

Reinventing the Border

Will Congress finally reform the INS?

By Daniel W. Sutherland

The country faced a crisis along the southern border. Illegal immigration and drug smuggling were flourishing from San Diego to Brownsville. Commentators argued that "foreign influences" were corrupting the country and demanded severe restrictions on immigration; some called for the commander-in-chief to send in the troops.

After months of study, the president announced a new plan in his State of the Union address. The problem, he argued, was that too many agencies were patrolling the border. Interagency rivalry and inefficiency were rampant, crippling enforcement efforts and wasting scarce tax dollars. It would make more sense to assemble the competing agencies into one lean, professional unit.

The president who delivered that speech was Herbert Hoover; the drug being smuggled was alcohol. After a lengthy fight, Congress rejected his plan.

Seven decades later, lawmakers are considering similar proposals. In the waning days of the last Congress, the Republican leadership slipped into its budget package a plan to break the Immigration and Naturalization Service into two separate agencies, one to provide services to legal immigrants and one to guard the border. Congressional Democrats and the Clinton administration fended off the proposal, but Republican leaders have promised to revive the issue in 1999. The immigration committees on Capitol Hill, recently dominated by contentious philosophic and economic debates, will now spend much more time analyzing blueprints for restructuring the INS and its Border Patrol.

The need for some sort of radical INS reform is increasingly obvious. Since 1992, the INS's annual budget has nearly tripled to nearly \$4 billion. It has almost 15,000 more employees than when Clinton took office, with more officers allowed to carry a gun than any other federal law enforcement agency, including the FBI and the DEA. The number of Border Patrol agents has risen from about 3,000 to more than 7,000. The results are less than impressive:

- In 1996, more than 300,000 people were waiting for the INS to process their citizenship paperwork. Now, more than 1.5 million people are in line. Residents of large cities, such as Chicago and Los Angeles, may wait as long as four years.

- In 1986, when Congress granted an amnesty to illegal immigrants, 3 million people signed up. Today, there are 5 million illegal immigrants in the United States. In other words, the problem is almost twice as large as when we last tried to wipe the slate clean and start over.

- According to a 1998 *San Francisco*

Chronicle series, the buildup along the southern border has been "largely to no avail." Recent research by Wayne Cornelius and Claudia Smith at the University of California at San Diego suggests that the heightened controls may have simply encouraged illegals to stick around once they get here: "Short-term shuttle migration"—the academic term for working here illegally for a short period and then returning home—may be giving way to more permanent illegal immigration.

- Legal immigrants, and the businesses and families that sponsor them, are complaining of increasingly shabby service from the INS. Carl Shusterman, a Los Angeles immigration attorney, recently told the *Los Angeles Times*, "This is the very first time in my 22 years practicing immigration law where the entire system—not just naturalization, but the entire system—seems to be melting down."

- Violence along the border has skyrocketed, and so have citizen complaints. At one point, the Border Patrol actually asked Congress to stop authorizing money for it until it could adequately train and equip its new hires. (Congress refused.)

Small wonder, then, that a recent House report concluded that the "INS is overwhelmed with the task of handling its responsibilities, resulting in a broken immigration system."

Under the circumstances, Congress can hardly avoid re-examining the entire structure of the immigration bureaucracy.

The most modest proposal is the one offered last fall, to divide the INS in two. Some scholars have revived Hoover's idea to merge all the federal law enforcement agencies with responsibilities along the southern border, including the Border Patrol, the Customs Service, the DEA, and the Agriculture Department. Still others propose merging all of the bureaus that facilitate legal immigration, including significant parts of the State and Labor departments, into one in-



Mass Appeal: New citizens being sworn in, Fresno, California, 1996. After decades of debate, reforming the INS may actually happen.

dependent agency similar to the Social Security Administration. Some of its duties could even be privatized.

Now two congressmen have taken it upon themselves to shepherd INS reform through Congress. One is Texas Democrat Silvestre Reyes. Before being elected in 1994, Reyes was chief of the Border Patrol sector that includes El Paso. He gained national prominence by creating "Operation Hold the Line," an initiative credited with virtually eliminating the flow of illegal immigrants through that city's business district. In 1997, Reyes drafted a bill to divide the INS in two, much like the Republicans' 1998 proposal. When Reyes speaks of the need to overhaul the agency where he worked for more than 25 years, his colleagues listen.

The other key congressman is Rep. Harold Rogers (R-Ky.), the chair of the subcommittee that appropriates the INS's budget. After nearly 15 years of trying to fix the agency's abysmal financial accounting systems and byzantine organizational chart, Rogers decided enough was enough: "It's just time we admit that this agency just will not work and assign the chores to agencies that have proven records and can be held accountable," he told Marcus Stern of the Copley News Service.

Rogers has been especially frustrated by the INS's ineffectual efforts to "reinvent" itself. The INS has announced major reorganization plans four times this decade, in 1991, 1994, 1997, and 1998. Its problems have remained intractable. "Same people. Same problems. Same shortcomings," Rogers says. It is always dangerous for a federal agency to anger the chairman of the committee that appropriates its funding.

Congressional Democrats now find themselves in a difficult position. Reyes is their most knowledgeable spokesman on immigration issues, and his proposals have a clear Democratic pedigree: The Carter administration pursued a major overhaul of the agency, and in 1990, then-Sen. Alan Cranston (D-Calif.) introduced a sweeping reform bill. On the other hand, Al Gore has been trumpeting his "national performance review" project—his much-heralded effort to reinvent the federal government—as evidence of his suitability for the presidency. Gore has long pointed to the "new INS" as evidence of his project's suc-

cess and therefore has resisted, and encouraged congressional Democrats to resist, any proposals that would call his past efforts into question.

The Republicans, meanwhile, face a much clearer path, mostly because INS reform is one topic the party's feuding factions can agree on. Prominent Republicans have clashed over California's Proposition 187 (the 1994 initiative prohibiting illegal immigrants from receiving government services, including education and medical care), over welfare benefits for legal immigrants, over proposals for a national ID card, and over the number of foreign workers Silicon Valley should be allowed to import. Pat Buchanan and Pete Wilson have traded barbs with Bill Bennett and Jack Kemp. Lamar Smith of Texas chairs the House Immigration Subcommittee, and Spencer Abraham of Michigan holds the Senate's equivalent post; both are conservative Republicans, but their views on immigration are diametrically opposed. Yet there's one thing they all agree on: The INS is a costly disaster.

Furthermore, party leaders think INS

reform could be a winning issue with Hispanic voters. Nearly every Latino with a relative, neighbor, or business associate who has recently immigrated can relate an INS horror story. The Border Patrol is particularly hated. Because Hispanics have recently voted against the GOP by large majorities, many Republicans are eager to develop proposals that would appeal to Latino voters. INS reform may be one such proposal.

Since President Hoover announced his plan in 1929, more than two dozen congressional committees, blue-ribbon commissions, and executive agencies have made similar recommendations. Each time, entrenched interests derailed reform. Given recent developments, some sort of change may finally be on the way. If nothing else, one of the government's poorest-performing agencies will finally receive serious public scrutiny. And that, in itself, is reason to cheer. ♦

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A Woburn FAQ

On *A Civil Action*, skepticism is overdue.

By Walter Olson

"Lawyer Errs on the Side of Angels": That's the newsy headline atop Janet Maslin's *New York Times* review of *A Civil Action*, the Hollywood release, based on the book by Jonathan Harr, in which attorney Jan Schlichtmann sues two large corporations on behalf of leukemia-stricken children in Woburn, Massachusetts. "Fighting the good fight," reads a nearby photo caption. Maslin describes the children as "casualties of a poisoned river," though the real-world legal proceedings never reached the issue of whether they were in fact casualties of anything.

Already a best-selling book, *A Civil Action* is now moving into the curriculum, which means captive schoolchildren are going to spend a lot of time watching John Travolta and being exposed to what *Boston Globe* columnist Alex Beam describes as the "unmistakable message of the movie and, to a lesser extent, the book": "Big corporations poured poison into the drinking water of a tiny, woe-begotten

weak case." Here's a primer on why, to bring to class and startle your teacher with:

Q: What did the jury decide?

A: First, it ruled that Beatrice Foods was not responsible for polluting the wells, rejecting Schlichtmann's case outright. Second, it ruled that W.R. Grace had contributed to the wells' contamination beginning in September 1973. This second ruling was much less helpful to Schlichtmann than it may appear, since the date was midway through the leukemia "cluster" that gave rise to the suit. It's not easy to pin your epidemic on Typhoid Mary if she arrived in town well after the outbreak started.

Grace ponied up \$8 million to settle, which meant the case never proceeded to its next phase, in which the jury would have considered whether the company's contribution to the wells' contamination had actually caused the leukemia and other illnesses. On the Beatrice side, it emerged that employees of the company had withheld from Schlichtmann an old geology

cuit upheld Skinner on all but one transitory issue; its final denial of rehearing was signed by then-Chief Judge Stephen Breyer, later named by President Clinton to the Supreme Court and considered nobody's stooge. Harr now says he was "distressed" to learn that Skinner came off as a villain to readers of his book: "He's a good judge and a smart man," he told Alex Beam, "and he's a credit to federal judges."

Q: What about Schlichtmann's other complaints that the judge was picking on him? *Time* says it was a "questionable ruling" for Skinner to have divided the trial into stages.

A: Such divisions are routine in tort litigation. They save the participants the expense of preparing for full-dress trial on later issues if a case may lose on preliminary grounds. Schlichtmann wanted to skip past the tiresome questions of who polluted what and get straight to putting client families on the stand to testify about the anguish of losing a child. Either he was banking on the emotional appeal, or he imagined the family testimony would somehow help resolve the hydrogeology issues.

Q: How did Schlichtmann manage to lose the contamination case against Beatrice, when its tannery was relatively near the wells and there was evidence of pollution on its land?

A: Two tactical decisions undercut his chances. The first was to fix on the theory that the cause of the leukemia cluster in east Woburn was trichloroethylene (TCE) and related industrial solvents. The second was to propose models of water flow that the jury correctly dismissed as incredible.

The TCE theory fit the headlines of the case, since it was the finding of solvents in the wells that led to their emergency closure. But as reporter Dan Kennedy, who covered the trial and aftermath for the Woburn newspaper and the *Boston Phoenix*, observes, Schlichtmann "had no evidence that the tannery had ever used" TCE. Nor was he ever able to come up with such evidence. Rather an important gap to leave in one's case, no?

Entangling himself further, Schlicht-

Already a best-selling book, *A Civil Action* is now moving into the curriculum. But, says the *Boston Globe's* Alex Beam, "Everyone familiar with the...trial knows that the plaintiff had a terribly weak case." Here's a primer on why, to startle your teacher with.

town, killed children," and "got away with it" because of our defective civil justice system. *Salon* reviewer Charles Taylor has even charged the movie with being too evenhanded, making it look as if there were somehow two sides to the story when in fact the corporate defendants were "demonstrably guilty," the evidence against them "overwhelming."

But in reality, writes the *Globe's* Beam, "Everyone familiar with the Woburn trial knows that Schlichtmann had a terribly

report that he argued would have helped his case. This led to years of further litigation, culminating in a fairly thorough defeat for Schlichtmann, basically on the grounds that the report would not have saved his case no matter when he obtained it.

Q: Schlichtmann claims this was because the judge in the case, Walter Skinner, was biased against him. Is that true?

A: Not many others on the scene agree. The U.S. Court of Appeals for the 1st Cir-