

BOX 4:

US Born Children

Vaccination/ Adoption

S.1664

Immigration Bill – S.1394

Police Brutality

105th Congress

Immigrant Technical

SAVE Study

Dr. Singh – Sikhs

CA Working Group

Federal Register Mon, Nov. 17, 1997

INS Reform

Podesta/Reyes

INS Reform

INS Reform – Hyde Letter

INS Reform

INS Reform II

INS Reform II

Immigration Reform Legislation 1996

Immigration Reform Legislation 1995

Immigration CIR Suggested Reforms

Immigration INS/ Reforms

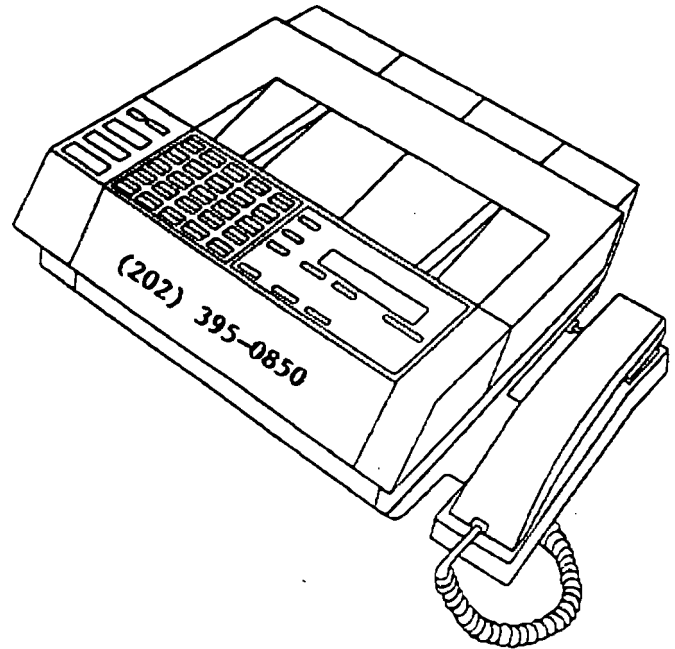
EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
TCJS Division
Justice/GSA Branch

FAX COVER SHEET

TO: *Julie*

FAX NUMBER: *65581*

PHONE NUMBER:



FROM: *Natm*

PHONE NUMBER: 202/395-

FAX NUMBER: 202/395-0850

COMMENTS: *Re: Requesting 'Saw to*
Naturalization - DOT has asked for
our comments by tomorrow. Let me
know if you have any ty

Date:

Time:

Number of Pages (including this page)

If you do not receive all the pages, please call as soon as possible.

May 15, 1998 (Final)

STATEMENT OF WORK**Support to the Department of Justice to Provide Detailed Planning and Implementation of the Administration's Organizational Restructuring Proposal for the Immigration and Naturalization Service****I. Purpose and Objectives**

The purpose of the series of tasks listed in the following statement of work is obtain the services of a contractor to work and consult closely with the Immigration and Naturalization Service (INS), Department of Justice to: (a) develop detailed implementation plans for the Administration's recently developed reform proposal for the organizational restructuring of the INS (attached), to include specific details on how the new organization will look and operate at all levels; and (b) facilitate in the implementation of the plans, including the establishment of an effective process to manage and monitor the organizational redesign.

II. Statement of Work**A. Background.**

The Immigration and Naturalization Service has one of the most demanding missions in the Department of Justice and within the entire Federal Government. The effective performance of its critical border enforcement and benefit service functions continue to be high Administration, Congressional, and public priorities. As an organization, INS has been confronted with some of the most extraordinary conditions in which to operate in recent Federal public administration.

Since 1993, INS has experienced a dynamic policy and statutory environment, including extensive increases in its duties authorized under new laws; large staff and budget enhancements; ever-higher public demand for services, a demand which is driven by factors beyond the agency's control and which often cannot be anticipated; and the commensurate substantial executive and management responsibilities to accommodate, plan and direct policy and operations according to these conditions. An example of INS' forward-looking executive initiatives in this environment is its undertaking and managing one of the most significant national office automation and interconnected enforcement/services information systems changes in Government.

The Department of Justice and Immigration and Naturalization Service leadership have used many successful approaches to

streamline INS' administrative infrastructure; ensure the best, state-of-the-art technological support for its Border Patrol and other law enforcement officers; and to implement a customer-driven approach to its strategic planning and operational decisions. Similarly, it has also significantly reformed and transformed many elements of its organizational structures to deliver better services and improve its enforcement capabilities in response to complex challenges noted above.

Implementation of such continued and rapid structural innovations is exceedingly difficult in any public organization, as well as in private firms. Of necessity, however, INS has moved proactively, although not without the criticism and some dislocations attendant upon any such decisive and ambitious structural transformations, to create a national organizational design that employs sophisticated information systems, sound public administration methodologies, and state-of-the-art fiscal and growth management strategies to accomplish its mission.

In its report to Congress in the Fall of 1997, the Commission on Immigration Reform (CIR) called for significant restructuring of the our Nation's immigration system. Among other things, the CIR proposed moving many current immigration functions from the INS to the Departments of State and Labor and consolidating immigration enforcement into a new Federal law enforcement agency within the Department of Justice.

The House Appropriations Committee directed the Attorney General to review the CIR report and develop a plan that would result in greater effectiveness and efficiency in the performance of the core functions of the Federal immigration system. In addition, the Domestic Policy Council (DPC) was instructed by the President to evaluate the CIR proposal and other proposed reform options, including those developed by members of Congress. In conducting this review, the DPC, working closely with the Office of Management and Budget (OMB), consulted with the Departments of Justice, State, and Labor, the INS, staff of the CIR, immigration experts and advocacy groups, and other White House offices, including the National Security Council. The Administration's efforts resulted in an overall framework for reform, and the Justice Department contracted with a management consulting firm to provide an assessment of INS' structure and operations and assistance in making the Administration's framework "operational." The Administration's report "A Framework for Change, Restructuring INS to Improve Immigrant Services and Strengthen Law Enforcement" is attached for your consideration in responding to this SOW and shall serve as a starting point for conducting the contract tasks.

Among other things, the Administration's reform plan would separate INS' service and law enforcement functions, but keep the agency intact. Under the proposal, separate chains of command

for service and enforcement functions from the field office level up to headquarters would report to the INS Commissioner. In addition, the proposal calls for eliminating the current INS field structure in which district and regional offices serve both enforcement and service functions and would replace it with separate enforcement and service offices to provide enforcement and service functions at the local level. The INS is committed to moving forward with this proposed restructuring. A broad overview of the proposed INS organizational structure is show in the chart below.

The Administration's proposal now needs to be further developed and planned out in more detail at all levels in preparation for implementation. Among the questions to be answered during this process are: What specifically needs to be done? Who will do it? How do all the pieces fit together? How will management and field office boundaries be drawn? How do we transition to the new organization? How do we obtain organizational buy-in and ensure sustained commitment to change?

B. Description of Services

The contractor shall propose a scope and methodology reflecting a thorough examination and understanding of the Administration's reform plan, additional views and ideas within the proposed framework, development of detailed planning of how the new structure will look and operate at all levels, and an implementation plan which shall include specific milestones, activities and resources.

Following the detailed planning phase (Phase I) of approximately six months, together with agreement among INS, DOJ, and the Administration on the Phase I products, a decision will be made as to whether and when the implementation phase (Phase II) will take place.

Based upon the present organizational restructuring proposal, the contractor shall develop a detailed plan of how the new structure will look and operate at all levels, and an implementation plan which shall include specific milestones, activities and resources, including costs required to perform the project tasks. The project shall include, but is not limited to, completion of the following tasks:

PHASE I

Task 1. Review Phase

- Review and analyze the Administration's proposed framework for reforming the INS.

Task 2. Interviews and Data Collection Phase

- Consult with DOJ, INS, Administration officials and external groups regarding the present restructuring proposal.
- Conduct structured interviews with INS senior policy managers and headquarters staff.
- Conduct a series of focus groups/meetings with key INS policy and senior management officials, including field-based officials, such as Regional Directors, District Directors, Chief Border Patrol Agents, and Headquarters

officials, in order to address concerns or issues raised regarding the reforms and planning for the implementation of the proposed restructuring.

Task 3. Detailed Planning

- Work with INS on the creation of a restructuring office to provide the leadership necessary to drive the restructuring program.
- Conduct analysis to develop a detailed design of the proposed organizational structure from headquarters down to the field level. This process should include the detailed structure, management boundaries, activities and processes for each operating division (e.g., Immigrant Services and Enforcement Operations). In addition, it should include the design of cross-organization processes and organization units required to integrate service and enforcement operations and the creation of detailed organization charts of the INS as a whole as well as specific offices and operations.
- Develop staffing patterns for each proposed office at the headquarters level and for each field location.
- Detail the re-design of key processes, and policies to effect them, while building on the broad range of redesign and re-engineering activities already underway in INS.
- Recommend specific options as to the restructuring of senior management positions and career paths. This task should include how INS will identify skills sets that are needed in the proposed organizational structure as well as develop recruitment and skill-refinement strategies for senior managers.
- Develop a detailed implementation plan to include identification and analysis of restructuring implementation issues, such as how position grade, pay structures, and career paths/development, between the enforcement function positions and service function positions would be affected.
- Propose human resource strategies to be employed to accomplish the restructuring, including use of personnel transfers and realignment within the new organization, and/or orderly attrition.
- Develop a comprehensive change management strategy designed to implement the reorganization with a minimum of organizational disruption and/or negative workforce impact.

PHASE II

Task 4. Implementation

- Upon completion of the planning phase (Phase I), a decision will be made as to whether to commence with the implementation phase (Phase II). Depending on decisions made, the contractor shall be prepared to test the integration of activities during implementation (Phase II) in a phased, full-blown, or pilot approach. Phase II of this order is an option item. The Government will evaluate offers for award purposes by adding the price of the option to the total price for Phase I. While it is the intent to have the awardee perform both Phase I and Phase II, evaluation and inclusion of this option does not obligate the Government to exercise it. Availability of funding and/or other factors yet known, will determine whether the option will be exercised.

C. Progress Reports and Status Reporting

The contractor shall provide detailed, written progress reports to, and meet bi-weekly with, a Senior Policy Board of INS officials to brief on project progress, solicit input, and receive guidance during Phase I, and monthly during Phase II, if a decision is made to fully implement the proposal.

D. Period of Performance

This project will be separated into two phases, each with its own timeframe.

1. Phase I will be conducted over the course of six months, beginning on July 1, 1998, and ending on December 31, 1998. Phase I will involve further analysis and detailed planning of the Administration's organizational restructuring proposal as outlined in tasks 1-3 above. The contractor's final Phase I report will be due to the Department of Justice, Immigration and Naturalization Service by December 31, 1998.
2. Phase II, Task 4, will cover implementation and will be conducted over the course of approximately 24 months, pending Department of Justice approval. Phase II shall not begin without the specific prior approval of the Government.

E. Deliverables

In performance of the above tasks and in accordance with the above purpose and objectives, the contractor shall submit the following deliverables:

<u>Deliverables</u>	<u>Due Date after Award</u>
develop project plan and schedule	6 weeks
develop/present draft Phase I Report including draft implementation plan	16 weeks
develop/present final Phase I Report including final implementation plan	26 weeks

Deliverables for Phase II shall be defined upon exercise of the option for Phase II.

F. Government Support

The contractor will receive the following Government support for the performance of these tasks:

A. Documentation. Access to reports, studies, data and related materials necessary to perform these tasks.

B. Technical Assistance. Points of contact will be designated from applicable INS offices to ensure consistency in areas related to data exchange and verification and other liaison matters. This assistance normally will be available only during normal business hours.

C. INS Senior Policy Board Input. The contractor will meet regularly with a Senior Policy Board of INS officials to discuss progress and problems related to the successful completion of these tasks and deliverables in accordance with the approved workplan and schedule. The INS policy board will provide assistance and guidance to the contractor as necessary. The INS Contracting Officer's Technical Representative will also attend the Senior Policy Board meetings.

G. Government Contacts

1. Contracting Officer's Technical Representative (COTR)

Nita Spalding
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536
(202) 616-7019

2. Project Manager

Mary Ann Wyrach
Deputy Commissioner
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536
(202) 514-1900

3. Contract Administration

Contract Administration for this requirement shall be performed by:

(To be named at a later date)
Immigration and Naturalization Service
General Contracts Section
425 Eye Street, N.W.
Washington, D.C. 20536

H. Invoices

Two copies of each invoice shall be submitted to:

Immigration and Naturalization Service
Collections and Payment
425 Eye Street, N.W., Room 6261
Washington, D.C. 20536

One copy of each invoice should be sent to the Contract Specialist and the COTR.

I. Security

For security all contract employees working on this task will be required to have a favorable NACI check. In addition, any contract employees working on this project will be required to be United States citizens.

J. Travel

Travel outside of the metropolitan Washington, D.C. area is anticipated. The contractor should propose travel sites consistent with the workplan and tasks.

K. Proposals Evaluation Criteria

General Information

It is the intent of the Government, by providing the instructions set forth below, to solicit information that will demonstrate the ability of the Offeror to successfully complete the requirements specified in the RFO and to permit a competitive evaluation of each Offeror's proposal. The proposal shall clearly demonstrate the Offeror's understanding of the overall and specific requirements of the proposed contract; convey the offeror's capabilities for transforming their understanding into accomplishments; and present the offeror's plans, methods, and prices for performing the contract.

The Contractor selected as a result of this RFQ shall be responsible for all contract requirements. The Government will look to one entity for the management and performance of the contract. In the event teaming or subcontracting arrangements are proposed for accomplishing the required work, the Offeror shall thoroughly describe the organizational relationships of the team members and subcontractors throughout the contract life, including the proposed contribution of each team member to the overall effort.

Proposal Format Information

General:

Each proposal shall be placed in a binder and shall include a title page and a complete table of contents. The Technical and Price Proposals shall be in separate binders. The offeror shall submit five (5) copies each of the Technical and Price Proposals.

1. Technical Proposal:

The Technical Proposal is intended to address technical performance, program management, and the offeror's experience and history of past performance. The contractor must submit a project plan, with an accompanying schedule for its completion, that includes a time line and an estimate of resources and costs required to perform project tasks.

2. Price Proposal:

The Price Proposal is to be strictly limited to price information and supporting documentation (i.e., pertinent pages from GSA schedule).

Proposal Submission

Proposals shall be submitted by C.O.B., Friday, June 5, 1998, to:

Department of Justice
Justice Management Division
1331 Pennsylvania Avenue
National Place Building, Suite 1040
Simplified Acquisition Staff
Washington, D.C. 20530
ATTN: Michelle Wall, Contracting Officer
(202) 307-1944

EVALUATION CRITERIA

Proposals will be reviewed by a panel including representatives of the Immigration and Naturalization Service and the Department of Justice.

The Government may award a contract on the basis of initial proposals without discussions.

Criteria are listed in descending order of importance.

1. Demonstrated comprehensive knowledge of the principles and tools of organizational re-design and re-structuring.
2. Demonstrated understanding of Federal Governmental organizations with extensive field structures.
3. Demonstrated staff of senior level consultants with extensive experience in law enforcement issues.
4. Corporate experience related to similar work with other law enforcement organizations -- Federal, State, local, or private sector and record of past performance.
5. Corporate capability to mount an effort of this magnitude within a limited period of time.
6. Reasonability of estimated cost based upon the technical proposal.
7. Understanding of the issues related to strategic change management and demonstrated ability to design a strategy to overcome the barriers to change.
8. Demonstrated understanding of civil service and law enforcement personnel and compensation systems and professional career development.

May 7, 1997 [UPDATED]

INS reform

**STRUCTURING, ORGANIZING, AND MANAGING
AN EFFECTIVE IMMIGRATION SYSTEM:
Options For Reform**

INTRODUCTION

In its first two reports to Congress and through subsequent study, the Commission has identified a number of significant areas in which the federal government is not structured, organized, or managed in a way to most effectively develop and implement immigration policy. Many of the identified problems have existed through various Administrations and cut across department or agency lines. Solutions to some of these problems have been proffered in years past by previous commissions, government agencies, and outside observers.

Restoring credibility and setting priorities—themes at the center of the Commission's policy recommendations on illegal and legal immigration, respectively—will not happen unless the government is set up to deliver on these policies. The Commission established a simple yardstick for measuring the effectiveness of the U.S. immigration system: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave. That simple yardstick should be applied to several departments, each having several agencies responsible for various immigration functions. The question is: What structural, organizational or management improvements could enable the overall immigration system to function effectively and efficiently?

This first section of this paper briefly provides an overview of the organizational roles and responsibilities of the principal departments involved in immigration policy development and implementation: Department of Justice [DOJ]; Department of State [DOS]; and Department of Labor [DOL]. The Customs Service, which does

DISCUSSION DRAFT

not have explicit responsibility for immigration but whose officers are cross-designated to perform immigration functions, is also discussed.

The second section focuses on three specific issues requiring attention in an improved immigration system—policy development, organizational relationships, and program accountability—and presents options for addressing each.

ORGANIZATIONAL ROLES AND RESPONSIBILITIES

Under the current system, immigration responsibilities are located in several Departments, and within each Department, in several agencies or subagencies:

Department of Justice [DOJ]

The Attorney General is responsible for administering and enforcing the Immigration and Nationality Act [INA] of 1952 and all other laws relating to the immigration and naturalization of aliens, including, but not limited to, the Immigration Reform and Control Act of 1986 [IRCA], the Immigration Act of 1990 [IMMACT], the Violent Crime Control and Law Enforcement Act of 1994 [VCCLEA], and the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA], and most recently the Illegal Immigration and Immigrant Responsibility Act of 1996 [IIRAIRA]. In turn, the Attorney General has delegated various aspects of this authority to a number of offices, divisions, and agencies (independent or otherwise), located throughout the Department of Justice.

The *Immigration and Naturalization Service* [INS], an independent agency within DOJ has frontline responsibility for administering and enforcing the immigration laws relating to provision of benefits, to enforcement of border, interior, and worksites, and to exclusion and removal of aliens from the United States. "Between FY '86 and '97, the INS budget authority grew from approximately \$584 million to almost \$3.1 billion. During the same period, its full-time equivalent

DISCUSSION DRAFT

[FTE] staffing increased from 11,767 to 23,863." [See *Budgeting for Performance: Strategy, Flexibility, and Accountability to Meet a Demanding Mission*, Report by a panel of the National Academy of Public Administration for the INS, p. 1, January 1997. Other sources indicate that the authorized staffing for INS is more than 26,500.]

The *Executive Office for Immigration Review* [EOIR], established by regulation in 1983, oversees the system of immigration courts, the Board of Immigration Appeals [BIA], which is the final administrative voice regarding the interpretation of certain laws (including those relating to the exclusion and deportation of aliens), and the Office of the Chief Administrative Hearing Officer [OCAHO], which is responsible for administering the hearing process issues arising under the employer sanctions, antidiscrimination, and document fraud provisions of the INA. [See *Organizational Chart for EOIR*, May 17, 1995.] EOIR has 503 permanent positions authorized with a budget of approximately \$61.5 million. Under the Violent Crime Reduction Program initiative, EOIR was authorized an additional 514 positions and \$48 million dollars. Combining these authorizing and budgetary sources, EOIR has a total of 1,017 positions and a budget of approximately \$109.5 million.

Under the present DOJ organizational structure, both INS and EOIR report to the Deputy Attorney General, as do a host of other agencies, divisions, and offices including the FBI, DEA, Executive Office for United States Attorneys, Criminal Division, U.S. National Central Bureau Interpol, United States Marshals Service, Bureau of Prisons, Office of the Inspector General, Office of Intelligence Policy and Review, Justice Management Division, United States Parole Commission, Office of the Pardon Attorney, the Office of Professional Responsibility, Office of Policy Development, Office of Legislative Affairs, Office of Public Affairs, and Office of Legal Counsel. [See DOJ Organizational Chart, October 9, 1994.] Hence, many components compete for the time, attention, and decisionmaking of the second in command at DOJ.

In addition to INS and EOIR, other components within DOJ are specifically charged with administering and enforcing aspects of the immigration laws. The *Office of*

DISCUSSION DRAFT

Immigration Litigation [OIL], housed in the Civil Division, defends in the federal courts administrative judgments regarding alien admissions and removals as well as challenges to the government's immigration laws and policies. OIL is assigned 54 permanent positions and has a budget of slightly more than \$7 million. It appears that as part of the DOJ Violent Crime Reduction Programs initiative, OIL also has been given another 71 positions funded by an additional \$7.75 million. Assuming this to be correct, OIL then has a total of 125 positions with a budget of \$14.75 million. In terms of lines of authority, OIL reports to a Deputy Assistant Attorney General, who reports to the Assistant Attorney General for the Civil Division, who reports to the Associate Attorney General, who reports to the Deputy Attorney General, who, in turn, reports to the Attorney General. [See Organizational Charts for the Civil Division, July 3, 1990 (as included in DOJ's budget for FY '97), and DOJ, October 9, 1994].

United States Attorneys prosecute certain immigration violations that provide for criminal sanctions. Most recently, U.S. Attorneys on the southwest border have begun enforcing an immigration provision of the 1994 Crime Bill, which provides enhanced penalties for the crime of being a deported alien who reenters or attempts to reenter the U.S. illegally, after having been convicted of a felony. U.S. Attorneys are also now prosecuting felony cases against aliens who reenter or attempt to reenter illegally, after having been deported pursuant to a final removal order.

Also, the *Criminal Division* has responsibility for litigating immigration-related matters involving forfeitures or civil penalty actions, for advising the Attorney General regarding the exercise of parole authority concerning aliens who are excludable under certain sections of the Act, for civil litigation seeking exclusively equitable relief against laws, investigations, or administrative actions designed to protect the national security, and for civil litigation involving writs of habeas corpus not challenging exclusion, deportation, or detention. [See 28 C.F.R. §§ 0.55 and 0.61 (1997)]. The Criminal Division reports through an Assistant Attorney General to the Deputy Attorney General. [See DOJ Organizational Chart, October 9, 1994].

DISCUSSION DRAFT

The *Office of Special Counsel for Immigration-Related Unfair Employment Practices* [OSC], formerly operating as a separate component in DOJ but now located in the Civil Rights Division, is charged with enforcing the antidiscrimination provisions of the INA as amended by IRCA. OSC is assigned 29 positions (30 FTEs) and has a budget of approximately \$5.4 million. The OSC reports to a Deputy Assistant Attorney General, who reports to the Assistant Attorney General for Civil Rights, who, in turn, reports to the Associate Attorney General, who reports to the Deputy Attorney General. [See Organizational Charts for Civil Rights Division (May 17, 1995), and DOJ (October 9, 1994)].

Immigration-related functions, although lesser in scope and frequency, also are performed by other parts of DOJ. For example, the *Community Relations Service* [CRS], an agency whose mission is to prevent and resolve disputes, disagreements, and difficulties relating to perceived discriminatory practices based on race, color, or national origin, anticipates that due to community tensions over national changes in immigration enforcement generally, activities at worksites, and recent welfare reform initiatives there will be an increased demand for its mediation and conciliation services in FY '97 and '98 that will require considerable resources. CRS participation and resources also are included in the DOJ mass immigration response planning. For example, in FY '95/'96, CRS participated in *Operation Safehaven* at Guantanamo Bay and at Howard Airforce Base in Panama. In the event that *Distant Shore* or the *Southwest Border Enforcement Plan* are implemented, CRS would be called upon to provide mediation and conflict resolution services to the detained population and the local community.

The *Office of Legal Counsel* [OLC], headed by an Assistant Attorney General, assists the Attorney General in her role as legal adviser to the President and the Executive Branch agencies and as arbiter of legal disputes within the Executive Branch. As such, OLC plays a critical role in writing decisions in the cases in which the Immigration and Naturalization Service seeks reversal of a decision by the Board of Immigration Appeals. A recent example of this effort is the Attorney General's decision in *Matter of Soriano*, rendered February 21, 1997 and holding that AEDPA's

DISCUSSION DRAFT

restrictions on a lawful permanent resident's eligibility for relief under section 212(c) apply to cases already pending before EOIR.

Department of State [DOS]

The *Bureau of Consular Affairs* [CA] is a long-established bureau covering the issuance of visas abroad to foreigners wishing to enter the U.S., the issuance of passports to American citizens, and assistance to American citizens living and traveling abroad. All of these responsibilities have both foreign policy and domestic policy considerations and involve legal, humanitarian, and management concerns. From 1952 to 1978, the Bureau was known as the Bureau of Security and Consular Affairs [SCA]. CA, which employs approximately 1,000 employees, has three major directorates, each headed by a Deputy Assistant Secretary: the Visa Office; the Passport Office; and the Office of Overseas Citizens Services. The Bureau has a staff of approximately 315 in its Washington office and some 474 permanent staff plus an additional 200 seasonal and part-time hires at its 15 passport and processing agencies around the U.S.

The *Bureau of Democracy, Human Rights and Labor* [DRL] was formed in 1994 under the policy direction of the Under Secretary for Global Affairs [G] and included the previous Bureau of Human Rights and Humanitarian Affairs [HA]. While there is growing recognition that human rights problems sometimes form the impetus for migration flows, the Bureau's main role in migration affairs continues to be through its Office of Asylum Affairs [DRL/ASY].

The *Bureau of Population, Refugee and Migration Affairs* [PRM] develops policy for U.S. positions on international population issues, works with both refugees entering the U.S. and organizations that provide assistance to refugees abroad, and has the coordinating policy role in DOS on 'migration issues' outside the U.S. The addition of a greatly expanded population portfolio to the former Bureau of Refugee Programs provides for greater emphasis on population matters when migration policy is considered.

DISCUSSION DRAFT

The *Office of the Legal Adviser* [L] serves as the DOS lawyer on migration issues, with one office dealing with legislation and policy issues on consular affairs and a second office dealing with human rights and refugees.

The *Bureau of International Narcotics and Law Enforcement Affairs* [INL], contains an Office of International Criminal Justice which deals in part with migration issues affecting some law enforcement issues (particularly alien smuggling).

Department of Labor [DOL]

Several agencies within the DOL share responsibility for immigration programs and issues. The main efforts of the *Employment and Training Administration* [ETA] focus on processing the various applications/attestations that are filed by employers seeking to hire immigrant and nonimmigrant workers. Within ETA, the immigration function is based in the Division of Foreign Labor Certification [DFLC] that works through State Employment Service Agencies [SESAs]. In FY '96, the DFCL National and Regional office staffs involved in immigration totaled 16 FTEs and 82 FTE, respectively. Total funding for ETA staff involved in alien labor certification was \$8.9 million, with grants to SESAs totalling \$45,713,000. It is estimated that, as a result of FY 1997 budget cuts, the SESAs will receive approximately 50 percent of what they received in FY 1996.

The *Employment Standards Administration* [ESA] is primarily responsible for all enforcement related to immigration, including both directed and complaint-driven investigations. Within ESA, the Wage and Hour Division [Wage/Hour] has primary compliance responsibility in the area of immigration; it is charged with investigating possible violations of the regulations, contract requirements, or attestations under the H-2A, H-1A, H-1B, D-visa and F-visa programs. It also is involved with enforcing the SAW reporting requirements and, with the Office of Federal Contract Compliance Programs [OFCCP], in reviewing employment eligibility verification requirements (I-9s) as part of its regular investigatory duties. Of the 30,000 investigations conducted by Wage/Hour in 1995, less than 5 percent of

DISCUSSION DRAFT

all investigative time, excluding I-9 reviews, was attributable to immigration enforcement.

The *International Labor Affairs Bureau* [ILAB] and Office of the *Assistant Secretary for Policy* [ASP] concentrate on policy and research aspects of immigration. ILAB represents the DOL on the President's Task Force on Immigration and Refugee Policy. Within ILAB, the Division on Immigration Policy and Research [DIPR] aids in development of the DOL immigration policy and is responsible for research and reporting responsibilities associated with a number of immigration-related reports mandated by IRCA and the Miscellaneous Technical Immigration and Naturalization Amendments [MTINA]. The Director of DIPR is one of the staff-level cochair of the DOL Immigration Policy Task Force.

ASP provides the Secretary with analytical support on economic policy issues; assists the Secretary, Deputy Secretary, and DOL agencies in the design and evaluation of programs by providing analytical support and research direction; and performs and/or oversees the performance of research in areas of special interest to the President and the Secretary. Its particular involvement with immigration issues stems from the responsibilities ASP assumed in 1987 for implementing IRCA and assigning research functions among DOL agencies. Since that time the ASP Office of Program Economics [OPE] has remained involved in specific immigration-related activities.

The *Board of Alien Labor Certification Appeals* [BALCA] is empowered to review all denials of applications for labor certification for which review is requested. Previously, appeals were adjudicated by individual administrative law judges within DOL. The BALCA mandate is to provide uniformity and consistency of decision. Under the regulations, BALCA is chaired by the DOL Chief Administrative Law Judge and consists of other DOL Administrative Law Judges designated by the Chief Judge.

The *Office of the Solicitor* [SOL] provides legal support for all DOL immigration programs and functions, including: providing advice and opinions in support of

DISCUSSION DRAFT

policy and program decisions; reviewing and, in some cases, drafting regulations and policy issuances that govern program operations; reviewing and clearing various correspondence; and litigating cases that arise under the various immigration programs.

Customs Service

The Customs Service of the Department of the Treasury has principal responsibility for inspection and clearance of goods entering the U.S. During the course of primary inspections, Customs officers are cross designated to inspect persons seeking entry (as INS inspectors are cross designated to inspect goods during primary inspection). Each agency's inspectors send suspected violators to the appropriate agency for secondary inspection and a final determination of admissibility. In addition to its inspection functions, the Customs Service also is responsible for "examining imported cargo and related paperwork to ensure compliance with federal laws governing international trade and to ensure that appropriate duties, taxes, and fees are collected. Customs also enforces certain provisions of the export control laws of the United States. Further, beyond the efforts of Customs inspectors to interdict narcotics and other contraband at ports of entry, Customs also employs special agents to investigate allegations of smuggling and commercial fraud" [GAO 1993].

MANAGEMENT ISSUES

National Policy Development

At this Commission's first public hearing, Doris Meissner [not yet nominated to be INS Commissioner] urged the Commission to address itself to gaps she identified in the immigration policy development capacity of the federal government [Testimony, January 5, 1993]:

DISCUSSION DRAFT

I propose that the Commission think about how a more sustained, active and forward-thinking role [in policy development] could come from the executive branch. Its purpose would be to establish an executive branch focal point that is increasingly needed and unlikely, because of history and outlook, to arise from within the agencies that discharge immigration functions.

Mrs. Meissner suggested that a policy development body should be responsible for: overseeing federal immigration policy development across all of the departments responsible for immigration matters; monitoring the execution and impact of new legislation, policies, and programs; generating research and analysis; serving as a forum for discussion of new ideas; and relaying the resulting recommendations to the Congress and the President.

Four years later, some progress has been made, but policy development still remains a weakness in the overall immigration system. INS has moved towards developing an improved internal agency policy development and monitoring capacity, but much more is needed in the way of a focal point for developing, articulating, and coordinating immigration policy within and across the major departments responsible for its implementation.

A number of options may be considered to improve policy development both within and across departments. [Please note that some of these options could be combined with some of the structural reforms discussed in the next section. Depending on some of the following structural reforms, the need for other options may be eliminated.]

Strengthening the Domestic Policy Council [DPC]. One administrative way to address the need for a national policy focal point would be to establish a new policy development and coordination mechanism at the Domestic Policy Council. Just as the National Security Council [NSC] Office of Democracy, Human Rights and Humanitarian Affairs has done regarding refugee and humanitarian matters, a DPC

DISCUSSION DRAFT

Office for Immigration Policy could articulate national policies and strengthen interagency cooperation.

The White House has foreshadowed such an option. On February 7, 1995, President Clinton issued a directive to the heads of Executive Departments and Agencies on deterring illegal immigration. The directive provided "a blueprint of policies and priorities for this Administration's continuing work to curtail illegal immigration." The directive required, for example, a White House Interagency Working Group to make certain recommendations for administrative initiatives and legislative reform on visa overstay deterrence; the INS and Social Security Administration to establish, implement, monitor, and review certain workplace verification pilot projects; DOJ in consultation with the Interagency Working Group to develop a National Detention, Transportation, and Removal Policy; and the Interagency Working Group to coordinate the development of a comprehensive package of deterrence strategies in selected metropolitan areas by multiple federal, state, and local agencies.

Creating Offices at the Departmental Level to Coordinate Immigration Matters. Each of the major departments diffuses responsibility for immigration matters across a number of different agencies, some with only immigration duties and others with a much broader range of activities. Because of the dispersal of functions, the relevant departments tend not to develop coherent policy positions reflecting the totality of their responsibilities regarding immigration. Often, immigration agencies become step-children, and immigration policy receives attention at the department level only when emergencies intervene.

Consolidating responsibility for all immigration matters into a single office at a sufficiently high level within each department could improve policy development. Consider the DOJ example in which responsibility for immigration decisionmaking, policy, and its implementation are located in many parts of the Department; some offices/agencies report to the Attorney General first through their respective Assistant Attorney General, then to the Associate Attorney General, and then to the Deputy Attorney General through his or her staff; others, including INS and EOIR, report to the Deputy Attorney General, again through his or her staff.

DISCUSSION DRAFT

To some, this organizational structure is very institutionally fragmented. Further, it fosters a situation where conflicts in, and coordination of, policy and oversight within and between the interested agencies/divisions/offices are not fully fleshed out before reaching the Deputy Attorney General for decision, and, in any event, are not resolved fully at an appropriately early level. The result is a lack, or perceived lack, of a coordinated and effective DOJ immigration policy.

To further coordination and effectiveness, some observers suggest that the responsibility for all immigration functions (e.g., policy, planning, coordination, benefits, border enforcement, interior enforcement, worksite enforcement, administrative review, court litigation, etc.) be housed under one roof—either at an Assistant Attorney General level or at an Associate Attorney General level. Under such a plan, this office would have full responsibility for developing policy related to all of these functions and would coordinate and oversee their implementation.

A similar option could be implemented at the DOL, with creation of a new Assistant Secretary for Immigration Affairs. The activities now performed by ETA, ESA, and ILAB could be brought together in one agency whose primary focus would be the development and implementation of DOL-related immigration policy. This agency would be responsible for policies regarding admission of skills-based immigrants and nonimmigrants, enforcement actions to determine if employers meet their responsibilities under the various skills-based categories, investigation of compliance with employer sanctions, etc. It also would undertake the research and analytic activities now performed by ILAB and ASP.

Establishing a Standing Body Responsible for Immigration Policy. In her 1993 testimony to the Commission, Mrs. Meissner recommended a standing commission to oversee immigration policy development. She suggested that a standing body, which could be structured along the lines of the Civil Rights Commission or with regulatory powers, such as the Federal Communications Commission, would be responsible for policy development but not for policy implementation.

Structural Problems Related to Operations

The immigration system is one of the most complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities, and in other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems:

Mission Overload. Some of the agencies that implement the immigration laws, INS in particular, have so many priorities that they have proved unable to manage all of them effectively. Between Congressional mandates and administrative determinations, these agencies have too many responsibilities that are given equal weight. Such a system is set up for failure and, with such failure, further loss of public confidence in the immigration system.

The Commission noted in its 1994 Report that the credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave. Our legal immigration should strive to serve the national interest in helping families to reunify and employers to obtain skills not available in the U.S. labor force; our refugee system should reflect both our humanitarian beliefs and international refugee law; and our enforcement system should seek to deter unlawful immigration through employer sanctions and tighter border control and have an effective mechanism for removal of those who do enter illegally.

No one agency is likely to have the capacity to accomplish all of these goals equally well. Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards-related regulation of U.S. businesses.

Diffusion of Responsibilities Among Agencies. Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. For example, responsibility for making decisions on skill-based immigrant and nonimmigrant applications is dispersed among DOL, INS, and

DOS. In addition, the United States Information Agency [USIA] has responsibility for the J visa under which some exchange visitors work in this country. DOL is expected to make a determination as to whether Americans are available for certain work and is also responsible for *post facto* enforcement activities to ensure that employers comply with the requirements of the specific visa category. INS determines whether the individual alien has the qualifications required by the job once DOL certifies that the employer has attempted to recruit and been unable to find a minimally qualified U.S. worker. Further, INS makes the determinations without any DOL involvement on an entire range of skill-based immigrant categories, including individuals with extraordinary ability, outstanding professors and researchers, multinational executives and managers, and professionals with advanced degrees who don't require labor certifications. INS also handles adjustments of status to permanent residents for workers who are already in the U.S. DOS issues visas overseas to would-be immigrants who meet the requirements under the DOL and/or INS review.

Border management exemplifies a different type of diffusion of responsibility. INS and Customs inspectors are both stationed at ports of entry for inspection of persons and goods entering the U.S. INS is responsible for ensuring that individuals have the legal right to enter the U.S., and Customs is concerned with the goods they are bringing. Because both agencies must perform an inspection, many previous studies had recommended that inspectors to be "cross designated" to make inspection easier. This "one stop" inspection was finally adopted in the late 1970s. Now either Customs or INS personnel perform both inspections, facilitating entry of persons and eliminating duplication of effort.

While cross-designation helps avoid a duplication of effort during primary inspection, it presents certain challenges. Customs staff must be trained to identify *mala fide* bordercrossers, and INS staff must be trained to identify individuals attempting to smuggle goods. In interviews conducted by Commission staff, line personnel of both agencies questioned the competence of colleagues from the other agency to perform their functions. They pointed to the limited training that the other agency is able to provide on what are, in essence, secondary responsibilities for which the

DISCUSSION DRAFT

staff member will neither be recognized nor promoted. Both agencies also complained that the dual management structure does not allow one agency to be in charge of and accountable for overall port operations. When the agencies do not coordinate the deployment of their staff, too few or too many staff may be assigned to work the inspection lanes.

A third area in which responsibility is diffused is worksite enforcement. Both INS and DOL investigate employers to determine if they have violated the rules triggering sanctions against employers who knowingly hire unauthorized workers. The Office of Special Counsel has related responsibilities in determining if employers are engaging in immigration-related unfair employment practices. Despite continuing efforts on the part of these agencies to improve cooperation and coordination, it is clear that the agencies have different, if not conflicting, missions. INS officers, while recognizing that effective employer sanctions may deter entry, generally see their principal responsibility as the apprehension and removal of illegal aliens. DOL officers see their principal responsibility as protection of workers from exploitive practices, such as wage and hour violations. Although recognizing that illegal immigration gives employers opportunities to violate labor standards because of the unwillingness of illegal aliens to complain, DOL inspectors fear that too close an identification with INS will hamper their ability to get information needed to prosecute employers. The OSC principal responsibility is to protect authorized workers from discrimination by employers. When OSC and INS disagree, however, on what constitutes vigilance in verifying work authorization (to avoid hiring unauthorized workers) and what constitutes discrimination, employers become confused and feel themselves caught between a rock and a hard place in complying with both parts of the law.

A fourth area in which responsibilities are diffused—and good arguments can be made for keeping or even increasing the organizational separation of responsibilities—involves the mechanisms for review and appeal of decisions. For example, INS apprehends illegal aliens but EOIR determines if they are deportable. Similarly, ETA makes the initial determination on labor certifications, but BALCA hears appeals of these decisions. The separation of responsibility ensures a fairer review.

DISCUSSION DRAFT

However, issues of coordination regarding policy, operations, and resources remain. For example, if INS investigations lead to an increase in apprehensions and referrals to the immigration court, will EOIR have sufficient judges for the increased caseload? In turn, if EOIR applies a tougher standard [for example, because of a Board of Immigration Appeals decision] and therefore issues more orders of deportation, will INS have the resources to remove the individuals?

Options for addressing the complex, sometimes confusing distribution of responsibilities for immigration operations include:

Improving coordination between and among existing agencies. The option that would require the least structural reform would improve coordination of the agencies currently involved in immigration functions. Better coordination could be achieved in a number of ways. For example, regular meetings of an Interagency Taskforce composed of the three principal agencies responsible for immigration benefits/services could identify ways to streamline and make more efficient the legal immigration and nonimmigrant systems. Similarly, working groups of Customs and INS at the headquarters and field levels could help address some of the problems encountered in the dual management of the border.

Reorganizing responsibilities along functional lines. A preferable option is to isolate the various functions encompassed in an immigration system and assign responsibility for each to a single agency. For example, the immigration system could be conceived to have four principal operations: (1) border and interior enforcement; (2) adjudication of benefits and visas [immigrant, nonimmigrant, and naturalization]; (3) immigration-related labor standards enforcement; and (4) appeals of administrative decisions. Defining separate responsibility to cover these functions would mean consolidating certain responsibilities now found in several agencies and breaking up some agencies into their component parts.

Immigration enforcement. A functional approach would consolidate border management (Border Patrol and Inspections), investigations, detention, and deportation into one agency. The principal responsibilities would be apprehending

DISCUSSION DRAFT

and removing illegal aliens, identifying and removing criminal aliens, breaking up smuggling rings and counterfeiting operations, etc. These functions already receive priority at INS, but identifying them as the sole mission of a single agency would avoid some of the conflicting priorities referenced above.

A consolidated enforcement agency could follow a more traditional law enforcement model structure, focusing on police activities, pre- and post-trial probation services, and prosecution. The police function would be carried out by *uniformed services*, such as Inspectors and Border Patrol Agents, and *detectives*, who would conduct investigations and collect intelligence at the border and in the interior to deter smuggling, facilitate removals and accomplish other similar goals. An effective *pre- and post-trial/hearing screening* and/or *supervised release* process would ensure that detention is available for those who are most likely to abscond or present a danger to the community. Another function of the law enforcement model would be *prosecution* by an Immigration Enforcement Agency or U.S. Attorney's office.

Immigration benefits/services/visas. Consolidation of activities now performed by DOL, INS, and/or DOS would mean a more efficient, smoother operating service system. The possibilities range from bringing together functions performed by two or more of these agencies to the establishment of an independent agency. Potential advantages of consolidation might include: an opportunity to create a more efficient and effective labor market test mechanism for skill-based immigrants; a one-stop determination system; and a higher degree of importance attached to the function by the responsible agency if benefits/services were the principal responsibility. For example, if all responsibilities were consolidated in the Department of State, there would be a seamless process beginning with nonimmigrant and immigrant processing through naturalization to passport issuance and overseas citizenship services. DOS already has responsibility for many of these functions and has the domestic infrastructure (through its passport agencies) and international presence to accomplish all aspects. Similarly, DOJ already performs some functions and could add others.

DISCUSSION DRAFT

Immigration-Related Employment Standards Enforcement. Consolidation of responsibility for immigration-related activities at the worksite would mean a single agency would have responsibility for all enforcement efforts involving employers hiring foreign workers. More specifically, this option would consolidate responsibility for enforcing sanctions against employers who fail to verify work authorization as well as enforcement of skills-based immigrant and nonimmigrant admission requirements. While the Department of Labor has principal responsibility for the latter actions, responsibility for employer sanctions enforcement is shared between DOL and INS, creating duplication of efforts and inefficiencies.

Appellate process. This could be handled in a number of different ways. EOIR could continue to serve as the agency to hear appeals of enforcement related actions. Appeals of the immigrant services/benefits decisions could be undertaken by a separate agency that combined what is covered by BALCA and the Administrative Appeals Unit at INS. A more effective structural change would establish an independent review agency that would hear appeals of all immigration-related administrative decisions.

Establishing a Cabinet Level Department or Independent Agency. A new Department or independent agency similar to the Environmental Protection Agency [EPA] would potentially provide the basis for leadership on immigration issues. Immigration issues affect many millions of Americans. A Cabinet secretary or independent agency head focused exclusively on migration matters would command attention both on policy and implementation matters. The difficulties of coordinating lower level agencies at various departments would be significantly addressed by this option. The resources now applied to such issues are comparable to those applied to matters handled in certain Cabinet level departments (e.g., Interior and State).

As Milton Morris points out in *Immigration—The Beleaguered Bureaucracy* (1985), combining several agencies into a single new independent agency with complete responsibility for administering a policy area has been used successfully in other areas of government to improve the quality of policy implementation. The EPA was established in December 1970 by consolidating the tasks of eleven agencies that

had environmental responsibilities. He observes that with the creation of the EPA came a greatly increased federal commitment to environmental protection.

Dr. Morris notes that the reorganization did not solve all the problems encountered in implementing environmental policy and that some might argue that it merely created new problems. Also, objections would likely be raised that creation of a new agency or department cannot be justified, particularly in a climate that promotes eliminating federal government offices or merging them into already existent departments. Dr. Morris believes that the most compelling reason to oppose a new department is that the distribution of responsibilities accurately reflects the character of immigration and the diverse interests it affects. In particular, he observes that important foreign policy interests justify the extensive involvement of DOS. As a practical matter, he notes the convenience of having consular officials handle visa issuances.

Priorities, Resources and Accountability

The many years of neglect of immigration issues within the federal government, combined with recent major increases in resources and responsibilities, creates challenges in improving accountability throughout the various agencies implementing immigration policy.

INS is the agency that has received the most attention and criticism (as well as the largest infusion of new resources), but many of the problems identified there pertain as well to other federal agencies with immigration responsibilities.

Government budgeting cycles are lengthy and complex, complicated by the doubly bifurcated processes of first authorization and then appropriations occurring separately in both the House of Representatives and the Senate, and then together in conference. Further complicating the situation, INS and DOS Consular Services report to one appropriations subcommittee while DOL and Customs report to others. Repeatedly, this situation has led to problems of imprecise articulation of

DISCUSSION DRAFT

priority actions within the budget authorizations process, followed by often inadequate appropriation of funding sufficient to accomplish those authorized actions successfully. There presently is no accountability between Congressional committees to ensure a congruence between any agreed-upon priority expectations and the resources actually allocated to do the job. Nor has it been easy for Executive Branch Departments to identify exactly how much money they need to accomplish the entirety of a specified goal—and then to scale back or increase that goal depending on the resources appropriated.

This overall problem is compounded by inadequate identification of the various elements of a priority action—and of the interrelationships necessary to accomplish a specified goal. For example, a priority to vastly increase the number of deportable aliens removed from the U.S. each year is composed of many interrelated and interdependent elements, involving, at a minimum, funding for EOIR Immigration Judges, INS trial attorneys, investigators, deportation officers, detention/deportation drivers, air and ground transportation (vehicles, equipment, and upkeep), government and/or contract detention space, travel documentation and authorizations [often necessitating intercession of DOS], deportation guards, etc. Although these elements are contained in many different line items in several different agency budgets, they are all essential to the accomplishment of this one seemingly simple removal priority. However, if any one of these elements is inadequately funded [e.g., detention space, investigators, or detention staff, etc.], then the ability of the government to produce the results expected often is drastically reduced. Yet, there currently is no way to present and then have approved the resources needed to accomplish such goals and objectives.

This situation is exacerbated by the need for agencies to deal simultaneously with various budget aspects involving four different fiscal years. For example, for the second quarter of FY 1997 (i.e., January-March 1997), federal agencies simultaneously are performing the following budget-related tasks:

For FY 1996 Completing work on 1996 year-end statistics and reports;

DISCUSSION DRAFT

For FY 1997 Continuing work on implementing FY 1997 goals and priorities;

For FY 1998 Putting final touches on the President's February "FY 1998 Budget Submission to the Congress" and then explaining/defending it at hearings before the appropriate Congressional committees;

For FY 1999 Developing within Executive Branch agencies the FY 1999 budget initiatives, priorities and strategies to be submitted to OMB under the "Spring Plan" planning process.

As noted above, though many of these problems pertain to all of the federal agencies responsible for immigration, INS has received the most attention because of its central role and responsibilities. The National Academy for Public Administration [NAPA] in its recent report on the INS financial management and budget systems, states that INS has three major processes in place to set directions and track progress for its programs: strategic planning; the Commissioners's priorities; and the budget. NAPA also reports that the Government Performance and Results Act [GPRA] recently added a fourth element: performance measurement.

NAPA concludes that the DOJ strategic plan lacks concrete performance goals and was completed after, rather than before, the INS strategic plan. The INS strategic plan is compared favorably with those of many other agencies, but, according to the NAPA study, also lacks specific performance criteria.

In discussing the INS priorities management process [PMP], NAPA concludes that among other purposes, the PMP serves as a management oversight mechanism. It reports, however, that the PMP is "not anchored in INS's operating systems," meaning that the process could end with a change of Commissioner. NAPA also points out that, although regional directors have some input through the executive associate commissioners, they are not substantive players in the PMP process.

DISCUSSION DRAFT

The NAPA report further states that, although INS has adopted most of the essential elements of an effective strategic management system, the parts of this system do not mesh well. The most prominent disconnects relate to timing. The budget cycle continues to drive the planning process. Priorities and their goals are often not finalized until well into the budget year. NAPA acknowledges that the budget occupies a legitimate central role in program management but concludes that budget should not have the lead role. The lead role should be reserved for the planning function.

The report also points out that INS does not have a multiyear, program planning component for each of its program areas that incorporates strategic long-term plans with the priorities process' annual implementation plan. NAPA recommends including multiyear, as well as annual, program planning related to the strategic plan and to the Commissioner's priorities in the annual planning cycle. The report points out that, without multiyear planning at the program level, it is difficult truly to operationalize priorities. The report states: "An annual plan can have no substantial utility unless it is considered in relation to a multi-year plan. A multi-year plan can have no substantial utility unless it is reviewed annually."

Effective systems of accountability require mechanisms to ensure that promotions and other forms of recognition are tied to performance. Too often, throughout the federal agencies responsible for immigration, too little recognition is given to effectiveness of operations and even less to innovation. Nor do agencies identify the outcomes by which personnel will be measured, instead relying on measures of output. For example, a Border Patrol officer or INS investigator generally will be judged by the number of apprehensions. More difficult to measure is whether an apprehension results in either a deterrence outcome [reducing new illegal entries] or a removal outcome. A further problem is that performance of certain activities appears to be given less credit than other activities. For example, INS examiners are generally on a different career track than INS enforcement personnel. Even when promoted to management positions with responsibility for overseeing both enforcement and service operations, staff members who rise through the service track are paid less total compensation at the same grade than persons who rise

through the enforcement track (with its law enforcement pay incentives and earlier retirement benefits).

The federal agencies responsible for immigration policies have considerable discretion to find and implement solutions to the problems discussed above. Some have called in outside experts to help identify such solutions. In addition, Congress has enacted legislation regarding government performance that encourages greater efficiency, effectiveness, and accountability. Two specific approaches hold potential for improving the priority setting, allocation of resources and accountability

Implementing the Government Performance and Results Act. The Government Performance and Results Act [GPRA] was enacted in July 1993, "To provide for the establishment of strategic planning and performance measurement in the Federal Government." In particular, Congress found that "waste and inefficiency in Federal programs undermine[d] [public] confidence . . . in the Government. . . ." and that "Federal managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness because of insufficient articulation of program goals and inadequate information on program performance," and "Congressional policy-making, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results."

GPRA was passed in order to "systematically hold Federal agencies accountable for achieving program goals," to "improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality and customer satisfaction," and to "improve Congressional decisionmaking" and "internal management of the Federal Government."

To accomplish the GPRA purposes, the Act requires each federal agency [currently defined by OMB as Departments and not such subordinate entities as the INS, FBI, etc.] to develop strategic plans for Fiscal Years 1999 onward. [GPRA requires planning for a minimum of five years, OMB says it should be for six years.] The strategic plan is to include "a comprehensive mission statement covering the major functions and operations of the agency general goals and objectives, including

DISCUSSION DRAFT

outcome-related goals and objectives" and a "description [strategy] of how the goals and objectives are to be achieved." In developing the strategic plan, the GPRA required agencies to consult with the Congress. Strategic plans are to be "updated and revised at least every three years." Annual performance plans will request the resources and authorities needed to successfully accomplish the goals and objectives of the strategic plan for that fiscal year. Agencies are to develop performance indicators and the information technology and management capabilities needed to measure program efficiency and effectiveness. Agencies are then required to submit to the Congress, annual performance reports six months after the end of each fiscal year.

A September 1995 memorandum to all heads of executive Departments and establishments from the Director of the Office of Management and Budget provided instructions on preparation and submission of agency strategic plans. For DOJ, the Assistant Attorney General for Administration started coordinating work on the DOJ strategic plan in August 1995. The GPRA requires agencies to complete their strategic plans "[n]o later than September 30, 1997."

To assist Department managers, the Justice Management Division issued a "DOJ Manager's Handbook on Developing Useful Performance Indicators" in April 1995. In June 1996, GAO issued an "Executive Guide: Effectively Implementing the Government Performance and Results Act." The Acting Comptroller General of the United States provided testimony to the Congress on "Managing for Results: Using GPRA to Assist Congressional and Executive Branch Decisionmaking" in February 1997.

On February 25, 1997, a joint Senate-House letter was sent to the Director of the Office of Management and Budget summarizing in considerable detail the kind and content of Executive Branch consultations that the Congress envisages under GPRA. The Congressional letter expressed the hope that rather than merely consult with Congress, agencies would "come to a reasonable degree of agreement with the committees as to what performance measures will be used to gauge program success."

DISCUSSION DRAFT

Once these strategic plans have been reviewed and approved, full implementation of GPRA also seems to imply closer Executive Branch consultation with the Congress on long-term [three-year] *and annual* goals and objectives and, therefore, also may result in a closer congruence between the goals finally adopted and the resources actually appropriated to accomplish those goals.

Implementing the NAPA Recommendations. As a result of its study "Budgeting for Performance: Strategy, Flexibility, and Accountability to Meet a Demanding Mission," NAPA made a series of forty recommendations in the areas of strategic planning, priorities, performance measures, budget formulation, and budget execution.

With respect to planning, performance, the budget, and financial management, NAPA recommendations included: development of a strategic plan and priorities with detailed assumptions leading to action plans by major program areas that include five-year dollar projections; development of performance measures tied to accomplishing the priorities and to the five-year program plans; development of a program evaluation capability to ensure effective measurement of whether there is movement toward the goals; and development of a strategy for acquiring financial accounting and reporting systems that adequately supports all financial management activities, including the budget process.

In the area of budget account structure, recommendations include adoption of a simpler decision unit structure by consolidating decision units on a programmatic basis. For budget formulation, NAPA recommended that both the base and enhancements in a budget formulation process focus on accomplishing goals within the context of a strategic plan and five-year program plans. With respect to budget execution, NAPA recommended soliciting field input to the base budget execution plan. Field input on both plans should be within guidelines on resource limitations provided by headquarters to prevent wish lists.

On organizational issues affecting budgeting, NAPA recommended delegation of authority for determining all sector and district allocations to regional directors and