

From the Magazine

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Border Blues

By Shawn Zeller

Merging into the Homeland Security Department was supposed to solve core problems for Immigration and Naturalization Service managers and employees. So far, little has changed for the better.

For employees of the old, much-maligned Immigration and Naturalization Service, the present is much like the past, even though their agency has been abolished, transferred from the Justice Department to the new Homeland Security Department, and split into three parts. INS' broken and dispirited culture, it seems, has made the move along with its former employees. And while the day-to-day work lives of former INS staffers have continued apace, sparking all the same concerns and gripes that their jobs always have, now it seems that INS' irascible team has a whole new rationale for its unceasing complaints: new DHS management systems, new chains of command, new job duties, new personnel systems. None, it would seem, has lived up to expectations.

At Border Patrol stations, not much has changed. Ask any Border Patrol agent how he feels about joining the Homeland Security Department and you're likely to hear a diatribe about how his enforcement mission gets short shrift, and that his pay and benefits are in jeopardy. Immigration inspectors, too, are griping about disparities between their pay and that of their Customs Service counterparts. But they're concerned primarily about protecting turf. They're against any effort to force them to perform Customs inspections or to allow Customs inspectors to perform immigration inspections: just the type of things that Homeland Security managers say will improve efficiency along the border. Meanwhile, immigration benefits adjudicators say that Homeland Security management is more concerned about processing benefits applications quickly than about doing it properly.

It wasn't supposed to work this way. INS restructuring, in the works since the mid-1990s, was to finally clarify the agency's mission. Border Patrol agents and interior investigators would no longer compete for funding and management support with the agency's benefits adjudicators. No longer would the agency have to both welcome immigrants and arrest them. "The driver [behind the restructuring] was that the agency's mission was too big, and too eclectic," says former INS Commissioner James Ziglar, now a professor at The George

Washington University Law School. “And it had a built-in conflict of interest.”

For years, Congress had mulled over restructuring proposals. None won enough supporters to succeed. Some legislators preferred plans to split the INS into two agencies, while others wanted to separate immigration services from enforcement, but keep the two parts within the same agency. The Sept. 11 attacks made everyone more open to compromise. Finally, with the creation of the Homeland Security Department and dissolution and division of the old INS, Bush and Congress settled on one plan.

The 2002 Homeland Security Act split former INS staffers into three separate units. Border Patrol agents and immigration inspectors joined former Customs Service inspectors at the new DHS Bureau of Customs and Border Protection, while INS interior investigators and detention and removal officers went to the Bureau of Immigration and Customs Enforcement. The services side of the agency—which processes applications for immigration benefits such as permanent residence and naturalization—is now at DHS as the new Bureau of Citizenship and Immigration Services.

Now that the INS is gone, and its enforcement personnel have merged with former Customs Service employees, new challenges have arisen. Disparate cultures must be melded, pay and benefits disparities ironed out, management systems recalibrated. At the same time, many of the old challenges remain: limited resources, poor technology and mixed messages from Congress about the agency’s mission. According to a study commissioned by Ziglar before he stepped down as INS commissioner last year, the INS budget would have to grow by at least a factor of six by 2010 to enable the agency to keep up with its workload. And then there is what’s probably the toughest problem of all: How to rejuvenate the INS’ dispirited personnel.

NO REAL COMMITMENT

Thane Gallagher, a Border Patrol agent for the past six and a half years and more recently the chief area representative for Local 1613, the San Diego branch of the American Federation of Government Employees’ National Border Patrol Council, is a typical case. A native of Buffalo, N.Y., and a Coast Guard veteran, Gallagher says he joined the Border Patrol out of an interest in law enforcement and a desire to make a difference. At 34, he’s one of the more experienced agents patrolling the Southern California desert.

Gallagher’s particular assignment covers 20 to 30 square miles between the Otay Mesa and Tecate ports of entry along California’s southeast border. Thus far, life for him hasn’t changed much since the Border Patrol was consumed by the Bureau of Customs and Border Protection earlier this year. But he has plenty of worries about the future.

A starting Border Patrol agent in San Diego earns about \$40,000 a year. The journeyman earns about \$60,000. Those figures are about \$10,000 higher than agents’ base pay, but agents have grown accustomed to earning about 10 hours of overtime pay each week. In addition, agents have long been assured that they will work the same shift hours for a minimum of six months at a time. Gallagher believes that all that could change if rumors

about DHS' new human resources system prove true. Though no such proposals are on the table for Border Patrol agents, the DHS has already proposed eliminating similar benefits for customs inspectors, he says. And the law that set up the Homeland Security Department, while requiring department managers to hear the unions' arguments, allows the managers to make personnel changes without the unions' consent.

Partly as a result, turnover among agents is close to 20 percent a year. Gallagher says he has stuck around because he believes strongly in the Border Patrol's mission and is dedicated to stopping illegal immigrants at the border. But he's come to believe that his superiors don't take it nearly as seriously as he does. Most of his workdays are excruciatingly dull, he says. They are usually spent working alone. When illegal immigrants hop over the old metal fence that separates the United States from Mexico, he tracks them down. And when he does catch immigrants, he says, new fingerprint technology has made it easier to identify them. On the whole, however, he's been surprised by how little has changed about his job since the Sept. 11 attacks.

In recent weeks, for example, as U.S. and Mexican officials have removed parts of the border fence to install drainage pipes along the border, Gallagher has found himself watching job sites rather than tracking immigrants. And this, he says, is not exactly what he signed up for when he joined the Border Patrol. "I'm guarding buildings and patches of dirt," he says.

Despite concerns that al Qaeda terrorists might use America's porous borders to enter the country, Gallagher has never felt that the politicians in Washington have made a real commitment to stopping illegal immigration. "People do not want the problem of illegal immigration addressed," he says. "We used to call them illegal aliens, then it was undocumented aliens; now they want to call them undocumented workers." And as terminology used to describe illegal immigrants has grown more sympathetic, Gallagher has grown more dispirited. Many of his colleagues feel the same way. It's hard to get motivated for work, Gallagher says, knowing that members of Congress and many Americans don't support the law he is bound to enforce, and that even his own agency has largely given up the business of enforcing immigration laws in the interior. "Our job is just to slow [illegal immigrants] down so that the economy can absorb them," says Gallagher.

Inside the borders, where the INS once raided workplaces to root out illegal immigrants, the agency has thrown in the towel, Gallagher says. Former INS interior investigators work now at another of the new DHS bureaus, the Bureau of Immigration and Customs Enforcement. About 2,000 immigration investigators are charged with tracking the more than 7 million people estimated to be living illegally in the United States. The number of investigators has not increased since Sept. 11.

Even so, since taking over the investigative bureau earlier this year, Michael Garcia—a former government prosecutor who was the last commissioner of the INS before its incorporation into DHS—has boosted immigration enforcement in critical industries. His bureau has investigated workers at airports, nuclear power plants and skyscrapers. Garcia also has started to work more closely with local law enforcement officials to track down

illegal immigrants who've committed serious crimes. He's had some success. After Garcia's bureau released a Top 10 list of wanted foreigners in May, nine were quickly captured.

But even Garcia admits that the agency simply doesn't have the workforce to track a run-of-the-mill illegal immigrant. In fact, because of limited staffing and even more limited cooperation from state and local law enforcement agencies, Garcia's investigators can't even guarantee that illegal immigrants now serving jail sentences in the United States will be deported upon release. That's because local police departments—concerned about maintaining good relations with immigrant communities—often refuse to assist immigration investigators. In fact, many governments specifically bar their personnel from working with federal investigators. As a result, Gallagher and many of his colleagues believe that they are the country's only line of defense.

RESOURCE PROBLEMS

Gallagher isn't alone in his frustrations. Linda Church is president of the old INS professional union, American Federation of Government Employees Local 51, which continues to represent 700 lawyers who have moved to DHS. An 11-year INS veteran, Church spends her days advising Border Patrol agents on what they can and cannot do. She also has prosecuted thousands of cases before the immigration courts, typically representing the government in deportation proceedings against foreigners caught at the border. She and her colleagues joined the INS, she says, because immigration law gives its practitioners a sense that they are playing a role in history. "You have to know current events and keep on top of what's going on in the world to assess people and claims," she says. The process itself is what Church enjoys. "If an alien gets asylum, it doesn't mean the government loses," she says. "It means justice was done."

But that's the ideal case, Church admits; the prosecution of most cases is far from it. It boils down to simple resource problems. She estimates that the average immigration attorney prosecutes 3,000 to 4,000 cases a year. "There is a tremendous volume. There is no preparation time. No time to prepare witnesses, or bring witnesses. It's not unusual to go to court unprepared," she says.

While immigrants wait for their cases to be tried, many are released into the population and are never heard from again. Others are held for months just waiting for a hearing. Reorganization of the INS hasn't brought new judges or lawyers to stem the workload or speed the work. And the division of the former INS lawyers into three separate bureaus may even slow the process further, Church believes.

Most of Church's colleagues have been transferred into the Bureau of Immigration and Customs Enforcement, but Church is now a lawyer in the Bureau of Customs and Border Protection. The division doesn't make sense to Church. "It's a false separation where there should be one flowing process," she says. When an illegal immigrant is caught at the border, Church and lawyers in the border bureau will prosecute the case. But what if they uncover evidence of a smuggling operation or widespread document fraud? Then, they

would have to refer the case to the investigative bureau. “We’ve split the enforcement process,” Church says. “But the intelligence from one bureau needs to logically flow to the other.” Dividing the old INS enforcement side in two, she believes, will only make it more difficult to prosecute cases.

In addition, Church is concerned that her bureau’s leadership is not attuned to the intricacies of immigration law. That’s because the Bureau of Customs and Border Protection is headed by Robert Bonner, the former chief of the Customs Service. Bonner has kept his old management structure, and the agency’s upper ranks are, as a result, populated mostly with former Customs officials. For Church, it hasn’t been an easy adjustment. “Customs law is different than immigration law,” she says. “And my direct chain of command doesn’t have the same experience in the area that I practice in.”

Finally, Church and all DHS immigration lawyers now work in a separate department from the immigration courts, which remained part of the Justice Department after the creation of DHS. Consequently, immigration attorneys worry that Justice and DHS may now come to different interpretations of immigration law that could lead to interdepartmental conflicts. “It just doesn’t make sense,” says Church.

Church takes issue with the restructuring of the INS’ enforcement organization, but she—like most people—agrees that the division of INS services from enforcement was a necessary change. The services side—which accounted for about 30 percent of the INS budget—was viewed in many INS district offices as a stepchild. When resources were tight, immigration services drew the short end of the stick.

The new Bureau of Citizenship and Immigration Services is composed of former INS employees who processed applications for immigration benefits. Because of limited staffing and outdated technology, the INS services division was plagued by application backlogs and slow processing times. It also walked a tightrope, trying both to speed application processing and to maintain the integrity of application reviews. In the 1990s, the INS found itself embroiled in scandal after it rushed application processing, only to find that some of the people it had approved had criminal records. Then, in 2002, the agency again took a public relations blow when a contractor sent two of the dead Sept. 11 hijackers visa approval letters months after the attacks.

The new head of the bureau, Eduardo Aguirre, previously a top executive at Bank of America, has set up a backlog reduction team that is working up a plan to maximize personnel and information technology resources while further streamlining procedures.

Aguirre reports progress in updating technology at the bureau, a desperate need in an agency where much of the work still is done by hand. And he says that for the first time, immigrants now can file electronic applications for work permits and for replacement or renewal of green cards, which are given to foreigners who hold permanent residency in the United States. These two forms make up about 30 percent of the applications received annually by the services bureau. By 2005, Aguirre says, 90 percent of all immigration forms will be available for online filing. But in addition to the online applications, the

bureau now collects a digital photograph, signature and fingerprint. This information, Aguirre says, will make it possible for the bureau to produce more secure immigration documents in the future.

But the flow of applications continues to overwhelm the agency, says Jim Bonnette, an adjudicator with the Bureau of Citizenship and Immigration Services and president of the Newark, N.J., local of AFGE's Immigration and Naturalization Service Council. Each year, foreigners file 7 million applications for immigration benefits, and the workload is just too great for the bureau's employees to meet Aguirre's backlog reduction goals, Bonnette says. "We want to do our job better but they want to push numbers through as if everyone came out of a cookie cutter mold," he says. "We have 20 minutes to do an interview, and it's not enough time." As a result, he says, the agency runs the risk of approving benefits to immigrants who are not entitled, and, in the worst-case scenario, giving benefits to a known criminal or terrorist.

As yet, Bonnette says, new technology has not provided a solution. The agency's computer system has glitches, and as a result, adjudicators continue to work with paper forms, he says. At one point, an adjudicator in Newark approved naturalization for an alleged member of the Iranian terrorist group, Hezbollah. "The technology failed us," he says. Adjudicators just aren't given time to run all of the necessary background checks for different spelling variations of a name, or aliases, Bonnette says. As a result, the agency has not learned the lessons of Sept. 11. "Sept. 10 is the same as Sept. 12 here," he adds.

FRONT-LINE FRUSTRATION

Management of the former employees of the INS remains a work in progress. Most former INS managers remained with the Bureau of Immigration and Customs Enforcement. But the INS management team has continued to serve all former INS employees, wherever they work in the Homeland Security Department. Former INS managers have made sure that all former INS employees have continued to receive paychecks, have working information technology systems, and have procurement and hiring authority.

On Oct. 1, however, the bureaus will have to fend for themselves. That approaching deadline has raised some consternation among former INS managers, who question whether Homeland Security's top management official, Janet Hale—who was previously a top manager at the Health and Human Services Department—has paid adequate attention to the reorganization.

In a July speech at the Heritage Foundation, a Washington think tank, Hale acknowledged that she has not even begun to implement new DHS management structures. For now, she said, she has focused on selecting and designing a new personnel system. A group of 60 officials from all DHS bureaus and unions have met over the last few months to identify best practices at DHS' component agencies. They also are studying past management reorganizations, such as at the Internal Revenue Service, Hale said.

In late July, a senior review committee held its first meeting aimed at narrowing options for

the new personnel system. The questions, Hale admitted, are myriad, because employees have different pay scales, overtime rules and retirement benefits. Hale said she wants the new system to iron out disparities, but also to reward good performance. Disciplinary procedures, she said, are another major category for review. By November, Hale hopes a new system will be chosen. Then the implementation will begin.

Meanwhile, work has only just begun on crafting new procurement and information technology systems. It's been a slow process, Hale said, and the challenges are enormous. "Five months into this, and we almost have everyone connected by e-mail," she joked. Hale made it clear that she prefers to move slowly and get new systems designed properly rather than having to backtrack after making changes too quickly. "Let's take the time, and let's do it right," she said.

But for bureau managers, this has created immense frustration. They say they've been told not to move ahead with management reforms until they are approved by Hale's office, but her office, in their view, has dragged its feet in making decisions. "One of the messages coming down is, 'Don't organize on lower levels, because I want it to mirror what I'm doing.' And then you say, 'Well, what are you doing?' And it's, 'We haven't decided yet,'" said one manager. "What they don't understand is that you can make decisions and then make midcourse corrections."

And with an Oct. 1 deadline looming, this manager—who requested anonymity—says he fears a "train wreck." On Oct. 1, INS employees will begin relying on their respective DHS bureaus for paychecks, technology support, and procurement and hiring. "I think some decisions are going to have to be made pretty quickly," says the manager. "Or some decisions will be made by default."

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