

EXECUTIVE SUMMARY

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Introduction

The Immigration Court is an administrative tribunal responsible for the review of the decisions of the U.S. Immigration and Naturalization Service (INS), the agency which prosecutes administrative violations of Immigration law. Both units of the Department of Justice (DOJ), the Immigration Courts and INS are subject to a long-standing practice within the department to locate their field offices together whenever possible. The intent of this policy has been to foster economy, efficiency, and customer service in support of the DOJ law enforcement mission. The practical effect, however, has been to contribute to an almost universal perception that the Immigration Court is a branch of the INS. This study was undertaken to evaluate how this policy came into being, whether it significantly impacts the real or imagined independence of the Court, and if so, if there are practical measures which can be taken to mitigate the impact of Immigration Court/INS collocation. A case study of the Buffalo Immigration Court was conducted to provide a real world example.

Literature Review

The Immigration Courts are a unit of the Executive Office for Immigration Review (EOIR) which was created in 1983 as a separate office within DOJ. Until that time immigration judges were employees of the INS and responsible to the same officials who supervised the law enforcement and prosecutorial activities of the agency. This arrangement has been the subject of a number of legal and philosophical challenges. Thirty years ago the Supreme Court identified the inherent conflict of prosecutors supervising quasi-judicial employees. The 1983 detachment of EOIR from INS, however, was not intended to assure an independent review of immigration officer decisions. Rather the split was made to alleviate the internal budget and other administrative conflicts resulting from the INS priority to deport illegal aliens and the immigration judges' responsibility to ensure a measure of due process.

Given this unique evolution, it might be questioned whether the Immigration Court is a "real" court at all. A review of the statutory and regulatory authorities granted to immigration judges, numerous federal court decisions, and analyses by legal scholars leads to the conclusion that the Immigration Court, despite its domicile within DOJ, functions for all intents and purposes as a court. If that conclusion is correct, the Court can be evaluated against generally accepted standards applicable to traditional trial courts in the United States. The *Trial Court Performance Standards* (TCPS) were developed as such a measure. One TCPS standard studies whether a court maintains its distinctive and independent status while fostering cooperation with court related agencies in the interest of justice.

A significant portion of Court customers believe that it is still part of the INS. One of the principle reasons for this belief is that the Court and INS are often collocated. EOIR has expanded greatly since its inception. Appropriations have risen 1,300 percent from 1984 to 2000. The number of permanently staffed Immigration Courts has increased proportionately. About one-half of them are collocated with INS district offices in accordance with DOJ policy. In addition to the historical intimacy of the two agencies another basis for the misconception is the cultural background of the persons most effected by their decisions. Aliens often do not speak English. They come from over 200 countries whose governments may engage in torture or coercion and pay little attention to fairness in their civil or criminal justice systems. There is no provision in immigration law for government paid attorneys, leaving over one half of aliens to represent themselves. It is not surprising that aliens brought before an immigration judge, especially one sitting in a courtroom next to the INS office, might not assume that they would receive an unbiased hearing.

Outside of DOJ, there has been a greater recognition of the inherent conflict of the Immigration Court's position within the largest law enforcement organization in the country. At least three bills have been introduced in Congress to remove EOIR from the department. The U.S. Commission on Immigration Reform made the same recommendation. Inside of the department, however, collocation continues to be an unquestioned policy. DOJ administrators, INS, and to a lesser extent EOIR, have been emphasizing the benefits of collocation such as greater efficiency, and paid little, if any, attention to the unintended adverse consequence of projecting the Court as biased and subservient to the interests of law enforcement.

Case Study

A examination of the Buffalo, New York Immigration Court illustrates how the various pressures and perceptions are manifested. When EOIR was separated from the INS in 1983, the Buffalo Court moved to space in a commercial building. This operation ceased in 1987 when many one-judge courts were deemed to be inefficient and were closed. For the next seven years immigration judges traveled to Buffalo from other cities to hear cases. These hearings were held in space controlled by the INS. For a number of reasons, including increased caseloads, escalating budgets, and management changes at EOIR, it was decided to reopen a permanent court in Buffalo.

In accordance with the department's policy the court was to be collocated with INS in a building where the U.S. Attorney's Office, another DOJ component, was the only other tenant. Construction delays, however, resulted in personnel entering on duty before space was ready. For over a year, the Court operated from offices provided by INS. While collocation has had the predicted benefit of enhancing the efficiency of Court and INS operations, it has also presented its own set of problems. To get the Court a person must use the INS entrance. Security is controlled by INS. Judges cannot park in the building. Three fourths of the telephone calls to the Court relate to matters for which the INS is responsible. Court mail is often delivered to INS. An EOIR evaluation team concluded in its draft report that these factors outweighed the benefits of collocation and recommended that the Court be moved.

Findings

There are some basic commonsense steps which can be taken to minimize the adverse consequence of collocation and enhance the appearance of independence. Among them are facility design practices, employee training, public affairs programs, and changes in other agency policies and procedures which

tend to emphasize the activities the two agencies have in common, rather than their inherently different judicial and law enforcement missions.

Conclusion

There is an intractable perception of INS as a monolithic bureaucracy with control of all immigration related matters. Although collocation is only one factor in this pervasive presumption, the joint location of Immigration Court and INS offices is perhaps the most tangible to the average person and especially to aliens who hope to receive a fair hearing. Under these circumstances the Immigration Courts have done an admirable job. Despite the difficulties, the agency should staunchly defend its distinctive position within DOJ. EOIR must take every opportunity to demonstrate its independence until such time as it is autonomous in form as well as function.

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