

# The Hmong Campaign for Justice: A Practitioner's Perspective

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*In the post-civil rights era, a chasm has evolved between progressive race scholars and civil rights practitioners with respect to preserving the civil rights of communities of color. Focusing on the Hmong campaign against welfare reform, the author argues that political and rebellious lawyering can bypass the disjunction between practitioners and academics to address the immediate needs of minority communities. The author presents a chronological account of the Asian Law Caucus' advocacy on behalf of the Hmong community, which resulted in public recognition of the Hmong communities' military service on behalf of the U.S. during the "quiet war" in Laos from 1960-1975, as well as continued government assistance. The author argues that the Hmong campaign for justice demonstrates that political and rebellious lawyering is an optimistic alternative to addressing the current attacks on communities of color, despite the disagreement between race scholars and practitioners in preserving civil rights. The author encourages academic allies to build true critical race praxis and collaborate with practitioners in taking proactive steps towards social justice.*

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*"There existed a chasm between the rhetoric of equal justice and the reality of people of color. The chasm was clearly seen in the justice system especially for Asian Pacific Americans and we felt an urgent need to do something about it."* – Attorney Dale Minami, on the impetus for the creation of the Asian Law Caucus.<sup>1</sup>

*"Why the disjunction? Why the dissociation? And what might be done? Put another way: In post-civil rights America, how might theories, lawyers, and activists bridge both the 'gap of chasmic proportions' between progressive race theory and political lawyering practice and the growing divide between law and racial justice?"* – Professor Eric Yamamoto, raising the question of the divide between practitioners and theorists.<sup>2</sup>

#### INTRODUCTION: "GAPS OF CHASMIC PROPORTIONS"

Raising the controversial *Ho v. San Francisco Unified School District* affirmative action case as a point of discussion, Professor Eric Yamamoto notes that "progressive race theorists have not joined lawyers and activists behind the scenes or in the litigation trenches . . . [n]or has their work, which critically interrogates questions of race, culture, and law, informed the framing, concepts, or language of the suit."<sup>3</sup> The work of contemporary progressive theorists has been characterized by a leading political lawyer as "intriguing, but not particularly helpful."<sup>4</sup>

Compared with the midstages of the civil rights movement, when there was a stronger connection between progressive academic theory and civil rights practice, the post-civil rights era has been dominated by an alliance between neoconservative theorists, judges, think tanks, politicians, and activists, which has eroded the victories of the previous era.<sup>5</sup> As neoconservative groups have worked hand-in-hand with each other to launch populist and legal challenges to hard-won civil rights, progressive "race scholars [have] adopted an increasingly critical posture . . . develop[ing] sharp critiques, not only of neoconservative race theory and its potent impact on law and politics, but also of liberal legal theory and civil rights law."<sup>6</sup> Some critical race theorists have even questioned the real impact of landmark civil rights litigation such as *Brown v. Board of Education* and the wisdom of looking to the law as a means for social change in the future.<sup>7</sup> This disjunction between the progressive race

1. Dale Minami, quoted in *RAFU SHIMPO*, April 19, 1997, at 3 (on the 25<sup>th</sup> anniversary of the founding of the Asian Law Caucus).

2. Eric Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 828-29 (1997).

3. *Id.* at 825.

4. *Id.* at 834 (citing Dale Minami).

5. See, e.g., National Committee for Responsive Philanthropy, *\$1 Billion for Ideas: Conservative Think Tanks in the 1990s*, March 12, 1999, available at <<http://www.ncrp.org/pst/pressreleases/thinktanks.htm>>; Dan Morgan, *Think Tanks: Corporations' Quiet Weapon: Nonprofits' Studies, Lobbying Advance Big Business Causes*, WASH. POST, January 29, 2000, at A1.

6. Yamamoto, *supra* note 2, at 834 (emphasis added).

7. See Richard Delgado and Jean Stefancic, *Symposium: Brown v. Board of Education after*

scholars and the civil rights practitioners is what some have referred to as a “gap of chasmic proportions.”<sup>8</sup> Though born of the same movement, frontline practitioners have increasingly relied upon the courts to enforce the civil rights of communities of color, while progressive race theorists have become increasingly academic and obscure. As a result, the two have largely become strangers to one another, with far-reaching consequences.

As Professor Yamamoto notes, the current practice of civil rights law often does not benefit from the critical race theory developed by academics. But perhaps even more importantly, the failure of the two groups to establish a common progressive civil rights agenda has forced frontline attorneys to fight what has become a largely defensive and reactive war. Over the past decade, the vast majority of civil rights battles over undocumented immigrants, affirmative action, welfare reform, and bilingual education have been waged in our “homeland,” over civil rights bridges we crossed long ago. The strategic assault of the conservative alliance has produced a highly successful “divide and conquer” strategy of separating documented from undocumented immigrants, legal permanent residents from citizens, gays and lesbians from people of color,<sup>9</sup> and immigrants from African Americans. Without a clear vision of the civil rights landscape, we have been recruited in local skirmishes to fight against ourselves. Indeed, without the support of progressive academics, we have had our agendas and communities redefined to the point where our own words are used against us, where the words and ideas of Dr. Martin Luther King Jr. are perverted into anti-affirmative action rhetoric, and where we have been robbed of our language of justice to such an extent that we are silenced as a community.<sup>10</sup>

So why do we not bridge this chasm between progressive thought and action? The reasons are varied. Progressive academics have explained that they are too much under attack within their profession, that they have little experience with political activism and community struggles, and that their

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*Forty Years: Confronting the Promise: The Social Construction of Brown v. Board of Education: Law Reform and the Reconstructive Paradox*, 36 WM. AND MARY L. REV. 547, 568-69 (1995).

If we are right, reformers should hesitate to place much faith in the legal system as the primary instrument for their agendas. Law is relatively powerless to effect social revolutions as both theory and history, including the case of *Brown*, demonstrate. Everything must change at once, so that a far greater focus than the merely legal is necessary before reform begins to be possible. Because the reconstructive paradox has greatest force with respect to courts, reformers ought to reserve judicial activism for the later stages of a revolution, using courts for the final mopping up steps to secure a social advance that society has already begun to accept.

Litigation is expensive and frustrating if resorted to at the wrong time. We urge that reformers reconsider the appropriate time to use it. If employed too early, as it arguably may have been with *Brown*, it leads to false celebration, then disillusionment by persons who, like African Americans, have waited too long to see their just demands met—then betrayed.

*Id.*

8. Yamamoto, *supra* note 2, at 835 (citing Margaret M. Russell, *Legal Education and Practice: De Jure Revolution?*, 93 MICH. L. REV. 1173, 1175 (1995)).

9. See, e.g., Julie Chao, *Korean Churches Enter Politics over Gay Initiative; Join Christian Coalition Fight to Cut Benefits, Drop Term "Sexual Orientation,"* S.F. EXAMINER, January 10, 2000, at A1.

10. See Yamamoto, *supra* note 2, at 828-29.

jobs are simply to produce theory for theory's sake.<sup>11</sup> Civil rights practitioners, on the other hand, have countered that their failure to engage in progressive race theory results from such factors as inertia on the part of attorneys, the lag time on the part of academia in producing relevant analysis, a lack of energy to read difficult critical theory, and impracticality.<sup>12</sup> While these excuses certainly have a ring of truth, they do not explain the successful alliance between neoconservative attorneys, politicians, and theorists.<sup>13</sup>

But of even greater concern than the practical barriers, some progressive academics have raised the philosophical and ideological question of whether they should cooperate with frontline attorneys at all. According to some, the "traditional civil rights law approach to social change . . . contributes in the long run to social and political stagnation and even regression . . . ; the approach encourages a false belief in incremental progress that disguises the profound need for social structural change."<sup>14</sup> This school of thought contends that social change can come only when there is a convergence of interests between the needs of the minority and the will of the majority, and therefore any momentary victory through the courts is only fleeting in substance and more likely to arouse a majority backlash.<sup>15</sup>

The problem is that while we can debate the intangible, but real harms caused by the chasm between progressive theorists and practitioners, we cannot ignore the daily injuries done to our communities by orchestrated assaults on their rights and by barriers to the pursuit of legal recourse. Families that are being unlawfully evicted, working in hazardous sweatshops, facing deportation, or being denied basic life-sustaining benefits do not care whether the change is temporary or systemic; they are concerned with the realities of food, shelter, health and employment. Life must go on even in the absence of an alliance with the academics; that is, a true critical race praxis combining "critical, pragmatic, socio-legal analysis with political lawyering and community organizing."<sup>16</sup> Frontline community advocates have turned instead to their clients and their communities for centering and direction. While academics continue to question the value of "regnant lawyering," many frontline attorneys have evolved into "rebellious" and "political" lawyers, engaging in legal

11. Sumi Cho, panel discussion on *New Theories of Race and the Legal Consequences* at the Asian Law Journal Symposium on [Re]Constructing Legal Paradigms: [Syn]thesizing the New Racial Theories and Legal Strategies for Social Justice, January 29, 2000.

12. See Yamamoto, *supra* note 2, at 832 n.41.

13. It is granted that there has been a more explicit practice by conservative forces of funding like-minded scholars at mainstream universities and creating think tank positions for conservative scholars. See JEAN STEFANCIC AND RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA 144-46 (1996).

14. Yamamoto, *supra* note 2, at 835 (discussing the arguments of Richard Delgado and Jean Stefancic).

15. See, e.g., STEFANCIC AND DELGADO, *supra* note 13, at 151-53. But see Dale Minami, *Asian Law Caucus: An Experiment in the Alternative*, 3 AMERASIA J. 28, 37-38 (1975) (noting that litigation may be an effective mechanism for social and political change).

16. Yamamoto, *supra* note 2, at 830.

advocacy which is "grounded in the lives and in the communities of the subordinated,"<sup>17</sup> and utilizing a multi-pronged strategy of media, organizing, and litigation.

Unlike regnant lawyering, which has been criticized for placing too much emphasis on the attorney and the legal system, or even traditional civil rights lawyering, which some believe places too much emphasis on the rule of law, political and rebellious lawyering perceives the law as only one of many tools in the campaign for social change. This approach treats the client as a partner in the struggle and engages in an "everything at once" strategy.<sup>18</sup> The practice of political and rebellious lawyering not only involves a client in the attorney's legal case, but also integrates the attorney's legal case into the client's campaign for justice by conducting a simultaneous and coordinated attack in the courts of law, media, and public opinion. Thus, while many would acknowledge the wisdom of scholar Derrick Bell's interest convergence theory, political lawyers have adapted by expanding their attack to include not only the legal cases, but also the very will of the majority.

This paper will analyze the legal, educational, and organizing campaign in the recent struggle of the Hmong for restoration of food stamp benefits in the face of welfare reform as an example of the potential for strategic political and rebellious lawyering. Although the Hmong comprise only 1.3 percent of the total Asian Pacific American population, which itself is only three percent of the entire United States population,<sup>19</sup> the Hmong campaign for justice eventually attracted the bipartisan support of Congress, won a declaration of support from the President of the United States, and successfully carved out an exception to the benefits cuts under the Welfare Reform Act of 1996. Political and rebellious lawyers, working hand-in-hand with community organizers, activists, and clients, were thus able to bridge at least one chasm that separated a community at risk from access to legal services.

Perhaps more importantly, the Hmong campaign has value beyond their own legal case. It played a significant role in changing the public discourse on the contributions and societal worthiness of immigrants as a whole, which eventually led to the repeal of many of the harshest provisions of the Welfare Reform Act. The Hmong campaign did not simply result in the restoration of benefits to one group, but it also contributed in part to a change in the majority's opinion of immigrants in general. Thus through political and rebellious lawyering, advocates were able to shape the will of the majority, perhaps offering some hope to some of our brothers and sisters in academia.

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17. GERALD LOPEZ, REBELLIOUS LAWYERING 38 (1992).

18. See Delgado and Stefancic, *supra* note 7, at 568.

19. See *The Asian Population: 2000*, U.S. CENSUS BUREAU REPORT available at <<http://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>>.

## I. THE PLAYERS IN THE HMONG CAMPAIGN FOR JUSTICE

Since rebellious lawyering is grounded in the lives and history of the communities being served, this paper will begin by introducing both the Asian Law Caucus and the Hmong in order to set the context for their coordinated campaign against a particular provision of welfare reform. Beyond a superficial understanding of the military history of the Hmong during the Vietnam War, it is critical to gain insight into the Hmong history of struggle and betrayals to understand how and why they were able to respond so effectively.

### A. *The Asian Law Caucus: A Political Law Firm to “Serve the People and Lead the Revolution”*

The Asian Law Caucus (“Caucus”) was founded in 1972 by a small group of recently graduated attorneys and law students as an outgrowth of the Third World Strike movements at San Francisco State University and the University of California at Berkeley. Its founding members envisioned the Caucus as a community law firm organized “to exercise law with a political emphasis – defending ‘political’ cases, attacking racism in institutions, highlighting society’s neglect of Asian American concerns, and supporting the work of progressive community organizations,” and “to be responsive and accountable to the Asian American communities, using law to promote and protect their interests.”<sup>20</sup>

While it was the first such legal organization in existence, what was perhaps most novel about the Caucus was the sophistication of its youthful founders in recognizing that “the role of law in social change is limited,” and that “legal challenges and legal work must complement the efforts of progressive association.”<sup>21</sup> Perhaps due to its dual grounding in both the racial and class struggles of the period, its founders cautioned that “it is crucial that attorneys do not labor under the illusion that their work in isolation will produce the massive material changes needed in this society.”<sup>22</sup> Though the concepts of critical race theory had not yet been formally articulated, the founders of the Caucus clearly saw themselves as community-based *political lawyers*, specifically rejecting the practice of regnant law in a manner that was dissociated from larger community struggles.

Over the past three decades, the Caucus has remained true to this underlying philosophy of practicing law as a complementary tool in its campaigns for social justice, serving not only as legal counsel but also as community educators and organizers in a number of key civil rights cases. These cases ranged from the seminal case of *Korematsu v. United States*, to the eviction defense of International Hotel residents, to serving as *amicus* counsel in the criminal defense of Dr. Wen Ho Lee.<sup>23</sup> It was not

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20. Minami, *supra* note 15, at 29.

21. *Id.* at 38.

22. *Id.* at 39.

23. See, e.g., Victor M. Hwang, *In the United States District Court for the District of New Mexico: United States of America, Plaintiff, vs. Wen Ho Lee, Defendant*(*amicus curiae* brief submitted

uncommon for a Caucus attorney to be representing a senior tenant in eviction proceedings on one day, drafting model municipal legislation to protect all senior renters the next day, and being arrested as part of a “tent-city” protest against neighborhood gentrification on the third day.

Attorneys at the Caucus approach their work through a three-pronged strategy: 1) conducting multilingual community outreach, education, and organizing, 2) providing direct legal services to indigent clients, and 3) engaging in impact work such as class-action litigation or policy advocacy. Each of these components is seen as critically related and dependent upon the others. As attorneys seek to educate and empower communities through presentations in churches, meal sites, ethnic media, or other community settings, legal questions and cases that require legal counseling and representation arise. Based upon the counseling and representation of thousands of low-income clients each year, patterns and systemic community needs have emerged from which the Caucus can plan its impact litigation and policy advocacy. Finally, even while engaging in impact litigation or policy advocacy, the Caucus usually brings its major cases in coordination with one or more progressive community partners. This ensures that the community will be engaged as an organizing and educational component to the litigation, guarantees that the remedy is true to the needs of the community, and assists in building the infrastructure necessary to sustain the long-term change sought by the litigation.<sup>24</sup>

As a political law firm, the Caucus believes that it is critical that impact work and class action litigation be informed by direct service to the community, and that litigation not be conducted in a vacuum but grounded as part of a movement for long-term social change.

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on August 8, 2000), 7 UCLA ASIAN PAC. AM. L.J. 57 (2001). A few of the other notable cases litigated by the Caucus include: *Chann v. Scott* (1972) (successfully enjoining the racial profiling of Chinatown youth by the San Francisco Police Department), *Cuadra v. Bradshaw* (1997) (suit forcing Labor Commissioner to toll back wages upon filing of complaint for unpaid wages), *Kao v. Rohner Park* (1998) (federal wrongful death suit against police killing of Chinese American based on martial arts stereotype), and *Truong v. San Francisco Housing Authority* (1998) (federal class action litigation against Housing Authority for failure to protect Southeast Asian residents from racial violence).

24. Often, when the Caucus enters into litigation where there is no existing community group to partner with, it forges new and independent coalitions to build community infrastructure. For example, as part of its community empowerment and litigation strategies, the Caucus has played a role in the historical development of groups such as the Chinatown Coalition for Better Housing, the Vietnamese American Coalition for Civil Rights, Sweatshop Watch, the Coalition for Justice for Kuan Chung Kao, the Coalition Against Racial and Ethnic Scapegoating (a national Wen Ho Lee support committee), and most recently a Bay Area Chinese Workers Center. See also Hina Shah, *Speech: Attorneys as Organizers*, 6 ASIAN L.J. 217 (1999).

### B. The Hmong: A History of Betrayals

*"To a Hmong, what distinguishes the Hmong from other people is their Hmong way of life."* – Gary Yia Lee, Hmong anthropologist.<sup>25</sup>

#### 1. The Hmong in China

The Hmong are a distinct ethnic minority group of Asia whose oral histories trace their roots back four thousand years to parts of Northern China. Originally called the “Miao” or “Meo” by the Chinese (a term reportedly connoting barbarians or the sound a cat makes), the term “Hmong” first became popularized in 1972, denoting free people or “those who must have freedom and independence.”<sup>26</sup> It is a fitting term because throughout their history, the Hmong have maintained a fiercely independent existence and culture, resisting all attempts to conquer and assimilate them.

Both Hmong oral and Chinese written history document long periods of war between the two groups and the existence of a Hmong kingdom located in what is now central China from A.D. 400 to 900. The Hmong society, however, has always been strongly structured around the clan, with elected clan leaders governing by consensus rule.<sup>27</sup> Thus, even during this era of a Hmong kingdom, the power of the Hmong king was not absolute, and there was a form of election to determine royal succession. According to Hmong history, the Hmong kingdom was betrayed and destroyed by the Chinese during the rise of the Sung dynasty around A.D. 900, after which the Hmong fled into the mountains.<sup>28</sup>

As time passed, the various Hmong clans dispersed and retreated further and further into the remote regions of China in order to preserve their culture and lifestyle. Moving to avoid becoming increasingly reliant upon slash-and-burn agriculture and unfavorable local rule or persecution, the Hmong soon became known as a nomadic people, living primarily in the mountainous regions. After the Chinese rebuilt a segment of the Great Wall known as the Hmong Wall in the early nineteenth century, thousands of Hmong left China for good to resettle in the mountains of Northeast Laos, North Vietnam and Burma.<sup>29</sup>

#### 2. The Hmong and the United States’ “Quiet War”

The United States’ war in Laos from 1960 to 1975 has often been dubbed the “secret war” or the “quiet war” because it was waged by the Central Intelligence Agency (CIA) largely without the involvement of

25. Gary Yia Lee, *Culture and Adaptation: Hmong Refugees in Australia*, in THE HMONG IN TRANSITION 55 (Glenn L. Hendricks et al. eds., 1986).

26. JANE HAMILTON-MERRITT, TRAGIC MOUNTAINS: THE HMONG, THE AMERICANS, AND THE SECRET WARS FOR LAOS, 1942-1992, at 3 (1993) [hereinafter TRAGIC] (citing JEAN LARTEGUY AND YANG DAO, LA FABULEUSE AVENTURE DU PEUPLE DE L’OPIUM (1979)).

27. The most common clan names found among Hmong who migrated to Laos include: Chang (or Cheng), Chue, Fang (or Feng), Hang, Her, Kue, Moua, Ly (or Lee), Lo (or Lao or Lor), Pha, Thao, Vang, Vue, Yang, and Xiong. See TRAGIC, *supra* note 26, at 6.

28. KEITH QUINCY, HMONG: HISTORY OF A PEOPLE 44-48 (2nd ed. 1995).

29. *Id.* at 60-69.

United States military troops or the knowledge of the American public.<sup>30</sup> Despite its nickname, the war in Laos was anything but quiet, as more than two million tons of bombs were dropped on Laos – mostly by the United States – with an average of one bombing sortie every eight minutes over a nine year period.<sup>31</sup> Between 1968 and 1972, the tonnage of bombs dropped on one battlefield alone in Laos exceeded the total tonnage dropped by American planes in both the European and Pacific theatres during the entirety of World War II, earning Laos the dubious distinction of being the most bombed nation in the world.<sup>32</sup> According to some estimates, the bombing displaced more than ninety percent of the population in Northern Laos, where the Hmong lived.<sup>33</sup>

Preventing the fall of Laos was critical to the United States' strategy in Southeast Asia because Laos was viewed as the first domino in the face of spreading Communism.<sup>34</sup> The United States desperately needed a ground force in Laos in order to interdict the Northern Vietnamese supply line that ran along the Ho Chi Minh trail, which curved in and out of parts of Southeastern Laos. However, treaties signed during the Geneva Conference of 1961-62 legally prohibited the United States from directly sending in its military troops to counter the North Vietnamese support of the communist Pathet Lao forces.<sup>35</sup> Thus, the government hatched a plan to circumvent the letter of the law by sending in a cadre of CIA "advisers" who would then recruit, train, and supply a local guerilla army.<sup>36</sup>

The Hmong, who had earlier earned a reputation as courageous warriors while fighting alongside the French during World War II, were recruited by the CIA along with several other ethnic minorities living in the mountains of Laos including the Iu-Mien, the Khmuu, the Lahu, and the Montagnards. The CIA trained more than 30,000 Hmong and other Highland Lao, organized under the command of General Vang Pao, to

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30. According to the New York Times, July 4, 1962, the Department of Defense denied involvement in Laos: "A Defense Department spokesman labeled as 'untrue' today charges that United States planes were dropping arms to Meo tribesmen in Laos." ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN* 126 (1997).

31. *Id.* at 131-32.

32. See Larry Bleiberg, *Forgotten, but not Forlorn: Dreamy Laos, Long Isolated and Scarred by War, Slowly Opens its Treasures to the World*, DALLAS MORNING NEWS, January 11, 1998, at T6.

33. See FADIMAN, *supra* note 30, at 134.

34. See TRAGIC, *supra* note 26, at 69. "Despite its remoteness, we were determined to preserve the independence of Laos against a take-over backed by its neighbors to the north- Communist China and North Vietnam. For the fall of Laos to Communism could mean the subsequent fall- like a tumbling row of dominoes – of its still-free neighbors, Cambodia and South Vietnam and, in all probability, Thailand and Burma. Such a chain of events would open the way to Communist seizure of all Southeast Asia." *Id.* (quoting President Dwight D. Eisenhower in *WAGING PEACE, 1956-1961: THE WHITE HOUSE YEARS* (1965)).

35. See FADIMAN, *supra* note 30, at 125.

36. See *id.* at 126. The CIA felt there was a need to recruit a guerrilla army because the Royal Lao army was perceived to be notoriously peaceful in nature (perhaps due to their Buddhist upbringing) and not likely to vigorously defend U.S. interests even if supplemented with arms and income. While the Royal Lao army was technically our ally against the Pathet Lao and Northern Vietnamese Army, a common view of the time was that the Lao were among "the most charming people in Asia – and the most otherworldly and least martial as well [with the consequence that] Lao troops have sometimes fired over the heads of the enemy rather than hurt anybody, much to the despair of American advisers." *Id.* at 127.

operate as special guerilla units. These soldiers defended American bases and airstrips, guided and flew bombing sorties, ambushed convoy lines along the Ho Chi Minh trail, and worked behind enemy lines to gather military intelligence. In particular, the Hmong served as a key element in the covert nature of the war by rescuing (or recovering the bodies of) downed American pilots who had been shot down while on bombing runs against the Vietnamese. In order for the United States plausibly to maintain its denial of military involvement, hundreds of Hmong were routinely dispatched behind enemy lines to take on the dangerous task of rescuing downed American pilots. Often less than half would return, successful in their mission of carrying out one or two American servicemen through enemy fire.<sup>37</sup>

Armed with inferior and outdated weapons, the Hmong distinguished themselves through their military prowess and apparent willingness to serve in dangerous situations where they were both outmanned and outgunned.<sup>38</sup> As the Hmong soldiers of military age were quickly killed, younger and younger boys were conscripted into service so that by 1968, thirty percent of the Hmong ground troops were under the age of fourteen years old.<sup>39</sup> Photographs of Hmong "soldiers" from this period show young shoeless boys proudly trying to carry rifles or bombs taller than themselves.<sup>40</sup> By 1971, many Hmong families had no more males to volunteer, and the very survival of the Hmong as a people was at stake. In the last years of fighting, seventy percent of the new recruits were between the ages of ten and sixteen.<sup>41</sup> Before the war was over, more than one-third of the entire Hmong population in Laos had been killed in combat, including half of all the males over the age of fifteen.<sup>42</sup>

In exchange for their loyal service and incredible sacrifices, the CIA issued each Hmong soldier a payroll number<sup>43</sup> and paid each an average of

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37. See TRAGIC, *supra* note 26, at 220-21. Some Hmong reported having been told in trainings that it was acceptable to risk a hundred Hmong lives to save one downed American airman. One Hmong, Vang Kai, reported being part of a rescue team of one hundred that lost sixty men while carrying two wounded American pilots out of the jungle. *See id.*

38. Although most accounts of the Hmong describe their willingness to serve on the basis of the "promise," many Hmong were also forcibly conscripted into service. See John Howard, *Hmong Who Fought for CIA to Lose Food Stamps*, TELEGRAPH HERALD, November 2, 1997, at A1 (Hmong mountain tribesman Chia Yang describes his forcible conscription at age ten, and village chief Chong Chue describes village draft quotas and his being forced to serve). See also FADIMAN, *supra* note 30, at 129. In oral interviews, Hmong veterans told us that the informal policy was that if one's older brother were killed, one would then be required to take his place. To avoid the necessity of completing additional paperwork, these younger replacements would simply fight under their brothers' names (thus raising the actual number of Hmong veterans who fought and died in the war). In any case, one might seriously question how ten- and twelve-year-olds could be deemed to have consented to military service.

39. See CHRISTOPHER ROBBINS, *THE RAVENS: THE MEN WHO FLEW IN AMERICA'S SECRET WAR IN LAOS* 52 (1995).

40. See, e.g., ROBBINS, *supra* note 39, at 312-13.

41. LILLIAN FADERMAN, *I BEGIN MY LIFE ALL OVER: THE HMONG AND THE AMERICAN IMMIGRANT EXPERIENCE* 7 (1998).

42. *Id.*

43. Many Hmong held onto these numbers as proof that they were United States veterans and thus entitled not only to welfare benefits but also full veterans' benefits.

2000 *kip* (\$3) per month, a mere ten cents per person per day.<sup>44</sup> The United States government, by comparison, paid American army privates in Vietnam between \$7 and \$11 per day. Hmong soldiers were reportedly killed at a rate ten times higher than their American counterparts.<sup>45</sup> It is clear that the Hmong chose to serve not for the money, but for the promise of greater support that the CIA made to the Hmong people. Though the details of this promise vary from account to account, the Hmong claim that the CIA promised them a homeland if the United States won in Laos and pledged that the United States would care for the Hmong even if it were to lose the war.<sup>46</sup> The CIA has never denied that such promises were made.<sup>47</sup> In light of the centuries of persecution by the Chinese and the nomadic lifestyle of the Hmong, it is not difficult to understand why the Hmong agreed to fight under those terms.

### 3. *The Hmong Betrayed*

In early 1973, despite the entreaties of many of its Southeast Asian allies, the United States negotiated a peace agreement with North Vietnam and began the withdrawal of all American troops and supplies from Laos and South Vietnam. The Hmong who had honorably served under American command were told to report to the Long Chieng airbase on May 11, 1975, where they would be flown out to safety. Though thousands of Hmong soldiers and families reported to the airfield, only two airplanes were ever sent to rescue the top military officials.<sup>48</sup> As Communist forces overran the airfield in the weeks to come, thousands of Hmong were massacred and forced to flee into the jungles where they were hunted down, starved, and subjected to chemical warfare. The official Communist Party newspaper at that time announced that it was in the government's best interest to "exterminate" all remaining Hmong.<sup>49</sup> The new communist regime took the position that all Hmong were traitors to the nation because of their support of the American forces. A senior official at that time

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44. FADIMAN, *supra* note 30, at 128. Undersecretary of State U. Alexis Johnson testified in 1971 before the Senate Armed Services Committee: "[The operation in Laos] is something of which we can be proud as Americans. It has involved virtually no American casualties. What we are getting for our money is, to use the old phrase, very cost-effective." *Id.*

45. *Id.* at 129.

46. According to Tasseng Yang, who claims to have been at the original meeting between Lt. Col. Vang Pao and the CIA, the CIA promised, "If the Hmong people beat the Vietnamese, then we will help the Hmong people as much as we can. If the Hmong people lose, we will find a new place where we can help the Hmong people." TRAGIC, *supra* note 26, at 92.

47. In addition, many retired CIA officials have spoken out in favor of granting the Hmong special consideration and citizenship and continued to lobby on behalf of the Hmong. At a rally for easing Hmong citizenship requirements in May 1997, at least two former CIA station chiefs in Laos spoke out on behalf of the Hmong. See Ben Barber, *Gift of Citizenship Promised to Veterans From Laos*, WASHINGTON TIMES, May 15, 1997, at A13. In addition, in July 2000, Air Force Captain Fred Platt, who flew the covert bombing runs in Laos, said, "These people fought and died for the U.S. and believed our promises. And we abandoned them." Jim Sheeler, *Ceremony to Honor Hmongs' "Secret War,"* DENVER POST, July 21, 2000, at A1.

48. See TRAGIC, *supra* note 26, at 341-51.

49. On May 9, 1975, the Khao Xane Pathet Lao, the official newspaper of the Lao People's Party, reportedly announced, "The Meo must be exterminated down to the root of the tribe." FADIMAN, *supra* note 30, at 138.

stated, "It is unfortunate that the price of peace in Laos is [Hmong] liquidation."<sup>50</sup>

According to some studies, Hmong survivors witnessed, on average, fifteen "major trauma events" involving killing or torture.<sup>51</sup> Several Hmong families reported to us either aborting pregnancies in order to conserve food during their flight to Thailand, or killing their own young babies while hiding from communist patrols. Although there are no precise statistics, it is estimated that between one-tenth and one-half of all Hmong refugees died during this period from starvation, execution, or exposure to lethal chemicals.<sup>52</sup>

More than fifty thousand Hmong initially escaped to Thai refugee camps, where they lived for years under subhuman conditions until the United States and other nations finally admitted them as refugees.<sup>53</sup> In 1975, the United States was willing to admit fewer than three hundred Hmong refugees, mainly high ranking army officers and their families.<sup>54</sup> The Hmong in the refugee camps suffered under inhumane conditions for up to a decade before they could be sponsored to Western nations. While the Thai practice of deterring additional Hmong immigration by punishing those already within its borders ultimately proved unsuccessful, this same cruel experiment would be tried against the Hmong again in the United States, with the passage and implementation of the Welfare Reform Act of 1996.

Between 1980 and 1996, 130,000 Hmong refugees eventually resettled into the United States, mostly from the Thai refugee camps. The actual Hmong population in the United States is estimated to be much higher at present due to their high birth rates, with the majority of the population living in the Central Valley of California, Minnesota and Wisconsin. The community is one of the poorest amongst the Asian ethnicities and stands out as an extreme under all common socio-economic indicators.

Many Hmong accepted government welfare as part of the "promise" that had been made to them in exchange for their military service. Others viewed welfare as part of the only life they knew, having grown accustomed to daily handouts in the Thai refugee camps.<sup>55</sup> Many others relied on welfare because they were unable to find employment due to racial discrimination; language, cultural and social barriers;<sup>56</sup> and the high

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50. *Id.* at 157.

51. *Id.* at 205.

52. See *id.* at 133 (citing a 1975 WASHINGTON POST report and a 1970 report to the Senate Judiciary Subcommittee on Refugees and Escapees).

53. See QUINCY, *supra* note 28, at 215.

54. FADIMAN, *supra* note 30, at 167.

55. *See id.* at 200.

56. Ironically, one of the key barriers to their employment was the intense desire of Hmong to seek employment. Many Hmong reported to us that they were discriminated against by potential employers because of a fear that hiring one Hmong would lead to many more migrating to the region. As a people historically accustomed to a nomadic lifestyle, hundreds of Hmong would move to regions on hearing of potential employment. After the passage of the Welfare Reform Act, thousands of Hmong moved from Fresno to other states where they thought they might find employment. See Karla

incidence of depression and post-traumatic stress disorder within the community.<sup>57</sup>

## II. WELFARE REFORM: "ENDING WELFARE AS WE KNOW IT"

On August 22, 1996, in the midst of a heated election year, President William J. Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as the Welfare Reform Act.<sup>58</sup> Even as he committed to "ending welfare as we know it," President Clinton publicly acknowledged during the signing ceremony that the Act went too far in unfairly punishing lawful permanent residents of the United States.<sup>59</sup>

Even in the midst of one of the longest periods of economic boom in the history of this nation and while the number of welfare recipients was already declining, the Welfare Reform Act proposed to "save" \$54.2 billion in spending from the federal budget over a five-year period by eliminating the safety net for many of our nation's most vulnerable populations. Nearly half of this total cut, or \$23.8 billion, would be saved by denying basic food, shelter, medical care, and old age/disability benefits to lawful immigrants even though they constituted only five percent of the total population of welfare recipients. Under the purported goals of "promoting self-sufficiency" and "deterring illegal immigration,"<sup>60</sup> the Welfare Reform Act proposed to slash thirteen billion dollars in Supplemental Security Income (SSI) benefits and nearly four billion dollars in food stamps, cutting off aid to more than half a million senior and disabled immigrants and more than a million families.

The only immigrants exempted from these harsh cuts were those who were somehow deemed either morally worthy or blameless for their economic situation. These groups included: 1) recent refugees and political asylees within seven years of their entry into the United States,<sup>61</sup>

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Bruner, *Hmong Exodus Slows; Welfare Fears Haven't*, FRESNO BEE, December 18, 1996, at A1 (noting that four thousand Hmong left Fresno for Minnesota, North Carolina, Oregon, Washington, Colorado, Texas and Georgia seeking employment).

57. According to various psychological studies, the Hmong as a community scored lowest among Southeast Asian refugees in terms of "happiness" and "life satisfaction," exhibited the highest degree of "alienation from their environment," and had shockingly high levels of "depression, anxiety, hostility, phobia, paranoid ideation, obsessive compulsiveness and feelings of inadequacy." See FADIMAN, *supra* note 30, at 202-03.

58. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 (1996) [hereinafter Welfare Reform Act of 1996].

59. See *Remarks by President Clinton at the Welfare Reform Bill Signing*, August 22, 1996, available at <<http://www.acf.dhhs.gov/news/welfare/wr/822potus.htm>>. In signing the bill into law, President Clinton stated, "We also believe that the congressional leadership insisted on cuts [in] programs for legal immigrants that are far too deep." *Id.*

60. Welfare Reform Act of 1996, Pub. L. No. 104-193, § 400 (1996) ("Statements of National Policy Concerning Welfare and Immigration").

61. These groups were given a seven-year amnesty period under the assumption that they would be able naturalize within that period. This assumption is overly optimistic in light of the fact that most immigrants must wait five years before they are statutorily eligible to apply, and many of the waiting periods for completing the naturalization process after filing of the initial application extend for two or three years. See, e.g., Ramon G. McLeod, *A Plan to Reduce Citizenship Delays: INS Requesting Funds to Attack Backlog of Naturalization Cases*, S.F. CHRONICLE, August 27, 1998, at A3 (noting delays of

2) immigrants and their families who could be credited with forty quarters (or roughly ten years) of work history in the United States,<sup>62</sup> and 3) immigrants and their families who had served in the United States armed forces.<sup>63</sup>

As of August 22, 1996, when the Welfare Reform Act was signed, all legal immigrants falling outside one of these three exempt categories were immediately barred from applying for any federal public benefit.<sup>64</sup> Thus, for example, a lawful permanent resident who had worked for a number of years at a gas station but was subsequently rendered quadriplegic during an armed robbery of the station, was statutorily disqualified from applying for any federal aid normally provided to severely disabled citizens. All legal immigrants who were receiving federal benefits as of the date of passage of the Act were given a one-year grace period during which they had to either naturalize or find a way to become self-sufficient.

By removing the safety net for our nation's most fragile and vulnerable populations in the course of ending "welfare as we know it," the government threw large segments of the immigrant community into a state of panic, shock and depression.<sup>65</sup> In spite of the stated purposes of the Act, which were to deter illegal immigration and to promote self-sufficiency, the overwhelming majority of the immigrants targeted for these "savings" were lawful permanent residents rather than illegal or undocumented immigrants, who had never been statutorily eligible for most federal public benefits in the first place. Moreover, often because of their age or disability, those groups of immigrants targeted by the Act were also those least likely to be able to achieve self-sufficiency.<sup>66</sup>

In this highly-charged atmosphere of uncertainty, fear and depression, thousands of senior and mentally-impaired immigrants nationwide contemplated suicide, and several dozen reportedly even took their own

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up to two years for eligible immigrants in the Bay Area to become naturalized citizens).

62. Unfortunately, many immigrants can only find work "under the table" in sweatshop industries such as garment and restaurant businesses, which cut corners by not paying into the Social Security system; these immigrants are thus unable to produce any record of gainful employment. For example, in a federal class action lawsuit filed by the Caucus to bar implementation of the Welfare Reform Act provisions that targeted immigrants, one of our lead plaintiffs was a Scottish woman who was over seventy years old. She had worked for more than twenty years in the United States but had always been paid under the table. She worked until well after she was eligible for retirement benefits, quitting her job only on her doctor's orders after her second heart attack. She was among the thousands of immigrants slated to be terminated from her monthly SSI sustenance check because she was deemed to have failed to contribute enough to merit disability benefits.

63. See Welfare Reform Act of 1996 § 402, 8 U.S.C. § 1612 (2002).

64. The definition of federal public benefit goes beyond welfare to include benefits such as federal government contracts, loans, grants, commercial or professional licenses which might have assisted them in gaining education, job training, or employment.

65. See, e.g., Susan Ferriss, *Panic Sets in over Severing of Benefits: Welfare Reform Proves Frightening for Legal Immigrants Who Have Worked in U.S. for Years*, S.F. EXAMINER, April 27, 1997, at B1.

66. In order to qualify for SSI benefits, an applicant would have already had to prove: 1) that he had no or little resources, 2) that he had no other means of income or family support, and 3) that he was aged (65 and over), blind, or too disabled to maintain gainful employment on his own. The SSI program, which paid to single recipients less than \$500 a month, was already the last resort for those who had demonstrated that they were unable to secure support by any other means.

lives in despair, to protest welfare reform, or to avoid becoming burdens upon their families.<sup>67</sup> One Hmong woman, whose suicide garnered national attention, chose to hang herself, which according to Hmong beliefs is a particularly violent form of protest because it denies the person the opportunity to reincarnate.<sup>68</sup> Tragically, many of these immigrants actually qualified for at least one of the three exemptions under the Welfare Reform Act, but they failed to fully understand their legal rights because the federal notices were written in highly formalized English that few of them could understand.<sup>69</sup>

### III. POLITICAL LAWYERING AND THE HMONG CAMPAIGN FOR JUSTICE

#### A. Mobilizing a Response to the Welfare Reform Act

Many public interest, social service, immigrant rights, and community groups responded to the grave threat posed by this clear political scapegoating of the immigrant community. Foreseeing the impact of the Act upon the Asian Pacific American population in the Greater Bay Area, the Caucus drastically realigned the priorities of the office, suspending or curtailing the practice of law in areas not directly related to welfare or immigration law, such as hate crimes and affirmative action.<sup>70</sup> Through our three-pronged strategy of organizing and educating the community, providing direct legal services, and engaging in impact work, we strived to play a role in local, state, and national arenas.

As a community law firm, we moved to respond to welfare reform as early as 1995, long before there was sufficient "injury" or legal "standing" to respond through litigation.<sup>71</sup> Locally, the Caucus responded as a triage

67. See, e.g., Deborah Hastings, *Welfare Worries End in Suicide; Hmong Woman Felt America Broke Promise to Care for Vietnam Allies*, FRESNO BEE, February 17, 1998, at A1 (discussing three different suicides in Hmong community with a taped message from one 54-year-old mother of seven asking "What if I lose my SSI? What if my husband and children lose their AFDC grant? If they stop my grant, I'm going to die anyway."); Stephen Magagnini, *Suicide Illustrates Welfare Reform's Toll among Hmong*, SACRAMENTO BEE, November 9, 1997, at A1; Carol Morello, *Aid Cutoff Driving Immigrants to Suicide: At Least Seven People across the Nation Are Known to Have Killed Themselves over the Impending Loss of Welfare Benefits*, PHILADELPHIA INQUIRER, May 25, 1997, at A1 (noting that 5 Cubans in Miami killed themselves, including a man in a wheelchair who rolled himself off a seven-story building); Kimi Yoshino, *Benefit-Loss May Have Led to Suicide: Officials Hope to Stop More Deaths*, STOCKTON RECORD, March 19, 1997, at A1 (reporting that a 75-year-old Mexican immigrant shot himself in the head after receiving an SSI warning letter).

68. See Bert Eljera, *Hmong Desperate on Welfare Reform: Suicides Lead to a Test Case for Welfare Reform*, ASIANWEEK, December 4, 1997, at 13-14.

69. See Karen McAllister, *Immigrant Takes Life Fearing Loss of Check*, FRESNO BEE, October 27, 1997, at A1 (reporting that a Hmong woman killed herself out of fear that she would lose her welfare check, despite receiving a letter in English indicating that her benefits would not be cut). See also Ferriss, *supra* note 65, at B1 (discussing case of Ignacio Munoz, who killed himself despite the fact that he probably met the work exception to the Welfare Reform Act).

70. Indeed, the Caucus was confronted at the time with committing its limited resources to either challenging welfare reform or participating in the class action challenge to Proposition 209, Ward Connerly's anti-affirmative action ballot initiative. Caught in a reactive war with multiple fronts, we chose to address the issue impacting the largest portion of our community's most vulnerable, and thus were unable to join the fight to save affirmative action. This is in part, the danger in fighting a defensive war without a larger vision and unity of critical race praxis.

71. Before I joined the Caucus in late 1996, the Caucus had participated in numerous lobbying

unit, conducting an intensive multilingual community education and outreach campaign at senior meal sites, public libraries, community fairs, churches, community centers, Chinese language schools, hospitals, ESL classrooms and other familiar community gatherings throughout the Bay Area. Following each presentation on the new law of welfare reform, we used trained social workers and senior volunteers to screen the hundreds of welfare recipients in the audience to see who might be saved through one of the legal exceptions and who could be naturalized prior to the cut-off date.<sup>72</sup> Through this process, we eventually represented hundreds of clients through the SSI administrative process and helped hundreds more naturalize before the termination date.<sup>73</sup>

On a more regional level, we produced weekly community bulletins updating social service providers, community groups, and ethnic media on the ongoing changes and implementation of the new welfare laws and produced multilingual handouts for clients outlining appellate rights and timelines. In order to counteract some of the confusion and misunderstanding generated by the English-only Social Security mailings, the Caucus held press conferences with ethnic media in advance of government mailings to explain the changes and released its own translations of forms to assuage community fears. It also conducted in-service trainings for social work staff and other legal service providers, as well as with government agencies, which ironically had difficulties in understanding their own directives.

As political lawyers, we looked beyond the arena of the courtroom in our efforts to protect the community. As part of a network of welfare and immigrant rights groups throughout the state, the Caucus assisted in coordinating several statewide marches on Sacramento, which brought thousands of immigrants to legislators' doorsteps to demand the passage of state laws to protect the most vulnerable populations.<sup>74</sup> Caucus staff worked in multi-racial and multi-cultural coalitions to put a face to welfare reform and humanize the issues. The Hmong community groups were

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efforts to attempt to derail the passage of the Welfare Reform Act, or at a minimum to strike its most draconian provisions.

72. In order to expand the range of our legal screening, we trained a core of monolingual Chinese senior citizens largely from the Chinatown Tenants Association in the basics of welfare reform to assist us in our intake process. All intake forms were translated into Chinese and a senior hotline was set up to accommodate community calls. Under the guidance of bilingual attorneys and paralegal organizers, the senior volunteers were able to counsel and screen many hundreds of clients who we otherwise would not have had capacity to serve. Many of our senior clients were also more at ease with receiving this form of peer counseling.

73. Earlier in the year, the Caucus had also co-counseled a federal class action lawsuit to force the INS to promulgate guidelines regarding its compliance with the Americans with Disability Act in the naturalization process. *See Chow v. Meissner*, 1997 U.S. Dist LEXIS 7347 (N.D. Cal. 1997). Partially in response to our suit, the INS set up new guidelines whereby individuals with disabilities (particularly learning or developmental) would have fair accommodations during naturalization interviews. This "disability waiver" process resulted in the successful naturalization of many lawful residents nationwide who otherwise would have been unable to pass the standard examination. *See Joren Lyons, Comment: Mentally Disabled Citizenship Applicants and the Meaningful Oath Requirement for Naturalization*, 87 CALIF. L. REV. 1017, 1018-20 (1999).

74. See Virginia Ellis, *Immigrants Rally Against Welfare Cuts*, L.A. TIMES, March 19, 1997, at A3 (noting that more than two thousand demonstrators marched on the state capitol).

particularly active during this period in lobbying both state and federal legislators to educate them about the needs and history of the Hmong veterans.<sup>75</sup>

The incongruity between the stated purposes of the Act and the populations it affected should not be overlooked because in many ways, welfare reform was less an attack on welfare recipients than an attack on legal immigrants and immigration. Similar in logic to the policy of the Thai government in providing less-than-minimal food and water to Hmong refugees in its camps, the true and openly stated purpose of welfare reform was to discourage future immigration by punishing those immigrants already lawfully present. This call for "welfare reform" was initiated by neoconservative scholars and assisted by think tanks and politicians, who fed off of public narrative and stereotypes such as the "black welfare queen" and the "rich Asian cheating the welfare system" to propagate a conservative agenda to limit immigration.

On this level, the Caucus worked extensively with its Washington, D.C. counterpart during this period not only to amend the law, but also to attempt to change the narrative of the welfare debate and the public's view of immigrants. Sadly, by maintaining a file of recorded deaths at the hands of welfare reform – a folder which media and legislators frequently requested – the Caucus played a key role in changing the face of welfare reform in the public eye. In place of the stereotypical images of welfare cheats and abusers, the public began to hear of hardworking senior and disabled immigrants who took their own lives out of fear while living in the richest nation in the world.

Through a combination of direct services, impact litigation, community education and organizing, and a coordinated public and media advocacy campaign, the coalition of advocates was surprisingly successful at changing the rhetoric of welfare reform. Within a year of the overwhelming passage of the Act, Congress had moved to amend many of the harshest provisions. Before the scheduled cuts against immigrants were to take place in August 1997, Congress passed the Balanced Budget Act of 1997, which allowed those senior and disabled immigrants who were already receiving SSI to continue receiving benefits.<sup>76</sup> In many states with large immigrant populations such as California, supplemental programs such as the California Assistance Program for Immigrants (CAPI) and state food stamps were implemented to assist those falling through the cracks of federal coverage.

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75. See Karla Bruner, *Hmong Pushing Welfare Relief: Fresno Group Hoping to Convince Lawmakers They Need Exemption from Possible Loss of Benefits*, FRESNO BEE, February 22, 1997, at B1.

76. The Balanced Budget Act of 1997 grandfathered in all of the senior and disabled immigrants who were already receiving benefits as of August 22, 1996. See *Balanced Budget Act of 1997*, Pub. L. No. 105-33, § 5301, 111 Stat. 251, 597-98 (1997).

*B. Welfare Reform and The Hmong: Another Betrayal*

As the Caucus sent out our weekly fax alerts to more than a hundred community agencies explaining the changes in the law, we began to receive calls from people named Xiong and Her in the remote parts of Northern California inquiring about the proposed cuts in the food stamp program. As the first calls came into the Caucus welfare reform hotlines, we gave legal advice over the phone and apologized that we could do no more due to the geographic distance and our commitment to the Bay Area. However, as the calls continued to mount from Marysville, Chico, and Yuba City, we decided to drive north one weekend to give a presentation on welfare reform for residents there and to gain a better understanding of what was in store for the future.

On an early Saturday morning, Sally Kinoshita, an extern from U.C. Davis, and I drove to a church in Marysville, approximately two-and-a-half-hours northeast of San Francisco. We arrived a little early, but as we pulled up, we realized based on the overflowing parking lot that there were hundreds of people already inside. The church was filled to capacity with more than five hundred Hmong men, women, and children eager to learn about their rights under the Welfare Reform Act. As Sally began to set up for our presentation, I ran out to purchase a disposable camera in order to photograph the over-capacity audience.<sup>77</sup> The community group sponsoring our event, the California Statewide Lao/Hmong Coalition, asked us for permission to videotape the event.

Sally and I divided our speaking roles. I began with an overview of welfare reform law and the major changes under the new Act, and she subsequently covered the mechanics of how to file an appeal and how to represent oneself in an administrative hearing. At this point, neither of us had had much experience in the administrative process; neither of us had ever handled a food stamp appeal.

As we covered the new welfare reform laws, the audience began to question why they were not protected under the military exemption category, having served under CIA command in Laos. Audience members came up to the stage and handed us military photo-journalism books of the war in Laos, pointing at pictures of themselves, their villages, and their families and friends as proof of their military service.<sup>78</sup> Having conducted some preliminary research, we knew that under a strict interpretation of the law, the military service of the Hmong did not fall within the narrow exception for veterans under the Welfare Reform Act, which recognized only service in the regular Army, Navy, Air Force, Marine Corps, or Coast Guard.<sup>79</sup> The United States' efforts to circumvent the law of the Geneva

77. As political lawyers, we knew that these photographs of families in crisis could assist in not only future lobbying efforts but also trying to convince our own office to commit the resources to this community.

78. See e.g., KENNETH CONBOY AND JAMES MORRISON, SHADOW WAR: THE CIA'S SECRET WAR IN LAOS (1995).

79. Under the Act, veterans were defined to include only those meeting the description set forth at 38 U.S.C. § 101, which reads: "The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than

Convention of 1961-62 by recruiting the Hmong through unofficial CIA channels also allowed the government to disavow them as excepted veterans under the Act. Because the Hmong had served as willing allies in the United States' secret war, these surviving veterans would not only be denied veterans' benefits but also be terminated from receiving basic government benefits.

The Hmong were angry about their predicament and viewed this as yet another instance in a long series of betrayals of their people.<sup>80</sup> Were it not for the illegal American involvement in Southeast Asia and the Hmong willingness to assist in rescue operations for United States personnel, the Hmong would never have faced the degree of genocidal persecution by the Laotian government that required them to flee their homes. Their subsequent difficulties with adapting to American society, their inability to secure employment, and the ongoing trauma of their persecution and refugee experience, were all direct byproducts of their unassailable loyalty to the United States. To now terminate them from food stamp programs because of a popular sentiment that they were morally unworthy of support was simply too much for the Hmong to accept.<sup>81</sup>

As we continued discussing their legal and procedural rights to proceed in *proper*, it became evident from the skepticism of the Hmong audience that few were likely to appeal the denial of their benefits. It sounded procedurally complex to the audience, who also questioned the value of filing a legal appeal to a government that had repeatedly broken its word to the community. The only incentive offered to them from a legal standpoint was that filing a timely appeal could at least extend their food stamp benefits pending the resolution of the appeal.<sup>82</sup>

As we listened to the audience that day, however, it became clear to us that the real issue was as much about honor and recognition as it was about the food stamp subsidy. While most families would suffer a loss or reduction in their household food stamp benefits under the Welfare Reform Act, those most affected spoke equally of the wrong done to their community by the government's refusal to acknowledge their service to the United States.<sup>83</sup> While as legal advocates, we had approached the issue in

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dishonorable." 38 U.S.C. § 101 (2002).

80. According to many Hmong, the first betrayal came when the American airlifts rescued only the officers from the Long Tieng airfield. The second betrayal was when the U.S. left the Hmong behind in the Thailand refugee camps. The third betrayal was the denial of veteran benefits to the Hmong. The fourth was the public attacks on the Hmong for accepting welfare. See FADIMAN, *supra* note 30, at 201.

81. Many of the Hmong had also believed the welfare checks to be part of the "promise" to take care of them in exchange for their military service and wanted to see if they could bring a legal challenge based upon this oral contract.

82. At the same time, we were careful to counsel them that they might be required to pay back such benefits if they lost, and that a failure to repay such benefits upon demand might be a future bar to citizenship.

83. Because California had chosen to provide state food stamps to children under the age of 18 and seniors over the age of 65, most families faced a reduction in total benefits equivalent to the family portion allocated to working-age adults. However, during one hearing, as the administrative judge attempted to console an emotionally upset Hmong woman by advising her that they would lose only the parents' portion of the food stamp grant, the woman responded by sarcastically asking the judge if she

terms of how to legally protect the Hmong from food stamp cuts in October, the Hmong viewed the problem and its causes more broadly in terms of both time and scope. Their struggle was not simply a question of losing a few hundred dollars a month but rather the continuing American failure to recognize the Hmong history of sacrifice and contribution. Thus, while many seemed wary at first, the audience quickly warmed up to the idea of filing legal appeals once we reframed the appeal as a method by which the community would have another opportunity in their ongoing campaign to educate the American people about the Hmong. The audience also responded well to the concept of a coordinated group action, which would tie up the administrative process and force the government to scramble and locate sufficient judges, courtrooms, and Hmong interpreters to deal with the mass of appeals.

Instead of responding within the narrow confines of the black-letter law, we decided collectively to challenge the spirit behind welfare reform and to attack the discourse claiming that immigrants were morally undeserving of benefits because they had not contributed enough to the system. Both from a strategic “political lawyering” viewpoint and from the community’s perspective, what was critical was not necessarily winning the immediate legal appeal, but rather advancing a long-term campaign that would allow the counter-narrative to emerge. Notably, due in part to the strong moral claim in this case, we consciously chose to engage in a strategy of political and rebellious lawyering rather than impact litigation. Our goal was to mobilize and empower the Hmong community to file individual appeals in mass in order to publicize their claims and stories to the rest of the American community. We did not want to have lawyers simply control the case by choosing class representatives, drafting sterile legal briefs and litigating the case in a vacuum through the courts. The process of fighting back and raising a voice was as important as the substance of the fight itself.

From this early presentation, it was evident that the Hmong, perhaps due to their history of persecution and reliance upon their clan structure, were much more attuned to responding to the call for collective action than many of the other clients we had worked with before. We were excited to work with the Hmong community not only to advance their cause, but also to illustrate the injustice of the Welfare Reform Act as a whole. Moreover, given their unique history of service and immense sacrifice as a community, the Hmong could serve as our “class plaintiffs” in the court of public opinion on the larger issue of immigrant contributions to America. Thus, although the Hmong communities were outside the Caucus’ normal jurisdictional area of the Greater Bay Area, we committed ourselves that day to assisting them in their campaign for food stamps and recognition.<sup>84</sup>

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and her husband were supposed to just sit at the dinner table and watch while their children ate.

84. One Hmong leader, Yia Noei Her, repeatedly and pointedly questioned our motivations and commitment to the Hmong community. Many people, he said, have come and given trainings or asked us to go to their demonstrations but have done nothing to help the Hmong community. As community-based attorneys, we were careful not to commit to more than we could deliver and were honest about our limitations as attorneys based in San Francisco.

### C. A Community Response<sup>85</sup>

The Hmong community began organizing soon after the passage of the Welfare Reform Act in order to protect their community from the proposed cuts, to seek eased naturalization requirements, and to push for full veterans' benefits. Through a number of public rallies and demonstrations, where thousands of Hmong marched in combat fatigues, the Hmong sought to educate federal and state elected officials on their history of service. In February 1997, a delegation of Hmong from Fresno traveled to Washington, D.C. to lobby federal officials. "A lot of people in Congress still don't know about the Hmong history, so we plan to introduce ourselves and our issues," said one of the principal organizers.<sup>86</sup> In May 1997, three thousand Hmong from Minnesota traveled to Washington, D.C. to be honored by various Congressmen in a public ceremony and to receive the Vietnam Veterans National Medal.<sup>87</sup>

In California, more than two thousand Hmong joined other immigrants in two rallies that took place in Sacramento in March and May of 1997.<sup>88</sup> Carrying signs that read "I rescued your son in the jungles of Laos, now what?" and "Paid the price, 40,000 Hmong dead for America," the Hmong effectively brought their plea to the forefront of the media's attention.<sup>89</sup> The contrasting images of military sacrifice and disabled veterans in the fight against Communism effectively undermined the narrative of undeserving immigrants living off welfare.

The Hmong community's public advocacy persuaded Congress to include in the Balanced Budget Act of 1997 a "sense of Congress," which made a number of significant factual findings, even though it failed actually to amend the Welfare Reform Act on behalf of the Hmong. Specifically, the "sense of Congress" recognized that "[t]housands of Hmong . . . fought in special guerilla units on behalf of the United States during the Vietnam conflict" and many "sacrificed their own lives and saved the lives of American military personnel."<sup>90</sup> The Congressional

85. While the importance of the Hmong community organizing and public demonstrations cannot be overstated, I have condensed the section to give the reader only a sense of the highlights of the campaign. However, much of the credit for the eventual victory must go to this independently-led community organizing.

86. Bruner, *Hmong Pushing Welfare Relief*, *supra* note 75, at B1.

87. See William Branigan, *Recognizing U.S. Allies in "Secret War": "Long Overdue" Honors Go to Hmong, Lao Vets*, WASH. POST, May 15, 1997, at A15.

88. See Karla Bruner, *Hmong Face 2nd Nightmare*, FRESNO BEE, March 10, 1997, at B1.

89. See Ellis, *Immigrants Rally Against Welfare Cuts*, *supra* note 74, at A3. See also Pamela Podger, *Immigrants Lobby State to Address Welfare Losses: Protesters Urge Lawmakers to Restore Key Benefits at Capitol Rally*, FRESNO BEE, May 29, 1997, at B1.

90. Balanced Budget Act of 1997, Pub. L. No. 105-33, § 5566, 111 Stat. 251, 639-40 (1997). This section included a statement entitled "Congressional Statement Regarding Benefits for Hmong and Highland Lao Veterans for Purposes of Public Assistance," which directly addressed the status of Hmong and Highland Lao veterans:

(a) FINDINGS – The Congress makes the following findings:

(1)Hmong and other Highland Lao tribal peoples were recruited, armed, trained and funded for military operations by the United States Department of Defense, Central Intelligence Agency, Department of State, and Agency for International Development to further United States national security interests during the Vietnam conflict.

(2)Hmong and other Highland Lao tribal forces sacrificed their own lives and saved the

statement also indicated that it was the legislative body's "sense" that the Hmong should be considered as veterans for the purposes of the Welfare Reform Act's exemptions.<sup>91</sup>

Unfortunately, the Balanced Budget Act only amended the provisions governing the veterans' exception on behalf of certain classes of Pilipino World War II veterans. Many took this to indicate the legislature's intent not to commit funding to the Hmong. Thus, although Congress recognized their "sense," it failed to provide an effective remedy for the Hmong.

#### *D. A Legal and Media Response*

The Caucus began intensive research on both legal and historical matters in order to prepare for the Hmong community's administrative defense. It drafted a short legal memorandum based primarily upon the Balanced Budget Act's "sense of Congress," arguing that the legislative intent should be given weight as law. Copies of the brief were circulated to the Hmong community through their internal social networks and to advocacy groups in most major areas of concentration of Hmong including Fresno, Stockton, Sacramento and parts of Wisconsin and Minnesota. Following the circulation, several thousand Hmong households in California filed appeals requesting that they be allowed to appear before an administrative judge in *pro per* to argue against the reduction or termination of their benefits.<sup>92</sup> According to a California Department of Social Services internal memorandum, 3500 immigrant households requested appeals of their food stamp cut-offs under the Welfare Reform Act. Of those appeals, 1335 were filed in Fresno, 200 in Sacramento, 155 in Butte, and 140 in Yuba, which represent the counties with the highest concentrations of Hmong residents. Los Angeles County, by contrast, had only 128 requests for hearings. Because we knew that the Caucus would not be able to provide traditional legal counseling and representation to all

lives of American military personnel by rescuing downed American pilots and aircrews and by engaging and successfully fighting North Vietnamese troops.

(3) Thousands of Hmong and other Highland Lao veterans who fought in special guerilla units on behalf of the United States during the Vietnam conflict, along with their families, have been lawfully admitted to the United States in recent years.

(4) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), the new national welfare reform law, restricts certain welfare benefits for noncitizens of the United States and the exceptions for noncitizen veterans of the Armed Forces of the United States do not extend to Hmong veterans of the Vietnam conflict era, making Hmong veterans and their families receiving certain welfare benefits subject to restrictions despite their military service on behalf of the United States.

(b) CONGRESSIONAL STATEMENT – It is the sense of the Congress that Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and have been lawfully admitted to the United States for permanent residence should be considered veterans for purposes of continuing certain welfare benefits consistent with the exceptions provided other noncitizen veterans under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

91. The fact that this "sense of Congress" was pushed by Congressman Vento of Minnesota cannot be overlooked. Minnesota is home to one of the largest Hmong communities. Elected officials there were keenly aware of the fact that welfare reform was driving immigrants to naturalize, and that these newly naturalized citizens were likely to be voting in upcoming elections.

92. See, e.g., Virginia Ellis, *Hmong Seek Exemption from Food Stamp Cuts*, L.A. TIMES, November 2, 1997, at A3; Karen McAllister, *Immigrants Fight for Food Stamps: Fresno County Has Received 604 Appeals from Legal Residents*, FRESNO BEE, September 1, 1997, at B1.

of the Hmong who had filed appeals, we wanted to do as much community outreach and education as possible in order to prepare the Hmong for their own defense.

Recognizing the community's high illiteracy rate coupled with the lack of a widely-used Hmong written language, Caucus staff working with volunteer Hmong social workers took to popular Hmong radio shows to notify the community of their legal rights and of what to expect from the process. Copies of the videotape from our initial training at the Marysville church were also distributed and viewed by hundreds of Hmong at home and in group settings. Contrary to the tradition of intimate and confidential one-on-one meetings between attorney and client, we counseled hundreds of unseen clients via radio, third-party intermediaries, and duplicated videotapes. Working with a group of volunteer second-generation Hmong American undergraduates and Asian American law students in the Greater Bay Area, the Caucus engaged in an intensive effort to assist the Hmong clients in preparing their cases in advance.<sup>93</sup> Using portable computers and printers, the students set up a number of traveling clinics in areas accessible to the community and worked with the Hmong veterans to translate and draft declarations outlining their cases. One Hmong veteran wrote:

I am the youngest of seven kids. I have four older brothers and two sisters. All of my brothers joined the U.S. Army. And in 1965 my sisters and parents were killed while working in the rice patty. So on July 17, 1965 I joined the U.S. Army, at the time I was 14 years old.... My duties were paratrooping and artillery specialist for the front line. As a paratrooper, whenever an enemy camp is sighted we were the first to invade and destroy the camp. As an artillery specialist my duties included disarming booby traps and carrying and hauling ammunition such as bullets, grenades, bomb shells, and shells for rocket launchers.... In 1973 I was severely injured. A grenade landed in the ditch where me and several of my troop members were hiding during a heavy firing. The grenade shredded away the bodies of my two friends and it knocked me unconscious. I was hit with metal shreds from my wrist down. I woke up in an Army hospital. A couple of months later, I was back on the front line again. There were two American soldiers assigned to every Hmong troop. The two American soldiers who were working with my troop were called Jerry and Kyle. In 1975 and the years that follow, I and a lot of my country men who served in the U.S. Army were being sought after by the Vietnamese soldiers. I took my family and fled into the jungle and waited for news of my brothers. I soon learned that three of my brothers were killed in the front line and one was captured and tortured until his death in 1978....

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93. Many of the Hmong veterans and Asian American students, and in particular, those of the Hmong descent, reported coming away from these interviews with a great deal of satisfaction. For many of the veterans, having a younger generation learn of their struggles and history was reward enough for the time and efforts involved in drafting such declarations. Meanwhile, the students benefited from learning much of the history of the Hmong that had never been fully disclosed by their families.

Another wrote plainly:

Before coming to the United States, I was a farmer, had my own land and property. I have never ask for support. The only reasons why I came to the United States are as followed. During the Vietnam War many of the CIA from the United States have cause us to become victims of Communist people. We were also known to be helpers of the United States CIA . . . . Many of my family members were killed by the communist after the retrieval of the U.S. CIA. Due to the cause of the problems from the CIA I have to come to the United States just to survive. The United States is just trying to eliminate our people but they're not killing us with weapons, but with the society and supreme laws to kill us. They started their plan from the Vietnam war and until now. We feel that these denying of food stamps is their way to eliminate us. I've been a soldier supporting the U.S. in 1965 until coming to the U.S.<sup>94</sup>

We gave the Hmong community copies of their declarations to bring to their hearings in case they were unwilling or somehow unable to testify on the day of the hearings. We also helped them gather packets of evidence, including copies of veterans' certificates issued by the Lao Veterans Association of America and commendations awarded to them by Congress. The Caucus prepared more than one hundred clients in this manner. Because we could not reach every Hmong community group, we also drafted sample questionnaires and declarations to explain the court process, and distributed these through the Hmong community networks. We asked the Hmong community to mail copies of their declarations back to us, which allowed us to identify the most compelling cases for potential impact litigation. Consequently, we received several hundred more copies of declarations along with photographs and other supplementary evidence.

Before entering the hearings, we knew that a successful outcome was unlikely. In light of the suicide reports, we were concerned about the impact that an unfavorable ruling or experience might have on the community. In ongoing community meetings, we cautioned the Hmong against having high expectations for the administrative hearings and assured them that we would continue to work for their campaign for recognition regardless of the outcomes of the hearings.

Days before the hearings, we discovered that the Untied States Department of Agriculture had issued advance guidance to all the administrative law judges assigned to hear these cases. This notice stated that while there had been a new sense of Congress, it had no legally binding effect. Thus, it essentially ordered the judges to deny the Hmong appeals because the sense of Congress "[did] not provide the authority to make [the Hmong veterans] eligible for food stamps."<sup>95</sup> Upon this discovery, we consulted with other legal service providers about the ethics and utility of proceeding in the face of such a clear directive, where there seemed to be no legal possibility of prevailing on the merits. Moreover, we

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94. These declarations, along with more than a hundred other declarations and questionnaires, are on file with the Asian Law Caucus in San Francisco.

95. United States Department of Agriculture Food and Consumer Service, Administrative Notice No. 97-107 (August 1997).

were concerned with the possibility of being sanctioned by the legal system for bringing frivolous claims. Ultimately, however, we decided to look at the situation beyond the lens of traditional regnant lawyering and to go forward with the appeals. Our legal objective at the time was simply to assist the Hmong in raising their voices in protest against the injustice to their community.

On the morning of October 15, 1997, a number of Caucus staff, law clerks, and volunteers went to Marysville to a temporary "courthouse" located in a mall in order to represent as many Hmong as physically possible. The "court room" was a large auditorium with a number of folding tables and chairs spread out to maintain a semblance of private hearings. Dozens of Hmong waited in the middle of the auditorium as the hearings proceeded around them. Though we had no formal clients and no retainers had been signed, we talked our way into the hearing room, and the hearing officers allowed us some time to speak with the large assembly and to offer our legal services to a group of "clients" we had never met. Legal partners from several other parts of the state, such as the California Central Legal Services Organization in Fresno, also represented a large number of Hmong appellants that day.

We had been alerted that due to the number of hearings requested and the similarity in issues presented, various individual cases would be lumped together in groups of five to ten for simultaneous hearing. While we had reservations about privacy and due process implications and had prepared legal research in order to challenge the hearing procedures if necessary, we also recognized as community lawyers that the bulk hearing process might work in our favor. While we wanted to tie up the administrative process by having each Hmong hold his or her own individual hearing, we also thought that a group hearing might embolden the Hmong who were more accustomed to working in groups, and thus help them effectively voice their cases. In addition, it would allow us to optimize our limited legal resources by monitoring and representing more individuals in their hearings. We eventually conferred with groups of Hmong and allowed them to choose whether to proceed in individual or group hearings. The vast majority of those that I represented chose to proceed in group hearings.

Each of us represented several dozen Hmong families that day as they stepped forward to speak of their families' sacrifices and to demand that they be recognized.<sup>96</sup> Many of the plaintiffs brought with them barely legible copies of our legal brief and the attached Congressional statement. Many were also prepared with the declarations that our law student and undergraduate volunteers had written. In each of the cases we defended, we spoke briefly to cover the legal bases for appeal, filed a copy of the brief if the clients had not already done so, and then essentially allowed

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96. In one particular case I represented, the family's food stamps were not even at risk, but the client had somehow in the confusion managed to file an appeal anyway. When he appeared at the hearing, I attempted to persuade him to take the case off the calendar since he had no damages recognizable under the law. This "client" insisted on proceeding with his hearing anyway, just so that he could be heard regarding his military service.

each client the opportunity to present his or her own story in his or her manner. The clients came to these hearings with yellowed photographs of themselves or their spouses in combat, military books showing the regions where they had fought, slips of paper bearing their CIA payroll numbers, documents issued by the Lao Veterans of America certifying their military service, and newspaper articles detailing the Hmong plight. And sadly, many brought with them stacks of family death certificates.<sup>97</sup>

Many clients pleaded with or alternatively berated the hearing officers, pointing to old war wounds and then to their children, asking if the judge was going to let them starve.<sup>98</sup> Each client was allowed to testify for as long as he or she individually chose. At times, members of the groups commented on or reinforced the testimony of the other plaintiffs, thus serving as informal witnesses.<sup>99</sup> The state's representative against whom I appeared seemed to listen attentively and did not choose to object to either the form or content of their testimony, thus displaying some sympathy for my clients' situations. We chose not to interrupt or attempt to shape or guide our clients' testimony, but rather allowed them to state their own cases.

On the morning of the hearings, the Caucus had sent out a press release alerting news media to the unusual nature of these ongoing legal proceedings. In certain areas, reporters were able to gain access to the hearings with the consent of the Hmong clients, who saw it as an opportunity to educate the broader community on their history and struggle.<sup>100</sup> In between our administrative hearings, we spoke by cellular telephone with reporters, relaying the incredible stories of our clients and educating the media about the Hmong community. Most major California press, as well as the Associated Press on the national level, covered our direct administrative challenge to the food stamp cuts.

Each case was intensely emotional and, as we journeyed home that night with all of the cases under submission, we enjoyed a bittersweet victory in having advocated for the Hmong in their proverbial day in court, although we knew that we were unlikely to have had any real legal effect. Nonetheless, based upon the heart-wrenching testimony of the Hmong veterans, we received several favorable decisions in the coming weeks as a number of administrative law judges defied the advance directive of the U.S. Department of Agriculture and ruled that the Hmong were in fact

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97. Because the judges were often unfamiliar with the Hmong and these various forms of evidence, they called upon us to take on the role of "expert witnesses" to help them interpret such evidence. We were all armed with copies of Fadiman's nonfiction bestseller *THE SPIRIT CATCHES YOU AND YOU FALL DOWN*, *supra* note 30, and read passages to the hearing officers as evidence.

98. Of those I represented that day, one woman in particular stands out in my mind, having been overcome with emotion during the hearing. When the administrative judge indicated as a matter of routine that he would take the matter under submission and send a decision in the mail, she angrily responded that if he had any courage, he would not reject them by mail but would come to their doorstep with a gun and personally kill them because that was the equivalent of a rejection letter. Her words seemed to have great effect upon the administrative hearing officer.

99. Many of my clients told me that through this way, some Hmong who would have falsely claimed to be veterans, were also prevented from making such claims in public.

100. See, e.g., Howard, *supra* note 38, at A1.

veterans for the purposes of the Welfare Reform Act. In finding for our clients, these judges issued courageous decisions that relied upon the testimony of our clients, our brief, and the “sense of Congress” stated in the Balanced Budget Act. One such decision reads in relevant part:

Based upon a preponderance of the evidence, it is found that the claimant, claimant’s spouse, and their unmarried dependent children . . . are not ineligible for food stamps due to non-citizen status . . . . The Congressional statement expressly states that Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict . . . should be considered veterans for purposes of continuing certain welfare benefits (e.g. Food Stamps) . . . Congress could have chosen to be silent on the issue of continuing eligibility for Hmong and Highland Lao individuals. Had that occurred, statutory construction of the PRWORA to be inclusive of Hmong and Highland Lao individuals would have been unreasonable. However, based upon the significant Congressional findings contained in Section 5566(a), the intent of Congress to expand eligibility to Hmong and Highland Lao veterans is clearly expressed in Section 5566(b). It is acknowledged that the Congressional statement in such section refers to the ‘sense of Congress’ to continue benefits and may arguably be construed to refer to a future rather than present expansion of benefits. However, Food Stamps are intended to meet a present, not future need. *The purpose of the Food Stamp Program is to provide food to eligible needy individuals on a current and timely basis. Hunger cannot be postponed.* Therefore a reasonable statutory construction of such language contained in the Balanced Budget Act Sections 5566(a) and (b) is to presently continue eligibility for Food Stamps for those qualified Hmong and Highland Lao veterans . . . . *The claim is granted.* (emphasis added).<sup>101</sup>

Acknowledging that even the “sense of Congress” seemed to imply the need for a future legislative fix, these judges chose to put common sense and the present reality of hunger before a theoretical black-letter reading of the law.

Our elation over winning these administrative cases was short-lived, however, as we received a “Director’s Alternate Decision” in each such case from the California Director of Social Services, which cited the Department of Agriculture’s Administrative Notice 97-107 in overruling the administrative judge’s decision.<sup>102</sup> But even as we lost this first round of our legal battle, we recognized the power and potential in the simple narrative of our clients. We had won (albeit briefly) cases that even the most sympathetic of legal advocates had thought to be legally hopeless. The news of our short-lived but symbolic victory in the administrative process gave a second life to the story in the media.<sup>103</sup>

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101. Copy of decision on file with author.

102. The decisions of the administrative law judges are considered to be recommendations to the state Director of Social Services, who declined to follow their decisions in these cases.

103. See, e.g., Ellis, *Hmong Seek Exemption*, *supra* note 92, at A3 (citing one administrative law judge’s description of the “‘emotional and heart-wrenching’ stories of leaving wives and children to fight for the Americans, of losing loved ones in the war and then, when it was over, of harrowing escapes from the communist victors.” *Id.*).

Based in part upon these initial decisions in our favor, we collaborated with another legal services organization to proceed with our challenge in state court. Central California Legal Services (CCLS), an organization based in Fresno, which is home to one of the largest Hmong populations, took the lead in preparing a writ on behalf of one of the clients it had represented in an administrative hearing.<sup>104</sup>

We decided to time the filing of the writ around Veterans' Day to achieve maximum press and public exposure. With the annual focus on honoring veterans, we wanted to offer the press an alternative angle on the history of a group of forgotten veterans. A few days before the filing, our plaintiff, Chong Yia Yang, drafted an op-ed piece, which appeared in the Fresno Bee, discussing his years of dangerous military service from the age of fourteen in Laos and stating his case for why the Hmong should be exempt from food stamp cuts.<sup>105</sup> The following day, the Sacramento Bee published a long front-page story entitled "Suicide Illustrates Welfare Reform's Toll among Hmong," which discussed the suicide of a Hmong mother of seven who was angry over the threat of welfare reform.<sup>106</sup> Citing our clients, the article hinted at the possibility of additional deaths should further food stamp cuts be implemented.<sup>107</sup>

We immediately faxed copies of both Chong Yang's op-ed piece and the article regarding the Hmong suicide to dozens of local, state, and federal legislators in order to obtain political support for our legal action. Lieutenant Governor Gray Davis, a Vietnam veteran and the underdog gubernatorial candidate at the time, took advantage of this opportunity both to promote himself and to attack the incumbent Governor Pete Wilson. Davis drafted a letter to Eloise Anderson, the director of the Department of Social Services (DSS) under Governor Pete Wilson, which cited the Sacramento Bee article and stated, "As a [Vietnam] veteran myself, I am personally offended that the state of California should fail to acknowledge the sacrifices of fellow [Hmong] veterans and their family members."<sup>108</sup> Copies of this letter were widely circulated, and it was covered extensively by the press.<sup>109</sup>

104. Attorneys Michael Kanz and Chris Schneider must be given credit for the tremendous efforts to further our legal case. CCLS chose to proceed by way of writ because as a recipient of federal Legal Service Corporation funds, they were barred from filing a class action lawsuit. The ongoing trend by conservative forces to restrict the substantive areas and procedural avenues open to legal services groups is another area that merits further study. The Caucus filed a companion class action claim, which the federal court stayed pending resolution of the CCLS case.

105. See Chong Yia Yang, *Hmong Soldiers Are Veterans, Too, Deserve Benefits*, FRESNO BEE, November 8, 1997.

106. Chia Yang, a 54-year-old Hmong woman in Sacramento, had committed suicide on October 16, 1997, leaving behind a videotaped message that blamed welfare reform for her death. "It's not because you didn't love or support me," said Yang, "my sadness over the (American) system and health problems drove me over the edge." Magagnini, *Suicide Illustrates Welfare Reform's Toll among Hmong*, *supra* note 67, at A20.

107. *See id.*

108. Charles McCarthy, *Hmong Sues for Aid as CIA Veteran*, FRESNO BEE, November 12, 1997, at B3.

109. See, e.g., Stephen Magagnini, *Restore Food Stamp Aid for Hmong, Davis Urges*, SACRAMENTO BEE, November 12, 1997, at B1; *Editorial: Spare the Hmong from Welfare Reform*, RIVERSIDE PRESS-ENTERPRISE, November 7, 1997, at A8.

During this period of intense scrutiny by the press, the Department of Social Services quickly softened its tune by attempting to acknowledge the sacrifices of the Hmong veterans while shifting the blame to the federal government.<sup>110</sup> Within a day of the Davis press release, a Vietnamese community liaison working for Republican Governor Pete Wilson contacted us and asked how they might support our efforts as well. We had an intense political debate within the Caucus on the efficacy of using politicians to advance our community campaigns. In particular, there were concerns from our legal staff over appearing to align with incumbent Governor Pete Wilson, who had made a career out of attacking immigrants. At the same time, we struggled with the ethics of turning down an opportunity that, while potentially harmful to our larger service population as a whole, might benefit our "client community." In the end, we reached a compromise whereby we passed the offer of assistance on to the representatives of the Hmong community and advised them to follow up if they so chose.

On November 12, 1997, CCLS and the Caucus convened a press conference at the Fresno Legion of Valor Museum to announce our intent to file an appeal on behalf of the Hmong. The press conference was timed to coincide with a Veterans' Day parade, at which the press quoted several "American" veterans who supported the Hmong claim for benefits.<sup>111</sup> A CCLS attorney even appeared on a conservative radio talk-show program that week to explain the legal case. This appearance drew mixed but grudgingly respectful comments from an audience that was not supportive of welfare or immigrants but could not deny the contributions of a group that had sacrificed so much in the fight against Communism. Through this and other public-speaking opportunities, we sought to recruit allies from nontraditional venues.

Because this case involved questions of federal jurisdiction, the state Department of Social Services successfully removed the case to federal court, where a federal judge ruled against the Hmong in March 1998.<sup>112</sup> The adverse opinion turned largely on the legal question of the authoritative weight to give to a "sense of Congress." However, even in ruling against the Hmong, U.S. District Court Judge Robert E. Coyle stated that while he was bound "by the 'only reasonable interpretation' of Congress' actions . . . the court must decry the inequitable treatment of a class of residents that sacrificed much to serve this nation . . . It is the court's sincerest hopes that Congress will take steps to remedy this inequity

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110. Note the softening of the following press statements: On November 9, 1997, DSS spokeswoman Corinne Chee said, "I feel for these people; they fought and died for us. But in the era of welfare reform, the new mantra is 'work.' It's not about 'what the government owes me.'" Magagnini, *Suicide Illustrates Welfare Reform's Toll among Hmong*, *supra* note 67, at A20. On November 12, 1997, DSS director Eloise Anderson stated, "If the Hmong feel betrayed, they ought to protest to Congress. The state of California didn't break any promises to the Hmong." Magagnini, *Restore Food Stamp Aid*, *supra* note 109, at B1.

111. See McCarthy, *supra* note 108, at B1.

112. One wonders if the state's response to our media advocacy affected the eventual framing of their legal defense from defending welfare reform to simply shifting the burden to the federal government.

as soon as practicable.”<sup>113</sup> Thus, although we again lost a round in the legal battle, we successfully used the courts as a mechanism to continue applying pressure to the legislative branch.

CCLS once again took a lead in appealing the district court opinion to the Ninth Circuit Court of Appeals, which eventually ruled against us only after a legislative fix had already been implemented. Although we ultimately “lost” the legal case, the litigation generated a wave of press from California to Washington, D.C., which played a significant role in advancing the general campaign of the Hmong. We ended up getting favorable op-ed pieces in newspapers ranging from the Los Angeles Times to the Fresno Bee.<sup>114</sup> Moreover, we even received favorable op-ed pieces from media such as the Kansas City Star, where the numbers of Hmong in the state were negligible. This perhaps indicated that we had succeeded in influencing the view of the mainstream.

#### *E. A Political Response*

Concurrently with our community organizing, media and legal campaigns, our affiliate lobbying office in Washington, D.C., the National Asian Pacific American Legal Consortium (NAPALC), had been holding frequent meetings with the Department of Agriculture and other federal officials for the purpose of convincing them to reverse their positions on welfare reform. The D.C. groups at the time were not only attempting to pass new legislation to reverse certain provisions of the Welfare Reform Act, but also lobbying various federal departments to interpret and implement the new welfare laws in a manner that would least impact our communities.

Armed with the declarations and questionnaires that we had collected directly from the Hmong community, NAPALC infused the voices and causes of the community into the general platform of demands by its D.C. counterparts. In meetings with various federal bureaucrats, they plied them with the compelling stories of Hmong sacrifice and American betrayal. The effect was to both advance the cause of the Hmong and soften the opposition’s general attitude towards immigrants as a whole. In addition, NAPALC contracted with a well-respected law firm inside the Beltway to issue a favorable legal interpretation analyzing the “sense of Congress” regarding the Hmong. Lawyers from this firm, Hmong grassroots activists, and NAPALC attorneys met with the White House Counsel, the Office of Management and Budget, the White House Domestic Policy Council, and the Undersecretary and General Counsel’s Office of the Department of Agriculture, armed with a legal memorandum in an attempt to obtain a political remedy. We hoped that this memorandum by a “political law firm” might be persuasive political lawyering of a different stripe.

Perhaps equally important during this period was the unspoken threat of the pending federal litigation that we had brought. Given the deaths that

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113. Michele Marcucci, *Stamping Out Benefits: Laotian War Veterans Challenge Food Stamp Cutoff*, CALIFORNIA LAWYER, May 1998, at 17.

114. See, e.g., *Justice for the Hmong*, FRESNO BEE, April 27, 1997, at B6.

this politically driven legislation had already caused, the administration would suffer a public relations nightmare should the law ultimately be deemed unconstitutional. Our D.C. advocates worked tirelessly in their attempt to convince the administration to reach some form of compromise on behalf of this class of veterans.

#### *F. A Victory for the Hmong*

On June 23, 1998, President Clinton signed into law the Agricultural Research, Extension and Education Reform Act of 1998, which among many provisions, amended § 402(a)(2) of the Welfare Reform Act to add an exemption for "certain Hmong and Highland Laotians."<sup>115</sup> Notably, the amendment provided for a food stamp ineligibility exception for any Hmong and Highland Lao legal permanent resident who "was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era," as well as his or her spouse and children.<sup>116</sup> This tortured language was apparently the result of intervention by the Department of Veterans Affairs, which threatened to oppose this amendment unless it could be drafted without characterizing the Hmong as veterans.

The work of the Caucus with the Hmong community continued. Shortly after this campaign, we hired one of the principal organizers from the community, Blong Lo, to work as a part-time paralegal and organizer to staff a small Sacramento satellite office. Sally Kinoshita, the extern who had participated in the initial Marysville training, continued her work with the Hmong by conducting additional needs assessments with the help of local Hmong college students. She eventually joined the Caucus as a staff attorney and focused on Hmong and Southeast Asian community needs. Working with both local organizers and Washington, D.C. lobbyists, the Caucus also helped secure the passage of the Hmong Naturalization Act, a change in law that would make it easier for many of the older Hmong and Laotian veterans finally to become United States citizens. Most recently, in 2001, the Caucus continued to work with many of the Hmong organizers with whom it had collaborated, to address broader issues of educational equity, hate violence, police misconduct, census and political representation.

#### CONCLUSION

The Caucus' work with the Hmong community was ultimately significant not only because it succeeded in raising the concerns of a small minority to the highest levels of government, but also because it changed the overall narrative regarding immigrants and welfare and diminished support for the immigrant-targeted provisions of welfare reform. As a

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115. Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105-85, § 508, 112 Stat. 523, 579 (1998).

116. *Id.* at 579-80.

community that had sacrificed so much in defense of American interests, the Hmong were one of the best examples that welfare reform was a poorly conceived and politically motivated act that had been cast too widely during an election year. Within two years of the passage of the popular act, most of its harshest provisions targeting immigrants had been amended or supplemented by state benefits.

From a practitioner's point of view, this victory demonstrated the power and possibilities of a political and community-based lawyering campaign. Despite remarkably limited resources and the seeming weight of both the law and public opinion against our success, we were nevertheless able to wage a war in the courts of law and public opinion to help build the momentum for change. Although the legal issues appeared to be insurmountable on their face, we were able to obtain the legal remedy we sought through a combination of litigation, community organizing, political lobbying and media advocacy.

Perhaps as important as the result was the process by which we proceeded. In engaging in this form of community lawyering, we hoped to assist in empowering a community that had previously been denied both a voice and access to the courts. Although we violated many traditional rules of lawyering by encouraging the filing of appeals without apparent legal merit, counseling masses of clients via radio and videotaped presentations, representing clients in hearings whom we had never previously met, and allowing clients to testify without our control or objection, we felt that as political and community-based attorneys, this strategy would best serve the needs of the client community.

In partial answer to the interest convergence theory advanced by some critical race theorists, the Hmong case offers a more optimistic alternative in an era of changing demographics. It cannot be denied that hard-fought legal victories may be fleeting in the face of a hostile majority sentiment, but in this new millennium in which demographics are rapidly changing, there is no reason that we cannot also win over the majority view. We no longer face a hostile monolithic majority that is opposed to all forms of social change; our issues and potential constituencies are no longer solely black and white. Moreover, just as the conservatives have advanced their agenda in the 1990s by creating temporary alliances to divide and conquer our communities, so must we on the frontlines respond by building coalitions, whether permanent or temporary, to defend our communities. Through a strategic campaign of political and community-based lawyering, effective use of the press, working with elected officials with compatible interests, aligning with groups beyond the usual suspects, and mobilizing communities, we can forge the majority opinion.

It must be noted, however, that this form of political community-based lawyering does not completely address the chasms of need because it is by nature a defensive and reactive weapon based on the immediate needs of the community. It does not portend to offer a proactive vision of social justice beyond the limits of our work with the Hmong and immigrant communities or supplant the call for a true critical race praxis. It is simply what must be done to answer the attacks upon our community.

As frontline practitioners, we sorely need the assistance of academic allies for the building of a true critical race praxis. We need to build a proactive agenda; we need theories in our litigation, research and amicus briefs, as well as allies who will draft editorial opinions and appear before the media to help influence public opinion. From a larger perspective, it could be argued that the progressive Asian American voice in the affirmative action cases was sacrificed as a result of our defensive commitment of resources to the Hmong campaign. Yet, there is another gap, that is, the chasm between academics and community, that must be bridged even as academics and practitioners join together in conferences and in litigation. While we need vision from the academics, it must also be a vision based on the view from the ground and not one that looks at a utopia beyond the hills and from the tower. The true loss in *Lowell* and other affirmative action cases was perhaps not in the failure to incorporate progressive theory and rhetoric into litigation, but in the inability to build a strong foundation and understanding of the issues in the community over the years. Frontline practitioners are often tied not only to the immediate needs but also the interests of the community as a whole, and thus cannot responsibly advance positions that are incompatible with a large segment of the community. We must proceed with "everything at once" and "everybody at once," sustaining the movement for social change through a coordinated campaign by academia, activists, and community.

