

INSIDE THE JUDGES' CHAMBERS: NARRATIVE RESPONSES FROM THE NATIONAL ASSOCIATION OF IMMIGRATION JUDGES STRESS AND BURNOUT SURVEY

STUART L. LUSTIG, MD, MPH;* NIRANJAN KARNIK, M.D., PHD.::*
KEVIN DELUCCHI, PHD.::* LAKSHIKA TENNAKON, MSc.::*
BRENT KAUL;** HON. DANA LEIGH MARKS JD;***
HON. DENISE SLAVIN JD.***

ABSTRACT

Immigration Judges (IJs), whose enormous caseloads consist of one horrific story of human suffering after another, face significant risks of stress and burnout – conditions that make adjudicating cases more challenging. Among this population we recently quantified stress and burnout using objective survey measures that showed that IJs suffer from significant symptoms of secondary traumatic stress and more burnout than has been reported by groups like prison wardens or physicians in busy hospitals. In this study, we analyzed data from a free response item asking about the challenges of IJs' work, which generated narrative responses from 59 judges. We then used qualitative data analytic methods to code themes in the narratives, which were then clustered into five metacodes: “workload/time demands,” “infrastructure problems,” “challenges to esteem,” “psychological/health issues” and “fraud.” The narratives provide a richly detailed and concerning perspective on the working conditions of IJs: Women IJs were more likely than men to volunteer concerns categorized as “psychological/health issues.” Higher stress and burnout scores were associated with “psychological/health issues” and “fraud,” and higher burnout scores were also associated with “challenges to esteem.” After examining our findings we discuss recommendations for improving IJ work conditions to address these critical issues.

BACKGROUND

Perhaps the most disturbing stories of human suffering anywhere in the

* University of California San Francisco, Department of Psychiatry. ACKNOWLEDGMENT: This study was funded by a grant from the University of California San Francisco Academic Senate to Dr. Lustig. © 2009, Stuart L. Lustig, Niranjana Karnik, Kevin Delucchi, Lakshika Tennakoon, Brent Kaul, Dana Leigh Marks, and Denise Slavin JD.

** International Federation of Professional and Technical Engineers

*** National Association of Immigration Judges

legal system arise in asylum cases. Immigration Judges (IJs), to whom the most complex of asylum cases are referred, hear some of the most repugnant of these stories. IJs are charged with discerning which asylum applicants qualify for asylum – a form of legal relief that 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 The responsibility to make this determination correctly is significant. 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 runs a significant risk of persecution upon return to his or her country.³

Given the gravity of the work IJs perform, it is not surprising that some recent appellate court decisions critical of individual IJs have received a great deal of press, as has research showing a disparity in asylum grant rates among IJs.⁴ However, it is not surprising to hear of instances of judicial intemperance or a lack of uniformity in how cases are handled, given the stress under which IJs are working. While articles have wildly speculated as to the causes of intemperance or lack of uniformity, this is the first study that has gone to the source and documented the conditions under which IJs work as a putative factor.

Secondary Traumatic Stress and Burnout

The presence of post-traumatic stress disorder (PTSD) among asylum applicants has been recently summarized.⁵ Ever since PTSD’s inclusion in the 1980 Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III),⁶ mental health clinicians have been keenly interested in the occupational effects among those who work with trauma victims, such as IJs. In addition to “burnout,” terms like “compassion fatigue”⁷ and “second-

1. DEBORAH E. ANKER, *LAW OF ASYLUM IN THE UNITED STATES* (3rd ed. 1999).

2. *See, e.g.*, *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); *Jordan v. De George*, 341 U.S. 223 (1951); *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); *Lehmann v. U.S. ex rel. Carson*, 353 U.S. 685, 691 (Black, J., concurring).

3. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Padilla-Agustin v. INS*, 21 F.3d 970, 978 (9th Cir. 1994).

4. Jaya Ramji-Nogales, Andrew I. Shoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 *STAN. L. REV.* 295 (2007).

5. Stuart L. Lustig, *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 *HASTINGS INT'L & COMP. L. REV.* 725 (2008).

6. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (American Psychiatric Association Press 3d ed. 1980).

7. Charles R. Figley, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in *COMPASSION FATIGUE: COPING WITH TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED* 1-20 (Charles R. Figley ed., Brunner/Mazel 1995).

ary traumatic stress” (STS)⁸ have been coined. STS, also called the “cost of caring,”⁹ includes symptoms similar to the PTSD symptoms that afflict trauma victims themselves. The overwhelming caseloads and long hours worked without overtime¹⁰ also put IJs at risk for burnout, which includes a decreased sense of personal and/or professional accomplishment,¹¹ emotional exhaustion, and depersonalization (e.g. distancing oneself from the job, cynicism and loss of compassion) all of which can potentially affect the outcome for applicants whose fates rest in judges’ hands.

Based on extensive research about the effects of trauma victims’ symptoms on professionals who work with them,^{12,13,14} including a study of judges engaged in domestic relations and civil court work in which 63% of respondents reported one or more symptoms of traumatic stress,¹⁵ we hypothesized that IJs, by virtue of the traumatic stories to which they are subjected on an ongoing basis, were at risk for secondary traumatic stress and burnout. As we recently reported¹⁶ and briefly summarize here, in June 2007 we conducted a web-based survey of stress and burnout among IJs using two survey measures, the Secondary Traumatic Stress Scale (STSS)¹⁷ and the Copenhagen Burnout Inventory (CBI).¹⁸ A total of 96 IJs (45.3%) responded to the survey. IJs indicated that they experienced significant symptoms of secondary traumatic stress on the STSS, scoring means of 2.0, 2.3, and 2.4 out of 5 on subscales for intrusion, avoidance and arousal symptoms respectively. Overall, female judges were more symptomatic than their male counterparts, with women scoring 2.50 on all scales combined, compared to a male mean of 1.84. This finding was consistent with the study of judges doing domestic relations work, in which 73% of female judges reported symptoms compared to 54% of their male counterparts.¹⁹ Women were also more symptomatic than men on each of the three subscales.

8. *Id.*

9. *Id.*

10. Dana Marks Keener, *Another Perspective on the Boston Immigration Court*, IMMIGRATION DAILY (Aug. 19, 2003), available at <http://www.ilw.com/articles/2003,0819-keener.shtm>.

11. Christina Maslach, Wilmar B. Schaufeli & Michael P. Leiter, *Job Burnout*, 52 ANN. REV. PSYCHOL. 397, 397-422 (2001).

12. JOHN H. EHRENREICH, 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.

13. Thomas W. Britt & Amy B. Adler, *Stress and Health During Medical Humanitarian Assistance Missions*, 164 MILITARY MED 275, 275-9 (1999).

14. Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245 (2003), available at <http://www.giftfromwithin.org/html/vtrauma.html>.

15. Peter G. Jaffe, Claire V. Crooks, Billie Lee Dunford-Jackson & Michael Town, *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. & FAM. CT. J. 1, 4 (Fall 2003).

16. Stuart L. Lustig et al., *Burnout and Stress Among United States Immigration Judges*, 13 BENDER'S IMMIGR. BULL. 2 (2008).

17. Brian E. Bride et al., *Development and Validation of the Secondary Traumatic Stress Scale*, 14 RES. SOC. WORK PRAC. 27 (2004).

18. Tage S. Christensen et al., *The Copenhagen Burnout Inventory: A New Tool for the Assessment of Burnout*, 19 WORK & STRESS 192 (2005).

19. Jaffe, *supra* note 15, at 4.

Judges reported more burnout than any other group of professionals to whom the CBI had been administered, including prison wardens and physicians in busy hospitals. Female judges were also more burned out than male judges. This significant sex difference was true for burnout as a composite score and on the contributing subscales of work-related burnout and personal burnout, whereas the difference on client-related burnout only trended towards significance. Sex differences on stress and burnout were not explained by variations between men and women on other demographic variables or working conditions.

In the web-based survey, we also asked judges a single open-ended question: “Please let us know anything else that would help explain the occupational challenges faced by immigration judges.” This single question generated about 6,000 words of narrative from fifty-nine of the ninety-six survey participants. Because we anticipated that their detailed comments would provide a richer understanding of their experiences than the quantitative scores on stress and burnout rating scales, analysis of this narrative data is the focus of this report. We also hypothesized that gender variations might exist in the thematic content of the narrative that would help elucidate the differences in stress and burnout detected by the survey measures.

METHODS

The survey methodology has been described previously²⁰ and is briefly reviewed here:

Subjects

After the University of California San Francisco Committee on Human Research approved the research protocol, all non-supervisory IJs 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 IJs in the United States—in June 2007 we contacted by email the entire membership of this organization and non-member Immigration Judges, comprising 212 possible respondents, with an invitation to participate in a web-based study about stress and burnout. After four reminder emails about the survey, the survey closed thirty days after the initial invitation.

The email invitation contained a link that directed IJs to the secure survey website, designed by the International Federation of Professional and Technical Engineers (IFPTE), NAIJ’s parent union that has previously hosted and

20. Lustig, *supra* note 16.

devised web-based surveys. Once judges clicked on the link 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 question asked judges to provide a unique identifying code for the purpose of linking their responses with those of future surveys while simultaneously protecting their anonymity.

IJs provided basic demographic information (age and sex), and answered a short series of questions about potential occupational risk factors for trauma and burnout, for example: how long they have been IJs, number of judges in the court, staffing of the court, progress towards case completion goals,²¹ 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 Secondary Traumatic Stress Scale (STSS) and the Copenhagen Burnout Inventory (CBI). The STSS asks about well-known trauma symptoms, specifically intrusion (e.g. nightmares, flashbacks, unwanted memories), avoidance (of people, places and reminders of trauma) and arousal (e.g. hyper-vigilance), and quantifies their frequency on a five-point scale ranging from one (“Never”) to five (“Very Often”). The CBI groups the questions into categories of work-related burnout, personal burnout, and client-related burnout (in this case, related to asylum seekers), and assigns values between 0 to 100, spaced by 25 points, to each of the 5 possible responses, so that “Always” or to a “Very High Degree” equaled 100, “Almost Always or “To a High Degree” equaled 75, and so on. Finally, we included the free response question mentioned above.

Data Analysis

Survey data was compiled into an Excel spreadsheet and all but the free-response narrative data was analyzed descriptively with SAS Version 9.1.²² The narratives (fifty-nine responses comprising about six thousand

21. See Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (codified as amended in scattered sections of 5 U.S.C. and 31 U.S.C.). In accord with the Government Performance and Results Act of 1993, Pub. L. 103-62, 107 Stat. 285 (1993), a strategic plan was developed to eliminate backlogs in the Immigration Courts by the end of Fiscal Year 2008. Ostensibly to comply with this mandate, case completion goals were established to meet the commitment that all cases pending on the docket for more than one year would be completed. These goals were to be “aspirational” and were developed based on the assumption that additional resources would be forthcoming. These resources did not materialize. However, the close scrutiny to compliance that these goals have received from the Office of the Chief Immigration Judge, and the need for an express waiver when they are not met, have caused many to question whether they are truly guidelines or goals rather than strict deadlines.

22. SAS Version 9.1 (2007) is produced by SAS Institute Inc. For more information about the software package, go to www.sas.com.

words) obtained from the survey were transcribed and evaluated using the constant-comparative method.^{23,24,25} Briefly, this entailed having two independent raters (SL and LT) independently read and code the themes present in the narratives. The raters compared their codes, and combined similar codes to develop a list of codes for the entire dataset. When there was disagreement, the raters discussed these differences in an attempt to find consensus. A third rater (NK) was available to resolve questions about combinations of codes or disagreements about labels of codes for narrative content. The codes, or themes, were grouped by the raters under metacodes that arose *de novo* from the subthemes. Five metacodes arose *de novo* from the themes. Frequencies of these metacodes were computed and the tally of results presented as frequencies in this paper.

Table 1. Metacodes and Subthemes derived from Immigration Judges' narrative responses

<i>Metacodes (Number of respondents in whose narratives a subtheme of the metacode appears)</i>	<i>Sub-themes mentioned by 3 or more judges</i>
1. Work load-time demands (35)	Work volume; Complexity of work; Oral decision; Pressure; Case completion goals; Time constraints; Mentally ill respondents
2. Infrastructure problems (30)	Lack of resources; Institutional failings; Bad lawyers; Unfair system; Number of judges; Incompetent staff; Lack of support; Asylum clock
3. Psychological/health issues (27)	Personal life affected; Emotionally draining; Psychological problems; Dissatisfaction; Responsibility; Inhumanity
4. Challenges to esteem (24)	Not understood; Lack of respect; Criticism; Scrutiny; No control
5. Fraud (12)	Fraud*

*This single subtheme did not fit clearly into other metacodes, and is therefore a separate metacode.

23. BARNEY G. GLASER & ANSELM L. STRAUSS, THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH (Aldine 1977).

24. ANSELM L. STRAUSS & JULIE CORBIN, BASICS OF QUALITATIVE RESEARCH: GROUNDED THEORY PROCEDURES AND TECHNIQUES (1990).

25. See generally THE SAGE HANDBOOK OF QUALITATIVE RESEARCH (Norman K. Denzin & Yvonna S. Lincoln eds., 3d ed. 2005) (describing the constant-comparative method).

RESULTS

As summarized in our previous study, ninety-six of the 212 eligible survey participants (45.3%) completed the stress and burnout questionnaires. The mean age of the responding IJs was fifty-three years ($SD=6.65$; range 35-72). The study sample was 43% female and 57% male, a small over-representation of women, who comprised 32% of the potential participants. The mean years of experience in the IJs was ten ($SD=5.5$; range one to twenty-five 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 79% worked in non-detained settings. For judicial caseloads, 36% of IJs had 51-75% asylum cases, 31% had 26-50%, 17% had 76-100% and 14% had 0-25% asylum cases.

Of ninety-six respondents, fifty-nine, or 61.4%, provided narrative comments. The sub-themes were grouped under the following five metacodes: "workload/time demands," "infrastructure problems," "challenges to esteem," "psychological/health issues" and "fraud." Frequencies for the associated metacodes are shown in Table One, along with the sub-themes of which they are comprised. Table One includes sub-themes assigned by coders to at least three different narratives, considered major themes.

To better understand what factors may contribute to stress and burnout among IJs, we looked for associations between the presence in the narratives of metacodes and demographic and occupational variables, and scores for stress and burnout. Using Pearson Chi Square tests for categorical data, we found that proportionately more female than male IJs wrote about themes coded as "health/psychology issues" (Chi Square=4.2056, $p=.0403$). (We had previously reported that the STSS and CBI detected greater stress and burnout among women IJs versus male IJs, so a gender difference in the presence of this metacode is consistent with this new finding.) Meanwhile, among all IJs, higher burnout scores were associated with the presence of the metacodes "psychology/health issues," "challenges to esteem" and "fraud." Stress scores were associated with the metacodes "psychology/health issues" and "fraud." Specifically, themes under "psychology/health issues" were more commonly coded among the narratives of IJs who reported significantly greater personal burnout (mean score 63.2 versus 51.8, $p=.0165$), work-related burnout (65.3 versus 51.8 $p=.0068$) and total burnout (59.4 versus 48.2, $p=.0159$). The "psychology/health issues" metacode was also associated with significantly higher scores on intrusion (2.4 versus 1.9, $p=.0006$), avoidance (2.7 versus 2.3, $p=.0207$), arousal (2.8 versus 2.3, $p=.0131$) and the composite of these subscales, total stress (2.6 versus 2.2 versus 2.0, $p=.0044$).

Themes subsumed under the metacode "challenges to esteem" were statistically significantly associated with increased age (56.2 years versus 52.4 years, $p=.0168$) and increased experience (12.3 years versus 9.3 years,

p=.0232). The presence of “challenges to esteem” was also associated with greater work-related burnout (66.1 versus 52.1, p=.007), client-related burnout (53.1 versus 39.1, p=.0161), and total burnout (60.7 versus 48.2, p=.0098).

Writing about “fraud” was significantly associated with personal burnout (68.1 versus 53.1, p=.0224), client-related burnout (58.7 versus 40.327, p=.016), and total burnout (64.6 versus 49.4, p=.0169). It was also associated with intrusion (2.55 versus 2.0, p=.0218), avoidance (2.9 versus 2.3, p=.0321), and total stress (2.8 versus 2.2, p=.0288). Older judges were more likely to write about infrastructure (55.8 versus 52.3, p=.0172), but otherwise no significant associations were noted for this metacode.

Because the narrative data itself is a rich source of information about the working environment of IJs, excerpts are included below for the sub-themes listed in Table One, and are grouped according to metacodes and sub-themes. They are taken verbatim from IJs’ responses, although some grammatical and spelling errors have been corrected, and a few potentially self-identifying comments have been removed to further protect the anonymity of respondents. Additionally, abbreviations have been substituted with the words written out, for greater clarity to a larger audience. **Metacodes** are in bold, and underlying *sub-themes* are underlined and italicized.

“Workload/Time Demands”

Of fifty-nine respondents, thirty-five included comments about the amount of work and the paucity of time in which to complete it. This topic was the most commonly reported. This metacode includes sub-themes of *work volume*, *complexity of work*, *pressure*, *oral decision*, *case completion goals*, *time constraints*, and *mentally ill respondents* (in other words, the additional time and work required because of them). Because comments about *pressure* mentioned it in passing and are largely subsumed under other themes as well, specific examples are not provided here.

Comments about *case completion* were generally similar to each other, focusing on the difficulty of completing cases within the allotted time period and without necessary resources. Typical examples follow:

Case completion goals, pressure to complete cases and the asylum clock cases cause a tremendous amount of stress.

Unrealistic and arbitrary case completion time pressures from management with little or no resources or courtroom support.

In those cases where I would like more time to consider all the facts and weigh what I have heard I rarely have much time to do so simply because of the pressure to complete cases.

We are told to keep producing—to get the cases done, without regard to the fact that we have insufficient support staff, insufficient time to deliberate and to complete cases, and outdated equipment.

Case completion “goals” are not “goals” but are in reality mandatory.

The dynamics in the courtroom do get quite intense on occasion, and we need to be able to adjourn, take a breather and get perspective. Our calendars don't allow that and we judges have to grovel like mangy street dogs to get exemptions from unrealistic completions goals and general workload expectations

What is required to meet the case completions is quantity over quality.

What traumatizes me is not the cases I have to adjudicate or the people I have to interact with while doing so, but rather the drip-drip-drip of Chinese water torture that I hear in my head (i.e. in my mind, hearing my boss saying: “more completions, more completions, bring that calendar in, you are set out too far, you have too many reserved decisions, why has that motion been pending so long, too many cases off calendar.”)

A related theme was the requirement for *oral decisions* from judges.

Balancing the important goal of providing a full and fair hearing and rendering a comprehensive oral decision with the arbitrarily imposed case completion goals.

What is an ENORMOUS stressor to me is the constant drumbeat of case completions goals and the persistent lack of sufficient time to be really prepared for the cases. Unlike many attorneys, I am not a procrastinator by nature and I like to be relatively current with my work. I HATE the fact that the current format virtually mandates oral decisions and makes it an excruciating punishment to reserve a decision.

The cases require judges . . . to rule promptly at the end of the hearing in the form of a lengthy, detailed and extemporaneous oral decision with little or no time to reflect or to deliberate.

We are denied transcripts and must decide complex cases, yet we are expected to render oral decisions on the spot. There is insufficient time in our schedules to provide for self-education and development in this complex area of the law.

The impact of the insufficient time provided for oral decisions was explained by one judge:

The hearings here are complex, fully litigated, and take the full hearing time (3 or 4 hour hearing slots) and more. It is common to run out of time to do the oral decision. In that case, I have to reset the case for another day for oral decision or do a written decision. In complex cases, it is better to prepare a written decision in order to cover all the issues in a well-reasoned decision. However, there isn't enough time in the day to prepare written decisions.

These last three comments also speak to the *complexity of the work*, which itself was a unique theme.

I feel many asylum cases are sufficiently complex, either factually or legally, so that I need time to percolate on the issues and digest the facts and applicable law. There is no time for that in our current structure, despite the fact that we are increasingly asked by the Circuit Courts to provide in depth and complicated decisions. I am OUTRAGED by the fact that Department of Homeland Security Asylum Officers receive more time to keep current on country conditions and changes in the law that we do . . . The law has gotten exponentially more complex while the time pressures and resources (like law clerks) inversely diminished to the point of being almost non-existent.

Making credibility determinations in asylum cases is extremely, extremely difficult.

In part because of the steady onslaught of cases, as well as their difficulty, *time constraints* and the related theme of *workload* were mentioned frequently. A few of the many typical comments appear below.

The volume is constant and unrelenting. There is not enough time to do research and adequately read about country conditions, especially for more exotic countries where the asylum claims are not as routine.

There is not enough time to think.

Not enough time to hear and issue a decision in the cases.

Generally the feeling that what is required to meet the case completions is quantity over quality.

Too much work and too little support including staff, monies, facilities, etc.

It is very frustrating to cope with such a large caseload. IJs should not be pressured to do more than two cases a day. Can headquarters understand that we are dealing with issues that affect real people, that we are deciding their fate?

In addition to the psychological ramifications of dealing with *mentally ill applicants*, these asylum seekers can entail more work and time on the part of judges:

I have a great deal of experience with depression and anxiety. Aside from coping with that personally, I have to deal with the depression, anxiety, and emotional problems of the individuals who appear before me. The facility where I work is one of the only facilities with mental health resources so I see the majority of individuals incarcerated in the United States who are being treated for psychological or emotional disorders.

Unprepared lawyers, likelihood of an Office of Professional Responsibility investigation after court of appeal criticism and Board of Immigration Appeals affirmance, and increasing numbers of seriously mentally ill respondents are problems.

Not enough resources to bring in a therapist to explain why they are not capable of telling a linear story.

“Infrastructure Problems”

In our sample, thirty respondents wrote about topics that were coded and ultimately grouped under “infrastructure problems.” The infrastructure sub-themes related to structural impediments to properly completing work. These included: *attorneys*, *lack of resources*, *institutional failings*, *DHS* (Department of Homeland Security), *BIA* (Board of Immigration Appeals), *unfair system*, *number of judges*, *bad lawyers*, *incompetent staff*, *lack of support*, *the asylum clock*, and *difficulty with interpreters*.

Some examples of concerns with *attorneys*, often mentioned in a list of other structural problems, are extracted below:

. . . The lack of care or attention of many of their lawyers; difficulty in trying to figure out what the truth is because “travel agents” or unscrupulous or unprepared attorneys have made prior submissions on their behalf . . . walking into the courtroom and seeing very difficult and SLOW attorneys on both sides and knowing the day is shot at the first case . . .

Judges must deal with cases frequently involving a high degree of fraud and/or incompetency by legal counsel (where judges must act to protect the rights of the applicant) . . .

I get a knot in my stomach trying to figure out who the bona fide applicants are, and I end up granting cases where I am not sure, just to make certain that I am not missing anyone who really needs protection, but can't articulate it clearly because they have such poor quality legal representation. . .

Lack of ability to sanction wayward attorneys

Lack of preparation by attorneys, particularly the DHS litigation counsel . . .

We have varied levels of interpreters and attorneys that make the day a challenge!

The low number of judges was also a concern, perceived as a direct cause of excessive caseloads.

The exacerbating factor is the lack of judges and support staff to handle the volume of cases, and the Department of Justice demand for stats versus the Circuit Courts' (correct) demand for Due Process.

. . . In conclusion: I would recommend that: 1) judges have 12 hours of administrative time each week; 2) each judge have a junior law clerk; and 3) the number of judges be increased in each court.

Lack of support and *lack of resources* (particularly law clerks, as well as other personnel and technology) were pervasive sentiments written about in various ways, usually in the context of other infrastructural challenges.

Unrealistic and arbitrary case completion time pressures from management with little or no resources or courtroom support . . .

There is a lack of technical support such as law clerks to help prepare decisions and research assistance to help us perform our jobs.

I could keep a junior law clerk busy full time writing decisions, doing research, responding to motions, and more.

The law has gotten exponentially more complex while the time pressures and resources (like law clerks) inversely diminished to the point of being almost non-existent.

Little or no support from headquarters. (Private attorneys are seldom sanctioned for even the most outrageous of behavior while IJs are subject to intense and often one-sided scrutiny and taken to task for demanding from attorneys that which would be expected in a non-immigration court.)

Lack of research resources, slow computers . . . no support, unfilled IJ positions, meaningless completion goals, ICE transferring aliens to detention facilities hundreds of miles from their attorneys and families simply to satisfy their numbers games, incompetent DHS attorneys and deportation officers, telephonic interpreters and hearings, faulty out-dated recording equipment (for YEARS!)

We have insufficient support staff, insufficient time to deliberate and to complete cases, and out-dated equipment.

Inadequate work space (in our court we are still in a temporary facility, which we have been now for going on three years with no relief in sight and no apparent attention being taken to the solve the space and facility problem); lack of appropriate recording facilities or devices (there seems to be a constant and ongoing assessment and study in the Immigration Courts to get digital recording devices; forget the study and get on with solving the problem); lack of judicial law clerks to help with our enormous work load and helping with the tremendous responsibility to get the job done right . . .

Time has demonstrated that, when it comes to the IJ in the field, no one within Department of Justice (DOJ)—neither the Attorney General, the Office of Immigration Litigation, the Office of Professional Responsibility, nor the leadership of Executive Office of Immigration Review (EOIR)—will step forward to support us.

No one gives a damn about us! Certainly not DOJ or EOIR.

A concerning theme, particularly among the last two comments, is a sense

of isolation. As stated by Jaffe *et al.*,²⁶ “One of the starkest contrasts arising from this research is the disconnect between what judges identify as ideal coping and prevention strategies and the reality of the judicial culture. Although many of the judges surveyed indicated the importance of social support and debriefing, the reality is that some judges work in isolation, they cannot consult about a case, they see horrific crimes, make weighty decisions, and have to keep their mouths shut about everything.” A very similar sentiment about this sense of isolation was perhaps best evoked by an image embedded in a comment in our study about, and coded as, *incompetent staff*:

In my office the lack of competence among the staffers is a glaring shortcoming. Our court administrator appears interested in everything but competence and professionalism. Your typical experienced IJ has as a frame of reference the character in a cartoon who is seen sitting alone on a very small island while surrounded by endless ocean.

Perhaps unique to the work environment of IJs is the *asylum clock*.²⁷ Although also a time pressure, it is included in this section because it is part of the structure of the work environment. Specific mentions include:

Case completion goals, pressure to complete cases and the asylum clock cases cause a tremendous amount of stress.

Even taking a vacation becomes stressful because cases need to be crammed in before if the clock will blow up when I am away. I get cranky when attorneys argue with me about the clock or send in letters to try and have the clock changed.

Overscheduled calendars because the ‘clock’ has to be stopped when realistically the cases should be set for a longer hearing and if the hearing does run long, there are cranky people in the hallway for the next case . . . deadlines on cases that are not asylum become a problem because those cases were adjourned to schedule ‘clock’ cases and then in turn become deadline cases;

Finally, several judges wrote about government agencies, such as the DHS, the Department of Justice (DOJ) and the Executive Office for Immigra-

26. Jaffe, *supra* note 15, at 6.

27. An applicant for asylum cannot qualify to receive authorization to work until his application has been pending for more than 180 days. *See* 8 U.S.C. §1158(d)(2). Therefore, asylum cases are generally to be adjudicated within 180 days of receipt. Colloquially, this time frame is sometimes referred to as the asylum clock. An applicant can choose to forego his ability to apply for work authorization and waive this time frame in order to more fully prepare his case, or the DHS can choose to request additional time to investigate, which will result in an opportunity for the applicant to apply for work authorization and excuse the Immigration Court’s failure to comply with the usual 180-day deadline. EXECUTIVE OFFICE OF IMMIGRATION REVIEW, OFFICE OF THE CHIEF IMMIGRATION JUDGE, REVISED OPERATING POLICY AND PROCEDURES MEMORANDUM (OPPM) No .00-01, ASYLUM REQUEST PROCESSING 8-9 (Aug. 4, 2000) available at www.usdoj.gov/eoir/efoia/ocij/oppm00/OPPM00-01Revised.pdf.

tion Review (EOIR) that oversee the immigration system, or the BIA (also referred to here as the “Board”), which hears appeals.

The American Civil Liberties Union currently has two lawsuits filed against DHS regarding this facility addressing overcrowding and health care access (several inmates have died in this facility in the last several years).

My inability to address greater institutional failings is perhaps the most frustrating part of my job. The institution minimizes or dismisses the complaints of detainees and expects me to discount their complaints. It sometimes takes years before the problems are so chronic that they are finally brought to someone’s attention. The fact that my concerns may be vindicated years after these issues have been raised with EOIR and DHS does not make up for the frustration and horror I experience in my powerlessness to address institutional failings in the detention and care of asylum seekers and other respondents who appear before me. I can’t remember a time when I thought my work life was even close to normal.

We are forced to work under an appellate Board that uses every excuse under the sun to remand cases to us. It is apparent that the Board does not, in many cases, take the time to thoroughly review the entire record before remanding cases. As a consequence, we are “re-traumatized” by having to hear the same cases again, often after we have already made findings that the asylum applicant is not eligible for relief.

Compared to what some of these asylum seekers have gone through, our problems are almost trivial. Most of our frustrations arise from: 1) a poorly designed and haphazardly administered Immigration Court system; 2) lack of necessary legal and clerical support; 3) negative attitudes of DOJ and Federal Courts about Immigration Judges; 4) poor judgment on some occasions by the BIA and colleagues in other Immigration Courts who have brought our entire system into disrepute; 5) lack of preparation by attorneys, particularly the DHS litigation counsel. DHS is just a mess, at all levels, and it is very stressful to deal with them day in and day out. They are amazingly unresponsive. We have been intentionally deprived by the Department and DHS of the tools and rules necessary to make DHS function in court in a reasonably professional and competent manner.

The failure of the Department of Justice and the Office of the Chief Immigration Judge (OCIJ) to create better working conditions, the failure of DOJ and OCIJ to boost morale, the failure of DOJ and OCIJ to make accountable the so called court administrators for their misconduct, the failure to have local chief judges that other judges can turn to when needed, rather than having to go to headquarters who in most instances are not responsive or are resentful when you make a request for assistance and the lack of good leadership in the chief judge’s office.

“Challenges to Esteem”

Esteem was a topic mentioned in some form by twenty-four judges. Major sub-themes coded under esteem included: *lack of respect*, *criticism*, *not understood*, and *scrutiny*. The perception of a lack of control (*no control*) was a minor theme, mentioned twice. One judge mentioned sexism. While some codes appear to be related to each other (e.g. scrutiny and criticism), they seemed to refer at times to different phenomena. The extent to which judges' work is scrutinized seemed demoralizing, even when not associated with outright criticism.

Examples of concern about *scrutiny*, often bundled with other themes, include:

The major stressors are having to complete a high volume of cases in an environment of completion goals and under the microscopic scrutiny of appellate courts which may not understand the pressures the judge faces on a daily basis.

IJs are subject to intense and often one-sided scrutiny and taken to task for demanding from attorneys that which would be expected in a non-immigration court.

Fear that every decision or proceeding may trigger a “personalized” and scathing published criticism from the reviewing circuit court and/or an Office of Professional Responsibility investigation into the judge, which may destroy the judge's professional reputation and career without the ability to rebut or defend.

Examples of concern about *criticism*, which again are often associated with other concerns, include:

Our last annual meeting spent far too much time telling us how awful we were – seldom does one hear a note of encouragement or appreciation from the agency as to what we do.

One of the worst management systems in existence is the Department of Justice. Judges are criticized, lied to and given no respect or even common courtesy by Executive Office for Immigration Review/ Department of Justice.

Excessive and improper criticism from Court of Appeals

I am demoralized by being made the “whipping boy” by the press and public, when it is the system we are forced to follow that contributes so greatly to errors I may make.

We get criticized for making the “wrong” determination.

Also, I feel intimidated and humiliated by the federal courts; their personal and cruel criticism of me and other IJs took all the joy out of my job and made me feel so humiliated that it affects my work each day.

Two additional comments about criticism also focus on the theme, *not*

understood:

Those who provide our oversight and those who provide commentary and criticism from the circuit courts of appeal have no clue or concern about the conditions and pressures under which we work.

In my view, the Attorney General's initiatives and demands on our court system has created the "poster child" for a hostile work environment and fueled a media frenzy of criticism from many who have no meaningful understanding of what we do as judges.

Succinctly touching upon several aforementioned themes (*workload, case completion, scrutiny, and not understood*) was this comment:

The major stressors are having to complete a high volume of cases in an environment of completion goals and under the microscopic scrutiny of appellate courts which may not understand the pressures the judge faces on a daily basis.

Lack of respect was depicted as follows:

The circuit courts seem to issue result-oriented decisions which do not give any respect to our findings, particularly when we have made adverse credibility findings. We get little respect or support from the Attorney General.

Albeit the job by its nature can be challenging, the greatest stressor is the administration's policies of considering this job one similar to a factory assembly line.

Lack of judicial (or even administrative) respect for the efforts of the majority of immigration judges giving their all to support the immigration policies of Congress;

No control was also an issue that affected self-esteem:

I HATE the fact that the current format virtually mandates oral decisions and makes it an excruciating punishment to reserve a decision. I feel demeaned by being unable to control my own work life as a professional, to be prevented from making the crucial judgment calls on how to decide a case—on the spot or after calm deliberation and research.

The fact that things beyond our control – i.e. an incompetent or even no interpreter for that language, or a legitimate request for an adjournment by the government "counts" against me for the clock and completion statistics; the feeling that I spend each day running from case to case and hope they all get done; the reality that if I get sick, have a family emergency, or am sent on a mandatory detail, all of those cases have to be reset and "count" against me; the reality that "administrative

time” is used to schedule cases so admin work has to be done in between or at lunch or after regular work.

Only one judge mentioned *sexism*, which may mean the problem is circumscribed to one particular court system. However, the comments were sufficiently poignant that they are included here.

Sexism comes into play here as the majority of individuals I deal with whether in the prison or within my own organization are men. Some have nothing but disdain for me and go out of their way to make my work life difficult. I am oftentimes told that I am outside my jurisdiction to raise issues on behalf of detainees or I am marginalized because I credit what is told to me by detainees (who must, of course, all be lying).

“Psychology/Health Issues”

Of twenty-seven judges who wrote about difficulties with health or mental well-being, sixteen were women, almost 50% more than the eleven men who broached this topic. Themes subsumed under this metacode were: *emotionally draining* (which was often synonymous with trauma), *personal life affected*, *responsibility* (i.e. the emotional toll it takes), *psychological problems of asylum seekers*, *dissatisfaction*, *inhumanity*, and *personal illness*.

Judges expressed feelings of tremendous *responsibility* for the lives of asylum seekers dependent upon their decisions.

The gravity of our decisions is undermined by the quantity of cases and the pressure to do more.

I often feel affected by the angst of people seeking relief in court. I feel pressure to relieve their angst.

This job is supposed to be about doing justice. The conditions under which we work make it more and more challenging to ensure that justice is done.

Just sitting here writing this is upsetting. I have to tell myself constantly that my presence here is critical to providing someplace in this institution where detainees will find the place to voice their concerns, share their life experiences, and get a full and fair hearing by a representative of the United States government. I'm not convinced that would happen if someone else were here instead.

Knowing that as an Immigration Judge we have the burden and the responsibility of being the first line judicial body and probably the only judicial body which many aliens will ever deal with or render due process of law regarding them, and yet, in spite of this heavy responsibility neither Congress or the President has delegated the necessary authority to Immigration Judges to execute that responsibility.

The cases are factually and legally complex with tremendous personal consequences for the applicant.

More positively:

It's a tough job. But, overall I greatly enjoy working with asylum seekers and using my well-developed professional skills to make a difference in people's lives. I find it very satisfying.

Perhaps because of the responsibility entailed in judges' deliberations, or perhaps because of the significant trauma embedded in people's stories (and thematically in these next excerpts), many reported that the work was *emotionally draining*:

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.

When the applicant is genuine, I am happy to grant the relief; although I admit I carry some of the emotional burden of their story with me.

Unrelenting nature of the work; emotionally exhausting - a genuine asylum case stays with you forever.

I have been here for five years so it is difficult to make distinctions between the nature of the cases I hear as they may relate to psychological and emotional challenges versus the nature of my work environment and the challenges that stem from a prison environment.

I have heard testimony about torture that I never wanted to know about, and I wish I hadn't heard. No one outside the court understands this. I feel grief hearing about some applicants' experiences.

I know I couldn't do this job if I were not on medication for depression or did not have access to competent psychological care myself.

The combination of hearing traumatic stories and not knowing which ones to believe is what is so mentally and emotionally exhausting. It is really hard work and we are not given enough recovery time within our busy schedules.

No sabbatical like professors get - we really need time away from this work every so many years - not just short vacations.

What drains me is high intensity listening for hours, especially where there difficulties with the interpreter. Until I got this job, I had no idea listening could be exhausting.

Asylum cases simply wear you out.

While it is emotionally very difficult to listen to the testimony of individuals who have experienced persecution and even torture emotionally I consider it a great privilege to have been given the authority to extend the protection of the U.S. government to such individuals.

However, there was one dissenting opinion about the impact of trauma:

Hearing about trauma does not bother me, because I have the ability to do something to help the survivors of persecution.

A theme related to the feeling of being emotionally drained was the onslaught of stories about how the *inhumanity* with which people treat each other.

We have to listen to horrific stories, day in and day out.

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.

The only bright spot on my horizon is that I plan to retire this summer . . . I hope to never again think about the murderers, wife beaters, child molesters, thieves and gang members whose cases I've handled at our detention center and in the state prisons. Now I know more about man's inhumanity to man than I ever wanted or needed to know.

There is no question that hearing asylum cases, especially the ones in which the witnesses testify credibly, has affected my view of the world. I have lost most of my faith in humankind, and I fear deeply for the future. At the same time, it is extremely gratifying to be able to grant cases in which asylum is warranted, and I am honored to be a part of the asylum process.

Although the above comment and a few others throughout indicate satisfaction with work, *dissatisfaction* in general was common as typified below:

I have been in government service for decades, including combat duty, and I have never detested a working environment more than I do in this capacity – save for the wonderful support within my individual court staff. I have not one ounce of professional respect for anyone above me in a management capacity. As an officer I was taught to lead by example and to always balance the mission with the needs of the soldier. Such a lesson is lost within this agency, within this Department, and under the leadership of this Attorney General.

I can't take this place anymore. What a dismal job this is!

This job has the potential to be really great. Right now, it just sucks.

Some comments pertained to the relationship between the work environment and one's *personal life*:

My colleagues and I never have time to go out for lunch. We never leave the building during the day. We have to submit vacation plans a year ahead of time to HQ to avoid potential conflicts with cases. It doesn't leave much room for getting away when you're starting to feel burned out. Additionally, I hate the thought of having to be anywhere on the weekend at a scheduled time.

Also, I routinely stay at work after the office is closed and take work home in an attempt to be prepared for the next day. However, both practices cut into my family time.

While monitored by an M.D., work related stress contributed significantly to major stroke (as determined by various neurologists, internists, etc.); off work for months and returned to face even more of a caseload; now under routine psychological therapy.

I know I couldn't do this job if I were not on medication for depression or did not have access to competent psychological care myself.

I take work home every night. I'm hanging it up in about a year.

“Fraud”

Based upon the findings of Ramji-Nogales²⁸ that male judges are less likely to grant asylum, in part based upon the greater likelihood of their having worked in enforcement, as opposed to human rights, we expected that male IJs would be more likely to write about fraud. However, in our sample, eight women and four men wrote about fraud, although the number of respondents was too low to permit any conclusion about the impact of gender on this concern. There were not specific sub-themes under this metacode, which seemed sufficiently different from the others to warrant its own category. Examples of IJs' comments follow:

My frustration with the system is not due to the fact that I believe the claims and am troubled by what I hear, on the contrary it is due to the rampant fraud.

The most frustrating thing for me is the high incidence of fraud in asylum cases that makes it all the harder for legitimate asylum seekers to prevail.

The standards in my circuit with regard to eligibility for asylum, specifically relating to credibility determinations and burden of proof, are now so low that I find I am required to grant cases that I and everyone else in the courtroom – attorneys, interpreters and Respondents – know are complete fabrications. I feel that pursuant to this case law I am required to sign my name to grants of asylum that I am absolutely certain should not be issued, and it makes my heart race for hours at a time to listen to testimony that I know is nothing but lies. I

28. Ramji-Nogales et al., *supra* note 4.

understand on an intellectual level that I am merely applying an evidentiary standard set by a higher court, but on an emotional level, I feel very dirty doing it. In my circuit, we have a system that routinely rewards individuals who lie under oath – and not just small unimportant falsehoods but lies about identity, nationality, religion, political affiliation, physical presence and so much more. The most stressful and upsetting part of my job is listening to this testimony and signing my name to these grants.

No proper investigation by DHS on many cases where it might shed light on veracity of claim, etc.

Many applicants see asylum as a way of gaining legal status and work permission. As a consequence, while there are bona fide applicants out there, there are many applicants who lie under oath and who bring witnesses to lie. We do not have the tools we need to expose what we all know in our bones is fraud.

Trying to discern the truth in situations where the asylum seeker has a great motive to lie and where one is forced to rely on that person nearly exclusively for information is very hard. The government undertakes no real investigation as to the facts of a given case. I think the essence of asylum is mere guesswork, which is a dangerous and sad state of affairs for the nation and for the asylum seeker.

It makes me feel ill to grant asylum to someone who I believe is probably lying, but it also makes me sick to think that I have denied protection to someone who really needs it.

DISCUSSION

This study describes IJs' written concerns about their work environment and explores the association that these narrative themes have with well-documented sources of stress and burnout. A comprehensive review of the psychology literature on burnout²⁹ noted that the experience of workload and time pressure are strongly and consistently related to burnout, as is a lack of social support, employee turnover (represented as retirement in our study), and a mismatch in control, namely that individuals have insufficient control over the resources needed to do their work or have insufficient authority to pursue the work in what they believe is the most effective manner. The metacodes derived from our aggregate data are consistent with this literature and assist us in providing recommendations on ways to alleviate stress and burnout in the IJ corps. We might have expected that higher burnout scores would be specifically associated with the presence of the metacode "workload/time demands," but the absence of an association does not mean that the demands were not experienced by those most burned out, but simply that themes under this metacode happened to not be volunteered as concerns.

29. See, e.g., Maslach, Schaufeli & Leiter, *supra* note 11.

As noted, “psychology/health” was a metacode that was significantly associated with stress and burnout scores. From the review of the literature, we know that poor mental functioning may lead to increased susceptibility to burnout, and that burnout is associated with substance abuse. Not surprisingly, depression, stress, and the need for psychological treatment were mentioned in these narratives. However, burnout as a phenomenon is distinct from psychiatric illness in that the genesis of burnout and sometimes its effects are specific to a particular environment. For example, psychiatric depression is experienced pervasively in time and space, whereas burnout results from stress on the job, where it is experienced most acutely, and its effects dissipate during a long vacation.

The narratives captured here beg the question about interventions that may be suitable to prevent or decrease burnout. Maslach et al.³⁰ note that interventions targeting affected individuals can be effective. People can learn new ways to cope and reduce feelings of exhaustion. However, reducing feelings of cynicism and inefficacy require additional attention to modifying the work environment and scrutiny of the organizational structure. As the established literature in the field shows, decreased workload, greater ability to effect change by workers, and increased social support on the job can help to reduce burnout.³¹ Thus, both the person and the context must be treated from a holistic conceptual framework.

Ideally a study such as this one would pave the way for improvements. The most commonly reported themes were about “workload/time demands,” so this is the obvious place to start. Likely the most pressing issue facing the Immigration Courts, as described in the data, is the need for more judges to meet exploding caseload burdens. Solving the caseload problem will alleviate mistakes and stress caused by overwork, which causes collateral shortcomings in the Immigration Court system. The Attorney General acknowledged this problem in his 2006 review³² but has nevertheless contributed to its perpetuation by the continued failure to provide adequate resources to the Immigration Courts and the insistence on case completions goals and formal performance evaluations. In fact, in the two years since a critical need for more IJs was identified, the IJ corps has continued to lose more judges than have been hired. Only now are the Courts back at 2006 staffing levels, which were identified as inadequate then because retirees have not been replaced in a timely fashion.³³ In addition, the judicial corps is in dire need of new judgeships as the DHS has significantly increased the numbers of individuals

30. *Id.*

31. *Id.* at 418-20.

32. Press Release, Dep’t of Justice, Attorney Gen. Alberto R. Gonzales Outlines Reforms for Immigration Courts and Bd. of Immigration Appeals (Aug. 9, 2006), http://www.usdoj.gov/opa/pr/2006/August/06_ag_520.html.

33. Improving the Immigration Courts: Efforts to Hire More Judges Fall Short, TRAC Immigration Report,

July 28, 2008, <http://trac.syr.edu/immigration/reports/189/> (last visited Jan. 11, 2008).

targeted in its enforcement efforts.³⁴

Concerning infrastructure, IJs should be provided with the resources they urgently need to handle their caseload responsibilities. IJs have identified the persistent lack of resources to help them perform their jobs as one of the main impediments keeping them from meeting the changing expectations of the Federal Courts. Frequent changes in the law have pushed the system to its breaking point.³⁵

Without a supportive infrastructure, IJs may not be able to fairly and thoroughly adjudicate cases, regardless of their good intentions. Without proper resources, the judges should not be subjected to additional unnecessary pressures like case completion mandates.

Many judges brought to light the problems with the “oral decision” method of case adjudication currently in use in Immigration Court. As the complexity of immigration law has increased, the present model of rendering oral decisions for virtually all decisions by IJs has become obsolete and unworkable. The complicated analyses required from IJs cannot be adequately accomplished in many cases without a full written decision with citations to the administrative record. The assignment of cases to IJs and the resources allocated for the decision-making process must be modernized to allow IJs the necessary time to produce thorough, written decisions in contested matters. The current process should be modified so that written decisions are the preferred method of rendering decisions in all contested matters.

Esteem was a common theme in IJs' narratives. As noted above, higher burnout scores were associated with the presence of “challenges to esteem” (as well as with “psychology/health issues” and “fraud.”) In our data, one esteem-related theme was scrutiny. To a certain extent, scrutiny is understandable and justifiable because of the stakes involved for the parties involved. That said, because of this level of scrutiny and accountability and the associated levels of burnout, IJs must have not only appropriate resources, but also judicial independence, which would allow them to control their workload and their dockets in a professional manner. Production-related performance goals are more suited to assembly line work and are antithetical to the complex nature of the law and the life and death consequences faced by respondents in Immigration Courts. IJs need the tools to control the decisions of their day-to-day work life, commensurate with the authority they wield and free from intrusive administrative oversight. This control is particularly needed now as it would help prevent assignation of blame to individual judges in cases where the system has failed for reasons beyond their control.

34. See Spenser H. Hsu, *Immigration Prosecutions Hit New High; Critics Say Increased Use of Criminal Charges Strains System*, WASH. POST, June 2, 2008, at A01; see also Ernesto Londo, *U.S. Steps Up Deportation of Immigrant Criminals*, WASH. POST, Feb. 27, 2008, at A01.

35. Dana Leigh Marks, *A System At Its Breaking Point*, LOS ANGELES DAILY JOURNAL, Aug. 29, 2008, at 6.

The issues of time, resources and self-esteem mentioned above are related, we believe, to our observation that IJs appear to retire from service at the earliest possible date. In our data, retirement was mentioned twice by judges, e.g. “The only bright spot on my horizon is that I plan to retire this summer . . .” and “I’m hanging it up in about a year.” The loss of experienced colleagues, who wish to escape the stress of their work environment, may further demoralize those who remain behind, in part because it takes so long to fill vacancies, but also because it takes several years to be truly competent in the job.

The final metacode, “fraud,” was a concern expressed by numerous judges who are aware of the obviously high stakes faced by those risking deportation in the asylum process. Jaffe³⁶ refers to a psychological term, the “availability heuristic,”³⁷ which postulates that exposure to an event (in this case, a fraudulent asylum claim) can lead to an over-estimation of the event’s frequency. According to this principle, IJs’ comments about fraud might be based on an overestimation of its occurrence, an estimation which could also affect their rulings.

In recent years, several organizations have been working to mitigate sometimes spurious suspicions of fraud by providing medical and psychological documentation, when possible, of the symptoms that would corroborate asylum seekers claims of torture and maltreatment. Non-Governmental Organizations like Physicians for Human Rights and Health Right International, as well as numerous regional agencies that provide social and medical services to refugees, evaluate asylum applicants and, when applicable, note the presence of scars, fractures, or psychological evidence of trauma, such as post-traumatic stress disorder.³⁸ While not infallible, these exams can often provide objective evidence of claims that are otherwise difficult to substantiate. Guides to the systematic evaluation of asylum seekers are available to medical and psychological evaluators,³⁹ who, regardless of their own political or philosophical beliefs, must bear in mind that their role is to provide adjudicators objective information about symptoms of trauma. Additional training regarding the availability of such tools should be provided to IJs, as well as the development of community outreach strategies by EOIR, to increase the introduction of such materials into the records in appropriate cases.

A guide to pitfalls in the judicial assessment of credibility has recently

36. See Jaffe et al. *supra* note 15.

37. See Amos Tversky and Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1128 (1974).

38. Stuart L. Lustig, Sarah Kureshi, Kevin L. Delucci, Vincent Iacopino & Samantha C. Morse, *Asylum Grant Rates Following Medical Evaluations of Maltreatment Among Political Asylum Applicants in the United States*, 10 J. IMMIGR. & MINORITY HEALTH 7, 9 (2008).

39. See generally VINCENT IACOPINO, *THE MEDICAL DOCUMENTATION OF TORTURE* (Michael Peel ed., 2002) (providing guidelines for systematic evaluation of asylum seekers).

been published primarily for the benefit of IJs.⁴⁰ It reviews, for example, symptoms of post-traumatic stress disorder, which include lack of emotional expression and difficulty remembering, both of which could be interpreted as a lack of credibility. Culturally laden approaches to testifying, which may cause applicants to avert eye gaze from authority figures such as IJs or to avoid culturally taboo topics such as sexual victimization, may also compromise an applicant's perceived legitimacy. In our survey, IJs indicated a lack of training in country conditions, training which clearly should include such important insights into cultural mores as well as the traditional political developments and religious status information currently provided by the Department of State country conditions materials.

We must mention the caveat that, by its nature, this study has some intrinsic limitations. First, judges were informed that results would be used to help advocate on their behalf. Therefore, there is an incentive to represent working conditions in an unfavorable light, and to downplay positive aspects of the job, although several IJs did provide positive comments. Secondly, there is no way to know if the comments provided by the fifty-six IJs are representative of the ninety-six in our sample of respondents, or of the approximately 212 who were initially invited to participate in the survey. It is possible that those who were most stressed and burned out wrote more than others who were less stressed and burned out, and perhaps therefore less motivated to answer. Alternatively, it is possible that those judges who did not respond were even more stressed and burned out, too much so to muster the energy required to type answers.

RECOMMENDATIONS

The data yielded by this survey clearly demonstrate that additional required resources for the Immigration Courts, at a minimum, include:

1. Meaningful, ongoing education and training for judges, with time provided off the bench to assimilate the knowledge gained, to implement the lessons learned, and to research and study legal issues on a case-by-case basis.
2. Adequate support staff and tools, such as sufficient law clerks, bailiffs, interpreters, laptop computers, and home-based computer access.
3. Sufficient administrative time. For example, Citizenship and Immigration Service Asylum Officers and Immigration and Customs Enforcement trial attorneys have more administrative time to prepare their cases and to research country conditions than do IJs, on average devoting no less than 16 hours per week to those tasks,

40. Lustig et. al, *supra* note 37.

while IJs generally receive no more than four hours each week off the bench for all their administrative duties.

4. The oral decision format should be carefully studied to determine if it is still viable in light of the increasing complexity of cases presented today. If the oral decision model remains the primary format employed, at a minimum, additional resources (both time off the bench for IJ composition and augmented judicial law clerk staffing for research and drafting decisions) should be provided to allow IJs greater flexibility to issue written decisions at their discretion in appropriate cases.
5. Case completions goals must be suspended until appropriate resources arrive and recommended adjustments in an IJ's daily caseload and work-life are implemented.
6. To address issues of esteem, judicial independence must be insured and IJs must be provided the necessary tools for docket management to enable them to control the parties before them and the proceedings over which they preside. Accountability for their performance should be through the appeals process and not through employee performance appraisal systems that are inherently biased in favor of quantity over quality.
7. The Department of Justice should establish a network of trained group facilitators and provide IJs with the opportunity to connect with each other as valued professionals and as human beings attempting to grapple with daily exposure to the most abject human cruelty and misery. Other professionals working in similar isolation, such as mental health practitioners who face significant challenges, benefit from the support and perspectives of their peers in a group setting. IJs should enjoy the same opportunity.
8. Finally, the pervasive nature of these problems and the fact that they have gone unaddressed for so long in the current system suggest a structural change in the Immigration Court system is needed. Many IJs noted the "institutional failings" of the current system, which was described as "one of the worst management systems in existence." The persistent inability to resolve these longstanding systemic problems clearly indicates that the Department of Justice is not up to the task and that the Immigration Courts should be statutorily established as an Article I court. The efficiencies of a specialized tribunal would be maintained, while creating an appropriate infrastructure that would address both the importance of the stakes in these proceedings and the complexities they present to the IJs who preside over them.

CONCLUSION

Our study has documented the high levels of stress and burnout existing in the IJ corps and its multiple causes and possible effects. The possible causes include an overwhelming, complex workload coupled with insufficient time and pervasively inadequate resources to complete that workload, and an

unsupportive infrastructure. The effects of such stress certainly are revealed in the IJ reports of the challenges to self-esteem, psychological and health-related issues and concerns about fraud. Given these reports, the recent findings of disparities in asylum decisions on the IJ level (although also reported on the level of asylum officers and circuit court judges) and instances of judicial intemperance by a few IJs may presage a growing crisis if the causes of this stress are not addressed. Because of the importance of their work, which often involves matters of life or death for the asylum applicants whose cases IJs adjudicate, this study highlights the need for immediate action to implement the recommendations provided.