
Penetrability of Administrative Systems: Political “Casework” and Immigration Inspections

Janet A. Gilboy

To achieve institutional goals, public agencies commonly rely on the political support of interest groups, the executive, and the legislature. While much is written about public agency vulnerability to pressures from these sources, little is known about how influence and agency behavior are linked. This article provides an in-depth look at one agency's response to an important segment of its environment. Drawing on an empirical study of administrative discretion, the study explores the Immigration and Naturalization Service's dependence on the support of politicians and pragmatic response to their “casework” on behalf of constituents. The article highlights a neglected feature of the influence process—how it affects the behavior of front-line public officials, particularly through their *anticipation* of the possibility that there will or might be casework complaints. It describes the inspection context as understood by front-line immigration inspectors, the asymmetric risks posed to them by casework, and the strategies they “rationally” employ to deal with these risks—strategies that promote accommodation as well as responses based on the perceived power of violators. The article suggests that a lack of countervailing incentives in certain kinds of cases underlies a cultural-political environment of accommodation to outsiders.

Administrative agencies are subject to a wide variety of devices to ensure that government power over individuals is adequately restrained. Among the mechanisms of control of agency action is “casework” by legislators and local politicians (Gormley 1989:45; Gilboy 1988:516–18). At the request of

Financial support for this study was generously provided by the National Science Foundation (SES-8911263) and the American Bar Foundation. I would like to express my great appreciation to the district administrators of the Immigration and Naturalization Service whose extensive cooperation and willingness to open their doors to scholarly research made this study of exclusion/admission decisionmaking possible. Their interest in this research provides us with a better understanding of the nature of government action within what is often a difficult environment of public purposes and private interests. I also am indebted to each of the inspectors working at the ports of entry studied; they kindly included me in their everyday activities and gave generously of their time to explain the nature of their work. I would like to thank Barry Boyer, Kitty Calavita, Terence Halliday, John R. Schmidt, and Peter H. Schuck for their indispensable commentary on earlier drafts of this paper, and Robert A. Kagan and Doris Meissner for their valuable insights relating to portions of this paper. Editor Frank Munger, Robert M. Emerson, and the anonymous reviewers of the *Law & Society Review* provided especially useful insights and advice for the final draft. Bette Sikes is to be thanked for energetically editing the article.

their constituents, politicians may contact government officials to obtain information or nudge or challenge an agency.¹

Casework is a popular activity. It is a type of divisible benefit (Clark & Wilson 1961:140) politicians can extend at almost no cost, in contrast to taking a policy stand that may gain the support of some individuals but engender the dissatisfaction of others (Fiorina 1977:43–44; Schuck 1975:244, 255, 264). Casework is particularly attractive to modern politicians since many other low-cost divisible benefits, such as various forms of patronage, are now illegal.² Politicians also view casework as an important opportunity for gaining reelection support (Fenno 1978:101) and devote much effort to servicing constituent requests (Clapp 1963:75; Mayhew 1974:54–56; Saloma 1969:183–87; Tacheron & Udall 1966:63; Elling 1979:357; Fiorina 1977:46).

Two views of casework exist. On the one hand, inquiries by members of Congress are thought to act as an "outside needling force" to ameliorate bureaucratic arrogance, delays, and mistakes (congressman quoted in Clapp 1963:51; see also Clark 1964:63–64; Evins 1963:42–44). Moreover, casework can increase legislators' knowledge of agency functioning, which may be beneficial in restructuring agency programs or providing corrective legislation (Clapp 1963:79; Johannes 1979:328; Mann 1968:19–20; but see Ogul 1976:168–71; Gormley 1989:200, 208).

But legislator intervention may result in special deference being paid to inquiries, particularly when the one initiating an inquiry is a powerful political actor on a substantive committee or appropriations subcommittee relating to agency business (Fiorina 1977:43; Mann 1968:43). Gormley (1989:200) has described casework as "a thinly veiled request for special treatment for a favored constituent."³ Some believe that even legislators' routine inquiries may affect case handling, since agencies must guess at a legislator's intentions or extent of involvement in a particular case.

Decisions in response to casework are made by officials typically exercising considerable discretionary power within the dimly visible recesses of bureaucracy. To fully understand the implications of casework, it seems important to step inside administrative systems and from within attempt to grasp the concerns and activities of agency officials.

This article attempts to provide such a glimpse through a

¹ In the immigration area, some of these challenges take the form of private immigration bills introduced into Congress. For a good discussion of the benefits and problems of this once popular form of legislator casework, see Schuck 1975:ch. 11.

² Peter Schuck (personal communication, 10 June 1991) provided this fuller picture of why politicians today find casework so attractive.

³ Many administrators concur with this assessment (Elling 1980:336, Table 3).

case study of the inner workings of one system—immigration inspections. Immigration and Naturalization Service (INS) inspectors work at ports of entry to the United States and are responsible for determining whether to allow foreign nationals to enter the country.

My purpose here is not to pass judgment on the desirability of casework or its merits relative to other mechanisms of control but instead to provide a picture of the potential effects of casework on administrative systems. I do this by extending the view beyond the typical point of politicians' casework contacts—usually higher-echelon administrators—to the organizational level of front-line officials.⁴ Appreciation of the work environment as known and understood by lower-level officials and the perceived risks and incentives operating in this context are central to understanding the implications of casework.

I first explore past approaches to the study of casework, identifying conceptual tendencies that have been barriers to our full appreciation of casework's consequences for officials' behavior. Next, I examine the INS's distinctive institutional context which increases the susceptibility of front-line officials to outside pressures. I discuss the case-handling strategies of inspectors generated by their critical "background knowledge" (Emerson 1991, 1992) of the organizational meaning and import of casework complaints, as well as the indirect effects of casework on agency routines and the exercise of discretion. Finally, using observations from other agency contexts, I describe several characteristics of the legal process and decision environment that allow accommodation to outsiders.

I. Limitations of Prior Research

Although a substantial literature discusses casework, it focuses largely on the activities of legislators and their staffs⁵ (Clapp 1963:75–84; Tacheron & Udall 1966:63–71) rather than on the responses of agency officials.⁶

⁴ I use this term to refer to officials in direct contact with the agency's clientele (Schuck 1983:59). Lipsky (1980) refers to them as "street-level bureaucrats."

⁵ E.g., existing research describes the number and types of constituent grievances legislators receive and the amount of time they spend on such complaints.

⁶ Little research systematically probes agency responses to casework. This seems to reflect a more general shortcoming of studies about public agencies—a lack of research on how various forms of political influence and agency behavior are linked. Recently, Scholz and Wei (1986:1265) called for more focused research to provide an in-depth understanding of the mechanisms that produce the patterns of enforcement behavior they and other scholars report. The lack of in-depth research on the effects of legislator casework is not surprising. Scholars working in other settings have found strong resistance to discussing the subject of external influence attempts or pressure. Hawkins (1984:121) reports strong taboos against raising the subject of polluters' bribes with regulatory officers, and Manley (1970:235) comments on the defensiveness of legislators themselves when queried about pressure groups and lobbyists. Moreover, the subject is difficult to study since attempts to influence agency action often take

A few scholars have explored the effects of casework on organizational behavior,⁷ but this work provides only limited insights. Barriers to full appreciation of the effects of casework arise in large part from conceptualizing the subject abstractly rather than contextually.⁸ With few exceptions, such as Robert Emerson's (1969:33–38) study of the juvenile court, existing research seeks to construct the gross effects of political intervention—that is, *generally speaking* how often officials change their decisions as a result of casework, rather than inquiring how officials *working in distinctive contexts* with particular incentive systems respond to political intervention. As a result, radically different estimates of casework effects are reported—from no effect on agency decisions to substantial effects.⁹ Realistically, efforts to construct some single estimate are doomed to be elusive because administrative agencies are embedded in a variety of political-cultural environments that are likely to produce different agency responses to outside attempts to control or influence agency actions (see Wilson 1989:ch. 5).

The literature also fails to grapple with the full range of casework effects. Studies inquiring about how often officials change their decisions focus largely on the consequences of *direct* legislator intervention while taking little account of indirect effects such as subsequent *anticipatory* official behavior. Moreover, where indirect influences are explored, only *positive* effects, such as greater internal supervision and self-correction, are discussed (Johannes 1979:347). The research also tends to discuss only the *activities* pursued by agencies in response to casework (e.g., changed decisions, rules, etc.). Yet official inaction is a plausible response to external pressures or threats (Schuck 1983:71).

These limitations of prior research are important. As described in this study, the effects of casework are not reducible

place in private outside the earshot of the researcher, and the more urgent the situation the more likely it is to involve telephone calls leaving no paper trail. A further research problem stems from legislators' fear of public criticism and charges of corruption over casework (Schuck 1975:261–64), now presumably heightened by controversies over casework by the Keating Five and by Senator D'Amato (see generally Berke 1991; Gruson 1991).

⁷ Johannes (1979) collected data from legislative as well as agency personnel about the effects of casework, including enhanced internal agency supervision and self-correction. Elling (1980), seeking to explain the differential consequences of casework for agency behavior, suggests in a two-state study that a state's "political traditions" and the degree of "professionalism" of the public work force may determine the extent of administrative accommodation to legislators' requests for special favors or exceptions.

⁸ Schuck (1983:59) points to this conceptual tendency and its problems in connection with a different mechanism of agency control, public tort remedies.

⁹ Some scholars report a large proportion of decisions (20–33%) are changed after intervention (congressman's estimate to Clapp 1963:78), while others suggest these interventions have a more limited effect (Gellhorn 1966:79) or even no effect (Mann 1968:41, 47).

to instances of actual casework intervention, casework consequences are not all positive, and inaction constitutes a form of official response.

More specifically, the focus on direct legislator intervention ignores important linkages between administrators and front-line officials. The decisions of front-line staff are fundamentally shaped by their understandings of how superiors have responded or are likely to respond in matters involving casework intervention. The anticipatory behavior emerging from such knowledge can magnify the effects of direct casework intervention (particularly where front-line officials anticipate that superiors will not back them up).

Recent theoretical work by Robert Emerson (1991, 1992) suggests the core phenomenon at work.¹⁰ In organizational settings, decisionmakers have considerable working knowledge of the likely organizational consequences of certain kinds of decisions. Legal actors draw on such knowledge in shaping their inquiry, interpreting facts, and classifying cases for purposes of disposing of them. Indeed, “the foreseeable interests and reactions of institutional agents at future processing points become increasing salient concerns in making some present decisions about a case” (Emerson 1992). Empirical work by Emerson (1992) on complaint filing in a district attorney office, Schuck (1972) on regulation by meat inspectors, and Lundman (1980) on police officer arrest practices suggest the involvement of background knowledge of the “downstream consequences” (Emerson 1992:14) of different decision options for present decisions.¹¹ In the inspection setting, awareness of casework intervention gets built into this background knowledge, and the likely organizational fates and implications of different types of cases provide a “tentative frame” (ibid.) in which cases are initially viewed by front-line staff.

It is tempting to draw from this conceptualization simply a caveat to researchers to be aware of the role of background knowledge in officials’ actions. But the conceptualization embodies more; there are different central concerns when empirically examining officials’ work involving *actual casework* and work involving background knowledge and *anticipation of possible future casework*. Actual casework involves officials in direct con-

¹⁰ This section benefited greatly from Robert M. Emerson’s fresh insights and generous comments.

¹¹ Such a phenomenon is not limited to those *within* a single organization. Inter-organizational processing also draws on knowledge of others’ interests and reactions (Emerson 1991). Moreover, assessments of other’s likely decisionmaking concerns and practices are found in situations involving more loosely linked collections of individuals and institutions. For instance, the *New Republic* (1990) suggests artists may “avert a run-in and a possible cutoff of funds” from the National Endowment for the Arts by broadly shaping their work to avoid offense to this important funding agency and powerful agency critic Senator Jesse Helms.

tact with complainants. Research is particularly focused on understanding the sources, variety, and escalation¹² of such casework contacts. Attention turns to the official strategies for managing complaints and to strategies for containing the involvement of increasingly more powerful individuals.

In contrast, in anticipation of casework the official is not dealing with a complaint but is anticipating if and when a case will evoke vocal opposition, particularly of the sort that will get the sympathetic attention of higher-ups. Research attention is particularly drawn to officials' background knowledge about the kinds of decisions generating complaints, the perceived concerns and practices of those who stand to receive the complaints, and to officials' assessments and use of this information in their work. Specifying and distinguishing the distinct concerns of different tiers of organizational decisionmakers (and tensions between tiers) is of research interest.

Whether one explores actual or anticipated casework, research requires sensitivity to the distinct context in which officials labor. These work environments vary not only between but also within agencies. The need for such a focus is suggested, for instance, by Scholz and Wei's study of OSHA (1986), which provides clear data that agency behavior across 50 states varies by local political complexion. More generally, when officials act, their responses reflect not simply external pressures but the spectrum of incentives operating on them as shaped by the tasks they perform (Wilson 1989:88; Schuck 1983). In dealing with casework demands, officials in various settings are exposed to different organizational problems and dilemmas relating to the nature of the enforcement process and the organization's decision environment (see part IX).

The emphasis on understanding the contexts in which officials work highlights the comparative nature of the inquiry. Although prior research has added valuable knowledge about the nature and consequences of casework, it has narrowed our focus by ignoring the diverse environments within which casework occurs. This conceptual shortcoming hampers comparative research on the crucial factors affecting the penetrability of administrative systems by external interests.

II. The Research Setting

Thousands of foreign nationals come to the United States each day seeking entry as tourists or for business. Decisions as to their admissibility (or excludability) are made by INS inspec-

¹² Escalation may involve heightened response (inquiries that become complaints or threats) or increasingly more influential complainants.

tors at ports of entry along our Mexican and Canadian borders and at international airports.¹³

All individuals arriving at ports of entry go through a *primary* inspection in which entry documents (passports, visas, etc.) are examined (Gilboy 1991). If the entry documentation meets the approval of the primary inspector, the alien is admitted to the country. If there is a question regarding a person's admissibility (such as inappropriate or questionable documentation), he or she is sent to secondary inspection.

Secondary inspection involves questioning individuals in greater depth about their documents and the purposes of their trip. After questioning, the individual may be admitted. If the inspector concludes, however, that the individual entering with a visa is not admissible, that individual typically is given the choice of going home or being detained and having his admissibility determined in an administrative exclusion hearing before a Department of Justice immigration judge.¹⁴

This article focuses on secondary inspections. Inspectors' decisions are thought to involve the exercise of considerable discretionary power delegated by Congress. Discretion exists in part because of the vagueness in the law specifying the particular grounds for exclusion (there are nine exclusion categories, including health, criminal and security reasons).¹⁵ This discretion is expanded because of case disposition choices¹⁶ as well as difficulties in fact finding. For instance, what type of evidence and how much is necessary to conclude that the foreign national is actually not coming to visit but instead intending to live and work illegally? Decisions on length of questioning, its tone (nonantagonistic or hostile), whether to search hand baggage and luggage, and whether to widen the inquiry by calling to verify information are left largely to the discretion of individual secondary inspectors.

¹³ On admission and exclusion see generally Aleinikoff & Martin 1991:chs. 3 & 4; *Harvard Law Review* 1983:1334–70; Martin 1987:49–59; Schuck 1984.

¹⁴ There are now eight nations, including England, Germany, and Japan, whose nationals may come to the U.S. without a visa. Individuals without a visa are subject to summary exclusion proceedings and returned home without an immigration judge hearing if determined to be excludable at the port of entry. The INS and State Department have proposed that an additional 13 countries be added to the visa waiver pilot program. *Interpreter Releases* 1991e:1196–97.

¹⁵ See the Immigration Act of 1990, which revises the previous 33 grounds for exclusion into 9 categories. See *Interpreter Releases* 1991a:265, 287; 1991b; 1991d.

¹⁶ Kenneth Culp Davis (1969:4) noted that discretion exists “whenever the effective limits on [a public official’s] power leave him free to make a choice among possible courses of action or inaction.”

III. Method and Approach

The materials for this article are drawn from a larger study examining discretionary decisionmaking in the immigration area (see also Gilboy 1991, 1992). The study focused on how legal institutions thought to exercise considerable discretion come to respond differentially to the cases brought to their attention, that is, how did they assess, react to and classify cases, and what factors shaped case dispositions?

To address these questions, I traveled to a U.S. international airport ("Metropolitan Port") where I observed and informally interviewed port officials for 102 days. This in-depth case study was supplemented by two weeks of observations and interviews at a port of entry along the Mexican border ("Border Port").¹⁷ At the two sites I observed and informally interviewed 36 and 25 port officials,¹⁸ respectively. At Metropolitan Port, the principal focus of the study,¹⁹ I observed secondary inspections conducted by the 18 inspectors assigned to this work during the study's observations from March 1988 to December 1990. Secondary inspections were observed during 73 days and each inspector was observed several times. Most of these observations took place from 1 P.M. to 7 P.M., the period when most international flights arrived.

To facilitate rapport, I spent the entire day with one or two secondary officers and observed all their cases. Depending on how busy the port was and whether an inspector got involved in a lengthy secondary inspection I observed anywhere from 5 to 15 cases each day. Typically, I was present during all stages of a secondary inspection, including conversations between primary and secondary inspectors, the secondary inspector's questioning of the suspected illegal entrant, baggage searches, telephone calls to verify information, the questioning of persons traveling with or awaiting the foreign national's arrival, discussions with co-workers and superiors, and paperwork preparation.

¹⁷ "Metropolitan Port" and "Border Port" were chosen partly for practical reasons relating to travel costs and access. "Metropolitan Port," the principal site of study, provided an excellent opportunity for studying how national exclusion/admission laws are implemented. It is among the largest U.S. air ports of entry to the United States, and the INS inspects annually hundreds of thousands of thousands of foreign nationals, lawful permanent residents, and U.S. citizens coming through it.

¹⁸ Ports of entry have a various types of officials or officers, including primary inspectors, secondary inspectors, supervisors, and the port director. To help preserve anonymity when quoting them, I refer to them as "officer 1 or 2," etc., except where otherwise noted.

¹⁹ By focusing in depth on one jurisdiction, insights are gained into the conditions under which an agency is vulnerable to external influence and the subtle and complex effects of such pressures on agency behavior. Given that this is principally a study of one jurisdiction of one federal agency, the generalizability of my findings is unknown, and my conclusions must be regarded as tentative pending additional research in other jurisdictions and other agencies.

Because so little was known about the setting—the last empirical study examined steamship travelers at Ellis Island 50 years ago (Van Vleck 1932)—I used extensive observations and informal rather than structured interviews. These methods allowed inspectors to describe work from their perspective and permitted important issues in the setting to come to the fore, including the subject of this article. Although I did not set out to focus on political casework as a factor shaping port decisions, its relevance became apparent from inspectors' comments, as did the sensitivity of the subject.

Once aware of inspectors' concerns about intervention by outsiders, I tried to raise the general issue with them. This was unproductive in getting forthright comments and too artificial and removed from actual cases to help me gain a good understanding of the phenomenon. Instead, it was more helpful to allow the subject to arise naturally in the course of the field research.²⁰ This required considerable time and persistence,²¹ since cases arousing concerns about political intervention are not an everyday occurrence. In pursuing the subject of political casework, in many instances inspectors themselves brought up the problem of potential outside intervention with the cases they were inspecting.²² This method increased both the quality of the data and its validity. In focusing on actual cases, I tried to understand not only the roots of failed attempts to enforce the law—the demoralizing cases that every inspector can readily describe—but also the devices inspectors used to permit successful pursuit of enforcement.

Knowledge about past events leads port officials at Metropolitan Port to report that intervention attempts occur in four kinds of cases. These involve relatively nonserious immigration violators as compared to such other would-be illegal entrants as criminal aliens, drug violators, terrorists, and fraudulent document users aided by organized crime rings. First, there are the *domestic employment cases*, which I mainly emphasize here. These are individuals seeking to enter the country without proper visas to work as domestic employees such as child-care helpers, stable workers, gardeners, household cooks and cleaners. The most common group is “nannies” or au pair girls com-

²⁰ This data collection approach was possible because the project was occupied with other data collection activity.

²¹ Understanding the full implications of casework influences meant exploring more than met the eye. Agency inactivity in response to prior political intervention makes it particularly difficult to discern the linkages between political influence and organizational behavior (Lukes 1974:18). Because power is subtle in its effects and, after a time, inspectors come to take it for granted as a limiting factor in a setting, some activity as well as nonactivity occurs with an unspoken nod to external constraints.

²² Because anticipated casework is often annoying, inspectors' willingness to discuss the subject seemed to be a way of letting off steam, seeking empathy for their plight, and showing their experience and sophistication in handling difficult situations.

ing to do child care. Hiring such women would not be illegal if the families had gone through the proper agencies and paperwork, but these women enter the country with tourist visas or visa waivers that do not permit employment (Gilboy 1991). Another set of cases are *abandonment of permanent resident status cases*. These are lawful permanent resident (LPR) aliens who "abandoned"²³ their residence by living outside the United States for longer than a year without permission of the INS. One familiar situation involves cases in which naturalized U.S. citizens have obtained LPR status for their parents and have encouraged them to live in the U.S. Sometimes the elderly parents prefer to spend their last years residing in their native country. They return each year to the U.S. under the erroneous assumption that to "maintain" their resident status they need only make a once-a-year reentry. A third set of cases is *fiancee and intending immigrant cases*. These are individuals seeking to enter without proper visas in order to permanently join spouses living in the U.S. or to marry U.S. citizens or permanent residents. These intending immigrants attempt to use tourist (nonimmigrant) visas to enter the country rather than waiting for immigrant or fiancee visas. Finally, at the time of the research, outside intervention was perceived as likely to occur in the cases of nationals from one particular country. Individuals from this *preferred country* were perceived as seeking to enter the U.S. with intentions to work but without proper visas. The country is thought to have powerful local and national political representatives who will intervene if a national's admissibility is challenged at the port of entry.

I mainly focus on domestic employment cases to explore some effects of actual and anticipated intervention on agency case processing. These cases are encountered relatively often in this setting, particularly in the summer months. More important, such cases illuminate many of the principal concerns of front-line officials and illustrate their anticipatory strategies. To put this set of cases in perspective, the port conducts about a half-million inspections of foreign nationals a year. Most are admitted to the U.S. after primary inspection. Of the 2% who are sent to secondary inspection for further questioning, most are admitted. Referrals to secondary inspection occur for many reasons, including suspicion that the individual intends to illegally live or work in the U.S., is using altered or fraudulent entry documents, or has a criminal background. No official statistics exist on the proportion of agency secondaries for specific reasons, but data collected during this study indicate that "pos-

²³ "Abandonment" is a legal term of art—a mixed question of fact and law turning in part on judgments about the foreign national's intentions. See *Matter of Kane* 1975.

sible nanny” cases make up about 5% of the referrals to secondary inspection (Gilboy 1991:595, Table 2).

IV. Agency Dependence on the Support of Politicians

Agencies commonly rely on three centers for political support: the community, the executive branch, and the legislature (Rourke 1976:43).²⁴ Many agencies are in the fortunate position of having community interest groups whose concerns are compatible with the agency’s formal goals (Wildavsky 1971:390). These agencies are able to command the intervention and support of these natural constituencies to obtain necessary resources and programs by relying not only on the self-interested action of these groups but also on the agency’s power to dispense desired benefits and favors (Rourke 1976:47). While the perils of undue agency deference to these interests are well documented,²⁵ it is also clear that these groups provide a useful source of support for pursuit of the agency’s interests (Fenno 1966:297; Ripley & Franklin 1986:14; Rourke 1976:47–51; Wildavsky 1971:391–93).

Other agencies, however, have a minimal number of natural allies to advocate on their behalf. The INS is a good example of an agency whose interest group support for enforcement is relatively weak because its benefits are intangible or ill defined.²⁶ The agency realistically cannot expect support from the undocumented alien population for immigration policing efforts that adversely affect them. Although several national organized groups support aspects of the INS’s mission (among them the Federation for American Immigration Reform and the Governors’ Association), these groups either have narrow constituencies or are not consistently involved in defending or promoting the agency. Moreover, it is often noted that an American ambivalence exists toward aliens in general and immigration en-

²⁴ Among the images of administrative agencies in the scholarly literature and popular press, perhaps none is more striking than that of public bureaucracies facing the political power wielded by organized interest groups, powerful individuals, and legislators (see McConnell 1966; Lowi 1979; Elling 1980; Berke 1991). The organizational literature contains many theoretical and empirical discussions of how dependency relationships may undermine pursuit of organizations’ formal goals (Pfeffer & Salancik 1978:ch 5; Selznick 1949; Perrow 1972:177–89; Emerson 1969:chs. 2 & 3).

²⁵ The cultivation of powerful interest groups or individuals or legislators carries with it the potential that they will gain control over agency behavior. This is particularly so when support is drawn from a relatively narrow base, since agencies are less able to avoid domination by building on the strength of each source as well as playing them off against each other (see Pfeffer & Salancik 1978:51–53, 96–97; Rourke 1976:43, 45).

²⁶ Another example is the Bureau of Prisons. Wildavsky (1971:390) observed that the incarcerated prison population is “hardly an ideal clientele” to promote the interests of the agency and “the rest of society cares only to the extent of keeping these people locked up.” Facing this situation, the agency historically has taken extraordinary measures to cultivate congressional support.

forcement in particular,²⁷ a further factor stymieing the emergence of vocal broad-based interest group support for the agency's policing efforts.

The INS also draws relatively little political support from the executive branch. It ranks among the lowest in institutional prestige and reputation of the enforcement agencies within the Department of Justice (DOJ). It recently was characterized by the chairman of a DOJ task force as a "stepchild of the Justice Department" (*Interpreter Releases* 1991c:519; see also U.S. Congress 1980:174) and has been described (along with the Border Patrol) as "whipping boys and the laughing stocks of the executive branch . . . underfunded, mismanaged, undermanned, inadequately supplied, riven by internal dissension, and politically manipulated" (Teitelbaum 1980:54). Its credibility is low and reportedly "rarely receive[s] the benefit of the doubt in its many controversies" from other parts of the executive (Aleinikoff & Martin 1991:102). Its issues are rarely those that an attorney general considers as requiring his attention. While this is not unusual for any entity within the DOJ, with the INS there are clearly issues that are volatile, that create problems for its effective administration, and that involve difficult policy trade-offs.²⁸ With a few exceptions, most attorneys general have not been engaged in matters that were they FBI issues would command their attention.²⁹ In recent years, the INS's financial resources (e.g., for the 1986 legalization legislation) came largely from its hard work rather than from a DOJ conclusion that the INS was to be a priority. In short, within the DOJ, there has been only sporadic attention to the INS.

Although all agencies seek to maintain support from influential political institutions such as the legislature (Gray 1969:541) and particularly legislators who control fiscal resources desired by the agency (Fenno 1966:ch. 6), agency cultivation of legislative support tends to be especially critical for agencies like the INS or Bureau of Prisons (Wildavsky 1971) where other sources of political support are limited.³⁰ Such

²⁷ For a discussion of survey findings about U.S. views on immigration, see Harwood 1986:10–13. See also Teitelbaum 1980.

²⁸ Lack of DOJ leadership in the immigration area perhaps can be seen best in areas other than resource support, to which the DOJ gives some minimal attention and support. One striking example of the DOJ's lack of concern with crucial public policy in the immigration area is its inattention to the ongoing interagency conflict over bail administration that involves two immigration entities within the department—the INS and the Executive Office for Immigration Review (see Gilboy 1990:638; Gilboy 1987:369).

²⁹ Telephone conversation with Doris Meissner (Former Executive Associate Commissioner, INS), 15 May 1991.

³⁰ Calavita (1992) suggests this void of political support for the INS encouraged the agency to court *special interest groups*, namely, agricultural growers. The activity not only served growers' interests (by providing a cheap, plentiful source of labor via the Bracero Program) but also served INS enforcement interests.

support carries the potential for influence over agency activity since countervailing sources of political power are not readily available to deflect or neutralize pressures. Moreover, to build the critical political support the agency needs, agency officials may look for opportunities to provide favors and services to powerful individuals.³¹

At another level, the local district office, the problem of support also exists. District administrators also must be aware of the individuals and groups they will need for local support of the agency's programs. No district office, for instance, wants to find itself in the situation of the one in San Francisco after the city council declared the city a sanctuary for Central American refugees. There is much an administrator has to do day to day to maintain legitimacy, an image of a competently run office, and a record of being fair, accessible, and open. If problems arise, an administrator wants to have credibility and to already have working relations with legislators' offices, local community leaders, consular generals of various nations residing in the district, and other influentials so that he gets a fair hearing. In many district offices, including the interior office studied, having established good relations is particularly important because they are in states with powerful national legislators whose understandings of the workings of the INS presumably are drawn in part from contacts with the local office.

Developing relations involves a district office not only in a series of accommodations with political figures but also in the development of local administrative practices and policies that protect the district and enhance its image by limiting the number of "needless" harmful or counterproductive encounters. Political casework tends to involve cases for which there is not that much public support for the "law-on-the-books." Certainly public opinion is not much aroused for tough handling of an 18-year-old Scandinavian girl coming for the summer to babysit, or for stringent application of fiancée visa rules to a woman arriving with joyful expectations of marrying a U.S. citizen, or for a forceful stance for taking permanent residence cards from elderly people living their last years outside of the country; indeed, the opposite reactions ("Who cares?" "Why are we doing this?") are more likely if brought to the public's attention.³²

Generally speaking, the kind of case is an important feature of the work environment in which influence operates. The po-

³¹ Calavita (1992) reports, e.g., that in the 1950s former INS Commissioner Swing seized the opportunity to obtain the future cooperation of the extremely influential Senator Eastland (Chairman of the Judiciary Committee and Immigration Subcommittee) by "bend[ing] the law to grant a visa to a child from Greece being adopted by personal friends of Eastland."

³² On the problems that other immigration officers experience in enforcing unpopular immigration laws, see Harwood 1986:89-93.

tential for external influence is likely to be intensified under conditions where the agency views the matter involved as minor, so that the mission or program of the agency is less likely to be threatened by compliance with demands. More particularly, pursuing cases of relatively minor enforcement importance to the agency may be a greater political liability to a district office than trimming its sails in the face of potential heavy political winds. Through accommodations to its local environment, a district office lessens needless exposure to critical scrutiny and unflattering, no-win contacts with individuals or their political representatives. Aggressive enforcement of unpopular laws for which there is local sentiment for relaxed enforcement can only tarnish the district's image as a reasonable institution. As suggested by one district administrator, less aggressive enforcement of relatively minor segments of its enforcement program (specifically "au pair" cases) can help the district maintain the community support needed for more important enforcement activities.³³ Concessions on elements of an agency's program can be a sound practice from a district perspective. As Kaufman (1990:79–80) points out in his classic study of the forest ranger, "In every instance, to have pressed forward regardless of local sentiment unquestionably would have cost far more in the long run than was gained in the short run; tactically, the concessions were certainly sound."³⁴

V. The Context of Front-Line Inspection Work

To fully appreciate the implications of casework it is necessary to explore how it is experienced by front-line workers, particularly the pressures, constraints and opportunities they encounter.

This section describes the asymmetric risks³⁵ posed to port officials by casework—risks which promote accommodation to outsiders. Three features of their decision environment are known and understood by officials: the high likelihood of politicians' intervention in certain cases; the failure of superiors to back them up when complaints occur; and the low risk of detection when exceptions are made. This knowledge of the foresee-

³³ On the practice of modifying or abandoning minor program parts to ensure more major goals, see Rourke 1976:53–54; Selznick 1957:44.

³⁴ Concessions can have other costs. They can encourage accommodation and even corruption by lower-level personnel (Schuck 1972). See part VIII for implications in this setting.

³⁵ These risks are in many respects analogous to those posed to officials by public tort liability. Peter Schuck provides an excellent examination of the litigation risks posed to officials and the self-protective strategies they engage in which undermine vigorous decisionmaking (Schuck 1983:ch. 3). Schuck's article emphasizes the *common* features of the work environment of public officials. In part IX, I compare the distinctive milieu of immigration inspections to another agency setting (wage-price control) in order to further discuss the skewed incentives in the inspection setting.

able organizational and personal consequences of various decisions is a critical source of information officials draw on in their work (Emerson 1992).

A. Predictable Intervention in Certain Cases

Prior known occasions of casework provide port officials with background knowledge about the kinds of cases in which intervention is likely. For some kinds of cases it is seen as a real possibility, for others it is not.

Intervention is perceived as very likely in nanny, permanent resident, and other previously noted cases. Outside inquiries in other cases, such as more serious cases, are seen as rare to non-existent. Those aiding or awaiting the entry of a fraudulent passport holder, for instance, are thought to be unlikely to call the port to inquire about why the person was not admitted. Even if legislators were contacted, port officials speculate politicians would be unwilling to intervene in such serious matters.

Port officials can readily describe the various foreseeable “organizational futures” of various kinds of cases.

[*Nanny* cases] are a real pain in the you-know-what. They’re a lot of work and you get all the aggravation with them. You’ve gone around and around with them . . . you can always expect congressionals with them. (Officer 13; May 1988)

These families want their nannies. They’re wealthy and have influence. It makes it hard for us to do our job. . . . The follow-up replies consume a lot of time needlessly because we are enforcing the law the way Congress intended us to do. There’s more work with nannies than with *criminals!* Then, too, someone who *overstays* [their authorized time in the United States], well, that’s the end of that. You hardly ever get an inquiry about why we sent them back. On the *nannies* it’s the opposite, hardly a time when we never get a response as to why we did send her back. So, it’s just the aggravation and futility as far as trying to enforce the law. (Officer 11; Feb. 1990)

[Unlike *fraudulent passport holders* sent back,] if a person is coming to be a *nanny* or a person is coming to marry a *permanent resident*—you send them back, they will complain! (Officer 19; May 1990)

[An inspector] had a [*nanny*] case not a long time ago. We were going to send her back [after documents were found and an admission of intentions to work]. She had signed and was ready, then [supervisors] changed their minds and decided to let her in. There’s too much pressure from outside, congressmen. [Q: A congressman called?] No, a big shot called the supervisors. . . . For supervisors, the pressure is on them too. If they make a wrong decision, then they [employ-

ers] call congressmen, and they call [the district director], and then back to us. So much politics involved, that's what it boils down to. (Officer 22; Sept. 1990)

More particularly, with nanny cases inspectors assume they are dealing with wealthy, politically connected families "who will complain" themselves or through political representatives. Telephone calls are viewed as likely to come in to the port from the girl's suspected employer during the secondary inspection as those awaiting her arrival conclude she was stopped and questioned. Callers may simply ask "what is happening," but on hearing the girl is a suspected nanny the exchange may escalate—demands may be made for the port to release the erroneously suspected worker, and threats made that the caller will enlist the help of his or her congressmen, senator, or the consular general of the girl's native country. It is expected that these calls will be received by downtown administrators. Even if an "inadmissible nanny" is immediately removed from the port and returned home after withdrawing her application to enter the U.S., inspectors perceive the case may not go away and brace themselves for a "congressional"—a letter of inquiry from a legislator calling for the agency to justify its actions. These inquiries are received by downtown superiors but are expected to be redirected back to the port for the officer's explanation.

B. Lack of Support by Superiors

The effects of casework intervention are mediated through the local INS organizational hierarchy of district administrators, port superiors, and inspectors.³⁶ As described below, although inspectors do not share fully agency orientations to political casework, they more or less conform to them since they are not free to give vent to their own preferences. Their behavior is constrained to a large extent by direct supervision as well as by the knowledge of potential criticism and embarrassment for failing to do what is expected of them. Indeed, their functioning is best understood as encouraged by the incentives and sanctions available to superiors rather than as an outgrowth of mutual interests and supportive actions.³⁷

Over time, port inspectors have developed considerable familiarity with the orientations of their superiors. These perceived general dispositions were summarized by several inspectors:

³⁶ Inspectors include primary and secondary inspectors. Port superiors include the port director, supervisors and senior officers. Downtown administrators include the district director, deputy district director, and assistant district director for examinations.

³⁷ Preparation of this section benefited from Lipsky's (1980:ch. 2) excellent discussion of the potentially different concerns of lower-level staff and their superiors.

They are deathly afraid of—as far as supervisors—complaints from congressmen or any agency that allocates money. (Officer 18; Sept. 1988)

The office downtown is very politically oriented. All you have to do is get a congressman on the case and they get in. (Officer 14; Oct. 1988)

The Port Director sets port policy based on port experience, which means past trouble. Unfortunately they tend to be gun shy. It affects morale. (Officer 6; June 1990)

Inspectors also have more particularized knowledge from their own experiences as well as those of other inspectors. This background knowledge informs them of the likely organizational consequences of certain kinds of decisions, particularly those running the risk of lack of support by higher-ups. Secondary inspectors can cite examples of the failure of downtown administrators to back them up, and when their memories falter, port superiors readily jog them with other lessons distilled from experiences:

[In fiancée cases] they don't want you to look hard even though you'd be right under the law. [Downtown administrators] say, "You could have handled it in a more positive way. The congressional was unnecessary." And the supervisor will get involved because they signed off. . . . If there is a hot issue, the higher-ups want to know the circumstances behind it. They'll [downtown office] question it all down the line so they can get off the hot seat. Some officers at the airport would stand up [for you] to a certain degree but not downtown. And that's basically what counts. (Officer 19; June 1990)

[Speaking about a traveler from the preferred nation] We may defer his or her inspection to make it look good. The relative would then get up their barrage of attorneys and the [downtown inspector completing the secondary inspection] would admit. There's no point to it. . . . [Y]ou have this person who has the credit cards, the apartment lease, the check stubs in their baggage . . . still we have them admitted as a visitor. They're [downtown administrators] trying to send a message indirectly, I would think. And, you're pretty naive not to take it seriously. . . . So why create problems for myself, other inspectors, and for the district. (Officer 11; Oct. 1988)

[In lawful permanent resident cases] no judge is going to take away the card. And that is what you have to think about. Once you've had several cases like this and you've been burned, you are more careful. When you take a card away you're doing something pretty major to them. There may be complaints at the office downtown. You don't need that. (Officer 13; May 1988)

[Speaking about nanny cases] When it's a nanny case, the employer calls the congressman, and the congressman in turn calls the district director and the girls get in. There's nothing else that we can do. (Officer 30; Feb. 1989)

Most inspectors experience discomfort with a role which they perceive undermines their ability to "do their job" of enforcing the law. Some pointedly portray the situation as not simply one in which they would be "right under the law" to proceed, but as one in which their failure to do so results in unfair treatment of persons similarly situated.

[Comparing fiancée cases at the port and overseas] If you're coming to get married and it's a U.S. citizen and you have no return tickets and no intention of returning. . . [you] are an immigrant without an immigrant visa. . . . Port policy is, well, go ahead and let them in and given them some time to defer the inspection to the downtown office and let them determine what to do with them. But clearly within that time they are going to get married. So then they are going to become an adjustment case. They are clearly excludable [at the port]. What is the purpose of a K visa? Why penalize the person who has waited a year for their fiancée to [legally] come in and others just come in as B2 visitors [visitors for pleasure] with the intention of marrying? But it's port policy [to defer inspection]—it's in the interest of a port to do it. (Officer 19; June 1990)

Tensions between inspectors and their port superiors for the most part are suppressed in their exchanges but surface in occasional private derisive remarks about downtown superiors and cynical (often humorous) conversations such as one where an inspector informed another that before wasting any time on another secondary inspection he planned to first ask what senators, or other politicians, they knew!

Some of the potential tensions also are dissipated by the perceived de minimus nature of cases that typically are the object of casework and bureaucratic accommodation. Nanny cases in particular tend to be viewed as of relatively minor enforcement importance as compared to some other would-be illegal entrants to the U.S. since they are seen as not associated with organized crime or viewed as a danger to the community. At the extreme, there is indifference by a few inspectors who feel the law should not be enforced in the first place (i.e., cases sent to secondary inspection).³⁸ Moreover, some inspectors brush aside actual or anticipated stymied enforcement in fiancée cases by noting these individuals would get their benefit anyway in

³⁸ As one inspector stated, "I don't know why they secondary them [nanny cases] when we have serious cases like fraud. . . . I look at them with the lowest priority. When you have [specific nations]. . . with fraudulent passports and they [nannies] don't come to stay . . . with the visa waiver she only has three months [in the United States]" (Officer 8; April 1990).

time; or they observe that in lawful permanent resident cases where the parent has been living outside the country the U.S. citizen children always could reapply at any time and obtain the resident status again for their parents—therefore why “spin one’s wheels” and create extra work for the government by taking these cards and opening the door to casework. If there is one set of cases, however, where resentment (and resignation) is most widely shared, it is that of the favored nation cases in which officers’ enforcement practices are strikingly different from those involving other nationals entering the port (see discussion in part VII).

Inspectors’ disagreement with organizational policies and practices arises in part from their position within the organization (see Lipsky 1980:17); inspectors do not have to worry personally about the consequences to the agency of offending politicians. Downtown administrators, in contrast, are usually subject to, and must deal with, legislators and other politicians, and in such face-to-face encounters officials have broader concerns than the individual case brought to their attention (see discussion in part IV).

Although normally noncooperation is an expected consequence of lower-level staff disagreement with superiors’ policies (*ibid.*), in the inspection setting inspectors have few resources with which to express their dissent. Formal compliance is ensured, in part, by port supervisors’ direct supervision over inspectors; they must “sign off” on any case in which a foreign national is sent for an exclusion hearing or returned home after withdrawing his or her application to enter the U.S. At times inspectors have sought to express their dissatisfaction with port practices by using countermeasures to punish people they believe should not be admitted (e.g., by limiting the period of stay in the U.S. of those “lying”), but port superiors have stopped such expansion of discretion whenever they detect it.

Moreover, whether an inspector’s disagreement with organizational practices is minimal or substantial, compliance is encouraged through the threat of significant sanctions. From the perspective of inspectors (as well as port superiors who at times express views quite similar to inspectors), there clearly are concerns that downtown superiors will not back them up when inquiries come. As one supervisor observed, “I’d rather deal with a felon and have everyone’s support [than] with a nanny or 407 [suspected abandonment of permanent resident status], no one’s supportive.” Downtown administrators are perceived as all too willing to believe or accommodate those complaining. Port superiors are quick to point out, however, that there is a larger agency-wide problem of nonsupport that affects even local district directors.

A sense of vulnerability of all levels of port personnel was

conveyed by a port superior during a port meeting as he discussed a nanny case in which the suspected employer called the port:

These cases are the kiss of death for us. She called and began to give me the names of people [in a wealthy nearby town] she knew. You begin to ask yourself, "Is it worth it?" [All inspectors were then warned to do a thorough Q & A—a question-and-answer interrogatory—so the port could use it in answering inquiries.] Especially the nanny cases, they all go to the front office [downtown district administrators] and it comes back to supervisors. They particularly like to put [supervisors] in a noose, and it goes on down the line [implying to lower-level inspectors], so it's important to do a good Q & A. (July 1990)

Port officials suggest their "credibility" will come into question with their downtown superiors if too many inquiries are received by the agency about their actions—a conclusion that officers believe has important implications for their performance evaluation, career advancement to other positions, and professional respect within the agency.

The interplay of risks from outside and within leads port officials to view themselves as operating in a hostile environment—an environment one official represented with a large picture over his desk of a lamb surrounded by wolves.

C. Proactive Policing: Low Risk of Detection Where Exceptions Are Made

Inspection work is predominately proactive rather than reactive. Inspectors identify most suspected illegal entrants themselves. Relatively few inadmissible foreign nationals are targeted by "tips" or complaints flowing in from the community or from other government agencies (Gilboy 1991:595, Table 2).

Suspected illegal entrants normally are identified by focused questioning of incoming travelers by primary inspectors and by application of unwritten categories of suspicious persons. For instance, for young women seeking to enter, certain "stories" about why they are coming suggest to inspectors arrangements to work for families without legal authorization (*ibid.*, p. 590). Hearing such a "story," a primary inspector would not admit the girl but instead send her to secondary inspection for further questioning.³⁹

The fact that immigration inspection is largely proactive means that inspectors are policing "complaintless violations."

³⁹ Although most primary inspectors are aware of the cautious approach of secondary inspectors to "nanny" cases, cases are still sent for secondary inspection since the port will proceed to exclude the girl if inspectors find a contract or other document indicating her intentions to work.

This is not a setting in which one finds aggrieved complainants pressing for stronger enforcement or looking over inspectors' shoulders to watch what happens to cases. Port officials' descriptions of their work are not peppered with cautionary tales of being caught between a rock and hard place—between politician's casework in individual cases and concerned interest group or individual scrutiny of agency policing activity.

The lack of complainants means that case-specific pressures do not exist for tough handling of suspected deportable aliens. As a result, officials have much leeway in the identification and processing of suspected excludable aliens. They operate with background knowledge of the low risk of detection if exceptions are made in certain kinds of cases, since they are aware that few make it their business to know how the agency exercises its policing powers.⁴⁰

VI. Inspector Responses to Anticipated Casework

Given the pressures, constraints, and opportunities in the setting, how do inspectors behave? Inspectors' awareness of possible casework intervention has led to anticipatory strategies, among them protective documentation, higher thresholds for proceeding, a wait-and-see approach to cases, and enforcement inaction. These strategies bear a close resemblance to the tactics Schuck (1983:71–77) described in his study of government officials' response to liability for damages.⁴¹ In some instances, these strategies were beneficial, allowing inspectors and port superiors to successfully resist or rebuff undesired pressures or demands. In other instances, they resulted in compliance with external constraints.⁴²

The enforcement strategies observed were partly adaptations to perceived past problems. Lessons were distilled from problem cases. Indeed, a few cases of past intervention had an uncanny tendency to take on a life of their own in shaping inspectors' assessment of later cases, pushing them mainly toward a more cautious and lenient approach to the processing of certain groups of suspected excludable foreign nationals.

⁴⁰ For further discussion of this potential countervailing pressure see part IX.

⁴¹ These tactics were inaction, delay, formalism, and changed decisions.

⁴² During my time in the field, there seemed to be an *emerging* modification of the structure of enforcement, especially in the system's internal procedures, legal norms, case outcomes, and domain of enforcement due to some additional incidents of political intervention in nanny and other types of cases.

A. Preparing Protective Documentation

To inspectors concerned with outside intervention, giving attention to preparation of documentation designed to support their actions is natural. The aim is to successfully justify and defend their work—thus permitting them to pursue actions they view as appropriate by stemming an inquirer's further involvement in the case and protecting themselves from future criticism.

If a suspected nanny is thought to be inadmissible and is to be returned to her country without an exclusion hearing, a question-and-answer interrogatory ("Q & A") is typically prepared by the secondary inspector. Time is taken to pin down the girl's response to such questions as, How does she know the family? How many children of what ages were in the home? Was the woman of the house employed or in the home during the day?

Thoroughness is stressed. If "a case comes back" to the agency after the girl is removed from the country, port superiors want a good document to fully answer inquiries. A good Q & A allows superiors to read to the caller the girl's own words about her intentions to work for compensation. A detailed document allowed one port superior, for instance, to respond to an employer who denied the girl's illegal employment—"How could I make this all up about you?" And in another case, a port superior reported that a foreign embassy that called the port at the urging of the employer "seemed satisfied" after being told the agency had the girl's statement.

The Q & A is *not* standard for all immigration cases. It is used most commonly when inspectors expect outside intervention and wish to "build a record" to support their actions (Schuck 1983:73).

Sometimes if they're nannies you can expect repercussions and you want to protect yourself. It depends on the situation [as to whether a Q & A is conducted], but with nannies we do it. It's good to take a Q & A that says that they told you that they were working here. It can come back to haunt you. (Officer 12; Feb. 1990)

Such documentation may lead to more prudent conduct insofar as gaps may be more apparent to superiors and to inspectors themselves. The point is, though, that the use or nonuse of such documentation is not necessarily undertaken with regard to its administrative or supervisory benefits. At present the Q & A is more a protective device for port officials than a routine practical documentation of case evidence or a standard agency method for structuring inspectors' discretion (Davis 1969:ch. 4) in cases in which individuals are removed from the port to their home countries.

B. Raising the Standard for Proceeding

Another response is to raise the standard of evidence needed for agency action so as to eliminate all but the most clear-cut violations. Agency actions to enforce the law are more easily defended in these cases. Raising the standard of proof, however, results in “inactivity” in a greater number of cases than otherwise would be the case.

More specifically, although a Q & A provides the agency with basic, structured evidence to respond, inspectors recognize that such statements have limited usefulness. The central problem is not providing Q & A documentation of girls’ stated intentions but refuting charges of agency foul play.

The perception of potential problems exists particularly when inspectors are unable to find an employment contract or personal letter suggesting a girl’s intentions to work as household help. Building a case for exclusion solely on the girl’s admissions in a Q & A is seen as soft footing that tends to give way from under the inspector despite his best efforts to anticipate problems. In a pattern all too familiar, a girl will say later she misunderstand the interpreter during questioning; was coerced by the inspector into saying she was employed by the family; and pressured into signing a question-and-answer statement to that effect under duress of threatened confinement pending a hearing. As several port officials described the risks of proceeding with only a statement:

[With nannies] it’s always intimidation. But the biggest thing is the breakdown of communication. We say we had a translator from the airlines. They [the outside caller] start to challenge the competency of the translator. (Officer 11; Feb. 1990)

The Service would detain a suspected [nanny] if we had a real good one. If she told us everything. If we had a *real good* Q & A. Because otherwise, the family calls and tells it differently and she was jailed too, and we look like the Gestapo. (Officer 13; Feb. 1990)

I had a case, she told me she had been here several times working for families, the usual MO [modus operandi]. We got downtown [for a hearing], her story changed. She said we threatened her with detention, that she was confused. The judge let her in. (Officer 12; Nov. 1990)

Inspectors increasingly seemed unwilling to suffer the problems experienced with previous cases and tended to take the position that they would proceed only when they had virtual incontrovertible proof (e.g., physical proof of employment, such as a letter from the employer describing the conditions of

employment). As one inspector explained his truncated secondary inspection:

I could be the hard guy, talk softly and carry a big stick and get her to admit she is a nanny. But—the repercussions—it is not worth it. I've learned my lesson and so have the other inspectors. The people she is coming to see call the congressman, and it makes problems for me, and for the supervisors, and the port. But if I find something like a letter, they can scream all they want and I have the backing of my supervisors. If I just get it out of the mouth that they are a nanny, I have nothing. It is not substantiated. After ten minutes, one hour, they say that just to get out of the situation they said, "I am a nanny." . . . I learned my lesson the hard way. All inspectors who did what I did had nothing but problems. (Officer 7; Aug. 1990)

Hard lessons have led to a tendency for "harder" evidence to be the emerging standard for action for some inspectors. Spending time to "break the girl"—to obtain an oral admission that she is coming to work—is perceived as *not worth the effort* since the family will protest, and eventually higher echelon administrators will admit the girl. As another inspector explained his decision not to question one girl further after finding no employment letter:

It would take two hours to break her. I wouldn't be paid for that [it was 7 P.M. and he was to leave at 8 P.M.] and the supervisors wouldn't want that either. Nannies are not worth it. . . . [M]iddle-income families have a certain perspective, and they'll say, "What are you doing? What are you doing sending home an 18-year-old girl who's coming to babysit? You guys have something better to do?" . . . You've got to face reality. If I send it downtown, what's going to happen? I've had good cases I've sent downtown. They will let them in. They feel it's in the special interest of the Service to let them in. I had a [European nation] girl who was coming to do an au pair job. I did the Q & A, and, yeah, she's was coming in, and, yeah, she was babysitting and doing cleaning and laundry and she was getting paid. The USC [U.S. citizen] was outside [in the airport lobby], and the next thing the girl wanted to go to the judge. So I sent it downtown. . . . She was admitted [by the agency]. . . . Even if you have an ironclad case and it goes downtown, all you have to do is get people who call downtown and you get special interest and they are admitted. (Officer 19; June 1990)

The strategy of raising the standard for proceeding also is found in "407" cases⁴³—suspected abandonment of lawful permanent resident (LPR) status. Except in "clear-cut" cases that do not allow discretionary relief, there is a port policy that in-

⁴³ Inspectors call these "407" cases after the I-407 form "Abandonment by Alien of Status as Lawful Permanent Resident."

spectors only take *voluntarily relinquished* LPR cards. Decisions to take LPR cards are perceived as potentially leading to vocal outcries from citizen sons and daughters whose parents are being informed that they abandoned their residence by living overseas. As a consequence, the possibility of irate U.S. citizens and their political representatives is on the minds of many inspectors.

Inspectors, however, do not respond to all such cases reflexively by backing away. Working knowledge about *general* risks does not in a wooden way determine the action taken in *particular* cases. As Emerson (1992:14) suggests, background information provides decisionmakers with a “tentative frame for attending to and beginning to process any particular case.” In “407” cases other considerations include the perceived power of the violator. Perhaps the concern to “do one’s job” where possible, leads inspectors and their port superiors to protect themselves from future trouble while seizing the opportunity to enforce when it is “a sure thing”; that is, when the risks of an inquiry are minimal.

With a 407, within 10 minutes you know what the outcome is going to be. I’m not going to say you take advantage of the situation, but if the sons and daughters are professionals . . . you know you are going to hear from them. But if there are blue-collar parents or not educated, nothing is going to come of it. More or less that’s the case. If an individual comes in and they say their son is in the passenger area . . . and the son turns out to be a professional—an engineer, doctor, lawyer—they’re going to pursue it and you will lose. You’re better off letting it go. You tell the son or daughter what is required of an LPR and that they need a reentry document, and do not do it again, and you give the card back.” (Officer 11; May 1991).

C. “Decisions Not to Decide”

Port officials sometimes take an approach that promotes the appearance of doing something but that avoids the risks of full enforcement. Peter Schuck (1983:75) characterizes this as a strategy to “substitute relatively riskless acts for relatively risky ones.” By putting off a final decision on a case, officials have the option of backing down if outsiders intervene vigorously or of proceeding if circumstances are advantageous.

This means of dealing with external intervention was mentioned as what *should have been done* in one case where enforcement ultimately failed. The case involved a young woman who in the Q & A indicated her intentions to enter the country to work in a family’s stable for room and board. Based on the Q & A, it was decided the girl was inadmissible. The girl voluntarily returned home without an exclusion hearing. Her removal pro-

duced a barrage of calls to the port from the suspected employer (a judge elsewhere in the U.S.) and a member of his family. Eventually the port and overseas State Department office (also thought by some port officials to be facing pressures from the suspected employer to issue another visa) were in contact. The State Department later issued the girl another visa and she was admitted to the U.S. One official familiar with the case provided this account:

When she came in, she gave a Q & A that incriminated her. She said she was going to take care of the horse and get room and board for doing that. Where do you draw the line? She was to take care of the horse and she'd be able to ride. But he [the suspected employer] had enough financial resources to show that he had other people to take care of the stable and that she did not need to work. He does travel and may have just met her and invited her. But she *was* coming to work. You can only do what you have to do, you prepare a case the best you can, but you can't control those higher up than you. (Nov. 1990)

Speculating on what would have happened if the port had gone beyond simply describing its evidence to the overseas State Department office—presumably instead adamantly blocking the girl's entry to the country—the official suggested higher-level administrators in the agency were not likely to back up the port's actions:

Technically it's a strong case, but some people have an ability to write letters all over the world and unfortunately some people higher up will acknowledge them. If they had contacted the [INS] Commissioner, they'd call us to say what's going on. There is a tendency [the official paused for a moment] let's say for them to believe them more than us.

Drawing a lesson from the case, the official suggested a less risky course of action should have been taken; "deferring" the girl's inspection to a later date rather than finding her inadmissible and removing her after she withdrew her application to enter. (A deferral allows an applicant into the country, without being held in detention, with a later appointment to complete the secondary inspection's determination of admissibility.) The case suggests, in part, the pressures experienced by port superiors aware that inspectors are interested in enforcing the law against unauthorized employment.⁴⁴ Despite the "bad vibes" the superior had about the case and the feeling that the judge

⁴⁴ Secondary inspectors were not a homogeneous group. For example, in nanny cases a few would occasionally "push" supervisors to "sign off" on their finding of excludability based on a Q & A. At the other extreme, others would do a quick handbag check only, and if no documents were found (and they hoped none were), the girl would be immediately admitted to the U.S. without a Q & A. Although inspectors' actions were not uniform, there were clearly discernible patterns of behavior shaped by incentives in the system.

“was not going to take it lying down,” the officer “signed off” and the nanny was removed from the port. Later events in the case suggested to the officer the appropriateness of a different, more moderate course of action—deferred inspection. The approach would have allowed the agency to take a wait-and-see approach; if the violator rallied her forces, the agency could back away. If not, the agency could proceed with enforcement.⁴⁵ Here again, the perceived power of the violator (via her suspected employer) in retrospect suggested this more moderate action to the port superior. The case “came in one night and I signed it and probably I shouldn’t have, given the trouble. She [the nanny] was going to see a judge and, it shouldn’t affect your decision.”

Fiancee cases are also illustrative. Legally, individuals entering the country on tourist or business visas (or on the visa waiver program) with the intention of marrying a citizen or lawful permanent resident and remaining in the U.S. are excludable at the port of entry since they are immigrants without an immigrant visa. Fiancee K visas (obtained prior to arriving at the port) are available for those planning to marry (INA sec. 214(d), 8 U.S.C. sec. 1184(d); see Gordon & Mailman 1990:vol. 1, sec. 23.02), although they take effort and some time to obtain. Those arriving at the port with intention to marry often are given deferred inspections—the inspection to be completed in several weeks at the downtown office.⁴⁶

Fiancee cases illustrate the agency’s ability, through a policy of “decisions not to decide,” to eventually exercise its discretion to overlook the violation. In this way the agency yields control over a portion of its enforcement program to this politically represented sector of the public. It typically happens that before the downtown inspection takes place, the couple is married. The case is transformed by the agency into an adjustment-of-status case in which the individual petitions to become a permanent resident of the country by virtue of marriage to a U.S. citizen (Sofaer 1972).

Deferred inspection is a course of action employed in types

⁴⁵ Such provisional or soft dispositions allow an agency much leeway in case handling. Some cases no doubt work themselves out to the agency’s advantage without further enforcement efforts. For instance, recognizing the agency’s interest in the case, the girl at her deferred inspection appointment might inform the agency of her intention to leave the country in the very near future, or the issue may be moot by the time of the appointment if the girl already returned home. In the case described, a deferred inspection also would have allowed the district to “pass the buck” to another district since the girl was traveling to another state.

⁴⁶ When the agency cannot escape the problem of likely intervention if they bar the entry of such individuals, officials can still make the best of the situation. Soft dispositions are not necessarily abandonment of enforcement. They provide the agency at least with some control if the marriage does not materialize. The officials are in a better position to enforce the law with the changed circumstances and the withdrawal of the most likely vocal complainer—the U.S. citizen marriage partner.

of cases with a foreseeable future of intervention. This course of action is not, however, automatically initiated. There are occasions when officials feel they are dealing with individuals who are unlikely to be politically represented, or gamble that this may be the case (as suggested in the case of the stable girl). Such assessments of the political power of violators are found in other settings. Lundman's study (1980:196) of the police suggests that officials try to protect themselves from liability and to avoid creating problems for their superiors by classifying arrests along a continuum from "safe to risky." Emerson's (1969:35–36) study of juvenile court decisions reveals similar variability in judicial behavior depending on whether individuals have "effective voice in court affairs" through political or community sources.

D. "Decisions Not to Act"

The suppression of agency action occurs in decisions *not to act in particular cases* presenting themselves for admission. When inspectors handle cases, they sift out problems for higher-ups. That is, they help them avoid problems with political representatives by anticipating the types of problems likely to lead to unhealthy confrontations or encounters for the agency.

Overt decisions not to pursue nanny cases because of their potential political ramifications were rare. In one domestic employment case, for example, the questioning revealed to the secondary officer that the girl appeared to be coming to the U.S. to work for an European consulate. The inspector quickly terminated the inspection, suggesting that pursuing it only would lead to problems for the port: "Once she said she was coming to see the [European] consulate—hands off! [Q: You would get a call?] Not me, the supervisors would get it, a complaint" (Officer 22; July 1990). Circumscribed agency action, however, take place in more subtle ways. As discussed next, the effects of power in a setting may prevent a matter from even becoming a subject for front-line inspectors' decisionmaking.

VII. The Indirect Power of Casework: Anticipation of Intervention in Agency Routines

At any point decisionmakers may consider certain types of agency initiatives to be beyond the acceptable scope of activity given the known reactions they will produce. External constraints promote this form of organization inaction.⁴⁷

⁴⁷ This section draws on the work of Bachrach & Baratz 1970; Lukes 1974; and Crenson 1971. My interest here is to introduce the notions of "nondecisionmaking" and "mobilization of bias" into discussion of the effects of casework intervention on agency behavior.

The theoretical work of several scholars provides a useful framework for exploring this facet of power in the administrative context. In their classic work exploring power in the community context, Bachrach and Baratz (1970) suggest that individuals may make decisions that prevent certain potentially threatening issues from becoming part of the political process (e.g., by establishing committees that defuse issues or by making certain appointments). In this way decisionmaking in the community comes to be limited to certain issues “acceptable” to those in power.⁴⁸

Lukes (1974) suggests further that potential issues may be suppressed not simply by *decisions* that result in suppressing a potential challenge but also by the *inactivity* of persons and groups whose interests may be at risk. He writes, “*the bias of the system is not sustained simply by a series of individually chosen acts, but also . . . by the socially structured and culturally patterned behaviour of groups, and practices of institutions, which may indeed be manifested by individuals’ inaction*” (ibid., pp. 21–22; emphasis added).

These observations suggest again that examining specific overt intervention attempts and agency responses may not detect powerful individuals’ ability to constrain agency activity—to narrow it in some way—without such obvious exercise of power. Indeed, anticipation of political intervention can get built into local agency routines and possibly ways of thinking about its work or mission.⁴⁹ Over time, organizational decision-making may simply never encompass or reach certain questions.

At Border Port and Metropolitan Port, I first glimpsed circumscribed agency activity in offhand remarks and grumblings from inspectors who saw evidence of evasion of the law but felt constrained from initiating certain enforcement efforts. Early one morning at the U.S.-Mexican border, an immigration inspector complained to me about the widespread illegal use of border-crossing cards by Mexicans to enter the United States

⁴⁸ Bachrach and Baratz (1971:7) observe:

Of course power is exercised when A participates in the making of decisions that affect B. Power is also exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A. To the extent that A succeeds in doing this, B is prevented, for all practical purposes, from bringing to the fore any issues that might in their resolution be seriously detrimental to A’s set of preferences.

⁴⁹ Finding obvious traces of the effects of such power may be difficult since its exercise may involve a “double non-event,” with all the problems for research of justifying the existence of the exercise of power (Lukes 1974:50). Not only may there be inactivity on the part of the agency, but the inactivity may exist without persons “resorting to either a tacit or an overt threat of severe deprivation” (ibid., p. 17). But researchers may find such hints of stifled agency activity in reports of prior aborted agency initiatives and statements of dissatisfaction with the current situation.

to work as domestics. (Legally, border-crossing cards only allow Mexican border-town residents to enter for 72 hours to shop and visit and prohibit their working in the U.S.) Pointing to a woman awaiting inspection, he asked, "Well, where do you think she's going? She says she's going to do some shopping!" Seeing another woman in line carrying a handful of nylon shopping bags, the inspector remarked that workers often use the bags to make it look as if they are going shopping.

The inspector then raised the sore subject of lack of enforcement. He reported that the previous year the district office had mounted an unsuccessful "maid blitz" to discourage Mexican women from using border-crossing cards to enter the U.S. and work as domestics.⁵⁰ Several hundred border-card crossers each day were questioned by immigration inspectors. Mexican women crossing in the morning hours with border-crossing cards were sent inside the port for further questioning about their intentions. Those "going shopping" were allowed to enter, but the INS exchanged their border-crossing cards for temporary passes that gave them only a few hours to conduct their business and return to Mexico, at which time their cards would be returned.

The port's enforcement efforts threatened to cut off a source of plentiful, cheap domestic labor in the border community. The two neighboring U.S.-Mexican communities long had enjoyed a relatively open border. A strong tradition existed in the U.S. community of illegally employing Mexican maids. Indeed, the flow of poor Mexicans over the border allowed a broad sector of the U.S. community to enjoy a level of domestic service normally only available to the wealthy in other U.S. cities. So widespread was the tradition of having maids among even the working class that the local paper reported one developer as saying it is difficult to sell a modestly priced home of 1,800 square feet without a maid's room and that floor plans used elsewhere are here routinely modified to add a maid's room.

The district's crackdown sparked a huge public outcry (on both sides of the border) that was closely reported in the local newspapers. Shortly after the enforcement effort began, merchants in the U.S. community complained vociferously that the crackdown was hurting businesses significantly because fewer Mexicans were crossing into the U.S. for fear of losing their border-crossing cards. By the third day of the crackdown, the INS's enforcement efforts triggered protests from other

⁵⁰ I later learned that gardeners and construction workers also were the object of this enforcement effort. Rather than using its limited resources to detect illegal domestics scattered in homes throughout the community, the agency chose to concentrate enforcement on the port of entry where it systematically sought to identify misusers of border cards.

sectors, including human rights and religious groups in the Mexican community, and farm worker, labor, and Hispanic groups in the U.S. community. Protests against the district's enforcement actions were staged at a nearby U.S. consulate and at the border-crossing point itself. The INS's enforcement activity also was brought to the attention of a local U.S. representative, who contacted the district office for an explanation of the enforcement initiative. No interest groups or coalition of groups in the community were reported to have stepped forward to defend the agency; thus, no external source of political support emerged to counterbalance the heavy barrage of complaints and protests.

By the end of the week, the enforcement effort was stopped. The district director apologized to U.S. and Mexican businesses for not warning them of the district's intent to intensify monitoring of border-crossing cards and promised to inform them if the program was resumed. It has not been. Two inspectors reflected on the roots of the failed enforcement attempt:

There was a public backlash. There was an outcry on the U.S. side because the babysitter did not get there on time and parents did not go to work. So public pressure forced the Immigration Service to drop that. Because they were not getting to the places [they were working], people said it was not fair. They said no one in the U.S. was there to be babysitters. So, we stopped it. (Officer 41; Nov. 1989)

We had [a maid blitz] a year ago, or maybe it was two. As usual, the general public complained. And, as usual politics, and they stopped it. (Officer 42; Nov. 1989)

No doubt inaction could be justified as relating to agency priorities to pursue more serious cases at the border (e.g., drug smugglers, fraudulent document holders), but the impetus clearly arises from other sources. The values of the U.S. border community, the collective force of business and other groups, and the related threat of congressional involvement if these interests are thwarted operated to effectively constrain and narrow enforcement. Inactivity is not preferred but imposed by constraints. Inspectors continue to express doubts about the legality of the admission of massive numbers of border crossers entering the country in the early morning hours. But the external intervention was powerful enough to restrain an INS challenge to existing values and practices that benefit this community. As in other agency settings (Kaufman 1960:75–80; Selznick 1957:45), the INS district may have tactically gained more in the “long run” by abandoning enforcement and reach-

ing out to maintain the support of powerful businessmen, interest groups, and politicians.⁵¹

Resentment from inspectors who felt constrained by pressures to do nothing was also apparent in some very different cases at Metropolitan Port. Early in the research I heard inspectors complain about the special treatment of visitors from one particular nation.⁵² One port superior pointed out they do not "go by the book" with these cases because powerful local politicians and national legislators had in the past and were likely now to call the INS if it attempted to act against individuals from that country. Importantly, such perceptions were reported to affect primary screening; perceived problem cases typically were no longer referred for secondary questioning. A primary inspector, speaking of the handling of citizens from that nation, complained of the agency's inability to enforce the law in those cases and its effects on his work. When asked what he could do about the fact he believed they were entering illegally to work, he responded:

Nothing. There's a feeling, it used to be desperation, now the feeling is "so what." Usually the airplane is filled with 167 people. . . . You know everyone is telling you they have \$25 and a ticket home and a visa. And you know 50% are going to get a job, and they're not going home. But there isn't a single thing you can do. They have a visa, someone is waiting for them [a citizen or lawful permanent resident]. They'll swear to it, that it's their cousin. There's not a thing you can do. If you *really* check one, you would find a reason to send them back or a lot of them. But it just doesn't happen. . . . If you take each and every one, and take the person outside, and question someone through with a trained questioner, then probably something can be done with them. But, 167 of them on a plane, it's hard to talk to everyone, it's hard, you need a translator. . . .

I'm suggesting we do not have enough personnel with enough training. I'm also suggesting even if we could stop someone and [the person in the airport lobby is a citizen], they'd run to [local politician] and we'd get six or eight phone calls in here, and the next morning that person is gone. . . . If you were a USC here ten years, and you wanted your cousin

⁵¹ This is not to say that enforcement of border-crossing cards ceased. But its scope is significantly narrowed. Enforcement no longer involves daily close scrutiny of several hundred border crossers. Moreover, the focus of enforcement seems to differ from that of the crackdown. Observations of primary inspection of pedestrians at the port of entry suggest that inspectors tended to focus on identifying *fraudulent use of border-crossing cards* (e.g., one person's use of another's card) rather than the possible *intentions of the individual* to illegally perform labor while in the U.S., which was the focus of the crackdown. Thus enforcement is confined to both a relatively safe enforcement issue (fraud) and an infrequent event.

⁵² The internal political situation of that country has dramatically changed recently and port practices may have also.

and the INS said no, you would be furious. . . . You'd call [local politicians], the consulate, and pretty soon [the district director and the port director], and all of a sudden someone would be in

No one even says, "Why not secondary them," because they're going to get in anyway. Why aggravate the passengers, yourself, and your co-workers because you've done something stupid. Because you know that they are going to get in [Q: Any group could call.] But another country does not have clout in this city like [this nationality]. (Officer 18; Sept. 1988)

These cases are generally difficult to prove. The entrants are unlikely to carry letters or contracts of employment showing their intent to work. Enforcement difficulties are exacerbated, however, by the perceived likelihood of successful intervention by politicians.

It's the [nation's] congressmen. They call downtown and they want so-and-so admitted. And they get jobs and work in violation of their status. And the community as a whole puts pressure on the Service to admit them. It's pretty frustrating. [Q: Why is it so frustrating?] You can't enforce the law in this regard. It's like swimming up river against the current. (Officer 14; Oct. 1988)

Port superiors also report resentment for curtailed enforcement in these cases. One, however, looking to the future, suggested the possible transitory nature of stymied agency action: "The State Department knows—why is someone coming for four months a year? They are coming to work. How can they be away that long? . . . Maybe the climate will change. You feel like a rubber stamp."

The agency's restrained action in this set of cases is not sustained by continuing outside intervention in particular cases but by anticipation of the exercise of power and influence against the agency were it to act. Cognizant of not only the likelihood of intervention by political representatives but also the dominant values prevailing elsewhere in government⁵³ regarding lenient treatment of that country's nationals, the INS prudently restrains its enforcement. These constraints do not necessarily result in total lack of enforcement, because the agency can and does proceed in some cases, particularly those thought to involve organized purveying of fraudulent documents to that country's nationals. But here again, a major effort to screen that country's travelers—as the port does with nationals from

⁵³ The existence of offstage foreign policy interests gives added force to intervention by local and national political representatives. Inspectors viewed the nation in question as one for which the State Department had strong interests in preferred treatment of its nationals. The enforcement situation was extraordinary in their view because while being told to enforce the law, they gleaned from the reactions of higher-ups in their own agency and other agencies that they were to do otherwise.

several other countries (Gilboy 1991:587)—is not likely at present.

VIII. Implications of Casework for the Exercise of Discretion

The benefits of casework are chronicled at length in the scholarly literature. The valued contributions of casework to the control and accountability of agencies, however, should not diminish our attention to some of its potential adverse effects. Ironically, legislators' very effort to serve as a prod and check on government can produce decisionmaking timidity, biases in agency treatment of individuals, and local political control over enforcement of national laws.

First, timidity is a potential by-product of officials' anticipation of casework.⁵⁴ As in other administrative contexts, exclusion decisionmaking is an area where officials are less likely to encounter trouble for failing to do something than for doing too much (Gellhorn 1966:52–53). Examination of the behavior of front-line officials suggests that timid decisionmaking flourishes as much in the shadows of "anticipated" political intervention as in the light of actual legislator intercessions. Fear of criticism, sanctions, and the general desire to keep out of trouble with superiors encourages accommodation to outsiders through cautious and lenient handling of certain cases.

Second, external power exercised over an agency can press a system into patterns of activity or inactivity that benefit some groups or individuals more than others. Bachrach and Baratz's (1970) study of community power is useful in exploring this phenomenon. They write:

Political systems and sub-systems develop a "mobilization of bias," a set of predominant values, beliefs, rituals, and institutional procedures ("rules of the game") that operate systematically and consistently to the benefit of certain persons and groups at the expense of others. Those who benefit are placed in a preferred position to defend and promote their vested interests. More often than not, the "status-quo defenders" are a minority or elite group within the population in question. (Ibid., pp. 43–44, citing E. E. Schattschneider, *The Semi-Sovereign People* (1960))

Government agency interests are not necessarily the same as private interests, yet dependencies make agency pursuit of private goals more likely. Insofar as the agency anticipates the

⁵⁴ In *When Americans Complain*, Gellhorn (1966:52–53) cautioned: "One of the hidden costs should . . . be pulled into the open: Awareness that someone is constantly peering over their shoulders causes some public servants to become too timid instead of too bold. . . . Insensitive administration must not be supplanted by insipid administration."

likely response of individuals or their political representatives and modifies agency behavior accordingly, the agency in effect becomes an extension of those interests—a subsystem mirroring the existing mobilization of bias within the community.

In the setting studied, for instance, we see an agency that in attempting to avoid or minimize needless conflict with a key source of support produces a pattern of activity in which there is systematic preferential handling of some cases. This preferential treatment is pursued by the threatened as well as the actual intervention of political representatives, promoted by agency administrators dependent on them, and magnified or enlarged by the self-protective activities of lower-echelon agency personnel. When one considers the nanny cases, the fiancée cases, the permanent resident cases, and the favored-nation worker cases, one discerns a common feature. To obtain a preferred position, an individual or segment of the community was able to exploit the highly discretionary legal area,⁵⁵ the absence of complainants, the job concerns of lower-level workers, and the low public and institutional visibility of enforcement decisions. As a result, the benefits and privileges of the system are denied to those outside the country—those denied or still awaiting visas legally permitting employment within the United States; or those engaged in the slower process of seeking fiancée visas to enter and marry; or those painfully awaiting the day (months or years ahead) when their immigrant visa is available to join relatives living in the United States. Moreover, preferential treatment is fueled by the tendency of some front-line inspectors to make decisions based on whether enforcement actions are “safe or risky”—that is, whether they will get in trouble for proceeding against someone who will get the ear of a politician resulting in problems for the agency.

The legal area of exclusion is particularly striking since the people who have the greatest stake in the fairness of the system are by definition those who are not here and part of the political system. Indeed, they have no right to be here. It is not simply the problem identified in other contexts of “passive or silent” victims of government practices (Schuck 1983:72). The very issue of exclusion is one that gives them no political influence, because it *does not raise the issue of equity*. It is not that the

⁵⁵ Decisionmaking bodies such as INS district offices are part of a larger organization. The precise influence of such larger bodies on agency officials' behavior is far from clear and has received only limited attention in studies of administrative agencies (Mashaw 1983; Cofer 1985; but see Kaufman 1960). The INS is often criticized for its problem of organizational fragmentation (U.S. General Accounting Office 1991), and district directors have been characterized as functioning “like states with all the rights of private state entities, rather than as local manifestations of a federal bureaucracy” (Maggio 1988:11). There are concerted efforts to deal with this decentralization (*Interpreter Releases* 1990), and further study is needed into the degree of autonomy district directors actually now enjoy in the exercise of their broad discretion.

effect of agency action is that people are excluded who should be admitted but that people are let in who should not be. For those denied the benefits of a preferred position, there is no legal claim since there is no right to be here.

Third, when local administrative officials are responsive to political pressures, they are under pressure to shape their policies according to the exigencies of actual or anticipated intervention, and those responses may not necessarily serve broad public policy interests.⁵⁶ A recognized problem of casework is the narrow constituent base politicians represent. One cannot easily overlook a pattern of administration that transforms the desires of politically represented individuals into local agency policy. Moreover, as the needs and wishes of the politically represented become dominant in a setting, central agency goals may decrease in importance. In extreme situations, they may erode agency-wide policies (Kaufman 1960:80) or other agencies' goals (Calavita 1992). The pragmatic responses of local entities to enable them to gain or maintain the crucial support of politicians is particularly troubling given that casework effects have low visibility. District policies and practices favoring one group or set of individuals may be effectively eliminated from public and even central office consideration and debate.

IX. Enforcement in Context: The Asymmetry of Risks

The image of the Immigration Service drawn from this case study is one of an agency whose sensitivity to politically important segments of its local environment⁵⁷ results in modification of portions of its enforcement program.

The agency finds itself in a dilemma. On the one hand, it is committed to enforcing immigration exclusion laws in a just and equitable manner, but on the other hand, its particular institutional situation affects the conditions of its administration. While it seeks to be accountable and universalistic in its handling of cases, the need to retain and strengthen the institu-

⁵⁶ Schuck (1983:76) acknowledges that official strategies of personal risk minimization may result in beneficial decisions. He observes though the real problem is that "street-level officials have both the incentives and the opportunities to employ these tactics *without regard to where the balance of social costs and benefits lies.*"

⁵⁷ While presumably all INS district offices face some pressures from legislators, districts probably vary a great deal in their exposure to pressure and their capacity to deal with it (see Scholz & Wei 1986). Several factors are likely to shape agency responsiveness to external political influence. Pursuing agency objectives is likely to be more difficult in a jurisdiction with powerful elected officials who are active in promoting constituents' interests. Administrators in jurisdictions where legislators are minor members of the House or Senate (i.e., have little or no role in the budgeting process or the substantive committee relating to agency business) are likely to perceive fewer problems in opposing legislators because doing so presents fewer risks. Along a continuum of agency-legislator relationships, it is useful to note that Metropolitan Port is probably quite vulnerable politically.

tional support of legislators and local political figures produces lenient handling of the cases of certain persons or groups. Moreover, like a stone thrown into a pond, casework intervention has a ripple effect beyond the point of agency contact. Drawing on their working knowledge, lower-level officials assess the meaning of changed decisions by their superiors and tend to take steps to diminish the perceived personal risks of such situations by anticipating outside intervention and superiors' likely reactions (see Emerson 1992). The anticipatory behavior enlarges accommodation to outside interests. In addition, through fundamental changes in legal norms—raised standards for action, routine reliance on dispositions malleable to political intervention, and official behavior recognized as adapted to violators' ostensible power—the stage is set for differential treatment of individuals and groups.

The agency's vulnerability to pressures from political sources arises in part from the meager assistance it receives from other traditional centers of support. It has, for instance, no natural constituency, that is, no dependable reservoir of strong political support for the resources it needs for its enforcement objectives. This condition raises the question, When an agency lacks powerful interest group support or other dependable sources of political buttressing, is the agency almost inevitably susceptible to external influence from legislators or other political operatives?

To conclude that this is true probably oversimplifies and overstates the effects of casework intervention pressures on agency functioning. Although agencies may not have strong organized interest group support, it is not at all clear the result is the susceptibility to external pressures found in this setting. As James Q. Wilson (1989:88) recently wrote, "Government agencies are not billiard balls driven hither and yon by the impact of forces and interests. When bureaucrats are free to choose a course of action their choices will reflect the full array of incentives operating on them" (1989:88; see also Heinz et al. forthcoming:ch 1). Indeed, several countervailing incentives may balance powerful pressures.

First, succumbing to external pressures may have such perceived adverse consequences for achieving institutional goals that an *internal culture* of stringent nonaccommodation may take root. Administrative units that heavily rely on voluntary compliance for enforcement are illustrative. Kagan (1978) describes federal agency handling of congressional inquiries on behalf of businesses which sought exceptions from the 1971 wage-price freeze. Those "congressionals," he observes, received VIP treatment (cases were brought to the top of the pile for accelerated dispositions), but there was no evidence that

they substantially affected case outcomes (ibid., p. 155).⁵⁸ Why was there no effect? Although the implementing agencies had no natural constituency, they did have strong political support from the executive branch. But also their primary mode of enforcement was voluntary compliance.⁵⁹ If there was a scandal or favoritism, fears were everyone would stop complying (ibid., pp. 74–78). The agencies felt an accommodative stance for certain industries would be likely to undermine their central mission. In contrast, the INS does not rely on voluntary compliance for exclusion decisionmaking⁶⁰ (although it does so in other enforcement areas).⁶¹ Its work is more in the nature of regulatory agencies doing permitting or licensing work—such agencies review applications, and individuals seeking benefits or privileges are in a relatively weaker position to complain about or balk at perceived government inequities. In these settings there are fewer worries about an accommodative approach or giving in here or there.

Second, in some law enforcement contexts, government officials know others in the community have a strong interest in how the powers of government are exercised and potentially may make it a threatening issue. The exceptions made by the INS are fairly invisible to the community.⁶² Those aware of favorable outcomes (relatives, friends, and employers) desire the lenient treatment. Exceptions are unlikely to come to light. In other settings in which one would think agencies would be particularly vulnerable to legislator interference (e.g., site judg-

⁵⁸ These thoughts on plausible differences between the INS and the federal agencies implementing the wage-price freeze originated in a conversation with Bob Kagan and reflect his perceptive insights about countervailing incentives to external pressures.

⁵⁹ The Internal Revenue Service also relies on voluntary compliance to achieve its goals. It also may be relatively more resilient to outside pressures since favoritism would quickly erode individuals' motivations to pay taxes. On the conditions that help ensure voluntary compliance with tax laws, see Levi 1988:52–70.

⁶⁰ Peter Schuck noted in reviewing this portion of the manuscript that the INS does rely on voluntary compliance in the exclusion area in the special sense that it is anxious that foreign nationals not demand a formal exclusion hearing and drain the agency's resources. I think, however, inspectors' decisions about aliens' admissibility are largely invisible, and inspectors are aware of this and know an accommodative stance in some cases will not undermine the waiver of the exclusion hearing in other cases.

⁶¹ Vulnerability to external influence may vary *within* an agency depending on the particular enforcement program and the internal culture surrounding its enforcement. For instance, the Immigration Control and Reform Act of 1986 calls for U.S. employers' voluntary compliance in screening prospective employees to ensure that undocumented foreign nationals are not hired (see Calavita 1990). It would be interesting to compare the implications of political casework (on behalf of businesses) in this area of enforcement with the exclusion area—the former is an area in which the agency is likely to be concerned that the appearance of favoritism will undermine local business support and compliance.

⁶² Like Schuck's officials facing litigation risks from tort liability, immigration inspectors are "well situated to indulge their risk aversion by engaging in self-protective strategies" (1983:55).

ments by the Environmental Protection Agency), some tendencies to give in are checked by the nature of the job. Companies can and do make it their business to know the terms of others' business; they desire to know what breaks other companies get and will complain if not given the same benefit (Kagan 1978:76). Moreover, interest groups on the other side (such as the Sierra Club on environmental issues) make it riskier for legislators to get involved since the matter may be controversial.

Agency officials thus operate in distinctive cultural-political environments with varying internal concerns and external forces that may provide countervailing incentives discouraging accommodation. This highlights again my contention that the subject of casework intervention needs to be conceptualized contextually rather than as abstractly as it has (as I discussed in part I). We need to inquire how officials working in diverse contexts respond to political intervention. Little is known about the extent of agency accommodation to external influence, and, given differences in the political environments and originating statutes of agencies, it is unlikely that a single global picture can be constructed. What we can do, however, is strive to understand the conditions that foster or discourage the penetrability of administrative systems.

By continuing to explore the factors promoting the vulnerability of agencies to their respective environments and the likely countervailing incentive systems in these administrative contexts, the roots of variation among agencies will become more apparent as will the problems and benefits of agency concessions.

References

- Aleinikoff, Thomas Alexander, & David A. Martin (1991) *Immigration: Process and Policy*. 2d ed. St. Paul, Minn.: West Publishing Co.
- Bachrach, Peter, & Morton S. Baratz (1970) *Power and Poverty: Theory and Practice*. New York: Oxford Univ. Press.
- Berke, Richard L. (1991) "Ethics Unit Singles out Cranston, Chides 4 Other in S. & L. Inquiry," *New York Times*, 28 Feb., sec. A, p. 1, cols. 1-2.
- Calavita, Kitty (1990) "Employer Sanctions Violations: Toward a Dialectical Model of White-Collar Crime," 24 *Law & Society Review* 1041.
- (1992) *Inside the State: The Bracero Program, Immigration, and the I.N.S.*. New York: Routledge, 1992.
- Clapp, Charles L. (1963) *The Congressman: His Work as He Sees It*. Washington, DC: Brookings Institution.
- Clark, Joseph S. (1964) *Congress: The Sapless Branch*. New York: Harper & Row.
- Clark, Peter B., & James Q. Wilson (1961) "Incentive Systems: A Theory of Organizations," 6 *Administrative Science Q.* 129.
- Cofe, Donna Price (1985) *Judges, Bureaucrats, and the Question of Independence: A Study of the Social Security Administration Hearing Process*. Westport, CT: Greenwood Press.
- Crenson, Matthew A. (1971) *The Un-Politics of Air Pollution: A Study of Non-decisionmaking in the Cities*. Baltimore: Johns Hopkins Press.

- Davis, Kenneth Culp** (1969) *Discretionary Justice: A Preliminary Inquiry*. Baton Rouge: Louisiana State Univ. Press.
- Elling, Richard C.** (1979) "The Utility of State Legislative Casework as a Means of Oversight," 4 *Legislative Studies Q.* 353.
- (1980) "State Legislative Casework and State Administrative Performance," 12 *Administration & Society* 327.
- Emerson, Robert M.** (1969) *Judging Delinquents: Context and Process in Juvenile Court*. Chicago: Aldine Publishing Co.
- (1991) "Case Processing and Interorganizational Knowledge: Detecting the 'Real Reasons' for Referrals," 38 *Social Problems* 198.
- Emerson, Robert M., & Blair Paley** (1992) "Organisational Horizons and Complaint-Filing," in K. Hawkins, ed., *The Uses of Discretion*. New York: Oxford Univ. Press.
- Evins, Joe Landon** (1963) *Understanding Congress*. New York: Clarkson N. Potter, Inc.
- Fenno, Richard F., Jr.** (1966) *The Power of the Purse*. Boston: Little, Brown & Co.
- (1978) *Home Style: House Members in Their Districts*. Boston: Little, Brown & Co.
- Fiorina, Morris P.** (1977) *Congress: Keystone of the Washington Establishment*. New Haven, CT: Yale Univ. Press.
- Gellhorn, Walter** (1966) *When Americans Complain: Governmental Grievance Procedures*. Cambridge, MA: Harvard Univ. Press.
- Gilboy, Janet A.** (1987) "Setting Bail in Deportation Cases: The Role of Immigration Judges," 24 *San Diego Law Rev.* 347.
- (1988) "Administrative Review in a System of Conflicting Values," 13 *Law & Social Inquiry* 515.
- (1990) "Some Problems of Broad Delegation of Lawmaking Power: Reflections from an Empirical Study," 18 *Policy Studies J.* 627.
- (1991) "Deciding Who Gets in: Decisionmaking by Immigration Inspectors," 25 *Law & Society Rev.* 571.
- (1992) "Government Use of Private Resources in Law Enforcement." Draft, June.
- Gordon, Charles, & Stanley Mailman** (1990) *Immigration Law and Procedure*. New York: Matthew Bender.
- Gormley, William T., Jr.** (1989) *Taming the Bureaucracy: Muscles, Prayers, and Other Strategies*. Princeton, NJ: Princeton Univ. Press.
- Gray, Kenneth E.** (1969) "Congressional Interference in Administration," in D. J. Elazar et al., eds., *Cooperation and Conflict: Readings in American Federalism*. Itasca, IL: F. E. Peacock.
- Gruson, Lindsey** (1991) "Senate Panel Finds No Evidence to Warrant Action on D'Amato," *New York Times*, 3 Aug., p. 1, cols. 4–5.
- Harvard Law Review** (1983) Note, Developments in the Law: "Immigration Policy and the Rights of Aliens," 96 *Harvard Law Rev.* 1286.
- Harwood, Edwin** (1986) *In Liberty's Shadow: Illegal Aliens and Immigration Law Enforcement*. Stanford, CA: Hoover Institution Press, Stanford Univ.
- Hawkins, Keith** (1984) *Environment and Enforcement: Regulation and the Social Definition of Pollution*. Oxford: Clarendon Press.
- Heinz, John P., Edward O. Laumann, Robert L. Nelson, & Robert H. Salisbury** (forthcoming) *The Hollow Core: Private Interests in National Policy Making*. Cambridge, MA: Harvard Univ. Press.
- Interpreter Releases** (1990) "McNary Proposes Massive INS Reorganization," 67 *Interpreter Releases* 605, May 25.
- (1991a) "The Immigration Act of 1990 Analyzed: Part 12—Exclusion and Deportation," 68 *Interpreter Releases* 265, Mar. 11.
- (1991b) "The Immigration Act of 1990 Analyzed: Part 13—Exclusion

- and Deportation Grounds Continued," 68 *Interpreter Releases* 305, Mar. 18.
- (1991c) "Congress Probes INS Management amid Proposed Reorganization," 68 *Interpreter Releases* 517, May 6.
- (1991d) "State Dept. Implements Revised Exclusion Grounds," 68 *Interpreter Releases* 677, June 3.
- (1991e) "INS, State Dept. Add Countries to Visa Waiver Pilot Program Regulations," 68 *Interpreter Releases* 1196, Sept. 16.
- Johannes, John R.** (1979) "Casework as a Technique of U.S. Congressional Oversight of the Executive," 4 *Legislative Studies Q.* 325.
- Kagan, Robert A.** (1978) *Regulatory Justice: Implementing a Wage-Price Freeze*. New York: Russell Sage Foundation.
- Kaufman, Herbert** (1960) *The Forest Ranger: A Study in Administrative Behavior*. Baltimore: Johns Hopkins Press.
- Levi, Margaret** (1988) *Of Rule and Revenue*. Berkeley: Univ. of California Press.
- Lipsky, Michael** (1980) *Street-Level Bureaucracy*. New York: Russell Sage Foundation.
- Lowi, Theodore J.** (1979) *The End of Liberalism*. 2d ed. New York: W. W. Norton & Co.
- Lukes, Steven** (1974) *Power: A Radical View*. London: Macmillan.
- Lundman, Richard J.** (1980) "Routine Police Arrest Practices: A Commonweal Perspective," in R. J. Lundman, ed., *Police Behavior: A Sociological Perspective*. New York: Oxford Univ. Press.
- McConnell, Grant** (1966) *Private Power and American Democracy*. New York: Vintage Books.
- Maggio, Michael** (1988) Interview, *Corporate Crime Reporter*, p. 10 (21 Nov.).
- Manley, John F.** (1970) *The Politics of Finance: The House Committee on Ways and Means*. Boston: Little, Brown & Co.
- Mann, Dean E.** (1968) *The Citizen and the Bureaucracy: Complaint-handling Procedures of Three California Legislators*. Berkeley, CA: Institute of Governmental Studies.
- Martin, David A.** (1987) *Major Issues in Immigration Law*. Washington, DC: Federal Judicial Center.
- Mashaw, Jerry L.** (1983) *Bureaucratic Justice: Managing Social Security Disability Claims*. New Haven, CT: Yale Univ. Press.
- Mayhew, David R.** (1974) *Congress: The Electoral Connection*. New Haven, CT: Yale Univ. Press.
- New Republic** (1990) "Indecent Request," *New Republic*, 9 April, p. 5.
- Ogul, Morris S.** (1976) *Congress Oversees the Bureaucracy*. Pittsburgh: Univ. of Pittsburgh Press.
- Perrow, Charles** (1972) *Complex Organizations: A Critical Essay*. Glenview, IL: Scott, Foresman & Co.
- Pfeffer, Jeffrey, & Gerald R. Salancik** (1978) *The External Control of Organizations: A Resource Dependence Perspective*. New York: Harper & Row.
- Ripley, Randall B., & Grace A. Franklin** (1986) *Policy Implementation and Bureaucracy*. 2d ed. Chicago: Dorsey Press.
- Rourke, Francis E.** (1976) *Bureaucracy, Politics, and Public Policy*. 2d ed. Boston: Little, Brown & Co.
- Saloma, John S.** (1969) *Congress and the New Politics*. Boston: Little Brown & Co.
- Scholz, John T., & Feng Heng Wei** (1986) "Regulatory Enforcement in a Federalist System," 80 *American Political Science Rev.* 1249.
- Schuck, Peter H.** (1972) "The Curious Case of the Indicted Meat Inspectors," *Harpers Mag.*, Sept., p. 81.
- (1975) *The Judiciary Committees*. The Ralph Nader Congress Project. New York: Grossman Publishers.

- (1983) *Suing Government: Citizen Remedies for Official Wrongs*. New Haven, CT: Yale Univ. Press.
- (1984) "The Transformation of Immigration Law," 84 *Columbia Law Rev.* 1.
- Selznick, Philip** (1949) *TVA and the Grass Roots*. Berkeley: Univ. of California Press.
- (1957) *Leadership in Administration*. Evanston, IL: Row, Peterson & Co.
- Sofaer, Abraham D.** (1972) "The Change-of-Status Adjudication: A Case Study of the Informal Agency Process," 1 *J. of Legal Studies* 349.
- Tacheron, Donald G., & Morris K. Udall** (1966) *The Job of the Congressman*. Indianapolis: Bobbs Merrill.
- Teitelbaum, Michael S.** (1980) "Right versus Right: Immigration and Refugee Policy in the United States," 59 *Foreign Affairs* 21.
- U.S. Congress** (1980) *Department of Justice, Authorization and Oversight, 1981: Hearings before the Committee on the Judiciary of the United States Senate, 96th Cong., 2d Sess.* Washington, DC: Government Printing Office.
- U.S. General Accounting Office** (1991) "Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems." GAO/GGD-91-28. Gaithersburg, MD: General Accounting Office.
- Van Vleck, William Cabell** (1932) *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*. New York: Commonwealth Fund.
- Wildavsky, Aaron** (1971) "Budgetary Strategies of Administrative Agencies," in R. E. Wolfinger, ed., *Readings on Congress*. Englewood Cliffs, NJ: Prentice-Hall.
- Wilson, James Q.** (1989) *Bureaucracy: What Government Agencies Do and Why They Do It*. New York: Basic Books.

Statutes Cited

- Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 8 U.S.C. 1101 (1986).
- Immigration Act of 1990, Pub. L. No. 101-649, 8 U.S.C. 1101 (1991).

Case Cited

- Matter of Kane, 15 *I. & N. Dec.* 258 (Board of Immigration Appeals, 1975).