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Practicing Immigration Law in Filene's Basement

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PRACTICING IMMIGRATION LAW IN FILENE'S BASEMENT

RICHARD L. ABEL*

The division of labor that produces lawyers renders others dependent on them: clients, adversaries, opposing counsel, courts, agencies, and the wider public. Lawyers may betray this trust, sometimes egregiously. In order to reduce the frequency and severity of such betrayals we need to understand the behavior. Disciplinary proceedings in the two largest American jurisdictions—New York and California—are public records if they eventuate in significant punishment. I am using those records to create case histories of a dozen lawyers, seeking to understand the environmental and characterological variables that produced their conduct. The most common client complaint is neglect. Through a case study of the representation of Chinese immigrants before the Immigration Court in New York, I seek to explain how and why the neglect occurred and what we might do to prevent it.

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INTRODUCTION

Ask people who have used lawyers what bothered them most and chances are you will hear complaints about neglect—not fees, not injustice, but impotent rage that nothing seems to be happening and even greater fury at being unable to find out. That should not surprise. Most of us have fumed in doctors' waiting rooms (note the name),¹ stayed home hoping the delinquent contractor would show

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1. To avoid this the wealthy are paying up to \$20,000 a year for "concierge" practices with limited patient lists. Amy Zipkin, *The Concierge Doctor Is Available (at a Price)*, N.Y. TIMES, Jul. 31, 2005, § 3, at 6.

up, or sat on hold with impenetrable bureaucracies like the IRS or the state DMV office. But although the problem is pervasive (for reasons I address below), lawyers still may be outliers.² Dickens³ and Kafka⁴ are the *loci classici*. For those seeking justice, process can be more compelling than outcome.⁵ Lawyer neglect dominated mid-twentieth-century American public opinion surveys⁶ and studies of automobile accidents conducted in the 1960s.⁷ Some delay is strategic.⁸ Lawyers "threaten to hold out until trial as a bargaining device when they think the nerves or resources of the opponent are unequal to their own."⁹ But—in a masterpiece of understatement—"the more candid

2. The complaint of incompetence overlaps, although it is not identical. Chief Justice Warren E. Burger notoriously pronounced that, according to judges with whom he had spoken, at least 75% of trial lawyers were incompetent. Judge Warren E. Burger, *A Sick Profession?*, 5 TULSA L.J. 1, 3 (1968). He later amended that figure to one-third to one-half of trial lawyers. Chief Justice Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 234 (1973) (adopting the one-third to one-half figure as a "working hypothesis" based on an informal poll of judges whose opinions on the percentage of incompetent lawyers ranged from as high as 75% to as low as 25%). In a national survey, 41% of lawyers and 72% of litigators agreed with the latter estimate. *LawPoll*, 64 A.B.A. J. 832, 832-33 (1978). Two surveys of judges put the figure closer to 20%. See ANTHONY PARTRIDGE & GORDON BERMANT, *THE QUALITY OF ADVOCACY IN THE FEDERAL COURTS* 5 (1978) (reporting that federal district judges regarded an estimated 8.6% of performances by lawyers as "inadequate" and 17% as "adequate but no better"); see also Dorothy Linder Maddi, *Trial Advocacy Competence: The Judicial Perspective*, 1978 AM. B. FOUND. RES. J. 105, 106 (1978) (stating that estimates by judges of the proportion of incompetent trial advocates range from 25% to 98%, and reporting that more than forty judges of district courts and the Court of Appeals for the Second Circuit said 10% to 12% of lawyers lacked a basic knowledge of advocacy).

3. CHARLES DICKENS, *BLEAK HOUSE* 2-5 (Dodd, Mead & Co. 1951) (1853) (describing the case of *Jarndyce v. Jarndyce*).

4. FRANZ KAFKA, *THE TRIAL* 113-14 (Schocken 1968) (1925).

5. E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 12 (1988).

6. See LAY OPINION OF IOWA LAWYERS, COURTS AND LAWS 7 (1949) (noting that the main way for lawyers "to improve their services is to *avoid delays*"); Henry S. Drinker, *Laymen on the Competency and Integrity of Lawyers*, 22 TENN. L. REV. 371, 375 (1952) (reporting that 153 bankers, other professionals, farmers, artisans, industrialists, and business men "stated that the principal weakness of lawyers was procrastination and delay").

7. See Maurice Rosenberg, *Court Congestion: Status, Causes, and Proposed Remedies*, in DOLLARS, DELAY AND THE AUTOMOBILE VICTIM: STUDIES IN REPARATION FOR HIGHWAY INJURIES AND RELATED COURT PROBLEMS 151, 157-60 (Walter E. Meyer Research Inst. of Law ed., 1968); H. LAURENCE ROSS, *SETTLED OUT OF COURT: THE SOCIAL PROCESS OF INSURANCE CLAIMS ADJUSTMENT* 228-29 (2d ed. 1980).

8. See DEBORAH R. HENSLER ET AL., *ASBESTOS IN THE COURTS* 90 (1985).

9. Alfred F. Conard, *The Economic Treatment of Automobile Injuries*, 63 MICH. L. REV. 279, 315 (1964).

attorneys will . . . admit that it is possible, occasionally, to misplace a case file or forget about a claim."¹⁰

The two most comprehensive surveys of clients confirmed this. The 1979 British Royal Commission found that "[t]he most common reasons given for dissatisfaction were that the solicitor appeared not to show enough interest in the client's problem or appeared not to do enough about it, that the matter took too long to complete or that the client was not kept informed of progress."¹¹ And a 1977 ABA legal needs study reported that 59% of the general public agreed that lawyers were not prompt about getting things done, 33% that they work harder at getting clients than serving them, and half that lawyers were not very good at keeping clients informed.¹² Table 1¹³ summarizes thirty-eight diverse populations: survey respondents, disciplinary complainants, and malpractice victims—in the United States, Canada, Great Britain, Australia, and Denmark—across more than half a century. Though the categories are not entirely consistent, the message is clear: neglect is the most common complaint.¹⁴

For the first sixty years of their existence the ABA Canons of Ethics disregarded the problem. But in 1969 the Code of Professional Responsibility declared that a lawyer "shall not . . . [h]andle a legal matter which he knows or should know that he is not competent to handle," do so without "adequate" preparation, or "[n]eglect a legal matter entrusted to him."¹⁵ And fourteen years later the Model Rules of Professional Conduct moved this mandate from DR 6 to Rule 1.1, which states: "A lawyer shall provide competent representation to a client."¹⁶ Surely first is where it belongs. The *raison d'être* of a profession is the knowledge asymmetry that makes consumers

10. DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* 31, 48 (1974).

11. ROYAL COMMISSION ON LEGAL SERVICES, 2[A] FINAL REPORT: SURVEYS AND STUDIES, 1979, Cmnd. 7648-1, at 223.

12. Barbara A. Curran & Inge Fryklund, *Opinions and Perceptions*, in BARBARA A. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* 227, 229-30 tbls.6.2 & 6.3 (1977); see also JEFFREY M. SMITH, *PREVENTING LEGAL MALPRACTICE* 2 (1981) ("It cannot be overemphasized that a good client relationship may not only help in preventing unmeritorious claims but may also be the decisive factor which causes a client to refrain from pursuing a valid claim.").

13. See *infra* Appendix, Table 1.

14. Successful solo and small firm practitioners know that neglect is the most common complaint and act on it. See CARROLL SERON, *THE BUSINESS OF PRACTICING LAW* 111-15 (1996). So do English barristers. GENERAL COUNCIL OF THE BAR, *ANNUAL REPORT* 13 (1990) (noting that the most frequent complaints by clients "are undoubtedly undue delays and late return of briefs").

15. MODEL CODE OF PROF'L RESPONSIBILITY DR 6-101(A) (1969).

16. MODEL RULES OF PROF'L CONDUCT R. 1.1 (1983).

depend on producers. It is disturbing, therefore, that professional responsibility courses neglect neglect. Twenty-four casebooks and treatises, most published within the last few years, omit the issue entirely or dispose of it in a page or two, typically representing less than 1% of the text.¹⁷ Perhaps the authors felt the topic raised no interesting questions. Yet the problem persists. Law schools know some of their graduates will neglect clients. Professional Responsibility instructors cannot hope to remedy this unless they know why.

Social science seeks to answer such questions, typically by studying populations of actors. But before we can discern patterns we need an intuitive understanding of how the behavior varies and its meaning for the actors. To this end, I have conducted a dozen case studies of unethical lawyering, using the detailed (and public) records of disciplinary proceedings in New York and California. The following is an example of extreme neglect.

I. A CASE STUDY OF NEGLECT¹⁸

Joseph F. Muto was admitted to the New York bar in January 1987.¹⁹ Although he worked in Syracuse for a real estate firm, for the District Attorney, and twice as a solo practitioner, he never established a successful practice.²⁰ After ten years he moved to New York City. In response to an advertisement, he began doing immigration cases for attorney David Rodkin.²¹ After a few months, having seen how much money could be made in immigration law, he left with another employee, Karen Jaffe,²² both of whom opened

17. See *infra* Appendix, Table 2.

18. All material relating to Joseph Muto's disciplinary hearing and the Immigration Court proceedings that prompted the Departmental Disciplinary Committee ("DDC") to investigate is taken from the 1,211 page hearing transcript of the DDC, Supreme Court, Appellate Division, First Judicial Department (RP 06/01). The transcript and attached exhibits are available for inspection at the office of the Committee on Character and Fitness, Appellate Division First Department, 60 Madison Avenue, Room 202, New York, New York, 10010, (212) 779-1779. The Committee on Character and Fitness will photocopy all or a portion of the transcript and exhibits for a fee of \$1.00 for the first page and \$.50 for each additional page upon written request. The author spent several weeks reviewing the transcript and exhibits at the office of the Committee on Character and Fitness. Citations in this Article relating to Muto's hearing refer to the author's notes of the contents of the transcript, which are on file with the North Carolina Law Review [hereinafter Author Notes]. Where appropriate, parallel citations to related, published proceedings are provided.

19. Author Notes, *supra* note 18, at 1.

20. *Id.*

21. *Id.* at 35.

22. See *id.* at 58.

individual practices in Chinatown in space rented from Michael Lee.²³ In February 2001, upon receiving a complaint from the Immigration Court's Judge Ferris, the Departmental Disciplinary Committee ("DDC") charged Muto with neglecting clients, assisting the unauthorized practice of law, mismanaging his escrow account, and failing to report his address, among other charges.²⁴

Prosecutor Sherry Cohen opened the June 4, 2001 disciplinary hearing by accusing Muto of being hired and paid by a "travel agency"²⁵ to represent Chinese immigrants facing deportation.²⁶ They did not choose him, rarely met him outside of court, and were unable to contact him.²⁷ Four immigration judges complained about his failure to appear at hearings.²⁸ Although he charged as little as \$150²⁹ (compared with the \$3,000 to \$8,000 fees of competitors),³⁰ even that was excessive for this quality of service.³¹

Muto responded to these accusations by displaying a photo of his office. "There's a contention that it's not a bona fide law office. Your Honor will note, my name is on the front of the building I'm not a dishonest attorney, [although] . . . I may be a little bit disorganized" ³² He offered "poor people" "quality legal services" at an "affordable price." ³³ He was hard working. "[V]irtually every one of my clients is overjoyed and happy with my services I'm the only low budget lawyer in Chinatown."³⁴ "[H]igh priced lawyers" were behind these complaints, "Lord and Taylor trying to put Filene's [B]asement out of business."³⁵ Muto claimed the travel agencies also resented his refusal to solicit clients

23. *Id.* at 5.

24. *Id.* at 4-5; see also *In re Muto*, 739 N.Y.S.2d 67, 68 (App. Div. 1st 2002), available at <http://www.westlaw.com> (listing the specific charges against Muto).

25. Although these offices sometimes do arrange travel, their role in this case is as intermediaries between undocumented or inadequately documented Chinese immigrants and American governmental bureaucracies.

26. Author Notes, *supra* note 18, at 5-6.

27. *Id.* at 5.

28. *Id.*

29. *Id.* at 112.

30. See *id.* at 5.

31. New York lawyers' estimated fees for processing asylum applications at \$1,500 to \$2,000 and for cancellation of removal at \$2,000. See FELINDA MOTTINO, VERA INST. OF JUSTICE, MOVING FORWARD: THE ROLE OF LEGAL COUNSEL IN IMMIGRATION COURT 30 (2000).

32. Author Notes, *supra* note 18, at 6.

33. *Id.* at 7.

34. *Id.*

35. *Id.* at 7-8.

by doing the “Chinatown crawl.”³⁶ If agencies sent him business he “didn’t know about it.”³⁷ Clients were complaining only in order to reopen their cases.³⁸ He blamed defaulting clients for his own non-appearance at hearings.

A. *The Representation of Chang Kui Lin*

The story of Chang Kui Lin,³⁹ one of Muto’s clients, illustrates Muto’s pattern of blaming his clients for his own incompetence. Lin testified that he paid a “snakehead”⁴⁰ \$30,000 to smuggle him into Mexico by boat in 1992, then to Los Angeles on foot, and finally to New York by plane.⁴¹ In March 1993, he applied through Xing Rong Service Company for a work authorization card, which was granted and renewed annually.⁴² When that agency closed he switched to Blue Eagle.⁴³ In 1997, Blue Eagle employee Tiffany Dong notified him of a political asylum hearing based on China’s coercive family planning policy—the first he had heard of the application.⁴⁴ On

36. *Id.* at 8.

37. *Id.*

38. Claiming ineffective assistance of counsel under *In re Lozada*, 19 I. & N. Dec. 637, 638 (1998), available at 1988 BIA LEXIS 19.

39. Both the immigration cases and the disciplinary hearing Americanized the order and spelling of Chinese names.

40. The English translation of the Chinese slang for smuggler. On the relationship between snakeheads and lawyers, see generally Elizabeth Amon, *The Snakehead Lawyers*, NAT’L L.J., July 15, 2002, at A8 (noting that experts say many immigration lawyers represent snakeheads indirectly).

41. Author Notes, *supra* note 18, at 23.

42. *Id.*

43. *Id.*

44. *Id.* The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) authorized 1,000 conditional grants of asylum per year based on China’s coercive population control. Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) (codified as amended in scattered sections of U.S.C.). As a result, asylum grants increased from 5,131 in FY 1996 to 9,170 in FY 2000 and the grant rate doubled from 17% to 36%. In New York City in FY 2000 it was 47%. NYC also completed 15% of Convention Against Torture applications that year. Thirty-seven percent of asylum seekers in New York were Chinese. MOTTINO, *supra* note 31, at 14. Chinese applicants nationwide increased from 6,930 completed cases in 1996 (3%) to 15,502 in 2000 (7%). U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, STAT. Y.B. 2000, F2-F3 (2001) [hereinafter EOIR STAT. Y.B. 2000], available at <http://www.usdoj.gov/eoir/statpub/SYB2000Final.pdf>. New York handled 23% of all asylum completions in FY 2000. *Id.* at M2. Chinese immigrants received the largest number of grants of asylum of any nationality in FY 1997–2000, four to five times as many as the next country (India) in 1998–2000. *Id.* at N1. In FY 2004, 3,400 Chinese immigrants were granted asylum, compared with 1,470 for the next country (Colombia); Chinese immigrants received 26% of all asylum grants, including conditional grants. U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, FY 2004 ASYLUM STAT. (2005), available at <http://www.usdoj.gov/eoir/statpub/fy04syb.pdf>.

November 10, he gave the agency his papers, including his wife's abortion certificate.⁴⁵ The agency took him to the Immigration and Naturalization Service ("INS") hearing but failed to prepare, and asylum was denied. On February 6, 1998 Dong told Lin to appear for the Immigration Court ("IC") master calendar on February 26.⁴⁶ That day he went to Blue Eagle, paid \$250, and was taken to the courtroom by Eddie Ye (Dong's husband).⁴⁷ Lin testified, "[t]hen the judge [presumably the bailiff] opened the door and he asked me to go in with an attorney whose skin was dark colored."⁴⁸

That attorney was Gregory Kuntashian, although (as Kuntashian later admitted) Lin never knew his name, talked with or paid him, or signed the appearance notice. Judge Noel Ferris directed Kuntashian to produce Lin's documentation by June 26 and scheduled an individual merits hearing for November 3.⁴⁹ But Lin stated that after the February hearing, Ye told him "the judge was not good. I had to change my case . . . to New Jersey," where Lin was working.⁵⁰ He paid the agency \$310 for a change of venue motion and got a receipt with a New Jersey address (where he had never lived),⁵¹ but he was unable to obtain the documentation of residence from his New Jersey employer, which Ye had requested.

Ye took Lin to the November 3 hearing and "told me that this Mr. Muto is my attorney."⁵² Lin had never met Muto before and did not choose him, pay him, or sign a notice of appearance. Although Muto had no recollection of meeting Lin in advance, he claimed, "as a matter of general policy, I would not do a reopen for someone who I haven't met"⁵³ [Therefore] I know he came to our office, [or at least s]omebody went to 401 Broadway."⁵⁴ Muto blamed Karen Jaffe, whose name was on the file.⁵⁵ "Most likely, Blue Eagle sent a client to Karen. Karen told me, Joe, do you want to do a change of venue

45. See Author Notes, *supra* note 18, at 83 (describing Staff Exhibit 1, which includes Lin's complaint).

46. *Id.* at 23. The master calendar is the initial hearing, roughly analogous to arraignment.

47. *Id.*

48. *Id.* at 23–24.

49. *Id.* at 24.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 52.

54. *Id.* at 60.

55. *Id.* at 9.

[motion] for this man? And I agreed”⁵⁶ He claimed Ye would confirm this, but failed to draft a valid subpoena for Ye.

Muto also said it was “common sense” that he would not deal with agencies.⁵⁷ “[L]ook at how big my practice is I have an office in the heart of Chinatown.”⁵⁸ He and Jaffe advertised their practice “using her name, [because the name] Karen Gowren, literally means high and mighty in Chinese [I]t was very effective.”⁵⁹ Muto let slip “I worked for Karen at the time” but quickly recanted: “I worked with Karen at the time. It just seemed like it was for Karen a few times, which is probably the reason we didn’t stay together.”⁶⁰ In an exchange with Prosecutor Cohen and the referee at the disciplinary hearing, Muto claimed that Karen refused to testify because she dealt with agencies:

Cohen: You shared office space with her and shared legal fees with her and did work for her, and your testimony is that you had no idea it was an agency.

Muto: I didn’t know Blue Eagle was behind this case It could be just an agency.

Referee:⁶¹ And meanwhile, you were taking seven or ten [cases] a day—

Muto: Not back then, Judge. No.

Referee: Five or four a day. And you’re asking me to believe that you were new on the street and people were coming in without references from agencies?⁶²

Muto offered to “take a frigging lie detector test”⁶³ but then said, “[c]ut Ms. Cohen a break . . . let’s say I got this file directly from Eddie [Y]e.”⁶⁴ Muto admitted:

[Ye] may have been standing next to [Lin] and interpreting. I didn’t know who Eddie Ye was [S]omebody told me he had a problem with his restaurant. I said give him my name. He came over to my office and I helped him with his restaurant.

56. *Id.*

57. *Id.* at 57.

58. *Id.*

59. *Id.* at 58.

60. *Id.* at 62.

61. John R. Horan, a partner in Fox, Horan & Camerini.

62. Author Notes, *supra* note 18, at 64.

63. *Id.* at 65.

64. *Id.* at 59.

And I told him I didn't want any of his cases, because Tiffany Dong, his wife, [had been] . . . convicted of immigration fraud.⁶⁵

Muto admitted knowing that David Rodkin took agency cases but claimed "that's probably the reason Karen and I set up our own practice."⁶⁶ However, he agreed with the prosecutor that "another reason" was that he "could make at least [\$]2,000 a week."⁶⁷

When Judge Ferris reprimanded Muto at the November 3 hearing for his "totally inadequate" October 5 change of venue motion he answered: "I wasn't aware, Your Honor."⁶⁸ He could not explain his failure to file the necessary documents by June 26.⁶⁹ Consulting with his client for the first time, Muto said Lin had "advised me he had trouble procuring the documents from his wife in China."⁷⁰ (At the disciplinary hearing Lin insisted, "[a]ll the documents were sent from China in October.") Judge Ferris gave Muto two weeks to explain why he hadn't moved to enlarge the time. "That's what lawyers do,"⁷¹ Judge Ferris said.⁷² Muto promised, "[y]ou will have it."⁷³

Lin could not see Muto before the next hearing on January 20, 1999, because the lawyer had given him neither a business card nor an office address. Ye once again took Lin to court. Another lawyer, Claude Maratea, appeared for Muto "of counsel"⁷⁴ because, Lin said, "the Judge did not like this Muto to be at the hearing."⁷⁵ Judge Ferris observed that service on Muto at his home address had failed three times, and said, "I will note for the record that I saw him earlier. That he muttered something and then went scurrying out of my courtroom.

65. *Id.*

66. *Id.* at 61.

67. *Id.*

68. *Id.* at 84.

69. *Id.* at 84–85. Local rules require that "evidence which a party will seek to offer at an Individual Calendar hearing must be filed with the Court ten days in advance." Local Operating Rule 2, U.S. Dep't of Justice, Executive Office for Immigration Review, Office of the Immigration Judge, New York, *available at* <http://www.usdoj.gov/eoir/efoia/ocig/localop/NYC.pdf> (last visited Apr. 18, 2006).

70. Author Notes, *supra* note 18, at 85.

71. Local Operating Rule 3.c requires a written motion for a continuance "as soon as the reason for such request is known, but not less than ten (10) days prior to the scheduled hearing date." Local Operating Rule 3.c, U.S. Dep't of Justice, Executive Office for Immigration Review, Office of the Immigration Judge, New York, *available at* <http://www.usdoj.gov/eoir/efoia/ocig/localop/NYC.pdf> (last visited Apr. 18, 2006).

72. Author Notes, *supra* note 18, at 85.

73. *Id.*

74. *Id.* at 1.

75. *Id.* at 24.

I'm going to require Mr. [] Muto to be produced on this case."⁷⁶ When he was produced, Muto said "I had to accept responsibility, Your Honor. I didn't prepare the motion [to enlarge the time to file.] I wasn't sure exactly how you wanted it. I hadn't done one before."⁷⁷ When Judge Ferris accused him of having "just ignored it," he objected, stating that "[i]t actually slipped through the cracks. I apologize."⁷⁸

Judge: I don't think it's appropriate for you to represent this individual because you're not representing him in [a] fair manner And then by sending in another lawyer who you knew could not answer any of these questions, because you walked out of my courtroom muttering that you weren't going to appear in this case.

Muto: I was feeling nervous coming in here, Your Honor.

Judge: Counsel, frankly, given the quality of your representation, that is the first appropriate response I have heard from you.⁷⁹

Judge Ferris gave him a week "to file a motion with me as to your law office failures in this matter."⁸⁰

Judge: I expect you to set up an appointment immediately with your client at an address. Do you have any business cards with you?

Muto: I kind of ran out of business cards today, Your Honor.

Judge: Yes, that's what you tell me every time.⁸¹

When Ye brought Lin back to court a week later, Judge Ferris asked Muto about the motion "to be filed no later than yesterday."⁸²

Muto: I did not do it, Your Honor. I had planned . . .

Judge: Mr. Muto, I'm requesting the Chief Judge of the United States Immigration Court to sanction you⁸³

76. *Id.* at 86.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 87.

81. *Id.*

82. *Id.*

83. The IC did not obtain authority to discipline for another eighteen months.

Muto: I was going to do the work over the weekend. My mother is in the hospital for surgery. She's very ill. And I have the name of the social worker at the hospital who [can] attest to that to verify what I'm saying.

Judge: Well, Mr. Muto, that's not how you do it. Right? You know perfectly well it's not the court's job to call social workers at hospitals.⁸⁴

Calling his representation "less than stellar," Judge Ferris gave him another week to file the motion.⁸⁵ Otherwise, Judge Ferris said,

I will not allow you to be this man's attorney anymore⁸⁶ [You] couldn't even write to The Court and ask for an extension claiming a family emergency, but . . . I've seen you in the court every day this week . . . you find the time to represent your clients or you get out of practice. I am tired of you, Mr. Muto, because you never meet your deadlines And you are hurting people and I am not going to be a party to that. Hear me well and hear me clearly. This record is going to the Appellate Division, Disciplinary Committee in its entirety. And I'm requesting action against you.⁸⁷

Muto filed his motion for consideration of late evidence. The bailiff called the case at noon the next day, but Muto was not present. Judge Ferris opened the hearing by saying: "I will note that Mr. Muto has poked his head in my door a couple of times this morning, but he has never stopped and he has never made a formal representation on the record as to why his client is not here."⁸⁸

She denied the asylum application and ordered Lin deported.⁸⁹ When both Muto and Lin appeared ten minutes later she reopened

84. Author Notes, *supra* note 18, at 88.

85. *Id.*

86. The judge was probably concerned that clients are bound by the actions of their lawyers, even bad ones. See Lester J. Mazor, *Power and Responsibility in the Attorney-Client Relation*, 20 STAN. L. REV. 1120, 1121-22 (1968) (restating the "laissez-faire principle that he who hires the lawyer must bear the cost of his default"). Only a few jurisdictions make an exception for "positive misconduct," which they define narrowly as conduct that "obliterates the existence of the attorney client relationship." See *Carroll v. Abbott Lab. Inc.*, 654 P.2d 775, 778 (Cal. 1982). But see *Panzino v. City of Phoenix*, 999 P.2d 198, 200 (Ariz. 2000) (rejecting rule).

87. Author Notes, *supra* note 18, at 88-89.

88. *Id.* at 89.

89. Local Operating Rule 1 states that "any delay by the respondent . . . in appearing for such a hearing may result in the hearing being held in absentia. Any delay in the appearance of the attorney . . . may . . . result in the hearing being held in the absence of the attorney" Local Operating Rule 1, U.S. Dep't of Justice, Executive Office for

the case, acknowledging it was scheduled for the next day, but challenged Muto's claim to have an office at 5 Doyers Street. Muto insisted he had his own room:

Muto: Invite you or anyone to come down and look at it

Judge: As a matter of fact, I tried to do that, Mr. Muto, and it could not be located in that building. Although I did see a mailbox which you share with a Chinese travel agent by the name of Dr. He.

Muto: [T]his is ridiculous. Dr. He has got an office across the hall and down . . .

Judge: You share the phone . . . you previously told me you didn't know [him]

Muto: I've met him.

Judge: [S]hould someone misplace your business card, if they had it, they would have no way of contacting you because you're unlisted. That is not a professional form of doing practice

Muto: That's an upstate thing.⁹⁰

Judge Ferris rejected Muto's excuses for delays in providing documentation, closed the record, and suggested voluntary departure.⁹¹ After consulting his client, Muto said Lin would accept it; but questioned by Ferris, Lin insisted on pursuing his application.⁹² In the subsequent disciplinary hearing, Muto attempted to explain why he accepted the voluntary departure. He said he had feared there was:

[P]robably at least a 50-50, if not greater chance that she would have that man taken into custody. That she would effectively—I don't want to say a kangaroo court type hearing—but she would conduct a hearing in a very short span of time . . . deny his case, and then order him arrested.⁹³

Immigration Review, Office of the Immigration Judge, New York, *available at* <http://www.usdoj.gov/eoir/efoia/ocig/localop/NYC.pdf> (last visited Apr. 18, 2006).

90. Author Notes, *supra* note 18, at 89–90.

91. *Id.* at 90.

92. *Id.*

93. *Id.* at 63.

Muto claimed that Judge Ferris “was very angry at me. She has a problem with me I asked other lawyers if they would take the case over, and they overwhelmingly said no.”⁹⁴

Muto then moved to withdraw as counsel because Lin “has not been completely up front with me.” Muto said he had “no clue that this case was on for today,” and the judge’s threatened grievance “will place me in a position where I would be possibly impeaching my client.”⁹⁵ Judge Ferris questioned his good faith but gave him a day to file a formal motion to withdraw.⁹⁶

Judge: Your conduct before The Court is unprofessional. It is continuously unprofessional—

Muto: Your Honor—

Judge: Excuse me, Mr. Muto, but—

Muto: Actually, Judge, I thought you were done, Judge—

Judge: If you interrupt me one more time, I will have you removed so be—

Muto: Actually, Judge, it—

Judge: Quiet and wait until it’s your turn.⁹⁷

Judge Ferris urged Lin to hire another lawyer and ordered Muto to be in court the next day, rejecting his request for a postponement, stating, “you accepted the date of tomorrow a week ago.”⁹⁸

The next day Lin told Judge Ferris that Muto “asked me to have” Maratea represent him.⁹⁹ Judge Ferris rebuked Muto: “[I]t’s inappropriate for you to be hiring him The Respondent is the one who hires his own lawyer. That’s the whole problem with this case. I have no evidence he ever hired you directly.”¹⁰⁰

Although he could not remember introducing Lin to Maratea, Muto later testified at the disciplinary hearing:

94. *Id.* at 63–64.

95. *Id.* at 90.

96. *Id.* at 90–91. Local Operating Rule 4 states that until the motion to withdraw is granted “all counsel and the parties must appear for the scheduled hearing and be prepared to proceed.” Local Operating Rule 4, U.S. Dep’t of Justice, Executive Office for Immigration Review, Office of the Immigration Judge, New York, *available at* <http://www.usdoj.gov/eoir/eoia/ocig/localop/NYC.pdf> (last visited Apr. 18, 2006).

97. Author Notes, *supra* note 18, at 91.

98. *Id.* at 91–92.

99. *Id.* at 93.

100. *Id.*

[A]s a general rule, if someone is going to cover, even a master [calendar], I will introduce the lawyer to them. I'll say a few words in Chinese [spoken] . . . point my thumb up. And have somebody—maybe a court interpreter, maybe a paid interpreter of another lawyer, explain to them And I'll say, good lawyer [repeated in Chinese] And that's how every other lawyer does it.¹⁰¹

But Maratea said he had never met Lin before. Judge Ferris reprimanded Muto for giving her the motion to withdraw late and for failing to follow regulations, but she eventually granted it.¹⁰²

At Muto's disciplinary hearing, Maratea testified that Muto had asked him to handle Lin's master calendar because Judge Ferris disliked Muto. After the master calendar hearing Michael Lee, Muto's office manager "got very angry."¹⁰³ Whenever Muto asked Maratea to appear, Maratea claimed, "[m]y next question would be, '[I]s this from your office directly or is it through an agent?' " because 60% to 70% of the cases he got from Muto came from agents.¹⁰⁴ Maratea said he "almost always" met the agent and client "in the lobby [and] the agent would bring the file The agent speaks Chinese and I communicate through the agent."¹⁰⁵ Maratea was paid \$75 to \$100 in cash, sometimes by Muto, sometimes by the agent. Agents, he said, were "very good for getting clients . . . if you're starting out in law [T]hey do the grunt work . . . get the documents, speak to the client."¹⁰⁶ Maratea explained that it would be "[v]ery unlikely" for "an attorney that has a regular practice in immigration court . . . to take a case from a travel agent without knowing it."¹⁰⁷ Muto then denounced Maratea for having "the unmitigated chutzpah to come into this room and accuse me of being an agency lawyer" when Maratea himself "deals exclusively with travel agencies."¹⁰⁸ Muto said he intended to file a grievance with the DDC.¹⁰⁹

Muto also blamed others. Lin "was a very difficult client."¹¹⁰ Judge Ferris "hated me . . . screaming at me at a time when my

101. *Id.* at 62.

102. *Id.* at 93.

103. *Id.* at 27.

104. *Id.*

105. *Id.*

106. *Id.* at 28.

107. *Id.*

108. *Id.* at 29.

109. *Id.*

110. *Id.* at 59.

mother is dying, to do this, do that Judge Ferris, you know, abused her judicial discretion by pushing and pushing and pushing and refusing to allow me off this case”¹¹¹

Ann Hsiung appeared as counsel for Lin three weeks later.¹¹² Judge Ferris said she had closed the record three times and would not reopen it “unless a Lazato [sic] motion is made.”¹¹³ She gave Hsiung a week to familiarize herself with the case. At that next hearing Judge Ferris told Hsiung her motion for a late filing of documents did not conform to *Lozada*,¹¹⁴ noting that “the actions of prior counsel appear to condone, that the case was being governed not by a lawyer, but by some third party.”¹¹⁵ Explaining why she had not previously filed a grievance against Muto, Hsiung replied that the DDC had just refused to accept another client’s grievance until the Immigration Court completed the case.¹¹⁶ Judge Ferris said the INS and DDC were discussing this and insisted Hsiung file a grievance “so that there would be attribution [sic] against just every day someone coming in and saying, oh, it’s the other lawyer’s fault.”¹¹⁷ Hsiung, however, said “[I have] a problem. I don’t want Mr. Muto or the other gentleman thinking that I personally filed against them . . . as much as I don’t agree with . . . their practice . . . it’s really not my business.”¹¹⁸ She preferred to help Lin file pro se, but Judge Ferris said no one would believe Lin had done that.¹¹⁹ The “problem” in immigration practice, according to Judge Ferris, was that, although 90% of Chinese appeals were “allegedly as pro se,” court filings “are by non-English speaking people and they are written in English My guess is that those are all being done by the so-called service agencies who are practicing law

111. *Id.*

112. *Id.* at 94.

113. *Id.*

114. *In re Lozada*, 19 I. & N. Dec. 637, 638 (1998), available at 1988 BIA LEXIS 19. Under *Lozada*, Lin could have his asylum case reopened if he could successfully claim ineffective assistance of counsel. *Id.* A respondent claiming ineffective assistance of counsel under *Lozada* must file a motion with the IC, and: (a) support the motion with an affidavit attesting to the relevant facts; (b) inform counsel of the accusations and allow counsel an opportunity to respond; and (c) indicate whether a complaint has been filed with the appropriate disciplinary authorities (in this case, the DDC). See AM. IMMIGRATION LAW FOUND., PROTECTING YOUR CLIENT WHEN PRIOR COUNSEL WAS INEFFECTIVE: EXPANDING THE BOUNDS OF *LOZADA* 2 (Apr. 2002), available at http://www.aifl.org/lac/lac_pa_050202c.pdf.

115. Author Notes, *supra* note 18, at 95.

116. *Id.*

117. *Id.* at 95–96.

118. *Id.* at 96.

119. *Id.*

without a license." She warned Lin not to "go through any third parties who are not in the employ of your lawyer."¹²⁰

Hsiung's practice is proof that not all immigration lawyers act like Muto. Hsiung charged \$3,500 to \$5,000 for an asylum application.¹²¹ Her four secretaries all spoke English, Cantonese, and Mandarin, and three spoke Fuzhou (like Lin).¹²² She saw each client for half an hour before taking a case, three hours before a master calendar, and for three two- to four-hour meetings before the individual hearing.¹²³ Even she could not say "100 percent that I didn't take any cases from a travel agency But I didn't give anybody, even a chance of taking control of the case."¹²⁴ She had seventy to eighty asylum cases and twenty to thirty reopens pending, compared with Muto's 500.¹²⁵ Although Muto claimed in his disciplinary hearing "there's nothing that needs to be done on them" for long periods, Hsiung always had her secretary "pull my file at least one month before the next hearing, to see what has to be done." Muto attributed clients' denials to have met him before a hearing to the fact that "somebody from an agency" could impersonate the client. But Hsiung required an ID before notarizing a client's signature.¹²⁶ Objecting that "you have a little bit of an advantage over me, being Chinese," Muto said, "There were so many reopens . . . I wasn't checking IDs"¹²⁷ He asked in his disciplinary hearing if Hsiung ever had "instances where . . . you'll send your clients letters, you'll call them. But you just don't hear from them between the hearings."¹²⁸ She replied:

It never happened in my office [M]y secretary will call the clients to make sure they will meet me at least one and a half months before the hearing date so I can schedule between then to the hearing date, at least two to three times to meet with them and prepare them for a hearing.¹²⁹

120. *Id.*

121. *Id.* at 32.

122. *Id.* By 2000, there were nearly as many Fuzhou-speaking applicants (which the EOIR called Foo Chow) as Mandarin speakers. EOIR STAT. Y.B. 2000, *supra* note 44, at H2.

123. Author Notes, *supra* note 18, at 32.

124. *Id.*

125. *Id.* at 33.

126. *Id.*

127. *Id.* at 33-34.

128. *Id.* at 34.

129. *Id.*

B. The Lozada Hearing

Lin complained to the DDC about Muto (and Kuntashian) two months after Judge Ferris insisted he do so.¹³⁰ When the DDC refused to act until the case ended, Judge Ferris expressed frustration and ordered a hearing. Although Congress had authorized the IC to hold lawyers in contempt, the IC could not proceed without implementing regulations¹³¹ and therefore lacked disciplinary authority.

Kuntashian and Maratea appeared at the July 14 hearing, but Muto neither appeared nor signed the certified mail receipt for the notice.¹³² Kuntashian conceded he had never possessed Lin's documents.¹³³ Eddie Ye testified under subpoena that he managed the Chinese Immigration Service Office.¹³⁴ He claimed to have "just translated [some] documentations" for Lin, but admitted he had kept neither the original nor the translation.¹³⁵

Ye: Now no longer have . . . it seems that the attorney took it away.

Judge: What attorney?

Ye: I don't know

Judge: Sir, is it your habit to give away documents that are nothing to do with you, to other people who you don't know?

Ye: No, no, no Last time this folder was given to the Attorney Muto.¹³⁶

Ye insisted Lin had hired both attorneys but admitted they had no common language.¹³⁷ Hsiung, representing Lin, pressed him on the issue:

Hsiung: How did Mr. Lin hire either one of those attorneys?

Ye: At the time I don't just remember [H]e was unable to find attorney and he has to know [sic] attorney.

130. *Id.* at 102.

131. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) § 304, 8 U.S.C. § 1229a(b)(1) (2000).

132. Author Notes, *supra* note 18, at 98.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* at 99.

Hsiung: Mr. Lin asked you to hire attorney for him?

Ye: Yes, to refer or introduce one for him.

Hsiung: [W]ho pays Mr. Kuntashian or Mr. Muto's fee . . . ?

Ye: Sometimes they paid the attorney. Sometimes . . . they get the money to me for me to deliver it to the attorneys.¹³⁸

Questioned by the INS lawyer, Ye could not remember if Lin's \$1,100 payment was his "translation fee."¹³⁹ Judge Ferris subpoenaed Ye to produce "all business records concerning any payments from Mr. Lin to you," but of course he could find none.¹⁴⁰

Judge Ferris noted for the record that she had just "encountered Mr. Muto in the waiting room" and told him about the hearing.¹⁴¹ Muto declined to attend, "relying on papers filed in the Appellate Division."¹⁴² He said he had filed a copy with the court the previous day. Muto's reply to Prosecutor Cohen appeared in Judge Ferris's mailbox an hour later, with a handwritten cover letter to Judge Ferris dated July 16, 1999 (two days hence) claiming he had filed it "with the window on the 10th floor yesterday."¹⁴³ His handwritten reply to the disciplinary charges filed by Lin with the DDC in April 1999 (but not acted upon until February 2000) declared he had taken the case without payment, "as a favor" to Kuntashian:

I [was] unaware of any third party involvement in this matter, and this individual was furnished with a business card with my address (in China town) and my name (in Chinese) I did file a proper motion for late filed documents [T]his individual was extremely evasive with the court, and myself regarding his address [T]he record will show that I provided competent and ethical representation. I did review this individual's claim with him, and explained the removal process to him.¹⁴⁴

Continuing the *Lozada* hearing on September 20, Judge Ferris agreed to accept additional evidence. At the individual hearing on February 2, 2000, she reaffirmed her belief from a year earlier that voluntary departure had been proposed without Lin's "knowledge,

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 100.

142. *Id.* at 100, 102 (Staff Exhibit 11).

143. *Id.* at 100.

144. *Id.* at 102-03 (Staff Exhibit 11).

without his consent, and purely at Mr. Muto's suggestion . . . to try to excuse Mr. Muto's failures to comply with court orders."¹⁴⁵ She found that:

Mr. Lin never hired a lawyer prior to hiring Miss Sung [sic] . . . but hired a service agency who both hired and paid lawyers and that those lawyers did not do the respondent's bidding but acted under the authorization, direction, and at the interest of the service agency only [Blue Eagle] transported the respondent back and forth from their offices in Chinatown. Their offices were the [site] of the preparation of all translations [Muto] did not obey court deadlines to file a motion as to why evidence was late What is perhaps to the court most shocking in this case was, one, an attempt at the last minute to change venue in this case without any basis . . . to get the case away from Judge Ferris [sic], myself, and also the fact that the notes of the attorney, Mr. Muto, appear all over the file of Blue Eagle¹⁴⁶

Judge Ferris granted Lin asylum on February 2, 2000.¹⁴⁷

C. *The Disciplinary Hearing*

Lin and Judge Ferris were not the only affected parties to file grievances against Muto with the DDC. Similar neglect complaints were filed by three other Chinese clients and one Bangladeshi client (seeking to reopen their removal orders under *Lozada*) and by three other Immigration Court judges—two in New York and one (in two separate matters) in New Orleans. The DDC opened its hearing against Muto in June 2000.

Prosecutor Cohen argued in closing that there was not "a scintilla of any support" for Muto's claim "that imposters came to his office pretending to be clients."¹⁴⁸ She noted: "[H]e has no files. He has no receipts of payment. He has no diary entry of meetings with these people in his office. [He] couldn't recall meeting any of the [clients]. In some cases he didn't know if they were women or men."¹⁴⁹

145. *Id.* at 101.

146. *Id.*

147. *Id.* at 2. Judge Ferris' action was not unprecedented. A U.S. district judge granted habeas corpus to an immigrant deported to Colombia when his lawyer failed to file a timely petition—and excoriated the prominent lawyer. *Gutierrez v. Ashcroft*, 289 F. Supp. 2d 555, 561–68 (D. N.J. 2003), *aff'd sub nom* *Gutierrez v. Gonzales*, 125 Fed. Appx. 406 (2005).

148. Author Notes, *supra* note 18, at 65.

149. *Id.* at 65.

Muto replied by arguing that because most of his 450 open cases required brief, infrequent work, "it's not really the huge out of control practice Ms. Cohen perhaps wants you to believe that it is."¹⁵⁰ He limited his caseload by referring out cases, but "if you have a good reputation, as I do, you're going to get a lot of people."¹⁵¹ He had no need to deal with agencies because "I get people off the street . . . by word of mouth."¹⁵² He had "the lowest rates in town," \$100 for a reopen, compared with the \$3,000 charged by other lawyers.¹⁵³ He continued:

To disbar me, Your Honor, to suspend me would be a grave injustice on the people that need services that I provide the most I work very diligently in my practice. I prep my clients I could bring in trial scripts and notepads, 70 pages [I] went to friends in Canada, I got Canadian country reports . . . nobody has this I don't care if it's 1250 pages of copying.¹⁵⁴

Over 300 of his 1,000 individual asylum cases had been granted. Just recently a judge granted asylum without further hearing, saying, "Good job, Mr. Muto."¹⁵⁵ He proclaimed his innocence. The DDC "has a full investigative staff . . . an investigator could have sat at 26 Federal—followed me there one day and tied this together."¹⁵⁶ Although some charges "should be sustained, . . . [i]n many cases I, as much as these clients, was a victim. People came to me. I didn't check proofs."¹⁵⁷

The Referee sustained all the charges.¹⁵⁸

In the penalty phase, Muto offered no witnesses in mitigation. Karen Jaffe refused to testify for him, afraid that she would "be the next target."¹⁵⁹ Muto said, "I would only be calling my wife, Your Honor [S]he's kind of a basket case, to be honest with you [W]e lost our little boy like ten years ago and she hasn't been the

150. *Id.*

151. *Id.* at 66.

152. *Id.* at 65.

153. *Id.*

154. *Id.*

155. *Id.* at 66.

156. *Id.* at 67.

157. *Id.* at 66.

158. *Id.* at 66–68; see also *In re Muto*, 739 N.Y.S.2d 67, 68 (App. Div. 1st 2002), available at <http://www.westlaw.com> (noting that the referee sustained all forty-three charges against Muto).

159. Author Notes, *supra* note 18, at 69.

same.”¹⁶⁰ When the Referee asked him not to “burden the record with things like that,” Muto replied, “I’m just basically going to, for lack of a better word, just bring up my past and throw myself at your mercy.”¹⁶¹

In mitigation, Muto noted that he had graduated in the top 7% at the University of Bridgeport School of Law in 1986.¹⁶² He submitted a form letter from Joseph Lieberman, then-Connecticut Attorney General, thanking Muto for working as a student intern.¹⁶³ Muto mentioned his 1994 suspension from the bar to show “that [he] accept[ed] responsibility” for his actions, but then admitted on cross-examination that the DDC found he had charged \$500 for a bankruptcy he never filed and pocketed the \$600 filing fee.¹⁶⁴ Other complaints were pending, and while suspended, he had received a letter of admonition for neglecting ten clients.¹⁶⁵ He was reinstated in 1996 after declaring: “I will never accept a case that I alone cannot successfully complete. And I will be totally honest with all clients regarding their cases.”¹⁶⁶ On cross-examination at the DDC hearing, he acknowledged having resigned from the bar in 1990.¹⁶⁷ A year

160. *Id.* at 66.

161. *Id.* Disciplinary proceedings encourage the lawyer to contest the charges vigorously and then, when found guilty, seek to display convincing contrition. This problem is especially acute for those, like Muto, who represent themselves, usually because they cannot afford counsel (sometimes by reason of the disciplinary action). The contradiction is well captured by the title of Harold Garfinkel’s classic article, *Conditions of Successful Degradation Ceremonies*, 61 AM. J. SOC. 420 (1956).

162. Author Notes, *supra* note 18, at 82. Chartered in 1947, the University of Bridgeport was a troubled institution in the 1980s, unable to compete with the state university system, which cost one-third as much for residents. See Katherine Farrish, *Final Exams May Be Final Indeed: University of Bridgeport Teeters on the Brink*, HARTFORD COURANT (Conn.), Dec. 12, 1991, at A1. Nevertheless, there were 177 full-time students in Muto’s graduating class. A.B.A. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, A REVIEW OF LEGAL EDUCATION IN THE U.S., FALL, 1986, LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS 12 (1986). After a 1989 bailout by local banks, the Unification Church of Sun Myung Moon bought the University in 1992. Constance L. Hays, *Bridgeport U. Ponders Its Future*, N.Y. TIMES, Apr. 27, 1992, at B7. Concurrent with this acquisition, the law school seceded from the University and was soon acquired by Quinnipiac College. George Judson, *Bar Group Approves the Transfer of U. of Bridgeport Law School*, N.Y. TIMES, Aug. 13, 1992, at B7.

163. Author Notes, *supra* note 18, at 117.

164. *Id.* at 79–74; see *In re Muto*, 636 N.Y.S.2d 703, 703 (App. Div. 4th 1995) (per curiam), available at <http://www.westlaw.com> (ordering suspension effective one year from interim suspension and until further order of the court); *In re Muto*, 621 N.Y.S.2d 994, 994 (App. Div. 4th 1994) (per curiam), available at <http://www.westlaw.com> (ordering interim suspension).

165. Author Notes, *supra* note 18, at 74.

166. *Id.*; see *In re Muto*, 652 N.Y.S.2d 462, 462 (App. Div. 4th 1996), available at <http://www.westlaw.com>. (reinstating Muto)

167. Author Notes, *supra* note 18, at 73.

later he moved for reinstatement, which was granted after his wife testified that she had submitted the resignation without his permission.¹⁶⁸ "I really didn't practice much at all in Syracuse, Your Honor. I was very unsuccessful in Syracuse."¹⁶⁹ He had "always wanted to live in New York" and "had a decent amount of job offers here."¹⁷⁰ But later he admitted doing per diem appearances when he first arrived, before working for Rodkin for \$750 a week—"more than I ever made." He offered a successful motion to reopen (and five others in which he could not find the judgments).¹⁷¹ Finally, he stated that his mother had died during this period, as well as a cousin.¹⁷²

Referee: Well those are sad, but they're not so intimate that they would be derailing

Muto: That and the fact that there was an enormous, enormous volume of convention against torture¹⁷³

Referee: But it's your decision to become involved with a volume practice.¹⁷⁴

Whenever the Referee pressed him about caseload Muto just repeated he was "cutting down."¹⁷⁵

Referee: [H]ow can you charge \$100 or \$200 or \$300 for the same thing [for which Hsiung charged \$2–3,500] . . . and then have the motivation to turn to your client enough to really do a good job?

Muto: Judge, I'm very motivated. I don't look at the money I love doing the work

Referee: Well the evidence I've seen indicates otherwise. Because it looks as though you have so many cases and you just want to get 100 bucks and then you put in a form motion, which is skeletal

168. *Id.* at 74.

169. *Id.* at 70.

170. *Id.*

171. *Id.* at 69.

172. *Id.*

173. New York City completed 1,870 Convention Against Torture ("CAT") cases in FY 00. EOIR STAT. Y.B. 2000, *supra* note 44, at 21,

174. Author Notes, *supra* note 18, at 69.

175. *Id.* at 71.

Muto: I'm going to work harder. I'm going to reduce my case load [S]o I could devote more time on the cases I have, and I'll . . . charge appropriately.¹⁷⁶

But Prosecutor Cohen noted Muto had said nothing about this in six depositions taken between December 1999 and November 2000. In reply, Muto could not resist bragging: "I did three masters today and they took five minutes each."¹⁷⁷ He insisted he had changed his office practice, demanding identification and having handwritten depositions notarized.¹⁷⁸ "I try and stay really on top of cases And I would like to try and initiate some kind of a, you know, I go over my files a lot more vigorously."¹⁷⁹

In closing, Cohen declared that Muto's earlier suspension "reflects a very cavalier attitude towards his practice."¹⁸⁰ She noted that his 1994 (actually 1997)

[R]epresentation as to how he's going to go forward in the handling of his practice was completely not fulfilled I don't think Mr. Muto gets it [T]he manner in which he conducts his practice is a per se violation of basic rudimentary practice [His defenses] communicate an effort to not take responsibility for his conduct; to blame others; to fashion theories that . . . border on [the] preposterous [He said] "I give all of my clients an 800 number which they can call and find out their status." Well first of all, as for the Chinese clients, I don't know how they could make that call.¹⁸¹

Cohen sought disbarment.

Muto insisted he was not "cavalier and callous" toward clients, but "very caring, very kind . . . nurturing."¹⁸²

I never had a real law practice before. Things got totally out of hand I had cases of neglect in Syracuse, but I didn't know how to do a matrimonial. I took on matrimonial cases up there because I needed the money. I had nothing, Your Honor. We had two foreclosures up there, Your Honor, of homes [T]hat's where the money went, to forestall a foreclosure.¹⁸³

176. *Id.* at 72.

177. *Id.* at 73.

178. *Id.*

179. *Id.*

180. *Id.* at 74.

181. *Id.* at 74–75.

182. *Id.* at 75.

183. *Id.*

He revisited his decision that his wife not testify.¹⁸⁴

We have a third child who passed away in 1987. And you know ... when we brought a malpractice action there were lawyers and judges in the Syracuse community who thought I was slightly better than scum pursuing a doctor who they considered ... was respected¹⁸⁵

After the Referee cut off this digression Muto insisted that giving clients the Immigration Court's 800 number:

[W]as an act of courtesy ... so they don't have to come into my office I always tell every client, any time you have a question about your case, you feel free to come down to my office and ask me And, gee, I love helping those along for freedom. I love my work. I love being a member of your legal community down here, and I love your city. I bought a home here I ... respectfully draw [the] court's attention to *Matter of Rodkin*, where another immigration lawyer, the same one who hired me, had numerous charges and received no more than a letter of admonition.¹⁸⁶

Cohen objected that the *Rodkin* case was confidential.¹⁸⁷ Muto asked for no more than an admonition "because I'm really doing a good job with the clients. Overall, I'm doing an excellent job."¹⁸⁸

The Referee urged Muto to put in writing something "other than your statement that you have turned a corner—I'm not sure I know how to believe that."¹⁸⁹

Muto did so, arguing that termination of his "successful high quality/low cost law practice would work a grave injustice on those clients who rely upon him" and could not pay \$3,000 or more.¹⁹⁰ He claimed he gave:

[C]lients an opportunity to retain an attorney who will be personally involved in their case from start to finish and who takes a strong interest in their asylum claim. This stands in stark contrast [sic] to the non-lawyer service agency which,

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* Only proceedings eventuating in suspensions and disbarments are public records.

188. *Id.* at 76.

189. *Id.* at 75.

190. *Id.* at 76.

despite charging an affordable fee, takes only a peripheral interest in their "customer's" claim at best.¹⁹¹

Although higher priced attorneys had lower case loads, his 450 cases "once filed, do not require any additional work."¹⁹² He won 25% of the Chinese asylum cases he litigated to verdict, compared with a national average of 15%.¹⁹³ He worked "long hours" and had "an 'open door' policy for his clients."¹⁹⁴ The day before he had won asylum following a two-hour hearing before Judge Sarah Burr, who ranked eighty-fourth in granting relief.¹⁹⁵ Suspension and disbarment "were never meant to be utilized to rid the profession of well-intentioned, honest, hardworking attorneys whose faults were due to inexperience at the practice of law and who were laboring under personal problems."¹⁹⁶ His mother was diagnosed with a terminal illness in September 1998 and died at the end of February 1999.¹⁹⁷ When her condition worsened in December 1998 he frequently drove to Syracuse.¹⁹⁸ Judge Ferris put "a great deal of pressure" on him while his mother "was in the last weeks of her life."¹⁹⁹ He had "compiled a stellar record as a prosecutor in Cortland County where he was entrusted with felony level cases and appeals less than a year after graduation from law school."²⁰⁰

Cohen replied that Muto's "neglect of his clients' interests" was "pervasive and extreme; in most cases he never even met or spoke directly to the clients [O]ften without the consent of his clients and at the least [sic] minute [he hired] other attorneys to appear on an 'of counsel' *per diem* basis."²⁰¹ His association with non-lawyer agents who controlled his cases "contributed to the poor quality representation."²⁰² He twice invoked "an otherwise confidential Letter of Admonition issued to another immigration attorney for

191. *Id.*

192. *Id.*

193. *Id.* In FY 2000, the grant rate was 36% nationally and 47% in New York City. EOIR STAT. Y.B. 2000, *supra* note 44, at 31-32 tbls.15 &16.

194. Author Notes, *supra* note 18, at 76.

195. *Id.* at 76, 117 (Respondent Exhibit D is two lists ranking judges by the percent of asylum petitions granted).

196. *Id.* at 76-77.

197. *Id.* at 77.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 77-78.

202. *Id.* at 78.

whom Respondent initially worked and with whom Respondent still maintains a professional relationship.”²⁰³

The Referee found that Muto’s Chinese clients were “especially vulnerable” because they did not speak English (or even Mandarin or Cantonese) and depended on “a series of middlemen.”²⁰⁴ “The inescapable conclusion is that the persons in these agencies like Respondent’s landlord Mr. Ye [sic] are practicing law and according to the testimony herein, doing it badly”²⁰⁵ He found “a shocking degree of neglect, whether born of carelessness, unconcern, or some deeper psychological cause.”²⁰⁶ Muto’s low-cost services “yielded only disastrous consequences for each of the complaining witnesses.” It was not his “reliance upon non-lawyers to procure clients and to do difficult legal work for him [and to do it incorrectly]” that was most troubling but his:

[T]ruly shocking disregard for his clients’ welfare in what is for them one of the most important undertakings of their lives. It is difficult to imagine a state of mind so negligent, so loosely tied to reality, or, at worst, so cynical, as would not even inform his client of the date of an individual hearing, or as would allow deportation orders to issue by default.²⁰⁷

Muto’s insistence that “he well serves his clients for fees they can afford has an air of delusion about it. After listening to the complaints herein, how can he possibly believe that?”²⁰⁸ His self-representation:

[D]isplayed general disorganization and a kind of *ad hoc* scatterbrained approach to the issues raised that one can only conclude is further evidence of how he dealt with former clients His inclination to put the blame on his hapless clients for his poor motions papers is offensive to say the least.²⁰⁹

The Referee recommended disbarment.²¹⁰

Persuaded by the testimony of former clients “who had nothing to gain from his punishment,” the Hearing Panel found “that Respondent was retained not by clients, but by these agents, and that

203. *Id.*

204. *Id.*

205. *Id.* at 79. The Referee is confused: Ye ran Blue Eagle; Lee was Muto’s landlord.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.* at 78 (recommending disbarment on September 17, 2001).

he aided their unauthorized practice of law.”²¹¹ He neglected numerous clients, whose “personal liberty” was at stake, and was “a danger to any client who might retain him.”²¹² The Panel recommended disbarment.²¹³

Muto twice sought extensions of time to petition against confirmation “due to the complex nature of this case” shown “by the fact that the referee’s report contained several factual errors and conflicting statements.”²¹⁴ But his only example was the generalization that Chinese illegal immigrants are male, when a fifth are female.²¹⁵ He invoked the Americans with Disabilities Act:

As the sole means of support for a disabled spouse and two small children, I have proceeded pro se since April 2001 My difficulties in proceeding pro se were apparent at my hearing, and this fact was noted in the referee’s report.²¹⁶

Muto submitted more applications granted “and also four cases which he successfully litigated in a single day.”²¹⁷ He argued that *Lozada* “has created a situation whereby an individual with nothing to lose often files a complaint against an attorney with the hope of having their case reopened.”²¹⁸ He displayed intimate knowledge of unauthorized practice of law by travel agencies but insisted that evidence of *his* dealings with them “is at best spectral.”²¹⁹

According to Muto, he was being selectively prosecuted, in violation of equal protection, because “the DDC is cognizant of extensive involvement other attorneys have with said agencies and even utilized two acknowledged agency attorneys to testify against Respondent at his hearing.”²²⁰ Muto had filed four grievances against them.²²¹ Maratea “admitted to dealing with a non-lawyer service agency, and even went so far as to say that he has a contractual relationship with Mr. Chen Despite Mr. Kuntashian’s known

211. *Id.* at 80.

212. *Id.*

213. *Id.* (The Hearing Panel members were Justin N. Feldman (chair), Christopher E. Chang, Michael J. Rosenberg, Burton N. Lipshie, and Sally W. Berg (lay member) (October 2, 2001)).

214. *Id.* at 81.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 82.

219. *Id.*

220. *Id.*

221. *Id.*

dealings with [Blue Eagle] agency . . . no disciplinary action was taken”²²² Even Rodkin received only a private admonition.²²³

Prosecutor Cohen objected that Muto failed to serve the DDC timely despite being granted a generous extension.²²⁴ This “disregard of the Court’s procedures and courtesies . . . [was] consistent with the very misconduct at issue and constitute[d] additional factors in aggravation.”²²⁵ She rebuked him for repeatedly disclosing the confidential complaint against Rodkin.²²⁶ The Tenth Judicial District had dismissed Muto’s complaints against Maratea.²²⁷

Muto filed a “reply affirmation” over Cohen’s objection: “[D]espite due dilligence [sic] due to the complexity of this matter Respondent was unable to complete his answer and memorandum of law any sooner.”²²⁸ He had waited for a letter from Paul Ginnelly, principal counsel to the Fifth District Disciplinary Committee for twenty-one years, who wrote that he had been “quite surprised by [Muto’s] candor and forthrightness” in responding to the charges leading to his 1994 suspension and “impressed by his honesty in regard to his representation of his clients It was apparent that Mr. Muto had numerous personal problems that impacted on his professional life.”²²⁹

The Appellate Division found that Muto had

[F]ailed to demonstrate any causal connection between his mother’s illness and his professional misconduct [He] had accumulated a substantial disciplinary history before any of the events on which the present charges are based [His] culpability is further aggravated by his lack of candor in these proceedings, and by his lack of genuine remorse and contrition, as evidenced by his continued mantra-like recitation, even in this Court, of the baseless assertion that he rendered “low cost high quality” representation to his ill-served clients.²³⁰

The DDC disbarred him.²³¹

222. *Id.*

223. *Id.* at 83.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *In re Muto*, 739 N.Y.S.2d 67, 70–71 (App. Div. 1st 2002), available at <http://www.westlaw.com>.

231. *Id.* at 71. The Board of Immigration Appeals suspended him provisionally on May 3, 2002. U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

II. IMPLICATIONS OF THE CASE STUDY

What does this case tell us about lawyer misconduct? Muto's sin was incompetence. He neglected clients by taking far too many cases and failing to maintain files, submit documents, draft motions, prepare for hearings, or even attend them. He relied on fallible memory for the dates of hundreds of hearings each year, checking the court calendar daily "to ascertain whether I am attorney of record for any cases which may have 'slipped through the cracks.'"²³² All too often he was. He did not know what an office diary was.²³³ He could not produce any appointment books for the period before the disciplinary complaints were filed, and those he began in response omitted vital court hearings.²³⁴ He never met most clients before their hearings, favoring a fortunate few with just fifteen to thirty minutes. Although his clientele was almost entirely Chinese, he had no regular interpreter, relying on someone down the hall (whose name he could not remember) and a high school student;²³⁵ in court, he borrowed official interpreters and those of other lawyers. Clients could never reach him: he rarely gave them business cards (or produced one in court), moved without informing them, was never in his office, and did not return their calls to the only number he gave out (his home answering machine).²³⁶ He skipped hearings in Buffalo and New Orleans, disregarding his obligation to represent clients until discharged by the court. He randomly picked a "per diem" lawyer in New Orleans with no prior immigration experience and gave him the wrong hearing date.²³⁷ He appeared in New Orleans by phone without prior permission and without producing his clients in court. He expected the court to fulfill his obligation to serve papers on opposing counsel and judges to verify his excuses for non-appearance. He filed late motions without asking for extensions and submitted documents after the record was closed. Factual errors suggested he copied affidavits prepared for other clients without taking the time (or having the capacity) to verify the facts. He borrowed boilerplate

EOIR Announces Latest Disciplinary Actions Under Rules of Professional Conduct (May 21, 2002), <http://www.usdoj.gov/eoir/press/02/attydiscMay02.htm>. It suspended him for seven years on January 28, 2003. U.S. DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *List of Disciplined Practitioners* (Jan. 18, 2006), <http://www.usdoj.gov/eoir/profcond/chart.htm>.

232. Author Notes, *supra* note 18, at 110.

233. *See id.* at 48.

234. *See id.*

235. *See id.* at 52.

236. *See id.* at 15.

237. *Id.* at 78.

motions without adapting them to his cases. Confronted with this he responded: "I didn't even know what was submitted. I mean it could have been something that was kicking around [in] my office."²³⁸ He relied on subordinates who were either incompetent or indifferent (and may actually have been his bosses).

His excuses only substantiated the charges. He was "fresh off the bus from Syracuse."²³⁹ His inaccessibility to clients was "an upstate thing."²⁴⁰ Not having made it there, his "problems arose more from inexperience at managing a successful law practice."²⁴¹ Every time he tried to explain his failure to move for an extension of time he compounded the offense. He had never done one before (but he constantly missed deadlines, and the motion was hardly complex). It "slipped through the cracks."²⁴² He could not even remember which failure he was trying to extenuate, confusing this motion with his improper change of venue motion (blatant judge-shopping). Given yet another chance, he failed to meet this deadline too. He claimed to be distracted by his mother's illness when the judges had seen him in court every day that week.²⁴³ Rather than answer his Chinese-speaking clients' questions himself through an interpreter, he called it good client care simply to furnish the court's 800-number, which required them to navigate a complex menu and process the information in English.²⁴⁴

Muto displayed his incompetence in the disciplinary hearing. He opened by declaring "I'm like nervous as hell,"²⁴⁵ repeating this throughout the trial. He could not stay on point, beginning his presentation with an absurd metaphor of the disciplinary hearing as a fox hunt without a fox when it should be painting by numbers.²⁴⁶ Just as he expected IC judges to elicit the evidence necessary to support his clients' petitions, so the Referee had to extract a coherent story and even draft witness subpoenas after Muto botched the job. He continued breaching confidentiality by citing his prior employer's private reprimand, even after being chastised.²⁴⁷ His self-destructive

238. *Id.* at 35.

239. *Id.* at 61.

240. *Id.* at 90.

241. *Id.* at 81.

242. *Id.* at 86.

243. *See id.* at 88.

244. *Id.* at 9.

245. *Id.* at 4.

246. *Id.* at 6.

247. *See id.* at 75.

impulse was epitomized in a Freudian slip: "this will come in on aggravation"—he meant mitigation.²⁴⁸

He conceded minor blemishes. He was a "little bit" disorganized.²⁴⁹ Things "slipped through the cracks"²⁵⁰ Sometimes I maybe don't understand. I'll say one thing where I . . . really mean something else"²⁵¹ But more often he revealed delusions of grandeur: "top" of his law school class, a Law Review editor, winner of a scholarship and an award for his academic performance (all at the University of Bridgeport).²⁵² He had a "stellar" record as prosecutor;²⁵³ actually, he left after processing routine misdemeanors for eight months. He had many employment offers in New York City;²⁵⁴ actually, he scoured the want ads, making pro forma appearances "of counsel" on a "per diem" basis. He kept repeating the mantra of high quality and low cost. "Overall" he was doing "an excellent job."²⁵⁵ He claimed that his 25% success rate exceeded the national average of 15% in Chinese asylum cases;²⁵⁶ actually, 36% of asylum applications were granted nationwide in fiscal year 2000, 47% in New York City.²⁵⁷ He got "deeply" into his work and devoted "many hours" to preparing applications and hearings;²⁵⁸ actually, he did far less than the minimum. He claimed that "virtually every one of my clients is overjoyed and happy with my services;"²⁵⁹ actually, many were so desperately unhappy they complained to the DDC despite their extreme vulnerability and lack of time, money, English and cultural familiarity. He had learned to write dates and times in Chinese; actually, he could not communicate with his Chinese clients. He stated, "I endeavor to be very dilligent [sic] in returning client calls and addressing their needs. I even provide a home number;"²⁶⁰ actually, clients complained bitterly about his unavailability. According to Muto, clients were "always welcome to come to Respondent's office at no additional charge to

248. *Id.* at 52.

249. *Id.* at 6.

250. *Id.* at 63.

251. *Id.* at 42.

252. *Id.* at 68, 82.

253. *Id.* at 77.

254. *Id.* at 70.

255. *Id.* at 11.

256. *Id.* at 76.

257. EOIR STAT Y.B. 2000, *supra* note 44, at 31–32 tbls.15 & 16.

258. Author Notes, *supra* note 18, at 10, 76.

259. *Id.* at 7.

260. *Id.* at 116.

discuss their case;”²⁶¹ actually, he was never there and gave out the IC phone number so they would not bother him.

Muto protested vehemently against the charge of agency involvement, partly because it jeopardized his pretensions to be a real lawyer at last. He offered photos to prove he had an office, whose shingle attracted clients (although they denied noticing it). He disdained the contemptible “Chinatown crawl,”²⁶² challenged Cohen to have him trailed and repeatedly demanded a “frigging” lie detector test.²⁶³ He distanced himself from the numerous agencies that openly advertised in the Chinese newspaper, “soliciting unsuspecting immigrants.”²⁶⁴ But he could not resist demonstrating deep familiarity with their operations, which strikingly resembled his own. He claimed to have left David Rodkin because agencies dominated that practice. But he expressed those qualms only after he departed—in pursuit of the kind of money Rodkin made. He teamed up with Karen Jaffe (who used her Chinese maiden name Gowren, which meant “high and mighty”),²⁶⁵ then accused her of accepting the Lin case from the Blue Eagle agency, then let slip that he worked *for* Jaffe, and finally tried to cure this by claiming he had split with her over agency work (actually, he again seems to have been motivated by greed). His last resort was willful ignorance: “Am I supposed to plug these people into lie detectors[?]”²⁶⁶

But the evidence of agency domination was overwhelming.²⁶⁷ Muto could not talk to his Chinese clients without interpreters, most of whom worked for agencies. He had clients throughout the country—Buffalo, New Orleans, Los Angeles, St. Louis, Houston, El Paso, and San Francisco—whom he never could have gotten himself. Blue Eagle kept Lin’s file and hired four lawyers for him—Jaffe, Kuntashian, Muto, and Maratea—none of whom Lin met before the hearings. Muto’s cavalier substitution of other lawyers without client consent simply repeated his own experience of being hired by

261. *Id.* at 76.

262. *Id.* at 8.

263. *Id.* at 65.

264. *Id.* at 82. “[P]eople offering legal services, some of whom are not lawyers, recruit clients through advertisements that ‘guarantee success’ regardless of the noncitizen’s actual chances.” MOTTINO, *supra* note 31, at 20.

265. Author Notes, *supra* note 18, at 58.

266. *Id.* at 14.

267. In response to comments by practitioners, the Executive Office for Immigration Review (“EOIR”) later added a section making it a disciplinary offense to assist “in the performance of activity that constitutes the unauthorized practice of law.” 8 C.F.R. § 1003.102(m) (2005). Immigration Courts lack authority to regulate those who are not lawyers or accredited representatives.

agencies, not clients. Maratea's testimony about Michael Lee's outburst strongly suggested that Lee controlled the case. Maratea admitted appearing in Muto's other cases at the behest of agents. Rodkin called Lee an agent—and he should know. Lee's business cards advertised his immigrant service agency and bail bond operation; Muto's were virtually identical—which may explain why he never had any to give to judges. Muto claimed to pay trivial amounts to rent space and obtain translation services from Lee—whom he described as a millionaire day-trading genius with no need for money. Lee controlled all of Muto's books, even client accounts. Muto could not fire him. The relationship resembled Uriah Heep's domination of Mr. Wickfield in *David Copperfield*.²⁶⁸ The \$1,100 Lin paid Lee could not have been for translation. Muto admitted clients paid Lee for Muto's own services. He had no receipts for these cash transactions. But agencies played an ambiguous role in the proceedings. Both prosecutor and Referee insisted they were relevant only to show neglect. Cohen did not prosecute Kuntashian or Maratea, who admitted working with agencies; Muto's complaint against Maratea was dismissed; and Rodkin received only a private reprimand for his extensive involvement.

Given his victims' powerlessness, Muto's egregious conduct probably would have escaped scrutiny but for two things. First, successor counsel helped clients file DDC grievances in order to reopen their deportation orders for ineffective assistance of counsel under *Lozada*.²⁶⁹ Second, Muto infuriated many IC judges, who felt solicitude for his clients and discomfort at deporting meritorious applicants because of their lawyer's incompetence.²⁷⁰ Judges rarely file grievances.²⁷¹ These judges did so in part because they lacked

268. See CHARLES DICKENS, *DAVID COPPERFIELD* *passim* (Alfred A. Knopf ed., 1991) (1849–50).

269. See *supra* notes 38, 114.

270. "Once the noncitizens are represented, judges will feel more confident that people's rights are protected . . ." MOTTINO, *supra* note 31, at 35. An immigration judge must "inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing." 8 C.F.R. § 1240.11(a)(2) (2005); see, e.g., *U.S. v. Leon-Paz*, 340 F.3d 1003, 1005 (9th Cir. 2003) (finding possible due process violation resulting from incorrect legal advice given by immigration judge). For an analysis of the efficacy of these efforts, see ANNA HINKEN, U.S. DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, EVALUATION OF THE RIGHTS PRESENTATION, <http://www.usdoj.gov/eoir/statspub/rtspsrpt.pdf> (last visited Apr. 18, 2006).

271. Judges and lawyers filed only 3.5% of grievances in Michigan in 1972; lawyers almost certainly outnumbered judges. Eric H. Steele & Raymond T. Nimmer, *Lawyers, Clients, and Professional Regulation*, 1976 AM. B. FOUND. RES. J. 917, 973 tbl.9 (1976).

contempt power and the EOIR had no disciplinary procedures.²⁷² Furious that Muto sought to take the Lin case away from her by filing a fraudulent change of venue motion (apparently initiated by Michael Lee), Judge Ferris advised Lin to mention Muto's agency connection in his grievance. Another judge's clerk urged a different client to complain. Judge Ferris took the extraordinary steps of conducting a vain search for Muto's alleged office, checking the building directory and mailboxes, calling information for his phone number, and summoning Kuntashian, Maratea, and Eddie Ye to testify about him. She joined three other judges in charging Muto with abandoning clients, ignoring filing deadlines, and missing hearings. Judges traded stories about his incompetence. One complained that Muto had left "three or four judges sitting here looking at the ceiling and all his clients looking at the ceiling and four interpreters called at extreme government expense."²⁷³

Muto aggravated the situation. He peered into Judge Ferris's courtroom before Lin's hearing, muttered he was afraid of her, and "scurried" away.²⁷⁴ He showed disrespect by asking her to verify his mother's illness and another judge to confirm his attempt to fly to New Orleans. Judges had to deal with unprepared lawyers filling in for Muto and, even worse, distraught clients he had abandoned. One judge complained that Muto "flaunts the court" (an apt malapropism), showed a lack of "courtesy," engaged in "flagrant," "unacceptable" behavior, and displayed "professional irresponsibility."²⁷⁵

After categorically denying the charges, Muto then admitted most but offered justifications: as a respondent he "had to walk a fine line between zealously advocating on his own behalf and accepting

272. EOIR proposed Professional Conduct for Practitioners—Rules and Procedures on January 20, 1998, 63 Fed. Reg. 2901 (July 27, 2000), which became effective July 27, 2000. 65 Fed. Reg. 39513 (June 27, 2005) (codified at 8 C.F.R. §§ 292 & 1003.102). Grounds included "contumelious or otherwise obnoxious conduct . . . which would constitute contempt of court," 8 C.F.R. § 1003.102(g), and "frivolous behavior," i.e., actions that "lack an arguable basis in law or in fact, or are taken for an improper purpose" *Id.* § 1003.102(j). Before November 2000, it seems that only five immigration lawyers had ever been disciplined under earlier regulations, four between 1976 and 1979 (the Carter "clean government" era). Bruce A. Hake, *A Great Wind: The New INS/EOIR Attorney Discipline Regime*, 5 BENDER'S IMMIGR. BULL. 885, 885 (2000).

273. Author Notes, *supra* note 18, at 114. The approximately 220 Immigration Court judges heard over 220,000 proceedings annually during this period, or more than 1,000 each. New York City's twenty-six judges heard 19,683 matters in FY 2000. EOIR STAT. Y.B. 2000, *supra* note 44, at 4, 5 fig.1, 7 tbl.1.

274. See Author Notes, *supra* note 18, at 86.

275. *Id.* at 114–15.

responsibility for those acts that he is culpable of.”²⁷⁶ Like his clients, he was a recent immigrant to New York City (from upstate), striving to better himself (with a law degree). He was the only Chinatown lawyer charging “affordable” fees²⁷⁷—out of sympathy, not greed (he even claimed to do pro bono work, which he never described).²⁷⁸ Suspension or disbarment “would work a grave injustice on those clients who rely upon him.”²⁷⁹ He was just an “over eager little puppy dog,” who accepted too many clients out of inexperience.²⁸⁰ He “worked and worked and worked,” evenings and weekends.²⁸¹ “I practically live at 26 Federal Plaza” (the courthouse).²⁸² But he could not resist boasting of handling up to twenty matters a day, sometimes four individual hearings, and making \$4,000 in a week of master calendars (performing largely clerical tasks).²⁸³ His explanations for volume aggravated the offense: “matters, once filed, do not require any additional work;” “often, aside from writing and assembling documents, there is very little that needs to be done”²⁸⁴ He was either neglecting or overcharging clients—or both.

Such braggadocio revealed profound insecurities. He was “fulfilling a life long ambition” by becoming a lawyer.²⁸⁵ But the ten years in Syracuse were an unmitigated disaster. He had resigned and then, after readmission, been suspended for misappropriation and admonished for neglecting multiple clients. He had interspersed embarrassingly brief stints at three employers with two failures in solo

276. *Id.* at 82.

277. *Id.* at 7.

278. *Id.* at 57.

279. *Id.* at 76.

280. *Id.* at 10.

281. *Id.* at 7.

282. *Id.* at 9.

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.

MOTTINO, *supra* note 31, at 20.

283. See Author Notes, *supra* note 18, at 52. In New York, eight lawyers “represented from twenty-three to seventy-six cases in a single month.” Over 80% of their clients were Chinese. One was imprisoned “for defrauding the INS and misleading thousands of clients.” *Id.* at 28–29, 31; see also Mirta Ojito, *Lawyer’s Fall Rends Immigrants’ Lives*, N.Y. TIMES, Oct. 23, 1998, at B1 (discussing the downfall of then-imprisoned attorney, Sheldon Walker, whose exploits resemble those of Muto).

284. Author Notes, *supra* note 18, at 76.

285. *Id.* at 82.

practice. A malpractice lawsuit against the doctor who had cared for his dead infant provoked widespread resentment. Like many others, he fled to the Big Apple, hoping to start over. He seemed to realize his dream quickly: earning far more than he ever had, gaining acceptance from the city's "legal community," even buying a co-op (with his dying mother's life insurance).²⁸⁶ Most of all, he luxuriated in the respect and gratitude of Chinese clients who bowed, saying "she-she, thank you in Chinese," when he strolled through Chinatown on Sundays with his daughter.²⁸⁷ He had to believe they were attracted by his reputation, not Michael Lee's agency: "I think I came across . . . how thrilled I seemed to get when . . . somebody would come in and say they saw my name on the board, on the sign in front of my office, and they came in . . ."²⁸⁸

Muto oscillated between claiming to sacrifice himself for clients and blaming them (and others) for his troubles. While insisting "I'm very honest when it comes to taking responsibility" he constantly evaded it.²⁸⁹ The complaints against him came from "high priced lawyers, . . . Lord and Taylor trying to put Filene's [B]asement out of business."²⁹⁰ (In fact Ann Hsiung, who charged up to \$5,000 for an asylum application, did not want Muto to think she "personally" complained about him, saying, "it's really not my business.")²⁹¹ Muto also alleged that "these agencies, to a certain extent, are behind it," though the imputed motive (competition) was implausible. Former clients filed grievances just to reopen deportation and removal orders. (True, but they succeeded only if the IC found inadequate representation.) He blamed clients for *his* failure to appear at hearings, abdicating responsibility to notify or produce them. Muto said that Lin "hadn't come into my office. We sent a couple of letters out." But he had no copies. He insisted a judge must have told a client the hearing date, disregarding his own obligation to do so. He declared it general practice to abandon defaulting clients, although this clearly violated the law. He blamed Judge Ferris's "kangaroo court"²⁹² for his *own* misrepresentation that Lin accepted voluntary departure. He had abandoned Lin for failing to cooperate or tell the truth. He blamed another client for replacing him—after he failed to appear! He responded to client denials of having met him or signed

286. *See id.* at 7.

287. *Id.*

288. *Id.* at 54.

289. *Id.* at 46.

290. *Id.* at 7-8.

291. *Id.* at 96.

292. *Id.* at 63.

appearances or affidavits with the bizarre story that someone was impersonating them and he naively failed to check IDs. He could not say why anyone would do that: "I don't know what makes these people tick. They're not the most ethical. They're not the most scrupulous [N]ot every client is honest."²⁹³ To client complaints of not being told the outcome of applications, he retorted, "they don't always tell you the true and correct addresses."²⁹⁴ His inadequate, canned motions were what New York IC judges wanted. He attributed unsuccessful applications to the judge's general hostility to immigrants (based on a table of rankings) or antipathy to him (disregarding his own provocations). He blamed the Office of Court Administration and postal service for losing his address change and insisted Prosecutor Ginnelly would testify it "happens all the time."²⁹⁵ (He didn't.) He blamed Michael Lee for mismanaging trust accounts that were his own responsibility and other attorneys for misinforming him about ethical rules he should have known.

Mutual recriminations among lawyers were inevitable. Thieves fall out. When Maratea and Kuntashian testified against him, Muto asked if Cohen had promised immunity (she had not) and then complained against *them*. He repeatedly breached confidentiality by objecting that David Rodkin, his former boss, had only been privately reprimanded. He called Karen Jaffe a "close friend,"²⁹⁶ then accused her of agency work, and resented her refusal to testify for him out of fear of self-incrimination! Like a child caught with his hand in the cookie jar, he whined "they did it too"—using the legalese of selective prosecution and equal protection.

Lacking both records and a reliable memory, Muto could offer only banalities to substantiate his stories: "general office procedure,"²⁹⁷ "as a matter of course, this would be what I would do,"²⁹⁸ "I generally will send out letters when the hearing is close,"²⁹⁹ he "assumed" he had returned a client's call. When Cohen expressed exasperation at him for prefacing every factual statement with "I believe," Muto acknowledged he feared being caught in a lie. Like most of us, he preferred evasion to outright deceit. Muto repeatedly concocted excuses for not appearing in New Orleans rather than

293. *Id.* at 57.

294. *Id.* at 55.

295. *Id.* at 10.

296. *Id.* at 116.

297. *Id.* at 50.

298. *Id.* at 55.

299. *Id.* at 42.

confess his flying phobia to the judge. When he finally drove to New Orleans, he told a New York judge he could not appear there but did not mention why. Muto lied poorly, constantly contradicting himself. He did and did not move to extend the time in Lin's case. He was unaware of agency involvement in that case but dealt directly with Eddie Ye (whom he claimed to know only as a restaurateur!). He did and did not file a change of venue motion in New Orleans. He told a client a hearing date but failed to appear himself. He believed another lawyer was appearing for a client but then told the client he himself could not appear. Like Dr. Seuss's little boy on Mulberry Street, Muto's lies grew ever more elaborate.³⁰⁰ He appeared for Ju Jin Jing, but later stated he could not because of a detention hearing; he hired Schneider to appear of counsel, but later stated he did not know if he had told Jing that Schneider would do so; Schneider had taken over the case (he had not); Muto was sick; his cousin had died; Muto was out of the state; he had telephoned the court; Jing had fired him. Although he did not remember meeting Yi Chen and could not speak to him, Muto claimed he had told Chen to appear in Buffalo, offered to drive him there personally and was eager to do so "because I have family in Buffalo. And that's like, great, I get to go to Buffalo and . . . see a Bison's game, go down to the Anchor Bar and have some wings."³⁰¹

If love is never having to say you're sorry, self-abasement is always groveling—and just intensifying the contempt. When all else failed, Muto expressed remorse. He apologized to a client for missing appearances and promised not to do it again. He returned fees to abandoned clients—as though that made up for their being deported to China. He offered to return another client's fee—but naturally lacked the money. He sought to transform misconduct into incompetence and then begged for pity on the ground of inadequacy (which he argued should be forgiven; only dishonesty deserved punishment). He was inexperienced. He was ignorant. Facing two foreclosures, he accepted matrimonial clients in Syracuse even though he did not know how to do divorces. He was overwhelmed by representing himself in the disciplinary proceeding—not a good advertisement for his ability to represent hundreds of asylum applicants. Like Dogberry he exhorted: "[M]asters, remember that I

300. See generally DR. SEUSS, AND TO THINK THAT I SAW IT ON MULBERRY STREET (1937) (however, in Dr. Seuss's tale, the little boy only contemplates fabricating his story before deciding to tell the truth).

301. Author Notes, *supra* note 18, at 49.

am an ass [F]orget not that I am an ass."³⁰² Like the Mad Hatter he told the court he was a "poor man"³⁰³—provoking the predictable reaction that he was a very poor lawyer. His wife was a "basket case," entitling *him* to invoke the Americans with Disabilities Act. His children were deprived by being denied summer camp. His mother had died (a year or more before); a cousin had died. He suffered from flying phobia. He prefaced his mitigation: "I'm basically going to . . . just bring up my past and throw myself at your mercy."³⁰⁴

Like all of us, Muto was a prisoner of his *modus operandi*. He accepted too much work, did it badly or not at all, apologized, offered his inadequacies as an excuse, and promised to reform. He claimed he had "continually endeavored to improve his practice to better serve his clients."³⁰⁵ But he hadn't. As Cohen noted, he made the same promises to secure readmission following his suspension and admonitions in Syracuse. He had promised Judge Ferris he would file the motion for an extension of time. He promised he would appear on the date he had chosen. But he did none of this. At least he was consistent.

III. WHAT TO DO ABOUT NEGLECT?

I deliberately chose an extreme case to illustrate the problem of neglect. The next step would be to identify behavioral variables and map their frequency and associations. Although it is premature to propose remedies, I will conclude with some brief speculations. Unfortunately, Muto is not unique. The EOIR Bar Counsel deplored that "[t]here are many immigration lawyers out there who really don't know the immigration laws."³⁰⁶ A survey of 100 legal representatives practicing at 26 Federal Plaza concluded that "most lawyers in immigration proceedings are barely adequate and that small numbers are very good and very bad The high-volume private practice lawyers were usually considered among the very bad."³⁰⁷ Entry

302. WILLIAM SHAKESPEARE, *MUCH ADO ABOUT NOTHING*, act 4, sc. 2, ll. 82–84 (Tucker Brooke ed., Yale U. Press 1965) (1600).

303. "The miserable Hatter dropped his teacup and bread-and-butter, and went down on one knee. 'I'm a poor man, your Majesty,' he began. 'You're a very poor speaker,' said the King." LEWIS CARROLL, *ALICE'S ADVENTURES IN WONDERLAND* 87–88 (Candlewick Press 1999) (1865).

304. Author Notes, *supra* note 18, at 66.

305. *Id.* at 77.

306. Jennifer Barnes, *The Lawyer-Client Relationship in Immigration Law*, 52 EMORY L.J. 1215, 1219 (2003).

307. MOTTINO, *supra* note 31, at 7, 28.

barriers to practice are high. Muto "graduated at the top of his class" (if at a low-ranked law school). He passed the two-day New York Bar Examination the first time he took it (in 1986). (In 1984, 74% did so, compared with 78% nationwide.)³⁰⁸ But neither hurdle tests for the fatal flaws Muto later exhibited, and it is not clear how they could be exposed prior to practice. His first decade in Syracuse offered telltale warning signals: four different jobs; resignation followed by the bizarre claim that his wife had submitted it without his authorization; suspension for misappropriating client funds; multiple complaints about failing to perform services; taking on work for which he was unqualified. Professions, including law, make aspirants surmount significant hurdles—to protect those inside—but are reluctant to punish practitioners—again to protect those inside.

Some of the problems in this case were peculiar to or aggravated by immigration practice. Clients are unusually vulnerable: poor, deeply in debt, uneducated, ignorant of language and culture, and threatened with losing everything they have so painfully won. Most, especially those from China, are totally dependent on non-lawyer intermediaries.³⁰⁹ The EOIR Bar Counsel warned against "immigration consultants," "visa consultants," and "notarios."³¹⁰ The 26 Federal Plaza study found that "some asylum seekers are directed to lawyers by the travel agents who helped arrange their journeys."³¹¹ As Muto's case showed, these intermediaries dominate many practitioners: charging clients; choosing, switching, and paying lawyers; collecting and translating documents; maintaining the file; "preparing" clients for hearings; interpreting; and even choosing litigation strategies (like Lin's change of venue motion).³¹² They are

308. RICHARD L. ABEL, *AMERICAN LAWYERS* 269–73 tbls.17 & 18 (1989).

309. Non-lawyer intermediaries dominate other practice areas. "The broker may be another lawyer, an accountant, a real estate or insurance broker or agent, a building contractor, a doctor, policeman, bondsman, precinct captain, garage mechanic, minister, undertaker, plant personnel director, foreman, etc." JEROME E. CARLIN, *LAWYERS ON THEIR OWN* 135–36 (1962).

310. Barnes, *supra* note 306, at 1217; see also Milagros Cisneros, *H.B. 2659: Notorious Notaries—How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 ARIZ. ST. L.J. 287, 288–89 (2000) (arguing for bill requiring *notario* disclaimers); Scott Daniels, *The Bar, the Courts, the Legislature and the Unauthorized Practice of Law*, UTAH B.J., Oct. 2001, at 6, 8 (arguing for the reenactment of an unauthorized practice of law statute that would criminalize actions by *notarios*).

311. MOTTINO, *supra* note 31, at 20.

312. "In some cases the client will not even know who his lawyer is . . . who is actually doing the work for him." CARLIN, *supra* note 309, at 163.

indispensable; regulation will just drive them underground and increase the vice tax they charge.³¹³

But I chose this case to illustrate neglect, not immigration practice. How does Muto's behavior illuminate it? Some of his disorganization may have been characterological. Lawyers have invoked the Americans with Disabilities Act to claim Attention Deficit Disorder as a defense to discipline for neglect. Courts have responded—I believe rightly—that the ADA does not prevent them from disciplining lawyers for injuring clients.³¹⁴

Solo practitioners—more than a third of all lawyers, and almost half of private practitioners in 2000³¹⁵—confront their own unique problems. “You can't be in the office and circulating at the same time. And you have to circulate to get known. But then office work takes a lot of time, a great deal of clerical work.”³¹⁶ Muto “solved” this problem by letting Blue Eagle deal with his clients. Organizations grant compassionate leave to employees coping with personal problems. But sole practitioners have difficulty getting someone to cover for them, as Muto did when his mother was dying. As I mentioned at the beginning of this Article, *all* service providers ration their time—their only market commodity. Producers prefer to have a queue of consumers waiting for their services.³¹⁷ (The only antidote, discussed below, is competitors wooing dissatisfied customers.) More than forty years ago divorce lawyers complained:

313. See HERBERT L. PACKER, *THE LIMITS OF THE CRIMINAL SANCTION* 277–82 (1968) (“By making conduct . . . criminal, what we are in effect doing is limiting the supply of the commodity in question by increasing the risk to the seller, thereby driving up the price of what he sells.”).

314. See generally *McCready v. Ill. Bd. of Admissions to the Bar*, No. 94C3582, 1995 WL 29609 (N.D. Ill. 1995) (denying bar admission based on drug addiction); *Fla. Bar v. Clement*, 662 So. 2d 690 (Fla. 1995) (disbarring attorney despite fact that he suffered from manic depression); *State ex rel. Okla. Bar Ass'n v. Busch*, 919 P.2d 1114 (Okla. 1996) (suspending lawyer with a previous neglect suspension on a finding of neglect for losing a client's \$10 million malpractice judgment).

315. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000* 7 tbl.7 (2004).

316. HUBERT J. O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* 47 (1963). For a more recent account, see SERON, *supra* note 14, at 115, 118.

317. See JONATHAN D. CASPER, *AMERICAN CRIMINAL JUSTICE: THE DEFENDANT'S PERSPECTIVE* 102 (1972) (describing the caseloads of public defenders); HENSLER ET AL., *supra* note 8, at 90–91; LYNN M. MATHER, *PLEA BARGAINING OR TRIAL?* 24 (1979) (describing the caseloads of public defenders); Robert Dingwall & Tom Durkin, *Time Management and Procedural Reform, in REFORM OF CIVIL PROCEDURE: ESSAYS ON 'ACCESS TO JUSTICE'* 375–76 (A.A.S. Zuckerman & Ross Cranston eds., 1995); W.L.F. Felstiner, *Professional Inattention Origins and Consequences, in THE HUMAN FACE OF LAW: ESSAYS IN HONOR OF DONALD HARRIS* 121, 140–41 (Keith Hawkins ed., 1997).

A lawyer to live must have volume. I have volume but it is killing me One week you're as busy as you can be, and then you sit around for weeks or months until another busy spell sets in To tell you the truth, I'm in no position to refuse any kind of client.³¹⁸

An Oregon State Bar survey found that 27% of lawyers had more work than they could handle and another 42% were at the limit of their workloads.³¹⁹ "Franchise law firms" cram the maximum number of client interviews into the day. "I'm not interested in their life stories," said a lawyer, "When you have people scheduled only 15 minutes apart, I don't have time for it and it's not necessary."³²⁰ The 26 Federal Plaza study identified eight lawyers representing twenty-three to seventy-six cases a month; Muto bragged about doing three masters in five minutes each and four individual hearings in a day;³²¹ he had 450 open cases.³²² Solo and small firm lawyers like Muto can mistreat clients because they are "expendable":³²³ one-shot consumers³²⁴ who have been rendered a marginal source of new business by the advent of mass marketing and intermediaries like the "travel agencies." Carlin's classic study of lawyers' ethics found that violations were more common when the clientele was unstable and low status.³²⁵ Peer groups encouraged unethical behavior; although Carlin focused on law offices,³²⁶ for Muto the significant reference group was the 26 Federal Plaza regulars.

In light of this provisional diagnosis, do any remedies seem promising? We could limit solo practice. The English Law Society considered doing so when it found that sole practitioners were disproportionately responsible for defaults, which were driving up contributions to the compulsory Indemnity Fund.³²⁷ Solicitors already must apprentice for two years and be employed for three more before venturing out alone. But the half of American private practitioners

318. O'GORMAN, *supra* note 316, at 47, 63-64.

319. Manuel R. Ramos, *Legal Malpractice: The Profession's Dirty Little Secret*, 47 VAND. L. REV. 1685, 1715 n.358 (1994).

320. JERRY VAN HOY, FRANCHISE LAW FIRMS AND THE TRANSFORMATION OF PERSONAL LEGAL SERVICES 57 (1997).

321. Author Notes, *supra* note 18, at 76.

322. *Id.* at 71.

323. CARLIN, *supra* note 309, at 161.

324. Marc Galanter, *Why the Haves Come Out Ahead*, 9 LAW & SOC'Y REV. 95, 117 (1974).

325. JEROME E. CARLIN, LAWYERS' ETHICS 68 tbls.44&45, 72 tbl.48 (1966).

326. *Id.* at 105 tbl.84, 108 tbls.89&90, 110 tbl.93, 111 tbl.95.

327. RICHARD L. ABEL, ENGLISH LAWYERS BETWEEN MARKET AND STATE: THE POLITICS OF PROFESSIONALISM 38-83 (2003).

who are on their own would fiercely resist and might claim class and race discrimination (as did English solicitors). Should immigration practice, whose substantive law is very complex, be restricted to specialists? For several decades most lawyers have claimed to be specialists; but the profession has refused to make specialization an additional entry barrier.³²⁸

Can the market correct its own imperfections? The problem is not a shortage of lawyers. The 26 Federal Plaza study reported "a higher density of lawyers in New York City than anywhere else in the United States" and "many lawyers in private practice who offer services at a range of prices to meet meager budgets."³²⁹ Legal representation rates were high: 86% at master hearings, 95% at individual hearings.³³⁰ Carlin found, however, that competition *increased* the likelihood of ethical violation.³³¹ Laissez-faire lets consumers trade quality for price. But professions emerge because information asymmetries make this risky. A shopper who chooses Filene's Basement over Lord & Taylor can see the goods *before* buying and adequately evaluate aesthetics. Consumers of legal services can do neither. For "most clients," said a small firm practitioner, "it's a toss-up whether it's fast and cheap or cheap and fast!"³³² Muto boasted that he offered "poor people . . . quality legal services" at an "affordable price."³³³ But as an IC judge at 26 Federal Plaza said: "These are lawyers you'd rather not see They show up five minutes before trial. I 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."³³⁴ Individual clients are extremely passive in monitoring their lawyers.³³⁵ Chinese immigrants facing deportation are likely to be even less assertive.

328. ABEL, *supra* note 308, at 122–23 (noting that only two states have created specialist examinations).

329. MOTTINO, *supra* note 31, at 16–17.

330. *Id.* at 11 tbl.1.

331. CARLIN, *supra* note 325, at 105 tbl.85.

332. SERON, *supra* note 14, at 108.

333. Author Notes, *supra* note 18, at 7.

334. MOTTINO, *supra* note 31, at 32.

335. See ROBERT HUNTING & GLORIA S. NEUWIRTH, WHO SUES IN NEW YORK CITY: A STUDY OF AUTOMOBILE ACCIDENT CLAIMS 107–08 (1962); HERBERT M. KRITZER, THE JUSTICE BROKER: LAWYERS AND ORDINARY LITIGATION 60 (1990); ROSENTHAL, *supra* note 10, at 31, 43–44, 47–48; Felstiner, *supra* note 317, at 125–26; Carl Hosticka, *We Don't Care What Happened, We Only Care What Is Going to Happen*, 26 SOC. PROBS. 599, 599 (1979); Steele & Nimmer, *supra* note 271, at 955–57.

If there are unavoidable imperfections in the market for private practitioners, what about alternatives? Everyone acknowledges the importance of representation in immigration proceedings (even if courts refuse to extend Sixth Amendment rights beyond criminal trials).³³⁶ The EOIR permits representation by law students, non-lawyer employees of accredited representatives, and “reputable individuals” (friends of the alien). Fourteen organizations offer free legal services in New York City.³³⁷ The Board of Immigration Appeals has a pro bono project (though that does not help at trial).³³⁸ But though law students and accredited representatives offer higher quality services than most private practitioners, they cannot begin to represent all needy clients.³³⁹ Should the “travel agencies” and other for-profit entities that illicitly dominate lawyers like Muto be allowed to do so openly but made responsible for the quality of those services? That would violate the ban against lay intermediaries.³⁴⁰ Should they be allowed to appear in court for clients *without* lawyers? That would necessitate regulation, the creation of a paraprofession, with the attendant problems of quality control and rent-seeking behavior.

336. See Charles Gordon, *Right to Counsel in Immigration Proceedings*, 45 MINN. L. REV. 875, 875–76 (1961) (noting that “courts thus far have resisted every effort to assimilate deportation to criminal punishment and to apply the constitutional guarantees that relate to criminal prosecutions” because the immigration process is considered civil rather than criminal); William Haney, *Deportation and the Right to Counsel*, 11 HARV. INT’L L.J. 177, 177–78 (1970) (explaining that although aliens do not have any constitutional protections from deportation, courts have imposed a requirement of procedural due process for deportation proceedings). In 1997, 21% of represented applicants, but only 1% of unrepresented, obtained relief nationwide, 23% and 1% in NYC. MOTTINO, *supra* note 31, at 33 tbl.5, 36 tbl.6. In FY 1999, 46% of represented Chinese asylum seekers were successful, compared with 13% of unrepresented. EXECUTIVE OFFICE OF IMMIGRATION REVIEW, IMMIGRATION COURT ASYLUM DECISIONS: FY 1999, Table 4; Andrew I. Schoenholtz & Jonathan Jacobs, *The State of Asylum Representation: Ideas for Change*, 16 GEO. IMMIGR. L.J. 739, 743 (2002). Self-selection is unlikely to account for the entire difference. For all nationalities that year, 37% of represented but only 6% of unrepresented asylum applicants were successful. *Id.* at 766 tbl.2.

337. List of Free Legal Services Providers, http://www.usdoj.gov/eoir/probono/free_lglchtNY.htm (last visited Apr.18, 2006). The requirement that they charge only “nominal” fees limits funding and, hence, services. Donald Kerwin, *Charitable Legal Immigration Programs: Can They Survive?*, 74 INTERPRETER RELEASES 813, 815 (1997).

338. DEP’T OF JUSTICE, BD. OF IMMIGRATION APPEALS, THE BIA PRO BONO PROJECT IS SUCCESSFUL 8 (2004), available at <http://www.usdoj.gov/eoir/reports/BIAProBonoProjectEvaluation.pdf>; see MOTTINO, *supra* note 31, at 18 n.24.

339. MOTTINO, *supra* note 31, at 19; Barnes, *supra* note 306, at 1217.

340. MODEL RULES OF PROF’L CONDUCT R. 5.4 (2003).

What, then, of post-hoc regulation?³⁴¹ We saw that IC judges were atypically proactive. The creation of an EOIR disciplinary process—which suspended or expelled 195 lawyers in its first five years—may have reduced that motivation.³⁴² If so, the system depends on client complaints. As we see in Table 1, clients do complain about neglect.³⁴³ And *Lozada*'s requirement of a grievance in order to reopen a deportation order encouraged Muto's clients to complain (although he then tried to discredit them on grounds of self-interest).³⁴⁴ But most neglected clients are deported or disappear to avoid deportation. For the same reason malpractice liability is not a meaningful threat. As Muto's case shows, a great deal of damage can precede any corrective action, a problem compounded by the reluctance of disciplinary bodies to act without a pattern of neglect, and even then to disbar.³⁴⁵ Solo and small firm lawyers tend to see the entire framework of ethical rules and discipline as illegitimate.³⁴⁶ "Lord and Taylor trying to put Filene's [B]asement out of business."³⁴⁷ Sole practitioners felt that the Chicago Bar Association

341. Dysfunctional institutions frequently abdicate responsibility to higher authority. Incompetent private practitioners like Muto expect IC judges to do their work for them. Overburdened IC judges count on the Board of Immigration Appeals ("BIA") to correct their errors. The president of the IC judges' union said, "[w]e were encouraged to do things in a short-and-dirty manner, knowing that the BIA would return them if we went too far." Solomon Moore & Ann M. Simmons, *Immigrant Pleas Crushing Federal Appellate Courts*, L.A. TIMES, May 2, 2005, at A1. Faced with a backlog of 57,200 cases and a staff cut by half (from 23 to 11), the BIA increased the number of "affirmances without opinion" from 6% of its decisions in 2001 to one-third in 2004. *Id.* The Ninth Circuit saw its immigration caseload increase from 965 in FY 2000 to 4,835 in FY 2003, or nearly half its calendar! *Id.* Judge Dorothy Nelson said, "[w]e feel overloaded by this problem." *Id.* Its panels have responded by denouncing BIA decisions as "nonsensical," "incoherent," and an "example of sloppy adjudication," and by threatening to name the worst judges. *Id.*

342. U.S. DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *List of Disciplined Practitioners* (Jan. 18, 2006), <http://www.usdoj.gov/eoir/profcond/chart.htm>.

343. See *infra* Appendix, Table 1.

344. See *supra* notes 38, 114.

345. Compare *Friday v. State Bar*, 144 P.2d 564, 569 (Cal. 1943) (en banc) (suspending a disrespectful, incompetent lawyer for six months), and *Fla. Bar v. Neale*, 384 So. 2d 1264, 1265 (Fla. 1980) (per curiam) (refusing to discipline malpractice), with *In re Albert*, 212 N.W.2d 17, 21 (Mich. 1973) (per curiam) (suspending for one year a lawyer who neglected five clients), and *Comm. on Legal Ethics v. Mullins*, 226 S.E.2d 427, 432 (W.Va. 1976) (suspending a negligent attorney indefinitely). See also ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 335 n.1 (1974), available at <http://www.lexis.com> (requiring "consistent failure to carry out the obligations" or "a conscious disregard for the responsibility owed to the client"); ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1273 (1973) (requiring "more than a single act or omission"), available at <http://www.lexis.com>.

346. See CARLIN, *supra* note 325, at 57.

347. Author Notes, *supra* note 18, at 8.

"represent[s] the layman against the lawyer, rather than the lawyer's view" ³⁴⁸ "We feel they're dominated by a small group of blue-blood lawyers. Their interests are not compatible with ours. They are the lawyers that represent the railroads and insurance companies." ³⁴⁹ "The big difference between the large firm lawyer and the average practitioner is that the big firms give out more bullshit, superfluity, and unnecessary research." ³⁵⁰ There is reason for skepticism about the efficacy of discipline as a means of ensuring competence. ³⁵¹

Which brings me back to where I began. Unless we know the background and environmental variables that produce neglect and the self-understandings of the lawyers who engage in it, we cannot devise effective remedies. ³⁵² I hope this case study makes a modest contribution to that end.

348. CARLIN, *supra* note 325, at 178.

349. *Id.* at 180.

350. *Id.* at 183.

351. See generally Marvin E. Frankel, *Curing Lawyers' Incompetence: Primum Non Nocere*, 10 CREIGHTON L. REV. 613 (1977) (proposing reforms to cure the incompetence in the legal profession); Susan R. Martyn, *Lawyer Competence and Lawyer Discipline: Beyond the Bar?*, 69 GEO. L.J. 705 (1981) (examining the role of the bar disciplinary process as a means of ensuring legal competence and concluding that the current grievance process is ineffective); Edmund B. Spaeth Jr., *To What Extent Can a Disciplinary Code Assure the Competence of Lawyers?*, 61 TEMP. L. REV. 1211 (1988) (examining whether a disciplinary code is an appropriate instrument to enhance professional performance).

352. Fiddling with the rules—the profession's usual response—is not likely to be one. See Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 TEX. L. REV. 639 *passim* (1981).

APPENDIX

Table 1. Neglect as Source of Dissatisfaction with Lawyers

Behavior	Location	Date	N	% Neglect
Disciplinary ³⁵³ Complaints	Ontario, Canada	Nov. 9, 1977 to Dec. 9, 1977	171	31
Disciplinary ³⁵⁴ Complaints	Ontario, Canada	1977	2,591	16
Disciplinary Complaints	Ontario, Canada	1978	3,359	19
Disciplinary ³⁵⁵ Complaints	Ontario, Canada	1975	1,469	41
Survey ³⁵⁶	England and Wales	1977	225	74
Complaints ³⁵⁷	England and Wales	4 weeks 1977	901	61
Survey ³⁵⁸	Scotland	1978	72	61
Survey ³⁵⁹	U.S.	1973-74	1,185	21
Complaints ³⁶⁰	New York	1974-75	1,642	29
Complaints ³⁶¹	Oklahoma	1970	142	49
Complaints ³⁶²	Colorado	1971-72	408	44
Complaints ³⁶³	Minnesota	6 months, 1971	Unreported	45
Complaints ³⁶⁴	Michigan	1972	1,016	40
Reprimands ³⁶⁵	California	1971-75	44	46
Reprimands ³⁶⁶	Florida	1966-72	19	16
Reprimands ³⁶⁷	NY State	1961-70	44	39
Reprimands ³⁶⁸	NYC	1964-75	32	28
Reprimands ³⁶⁹	Texas	1968-75	40	40
Disbarments, Suspensions, Resignations ³⁷⁰	California	1971-75	229	17
Same ³⁷¹	Florida	1966-72	442	24
Same ³⁷²	NY State	1961-70	95	8
Same ³⁷³	NYC	1964-75	172	14
Same ³⁷⁴	Texas	1968-75	74	8
Same ³⁷⁵	Wisconsin	1957-73	101	18
Complaints ³⁷⁶	England and Wales	1986	14,975	52

Behavior	Location	Date	N	% Neglect
Complaints ³⁷⁷	England and Wales	1987	17,839	55
Malpractice claims ³⁷⁸	U.S.	1981-83	18,436	46
Malpractice claims ³⁷⁹	U.S.	1983-85	28,412	27
Malpractice claims ³⁸⁰	U.S.	1990-95	11,299	27
Malpractice claims ³⁸¹	U.S.	1996-99	31,315	16
Complaints ³⁸²	Australian barristers	c. 1979	138	23.2
Complaints ³⁸³	Australian solicitors	c. 1979	2,130	38.8
Complaints ³⁸⁴	Australian solicitors	c. 1979	1,324	44
Complaints ³⁸⁵	NYC	1970	966	54
Complaints ³⁸⁶	English Solicitors	1995	985	52
Complaints ³⁸⁷	English solicitors	1990	Unreported	50
Discipline ³⁸⁸	Danish lawyers	1996	199	59
Complaints ³⁸⁹	Illinois	1928-48	531	28
Survey ³⁹⁰	Illinois	1982	1,319	71
Complaints ³⁹¹	Mid-western State	1949-63	2,565	32

353. BARRY J. REITER, DISCIPLINE AS A MEANS OF ASSURING CONTINUING COMPETENCE IN THE PROFESSIONS AND TABLE OF DISCIPLINE ACTIVITIES BY PROFESSION app. A at 326-45 tbl.I (1978) (analyzing complaints for delays, lack of progress, and lack of communication reported in Ontario, Canada).

354. *Id.* app. A at 349 tbl.II (analyzing complaints for failure to properly explain, delay without justification, and client not advised of rights).

355. *Id.* (analyzing complaints for failure to properly explain, delay without justification, and client not advised of rights).

356. ROYAL COMMISSION ON LEGAL SERVICES, *supra* note 11, at 228 tbl.8.34 (surveying users and non-users of legal services in England and Wales on the following reasons for dissatisfaction: solicitor did not take an interest, solicitor did not do enough work, matter took too long, solicitor was too slow, lack of communication, and client not kept informed of progress).

357. *Id.* at 302 tbl.9.2 (analyzing complaints recorded over a four-week period by the National Association of Citizens Advice Bureau).

358. ROYAL COMMISSION ON LEGAL SERVICES IN SCOTLAND, II[A] APPENDICES 1-6, 1980, Cmnd. 7846-1, at 69 tbl.41 (reporting reasons for dissatisfaction with solicitors).

359. Barbara A. Curran, *Patterns of Lawyer Use and Clients' Assessments of the Lawyer-Client Exchange*, in CURRAN, *supra* note 12, at 185, 210 tbl.5.15 (reporting client dissatisfaction with lawyers' efforts to keep the client informed of case progress).

360. Steele & Nimmer, *supra* note 271, at 970–71 tbl.7 (reporting the types of complaints made to the Association of the Bar of the City of New York and the Oklahoma State Bar Association) (citations omitted).

361. *Annual Report of the General Counsel*, 42 OKLA. BAR ASS'N 269, 269 (1971) (listing the number of complaints received by the Oklahoma Bar Association disciplinary program in the category of “neglect & lack of representation”).

362. Steele & Nimmer, *supra* note 271, at 971 tbl.8 (reporting complaints made to the Colorado Disciplinary Association of inadequate representation and delay) (citations omitted).

363. R.B. REAVILL, MINN. OFF. OF LAWYERS PROF. RESP., PROFESSIONAL RESPONSIBILITY & DISCIPLINE: A WARNING (1971), available at <http://www.courts.state.mn.us/lprb/70sbbarts/bb1071.html> (reporting that nearly 45% of complaints in Minnesota concerned neglect and lack of communication). The following year Reavill reported the percentage of complaints involving neglect approached 50%. R.B. REAVILL, MINN. OFF. OF LAWYERS PROF. RESP., PROFESSIONAL RESPONSIBILITY & DISCIPLINE: MORE ABOUT NEGLECT (1972), available at <http://www.courts.state.mn.us/lprb/70sbbarts/bb0372.html>.

364. Steele & Nimmer, *supra* note 271, at 975 tbl.10 (tabulating the percent of complaints received by the Michigan Bar Grievance Board in 1972 due to “quality and promptness of services”) (citations omitted).

365. *Id.* at 992 tbl.16 (reporting the percent of California public reprimands based on delay, neglect, inaction, or abandonment) (citations omitted).

366. *Id.* (reporting Florida public reprimands based on delay, neglect, inaction, or abandonment) (citations omitted).

367. *Id.* (reporting New York state reprimands based on delay, neglect, inaction, or abandonment) (citations omitted).

368. *Id.* (reporting New York City reprimands based on delay, neglect, inaction, or abandonment) (citations omitted).

369. *Id.* (reporting Texas reprimands based on delay, neglect, inaction, or abandonment) (citations omitted).

370. *Id.* at 995 tbl.18 (reporting California public disciplinary sanctions due to delay, neglect, inaction, and abandonment of cases) (citations omitted).

371. *Id.* (reporting Florida public disciplinary sanctions due to delay, neglect, inaction, and abandonment of cases) (citations omitted).

372. *Id.* (reporting New York state public disciplinary sanctions due to delay, neglect, inaction, and abandonment of cases) (citations omitted).

373. *Id.* (reporting New York City public disciplinary sanctions due to delay, neglect, inaction, and abandonment of cases) (citations omitted).

374. *Id.* (reporting Texas public disciplinary sanctions due to delay, neglect, inaction, and abandonment of cases) (citations omitted).

375. *Id.* (reporting Wisconsin public disciplinary sanctions due to delay, neglect, inaction, and abandonment of cases) (citations omitted).

376. SOLICITORS COMPLAINTS BUREAU, FIRST ANNUAL REPORT 25 (1988) (reporting solicitor and lay complaints of failure to account, lien or failure to hand over papers, inadequate service and negligence, and delay or failure to answer correspondence).

377. *Id.* (reporting solicitor and lay complaints of failure to account, lien or failure to hand over papers, shoddy work, inadequate service and negligence, and delay or failure to answer correspondence).

378. William H. Gates, *The Newest Data on Lawyers' Malpractice Claims*, A.B.A. J. Apr. 1984, at 78, 78, 80 fig.5 (listing malpractice claims complaining of failure to calendar, failure to obtain client's consent or inform client, inadequate discovery or inadequate investigation, failure to know or ascertain a deadline, failure to file documents, and

procrastination or lack of follow-up, as collected by the National Legal Malpractice Data Center).

379. STANDING COMM. ON LAWYERS' PROF. LIABILITY, A.B.A., LEGAL MALPRACTICE CLAIMS IN THE 1990s 14 tbl.5 (1996) (listing claims against attorneys broken out by type of alleged error; combined administrative errors are used as "neglect" variable).

380. *Id.* (listing claims against attorneys broken out by type of alleged error; combined administrative errors are used as "neglect" variable).

381. STANDING COMM. ON LAWYERS' PROF. LIABILITY, A.B.A., PROFILE OF LEGAL MALPRACTICE CLAIMS 1996-1999 12 tbl.5 (2001) (reporting alleged error percent due to administrative errors).

382. NEW SOUTH WALES LAW REFORM COMM'N, THE LEGAL PROFESSION: BACKGROUND PAPER III 55-56 tbl.7 (1980) (listing withholding of documents or money, delay, and poor communication as reasons for dissatisfaction).

383. *Id.* at 57-59 tbl.8 (listing withholding of documents or money, delay, and poor communication as reasons for dissatisfaction).

384. *Id.* at 109 tbl.3 (reporting percent of complaints of dissatisfaction due to negligence or delay).

385. F. Raymond Marks & Darlene Cathcart, *Discipline Within the Legal Profession: Is It Self-Regulation?*, 1974 U. ILL. L. REV. 193, 212-13 tbl.I (1974) ("Of the 966 complaints in the First Department [of New York State] which, in the judgment of the intake screeners, stated a prima facie allegation that came within the jurisdiction of the disciplinary agency, 524 (54.6 percent) involved 'neglect.'").

386. VERITY LEWIS, THE LAW SOC'Y'S RESEARCH AND POLICY PLANNING UNIT, COMPLAINTS AGAINST SOLICITORS: THE COMPLAINANTS' VIEW: LAY COMPLAINANTS' EXPERIENCES AND PERCEPTIONS OF THE SOLICITORS COMPLAINTS BUREAU AND SOLICITORS' IN-HOUSE COMPLAINTS PROCEDURES 1, 11 chart 1 (1996) (reporting complaints due to "excessive delay in conducting legal matters").

387. *Id.* at 1 (citing E. Skordaki & T. Dimmock, A Survey of Complainant Satisfaction Among Lay Complainants to the Solicitors Complaints Bureau (1990) (unpublished report)).

388. HELLE BLOMQUIST, LAWYERS' ETHICS: THE SOCIAL CONSTRUCTION OF LAWYERS' PROFESSIONALISM: DANISH PRACTICING LAWYERS AND SOME PRE-CONDITIONS FOR THEIR ETHICS app. 2, at 255 tbl.8 (2000) (listing the reasons for sanctions in 1996 for firms of less than twenty-one lawyers).

389. ORIE L. PHILLIPS & PHILBRICK MCCOY, CONDUCT OF JUDGES AND LAWYERS: A STUDY OF PROFESSIONAL ETHICS DISCIPLINE AND DISBARMENT 110-12 (1952) (reporting complaints "arising essentially from failure of the lawyer to conduct his practice in a business-like way").

390. Katherine Agar & Kent W. Smith, *Part 5: 1982 Survey of Illinois Lawyers: State of the Profession and Current Issues*, ILL. B.J., Nov. 1983, at 115, 121, 162 tbl.5.3 (reporting the percentage of respondent lawyers who felt that neglect was an "important reason for less than reasonable professional skill and care by lawyers").

391. JOEL F. HANDLER, THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY 79 tbl.4.1 (1967) (citing the percent of charges against attorneys in the state bar association due to "[n]eglect, misinforming, carelessness, failure or refusal to proceed with litigation, giving bad advice, disputes as to how pending litigation should be conducted, collusion or conspiracy against client").

Table 2. Casebook and Treatise Coverage of Neglect

Author	³⁹² Pages	Percent of Material in Book
³⁹³ Burns et al.	0	0
³⁹⁴ Cochran & Collett	0	0
³⁹⁵ Crystal	0	0
³⁹⁶ Devine et al.	0	0
³⁹⁷ Gillers	22, 65–66, 588–90, 684	0.8
³⁹⁸ Hayden	125	0.2
³⁹⁹ Hazard et al.	848–53	0.5
⁴⁰⁰ Heymann & Liebman	0	0
⁴⁰¹ Kaufman & Wilkins	673–76	0.5
⁴⁰² Lerman & Schrag	217–39	3.3
⁴⁰³ Martyn & Fox	43–48	1.1
⁴⁰⁴ Moliterno	146–47, 304	0.8
⁴⁰⁵ Morgan & Rotunda	77–78	0.3
⁴⁰⁶ Noonan & Painter	0	0
⁴⁰⁷ Rhode	0	0
⁴⁰⁸ Rhode & Hazard	249–50	0.4
⁴⁰⁹ Rhode & Luban	977–79	0.3
⁴¹⁰ Rotunda	148–49	0.3
⁴¹¹ Rotunda & Dzienkowski	107–25	1.2
⁴¹² Rotunda & Krauss	16–17	0.5
⁴¹³ Schwartz et al.	143–45, 155–56	1.4
⁴¹⁴ Steinbezug	0	0
⁴¹⁵ Wendel	38–40, 97–98	1.2
⁴¹⁶ Wydick et al.	149–51, 161–62	1.5

392. Referenced pages exclude those generally pertaining to legal malpractice and ineffective assistance of counsel.

393. See generally ROBERT P. BURNS, THOMAS F. GERAGHTY & STEVEN LUBET, *EXERCISES AND PROBLEMS IN PROFESSIONAL RESPONSIBILITY* (2d ed. 2001) (omitting the topic of attorney neglect).

394. See generally ROBERT F. COCHRAN, JR. & TERESA S. COLLETT, *CASES AND MATERIALS ON THE LEGAL PROFESSION* (2d ed. 2003) (omitting the topic of attorney

neglect).

395. *See generally* NATHAN M. CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION (3d ed. 2004) (omitting the topic of attorney neglect).

396. *See generally* JAMES R. DEVINE, WILLIAM B. FISCH, STEPHEN D. EASTON & ROBERT H. ARONSON, PROFESSIONAL RESPONSIBILITY: PROBLEMS, CASES, AND MATERIALS (3d ed. 2004) (omitting the topic of attorney neglect).

397. STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS 22, 65–66, 588–90, 684 (7th ed. 2005).

398. PAUL T. HAYDEN, ETHICAL LAWYERING: LEGAL AND PROFESSIONAL RESPONSIBILITIES IN THE PRACTICE OF LAW 125 (2003).

399. GEOFFREY C. HAZARD, JR., SUSAN P. KONIAK, ROGER C. CRAMTON & GEORGE M. COHEN, THE LAW AND ETHICS OF LAWYERING 848–53 (4th ed. 2005).

400. *See generally* PHILIP B. HEYMANN & LANCE LIEBMAN, THE SOCIAL RESPONSIBILITIES OF LAWYERS: CASE STUDIES (1988) (omitting the topic of attorney neglect).

401. ANDREW L. KAUFMAN & DAVID B. WILKINS, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 673–76 (4th ed. 2002).

402. LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 217–39 (2005).

403. SUSAN R. MARTYN & LAWRENCE J. FOX, TRAVERSING THE ETHICAL MINEFIELD: PROBLEMS, LAW, AND PROFESSIONAL RESPONSIBILITY 43–48 (2004).

404. JAMES E. MOLITERNO, ETHICS OF THE LAWYER'S WORK 146–47, 304 (2d ed. 2003).

405. THOMAS D. MORGAN & RONALD D. ROTUNDA, PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS 77–78 (8th ed. 2003).

406. *See generally* JOHN T. NOONAN, JR. & RICHARD W. PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER (2d ed. 2001) (omitting the topic of attorney neglect).

407. *See generally* DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2d ed. 1998) (omitting the topic of attorney neglect).

408. DEBORAH L. RHODE & GEOFFREY C. HAZARD, JR., PROFESSIONAL RESPONSIBILITY AND REGULATION 249–50 (2002).

409. DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 977–79 (4th ed. 2004).

410. RONALD D. ROTUNDA, PROFESSIONAL RESPONSIBILITY 148–49 (7th ed. 2004).

411. RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY: A STUDENT'S GUIDE 107–25 (2005–2006 ed. 2005).

412. RONALD D. ROTUNDA & MICHAEL I. KRAUSS, LEGAL ETHICS IN A NUTSHELL 16–17 (2003).

413. MORTIMER D. SCHWARTZ, RICHARD C. WYDICK, REX R. PERSCHBACHER & DEBRA LYN BASSETT, PROBLEMS IN LEGAL ETHICS 143–45, 155–56 (7th ed. 2005).

414. *See generally* MARC I. STEINBERG, LAWYERING AND ETHICS FOR THE BUSINESS ATTORNEY (2002) (omitting the topic of attorney neglect).

415. W. BRADLEY WENDEL, PROFESSIONAL RESPONSIBILITY: EXAMPLES AND EXPLANATIONS 38–40, 97–98 (2004).

416. RICHARD C. WYDICK, REX R. PERSCHBACHER & DEBRA LYN BASSETT, CALIFORNIA LEGAL ETHICS 149–51, 161–62 (5th ed. 2005).