

Protecting the Vulnerable While Nourishing the Lawyer's Soul

Pro Bono in Asylum and Immigration Matters

By Tara Magner

Representing Asylum Seekers in the Immigration Courts

"It's about trying to do whatever I can to make a difference in the lives of people that need the skills I have to offer," said Jennifer Reicher Jaffe, an associate in the Chicago office of Latham & Watkins LLP.

Jaffe had some immigration law experience when she joined Latham & Watkins in 2002 after completing a clerkship with the Staff Attorneys' Office in the Seventh Circuit Court of Appeals. She applied her immigration knowledge to the *pro bono* cases she accepted with the National Immigrant Justice Center almost immediately after joining the firm.

Jaffe handled an asylum case for a husband and wife from the Democratic Republic of the Congo (DRC). The husband had served as a high-level government official in DRC but was later threatened, beaten and detained by government soldiers. Several soldiers brutally assaulted his wife while he was made to watch. The couple managed to escape to the United States, but had no family or friends here and lived on the streets. The husband suffered mentally from their ordeal in DRC and the subsequent displacement. In addition, in an initial interview with a government asylum office, the couple did not discuss the sexual assault in DRC because of the shame and trauma of the abuse. These circumstances led to inconsistencies in their asylum claim and, hence, the referral of the case to the immigration court. If not for the inconsistencies, "it should have been an open and shut case," said Jaffe.

While Jaffe and her colleagues at Latham & Watkins waited a full year for a hearing,

they helped the couple obtain counseling and worked with them to prepare for questioning from the immigration judge and the government attorneys. At the hearing, the immigration judge granted them asylum. "I don't think I had ever seen them smile as

Some of the most vulnerable people in our community are those who have fled persecution in their home countries to seek protection in the United States. Hundreds of *pro bono* attorneys in the Chicago area have answered the call to help them, and these lawyers consistently count asylum and protection-based immigration cases among the most rewarding in their careers. These stories are told here. At the end of this article there is more information on how interested lawyers can get involved.

fully and completely as they did then at the realization that it was over, and they were free and safe," said Jaffe.

Jaffe found the experience extremely rewarding because she was able to help asylum seekers secure the protection to which they are entitled under law. Without her legal representation, they would likely not have

obtained that protection. She also valued the opportunity to practice in immigration court before immigration judges. "Interaction with the immigration judges fed my overall knowledge of the law. Engaging these judges in conversation provides a valuable insight into the immigration debate."

Jaffe is a member of the Pro Bono Committee at Latham & Watkins and has encouraged other lawyers to seek this experience by taking *pro bono* cases. "I tell people that it's not about any one case," but about ensuring that rights are respected for all. Nonetheless, maintaining contact with former clients over time has also proven rewarding. Jaffe said that the couple from DRC is now living with a distant relative on the East Coast. They just obtained lawful permanent resident status, a significant step. "They were incredibly excited," said Jaffe. "It's not easy for them, but they're making it work."

Representing Asylum Seekers on Appeal to the Seventh Circuit Court of Appeals

Some asylum cases may be resolved at an initial interview with an asylum officer, or as with Jennifer Jaffe's case, the case may be adjudicated by an immigration judge. When the immigration judge denies a case, the asylum seeker may appeal to the Board of Immigration Appeals (BIA), an administrative review body. In cases where the BIA affirms a judge's denial, the National Immigrant Justice Center (NIJC) will review the record and the decision to make a determination as to whether there is a basis to seek judicial review by the appropriate Circuit Court of Appeals. Should NIJC decide to appeal the case to the Circuit Court of Appeals, it will often seek a *pro bono* attorney to work on the case with NIJC.

For example, Brian Murray of Jones Day recently won a reversal in one such case for a Cameroonian woman. The woman had become active in Cameroon's student movement in 1993 when she was a senior in high school and participated in a march to support striking teachers. The Cameroonian police arrested, beat and detained her for three days without water or food. After she was released, she was hospitalized for two weeks to treat dehydration and other injuries she sustained in the extraordinarily inhumane conditions of the jail. In 1996, the client resumed her political activities and was arrested and severely beaten on two separate occasions. In 2001, she obtained a visa to enter the United States and applied for asylum.

The immigration judge denied her application, viewing each of the beatings and arrests to be isolated incidents that did not amount to persecution. The immigration judge further found that the beatings were no different from those experienced by the general population in a war-torn country.

Murray successfully argued on appeal that the immigration judge failed to consider the entire record of beatings and abuse. The Seventh Circuit recognized that the petitioner suffered targeted persecution by the government as opposed to the deprivations experienced by citizens who suffer the effects of war but are not targeted as individuals. The Seventh Circuit Court of Appeals remanded the case to the administrative courts. Murray is hopeful that his client will receive protection from the immigration courts.

When the client learned that she had won at the Seventh Circuit, Murray recounted his client's reaction. "She had to sit down, she was so emotional. She was in tears, and so grateful for the legal help that she received," Murray said. Murray's client just completed a nursing degree and hopes to find permanent work as a nurse.

Murray said that the asylum cases he handles *pro bono* are vastly different from his typical work at Jones Day. "All of my cases and all of my clients are important,"

he said. "The difference with asylum cases is that, if I lose, my client may be sent home to face persecution -- or even death -- at the hands of government agents. But if I win for a client like this one, she can stay



One of the National Immigrant Justice Center's offices serves Chicago's Pilsen community, a destination for immigrants from many different cultures for over 100 years. Photo by Mary Hanlon.

in the United States to build a new life in safety."

Murray took the Cameroonian woman's case on the heels of another win for a client from the National Immigrant Justice Center. He previously represented a man from Togo in his asylum case before an immigration judge. After they won, the client petitioned for his wife and children from Togo to be reunited with him in the United States. The government granted his petition and the family now lives safely in Indianapolis. "He is now working as a professional, providing for his family, and raising his children without fear. Seeing a result like this is what makes these cases among the most important ones I handle. And also among the most satisfying."

Protecting Due Process

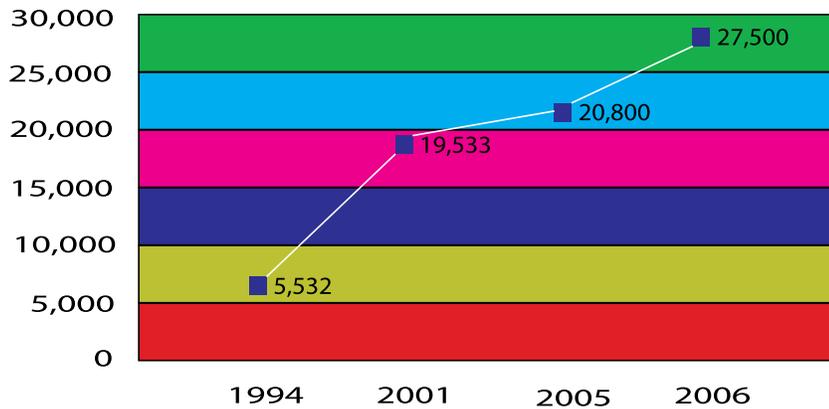
The Seventh Circuit Court of Appeals, while generally viewed as a conservative court, has responded favorably to challenges that raise Constitutional, statutory, and due process issues in the immigration and asylum context. In 2005, the Seventh Circuit unexpectedly became the most pro-immigrant Court of Appeals in the country, reversing 40% of immigration and asylum appeals. The Ninth Circuit, which had the second highest reversal rate in this area, reversed only 17% of immigration appeals in 2005.

The steady pressure of appeals and litigation brought before the Seventh Circuit by the National Immigrant Justice Center and its *pro bono* partners has proven to be a bellwether for the nation. Other circuits that have traditionally been viewed as conservative are now citing to the Seventh Circuit and more frequently issuing opinions that protect due process rights. NIJC's *pro bono* attorneys play an indispensable role in developing and arguing these cases, frequently winning relief for their clients and occasionally setting positive precedent through impact litigation.

Jennifer Erickson and Linda Coberry of Winston & Strawn recently won a petition for review before the Seventh Circuit Court of Appeals for an Ethiopian woman who was denied due process in her asylum case.

After the war between Ethiopia and Eritrea in the late 1990s, the Ethiopian government persecuted Ethiopians of Eritrean heritage. On returning from a period of study abroad, the NIJC client, an Ethiopian woman, was interrogated for eight hours, accused of spying for the Eritrean government, beaten, raped, and ordered deported. The deportation order that she was given by the Ethiopian government was on a photocopied piece of paper with her name written in by hand. This seemingly insignificant photocopy became critical to her claim.

At the hearing, without prior notice, the government presented as a witness a document expert to testify that the deportation



The number of detained immigrants, including asylum seekers, has increased substantially in recent years, jumping from 5,532 per day in 1994 to approximately 27,500 in 2006. It is virtually impossible for detained immigrants, who are often held in remote county jails, to seek protection-based relief without the assistance of pro bono counsel. Sources: ICE Immigration Enforcement Initiatives, June 23, 2006 (www.ice.gov); Hearing of the Committee on the Judiciary, Review of USDOJ Immigration Detention Policies, House of Representatives, Dec. 19, 2001 (www.house.gov).

Feed Your Soul...

When I volunteer at the Trinity United Church of Christ Legal Clinic on Saturday mornings I get to sit and talk with people who don't normally have access to a lawyer. Sometimes they need me to represent them in a case, but often they simply need advice. Either way, I am giving them something valuable – my time and my knowledge. It's hard to do pro bono when you are a solo practitioner. I don't have a lot of spare time in my day. But this is some of the most important work I will ever do and I would not give it up for anything. I consider this business development for my soul.



Ellen E. Douglass
Law Offices of Ellen E. Douglass

VOLUNTEER

In addition to the volunteer opportunities available at NIJC, a number of other Chicago Bar Foundation-funded legal aid organizations seek volunteer attorneys and paralegals to help vulnerable members of our community with their immigration legal problems. All programs listed below provide training, training materials and back-up support from an experienced attorney. Also, you may visit www.IllinoisProBono.org for information about pro bono opportunities and upcoming trainings.

AIDS Legal Council of Chicago. Ann Fisher, 312/ 427-8990, ann@aidlegal.com. Help persons with HIV/AIDS apply for HIV Immigration Waivers.

Centro Romero. Frank Melone, Director of Immigration Law Project, 773/ 508-5300, f.melone@centroromero.org. Help immigrants apply for citizenship, represent individuals in immigration matters, and prepare and file self-petitions under the Violence Against Women Act (VAWA).

Chicago Legal Clinic. Ed Grossman, 773/731-1762 or egrossman@dclaw.org. www.dclaw.org. Assist clients with their immigration legal matters.

Chicago Volunteer Legal Services. Margaret Benson, 312/ 332-5542 or mbenson@cvls.org. www.cvls.org. Assist clients with their immigration legal matters.

Legal Assistance Foundation of Metropolitan Chicago. Lisa Palumbo, 312/ 347-8374 or lpal@lafchicago.org. www.lafchicago.org. Volunteers needed to help battered immigrant women and children file for immigration status by preparing and filing self-petitions under the Violence Against Women Act (VAWA).

order was fraudulent. In an effort to rebut the testimony of the government's witness, the Ethiopian woman attempted to present an expert to testify that in Ethiopia during that time period, it would not have been unusual for a form to be photocopied, as occurred in her case. The Immigration Judge did not allow the Ethiopian woman's witness to testify, and later denied her asylum

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claim. The Board of Immigration Appeals affirmed that decision.

Erickson argued before the Seventh Circuit that the judge’s acceptance of one expert witness but not the other violated the woman’s right to cross-examination of evidence presented against her. The Seventh Circuit agreed. The client “did not receive a fair hearing, and she is entitled to a new one,” wrote Judge Williams, who issued the opinion in this case. The Court remanded the case to the immigration court for a new hearing.

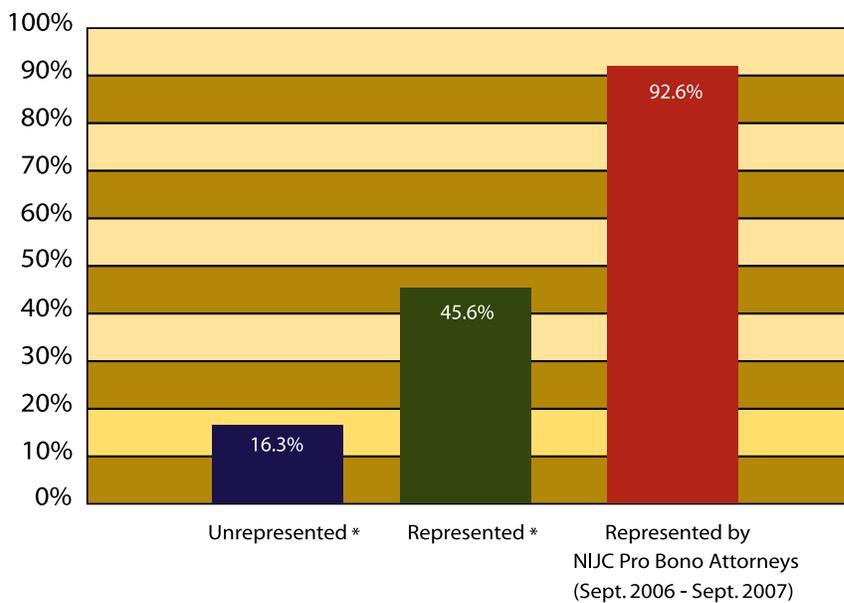
“This was an extremely compelling case,” said Erickson. “My client deserved a fair chance to challenge the government’s witness and to present evidence. Now she will have that chance.”

Winston & Strawn is building a practice in appellate litigation. By regularly accepting Seventh Circuit appeals from NIJC, it demonstrates its commitment to *pro bono* service and offers its younger attorneys the opportunity to gain appellate experience. This case was Erickson’s first argument before the Seventh Circuit. “I was thrilled to be able to take on this case, both because of the professional experience and because I was able to help my client attain a chance to fairly present her case.” ■

Tara Magner is Director of Policy at the National Immigrant Justice Center in Chicago and a member of the CBA’s Legal Aid Committee.

8 O’CLOCK CALL WITH LAW DIVISION JUDGES

The Eight O’Clock Call brings together lawyers and judges in a casual, breakfast setting. Judges will field questions on their careers, their court calls and their personal experiences. The complimentary event, featuring judges from the Law Division, will be held on Friday, November 2, 200, 8:00-8:45 a.m., at the CBA Building. CBA members only please. RSVP to yls@chicagobar.org or 312-554-2032 (include your name, phone, and member number).



Effect of Representation on Asylum Grant Rates. Source (*): Ramji-Nogales, et al, “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review*, Vol. 60, 2008.

HOW YOU CAN HELP

The National Immigrant Justice Center welcomes participation from attorneys and volunteers who wish to help protect the rights of asylum seekers, immigrants, refugees, and other vulnerable groups of non-citizens.

Lawyers have a unique opportunity to assist by representing clients in asylum cases. Pro bono attorneys are also needed to represent trafficking victims, immigrant victims of domestic violence, unaccompanied immigrant children, detained immigrants, and immigrants who seek to adjust their legal status. NIJC provides regular training programs for each of these areas of practice and advises attorneys throughout the duration of a case. NIJC also seeks volunteers to assist with translation, client intakes, and community education. These activities may be attractive to non-lawyers or to anyone who wishes to volunteer for a day or two at a time.

For more information on becoming a NIJC pro bono partner, please contact Jefferson Mok via email at jmok@heartlandalliance.org or at 312/ 660-1307.

What you can do?

- Represent asylum seekers who are seeking protection from persecution
- Represent individuals who wish to apply for U.S. citizenship
- Represent immigrants who are survivors of domestic violence, trafficking, or other crimes who are eligible for immigration benefits
- Represent immigrant children who have been placed in deportation proceedings
- Become involved in impact litigation and argue cases in Federal District Court or the Seventh Circuit Court of Appeals or prepare an amicus brief
- Become a part of a rapid response network to respond to immigration enforcement raids
- Assist in conducting Know Your Rights presentations to detained immigrants, refugees and asylum seekers
- Conduct intakes with detained immigrants in county jails
- Represent a detained immigrant in immigration court