U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Third Congress

DATE:

TO: Jose Cerda

FROM: J. Cohen / K Mendelson

TELEPHONE: 225-3951 (FAX 225-1958)

NUMBER OF PAGES (INCLUDING THIS PAGE): 2

The portion of the National Performance Review (NPR) dealing with Federal law enforcement agencies makes a compelling argument that the current Federal law enforcement system is in need of some type of restructure. In the last decade, attempts to reorganize Federal law enforcement have faced numerous obstacles including lack of cooperation from agency officials and resistance by Members of Congress. Indications are that if handled in a manner which is sensitive to the concerns of the interested parties, the time may be ripe to implement change which creates a more effective, coordinated and efficient Federal law enforcement mechanism. While the recommendations pertaining to the establishment of a Director of Law Enforcement and an Executive Law Enforcement Council (ELEC) are both politically and substantively time appropriate, Recommendation Three regarding the merging of the Bureau of Alcohol, Tobacco and Firearms (BATF) and the Drug Enforcement Administration (DEA) in the Federal Bureau of Investigation (FBI) may be premature.

- In order to be effective, this Review must be presented as an objective effort, supported by factual data, to create a more efficient law enforcement system. If it is viewed as an attack on a specific agency, it is doomed to fail like prior efforts.

- The information contained in the Review does not sufficiently explain how simply merging the enforcement and investigative function of the BATF and the DEA into the FBI solves the problems associated with the lack of coordination between the "140 different Federal organizations with some law enforcement functions." This ommission could be used as ammunition for critics of the Review as a whole.

- Recommendation Three appears to be based on the fact that the BATF was originally created for regulatory and revenue purposes and that its current enforcement and investigative role duplicates a function already carried out by components of the Justice Department. Although the NPR describes the Customs Service and the IRS in a similar light, these two agencies retain their enforcement and investigative function. This potentially invites criticism that the Administration is simply targeting the BATF.

Should the Administration implement only Recommendations One and Two, it could be criticized for creating just another level in a top heavy bureaucracy without actually doing anything of substance. Therefore, the ELEC, at its inception, should be immediately charged with the task of examining the proposed merger of the BATF and DEA into the FBI and develop all necessary policies and procedures to implement the merger should it be deemed the appropriate course of action. The ELEC should also be tasked to examine the Federal law enforcement structure as a whole and develop specific recommendations to improve coordination and efficiency. Both of these examinations should be subject to time deadlines specified in advance.

August 11, 1993

MEMORANDUM TO DR. LEE P. BROWN, DIRECTOR ONDCP

FROM: RICIA MCMAHON
ED JURITH

RE: DEA/FBI MERGER

The attached press clipping from today's Washington Times, and the draft section from the Vice President's draft report on reinventing government discuss the proposed merger of DEA into the FBI as a division of the latter. Also attached is a set of talking points prepared by DEA opposing the merger.

According to the draft of the Vice President's document, a recommendation is made to consolidate Federal law enforcement functions under the Attorney General as "Director of Law Enforcement" (DLE). ONDCP would be represented on a Executive Law Enforcement Council that would advise the DLE on all Federal law enforcement matters. DEA would be **merged as a division** into the FBI, along with law enforcement functions of ATF.

The balance of the Vice President's draft sets forth the alleged benefits to this proposal, the most significant - and no doubt what is driving this - is a savings of $83 million in the first year and $63 million per year thereafter by merging DEA into the FBI.

As Director of ONDCP, by statute, you would have to approve any merger of DEA into the FBI. We are in the process of gathering together the various arguments, pro and con, on the practicality and effectiveness of this proposal. This document will be available for you on your return.

THIS IS A VERY SIGNIFICANT ISSUE, AND ONE ON WHICH YOU NEED TO BE DEEPLY ENGAGED ON YOUR RETURN. The Vice President's Task Force on Reinventing Government is due to report their final recommendations shortly after Labor Day.

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▶ 8

To Ed Jurith	From Greg Lenaston
Dept./Agency	Phone #
Fax # 467-9809	Fax #

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1.

11, 1993

National police force?

Gore plan melds U.S. law agencies

By John Bennett
SCRIPPS HOWARD NEWS SERVICE

All federal law enforcement activities would be moved into the Justice Department and controlled by the attorney general under a sweeping reorganization plan crafted by Vice President Al Gore.

The proposal would merge the FBI with the Drug Enforcement Administration and enforcement functions of the Bureau of Alcohol, Tobacco and Firearms, Secret Service, Customs Service, Internal Revenue Service, and Postal Service.

Drafters of the plan candidly observed it could create a public concern that the government was creating a powerful new "national police force" and a Justice Department that's too big and unmanageable.

But the plan's authors also said it would achieve major efficiencies and save millions of dollars.

The first step would be creation of a presidential commission to study the merger of the agencies. That could be announced as early as Sept. 7, when Mr. Gore releases his other recommendations from his "reinventing government" task force.

The plan proposes creating a "Directorate of Central Law Enforcement" headed by the attorney general and supervised by a presidentially appointed council based at the White House.

The plan, which would dramatically centralize federal law enforcement powers, suggests the new directorate could be modeled after the CIA director's organizational structure.

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JUSTICE

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The attorney general would serve dual roles — one as head of the Justice Department and the other as leader of the entire U.S. law enforcement community.

"The [attorney general] should be the presidential adviser and principle source authority on law enforcement matters throughout the government," the plan says.

"When agencies have competing or conflicting law enforcement interests of major national significance, the [attorney general] should advise the president and the president should make a decision after coordinating with Congress."

The supervising White House law enforcement council would be chaired by the attorney general and limited to leaders of the departments of Justice, Treasury, State, Interior and Defense, the CIA, and the Office of National Drug Control Policy.

"There haven't been any decisions on any specific recommendations," said Maria Romash, Mr. Gore's communications director, when asked about the report.

The plan lists these restructuring "options" for the presidential commission to study:

- Moving the DEA into the FBI as a division. The change would require the director of the division to be a current DEA official and that pre-determined levels of staffing and funding be dedicated to drug enforcement.

The plan concludes that a DEA-FBI merger would not only achieve efficiency, but save the government about $84 million a year.

- Shifting 1,500 FBI agents currently involved in drug enforcement work into the FBI's proposed DEA division.
- Transferring the Secret Service and ATF enforcement functions from the Treasury Department to the Justice Department.
- Aligning the Postal Service's inspection service with the FBI.
- Moving the IRS criminal investigations division from the Treasury Department to the Justice Department.
- Shifting the Customs Service drug enforcement efforts — with the exception of U.S. border activities — from the Treasury Department to the Justice Department ...

A central part of the plan proposes merging most administrative and support functions of the law enforcement agencies. "Such can be justified in terms of economy, effectiveness, coordination and control," the plan says.

A key part of the recommendation gives the attorney general authority to recommend to the president changes in the organization, management and budgets of federal departments and agencies engaged in law enforcement.

The idea already has drawn fire on Capitol Hill. Anticipating the plan, Sen. Dennis DeConcini, Arizona Democrat, inserted language in the pending Treasury Department 1994 appropriations bill that forbids any shift of ATF enforcement powers.

JTR-12: Improve Coordination and Structure of Federal Law Enforcement Agencies

Background

There are over 140 different Federal organizations with some law enforcement functions. These organizations are responsible for various police and/or criminal investigative functions pertaining to more than 4,100 federal criminal laws under the U.S. Code. Most federal crimes involve violations of a number of these laws, many of which come under the jurisdiction of multiple federal agencies. For example, a drug investigation may involve violations of financial, firearms, immigration or customs laws, in addition to drug statutes.

Fragmentation and jurisdictional overlap have hindered a comprehensive national and international approach to law enforcement. It has led to a lack of coordination and information sharing, as well as duplication of efforts and inefficient use of resources. Competition among law enforcement agencies might be expected to result in a more dynamic law enforcement. Instead, competition for funding and performance credit has led to counterproductive rivalry among law enforcement agencies, particularly in the areas of drugs and violent crimes.

The turf battles have been highlighted in the media and have served to undermine citizen confidence in federal law enforcement. According to current and former law enforcement officials, the rivalry appears to exist more often in the upper level management than in the field. A news article reads "Sometime agents themselves would be willing to cooperate, but their managers were in a turf struggle... It was like watching kids fight in a playground. Here are the agents trying to get the work done, and they have to watch the supervisors fight."[1]

To compound the problem, the Offices of Inspector General (IG) at various agencies are now involved in law enforcement. The Inspector General Act of 1978, as amended, established Offices of Inspector General at agencies to primarily ensure employee and program integrity through prevention and detection of criminal activity, unethical conduct, and program fraud and abuse. Since then, due to identified needs, some IG personnel have acquired full law enforcement authority from the Attorney General's Office to make arrests and carry firearms in the performance of their duties. This issue has

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received mixed opinions in the law enforcement community and DOJ has conducted studies.

Of the top ten agencies with law enforcement responsibilities, the majority of the overlap and duplication appears to be between and within the Departments of Justice (DOJ) and Treasury (Treasury) agencies.[2] Some of the Treasury agencies involved in law enforcement were originally created for regulatory and revenue purposes. Over the years they have gradually acquired investigative and law enforcement responsibilities which exceeds their original purpose and duplicates the functions of DOJ agencies.

For example, in 1972 the Bureau of Alcohol, Tobacco and Firearms Division of the Internal Revenue Service (IRS) was designated as a separate agency within the Treasury Department, and was named the Bureau of Alcohol, Tobacco and Firearms (BATF).[3] Hence, BATF is an outgrowth of federal legislation concerning taxation and regulatory functions related to alcohol, tobacco and firearms. Today, BATF's mission has expanded to include investigation and enforcement of laws related to drugs, gangs, explosives, and violent crimes. BATF's results in the alcohol and tobacco areas are limited in comparison to the firearms area. 1992, BATF initiated only 10 alcohol cases which resulted in recommending 10 suspects for prosecution, and 13 tobacco cases which resulted in recommending 8 suspects for prosecution. In comparison. BATF initiated 12,314 firearms and explosives cases which resulted in recommending 11,406 suspects for prosecution.[4] Thus, the majority of BATF's effort have involved cases which are duplicative of the DOJ efforts in this area. The 1993 Branch Davidian standoff in Waco, Texas and the World Trade Center bombing in New York City are examples of BATF overlap with the Federal Bureau of Investigation (FBI).

Similarly, the U.S. Customs Service (Customs) which was created to guard the nation's borders and enforce trade laws. However, Customs is now involved in drug enforcement and duplicates the efforts of DOJ agencies. Customs receives significant funding in the drug control area. For example, Customs fiscal year 1992 budget for drug control was about $785 million. In contrast. DOJ's agencies the Drug Enforcement Administration's (DEA) fiscal year 1992 budgets for drug control was about $710 million. the FBI's about $205 million. and Immigration and Naturalization Service's (INS) about $141 million. In addition to drugs, Customs duplicates the investigative and law

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enforcement efforts of the FBI, DEA, and INS in the illegal alien area.

The Departments of Treasury (Customs, BATF and IRS) and Justice (DEA, FBI, U.S. Attorneys, and the Criminal and Tax Divisions) agencies also overlap in the area of money laundering. Treasury manages and maintains the Financial Crimes Enforcement Network (FINCEN) and is involved in investigating financial crimes matters, particularly those related to tax crimes. The DEA and FBI are also involved in investigating financial crimes, particularly those which are tied to major illegal drug enterprises. Both departments are required to investigate money laundering operations to accomplish their missions, and adequate coordination is necessary to avoid duplication.

In addition, within DOJ there is considerable overlap and lack of coordination between the FBI and DEA in the areas of drugs, firearms, gangs, money laundering and wiretaps. According to a 1990 General Accounting Office report, DEA and the FBI carry out their drug law enforcement responsibilities independent of each other. They independently develop investigative strategies and priorities, operate separate intelligence systems, and have developed different systems for reporting and measuring their performance.[5]

Although law enforcement agencies try to avoid parallel investigations, they still occur. It is not uncommon for agents from one federal law enforcement agency to unknowingly conduct an investigation of agents from another, believing the other to be the criminal element. This is inefficient and could result in life threatening situations.

Law enforcement responsibilities and jurisdiction often involve many different entities which has resulted in a variety of task forces, committees and other efforts to resolve and promote interagency coordination. Some have attained varying degrees of success, but still fail to address structural impediments to coordination, particularly in the area of drug enforcement. Notable examples include the Organized Crime Drug Enforcement Task Force (OCDETF), Committee for the Coordination of FBI/DEA Activities (Link-Up Committee), the Six-City Joint Drug Plan, and efforts of the Office of National Drug Control Policy (ONDCP). OCDETF, which is managed by DOJ, uses a combined appropriation for federal drug enforcement investigations. Nonetheless, agencies tend to cooperate only to the extent necessary to obtain OCDETF funding. While the objectives of these task forces are laudable, they require considerable staff-hours and

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funding to coordinate and do not represent a single solution to the difficulties.

As an alternative solution to coordination, several Attorney Generals have considered merging DEA into the FBI; however, no action was ever taken in this regard. Obviously, the DEA and FBI view points on this solution differ.

The FBI, which is a multi-mission agency, contends that the expansive management and investigative resources of a multi-mission agency provides superior capabilities to investigate drug trafficking organizations that perpetrate a wide range of crimes. In a white paper to the Attorney General, the FBI stated "The problem of illegal drug trafficking cannot be segregated from the other criminal programs, and even some of the non-criminal programs, for which the FBI is responsible."[6] The DEA which is a single mission agency, contends that they give top priority to a focused U.S. Government response to the drug problem. In response to the FBI white paper, DEA stated "The loss of a single-mission drug enforcement agency would diminish the current effectiveness of the United States Government's domestic and international counternarcotics efforts. As just one of the FBI's ten divisions, the FBI drug program will always compete for priority and resources with the FBI's other programs."[7]

The objective for federal law enforcement should be a unified, comprehensive, cooperative and mission driven effort with the flexibility to respond to changes in national priorities. This direction was supported in testimony before the Committee on Governmental Affairs United States Senate, wherein the Comptroller General of the United States stated "Strengthened central management systems would permit the Attorney General to establish, communicate, coordinate, and oversee national goals and priorities... Despite increased resources for investigating white collar crime, the effectiveness of this effort is not yet adequate, in part because of the decentralized Department and diffusion of responsibility, authority and resources between Justice and other agencies."[8]

While total consolidation of all law enforcement agencies is one solution; other alternatives to resolving the problem include a modified restructuring of agencies coupled with clarification of missions, jurisdiction and authority. The most immediate and critical need is to establish central leadership for law enforcement on a national level. There is currently no single leader of the federal law enforcement community to articulate and oversee a national law enforcement strategy, manage resources, coordinate efforts, and

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resolve conflicts among law enforcement entities in accordance with Administration priorities. Although the Attorney General is the nation's chief law enforcement officer, she does not have authority over law enforcement activities outside of DOJ.

Many of the problems that currently exist in the law enforcement community mirror those which plagued the intelligence community. The Director of Central Intelligence (DCI) position was created to establish a single leader of the intelligence community and acts as the primary advisor to the President and National Security Council on foreign intelligence. The Director of Central Intelligence Agency serves as the DCI.

RECOMMENDATIONS

1. **The President should establish a Director of Law Enforcement (DLE) modeled after the Director of Central Intelligence (DCI).**

The Attorney General should serve a dual role as the DLE and head of the Department of Justice. The DLE should be the chief law enforcement officer of the federal government and the primary adviser to the President on national law enforcement matters. The DLE should also be the central policy and priority setting authority with respect to all federal law enforcement activities, and be responsible for establishing and implementing a national strategy on law enforcement. In addition, the DLE should review and approve all federal law enforcement resource allocations and program funds in accordance with the Administration's priorities.

2. **The President should establish an Executive Law Enforcement Council (ELEC), chaired by the DLE.**

The Executive Law Enforcement Council should include representatives of the Departments of Justice, Treasury, State, Transportation, Defense,and the Central Intelligence Agency, the Border Agency and the Office of National Drug Control Policy. The ELEC should advise the DLE on all federal law enforcement matters. Such matters should include clarification of jurisdictional responsibilities among agencies, resolution of interagency conflicts, development of policies to ensure coordination and information sharing among agencies, development of a uniform statistical reporting system to ensure accurate law enforcement data, recommendations on the structure and alignment of law enforcement agencies, development of a performance measurement system which rewards interagency

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team efforts, and development of standards to evaluate each agency's contribution to the DLE's priorities.

3. The President should initiate a realignment of federal law enforcement, as follows:

(a) Transfer the law enforcement responsibilities and related resources of the Bureau of Alcohol, Tobacco and Firearms (BATF) from the Department of Treasury to the Department of Justice and merge then into the Federal Bureau of Investigation (FBI); and,

(b) Merge (e.g.. as a Division) the Drug Enforcement Administration (DEA) into the Federal Bureau of Investigation (FBI).

Most DEA and BATF personnel currently come under Civil Service status while FBI personnel possess Excepted Service status. The appeals processes, in connection with personnel issues, vary with the two systems. Any consolidation of the two agencies should address this issue.

Implications

The recommendations will result in a more unified, comprehensive and coordinated attack on criminal enterprises through the consolidated jurisdiction and resources made available to the FBI. This will send a strong message that all the resources of the FBI and other agencies will now be coordinated to fight the war on drugs.

The establishment of a single federal official--DLE--will result in greater accountability for federal law enforcement efforts and ensuring that budgets are effectively spent on national law enforcement objectives.

The creation of the ELEC will serve as a mechanism for eliminating turf battles, reducing duplication of effort and fostering cooperation among agencies.

The jurisdictional changes among the departments along with the ELEC will help to clarify the missions of the major federal law enforcement entities. Multi-mission approach will offer an expansive investigative jurisdiction to address all the criminal conduct which attends drugs, firearms, and explosive.

The efficiency of service delivery to citizens would improve by defining and moving law enforcement resources closer together. This approach would provide more uniformity of policy, guidelines, and programs and create a more centralized national drug

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investigative strategy.

Redundancies in management, intelligence data bases, physical facilities, communications equipment, training, and research and development will be reduced by reducing the number of different systems for measuring drug investigation performance and accomplishments a clearer picture of national efforts.

The mix of BATF and DEA agents with FBI will afford multi-mission agency type cross-training opportunities to both BATF and DEA agents, and result in a more diverse personnel base within the FBI.

The mix will afford FBI agents enhanced training in the drugs and firearm areas.

Fiscal Impact

The recommendations will result in a substantial increase in efficiency, effectiveness and economy, especially in the administrative and support functions (for example, Public and Congressional Affairs, Administrative Services, Laboratory, Procurement, Personnel, Equal Employment Opportunity, Legal Counsel, and Training) if federal law enforcement agencies performing similar functions are efficiently realigned to meet current needs.

Significant economies of scale would be realized through reduction and consolidation of headquarter and field office facilities, air-fleets, information management systems, etc.

Consolidation will also result in a more comprehensive and coordinated approach to law enforcement. This will eliminate wasteful duplication of resources and counterproductive competition.

By merging three agencies together (BATF and DEA, into FBI), the management structure can be merged into one, resulting in the requirement for less personnel and other duplicative resources. Every effort could be made to allow this to occur through attrition rather than reduction in force.

The issue of excepted service versus career service must be addressed.

The preliminary projected cost to merge DEA into the FBI is about $110 million. The projected savings in the first year is about $83 million and $63 million per year thereafter.

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DEA Material

THE PROPOSED MERGER OF DEA INTO THE FBI

The proposed merger of DEA into the FBI has been studied, at length, for the last 16 years. Each time, it has been rejected by both Democratic and Republican administrations. The major issues are:

I An Attempted Merger Will Cause Massive Disruption to US Drug Control Efforts

- Massive disruption will result from an attempted merger that will last at least 2-3 years.
- Low morale resulting from the perceived negative impact on the careers of DEA personnel raise a serious question whether positive momentum will ever be regained.

II The Elimination of a Single Mission Agency Will Erode the Effectiveness of US Counternarcotics Effort

- Single mission agency provides singularity of purpose.
- Single mission agency precludes diversion of appropriated funds to other programs.
- Single mission agency produces a specialized, expert work force.
- Single mission agency precludes multi-mission conflicts of interest.
- Single mission agency demonstrates our national resolve. Its elimination will be a foreign policy embarrassment.

III The Elimination of DEA Will End Its Successful Foreign Program

- DEA's overseas network is qualitatively different from the FBI's Legal Attache Program.
- The FBI's counterintelligence mandate would jeopardize current cooperation with DEA counterparts in many countries.

VI Multiple Jurisdictions Are Unnecessary to Effectively Dismantle Drug Enterprises

- DEA attacks the full range of drug-related crimes, e.g., money laundering, communications violations, chemical shipments and smuggling.
- Despite the FBI's broader jurisdiction, DEA obtains as broad a range of criminal convictions as the FBI.
- DEA productivity in complex cases exceeds the FBI. (DOJ 1991-92 OCDETF conviction statistics: CCE - DEA 96 vs FBI 37; RICO - DEA 35 vs FBI 15)
- DEA success depends on cooperative drug law enforcement philosophy; the FBI adheres to "self-reliance" and a lack of sharing valuable drug intelligence.
- Almost every major Colombian cartel leader is indicted in DEA cases.

V Merger Would Not Result in Cost Savings or Greater Efficiencies

- DEA's superior productivity dwarfs other productivity concerns.

- Comparing productivity on an agent-to-agent basis, DEA (2,812 domestic Special Agents) is more productive than the FBI drug program (1,619 Special Agents).

  - Arrests per agent in FY 1992 (DEA 8.6 vs FBI 2.1) 4:1 ratio
  - Drug convictions per agent in FY 1992 (DEA 6.2 vs FBI 0.9) 6:1 ratio
  - Assets seized per agent in FY 1992 (DEA $305,000 vs FBI $97,000) 3:1 ratio

- Comparing productivity on an agency-to-agency basis, DEA is more productive.

  - Deposits to DOJ Assets Forfeiture Fund in FY 1992 (DEA $279 million vs FBI $82 million) 3:1 ratio
  - Wiretap orders for Title 21 offenses in FY 1991 (DEA 256 vs FBI 59) 4:1 ratio; in FY 1992 (DEA 291 vs FBI 64) 4:1 ratio
  - OCDETF money laundering convictions in FY 1991-1992 (DEA 137 vs FBI 68) 2:1 ratio

VI Other Important DEA Programs Would Be Jeopardized

- DEA has positive record on diversity and EEO.

- DEA has superior diversity of personnel. 1,380 DEA Special Agents are fluent in 38 foreign languages. This diversity is needed for effective drug enforcement.
- DEA has a positive record in EEO matters. DEA has a court-validated Special Agent Promotion Plan (SAPP), and excellent minority representation at all levels, including management. A merger would jeopardize these accomplishments.
- Consolidation endangers civil service status of DEA employees in favor of FBI excepted service.

- DEA's Diversion Control Program is unique and unlike any current FBI function.

- Regulatory responsibilities controlling 885,000 firms and individuals authorized to handle controlled substances.
- Responsible for implementation of the Chemical Diversion Trafficking Act.
- Regulatory function cannot be removed from law enforcement function without loss of effectiveness in both functions.

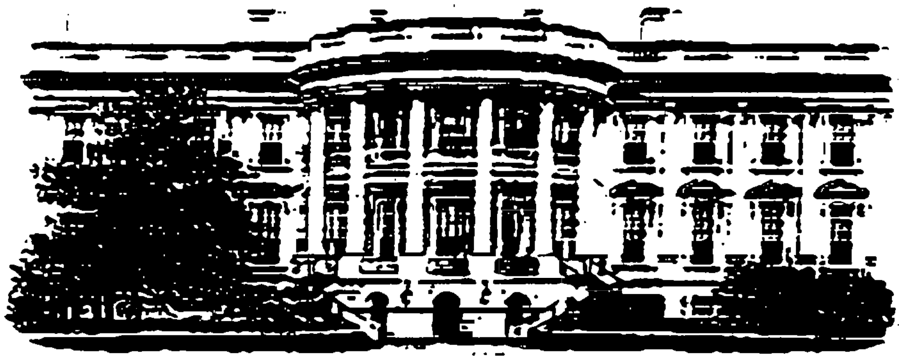
- DEA's Intelligence Program is better suited to support drug investigations.

  - DEA's philosophy of sharing drug intelligence fosters cooperation and operational coordination.
  - DEA has a centralized, automated filing system for investigative information.
  - DEA's NADDIS is an automated central index system, accessible worldwide.

VII DEA Consolidation Proposal

- Most effective and efficient way to better focus Federal drug enforcement resources is to transfer all FBI drug program resources obtained since 1982 to DEA. These resources were obtained so that the FBI could better support DEA. Now unnecessary duplication and competition can be eliminated by their consolidation within DEA's centralized, focussed drug program.

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500



FACSIMILE TRANSMITTAL SHEET

NUMBER OF PAGES, INCLUDING COVER: 7

DATE: 8/13/93

TO: Jose Cerda

FAX NUMBER: 456-7739

OFFICE NUMBER:

COMMENTS: Our Discussion

FROM: Ed Jurith

FAX NUMBER:

OFFICE NUMBER:

SENT BY:NAT'L DRUG POLICY : 8-13-93 : 17:10 : ONDCP-EOP→ 202 456 7739:# 1/ 7

August 12, 1993

MEMORANDUM FOR DR. BROWN

FROM: ED JURITH

RE: DEA/FBI REORGANIZATION

Dr. Brown, Ricia asked me to prepared the attached draft for your review.

We have been in touch with all of the relevant officials in the Vice President's Office, the Attorney General's Office, and in the White House over the "DEA/FBI merger" issue. Yesterday's meeting at Justice was supposed to be for Justice Department officials only. Hence, the failure to invite ONDCP. However, State and the NSC got wind of it, and that is how they were represented at the meeting.

Apparently the Attorney General wants the entire issue of the FBI/DEA merger examined fully. Yesterday's meeting was held because a draft of the Vice President's recommendations in this area were being leaked to the press. The AG felt a need to act.

The AG has asked that the merger proposal be look at from five key areas:

- Impact on foreign operations;
- temporary disruption of DEA operations;
- Impact on long term productivity;
- political perceptions;
- and other domestic issues (eg. State and local task forces).

The time line calls for swapping papers by next Wednesday by the agencies involved. Then the principals would then react to each other's concerns. We told Phil Hyman that we wanted weigh in on all aspects of this proposal, above and beyond the issue of political perceptions.

The attached draft outlines some of the major concerns in the above areas ONDCP should have about a merger. I believe our guiding thrust should be "what is in the best interest of overall U.S. drug control policy".

Ricia thought it best to get some document in the hands of Phil Hyman by the end of this week. If you want to do that, please review this draft and have yourself or Rich Porter get back to me with any comments or corrections. I'll plug in whatever you think best.

In the evenings and on the weekend (I'll be in and out of the office) my home number is (202) 363-6631.

August 12, 1993 **DRAFT**

MEMORANDUM TO DEPUTY ATTORNEY GENERAL PHILIP HYMAN

FROM: DR. LEE P. BROWN, DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY

RE: DEA/FBI REORGANIZATION

Any reorganization of the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) should be undertaken only after careful consideration of the impact of this move on the nation's overall drug control program. DEA is the only drug control program agency that has as its sole mission the suppression of traffic in controlled substances in and directed at the United States. The single mission focus of DEA, and the expertise it has developed over the years, has given the given Federal drug law enforcement efforts credibility with drug enforcement units of State and local government, and most importantly, with drug control authorities in other nations.

DEA was created by Reorganization Plan No. 2 of 1973 to bring a sense of order and unity to Federal drug law enforcement efforts, which up to that point had been diffused in many Cabinet department and agencies.

The Reagan Administration explore the merger concept in 1981 - 1982 and rejected that approach, opting instead to give the FBI concurrent jurisdiction over Title 21 offenses with DEA and harmonizing management between the two justice units. At the time of that decision, it was recognized that having a separate drug enforcement agency was vital to the leadership of the United States on drug control issues. This theme was repeatedly mentioned at Congressional Hearings on the subject before the House Judiciary Subcommittee on Crime chaired then by the Rep. William J. Hughes, and the former House Select Committee on Narcotics Abuse and Control, chaired by former Rep. Leo C. Zeferetti and then Rep. Charles B Rangel.

The issue that must be addressed is what is the object of the reorganization? If it is to harmonize specific functions of various Justice agencies to prevent overlap and duplication of effort, then full merger of the DEA into the FBI may not be necessary. If somehow DEA has failed in its mission, and the FBI has shown it could perform these functions better, then a merger may make sense. If Federal drug enforcement is a national priority - along with the other aspects of Federal drug policy - having an entity whose single focus is the enforcement of the nation's drug law would seem to reaffirm that priority status.

The following issues need to be considered:

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Perception of Downgrading the Drug Issue

As Director of ONDCP, I am particularly sensitive to the perception that the Administration may be "downgrading" the importance of its drug control mission. The Administration has taken a number of hits in this area already this year - reductions in its drug budget submissions, the slow start in getting ONDCP organized, etc. - making it manifestly unwise to propose making DEA a "division" or "subdivision" of the FBI without some significant - and immediate - gain that would come from that in terms of improving the national drug control effort.

It would appear that a full merger would take a number of years, and could be potentially disruptive to ongoing drug investigative efforts. In the interest of streamlining the Department of Justice's drug enforcement efforts, does it make more sense to transfer to DEA the 1500 FBI agents presently assigned to drug enforcement to insure full Department efficiency in this area? This would enable the Department to comprehensively address all drug responsibilities currently assigned to the Department with the expertise in DEA.

Foreign Policy Implications

Dating back to its predecessor agency, the Federal Bureau of Narcotics, the DEA has a long history of cooperative investigation with its counterpart drug suppression agencies in foreign nations. The FBI has no such history. Moreover, it was the role played by the FBI in counterintelligence activities and the negative perception that carries overseas, that was a major factor that led the Reagan Administration to reject the merger of the two agencies in 1982. DEA foreign cooperative investigations are a significant element in our nation's drug suppression efforts. Foreign governments have confidence in dealing with DEA. To put in jeopardy that confidence could destroy invaluable working relationships that currently lead to the interception of vast tons of illegal drugs before they reach the United States.

Further, as noted above, we do not want to "downgrade" the importance of drug control in the minds of foreign governments, who rely on the leadership of the United States in international drug control activities. I am fearful a full merger would do just that.

Congressional and State and Local Reaction

Congressional reaction to the merger can be expected to be intense on both sides of the issues. While press reports on Thursday noted that Senator Biden and Rep. Schumer voiced support for some type of consolidation, other key members like Rep, Don Edwards and Rep. Charles Rangel may have strong views which oppose the merger. Rep. Edwards has long voiced opposition to any

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form of a "national police force", while Rep. Rangel has long championed the independence of DEA.

Further, strong consideration needs to be given to what other drug policy initiatives the Administration will be recommending to the Hill in the near future and how the Administration wants to prioritize its drug policy agenda, before a any firm decisions are made on consolidation or merger.

State and local law enforcement agencies have traditionally have had closer working relationships with the DEA, as opposed to their FBI counterparts. The past reluctance of the FBI to share intelligence and information with State and local officials, and the Bureau's fear of local police corruption, has in the past hampered working relationships between the FBI and State and local enforcement units. While various Federal task forces and working groups have eased some of these problems in recent years, the integrity of working relationships with State and local law enforcement agencies must be accounted for in any proposed consolidation.

Diversion Control Program

DEA's controlled substances and chemical diversion control program is a very extensive regulatory function that does not fit in neatly with any excising FBI programs. The diversion of licit controlled substances into avenues of abuse is a drug control problem of importance. For example, within the last two week the General Accounting Office released a study showing the serious problem of medicaid fraud and the diversion of prescription drugs. While the FBI, in its health care frauds program has looked at some aspects of this problems, DEA alone possesses the regulatory mechanism to police and discipline controlled substances registrants.

Similarly, since being assigned jurisdiction over the Chemical Diversion Trafficking Act in 1988 and by working closely with U.S. manufacturers, DEA has established an effective program to curtail the diversion of U.S. produced precursor and essential chemicals into the illicit traffic. This program has been saluted by our foreign counterparts in nations where these chemicals are used in the drug processing chain. Any consolidation plan needs to maintain the integrity of this important program.

Summary

These are a few of my concerns. I look forward to reviewing all the various FBI and DEA position papers on the proposed consolidation so that the recommendation I make to the President is based on a full understanding of the various options proposed. I strongly believe, however, that whatever reorganization plan is ultimately agreed to by the Administration, its guiding principles must be based on what is in the best interests of U.S.

drug control policy, and that alone.

Shifting from Red Tape to Results

IMPROVE COORDINATION AND STRUCTURE OF FEDERAL LAW ENFORCEMENT AGENCIES

Background

There are over 140 different Federal organizations with some law enforcement functions.[1] These organizations consist of over 40,000 employees who are responsible for various police and/or criminal investigative functions.[2] Their responsibilities pertain to more than 4,100 federal criminal laws. Most federal crimes involve violations of a number of these laws, many of which come under the jurisdiction of multiple federal agencies. For example, a drug investigation may involve violations of financial, firearms, immigration or customs laws, in addition to drug statutes.

Fragmentation and jurisdictional overlap have hindered a comprehensive national and international approach to law enforcement. They have led to a lack of coordination and information sharing, as well as duplication of efforts and inefficient use of resources. Although competition among law enforcement agencies might be expected to result in a more dynamic law enforcement, competition for funding and performance credit has led to counterproductive rivalry among law enforcement agencies. This is especially true in the areas of drugs and violent crimes.

The turf battles have been highlighted in the media and have served to undermine citizen confidence in federal law enforcement. According to current and former law enforcement officials, the rivalry appears to exist more often in the upper level management than in the field. One news article found: "Sometime agents themselves would be willing to cooperate, but their managers were in a turf struggle....It was like watching kids fight in a playground. Here are the agents trying to get the work done, and they have to watch the supervisors fight."[3] Although law enforcement agencies try to avoid parallel investigations, they still occur. It is not uncommon for agents from one federal law enforcement agency to unknowingly conduct an investigation of agents from another, believing the other to be criminals. This is inefficient and could put officers in life threatening situations.

To compound the problem, the inspectors general (IGs) in various agencies are now involved in law enforcement. The Inspector General Act of 1978 established the inspector general positions within agencies to ensure employee and program integrity through prevention and detection of criminal activity, unethical conduct, and program fraud and abuse. Since then, due to identified needs, some IG personnel have gained law enforcement authority from the Attorney General's Office allowing them to make arrests and carry firearms. Opinions in the law enforcement community have been mixed and the Department of Justice (DOJ) has conducted studies in this regard.

Of the top ten organizations with law enforcement responsibilities, the majority of the overlap and duplication appears to be between and within agencies of the DOJ and the Department of Treasury (Treasury).[4] Some of the Treasury agencies involved in law enforcement were originally created for regulatory and revenue purposes. Over the years, they have gradually added investigative and law enforcement responsibilities which exceed their original purpose and duplicate the DOJ functions.

For example, in 1972, the Internal Revenue Service's (IRS) Bureau of Alcohol, Tobacco and Firearms Division was designated as a separate agency within the Treasury Department and was named the Bureau of Alcohol, Tobacco and Firearms (BATF).[5] Hence, BATF is an outgrowth of federal legislation concerning taxation and regulatory functions related to alcohol, tobacco and firearms. Today, BATF's mission has expanded to include investigation and enforcement of laws related to drugs, gangs, explosives, arson and violent crimes. BATF's work in the alcohol and tobacco areas is limited compared to its activities in the firearms and explosives areas. In 1992, BATF initiated only 10 alcohol cases which resulted in recommending 10 suspects for prosecution, and 13 tobacco cases, which resulted in recommending eight suspects for prosecution. In comparison, BATF initiated 12,314 firearms and explosives cases, which resulted in recommending 11,406 suspects for prosecution.[6] Thus, the majority of BATF's effort have involved cases which are duplicative of DOJ efforts, particularly in the areas of firearms, explosives and drugs.

To achieve its goals, BATF is divided into two basic functions: law enforcement and compliance (e.g., regulatory and revenue) operations.[7] BATF's law enforcement and compliance functions are performed separately. Law enforcement activities are performed by special agents and compliance operations (i.e., regulatory and revenue) are performed by regulatory inspectors and revenue collectors. Regulatory and revenue matters that raise the possibility of criminal activity are generally passed to the BATF law enforcement component for criminal investigation, rather than to another federal agency , such as the Federal Bureau of Investigation (FBI) or Drug Enforcement Administration, (DEA) which has the same law enforcement authorities. Two recent examples of this jurisdictional overlap between BATF and FBI are the 1993 Branch Davidian standoff in Waco, Texas and the World Trade Center bombing in New York City. To resolve the problem, the House, in April 1993, introduced a bill to transfer all functions of BATF related to the firearms regulation from Treasury to Justice, then into the FBI.[8] The bill was referred jointly to the Committees on Ways and Means and the Judiciary.

Like BATF, the U.S. Customs Service (Customs) was not created for traditional law enforcement purposes. Customs was created to guard the nation's borders and enforce trade laws. However, Customs is now involved in drug enforcement and duplicates the efforts of DOJ agencies. Customs receives significant funding in the drug control area. For example, Customs fiscal year 1992 budget for drug control was about $785 million, equal to about 50 percent of its budget. In contrast, DOJ's DEA fiscal year 1992 budgets for drug control was approximately $710 million, the FBI's budget was $205 million, and Immigration and Naturalization Service's (INS) budget was $141 million. In addition to drugs, Customs duplicates the investigative and law enforcement efforts of the FBI, DEA, and INS in the illegal alien area.

The Departments of Treasury (i.e., Customs, BATF and IRS) and Justice (i.e., DEA, FBI, U.S. Attorneys, and the Criminal and Tax Divisions) also overlap in the area of money laundering. Treasury manages and maintains the Financial Crimes Enforcement Network (FINCEN) and is involved in investigating financial crimes matters, particularly those related to tax crimes. The DEA and FBI are also involved in investigating financial crimes, particularly those which are tied to major illegal drug enterprises. Both departments are required to investigate money laundering operations to accomplish their missions. Therefore, well-defined jurisdictional lines and adequate coordination are necessary to avoid unnecessary duplication.

In addition, within DOJ there is considerable overlap and a need for greater coordination between the FBI and DEA in the areas of drugs, firearms, gangs, money laundering and wiretaps. According to a 1990 General Accounting Office report, DEA and the FBI carry out their drug law enforcement responsibilities independent of each other. They independently develop investigative strategies and priorities, operate separate intelligence systems, and have developed different systems for reporting and measuring their performance.[9] Over the years, several initiatives and agreements have been implemented to encourage cooperation, coordination and information sharing between the FBI and DEA.[10] Such efforts have not resolved the problem.[11] As an alternative solution, several Attorneys General have considered merging DEA into the FBI; however, no action has ever been taken. In the past, the different strategies of the DEA and the FBI in fighting the drug war was a major concern when considering a merger. Today, the DEA now has a "Kingpin" strategy, which is consistent with the FBI strategy to identify the drug organizations through intelligence efforts and dismantle these organizations through prosecution. Still, the DEA and the FBI have significantly different view points on consolidation.

The FBI, which is a multi-mission agency, contends that the expansive management and investigative resources of a multi-mission agency provides superior capabilities to investigate drug trafficking organizations that perpetrate a wide range of crimes. In a white paper to the Attorney General, the FBI stated: "The problem of illegal drug trafficking cannot be segregated from the other criminal programs, and even some of the non-criminal programs, for which the FBI is responsible."[12] The DEA which is a single mission agency, contends that they give top priority to a focused U.S. Government response to the drug problem. In response to the FBI white paper, DEA argued: "The loss of a single-mission drug enforcement agency would diminish the current effectiveness of the United States Government's domestic and international counter-narcotics efforts. As just one of the FBI's ten divisions, the FBI drug program will always compete for priority and resources with the FBI's other programs."[13]

Law enforcement responsibilities and jurisdiction are often ambiguous and involve many different organizations. To address the problems, federal officials have generally tried coordination efforts, as opposed to consolidation or clarification of jurisdictional lines. This has resulted in a variety of task forces, committees and other efforts designed to promote interagency coordination. Some have attained varying degrees of success, but still fail to address structural impediments to coordination, particularly in the area of drug enforcement. Notable examples include the Organized Crime Drug Enforcement Task Force (OCDETF), Committee for the Coordination of FBI/DEA Activities (Link-Up Committee), the Six-City Joint Drug Plan, and efforts of the Office of National Drug Control Policy (ONDCP). OCDETF, which is managed by DOJ, uses a combined appropriation for federal drug enforcement investigations. While the objectives of these task forces are laudable, they require considerable staff-hours and funding to coordinate and do not represent a single solution to the difficulties.

The objective for federal law enforcement should be a unified, comprehensive, cooperative and mission-driven effort with the flexibility to respond to changes in national priorities. This direction was supported in testimony before the U.S. Senate Committee on Governmental Affairs, in which the Comptroller General of the United States stated: "Strengthened central management systems would permit the Attorney General to establish, communicate, coordinate, and oversee national goals and priorities....Despite increased resources for investigating white collar crime, the effectiveness of this effort is not yet adequate, in part because of the decentralized Department and diffusion of responsibility, authority and resources between Justice and other agencies."[14]

While consolidation of most law enforcement agencies which have the same or similar jurisdiction is one solution, other alternatives include the identification of a single leader of the law enforcement community, a modified restructuring of agencies which clearly have significant overlap, coupled with clarification of missions, jurisdiction and authority among organizations. The most immediate and critical need is the establishment of central leadership. There is currently no single leader of the federal law enforcement community to articulate and oversee a national law enforcement strategy, manage resources, coordinate efforts, and resolve conflicts among law enforcement entities in accordance with Administration priorities. Although the Attorney General is the nation's chief law enforcement officer, she does not have authority over law enforcement activities outside of DOJ.

Many of the problems that currently exist in the law enforcement community mirror those which plagued the intelligence community. The Director of Central Intelligence (DCI) position was created to establish a single leader of the intelligence community and acts as the primary advisor to the President and National Security Council on foreign intelligence. The Director of Central Intelligence Agency serves as the DCI.

Recommendations

1. **The President should establish a Director of Law Enforcement (DLE) modeled after the Director of Central Intelligence (DCI).** The Attorney General should serve a dual role as the DLE and head of the Department of Justice. The DLE should be the chief law enforcement officer of the federal government and the primary adviser to the President on national law enforcement matters. The DLE should also be the central policy and priority setting authority with respect to all federal law enforcement activities, and be responsible for establishing and implementing a national strategy on law enforcement. In addition, the DLE should review and approve all federal law enforcement resource allocations and program funds in accordance with the Administration's priorities.

2. **The President should establish an Executive Law Enforcement Council (ELEC), chaired by the DLE.** The ELEC should include representatives of the Departments of Justice, Treasury, State, Transportation, Defense, and the Central Intelligence Agency, the Border Agency (see Issue 2: Create an Independent Border Management Agency) and the Office of National Drug Control Policy. The ELEC should advise the DLE on all federal law enforcement matters. Such matters should include clarification of jurisdictional responsibilities among agencies, resolution of interagency conflicts, development of policies to ensure coordination and information sharing among agencies, development of a uniform statistical reporting system to ensure accurate law enforcement data, recommendations on the structure and alignment of law enforcement agencies, development of a performance measurement system which rewards interagency team efforts, development of programs to enhance federal support to state and local law enforcement, and development of standards to evaluate each agency's contribution to the DLE's priorities.

3. **The Administration should initiate a realignment of federal law enforcement, as**

follows:

(a) Transfer the law enforcement functions, authorities and related resources of the Bureau of Alcohol, Tobacco and Firearms (BATF) from the Department of Treasury to the Department of Justice and merge them into the Federal Bureau of Investigation (FBI);

(b) Transfer the compliance (e.g., regulatory and revenue) functions, authorities and related resources of BATF to the Internal Revenue Service (IRS); and

(c) Merge the Drug Enforcement Administration (DEA) into the Federal Bureau of Investigation (FBI).

Implications

The establishment of a DLE will result in greater accountability for federal law enforcement efforts and ensure that budgets are effectively spent on national law enforcement objectives. The creation of the ELEC will assist the DLE in addressing turf battles, reducing duplication of effort and fostering cooperation among agencies.
The DLE assisted by the ELEC will serve to clarify the missions of the major federal law enforcement entities.

The transfer and realignment of agencies and responsibilities will require Presidential and congressional approval. Most DEA and BATF personnel currently come under Civil Service status, while FBI personnel possess Excepted Service status. The appeals processes, in connection with personnel issues, vary with the two systems. Any consolidation of the two agencies must address this issue.

The mix of BATF and DEA agents with FBI agents will afford multi-mission agency-type cross-training opportunities to both BATF and DEA agents, and will result in a more diverse personnel base within the FBI. The mix will also afford FBI agents enhanced training in the drugs and firearm areas. The multi-mission approach to criminal conduct which attends drugs, firearms, gangs and explosives will offer an expansive investigative jurisdiction to address all these crimes. This will result in a more unified, comprehensive and coordinated attack on criminal enterprises through the consolidated jurisdiction and resources made available to the FBI. This will send a strong message that all the resources of the FBI and other agencies will now be coordinated to fight the war on drugs and violence.

The personnel in administrative and support positions will be affected. The most effective and efficient distribution of such personnel should be considered in the merger. Redundancies in management, intelligence data bases, physical facilities, communications equipment, training, and research and development will be reduced by reducing the number of different systems for measuring drug investigation performance and accomplishments and provide a clearer picture of national efforts.

The efficiency of service delivery to citizens would improve by defining and moving law enforcement resources closer together. This approach would provide more uniformity of policy, guidelines, and programs and create more a centralized national crime fighting strategy.

Fiscal Impact

The recommendations should result in a substantial increase in efficiency, effectiveness and economy, especially in the administrative and support functions (for example, Public and Congressional Affairs, Administrative Services, Laboratory, Internal Affairs, Procurement, Personnel, Equal Employment Opportunity, Legal Counsel, and Training) if federal law enforcement agencies performing similar functions are efficiently realigned to meet current needs.

Significant economies of scale would be realized through reduction and consolidation of headquarter and field office facilities, air-fleets, vehicle resources, information management systems, etc. Consolidation will also result in a more comprehensive and coordinated approach to law enforcement. This will eliminate wasteful duplication of resources and counterproductive competition.

By merging three agencies (BATF and DEA into FBI), the management structure can be merged into one, requiring fewer personnel and other duplicative resources. Every effort could be made to allow this to occur through attrition rather than reduction in force. The issue of excepted service versus career service will have fiscal impact which must be addressed.

The preliminary projected cost to merge DEA into the FBI is about $110 million. The projected savings in the first year are about $83 million and $63 million per year thereafter. The projected savings resulting from a merger of BATF into FBI is pending.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

"A Professional Association for Federal Law Enforcement Officers"

TESTIMONY OF

VICTOR G. OBOYSKI

NATIONAL PRESIDENT

OF THE

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

BEFORE THE

HOUSE JUDICIARY COMMITTEE'S

SUBCOMMITTEES ON CRIME AND CRIMINAL JUSTICE
AND CIVIL AND CONSTITUTIONAL RIGHTS

ON THE

<u>PROPOSED MERGER OF THE FBI AND DEA</u>

WEDNESDAY, SEPTEMBER 29, 1993

WASHINGTON, D.C.

192 OAK STREET, AMITYVILLE, NY 11701-3028

Honorable Chairmen Edwards and Schumer, Members of the Subcommittees, Ladies and Gentlemen.

My name is Victor Oboyski. I serve as President of the Federal Law Enforcement Officers Association ("FLEOA") which represents more than 8000 Federal criminal investigators, special agents and related employees.

It is indeed a pleasure to come before this joint session of the Subcommittees on Crime and Criminal Justice and Civil and Constitutional Rights to explain the grave concerns which FLEOA has over the proposed merger of the FBI and DEA.

As National President of the largest association in the nation representing Federal law enforcement officers, I can say with certainty that the vast majority of our FBI and DEA members oppose such an operational consolidation because they know it will not work. FLEOA determined the extent and nature of their opposition by an extensive written survey and numerous discussions.

THE NEED FOR SINGLE MISSION AGENCIES

In a merger of the FBI and the DEA, the specialized expertise in drug enforcement which the DEA has obtained since its formation under Reorganization Plan No. 2 would be lost. In short order the nation's anti-narcotics effort would be reduced to the status of another program within the FBI. This message would not be lost on either the international drug cartels or domestic dealers.

The merger of the FBI and DEA would also break up the DEA's enforcement and Diversion Control activities to the detriment of criminal investigations.

DISRUPTION OF DEA COOPERATIVE EFFORTS

The DEA's outstanding record of cooperation with other Federal, State, county and local law enforcement agencies would also be damaged by such a merger. At this time, DEA task forces are utilizing the best and brightest Federal, State and local people in truly collective enforcement efforts. Moreover, DEA's overseas cooperation with foreign anti-narcotics police has been able to transcend political differences. Overseas, the DEA and its foreign counterparts have been able to work together successfully even when political chasms divides other national interests. This trust and cooperation would suffer a serious blow if an FBI-DEA merger took place because in many countries the FBI is viewed as a counterintelligence agency and as being associated with the CIA.

THE MERGER WOULD NOT PRODUCE MORE EFFICIENT OPERATIONS AT LOWER COST

Decentralization, streamlining, cutting red tape and regulation and empowering organizations and employees to serve the needs of their constituents lies at the philosophical center of National Performance Review. How then can the increased centralization, the new regulations and the increased complexity which will come from merging FBI and DEA hope to serve this goal? The merger will produce new layers of reporting responsibility and increase the density of an already large and complex FBI bureaucracy. It is also likely to suffer under a two-tiered personnel system. For example, the DEA enjoys the protections of the Civil Service System while FBI personnel are in the Excepted Service. Our members feel that following any such merger DEA personnel will be adversely affected in such areas as transfers, promotions, discipline and overall job status.

For months now morale and efficiency in the FBI, DEA and other Federal law enforcement agencies have been suffering over the uncertainty of their agency's status. It will take years to complete a merger of the FBI and DEA which will undoubtedly cost millions. FLEOA believes that the disruption it will cause to operating programs may never be recouped.

HISTORICAL PERSPECTIVES ON DRUG REORGANIZATIONS

I mentioned that FLEOA opposed the FBI-DEA merger proposal for operational reasons. An understanding of drug enforcement's historical perspective will help illuminate our concerns.

The creation of a unified DEA came after years and years of effort to overcome the inadequate and fragmented activities of the Federal Bureau of Narcotics ("FBN"), Bureau of Narcotics and Dangerous Drugs ("BNDD"), Bureau of Drug Abuse Control ("BDAC"), Customs, Office of Drug Abuse Law Enforcement ("ODALE"), etc.

Reorganization Plan #1 and Reorganization Plan #2 finally succeeded in building a unified effort to combat the unique scourge of narcotics trafficking. After all these years the structure and organization of the nation's specialized anti-narcotics apparatus finally works reasonably well most of the time. Its deficiencies require fine tuning to correct, not the scrapping of the entire agency. This conclusion was reached in 1982 when a proposed merger of the FBI and DEA was debated and rejected. It needs to be restated here today. Don't throw the baby out with the bath water.

OVERCOMING TURF WAR AND DUPLICATIONS

Having laid out all these objections let me now say that FLEOA agrees fully with the need to eliminate turf wars and overcome duplication in law enforcement. And we believe that both the Justice Department, the Treasury Department and others need to seriously examine law enforcement problems together.

Further, we believe that the White House must play a leadership and facilitator role in helping Treasury, Justice and other Department's in the Federal Government coordinate their enforcement activities. Recently FLEOA has taken the position that the appointment of a Domestic Security Advisory to the President is the best way to go about achieving such results.

DOMESTIC SECURITY ADVISOR

A Domestic Security Advisor to the President would provide impartial high level enforcement advice and oversight to the President during crises, and assist with the formulation, conduct and coordination of long-term national law enforcement policies.

Today the major threat facing our national life no longer lies beyond our shores. It resides in our cities, suburbs and rural areas where the fear and reality of crime have chipped away at our safety and sense of security. Reversing this trend can only be done by a President willing to hold the nation's hand as he shapes and directs law enforcement's fight against drugs, violence and the proliferation of weapons.

But the President cannot do this alone. He cannot individually overcome entrenched bureaucracies, ingrained attitudes, and as many organizational cultures as there are Federal enforcement agencies. He must have a Domestic Security Advisor -- an individual, <u>not another bureaucracy</u> -- who is familiar with a broad range of issues threatening domestic tranquility and who is expert in coordinating unified enforcement activities. In short, a Domestic Security Advisor would do for Federal law enforcement what the "Surgeon General" does for National health and the National Security Advisor does for foreign affairs.

The appointment of a Domestic Security Advisor, we feel, offers the President and the nation the best means for (a) analyzing and coping with turf and duplication problems; (b) coordinating the efforts of tens of thousands of Federal, State, county and local law enforcement agencies; (c) coping with the increased propensity of Congress to "Federalize" crimes previously considered local; and (d) offering important advice and counsel on the law enforcement aspects of all facets of national policy.

I might also add that a Domestic Security Advisor -- a position we would very much like to see included in this year's anti-crime bill -- would be perfectly situated to recommend measures for increasing efficiency and cost effectiveness without creating new problems.

NEED TO CONTINUE THE QUEST FOR BETTER ALTERNATIVES

FLEOA feels the quest for better alternatives in Federal law enforcement needs to continue. A FBI-DEA merger does not hold the answers. Moreover, Federal law enforcement officers at the "grass roots" level need to be heard from in this debate. Top down management in Federal law enforcement has lead us to this state of intractable turf and duplication problems; the empowerment of working agents might lead to some viable solution everyone can live with.

FLEOA's national forum on "Reinventing Federal Law Enforcement" which is scheduled for Friday, November 19, 1993 at the Doubletree Hotel -- National Airport/Pentagon City in Alexandria's Crystal City, will be exploring these and other issues facing Federal law enforcement. I would like to close by inviting all here to come and participate.

BIOGRAPHY OF
VICTOR G. OBOYSKI
NATIONAL PRESIDENT OF THE
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

Victor G. Oboyski has been a law enforcement officer with the U.S. Marshals Service since 1971. At present he serves as a Supervisory Criminal Investigator assigned to the Organized Crime Drug Enforcement Task Force in New York City.

The recipient of numerous awards and commendation for outstanding work in fugitive investigations, Mr. Oboyski has twice received the Director's Award, on of the highest honors the U.S. Marshals Service can bestow.

A member of the Federal Law Enforcement Officers Association since 1979, he served as FLEOA's Agency President for the U.S. Marshals for two years before being elected to the post of National President in November, 1990.

Mr. Oboyski served as a military police officer from 1968-1971. He holds an MA degree in Public Administration and a BS degree in Police Science from John Jay College.

THIS WEEK

Officers Oppose Law Enforcement Merger

By Leigh Rivenbark
Federal Times Staff Writer

FBI and Drug Enforcement Administration agents oppose the administration's idea of merging the two agencies.

Most FBI and DEA members of the Federal Law Enforcement Officers Association oppose the merger, said Victor Oboyski, association president, at a Sept. 29 hearing on a proposal made by Vice President Al Gore's National Performance Review.

"In short order the nation's antinarcotics effort would be reduced to the status of another program within the FBI," Oboyski said.

DEA agents are civil service members, with rights and protections not available to FBI agents, who are in the excepted service.

"Our members feel that following any such merger, DEA personnel will be adversely affected in such areas as transfers, promotions, discipline and overall job status," Oboyski said.

Deputy Attorney General Philip Heymann told the House Judiciary subcommittee on criminal justice and civil rights that the administration has looked at four options:

- Keeping the FBI and DEA separate, but with the attorney general encouraging more cooperation between them;
- Removing the FBI from drug interdiction and giving DEA the FBI's drug-related intelligence, an option DEA supports;
- Merging the two agencies into "one federal drug enforcement superagency," favored by the National Performance Review, or
- Keeping DEA and the FBI separate but creating a new, "single point of authority" position overseeing both.

Heymann revealed the administration, long said to favor the merger option, is also looking seriously at the "single point of authority" option.

"The single point of authority would be empowered to review all budget requests related to drug enforcement and mandate that the DEA and FBI comply with its directives concerning drug law enforcement," Heymann said.

'DEA personnel will be adversely affected in . . . transfers, promotions, discipline and overall job status.'

Association President Victor Oboyski

The "authority" could also assign FBI and DEA agents to each others' agencies "to foster and develop a spirit of interagency cooperation and to create a sense of a single, department-based drug program," he said.

The chief problem with this option is deciding who would be the person in charge, Heymann said. The authority could be the deputy attorney general, assistant attorney general for the criminal division, the FBI director, the DEA director or even a council of law enforcement officials, he said.

Merger Obstacles

A major problem with merger is the fact the FBI has counterterrorism and counterintelligence missions, witnesses said.

If the FBI takes over primary anti-drug responsibilities, cooperation from foreign countries could decline, merger opponents predicted. Foreign officials know the DEA has no counterintelligence or national security concerns.

When the idea of a DEA-FBI merger was on the table a decade ago, Rep. William Hughes, D-N.J., then chairman of DEA's oversight subcommittee, asked officials abroad what they thought.

"Several of them indicated that their country would be more reluctant and cautious in cooperating with U.S. drug enforcement if it were being carried out by an agency with a broad portfolio of responsibilities, such as responsibility for national security and counterintelligence," Hughes said.

According to Hughes, an internal FBI paper favoring the merger recommends the FBI avoid this problem by setting up special drug liaison officers at foreign posts.

"Stamping agents' FBI credentials 'drug enforcement only while in country X' will not solve the problem," Hughes said.

Rep. James Sensenbrenner, R-Wis., supported the merger, but questioned the National Performance Review's claim that an FBI-DEA merger and other Justice streamlining could save \$187 million by fiscal 1999.

Heymann did not give details on how that saving might be achieved.

State and local law officers fear a merger would disrupt their working relationships with federal agents, according to Robert Scully, executive director of the National Association of Police Organizations.

Police group opposes merging law agencies

By Jerry Seper
THE WASHINGTON TIMES

The president of the 8,000-member Federal Law Enforcement Officers Association has told Attorney General Janet Reno the association is opposed to any merger of the FBI, the DEA and the Bureau of Alcohol, Tobacco and Firearms.

Victor Oboyski, FLEOA president, said he told the attorney general in a meeting last week that the association was against any transferring or merging of functions or personnel from DEA and ATF to the FBI — a move Vice President Al Gore proposed in his "reinventing government" report.

"Over a period of time, the federal law enforcement effort in combating drugs and illegal firearms would become just another program among the many already under the jurisdiction of the FBI," said Mr. Oboyski.

"Much of the specialization and expertise that DEA and ATF have developed over the years would be lost in an agency that is already responsible for many other national security priorities and statutes."

Mr. Oboyski also said the association believes the merger — if approved — would eliminate "the cooperative efforts of the DEA and the ATF with state and local law enforcement agencies."

Mr. Gore's "reinventing government" team recommended creating a new "Directorate of Law Enforcement" headed by the attorney general and supervised by a White House-based council. The recommendation calls for the merger of non-Justice Department agencies within the directorate, as well as shifting the DEA and the ATF into the FBI. Both the DEA and the FBI are Justice Department agencies. The ATF is a Treasury Department agency.

> *"Much of the specialization and expertise that DEA and ATF have developed over the years would be lost."*

The vice president has said the merger would provide an eventual savings of $84 million.

Miss Reno has suggested she might be able to live with the merger of the DEA into the FBI but has not made a final decision on the proposal, although the idea is under intense review. The proposal has been the subject of bitter debate for nearly 20 years among officials from both agencies.

The FBI has about 1,700 of its 10,500 agents devoted to the drug war. The sole mission of the DEA's 3,500 agents is to fight drugs.

Mr. Oboyski, a deputy U.S. marshal, said opposition to the proposed merger is widespread among law enforcement agencies, including the nation's three largest police organizations — the National Association of Police Organizations, the Fraternal Order of Police and the International Brotherhood of Police Officers. The three organizations collectively represent about 400,000 state and local police officers.

The FLEOA has said Mr. Gore's National Performance Review — billed as a means of streamlining federal law enforcement efforts and cutting red tape — would not be successful.

"New regulations and program guidelines will have to be created within the FBI to accomodate the complexities of the existing DEA amd ATF functions," Mr. Oboyski said. "New layers of reporting responsibilities will have to be created.

"An already large and complex bureaucracy would become larger and more complex," he said, addding that it's unlikey a DEA-ATF-FBI merger would create "an agency that works better and costs less."

Mr. Oboyski said the association believes "strong leadership, with a real commitment to coordination and cooperation," will be more effective in the long run than "forcing agencies to consolidate."

The FLEOA was founded 15 years ago to provide federal law enforcement officers and special agents with legal and legislative representation. The association has 8,000 members from 50 federal law enforcement agencies.

Jose:
This is due

PJW —
Review w/
Donsia + Jose

August 9, 1993

MEMORANDUM

TO: **NPR Policy Group:**
Phil Lader, Chair
Leon Fuerth
Elaine Kamarck
Roy Neel
Jack Quinn
Bruce Reed
Marla Romash
Margaret Yao
NPR Management Team
Department of Justice Liaison
Samuel Dubbin

FROM:: Mary M. Mozingo
Coordinator, Justice/Treasury/RTC Team

SUBJECT: Draft NPR Chapter on the Department of Justice

Attached is a draft of the Department of Justice for the NPR final report. Please note that the fiscal impact figures are incomplete.

This chapter is to be completed by August 18, 1993. Therefore, we would appreciate receiving your comments by August 17 so that we can incorporate them into the final report. Please send your comments to:

Justice/Treasury/RTC Team
Suite 200
750 17th Street, NW
Washington, D.C. 20006

Please feel free to call me at 632-0150 extension 116 if you have any questions.

Attachment

DEPARTMENT OF JUSTICE
AGENCY TEAM REPORT

NATIONAL PERFORMANCE REVIEW

INTERNAL WORKING DOCUMENT--NOT FOR DISTRIBUTION
August 8, 1993

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Section I
Introduction

THE DEPARTMENT OF JUSTICE
INTRODUCTION AND EXECUTIVE SUMMARY

Although the Judiciary Act of 1789 established the Attorney General as a member of the President's Cabinet, the Attorney General did not become the head of a department until the establishment of the Department of Justice (Justice) in 1870. When the first Attorney General took office, the United States had three federal crimes - treason, counterfeiting, and piracy. Today there are over 3,000 federal crimes. Justice has seen its budget quadruple and its payroll almost double since 1980. Its resources have grown at 4 1/2 times faster than the rest of the civilian workforce. Justice's budget has increased from $2.4 billion in 1980 to $10.4 billion today, and its payroll has swelled from 54,600 to nearly 98,000 during the same period. Justice's primary focus during this period has been on law enforcement. Not surprisingly, the two largest organizations within Justice are the Federal Bureau of Investigation and the Bureau of Prisons. Despite Justice's expenditure of significant resources in fighting the war on drugs during the past thirteen years, drugs and drug use remain a problem in the United States. Additionally, while ninety-four percent of all criminal prosecutions are handled by state and local governments, federal financial support to local jurisdictions decreased from twenty-six percent of federal justice spending in 1980 to seven percent today.

Justice is divided into 32 components and serves as the Nation's law firm and counsel to its citizens. The major components of Justice are:

- the Bureau of Prisons (BOP) with a budget of $2.4 billion and 23,654 employees (these figures include the Federal Prison Building fund);
- the Federal Bureau of Investigations (FBI) with a budget of $2.0 billion and 21,474 employees;
- the Immigration and Naturalization Service (INS) with a budget of $0.99 billion and 9,824 employees;
- the U.S. Attorneys with a budget of $0.8 billion and 7,779 employees; and
- the Drug Enforcement Administration (DEA) with a budget of $0.7 and 5,676 employees.

The other major components are U.S. Marshals, the Office of Justice Programs, the Litigative Divisions (Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax), the Justice Management Division, and Community Relations Service.

The primary issues facing the Department are:

- overlapping enforcement issues;
- ever-increasing impact of the drug-related crimes -- U.S. Attorney caseload and Federal prison population;
- need to develop an effective crime prevention program; and
- border management and illegal aliens.

Since mid-April 1993, the five-member Justice Team of the National Performance Review (NPR) examined Justice issues. The NPR team reviewed General Accounting Office (GAO) reports, Justice Inspector General (IG) reports, Justice Management Division (JMD) reports, and studies conducted by various associations and think tanks. The NPR team also studied transition materials from the Clinton Administration Transition Team, GAO, the Office of Management and Budget (OMB) and Justice. The NPR Team also conducted numerous personal and telephone interviews and visited a few critical field sites--time did not permit extensive visits to field organizations. The team also participated in focus and working groups which surfaced new issues and multiple points of views. Since the middle of May, the NPR Team has been meeting on a weekly basis with the internal Justice Reinvention Team.

The NPR team focused on 21 major issues which fall into four reinvention themes. The four reinvention themes are:

- Shifting from Red Tape to Results
- Introducing Market Dynamics
- Creating a Quality Management Culture
- Now is the Time.

Shifting from Red Tape to Results

This theme includes all the NPR recommendations about stripping away control systems to empower Justice managers and employees to meet the needs and expectations of their internal and external customers. It emphasizes the importance of a clearly defined mission for an organization and an organization's ability and flexibility to meet the challenges of an ever-changing workplace. Several of the Justice issues fell in this category. Many of the functions of Justice overlap with those of other federal agencies. This is particularly true of the overlap in law enforcement between Justice and the Department of the Treasury (Treasury). This has resulted in duplicative effort, inefficient operations, confusing missions, wasted resources and less than satisfactory customer service.

These problems are particularly apparent in the federal law enforcement community, which includes more than 140 organizations charged with enforcing more than 3,000 criminal laws. The NPR recommends establishing a Director of Law Enforcement who will be responsible for establishing and implementing a national law enforcement strategy. The NPR further recommends that the Director chair an Executive Enforcement Council which will be responsible for clarifying jurisdictional responsibility among agencies. The NPR further recommends combining agencies whose jurisdictions are so tied that their separation causes severe duplication of efforts.

Currently, Justice and Department of the Treasury manage separate programs that are aimed at controlling the movement of people and goods across the U.S. borders. As the market place has become global and migration has increased, these two functions have become inextricably linked. The NPR recommends creating a single agency for managing border operations. This new agency will provide the opportunity for meeting the challenges of the future facilitating the movement of people and goods across our borders.

The NPR believes that increased resources are needed for "reasonable" control of illegal entry. One resource source would be to reduce and coordinate resources dedicated to air interdiction.

Introducing Market Dynamics

This theme involves making government operate more like a business. One of the ways of doing this is to allow the government to charge fees to those who benefit from government services. Currently, increased staffing is needed to quickly move people and goods across our borders. International air travelers pay $12 per person to travel across the border, but travelers across the land border pay virtually no fees. The NPR recommends lifting this exemption and recommends several other user fee increases to generate funds to be used to facilitate international transportation. In addition, the NPR believes that the Attorney General and the Secretary of the Treasury should expand the pilot Dedicated Commuter Lane program, as planned to selected norther border sites and to at least one southern border location.

The NPR believes that to improve federal debt collection Congress should authorize each U.S. Attorney to retain a small percentage of all amounts collected to pay for specified administrative cost.

Creating a Quality Management Culture

The primary thrust of the recommendations in this category is related to changing the way Justice manages its organization. It encompasses empowerment of employees, decentralization of authority, business process re-engineering, and information technology.

The NPR believes several management changes would be effective improvements. First, the Immigration and Naturalization Service organizations, management, processes and systems need to be reinvented. The first step in the process would be for the INS Commissioner to develop the best possible vision statement. The NPR has recommendations on the steps to be taken to implement the vision. Second, the effectiveness of Justice Department Legal Divisions operations would improve if they operated as if they were a Law Firm. The NPR has recommended specific administrative and systemic improvements that can achieve the recommended change. Third, the U.S. Attorneys' white collar fraud civil enforcement efforts should be enhanced.

In addition, now that Congress has created a new Department of Treasury Asset Forfeiture Fund, sustained oversight is needed by both Justice and Treasury to see that the memorandums of understanding on cooperations are followed. And the duplication of drug intelligence systems needs to be reduced and computer security improved

Now is the Time

Recommendations under this theme involve cutting spending, increasing revenues, and eliminating functions. The NPR team is recommending the reducing of duplication in law enforcement training and streamlining background investigations of Federal employees. The majority of the recommendations in this category are focussed on revenue production. An examples is adjusting civil monetary penalties to the inflation index.

All the Justice recommendations are discussed in detail in "Section II: Issue Papers and Recommendations." The internal Justice Reinvention Team's many activities are discussed in "Section III: Agency Reinvention Activities." "Section IV: Fiscal Impact Summary" will be completed once the fiscal estimates are received from the appropriate offices.

Section II
Issue Papers and Recommendations

Shifting from Red Tape to Results

IMPROVE COORDINATION AND STRUCTURE OF FEDERAL LAW ENFORCEMENT AGENCIES

Background

There are over 140 different Federal organizations with some law enforcement functions.[1] These organizations consist of over 40,000 employees who are responsible for various police and/or criminal investigative functions.[2] Their responsibilities pertain to more than 4,100 federal criminal laws. Most federal crimes involve violations of a number of these laws, many of which come under the jurisdiction of multiple federal agencies. For example, a drug investigation may involve violations of financial, firearms, immigration or customs laws, in addition to drug statutes.

Fragmentation and jurisdictional overlap have hindered a comprehensive national and international approach to law enforcement. They have led to a lack of coordination and information sharing, as well as duplication of efforts and inefficient use of resources. Although competition among law enforcement agencies might be expected to result in a more dynamic law enforcement, competition for funding and performance credit has led to counterproductive rivalry among law enforcement agencies. This is especially true in the areas of drugs and violent crimes.

The turf battles have been highlighted in the media and have served to undermine citizen confidence in federal law enforcement. According to current and former law enforcement officials, the rivalry appears to exist more often in the upper level management than in the field. One news article found: "Sometime agents themselves would be willing to cooperate, but their managers were in a turf struggle....It was like watching kids fight in a playground. Here are the agents trying to get the work done, and they have to watch the supervisors fight."[3] Although law enforcement agencies try to avoid parallel investigations, they still occur. It is not uncommon for agents from one federal law enforcement agency to unknowingly conduct an investigation of agents from another, believing the other to be criminals. This is inefficient and could put officers in life threatening situations.

To compound the problem, the inspectors general (IGs) in various agencies are now involved in law enforcement. The Inspector General Act of 1978 established the inspector general positions within agencies to ensure employee and program integrity through prevention and detection of criminal activity, unethical conduct, and program fraud and abuse. Since then, due to identified needs, some IG personnel have gained law enforcement authority from the Attorney General's Office allowing them to make arrests and carry firearms. Opinions in the law enforcement community have been mixed and the Department of Justice (DOJ) has conducted studies in this regard.

Of the top ten organizations with law enforcement responsibilities, the majority of the overlap and duplication appears to be between and within agencies of the DOJ and the Department of Treasury (Treasury).[4] Some of the Treasury agencies involved in law enforcement were originally created for regulatory and revenue purposes. Over the years, they have gradually added investigative and law enforcement responsibilities which exceed their original purpose and duplicate the DOJ functions.

For example, in 1972, the Internal Revenue Service's (IRS) Bureau of Alcohol, Tobacco and Firearms Division was designated as a separate agency within the Treasury Department and was named the Bureau of Alcohol, Tobacco and Firearms (BATF).[5] Hence, BATF is an outgrowth of federal legislation concerning taxation and regulatory functions related to alcohol, tobacco and firearms. Today, BATF's mission has expanded to include investigation and enforcement of laws related to drugs, gangs, explosives, arson and violent crimes. BATF's work in the alcohol and tobacco areas is limited compared to its activities in the firearms and explosives areas. In 1992, BATF initiated only 10 alcohol cases which resulted in recommending 10 suspects for prosecution, and 13 tobacco cases, which resulted in recommending eight suspects for prosecution. In comparison, BATF initiated 12,314 firearms and explosives cases, which resulted in recommending 11,406 suspects for prosecution.[6] Thus, the majority of BATF's effort have involved cases which are duplicative of DOJ efforts, particularly in the areas of firearms, explosives and drugs.

To achieve its goals, BATF is divided into two basic functions: law enforcement and compliance (e.g., regulatory and revenue) operations.[7] BATF's law enforcement and compliance functions are performed separately. Law enforcement activities are performed by special agents and compliance operations (i.e., regulatory and revenue) are performed by regulatory inspectors and revenue collectors. Regulatory and revenue matters that raise the possibility of criminal activity are generally passed to the BATF law enforcement component for criminal investigation, rather than to another federal agency , such as the Federal Bureau of Investigation (FBI) or Drug Enforcement Administration, (DEA) which has the same law enforcement authorities. Two recent examples of this jurisdictional overlap between BATF and FBI are the 1993 Branch Davidian standoff in Waco, Texas and the World Trade Center bombing in New York City. To resolve the problem, the House, in April 1993, introduced a bill to transfer all functions of BATF related to the firearms regulation from Treasury to Justice, then into the FBI.[8] The bill was referred jointly to the Committees on Ways and Means and the Judiciary.

Like BATF, the U.S. Customs Service (Customs) was not created for traditional law enforcement purposes. Customs was created to guard the nation's borders and enforce trade laws. However, Customs is now involved in drug enforcement and duplicates the efforts of DOJ agencies. Customs receives significant funding in the drug control area. For example, Customs fiscal year 1992 budget for drug control was about $785 million, equal to about 50 percent of its budget. In contrast, DOJ's DEA fiscal year 1992 budgets for drug control was approximately $710 million, the FBI's budget was $205 million, and Immigration and Naturalization Service's (INS) budget was $141 million. In addition to drugs, Customs duplicates the investigative and law enforcement efforts of the FBI, DEA, and INS in the illegal alien area.

The Departments of Treasury (i.e., Customs, BATF and IRS) and Justice (i.e., DEA, FBI, U.S. Attorneys, and the Criminal and Tax Divisions) also overlap in the area of money laundering. Treasury manages and maintains the Financial Crimes Enforcement Network (FINCEN) and is involved in investigating financial crimes matters, particularly those related to tax crimes. The DEA and FBI are also involved in investigating financial crimes, particularly those which are tied to major illegal drug enterprises. Both departments are required to investigate money laundering operations to accomplish their missions. Therefore, well-defined jurisdictional lines and adequate coordination are necessary to avoid unnecessary duplication.

In addition, within DOJ there is considerable overlap and a need for greater coordination between the FBI and DEA in the areas of drugs, firearms, gangs, money laundering and wiretaps. According to a 1990 General Accounting Office report, DEA and the FBI carry out their drug law enforcement responsibilities independent of each other. They independently develop investigative strategies and priorities, operate separate intelligence systems, and have developed different systems for reporting and measuring their performance.[9] Over the years, several initiatives and agreements have been implemented to encourage cooperation, coordination and information sharing between the FBI and DEA.[10] Such efforts have not resolved the problem.[11] As an alternative solution, several Attorneys General have considered merging DEA into the FBI; however, no action has ever been taken. In the past, the different strategies of the DEA and the FBI in fighting the drug war was a major concern when considering a merger. Today, the DEA now has a "Kingpin" strategy, which is consistent with the FBI strategy to identify the drug organizations through intelligence efforts and dismantle these organizations through prosecution. Still, the DEA and the FBI have significantly different view points on consolidation.

The FBI, which is a multi-mission agency, contends that the expansive management and investigative resources of a multi-mission agency provides superior capabilities to investigate drug trafficking organizations that perpetrate a wide range of crimes. In a white paper to the Attorney General, the FBI stated: "The problem of illegal drug trafficking cannot be segregated from the other criminal programs, and even some of the non-criminal programs, for which the FBI is responsible."[12] The DEA which is a single mission agency, contends that they give top priority to a focused U.S. Government response to the drug problem. In response to the FBI white paper, DEA argued: "The loss of a single-mission drug enforcement agency would diminish the current effectiveness of the United States Government's domestic and international counter-narcotics efforts. As just one of the FBI's ten divisions, the FBI drug program will always compete for priority and resources with the FBI's other programs."[13]

Law enforcement responsibilities and jurisdiction are often ambiguous and involve many different organizations. To address the problems, federal officials have generally tried coordination efforts, as opposed to consolidation or clarification of jurisdictional lines. This has resulted in a variety of task forces, committees and other efforts designed to promote interagency coordination. Some have attained varying degrees of success, but still fail to address structural impediments to coordination, particularly in the area of drug enforcement. Notable examples include the Organized Crime Drug Enforcement Task Force (OCDETF), Committee for the Coordination of FBI/DEA Activities (Link-Up Committee), the Six-City Joint Drug Plan, and efforts of the Office of National Drug Control Policy (ONDCP). OCDETF, which is managed by DOJ, uses a combined appropriation for federal drug enforcement investigations. While the objectives of these task forces are laudable, they require considerable staff-hours and funding to coordinate and do not represent a single solution to the difficulties.

The objective for federal law enforcement should be a unified, comprehensive, cooperative and mission-driven effort with the flexibility to respond to changes in national priorities. This direction was supported in testimony before the U.S. Senate Committee on Governmental Affairs, in which the Comptroller General of the United States stated: "Strengthened central management systems would permit the Attorney General to establish, communicate, coordinate, and oversee national goals and priorities....Despite increased resources for investigating white collar crime, the effectiveness of this effort is not yet adequate, in part because of the decentralized Department and diffusion of responsibility, authority and resources between Justice and other agencies." [14]

While consolidation of most law enforcement agencies which have the same or similar jurisdiction is one solution, other alternatives include the identification of a single leader of the law enforcement community, a modified restructuring of agencies which clearly have significant overlap, coupled with clarification of missions, jurisdiction and authority among organizations. The most immediate and critical need is the establishment of central leadership. There is currently no single leader of the federal law enforcement community to articulate and oversee a national law enforcement strategy, manage resources, coordinate efforts, and resolve conflicts among law enforcement entities in accordance with Administration priorities. Although the Attorney General is the nation's chief law enforcement officer, she does not have authority over law enforcement activities outside of DOJ.

Many of the problems that currently exist in the law enforcement community mirror those which plagued the intelligence community. The Director of Central Intelligence (DCI) position was created to establish a single leader of the intelligence community and acts as the primary advisor to the President and National Security Council on foreign intelligence. The Director of Central Intelligence Agency serves as the DCI.

Recommendations

1. **The President should establish a Director of Law Enforcement (DLE) modeled after the Director of Central Intelligence (DCI).** The Attorney General should serve a dual role as the DLE and head of the Department of Justice. The DLE should be the chief law enforcement officer of the federal government and the primary adviser to the President on national law enforcement matters. The DLE should also be the central policy and priority setting authority with respect to all federal law enforcement activities, and be responsible for establishing and implementing a national strategy on law enforcement. In addition, the DLE should review and approve all federal law enforcement resource allocations and program funds in accordance with the Administration's priorities.

2. **The President should establish an Executive Law Enforcement Council (ELEC), chaired by the DLE.** The ELEC should include representatives of the Departments of Justice, Treasury, State, Transportation, Defense, and the Central Intelligence Agency, the Border Agency (see Issue 2: Create an Independent Border Management Agency) and the Office of National Drug Control Policy. The ELEC should advise the DLE on all federal law enforcement matters. Such matters should include clarification of jurisdictional responsibilities among agencies, resolution of interagency conflicts, development of policies to ensure coordination and information sharing among agencies, development of a uniform statistical reporting system to ensure accurate law enforcement data, recommendations on the structure and alignment of law enforcement agencies, development of a performance measurement system which rewards interagency team efforts, development of programs to enhance federal support to state and local law enforcement, and development of standards to evaluate each agency's contribution to the DLE's priorities.

3. **The Administration should initiate a realignment of federal law enforcement, as**

follows:

(a) Transfer the law enforcement functions, authorities and related resources of the Bureau of Alcohol, Tobacco and Firearms (BATF) from the Department of Treasury to the Department of Justice and merge them into the Federal Bureau of Investigation (FBI);

(b) Transfer the compliance (e.g., regulatory and revenue) functions, authorities and related resources of BATF to the Internal Revenue Service (IRS); and

(c) Merge the Drug Enforcement Administration (DEA) into the Federal Bureau of Investigation (FBI).

Implications

The establishment of a DLE will result in greater accountability for federal law enforcement efforts and ensure that budgets are effectively spent on national law enforcement objectives. The creation of the ELEC will assist the DLE in addressing turf battles, reducing duplication of effort and fostering cooperation among agencies. The DLE assisted by the ELEC will serve to clarify the missions of the major federal law enforcement entities.

The transfer and realignment of agencies and responsibilities will require Presidential and congressional approval. Most DEA and BATF personnel currently come under Civil Service status, while FBI personnel possess Excepted Service status. The appeals processes, in connection with personnel issues, vary with the two systems. Any consolidation of the two agencies must address this issue.

The mix of BATF and DEA agents with FBI agents will afford multi-mission agency-type cross-training opportunities to both BATF and DEA agents, and will result in a more diverse personnel base within the FBI. The mix will also afford FBI agents enhanced training in the drugs and firearm areas. The multi-mission approach to criminal conduct which attends drugs, firearms, gangs and explosives will offer an expansive investigative jurisdiction to address all these crimes. This will result in a more unified, comprehensive and coordinated attack on criminal enterprises through the consolidated jurisdiction and resources made available to the FBI. This will send a strong message that all the resources of the FBI and other agencies will now be coordinated to fight the war on drugs and violence.

The personnel in administrative and support positions will be affected. The most effective and efficient distribution of such personnel should be considered in the merger. Redundancies in management, intelligence data bases, physical facilities, communications equipment, training, and research and development will be reduced by reducing the number of different systems for measuring drug investigation performance and accomplishments and provide a clearer picture of national efforts.

The efficiency of service delivery to citizens would improve by defining and moving law enforcement resources closer together. This approach would provide more uniformity of policy, guidelines, and programs and create more a centralized national crime fighting strategy.

Fiscal Impact

The recommendations should result in a substantial increase in efficiency, effectiveness and economy, especially in the administrative and support functions (for example, Public and Congressional Affairs, Administrative Services, Laboratory, Internal Affairs, Procurement, Personnel, Equal Employment Opportunity, Legal Counsel, and Training) if federal law enforcement agencies performing similar functions are efficiently realigned to meet current needs.

Significant economies of scale would be realized through reduction and consolidation of headquarter and field office facilities, air-fleets, vehicle resources, information management systems, etc. Consolidation will also result in a more comprehensive and coordinated approach to law enforcement. This will eliminate wasteful duplication of resources and counterproductive competition.

By merging three agencies (BATF and DEA into FBI), the management structure can be merged into one, requiring fewer personnel and other duplicative resources. Every effort could be made to allow this to occur through attrition rather than reduction in force. The issue of excepted service versus career service will have fiscal impact which must be addressed.

The preliminary projected cost to merge DEA into the FBI is about $110 million. The projected savings in the first year are about $83 million and $63 million per year thereafter. The projected savings resulting from a merger of BATF into FBI is pending.

CREATE AN INDEPENDENT BORDER MANAGEMENT AGENCY

Background

The Department of Justice's Immigration and Naturalization Service (INS) and the Department of the Treasury's U.S. Customs Service (Customs) share responsibility for controlling and regulating the flow of people and goods into the U.S. Although they are both responsible for border security and even perform what may appear to the public to be identical functions at some locations, their separate and distinct missions have led to dysfunctional operations. In carrying out their separate missions, the agencies' operations often overlap, creating duplication and conflict. The result is confusion in the management of the U.S. borders which resists solution by the best of managers while the current system continues.

INS' mission is to determine the eligibility of persons to enter and remain in the U.S.; prevent and deter smuggling of people and narcotics into the U.S.; and protect the American public against the results of illegal entry of aliens. Customs' mission is to regulate people, carriers and goods that cross U.S. borders; assess and collect duties, taxes and fees on imports; prevent and deter smuggling of goods and narcotics; and to protect the American public against the entry of contraband and prohibited goods.

INS and Customs perform these duties through inspectors, examiners, other staff and law enforcement personnel both at the border and in interior locations. Both have inspectors at nearly 300 land, air, and sea international arrival Ports of Entry (POEs) into the U.S. In addition to its inspectors, INS also has Border Patrol agents who deter entry along the land border between POEs and adjudicators in interior locations who perform quasi-judicial functions related to the status of non-citizens.[15] INS' law enforcement functions include investigators who apprehend criminal aliens and enforce laws against illegal alien employment. INS' detention and deportation officers detain and remove aliens from the U.S.

In addition to its inspectors at POEs, Customs' Office of Air and Marine Interdiction patrols the border and deters the illegal entry of drugs via general aviation. Other Customs personnel perform regulatory, audit and quasi-judicial functions away from the border that relate to interpretation of trade and revenue laws.[16] Customs' law enforcement functions include investigators who enforce laws against illegal entry of contraband, prohibited goods and trade fraud.

Both Customs and INS have missions fundamentally tied to the U.S. border. The standard for the management of the entry of both people and goods should be the enforcement of U.S. laws with a minimum of delay and disruption to legitimate traffic. The current approach to border management has resulted in a patchwork division of labor which has led to operational inefficiencies and diminished mission performance.

For example, at air POEs, INS is responsible for primary inspection (initial screening) while both INS and Customs maintain individual responsibility for secondary inspection. At most land border POEs, INS and Customs share responsibility for primary inspection, while each maintains individual responsibility for secondary inspections. For illegal air traffic over the border, Customs is responsible; for illegal traffic at ground level, INS exercises responsibility.

These problems are compounded by the involvement of other federal agencies in border issues. Nearly 20 other agencies as well as state and local governments have some border security functions.[17] Several of these have missions which require inspections at the border. With the exception of the U.S. Department of Agriculture, which maintains an inspection staff at many POEs, Customs, and INS where Customs and INS are cross-designated to perform primary inspections, serves as the surrogate inspector for these agencies.

For nearly a century, relationships between INS and Customs have been marked by fragmented authority, overlap and duplication of jurisdiction, and interagency rivalry deeply ingrained in their management cultures. Each agency has different law enforcement authorities, statutory responsibilities, operational guidelines and organizational structures. Each has personnel components which promote independence and autonomy. Turf battles, competing priorities, poor customer service and ineffective operations are the inevitable result.[18] These problems are exacerbated by separate employee unions and separate congressional oversight and appropriations committees.

Ineffective operations at Southwest border POEs illustrate the often counterproductive nature of the current arrangement. Individuals and vehicles arriving at land POEs go through primary inspection (initial screening to determine their admissibility) and are referred for secondary inspection if necessary. Although both agencies' inspectors are cross-designated to perform each others' primary inspections, and have formal agreements providing for a fifty/fifty split in responsibility for staffing traffic lanes, there is no coordinated approach for addressing staffing imbalances and traffic backups. In interviews with the General Accounting Office (GAO), each agency charges the other has taken unilateral uncoordinated action to facilitate traffic flow and each charges the others' action has adversely affected its mission.[19] Because INS has less than half of Customs' staffing along the southern border (fiscal 1993 staffing: Customs--1903; INS--925), INS is frequently unable to open as many lanes as Customs' staffing would allow. Until recently, if INS' staffing permitted it to open only eight lanes of traffic, Customs would adhere to the strict letter of the agreement and also open only eight.[20]

In October 1992, INS undertook a one-day test, using overtime funds, to determine the effect on traffic backups from opening additional lanes at San Ysidro, California. The result was smooth traffic movement all day. Customs alleged that because this action was not coordinated in advance between both agencies it adversely affected narcotics seizures. Yet in November, three weeks after INS' San Ysidro test, Customs--without advising INS--permanently increased staffing during peak traffic periods, alleging after the fact that it had planned the increases for some time.[21]

Both Customs and INS maintain canine units which are trained at different facilities using different systems. Customs' dogs are trained to detect drugs; INS' to detect both drugs and concealed people. The two agencies have been unable to agree on how and where the dogs should be used. Customs alleges INS' dogs are inadequately trained. INS alleges Customs uses its dogs in a manner which subjects the U.S. Government to potential liability. Therefore, when Customs deploys its canines at pedestrian border crossing points, INS closes its lanes thereby impeding pedestrian traffic movement.

Problems such as those concerning lane staffing and canine deployment are aggravated because no one is in charge of and responsible for overall port operations.

Although each agency is cross-designated to perform the primary inspections of the other, Customs has not established performance standards addressing INS' mission. There are also no performance measures to judge the overall effectiveness of their joint personnel or programs.[22] The agencies have separate musters at the beginning of inspectors' shifts. As a result, problems both agencies inspectors might expect to encounter during the work day are not jointly aired, and potential solutions go unidentified. There is no formal mechanism for a unified approach to dealing with mutual problems.

Problems with operations are not limited to land POEs. In the early 1980s, faced with increasing workload, Customs prevailed upon INS to perform the initial screening of all passengers for both INS and Customs purposes. This allowed Customs to develop a "selectivity" system which targets high risk passengers and cargo, and allows the expeditious entry of low risk travelers. Customs' selectivity system uses combinations of automated data analysis and "roving" inspectors skilled in observational and behavioral analysis to direct its enforcement efforts at suspect violators.[23]

Customs' selectivity system is fundamentally grounded on INS performing Customs' initial screening. Yet in interviews, Customs now contends INS clings unjustifiably to a requirement to examine every passenger, thereby providing poor customer service by unwarranted delays to low risk travelers. Various Customs officials also speculated that INS continues to examine every airline passenger in order to justify its authority to charge a $5 dollar user fee.

Both agencies use the automated Interagency Border Inspection System (IBIS) to process low risk travelers quickly, while alerting them to potential problem travelers. Although "owned" and managed by Treasury, the IBIS enforcement system allows several Federal agencies shared access to suspect lookout records.[24] Customs also uses the system to "prove" INS' deficiencies. In papers presented to the National Performance Review, Customs pointed to the fact that less than 15 percent of referrals using the IBIS system were as a result of information obtained from INS sources.[25] In interviews, Customs officials presented statistics stressing Customs "versus" INS performance in speeding traffic.

The land and air space between POEs also involve overlapping responsibilities between Customs and INS. Both are responsible for illegal traffic across the borders. The

Customs operation is aimed primarily at air traffic; INS' Border Patrol focuses primarily on ground traffic. However, because the agencies' appropriations are controlled by separate Congressional committees, there is no means to balance resource requirements and allocations between the two agencies. The Border Patrol lacks resources needed to have a "reasonable" opportunity to accomplish its mission (see elsewhere in this report), while Customs' air interdiction program is generously funded (see elsewhere also).

Myriad studies have addressed border management and the rivalry between Customs and INS and have recommended solutions from the broad to the band-aid. A 1988 report by the Senate Committee on Governmental Affairs cited more than 25 such studies, beginning with President Taft's April 4, 1912, proposal to abolish the Revenue Cutter Service, which was "established as a coast patrol to prevent smuggling and assist in the enforcement of the customs laws...."[26] As a result , its responsibilities were divided among other services and agencies.[27] Over this long history of review, the studies have focused on one or more of three overriding solutions: (1) transferring jurisdiction, authority, resources and personnel between or among affected agencies and departments; (2) unifying parts of border control agencies, identifying one as the "lead" but not "single" agency; or (3) merging entire agencies and creating a new organization.[28] All solutions stress the potential for improved interdiction and enforcement, especially in the areas of drug trafficking and illegal immigration, enhanced economy and efficiency, curtailment of interagency rivalry and conflict, and end to duplication and overlap.

No broad-scale reorganization has ever been approved by Congress, although many have had persistent and sometimes intense high level support.[29] Opposition from affected agencies, Cabinet departments, congressional committees, labor unions or private sector organizations has always prevailed.[30]

Customs and INS have attempted to address the underlying problems identified in the studies by promising to improve cooperation and coordination. The GAO has reported that cooperation agreements signed since 1977 have not been adhered to or updated.[31] As recently as May 1993, the newly appointed Customs Commissioner reiterated his commitment to resolving interagency disputes. Customs and INS, in the presence of their Cabinet secretaries, have met to discuss improved cooperation.[32] The two agencies recently held a joint meeting to address border interdiction issues and renewed promises to improve cooperation and coordination. Yet, during NPR review, Customs repeatedly submitted draft papers proposing that it assume INS' duties at land POEs (but not those between land POEs or at airports), alleging its performance is more effective than INS'.[33] And in Customs' response to the then draft GAO report on border management (cited elsewhere in this report), the Acting Commissioner recommended that certain functions of INS be transferred to Customs.[34] Even if Customs' most recent recommendation were adopted, the problem of a disjointed approach to border management would remain unresolved. Solutions based either on Customs' proposal to assume portions of INS' duties or on renewed cooperation agreements, rely heavily on the personalities of agency management, rather than on a unified strategy for border management.

The challenges posed by changing global business competition and increasing international migration make a unified border management approach imperative. At least one and one-half million persons entered the U.S. illegally in 1991.[35] Put more graphically, one illegal alien entered every twenty-one seconds. The resulting costs for all public services, education, criminal justice and correction programs are estimated at $7.8 billion in 1992.[36] Customs reported collections of $16 billion dollars in fiscal year 1991 and is responsible for nearly 10 million entries per year .[37] As global trade increases, Customs faces challenges from managing the changing character of these entries, particularly those involving complex electronic products.

A single, independent border management and control agency would ensure a unified and coordinated approach to the entry of people and goods into the U.S. It would provide the flexibility needed to realign resources to improve enforcement and customer service by speeding legal and decreasing illegal traffic flow. It would improve coordination and sharing of intelligence; eliminate interagency rivalry and ineffective cooperation; and eliminate dual management structures, ineffective strategic planning and poor accountability.

The two other potential solutions offered in previous studies involved (1) transferring jurisdiction, authority, resources and personnel between or among affected agencies and departments, or (2) unifying parts of border control agencies, identifying one as the "lead" but not "single" agency. Neither of these options addresses current or future operational conditions. Few could argue persuasively that all of INS' current functions fit logically into the Department of the Treasury, or that all of Customs' fit logically into the Department of Justice. Neither agency proposes that option; both would prefer not to assume responsibility for one or more parts of the others' duties. And placing responsibility for all functions into a subordinate part of an existing agency would not create the independence necessary to develop, advocate at the highest levels of the U.S. Government and implement a single border management mission.

In effect, Customs' proposed alternative described above--in which it would assume responsibility for land POEs while INS retains responsibility for air POEs and the land border between POEs--is a version of previous studies' second potential solution of unifying parts of border control agencies. This option would not solve the problem of a disjointed approach to border management or allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. It would inhibit the development of integrated policies and strategies and would have to rely heavily on the personalities of agency management.

A single border management agency should provide a one-stop shop for all movement across the border. Decisions affecting border management issues could be made without the problems currently created by the need to consult with separate management hierarchies. It would permit the empowerment of employees to concentrate on a unified mission rather than finger pointing. Finally, it should result in resources savings by eliminating duplication and overlap, particularly in management structures.

INS and Customs resources combined exceed $3 billion dollars and nearly 37,000 full-time equivalent work years (FTEs) (see Table 1). The ratio between Customs and INS resources devoted to inspection and control activities is more than two to one. INS' fiscal year 1994 budget includes 3,795 FTEs and $262.3 million dollars in authorized and user fee accounts for inspection activities.[38] Customs' 1994 budget provides for 8,262 FTEs and $507 million dollars in authorized and user fee accounts for inspection and control activities.[39]

Recommendation:

Congress should enact legislation consolidating all Immigration and Naturalization Service (INS) and U.S. Customs Service (Customs) functions into a single, independent border management agency effective no later than the beginning of fiscal year 1995. This would allow the U.S. to prepare for the future in which the movement of goods, people and services will be inextricably linked. The new single agency should be responsible for all aspects of the movement of people and goods into and out of the U.S., and for proposing integrated policies and strategies. The head of the new organization should be nominated by the President with the advice and consent of the Senate.

The Attorney General and the Secretary of the Treasury should direct the current INS and Customs Commissioners respectively to develop a proposed implementation plan no later than January 31, 1994 for joint INS/Customs operations during the transition to the new agency. The President should identify his nominee for the head of the new agency as soon as possible, so that he or she may work with INS and Customs on the transitional action plan and timetable. This transitional organizational structure should be in place no later than April 30, 1994. Additional recommendations concerning future operations between POEs are addressed in a separate portion of this report.

Implications:

Creation of an independent agency to manage all border operations would afford an opportunity to develop a more strategic and integrated vision within the government for addressing the problems of facilitating the entry and assimilation of people, services and goods, and long term world migration pressures. Independence would establish accountability, allow focus on agency mission identification and pursuit, and encourage development of coherent administrative systems. It might tend to defuse the seemingly intractable cultural rivalry between the two principal organizations. Resource considerations would be addressed by one agency and one set of congressional committees. It would face serious opposition from virtually every quarter, but could resolve the significant problems no other solution has addressed.

While some advocate separation of Customs and INS law enforcement and service, others argue "only the appearance of duplication" would end, because of the functions' "close relationship to and logical outgrowth from the primary duties and responsibilities of their parent agencies, and the resultant damage to "continuity and unity of operations."[40] The General Accounting Office attributes Customs' advantage in inspector resources to favorable congressional support, lacking for INS.[41] Customs' inspection function is a central component of its workforce and is experienced in enforcing numerous laws for other agencies. INS' inspectors are a smaller proportion of its overall workforce, but more experience in enforcing immigration laws and enforcement operations between ports.[42] A single agency organization would maximize the use of resources and potentially identify savings.

Fiscal Impact:

Creation of a new agency inevitably involves initial start-up costs which we have asked the Office of Management and Budget to estimate. The current combined resources of Customs and INS exceed $3 billion per year. At that level of funding, the new agency should be able to fund its start-up costs without additional funding.

Treasury has estimated that a direct savings in the $12 to $15 million dollar per year range could be anticipated by the reduction of logistical requirements, such as radios, vehicles, other equipment, office space, and management and administration support.[43] In terms of savings related to management and administrative staff for a consolidation of land border inspections alone, Treasury estimated a reduction of up to 150 FTEs. Based upon an average of $42,000 per employee for salaries and benefits, this would translate into potential savings of $6.3 million. Other associated overhead costs would be reduced over time. Salaries savings would be dependent upon when employment reductions took place and whether or not they were achieved through attrition.[44]

Available cost data on savings were provided by the Treasury Internal Reinvention Team. Additional details have been requested but not yet received from the Department of Justice and the Office of Management and Budget.

Table 1: Fiscal 1993 Resources for Customs and INS[45]

	FISCAL 1993 INS	FISCAL 1993 Customs	TOTAL
Full Time Equivalents	18,537.00	18,419.00	36,956.00
Salaries and Expenses	$977,927,000	$1,315,917,000	$2,293,844,000
Immigration Exam. Fee Acct.	$337,415,000		$337,415,000
Immigration User Fee Acct.	$240,948,000		$240,948,000
Enforcement Fines	$12,660,000		$12,660,000
Immigration Legalization	$8,281,000		$8,281,000
Breached Bond/Detention Fund	$5,000,000		$5,000,000
Land Border Inspection Fee	$4,000,000		$4,000,000
O&M, Air & Marine Interdiction Programs.		$83,242,000	$83,242,000
O&M, P-3 Drug Interdiction Programs.		$28,000,000	$28,000,000
Procurement, Air & Marine Interdiction Programs.		$21,174,000	$21,174,000
Facilities, Construction, Improvements, Related Expenses		$4,600,000	$4,600,000
Forfeiture Fund		$15,000,000	$15,000,000
Service at Small Airports		$1,500,000	$1,500,000
Total	$1,586,231,000	$1,469,433,000	$3,055,664,000

INCREASE RESOURCES FOR "REASONABLE" CONTROL OF ILLEGAL ENTRY

Background:

The Border Patrol critically needs increased resources--both personnel and infrastructure support--to permit it a "reasonable opportunity" to confront and deter illegal entry. As President Clinton said on July 27, 1993:

> "..it's certainly plain to anyone with eyes to see that the border patrol is drastically understaffed--breathtakingly understaffed...our borders leak like a sieve. The simple fact is that we must not...surrender our borders...the solution [to the problem of illegal immigration] is to welcome legal immigrants...and turn away those who do not obey the laws. We must say no to illegal immigration so we can continue to say yes to legal immigration."[46]

Operations between ports of entry--along the 8,000 miles of land and coastal borders of the U.S.--are not easily "reinvented" absent a revised national policy on illegal immigration which effectively closes the border. An estimated one and one-half million people enter the U.S. illegally every year.[47] Put more graphically, one illegal alien enters every twenty-one seconds. Estimated illegal immigration costs for all public services, education, criminal justice and correction programs were $7.8 billion in 1992.[48]

The U.S. land border, particularly its southern flank, is the greatest challenge. An estimated one million illegal aliens cross there each year.[49] Border control has long been an integral component of U.S. efforts to stem the influx of illicit drugs. Terrain and the amount and type of smuggling, particularly of narcotics, differentiate the northern from southern border.[50]

The Immigration Reform and Control Act (IRCA) of 1986 was intended to "solve" the problem of illegal entry by providing for "legalization" of about three million aliens, increased Border Patrol staffing, and penalties against employment of illegal aliens.[51] Only its legalization component was effective because, although IRCA and subsequent legislation authorized increases in INS' Border Patrol resources, Congress did not appropriate funds.[52]

A three-pronged approach is needed to reduce illegal immigration across the land border: (1) increased personnel and infrastructure funding for Border Patrol operations; (2) increased employer sanctions education and enforcement including efforts to develop a tamper-resistant employment authorization document and/or electronic verification system; and (3) increases both in the Government of Mexico's interdiction program as well as the U.S. Government's interior repatriation of Mexican illegal aliens. All require increased resources. During the course of this study, potential reductions in the Customs air interdiction program have been identified which would be sufficient to fund portions of the recommended increases (see elsewhere in this report).

The Border Patrol's 4,000 agents are hard pressed to provide more than a minimal patrol of the land border. The Border Patrol is charged with detecting and interdicting all crossings of U.S. borders between ports of entry. While its primary mission is the interdiction of illegal aliens, it has collateral authority to interdict drug traffic.[53] It arrested more than 1.2 million aliens and seized over $1.4 billion in narcotics in 1992.[54] More than a million to five million[55] more aliens are estimated to have entered undeterred. A 1993 study prepared for INS by Sandia National Laboratories disproved the theory that significant improvements in border control could be achieved by new or improved technologies. It concluded "the Southwest Border is being overrun, and the use of more [technology] will only identify more targets that can be neither apprehended using current [staff] nor accommodated within existing facilities."[56]

Border Patrol resources are inadequate to its current mission. For example, 49 percent of all illegal alien apprehensions (and presumably entries without apprehension) occur across 66 miles of the U.S. border with Mexico covered by the San Diego Border Patrol Station in California. Its approximately 1,200 agents apprehended over one-half million aliens and nearly $155 million dollars worth of narcotics.[57] The Border Patrol is on duty in San Diego Sector 24 hours per day, in three shifts. As members of the National Performance Review observed during a June 1993 visit to that sector, illegal entrants stream across the border. Despite their best efforts, agents can apprehend only a small number.

Interior checkpoints are critical to effective operations. Border Patrol personnel at checkpoints detect and apprehend deportable aliens, and alien and narcotics smugglers, who attempt to travel into the interior after evading border detection. In May 1993 alone, the

San Diego Sector apprehended 2,710 illegal entrants during checkpoint operations.[58] The Border Trade Alliance supports a far greater presence at inland check points, recommending they should be open 100 percent of the time, rather than the current 75 to 80 percent.[59]

The Border Patrol recently undertook a Staffing Requirements Survey intended to calculate the base level of staffing necessary before any apprehension or processing occurs. Previous to this study, apprehension statistics were the sole measure of workload. In undertaking this study, the Border Patrol "realized that it may never be fully staffed, but wanted to end the fiction that it was possible to deliver an acceptable level of border control with limited resources." The results indicate a total of approximately 5,750 personnel were needed: about 4,900 agents and 850 support (including headquarters staffing).[60] At the end of 1992, the Border Patrol had a total of 4,769 personnel (4,060 agents, 698 support).[61]

The Border Patrol's calculations appear conservative. The Sandia study's recommendations would add 1,432 personnel to the southwestern border alone.[62] Sandia believes the Border Patrol has "...insufficient personnel to perform the already assigned tasks; inadequate office space, maintenance facilities, and detention facilities; and the lack of adequate vehicles to conduct present operations. We believe there are critical lower limits, which, if violated, would severely limit the Border Patrol's present level of effectiveness."[63] The National Performance Review team's visit to the San Diego Sector confirmed the urgent need for infrastructure funding. For example, we observed new vehicles sitting in the lot unable to be used because resources to purchase radios or paint them were unavailable, and single agents in vehicles confronting hundreds of attempted violators. Increased use of sensors, low light level television systems, stadium style lighting and mobile night vision will also serve as a Border Patrol force multiplier.[64]

On July 27, 1993, President Clinton announced a $175.5 million proposed initiative in fiscal 1994 to "strengthen current enforcement programs to combat illegal immigration."[65] That initiative would include $45.1 million for Border Patrol personnel and technology to allow hiring, training and equipping up to 600 more agents.[66]

The second prong of a three-pronged approach to reducing illegal immigration involves increased efforts to cut off the job supply through an effective employer sanctions program. One aspect of that program must include increased employer education. Another is development of a tamper and fraud proof work document issued to all aliens authorized to work in the U.S. who are not permanent residents. Employers and U.S. law enforcement entities need to be able to distinguish fairly and accurately between those who are, and those who are, not eligible to live and work in the U.S.

The lack of resources to educate employers about the sanction provisions of IRCA, the lack of standard documentation and the use of fraudulent documentation all impact negatively on deterrence. Thus an aspect of an improved employer sanctions program involves increased resources for employer education. In April 1991, INS shifted resources from employer education programs to rigorous enforcement, reducing education efforts to a bare minimum.[67] In fiscal year 1987, over 300,000 education contacts were made with 72 full-time equivalents (FTEs); in fiscal 1992, only some 58,000 were recorded, with 18 FTEs.[68] Because immigration law implementation policies and procedures change frequently, and because new employers continuously enter the market place, employer education programs are a constant requirement.

Legally resident aliens over the age of 14 are already required to have proof of registration in their possession. Non-resident aliens authorized to work would present the new Employment Authorization Document (EAD). Thus, a requirement that all who identify themselves to employers as non-citizens produce an INS-issued document would not constitute an additional burden, nor cause discrimination against U.S. citizens. Employers would remain precluded from specifying which document is acceptable except for those who have already identified themselves as non-citizens.[69]

INS argues the dramatic increase in the use of counterfeit documents for employment is a strong indicator that employer sanctions are working.[70] But their widespread availability severely impacts INS' ability to establish that an employer "knowingly hired" (the legal standard) an alien ineligible to work.[71]

The Border Trade Alliance agrees with increases in education and enforcement. It argues increases in education would assist businesses to comply with laws, resulting in a partnership rather than adversarial relationship between the community and law enforcement.[72]

In 1992, INS instituted a one-year automated Telephone Verification System (TVS) pilot, which allowed prospective employers to call to determine whether individuals who identified themselves as aliens were in fact eligible to work, and had not presented counterfeit documents. Approximately nine percent of persons about whom queries were made were found ineligible for employment.[73] One employer is quoted as having said the TVS "is incredible, it's keeping your company safe." Pilot employers expressed willingness to pay for such a service, as insurance against disruptions caused by enforcement actions.[74] Plans for Phase II of the pilot contemplate use of a "900" number.[75] Others have proposed an alternative, automated verification system to replace the current paper document process, such as a social security number based system.

The third and final prong of the three-pronged effort to deter illegal immigration across the southern border involves increases in Mexico's interdiction program, and in the Border Patrol's interior repatriation program. Some argue the North American Free Trade Agreement (NAFTA) is an opportunity for the U.S. to pursue with the Government of Mexico its willingness to assist in the control of illegal immigration, by disrupting staging areas and undertaking additional screening. In fiscal 1993, $350,000 has been allocated to the Department of State to provide funding for the Government of Mexico's Project 057. In this program, the Mexican Government apprehends third country nationals identified as being in Mexico illegally and intending to enter the U.S. illegally. The money provides for their repatriation or removal to a third country.[76]

In previous years, Mexicans apprehended entering the U.S. illegally and agreeing to departure were repatriated at U.S. expense to the interior. This is no longer done. As a result, many aliens merely wait for another opportunity to enter illegally.[77]

Recommendations:

1. **The President should seek Congressional approval to redirect resources to increase funding for operations to deter illegal immigration across the southern border of the U.S.** Reductions in the Customs air interdiction program would be portions of this recommendations (see elsewhere in this report).

2. **The Office of Management and Budget should allocate the redirected resources**

from the Customs air interdiction program to the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol to: (1) increase personnel and infrastructure to permit a reasonable opportunity to confront and deter illegal entry, including full staffing of all interior checkpoints, additional personnel, and additional support staff and equipment; and (2) increase funding of the Border Patrol's interior repatriation program.

3. The Office of Management and Budget should allocate the redirected resources from the Customs air interdiction program to the Department of Justice for the Immigration and Naturalization Service to: (1) increase education of U.S. employers about the employer sanctions provisions of the Immigration Reform and Control Act of 1986; (2) increase enforcement of employer sanctions by INS enforcement officers, including the U.S. Border Patrol; and (3) pursue the development of a tamper-resident employment authorization document.

4. The Office of Management and Budget should allocate additional funding to the Department of State to increase funding for the Government of Mexico's program to deport third-country nationals intending to enter the United States illegally.

Implication:

Reprogramming resources from the Customs air interdiction program would be vigorously opposed by the Department of the Treasury and concerned Members of Congress. See elsewhere in this report for full analysis.

Increased funding for the Border Patrol may give it a reasonable opportunity to perform assigned functions. Without increased resources, the current one and one half to five million illegal entrants per year are likely to continue for the foreseeable future, impacting most heavily on states with large immigrant populations (California, New York, Texas, New Jersey, Florida, and Illinois). The U.S.--both at the state and federal level--can no longer afford this level of illegal entry. Funds should first be applied to ensure that the Border Patrol has adequately equipped and trained each agent.

Increased public education about employer sanctions could increase deterrence as well as make enforcement efforts more palatable. State and local communities, whose budgets are adversely affected by illegal immigrants, could be instrumental in public education efforts effort. Increased enforcement of employer sanctions would likely result--albeit perhaps indirectly--in increased detention and deportation of illegal aliens, which could in turn produce a major deterrent to increased illegal immigration. A more secure Employment Authorization Document (EAD) would alleviate employers' burdens and reduce illegal employment. Increased funding for employer education and enforcement would reduce the "pull" factor into the U.S.

Increased funding of the program to prevent illegal entry of third country nationals from Mexico will increase deterrence.

Fiscal Impact

The President's initiative announced July 27, 1993 would provide for 600 new Border Patrol agents and support training and technology at a cost of $45.1 million. Estimated cost of the recommended additions of a minimum 1,000 additional Border Patrol agents, support personnel and technology is $145.5 million in the first year, $100.5 million in subsequent years.[78] Justice and OMB have been asked to provide estimates on: (1) differences between the President's initiative and (2) estimates on the remaining recommendations, including an FTE estimate for the additional administrative personnel requirements.

Table 1: Estimated Resource Requirements*

	First Year	Subsequent Years
Additional Border Patrol Agents	$103,000,000	$80,000,000
Sensors	$6,000,000	$6,000,000
Encrypted Radios	$4,500,000	$4,500,000
Fleet Replacements	$8,000,000	$8,000,000
Administrative Personnel	$2,000,000	$2,000,000
Construction of New Facilities	$22,000,000	$0
Subtotal	$145,500,000	$100,500,000
Increased Employer Sanctions Education		
Increased Employer Sanctions Enforcement		
Expanded Electronic Verification		
Tamper Resistant EAD		
Increased Interior Repatriation		
Increased Project 057		
Grand Total	$145,500,000	$100,500,000

*Estimates are based upon a minimum of 1,000 new Border Patrol Agents.

President Clinton's July 27, 1993 proposed initiatives to curb illegal

immigration requests $45.1 million for "up to 600" more agents.

Data above provided by Justice Internal Reinvention Team to the National

Performance Review, July 20, 1993. Justice and OMB have been asked to

provide estimates on: (1) differences between the President's initiative and

(2) estimates on the remaining recommendations, including an FTE

estimate, for the additional administrative personnel requirements.

REDIRECT AND BETTER COORDINATE RESOURCES DEDICATED TO AIR INTERDICTION OF DRUGS

Background

Numerous federal agencies are involved in preventing illegal drugs from entering the U.S. This year, almost $7.75 billion have been allocated for this effort.[79] The functions of responsible agencies overlap and they have duplicative resources. There is no effective mechanism to evaluate where resources should be directed or to coordinate resource acquisition. Most importantly, the drug interdiction programs have not fulfilled their objective of reducing drug supplies in the U.S. Despite the number of resources dedicated to interdiction, more cocaine and more heroin enters the country than before the first drug strategy was released in 1989.[80] Estimates are that interdiction efforts result in seizures of thirty percent of the drugs being brought into the U.S.[81]

The standard for drug interdiction efforts should be to reduce the available drug supply in the U.S. at the minimum level of expense. This requires coordination of resources and the flexibility to shift strategy and resources to counter the changing methods used by drug smugglers.

The Department of Defense (DOD) is the lead agency for detecting and monitoring (tracking by fixed or mobile radar) drug traffic into the U.S. The Department of Treasury's U.S. Customs Service (Customs) has primary responsibility for enforcing laws against drug smugglers. The Department of Justice's Immigration and Naturalization Service (INS) supports land border drug interdiction through its inspection and Border Patrol functions. The Department of Transportation's U.S. Coast Guard has a primary role when the possible entry is over the water they patrol (12 miles outside the U.S. border.) The efforts of the INS and Customs at the land border ports of entry are discussed in detail separately in this report. The U.S. Coast Guard's drug enforcement efforts will not be addressed herein because nearly all the resources they devote to drug interdiction also support their maritime missions.[82]

The fiscal year 1989 National Defense Authorization Act gave DOD increased responsibilities in the war on drugs. DOD is now the lead federal agency for the detecting and monitoring of aerial and maritime transit of illegal drugs from their foreign source to the U.S. border. Since DOD cannot arrest, detain or seize, it "hands off" the information on smugglers to law enforcement agencies.

DOD's 1993 budget for detection and monitoring is $843.6 million. Some of these funds are used for: (1) operating detection and monitoring platforms (i.e., aircraft, ships and vehicles) in support of counter-drug operations ($293.1 million); (2) programs that address the flow of illegal drugs at or near the source of production ($137.3 million); (3) the operation of land and sea based aerostats, which are helium-filled radar balloons ($59 million); (4) deploying mobile radar systems ($16.1 million); (5) operating and developing radar facilities ($43.2 million); (6) enhancing shipboard and aircraft sensors ($24.2 million); (7) purchasing aircraft ($35 million); and (8) various other activities of command, control, communications and intelligence (C3I) programs ($42.3 million). DOD's 1994 budget request includes $890 million in support of their detection and monitoring mission.[83] Customs has authority to detain, arrest and seize, and is the lead enforcement agency for drugs at the border. The objective of Customs' Office of Air and Marine Interdiction (OAMI) is to interdict and apprehend smugglers using aircraft and vessels, and to provide assistance to other enforcement efforts of Customs and other agencies.

OAMI's 1993 budget was approximately $126 million, not including salaries and expenses. These funds support OAMI assets which include jet interceptors and long-range trackers equipped with radar and infrared detection sensors; high performance helicopters; single and multi-engine support aircraft; airborne detection platforms; and fast utility and blue water type vessels equipped with sophisticated marine radar systems, radios and other electronic support equipment. OAMI runs an Aviation Operations Division; two Aviation Operations Centers, a Surveillance Support Center and Aviation Branches to support their operations.[84]

Customs' budget also funds considerable resources used for detection and monitoring. Customs operates two C3I centers, which, like DOD's C3I facility, locate, identify and track suspect aircraft. Customs also operates a National Aviation Center to administratively support its C3Is.
In addition, Customs owns mobile radar platforms: four P-3 aircraft which cost $2,356 per

hour to operate and four P-3 Slick aircraft which cost $2,211 per hour to operate. Customs' 1994 estimate for Operation and Maintenance for the P-3 program alone is estimated at $26.6 million.[85] DOD owned radar platform assets include E-2 Hawkeyes, E-3 AWACS, and numerous aerostats which cost $2,700, $8,338 and $500 an hour respectively to operate.[86]

Clearly, DOD and Customs duplicate each other's resources. Some of the duplication in facilities is due to the fact that DOD became involved in the war on drugs in 1989. Customs first C3I became fully operational in 1988 and the other in 1989. The National Aviation Center became operational in 1990. When DOD entered the war on drugs, their authority to control resources and direct operations of civilian agencies was not clear. This led to separate military and civilian planning, coordinated only to the extent necessary to avoid conflicting operations.[87] Additionally, turf battles and oversight by separate Congressional committees resulted in Customs and DOD overlapping each others' functions and resources.[88] As resources were acquired, there was little coordination among the responsible agencies to ensure that resources were not spent unnecessarily. Without any type of clearinghouse, Customs and DOD unilaterally developed their own acquisition plans, providing little assurance that the requirements used to justify acquisitions were valid.[89]

In the early 1990s, OAMI extended its operations from the border to drug source and transit areas such as Mexico, Central and South America. Customs' strategy has been to use mobile and fixed radar to detect drugs at their source and in transit countries. They then pass the information on to host nations and Drug Enforcement Administration (DEA) agents operating abroad.

In fiscal year 1992, Customs P-3 aircraft flew a total of 5,432 hours with an operating cost of about $20 million. These led to a total of 23 seizures overseas made by host government officials. Thirteen were stops of aircraft carrying drugs and ten were the result of suspect aircraft either making a drop and returning to the point of departure or off-loading and fleeing the scene.[90]

In addition to Customs' airborne efforts, DOD also uses air and ground-based detecting and monitoring assets to assist host nation air interdiction forces to disrupt the flow of cocaine from major growing areas.

DEA maintains that the government's interdiction program has been over-funded in relation to the programs' benefit in interdicting drugs overseas since nearly all cocaine seized overseas is the result of investigation, not interdiction. DEA maintains that the "patrolling" done by Customs' aircraft is a waste of resources. They believe that the interdiction program would be better served if Customs flew only based on prior information indicating a need to monitor a certain area. DEA points out that Customs' aircraft may patrol randomly in order to increase flight hours to justify their expensive detection and monitoring equipment.[91]

Customs credits its air interdiction program with successfully eliminating smuggling by general aviation aircraft. During the first eight months of fiscal year 1993, Customs tracked 50 suspected aircraft out of Columbia. None of the aircraft were tracked into the U.S.[92] In the last year and a half, Customs has made only one drug seizure from an aircraft which crossed into the U.S. over the southwest border.[93]

As the air threat on the border has decreased, Customs has been redeploying its air resources to support investigations rather than to detect smuggling. As Customs shifts its focus, it is important that resource allocations for investigative support be coordinated between and among agencies in light of the overall national law enforcement objectives.

Whether or not an interdiction program can be effective in reducing cocaine consumption in this county is debatable. A well quoted Rand Corporation study found that it is extremely difficult to reduce the cocaine consumption in the U.S. by even five percent through more stringent drug interdiction. It identified the adaptability of smugglers, the variety of methods by which cocaine can be brought into the U.S., and the low price of both drugs and labor for smugglers as the obstacles to reducing drug supplies. The total consumption was reduced by more than five percent only when the risk for almost every mode of bringing in the drug was raised. The study found that as more routes became riskier, more total shipments were imported. The study identified the U.S.-Mexico border as an area that presents major problems because it is difficult to control against the entry of individuals, including illegal aliens, who can carry high value shipments of cocaine.[94]

Customs recognizes that drug smugglers are currently smuggling in any conveyance available via the ports of entry and over land between the ports of entry.[95] Although drug smugglers adapt to changing interdiction strategies, there is no effective mechanism to shift and balance resources between the various agencies responsible for drug interdiction.

For example, the areas between the ports of entry are the responsibility of the Border Patrol. It patrols the land border and operates highway checkpoints aimed at minimizing the number of illegal aliens and drugs leaving the border region if they get into the country. For years, the Border Patrol has been under-funded. The Immigration Reform and Control Act of 1986 included provisions to increase the number of Border Patrol agents. Since then, Congress has twice ordered increases in Border Patrol personnel, but has failed to provide any additional funding.[96] President Clinton recently said it is "certainly plain to anybody with eyes to see that the border patrol is drastically understaffed - - breathtakingly understaffed."[97]

The challenge for the future of the drug interdiction program is to effectively and efficiently use available resources in accordance with an overall national drug control strategy, to eliminate duplication of effort and resources, and to coordinate future operations and acquisitions to avoid duplication.

Recommendations:

1. **Appropriations for drug interdiction operations should come under the aegis of the newly created position of Director of Law Enforcement (DLE).** (Establishing the DLE is addressed elsewhere in this report.)
2. **The newly created Executive Law Enforcement Council (ELEC) should review existing interdiction programs, activities and assets to determine their overall benefit to the national drug enforcement strategy. The ELEC should provide the DLE recommendations for any changes in deployment of resources which are necessary to respond to the national drug enforcement strategy.** (Establishing the ELEC is addressed elsewhere in this report.)
3. **The ELEC should, at a minimum, eliminate Customs P-3 program.**
4. **Appropriations for Customs' Office of Air and Marine Interdiction (OAMI) should come under the aegis of the DLE.**

Implications

Assigning allocation authority for drug interdiction appropriation to the DLE will ensure that the resources dedicated to this effort are consistent with overall national counter-narcotics objectives and priorities. It will allow for allocation of funds based upon the program's relative contribution to reducing drug supplies and provide a mechanism for deploying and allocating resources in response to changing smuggling threats. It will also ensure that future acquisitions reflect valid requirements and collectively support an efficient mix of resources to carry out the interdiction mission.

Giving allocation authority for OAMI to the DLE will ensure that the changes Customs makes in its enforcement support operations are in the overall best interest of the law enforcement community.

Fiscal Impact

Eliminating Custom's P-3 program will save $26.6 annually.[98]

Introducing Market Dynamics

SUPPORT THE COSTS OF LAND BORDER OPERATIONS WITH USER FEES

Background

The federal government is losing millions of dollars annually because of inconsistent user fee statutes and policies applied to travelers depending upon whether they enter at land or air Ports of Entry (POEs). Differing statutes and policies apply depending upon whether the Immigration and Naturalization Service (INS) or the Department of State (State) provides the service. Those user fees which are assessed do not cover the full cost. Disagreements between agencies inhibit the institution of programs which could improve customer service and for which user fees could be charged. Current legislation does not permit the use of the funds in the INS Examination Fee or INS User Fee accounts for Border Patrol expenses. The National Performance Review has identified resource requirements for the Border Patrol (see elsewhere in this report) which could be partially offset by some of the fees identified here.

The general policies covering user charges are set out in 31 U.S.C. 9701 which provides that any service rendered by a Federal agency, to or for any person, except those engaged in the transaction of official business of the Government, shall be self-sustaining to the fullest extent possible. The Office of Management and Budget (OMB) Circular A-25, User Charges, September 25, 1959, as amended, provides that a charge be imposed to recover the full cost to the government of rendering a service which provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large.[99]

Taxpayers currently bear the much of the burden of INS operations. While most international air travelers pay $12 per person ($5 dollars each for INS[100] and Customs inspections; $2 for Agriculture inspections), with few exceptions, no charges are assessed against land border travelers traveling in either direction across the border. Increased staffing is needed to facilitate the more rapid movement of persons and goods transiting the border without compromising law enforcement. More of the burden should be borne by users of those services, whether occasional or frequent. Applicants applying with INS or

State should be charged the same fee.

The Federation for American Immigration Reform (FAIR) would support a "modest" border crossing fee, similar to that paid by air travelers. It agrees there are costs associated with doing an adequate job in a time of deficit-cutting austerity. It believes control of borders is not only essential to national physical security, but to fiscal security as well.[101]

State currently has no authority to retain fees. The Land Border Inspection Fee Project and Account, established by the 1991 Appropriations Act for the Department of Justice, authorizes the establishment of pilot projects under which a fee may be charged and collected by INS for inspection services at one or more land border points of entry to study the feasibility of charging fees to enhance services. Such projects may include commuter lanes.[102] This authority expires at the end of fiscal 1993, unless extended. The fiscal 1994 budget, if enacted, would provide for extension of this authority to September 30, 1996.

Both State and INS issue documents to Mexicans and some Canadian citizens or lawful permanent residents who have common nationality who may desire them for entry into the U.S. Applications for INS issued documents are accepted at land border POEs and adjudicated by Immigration Inspectors. Most POEs have insufficient staff to handle the workload on a timely basis. Multiple steps are involved, including a personal interview and a record check. Imposition of fees for these services would provide additional staffing and improve customer service without sacrificing enforcement.[103] Although interviews occur daily, because of insufficient staffing, waits of several months are common for INS issued documents.

How the Government of Mexico would respond to a formal proposal for the institution of an application fee for the issuance of Border Crossing Cards (BCCs) is not certain. Earlier informal consultations received a favorable response.[104] State now expresses "considerable" doubt the proposal would be favorable received; it also believes charging for BCCs would conflict with efforts to promote the North American Free Trade Agreement (NAFTA).[105]

Sections 101 and 222 of the Immigration and Nationality Act of 1952 (INA) provide for the issuance of BCCs.[106] The Agreement on Passport Visas (Treaty) of 1953 with Mexico would require amendment to allow for the collection of fees.[107] The existing

Agreement currently prohibits charging a fee for the initial issuance of a BCC. The Treaty does not specifically preclude charging a fee for replacement cards[108] and is silent as to whether a fee may be charged for the replacement of lost, stolen or mutilated BCCs.[109]

Under the authority provided in P.L. 101-515, INS began testing the feasibility of a "commuter lane" concept in June 1991, with the Peace Arch Crossing Entry (PACE) program in Blaine, Washington, scheduled to end in September, 1993.[110] The Blaine location was chosen because of increasing traffic flow and severe congestion.[111]

PACE provides for a Dedicated Commuter Lane (DCL), through which only pre-screened, pre-authorized, low-risk individuals traveling in vehicles displaying INS issued $25 windshield decals can travel. Vehicles need only slow for visual inspection rather than stopping for full INS and U.S. Customs Service (Customs) inspections. Both agencies conduct periodic spot checks of DCL vehicles for identities and customs declarations.[112]

The pilot is also being used to: (1) test alternative approaches to customs and duty collection and immigration enforcement; (2) measure the impact of express lanes on overall border congestion; and (3) determine the degree of public acceptance of a DCL and the fees attached to the concept.[113]

INS and Customs officials agree the Blaine pilot is a "complete success," with less than one tenth percent violations.[114] INS sees PACE as a successful law enforcement tool.[115] Because Inspectors can concentrate on non-screened travelers, Blaine's refusal rate has risen 15 percent.[116] One INS official described the program as the most successful innovation ever undertaken by INS.[117] Fees collected by INS from PACE from June 15, 1991 to February 17, 1993 totalled over $773,000.[118] DCL has also resulted in a decline in the waiting time for all travelers entering the U.S. INS reports traffic is averaging over 1,000 cars per day, and that the hours were extended in response to PACE users demand.[119] Since the DCL opened, there have been no written or telephone complaints regarding delays or traffic backups, and average waiting time in non-DCL's had been reduced from 29 to 12 minutes.[120] PACE lane users state the DCL saves an average of 45 minutes waiting time.[121]

INS would like to test the DCL concept on the southern border.[122] Customs opposes this. In a November 25, 1991, letter to the INS Commissioner, the Customs Commissioner announced she would "direct the Customs designating officers in [affected districts] to revoke all current [cross] designations...adjust regular primary staffing to ensure the security of the DCL lane...treat [those lanes] as any other including using [stop] procedures."[123]

Customs is concerned about: lack of sophistication in Mexican law enforcement capabilities; drug smugglers' use of the DCL as a more secure means to transport narcotics; and the disparity between Mexican and Canadian government support for the concept.[124]

INS sees primary users of a DCL as the working community, including employees of companies who work in one country and reside in the other, owners of these companies, and health care workers who cross the border on a regular basis. All applicants would be subject to El Paso Intelligence Center (EPIC) and National Crime Information Center (NCIC) data checks. INS believes DCL target users--business and professional community--inherently present a low risk profile.[125]

Customs agrees the pilot at Blaine has been a success, but believes that does not guarantee success at other locations, particularly the southern border. It believes the Blaine situation was unique in terms of: low risk travelers; better facility layout and expansion potential; excellent Canadian local government and law enforcement support; and the willingness of the affected population to pay the fees.[126]

Customs would prefer (1) High Occupancy Vehicle (HOV) lanes and (2) increased staffing. Customs believes HOV lane advantages to travelers include: reduced vehicle volume, no cost (no fee), and no administrative burden (no application process).[127] INS sees no increased facilitation in HOV lanes because vehicles would still require inspection stops.[128] It also (1) fears Mexican children would be paid to "fill space" in HOV lane vehicles, and (2) questions Customs' ability to add sufficient staff to implement the concept on a regular basis.[129]

Southern border federal and state law enforcement officials believe a properly monitored DCL would be appropriate, and that the DCL decal could become a status symbol. They advise INS' random compliance check strategy would discourage illegal purpose use of DCLs.[130] They agree with INS' position that users of a DCL who show a legitimate need to cross the border frequently do not meet the profile of a contraband smuggler.[131] It is these officials' belief that INS and Customs are engaged in a "turf battle about who controls the southern border...effective programs such as DCL often fall victim...."[132] A Customs headquarters internal memorandum dated November 13, 1992, supports the comments of southern border law enforcement officials that the concept of the DCL along the southern border is a battle among agencies over responsibilities, not a philosophical difference about the potential of drug smuggling. It implies INS' efforts would remove authority and responsibility from Customs.[133]

The INS Acting Commissioner has informed Customs that INS intends to go forward with the implementation of additional DCLs in Point Roberts, Washington; Detroit, Michigan; and Buffalo, New York before the end of the fiscal year.[134]

Form I-94, Arrival/Departure Record, and Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form are required registration documents for most nonimmigrant aliens, whether arriving by land or air. Fees for inspections of persons arriving aboard a commercial vessel or aircraft are authorized by the INA. No comparable fees exists for land border entries.[135] INS estimates the yearly volume of land border Forms I-94 and I-94W as 900,000, and the estimated cost per issuance as $6.29 dollars.[136]

Form I-68, Canadian Border Boat Landing Permit, allows previously inspected eligible U.S. and Canadian citizens and residents to enter by small boat without reporting for inspection.[137] INS estimates the yearly volume of Forms I-68 as 66,000, and the estimated cost per issuance as $15.67 dollars.[138]

Form I-185, Nonresident Alien Canadian Border Crossing Card, is issued to Canadian citizens, or lawful permanent residents who have common nationality, as evidence of long-term waiver of their inadmissibility pursuant to Section 212(d)(3)(b), INA.[139] Form I-175 is the application for this card.[140] INS estimates the yearly volume of Forms I-185 as 2,000, and the estimated cost per issuance as $30.00 dollars.[141]

State also issues Canadian Border Crossing Cards as well as nonimmigrant visitors' visas for business or pleasure (B-1/B-2) stamped in passports by U.S. diplomatic and consular posts. In fiscal year 1992, State issued a combined total of 3,297 Border Crossing Cards, B-1s, and B-2s to persons eligible Canadian citizens.[142] Data are not readily available on the number of these documents issued to lawful permanent residents of Canada who have common nationality. Nor are data currently available on the cost to State for the issuance of these documents.

Form I-586, Nonresident Alien Mexican Border Crossing Card (BCC), offers the same privileges as a business or pleasure visa (B-1/B-2) stamped in passports and issued by U.S. diplomatic and consular posts. Mexican citizens, in contrast to Canadian citizens, require visas to enter the U.S. Current BCCs issued to Mexicans are valid for ten years and allow bearers to visit within 25 miles of the border for up to 72 hours without further documentation. The prior BCCs issued to Mexicans had indefinite validity. The old cards need not be replaced as long as they are not lost, stolen or mutilated. If INS holds to the expiration date in current BCCs, a tremendous volume of work will be generated for southern border POEs.[143] INS views the BCC as an extremely desirable benefit available to Mexicans.[144] Form I-190 is the application for this card.[145]

INS estimates the yearly volume of Forms I-586 as 200,000. Approximately twenty percent of these are replacement applications which require identical adjudicative processes. INS estimates cost per issuance as $25.91 dollars. Incentives to ensure safeguarding of these important documents are needed.

INS would prefer to charge fees for all BCCs, whether initial, renewal or replacement, to preclude efforts of applicants to elude payment through fraudulent or other means.[146]

State issues Border Crossing Cards as well as B-1/B-2 visas to Mexicans. In fiscal year 1992, State issued a combined total of 794,367 Border Crossing Cards, B-1s, and B-2s to eligible Mexican citizens.[147] Data are not currently available on the cost to State for the issuance of these documents.

Form I-444, Mexican Border Visitors Permit, is issued in conjunction with presentation of Form I-186, Nonresident Alien Mexican Border Crossing Card, or nonimmigrant visitors' visas (B-1/B-2). Issued in lieu of Form I-94, Form I-444 permits travel of Mexican nationals to travel to the five border state area of Arizona, California, Nevada, New Mexico, or Texas for a period not to exceed 30 days.[148] INS estimates the yearly volume of Forms I-444 as 4,980,000, and the estimated cost per issuance as $3.78 dollars.[149]

Recommendations:

The National Performance Review has recommended the creation of a single, independent border management and control agency (see elsewhere in this report). The following recommendations are applicable whether or not such an agency is created, but would require revision to specify which agency head would take the recommended action.

1. **Congress should enact legislation to permanently authorize the Land Border Inspection Fee Account for the Department of Justice.**

2. **Congress should enact legislation to permanently authorize the Department of State to collect and retain fees which correspond to those collected for land border transit documents issued by the Department of Justice.**

3. **Congress should enact legislation to authorize the use of all user fee accounts to fund Border Patrol requirements.**

4. **The President should authorize the Department of State to undertake discussions with the Government of Mexico to amend the Agreement on Passport Visas (Treaty) of 1953 with Mexico to allow for the collection of fees.**

5. **The Attorney General should direct the Commissioner of the Immigration and Naturalization Service (INS) to take all necessary action to establish and collect fees for: (1) Form I-94, Arrival/Departure Record; (2) Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form; (3) Form I-68, Canadian Border Boat Landing Permit; (4) Form I-185, Nonresident Alien Canadian Border Crossing Card; (5) Form I-586, Nonresident Alien Mexican Border Crossing Card; and (6) Form I-444, Mexican Border Visitors Permit.** The fees charged should fully recover the total cost of providing these services. Those fees should be directed first and foremost to field, not headquarters, operations.

6. **The Attorney General should direct the Commissioner of the Immigration and Naturalization Service (INS) to take all necessary action to establish and collect exponentially larger fees for the third and subsequent replacement of Form I-586, Nonresident Alien Mexican Border Crossing Card.**

7. **The President should direct the Attorney General and the Secretary of the Treasury to expand the pilot Dedicated Commuter Lane (DCL) program, as planned,**

to selected northern border sites and to at least one southern border location. A fee which fully recovers the cost of its operations should be charged to users of the DCL.

Implications

Permanent authorization of the Land Border Inspection Fee Account would give INS authority to establish and collect appropriate fees for land border inspection services, and would therefore allow appropriate increases in staff to improve customer service, increase travel facilitation, and improve enforcement.

Unless State is authorized to collect fees comparable to those charged by INS for these land border transit documents, a large number of eligible applicants will seek fee-free documents from State, increasing State's workload while decreasing INS'. State would oppose collecting fees for another agency--with attendant workload and administrative concerns--for work it performs.

Offsets for border patrol resource requirements could be achieved if legislation permitted the use of funds for this purpose.

Amendment of the Agreement on Passport Visas (Treaty) of 1953 with Mexico would allow for the collection of fees.

Establishment and collection of appropriate fees for land border inspection services would allow appropriate increases in staff to improve customer service, increase travel facilitation, and improve enforcement. See estimates at Table 1. Collection of fees at sites which do not currently do so may result in cash management problems which the INS Commissioner must address.

Exponentially larger fees for the third and subsequent replacement of Form I-586, Nonresident Alien Mexican Border Crossing Card would act as an incentive to aliens to safeguard these important documents.

Expansion of the pilot Dedicated Commuter Lane (DCL) program, as planned, to selected northern border sites and to at least one southern border location would further test the validity of the concept, and might diffuse Customs' concerns about increased narcotics smuggling. An appropriate fee would defray the costs.

Fiscal Impact:

The initial cost estimates for additional revenues are about $900,000. Justice and OMB have been asked to develop more firm estimates and to complete the fiscal impact worksheet.

Table 1: User Fees

ACTION ITEM	ESTIMATED VOLUME	ESTIMATED COST	PROPOSED FEE	ESTIMATED GROSS RECEIPTS	ESTIMATED NET RECEIPTS
I-94, I-94W, Arrival/Departure	900,000	$6.29	$6.00	$5,400,000	($261,000)
I-68, Canadian Boats	66,000	$15.67	$16.00	$1,056,000	$21,780
I-175, I-185 Canadian BCCs	2,000	$30.00	$30.00	$60,000	$0
State BCCs	562	$30.00	$30.00	$16,860	$0
State B1s	16	$30.00	$30.00	$480	$0
State B2s	263	$30.00	$30.00	$7,890	$0
State B1/B2s	450	$30.00	$30.00	$13,500	$0
State B1/B2s/BCCs	6	$30.00	$30.00	$180	
Subtotal State	1,297			$38,910	
State and INS	3,297			$98,910	
I-190, I-586 Mexican BCC orig.	156,000	$25.91	$26.00	$4,056,000	$14,040
I-190, I-586 Mexican BCC repl.	44,000	$25.91	$26.00	$1,144,000	$3,960
Subtotal, INS	200,000			$5,200,000	$18,000
State BCCs	76,296	$25.91	$26.00	$1,983,696	$6,867
State B1s	11,660	$25.91	$26.00	$303,160	$1,049
State B2s	62,115	$25.91	$26.00	$1,614,990	$5,590
State B1/B2s	237,587	$25.91	$26.00	$6,177,262	$21,383
State B1/B2s/BCCs	206,709	$25.91	$26.00	$5,374,434	$18,604
Subtotal State	594,367			$15,453,542	$53,493
State and INS	794,367			$20,653,542	$71,493
I-444, Mexican vice I-94s	4,980,000	$3.78	$4.00	$19,920,000	$1,095,600
SUBTOTALS/TOTALS					
Grand Total, INS replacements	5,992,000			$27,580,000	$860,340
Grand Total, INS, all actions	6,148,000			$31,636,000	$874,380
Grand Total, State w/o Mex.	1,297			$38,910	$0
Grand Total, State, All	595,664			$15,492,452	$53,493
Grand Total, Replacements	5,993,297			$27,618,910	$860,340

GRAND TOTAL, ALL	6,743,664		$47,128,452	$927,873

IMPROVE DEPARTMENT OF JUSTICE DEBT COLLECTION EFFORTS

Background

Each year, thousands of borrowers from the federal government default on loans administered by the Department of Education (DOE), Farmer's Home Administration (FmHA), Department of Veterans Affairs (VA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), and other federal agencies. After employing their own collection techniques, including telephone calls, demand letters, efforts to offset and, in some instances, hiring of private collection agencies, federal agencies refer debt collection claims to the Department of Justice (DOJ) for litigation.[150]

Claims valued at $500,000 or less are referred through Deduce National Central Intake Facility (NCIF) to the U.S. Attorneys office in the jurisdiction where the debtor resides, while those in excess of $500,000 are referred to DEDUCE headquarters divisions.[151] The primary challenges in improving DEDUCE debt collection efforts involve maximizing collection of the funds owed to the federal government and improving Deduce ability to service its agency clients through development of a central management information system to provide reliable tracking and monitoring of federal debt collection activity.

Ninety percent of all debt collection claims are processed by the U.S. Attorneys' Financial Litigation Units (FLUs), which are the primary debt collectors within DEDUCE.[152] Debt collection claims referred to FLUs are processed through the NCIF, which tracks both the number and dollar value of debts referred.[153] Critics of DEDUCE debt collection techniques contend that U.S. Attorneys' offices generally accord low priority to debt collection compared with other aspects of their criminal and civil caseload. In an attempt to improve collections, Congress enacted the Federal Debt Recovery Act of 1986, authorizing the Attorney General to contract with at least four law firms in five to ten judicial districts as a pilot project to test the effectiveness of contracting with private debt collection counsel to augment the resources of the FLUs.[154]

While advocates of the private counsel debt collection counsel pilot contend that private counsel offers a cost-effective debt collection tool and that DEDUCE should continue to avail itself of the option to retain private counsel, many U.S. Attorneys contend that private counsel are less effective in maximizing debt collections than FLUs while the cost to collect with private counsel is higher. Critics further contend that because private counsel earns a fee of approximately 33 percent of amounts collected, they frequently "skim" the least difficult collection cases while returning the difficult collections to DEDUCE. Unlike private counsel FLU personnel are salaried personnel, and have less of a direct financial incentive to maximize collections.

As the debt collectors of last resort, FLUs have the difficult task of collecting on judgments in cases in which all other efforts to collect have failed. In May 1992, the U.S. Marshals Service (USMS) began a Judgment Enforcement Team (JET) pilot program whereby Deputy U.S. Marshals in six judicial districts volunteered to assist the FLUs by searching for absconded debtors and hidden assets that could be used to satisfy judgment debt.[155] In addition to the USMS, private "net worth determination" contractors can provide a useful service in locating debtors and their assets.

A primary criticism of Deduce debt collection efforts is that DEDUCE lacks the capability to provide its federal agency clients with readily obtainable information on the status of their debt collection claims referrals. The agencies contend that the general unavailability of such information impedes their ability to manage their bad debt inventory. In order to better manage its debt collection caseload and to respond to agency concerns, DEDUCE created the NCIF to receive debt collection claims referrals for all U.S. Attorneys' offices and to provide tracking for these cases. While the NCIF has improved Deduce ability to track debt collection claims referred to U.S. Attorneys' offices, it does not yet offer the fully automated debt collection/litigation capabilities that are available to the U.S. Attorneys' offices in the private counsel pilot districts.[156]

Recognizing the apparent limitations in its ability to process and track debt collection claims, DEDUCE has proposed an item in its fiscal year 1994 budget that would authorize DEDUCE to retain up to three percent of amounts collected pursuant to civil debt collection litigation activities to be used for paying the costs of processing and tracking such activities.[157] In particular, DEDUCE proposes to expand its central debt collection intake facility to create a departmentwide debt collection system that would include information on the status of agency debt collection claims. An enhanced system would automate payment processing, accounting and reporting functions, resulting in more timely data and eliminating FLU data entry functions. This would free FLU personnel from these administrative burdens and allow them to pursue collection activities that result in the recovery of more debt.[158] In some states, automation could also allow for consolidation of debt collection in a single office, eliminating the need to have a FLU in every U.S. Attorney's office.[159]

Recommendations

1. Congress should authorize each U.S. Attorney to retain up to one percent of all amounts collected by his or her office pursuant to annual civil debt collection litigation activities involving only those debt collection claims of $500,000 or less that are referred to the U.S. Attorney's office through Deduce central intake facility. Retained proceeds should be used, in the U.S. Attorney's discretion, for staffing of FLU units, for paying the case-related costs of conducting debt collection litigation and investigation, and for payment of expenses necessary to improve collection of federal debts such as training and the payment of bonuses to FLU and USMS debt collection personnel whose collection activities exceed annual collection benchmarks.

Authorizing U.S. Attorneys' offices to retain a percentage of annual debt collections to be used for payment of the costs of debt collection activities would improve incentives for individual U.S. Attorneys' offices to maximize collection amounts. In particular, providing U.S. Attorney's with the discretion to reward debt collection personnel for their success in maximizing debt collection amounts should provide a powerful incentive for debt collection personnel to engage in aggressive debt collection efforts. U.S. Attorneys could compensate participating USMS personnel on a reimbursable basis. Limiting amounts retained by U.S. Attorneys' offices to a percentage of those claims under $500,000 will avoid the prospect of windfall claims and assure that the enhanced debt collection muscle will be directed at the volume of FLU unit collection cases.

The debt collection fund created by this recommendation differs from Deduce previous Debt Collection Activity Fund in that it gives wide discretion to U.S. Attorneys in the field to employ, train and reward employees engaged in debt collection activities. While OMB should be directed not to impose any FTE limitations upon U.S. Attorneys' use of these funds, U.S. Attorneys should emphasize that these funds are primarily to be used to provide collection incentives to existing FLU personnel.

2. **To promote development of a centralized federal debt collection information and tracking system, Congress should authorize Section 108 of the General Provisions of the DEDUCE budget request as set forth in the President's Budget for Fiscal Year 1994, providing for the Attorney General to credit to the DEDUCE Working Capital Fund for fiscal year 1994 and thereafter, up to three percent of all amounts collected pursuant to civil debt collection litigation activities, net of U.S. Attorneys' offices collection retainers, to be used only for paying the costs of processing and tracking such litigation.**

Amounts collected pursuant to this fund would be used to pay for development of the NCIF and related debt collection automation initiatives.

3. **Although DEDUCE should continue to use private debt collection counsel to the extent it deems appropriate, DEDUCE should require private counsel to accept debt collection claims referred by DEDUCE as a package and offset private counsel recoveries by a percentage of the value of debt collection claims returned to DEDUCE.**

DEDUCE should conduct its own analysis of the feasibility of hiring private collection counsel. The requirement that private counsel be required to accept debt collections claims referrals in packages would deter the practice of skimming easily collectable claims by assuring that counsel are paid based upon their net collection efforts.

Implications

Authorizing U.S. Attorneys to retain one percent of their office's annual debt collection amounts to pay the costs of conducting debt collection litigation, including the payment of bonuses to FLU and USMS judgment enforcement personnel, would create additional incentives to maximize amounts collected.

Development of DEDUCE debt collection claims processing and tracking information will enable Deduce federal agency clients to better manage their own bad debt inventory by measuring the progress of DEDUCE litigation of their debt collection claims.

Providing DEDUCE with the option of employing private collection counsel will give DEDUCE flexibility to manage its debt collection claims inventory. Paying private counsel according to their net collection efforts will reduce skimming of easily collectible claims.

Fiscal Impact

These recommendations contain cost avoidance measures.

EXPAND THE BUREAU OF PRISONS EDUCATION, JOB TRAINING AND FINANCIAL RESPONSIBILITY PROGRAMS

Background

A major challenge facing the Bureau of Prisons (BOP) is managing its growing population at a time of increased prison overcrowding, longer sentences and fewer incentives for good behavior or personal development by inmates while in prison. As a result of sentencing guidelines, the "war on drugs" and other factors, the prison population has exploded in recent years. Moreover, the Sentencing Reform Act of 1984,[160] which has led to generally longer sentences, restricted "good time" to a maximum of 54 days per year and eliminated parole, downplayed the role of rehabilitation in the incarceration process as opposed to probation, and removed incentives for inmates to engage in good behavior and self-improvement while incarcerated. Nevertheless, BOP generally attempts to encourage inmates to participate in educational, vocational training and financial responsibility programs.

At present, a large number of inmates are functionally illiterate, and approximately one-half lack a high school diploma.[161] BOP established a literacy program in 1982 designed to increase literacy standards of the population, and the required achievement levels under the program have steadily risen since its inception. In 1990, as required by the Crime Control Act of that year, a mandatory functional literacy program for all mentally-capable inmates was established. Under the program, inmates who are functionally illiterate must complete 120 days of participation in the program, and the program currently requires inmates to achieve a 12th grade level of literacy in order to "graduate". As of March 1992, twenty-three percent of the 30,000 inmates without a high school diploma were enrolled in the literacy program. BOP also encourages inmates to earn a General Equivalency Diploma (GED) while in prison, though inmates are not exempted from work requirements in order to pursue the degree. Finally, BOP requires that certain inmates receive English as a Second Language (ESL) schooling as required by the Crime Control Act of 1990.[162]

Despite the availability of programs, there are few incentives for inmates to successfully complete or continue their educational efforts, and, significantly, BOP does not measure what percentage of the inmate population ultimately earns a GED while in prison. BOP offers inmates small financial awards, pens, dictionaries and other prizes for individuals to complete the GED, but these have not been particularly effective in coaxing inmates to earn the diploma. Inmates who have or earn a GED are also eligible to apply for Pell grants for college study, and many inmates pursue advanced degrees through that program. Inmates who were surveyed indicated that they would participate in more of the educational programs if they would increase the likelihood of their post-release success or result in sentence reductions, but the current sentencing structure does not encourage educational activity.[163] In the past, educational achievement while in prison was considered during parole hearings, but parole has been eliminated and "good time", which is currently limited to 54 days per years, has not been granted for education for at least 20 years. Other incentives that were cited by inmates included reductions in security classification, preferred housing, and extended visitation rights, and BOP is considering testing some of these options.[164]

BOP offers a number of other educational and vocational programs to inmates, including speed reading and classes in approximately 40 vocational areas. The most popular of the vocational areas are landscaping, building trades and food service. Inmates are generally allowed to tutor one another while in prison, but BOP limits the ability of inmates to instruct one another academically or in trades in order to avoid the development of hierarchies in its facilities. There are few performance measure in place to evaluate the effectiveness of these programs.

A potentially useful device for encouraging inmates to receive a diploma is the federal work program (discussed below). While inmates generally prefer to participate in the federal prison industries program since it pays relatively high wages, and while many facilities have waiting lists of inmates who seek to participate in the program, BOP does not require inmates to have a GED or equivalent before they can join the prison industries, though the degree is required in order for an inmate to receive pay raises under the work program. According to one study, some inmates cited the lure of prison industries, and its relatively high wages, as a reason for not pursuing a high school degree.[165]

The Federal Prison Industries, Inc. (FPI), also known as UNICOR, is a federal government-owned corporation whose board of directors is appointed by the President. UNICOR was created by Congress in 1934 and employs approximately 16,000 inmates (24 percent of the prison population) in 87 factories. The entity sells goods and services to the federal government, primarily the Department of Defense, General Services Administration, the Post Office and the Veterans Administration. Products made by UNICOR include furniture, clothing, electronic cable, metals, textiles, and similar items. The program is financially self-sustaining and does not require taxpayer funding. Through the program, many inmates receive job training skills and work experience, often for the first time in their lives. The pay is also significantly higher than that available in regular prison work programs, with wages starting at $.44 per hour (and a four-level scale culminating in $1.10 per hour) compared with the $.12 per hour starting wage for regular prison work.

UNICOR strives to keep one-quarter of the federal prison population usefully occupied and is viewed by prison officials as extremely helpful in reducing inmate idleness. UNICOR is currently faced with enormous challenges in its attempts to expand its range of goods and services to keep up with the booming federal prison population. Moreover, the entity is handicapped not only by a shrinking federal market for its goods but also by limitations on market share and other restrictions imposed on it by various non-prison groups. A 1990 Deloitte and Touche study identified several areas for UNICOR expansion, including expanding its share of the federal procurement market, subcontracting with private entities, or moving to new areas such as jobs that are currently being performed offshore or labor intensive jobs in the area of recycling.

A 1992 BOP study concluded that inmates who received prison vocational training and work experience were less likely to engage in misconduct while incarcerated and less likely to recidivate in the first year after release than inmates who did not participate in such programs during their terms in prison.[166] While the report did not contain any discussion or evaluation of the type of jobs obtained by former inmates and the role of programs such as UNICOR in serving as an effective out-placement program for these individuals, the report did note that most inmates were on their own to find jobs after release. Nevertheless, over half of the inmates surveyed felt that vocational training they received in prison would be useful in their post-release job search, and one-third felt that

UNICOR would help them get a position after prison.

Under present UNICOR policy, most factories are located in high, medium and low security facilities, rather than in minimum and administrative facilities. UNICOR tends to employ inmates with longer sentences and higher security levels, both to recoup its cost of training and because those inmates tend to be greater security risks (and are presumably more dangerous if idle).

Since inmates at the minimum security level are generally allowed to work under supervision off prison grounds at federal government facilities, such as military bases, fewer of these individuals are employed in UNICOR. Unfortunately, most of these prison camp jobs are low-skill in nature, such as cleaning facilities, cutting grass or collecting recyclable materials, and the law limits the ability of BOP to provide these services outside of the federal government, even to non-profit organizations. BOP has developed other structured work programs for minimum security inmates, such as urban work camps and labor agreements with other federal agencies such as the U.S. Park Service.

While the current work programs makes some sense from a security perspective, it has the odd result of focusing valuable work training efforts on inmates who are least likely to be released into society in the near term. Moreover, due to restrictions on the ability of federal minimum security inmates to work in the community, federal prisoners serving shorter sentences often perform lower-skill jobs and receive less training.

BOP has successfully undertaken efforts in recent years to encourage financial responsibility by inmates. Since many inmates owe fines or restitution while in prison, BOP has encouraged inmates to work to pay off these debts under the Inmate Financial Responsibility Program. Inmates work with prison officials to develop financial plans, and when inmates do not participate certain privileges are withheld. Examples include removal from community program participation and pay reductions to the lowest level available. Last year, approximately $14 million was collected under the program and used to finance a fund for victims of crime. Still, some estimate that millions of dollars remain "hidden" by inmates who claim an inability to pay.

Inmates in the federal prison system receive several services during their incarceration. BOP runs commissaries at its facilities, where inmates are permitted to purchase items such as ice cream and cigarettes, and inmates have accounts consisting of money earned or sent to them by friends or family members, through which they are allowed to spend up to $150 per month. Health care services are provided to inmates free of charge (although they must pay for elective procedures), and in some facilities inmates average 20 visits to the health care services per year, compared with four or five times per year average in the country. Pharmaceuticals are also provided to inmates at no cost. In some cases, wardens have complained that inmates use health care as a way to avoid work responsibilities, and at least one warden noted the high use of dental and other services by inmates immediately prior to their release.

One of the more difficult aspects of the federal criminal justice process is the number of agencies that participate in the process and the lack of coordination between the players. Typically, an offender will interact with several federal agencies throughout the process, including several law enforcement organizations, marshals, probation officers, prosecutors, judges, prison officials and post-release monitors. In general, each of the players has its own information system and techniques, and information on an individual is usually entered into a computer a number of times. More importantly, the diffuse nature of the system and the lack of standardization have made it difficult to assemble information and statistics that would assist the players in understanding how to do their respective tasks better.

Recommendations

1. Congress should direct the U.S. Sentencing Commission to develop a performance-based sentencing structure that would increase or decrease an inmate's sentence based on clear performance measures.

Some states have developed a concept of "gain time" that allows inmates to reduce their sentences based on performance, and BOP officials currently have some limited ability to take away or reinstate the 54 days of "good time" currently built into the structure. One alternative that might be considered would be to give inmates a "second look" under the sentencing guidelines if their behavior during prison indicates that they should be reclassified under the sentencing grid. The sentencing guidelines are in part based on classifications about individuals that may be inaccurate or change over time, and allowing inmates to earn credits will help BOP better manage the population.

2. **BOP should make a GED mandatory for participation in UNICOR and should measure the number of inmates who receive diplomas while in prison.**

Alternatively, BOP should require inmates who do not have a GED to pursue the degree on at least a half time basis while in prison and to work no more than a half day in UNICOR until the degree is obtained.

3. **Congress should support UNICOR expansion efforts in areas that do not compete with the private sector and eliminate restrictions that prevent UNICOR from becoming more market-oriented.**

UNICOR is currently limited in its ability to develop economies of scale due to restrictions that mandate that it must not compete with private industry, but it has been working with labor and small business to find areas for cooperation. By expanding its ability to subcontract with the private sector and to expand into other areas, more inmates can be used without negatively impacting the workforce or the private sector.

4. **BOP should examine ways to use UNICOR to provide more opportunities to lower security inmates who are nearing release.**

Currently, UNICOR focuses its efforts on inmates who are generally serving longer sentences. By using UNICOR to help give inmates nearing release some high skill experiences, such as in sales or customer service, the reintegration of former inmates can be improved.

5. **Congress should permit BOP to expand its use of appropriate minimum security prison labor under 18 U.S.C. 4125 to allow local BOP community relations officials to develop and be accountable for innovative work programs at the local level.**

Currently, BOP can provide inmate volunteers to the community, but paid inmate workers are only allowed to work at federal facilities. Expanding work opportunities in the local communities providing they do not take away local jobs will allow prisons to help the community in more innovative ways.

6. **BOP should restrict commissary privileges to inmates who have not paid all fines and restitution.**

For example, BOP could insist that for each $1 in commissary purchases above $75 per month the inmate would contribute at least $2 under the Inmate Financial Responsibility Program.

7. **BOP should charge a nominal user fee for prison health care.**

Currently, BOP provides free health care and pharmaceutical for inmates, and some prisoners use the mechanism as a way to avoid work or other responsibilities. To overcome administrative problems, BOP might charge the user fees through its commissary or other existing accounts mechanisms. Implementation may be phased in overtime and by location to allow evaluation of one or more systems and reduce the likelihood of adverse effects. Congress should consider requiring eligible inmates to pay for their own health care through private insurance and mandate that such companies provide coverage.

8. **The Department of Justice should Improve coordination and standardization among the players in the criminal justice process.**

There are a variety of problems in this area, with each agency having its own information system, criminal coding and other features. Because information about an offender must be entered into the system by several entities, it is difficult to plan prison space or other needs. Moreover, performance measures and recidivism statistics are hard to compile.

Implications

Developing performance-based sentencing guidelines will encourage inmates to engage in self-improvement and assist BOP officials in managing the prison population. Unlike parole, which critics viewed as discretionary and inconsistent, performance-based guidelines would reinforce the "truth-in-sentencing" objectives of sentencing reform while providing incentives and sanctions based on inmate behavior and achievements. Since the sentencing guidelines place offenders into categories based on behavioral and other characteristics, inmates who have acted well or poorly should have the opportunity to move up or down the categories through a "second look." While BOP currently has the ability to take away or reinstate good time during a year, the good time vests at the end of a year, making it difficult to control inmate behavior, especially for inmates with longer sentences.

While BOP views UNICOR as a valuable way to keep the inmate population busy, in cases where waiting lists exist educational programs would similarly keep inmates occupied while giving inmates an incentive to earn the degree. Measuring the rate of inmates receiving GEDs will ensure that BOP measures results rather than process.

UNICOR is effective in keeping inmates busy and giving some inmates solid job skills. Allowing it to continue in its efforts to expand will ensure that federal inmates can be used for productive purposes while gaining job skills for after their release.

Despite its effectiveness in curbing idleness and its ability to remain a financially self-sustaining program, UNICOR does not focus on giving relevant job skills to inmates who are near their release. Reviewing UNICOR's mission to find ways that it can help in assisting inmates who are near release should help increase the likelihood that inmates find jobs after leaving prison.

While there are several concerns regarding the use of prison camp labor in the community, such as security issues and concerns from local labor groups, the current regulations do not encourage the development of federal inmate programs that could provide valuable service to local communities on projects that will not be accomplished otherwise. There are a number of innovative training programs, especially in the area of non-profit organizations, and removing this restriction will empower local prison officials.

Many of the items in the BOP commissaries are discretionary expenses. Since many of the inmates receive significant resources from the outside, using those resources to help victims' families has an element of symmetry and would ensure that fines and restitution are paid before inmates can consume more goods.

Aside from generating some additional resources, a nominal user fee will limit the use of health care services by inmates as a way to avoid work. It will also limit wasteful use of the service. Of course, some limits on the fee will be needed to ensure that those inmates needing service receive it.

Bringing the various players together will help make the criminal justice a more seamless process, with a greater opportunity to develop management tools and measures to help assess the impact of actions on the entire process. It will also reduce wasteful duplication in entering and accessing information about offenders. Some of the law enforcement organizations are working on a pilot program in the area of automatic booking systems, and several states have moved ahead with efforts to develop and "Offender Based Tracking System". The Department of Justice should look for ways to standardize its information so it can be shared across the organization.

Fiscal Impact

Reexamining inmate sentences may reduce costs by allowing inmates to leave prison sooner. Aside from that, providing incentives to improve behavior may reduce some costs, but it is unclear by how much.

Encouraging inmates to receive their GED should not cost any more money since the classes are already being offered. Since many of the inmates who would have been paid by UNICOR will be kept busy, the wages that would have been paid to these individuals will be saved.

In 1992, UNICOR showed earnings of $20 million, which was used to build new factories to keep up with the growing inmate population. By increasing the size and efficiency of the organization, additional profits might be achieved. Moreover, by subcontracting with the private sector, it is possible that greater opportunities for revenues might be realized. It is difficult to estimate what cost, if any, this recommendation will have.

While commissary surcharges will have little fiscal impact, they may provide an incentive for inmates to keep up with their financial obligations.

In the area of health care, one of BOP's fastest growing expenses, the government should save a substantial amount of money by cutting dow on the wasteful use of health care resources.

Creating a Quality Management Culture

IMPROVE MANAGEMENT OF FEDERAL ASSETS TARGETED FOR DISPOSITION

Background

The Federal Government acquires assets for disposition as a consequence of regulatory or programmatic actions. These assets can be categorized into three primary groups: financial assets, real property and personal property.[167] As of September 30, 1992, 22 agencies maintained their own programs for disposing of $193 billion in assets targeted for disposition. The largest nine agencies each had assets valued at more than $600 million. Together, these nine agencies were responsible for more than 99 percent of the total inventory.

Nine Largest Agencies Holding Federal Assets

Name	Percentage Held
Resolution Trust Corporation (RTC)	73.8
Federal Deposit Insurance Corporation (FDIC)	16.8
General Services Administration (GSA)	3.3
Defense Logistics Agency (DLA)	2.1
Department of Veterans Affairs (VA)	1.2
Department of Housing and Urban Affairs (HUD)	0.9
Department of Justice (DOJ)	0.7
U.S. Customs Service	0.6
Other Agencies[168]	0.6
Total	100.0

Financial assets include items such as loans, cash, stocks, partnership shares and bonds which account for 72.3 percent of the total federal assets. Real property includes residential and commercial real estate, farmland, and vacant land which account for 15.4 percent and personal property accounts for 12.3 percent of the total.[169] Assets ready for disposition are normally those acquired through forfeiture, seizure or foreclosure.

Forfeiture and Seizure. The Federal Government has had the authority to take property through forfeiture for more than 200 years. It was not until about 1980, however, that it began to apply the asset forfeiture laws as powerful weapons against organized crime figures. The number and value of seizures grew dramatically. In 1979, the total value of seized property inventories at the Department of Justice and the U. S. Customs Services was $33 million. By 1992, the inventories were valued at $1.9 billion. Assets seized now include 16,000 cars; 5,200 real properties; other property (such as planes, boats, jewelry, and antiques) valued at about $360 million and $550 million in cash.[170]

On June 28, 1993, the Supreme Court ruled unanimously that the Constitution limits the Government's authority to seize the homes, businesses and other property of criminals and suspects. The Court found that the Eighth Amendment clause that bars "excessive fines" requires that there must be some relationship between the gravity of an offense and the property that is seized.[171]

The Federal Government has a fragmented approach to managing and disposing of assets targeted for disposition. Over time, authority for managing and disposing of federal assets has been given to many agencies and congressional oversight has been spread among numerous committees.[172]

The Department of Justice and Customs Service initially focused more on seizing criminals' holdings than managing seized assets. Due to the mismanagement of assets, the federal government lost revenue. By the late 1980s, both agencies had developed better ways to inventory these assets. Despite serious management problems, the asset forfeiture process has been improving and the use of asset forfeiture as a law enforcement tool has been quite successful. However, a number of problems have emerged.

The federal government currently has two separate Asset Forfeiture Funds. In DOJ, the Executive Office of Asset Forfeiture was created to coordinate the asset forfeiture process from cases arising out of law enforcement activity, as well as the forfeiture process of certain Department of Treasury agencies who were part of the Justice program. Treasury also had its own asset forfeiture program and fund for forfeitures arising out of the Customs law enforcement activities.

Both the DOJ and the Treasury programs have been criticized by the General Accounting Office (GAO) for mismanagement of seized assets. In the late 1980s, DOJ began work on the Consolidated Asset Tracking System (CATS), a computerized system of monitoring seized assets. In the DOJ program, the U.S.M.S.assists in the seizures of assets, and on management and disposition of them. Under the Treasury system, a private contractor developed software and other systems which will be turned over to the federal government when the contract expires. Although the agency has made significant progress to resolve these problems there is one new one remaining problem.

A new Department of Treasury Asset Forfeiture Fund, which has been established to handle the new and transferred authority for Treasury Agencies, will become effective in October 1993. It will be the depository of cash and the proceeds of sale of the assets seized by Internal Revenue Service (IRS), Bureau of Alcohol, Tobacco and Firearm (AFT), U. S. Secret Service and the U. S. Customs Service.[173]

Uniformity and consistency of legal administration procedure and interagency cooperation have been cited as the keys to the success and integrity of the asset forfeiture program in Federal Law enforcement.[174] The proposed duplication of administrative functions is a potentially new problem which could create added administrative cost, duplication and procedural differences, possible disparity in due process, and create unneeded competition between agencies.

Another problem is the lack of sufficient USMS personnel to administer the Asset Forfeiture Program effectively, the "custodian" of all DOJ seized assets. . The program has grown exponentially since 1984.[175] Since 1986, properties in the custody by the U.S. Marshal have grown from 3,664 to 31,698 in 1992[176] In spite of the increase in assets and management and disposition responsibility, the U.S. Marshals have not received any increase in staffing for this activity. Although most of the fund's administrative costs attendant to seizure, management and disposition are paid from the proceeds of asset sales, the DOJ policy will not use the Fund to pay government employee salaries. This hampers the US Marshal's in their efforts to effectively manage and control the Fund assets. Personnel and related expenses for the USMS Seized Assets Division, not funded by the Assets Forfeiture Fund are approximately $28.5 million.[177] The overall operating program costs for the fund a for fiscal 1990 was $328 million.[178] This is potentially a problem for the new Treasury fund.

While it is important to maintain a check on the asset forfeiture process, especially in the area of due process, there appear to be some areas in which the technique can be expanded. In particular, U.S. Attorneys have suggested that the seizure of assets from illegal aliens engaged in smuggling or any crime for profit would be warranted.

Foreclosure. Because of debtor defaults, the government has become one of the largest holders of housing, farm, and commercial real estate. The acquisition, management, and disposition of foreclosed real property has a significant impact on agencies' administrative workload. Presently, it is extremely difficult to assess the magnitude and value of the total holdings and the effectiveness of procedures, strategies, and systems for managing and disposition of real property cross agencies and government-wide. Inefficiencies in the management and disposition of real property can result in higher inventories and associated carrying costs, and a failure to realize the fair value of property sold by the government.[179]

A study of how four government agencies' (FmHA, HUD, SBA, and VA) property management programs operate reported that the following conditions existed in all of the agencies. They are organized to support loan programs, not property management. All four agencies have traditional hierarchial structures, extensive service-oriented field office networks, and detailed procedures for property disposition. The federal budget process constrains the agencies ability to change staffing levels in time to respond to rapid fluctuations in inventory volume. Private sector property management firms typically require fewer employees than the Federal agencies because the private sector asset management employees are not responsible for administering program benefits as well as managing and disposing of properties. All agencies use private contractors to perform specific tasks related to the management and disposition of real property.[180]

Program and legislative constraints slow disposition in some cases. Agency and congressional concerns over the supply of low-income rental housing and family-sized property create unique obstacles to rapid disposition of HUD multi-family properties. FmHA must make properties available to program-eligible applicants before offering the properties to other buyers. Former owners and/or tenants may exercise leaseback/buy-back options on FmHA-acquired farm properties for a period of 180 days. FmHA farm properties may also be deemed suitable for wildlife programs by the Fish and Wildlife Service. HUD must lease 10 percent of its single family properties to non-profit or state governments for housing for the homeless. VA must sell at least 35 percent of its properties for cash. SBA is required to evaluate the effect of its commercial property sales on local economies.[181]

The federal government has a fragmented approach to managing and disposing of assets targeted for disposition. Over time, authority for managing and disposing of these assets has been given to many agencies, and congressional oversight has been spread among numerous committees.[182]

Significant change is needed government-wide in the acquisition, management and disposition of real estate assets. Too little attention has been paid to developing clear-cut policies and cohesive strategies or to the sharing of innovations and creative solutions.

While numerous reports, studies and draft legislative packages addressing some of these issues may be found throughout Government, may of these documents focus upon individual agency programs and do not address the totality of the asset management and disposition issues Government-wide.

Using Real Property for the Affordable Housing Disposition Programs. Each of the following agencies with housing stock have an affordable housing mandate: HUD, Veterans Administration, Resolution Trust Corporation, General Services Administration and the Federal Deposit Insurance Corporation. Affordable housing is not the primary interest or focus of any of these agencies. Other agencies also have acquired of housing stock. Another issue paper recommends how the affordable housing program could be strengthened by consolidating the effort in one organization and/or use of a common reference system of available housing stock.[183] Another National Performance Review issue paper has been written on this subject.

Owned and Leased Space by the Federal Government. Instead of disposing real property it could be used by the Federal Government. A real property fund would be established for GSA to promote sound real property management. GSA would compete with private industry in leasing space to the Federal Government and could lease space to private industry. Another National Performance Review issue paper has been written on this subject.

Recommendations

1. Now that Congress has created a new Department of Treasury Asset Forfeiture Fund and the DOJ and Treasury have memorandums of understanding on cooperation,[184] sustained oversight is needed by both agencies to see these problems through to resolution.

2. Eliminate the DOJ restriction against paying the federal employee personnel costs from their asset forfeiture fund.

3. Follow-up on the results of OMB's recently initiated study on the magnitude of the Government-wide problem. OMB's management side is currently conducting a management study on the magnitude of the problem and modeling potential solutions. Both the General Services Administration and Treasury's Financial Management Services have written papers that should be considered by OMB before final resolution.

Implications

The result of the fragmented asset management approach has been the absence of a government-wide asset inventory policy and the lack of any central control over asset disposition activities as illustrated by the absence of a government-wide inventory of these assets.[185] For forfeiture and seizure: consolidating aspects of the two property management operations should lead to tremendous economies of scale, particularly in the administrative area; and for ensuring that assets would be sold at a fair market value. It also could resolve some of the turf problems between Justice and Treasury.

Fiscal Impact

GAO estimates that consolidation of the seized asset funds would save about $2.5 million annually in administrative costs by reducing duplication of effort and would lead to additional savings in contractor costs as a result of economies of scale.[186] The fiscal impact worksheets are being developed by Treasury, Justice, and OMB.

REDUCE DUPLICATION OF FEDERAL DRUG INTELLIGENCE SYSTEMS AND IMPROVE COMPUTER SECURITY

Background

In the Intelligence Authorization Act For Fiscal Year 1994, the Permanent Select Committee of Intelligence submitted a report which reads "...the Committee expressed concern over the number of individual, uncoordinated counter-narcotics initiatives within the intelligence community... A principal reason for the lack of coordination is that no single person or organization has a clear mandate to oversee intelligence collection, analysis and reporting on the counter-narcotics effort... Intelligence centers have proliferated in the intelligence community, defense department and law enforcement agencies, with little attempt to ensure that the analytic efforts of these centers are coordinated and responsive to the customers they support."[187]

In a recent General Accounting Office (GAO) report "Federal organizations reported operating 19 counter-narcotics intelligence centers with another, a national center planned for the summer of 1993."[188] Fifteen of the 19 centers are producing time-sensitive intelligence information that law enforcement agencies use primarily to arrest drug traffickers quickly and seize illegal drugs. The other four centers, for example the Drug Enforcement Administration's (DEA's) Intelligence Division, generally produce intelligence about long-term trends in illegal drug trafficking. In addition, 12 of the 19 centers have missions that encompass more than intelligence gathering, processing, and analysis. The seven remaining centers have intelligence gathering, processing and analysis as their sole mission.

The reports reflects that significant duplication exist in the analysis and reporting of drug intelligence data. The primary function of 15 of these centers is to gather and analyze time-sensitive information such as current location and movement of specific drug smuggling activities, and the remaining four centers generally produce information on long-term trends and patterns.

This data is used to determine where to concentrate future drug interdiction resources. Intelligence is very important to successful interdiction. The Office of National

Drug Control Policy (ONDCP) reports that in fiscal 1991 more than 75 percent of the cocaine seized by the U.S. Customs Service (Customs) and 70 percent of cocaine seized by the U.S. Coast Guard resulted from prior intelligence. The types of intelligence collected generally fall into three categories: Tactical intelligence - time-sensitive information for immediate use (e.g., information on the present or imminent location of a drug smuggling aircraft); Operational intelligence - information used to support investigations and prosecutions (e.g., information on specific persons or organizations that are targets of investigations); or Strategic intelligence - information used to support policy and planning decisions (usually at the national level) and generally providing a longer-term focus on patterns and trends.

Vast amounts of varied drug intelligence information are being collected by a wide array of agencies and used to support their differing needs and missions. For example, four intelligence centers analyze air traffic activity along the southwest U.S. border. Each reports on aircraft type, routes, and suspected drugs being transported. Each agency analyzes various types of drug intelligence to support their individual operations. According to a GAO report, as a result of a random sampling of organizations, only one of eight had coordinated with, or notified, other organizations of its efforts during the data gathering and analysis phase. The law enforcement organizations with the primary responsibility for drug intelligence are the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Naturalization Service (INS)), Customs, and the U.S. Coast Guard. In addition, the DOD and the Central Intelligence Agency (CIA) also provide drug intelligence support to law enforcement.

The El Paso Intelligence Center (EPIC), managed by the Drug Enforcement Administration (DEA), was established in 1974. EPIC is a multi-agency center which provides complete and accurate intelligence on drug movement by land, sea and air throughout the world. It gathers and analyze primarily time-sensitive information used in effecting investigations and interdiction of drugs. EPIC's primary mission is tactical intelligence, however, according to officials at EPIC, to varying degrees, EPIC accomplishes operational and strategic intelligence objectives.

The Financial Crimes Information Network (FINCEN), managed by the Department of Treasury, was established in 1990. FINCEN provides both tactical and strategic intelligence on all financial crimes and is not limited to just those that are drug related.

The Counter-narcotics Center (CNC), managed by the Central Intelligence Agency (CIA), was established in 1989. The CNC provides overall guidance and support to the intelligence community (IC) counter-narcotics efforts. It provides the interface between the IC intelligence producers and the consumers, including law enforcement.

The National Drug Intelligence Center (NDIC), managed by the Federal Bureau of Investigation (FBI), is scheduled to become operational in the summer of 1993. The NDIC is a multi-agency organization which will produce strategic (i.e., long-term trends) and organizational studies encompassing domestic, foreign, and international issues and organizations affecting the nations drug control problem.[189] The establishment of NDIC was intended to develop a central entity to consolidate drug intelligence beyond the capability of any single agency. The mission of the NDIC is to collect and consolidate multi-source drug information to produce organizational and strategic intelligence analyses for use by national policymakers, diverse law enforcement entities, to promote information sharing among these entities; and to promote compatibility standards for drug intelligence information collection systems.[190]

The idea of NDIC is to both complement and utilize other intelligence centers, as appropriate. For example, as the NDIC sets priorities it may ask one or more of the centers to contribute relevant intelligence and/or to conduct portions of the analysis. The NDIC will work extensively with EPIC, FINCEN and CNC. These centers will continue to operate separate and apart from the NDIC in pursuit of their individual missions.

Some drug intelligence experts and budget officials have expressed concerns about NDIC. The concerns are: 1) Does NDIC duplicate EPIC 2) What is the added value of NDIC, is the cost justified and could EPIC have been enhanced to meet the same objectives at less cost; 3) Since NDIC's construction was funded under a DOD appropriation bill, how will its future operations be funded; 5) Why was NDIC constructed in Johnstown, Pennsylvania, with a satellite office in McLean, Virginia. Why not the Washington, D.C. area; and 6) Does NDIC's have a clear mission. It is the opinion of some drug intelligence experts that the current proposed mission of NDIC duplicates to EPIC to large degree and other intelligence collection and analytical centers, and to a lesser degree those of the FINCEN.

At the time NDIC was envisioned there was a need to be proactive in the "war on drugs" and the military had acquired an enhanced role in the counter-drug effort. This resulted in its funding being attached to a Department of Defense (DOD) appropriation bill. The President's 1990 National Drug Strategy directed the creation of the NDIC and Congress provided $10 million funding for the establishment of NDIC in the Fiscal Year 1991 DOD Appropriations Act. Forty million dollars was appropriated in fiscal year 1992, and the budgeted expenditures through fiscal year 1994 is $50 million. As of the second quarter of fiscal year 1993 about $18 million had been expended and about $ 38 million obligated. As of July 1993, there were 92 employees, and it is projected that by end of fiscal year 1993 and 1994, there will be 148 and 211 employees respectively. [191]

It is the opinion of some drug intelligence and budget experts that EPIC could have been upgraded at less cost and have satisfied the same objectives as NDIC. These officials argue that an effective interagency infrastructure is already in place at EPIC. That EPIC has an approved charter, memoranda of understanding with participating agencies, a system for timely collection, analysis, and dissemination of intelligence. Also in place is a management structure for both administrative and intelligence support.

The NDIC officials argue that there is a difference between EPIC and NDIC. There does not appear to be any federal guidance or leadership to facilitate and ensure the coordination, compatibility and sharing of drug-related intelligence, and to identify and eliminate potential duplication. The Director of ONDCP establishes priorities for intelligence functions and encourages agency cooperation in coordinating and sharing intelligence activities, however, he does not have the authority to direct agency intelligence activities. He has only indirect leverage to influence coordination through his budget review and certification responsibilities. The Attorney General, and Secretaries of Treasury and Defense have no direct control over drug intelligence systems outside their respective Departments.

In a General Accounting Office (GAO) report, dated February 1992, it was reported that DEA is not complying with federal requirements to ensure that sensitive and national security information processed on computer equipment is protected from unauthorized access and disclosure. Computer systems which includes criminal and intelligence data, could possibly endanger lives, undermine ongoing law enforcement investigations, and ultimately, jeopardize the national war on crime and drugs. Such systems should be enhanced to meet applicable computer security requirements.

Recommendations

1. The President should give the Director of Law Enforcement (DLE) the authority to manage a national comprehensive consolidated counter-narcotic program.

2. The DLE should eliminate the National Drug Intelligence Center (NDIC) and enhance the El Paso Intelligence Center's (EPIC's) to meet current strategic mission. Another use of the NDIC should be considered.

3. The DLE should evaluate and reduce the number of drug intelligence centers and systems to minimize unnecessary duplication. The DLE should ensure compatibility and integration of all drug intelligence centers and systems, as practical.

4. The DLE should ensure that drug intelligence information is shared among federal, state and local law enforcement agencies, as applicable.

5. The DLE should evaluate and improve, as applicable, the security and privacy of drug intelligence systems and information management systems. The DLE should ensure that such systems are being operated in compliance with national computer security requirements for safeguarding sensitive and classified data.

6. Develop incentives which ensures and encourages all source data sharing among agencies.

Implications

1. This will serve to enhance systems which are integrated, compatible and uniform.

2. This will reduce duplication and cost, and increase efficiency.

3. This will promote cooperation, coordination and information sharing.

4. Although efficiency will be increased, some agencies will still prefer to have their own system. They may not trust others "having access to their data."

Fiscal Impact

Fiscal impact is being finalized.

REINVENT THE IMMIGRATION AND NATURALIZATION SERVICE'S MANAGEMENT PROCESSES AND ORGANIZATIONAL STRUCTURE

Background

The employees of the Immigration and Naturalization Service (INS) cannot articulate a clear sense of mission. INS has not had a strong voice in articulating the U.S.' immigration policies. INS' organizational structure and management policies highly centralize authority and responsibility in headquarters offices rather than delegate them to the field. INS employees are faced with the requirement to cope with and accurately explain to customers complex and frequently contradictory laws, regulation, policies and procedures with poor or no informational information handouts. INS program budgets are compartmentalized and fenced. INS' internal and external customers express dissatisfaction.

The National Performance Review has recommended the creation of a single Border Management Agency (see elsewhere in this report). Whether or not such an agency is created, the issues outlined in this section must be addressed, either by INS or by the new agency.

The new INS Commissioner is faced with a daunting challenge: to articulate a vision and forge an organization structure and management systems capable of coping with ever mounting workloads, the lack of national consensus, and steady if not decreasing resources. INS employees' belief in and fundamental support for that vision will determine the energy and innovation they bring to the task. Their empowerment will be critical to success.[192]

The lack of national consensus about immigration policy and the powerful interests groups with diametrically opposite views result in unclear statutory direction and frequently put the agency's personnel into "no-win" positions.[193] Legislation has been introduced and enacted with little input from INS, despite its expertise. Those inside INS and outside believe that INS' organizational placement within the Department of Justice (DOJ) in previous administrations, caused INS' views on immigration legislation to be inaccurately or incompletely transmitted to the Congress.[194]

Legislation is frequently enacted without adequate consideration of its impact upon INS' effectiveness.[195] Many INS employees expressed frustration that neither the Congress nor appropriate federal agencies commission impact studies before immigration legislation is passed.[196] And once enacted, resources to carry out the legislation, and lead time, are almost always inadequate.[197] As a result, discrepancies between the laws on the books and they way INS can enforce them cause innumerable problems.[198] While most accept that the political arena changes the policy, such changes affect workload; the bureaucratic system can rarely adjust quickly enough.[199]

Immigration consequences flow from almost all federal government actions but are infrequently considered. For example, decisions to embargo Haiti or pursue the North American Free Trade Association (NAFTA) have and will continue to impact upon will the flow of people into the U.S.[200]

The costs of changes in immigration policy, or the U.S. government's inability to carry out the stated policy, impact heavily upon state and local governments, and the taxpayers, but they have little direct input into those decisions.[201]

Some have suggested the solution lies in the removal of INS from the Department of Justice, and its elevation in the federal government.[202] For these and other reasons, the National Performance Review has recommended the creation of a single, independent border management agency (see elsewhere in this report).

Other' suggestions are more systematic, arguing inefficiencies or ineffectiveness could be prevented by: (1) requiring resource impact studies before any administrative or legislative immigration policy changes are made; and (2) ensuring required increases in, or reprogramming of, resources, are in place simultaneously with the effective date of the new policy.[203]

INS employees are prevented from "selling" the agency's successes by the current organizational structure and management policies, by their lack of clear understanding the immigration mission and by poorly articulated and conflicting policies.[204] We found employees at every level in INS anxious to get that story out, but unable to do so. One employee told of the difficulty in securing multiple levels of management approval for a simple news release. Another described being chastised for an accurate (but uncleared) statement to the media.

Surveys have indicated the majority of U.S. citizens and residents, when asked, are opposed to illegal immigration.[205] But these same individuals are likely to deplore the deportation of a specific single illegal immigrant.[206] INS does not appear to initiate the positive stories. Negative coverage about "harmless" deportations leaves INS in the defensive--explaining the enforcement of the law or responding to charges and allegations.[207]

INS' lack of accurate, up-to-date informational pamphlets is a source of customer frustration. One of the reasons the Internal Revenue Service, one concerned employee contends, turned around its reputation was its excellent brochures and handouts responding to a myriad of taxpayer questions.[208]

It is no surprise that INS has a reputation as hostile and unresponsive to the public's needs.[209] Some attribute that reputation to fact that the traditional career path inside INS has favored law enforcement.[210] The Border Trade Alliance (BTA), for example, believes the U.S. Customs Service (Customs) is more receptive to BTA's needs than INS is. It alleges that INS employees are trained to treat everyone as suspicious, while Customs is more professional.[211] Others attribute it to the strain INS employees undoubtedly fact in keeping up with the complexities of immigration laws and policies, which "have become as complicated as our tax code."[212]

The public's perception of INS and the constraints it must face in carrying out its very difficult mission is a critical factor in its success or failure.[213] Customs has done an excellent job in making its case to the Congress and in involving community based organizations to resolve mutual problems.[214] INS' could use its field offices to do the same.[215]

Many inside and outside INS, and indeed the U.S. government, have strong views about whether INS' "twin missions" are inherently incompatible.[216] Clearly INS' leadership faces a challenge in balancing enforcement with service.[217] Some describe it as a "fundamental tension" between "competing objectives;"[218] others as an "awkward dynamic."[219]

Since immigration is restricted, some argue, INS has but one function: "to ensure that only those persons may enter who are legally entitled to do so; and to screen out the majority of the world's population who is not. Expediting lawful traffic is merely a bi-product of the main mission."[220] They stress all INS functions are part of a whole (two sides of same coin[221]), with one impacting the other:[222]

> "If alien entrants are not effectively controlled, then processing for both illegal entrants (detention and deportation) and legal entrants (inspections, examinations, and naturalizations) become impossible to manage. If border controls and refugee/asylum law are applied poorly, then the number of aliens entering the United States soar, and the system is overloaded. If the processing function is not prompt and fair, the system backs up, frustrating legal immigrants and establishing incentives for more and more people to evade the law. It is an error to focus on inspection and examination delays and costs only; this diverts attention from the importance of effective departure and entry controls and related border security."[223]

Several argue enforcement--most particularly the Border Patrol--should be separated from service functions,[224] because mission accomplishment is hampered by their "institutional dichotomy."[225] One former INS Commissioner believes the Border Patrol should be an independent entity within the Department of Justice, to enable more easy linkage with other "law enforcement" units.[226] A corollary benefit would be the change, over time, to a service orientation in INS' top management positions.[227]

There is a querulous quality to many of the complaints. One interlocutor stated: "No one understands the mission of enforcement. Congress favors the service side." Nevertheless, valid concerns about duplication, confusion and overlap among programs exist.[228] Both sides of the house suffer from lack of resources and poor management systems.[229]

Some customers allege INS has an "undue interest in promoting its enforcement function," citing the "Green Card" Replacement Program which was intended to replace easily counterfeitable green cards with a new, harder to forge version.[230] As they see it, controversy concerning the program's cost to customers versus existing backlogs in other service areas resulted in successful litigation staying the program on the basis of INS' failure to observe the Administrative Procedure Act and the Immigration statute.[231] They argue the program was the result of "myopic management" and "insufficient planning," resulting in disregard for how service delivery might be affected.[232]

Selected Office of the Inspector General (OIG) personnel, when polled, gave the unanimous opinion that INS has an "institutional inferiority complex" and a morale problem. Examples of employees' perceptions include: "everyone" has new vehicles while theirs are battered clunkers; INS' positions are lower graded; and INS is under-funded.[233]

INS does not need to be studied. The National Performance Review confirmed that INS has been studied sufficiently, even if there is no "right" answer. Decisions are now necessary to revise an organizational structure which defies logic and to revitalize a demoralized staff.

INS's current organizational structure is both overly decentralized and overly centralized; cumbersome and top heavy; and ineffective and unresponsive. It results in ineffective coordination, lack of communication, and program stovepiping. Most particularly, it creates significant span of control problems.

INS' field operations currently consist of 103 separate reporting elements: four Regional Offices (Eastern, Northern, Southern, and Western); four Regional Service Centers; seven Asylum Offices; 36 District Offices (33 domestic, 3 overseas); and 21 Border Patrol Sectors. Each Regional Office is split into a single administrative and eight operational components: the Special Assistants for Field Operations (SAFO -- a single individual and his/her secretarial support), and the seven individual program components: Border Patrol, Detention and Deportation, Investigations, Intelligence, Asset Forfeiture, Adjudications and Inspections.

UNIT	NUMBER/TYPE	COMMENTS
Regional Offices	4	Administrative
	32	Operational: 4 SAFO, 28 Program
Regional Service Centers	4	
Asylum Offices	7	
District Offices	36	33 Domestic, 3 Overseas
Border Patrol Sectors	21	

Total 104

The Executive Associate Commissioner for Operations is the first line supervisor over 58 field units: the 4 SAFOs, the 33 domestic District Offices and the 21 Border Patrol Sectors. The Executive Associate Commissioner for Management is the first line supervisor over the four Regional administrative staffs. The Director, Office of International Affairs and Outreach, is responsible for ten offices: the seven Asylum Offices and the three overseas District Offices. The Director, Office of Service Center Operations, is responsible for the four Regional Service Centers. And the seven program Assistant Commissioners are each responsible for the four program components in each of the Regional Offices (28 in total), effectively "stovepiping" these operations.

INS does not have systematized policies, procedures and processes, exacerbating problems relating to span of control and lack of functional interface between and among these offices who need to interact effectively to accomplish the mission.[234]

INS was reorganized into its current structure in order to correct real or perceived problems with the power structures created by former political appointee Regional Commissioners whom the INS Commissioner felt unable to direct or control. It was intended to ensure all agency field elements followed the same national policies. Some have pointed out the problems "resulted from issues not related to the organizational structure. Rather, it was a leadership and accountability problem."[235]

The reorganization has created more problems than it solved. The effects are institutional conflict, layering, turf battles and span of control concerns.

There is currently no efficient way to resolve routine conflicts. Field managers can either to go to a headquarters program manager--whose interests are parochial--or ask the one executive responsible for 58 field elements to intervene. The resultant span of control has created both excessive field autonomy and debilitating workload for that executive.[236]

Field elements have made it clear both in writing and in interviews with the National Performance Review that they feel the lack of direction and control, and the resultant isolation; do not feel like participants in the process; do not know how to influence agency action; do not know what is expected of them; and do not know to whom to turn with concerns or to resolve conflicts.[237]

Management is perceived as having become a bunker, with policy managers inappropriately involved in the "priority of the day" daily operations and ad hoc decision making in very complex and varied areas.

The span of control is enormous. And it results in "rowing" rather than "steering." It would be virtually impossible for one individual responsible for 58 elements to visit every office during the year, let alone become familiar with each operation. INS is too vast an organization with too many complex missions and responsibilities for it to be managed by ad hoc decision making or by any one individual or group of individuals.[238]

While they are unlikely to agree with this view, the organizational structure is widely perceived to have created isolation among and between headquarters program managers. Each is seen to develop and issue program specific policies, often without consultation with other headquarters programs.

INS' external customers are aware of the organizational disarray. One testified: "The Headquarters Office continues to struggle to regain control over the field, many district directors cut paths of their own, and the regional officers are protective of the autonomy that has evolved. The end result is an agency that lacks unified policy, standards, and procedures...The diffusion of power undermines the effectiveness of service delivery."[239]

There is a wide consensus in the field, at both the regional and district levels, that a return to a regional structure is essential. This consensus is not shared by headquarters personnel.

Some regions, perceiving a void in direction from Washington, try to fill it, despite their official lack of supervisory or operational authority. When such efforts work, they are only the result of cooperation among elements. One officer cited the Western Region's efforts to coordinate submissions for a "Management Controls Information" report, which was subsequently cited by Headquarters: "It is worth noting that during a recent exercise to identify and describe the current management controls in place within INS, the Western Region assumed the role of coordinator for the submissions from Districts and Sectors within its geographical boundaries. As a result of this regional involvement, the Western

Region's submissions were far more complete and more timely than those of INS field locations elsewhere."[240]

Programs, regulations and Washington guidance are interrelated, but not coordinated. One officer cited the example of implementing the Chinese student protection provisions. These individuals could adjust from temporary protected status to permanent residents by submitting applications to Service Centers, which in turn must decide which individuals might require interviews. The interviews are conducted by District Offices. Sophisticated liaison between service centers and districts is needed.[241]

Washington managers, and some field elements, argue just the opposite. They view the former regional operations as obstructionist, either not transmitting headquarters' instructions, delaying them in order to add a "cover sheet" or sufficiently changing the "spin" so as to adversely affect the intended outcome.[242] Others argue for elimination of the vestigial staffs who only serve as a conduit for the information flow from Headquarters to the field and vice versa, and imperfectly filter and slow down the information.[243]

One executive has proposed reconstitution of regional operations with the managers physically located in Washington.[244] A former INS senior manager, now with the Air Transport Association, cites the private sector's success with such an alternative structure.[245] Others argue that field commanders with line authority who are familiar with the politics at the local level and are able to react quickly are needed.[246]

In keeping with the themes of "Reinventing Government," decision-making and resource allocation need to be decentralized and delegated to the lowest possible organizational level. As one officer stated: "High-level officials in Washington, no matter how well meaning, are not in a position to make realistic decisions regarding field operational needs."[247]

On the other hand, delegation of all policy and operational decisions to 103 entities with no mechanism for coordination is equally ineffective.

INS management also needs to reintroduce effective strategic planning, one that is based upon the fullest possible participation of its field operations personnel. An effective system encourages a wide variety of input to ensure the wisest course of action and participants' understanding and buy in.[248]

For example, among the challenges INS must face in the next year will be the over one million aliens in the Los Angeles area alone who were legalized under the Immigration Reform and Control Act of 1986 (IRCA) and will become eligible for naturalization in 1994. If they choose to avail themselves of that benefit, they will then be eligible to apply for immigrant visas for their immediate relatives. How headquarters and the field work together to address this potentially overwhelming workload will be critical.[249]

Strategic planning is rarely effective without adequate financial management and information systems. INS has been cited in congressional testimony (quoting a General Accounting Office (GAO) report) for maintaining: "automated records on over 23 million aliens plus 30 million non-immigrant students and visitors" which, along with "management and programs data, are kept in over 120 information systems, ranging from large, complex, centrally-developed and maintained systems to small computer applications used in field offices. In addition there are many individually developed manual information systems." Despite this repository of data, it is alleged that INS has virtually no accurate data available to it in any category.[250]

The Justice Inspector General, also quoting a GAO report, testified, because of a lack of resources and planning for information systems, INS' managers and field officials did not have information which was adequate, reliable, and timely enough to carry out the Service's mission effectively.[251]

Recommendations

The National Performance Review has recommended the creation of a single Border Management Agency (see elsewhere in this report). The new head of that agency, if created, should take the actions directed to the Commissioner of the Immigration and Naturalization Service in the following recommendations.

1. Immediately after assuming office, or immediately after issuance of this report, whichever comes first, the Commissioner of the Immigration and Naturalization Service (INS) should take the steps necessary to develop the best possible (given the realistic constraints of lack of national consensus) vision statement for the INS for the next five years. The fully vetted proposed vision statement should be submitted to the

Attorney General for approval within sixty days after swearing in or issuance of this report. The development should first and foremost involve personnel at all levels of INS. Input and comment should be sought from other U.S. government executive branch entities (including but not limited to the Department of the Treasury, particularly the U.S. Customs Service; the Department of State; the Department of Labor; other elements of the Department of Justice; the National Security Council, the Domestic Policy Council, and the Economic Policy Council); members of congress and their staffs; and concerned interest groups. The views of state and local governments should also be sought.

2. **After approval, the Attorney General should present the proposed vision statement to the President for his endorsement.**

3. **Within thirty days after the completion of the proposed vision statement, and building upon the communication and coordination systems established during its development, the INS Commissioner should propose to the Attorney General for submission to the President an interagency process for ensuring all future federal actions which could impact upon immigration are appropriately vetted with INS.** This proposed process should also be developed initially by personnel at all levels of INS, and vetted with other U.S. government executive branch entities. Input should also be sought from concerned congressional committees, to encourage their cooperation in commissioning impact studies prior to enacting changes to immigration legislation.

4. **The President should issue the proposed interagency process as an executive order or national security directive, whichever is more appropriate.**

5. **Immediately upon the President's approval of proposed vision statement, and building upon the communication and coordination systems established during its development, the INS Commissioner should direct each regional office, in close coordination and cooperation with all field units in that geographical area (including but not limited to District Offices, Border Patrol Sectors, Asylum Offices, and Regional Service Centers) to propose within thirty days coordinated public outreach and information campaign strategic plans for the coming six month period.** These campaigns should include, inter alia, meetings with concerned interest groups, private sector representatives, the media, state and local governments, and other community organizations.

The regional plans should include proposals for regular feedback of the full range of views from concerned parties to Washington. The plans should be submitted to the Commissioner for approval within thirty days. In approving the overall INS strategic plan for public outreach and information, the Commissioner should set overall guidance and ground rules to be followed by all offices. Once approved, each regional office should be delegated full authority and responsibility for carrying out both the campaigns and regular contacts with the media and the public within established guidance. Regional offices should in turn delegate as much of that responsibility as is possible to all field units. The Commissioner should update ground rules and guidance as frequently as is necessary, taking particularly into account the regular feedback from regional offices. Guidance or approval from Washington for public statements should be required only in the most unusual instances.

6. **Simultaneously with the development of the public outreach and information campaign, the INS Commissioner should establish a task force composed of INS personnel at all levels with substantive knowledge and/or drafting skills to develop a comprehensive set of informational pamphlets, brochures or other written materials covering as many of INS' functions and missions as is possible.** The task force should be charged to design simple but informative materials which can be used to answer the multitude of questions INS' customers might ask. The task force should also be directed to propose regular update schedules for each document, as well as a strategic plan for its dissemination to the widest possible audience. The task force should complete its work within ninety days. The documents should be printed using the most expeditious means available.

7. **Immediately after assuming office, or immediately after issuance of this report, whichever comes first, the Commissioner of the Immigration and Naturalization Service (INS) should propose, and the Attorney General should approved, reinstitution of an INS regional structure. The heads of the regional offices should be career U.S. government employees with substantial and proven knowledge of immigration issues and demonstrated management skills. They should be located in the geographic region which they manage.** The titles given the heads of these regional operations should be left to the discretion of the Commissioner. All field entities, including District Offices

(domestic and overseas), Border Patrol Sectors, Regional Service Centers, program components currently located in regional offices and Asylum Offices should report to the head of a regional office. The heads of the regional offices should in turn report directly to the INS Deputy Commissioner. The program heads in Washington should assist in the "steering" of the Immigration Service; they should not "row." Therefore, they should retain program and policy development responsibility which is (1) coordinated by the Deputy Commissioner and (2) communicated formally to the field solely through the regional offices. Day to day operations at the field level should be left solely to the heads of the regional offices who should be delegated full authority and responsibility.

8. **Immediately after issuance of the INS vision statement and the reorganization of INS into a regional structure, the Commissioner of INS should issue strategic planning guidance, including financial and personnel planning targets, for a five year planning period to the heads of the regional offices. The heads of those offices, in turn, should establish mechanism to coordinate with all subordinate elements to develop and submit proposed regional plans, with appropriate performance measures, to Washington within sixty days.** Regional offices should ensure the widest possible input into the development both of the strategic plan and the design of performance measures. Once the five year strategic plan is approved by the INS Commissioner, regional offices should be delegated full authority and responsibility, and financial and personnel resources, to carry it out. The regional offices should in turn delegate maximum financial and operational authority to the subordinate field elements. Revisions to financial and personnel levels provided to regional offices, and in turn to subordinate field elements, should be subject to revision only in the most unusual circumstances. Field elements should submit financial and personnel resource utilization and requirements reports to regional offices, and regional offices to the Deputy Commissioner, on a quarterly basis. Progress against the strategic plan should be reported semi-annually. Strategic plans should be revised and updated annually.

Implications:

Creating a "clear sense of mission" is the first and most critical step in "reinventing" the Immigration and Naturalization Service (INS). The mere process of including INS personnel at all levels in the development of a vision statement would go a long way toward "empowering" them and debunking the belief that INS has no input to articulating what immigration policies should be. It will also improve morale and communications between and among INS personnel. The National Performance Review readily acknowledges that it will be extremely difficult to develop one statement which adequately encompasses the views of all those outside the agency--both in public and private concerns--who believe they have something critical to contribute. The process, however, will begin the two way communication essential to revising the public's perception of INS, and educating the latter on the constraints under which the agency is forced to operate. State and local governments, who are heavily impacted by U.S. immigration policies, will have a forum for voicing their concerns. It will also forge the beginnings of a coordinated process so critical to future changes in policy direction.

The President's endorsement of the proposed vision statement will send a clear message to personnel both inside and outside the government that INS can not be viewed as a "stepchild" but has the support and commitment of the administration in its extremely difficult task.

An agreed process for vetting the future government actions for immigration consequences will allow INS to operate in a more proactive rather than reactive mode. It will also allow INS to identify the resource requirements of proposed changes, and put those in place, or describe the consequences of its inability to do so, prior to approval of the changes.

Issuance of the proposed interagency vetting process as an executive order or national security directive, whichever is more appropriate, will ensure (as much as that is possible) that future changes are appropriately coordinated.

The Immigration and Naturalization Service has a story to tell and a need both to improve its service to customers as well as to change its customers' perceptions about the service it already provides to the best of its ability. And the people to carry out its functions on a day to day basis--usually in the best position to tell that story persuasively and with conviction--should be empowered to do so. The communities in which INS offices reside have strong views on immigration issues, as well as frequently legitimate proposals for resolving problems, that need a regular forum for vetting. Although it is critical that the Administration's position on potentially sensitive issues remain consistent and coordinated, the "muzzling" of local offices which occurs with over centralization is counterproductive. This recommendation provides a regular channel for two-way communication.

INS needs updated material to answer its customers questions correctly and quickly. And it needs a regular system to maintain those materials current. Employees who perform functions on a daily basis in the field are frequently in the best position to draft materials which answer the customers' most common questions, and to propose effective plans for getting that message out. Since it is likely these informational materials will require frequent changes, regular update schedules and the fastest means of reproduction are critical to future effectiveness.

Reinstitution of a regional structure in INS will: (a) eliminate span of control problems; (b) improve coordination and communication; (c) eliminate program stovepiping; (d) reduce layering; (e) delegate authority and responsibility to the lowest level possible; and (f) empower managers. Location of the heads of regional offices in the field will ensure they have the knowledge of local conditions necessary to provide quick reactions whenever required. Selection of career managers with substantive knowledge and operational skills will reduce concerns about their ability to operate independently.

Institution of a strategic planning system with planning guidance from the top but input from the field will ensure the widest possible participation to help identify the "best" course of action and the participants' understanding of and buy in for the decisions. Delegation of financial and personnel management authority to the lowest possible level and development of performance measures are key "reinvention" principles. The National Performance Review recognizes that INS' current management information systems make coordinated strategic planning and effective financial management difficult, but is aware that INS has well developed plans underway to address those concerns.

Fiscal Impact

The cost of developing a mission statement will include per diem for a task force of approximately sixty people detailed to Washington for sixty days.

The cost of developing an interagency vetting process will include per diem for a task force of approximately sixty people detailed to Washington for thirty days.

A regular program of public outreach will require diversion of some full-time equivalents (FTEs) from other duties on a regular basis.

The cost of developing a comprehensive set of informational materials will include per diem for a task force of approximately thirty people detailed to Washington for ninety days, plus the recurring cost of reproduction and dissemination of materials.

A regional office structure may result in elimination of duplication and excessive layering which could free some resources for reprogramming to line functions.

Effective strategic planning will ensure the most effective and efficient utilization of resources.

MAKE THE DEPARTMENT OF JUSTICE OPERATE MORE EFFECTIVELY AS THE NATION'S LAW FIRM

Background

The Department of Justice (DOJ) describes itself as the nation's largest law firm. Seventy-five hundred DOJ attorneys in six legal divisions and 94 United States Attorneys offices represent the federal government in a multitude of matters. Within DOJ, five legal divisions -- the Antitrust Division, Civil Division, Civil Rights Division, Environment and Natural Resources Division, and Tax Division -- report to the Attorney General through the Associate Attorney General, while the Criminal Division and the U.S. Attorneys report to the Attorney General through the Deputy Attorney General. The legal divisions and the U.S. Attorneys conduct criminal prosecutions and represent federal agencies in civil judicial proceedings. Each of the legal divisions also play a specialized role in the development of national legal policy. Each U.S. Attorney, as the chief law enforcement officer in his or her district, is responsible for establishing law enforcement priorities in the district.

Like any large law firm, DOJ faces a number of management challenges, particularly in view of its highly decentralized operations.[252] At present, each legal division uses its own case tracking system, while each U.S. Attorneys office operates one of four such systems. The absence of uniform case tracking makes litigation workload and performance measurements difficult, impedes efficient resource allocation, and creates informational barriers among the litigative organizations.[253]

DOJ is currently developing a consolidated office network capable of functioning as a departmentwide case reporting system. Although DOJ's litigative organizations have reached a consensus on standardizing previously non-comparable case information, there remains some doubt whether the system will identify the number of staff working on individual cases and other workload information with which resource allocation and budgetary decisions can be made.[254] Furthermore, as with any database, the proposed DOJ case management system will only be as useful as the information it contains. With thousands of matters referred to individual U.S. Attorneys offices and the legal divisions annually, the motivation for DOJ attorneys and other line personnel to maintain the accuracy of the system will be directly proportional to the system's helpfulness to them in their work.

Like any large law firm, DOJ has to provide support services to its attorney personnel. At present, each litigative organization maintains its own administrative, personnel, legislative affairs, and litigation support staffs.[255] DOJ's Justice Management Division (JMD) also performs administrative and non-litigation support functions on a departmentwide basis, compounding the duplication of effort. Ironically, JMD was created to consolidate DOJ support functions, including those of the litigative organizations. Each litigative organization developed its own administrative component, however, after becoming dissatisfied with the level of service being provided by JMD. Moreover, attorneys within the litigative organizations appear to appreciate the service provided by their internal administrative staffs.

DOJ should resist consolidation of support functions within the litigative organizations. The function appears to be working in its current composition. To improve the overall quality of their support, however, as well as to promote development of support and information functions through idea sharing, it would behoove the litigative organizations to share support functions among themselves. In particular, sharing expertise in technical areas such as computer analysis and litigation support should also produce cost savings. Sharing of computer rooms, for example, which DOJ is currently beginning to undertake in new office space, saves money in construction, rent and maintenance.
One internal customer relationship that DOJ should examine is the one between the headquarters legal divisions and U.S. Attorneys in the field. Structurally, the vesting of the lion's share of federal litigating authority in U.S. Attorneys tailors national justice priorities to local demands. At the same time, DOJ headquarters legal divisions are charged with coordinating national litigation policy. While the headquarters legal divisions often serve U.S. Attorneys as a repository of federal practice information and policy guidance, U.S. Attorneys often resent what they perceive to be headquarters' alleged micro-management of their offices and second-guessing of their decisionmaking, particularly by lower-level headquarters' attorneys.

As the General Accounting Office recently observed concerning DOJ generally, "[a] balance must be struck between the need for strong leadership in important areas and the benefits of a decentralized law enforcement mechanism in the hands of U.S. Attorneys."[256] To strike an appropriate balance, DOJ should work to improve communication between headquarters and the field. One way to do so may be to provide for experienced Assistant U.S. Attorneys to rotate through the legal divisions on a regular basis, where they could advise the Assistant Attorneys General on field issues while serving as a liaison between the field and the headquarters division in particular cases. Similarly, providing for headquarters legal division attorneys to serve temporary details with U.S. Attorneys would enhance headquarters attorneys' trial experience and their appreciation of challenges faced on a daily basis by their counterparts in the field. DOJ should also encourage the Assistant Attorneys General of the legal divisions to continue to work with the Attorney General's Advisory Committee of U.S. Attorneys, and should also encourage the development of litigation working groups consisting of both headquarters and field attorneys. At present, for example, the U.S. Attorneys' White Collar Affirmative Civil Enforcement litigation working group has no members from DOJ's headquarters legal divisions. In addition to facilitating relationships between the two groups, working groups can further professional development in substantive DOJ practice areas.

Finally, the most important relationship in any law firm is the one between the firm and its clients. The relationship between DOJ and its federal agency clients becomes strained in individual cases when a client agency either disagrees with DOJ over a litigation position or perceives that DOJ is not placing a high enough priority on litigation affecting that agency's programs. The first problem occurs in non-criminal cases in particular, when DOJ is frequently challenged to determine whether it represents the client agency, the U.S. Government generally or the "law" itself.[257] Though this arrangement facilitates a coordinated approach to federal legal policy, it periodically leads to client agency dissatisfaction when the agency feels it is being under-represented. The second problem typically occurs when an agency referring matters to a U.S. Attorneys office for litigation believes its cases are either being accorded insufficient priority or that delay attributable to the U.S. Attorney's own case inventory is compromising the value of its the agency's claim. Both problems result in agency calls for expanded authority to use their own in-house counsel. DOJ contends that decentralizing federal litigation authority promotes inconsistent application of the law to the extent that agencies take self-interested positions in program litigation.

To become better attuned to the needs of its agency clients, DOJ should develop an annual client satisfaction survey to apprise the Attorney General of problem areas in the federal litigation relationship. On a more substantive level, DOJ should encourage agency clients to avail themselves of Special Assistant U.S. Attorney (SAUSA) status, which enables agency attorneys to be deputized as Assistant U.S. Attorneys to litigate federal cases on behalf of DOJ. SAUSAs can be particularly useful to agencies facing a large volume of program litigation, including debt collection matters, in a particular federal district. Consistent with the foregoing the Attorney General should instruct U.S. Attorneys to make liberal use of agency SAUSAs where circumstances warrant.

Recommendations

1. To provide the Attorney General with the information she needs to make litigative organization resource allocation and budgetary decisions in accordance with national litigation priorities, DOJ should develop a departmentwide case management system capable of tracking cases being litigated and the total number of staff in the litigative organizations working on them.

To the extent that DOJ's consolidated office network currently under development will become such a system, it should contain workload information with which resource allocation decisions can be made. Because DOJ's legal divisions have attempted to implement attorney time records in the past with little success, the department should accord priority to developing design specifications that induce litigative organization personnel to use and maintain the system.

2. To promote innovation and development in support functions and to facilitate cost savings through sharing of support services resources, DOJ's litigative organizations should conduct labs to bring together the best ideas and processes of support personnel from several components in the context of particular cases.

Attorneys within one component division, for example, could avail themselves of litigation support or information technology functions successfully developed within another component division. Establishment of support function labs bringing together personnel from several component litigative organizations in the context of particular cases would foster support sharing on an expedited basis.

3. **To improve communication between DOJ headquarters attorneys and their counterparts in the field, DOJ's litigative organizations should provide for experienced Assistant U.S. Attorneys to serve temporary 12-month details with the headquarters legal division Assistant Attorneys General on a rotating basis. Likewise, experienced headquarters attorneys should be provided a similar opportunity to serve temporary 12-month details with U.S. Attorneys.**

4. **To improve communication between headquarters and the field, as well as to promote departmentwide development of substantive legal policy, DOJ litigation working groups should, to the extent practicable, include representatives from both headquarters legal divisions and U.S. Attorneys' offices.**

5. **To better respond to the concerns of its federal agency clients, DOJ should develop an annual client satisfaction survey.**

An annual survey will enable DOJ to measure its agency clients' satisfaction with DOJ legal representation and inform the Attorney General of problems that may exist in the relationship.

6. **To enable its federal agency clients to better respond to litigation demands, DOJ should encourage its federal agency clients to avail themselves of SAUSA status.**

At present, some U.S. Attorneys offices resist deputizing SAUSAs, leading to client agency dissatisfaction with DOJ representation and calls for independent litigating authority. The Attorney General should instruct all U.S. Attorneys to deputize agency SAUSAs, particularly in districts in which an agency faces a large volume of program litigation that may otherwise strain the litigation capacity of the local U.S. Attorney's office.

Implications

In addition to improving the Attorney General's ability to allocate DOJ resources, a functional consolidated case management system would enable DOJ and its federal agency clients to assess the legal costs associated with federal program litigation.

With shrinking budgets, authorizing DOJ litigative organizations to share administrative and support expertise on an experimental basis will better assist attorneys in meeting their primary mission goals.

Authorizing headquarters and field personnel to be temporarily detailed to each other's component organizations on a regular basis will improve intra-agency communications and enhance working relationships between headquarters and the field.

Instituting a DOJ customer satisfaction survey will enable the department to better serve its federal agency clients. Instructing the U.S. Attorneys to appoint SAUSAs will encourage use of SAUSAs.

ENHANCE THE U.S. ATTORNEYS' WHITE COLLAR FRAUD CIVIL ENFORCEMENT EFFORT

Background

Each year, the U.S. Government loses billions of dollars to fraud on federal programs.[258] Unscrupulous health care providers bill the Medicare and Medicaid programs for services that are either unnecessary or have not actually been provided. Drug companies invent false drug labels and billing codes to obtain excess reimbursement for generic drugs, resulting in excessive charges to the Medicaid program. Small Business Administration financial assistance programs are vulnerable to loan fraud in cases in which false loan applications are detected prior to funding. Illegal trafficking in food stamps occurs on a significant scale. The federal government spends hundreds of millions of dollars in Federal Employee's Compensation Act programs with little actual monitoring of professional "enablers" who assist in the filing of false claims. The U.S. Attorneys' white collar affirmative civil enforcement effort investigates and prosecutes these and other violations, identifying defrauders of federal programs and recovering millions of dollars annually for U.S. taxpayers.[259]

Because the burden of proof required in a civil case is less than "beyond a reasonable doubt," and further, because criminal and civil fraud investigations often develop in parallel in the field, civil fraud actions can effectively complement criminal prosecutions when the objective is to recover monies owed to the taxpayers and disqualify the perpetrator from further participation in the federal program. While there has been a 300 percent growth in the number of criminal prosecutions initiated by the Department of Justice (DOJ) in the past five years, there has been little growth in resources dedicated to civil fraud investigations and prosecutors.

An unavailability of investigative resources impedes the investigation and pursuit of civil fraud violations. The majority of federal law enforcement agencies do not credit investigative personnel for developing civil cases. As a result, agents typically decline to conduct civil fraud investigations in favor of criminal investigations, regardless of the size of the potential fraud recovery.[260] Even worse, investigative agency performance measurement systems discourage support or assistance to civil investigations which arise out of the same conduct as a criminal investigation.[261] The U.S. General Accounting Office has concluded that lack of investigative resources has constrained DOJ and the Office of the Inspector General in the Department of Health and Human Services (HHS) from investigating health care fraud.[262] Although DOJ has formed a health care fraud working group within its Criminal Division, the group includes no private, non-profit, or state or local participants, and has little role in policymaking.

Fraud enforcement through civil penalty investigations and prosecutions undertaken to date have produced impressive results. During fiscal year 1992, the Executive Office for United States Attorneys implemented a pilot program in three U.S. Attorneys offices to enforce civil penalties and collect funds for the U.S. Government using the Federal False Claims Act, which enables the government to recover three times its damages and a civil penalty of up to $10,000 for each violation.[263] Examples of successful health care-related recoveries included over $3 million in cash and free care from a physician who overcharged the Medicare program for in-hospital dialysis, $1.5 million from an auditing company that falsely claimed that it had reviewed 50,000 Medicare cases, and $1 million from operators of medical equipment companies who supplied unnecessary equipment and then sought to avoid responsibility through a series of corporate transformations. Non-health care civil fraud recoveries included $6.9 million from a defense contractor and its plant manager for supplying substandard orange juice to the military and more than $1 million in settlements from retail stores that illegally redeemed food stamps, together with removal of the stores from the food stamp program and the promise of cooperation against wholesalers involved in food stamp fraud. In many of these cases, the case was resolved prior to a court filing because the investigation resulted in evidence which persuaded defendants that trial success was highly unlikely.[264] The U.S. Attorneys have also established a white collar fraud civil enforcement working group that provides training and support to investigative personnel and prosecutors involved in civil fraud cases. The working group also produces a "how to" manual for civil fraud prosecutions.

U.S. Attorneys involved in affirmative civil enforcement pilots emphasize the importance of empowering local communities in weeding out fraud. While civil fraud prosecutors rely upon investigative support from the FBI, federal agency inspectors general and other federal law enforcement personnel, they also obtain invaluable leads and information from local program providers and recipients, most of whom resent attempts to defraud programs in which they participate, as well as professional associations, citizens groups and the media.

In this connection, U.S. Attorneys contend that the current $500,000 limitation on their affirmative civil litigation settlement authority is anachronistically low and slows the disposition of cases as settlement approvals work their way through DOJ headquarters bureaucracy.[265] Underlying these contentions is the U.S. Attorneys' objection to the perceived practice of DOJ's headquarters Civil Division using its approval authority in civil fraud cases to obtain credit for fraud recoveries obtained largely through the work of Assistant U.S. Attorneys in the field. The Civil Division responds that headquarters review of settlements in larger cases provides quality control and furthers the development of national litigation policy.[266] Specifically, the Civil Division contends that headquarters review promotes the uniform application of justice throughout the nation by preventing against different DOJ responses to the same conduct depending upon where in the nation the conduct occurs. The Civil Division further contends that U.S. Attorneys' offices tend to view headquarters review as cumbersome when headquarters indicates to an office that its theories need to be refined or that proposed settlement amounts do not accurately reflect the loss to the government. The Civil Division also notes that some U.S. Attorneys offices authorized to prosecute larger civil cases have ignored smaller cases, forcing the Civil Division to send lawyers from Washington to handle the small cases with resulting inefficiencies.[267]

Similarly, U.S. Attorneys contend that DOJ headquarters frequently asserts jurisdiction over the civil component of cases declined by their office's criminal prosecutors, even though the criminal case and civil case have been developed simultaneously. U.S. Attorney civil prosecutors assert that giving them primary responsibility for civil cases initially reviewed by their offices as criminal matters would encourage the investigation, prosecution and speedy disposition of civil fraud cases at the local level where fraud occurs. DOJ's Civil Division responds that while it supports the need for all criminal fraud matters to be referred simultaneously to the civil side of U.S. Attorneys' offices, requiring the U.S. Attorneys' offices to make the Civil Division aware of such cases does not detract from the effort to enhance coordination between headquarters and the field.

Finally, notwithstanding the success of affirmative civil enforcement in recovering taxpayer funds and deterring fraud, U.S. Attorneys caseload demands require that civil prosecution resources be devoted to defending suits against the U.S. Government before affirmative civil enforcement cases can be undertaken. Enforcing civil fraud judgments frequently involves support from the United States Marshals Service (USMS) as well.[268] Because of current federal hiring limitations, however, U.S. Attorneys have to pursue those who defraud the government while continuing to satisfy the demands of their non-discretionary caseload. One way to do so is to authorize DOJ to retain a portion of civil fraud recoveries to pay for the costs of U.S. Attorneys' affirmative civil litigation, thereby enabling civil fraud recovery activities to be carried out on a self-supporting basis.

Recommendations

1. **The President should emphasize civil fraud recovery as a priority.** Vigorous investigation and prosecution of civil fraud would recover millions of dollars defrauded from the government annually and enhance the integrity of federal programs. Because of the magnitude of fraud in the health care sector, an emphasis on civil fraud recoveries would be consistent with national health care reform. A presidential commitment to civil fraud recoveries would also result in federal investigative agencies crediting their investigative personnel for conducting civil fraud investigations. Because many civil fraud investigations can be developed simultaneously with ongoing criminal fraud investigations, giving federal investigative personnel performance credit for working civil cases would not result in a significant increase in their workload to the extent that they are currently conducting criminal fraud investigations.

2. **Consistent with the objectives of national health care reform, the DOJ should lead an interagency health care fraud prevention team to promote a comprehensive solution to health insurance fraud.**

The working group, which should consist of both headquarters and field members of DOJ's white collar fraud civil enforcement working group, DOJ's Criminal Division, FBI investigators, HHS Inspector General audit personnel, and Health Care Financing Administration personnel, should coordinate the government's investigation and prosecution of health care fraud and direct health care anti-fraud enforcement activities.

The General Accounting Office has previously recommended that Congress establish a national health care fraud commission composed of private and public payers, providers, and law enforcement agencies.[269] Ideally, the two recommendations would be combined in support of one executive branch health care fraud working group chaired by the Attorney General.

3. **To provide for the effective investigation and pursuit of civil fraud without the appropriation of additional resources, Congress should authorize DOJ to retain up to three percent of U.S. Attorneys' offices civil fraud recoveries annually to pay for the cost of creating civil fraud recovery teams within U.S. Attorneys offices.**

Based on the results of the U.S. Attorneys' civil fraud pilot program, which incurred expenses of about nine percent of recoveries, authorizing DOJ to retain three percent of civil fraud recoveries appears to be a conservative approach. Concerns about the development of a bounty mentality among federal prosecutors would be ameliorated by DOJ-imposed limits on the allocation of civil fraud resources to individual U.S. Attorneys' offices.

Civil fraud recovery teams should consist of a prosecuting Assistant U.S. Attorney, an investigator, a paralegal, clerical support and a part-time Deputy U.S. Marshal. The Office of Management and Budget should establish a fund to be capitalized in advance to allow U.S. Attorneys' offices to begin implementation of affirmative civil fraud projects, with a two to three year phase-in period. Specific performance standards should be addressed, and individual U.S. Attorneys offices should be required to meet those standards to continue to participate in the program. The DOJ affirmative civil fraud fund should not be covered by any agency FTE limitations that will limit the U.S. Attorneys from full participation in the program in cases in which they are able to demonstrate performance. The USMS should be reimbursed from the fund for participation of Deputy U.S. Marshals on U.S. Attorneys' affirmative civil enforcement teams.

4. To improve the DOJ's development of policy and practice relating to civil fraud recoveries, the U.S. Attorney's White Collar Fraud Civil Enforcement Working Group should include attorneys from DOJ's Civil Division.

While both DOJ's Civil Division and U.S. Attorneys' offices pursue civil fraud recoveries, the Civil Division is currently not represented in the U.S. Attorneys civil fraud working group. Because the working group produces a civil fraud manual, holds training sessions, and functions as an important vehicle for DOJ prosecutors to exchange information about civil fraud prosecution efforts, participation by one or more DOJ headquarters prosecutors would facilitate communications and policy development between U.S. Attorneys in the field and their Washington-based counterparts.

5. To promote community-based civil fraud recovery efforts, the Attorney General should raise the dollar amount of U.S. Attorneys settlement authority in affirmative civil cases.

The Attorney General should request the white collar fraud civil enforcement working group to recommend specific dollar increases above $500,000. U.S. Attorneys' offices charged with independently deciding whether to charge a person with criminal wrongdoing and making recommendations involving imprisonment and capital punishment are capable of similar discretion in the conduct of affirmative civil litigation. The working group should also review and make recommendations with respect to related collateral issues, such as the alleged tendency of particular U.S. Attorneys' offices to neglect smaller dollar cases that may ultimately require the attention of headquarters Civil Division personnel, as well as concerns about the uniform application of justice throughout the nation.

The Attorney General should also request the working group to study the relationship between the Civil Division and U.S. Attorneys' offices in the area of civil litigation and to recommend ways to delayer headquarters review processes and to improve coordination of affirmative civil fraud efforts.

Implications

Establishing civil fraud recovery as a national priority would promote the investigation and prosecution of civil fraud, including health care fraud. Enabling federal investigative personnel to receive performance credit for conducting civil fraud investigations would result in the development of civil fraud investigations building upon previously declined criminal fraud matters.

A health care fraud working group headed by the DOJ would further the objective of comprehensive national health care reform by coordinating the use of existing anti-fraud resources in the pursuit of cost-effective health care program operations.

Allowing individual U.S. Attorneys offices to retain a percentage of their civil fraud recoveries to pay for the costs civil fraud litigation activities would provide for such activities to be self-funding, enabling U.S. Attorneys to undertake affirmative civil litigation without the appropriation of additional resources.

Expanding membership in the white collar fraud civil enforcement working group to include DOJ Civil Division attorneys would promote a coordinated DOJ approach to civil fraud investigations by improving communications between headquarters and field personnel.

Raising U.S. Attorneys affirmative litigation settlement authority would promote community-based civil fraud investigations and prosecutions. Delayering of DOJ headquarters approval processes should expedite the disposition of cases while continuing to address headquarters quality control concerns.

FISCAL IMPACT WORKSHEET

Issue Title: Enhance the U.S. Attorneys' White Collar Fraud Civil Enforcement Effort

Recommendations:

1. The President should emphasize civil fraud recovery as a national priority.
2. Consistent with the objectives of national health care reform, the DOJ should lead an interagency health care fraud prevention team to promote a comprehensive solution to

health insurance fraud.

3. To provide for the effective investigation and pursuit of civil fraud without the appropriation of additional resources, Congress should authorize DOJ to retain up to three percent of U.S. Attorneys' offices civil fraud recoveries annually to pay for the cost of creating civil fraud recovery teams within U.S. Attorneys offices.

4. To improve the DOJ's development of policy and practice relating to civil fraud recoveries, the U.S. Attorney's White Collar Fraud Civil Enforcement Working Group should include attorneys from DOJ's Civil Division.

5. To promote community-based civil fraud recovery efforts, the Attorney General should raise the dollar amount of U.S. Attorneys settlement authority in affirmative civil cases.

Methodology: This information will be forthcoming.

Implementation Approach: This information will be forthcoming.

Fiscal Impact Table:

In Millions of Dollars

	1994	1995	1996	1997	1998	1999
Budget Authority	$26.54	$37.43	$38.70	$40.02	$41.40	$42.80
Outlay	$23.36	$35.33	$38.22	$39.83	$41.19	$42.56
*Revenue**	$128.5	$388.6	$420.5	$438.1	$453.1	$468.5
Change in FTEs	186	372	372	372	372	372

Classification Information:

Function: Federal Litigative and Judicial Activities

Agency: Department of Justice

Bureau: Legal Activities

Account: Salaries and expenses, United States Attorneys

EXAMINE THE EFFECTIVENESS OF THE OFFICE OF JUSTICE PROGRAMS

Background

The Omnibus Crime Control and Safe Streets Act of 1968 created the first comprehensive Federal grant program to help States and localities strengthen and improve their criminal justice systems. Today this program is administered by the Office of Justice Programs (OJP).

From 1968 to the most recent re-authorization, debate between several Administrations and Congress over program priorties and approaches has been ongoing. Re-authorizing legislation has mandated major changes in leadership positions, authorities, and organizational structure.

Today OJP manages grant and other assistance programs totalling $845 million annually. Yet it is plagued by serious problems rooted in its turbulent history. These include: a complex and conflict-prone management environment; fragmented and unclear lines of authority; and uncoordinated program activities.

The OJP mission encompasses the entire range of criminal justice activity. The stated OJP mission is, "...to provide national direction, assistance, and leadership to state and local units of government; to carry our specific programs of proven effectiveness or which offer a high probability of improving the criminal justice system; and to provide staff support and coordinate the activities of the National Institute of Justice (NIJ), Bureau of Justice Statistics (BJS), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Bureau of Justice Assistance (BJA) and Office for Victims of Crime (OVC).

OJP has six offices that provide professional, technical, and administrative services to the Office of the Assistant Attorney General and to the five OJP bureaus. These are the Office of Congressional and Public Affairs, Office of the General Counsel, Office of Civil Rights, Office of the Comptroller, Office of Personnel and the Office of Planning, Management and Budget.

The Assistant Attorney General (AAG) of OJP and the five OJP bureau heads are Presidential appointees, subject to the advice and consent of the Senate. The bureaus are under the general authority of the Attorney General, while the heads of the program offices report to the Attorney General through the AAG. The law invests the bureau heads with final authority over all grants awarded by their respective organizations.

The AAG is charged with a number of information dissemination and liaison duties and is provided personnel authority like the bureau directors. The only specific, statutorily assigned duty of the AAG related to the OJP bureaus is concerned with providing staff support to coordinate the activities of those offices.

In addition to these statutory authorities, the AAG was delegated certain additional functions and authorities over the bureaus by a previous Attorney General. This highly controversial order basically allowed the AAG to establish binding policies and priorities for the bureaus with respect to grants, coordinate program plans, grant solicitations, publications and other program activities. In addition, the order gave the AAG the authority to make final determinations on whether grants comply with policies, and to modify or direct their compliance.

In 1991, the GAO issued a report that concluded that the Attorney General has exceeded his general authority over the bureau heads by assigning these additional authorities to the AAG. The GAO goes on to say that, "the entire statutory structure reflects Congress' unequivocal intent to vest policy control over the OJP grant and contract programs in the bureau heads."

The present organizational structure is clearly in need of fixing. The current structure does not lend itself to strong and consistent leadership, effective coordination, and clear priority setting.

Recommendations

1. This option would streamline and reduce the number of current OJP bureaus and offices. It would combine three of the existing OJP bureaus (OVC, OJJDP, BJA) and transfer into OJP assistance functions now being carried out by other DOJ components; i.e., Weed and Seed, National Institute of Corrections (NIC) and include new assistance programs such as, Community Policing, Police Corps etc.

It would create a new program structure under a single BJA. In addition, it would combine all research and statistics functions except general counsel and congressional/public affairs would be established under a single of Office of Administrative Services.

This option would eliminate distinct legislatively created program categories in existence today requiring new and broader legislation that would combine a whole range of programs into one.

2. This option would build a whole new organization to provide assistance to state and local governments. A new Office of State and Local Partnerships would replace OJP on the DOJ organization chart and signal the "partnership" of service being sought in new initiatives now under consideration. This option would envision one Presidentially appointed head (AAG, Director?) and cover all the mandates of the prior construct and any new ones the President or Attorney General might want to add.

This "revamping" approach would permit the Department, Congress and interest groups to: revisit and eliminate the weakest elements of past programs; determine current and anticipated future needs; and to then reallocate the resources where needs are greatest and benefits most likely to result in the criminal justice system.

In addition, to the new "partnership" office, this option would also recognize the important role of statistics. The model envisioned here would build on BJS and establish in the Department a new "Office of Justice Statistics" similar to the Labor Department's Bureau of Labor Statistics (BLS) model. The new OJS would be the national center for criminal justice statistical data, incorporating appropriate statistical functions from other Justice components; e.g., FBI's Uniform Crime Report.

Implications

The change in Administration as well as efforts to implement new Federal/State Partnership initiatives (e.g., Community Policing, Police Corps, and Criminal Records Upgrades) present an opportunity to revisit OJP organization and management issues from a fresh perspective. The possibility of achieving effective, long-term change seems real and could result in better program management efficiencies and cost savings.

The National Performance Review offers an ideal vehicle by which to accomplish some real change at the Office of Justice Programs. In the past Congress has been resistant to changing the structure of OJP. It has encouraged much of the organizational tension that exists between and within bureaus. The bureaus each have their own active and vocal constituencies that will work against any change from the status quo or any effort to make the bureaus more accountable to any one other than congress or interest groups.

A newly restructured OJP would embody many of the NPR principles espoused by the Vice President. The new OJP would:

o Improve its service to its customer, the state and local communities.

o It would empower its employees by creating a clear sense of mission, give it organizational unity and help create an organization culture.

o With a clear mission, spoken with one voice, OJP would thereby empower the communities it serves to solve their problems with the assistance, not necessarily the direction, of a responsive Federal agency.

Fiscal Impact

To be determined.

Now is the Time

REDUCE DUPLICATION OF LAW ENFORCEMENT TRAINING FACILITIES

Background

In recent years, there have been some progress in efforts to economize use of existing federal law enforcement training programs and facilities through consolidated training, but some concerns remain. Several agencies have established their own separate training facilities in addition to those larger and more comprehensive facilities which currently exist. Since there are no legal restrictions on these initiatives, the agencies are free to purse their goals unchecked.

The Office of National Drug Control Policy (ONDCP) and the Office of Management and Budget (OMB) have raised concerns since 1990 regarding the best means to meet the training needs of all federal drug enforcement officers. A 1978 President's Reorganization Project study suggested that "The law enforcement training programs and facilities of FBI, DEA and FLETC could be combined (BATF [Bureau of Alcohol, Tobacco & Firearms] is currently trained at FLETC) into a coordinated program to ensure that all federal law enforcement personnel received quality professional training that is coordinated with and responsive to national enforcement and prosecutive priorities; to continue, increase and improve the coordination of the training assistance being provided to state and local law enforcement; and to provide for more efficient and effective utilization and development of federal facilities."

The House Appropriations Committee Report (102-618, dated June 25, 1992) on H.R. 5488, the Treasury, Postal Service, and General Government Appropriations Bill, 1993: "directs the Office of Management and Budget to (1) within 30 days of enactment of this legislation submit a report to the House and Senate Appropriations Committees on how many agencies have left or plan to leave FLETC for their law enforcement training since enactment of Public Law 102-141, and (2) determine whether or not it is in the best interest of the government to allow the proliferation of federal law enforcement training facilities. When the proliferation of training facilities is not in the best interests of the government, the Committee directs the Office of Management and Budget not to include funding for them in the President's budget request."

The largest and most consolidated federal training facility is the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia, which is operated by the Department of Treasury. FLETC has three primary facilities which provides instructions to 70 agencies with law enforcement responsibilities. The Federal Bureau of Investigations (FBI), the Drug Enforcement Agency (DEA), the U.S. Postal Service, the Department of Veterans Affairs (i.e., security guards), the Army Criminal Investigative Division, and the Air Force Office of Special Investigation are the only entities in the Federal law enforcement community that do not routinely use FLETC facilities to train their personnel in some aspects of their training program.

The FBI Academy at Quantico, Virginia, which is operated by the FBI, falls under the Department of Justice (DOJ). DEA agents currently receive some of their training at the Academy. In 1992, a Justice Training Center contiguous to the FBI Academy was approved for specialized drug enforcement training, under the management and control of DEA. Concerns have been raised regarding the advisability of constructing the DEA facility, particularly if less costly facilities are available or could be modified at less cost. Several studies have been conducted to assess the feasibility of having a separate DEA facility, relocating DEA training programs to an alternate site (e.g., FLETC, Georgia, Fort McClellan, Alabama, etc.) or expanding the FBI Academy to meet DEA's needs.

Some other highly developed facilities provide task-specific, specialized training for certain agencies. The U.S. Secret Service, for instance, has a facility in Laurel, Maryland, where protection related training is conducted. It would not be economical to duplicate those facilities at the FLETC or to prevent further enhancements to those centers in line with the type of training they presently provide. Further, consolidation is not the best approach in every instance due to operational considerations. Some duplication in training resources is necessary due to the vast number of law enforcement officers/agents requiring varied and specialized training and this arrangement fosters development of new concepts and training techniques, and it encourages excellence. But most importantly, when training is required to support an agency specific operation or event, timeliness of training and availability of resources and facilities become significant issues.

However, too much duplication results in inefficiency in the use of federal resources.

When too many agencies build their own training facilities and programs, they tend to over-duplicate what is already available. This undermines the economic goals of a consolidated federal approach to training since there are financial savings which are achieved through economies of scale. When training resources are pooled, a higher level of training can be offered particularly benefitting those who are assigned to smaller agencies that do not have the resources to independently support a comprehensive training program. The interface between federal, state, and local law enforcement officers training at the same facility helps develop bonds and teamwork which they carry through their professional careers. Consolidated training is already occurring to a large degree. For example, there are numerous instances of Treasury agents attending Quantico facilities for highly specialized courses regarding behavioral science, hostage negotiations, bank failure seminars, etc. Continued "cross" utilization of federal facilities in this manner is highly beneficial to the student and is encouraged.

A national cooperative federal training program would allow law enforcement personnel, who have a justifiable need, to train at any federal facility which is equipped to provide that training. Lastly, new training facilities should not be built if a facility already exist or can be easily modified to accommodate the requirement. All agencies should share their training personnel and other resources.

Recommendations

1. **The Director of Law Enforcement (DLE) should establish, under the Executive Law Enforcement Council (ELEC), a senior interagency training advisory committee which represents the law enforcement community to specifically address law enforcement training programs, to include the efficient use of federal training facilities, training priorities and the development of future training curriculum.**

2. **The ELEC should draft for the Director of Law Enforcement (DLE) a Federal Law Enforcement Facility Training Act for submission to Congress, which would address various aspects of law enforcement training to include defining when the development of a new training facility or the expansion of a facility would be appropriate and establish an approval process.**

3. **Prior to the establishment of the DLE and the ELEC, the Office of**

Management and Budget (OMB) should control the funding for new training facilities or expansion of a facility in keeping with the spirit of the House Report on H.R. 5488.

4. FLETC and the FBI Academy should be further developed, as practical to accommodate multi-agency national training needs in lieu of construction of new training facilities.

Implications

1. This will result in a more efficient use of training program, facilities, instructors, and other resources. It would be more efficient and cost effective to add buildings and other training facilities to existing FLETC and FBI training centers than to create new independent training centers.
2. This will afford federal, state and local officers the opportunity to bond (cross-fertilization of ideas) with one another and foster closer working relationships in joint federal, state and local investigations.
3. This will reduce the duplication of federal facilities and other training resources.

Fiscal Impact

Fiscal impact figures are being finalized.

STREAMLINE BACKGROUND INVESTIGATIONS FOR FEDERAL EMPLOYEES

Background

The Federal government is the largest employer in the United States, with a workforce of 2.9 million full-time civilian employees, 2.1 million military personnel. At a minimum, each tentative selectee for a Federal position is subject to some sort of background investigation (BI) prior to or shortly after entering on duty. In addition, employees already on-board may require more extensive BIs, based on new duties, or may require a periodic reinvestigation (PRI) due to the age of their initial background investigation (BI).

Through regulation, and as a result of various executive orders, the Office of Personnel Management (OPM) has the primary authority to: (1) establish personnel suitability requirements and (2) conduct investigations and authorize appointments "subject to investigations" to the competitive service. Agencies reimburse OPM for conducting BIs. OPM may also delegate authority to agencies to contract out investigations for competitive positions. During the last few years, agencies have become increasingly dependent on using contractors or in-house investigators to conduct investigations because OPM could not meet timeliness standards for either routine or expedited cases, and OPM charges are prohibitive. However, to respond to timeliness concerns, OPM has staffed to higher levels to conduct investigations for agencies, and has indicated that it will revoke some existing delegations of authority for agencies to conduct investigations. Agencies provided written estimates to OPM that they would need 133,281 investigations conducted during Fiscal Year 1993 and 131,006 in Fiscal Year 1994.

Conducting investigations for excepted service positions and contractor personnel in an agency is the responsibility of the agency, but an agency may enter into an agreement with OPM to obtain reimbursable investigative services for these investigations. In DOJ, investigations for excepted service positions are generally conducted by the FBI's in-house investigators, or through the FBI's Background Investigation Contract Services (BICS) pilot project. This program contracts out BIs to former federal investigators with demonstrated expertise in the conduct of BIs. BICS has proven itself efficient and effective in all measurable dimensions, as substantiated by audits by FBI's Inspection Division.

There are a number of issues involving initial BIs and PRIs in the Department of Justice. To summarize, the basic issues are as follows:

1. Lack of timeliness of OPM-conducted initial BIs: Clients have historically complained of significant backlogs in OPM processing of initial BIs and PRIs. Delays in completion of initial BIs have various negative effects on Departmental operations. For components that require completion and adjudication of initial BIs prior to employment, these delays may cause qualified candidates to find jobs elsewhere. A number of weaknesses surrounding the BI process were identified in a report prepared by the Department's Office of the Inspector General (OIG).

2. Costs for OPM- and FBI-conducted initial BIs and PRIs, versus. in-house and private sector contract investigations: An additional problem is the cost of initial BIs and PRIs. OPM full-field initial BIs cost $2,400 each in Fiscal Year 1992, and FBI PRIs cost up to $4,500 depending on scope. There are additional charges for expedited OPM investigations. In order to bypass delays and to cut costs, the Drug Enforcement Administration (DEA) and the U.S. Marshals Service (USMS) have obtained from OPM delegations of authority to conduct their own initial BIs. USMS reports that it can conduct an equivalent investigation to OPM's for $1,800. DEA utilizes a contractual service which conducts the BI for $1,500. In addition to cost savings, DEA reports that it also receives under its contract a guaranteed turnaround of 30 days. OPM charges an additional $450 for the expedited service, which is reportedly not consistently within the 30 day requirement. However, despite this successful "empowerment" of DEA, OPM has indicated that it may revoke DEA's authority to conduct initial BIs at the end of Fiscal Year 1993. If these efforts have been successful, DOJ should be looking at expansion of them, possibly to other DOJ components. DOJ has asked OPM for a delegation of authority to use the DEA contractor to conduct INS and EOUSA investigations, but OPM has repeatedly denied this authority.

3. Lack of Competition, Objective Quality Measurement and Customization of Requirements: OPM controls authority for other agencies to conduct investigations (using

staff or contractors). OPM also competes with the other agencies to provide that service, but does not offer competitive prices. This conflict of interest gives OPM a virtual monopoly on conducting BIs. OPM's investigative organization operates on a revolving fund, and therefore must justify its existence and cover all costs. Having staffed up to improve responsiveness, as mentioned above, there are strong disincentives for OPM to permit other agencies to provide a competitive, less expensive, and sometimes more responsive product.

For example, DEA's authority to conduct BIs through contract services is being revoked by OPM based on a quality assurance issue. However, DEA maintains that the quality of its contract deliverables is very high. In this case, DEA states that the portion of the BI in question was in fact prepared by DEA itself, not the by the contractor, and that the majority of the problems cited by OPM were procedural and not substantive. DEA has corrected the problems. Assistance from OPM in proper procedures would be more productive than revocation of authority. Objectively defined performance measurement for delegated investigations is needed, to encourage competitive alternatives to OPM that maintain quality standards.

OPM itself has had a history of quality problems, partly stemming from the need to supplement reports and investigations prepared by OPM, in order to meet agencies' unique personnel security requirements. Various agencies have developed a myriad of personnel investigation forms, which supplement the Standard Forms used by OPM in its investigations, but which are not used by OPM investigators. The Standard Forms may or may not contain sufficient information to support agency mission requirements.

4. Further potential cost savings may result from additional changes in DOJ policy on scope of PRIs: Cost issues of PRIs were discussed in detail in the above-cited OIG report. Briefly, OIG indicated that DOJ could save money if OPM reinvestigations were conducted for certain employees rather than using FBI reinvestigations, and that PRIs of more limited scope would be less expensive. DOJ has taken steps to implement these recommendations (including negotiations with the FBI to reduce costs), but further limitations on the scope of the investigation could be implemented, with commensurate cost savings.

On a Government-wide basis, cost savings might be achievable if reinvestigation requirements for less sensitive positions were relaxed.

5. Agencies are not sufficiently utilizing previously performed initial BIs and PRIs: Agencies should be strongly encouraged to share BI and PRI information; DOJ utilizes Department of Defense, CIA, and Treasury BI/PRI information wherever possible, to minimize the amount of reinvestigation required if the employee has an adjudicated BI/PRI from another agency. Through no fault of their own, personnel security offices rarely have consistent or dependable information on previously completed initial BIs or PRIs on a given employee. Employees rarely know with certainty what initial BIs or PRIs have been completed, and the central Government-wide database (SII), operated by OPM) has user capacity problems. To use the system, OPM requires information that is not always available (City of Birth) in order to respond to a simple query from outside agencies on previously completed initial BIs, and the system has limited query capacity. Also, although the database is intended to be Government-wide in scope, and has interfaces with DCII, some BI information is not provided by agencies that conduct the BIs. Other agencies also do not consistently respond to direct inquiries on whether initial BIs have been completed.

Generally stated, the entire process of initial BIs and PRIs should be more timely and less costly, and agencies should have more flexibility in meeting personnel security requirements.

Recommendations

1. The Departments of Justice and the Treasury should, on behalf of all their components, pursue a flexible delegation of authority, using experienced investigators (e.g., retired Federal law enforcement officers) to conduct initial BIs and PRIs. The delegation should be tailored to meet each Department's unique mission and requirements. DOJ plans to conduct a Reinvention Lab to measure cost and quality of initial BIs and PRIs conducted by in-house staff and contractors, which will apply the "reinvention" principles of cross-servicing and competition between two DOJ components that can provide the service. Agency components such as DEA and USMS should be permitted, through this delegation, to cross service other organizations, such as INS and U.S. Attorneys.

2. OPM should ensure that quality standards for agency-conducted or contractor-conducted BIs are assessed by an objective party with no vested interest in returning BI "business" back to OPM.

3. OPM should consider the use of contractual and temporarily hired employees to conduct BIs, to permit more flexibility in meeting rising and falling demands for BIs.

4. Congress should enact legislation that authorizes agencies to conduct initial BIs and PRIs, and to obtain contractual services for initial BIs and PRIs pursuant to quality standards to be set and published by OPM.

5. OPM should develop a standard form encompassing the core of required questions to be asked of each applicant/employee, and allow the agency the option of attaching additional forms and/or questions for the investigators that are specific to agency mission.

6. DOJ internal policy should be revised to provide for the minimum investigation required (such as credit checks, name checks with the FBI) combined with employee certification on a new SF-86. If discrepancies are found between the SF-86 and other investigations, adverse action can be taken, which will act as a deterrent for employees in not reporting derogatory information on themselves.

7. The OPM regulation requiring a periodic reinvestigation should be relaxed so that agencies can perform the updates within a 5-10 year window, depending on agency mandates and priorities. OPM should also permit (and DOJ consider any internal policy changes required for) the use of contract investigators for certain excepted service personnel (e.g, non-political U.S. Attorneys' Office personnel). An executive order is needed to override the current regulation.

8. OPM should increase the capacity of its automated BI status system, to increase the number of simultaneous users possible.

9. Through interagency working groups, or through a legislative mandate, agencies should be required to make BI and PRI information available to authorized, cleared personnel security offices throughout the Government. OPM's automated database should be enhanced to only require reasonable requirements for search parameters (i.e., to not require City of Birth).

Implications

The above recommendations will result in less costly and more timely initial BIs and PRIs. Agencies will have more flexibility and control over the ways in which they meet personnel security requirements. Formal authorization of agencies to conduct or contract for initial BIs and PRIs will encourage competition. Components within DOJ that wish to administer contracts can do so, and can potentially cross-service other components in DOJ or other Federal agencies. Use of this competitive model should keep service (e.g., responsiveness) high and keep costs low.

Fiscal Impact

Based on DOJ experience with in-house staff conducting BIs, and with contract support conducting BIs, we conservatively estimate a $750 - $1,000 savings on each background investigation conducted under agency authority rather than by OPM. The previously provided estimates on BIs required should be revised in light of the anticipated hiring freezes across the Federal workforce. However, even if only 10% of the originally estimated 131,006 BIs are diverted from OPM to agency authority, savings could amount to approximately $10 - $13 million in Fiscal Year 1994.

ADJUST CIVIL MONETARY PENALTIES TO THE INFLATION INDEX

Background

The Federal Government fails to collect millions of dollars each year because Civil Monetary Penalties (CMPs) assessed by Federal agencies are not regularly adjusted for inflation to maintain their deterrent value for preventing violations of Federal law. CMPs are non-criminal penalties set by law with a fixed or maximum value (e.g., "$2,500 per day," "$10,000 per violation," or "10% of gross value, but no more than $5,000"). Federal agencies assess and collect CMPs to enforce a wide variety of laws in areas such as health and safety, transportation safety, environmental hazards, import and export restrictions, land and resource management, tax law enforcement, and lobbying. A search of the U.S. Code indicates that there are about 500 statute sections containing language on civil penalties.[270]

Each year, Federal agencies make billions of dollars in assessments for violations of Federal law. During Fiscal Year 1992 alone, agencies assessed almost $2.3 billion in CMPs against individuals and businesses.[271] Yet, because the dollar value of CMPs is set by law and CMPs are rarely updated to reflect the effect inflation, the value of CMPs as a deterrence for violations of Federal law often declines over time.

A recent report published by OMB includes an inventory of CMPs that exist in Federal statute.[272] The report identifies many CMPs that have been on the books for years without being adjusted for inflation, including some that have been unadjusted since as early as 1870.[273] In fact, many older penalties are not currently in use and should be removed from Federal statute. While most CMPs that are actually assessed by agencies have been either defined or adjusted by law since the 1970s, inflation has still robbed many penalties of their deterrent value. For example, a violation of the Clean Air Act that was defined in law in 1977 as a fine of $25,000 per violation would be worth at least $55,000 per violation today if it were adjusted for inflation.[274]

Not only does failure to inflation adjust CMPs reduce the deterrence value of penalties, it also robs the Federal Government of an important source of revenue. During FY 1992, collections of CMPs were $416 million.[275] If all CMPs assessed during 1992 had been adjusted for inflation before assessment, larger penalties would have been assessed. As a result, the amount collected by the Federal Government likely would have been much greater. Inflation adjusting CMPs could provide for a source of increased revenue for the Federal Government.

Congress passed the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) of 1990, P.L. 101-410, because of its interest in knowing the extent of the problem of CMPs that have not been adjusted to keep pace with inflation. FCPIAA established two reporting requirements for CMPs: [276]

(1) An annual report detailing CMP assessments and collections during the previous fiscal year, and

(2) An inventory every five years of all CMPs and the amount that they would have to be adjusted by if they were revised to take into consideration inflation.

However, while FCPIAA established a reporting requirement detailing proposed inflation adjustments, it did not provide for the actual inflation adjustment of CMPs.

Recommendations

1. **Institute a one-time "catch-up" inflation adjustment for all CMPs by submitting legislation to Congress to adjust for the affect of inflation since the time that each CMP was last set or adjusted in the law.**

2. **Begin submitting inflation adjustment legislation to Congress on an annual basis to revise all CMPs to reflect any inflationary changes over the previous year.**

Implications

1. A one-time "catch-up" inflation adjustment for CMPs would bring penalty values into accord with today's value of money and renew the deterrent effect that the penalties were originally intended to have. Collections would be higher because assessed amounts would increase.

2. By simply beginning annual adjustments of CMPs to take into consideration the previous year's inflation, the Federal Government would ensure for the future that CMPs at least maintain the deterrent value that they have today.

Fiscal Impact

Because information is not available on use of individual penalties, it would not be possible to calculate the fiscal impact of increased collections associated a one time "catch-up" inflation adjustment that would revise each penalty based on the year in which it was last set by law. However, under the assumption that annual inflation adjustments would be carried out to compensate for inflation during any given year, and assuming that the number and type of assessments holds steady over time, then it would be possible to collect an additional $193 million in revenue over a five year period (as shown in the table below). Since this option would not go so far as to attempt to adjust for inflation since CMPs were passed into law, it would have a more limited effect in terms of improved deterrence and increased revenues.

Inflation Adjusted Collections of Civil Monetary Penalties

(Dollars in Millions)

	FY 1992	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	Cumulative FY '94-98
Steady-State Collections (See Note)	$416	$416	$416	$416	$416	$416	$2,080
GDP Deflator	N/A	2.9%	3.0%	3.0%	3.0%	3.0%	N/A
Increased Collections From Inflation Adjustment	N/A	$12	$25	$38	$52	$66	$193
Total Collections After Inflation Adjustment	$416	$428	$441	$454	$468	$482	$2,273

Note: Projections assume that out-year collections remain at least at the level of FY 1992 collections. Evidence from prior annual reporting suggests collections may increase over time due in part to increased CMP assessments.

ADDRESS THE U.S. MARSHALS SERVICE CONCERNS REGARDING FEDERAL COURTHOUSE SECURITY

Background

Protection of the federal judicial process, and particularly the members of the federal judiciary, is the U.S. Marshals Service's (USMS) highest priority. As such, the USMS plays an integral role in security design for both new and renovated and expansion courthouse facilities.

Generally, the coordination and planning for security in new federal courthouse facilities is working extremely well. However, funding for security for new federal court facilities is not a part of the cost of the facility, and must be requested separately by the federal judiciary.

Coordination and planning for security for other than new courthouse projects can not always be done on as well organized a basis with appropriate consideration for security concerns, and can result in severe fiscal and personnel problems for the USMS.

Currently, judicial officials occupy leased space at approximately 115 locations outside of the U.S. courthouses in commercial office space, state government buildings, or other non-GSA facilities. The federal judiciary is in midst of one of the largest facilities expansions efforts in it its history. The rate of expansion will continue to increase, and the Administrative Office of U.S. Courts (AOUSC) estimates that 220 additional projects will be completed over the next 10 years.

USMS records indicate that threats to judges and prosecutors have increased dramatically. As a result, security at federal courthouses has greatly increased in recent years. Any facility used by the federal judiciary to conduct trials that has inadequate security exposes the judiciary, officers of the court, court employees, and the general public to extreme danger. It has always been the mission of the USMS to provide a safe and secure environment for the judicial process, which affirms the nation's confidence in the judicial system.

Whenever there is insufficient space within existing courthouses for chambers and courtrooms for newly appointed judges or senior judges, facilities must be quickly located.

Frequently, this expansion space is found in commercial office buildings without existing security protocols. Deputy U.S. Marshal (DUSM) and Court Security Officer (CSO) resources must be reallocated from the main courthouse facility to provide security.

As the budget is projected approximately 18 months in advance, it is not possible to meet the real-time needs for security personnel and equipment. The immediate need for additional space, frustrates the best attempts to achieve a secure environment without determent to security at other locations.

Problem: It is very difficult to budget for USMS security personnel (DUSMs or CSOs) in a timely manner to provide security at these satellite facilities. The real-time associated with these satellite projects can be as little as two months. There is no opportunity for the budget process to work in this short period of time.

The budgeting process is part of the problem. The Judicial Conference of the United States Committee on Court and Judicial Security is responsible for making recommendations regarding the security budget for the federal judiciary. This is funding to provide for CSOs, who provide perimeter security, building entrance screening, and security for judicial space, and also funds for security equipment at federal courthouses.

As the budget goes through internal review, the requests may be reduced because of competing priorities within the judiciary before it goes to Congress. In the past several years, Congress has failed to fully appropriate even these reduced requests.

Congress appropriates court security funds to the judiciary who in turn gives the funds and operational responsibilities to the USMS. The USMS budget, which is part of the Executive Branch request and separate and from the judiciary, contains requests for DUSMs and resources to support the judiciary's court security program. The USMS is ultimately responsible for protecting the judiciary and suffers the consequences of insufficient funding for the security of federal court facilities. The USMS suffers directly when DUSM resources are required to produce prisoners in courtrooms in commercial space without adequate cellblock holding facilities. The CSO can be spread too thinly resulting in security posts in courthouses not being staffed appropriately.

Currently, there are over **130 vacancies** to be filled on the federal bench. It is anticipated that the vacancies will start to be filled shortly and that a significant number of these new judges will be on the bench by the beginning of FY 1995. According to the AOUSC estimates, up to five additional vacancies occur per month due to retirements, resignations, or death.

Recommendations

Continued close coordination between GSA, Justice and the Judiciary is necessary to ensure adequate judicial security and to avoid the program deficits within USMS. Requirements and annual budget estimates should continue to be developed in consultation among three components. The various budget requests related to judicial security would remain the under the jurisdiction of the cognizant appropriations subcommittees. The Office of Management and Budget would continue to review the Executive Branch requests.

The need for some amount of "expansion" space for the judiciary can be anticipated each year. Therefore, it is recommended that additional monies over and above that provide for existing courthouse facilities and newly constructed courthouse be provided within the existing Court Security appropriation of the Judiciary and earmarked for CSOs and security equipment for "expansion" space. These monies should be no-year funds to meet "expansion" space security needs. Unused earmarked funds would be carried over and replenished through the annual appropriations process.

Implications

The Judiciary's court security appropriation does not keep pace with court expansion. The lack of funding for security (i.e. CSOs and equipment) for expansion facilities results in great difficulty in providing adequate security.

Fiscal Impact

The USMS FY 1995 budget request to the Department includes a request for 47 DUSM positions to complete the number of additional DUSMs necessary to provide security for the additional 85 Article III judges added by the Federal Judgeship Act of 1990. Although the Judiciary been authorized security resources to support the 85 new judges, Congress did not appropriate sufficient funds to full staff the CSOs authorized in 1993.

The USMS has great difficulty in providing proper security service to the federal judiciary without causing disruptions in its other program areas. As a service organization, the USMS's workload is totally determined by outside events (e.g., the number prisoners held in custody, the number of trials and other court proceedings held, the number of assets seized by investigative agencies, the number of fugitives wanted by federal authorities). unfunded security needs impact virtually every other USMS program area.

PROFESSIONALIZE THE U.S. MARSHALS SERVICE

Background

The U.S. Marshals Service (USMS) is a law enforcement agency with 4,000 employees assigned throughout the United States and its territories. Its primary mission is to serve the federal judicial system including: 1) protection of judges, prosecutors, juries and witnesses, 2) service of judicial process, 3) maintaining custody and providing for the transportation and production of prisoners, 4) carrying out warrants of arrest for fugitives from justice, and 5) maintaining the civil peace. In addition, the USMS maintains custody of property seized by order of the court.

The USMS is headed by a Director who supervises a headquarters staff and a field structure organized around judicial districts headed by a U. S. Marshal. Pursuant to 28 U.S.C. 561(c), the President appoints U.S. Marshals with the advice and consent of the Senate. This selection process was created in 1789, at a time when the U.S. Marshal was the administrative representative of the President with the sole authority to disburse funds from the Treasury in the field.

There are 94 Marshals -- one for each of 93 Federal judicial districts and the Superior Court. The U.S. Marshals typically are selected by the senior Senator of the President's party. They are appointed at the GS-15 level, ($66,609 - $86,589), except in the 19 largest districts where the Marshal is appointed to a Senior Level Position earning $104,800.

The USMS has recommended criteria for selection of new U.S. Marshals. However, little if any regard is given to these criteria, and most appointments are made based upon political considerations. Many U.S. Marshals have no law enforcement experience at all (e.g. phone company foreman, coroner, food company president, etc.), and many do not have any management experience either. U.S. Marshals rarely have any background in federal law enforcement.

Unlike the presidentially-appointed United States Attorneys, who serve as the chief federal law enforcement officer in their district, the U.S. Marshal has a supporting role and exercises little if any policy discretion regarding his or her work load. The United States Attorneys' exercise in prosecutorial discretion is in fact a policy-making function.

There are a few ancillary benefits for the USMS from the current system. By virtue of their political ties, U.S. Marshals have useful congressional contacts which affect the acquisition of resources. They may also have nurtured working relationships at the State and local level which are advantageous to the USMS. In addition, their political connections may be helpful in their relationship with the judiciary and the United States Attorneys, who are themselves, political appointees.

However, for over 75 years, the Executive Branch has sought to place the Marshals into the Civil Service, but has not successfully obtained support for the proposal in the Senate. The proposal was recommended by President Taft's Commission on Economy and Efficiency in 1912, President Roosevelt's Commission on Administrative Management in 1937, the first Hoover Commission under President Truman in 1947, and the second Hoover Commission under President Eisenhower in 1955. Legislative proposals were introduced in several different versions in the 1970's and early 1980's, but they all failed in the Senate.

Problem: The present method of appointment of U.S. Marshals has no relevance to the needs of modern law enforcement or the requirement of efficient and effective management. The system is a relic of a by-gone area when these posts were among the principal ones in the federal family. Today, the existence of separate fiefdoms in the 94 judicial districts is a severe impediment to a well managed law enforcement agency.

The current political appointment system, cannot ensure that U.S. Marshals have the necessary experience and expertise to be a high caliber front-line managers in a critical law enforcement position.

A U.S. Marshal has the broadest law enforcement powers of any federal officer and the broadest array of law enforcement responsibilities. Even a routine activity such as serving a court order can become a violent confrontation when it occurs in a volatile situation such as a coal mine strike or a confrontation with an armed and dangerous felon. When critical law enforcement situations occur, the U.S. Marshal should have a high level of law enforcement expertise to carry out his or her duties.

As the head of their district office, the U.S. Marshals' role is complex and requires a composite of law enforcement expertise; including: 1) sophisticated personal security, like that of the Secret Service, 2) prisoner handling, like that of the Bureau of Prisons, 3) apprehension of fugitives and financial investigations, like any investigative agency, 4) management and disposition of real and personal property, like a business manager, 5) financial management of dispersing authority for the federal government, and 6) management and administration of the office.

To accomplish his or her mission, the U.S. Marshal should have knowledge of federal and local laws, court rules and procedures, department and agency regulations and policies, Civil Service Commission regulations, budget formulation and execution requirements, procurement laws and procedures and a host of other federal government requirements.

Because the presidentially-appointed U.S. Marshal frequently does not have this composite experience and the requisite knowledge, the task falls to the Chief Deputy U.S. Marshal (CDUSM) to provide the leadership and management expertise to carry out the USMS mission in the district. CDUSMS are senior career federal law enforcement employees who have spent many years in the USMS developing their skills. They undergo a comprehensive and highly competitive assessment process, in-service retraining, and are responsible for the operation and administration of their district offices. These CDUSMs provide the management continuity of the USMS field operations. The lack of expertise and experience of the U.S. Marshals necessitates the role of the CDUSM.

In addition, the presidentially appointed U.S. Marshal is not subject to disciplinary actions and may only be removed the President or upon the appointment of a successor. The Director, USMS, has little authority to deal with a U.S. Marshal's incompetence or misconduct.

A letter of censure from the Director is the most severe disciplinary action that can take against a U.S. Marshal. By contrast, a Deputy U.S. Marshal can be suspended or even removed for similar infractions.

Recommendations

The best way to ensure professionalism is through merit employment. Open competition and equal opportunity for appointment and advancement are the basis tenets of the Civil Service system. During the last 30 years, the USMS has improved its performance through the professionalization of its career federal work force. Every major commission appointed to reform the federal government in the 20th century has recommended placing position of U. S. Marshal into the Civil Service.

Legislation should be enacted to eliminate the requirement for presidential appointment of U.S. Marshals from 28 U.S.C. 561. These appointments should be made by the Director, USMS for its field offices, in the manner of all other federal law enforcement agency heads. Concomitantly, the USMS could restructure its management in mid-size and smaller USMS district offices to eliminate unnecessary supervisors and reduce costs.

Implications

The present system for the appointment of U.S. Marshals has resulted in a law enforcement agency that can not be effectively managed. The lack of even minimal law enforcement qualifications has resulted in weak leadership and management in the field and unnecessary layering to compensate for it.

The lack of good law enforcement credentials results in the lack of parity within local the law enforcement community, for many U.S. Marshals. The USMS generally suffers from this image and while the USMS serves a critical support function of the entire law enforcement and judicial communities, they are frequently the forgotten member in the resource allocation process.

Short of illegal or gross misconduct, U.S. Marshals cannot be held accountable. The disparity in discipline between political U.S. Marshals and career employees has a devastating impact on morale. The double standard breeds strong resentment. When there is a disagreement between the U.S. Marshal and the CDUSM who actually runs it, the CDUSM is frequently reassigned. U.S. Marshals cannot be.

Flagrant disregard for fiscal discipline is a serious problem within the field offices. A U.S. Marshal who has routinely exceeded his budget by hundreds of thousands of dollars remains in office.

Fiscal Impact

The presidential appointment of U.S. Marshals creates an extra layer of bureaucracy in the field offices. Appointment of two middle-management level officers (U.S. Marshal and the CDUSM) results in unnecessary expense for salary, benefits and overhead (e.g. rent, vehicles and other equipment). The total cost of salary and benefits alone for the U.S. Marshals is approximately $10 million.

The USMS could save most of those expenses by eliminating the presidentially-appointed U.S. Marshals and replacing them with the existing career CDUSMs. A position equivalent to the current Chief Deputy would still be necessary to run the USMS 20 largest district offices. These 10 offices handle approximately 80% of the national work load. However, in the 74 mid-size and small offices, a replacement for the position of CDUSM would be unnecessary. The existing CDUSMs could assume the position of U.S. Marshal and the CDUSM position could be eliminated. The net savings would be approximately $4-6 million per year.

DEVELOP LOWER-COST SOLUTIONS TO SOLVING FEDERAL PRISON SPACE PROBLEMS

Background

The Federal Bureau of Prisons (BOP) currently operates 72 facilities housing approximately 79,000 prisoners, with another 8,500 people contracted out to various non-BOP facilities such as halfway houses. BOP has several types of institutions, including four levels of security -- high, medium, low and minimum (i.e., prison camps) -- and administrative facilities, such as prison hospitals.[277] In general, prisoners "graduate" from higher to lower levels of security as they move toward the end of their sentences, although inmates who misbehave or are deemed to be security risks may be moved to a higher level facility. In addition, BOP tries to move inmates closer to home as their sentence ends, in the belief that inmates have a higher success rate following release if they serve the latter part of their prison terms near their homes and families.

The federal prison population has grown dramatically in the last several years. From 1986 to 1992, BOP population grew by 70 percent, from 41,500 in 1986 to its current record level.[278] Moreover, the federal prison population is expected to grow to more than 102,000 inmates by 1996.[279] Aside from handling convicted criminals, BOP also accommodates the overflow of Immigration and Naturalization Service (INS) detainees and pre-sentence prisoners held by the U.S. Marshals Service (USMS) and, in some cases, the U.S. Probation Service (USPS). Significantly, the U.S. has the world's highest rate of incarceration, with 455 people incarcerated per 100,000 people. South Africa is second, with 311 people per 100,000.[280]

The major reasons for the explosive growth of the federal prison population have been the implementation of strict sentencing guidelines beginning in 1987 and the results of the nation's "war on drugs" over the past decade. The Sentencing Reform Act of 1984[281] established the U.S. Sentencing Commission and fundamentally altered federal sentencing practices by limiting the discretion of judges, restricting the awarding of "good time," and eliminating parole in order to reduce sentence disparities. To ensure that major drug traffickers and other offenders did not avoid serving time in prison, Congress established a set of "mandatory minimum" sentences, which override the sentencing guidelines for certain offenders, based on factors such as the type of crime and an offender's history of violence.[282] In drug cases, which are the cases that most often trigger mandatory minimum sanctions, the amount of drugs involved is heavily weighted in the sentence, and in cases where a weapon was involved, an offender's criminal history is especially important. As a result of the guidelines and the mandatory minimums, more people are serving time in prison, and they are serving longer sentences.[283] Moreover, because BOP experience indicates that longer sentences increase the security risks associated with a particular inmate, BOP policy and the federal sentencing structure tend to place inmates in the higher, more expensive security facilities rather than lower cost alternatives. An additional factor in the rising federal prison population is the growing "federalization" of the criminal justice process, with Congress, federal prosecutors and others promoting federal responses to what were traditionally state crimes and state and local governments encouraging federal prosecution and imprisonment of joint federal-state offenders.

As a result of the federal sentencing guidelines, targeted law enforcement efforts and other factors, the nature of the prison population has not only increased, but it has also changed over time. Inmates in the federal prison system convicted of drug-related crimes currently make up approximately 61 percent of those incarcerated, a percentage that is expected to grow to 66 percent (or 71,000 inmates) by 1996. Many of these inmates are first-time offenders serving long sentences due to the "mandatory minimums," and a significant number have no history of violence. In addition, some have noted that a number of federal inmates have been imprisoned due to their roles as conspirators or "mules" in drug trafficking schemes, rather than as principals, in part because the sentencing structure prohibits plea bargaining except in cases where an offender can offer "substantial assistance" to the prosecution; this mechanism is generally available only to the more senior members of a criminal organization. The population of white collar criminals from financial institutions, insider trading, public housing and health care scandals has increased as well, with an inmate population of over 5,000.

While BOP has undertaken a massive expansion program to keep up with this growth, the increased population has led to severe prison overcrowding. In 1981, there were 24,000 bedspaces at federal facilities, and there was little overcrowding. In 1992, BOP had 49,000 bedspaces and 46 percent overcrowding. The current BOP goal is to reduce overcrowding to 28 percent by 1995.

To meet that goal, prison construction has increased tremendously. Since 1990, BOP has been appropriated approximately $2 billion for new construction, and it has begun building prisons at a record pace, with 44 new facilities and over 35,000 new bedspaces planned through 1996.[284] According to several estimates, the average cost of building a new prison is approximately $50,000 per bed, and the average cost of running a prison is approximately $20,000 per inmate per year.[285] In general, lower security prisons are less costly to build and run than those at higher security levels. BOP has explored a variety of ways to reduce the cost of new prison construction, including the use of military bases for new facilities, standardized prison design and other methods for reducing costs. In fiscal 1993, for instance, BOP has been able to acquire a portion of a former military base in New Jersey and has been actively pursuing efforts to acquire facilities in Massachusetts and Texas, among others.[286]

There are a number of alternatives to incarceration that have been implemented by BOP and others in the federal criminal justice process. The USPS, which assists in the pre-trial monitoring of suspected offenders and is responsible for probation and the "supervised release" of former inmates, has explored and begun to implement home electronic detention and other devices as a cost-effective way to handle its burgeoning caseload. Under the sentencing guidelines, probation (up to five years) can be ordered by judges as an alternative to prison only in limited situations, and it has not been used as frequently as in the past. As a result, much of the USPS' role in the former probationary process has been in the area of supervised release, whereby a USPS officer handles the case of a former inmate for a certain term after release from BOP custody.

BOP has also explored alternatives to incarceration within the framework of the sentencing guidelines, including the development of intensive "boot camps" for certain first-time, non-violent youthful offenders with less than 30 months to serve in their sentences. Under the federal boot camp pilot program, inmates participate in an intensive, military-style program that lasts approximately six months, with the remainder of their time served in a halfway house or in home detention, rather than in a prison camp. Although boot camps are more staff intensive than traditional minimum security facilities, a recent GAO study indicated that the use of boot camps resulted in lower housing costs over time since inmates who successfully complete the programs spend a greater portion of their sentence in a community setting. However the report concluded that the long-term impact of the program was uncertain and that the effect on recidivism was unclear.[287] With respect to the period at the end of a sentence, BOP often moves inmates to halfway houses but the law limits stays at halfway houses to the greater of 6 months or 10 percent of an inmate's sentence. As a result, BOP generally moves inmates to halfway houses only in the last 120 to 180 days of their sentences. Since halfway houses are significantly less expensive to run than prisons, with an average cost of $33 per day per inmate (less an average of $4.40 per day contributed by the inmate from work proceeds), savings could be achieved by putting not only more people in halfway houses but also by putting the same people there sooner.

A problematic feature of coordinating the community corrections of the federal criminal justice process is the fragmentation of responsibility among various agencies and branches of government. The USPS has responsibility for compiling pre-sentencing reports on offenders for federal judges, probation and, following the changes brought about by the sentencing guidelines, the supervised release of former inmates. The BOP is involved in community corrections through its agreements with halfway house facilities, and the U.S. Parole Commission, which is scheduled to disband in 1992, has also played a role in this area. As a result of this fragmentation, post-release planning and resource allocation has been difficult since resources cannot easily be shifted over longer sentences from incarceration to alternatives such as electronic home detention. Moreover, since the senior USPS official in each of the 94 judicial districts reports to the Chief Judge of that district, it is difficult to ensure coordination, uniformity and consistency in the development and use of alternative section programs.

Recommendations

1. BOP should expand its "boot camp" programs and continue exploring additional alternatives to incarceration.

BOP should consider developing additional intensive confinement centers based on the boot camp model which reduce costs by requiring inmates to adhere to an intensive work, fitness and education schedule during the first portion of their term in exchange for longer stays at relatively inexpensive halfway house or home detention arrangements during the later segments of their sentences.

2. Congress and the U.S. Sentencing Commission should continue to review the impact of "mandatory minimums" on the federal inmate population to determine whether they have been applied to offenders as anticipated and whether they have resulted in incarceration levels, and costs, that are higher than planned.

The "mandatory minimum" provisions of the sentencing guidelines have had an enormous effect on the number, length and security level of the federal inmate population, and the ability of the prison system to reduce problems of overcrowding in a cost effective manner are limited by the requirements of those guidelines. The impact of the mandatory minimums on law enforcement objectives and whether and how these provisions should be revised are policy issues beyond the scope of the National Performance Review. However, the effect of these provisions on the prison system must be understood by all parties in the process in order to fully assess ways to anticipate and alleviate overcrowding in the federal prison system and the affiliated costs.

3. BOP should continue to explore the use of former military bases, especially in connection with the detention space needs of the USMS and INS.

Given the rapid growth of the federal prison population and the urgent detention space needs of other federal agencies, military bases, along with their local infrastructure and support personnel resources, might be ideally suited for alternative forms of incarceration or other detention space. While BOP actively considers former military base sites, its conversion criteria should be reconsidered to ensure that this option is fully exploited, especially in light of the system's immediate short-term needs.

4. BOP and federal judges should make more prisoners "pay their way" by charging inmates for the costs of their incarceration. In addition, minimum security inmates (such as white collar criminals) suspected of having hidden assets should be housed in stark minimum security facilities with few amenities until they have paid all

of their fines and penalties.

Currently, judges have authority to impose or waive such fines during sentencing, and BOP has proposed a rule establishing guidelines to assess and collect such a fine.[288] Currently, BOP means tests federal inmates to determine whether and how much of the costs of prison they may be assessed, but it is unclear how many inmates might be required to pay under this rule since it can collect fines only in the event a judge does not impose or waive them. Overall, a very high percentage of criminals do not pay all of their fines or other fees, and some BOP officials believe that certain inmates may have the resources to pay their financial obligations but are hiding them.

5. **The Department of Justice should work with the judicial branch to consider ways to improve the community corrections process, including the possibility of merging or consolidating federal agencies or functions.**

Currently, the USPS, BOP and U.S. Parole Commission, among others, play a role in the process, and greater coordination among these groups would improve effectiveness.

6. **BOP and the USPS should expand the use of alternative detention mechanisms such as halfway houses, electronic detention and supervised home release for appropriate offenders toward the end of their prison terms.**

According to a 1991 GAO report, BOP currently has access to over 5,000 beds at halfway houses across the country, but, on the average, only 1,333 are used daily.[289] The report indicated that a larger percentage of the inmate population could take advantage of this program without posing an additional risk to society. Moreover, since inmates who serve time at a halfway house typically work and pay a portion of their housing costs, costs savings can be further achieved.

Implications

The expanded use of the boot camp program should have several effects on the federal prison system. By altering the composition of the prison time served, the intensive confinement centers work to encourage behavior modification at the early portion of the term in exchange for more lenient, and less costly forms of incarceration at the end. While the long-term impact of this program on recidivism is unclear, National Performance

Review staff interviewed several boot camp participants at a BOP pilot program and noted that the attitudes and outlook of the participants compared favorably with those inmates based at traditional less intensive minimum security facilities. Since inmates at halfway houses or in home detention are carefully monitored, BOP has an opportunity to ensure that they receive adequate after-care and demonstrate good behavior after release or face return to prison.

While alternatives to incarceration and other low cost approaches to the prison space problem are important, the only way to address the cause of the problem is to review the current sentencing structure. The experience of the past seven years showed the impact that sentencing has had on the prison system, and a review of that structure is necessary in order to manage the problem of overcrowding.

Converting former military bases to BOP facilities might save BOP a substantial amount of money and alleviate the impact of base closings on local communities, although the data on the subject is unclear and case-by-case judgements must be made. BOP has looked at ways to use military bases to help meet its space needs and has met with success in some cases, including a promising effort to hire former military personnel, but continued efforts should be made. In addition, joint detention facilities could help alleviate space problems for INS, the USMS and others. Finally, BOP might consider using former military bases for joint federal and state "boot camp", drug treatment or other programs, but sharing BOP facilities with state and local governments could be troublesome, particularly since correctional philosophies, priorities and resources might differ, and result in greater cost for the federal government. While the USMS and state and local jails have been able to work out such joint arrangements, such a structure might be more problematic in the area of prisons, where longer terms and larger numbers are involved.

While it is difficult to determine whether charging inmates for their sentences will have any impact, requiring inmates to pay fines or spend time at stark minimum security facilities may help ensure that inmates find "hidden" resources that might otherwise escape the system.

Reviewing the roles of federal agencies involved in handling supervised release and alternative sanctions should help the federal government act more cohesively in the area of community corrections. At present, the differing missions, resources and objectives of each of the players in the community corrections process makes it difficult to coordinate federal efforts in this area.

Finally, alternatives to incarceration at the end of the process, when offenders are in the process of being reintegrated into society, often have beneficial effects. These include helping inmates to find employment and assisting in developing the support structure needed to function during the crucial first months after release.

Fiscal Impact

A boot camp housing 150 inmates can be constructed next to an existing facility for about $1 million, much less than the $50,000 per bed cost for new bed construction at minimum security facilities. However, the operating costs of boot camps, compared with traditional minimum security facilities, are greater, due to increased need for staff supervision and instruction. Nevertheless, the costs are further reduced under the boot camp program since inmates spend a greater potion of their sentence in a low-cost community setting.

Altering the mandatory minimum structure could have an enormous effect on the structure of the federal prison system, although the exact fiscal impact would depend on the extent of the policy change recommended.

It is unclear how many federal inmates could afford to pay for the costs of incarceration and how many who are required to pay actually come up with the money.

Any merger or consolidation of community corrections agencies might save federal funds in the long term, though it may have significant immediate implementation costs. In addition, greater coordination between these entities would assist in the efficient allocation of resources for that purpose.

Since the daily cost of housing an inmate in a halfway house is much less than the cost of housing that individual in a prison, and since halfway house inmates typically pay much of their own way, each additional halfway house bed and each additional day in the halfway house would be a cost savings. With respect to electronic home detention, a monitoring device costs approximately $6-7, and the costs of a supervisor, who typically has responsibility for 30-40 individuals, is roughly $7 per day, also much less than the cost of incarceration.

DEVELOP MORE EFFECTIVE WAYS TO TREAT AND REHABILITATE INMATES WITH SUBSTANCE ABUSE PROBLEMS

Background

As a result of the nation's severe drug abuse problem and the consequent "war on drugs," the number of state and federal prison inmates who are substance-dependant has grown dramatically. In the federal system, it is currently estimated that 44 percent of the federal prison population has a moderate to severe problem, with another 20-25 percent having problems of a more minor nature.[290]

The Federal Bureau of Prisons (BOP) currently runs several programs designed to treat inmates who are substance-dependent. BOP requires inmates identified as having drug or alcohol abuse histories to enroll in its mandatory 40-hour drug education program. Individual and group counseling, as well as self-help programs such as Alcoholics and Narcotics Anonymous, are also available at most facilities.

More significantly, in response to criticism in the late 1980s, BOP has begun to develop and offer non-residential drug treatment in all institutions and has implemented residential drug treatment programs in approximately thirty institutions. The residential programs usually run for nine months and inmates live in separate facilities but interact with the general population. A 1991 GAO study indicated that only 364 federal prisoners out of an estimated 27,000 eligible inmates who have been identified as having a drug and alcohol problem received treatment. Today, approximately 3,000 inmates are receiving treatment of some sort.[291] Inmates who participate in these programs continue to at least partially assume their work and other responsibilities within the prison facilities while receiving treatment. BOP is exploring alternative programs and is currently in the process of implementing a 12-month residential program in a number of facilities. From 1990 to 1992, BOP more than tripled the budget for drug treatment, from $7.2 million to $21.8 million.

While BOP is studying ways to encourage inmates to join drug treatment programs, requirements or incentives for participation in drug treatment programs while in prison have been limited by federal sentencing guidelines, which removed most incentives for pursuing treatment in favor of a more determinate sentencing structure. The Sentencing Reform Act of 1984[292], which created the U.S. Sentencing Commission to develop the federal sentencing guidelines, stated that rehabilitation was not an appropriate goal of incarceration (as opposed to probation), significantly limited probation and eliminated parole. Similarly, Congressionally-mandated "minimum mandatory" sentences, in which certain offenders are required to serve a minimum term in prison, imposed firm and long sentences on offenders based on the quantity of drug involved in the offense.

Despite dramatically changing the demographics of the federal prison population by incarcerating a higher percentage of drug-related offenders, the guidelines and "minimum mandatories" do not include mandatory treatment as part of a sentencing option, although a judge may recommend treatment. BOP encourages inmates to participate in treatment programs by limiting pay rates to the lowest level or denying inmates extended halfway house placement if they do not participate, but there are limited ways to encourage treatment and few performance measures or statistics in this area to analyze whether these incentives are working.

Some authorities believe that the prison system is an excellent vehicle to target and treat those needing help. A report sponsored by the U.S. Department of Health and Human Services found that separating inmates who are enrolled in drug treatment programs from the rest of the general prison population may be the best way to ensure that substance-dependant inmates receive effective treatment.[293] BOP has developed some residential facilities that house inmates away from the general prison population, but some facilities have had to "mix" populations in order to ease overcrowding. Moreover, even in the residential programs inmates mix during free time. BOP has explored programs that segregate portions of the inmate population in connection with its "boot camp" program, which puts first-time, youthful, non-violent offenders through an intensive fitness, work, and education regimen followed by a stay in a halfway house and home detention (as opposed to time serving the remainder of their sentences in a traditional minimum security facility), but a program of that type has not been implemented in the context of drug treatment.

Another critical component of drug treatment is aftercare. Prior to release, BOP inmates may spend a period of time either before or after release in a halfway house. While in such a facility, inmates who have completed residential treatment are required to participate in community-based treatment. BOP contracts with community-based treatment providers, often the same providers used by the U.S. Probation Service (USPS), in order to ensure a continuum of treatment as the inmate moves from BOP to USPS supervision. Once prisoners are released from the federal prison system, they often serve a period of supervised release under the USPS, which conducts urinalysis tests and helps inmates find follow-up care. Since the average period of supervised release is relatively short, however, there are few ways to assess results over the long term. BOP has, in agreement with the National Institute for Drug Abuse (NIDA), begun a five-year outcome study to assess the performance of BOP programs, and preliminary results are expected in September 1994. In general, however, the information systems in the federal criminal justice process are highly fragmented, and it is difficult to compile data and analyze the impact of federal substance abuse programs.

Recommendations

1. **Congress should instruct the U.S. Sentencing Commission to include mandatory drug treatment as a component of the federal sentencing guidelines for those offenders who are found to have moderate to severe substance abuse problems.**

Alternatively, Congress and the U.S. Sentencing Commission should consider using the sentencing guidelines to develop incentives for offenders who need drug treatment to voluntarily undergo it.

2. **BOP should develop a pilot "drug boot camp" as a way to encourage inmates to pursue drug treatment and to isolate the those individuals from the general prison population.**

3. **BOP should reallocate a portion of existing construction funds to build pilot prison facilities dedicated to providing inmates with drug treatment.**

To make these programs cost effective and to keep inmates closer to their homes, families and communities, BOP should build the facilities as satellites to existing BOP institutions rather than as separate units. To the extent inmates are non-violent, the USPS should link or integrate these programs with community drug treatment programs receiving federal funds or community volunteer programs.

4. **In connection with any mandated drug treatment programs, Congress, the U.S. Sentencing Commission, BOP and the USPS should extend to probation process or after-care programs to ensure that former inmates continue to stay off drugs after release.**

BOP and USPS should use this lengthened process to measure the results of drug treatment programs.

Implications

A very substantial portion of the inmate population with moderate to severe drug problems is not receiving substance abuse treatment of any type, though a larger portion is receiving some drug education. While it is unclear whether successful treatment requires voluntary participation by the inmate, the sentencing structure could do more to encourage participation, if not mandate treatment. Reviewing and revising the sentencing guidelines and the "mandatory minimums" will help to make sure that those who need treatment have incentives to seek it out and receive it.

One alternative model for this might be the BOP's "boot camp" pilot, which appears to be successful. The program encourages participants by allowing them to spend the remainder of their sentences at a halfway house and in home detention. It also serves to focus on the needs of inmates through its wellness and self-analysis program. Starting to develop a parallel program in the area of drug treatment, including the opportunity for inmates to move directly into "supervised after-care," will help assess a potential expansion opportunity.

Developing exclusive drug treatment centers as adjuncts to existing facilities might also provide a cost effective way to treat a larger portion of the inmate population. According to various estimates, the cost of treating an individual in a residential program varies between $2,500 and $10,000 per year, which is less than the annual cost of housing an inmate in a medium security facility. It should be noted that the security level of the inmates to be treated will also have an impact on the cost. Since a large portion of the drug-related inmate population is non-violent, building drug treatment centers rather than prisons would reduce cost. Moreover, such facilities could be shared with other federal agencies and state and local governments, and coordinated approaches to treatment could be facilitated, including using state governments to help handle post-release responsibilities.

Since an important part of drug treatment is after-care, the probationary apparatus should continue to be used to monitor former inmates, possibly requiring inmates to return to treatment. The USPS currently monitors drug use as part of its supervision of former inmates, though former inmates who violate the terms of their release due to drug use generally go back to prison rather than into treatment. If a more comprehensive drug treatment after-care program were established, the results might be better. Moreover, by using the information system as a mechanism for post-release follow-up, greater monitoring of the former inmate population could be achieved. In addition, performance data on various treatment programs could be developed using this system.

Fiscal Impact

According to a GAO report, drug treatment in BOP facilities as currently provided costs an estimated $5,000 per inmate, in addition to the average $18,000 per inmate per year operating cost.[294] This estimate needs to be reviewed, since it incorporates security and other apparatus that might not be necessary drug treatment satellite programs. Drug treatment has recently become a separate line item for BOP, and this has resulted in greater attention, resources, and cost-benefit analysis for the programs. If a separate budget for substance abuse offenders were established, clearer results might be possible. This could also help assist in analyzing the actual costs of treatment (leaving aside long term cost savings from shorter sentences and greater time in the community by the former inmate).

The boot camp model might prove cost effective. The current BOP pilot programs cost approximately $1 million for a 150 bed facility, and savings are achieved since inmates who complete the program are placed in halfway houses and home detention rather than serve a greater proportion of their sentence in minimum security facilities. Building a drug treatment pilot on this model should cost about the same, though administrative (principally professional) costs would probably be slightly higher.

Developing dedicated drug treatment centers might also significantly reduce the cost of drug treatment. To the extent that substance abusers are non-violent, such facilities might be significantly less expensive than new prisons and could be constructed as an alternative to already authorized and appropriated but not yet funded prison construction projects. A recent article in *The New York Times*[295], *for example,* estimated the cost of running a therapeutic community center at $2,500 - $5,000 per participant and noted that the Texas prison system has invested large sums of money for such facilities. Such a model could be implemented at the federal level.

IMPROVE TECHNIQUES USED IN PRISONER TRANSPORTATION AND CUSTODY BY U.S. MARSHALS

Background

Individuals arrested or detained for violation of federal statutes are remanded to the custody of the Marshals Service. Federal prisoners are transported and moved within and between districts for observation and service of sentence. Long-distance prisoner moves are done under the National Prisoner Transportation System (NPTS), which includes large aircraft and small planes and a supporting system of buses and vans operated by the Bureau of Prisons. The NPTS has been called upon with increasing frequency to relieve conditions brought on by the jail space crisis in the Northeast and other areas. Prisoners in Massachusetts are currently held in Danbury, Connecticut, a three-hour ride away, and prisoners in the Southern and Eastern Districts of New York are shuttled to Texas. At any time, the Marshals Service has 20,000 pretrial detainees moving among 908 jails. Overall, the NPTS conducts 91,000 prisoner movements annually.

With respect to prisoner custody, the Marshals Service enters into intergovernmental arrangements for jail space with state and local jails. Because state and local governments find such agreements profitable, the Marshals Service should aggressively promote competitive bidding to provide housing for federal prisoners. Additionally, the Marshals Service may be able to reduce paperwork burdens by availing itself of the Bureau of Prisons' Sentry computerized tracking system, which is an offender-based tracking system that monitors the federal prison population in real time. At present, most of the information collected by the Marshals' paperwork is incompatible with the Sentry system. Because the Marshals Service and Bureau of Prisons split responsibility for transporting inmates, and further, because the Sentry system is currently available on a limited basis at all U.S. Attorneys offices, expanding the system to assist the Marshals Service could be relatively easy.

Recommendations

1. **The Marshals Service and the military should examine ways to provide the use**

of excess capacity aircraft by NPTS. Military pilots, for example, may already be flying aircraft with excess capacity as part of their certification process. The Marshals Service examine similar arrangements with military reserves, which may also have excess aircraft capacity.

2. Expand video arraignment pilot programs to reduce number of pretrial court appearances.

3. Institute competitive bidding by state and local jails for Marshals Service jail space agreements..

4. Expand Bureau of Prisons "Sentry" computer tracking system to monitor pre-sentence detainees.

Implications

1. NPTS has attempted to lease excess capacity military aircraft with limited success. Because prisoners cannot be shackled on commercial aircraft, security considerations dictate that NPTS use dedicated aircraft for prisoner movements. Although NPTS has attempted to lease excess capacity military aircraft, the military has to date only made aircraft available on terms that are generally unfavorable. In one instance, the military offered to lease NPTS an aircraft on six weeks notice for approximately $6,000 per day, while Federal Express offered to lease a similar capacity plane to NPTS on 48 hours notice for $3,700 per day. While NPTS can continue to lease privately owned aircraft at market rates, the issue of availability of excess aircraft capacity within the federal government should be examined in order to determine whether NPTS can avail itself of that capacity without restricting the availability of aircraft to the military in the event of troop movement demands or a national emergency.

2. The Marshals Service estimates that it produces each prisoner seven times for appearances at detention hearings, trials and other court appearances. In 1992, the Marshals Service instituted a video arraignment pilot project in an effort to reduce the number of pretrial prisoner movements. The program, currently ongoing at Bureau of Prison facilities in Tallahassee, Florida and Guanaba, Puerto Rico, uses two-way video teleconferencing equipment to enable the prisoner and his or her counsel to "appear" before the federal judge

assigned the case without having to be physically present in the court city. The program has so far proved to be successful and is ready to expand to other Bureau of Prison facilities. The INS has also expressed interest in the project. One disadvantage is the concern of among federal judges and public interest groups that prisoners be afforded an opportunity to appear in person at all hearings involving their case. These concerns may be ameliorated through selective use of video arraignments to relieve the most expensive prisoner movements. In addition, several courts have already ruled that video arraignments do not deprive prisoners of due process.

3. The Marshals Service currently spends approximately $275 million annually on the care of U.S. prisoners in non-federal institutions. The Marshals Service contracts with state and local jails to board federal prisoners and detainees before and during a trial and while awaiting transfer to federal institutions after conviction. Instituting competitive bidding among state and local jails for federal prisoners will have the effect of lowering average daily prisoner costs, which currently average $55.75 per offender. A possible disadvantage to this approach is that state and locals may object to the institution of a "market" rate for federal prisoners. State and locals will benefit long-term, however, to the extent that they become more efficient providers of jail space.

4. Expanding the Bureau of Prison's Sentry prisoner tracking system forward to include Marshals Service prisoners and detainees will reduce paperwork burdens on the Marshals Service while providing the Department of Justice with an expanded offender-based tracking system. There are no apparent disadvantages to this option.

Fiscal Impact

The actual fiscal impact of these recommendations has not been estimated yet.

Endnotes

1. GAO/GGD -91-75, Justice Model, Appendix VI, Federal Organizations With Some Law Enforcement Functions, pages 81 through 85.

2. Report of the National Advisory Commission on Law Enforcement, April 1990, page 32.

3. Federal Times Law Officers are Caught in Cross-fire of Duplicate Efforts, June 7, 1993.

Federal Times, Reinventing Drug Enforcement, June 14, 1993

4. U.S. Attorney Databases on Defendant Referral, Declinations and Indictments: FISCAL YEAR 1991, Table I.

5.Treasury Organization Chart Manual, October 1992, page 45.

6. Office of Management and Budget (OMB), Federal Drug Control Programs, Budget Summary, Fiscal Year 1994

7. The United States Government Manual, Section on Bureau of Alcohol, Tobacco and Firearms, page 504, 1992/93.

8. Congressman John Conyers introduced bill H.R. 1927, to transfer all functions of the Bureau of Alcohol, Tobacco, and Firearms relating to the regulation of firearms from the Department of the Treasury to the Federal Bureau of Investigation.

9. U.S. General Accounting Office, Report to the Chairman, Committee on Governmental Affair, U.S. Senate JUSTICE DEPARTMENT, Coordination Between DEA and the FBI, March 1990, page 1.

10. Implementation Directive for Concurrent Drug Investigative Jurisdiction Between The Drug Enforcement Administration and The Federal Bureau of Investigation, Department of Justice, March 1982.

11. Federal Times, In This Drug War, It's FBI versus. DEA.

12. FBI White Paper, Reorganization of Federal Drug Law Enforcement Resources, 1993, page 2.

13. DEA Response to FBI White Paper Titled: Reorganization of Federal Drug Law Enforcement Resources, June 1993, page i.

14. GAO Report, January 8, 1993, Testimony Before the Committee on Governmental Affairs United States Senate, Major Issues Facing a New Administration, Statement of Charles A. Bowsher, Comptroller General of the United States.

15. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.

16. Department of the Treasury Rebuttal Paper to National Performance Review Recommendation to "Create an Independent Border Management Agency," July 30, 1993.

17. Memorandum from Dick Thornburgh, Chairman Pro Tempore, Domestic Policy Council and Brent Scowcroft, Assistant to the President for National Security Affairs, to the Vice President, the Secretaries of State, Treasury, Defense, Agriculture, Commerce, and Transportation, the Directors of the Office of Management and Budget, Office of National Drug Control Policy, and Central Intelligence Agency, "Conclusion of the Border Security Review, April 5, 1991," including the "Border Security Implementation Plan" (Tab C), p. 1.

18. U.S. Congress, Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, (Congressional Research Service, Library of Congress, Washington D.C., June 1988), p. 35.

19. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, GAO/GGD-93-111 (Washington, D.C.:, June 1993), p .6.

20. Ibid.

21. Ibid., pp. 6-7.

22. Ibid., pp. 5-8.

23. U.S. Department of the Treasury, U.S. Customs Service, "Master Plan for Passenger Processing at United States Airports for the 1990's," provided to the National Performance Review, Washington, D.C., June 21, 1993, pp. 2-7.

24. IBIS includes: the Department of State's Automated Visa Lookout System (AVLOS) and Consular Lookout and Support System (CLASS); INS' National Automated Immigration Lookout System (NAILS); and Customs' Treasury Enforcement Communications System (TECS). Memorandum from Dick Thornburgh to the Vice President, et. al., "Border Security Implementation Plan" (Tab C), p. 4.

25. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.

26. Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, p. 90.

27. Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, pp. VII-X.

28. Ibid., pp. 3-4; and Memorandum from Ralph B. Thomas, Acting Director, Congressional and Public Affairs, Immigration and Naturalization Service (INS), to Chris Sale, Acting Commissioner, INS, Washington, D.C., February 18, 1993, "Reorganization: INS and the Customs Service."

29. Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, p. 4.

30. Ibid., p. 18.

31. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 2.

32. Interview with Chris Sale, Acting Commissioner for the Immigration and Naturalization Service, Washington, D.C., June 15, 1993.

33. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.

34. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 28.

35. No firm estimates exist on the number of aliens who escape apprehension upon entry. Various sources estimate from one and one-half to five million.

36. Daniel James, "To Cut Spending, Freeze Immigration," *Wall Street Journal*, Counterpoint, June 24, 1993, p. A 13. (Additional estimates cited include: $35 billion annually for all immigrants; $450 billion in the 1993-2002 period.)

37. U. S. Comptroller General, *Managing the Customs Service*, GAO/HR-93-14 (Washington, D.C.: , December 1992), pp. 6, 10.

38. Data on INS provided by Justice Reinvention Team to the National Performance Review, July 26, 1993.

39. Office of Management and Budget, *Summary of the Fiscal 1994 President's Budget Request for the U.S. Department of the Treasury*, April 8, 1993.

40. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 8.

41. U.S. Comptroller General, *Customs and INS: Dual Management Structure for Border Inspections Should Be Ended*, p. 13.

42. Ibid.

43. U.S. Department of Treasury, Paper on Border Management provided to the National Performance Review, July 26, 1993.

44. Treasury Internal Reinvention Team, data provided to the National Performance Review via facsimile, July 21, 1993.

45. Data on Customs provided by the Treasury Internal Reinvention Team to the National Performance Review via facsimile, July 21, 1993; Data on INS provided by the Justice Reinvention Team to the National Performance Review, July 26, 1993.

46. Remarks by the President, the Vice President and the Attorney General during Immigration Policy Announcement, Roosevelt Room, The White House, Washington, D.C., July 27, 1993, pp. 1-4.

47. No firm estimates exist on the number of aliens who escape apprehension upon entry. Various sources estimate from one and one-half to five million.

48. Daniel James, "To Cut Spending, Freeze Immigration," *Wall Street Journal*, Counterpoint, June 24, 1993, p. A 13. (Additional estimates cited include: $35 billion annually for all immigrants; $450 billion in the 1993-2002 period.)

49. U.S. Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service 1991*, (U.S. Government Printing Office, Washington, D.C., September 1992), p. 160.

50. U.S. Congress, Senate Committee on Governmental Affairs, *Border Management Reorganization and Drug Interdiction*, (Congressional Research Service, Library of Congress, Washington D.C., June 1988), p. 11.

51. *The Immigration Reform and Control Act of 1986 (IRCA)*, (November 6, 1986), P.L. 99-603.

52. Sandia National Laboratories, "Systematic Analysis of the Southwest Border," prepared for the Immigration and Naturalization Service, funded by the Office of National Drug Control Policy, prepared by Advanced Systems Integration Department 9651, Albuquerque, New Mexico, January 1993, Volume 1, p. ES-9.

53. Ibid., p. ES-2.

54. U.S. Immigration and Naturalization Service (INS), "U.S. Border Patrol Program Overview," Washington, D.C.; June 1993, pp. 1-2.

55. See endnote 2.

56. Sandia National Laboratories, Volume 1, pp. ES 2-4.

57. Gustavo De La Vina, Chief Patrol Agent, U.S. Border Patrol, "San Diego Sector Operational Profile," San Diego, CA, provided to the National Performance Review June 22, 1993, p. 1.

58. U.S. Border Patrol, U.S. Immigration and Naturalization Service, "Daily Apprehensions -- May 1993," provided to National Performance Review team members, by the San Diego Sector, San Diego, California, June 22, 1993.

59. Border Trade Alliance, "Position Paper on Unified Port Management", provided to the National Performance Review team members during interview in San Diego, California, June 25, 1993.

60. U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol, "Draft Results of a Border Patrol Staffing Requirements Survey," provided to the National Performance Review, Washington, D.C., July 2, 1993, p. 1.

61. U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol, "Border Patrol Staffing & Apprehensions (Agents & Support)," Washington, D.C.; June 7, 1993.

62. Sandia National Laboratories, Volume 2, p. 209.

63. Ibid., p. 202.

64. Border Patrol notes provided to the National Performance Review, July 20, 1993.

65. The White House, "Fact Sheet: Initiatives to Curb Illegal Immigration," Washington, D.C., July 27, 1993, p. 1.

66. Ibid.

67. Immigration and Naturalization Service (INS), "Employer Sanctions Questions and Answers," Washington, D.C., June, 1993, p. 38.

68. Ibid., p. 41A,

69. Ibid., p. 29A.

70. Ibid., p. 12.

71. Ibid., p. 6.

72. Border Trade Alliance, "Position Paper on Unified Port Management."

73. INS, "Employer Sanctions Questions and Answers," p. 36.

74. Ibid., p. 16.

75. Ibid., p. 36.

76. Selected Chief Patrol Agents' Focus Group Interview, U.S. Immigration and Naturalization Service, Washington, D.C., July 1, 1993.

77. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 7.

78. Data provided by the Justice Internal Reinvention Team to the National Performance Review, July 20, 1993.

79. Office of Management and Budget, *Federal Drug Control Funding, FY 1994 Budget Summary* (Washington, D.C., 1993), p.5.

80. Majority Staffs of the Senate Judiciary Committee and the International Narcotics Control Caucus, *America's Drug Strategy: Lessons of the Past...Steps Toward the Future.*, (Washington, D.C., April 1993), p. 138.

81. Interview with Colonel Robert Newberry, Principle Director for Drug Enforcement Policy and Support, Office of the Secretary of Defense, Pentagon, Alexandria, Virginia, May 25 and June 11, 1993.

82. Office of Management and Budget, *Federal Drug Control Funding,* p.113.

83. Ibid., pp. 17-20.

84. Ibid., p.123-125.

85. Ibid., p. 123.

86. U. S. Customs Service, Information Provided for the NPR, July 15, 1993.

87. U.S. Comptroller General, *Drug Control: Impact of DOD's Detection and Monitoring on Cocaine Flow, Report to Congressional Requesters, GAO/NSIAD-91-297* (Washington, D.C.: General Accounting Office, September 1991), p.6.

88. Interview with Robert Newberry, May 25 & June 11, 1993.

89. U.S. Comptroller General, *Drug Control: Oversight Needed to Prevent Acquisition of Unnecessary Equipment*, Report to the Chairman, Committee on Government Operations, House of Representatives, GAO/NAIAD-92-260 (Washington, D.C.: General Accounting Office, July 1992), p.3.

90. Information provided to the NPR by Customs, July 12, 1993.

91. Ibid.

92. Memorandum from Director, Aviation Operations Center (West), to Deputy Assistant Commissioner, Office of Air and Marine Interdiction, June 10, 1993.

93. Interview with Joseph W. Maxwell, Director, Aviation Operation West, U.S. Customs Service, Riverside, California, June 21, 1993.

94. Peter Reuter, Gordon Crawford, and Jonathan Cave, "Sealing the Borders: the Effects of Increased Military Participation in Drug Interdiction: (Prepared for the Office of the Under Secretary of Defense for Policy, the RAND Corporation, 1988), pp. vi-xiii.

95. Memorandum From Director, Aviation Operations Center (West), June 10, 1993.

96. Advanced Systems Integration Department 9561, Sandia National Laboratories, *Systematic Analysis of the Southwest Border*, Vol.1 (Albuquerque, New Mexico, January 1993), p.ES-9.

97. The White House, Office of the Press Secretary, Remarks by the President, The Vice President and the Attorney General during Immigration Policy Announcement, July 27, 1993, p.4.

98. Office of Management and Budget, *Federal Drug Control Funding, p.123.*

1. U.S. Department of Justice (Justice), Office of the Inspector General (OIG), Audit Division, Audit Report, *Controls Over Established User Fee Accounts in the Immigration and Naturalization Service* (Washington, D.C., December 1992), p. 199.

100. A one dollar ($1) increase in INS inspection fees from $5 to $6 is included in legislation entitled "Expedited Exclusion and Alien Smuggling Penalties Act of 1993" announced by the President on July 27, 1993. The White House, "Fact Sheet: Initiatives to Curb Illegal Immigration," Washington, D.C., July 27, 1993, p. 4.

101. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 13.

102. U.S. Department of Justice, Office of the Inspector General Audit Report, *Controls Over Established User Fee Accounts in the Immigration and Naturalization Service*, p. 7.

103. Immigration and Naturalization Service (INS), Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," provided to National Performance Review during interview with Michael D. Cronin, Assistant Commissioner for Inspections,

Washington, D.C., June 17, 1993, p. 1.

104. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p. 1.

105. Memorandum from Nick Sherwood, Bureau of Consular Affairs, Department of State, National Performance Review: Department of Justice Issue Paper and Recommendations--Request for State Position," to Bob Service, State National Performance Review Team, (Washington, D.C.), August 2, 1993.

106. Section 101, *Immigration and Nationality Act (INA) of 1952* (as amended), [8 U.S.C. 1101]; Section 221, INA, [8 U.S.C. 1201].

107. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p. 1; Treaty, October 28-November 12, 1953, United States-Mexico, 5 U.S.T. 174 T.I.A.S. 2912.

108. Immigration and Naturalization Service (INS), Draft changes to Title 8, *Code of Federal Regulations (CFR)*, Parts 103, 212, 217, 235, 264, and 286, "Charging Fees for Services at Land Border Ports-of-Entry," provided to National Performance Review during interview with Michael D. Cronin, Assistant Commissioner for Inspections (Washington, D.C., June 17, 1993), p. 6.

109. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p. 2; Telephone interview with John Adams, Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State, Washington, D.C., July 7, 1993.

110. U.S. Congress, House Committee on Appropriations, Surveys and Investigations Staff Report, "Immigration and Naturalization Service Dedicated Commuter Lane Pilot and Inspections and Overseas Locations," Washington, D.C. March, 1993; transmitted by letter to Attorney General Janet Reno from Neil Smith, Chairman, Subcommittee on the Departments of Commerce, Justice, and State, The Judiciary and Related Agencies, April 20, 1993, p. i.

111. Ibid, p. 3.

112. Ibid., p. i.

113. Ibid., p. 3.

114. Ibid., p. 1.

115. Ibid., p. 4.

116. Ibid., pp. 4-5.

117. Ibid., p. 4.

118. Ibid.

119. U.S. Department of Justice, Immigration and Naturalization Service (INS), Office of Inspections, "Dedicated Commuter Lane," Washington, D.C., May 1993, Tab 2, p. 2.

120. U.S. Congress, "INS Dedicated Commuter Lane Pilot," p. 5.

121. Immigration and Naturalization Service, "Dedicated Commuter Lane," Tab 2, p. 2.

122. U.S. Congress, "INS Dedicated Commuter Lane Pilot," p. 5.

123. Ibid.

124. Ibid., pp. i, 6.

125. Ibid., p. 6.

126. Ibid., p. 7.

127. Ibid., pp. ii; 7.

128. Ibid., p. ii.

129. Ibid., p. 8.

130. Ibid., pp. ii; 9.

131. Ibid., p. 8.

132. Ibid., pp. ii; 9.

133. Ibid., p. 9.

134. Immigration and Naturalization Service, "Dedicated Commuter Lane," Tab 3, p. 1.

135. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 4; Section 286, INA, [8 U.S.C. 1356].

136. Immigration and Naturalization Service (INS), Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994," June 4, 1993, provided during interview with Michael D. Cronin, Assistant Commissioner for Inspections, Washington, D.C., June 17, 1993.

137. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 5.

138. Immigration and Naturalization Service, Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994."

139. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 5. Canadians and lawful permanent residents who have common nationality with Canada are normally waived passport and visa requirements unless excludable. This form eliminates the need for a yearly waiver application for those who had previously been found ineligible for waivers.

140. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 4.

141. Immigration and Naturalization Service, Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994."

142. Telephone interview with Lorraine Lewis, Immigrant Visa Control and Reporting Division, Foreign Operations, Visa Services, Bureau of Consular Affairs, Department of State, Washington, D.C., July 7, 1993.

143. Telephone interviews with Diane Hinckley, Acting Assistant Commissioner for Inspections, Immigration and Naturalization Service, Washington, D.C., July 7, 1993; and George E. McCubbin, Area Port Director, San Ysidro, California, July 7, 1993.

144. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p.1.

145. Immigration and Naturalization Service, Draft changes to Title 8, CFR, p. 6.

146. Immigration and Naturalization Service, Draft "Proposal to Amend the Agreement on Passport Visas (Treaty) of 1953," p.2.

147. Telephone interview with Lorraine Lewis, July 7, 1993.

148. Immigration and Naturalization Service, Draft changes to Title 8, *CFR*, p. 4.

149. Immigration and Naturalization Service, Draft "Proposed Land Border User Fee Charges Cost Analysis Fiscal Year 1994."

150. Debt collection claims are claims which the agencies refer to DOJ for litigation and/or debt collection, for which litigation is not necessary to establish that the claim is due and payable. These claims include defaulted loans, overpaid benefits, and unpaid agency-imposed civil monetary penalties, but exclude claims referred to DOJ that require litigation to establish the amount due or claims involving tax litigation from the Internal Revenue Service. *Final Report of the Multi-Agency Action Team On Financial Litigation Information* (Washington, D.C. June 1992), p. 41. DOJ attorneys also sue to collect unpaid criminal fines and assessments, which are tracked by the Administrative Office of U.S. Courts' National Fine Center.

151. The Federal Claims Collection Standards contain the regulations used by agencies to refer claims to the DEDUCE for litigation and enforced collection. 4 C.F.R. §§101-105.

152. FLUs are staffed by debt collection paralegals working under the supervision of an Assistant U.S. Attorney.

153. The NCIF screens all incoming debts to ensure that the statutes of limitation have not expired, that the debtors' addresses are within the judicial district to which they are addressed, and that a correctly completed Claims Collection Litigation Report is attached. The NCIF does not currently track debt collection claims referred to Deduce headquarters divisions, nor does it function as a case tracking system with respect to debt collection claims.

154. The private debt collection counsel pilot program currently runs through September 1996. 31 U.S.C. §3718(b). The law authorizes its expansion to a total of not more than 15 federal judicial districts.

155. In one typical case, JET pilot USMS personnel in Arizona seized two limousines and $4,500 in cash from a debtor who had defaulted on a $2,380 student loan. To date, the JET pilot has undertaken over 1,040 asset investigations, located over 200 absconded debtors and closed over 800 cases.

156. In the private debt collection counsel pilot districts, DEDUCE has expanded the NCIF to include information on the status of agency debt collection claims.

157. In fiscal years 1991 and 1992, Deduce Executive Office for U.S. Attorneys administered a Debt Collection Activity Fund (DCAF), which provided $5 million to be used to train debt collection personnel, locate debtors and their property, and pay the costs of the sale of debtor property not covered by sale proceeds. The DCAF was authorized by Congress in fiscal year 1993, but no money was appropriated to fund it.

158. The expanded NCIF would produce debt collection litigation documents, generate statements to debtors on installment payment plans, provide for debtors to send payments directly to the appropriate lockbox, and generate default letters to all debtors in a payment plan who fail to make their required payments on a timely basis.

159. In Tennessee, for example, one FLU could service the debt collection litigation activities in each of the state's three federal judicial districts.

160. Public law 98-473, 98 Stat. 1837 (1984).

161. U.S. Government Accounting Office, *Federal Prisons: Inmate and Staff Views on Education and Work Training Programs*, January 1993, GAO/GGD-93-33.

162. Ibid.

163. Ibid.

164. Ibid.

165. Ibid.

166. Bureau of Prisons post-release employment study, 1992. See also Bureau of Justice Statistics Special Report, April 1989, *Recidivism of Prisoners Released in 1989*.

167. General Accounting Office, *Asset Management-Government-wide Asset Disposition Activities*, GAO High-Risk Series, (Washington D. C., December, 1992), p. 1.

168. Ibid, pp. 9-10.

169. Ibid, pp. 1 & 11.

170. Ibid, p. 6.

171. New York Times, p 1, June, 20, 1993

172. *Asset Management-Government-wide Asset Disposition Activities*, p. 1.

173. Memorandum of Understanding between the US Customs Service and IRS which creates the procedures for the Treasury Asset Forfeiture Fund, May 3, 1993

174. Focus Group meeting, p 1, June 21, 1993 & Focus Group meeting, p 1, June 23, 1993

175. Department of Justice on the Asset Forfeiture Program, p. 78.

176. Department of Justice, United States Marshals Service Seized Assets Division Statistical Charts as of April, 1993, p. 1.

177. Phone Conversation with Tim Virtue, SUMS, 6/29-30/93

178. *Asset Management-Government-wide Asset Disposition Activities*, p. 29.

179. Department of the Treasury, Financial Management Service, *Final Recommendations or a Model Real Property Management/Disposition System*, (Washington, D. C., January 18,1991), p. 1-2.

14. Ibid., pp.1-4, 2-2, 2-4.

181. Ibid, pp. 2-2 to 2-6.

182. *Asset Management-Government-wide Asset Disposition Activities*, p. 1.

183. JTR-64: Re-engineer the Affordable Housing Disposition Programs using the Resolution Trust Corporation Initiative as a Model

184. Treasury Reinvention Team paper on the same subject.

185. *Asset Management-Government-wide Asset Disposition Activities,* p. 1.

186. *Asset Management-Government-wide Asset Disposition Activities,* p. 5.

187. House of Representatives, Intelligence Authorization Act For Fiscal Year 1994, Mr. Glickman, from the Permanent Select Committee on Intelligence, page 13.

188. GAO, Drug Control, Coordination of Intelligence Activities, April 1993.

189. Department of Justice document, National Drug Intelligence Center, April 1993

190. Department of Justice document, National Drug Intelligence Center, April 1993

191. Funding Data sheet provided by the National Drug Intelligence Center.

192. Sources for this section of the report are numerous. Unless otherwise specifically cited elsewhere, they include:

- Interview with John W. Cummings, Acting Director, International Affairs and Outreach, Immigration and Naturalization Service, Washington, D.C., June 3, 1993.
- Interview with John Davis, Adjudicator, Northern Service Center, Lincoln, Nebraska, Immigration and Naturalization Service, detailed to the National Performance Review, Washington, D.C., April 19, 1993.
- Interview with Jay Jennings, General Accounting Office, U.S. Congress, Washington, D.C., May 17, 1993.
- Interview with Joan C. Higgins, Assistant Commissioner for Detention and Deportation, Immigration and Naturalization Service, Washington, D.C., June 3, 1993.
- Interview with Joseph L. LaCombe, Area Port Director, and Christopher T. Hess, Assistant Port Director, Dulles International Airport, Washington District, Immigration and Naturalization Service, Washington, D.C., June 1, 1993.
- Interview with Thomas Walters, Acting Assistant Commissioner, Border Patrol, Immigration and Naturalization Service, Washington, D.C., June 11, 1993.
- John F. Shaw, Assistant Commissioner for Investigations, Immigration and Naturalization Service (INS), "Balance Between Service and Enforcement Functions," Investigations' Submission to the INS Commissioner's Conference, Denver, Colorado, June 7 - 11.
- John F. Shaw, Assistant Commissioner for Investigations, Immigration and Naturalization Service (INS), "INS Enforcement: Documenting the Need for Organizational Change," Investigations' Submission to the INS Commissioner's Conference, Denver, Colorado, June 7 - 11.

193. Rudolph Valdez, Western Regional Administrator, Immigration and Naturalization Service, "Hundred Day Comments," November 14, 1992, p. 2.

194. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Gene McNary, Former Commissioner of the Immigration and Naturalization Service, Washington, D.C., March 30, 1993, pp. 8-9; and Round table with INS Washington District personnel, June 16, 1993.

195. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Dan Stein, Executive Director of the Federation for American Immigration Reform, Washington, D.C., March 30, 1993, p. 8; and Round table with INS Washington District.

196. Memorandum from C. M. McCullough, Acting Regional Administrator, Western Region, Immigration and Naturalization Service (INS), Laguna Niguel, California, to Gary S. Messina, Director, Office of Strategic Planning, Headquarters, INS, "Request for instances of 'bureaucratic nightmares,' your memo dated May 6, 1993," May 7, 1993, p. 2.

197. Ibid, p. 2.

198. Round table with INS Washington District.

199. Interview with James Gildea, Staff Assistant to the Associate Commissioner for Enforcement, Immigration and Naturalization Service, Washington, D.C., May 18, 1993.

200. U.S. Congress, Testimony by Gene McNary, pp. 11-12.

201. U.S. Congress, Testimony by Dan Stein, p. 10.

202. U.S. Congress, Testimony by Gene McNary, p. 7.

203. U.S. Congress, Testimony by Dan Stein, p. 10.

204. Interview with James B. Turnage Jr., District Director, San Diego District Office, Immigration and Naturalization Service, San Diego, California, June 23, 1993.

205. U.S. Congress, Testimony by Gene McNary, p. 5.

206. Round table with INS Washington District.

207. U.S. Congress, Testimony by Gene McNary, p. 5.

208. Interview with Cliff Rogers, Acting District Director and Don Looney, Deputy District Director, Los Angeles District Office; and Mario Salgado, Deputy Port Director, Los Angeles International Airport, Immigration and Naturalization Service, Los Angeles, California, June 21, 1993.

209. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Statement of Theodore Ruthizer, President, American Immigration Lawyers Association, Washington, D.C., March 30, 1993, pp. 10-11.

210. Ibid.

211. Interview with Selected Members of the Border Trade Alliance, San Diego, California, June 25, 1993.

212. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Richard M. Hankinson, Inspector General, Department of Justice, Washington, D.C., March 30, 1993, p. 35.

213. U.S. Congress, Statement of Theodore Ruthizer p. 10; and U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Cecilia Munoz, Senior Immigration Policy Analyst, National Council of La Raza, Washington, D.C., March 30, 1993, p. 4.

214. Interview with James B. Turnage Jr.

215. Richard E. Norton, Managing Director, Facilitation, Air Transport Association (ATA), "Implementing Immigration Policy in the 1990's: Managing Change at the Immigration and Naturalization Service," Washington, D.C., December. 1992, p. 8.

216. U.S. Congress, Testimony by Richard M. Hankinson, p. 36.

217. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Statement of Don Wortman, Fellow of the National Academy of Public Administration, Washington, D.C., March 30, 1993, p. 1.

218. U.S. Congress, Testimony by Dan Stein, p. 3.

219. Interview with Paul Virtue, Deputy General Counsel, Immigration and Naturalization Service, Washington, D.C., May 17, 1993.

220. U.S. Congress, Testimony by Dan Stein, p. 5.

221. Interview with Marion Metcalf (Enforcement), Immigration and Naturalization Service,detailed to the National Performance Review, Washington, D.C., April 21, 1993.

222. U.S. Congress, Testimony by Dan Stein, p. 13; and Interview with James A. Puleo, Acting Executive Associate Commissioner for Operations, Immigration and Naturalization Service, Washington, D.C., June 15, 1993.

223. U.S. Congress, Testimony by Dan Stein, p. 13.

224. Selected Chief Patrol Agents' Focus Group Interview, U.S. Immigration and Naturalization Service, Washington, D.C., July 1, 1993.

225. Letter from William T. Veal, Deputy Chief Patrol Agent, San Diego Sector, U.S. Border Patrol, U.S. Immigration and Naturalization Service, San Diego, California, to Carol L. Levy and Carolyn S. Lowengart, Treasury and Justice Team, National Performance Review, June 25, 1993.

226. U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Summary of Testimony of Leonel J. Castillo, Former Commissioner of the Immigration and Naturalization Service, Washington, D.C., March 30, 1993, p. 8.

227. U.S. Congress, Summary of Testimony of Leonel J. Castillo, p. 9.

228. Interview with John F. Shaw, Assistant Commissioner for Investigations, Immigration and Naturalization Service, Washington, D.C., June 17, 1993.

229. U.S. Congress, Testimony by Cecilia Munoz, p. 10.; and U.S. Congress, House Committee on Government Operations, Subcommittee on Information, Justice, Transportation, and Agriculture, Testimony by Richard J. Wilson, on behalf of the American Bar Association, Washington, D.C., March 30, 1993, p. 1.

230. U.S. Congress, Statement of Theodore Ruthizer pp. 5-6.

231. Ibid.

232. Ibid.

233. U.S. Congress, Testimony by Richard M. Hankinson, p. 6.

234. Rudolph Valdez, "Hundred Day Comments," p. 4.

235. Memorandum from C. M. McCullough, Acting Regional Administrator, Western Region, Immigration and Naturalization Service (INS), Laguna Niguel, California, to Gary S. Messina, Director, Office of Strategic Planning, Headquarters, INS, "Organizational Analysis: Your memo dated May 27, 1993," June 18, 1993, p. 1.

236. Richard E. Norton, "Implementing Immigration Policy in the 1990's," p. 4.

237. Rudolph Valdez, "Hundred Day Comments," p. 4.

238. Ibid.

239. U.S. Congress, Statement of Theodore Ruthizer, pp. 7, 9.

240. Memorandum from C. M. McCullough, "Organizational Analysis," p. 2.

241. Interview with James Booe, Acting Staff Assistant for Field Operations, Western Region, Immigration and Naturalization Service, Laguna Niguel, California, June 22, 1993.

242. Interview with James A. Puleo.

243. Letter from William T. Veal.

244. Interview with James A. Puleo.

245. Richard E. Norton, "Implementing Immigration Policy in the 1990's," p. 4.

246. Interview with Richard K. Rogers, Special Assistant for Field Operations; C. M. McCullough, Acting Regional Administrator; and Virginia K. Kice, Chief, Congressional and Public Affairs Office, Western Region, Immigration and Naturalization Service, Laguna Niguel, California, June 22, 1993.

247. Letter from William T. Veal.

248. Rudolph Valdez, "Hundred Day Comments," p. 5.

249. Interview with Cliff Rogers et. al.

250. U.S. Congress, Testimony by Dan Stein, p. 12.

251. U.S. Congress, Testimony by Richard M. Hankinson, p. 31.

252. The legal divisions are located at DOJ headquarters in Washington, while the U.S. Attorneys offices are located in each federal judicial district throughout the United States. Because a single U.S. Attorney administers offices in both Guam and the Northern Mariana Islands, there are 94 U.S. Attorneys offices but only 93 U.S. Attorneys.

253. U.S. Comptroller General, *Transition Series - Justice Issues*, OCG-93-23TR (Washington, D.C.: General Accounting Office, December 1992); U.S. Comptroller General, *Improved Management Processes Would Enhance Justice's Operations*, GGD-86-12 (Washington, D.C.: General Accounting Office, March 1986); U.S. Comptroller General, *Department of Justice Case Management Information System Does Not Meet Departmental or Congressional Information Needs*, GGD-83-50 (Washington, D.C.: General Accounting Office, March 1983); and U.S. Comptroller General, *Department of Justice Making Efforts to Improve Litigative Management Information Systems*, GGD-79-80 (Washington, D.C.: General Accounting Office, September 1979). The term "litigative organizations" as used herein includes the DOJ legal divisions and the U.S. Attorneys offices.

254. Letter from Howard G. Rhile, Director, General Government Information Systems, GAO, to the Honorable Jack Brooks, Chairman, Committee on the Judiciary, House of Representatives (December 9, 1992).

255. The Executive Office for United States Attorneys provides administrative support to the U.S. Attorneys offices.

256. U.S. Comptroller General, *Transition Series - Justice Issues,* OCG-93-23TR (Washington, D.C.: General Accounting Office, December 1992).

257. For example, DOJ's Environment and Natural Resources Division may defend the Department of Defense against a hazardous waste claim in one case while representing the Environmental Protection Agency as a plaintiff in a similar matter.

258. The General Accounting Office recently observed that estimates that fraud adds ten percent to the nation's $800 billion in health care costs are uncertain because of the hidden nature of fraudulent and abusive practices. U.S. Congress, House Subcommittee on Crime and Criminal Justice, "Legal and Resource Constraints Complicate Efforts to Curb Fraud and Abuse," testimony by Janet L. Shikles, Director, Health Financing and Policy Issues, Human Resources Division, U.S. General Accounting Office, February 4, 1993.

259. Affirmative civil fraud also includes civil actions to stop a fraud in progress or to obtain restitution or other relief to non-governmental victims of fraud. The government is seldom the only fraud victim in health care cases, and often there are victims in other cases as well. DOJ's Civil Division also prosecutes affirmative civil fraud violations, particularly those cases involving more than a $500,000 loss to the government.

260. Although the Federal Bureau of Investigation (FBI) recently reassigned 50 agents from other areas to health care fraud, the agents typically focus on criminal fraud investigations.

261. DOJ's Civil Division has observed that promotions and other measures of professional accomplishments within agency Inspector General offices appear to be based upon the number of convictions obtained. As a result, petty convictions can "count" for far more than major civil recoveries.

262. Shikles testimony before House Subcommittee on Crime and Criminal Justice, February 4, 1993. For example, the HHS Inspector General has less than two full-time investigators working on health fraud in southern California, where fraudulent billing schemes have been prevalent. Id.

263. U.S. Attorneys' offices in the Central District of California, Western District of New York and Middle District of Pennsylvania participated in the program.

264. The affirmative civil enforcement pilot program recovered just over $7 million at a cost of $642,884.

265. Affirmative civil fraud cases are cases in which the U.S. Government initiates a lawsuit against a defendant to recover monies owed to the government, as opposed to defensive cases in which the U.S. Government defends itself against a claim in a lawsuit. U.S. Attorneys contend that an increasing number of civil fraud cases they prosecute involve losses to the government in excess of $500,000.

266. U.S. Attorneys do not take similar issue with settlement authority limits in defensive cases, in which the requirement of DOJ Civil Division approval of settlements in excess of $500,000 often induces plaintiffs to settle at or below $500,000 rather than submit their case to uncertain outcome of DOJ headquarters review.

267. Note that on December 30, 1992, former Attorney General Barr issued a directive increasing U.S. Attorneys' settlement authority to $1 million. On January 31, 1993, however, then Acting Attorney General Gerson suspended the directive.

268. USMS personnel frequently assist the U.S. Attorneys in determining whether pursuing a civil fraud case will be cost effective, as well as in satisfying judgments obtained.

269. Shikles testimony before House Subcommittee on Crime and Criminal Justice, February 4, 1993.

270. Civil Monetary Penalty Inflation Adjustment Report: Report to Congress, Office of Management and Budget, Executive Office of the President, July 1991.

271. Civil Monetary Penalty Assessments, Collections, and Status of Receivables, FY 1992: Report to Congress, Office of Management and Budget, Executive Office of the President, January 1992 (See Exhibit 1).

272. Civil Monetary Penalty Inflation Adjustment Report: Report to Congress, Office of Management and Budget, Executive Office of the President, July 1991.

273. Ibid, (See Exhibit 1).

274. Civil Monetary Penalty Inflation Adjustment Report: Report to Congress, Office of Management and Budget, Executive Office of the President, July 1991, [See Exhibit 1, p. 7 and Exhibit 2, p. 7, 42, U.S.C. 7413(b).].

275. Civil Monetary Penalty Assessments, Collections, and Status of Receivables, FY 1992: Report to Congress, Office of Management and Budget, Executive Office of the President, January 1992 (See Exhibit 1).

276. P.L. 101-410, the Federal Civil Penalties Inflation Adjustment Act of 1990.

277. U.S. Government Accounting Office, Federal Prisons: Revised Design Standards Could Save Expansion Funds, March 1991. GAO/GGD-91-54. According to this study, as of January 1991, the distribution of inmates in the federal prison system was as follows:

minimum -- 21%, low -- 14%, medium --31%, high -- 9%, and administrative -- 25%.

278. Bureau of Justice Statistics Bulletin, Prisoners in 1992. This study also indicated a 15.9% increase in sentenced federal prisoners in 1992.

279. U.S. Government Accounting Office, Transition Series, Justice Issues, December 1992.

280. Edna McConnell Clark Foundation, Americans Behind Bars (New York: Edna McConnell Clark Foundation), May 1992, p.5.

281. Public Law 98-473, 98 Stat. 1837 (1984).

282. At present, approximately 60 federal criminal statutes, mostly relating to weapons and drug offenses, require mandatory sentences.

283. See, e.g., GAO Transition Series, supra note 3 (indicating that 74% of offenders were sent to prison under the sentencing guidelines, as opposed to 53% under the previous structure, and that the average inmate could expect to serve three years longer under the system) and Bureau of Justice Statistics Special Report, Federal Sentencing in Transition, 1986-90, June 1992, NCJ-134727 (indicating that, even if sentences decreased under the new guidelines, time actually spent in prison increased under the new structure).

284. The BOP construction budget has increased from $600 million in 1986 to over $2.3 billion in 1992. GAO Report, supra note 3.

285. See, e.g., U.S. Government Accounting Office, State and Federal Prisons: Factors That Affect Construction and Operating Costs, May 1992, GAO/GGD-92-73, and U.S. Government Accounting Office, Prison Costs: Opportunities Exist to Lower the Cost of Building Federal Prisons, October 1991, GAO/GGD-92-3.

286. According to BOP officials, approximately one-third of BOP's facilities are located on active or former military bases. BOP has reviewed recently-available sites and, as noted, is pursuing some locations, though BOP has strict criteria for determining site selection. The U.S. Department of Defense, in connection with the BOP, has published a guide to using former military installations as correctional facilities.

287. U.S. Government Accounting Office, Prison Boot Camps: Short-term Prison Costs Reduced, but long-term Impact Uncertain, April 1993, GAO/GGD-93-69.

288. Attorney General Order No. 1753-93, 28 C.F.R. Part 505, 58 Fed. Reg. 122, June 28, 1993.

289. U.S. Government Report, Prison Alternatives: Crowded Federal Prisons Can Transfer More Inmates to Halfway Houses, March 1991, GAO/GGD-92-5.

290. U.S. Government Accounting Office, Drug Treatment: Despite New Strategy, Few Federal Inmates Receive Treatment, September 1991, GAO/HRD-91-116, p. 2.

291. Ibid., p. 3.

292. Public Law 98-473, 98 Stat. 1837 (1984).

293. GAO/HRD-91-116, endnote 1, Appendix II, Elements of Effective Prison Drug Treatment Programs Reported by the OTI, NIC and IOM. The study reviews characteristics of successful programs as determined by the Office of Treatment Improvement (HHS), the National Institute of Corrections (Department of Justice) and the Institute of Medicine.

294. Ibid.

295. [New York Times Magazine, June 25, 1993, p. 16.]

Section III
The Department of Justice Reinvention Activities

DEPARTMENT OF JUSTICE REINVENTION EFFORTS

Introduction

The direction that Attorney General Janet Reno set out to take the Department of Justice, and the goals of the National Performance Review are for very concrete reasons, the same. As State Attorney in Dade County, Florida for fifteen years, Ms. Reno understands what it means to fight crime and protect the community in an environment of increasing social tensions, ever more sophisticated and violent criminal enterprises, and unpredictable outside forces such as uncontrolled immigration, with declining real financial resources. These challenges require a commitment to creativity, and the courage to confront outdated or ineffective or unworkable assumptions and strategies in the fight against crime.

In 1984, when she was the state prosecutor in Miami, the Attorney General made the following observation: "The big and bureaucratic Federal law enforcement apparatus still seems a bit unwieldy." By 1993, when the Clinton - Gore Administration took office, that federal apparatus had grown phenomenally in response to bipartisan efforts to fight the ever-more frightening problems of crime on the streets of America.

Yet within weeks of taking office, the Attorney General made the following pledge:

> "...I have already committed myself to a thorough review of the Department of Justice agencies. . . . I want to look at it and come up with a plan that, number one, eliminates any duplication. We've got too much to do to have any duplication that is costly and unnecessary. . . . I want to do everything I can to make sure that the agencies' efforts are coordinated, that there is no overlap in terms of what one agency does, that all the agencies involved know what they're doing and working together in an effective way.. The one thing I cannot abide are turf battles. the one thing I cannot abide, particularly if I'm the person having authority over an agency, is one agency going in one direction and the other going in the opposite direction and never talking. Those are the goals I want for this year."

The Clinton-Gore Administration, through Attorney General Janet Reno and her senior management team: Philip Heymann, Webster Hubbell, and Drew Days, thus embarked on the National Performance Review with the following goals: serving all in this nation who seek access to justice, looking toward communities for the answers whenever possible, eliminating wasteful spending and duplications of effort, and allowing the dedicated Department of Justice employees at all levels to enjoy the satisfaction of greater autonomy, productivity, and of course, accountability.

Setting the Tone

As the Attorney General stated during her March 1993 confirmation hearings: "I (want to) let people know that I don't care about turf, I don't care about credit, I just want to do ... the right thing".

This simple standard became the mandate for the Department of Justice. On April 6, 1993, at her first address to Department employees, the Attorney General announced, "We will address each issue with one question: What's the right thing to do?" Reflecting on her experience in Dade County, Ms. Reno stated that, "I want this Department to be as open as possible, under the law . . . Working with other agencies, we have to make government user-friendly, so you don't need a lawyer to understand what you need to do to deal with your government."

The goal of the Justice Performance Review is to move from a department where many dedicated career people are constrained by entrenched institutional barriers, to a department focused on serving America.

Laying the Ground Work

The stage for the work of National Performance Review was set that day. The Attorney General has committed to a thorough review of Justice agencies so that a plan can be developed that eliminates wasteful duplication, and enhances coordination within the department as well as among federal agencies.

Anticipating the streamlining that must be done to reduce costs and improve service delivery, the Attorney General is also laying the ground work for the Department of the future. A strategy to train new Departmental managers in techniques for creating a clear sense of mission, fostering excellence through incentives, empowering employees to better serve customers, and measuring results and establishing accountability will be critical to the effort to institutionalize an ethic of achieving results through efficiency and team work in the Department.

To kick-off the reinvention process at Justice, each component was asked to submit a list of bureaucratic obstacles which impede their work and suggest solutions to ongoing problems. The results of our initial survey were used to develop a list of internal department priorities which will ensure that major issues are addressed by the NPR and internal reinvention process.

With the tremendous help and cooperation of the component heads, the Attorney General has established an internal Department of Justice Performance Review team. This team is tasked to support efforts of the NPR team, assist in developing pilot programs (laboratories), process ideas generated by employees, facilitate problem solving, and track the Department's progress in implementing initiatives. The Attorney General has closely followed the efforts of the Performance Review.

The Department's response to the Vice-President's Teams's search for answers was simple and direct: contact any person in any component of the Department. Ask any questions that will help us understand how we can do our job better.

The hallmarks of the Justice Performance Review are participation and communication. The outreach effort to the grass roots of the Department began with the Attorney General establishing a postoffice box and sending a letter to all employees asking for suggestions for improving the way the Department of Justice serves the public.

Remarkably, the hundreds of respondents were genuinely surprised and gratified that their opinions were being solicited. Employees received a follow up letter with their payroll slip.

These efforts have elicited over 1,000 extremely detailed and thoughtful suggestions from Justice employees nation-wide. A tracking system has been developed to log these ideas and enable the internal Justice Performance Review team to identify common themes and issues from these employee submissions. The Justice Performance Review P.O. Box continues to receive dozens of letters each day.

In early stages of the Vice President's National Performance Review process the internal team helped to establish focus groups and meetings with department employees which included both headquarters and field staff of all levels. They also facilitated and accompanied the Vice President's team members to various Departmental operational sites such as prison facilities and intelligence centers.

In July, Vice President Gore and the Attorney General hosted a Town Hall Meeting in the Department's Great Hall of Justice. The meeting included over 400 employees representing all grade levels and Department components. Employees from the five litigating divisions (Antitrust, Civil, Criminal, Environment and Natural Resources, and Tax Divisions); the five bureaus (the Drug Enforcement Administration, the Federal Bureau of Investigation, the Federal Bureau of Prisons, the Immigration and Naturalization Service, and the U.S. Marshals Service); and the management and policy offices of the Department were present. The meeting was broadcast live over the Department's television system and by satellite to the Federal Law Enforcement Training Center in Glynco, GA and to the FBI headquarters auditorium where employees were able to participate via telephone.

With Vice President Gore leading the discussion, the town hall meeting participants identified a wide range or government-wide and agency issues and problems and generated some suggestions for making positive change through reinvention efforts. The meeting demonstrated that Justice employees have many thought provoking and commons sense ideas, as well as great enthusiasm for the goals of the National Performance Review.

Requests for copies of the video have come in from Justice employees throughout the country. The video of the meeting is being distributed through the both the agency headquarters in Washington and the Law Enforcement Coordinating Committees in all 93 judicial districts.

Employee suggestions are being reviewed as they arrive. Some issues which can be solved quickly will be identified and corrected immediately.

The other ideas will be reviewed and analyzed by teams of volunteers from the Department. These groups, consisting of staff at all levels, will address major issues and common themes. The groups will also develop corrective action strategies and implementation plans for problems identified through the National Performance Review and the internal Justice Performance review efforts. The effort will be ongoing throughout this Administration.

In fact, in response to the great outpouring of employee ideas, the Justice team has already established a successful "laboratory": an 800 phone number for receiving employee suggestions with calls handled by trained 800 phone personnel, and ideas channeled to the appropriate problem solving team.

Reinvention Laboratories

As part of the National Performance review effort the Justice Department is working to establish "reinvention laboratories" Each Departmental component has appointed a liaison who works with both the Justice Performance Review team and component employees to establish labs and work on other aspects of the NPR process.

Department of Justice labs will embody principles of the National Performance Review including improving customer service, increasing competition; empowering communities, making government more market oriented, and serve as test projects which will be evaluated for future development or expansion. Each laboratory will include a set of performance measures which can be used to monitor progress in achieving established objectives.

Laboratories that are currently under development include:

- **Empowerment of our employees** to deliver better and more efficient service through Immigration and Naturalization Service customer service initiatives at a district office.
- **Elimination of duplication** of effort in the field through development of a joint law enforcement automated data system for "booking" and identifying offenders.
- **Relying on communities, leveraging local and private resources, and eliminating bureaucratic obstacles** by inviting communities which have begun to organize to propose locally based comprehensive strategies to reduce crime and follow up with coordinated delivery of social services. The

goal is to utilize state, local, private, and federal resources in concert to respond more effectively to community needs through the collaboration of social service agencies and law enforcement. Through this lab, we will also identify obstacles which communities encounter with particular emphasis on federal rules for which they would like to seek waivers.

This lab is based on the existing Weed and Seed Program, but is designed to provide an effective mechanism to deliver resources from several federal agencies to communities which organize themselves to direct those resources in a coordinated, comprehensive manner. The goal is self sufficient communities, and an end to the stove-piped delivery of federal resources. **If successful, this should be hailed as a total Clinton-Gore Administration team effort, not simply a DOJ lab.**

- **Increased competition** and improved customer service is the goal of a background investigation laboratory planned utilizing DOJ components which have shown they can provide quality background investigations at less cost and in less time than is currently done.
- **Improving delivery of service to our federal client agencies** will be the focus of a laboratory with United States Attorneys and federal law enforcement agencies, professional organizations, and their local communities to address fraud against government programs, such as Medicare fraud, food stamp fraud, bankruptcy fraud, labor compensation fraud, etc.
- **Enhanced coordination and improved communication** through a correspondence tracking system laboratory within Justice is being developed. The goal will be to better serve DOJ personnel as well as the public and other governmental agencies at all levels.

Establishing reinvention laboratories will be an ongoing process within the Department of Justice as new obstacles are identified and innovative new solutions are proposed.

Looking Ahead

To enhance communication throughout the department, The Attorney General will keep Justice employees apprised of the progress of the National and internal Performance Review efforts through a newsletter which will begin publication in the near future. The newsletter will also be used to highlight success stories and accomplishments by employee groups and individuals in their efforts to improve the way the Department works.

To ensure that the NPR process and employee suggestions produce positive changes within the Department, the Justice Performance Review team will use project management software to track and report on implementation of NPR an internal Justice initiatives. The project schedule will include tasks, responsibilities and dates for completing activities.

Conclusion

The Attorney General is strongly committed to the NPR process and goals. She has done much to demonstrate this through leadership by example. Upon arriving at the Department of Justice, the Attorney General was please to see that a "kindred spirit" had hung the portrait of former Attorney General Robert Kennedy in her office. The Attorney General has subsequently quoted him in public statements:

> "In 1968, Bobby Kennedy called all of us to a great task. A quarter century later the task remains unfinished. So I ask that we all listen anew to his words: "We have before us a historic opportunity. Out of the tension and trouble, out of our difficulty and danger, we can, and I believe we will, forge a new nation -- better, stronger, more free and more united than the country we had before. It is open to us now, it is demanded of us now, to engage in the great work of rebuilding our country."

Section IV
Fiscal Impact Summary

Fiscal Impact Figures
Have Not Been Finalized

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

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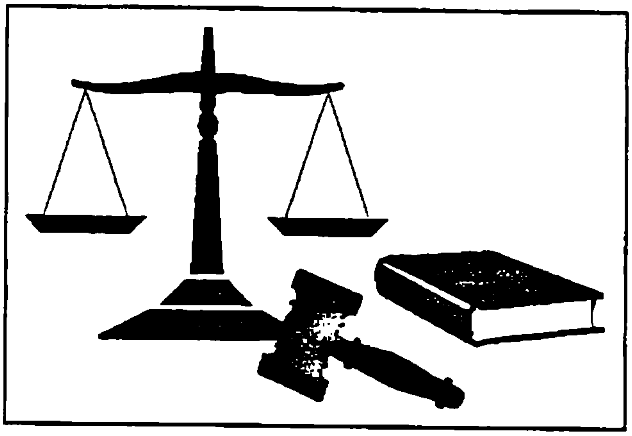

TO: Jose Cerda
456-2564 ; home 202/244-4027

FAX NO: 456-7028

FROM: Faith Burton

PHONE: 514-1653

DATE: Sept. 28, 1993

NO. OF PAGES: 21 pages **(EXCLUDING COVER)**

COMMENTS: DOJ draft testimony for FBI/DEA hearing tomorrow.

STATEMENT OF THE DEPUTY ATTORNEY GENERAL
PHILIP B. HEYMANN
BEFORE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
AND
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
ON THE
FEDERAL BUREAU OF INVESTIGATION
AND THE
DRUG ENFORCEMENT ADMINISTRATION
September 29, 1993

Chairman Edwards, Chairman Schumer, Members of the Subcommittees:

I am pleased to have this opportunity to appear before you today to discuss various options for enhancing the federal drug enforcement efforts of the Drug Enforcement Administration and the Federal Bureau of Investigation. These are matters, as you well know, which have been extensively studied by the Department of Justice and the National Performance Review Committee Chaired by the Vice President. The Vice President and the Attorney General agree that action in this area is needed, and I am prepared to highlight for you the issues and options that we are considering. I also want to emphasize our commitment to improving the coordination and effectiveness of the federal government's efforts to combat the importation and distribution of narcotics in our country, while eliminating the wasteful duplication of resources and energy.

I. Introduction

Over the past twenty years, no influence has been more pernicious in this nation than drug trafficking. One need only turn on a national or local news report to see yet another drug-related homicide or robbery. Drug-related offenses are a common thread running through a wide variety of criminal activities, such as drive-by shootings and other street violence, money laundering, banking and business fraud, terrorism, and the corruption of government officials. Narcotics are tearing at the very fabric of our society. Our citizens require and deserve an effective federal response to curtail the tide of drug-related violence sweeping through our country and to reduce the availability of these dangerous substances.

Federal law enforcement has attempted to meet this challenge. Our efforts have been, and shall continue to be diverse and multi-faceted. Among the many agencies that make substantive contributions to our efforts, the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) have been at the forefront of the federal government's war on drugs. Both organizations, along with many dedicated state and local law-enforcement authorities, have made great strides in the battle to rid our playgrounds and neighborhood streets of drug traffickers.

The FBI and the DEA are in agreement on one fundamental issue: Something must be done to eliminate the bifurcation of the Justice Department's drug-enforcement effort. There also is general agreement on what are the most critical coordination and duplication problems.

There are multiple and overlapping task forces. For example, the FBI's "Safe Streets" and the DEA's "REDRUM" task forces both target street violence of drug groups, sometimes in the same cities.

The two agencies have adopted differing philosophies of drug intelligence; while the FBI is committed to "bottom up" development of intelligence through its Regional Drug Intelligence Squads, under the DEA's Targeted Kingpin Organizations strategy, intelligence collection is directed from DEA Headquarters. The FBI does not have direct access to DEA's NADDIS database, and the DEA does not have access to FBI files.

Similarly, there are conflicts over international investigative jurisdiction. For example, complex international money-laundering investigations require extensive resources, coordination of intelligence, and specialized expertise. Under the current system, limited resources are divided among the FBI, DEA, and U.S. Customs Service, which makes the overall effort less concentrated and less effective.

There are few cooperative training programs between the FBI and DEA, despite the fact that both are currently located at the FBI Academy in Quantico, Virginia. This leads to a costly duplication of effort, particularly in light of the DEA's recent request to build its own training academy, separate and apart from the FBI complex.

Duplication and redundancies exist in such areas as tactical radio requirements; engineering research staffs; research and development initiatives; record and data communications; automated data processing services; and law libraries.

II. Four Options

These problems have long been recognized by the Department of Justice and the law enforcement community throughout the country, and were recently highlighted in the Vice President's National Performance Review. As part of its recommendation to streamline and increase the efficiency of the federal government, its report recommends significant structural changes to integrate the drug law enforcement efforts of the DEA and FBI.

Essentially, there are four major options available to the Department of Justice to streamline, coordinate, and improve federal drug law enforcement efforts.

The first is to maintain the status quo. This would effectively entail encouraging greater cooperation between the separate agencies while maintaining them as separate law-enforcement organizations. This is simply not an acceptable alternative. The very reason that we are here today is that federal drug law enforcement can and must be better coordinated and more effective. To do nothing would be an abdication of our sworn duties and a grave mistake. As to this point, both agencies agree.

The second option would be to remove the FBI from drug law enforcement activities. It would result in the DEA's becoming the single departmental organization responsible for federal drug enforcement. Such a removal would require the transfer of the FBI's drug and drug-related intelligence to the DEA. It also would necessitate the transfer of several hundred FBI agents presently assigned to drug enforcement activities to the DEA.

The third option would be a merger of the FBI and the DEA into one federal drug-enforcement super-agency, thereby creating a single point-of-contact for all federal, state and local drug law enforcement efforts. As you are well-aware, this proposal has been the topic of much discussion and analysis over the past few months. Proponents state that a consolidation of the two agencies would result in one fully-equipped agency within the Department of Justice to investigate violations of federal drug laws. Such an arrangement, it is argued, would result in less duplication and inefficiency in this country's drug law enforcement policy.

Further, the merging of the DEA into the FBI would have the additional benefit of incorporating a single mission agency, the DEA, into the FBI, a multi-mission agency. The FBI investigative mandate, which is the most expansive of all federal investigative agencies, authorizes it to investigate all facets of criminal enterprise. Conversely, the DEA possesses far more limited investigatory powers. Historically, in many of its major criminal investigations, the FBI has worked with and relied upon the DEA. Consolidation of the two agencies would result in greater cooperation and efficiency, and would obviate the need for the ordinarily cumbersome coordination problems.

The merger of the FBI and the DEA would result in a unified and efficient drug-intelligence effort, which is essential to effectively identifying and profiling major drug trafficking organizations. Currently, the FBI and the DEA bear a shared responsibility of developing drug intelligence. However, they have adopted differing philosophies to carry out this mission. Clearly, the vision of successfully combining the best of the FBI and the DEA into a single drug-enforcement unit is truly awesome.

It also is asserted that a merger of the DEA and the FBI will result in improved coordination of international operations, enhanced and more efficient laboratory services, an Office of General Counsel which would employ uniform standards when conducting complex drug investigations involving sensitive techniques, and a fully integrated investigative staff.

In sum, a merger of the DEA into the FBI ~~would result in a more effective~~ could improve our response to the nation's war against drugs. In order to achieve this goal, however, the FBI would have to undergo a period of adjustment and expansion. For example, the FBI would absorb most, if not all, of the approximately 3,700 hundred agents presently employed by the DEA. In order to perform the duties previously carried out by the DEA, the FBI would have to retrain its agents to incorporate many of the effective drug enforcement techniques employed by the DEA. In essence, the merger would require that the FBI take on all of the duties presently performed by the DEA, in addition to the Bureau's existing responsibilities.

The fourth option would be to continue to have both the DEA and the FBI investigate and combat drug trafficking and drug importation, but create a new, single point of authority that is capable of dealing with the problems of overlapping and inconsistent efforts. This alternative grew out of the Justice Department's review process.

The single point of authority would be empowered to review all budget requests relating to drug enforcement and mandate that the DEA and the FBI comply with its directives concerning drug law enforcement. Like the merger, the creation of such an authority could reduce duplication between the two agencies, and coordinate budgets; training; the gathering and distribution of intelligence; computer and communication systems; targeting strategies; cooperation with state and local agencies; laboratory facilities; and research and development. Further, the newly created authority could work with the Office of National Drug Control Policy (ONDCP) to develop a coordinated system for measuring law enforcement productivity in the drug control effort. The authority would thereby be able effectively to monitor the DEA's and the FBI's progress in their respective missions. Finally, the authority might, if deemed desirable, assign FBI and DEA agents from one agency to another to foster and develop a spirit of inter-agency cooperation and to create a sense of a single Department-based drug program.

There are various options as to which individual or group of individuals could serve as such an authority; three of which immediately come to mind. For instance, the Deputy Attorney General or the Assistant Attorney General for the Criminal Division could serve in that position. Second, a Senior Law Enforcement Official could serve as the single authority. This individual might be the Director of the FBI or the Administrator of the DEA.

Third, the single authority could take the form of a Drug Enforcement Coordinating Council comprised of perhaps the Deputy

Attorney General, the Assistant Attorney General for the Criminal Division, the Director of the FBI, and the Administrator of the DEA.

III. The Process of Review and Identification of Key Issues

The Attorney General has directed me to lead a comprehensive effort to analyze the complex issues involved with assuring the American people that the anti-drug functions of the Department of Justice work in the most effective manner possible. We have solicited the views and expertise of not only Department personnel and the DEA and FBI, but also the ONDCP, the State Department, the National Security Council, and others. The Attorney General has personally discussed this matter with Members of Congress, ONDCP Director Lee Brown, Special Agents-in-Charge and other agents of the DEA, DEA Administrator Bonner, and FBI Director Freeh, former administrators of law enforcement agencies, as well as Department of Justice attorneys working on this review.

The review has centered upon five key issues that must be considered when evaluating any option to address the problems that now exist: (1) the temporary disruption that may result from reorganization; (2) the long term effects on our ability to combat drug abuse and violent offenses; (3) the financial impact of change versus the status quo; (4) the status of cooperation with other countries in the drug effort; (5) cooperation with state and local law enforcement; and (6) the personnel status of FBI and DEA agents.

1. **Temporary Disruption in Operations**

We must determine whether there would be any significant temporary diminution of the effort focused on drug enforcement if time and resources were diverted to implement changes in the status quo, and if so, the length of the disruption. Short-term disruption - which can have long-term consequences - can include loss of contact with cooperating individuals, loss of access to international investigative efforts or loss of investigative momentum. Factors influencing short-term disruption include: office relocation; training and other personnel matters; management adjustments; redefinition of policies and procedures; different management philosophies; and equipment changes. In addition, reorganization may impact the morale of both DEA and FBI agents. Both DEA and FBI have submitted materials describing potential short-term impacts on their organizations, and on the drug effort.

2. **Long-term Effects of Change**

Any change from the status quo must provide net benefits in the long term. In order to project the results of the various options for change, we need to consider the present, relative strengths of the DEA and the FBI. We have focused on the questions of relative productivity, flexibility, and personnel expertise of the agencies.

However, a complication with evaluating the long-term impact of options for change is that it is difficult to settle upon a single definition of productivity and effectiveness which adequately reflects the strengths of both agencies. For instance, DEA's statistics reflect, for example, that on a per-agent basis, it conducts five times as many wiretaps as the FBI; four times as many arrests; six times as many convictions; and a three-to-one ratio in forfeitures. However, FBI cites to the advantages of its broad investigative jurisdiction and its particular effectiveness in the areas of violent crime and traditional organized crime. For example, in Fiscal Years 1990 through 1992, over 1,200 drug convictions were obtained under the FBI's organized crime, violent crime, and white-collar crime programs.

Also to be considered in assessing the impact of change are the likely long-term effect of inaction and the problems that led us to this comprehensive review: turf fights, duplication of resources, unnecessary bureaucracy, intelligence sharing difficulties and confusion at the state and local level. The Department is evaluating the present strengths of the agencies and is studying the likely prospects for addressing these concerns in various reorganization/reallocation scenarios.

3. **Financial Issues**

We are evaluating the financial impact of various options for change. Potential costs and savings flow from possible office space changes in headquarters and field offices; personnel reductions; additional training for transferred agents; permanent changes of duty station for agents; changes in automated data processing; conversion of technical investigative equipment, including radios; miscellaneous expenses, and other economies of scale.

The FBI and the DEA have submitted materials concerning these factors. There is a wide range of estimates, particularly concerning initial costs of reorganization, and the Department's Justice Management Division (JMD) is analyzing these projections.

4. **Cooperation with Other Countries**

At present, the DEA has 73 overseas offices located in fifty countries around the world. These offices are staffed by 343 DEA agents, 33 intelligence analysts, 6 diversion officers and support staff. The FBI has 55 agents and 55 support staff assigned to 21 countries. In all but one case, DEA has personnel in all countries where an FBI Legal Attache is currently assigned.

DEA has functioned as the lead agency for the conduct of drug investigations in foreign countries. DEA and its predecessor organization have had a long history of functioning in a cooperative relationship with foreign governments in counter-narcotics efforts. The FBI is beginning to develop an international drug enforcement role.

In assessing the potential impact of reorganization on international counter-narcotics enforcement, the Department has focused upon three related issues: (1) the potential impact, if any, on operational case activities; (2) the possible reaction of the host countries; and (3) the impact on multilateral enforcement efforts and programs. The State Department and the National Security Council, in addition to the FBI and DEA, have been consulted with respect to these international issues.

5. **Cooperation with State and Local Law Enforcement**

The Subcommittees are well familiar with the importance of improving the relationship between federal law enforcement and state and local governments. It is well established that state and local law-enforcement personnel bear the brunt of the drug-enforcement responsibility in this country. Any effort to maximize our national drug-enforcement capabilities must include the development of strong and collegial relationships between state and local law-enforcement authorities and the federal government. The concept of state/federal task forces continues to be extremely valuable. Any change in the drug-enforcement structure must assure the effective use of this concept.

6. **Personnel Status of DEA and FBI Agents**

All FBI positions are exempted from the civil service. However, except for the Administrator, the Deputy Administrator and certain other positions, DEA personnel are in the competitive service. We are analyzing the impact of these differences upon various options for reorganization.

I believe this review process has been comprehensive. We are giving full consideration to the strengths and weaknesses of each organization and we recognize what works and what doesn't work. From our discussions with those who best know these agencies and the overall effort against drugs, we have learned that these five issues and their sub-issues are truly difficult, but we are determined to set the most efficient and most effective course for future drug enforcement within the Department of Justice.

IV. Problems and Challenges

As a result of this extensive process of review and consultation with the affected agencies and other interested parties, the Attorney General has come closer to reaching — although she has not yet reached — a conclusion on the best resolution of these issues. As is common with matters of such complexity, there are serious difficulties with each of the options. In the time remaining, I would like briefly to present to you my understanding of the principal shortcomings of each of the options under serious consideration and thereby to convey to the Subcommittees the reasons for the Attorney General's caution in this area.

There is one point over which everyone appears to be in agreement—namely, the option to do nothing at all is simply unacceptable. Especially in the areas of intelligence and state and local cooperation, the roles of the DEA and the FBI have become duplicative and counterproductive. The FBI's Regional Drug Intelligence Squads (RDISs) and the DEA's Targeted Kingpin Organizations strategy are both defensible approaches to gathering and maintaining intelligence information, but they are radically different. DEA directs collection of intelligence from the Headquarters level, while RDISs develop intelligence collection priorities on a local basis. Moreover, the notable lack of coordination between these programs has resulted in inefficiencies and expensive duplication of efforts. As both the FBI and DEA have recognized, there is also significant overlap in areas such as agent training, including defensive driving and firearms training; field offices, which may unnecessarily multiply support personnel; procurement policies, which may diminish opportunities to realize savings from economies of scale; automation and data processing, upgrades to which could prove quite expensive; research and development projects; asset forfeiture teams; and general administration. Different kinds of equipment used by the FBI and DEA, most notably in the area of secure voice radio, are incompatible. This further burdens the coordination of investigative efforts. Duplication and inefficiency, which is inherent in the structure of the status quo arrangement, has resulted in a less effective and more costly drug-enforcement effort precisely at the time when the Administration, Congress, and the public have come to recognize the magnitude of the drug problem in this country and the importance of combatting it effectively and efficiently.

Both the Vice President and the Attorney General agree that major structural changes in this country's approach to drug enforcement are necessary. The tough question, of course, is what form these structural changes ought to take. As I mentioned earlier, I believe that each of the broad alternatives to the status quo that have been considered over the past few months presents significant difficulties.

The DEA has proposed that the lack of coordination and inefficiency could be solved by revoking the FBI's concurrent jurisdiction over offenses defined in Title 21 of the United States Code. The main problem with eliminating the FBI's drug-enforcement jurisdiction, however, is that it may hamper the FBI's ability to investigate criminal enterprises whose focus is not drugs, but whose vulnerabilities may lie in drug-related areas. For example, traditional criminal organizations may be involved in a vast array of criminal conduct, ranging from murder and terrorism to banking and business fraud, but may also be involved in drug trafficking. While responsibility for drug-related criminal activity would reside primarily with the DEA, responsibility for investigating other forms of criminal activities defined in Title 18 of the United States Code would continue to lie with the FBI. The FBI and the DEA could be left investigating the same criminal organizations through the enforcement of different criminal statutes. This would represent neither an improvement in efficiency nor a particularly effective use of our criminal law-enforcement capacity. Although this proposal might effectively eliminate much of the duplication of drug-enforcement efforts, the complexity and breadth of the new coordination problems would likely overshadow any gains in efficiency.

Furthermore, the "multi-mission" nature of the FBI's broad law-enforcement jurisdiction is particularly well-suited to attacking "multi-mission" criminal organizations. Only a coordinated and multi-faceted response will successfully destroy those vast criminal enterprises in which drug activity has been carefully and inextricably integrated. It is simply unrealistic to believe that the FBI will be able to carve out and leave for the DEA's attention an organization's drug-related activity while successfully focusing its own resources on the organization's non-drug criminal conduct. Removing the FBI from drug-enforcement activity altogether would be a step toward a more fragmented approach to law enforcement at a time when increased coordination and cooperation are required. Moreover, entirely eliminating the drug-enforcement jurisdiction of the federal government's largest and best known law-enforcement agency could be misperceived as a lack of resolve in combatting drug trafficking. For all these reasons, this alternative does not appear to be a promising resolution.

At the other end of the spectrum is the FBI's proposal to merge the two law-enforcement organizations by creating an Organized Crime/Drug Division within the FBI. A merger of the two agencies would represent a fundamental reorganization of the drug-enforcement structure, and it would resolve many of the tensions and duplications identified in the status quo. As I have already mentioned, the prospect of combining the best of both agencies has a great deal of appeal. Still, there are real difficulties.

The ONDCP has expressed concern that a merger might be perceived as "downgrading" the importance of the drug-control mission. While I have great confidence in the FBI's commitment to drug enforcement and in the integrity and professionalism of the DEA personnel that would be integrated into the FBI's new division, I share the concern of Director Brown and others that the transition to a fully integrated drug-enforcement division would be time consuming and disruptive. Additionally, as with elimination of the FBI's Title 21 jurisdiction, merger of DEA into FBI could be misunderstood as a lessening of national resolve.

Even in the long run, however, a merger might present problems. The DEA has established a vast network of overseas contacts with foreign governments that could be jeopardized by any association with the FBI's counterintelligence activities. It may be difficult to integrate DEA personnel into the FBI, not only because of practical differences between "competitive service" and "excepted service" but, more importantly, because the DEA's organizational culture is strong and distinctive. Finally, there are those who believe that a certain level of competition — even among law enforcement agencies — is healthy, for it may foster the development of more creative approaches to fighting drugs that might not evolve from a single drug-enforcement bureaucracy. The DEA provides alternative and distinctive methods for combatting the drug problem, and while these may lead to certain undesirable inefficiencies, the elimination of all competition through a complete merger risks losing the baby with the bathwater.

The fourth option is the creation of a formal, permanent point of authority to supervise the federal drug-enforcement effort would preserve both the FBI and the DEA as distinct drug-enforcement agencies while resolving the jurisdictional disputes and coordination problems that characterize the status quo. This option, like all the others, has its difficulties.

There is the critical question of who or what the point of authority would be. In order for it effectively to coordinate drug policy and to eliminate the duplication and waste that we have identified, the point of authority would have to have sufficient authority to review and modify budget requests and to enforce compliance with policy directives. We must carefully consider the structure and composition of this single point of authority, for there is sure to be significant institutional resistance to such a plan. The Deputy Attorney General, for example, may have too many other pressing responsibilities to manage law-enforcement activities on a day-to-day basis. The Assistant Attorney General for the Criminal Division is another possibility. The Director of the FBI (for example, if the Administrator of the DEA were to report directly to the Director, as in 1982) or the Administrator himself might be better positioned for this role, yet each may prove objectionable to some of those in the other's agency.

The point of authority could rest with a group of administrators meeting as a Drug Enforcement Coordinating Council. This Council alternative, while avoiding the difficulties associated with placing authority over all federal drug enforcement in a single individual, has the disadvantage of creating yet another level of bureaucratic control. The additional question of who would chair such a Council recreates the conflict among the administrators that the Council alternative was intended to avoid.

In closing, I wish to reiterate that the Attorney General has yet to reach a decision on our best response to the significant problems of coordinating the drug-enforcement efforts of the FBI and the DEA. As I have outlined, there are both significant advantages and difficulties with each of them. We are committed to finding and implementing the most viable solution, taking into account all of the relevant concerns. We welcome your counsel as we move forward to resolving these issues.

I look forward to your comments and to answering any questions you may have. Thank you very much.

HARVARD UNIVERSITY
JOHN F. KENNEDY SCHOOL OF GOVERNMENT
CAMBRIDGE, MASSACHUSETTS 02138

FACSIMILE TRANSMISSION

Date: 15 September 1993 **Time:** 6:45 pm

Sender's Name: Prof. Mark Kleiman **Sender's Tele. #:** (617) 495-5188

TO: Mr. Jose Cerda -- Domestic Policy Staff

FAX Tel. #: (202) 456-7028

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HARVARD UNIVERSITY

JOHN F. KENNEDY SCHOOL OF GOVERNMENT

MARK A.R. KLEIMAN
Associate Professor of Public Policy

79 JOHN F. KENNEDY STREET
CAMBRIDGE, MASSACHUSETTS 02138
TEL. (617) 495-5188
FAX (617) 496-9053

TO: Mr. José Cerda
Domestic Policy Staff
FROM: MK Mark Kleiman
SUBJ: Reorganizing Drug Law Enforcement
DATE: September 15, 1993

Summary

Merging the DEA into the FBI, if it could be implemented successfully, would have some long-term benefits, especially in the reduction of destructive competition and the strengthening of the Department's position vis-a-vis other agencies, especially the Customs Service.

But the almost certain immediate results would be reduced productivity and management control within the entire merged entity. Managing the merger would be an almost bottomless sink into which the new Director's time and energy would flow, limiting his ability to navigate the Bureau through its post-Cold War transition. If the period of disorganization and distraction were as short as three years, that would count as a considerable managerial achievement.

Moreover, even in the long run, some of the results of a merger would be undesirable. Drug enforcement needs to reflect the logic of the drug markets, which dictates that new suppliers will appear to fill the market niches left by enforcement actions against existing suppliers. The strategy of catching as many of the worst bad guys as possible, which is a sensible strategy for non-transactional, "predatory" crimes such as bank robbery and auto theft, and which is at the heart of the FBI's approach to law enforcement generally, is seriously deficient as applied to drug law enforcement. Crafting drug enforcement strategy with careful attention to its likely effects on the drug markets would be completely contrary to the way the Bureau does the rest of its business.

Thus a merger would seriously compromise the prospect of fielding a drug law enforcement effort well-designed to reduce the supply of drugs. DEA's capacity for market analysis, and its commitment to act on the results of that analysis, both need to be strengthened; the new DEA Administrator, if there is one, will face no more important task. But at least the DEA understands that its bottom line is not arrests and convictions, but progress against drug abuse. It can and should be encouraged to put that understanding into practice. For the FBI to do so would be such a departure from the operating style which has served it well in other areas as to be wildly implausible.

There are alternatives to a merger with better prospects for good results. A partial reverse merger, with the FBI keeping Title 21 jurisdiction but investigating drug cases only against individuals or groups previously identified as non-drug violators (e.g., LCN, El Rukns), and most FBI drug resources (with or without bodies) gradually being transferred to DEA, would reduce destructive competition and increase productivity and strategic focus. Even in the status quo within DoJ is maintained, a renegotiation of the treaty with the Customs Service could do more to reduce the overall level of interagency friction in drug investigations than would a merger.

From what I can see, only the FBI and some of the staff of the National Performance Review support the merger. The newspapers report that Congressional sentiment toward it is cool. That is considerably warmer than the sentiment among the handful of academic students of drug enforcement: Peter Reuter, James Q. Wilson, and Mark Moore all think it a thoroughly bad idea. My small and unscientific survey of local law enforcement suggests not much more enthusiasm from that quarter. All the former DEA administrators, including the two who came from the FBI, are against it.

None of this opposition would matter much if the process produced rapid success, but they could make a difficult transition a political catastrophe. Both current DEA agents, embittered by their subjugation to an agency which despises them, and the Customs Service, threatened by facing a much more powerful DoJ competitor agency, would be eager to make the rocky nature of the transition known to the press and the Congress. Reports of disorganization, accompanied by falling arrest statistics (and by falling heroin and marijuana prices, likely to happen in any case for unrelated reasons), could provide the pretext for still more complaints that once again the Administration has neglected the war on drugs, can't manage competently, and so on. There seems to be no reason to accept short-term problems and accompanying political static without the prospect of better long-run results than the merger is likely to deliver.

Short-Term Issues

A. Personnel

From the outside, personnel issues appear to be minor concerns that must be prevented from getting in the way of national goals. From the inside, they are almost literally life and death issues, especially within law enforcement agencies. The combination of high salaries, generous law enforcement pensions, and the lack of lateral mobility between agencies makes a DEA agent with a dozen years of service a virtual prisoner; the financial penalties for leaving early are very severe, and the system has encouraged her to invest in skills (undercover work, fluency in Burmese or Turkish) that have little value on the open market.

When the FBI took effective trusteeship of the DEA in the 1980s under Bud Mullen and Jack Lawn, senior career DEA agents in Headquarters jobs were systematically replaced by FBI agents. The FBI alumni conveyed the impression that they were there to educate and civilize the natives. (I was in the Criminal Division back then, and remember some of the things that Mullen and his senior staff said to me about the people who were working for them.) That left a residue of resentment, amounting almost to hatred, that helps explain the furious campaign DEA is now conducting against the merger.

For current DEA agents, the merger would mean loss of civil service status, assignment under FBI agents who are younger and less experienced than they are (due to the difference in the two agencies' grade structures), and seriously handicapped promotion prospects, as FBI promotion decision are certain to favor FBI agents. DEA Special Agents in Charge are likely to find themselves effectively demoted two levels, from being heads of their own offices to subordinates in a drug unit headed by an FBI drug agent who reports to an FBI SAC.

I do not know nearly enough civil service law to know what, if any, rights DEA agents would have in the event of a merger. The position of agents who are members of minority groups is especially tricky, given that DEA is subject to a consent decree intended to safeguard to their career paths.

These personnel matters would require constant attention from the top management of the FBI. In addition, one would have to expect both the FBI drug agents and the transferred DEA agents to be substantially less productive during the transition period than they have heretofore been. This would be true even if the DEA transferees simply moved down to the productivity level of their FBI counterparts; the difficulties of adjusting to new ways of doing things and deterioration of individual and unit morale would worsen matters, at least for a while.

John Bartels and Peter Bensinger can testify to the nightmare of merging BNDD and the drug agents of the Customs Service to form DEA. The resulting tensions -- in 1979, seven years after the merger, DEA SACs were still identified as being either "Customs" or "BNDD" -- and resulting poor performance and deficient management controls helped create the demand for the first FBI/DEA merger attempt. By any measure, the cultural gap between DEA and FBI is wider than the BNDD/Customs gap was. Of course, the FBI will not tolerate some of the nonsense that Bartels and Bensinger had to put up with, but the result will not be a pretty sight, and we should not be surprised if not much work gets done in the meantime.

B. Operations

Attempts during the 1980s to establish such simple commonalities between DEA and FBI as using the same radios and the same interview forms failed dismally, despite having FBI people running DEA. This partly reflected mere organizational inertia, which a merger will help overcome: everything will be done the FBI way, thus saving arguments.

But it also reflected that the extent to which the operational requirements of drug law enforcement differ from those of other law enforcement. The DEA Form 6 simply has room for information (e.g., quantity of drug) irrelevant to most FBI investigations and therefore not called for on FBI Form 302. Of course, anything can be recorded in the "Comments" section, but this destroys the value of maintaining a common format, which ensures that forms can be easily visually scanned, key-entered, etc.

This simple, but not trivial, example will be multiplied a thousandfold under the merger. Whenever the needs of drug law enforcement conflict with the needs of the rest of the FBI's work, or simply with "the Bureau way," drug enforcement will have to take a back seat.

LONG TERM ISSUES

A. Personnel

The problems of displaced or disaffected existing DEA personnel will last no longer than their careers. But the differences between FBI agents and DEA agents do not reflect merely the accidents of organization history; to some extent, they mirror the needs of the different missions of the two agencies. Stereotypically, DEA agents are younger, closer to the street (many with local law enforcement backgrounds), and less "buttoned-down" than FBI agents. They are less likely to have law degrees, more likely to speak Spanish, and somewhat more diverse ethnically. All of this makes them better suited to the milieu of drug dealing, just as it would make them less suited to dealing with other FBI agents, writing file memos, doing background checks, or chasing spies.

Being a good drug agent and making a success of oneself in the FBI seem to call for very different sets of characteristics. While for some purposes it would be desirable for the FBI to become less homogeneous, it would be rash to expect that to happen quickly. The more successful an organization has been in one style, the less likely it is to make rapid changes in its internal culture.

Moreover, the FBI's training and career patterns are designed to create generalists and Bureau loyalists. (True, the FBI has tolerated specialists in the areas of foreign counterintelligence and organized crime, which have been virtually separate career tracks within the FBI. But those areas had much higher prestige than the drug assignment is likely to carry, especially given the stigma that will accompany a background in the DEA.)

By contrast, DEA has training and career policies designed to create drug enforcement specialists. An agent who is simply getting his drug ticket punched, between assignments to bank robbery and insurance fraud, and whose training did not emphasize drug law enforcement, would seem less likely to make a large number of high-quality cases than one whose entire career is making drug cases. The personal investment represented by acquiring an obscure foreign language or a stable of productive informants will be less worth making the shorter one's expected career in drug enforcement.

B. Operating style

But the productivity gap between DEA agents and FBI drug agents is not fully accounted for by differences in personnel. The FBI is organized to ensure that nothing untoward happens, that everything is documented, and that Headquarters knows exactly what is going on in the field. This has some advantages, in particular the protection of civil liberties and the avoidance of scandal. But it greatly increases the "cycle time" for getting decisions made.

Thus the stereotype of the DEA cowboy and the Bureau bureaucrat is not merely a difference of personality types (though each agency tends to attract the personality that fits it best.) The FBI doesn't tolerate cowboys, and whatever cowboyish tendencies its agents have are reigned in by tight reporting requirements and the ever-present threat of Inspections.

An agency whose people spend much of their time in their offices writing memos to one another and to the files, and who need multiple layers of approval for any activity outside of routine, will make fewer mistakes and commit fewer improprieties than a more loosely-organized rival, but it will make fewer cases as well. Doing it the Bureau way means doing it slowly, by comparison with the DEA's ready-fire-aim approach.

The strongest reason for the merger, then, would be a desire to reduce the number of drug cases made by DoJ agencies, without a budget cut that would cause outrage on the Hill and in the newspapers. If the desire is simply to protect civil liberty by reining in the more outrageous DEA capers, that could probably be accomplished more easily, with a smaller shrinkage in quality-adjusted case counts, by choosing a DEA Administrator with a strong commitment to continue the progress the agency seems to have been making on that front.

C. Strategy

If the goals of drug law enforcement are to protect Americans from drug abuse, by making drugs more expensive and harder to obtain, and to reduce the violence attendant on the illicit markets, then the best drug law enforcement will not be the one that makes the most cases, or the best cases, or some combination of the two, but the one that does the most to reduce drug abuse and violence. That is what "supply reduction" ought to mean, if it means anything.

Arresting one dealer or breaking up one dealing organization tends to create an opportunity for a rival to expand, or for a new individual or group to enter the market, to fill the now unsupplied demand. Thus in any given drug market and region (say, cocaine in New England), the problem of allocating scarce enforcement, prosecution, and corrections resources to produce the most impact on the market is far from a simple one, especially if the objective of violence control is added to that of drug supply control. Add to that problem rapidly-shifting drug fashions (it's hard to recall that fifteen years ago cocaine looked less important than methamphetamine or Quaalude), and DEA's decision problems look about as complicated as the Federal Reserve Board's.

DEA's current analytic capacity is seriously inadequate to the task, partly because its lip service to the idea of supply reduction is not always accompanied by the willingness to abandon strategies that are successful in producing many high-quality cases even if analysis suggests that they are likely to be unsuccessful in reducing drug abuse and violence.

The task of building an analytic capacity and a learning culture within federal drug law enforcement is made more urgent by the rising tide of heroin imports. (Over less than a decade, the inflation-adjusted price of a milligram of pure heroin at retail has fallen by about 75%, and heroin imports have roughly doubled.) Unless heroin is prevented from going down cocaine distribution channels, the country is more likely than not to suffer a substantial heroin epidemic, with more than a doubling of the heroin-addict population.

Choosing supply reduction, rather than making cases, as an organizational goal is a highly risky strategy. It means that one becomes accountable for outcome rather than output. The cocaine epidemic has helped discredit the DEA, because DEA took as its goal the reduction of drug supply. The rise of auto theft or terrorism does not discredit the FBI, as long as the FBI continues to arrest auto thieves and terrorists. It therefore seems very unlikely that the FBI, given the drug enforcement mission, will define its goal, internally or externally, as controlling drug abuse and drug-related violence.