THE NATIONAL LAW JOURNAL
WWW.NLJ.COM

IMMIGRATION JUDGES

Bullies on the bench

Stacy Caplow/Special to The National Law Journal
March 5, 2007

Image: Martin Mayo

An immigration judge presiding over deportation hearings at Downstate Correctional Facility in Fishkill, N.Y., regularly made offensive observations such as: "Colombians and Cubans are drug dealers"; "Mexicans are drunks"; "Salvadorans prefer incest"; "Poles drink too much"; "Dominican women will have children with anyone;" "Chinese are kidnappers"; and "Jamaicans, Dominicans and Cubans are murderers."

This behavior poisoned his courtroom until 1999, when a newly hired government lawyer filed a formal complaint to the U.S. Department of Justice. It took three separate investigating bodies and almost seven years for this loutish judge to be dismissed for his persistently inappropriate remarks amounting to egregious professional misconduct. This past December, after appealing his case to federal court, he was finally fired for good.

Unfortunately, this judge is just one stain on an already tarnished system of justice for immigrants, where abusive and disrespectful behavior is tolerated far too often.

Nationwide, more than 200 immigration court judges make the all-important decisions about whether individuals can remain in the United States in about 350,000 cases annually. The substandard performance of many of them has been exposed in an embarrassing number of federal court appellate cases.

Appellate court criticism
Federal judges criticize immigration judges' decisions and rude treatment of immigrants, particularly asylum seekers escaping gang rape, torture, kidnapping and beatings in their home countries. Their decisions are consistently found to be rife with errors of logic and of fact, speculation, irrationality, bias, intemperance, bullying, ignorance, insensitivity and hostility.

For example, the 3d U.S. Circuit Court of Appeals has repeatedly expressed its frustration with one notoriously intemperate judge in Philadelphia Immigration Court, yet that judge is still

sitting despite numerous reversals. Just last week, the 2d Circuit harshly condemned an immigration judge's decision for containing a "plethora of errors and omissions" and for remarks that "erode the appearance of fairness." This was the second opinion of this court in less than a year to excoriate this particular judge. And the 7th Circuit reported an amazing 40% reversal rate in immigration court rulings in 2005. .

Last August, Attorney General Alberto Gonzales finally seemed to be taking responsibility for the misbehaving judges who work for his Department of Justice. He pledged improved training, performance evaluations and a competency examination on immigration law. He promised to ask for significant increases in resources for the courts. And he vowed to develop means for detecting and dealing with misconduct. To date, none of these reforms have been implemented.

One glaring problem is that immigration judges are political appointees whose appointments may be rewards for years of government service or party loyalty, and are not subject to any independent oversight or approval. Neither their job qualifications nor their on-the-bench performance is scrutinized by outside groups such as the American Bar Association or the American Immigration Lawyers Association. Unlike other judges, they are accountable to no one other than the attorney general, the nation's chief prosecutor, and may, as a result, lack the independence normally associated with the judiciary. They act without fear of public scrutiny or reprisal.

Zero tolerance policy is needed

If Gonzales were truly committed to reforming the system, he would start by purging all the biased and burned-out judges, the bullies and bigots who ignore the law. He would put the borderline judges on notice to clean up their acts. A zero-tolerance policy is the only credible approach.

At the same time, he would guard against undermining the performance and morale of conscientious and capable immigration judges by directing more resources to alleviate the daily pressure of presiding over multiple hearings involving emotionally charged, high-stakes issues.

Following that, he would get to work on the more entrenched problems, but not in the usual closed, secretive, and self-protective fashion. It is time to call in qualified outside specialists. He must consult with respected immigration academics and nongovernmental organizations, and solicit and trust the views of knowledgeable and concerned lawyers. He must consider the views of organizations like Human Rights First that have put forth detailed proposals addressing the structure and management of the immigration courts. Finally, he must set strict deadlines for action.

Firing one crude, sexist boor of a judge hardly begins to address bias and disrespectful behavior on the immigration bench. Only firm, consistent oversight and high standards of professionalism and civility can assure judicial competence and impartiality, and with it, respect for this important court. Vested interests and politics must take a back seat to sincere reform efforts.

Stacy Caplow is a professor of law and the director of the Brooklyn Law School Safe Harbor Project, an immigration law clinical program.

Copyright 2007 ALM Properties, Inc. All rights reserved.