

Not Mincing Words Over Asylum

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Body

James Warren writes a column for the Chicago News Cooperative.

In the clubby atmosphere of the judiciary, we'd best take note if a federal judge derides another's "warped logic" and "awful prose" and characterizes as capricious how the entire system handles the daily drama of immigrants' seeking to stay in this country.

The decision last month by the United States Court of Appeals for the Seventh Circuit in *Stanojkova v. Holder* is a reminder of the potency and poignancy of individual cases that get lost in the hyperbolic fray of made-for-talk-radio debates on immigration.

The decision by the Chicago court revives sporadically publicized tensions between federal appeals courts and both our lower-prestige, hard-pressed immigration judges and the Board of Immigration Appeals in Falls Church, Va. And it asks us to mull a notion broader than some people may possess of just what constitutes "persecution."

The overall, intramural squabble is partly explained by a sharp increase in immigration caseloads and other matters winding up before appeals courts. Those judges, one rank below the Supreme Court, often find immigration judges callously inconsistent in denying asylum requests and backing Justice Department moves to deport individuals.

The *Stanojkova* case presents us with 10 minutes of seeming hell joined nearly a decade later by a three-judge appeals court panel notable for its ideological diversity and unanimity that something smells.

The case involves Ivanka Stanojkova and her husband, Gjorgji Naumov, Macedonian Slavs caught in ethnic tensions after the breakup of Yugoslavia. In 2001, Mr. Naumov was drafted into the Macedonian army, but he didn't report because of what he deemed suppression of Albanians' demands for greater rights.

On July 2, 2002, according to the appeals panel, members of a pro-government paramilitary police unit called the Lions showed up at the couple's home at midnight, masked and dressed in black. They knocked out Mr. Naumov's parents with a chemical spray, sexually abused the pregnant Ms. Stanojkova and beat Mr. Naumov with a gun. They called the couple "betrayers of Macedonia" and took the family's money and jewelry.

The couple fled and ultimately arrived in the United States without a visa. But Carlos Cuevas, a Chicago immigration judge with a far-from-bad reputation, ordered them back to Macedonia, and the appeals board -- actually just one person -- affirmed his decision.

That bewildered the judges on the Seventh Circuit panel: Richard A. Posner, a high-powered and provocative conservative who is the most influential federal judge outside the Supreme Court; Ilana Diamond Rovner, a

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moderate Republican who escaped Nazi persecution in Latvia and came to this country as a child; and Diane P. Wood, a liberal who was on President Obama's short list to fill the most recent Supreme Court vacancy.

The prolific Judge Posner wrote the panel's opinion, which eviscerates the immigration judges' conclusion that the couple cannot be deemed "persecuted." The panel finds the lower court's logic wrongheaded and derides its assessment of Macedonian history and the role of the Lions, saying the judge "resorted to the kind of warped logic that mars so many opinions of immigration judges and members of the Board of Immigration Appeals."

Judge Posner even belittles the trial judge's writing, like a puzzled college professor might treat many of our barely literate Chicago public high school students. "As near as we can tell from this awful prose," the judge starts one line, then says he's clueless about what Judge Cuevas meant in describing the original incident.

The key passages involve whether it would be safe for the couple to return, even conceding that Macedonia is now a less fractious environment. Judge Posner chides the immigration board's lack of useful definitions to distinguish between harassment and the sort of persecution that guarantees a grant of asylum.

"The line between harassment and persecution," he wrote, "is the line between the nasty and the barbaric, or alternatively between wishing you were living in another country and being so desperate that you flee without any assurance of being given refuge in any other country."

"The line was crossed here," he added.

The couple's case was sent back to the immigration board, with Judge Posner asking, "Why would anyone hang around in Macedonia after that if there was any way out?"

Maybe the board should get a copy of the Tom Stoppard play "Night and Day," in which a veteran photographer tells a young reporter, "People do awful things to one another," especially in dark places.

Just ask Ms. Stanojkova and her husband.

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Graphic

PHOTO: Judge Richard A. Posner (PHOTOGRAPH BY STEVE KAGAN FOR THE NEW YORK TIMES)

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