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Immigration judges come under fire; Gonzales weighs in

Pamela A. MacLean

An immigration judge in Newark, N.J., snores through a Colombian woman's testimony of fears for her life before denying her asylum.

A Los Angeles immigration judge refuses asylum to a victim of the Rwandan genocide, faulting his lack of emotion in describing seeing his mother and three siblings hacked to pieces.

A Philadelphia immigration judge so bullied and badgered a Ghanaian woman held as a sex slave by her father that an appeals court ordered the judge off the case.

Despite these types of allegations of abusive conduct by immigration judges around the country, documented in court papers, discipline is nearly nonexistent, a review by The National Law Journal has found.

Ira Kurzban, a nationally known immigration lawyer at Miami's Kurzban, Kurzban, Weinger & Tetzeli, said that "[t]here are judges who really have no business being judges. They are unfit and should be removed." He added: "The problem is we don't have a system to respond in an adequate way to disciplining errant immigration judges."

Robert Whitehill, a Pittsburgh immigration attorney with Fox Rothchild said, "My experience has been some judges will on occasion berate, abuse and demean an alien or the alien's counsel. It is vicious." He said further, "I think it is futile to complain, and I hate to say that."

Susan Akram, who teaches immigration and human rights law at Boston University School of Law, said, "[t]hey have a discipline system on paper but I have tried it and it is not worth the paper it's printed on. There aren't guidelines that clearly bind the judges."

The Executive Office of Immigration Review (EOIR), which oversees immigration judges within the U.S. Department of Justice, first distributed an ethics manual for judges in 2001 following complaints that an immigration judge had married an illegal alien.

The manual addresses integrity, bribery and outside influence, not courtroom misconduct, except to say judges should be patient, dignified and courteous.

The American Immigration Lawyers Association (AILA) has complained for years to Justice Department officials who oversee immigration judges (IJs) that its reports of unethical or abusive conduct go unheeded.

"We continue to receive numerous reports from members complaining about injudicious conduct by various IJ's (frequently the same ones) along with repeated concerns that 'nothing can be done,' and 'nobody cares,' " according to 2002 minutes of liaison meetings between the AILA, representing 9,600 lawyers, and EOIR.

No records

In response, Chief Judge Michael J. Creppy told the group that he takes "all complaints against immigration judges very seriously."

But his office has declined to say how many complaints it has received and insisted that it does not track the type or number of discipline actions against judges, despite requests from AILA and the immigration judges' union.

Asked why statistics on discipline are not kept, EOIR spokesman Greg Gagne responded, "We asked the question. The answer is: We don't keep those records."

As for assertions that the discipline system doesn't work, Gagne said, "There is no basis for comments like that." Lawyers may raise specific complaints with the chief judge.

"It is less formalized than [the Office of Professional Responsibility], but those are the two avenues for raising concerns," he said.

Creppy has eight regional assistants who manage the judges and may get involved in discipline "depending on the level of infraction," Gagne said.

Creppy declined to be interviewed.

The 215 immigration judges nationwide are not part of the judiciary but are lawyers working for the Justice Department and acting in a quasi-judicial capacity as administrative law judges. They may be appointed after seven years of law practice, although immigration law specialty is not required. Pay ranges from \$110,000 to \$149,000 a year, according to

Gagne. The executive office recruits and hires lawyers to be immigration judges in civil service positions. The job has no term limit.

Gonzales weighs in

As criticism from appellate judges intensified in several circuits and media attention focused on judicial shortcomings, U.S. Attorney General Alberto Gonzales issued a sharply worded warning on Jan. 9 to immigration judges to shape up.

He chastised them for conduct described as "intemperate or even abusive." He ordered Associate Attorney General Robert McCallum and acting Deputy Attorney General Paul McNulty to investigate complaints and report back.

Until the creation of the Department of Homeland Security after the Sept. 11, 2001, terrorist attacks, the Justice Department oversaw both immigration judges and prosecutors, creating tension between judicial independence and the Justice Department's desire to enforce department policy through the judges.

Now they are separate, with prosecutors under Homeland Security and the Justice Department overseeing the judges.

A movement several years ago to remove immigration judges from Justice Department control and make them part of the judicial branch drew little support in Congress.

The newer design is an improvement, according to Dana Marks, vice president of the National Association of Immigration Judges and a San Francisco immigration judge.

The resolution of specific complaints against judges is confidential. Creppy's office has responded to AILA criticism of the system by urging members to write letters with specific charges to Creppy, who is responsible for judicial discipline decisions.

Asked what types of actions Creppy's office takes on complaints that generated genuine concern, his office replied to AILA in 2002 that Creppy takes complaints seriously but offered no details.

Complaints are also sent to the Office of Professional Responsibility (OPR), which investigates allegations of misconduct by attorneys within the Justice Department.

In the past decade, OPR's summary of investigations shows three reported inquiries involving immigration judges.

One found no misconduct, while in the two other cases, in 2001 and 2002, OPR found misconduct by unidentified judges. Both left the department before discipline was imposed.

Yet in its 2000 report, OPR recommended creation of the ethics manual "in response to increased numbers of misconduct allegations against immigration judges."

And a 2001 report by the Government Accountability Office (GAO), the congressional watchdog agency, described four cases against immigration judges between 1995 and 2000.

In 1997, one judge was fired for "abuse of authority" while another unidentified judge was accused of abuse of his position and "unprofessional statements," and agreed to retire rather than face firing.

All mention of the proposed termination was removed from the personnel file, according to GAO. A third judge also volunteered to retire rather than face firing, and a fourth improved his poor performance and was reassigned without punishment.

Judges as prosecutors?

Some of the worst conduct, according to Akram, is by judges who act as prosecutors, routinely telling the government's lawyer what objections to raise, then ruling favorably on them.

Or judges may delay hearings four or five times, forcing witnesses to return repeatedly, until they give up. Then the judge finds the alien not credible because his or her testimony is uncorroborated, she said.

One of the most serious allegations repeated by several lawyers in nearly two dozen interviews with immigration specialists around the country is manipulation of the court record.

"One thing judges do control is the record and some pay more attention to that ability," said a practitioner who asked not to be identified out of concern for retaliation. "They turn off the tape," he said. "It doesn't leave a noticeable hole in the transcript, but it does happen," he said. Three other lawyers repeated similar experiences.

Marks, with the National Association of Immigration Judges, said, "We are in a strange gray area. To the Department of Justice we are attorneys. We are not law judges."

She said the media accounts of public criticism by federal appellate courts "skews the picture. A huge number of cases are affirmed and not criticized," she said.

"We render extemporaneous oral decisions. We are a strange hybrid," she added.

Deportation is a civil action, yet the consequences can be life or death. Hearings can be closer to criminal proceedings, with judges setting bond amounts for aliens held in detention, Marks said.

Alarming cases

As officials debate the best route to reform, there are a number of alarming examples to draw from. They include:

Newark, N.J., Judge Michael Strasser took a medical leave a few months after sleeping through a portion of the 2004 hearing of a Colombian woman, according to a government document about the case.

As Strasser snored, the Colombian woman recounted warnings from a right-wing militia that she would be "put in a box" if she returned to her war-torn country.

Strasser was also admonished by superiors for taking a personal phone call on the bench and telling a translator to bring him a soda, according to a press account of the incident.

He returned to the bench in 2005 but is again on medical leave, and could not be reached for comment.

Los Angeles Judge Anna Ho, appointed in 1995, has been roundly criticized by the 9th U.S. Circuit Court of Appeals by name in at least seven opinions for issuing "cookie-cutter" rulings and acting more like a prosecutor than an impartial judge. *Paramasamy v. Ashcroft*, 295 F.3d 1047 (2002).

She was reversed for ordering a man deported to Mexico despite his mother's authenticated birth certificate showing he was born in Portland, Ore., in 1979 and was a U.S. citizen. *Rivera v. Ashcroft*, 387 F.3d 835 (2004).

Ho did not return a call seeking comment.

Philadelphia Judge Donald Ferlise issued a "sanitized" version of his original "crude and cruel" oral ruling in the case of Lorraine Fiadjoe, who

was traumatized by her years of sex slavery to her father and by his murder of her fiancé, according to the 3d Circuit.

The appeals court overturned his rejection of her asylum and ordered a new judge to hear the case. *Fiadjoe v. Attorney General*, 411 F.3d 135 (2005).

On Jan. 19, the 3d Circuit again said it was "deeply troubled" by Ferlise's "intemperate and bias-laden" remarks about an Indonesian woman seeking asylum, and held him to have violated her constitutional rights. *Sukwanputra v. Gonzales*, No. 04-3336.

Ferlise did not return a call for comment.