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MEMORANDUM FOR THE RECORD

**Event: Interview with James Castello, former Associate Deputy Attorney General (ADAG)**

**Dates:** November 7, 2003

**Special Access Issues:** interview done telephonically, and taped with knowledge and consent of Mr. Castello

no tape turned in

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**Team Number:** 5

**Location:** GSA

**Participants – Non-Commission:** James Castello, former Associate Deputy Attorney General, Department of Justice, [james.castello@freshfields.com](mailto:james.castello@freshfields.com); ph: 43-1-515-150

**Participants – Commission:** Thomas R. Eldridge, Janice Kephart-Roberts

Background:

B.A. in History, MA in Economics, Law degree 1986. Practiced at NY law firm in private sector. In 1995, became Deputy Counsel to the President in the WH Counsel's Office. In March 1996, became DAAG in the DOJ Office of Legislative Affairs (OLA) (AAG was Andy Fois). In approximately January 1998, became ADAG handling principally immigration issues. Other issues he handled were: hate crimes initiative, human rights issues (an interagency group). He spent approximately 70% of his time on immigration issues. He worked with two other individuals, less senior, who were Counsel to the AG – John Morton and \_\_\_\_\_ Glassman.

Within the Deputy's Office, he worked with Bob Litt, Jon Schwartz, and Gary Grindler, each the PDAG at one time during his tenure.

He worked with the DOJ Office of Immigration Litigation (OIL). There, we worked with Phil Bartz and Bob Bumbaugh (the head of OIL).

Overall impression of the INS and DOJ leadership

Castello described the INS as a "sprawling organization, undergoing wrenching changes, with no leadership." He said it suffered under "huge demands" with "not enough resources" "It is such a decentralized organization," Castello said. He also said that the "organizational environment" was dysfunctional and made carrying out its mandate "difficult."

Another institutional roadblock was the fact that there were a total of only 4-5 political positions in the INS. This meant, Castello said, that "if you came in as a new administration, you had to motivate them" in order to get the job done (versus putting into positions of power people who you believed would get the job done). Although Castello said some people did get fired, in general, that was not the case.

He said the INS Commissioner during his tenure – Doris Meissner – "gets high marks vis-à-vis her predecessors, but it was a tall order."

He also said that AG Janet Reno deserved "pretty high" marks. He said it was hard to imagine an AG "who spent more time on immigration than Janet Reno."

During the tenure of Meissner and Reno, Castello said, the INS "definitely got better, but it was an unbelievably slow process."

#### Priorities for the INS

Castello said the priorities he worked on were: naturalization, criminal aliens, detention standards and space, expedited removal, an entry-exit system, student tracking, and the use of secret evidence.

On naturalization, the problem was that INS had fallen behind, and their systems were such that once an application was older than a certain date (18 months), the forms had to be submitted anew. This compounded the backlog and confusion.

On entry-exit, it was an acknowledged duty under section 110 of IIRAIRA, but it was also generally understood that it was "an impossible task." Castello said it was started as a pilot project with some limited airlines at a selected group of "slow ports of entry." This was a project of Bob Bach, per Castello.

Castello said the entry-exit system reached a major vulnerability in our border security system. "Everyone knew that visa overstays was a problem – this is a major source of illegal immigration."

Student tracking, Castello recalls, was "less of an issue."

Expedited removal, Castello said, "never met its potential."

#### INS Automation

Castello said that poor planning for automation systems was a significant problem for the INS. "When we went through a review of automation for INS programs, it became clear that they did not talk to each other."

#### Quick Response Teams

This was part of the INS enforcement side. These teams were under the leadership of Mike Pearson. Castello said he was "not sure he was effective," about the harshest thing Castello said about anyone. He said Pearson did not have the same priorities as the DAG.

Pearson, who Castello said was ex-military, did not consider appropriately the concerns raised about the civil rights implications of his teams' actions. He needed prodding, Castello said, before he got the message.

#### Detention Facility Standards

Castello said that the AG and DAG "felt passionately" about this topic. There was good reason: the reporting during this period about the horrible conditions at INS facilities such as the Krome facility in Miami. There were allegations about rapes, and inmate "combat" that turned the stomach and infuriated one's sense of justice.

#### National Security Cases

The head of this was Dan Cadman, who also handled cases of people with a history of human rights abuses abroad, i.e., displaced dictators. This latter issue gained attention and a piece of legislation was drafted providing for greater screening of such individuals for human rights abuses. Castello said he testified on it before Congress.

#### INS relations with Congress

In Castello's view, Congress was "so fed up that they didn't care if they made an unreasonable demand on the INS and provided them with no resources to do it." In other words, Congress was convinced that the INS was not fixable, so their approach became to use the INS as a foil for publicity purposes. "Lamar Smith made himself a juggernaut," said Castello.

The problem was that there was truth in these grandstanding attacks. "Week to week you could point to something the INS did that disappointed," Castello said.

During this time, Castello said, there were constant threats that Congress would respond to INS failure by splitting the enforcement side of INS away from the services side. The thinking was that the INS was too big, and that it needed to be single-mindedly focused on border control. This was something that Congressman Hal Rogers threatened repeatedly. Castello said the administration did not want this to happen.

#### INS internal policymaking

Castello would attend the "INS Weekly" between the AG, DAG, and INS Commissioner. However, the INS Policy Council was an internal INS body. Castello "would be informed about" its decisions but did not attend its meetings.

#### INS Reorganization

Castello said he was part of the sessions to discuss reorganizing the INS. INS hired Coopers and Lybrand to do an assessment. Castello attended a retreat in Virginia. Castello said that he believed a lot of the INS' problems went deeper than organizational structure – to training, motivation, and personnel ability. He recalls thinking reorganization was not a solution. In his view, the administration "was trying to forestall radical reshaping" of the INS by Congress. As far as the process went, while the INS was considering how best to reorganize, Commissioner Meissner would report to the AG on the progress they were making and where they were headed. Castello believes the

ultimate plan did bifurcate enforcement and services within each regional district, creating "two stovepipes," which then would "join at the top." Castello thinks the AG did eventually endorse this proposed plan.

#### Fraud

"People cared about it." Castello felt that asylum reorganization was "very successful," vis-à-vis fraud prevention. This occurred in December 1997. The changes involved:

1. No immediate employment authorization for asylum applicants;
2. creation of a core of trained asylum interviewers; and
3. better information collection on the conditions of countries to assess whether an asylee's claim is credible.

#### Secret Evidence Cases

There were two facets to this issue: actual cases, and development of rules regarding those cases. The 1996 statutes had codified the use of secret evidence, but there were no rules or procedures set up about how or when such evidence could be used. The AG wanted to fix that, so a DOJ review was initiated which required submission to the AG's office for approval. The plan was finally completed right before the change in administrations, and Castello doesn't know whether the plan was adopted or not for use of secret evidence in immigration cases.

As to the actual cases, during Castello's tenure at Justice, the agencies weighing on these were: OIL, OIPR, FBI, and the Crim Div. The DAG's office (and Castello) would be involved in a presentation to the AG if one happened in a particular case.

The question of procedures and rules to be followed in a secret evidence case was of significant concern to the AG. Although not required by law, the AG wanted developed new rules on how to use and under what circumstances to use, secret evidence in immigration cases. Organizations involved in this drafting were: OIL, OIPR, FBI, Criminal Division, and the Civil Rights Division of Justice.