

## ANOTHER PERSPECTIVE ON IRA GOLLOBIN: VISIONARY ARCHITECT OF CHANGE

By Mark R. von Sternberg

When I first met Ira Gollobin in the late 80's, he had already risen to an exceptional level of renown, combining a high level of scholarly achievement with significant success in the field of practical litigation. Among other things, Ira had already organized the judicial attack against restrictions on Haitian asylum seekers which had met with so much success in *Haitian Refugee Center v. Smith*; he had served with distinction as general counsel to the American Committee for the Foreign Born; and he had written a highly influential treatise on Marxian political and economic theory, *The Materialist Dialectic: Its Laws, Categories and Practice*, as well as a highly useful autobiographical study, *Winds of Change: An Immigration Lawyer's Perspective on Fifty Years*.

Jim Haggerty, then a Regional Director of the Migration and Refugee Services Division of the United States Conference of Catholic Bishops, first introduced me to Ira. Ira had a long history of working with public interest agencies such as USCCB on the Haitian dilemma. The plight of the Haitians involved one of the United States' first experiments with the summary treatment of asylum claims by those who were a part of a regional mass influx.

At the time, I was chairing a *pro bono publico* committee at the Archdiocese of New York. The members of the committee were most interested in hearing what Ira had to say because we were at the time dealing with another mass influx of our own, -- one which resembled in many of its features the plight of Haitians under the Duvaliers, -- Salvadoran refugees who had been specifically targeted in a brutal and inhuman civil war. As they had with the Haitians, Legacy INS took the position that most of our clients were running from economic conditions (or, at best, conditions of indiscriminate violence), -- and were not fleeing targeted persecution. The denial rate with respect to Salvadoran refugees was extreme, approaching 100%.

When I invited Ira to address our group, I was not certain that he would accept. I feared that he would be too busy, and would not have time to advise attorneys who were, for the most part, fighting an extremely uphill battle before U.S. immigration authorities on behalf of a largely forsaken group. But my anxieties were misplaced. It was Ira's nature always to have time for such excluded classes, and for the attorneys representing them. As he would show us on successive occasions, Ira always had time; if he did not have it, he would make it. He accepted the invitation promptly and gracefully. When Ira eventually appeared before us, I was struck immediately by his air of quiet authority. Ira was there to impart to us the outlines of a practical strategy derived from his years of experience: broad theoretical knowledge would be merged with an expert's familiarity concerning the administrative, judicial and legislative processes.

The strategy Ira outlined centered on a policy of tenacity and patience. Specifically addressing the complex litigation surrounding the Haitian influx, he acknowledged that, in its initial phases, the litigation looked bleak from the perspective of the Haitians. It was only after time, and the opportunity to demonstrate the unfairness of the administrative process towards these asylum seekers, that judicial opinion began to shift. (The complaint in *Haitian Refugee Center v. Smith* set forth some of the more glaring procedural injustices: mass scheduling of asylum interviews; failure to maintain verbatim transcripts; failure to detail the grounds of denial of asylum claims;

arbitrary and erroneous classification of all claims as lacking in substance; failure to make decisions available for inspection. According to one perhaps apocryphal account, INS had devised an internal form for processing Haitian asylum claims; at the bottom of the form where the entries for approval or denial were supposed to appear, there was only one such entry, and that was for denial).

Ira recounted this swaying of the judicial mind with a view both to informing us and giving us hope. At the end of the day, of course, the Fifth Circuit agreed with the lower court's decision: Duvalier had so infused State power into everyday life, had so made substantial elements of the Haitian public weak so that he could remain strong, that struggles which appeared to be economic on their face were in effect political. It was a stirring victory for the Haitians that would play a significant role when the next influx of Haitians came in the early 90's, this time occasioned by the deposition of Jean Bertrand Aristide and his replacement by a military junta.

Ira's confidence in the capacity of litigation to produce just results was, perhaps, his principal legacy. It is of moment that this was in effect what happened to a degree with the Haitians when, in 1986, Congress passed section 202 of the Immigration Reform and Control Act, -- the section dealing with Haitian entrants. A similar evolution followed the deposition of Jean Bertrand Aristide. At first Legacy INS took the position that only leaders within the cadres of Aristide's followers were in a position of differential risk. In the wake of substantial struggles at the administrative level, however, this position ultimately weakened as the INS was forced to look more broadly at evidence of country conditions and to accept that rank and file members of pro-Aristide groups were similarly in danger. As had the Haitian influx in the early 80's, that taking place in the early 90's also resulted in the passage of ameliorative legislation in the form of the Haitian Refugee Immigration Fairness Act, which provided increasing numbers of Haitian refugees with a path to lawful permanent resident status.

And Ira was largely right about the Salvadorans as well, although it was extremely difficult to see this at the time. The virtual wholesale rejection of Salvadoran asylum claims was followed by a strange administrative response, as prolonged litigation before the immigration courts began to make itself felt. Large numbers of appeals from denials by immigration judges were kept "on hold" at the Board of Immigration Appeals without a decision. By the early nineties Salvadoran asylum claims had aggregated to a considerable number while doubts about the nature of the process which had led to these denials continued to grow. Then in 1991, a class action brought in the Northern District of California led to a ground-breaking settlement.

In *American Baptist Church v. Thornburgh*, Legacy INS and the Executive Office for Immigration Review virtually consented that they had improperly taken into consideration United States foreign policy objectives in determining eligibility for asylum, and permitted Salvadoran (and Guatemalan) asylum seekers to have their claims adjudicated de novo. Congress also responded to the Salvadoran plight by enacting as a part of IMMACT specific provisions which would permit qualifying Salvadorans to apply for "legalization". The long struggle was finally brought to a tentative form of closure with the passage of the Nicaraguan Adjustment and Central American Relief Act, which provided that Salvadorans (and Guatemalans) who could meet certain entry and filing requirements could seek a form of humanitarian relief based on a showing of extreme hardship if returned.

Ira and I had an opportunity to rehash some of these developments over dinner towards the end of the year 2000. As he had during the occasions when he had addressed our group, Ira provided many fascinating anecdotes arising from the numerous litigations he had taken part in. And, again, his faith emerged that the litigation process could produce “winds of change”, -- arising perhaps not so much from the process itself but rather from the capacity of that process to reveal the unfairness with which certain isolated groups in desperate need of humanitarian assistance could be treated. Ira was always solicitous of that need, whether in acting as counsel in the litigation itself, or advising other attorneys and providing them with a basis for hope in their own struggles. And it is this feature of Ira’s character, his always sound instinct to act as the “good Samaritan”, which has and will continue to inspire both myself and the other members of the practicing immigration bar who so deeply admired him.