

Burnout and Stress Among United States Immigration Judges

Stuart L. Lustig, M.D., M.P.H.; Kevin Delucchi, Ph. D; Lakshika Tennakoon, M. Sc; Brent Kaul; Hon. Dana Leigh Marks J.D.; Hon. Denise Slavin J.D.

ABSTRACT

Immigration Judges (IJs), whose enormous caseloads consist of one horrific story of human suffering after another, are at risk for stress and burnout, conditions which make adjudicating cases that much more challenging. Although stress and burnout have been documented among other professionals who work on a daily basis with traumatized populations, these conditions have never been quantified among IJs. All 212 practicing IJs were invited to participate in a web-based survey that asked generally about the work environment and used the Secondary Traumatic Stress Scale (STSC) and the Copenhagen Burnout Inventory (CBI) to inquire about stress and burnout respectively. A total of 96 IJs (45.3%) responded to the survey. IJs indicated they were suffering significant symptoms of secondary traumatic stress. They also reported more burnout than has been seen with any other professional group to whom the CBI has been administered, including physicians in busy hospitals and prison wardens. Female IJs reported significantly more stress and burnout than their male colleagues, a difference that was not explained by variations between men and women of other demographic variables or working conditions. Recommendations to reduce stress and burnout are discussed, namely decreasing caseloads, hiring more IJs, increasing support staff, reexamining case completion goals, and developing a support network for IJs

BACKGROUND

Perhaps the most disturbing stories of human suffering anywhere in the legal system arise in asylum cases. Immigration Judges, to whom the most complex of these cases are referred, likely hear the most horrifying of these stories.

Asylum Seekers and Immigration Court Proceedings

Asylum may be granted in the United States to people who are unable or unwilling to return to their home country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹ Some asylum seekers are victims of severe emotional trauma, having suffered either torture, serious physical abuse such as rape, physical or sexual intimidation, physically brutal treatment or threats from police or other government officials or groups those officials cannot or will not control.

In all cases before them, U.S. Immigration Judges are charged with the grave decision of who should be deported and who should be granted the benefit of lawful status in the United States. The U.S. Supreme Court has called the effect of deportation to be the equivalent of banishment, a sentence to life in exile,

loss of property or all that makes life worth living; in essence, deportation is a "punishment of the most drastic kind."² An order of deportation can effectively amount to a death sentence, when an undocumented immigrant will be subject to persecution upon return to his or her country.³ Thus, on a daily basis, U.S. Immigration Judges nation-wide are entrusted with the equivalent of capital cases, and the stakes are high for all parties.

Factors Affecting Asylum Grant Rates

In an ideal world, an applicant's likelihood of obtaining asylum would depend only upon the merits of the case. In actuality, factors determining grant or denial rates of asylum are not well understood, but appear to vary and be influenced by the political and legal climate, as represented by frequent changes in the statutory and case law and situational considerations in clients' cases, such as whether they are represented by an attorney, whether they are applying affirmatively or defensively, whether supporting documentation, medical or otherwise, is

¹ Deborah E. Anker, *Law of Asylum in the United States* (3rd ed. Boston: Refugee Law Center 1999).

² See, e.g., *Fong Haw Tan v. Phelan*, 333 U.S. 6 (1948); *Jordan v. DeGeorge*, 341 U.S. 223 (1951); *Ng Fung Ho v. White*, 259 U.S. 276 (1922); *Lehman v. United States*, 353 U.S. 685, 691 (1957).

³ See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987); *Padilla-Augustin v. INS*, 21 F.2d 970, 978 (8th Cir. 1994).

available.⁴ Also, a recent, landmark study examined the variability of grant rates for cases in the same local courts from the same countries among different judges, and identified the following associated factors: presence of legal representation, request by the applicant for protection of a spouse or minor child in the United States, gender of the judge, and work experience of the judge prior to joining the bench.⁵ Specifically, asylum applicants' chances of relief were better if they brought their families to the United States and if judges were female and worked in the human rights sector or in private practice (as opposed to enforcement) prior to their judgeships.

It has not been shown that this "disparity" is unique to the Immigration Court system. Indeed, it may be a by-product of our system of jurisprudence. The study's authors acknowledged "[w]e cannot prove that the variations in outcomes based on the locations or the personalities of the adjudicators are greater in asylum cases than in criminal, civil, or other administrative adjudications."⁶ There are few if any similar studies of other courts. Indeed, in courts of all kinds across the country "many lawyers believe that although they cannot predict the outcome of a trial-level case on the day before it is filed, . . . they can do so once they know what judge or judges have been assigned to decide it."⁷

Another possible, as yet unexamined, factor contributing to grant rates could be stress and/or burnout among judges. The ability of judges to hear cases empathically is critically important to a fair asylum hearing, but may be made difficult or impossible by high rates of secondary traumatic stress (STS) caused by the huge volume of human misery, whether real or fictitious, to which Immigration Judges are subjected or due to burnout they experience. Symptoms of stress and burnout include cynicism and detachment which could affect judges' perceptions of asylum seekers' credibility. While STS and burnout

are well documented among therapists, first responders, and even attorneys and other types of judges, there is no documentation of symptoms among Immigration Judges whose uniquely heavy docket often includes several cases a day containing horrific material. This study assessed the prevalence of STS and burnout among a national sample of Immigration Judges.

Secondary Traumatic Stress and Burnout

Since the inclusion of Post-Traumatic Stress Disorder (PTSD) in the 1980 Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III),⁸ which is the American Psychiatric Association's handbook of all psychiatric disorders, mental health clinicians have been keenly interested in the occupational effects of working with trauma victims. In addition to "burnout," terms such as "compassion fatigue,"⁹ and "STS,"¹⁰ have been coined. STS, also called the "cost of caring,"¹¹ includes symptoms similar to those of the PTSD that afflict trauma victims themselves: nightmares, flashbacks, intrusive thoughts, avoidance of people, places or activities that remind one of the event, numbness, lack of interest in things, hyperarousal, and foreshortened sense of the future. Immigration Judges, by virtue of repeated exposure to traumatized asylum seekers, and those falsely reporting abuse and trauma to avoid deportation at any cost, are susceptible to STS. The overwhelming sizes of their caseloads and long hours worked without overtime¹² also puts Immigration Judges at risk for burnout, which includes a decreased sense of personal and/or professional accomplishment,¹³ emotional exhaustion, and depersonalization, e.g. distancing oneself from the job, cynicism and loss of compassion, all of which could affect the outcome for applicants whose fates rest in judges' hands.

⁴ Lustig SL, Kureshi S, Delucchi, K, Iacopino V, Morse S. *Asylum Grant Rates Following Medical Evaluations of Maltreatment Among Political Asylum Applicants in the United States*, J. Imm. and Minority Health (in press).

⁵ Ramji-Nogales, J., et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stanford L. Rev. 295 (Nov. 2007).

⁶ See Matter of S-M-J-, 21 I. & N. Dec. 722 (BIA 1997) (where it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of the applicant's claim, the evidence should be provided or an explanation should be given as to why the information was not presented.)

⁷ Ramji-Nogales, J., et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stanford L. Rev. 295, 300 (Nov. 2007).

⁸ American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders* (3rd ed. Washington, DC: American Psychiatric Association Press, 1980).

⁹ Figley C.R., *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview* 1, in Figley, C.R., ed., *Compassion Fatigue: Secondary Traumatic Stress Disorder in Those who Treat the Traumatized* (Brunner/Mazel, N.Y. 1995).

¹⁰ *Id.*

¹¹ *Id.*

¹² Keener, D.M., *Another Perspective on the Boston Immigration Court*, Immigration Daily, available at: <http://www.ilw.com/articles/2003,0819-keener.shtm> [last accessed 12/14/2007]

¹³ Maslach, C., Schaufeli, W.B., Leiter, M.P., *Job burnout*. 52 Ann.. Rev. Psych 397-422 (2001).

Professionals Who Interact with Trauma Victims

A significant literature exists on the effects of trauma victims' symptoms on professionals who work with them. Broad categories of secondarily traumatized workers have been delineated,¹⁴ and include: 1) staff of humanitarian aid and development organizations, health care workers, human rights workers and journalists, all of whom endure repeated or prolonged contact with traumatized individuals, and whose role is to provide material assistance or training, or to gather information; 2) first responders (police, firefighters, rescue and relief workers, emergency medical workers) who respond to individual or mass disasters; 3) mental health workers (therapists, counselors, psychiatrists) who hear about trauma experiences in great detail, feel personally connected with the sufferers, and are responsible for helping them to recover. Immigration Judges are included within the first of the three at-risk categories described above. In their roles as evaluators of evidence for the purpose of applying relevant aspects of the law, they are relentlessly exposed to a wide range of human cruelties and personal suffering (much of which is profoundly horrifying, whether real or fictitious).

Although STS and burnout have not been studied among Immigration Judges, specifically, they are likely susceptible to these conditions, based on investigations of other professionals who work with traumatized populations and do not leave work unscathed. For example, a study of humanitarian workers in Kazakhstan surveyed pre- and post-deployment found they used coping mechanisms that were less adaptive than anticipated, as alcohol and cigarette consumption was increased.¹⁵ Levin and Greisberg¹⁶ evaluated STS and burnout among attorneys, social service workers and therapists using the Secondary Trauma Questionnaire¹⁷ and items

assessing burnout.¹⁸ They found that while the three groups were of similar age and experience, and did not differ on other putative risk factors (history of childhood trauma, prior history of treatment for emotional problems), attorneys experienced more symptoms of secondary trauma and burnout compared with the other two groups. Attorneys also scored higher (more symptomatic) on the trauma subscales which measure symptoms of re-experiencing traumatic events, avoidance of traumatic reminders, and hyperarousal. In another study,¹⁹ 105 judges engaged in domestic relations/civil court work, juvenile cases and criminal court work were surveyed about symptoms of STS during workshops at a national conference. Of those responding, 63% of the judges reported experiencing one or more short-or long-term STS symptoms.

Trauma Among Asylum Seekers

Immigration Judges in particular are susceptible to STS and burnout because the refugees whose cases they adjudicate are often severely traumatized.^{20 21} One study of asylum seekers attending a community clinic found that 35% displayed symptoms of PTSD, while 32.5% exhibited symptoms of major depression.²² These symptoms can persist over time,²³ even a decade later.²⁴ In a four-country survey of refugees, despite variations in trauma types, conflict-related trauma was associated with PTSD among all populations sampled.²⁵

¹⁸ Figley C.R., *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview* at 1, in Figley, C.R., ed., *Compassion Fatigue: Secondary Traumatic Stress Disorder in Those who Treat the Traumatized* (Brunner/Mazel, N.Y. 1995).

¹⁹ Jaffe P.G., et al., *Vicarious Trauma In Judges: The Personal Challenge of Dispensing Justice*, 54 *Juvenile and Fam. Ct. J.* 1 (2003).

²⁰ Lears, L.O., and Abbott, J.S. *The Most Vulnerable Among Us*, 86 *Health Prog.* 22-5, 60 (No. 1 2005).

²¹ Buchwald, D., et al., *Prevalence of depressive symptoms among established Vietnamese refugees in the United States: detection in a primary care setting*, 8 *J. General. Intern. Med.* 76 (No. 2 1993).

²² Silove, D., et al., *Anxiety, depression and PTSD in asylum seekers: associations with pre-migration trauma and post-migration stressors*. 170 *British J. Psychiatry* 351 (No. 4 1997).

²³ Sack, W.H., et al., *A 6-year follow-up study of Cambodian refugee adolescents traumatized as children*, 32 *J Am Acad Child Adolesc. Psychiatry* 431 (No. 2 1993).

²⁴ Boehnlein, J.K., et al., *A ten-year treatment outcome study of traumatized Cambodian refugees*, 192 *J Nerv Ment Dis.* 658 (No. 10 2004):

²⁵ deJong, Joop, T.V.M., et al., *Lifetime Events & Posttraumatic Stress Disorder in 4 Postconflict Settings*, 286 *J. Am. Med. Assn.* 555 (No. 5 2001):

¹⁴ Ehrenreich, J.H., *Bibliography: Managing Stress in Humanitarian, Health Care, and Human Rights Workers* (2002). Available at: http://www.headington-institute.org/Portals/32/resources/AntaresLiteratureReview_revformat3-11-03_.pdf [last accessed December 14, 2007].

¹⁵ Britt, T.W., and Adler, A.B., *Stress & health during medical humanitarian assistance missions*. 1 *Mil. Med.* 164(4), 275-9 (Apr. 1999).

¹⁶ Levin A.P., and Greisberg S., *Vicarious Trauma in Attorneys*. 2nd Annual Pace Women's Justice Center Domestic Violence Think Tanks, 5/22/03. 24 *Pace L. Rev.* 245 (2003); available at: <http://www.giftfromwithin.org/html/vtrauma.html> [last accessed 12/14/2007].

¹⁷ Motta R.W., et al., *Initial Evaluation of the Secondary Trauma Questionnaire*, 85 *Psychological Rep.* 997-1002 (1999).

Multiple traumatic exposures are associated with greater severity of PTSD among refugee populations.²⁶ Furthermore, psychiatric co-morbidity has been linked to functional disabilities among refugees,²⁷ although psychopathology per se is not necessarily associated with an increase in asylum grant rates.²⁸

Given that asylum seekers may be severely traumatized, in this study we investigated whether Immigration Judges themselves suffer from secondary trauma and burnout.

METHODS

Subjects

After the University of California San Francisco Committee on Human Research approved the research protocol, all 212 currently practicing Immigration Judges nationwide were invited to participate in this survey.

Recruitment

In collaboration with the leadership of National Association of Immigration Judges (NAIJ), the recognized collective bargaining unit of all Immigration Judges in the United States, we contacted by email the entire membership of this organization and all non-member Immigration Judges with an invitation to participate in a study about stress and burnout. The total number of possible respondents was 212. Judges were initially emailed about the survey on June 22, 2007 and were sent reminder emails by NAIJ leadership on July 3rd and 12th. On July 17th, NAIJ leadership contacted union stewards and asked them to remind judges to complete the survey. The survey closed on July 20th, allowing four weeks and two days for respondents to participate.

The invitation email about the web-based survey contained a link that directed them to the survey website. The secure website was designed by the International Federation of Professional and Technical Engineers (IFPTE), NAIJ's parent union which has previously hosted and devised web-based surveys.

Once judges clicked on the link in the invitation email they were directed to the informed consent form, and were required to acknowledge that they understood the benefits and potential risks of the study. They were then directed to the actual study questions.

Survey Format

The first questions asked judges to provide a unique identifying code (comprised of their mother's maiden name and sum of last four digits of SSN) for the purpose of linking their responses with those of future surveys, while simultaneously protecting their anonymity. We decided that the benefit of an increased response rate, secondary to our rigorously ensuring anonymity, outweighed the small risk of participants other than the intended group of judges (e.g. anyone to whom they forward the link) completing the survey.

In the initial part of the survey, Immigration Judges were asked to provide basic demographic information (age and sex), and to answer a short series of questions about potential occupational risk factors for trauma and burnout, such as how long they have been Immigration Judges, number of judges in the court; staffing of the court; progress towards case completion goals;²⁹ detained vs. non-detained setting; proportion of asylum cases in their caseload; and proportion of cases with a hardship factor. The web-based survey included the following measures (see next section): Secondary Traumatic Stress Scale (STSC) and the Copenhagen Burnout Inventory (CBI). Finally, a free-response question asked about "anything else that would help explain the occupational challenges faced by Immigration Judges."

MEASURES

The Secondary Traumatic Stress Scale and the Copenhagen Burnout Inventory (CBI) were used to assess for the presence of STS and burnout respectively.

The STSC is a 17-item, self-administered instrument which can be completed in under ten minutes, designed to measure intrusion, avoidance and arousal symptoms associated with indirect exposure to traumatic events via one's professional relationships with traumatized people. Psychometric properties have

²⁶ Mollica, R.F., et al., *Dose-Effect Relationships of Trauma to Symptoms of Depression and Post-Traumatic Stress Disorder Among Cambodian Survivors of Mass Violence*, 173 *British J. Psych.* 482 (1998).

²⁷ Mollica, R.F., et al., *Disability Associated with Psychiatric Comorbidity and Health Status in Bosnian Refugees Living in Croatia*, 282 *J. Am. Med. Assn.* 433 (No. 5 1999):

²⁸ Silove, D., et al., *Torture, Mental Health Status, and the Outcomes of Refugee Applications Among Recently Arrived Asylum Seekers in Australia*, 2 *International J. Mig. Heal. Soc. Care* 1 (No. 1 2006).

²⁹ "Case completion goals" are claimed to be "aspirational" goals or time periods within which Immigration Judges are expected by the Office of the Chief Immigration Judge to complete the adjudication of a case, or request a "waiver" from the deadline for doing so.

been established.³⁰ Construct validity for the scale and subscales (Cronbach's alpha) ranged from .80 to .93. The measure also has good convergent and discriminant validity. Factorial validity was also assessed, with factor loading for individual items ranging from .58 to .79, each being statistically significant (alpha = 0.05) with t-values ranging from 10.13 to 15.68. R^2 values ranged from .33 to .63 for individual items, indicating that between 33% to 63% of the variance on individual items can be accounted for by the factor to which they are assigned.

The CBI is a self-administered, 19-item survey assessing frequency of symptoms with a five-point scale; it requires five to ten minutes to fill out, and has three subscales: personal burnout, work-related burnout, and client-related burnout.³¹ Chronbach's alphas for internal reliability are very high (.85-.87), and its predictive validity was good in this sample, showing strong associations between burnout at baseline and the follow-up variables of sick days, sleep problems, pain-killer use and intention to quit work.³²

Data Analysis

Survey data was compiled into an Excel spreadsheet and all but the free-response narrative data was analyzed descriptively with SAS Version 9.1.³³ Rates of STS and burnout tallied and a model of the contribution of demographic and occupational factors to the presence of secondary traumatic stress and burnout was estimated and tested. Narrative responses were sufficiently extensive (59 responses comprising about 6,000 words) that they will be analyzed and reported on separately using qualitative analysis methods.

RESULTS

Demographic Characteristics

We sent the survey questionnaire to 212 Immigration Judges (144 men and 68 women) in the USA. Ninety six (n=96) of the 212 potential participants responded and completed the survey questionnaire. The participant response rate was

45.3%. The mean age of the responding Immigration Judges was 53 years (SD=6.65; range 35-72). The study sample was 43% female and 57% male, a small over-representation of women, who comprise 32% of the potential participants. The mean years of experience in the Immigration Judges was 10 (SD=5.5; range 1 to 25 years). Thirty five percent worked in settings that were fully staffed, while 65% worked in settings with vacancies. Twenty-one percent worked primarily in detention centers while and 79% worked in non-detained settings. For judicial caseloads, 36% of Immigration Judges had 51-75% asylum cases, 31% had 26-50%, 17% had 76-100% and 14% had 0-25% asylum cases. This demographic data and occupational variables are summarized in Table 1, (**Appendix A** *infra*).

Burnout Among Judges.

The burnout scale assigns values between 0 to 100, spaced by 25 points, to each of the 5 possible responses, such that "Always" or to a "Very High Degree" equaled 100, "Almost Always or "To a High Degree" equaled 75, and so on. Male judges' total burnout mean was 44.9, whereas for female judges it was 59.9, a statistically significant difference ($p > .0003$). As reviewed in greater detail in the Discussion section (see *Comparison with Other Professionals*), Immigration Judges report burnout scores that are higher than any among all other professionals whom this instrument has assessed, including those who work in hospitals and prison systems!

Table 2 (**Appendix B** *infra*) shows the distribution of responses, along with means and standard deviations, for each of the nineteen burnout questions on the CBI. As can be seen, judges report substantial burnout across all three subscales (personal burnout, work-related burnout, and client-related burnout). Overall subscale means were 55.9 (personal burnout), 55.6 (work-related burnout), and 42.6 (client-related burnout). An important finding of this study is the extent to which female judges are significantly more burned out than the male judges. For female versus male judges, means for the subscales were 65.4 versus 47.3 for personal burnout ($p < .0001$), 66.0 versus 47.9 for work-related burnout ($p < .0001$), and 47.4 versus 39.1 for client-related burnout ($p = .11$). Thus, on the personal and work-related burnout subscales, scores between men and women were significantly different, but not for the scores on client-related burnout which only tended towards significance.

A review of the first column of Table 2 helps to fully reveal the extent to which women judges are more burned out than men. For example, while only 7% of male judges report that they "always" feel tired, 24% of female judges do, over three times as many.

³⁰ Bride B.E., et al., *Development and Validation of the Secondary Traumatic Stress Scale*, 14 Research on Social Work Practice 27 (Jan. 2004).

³¹ Kristensen T.S., et al., *The Copenhagen Burnout Inventory: A New Tool for the Assessment of Burnout*, 19 Work and Stress 192 (No. 3 2005).

³² *Id.*

³³ SAS Institute Inc., 2007. 100 SAS Campus Drive, Cary, NC 27513-2414. www.sas.com.USA

While 2% of male judges are "always" physically exhausted, 15% of female judges are, a 7.5-fold difference. Emotional exhaustion is reported as "Always" occurring among 4% of male judges but 20% of female judges, a five-fold difference.

Stress Among Judges

The distribution of responses on the STSC appear in Table 3 (**Appendix C** *infra*). Overall means for the subscales of intrusion, avoidance and arousal symptoms were 2.0, 2.3, and 2.4 respectively, suggesting mild to modest suffering. Female judges reported more secondary traumatic stress than male judges, the survey means being 2.50 vs. 1.84 respectively, a statistically significant difference ($p > .0005$). For female vs. male judges, means for the subscales were 2.4 vs. 1.8 for intrusion ($p < .0006$), 2.8 versus 2.1 for avoidance ($p = .0040$) and 2.0 versus 2.2 for arousal symptoms ($p < .0004$). Differences between men and women on each of these subscales was also statistically significant.

Inspection of Table 3 shows the extent to which women's scores differ from men's scores. For example, 11% of men responded that they felt numb "Often" or "Very Often," compared to 34% of women, a three-fold difference. Feeling discouraged about the future was reported "Often" or "Very Often" by men 16% of the time, compared to 34% of the time by women, a more than two-fold difference. Trouble concentrating was reported "Often" or "Very Often" by 4% of men but by 17% of women. For feeling "easily annoyed," the percentages were 13% for men, 29% for women. Finally, for "expecting something bad to happen, the percentages were 9% for men, 32% for women. Clearly female Immigration Judges are substantially more stressed than their male counterparts.

Exploratory Analysis of Gender Differences

Because we found significant differences in burnout and stress among male versus female judges, we compared demographic and occupational variables by gender. (For example, are women more burned out because they are working in detention centers to a greater extent, or because they are older?) No differences in these variables were found except that female judges were 4.5 years younger than male judges, on average. However, there was no statistically significant interaction between age and burnout or stress scores, e.g. younger judges do not report more or less burnout than older judges, regardless of gender.

DISCUSSION

Survey Considerations

The current survey is a cross-section of burnout and stress among Immigration Judges in the USA. The

preliminary results will generate new ideas to design a cohort study to investigate the burnout and stress among Immigration Judges over a period of time. This study is the first, to our knowledge, to investigate burnout and stress among Immigration Judges in USA. The study was conducted using standardized research instruments and a web-based survey. Web-based surveys have a number of benefits compare to conventional paper or face-to-face interviews. They are feasible to conduct, easier to recruit large numbers of participants, and can be completed rapidly.³⁴

Our response rate is acceptable, though lower than that (77%) of a contemporaneous survey of Immigration Judges regarding asylum adjudications conducted by the Government Accountability Office from May 30, 2007 to July 29, 2007.³⁵ The proximity in time of the two surveys may have lowered our response rate due to participation fatigue. Anecdotally, one judge reported to the NAIJ leadership a concern about anonymity, despite our efforts to ensure privacy. Another said that not wanting to report his/her mother's maiden name (although was happy to use his/her own name) led to response refusal. A third was concerned that the data might lead to a call for term limits on immigration judge appointments.

Response bias is always a factor to consider and in this survey we have no way of knowing how those who responded were different from those who did not. It is possible that judges who responded were more burned out or traumatized than their non-responding colleagues and therefore were eager to participate in a study on this topic. If this were the case, our study would be higher than burnout among all judges. On the other hand, it is possible that judges who did not participate were too burned out to find the time or energy to respond, and that those who did respond were, in fact, less burned out than their non-responding counterparts. Both situations could be true in some cases. It is not clear that any of the anecdotally reported reasons for non-response were associated with more or less burnout than what was reported by survey participants. However, we did hear anecdotally that, had the definition of client-related burnout been broadened to include all individuals in proceeding before the court, rather than just asylum seekers, several judges would have registered significantly higher levels of stress because their inability to favorably exercise discretion in cases they

³⁴ Wyatt J, *When To Use Web-Based Surveys*, 7 J. Am. Med. Inform. Assoc. 426 (No. 4 2000).

³⁵ Maria Mercado, Government Accountability Office, personal communication, November 8, 2007.

believed were deserving but for which no remedy exists in the law is a considerable source of stress.

Extent of Symptoms Among Judges

We found significant amounts of stress and burnout among U.S. Immigration Judges. In particular, they reported high rates of emotional exhaustion, frustration with work, and feeling "burnt out." A typical comment, as extracted from the narrative data, perhaps captures the essence of the numerical data: "Even if the asylum application is fabricated, one nonetheless hears a case detailed with examples of horrific human behavior. We have no opportunity to decompress and the agency offers no means of addressing the undeniable effect of dealing with these issues day after day...Seldom does one hear a note of encouragement or appreciation from the agency as to what we do." Symptoms of secondary traumatic stress appeared less pronounced, although approximately half the sample wondered how long they would be able to continue working with asylum seekers and difficulty sleeping was reported "often" or "very often" by about 25% of the sample. Another comment speaks to the impact of repeated exposures to trauma: "As an Immigration Judge, I have to hear the worst of the worst that has ever happened to any human being, particularly in asylum cases. I have to listen to the trauma suffered by individuals. I have to hear it on a daily basis. It's emotionally draining and painful to listen to such horrors day in and day out. I strive to maintain my equilibrium but it's hard." The entirety of the narrative data, and its association with age, sex and other occupational risk factors, will be reported elsewhere.

The STSC is designed to elicit symptoms of stress (nightmares, flashbacks, unwanted memories, avoidance of reminders of trauma, emotional numbness, jitters, etc), which occur as part of traumatic disorders, and that can arise among those working with traumatized clients, in this case asylum seekers. However, as a comparison of the response distributions in tables two and three makes clear, judges reported suffering from burnout symptoms more than from trauma-induced stress. Consistent with the overall finding of greater burnout compared to stress is that, on the CBI subscales, burnout specifically related to clients is actually lower than personal burnout or work-related burnout. These findings suggest that judges are burned out not so much as a result of the asylum seekers whose stories they hear, as we had postulated would be the case, but because of other job-related stresses that were not specifically inquired about in this study. Nevertheless, although the narrative data has yet to be systematically analyzed, several references to long hours, insufficient time to review cases, insufficient clerical support, and perceived lack of appreciation by the agency suggest

that the causes of burnout are readily apparent to members of our cohort.

Gender Differences

The finding that female judges are more burned out than male judges is noteworthy. We were unable to explain this difference based upon the variables we had assessed. It is possible that female judges, who are more likely to come from human rights or private practice backgrounds as opposed to an enforcement background, have greater concerns for the physical and emotional wellbeing of asylum seekers than do men and would be more susceptible to trauma, as appears to be the case on the STSC. However, arguing against this possibility is that male and female judges did not report statistically significant differences on the client-burnout subscale, the one subscale that specifically addresses the difficulty of dealing with traumatized individuals. Another possibility to explain overall gender differences is that women are either more aware of or more willing to report subjective feelings of distress than are men, a phenomenon observed in the mental health professions. Another factor related to burnout and stress may be that women have been shown to make moral decisions that prioritize relationships over rules, whereas men make these decisions the opposite way.³⁶ Perhaps this concern with the impact of their decisions on human relationships is more stressful for women judges than is adhering to rules for male judges. Finally, it may also be that women are more burned out because, as has traditionally been the case, highly successful career women experience more demands at home than may their male counterparts who can focus in a less encumbered way on their careers.

Comparison with Other Professionals

Although burnout and stress are inherently debilitating for those who suffer from them, the implications for those whose lives depend on sufferers are also significant. This study raises the question about how burned out are Immigration Judges compared to other at-risk professionals. Another study of burnout using the same survey instrument, the CBI elicited scores of personal, work, and client-related burnout for several professions. For example, scores for prison wardens, midwives, home help aids, social workers, and hospital doctors all ranged from 26.4 up to 44.7 on the three subscales.³⁷ As can be seen,

³⁶ Gilligan, C., *In a Different Voice: Psychological Theory and Women's Development* (Harv. U. Press 1982 Cambridge, MA).

³⁷ Kristensen T.S., *et al.*, *The Copenhagen Burnout Inventory: A New Tool for the Assessment of Burnout*, 19 Work and Stress 192 (No. 3 2005).

Immigration Judges, especially female judges, are more burned out than even hospital-based doctors, who care for the sickest patients, and they are more burned out than prison wardens, who deal with the most deviant members of society.

Potential Impact on Asylum Seekers

What is the impact of burnout or stress among Immigration Judges on asylum seekers? We do not currently know whether rates of burnout are associated with asylum grant or denial rates. Either association is possible or they could be unrelated. Certainly if judges are too burned out to be empathic, they may be quick to cynically rate an applicant's credibility as less than it could be. Alternatively, burnout and exhaustion may make judges too tired to find fault with applicant's cases where fault, in fact, lies. Among the predictive variables among judges for grant rates, there still remains variance to be explained (A Schoenholtz, personal communication, August 7, 2007). A follow-up study should address whether burnout is, in fact, associated with grants or denials of asylum. However, in the absence of associations of stress with grant or denial rates, clearly court proceedings would be more efficient and stress free for the parties involved if burnout and stress among judges were reduced.

Further, at least one of the short term symptoms of vicarious trauma or stress has been identified as "intolerance" of others.³⁸ A handful of Immigration Judges have been identified in circuit decisions as displaying this demeanor in court towards applicants. While secondary traumatic stress symptoms appeared less pronounced in the Immigration Judge corps, this condition could explain these problems with a few judges.

RECOMMENDATIONS

The prevalence of burnout and stress experienced by Immigration Judges as documented by this study must be addressed. While the survey did not specifically ask about coping mechanisms, many judges who responded took advantage of a neutrally worded, open-ended question calling for comments about the occupational challenges of serving as immigration judges and shared very personal and painful experiences of job-related burnout and stress. These comments, which will be analyzed more completely in a forthcoming study, do, even at this point, provide a starting point for recommendations.

RECOMMENDATION #1: DECREASED CASELOADS.

Fewer cases would allow judges time to "decompress" or recover between tales of horror, as well as time to research the law and educate themselves on country conditions for the countries from which individuals seek asylum. One judge who wrote that "work-related stress contributed significantly to a major stroke" that he/she had suffered nevertheless returned from medical leave to find an even bigger caseload waiting! The judge reported that he/she is now receiving psychotherapy to deal with the matter. But individual psychotherapy to deal with the stress should not be the first approach. The pandemic of comments from judges about large caseloads (and legal and management-imposed time deadlines for completing those cases) as the cause for their frustration and angst necessitates structural changes at a systemwide level.

RECOMMENDATION #2: INCREASE THE NUMBER OF IMMIGRATION JUDGES.

Decreased caseloads can best be accomplished by increasing the number of Immigration Judges. While the onslaught of asylum cases will continue unabated, practically speaking, the most effective way to decrease caseloads without causing further backlogs of cases is to increase the number of immigration judges.

RECOMMENDATION #3: INCREASE SUPPORT STAFF

Further, many judges noted the need for increased support staff -- especially law clerks -- to help shoulder the load. Judges must divert significant amounts of time to clerical tasks in support of the caseloads that could be handled by ancillary support staff. As one judge wrote succinctly, "The exacerbating factor is the lack of judges and support staff to handle the volume of cases." It should be noted that increased staffing was also one of the recommendations in the study finding disparities in asylum grant rates, as well as a part of the 22-point plan by the Attorney General³⁹ to address concerns about the Immigration Court -- yet the number of Immigration Judges has decreased since then. Increase in support staff would greatly help to alleviate the stress on already overwhelmed Immigration Judges.

RECOMMENDATION #4: REEXAMINE CASE COMPLETION GOALS.

As one judge wrote, "We need more time for case preparation, I take work home every night. I'm hanging it up in about a year." Another wrote, "An

³⁸ See Jaffe P.G., et al., *Vicarious Trauma In Judges: The Personal Challenge of Dispensing Justice*, 54 *Juvenile and Fam. Ct. J.* 1, 4 (2003).

³⁹ August 9, 2006, Attorney General Alberto R. Gonzalez Outlines Reforms for the Immigration Court and Board of Immigration Appeals, www.usdoj.gov/opa/pr/2006/August/06_ag_520.html [last accessed 12/14/2007].

enormous stressor to me is the constant drumbeat of case completion goals and the lack of sufficient time to be really prepared for the cases.” It should be noted that a few years ago the Executive Office of Immigration Review developed “case completion goals” – “aspirational” time frames within which cases should be completed – to show responsibility for completing cases in a timely fashion.⁴⁰ However, these “goals” have clearly contributed to stress on the judges. Many Judges feel these goals are “arbitrarily imposed,” and that as a consequence of these goals they feel that they are working on “a factory assembly line” or they have the “feeling of being part of a machine with little control over the situation.” Thus, case completion goals should be re-examined.

RECOMMENDATION #5: DEVELOP SUPPORT NETWORK FOR IMMIGRATION JUDGES.

Within the mental health arena, where workloads are also high and cases can be emotionally draining, practitioners often discuss cases with colleagues (leaving out identifying details in order to preserve patients' rights of confidentiality). Even solo practitioners who may not be affiliated with a clinic or academic center often get together for “peer supervision groups” which serve the same function: sharing ideas and letting off steam. In some cases, clinicians even pay for the occasional consultation with expert colleagues for particularly challenging cases. While the explicit purpose of all these encounters is to exchange information that is useful in the care of patients, they also provide an important setting in which colleagues can commiserate with each other and support each other's efforts. Most clinicians are more than happy to make time for these meetings outside the regular workday. The Department of Justice should establish a network of trained group facilitators and provide Immigration Judges the opportunity to connect with each other as valued professionals and also as human beings attempting to grapple with the daily exposure to the most abject human cruelty and misery.

About the Authors: Stuart L. Lustig, M.D., M.P.H., University of California San Francisco, Department of Psychiatry; **Kevin Delucchi, Ph.D.,** University of California San Francisco, Department of Psychiatry; **Lakshika Tennakoon, M. Sc.,** University of California San Francisco, Department of Psychiatry; **Brent Kaul,** International Federation of Professional and Technical Engineers; **Hon. Dana Leigh Marks, J.D.,** National Association of

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ATTENTION READERS

Any reader interested in sharing information of interest to the immigration bar, including notices of upcoming seminars, newsworthy events, “war stories,” copies of advisory opinions, or relevant correspondence from the DHS, DOJ, DOL, or DOS should direct this information to Daniel M. Kowalski, 111 Congress, Fourth Floor, Austin, TX 78701; fax: 512-692-2621, email: dan@cenizo.com, or Ellen Flynn, Practice Area Editor, Matthew Bender/LexisNexis, 744 Broad Street, Newark, NJ 07102, fax: (973) 820-2626, e-mail: ellen.m.flynn@lexisnexis.com.

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⁴⁰ See, e.g., AILA-EOIR Liaison Agenda Questions and Answers for March 22, 2006, www.usdoj.gov/eoir/statspub/eoiraila32206.pdf [last accessed 12/14/2007].

Table 1: Socio-demographic profile of the study population (n=96)

		n	%
Gender	Male	53	55.3
	Female	43	44.7
Mean age of the judge: 53 years (SD = 6.7)*		96	100.0
Mean years of experience: 10 years (SD = 5.5)*		95	98.9
Staffing	Fully staffed	34	35.4
	Has Vacancies	62	64.5
Case completion Goals	Yes	56	58.3
	No	40	41.6
Setting	Detained	20	20.8
	Non-detained	76	79.1
Proportion of asylum cases			
	0-25%	14	14.5
	26-50	30	31.2
	51-75%	35	36.4
	76-100%	17	17.7
Proportion of hardship factor			
	0-25%	18	18.7
	26-50	48	50.0
	51-75%	26	27.0
	76-100%	4	4.1

*SD= Standard Deviation

Table 2. Copenhagen Burnout Inventory (CBI). Scales, items, and response frequencies.

Burnout questions	Always ^a or To a very high degree ^b (Scoring 100) %		Often or To a high degree ^b (Scoring 75) %		Sometimes ^a or Somewhat ^b (Scoring 50) %		Seldom or To a low degree ^b (Scoring 25) %		Never ^a almost never or To a very low degree ^b (Scoring 0) %		Mean scores for gender distribution	
	M	F	M	F	M	F	M	F	M	F	M	F
Personal burnout												
How often do you feel tired? ^a	7	24	47	63	31	7	14	5	0	0	61.8	76.8
How often you are physically exhausted? ^a	2	15	31	51	38	19	22	15	7	0	50.0	66.5
How often you are emotionally exhausted? ^a	4	20	27	49	42	24	25	7	2	0	51.4	70.1
How often do you think “I can’t take anymore”? ^a	0	7	14	29	31	36	25	15	27	12	33.2	51.2
How often do you feel worn out? ^a	5	17	33	58	31	17	25	7	5	0	51.8	71.3
How often do you feel weak and susceptible to illness? ^a	0	10	13	24	33	51.2	40	10	14	5	35.9	56.1
Total average personal burnout score for all respondents											55.0	
Work-related burnout												
Do you feel worn out at the end of the working day? ^a	7	44	38	46	38	2	14	7	2	0	58.6	81.7
Are you exhausted in the morning at the thought of another day at work? ^a	5	15	9	29	29	34	36	15	20	7	35.9	57.3
Do you feel that every working hour is tiring for you? ^a	2	10	14	27	29	39	36	17	18	7	36.3	53.7
Do you have enough energy for family and friends during leisure time (inverse scoring)?	22	0	42	19	24	46	11	29	2	5	32.2	54.9
Is your work emotionally exhausting? ^b	16	41	34	39	36	17	11	2	2	0	63.2	79.9
Does your work frustrate you? ^b	14	27	16	27	47	34	14	10	7	2	54.1	66.5

Table 3. Secondary Traumatic Stress Scale (STSS). Scales, items and response frequencies.

Secondary Traumatic Stress Scale questions	1 Never %		2 Rarely %		3 Occasionally %		4 Often %		5 Very often %		Mean score	
	M	F	M	F	M	F	M	F	M	F	M	F
Intrusion												
My heart starts pounding when I think about my work.	58	29	27	41	9	17	0	5	5	7	1.7	2.2
It seems as if I am reliving the trauma(s) experienced by the asylum applicants.	44	22	40	41	14	24	2	12	0-	0	1.8	2.3
Reminders of my work with asylum applicants upset me.	38	7	33	29	16	41	11	15	2	7	2.1	2.9
I think about my work with asylum applicants when I don't intend to.	24	5	29	35	40	32	5	19	2	7	2.3	2.9
I have disturbing dreams about asylum applicants.	74	51	18	27	4	22	2	0	2	0	1.4	1.7
Total average intrusion score for all respondents											2.0	
Avoidance												
I feel emotionally numb.	29	17	31	22	29	27	7	27	4	7	2.3	2.9
I feel discouraged about the future.	27	15	40	29	16	27	7	22	9	7	2.3	2.8
I have little interest in being around others.	34	15	33	44	20	22	9	17	4	2	2.2	2.5
I am less active than usual.	29	2	34	22	20	46	9	19	7	10	2.3	3.1
I avoid people, places or things that remind me of my work with asylum applicants.	56	27	22	32	9	15	9	17	4	10	1.8	2.5
I want to avoid working with some asylum applicants.	33	24	33	24	20	27	11	12	4	12	2.2	2.6
I notice gaps in memory about asylum applicants' cases.	45	22	31	36	14	29	4	12	5	0	1.9	2.3
Total average avoidance score for all participants											2.3	

Arousal												
I have trouble sleeping.	22	7	36	29	22	29	16	27	4	7	2.4	3.0
I feel jumpy.	38	15	40	41	14	29	4	10	4	5	2.0	2.5
I have trouble concentrating.	24	7	49	39	24	36	0	15	4	2	2.1	2.7
I am easily annoyed.	16	5	40	19	31	46	9	27	4	2	2.4	3.0
I expect something bad to happen.	42	12	33	36	16	19	4	17	5	15	2.0	2.9
Total average arousal score for all participants											2.4	