We Represent *People*, Not Files!

by Bruce A. Hake

REFLECTIONS ON THE *VALINOTI* CASE

"It's always been about people." That is the motto of *Bender's Immigration Bulletin*. A recent court decision helps to show why that motto is so important. I've spent more than 10 years of work on legal ethics in immigration practice, and the most interesting court decision I've seen in this area is *In the Matter of James Robert Valinoti*, No. 96-0-08095 (Cal. Bar Ct., Review Dept., Dec. 31, 2002).[1] Mr. Valinoti is a 38-year-old immigration lawyer in Los Angeles.[2] After many ethics complaints against him, he was given a two-year suspension at the trial court level.[3] He appealed to the Review Department of the California Bar Court. In its *Valinoti* decision, by a 2-1 vote the court recommended that the suspension be increased to three years, in addition to other restrictions. The dissenting judge called for disbarment. Mr. Valinoti has said he does not plan to appeal to the California Supreme Court, which must enter the final disciplinary order.[4] Many lawyers will think that it is a miracle--and an outrage--that he was not disbarred.

The *Valinoti* decision is 100 pages of small type. This article does not cover every detail. Instead, it uses the decision as a basis for reflection on the fundamental truth that immigration lawyers represent *people*. They do not represent "files." Every blurring of this distinction breaks the oath of admission to the bar. More seriously, it violates the Golden Rule ("do unto others as you would have them do unto you"), which is the foundation of all major religions and moral traditions.[5] It's a rotten thing to do, but a surprising number of lawyers do so automatically, even unconsciously. This is a main theme of the *Valinoti* decision.

Business Immigration Lawyers: Take Heed

The *Valinoti* case involves the murkiest abysses of immigration trial practice. Lawyers who do not practice in this area may assume that it is not relevant to their work. But that would be myopic. Counterintuitively, it is business immigration lawyers (or more broadly, all immigration lawyers, like me, who have mainly office practices) who may need to pay the most attention. Once the facts are examined, the moral blindness and corruption in *Valinoti* is plain to see, and perhaps some deportation defense lawyers will scramble to make corrections. But the case's lessons also need to be heeded in the more comfortable quarters of law, where the same evils are harder to spot but may be equally harmful.

There are many worlds in American immigration law. The cultural distance between business immigration practice and deportation defense is often wider than the cultural distance between American lawyers and foreign clients. All kinds of immigration lawyers, however, are at risk for the corruption of viewing matters as files, not people. Business immigration lawyers operate above the squalor of the *Valinoti* case. But at times they fall into the same errors.

Upscale business immigration practice is a new thing. For many decades, immigration law was the redheaded stepchild of American law. It was despised as dirty, grubby, mere "form-filling" for the unwashed poor. Immigration law was long considered an inferior form of law practice, a last refuge for lawyers of mediocre skill and blemished pedigree. Among the white-shoe lawyers, there was much hand-wringing about unwashed tides of "foreigners and Jews" entering the legal profession, many of whom had few alternatives besides immigration practice.[6]

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[1] Published at 2002 Calif. Op. LEXIS 9 and 2003 Daily Journal D.A.R. 167, and summarized at 8 Bender's Immigr. Bull. 481 (Mar. 15, 2003).

[2] His entry on *www.martindale.com* is as follows: "Born 1964; Admitted 1993; Hofstra University, B.B.A.; Southwestern University School of Law, J.D."

[3] See Robert Greene, "State Bar Court Increases Length of Proposed Suspension of Immigration Lawyer Working With 'Notarios,'" *Metropolitan News-Enterprise* (Los Angeles), Jan. 7, 2003 at 1. This article is based on a personal interview with Mr. Valinoti.

[4] Id.

[5] See, e.g., *www.fragrant.demon.co.uk/golden.html*. See also Bruce and Judy Hake, "The Scriptural Foundations of an Open Immigration Policy" (1998), published at *www.ilw.com/hake/openimm.htm*.

[6] See Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (Oxford Univ. Press 1976) at 107.

This changed in the mid-1980s, in the wake of the Immigration Reform and Control Act of 1986 ("IRCA"), which created the employer sanctions regime and imposed new burdens on American business. Big law firms copy each other, and quickly the word got around that there is money in immigration practice. Nowadays immigration law sections are the *number one* profit center at some big law firms. Younger lawyers may not even know that immigration law was once on the bottom of the prestige totem pole, even lower than personal injury practice.

But even though they may be making great pots of money, work at fancy addresses, and are no longer despised by legal elites, business immigration lawyers need to be careful not to fall into the traps that dehumanize the lowliest reaches of immigration law.

Who's On First?

Before descending into the muck of the *Valinoti* case, let's set the stage with a comic interlude.

My all-time favorite law book is *Persons & Masks of the Law* by John T. Noonan, Jr.[7] Here is the theme of the book:

> Legal history, legal philosophy, and legal education, or rather, the persons who are engaged in legal history, philosophy, and education, are or should be concerned with law not as a set of technical skills which may be put to any use but as a human activity affecting both those acting and those enduring their action. The analytic bent of most of those now so engaged leads them to reduce "person" to a congerie of "rights," with the highest ideal, if any is expressed, to do "justice" by enforcing the rights. Evading analytical reduction, the whole person escapes them. **But it is necessary to insist that the person precedes analysis**, and to seek to do justice in the narrow sense is no more a full human aspiration than such justice is the sum of human virtues.
>
> The central problem, I think, of the legal enterprise is the relation of love to power. We can often apply force to those we do not see, but we cannot, I think, love them. Only in the response of person to person can Augustine's sublime fusion be achieved, in which justice is defined as "love serving only the one loved."[8]

A large part of the "learning to think like a lawyer" that is indoctrinated into people in law school involves reducing the human, subjective aspects of every situation and seeking to abstract out objective principles of law. Every lawyer must learn this intellectual discipline in order to be technically competent (although a good case can be made that the whole project is bogus from the outset, as I always used to argue in law school, maintaining that nearly every legal decision is actually determined by the facts). But every good lawyer also realizes that thinking abstractly is just a preliminary step in the analysis of a case. One then must go on to the more challenging effort of synthesizing the human aspects with the legal rules, never losing sight of the human reality of the people affected by the problem. Bad lawyers, on the other hand, get stuck in the middle of this developmental process. Before long they are throwing out the baby with the bath water in every case.

Taking this theme to heart in my own work, I have always insisted that law practice is a high calling. Law is a learned profession, not a mere money-getting trade. A lawyer-client relationship is an essentially *personal* relationship. The foundation of legal ethics, which is rooted in the common law of agency, is the duty of *loyalty* to individual clients.[9] A lawyer has multiple duties: to his client, to the administration of justice, and to himself, because he has a right to a decent living.[10] Of these duties, the most important is the duty of loyalty to individual clients, also called the duty of zealous advocacy. To my mind, that's a fancy way of saying "Golden Rule."

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[7] John T. Noonan, Jr., *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks* (Farrar, Straus and Giroux 1976). See also Kevin Starr, "Judge John T. Noonan, Jr.: a Brief Biography," 11 Rutgers J. of Law & Religion 151-76 (1994-95). Judge Noonan earned an M.A. and a Ph.D. at my alma mater Catholic University in Washington, D.C. He was a law professor at Notre Dame and Boalt Hall (University of California, Berkeley). In 1985, he was appointed by Ronald Reagan as a judge on the U.S. Court of Appeals for the Ninth Circuit, where he still serves in senior status.

[8] Noonan, supra n.7, Foreword at x-xi (emphasis added).

[9] See "Ethical Issues In Immigration Practice: A Roundtable Discussion," 90-8 *Immigration Briefings* 3-5 (Aug. 1990) (lead section by me on the duty of loyalty).

[10] See American Bar Ass'n, *Model Rules of Professional Conduct*, Preamble at ¶ 8 ("Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an upright person while earning a satisfactory living.").

But these aspirations take a beating in the real world of busy practice, in both the chaos of Immigration Court and the frenzy of any law firm's back office. (Please note that I am a bit uncomfortable with all this earnest sanctimony. I certainly do not believe my own practice is immune from error.)

Thinking about the *Valinoti* case and the wisdom of Judge Noonan, I went out searching for writings on the *Valinoti* case. I discovered only one federal case that mentions Mr. Valinoti. Coincidentally, it is a Ninth Circuit decision written by Judge Noonan![11] It was an asylum appeal. The Ninth Circuit held that the petitioner had been denied the right to counsel. I refer to the decision due to its vivid picture of the realities of Immigration Court practice in California. It shows the kinds of appearances that Mr. Valinoti made thousands of times. Judge Noonan starts his opinion with a quotation from the Immigration Court transcript, which for our purposes is best appreciated in its entirety:[12]

> Jesus Escobar-Grijalva petitions for a review of an order of the Board of Immigration Appeals (the Board) denying her asylum and withholding of deportation. Holding that she was denied the right to counsel given her by 8 U.S.C. § 1362, we grant her petition and remand for proceedings consistent with this opinion.
>
> PROCEEDINGS
>
> On October 24, 1996 a hearing on Escobar's application for asylum and withholding of deportation was held. She alleged persecution on account of her political opinion in Guatemala. She participated in the hearing through a Spanish-speaking interpreter.
>
> The hearing began as follows:
>
> JUDGE FOR THE RECORD
>
> This is a continued proceeding at Los Angeles, California on October 24, 1996, in deportation proceedings in the matter of Jesus Escobar-Grijalva, A 72 519 396. On behalf the respondent, no attorney or representative has appeared. And on behalf of the Service, general attorney Mr. Alan Youtsler. The official Spanish interpreter and court clerk is Sinyova (phonetic sp.) Lopez.
>
> JUDGE TO MS. ESCOBAR
>
> Q. To the respondent, Ms. Escobar, it is now five after two, over an hour -
>
> A. Oh, wait, wait, Your Honor. I apologize.
>
> Q. Oh, thank you. Over an hour past the scheduled time that your case was scheduled for a hearing. We have waited your attorney. That is, at the last hearing - well, previous hearings you have had various attorneys, Mr. Davis, Ms. McGuire, Ms. Scott, and you continue apparently to be represented by attorneys from that office. Who is your present attorney, because no one is with you.
>
> A. It's a new American one.
>
> Q. A new American one? What is the name of this attorney?
>
> A. I don't know.
>
> Q. Well, where is he, ma'am? I mean, you were sitting here and your attorney's not here.
>
> A. (Indiscernible). He told me that he was already here. But I didn't see him.
>
> Q. Have you even met this new attorney, yet, ma'am? This new American attorney as you described him to be?
>
> A. Yes, I saw him.
>
> Q. What is the name of this attorney? It looks like Jeremy Frost is his name. Is that his name?
>
> A. (Indiscernible).
>
> Q. A man, according to the writing in here, at least. He is still part of the same law office of McGuire and company. But, my question to you, ma'am, is where is any of your attorneys? Where are they?
>
> A. I don't know, it - can you allow me to go out and see.

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[11] *Jesus Escobar-Grijalva v. INS*, 206 F.3d 1331 (9th Cir. 2000).

[12] Id. at 1331-1334 (emphasis added).

Q. Well, ma'am, have you seen them today at all? Any of your attorneys?

A. Yes, I did see him.

Q. You saw Mr. Frost?

A. Yes.

Q. Or was this gentleman his assistant that you saw, ma'am? Don't get the two confused.

A. No, it (indiscernible).

Q. Okay, and he said he would be representing you? When did you last see him? When did you last see him ma'am?

A. I just saw him before I got in here. Would you please allow me to go out one moment.

Q. We'll have the court interpreter go out there and call his name.

(OFF THE RECORD)

(ON THE RECORD)

JUDGE FOR THE RECORD

Back on the record. Off the record, the court interpreter would [list] the respondent's witness.

JUDGE TO MR. FROST

Q. Counsel, I understand you're Jeremy Frost, is that right?

A. That's correct, Your Honor.

JUDGE TO MS. ESCOBAR

Q. Now, ma'am, is this your attorney, Mr. Frost?

A. No.

Q. No?

A. It's another one.

JUDGE TO MR. FROST

Q. Okay, well, counsel, have you ever met your client?

A. No, I haven't, Your Honor. But I'm - I'm from -

[MS. ESCOBAR TO JUDGE]

A. He hasn't seen me.

JUDGE TO THE INTERPRETER

Q. Wait, wait. Let - let her finish. What - what's that?

A. He - it's another gentleman.

Q. Okay, well, Mr. Frost is from the law offices of Terance McGuire. He is one - apparently one of the new attorneys.

A. Actually -

Q. This is not the person you - you met outside? The new attorney you said - the new American attorney?

A. With a black jacket.

JUDGE TO MR. FROST

Q. Counsel, do you have any idea who that is?

A. No, I don't, Your Honor.

Q. Is that one of your assistants maybe? One of your clerks or something?

A. **I'm - I'm not even with McGuire's office. I'm with Jim Valanti (phonetic sp.) - Valinoti.**

Q. You're with Valinoti? Well -

A. Yeah.

Q. - (indiscernible) really confusing me, because your - your notice comes in - in McGuire's office's name, not Valinoti's. And is there some reason why you submitted a notice with another law firm? I mean, I'm really confused now. **If you're with Mr. Valinoti's office, why are you submitting a notice under Mr. Terance McGuire's offices?**

A. Your Honor, I'm a little confused too. And if I could call a recess for five minutes to just get it clarified. I - I really don't have the answer.

Q. Have you met you client before today, counsel. I mean, right now, because she said she never saw you before until you walked in right now.

A. That's true, Your Honor. I've never met her.

Q. And you're going to be presenting her case?

A. Actually, I was hoping to have time, you know, before, but I just ran from this hearing to this hearing.

MR. YOUTSLER [COUNSEL FOR THE GOVERNMENT] TO JUDGE

Q. I don't think he can represent her. He hasn't ever met her before. He has no idea what her case [is] about.

JUDGE TO MR. FROST

Q. Yeah, counsel, I - at the minimum I'm a little concerned. First of all, whose law firm are you associated with?

A. Jim Valinoti, Your Honor.

Q. Jim Valinoti? Okay, so you're not associated with McGuire, Scott and Company?

A. No, Your Honor. **But if I get a chance to talk with Jim, maybe I could get some clarification into who is actually handling this file.**

Q. No, counsel. I'm going to ask the respondent what she wants.

A. Okay.

JUDGE TO MS. ESCOBAR

Q. Ma'am, do you want this gentleman to represent you?

A. Those are my papers, but if the man is not her–

Q. Well, ma'am, let me tell you, I want to make sure you understand something. You're going to have basically three choices. And let me explain to you what they are. You're going to have the choice, number 1, of choosing this gentleman who claims he represents you, although never meeting you today yet, to represent and present you[r] case today. Or, you have the choice of proceeding on your own and being your own attorney and representing yourself today and presenting your case. That's the second choice. Or, the third choice is, I will give you a continuance to get a new attorney to represent you. And when I say that, ma'am, if you get a new attorney, it's not going to be any of the following people. And I will not allow them to appear. **And that includes Mr. Frost, Mr. McGuire, Mr. Alexander, Ms. Scott or Mr. Davis or Mr. Valinoti or Mr. Cassarian** (phonetic sp.). None of those people. Because you see, supposedly this gentleman represents all of them as one of their attorneys. And I'm not about to continue a case for some - one of them from the same law offices to walk in when they should have been ready today to present your case. So if you don't accept Mr. Frost from these law firms, none of those individuals will be representing you at your next hearing. Now if you get a new attorney unrelated to any of them, I don't have a problem. You're more than welcome to do that. But I'm not having one of those attorneys from the same law offices walk in and get a delay because they don't know what's going on with their cases. They're not going to get that continuance for that purpose. They're going to be removed as your attorney, and they're not going to represent you. So, ma'am, of those three choices, what would you like? Mr. Frost to present your case today? You to do it on your own? Or, you can find a new attorney completely separate and apart from any of these attorneys I've mentioned (indiscernible) who have filed notices with me.

A. It's okay. If he doesn't miss again, he doesn't, you know, show up again.

Q. So you want Mr. Frost to represent you? Is that what you said? Choice number 1?

A. I don't know what he said.

Q. That's what I don't know, ma'am. Is that choice number 1 you're selecting?

A. It's okay.

> Q. That's fine, ma'am. We're going to proceed then.
>
> The hearing continued, with Frost asking some questions. . . .

Did you notice? Mr. Valinoti's hapless associate in this comedy of errors does not think of himself as representing a person. He is "handling a file." At least he had the decency to recognize that he might need a few minutes to get up to speed in a complex matter potentially involving mortal dangers.

Judge Noonan was disgusted: "To call Frost her lawyer and Escobar his client mocks the meaning of what a lawyer is -- a counselor and advocate knowledgeable of the matters on which he or she provides counsel and of the cause he or she represents."[13] He concluded his opinion with these grim words:[14]

> The administrative record in this case points to serious problems in the immigration bar. It gives a picture of attorneys shuffling cases and clients, imposing on immigration judges and on hapless petitioners alike. There is a need to clean house, to get rid of those who prey on the ignorant. The starting point is not to make the helpless the victims.

Judge Noonan believed the best way to explain his decision was to start with that large quotation from the transcript. Conventional legal writing would abridge the quotation, seeking to abstract core analytical points. But as noted above, it is necessary to insist that the person precedes analysis. To comprehend the human reality of that farcical Immigration Court hearing, one has to see the unabridged facts. It's an ugly picture.

Chamber of Oddities and Horrors

One might think that the hearing in *Escobar-Grijalva* is an aberration. In fact, it is just the tip of a large nightmare. Let us now review the oddities and horrors of the *Valinoti* decision.

The court recommended that Mr. Valinoti incur a three-year suspension from law practice due to complaints filed by the California State Bar involving 28 counts of professional misconduct in nine separate client matters.[15]

In each matter, Mr. Valinoti was attorney of record for aliens with cases pending in the U.S. Immigration Court in Los Angeles.[16]

Before the State Bar Court's Review Department, Mr. Valinoti raised five grounds of claimed error. The court rejected them all. In addition, it found him to have committed more violations than held by the trial court. In particular, it found him to have committed professional misconduct in all nine matters (the hearing judge found misconduct in seven of the matters) and it found him culpable of 18 of 28 counts of charged misconduct (the hearing judge found him culpable on 14 counts).[17]

Mr. Valinoti began his legal career in 1993, practicing primarily in the areas of construction and insurance law. In mid-1995, he opened his own law office and began representing aliens in Immigration Court. By early 1997, his practice consisted almost entirely of Immigration Court matters. From mid-1995 through late 1997, he handled more than 2,720 immigration cases.[18]

Think about that. That's over 2,720 cases in about 30 months, which works out to five cases or more each and every business day, with no time off.

Mr. Valinoti's first claimed point of error was that his practice conformed to the practice standards of the immigration bar. The court dismissed this argument: "Admittedly, immigration law is a specialized area of practice. However, the standards governing an attorney's ethical duties do not vary according to the many areas of practice."[19]

Mr. Valinoti's second claimed point of error was that the trial judge supposedly failed to recognize that Mr. Valinoti had limited the scope of his representation and was appearing merely as an "**appearance attorney**."[20]

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[13] Id. at 1335.
[14] Id.
[15] *Valinoti*, supra n.1, at 1.
[16] Id.
[17] Id. at 3.
[18] Id. at 4.
[19] Id. at 5.
[20] Mr. Valinoti's main defense, on which he still insists, is that he was never anything more than a so-called "appearance attorney," who does not do "paperwork." References to this claim appear in this article at nn.21, 29, 30, 48, and accompanying text. It is established law that there do not exist distinctions between different classes of clients in respect of the measure of a lawyer's duty; a person either is or is not a client, and if the person is a client, then the lawyer owes the full range of professional duties during the pendency of the representation. See Bruce A. Hake, "Dual Representation in Immigration Practice: The Simple Solution is the Wrong

The court scornfully dismissed this argument:

> According to respondent, an "appearance attorney" appears in his clients' immigration cases only for the limited purpose of making court appearances; an "appearance attorney" does not, inter alia, prepare and file his clients' immigration applications, pleadings, or other documents. Instead, respondent asserts, those items are properly prepared and filed by nonattorney immigration services providers. As respondent and his witnesses testified . . . , these nonattorney immigration services providers (1) advise aliens on United States immigration law and procedures; (2) prepare and file immigration applications, pleadings, and other documents with the INS, the immigration court, and the BIA on behalf of their alien clients; and (3) refer their alien clients to immigration attorneys, such as respondent, when the aliens must appear in immigration court.
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> These nonattorney immigration services providers are commonly referred to as immigration consultants, visa consultants, and, in some Hispanic communities, *notarios* or *notarios publicos*.
>
> . . .
>
> Of the more than 2,720 immigration cases that respondent and his law office handled between mid-1995 and late 1997, all but about 170 of them were referred to him by immigration services providers . . . . [R]espondent contends that each culpability finding by the hearing judge which is based on a failure to fulfill a duty or to perform a service that respondent asserts should have been fulfilled or performed by the referring nonattorney provider is erroneous and must be reversed.[21]

The court then devoted 14 pages to the evils of the unauthorized practice of law ("UPL") in immigration law, and to the ways that Mr. Valinoti enriched himself on the backs of thousands of foreigners by facilitating UPL.[22]

One of Mr. Valinoti's malodorous defenses was to assert that his clients were committing fraud in their immigration applications, and therefore one should not credit their testimony against him.[23] The court was not amused.

In my own experience, it takes at least 10 hours of a lawyer's time to get properly prepared for an asylum merits hearing. The most important facts always take a long time to ferret out and develop, and one always struggles with sociocultural and language barriers. But that's not how it works in Immigration Court in Los Angeles:

> Often, immigration services providers waited until the day of the initial hearing in their alien clients' cases before they referred their clients to respondent, or another immigration attorney. In such a case, the immigration services provider walked the hallways outside the immigration court courtrooms with the alien the day of the hearing looking for respondent. When the provider found respondent, he introduced the client to respondent, arranged for respondent to appear with the client in court, and usually paid respondent a cash appearance fee. Regardless of whether the provider referred the client to respondent shortly before or well in advance of the initial hearing, respondent did not ordinarily meet with the client to review the client's case or otherwise obtain the facts necessary to properly represent the client at the initial hearing.[24]

The court noted respondent's testimony that he averaged $150 per appearance. Thus, by conservative extrapolation, he earned more than $250,000 with this appearance mill in 1996 and again in 1997.[25] But considering that Mr. Valinoti took many fees in cash, and did not keep records, the actual take may have been much higher.

Mr. Valinoti claimed that nonattorney immigration

Solution," 5 *Georgetown Immigr. L.J.* 581, 594-595 (Fall 1991). It is apparent from the *Valinoti* decision (and many others) that a symmetrical rule pertains to lawyers. A lawyer either does or does not represent a person, and during the course of the representation the lawyer is bound by the full range of professional duties. Some duties, especially the duties of confidentiality, survive the termination of the representation. See Bruce A. Hake, "Loyalty to a Former Client," 13 *Immigr. Law Report* 205-210 (Fragomen, Del Rey & Bernsen law firm Sept. 15, 1994).

[21] *Valinoti*, supra n.1, at 6-7.

[22] Id. at 7-22.

[23] Id. at 11.

[24] Id. at 13.

[25] Id. at 14.

service providers are authorized by federal law to prepare and file applications for aliens in deportation proceedings. The court rejected this argument, characterizing it as "additional misrepresentations of law to this court."[26]

Sua sponte, the court raised the issue of Mr. Valinoti's unethical aiding and abetting of UPL. Its discussion on this point is among the best rendered by any court:

> Furthermore, based on the interplay of the regulatory definitions of case, representation, practice, and preparation as set forth in [8 CFR], "the scope of the term 'representation' is a *very* broad one. It includes activities which range from *incidentally* preparing papers for a person, to giving a person advice about his or her case, to appearing before the Service on behalf of a person." [citing INS General Counsel opinions] Therefore, any person who is not an attorney or one of the six federally authorized nonattorney representatives under [8 CFR Part 292] may not engage in any activity falling within this *very* broad definition of representation without violating federal law.[27]

After a discussion of California law, the court then held:

> We hold that the preparation and filing of immigration applications, pleadings, and documents by the nonattorney immigration service providers in this proceeding was the representation of aliens under federal law, that those nonattorney providers were not within one of the six categories of nonattorneys authorized under federal law to represent aliens in immigration cases, and that those nonattorney providers, therefore, represented aliens in violation of federal law. We further hold that the preparation and filing of immigration applications, pleadings, and documents by the nonattorney providers in this proceeding fall within California's definition of the unauthorized practice of law . . . and that those nonattorney providers, therefore, engaged in the unauthorized practice of law. Finally, we hold that, by relying on and permitting those nonattorney providers to prepare and file immigration applications, pleadings, and other documents for his clients from at least mid-1995 through late 1997, respondent deliberately aided and abetted the providers to represent aliens in violation of federal law. In doing so, respondent engaged in acts of moral turpitude . . . .[28]

The court then demolished Mr. Valinoti's claim that he was off the hook because he was merely an "appearance attorney." There is no such thing. Among other things, the court noted that the Form EOIR-28 appearance form that every lawyer must file to become attorney of record in an Immigration Court proceeding specifies on its face: "Please note that appearances for limited purposes are not permitted."[29]

In for a dime, in for a dollar. A lawyer has an almost unlimited right to refuse to accept a case (the exception is judicial appointment). Once he has accepted a case, however, he is subject to the entire range of a lawyer's professional duties. Once the EOIR-28 has been filed in a removal matter, the lawyer is on the hook for all aspects of the representation. Moreover, in that circumstance, where a matter is pending before a tribunal, the lawyer cannot withdraw from representation without permission of the court. The court commented:

> Accordingly, when respondent filed a Form EOIR-28 in a client's immigration case, he had the duty to fully and competently represent the client before the immigration court and to properly prepare each and every application, pleading, and document necessary for the proper representation of the client. . . . **Moreover, this duty to fully and competently represent an alien client may not be modified by an agreement between a client and his attorney even if the parties expressly note the limited scope of the attorney's representation on the Form EOIR-28 filed with the immigration court.** [citing *Matter of N – K*, 21 I. & N. Dec. 879 (BIA 1997)] . . . Accordingly, respondent's testimony and repeated argument that he could legally and appropriately limit the scope of his representation to that of an "appearance attorney" are disingenuous.[30]

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[26] Id. at 18.

[27] Id. at 19 (emphasis in original).

[28] Id. at 20-21 (citations omitted).

[29] Id. at 22.

[30] Id. (emphasis added). Note that this discussion is confined to the necessary scope of representation in matters pending in Immigration Court. In other contexts, it may be acceptable and prudent to limit the scope of representation, provided that the client gives informed consent. See Hake Dual Representation Article, supra n.20, at 606-608.

In his third claimed point of error, Mr. Valinoti argued that the trial judge's misconduct findings were erroneous because they were based on negligence or honest mistakes. Indeed, with a straight face he argued to the court in writing that they were made in good faith as a "product of trying to do too much, not too little" for his clients.[31] The court incinerated this contention:

> First, the hearing judge correctly found that, from at least mid-1995 through late 1997, respondent: (1) repeatedly and deliberately abdicated his ethical duties to properly represent his alien clients and to competently perform the legal services that he had a legal duty to perform; (2) repeatedly accepted more immigration cases than he and his law office could properly handle; (3) routinely "placed his interests above those of his clients" by permitting nonattorneys to prepare and file his clients' immigration applications . . . ; and (4) consistently "demonstrated a profound lack of understanding of his duty of fidelity to his clients." Second, as the second count of uncharged misconduct on which we independently conclude that respondent is culpable and consider as aggravation, we find that, from at least mid-1995 through late 1997, respondent engaged in a course of practicing law that was reckless and involved gross carelessness.[32]

The court then ventured into the miasma of Mr. Valinoti's recordkeeping:

> [R]espondent's fiduciary duties to his clients unquestionably required that he keep adequate non-financial client files and records. . . . At a minimum, respondent was required to keep, for each client, an individual file that not only contained the client's name, address, and telephone number, but also all other items reasonably necessary to competently represent the client, such as a written fee agreement, correspondence, pleadings, deposition transcripts, exhibits, physical evidence, and expert reports. . . . [R]espondent failed to keep non-financial client files and records that complied with these minimum requirements.[33]

The court noted that Mr. Valinoti also failed to develop and maintain procedures for protecting client files, for calendaring court hearings and filing deadlines, for tracking client communications, and for accurately accounting for client trust fund receipts and other property. In addition, he failed to train his staff to follow any such procedures. The court stated:

> In short, the facts in this proceeding "disclose an habitual failure to give reasonable attention to the handling of the affairs of his clients rather than an isolated instance of carelessness followed by a firm determination to make amends." . . . Such recklessness and gross carelessness, even if not deliberate or dishonest, violate "the oath of an attorney to discharge faithfully the duties of an attorney to the best of his knowledge and ability and involve moral turpitude, in that they are a breach of the fiduciary relation which binds him to the most conscientious fidelity to his clients' interests.[34]

Having drawn those dire conclusions, the court spent the next 14 pages of its decision setting forth the hair-raising facts. Here are some samples:

> From approximately March 1996 to late November 1996, respondent employed, as a "kind of part time" secretary, someone respondent testified was named Roxanne, but whom [another employee] testified was named Rosanna (hereafter Rosanna). Even though respondent employed Rosanna for approximately nine months and presumably paid her (withholding, reporting, and paying her state and federal employment taxes) throughout those nine months, he could not remember her last name.[35]

Mr. Valinoti had two occasional, part-time nonlawyer employees in 1996. During that year:

> Respondent's law office handled more than 1,000 immigration cases in 1996. Respondent estimates that he was the attorney of record in at least 400 or 500 of those cases. Presumably, other attorneys associated with the respondent's office were the attorneys of record in the remaining cases.
>
> According to the respondent he made an

[31] Id. at 23.
[32] Id. at 23.
[33] Id. at 24.
[34] Id. at 25 (citations omitted).
[35] Id. at 27.

> average of four immigration court appearances each morning and four each afternoon in 1996. We accept respondent's testimony that he made an average of four appearances each afternoon in 1996, but reject his testimony that he made an average of four appearances each morning because it is impeached by [an employee's] credible, disinterested, and unchallenged testimony that, when she worked for respondent, he made between five and seven appearances each morning.[36]

The next section of the court's decision is entitled "Respondent's many law offices." There was much dispute about many different addresses used by the respondent during the 30-month period under review. Here is a lowlight:

> Whenever respondent truly moved his office to Lankershim Boulevard, he sublet from and shared office space with Hratch Baliozian, who is a nonattorney immigration services provider who refers immigration clients to respondent. Their office space consisted of a common reception area and two small offices. One of the offices was used by Baliozian and his staff, and the other one was used by respondent and his staff. . . .
>
> **The only furniture in respondent's office was a desk, which respondent, Lopez, and the second secretary shared; a credenza; and a shelf-type cabinet. There was no filing cabinet. Respondent kept all of his client files, which according to Lopez's and respondent's testimonies totaled no more than 200, in one or two boxes on the floor next to his desk. There was no office equipment in respondent's office other than perhaps a telephone. However, in Baliozian's office, there was a computer and a printer, which respondent's secretaries were allowed to use for writing letters and drafting notices. Respondent might have owned the printer.**[37]

Recall that during this time Mr. Valinoti was taking in hundreds of thousands of dollars every year in fees.

The court also found that Mr. Valinoti: (1) failed to properly maintain his official state bar address;[38] (2) failed to notify his clients, the immigration court and the postal service of his many changes of address;[39] (3) failed to protect client records;[40] and (4) repeatedly failed to properly file his clients' pleadings and to properly appear at his clients' immigration hearings.[41] Here are more lowlights:

> [R]espondent testified that he kept the addresses of his clients in the notebook-size, yearly calendars that he carried with him to court every day and, for a very brief time period, in a "hand-held computer organizer." Respondent further testified that his "office did the best [it] could to send out notices to everybody" whose address was listed in either his notebook-size calendars or his hand-held computer organizer. However, **respondent also testified (1) that, in April 1996, someone broke into his car and stole his briefcase containing his 1996 calendar and (2) that, in June 1997, someone again broke into his car and stole his briefcase containing his 1997 calendar and his hand-held computer organizer.** Even if we were able to accept as credible respondent's testimony that he kept his clients' names and addresses in his calendars and hand-held computer organizer, he could not have notified the clients listed in his stolen 1996 calendar when he moved his office in late 1996 or January 1997. Likewise, he could not have notified the clients listed in either his stolen 1996 calendar, his stolen 1997 calendar, or his stolen hand-held organizer when he moved his office in July 1997 or when he moved in November 1997.
>
> Moreover, . . . we not only reject respondent's testimony that he kept his clients' addresses in his calendars and hand-held computer organizer, but also find that he failed to keep any client records in all but a limited number of his cases. Thus, respondent could not have and did not send out "hundreds" of change of address notifications as he testified.[42] . . .
>
> At least from mid-1995 through late 1997, neither respondent nor his staff kept a listing of the names, addresses, and telephone numbers of respondent's thousands of clients. Nor did they keep a record of most of the legal fees respondent earned in his immigration cases even though they

[36] Id. at 28.
[37] Id. at 30 (emphasis added).
[38] Id. at 31-32.
[39] Id. at 32-36.
[40] Id. at 36-38.
[41] Id. at 38-39.
[42] Id. at 33.

> totaled in the hundreds of thousands of dollars each year and, according to respondent's testimony, were often paid to him in cash. Even though he had thousands of clients, the record establishes, at best, that he maintained only the following limited files: (1) 200 client files that he kept in one or two boxes on the floor of his office . . .; (2) a small number of skeletal client files that he made while at the immigration court; and (3) limited client records respondent personally wrote in his notebook-size calendars and hand-held computer organizer.[43]

Mr. Valinoti also testified that his computer was stolen at a time he was evicted from one of his offices, in addition to his calendars and computer organizer. The court found that his testimony regarding his maintenance of basic client information was "deliberately false."[44] Mr. Valinoti also testified that many of the 200 client files he claimed to have maintained were also stolen. The court found this testimony to be contradicted by the credible testimony of his employee Lopez, who testified that she herself had retrieved those files and stored them in her car for a week before Mr. Valinoti claimed them.[45]

But while he was not wasting time maintaining client records, Mr. Valinoti was busy sprinting from one courtroom to another:

> In sum, during much of the time period . . . , respondent spent most days at the immigration court making his many appearances. He spent little time in his law office. He routinely agreed to make multiple appearances in different cases even though the hearings in which he was to appear were set at the same time and before different IJs. At that time, there were at least 19 IJs in Los Angeles with courtrooms on various floors of either the Federal Building on North Los Angeles Street of the Roybal Center and Federal Building on East Temple Street. He also had multiple immigration court hearings and merits hearings (i.e., trials) set for the same time. He did not proffer an explanation as to how he could try more than one immigration case at a time.
>
> Obviously, respondent "ran" from courtroom to courtroom looking for his clients (often times having to also look for someone to translate for him so that he could communicate with his clients), checking in with the court clerks, and checking with the court clerks regarding the calendar placements for his hearings. It is not surprising that respondent was repeatedly late for and missed court appearances or that respondent had a well-known reputation for such. Respondent also repeatedly missed filing deadlines. And, as far as we can determine, he never properly sought an extension of time or properly requested a continuance of a hearing.[46]

The next 43 pages of the court's opinion marches through Mr. Valinoti's misconduct in nine separate client matters.[47] Space does not permit a detailed discussion, although I regret that in view of this article's theme of paying attention to the actual people involved. The court itself was thorough. On almost every one of these 43 pages, the court finds Mr. Valinoti's conduct to involve moral turpitude and deliberate misrepresentations, including many direct lies to Immigration Judges, to his clients, and to the California State Bar.

The final 20 pages of the court's opinion discuss aggravating and mitigating circumstances, concluding with a detailed report on recommended discipline. Here are some key points:

> "Deportation is often tantamount to exile, with consequences which affect family members as well as the individual himself. In the worst case, inappropriate deportation can lead to incarceration, torture, or death . . . . To the layman or [even the] untrained attorney, immigration forms may appear to be simple biographic questionnaires; however the implications and possible pitfalls from their use or misuse are abundant . . . ." [quoting comments from Immigration Judge Dana Marks Keener] It is not just the omission or misstatement of a substantial relevant fact on an immigration application, pleading, or document that can cause devastating and, at times, irreversible harm to an alien case. The failure to completely fill out the simplest of immigration forms can also cause such devastating harm, as well as the mere

[43] Id. at 34-35.
[44] Id. at 36.
[45] Id. at 36-37.
[46] Id. at 38-39.
[47] Id. at 39-81.

failure to timely file an immigration application, pleading, or other document. . . .

Furthermore, a victim of unlawful representation and unauthorized practice of law by nonattorney immigration services providers "may forfeit his place on the years-long INS waiting list for immigration through family members, or lose all rights to apply for relief . . . . Unscrupulous consultants write down false asylum stories without the clients' knowledge, which destroys the credibility of applicants who do not have a strong asylum claim; charge money for non-existent "amnesty" programs or for immigration programs that exist but do not apply to the clients; and persuade unsophisticated clients to commit fraud by telling them that this is how it is done in America." . . .

In sum, by improperly limiting the scope of his representation of the clients referred to him by immigration service providers to that of an "appearance attorney," respondent effectively provided them with no legal representation or services.[48]

The court's discussion of "substantial client harm" merits full quotation:

Respondent's repeated misconduct, particularly his failure to competently perform legal services, caused substantial harm to the Salgados, Gonzalez, the Guevaras, and Ramirez. . . . Because respondent failed to competently represent [them], all had their applications for relief deemed abandoned and were either ordered deported or granted voluntary departure, which is effectively an order of deportation. They were all forced to hire new counsel to have their cases reopened, and having an immigration case reopened after an order of deportation in absentia is very difficult . . . .

Having all of their requested relief deemed abandoned and being ordered deported not only delayed their immigration cases, but was personally devastating and stressful for all of the foregoing clients. In that regard, Salgado's testimony establishes that he suffered substantial anguish. He worried for months that he and his wife would be deported, he would lose his job, and they would lose their house through foreclosure because they could not make their mortgage payments if Salgado did not have a job in the United States. It was only after one motion, two appeals, and three years that the Guevaras' new counsel was able to remedy respondent's misconduct by getting their case reopened by the Ninth Circuit. The stress of living under an order granting voluntary departure (which, contrary to respondent's assertions, is effectively an order of deportation) while their motion to reopen was denied by the IJ and their appeal to the BIA was rejected was certainly extremely difficult for the Guevaras.

Similarly, there can be no question that it was emotionally very difficult on Israil to have her request for relief denied and [be] ordered deported to Syria when she was more than 70 years old and after she had lived with her immediate family in California for 17 years.[49]

Later the court notes that, among many kinds of misconduct in all nine cases under review, in one case Mr. Valinoti "intentionally abandoned his client Ramirez minutes before the merits hearing was scheduled to begin on her application for asylum." The court continued:

"Asylum cases are probably the most sensitive cases that the field of immigration deals with. They are like death penalty cases." . . . Respondent's misconduct not only presented the possibility of serious consequences, but actually resulted in substantial harm to many of his clients.[50]

On top of all this, Mr. Valinoti showed no remorse and accepted no responsibility:

We agree with the hearing judge's finding that respondent lacks remorse for his misconduct. He still refuses to accept responsibility for his misconduct[,] blaming his clients and the referring immigration services providers for his failure to perform the *legal* services for which respondent had a duty to perform for his clients. When asked, in the hearing department, the

[48] Id. at 83 (citations omitted).

[49] Id. at 88-89.

[50] Id. at 94-95.

> extent to which he accepts responsibility for his failures to properly prepare and timely file his clients' immigration applications, pleadings, and other documents, respondent testified that he will not accept any responsibility because as he stated without regret: "**I never promised to do any paperwork and I never received money for paperwork.**"[51]

The next five pages of the court's opinion assess the degree of discipline to be imposed. The decision ends with a 10-point suggested disciplinary order.[52]

The opinion was written by Presiding Judge Ronald Stovitz and joined by Judge Paul Bacigalupo. Judge James O'Brien, the retired Presiding Judge of the California Bar Court, filed an acerbic, two-page concurring and dissenting opinion, in which he argued that Mr. Valinoti's conduct is so egregious and turpitudinous that it requires disbarment.

The California Supreme Court has evidently not yet entered the final order of discipline. It remains to be seen whether it will side with the dissent. Every lawyer must boggle to imagine that one would *not* get disbarred, in California or any other state, for such a pattern of misconduct, especially where there are findings of repeated deliberate lies to judges and the Bar.[53]

Moreover, it is puzzling and infuriating that the court went to such length to dissect Mr. Valinoti's misconduct, but then recommended such a comparatively mild sanction. Many lawyers have been disbarred for much less. The cynical will note that that the penalty would probably have been more severe if the victims were hundreds of U.S. citizens.[54] From this perspective, the court's efforts seem to be a Pyrrhic victory, not likely to have much deterrent effect on any lawyer. The public interest would have been better served if the court had summarized the crimes in 10 pages and then struck him from the roll of California lawyers.

Unfortunately, Mr. Valinoti does not seem to realize how miraculous and charitable it is that he escaped a recommendation of disbarment. In a newspaper interview shortly after the decision came down, he revealed himself to be utterly uncomprehending, despite the court's lengthy analysis:

> Valinoti . . . said he was devastated by the ruling. He charged that the State Bar treated him unfairly, without regard for the way immigration attorneys must conduct their practices to protect their clients' interests after the clients have visited legitimate, or outlaw, non-lawyer consultants.
>
> "If I'm doing something wrong, then I promise you 60 other immigration lawyers are as well," Valinoti said.[55]

Moreover, Mr. Valinoti blamed his troubles on politics and on his own clients:

> Allen Blumenthal of the State Bar Office of Chief Trial Counsel said charges were brought against Valinoti at about the time of the virtual shutdown of the State Bar due to then-Gov. Pete Wilson's veto of a lawyer fee bill. The charges had nothing to do with a ramping-up of efforts to close illegitimate immigration consulting businesses, he said.
>
> Valinoti said the State Bar's stance was shaped by a need to appear tough in the wake of a shut-down.
>
> "I feel the State Bar came out blood-hungry after me," he said.

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[51] Id. at 89-90 (italic emphasis in original; boldface emphasis added).

[52] Id. at 94-100.

[53] Honesty is fundamental to law practice. The legal ethics rules contain many rules specifically requiring truthfulness. See, e.g., *Maryland Rules of Professional Conduct* (2002), Rule 3.3 (Candor Toward the Tribunal), Rule 4.1 (Truthfulness in Statements to Others), Rule 7.1 (prohibition of false or misleading communications regarding the lawyer's services), Rule 8.1(a) (an applicant for admission or reinstatement to the bar must not knowingly make any false statements of material fact), and Rule 8.4(c) (it is disciplinable misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

[54] I filed ethics charges at one point against an immigration lawyer who had sexually assaulted a client and then, I believe, deliberately arranged to have her ordered deported after she spurned him. There was compelling evidence in the case, enough to persuade the INS District Counsel to join a joint motion for reopening, which led eventually to the woman receiving suspension of deportation. On the ethics complaint, however, the Pennsylvania Bar ducked, dodged, and whitewashed the whole matter with no investigation. I am convinced that it did so because the client had so many political weaknesses: poor, black, female, foreign, uneducated, in trouble with the law, and (perhaps) represented by a low-status sole practitioner.

[55] Greene, supra n.3, at 1.

> The lawyer acknowledged being somewhat disorganized in the early days of his practice, and **said his fate may have been sealed when, in the midst of a relationship problem, he failed to respond to an initial contact by the State Bar.**
>
> But he said the problem was largely part of the structure of the immigration system. People from other countries desperate to get work authorization here must "play games" with the law, he said, before coming to immigration lawyers to clean up what they have done.[56]

Mr. Valinoti took 11 months to respond to an opening inquiry about his conduct from the California State Bar.[57] He told the newspaper reporter that he blamed this delay on a "relationship problem." He blamed his problems on his victims, on the bar, on the system, on anybody but himself. The case presents one puzzle after another. Is this immaturity? Moral blindness? Sociopathy? Garden-variety selfishness? One cannot judge from words alone. More mystifying, however, is the court's failure to acknowledge the force of its own analysis.

So What Does This Have To Do With Business Immigration?

Having arrived at the end of the discussion of this singularly nasty case, one's mind may recoil at the thought that this has anything to do with a professional and efficient business immigration law practice. On the surface there is little comparison. Underneath, however, there are parallels between the abuses in *Valinoti* and the temptations and pressures that afflict all kinds of law practice, including the most prestigious business immigration practices (and including my own waiver-based practice).

In a nutshell, there are parallels between the two kinds of practice whenever the clients are made invisible, whenever the clients are dehumanized and ignored, whenever the clients are viewed instrumentally and not as ends-in-themselves. Parallels exist whenever a lawyer finds himself thinking of "files" and not people.[58]

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[56] Id. at 3 (emphasis added).

[57] *Valinoti*, supra n.1, at 86.

[58] All of the dehumanizing temptations of business immigration practice cannot be cataloged here. But here are some: (1) adopting the simple solution of viewing the corporate petitioner as the sole client, even though the alien beneficiary is equally a client under universally acknowledged rules of dual representation; (2) not entering formal written retainer agreements with alien beneficiaries; (3) not communicating directly with alien beneficiaries; (4) not sending receipt notices and approval notices to alien beneficiaries; (5) functioning as in-house counsel without exercising independent professional judgment; (6) not exercising sufficient control over non-lawyer support staff charged with client matters, such as not checking forms before signing; (7) not performing pro bono publico services; (8) taking on too much work; (9) charging excessive fees; (10) mass-producing inferior work; and so forth, on through the entire list of rules of professional conduct. This is not a general indictment of the business immigration bar. Many or most business immigration lawyers have high professional standards. But error and harm will flourish whenever a lawyer fails to recognize that an alien for whom he is doing legal work is a *client*, and a *person*, because the foundation of legal ethics is the obligation of *loyalty* to individual clients.