

PRO BONO

PROPERTY BEFORE PEOPLE?

IP ATTORNEY PETER AFRASIABI SEEKS CHANGE IN IMMIGRATION COURTS
 BY NYSSA GESCH



Since clerking on the 9th Circuit after law school, Peter Afrasiabi, currently a busy IP partner at One LLP, has worked many immigration cases pro bono. Not all of them have happy endings.

One client, Bobby Flores, virtually grew up in the immigration system. His parents came to the U.S. to escape the Shining Path, a Peruvian guerrilla organization. Because they were found to have entered the country without authority, the family was put into deportation proceedings. However, because Flores' parents arrived first, they were able to suspend their own deportations but not Bobby's. "[The immigration judge] didn't do what you hope judges would do," says Afrasiabi, "which is recognize that there's something that doesn't make sense when you're allowing parents to stay but you're ordering a 13-year-old to leave."

In this case, "I always walked away with this feeling that the system isn't working right, and justice isn't being delivered, in a way that I don't walk away in my intellectual property cases," Afrasiabi says. "In federal court, whether I win or lose, I very rarely feel that, 'Wow, there was a really bad failure in the system.'"

Such thoughts led him to write a book documenting failures in immigration court, *Show Trials: How Property Gets More Legal Protection than People in Our Failed Immigration System*, which was published last year.

"The book, in many ways, was written in my mind over the years," he says. "The cases were all there but I didn't have a thesis to explain them all."

That arrived when he worked simultaneously on two cases: one for a victim of persecution in China who was

seeking political asylum; the other a copyright case in federal court. "The same basic thing happened in each case, and the property system's response was the antithesis of the immigration system's response," Afrasiabi says. In the political asylum case, due to a translation error, his client showed up two hours late and was deported. A missed hearing in the copyright case led to a much less severe result.

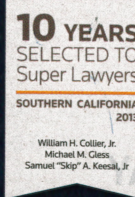
"There is something fundamentally wrong when we're able to have better protection for our property than we are for people," Afrasiabi says.

So what can be done to reform the system? Afrasiabi suggests ensuring that immigration judges are selected in a similar way to Article III judges—one that is transparent, subject to public vetting and polls local bar communities.

Afrasiabi also calls for right to counsel for people whose cases have significant life or liberty issues at stake. "For example, people like my Iraqi client, who has been tortured and has the risk of death if deported," Afrasiabi says. "A legal system can't adjudicate his rights fairly unless the government also gives a lawyer to him at the same time it gives itself a lawyer to deport him. It should be giving a lawyer on the other side of the scales of justice."

"The bigger picture reforms that are needed are ones that come from Congress," Afrasiabi says, such as reinstating the right to appeal in places where it has been taken away. "The right to appeal is about as basic as apple pie," he says.

Immigration cases can be frustrating but Afrasiabi finds a silver lining. "I remain a firm believer that every lawyer who takes a single case really can make a difference in that case," he says. "Sometimes you don't win your case and you don't make a difference, but you've at least delivered a message to the person that the system does care, they're not on their own, and with time and with great effort and coordination of effort, you can see systemic change." ■



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 we congratulate
 Skip Keesal,
 Mike Gless,
 and
 Bill Collier
 on this
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