

[printed on OCIJ letterhead]

October 20, 2000

The Editors, *San Jose Mercury News*
750 Ridder Park Drive
San Jose, CA 95190

By Fax to (408) 271-3792

Dear Editors:

In a series of articles published on October 18 and later, author Fredric N. Tulsy reported on what he claimed was a grant-supported “analysis of the nation’s asylum system” as it relates to the cases which are heard before Immigration Judges throughout the United States. Essentially, however, the articles are disappointing as an analysis. An analysis would require balance and fairness, neither of which appears evident in these stories.

Tulsy provides a distorted view of the asylum process in immigration court by using only the most extreme examples of decisions which, *in his opinion* and that of attorneys who lost some cases, seemed wrong. He writes of “extraordinary disparities” in case results among the judges and court locations, as if we should expect some kind of national uniformity in decision-making in spite of what even he acknowledges as “wide differences in the nature of asylum claims.” His focus, however, is entirely on the differences among the judges, not on the differences among applicants. Where’s the balanced analysis?

Rather than telling the full story of the more than 300,000 asylum cases completed by Immigration Judges in the 5 years of his study, Tulsy and the Mercury-News chose instead to present a narrow examination of a few exceptional cases that supported Tulsy’s preconceived notions and the newspaper’s editorial bias. The articles never mentioned that, during that 5-year period, the so-called “grant rate” in asylum cases overall increased steadily from 19.1 percent in 1995 to 36.1 percent in 1999. They excluded any examples of the 30,381 applicants who received asylum in an immigration court during the same period. Instead, the articles took the easy course of headlining negative results and “top ten” lists as if the asylum process compared to some kind of sports competition in which the ultimate purpose is to win.

The purpose of the asylum process is to provide refuge to individuals who have a “well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.” That is the one principle or standard that is applied uniformly by every immigration judge in every immigration court. And all asylum seekers,

regardless of nationality or background, are given an equal opportunity to make their claims of a well-founded fear of persecution in a system that provides due process, including rights to appeal from the immigration court and the Board of Immigration Appeals all the way to the Supreme Court.

We pride ourselves on the diversity of our Immigration Judges. As much as possible, the Executive Office for Immigration Review and I want our judges to reflect the broad, diverse cross-section of our society. I could report many "good news" stories about them. For example, a number of our Immigration Judges coordinate *pro bono* programs to assist asylum seekers and others who cannot afford representation to obtain counsel, so that our proceedings may be conducted with fairness, timeliness, and efficiency. Some volunteer with law clinics, teach immigration law, and work with local bar associations to promote a better understanding of the complexities of immigration law.

With respect to the inflammatory cases craftily selected, where and when any immigration practitioner or alien is concerned with the behavior, conduct, or demeanor of an IJ, the office in which to pursue discipline of such acts is the Office of Professional Responsibility (OPR) in the Department of Justice. OPR was established for the purpose of ensuring that "Departmental employees continue to perform their duties in accord with the professional standards expected of the Nation's principal law enforcement agency." As such, OPR is responsible for investigating allegations of misconduct that relate to the exercise of their authority to investigate, litigate, or provide legal advice. Therefore, OPR's jurisdiction extends to all Immigration Judges and is a legitimate avenue for persons to seek redress in those cases where they believe there have been abuses of power or authority.

It is unfortunate that Mr. Tulsy and the Mercury-News did not see fit to consider the bigger picture of the asylum process. In many ways, the roles of the media and the courts are similar in their respective efforts to provide a fair analysis of facts in pursuit of the truth. It is most unfortunate because, in this case, the media tried to represent the truth with only a one-sided analysis of the facts.

Sincerely,

[signed]

Michael J. Creppy
Chief Immigration Judge