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THE VERGE OF EXPULSION, THE FRINGE OF JUSTICE

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Federal appeals are not usually a volume business. Even fancy Manhattan firms with hundreds of lawyers seldom have more than a handful of cases pending in the United States Court of Appeals for the Second Circuit, which is known for its august history, superior judicial craftsmanship and special expertise in commercial and securities case.

These days, though, the Second Circuit is struggling with the output of prolific immigration lawyers like Frank R. Liu. In the last three years, Mr. Liu has filed more than 50 appeals in federal courts, most of them to the Second Circuit, in New York.

In April 2006, a three-judge panel of the court warned Mr. Liu that his carelessly written and factually unreliable appellate brief, apparently copied in large part from earlier ones, could subject him to discipline.

You might think that would have gotten Mr. Liu's attention. But he was chastised five more times in 2007, by panels including eight more judges. In May and again in September, Mr. Liu was referred to the court's disciplinary committee for his "seriously deficient" work.

There is, Judge Robert A. Katzmann wrote for a panel of Second Circuit judges in February, a "disturbing pattern of ineffectiveness" at the lower levels of the immigration bar, one that rears its head in the appeals courts with "alarming frequency."

Mr. Liu, a disarmingly candid man, was quick to agree.

"I think the judge has a point, actually," he said. "Some attorneys, including myself, do not spend enough time. We're not trained properly in terms of federal appeals. I ventured into an area I found later was very demanding. I was probably not qualified to do the job."

Two briefs Mr. Liu submitted to the Second Circuit in October 2006 support his self-assessment. They included, for starters, 27 paragraphs that were essentially the same in each brief. Mr. Liu did add a half-dozen paragraphs to each brief to take account of the distinct facts in the two cases, but he made no effort to explain where the lower court judges had gone astray in ruling against his clients.

Other immigration lawyers handle even more preposterous caseloads than Mr. Liu. Seven small immigration firms each had more than 100 appeals pending in the Second Circuit in the spring of 2005, according to a study published in The New York Law School Law Review. One of them had more than 300. These appeals are part of a yet larger phenomenon.

In recent years, the number of immigration appeals has more than quintupled, a consequence of revisions to the way immigration cases are handled.

The Second Circuit disciplinary committee has not made a decision in Mr. Liu's case, and Mr. Liu said he was worried about his livelihood and reputation. He has, he said, for the most part stopped handling federal appeals.

"Personally, I feel very ashamed, of course, in being mentioned," he said.

It is easy to feel superior to lawyers like Mr. Liu and his colleagues, but they are symptoms of a systemic problem rather than its cause.

People involved in immigration appeals, many of whom are seeking asylum, are often poor. But they are not entitled to lawyers provided by the government.

"A person accused of shoplifting gets an appointed attorney," said Stephen W. Yale-Loehr, who teaches immigration law at Cornell. "Someone who is fleeing persecution and may be tortured or killed if forced to go back to their home country does not."

That means asylum applicants may get only the justice they can afford.

Judge Richard C. Wesley of the Second Circuit said the combination of three factors made the lot of the asylum applicant "a witch's brew that creates the opportunity for mistakes."

"A large number of these litigants are poor," he said. "For many, English is a second language if it is a language. The law is intricate and not easily understood."

That said, he added, "there are people who labor in these vineyards with great distinction." But many do not, in part because they cannot make a living doing legal work of acceptable quality.

Mr. Liu said he typically charged a flat fee of about \$2,500 for an appeal, a fortune to clients and a pittance by the standards of large firms, which routinely charge \$100,000 and more for an appeal.

"A new immigrant makes like \$10 or \$8 or \$7 an hour, and big firms charge like \$250 an hour," Mr. Liu said, underestimating what big-firm partners charge by a factor of three if not four.

But Mr. Liu said he was not hiding behind the economics of his practice. "There is simply no excuse," he said. "Even if you don't charge a lot of money, you have to do your job."

Notwithstanding the shortcomings of parts of the immigration bar, there is no question that, on average, having a lawyer makes a difference. A study published last year in *The Stanford Law Review* found that 46 percent of people who appeared with lawyers or other representatives were granted asylum. People without lawyers won 16 percent of the time.

Good lawyers do even better. Georgetown University's legal clinic wins 89 percent of the time. Human Rights First, which refers cases to big law firms in New York and Washington willing to handle them without charge, wins 96 percent of the time.

All of this points to a disquieting phenomenon. There is a legitimate debate about how liberal the nation's asylum policies should be. But nobody should be happy to hear that whether people who claim to be fleeing persecution are deported or not turns on how good a lawyer they have — or whether they can afford one at all.