

**THE NEW YORK TIMES**

August 10, 2006

# **Immigration Judges Facing Performance Reviews**

By NINA BERNSTEIN

WASHINGTON, Aug. 9 — Attorney General Alberto R. Gonzales warned the nation's 215 immigration judges on Wednesday that they all faced annual performance evaluations for the first time and regular scrutiny to detect high reversal rates, frequent complaints or unusual backlogs.

But the consequences of failing were not spelled out. And some of the judges said they worried that evaluations would increase pressure on all judges to make decisions faster, without weeding out the handful of judges who have drawn the most criticism.

Immigration judges, who now handle 300,000 cases a year under stepped-up guidelines, are employees of the Justice Department, not the federal judiciary. After battling for years to unionize, they ratified their first labor contract on Monday.

Performance evaluations were among several measures, most still in the planning stages, that Mr. Gonzales announced here in a luncheon speech at the judges' annual training conference. He has been under mounting pressure to disclose the findings of a comprehensive review that he ordered last January after federal appeals courts around the country complained of a pattern of biased and incoherent decisions on asylum and rebuked some immigration judges by name for "bullying" and "brow-beating" people seeking refuge from persecution.

The speech was closed to the news media, but according to prepared remarks, he assured the immigration judges that the review had found that the vast majority did their jobs well "under pressures that would try even the most patient among us."

But Mr. Gonzales added: "Patterns have developed around specific areas of concern. I have seen evidence that some immigration judges, on rare occasions, do behave inappropriately toward those appearing before them, whether aliens, their representatives" or Department of Homeland Security lawyers.

Mr. Gonzales acknowledged that many critics attributed the problems to recent changes intended to streamline the Board of Immigration Appeals. Many federal judges say the changes, which reduced the number of judges on the board to 11 from 23, turned the board's internal review of immigration judges' decisions into a rubber stamp, shifting the burden of re-examination to the federal courts.

But the attorney general defended those changes, saying they had worked to reduce a big backlog, while suggesting that a few modifications might be made. He said he would seek to add four members to the board, who would also be subject to yearly evaluations, and devise a system to identify cases appealed to federal court and refer them back to the board for additional review.

Mr. Gonzales said he intended to prepare a budget request to hire more immigration judges, staff lawyers and law clerks.

Other proposals include giving judges appointed after this year an immigration law exam and a two-year probation, upgrading electronic equipment in courts where judges now handle manual tape recorders themselves, and giving judges the power to fine lawyers for frivolous filings or false statements.

Denise N. Slavin, an immigration judge in Miami and the president of the National Association of Immigration Judges, the union local, said her colleagues would welcome more resources. But Ms. Slavin said the performance evaluations raised serious concerns for the independence of judges who by statute are supposed to be neutral, independent decision makers, despite working for the attorney general, like the government lawyers who appear before them.

“We want to be sure that no one’s performance is evaluated on quantity rather than quality,” she said.

Among the questions unresolved are who will have a hand in the evaluation, Ms. Slavin noted. If complaints are solicited from the lawyers, she said, liberal judges could be at risk of criticism from the Department of Homeland Security and conservative judges could be at risk from members of the private bar.

Brian Roehrkasse, a spokesman for the Justice Department, said that the process of developing the evaluations was just beginning, and that no decisions had been made on how they would be done.

But Mr. Roehrkasse added, “The attorney general’s directive makes clear that performance appraisals will not be used to tell judges whether to grant or deny relief” but will focus on their professionalism, reasoning and courteous manner.

Mr. Gonzales also called for the director of the Executive Office of Immigration Review and the acting chief immigration judge to review a recent study highlighting disparities in the rate at which immigration judges grant and deny asylum “and, if appropriate,” to make recommendations on the issue.

“There are serious complaints coming from the Courts of Appeals, the press, and a host of other observers,” he said. “You know, as professionals, that these criticisms should not be ignored, and they cannot continue to cast a shadow over your work.”