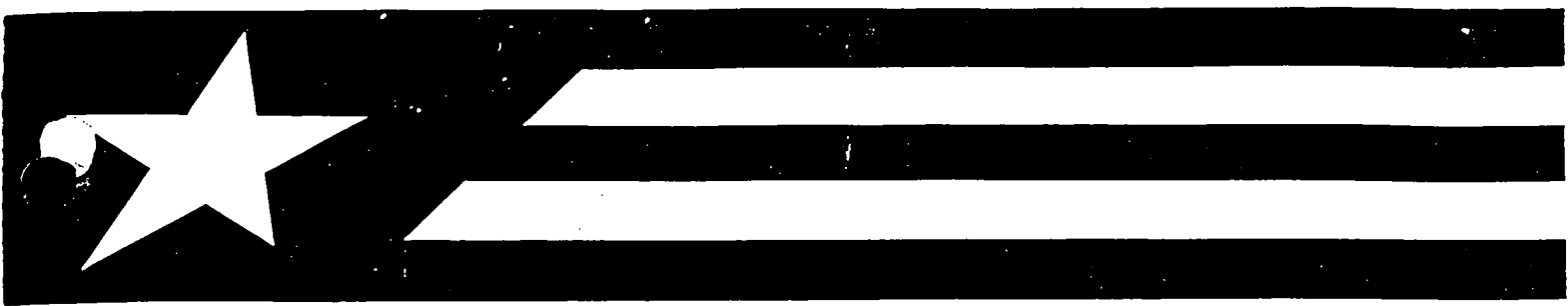

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U.S. Immigration Policy and the National Interest

The Final Report and Recommendations
of the Select Commission on Immigration and Refugee Policy
to the Congress and the President of the United States

March 1, 1981

SECTION VII. ADMINISTRATIVE ISSUES

Introduction

The agencies administering U.S. immigration and nationality laws, especially the Immigration and Naturalization Service (Department of Justice), are among the most beleaguered agencies in the federal government. The Select Commission has heard, along with some praise, a broad range of complaints about the INS and other agencies with immigration-related responsibilities, primarily the Visa Office and Consular Service of the Department of State.

The Commission recognizes that its recommendations for a new and better law must be implemented and administered effectively, efficiently and professionally. Although the Commission understands that many of the current problems facing INS and the Consular Service are attributable to ambiguities and inconsistencies present in the Immigration and Nationality Act itself, it acknowledges that the recommendations it has made for improving the law cannot by themselves successfully ameliorate the problems. Changes must also be made within the agencies to address specific structural, management and attitudinal problems.

VII.A. FEDERAL AGENCY STRUCTURE*

THE SELECT COMMISSION RECOMMENDS THAT THE PRESENT FEDERAL AGENCY STRUCTURE FOR ADMINISTERING U.S. IMMIGRATION AND NATIONALITY LAWS BE RETAINED WITH VISA ISSUANCE AND THE ATTENDANT POLICY AND REGULATORY MECHANISMS IN THE DEPARTMENT OF STATE AND DOMESTIC OPERATIONS AND THE ATTENDANT POLICY AND REGULATORY MECHANISMS IN THE IMMIGRATION AND NATURALIZATION SERVICE OF THE DEPARTMENT OF JUSTICE.

Over time, as needs have grown or changed, responsibility for administering immigration laws has been placed wherever appropriate systems already existed or where, at the time, it seemed most logical. As a result, eight cabinet departments now have immigration-related responsibilities (see Appendix E, Role of the Federal Government in Immigration and Refugee Policy). A study of the specific nature of the immigration responsibilities of the Immigration and Naturalization Service in the Department of Justice, the Consular Service and Visa Office in the Department of State, the Labor Certification Division in the Department of Labor, the Public Health Service in the Department of Health and Human Services, the U.S. Travel Service in the

*Commission vote

Yes-10; No-3; Absent-2.

Department of Commerce, the Internal Revenue and Customs Services in the Department of the Treasury, the Plant and Animal Quarantine Service in the Department of Agriculture and the Coast Guard in the Department of Transportation has led the Select Commission to the conclusion that in all but the Departments of Justice and State, immigration responsibilities are relatively minor but integrally tied to broader agency mandates. The efficiency and effectiveness of overall immigration law administration would not be enhanced by removing these agencies or their immigration related functions from their parent departments.

Historically, attention has been given to the major, shared immigration responsibilities of the Departments of Justice and State. Periodically, recommendations have been made to transfer the visa issuance function from the Department of State to the Immigration and Naturalization Service in the Department of Justice, or to an independent agency which would house both the overseas and domestic immigration functions now assigned to the two departments. It has been argued that such a consolidation would alleviate the problems of occasional inconsistency and lack of coordination in policy formulation and implementation between the Departments of Justice and State.

The Commission has studied the advantages and disadvantages of the single immigration agency option, either within the Department

of Justice or as an independent agency, and concludes that, at this time, the current division of responsibility between the Departments of Justice and State should be maintained. Continuing visa issuance in the Department of State and domestic operations in the Department of Justice recognizes major departmental jurisdictions and expertise in foreign and domestic policy. Further, it avoids the costs of new personnel and resource requirements, and the major personnel and operational disruptions which result from reorganization.

Several Commissioners, however, while acknowledging that the current organization may be preferable at this time, support the concept of a single agency with both foreign and domestic immigration responsibilities. They believe efficiency, effectiveness and the status of immigration policy would be significantly enhanced by such a reorganization.

Other Commissioners support transferring the immigrant--but not the nonimmigrant--visa function from the Department of State to the Immigration and Naturalization Service.* This option, they

*Commission vote

Vote taken on an amendment proposed by Commissioner Ochi--
Transfer immigrant visa issuance from State to INS. Yes-4;
No-9; Absent-2.

believe, would require less additional overseas personnel than would an independent agency and would not remove the more foreign policy-oriented nonimmigrant visa issuance function from the Department of State. Further, by such a reorganization, they believe interpretation of the law on immigrant admissions would be more uniform.

VII.B. IMMIGRATION AND NATURALIZATION SERVICE*

The inadequacies of the Immigration and Naturalization Service have regularly been the subject of public criticism, including testimony before the Select Commission, site visits, letters to the Commission, and series of reports in leading U.S. newspapers. Many of these inadequacies can be attributed to the low priority given INS within the federal structure and an unclear mission with insufficient resources for performing that mission. Historical circumstances within the agency also have established negative attitudes and practices, both in terms of management and operations.

The Commission acknowledges that most INS employees are conscientious and hard-working, and capable of handling their duties effectively. Nevertheless, the Commission believes that, along with an improved immigration policy, a series of initiatives directed specifically at the agency's organization and the professionalism of its employees will greatly improve the Immigration and Naturalization Service.

*See Appendix B for Supplemental Statement by Commissioner Och on this issue.

Service and Enforcement Functions*

THE SELECT COMMISSION RECOMMENDS THAT ALL MAJOR DOMESTIC IMMIGRATION AND NATIONALITY OPERATIONS BE RETAINED WITHIN THE IMMIGRATION AND NATURALIZATION SERVICE, WITH CLEAR BUDGETARY AND ORGANIZATIONAL SEPARATION OF SERVICE AND ENFORCEMENT FUNCTIONS.

The Immigration and Naturalization Service is currently responsible for most domestic operations which concern immigration and citizenship. These operations cover a wide range of activities, from providing benefits concerning aliens to apprehending and deporting alien criminals. The Commission, during the course of its work, has heard many persons argue that one agency should not have such a broad spectrum of responsibilities because service and enforcement operations are inherently contradictory.

*Commission vote

Yes-14; Absent-1.

The Commission has investigated the possibility of dividing present INS operations into two separate agencies, one with service-related responsibilities and the other solely concerned with law enforcement functions. It has also evaluated previous attempts to reorganize INS functions into interior and border agencies that would have consolidated INS border activities with similar border operations in other federal agencies, primarily the U.S. Customs Service's patrolling and inspections functions.

Based on its analysis of both service-enforcement and interior-border splits, the Select Commission concludes that the administration of U.S. immigration policy would not be made more efficient or effective by either type of reorganization. INS service and enforcement operations have elements of both orientations and are linked logically and physically by law and administrative support systems. Actions taken concerning an alien in one INS operation may result in eligibility for or denial of a subsequent action in another. Separating service and enforcement or interior and border functions into different agencies would be likely to increase inconsistency, duplication and delay rather than improve the administration of U.S. immigration and nationality laws.

The Commission does believe, however, that service and enforcement functions should be separated within INS to the greatest extent possible. Separate administrators already supervise service- and enforcement-related operations, and the Commission finds that separate budgets for service and enforcement-related functions would be desirable as well. This recommendation for the separation of budget items, however, refers to separate budget allocations within a single INS appropriation, not separate budget appropriations for service and enforcement functions. The common administrative support systems underlying all INS operations and the lack of management flexibility which would result from separate service and enforcement appropriations argue against this approach.

II.B.2. Head of the INS*

THE SELECT COMMISSION RECOMMENDS THAT THE HEAD OF THE IMMIGRATION AND NATURALIZATION SERVICE BE UPGRADED TO DIRECTOR AT A LEVEL SIMILAR TO THAT OF THE OTHER MAJOR AGENCIES WITHIN THE DEPARTMENT OF JUSTICE AND REPORT DIRECTLY TO THE ATTORNEY GENERAL ON MATTERS OF POLICY.

*Commission vote

Yes-14; Absent-1.

The Select Commission believes that the credibility and prestige of the Immigration and Naturalization Service, as well as the top-level attention and concern given immigration policy, can be increased by upgrading the position of INS Commissioner to Director, at a level comparable to other Department of Justice bureau heads. Additionally, as a means of improving communication between INS and the Department of Justice, the Commission supports reducing the administrative layers between the INS Director and the Attorney General. It, therefore, recommends that the Director report directly to the Attorney General rather than to the Associate Attorney General on policy matters, as is the case with the Director of the Federal Bureau of Investigation.

VII.B.3. Professionalism of INS Employees*

THE SELECT COMMISSION RECOMMENDS THE FOLLOWING ACTIONS BE TAKEN TO IMPROVE THE RESPONSIVENESS AND SENSITIVITY OF IMMIGRATION AND NATURALIZATION SERVICE EMPLOYEES:

- ESTABLISH A CODE OF ETHICS AND BEHAVIOR FOR ALL INS EMPLOYEES
- UPGRADE EMPLOYEE TRAINING TO INCLUDE MEANINGFUL COURSES AT THE ENTRY AND JOURNEYMEN LEVELS ON ETHNIC STUDIES AND THE HISTORY AND BENEFITS OF IMMIGRATION.

*Commission vote

Yes-14; Absent-1.

PROMOTE THE RECRUITMENT OF NEW EMPLOYEES WITH FOREIGN LANGUAGE CAPABILITIES* AND THE ACQUISITION OF FOREIGN LANGUAGE SKILLS IN ADDITION TO SPANISH--IN WHICH ALL OFFICERS ARE NOW EXTENSIVELY TRAINED--FOR EXISTING PERSONNEL.

- SENSITIZE EMPLOYEES TO THE PERSPECTIVES AND NEEDS OF THE PERSONS WITH WHOM THEY COME IN CONTACT AND ENCOURAGE INS MANAGEMENT TO BE MORE SENSITIVE TO EMPLOYEE MORALE BY IMPROVING PAY SCALES AND OTHER CONDITIONS OF EMPLOYMENT.†
- REWARD MERITORIOUS SERVICE AND SENSITIVITY IN CONDUCT OF WORK.
- CONTINUE VIGOROUS INVESTIGATION OF AND ACTION AGAINST ALL SERIOUS ALLEGATIONS OF MISFEASANCE, MALFEASANCE AND CORRUPTION BY INS EMPLOYEES.
- GIVE OFFICERS TRAINING TO DEAL WITH VIOLENCE AND THREATS OF VIOLENCE.
- STRENGTHEN AND FORMALIZE THE EXISTING MECHANISM FOR REVIEWING ADMINISTRATIVE COMPLAINTS, THUS PERMITTING THE IMMIGRATION AND NATURALIZATION SERVICE TO BECOME MORE AWARE OF AND RESPONSIVE TO THE PUBLIC IT SERVES.
- MAKE SPECIAL EFFORTS TO RECRUIT AND HIRE MINORITY AND WOMEN APPLICANTS.

Although realizing that most INS employees are both responsible and capable, the Select Commission believes that improvements must be made in response to the complaints generated about some INS employees. These complaints centered on insensitivity to

*Ochi Amendment - Add wording "the recruitment of new employees with foreign language capabilities." Approved by unanimous consent.

†Otero Amendment - Add wording "encourage INS management to be more sensitive to employee morale by improving pay scales and other conditions of employment." Passed by unanimous voice vote.

aliens seeking benefits from INS and the verbal and occasional physical abuse of aliens who were being temporarily detained, interrogated or arrested by INS enforcement personnel.

The Commission is of the view that the specific actions listed above, coupled with other recommendations for a clearer and more easily administered immigration policy, will significantly improve the professionalism of and respect for the Immigration and Naturalization Service, and its ability to effectively and efficiently administer U.S. immigration and nationality laws.

STRUCTURE FOR IMMIGRATION HEARINGS AND APPEALS*

Forty immigration judges in the Immigration and Naturalization Service currently hear and decide approximately 56,000 deportation and 3,000 exclusion cases annually. Some persons appear before immigration judges individually, while others, in certain uncontested cases, appear in groups.

Any deportation or exclusion order issued by an immigration judge can be reviewed at the request of either the alien or INS before the five-member Board of Immigration Appeals (BIA). This Board is a quasi-judicial appellate entity, created by regulation, that operates within the Department of Justice, but outside the Immigration and Naturalization Service. Determinations by the Board of Immigration Appeals generally represent the final administrative step in the process of exclusion or deportation, although on rare occasions a case may be reviewed by the Attorney General as a result of a referral process which can be initiated by the government but not by the alien. An alien may seek review of a BIA exclusion decision by habeas corpus in a U.S. District Court (with subsequent appellate review in the U.S. Court of Appeals) and of

*See Appendix B for Supplemental Statements by Commissioners Holtzman, McClory and Ochi on this issue.

a BIA deportation decision by direct appeal to a U.S. Court of Appeals. Of approximately 2,000 deportation cases decided annually by the Board, roughly 10 percent undergo judicial review.

Select Commission research has found the following weaknesses in the hearing and review process in exclusion and deportation cases:

- INS does not provide adequate support service to immigration judges, contributing to long delays in the administrative adjudication process;
- Immigration judges are administratively dependent upon officials (INS district directors) who are involved in an adversary capacity in proceedings before the judges;
- The present vulnerability of the Board of Immigration Appeals to possible executive intervention (because of the Board's placement in the Department of Justice and lack of statutory standing) detracts from its stature and undermines the appearance of independent decision making;
- The grade levels of immigration judges (GS-15) and members of the Board of Immigration Appeals (GS-15, with a GS-16 chairman) are not commensurate with the nature of the responsibilities these officials discharge, a factor that serves as a deterrent to the recruitment of highly qualified lawyers to fill these important roles;*

*GS-16 is the grade of administrative law judges in most federal agencies. Members of the U.S. Parole Commission, who are roughly comparable to the Board of Immigration Appeals members, occupy positions at the GS-18 level.

The present institutional structures, in both deportation and exclusion cases, make available a process of judicial review following a quasi-judicial hearing and appeal to the BIA. These structures unreasonably and unnecessarily prolong the execution of exclusion and deportation orders; and

The present combination of quasi-judicial and judicial appellate structures promotes doubt and confusion in the development of immigration law and encourages relitigation in new cases of issues that have already been decided.

VII.C.1. Article I Court*

THE SELECT COMMISSION RECOMMENDS THAT EXISTING LAW BE AMENDED
TO CREATE AN IMMIGRATION COURT UNDER ARTICLE I OF THE U.S.
CONSTITUTION.

The Select Commission is convinced of the need for a more equitable and efficient method of processing exclusion and deportation cases. Some Commissioners believe that the answer lies in the creation of a U.S. Immigration Board, with statutory independence from INS and the Attorney General, subject to the requirements of the Administrative Procedures Act. Such a mechanism, these Commission members argue, would also be an ideal body for adjudicating noncriminal actions taken against employers under an employer sanctions system.

A majority of Commissioners, however, is of the view that such a solution would still suffer from many of the current administrative inadequacies. The institution of an Immigration Court under Article I of the U.S. Constitution, they believe, would result in more efficient and uniform processing of cases.†

*Commission vote

Yes-8; No-4; Pass-1; Absent-2.

†Congress, in creating an Article I Court, can provide flexible rules of procedure. For example, Congress can specify that (a) nonlawyers may be admitted to represent aliens in proceedings, and (b) the new court will not be bound by the Federal Rules of Evidence.

The Article I court offers an advantage over a quasi-judicial system because it provides one hearing and one appellate review in place of the layering of review that characterizes the present system. The Immigration Court recommended by the Commission will include a trial division to hear and decide exclusion and deportation cases and an appellate division to correct hearing errors and permit definitive, nationally binding resolutions of exclusion and deportation cases.* The new court also offers the potential for introducing judicial uniformity into the review of denials of applications and petitions-- matters that now occupy the attention of district courts around the country. The elimination of potential disparate rulings by courts of appeals should discourage further litigation.

The Commission majority is also of the view that an Article I Immigration Court is more likely to attract outstanding adjudicators. Improvements in the caliber of personnel will enhance the quality of decisions and generally eliminate any need for further review. Some Commissioners believe that if the Article I Court cannot be instituted for several years, interim measures should be taken to improve the competency of the existing INS

*The remedy of Supreme Court review by petition for certiorari would remain available for the rare immigration case of great national importance; review of immigration decisions by U.S. Courts of Appeals would be eliminated.

immigration judges. At a minimum, they believe that the judges should receive additional training, have their positions upgraded and follow procedures identical with those set forth in the Administrative Procedures Act.

VII.C.2. Resources for Article I Court*

THE SELECT COMMISSION URGES THAT THE COURT BE PROVIDED WITH THE NECESSARY SUPPORT TO REDUCE EXISTING BACKLOGS.

All delays in the current exclusion and deportation process are not caused by the existing adjudicatory process. It frequently takes an inordinate period of time to prepare the transcript of a deportation hearing when an appeal is taken to the Board of Immigration Appeals. This delay is caused not by structural problems in the existing hearing system but rather by a lack of INS clerical resources devoted to the hearings process.

To eliminate this type of administrative delay, which harms the exclusion and deportation process, the Commission recommends that the new court be provided with a sufficient number of clerical personnel and other resources to reduce existing backlogs and allow the expeditious processing of the court's new caseload.

*Commission vote

Yes-8; No-4; Pass-1; Absent-2.

ADMINISTRATIVE NATURALIZATION*

THE SELECT COMMISSION RECOMMENDS THAT NATURALIZATION BE MADE
AN ADMINISTRATIVE PROCESS WITHIN THE IMMIGRATION AND NATURALI-
ZATION SERVICE WITH JUDICIAL NATURALIZATION PERMITTED WHEN
PRACTICAL AND REQUESTED. IT FURTHER RECOMMENDS THAT THE
SIGNIFICANCE AND MEANING OF THE PROCESS BE PRESERVED BY
RETAINING MEANINGFUL GROUP CEREMONIES AS THE FORUM FOR THE
ACTUAL CONFERRING OF CITIZENSHIP.

Select Commission research has found that the naturalization process--currently divided between the Immigration and Naturalization Service and the judicial system--is duplicative, costly and time-consuming for petitioners, the INS and overburdened judges. The Commission's analysis of the naturalization process has also shown a lack of uniformity in decisions made among the hundreds of naturalization court jurisdictions.

An INS naturalization examiner now recommends that an applicant's petition to the court for naturalization be granted or denied, and it is rare that a judge does not follow this recommendation. Nevertheless, naturalization requires an appearance before a

*Commission vote

Yes-14; Absent-1.

federal judge. This court procedure, because of scheduling difficulties, often adds unnecessary weeks or even months to the naturalization process.

As a result of its research, the Select Commission has concluded that INS naturalization examiners should be authorized to assume what is currently a judicial responsibility and grant or deny citizenship. To the extent possible, however, the Commission believes it is desirable to preserve the significance of the naturalization process by retaining meaningful group ceremonies as the forum for actually conferring citizenship.

Despite this support of administrative naturalization, the Commission recognizes the dignity often added to the naturalization ceremony by the courtroom procedure and the deep satisfaction that the naturalization process gives some immigrants and judges. It, therefore, does not wish to bar judicial naturalization as an alternative where local courts believe they can efficiently continue the courtroom hearing and ceremony. Thus, while recommending administrative naturalization within the Immigration and Naturalization Service, the Commission leaves open the possibility of judicial naturalization in those cases where the petitioner, INS and the courts find it to be a desirable and efficient alternative.

REVIEW OF CONSULAR DECISIONS*

THE SELECT COMMISSION RECOMMENDS THAT THE EXISTING INFORMAL REVIEW SYSTEM FOR CONSULAR DECISIONS BE CONTINUED BUT IMPROVED BY ENHANCING THE CONSULAR POST REVIEW MECHANISM AND USING THE STATE DEPARTMENT'S VISA CASE REVIEW AND FIELD SUPPORT PROCESS AS TOOLS TO ENSURE EQUITY AND CONSISTENCY IN CONSULAR DECISIONS.

The process of immigrant and nonimmigrant visa issuance and denial traditionally has been exempted from formal review, giving the consular officer absolute authority over decisions on visa applications. Excepting these consular decisions from appellate review has long been criticized on the grounds that while aliens abroad are not, as a matter of law, entitled to constitutional due process, they should receive a formal review of denials of their visa applications because review of a denial of an important benefit is so much a part of the American system of justice. In analyzing this issue, the Commission has

*Commission vote

Yes-11; No-3; Absent-1.

See Appendix B for Supplemental Statement of Commissioner Ochi on this issue.

reviewed the existing visa denial process, the adequacy of current informal review procedures and alternative appellate review systems which could be instituted.

The right to a fair consideration is now explicitly stated in the Department of State's visa regulations, and applicants under the current policy are to be given every reasonable opportunity to establish their eligibility for visas. Since the visa issuance process is not now formally reviewable either within the Department of State or in U.S. courts, the Bureau of Consular Affairs maintains an informal review process under which all visa refusals, whether contested or not, must be reviewed by a second officer. This reviewing officer may issue the visa when in disagreement with the first officer and when the first officer cannot be convinced to grant it. If a denial stands, a consular officer, the applicant or a U.S. petitioner may obtain further review by requesting an advisory opinion from the Visa Office in Washington, D.C. The Visa Office, though, only can bind a consular officer to its opinion on a matter of law and not on the application of law to the facts of a particular case. However, instances where the advice of the Visa Office is refused are rare, and other disciplinary actions can be and are taken by the Department of State in appropriate cases.

...evaluating the existing review process and alternative systems--including a formal appellate review mechanism within the Department of State, an Immigration Court and the existing U.S. courts--the majority of the Commission has concluded that certain administrative improvements should be made within the existing informal review system to create an effective review process. Such improvements could include improving the current system through improved documentation on the reasons for visa denials and increased review of field office operations and practices where there are frequent complaints or apparent departures from established policy. The majority of Commissioners hold the view that these changes should remove many of the inequities which now exist in the visa issuance process and make decisions more consistent with each other and with law and regulation, without creating the expense of a new appellate body. A few Commissioners, however, remain unconvinced that an informal review system will be sufficient to provide a consistently proper review of visa denials and call for the establishment of a formal and independent review mechanism within the Department of State for this purpose.

VII.F. Immigration Law Enforcement by State and Local Police*

THE SELECT COMMISSION RECOMMENDS THAT STATE AND LOCAL LAW ENFORCEMENT OFFICIALS BE PROHIBITED FROM APPREHENDING PERSONS ON IMMIGRATION CHARGES, BUT FURTHER RECOMMENDS THAT LOCAL OFFICIALS CONTINUE TO BE ENCOURAGED TO NOTIFY THE IMMIGRATION AND NATURALIZATION SERVICE WHEN THEY SUSPECT A PERSON WHO HAS BEEN ARRESTED FOR A VIOLATION UNRELATED TO IMMIGRATION TO BE AN UNDOCUMENTED/ILLEGAL ALIEN.

Because of the relatively small number of INS Border Patrol officers and investigators available to detect undocumented/illegal entrants, INS has at times unofficially encouraged state and local law enforcement officers to assist in locating and apprehending undocumented/illegal aliens. These officers, though not legally authorized to apprehend persons on immigration charges except in alien-smuggling cases, are authorized under specific guidelines to report to INS suspected undocumented illegal aliens apprehended on charges not related to immigration violations, and in fact are encouraged to do so. The Commission has heard of many instances, however, when these guidelines have

*Commission vote

Yes-13; No-1; Absent-1.

~~/~~State law in California and Illinois empowers local law enforcement officials to enforce federal laws, thus giving them technical authorization to enforce immigration laws.

not been followed and state and local law enforcement officers have detained suspected undocumented/illegal aliens when there was no substantive violation of local law.

The Select Commission holds the view that the complexity of immigration law, when coupled with the lack of training of state and local law enforcement personnel in this area, is likely to result in continuing civil rights violations against U.S. citizens and aliens legally in the United States. Further, attempts to enforce immigration laws are likely to alienate local police from segments of the communities they serve, to the detriment of effective local law enforcement. Therefore, the Commission supports the position that state and local law enforcement officers should be prohibited from apprehending persons on immigration charges, except in alien-smuggling cases. In situations, however, where a person is arrested for a violation unrelated to immigration (but is not a victim of or a witness to such a crime), and is suspected of being an undocumented/illegal alien, the Commission believes that state and local law enforcement officers should be encouraged to notify INS, which may then make further inquiry into the immigration status of the individual.

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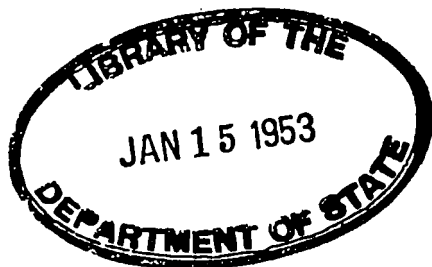
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"The bosom of America is
open to receive not only
the Opulent and Respectable
Stranger, but the oppressed
and persecuted of all
Nations And Religions;
whom we shall wellcome
to a participation of all
our rights and privileges,
if by decency and propriety
of conduct they appear to
merit the enjoyment."

*Geo. Washington, Dec. 2, 1783, New York, The
Writings of George Washington; from the Original
Manuscript Sources; 1745-1799. Editor, John C.
Fitzpatrick, United States Government Printing Office,
Washington, 1938, Vol. XXVII, June 11, 1783, to
November 28, 1784, page 254.*

Whom We Shall Welcome

REPORT OF THE
PRESIDENT'S COMMISSION
ON IMMIGRATION AND
NATURALIZATION



THE PRESIDENT'S COMMISSION ON IMMIGRATION
AND NATURALIZATION

PHILIP B. PERLMAN, *Chairman*

EARL G. HARRISON, *Vice Chairman*

THOMAS G. FINUCANE

ADRIAN S. FISHER

Rev. THADDEUS F. GULLIXSON

Msgr. JOHN O'GRADY

CLARENCE E. PICKETT

HARRY N. ROSENFELD, *Executive Director*

JV 6455

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Letter of Transmittal

PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION
WASHINGTON, D. C.

January 1, 1953.

DEAR MR. PRESIDENT:

The President's Commission on Immigration and Naturalization submits to you its report pursuant to your request of September 4, 1952, and Executive Order No. 10392.

We believe that the separately printed record of hearings held by the Commission provides information of permanent value to the executive and legislative branches of the Government. The work could not have been done without the wholehearted cooperation of many individuals, organizations, and institutions interested in the problem.

The Commission hopes that its study and recommendations will contribute to public understanding of this vital matter, and assist the Congress in the consideration of legislation to improve the immigration and naturalization laws and policies of the United States.

Respectfully submitted.

THOMAS G. FINUCANE

ADRIAN S. FISHER

THADDEUS F. GULLIXSON

Msgr. JOHN O'GRADY

CLARENCE E. PICKETT

EARL G. HARRISON
Vice Chairman

PHILIP B. PERLMAN
Chairman

HARRY N. ROSENFELD
Executive Director

The President
The White House
Washington, D. C.

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of the Displaced Persons Commission indicates that a sensitive re-
element program could bring 400,000 people into the United States,
keep them out of areas of labor surplus and direct or route them to
areas of labor shortages. In February 1950, that Commission reported
as follows:

The impact of displaced persons on aggregate unemployment in this country
has been insignificant. Even in critical unemployment areas displaced persons
have been a negligible factor in the degree of unemployment.

Normal experience has shown that only about half of the immigrants
coming to the United States go into the labor force. Since the total
population grew two-thirds between 1920 and 1950, an increase of
immigration from 154,000 to 250,000 per year could scarcely present
serious problems of absorption. On the other hand, it could (1)
provide by 1960 an addition of 500,000 to 1,000,000 in our manpower of
military age; (2) relieve special manpower shortages of importance
both for the needs of defense and of an expanding peacetime economy;
and (3) continue to supply us with the talents and skills from abroad
that have so strengthened and enriched our civilization.

Immigration and our Foreign Policy

In the Executive Order which established it, the Commission was
given the task of considering:

* * * the effect of our immigration laws and their administration, including
the national origin quota system, on the conduct of the foreign policies of the
United States, and the need for authority to meet emergency conditions such as
the present overpopulation of parts of Western Europe and the serious refugee
and escapee problems in such areas.

LESSONS OF HISTORY

None can truthfully say that the Japanese attack on Pearl Harbor
was a direct result of the Immigration Act of 1924. However, respon-
sible experts have assured the Commission that the Japanese exclusion
clause of the 1924 Immigration Act contributed to the growth of the
nationalistic, militaristic, and anti-American movement in Japan
which culminated in war against the United States.

While the 1924 bill was under consideration, the Japanese Amba-
sador pointed out that the exclusion clause would be a serious blow to
Japanese self-esteem. His counselor of embassy warned that it would
undercut the pro-democratic forces in Japan and strengthen the mili-
tarists. Secretary of State Hughes urged Congress not to "affront a
friendly nation" by placing a legislative stigma upon its people. But
the bill became law—and the consequences predicted for it came to
pass. Ultra-nationalist and militarist elements in Japan gained
strength and fervor in their efforts to whip up hatred of America and
to spread the doctrine of "Asia for the Asiatics."

One of Hitler's excuses for taking Czechoslovakia and attacking
Poland was the need for "living space" for Germany's growing popu-
lation. Mussolini used Italy's overpopulation to excuse his attack on
Ethiopia. The Japanese Government attempted to justify its inva-
sion of Manchuria on similar grounds. Without in any way justifying
the wrong done, the Commission believes these examples demonstrate
the vital role that migration or lack of migration plays in world affairs.

American immigration law, unfortunately, has not always been
formulated with an eye to its effects on our international relationships.
But there have been instances of recognition, particularly in recent

y rs. The repeal of the Chinese Exclusion Act, in 1943, and the repeal in 1946 of exclusion directed against India, in favor of quotas for both countries, were themselves implementations of foreign policy. The repeal of Japanese exclusion in 1952 further demonstrated a growing American realization that immigration policy can be a positive as well as a negative factor in foreign policy.

The present nonquota status of immigrants from the Western Hemisphere is another recognition of the foreign policy aspects of immigration law. Theoretically and practically, the national origins formula could have been applied to these nations, too. But here our "good neighbor" policy and considerations of hemispheric foreign relations seem to have prevailed.

The Displaced Persons Act is another recent recognition of the relationship between immigration and international stability.

Our whole national history illustrates a point which has only recently come to be recognized in its own light: American immigration policy and law must be formulated in awareness of their international impact and must be designed to advance our foreign policy.

RESPONSIBILITIES OF LEADERSHIP

Our present immigration policy dates from the period following the first world war. That was only some 30 years ago, but it was a different era of world and of American history. Then the United States was seeking to avoid the international responsibilities which its power and stature placed upon it. Our present immigration laws are rooted in the period of America's blindest isolationism.

Today the United States is in a different position. For good or ill, this country now occupies a position of leadership among the nations of the free world. We cannot avoid the responsibilities that fall on the shoulders of a leader. The United States can never again turn its back on the facts of international relations.

Although the United States is a world leader, its leadership is effective in only part of the world. This means, among other things, that our responsibilities toward those peoples who share our outlook are sharper and clearer. In the struggle against communist totalitarianism today—as against other totalitarianisms yesterday—it is obvious that for our own well-being we must have genuine friends and firm partners.

In this situation, any action the United States takes or fails to take inevitably affects the partnership we speak of as the community of free nations. And because it affects the partnership, it also reacts upon our own position of leadership. This is especially true in connection with actions which relate directly to the nationals of other countries.

This is not to say that our immigration laws should be determined by what other countries or people want. But it is to say that what the United States itself should want in its immigration laws should be tremendously affected, in our own welfare and security, by the effect such laws have on foreign countries and peoples. The responsibilities of leadership include and require "a decent respect to the opinions of mankind."

IMMIGRATION IS PART OF FOREIGN POLICY

If any view presented to the Commission can be said to be substantially unanimous, it is that our immigration law is part of our foreign policy. It came to the Commission from diplomats, businessmen, scholars, clergymen, labor and farm leaders, civic leaders, club women—in fact, from almost every walk of life.

Officials dealing with American foreign policy feel this very strongly, as is shown in their testimony before the Commission. The Secretary of State of the United States, Dean Acheson, advised:

Immigration, like most important facets of our national life in these times, is closely linked with our foreign policy and objectives. * * *

Our immigration policy with respect to particular national or racial groups, will inevitably be taken as an indication of our general attitude toward them, especially as an indication of our appraisal of their standing in the world. It will, therefore, shape their attitude toward us and toward many of our other policies.

The Director of Mutual Security, W. Averell Harriman, stated:

The kind of immigration policy we adopt is a factor in the world struggle between democracy and totalitarianism.

William H. Draper, United States Special Representative in Europe and formerly Undersecretary of the Army, stated to the Commission:

Whether we like it or not, we are part of the world, and we can no longer disassociate ourselves from what happens elsewhere * * *

In endeavoring to strengthen the economic and military defense of the free world, and particularly of the North Atlantic Community, we should recognize immigration policy as one of the elements in achieving economic and political stability as well as social equilibrium.

The Psychological Strategy Board's consultant, Edward M. O'Connor, told the Commission of his conviction that

* * * our immigration law, together with its enlightened administration, is a fundamental instrument in the conduct of our relations with other nations and * * * must at all times, and particularly in times of international crisis, be geared to a dynamic, purposeful, and farsighted policy of world leadership.

Similar concern for the relationship between immigration and foreign affairs was expressed by outstanding private citizens. Russell W. Davenport, former editor of the magazine *Fortune*, said:

Nothing perhaps has affected the world standing of the United States so deeply, in so many ways, over so long a period as its immigration policy. The United States has always stood forth before the nations as a haven of refuge from tyranny and disorder, and this fact has profoundly affected the traditions of our country and of our free way of life. Moreover, as we look toward the future, our immigration policy appears to become more important, rather than less. We are a symbol of freedom and the world looks to us to define in concrete ways how freedom can be achieved. Our immigration policy is vital to that definition.

Miss Anna Lord Straus, past president of the League of Women Voters and former member of the American Delegation to the United Nations General Assembly, stated to the Commission:

I had the opportunity to learn something of that when I was over in Paris at the General Assembly at meetings with representatives formerly from countries that are behind the iron curtain, who were living in Paris. We had discussions at that time as to what the United States might do to be more helpful. . . .

In these discussions which were very frequent, very frank, and quite unfavorable to some of the actions of the United States, there was an underlying friendliness to us, but a difficulty in being able to interpret to their people our country, and time and time again it was an immigration problem that was at the root of it, because, as they kept saying, "no matter what you say, if you don't act according to your professions of faith and your statements, they will discount entirely what you say", and the immigration question came up very frequently in quite a variety of discussions that I had with those people.

Mrs. Z. W. Schroeder, of the General Federation of Women's Clubs declared:

. . . I would like to particularly add emphasis as to the question of the correlation between immigration laws and restrictions in our entire foreign policy . . . So, my plea is this: Your immigration laws in this country, our immigration laws, should be a flexible instrument of our foreign policy.

J. D. Zellerbach, San Francisco industrialist, wrote the Commission:

My strong conviction is that the present immigration laws are in direct conflict with United States philosophy and policy on foreign affairs and are unrealistic in facing up to world conditions.

The President of the American Farm Bureau Federation, A. B. Kline, wrote to the Commission:

United States immigration policy should be made to serve and support the over-all national policy on international relations.

The late Philip Murray, president of the C. I. O., stated to the Commission, through Alan Haywood, executive vice president:

Our immigration policy is a part of our over-all national policy. For us, at the very time when we are striving to build a mutual security system in cooperation with our allies abroad, to make our immigration and naturalization laws ever more virulently isolationist and antiforeign, not only makes very little sense: it embarrasses us in the pursuit of the wider objectives of our foreign policy. Both our national interest and the deep humanitarianism which has always characterized Americans as a nation require that we reverse this trend of the

2 years, and establish a new policy on immigration and naturalization which will be consistent with twentieth century conditions and ideals.

Many of the country's religious leaders expressed the same view that American immigration law is as much a part of our foreign policy as a foreign treaty. The National Council of Churches of Christ, in a resolution (of March 1952) presented to the Commission, stated:

We believe it is of the utmost importance that legislation be enacted that will conform with our democratic tradition and with our heritage as a defender of human rights. The adoption by Congress of enlightened immigration and naturalization laws would add immeasurably to the moral stature of the United States and would hearten those nations with which we are associated in a common effort to establish the conditions of a just and durable peace.

In discussing this resolution, Mrs. Mildred McAfee Horton, officer of the National Council of Churches of Christ, and formerly President of Wellesley College and Director of the WAVES, stated:

Our [immigration] policies (or their administration) have alienated us from parts of the world whose good will is important. . . .

I want the Commission to know that there are people—and many of them—who are more afraid of losing the friendship of our friends and potential friends than we are of the threats of our enemies. There are people—and many of them—who believe that America is safest when she generalizes the principles she accepts for herself and takes seriously the idea that "all men are endowed by their Creator with certain unalienable rights" including "life, liberty, and the pursuit of happiness." Immigration and naturalization policies which thwart those rights for the rest of the world will not permanently strengthen or safeguard the United States of America.

Dr. Paul C. Empie, Executive Director of the National Lutheran Council, called the Commission's attention to the fact that

. . . the new immigration law is not geared to current world needs, but rather is related to historical circumstances of many decades past . . . the refusal to open our doors [to refugees] would be a staggering blow to the strength of our moral leadership in the current ideological world struggle.

The Missouri Synod-Lutheran Church was represented at one of the Commission's hearings by Reverend Werner Kuntz, who said:

Some of the things which I read in Public Law 414 seem more akin to the superiority complex that was spawned out of the foulness of Nazism than to the humanitarian attitude which our fathers taught us. It is not the kind of thinking that one should expect of a nation that has been thrust into a position of world leadership and whose example can shape a better destiny for a disordered world.

The Archbishop of Boston, The Most Rev. Richard J. Cushing, submitted a statement to the Commission which included the following observations:

The above indicated discriminatory and undemocratic features of the McCarran-Walter Law are to my mind a grave potential threat to our domestic development and our international leadership.

follows:

* * * We need an immigration program that is sufficiently elastic to enable whatever administration may be in office to face up squarely to a domestic and foreign policy which is in keeping with the position of world leadership which the United States enjoys today. It is foolhardy to lose sight of the fact that our immigration policy has a foreign, as well as domestic, impact. Our immigration policy has as great an effect on our neighbors as the technical and economic assistance we are extending abroad. Our immigration policy has an economic, psychological and political character of an extent that would be difficult to measure.

In light of these considerations, I think it is most fortunate that the creation of your commission has given us an opportunity to reassess our entire immigration and naturalization structure and policy * * * We have today an American policy on immigration which is completely outmoded, out of harmony with our ideas and actions, and completely at variance with the foreign policy which we are pursuing in accordance with such ideals * * *

Bruce M. Mohler, Director of the Bureau of Immigration of the National Catholic Welfare Conference, urged that—

The immigration and nationality law of the United States should reflect, or at least be adaptable to, the foreign policy of the country.

Rabbi Abba Hillel Silver, of Cleveland, Ohio, stated before the Commission:

Racial discrimination creates disunity at home and resentment abroad. It interferes with our foreign relations and the role of international leadership which destiny has thrust upon us in recent years. It is one of the fundamentals of our political philosophy and an essential part of our foreign policy to treat all peoples alike, regardless of race or origin. We stand committed to the principle of fundamental human rights for all men alike. * * * We cannot press for international acceptance of these principles and at the same time offend nations and races by discriminating against them in our own immigration laws.

Lester Gutterman, speaking for the American Jewish Committee and the Anti-Defamation League of B'nai B'rith, declared that

* * * our immigration policies and practices are of vital importance in preserving the health of our democratic American society, and play a major role in our country's leadership in the maintenance of a stable world order.

It is significant that during 1952 the Governments of Canada, the United Kingdom, and the Philippine Republic have, through diplomatic channels, called attention to certain irritating inequities and administrative complexities of the Immigration and Nationality Act of 1952.

PROGRAMS OF ACTION

Testimony before the Commission that America's immigration policy is inextricably bound up in our foreign relations is fully cor-

its own, the United States has participated—often as a leader—in every important postwar attack upon the problems of international population pressure, migration, and resettlement.

Almost every part of the United Nations organization comes into contact, in one way or another, with some aspect of the problem of people moving across borders. In most instances that contact is limited or incidental. In quite a number, however, it is direct and even exclusive.

UNRRA, from 1944 to mid-1947, had a displaced persons program to which the United States contributed some \$58 million—not counting the supplies and transportation granted by the Army. From 1947 to January 1952, the International Refugee Organization (IRO) which was solely concerned with refugees, received \$237 million, nearly 60 percent of its budget, from the United States. The United Nations High Commissioner for Refugees is getting about \$250,000 from the United States in 1952-53, and is seeking to raise more funds. Congress has authorized in the Mutual Security Act of 1952 up to \$50 million for Arab refugees in the Near East and up to \$45 million for Korean relief—both to be administered by UN organizations.

The Intergovernmental Committee for European Migration (formerly the Provisional Intergovernmental Committee for the Movement of Migrants from Europe) formed in 1951 by 15 governments at the instance of the United States, and now comprising 20 countries, has received nearly \$20 million in the last two years from this country. The Organization for European Economic Cooperation—the European coordinating agency for the Marshall Plan and later for the Mutual Security Agency—is concerned with migration as a method of balancing manpower needs for higher production. So also is the North Atlantic Treaty Organization (NATO), whose concern with manpower is more pressing as an aspect of Western defense.

Independently, the United States operated a 4-year program that brought nearly 400,000 displaced persons to this country. A total of about \$19 million of United States appropriated funds went into this program. For the President's Escapee Program, to assist Iron Curtain refugees, \$4.3 million in appropriations and \$1.9 million in counterpart funds have been made available.

The leading role the United States has played in most of these activities, and our financial support, give conclusive proof that this country recognizes the importance of relieving population and refugee pressures and of facilitating the movement of persons. In practice, however, we are faced with the fact that our immigration laws are discriminatory, obsolete, and fail to measure up to the needs of our foreign policy.

The Administrative Agency

The Commission recommends:

1. That a Commission on Immigration and Naturalization be created, to be appointed by the President subject to Senate confirmation, responsible for the administration of all immigration and naturalization laws.

2. That present duplication of functions between the consular officers in the Foreign Service of the Department of State and the immigrant inspectors in the Immigration and Naturalization Service of the Department of Justice be eliminated, and that a consolidated service under an Administrator of Immigration and Naturalization responsible to the proposed Commission be substituted.

3. That a Board of Immigration and Visa Appeals be created under the proposed Commission, with final administrative appellate authority (except in cases involving the exercise of discretion) in all cases of visa denials, exclusions, deportations, and other related matters.

PRESENT ADMINISTRATION OF IMMIGRATION ACTIVITIES

Under present law, the various functions relating to immigration and naturalization are committed to two separate departments of government, both administering and interpreting parts of the same law and applying them to the same persons.

The Immigration and Naturalization Service, Department of Justice

The Immigration and Naturalization Service exercises its functions in connection with the law principally within the United States, in the admission or exclusion of immigrants seeking to enter this country, the apprehension and removal of deportable aliens, the conduct of naturalization proceedings, and the preparation of denaturalization cases.

Federal administration in the field of immigration began with the act of 1864, which established a Commissioner of Immigration whose function was to encourage immigration. This law was passed in a period of manpower shortage during the Civil War, and it was repealed in 1868. Thereafter there was no Federal agency charged

with the supervision of immigration until the first general immigration law of 1882 was enacted. The 1882 act vested responsibility for its administration in the Secretary of the Treasury, but actual enforcement was entrusted to State boards or officers designated by him.

Federal administrative enforcement began with the passage of the act of 1891 when Congress provided that there should be in the Treasury Department a Superintendent of Immigration, whose title was later changed to that of Commissioner General of Immigration.

The Bureau of Immigration was transferred from the Treasury Department to the Department of Commerce and Labor upon its establishment in February 1903. The Naturalization Act of 1906 inaugurated Federal supervision of naturalization and established a consolidated agency known as the Bureau of Immigration and Naturalization. In 1913, the consolidated bureau was moved to the new Department of Labor and was divided into the Bureau of Immigration and the Bureau of Naturalization. At the head of the Bureau of Immigration was a Commissioner General of Immigration, while at the head of the Bureau of Naturalization was a Commissioner of Naturalization. Both bureaus were placed under the immediate direction of the Secretary of Labor.

The two bureaus continued to function separately until 1933, when the President, acting pursuant to Congressional authority, directed by Executive Order that they be merged as the Immigration and Naturalization Service, headed by the Commissioner of Immigration and Naturalization. From 1933 until 1940, the Service functioned under the direction of the Secretary of Labor.

In 1940, the President submitted to Congress a reorganization plan which proposed to transfer the Immigration and Naturalization Service from the Department of Labor to the Department of Justice. The plan was approved and the transfer became effective June 14, 1940. Since then, the Immigration and Naturalization Service has functioned as part of the Department of Justice under the direction of the Attorney General of the United States.

Foreign Service, Department of State

The Immigration Act of 1924 vests the performance of the visa function, which consists of the granting or denial of visas in consular officers of the American Foreign Service abroad, which operates under the control and direction of the Department of State. Under the act of 1952, the authority to issue or deny visas is clearly and exclusively vested in the consular officers, and the statute directs that they shall not be subject to the supervision of the Secretary of State in this regard.

The requirement of a visa to enter this country is relatively new, and dates only from World War I when it was established essentially

as a war-time security device. This requirement to obtain visas from American consular officers abroad was given statutory recognition in the act of 1918. Under the Immigration Act of 1924, however, immigrant aliens seeking to come to the United States were required to establish in advance their eligibility under all the immigration laws and to obtain a visa from an American consul stationed abroad before embarkation. An immigrant was prohibited from entering the United States unless he was in possession of an unexpired immigration visa. However, the issuance of such a visa by an American consular officer does not guarantee his admission to the United States.

Other statutes have given additional responsibility under the immigration laws to the Secretary of State. Thus, under the Passport Act of 1918 as amended, the Secretary of State with the concurrence of the Attorney General, is authorized during the time of war or emergency to describe classes of aliens whose entry would be prejudicial to the United States. The Alien Registration Act of 1940 empowers the Secretary of State in emergency cases to waive documentary requirements for aliens seeking to enter this country.

To aid in the performance of the visa functions abroad under the immigration laws, a Visa Division was created in the Department of State. The Visa Division provides technical guidance and assistance to consular officers who themselves must determine initially the alien's admissibility to the United States.

In the final report of the Senate Judiciary Committee, following its recent study of the immigration system of the United States, the following recommendation was made:

Because of the close relationship of the Visa and Passport Divisions of the Department of State and their importance in the control of immigration problems, the subcommittee recommends the establishment of a Bureau of Passports and Visas as an independent unit of the Department of State, headed by a Director with the rank of Assistant Secretary of State and subject to general supervision by the Secretary.

To meet objections of the Department of State the bill was revised to establish a Bureau of Security and Consular Affairs responsible to the Secretary of State, and closely integrated within the Department's framework. It was enacted in this form in the Immigration and Nationality Act of 1952.

Board of Immigration Appeals, Department of Justice

A third agency which functions in the immigration process is the Board of Immigration Appeals. During virtually all of the period when the Immigration and Naturalization Service was in the Department of Labor, there was no independent Board of Appeals. Originally, the Secretary of Labor was aided by an advisory committee in making his determinations under the immigration and naturalization

laws. In 1922 a five-man Board of Review was established in order to review all immigration cases and to make recommendations to the Secretary of Labor. The Board of Review had no power to make decisions, and was responsible to the Secretary of Labor, whom it advised. The Board of Review offered an opportunity for oral argument, submission of briefs, and more careful consideration. Also, it relieved the Secretary of Labor of the burden of considering a large volume of appeals. When the Immigration and Naturalization Service was established as a consolidated agency in 1933, the Board of Review became responsible to the Commissioner, and its recommendations were reviewed by him before being transmitted to the Secretary of Labor.

With the passage of time the procedures and the anomalous position of the Board of Review were subjected to increasing criticism. In 1931, the Wickersham Commission, studying the enforcement of Federal laws, advocated the creation of an independent tribunal so that the prosecuting and administrative functions in immigration matters would be completely separated from judicial duties. The latter duties would be vested in an independent tribunal, "composed of men of judicial caliber, to be appointed by the President." The Commission stated:

The creation of such an independent tribunal for the determination of deportation cases seems to be the logical development of the present system itself. The Department of Labor has found it advisable to create a Board of Review within its own organization. As has been shown, this board has developed certain embryonic judicial tendencies, although the growth of these tendencies has been hampered by the subordinate position in the department which the board occupies. The next step in development seems clear—the dichotomy should be made complete. The Board of Review should be lifted out of its place in the Department of Labor and should be made an independent tribunal.

Perhaps the closest analogy in structure to such a proposed tribunal is the Board of Tax Appeals, an independent governmental agency created by Congress in 1924. The Board neither initiates nor prosecutes the cases which are brought before it but in effect sits as a court. Its hearings are public and its decisions are reported. It has some power of appointment and is working out an elastic organization. Appeals are allowed in the respective circuits. The independence of this Board and the satisfactory nature of its decisions are generally conceded.

There seems to be no good reason why we should not proceed at least as far in the establishment of a satisfactory system with respect to the important personal rights involved in deportation as we have with respect to the property rights involved in taxation.

From 1938 to 1940 the Secretary of Labor's Committee on Administrative Procedure made an exhaustive study of the Immigration and Naturalization Service. Its report stressed the necessity of freeing the Board of Review from other than quasi-judicial duties, stating that the agglomeration of duties placed on the members of the Board was indefensible, and that

It is folly even to talk of fair hearing by individuals who are struggling under such a load . . . The several thousand of admissions and deportation cases which would be referred to the Board under the arrangements we are suggesting are as much as its members can possibly consider with any semblance of fairness.

These recommendations were accepted and put into effect. In 1939 the Board of Review was removed from the control of the Commissioner and was made responsible only to the Secretary of Labor. When the Immigration and Naturalization Service was transferred to the Department of Justice in 1940, the Board of Review became the Board of Immigration Appeals and was placed under the immediate direction of the Attorney General. Unlike the Board of Review, which could make only recommendations, the Board of Immigration Appeals was empowered to make final decisions, subject to possible review by the Attorney General. Since 1940 it has continued to function as an arm of the Attorney General, independently of the Immigration and Naturalization Service whose decisions it reviews.

The Board of Immigration Appeals, composed now of a chairman and four associate members, never has been recognized by statute. It continues to function at the pleasure of the Attorney General and for his convenience. Its jurisdiction is defined in regulations which have been changed on a number of occasions during recent years. Its primary function is to hear and decide appeals in exclusion and deportation cases. However, since there is no statutory restraint the Attorney General could at any time abolish the Board of Immigration Appeals or modify its jurisdiction in any regard he deems appropriate.

UNNECESSARY DUPLICATION OF FUNCTIONS

The requirements of the Immigration Act of 1924 that approval must be obtained overseas before the alien could embark for the United States was an important improvement over earlier procedures. It enabled the alien to obtain an advance, but not final, determination of his eligibility before he pulled up his roots and undertook the long and expensive trip to the United States.

While acknowledging the distinct advances in administration made possible by this improved procedure, many have pointed out the resultant disadvantages. There is an obvious duplication in functions between the consular officer overseas and the immigration officer at the port of entry. The consul must determine the alien's admissibility to the United States before he can issue a visa. The immigration officer likewise must determine the alien's admissibility before he can permit him to enter the United States. Both interpret and apply the same law.

An additional consideration concerns the qualifications of consuls to make such determinations. The consular function is an old and

important one in international relations. The consul's traditional duties have related primarily to protecting the property and personal interests of American citizens in foreign countries and to the promotion of trade and commerce. The function added after World War I, of passing upon an alien's admissibility to the United States under the immigration laws has been regarded by some as a secondary one. The personnel to whom this function was assigned generally were insufficiently equipped at first by training and experience. Thus, the Department of State has reported to the Commission that only 3 percent of visa officers have had legal training despite the fact that the visa issuing officer is required to deal with "a great body of complex laws and regulations." It is important to note that the consul's negative decision on a visa application is final and unreviewable.

Soon after operations commenced under the Immigration Act of 1924 it became apparent that consular officers often lacked adequate training and background to discharge their new responsibilities under the immigration laws. These deficiencies resulted in a considerable volume of rejections at ports of arrival in the United States of aliens who had been granted visas. In order to aid the consuls immigrant inspectors were sent abroad in 1925 under an agreement with the Department of State and were attached as technical advisers to the consulates at London, Southampton, Liverpool, Glasgow, Belfast, Dublin, and Queenstown. Although the consular officer had final authority in determining whether a visa was to be issued, he usually was guided by the advice of the immigrant inspector.

This system was successful in operation and was extended to the Scandinavian countries, Poland, Czechoslovakia, the Netherlands, Belgium, Italy, Germany, and Austria. The reduced immigration during the depression of the 1930's resulted in a decrease in the number of technical advisers. In 1934, for example, there were nine immigration technical advisers stationed in Europe, each of whom was assigned to areas in Europe and traveled on circuit between the different consulates in that area. The technical-adviser system was terminated at the outbreak of World War II in Europe and has not since been reinstated.

During the displaced persons program, immigration inspectors were stationed overseas, and in effect passed upon the immigrants' admissibility after documentation with a visa, just as is ordinarily done at American ports of entry.

In 1949, the Hoover Commission on Organization of the Executive Branch of the Government recognized the deficiencies of the present system under which there is a dual control of immigration and recommended that the Visa Division of the Department of State be transferred to the Department of Justice. The Hoover Commission made two pertinent recommendations:

1. The State Department as a general rule should not be given responsibility for the operation of specific programs whether overseas or at home.

2. * * * the functions of v control * * * should be transferred from the State Department to the Justice Department.*

The Hoover Commission Task Force Report on Foreign Affairs elaborated in two statements:

1. All visa responsibility, therefore, except with respect to diplomatic visas, should be placed in the Justice Department. Visa work presently performed by the Foreign Service abroad should be continued but in accordance with policies established by the Justice Department in consultation with the State Department.

2. The logical solution to the visa problem lies in the transfer of the Visa Division functions to the Department of Justice. Diplomatic visas, however, should remain under the jurisdiction of the Secretary of State.

Following publication of the Hoover report, the Department of State organized several committees to study the various recommendations. One of these committees was the Visa Task Force which presented its findings in a report (March 31, 1949) in answer to the Hoover Commission recommendations on location of the visa functions. This State Department report counseled against acceptance of the Hoover Commission's recommendation to consolidate immigration functions.

The study of the Senate Judiciary Committee which preceded the introduction and enactment of the act of 1952 likewise took cognizance of this duplication. However, the committee declined to recommend any substantial changes and stated:

Among the principal points of criticism aimed at the present immigration structure has been the contention that the multiplicity of control by several agencies of various immigration activities should be eliminated. In general, the subcommittee has come to the conclusion that, although there are some points in the mechanism where coordinated action is necessary and duplication must be eliminated, the over-all structural pattern ought to be maintained. The subcommittee is persuaded to the position on the grounds that (1) the distribution of responsibility places additional barriers in the way of undesirable aliens, additional fences of protection which the alien must surmount, and (2) the present system operates satisfactorily and the suggested modifications will eliminate most of the existing difficulties.

The Senate Judiciary Committee likewise addressed itself specifically to the recommendations of the Hoover Commission, and stated:

The subcommittee has given serious consideration to the proposal advanced by the Hoover Commission for a transfer of the Visa Division to the Department of Justice and its merger with the Immigration and Naturalization Service. As already pointed out, the subcommittee is persuaded to continue the visa process separate from the immigration procedure as an additional barrier to the entry of inadmissible aliens.

*Report of Hoover Commission, on Foreign Affairs, House Doc. 79, 81st Cong., 1st Sess., pp. 32, 34.

The act of 1952 made no appreciable change in the organizational set-up except to establish in the Department of State a Bureau of Security and Consular Affairs. Provision was made within that Bureau for a general counsel of the Visa Office authorized "to maintain liaison with the appropriate officers of the [Immigration and Naturalization] Service with a view to securing uniform interpretations of the provisions of this act."

Feasibility of Consolidating Functions

All witnesses who addressed themselves to this problem in the Commission's public hearings urged that the functions of consular and immigration officers should be consolidated. The Commission agrees that this is a desirable goal. There is no reason why there should be two independent determinations of the same issue, except upon the basis of mistrust and fear. Every national purpose would be fully served by one thorough and trustworthy examination and determination.

The best available information indicates that this costly, unwieldy, and unbusiness-like duplication serves no reasonable purpose. It is hardly more than historical accident which has become, to some, a principle. An informal study in the Department of State a few years ago disclosed that in less than one-half of 1 percent of all cases where visas were issued by consular officers were the applicants rejected at ports of entry in the United States. The 1951 annual report of the Immigration and Naturalization Service supplied the following information concerning the number of aliens excluded at the border:

Table 13.—Aliens Excluded From the United States, by Cause, Year Ended June 30, 1951

Cause	Number excluded		
	Total	Border crossers ¹	Other aliens
All causes.....	5, 647	1, 863	3, 784
Without proper documents.....	3, 963	1, 180	2, 783
Criminals.....	610	273	337
Mental or physical defectives.....	434	97	337
Subversive or anarchistic.....	165	136	29
Stowaways.....	121	-----	121
Had been previously excluded or deported.....	119	72	47
Likely to become public charges.....	116	38	78
Immoral classes.....	38	23	15
Previously departed to avoid military service.....	14	10	4
Unable to read (over 16 years of age).....	3	-----	3
Contract laborers.....	1	-----	1
Other classes.....	63	34	29

¹ Aliens seeking admission at land borders for less than 30 days.

Excluding from consideration border crossers and proper documents, this table reveals that during 1951 approximately 1,000 aliens in possession of visas were excluded by immigration officers at the ports of arrival in the United States. The extent of unnecessary duplication is revealed when this is compared with some 206,000 immigrants admitted during that same period, in addition to visitors.

In the Commission's opinion, the duplication in visa issuance and immigration examinations is wasteful and unjustifiable. The Commission cannot subscribe to the sentiment that this obstructive process is required "as an additional barrier to the entry of inadmissible aliens." By the same token such additional barriers can operate also to shut out desirable aliens; the relatively few inadmissible aliens it stops could be dealt with by a unified and more effective administration.

Similarly, the Commission is not impressed with the State Department's suggestion that the conduct of foreign relations requires the issuance of nondiplomatic visas by consular officers. The consular function did not until 1924 include the issuance of immigration visas. Nor is the State Department suggesting that foreign policy requires the determination of admissibility by consular officers at the port of entry in the United States.

The time has come to terminate the unnecessary and costly obstructions established by the duplication of visa and immigration examinations. This could be accomplished by eliminating overlapping and duplication through unifying these functions in a single process. The result will be a more effective administration of the law, a saving of Government expenditures, and a better location of administrative responsibility.

Operation of Proposed System

The Commission agrees with the Hoover Commission that a large program of such an administrative operation as the immigration law has no place in the Department of State, whose primary responsibility is the conduct of foreign relations. The Commission recommends that the primary determination overseas of an alien's application for a visa to the United States should be made by officials of the same agency which determines admissibility at the ports of entry. Presentation of such visa at a port of entry in the United States should entitle an alien to be admitted without further inquiry except as to (1) identity, (2) any medical condition developed since the visa was issued, and (3) any evidence relating to subversive activities not previously considered.

The Commission believes that there should be no substantial difficulty in establishing such a system of unified determinations in the

In such places visa issuance is a full-time job for visa officers. There may be some rearrangement necessary for operation in isolated areas from which few applications for visas originate and where, therefore, full-time visa officers are not stationed. This is a problem of administrative management, susceptible of a variety of solutions. The Commission believes that in such areas the agency responsible for the consolidated functions could follow the normal procedure used by many Government agencies in connection with overseas activities. The consular officer could be designated as an agent of the immigration authorities to receive the application, which then could be forwarded, with the requisite documents and evidence, to the nearest overseas regional office of the consolidated agency. The determination would be made by an officer stationed in such a regional office. If the evidence is incomplete, he could request the consul to conduct any additional interrogation or investigation deemed necessary. Or, if advisable, the consular officer could in these few cases be authorized to act on behalf of the consolidated agency.

It has been suggested that there may be difficulty in stationing officers of the consolidated agency in some foreign countries. Immigration officers have already performed duties under our immigration laws in Germany, Great Britain, Canada, Italy, and in other countries. To satisfy any requirements of protocol such officers could be attached for technical purposes to our Embassies or other accredited offices with conventional titles.

The differences between present procedures and the consolidated procedure the Commission has recommended, including suggested appellate procedures, are illustrated in Chart I.

The consolidation of all immigration functions in one responsible agency is an essential aspect both of the new approach to immigration which the Commission believes to be long overdue, and of the efficiency in Government which it was the purpose of the Hoover Commission to reach. Whatever mechanical difficulties may arise from such a consolidation could, with proper spirit and good will, be overcome completely and promptly.

PROPOSED ADMINISTRATION OF IMMIGRATION AND NATURALIZATION

Nature of Functions

As conceived by the Commission, there are three major functions to be performed by administrative officials of the Government in the field of immigration and naturalization:

(1) Enforcement—this includes visa issuance, inspection and exclusion at ports of entry, policing, investigation, deportation, admin-

Chart I.—Comparison of Present and Proposed Procedures

Type of action	Present program	Proposed plan
Overseas: Action on visa..... Appeal.....	By American consular officer. No regular appeal provided.	By officer of proposed commission. Appeal to statutory Board of Immigration and Visa Appeals.
Port of entry: Action on admission..... Determination on questionable cases.	By immigration inspector, with complete authority to review consular action. To Board of Special Inquiry. After Dec. 24, 1952 to (single) special inquiry officer.	By inspector but limited to (1) identity, (2) health, (3) security. To hearing officer under Board of Immigration and Visa Appeals.
Appeal: Initial..... Final.....	To nonstatutory Board of Immigration Appeals. No further appeal, but Board of Appeals may certify immigration cases to Attorney General and Attorney General may review on own motion.	To statutory Board of Immigration and Visa Appeals. Review by proposed commission in selected cases involving discretionary relief.

istrative prosecution, and the administration of the naturalization laws.

(2) Adjudication—this includes the determination of cases and of their appeals within the administrative process.

(3) Policy determination—this includes over-all policy formulation; the issuance of regulations for allocation of visas, within the statutory ceiling, subject to change by the President and disapproval by the Congress; and making reports and recommendations to the President and the Congress.

Another aspect of this problem relates more to attitude than to specific functions. The Commission is impressed by the suggestions it received that the administration of immigration laws should be such as to develop and maintain an atmosphere and spirit of friendship for immigrants. Whatever the cause, and often it is beyond the control of the administrative officials, the fact seems to be that the administrative procedures are unsatisfactory, and are productive of unnecessary and wasteful delays and embarrassments at home and abroad. This factor is an important consideration in the development of any administrative structure in the field of immigration and naturalization.

Location of Functions

Throughout the course of Federal immigration administration there has been no certainty as to the proper place of immigration functions. Originally, immigration enforcement was assigned to the Treasury Department. In 1903 it was transferred to the Department of Commerce and Labor. It moved to the Department of Labor in 1913, and in 1940 it was shifted to the Department of Justice. Through the years immigration and naturalization functions have been handled either by two bureaus or by a single bureau. The review process was nonexistent, then advisory, later part of the Immigration and Naturalization Service, and finally directly under the head of the Department.

Additional proposals to shift immigration and naturalization functions from the Department of Justice to another agency have been made from time to time. During the Commission's hearings there was a diversity of sentiment on this subject. Some proposed that the Immigration and Naturalization Service be returned to the Department of Labor. Others suggested that a new agency be created. Still others urged that matter be let alone.

The Commission's recommendations introduce a new function not now vested in either of the two departments. This new element, the allocation of visas, requires reconsideration of the entire matter since it is no longer a question of old functions remaining in Justice or State Department, but rather where new and consolidated immigration functions are to be placed. **The Commission has already expressed agreement with the Hoover Commission that it is inappropriate to put these functions in the Department of State.** In its recommendation that they be assigned to the Department of Justice, the Hoover Commission naturally did not consider the proposed new functions of visa allocation.

It may be argued that these combined functions should be vested in the Department of Justice because the immigration law involves responsibilities related to the national security and that these logically fit into the Justice Department's sphere of activity. The Commission believes, however, that the arguments to the contrary are more persuasive. Presumably, the primary security tie to the Department of Justice would be the necessity of close relationship with the Federal Bureau of Investigation. Actual practice, however, does not justify such an argument. The Immigration and Naturalization Service conducts its security functions through its own investigative unit which is completely separate from the Federal Bureau of Investigation. Its liaison with the Federal Bureau of Investigation could be just as close if the two investigative units were in different agencies. Furthermore, security functions concerning immigration were performed effectively by the Displaced Persons Commission, and were

closely related to the Federal Bureau of Investigation, the Central Intelligence Agency, and the Immigration and Naturalization Service, although the Displaced Persons Commission was an independent agency.

The Department of Justice is primarily a litigating and prosecuting agency. It includes the Federal Bureau of Investigation and the administration of Federal prisons, but these are natural arms of its prosecuting functions. There seems to be no good reason why the Department of Justice should be concerned with such matters as the allocation of visas to such preferential groups as may be authorized by Congress; with the issuance of visas to individual applicants abroad, and the subsequent operations at the ports of entry; or with citizenship education. None of these matters has any real relationship to the normal operations of the Department of Justice. The added responsibilities proposed by the Commission remove it further from such relationships.

On the other hand, there is every reason why many determinations made under immigration and naturalization laws should be removed from control by the Department of Justice. The Immigration and Naturalization Service has its own legal staff, separate from the various divisions of the Department of Justice, and conducts such matters in the same manner and to the same extent as do other departments of the Federal Government. If the existing and proposed new functions were combined in an independent agency, the Department of Justice would continue to handle at higher levels litigation originated in or with the independent agency in the same manner as is now done for other departments and agencies. There are those who believe that one of the present causes of criticism of the immigration laws stems from the fact that the administration of those laws is centered in a prosecuting and litigating agency. No sound argument has been advanced for keeping it where it is. **The new and combined functions do not properly fit in the Department of Justice.**

Nor is the Commission convinced by those who urge returning the immigration authority to the Department of Labor. This is not to say that the Department of Labor has no interest in the subject. But the major aspects of immigration and naturalization policy and administration are largely unrelated to the responsibilities of the Department of Labor. Furthermore, the immigration policy of the United States cannot be based solely upon manpower or labor considerations, although such factors are undeniably important.

Another suggestion is that immigration and naturalization functions should be located in the Federal Security Agency. That agency already plays a role in the immigration process through the medical examinations of immigrants by the Public Health Service, and because of the requirement of the act of 1952 for reports on social se-

curity information for the Immigration and Naturalization Service. It is argued that such a change would be desirable in the light of the Federal Security Agency's interest in people as such, whether aliens or natives.

The fact is, however, that the administration of the consolidated immigration and naturalization functions, coupled with the new responsibility for visa allocations, does not properly belong in any existing department or agency. It touches upon many, must work closely with some, but really has no basic connection to the primary responsibilities discharged by any of the other departments and agencies. The result is that the problems relating to immigration and naturalization do not command adequate thought and attention of the cabinet officers under whom either the Immigration and Naturalization Service or the Visa Division have been placed.

Independent Agency

This leaves only one other alternative, an independent agency. As a general proposition the Commission recognizes government administration should be organized within departments under the supervision of cabinet officers. But this administrative design gives way to the principle that in a democracy content should prevail over form. And so the Congress has established the Interstate Commerce Commission, the Federal Power Commission, and the Federal Communications Commission, among others which are not within cabinet departments. These agencies, as with the proposed consolidated immigration agency, exercise legislative, quasi judicial and administrative functions. Everyone will agree that the interests of the people are best served by that form of governmental administration which most effectively accomplishes the governmental purpose and not that which is motivated purely by administrative expediency.

The Commission believes that the major immigration functions described in this Report can be performed most effectively through an independent agency. The duties are so important, particularly in connection with the visa allocation authority, that the public interest requires a definite pin-pointing of responsibility, as well as the full-time attention which a cabinet officer cannot give.

The Commission believes that the creation by Congress of a new and independent immigration agency will assure the development of the fresh approach needed to change our immigration policy from a negative to a positive force.

The expert study, knowledge and experience required for visa allocation decisions, and for reports to the President and Congress, coupled with the other proposed new and highly important administrative and appellate duties and powers, make it advisable, if not mandatory,

that such authority be exercised by an independent agency headed by a commission.

Commission on Immigration and Naturalization

The Commission recommends the establishment of a new and permanent Commission on Immigration and Naturalization to have control and supervision over the entire field of immigration and naturalization. This proposed Commission would be composed of three, five or seven members, as the Congress may determine. They should be appointed by the President, subject to Senate confirmation.

Under this proposed Commission there would be an Administrator of Immigration and Naturalization, appointed by and responsible to that Commission, and who would be charged with all phases of administration and enforcement. Completely separate from the Administrator, but also appointed by and responsible to the proposed Commission, would be a Board of Immigration and Visa Appeals. That Board would have final authority to make necessary administrative adjudications in exclusion and deportation cases, subject only to a limited appeal to the proposed Commission in cases involving the exercise of discretion, but not in questions of law or fact, whenever that Commission agrees to accept such appeals. In addition to exclusion and deportation cases, the Board would hear appeals in visa cases and would also determine whether an alien may be excluded without a hearing in security cases, in the manner described in Chapter 15.

The Commission believes that such a plan would mark an important advance from the existing scheme of organization. It would produce much more effective and coordinated administration and would assure the required high-level consideration of allocations to be made within the unified quota system. It would bring the immigration process into line with the separation of functions contemplated by the Administrative Procedure Act, generally recognized as the norm of fair administrative organization.

If this Commission's recommendation for the creation of an independent Commission on Immigration and Naturalization is adopted, provision should be made for the personnel now employed by the Immigration and Naturalization Service, and by the Visa Division, performing functions affecting immigration in Washington and in the consular offices overseas. The present employees of the Immigration and Naturalization Service should be transferred to the proposed Commission and assigned duties under the proposed Administrator of Immigration and Naturalization. Present staff of the Board of Immigration Appeals and hearing examiners of the Immigration and

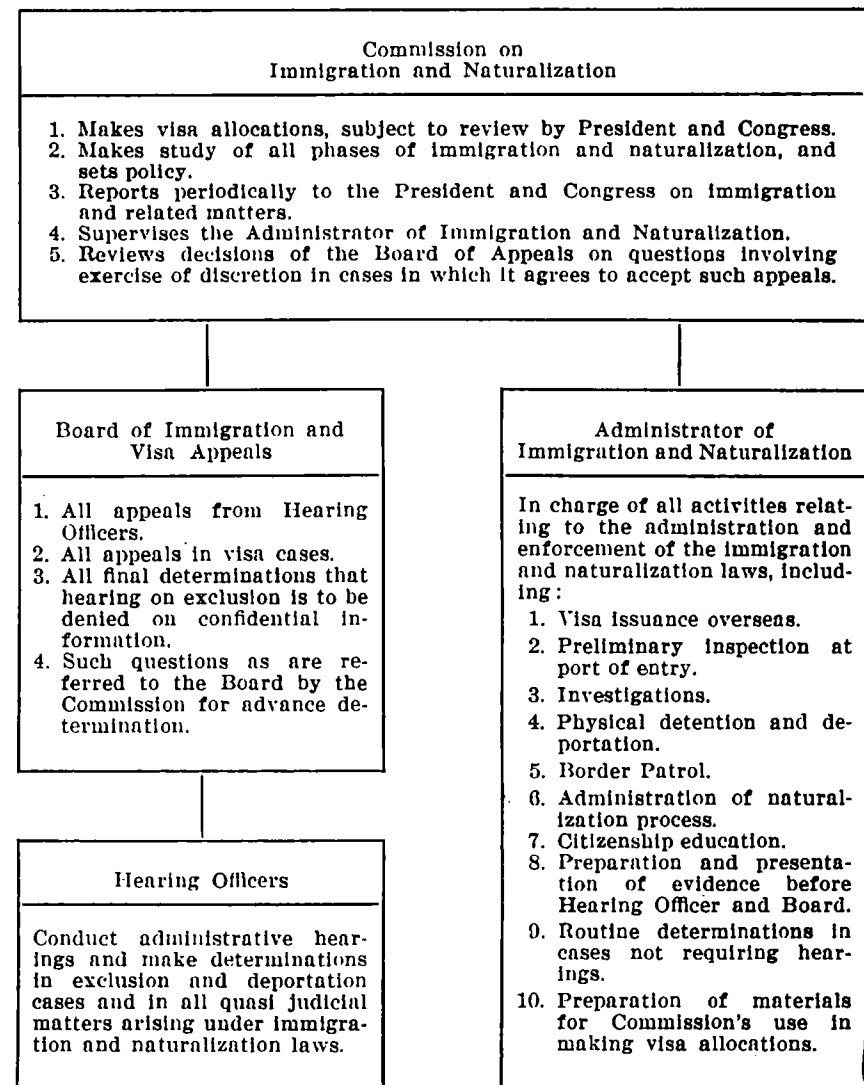
Naturalization Service should also be transferred to the new Commission and assigned to duties under the proposed Board of Immigration and Visa Appeals. The transfer of personnel working on visa matters in the Department of State and exercising the visa function abroad likewise should present no serious difficulty. It should be ascertained which employees in the Bureau of Security and Consular Affairs and which of our consular officers in foreign countries are engaged primarily in visa activities. Such employees should be transferred to the new Commission.

Moreover, any transfer of personnel from the Department of State and the Department of Justice to the new Commission should be made without prejudicing any status, rights, or privileges of such employees.

All pertinent records and files should be transferred to the proposed Commission, along with the transfer of functions and staff now vested in other agencies.

Chart II portrays the plan of organization suggested by the Commission.

Chart II—Proposed Administrative Agency



Fair Hearing and Procedure

Americans treasure a person's privilege to fair consideration in proceedings conducted by a Government official. The concept of fair dealing is enshrined in the Bill of Rights which guarantees that no man shall be deprived of his liberty without due process of law. It is rooted in centuries of solid experience in Anglo-Saxon law.

Testimony given at the Commission's hearings contains complaints by reliable witnesses to the effect that important aspects of our procedure for the consideration of applications by aliens to come into, and of their right to remain in, the United States are not fair.

There are several problems which arise in this connection. First, the present lack of any formal review of a consular denial of a visa. Second, the adequacy of the procedure for review of exclusion and deportation orders. And third, the nature of court review of administrative decisions. Each of these problems involves the fairness of consideration given to an alien.

THE COMMISSION RECOMMENDS:

Review of Consular Decisions

That the denial of a visa to enter the United States should be subject to review by a Board of Immigration and Visa Appeals.

Fair Hearing and Procedure in Exclusion and Deportation

That a Board of Immigration and Visa Appeals be established by statute, to be concerned exclusively with the adjudication of cases arising under the immigration laws.

That hearing examiners in exclusion and deportation cases be separated from enforcement functions and placed under the supervision of the Board of Immigration and Visa Appeals.

That deportation hearings be conducted in conformity with the Administrative Procedure Act.

That the caliber of hearing examiners be improved.

Judicial Review

That an exclusive statutory form of judicial review be established in deportation cases.

That habeas corpus continue to be the form of judicial review in exclusion cases.

That there be no judicial review of actions denying a visa.

That the courts be specifically authorized to decide whether denials of bail pending determination of deportability are arbitrary or illegal.

REVIEW OF CONSULAR DECISIONS

The preponderance of the testimony before the Commission is to the effect that in giving complete and unreviewable authority to consular officers, the law and practice fail to conform with traditional American reliance upon fair hearings as a safeguard against abuse of power.

Present System

Under the present system the consul occupies a unique position in American law and practice. By express provision of law no one can review his decision on a visa application. The Secretary of State is charged with the general administration of the statutory provisions relating to the duties and functions of diplomatic and consular officers of the United States. However, the Secretary of State has no power to control or direct the consuls in certain visa activities. The Act of 1952 made crystal clear the finality of the consular officer's power in visa issuance by specifying that the Secretary of State could control all consular activities "except those powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas."

It was repeatedly testified at the Commission's hearings that such administrative "absolutism" was unparalleled in the whole range of American law.

In the Senate Judiciary Committee's study the chief purpose for vesting such complete authority in a subordinate official doubtless was the Committee's desire to place "additional barriers in the way of undesirable aliens, additional fences of protection which the alien must surmount." The Committee evidently was unconcerned with the desirable aliens whose application might be improperly or unfairly denied if the consul's decisions were not reviewed. The Committee stated:

. . . The subcommittee concludes, however, that to allow an appeal from a consul's denial of a visa would be to make a judicial determination of a right when, in fact, a right does not exist. An alien has no right to come to the United States and the refusal of a visa is not an invasion of his rights. Permitting review of visa decisions would permit an alien to get his case into United States courts, causing a great deal of difficulty in the administration of the immigration laws . . .

Every witness before the Commission who discussed the consul's absolute authority, criticized it without reservation. The chairman of the committee on immigration and naturalization of the administrative law section of the American Bar Association said:

It has become a fundamental premise of our jurisprudence that the decision of weighty matters should almost never be placed in the power of a single individual free from the control of a superior reviewing body. We search in vain for any parallel in our institutions for this despotic consular absolutism. Relatively few decisions even of Federal judges are free from the possibility of appellate revision. But the consul is not only immune from review, but from any other kind of check, even of publicity. If there is such a thing as an axiom of law it is that where there is power there must be safeguards against the abuse of power. We have no doubt that consuls, as a group, are as conscientious and honorable as any other group of government officials. We may even assume that they are much more so. Still it is indefensible to give to any man, acting in secret in a remote land, autocratic power to grant or withhold a privilege of such enormous value as that of entrance to this country.*

Issuance or denial of a visa frequently involves complicated legal problems of eligibility and determinations of foreign law, such as whether a crime has been committed. Yet, as stated elsewhere, only 3 percent of the consular officers are attorneys. Consular officers are required to decide whether a prospective immigrant "is likely to become a public charge," medical questions, complicated security issues, occasionally involving knowledge of foreign political economic and social movements, and a host of other issues involving technical knowledge and the wise exercise of discretion. And yet, the visa-issuing consular officers are generally junior and subordinate officers in our consulates, and assignment to visa-issuing duties is not always regarded as a desirable post within the Foreign Service.

The Commission finds no persuasive reason why the determinations of a consular officer in visa cases should not be reviewed. The Commission assumes that all consular officers are loyal, disinterested public servants. But human beings do err, in interpreting law and assessing facts. It is undesirable to permit the possibility of control of human destinies by caprice, prejudice, or mistake, subject to no regulation or review. The Commission is informed that existing practices permit some opportunities for informal reconsideration. However, such reconsideration, which is generally limited to aliens who are able to interest sponsors, attorneys, or Members of Congress in their cases, is palpably inadequate. The Commission recommends that a formal appeal procedure be established by statute, giving opportunity for appeal on the denial of a visa.

*The excerpt above is quoted from the statement of Prof. Louis L. Jaffe of Harvard Law School, Chairman of the Committee on Immigration of the Administrative Law Section of the American Bar Association, speaking for himself and for Prof. Henry M. Hart, Jr., of Harvard Law School, at the Washington hearing, October 28, 1952.

The Commission has sought advice from those urging such review as to the methods by which it should be established. **The Commission is convinced that there are no substantial practical difficulties to be encountered in establishing such a review procedure which cannot be easily overcome.** As a matter of fact, procedures have been established in comparable situations which are precedents for the Commission's recommendations.

World War II Visa Review Procedures.—Elaborate procedures to review applications for visas were in effect during World War II. Under such procedures, with few exceptions, all visa applications of aliens seeking to enter the United States, whether for temporary or permanent stay, had to be submitted in advance for central clearance in the Department of State. Such consideration was limited to security factors, and the determination was only as to whether the entry of the applicant would be prejudicial to the safety of the United States.

The procedure for such review of prospective visa action required the alien to submit detailed information in writing. In addition, the review agencies had a complete record which included such items as recommendations from the consular officer handling the case abroad, intelligence reports bearing upon the alien concerned, statements and affidavits from the sponsor and others, and miscellaneous information regarding the alien and his sponsors.

Three distinct visa review bodies were set up in this wartime procedure. The first was composed of interdepartmental committees comprising one representative from the Departments of State, War and Navy, from the Federal Bureau of Investigation, and the Immigration and Naturalization Service. These committees made recommendations to the Secretary of State. If accepted, they were sent on to the visa-issuing officers as advisory opinions. If rejected, the cases went on to the second link in the chain of review procedures, the Interdepartmental Visa Review Committees, composed of representatives of the same Government agencies involved in the first committees. Here, oral argument and representation by attorneys was allowed. If the Committee's opinion in any case was accepted by the Secretary of State, it became the Department's advisory opinion; if not, the matter was referred to the third and last stage, the Board of Appeals on Visa Cases which considered the whole file.

The Board of Appeals was composed of two persons appointed by the President, with an alternate. It held no hearings, and cases were decided on the basis of the written record, including statements and other materials available to the other review committees. The Board of Appeals operated for about three and a half years, from November

1941 to June 1945, and made definitive recommendations in 22,622 cases. In only one case did the Secretary of State not follow its recommendation. In over 73 percent of the cases, the Board of Appeals affirmed the Interdepartmental Visa Review Committees; in 26 percent of the cases it recommended in favor of the visa applicant after the Review Committee had recommended otherwise.

Present Visa Review Procedures.—Information supplied by the Chief of the Visa Division in the Department of State indicates that there is now in existence an informal procedure to review determinations in visa cases, both in advance of such determinations and after they are made. One entails a review by the Visa Division of the Department of State of visa cases still in course of processing at a consular post abroad prior to final action by the visa officer; in certain categories of cases such review is mandatory. The other entails review by the division after final action has been taken by a visa officer in issuing or, much more often, in refusing issuance of a visa.

Any visa case still under active consideration, and before final consular action has been taken, is reviewable either by the visa officer concerned, or his superiors in the field, or by the Visa Division upon request of the applicant or persons interested in his behalf upon presentation of good and sufficient reason. However, it is comparatively rare that such a request will be made by the applicant or other interested parties while the case is in process. Although in theory there is a review of consular action prior to final determination, in practice this is a reconsideration requested either by the consul or his superior, in the nature of purely administrative supervision, and not a review requested by the applicant immigrant.

The Chief of the Visa Division of the Department of State also advised the Commission of the procedures in effect concerning cases in which action has already been taken on a visa application. In cases of refusal, where there is more than one consular officer at a post, the refusals may be reviewed by such second officer as well as the supervisor. All refusals of visas are reported to the Department with explanatory information.

In addition, upon request by Members of Congress, attorneys, or other individuals in behalf of an alien, the case may be reconsidered in the Visa Division. However, there is no established or published procedure for the reconsideration of final consular action denying visas, nor any power to reverse the original decision. Occasionally, the file is sent for, and then each case is handled as a specific problem. But in any event, this review process is inadequate because at most it can result only in an "advisory opinion," and the issuing consul cannot be directed to reverse his determination.

These two so-called review practices are not in any sense appellate reviews; rather they partake largely of the nature of management or

administrative supervisory and reporting devices. Neither procedure meets the normal requirements for fair administrative review of decisions, for the following reasons:

- (1) The alien is not given a right of review of his case;
- (2) There is no definite review or appellate procedure. No specific review panels, appeal boards, or other similar formally established bodies function. If there is any review at all, it may be made individually by an officer of the Division, or by the Chief of the Division, or by an *ad hoc* panel of several division officers, depending upon the importance or complexity of the case.
- (3) There is no published information on the opportunity for such review or the steps to be taken to obtain it. The procedure is based on unpublished departmental instructions to its staff.
- (4) The consul is not bound by the "advisory opinion."

If the existence of these generally unknown and diverse methods of review have any value in this connection, it would seem that they are precedents for the creation of a more formal and improved review, one that would meet the test of fairness. One of the administrative problems to be solved in establishing a formal review procedure is the nature of the record upon which such review can be had. This problem apparently has been satisfactorily solved in the existing procedure for reconsideration of consular action. In such instances, the record of a case submitted for reconsideration consists for the most part of the applicant's dossier. This includes the data relating to him personally (biographical information and background data), together with statements offered in his behalf by interested parties, recommendations by the visa officer abroad, and in general all material which bears directly upon the issue which enables the reviewing authority to formulate a reasoned advisory opinion.

If the case is being reviewed on security grounds, the record must contain all data obtainable which relates to the applicant's status as a possible security threat, including intelligence agency reports and results of other investigatory bodies' inquiries. If the financial responsibility of the sponsor is in doubt, then the record will include all possible available data relating to his financial status, so that the reviewing authority may decide if sufficient financial ability and responsibility is indicated.

Review of Cases Involving Claims to American Citizenship.—In addition to the precedents and procedure for reconsideration of consular visa actions, there also are procedures to review consular actions in connection with passports.

- (1) Board of Review.—Since 1941 procedures have been available in the Department of State permitting review of consular decisions denying passports. A Board of Review in the Passport Division was then established to consider appeals from determinations which deny

an American passport to a person abroad claiming United States citizenship.

The Board of Review has adopted no formal rules of procedure. The persons concerned may have their cases considered upon the basis of the material constituting the existing record plus any additional evidence they may desire to submit, or they may request a formal hearing at which witnesses may appear and the interested person may be represented by an attorney. The Commission is informed that the facts in the Department's possession are disclosed in such hearings and that the person concerned is given full opportunity to present his case.

- (2) Board of Passport Appeals.—As a result of considerable public criticism of the procedures of the Department of State in denying passports for security reasons, echoes of which appeared in the testimony before the Commission by some of our outstanding scientists, a Board of Passport Appeals was established by the Department of State in August of 1952. Provision is made for tentative disapprovals of passport applications, accompanied by notice in writing of the tentative refusal "and of the reasons on which it is based, as specifically as in the judgment of the Department of State secrecy considerations permit." The applicant is entitled to appeal to a hearing officer of the Passport Division, to be represented by counsel, and to submit affidavits and other evidence.

If the decision of the Passport Division is adverse, the applicant is informed of such action and of his right to appeal to the Board of Passport Appeals. The Board is authorized to publish its rules of procedure and accords the applicant the right to a hearing and to representation by counsel.

This Board's jurisdiction includes appeal from actions by consular officers in denying passports for reasons of national security. The Board of Review has jurisdiction to review actions by consular officers denying passports because of doubts as to American citizenship.

- (3) Denials of Certificates of Identity.—The law provides for the issuance of a certificate of identity to a person in a foreign country whose claim to United States citizenship is rejected and who desires to proceed to the United States in order to attempt to obtain a judicial declaration confirming his claim to American citizenship. The statute specifically provides that such an individual is entitled to appeal to the Secretary of State from the decision of a consular officer denying a certificate of identity.

Where a consular officer refuses a Certificate of Identity and an appeal is taken to the Secretary of State, the case is reviewed in its entirety by the Passport Division.

These precedents indicate the feasibility of procedures for reviewing consular actions on visa applications.

The Commission is convinced that there is no substantial reason for continuing the present system under which the consular officer's determinations in visa cases are final and not reviewable as of right. The Board of Immigration and Visa Appeals, the creation of which is proposed by the Commission, should have statutory authority to review all denials of visas, with full authority to reverse such actions and direct issuance of visas.

Where a visa is denied, either formally or informally, the alien should be informed in writing of the basis for such denial and of his right to have the matter reviewed by the proposed Board of Immigration and Visa Appeals. Upon the filing of such an appeal by an alien with the visa issuing officer, the latter should be required to forward to the Board a written report, accompanied by any pertinent affidavits or documents, describing the facts and the basis for his action. There should be no requirement of a formal hearing before the visa issuing officer.

The alien should not be authorized to come to the United States merely for the purpose of presenting his appeal. The alien should be entitled to know the grounds for refusal, except such as are determined by the Board to be unavailable for security reasons. The alien should be entitled to representation by counsel before the Board.

FAIR HEARING AND PROCEDURE IN EXCLUSION AND DEPORTATION

Consular decisions concerning a visa take place outside of the United States and before an alien has severed his ties abroad. Immigration authority decisions on exclusion take place when the alien reaches the shores or borders of this country. Orders of deportation affect aliens already resident in the United States.

Current Hearing Procedures

Exclusion—Examination Upon Arrival.—No alien may legally enter the United States unless he undergoes examination and inspection by the Immigration and Naturalization Service acting for the Attorney General. Since 1893, Congress has provided for administrative hearings in cases of arriving aliens whose admissibility to the United States is questioned. The courts have declared that such hearings, whenever provided, must be fairly conducted and that exclusion can be ordered only on statutory grounds.

Each such hearing is conducted by a special inquiry officer. Previous to December 24, 1952, the effective date of the act of 1952, the

hearings were conducted by three-member Boards of Special Inquiry, stationed throughout the United States.

The procedure on the alien's arrival is set out in considerable detail in the statute. If the alien's right of entry is in doubt the immigration officer may order his temporary removal for detention at a designated place, but such removal is not considered a landing in the United States. If the immigration officer questions the applicant's right to enter, he must refer the case to a special inquiry officer for a hearing. Proceedings before the special inquiry officer are conducted under oath and his determination must be based solely on the evidence produced at the inquiry. At such hearing the alien may be represented by counsel. A complete record is made of the proceedings and of all evidence produced by the Government and by the alien.

The alien has a right to appeal to the Board of Immigration Appeals in the Department of Justice from the exclusion order of the special inquiry officer. The filing of an appeal stays the execution of the exclusion order until final decision is rendered. The decision on appeal must rest solely on the evidence adduced before the special inquiry officer. Decisions of the Board of Immigration Appeals may be certified to the Attorney General for further review in exceptional cases upon request of the Attorney General, the Board, or the Commissioner of Immigration and Naturalization.

Simultaneously with the inspection by immigration officers, persons seeking to enter the United States are required to undergo a physical and mental examination by medical officers of the United States Public Health Service. Generally, the determinations of medical officers are subject to review only by a board of medical officers of the Public Health Service.

Aliens whose exclusion is finally ordered by immigration or medical officers must be deported immediately to the country whence they came at the expense of the transportation line which brought them.

Deportation.—Although some form of hearing has always been available to persons subject to deportation, no express provision existed in the statute until 1952. Nevertheless, the Supreme Court has held that a requirement for a fair hearing necessarily was implicit in the immigration law relating to deportation. The Court has held that the provision of the Fifth Amendment that no person shall be deprived of his liberty without due process of law applies to all persons in the United States, citizens and aliens alike. This guarantees to each alien in the United States, whether he be lawfully or unlawfully here, a fair hearing before his deportation can be ordered.

Deportation is not regarded as criminal punishment. However, it often entails great hardship. Consequently, the courts have insisted that deportation hearings must conform most scrupulously to the highest standards of fair play.

the issuance of a warrant of arrest. Such warrants of arrest are issued only upon a determination that probable cause for deportation exists. When the alien is arrested, he is furnished with a copy of the warrant of arrest and notified of his right to counsel and release under bond. In virtually every case the alien is released under bond.

The hearing takes place before the special inquiry officer, who is authorized to administer oaths, present and receive evidence, interrogate, examine and cross-examine the alien or witnesses, and to make a determination as to the alien's deportability. In any case or class of cases designated by the Attorney General, an additional immigration officer may be assigned to present the evidence on behalf of the United States before the special inquiry officer.

The statute directs that the alien shall be given reasonable notice of the charges against him, that he shall have the privilege of being represented by counsel, as well as a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine the Government witnesses. No order of deportation is valid unless it is based upon substantial evidence in the record of the hearing.

The alien is entitled to appeal to the Board of Immigration Appeals from an adverse decision of the special inquiry officer. A decision of the Board of Immigration Appeals is subject to review by the Attorney General only when such review is requested by the Attorney General, by the Board, or by the Commissioner of Immigration and Naturalization. If the alien's deportation eventually is ordered, he is taken into custody under a warrant of deportation, if not already in custody, and deported.

The Issues

The ordinary test applied to a law or to a procedure is not what is done under it, but what may be done. Only in that way is it possible to determine whether it is open to abuse. Authorities in legal fields have long condemned procedures under which the same officials, or officials acting under the same administration, appear as complainants, as witnesses on their own complaints, and finally as judges to determine the result. The main issue here is whether reviews or appeals from the initial findings should be decided by officers not directly connected with those responsible for such findings. The issue here involves proposals for an independent appeals board, the separation of prosecuting and judicial functions, and provision for independent hearing examiners.

During the last 40 years, there have been at least eight appraisals of this issue by various individuals and groups. In general, they have dealt with the separation of judicial and enforcement functions and with the caliber of the hearing officials.

The Hoover Commission on Law Observance and Enforcement.—A major study of immigration procedures was prepared by the so-called Wickersham Commission in 1931, "The Enforcement of the Deportation Laws of the United States."

One of the principal criticisms in the Wickersham report was addressed to the practice of having the immigrant inspector perform the combined duties of investigator, prosecutor, judge, and enforcement officer. The report was critical of the Board of Review, since reorganized as the Board of Immigration Appeals, on the ground that it was not a statutory board and was the creature of the Secretary of Labor, who was authorized also to enforce and administer the immigration laws. It observed additionally that the Board lacked necessary discretionary power to alleviate hardships.

In its conclusions and recommendations the report sharply criticized the system of administration under which "one agency of the United States Government acts as investigator, prosecutor, and judge, with despotic powers." It recommended that

(a) The Department of Labor should be charged only with the duties of investigation and prosecution of aliens unlawfully in this country and of execution of warrants of deportation when issued. . . .

(d) An independent board, with some such name as the "board of alien appeals," should be created, composed of men of judicial caliber, to be appointed by the President. This board should be charged with the duties of issuing warrants of arrest, of conducting hearings on the warrants, and of deciding when warrants of deportation should be issued. Its findings should be published.

(e) The board of alien appeals should have discretion to allow even deportable aliens to remain in this country where deportation would result in unnecessary hardship to American families, or is otherwise found to be inadvisable. Discretion should also be given to admit aliens previously deported.

(f) This board should have broad powers in effecting its own organization. It should have the right to appoint subordinate officials, such as masters or examining attorneys; these appointees would act as officers of the board in the different localities and would be under its sole jurisdiction.

Van Vleck Study.—This study, "The Administrative Control of Aliens", published in 1932 under the auspices of the Commonwealth Fund, was made by Dean William C. Van Vleck of George Washington University Law School. It criticized various exclusion and deportation procedures. It strongly objected to the combination in the immigration hearing officers of the functions of investigation, prose-

cution, and adjudication. It pointed out that few of the inspectors had legal training. It recommended that the personnel of boards of special inquiry be improved, that the Board of Review be given statutory authority, and that deportation be made a judicial, rather than an administrative, process.

President's Committee on Administrative Management.—This group made the next major study of administrative procedure. While its scrutiny was not aimed directly at the immigration process, its report criticized the mixture of administrative and adjudicative functions in Government agencies. It observed that such "mixed duties" "constitute an unwholesome atmosphere in which to adjudicate private rights." The Committee also pointed out that:

The same men are obliged to serve both as prosecutor and as judge. This not only undermines judicial fairness, it weakens public confidence in that fairness.

The Dimock Committee.—Probably the most comprehensive analysis and criticism of immigration procedures was that made by the Secretary of Labor's Committee on Administrative Procedure, the so-called Dimock Committee, which was appointed in 1938 and made its report May 17, 1940. The report pointed out that "the serious problem in deportation administration is bias or suppression of bias resulting from confusion of function," which was a consequence of "imposing upon the same inspector not only the duty of presiding over the hearing, but of actually prosecuting it." The Committee also spoke of the need for a "public guarantee of real insulation and independence of the inspectors who sit as trial examiners" and remarked:

To assure to every alien in a contested proceeding a fresh hearing before an official with the special experience, standing, and point of view of an administrative judge would do much to minimize the dangers of abuse.

The Committee said:

We recommend that the presiding inspectors be relieved of their present duties of presenting the case against aliens and be confirmed [sic] entirely to the duties customary for a judge. This, of course, would require the assignment of another officer to perform the task of prosecuting attorney . . .

A genuinely impartial hearing, conducted with critical detachment, is psychologically improbable, if not impossible, when the presiding officer has at once the responsibility of appraising the strength of the case and of seeking to make it as strong as possible. Nor is complete divorce between investigation and hearing possible so long as the presiding inspector has the duty himself of assembling and presenting the results of the investigation. Considerations such as these have led the overwhelming majority of other Federal administrative agencies to adoption of the practice here proposed . . .

Finally, the report urged the need to attract personnel "who have the fresh, outside viewpoint which this ingrowing [Immigration and Naturalization] Service so badly needs."

Attorney General's Committee on Administrative Procedure.—This Committee made a comprehensive study of all Government processes, not limited to procedures in immigration cases. Its final report, submitted in 1941, stated that it had not undertaken a study of the Immigration and Naturalization Service because the Secretary of Labor's committee had just completed an exhaustive analysis. However, the Attorney General's committee likewise criticized the practice of combining the prosecuting and adjudicating functions in Government agencies, and stated:

A man who has buried himself in one side of an issue is disabled from bringing to its decision that dispassionate judgment which Anglo-American tradition demands of officials who decide questions. Clearly the advocate's view ought to be presented publicly and not privately to those who decide.

These types of commingling of functions of investigation or advocacy with the function of deciding are thus plainly undesirable. But they are also avoidable and should be avoided by appropriate internal division of labor. For the disqualifications produced by investigation or advocacy are personal psychological ones which result from engaging in those types of activity; and the problem is simply one of isolating those who engage in the activity. Creation of independent hearing commissioners insulated from all phases of a case other than hearing and deciding will, the Committee believes, go far toward solving this problem at the level of the initial hearing provided the proper safeguards are established to assure the insulation. A similar result can be achieved at the level of final decision on review by the agency heads by permitting the views of the investigators and advocates to be presented only in open hearings where they can be known and met by those who may be adversely affected by them.

The Committee also considered the advisability of completely severing adjudication from prosecution by creating separate agencies to handle each. It concluded that this would be too costly and cumbersome, and that the most feasible arrangement would be a severance of prosecuting from adjudicating functions within the agency itself.

The Senate Judiciary Committee Study.—The inquiry of the Senate Judiciary Committee which preceded enactment of the Immigration and Nationality Act of 1952 was intended as a "full and complete investigation of our entire immigration system." However, in the voluminous report issued by the Senate Judiciary Committee at the completion of its inquiry, the Committee merely described the prevailing exclusion and deportation processes. It submitted no recommendation for change in the deportation procedures. In regard to the exclusion process it recommended merely that the three-man board of special inquiry be reduced to one officer.

Several studies also dealt with the problem of the caliber of hearing officers.

The Immigration Commission of 1907 submitted its report in 1911. Its recommendations included one "to strengthen the certainty of just and humane decisions of doubtful cases at ports of entry." This

...ought to be accomplished by urging that the boards of special inquiry "should be composed of unprejudiced men of ability, training, and good judgment . . . the character of these boards should be improved . . ."

The Jane Perry Clark Study in 1931, "Deportation of Aliens from the United States to Europe" urged statutory recognition for the Board of Review, and that its members and personnel be required to have legal training and higher qualifications.

The Administrative Procedure Act

A dominant note in many of these inquiries is their criticism of the failure to establish a clear division between the prosecuting and adjudicating functions of immigration officers. Such a severance has never been completely accomplished. Consequently it is significant that a major zone of controversy in immigration matters during recent years has been the issue as to whether the procedural requirements of the Administrative Procedure Act should apply to immigration proceedings.

The Administrative Procedure Act was enacted in 1946. It resulted from many years of debate and study concerning the need for improvements in Federal administrative justice. At the heart of this legislation, intended as a broad charter to govern the procedure of all Federal agencies, were its provisions for safeguarding the independence of hearing examiners. It provided that such examiners should be appointed for each agency only by the Civil Service Commission; that such examiners should perform no duties inconsistent with their duties as examiners; that their compensation should be prescribed by the Civil Service Commission independently of agency ratings or recommendations; and that they should be removable only for cause upon the determination of the Civil Service Commission.

Moreover, the statute prohibited private consultation by examiners with agency officers; forbade officers engaged in investigative and prosecuting functions in a case from engaging in the decision of that case; and directed that no hearing officer should be responsible to any officer engaged in prosecuting or investigating functions. These latter provisions are not applicable to the agency itself or members of the body comprising it.

Recognizing the widespread mixture of prosecuting and adjudicating functions found in many Federal agencies, the Administrative Procedure Act sought to achieve a limited separation of these functions within the framework of agency operations, and a substantial degree of independence in each agency's hearing examiners. According to the Supreme Court, the major purpose of the Administrative Procedure Act was "to curtail and change the practice of embodying

in one person . . . the functions of prosecuting and adjudicating. . . . The statute did not effect a complete divorce of prosecuting and adjudicating functions. But its directives were intended, no doubt, as a long step in the direction of that goal.

The Department of Justice took the position that the requirements of the Administrative Procedure Act were not intended to govern immigration proceedings. This resulted in litigation which eventually culminated in the *Wong Yang Sung* case,* where the Supreme Court concluded that deportation hearings were amenable to the Administrative Procedure Act. In its opinion the Court declared:

The Administrative Procedure Act did not go so far as to require a complete separation of investigating and prosecuting functions from adjudicating functions. But that the safeguards it did set up were intended to ameliorate the evils from the commingling of functions as exemplified here is beyond doubt. And this commingling, if objectionable anywhere, would seem to be particularly so in the deportation proceeding, where we frequently meet with a voteless class of litigants who not only lack the influence of citizens, but who are strangers to the laws and customs in which they find themselves involved and who often do not even understand the tongue in which they are accused. Nothing in the nature of the parties or proceedings suggests that we should strain to exempt deportation proceedings from reforms in administrative procedure applicable generally to Federal agencies.

The Supreme Court decision dealt only with deportation hearings. The Supreme Court has not yet passed upon the applicability of the Administrative Procedure Act to exclusion hearings. However, the lower Federal courts found the requirements of that statute inapplicable to such exclusion hearings.

However, the Congress in a rider to an Appropriation Act enacted on September 27, 1950 negated this Supreme Court decision by a statutory exemption of "exclusion or expulsion of aliens" from the provision of the Administrative Procedure Act.

The Immigration and Nationality Act of 1952 does not deal directly with the Administrative Procedure Act. It repeals the Appropriation Act rider which specifically exempted immigration procedures. However, other directives of the statute forge a pattern which reveals an unmistakable purpose to exempt immigration hearings from the procedural requirements of the Administrative Procedure Act. Thus sections 236 and 242 specify that exclusion and deportation hearings are to be conducted before special inquiry officers and that the procedure described in the statute "shall be the sole and exclusive procedure for determining" an alien's right to enter or remain in the United States. Moreover, section 101 (b) (4) defines a special inquiry officer as:

Any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this

**Wong Yang Sung v. McGrath*, 339 U. S. 33 (1950).

and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this act as the Attorney General shall prescribe.

The apparent purpose of these provisions was to establish an exemption from the procedural requirements of the Administrative Procedure Act without specifically mentioning that statute. The regulations recently promulgated by the Immigration and Naturalization Service under the 1952 act have adopted that interpretation.

The Issues Reconsidered

The deportation process has come a long way since 1893 when a Chinese alien could be expelled from the United States unless the legality of his stay was attested by "one white witness"; or even since the 1920's with the "shocking spectacle of flying squadrons of inspectors moving about the country—a single official regularly making the investigation, holding the hearing and recommending a decision." Indeed, with some conspicuous exceptions both admission and expulsion procedures have advanced steadily toward the achievement of greater fairness. The Commission observes those advances, but notes that some of the shortcomings that repeatedly have been subjected to heaviest assault by responsible and informed observers are still unremedied.

(1) Uncertain Status of Board of Immigration Appeals

To the Commission it seems inexplicable that the Board of Immigration Appeals is not specifically sanctioned by statute, and owes its existence only to a regulation of the Attorney General. Several studies of the immigration process and very considerable testimony before the Commission have condemned this situation and have urged that such Board be given statutory recognition. A proposal to give such status to the Board was passed by the House of Representatives in the course of its consideration of the 1952 Act, but was eliminated by the Senate.

The tenuous status of the Board of Immigration Appeals, underlined by repeated changes in its allotted jurisdiction, is clearly undesirable. A quasi-judicial agency that exercises virtual life-and-death authority over thousands of human lives should be free to exercise its responsibilities in an atmosphere of stability and protection from pressures. In its proposals for organization of immigration functions (Chapter 10), the Commission recommends a statutory Board of Immigration and Visa Appeals, with specific legislative authorization to make final administrative decisions in a wide variety of cases.

The adoption of this proposal would be a step toward hearings for aliens.

Aliens should be entitled to bring appeal to the Board of Immigration and Visa Appeals without the payment of fees.

(2) Commingled Judicial and Prosecuting Functions

A striking phenomenon in the jurisprudence of our day has been the crystallization of concepts for fair dealing in the administrative process. These concepts have been formulated by scholars, by the legal profession, by official studies, by the courts, and in the legislatures. They have included a universal condemnation of the situation in which one official or group of officials acts as investigator, prosecutor, and judge. This practice has been characterized as obnoxious to elementary standards of fair procedure.

Those who have appraised the immigration process likewise have condemned its mixture of prosecuting and adjudicative functions. They have described it as a roadblock to impartial consideration. The Supreme Court said recently that the administrative deportation hearing is "a perfect exemplification of the practices so universally condemned." But the attainment of insulation between prosecution and adjudication has been resisted and is today not yet a reality. The deportation process, although it touches countless human lives, thus has lagged behind other aspects of administrative justice. The major burden of the testimony of the American Bar Association was to urge the application of the Administrative Procedure Act to deportation proceedings.

The current hearing procedures should be examined in the light of the mandates of the Administrative Procedure Act. First is the need for restricting hearing officers to adjudicative functions, so that they will not be committed to the attitudes or aims of investigation and prosecution. In this connection the Administrative Procedure Act provides (1) that hearing officers "shall perform no duties inconsistent with their duties and responsibilities as hearing examiners"; (2) that investigative and prosecuting officers shall not participate in any decisions. From these requirements it would necessarily follow (3) that separate officers shall prosecute and preside at hearings.

Present practice conforms only partially with this first objective. Of 119 full-time hearing officers in the Immigration and Naturalization Service on October 1, 1952, only two performed extraneous duties. However, several hundred other officers, principally immigrant inspectors, are assigned part time to conduct hearings in exclusion cases.

With regard to the above item (2), the immigration statute now provides, like the Administrative Procedure Act, that special inquiry

officers shall not conduct proceedings in those cases in which they have participated in investigating or prosecuting functions.

In regard to the above item (3), the departure from Administrative Procedure Act is even more complete than under item (1). The act of 1952 provides that a special inquiry officer shall have complete authority to prosecute, hear, and decide exclusion and deportation cases, except that in some special classes of cases, fixed specifically or by regulation, an additional immigration officer may be assigned to present the evidence on behalf of the United States. The regulation does not require the assignment of an additional officer in any specific category of cases, but leaves the assignment to the discretion of the officer in charge of the district. In practice an examining officer was seldom designated, and in the vast majority deportation hearings were conducted entirely by a hearing officer, prior to the act of 1952.

The present hearing procedure in deportation and exclusion cases fails to conform to the now generally accepted standards for fair hearings. The normal practice in both exclusion and deportation cases under the act of 1952, is to have the entire proceeding conducted by a special inquiry officer who acts both as prosecutor and judge. Furthermore, officers normally performing investigating and prosecuting duties are authorized to conduct immigration hearings.

Another major facet of the Administrative Procedure Act is the removal of hearing examiners from the supervision of officers performing prosecuting and investigative functions. This goal likewise is not fully met by current immigration practices. Even full-time hearing officers are subject to the immediate supervision of the district director of the Immigration and Naturalization Service in administrative arrangements at the local level, and to over-all policy supervision of the assistant commissioner in charge of the inspections and examinations division. Both of these officials are concerned with enforcement. Under such an arrangement the hearing officer inevitably will tend to tailor his determinations to the wishes of his superior officers, whose sphere of action encompasses enforcement duties.

Indeed, the 1952 act explicitly declares that special inquiry officers "shall be subject to such supervision and shall perform such duties, not inconsistent with this act, as the Attorney General shall prescribe."

(3) Independence and Competence of Hearing Officers

Another major objective of the Administrative Procedure Act is to assure to hearing officers a measure of independence. This is done, in addition to the methods already discussed, by placing their appointment, ratings, compensation, and removal within the domain of the Civil Service Commission, independent of control in the agency in

which they serve. None of these objectives is reached by current immigration policies. Hearing officers enjoy no such independence of status. They are civil service officers and are subject to the normal powers of the Attorney General, as head of the Department of Justice, to appoint, compensate, rate, promote, and remove them.

The sponsors of the Administrative Procedure Act contemplated that the hearing examiner would be an officer with a high level of competence, and that the scale of his compensation would be adequate to attract outstanding individuals. **Current immigration administration falls short of these objectives.**

In the previous studies of the Immigration and Naturalization Service there has been a recurring recommendation for improvement in the caliber of hearing officials. Through the years there undoubtedly have been marked improvements in personnel, but many have said that such improvements have not progressed far or fast enough. The present complaint seems to be directed far more to the low concept of the role and function of such officers than to the officers themselves, some of whom are recognized as meeting the generally accepted standards for such important positions.

The Dimock committee reached the conclusion in 1940 that it was a mistake to recruit all hearing officers, as was done in 1940 and is still being done in 1952, through promotion from within the service. Of the 119 hearing officers now employed by the service, 74 formerly were immigrant inspectors, 18 were investigators, and 27 occupied miscellaneous positions such as naturalization examiner, patrol inspector, and officer-in-charge. Only 16 hearing officers are members of the bar and 5 possess law degrees but are not admitted to the bar. Thus less than 18 percent of the hearing officers have legal training. Thirty-two hearing officers possess college degrees. This means that approximately 60 percent of the hearing officers do not have college degrees or legal training.

The Commission is in accord with the conclusions of previous studies that it is of the utmost importance that hearing officers be possessed of adequate training and experience properly to discharge the duties assigned to them, requiring knowledge of intricate laws, regulations and court decisions and the capacity to deal justly with human rights and aspirations.

Closely related to the independence and qualifications of hearing examiners is their compensation. Manifestly, officers of high caliber cannot be attracted to these positions unless they are offered reasonable compensation commensurate with their responsibilities. The compensation scales of immigration hearing officers during recent years have never attained the reasonable levels fixed in most other agencies.

The deficiencies in the immigration hearing process seem clear. In large measure they result from a commingling of prosecuting and investigating functions, from the absence of real independence in the officers who hear and decide cases, and from what is said to be the inadequate qualifications of some of the hearing officers.

The Commission believes it imperative not only that immigration hearings accord a maximum of fairness, but also that they give others confidence of fairness. In order to improve immigration administration, to insure greater impartiality in rendering judgments, and to bring to the decision of cases under immigration laws a fresh and more humane point of view, the Commission makes the following recommendations:

Separation of Organization.—In the recommendation for a Commission on Immigration and Naturalization (Chapter 10), provision is made for a division of organizational responsibility between an Administrator of Immigration and Naturalization and a Board of Immigration and Visa Appeals. The Board of Immigration and Visa Appeals would be a statutory board whose members would be appointed by the Commission. The Board would be concerned exclusively with the adjudication of cases arising under the immigration laws. **The entire process of adjudication would be concentrated in the Board, which would be independent in deciding cases.** Its decisions would be administratively final on all issues of law and fact and would be subject to review by the new proposed Commission only in regard to the exercise of discretionary authority.

Separation of the Hearing Function.—**The Commission recommends that the examiners who hear and decide exclusion and deportation cases be separated from any enforcement functions. This would be accomplished principally by placing such examiners under the supervision of the Board of Immigration and Visa Appeals and removing them from the control and direction of any enforcement officials.** Such examiners would be prohibited from performing any duties outside of their responsibilities as hearing officers.

A number of witnesses have urged also that the procedural requirements of the Administrative Procedure Act be applied to immigration hearings. The spearhead of this proposal is the American Bar Association, whose representative testified at the hearing, in part as follows:

We do not doubt the good faith of the Service nor its disposition to give fair hearings. We do not deny that the act is an improvement on the rider of 1951. But we return to the fundamental proposition that the provisions of the APA taken in their entirety represent a careful, well-considered view of the minimal

but indeed more true of deportation proceedings than of other proceedings to which APA is applicable. The interest of a person about to be deported of his relatives and close friends is among the weightiest and most significant that can be imagined.

The need for invoking the purely procedural directives of the Administrative Procedure Act doubtless will be lessened by the adoption of the Commission's proposal for the separation of adjudicative functions from enforcement, subject only to a limited right of appeal. It may perhaps be urged that there is still a possibility that immigration hearing officers, lacking the relative independence of examiners chosen in accordance with the Administrative Procedure Act, may ultimately come under the influence of enforcement officials. To minimize this possibility, to remove a constant source of needless controversy and litigation, and to bring the deportation process in line with the uniform administrative procedures established by the Administrative Procedure Act, **the Commission recommends that deportation hearings be conducted in conformity with the procedural requirements of the Administrative Procedure Act.** All this would entail, in addition to the division of functions and organization recommended, is that a prosecuting officer be assigned to assemble and present evidence before the deportation examiner. There can be no substantial objections to making this a routine rather than the exceptional requirement it is under the 1952 act. The practical difficulties would be negligible and the added costs inconsiderable.

In reaching the conclusion that the added costs will be inconsiderable, the Commission has not lost sight of the estimates given to the Congress by the Immigration and Naturalization Service, that the increased cost for that particular year would be almost \$4,000,000, and that if all aliens charged in deportation cases demanded hearings the extra annual expense might reach 25 or 30 million dollars. These calculations were on the theory that in the case of every alien apprehended because illegally in the United States, a hearing would have to be given him by an independent hearing officer with the aid of a prosecuting officer.

For the last fiscal year, the Immigration and Naturalization Service completed 42,258 deportation hearings. At the same time, voluntary departure without a hearing was allowed in 694,200 cases. If hearings were conducted under the Administrative Procedure Act it would still be permissible for the service to permit voluntary departure without bringing the case to a hearing, as is the practice today. No factual basis whatever has been offered to support the conclusion that every alien apprehended because illegally here, or any number of aliens greater than those now accorded hearings, would demand a hearing if operating under the Administrative Procedure Act. Actually, every

the United States Constitution to demand a fair hearing, so that the opportunity for delay exists even now for those disposed to resort to dilatory tactics.

It has been suggested that a deportation hearing under the Administrative Procedure Act would be more time-consuming and, therefore, more aliens would demand a hearing in order to remain in the United States longer. It is difficult to perceive the validity of such an assumption. In fact, it would seem that as a hearing officer under the Administrative Procedure Act would be relieved of the duty of studying a case in order adequately to act as a prosecuting officer, with that function being placed in another official, hearings should be less time-consuming than is now the case.

Clearly, applying the Administrative Procedure Act to deportation proceedings will be somewhat more costly than is true under existing law and regulations. That cost, however, should be limited to the expense involved in hiring additional personnel to act as prosecuting officers. Judging this added cost against the benefits of a completely impartial and objective hearing, the Commission is of the opinion that fiscal considerations should not operate against the adoption of the Administrative Procedure Act in deportation proceedings under the immigration laws.

The Commission believes its recommendations in connection with deportation hearings meet the substantive requirements for a fair hearing, and comply fully with the spirit and purpose of the Administrative Procedure Act.

The exclusion process seems to be governed by somewhat different considerations. It deals with an alien who is outside the United States and who is not in a position to claim procedural protections equal to those accorded to an alien who has established residence in the United States. The American Bar Association has not officially favored application of the Administrative Procedure Act to the exclusion process. Moreover, in the admission process at the numerous ports of entry along the seacoasts and land ports of the United States there is special need for speed and flexibility in passing upon cases. **The application of the Administrative Procedure Act to the exclusion process would seem to hamper effective administration, and the Commission does not recommend that course now.** It believes it would be advisable to study the results of experience under the proposals it has made before reaching a decision as to the need for additional measures.

In the meantime, under the plan recommended by the Commission, the hearing officers who consider applications for admission would be responsible to the Board of Immigration Appeals and not to enforcement officers.

time of the Administrative Procedure Act to exclusion, the Commission believes that it would be inappropriate to attempt to use that act to control the procedure of visa issuing officers stationed overseas.

The proceedings before such visa officers should be free from unnecessary complications. Generally, their determinations would be made on a written record, consisting of an application and supporting documents. Unless extended inquiry is found necessary, there would be no need for any formal hearing in such cases. The visa issuing officer's determinations would be subject to review by the proposed Board of Immigration and Visa Appeals. This procedure would provide appreciably greater assurances of fair play to the applicant for a visa than is available under present law.

Improvement in Caliber of Examiners.—Such improvement will follow to some extent from the severance of adjudication from administration. Freedom from ties with enforcement doubtless will tend to alter the outlook of hearing officers. But changed organizational management will not in itself meet the need, to which many of the studies called attention, for improvement in the caliber and the competence of some of the hearing examiners.

JUDICIAL REVIEW

With the growing complexity of modern life, it has been necessary to develop specialized administrative agencies of government, many of which take on quasi-judicial functions which previously were conceived of as being wholly within the area of court action. This development of administrative justice has raised the important problem of the relationship of such quasi-judicial administrative agencies and the normal court system. There has been some uncertainty as to the precise extent to which the courts would, or even should, inquire into the merits of issues which have been resolved by the quasi-judicial administrative process.

This same uncertainty has been present in immigration. The legal scholars in general seem to agree that in the area of administrative law, including immigration, there has been a steadily widening zone of intervention by the courts.

The issues are twofold: first, whether there should be any judicial review of the action of immigration officials; second, whether such judicial review should be limited to a determination of the reasonableness of executive action, or should re-examine the merits.

These issues arise in different phases of the immigration process:

Deportation Orders

The statutes never have directly sanctioned judicial examination of deportation orders. On the contrary, they always have confided to administrative officers the function of determining whether an alien should be deported, and have provided that the determination "shall be final." Such is still the provision of the 1952 act. The courts have supported this grant of authority to administrative officers; the Supreme Court has stated that they are authorized to function "without judicial intervention."

Although the immigration law lacks a specific statutory authorization for judicial review of deportation, the courts have held that an alien could question a deportation order through a writ of habeas corpus. The proceeding affords to each person deprived of his liberty a speedy and effective means of testing the legality of his detention. But it is not a full judicial review of the issue; it only enables the courts to ascertain whether the deportation order was supported by substantial evidence, was issued on the basis of legal authority, and after a fair hearing. The courts have not attempted to decide in habeas corpus proceedings whether the administrative findings were wrong but rather have determined whether the proceedings were fairly and legally conducted.

Until the enactment of the Administrative Procedure Act in 1946 the courts uniformly held that the writ of habeas corpus was the exclusive method of contesting a deportation order. Since then, the legal situation has been somewhat confused. Efforts have been made to invoke court remedies under the Administrative Procedure Act and under the previously enacted Declaratory Judgment Act, and both forms of proceeding have been sanctioned in some of the lower Federal courts. Perhaps by the time this report is completed the Supreme Court will have ruled on the matter.

The 1952 act contains no specific provision concerning judicial review of deportation orders. The congressional conference report on that bill stated that "the safeguard of judicial procedure is afforded the alien in both exclusion and deportation proceedings," but it does not explain or indicate just how.

The attempts to enlarge the remedies that might be pursued to question orders of deportation doubtless have been engendered in large measure by a conviction that the relief afforded through the writ of habeas corpus is inadequate. No one would dispute that the writ of habeas corpus has furnished sturdy protection to individual rights in deportation cases. However, that writ can be obtained only by a person who is actually in physical custody. The alien, therefore, is unable to bring court proceedings until an attempt is made to enforce

the order of deportation. This has meant that he has been obliged to undergo detention before he could obtain a court ruling.

The Commission requested the advice of the United States Solicitor General's office concerning the possibility of improving and clarifying the avenues for judicial review of deportation orders. The views expressed in the Acting Solicitor General's response were formulated with the concurrence of the Immigration and Naturalization Service of the Department of Justice. The Acting Solicitor General stated:

I am strongly of the opinion that the form and other incidents of the judicial review of deportation orders should be clarified by legislation.

He recommended clarification of the existing uncertain situation by a statutory substitute of "a single, fair, and expeditious review" for the habeas corpus proceeding. He observed:

It is inconvenient to the alien and of no corresponding benefit to the Government that he cannot challenge a deportation order which is otherwise final until he has been taken into at least nominal custody.

He also suggested that the statute include assurances for speedy consideration of such cases and reasonable safeguards against dilatory and multiple litigation.

The Commission agrees with these views and recommends the creation of a statutory form of judicial review of orders of deportation. Just how this should be developed is a matter for legislative draftsmanship. The Commission is not wedded to any particular means of providing a clear and precise procedure for judicial review of orders of deportation.

However, as some indication of what such proposal might involve, the following is suggested as one means of accomplishing this recommendation:

(a) The immigration statute should include specific authorization for judicial review of deportation orders after the administrative decision has become final. Although the precise designation of such a court proceeding is unimportant, this remedy could appropriately be called a petition for judicial review.

(b) Enforcement of the order of deportation should be subject to the right to file a proceeding for judicial review within a period of 60 days.

(c) Although there is a logical justification for channeling review proceedings directly to the United States courts of appeals, the heavy volume of such cases might overburden those courts. On balance therefore it might be preferable that the petitions for review be brought in the United States district courts. If this view be taken, such suits should be maintained in the district of the plaintiff's residence, rather than in the District of Columbia, in order to avoid a concentration of cases in one court.

actions in some Federal courts, the statute should make provision for simplified pleadings and expedited consideration in the same manner as habeas corpus proceedings are now expedited. Moreover, the statute should preclude multiple attacks upon deportation orders by providing that this special review proceeding shall be the exclusive remedy. Such procedure will give the alien respondent in deportation proceedings a prompt and effective remedy, but will restrict him, in common with all other litigants, to a single mode of review.

(e) Because deportation will continue to be an administrative, rather than a judicial function, court review should be restricted to an appraisal of the legality and fairness of the decision, and should not reconsider the merits of the controversy. Therefore, the scope of review of deportation orders could continue to be governed by provisions of the Administrative Procedure Act, which substantially conforms with the scope of judicial inquiry fashioned by the courts themselves in deportation cases.

Exclusion Orders

Under present law and court rulings the alien applying for admission to the United States who is stopped at the port of entry does not have status or legal protections equivalent to those granted to an alien already admitted into the United States. However, the Supreme Court long ago decided that an alien so barred from the United States had the right to institute habeas corpus proceedings, to determine whether the exclusion was ordered on grounds prescribed by Congress.

The availability of habeas corpus has been an important privilege to aliens whose exclusion has been ordered. The excluded alien ordinarily remains in confinement at the port of entry and the writ of habeas corpus seems a suitable vehicle for obtaining a court ruling. Moreover, the Commission is not aware that the form of the remedy has caused any real difficulty. Consequently the Commission recommends that there be no change in existing formulas for review of exclusion orders after final administrative review by the proposed Board of Immigration and Visa Appeals. This would mean that the writ of habeas corpus will continue to be the appropriate remedy open to an alien excluded at a port of entry who wishes to challenge a final order of exclusion.

Denial of Visa

Although the precedents are meager, it seems doubtful whether under present law a rejected applicant for a visa can bring court proceedings to question the adverse determination. Elsewhere the Commission recommends that the proposed Board of Immigration

and Visa Appeals review determinations denying visas. One of the objections to granting such administrative review has been the apprehension by some that it might invite further review in the courts.

Although the purpose to be served by such review is an old and cherished one—protection against arbitrary or illegal official action—the legal right recommended is a new one. The Commission believes it desirable to await experience with its proposed administrative review of visa actions before consideration of judicial review. Therefore, the Commission recommends that at this time the review by the proposed Board of Immigration and Visa Appeals, of a decision denying a visa, should not be subject to judicial review.

Bail

The immigration laws do not recognize an absolute right to release on bail for an alien against whom deportation proceedings are pending. Although the privilege of bail has been granted almost universally, there have been some instances in which bail has been denied.

The legal authority to refuse bail prior to a determination of deportability was challenged in the courts and eventually was supported by the United States Supreme Court in *Carlson v. Landon*, 342 U. S. 524 (1952). The Supreme Court was closely divided on this issue, but the majority sustained the denial as a necessary administrative weapon to be used against aliens who are active adherents of the world Communist movement, and declared that the aid of the courts could be invoked to determine whether this power was being arbitrarily or illegally exercised.

The act of 1952, section 242, provides that courts shall have authority to review determinations denying bail in deportation proceedings only upon "a conclusive showing . . . that the Attorney General is not proceeding with . . . reasonable dispatch." This provision apparently attempts to preclude the courts from considering whether denials of bail have been arbitrary or illegal.

The Commission recommends that the courts be given specific authority to decide whether denials of bail pending hearings and determinations in deportation cases are arbitrary or illegal.

In summary, apart from bail cases, no additional substantive judicial review is recommended by the Commission. The procedure and form of judicial review in deportation cases should be clarified, but no new or additional judicial review or court procedures are recommended in exclusion or visa denials. Here the Commission believes that experience with the proposed new rights and procedures set up in connection with the proposed Board of Immigration and Visa Appeals should determine what, if any, further steps should be taken.

Conclusions

The immigration and nationality law embodies policies and principles that are unwise and injurious to the nation.

It rests upon an attitude of hostility and distrust against all aliens.

It applies discriminations against human beings on account of national origin, race, creed and color.

It ignores the needs of the United States in domestic affairs and foreign policies.

It contains unnecessary and unreasonable restrictions and penalties against individuals.

It is badly drafted, confusing and in some respects unworkable.

It should be reconsidered and revised from beginning to end.

Recommendations

Throughout this Report are various recommendations, appearing in the chapters in which particular subjects are discussed. The more important ones are briefly restated here, without reference to the order in which they appear elsewhere:

The Quota System

1. The national origins quota system should be abolished.
2. There should be a unified quota system, which would allocate visas without regard to national origin, race, creed, or color.
3. The maximum annual quota immigration should be one-sixth of 1 percent of the population of the United States, as determined by the most recent census. Under the 1950 census, quota immigration would be open to 251,162 immigrants annually, instead of the 154,657 now authorized.
4. All immigration and naturalization functions now in the Department of State and the Department of Justice should be consolidated into a new agency, to be headed by a Commission on Immigration and Naturalization whose members should be appointed by the President and confirmed by the Senate.
5. The maximum annual quota of visas should be distributed, as determined by the proposed Commission on Immigration and Naturalization, on the basis of the following five categories:

**The Right of Asylum
Reunion of Families
Needs in the United States
Special Needs in the Free World
General Immigration**

6. For the next three years, within the maximum annual quota, there should be a statutory priority, implementing the Right of Asylum, for the admission annually of 100,000 refugees, expellees, escapees, and remaining displaced persons.
7. The allocation of visas within the maximum annual quota should be determined, once every 3 years, by the proposed Commission on Immigration and Naturalization, subject to review by the President and the Congress.

Fair Hearings and Procedure

8. Enforcement functions should be exercised, under the Commission's supervision and control, by an Administrator. Quasi-judicial functions should be exercised, under the Commission's supervision, by a statutory Board of Immigration and Visa Appeals.
9. The same officials should not be permitted to exercise both enforcement and judicial functions. Aliens should be accorded a fair hearing and procedure in exclusion and deportation cases. Hearings in deportation cases should conform with the requirements of the Administrative Procedure Act. Hearing officers should be responsible only to the proposed Board of Immigration and Visa Appeals, which should have authority to exercise final administrative review of their decisions, subject to further review in limited cases by the Commission. Aliens should have a right of administrative review, before the Board of Immigration and Visa Appeals, from denials of visas; and have a clearly defined method of seeking court review of orders of deportation.

Admissions and Deportations

10. The conditions for admission of aliens into the United States should
 - bear a reasonable relationship to the national welfare and security;
 - be definite in their meaning and application;
 - include discretionary authority to waive specified grounds of inadmissibility, in meritorious cases;

provide for exclusions without hearing, for reasons of security, only upon direction of the Board of Immigration and Visa Appeals; and

not be based on the so-called criminal judgments of totalitarian states.

11. The grounds for deportation of aliens already in the United States should

bear a reasonable relationship to the national welfare and security; not be technical or excessive;

not be retroactive so as to penalize aliens for acts which were not prohibited when committed; and

not require the deportation of aliens who entered the country at an early age, or those who have been residents for such a long period as to become the responsibility of the United States.

12. In connection with the deportation of aliens, there should be discretionary authority to

allow them to depart voluntarily instead of deportation; adjust their status within the United States if they are currently qualified to reenter;

suspend deportation under reasonable conditions; and adjust the status of bona fide official defectors from totalitarianism.

13. A resident alien who is not otherwise deportable should not, by reason of a brief absence from the United States, be subject to exclusion or deportation.

14. Unless proceedings for deportation and denaturalization are brought within ten years, they should be barred.

15. Arrangements should be made to expedite the processing of visas for temporary visitors, including leaders in art, scientific and business fields, and the law should apply to such nonimmigrant aliens only such restrictions as are directly concerned with the health, safety, and security of the United States.

Security

16. The security of the United States should be protected by continuing to bar the entry of spies and saboteurs.

Aliens who are present members or affiliates of any totalitarian party, including Communists, Nazis, and Fascists, should be denied admission into the United States except where their membership is involuntary; or

affiliations is not knowingly or willingly to further the aims and principles of such parties.

They should be deported except where they

entered the United States at an early age or have been residents for such a long period of time as to have become the responsibility of the United States.

Aliens who are former members or affiliates of any totalitarian party may be admitted provided

they have repudiated and are now opposed to such totalitarian ideologies; and

the responsible administrative officers make a finding that the admission of such aliens would not be contrary to the public interest.

They should be deported unless

they have repudiated such doctrines for at least five years.

Citizenship

17. The law should not discriminate against naturalized citizens but should place them in the same status as native-born citizens, except where citizenship was procured by fraud or illegality. The law should minimize or remove restrictions which create statelessness, disrupt family unity, or impose unreasonable conditions or procedures upon the acquisition or retention of citizenship.

APPENDIXES

ADDITIONAL VIEWS OF ADRIAN S. FISHER

I concur wholeheartedly in the policy recommendations in the report of the President's Commission on Immigration and Naturalization. I believe that their prompt adoption would be in the interest of the United States, both in the conduct of its foreign relations and in the continued vigorous growth and development of its economy and its society. However, in only one small aspect of the report, that dealing with the administrative arrangements for the issuance of visas overseas, I cannot see eye to eye with my colleagues.

The Report proposes to set up, in effect, another separate foreign service by authorizing the Administrator of Immigration and Naturalization to set up visa offices overseas as part of the unified program. In view of the importance which the report places on the foreign policy of the United States, a view in which I wholly concur, I cannot see what is to be gained by separating the administration of the proposed program from the agency which is charged with the administration of the foreign policy of the United States. It may well be that the Department of State is subject to legitimate criticism in its activities under the present system for not having paid enough attention to the foreign policy aspects of the administration of the visa issuing function. But in my judgment the remedy for that defect is not to be found in divorcing it entirely from this function. It may well be true that in its administration of the visa function overseas the Department of State has relied excessively upon "experts;" that is, persons who spend a large proportion of their time doing nothing but visa work. If the Department, however, has erred in this respect, this tendency should be corrected, not accentuated, and the participation in the visa function of officers who have an over-all responsibility for the conduct of foreign relations should be encouraged, not made impossible.

The same can be said with reference to the problem of placing an additional group of United States officials in foreign countries to represent the United States of America. I am aware that my colleagues are led to their concept of administration by their view that a visa once issued should be final, and not subject to review at the port of entry except for identity, physical condition, and security status. From this they deduce, by the maxim of "No responsibility without authority," the conclusion that the visa issuing function must in turn be under the proposed commission. I wholly agree that a visa once

issued should be final and not subject to review at the port of entry except for identity, physical condition, and security status. I wholly agree also that there should be an independent Commission on Immigration and Naturalization. I am completely in accord with the recommendation that there should be a formal procedure for review of consular decisions with respect to visas. However, I do not agree that these desirable ends require that persons other than consular officers should issue the visas.

I am reinforced in this view by the fact that in over 200 Foreign Service posts there is not an adequate work-load of visa cases to justify the establishment of a separate visa office. My examination of the statistics shows that almost 50 percent of all visas are issued in posts of this kind. The proposed solution—that is, to have the consul, in effect, act as a hearing officer but without any power of decision, even in a clear case—does not seem to me to be a satisfactory one. Certainly it does not seem to be satisfactory to have two separate systems, one disposing of 53 percent of the visas and the other disposing of 47 percent.

I believe the proposed Commission should avail itself of the very real advantages in using the Foreign Service to accomplish its requirements abroad, as do some 45 United States Government agencies at the present time. The proposed Commission would thus have a widespread, flexible, operating service with the particular advantage of utilizing its broad experience in foreign affairs. This experience will be invaluable in evaluating the intent of the alien, and his social, economic, and political background, and in estimating the effect of the alien's admission to the United States upon our foreign relations and domestic security and development.

The proposed Commission would have the same responsibility and authority, the same freedom in the issuance of substantive guidance and direction as it would enjoy with its own employees. It could participate with other government agencies, under procedures now established under the Foreign Service Act of 1946, in the selection, training, assignment, and promotion of Foreign Service personnel, and could participate in the day to day administration of the Service by the Department of State to the extent necessary to meet its requirements.

Except for this single administrative detail, I am in complete accord with the Commission's conclusions and recommendations.

Order Creating the Commission

EXECUTIVE ORDER 10392

ESTABLISHING THE PRESIDENT'S COMMISSION ON IMMIGRATION AND NATURALIZATION

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SEC. 1. There is hereby established in the Executive Office of the President a commission to be known as the President's Commission on Immigration and Naturalization, which shall be composed of a chairman, a vice chairman, and five other members, all of whom shall be designated by the President.

SEC. 2. The Commission is authorized and directed to make a survey and evaluation of the immigration and naturalization policies of the United States, and shall make recommendations to the President for such legislative, administrative, or other action as in its opinion may be desirable in the interests of the economy, security, and responsibilities of this country. The Commission shall give particular consideration to:

(a) The requirements and administration of our immigration laws with respect to the admission, naturalization and denaturalization of aliens, and their exclusion and deportation,

(b) The admission of immigrants into this country in the light of our present and prospective economic and social conditions and of other pertinent considerations; and

(c) The effect of our immigration laws and their administration, including the national origin quota system, on the conduct of the foreign policies of the United States, and the need for authority to meet emergency conditions such as the present overpopulation of parts of Western Europe and the serious refugee and escapee problems in such areas.

SEC. 3. In performing its functions under this order, the Commission may prescribe such rules of procedure, and may hold such public hearings and hear such witnesses as it may deem appropriate.

SEC. 4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Commission in its work and to furnish the Commission such assistance, not

inconsistent with law, as it may require in the performance of its functions.

Sec. 5. The expenditures of the Commission shall be paid out of an allotment made by the President from the appropriation entitled "Emergency Fund for the President—National Defense" in Title I of the Independent Offices Appropriation Act, 1953 (Public Law 455, 82d Cong.), approved July 5, 1952. Such payments shall be made without regard to the provisions of (a) section 3681 of the Revised Statutes (31 U. S. C. 672), (b) section 9 of the act of March 4, 1909, 35 Stat. 1027 (31 U. S. C. 673), and (c) such other laws as the President may hereafter specify. The members of the Commission shall receive such compensation and expense allowances, payable out of the said allotment, as the President shall hereafter fix, except that no compensation shall be so fixed with respect to any person while receiving other compensation from the United States.

Sec. 6. The Commission shall make a final written report to the President not later than January 1, 1953, including its recommendations for legislative, administrative or other action. The Commission may also make such earlier reports to the President as it may deem appropriate. The Commission shall cease to exist 30 days after rendition of its final report to the President.

HARRY S. TRUMAN.

THE WHITE HOUSE, *September 4, 1952.*

SEPTEMBER 4, 1952.

STATEMENT BY THE PRESIDENT

I have today established a special Commission on Immigration and Naturalization, to study and evaluate the immigration and naturalization policies of the United States.

Our immigration and naturalization policies are of major importance to our own security and to the defense of the free world. Immediately after the war ended, we recognized the plight of the displaced persons; we acted to cooperate with other nations and to admit a share of these victims of war and tyranny into our own country. The displaced-persons program has now been successfully concluded, but the free world faces equally grave and equally heart-rending problems in the continual stream of refugees and escapees from the iron-curtain countries into Western Europe. These people add to the pressures of overpopulation in certain countries. Overseas migration from Europe has been dammed up by years of war and international economic disorder. While we have joined with other nations to meet such problems as these, our own immigration laws based on conditions and assumptions that have long ceased to exist, present serious obstacles in reaching a satisfactory solution.

Humanitarian considerations, as well as the national interest, require that we reassess our immigration policies in the light of these facts. The United States must remain true to its great traditions and have an immigration policy that strengthens our Nation at home and furthers our world leadership.

The Eighty-second Congress devoted much time and effort to this problem, but the bill which it passed was so defective in many important provisions that I could not give it my approval. In my veto message, I expressed the hope that the Congress would agree to a careful reexamination of the entire matter. I suggested that the Congress create a representative commission of outstanding Americans to make a study of the basic assumptions of our immigration policy, the quota system and all that goes into it, the effect of our immigration and nationality laws, and the ways in which they can be brought into line with our national ideals and our foreign policy. The Congress did not act upon these suggestions.

I do not believe that the matter should remain where the Congress left it. The problems of immigration policy grow more pressing, and the inequities fostered by the new law require careful examination. I am, therefore, appointing this Commission in the belief that its recommendations will enable the next Congress to consider the subject promptly and intelligently. This Commission will have the benefit of much information already drawn together in the field of immigration, including that developed by the committees of Congress in their long study of the problem. It should, therefore, be in a position to complete its study before the reconvening of the next Congress.

I have directed the Commission to give particular consideration to:

(a) The requirements and administration of our immigration laws with respect to the admission, naturalization, and denaturalization of aliens, and their exclusion and deportation;

(b) The admission of immigrants into this country in the light of our present and prospective economic and social conditions and of other pertinent considerations; and

(c) The effect of our immigration laws, and their administration, including the national origin quota system, on the conduct of the foreign policies of the United States, and the need for authority to meet emergency conditions such as the present overpopulation of parts of Western Europe and the serious refugee and escapee problems in such areas.

The members of the Commission are as follows:

Philip B. Perlman of Maryland, Chairman. (Formerly, Solicitor General of the United States, formerly city solicitor of Baltimore, secretary of the State of Maryland, assistant attorney general of Maryland.)