**RECLAIMING THE VISION – A PLAN FOR ACTION**

**BY PAUL WICKHAM SCHMIDT**

**UNITED STATES IMMIGRATON JUDGE (Retired)**

**The George Washington Law School Immigration Clinic**

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**Good afternoon, and thanks so much to you and my good friend and Alexandria neighbor Professor Alberto Benitez for inviting me. I want to express my deep appreciation for all of the great help that your Clinic gave to vulnerable migrants and to the Judges of the U.S. Immigration Court in Arlington, VA in carrying out our due process mission over the years that I was on the bench, from 2003 to 2016. I’m also delighted that the amazing Paulina Vera, a “distinguished alum” of the Arlington Immigration Court Internship Program is your Assistant Instructor.**

**Professor Benitez tells me that all of you have read my recent article from *Bender’s Immigration Bulletin* entitled “Immigration Courts: Reclaiming the Vision.” I of course was referring to the noble vision of “being the world’s best administrative tribunals guaranteeing fairness and due process for all.”**

**As you also know, my article set forth a “five step” program for achieving this: 1) a return to Due Process as the one and only mission – ditching the current political manipulation of the courts; 2) an independent Article I Court structure, to replace the current outmoded “agency structure” in the DOJ: 3) professional court management along the lines of the Administrative Office for U.S. Courts and merit-based selection of judges; 4) an independent appellate body that functions in the manner of an Article III court, not as an “Agency Service Center;” and 5) an e-filing system to replace the current “files in the aisles.”**

**The question is how do we get there from here. Sadly, the individual who *should* be pushing these reforms, our Attorney General Jeff Sessions, has shown *absolutely no interest* in meaningful court reforms or protecting due process, beyond rather mindlessly proposing to throw many more new untrained judges into an already dysfunctional and disturbingly inconsistent judiciary and to force a system already careening out of control to “pedal even faster.” That’s a program for failure. Moreover, in my view, Sessions has demonstrated through his public statements and actions to date a clear pro-enforcement and anti-immigrant bias that makes him the wrong individual to be in change of a due process court system.**

**The other group who should be solving this problem is Congress. Immigration Court reform should be a bipartisan “no-brainer.” Both sides of the “immigration debate” should want a fair and efficient Immigration Court system that fully complies with due process, gets the results correct, and doesn’t accumulate huge backlogs. Unfortunately, however, Congress currently seems preoccupied with other issues that well might be less important to our country but more “politically expedient.” Although there is a fine draft “Article I Bill” floating around “The Hill,” prepared by the Federal Bar Association with input from the National Association of Immigration Judges, to date I am aware of no actual Congressional sponsor who has “thrown it in the hopper.”**

**So, do we abandon all hope? *No, of course not!* Because there are hundreds of newer lawyers out there who are former Arlington JLCs, interns like Paulina, my former students, and those who have practiced before the Arlington Immigration Court, and folks like you who have had the great leadership of Professor Benitez and others like him in Immigration, Refugee, and Asylum clinics throughout the country!**

**They form what I call the “New Due Process Army!” And, while *my* time on the battlefield is winding down, *they are just beginning the fight!* They will keep at it for years, decades, or generations -- whatever it takes to force the U.S. immigration judicial system to live up to its promise of “guaranteeing fairness and due process for all!”**

**What can *you* do to get involved *now*? The overriding due process need is for *competent representation* of individuals claiming asylum and/or facing removal from the United States. Currently, there are not nearly enough pro bono lawyers to insure that everyone in Immigration Court gets represented.**

**And the situation is getting worse. With the Administration’s planned expansion of so-called “expedited removal,” lawyers are needed at *earlier* points in the process to insure that those with defenses or plausible claims for relief *even get into* the Immigration Court process, rather than being summarily removed with little, if any, recourse.**

**Additionally, given the pressure that the Administration is likely to exert through the Department of Justice to “move” cases quickly through the Immigration Court system with little regard for due process and fundamental fairness, resort to the Article III Courts to require fair proceedings and an unbiased application of the laws becomes even more essential. Litigation in the U.S. District and Appellate Courts has turned out to be effective in forcing systemic change. However, virtually no unrepresented individual is going to be capable of getting to the Court of Appeals, let alone prevailing on a claim.**

**So, what you are doing here at the GW Immigration Clinic *directly supports* the Immigration Court reform movement by insuring that the system will not be able to continue to run over the rights of the unrepresented or underrepresented and that individuals who are unfairly denied relief at the Immigration Court and BIA levels are positioned to seek review in the independent Article III Courts.**

**I also have been working with groups looking for ways to expand the “accredited representative” program, which allows properly trained and certified individuals who are not lawyers to handle cases before the DHS and the Immigration Courts while working for certain nonprofit community organizations, on either a staff or volunteer basis. Notwithstanding some recently publicized problems with policing the system, which I wrote about on my blog** [immigrationrcourtside.com](http://immigrationrcourtside.com)**, this is a critically important program for expanding representation in Immigration Courts. Additionally, the “accredited representative” program is also an *outstanding opportunity* for retired individuals, like professors, who are not lawyers to qualify to provide pro bono representation in Immigration Court to needy migrants thorough properly recognized religious and community organizations.**

**Even if you are not practicing or do not intend to practice immigration law, there are many outstanding opportunities to contribute by taking pro bono cases. Indeed, in my experience in Arlington, “big law” firms were some of the major contributors to highly effective pro bono representation. It was also great “hands on” experience for those seeking to hone their litigation skills.**

**Those of you with language and teaching skills can help out in English Language Learning programs for migrants. I have observed first hand that the better that individuals understand the language and culture of the US, the more successful they are in navigating our Immigration Court system and both assisting, and when necessary, challenging their representatives to perform at the highest levels. In other words, they are in a better position to be “informed consumers” of legal services.**

**Another critical area for focus is *funding* of nonprofit community-based organizations and religious groups that assist migrants for little or no charge. *Never* has the need for such services been greater.**

**But, many of these organizations receive at least some government funding for outreach efforts. We have already seen how the President has directed the DHS to “defund” outreach efforts and use the money instead for a program to assist victims of crimes committed by undocumented individuals.**

**Undoubtedly, with the huge emphases on military expansion and immigration enforcement, to the exclusion of other important programs, virtually all forms of funding for outreach efforts to migrants are likely to disappear in the very near future. Those who care about helping others will have to make up the deficit. So, at giving time, remember your community nonprofit organizations that are assisting foreign nationals.**

**The Federal Bar Association (“FBA) has been a strong moving force for court reform resulting in an Article I U.S. Immigration Court. So, becoming a “student member” of the FBA and getting involved with our local chapter is another way to support reform.**

**Finally, as an informed voter and participant in our political process, *you* can advance the cause of Immigration Court reform and due process. For the last 16 years politicians of *both parties* have largely stood by and watched the unfolding due process disaster in the U.S. Immigration Courts without doing anything about it, and in some cases actually making it worse.**

**The notion that Immigration Court reform must be part of so-called “comprehensive immigration reform” is simply *wrong.* The Immigration Courts *can* and *must* be fixed *sooner* rather than later, regardless of what happens with overall immigration reform. It’s time to let your Senators and Representatives know that we need *due process reforms* in the Immigration Courts as one of our *highest national priorities*.**

**Folks the U.S Immigration Court system is on the verge of collapse. And, there is every reason to believe that the misguided “enforce and detain to the max” policies being pursued by this Administration will drive the Immigration Courts over the edge. When that happens, a large chunk of the entire American justice system and the due process guarantees that make American great and different from most of the rest of the world will go down with it.**

**In conclusion, I have shared with you the Court’s noble due process vision and my view that it is not currently being fulfilled. I have also shared with you my ideas for effective court reform that would achieve the due process vision and how *you* can become involved in improving the process.**

***Now is the time to take a stand for fundamental fairness'! Join the New Due Process Army!*  *Due process forever!***

**Thanks again for inviting me and for listening. I’d be happy to take questions or listen to suggestions.**

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