

MARY S. HOOPEs

BERKELEY JUDICIAL INSTITUTE ♦ 225 BANCROFT WAY ♦ BERKELEY, CA 94720

mhoopes@berkeley.edu

www.maryhoopes.com

EDUCATION

UC Berkeley, Ph.D., Jurisprudence and Social Policy Program, 2020

Dissertation: *Empirical Studies of the State's Treatment of Noncitizens in the United States: A Mixed Method Approach*

Committee: Leti Volpp and Taeku Lee (Co-Chairs), Kevin Quinn, Jonathan Simon, Irene Bloemraad

Honors: Berkeley Empirical Legal Studies Fellowship
Outstanding Graduate Instructor Award
High Distinction, Qualifying Field Exam
Dean's Normative Time Fellowship
Berkeley Fellowship (six-year fellowship including full tuition, fees, and stipend)

Experience: Summer Program, Inter-university Consortium for Political and Social Research (ICPSR), University of Michigan
Institute for Qualitative and Multi-Methods Research (IQMMR), Syracuse University
Research Design for Causal Inference, Northwestern University
Exchange Scholar, Religious Norms in the Public Sphere (Paris, France)

Cornell Law School, J.D., magna cum laude, 2005

Honors: *Order of the Coif*
PEO Scholar, 2004-2005
CALI Award for Excellence in Contracts

Activities: Cornell Law Review, General Editor 2004-2005; Associate Editor, 2003-2004
Public Interest Law Union (PILU), Member, 2002-2005
Study Abroad, ESADE School of Law, Barcelona, Spain, Fall 2005 (fluency in Spanish required)

University of Notre Dame, B.S., magna cum laude, Philosophy and Science Pre-Professional Studies, 2002

Honors: John A. Oesterle Award in Philosophy
Honors Thesis, *Affirmative Action Policies in U.S. Higher Education*

Activities: Notre Dame International Service Program, San Jose Orphanage, Chile, 2001
Center for the Homeless Children's Group, President, 2001-2002; Vice-President, 1999-2000
Biology Department, Poster Presentation: Labeling Liposomes in Drug Targeting

PUBLICATIONS AND WORKS IN PROGRESS

[*Regulating Marginalized Labor*](#), 73 HASTINGS L.J. __ (forthcoming 2022) (job talk paper)

While the administrative state is thought to pervade nearly every aspect of modern life, farmworkers are one of many vulnerable populations who remain far from its protective reach, existing largely in the shadows of the law. The threat of enforcement looms large for those who lack legal status, but the framework that regulates farmworkers' working conditions remains severely under-enforced. One agency, the Equal Employment Opportunity Commission (EEOC), has emerged as an important exception, adopting innovative strategies to secure substantial settlements and a wide range of injunctive relief on behalf of farmworkers. Using an original database of EEOC farmworker litigation and interviews with both EEOC

employees and farmworker advocates, this article provides the first empirical analysis of the Commission's groundbreaking initiative over the past two decades, which has gone unnoticed within legal scholarship. It argues that at least two features were critical to the Commission's success: (1) its de-centralized, entrepreneurial structure, which permitted this initiative to diffuse from the bottom up within the agency and persist across administrations, and (2) its unique and sustained partnerships with advocacy organizations. As the article contends, the EEOC's trajectory provides insight into how to strengthen public enforcement in the context of marginalized communities like farmworkers.

[*Learning to Detain Asylum Seekers and the Growth of Mass Immigration Detention in the United States*](#) (with Smita Ghosh), 46 LAW & SOCIAL INQUIRY __ (forthcoming 2021, peer-reviewed) (featured in [ImmigrationProf Blog](#) and forthcoming in [Youth Circulations Blog](#))

Drawing upon an analysis of congressional records and media coverage from 1981 to 1996, this article examines the growth of mass immigration detention. It traces an important shift during this period: while detention began as an ad hoc executive initiative that was received with skepticism by the legislature, Congress was ultimately responsible for entrenching the system over objections from the agency. As we reveal, a critical component of this evolution was a transformation in Congress's perception of asylum seekers. While lawmakers initially decried the detention of asylum seekers, they later branded them as dangerous as they grew in magnitude and were incorporated into existing racial hierarchies. Lawmakers began discussing asylum seekers as criminals or agents of infectious diseases in order to justify their detention, which then cleared the way for the mass detention of arriving migrants more broadly. Our analysis suggests that legislators may have emphasized the dangerousness of asylum seekers to resolve the dissonance between their theoretical commitments to asylum and their hesitance to welcome newcomers. In addition to this distinctive form of cognitive dissonance, we discuss several other implications of our research, including the ways the new penology framework figured into the changing discourse around detaining asylum seekers.

[*Judicial Deference and Agency Competence*](#), 38 BERKELEY J. INT'L L. __ (forthcoming 2021)

While there is consensus among practitioners and scholars alike that immigration adjudication is compromised, very few studies have examined the role that federal courts play in reviewing this system. This article focuses on asylum appeals at the federal appellate level and constructs an original database of cases across five circuits over seven years. It reveals that the federal Courts of Appeals have created a wide variety of court-fashioned rules that serve to either expand or constrict the scope of judicial review, with important implications for the likelihood of remand. As this analysis demonstrates, the elasticity of the appellate review model permits this wide variation, as courts applying a nearly identical standard of review reach starkly different results. It argues that the more expansive approach to review is normatively beneficial, as we ought to have an appellate review model that permits courts to be responsive to evidence of an agency in crisis. This is particularly compelling in the context of asylum seekers, as their lack of political power has enabled both a long history of politicization of the adjudication process and a disregard for quality assurance initiatives within the immigration agency. Since larger changes aimed at addressing the underlying flaws at the agency level are unlikely to be forthcoming soon, federal courts may be the only institutions equipped to meaningfully address problems within asylum adjudication.

Law Clerk Diversity in the Federal Courts (with Justice Goodwin Liu and Judge Jeremy Fogel, work in progress)

The lack of diversity among federal law clerks has been the subject of much scrutiny in recent years, taking center stage in congressional hearings, the legal academy, and the judiciary itself. However, other than Tony Mauro's work on clerk diversity at the Supreme Court, no scholarship has empirically examined this issue. This study provides a first look at diversity in law clerk hiring at the Courts of Appeals, drawing from data collected through interviews with fifty federal appellate judges. These interviews explore judges' approaches to hiring, their views of diversity along a broad range of dimensions, and the means by which they sought to achieve their goals. In this article, we illuminate the process by which some judges have achieved greater diversity in their chambers.

The Psychology of Judicial Decision-Making (with Judge Jeremy Fogel and Jason Cantone), chapter in *Handbook of the Psychology of Legal Decision-Making*, Cambridge University Press (invited contribution, forthcoming 2022)

This chapter forms part of a reference book that presents readers with the foundational topics in the area of legal decision-making. Focusing on the psychology of judicial decision-making, our chapter highlights the ways in which implicit and explicit bias, heuristics, and other cognitive processes can affect decision-making.

Book Review, RUTGERS CRIM. L. & CRIM. JUST. BOOKS ONLINE (reviewing Andrew I. Schoenholtz, Jaya Ramji-Nogales, and Phillip G. Schrag, *The End of Asylum* (2021), forthcoming 2022, invited contribution)

Practice-Oriented Works:

Chapter, *Elevating Your Game*, American Bar Association Section of Litigation, 2010 (a book addressing the lack of diversity among lawyers in senior leadership positions)

Attorney-Client Privilege and Work Product Doctrine-Protecting the Privilege: What Is It, Who Has It, and What Happens If You Waive It Good-Bye? (with Christina M. Tchen), Practising Law Institute, Federal Civil Practice 2006 (updated version published in 2007)

Attorney-Client Privilege and Work Product Doctrine in Internal Investigations (with Christina M. Tchen), Practising Law Institute, Federal Civil Practice 2007 (updated version published in 2008)

TEACHING AND RESEARCH INTERESTS

Civil Procedure, Administrative Law, Immigration Law, Professional Responsibility, Refugee and Asylum Law, Legislation and Statutory Interpretation, Law and Society Seminar, Labor and Employment Law

CLERKSHIP AND FELLOWSHIP

Law Clerk, The Honorable John T. Noonan, Jr., Ninth Circuit Court of Appeals, San Francisco, CA, 2016-2017

United States Supreme Court Fellow, Washington, DC, 2017-2018

Assigned to the Federal Judicial Center. Responsibilities included research on the federal courts, teaching a class to Supreme Court interns, and presenting briefings to judges and other international visitors to the Court.

PROFESSIONAL EXPERIENCE

Director of Research, Berkeley Judicial Institute, UC Berkeley School of Law, 2018-present

Responsibilities include developing the Institute's research on a wide range of issues related to state and federal judiciaries, and planning events and symposia that foster interaction between the legal academy and the judiciary. Consultant work with federal courts on internal governance issues, including leading research teams that administer surveys and conduct interviews with judges and court personnel.

Instructor, Immigration Law Seminar, University of California, Berkeley, 2014-2016

Fall Program for Freshmen, 2014 (4.8/5 teaching effectiveness)

Fall Program for Freshmen, 2016 (6.9/7 teaching effectiveness)

Rhetoric Department, 2016 (6.7/7 teaching effectiveness)

Graduate Student Instructor, UC Berkeley, Legal Studies, 2009-2015

Immigration & Citizenship Law (Professor Leti Volpp, eight semesters/summers 2010-2015)

Law in Chinese Society (Professor Bob Berring, Spring 2014)

Law, Politics & Society (Professor Malcolm Feeley, Fall 2010)

Makings of Modern Constitutionalism (Professor David Lieberman, Summer 2009)

Visiting Researcher, UCLA School of Law, 2012-13

Faculty Sponsor: Professor Hiroshi Motomura. In addition to research, provided volunteer legal assistance at Deferred Action for Childhood Arrival (DACA) clinics and served on the organizing committee for a UC-wide immigration conference.

Graduate Student Researcher, 2010

Professor Kevin Quinn. Coded legal opinions for a quantitative analysis of the New York Court of Appeals decision-making from 1900-1950.

Litigation Associate, 2005-2008, Skadden, Arps, Slate, Meagher & Flom LLP (Chicago, IL)

Represented corporations in complex litigation, internal investigations, and SEC investigations. Co-represented an inmate in a religious discrimination suit through a federal jury trial. Extensive pro bono experience in immigration law, including representation of those seeking asylum, U visas, and Special Immigrant Juvenile (SIJ) status, and serving as a member of the Illinois Task Force on Unaccompanied Immigrant Children. Reviewer for the ABA Judicial Internship Opportunity Program.

Adjunct Professor, Loyola University Chicago School of Law, 2007-2008

Courses: Legal Writing I and II

SELECTED CONFERENCES AND WORKSHOPS

Regulating Marginalized Labor, May 2021, Law & Society Association. Chicago, IL (virtual).

Learning to Detain Asylum Seekers, May 2020, Law & Society Association. Denver, CO (virtual).

Disparities in Appellate Review of Asylum Law, June 2018, United States Judicial Conference, Committee on Federal-State Jurisdiction. Williamsburg, VA.

Disparities in Appellate Review of Asylum Law, February 2018, United States Supreme Court. Washington, D.C.

Disparities in Appellate Review of Asylum Law, April 2017, Legal Academia Workshop (invited), University of Notre Dame. South Bend, IN.

Religious Claims in Asylum Appeals, May 2014, Western Political Science Association. Los Angeles, CA.

Appellate Review of Religious Asylum Claims, May 2012, Religious Exchange Scholars Conference, University of California. Berkeley, CA.

Evaluating a Recent Proposal to Create Article I Immigration Courts, May 2010, Immigration Law Teacher's Conference. DePaul University College of Law. Chicago, IL.

JOURNAL AND PROFESSIONAL SERVICE

Referee, *Law & Society Review*

Member, Ninth Circuit Judicial Conference, Law Clerk Diversity Subcommittee

Speaker, UC Berkeley Latinx Pre-Law Society

Mentor, UC Berkeley Undergraduate Research Apprentice Program

Mentor, UC Berkeley Student Mentoring and Research Team

LANGUAGE

Spanish (highly proficient)

BAR ADMISSION

Illinois (inactive)