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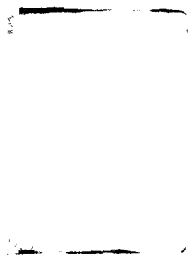
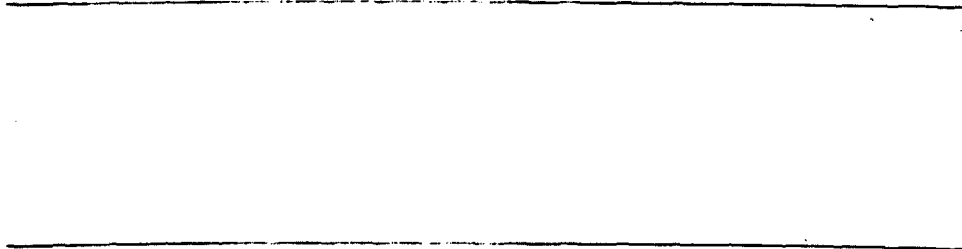
Transition Series

November 1988

Justice Issues



GAO/OCG-89-13TR



Comptroller General
of the United States

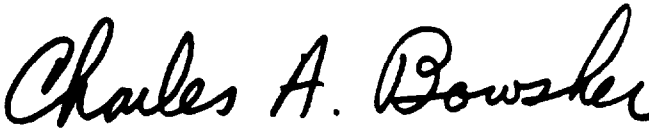
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November 1988

The President of the Senate
The Speaker of the House of Representatives
The Attorney General-designate

This summary report is one of a series that addresses major policy, management, or program issues facing Congress and the new administration. This report discusses issues, the problems associated with each, and recommended actions based on our work at the Department of Justice. Some of our concerns are relatively new, while others represent unresolved problems that have developed over the past several years.

The four issues we believe should be included in whatever agenda Congress and the Attorney General set for the Department of Justice are (1) improving overall departmental management, (2) reassessing the effectiveness of drug abuse control programs, (3) planning for the potentially staggering costs of sentencing reform, and (4) determining whether immigration reform is working. We studied the management of the Department of Justice and reported to Congress in 1986 that the Department's central management needed strengthening. In 1988 we issued a special status report on controlling drug abuse that provided an overview of the drug problem and federal efforts to deal with it. All four issues are fully discussed in the reports noted at the end of this report.



Charles A. Bowsher

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Strengthen the Department's Central Management Capability

Effective management of the Department of Justice's 71,000 employees and \$5.4 billion budget is complicated by its highly decentralized operations and the operating freedom and independence afforded to many of its agencies and offices. Lack of central management has contributed to problems in planning and implementing program initiatives. The Department needs to strengthen its central management capability to ensure that effective management systems are in place to support the many policy, priority, and resource decisions the Attorney General must make.

The need for strong central management is demonstrated by problems the Department has encountered in managing defense procurement fraud investigations. Even though these investigations were a top Attorney General priority, the Department's overall management of these investigations shows a lack of planning and program management capability.

The Department does not have complete or timely information on the status of a significant number of defense procurement fraud cases and does not know the amount of attorney resources spent on this high priority program. Moreover, its prosecuting offices have not developed written management plans outlining current and

future efforts in this area that could be used for assessing performance and problems. The Department needs a process for developing and periodically updating written plans that contain goals to provide a mechanism for assessing performance and problems in the Attorney General's law enforcement priorities.

Various Department officials, including former Attorneys General, have recognized the need for stronger departmental management. Past Attorneys General traditionally have looked to the Deputy Attorney General to serve as the Department's general manager. This has seldom been fully satisfactory, in part because the Deputy has had responsibility for both management matters and general supervision of criminal or civil matters. These litigation responsibilities often have sapped much of the Deputy's time and attention, to the detriment of improving overall departmental management.

In 1987, the Attorney General attempted to strengthen overall departmental management by seeking congressional approval to assign management responsibility to the Deputy Attorney General and relieve him of his litigative responsibilities by creating a two-Associate Attorney

General system for supervising the Department's civil and criminal matters. However, Congress did not act on this proposal.

A fundamental decision the next Attorney General must make is how to strengthen central management of the Department. The Department must deal with a number of critical, complex issues such as drug abuse control and reforms to sentencing and immigration laws. A strong central management structure will enable the Attorney General to successfully meet these challenges and should pay lasting dividends, not only for the next administration, but over the long term.

Develop Information Needed to Set Budgetary Priorities for Anti- Drug Programs

If we measure success of the current federal drug abuse control strategy by looking at the number of drug users and amounts of drugs entering the country, we must unfortunately conclude that our present strategy—which emphasizes supply reduction—is not very effective. The dilemma is that no one knows which drug control programs are the most effective.

An increasing number of drug experts believe that the root cause of our national drug problem is the demand for illegal drugs. It is time to consider assigning more resources to activities aimed at reducing demand: treatment, prevention, education, and research on the causes and extent of drug abuse. This does not mean that efforts to control the supply of illegal drugs should be reduced. They play an important role in the overall drug abuse control strategy. However, further emphasis on supply reduction programs will probably not solve the drug problem in this country.

Recognizing the need to redirect the federal drug abuse control strategy, on October 22, 1988, Congress passed the Anti-Drug Abuse Act of 1988. The legislation, among other things, establishes in the Executive Office of the President an Office

of National Drug Control Policy, to establish and coordinate policies, objectives, and priorities for federal antidrug abuse efforts. The legislation also provides for greater emphasis to programs aimed at reducing the demand for illegal drugs.

Setting budget priorities will be a key responsibility of the Director of the new Office of National Drug Control Policy. To help accomplish this task, the Director will need better information on program effectiveness to decide where resources should be allocated. In the past, the National Drug Policy Board, chaired by the Attorney General, did not use its statutory authority to develop budgetary priorities, on the grounds that it lacked the information needed to decide where resources should be allocated.

Existing data systems portray drug trends and help gauge the overall impact of the federal strategy but do not adequately measure the effectiveness of specific drug control efforts. Measuring effectiveness is difficult. First, it is difficult to isolate the full impact and effectiveness of a single program such as drug interdiction. Second, the clandestine nature of drug production, trafficking, and use limits the quality and quantity of data that can be collected to measure program success. Third, the data

that are collected—for example, the data used to prepare estimates of drug availability and consumption—are generally not designed to measure program effectiveness.

The new legislation also requires the development of measurable objectives for antidrug abuse programs. The Attorney General should work with the Director of the new Office of National Drug Control Policy, to develop effectiveness measures for Justice programs. Such measures would provide information that Congress and the executive branch need to make informed decisions about the allocation of budget resources to drug abuse control programs.

We have addressed the drug control issue more fully in *Controlling Drug Abuse: A Status Report* (GAO/GGD-88-39, Mar. 1, 1988).

Identify Effects of Sentencing Reform

The federal criminal justice system has taken a significant turn in recent years toward stiffer and more consistent sentences for criminals. From a Department of Justice perspective, the budgetary consequences of this reform could be staggering and the Department must develop cost estimates and evaluate alternatives to ensure that the best resource decisions are made. Prison construction costs alone could reach \$4.6 billion during the next 9 years.

The Comprehensive Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, and the sentencing guidelines established in 1987 by the U.S. Sentencing Commission reformed sentencing practices by significantly increasing prison sentences for certain federal offenders. While the actual impact of sentencing reform is just now emerging, the potential impact over the next several years is enormous in terms of the increased work load of federal prosecutors, U.S. Marshals, and other court personnel, and the potential increase in the federal prison population.

Under sentencing reform, criminals who face stiffer sentences may not agree to plead guilty and instead choose to go to trial. For the year ending June 30, 1986, about 86 percent of convicted defendants

pled guilty rather than go to trial. If the plea agreement rate decreases significantly, there will be a need for more prosecutors, marshals, and other court personnel to handle the increased work load. Neither the judicial branch nor the Department of Justice has developed estimates of the budgetary impact of sentencing reform on plea agreements.

There is no doubt, however, that considerable resources will be needed to provide effective custody, care, and rehabilitation programs for expected increases in the Department's prisoner population. Prison overcrowding could become a major impediment to an effective federal criminal justice system if sufficient funds for prison expansion are not provided or alternatives to construction are not fully used.

As of July 1988, federal prisons housed about 43,100 prisoners, 57 percent more than the prisons are designed to handle. Another 6,800 prisoners were housed in contract facilities. The U.S. Sentencing Commission estimated that the federal prison population will be between 78,000 and 125,000 prisoners by 1997. Only a small portion (about 5 to 6 percent) of the increase will be due to the sentencing

guidelines. Thus, even if ongoing constitutional challenges to the guidelines are successful, the prison population will still increase substantially due to the increased sentences required by the 1984 and 1986 acts.

The Department ultimately wants to reduce its prison overcrowding to 20 percent over capacity. To accomplish this goal and to provide for the additional prisoners, the Department would need about \$2.0 to \$4.6 billion (excluding inflationary impacts) to construct new prisons unless other alternatives are used. The Department may need another \$0.5 to \$1.0 billion a year to operate and maintain the new prison space.

The Department needs to ensure that alternatives to new prison construction, such as excess military facilities, halfway houses, or "private contract facilities," are used where feasible. Joint ventures with the military or some state prison systems need to be considered. Where possible, minimum security facilities should be used in lieu of higher security facilities that are more costly. Also, limited funds may make larger capacity prisons more palatable to the corrections community than the current practice of limiting prison capacity to 800 or fewer beds. Prison "boot camps"

(military style prisons oriented toward discipline), “electronic supervision,” probation with varying degrees of supervision, or other innovative alternatives to traditional incarceration also need to be evaluated.

The Attorney General must ensure that the cost implications of sentencing reform are thoroughly examined. Budgetary limitations will require that only the most efficient and effective programs are implemented.

Determine Whether Immigration Reform Is Working

To reduce the flow of aliens illegally entering the United States to find work, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which, among other things, prohibits employers from hiring any alien not authorized to work. The primary tool provided by IRCA to stop the hiring of aliens not authorized to work is the employer sanctions provision of the act which provides civil and criminal penalties for employers who do not comply with the law.

It is now unlawful to knowingly hire aliens not authorized to work or to hire any person (including U.S. citizens) without verifying the person's legal employment status. All employers need to certify that each new employee hired is authorized to work. This provision applies to each of the nation's estimated 7 million employers and the 67.5 million people hired annually.

IRCA is consuming about a fourth of Justice's Immigration and Naturalization Service's (INS) resources, often at the expense of other programs. It also places a burden on the nation's employers and employees. These costs are in vain if IRCA does not achieve its objective of preventing the employment of illegal aliens.

The Attorney General must be in a position to tell Congress if the act's objectives of reducing illegal alien employment and flow into the country have been met. To do this, he must ensure that INS collects and analyzes the right information for assessing the effectiveness of the act.

INS will need to modify its data collection and analyses regarding aliens' employment activities. For example, to determine the act's impact on reducing unauthorized alien employment, INS needs to systematically collect and analyze information about whether unauthorized aliens were employed before or after implementation of the act.

However, INS is not always determining when the unauthorized aliens were employed. As a result, the Attorney General will not know how the employment of unauthorized aliens changed after implementation of the act. In addition, the Attorney General needs to know the extent that aliens use fraudulent and counterfeit documents to circumvent the act.

Increase Efforts to Prevent Discrimination Due to Immigration Reform

IRCA allows Congress to use expedited procedures to repeal the employer sanctions provision if it causes a widespread pattern of employment discrimination. The law also establishes a new enforcement unit in the Department of Justice to investigate complaints—the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

As of September 12, 1988, OSC had received 279 discrimination complaints. Information from employers indicates that there may be many more employers who are discriminating against foreign-looking persons, which is not permitted under the act.

To help prevent employer discrimination, the Department needs to increase its efforts to educate employers on their rights and responsibilities under the act. If the employer sanctions provision is repealed because of employer discrimination, then a major tool for preventing illegal immigration would be lost.

Related GAO Products

Justice Department: Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12, Mar. 14, 1986)

Controlling Drug Abuse: A Status Report (GAO/GGD-88-39, Mar. 1, 1988)

Sentencing Guidelines: Potential Impact on the Federal Criminal Justice System (GAO/GGD-87-111, Sept. 10, 1987)

Immigration Reform: Status of Implementing Employer Sanctions After One Year (GAO/GGD-88-14, Nov. 5, 1988)

Defense Procurement Fraud: Justice's Overall Management Can be Enhanced (GAO/GGD-88-96, June 29, 1988)

National Drug Policy Board: Leadership Evolving, Greater Role in Developing Budgets Possible (GAO/GGD-88-24, Feb. 12, 1988)

Drug Abuse Prevention: Further Efforts Needed to Identify Programs That Work (GAO/HRD-88-26, Dec. 4, 1987)

Drug Control: U.S. International Narcotics Control Activities (GAO/NSIAD-88-114, Mar. 1, 1988)

Drug Control: Issues Surrounding
Increased Use of the Military in Drug
Interdiction (GAO/NSIAD-88-156, Apr. 29, 1988)

Drug Smuggling: Large Amounts of Illegal
Drugs Not Seized by Federal Authorities
(GAO/GGD-87-91, June 12, 1987)

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The Budget Deficit (GAO/OCG-89-1TR)

The Public Service (GAO/OCG-89-2TR)

Revenue Options (GAO/OCG-89-3TR)

Financial Services Industry Issues (GAO/OCG-89-4TR)

International Trade Issues (GAO/OCG-89-5TR)

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Interior Issues (GAO/OCG-89-24TR)

Transportation Issues (GAO/OCG-89-25TR)

Internal Revenue Service Issues (GAO/OCG-89-26TR)