

MOVING FORWARD:

THE ROLE OF LEGAL COUNSEL IN NEW YORK CITY
IMMIGRATION COURTS

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Executive Summary

In the United States, noncitizens in immigration removal proceedings (formerly known as deportation proceedings) have a right to legal representation, but counsel is not provided for free by the government. Whether they retain a lawyer or not, noncitizens are required to attend a hearing, called a master calendar, in which a judge reviews the charges against them and decides if they have grounds to apply for relief from removal. If the decision is favorable, they must then attend an individual merits hearing, in which a judge decides whether or not they can legally remain in the country.

In the past there has been almost no empirical study of legal representation in Immigration Court. At the same time, the debate about a noncitizen's right to counsel, which has been going on since the 1960s, includes statements as if they were based on empirical findings and conclusions. Researchers at the Vera Institute of Justice decided to test some assumptions about how many and which noncitizens retain counsel, and how having or not having counsel affects the processing of cases and their outcomes. With that purpose in mind, we conducted a close-up study of a diverse group of noncitizens in New York City's Immigration Courts and then compared these findings to data from Los Angeles, Miami, and the nation. Along the way we also examined the search for legal counsel, what types of legal counsel are available to noncitizens, and what proportions of these represent people in court.

Large metropolitan areas tend to have higher rates of representation than the country as a whole (37percent): in New York City, almost 80 percent of noncitizens had a legal representative; in Los Angeles, 53 percent; and in Miami, 44 percent. People who completed their cases at an individual merits hearing, and who clearly appeared in court were even more likely to have representation.

From interviews with immigration legal professionals and noncitizens in New York City, the researchers learned that the search for counsel is often a time-consuming and frustrating experience, whether people eventually find lawyers or not. For those who had only one lawyer—and many had two to six representatives by their final hearing—the search lasted an average of four months. One-third of the respondents in the sample needed adjournments to find legal representation, bringing costly delays to the system. When they finally retained counsel, most respondents in New York City were represented by private lawyers. Some of these were considered good while others were perceived to be inadequate.

The relationship between representation and case outcome is difficult to ascertain. For example, while many more people in New York City had lawyers than in Los Angeles, the number of cases

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resulting in relief or voluntary departure was the same in both cities. When the researchers looked only at asylum seekers, however, representation was associated with a positive outcome for the noncitizen.

This empirical study injects new meaning into the debate on the right to and need for legal counsel in Immigration Court. Since immigration judges in New York City are reluctant to proceed when faced with an unrepresented respondent, adjournments to search for a lawyer can often cause lengthy and costly delays to the system. While some noncitizens may seek to delay a decision, fearing an order of removal, others have indicated a preference for completing the proceedings as soon as possible. Without counsel, however, noncitizens do not know for sure whether they have a possibility for relief or voluntary departure that the court could consider. As a result, a minimal level of guidance or representation for all respondents can help people thoroughly assess their situation, avoid potential mistakes or confusion, and move more efficiently through the court system.

Introduction

For almost forty years policy makers and legal scholars have questioned whether noncitizens in Immigration Court have a universal right to counsel, including court-appointed counsel for those who have none. Universal representation is often debated as a legal issue—as the right to counsel under the law. Few have conducted empirical studies of legal representation.

The research literature informing the debate, however, makes a number of assumptions about Immigration Court and the experiences of noncitizens both inside and outside the courtroom. Reports are imprecise and, at times, contradictory. Are the rates of representation more or less consistent nationwide? What happens if someone appears in court without a lawyer? Does everybody, in fact, need a lawyer? These are some of the questions that researchers at the Vera Institute of Justice asked when they began conducting a close-up study of a group of noncitizens in New York City's Immigration Courts and then compared some of their findings to data from Los Angeles, Miami, and the nation.¹

The report focuses on comparative rates of representation, search for legal counsel by noncitizens, and the effects of representation (or lack thereof) on Immigration Court proceedings and outcomes. Noncitizens include people seeking asylum, undocumented workers apprehended during work site enforcement actions, and criminal aliens (ex-offenders who have served their prison sentences and been turned over to the Immigration and Naturalization Service for removal proceedings). We conducted interviews and observations and obtained information on rates of representation and case outcomes for New York City. We also obtained data for other jurisdictions to see if the experience in New York City was unique or representative of the country as a whole. With this combination of qualitative and quantitative information, we were able to substantially clarify longstanding assumptions about the role and effect of legal counsel in Immigration Court.²

Current Facts and Beliefs About Counsel in Immigration Court

National data show that most noncitizens, or respondents as they are called in Immigration Court, are not represented by counsel. According to the Executive Office for Immigration Review (EOIR),

¹ This research was made possible with support from the Ford Foundation.

² During our study, we became aware of an article in which the author suggests some of the questions we explored: Stephen H. Legomsky, *A Research Agenda for Immigration Law: A Report to the Administrative Conference of the United States*, 25 *San Diego Law Review*, 227 (1988).

when this study began in 1997 only 37 percent of all respondents and 11 percent of those held in detention centers when their case was completed, had representation.³ A 1992 study by the U.S. General Accounting Office that focused only on respondents in detention found that less than 25 percent (including 11 percent of criminal aliens) had counsel representing them in removal proceedings at the time of GAO's review.

How do rates of representation vary across the country?

Early literature, such as Gordon, discusses low rates of legal representation without regard to circumstances such as geographic area; there is no explicit differentiation.⁴ Later researchers suggested that geographic differences in the rates of representation exist, but cite no empirical studies. For example, Haney notes a letter from Gordon in which he writes that rates of representation are probably higher in New York City.⁵ More recently Martin stated that most asylum seekers, at least in large, high-volume jurisdictions, are now represented in Immigration Court.⁶ Beyond vague references, however, there has been no comparative study of rates or levels of representation. And if rates do vary according to location, what might account for the difference?

What happens if people appear in court without a lawyer?

Another assumption about Immigration Court is that if people do not retain counsel, their scheduled court hearing will be conducted anyway.⁷ Conventional wisdom suggests that because the proceedings are adversarial in nature, judges and INS trial attorneys might prefer facing someone who has no legal counsel. According to Gordon "In earlier days some (INS) administrative authorities looked with disfavor upon attorneys and sought to discourage their participation."⁸ There are no studies regarding where and in what situations cases proceed without counsel, or of the role immigration judges play in encouraging—or discouraging—counsel. Do judges push noncitizens to

³ Immigration Court, separate from the Immigration and Naturalization Service, is housed within the Executive Office for Immigration Review (EOIR).

⁴ See Charles Gordon, *Right to Counsel in Immigration Proceedings*, 45 *Minnesota Law Review* 875 (1961).

⁵ See William Haney, *Deportation and the Right to Counsel*, 11 *Harvard International Law Journal* 177 (1970). Footnote 29.

⁶ See David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 *University of Pennsylvania Law Review* 1247 (1990). Page 1307.

⁷ See Haney, *supra* note ___, at 179: "If the alien for any reason does not avail himself of his privilege to retain counsel, the hearing will be conducted anyway."

⁸ See Gordon, *supra* note, at 878.

proceed without a representation, or do they give adjournments so that people have time to find a lawyer?

Can unrepresented respondents be processed more quickly?

Scholars disagree over whether or not having counsel causes delays in immigration removal proceedings. Appleman argues that, for the “recently arrived border-crosser,” taking the time to find a lawyer may only be a “delay of the inevitable.”⁹ And Glazer notes that arguments against providing counsel could include the concern that it would be used for purposes of “strategic delay.”¹⁰ Both of these make the point that taking adjournments for cases with no possibilities for relief would slow down the proceedings and waste time for both the court and the immigrant, but they assume that by not taking time, the case is settled immediately. Making a contrasting argument, practitioners and scholars such as Creppy and Schuck believe that not having counsel causes delays, since judges feel obliged, out of concern for a person’s rights and for the integrity of the removal proceedings, to delay the hearing until that person can retain counsel.¹¹ What is the impact of high (or low) numbers of unrepresented respondents on the Immigration Court system, and the speed with which a case is completed?

Do people know how to find representation—and can they afford it?

A fourth assumption is that respondents fail to retain counsel because they cannot afford it, and that the answer to lack of counsel is provision of court-appointed counsel by the government. Both Gordon and Haney write that noncitizens in proceedings are “likely to be poor.” And Frey and Udagama state that “Given the fact that a majority of the asylum seekers in the United States are indigent, having left behind everything in the country of origin, and also given the exorbitant fees that many private practitioners and law firms charge for consultations, most are dependent on *pro bono* legal services.”¹² In the same vein, Schuck writes that many aliens cannot afford to procure paid

⁹ Irving Appleman, *Right to Counsel in Deportation Proceedings*, 14 *San Diego Law Review* 130 (1976). Page 140-141.

¹⁰ See Elizabeth Glazer, *The Right to Appointed Counsel in Asylum Proceedings*, 85 *Columbia Law Review* 1157 (1985). Page 1183.

¹¹ See Judge Michael John Creppy, *The Quest for Enhanced Efficiency in Immigration Courts*, 72 *Interpreter Releases* 193 (1995). Page unknown/electronic file. See also Peter H. Schuck, *INS Detention and Removal: A ‘White Paper’*, 11 *Georgetown Immigration Law Journal* 667 (1997). Page 689-690.

¹² See Barbara Frey and Deepika Udagama, *Assisting Indigent Political Asylum Seekers in the United States: A Model for Voluntary Legal Assistance*, 13 *Hamline Law Review* 661 (1990). Page 665.

representation on their own.¹³ In some contrast to these citations, Appleman writes that failure to retain counsel is not always due to indigency; some choose to waive counsel and represent themselves.¹⁴

There has been no rigorous assessment of how many respondents would be willing and able to pay a fee, and what fees would be within the range of possibilities. Is the issue really lack of funds or is it lack of access or information necessary to make an informed choice?

Does the presence of more lawyers in court lead to more winning cases?

Researchers agree that the issues surrounding the role and effect of legal counsel in removal proceedings are complicated and cannot be easily attributed to one feature of the process. The presence of counsel would seem to increase a person's chance of finding relief, but it is not clear whether a positive outcome is due to the efforts of a lawyer or whether other factors might play a role. Taylor writes that people who believe that they have a claim for relief may be more motivated to hire an attorney, while those with no viable claim may be more likely to appear in court without counsel and accept an order of removal.¹⁵ According to Appleman, "In the great majority of deportation cases, ...the presence or absence of appointed counsel cannot make the slightest difference in the outcome."¹⁶

What proportions of represented cases win relief? What proportion of winning cases have representation? If rates of representation differ by region, will proportions of winning cases vary accordingly? Do higher rates of representation lead to more winning cases?

Our Investigation

We designed this study to learn what happens in Immigration Court—who has representation and what the effect is on the system and the people involved. The study of legal counsel took place 1997-1998 in conjunction with the start-up of the Vera Institute's Appearance Assistance Program (AAP), a three-year demonstration project in partnership with the Immigration and Naturalization Service.

¹³ See Schuck, *supra* note, at 690.

¹⁴ See Appleman, *supra* note, at 134-40.

¹⁵ See Margaret H. Taylor, *Promoting Legal Representation for Detained Aliens: Litigation and Administrative Reform*, 29 Connecticut Law Review 209 (1997). Footnote 62.

¹⁶ See Appleman, *supra* note, at 141.

The AAP tested community supervision as an alternative to detention or release on bond for noncitizens in immigration removal proceedings in New York City.⁷⁷

New York City is an ideal location in which to begin our exploration because it comprises diverse immigrant populations. Its three immigration courts also contain approximately 15 percent of national removal cases, including a large number of all major types of cases and legal representation.

We collected data on a sample of New York City respondents and gained access to administrative information from the Executive Office for Immigration Review (EOIR) on the city and the nation, as well as Los Angeles and Miami. To learn about people's perceptions and experiences of the process, we observed court proceedings, interviewed immigration legal professionals and respondents, and surveyed legal practitioners.

The next section, "Description of the Study," describes in detail the research methods and defines key terms. The three subsequent sections each begin with a short paragraph summarizing the main points. They are followed by a conclusion section, which brings together everything we learned about the role and effect of legal counsel into a coherent whole, and suggests some conclusions, and new directions, to which the research points.

In the body of the report we have included only the essential tables and figures. Additional tables are in the Appendix.

⁷⁷ See Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* (2000). See also Chris Stone, *Supervised Release as an Alternative to Detention in Removal Proceedings: Some Promising Results of a Demonstration Project*, 14 *Georgetown Immigration Law Journal*, 673 (2000).

Description of the Study

OVERVIEW

Throughout the report we analyze five groups of respondents from three New York City venues. Federal Plaza, in lower Manhattan, is the city's primary immigration court. It handles cases for people who are not detained, including those who made application for asylum but were not apprehended by the INS (affirmative asylum cases), undocumented people apprehended by the INS at their places of employment, and a small number of criminal aliens. These cases constitute our first group.

The Varick Street Service Processing Center handles three types of respondents (treated in our study as three separate groups): detained criminal aliens, released criminal aliens, and noncriminal cases transferred over from Federal Plaza to relieve the backlog of cases there.

The Wackenhut Detention Center at John F. Kennedy International Airport holds people seeking asylum or claiming U.S. citizen or immigrant status (the fifth and final group).

To analyze the role and effect of legal representation for these groups, we obtained data from the Executive Office for Immigration Review (EOIR). We then obtained additional data for a second New York City sample, and for Los Angeles, Miami, and the nation. We relied on our observations of Immigration Court and interviews with immigration legal professionals, respondents, and legal practitioners to help interpret the quantitative data.

TERMS

A respondent has a "legal representative" or "counsel" when there is a legal representative of record in the EOIR system. In other words, a lawyer has submitted on behalf of the respondent a Notice of Entry of Appearance as Attorney or Representative (form E-28) in person or by mail. If people proceed without a legal representative, they must present their case *pro se* (for themselves).

"Immigration legal professional" includes legal representatives for respondents, INS trial attorneys who represent the government, and Immigration Court judges. Legal representatives for respondents include private bar lawyers, lawyers working for nonprofit agencies, and accredited representatives (lawyers not licensed in any of the fifty states but who work with a recognized nonprofit agency and have been granted permission by the U.S. government to represent immigration cases).

To analyze the association between representation and case outcome, we grouped outcomes into four categories: relief, case closed, voluntary departure, and removal. "Relief" represents a judge's decision for relief or admission, as well as other decisions that allow the respondent to stay in the

United States with immigrant or citizen status. This is the outcome of choice for respondents. “Case Closed” includes a judge’s decision of termination or another completion such as administrative closure and failure to prosecute. When a case is closed, the respondent has neither gained a new status nor been ordered removed from the country; it does not alter the status quo. Many cases are closed when the respondent does not appear in court and there is not sufficient evidence or paperwork for the judge to issue an order of removal. “Voluntary Departure” represents a judge’s decision of voluntary departure. Respondents are obliged to return to their country of origin, but are not ordered removed. Finally, “removal” represents an order of removal, deportation, or exclusion, as well as another decision that would lead to removal, such as status review denial. This is the worst outcome for the respondent, and it places the most serious restrictions on re-entering the United States.

QUANTITATIVE DATA COLLECTION

Close-up study of New York City. We collected data on 574 respondents at the three New York City Immigration Courts. This constitutes our “NYC Snapshots” sample. Although our first choice was to work with a random sample of cases, stratified by the three sites, we did not have access to a complete list of people. Instead, we took advantage of the best opportunity to collect samples, or snapshots, from each venue that we believe are representative as possible.¹⁸ This allowed us to compare the three venues.

In each location we collected respondent identification numbers, known as Alien Numbers (or A-Numbers), which were then used to track the cases in the EOIR Automated Nationwide System for Immigration Review (ANSIR). This administrative data include pivotal events and dates in removal proceedings, minimal demographic data, and some information on legal representation.

At Federal Plaza, we used a “test bore” approach by visiting the site and “drilling” into the population four times between October 1997 and July 1998. On these visits, we used the court calendar bulletin board to collect a sample of 331 cases from master calendar and individual hearing lists. Courtrooms were chosen using a random procedure to select two holding master calendar hearings and three holding individual hearings. From these we recorded respondents’ A-Numbers, which were then used to track the cases in ANSIR.

At Varick, we obtained court calendars for the first two weeks of October 1997. We used all cases within that period, which resulted in 79 A-numbers.

At Wackenhut, we obtained the Detention Inventory Report for one day in August 1998, which included individuals who had entered Wackenhut from March 30, 1997, through August 19, 1998. The report contained 188 names, but we were able to use only 164: those people who were already in proceedings and, therefore, had a record in ANSIR.

We tracked the sample cases through the proceedings. By the cut-off date for our analysis, 271 cases had been completed and 303 were still pending. We defined a case as completed when an immigration judge had issued a decision, such as an order of removal or an admission to the United States, or had completed the case in some other way, such as an administrative closure. We did not include prior cases for the same person that resulted in an interim decision such as a change of venue, nor did we look beyond the judge's decision to possible future motions or appeals. In our report, each respondent has one case.

EOIR databases. EOIR provided data from ANSIR for all cases completed at Federal Plaza in March 1998. We also received data for the same time period for cases completed in the corresponding courts in Los Angeles and Miami. This sample, "Completed Cases March 1998," allowed us to compare legal representation in the three cities.

SURVEY OF LEGAL REPRESENTATIVES

Using a list of names from the "NYC Snapshots" cases from Federal Plaza, we conducted telephone interviews and completed questionnaires with one hundred legal representatives during July and August 1998. (Our complete list totaled 139: 15 had no contact information, five refused to participate, and 19 did not respond after repeated attempts to contact them.) We used a structured survey to ascertain titles and affiliations, the focus of their practice, and their estimates of appropriate fees for services.

¹³ Regardless of the selection procedures, there is a certain amount of flux and change in factors such as rates of representation, meaning that no results would be universally reliable and generalizable. For this reason we use multiple sources of data wherever possible to confirm outcomes.

OBSERVATIONS

We made several visits to New York City's Immigration Courts to observe the proceedings and understand the roles and interactions of the court players, including immigration judges, INS trial attorneys, respondents, and especially the respondents' legal representatives. Members of the research team and staff members from the Appearance Assistance Program observed court activities between February 1997 and February 1999.

INTERVIEWS

We conducted forty in-person interviews with immigration judges, INS trial attorneys, and legal representatives for respondents. Judges were randomly selected, by venue, from a roster dated February 1997; ten interviews were conducted between March and August 1997. INS trial attorneys were randomly selected, by venue, from a roster dated September 1997; ten interviews were conducted between October and December 1997. Private lawyers were randomly selected from the American Immigration Lawyers Association (AILA) 1996-1997 Membership Directory; ten interviews were conducted between May and August 1997. Agency legal representatives were randomly selected from a list compiled from three sources, all from 1997 (The National Immigration Law Center's Directory of Nonprofit Agencies That Assist Persons in Immigration Matters, the EOIR roster of Accredited Representatives, and the City of New York's Directory of Services to Immigrants); ten interviews were conducted between May and August 1997. (No judges or trial attorneys refused to participate. When private lawyers or agency representatives refused, we substituted by randomly selecting others to take their place.) We conducted semi-structured, hour-long interviews, loosely following a protocol that allowed people to elaborate and change the direction of the conversation. We learned their views of immigration removal proceedings, including estimates of representation rates, difficulties respondents encounter in searching for counsel, and the role and effect of counsel.

We also interviewed eight respondents (who were participants in the Appearance Assistance Program) to gain insight into the process from the perspective of the consumer. They spoke about their experiences with a variety of legal representatives. These interviews lasted an hour, and we used semi-structured interview guides and encouraged people to describe the search for counsel in their own words.

SECTION I

WHO HAS COUNSEL

About 80 percent of immigrants in removal proceedings in New York City's Immigration Courts have legal representation by the time a judge considers the substantive issues of their cases. For some categories of respondents the proportions with counsel are even higher: About 93 percent of those who go on to an individual merits hearing have counsel, as do more than 95 percent of people who are not detained and appear for their final hearing. This is a much higher rate of representation than the national average and than Los Angeles (53 percent) or Miami (44 percent).

Detained criminal aliens are generally less likely than others to have legal representation in New York City. Among all respondents, those most likely to be without counsel make no application for relief and complete their cases at a master calendar hearing. Unless they are detained, they probably do not appear in court.

Representation in New York City

Representation and Venue

Eighty-one percent of all respondents from our “NYC Snapshots” sample (comprising 574 cases both pending and completed) were represented by counsel at the time of our analysis. The proportion of people with counsel ranged from 75 percent of the Varick detained criminal alien group to 100 percent of the Varick released criminal alien group. Falling between these extremes were Wackenhut, at 80 percent; Federal Plaza, at 81 percent; and the Varick transfer cases, at 96 percent of respondents with representation. (See Appendix Table 1-A.)

Although detained criminal aliens at Varick had only a slightly lower rate of representation than other groups, we believe that finding counsel is more problematic for them than our data imply. First, much of the representation at Varick is due to the efforts of one volunteer legal representative.¹⁹ Second, a full-year EOIR sample of completed Varick cases for 1996 revealed that detained criminal aliens were represented only about 60 percent of the time. Third, immigration legal professionals confirmed that rates of representation are generally lower for this group.

¹⁹ See Section 3.

According to judges, INS trial attorneys, and legal representatives, it is more difficult for those in detention to establish contact with lawyers and meet to discuss a case. This is because of limited access to telephones and conference rooms, but also because lawyers find working in a detention center to be less convenient and more time-consuming. For noncitizens detained on criminal charges, the difficulty is compounded by the fact that many legal representatives refuse to represent respondents with criminal convictions because most are not eligible to apply for relief and therefore have no chance of winning their cases. As a result, many feel frustrated in their search and are desperate to be released from detention, especially if it follows a term in prison or jail. These feelings, along with the realization that there is no possibility for relief, cause people to become impatient with the judge's urging to find counsel. Instead, they express the desire to abandon the search for counsel, proceed *pro se*, complete the case, and be returned to their country of origin.²⁰

Representation and Level of Hearing for Completion

People who complete their cases at individual merits hearings are more likely to be represented than those who complete at master calendar hearings. When we looked only at cases from the “NYC Snapshots” sample that were completed at the time of our analysis, at least 90 percent of people from every site who completed at an individual merits hearing were represented by counsel.²¹ On the other hand, only about 57 percent of those who completed at a master calendar were represented. Of the 67 people who completed without counsel, 85 percent completed at a master calendar hearing. (See Table Appendix 2-A.)

There are several reasons why those who complete at an individual merits hearing rather than a master calendar have higher rates of representation. Continuing on to an individual hearing is predicated upon having a possible remedy—a way to pursue relief from deportation. Those with counsel are more likely to present a possible remedy, and those who think they have a possible remedy are more likely to seek counsel. Moreover, those who complete at an individual merits hearing are also those who were present at their master calendar(s) and again at their final individual

²⁰ A 1992 GAO report cited the same explanations from INS officials and representatives of alien advocacy groups (p. 46). See U.S. General Accounting Office, *Immigration Control: Immigration Policies Affect INS Detention Efforts*, (1992).

²¹ Of the 574 cases, 271 were completed and 303 were still pending at the time of our analysis. Representation rates for pending and completed cases differed only at Federal Plaza, where the rates were lower for completed cases. In this type of sample, the difference occurs because people without counsel usually finish their cases earlier. Many fail to appear at hearings, resulting in an immediate completion, and some complete at a master calendar by taking voluntary departure.

merits hearing. Appearance in court—as the next section will show—is highly related to the presence of representation.

Representation and Appearance in Court

The differences in representation rates among locations and between master and individual hearings narrow when one looks only at those cases in which people were clearly present in court.²² Since detained respondents have no option but to appear in court, our analysis considers only groups of people who were not held in detention.

Of the 57 percent of cases with representation that completed at a master calendar hearing, 90 percent were clearly present in court (compared to 95 percent of those who completed at an individual merits hearing). While 43 percent of *all* respondents completed master calendar hearings without counsel, the range is zero to 14 percent for those present in court. Hence, among the nondetained groups, those likely to complete without counsel are those who do not appear for a master calendar hearing (see Table 1).

²² The EOIR database records attendance or absence in court for cases completed by a decision such as relief, removal, or voluntary departure. For other completions, such as administrative closure or a failure to prosecute, presence and absence are not recorded. “Clearly present in court” is a subset of all completions, which also include “clearly absent” and “unknown attendance.”

TABLE 1:
NUMBER AND PERCENT OF NONDETAINED RESPONDENTS CLEARLY PRESENT IN COURT
BY TYPE OF HEARING AND REPRESENTATION STATUS AT TIME OF COMPLETION

SITE GROUPS	TYPE OF HEARING	REPRESENTATION STATUS		TOTAL NUMBER
		With Counsel	Without Counsel	
Federal Plaza	Master	19 (86%)	3 (14%)	22
	Individual	35 (95%)	2 (5%)	37
	<i>Subtotal</i>	<i>54 (92%)</i>	<i>5 (8%)</i>	<i>59</i>
Varick Transfer Cases	Master	2 (100%)	---	2
	Individual	18 (95%)	1 (5%)	19
	<i>Subtotal</i>	<i>20 (95%)</i>	<i>1 (5%)</i>	<i>21</i>
Varick Released Criminal Alien	Master	5 (100%)	---	5
	Individual	5 (100%)	---	5
	<i>Subtotal</i>	<i>10 (100%)</i>	<i>---</i>	<i>10</i>
TOTALS	MASTER	26 (90%)	3 (10%)	29
	INDIVIDUAL	58 (95%)	3 (5%)	61
	<i>GRAND TOTAL</i>	<i>84 (93%)</i>	<i>6 (7%)</i>	<i>90</i>

Source: Completed cases from "NYC Snapshots."

These numbers substantiate what many immigration legal professionals told us: few respondents show up in court without counsel to present cases *pro se*. If respondents appear at their first scheduled master calendar hearing without legal representation, as is often the case, the judge advises them to seek legal counsel and schedules a second master calendar. Most will have counsel by the second master calendar, some will drop out and complete in absentia, and others will cycle through repeated master calendar hearings, with judges admonishing them to find legal counsel. Consequently, respondents who stay with the process are likely to retain counsel before completing.

What is the relationship between not appearing and not having counsel? Legal professionals gave varied and conflicting explanations. Some people said that immigrants fail to appear in court

because they have not retained counsel. This belief is supported by the fact that, among respondents who fail to appear, there are some who had made earlier appearances without counsel and taken adjournments to find a lawyer. Others, including immigration judges and INS trial attorneys, offered another explanation. They believe that respondents fail to retain legal representation because they have no intention of appearing to complete their cases in court. These includes respondents who feel they do not have a good case or who know that country conditions have changed and asylum is no longer being granted for their cases. They do not come to court because they give up and often believe that if they do appear, they could be detained and physically deported (even though this does not currently happen). Other people get married or make plans to adjust their status in other ways, and think they no longer need to appear in court to complete deportation or removal proceedings. In fact, some respondents who do have counsel fail to appear.

Finally, people we interviewed believe that lawyers can either encourage or discourage clients from attending their hearings. If legal representatives stress the importance of coming to court and remind clients about upcoming hearings, it will encourage them. If the lawyers tell their clients they have no remedy and “should not bother,” it will discourage them. Several judges and trial attorneys disagreed, however, saying that clients do not have enough contact with their lawyers for these representatives to have any effect at all on appearance rates.

Representation and Type of Application or Nationality

Immigration legal professionals told us that representation rates differ by type of case (or application) and nationality. We tested their theory with completed cases from our “NYC Snapshots” sample. More than half the respondents (57 percent) applied for asylum, and about a third (32 percent) had no application on file. The remainder were status review cases (two percent) or they applied for voluntary departure (three percent) or for suspension of deportation, cancellation of removal, or adjustment of status, which we grouped together as “suspension/adjustment” (six percent).²³ Respondents from the Varick criminal alien groups were less likely to apply for asylum than people from Wackenhut and Federal Plaza.

Our sample contained 68 different nationalities. The largest groups (represented by five or more people in the sample) were Albania, Bangladesh, China, the Dominican Republic, Ecuador, El

²³ Status review is not an application, but a type of case, and is therefore placed in a separate category.

Salvador, Ghana, Guyana, Haiti, India, Jamaica, Mauritania, Mexico, Nigeria, Pakistan, Sri Lanka, and Yugoslavia.

Using these larger groups, we found that for the most part application was correlated with home country in a predictable way, based on country conditions and U.S. policy. Nearly every applicant from Nigeria, Yugoslavia, and China was seeking asylum. The groups from Bangladesh, Sri Lanka, and Mauritania also had high numbers of asylum seekers. On the other hand, among Dominicans, Guyanese, Jamaicans, and Mexicans there were no asylum seekers. One-half to three-fourths of respondents from these countries had no application on file. Most respondents from Ecuador and Pakistan also made no application. (See Table Appendix 3-A.)

Having established that nationality is associated with type of application, we then analyzed the relationship between representation and application. Eighty-four percent of people applying for asylum had counsel, compared to 60 percent of those who made no application. Thus, nationalities identified with low proportions of asylum seekers and high proportions of respondents making no application were also the nationalities least likely to have counsel. (Looking at the other types of applications, 75 percent of people applying for voluntary departure and 94 percent applying for suspension/adjustment had representation. On the other hand, only 17 percent of respondents applying for status review had representation. See Table Appendix 4-A.)

REPRESENTATION IN NEW YORK, LOS ANGELES, AND MIAMI

According to EOIR statistics for 1997, 37 percent all U.S. cases had representation. Compared to the nation, then, New York City's figures are very high. One reason is that New York City is a large metropolitan district with a sizeable legal community and easily accessible Immigration Courts. (Wackenhut, though less accessible than Federal Plaza and Varick, is still relatively close to city offices compared to detention centers in other parts of the country.) Therefore, more appropriate comparison to New York City are other urban areas with a high concentration of immigrants, such as Los Angeles and Miami.

To make this comparison, we looked at cases completed in March 1998 (from our EOIR administrative databases) for each city's primary Immigration Court—Federal Plaza in New York City and the comparable courts in Los Angeles and Miami. Representation in both Los Angeles and Miami was much lower than in New York City (see Table 2).

In all three cities, those completing at individual hearings and clearly present in court were more likely to be represented. But New York City had the highest rates of representation in each of these categories. For example, considering only those people who completed at a master calendar hearing, New York's rate of representation was two and a half times that of Los Angeles and three times that of Miami (54 percent for New York, 21 percent for Los Angeles, and 18 percent for Miami). The range is less dramatic for those completing at an individual hearing: 98 percent in New York, 91 percent in Los Angeles, and 83 percent in Miami.

Similarly, respondents in New York were more likely to be clearly present at master calendar and individual merits hearings than those in the other cities. But those clearly present at either a master calendar or individual merits hearing were also more likely to be represented in New York than in the other cities.

TABLE 2:
NUMBER AND PERCENT OF RESPONDENTS
BY HEARING LOCATION, REPRESENTATION STATUS, AND TYPE OF HEARING
AT TIME OF COMPLETION

HEARING LOCATION	REPRESENTATION STATUS			TYPE OF HEARING	REPRESENTATION STATUS		
	With Counsel	Without Counsel	Total		With Counsel	Without Counsel	Total
Los Angeles	1,377 (53%)	1,233 (47%)	2,610	Master	291 (21%)	1,120 (79%)	1,411
				Individual	1,086 (91%)	113 (9%)	1,199
				<i>Total</i>	<i>1,377</i>	<i>1,233</i>	<i>2,610</i>
FOR THOSE CLEARLY PRESENT IN COURT:				Master	206 (70%)	90 (30%)	296
				Individual	959 (92%)	81 (8%)	1,040
				<i>Total</i>	<i>1,165</i>	<i>171</i>	<i>1,336</i>
Miami	609 (44%)	783 (56%)	1,392	Master	155 (18%)	690 (82%)	845
				Individual	454 (83%)	93 (17%)	547
				<i>Total</i>	<i>609</i>	<i>783</i>	<i>1,392</i>
FOR THOSE CLEARLY PRESENT IN COURT:				Master	87 (62%)	54 (38%)	141
				Individual	366 (85%)	64 (15%)	430
				<i>Total</i>	<i>453</i>	<i>118</i>	<i>571</i>
New York City (Federal Plaza)	1,362 (79%)	355 (21%)	1,717	Master	392 (54%)	331 (46%)	723
				Individual	970 (98%)	24 (2%)	994
				<i>Total</i>	<i>1,362</i>	<i>355</i>	<i>1,717</i>
FOR THOSE CLEARLY PRESENT IN COURT:				Master	251 (90%)	29 (10%)	280
				Individual	812 (98%)	17 (2%)	829
				<i>Total</i>	<i>1,063</i>	<i>46</i>	<i>1,109</i>

Source: "Completed Cases March 1998." Sample includes some criminal alien cases; less than 4.5 percent for any city.

We hypothesized that perhaps New York City had more people seeking asylum, who are more likely to have legal representation. All three cities, however, had high levels of asylum seekers (75 percent in New York, 80 percent in Los Angeles, and 65 percent in Miami). The difference is that the nationalities represented by people seeking asylum varied greatly.

New York had a far more diverse population of people seeking than Los Angeles or Miami, with applicants from Asia, the Indian subcontinent, Russia, Eastern Europe, Africa, and Latin America. (See Table Appendix 5-A.) The only group constituting a high proportion of New York's applicants—37 percent—were Chinese. In the other cities, most asylum seekers were from Latin America and the Caribbean. In Los Angeles, more than half were from Mexico. This was surprising because Mexico is not a nation where country conditions and U.S. policy result in a high number of successful asylum cases.

We later learned from speaking with immigration legal professionals in California that some Mexicans of long-time residency have been advised to apply for asylum in order to be placed in removal proceedings. Once in proceedings they withdraw the initial asylum application and apply for cancellation of removal, which, if granted will lead to legal permanent residency. We reevaluated asylum seekers by eliminating those who apply and subsequently withdraw applications and it became clear that New York City has a higher proportion of committed asylum seekers than Los Angeles, but similar to Miami. Taking into consideration only people who apply for asylum and do not withdraw their applications, asylum seekers make up 63% of the cases in New York, 60% in Miami, and 46% in Los Angeles. These asylum seekers are represented 79% in New York, 34% in Miami, and 25% in Los Angeles. Therefore, even for this group of committed asylum seekers, New York has more representation.

Some of the Los Angeles Mexicans and others who originally applied for asylum went on to submit other applications (suspension, cancellations, adjustment, etc.). others submitted no application. In all three cities representation is high for people with suspension/adjustment applications—Los Angeles 92%, Miami 98%, New York City 100%. New York also has the highest rate of representation for people with no application—Los Angeles 57%, Miami 44%, New York City 77%.

For nationality groups that had sizeable numbers in at least two of the cities, representation tended to vary across the three cities, with the highest rates usually in New York (see Table 3). This is true for respondents from Bangladesh, China, Colombia, El Salvador, Guatemala, India, Pakistan,

Romania, Russia, and Sri Lanka. For a few groups, however, representation was consistently high or low across the board while highest in New York: in all three cities, Nicaraguans were most often represented while Mexicans were represented least often.

TABLE 3:
 RESPONDENTS WITH COUNSEL
 FOR SELECTED NATIONALITIES AT TIME OF COMPLETION
 ALL TYPES OF CASES

COUNTRY OF NATIONALITY	IMMIGRATION COURT			TOTAL NUMBER
	LOS ANGELES	MIAMI	NEW YORK CITY	
	Number and percentage of group that completed with counsel (more than 75 percent is highlighted)			
Bangladesh	7 (64%)	7 (78%)	58 (94%)	72
China	10 (77%)	1 (50%)	446 (88%)	457
Colombia	12 (80%)	37 (63%)	17 (89%)	66
El Salvador	120 (43%)	22 (30%)	91 (78%)	233
Guatemala	132 (46%)	50 (14%)	26 (87%)	208
Haiti	0 (00%)	180 (68%)	19 (95%)	199
Honduras	43 (61%)	42 (42%)	13 (59%)	98
India	17 (55%)	1 (33%)	37 (82%)	55
Mexico	664 (49%)	18 (13%)	26 (58%)	708
Nicaragua	65 (83%)	38 (73%)	17 (94%)	120
Pakistan	7 (50%)	2 (50%)	45 (78%)	54
Peru	19 (59%)	39 (72%)	11 (69%)	69
Romania	6 (43%)	2 (50%)	16 (94%)	24
Russia	7 (58%)	5 (63%)	36 (88%)	48
Sri Lanka	7 (54%)	2 (50%)	7 (88%)	16
Yugoslavia	4 (80%)	1 (100%)	38 (90%)	43

Source: "Completed Cases March 1998."

Why Are Rates of Representation Higher in New York City?

Immigration legal professionals familiar with the New York metropolitan area have offered many possible explanations for why rates in this area are consistently higher than in other urban areas. First, there is a higher density of lawyers in New York City than anywhere else in the United States. Second, New York City has a culture that sanctions consulting lawyers in situations that would not necessarily suggest retaining counsel to people in other parts of the country—for example, in uncontested divorce and housing court. Third, New York City has well-established immigrant communities with resources and networks, which promote connections between immigrants and lawyers. And because of New York City's immigrant tradition, representing immigrants is considered noble. Finally, there are locally based foundations that fund nonprofit agencies providing legal counsel to immigrants, and there are many lawyers in private practice who offer services at a range of prices to meet meager budgets.

SECTION II THE SEARCH FOR REPRESENTATION

The search for counsel in New York City is often long and difficult, both for those who eventually find counsel and those who do not. Respondents lack not only money but also information, knowledge of English, and convenient access to lawyers. They also have difficulty recognizing or assessing incompetent or unscrupulous lawyers. About one-third of the respondents in our sample needed adjournments to find legal representation, postponing resolution of their cases and bringing costly delays to the system. Many switched lawyers while their cases were proceeding and had two to six representatives by their final hearing. Even those who had only one lawyer, but took at least one adjournment to find counsel, took four months on average to complete the search.

Beginning the Search

Private attorneys and legal representatives who work for nonprofit agencies represent noncitizens in immigration removal proceedings. Private lawyers, some of whom specialize in immigration law, charge fees; some adjust their fees based on a person's ability to pay or take on selected *pro bono* cases. Nonprofit agencies provide free or low-cost legal services by lawyers or others who have been granted permission to serve as accredited legal representatives in Immigration Court. Both private lawyers and nonprofit agencies represent people at all three New York City Immigration Courts.

When INS officials place noncitizens in removal proceedings and serve them with a Notice to Appear (NTA), they also advise them of their right to be represented by legal counsel and give them an Immigration Court list of nonprofit agencies. The Notice to Appear also specifies that "a list of qualified attorneys and organizations that may be available to represent you at no cost will be provided with this Notice." We verified the practice of providing the list by observing and interviewing recently apprehended noncitizens. Similar lists of private attorneys do not exist, and people receive no information from judges or other court personnel on how to seek representation from private lawyers.

Six nonprofit agencies have joined forces to establish the Immigration Representation Project, or IRP, at Immigration Courts and detention centers.²⁴ For respondents with hearings at Federal Plaza

²⁴ These agencies are the Catholic Legal Immigration Network, Hebrew Immigrant Aid Society, The Legal Aid Society, New York Association for New Americans, Traveler's Aid, and The Lawyers Committee for Human Rights.

the IRP, which is located near immigration courtrooms, is open four mornings a week, every other week. Legal representatives are available to screen people for possible representation by their agency or for referral to another IRP agency. For people held at Wackenhut, participating agency representatives interview all new arrivals and refer selected cases to a participating agency or to private lawyers willing to provide *pro bono* representation through the Lawyers Committee for Human Rights Asylum Program.

There is general agreement throughout the immigration community that the nonprofit agencies not only provide high-quality representation but also work effectively with judges, INS trial attorneys, and other legal professionals. Therefore, it is not surprising that judges at all three New York City Immigration Courts (Federal Plaza, Varick, and Wackenhut) refer people who appear in court without counsel to the agency list and the court-based representation projects. Unfortunately, given their very limited resources, most nonprofit agencies can represent only a small number of people who meet their requirements and whose cases rank highest among the agency's priorities.

People who have been rejected by agencies and cannot afford a private attorney may find help from one of the religious people who serve as "safety net" representation for people in removal proceedings. Two in particular, both Catholic priests, are very helpful. One is a lawyer and the other is an accredited representative; both work with church-supported agencies. The latter, whom we will refer to as the Priest Rep, became an accredited representative in order to help his immigrant parishioners who needed legal assistance. Since then, his work on behalf of people in removal proceedings has grown tremendously, and now he functions more as an institution than an individual advocate. Working with an assistant, he makes special arrangements with Immigration Courts throughout the state. At Federal Plaza he schedules times to be available in certain courtrooms or with certain judges; at Varick, there are regularly scheduled "Priest Rep days" for him. In 1998, the Legal Aid Society, which had provided an on-site lawyer once a week in previous years, returned to provide screening and representation at Varick on an alternating-week schedule with the Priest Rep.

The Search Close Up: Respondents' Stories

According to immigration legal professionals and respondents, some people begin their search for representation soon after they are apprehended, particularly those with close community ties and support from family and friends. Some even ask family members to help them look for lawyers while they are still in detention. Other people, however, delay the search or make little progress until the

hearing date approaches or sometimes until the day of the hearing. And, as our findings show, many people appear in court without representation.

Noncitizens who misunderstand the court process and, consequently, their need to obtain counsel may be more likely to come to court without a lawyer. Some respondents view their situation in terms of good and evil, rather than as a matter of laws and procedures. For example, several respondents told us that they have faith in the U.S. justice system and believe that judges will see them as good, hard-working people and, therefore, will allow them to pursue a better life in the United States. Other people in removal proceedings, especially those who have been involved in the criminal justice system, assume that the government will provide legal representation (as they do with court-appointed lawyers in criminal court).

People who want a lawyer often lack sufficient information about where or how to find one. Language barriers, cultural misunderstandings, and lack of familiarity with U.S. systems and procedures compound the problem. Despite receiving the list of nonprofit agencies along with the Notice to Appear, many people feel powerless to search for counsel on their own. For some, it is almost impossible to make their way, either by phone or in person, to someone who will listen to their predicament. Negotiating mass transportation, answering machines, receptionists, and screeners appears too difficult. Some hope for help from the judge once they get to court.

Those held in detention usually have an even tougher time getting the information and assistance they need to find a lawyer. Telephone communication can be difficult and opportunities to meet in person are limited. Some in detention, however, feel less constrained. Mohammed, who was detained at Wackenhut, called listed nonprofit agencies until he found an agency willing to represent him. He was very pleased with his lawyer, and they were working together to prepare his case. Another man at Wackenhut, Kendall, was at the time without counsel. The agencies could not take his case, and although he had relatives in another part of the United States who were willing to send money for a private attorney, he had no one nearby to help him find one. He felt unable to locate a capable and trustworthy lawyer from detention.

For many, finding representation ultimately depends on their ability to pay for services. But some, like Kendall, simply lack information. Others who can pay receive information from questionable sources and risk retaining lawyers whose services are inferior or unethical, or who operate outright scams. At Federal Plaza, there are low-cost, high-volume private lawyers who are generally considered to be low-end in terms of degree of attention they can devote to any individual case. Some

respondents at Federal Plaza are solicited by lawyers who congregate in hallways and waiting rooms or respondents, desperate to find help, approach lawyers and retain their services on the spot as they enter the courtroom. Other times people offering legal services, some of whom are not lawyers, recruit clients through advertisements that “guarantee success” regardless of the noncitizen’s actual chances.

For many people there are false starts and mistakes along the way as they search for counsel. “Respondents sometimes approach us,” one INS trial attorney recounted. “They ask around at court for the ‘lawyers’ and are directed to our office.” Though often sympathetic, these lawyers have to explain that they are the “enemy” and therefore cannot help them find representation.

Most noncitizens begin their search by looking in their own communities. Some asylum seekers are directed to lawyers by the travel agents who helped arrange their journeys to the United States or by compatriots they encounter upon arrival. Furthermore, as the number of immigrants from a country grows, especially if there is strong potential for asylum, so does the number of private lawyers to represent them. They advertise in ethnic newspapers and develop reputations that spread through the community by word of mouth.

Sue and Tang stated that they fled China to escape persecution for failing to follow the country’s birth control policies. In the United States, they had many problems retaining counsel.

Tang, who arrived several years before his wife, went to a Chinese travel agency where he was referred to Mr. W., a private lawyer, who specializes in Chinese asylum cases. While the case was pending, Mr. W. disappeared, leaving word that he had passed the case to another lawyer. Tang paid the second lawyer for one appearance before he too disappeared with Tang’s documents. The travel agency also disappeared. When we spoke with Tang, he was unrepresented and his case was pending.

Later, when Sue arrived in the United States, she was detained at Wackenhut. Tang hired Mr. J., a lawyer who advertised in a Chinese newspaper, to represent his wife. Sue stayed with this lawyer for approximately one month, which included one master calendar hearing. Shortly thereafter, Sue was released to Vera’s Appearance Assistance Program (AAP). Dissatisfied with Mr. J.’s lack of time to consult with her or prepare for hearings, Sue fired him. They had already paid him \$5,000.

A friend recommended Mr. N., a lawyer who had a reputation for being good, experienced, and affordable. He promised a flat fee of \$2,000. He met with Sue twice and attended a master calendar to request an adjournment to file an asylum application.

When we interviewed Sue, she was pleased with Mr. N. because he had explained everything clearly, but later on, she failed to appear in court and was ordered removed in absentia.

The strength of respondents' cases—in other words, their chance of winning—also affects their ability to find a lawyer and the quality of the representation they receive. Good private lawyers and nonprofit agencies prefer to represent people with promising cases. People without clear legal remedies have a much harder time finding strong representation—or any representation at all.

Unlike noncitizens who come to the United States to escape persecution in their countries and have the possibility to apply for asylum, those apprehended during INS work site enforcement actions often have no possibility for relief. Most have little money to pay for legal assistance, and their cases are not a priority for most nonprofit agencies. Many appear in court to ask for voluntary departure, but judges adjourn their cases for them to find representation, which begins a cycle of delay and frustration.

Ramon entered the United States from Mexico without documents, and later was apprehended at the restaurant where he was working. He spent one night in detention and was released to the Appearance Assistance Program.

Someone from the AAP made an appointment for him at a nonprofit agency, where he was told to go to court on his own and ask for voluntary departure.

At his first hearing, the judge encouraged him to find counsel and referred him to the Immigration Representation Project based in the courthouse—but he found no help there. Before his second master calendar hearing, he contacted a priest legal representative who agreed to represent him. Due to a misunderstanding, however, Ramon himself did not attend that hearing. Finally, voluntary departure was granted at his third master calendar hearing—16 months after he was apprehended.

Unlike Ramon, other respondents become discouraged and fail to complete the process.

Francisco entered the U.S. from Colombia with a tourist visa, but he overstayed and worked until he was apprehended at the electronics factory where he had a job. He attended his first master calendar prepared to show the judge that he was willing and able to leave voluntarily, but his file could not be located.

He tried again at the second master calendar, but the judge insisted he retain counsel and denied his request for voluntary departure. He tried a third time, but once again his file could not be located. By the fourth master calendar, Francisco had returned to Colombia, and he was ordered removed in absentia.

Respondent initiative is a big part of overcoming obstacles to finding counsel and prevailing in court, especially in cases with less obvious promise.

Benito illegally entered the United States from Mexico in 1987 and was apprehended in 1997 at a garment factory where he worked as a cutter. In many ways, he seemed a likely deportee, but Benito had a different vision. Prior to his apprehension, he had conversations with two private attorneys who offered very different advice. Benito

reported that one suggested he divorce his wife and marry a U.S. citizen; the other wanted to charge \$3,000 to help Benito obtain labor certification under false pretenses. Benito felt disillusioned with both lawyers.

After being apprehended and detained, Benito persisted in his search because he believed he had a good case. He had been in the United States for more than 10 years and had a child here. He had also kept a file documenting his life in the United States.

Soon after being apprehended, Benito became a participant in the AAP, and with help from the program, once again resumed his search for counsel. He met with a couple of religious legal representatives, but they were too busy. He tried a church-based ethnic association, but they were very pessimistic. Finally, someone from the AAP referred him to a law school clinic. Benito felt that the student and professor he met there really listened to him and clearly explained the laws and procedures. Moreover, their help was free, and they were enthusiastic about representing him.

The student and teacher represented him at his third master calendar hearing and his individual merits hearing. A bilingual secretary from the law school served as interpreter. In October 1998, Benito was granted cancellation of removal, meaning that he could stay in the U.S. and apply to become a legal permanent resident.

Quantifying the Search

As the stories and anecdotes illustrate, the search for counsel seems to be a difficult and time-consuming task for many people in immigration removal proceedings. Since the number of interviews with respondents was too small to quantify the experience, we turned to our two larger samples—"NYC Snapshots" and "Completed Cases March 1998"—to examine the number of hearings adjourned for the purpose of finding a lawyer; how many people switch lawyers during the process and how many different lawyers people retain before their cases are completed; and how many months people spend finding a lawyer.

Adjournments to Find Counsel in New York City

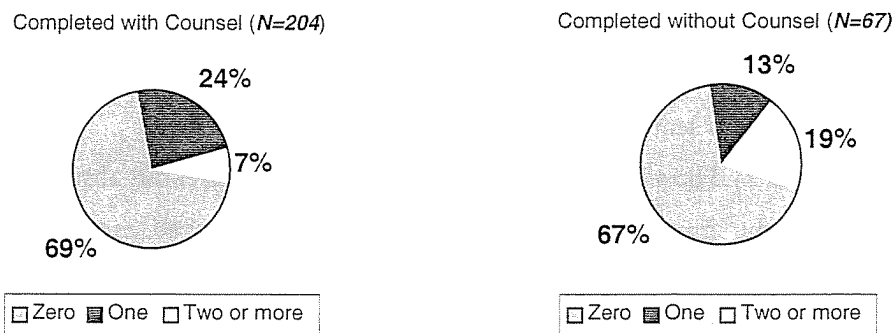
Over one-third of people in the "NYC Snapshots" sample—whether they completed with or without counsel—required at least one adjournment to find a lawyer (Figure 1).²⁵ Almost 20 percent of those who completed their cases *without* counsel nevertheless took two or more adjournments to seek representation. These findings support anecdotal information about the difficulties many respondents encounter in their search for counsel. The use of multiple adjournments also slows the entire court system, making it more costly and less efficient. (According to a report by the INS, the

²⁵ We use only adjournments coded by EOIR as "or: alien to seek representation."

cost to EOIR for conducting master calendar hearings is approximately \$108 per person per hearing.²⁶)

²⁶ *Immigration Examinations Fee Account Phase II Study*, October 24, 1997.

FIGURE I:
ADJOURNMENTS TO FIND REPRESENTATION



Source: Completed cases from “NYC Snapshots.”

Adjournments for Respondents Completing With Counsel. From 25 to 30 percent of the Federal Plaza, Wackenhut, and Varick transfer cases required adjournments to find counsel, and most of them required only one. Respondents from the Varick criminal alien groups, including those detained and released, had more difficulty in successfully completing their search. More than half the Varick detained respondents and over 40 percent of those released required an adjournment. The Varick detainees were also most likely to require two or more adjournments. Estimates by immigration judges and INS trial attorneys support these findings. (See Table 4.)

Immigration legal professionals also believe that nationality has a substantial effect on whether people have counsel at their first hearings. They explained that Chinese asylum seekers, which are the largest single group at Federal Plaza and a large portion of the Varick transfer population, are usually represented at the first master calendar hearing. The Chinese in our sample at Federal Plaza obtained fewer adjournments than other nationalities. Of the 25 completed Chinese cases, 88 percent needed no adjournments to find counsel, compared to 69 percent of all other completed cases. Similarly, among the Varick noncriminal cases, 91 percent of Chinese respondents required no adjournments to find counsel, compared to 54 percent of all others in this site group.

Adjournments for Respondents Completing Without Counsel. Analysis of the cases in our sample who completed without counsel also shows differences among the site groups. At Federal Plaza, 34 percent of those who were ultimately unsuccessful in their search for a legal representative nevertheless obtained adjournments to find them, as did 29 percent of respondents at Wackenhut.

Again, people detained at Varick were the most likely to require adjournments and they were also the only group in which those completing without counsel required fewer adjournments than those who eventually found a lawyer (except for one Varick transfer case that had no adjournment). Forty percent of Varick detained criminal aliens who completed without counsel took adjournments, compared to 56 percent of those who eventually found a lawyer (see Table 4). We do not know how many of those who obtained no adjournments searched unsuccessfully for a lawyer and how many never intended to retain counsel but abscond or accept deportation. According to the immigration legal professionals we interviewed, most people detained at Varick who lack representation have chosen to waive it.

There are respondents at all three sites, however, who appear in court for hearings without lawyers, request adjournments to find them, and are nevertheless unsuccessful—almost 30 percent of the noncriminal alien respondents, and 40 percent of the Varick detainees. Some of these people appear for all required hearing; others appear for some before completing in absentia. In fact, those who were present in court for all their hearings and completed without a lawyer were granted an average of two adjournments per person, more than any other group (that is, more than those who were absent, with and without counsel, and those who were present with a lawyer). Other people were present in court for some of their hearings without lawyers, obtained adjournments, and then completed in absentia. Those who demonstrated a willingness to begin the legal process are some who might benefit from in-court legal assistance.

TABLE 4:
ADJOURNMENTS TO FIND REPRESENTATION
BY SITE GROUP AND REPRESENTATION STATUS

SITE GROUP	NUMBER OF ADJOURNMENTS			
	Zero	One	Two or More	Total
Federal Plaza:				
Completed with Counsel	62 (76%)	17 (21%)	3 (4%)	82
Completed without Counsel	28 (67%)	7 (17%)	7 (17%)	42
<i>Subtotal</i>	<i>90 (73%)</i>	<i>24 (19%)</i>	<i>10 (8%)</i>	<i>124</i>
Varick Transfer Cases:				
Completed with Counsel	16 (70%)	6 (26%)	1 (4%)	22
Completed without Counsel	1 (100%)	---	---	1
<i>Subtotal</i>	<i>17 (71%)</i>	<i>6 (25%)</i>	<i>1 (4%)</i>	<i>24</i>
Varick Released Criminal Alien:				
Completed with Counsel	7 (58%)	4 (33%)	1 (8%)	12
Completed without Counsel	---	---	---	---
<i>Subtotal</i>	<i>7 (58%)</i>	<i>4 (33%)</i>	<i>1 (8%)</i>	<i>12</i>
Varick Detained Criminal Alien:				
Completed with Counsel	13 (43%)	10 (33%)	7 (23%)	30
Completed without Counsel	6 (60%)	2 (20%)	2 (20%)	10
<i>Subtotal</i>	<i>19 (48%)</i>	<i>12 (30%)</i>	<i>9 (23%)</i>	<i>40</i>
Wackenhut:				
Completed with Counsel	43 (75%)	12 (21%)	2 (4%)	57
Completed without Counsel	10 (71%)	---	4 (29%)	14
<i>Subtotal</i>	<i>53 (75%)</i>	<i>12 (17%)</i>	<i>6 (8%)</i>	<i>71</i>
All Groups:				
Completed with Counsel	141 (69%)	49 (24%)	14 (7%)	204
Completed without Counsel	45 (67%)	9 (13%)	13 (19%)	67
<i>Grand Total</i>	<i>186 (69%)</i>	<i>58 (21%)</i>	<i>27 (10%)</i>	<i>271</i>

Source: Completed cases from "NYC Snapshots."

Combined Adjournments in New York, Los Angeles, and Miami

Using the “Completed Cases March 1998” sample from Federal Plaza, we tracked respondents who were granted adjournments to find lawyers, to allow their lawyers to prepare, or because their lawyers did not appear in court. Our purpose was to obtain some sense of the number of court adjournments traceable to difficulties people encounter in their search. More than 400 people obtained a first adjournment for these reasons, 76 obtained a second adjournment, and 11 obtained a third—a total of 498 adjournments in 1,718 cases. A large number of these adjournments might have been avoided if people had retained counsel in time to prepare for the first hearing.

Switching Lawyers

Retaining more than one lawyer—switching midstream—is relatively common in New York City, although some people are more likely to switch lawyers than others. Whenever it happens and for whatever reason, switching contributes to further delays.

Except for Wackenhut, sizeable proportions of people at every location had more than one lawyer. (See Table Appendix 6-A.) Those most likely to switch were part of the Varick noncriminal group transferred over from Federal Plaza: 83 percent of these respondents had between two and four lawyers. Among the criminal alien respondents released from Varick, half switched: most had two or three lawyers; one had six. It could be that these people, all ex-offenders, start out with criminal lawyers who are not well versed in immigration law and later look for attorneys who specialize in immigration law.

There is no consistent relationship across the sites between having multiple lawyers and obtaining adjournments to find counsel. Only those from the criminal alien group released from Varick had a high proportion of both adjournments and switches. The Varick transfer respondents, who were most likely to switch lawyers, had a low average number of adjournments to seek counsel. And the Varick detained respondents, who were least likely to switch lawyers, were also the most likely to require adjournments to seek counsel, which suggests that their difficulty was in finding their one lawyer.

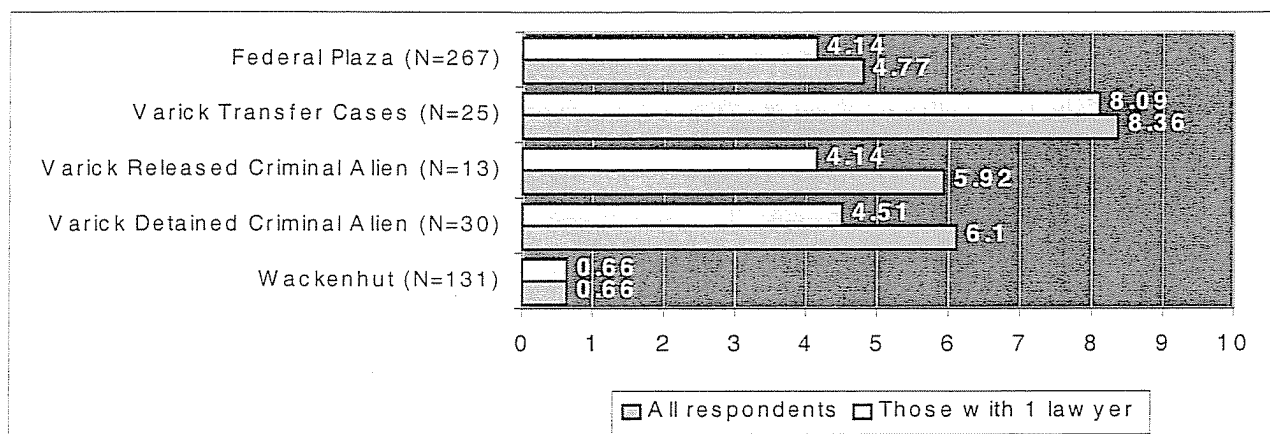
Months Spent to Find Counsel

Another way to quantify the search is to look at how long it takes people to find representation. Figure 2 shows the median number of months from the date of the Notice to Appear, which signals

the beginning of a removal proceeding, until the date the most recent lawyer submitted the Notice of Entry of Appearance as Attorney or Representative (form E-28).²⁷ We distinguish between respondents with legal representation and those with only one representative.

The time ranged from about three weeks for people at Wackenhut to more than eight months for members of the Varick transfer group. Those with only one lawyer required less time, but even so, the transfer cases still required eight months. Respondents at Federal Plaza and criminal aliens from Varick—detained and released—required more than four months (see Figure 2).

FIGURE 2:
MEDIAN NUMBER OF MONTHS
TO FIND COUNSEL



Source: All cases from "NYC Snapshots."

A few individuals add texture to the overall numbers. Ten different respondents at Federal Plaza each had four lawyers and took more than 15 months, on average, to complete their search. Two criminal aliens released from Varick each took almost two years from the date of the Notice to Appear to the date of the E-28 for the final lawyer, which was their third. Among those detained at Varick, five people took an average of 17 months to find a final lawyer (their second) and one took more than four years to find a final lawyer (the fourth).

²⁷ We use the median to avoid the inappropriate influence of extreme values.

SECTION III

LEGAL REPRESENTATIVES PEOPLE GET AND CASE OUTCOMES

Most respondents in New York City are represented by a wide diversity of private lawyers. There are some exceptions, however: a small number of very high-volume private attorneys represented from 23 to 76 cases in a single month. Legal representatives working with nonprofit agencies represent only a fraction of all respondents. The Priest Rep, described above, works intensively with criminal aliens detained at Varick, and legal representatives from the Detention Representation Project are active at Wackenhut. The legal professionals we interviewed agreed most lawyers in immigration proceedings are barely adequate and that small numbers are very good and very bad. Legal representatives working for nonprofit agencies were usually judged very good, as were some private attorneys specializing in immigration law. The high-volume private practice lawyers were usually considered among the very bad.

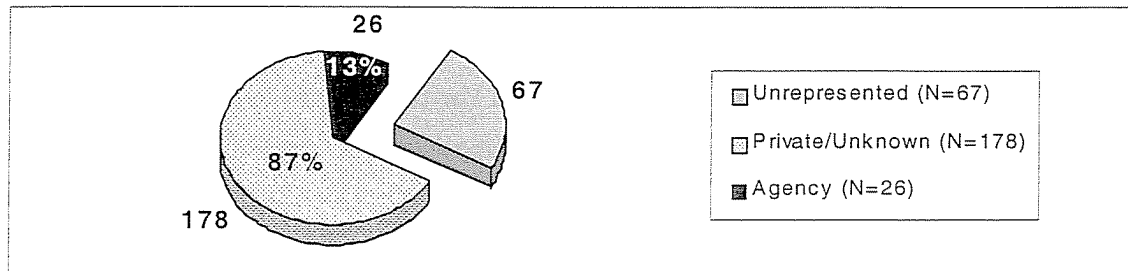
Almost all respondents who won the right to remain in this country and a large majority of those granted voluntary departure were represented by counsel. Across all case outcomes—relief, case closures, voluntary departure, removal—respondents in New York were more likely to be represented than respondents in Los Angeles and Miami. But respondents with counsel in Los Angeles were more likely to win relief and to be granted voluntary departure than those in New York. As a result, considering all respondents—those with and those without counsel—New York and Los Angeles had about the same proportions of winning and voluntary departure cases. For asylum seekers New York City had the highest rate of representation and the highest rates of winning relief.

The Legal Representatives People Get

For those respondents who retain counsel, whom do they select, or settle for, in the end? The 204 cases captured in our “NYC Snapshots” sample that completed with counsel hired 145 representatives. Nearly 90 percent were private lawyers; the rest were agency representatives (Figure

3;Representation by Type of Counsel for each site group is presented in Appendix Figures 1-A through 3-A).²⁸

FIGURE 3:
REPRESENTATION BY TYPE OF COUNSEL
AT ALL SITES AT TIME OF COMPLETION



Source: Completed cases from "NYC Snapshots."

Agency representation was more prevalent for criminal aliens at Varick than for other groups and was provided almost exclusively by the Priest Rep. Without this safety net, only 48 percent of the Varick detained group would have been represented, compared to the actual figure of 75 percent.²⁹ About 14 percent of the respondents at Wackenhut who had counsel were represented by nonprofit agencies, in this case by lawyers working for one of the Detention Representation Project agencies; adding cases represented by private lawyers working with the Lawyers Committee for Human Rights Asylum Program brings it to 21 percent.³⁰ The largest majority of private representation was at Federal Plaza, where private attorneys represented 96 percent of people who had counsel.

Respondents in our sample were not represented by the same few attorneys. No private lawyer represented more than six individuals and, except for the Priest Rep working with the Varick detainees, who had 14 cases, no agency lawyer represented more than three individuals. In the "Completed Cases March 1998" sample, however, we found evidence that some private lawyers have

²⁸ Type of lawyer is not recorded in the EOIR/ANSIR database and must be ascertained by contacting the representative of record. We could not obtain the information for eight practitioners. Since the population of agency representation is small and generally recognizable, however, we classified the eight unknown types as private lawyers.

²⁹ In the EOIR sample of completed Varick cases for 1996, this priest represented 168 cases, which accounted for 18 percent of all completed cases for the year, 28 percent of the cases with counsel, and 98 percent of the cases with agency representation. See Appendix Figure 1-A.

³⁰ This is based on a list of lawyer names provided by the Lawyers Committee for Human Rights. An INS trial attorney who has worked at Wackenhut had the impression that practitioners associated with the Detention Representation Project represented about one-third of the cases there, a higher proportion than found in our sample. See Appendix Figure 2-A.

very high caseloads. Of the total 1,718 cases (1,363 of which were represented), there were eight private lawyers who completed more than 20 cases in the one-month period—ranging from 23 to 76. Over 80 percent of their clients were Chinese and about seven percent were Mauritanian.

Survey of Local Counsel

To deepen our understanding of legal representatives and their work, we interviewed 100 practitioners representing cases from our “NYC Snapshots” sample at Federal Plaza. (Some of them were also found to be representing respondents at Wackenhut and Varick.) The interviews focused on their credentials (lawyer or accredited representative), affiliations, specialization, provenance of clients, and amount of fees.

Ninety-nine of those interviewed were lawyers; one was an accredited representative. Eight worked for nonprofit agencies (the accredited representative and seven lawyers) and 92 were in private practice. Nearly half (46 percent) were members of the American Immigration Lawyers Association (AILA). For 50 percent of the lawyers surveyed, immigration is at least 90 percent of their practice.

Over 80 percent said they specialize in clients from a particular geographic region—most commonly, Latin America or Asia—and that someone in their office speaks one or more of the languages in which they specialize. While agency practitioners said they tend to receive their clients from the Immigration Court list of nonprofit agencies, private lawyers’ clients are referred to them primarily through word of mouth and by previous clients.

Practitioners were asked what respondents should expect to pay for immigration legal services with a private attorney. Their ballpark estimated averages were as follows:

- Voluntary Departure \$250 to \$500
- Cancellation of removal \$2,000
- Criminal alien cases \$2,000 to \$3,000
- Asylum \$1,500 to \$2,000

We received varied responses when we asked the private lawyers about their *pro bono* work. About three-fourths of them said that they did some *pro bono* work but it constituted less than 13 percent of their cases. About four percent said they took about 20 to 25 percent *pro bono* cases, and

20 percent said they did no *pro bono* work at all. One of the practitioners surveyed was a private attorney doing only a few immigration cases per year, all *pro bono* for the Lawyers Committee for Human Rights Asylum Program.

Perceptions of the Role and Value of Representation

What is the purpose of legal representation in Immigration Court? In interviews with immigration judges, INS trial attorneys, private and agency lawyers, accredited representatives, and respondents, we found some common ground in defining the value of representation. All parties agreed that individuals need a competent lawyer to assess whether they have a legitimate claim. They also agreed that lawyers can ensure that people's rights are preserved at each step in the process and maintain the adversarial balance of the system. We found some expected differences in the views of INS trial attorneys and respondents. Many trial attorneys believe that immigration legal representatives have a responsibility to keep frivolous cases out of court. Respondents, of course, say that anything goes; their main goal is to win the case, stay legally in the United States, and apply for a green card.

It is obvious that not all immigration lawyers provide the same level of service. If the ultimate goal of each respondent is to retain a well-trained, competent, specialized attorney with sufficient time and resources to ensure the best quality and most individualized service, then many respondents fall short of the goal. During the study we heard of serious problems:

- A lawyer erroneously conceded charges by the INS because he did not understand the details of the respondent's prior criminal conviction (example from an immigration judge).
- A lawyer withdrew an application for cancellation of removal without the client's knowledge or permission (example from an immigration judge).
- One of the eight lawyers with high caseloads mentioned above is currently serving time "for defrauding the INS and misleading thousands of clients" (*The New York Times*, 23 October 1998).

- A respondent sat in the entrance to Federal Plaza and refused to leave because he had lost his case, did not know how to make an appeal, had no one to contact, and did not know the name of his attorney (example from an INS trial attorney).

Because of their constant presence in the courtroom, knowledge of the law, and understanding of procedures, immigration judges and INS trial attorneys can be astute observers of the lawyers who represent people in removal proceedings. We asked them to characterize the quality of representation and its distribution among respondents. Overall, their responses suggest that legal representation at Federal Plaza falls into three categories: very good, barely adequate, and incompetent or unscrupulous. The vast majority of representatives, according to them, are barely adequate. At the margins, there are small numbers of very good and very bad advocates.

According to those we interviewed, large firms that take a limited number of asylum cases through the Lawyers Committee for Human Rights present the most thorough and polished cases. Like the one such lawyer in our interview sample, they typically do not specialize in immigration law but have time and resources to research, prepare, and present well-documented cases.

The lawyers and accredited representatives working for nonprofit agencies have less time and fewer resources to prepare cases; still, most are included in the top category. They were usually described as practitioners who know the law and what questions to ask, do a good job preparing a client before the hearing, obtain documents to support their cases, and argue zealously. There are private attorneys specializing in immigration law who were also considered excellent, both in terms of knowing the law and being dedicated to their clients.

A middle category, the barely adequate, includes people who “mean well but are not great.” They are somewhat familiar with the law and make an attempt to represent their clients, submit documents, and research cases. This category includes mostly private attorneys and some representatives from the nonprofit agencies.

Classified among the very bad were high-volume, private-practice lawyers, many of whom appear to be associated with travel agencies, who have little or no contact with their clients.³¹ They were described as individuals who “do not prepare, do not know immigration law, and do not care.” “These are lawyers you’d rather not see,” said one judge. “They show up five minutes before trial. I

³¹ The association with travel agencies is based on a variety of sources, including observations in Immigration Court (including a hearing during which the lawyer lamented the difficulties of working with travel agencies), and conversations with immigration legal professionals.

think a person would be better off *pro se* than with a lawyer who's asked them thirty seconds' worth of questions, done no research, gets no background documents, and has told them nothing." Considered even lower in this category are some that file mostly frivolous, often "carbon copy" applications. The most unscrupulous are people with no credentials who pose as lawyers. Recently, a man promising to obtain green cards, citizenship, or labor certification for legal fees ranging from \$3,000 to \$10,000 was prosecuted for practicing without a license.³²

Immigration legal professionals generally agree on the three categories, but rarely on the proportion of practitioners in each category. Some said 60 percent of Federal Plaza representatives were very bad while others said that 20 percent were in this group. Estimates about how many are very good also range from 10 to 30 percent.

INS trial attorneys and judges who are familiar with Varick and Wackenhut say that the quality of representation is similar to that of Federal Plaza. But they believe that lawyers who represent criminal aliens at Varick tend to be more competent. The problem is that there are not enough of them.

Case Outcomes

What difference does legal representation make in the outcome of a case? There is no simple answer to this question, because so many factors are at play. For instance, as many of the people we interviewed pointed out, the respondent is not dependent only on a lawyer, because the judge has a responsibility to ensure that all facts of the case are brought out and considered. Even the INS trial attorney, who normally plays the role of adversary, may offer material in support of a legitimate claim by a respondent. Our analysis, however, shows that very few respondents without counsel are granted relief or voluntary departure.

To analyze the association between representation and case outcome, we grouped outcomes into four categories: relief, case closed, voluntary departure, and removal.³³ We used three databases for the analysis: EOIR data for the entire United States for fiscal year (FY) 1997;³⁴ the "Completed Cases March 1998" sample for New York City, Los Angeles and Miami; and our "NYC Snapshots" sample. All showed similar results.

³² *Man Defrauded NY Immigrants of Savings*, Reuters, New York, 27 August 1998.

³³ For definitions of these terms, see the Description of the Study section on page ____.

³⁴ This information was provided by EOIR; it differs from the other two databases in that it excludes three types of administrative closures.

TABLE II:
THE UNITED STATES, FY 1997
NUMBER AND PERCENT OF IMMIGRATION JUDGE DECISIONS
BY OUTCOME CATEGORY AND REPRESENTATION STATUS

OUTCOME CATEGORY	WITH COUNSEL	WITHOUT COUNSEL	TOTAL NUMBER
<i>Relief</i>	15,127 (21%)	1,320 (1%)	16,447
<i>Case Closed</i>	8,792 (12%)	8,690 (7%)	17,482
<i>Voluntary Departure</i>	25,225 (35%)	5,945 (5%)	31,170
<i>Removal</i>	23,440 (32%)	105,972 (87%)	129,412
Total	72,584 (100%)	121,927 (100%)	194,511

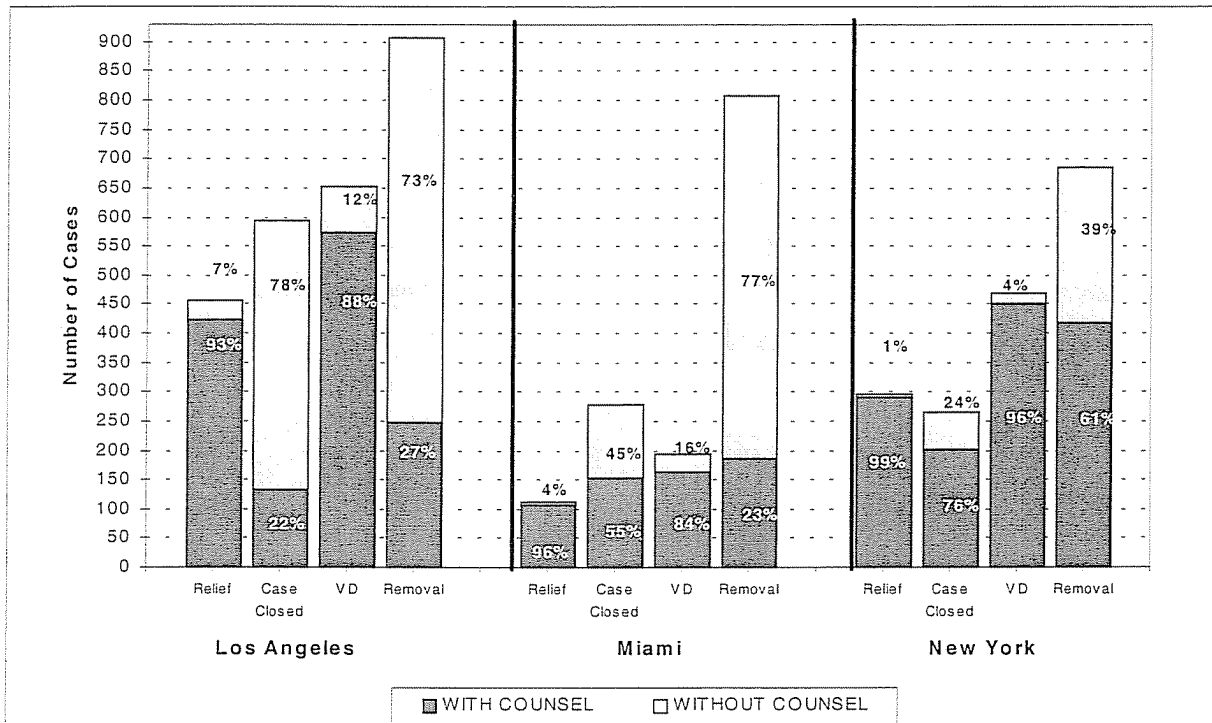
Source: EOIR U.S. Data FY 1997.

National data for FY 1997 shows that only one percent of unrepresented respondents won relief, compared to 21 percent of those with representation.³⁵ Only five percent of those without representation were granted voluntary departure compared to 35 percent of those with counsel. Nearly 90 percent of individuals without counsel lost their cases, compared to about one-third of those who were represented (Table II).

Figure 4 shows outcomes for cases at Federal Plaza in New York City and the comparable venues in Los Angeles and Miami, based on EOIR data. As would be expected given the results presented in Section I, respondents with each type of case outcome are more likely to be represented in New York than in the other cities. For example, 96 percent of voluntary departure cases were represented in New York; in Los Angeles and Miami the figures were 88 percent and 84 percent, respectively. The largest difference among the three cities is the percentage of cases resulting in removal that were represented: only about one-fourth of these cases were represented in Los Angeles and Miami, while 61 percent were represented in New York.

³⁵ In its 1992 report, GAO also found that respondents with counsel were more likely to win their cases than those without counsel.

FIGURE 4:
ALL OUTCOME CATEGORIES
BY REPRESENTATION STATUS AND CITY



Source: "Completed Cases March 1998."

In New York, only one percent of the respondents without counsel won relief and only five percent were granted voluntary departure. Again, those without representation were much more likely to be removed. The same pattern occurs in Los Angeles and Miami: people with counsel were much more likely than those without representation to be granted relief and voluntary departure.

Related to this, respondents with counsel in Los Angeles were more likely than those in New York to win relief and to be granted voluntary departure. In Los Angeles, 31 percent of respondents with counsel won relief and 42 percent were granted voluntary departure. (See Table 12) In New York, 21 percent of those with counsel won relief and one-third were granted voluntary departure. As a result, although individuals in New York are much more likely to be represented than those in Los Angeles, the proportions of all respondents who win relief or are granted voluntary departure are

about the same in the two cities. In New York, 17 percent of all cases won relief and 27 percent were granted voluntary departure. The corresponding figures for Los Angeles are 18 percent and 25 percent.

We have first shown outcomes all together because type of case depends on applying for relief, and people without lawyers may not know to apply, or how to apply. However, we also separate out asylum seekers both because there is more public interest in asylum and because asylum applications are often originated by the respondent (affirmative asylum). Asylum seekers without a legal representative of record were 75 percent in Los Angeles, 66 percent in Miami, and 21 percent in New York City. For the subgroup of asylum seekers New York City had a higher proportion of cases winning relief—25 percent in New York City compared to 7 percent in Los Angeles and 5 percent in Miami. Case closures were more common in Los Angeles and Miami, and may be related to temporary protection program for people from certain Central American countries.³⁶

Most asylum seekers in all three cities who do not have representation have outcomes that are either case closures or deportation. 98% in Los Angeles, 98% in Miami, 93% in New York. For the majority of case closures we cannot know whether or not the person appeared in court. We do know that most asylum seekers who were deported were not in court: 98% in Los Angeles, 83% in Miami, and 98% in New York City.

For respondents who applied for forms of relief other than asylum having representation and winning relief varied by city. In Los Angeles those with and without representation won relief at the same rate (about 50%). In Miami and New York City none in this category were unrepresented and those with representation also won relief about 50% in both cities.

Noncitizens who did not apply for any form of relief who also have representation do not do better than those without representation. Some without representation or application might have applied if they had had representation. It is also possible that those without representation consulted lawyers and then, learning that they had no avenue for relief, did not retain lawyers to represent them in court. Some in this situation may have decided not to even appear in court. However, for those who did appear, they found that it was necessary to have representation not only to pursue relief, but to be able to complete proceedings. That is, the role of legal counsel is not only to develop and present a case with possibilities for relief but also to allow the case to move forward in court. Once the

³⁶ In Los Angeles, for example, Nicaraguans, who are only 3% of the population of the sample were 31% of the case closures. This appears to be an effect of NACARA, an amnesty program for Nicaraguans and some Cubans. However, more than half of the case closures were for Mexicans, which is also the largest nationality group and was not included in any temporary protection program. Therefore, we cannot explain the large number of case closures.

noncitizens are represented, judges will feel more confident that people's rights are protected, that their options have been explained to them, and that decisions to complete the case are more likely to be properly granted or denied.

TABLE 12:
NUMBER AND PERCENT OF OUTCOME CATEGORIES
BY REPRESENTATION STATUS

OUTCOME CATEGORY	WITH COUNSEL		WITHOUT COUNSEL		TOTAL NUMBER AND PERCENT	
LOS ANGELES						
<i>Relief</i>	432	(31%)	33	(3%)	465	(18%)
<i>Case Closed</i>	125	(9%)	460	(37%)	585	(22%)
<i>VD</i>	573	(42%)	80	(6%)	653	(25%)
<i>Removal</i>	247	(18%)	660	(54%)	907	(35%)
<i>Subtotal</i>	1377	(100%)	1233	(100%)	2610	(100%)
MIAMI						
<i>Relief</i>	111	(18%)	5	(1%)	116	(8%)
<i>Case Closed</i>	149	(24%)	126	(16%)	275	(20%)
<i>VD</i>	162	(27%)	32	(4%)	194	(14%)
<i>Removal</i>	187	(31%)	620	(79%)	807	(58%)
<i>Subtotal</i>	609	(100%)	783	(100%)	1392	(100%)
NEW YORK						
<i>Relief</i>	307	(23%)	5	(1%)	312	(18%)
<i>Case Closed</i>	185	(14%)	64	(18%)	249	(15%)
<i>VD</i>	452	(33%)	17	(5%)	469	(27%)
<i>Removal</i>	417	(31%)	269	(76%)	686	(40%)
<i>Subtotal</i>	1361	(101%)	355	(100%)	1716	(100%)
<i>Total</i>	3347	(59%)	2371	(42%)	5718	

Source: "Completed Cases March 1998."

TABLE 13: ASYLUM ONLY
 Number and Percent of Outcome Categories
 by Representation Status

OUTCOME CATEGORY	WITH COUNSEL	WITHOUT COUNSEL	TOTAL NUMBER AND PERCENT
LOS ANGELES 25% REPRESENTED			
<i>Relief</i>	78 (26%)	3 (LT 1%)	81 (7%)
<i>Case Closed</i>	47 (16%)	392 (44%)	439 (37%)
VD	86 (29%)	16 (2%)	102 (9%)
<i>Removal</i>	88 (29%)	484 (54%)	572 (48%)
<i>Subtotal</i>	299	895	1194
MIAMI 34% REPRESENTED			
<i>Relief</i>	39 (14%)	5 (1%)	44 (5%)
<i>Case Closed</i>	64 (23%)	99 (18%)	163 (20%)
VD	56 (20%)	7 (1%)	63 (8%)
<i>Removal</i>	123 (44%)	443 (80%)	566 (68%)
<i>Subtotal</i>	282	554	836
NEW YORK 79% REPRESENTED			
<i>Relief</i>	267 (31%)	5 (2%)	272 (25%)
<i>Case Closed</i>	84 (10%)	35 (16%)	119 (11%)
VD	215 (25%)	10 (4%)	225 (21%)
<i>Removal</i>	287 (34%)	175 (78%)	462 (43%)
<i>Subtotal</i>	853	225	1078
Total			

Source: "Completed Cases March 1998."

Conclusion

This section presents a summary of our empirical findings, conclusions, and possible directions for future debate on legal counsel in Immigration Court.

Empirical Findings

Levels of representation are not consistent across the country. Average national rates of representation have a wide range and need to be calculated for a particular city or area. They are, however, higher in large cities than in the country as a whole. This is logical since urban areas offer more legal services, both private and nonprofit, than other geographic areas, especially isolated detention centers.

Rates of representation are highest in New York City compared to Los Angeles and Miami. Possible explanations are the high density of lawyers in New York City, a culture of consulting lawyers, well-established immigrant communities with resources and networks, locally based foundations concerned with the plight of immigrants, and a plethora of private practice lawyers offering a range of services and prices.

In sum, it is clear that it cannot be assumed that representation of low everywhere. One future area of focus might be on why there is a disparity in representation rates in comparable areas, such as large urban areas. Beyond that it is important to realize that a discussion of rates of representation based only on a review of completed cases is not enough. One must also look at how the process unfolded on the way to having representation at the time of completion. Furthermore, it is important to know what difference representation makes along the way, both for the noncitizen and for the system.

The search for counsel is not easy and takes time. Despite the advantages of noncitizens in New York City—such as deep-rooted immigrant communities—the search for a lawyer still could last several months. Some respondents can afford and do pay fees for private lawyers—in fact, the majority of noncitizens in New York City do so. But quality is an issue—getting what you hope you paid for. The big cost sometimes comes from being taken advantage of before finding honest or competent legal counsel. Some, such as Sue (see Section II), become dissatisfied with lawyers who allow little or no time to consult with or prepare their clients. Some noncitizens who do not appear to have a lawyer,

such as those who require several adjournments in court, may actually be paying large sums to notarios or others posing as counsel. Immigrants unfamiliar with this country and customs are often unable to adequately assess an unknown lawyer's competence or ethics. In recent years articles in both the *New York Times*³⁷ and the *Los Angeles Times*³⁸ have described numerous instances of immigrants defrauded of money—and an opportunity to demonstrate the legitimacy of their case in court—by people who capitalized on the noncitizens' ignorance of immigration law and procedure as well as basic English.

Findings on the search for counsel have implications for examining rates of representation. One cannot assume that a person who is represented in the end was always represented throughout. An area of focus might be to learn more from the perspective of the noncitizen. Another would be to assess how the process and timing of the search affect the court.

In New York City, unrepresented respondents are not always processed quickly. At least in New York, we did not find that judges or trial attorneys push unrepresented respondents toward closing the case immediately. Our empirical findings support scholars and policy makers who have pointed out that immigration judges feel obliged, out of concern for people's rights and for the integrity of the removal proceedings, to delay the proceedings until respondents can retain counsel. Not having a representative slows the time to get the case started and makes the court process inefficient.

Some delays in the form of adjournments and continuances may occur as a result of noncitizens or lawyers stalling to extend the time before an inevitable order of removal or deportation. What we did learn is that there is lost time in court while judges question and admonish respondents to come back with representation. INS trial attorneys told us that during that time they sit silently, also wasting their time. And this is also true in some cases for clerks and translators.

The debate on right to counsel should not assume that a respondent not bothering to look for a legal representative will save time, even if the person does not seem to have a chance for winning relief. Instead of saving time, it actually takes more time than if the respondent had shown up at the first hearing with a lawyer.

³⁷ For example Mirta Ojito, *Lawyer's Fall Rends Immigrants' Lives*, *New York Times*, October 23, 1998, at B1. Also 7/17/2000 ??? (get from Jane).

³⁸ For example, Hugo Martin, *New Efforts Underway to Combat Immigration Fraud*, *Los Angeles Times*, January 26, 2000 (from latimes.com).

Our research casts doubt on a clear and positive correlation between having counsel and winning relief across the board. Whereas it is true that noncitizens who win relief generally have lawyers, higher proportions of represented respondents overall do not lead to higher proportions of winning cases. New York had higher rates of representation than Los Angeles, but when it came to outcomes, the two cities were comparable. In all three cities there were people with no application or way to win relief. In New York they were more likely to be represented, but it had no effect on making them more likely to win their cases.

For asylum seekers there is a correlation between having representation and winning relief. For asylum seekers, a greater association existed between winning relief and having representation. New York had higher rates of representation and a higher proportion of winning cases. People with asylum applications and lawyers won asylum more than people with asylum applications but without lawyers. The association is clear. What is still not clear is the cause and effect. That is, is it that people with strong cases get lawyers and others do not? Or is it that asylum claims need to be developed by a legal representative? This question cannot be answered by the current research. However, having a legal representative seems to matter for asylum seekers.

The findings on outcomes have interesting implications for future debates on legal counsel for immigration court. It cannot be assumed that more lawyers will mean more winning cases. By the same token, people without representation who lose their cases are not necessarily losing for that reason. If a person has nothing to apply for, a lawyer will probably not matter for the outcome. Even with asylum, there is not a perfect correlation between having representation and winning. What it will mean to have a careful review by competent counsel is that options have been explored and explained to the respondent, appropriate applications have been filed, and the case has been developed to the fullest extent and presented in the best light.

Does Having a Lawyer Matter ?

Given that having a lawyer may not matter as far as winning relief, another important question is: Does having legal counsel matter? Many within and outside the INS would say that the mark of a good outcome is not that the noncitizen wins relief, but that the goal of the court process is to deliver

a fair decision based on the law (“properly granted or denied”).³⁹ So even if legal representation does not increase the proportion of winning cases, the representation is not in vain if it increases the chances of a proper decision. Knowing for sure that a decision was made in a proper manner would require expert reevaluation of every case. Representation by well-trained, competent professionals, however, makes the possibility more likely.

Another advantage to consistent representation at immigration hearings is that noncitizens with lawyers move more smoothly and quickly through the system. First, there is a relationship between appearance in court and representation: in Los Angeles, 85 percent of people with counsel were clearly present in court, compared to 14% without; in Miami it was 74% compared to 15%; and in New York City it was 78% compared to 13%.⁴⁰ Would the people who absconded have appeared if they had had counsel? We cannot say for sure, but we know that at least some of them did appear and take adjournments to find counsel before absconding. This suggests that if some form of representation had been available from the beginning, they may have completed their cases. Second, people who appear without representation prolong the start of their cases. They, too, would benefit from representation from the beginning, especially in places where judges are reluctant to proceed without a lawyer present.

But what kind of representation is appropriate? People who have not applied for relief despite being represented are not likely to win. While some cases are about developing an argument based on compelling reasons for relief, other cases—involving people who are not eligible to stay in the country—are about finishing up and moving on. If we add to this the issue of fairness and justice, all respondents are better served by having information and support throughout the proceedings whether they win or lose, are allowed to stay or have to leave. It is important that everyone have a chance to receive information, tell their stories, and ask questions.

One way to be sure that all respondents are represented would be for the government to provide representation, putting respondents on an even ground with government, which is always provided an attorney. However, it does not seem necessary for every respondent to have full-blown representation—a lawyer devoting full resources to winning relief. For many there is no avenue for relief. On the other hand, every case needs to be evaluated, and every case needs assistance in

³⁹ A point raised by David Martin at the Workshop on Asylum Representation, Georgetown University, Institute for the Study of International Migration, Washington, DC, May 2000.

⁴⁰ In the evaluation of AAP, Vera Institute of Justice researchers found a strong association between representation and appearance.

reaching completion (getting through and moving on). The best solution to ensuring a fair, just, speedy, and efficient process for each respondent may not be provision of counsel for all respondents. The best solution may be to figure out what type of assistance is needed, for which types of cases, and at which point in the process. This moves the debate from proving right and need to exploring alternatives. Next steps might involve looking into what options may be available other than one lawyer per respondent, and expanding the debate to include these other options.

Through this research we became familiar with various alternatives, or attempts to provide universal legal assistance of some kind: *pro bono* projects that conduct triage and provide information, volunteer lawyers who represent anyone in court on a given day, and informational rights presentations followed by question-and-answer sessions. Future research can explore these and other options and evaluate their value in making hearings fairer and Immigration Courts more efficient.