-group differences, I was attentive to narrative themes that cut across identity categories but were nonetheless constitutive of identity (e.g., religious practitioners discussed offering holistic services rooted in their faith traditions, just as immigrant ARs discussed offering holistic services because they understand the immigrant experience).

Emerging from preliminary analyses were an abundance of what Mather et al. (2001, 10) call “collegial reference points” – or juxtapositions between ARs’ own legal practice and the (often less desirable) practices of their peers (or, at least of their “imagined peers”). While they do not represent the entirety of my data, I focus primarily on these reference points in the sections that follow given how effective they are at illuminating the professional ideology of ARs. As sociologists have long acknowledged, statements about collective identity and collective values are often made by way of contrast (e.g., Erikson 1966; Longazel 2016; Zerubavel 1991). Collegial reference points thus do not necessarily

⁶ This is not to say differences do not exist. Future study might compare, for example, a secular RO and a religious RO, or do quantitative research that can ascertain a more precise relationship between AR traits and their approach to legal practice.

reflect reality; rather, I treat them as discursive tools ARs use to articulate their values. For example, when an AR says she practices law “more empathetically” than traditional lawyers do, I do not interpret that to mean ARs *actually* practice law more empathetically – they may, they may not – but rather that this AR *values empathy* as part of her legal practice. After initially dividing up my data based on comparison points (e.g., ARs compared to lawyers; ARs compared to *notarios*) I coded value-laden narratives such as the one I opened the paper with (compare Riessman 1993) and other such “value statements” within these broader categories to begin sketching the outline of the AR professional ideology that follows. Initially it appeared as though ARs’ value set rested on glaring contradiction between the simultaneous opposition to and embrace of legal formalism. However, continued analysis eventually revealed that client-centeredness was at the core of each of these otherwise conflicting perspectives.

“We Do a lot to Relieve the Tension”

With regard to the anti-formalist aspects of their work, ARs drew comparisons between themselves and imagery of “The Trickster” lawyer (Mindes & Acock 1982; 180). Implying that lawyers could be manipulative, greedy, and cold was how they depicted their work as just the opposite: honest, selfless, and warm. One AR, for example, told a story about a client who thanked her with a “half-a-dozen peaches from his peach tree.” To her, this gesture spoke volumes about the type of relationships ARs have with their clients. “It’s just the fact that he felt that I would appreciate the gift of his peaches – there’s a different level of confidence,” she said. “Its small things but I don’t think he would ever have gone to a lawyer and taken him some peaches.” In short, ARs take pride in creating “a cozier, warm, fuzzier environment” where their clients “feel more comfortable” and “feel safe,” which they suggest is “hard to get in an attorney’s office.”

They describe creating such a comfortable climate by attending to their clients’ emotional needs, especially as they confront hopelessness and despair. Several ARs told me that they try to keep clients from feeling as if they have nowhere to turn – even on occasions where that is the reality – by *trying to offer something*, be it referrals to other organizations, non-legal advice, or simply hope. As one AR put it,

I don’t just tell [my clients] that there’s nothing you can do. I explain to them *why*. For example, a young woman came [to my office] on Wednesday... She just wanted to get some way to get permission [to be in the United States]... she can’t apply for

[Deferred Action for Childhood Arrivals] DACA and she has no one here to apply for her. I explained to her that [our hope is] ... that she would be a perfect person for comprehensive immigration reform. When the reform happens, she would be someone who we would hope to be able to help... I gave her a sheet of paper – it came from [Immigrant Legal Resource Center] (ILRC). [The paper listed some] things that people can do ahead of time to prepare for comprehensive immigration reform, like get their documents together, get their proof of residence together, those kinds of things. I think she walked out feeling like she could do something even though there's no immediate and quick fix for her right now... When she was ready to leave and I had told her I couldn't help her, I took [her] contact information and I said: "You're going to be in my computer under my list of people that might be able to apply for comprehensive immigration reform." She got up to leave and I gave her a hug... After she left I thought, I wonder how many lawyers would have listened to her that way, and that she would've left feeling hopeful, like maybe something good will happen down the road for me. There's just a different way I do immigration law than a lawyer does immigration law, I think.

This is a great example of the perception-changing work ARs do. Using ideas about lawyer rigidity as a crutch, this AR describes going out of her way to make sure her client leaves "feeling hopeful," "feeling like she could do something," despite their mutual realization that she in fact has no options. Emotional labor is key here: the hug, the reassurance. Also, by providing instructions on a policy that does not currently exist, the AR in effect reframes the situation, turning what was otherwise a devastating legal defeat into a *delayed victory* – or, more accurately given the elusive nature of comprehensive immigration reform, a loss shrouded in hope that is slightly easier to bear. All that actually changes is how the client feels when she leaves the office, yet you get the sense from the way she describes it that the AR sees this as better than nothing at all.

A similar pattern is evident when ARs describe how they educate their clients. Just as they tried to offset hopelessness with hope, many discussed *providing information* to counterbalance the confusing, seemingly arbitrary nature of U.S. immigration law and policy. Imagery depicting "traditional lawyers" as cold and excessively rational remained a useful contrast. Unlike lawyers who have "too many clients" and run a clock to track billable hours, ARs described the selfless sharing of information as part of their broader humanistic approach. "[My clients] know they're free to call me at any time by telephone and discuss any of their fears or their questions, and I give them time to do that," one

respondent said. “I don’t charge for every 15 minutes or half-hour,” she continued. “I just don’t do that kind of thing.” Another more clearly conveyed how ARs “are educators” operating with a mindset that differs drastically from impatient and impersonal attorneys:

We don’t just represent clients, we educate them, we really do. I don’t think that attorneys do that... I think that’s really important because so many clients don’t understand what it is that’s happening to them. They just come in and say... “My husband is illegal and I want to get him citizenship.” I educate them, he’s not going to get citizenship, you have to pass through this process first... just simple things like that... I think that Accredited [Representatives] across the board are educators because we’re not coming from an attorney background and mindset. We’re going to explain to the client, “here’s how this process looks.”

Importantly, this AR continues by expanding on how her own prior experience as an immigrant informs her approach:

Attorney offices don’t work that way and I only know that because I’ve been to so many attorneys’ offices with my own case and never do they sit down with me and talk about “here’s what the process is, here’s why you’re eligible for this thing and here’s what we need to prove it.” Instead of doing that they just say “we can do it for this amount and give us this stuff.” And I don’t want that. I want to be informed.

This AR is clearly pushing back against what she perceives to be an injustice. Feeling like her own immigration attorney acted too impersonally and did not teach her what she needed to know, she is committed to not replicating that with her own clients. Yet there is also an unspoken acknowledgement that emotional labor – or, in this particular case, client education, provided voluntarily and compassionately – represents the one site where she is able to assert such resistance. With the vast majority of immigration law and policy’s injustices beyond her reach (i.e., “He’s not going to get citizenship”), she seems to take pride in knowing that the pain of excessive formalism is one wrong she is able to right.

Others dug deeper as they reflected on how their social position and life experiences allow them to do this type of work effectively. An AR who works at a domestic violence agency explained to me how, being an immigrant woman, she is able to connect to her clients in ways that she thinks her counterparts in the legal profession cannot. “I’m not only an immigrant, [which] they can hear... in my accent, I’m [also] a woman.” She went on to explain how her office attracts many clients who were repelled by an

experience with a professional, often male lawyer. The issue for her is not only that the practitioners she compares herself to are too legally rigid, it is also that they cannot relate as well socially. “When [my clients] found themselves talking to the immigration attorney about their victimization... all the things that they need to disclose in order to file their petition, they feel like they don’t have the same connection.” Some ARs made this same point about language, observing how most attorneys do not speak Spanish, and that it can be much more comfortable for clients to speak to someone directly rather than through a translator. Education levels came up, too, as it relates to communication. ARs took pride in their ability to simplify things in a widely-relatable way, in contrast to lawyers who they say speak “legalese.”

To summarize, each these examples make clear that ARs, as a group, approach their work with a sense of anti-formalism. Echoing Sister Louise, they admirably offer hope in the face of fear and recognize the importance of connecting with their clients on a personal level, which most feel equipped to do given their life experiences. “I feel like I have a different concept of how immigrants think because of the way I got here,” an AR who spent time working on the U.S.-Mexico border said to me. “I just think I have the ability to see things first at a human immigrant level and then try to help them to understand what their options are from that viewpoint.” At the same time, their narratives offer a sobering reminder that with the current state of immigration law and policy, they are in a position where they can only do so much. This is not to say ARs do not regularly file successful applications on behalf of their clients. They most certainly do. Rather, my larger point, to use Blumberg’s phrasing, is that ARs are hardly positioned as adversaries of the state whose policies threaten many of their clients. When a client is eligible for a particular status, they do all they can to help attain that status. When they are not, however, ARs’ focus, given how they are positioned, seems to be on *managing* legal violence, more so than combating it. While clients may be appreciative of this, it is likely that the state is, too. As one AR tellingly put it, “I’ve heard from the jailer that we do a lot to relieve the tension.”

Cleaning “Dirty Little Documents”

Accompanying AR’s focus on offering their clients hope, information, and connection was a more formalistic narrative identifying *sound legal practice* as a key component of their professional ideology. Perhaps cognizant of the doubts some have about their qualifications (see, e.g., Dolnick 2011), my interviewees had a lot to say about their own competence and about the sound

judgment they exercise in their work. Sprinkled throughout my interview transcripts were quotes like: “It takes quite a bit to get accredited”; “I’m always doing webinars”; “we do continuous trainings all the time”; and “I can’t believe the humongous amount of information that’s in my head that I’ve learned since I’ve been here.” Yet ARs also willingly acknowledged their own limitations. They spoke of policing themselves, policing each other, and, especially, of asking for assistance whenever they needed it. As one AR put it, “I know what I’m competent in and what I’m not. I think that is the most important quality of [an AR].” Which is to say: ARs articulated a strong commitment to providing their clients high quality legal assistance, but also articulated that it was important to them, given all that is at stake, to humbly and conscientiously seek advice on matters that are beyond their skill level.

ARs continued to use collegial reference points in this part of their narrative, only now they featured imagery of the lawyer as “hero” (Mindes & Acock, 1982). They expressed pride in sharing qualities with “good lawyers” – legal prowess, good judgement, self-confidence, and status – while distinguishing themselves from *notarios*, less capable ARs, and even inexperienced attorneys who they described as ineffective, lacking essential knowledge, timid, and/or illegitimate. Rather than being at odds, their embrace of formalism shares with the holistic aspects of their practice a strong commitment to their clients’ well-being in light of their vulnerability. Just as they see “trickster” lawyers representing a threat to clients in need of empathy, ARs described being highly attuned to the potential of a legal error threatening their clients’ ability to secure legal status. This is perhaps most evident in the following passage:

When I’m going through a difficult case I don’t sleep... You try not to make a mistake because a little mistake can ruin the life of someone. Years ago.... I was helping this woman from Guatemala to file for a program – it was sort of like a legalization type of program and there was a deadline.... I will never ever forget that day. We prepared the case. I file it. A week later, the package was sent back to me. I thought I was going to die. I saw the package – I was shaking. I opened it and they rejected it saying that I had filed it incorrectly because the money order that it included had \$50 more [than was needed]... Even though we sent more money... they sent the case back to me. It was considered improperly filed. That meant that my client was going to lose her only chance of ever getting her legal status here after being here for 25 years. I thought I was going to kill myself. I was beside myself and I didn’t know what to do. I called everybody. But thank God, after 4 months of fighting, it worked out,

and there was a lot of people that ended up in the same situation because they had changed the fee a few days before and nobody knew about it. So they ended up accepting it. But that's the huge responsibility that you have on your shoulders... When I had to call my client to tell her that they sent the package back... oh my God... I thought she was going to kill me. She was just speechless – it was just awful... They don't give you another chance – if you miss it that's it for your clients.

This AR still acknowledges formalism's ruthlessness when she points out that her client almost had twenty-five years of her life erased because of a petty bureaucratic detail. Yet, in this case, she responds with a deep appreciation of the threat her client faces and, like many ARs who spoke about being laser-focused on legal details, she *takes it upon herself* to try to minimize the infliction of pain from legal violence by performing careful legal work. This AR goes so far as to suggest that *she* has taken on some of this pain herself (e.g., "I don't sleep"; "I was shaking"; "I was beside myself"), including an acknowledgement, to quote Robert Cover (1986, 1601), that immigration law "takes place in a field of pain and death" (e.g., "I thought I was going to die," "I thought I was going to kill myself," "I thought she was going to kill me").

This example may be extreme, but I found that most ARs followed more or less the same line of reasoning. The logic of this aspect of their professional ideology is that subpar services can threaten clients; therefore, a humanistic approach, while helpful, cannot stand alone. High quality legal practice must accompany it, or else the client is at risk. One AR noted that most of her colleagues are "bleeding heart people," but emphasized that, for the good of the clients, they need to balance that out with what she called a "straight laced" approach. She gave the example of a former staff member who "had some training" and....

knows a lot about immigration but she doesn't know everything. She knows just enough to be dangerous... That's the dangerous part about the social work model... [You] have that mentality in your head that there's got to be a way to help, there's got to be a way to make this be a good outcome, and sometimes people have a tendency to maybe make a promise or make people feel they're more helpful than maybe they should.

Notable here is how "dangerousness" comes from a *lack of knowledge*. Identifying ineffective work rather than state violence as the source of the threat speaks to the responsibility ARs place upon themselves and each other. Interestingly, ARs' criticisms of *notarios* often took the same form. Whereas the prevailing narrative (which a few of my interviewees did echo) depicts them as

villainous cons (e.g., Longazel and Fleury-Steiner 2013), some ARs were willing to consider the possibility that *notarios*, too, are often times “well-meaning people.” For many ARs, the issue was not so much with their “scamming” as it was with *notarios*’ “bad work.” Complaints were that they get in “over their heads,” or that they “kind of wing it and see if they can get the work done without anybody figuring out they don’t know what they’re doing.” Reflective of the value ARs as a group place on legal knowledge, one AR elaborated on the dangerousness of incompetent *notarios* in the context of the looming threat of deportation:

The thing is... filling out a form is not that difficult, that’s not the problem. A form is a form. It’s the consequences when you file that form with the government. If you file for a benefit that you don’t qualify for and they deny it, you’re going to be deported. Honestly, if somebody comes here and says, “can you help me fill out this form, this form is to apply for an employment authorization.” All right, let’s read the questions: Name, date of birth, address. Okay, let’s fill it out. That was pretty simple. That’s not the problem. But mail that form out to the government and you’re exposing yourself – where you live – and they’re going to say, “Why is this person filling [the form] out; they’re not even qualified to file this form”... [Now the government] know[s] where you live. Boom! Immigration shows up at your house, arrests you and put you in jail and deports you.

ARs also described how their practice of protecting clients *with*, rather than just *from* legal formalism extended to other aspects of their work. In contrast to conceiving of time as something freely and generously given, there were other instances where they spoke of it as a *resource that they need to protect* in order to assure that legal services are of a sufficiently high quality. “We have to limit our caseloads, because well-intending folks can take on too many cases and that does a disservice to the population, as well.” Others spoke that way about standardization, professionalization, and regulation. Thus coexisting with an embrace of the non-profit setting as a safer, more informal space were calls for *more formalism* – or, “whatever it takes for quality insurance.” Ever-cautious of those who provide subpar services, some expressed a desire for “checks and balances” and recognizable symbols within the office setting (e.g., licenses, plaques) that let clients know they are “in a place that’s legitimate.”

AR with full accreditation add another layer to this. When I asked them about their relationships with immigration officials, they explained, again echoing Blumberg, how they recognize state agents as partners rather than adversaries. One AR described their relationship as “amicable.” Because “this is a repeat interaction,” he

said he does his best to remain on good terms with immigration officials. This strategy, too, seemed to be devised in the best interest of the clients. After all, in most cases, ARs are helping clients secure a particular legal status that has predetermined eligibility, which means there is often little need for dispute. One AR even specified that the two parties usually enter a case in agreement on what the results will be. Discrepancies, they said, are mostly limited to cases where a client failed to disclose something in advance. In fact, as a testament to the devolutionary nature of the R&A Program, I was told that immigration officials let ARs know how much they appreciate the work ARs do behind-the-scenes to determine eligibility – a task that, without the R&A Program, state agents in all likelihood would be undertaking on their own. The following passage is especially revealing of this, as it captures not just how ARs serve the state by preparing forms in advance, but also how their commitment to their clients and their ability to relate to them makes them especially well-suited to do so:

We output good work. We're still coming in on behalf of a client and helping them fix their application. If they did it on their own, that might have been a lot different for that officer sitting across [the table]... We get indignant clients and we help package up their dirty little documents all in a little package. I think if we weren't here, the local office would pull its hair out. That's what I can tell you. They wouldn't have somebody sifting through it and getting things ready to go for when we sit in that interview. Now my stinky client is going to come with us and we're going to sit there and stink up your office, but at least everything is there. They're not going to try and do it on their own instead of at your window, coming out and asking every question about everything, and then you tell them that they need to make another appointment... I always want to say in these interviews, "Do you realize if we did not meet with Carlos beforehand, he would not have his court-certified dispositions, and he didn't even know his address and so we had to fish that out and get it off of his food stamp letter?"

Conclusion

In describing the professional ideology of ARs, I have tried to add some complexity to discussions around this and similar programs allowing lay lawyers to practice law. Rather than focusing on their "effectiveness" as measured by, say, legal wins and losses, I drew attention to how factors such as social position and prior experience shape the way ARs approach their work as legal practitioners. Deeply committed to their clients, I demonstrated how they do what

they can to minimize legal violence's "cumulatively injurious" (Menjívar and Abrego 2012, 1380) effects. Sometimes this takes the form of emotional labor meant to soften the blow of immigration law's characteristic rigidity. Other times it involves careful legal practice done with the intent of avoiding unnecessary mistakes. However, when analyzed in the context of state devolution, I show how what otherwise appears to be a positive step toward an "immigration *Gideon*" (e.g., Johnson 2013) actually bears resemblance to broader patterns of immigration governance. Driven by strong commitments to their clients, ARs, seemingly to the state's delight, churn out work that eases otherwise difficult-to-manage tensions and handles confusing legal minutiae. As a result, it seems the immigration system receives clients who are more "primed" to endure legal violence and whose paperwork is already prepared for smooth passage through the immigration bureaucracy.

Several promising avenues for further inquiry emerge from this research. First, this analysis calls on scholars of the legal profession to be more attentive to those who practice law outside of the profession's traditionally-conceived bounds. Likewise, it prompts those who are considering the efficacy of lay lawyer programs to take a careful look at how they are implemented *in practice* from beginning to end. It very well could be that ARs' ability to relate so well to their clients, among other traits, prompts questions not just about *what they lack* in comparison to traditional attorneys, but, rather, *what they have to offer* (see, e.g., Cocoran 2012). Similarly, discussions about the diversity of the legal profession should not overlook this group of legal practitioners. It may not be that women, people of color, and working class folks are so much disproportionately *absent* from the legal profession but rather that they have been relegated to rungs so low on the profession's hierarchy that the work they do is not even being identified as lawyering (compare Batlan 2015).

Second, this research pushes the boundaries of the "access to justice" literature. When access to justice is conceived of as "access to lawyers," the question that arises about the R&A Program is "How many more immigrants are getting access to legal services?" and "Are lay lawyers 'good enough'?" While these are important questions, the testimony considered here suggests both the presence and absence of "justice" in multiple forms. It could be, for example, that the immigrant clients who were turned off by their experience with a "traditional attorney" felt a recovered sense of justice after working with an AR, even if they did not go on to gain the status for which they had hoped. Then again, if we step back, as Catherine Albiston and Rebecca Sandefur (2013, 11 emphasis added) suggest, to "consider the broader, *systemic* effects of [legal] representation" we might say that the R&A Program merely creates a veneer of justice. Can we still claim that

access to justice has increased if the violent effects of U.S. immigration law and policy go unchallenged and are perhaps even being made easier to carry out because of the R&A Program (compare Bellow and Kettleson 1978)?

Such questions speak directly to issues of immigration governance, as well. Scholars have been noticing how contemporary immigration control tends to expand not with brute force but rather through a process of “negotiation” (Longazel and van der Woude 2014). In her study of the Temporary Protected Status (TPS) the U.S. Government grants to immigrants from El Salvador, for example, Miranda Hallett (2014, 633) describes how while state discourse framed the TPS program as a *gift*, the policy – “tainted by the self-interest of the giver” – turned out to be more akin to *grift*. TPS, she notes, creates a system of surveillance, enhances Salvadoran exploitability, and reinforces U.S. superiority by “[producing] a sense of obligation on the part of recipients without substantively improving their situation” (633–634). I made a similar point in research I conducted with Benjamin Fleury-Steiner’s (Longazel and Fleury-Steiner 2013) on the politics surrounding *notario* fraud. While an “anti-*notario* fraud apparatus” (2013, 362) composed of state agencies and private organizations sends the message “that ‘something is being done’ here” (Garland 1996, 451) to protect vulnerable immigrants, we suggested that in practice, the ensuing discourse works to “responsibilize” immigrants, encouraging them to become “better consumers.” As such, deportation looks like the consequence of a “bad choice” rather than an act of state violence. The present study adds to this scholarly discussion by noting that, once again, the state seems willing to intervene on behalf of marginalized immigrants on the condition that such interventions do not threaten and perhaps even bolster the immigration regime (compare Bell 1980).

Finally, while I have argued that the state is devolving emotional and bureaucratic burdens down to committed advocates, others may consider exploring in more detail the political economic question of how the state passes down the *costs* associated with such services. Some of the ARs I spoke with, for example, mentioned how pricey it is for their organization to provide legal aid. Indeed, ROs are on their own when it comes to funding “very expensive” trainings that are “often on the other side of the country” – not to mention staff salaries and other day-to-day operational costs. The R&A Program might therefore represent a “neoliberal *Gideon*” wherein the state increases representation on the cheap by subcontracting the emotional and legal labor required to carry out its immigration policy. And, importantly, it appears to be disproportionately calling on women and immigrants, who, while perhaps uniquely qualified and good at what

they do, are notably paid substantially less than “traditional lawyers.” In this respect, the state filters down responsibility for providing *and* funding legal services to marginalized communities themselves (compare Levi and Valverde 2002; Longazel and Fleury-Steiner 2013) – a particularly nefarious act considering the rise in immigrant detention and deportation coupled with the continued reliance on exploited immigrant labor.

All this is to say, the notion that the R&A Program *only* represents increased opportunities for representation – for better or worse – is “largely for external consumption” (Blumberg 1967, 24). In practice, the story is far more complex. The state may be sending a message with this program that it is working hard to address immigrant vulnerability – and certainly in some cases, it may be doing just that – but when viewed at the systemic level, a number of serious questions arise. At virtually no cost to the state, emotions are calmed, advocates are domesticated, and complicated forms are carefully prepared for smooth passage through a system that ultimately maintains its violent tendencies. A harsh immigration regime thus carries on aided by “a perfunctory obedience to the ideology of due process” (Blumberg 1967, 22).

Appendix

Appendix – Interview Guide

Personal Story

I'd like to begin by having you tell me a little bit about yourself.

What motivated you to apply for accreditation status?

Immigration Attitudes

Before we talk about your work as an Accredited Representative, I'd like to hear some of your thought about immigration issues more generally. So let me ask: What, in your mind, are some of the biggest challenges facing immigrants today?

Life as an Accredited Representative

Tell me about your work as an AR.

What is a typical case like for you?

Tell me a little more about the clients you work with.

What would you say are some of the biggest challenges you face working as an AR?

How do you see yourself in relation to immigration officials? That is, do you feel like you are working with them or do you feel like they are your adversaries?

Based on what you have been telling me, it sounds like you think the R&A Program is not an ideal system. What would an ideal system look like? (Or, based on what you have been telling me, it sounds like you think pretty highly of the R&A Program. Would you consider it to be an ideal system?)

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