

# Immigration Consultants

## I. INTRODUCTION

In fiscal year 1973-74, Immigration and Naturalization (INS) officials reported that 285,997 illegal aliens were apprehended in California.<sup>1</sup> A recent estimate is that the number apprehended represents only one-third of the total number of illegal aliens.<sup>2</sup> Some of these aliens entered the country surreptitiously, without the necessary visas, work papers, or border inspections.<sup>3</sup> Others entered on valid visas which have since expired.<sup>4</sup> Whatever their origin, these aliens now live "without the law."<sup>5</sup>

Their illegal status forces these aliens to lead frightened, unpleasant lives.<sup>6</sup> They are subject to harassment and exploitation by employers, landlords and merchants.<sup>7</sup> They are the frequent victims of crime and numerous fraudulent schemes.<sup>8</sup> Yet their illegal status prevents them from seeking redress;<sup>9</sup> they fear any contact with "the authorities" that may lead to deportation.<sup>10</sup> It is little wonder, then, that the illegal alien desperately seeks a way to legalize his status.

The lawful status of the permanent resident alien is certainly superior to that of the illegal alien. Yet very often these lawful resident aliens left friends and relatives behind when they emigrated.<sup>11</sup> Resident aliens tend to be unsure of the procedures necessary to bring their families to this country.<sup>12</sup> Therefore, they also seek immigration assistance from other persons.

Both the illegal alien and the permanent resident alien often turn

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<sup>1</sup>Letter from Robert J. Seiz, INS Public Information Officer for Southwest Region, to Jane Conard, Oct. 1, 1974, on file with U.C.D. L. Rev.

<sup>2</sup>U.S. NEWS AND WORLD REPORT, Feb. 3, 1975, at 27.

<sup>3</sup>ACLU REPORTS, THE IMMIGRATION AND NATURALIZATION SERVICE AND CIVIL LIBERTIES: AN ABUSE OF DISCRETION 8 (1974) [hereinafter cited as ACLU REPORTS].

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* at 20.

<sup>7</sup>*Id.*

<sup>8</sup>LOS ANGELES COUNTY BAR ASSOCIATION, PUBLIC HEARINGS ON THE DEPORTATION AND REMOVAL OF ALIENS 8 (Dec. 18, 1974) (statement by Councilman David Cunningham) [hereinafter cited as HEARINGS].

<sup>9</sup>ACLU REPORTS, *supra* note 3, at 20.

<sup>10</sup>*Id.*

<sup>11</sup>HEARINGS, *supra* note 8, at 24 (statement by consultant Delfino Varela).

<sup>12</sup>*Id.*

to the immigration consultant for advice.<sup>13</sup> These consultants, the great majority of whom are notaries public,<sup>14</sup> advertise their services extensively in newspapers directed at ethnic neighborhoods.<sup>15</sup> They also place advertisements in major newspapers, such as the *Los Angeles Times*,<sup>16</sup> promising "professional" immigration advice.<sup>17</sup>

Some of these consultants, no doubt, are providing valuable help to their clients, assisting them in immigration matters for a small fee.<sup>18</sup> The great number of complaints regarding the practices of the consultants, however, recently prompted Mayor Thomas Bradley of Los Angeles to remark,

There is a need to curb the abusive practices of . . . immigration consultants who prey on the discomforts and difficulties of aliens. My office has received numerous complaints about alleged . . . illegal acts on the part of some of the loosely regulated "immigration consultants."<sup>19</sup>

Little close study of the role of the immigration consultant has been undertaken.<sup>20</sup> This article will attempt to explore the "abusive practices" of the immigration consultant and consider possible remedies. The discussion will be confined to California,<sup>21</sup> typical of the southwestern states where much of the consultants' activity is located.<sup>22</sup>

## II. THE PROBLEM

### A. THE PRACTICES

The abusive practices of immigration consultants might be loosely categorized into three groups. The first is fraudulent, false and misleading acts by the consultant. Typically the alien has no grounds to immigrate, or to legalize his status, but the consultant takes his money anyway while promising "guaranteed results."<sup>23</sup> Conversely, the alien may have grounds to immigrate, but the consultant takes

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<sup>13</sup>Corde Carillo, *Immigration Frauds*, June, 1973 (unpublished report in Calif. Dept. of Consumer Affairs) [hereinafter cited as Carillo].

<sup>14</sup>Miller, *Beware of Coyotes: A Commentary on the Unauthorized Practice of Law*, 47 J. STATE BAR CALIF. 239 (1972) [hereinafter cited as Miller].

<sup>15</sup>*Id.*

<sup>16</sup>*See, e.g., Los Angeles Times*, Feb. 15, 1975, § 4, at 2, col. 3.

<sup>17</sup>Miller, *supra* note 14, at 239.

<sup>18</sup>Letter from Attorney Peter A. Schey, Legal Aid Society of San Diego, to author, Feb. 5, 1975, on file with U.C.D. L. Rev. [hereinafter cited as Schey letter].

<sup>19</sup>HEARINGS, *supra* note 8, at 168 (statement by Mayor Bradley).

<sup>20</sup>Letter from Romulo Lopez, member of staff of Senate Subcommittee on Representation of Citizen Interests, to author, Oct. 22, 1974, on file with U.C.D. L. Rev. [hereinafter cited as First Lopez letter].

<sup>21</sup>This is not to say that the problem does not exist in other states. *See, e.g.,* Senator Edward Brookes' remarks concerning English residents induced to immigrate to Massachusetts, 117 CONG. REC. § 44826 (1971).

<sup>22</sup>Miller, *supra* note 14, at 238.

<sup>23</sup>*Id.* at 239.

the alien's money never intending to perform.<sup>24</sup> In either case, the alien receives no papers and loses his money.<sup>25</sup> Some consultants promise fraudulently to provide letters containing work offers for their clients, at a price.<sup>26</sup> The alien agrees, but INS officials routinely reject such fraudulent letters and the alien is denied his visa.<sup>27</sup>

Second, many of these consultants who advertise as immigration specialists have little or no knowledge of immigration law, and make crucial mistakes in the preparation of immigration papers.<sup>28</sup> Although these consultants may sincerely desire to help their clients,<sup>29</sup> the results are the same as if they did intend to deceive: the clients lose money and receive no papers.<sup>30</sup> Very often the clients must hire an attorney to salvage the wreck which the uninformed consultant made of their applications for immigration.<sup>31</sup>

Finally, many consultants tend to charge exorbitant rates for assisting an alien with a problem that may involve no more than completing a few forms.<sup>32</sup> The average consultant's fee appears to run from \$300 to \$400.<sup>33</sup> Some, however, have been known to charge from \$1,700 to \$2,000 for "immigration advice."<sup>34</sup> In addition, some consultants bill their clients in a series of installments.<sup>35</sup> If at some point the client is unable to continue with payments, some consultants will stop work on the case.<sup>36</sup> Should the client wish to have another person represent him or her, the consultant will often refuse to return important documents to the alien until the full bill is paid.<sup>37</sup>

## B. THE CONSULTANTS

It is difficult to state with certainty the background or number of consultants in California. Some of the consultants working out of the barrios are Chicanos.<sup>38</sup> Others are ex-members of INS.<sup>39</sup> The Los Angeles phonebook alone lists thirty-four "Immigration and Natu-

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<sup>24</sup> HEARINGS, *supra* note 8, at 80 (statement by Attorney Sidney Broffman).

<sup>25</sup> *Id.*

<sup>26</sup> Schey Letter, *supra* note 18.

<sup>27</sup> *Id.*

<sup>28</sup> HEARINGS, *supra* note 8, at 80 (statement by Sidney Broffman).

<sup>29</sup> HEARINGS, *supra* note 8, at 252 (statement by Attorney Anita Castellanas).

<sup>30</sup> HEARINGS, *supra* note 8, at 80 (statement by Sidney Broffman).

<sup>31</sup> *Id.*

<sup>32</sup> Schey Letter, *supra* note 18.

<sup>33</sup> HEARINGS, *supra* note 8, at 32, 141 (statements by Delfino Varela and Octavio Martinez).

<sup>34</sup> Miller, *supra* note 14, at 239. *Los Angeles Times*, April 21, 1975, § 1, at 1, col. 1 [hereinafter cited as *Los Angeles Times*].

<sup>35</sup> Schey Letter, *supra* note 19.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Letter from Romulo Lopez, to Jose Maria Merino, Aug. 23, 1974, on file with U.C.D. L. Rev. [hereinafter cited as Second Lopez Letter].

<sup>39</sup> Pamphlet distributed by Carlson and Kaplan Inc., Los Angeles consultants.

ralization Counselors.”<sup>40</sup> Gary Manulkin, an attorney with One-Stop Immigration Center, a federally funded program in Los Angeles, estimates that there may be as many as 2,000 individuals and firms doing immigration consulting in California. Approximately 200 operate on a full-time basis with the rest only occasionally practicing in the field.<sup>41</sup> Out of this total number, it is even more difficult to estimate the number who are engaged in abusive practices. Manulkin estimates that only one out of every twenty consultants is engaged in totally legitimate work.<sup>42</sup>

### C. THE VICTIMS

The victims of the consultants' abusive practices generally come from South America, Mexico, France or Italy.<sup>43</sup> Because of California's proximity to Mexico, the assumption is that the majority of the victims in this state are from that country.<sup>44</sup> Some of the aliens wishing to immigrate meet all the requirements; however, an estimated eighty percent of those wishing to immigrate have no basis on which to become permanent resident aliens.<sup>45</sup>

The precise number of people victimized by the consultants is difficult to estimate. One reason is that the INS deports many of the victims.<sup>46</sup> Furthermore, many of the victims, both legal and illegal, are afraid to come forward and complain of the treatment they received.<sup>47</sup> The illegal alien, especially, fears that a complaint will attract the authorities and lead to his deportation.<sup>48</sup> For example, in Los Angeles some aliens, after going to a police station to complain, are reportedly detained in order for the immigration authorities to transport them to a detention center to determine if their status is legal or illegal.<sup>49</sup>

One-Stop Immigration Center sees one thousand to fifteen hundred clients a month.<sup>50</sup> Gary Manulkin approximates that of these,

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<sup>40</sup>Los Angeles Telephone Book, Yellow Pages (1974).

<sup>41</sup>*Los Angeles Times*, *supra* note 34.

<sup>42</sup>Telephone interview with Attorney Gary Manulkin, Jan. 23, 1975 [hereinafter cited as Manulkin Interview].

<sup>43</sup>Miller, *supra* note 14, at 239.

<sup>44</sup>Of the 85,062 immigrants legally admitted to California in fiscal year 1972, 35,085 of them were from Mexico. 1973 I.N.S. ANN. REP. Carrillo refers to the victims as Mexicans. Carrillo, *supra* note 13, at 1.

<sup>45</sup>Miller, *supra* note 14, at 239.

<sup>46</sup>*Id.*

<sup>47</sup>Letter from Don Hauptman, Dep't. of Consumer Affairs, to John T. Kehoe, Director, Dep't. of Consumer Affairs, June 22, 1973, on file with U.C.D. L. Rev.

<sup>48</sup>Los Angeles Police Dep't., Report on Immigration and Naturalization Consultants Within the City of Los Angeles, August, 1974 [hereinafter cited as Police Report].

<sup>49</sup>HEARINGS, *supra* note 8, at 13 (statements by Attorneys Robert L. Miller and David Cunningham).

<sup>50</sup>Manulkin Interview, *supra* note 42.

twenty-five to thirty bring complaints about immigration consultants.<sup>51</sup> In the three years since the Los Angeles Police Department set up Operacion Estafordes (Operation Swindlers), almost twenty-five percent of the consumer complaints received from the area's Spanish-speaking people have involved immigration matters, and most of these concern the immigration consultant.<sup>52</sup> The number of unreported complaints cannot be accurately estimated.

#### D. WHY THE SITUATION EXISTS

Many factors lead an alien to turn to the consultant and allow the consultant to take advantage of him. One significant factor may be the general lack of low-cost legal advice to aliens.<sup>53</sup> Very few attorneys in private practice have a working knowledge of immigration law or procedures.<sup>54</sup> Robert L. Miller, chairman of the Immigration Committee of the Los Angeles Bar Association, estimates that there are 50 immigration specialists in Los Angeles and another 100 lawyers occasionally operating in the field.<sup>55</sup> The vast majority of aliens with immigration problems are poor persons and could not afford to retain private counsel even if it were available.<sup>56</sup> Most legal-aid type programs do not provide immigration services.<sup>57</sup> Thus, the consultant may appear to be the only help available.

Furthermore consultants, unlike attorneys, are free to advertise. Such advertising, often in the aliens' native language, is important in attracting aliens.<sup>58</sup>

Significantly, most consultants are also notaries public.<sup>59</sup> In the civil law countries, the origin of most of the victims,<sup>60</sup> the notary public is a lawyer and a person of great prestige.<sup>61</sup> In this state, almost any citizen over the age of eighteen can become a notary.<sup>62</sup> Many consultants prominently display signs reading "Notary Public" or its Spanish equivalent, "Notario Publico".<sup>63</sup> Very often then, a

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<sup>51</sup> *Id.*

<sup>52</sup> *Los Angeles Times*, *supra* note 34.

<sup>53</sup> Second Lopez Letter, *supra* note 38.

<sup>54</sup> Schey Letter, *supra* note 18.

<sup>55</sup> *Los Angeles Times*, *supra* note 34.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> HEARINGS, *supra* note 8, at 255 (statement by Anita Castellanas). One firm, Carlson and Kaplan, previously advertised over the radio: "You never know when Immigration will come to knock on your door! Call today to Carlson and Kaplan for a free consultation before its too late!" *Los Angeles Times*, *supra* note 34. See text accompanying notes 100-105 for a discussion of the injunction recently obtained against Carlson and Kaplan.

<sup>59</sup> Miller, *supra* note 14, at 239.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> CAL. GOV'T. CODE § 8201 (West 1975 Supp.)

<sup>63</sup> Miller, *supra* note 14, at 239.

Mexican-born alien doing business with a consultant who advertises himself as "notario publico" is under the impression he is dealing with an attorney.<sup>64</sup> In many cases, it seems the notary does nothing to correct this mistaken belief.<sup>65</sup>

Finally, the alien, particularly the illegal alien, is an easy mark for fraudulent or abusive practices. He is ignorant both of his rights under U.S. laws and of the unlikelihood that he will be able to obtain permanent residency.<sup>66</sup> He is strongly motivated to remain in this country and is therefore likely and eager to believe false promises.<sup>67</sup>

### III. REMEDIES AVAILABLE UNDER EXISTING LAW

#### A. PRIVATE ACTIONS FOR MONEY DAMAGES AND INJUNCTIVE RELIEF

##### 1. DECEIT

Section 1709 of the California Civil Code<sup>68</sup> provides:

One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

Section 1710 of the Civil Code defines "deceit" as either the suggestion of a fact by one who does not believe it to be true, or has no reasonable grounds for believing it to be true, or the suppression of a fact which is likely to mislead, or a promise, made without the intent of performing it.<sup>69</sup> An expression of opinion may also be actionable when the declarant holds himself out as being specially qualified.<sup>70</sup>

Thus, when a consultant takes the alien's money, with assurances of successful immigration, knowing that the alien has no grounds to immigrate, the consultant is liable for deceit. This is also true when the consultant takes money with no intention of ever performing any immigration service, or when the consultant makes a statement about immigration procedure which he knows or should know is not true. The problem with bringing such an action, however, is that it involves two difficult requirements of proof. First, it is necessary to prove that the consultant knew or should have known that what he

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<sup>64</sup>*Id.*

<sup>65</sup>*Id.*

<sup>66</sup> ACLU REPORTS, *supra* note 3, at 41.

<sup>67</sup>*Id.*

<sup>68</sup> CAL. CIV. CODE § 1709 (West 1973). *See also* CAL. CIV. CODE § 1572 (West 1973) for a statutory definition of fraud. There is little, if any, distinction in California law between fraud and deceit. The statutory definition of each has no significant variation, and the courts use the terms interchangeably. *See, e.g.,* Ashburn v. Miller, 161 Cal. App. 2d 71, 526 P.2d 229 (1958).

<sup>69</sup> CAL. CIV. CODE § 1710 (West 1973).

<sup>70</sup> Harazim v. Lynam, 267 Cal. App. 2d 127, 130, 72 Cal. Rptr. 672 (1968).

was saying was untrue, or that he engaged in a misleading suppression of a fact.<sup>71</sup> Second, it must be shown that he made the statement in order to induce the other party to enter into a contract with him.<sup>72</sup> The elements of knowledge and intent are subjective and as such are difficult for the plaintiff to prove.<sup>73</sup>

In a recent case, *Elvira v. Guerrero*,<sup>74</sup> an immigration consultant told a permanent resident alien whose wife was in the country illegally that it would not be necessary for his spouse to return to her native country, Mexico, in order to legalize her status.<sup>75</sup> However, under section 245 of the 1952 Immigration and Naturalization Act, a native of the Western Hemisphere must return to her country and obtain a visa before she can become a permanent resident alien, assuming she meets the entry requirements.<sup>76</sup> Because this basic step was not followed, the woman's status was not changed for two and a half years. Finally it was necessary for her to hire another consultant, who took the proper steps to legalize her status.<sup>77</sup>

She and her husband then sued the consultant for fraud,<sup>78</sup> on the theory that the consultant had knowingly misrepresented what actions the client would have to take in order to induce her to pay him four hundred dollars for immigration services.<sup>79</sup> The action failed however, because the plaintiffs were not able to show that the consultant knew that the statement he made was false.<sup>80</sup> The judge found that the consultant was under the "mistaken belief" that plaintiff would not have to return to Mexico in order to regularize her status.<sup>81</sup> The case typifies the problems facing an aggrieved client attempting to recover from an immigration consultant on the grounds of fraud.

## 2. INJUNCTIVE RELIEF

Section 3369(2) of the California Civil Code<sup>82</sup> provides that an act

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<sup>71</sup> 23 CAL. JUR. 2d 11 (1963).

<sup>72</sup> *Id.*

<sup>73</sup> See PROSSER, TORTS 700 (4th ed., 1971).

<sup>74</sup> *Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974. Apparently no appellate decisions involving practices of the immigration consultant exist. While lower court decisions other than those mentioned in this article may exist, the normal research guides are of no help in obtaining them.

<sup>75</sup> *Id.*

<sup>76</sup> 2 GORDON & ROSENFELD, IMMIGRATION LAW AND PROCEDURE, § 7.7.

<sup>77</sup> *Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974.

<sup>78</sup> Brief for plaintiff at 6, *Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> CAL. CIV. CODE § 3369(2) (West 1973).

of unfair competition may be enjoined. Unfair competition is defined in section 3369(3)<sup>83</sup> as "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising . . ." Section 3369(5)<sup>84</sup> further provides that an action for injunctive relief may be brought by the Attorney General, a district attorney or an individual acting for himself or for the general public.

It is easier to make a case for relief under section 3369 than it is under section 1709, since the elements of deceit are not part of the cause of action under section 3369.<sup>85</sup> The essential test of what constitutes enjoined conduct is whether the public is likely to be deceived.<sup>86</sup>

In *Elvira v. Guerrero* the plaintiffs were able to obtain an injunction against the defendant.<sup>87</sup> The plaintiffs claimed that the act of the defendant in holding himself out as an expert in immigration matters, when he in fact was ignorant of immigration law, constituted an unfair business practice.<sup>88</sup> The court held that the defendant would be enjoined from representing himself as an expert or consultant in immigration matters until he had proved to the Immigration and Naturalization Service that he was familiar with and understood all of the laws and regulations pertaining to U.S. immigration matters.<sup>89</sup>

Injunctive relief is also available under sections 17500 and 17535 of the Business and Professions Code. Section 17500<sup>90</sup> prohibits the dissemination of untrue or misleading advertising which is known or should be known to be untrue and misleading. Section 17535<sup>91</sup> provides that an action for injunctive relief may be brought by the Attorney General, district attorneys, city attorney and prosecutor, and county counsel, or an individual acting for itself or the general public. Those consultants who advertise as "notario publico" with knowledge of its connotation to their Mexican clients<sup>92</sup> may be liable under this section.

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<sup>83</sup>CAL. CIV. CODE § 3369(3) (West 1973).

<sup>84</sup>CAL. CIV. CODE § 3369(5) (West 1973).

<sup>85</sup>*Barquis v. Merchants Collection Association of Oakland, Inc.*, 7 Cal.3d 94, 111, 101 Cal. Rptr. 745, 757, 496 P.2d 817, 829 (1972).

<sup>86</sup>*People ex rel. Mosk v. National Research Company of California*, 201 Cal. App. 2d 765, 772, 20 Cal. Rptr. 516, 521 (1962).

<sup>87</sup>*Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974.

<sup>88</sup>Brief for Plaintiff at 9, *Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974.

<sup>89</sup>*Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974.

<sup>90</sup>CAL. BUS. & PROF. CODE § 17500 (West Supp. 1975).

<sup>91</sup>CAL. BUS. & PROF. CODE § 17535 (West Supp. 1975).

<sup>92</sup>*Miller*, *supra* note 14, at 239.



## B. GOVERNMENTAL ACTIONS FOR CRIMINAL PUNISHMENT AND INJUNCTIVE RELIEF

### 1. INJUNCTIVE RELIEF

Under section 3369 and section 17535,<sup>93</sup> as discussed earlier, the Attorney General and district attorneys may bring actions for injunctive relief. In addition, under section 17535 civil penalties of six thousand dollars may be collected by the Attorney General or district, county or city attorneys.<sup>94</sup> Various provisions are made for the distribution of the fine to the state, county or city.<sup>95</sup>

Recent cases brought against immigration consultants have resulted in injunctions restraining the consultants from violations of section 3369 and section 17500. In *People v. Pan American Immigration and Naturalization Service and Paula Jara*<sup>96</sup> the superior court restrained the defendants from advertising or implying that the process of immigration was a simple matter of paperwork which defendant could take care of easily, that the defendant knew and had influence with many important immigration officials, and that defendant could arrange job offers for aliens to assure that they would not be excluded from immigration under section 212(1)(14) of the Immigration and Nationality Act.<sup>97</sup> In another case,<sup>98</sup> the court enjoined the defendants from advertising or otherwise stating that the defendant could purchase employer reference letters, or that the occupation of domestic housekeeper or seamstress could confer immigrant status upon aliens.<sup>99</sup>

Carlson and Kaplan, one of the largest consulting firms in the Los Angeles area, used a heavy advertising campaign in the foreign language media to attract customers and had more than 3,000 clients.<sup>100</sup> The Los Angeles City Attorney recently won a civil injunction against the firm for two counts of false and misleading advertising.<sup>101</sup> The firm pleaded nolo contendere to the advertising charges, was fined \$1,000, and agreed to summary probation of thirty months with thirteen conditions.<sup>102</sup>

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<sup>93</sup>CAL. CIV. CODE § 3369; CAL. BUS. & PROF. CODE § 17535 (West Supp. 1975).

<sup>94</sup>CAL. BUS. & PROF. CODE § 17535.5 (West Supp. 1975).

<sup>95</sup>*Id.*

<sup>96</sup>No. D31293, Super. Ct. County of Los Angeles, July 5, 1974.

<sup>97</sup>*Id.*

<sup>98</sup>*People v. Martinez*, No. C32518, Super. Ct. County of Los Angeles, Jan. 28, 1974.

<sup>99</sup>*Id.*

<sup>100</sup>*Los Angeles Times*, *supra* note 34.

<sup>101</sup>*People v. Carlson and Kaplan, Inc.*, No. 31 50 3622, Los Angeles Muni. Ct., Feb. 27, 1975, in *Los Angeles Times*, *supra* note 34.

<sup>102</sup>*Id.*

The conditions limit the content of the firm's advertisements.<sup>103</sup> They cannot advertise themselves as former immigration officers, nor can they claim that they will provide their clients with preferred treatment or special consideration from the INS.<sup>104</sup> This disposition of the case was criticized by some attorneys.<sup>105</sup>

## 2. CRIMINAL ACTIONS

### a. Petty and Grand Theft

Some consultants have been successfully prosecuted for petty and grand theft under sections 487<sup>106</sup> and 488<sup>107</sup> of the California Penal Code.<sup>108</sup> The definition of theft in section 484 of the Penal Code includes the taking of personal property by "false or fraudulent representation or pretense."<sup>109</sup> It is necessary to show that an actual intent to defraud existed at the time the false representations were made.<sup>110</sup>

### b. Unauthorized Practice of Law Misdemeanor

Section 6126<sup>111</sup> of the Business and Professions Code makes it a misdemeanor for a person not a member of the state bar to practice law. Although some consultants have been prosecuted under this theory,<sup>112</sup> it has been suggested that some prosecutors are not pursuing actions under this statute as vigorously as they might.<sup>113</sup>

One reason more consultants have not been prosecuted under this statute may be that the language of the statute is vague.<sup>114</sup> The statute forbids "the practice of law" but does not define what the practice of law is.<sup>115</sup> The case law does little to clarify the question. The courts have held that whether a person is practicing law is a factual question to be determined on a case-by-case basis.<sup>116</sup> In *People v. Merchants Protective Corporation*,<sup>117</sup> the California Supreme

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Robert L. Miller commented, "What they've done is show Carlson and Kaplan how to practice law without a license." *Los Angeles Times*, *supra* note 34. See text accompanying notes 120-151 for a discussion of the practice of law.

<sup>106</sup> CAL. PEN. CODE § 487 (West 1970).

<sup>107</sup> CAL. PEN. CODE § 488 (West 1970).

<sup>108</sup> Police Report, *supra* note 48.

<sup>109</sup> CAL. PEN. CODE § 484 (West 1970).

<sup>110</sup> *People v. Krupnick*, 165 Cal. App. 2d 755, 758, 332 P.2d 720, 722 (1958).

<sup>111</sup> CAL. BUS. & PROF. CODE § 6126 (West 1974).

<sup>112</sup> *People v. Gonzalez*, Crim. No. 140351, San Diego Muni. Ct., March 6, 1974; Police Report, *supra* note 48.

<sup>113</sup> HEARINGS, *supra* note 8, at 82 (statement by Sidney Broffman).

<sup>114</sup> Miller, *supra* note 14, at 240.

<sup>115</sup> HEARINGS, *supra* note 8, at 82 (statement by Sidney Broffman).

<sup>116</sup> *Baron v. City of Los Angeles*, 2 Cal.3d 535, 542, 86 Cal. Rptr. 673, 677, 469 P.2d 353, 357 (1970).

<sup>117</sup> 189 Cal. 531, 209 P.363 (1922).

Court stated:

[T]he practice of law is the doing and performing services in a court of justice in any matter depending [sic] therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured.<sup>118</sup>

In explaining why more unauthorized practice of law actions are not brought against consultants, Louis Traeger, a Deputy District Attorney of Los Angeles County, stated, "While lawyers and judges may know what constitutes the practice of law, no one else does. In my opinion, police agencies do not present unauthorized practice of law cases to prosecutors because they do not understand what constitutes an offense."<sup>119</sup>

### C. STATE BAR ACTION

The state bar has authority, under section 6030<sup>120</sup> of the Business and Professions Code, to enjoin any violation or threatened violation of section 6125. Enforcement officials may consider the definition of the practice of law to be vague. The state bar, however, has met with success in actions for the unauthorized practice of law brought recently against divorce consultants.<sup>121</sup> If the state bar is bringing the actions against divorce consultants, why does it not bring them against immigration consultants?<sup>122</sup>

One suggestion is that the state bar is more concerned about divorce consultants because the divorce consultants take more business from attorneys than do immigration consultants.<sup>123</sup> It might also be argued, however, that the divorce consultant is practicing law and the immigration consultant is doing something different.<sup>124</sup> Therefore, a comparison of the activities of the immigration consultant and the divorce consultant may be helpful. *State Bar v. Corey*<sup>125</sup> was the

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<sup>118</sup> *Id.* at 535, 209 P. at 365.

<sup>119</sup> See Final Report of the State Bar [of Calif.] Conference Committee on 1972 Conference Resolutions, Nos. 11-3 and 11-4, Definition of Unlawful Practice of Law, Remedies, Exhibit C, letter of April 1973 to committee [hereinafter cited as State Bar Final Report].

<sup>120</sup> CAL. BUS. & PROF. CODE § 6030 (West 1974).

<sup>121</sup> STATE BAR REPS., December 1974, at 1.

<sup>122</sup> HEARINGS, *supra* note 8, at 197 (statement by Attorney Herbert Nowlin).

<sup>123</sup> *Id.*; Interview with Robert L. Miller, Los Angeles, November 15, 1974 [hereinafter cited as Miller Interview].

<sup>124</sup> Andrew Richey of the State Bar Unauthorized Practices Committee is very active in the state bar's move against divorce consultants. See STATE BAR REPS., December, 1974. In a telephone interview in October, 1974, Mr. Richey stated to the author that he believed the immigration consultants were only filling out forms, not practicing law.

<sup>125</sup> No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

original test case brought against a divorce consultant.<sup>126</sup> In finding that the defendants had engaged in the practice of law, the superior court looked to these factors:<sup>127</sup>

1. The defendants justified their services on the grounds that there are not enough attorneys to provide these services for a low fee;
2. Defendant's advertisements;
3. The defendants determined from facts provided by their clients whether or not such facts justified their customers proceeding in propria persona;
4. The defendants prepared instruments affecting the property rights of their clients.

The defendants in *Corey* argued that the members of the legal profession had forced the proliferation of such businesses because they charged high fees.<sup>128</sup> The court held that this was an admission by the consultants that they were providing the services of an attorney, that is, legal advice.<sup>129</sup> Some immigration consultants have defended their work in much the same way, stating that their work is necessary because there are not enough attorneys to meet the demand, and because the attorneys' fees are much too high.<sup>130</sup>

The court in *Corey* stated that in order to determine what services the defendants performed for their clients, it was useful to inquire as to what services the defendants' advertisements claimed they would provide.<sup>131</sup> The divorce consultants held themselves out as providing "personal consultation" at "confidential appointments."<sup>132</sup> The court found the defendants were offering professional legal advice for a fee to their clients in a confidential relationship.<sup>133</sup> Some immigration consultants do not advertise so subtly. One group in Los Angeles advertised that the illegal alien "must confide in someone who really knows the basis of the laws . . . someone who will counsel you with true professionalism . . . We are that company."<sup>134</sup> These

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<sup>126</sup> STATE BAR REPS., December 1974.

<sup>127</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> See the form letters sent in May 1974 by the Latin American Association of Professional Immigration Consultants of California and the Mexican American Social Service to the Assembly Committee on Criminal Justice in opposition to AB 2701, in the Committee's files. See also testimony of Antonio Bueno before the Committee in opposition to AB 2701, April 21, 1974, notes taken by Robert L. Miller.

<sup>131</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Pamphlet distributed by Carlson and Kaplan, Inc., Los Angeles consultants,

consultants boast of their expertise in the law. They clearly are claiming to practice law.

The court in *Corey* reasoned that only an attorney was competent to determine from the facts of a divorce case whether a person is in a position to proceed in propria persona without risk of adverse legal repercussions.<sup>135</sup> At least one immigration consultant has stated that when he gets a difficult case, one that is not just "paper work," he will send the case to an attorney.<sup>136</sup> Apparently he is making the same kind of decision the defendants in *Corey* were making when they made the determination that a client could proceed in propria persona.

The divorce consultants had prepared contracts which the court found affected the property rights and other legal relationships between their customers and customers' spouses.<sup>137</sup> Language from *People v. Merchants Protective Corporation*<sup>138</sup> was quoted: The practice of law involves "the preparation of legal instruments and contracts by which legal rights are secured . . ." <sup>139</sup> The court held that only attorneys were competent to select the correct form from "the hundreds of forms available to them and where necessary to draft terms to make the contract uniquely appropriate to the particular customers."<sup>140</sup>

The immigration consultant prepares forms for his clients. Immigration law, however, is an extremely complicated legal area.<sup>141</sup> The consultant must decide, given the facts of the case, which of the many forms<sup>142</sup> available is appropriate for his client. It seems that the consultant, in deciding which form to use, is making the same decision the attorney makes when he decides which form is proper. The immigration form itself is an application for legal status within the country. The form, then, is a legal instrument by which legal rights are secured.

A point raised by the state bar in *Corey*, although not discussed by the court, was the amount charged by the defendants.<sup>143</sup> The defen-

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provided by Robert L. Miller. See text accompanying notes 100-105 for a discussion of the injunction recently obtained against Carlson and Kaplan.

<sup>135</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>136</sup> HEARINGS, *supra* note 8, at 139 (statement by Octavio Martinez).

<sup>137</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>138</sup> 189 Cal. 531, 535, 209 P. 363, 365 (1922).

<sup>139</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>140</sup> *Id.*

<sup>141</sup> ACLU REPORTS, *supra* note 3, at Appendix vi.

<sup>142</sup> See J. WASSERMAN, IMMIGRATION LAW AND PRACTICE, 31-132 (2d ed. 1973).

<sup>143</sup> Brief for plaintiff, *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct., 1973, reproduced in 38 UNAUTHORIZED PRACTICE NEWS 51 (1974).

dants claimed they were only filling in forms,<sup>144</sup> as many immigration consultants claim.<sup>145</sup> The plaintiff pointed out that the fee charged by the divorce consultant, seventy-five dollars, was far above the price a stenographer would charge for typing out a form.<sup>146</sup> The same could certainly be said for the average fee of three hundred to four hundred dollars many immigration consultants charge.<sup>147</sup> In *People v. Sipper*<sup>148</sup> the court found a real estate broker guilty of practicing law, partially because the fee he charged "clearly indicates that he considered he was called upon to do something more than the mere clerical work of typing in certain furnished information in a blank form."<sup>149</sup>

It appears that many immigration consultants are involved in the practice of law to the same extent as the divorce consultant in *Corey*.<sup>150</sup> Unfortunately, the state bar does not seem interested in pursuing the immigration consultant.<sup>151</sup>

#### IV. RECENT LEGISLATIVE RESPONSE<sup>152</sup>

##### A. GOVERNMENT CODE §§ 8211 and 8214.1

California lawmakers have taken notice of the problems created by many immigration consultants. This law, which became effective January 1, 1974, amended sections 8211 and 8214.1 of the Government Code, relating to notaries public.<sup>153</sup> The amendments provide that a notary may not charge, exclusive of signature verification, more than ten dollars for each set of forms relating to immigration, whether acting as a notary or not.<sup>154</sup> It also provides for suspension or revocation of a notary's commission if a fee of more than ten dollars is charged.<sup>155</sup> This does not apply to an attorney who is also a notary public and who is rendering professional services regarding immigration matters.<sup>156</sup>

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<sup>144</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>145</sup> Testimony of Delfino Varela and Attorney Paul Marter before the Assembly Committee on Criminal Justice in opposition to AB 2701, April 21, 1974, notes taken by Robert L. Miller. Miller Interview, *supra* note 123. Statement by John F. Sheffield in *State Bar Final Report*, *supra* note 119, at 2.

<sup>146</sup> *State Bar v. Corey*, No. 157163, Super. Ct. County of San Bernardino, Oct. 11, 1973.

<sup>147</sup> *See* note 33.

<sup>148</sup> 61 Cal. App. 2d Supp. 844, 142 P.2d 960 (1943).

<sup>149</sup> *Id.* at 846, 142 P.2d at 962.

<sup>150</sup> HEARINGS, *supra* note 8, at 197 (statement by Herbert Nowlin).

<sup>151</sup> HEARINGS, *supra* note 8, at 82 (statement by Sidney Broffman).

<sup>152</sup> It has been suggested that legislation in this field may be federally preempted. *See* 6 PAC. L.J. 182. This topic is beyond the scope of this article.

<sup>153</sup> CAL. GOV'T. CODE § § 8211 and 8214.1 (West Supp. 1974).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

This law is directed at the exorbitant fees charged by some immigration consultants who are also notaries. It has been suggested<sup>157</sup> that the notaries can avoid this statute by charging ten dollars for filling out the form, then charge four hundred dollars more for "immigration advice." A broad interpretation of the language "whether . . . acting in his capacity as a notary or not" can rectify this.<sup>158</sup> One major shortcoming of the statute, however, is that with no enforcement agency behind it, the statute goes essentially unenforced.<sup>159</sup>

#### B. GOVERNMENT CODE § 8219.5

This law, effective January 1, 1975, added section 8219.5 to the Government Code, relating to notaries public.<sup>160</sup> The new law requires that a notary public when advertising in Spanish as a "notario publico" post a specified notice in English and Spanish.<sup>161</sup> The notice must state that a notary public who is not an active member of the state bar cannot give legal advice. The notice must also state the fees set by statute which a notary may charge.<sup>162</sup> The law further provides that the Secretary of State shall suspend the commission of a notary public who fails to post such notice, and provides that the Secretary of State shall revoke the commission on the third offense.<sup>163</sup>

The bill was designed to prevent the title "notario publico" from misleading Spanish-speaking people.<sup>164</sup> As noted earlier,<sup>165</sup> many Spanish-speaking people because of the status of the "notario" in their home country, are led to believe that the "notario" is an attorney.<sup>166</sup> Rigorous enforcement of this law, recently urged by Assemblyman Garcia,<sup>167</sup> may stop some of the victimization of aliens. The implementation of the law creates problems, however, such as difficulties in notifying the more than 125,000 notaries in the state.<sup>168</sup>

#### C. PENAL CODE §§ 653.55-653.61

Penal Code §§ 653.55-653.61 began as Assembly Bill 2701,

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<sup>157</sup> Plaintiff's brief at 15, *Elvira v. Guerrero*, No. 266153, Super. Ct. County of Santa Cruz, Sept. 3, 1974.

<sup>158</sup> CAL. GOV'T. CODE § 8211 (West Supp. 1975).

<sup>159</sup> Schey Letter, *supra* note 18.

<sup>160</sup> CAL. GOV'T. CODE § 8219.5 (West Supp. 1975).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Press release by Assemblyman Garcia, author of the original bill, Assembly Bill 286, on file with U.C.D. L. Rev. [hereinafter cited as Garcia Press Release].

<sup>165</sup> See Part I.

<sup>166</sup> Press release, *supra* note 164.

<sup>167</sup> Press release by Assemblyman Garcia, Jan. 9, 1975, on file with U.C.D. L. Rev.

<sup>168</sup> Legislative analysis of AB 286, provided by Administrative Assistant to Assemblyman Garcia, on file with U.C.D. L. Rev.

authored by Assemblymen Moretti and Alatorre.<sup>169</sup> As originally written, the bill would have eliminated the immigration consultant completely from the field of immigration law.<sup>170</sup> The bill would have clarified the present definition of the practice of law and would have made it easier for the state bar and district attorneys to take action against the consultants who have been victimizing aliens.<sup>171</sup> The consultants were vigorously opposed to this bill and engaged in a campaign to block its passage.<sup>172</sup> The bill was amended five times<sup>173</sup> before the Governor signed it in September 1974.

As now written, the law makes it a misdemeanor for any person for compensation to knowingly make a false or misleading statement or assertion of fact in the preparation of an immigration matter.<sup>174</sup> "Preparation" is defined as including ". . . completing a form provided by a federal or state agency in an immigration matter."<sup>175</sup> The law provides for injunctive relief to prevent violations of the statute. Injunctions may be brought by the Attorney General, or any district, county or city attorney or prosecutor.<sup>176</sup> A \$1,000 fine is provided for an intentional violation of an injunction issued pursuant to the statute.<sup>177</sup> Any person who violates any provision of the statute is to be fined \$2,500,<sup>178</sup> with the statute providing for a system of distribution to the state, county and city.<sup>179</sup> An individual may bring an action acting for himself or the general public.<sup>180</sup> Any person injured by violation of the statute is allowed to recover his actual damages or \$500, whichever is greater, plus the costs of the suit, including reasonable attorneys' fees.<sup>181</sup>

In order to bring an action under this statute, the plaintiff must show the defendant knowingly made a false or misleading material statement. Although intent to induce reliance is not a necessary element of this cause of action, as it is in a cause of action for fraud, the requirement of showing knowledge makes an action under Penal Code §§ 653.55-653.61 almost as difficult to bring as an action for fraud. It does provide, however, for injunctive relief, fines, and ac-

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<sup>169</sup> Press release by Assemblyman Alatorre, Jan. 7, 1974, on file with U.C.D. L. Rev. [hereinafter cited as Alatorre Press Release].

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> See letters written to the Assembly Committee on Criminal Justice in opposition to AB 2701. Also, testimony before the Assembly Committee on Criminal Justice in opposition to AB 2701, April 21, 1974, notes by Robert L. Miller.

<sup>173</sup> Text of Assembly Bill 2701.

<sup>174</sup> CAL. PEN. CODE § § 653.55-653.61 (West Supp. 1975).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*



tion by state and local enforcement officers. Even so, some have suggested that Assembly Bill 2701 was so diluted as to render the new law ineffective.<sup>182</sup>

## V. DIFFICULTIES WITH EXISTING LAW

The foregoing discussion shows a number of remedies available for use against abusive immigration consultants. None of them seems entirely satisfactory. Any private action presents the problem of the general unwillingness of the victims to complain.<sup>183</sup> Actions for fraud, false advertising, theft by false pretenses and a Penal Code §§ 653.55-653.61 violation all involve the showing of a difficult mental element, knowledge or intent. Government Code §§ 8211, 8214.1, and 8219.5, aside from the limitations already discussed, apply only to those consultants who are notaries; a consultant could escape their force by resigning his commission, if necessary. Neither the state bar nor prosecuting officers seem willing to pursue the consultants on the grounds that they are practicing law. The injunctive relief under section 3369 and section 17535, when sought by state officials, seems to provide the most flexible remedy. Yet it has only been applied retroactively, after the initial harm has been done. As Los Angeles Chief of Police, E.M. Davis, stated,

Spasmodic prosecution of this type of case [involving immigration consultants] will not guarantee protection for future victims of unscrupulous immigration consultants . . . .<sup>184</sup>

New law in this area is needed to prevent future abuse.

## VI. PROPOSALS FOR CHANGE

It must be repeated that little comprehensive study has been done of the problems in the area of immigration consultants,<sup>185</sup> and this article will not attempt to provide a definitive remedy for the problem. However, the reforms proposed in this area will be explained, and an attempt will be made to list the important factors that must be considered by the Legislature before it can knowledgeably act.

### A. ELIMINATION OF THE CONSULTANT FROM THE FIELD OF IMMIGRATION LAW

One proposal would effectively eliminate the immigration consultant from the field of immigration law.<sup>186</sup> This would be accom-

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<sup>182</sup> HEARINGS, *supra* note 8, at 197-98 (statement by Herbert Nowlin); Miller Interview, *supra* note 123.

<sup>183</sup> See Part II B.

<sup>184</sup> Memorandum by E.M. Davis to Board of Police Commissioners, in Police Report, *supra* note 48.

<sup>185</sup> First Lopez Letter, *supra* note 20.

<sup>186</sup> Miller Interview, *supra* note 123; Manulkin Interview, *supra* note 42.

plished by clearly defining the practice of law to include the activities of the consultant.<sup>187</sup> This proposal would make it easier to bring unauthorized practice of law actions against consultants engaging in abusive practices.<sup>188</sup> Even the activities of the legitimate consultants, however, would be within the ambit of the statute and would be open to prosecution at any time.

The proposal began as a resolution of the California State Bar Association Conference of Delegates held in 1972. The resolution proposed to amend section 6126 of the California Business and Professions Code. The resolution provided that part of the practice of law would be defined as

... the study of the facts of the case and applicable laws coupled with the giving of advice, including the incidental drawing up and completion of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed forms by one whose remuneration, if any, is nominal, . . . and who does not hold himself out as specially qualified in law or legal or administrative procedure.<sup>189</sup>

The proponents of this solution feel it best to prevent all consultants from working in the field of immigration law.<sup>190</sup> These attorneys<sup>191</sup> point to 8 C.F.R. §1.1(i) and (k),<sup>192</sup> the federal immigration regulations defining the practice of law which serves as a model for the proposal. The federal regulations at 8 C.F.R. 292.1<sup>193</sup> also limit the persons who may represent others before the Immigration and Naturalization Service and the Board of Immigration Appeals to attorneys and people of good moral character appearing without remuneration.<sup>194</sup>

Those supporting the elimination of the consultants from this field offer a number of reasons why only attorneys should give immigration advice. The attorney must answer to the state bar and a Code of Ethics, while the consultant answers to no professional organization or code.<sup>195</sup> The client has a legal right to confidentiality, and an attorney may invoke the attorney-client privilege, but the consultant and his customer have no such rights.<sup>196</sup> Attorneys also generally carry malpractice insurance.<sup>197</sup> In addition, at least one practitioner has contended that the representatives' personal contacts in the field

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<sup>187</sup> Miller, *supra* note 14, at 241.

<sup>188</sup> Alatorre Press Release, *supra* note 169.

<sup>189</sup> State Bar Final Report, *supra* note 119.

<sup>190</sup> Miller Interview, *supra* note 123.

<sup>191</sup> Miller, *supra* note 14, at 241.

<sup>192</sup> 8 C.F.R. § 1.1(i)(k) (1974).

<sup>193</sup> 8 C.F.R. § 292.1 (1974).

<sup>194</sup> *Id.*

<sup>195</sup> Miller Interview, *supra* note 123.

<sup>196</sup> Manulkin Interview, *supra* note 42.

<sup>197</sup> *Id.*

of immigration law are often of the greatest help to a client; the attorney is likely to know more influential immigration officers than the consultant.<sup>198</sup> Attorneys' fees compare favorably to notaries' fees. The average consultant fee is estimated at three hundred to four hundred dollars,<sup>199</sup> while attorneys' fees for similar services run from three hundred and fifty dollars to seven hundred and fifty dollars.<sup>200</sup> Furthermore, many attorneys charge nominal or no consultation fees.<sup>201</sup> In contrast, one Los Angeles consultant firm charges two hundred dollars for a consultation.<sup>202</sup> The facts do not support the consultant's argument that his services are necessary because attorneys charge such high fees.

The consultants have opposed this proposal on the grounds that it will serve only the selfish interests of attorneys: that is, to eliminate competition.<sup>203</sup> The proponents deny that charge, asserting that the proposal is only for the public good.<sup>204</sup> A more basic problem exists, however. Some people fear that the elimination of all immigration consultants will leave the indigent and middle class alien with nowhere to go for immigration advice,<sup>205</sup> due to the current lack of qualified attorneys in this field.<sup>206</sup>

Some attorneys believe that the upcoming surplus of new young lawyers will fill the gap created by the elimination of the consultant.<sup>207</sup> Gary Manulkin feels that the free programs available now, if additionally funded by the money being used to prosecute the consultants, could easily provide the immigration service needed.<sup>208</sup> (Of course, the effectiveness of such a plan would depend on the availability and amount of such funds). He also advocates the training of law students and others as paraprofessionals under the supervision of an attorney.<sup>209</sup> Training programs could be instituted to provide more qualified attorneys,<sup>210</sup> while the bar pushed for more classes to be taught in immigration law at law schools.<sup>211</sup> In general, then, the proponents of this solution feel that the absence of the immigration

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<sup>198</sup> HEARINGS, *supra* note 8, at 245 (statement by Anita Castellanas).

<sup>199</sup> See note 33.

<sup>200</sup> ACLU REPORTS, *supra* note 8, at 39.

<sup>201</sup> HEARINGS, *supra* note 8, at 245 (statement by Attorney Gary Silbiger).

<sup>202</sup> HEARINGS, *supra* note 8, at 247 (statement by Anita Castellanas).

<sup>203</sup> See letters from various consultants to Assembly Committee on Criminal Justice in opposition to AB 2701. Testimony before the Assembly Committee on Criminal Justice, April 21, 1974, notes taken by Robert L. Miller.

<sup>204</sup> HEARINGS, *supra* note 8, at 78 (statement by Sidney Broffman).

<sup>205</sup> See, e.g., HEARINGS, *supra* note 8, at 85 (statement by Attorney Andrew K. Dolan).

<sup>206</sup> See Part I B.

<sup>207</sup> HEARINGS, *supra* note 8, at 86, 151 (statements by Sidney Broffman and Judge Armond Jewell).

<sup>208</sup> Manulkin Interview, *supra* note 40.

<sup>209</sup> HEARINGS, *supra* note 8, at 89, 91 (statement by Gary Manulkin).

<sup>210</sup> HEARINGS, *supra* note 8, at 53 (statement by Romulo Lopez).

<sup>211</sup> *Id.* at 54.

consultants will not cause a lack of immigration advice to aliens.

### B. REGULATION BY LICENSING<sup>212</sup>

Many of the consultants themselves have suggested that the state impose some sort of regulation.<sup>213</sup> Many of the proposals are rather vague.<sup>214</sup> One suggestion has been to license the consultants in the same manner tax preparers are licensed.<sup>215</sup> The tax preparer, however, is not required to show any particular level of competency before he obtains his license.<sup>216</sup> In view of the grave problems consultants create by giving erroneous advice, strict guidelines for qualification are crucial.<sup>217</sup> Such guidelines might include testing procedures and special education.<sup>218</sup>

Some consultants have organized themselves into a National Association of Immigration Consultants.<sup>219</sup> The association has about one hundred members at present, most from the Southern California area.<sup>220</sup> This group proposes that consultants be licensed in the same manner as tax preparers.<sup>221</sup> More importantly, however, the group desires to establish a binding code of ethics for consultants.<sup>222</sup> This is perhaps in response to the argument that while attorneys are answerable to the state bar, the immigration consultant answers to no professional group. At any rate, the group must come forward with some definite proposals as to what this code of ethics may contain, and how the code would be enforced, before an analysis of the group's potential effect on the practices of immigration consul-

<sup>212</sup> The Los Angeles City Council is considering a licensing proposal, but the requirements for obtaining a license would be a certificate from the Federal government based on 8 C.F.R. § 1.1(i)(k) (1974), and 8 C.F.R. § 292.1 (1974). The effect of this would be to eliminate everyone except attorneys and charitable organizations. The Los Angeles proposal, as it now stands, is really a proposal for the elimination of the consultants, rather than regulation. Analysis of Proposed Legislation — Immigration Consultants — Council File No. 72-431, memorandum from the Chief of Police to the Board of Police Commissioners.

<sup>213</sup> See letters from various consultants to Assembly Committee on Criminal Justice in opposition to AB 2701; HEARINGS, *supra* note 8, at 140 (statement by Octavio Martinez).

<sup>214</sup> See letters from Lynwood Community Center, April 16, 1974, and from Ralph Ruiz, May 1974, to the Assembly Committee on Criminal Justice, suggesting that the consultants be placed in the Bureau of Professional and Vocational Standards.

<sup>215</sup> Letter from Imperial Center to Assembly Committee on Criminal Justice (April 15, 1974).

<sup>216</sup> CAL. BUS. & PROF. CODE §§ 9891-9891.40 (West Ann. 1964 & Supp. 1975).

<sup>217</sup> Statement by Albert R. Garcia, June 5, 1974, in opposition to AB 2701, from files of Assembly Committee on Criminal Justice.

<sup>218</sup> HEARINGS, *supra* note 8, at 147 (questions by John Van De Kamp and answers by Octavio Martinez); telephone interview with Octavio Martinez, Feb. 4, 1975.

<sup>219</sup> *Los Angeles Times*, *supra* note 41.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

tants can be made.

## VII. CONCLUSION

At this time too little is known about the nature and extent of the problems the immigration consultant creates for any definitive conclusions to be drawn. The Legislature should undertake a close study of the situation, giving consideration to the following factors:

1. The extent of fraudulent and abusive practices by consultants. If there are as few legitimate consultants as Gary Manulkin believes,<sup>223</sup> perhaps the most efficient solution would be to eliminate them altogether. On the other hand, if there is a large group of honest, competent consultants, their rights should certainly be considered in any legislation that is proposed.

2. The feasibility and effectiveness of licensing the consultant. The costs involved in establishing testing procedures and a professional organization or a state regulatory agency must be considered. It must also be asked whether a testing procedure would prevent fraudulent activities and the giving of erroneous advice. Furthermore, even given the feasibility and effectiveness of such a proposal, it may be questioned whether licensing will provide the public with the safeguards inherent in dealing with an attorney.<sup>224</sup> Assuming the problems of qualification and accountability have been met, attorneys may still claim that their malpractice insurance and the attorney-client privilege protect the client far more than mere licensing.

3. The extent to which aliens will go without any immigration assistance whatsoever if the consultants are eliminated. It is unclear whether the state bar and the programs available now would be able to meet the needs of the aliens. The United States Senate Judiciary Committee's Subcommittee on Representation of Citizen Interests began a study on making legal services in the field of immigration law available to all persons.<sup>225</sup> This study, currently continued by the Subcommittee on Constitutional Rights, should prove quite helpful to the State Legislature in making its determination.

4. The question of whether the consultants are practicing law. The Legislature may decide they are, but only in a limited and technical sense. If so, the question then arises whether they should be allowed to continue if it can be shown that the legitimate consultants are providing a valuable service.

These questions must be answered before an equitable and effective remedy can be fashioned. Whatever the final answer may be, the victimization of California's illegal and resident aliens must be stopped.

*Patricia Shuler*

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<sup>223</sup> See notes 52 & 53.

<sup>224</sup> See Part V A.

<sup>225</sup> HEARINGS, *supra* note 8, at 46 (statement by Romulo Lopez).

