



# Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities

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**Arizona, California, New Mexico, and Texas  
Advisory Committees to the United States  
Commission on Civil Rights**

**March 1997**

*This report of the Arizona, California, New Mexico, and Texas Advisory Committees to the United States Commission*

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 3(d) of the Civil Rights Commission Amendments Act of 1994. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the State.

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## Letter of Transmittal

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Arizona, California, New Mexico, and Texas Advisory  
Committees to the U.S. Commission on Civil Rights

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Mary K. Mathews, *Staff Director*

The Arizona, California, New Mexico, and Texas Advisory Committees submit this report, *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities*, in furtherance of their responsibility to assist the Commission in its factfinding function. The four Advisory Committees approved the report by a vote of 52 to 4. The report is based on factfinding meetings convened in El Paso on June 12, 1992, by the Texas and New Mexico Advisory Committees and in San Diego on April 16 and 17, 1993, by the Arizona and California Advisory Committees. Additional background research and interviews were conducted by Committee members and staff.

In the fall of 1990, the United States Commission on Civil Rights was requested by the Congress to look into border-related civil rights problems affecting communities along the U.S.-Mexico border. The Commission's Advisory Committees in Arizona, California, New Mexico, and Texas agreed to undertake a field research project which would examine the conduct and operations of Federal immigration law enforcement in selected border communities in the southwest.

While the focus of this inquiry was much more limited, the four-State project served to reinforce several significant findings in the Commission's 1980 landmark report, *The Tarnished Golden Door*, which found widespread discrimination in the Nation's immigration laws and their implementation.

In this new project, the four Committees decided to focus on issues of accountability in Federal immigration law enforcement, including the adequacy and accessibility of complaint procedures relating to allegations of misconduct and relationships between Federal immigration law enforcement agencies and the border communities they impact.

In this report, the four Advisory Committees conclude that border communities in the Southwest are uniquely impacted by the presence of large-scale Federal immigration law enforcement activity and oftentimes, this serves to diminish civil rights protections, especially for Hispanics. The Committees also conclude that the existing mechanisms for redress of alleged misconduct by Federal immigration authorities are inadequate, inaccessible, and lack the confidence of the communities most directly affected. Finally, the Committees were presented with substantial testimony and information indicating that a pattern of abusive treatment by the U.S. Border Patrol might exist. While the Committees were unable to independently verify or confirm many of the allegations, the large numbers and severity of abuse complaints are a cause of deep concern to the four Committees.

As indicated in the report, the Arizona, California, New Mexico, and Texas Advisory Committees urge the Commission to revisit the immigration issues so comprehensively examined in *The Tarnished Golden Door*. An updating of this important Commission study would provide a valuable contribution to the current national debate concerning immigration issues and impacts.



Meanwhile, we are hopeful that the Commission will endorse the recommendations contained in this four-State Advisory Committee report and use its influence to encourage their adoption by appropriate Federal authorities.

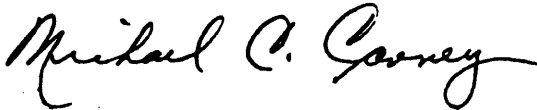
Respectfully,



Emma Armendáriz, *Chairperson*  
New Mexico Advisory Committee



Adolph P. Canales, *Chairperson*  
Texas Advisory Committee



Michael C. Carney, *Chairperson*  
California Advisory Committee



Manuel Peña, Jr., *Chairperson*  
Arizona Advisory Committee

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\*The State lists represent those individuals who were members of these State Advisory Committees during the project.

**Acknowledgments**

The Arizona, California, New Mexico, and Texas Advisory Committees wish to thank the staff of the Commission's Western Regional Office in Los Angeles for its assistance in the preparation of this report. The project was the principal assignment of John F. Dulles II with assistance and support from Grace Hernandez and Priscilla Lee-Herring. The report was written by John F. Dulles II. Editorial assistance and preparation of the report for publication were provided by Thomas V. Pilla. The report was prepared for publication by Gloria Hong. The project was carried out under the overall supervision of Philip Montez, Director, Western Regional Office.



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# I. Introduction

In 1980 the United States Commission on Civil Rights published *The Tarnished Golden Door: Civil Rights Issues in Immigration*.<sup>1</sup> This study examined immigration laws, practices, and procedures and found widespread discrimination in the laws and their implementation. This document concluded that the enforcement of immigration laws results “in the denial of the rights of American citizens and aliens.”<sup>2</sup> The Commission noted that it had received “much testimony that numerous problems exist within the Immigration and Naturalization Service (INS) information services.”<sup>3</sup> Public access to the agency was found to be a serious problem. In addition, the Commission received “complaints from the public about the rude treatment received at the hands of the INS employees”<sup>4</sup> and suggested that “hiring more employees from minority groups could help to increase INS sensitivity and provide more courteous and knowledgeable service to the public.”<sup>5</sup>

In describing the conflicting roles of the INS as both a service and enforcement body, the Commission found that “an overemphasis on enforcement normally occurs”<sup>6</sup> and this “has resulted in the denial of services or benefits for which persons are eligible under the immigration laws.”<sup>7</sup> The study also found that “local police involvement in

enforcing the immigration laws has resulted in violations of the constitutional rights of American citizens and legal residents.”<sup>8</sup> It notes that there are no provisions in immigration law for arrest and/or detention of aliens by anyone other than Federal immigration officers.<sup>9</sup>

The report devoted one chapter to an analysis of the complaint investigation procedures within the INS.<sup>10</sup> The Commission listed six components necessary for a responsive complaint investigation system within law enforcement:

- a) A process that is “swift, thorough and fair”; speedy complaint resolution is essential in obtaining good community cooperation.
- b) Public awareness of the complaint process; the public must be aware of its right to file complaints and of the proper process and procedures for doing so.
- c) Adequate notice to complainants of the results and final disposition of complaints.
- d) Sound investigative procedures.
- e) Careful selection of investigators.

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1 U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration* (1980) (hereafter cited as *Tarnished Golden Door*).

2 *Ibid.*, p. iii.

3 *Ibid.*, p. 31.

4 *Ibid.*, p. 32.

5 *Ibid.*, p. 33.

6 *Ibid.*, p. 41.

7 *Ibid.*

8 *Ibid.*, p. 94.

9 *Ibid.*, p. 91–93.

10 *Ibid.*, pp. 117–29. This chapter is entitled “Complaint Investigation Procedures of the Immigration and Naturalization Service.”

f) Public disclosure (including publication) of statistical summaries of complaint records; complete records of complaint reception, investigation and adjudication must be maintained.<sup>11</sup>

In its findings, the Commission concluded that the INS had failed to adequately meet all of these standards. It found a significant backlog of complaints, a public not fully apprised of the complaint process, no requirement of notification to the complainant regarding status or disposition of his/her complaint, no appeal process for complainants, inadequate guidelines for assignment of investigators, insufficient number of minority-group investigators and lack of public disclosure of complaint statistics.<sup>12</sup>

The Commission recommended that a board of review be established by the Attorney General to review INS misconduct complaints where appeals are filed by complainants.<sup>13</sup> The Commission also recommended that the "INS should compile and publish, at least annually, a statistical summary of all complaints received and their final disposition."<sup>14</sup>

In addition to extensive research and a public hearing in Washington, D.C., in November 1978 which resulted in the Commission's statutory report, State Advisory Committee factfinding meetings were held in New York, California, and Texas in that same year. More than 150 persons addressed these meetings, providing many diverse perspectives on matters relating to civil rights issues in immigration.<sup>15</sup>

At a factfinding meeting of the California Advisory Committee, the executive director of Mexican American Social Services reported that he was not aware of any structure within the INS to receive and handle complaints against officers.<sup>16</sup>

In addition, one of the INS immigration judges appearing at the meeting was unaware of the proper procedure for filing complaints.<sup>17</sup> An immigration expert testified at a factfinding meeting in San Diego that complainants receive no response from the INS after filing complaints, leading them "to conclude that some complaints are referred from office to office and are not acted upon for as long as a year."<sup>18</sup>

The California Advisory Committee held factfinding meetings in Los Angeles and San Diego in June 1978. The Committee's report, *The Study of Federal Immigration Policies and Practices in Southern California*,<sup>19</sup> contained several key findings, including the following:

- INS enforcement policies and practices have a discriminatory effect on Hispanic citizens and aliens in southern California.
- INS border policies and practices have resulted in an enforcement effort against undocumented aliens which creates undue hardships for Hispanic citizens and aliens either living in southern California border areas or passing through these areas.
- INS mandatory training programs do not place sufficient emphasis on public relations, cultural sensitivity, and civil and constitutional rights.

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11 Ibid., p. 119.

12 Ibid., pp. 119-29.

13 Ibid., p. 128.

14 Ibid., p. 129.

15 Ibid., p. 3.

16 Ibid., p. 121

17 Ibid.

18 Ibid., p. 122.

19 California Advisory Committee to the U.S. Commission on Civil Rights, *A Study of Federal Immigration Policies and Practices in Southern California* (June 1980).



- INS complaint and disciplinary procedures are ineffective in reducing community complaints about verbal and physical abuse by personnel at INS.

- The exercise of discretionary power by INS officers performing enforcement and service functions is not effectively controlled.<sup>20</sup>

The California Advisory Committee noted that its "factfinding effort was hampered by inconsistent responses from the public and private sectors. Many community allegations concerning INS policies and conduct of INS employees were consistent but unverifiable. INS officials continually denied these allegations but were often vague and contradictory in their responses."<sup>21</sup>

In its report, *Sin Papeles: The Undocumented in Texas*<sup>22</sup> (January 1980), the Texas Advisory Committee concluded that:

Undocumented persons are in the extremely precarious position of being unable to assert themselves in protection of their rights without subjecting themselves to possible deportation or prosecution. In the context of their relationship with authorities such as the INS, this means that when abused, they usually stand silent. The testimony given to the Texas Advisory Committee established that there are procedures used by the INS, such as interrogating aliens in closed rooms, which clearly lend themselves to abuse. The INS relies largely on its officers to report abusive actions by their fellow officers. The evidence presented at the factfinding meeting demonstrated that this policy of self-policing has serious drawbacks and may achieve little, if any,

deterrence. In fact, credible testimony indicated that some supervisory officials might encourage abusive acts by criticizing officers for not being tough enough on aliens.<sup>23</sup>

The Advisory Committee found "convincing evidence that some undocumented persons have been subjected to physical and psychological abuse at the hands of INS officers."<sup>24</sup>

In April 1990 a hearing was held by the House Committee on Foreign Affairs, Subcommittee on Human Rights and International Organizations on "Allegations of Violence Along the U.S.-Mexico Border."<sup>25</sup> Subcommittee Chairman Gus Yatron opened the proceeding by noting that "[t]here have been and continue to be reports of violence along the U.S.-Mexico border in which there is no clear consensus as to how to resolve it."<sup>26</sup> Declaring that "[i]t is clear that something is wrong on our borders"<sup>27</sup> and calling for cooperation between U.S. and Mexican authorities, he maintained that:

The Border Patrol has a responsibility to protect our borders and to ensure that the laws are enforced. They are also responsible to ensure that illegal aliens are treated in a humanitarian manner, and when abuses occur, formal investigations are conducted and disciplinary actions taken.<sup>28</sup>

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20 Ibid., pp. 49, 50.

21 Ibid., p. 3.

22 Texas Advisory Committee to the U.S. Commission on Civil Rights, *Sin Papeles: The Undocumented in Texas*, January 1980. The report is based on a 2-day factfinding meeting of the Advisory Committee in San Antonio in September 1978.

23 Ibid., p. 33

24 Ibid., p. 46.

25 *Allegations of Violence Along the U.S.-Mexico Border: Hearing Before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs, House of Representatives*, 101 Cong., 2d. Sess. (1990) (hereafter cited as 1990 Cong. Hearings).

26 Ibid., p. 1.

27 Ibid.

28 Ibid.

Former Congressman Jim Bates of San Diego, citing increased tensions and violence at the border (official and unofficial), concluded that underlying this phenomenon are "elements of racism."<sup>29</sup> He explained:

I think that the undocumented immigrants crossing and those who may be American citizens of Hispanic heritage are often mistreated, sometimes in very minor ways, but nevertheless discriminatory treatment that needs to be confronted.<sup>30</sup>

He called for all law enforcement agencies, elected officials, governmental jurisdictions and school districts to become involved, emphasizing that "there cannot be any condoning of discrimination against the people crossing the border based on their race, color or creed."<sup>31</sup>

In March 1990 the American Friends Service Committee Immigration Law Enforcement Monitoring Project (ILEMP) released a report summarizing 380 cases of alleged human and civil rights violations committed by law enforcement officers in San Diego, the Rio Grande Valley (Texas), Tucson, El Paso and Florida from May 1988 to May 1989.<sup>32</sup> The report alleged that 814 individual victims were affected by these law enforcement actions, and that "officers cited by victims as having committed these abusive acts were mostly Border Patrol Agents; they were specifically named in 132 cases."<sup>33</sup> Eighty-nine cases identified officers only as INS agents or employees. Among the report findings:

The majority of incidents of death and serious injury from all categories were identified in San Diego. There were 43 cases of physical abuse, three cases of death and serious injury due to high speed chases, and five deaths and six injured from the use of firearms.<sup>34</sup>

In the El Paso area, 68 percent of the victims were lawfully in the United States—28 of the total of 41 victims. Twelve of these 28 were U.S. citizens.<sup>35</sup>

Of the 380 cases of alleged abuse (all types) by law enforcement officers at the border, 209 were reported in the San Diego area.<sup>36</sup>

In November and December of 1990, the national media devoted considerable attention to the growing violence along the border. While much of the focus centered on increased evidence of anti-immigrant sentiment and related racially motivated hate crimes, there were also frequent references to alleged misconduct and excessive force by U.S. law enforcement officers, principally Border Patrol. The *Washington Post* reported that "U.S. Border Patrol agents shot six Mexicans in the last year, killing four of them."<sup>37</sup> The story further noted that none of the agents involved had been prosecuted or even identified, despite protests by Mexican officials that some of the shootings were unjustified.<sup>38</sup> The *Los Angeles Times* quoted Mexican authorities as asserting "that Border Patrol agents are seldom, if ever, prosecuted in connection with the shooting of immigrants" and calling on the U.S. Government "to end "impunity" for American agents."<sup>39</sup>

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29 Ibid., pp. 4, 5.

30 Ibid., p. 4.

31 Ibid., p. 5.

32 American Friends Service Committee, *Human Rights at the Mexico-U.S. Border* (Philadelphia: March 1990).

33 Ibid., pp. 7, 11.

34 Ibid., p. 10.

35 Ibid., 11.

36 Ibid., p. 7.

37 Edward Cody, "Violence Rises at Mexican Crossings," *Washington Post*, Dec. 11, 1990, p. A8.

38 Ibid.

39 Marjorie Miller and Patrick McDonnell, "Rise in Violence Along Border Brings Call for Action," *Los Angeles Times*, Dec. 9,

In November 1990 Presidents Carlos Salinas de Gortari and George Bush met in Monterrey, Mexico, and shared their concern regarding increased violence on both sides of the international border. They agreed that officials from both countries could meet to discuss measures for reducing violence. The INS Commissioner, Gene McNary, subsequently announced that the Border Patrol would "review its training and field tactics to eliminate or dramatically reduce the incidents of violence."<sup>40</sup>

In the fall of 1990, Congress asked the United States Commission on Civil Rights to look into problems of violence at the U.S.-Mexico border. The Commission's Advisory Committees in Texas, New Mexico, Arizona and California agreed to embark on a joint field project to examine the conduct and operation of federal immigration law enforcement in border communities in the Southwest.<sup>41</sup>

On June 12, 1992, the Texas and New Mexico Advisory Committees convened a joint public forum on U.S.-Mexico border-related civil rights issues.<sup>42</sup> A similar meeting was held in San Diego on April 16 and 17, 1993 by the Arizona and

California Advisory Committees<sup>43</sup> Among those invited to address the proceedings were elected officials, business and community leaders, legal and advocacy organizations, the Mexican Consul, local police departments, representatives of the Federal Bureau of Investigation (FBI), the Office of the Inspector General, INS, Border Patrol (all from the U.S. Department of Justice), and the U.S. Customs Service, Department of Treasury. In addition to scheduled testimony, an open session was convened at both sites to solicit additional community input. While it was originally proposed that four forums would be conducted, resource limitations necessitated a more limited format. Issues pertaining to New Mexico were addressed in El Paso, while the San Diego forum included significant testimony from southern Arizona.

All participants were requested to provide information relevant to the following: relationships between Federal immigration law enforcement agencies and border communities, adequacy and accessibility of complaint procedures relating to allegations of misconduct and information on the conduct and operations of Federal immigration

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1990, p. A8.

40 Ibid.

41 In 1970 the Commission conducted a comprehensive study of law enforcement in the Southwest and found that "Mexican Americans citizens are subject to unduly harsh treatment by law enforcement officers . . . [and] are often arrested on insufficient grounds, receive physical and verbal abuse and penalties which are disproportionately severe." U.S. Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest* (1970), p. iii.

The Arizona, California, New Mexico, and Texas Advisory Committees convened forums after passage of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 reprinted in 1986 U.S. Code Cong. & AD. News (100 Stat.) 3359 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 20 U.S.C., 29 U.S.C., 42 U.S.C. (1988 & supp. V 1994) to assess implementation issues and civil rights impacts of this legislation on southwestern communities. Reports of these forums include: Arizona Advisory Committee to the U.S. Commission on Civil Rights, *Implementation in Arizona of the Immigration Reform and Control Act* (1990). California Advisory Committee to the U.S. Commission on Civil Rights, *Implementation in California of the Immigration Reform and Control Act: A Preliminary Review* (1989). New Mexico Advisory Committee to the U.S. Commission on Civil Rights, *Implementation in New Mexico of the Immigration Reform and Control Act: A Preliminary Review* (1989). Texas Advisory Committee to the U.S. Commission on Civil Rights, *Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review*, (1989).

42 New Mexico and Texas Advisory Committees to the U.S. Commission on Civil Rights, *Joint Factfinding Meeting on Immigration-Related Civil Rights Issues*, El Paso, Texas, June 12, 1992 (2 volumes) (hereafter cited as El Paso Transcript vol. 1 and vol. 2).

43 Arizona and California Advisory Committees to the U.S. Commission on Civil Rights, *Joint Forum on Immigration-Related Civil Rights Issues, San Diego, California, April 16 and 17, 1993* (2 volumes) (hereafter cited as San Diego Transcript vol. 1 and vol. 2).

law enforcement relating to civil rights protections. Participants were also requested to provide general views on border violence and recommendations for mitigation.

Based upon a review by the four Advisory Committees of the nearly 700 pages of testimony received at the two forums, a decision was made to prepare a report for the United States Commission on Civil Rights summarizing significant patterns of testimony. In addition to direct testimony, the report draws upon other studies and documents provided by forum participants or gathered by Commission staff during its research.<sup>44</sup>

The Arizona, California, New Mexico, and Texas Advisory Committees have concluded, based on their joint investigative efforts, that the following issues represent the most significant civil rights concerns of border communities in the southwest as they relate to the presence of Federal immigration law enforcement:

a) Border communities in the Southwest are uniquely impacted by the presence of large-scale Federal immigration law enforcement ac-

tivity. Although enforcement of immigration law is important, the existence of such policing oftentimes serves to diminish the protection of civil rights, especially for Hispanics.

b) The Advisory Committees were presented with substantial testimony and information indicating that a pattern of abusive treatment by Border Patrol officials might exist. The Committees were not in a position to confirm this potential finding, as many of the allegations presented to the Advisory Committees had not been independently investigated or verified. However, the sheer statistical numbers and severity of abuse complaints are a cause of deep concern.

c) Existing mechanisms for redress of alleged misconduct by Federal immigration officers are inadequate, inaccessible, and lack the confidence of the communities most directly affected.

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<sup>44</sup> The Inspector General, U.S. Department of Justice and the Commissioner, Immigration and Naturalization Service, were requested by letters dated November 27, 1995, to review and comment on the draft report. Their responses are attached as appendices A and B.

## II. The Border

The United States border with Mexico has experienced many turbulent and troubled times and has been at the center of many international and domestic conflagrations. Following the 1848 Mexican War and the signing of the Treaty of Guadalupe Hidalgo, all Mexican land north of the Rio Grande was ceded to the United States. While the Mexican government attempted to protect the integrity of the Rio Grande region by placing the border at a more northern point, the United States dictated the terms of the agreement and “consumed by a spirit of aggressive expansionism, did not take into consideration how the local populations would fare.”<sup>1</sup> As one noted border expert has observed, “In the history of relations between the two nations, no other issue has caused so much controversy, bitterness, and outright confrontation.”<sup>2</sup>

Among the critical issues creating friction are the ambivalent, confusing, and inconsistent efforts by the United States to enforce immigration laws. In their quest to control the border and halt the influx of foreigners, federal officials “dictate policies and make laws frequently detrimental to the welfare of border communities.”<sup>3</sup> Until World War I, crossing the border was an easy task and “restrictions on entering the U.S. from Mexico were so limited that people hardly had any reason to come over illegally.”<sup>4</sup>

Economic growth in the United States created a need for a greater labor supply. However, during the Great Depression, hundreds of thousands of persons of Mexican descent were “repatriated” to Mexico. More than half of these were American citizens.<sup>5</sup> During this period, “harassment, and at times mistreatment of people by U.S. immigration officials, was reported in the press and in personal testimonies. Bridge inspectors, who routinely asked embarrassing and insulting questions, often prevented legally admitted Mexicans . . . from reentering the United States.”<sup>6</sup>

As the United States entered the Second World War, Mexican workers were once again encouraged to cross the border in order to meet labor shortages. But in the 1950s, the Federal Government launched “Operation Wetback” to expel Mexicans from this country. Once again, many American citizens were forced to leave their country of birth. More than 1 million people were expelled from the United States in 1954 alone; to assure the effectiveness of “Operation Wetback,” hearings were denied to many of those apprehended and thus American citizens were denied their constitutional rights.<sup>7</sup> One of the most serious immigration incidents in El Paso-Juarez occurred in 1948 when U.S. officials allowed thousands of Mexican workers to cross the Rio Grande, then arrested them and paroled them to

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1 Oscar J. Martinez, *Troublesome Border*, (Tucson: University of Arizona Press, 1988) p. 5 (hereafter cited as *Troublesome Border*).

2 *Ibid.*, p. 4.

3 *Ibid.*, p. 6.

4 American Friends Service Committee, *Human Rights at the Mexico-U.S. Border* (Philadelphia: March 1990), p. 2.

5 U.S. Commission on Civil Rights, *Tarnished Golden Door: Civil Rights Issues in Immigration* (1980), p. 10 (hereafter cited as *Tarnished Golden Door*).

6 *Troublesome Border*, p. 133.

7 *Tarnished Golden Door*, p. 11.

American growers who were waiting in trucks to take them to the fields.<sup>8</sup> This was in clear violation of international agreements, but emphatically demonstrates the historical exploitation of Mexican labor by U.S. economic interests, supported by governmental action.

In a paper presented to the Arizona and California Advisory Committees, noted Mexican border scholar Dr. Jorge A. Bustamante observed:

The view that predominates in Mexico is that migration is basically an economic phenomenon, a labor issue, from which the United States reaps the benefits since Mexican migrants fill jobs that U.S. workers are unwilling to take. Thus, the migrant workers are carrying out an activity which is just as legitimate as are the profits gained by their U.S. employers.

In the United States, in contrast, the predominant view of these same migrants is that they are in the majority criminals who transport drugs from Mexico and enter the United States to subsist on public assistance programs or to take jobs which rightly belong to U.S. citizens. Supposedly these U.S. workers are forced into unemployment by the influx of Mexican migrants who come to steal their jobs.

In Mexico these individuals are called "migrant workers" and they are viewed in such a positive light that their family members are openly proud of their achievements. In the United States, they're called "illegal aliens"; they are viewed in a very negative light. . . .<sup>9</sup>

## The Border Patrol

In 1924 Congress created the Border Patrol as a component of the Immigration Bureau, "to patrol the land border and stop smuggling."<sup>10</sup> According to the INS, its duty was expanded in 1925 to patrol the seacoast, and "since then the Border Patrol has used every means available to fulfill its duty. Along with saddle horse, Patrol Agents by the 1930s used cars, trucks, motor boats, and radios. In the 1940s, they added autogiros and airplanes."<sup>11</sup>

The Patrol was expanded during the Second World War, when its duties included the guarding of diplomats and detention camps. By 1950 most of the Border Patrol's resources were shifted to the southern border to prevent illegal immigration. One recent report described the evolution of the Border Patrol in the following way: "From its inception in 1924 as a loose-knit band of former Texas Rangers and gunslingers who engaged in shootouts with tequila smugglers along the Rio Grande, the Border Patrol has evolved into the nation's busiest police force, making more than 1 million arrests a year."<sup>12</sup> The Border Patrol "is the symbol of U.S. law enforcement along nearly two thousand miles of border with Mexico."<sup>13</sup>

Its agents make more than 1 million arrests a year, more than any other law enforcement agency in the country. Although the U.S. Census Bureau estimates that Mexican nationals make

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8 *Troublesome Border*, p. 133.

9 Jorge A. Bustamante, "Undocumented Migration: A Theoretical-Methodological Framework," paper originally prepared for Conference on Migration and International Cooperation, Madrid, Spain, Mar. 29-31, 1993, also submitted at Arizona and California Advisory Committees to the U.S. Commission on Civil Rights *Joint Forum on Immigration-Related Civil Rights Issues*, San Diego, (Apr. 16-17, 1993) (hereafter cited as "Undocumented Migration").

10 U.S. Immigration and Naturalization Service, *An Immigrant Nation: United States Regulation of Immigration, 1798-1991* (June 1991), p. 23.

11 *Ibid.*

12 Patrick J. McDonnell and Sebastian Rotella, "When Agents Cross Over the Borderline," *Los Angeles Times*, Apr. 22, 1993, p. 1.

13 *Ibid.*

up 45 to 50 percent of the undocumented population in the country, it is estimated that approximately 90 percent of all INS and Border Patrol enforcement efforts are targeted toward this group.<sup>14</sup>

The passage of the 1986 Immigration Reform and Control Act (IRCA) resulted in an authorized staff increase of 50 percent for the Border Patrol. In February 1992, then Attorney General William P. Barr announced that 300 new agents would be hired to strengthen enforcement activity at the border.<sup>15</sup> Two years later, the Clinton administration announced a new "border initiative" which would add a total of 1,010 Border Patrol agents to the El Paso and San Diego sectors.<sup>16</sup> According to the announcement, additional resources and technology, including new lighting, fencing, improved sensors, and mobile infrared scopes would be placed in these two areas, where 65 percent of all illegal entries occur.<sup>17</sup>

The Border Patrol has also increasingly become involved in drug interdiction activities. The Anti-Drug Abuse Act of 1986 required the Border Patrol to interdict drugs and gave it powers to arrest drug smugglers.<sup>18</sup> In June of 1986 the United States established "Operation Alliance" to interdict drugs, weapons, currency and undocumented immigrants.<sup>19</sup> The Alliance's Southwest Regional Command includes personnel from Fed-

eral and local law enforcement agencies, including the Border Patrol. In November 1989 the U.S. Army became formally involved with these efforts with the establishment of a Joint Task Force in El Paso.<sup>20</sup> The Immigration Act of 1990<sup>21</sup> further reinforced the Border Patrol's formal role in drug interdiction and greatly expanded the arrest authority of Border Patrol agents.

In a recent study addressing the militarization of the border, one scholar has concluded that:

The U.S. government has implemented a large-scale qualitative and quantitative escalation of the level of militarization of the U.S.-Mexico border since the latter 1970s. This has been carried out under the auspices of increased immigration and drug enforcement activities (i.e., the "War on Drugs"), and has been concentrated in the Immigration and Naturalization Service (INS), though the U.S. military has become increasingly directly involved in recent years.

The prospect of not only military technology and resources, tactics, and strategy, but also the on-going, *de facto use of actual elements of the U.S. military domestically working together with civilian law enforcement agencies in such endeavors is in many regards unprecedented, and raises a number of disturbing implications for the status of civil and human rights of those living in the border region.*<sup>22</sup>

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14 Peter A. Schey, et al., "Petition to the Inter-American Commission on Human Rights of the Organization of American States," Aug. 12, 1992, p. 23 (hereafter cited as OAS Petition).

15 Ronald J. Ostrow, "U.S. to Add 300 Agents Along Mexican Border," *Los Angeles Times*, Feb. 9, 1992.

16 Ronald J. Ostrow, "U.S. Plans Effort to Stem Illegal Entry at Border," *Los Angeles Times*, Feb. 3, 1994 (hereafter cited as U.S. Plans Effort).

17 Ibid.

18 Anti-Drug Abuse Act of 1986, Pub. L. No. 99-S70, 100 Stat. 3207 reprinted in 1986 U.S. Code Cong. & AD. News (100 Stat.) 3207 (codified as amended in scattered sections of Titles 5, 7, 10, 12, 15-16, 18-22, 25, 27-28, 31, 42, 46 App., 47, 48, and 49 App. of U.S.C. (1988 & Supp. V 1994).

19 OAS Petition, p. 23.

20 Ibid., pp. 23, 24.

21 Pub. L. No. 101-649, 104 Stat. 4978, reprinted in 1990 U.S. Code Cong. & AD. News (100 Stat.) 4978 (codified as amended in scattered sections of 8 U.S.C.; 18 U.S.C. §429; 22 U.S.C. §2691; 26 U.S.C. §3304; 29 U.S.C. §1506; 42 U.S.C. §§402, 1382c, 3753 (Supp. V 1994).

22 Timothy J. Dunn, "The Militarization of the U.S. Mexico Border, 1978-1991: Low Intensity conflict Doctrine Comes Home," Department of Sociology, University of Texas at Austin, November 1990, Abstract, p. iii.

The Border Patrol's highly visible role in the "War on Drugs" has led to confusion regarding its functions. The General Accounting Office has emphasized that "the Border Patrol's primary mission is the apprehension of illegal aliens, not the seizure of illegal drugs. Drugs are seized as a by-product of stopping illegal aliens crossing U.S. borders."<sup>23</sup> Increased Border Patrol militarization has been vehemently criticized by the Mexican government. A former foreign minister of Mexico expressed serious concerns about the "voices of darkness" that threaten to militarize the border.<sup>24</sup> And a scholar examining immigration policy options noted that:

Militarization is misguided in its premise. The logical extension of viewing immigration as an "invasion" is that the national boundary must be defended at gunpoint. . . . [T]his depiction of immigrants as an invading force is inconsistent with both the historical record and the present reality. Not only is the contemporary flow a product of long-standing policies of U.S. encouragement, but today's immigrants—far from hostile invaders—provide cheap labor in the contemporary U.S. economy.<sup>25</sup>

### Management Issues

The INS and the Border Patrol have been frequent targets of Congressional criticism, largely for management deficiencies. A 1993 report by the Committee on Government Operations, U.S. House of Representatives, concluded:

In recent years, government auditors have issued numerous reports identifying management inefficiencies throughout INS. Their findings have been so consistently negative and the problems so pervasive that in the 1992 Department of Justice annual report required under the Federal Managers Financial Integrity Act of 1982, the Immigration and Naturalization Service was identified as the Department's number one high risk area.<sup>26</sup>

Among the committee's findings: The INS has lacked competent and committed leadership with vision; INS is understaffed; the agency has failed to comply with departmental requirements for screening employees; INS employees receive inadequate training and supervision; the INS has mismanaged its appropriations for many years; and its information management systems are flawed.<sup>27</sup>

Many of these criticisms are based upon audits performed by the Inspector General of the Department of Justice. In a 1992 study of INS corruption, the Inspector General found that the INS "is often indifferent when it comes to screening its employees and training them, much of their work is unsupervised, and administrative discipline is sometimes haphazard . . . not only is [INS] not managing its employees well, but it also, by this neglect, is fostering a climate in which corruption can occur."<sup>28</sup> The Inspector General noted that the International Association of Chiefs of Police recommend the following essentials in minimizing law enforcement corruption: select new hires

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23 U.S. General Accounting Office, *Drug Interdiction: Funding Continues to Increase but Program Effectiveness is Unknown*, p. 17.

24 Kitty Calavita, "The Immigration Policy Debate: Critical Analysis and Future Options," paper published in Wayne A. Cornelius and Jorge A. Bustamante, *Mexican Migration to the United States* (San Diego: Center for U.S.-Mexican Studies, University of California, San Diego, 1989), p. 166.

25 Ibid.

26 U.S. Congress House, Committee on Government Operations, *The Immigration and Naturalization Service: Overwhelmed and Unprepared for the Future*, 103d Cong., 1st Sess., 1993, H.R. Rep. 216, p. 2 (hereafter cited as *INS Overwhelmed and Unprepared for the Future*).

27 Ibid., pp. 10-18.

28 *The Immigration and Naturalization Service: A Mandate for Change: Hearing Before the Information, Justice, Transportation and Agriculture Subcommittee of the Committee on Government Operations*, 103d Cong., 1st Sess., p. 48 (1993) (prepared statement of Richard J. Hankinson, Inspector General, U.S. Department of Justice) (hereafter cited as *Hankinson Statement*).



carefully, screen them, conduct background checks, use drug tests, utilize psychological testing to help weed out bad candidates; train them, supervise them, require accountability, and discipline for misconduct.<sup>29</sup> The Inspector General found these essentials lacking at the INS. The report did find that the agency is significantly understaffed and that this negatively impacts the performance of administrative functions.<sup>30</sup>

In September 1991 the Office of the Inspector General (OIG) issued a report on INS firearms policy. In a review of 90 shooting incidents involving 112 personnel, the OIG concluded that INS was not in compliance with some firearms policies and procedures, while others required revision. The report found that some officers inappropriately used their firearms, discharged weapons accidentally, and were not qualified on the weapon used.<sup>31</sup> In addition, there was no independent review of the shootings by the Firearms Review Board, and policy did not exist for administering disciplinary actions in cases where INS firearms policy was violated.<sup>32</sup>

The Immigration Act of 1990 greatly expands the enforcement authority of the INS, giving its officers broad powers to use weapons and make arrests.<sup>33</sup> However, before this new authority can be used, Congress mandated that the Attorney General publish final regulations that prescribe which officers may use force, including deadly force, and the circumstances under which such force may be used; establish standards on enforcement; require training; and establish an expedited internal review process for violations of standards.<sup>34</sup> Numerous immigration lawyers, enforcement experts, and civil rights organizations provided input to the Attorney General on these guidelines. The regulations have been published and become effective August 17, 1995.<sup>35</sup>

In addition to official criticism from Congress and internal auditors, the INS has been subjected to much disparagement from outside organizations as well. For example, the Heritage Foundation concluded that the INS is "perhaps the most ailing agency in government . . . [S]tudy after study shows that INS continues to wallow in its backwater of antiquated managerial practices. . . ."<sup>36</sup>

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29 Ibid., p. 47.

30 Ibid., p. 56.

31 U.S. Department of Justice, Office of the Inspector General, *Audit Report: Immigration and Naturalization Service Firearms Policy* (1991), pp. i, ii (Executive Digest).

32 Ibid.

33 Immigration Act of 1990, Pub. L. 101-649, §503, 104 Stat. 4978-49 (1990), 8 U.S.C. §1357 (Supp. V 1994) (hereafter cited as IA90 or 1990 Act).

34 *Id.* at §503, 8 U.S.C. §1357 (Supp. V, 1994).

35 See 8 C.F.R. §§287.1-287.11, *Field officers powers and duties*.

36 *Hankinson Statement*, p. 4.

### III. Impacts of Federal Immigration Law Enforcement on Border Communities

#### El Paso

The two cities of El Paso and Ciudad Juarez represent the largest metropolitan area along the U.S.-Mexico border, with a total population approaching 2 million. Unlike San Diego, which was developed much earlier than Tijuana, El Paso and Juarez share a common history of both cultural and economic growth.<sup>1</sup> With a single downtown district divided only by the Rio Grande River, commerce between these twin cities has always flourished. Documented border crossings total well over 40 million per year, and it is estimated that 25 percent or more of El Paso's retail trade is derived from Mexican consumers.<sup>2</sup> An official of the Greater El Paso Chamber of Commerce described this relationship for members of the New Mexico and Texas Advisory Committees:

The communities of El Paso and Juarez are closely tied in a number of ways. Geographically, we share common city limits, albeit, an international boundary as well. The Rio Grande, in many respects though, is merely an inconvenience. We are actually a single community both culturally and economically. Daily, we interact with friends, family, and business relationships on the other side of the international border. We and our friends from Juarez also alternately speak Spanish and English when on either side of the border. Furthermore, my board of directors at the Greater El Paso

Chamber of Commerce consists of several Mexican national citizens from Juarez . . . which I believe is the only Chamber of Commerce along the entire border that has such a situation. The reason I mention these matters, is I believe that we here in El Paso-Juarez have learned to live in harmony. . . .<sup>3</sup>

Fully 70 percent of El Paso's population is Hispanic and 25 percent is foreign born (compared to the United States population which is 8.6 percent foreign born.)<sup>4</sup> According to Jose Moreno, executive director of the Diocesan Migrant and Refugee Services program in El Paso,

it can be safely said that the Border Patrol is the single most visible agency in the region. The presence of the Border Patrol in every part of our city . . . makes it almost impossible to avoid contact with its officers.<sup>5</sup>

More than 1,300 uniformed Federal officers are stationed in El Paso (including approximately 600 Border Patrol agents). This compares with a city police force of only 800 officers.<sup>6</sup> Mr. Moreno noted that "while the sight of Border Patrol vans, agents and other INS officers is commonplace, the relationship between the Border Patrol and the community, especially the seventy percent of the community which is Hispanic, can be termed as uneasy."<sup>7</sup> He described the effects of this policing activity:

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- 1 American Friends Service Committee, *Human Rights at the Mexico-U.S. Border* (Philadelphia: March 1990), p. 2.
  - 2 Most Reverend Raymundo Pena, Bishop of the Catholic Diocese of El Paso, written statement submitted at meeting of U.S. Commission on Immigration Reform, El Paso (Mar. 17-18, 1994) (hereafter cited as *Rev. Pena Statement*), p. 2.
  - 3 Bob Cook, vice president, Government Relations, Greater El Paso Chamber of Commerce, written statement submitted at New Mexico and Texas Advisory Committees to the U.S. Commission on Civil Rights, *Joint Forum on Immigration-Related Civil Rights Issues*, El Paso, Texas, June 12, 1992, p. 2.
  - 4 *Rev. Pena Statement*, p. 3.
  - 5 Jose G. Moreno, executive director, Diocesan Migrant and Refugee Services, written statement submitted at meeting of U.S. Commission on Immigration Reform, El Paso (Mar. 17-18, 1992), p. 2. (hereafter cited as *Moreno Statement*).
  - 6 Paul Salopek, "Amid Rising Complaints, Border Forces are Secretive," *El Paso Times*, Dec. 6, 1992, p. 1.

We see on a daily basis the green suburban truck driving through downtown El Paso with the door ajar waiting—an officer waiting to jump out so that he can go and apprehend suspected undocumented people. This is a reality we live with in El Paso. . . .<sup>8</sup>

We cannot in this community continue to support the mentality by the Border Patrol that the entire city of El Paso is the equivalent of the border, for it is not. In a community of 70 percent Hispanic, in a community with 25 percent poverty level to look merely at a person's color of skin or to look at the manner of dress and have that be the sole determining factor of whether they are undocumented persons or not is unacceptable. We can no longer accept the reasoning by a Border Patrol agent that sees a Hispanic man running through south El Paso and assumes that, because that young man is running, that is an undocumented person.<sup>9</sup>

In the late 1970s, the El Paso police created a downtown foot patrol in order to combat crime, 50 percent of which the police allege can be "directly attributed to undocumented aliens."<sup>10</sup> The foot patrol, funded by a special Federal grant, consisted of police officers only. The foot patrol was extremely popular with downtown merchants; however, it was abandoned when the grant ran out. Merchants, led by the Downtown Development Association of El Paso, demanded that the program be reinstated.<sup>11</sup>

The foot patrol was reestablished using the combined manpower of the El Paso Police Department and the U.S. Border Patrol.<sup>12</sup> A description of the foot patrol noted that four uniformed police officers are assigned to walk beats in the downtown area with Border Patrol partners. Two plainclothes officers work with plainclothes border patrol agents. A seventh uniformed border patrolman operates a transportation unit.<sup>13</sup>

Lieutenant Greg Brickey of the El Paso Police Department told the New Mexico and Texas Advisory Committees that the joint foot patrol "is one of the most efficient units of the police department" and resulted in an impressive number of arrests and a "significant reduction in street crime in the downtown area."<sup>14</sup> Lieutenant Brickey noted that the department intends to expand this program and that it is widely supported by both business owners and residents in the downtown area. Paul Lazovick, president of the Downtown Development Association, told the Advisory Committees that his group has "not been made aware of any adverse violations of civil rights" as a result of this operation.<sup>15</sup>

Despite this support, numerous community, Hispanic, and civil rights organizations have called for an end to the joint foot patrol. Mark Schneider, an attorney with Texas Rural Legal Aid in El Paso, described his observations of the joint patrol:

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7 Moreno Statement, p. 1.

8 Jose Moreno, testimony before the factfinding meeting conducted by the New Mexico and Texas Advisory Committees in El Paso, Texas, June 12, 1992, transcript vol. pp. 13-15 (hereafter cited as *El Paso Transcript*).

9 El Paso Transcript, vol. 1, p. 14, 15.

10 Lt. Greg Brickey, El Paso Police Department, "The El Paso Police Department/United States Border Patrol Foot Patrol: A Study in Joint Operations," (paper presented at New Mexico and Texas Advisory Committees to the U.S. Commission on Civil Rights, *Joint Forum on Immigration-Related Civil Rights Issues*, El Paso, Texas, June 12, 1992) p. 1 (hereafter cited as *Brickey Study*).

11 Lt. Greg Brickey, El Paso Police Department, testimony, El Paso Transcript, vol. 2, p. 28.

12 The joint foot patrol was a fact during the period of study by the Advisory Committee. "Border Patrol Agents have not participated in those foot patrols since mid-1993." Doris Meissner, Commissioner, Immigration and Naturalization Service, U.S. Department of Justice, letter to Philip Montez, WRO, USCCR, Feb. 7, 1996.

13 See *Brickey Study*, p. 1.

14 *Ibid.*, pp. 3, 4.

15 El Paso Transcript, vol. 2, p. 28.

This is a particularly suspect activity because they jointly detain and question usually young males who appear to be of Mexican descent. The general practice is that the police demand an I.D. If the I.D. is not produced or it's not sufficient to prove legal residency, then the person is arrested by the Border Patrol. I have personally witnessed that this process is neither consensual, nor a brief, voluntary questioning.<sup>16</sup>

Mr. Schneider explained that local police have no authority to enforce Federal immigration laws and cannot detain a person solely on suspicion of being an undocumented alien.<sup>17</sup> Furthermore, he continued, all Border Patrol stops, searches, and seizures must be either: "based upon 1) probable cause or reasonable suspicion of an illegal activity, 2) a brief and casual questioning, or 3) based upon freely given consent."<sup>18</sup> A representative, and former past president, of the Mexican American Bar Association told the Advisory Committees at the El Paso forum:

We should not have to walk in our downtown streets and see the Border Patrol coupled with a police officer, which we call foot patrol, simply walk up to anyone that they feel may not be here legally and harass them, and we should not have to just walk by and say, "Well, that's life on the border."

That is not life on the border, and it's not the kind of life on the border that I want my children to inherit.<sup>19</sup>

The Border Rights Coalition, an El Paso based human rights organization, has received a significant number of complaints alleging improper law enforcement actions of the joint foot patrol.<sup>20</sup>

Some of these were shared with the Advisory Committees. Debbie Nathan, a journalist and member of the Border Rights Coalition described an occasion wherein a local newspaper published the photograph of an El Paso policeman asking an unidentified man for his immigration papers. The photographer confirmed that the policeman was a member of the foot patrol who, when questioned, confirmed that he had stopped the individual in order to check his immigration status. Ms. Nathan called the editor to advise that the photograph depicted an illegal action on the part of the policeman.<sup>21</sup> She also told the Advisory Committees of a conversation she had with a woman who was allegedly assaulted, robbed, and threatened with rape. According to Ms. Nathan, because "she was undocumented," the woman "was afraid to call the police because in her mind she thinks the police are going to ask her about her status. . . . [Therefore] a serious crime . . . goes unreported, which is a warning to the entire community . . . it keeps the police from doing [their] job."<sup>22</sup> Mr. Moreno called for an end to the foot patrol, concluding that joint police-border patrol activity inhibits persons from reporting crimes to the police and thus, "in the end, victims are the ones that suffer."<sup>23</sup>

In his appearance before the Texas and New Mexico Advisory Committees, El Paso Mayor Bill Tilney acknowledged that the joint patrol has received criticism from various organizations. In observing that there is a great deal of pressure by downtown merchants to continue the efforts, he concluded that "we have to weigh both sides of the equation."<sup>24</sup>

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16 Ibid., vol. 1, pp. 62, 63.

17 Ibid., vol. 1, p. 61.

18 Ibid., vol. 1, p. 58.

19 Margarito Rodriguez, testimony, pp. 37, 38.

20 American Friends Service Committee, *Sealing Our Borders—The Human Toll* (Philadelphia: AFSC, 1992), p. 33 (hereafter cited as *Sealing Our Borders*).

21 Debbie Nathan, Briefing for the Arizona, California, New Mexico, and Texas Advisory Committees, El Paso, Texas, May 18, 1991.

22 Debbie Nathan, testimony, El Paso Transcript, vol. 1, p. 48.

23 Moreno testimony, Ibid., vol. 1, p. 18.

Antonio Carrasco, administrator of a barrio-based health clinic, told the advisory committees that he was the victim of a joint patrol sweep of a restaurant lounge in 1990. The Border Patrol agents and police officers allegedly rounded up most of the patrons and subjected them to interrogations and requests for identifications. Those who did not have documents were taken away; those for whom warrants were issued were arrested; and those who could prove who they were, were released.<sup>25</sup>

According to Mr. Carrasco, an American citizen, he and his friends were thrown against the wall and handcuffed without probable cause. He was booked by the El Paso Police and charged with resisting arrest because of his protests of civil rights violations. In the absence of probable cause, Mr. Carrasco's case was dismissed.<sup>26</sup>

In 1982, Judge Lucius D. Bunton, of the U.S. District Court for West Texas, held that the INS was illegally questioning and detaining persons in El Paso.<sup>27</sup> The INS, based on information from the El Paso Police Department that illegal aliens were employed in certain bars around the city, went into bars with the El Paso Police, guarded the doors so that no one could leave without permission, and interrogated patrons and employees regarding their citizenship. They "concentrated on those of obvious Mexican descent" and searched nonpublic areas of their bars. The court held that the warrantless search of nonpublic areas and the detention of people as to whom INS

agents had no reasonable suspicion of illegal alien status violated the fourth amendment right to be free from unreasonable search and seizures.<sup>28</sup>

The court enjoined the INS from detaining people to investigate their immigration status or arresting them without a reasonable suspicion based on articulable facts and rational inferences that the person was in the United States illegally.<sup>29</sup> Judge Bunton noted in his injunction:

To allow INS agents to stop and interrogate persons based solely on suspicion of alienage would allow the INS to stop and interrogate more than half of the legitimate population of the border town of El Paso. This would be a subversion of the public's Fourth Amendment right to be secure in their persons and Fourteenth Amendment right to be free from unwarranted and oppressive governmental intrusions into its privacy.<sup>30</sup>

Judge Bunton also emphasized that "absent consent, an INS agent may not even detain and interrogate a person believed to be an alien unless the agent has a reasonable suspicion based on articulable facts and rational inferences that the person is not only an alien but is illegally in the country."<sup>31</sup> In a consent decree, the INS agreed to pay \$14,000 to four plaintiffs whose constitutional rights were violated, and the Court entered a permanent injunction, which is still in effect, against the illegal detention, interrogation, and arrest of persons by INS in El Paso.<sup>32</sup>

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24 Bill Tilney, mayor of the city of El Paso, testimony, *Ibid.*, vol. 2, p. 26.

25 Antonio Carrasco, testimony, *Ibid.*, vol. 1, pp. 99-101.

26 *Ibid.*

27 See *Mendoza v. INS*, 559 F. Supp. 842 (W.D. Tex. 1982).

28 *Id.* at 845, 847-49.

29 *Id.* at 847-48.

30 *Id.* at 850-51.

31 *Id.* at 847.

32 Mark Schneider, testimony, *El Paso Transcript*, vol. 1, p. 62.

One of the plaintiffs in *Mendoza*, an American citizen, was arrested at a business establishment and produced valid documents establishing his citizenship; nonetheless, the INS agent discredited their authenticity because the plaintiff spoke no English and he was arrested and detained for 4 hours.<sup>33</sup> In testimony before the Advisory Committees, a representative of Texas Rural Legal Aid stated that his agency and other attorneys are considering filing a motion for contempt of court for violations of Judge Bunton's permanent injunction, citing repeated violations by immigration authorities.<sup>34</sup>

Carlos Marentes, a labor organizer, told the Advisory Committees that many agricultural workers are citizens of the United States or have legal status; however, because they speak no English, they are "subjected to interrogations, hostility, abuses and, many times, physical aggression. The workers who have been recently legalized are especially targeted."<sup>35</sup> Mr. Marentes noted that the majority of workers do not know their legal rights "and that makes them more vulnerable to the hostility of immigration authorities."<sup>36</sup>

In describing the complex legal and jurisdictional issues affecting law enforcement at the border, Margarito Rodriguez, of the Mexican Bar Association, told the Advisory Committees that "because of the unique nature of the border and the border region, you do not have the same constitutional rights, the same level of constitutional protection, that you would have if you lived in other regions of the country."<sup>37</sup>

During the open session convened by the Texas and New Mexico Advisory Committees following scheduled testimony, new information regarding Border Patrol conduct was received from a teacher and graduating senior of El Paso Bowie High School.<sup>38</sup> David Renteria, a visually impaired student, was walking home from school when a Border Patrol van pulled up alongside and an agent asked him and a companion about their citizenship. Mr. Renteria responded that he was a U.S. citizen and kept on walking. According to Renteria, an agent then told him that "you better stop before I beat you up so bad you're not going to be able to move."<sup>39</sup> Mr. Renteria was then asked for his identification and was pushed up against a fence. He responded that he did not carry identification and that he was invoking his right to remain silent. The agent replied that as he was not under arrest, he had no right to remain silent. The Border Patrol agent then pushed Renteria's face, first against the fence and then slapped him with one hand while holding Renteria's arm behind his back with the other. The agents ridiculed him for exercising his constitutional rights. When a city police officer was called, Renteria asked him how he could file a complaint for physical abuse and deprivation of his first amendment rights. The officer told him there was nothing he could do that the Border Patrol agents were simply doing their job. About two days later, one of the agents drove by Renteria's home and made an obscene gesture, laughed, and spit in the direction of Renteria and his brother.<sup>40</sup>

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33 *Mendoza*, 559 F. Supp. 845, 849.

34 Schneider Testimony, El Paso Transcript, vol. 1, p. 64.

35 Carlos Marentes, testimony, *Ibid.*, vol. 1, p. 27.

36 *Ibid.*

37 Rodriguez testimony, El Paso Transcript, vol. 1, p. 32.

38 El Paso Transcript (audiotape of open session).

39 See, Louis Dubose, "Suing the Border Patrol—The Battle at Bowie High," *Texas Observer*, Dec. 11, 1992 (hereafter cited as *Battle at Bowie High*). The incidents are also fully described in a Federal district court order granting plaintiffs' petition for preliminary injunction and class certification, *Murillo v. Musegades*, 809 F. Supp. 497 (W.D. Tex. 1992).

40 *Battle at Bowie High*.

In an interview with the *Texas Observer*, Mr. Renteria said that his family was routinely stopped when they walked to church and that agents routinely harass people in the neighborhood.<sup>41</sup>

Juan Sybert-Coronado, a teacher at Bowie High and sponsor of the Chicano student's MECHA club (Movimiento Estudiantil de Chicanos de Aztlan), advised students of their rights and encouraged them to make public their complaints against the Border Patrol.<sup>42</sup>

Mr. Sybert-Coronado addressed the forum in El Paso and subsequently wrote a letter to the Advisory Committees providing detailed observations regarding his campus and its experiences with the Border Patrol.<sup>43</sup> He began by describing the setting:

Bowie [High School] is located in the Chamizal, an area owned by Mexico until the mid-1960s land swap. It provides a basic high school education to about 2000 students. Ninety-nine percent of these students are Hispanics, mostly first and second generation Mexican immigrants. These students come from the poorest urban zip code in the U.S. In short, this group is poor, brown, and attending school less than 100 feet from the U.S.-Mexico border.<sup>44</sup>

Although aware of the Border Patrol's presence on the Bowie campus, Mr. Sybert-Coronado was not aware of possible civil rights violations until a student came to him and alleged an incident wherein an agent had called the student a liar when he identified himself as a U.S. citizen. Upon

producing his school identification card, he was told by the agent it had no meaning. Another student, a legal resident, had his immigration papers confiscated when the same agent called them a forgery. He was placed in a Border Patrol van.<sup>45</sup>

The principal of the high school, who identified both of the students as legal residents, was summoned by a school security guard. They were released without an apology.<sup>46</sup>

This incident angered Mr. Sybert-Coronado, who began asking his students about their experiences with the Border Patrol. "Soon thirty-four different stories emerged from approximately two hundred students contacted," he recalled.<sup>47</sup> Most fell in the category of verbal abuse, typically students being called liars upon declaring U.S. citizenship.<sup>48</sup> Three female students described incidences of sexual abuse. Mr. Sybert-Coronado told the Advisory Committees that the most shocking sexual abuse occurred when a 13-year-old girl was:

. . . followed home from school by a Border Patrol van and sexually harassed by agents commenting on her body parts. This made [her] feel dirty. She ran home and complained to her mother, who in turn attempted to complain to the Border Patrol. The next day her mother was questioned at home, not about the incident but about her own legal residency status. Her aunt later that day was also taken into custody only to be released a few hours later. [The girl] wished to testify [before] your committee in person; however her mother forbade her from doing so.<sup>49</sup>

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41 Ibid.

42 Ibid.

43 Juan Sybert-Coronado letter to New Mexico and Texas Advisory Committees, June 16, 1992.

44 Ibid., p. 1.

45 Ibid.

46 Ibid., p. 2.

47 Ibid.

48 Ibid.

49 Ibid.

After describing several other incidents of alleged Border Patrol misconduct on the campus, Mr. Sybert-Coronado recommended that, 1) public schools should not be used for surveillance purposes, 2) toll free complaint hotlines should be established and publicized, and most importantly, 3) "some provision must be made for community oversight of Border Patrol activities."<sup>50</sup>

Despite these troubling occurrences, few protests were made "in a community where complaining publicly about the Border Patrol has long been seen as futile and perhaps dangerous . . . [F]ew Hispanic residents . . . relished the idea of taking on a well-armed federal agency that for generations has been a powerful presence in their community, a place where some parents, fearing an accidental deportation, don't let their children leave home in the morning without their birth certificates."<sup>51</sup>

However, when a new principal, Paul Strelzin, was assigned to Bowie High School, this situation changed dramatically. Mr. Strelzin heard of numerous school encounters with the Border Patrol from faculty and staff. The principal's own secretary told of having been followed home by agents with no probable cause, and of other confrontations where she had been treated rudely by the Border Patrol.<sup>52</sup> Especially egregious was an incident involving a varsity football coach, Ben Murillo. He was driving two students to a game when he was pulled over by the Border Patrol.

One of the agents pointed a gun at his head and ordered him out of his vehicle. The coach told the agent, "I'd appreciate it if you would holster your gun."<sup>53</sup> The agent responded, "I'd appreciate if you would shut up."<sup>54</sup> Mr. Murillo was searched and questioned, and the two students were questioned and asked for identification. Students also came forward, encouraged by the new principal, and recounted other serious confrontations involving Border Patrol agents, including incidents of physical abuse.<sup>55</sup>

The principal attempted to resolve these grievances with the then Border Patrol sector chief, but was unsuccessful in putting a stop to the agency's enforcement activities on his campus. Eventually, seven representative plaintiffs brought a class action lawsuit on behalf of Bowie in Federal court, alleging a denial of constitutional rights.<sup>56</sup> The plaintiffs asked the Federal district judge to enjoin the Border Patrol from coming onto the campus to detain persons without a reasonable basis that they were violating U.S. immigration laws.<sup>57</sup> Faculty, staff, and students presented the court with information about alleged abuses and in December 1992, Senior District Judge Lucious Bunton ruled that the Border Patrol had violated the plaintiffs' civil rights and issued an order enjoining them from doing so in the future.<sup>58</sup> He further certified the plaintiffs as a class, permitting their lawyers to seek other potential victims.<sup>59</sup>

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50 Ibid., pp. 4, 5.

51 Robert Tomsho, "High School in El Paso Gives the Border Patrol a Civil Rights Lesson," *Wall Street Journal*, Feb. 23, 1993, p. 1.

52 *Battle at Bowie High*, p. 4.

53 Ibid.

54 Ibid.

55 Ibid.

56 *Murillo v. Musegades*, 809 F. Supp. 487, 500-504 (W.D. Tex. 1992); See also Americas Watch, *United States—Frontier Injustice: Human Rights Abuses Along the U.S. Border with Mexico Persist Amid Climate of Impunity*, (New York: May 1993) (hereafter cited as *Frontier Injustice*) p. 24.

57 *Murillo*, 809 F. Supp. 487.

58 *Id.* at 500-04.

59 *Id.* at 501-03.



Judge Bunton ordered the Border Patrol not to stop individuals without reasonable suspicion, based on articulable facts (other than mere Hispanic appearance) which indicate that they are in violation of immigration laws.<sup>60</sup>

The order states that "the Government's interest in enforcing immigration laws does not outweigh the protection of the rights of United States citizens and permanent residents to be free from unreasonable searches and seizures."<sup>61</sup> Judge Bunton documented and described numerous violations and abuses brought to the court's attention and concluded that the plaintiffs "have been insulted, humiliated, degraded and embarrassed each time they were unlawfully either stopped, questioned, detained, frisked, arrested, searched, or physically or verbally abused by defendants."<sup>62</sup> He declared that the agency had discriminated against the plaintiffs in violation of their fourth and fifth Amendment rights and added that such violations had also been suffered upon "numerous other students from the Bowie High School District."<sup>63</sup>

Judge Bunton implied that the Border Patrol should have been aware of these incidents, citing defendant Border Patrol agent Dale Musegades' awareness of Bowie High School District student and resident complaints and the United States Commission on Civil Rights' Texas and New Mexico Advisory Committees public forum convened in El Paso in June 1992.<sup>64</sup> Significantly, the court also found that the "procedures presently in place for reporting and investigating alleged abuses by the El Paso Border Patrol are ineffective. The

procedures are complex, and often the victim is discouraged from filing a complaint by the governmental offices, personnel and complaint structure. . . ."<sup>65</sup>

Judge Bunton explained that victims fail to report abuse because: 1) they fear retaliation; 2) they "begrudgingly accept this type of abusive law enforcement action as a way of life;" 3) they have a sense of futility that they "are rarely, if ever informed of the disposition of their complaints; and 4) they believe their complaints will neither be rigorously investigated nor officers duly disciplined."<sup>66</sup> Judge Bunton also concluded that the El Paso Border Patrol does not keep statistics on the numbers of U.S. citizens and legal residents that it detains, and that its records pertaining to arrests of undocumented persons in the Bowie High School District are "at least questionable, possibly inflated, and apparently inconsistent."<sup>67</sup>

In February 1994 Judge Bunton approved a settlement of the lawsuit which makes permanent the stipulations requiring the Border Patrol to enforce its responsibilities in a constitutional manner.<sup>68</sup> It requires that civil and constitutional rights training be provided to its agents and mandates the establishment of a complaint procedure with the following components:

- a) publication of complaint procedures utilizing bilingual posters, television and radio, distribution of bilingual pamphlets and complaint forms;

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60 *Id.* at 503.

61 *Id.* at 497.

62 *Id.* at 500-01.

63 *Id.* at 500-01.

64 *Id.* at 495.

65 *Id.* at 496.

66 *Id.*

67 *Id.* at 495.

68 *Murillo v. Musegades*, Notice of Proposed Settlement of Lawsuit Concerning Persons of Hispanic Descent from the Bowie High School Area, Feb. 17, 1994.

b) maintenance of a bilingual telephone hotline to receive complaints and prominent display of this number on the rear bumper of each Border Patrol vehicle;

c) mailing acknowledgments within seven days to persons filing complaints.

d) filing of quarterly reports with the Federal district court for 5 years detailing the number and types of complaints received and their resolution.<sup>69</sup>

Following the settlement, the new Border Patrol sector chief acknowledged that the situation had been "difficult not just for Border Patrol and Immigration Service . . . but for the community as a whole."<sup>70</sup> Bowie High School principal Paul Strelzin observed that "anytime you beat the government at their own game, it's a great victory."<sup>71</sup>

The decision by Judge Bunton reinforced many of the observations and experiences that were shared with the Advisory Committees at the El Paso Forum. Ruben Garcia, director of a program which provides shelter for the undocumented and refugees, described several examples of alleged improper conduct by immigration authorities. On one occasion, the shelter provided a van to take its residents to a Catholic mass. Upon arriving at the Cathedral, the van was surrounded by four Border Patrol vehicles and all occupants were detained.<sup>72</sup>

Mr. Garcia also told the Advisory Committees that his shelter had been raided by the Border Patrol and that these searches were conducted

without warrants. He spoke about times when, in the middle of the night, "Border Patrol trucks [were] running up and down the street blowing their horns, flashing their lights on our building, terrifying our people."<sup>73</sup> Ironically, Mr. Garcia noted that oftentimes, immigration officers refer undocumented refugees to his facility when they have no place to hold them.<sup>74</sup> Mr. Garcia observed that "the vast majority of people I work with are extremely intimidated, fearful, and their rights are the absolute last thing that they feel they are able to protect."<sup>75</sup>

One critical problem limiting the accountability of Federal immigration law enforcement is the absence of a clear, comprehensive, and accessible complaint process. This was well-documented in the Federal court's findings in the Bowie case. Delia Gomez, speaking on behalf of the El Paso Border Rights Coalition, told the Advisory Committees that "consistently, our reports indicate that Federal agencies do not have clear and accessible complaint procedures and that even when people undergo the often circuitous and difficult task of filing their complaints, their complaints are not taken seriously."<sup>76</sup> A local attorney, with years of experience in filing Federal court tort claims, told the Advisory Committees that the single biggest problem in dealing with Federal law enforcement is "getting information to the community as to whom do they complain and to cut through the various traps and impediments imposed by . . . law enforcement officials."<sup>77</sup> This attorney stated that it took him 3 days to find the local INS Office of Inspector General, which is "located in warehouses near the airport."<sup>78</sup> He

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<sup>69</sup> *Id.* at 7-14.

<sup>70</sup> Associated Press, "Border Patrol Can't Stop People Because They Look Hispanic," *El Paso Times*, Feb. 18, 1994.

<sup>71</sup> *Ibid.*

<sup>72</sup> Ruben Garcia, testimony, *El Paso Transcript*, vol. 1, p. 68.

<sup>73</sup> *Ibid.*, p. 69.

<sup>74</sup> *Ibid.*, p. 71.

<sup>75</sup> *Ibid.*, p. 72.

<sup>76</sup> Delia Gomez, testimony, *Ibid.*, p. 92.

<sup>77</sup> Carlos Spector, testimony, *Ibid.*, vol. 1, p. 74.

also observed that law enforcement agencies are in a powerful position to retaliate against complainants, by charging them with disorderly conduct or interfering with a Federal official.<sup>79</sup>

A journalist told the Advisory Committees that most immigrants know that filing a complaint is a "Catch 22 situation . . . they won't be believed, or if it appears that they will be believed, reporting is going to bring them a little bit of trouble."<sup>80</sup>

Attorneys and representatives of human rights organizations reinforced the public perception that the filing of complaints may result in retaliation.<sup>81</sup> The Border Rights Coalition, which has reported more than 150 cases of alleged misconduct by Federal immigration authorities between 1989 and 1991, called for "accountability and civilian oversight, better hiring practices, better training, [including] cultural sensitivity and human rights, better disciplinary procedures, and a more accessible complaint process."<sup>82</sup>

Prior to the creation of the Border Rights Coalition, an El Paso-based organization, the League for Immigration and Border Rights Education (LIBRE) monitored cases of alleged misconduct by Federal immigration law enforcement agencies. A 32-page document detailing approximately 44 separate incidents, many involving multiple victims, was submitted to the Advisory Committees.<sup>83</sup>

Two attorneys addressing the Advisory Committees recalled that a recommendation had been made to the INS that a telephone number to file complaints should be placed on the back of all Border Patrol vans. This suggestion was summarily rejected, they observed.<sup>84</sup> Just such an initiative was mandated by Federal Judge Bunton in his 1993 court order.

In 1991 a Federal district court judge ruled that two Border Patrol agents in El Paso were negligent in cutting and wiggling a rope being used by four Mexicans to pull themselves back across the Rio Grande to Mexico after having been spotted by the agents.<sup>85</sup> The raft capsized and a 28-year-old sheet-metal worker drowned. Attempts were made to alert the agents that the victim could not swim and that his life was in danger, but they persisted in pulling the rope and the raft overturned. The judge ruled that the agents should have known that the raft would capsize and that one of the men on board could not swim. He held that the agents wrongfully caused the victims's death and awarded the family \$210,000.<sup>86</sup> The U.S. Government paid the damages award. No sanctions were imposed on the two agents. In response to a Freedom of Information Act (FOIA) request filed by the Diocesan Migrant and Refugee Service program, the U.S. Department of Justice advised that "we have been

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78 Ibid., p. 76.

79 Ibid., p. 77.

80 Nathan testimony, Ibid., vol. 1, p. 24.

81 See El Paso Transcript, vol. 1, pp. 24, 27, 46, 82, 96, and 117.

82 Delia Gomez, El Paso Border Rights Coalition, El Paso Transcript, vol. 1, p. 94. See also *Sealing Our Borders*, p. 39.

83 League for Immigration and Border Rights Education (LIBRE), Reports of allegations of "Abuse of citizens legal rights and/or dignity by U.S. Customs, Border Patrol, INS and local law enforcement agents," provided to U.S. Commission on Civil Rights staff, May 1991.

84 Jose Moreno, Executive Director, Diocesan Migrant/Refugee Services, Ibid., pp. 15 and 17.

85 Debbie Nathan, El Paso Chapter, American Civil Liberties Union, testimony, El Paso Transcript, vol. 1, p. 22.

86 Americas Watch, *Brutality Unchecked—Human Rights Abuses Along the U.S. Border with Mexico* (New York: May 1992) (hereafter cited as *Brutality Unchecked*), pp. 21, 22. According to Americas Watch, "A civil suit was brought under the Federal Tort Claims Act, and U.S. District Judge Harry Lee Hudspeth found that the agents should have known that the raft would flip and were told Valenzuela could not swim. He therefore held that the agents wrongfully caused Valenzuela's death, and awarded damages of \$210,000 to Valenzuela's father, brothers, and sisters. The U.S. Government paid the damages award; in effect the agents escaped any sanctions for their acts." See also *Houston Chronicle*, Feb. 6, 1991, p. 18A.

apprised by Border Patrol officials that no disciplinary action was taken against either employee.<sup>87</sup>

### **New Mexico Impacts**

About 70 miles west of El Paso is Columbus, New Mexico, a small border community with a population of approximately 700. Palomas is the Mexican town directly across the border. Due to its geographic isolation and small population, there is not a great amount of international traffic at this crossing; however, the INS, Border Patrol and U.S. Customs are stationed in and around the small village.

Jack Long, a businessman from Columbus, addressed the Advisory Committee forum in El Paso and expressed concern about the conduct of Federal immigration law enforcement in his community. He began by noting that, like El Paso and Juarez (but on a much smaller scale), Columbus and Palomas have a close relationship: "Our families . . . our social activities . . . and our economies [are] intertwined."<sup>88</sup> Mr. Long is a newspaper publisher and represents a Customs House brokerage firm. In his business, 98 percent of his clients are Mexican Nationals. He said that he was concerned about how they are treated by U.S. immigration authorities: "I'm concerned about their impression of my country, of my town, and of my people."<sup>89</sup> He added that he personally had experienced "a number of problems and a number

of run-ins with [the] Border Patrol."<sup>90</sup> He explained, "I often have to leave early in the morning for an appointment . . . and I get jittery because quite often I'm stopped by the Border Patrol just because I'm leaving early in the morning."<sup>91</sup> He recalled that his wife returned home late one evening and "was surrounded by something like three or four Border Patrol vehicles . . . and she was very frightened."<sup>92</sup>

Mr. Long said that he was getting stopped once or twice daily by the Border Patrol, which he could not understand, since he and his vehicle are well-known and he lives directly across the street from the Border Patrol office. He tried to get the names of the Border Patrol agents, but he told the Advisory Committees that "they always refused to give me their names."<sup>93</sup>

Mr. Long also expressed concern with the increased militarization of the border and noted an incident where one of his clients "was stopped in the middle of the night with bright lights, automatic weapons, and a number of men dressed in fatigues."<sup>94</sup> Mr. Long explained that his client was on a back road and apparently met up with a joint immigration law enforcement-U.S. military operation along the border and "it was very frightening to him."<sup>95</sup> He recommended more training and greater professionalism for immigration law enforcement agencies and stated that this is essential to prevent civil rights abuses, "especially

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87 Jennifer R. Nelson, Associate Regional Commissioner, Office of Management, INS, letter to Jose Moreno, executive director, Diocesan Migrant and Refugee Service, El Paso, Aug. 9, 1991.

88 Jack Long, testimony, El Paso Transcript, vol. 2, p. 48. In addition to Columbus-Palomas, there is an even more isolated and remote border crossing at Antelope Wells, in western New Mexico, which has no population centers nearby. The newest border crossing in New Mexico has been developed at Santa Teresa, which is in south-central New Mexico and within the metropolitan area served by El Paso. It was designed to relieve El Paso-Juarez of significant amounts of commercial international traffic (primarily trucking).

89 Ibid.

90 Ibid., p. 49.

91 Ibid.

92 Ibid., p. 50.

93 Ibid.

94 Ibid., p. 53.

95 Ibid., p. 54.

where there is no local responsibility . . . the responsibility comes from Washington . . . and the local population doesn't have influence."<sup>96</sup>

Carlos Ogden is an attorney who has resided in Columbus for 15 years and served two terms as mayor. He told the Advisory Committees in El Paso of the difficulty in filing complaints against the Border Patrol in southern New Mexico. There is a Border Patrol office in Deming, a city of approximately 15,000 located 32 miles north of Columbus. According to Mr. Ogden, "it is easier to get in to see Al Giugni (INS District Director in El Paso) who has more employees under him than the whole [population of the] town of Columbus to make a complaint against an immigration officer, than it is to go to Deming to talk to the guy in charge there."<sup>97</sup>

Mr. Ogden recounted a personal experience where he was pulled over by several Border Patrol vehicles:

I was mayor two times. One night they followed me with the lights on. I had been an assistant district attorney. I thought, man, this could be somebody I put in jail behind me. They stopped me, a bunch of cars, and said some silly things. I said to the officer, "I want to know your name," and he says, "Well, who are you?" I said, "For one thing, I'm the mayor of this town." He said, "That don't cut no ice with me." He wouldn't give his name.<sup>98</sup>

Mr. Ogden and the Border Patrol officer in charge of the Deming office were both members of the Rotary Club in Deming at the time, and the

mayor was able to resolve many problems informally in this setting. When the Border Patrol official retired, this avenue for redress was eliminated, and Mayor Ogden subsequently had great difficulty in securing access to this agency.<sup>99</sup>

After relating several of his negative experiences (and those of his clients) with the Border Patrol, Mr. Ogden discussed the problem of inadequate supervision: "There is no system, so you have officers working without supervision."<sup>100</sup> He further alleged that "Border Patrolmen are very poorly trained policemen in the local sense. . . . There is not a deputy sheriff in a small county of southern New Mexico that doesn't know a lot more about search and seizure."<sup>101</sup> This is especially critical, Mr. Ogden observed, because Border Patrol officers in New Mexico are commissioned peace officers and, therefore, are authorized to intervene in many nonimmigration related criminal situations.

According to Mr. Ogden, Border Patrol officers in southern New Mexico are often unfamiliar with applicable laws and regulations relating to law enforcement in New Mexico. He further concluded that the Border Patrol should publicly state its policy of cooperating with local law enforcement agencies, asserting that their conduct (especially that of undercover Border Patrol agents) is often inappropriate and outside of their legal jurisdiction.<sup>102</sup> For an example, Mr. Ogden recalled an incident where a local policeman and Border Patrol officer apprehended a teenager whom they suspected of having drugs in his vehicle. The youth did not consent to a search, and a

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<sup>96</sup> Ibid. Mr. Long also presented several affidavits to the Advisory Committees consisting of individual notarized statements alleging misconduct on the part of Federal immigration law enforcement officers.

<sup>97</sup> Carlos Ogden, testimony, *Ibid.*, p. 55.

<sup>98</sup> *Ibid.*, p. 56.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*, p. 57.

<sup>101</sup> *Ibid.*, pp. 61-62.

<sup>102</sup> *Ibid.*, pp. 59, 61.

local magistrate refused to grant a search warrant. According to Mr. Ogden, the "Border Patrolman grabbed the [car] key out of the kid's hands [and] said, 'I am a Federal officer. I don't need a warrant.'"<sup>103</sup>

## Border Patrol—Operational Considerations

The *Los Angeles Times* conducted an in-depth investigative report of the Border Patrol in 1993.<sup>104</sup> The newspaper examined many internal documents, court records, and conducted more than 100 interviews, more than 50 of these with Border Patrol agents and officials.<sup>105</sup> Among the conclusions reached by the *Times* following its investigation were the following:

The Border Patrol hires agents with dubious pasts, including criminal records and checkered careers with police agencies and the military. Pressures to rush agents to the international line exacerbate a flawed screening process.

Management has failed to halt unauthorized shootings, a recurring problem that has led to criminal charges against agents and generated periodic international uproar. A Justice Department audit found that immigration agents violated firearms rules in one-third of 66 incidents studied.

Physical mistreatment of suspects—"street justice" in the words of a recently retired supervisor—is a persistent occurrence that has triggered denunciations by courts, veteran agents, Mexican officials and interna-

tional human rights groups. Fear of retaliation and a deficient complaint process discourage victims and witnesses from reporting abuses.

Internal investigations of wrongdoing and discipline of agents are slow and erratic—flaws that top Border Patrol officials and the U.S. Justice Department acknowledge. Critics say weak oversight lets agents remain on duty despite lengthy records of alleged misconduct.<sup>106</sup>

The reporters observed that "From California to Texas, agents of the Border Patrol—the guardians of U.S. law and order on the frontier with Mexico—have crossed the line into lawbreaking and disorder."<sup>107</sup> The *Times* noted the work done by the United States Commission on Civil Rights on immigration agency abuses in the late 1970s, and advised readers of the forum held in San Diego by the California and Arizona Advisory Committees "to gather new testimony on abuse."<sup>108</sup>

The newspaper acknowledged the difficulty in independently determining the extent of Border Patrol misconduct, indicating that "in response to repeated requests under the Freedom of Information Act, immigration officials said they do not keep track of abuse complaints and have no comprehensive data on internal discipline of agents."<sup>109</sup> An INS official told the *Times* that this information "is something we have not collected routinely, and to go back and retrieve that would be a massive project . . . there has not been any consistent monitoring of disciplinary actions on a nationwide basis."<sup>110</sup>

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<sup>103</sup> Ibid., p. 62.

<sup>104</sup> Patrick J. McDonnell and Sebastian Rotella, "Crossing the Line: Turmoil in the U.S. Border Patrol," *Los Angeles Times*, Apr. 22, 23, 24, 1992. This series of articles provides background information and reviews current operational practices and controversies surrounding the Border Patrol. (Hereafter cited as *Turmoil in the U.S. Border Patrol*.)

<sup>105</sup> Ibid., Apr. 22, 1993.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

This conforms to testimony provided to Congress by the Inspector General for the U.S. Department of Justice, Richard J. Hankinson. Mr. Hankinson told a congressional oversight committee that available evidence indicates that adequate corrective action is not consistently taken in the instances in which an employee is found to have engaged in inappropriate conduct.<sup>111</sup> The Inspector General stated that, in fact, "INS treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance."<sup>112</sup> Mr. Hankinson also characterized INS as being "often indifferent" to training and concluded that the agency "empowers the vast majority of its employees to make critical decisions, but devotes uncertain amounts of time to supervising their work."<sup>113</sup> The Inspector General's audit also criticized INS screening procedures, finding that they failed to comply with departmental requirements.<sup>114</sup>

Background investigations were also reported as a "material weakness" by the Department of Justice.<sup>115</sup> The Inspector General told the Congress that in one INS region alone, "over 286 employee background investigations had not been adjudicated and there was derogatory information that requires some further explanation or resolution."<sup>116</sup> He gave the examples of one em-

ployee who had tested positive for marijuana at the time he entered duty and had an allegation in his investigative report that he had sold drugs, and another who had been involved in two firearms incidents before his Federal employment and was described in his investigative report as a "walking time bomb, a pathological liar, [and] someone who lacked judgment and was unfit for law enforcement." Yet both were still employed by the INS "in highly sensitive positions."<sup>117</sup>

## Perspectives of the Mexican Government

As noted earlier, although the U.S. Census Bureau estimates that Mexican nationals constitute 45–50 percent of the undocumented population in the United States, the INS and Border Patrol target approximately 90 percent of their enforcement activities against this group.<sup>118</sup> This major law enforcement emphasis has resulted in numerous incidents leading to formal protests by the Mexican Government. In a February 1992 report published by the National Human Rights Commission, its chairman, Jorge Carpizo, observed that immigration authorities in the United States "combat the entry of illegal aliens with a broad range of powers which they can use at their own discretion."<sup>119</sup> He further noted that "this had led . . . to some cases of excessive use of force

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111 The Immigration and Naturalization Service: A Mandate for Change: Hearing Before the Information, Justice, Transportation and Agriculture Subcommittee of the Committee on Government Operations, 103d Cong., 1st Sess., p. 48 (1993) (prepared statement of Richard J. Hankinson, Inspector General, U.S. Department of Justice), pp. 53, 54. (hereafter cited as *Hankinson Statement*).

112 *Ibid.*, p. 54.

113 *Ibid.*, pp. 45–52.

114 *Ibid.*, pp. 48–49.

115 *Ibid.*, p. 48.

116 *Ibid.*, p. 49.

117 *Ibid.*

118 "U.S. Plans Effort," *Los Angeles Times*, Feb. 3, 1994.

119 National Commission on Human Rights, *Report on Human Rights Violations of Mexican Migratory Workers on Route to the Northern Border, Crossing the Border and Upon Entering the Southern United States Border Strip* (Mexico, D.F.; February 1992) (hereafter cited as *Report on Human Rights Violations*), p. 10.

and of lethal weapons . . . where the responsible agents of the INS have generally been exonerated."<sup>120</sup> The report by the Mexican Commission documents 117 cases of violence and abuse against Mexican migratory workers by different U.S. law enforcement officers between 1988 and 1990. Each of these reported cases resulted in diplomatic complaints or consular measures taken by the Mexican Government.<sup>121</sup> Approximately half of these reported violations occurred in the San Diego area, while the next highest incidence was in El Paso.<sup>122</sup> Nearly 60 percent of the complaints named agents of the INS [including the Border Patrol] as the perpetrators. Of the 117 cases, 16 involved death, and 43 involved injuries.<sup>123</sup>

The report presents a summary of each of the cases of alleged misconduct by United States law enforcement officers that were reported by the Ministry of Foreign Affairs. In addition, the Mexican Human Rights Commission provides data of misconduct complaints reported by other nongovernmental agencies. Testimony was provided to the Mexican Commission by the Support Center for Migrant Workers, A.C.,<sup>124</sup> and the Migratory Studies and Information Center.<sup>125</sup> In 1989–1990, the Migratory Studies and Information Center monitored press reports concerning human rights violations in the San Diego area. Approximately 85 percent of the 1990 press reports named the Border Patrol as the responsible agency. The Sup-

port Center for Migrant Workers reported 57 cases involving U.S. officials between 1988 and 1990.<sup>126</sup> Although the National Commission notes that this organization provided many sworn statements concerning alleged abuse, the document does not provide detailed information on these cases.

The Mexican Human Rights Commission found that "often the demands for justice submitted by Mexican authorities to U.S. authorities do not prosper."<sup>127</sup> It found that while in exceptional cases, U.S. law enforcement officers might be brought to trial, "they are often exonerated."<sup>128</sup> And although victims sometimes received compensation as a result of civil litigation, the commission concluded that "this has not appeared to have drastically affected the propensity of abuse against Mexican migratory workers, since generally, these measures have not been accompanied by a penal sanction."<sup>129</sup>

The commission also reported that "the existence of xenophobic feelings in the United States has fostered mistreatment of Mexican migratory workers, by private individuals and public officials both."<sup>130</sup> According to the commission, "The problem is particularly serious in the San Diego area, where a considerable number of Americans have demanded that the U.S. Government apply special measures to prevent the entry of Mexicans into U.S. territory, while leaders of the extreme right have proposed drastic solutions. The result

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120 Ibid.

121 Ibid., p. 53.

122 Ibid., p. 54.

123 Ibid., p. 107.

124 Ibid., p. 133. The Support Center was founded in 1988 "to publicize, defend, widen and protect the rights of Mexican migrant workers."

125 Ibid., p. 133. The Migratory Studies and Information Center, founded in 1978, provides legal and economic assistance to migrants and conducts research and surveys.

126 Ibid., p. 108.

127 Ibid., p. 61.

128 Ibid., p. 64.

129 Ibid.

130 Ibid.



has been the proliferation of radical positions, a fact that has increased the number of violent acts against Mexicans."<sup>131</sup> It cites the summit meeting of November 1990 in Monterrey where Presidents Carlos Salinas de Gotari and George Bush expressed their mutual concerns regarding violence on the border and called for improved bilateral mechanisms to resolve this problem.<sup>132</sup>

Roberto M. Gamboa, the Consul General of Mexico in El Paso,<sup>133</sup> noted that the Mexican consulates in the United States have been receiving an increased number of complaints from Mexican citizens alleging violations of civil rights by U.S. Federal enforcement agencies, "but in particular by the Border Patrol."<sup>134</sup> The consul general described his relationship with the El Paso offices of INS and U.S. Customs as cordial, but said that "unfortunately the Border Patrol . . . has reflected a total and absolute disregard [of] our complaints, as far as answering with some actions."<sup>135</sup> He noted that his office receives letters indicating that investigations are carried out, but that during his tenure in this diplomatic post, he has never had a case where an officer accused of misconduct has been disciplined.<sup>136</sup> The Consulate provided documentation of 26 cases of alleged

abuse by the Border Patrol, listing names of complainants, dates of incidents, type of case, and dates referred for action.<sup>137</sup> The document reflects that certain of these cases were settled through court or other civil action unrelated to sanctions against alleged violating officers.<sup>138</sup>

In March 1993 Mr. Gamboa submitted new information to the Advisory Committees providing detailed information on 22 additional cases, most involving alleged physical abuse. All of these additional cases were lodged against the Border Patrol.<sup>139</sup> In February 1993 a citizen's group was formed in El Paso calling for the Mexican consul to be removed, citing alleged efforts "to foster racial unrest and disharmony and to hinder U.S. law enforcement agencies."<sup>140</sup> The group, called Citizens for Responsible Government, announced a letter writing campaign to the U.S. State Department, and correspondence to the U.S. Department of Justice and to congressional representatives. One letter obtained by the *El Paso Times* calls on the U.S. Senate to withhold support for the North American Free Trade Act (NAFTA) "pending the resolution of the problems created by Consul General Gamboa and others."<sup>141</sup> This

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131 Ibid., p. 35.

132 Ibid., p. 71.

133 Roberto M. Gamboa, testimony, *El Paso Transcript*, vol. 2, p. 5. Mr. Gamboa conveyed to the Commission's four southwestern State Advisory Committees a special "message of friendship and congratulations" from President Carlos Salinas de Gotari, expressing his appreciation for the opportunity to present information in both El Paso and San Diego on human rights violations at the border.

134 Ibid., p. 5.

135 Ibid., p. 7.

136 Ibid., pp. 7-8.

137 Roberto M. Gamboa, Consul General of Mexico, letter to John F. Dulles II, U.S. Commission on Civil Rights staff, June 15, 1992 [hereafter referred to as Gamboa Letter, June 15, 1992]. This submission contains Consul Gamboa's statement before the New Mexico and Texas Advisory Committees, recommendations, and an appendix: "List of Reported Cases Against Border Patrol Officers Handled Through This Consulate General or by Our Legal Advisors."

138 Ibid., appendix.

139 Roberto M. Gamboa, letter to John F. Dulles II, Mar. 2, 1993.

140 Benjamin Keck, "Group Wants Mexican Counsel Ousted," *El Paso Times*, Feb. 27, 1993, p. B1.

141 Ibid.

action was the apparent result of press conferences called by Mr. Gamboa to protest alleged shootings of Mexicans by Border Patrol agents.<sup>142</sup>

The consul, in his presentation to the Advisory Committees, made several recommendations. These include the development of a standard complaint form, with publicity regarding the right to file misconduct charges. Mr. Gamboa noted that "a lot of claims are not filed by [Mexican citizens] because of the fear of appear[ing] before an authority."<sup>143</sup> Also, the complaint procedure should provide specific time frames for the filing and disposition of complaints. Other recommendations call for a reduction in violence, the ban on the use of lethal weapons, new cultural and psychological training for Border Patrol agents, and the establishment of an independent Federal investigating office, charged with the responsibility of reviewing and investigating incidents where law enforcement officials are involved and presenting findings and recommendations to State and Federal grand juries, when necessary.<sup>144</sup>

At the San Diego forum convened by the Arizona and California Advisory Committees on April 16–17, 1993, Mexican Consul Miguel Escobar reaffirmed the testimony provided by Mr. Gamboa in El Paso. Mr. Escobar noted that Mexican migratory workers are "very much vulnerable . . . and must often deal with law enforcement officers in a practically helpless state."<sup>145</sup> Citing statistics from the National Human Rights Commission in Mexico, the Consul stated that:

Use of force, lethal force, by Border Patrol agents and other law enforcement agents on undocumented migrants has been one of the main worries of the Mexican

consulate general in San Diego. And in all of these cases, there is a common denominator: Impunity. To our knowledge, not one officer under investigation for committing bodily harm to a migrant has ever been found guilty.<sup>146</sup>

Mr. Escobar recommended that Border Patrol training instill "the idea of respect for human life and dignity . . . and emphasis should be placed on the fact that undocumented workers are not criminals."<sup>147</sup> In San Diego, the consul was particularly critical of the INS complaint process:

Complaint procedures are something to behold. You have to realize that many times, the victims of misconduct become the accused. These abused migrants, with no protection at all, unfamiliar with U.S. laws and U.S. culture, with no knowledge of English and sometimes even of Spanish, fearing deportation, cannot defend themselves against trumped-up charges and most of the time will accept deportation rather than pursue complaints against elements of the law.

The INS systematically refuses to divulge the names of agents involved in shootings and other types of mayhem. And this, of course, makes it very difficult for the victims to identify those who abuse them if they ever should be thinking of filing administrative complaints or civil lawsuits.<sup>148</sup>

Mr. Escobar told the Advisory Committees that the investigation of human rights violations by Federal agencies takes "such a long time . . . and sometimes we do not get a very definite answer."<sup>149</sup> He suggested that "a more humane approach" to Border Patrol policies should be instituted, in recognition of the fact that their officers are "facing unarmed people that actually are

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142 Ibid.

143 Gamboa testimony, El Paso Transcript, vol. 2, p. 12. See also Gamboa Letter "Recommendations," June 15, 1992, pp. 4, 5.

144 Ibid.

145 Miquel Escobar, testimony, Arizona and California Advisory Committees to the U.S. Commission on Civil Rights Joint Factfinding Meeting on Immigration-related Civil Rights Issues, San Diego, California, Apr. 16–17, 1993, (2 volumes) vol. 1, p. 56. (Hereafter cited as San Diego Transcript, vol. 1 and vol. 2).

146 Ibid., p. 58.

147 Ibid., p. 60.

148 Ibid., pp. 58–59.

coming across—without documents, of course—trying to get a job. And they are not, for the most part, criminals. Absolutely, they are not, by a great majority, criminals.”<sup>150</sup>

The Mexican Government also released a statement in May 1993 in support of a bill introduced in the U.S. House of Representatives. The measure, H.R. 2119, would have established a new Federal commission to independently investigate complaints filed against Federal immigration law enforcement officials.<sup>151</sup> In addition, the bill would have established a Community Outreach Office to improve relationships between Federal immigration officials and the public.<sup>152</sup>

The statement, released in the Federal District of Mexico, states in part:

The initiative taken today . . . acknowledges the importance of, and commitment to, the protection activities carried out by Mexican authorities through their consular officers in this country . . . the Government of Mexico considers that the creation by the U.S. Congress of an independent commission represents significant progress in the effort made by both countries to eradicate the atmosphere of violence and lack of security in our common border.

Mexico believes that this initiative will help strengthen dialogue and communication between the two governments [in] the defense and observance of the basic human rights of Mexicans living in the United States.<sup>153</sup>

## Petition to the OAS

In August 1992, the Center for Human Rights and Constitutional Law in Los Angeles filed a petition with the Organization of American States (OAS) to intervene with the United States Government to end what is referred to as its “iron-fist” policy along the U.S.-Mexico border.<sup>154</sup> The petition was filed on behalf of several organizations, including the League of United Latin American Citizens (LULAC), two Mexico-based human rights organizations (Comision Mexicana de Defensa y Promocion de los Derechos Humanos, A.C., and the Academia Mexicana de Derechos Humanos, A.C.), and seven individuals (six Mexican nationals and one U.S. citizen) who were allegedly beaten or shot by Border Patrol agents.<sup>155</sup> In addition to the Center for Human Rights and Constitutional Law, lawyers were also provided by the California Rural Legal Assistance program (CRLA), the national American Civil Liberties Union (ACLU) based in New York, and the ACLU Foundation of Los Angeles.<sup>156</sup>

According to attorney Peter Schey, the U.S. Government has authorized Border Patrol agents to “use deadly force by firing upon Mexican nationals who sometimes throw stones at U.S. agents or attempt to flee back into Mexico during border crossing encounters with U.S. officials. . . . This policy has resulted in escalating violence along the U.S.-Mexico border.”<sup>157</sup>

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149 Ibid., p. 66.

150 Ibid., p. 62.

151 Immigration Enforcement Review Commission Act, H.R. 2119, 103d. Cong., 1st Sess. (1993). This proposed legislation was not enacted by the Congress. At the time of printing of this report Congressman Xavier Becerra, D-Calif., the bill’s sponsor, had not reintroduced this bill or similar legislation.

152 *Id.*

153 Press Release, Consulate General of Mexico, Houston, Tex., May 14, 1993.

154 Peter A. Schey, et al., “Petition to the Inter-American Commission on Human Rights of the Organization of American States,” Aug. 12, 1992. (hereafter cited as OAS Petition). See also *Network News*, newsletter of the National Network for Immigrant and Refugee Rights, vol. V., no. 5, August–September 1992, p. 1 (hereafter cited as *Network News*).

155 Ibid.

156 Ibid.

157 *Network News*, vol. 5., no. 5, pp. 1 and 4.

The petition alleges that the INS and Border Patrol "have tolerated and thereby encouraged shootings, improper use of firearms and other weapons, beatings, physical abuse and racially motivated verbal abuse of immigrants, refugees and U.S. citizens."<sup>158</sup>

The document summarizes approximately 20 individual cases in which persons have allegedly been shot by Border Patrol agents under questionable circumstances. The list also includes cases of alleged rapes, beatings, and other acts of physical abuse. The petitioners allege that the "complaint procedure maintained by the INS and the U.S. Justice Department is unresponsive and inadequate to expose and redress abuses."<sup>159</sup> The OAS petition elaborates on this:

Because of their indigency, fear of exposure to arrest and deportation, and lack of knowledge of their legal rights, few migrants unjustifiably injured in these incidents, or families of those killed, seek redress in the U.S. courts. Because of the costs of litigation, technicalities in U.S. laws, and various judicial immunities which U.S. border agents enjoy, those who do seek compensation in U.S. courts are seldom successful. The pattern of the U.S. Government's response to documentation of severe abuses, including testimony, public charges, formal complaints and litigation, has been perfunctory investigations and minor, if any, punishment of offending officers.<sup>160</sup>

Mr. Schey noted that undocumented persons risk arrest and deportation in the filing of misconduct claims, and that the "exhaustion of domestic remedies is made extremely difficult by a pattern

and practice of the INS and Border Patrol to cover up and whitewash its own investigation of alleged incidents of excessive use of force by its agents."<sup>161</sup>

## San Diego

San Diego County has a population of approximately 2,500,000, while the city of San Diego is comprised of just over 1,100,000 persons. The Mexican state of Baja California has a population of 1,661,000, with approximately half of its residents in the city of Tijuana, just miles south of San Diego.<sup>162</sup> The San Diego Border Patrol Sector is the most active area of Border Patrol operations. In fiscal year 1992, 565,581 undocumented persons were apprehended by San Diego Border Patrol agents along the 66-mile international boundary with Mexico and the over 7,000 square miles which comprise this sector.<sup>163</sup> It has been called the "nation's busiest, most violent border zone."<sup>164</sup> Over 1,000 agents are stationed at this sector, and nearly half of all apprehensions occur here.<sup>165</sup>

On April 16 and 17, 1993, the Arizona and California Advisory Committees convened a forum in San Diego to obtain additional information and data for the four-state border violence project. This section of the report summarizes portions of the most significant testimony presented to the Committees in San Diego by community representatives. Additional sources and documentation are incorporated, as appropriate.

Claudia Smith, regional counsel for the California Rural Legal Assistance in Oceanside, told the Advisory Committees that:

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158 OAS Petition, p. 3.

159 Ibid., p. 31.

160 Ibid., pp. 3-4.

161 *Network News*, vol. V, no. 5, August-September 1992, p. 4.

162 U.S. Dept. of Commerce, Bureau of the Census, 1990 Census; Mexico, Censo de Poblacion, SSP, 1990.

163 U.S. Border Patrol, *Operational Profile* (1993), p. 1.

164 *Turmoil in the U.S. Border Patrol*, Apr. 22, 1992, p. 1.

165 Ibid.

Border Patrol officials in this sector have helped fan resentment of and fear towards new immigrants. They have recklessly overstated the level of illegal immigration and promoted all-too-popular misconceptions about the dimensions of undocumented crime.<sup>166</sup>

According to Ms. Smith, the apprehension figures released by the Border Patrol "are badly skewed since no adjustment is made for repeat apprehensions. . . . Field studies of would-be border crossers have shown that the same individual is often apprehended more than once, and not uncommonly up to four times, before he or she gets across undetected."<sup>167</sup> Ms. Smith also noted a problem which was the subject of considerable concern in El Paso, namely, the cooperation of law enforcement agencies with the Border Patrol. According to Ms. Smith:

The effort to present the undocumented as a public safety problem has served the purpose of giving police departments sufficient cover to team up with Border Patrol. Largely barred from enforcing immigration laws, police will cooperate by resorting to pretextual arrests on minor offenses in order to interrogate someone about his or her immigration status and turn the undocumented over to the Border Patrol.

The civil rights implications of such joint activity aside, working hand in hand with the Border Patrol burns much-needed bridges to the immigrant community.<sup>168</sup>

In responding to committee questions concerning the Border Patrol's procedures for the handling of misconduct complaints, Ms. Smith stated that in her experience "in making many, many

complaints . . . what I always get back is a complete refusal to countenance any criticism of Border Patrol agents."<sup>169</sup>

David Valladolid, representing the board of directors of the Chicano Federation, an advocacy and service organization, was especially critical of the Border Patrol's complaint process. Upon consultation with Chicano Federation staff, Mr. Valladolid concluded that the immigrant community in San Diego is very uninformed regarding laws and regulations governing immigration and citizenship, and has virtually no communications with the Border Patrol and the INS.<sup>170</sup> This, he noted, "has created an atmosphere of fear, apprehension and general distrust by the immigrant community towards the INS and the Border Patrol."<sup>171</sup>

Chicano Federation staff indicated that they receive complaints on a weekly basis against the Border Patrol for alleged abuses ranging from verbal abuse to serious physical abuse. "For the most part," Mr. Valladolid observed, "immigrants do not feel there is any form of redress [and] they, many times, choose not to complain because they find the complaint procedure is either nonexistent or too cumbersome . . . the immigrant community has become so accustomed to the harassment and to the different forms of abuse, most of them now chose to simply overlook it."<sup>172</sup>

Mr. Valladolid, a seventh generation Californian, told the committees that he personally has been stopped and questioned by the Border Patrol on more than one occasion and "this represents a direct violation of my civil rights and is an affront to me since the only probable cause for them stopping me was my appearance."<sup>173</sup>

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166 Claudia Smith, Testimony, San Diego Transcript, vol. 1, p. 21.

167 Claudia Smith, letter to John F. Dulles II, Apr. 23, 1993, p. 1.

168 Smith testimony, San Diego Transcript, vol. 1, pp. 23-24.

169 Ibid., p. 29.

170 David Valladolid, San Diego Transcript, vol. 1, p. 36.

171 Ibid.

172 Ibid., p. 37.

173 Ibid.

Mr. Valladolid concluded his remarks with a series of recommendations, including the establishment of regional citizen advisory groups to work with the Border Patrol, regional citizen oversight committees with powers of investigation and subpoena, reforming the complaint procedure, mandating cultural diversity training for all agents, recruiting agents from the region to which they are assigned, establishing a binational human rights commission, reducing Border Patrol fire power, and restricting the Patrol to a one mile radius of the international border.<sup>174</sup> In advocating for greater Border Patrol accountability, Mr. Valladolid remarked:

In a free society, no law enforcement agency can or should be allowed to function without accountability or responsibility, both to the Constitution and the citizens it represents. History is too full of examples of human tragedy when groups or agencies have been able to exercise power or control over others with full impunity in terms of their conduct.

The authors of our Constitution understood our human weaknesses when they implemented systems of checks and balances; therefore, no one should fear the checks and balances of a Federal oversight committee or community review boards . . . unless they have something to conceal.<sup>175</sup>

Reverend Rafael Martinez, executive director of North County Chaplaincy, a community-based service agency, expressed concern that Hispanic victims of crime very often will not call the Sheriff's department for protection because of the fear of being turned over to immigration authorities. Collaboration between the Border Patrol and the sheriff's department in San Diego County, Reverend Martinez observed, is frequent because

many of the sheriff's personnel are unable to speak Spanish and they call on Border Patrol agents to assist in interrogations.<sup>176</sup> He cited several cases of brutal hate crimes committed against migrant workers and emphasized the need for sheriff's officers to be bilingual. He further stated that Border Patrol complaint procedures "are unknown in our community."<sup>177</sup>

Andrea Palacios Skorepa serves as executive director of Casa Familiar, a social service agency in San Ysidro, a community of approximately 25,000 residents located at the international border. Approximately 90 percent of the population is Hispanic. Ms. Skorepa has also chaired the city of San Diego's Citizens Advisory Board on Police-Community Relations. In her prepared statement before the Advisory Committees, she noted that, despite the presence of numerous Federal law enforcement agencies and personnel in San Ysidro, "there does not appear to be any commitment on the part of the Federal entities to establish any meaningful linkages with community-based organizations."<sup>178</sup> In her remarks regarding the conduct of Federal immigration law enforcement operations, Ms. Skorepa advised that:

We consistently hear of treatment that residents characterize as insensitive, rude, inappropriate, obscene, and unnecessarily physical or violent. . . . A significant problem that has surfaced is the fact that this behavior is so commonplace that only a few of the offenses are reported in a manner consistent with what we would normally categorize as a complaint. It appears that people have become inured to the lack of respect, discourteous behavior, and worse that would not normally be tolerated by other groups of individuals.<sup>179</sup>

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174 Ibid., pp. 40-41.

175 Ibid., pp. 39, 40.

176 Reverend Rafael Martinez, testimony, San Diego Transcript, vol. 1, p. 68.

177 Ibid., p. 70.

178 Andrea Palacios Skorepa, Written statement submitted to Arizona and California Advisory Committees, Apr. 16, 1993, p. 3.

179 Ibid., p. 4.

She also stated that there "does not currently exist any effective complaint procedure or process."<sup>180</sup> Noting that Federal immigration authorities cite very low complaint statistics, Ms. Skorepa responded that "numbers of complaints lodged . . . has more to do with the availability of information, the credibility of the complaint process, and whether in fact complaining significantly impacts the manner in which individuals are disciplined and/or the process in which the population served is affected in a positive manner."<sup>181</sup> She advocated the institution of "tough, fair, and credible Federal and local complaint procedures and oversight . . . with community representation. . . . Oversight should be representative of the diverse population and should have the powers necessary to compel testimony and effect disciplinary actions."<sup>182</sup>

Finally, Ms. Skorepa discussed her beliefs concerning xenophobia in San Diego:

San Diego's proximity to the border, its history as a military town, and as an area that extols the virtue of being a native San Diegan, coupled with its politically conservative orientation, has made it a city ripe for immigrant bashing. This city is in the throes of a demographic metamorphosis which is changing the complexion of its residential makeup but not its systems and institutions. It has become a fertile breeding ground for xenophobia.

We are confronted daily, in almost every area, with a growing anti-immigrant environment. The primary recipients of this growing fear and disaffection is the largest ethnic group in the area. This group is Latino. We are the scapegoat of choice for every negative social and economic condition that this area experiences. We

are stereotyped by broad sweeping generalities. The operational reality of San Diego is that all Latinos suffer the consequences of this practice. The fact that any individual may be able to trace their history in this country back seven generations or is a recent immigrant with proper documentation is irrelevant since we are all seen as foreigners in this place. This has created an environment in which basic civil rights are violated and threatened, in an almost cavalier fashion.<sup>183</sup>

As noted in the introduction to this report, the American Friends Service Committee (AFSC) released a report in March 1990, summarizing 380 cases of civil rights violations allegedly committed by immigration law enforcement authorities in five geographical areas between May 5, 1988, and May 4, 1989.<sup>184</sup> More than half (209) were reported in the San Diego area. The majority of incidents of death and serious injury were also identified in San Diego where 43 cases of physical abuse, 3 cases of death and serious injury due to high-speed chases, and 5 deaths and 6 injured from the use of firearms were reported.<sup>185</sup> The AFSC report includes a chapter which describes objects and methods allegedly used by the Border Patrol to inflict injury, including flashlights, nightsticks, vehicles, rings, pistols, handcuffs, and windshield scrapers.<sup>186</sup>

In February 1992, the AFSC released a new report which included statistics on reported cases of abuse between May 1989 and May 1991.<sup>187</sup> Of the 1,274 cases reported, 360 (28.3 percent) involved verbal or psychological abuse, 285 (22.4 percent) alleged physical abuse, 200 (15.7 percent) involved illegal or inappropriate searches,

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180 Ibid., p. 5.

181 Ibid., pp. 5-6.

182 Ibid.

183 Ibid., p. 6.

184 American Friends Service Committee, *Human Rights at the Mexico-U.S. Border* (Philadelphia: March 1990).

185 Ibid., p. 10.

186 Ibid., pp. 14-16.

187 *Sealing the Borders*.

and 184 (14.4 percent) alleged denial of due process.<sup>188</sup> According to the American Friends Service Committee:

San Diego is the region where the largest number of Border Patrol agents are concentrated, and where around 40 percent of all apprehensions of undocumented immigrants occur. In accordance with this disproportion, San Diego was the area where the largest number of abuses was reported. Of these, physical abuse was the most frequently reported abuse, followed closely by psychological or verbal abuse. San Diego accounted for over half of the total physical abuses and over two-fifths of the psychological and verbal abuses reported by all regions.<sup>189</sup>

Additional information for San Diego extracted from the data base for this report was provided by the U.S.-Mexico Border Program/AFSC:

For San Diego, 405 abuses were reported by 149 victims, an average of 2.7 abuses per victim. Of the abuses reported, 36.8 percent were physical abuses, 36.5 percent psychological or verbal abuses, 6.7 percent were abuses related to the deprivation of liberty, 5.2 percent were inappropriate search and seizure abuses, 8.6 percent were denial of due process abuses, 2.5 percent were seizure or destruction of property abuses, and 3.7 percent were others not classified.

Of the 405 abuses reported, 73.4 percent (297) were committed by the U.S. Border Patrol, 9.6 percent (39) by the U.S. Customs, and 5.9 percent (24) by the local law enforcement agencies.

Of the victims whose immigration status was known—137 out of 149—22.6 percent were U.S. citizens, 8.7 percent were either permanent or temporary residents (amnesty), 64.2 percent were undocumented and 4.5 percent either had passports, political asylum or were applicants for various types of status.<sup>190</sup>

The report was criticized by Border Patrol officials as being unreliable and biased. A spokesman for the agency stated that “we don’t think the American Friends Service Committee has shown itself to be a credible critic of the Border Patrol and the INS.”<sup>191</sup> The report was also criticized by the Federation for American Immigration Reform whose director said the AFSC was out of step with public opinion.<sup>192</sup>

Robert Martinez, director of the AFSC’s U.S.-Mexico Border Program and a board member of the American Civil Liberties Union of San Diego and Imperial Counties, presented the Advisory Committees with additional information concerning alleged civil rights violations reported to his office involving border law enforcement agencies. Mr. Martinez has monitored border civil rights issues for approximately 20 years. He provided statistical summaries of alleged physical abuse cases for the period January 1974 to March 1993.<sup>193</sup>

At the San Diego forum, Mr. Martinez testified that recent internal audits, GAO reports “uncovered serious allegations and patterns of misconduct, coverup, and corruption in Federal immigration law enforcement agencies” and that these “underscore the need for serious reform.”<sup>194</sup>

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188 Ibid., p. 20.

189 Ibid., p. 39.

190 U.S.-Mexico Border Program AFSC, Press Release, June 7, 1991.

191 Sebastian Rotella, “Border Abuses Continue, 2-Year Study Says,” *Los Angeles Times*, Feb. 26, 1992, p. 8A.

192 Ibid.

193 Roberto Martinez, written testimony before Arizona and California Advisory Committees, Apr. 16, 1998. (hereafter cited as Martinez Statement). The exhibits provided as an attachment to this statement contain 15 pages summarizing or listing individual cases of alleged immigration law enforcement misconduct. Most of the incidents cited involve allegations of excessive use of force. These exhibits were displayed for the Arizona and California Advisory Committees by Mr. Martinez during the San Diego forum on Apr. 16, 1998.

194 Roberto Martinez, testimony, San Diego Transcript, vol. 1, p. 84.



In criticizing the absence of disciplinary sanctions against errant Border Patrol agents, supervisors and sector chiefs for abuses committed, Mr. Martinez commented:

As far as we know, no agent has ever been convicted for killing an undocumented person, and very few for excessive force. There are very good reasons for that. First of all, no judge or jury will ever take the word of an undocumented person over that of a Federal agent. Secondly, victims of physical abuse are often charged with assault on a Federal officer in order to cover up the incident, as well as make it as difficult as possible to prove abuse both in criminal as well as civil proceedings. Victims of abuse have always had very limited opportunities for redress through the courts.<sup>195</sup>

Mr. Martinez also blamed "the anti-immigrant climate sweeping the country . . . [which] promises to make it even more difficult to break this cycle of violence and hostility."<sup>196</sup> As immigrant bashing and scapegoating has become more widespread, he continued, "we are now reaping the consequences of it today in the form of hate crimes and vigilantism being committed against both documented and undocumented workers."<sup>197</sup>

He recommended the creation of independent civilian oversight committees at the Federal and local levels for Federal agencies on the border, tighter restrictions on use of force and firearms policies within the Border Patrol, and the creation of a complaint process.<sup>198</sup>

Mr. Martinez introduced several individuals to the Advisory Committees who provided personal accounts of alleged mistreatment at the hands of

the Border Patrol. Hermelino Sandoval Martinez, a Mexican national, alleged that he was beaten and injured by a Border Patrol agent on December 23, 1993. Mr. Sandoval suffered severe internal injuries requiring hospitalization and surgery of the pancreas.<sup>199</sup>

Margarito Cruz, another Mexican national, alleged that he was beaten with a pipe by several civilian Americans on motorcycles. His assailants then called U.S. Border Patrol agents who inquired as to who had beaten him. When he identified his assailants, Mr. Cruz alleged that the officers ignored him, grabbed him by the neck, and transported him to Temecula. Bleeding profusely (from the head), he was kept waiting for an hour before being taken to a hospital for treatment. No action was taken against his alleged assailants.<sup>200</sup>

Mr. Martinez also provided several other recent accounts of alleged Border Patrol misconduct and excessive use of force.<sup>201</sup> According to Mr. Martinez, the more serious abuse cases are turned over to civil rights attorneys for appropriate legal action.<sup>202</sup>

One case described by Mr. Martinez involved a U.S. citizen of Mexican descent whose citizenship documents were allegedly declared fraudulent by a Border Patrol agent. The victim was hit in the face by the agent, handcuffed, and taken to a detention center where he was held for 3 hours, according to Mr. Martinez. Although the victim told agents, "I was born here; this is my country," he alleges the officers retorted, "This is not your country; you come from Tijuana."<sup>203</sup>

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195 Ibid., pp. 84–85.

196 Ibid., p. 85.

197 Ibid.

198 Martinez Statement, p. 5.

199 Hermelino Sandoval Martinez, testimony, San Diego Transcript, vol. 1, p. 91. See Also *Frontier Injustice*, pp. 11–12 for a description of this case.

200 Margarito Cruz, testimony, San Diego Transcript, vol. 1, p. 94.

201 Martinez Statement, pp. 6–7.

202 Martinez testimony, San Diego Transcript, vol. 1, p. 113.

203 Ibid., p. 7.

Several community representatives participating in the San Diego forum expressed a very different point of view regarding Border Patrol and INS operations. Ben Seeley, the southern California program director for the Federation of American Immigration Reform (FAIR), described FAIR as a national advocacy group for immigration reform and control and added, "We don't really get into law and order or civil rights abuses per se."<sup>204</sup> However, he stated that the best way to avoid human rights abuses would be "if we did a better job of stopping the source of the problem at the border."<sup>205</sup> He elaborated:

It's FAIR's opinion that if our Federal Government did what it was mandated to do—if it lived up to the terms of the 1986 Immigration Reform and Control Act, we would not be sitting here today talking about things like this, or, if we were, it would not be as highly visible.<sup>206</sup>

Mr. Seeley noted that FAIR is sometimes unfairly accused of being "a right-wing, racist group" but is in fact a population control group that supports "reasonable acceptable levels of immigration . . . we don't feel there is any reasonable or acceptable level of illegal immigration."<sup>207</sup>

Jack McGoldrick, representing the San Diego Crime Commission (a private group) and the Coalition for Immigration Law Enforcement (C-FILE), told the committees that there is a direct relationship between crime and civil rights violations: "where there is a large amount of lawless-

ness and crime, there are naturally large numbers of alleged civil rights violations."<sup>208</sup> Mr. Goldrick observed that "each [Border Patrol] agent arrests more criminals in one week than the average police officer does in 10 years."<sup>209</sup> Operating under this immense pressure, he continued, probably no other police department receives fewer complaints.<sup>210</sup>

Asserting that there is "a large, criminal element among the masses of illegals who have no regard for anyone's civil rights,"<sup>211</sup> he concluded that "more Border Patrol agents will greatly decrease the number of illegal crossings and deter others from making the attempt. In addition, the crime will decrease and the border will be less dangerous for both U.S. citizens and immigrants alike."<sup>212</sup> Observing that "the citizens of San Diego County can no longer tolerate or afford the problems caused by an uncontrolled border,"<sup>213</sup> he remarked:

The last 47 years, the Federal Government has not kept its commitment to the citizens of San Diego County. That commitment was to provide a secure and controlled border between the United States and Mexico. The U.S. Government has never provided the resources necessary, in either manpower or equipment, to enforce laws of the United States, and the result is chaos.<sup>214</sup>

In closing, Mr. McGoldrick recommended more Border Patrol officers be provided to enforce U.S. law, requiring Mexico to "repatriate its citizens to their inland homes," establishing a "fool proof"

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204 Ben Seeley, testimony, San Diego Transcript, vol. 1, p. 118.

205 Ibid.

206 Ibid., p. 119.

207 Ibid.

208 Jack McGoldrick, testimony, San Diego Transcript, Ibid., vol 1, pp. 120–21.

209 Ibid., p. 121.

210 Ibid., p. 122.

211 Ibid.

212 Ibid., p. 123.

213 Ibid., p. 122.

214 Ibid.

Social Security card, and diligently enforcing employer sanctions “against those who knowingly hire illegal aliens.”<sup>215</sup>

Muriel Watson, founder of the Light Up the Border program in San Diego, told the Advisory Committees that her interest and concerns relating to the border began many years ago. In 1973 she requested that the county board of supervisors inquire of the Federal Government “why the Border Patrol was being overwhelmed in their ability to prevent the flow of illegal immigrants.”<sup>216</sup> According to Ms. Watson, “There was an immediate response: dead silence. No one in any official position wanted to talk about the obvious situation.”<sup>217</sup> During the 1980s, she continued, “there was much discussion about immigration reform legislation being considered by Congress, and the law eventually enacted provided generous packets of amnesty for aliens which protected their civil rights as residents of the United States.”<sup>218</sup> While this resulted in a temporary slowdown of illegal crossings, she noted that, “by 1987, the influx began to grow again and led to another increase in violence along the border. Once again the option of silence took hold . . . and the reports of rape, robbery, and murder came in one-column-inch articles in the local papers as the usual police reports.”<sup>219</sup> Ms. Watson then described her efforts to create the Light Up the Border campaign:

In November of 1989 I asked friends, family and neighbors to join with me on a program of lighting up the border to bring attention, if we could, about the horrors

taking place in the dark canyons along Dairy Mart Road. This was a San Diego street that was not being patrolled by the police.

I inquired about permission necessary to park along the road and received the information that it was within the law to park our cars on a San Diego Street so long as we did not block the flow of traffic. We held several “Light Ups” with the cooperation of many concerned citizens who came and sat in their cars during the twilight and when the sun went down turned on the headlights for approximately 30 minutes and then left the area in an orderly fashion. The intent was to demonstrate for the public the dark and foreboding environment of Dairy Mart Road and illustrate the almost impossible task of protecting anyone who ventured into the area. This peaceful action seemed to break the code of silence surrounding the mission of the Border Patrol.<sup>220</sup>

This effort was opposed by immigrant rights groups who staged several counterdemonstrations. Light Up the Border resulted in increased debate and dialogue, and focused public attention on border violence and human rights issues.<sup>221</sup>

Ms. Watson observed that this “breaking of the code of silence surrounding illegal aliens” also resulted in many tangible benefits as elected officials became involved in addressing border safety issues.<sup>222</sup> She noted that the Department of Defense, the Army Corps of Engineers, and the National Guard “proceeded to build roads for the Border Patrol and place a fence along the international line which curtailed the flow of drugs in a most dramatic fashion. Lights were put into place and more lights are on the agenda.”<sup>223</sup> While

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215 Ibid., p. 124.

216 Muriel Watson, testimony, San Diego Transcript, vol. 1, p. 126.

217 Ibid.

218 Ibid., p. 127.

219 Ibid.

220 Ibid., pp. 127, 128.

221 For a vivid description of the Light Up the Border rallies, see Ricardo Chavira, “Hatred, Fear and Vigilance,” *Time Magazine*, Nov. 19, 1990.

222 Watson testimony, San Diego Transcript, vol. 1, p. 128.

223 Ibid.

acknowledging that these actions may not have slowed "the flow of illegal aliens," they have "brought a semblance of calm and protection to all involved," Ms. Watson concluded.<sup>224</sup>

Norman Hahn, Chairperson of the city of San Diego's 15-member Human Relations Commission,<sup>225</sup> addressed the forum on behalf of this official body. The commission authored and is implementing the city of San Diego's hate crimes reporting and tracking ordinance.<sup>226</sup> Mr. Hahn welcomed the Advisory Committees to San Diego and noting that San Diego is a border city, stated:

Our residents are particularly affected by Border Patrol practices that can and do harm the quality of human relations in our city. For example, many legal residents and U.S. citizens who are Latino have complained that they are frequently stopped and questioned, and sometimes harassed on the trolley, on the street, in front of their homes by Border Patrol agents demanding proof of citizenship and a green card. It is the experience of many residents that people are treated differently based on the color of their skin. And it appears that these incidents are the tip of the iceberg. We are aware of far more serious abuses which have led many local residents to believe that once they are in Border Patrol custody, their constitutional rights cease to exist. In the climate of accelerating immigrant bashing and heightened xenophobia, it is increasingly important that there be genuine accountability for an agency which is known to be overzealous in its efforts to fulfill its statutory charge. A two-tier system of law enforcement, based on skin color, undermines our community's relationship with the Border Patrol, and the quality of human relations in our community as a whole.<sup>227</sup>

In its statement, the city of San Diego's Human Relations Commission noted that city and county residents have strongly expressed their approval for civilian review mechanisms for complaints of law enforcement abuse. In calling for such a measure at the Federal level, the Commission asserted that:

An independent, civilian review mechanism is even more important with respect to law enforcement agencies, such as the Border Patrol, that have a strong daily presence in our community but are not locally controlled. It should come as no surprise that local residents perceive that they have no viable mechanism for ensuring that Border Patrol agents are accountable to the public, because in fact, they have none.

Civilian oversight would help to restore the public confidence and trust in immigration law enforcement agencies that is so deeply eroded today.<sup>228</sup>

Bobbie Morris, a member of the county of San Diego's Human Relations Commission<sup>229</sup> and chair of its Border Issues Subcommittee, offered a differing perspective on border issues. Based on work done by the subcommittee, Ms. Morris told the Advisory Committees that lack of control of the border directly affects the quality of life for those living in the county. It also results in "a disproportionate drain on the resources to support mandated programs, i.e., health, education, housing, criminal, and social services. As a result of this perceived burden, there is resentment and some violence against Hispanics/Latinos in general."<sup>230</sup> The commission also found that many groups, especially immigrants and migrant workers, probably do not report hate crimes "due to

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224 Ibid.

225 The Human Relations Commission was created in 1991 to advise city officials on methods for assuring that all citizens receive fair and equal treatment, and works to reduce bigotry and prejudice in San Diego. *See generally*, City of San Diego, Human Relations Commission, *Responding to Hate Violence*, October 1998, p. 1.

226 *See* City of San Diego Municipal Code §§ 52.9701-52.9708.

227 Norman Hahn, testimony, San Diego Transcript, vol. 2, pp. 9-10.

228 Ibid., p. 11.

229 This commission consisted of 15 members, 8 appointed by each supervisor. It has since been disbanded by the county.

230 Bobbie Morris, testimony, San Diego Transcript, vol. 2, p. 18.

language barriers, distrust of government authorities, fear of creating immigration-related problems, or lack of knowledge about hate crimes and how to report them."<sup>231</sup>

In responding to Committee questions, Ms. Morris stated that the County Human Relations Commission had, "never . . . in the 8 years I've been on the commission had someone come before us and say they were a victim of the Border Patrol."<sup>232</sup> She further commented that "a lot of what we are hearing is the Mexican violence done by Mexicans. . . . I mean its their own countrymen. . . ." <sup>233</sup> She suggested that the Advisory Committees consider the "effects on the people who are the recipients of the violence at the border who have nothing to do with it, people who are living in their homes, driving on the freeway."<sup>234</sup> Citing her own experiences, she told the panel that "I can't drive from my house here without passing the illegal aliens on the freeway in fear of hitting them."<sup>235</sup> Ms. Morris also recalled that Hispanic representatives were unwilling to participate in a law enforcement forum sponsored by her subcommittee. However, she added, "the Border Patrol sector chief has been very, very helpful whenever we had a forum or needed information. He is very, very willing to cooperate. He has never turned us down."<sup>236</sup>

Bill Radatz, a board member of the Centro de Asuntos Migratorios, an immigration assistance program in San Diego, expressed concern about the "growing feeling of hate and immigrant bash-

ing in our community."<sup>237</sup> Mr. Radatz said that he supported the creation of a review board for the Border Patrol. As a member of the Border Peace Patrol, a Quaker-affiliated group which observes activity at the border, he also expressed sympathy for the difficult challenge confronted by Border Patrol officers. "We set an impossible goal of trying to stop the immigration that we know is going to continue," he said.<sup>238</sup> The result, he explained, is frustration for the enforcement agents:

My sense, in talking to the border agents as we walk the border with the Peace Patrol, is that most of them are intent on doing the job that they have been asked to do, they're trying to do it well. Most are frustrated with the job, that they see . . . as an impossible job to accomplish. That creates the potential for violence. That is, if you're given a job you really cannot do anything about and cannot solve, that creates a tension level that I think continues to rise and presents the opportunity for abuse.<sup>239</sup>

Edith Cole, representing the Border Peace Patrol, confirmed this view:

Most of the agents we talked to expressed sympathy for the people on the other side of the fence who are forced to leave their homes in search of some kind of livelihood for their families. Many appear frustrated by the impossibility of effectively stemming the tide of immigrants, as well as apprehending drug runners and other criminals. Most of them, we believe, are trying hard to do a decent job under often difficult conditions

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231 Ibid.

232 Ibid., p. 26.

233 Ibid., p. 22.

234 Ibid., p. 19.

235 Ibid., p. 20.

236 Ibid., p. 26.

237 Bill Radatz, testimony, San Diego Transcript, vol 2, p. 32.

238 Ibid., p. 33.

239 Ibid.

and therefore feel angry when the accusation of abuse by a few agents becomes a perception of the Border Patrol as a whole.<sup>240</sup>

According to Ms. Cole, the establishment of better internal control mechanisms to deal with agents who abuse their power would “support the professional self-image and integrity” of those officers who are doing a good job.<sup>241</sup> She suggested that the apparent “entrenched policy of denying or covering up even serious incidents of abusive and racist behaviors . . . tend[s] to tarnish the professional image of the Border Patrol and destroy the morale of agents who are doing a decent job.”<sup>242</sup>

Paul Aceves, a representative of the Raza Rights Coalition, called for the “immediate dismantling of the Border Patrol and the removal of all military forces from the border.”<sup>243</sup> He characterized San Diego as “one of the most racist cities in the United States”<sup>244</sup> and charged that the United States is trying to impose a law enforcement solution on a socioeconomic problem and that militarizing the border serves to scapegoat American foreign policy failures in Latin America.<sup>245</sup> Mr. Aceves denounced the “media campaign to criminalize a sector of our community”<sup>246</sup> and in calling for the establishment of an open border, told the Advisory Committees that “we will not tolerate a national police force that has been specifically established to terrorize Chicano Mexicans by using gestapo tactics.”<sup>247</sup>

Augie Barenó, executive director of the Department of Transborder Affairs for the County of San Diego, alerted the Advisory Committees at the opening session of the 2-day forum in San Diego that they would hear many differing and often conflicting views on border-related issues. However, he cautioned:

I think what has been lost in those discussions—and I’m talking as a native San Diegan and as a person involved in border issues for many, many years—what we have lost is the higher ground where those issues can be part of our public dialogue, become part of our public debate. I think what you’ll find in border States is that there is no right or wrong, there is just a condition. And we either choose to build upon it or it tears us apart. I think what you’ll find here is that there is much passion in all the perspectives, but somehow, somehow, we cannot divorce ourselves from Mexico.

Baja California is a very dominant force in our lives. We have to find a way. We have to find the higher ground where this public discourse . . . the analysis of issues . . . the dialogue . . . the differences can reasonably play themselves out. I think that is what is missing.<sup>248</sup>

## Arizona

In 1994, a study conducted by professors from the Universities of Wisconsin and Arizona found that “incidents of mistreatment of individuals by U.S. Immigration authorities are widespread in Tucson, Arizona and the lower Rio Grande Valley, Texas.”<sup>249</sup> In a South Tucson sample of 166

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240 Edith Cole, Border Peace Patrol, “Written testimony submitted to the Joint Arizona and California Advisory Committee Forum on U.S./Mexico Border Related Civil Rights Issues, United States Commission on Civil Rights,” Apr. 17, 1993, pp. 2–3.

241 Ibid., p. 3.

242 Ibid.

243 Paul Aceves, San Diego Transcript, vol. 2, p. 48.

244 Ibid., p. 51.

245 Ibid., p. 47.

246 Ibid., p. 48.

247 Ibid.

248 Augie Barenó, testimony San Diego Transcript, vol. 2, pp. 9–10.

249 Robert E. Koulisch, Manuel Escobedo, Raquel Rubio-Goldsmith, John Robert Warren, *Final Report of the Border Interaction*

randomly selected households, 18.1 percent reported having “personally experienced an irregular encounter with immigration authorities.”<sup>250</sup> The majority of these cases involved verbal mistreatment (76.6 percent), while 63.3 percent involved legal mistreatment and 33.3 percent of the persons interviewed reported physical mistreatment.<sup>251</sup> The researchers found that interviews and other data suggest more physical mistreatment in South Tucson than in south Texas.<sup>252</sup> The report continued: “a plurality of the South Tucson respondents who reported mistreatment, 41.4 percent, experienced mistreatment at the border in Nogales, and 38 percent of the respondents experienced mistreatment, 60 miles north, on the streets of South Tucson or Tucson, which are adjoining municipalities. Similarly, a full 55.2 percent of the respondents experienced mistreatment at or near an international border such as Nogales, or Naco, Arizona.”<sup>253</sup>

In South Tucson, it was found that “the U.S. Border Patrol commits the largest number of abuses reported in this study.”<sup>254</sup> The Border Patrol was involved in 61.5 percent of the mistreatment cases. This was followed by both U.S. Customs and INS officers at 15.4 percent.<sup>255</sup> Also, the research revealed that more than 75 percent of the respondents in the South Tucson sample were citizens and that the ethnicity of the immigration

officer had virtually no bearing on the likelihood of an irregular incident.<sup>256</sup> Concluding that “there is no effective method for reporting grievances about INS misconduct,” the authors noted that only 3.3 percent of those reporting mistreatment “sought formal redress from the government.”<sup>257</sup>

In its February 1992 report, *Sealing Our Borders: The Human Toll*, the American Friends Service Committee found that after San Diego, southern Arizona reported the second largest number of abuses in immigration law enforcement between May 5, 1989, and May 4, 1991.<sup>258</sup> In fact, more than twice as many cases (308) were reported in Tucson than El Paso (153) during that period. The survey also found that more illegal or inappropriate seizures were reported in southern Arizona than in any of the other regions.<sup>259</sup>

The *Los Angeles Times*, in its extensive 1993 investigation of the Border Patrol, concluded:

If the U.S. Border Patrol is a rogue agency as its detractors insist, the most renegade branch is based here along the northern expanses of the Sonoran desert. . . . Within the last six months, an agent and a former agent were convicted in separate cases of smuggling drugs while on duty. Another agent was tried on charges of murder and assault, and a veteran investigator was locked up for perjury. . . .

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Project: A Comparative Study of U.S. Immigration Authorities and Border Communities in South Tucson, Arizona and South Texas (May 23, 1994), p. 2.

250 Ibid., p. 13.

251 Ibid., p. 14.

252 Ibid.

253 Ibid., pp. 14, 15.

254 Ibid., p. 21.

255 Ibid.

256 Ibid., p. 22.

257 Ibid., p. 21.

258 *Sealing Our Borders*, p. 39.

259 Ibid.

The tableau of corruption and misconduct at the Border Patrol's vast Tucson sector—responsible for most of Arizona—has drawn scrutiny from the FBI, Justice Department internal affairs investigators, Federal prosecutors and local law enforcement.<sup>260</sup>

Although resources were inadequate to conduct a full forum on site in Arizona, the Arizona and California Advisory Committees invited selected individuals from that State to address the public meeting in San Diego on April 17, 1993. A community panel consisting of lawyers, instructors, and immigrant advocates provided extensive insights into the magnitude of immigration-related human rights issues in Southern Arizona.

Guadalupe Castillo, a history teacher at Pima Community College in Tucson, told the panel that there is a long history of "U.S. invasions and conquests of Mexican territory, [which] left a legacy of violence and racism. If the life of the Mexican became cheap, civil and human rights became meaningless."<sup>261</sup> Legislation and social practice institutionalized the "second class status and denigration of Mexicans. . . . Government, law enforcement, the courts, and society tolerated, collaborated, and even encouraged vigilante terrorism as an extension of official power and control," Ms. Castillo asserted in her remarks.<sup>262</sup>

She then recounted several cases of alleged abuse in the Tucson area since 1976, concluding that these established a "pattern and practice of violence by law enforcement authorities."<sup>263</sup> In one incident, Ms. Castillo recalled that several Federal agencies (including the INS) entered a

Tucson social service agency and removed over 600 client files which were then used to detain and deport 150 undocumented persons to Mexico. Four women were indicted on 25 counts of alleged violations of Federal law in providing counseling to undocumented persons in the process of legalizing their status.<sup>264</sup>

She cited another case of alleged vigilante action, wherein three Anglo ranchers near Douglas captured, tortured, and robbed three Mexican undocumented workers. Two of the assailants were acquitted the third died before the trial.<sup>265</sup> Another case involved an alleged paramilitary organization that organized a Tucson contingent to patrol the border. Wearing hoods and carrying semiautomatic weapons, recounted Ms. Castillo, they terrorized undocumented persons, including a family with young children.<sup>266</sup> After reviewing several other more recent cases, Ms. Castillo concluded her remarks by demanding that "we have zero tolerance for human and civil rights violations at the border, just as we expect in any other place in the United States."<sup>267</sup> The border must be demilitarized and the Constitution made operational at the border, she insisted.

Ms. Castillo called for the establishment of a Federal civilian review commission for immigration law enforcement, noting that the Tucson City Council has endorsed the creation of such an entity.<sup>268</sup> She also recommended more aggressive Federal civil rights enforcement by the U.S. Department of Justice and congressional hearings along the border.<sup>269</sup>

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260 "Turmoil in the U.S. Border Patrol," *Los Angeles Times*, Apr. 23, 1993.

261 Guadalupe Castillo, testimony, San Diego Transcript, vol. 2, pp. 54–55.

262 *Ibid.*, p. 55.

263 *Ibid.*, p. 56.

264 *Ibid.*, p. 57.

265 *Ibid.*, p. 58.

266 *Ibid.*

267 *Ibid.*, p. 60.

268 *Ibid.*

269 *Ibid.*, p. 61.



As discussed earlier in this report, immigration law enforcement has taken a much greater responsibility and role in drug interdiction efforts. Both the Anti-Drug Abuse Act of 1986 and the Immigration Act of 1990 formally brought the Border Patrol into the "War on Drugs."<sup>270</sup> Border Patrol agents were provided with high-powered weapons and sophisticated surveillance and communication equipment.<sup>271</sup> Arizona is considered to be among the prime drug corridors, due to its isolation and rugged border terrain.<sup>272</sup>

According to an account published in *Atlantic Monthly* in May 1992, there are at least 10 Federal agencies involved in drug interdiction in southern Arizona.<sup>273</sup> Commenting on this massive effort, the journalist observed:

It is a big operation. Officially the federal government allotted \$11.7 billion this year to fight drugs, 70 percent of which went to law enforcement. The real expenditure was higher, hidden in more obscure budgets and intentions. I was told that one Border Patrol chief had recently ordered his agents not to worry anymore about catching aliens, to go out and catch drug runners. The man needed to produce drug seizures to please Washington. The search for progress is the guiding principle of endless battle: in Vietnam we counted enemy corpses; here we count pounds. You might think there would be plenty of pounds to go around, but the seizures are rare, and the agencies squabble incessantly over money and reputations. In the desert their trackers track one another. Were it not for a bookkeeping system that allows everyone involved in a seizure to claim credit simultaneously, the competing agencies might resort to sabotage.<sup>274</sup>

According to the *Los Angeles Times*, "Some agents complain that commanders place so much emphasis on amassing drug seizures—thus impressing top brass and lawmakers in Washington—that supervisors turn a blind eye to evidence of wrongdoing by agents."<sup>275</sup> Human rights activists believe that this intensified and highly dangerous mission results in many more abuses by the Border Patrol. Alleging that "the borders have become war zones," one legal expert commented that the militarization of the border to interdict drugs resulted in a new attitude: "When the war on drugs came about, everybody shrugged their shoulders and basically said, 'Well, I'll give up a little of my civil rights to prevent the drugs.'"<sup>276</sup>

In responding to an Advisory Committee member's inquiry, Tucson lawyer and activist Jesus Romo Vejar, commented that "the vast majority of people who cross the border are undocumented peaceful persons who come to this country because they are seeking jobs."<sup>277</sup> He further suggested that possibly an agency other than the Border Patrol should be responsible for drug interdiction. "But, if the Border Patrol is empowered to do it . . . they must be properly trained and supervised and accountable for abuses."<sup>278</sup> He explained:

The problem we have is that we have people who are crossing the border peacefully but if the place where they're crossing has been determined to be a drug corridor, it is very likely that they will be identified as drug runners rather than what they are—men, women, and children who are just coming to work.<sup>279</sup>

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270 See chap. II, fn. 18 and 32.

271 *Brutality Unchecked*, p. 5.

272 "Turmoil in the U.S. Border Patrol," Apr. 22, 1993.

273 William Langewiesche, "The Border," *Atlantic Monthly*, May 1992, p. 76.

274 *Ibid.*

275 "Turmoil in the U.S. Border Patrol," *Los Angeles Times*, Apr. 23, 1993.

276 Isabel Garcia de Romo, briefing for Arizona, California, New Mexico and Texas Advisory Committees, El Paso, May 18, 1991.

277 Jesus Romo Vejar, testimony, San Diego Transcript, vol. 2, pp. 73–74.

278 *Ibid.*, p. 74.

279 *Ibid.*

Mr. Romo described several cases of alleged misconduct by immigration authorities, and told the Advisory Committees that "the cases we have encountered in the Tucson area are enormous . . . we encounter a huge number of cases that involve verbal abuse, a great number of cases that involve beatings by Border Patrol."<sup>280</sup> Acknowledging that not all Border Patrol agents are culpable, he, nonetheless, observed that the lack of proper screening and training of prospective agents, combined with an absence of effective supervision and accountability, can lead to dangerous situations.

As an active immigrant rights attorney, Mr. Romo also expressed frustration with the difficulty in obtaining factual information from Federal agencies, including confirmation of incidents and the names of agents involved, which are not released. Because of his many experiences, he has concluded that there is no administrative accountability, "no effective complaint procedure . . . no investigations, and definitely no discipline of officers—none that we have been able to detect. . . . With regard to judicial accountability, with judges and juries, they are essentially ineffective when it comes to these kind of cases."<sup>281</sup>

Richard Gonzales, a private attorney in Tucson, who formerly served as a Public Defender and a member of the Pima County attorney's antidrug strike force, recalled a case in 1976 when he was first made aware of problems in the Border Patrol.<sup>282</sup> In that case, two Border Patrol agents were on patrol in Sweetwater Pass in Pima County, a remote area of Organ Pipe National Park frequently traveled by undocumented workers entering the United States. Three unarmed Mexican males were walking along the trail when they tripped an electronic sensor, alerting the agents to their presence. One agent confronted the men, while the other approached from behind.

Before questioning, one of the Mexicans turned and ran toward the border. One of the agents chased him, shouting for him to stop. When he failed to do so, the agent fired three shotgun blasts hitting the man in the back, severing his spinal cord and leaving him a quadriplegic. The offending agent suggested that the agents leave the wounded man and remain silent. However, his partner refused to agree, and the victim was taken to a local hospital. The incident was reported to authorities not by the agents, but by the attending physician. The agent who fired on the undocumented man was subsequently indicted in Pima County Superior Court for assault with a deadly weapon.<sup>283</sup> According to Jesus Romo Vejar, the agent was convicted but ultimately served only a few weekends in jail.<sup>284</sup>

Sixteen years later, on June 12, 1992, a similar case occurred in rugged canyon country near Nogales. In this case, five Border Patrol agents set up a stakeout in a remote location known as Maricopa Canyon. Two of the agents, Thomas Watson and Michael Elmer, pursued three men whom they assumed were lookout scouts for drug smugglers. Agent Watson fired warning shots in the air and the men fled back toward Mexico. Agent Elmer saw one of the men, Dario Miranda Valenzuela, running over a ridge approximately 40 yards away. The man was unarmed and running away from the agent, who proceeded to fire a dozen times with his semiautomatic AR-15 carbine, hitting Miranda Valenzuela twice in the back. According to Agent Watson, the two agents did not call for medical assistance but instead considered planting a weapon on the victim to justify the shooting. After shooting Miranda Valenzuela, Elmer also fired a shot at another fleeing man. He then dragged Miranda Valenzuela 175 feet and hid him in a crevice where he died. Doctors estimate Miranda may have lived

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280 Ibid., p. 62.

281 Ibid., p. 68.

282 Richard Gonzalez, testimony, San Diego Transcript, vol. 2, pp. 93-94.

283 Ibid.

284 Vejar Testimony, San Diego Transcript, vol. 2, pp. 64-65.

for 30 minutes after he was shot and that he might have been saved if medical aid had been summoned. The shooting was reported by Agent Watson the following day, June 13, approximately 15 hours after the incident.<sup>285</sup>

Comparing the Elmer case to the shooting incident 16 years earlier, Mr. Gonzales told the Advisory Committees that in his personal experience, "it seems that the Border Patrol has remained constant in its inability to conform to accepted standards of appropriate law enforcement conduct."<sup>286</sup>

During the investigation of the Miranda Valenzuela shooting, it was learned that Agent Michael Elmer had been involved in several other incidents. In March 1992 he fired multiple shots at three or four men in a remote area, and this went unreported. In this same time period, he arrested a man on drug charges and pistol whipped him on the head after he was handcuffed. The victim was denied medical treatment for his laceration. On the same day, Elmer fired on a group of people, emptying two, 20 round clips from his M-16. As it turned out, these were unarmed men, women, and children. Although there were five other agents present, the incident was not reported. It became known only after the Miranda Valenzuela shooting investigation began.<sup>287</sup> In an investigation by the U.S. Department of Justice, Mr. Elmer's ex-wife told Federal officials that her husband had once taken cocaine seized in a drug bust and brought it home for their personal use.<sup>288</sup>

Elmer was arrested by Arizona authorities and became the first Border Patrol agent to be charged and tried for murder. During his trial, numerous violations of policy were admitted by Elmer and other agents: using an unauthorized assault rifle not issued by the agency; the firing of warning shots, which are prohibited; the failure to report fired rounds—every shot must be documented; attempting to conceal shootings by replacing spent bullets with others saved from target practice; firing on a fleeing person.<sup>289</sup>

Testimony during the December 1992 murder trial revealed that the firing of warning shots was common practice.<sup>290</sup> Several agents testified that warning shots are fired nightly in the remote canyons along the border.<sup>291</sup> Furthermore, agents testified that shootings are so common that no one bothers to report them, despite a policy requiring reporting of all weapons discharges.<sup>292</sup> Agent Watson testified that "everyone at the station always had a couple of extra rounds" so that spent bullets would be replaced without the need to report that shots were fired.<sup>293</sup> Other testimony revealed that agents did not report another shooting where a wound was inflicted on an undocumented person.<sup>294</sup>

Thomas Watson, Elmer's partner who reported the Miranda shooting, was fired in April 1993. He alleges that his termination was in retribution for his disclosures: "It's a big coverup: I broke the code of silence and they want to get back at me," said Watson, a 5-year veteran once decorated for

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285 Ibid., pp. 95, 96. See also *Frontier Injustice*, p. 5, and Debbie Nathan, "The Killing Fields at the Border," *Los Angeles Weekly*, Jan. 8-14, 1993 (hereafter cited as Nathan, "Killing Fields").

286 Gonzalez Testimony, San Diego Transcript, vol. 2, p. 96.

287 Ibid., pp. 101-02.

288 See Nathan, "Killing Fields."

289 Tessie Borden, "Trial Mars Border Patrol's by-the-rules Image," *Arizona Daily Star*, Dec. 15, 1992, p. 1. (hereafter cited as Border, Trial Mars Image).

290 *Frontier Injustice*, p. 27.

291 Ibid.

292 Ibid., p. 28.

293 Ibid.

294 Border, Trial Mars Image, p. 1.

pulling two immigrants from a raging canal. "I knew I was doing the right thing by turning him in for murder, even though I embarrassed them."<sup>295</sup>

Mr. Elmer was acquitted of all charges in the State trial, including covering-up the incident (which he had explicitly admitted). In what was considered to be the first time that Federal charges have ever been brought against a Border Patrol agent for killing a person while on duty, a Federal grand jury, in August 1993, indicted Mr. Elmer for civil rights violations in connection with the death of Dario Miranda Valenzuela.<sup>296</sup>

A Federal jury in Phoenix acquitted Mr. Elmer of the charges of civil rights violations and obstruction of justice in February 1994.<sup>297</sup> The Mexican Counsel in Phoenix reacted: "It is a decision that we find inexplicable."<sup>298</sup> Mr. Elmer's attorney responded that the jurors "clearly sympathized with the difficult task of the Border Patrol at an increasingly militarized border."<sup>299</sup>

In a civil lawsuit filed on behalf of the family of Dario Miranda Valenzuela, the plaintiffs allege "that as a direct result of Border Patrol and INS failure to supervise their agents or enforce the applicable policies and procedures, Dario Miranda Valenzuela was wrongfully shot and killed by defendant Elmer."<sup>300</sup>

In his statement before the Advisory Committees in San Diego, Mr. Gonzales also recalled that as deputy Pima County Attorney, he became aware that law enforcement officers with whom he worked considered border patrol agents to be "ill-trained, undisciplined, and trigger happy."<sup>301</sup> After leaving the prosecutor's office, he represented several Border Patrol agents who testified before a special Federal study commission on immigration reform.<sup>302</sup> According to Mr. Gonzales, their testimony alleged "abusive tactics that were employed on a day-to-day basis in the Tucson and Nogales sector."<sup>303</sup> He described one of these alleged activities:

Among other things, they told the Commission how the agents would sometimes play a game to see which agent could stuff the most undocumented persons in their "Ram Charger" (vehicle) in one day. They would do this by driving through the streets of Tucson, picking up anybody that looked Mexican and failed to produce proper identification upon request. They would then take the persons into custody and place them in the vehicle. They would not transport any one to the station for processing until they couldn't stuff anymore persons in the truck—that was how you determined the winner.<sup>304</sup>

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295 "Turmoil in the U.S. Border Patrol," *Los Angeles Times*, Apr. 23, 1993.

296 Patrick J. McDonnell, "Border Agent Faces Civil Rights Charges In Immigrant Death," *Los Angeles Times*, Aug. 13, 1993.

297 Sebastian Rotella, "Ex-Border Patrol Agent Acquitted in 1992 Slaying," *Los Angeles Times*, Feb. 4, 1994.

298 Ibid.

299 Ibid.

300 Marqarito Tello vda. de Miranda et. al. vs. Michael Andrew Elmer, Civ-98-183-TUC-JMR (D. Ariz. 1998), p. 19.

301 Gonzalez Testimony, San Diego Transcript, vol. 2, p. 97.

302 The panel, established by the Congress, was chaired by Father Theodore Hesbergh, former President of Notre Dame University and former Chair, United States Commission on Civil Rights.

303 Gonzalez Testimony, San Diego Transcript, vol. 2, p. 98.

304 Ibid.

Lynn Marcus, coordinator, of the Southwest Refugee Rights Project, told the Advisory Committees convened in San Diego that she has visited numerous INS facilities in the Southwest and spoken with many detainees.<sup>305</sup> In the course of her work, Ms. Marcus has learned of various accounts of alleged misconduct by INS and Border Patrol officials. In June 1992, she provided the Advisory Committees with a summary of four incidents.<sup>306</sup> One case involved an undocumented man riding a bicycle in Nogales, who was allegedly apprehended and struck in the legs by a Border Patrol agent. When taken to the Border Patrol station, he reportedly asked why he had been subjected to such treatment and allegedly was told, "You know what happened to that black guy in Los Angeles? Well, that can happen to you, too."<sup>307</sup> The man was taken to a processing center. An asthmatic, he carried a respirator which allegedly was taken from him, resulting in an asthma attack. He was taken to a hospital, where a doctor indicated that his leg was apparently fractured. According to a legal worker who interviewed the complainant at the time, the man was denied medical attention for the fracture and was deported to Mexico.<sup>308</sup>

In an extensive review of INS detention facilities, an international human rights organization found that:

Conditions in detention facilities used by the INS are dreary and often abusive. Due process and other legal rights often are ignored. Guards and administrators who are responsible for abusing a detainee or otherwise interfering with the exercise of his or her legal rights invariably escape punishment. Under these conditions, the INS's expanded use of detention as a means to discourage immigration raises serious human rights concerns.<sup>309</sup>

Despite a 1988 Federal court injunction against the INS finding in part that detainees were being denied adequate access to legal representation,<sup>310</sup> human rights investigators found that "serious difficulties with access to counsel continue" at INS processing facilities.<sup>311</sup> Reporting on several serious cases of alleged physical abuse of detainees, they also concluded that the incidents "demonstrate the complete inadequacy of INS internal complaint procedures."<sup>312</sup>

Ms. Marcus' testimony in San Diego focused on this inadequacy, which she stated "allows the officers to engage in violence and other forms of abuse with impunity."<sup>313</sup> She spelled out the experiences that have led her to conclude that "the Department of Justice's supposedly independent system of investigating complaints does not work."<sup>314</sup> She told the Committees that the Department does not disseminate information concerning the complaint process and, therefore,

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305 Lynn Marcus, testimony, San Diego Transcript, vol. 2, p. 78. The Southwest Refugee Rights Project is a Tucson-based project which was founded as a part of a nationwide effort to monitor the treatment of adults and minors in the custody of the INS. The project seeks to improve detainees' access to counsel and to enforce court orders and settlement agreements affecting the rights of detainees.

306 Lynn Marcus, attorney, Southwest Refugee Rights Project, "Summary of Four Recent Incidents in Southern Arizona," June 11, 1992 (presented to New Mexico and Texas Advisory Committees, El Paso, June 12, 1992).

307 *Ibid.*, p. 1.

308 *Ibid.*

309 *Brutality Unchecked*, p. 51.

310 *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988) *aff'd* sub. nom. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990).

311 *Brutality Unchecked*, p. 63.

312 *Ibid.*, p. 55.

313 Marcus Testimony, San Diego Transcript, vol. 2, p. 78.

314 *Ibid.*

“many people don’t know where or how to make a complaint.”<sup>315</sup> When complaints are made, Ms. Marcus continued,

they bounce from office to office without much being done. Prosecution is declined and investigations are concluded without the victims having been interviewed or even informed. In the end, no officer is prosecuted, fired or suspended. The system is flawed and ineffectual, and it sends a message to officers that they can continue to commit abuses without suffering any consequences.<sup>316</sup>

Ms. Marcus described a situation in 1990 where numerous similar complaints from detainees at the INS facility in El Centro, California led legal advocates to conclude that “a culture of violence was brewing among the detention officers” at the center.<sup>317</sup> Ms. Marcus described several instances where complaints were filed with the Department of Justice, Office of Inspector General (OIG). In each case, she reported, “complainants were not interviewed or were only interviewed at the insistence of lawyers or outside agencies. Minimal information was gathered by OIG and sent to Washington. Prosecutive interest was declined within one or two days and subject officers were not interviewed.”<sup>318</sup> Ultimately, Ms. Marcus told the committees, a lawsuit was filed by immigrant rights attorneys in order to stop the alleged beatings at the detention facility.<sup>319</sup>

In another case, Ms. Marcus recalled that a complaint she filed in 1992 “bounced around [and] the Civil Rights Division of the Justice Depart-

ment declined prosecutive interest. The local OIG office sent it to the OIG in Washington, which sent it to INS headquarters in Washington, which sent it to the INS regional investigations in Laguna Niguel, California. . . . Regional investigations of the INS sent the case to the Border Patrol in Tucson.”<sup>320</sup> At the time of the Advisory Committee forum in San Diego, she was told the case is “still under investigation.”<sup>321</sup>

In response to a question, Ms. Marcus noted that the Border Patrol’s statistic reflecting only one complaint for every 17,000 apprehensions “is perfectly meaningless.”<sup>322</sup> She explained:

People are perfectly justified in not making complaints if the system is useless. I can’t advise somebody, make this complaint and it will get you somewhere. I have to advise somebody, well, make this complaint and it will get you nowhere—at least there will be a piece of paper. That’s the best I can tell people.<sup>323</sup>

Ramona Corrales works with the Chicanos Por La Causa, a nonprofit agency in Somerton, about 13 miles from the Arizona-Mexico border near Yuma. An immigration counselor who is certified by the INS, Ms. Corrales described a very strained relationship between community-based organizations and the INS and Border Patrol. She told the Advisory Committees:

I cannot count the times that clients have told me that the Border Patrol or INS agents have told them that Chicanos Por La Causa or other nonprofit agencies have no business doing immigration casework.<sup>324</sup>

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315 Ibid.

316 Ibid., pp. 78–79.

317 Ibid., p. 79.

318 Ibid., p. 81.

319 Ibid.

320 Ibid., p. 83.

321 Ibid.

322 Ibid., p. 92.

323 Ibid, p. 92–93.

324 Ramona Corrales, testimony, San Diego Transcript, vol. 2, p. 111.

On many occasions the Border Patrol will take away any documents that the client has on them and will tear the documents. . . . The Border Patrol will tell clients that their case will be unfavorably decided or delayed if they insist on going to a nonprofit agency. Officers will contradict information that is told to the clients regarding their rights in the United States, and they tell the clients that all is lost unless they immediately agree to return to Mexico.

Many clients can seek the right to remain in the United States. Unfortunately, many times they give up this right because they're afraid of the immigration.<sup>325</sup>

Ms. Corrales said that document confiscation is a frequent problem and that "border crossing cards are routinely lifted at the port of entry."<sup>326</sup> She recalled that several years ago, one of the officers at the port of entry in San Luis, Arizona, was "so abusive that demonstrations were held on both sides of the border. . . . He had lifted so many border crossing cards."<sup>327</sup> According to Ms. Corrales, the offending officer was transferred to Hawaii.<sup>328</sup> She posed further questions for the committees: "Why don't clients complain about the abuses? To whom? To whom are they going to complain? To the same agency that is threatening to deport them? To the fellow employees of the officer who abused them?"<sup>329</sup>

Also appearing before the Advisory Committees in San Diego was Alma Barajas, a paralegal worker with Southern Arizona Legal Aid in Nogales. She expressed concern about racism and the "vast number of human rights violations" along the U.S.-Mexico border.<sup>330</sup> She advised the

panel that the Border Patrol is "conducting unlawful stops of vehicles based on their prejudices and do not hesitate to use exorbitant constraints/authority to intimidate the citizens of this community."<sup>331</sup> Relating a personal experience, Ms. Barajas recounted that she had been followed by a Border Patrol agent for approximately 10 miles when a second patrol car joined in. At this point, the signal lights were flashed. When she pulled over, one officer approached her while two others waited behind her vehicle. One of the agents, she said, pointed a gun at the taillight of her car. When she questioned the officer concerning the legal basis for the stop, the officer allegedly responded: "Don't you ever expect to get stopped?"<sup>332</sup> Ms. Barajas reported another similar case where weapons were allegedly drawn, and in this case, damage was caused to the victim's vehicle.<sup>333</sup>

Ms. Barajas described several cases wherein victims of alleged misconduct had directly contacted her and recounted their experiences. One such case involved a 35-year-old female who allegedly was apprehended by a Border Patrol agent, taken to a nearby lake, intimidated with a gun, and sexually abused for almost 3 hours. She required medical attention after the incident, according to Ms. Barajas.<sup>334</sup> Ms. Barajas added that local hospitals are "pressured by the INS to give them specific details of the bills incurred by undocumented aliens who have U.S. citizen children. Since this information is privileged, the hospital simply states that there are no outstanding debts. . . . INS interprets [this] as if public

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<sup>325</sup> Ibid., p. 112.

<sup>326</sup> Ibid., p. 115.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid., p. 116.

<sup>329</sup> Ibid.

<sup>330</sup> Alma Barajas, testimony, San Diego Transcript, vol. 2, p. 117.

<sup>331</sup> Ibid., p. 118.

<sup>332</sup> Ibid., pp. 118-19.

<sup>333</sup> Ibid., p. 119.

<sup>334</sup> Ibid., p. 117.

health care paid for the services and labels them a public charge; as a result, they [prosecute] these individuals."<sup>335</sup> Ms. Barajas concluded her remarks by telling the committees that "racism abounds" in many institutions in Nogales, and that public agencies attempt to use the INS to obtain information upon which they can deny services to community residents.<sup>336</sup>

In July 1992 U.S. Senator Dennis DeConcini announced his support for a citizens review board to monitor allegations of violence along the border. "The Border Patrol in my state . . . has had many incidents of abuse toward apprehension of illegal aliens . . . and sometimes legal aliens."<sup>337</sup> The Senator continued:

It's not a pleasant environment to be hanging out every night with a bulletproof vest on, watching people crossing, chasing them on foot or in a pickup truck. It's a tough job. People get stressed out. But that's no excuse for violating human rights. . . .<sup>338</sup>

The director of the Immigration Law Enforcement Monitoring Project of the American Friends Service Committee addressed the Advisory Committees in San Diego. She discussed research conducted in the Rio Grande Valley, Texas. In a sample of the 250 interviews conducted, she noted that about one fourth of the respondents indicated "irregular or negative encounters with immigration authorities."<sup>339</sup> Ms. Jimenez stated that "it is without doubt that of all the victims that I have interviewed in the survey, none knew that they could complain and none knew where they could

complain, which is an interesting phenomenon to observe. And it indicates to us that much work has to be done in order to inform people of their right to complain and what processes exist for them to bring their cases to the knowledge of proper authorities."<sup>340</sup> In April 1991, she stated, ten notarized complaints of alleged misconduct were sent to the Civil Rights Division of the Department of Justice.<sup>341</sup> According to Ms. Jimenez, the Department responded that none of the cases were substantiated, "despite the fact that they were properly attested to by the victims and signed."<sup>342</sup>

She concluded that the validity of the many complaints lodged against immigration law enforcement entities "cannot be determined until there is a system [where] people know they can complain and thorough investigations can be done."<sup>343</sup> She elaborated:

Who is this fair to? I think it's fair to both people who suffer abuse, but it's also fair to the agents who are accused of that abuse in the sense that as long as communities perceive that there is no resolution of complaints, the agents themselves suffer from credibility in communities and a deterioration of their relationship in those communities.

And, so, in a democratic society it is proper to look for systems in which checks and balances can be implemented in terms of those who have power and those who don't, and systems that will lead to objective conclusions and also the protection of human and civil

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335 Ibid., p. 119.

336 Ibid., p. 120.

337 Copley News Service, "Arizona Senator suggests citizen panel to monitor alleged border violence," *El Paso Times*, July 1, 1992.

338 Ibid.

339 Jimenez, testimony, San Diego Transcript, vol. 2, p. 128.

340 Ibid., pp. 131, 132.

341 Ibid., p. 132.

342 Ibid.

343 Ibid., pp. 133-34.



rights in the operation of any government entity, but particularly in those entities where we have given the consent to use deadly force.<sup>344</sup>

Ms. Jimenez also reviewed the principal findings of her organization's 1992 report, *Sealing Our Borders*. Among these are the following:

- Significant and serious abuses continue to occur in the enforcement of immigration law along the U.S.-Mexico border and in South Florida.
- A significant percentage of the victims are citizens, legal residents, or persons who are otherwise residing in the U.S. under color of law.
- The U.S. Border Patrol, the largest enforcement division of the Immigration and Naturalization Service, is responsible for the greatest number of abuses.
- A key factor underlying the continual abuse of persons by immigration law enforcement officers is the lack of an adequate system, either internal or external, of review of complaints and officer accountability.<sup>345</sup>

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<sup>344</sup> Ibid., p. 134.

<sup>345</sup> *Sealing Our Borders*, pp. 3-4.

## IV. The Complaint Process

In a major investigative report, the *El Paso Times* found that:

despite a wave of brutality reports, the powerful federal agencies that guard the U.S.-Mexican border rarely reveal how they discipline their problem agents.<sup>1</sup> They block public scrutiny with extreme secrecy rules and they deflect citizens' abuse complaints.<sup>2</sup>

The 6-month inquiry found that although the majority of Border Patrol agents are "hard working professionals, the agency's rogue reputation is abetted by a poor track record on investigating and prosecuting alleged abusive agents. . . ."<sup>3</sup>

According to the newspaper, the Department of Justice was uncooperative with its request for information. Despite months of telephone calls, extensive correspondence, and the intercession of a U.S. Senator, the Federal agency failed to respond to a series of written inquiries, including questions concerning the complaint process. Among those not answered: Is there a procedure

for tracking repeated complaints against INS personnel to detect problem employees?"<sup>4</sup> Five requests for information under the Federal Freedom of Information Act (FOIA) failed to produce information on statistical trends, investigative procedures, and public access to the complaint process.<sup>5</sup>

The Department of Justice did provide limited statistical data. For example, the FOIA request inquired about the status of 22 well-documented allegations of abuse by Border Patrol agents in El Paso. Of the 22, the agency reported that it had no record of 14.<sup>6</sup> It further responded that it could not divulge the names of the agents involved, whether or not investigations were being undertaken, or the results of the investigations.<sup>7</sup>

The Department also provided the *El Paso Times* with statistics summarizing the number of INS cases referred to the Civil Rights Division for fiscal years 1989, 1990, and 1991. Table 1 provides this data.

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1 Paul Salopek, "Wall of Silence—Border Law and Abuse," *El Paso Times*, Dec. 6–8, 1992 (hereafter cited as *Wall of Silence*).

2 *Ibid.*, Dec. 6, 1992, p. 1.

3 *Ibid.*, p. 11a.

4 *Ibid.*

5 *Ibid.*

6 *Ibid.*

7 See 809 F. Supp. 487, 500–504, See also *Americas Watch United States—Frontier Injustice: Human Rights Abuses Along the U.S. Border with Mexico Persist Amid Climate of Impunity* (New York: May 1993) (hereafter cited as *Frontier Injustice*) p. 39.

The agency further indicated that 59 civil rights abuse investigations were pending against the INS and that one-sixth of the Department's total of 1,400 total misconduct allegations under investigation at the time (Fall 1992) involved the INS.<sup>8</sup> The investigative report determined that federal investigators failed to "find the agents implicated in three of the eight most highly-publicized Border Patrol shootings and beatings in El Paso since 1987."<sup>9</sup>

The *El Paso Times* investigation utilized volunteers with hidden tape recorders who approached INS and Border Patrol officers to inquire about the complaint process. According to the *El Paso Times*, in half of the encounters the Federal agencies did not enforce their own complaint regulations.<sup>10</sup> The reporters found that "irregularities marred fully half of the eight taped conversations with Immigration employees. The agents' behavior ranged from bafflement at proper complaint procedures to outright bullying."<sup>11</sup> In one instance, an immigration inspector referred a complainant to a fruit inspector with the U.S. Department of Agriculture.<sup>12</sup>

The investigation revealed that the Federal Government "doles out erratic punishment or none at all to Border Patrol agents involved in . . . abuse cases in El Paso."<sup>13</sup> Veteran Border Patrol agents told the reporters that the agency "has turned the capture of undocumented immigrants into a dehumanizing numbers game governed by unofficial arrest quotas."<sup>14</sup> In an editorial calling

for major reforms, the newspaper noted that "one of the fundamental recommendations of the U.S. Civil Rights Commission a decade ago has been discarded: pre-printed public complaint forms. . . . Having supervisors take down information by pencil on blank pieces of paper isn't just unprofessional. In fact, its absurd."<sup>15</sup>

In an analysis of the INS complaint process, Americas Watch, a division of Human Rights Watch, found that, agents dissuade victims from filing complaints and dissuade fellow agents from reporting abuses; intimidating countercharges for criminal misdemeanor or felony charges are sometimes brought against victims of abuse; and victims fear that they will be held in jail as material witnesses for extended periods of time.<sup>16</sup>

The human rights investigators also found many deficiencies in the processing of complaints. Among problems they detected were difficulty in accessing the complaint process and failure to notify complainants about the status of their case.<sup>17</sup> The report found "jurisdictional overlaps or gaps. . . . The diffusion of responsibility for review allows complaints to float through the system without anyone assuring that agents responsible for abuse receive any sanction."<sup>18</sup>

The process for complaint investigations may involve the Office of Inspector General (OIG), Department of Justice; the Criminal Section of the Civil Rights Division (Department of Justice), the Federal Bureau of Investigation; the U.S. Attorney; and the specific agency involved, either INS

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8 *Wall of Silence*, Dec. 6, 1992, p 11a.

9 *La Migra*, Mar. 12, 1993, p. 7.

10 *Wall of Silence*, Dec. 7, 1992, p. 4. *See also La Migra*, Mar. 12, 1993, pp. 9-10.

11 *Ibid.*

12 *Ibid.*

13 *Wall of Silence*, Dec. 6, 1992, p. 10a.

14 *Ibid.*, p. 11a.

15 *Wall of Silence*, Dec. 8, 1992, p. 6a.

16 *Frontier Injustice*, pp. 33-34.

17 *Ibid.*, pp. 35-36.

18 *Ibid.*, p. 35.

or the Border Patrol. There is considerable discretion in how individual cases are handled, and many are eventually referred back to the agency against which the complaint was filed.<sup>19</sup> Americas Watch also found that the internal review of INS agents accused of committing abuses is "shrouded in secrecy, with the public allowed only occasional glimpses of the procedures used to identify and punish abusive agents . . . those rare opportunities display a review system that is woefully inadequate. Because of its damning nature, and due to camaraderie within the ranks of the INS and its subagency, the Border Patrol, information about internal review of agents is fiercely guarded."<sup>20</sup>

In its investigation, the *Los Angeles Times* found that even "high ranking immigration and Justice Department officials express frustrations with the result: a slow-moving, uneven internal oversight process that often fails to deter wrongdoing by agents."<sup>21</sup> It also found "that investigations of misconduct drag on, allowing wrongdoers to remain on duty for months and prolonging uncertainty for those wrongly accused."<sup>22</sup> In fiscal year 1992, the Office of Inspector General received 463 allegations against agents. Formal investigations were opened in 30 cases, covering allegations ranging from beatings to bribery. Nine of the 30 cases were still under investigation at the time of series' publication; most of the rest were found to be unsubstantiated.<sup>23</sup>

The *Los Angeles Times* reported that "jurisdictional squabbles" sometimes interfere with investigations; that Border Patrol agents are sometimes "dissuaded" from reporting suspected misconduct and that the Office of Inspector General is "spread too thin" and includes former Border Patrol agents "hesitant to pursue allegations against one time colleagues."<sup>24</sup> The state prosecutor in the Michael Elmer case commented that "there is a lack of accountability, or a procedure to ensure that agents are responsible for their actions."<sup>25</sup>

Many of the deficiencies in the internal management systems of INS noted by immigrant rights organizations and the press were confirmed in the 1993 congressional testimony of the Inspector General of the Department of Justice, Richard J. Hankinson. The statistics he provided reflected that the largest number of misconduct allegations brought against INS personnel for fiscal years 1990-1992 was for assaults (17.6 percent) followed closely by bribery (14.9 percent).<sup>26</sup> The Inspector General found serious problems in the screening, training, supervision, and discipline of INS personnel. Mr. Hankinson told the Congress that: "There is a persistent belief among those of our staff with experience in the area that INS' treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance."<sup>27</sup>

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19 Ibid., p. 38.

20 Ibid.

21 Patrick J. McDonnell and Sebastian Rotella, "Crossing the Line: Turmoil in the U.S. Border Patrol," *Los Angeles Times*, Apr. 22-24, 1992. This series of articles provides background information and reviews current operational practices and controversies surrounding the Border Patrol. (hereafter cited as *Turmoil in the Border Patrol*).

22 Ibid.

23 Ibid.

24 Ibid.

25 Ibid.

26 The Immigration and Naturalization Service: A Mandate for Change: Hearing Before the Information, Justice, Transportation and Agriculture Subcommittee of the Committee on Government Operations, 103d Cong., 1st Sess., p. 15 (1993) (prepared statement of Richard J. Hankinson, Inspector General, U.S. Department of Justice) (hereafter cited as *Hankinson Statement*).

27 Ibid., pp. 53-54.

In its 1992 report, *Brutality Unchecked, Human Rights Abuses Along the U.S. Border with Mexico* (May 1992), Americas Watch recommended that:

The public should be effectively informed of its right to file complaints against INS abuse. All INS personnel should be fully familiar with the complaint process. Easy-to-understand complaint forms should be supplied and an explanation of the complaint procedure, in the immigrants' languages, should be displayed promi-

nently in all INS offices to which arrested undocumented migrants are taken and in all detention facilities used by the INS.

All persons who file complaints should be informed when their complaint is received, given periodic status reports, and provided access to an appeal process that is not overly burdensome.

Under no circumstances should reprisals be taken against an undocumented migrant who files a complaint.<sup>28</sup>

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28 *Americas Watch, Brutality Unchecked—Human Rights Abuses Along the U.S. Border with Mexico* (New York: May 1992), p. 79 (hereafter cited as *Brutality Unchecked*).

## V. Law Enforcement Perspectives

The Advisory Committees meeting in El Paso and San Diego received full cooperation from both Federal and local law enforcement agencies which serve communities along the southwestern U.S.-Mexican border. In addition, selected law enforcement entities in Mexico were invited to participate in the proceedings. The information and views provided by these official agencies were extremely useful to the Committees in their effort to obtain a balanced and more complete description of immigration law enforcement operations.

### Federal Views

The Committees invited representatives of the National Border Patrol Council of the American Federation of Government Employees, AFL-CIO, which represents all nonsupervisory employees of the Border Patrol throughout the United States. Their testimony was not on behalf of the agency; rather, it represented the views of many Border Patrol agents who serve on the front lines.

T.J. Bonner, national president of the Council, has been a Border Patrol agent in the San Diego Sector for more than 15 years. Mr. Bonner testified before the Advisory Committees and was critical of the management provided by the INS and the Department of Justice. He stated that these agencies:

routinely ignore and blatantly violate the due process rights of Border Patrol agents, failing to advise them of their right to representation in investigative interviews that can lead to disciplinary or criminal action, denying

representation when it is requested, and even intentionally lying to agents in hopes of coercing confessions of wrongdoing. Given this shabby treatment of employees, it is remarkable that the incidence of due process violations by Border Patrol agents is so low.<sup>1</sup>

He said that agents receive extensive training in "protecting the civil and due process rights of all individuals, as well as the proper use of force against combative individuals."<sup>2</sup> Mr. Bonner testified that the "number of substantiated cases of physical abuse by Border Patrol agents is minuscule, especially in proportion to the number of persons encountered by the Border Patrol."<sup>3</sup> He noted that where physical force is used, "in the overwhelmingly majority of cases," it is done in self-defense or to defend others.<sup>4</sup> In the few cases where agents do exceed their authority in the use of force, Mr. Bonner suggested that they "should be dealt with harshly."<sup>5</sup> "However," he continued, "to conclude that the Border Patrol engages in systematic abuses of human rights because of the improper actions of a few renegade employees would be grossly inaccurate and unfair."<sup>6</sup>

Mr. Bonner provided a far different portrayal of the Border Patrol than had been described by some community activists:

Patrol agents are not heartless robots. They are human beings, no more perfect or imperfect than any other class of people. They are active members of their communities. They eat in the same restaurants, go to the same churches, and send their children to the same schools as everyone else in the community. Almost without exception, they enforce our nation's

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1 T.J. Bonner, testimony, San Diego Transcript, vol. 1, pp. 235-36.

2 Ibid., p. 235.

3 Ibid., p. 236.

4 Ibid.

5 Ibid.

6 Ibid.

immigration laws in a fair, humane, and compassionate manner. Their many actions of heroism and compassion, small and large, performed on a daily basis, are rarely publicized. Border Patrol Agents have rescued undocumented migrants from raging flood waters, reunited lost family members, fed hungry undocumented migrants with money from their own pockets, freed undocumented migrants being held for ransom, assisted undocumented migrants in securing wages owed by unscrupulous employers, provided shelter and warmth for undocumented migrants exposed to the elements, and performed other acts of kindness and heroism too numerous to mention.<sup>7</sup>

Mr. Bonner agreed that there is too much violence at the border, but indicated that the source of most of this is criminals who assault Border Patrol agents "with guns, knives, clubs, stones, vehicles, fists, and other weapons."<sup>8</sup> He also accused critics of the Border Patrol of using misleading statistics concerning shooting incidents, telling the Committees that the majority of those "have been border bandits engaged in assaults upon law enforcement officers or innocent undocumented migrants."<sup>9</sup> Mr. Bonner concluded by noting that "all allegations of abuse by Border Patrol agents are thoroughly investigated . . . [and] the majority of such complaints are determined to be unfounded."<sup>10</sup> Mr. Bonner did, however, comment that the current complaint process might be improved by "speeding up the investigatory process; ensuring that discipline is administered swiftly, fairly, and uniformly; and by breaking down the wall of silence that shrouds the

process."<sup>11</sup> Recalling that his union has tried unsuccessfully to obtain the manual governing the operation of the Office of Inspector General,<sup>12</sup> he commented that the OIG "operates behind a cover of complete silence and darkness. I think if they were more forthright in what they were doing . . . the public would have been more satisfied and able to see some results."<sup>13</sup>

In testimony before the House Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs in 1990, Stephen Garcia, President of Local 1613, National Border Patrol Council of the American Federation of Government Employees in San Diego, provided statistics regarding assaults on Border Patrol agents. Noting that he had experienced "innumerable rocks thrown at me" and had seen agents "seriously injured by rocks," he indicated that in fiscal year 1988 along a 12-mile stretch of the border, "99 incidents of rock assaults were recorded, 21 enforcement vehicles windshields and windows destroyed. In fiscal year 1989, [there were] 220 recorded rock assaults, 55 windshields and windows shattered."<sup>14</sup> Mr. Garcia also noted that in the same 12-mile section, there were 69 physical assaults against Border Patrol agents in fiscal 1988, 44 assaults in fiscal year 1989, and for the first 6 months of fiscal year 1990, 92 physical assaults were reported.<sup>15</sup> Mr. Garcia depicted a highly dangerous and violent setting at the border, where "border bandits prey upon the undocumented aliens" and where Border Patrol agents also encounter dangerous bandits and

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7 Ibid., pp. 236-37.

8 Ibid., p. 237.

9 Ibid., pp. 237-38.

10 Ibid., p. 239.

11 Ibid.

12 Ibid., pp. 243-44.

13 Ibid., p. 250.

14 Allegations of Violence Along the U.S.-Mexico Border: Hearing Before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs, House of Representatives, 101 Cong., 2d. Sess. (1990), p. 36 (statement of Stephen Garcia).

15 *Id.*, p. 37.

smugglers. "In the light of violence that is directed at them, Border Patrol agents have exhibited remarkable restraint," he told the congressional subcommittee.<sup>16</sup> He also noted that the "increasing disregard for human life demonstrated by smugglers while they are transporting undocumented aliens in vehicles is alarming."<sup>17</sup> While called upon to control the Nation's borders, Mr. Garcia concluded that the Border Patrol is

not given sufficient manpower or funding to deal effectively with the problem. In spite of this adversity, the men and women of the U.S. Border Patrol perform their jobs admirably and professionally. The few incidents of civil rights abuse which have been proven . . . have been acted upon swiftly and dealt with severely by the Service. Border Patrol agents and other officers or the Immigration and Naturalization Service deserve the support of Congress and the nation as a whole, and not condemnation for unsubstantiated reports of abuse.<sup>18</sup>

The *Los Angeles Times* found that the Border Patrol's

task is fraught with risks. Armed criminals and drunken troublemakers frequent the border, and in the most recent fiscal year, authorities recorded 167 alleged assaults on agents—about one per 13,000 arrests—injuring 49 agents, 4 seriously. Of 11 agents

killed since 1980, 10 died in vehicle and aircraft accidents and one was gunned down by a suspected smuggler in Fresno.<sup>19</sup>

The investigative report also described the severe frustration confronting Border Patrol agents:

Feeling abandoned and under siege, some agents close ranks, regarding the mostly nonviolent migrants, the public and their supervisors as adversaries in a thankless, futile battle. The job breeds a frazzled mentality—an explosive fusion of frustration, callousness and tension.<sup>20</sup>

In a harsh indictment of an *Arizona Republic* editorial which compared certain Border Patrol operations to the Gestapo, Stephen McDonald, a Border Patrol officer in Tucson, responded:

The Border Patrol is actually a force of less than 4,000 men and women of all races and creeds. Since 1924, nearly 70 agents have been killed in the line of duty while serving their country. In addition, uncounted numbers of agents have been wounded by gunfire, knife assaults and rock attacks. . . .

The agency is constantly maligned publicly through the media by advocates for uncontrolled immigration and, in some cases, by the media itself. The printed half

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16 *Id.*

17 *Id.*

18 *Id.*, p. 38. Mr. Garcia also addressed the Arizona and California Advisory Committees during the open session portion of their public forum in San Diego on Apr. 17, 1993. He reminded the panel that agents perform a service: "We seem to be performing more of a service than we are enforcement. . . we are legalizing a lot of people. . . . Also, agents save lives, rescuing people in dangerous situations. Mr. Garcia also commented that "undocumented migrants face great abuse by other persons in the United States. . . the ones that transport them in trunks. . . house them in places that would not be even acceptable as a minimum standard of living. . . these are additional abuses that the panel should be looking into. It is real and it continues whether the Border Patrol is here or not." Steven Garcia, testimony, San Diego Transcript, vol. 2, pp. 149,150.

Another Border Patrol agent, Michael Hance, also addressed the open session, testifying that the San Diego sector has an "extremely strong internal discipline program. . . most agents that are charged will wind up with discipline resulting in either admonishment to termination." Mr. Hance also stated that "agents in this sector are overworked, underpaid, underresourced," and (noting the many diverse laws which are enforced by the Border Patrol), "it has led to us enforcing laws that we've had no training in over an extensive period of time." Michael Hance, testimony, San Diego Transcript, vol. 2, pp. 147-48.

19 *Turmoil in the U.S. Border Patrol*, XXdate & page XX.

20 *Ibid.*



truths and innuendo are actually unsubstantiated or unsustained allegations that are being misrepresented as fact.<sup>21</sup>

Following a series of violent incidents involving Border agents—including a conviction for rape, an indictment for assault of a legal resident, and a high-speed chase that led to six deaths—then-INS Commissioner Gene McNary issued a strong statement of support for the beleaguered agency. Declaring that the Border Patrol had an exemplary record and praising its agents for their “discipline and devotion,” the Commissioner told a congressional oversight panel that he was tired of immigrant rights groups making “ludicrous charges.”<sup>22</sup> Asserting that “critics keep coming in like the fog—some of them paid to say bad things about the Border Patrol,” Mr. McNary called on Congress to view these accusations with more skepticism. “If there’s one thing we need more than additional resources,” he told the Congress, “it is a commitment [from Congress] to stand behind the Border Patrol . . . and against those critics who would render border enforcement ineffective.”<sup>23</sup>

Gustavo De La Vina, San Diego Border Patrol sector chief at the time of the Advisory Committee project (now western regional commissioner), has served in the agency for more than 21 years and is former director of the Border Patrol training academy in Georgia. He also served as deputy chief in El Paso for 6 years. One of three Hispanic sector chiefs, Mr. De La Vina began his San Diego assignment in 1990. As supervisor of the Border Patrol’s busiest sector, Mr. De La Vina supervised nearly 1,000 agents (representing almost one-quarter of the national force). Since he came to

San Diego, he has overseen the reinforcement of the fence, road improvements, and the installation of stadium lights at the busiest crossing point in the United States. Mr. De La Vina told the Advisory Committees in San Diego that in a period of 3½ years (fiscal year 1990 to April 1993), there had been 1.8 million arrests of illegal aliens in the San Diego area.<sup>24</sup> In fiscal year 1992, there were more than one-half million apprehensions, and Mr. De La Vina projected a slightly higher number through fiscal year 1993. Citing typical numbers, he told the San Diego panel that in 1 month, March 1993, there were over 61,000 apprehensions, and in 1 day (April 15, 1993) 1,472 arrests were made.<sup>25</sup> Under questioning by the Advisory Committees, he acknowledged that there is recidivism and that total number of arrests does not necessarily correspond to total number of individuals apprehended.<sup>26</sup> Mr. De La Vina noted that the number of arrests in a 4-year period is equivalent to “two cities the size of San Diego.”<sup>27</sup> The San Diego sector encompasses 7,000 square miles and 66 miles of international border. Mr. De La Vina noted that those undocumented persons seeking employment or to join their families in the United States do not represent a major problem for enforcement officers. However, he told the Advisory Committees, “mixed into that bag,” are other more dangerous profiles: “the coyote or alien smuggler who has complete disregard for human life; the narcotics smuggler, who will resort to any level or force to avoid arrest; juvenile gang members; also burglars, alcoholics, and drug addicts.”<sup>28</sup> The former sector chief said, “I don’t think there is [another] police agency in the world

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21 Stephen R. McDonald, “Comparing Border Patrol to Nazis is Simply Unfair,” *Arizona Republic*, Apr. 7, 1993.

22 James Bornemeier, “Head of INS Defends, Assails Critics,” *Los Angeles Times*, Aug. 6, 1992, p. A3.

23 Ibid.

24 Gustavo De La Vina, testimony, San Diego Transcript, vol. 1, p. 138.

25 Ibid.

26 Ibid., p. 164.

27 Ibid., p. 139.

28 Ibid., p. 140.

that is dealing with the masses of people entering one particular area like we have here in San Diego."<sup>29</sup>

Mr. De La Vina said that "every complaint allegation that we receive is taken extremely seriously . . . every complaint received is referred to the Office of Inspector General (OIG) for investigation. The OIG determines which complaints are forwarded to the Civil Rights Division, which then determines whether there will be criminal prosecution by the U.S. attorney or whether the matter will be referred back to the sector chief for administrative action."<sup>30</sup> He confirmed the frequently quoted Border Patrol position that, at the national level, there is one complaint filed for every 17,000 apprehensions. In San Diego, however, he indicated that there is one complaint for every 7,200 arrests.<sup>31</sup> Mr. De La Vina acknowledged that there was considerable violence at the border in San Diego prior to his arrival; however, since 1990 there has been a 70 percent reduction in violence. The initiation of new enforcement strategies, the installation of lights, and new cooperation with Mexican officials is responsible for the decline in violence, he noted. Prior to this, assaults against Border Patrol agents and undocumented persons were "out of control."<sup>32</sup> Mr. De La Vina further noted that there had not been use of deadly force by a Border Patrol agent in more than 29 months.<sup>33</sup>

He told the Advisory Committees, under questioning, that "our complaint system . . . varies . . . some of the complaints that I am now receiving have been due to verbal abuse."<sup>34</sup> He stated that

every detainee is turned over to a Mexican official, where a complaint can be filed. In addition, the INS provides office space for the Mexican Consulate to receive complaints. Also, Mr. De La Vina continued, "we receive a great many complaints ourselves, which are addressed immediately."<sup>35</sup> Mr. De La Vina agreed that the only significant change in the complaint system since the U.S. Commission on Civil Rights issued its *Tarnished Golden Door* report was the transfer of functions from the INS Office of Professional Responsibility to the Office of Inspector General (OIG) which is within the Department of Justice, but not directly under the INS.<sup>36</sup> Otherwise, Mr. De La Vina told the Committees, there have been no changes in the complaint process.<sup>37</sup> He indicated that he accepts complaints from many different sources, including the Mexican Consulate, the sheriff's department, and special interest groups. There is no specific process or system for filing complaints with the San Diego Border Patrol Sector. He expressed strong support for the continuation of the present investigative system, which relies on the OIG or the FBI to investigate complaints against the Border Patrol.<sup>38</sup>

The former sector chief also told the advisory panel that he had terminated one employee in 3 years for misconduct and has issued "three or four" suspensions. Written and oral reprimands for misconduct involving civil rights have been rarely issued, he continued, because those cases would go directly to suspension status.<sup>39</sup>

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29 Ibid., p. 141.

30 Ibid., p. 144.

31 Ibid., p. 145.

32 Ibid., p. 147.

33 Ibid., p. 146.

34 Ibid., p. 148.

35 Ibid., pp. 148-49.

36 Ibid., p. 152.

37 Ibid., pp. 152-53.

38 Ibid., p. 159.

When questioned about a possible conflict of interest between drug interdiction and apprehension of undocumented aliens, Mr. De La Vina responded:

I would like nothing better than to have a zone designated only for narcotics smugglers. My job would be a lot easier . . . but unfortunately that is not the case . . . everything coming across the border is [within] the jurisdiction of the Border Patrol.<sup>39</sup>

However, Mr. De La Vina commented that while narcotics smugglers like to blend in with the "illegal alien population," the Border Patrol is able to detect this and avoid the use of excessive force upon innocent persons.<sup>41</sup>

In his remarks, the former Sector Chief described the training provided to his agents, which includes courses on ethics, use of force, and constitutional rights.<sup>42</sup> He also provided a syllabus for a refresher course for supervisory Border Patrol agents, containing extensive legal information regarding civil and constitutional rights, a detailed chronology of his meetings with community-based organizations and a listing of border tours and briefings which were conducted by his office. Mr. De La Vina also stated that he supported a proposal to initiate a citizen's advisory board at the local level, and suggested that there might be one in place in approximately 6 months.<sup>43</sup>

The Tucson Border Patrol Sector is responsible for 281 linear miles of the border and has just over 300 sworn officers. Included in its jurisdiction are many miles of rugged desert terrain as well as the major cities of Phoenix and Tucson.

In 1992 and 1993, city elected leaders, school officials, and Hispanic leaders in Phoenix complained that Border Patrol agents were pursuing students onto public school campuses without the authorization of school officials. School administrators complained that this was a violation of an agreement prohibiting Federal officers from making arrests on school grounds.<sup>44</sup> The intrusion of the Border Patrol onto school grounds was criticized by Phoenix Mayor Paul Johnson and other officials, who called for an investigation.<sup>45</sup> In one incident, the Border Patrol asked the U.S. Attorney to investigate whether school officials might have improperly impeded the actions of the Border Patrol agents.<sup>46</sup> In an editorial, the *Arizona Republic* responded:

As is so often the case, the feds have it backward. Federal prosecutors ought to investigate not whether school officials obstructed justice, but whether the Border Patrol exceeded its authority, as seems to be the case, and those responsible should be held accountable. Only in that way can the Border Patrol be made to respect the civil rights of Hispanic students.<sup>47</sup>

In responding to Advisory Committee questions about this issue, Tucson sector chief Ron Dowdy stated that after two incidents at Phoenix

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39 Ibid., pp. 167-68.

40 Ibid., p. 158.

41 Ibid., pp. 157-58.

42 Ibid., p. 143.

43 Ibid., p. 168.

44 Julia Lobaca, "Phoenix Confronts Border Patrol," *Arizona Republic*, Mar. 20, 1993, p. 1.

45 Ibid.

46 Ibid.

47 Editorial, "The U.S. Border Patrol—More Gestapo Tactics," *Arizona Republic*, Mar. 20, 1993, p. A26.

high schools, the Border Patrol entered into a Memorandum of Understanding with the Phoenix Union High School District.<sup>48</sup> This required notification of school officials prior to the Border Patrol coming onto school property. Mr. Dowdy indicated that a March 1993 incident after the agreement was signed dealt with a situation that had not been addressed or foreseen in that agreement.<sup>49</sup> Mr. Dowdy told the Advisory Committees in San Diego that the agreement would be tightened up "to ensure that misunderstandings and misconceptions of that nature do not occur in the future."<sup>50</sup>

The Michael Elmer murder trials in Arizona contained considerable testimony from Border Patrol agents attesting to frequent violations of agency firearms policy, including the firing of warning shots, failure to report weapons, discharges, use of unauthorized weapons, and improper accounting of ammunition. Mr. Dowdy responded to questions concerning the testimony:

That testimony, of course . . . has opened the door to an additional investigation. I would like to point out, for the record, that testimony did not indicate that Border Patrol management and supervisors were aware of those shots, but rather that with the knowledge that those were prohibited actions, those actions were being done.

We're very interested in that. We do not condone it. We do not tolerate it. And there is still an ongoing investigation with regard to information that came to light during the investigation during that trial.<sup>51</sup>

Mr. Dowdy further commented that

the Border Patrol has its share of problems, my sector included. We're not perfect. We recruit officers from the human race, despite what some of our detractors believe, and despite our best efforts to do a thorough job of screening, we do wind up with a few bad officers.<sup>52</sup>

He recalled that two agents in his sector have been criminally prosecuted for their involvement in drug activities and one for stealing money from undocumented persons.<sup>53</sup> Mr. Dowdy also said that there have been OIG investigations of civil rights violations that did not lead to prosecutions.<sup>54</sup> While not specific, he said that, based on listening to Mr. De La Vina's testimony, he has issued more suspensions and fired more people for misconduct than the San Diego sector chief.<sup>55</sup> Mr. Dowdy commended the OIG for doing an "excellent job," but said it has insufficient personnel to investigate matters expeditiously.<sup>56</sup> The delays in resolving cases can create serious personnel problems for Border Patrol managers.<sup>57</sup>

In a prepared statement for the Advisory Committees, the Tucson Border Patrol sector chief described the complaint process for allegations of

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48 Ron Dowdy, testimony, San Diego Transcript, vol. 1, p. 178.

49 Ibid.

50 Ibid.

51 Ibid., p. 176.

52 Ibid., p. 171.

53 Ibid., p. 182.

54 Scott Coffin, Deputy Tucson Sector Chief, told staff in an interview that approximately one dozen complaints are investigated by OIG annually and very few are sustained. Complaints are received from citizens, attorneys and the Mexican Consulate. Scott Coffin interview, Sept. 22, 1992.

55 Dowdy Testimony, San Diego Transcript, vol. 1, p. 188.

56 Ibid., pp. 171-73.

57 Ronald J. Dowdy, interview, Sept. 22, 1992.

misconduct. He noted that the INS has created an Office of Internal Audit to coordinate referral investigations from the OIG, formulate policy, measure INS employee misconduct-related statistics, and perform field audits.<sup>58</sup> Despite this bureaucratic process, Mr. Dowdy emphasized that the "chief patrol agent of a Border Patrol sector is responsible for ensuring that subordinate employees are aware of, and comply with rules, regulations, and outstanding instructions relating to integrity, graft, corruption, and misconduct by service employees. The chief patrol agent is also responsible for seeing that the proper reporting procedures are followed, and that immediate action (if legally permissible) is taken to temporarily alleviate a misconduct situation before final action upon completion of an investigation."<sup>59</sup>

Chief Dowdy discussed the dangerous levels of crime existing in southern Arizona, telling the committees that the Nogales Police and Santa Cruz County sheriff's departments reported 4,096 crimes in the most recent 3-year period. Mr. Dowdy further stated that these law enforcement entities have determined that 68 to 70 percent of

these crimes involved undocumented aliens; and that 85 percent of their jail population is made up of inmates from Mexico.<sup>60</sup> He offered the following national statistics to demonstrate the dangers of Border Patrol work:

Nationwide in FY 1992, 168 incidents of assault against 222 agents were reported. . . . Assaults increased 5% over the previous fiscal year. During FY 1992, Border Patrol agents were involved in 51 shooting incidents compared to 43 in FY 1991. Drug related shooting incidents increased 280%, from 7 in FY 1991 to 20 in FY 1992.<sup>61</sup>

Mr. Dowdy told the Advisory Committees that in the past year, his sector apprehended just under 71,000 undocumented aliens.<sup>62</sup> His agents have "a hard and dangerous job and for the most part, a thankless one . . . they are responsible citizens like yourselves who happen to be highly trained, professional law enforcement personnel."<sup>63</sup>

Of his approximately 303 officers, 75 were hired within the past year and have not completed their 1 year probationary period.<sup>64</sup> Mr. Dowdy

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58 Ronald J. Dowdy, Written Testimony, San Diego Factfinding Meeting, Apr. 16, 1993," p. 9.

59 Ibid.

60 Ibid., p. 10.

61 Ibid., p. 11.

In the dissent to the report filed by three Advisory Committee members the following comments were included:

*"There is a serious problem of violence along the Mexican border, but it is not the problem claimed in the Report. There are two main groups who are victimized by that violence: (1) innocent American citizens who live near the border, and illegal border-crossers themselves, who are preyed upon by criminal elements along with the illegals; and (2) Border Patrol officers who are shot at, assaulted with rocks, and otherwise harassed by alien criminals who flock to border crossing areas. Compared to hundreds of violent incidents of this kind that take place annually . . . the rare incidents of violence perpetrated by Border Patrol agents are not the main problem.*

The leading source of border violence is illegal immigrants themselves, among whom there is a high proportion of criminals who often use violence in the course of such activities as drug running, bringing groups of people illegally into the United States, or raping or robbing other immigrants. (Steven Garcia and James R. Dorcy conveniently summarized the relevant facts in a hearing conducted by the House of Representatives, Committee on Foreign Affairs, Subcommittee on Human Rights, Apr. 18, 1990, pp. 35-45, 61-82. The draft report should have made better use of this testimony, a copy of which was given [by regional staff] to SAC members at the 1991 El Paso briefing.)" Critique of Draft Report, p. 8.

62 Dowdy Testimony, San Diego Transcript, vol. 1, p. 179.

63 Ibid., p. 172.

64 Ibid.

observed that if he had more officers, "our apprehensions would go down, because after two or three times of being apprehended, I think they will go and try it somewhere else."<sup>65</sup>

In May 1994 the Border Patrol arrested a record 10,000 aliens illegally entering the country near Nogales. Agent Steve McDonald of the Tucson sector indicated that these numbers include many repeaters and can be misleading: "It's not 10,000 different people . . . you could catch the guy two or three times during a shift. . . . That is in fact happening."<sup>66</sup>

The El Paso Border Patrol sector is the Nation's second busiest and is staffed with more than 600 agents and 60 support staff. In a period of just over 8 months—October 1991 to the time of the El Paso forum in June 1992—the sector had made 174,000 apprehensions.<sup>67</sup> Dale Musegades, the sector chief at the time of the Advisory Committee's visit to El Paso, noted that his officers had experienced approximately 54 armed encounters since January 1, 1992 and there were nine assaults on his agents during this period.<sup>68</sup> The sector chief noted that violence has escalated along the border and there is an increase of organized gang activity.<sup>69</sup>

Mr. Musegades told the New Mexico and Texas Advisory Committees that Border Patrol agents receive 18 weeks of training consisting of 736 hours of instruction before their initial field assignment. Of these 736 hours, 31 are "devoted to people-related or sensitivity-type issues"; 222 hours are devoted to Spanish-language proficiency; 133 hours pertain to legal training (im-

migration and nationality law, statutory and criminal law); and the remainder relate to physical preparation, including firearms training.<sup>70</sup> In addition, agents are on probationary status for 1 year and receive additional training and testing.<sup>71</sup> Mr. Musegades told the panel that Border Patrol agents are compassionate: "I don't believe there is a Border Patrolman in existence who does not sympathize with the majority of people we encounter."<sup>72</sup> However, he noted that one of the difficulties in this job "is that you encounter a lot of misery. Some people put on a coat of armor such as a gruff exterior or the appearance of being unfeeling simply to be able to withstand the emotion that they feel."<sup>73</sup> Mr. Musegades took exception to those who have criticized the agency's complaint process, pointing out that:

Our number is in the phone book . . . if anybody wants to know where the Border Patrol is located. I have a little problem with people who say that they cannot make complaints. I've never found anybody to be shy about making a complaint, and we deal with them, so when somebody comes up and says that they have trouble, we don't know who to complain to, we don't know, nobody will take our complaint, I don't think that's necessarily true.<sup>74</sup>

The sector chief did, however, tell the committees that there is no procedure for notifying complainants of the status or resolution of their complaints.<sup>75</sup> In response to a suggestion that the Border Patrol display an "800" number for complaints on all its vehicles, Mr. Musegades said

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65 Ibid., p. 179.

66 Arthur H. Rotstein, "Nogales, Arizona Natural Squeeze Point for Immigrants," *Albuquerque Journal*, July 25, 1994, p. B6.

67 Dale Musegades, testimony, *El Paso Transcript*, vol. 2, pp. 90, 91.

68 Ibid., p. 91.

69 Ibid., p. 73.

70 Ibid., p. 68.

71 Ibid.

72 Ibid., p. 69.

73 Ibid.

74 Ibid., pp. 91–92.

that this had once been tried without much response.<sup>76</sup> Nonetheless, he told the Committees that he would be willing to consider reimplementation of this recommendation.<sup>77</sup>

In describing the complaint process, Mr. Musegades said that all complaints are filed with the OIG and that failure to do so is in itself a violation. Although civil rights violations are referred to the Civil Rights Division of the Department of Justice, less serious cases may be referred back to the Border Patrol by OIG for investigation. After the internal investigation is completed by a Border Patrol agent, the deputy sector chief makes a recommendation to the chief for disciplinary action in the event the complaint is sustained. The chief makes the final decision in these administrative cases, "guided by a table of penalties and advice from labor-management relations specialists and service attorneys."<sup>78</sup> He expressed satisfaction with the present system.

In a subsequent followup letter to the U.S. Commission on Civil Rights, Western Regional Office, Chief Musegades provided data on misconduct complaints referred to the OIG from the El Paso Border Patrol Sector. From September 16,

1991, the beginning of the tracking period, to July 30, 1992, 96 complaints were filed with the OIG. Of these, 49 relate to administrative matters such as "misuse of a government vehicle." The remaining 47 complaints are shown in table 2.

Commenting on these figures, Mr. Musegades wrote:

The number of pending cases seems large and I can't speak for the Office of the Inspector General, however, it is my opinion [that] frivolous appearing cases have a lower priority while cases of substance are acted upon fairly rapidly. Therefore, considering these numbers and from past experience, I would expect the number of substantiated cases to be very few or none at all.<sup>79</sup>

While noting that the apprehension of illegal aliens is the first priority of the Border Patrol, Mr. Musegades observed that "drugs is a secondary mission . . . wherever illegal aliens or people cross the border . . . that's where contraband also enters illegally . . . you cannot separate the two."<sup>80</sup> The former El Paso sector chief, commenting on use of force policy, added that he had received authorization to equip his agents with collapsible side hand batons. Agents must be certified to use this

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75 Ibid., p. 88.

76 Ibid., p. 91.

77 Ibid., p. 104.

78 Ibid., p. 71.

79 Ibid., p. 2.

80 Musegades Testimony, vol. 2, p. 106.

instrument, and Mr. Musegades sees this as a tool that can be used as an intermediate step in the escalation of force, which "will prevent the necessity of deadly force in many cases."<sup>81</sup>

The three Border Patrol sector chiefs from El Paso, Tucson, and San Diego indicated that they have extensive community outreach programs. Much of this activity is related to working with schools and other community groups in programs to educate youth concerning drugs. As Mr. Musegades pointed out, "we routinely address civic organizations and clubs, put on demonstrations at malls and public places, and speak to concerned citizens groups."<sup>82</sup> Mr. De La Vina, the San Diego sector chief, and Mr. Dowdy, his counterpart in Tucson, provided the Committees with an extensive list of community outreach efforts, including many diverse, public, private and civic organizations. In addition, many tours of the border were provided by the Border Patrol for elected public officials at the Federal, State, and local levels. Most of these were performed in San Diego under Mr. De La Vina's direction.<sup>83</sup>

Alfred Giugni, the El Paso District Director of the INS for 12 years, told the Advisory Committees that he has enjoyed excellent relations with the local communities in both El Paso and Juarez. The district office instituted an aggressive outreach program for legalization under the Immigration Reform and Control Act of 1986 and is now continuing its outreach efforts by developing an extensive citizenship awareness program. This program is considered a model and has been commended by Hispanic leadership groups.<sup>84</sup> Mr. Giugni meets regularly with the mayors of both

Juarez and El Paso and has positive relations with the Mexican Consulate. Mr. Giugni recalled that under INS Commissioner Leonel Castillo, an immigration advisory group was formed consisting of local leaders, ethnic groups, and religious and educational leaders "to provide assistance and guidance to the [INS] in terms of concerns of the community."<sup>85</sup>

Mr. Giugni reported that the INS has an "800 ask immigration" number but acknowledged that "if you call there, you're going to get a busy [signal]."<sup>86</sup> The district office has publicized its policy of encouraging complainants to request a supervisor at the port to directly look into any problems. One problem which arises is that complainants are often unclear as to the identity of the offending officer (all INS officers wear name tags) and there is a common public perception that all officers on the border are immigration officers. In fact, enforcement responsibilities are shared with U.S. Customs and U.S. Department of Agriculture (USDA) officers; most personnel, however are from U.S. Customs.<sup>87</sup> Mr. Giugni noted that complaints received by him sometimes allege rudeness by INS personnel; however, few if any involve physical contact.<sup>88</sup>

James Turnage, district director of the San Diego INS office, described a complaint process similar to that utilized in El Paso:

A member of the public can, at any time, ask to see an officer's supervisor to lodge a complaint, to seek clarification of an action, or to inquire about any matter he or she feels uncomfortable discussing with the officer. If satisfaction is not obtained, supervisors are under

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81 Ibid., pp. 72-73.

82 Ibid., p. 71.

83 Mr. De La Vina provided the Arizona and California Advisory Committees with a 14-page document listing all meetings, public events, outreach efforts, tours, and briefings, of his office. Mr. Dowdy and Mr. Musegades also submitted information on their public meetings and outreach efforts.

84 Alfred Giugni, testimony, vol. 2, p. 65.

85 Ibid., p. 64.

86 Ibid., p. 94.

87 Alfred Giugni, interview, Feb. 19, 1992.

88 Ibid.



orders to refer the matter to the highest ranking officer on duty, or to explain clearly and politely how the issue may be referred to a district program manager.

This open approach to dealing with the public has been successful in the San Diego district. While we do not keep running statistics on complaint resolution, I can assure this panel that the annual figure would be low indeed. Fewer than a dozen written complaints were received and promptly resolved in the past year.<sup>89</sup>

The district office has also established a congressional unit to deal with matters referred to members of Congress by their constituents.

Mr. Turnage pointed out that immigration officers "are trained from the date of hire in cross-cultural communication and how to deal with the public."<sup>90</sup> He elaborated:

The fact of the matter is that the immigration officer himself or herself is bilingual, very likely bicultural, and almost certainly an integral part of his or her community. INS policy requires the first, appreciates the second, and encourages the third.<sup>91</sup>

Both INS district directors told Commission staff that complaints filed with the OIG which are not criminal in nature are referred back to them for action; however, neither director described a process where complaints filed initially with the INS district alleging misconduct are routinely referred to the OIG.<sup>92</sup>

The Office of Inspector General (OIG), U.S. Department of Justice (DOJ), was established in 1988 by Congress. Its function is to "promote

economy, efficiency and effectiveness within the U.S. Department of Justice."<sup>93</sup> The OIG "enforces Federal fraud, waste, abuse, and integrity laws and regulations within the Department and identifies for prosecution those individuals or organizations involved in financial, contractual, or criminal misconduct in DOJ programs and operations."<sup>94</sup> All integrity investigations of DOJ personnel are conducted by the Investigations Division.<sup>95</sup> In addition, the division provides integrity awareness training for departmental personnel.

The OIG has field offices in several cities, including El Paso, San Diego, and Tucson. Jerome Bullock, the Assistant Inspector General for Investigations in Washington, D.C., participated in the El Paso forum, as did Stephen Beauchamp and Ralph Paige, special agents in Charge of the El Paso and San Diego OIG field offices, respectively.

The OIG conducts investigations of civil rights allegations brought to its attention by various sources, including employees, managers and citizens.<sup>96</sup> All civil rights allegations must be referred to the Civil Rights Division which evaluates them and determines whether they warrant additional investigation, in which case the Federal Bureau of Investigation (FBI) conducts a preliminary inquiry. If the Civil Rights Division determines that no further investigation is appropriate, the case is referred back to the OIG, which then returns the matter to the component

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89 James B. Turnage, Jr., Written Testimony, San Diego Factfinding Meeting, Apr. 16, 1993, San Diego Transcript, vol. 1, p. 3.

90 Ibid., p. 2.

91 Ibid.

92 Alfred Giugni, interview, Feb. 19, 1992; James Turnage, interview, Aug. 18, 1992.

93 U.S. Department of Justice, Office of the Inspector General, *Fact Sheets*, Fiscal Year 1991.

94 Ibid.

95 El Paso Transcript, vol. 2, p. 76.

96 Jerome Bullock, testimony, El Paso Transcript, vol. 2, p. 78.

affected, "for inquiry and investigation on their own."<sup>97</sup> Mr. Bullock justified the returning of the cases to the individual components:

The reason that we do that is that once the Civil Rights Division has determined that the allegation is not serious enough for either investigation by the FBI or not serious enough to take further action from a criminal standpoint, we then recognize that is an item that is not at a level of seriousness that we should devote attention to.<sup>98</sup>

He did comment that on rare occasions, if there are extenuating circumstances, the OIG might conduct the inquiry instead of returning it to the affected agency.<sup>99</sup>

Mr. Bullock told the Advisory Committees in El Paso that the OIG does not advise complainants of the status or resolution of their allegation because of the "sheer volume" of allegations, many of which do not relate to civil rights.<sup>100</sup>

The OIG prepares a report of its activities for Congress every 6 months, summarizing its activities. Although the reports provide overall statistics on investigative actions and describe selected activities,<sup>101</sup> they do not break down the cases by category of offense or by individual component. Therefore, it is not possible to obtain from this source the numbers of civil rights complaints filed against the INS or the Border Patrol and the results of such investigations. The OIG's *Semi-annual Report to Congress* for the period April 1,

1992, to September 30, 1992, reflected that the OIG had assisted the Imperial County District Attorney's Office in California in convicting a Border Patrol agent for rape and was assisting the Santa Cruz County Sheriff's Office in Arizona in a murder investigation involving a Border Patrol agent.<sup>102</sup> The report for the period April 1, 1993, to September 30, 1993 described several incidents of fraud, smuggling, theft, and bribery involving employees of the INS.<sup>103</sup>

Mr. Stephen Beauchamp, the El Paso OIG representative, testified that it is his responsibility to accept all allegations, make certain they are documented, and forward them to the Civil Rights Division within 24 hours. His agents will ask for additional information where necessary before forwarding the cases.<sup>104</sup> In an interview with Commission staff, Mr. Beauchamp noted that the Civil Rights Division returns complaints within 1 week and where it declines further action, the matter is referred back to the component as "management should be aware of it."<sup>105</sup> In some cases, Mr. Beauchamp will refer a complaint "sideways" to the component involved at the same time it is forwarded to the Civil Rights Division.<sup>106</sup>

Ralph Paige, OIG representative in San Diego, stated that although the FBI has primary responsibility for investigating allegations of criminal civil rights violations, the OIG "maintains an important role as a clearinghouse . . . for all allegations of misconduct against Department of Justice employees."<sup>107</sup> The OIG receives complaints

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97 Ibid., pp. 78-79.

98 Ibid., p. 79.

99 Ibid.

100 Ibid., p. 101.

101 U.S. Department of Justice, Office of the Inspector General, *Semiannual Report to Congress*, Apr. 1, 1992 to Sept. 30, 1992; Apr. 1, 1993 to Sept. 30, 1993.

102 Ibid., Apr. 1, 1992-Sept. 30, 1992.

103 Ibid., Apr. 1, 1993-Sept. 30, 1993.

104 Stephen Beauchamp, testimony, El Paso Transcript, vol. 2, pp. 81-82.

105 Stephen Beauchamp, interview, Apr. 8, 1992.

106 Ibid.

107 Ralph Paige, testimony, San Diego Transcript, vol. 1, p. 185.

from a variety of sources, including immigrant rights groups, the Mexican Consulate, congressional offices, and the Border Patrol itself. Mr. Paige described a process of documenting and quickly forwarding complaints to the Civil Rights Division in Washington. If a case is returned to the OIG by the Civil Rights Division, Mr. Paige's office evaluates the complaint, and either conducts an administrative investigation, refers it to the INS internal audit unit in Washington, D.C. or files it for information.<sup>108</sup>

Mr. Paige noted that OIG now has an automatic tracking system which can be used to identify specific offices which are the subject of repeated complaints.<sup>109</sup>

Upon questioning by Committee members, Mr. Paige indicated that complainants are not notified by the OIG concerning the results of their case and that such a practice would be difficult because "we are just a factfinding body [and] even the reports that go to the agency do not contain conclusions"<sup>110</sup> He suggested that the INS would be better suited to notify complainants. He noted that discipline is "really the purview of the employing agency . . . we're not always aware ourselves, what discipline was taken in a case."<sup>111</sup>

Mr. Paige indicated a willingness to publicize the OIG complaint process "if there is a perception that the community at large is not aware of a mechanism to make complaints."<sup>112</sup>

In 1993 the OIG offices in El Paso and San Diego initiated special projects targeting civil rights problems within the Border Patrol. In January, Mr. Beauchamp proposed a task force initia-

tive "to deal with increasing allegations of civil rights abuse directed against the Border Patrol at El Paso, Texas."<sup>113</sup> In an evaluation of this project, the OIG reported that between October 1, 1990, through December 31, 1992, there were 86 allegations of civil rights violations filed against the INS in the three-State area covered by the El Paso OIG—Oklahoma, New Mexico, and north and west Texas. Sixty-one of these allegations or 71 percent were directed at the El Paso sector of the Border Patrol. Only four cases were investigated by the OIG. Half of the cases were returned to the INS for investigation.<sup>114</sup> In its self-evaluation, the El Paso OIG office raised a critical question:

Our strategy will have to acknowledge that when we refer a civil rights allegation to the INS, it will most likely be investigated by the very organization which has been accused. Can we defend the practice of referrals? To an outsider, this does not appear to be good government.<sup>115</sup>

The evaluation also suggested that although it is important to improve access to the complaint process, "what transpires at the end of the process may be even more important. It is our opinion that a Department which is non-responsive to outside inquiry can cause more than its share of the problem."<sup>116</sup>

The El Paso task force also found that while OIG integrity awareness training is important, "the impact is greatest when . . . investigations lead to timely disciplinary action. As the word

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108 Ibid., p. 187.

109 Ibid., pp. 187–88.

110 Ibid., p. 191.

111 Ibid., p. 190.

112 Ibid., p. 198.

113 Office of the Inspector General, El Paso Field Office, *Civil Rights Task Force-Proposal*, Jan. 4, 1993, p. 1.

114 Office of the Inspector General, El Paso Field Office, *Civil Rights Task Force-Proposal Evaluation*, June 30, 1993, p. 7.

115 Ibid., p. 3.

116 Ibid., p. 4.

gets out that agents will be held accountable for their actions, perhaps there will be an accompanying change in attitudes.”<sup>117</sup> The report confronted the problem of having three different agencies, all within DOJ, with overlapping responsibility to investigate civil rights allegations. Explaining that, depending on circumstances, the FBI, the OIG, or the INS—and possibly two different INS components—might conduct a civil rights investigation, the Task Force evaluation suggested that the new Attorney General might wish to address this problem.<sup>118</sup>

The El Paso Task Force evaluation concluded its report by offering several recommendations:

- a) The Investigations Division should refine its data management system (IDMS) so that a full range of statistical data can be retrieved in the area of civil rights allegations.
- b) The Office of the Inspector General should play a lead role in developing a more responsive public information system so that the Department of Justice can improve its record of communication in the area of civil rights allegations.
- c) The Investigations Division should develop an overall border office strategy to deal with the increasing attention to civil rights allegations.
- d) The Investigations Division should continue the effort within the Department to streamline the complaint process involving civil rights allegations.
- e) The Investigations Division should develop a bilingual poster that facilitates the reporting of civil rights allegations in areas covered by border field offices.<sup>119</sup>

The San Diego OIG civil rights initiative covered the period of September through December 1993.<sup>120</sup> According to that office, historically, the San Diego Border Patrol Sector accounts for about 90 percent of the civil rights-related allegations received by the San Diego OIG field office.<sup>121</sup>

Twenty civil rights complaints involving the Border Patrol were received during the initiative period, a decrease in the number of allegations anticipated. Sixteen involved physical abuse and one involved sexual abuse; one involved theft, and another the shooting of an undocumented alien. Of the 20, 12 preliminary investigations were opened by the OIG, 4 complaints were referred to the FBI and 4 were filed for information.<sup>122</sup>

The San Diego OIG field office found that the “vast majority of civil rights complaints cannot be substantiated.”<sup>123</sup> The report noted (as did the El Paso initiative) that the “code of silence” within the Border Patrol creates reluctance among agents to give evidence against a fellow officer.<sup>124</sup>

The San Diego review identified “27 Border Patrol agents who had three or more allegations made against them. These 27 were responsible for approximately one-third of the total civil rights allegations received against San Diego sector personnel.”<sup>125</sup> Additionally, the OIG study found that approximately 230 different Border Patrol agents were named as respondents in civil rights complaints filed during fiscal years 1991, 1992, and 1993. Approximately 300 civil rights allegations were made during this period against San Diego

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117 Ibid., p. 5.

118 Ibid., p. 6.

119 Ibid., pp. 9–11.

120 Richard Hankinson, Inspector General, Memorandum for the Attorney General, “Southwest Border Patrol Civil Rights Abuses,” Feb. 15, 1994, (hereafter cited as “Hankinson Memorandum”).

121 San Diego Civil Rights Initiative—“After Action Report” (appended to Hankinson Memorandum, above), p. 2.

122 Ibid., p. 3.

123 Ibid.

124 Ibid., p. 4. *See also*, El Paso Field Office, OIG “Civil Rights Task Force”—Proposal, Jan. 4, 1993, p. 4.

125 San Diego Civil Rights Initiative—“After Action Report” (appended to Hankinson Memorandum), p. 9.

Border Patrol sector personnel.<sup>126</sup> Border Patrol field managers expressed “considerable hostility” at the proposal for the distribution of a Spanish-language poster informing persons concerning the complaint process.<sup>127</sup> In fact, the report noted that “the most common question asked of us was why the poster did not contain a warning of the possible consequences of making a false allegation against an agent.”<sup>128</sup> Overall, the San Diego field office of the OIG found that the San Diego Border Patrol is adequately addressing civil rights complaints.<sup>129</sup>

One extremely important finding in both the San Diego and El Paso initiatives was included in a memorandum for Attorney General Janet Reno transmitted by Richard J. Hankinson, Inspector General on February 15, 1994:

Both the El Paso initiative and the San Diego one seem to have uncovered a concern common to the Hispanic rights communities in the two cities. They want more information. An incident occurs, an allegation is made, the Department responds that there will be an investigation (if, indeed, the Department admits even that), and nothing further is heard. . . . There seem to be important gains from some limited report to the public upon conclusion of Departmental action. Even to report that the investigation has been concluded without substantiating the allegation, or that prosecution has been declined based on litigative risk or lack of credible testimony tells the public that the Department paid attention to the allegation and is willing to hold its judgment up to public scrutiny, to be accountable even when it takes no action—especially when it takes no action. At the same time, to report that no action was warranted strengthens the stature of the Border Pa-

trol, which often is tarnished by ill-founded or enlarged claims. Consequently, we are looking at the way we handle complaints and communicate with victims to improve the amount of information they get about our investigations.<sup>130</sup>

The special agents in charge of the FBI’s El Paso and San Diego offices both participated in this Advisory Committee project and provided overviews of their civil rights responsibilities. Richard Schwein, the El Paso representative, explained that his office conducts investigations of all Federal criminal statutes, including civil rights provisions. This extends to charges against local and state officials, as well as Federal officers.<sup>131</sup>

Mr. Schwein told the Committees that his office accepts complaints from all sources, including walk-in clients, component agencies, civic groups, and the monitoring of television and newspapers.<sup>132</sup> He pointed out that U.S. civil rights laws apply to all inhabitants of the United States, not just citizens or legal residents. Because the FBI has no jurisdiction in Mexico, Mr. Schwein works closely with the Mexican consul, who might assist in making witnesses available for interviews.<sup>133</sup> Nationally, he advised, there are thousands of civil rights complaints filed and “very candidly, few of them are prosecuted. Very few of them meet the standards of the Department of Justice.”<sup>134</sup>

William Esposito, FBI representative in San Diego, told the Advisory Committees that the FBI breaks down civil rights cases in three categories: racially motivated hate crimes, police brutality,

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126 Ibid.

127 Ibid., p. 5.

128 Ibid., p. 6.

129 Ibid. p. 10.

130 Hankinson Memorandum, p. 2.

131 Richard Schwein, testimony, El Paso Transcript, vol. 2, pp. 83–84.

132 Ibid., p. 84.

133 Ibid., p. 86.

134 Ibid., p. 85.

and involuntary servitude and slavery.<sup>135</sup> At the national level, the FBI receives approximately 6,000 cases each year, one half of which involve active investigations. Fifty to 60 of these go to grand juries for potential indictments; in 1992, 110 individuals were convicted of Federal civil rights violations.<sup>136</sup> Mr. Esposito said that three full-time bilingual FBI agents in San Diego are assigned to civil rights investigations. At the time of the San Diego forum, his office had 22 ongoing civil rights investigations in San Diego and Imperial Counties, approximately 80 percent of which were law enforcement, police brutality cases.<sup>137</sup> As in the case of OIG, the FBI takes no administrative action against any law enforcement personnel. Its exclusive function with respect to civil rights enforcement is to conduct criminal investigations.<sup>138</sup> Mr. Esposito commented that he has conducted extensive outreach with law enforcement agencies, the media, and community groups. All press releases issued by his office are in both Spanish and English.<sup>139</sup>

## Local Views

Although the Advisory Committee project focused on Federal immigration law enforcement, several local police agencies were invited to describe their working relationship with the INS and more specifically, with the Border Patrol. The El Paso Police Department conducts a joint downtown foot patrol with the Border Patrol which has

been the subject of considerable criticism by civil rights groups in the community.<sup>140</sup> El Paso Police Lt. Greg Brickey provided the Advisory Committees with a brief description and assessment of this unique law enforcement program. As described in this report, four uniformed police officers are assigned to walk beats in the downtown area with Border Patrol partners. Two plainclothes officers from each department also are on this patrol, and another Border Patrol agent operates a transport unit.<sup>141</sup> The unit has been "very successful" according to Lieutenant Brickey.<sup>142</sup>

According to a study provided to the Advisory Committees by the El Paso Police Department, the effectiveness of the unit is demonstrated by their statistics:

Since June 1991, the unit has compiled an impressive total of 157 felony arrests, 425 misdemeanor arrests and the deportation of 2,734 undocumented aliens. They have contributed to a significant reduction in street crime in the downtown area and fostered a better working relationship between the community and the police department.<sup>143</sup>

The study found that of more than 100 questionnaires returned by businesses and residents in the patrol area, "there were no negative responses."<sup>144</sup> Most responded by indicating that they desired an increase in manpower for the joint patrol. Lieutenant Brickey acknowledged the project hasn't been without criticism. He said that

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135 William Esposito, testimony, San Diego Transcript, vol. 1, p. 207.

136 Ibid., p. 208.

137 Ibid., p. 209.

138 Ibid., p. 211.

139 Ibid., p. 208.

140 "In actuality, Border Patrol Agents have not participated in those foot patrols since mid-1993." Meissner letter.

141 Greg Brickey, testimony, El Paso Transcript, vol. 2, p. 125.

142 Ibid.

143 Lt. Greg Brickey, El Paso Police Department, "The El Paso Police Department/United States Border Patrol Foot Patrol: A Study in Joint Operations," (paper presented at New Mexico and Texas Advisory Committees to the U.S. Commission on Civil Rights, (Joint Forum on Immigration-Related Civil Rights Issues), El Paso, Texas, June 12, 1992) pp. 3-4 (hereafter cited as Brickey Study).

144 Ibid., p. 4.

“there have been claims that police officers have stopped people solely for the purpose of identifying whether or not they are . . . illegal aliens.”<sup>145</sup> Critics do not reside in the patrol area, he reported, and their concerns result from a misunderstanding. He explained the authority of local police on the joint patrol:

We are empowered to stop and question people if we feel they are engaging in some type of illegal activity. We are entitled to ask for identification. At that point if we ascertain they do not have any identification or it is suspected they are illegally in the United States, the Border Patrol takes over, so there is some overlapping power, but they are clear-cut at the same time. The police officer backs off when it is not his turn to talk to the person anymore.<sup>146</sup>

In a letter from John Scagno, El Paso chief of police, to Commission staff, the following specific questions were answered as follows:

**1) Do the El Paso Police request information regarding immigration status?**

No. If, however, immigration status becomes a questionable issue after the lawful stop has been made, the expertise of Border Patrol or Immigration authorities is summoned.

**2) Do the police arrest or detain persons for immigration violations?**

No. Officers of this department enforce the same laws for immigration violators as for any other citizen. El Paso Police Officers do not arrest persons for immigration violations *only*.<sup>147</sup>

Norman Stamper, assistant San Diego police chief, told the Advisory Committees that his department “has a long-standing policy that makes it clear that our police officers are neither required nor permitted to enforce immigration laws.”<sup>148</sup> In addition to its being outside of the department’s responsibility, Assistant Chief Stamper explained that “the police are committed to maintain[ing] the best possible relationship with San Diegans of color—particularly Hispanics—given our proximity to the border.”<sup>149</sup> The San Diego Police Department does target criminal activity involving the undocumented and works with other Federal and local law enforcement agencies in addressing drug problems on the border. In addition, the department maintains a joint patrol with the Border Patrol. The unit, referred to as the Border Crimes Intervention Unit (BCIU), is comprised of police officers and Border Patrol agents “who work as a team to prevent . . . murder, robbery, and rape in the hills and canyons between Tijuana and San Diego.”<sup>150</sup> Unlike the El Paso operation, this unit does not function within the downtown area of San Diego. Rather, the patrol operates in rugged and isolated terrain at the juncture where the city limits meet the border with Mexico. According to Police Chief Bob Burgreen, a proposal to duplicate the El Paso joint patrol in downtown San Diego was seriously considered; however, it was “shot down by a citizens’s advisory board.”<sup>151</sup>

In December 1991 the San Diego city manager and chief of police established a blue ribbon committee on violence.<sup>152</sup> The panel, consisting of public officials, law enforcement personnel, and civic leaders presented a series of findings and

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145 Brickey Testimony, El Paso Transcript, vol. 2, p. 126.

146 Ibid.

147 John Scagno, El Paso chief of police, letter to John F. Dulles II, Aug. 31, 1992, p. 2.

148 Norman Stamper, testimony, San Diego Transcript, vol. 1, p. 213.

149 Ibid.

150 Ibid., p. 214.

151 Bob Burgreen, San Diego chief of police, interview, Sept. 1, 1992.

152 See City of San Diego, *1992 Blue Ribbon Task Force on Violence, Recommendations*, San Diego.

recommendations in a 1992 report. Its subcommittee on border issues reported that "there is a current perception that some Border Patrol personnel have been abusive toward undocumented persons . . . a clear perception exists from several segments of the community that identifiable abuse of undocumented persons is occurring in the contact, detention and voluntary deportation process [and] . . . there is an existing perception that there is inadequate problem accountability for policies and practices of the Border Patrol."<sup>153</sup> The task force recommended "increased training and funding for the Border Patrol and the creation of a citizen's review and/or advisory board to work with the Border Patrol . . . to develop potential solutions for the problem of abuse and to promote harmony and understanding of the problems and potential solutions."<sup>154</sup>

Sheriff Jim Roache of San Diego County explained to the Advisory Committees that his officers are required to work closely with many other law enforcement agencies, including the Border Patrol: "My jurisdiction is in the busiest border entry point in the world. . . . In order to enforce the law along the 75-mile border, the INS, the Border Patrol, and U.S. Customs all utilize the San Diego Sheriff's department as a coequal in addressing the problems we face. From illegal immigration to drug smuggling, our law enforcement efforts are better coordinated than ever before."<sup>155</sup> Recognizing that there are jurisdictional issues, the sheriff remarked that "our close proximity to overlapping jurisdictions require that we have, at least, semi-formal interplay."<sup>156</sup> Mr. Roache noted that the reporting of hate crimes by undocumented aliens

is infrequent, adding, "Illegal immigrants are often victimized, and our deputies never hear about it."<sup>157</sup>

In an interview with Commission staff, Mr. Roache acknowledged that his department does not have sufficient bilingual officers. Although the sheriff encourages his deputies not to call on the Border Patrol for assistance, "if you have no other choice, its okay."<sup>158</sup>

## Mexican Views

In 1990, Grupo Beta was created in Mexico. This unique law enforcement experiment was designed to reduce violent crime at the border and to attack official corruption and misconduct.<sup>159</sup> The elite unit is comprised of 45 well-trained agents from three different levels of government: the municipality of Tijuana, the state of Baja California and the Federal Government of Mexico. In addition to police activity (primarily preventive), the unit engages in open dialogue among officers and has close working relationships with U.S. law enforcement agencies, academic institutions, and human rights groups. Its efforts have been widely praised by American law enforcement officials for a significant contribution to the reduction of crimes against migrants at the border.<sup>160</sup>

Javier Valenzuela, Grupo Beta's commander, participated in the Advisory Committee's San Diego forum. He stressed the need for bilateral approaches and cooperation in addressing immigrant law enforcement issues. Mr. Valenzuela indicated that his unit had received a total of 838 complaints (an average of 31 per month since 1991). Eighty percent of these were within

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153 Ibid., p. 20.

154 Ibid.

155 Jim Roache, testimony, San Diego Transcript, vol. 1, pp. 216-17.

156 Ibid., p. 218.

157 Ibid., p. 219.

158 Jim Roache, Sheriff, San Diego County, interview, Sept. 9, 1992.

159 Javier Valenzuela, testimony, San Diego Transcript, vol. 1, pp. 222-23. See also, Sebastian Rotella, "Walking a Tightrope at the Border," *Los Angeles Times*, Sept. 15, 1993 (hereafter cited as "Tightrope at the Border").

160 "Tightrope at the Border," *Los Angeles Times*, Sept. 15, 1993.



American territory, where he has no jurisdiction. The Border Crimes Intervention Unit (BCIU) patrols this area but is understaffed and limited, Mr. Valenzuela observed.<sup>161</sup>

With regard to the type of crimes reported, he testified that "our information reveals that the highest number is for assaults by regular delinquents, followed by injuries and abuse attributed to American officials, and in third place extortion and abuse attributed to Mexican officials."<sup>162</sup> In comparing statistics for the first 3 months of 1992 and 1993, Mr. Valenzuela noted that "the volume of reports presented against American officials increased from 9.8 percent to 32.2 percent" of the total.<sup>163</sup> He told the panel that "it is essential to promote greater responsibility for the U.S. agencies in charge of surveilling the area through training that will promote an attitude of respect and protection towards the migratory population."<sup>164</sup>

Mr. Valenzuela concluded that the current administrative and judicial mechanisms for addressing complaints are inadequate. He suggested that political decisions will be required in order to provide appropriate legal assistance and counseling services for migrants whose transient nature makes it difficult for them to "participate in bureaucratic, judicial processes that take so long."<sup>165</sup>

The state of Baja California established a state commission on human rights in 1991.<sup>166</sup> Known as the Procuraduria De Los Derechos Humanos, it is directed by Jose Luis Perez Canchola, who explained its functions to the Advisory Committees:

We investigate accusations against public authorities of human rights violations; issue recommendations on appropriate actions; propose state policy regarding the respect for, and in defense of, human rights; [and] prepare preventive programs concerning human rights.<sup>167</sup>

According to the records of the Procuraduria, Mr. Perez Canchola indicated that in 1992, there were

49 incidents of violations that affected a total of 128 individuals in the area of the Tijuana border on both sides . . . 36 incidents happened on the U.S. side and 13 on the Mexican side.<sup>168</sup>

Law enforcement officials were accused in 14 acts of violence with the following consequences: 4 deaths, 4 injuries, 2 extortions and 4 other types of abuses.<sup>169</sup> Of the 14 incidents, 10 involved the U.S. Border Patrol.

Mr. Perez Canchola observed that "as long as migrant workers and their families keep crossing the border illegally, violence and human rights violations will persist along the U.S. border."<sup>170</sup>

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161 Valenzuela Testimony, San Diego Transcript, vol. 1, p. 225.

162 Ibid.

163 Ibid., p. 226.

164 Ibid.

165 Ibid., p. 227. Javier Valenzuela submitted a paper to the Arizona and California Advisory Committees, U.S. Commission on Civil Rights, entitled "El Operativo 'BETA': Experience in the Analysis and Erradication of Violence on the Tijuana Border with San Diego," April 1993.

166 Procuraduria De Los Derechos Humanos y Proteccion Ciudadana De Baja California, "1992: Registry of Cases of Violence on the Tijuana-San Diego Border against Undocumented Immigrants," January 1993, Tijuana, B.C.

167 Jose Luis Perez Canchola, testimony, San Diego Transcript, vol. 2, pp. 228-29.

168 Ibid., p. 229.

169 Ibid., p. 230.

170 Ibid.

Expressing his concern at the lack of “strong relationships” between Mexican and U.S. law enforcement and human rights agencies, Mr. Perez Canchola recommended that mechanisms be put in place to improve this situation.<sup>171</sup> He concluded his statement with this observation:

In my personal opinion, the main responsibilities [for] this migration [are] on the Mexican side. The level of poverty, unemployment, millions of people without jobs and opportunity in the future, are the main causes of this phenomena.

As long as this reality persists, there will be no end to the immigration into the U.S. But, in the meanwhile, we have to do all we can to cut down the number of incidents where human rights are violated. To do so, the enforcement agencies on both sides should improve their relationships. A civilized coexistence between Mexico and the U.S. demands general and effective respect of human rights of nationals for each of our countries, mainly along the border.<sup>172</sup>

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<sup>171</sup> Ibid., p. 231.

<sup>172</sup> Ibid., pp. 231–32.

## VI. Postscript and Summary

The Arizona, California, New Mexico and Texas Advisory Committees continued to monitor developments concerning immigration law enforcement after the conclusion of the two public forums in El Paso and San Diego. As noted in the report, there has been a sustained increase in the resources allocated to guarding the border. Forty-five million dollars were appropriated in fiscal year 1994 for enhanced Border Patrol operations. The President's 1995 budget requested \$2.1 billion to fund the INS, which included \$368 million of new funds "for an enforcement initiative to reduce the flow of illegal immigration."<sup>1</sup> These will be used to fund five major immigration initiatives.

In testimony before the House Subcommittee on Immigration and Refugee Affairs, Alice M. Rivlin, Director of the Office of Management and Budget (OMB), stated that these initiatives "will

give INS the ability to improve enforcement at the land border, at airports, and in the interior. INS will help beef up border operations in San Diego and other affected areas . . ."<sup>2</sup> Ms. Rivlin also told the Subcommittee that "the Federal Government's primary responsibility in the area of illegal immigration is to control and manage the nation's borders. We must address this responsibility as a matter of national sovereignty and in order to maintain fiscal and economic security."<sup>3</sup>

In September 1993, the Border Patrol initiated "Operation Blockade" in El Paso. This enforcement effort, later renamed "Operation Hold the Line," involved a "new strategy of controlling the border by saturating a 20 mile stretch of the U.S.-Mexico Border between El Paso and Juarez with Border Patrol agents."<sup>4</sup> The initiative was considered a success by local, State, and Federal officials, although it was protested by Mexicans in

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- 1 Alice M. Rivlin, Deputy Director, Office of Management and Budget, before the Committee on the Judiciary, Subcommittee on Immigration and Refugee Affairs, U.S. Senate, Concerning Fiscal Impact of Illegal Immigration, Aug. 3, 1994, p. 3 [hereafter cited as Rivlin Statement].
  - 2 Ibid. The Clinton administration budget for fiscal year 1996 "would raise immigration-related funding for the INS and four other agencies by more than 1 billion dollars over current levels." Included in this is a proposal to "hire 700 new Border Patrol agents, for a total of 5,682, or 42 percent more than when Clinton took office." Ronald J. Ostrow, "Clinton Seeks Funds to Curb Illegal Hirings," *Los Angeles Times*, Feb. 5, 1995, p. 1.
  - 3 Rivlin Statement, p. 2. On February 6, 1995, the President directed the reassignment of 62 Border Patrol agents to Nogales, Arizona, where apprehensions of undocumented persons increased by more than 50 percent in 1 year, according to Border Patrol officials.

The President's unusual order responds to an increase in illegal immigration in Arizona attributed to Border Patrol crackdowns in San Diego and El Paso and, more recently, to a Mexican economic crisis caused by the devaluation of the peso, according to a statement issued by the White House Press Office Sunday.

The administration anticipated an increase in illegal entries in Arizona this year . . . and is already training 100 new patrol agents to reinforce the Nogales border, the White House statement said. But illegal crossings increased so dramatically in January in the wake of the peso devaluation that more agents are needed now.

The reinforcements are going to the Border Patrol's volatile Tucson sector, which has about 280 agents. The sector experienced an increase in arrests of about 70 percent last month and 51 percent last year.

Sebastian Rotella, "Clinton Orders Border Buildup at Nogales," *Los Angeles Times*, Feb. 7, 1995, p. A3.

- 4 Rivlin Statement, p. 3. See also Tom Golden, "U.S. Border Crackdown Enrages Mexican Town," *The New York Times*, Oct. 1, 1993, p. 1, and "They Shall Not Pass," *The Economist*, July 9, 1994, p. 23.

Juarez. The initiative was supported by the U.S. Commission on Immigration Reform, which praised its emphasis on "prevention of illegal entry at the border, rather than apprehension following illegal entry."<sup>5</sup> Ms. Rivlin also noted that "Operation Hold the Line has been a successful experience for the INS" but acknowledged that its deterrent effect "appears to have diminished somewhat the longer the operation lasted and it has less of a deterrence effect on long distance labor migrants than on other kinds of crossers."<sup>6</sup>

On October 1, 1994, the Border Patrol launched a massive deployment of agents at the San Diego-Tijuana border crossing area.<sup>7</sup> Entitled, "Operation Gatekeeper," this effort involved a build-up of forces nearly doubling the number of Border Patrol agents and greatly increasing the number of apprehensions. While utilizing different tactics and strategies than those employed in El Paso, Operation Gatekeeper has been similarly praised. Nonetheless, Grupo Beta, the Mexican border protection force, filed three separate complaints of alleged Border Patrol misconduct, only one day following implementation of the new crackdown.<sup>8</sup>

The U.S. Commission on Immigration Reform, in its September 1994 report to the Congress, concluded that there is an immediate need for "more effective prevention and deterrence of illegal immigration" and made recommendations for accomplishing this.<sup>9</sup> The Commission also concluded "that it is possible to reduce unlawful immigration in a manner that is consistent with our

traditions, civil rights and civil liberties."<sup>10</sup> While calling for increased resources for prevention, including more staff, technological systems, and mobile, rapid response teams, the Commission nonetheless did not support "the erection of extraordinary physical barriers, such as unscalable walls, unless needed as a last resort to stop violence when other means have proved ineffective."<sup>11</sup> In addition, the Commission's report to the Congress included these recommendations:

The Commission supports efforts to reduce potentially violent confrontations between Border Patrol officers and those believed to be seeking illegal entry into the U.S.

The Commission supports efforts already underway to address complaints about human rights violations, including:

- Increased training and professionalism of Border Patrol officers to enable them to respond appropriately to potentially violent situations;
- Improved procedures for adjudicating complaints of Border Patrol abuses;
- Mechanisms to provide redress or relief to those subjected to improper actions; and
- More effective protection of Border Patrol officers from violence directed at them.<sup>12</sup>

The INS took steps to create a citizen's advisory panel, including representatives from the Attorney General's office, Civil Rights Division of the Justice Department, members of public interest groups, and community representatives.<sup>13</sup>

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5 U.S. Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*, A report to Congress, Executive Summary, September 1994, p. 6 (hereafter cited as *Restoring Credibility*).

6 Rivlin Statement, p. 3.

7 Sebastian Rotella, "Agents Begin Massive Sweep Along Border," *Los Angeles Times*, Oct. 2, 1994, p. 1.

8 Sebastian Rotella, "Border Patrol Agents Accused of Abuses," *Los Angeles Times*, Oct. 5, 1994.

9 *Restoring Credibility*, p. 3.

10 *Ibid.*, p. 5.

11 *Ibid.*, p. 7.

12 *Ibid.*, pp. 7-8.

13 Cris Sale, Acting Commissioner, INS, testimony before House Judiciary Committee, Subcommittee on International Law, Immigration and Refugees, Sept. 30, 1993.

In May 1993, several members of the House of Representatives, led by Xavier Becerra of California, introduced legislation to create a Federal Immigration Enforcement Review Commission that would independently investigate complaints filed against Federal officials who enforce immigration laws.<sup>14</sup> Under the proposed legislation, if the Commission finds that abuse has occurred, it would make disciplinary recommendations to the affected agency. In addition, a Community Outreach Office would be created to improve relationships between Federal immigration officials and the public.<sup>15</sup>

The Advisory Committees support initiatives to create mechanisms for enhancing the accountability of federal immigration law enforcement at the border. As one noted legal expert testified before the Congress:

The INS has many hardworking, dedicated, and loyal employees whose best efforts are frustrated by institutional inertia and the culture of the agency. There are, however, also a significant number of INS employees who are insensitive to the diversity of the public they serve and respond with hostility to legitimate inquiries and requests from the public.<sup>16</sup>

The U.S. Commission on Civil Rights, in its landmark 1980 report, *The Tarnished Golden Door*, advised both the Congress and the President that "current immigration laws and practices and procedures for the enforcement of those laws result in the denial of the rights of American citizens and aliens."<sup>17</sup> Calling for "immediate corrective action," the Commissioners determined that "American residents with ethnic characteristics similar to major immigrant groups have suffered too long from the burdens attendant upon immigrant or alien status in American society."<sup>18</sup>

In an interview conducted shortly after her Senate confirmation, Immigration and Naturalization Commissioner Doris Meisner made the following comments concerning critical immigration issues affecting the nation:

I don't think we should trivialize the reasons that people come and somehow make them into sophisticated manipulators. . . . People come here illegally to work. Others come illegally to stay alive, physically.

. . . Things like immigration are very wonderful in retrospect. When it happened 100 years ago and it all worked out . . . it's lovely. But it has never been wonderful and easy when it's happening. It's extraordinarily difficult.<sup>19</sup>

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14 H.R. 2119, 103d Cong., 1st Sess. (1993). See also Howard Libit, "Border Patrol Oversight Bill Introduced," *Los Angeles Times*, May 14, 1993.

15 Ibid.

16 [U.S. Congress, House, Committee on Government Operations], *The Immigration and Naturalization Service: Overwhelmed and Unprepared for the Future*, 103d Cong., 1st Sess., 1993, H.R. Rept. 216, p. 15.

17 Arthur S. Flemming, Chairman, United States Commission on Civil Rights: *Civil Rights Issues in Immigration* (1980), p. iii.

18 Ibid.

19 Marc Sandalow, "INS Chief Says Illegals' Goal Isn't Welfare," *San Francisco Chronicle*, Oct. 30, 1993, p. 1.

## VII. Principal Findings and Recommendations

The principal findings of the four-State Advisory Committees were stated in the introduction to this report. They are restated at its conclusion:

- a) Border communities in the southwest are uniquely impacted by the presence of large-scale Federal immigration law enforcement activity. While enforcement of immigration law is important, the existence of such policing oftentimes serves to diminish the protection of civil rights, especially for Hispanics.<sup>1</sup>
- b) The Advisory Committees were presented with substantial testimony and information indicating that a pattern of abusive treatment by Border Patrol officials might exist. The Committees were not in a position to confirm this potential finding, as many of the allegations presented to the Advisory Committees had not been independently investigated or verified. However, the sheer statistical numbers and severity of abuse complaints are a cause of deep concern.<sup>2</sup>
- c) Existing mechanisms for redress of alleged misconduct by Federal immigration officers are inadequate, inaccessible, and lack the confidence of the communities most directly affected.<sup>3</sup>

Based on the extensive testimony provided at the two public forums and additional staff research and field investigations, the Advisory Committees believe that the U.S. Commission on Civil Rights should revisit many of the immigration issues so comprehensively examined in its 1980 report, *The Tarnished Golden Door*. Although the focus of the Advisory Committee project was much more limited and addressed primarily Federal immigration law enforcement issues

impacting border communities in the Southwest, sufficient evidence and data were gathered to clearly confirm that several significant findings and recommendations contained in the Commission's statutory report are still timely 15 years later. Specifically, the Advisory Committees have concluded that the many deficiencies found by the Commission in the complaint investigation procedures of the Immigration and Naturalization Service have not been adequately addressed or rectified. The Advisory Committees found that there is widespread dissatisfaction with the complaint process in effect at the Immigration Service, and especially the Border Patrol. The Advisory Committees found the following problems with the current procedures:

- There is inadequate public awareness of the complaint process:
- Complaint mechanisms are inconsistent, confusing and often inaccessible:
- There exists no standard complaint form:
- There is no appeals process and no procedure or mechanism for independent external review:
- Potential complainants often fear reprisals—including the filing of counter-charges—as well as active discouragement of their complaints:
- There is widespread lack of confidence in the thoroughness, aggressiveness, and impartiality of complaint investigations, and their results:
- Complainants are not notified of the status or disposition of their case:
- There is a widespread perception that errant officers are rarely disciplined for abusive behavior:

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1 At their June 1995 meeting, the Commissioners requested that future SAC reports contain references in the findings to the sections or pages of the report that supported the findings. See pp. 14–15. See chap. III, particularly pp. 18–32; 34–37; 47–53; 68–79.

2 See pp. 5–6; 23–31; 33–34; 38; 40–43; 45–48; 53–55; 57–58; 66–68; 75–79.

3 See chap. IV, entire; See also pp. 30–33; 38–40; 43–45; 47–48; 52; 62–63; 67–68; 71–72; 78.

- Complaint statistics are incomplete, inaccessible, and not published on a regular basis.

With respect to allegations of Border Patrol misconduct, the Advisory Committees heard much anecdotal and some firsthand information about incidents involving alleged physical, psychological, and verbal abuse. These included shootings, beatings, and sexual assault; racial and ethnic insults; rude and abusive language; threats and coercion; illegal or inappropriate searches, seizures, and arrests; and confiscation of documents.

Also, the Advisory Committees were presented with several research documents containing statistical compilations and summaries of alleged incidents of immigration law enforcement misconduct and/or complaints. These were provided by various sources, including academicians, United States and international human rights organizations, and the Mexican Government.

Finally, the Advisory Committees collected significant testimony concerning the impacts on border communities of large-scale Federal immigration forces. There were many allegations of civil rights violations based on race, ethnicity, nationality, and language. Some communities expressed fear and distrust of the Border Patrol and alleged harassment, racism, and selective enforcement of immigration laws with inadequate legal basis. Several of these allegations have been sustained by Federal court findings.

The Advisory Committees heard much testimony concerning the lack of opportunity for community input into immigration law enforcement policies and practices. There was a widespread perception that because Federal immigration authorities are not locally accountable, there is no access or remedy available at the local level for addressing community concerns about immigration policing.

## Recommendations

It is the Advisory Committees' hope that increased resources for Federal immigration law enforcement will result in improved management within the INS. Several congressional committees as well as the Inspector General of the Department of Justice have documented severe mismanagement within the INS, including the failure of INS to properly recruit, screen, train, supervise,

and discipline its officers. Many of the civil rights and accountability problems within Federal immigration law enforcement identified by the Advisory Committees stem from these deficiencies and could probably be corrected with appropriate changes in direction, management structure, policies, and operational practices.

Local police departments throughout the country are increasingly being subjected to greater public accountability. Many local law enforcement agencies now have policy advisory and oversight panels reviewing their operations. Some have independent civilian review boards or commissions to investigate and act on allegations of misconduct, and to evaluate police practices.

While immigration law enforcement represents the largest police force in the United States, it operates without any similar accountability.

The Advisory Committees of Arizona, California, New Mexico, and Texas urge the United States Commission on Civil Rights to consider the following recommendations and forward them in a timely manner to appropriate Federal officials:

- 1) The complaint process within the OIG and INS should be restructured to correct the deficiencies noted by the Commission in *The Tarnished Golden Door* and reconfirmed by its Advisory Committees in the Southwest 15 years later. The new system must be designed to assure public awareness and accessibility and accountability; investigations should be conducted in a timely, impartial, and thorough manner; complainants should be systematically advised of the status and resolution of their case; an appeals process should be established which is not overly burdensome; complaint statistics should be published and released to the public on a regular basis; the system must be managed to assure its integrity and promote public confidence; reprisals as a means of discouraging complaints must not be tolerated.
- 2) Citizen advisory boards for Federal immigration law enforcement should be established at the Federal, regional, and local levels in border-impacted communities. These entities should be comprised of public officials, community representatives, immigration lawyers and advocates, and where appropriate, representatives of the Mexican (or Canadian) Government.

Their function would be to provide input into local strategies and operational practices of immigration law enforcement and to serve as a vehicle for improving the relationship between Federal immigration law enforcement agencies and the communities most directly impacted by their presence. These boards should be established and their structure defined by Federal law in order to assure their credibility and to create public confidence.

In addition, the INS should establish community outreach offices in selected border communities with liaison personnel and ombudsmen to assist in assuring responsiveness to community concerns. This outreach program should be designed in a manner which emphasizes service and should be staffed by civilians who work with, but are not under the supervision of local INS and Border Patrol personnel.

3) The Congress should establish a Federal immigration enforcement review commission to investigate independently serious misconduct charges and recommend disciplinary action, as appropriate. That commission should review and evaluate the effectiveness of the OIG and INS internal affairs and complaint systems and

make recommendations for improvements to assure their effectiveness, integrity, and enjoyment of public confidence.

4) The recruitment, screening, selection, and training programs for the INS and the Border Patrol must be strengthened and improved, in accordance with the findings of congressional oversight committees and the Inspector General of the Department of Justice. Management and accountability structures, including supervisory and disciplinary provisions, also need to be strengthened. As these issues are addressed by leadership at the Department of Justice, it is essential that compliance with civil rights statutes, regulations, and court orders be emphasized in all phases of reform. In addition, the INS should attempt to recruit officers who have outstanding records of community service and a genuine sensitivity to issues of language and cultural and ethnic diversity. Although the question of separating the enforcement and service functions of the INS was outside the scope of this Advisory Committee study, it is, nonetheless, of critical importance that this agency rebuild its professional reputation based on respect for individual rights, including those of minorities and immigrants, with or without documentation.





## Appendix A

U.S. Department of Justice  
Immigration and Naturalization Service

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Office of the Commissioner

425 Eye Street N.W.  
Washington, D.C. 20536

FEB - 7 1996

Mr. Philip Montez  
Regional Director  
Western Regional Office  
United States Commission on Civil Rights  
3660 Wilshire Boulevard, Suite 810  
Los Angeles, CA 90010

Dear Mr. Montez:

This is in response to a November 27, 1995, request by Ms. Mary K. Mathews, Staff Director, United States Commission on Civil Rights, for Immigration and Naturalization Service comments on the June 1995 draft report "Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities" prepared for the Commission's information and consideration by its Arizona, California, Texas, and New Mexico Advisory Committees.

First, let me commend the Advisory Committees and the Commission on the draft report. Quite obviously, it is the product of enormous investments of time and effort by many committed, thoughtful contributors. My staff and I have found the draft report very helpful in our continuing efforts to improve an absolutely vital aspect of our service to the public: the proper treatment of the people with whom we deal every day.

The draft report is virtually free of substantive inaccuracies. However, because considerable time has passed since the Advisory Committees conducted their fact finding in El Paso in June 1992 and in San Diego in April 1993, some of the information in the report now is quite dated. For example, the Advisory Committees describe as a current practice in Section III of their draft report the conduct of joint foot patrols in downtown El Paso by officers of the El Paso Police Department and agents of the U. S. Border Patrol. In actuality, Border Patrol Agents have not participated in those foot patrols since mid-1993.

More unfortunately, the time lag has precluded description of the very aggressive, extensive, and successful efforts that we in the INS and the Department of Justice have made to prevent human and civil rights abuses, particularly over the last several years.

Page 2  
Mr. Philip Montez

Absent information about those efforts, the draft report would lead its readers to conclude that the INS is unaware of or unconcerned about the problem and unwilling or unable to solve it. Nothing could be further from the truth, and it is to correcting that deficiency of the draft report that this response mainly is devoted. The enclosed comments are presented in the context of the Advisory Committees' "Principal Findings and Recommendations" as set forth in the draft report.

Thank you for the opportunity to comment on the draft report. If you should have any questions or need any additional information, please do not hesitate to contact me or my Director of Internal Audit, Mr. John P. Chase, at (202) 514-2373

Sincerely,

A handwritten signature in black ink, appearing to read "Doris Meissner". The signature is fluid and cursive, with a large initial "D" and "M".

Doris Meissner  
Commissioner

Enclosure

cc: Mary K. Mathews  
Staff Director  
United States Commission  
on Civil Rights

**Immigration and Naturalization Service Comments on the  
Principal Findings and Recommendations of the  
U. S. Civil Rights Commission's Arizona, California, Texas, and New Mexico  
Advisory Committees as Presented in their June 1995 Draft Report,  
"Federal Immigration Law Enforcement in the Southwest:  
Civil Rights Impacts on Border Communities"**

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**Immigration Law Enforcement's Impact on Border Communities:  
Advisory Boards and Outreach Efforts**

**Draft Report.** The Advisory Committees concluded, "Border communities in the Southwest are uniquely impacted by the presence of large-scale Federal immigration law enforcement activity," and, "While enforcement of immigration law is important, the existence of such policing oftentimes serves to diminish the protection of civil rights, especially for Hispanics." They stated they ". . . heard much testimony concerning the lack of opportunity for community input into immigration law enforcement policies and practices. There was a widespread perception that because Federal immigration authorities are not locally accountable, there is no access or remedy available at the local level for addressing community concerns about immigration policing." They made the following recommendations:

*Citizen advisory boards for Federal immigration law enforcement should be established at the Federal, regional, and local levels (in border-impacted communities). These entities should be comprised of public officials, community representatives, immigration lawyers and advocates, and where appropriate, representatives of the Mexican (or Canadian) Government. Their function would be to provide input into local strategies and operational practices of immigration law enforcement and to serve as a vehicle for improving the relationship between federal immigration law enforcement agencies and the communities most directly impacted by their presence. These boards should be established and their structures defined by Federal law in order to assure their credibility and to create public confidence.*

*In addition, the INS should establish community outreach offices in selected border communities with liaison personnel and ombudsmen to assist in assuring responsiveness to community concerns. This outreach program should be designed in a manner which emphasizes service and should be staffed by civilians who work with, but are not under the supervision of local INS and Border Patrol personnel.*

**INS Comments.** We have established an advisory board at the Federal level and a number of citizens' groups at the local level. We are continuing to broaden our outreach efforts.

On the initiative of the INS, the Citizens' Advisory Panel (CAP) was chartered in 1994 "... to provide recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against INS employees, and, most importantly, to minimize or eliminate the causes for those complaints." Through an exhaustive nomination and selection process, 15 members were chosen: 9 private citizens, 5 Department of Justice officials including the Commissioner, and a representative of the Government of Mexico; a roster of the current CAP membership is attached. The CAP met three times in 1995, once each in Washington, D.C., San Diego, and Houston. Each meeting included opportunities for comments by members of the public as well as presentations by Government officials. The main topics addressed thus far have been the complaint process and the training of officers, including Border Patrol Agents. We are confident that the CAP's recommendations to the Attorney General will make extremely positive contributions to our efforts to eliminate the causes of complaints of misconduct and to our systems for resolving allegations.

A number of INS field offices have established citizens' groups which very successfully provide at the local level the same forum for exchange of ideas as the CAP provides at the national level. The Commissioner has continued to encourage INS local offices to pursue outreach activities of this type. The INS Office of Internal Audit has also initiated an outreach effort to Mexican Consuls and advocacy groups in the Southwest cities where the INS does the majority of its work. This has opened the lines of communication between INS Headquarters and those groups.

As described below, the INS soon will issue to its field offices complaint system posters and standard complaint forms. In conjunction with that, INS managers will be directed to expand their current community outreach efforts to ensure that the process for reporting complaints against INS employees is well known.

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### Possible Pattern of Abusive Treatment

Draft Report. The Advisory Committees presented their second principal finding as follows:

*The Advisory Committees were presented with substantial testimony and information indicating that a pattern of abusive treatment by Border Patrol officials might exist. The Committees were not in a position to confirm this potential finding, as many of the allegations presented to the Advisory Committees had not been independently investigated or verified. However, the sheer statistical numbers and severity of abuse complaints are a cause of deep concern.*

They presented the following discussion in support of that finding:

*With respect to allegations of Border Patrol misconduct, the Advisory Committees heard much anecdotal and some firsthand information about incidents involving alleged physical, psychological, and verbal abuse. These included shootings, beatings, and sexual assault; racial and ethnic insults; rude and abusive language; threats and coercion; illegal or inappropriate searches, seizures, and arrests; and confiscation of documents.*

*Also, the Advisory Committees were presented with several research documents containing statistical compilations and summaries of alleged incidents of immigration law enforcement misconduct and/or complaints. These were provided by various sources, including academicians, United States and international human rights organizations, and the Mexican Government.*

*Finally, the Advisory Committees collected significant testimony concerning the impacts on border communities of large-scale Federal immigration forces. There were many allegations of civil rights violations based on race, ethnicity, nationality, and language. Some communities expressed fear and distrust of the Border Patrol and alleged harassment, racism, and selective enforcement of immigration laws with inadequate legal basis. Several of these allegations have been sustained by Federal court findings.*

**INS Comments.** The INS shares the concern of the dissenting Advisory Committee members that the draft report does not provide a balanced analysis of the information on each side of this extremely complex and highly-charged issue. While the Advisory Committees are careful to conclude that "a pattern of abusive treatment by Border Patrol officials might exist" (emphasis supplied), the draft report's presentation implies a stronger conclusion.

Over the past several years, we have received from rights groups many of the abuse allegations presented to the Advisory Committees and recounted in the draft report, have addressed them carefully, and have responded extensively. Generally, our analyses revealed that a number of the allegations never had been brought to the attention of the appropriate authorities. Of those that were reported, many were not presented in a timely manner, making investigation difficult or impossible. In many of the cases where investigation could be conducted, the allegations could not be sustained, sometimes because victims and witnesses could not be located but, most often, simply because of lack of corroborating evidence. Even in those cases where substantiated allegations led to corrective action, the person or organization providing the information often was unaware -- and, because of the employees' privacy interests, could not properly have been made aware -- of the corrective action taken.

Although the overwhelming majority of INS employees are highly principled professionals who chose to pursue law enforcement careers precisely because of their respect for the law and concern for the rights of individuals, we cannot deny that some of its employees have committed abuses of human and civil rights. While we are convinced that human and civil rights abuses in INS are nowhere near as common as the draft report suggests, debating that point serves no purpose. Even one instance of abuse is too many. No level of human and civil rights violations is acceptable and INS efforts to combat abuse -- including improvements in and enhanced access to the complaint process, increased civil rights training, rigorous new employee screening, vigorous prosecution and discipline of officers who commit civil rights abuses -- will continue to rest on that premise.

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### The Complaint Process

**Draft Report.** The Advisory Committees' third principal finding was that "[e]xisting mechanisms for redress of alleged misconduct by Federal immigration officers are inadequate, inaccessible, and lack the confidence of the communities most directly affected." They identified what they believed to be specific problems with the current complaint process; those are addressed below. The Advisory Committees made the following recommendation:

*The complaint process within the OIG and INS should be restructured to correct the deficiencies noted by the Commission in The Tamished Golden Door and reconfirmed by its Advisory Committees in the Southwest 15 years later. The new system must be designed to assure public awareness and accessibility and accountability; investigations should be conducted in a timely, impartial, thorough manner; complainants should be systematically advised of the status and resolution of their case; an appeals process should be established that is not overly burdensome; complaint statistics should be published and released to the public on a regular basis; the system must be managed to assure its integrity and promote public confidence; reprisals as a means of discouraging complaints must not be tolerated.*

**INS Comments.** Particularly over the last 2 years, we and the Department of Justice have made a number of significant improvements in the processes for reporting and resolving allegations of abuse. We already have taken a number of the specific actions which the Advisory Committees have recommended. We also have taken other actions that will serve many of the purposes intended by the Advisory Committees.

The Department of Justice and INS procedures for addressing alleged civil rights violations by INS employees are summarized as follows:

- All allegations of civil rights violations that come to the attention of INS are presented to the appropriate field office of the Office of the Inspector General (OIG), Department of Justice (DOJ), and to the INS Office of Internal Audit (OIA) which opens a case file for tracking purposes. Most such allegations are reported by INS managers in the same fashion as other misconduct allegations are reported. It is not uncommon, however, that allegations of criminal civil rights violations bypass the INS and the OIG. For example, some are presented to the Federal Bureau of Investigation or the DOJ Civil Rights Division directly by complainants, their advocates, or other law enforcement agencies. Depending on the particulars of the individual case, the OIG may or may not conduct a preliminary investigation. Regardless, the OIG quickly presents the matter to the DOJ Civil Rights Division (CRT), which determines whether or not investigation by the FBI is warranted. NOTE: In the Southern District of California, the office of the United States Attorney is involved in this stage of the process along with the CRT.
- If the CRT decides that an FBI investigation is appropriate, it directs that such investigation be conducted. The FBI provides its investigative report to the CRT, which then either accepts or declines the case for criminal prosecution. If the CRT declines the case, it forwards to the OIA the FBI investigative report and its analysis of the case. The OIA then handles the case as described below. NOTE: The INS has no control over the handling of cases pursued as criminal civil rights violations. In most cases, while criminal action is pending, Department policy precludes the INS from either using the results of the criminal investigation of the incident to support administrative action such as suspension, demotion, or removal, or conducting its own investigation for that purpose.
- If the CRT decides that an FBI investigation is not warranted, it refers the matter to the OIG. Usually within several days, the OIG then chooses one of the following alternatives: (1) to initiate an investigation; (2) to refer the matter to the INS OIA "for appropriate investigation, inquiry, or managerial oversight," with a requirement that the INS provide a report of the results; or (3) to refer the matter to the OIA for information.
  - If the OIG retains the case for investigation, it notifies the OIA of the particulars of the case and its action thereon. When the OIG completes the investigation, upon either the appropriate prosecutor's declination of prosecution or completion of judicial action, it forwards a report of its investigation to the OIA.
  - On receipt of a case referred by the OIG, the OIA decides whether to investigate the matter itself or to refer it to the appropriate Border Patrol

**Sector Chief or District Director for an inquiry. In cases the OIA refers for action, it sets suspense dates for completion of action and requires a report of the management inquiry's findings and the corrective action taken based on substantiated allegations. The OIA oversees this process to ensure inquiries are thorough, unbiased, and timely.**

- **If the case was referred by the OIG for information and the OIA does not determine independently that an inquiry is warranted, the OIA refers the case to local management for information. Even in those cases, the OIA provides local management the option of conducting an inquiry. If local management opts to conduct an inquiry, it must provide to the OIA a report of the results; otherwise, the case is considered closed at the point it is referred to local management for information.**
- **On receipt of a report of investigation or inquiry -- be it an inquiry report by local INS management, an investigative report by the OIG or FBI, or an investigative report by its own staff -- the OIA performs a number of functions:**
  - **The OIA first ensures that the issues have been addressed; that the necessary evidence has been obtained; that the evidence has been properly weighed and that the conclusions follow from the facts; and that systemic problems -- deficiencies in management systems that foster misconduct, allow preventable misconduct to occur, or permit misconduct to go undetected -- have been identified and addressed. Where an inquiry or investigation is found deficient, the OIA directs additional action as appropriate. If the deficiency is in a report prepared by another agency such as the OIG or the FBI, the OIA's options are to request additional work by that agency or to, itself, conduct additional investigation.**
  - **Where an allegation of misconduct on the part of an employee is substantiated and corrective action has been initiated, the OIA reviews that action to ensure it is reasonable and appropriate. Where management has decided against taking corrective action against an employee based on a substantiated allegation, the OIA likewise assesses the reasonableness and propriety of management's rationale for that decision. If the corrective action decision is found improper or questionable, the OIA addresses the matter with the official who made the corrective action decision and, if agreement cannot be reached, addresses the matter with that official's superior.**

**These procedures are applied in every case and are not merely theoretical. They ensure that all cases of alleged civil rights violations by INS employees are fully and fairly examined, first as potential bases for criminal prosecution, then as potential bases for disciplinary or adverse action.**



The Advisory Committees concluded there is inadequate public awareness of the complaint process. We are preparing for issuance to our field offices posters and complaint forms and instructions for their use. The posters and complaint forms, which are in both English and Spanish, will be displayed in plain view in each INS processing, holding, and public access area. Complaint forms, also in both English and Spanish, are to be available at the same locations and will be provided immediately upon request. District Directors and Chief Patrol Agents will be responsible for ensuring that the posters are displayed properly and are neither defaced nor removed. They also will be responsible for ensuring that all questions regarding complaint procedures are answered promptly and courteously.

The new posters will enhance complainants' options in presenting their dissatisfactions. The new INS posters will inform complainants: (1) of the toll-free telephone number through which they may present complaints to the Department of Justice; (2) of the availability of franked, pre-addressed complaint forms by which they may present written complaints; and (3) of the address and telephone number of the office of the local District Director or Chief Patrol Agent to which they may address complaints in person or in writing. Those complaint forms submitted by mail will be received by the OIA. That office immediately will notify the OIG of allegations of civil rights and other serious violations. Complaints made to local management will continue to be reported to the appropriate authorities.

The Advisory Committees concluded that the complaint mechanisms are inconsistent, confusing, and often inaccessible. We agree that the processes for resolving civil rights abuse allegations are complex and time-consuming. That is, in part, because such allegations, if proved, can lead to criminal prosecution and because they are handled differently than other types of alleged employee misconduct. Nevertheless, the roles of the various entities that act on allegations of civil rights violations are well-defined.

Although the processes are quite complex from the Government's standpoint, they are relatively simple, straightforward, and accessible from a complainant's standpoint, and will become even more so with the institution of the new complaint form and complaint system poster. All INS employees are required to report any allegation of misconduct they receive. The obligation to report other agents' misconduct and the procedures for doing so are a part of every officer's training, and failure to do so is a punishable offense.

As in the many other kinds of employee misconduct matters it handles, the OIA picks up where the criminal justice system leaves off, ensuring that allegations not pursued as criminal violations are thoroughly and properly addressed as potential disciplinary matters. The INS established its Office of Internal Audit in early 1992, and, in early 1993, that office assumed responsibility for the administration of the process for resolution of allegations of employee misconduct. Staffing of that OIA function was completed in late 1993, and the

OIA has been accomplishing the full range of its responsibilities in respect to misconduct allegations since that time.

The OIA is about to issue new written procedures for the reporting and resolution of allegations of employee misconduct within the INS. Those procedures will simplify and speed up the process. They will provide for the local handling of minor complaints, enabling those within the system to focus on more serious allegations such as civil rights violations.

The Advisory Committees concluded there is no standard complaint form. As described above, we are issuing a standard complaint form.

The Advisory Committees concluded there is no appeals process. Formal appeals processes are more appropriate to requests for redress than they are to disclosures of wrongdoing. Nonetheless, if a complainant is dissatisfied with the outcome, other well-known avenues of relief are available, starting with the chain of command in the INS. We are committed to seeking the truth in our handling of allegations and to ensuring that violators face the consequences of their actions.

The Advisory Committees concluded there is no procedure or mechanism for independent external review. Particularly in the case of allegations of civil rights abuses, such procedures and mechanisms do, in fact, exist. Those involved in the above-described Department of Justice process -- the Office of the Inspector General, United States Attorney's Offices, the Civil Rights Division, and the FBI -- all are quite separate from and independent of the INS. The INS Office of Internal Audit reports directly to the Commissioner and is completely independent of field control and influence. The Department of Justice and the INS give the resolution of allegations of civil rights abuses by INS employees their fullest and fairest attention.

The Advisory Committees concluded that potential complainants often fear reprisals, (including the filing of countercharges) as well as active discouragement of their complaints. Reprisals for presenting allegations of INS employee misconduct are prohibited. Alleged or suspected reprisals are dealt with through criminal or administrative processes as appropriate. Included in the instructions section of the new complaint form is the assurance, "There will be no retaliation for submitting a complaint." Further, we will not single out for enforcement action complainants who are illegally in the United States. However, that does not mean that ultimately they will not be placed in deportation proceedings. The instructions section of the new complaint form includes the statement, "Submitting this form will have no effect on your case or eligibility for any benefits to which you are entitled under the Immigration and Nationality Act."

The Advisory Committees concluded there is widespread lack of confidence in the thoroughness, aggressiveness, and impartiality of complaint investigations, and their

results. We are confident that the enhancements we have made, as described throughout this document, will earn public confidence in our complaint resolution system.

The Advisory Committees concluded that complainants are not notified of the status or disposition of their cases. As a result of Citizens' Advisory Panel work, the OIA has begun notifying complainants whose identities are known of the receipt of their allegation and, upon completion of the investigation or inquiry, of the results.

The Advisory Committees stated they believe there is a widespread perception that errant officers are rarely disciplined for abusive behavior. We believe this perception is attributable to a number of factors, some of which are discussed above under the heading, "Possible Pattern of Abusive Treatment." Some allegations are not presented in a timely manner, making investigation difficult or impossible. Many timely allegations cannot be sustained, sometimes because victims and witnesses cannot be located, and sometimes simply because of lack of corroborating evidence. Generally, specific information on disciplinary action taken against INS employees cannot be made public because of the employees' privacy interests. Other dynamics contribute to the perception as well.

Accounts of alleged civil rights abuses often reach the public through press accounts early, when the often lengthy criminal investigative process is underway and the Government clearly is not in a position to release information. Cases declined for prosecution as criminal civil rights matters are considered in the context of the disciplinary action process, often requiring additional investigation. If and when complete findings become available to the public (as, for example, in cases accepted for prosecution as criminal civil rights matters which go to trial), the particulars and outcome usually receive less media attention than the victims' and advocates' original, more sensational accounts. Exceptions are cases -- such as the unsuccessful prosecutions of Nogales Border Patrol Agent Michael Elmer outlined in the Arizona portion of Section III of the Advisory Committees' draft report -- in which the outcomes are remarkable.

Public misunderstanding of the requirements for taking disciplinary actions (e.g., reprimands and short suspensions without pay) and adverse actions (e.g., long suspensions, demotions, and removals) against INS employees likewise contributes to the unfortunate perception that some employees who should be disciplined are not. As in criminal proceedings, specific procedures must be followed, charges must be proved, burdens of proof must be met, and appeals must be withstood. Although we are aggressive in our pursuit of misconduct cases, no agency's disciplinary efforts can be deemed sufficient by those who lack a full appreciation of the exacting requirements of Federal statute and case law.

The Advisory Committees concluded that complaint statistics are incomplete, inaccessible, and not published on a regular basis. We, too, were unsatisfied by the available statistics on allegations of misconduct and their outcomes. Because of that, our Office of Internal

Audit has developed a very powerful, computerized system not only to support its administration of INS' caseload of employee misconduct case, but to facilitate its analysis of case data to identify trends and patterns in allegations, findings, and corrective actions. That information will be extremely useful in INS efforts to prevent problems. We will make available to the public as much of this information as properly can be released.

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### Immigration Enforcement Review Commission

**Draft Report.** The Advisory Committees made the following recommendation:

*The Congress should establish a federal immigration enforcement review commission to investigate independently serious misconduct charges and recommend disciplinary action, as appropriate. In addition, the commission should review and evaluate the effectiveness of the OIG and INS internal affairs and complaint systems and make recommendations for improvements to assure their effectiveness, integrity, and enjoyment of public confidence.*

The Advisory Committees provided the following discussion in support of the recommendation:

*Local police departments throughout the country are increasingly being subjected to greater public accountability. Many local law enforcement agencies now have policy advisory and oversight panels reviewing their operations. Some have independent civilian review boards or commissions to investigate and act on allegations of misconduct and to evaluate police practices.*

*Although immigration law enforcement represents the largest police force in the United States, it operates without any similar accountability.*

**INS Comments.** We continue to believe that a review commission of the type recommended by the Advisory Committees is unnecessary because the current structure provides the requisite independence of review. As described above, potential criminal civil rights violations are handled initially by investigators and prosecutors outside the INS. Abuse matters that are not prosecuted as criminal offenses are reviewed and, if necessary, further investigated in the context of the disciplinary action process. That process is overseen by the Office of Internal Audit which reports directly to the Commissioner.

Also, it would be inappropriate for an entity outside the INS to be involved in the discipline of INS employees. The responsibility for deciding the need for and degree of discipline for substantiated instances of abuse, as well as for other administratively actionable offenses, properly rests with agency management.

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## Employee Accession and Training

**Draft Report.** The Advisory Committees stated that "[s]everal congressional committees as well as the Inspector General of the Department of Justice have documented severe mismanagement within the INS, including the failure of INS properly to recruit, screen, . . . [and] . . . train . . . its officers." They presented the following recommendation:

*The recruitment, screening, selection, and training programs for the INS and the Border Patrol must be strengthened and improved, in accordance with the findings of congressional oversight committees and the Inspector General of the Department of Justice. . . . As these issues are addressed by leadership at the Department of Justice, it is essential that compliance with civil rights statutes, regulations, and court orders be emphasized in all phases of reform. In addition, the INS should attempt to recruit officers who have outstanding records of community service and a genuine sensitivity to issues of language and cultural and ethnic diversity. . . .*

**INS Comments.** The recommended actions have been and will continue to be accomplished and enhanced.

Since June 1994, the Office of Personnel Management, by special agreement with the INS, has conducted personal interviews, under oath, with each Border Patrol Agent applicant. Such an interview must be completed and reported to the INS Office of Security before a prospective new agent is authorized to enter on duty. Border Patrol Agent applicants whose interviews reveal significant suitability issues are not hired until and unless those issues are resolved fully; the appointments of 11 percent of Border Patrol Agent applicants have been held up through this process. The Office of Personnel Management is meeting the requirement for 35-day pre-appointment background investigations, and such investigations are completed before new agents are sent to the field. We will remain committed to these enhanced screening procedures.

The decent, proper treatment of the millions of people with whom our officers deal each year is a key feature of the training which all of our officers receive. Their basic and advanced training covers the full range of skills, knowledges, and abilities they need to accomplish their jobs effectively. That training includes specific instruction in human and civil rights, officer integrity, and law enforcement ethics. It also includes considerable instruction that is directly related, such as constitutional law, officer liability, statutory authority, victim and witness awareness, and the use of force. The obligation to report other agents' misconduct and the procedures for doing so are a part of every officer's training.

In addition, the OIA is conducting an intensive program of civil rights training for field supervisors. The training imparts to supervisors the importance of their role in preventing civil rights abuses by creating an atmosphere in which civil rights violations are punished and proper conduct is rewarded. Examples are discussed and perspectives provided by representatives of the INS Office of Internal Audit, the Department of Justice Office of the Inspector General, the FBI, the Civil Rights Division of the Department of Justice, and United States Attorneys. Thus far, this training has been concentrated on the Southwest border and has taken place in San Diego, El Centro, and Tucson. In 1996, it is scheduled for McAllen, Texas, El Paso, and Miami.

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### Resources and Management

Draft Report. In their "Principal Findings and Recommendations" section of the draft report, the Advisory Committees stated:

*It is the Advisory Committees' hope that increased resources for Federal immigration law enforcement will result in improved management within the INS. Several congressional committees as well as the Inspector General of the Department of Justice have documented severe mismanagement within the INS, including the failure of INS property to . . . supervise, and discipline its officers. Many of the civil rights and accountability problems within Federal immigration law enforcement identified by the Advisory Committees stem from these deficiencies and could probably be corrected with appropriate changes in direction, management structure, policies, and operational practices.*

They recommended that "[m]anagement and accountability structures, including supervisory and disciplinary provisions . . . be strengthened."

INS Comments. Within just the past few years, we have made a number of significant changes to the direction, structure, and policies of the INS which have substantially improved its management and the service it provides.

The Commissioner has set and communicated objectives for INS programs in terms of agency priorities. From the outset, the Commissioner has made the improvement of the professionalism of the workforce the INS' top priority. The priorities process, which includes input from the field, results in the setting of milestones and objectives and the assignment of specific responsibilities for their accomplishment.

The 1994 reorganization of the INS has had a number of positive effects. Among them were the decentralization of control of INS field offices, resulting in a clearer, easier-to-follow chain of command, improved supervision, and clearer accountability.

**As discussed above, oversight of the disciplinary process to ensure reasonableness and consistency also is a function for which our Office of Internal Audit is responsible. The resolution of individual cases and punishment of offenders is critical to the reduction of misconduct problems; it corrects or eliminates problem employees and deters others from committing similar offenses. We recognize, however, that the success of our prevention efforts depends on our seeing beyond individual culpability and attending to the underlying causes of misconduct. To that end, the Office of Internal Audit reviews each case, regardless of its ultimate disposition, to identify deficiencies that foster misconduct, allow preventable misconduct to occur, or permit misconduct to go undetected, and recommends solutions to those problems.**

**We have prepared strong, new policies in areas directly bearing on enforcement activities, notably those in which our officers come in direct contact with the public. Examples are in the areas of high-speed vehicular pursuits, body searches, and the use of force, including firearms. Nonlethal devices such as the expandable side-handle baton are carried by agents in the field. Alternative nonlethal devices are currently being tested and evaluated for use by Border Patrol Agents.**

**New approaches to border control, exemplified by Operation Hold the Line in El Paso and Operation Gatekeeper in San Diego and supported by increased staffing and better equipment, have reduced border violence. Also, by reducing illegal entries and, thus, contacts between undocumented migrants and agents, they have reduced the opportunity for conflict and abuse to occur.**

**Members of the Citizens' Advisory Panel as of January 1996**

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**Government Members**

**Doris Meissner, Commissioner, INS (Chairperson)**

**Kenneth Leutbecker, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Department of Justice**

**Yvonne E. Campos, Assistant United States Attorney, San Diego, California**

**John P. Chase, Director, Office of Internal Audit, INS (non-voting member)**

**Vacancy**

**Armando Ortiz Rocha, General Consul, Consulate of the Government of Mexico, El Paso, Texas (non-voting member)**

**Private Citizen Members**

**Miguel A. Conchas, President and C.E.O., Laredo Chamber of Commerce, Laredo, Texas**

**Edwin J. Delattre, Dean of the School of Education and Professor of Education, Boston University, Boston, Massachusetts**

**Carol Rogoff Hallstrom, Regional Director, The National Conference (formerly The National Conference of Christians and Jews), San Diego, California**

**Bill Ong Hing, Associate Professor, Stanford Law School, Stanford University, Stanford, California**

**Eileen M. Luna, Executive Officer of the San Diego County Citizens Law Enforcement Review Board, San Diego, California**

**Jose G. Moreno, Executive Director, Diocesan Migrant and Refugee Services, El Paso, Texas**

**Marci Rios, Insurance Agent for New York Life Insurance Company, businessman and community advocate, Yuma, Arizona**

**Elsie L. Scott, former Deputy Commissioner of Training, New York City Police Department, New York, New York**

**Edward J. Tully, Director of Research, FBI National Executive Institute Associates, Fredericksburg, Virginia**





## Appendix B

U.S. Department of Justice

Office of the Inspector General

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February 16, 1996

Mr. Philip Montez  
Western Regional Office  
United States Commission  
on Civil Rights  
3660 Wilshire Boulevard, Suite 810  
Los Angeles, California 90010

Dear Mr. Montez:

Thank you for the opportunity to review the draft report to the United States Commission on Civil Rights on Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities. This report, which would recommend establishment of a civilian review commission to investigate allegations of border rights abuses by the Immigration and Naturalization Service (INS), fails to recognize both the accomplishments that have been made toward solving this problem and the independence of the Office of Inspector General. These factors make a new commission unnecessary, and the recommendation itself endangers recent gains by making them appear of no value.

The draft report of November 7, 1995, encapsulates testimony received by the Arizona, California, New Mexico and Texas Advisory Committees to the Commission on Civil Rights (the Commission) at hearings held in El Paso, Texas, and San Diego, California, in 1992 and 1993. The staff drafting the report did not note certain events and accomplishments that have occurred since the hearings. However, the improvements in civil rights enforcement made by the Office of Inspector General (OIG) and others do not appear to have been considered when the findings and recommendations were drafted.

The draft report does not recognize the independence which the OIG provides to the review of all civil rights allegations, and to the other matters which it investigates. The statutory language of the Inspector General Act gives the Department of Justice OIG an independent investigative and review authority which has been recognized by U.S. Court decisions.

Nor does the draft report measure recent developments that implement and strengthen the OIG's role in the receipt and review of civil rights allegations. These include:

\* Impact that the OIG's Civil Rights initiatives have had in the El Paso and San Diego areas.

\* Outreach efforts by the OIG, such as Spanish language complaint forms, Spanish language posters with OIG telephone numbers, OIG appearances on community media such as radio talk shows, and integrity training for Immigration and Naturalization Service (INS) managers.

\* Civil rights task force in San Diego, which coordinates the work of the OIG, FBI, United States Attorney and Civil Rights Division in the investigation of alleged violations. (The civil rights task force concept will be expanded to El Paso early in 1996.)

\* Tracking and monthly reporting of allegations of serious civil rights violations to the Attorney General and Deputy Attorney General.

The Commission and the Advisory Committees should take their share of credit for the interest and concern they have shown toward border problems, without which many of the improvements would not have occurred.

The Advisory Committee report's findings concerning the impact of immigration law enforcement on border communities are an important contribution. Public officials, community leaders, advocates and others should communicate regularly to share their concerns, solve problems, and promote compliance with laws and regulations. This communication already occurs in some communities, and can expand to others without a new federal office or commission.

The draft report discusses anecdotal allegations of abusive treatment along the border by INS employees, particularly Border Patrol Agents. Incidents where the civil rights of individuals are abused do occur, but there is no evidence in the report or elsewhere that these abuses are either systematic or widespread.

#### **Complaints of Civil Rights Abuse**

There is a system in place to handle allegations of civil rights abuse made against INS employees and Border Patrol Agents. It involves these components of the Department of Justice: the Civil Rights Division, the Federal Bureau of Investigation (FBI), the Office of the Inspector General (OIG), U.S. Attorneys, and INS.

A process for tracking civil rights allegations involving INS employees was put in place in July 1995 to ensure that all components work together to resolve these matters promptly. The

Mr. Philip Montez  
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tracking report, which is compiled each month by the OIG, is a list of the credible, serious civil rights allegations made against INS employees. By reviewing the monthly civil rights report, Department of Justice officials can determine which component is responsible for each allegation, and can ascertain whether or not timely action was or is being taken.

The largest number of allegations of civil rights abuses by INS personnel along the Southwest Border are made to INS managers by victims and their families. INS officials forward the complaints to the OIG. Other complaints are reported directly to the OIG, INS, the Civil Rights Division, the FBI, or U.S. Attorney's Offices.

One of the criticisms often heard of the complaint process is the lack of acknowledgement to the victims that a complaint has been received. OIG Special Agents in border communities often respond on an immediate basis to complaints that civil rights abuses have occurred. What better acknowledgement of a complaint could there be than for an OIG Special Agent to take a sworn statement from the victim of the complaint? In certain cases, statements of victims are videotaped. This may not be practical for all complaints, but it is being done in cases that make a difference.

In order for an allegation that rights have been abused to be prosecuted criminally, it must be supported by evidence beyond a reasonable doubt. A preponderance of the evidence, which is a lower but still substantial standard, must exist to support disciplinary action against an employee. Most complaints, particularly those which are untimely or incomplete, do not produce evidence that meets these standards and therefore do not result in either prosecution or employee discipline.

#### **The Independence of The OIG**

The draft report prepared for the Advisory Committees contains references to a fear on the part of aliens that making a complaint of abuse will bring adverse consequences to the complainant. The report, however, contains no documented instance where this has occurred. The OIG, because of its position as an independent component of the Department of Justice, provides a venue for receipt of complaints of border abuse where there should be no fear of reprisal. The location of OIG field offices along the border simplifies the process and permits quick response.

The OIG has conducted an outreach campaign to ensure that all credible complaints are received and properly investigated. These efforts include placing Spanish language posters with OIG telephone numbers in INS facilities where aliens are detained. We have also distributed Spanish language complaint forms to

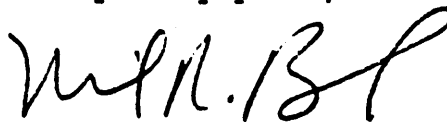
Mr. Philip Montez  
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these facilities, and to advocate groups. OIG officials have appeared on talk shows carried by local media outlets to explain the complaint process. More can be done, and the OIG has pledged to continue its outreach efforts.

U.S. laws on privacy of individuals and secrecy of grand juries make it difficult to fully disclose how alleged civil rights violations have been handled, and this lack of information promotes a distrust of the system. With information from the civil rights tracking report mentioned earlier, the OIG believes it can include a statistical summary of civil rights activity in future semiannual reports to Congress, which are public documents. Specific cases can not be mentioned by name; however, a summary of case activity will provide a level of public assurance that the job is getting done.

We appreciate the opportunity to review the draft report. Our comments reflect our interest and concern for the safety of all people along the U.S. - Mexican Border. We are enclosing a recently developed fact sheet which further describes the handling of civil rights allegations against INS personnel. If you have any questions or concerns about these comments, please feel free to call on us.

Very truly yours,



Michael R. Bromwich  
Inspector General

Enclosure



**FACT SHEET**

January 1996

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**HANDLING OF ALLEGATIONS OF CIVIL RIGHTS VIOLATIONS AGAINST  
EMPLOYEES OF THE IMMIGRATION AND NATURALIZATION SERVICE**

This document addresses questions often raised concerning the Department of Justice process for handling allegations of civil rights abuses by Immigration and Naturalization Service (INS) employees, particularly those along the Southwest Border.

**TRACKING OF ALLEGATIONS**

The process for handling allegations of civil rights abuses by INS employees involves the Office of the Inspector General (OIG), INS, the Civil Rights Division (CRT), the Federal Bureau of Investigation (FBI), and the U.S. Attorneys' Offices. A process for tracking civil rights allegations involving INS employees was put in place in July 1995 to ensure that all components work together to resolve these matters promptly. This tracking process has been a valuable source of information to the components involved and ensures that complaints are not lost or ignored.

The Civil Rights Report compiled each month by the OIG is a list of the credible, serious civil rights allegations made against INS employees. Each case listed includes the history of its handling by each of the components involved with INS civil rights matters--OIG, CRT, INS, FBI, and the U.S. Attorneys' Offices. The tracking report shows which DOJ component is responsible for each allegation and whether or not timely action has been taken. Distribution of the report to the Attorney General, the Deputy Attorney General, INS, FBI, CRT, and the Executive Office for U.S. Attorneys, ensures coordination among all affected components of the Department.

**RECEIPT AND REVIEW OF CIVIL RIGHTS COMPLAINTS**

Most allegations of civil rights abuses by INS personnel along the Southwest Border are initially received by INS managers who immediately forward the complaints to the OIG. Victims, witnesses, and others with information about alleged civil rights abuses may also report them directly to the OIG, INS, FBI, CRT, or a U.S. Attorney's Office.

Under A.G. Order 1931-94, FBI Field Offices inform the OIG of civil rights matters involving INS employees. CRT and INS records are reviewed monthly by the OIG. These steps together ensure coordination between all Department of Justice components involved in the Southwest Border civil rights process.

Under longstanding Department of Justice policy, the Criminal Section of CRT receives and reviews all allegations of

civil rights abuses. OIG Field Offices attempt to gather all readily available information and forward it to CRT within 24 hours of receiving an allegation. Criminal Section attorneys are assigned to review these allegations and make an initial determination (usually within 48 hours) as to which complaints should be investigated as criminal civil rights violations. CRT sometimes requests further information from the OIG to assist in making these determinations. CRT tracks criminal civil rights allegations as open cases until they are either declined or closed.

#### CRIMINAL INVESTIGATION OF CIVIL RIGHTS ALLEGATIONS

When CRT determines that a criminal investigation of a civil rights allegation is warranted, the matter is referred to a federal law enforcement agency for investigation. Pursuant to CRT policy as established in 1987, CRT refers most of its criminal civil rights investigations to the FBI.

FBI policy calls for completion of an initial investigation within 21 days. CRT attorneys review these initial investigative reports when they receive them and frequently request additional investigation prior to making a final prosecutive decision. The majority of matters initially referred for investigation by CRT are declined for criminal prosecution.

In several recent cases in which the OIG has invested significant resources in preliminary investigations, CRT has referred them back to the OIG for further investigation. In the Southern District of California, most criminal civil rights cases are worked jointly by the OIG and the FBI. OIG involvement in investigations draws upon its expertise in INS operations.

#### CASES DECLINED FOR PROSECUTION - ADMINISTRATIVE INVESTIGATIONS

Allegations of civil rights abuse by INS employees that are declined for prosecution by CRT during its initial review of the complaint are returned to the OIG, which conducts an administrative review of the matter. The OIG has several options. The OIG may open an administrative investigation or probe for more evidence of a criminal civil rights violation. The OIG may refer the complaint to the INS Office of Internal Audit (INS/OIA) for internal investigation or as an "information only" item.

All complaints that become OIG investigations or that are referred to INS/OIA for investigation are tracked in the Monthly Civil Rights Report. The status of complaints that are substantiated by an INS or OIG investigation continue to be updated monthly in the tracking report until INS has made its final decision on disciplinary action against the employee.

**FACT SHEET on Civil Rights Allegations  
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On receipt of a case referred by the OIG, INS/OIA ensures that an appropriate internal investigation or management inquiry is conducted. INS/OIA oversees the process to see that inquiries are thorough, unbiased, and timely. On receipt of a report, the INS/OIA confirms that the issues have been addressed and that deficiencies in management systems have been identified and are addressed. The INS/OIA ensures that disciplinary action taken against an employee based on a substantiated allegation is reasonable and appropriate.

Certain cases are declined for criminal prosecution after an FBI or OIG investigation has been completed. Because the elements of a crime may be different from the agency standards of conduct and the requirements of proof are not the same for criminal and administrative action, an incident that is not prosecutable may still lead to discipline of the employee. Investigative reports prepared by the OIG and the FBI are sent to INS/OIA for possible disciplinary action.

#### **ROLE OF U.S. ATTORNEYS' OFFICES**

As a matter of past practice, criminal investigations of civil rights allegations have generally been handled by CRT rather than by the U.S. Attorney's Office in the district where the allegation arises. A recent modification to the U.S. Attorney's Manual has spelled out a new policy under which the CRT's distinctive expertise in the handling of civil rights matters should be teamed with the litigation resources and experience of the U.S. Attorneys' Offices to create a partnership in working these civil rights cases.

The U.S. Attorney's Office for the Southern District of California has played a leadership role by making INS civil rights enforcement a high priority. The Office established a Special Prosecutions Unit to oversee the enforcement of civil rights cases in conjunction with the CRT. In Southern California, the OIG reports all civil rights cases both to the Special Prosecutions Unit and to the CRT. This process encourages quick decisions on the prosecutive merit of each case and promptly refers back to the OIG (or INS), for administrative investigation, those cases without prosecutive merit. The Department has initiated an expansion of this process to other locations along the Southwest Border.

#### **OUTREACH PROGRAMS**

The OIG has conducted extensive outreach efforts along the Southwest Border. Posters have been placed inside INS facilities that provide information and OIG telephone numbers in Spanish for those who want to report alleged civil rights abuses. The location of the posters encourages timely reporting. The OIG also distributes postage-paid forms in Spanish so all persons who

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feel that their rights have been violated have the opportunity to make a complaint. OIG staff recently appeared on a Spanish language radio talk-show in Arizona and responded to calls from citizens regarding civil rights matters.

Four OIG Field Offices--El Paso and McAllen, TX; Tucson, AZ; and San Diego, CA--are located near the Southwest Border where there is the largest concentration of INS employees and therefore the largest number of civil rights complaints. All of these OIG offices are staffed with bilingual special agents.

The INS is very much involved in outreach programs along the Southwest Border. A bilingual INS abuse complaint poster and complaint form will soon be distributed throughout the border region. INS/OIA has established working relationships with immigrant rights groups in Southern California. Last year, the Attorney General appointed a Citizens Advisory Panel (CAP) to study issues relating to civil rights abuse along the Southwest Border. The INS Commissioner is a member of the CAP and is responsible for coordinating the CAP's activities.



## Appendix C

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May 1, 1995

To: Philip Montez, Director, Western Regional Office, USCCR  
fax no. 213-894-0508

From: Tom West and Ed Erler

In your letter of April 17, you asked us to send our comment on the draft Report on border violence by May 1.

Our critique is enclosed.

We would like this critique to be printed at the end of the final version of the Report.

*Tom West*

*(Ed Erler approved this by phone.)*

**CRITIQUE OF THE DRAFT REPORT ON IMMIGRATION LAW ENFORCEMENT**  
**May 1, 1995**

Thomas G. West, member, Texas State Advisory Committee  
Edward J. Erler, member, California State Advisory Committee

The Report on Immigration Law Enforcement is fatally flawed, in two ways.

First, the procedure that was followed excluded the State Advisory Committees (SACs) from any significant role in selecting the topic for investigation, planning the briefing and forums, and writing the Report. In reality, the Advisory Committees have had almost nothing to do with the four-year project on border violence that this Report claims to summarize.

The second flaw, concerning the Report's content, is even more serious. The Report is strongly biased toward the point of view of the most extreme critics of the Immigration and Naturalization Service and the Border Patrol.

**Improper Procedure**

The front cover of the Report claims that it was authored by the four SACs. In fact, it seems to have been written entirely by Western Regional Office staff (in fact by John Dulles, according to a statement he made on April 28, 1995).

The Texas and California SACs have never even discussed the testimony presented at the Forums held in El Paso in 1991, and in El Paso and San Diego in 1993. Nor have the SACs ever discussed what might be the best ways to address border violence. West and Erler both suggested that the SACs should meet to discuss the draft Report and propose appropriate modifications before the Report was given final approval. Those suggestions were rejected, in spite of the fact that the Texas SAC met after the draft Report was sent to the SAC members, and before the deadline for SAC members to respond.

This bypassing of the deliberative role of the SACs was particularly disturbing because Chairman Carney and Mr. Montez gave assurances at an open meeting of the California SAC that the SAC would meet to discuss the Report before it was given final approval.

The Report is also procedurally flawed because it is based not only on the briefing and Forums where the SACs were at least physically present, but also on publications and hearings about which the SACs know nothing. These studies and publications have not been submitted to the SACs for evaluation. Their validity and reliability is therefore unknown to the SAC members. One of these reports complains that border patrol agents who have been prosecuted have been "often exonerated" by American juries (p. 82). The startling implication here is that not only the Border Patrol but the whole system of American justice has conspired to violate the rights of illegal aliens. The inclusion of such wild and reckless charges in a Report written in the name of the combined SACs but never discussed by them is not only ludicrous, but highly irresponsible.

### **Ideologically Biased Content in the Report**

From the start, the Western Regional Office, working with activist groups who are known to pursue a partisan political agenda, has allowed itself to become the mouthpiece of those groups. In turn, the Western Office has used the several State Advisory Committees as its mouthpiece.

That bias was already clear in Western Regional Director Philip Montez's initial 1991 statement on the "Four State Project on Border Violence," presented to the Texas, New Mexico, Arizona, and California SACs on the occasion of the 1991 El Paso briefing. On p. 4 of that statement Mr. Montez wrote, "The principal focus will be to evaluate the performance of the U.S. Border Patrol, especially in light of the charges that no Border Patrol agent has ever been disciplined for violating the rights of an alien [this charge is absolutely false, as Mr. Montez should have known]; and because of the documented number of cases where Border Patrol agents have allegedly used excessive force in the conduct of their duties."

In other words, before the project ever began, Mr. Montez and the Western Regional Office had already reached a conclusion about the very matter that we were supposedly about to investigate. They assumed from the start that the Border Patrol is the main source of border violence.

The same bias is clearly present in the Report itself. The conclusions and most of the first half of the Report are strongly weighted toward the point of view of the most extreme critics of the INS and Border Patrol. It is true that some opposing views are mentioned later in the Report. But those views are not given their proper weight in the introduction and conclusion. The first knowledgeable presentation in the Report of the actual situation on the border, from the point of view of a Border Patrol agent, is Steven Garcia's on p. 182!

Most of the evidence in the Report detailing alleged border patrol abuse is anecdotal and episodic (and in most cases sponsored by the advocacy groups wishing to discredit and disable the Border Patrol). Thus, the impression is given of widespread abuse. In reality, the incidents alleged were probably highly unusual, or, in some cases, fictitious or exaggerated. There was little or no evidence of widespread abuse or of a conspiracy to violate the rights of illegals.

The credibility of the advocacy groups whose opinions dominate the Report is doubtful. The groups who complain the loudest about the Border Patrol are willing to exaggerate wildly, and even to broadcast falsehoods, to advance their cause. A typical example is American Friends Service Committee spokesman Roberto Martinez's assertion in 1993 that "no judge or jury will ever take the word of an undocumented person over that of a federal agent" (Report, p. 111). Mr. Martinez knows very well about the 1991 El Paso case mentioned on p. 66, in which a federal judge sided with an illegal alien against the Border Patrol. The agents were held liable when a would-be illegal immigrant drowned when the agents tried to prevent him from crossing the Rio Grande into El Paso. Mr. Martinez is also familiar with the fact that another federal judge has required major changes in Border Patrol

procedures to protect the supposedly threatened rights of illegals.

There is a serious problem of violence along the Mexican border, but it is not the problem claimed in the Report. There are two main groups who are victimized by that violence: (1) innocent American citizens who live near the border, and illegal border-crossers themselves, who are preyed upon by criminal elements among the illegals; and (2) Border Patrol officers who are shot at, assaulted with rocks, and otherwise harassed by alien criminals who flock to border crossing areas. Compared to the hundreds of violent incidents of this kind that take place annually (pp. 182-4), the rare incidents of violence perpetrated by Border Patrol agents are not the main problem.

The leading source of border violence is illegal immigrants themselves, among whom there is a high proportion of criminals who often use violence in the course of such activities as drug running, bringing groups of people illegally into the United States, or raping or robbing other immigrants. (Steven Garcia and James R. Dorcy conveniently summarized the relevant facts in a hearing conducted by the House of Representatives, Committee on Foreign Affairs, Subcommittee on Human Rights, April 18, 1990, pp. 35-45, 61-82. The draft Report should have made better use of this testimony, a copy of which was given to SAC members at the 1991 El Paso briefing.)

The bias of the draft Report is especially evident in its curious near-silence about the major changes that have taken place along the border in the past two years. The whole picture has improved dramatically since the introduction of "Operation Hold the Line" in El Paso in 1993 and "Operation Gatekeeper" in San Diego in 1994 (mentioned at the end of the Report, pp. 245-6).

These new methods of enforcement replace the misconceived older policy of allowing illegals to cross the border and mingle in the local population before they are picked up by the Border Patrol. The new policy places most agents directly on or near the border, so that initial entry of illegals becomes much more difficult.

These new methods have resulted in large reductions of incidents of border violence, local crime, and complaints of abuse. These new methods have been very popular in border communities. The Dallas Morning News reported on October 31, 1994, that 78 percent of El Paso Hispanics support "Hold the Line." Revealing the ideological agenda of the advocacy groups, the same newspaper article reported that a MALDEF spokesman said she was "disappointed" that so many Mexican-Americans disapproved of illegal immigration.

Naturally, the draft Report does not mention the popularity of the new policy with both white and Mexican-American citizens of El Paso. It does mention its popularity with government officials, and its unpopularity with Mexicans in Juarez (p. 245).

At a 1994 meeting of the Texas SAC, member Al Velarde of El Paso said that the situation had improved so dramatically that the concerns that motivated the Report may no longer be relevant. The U.S. Commission on Immigration Reform has also endorsed these

new methods. Yet our Report's conclusions (pp. 18-19) do not reflect or endorse these new policies that have so effectively reduced border violence.

In light of points made by Steven Garcia and others, it appears that the problem of border violence arose primarily because of a quasi-official federal policy, over many years, of lax enforcement of immigration law. (See p. 183: the Border Patrol was "not given sufficient manpower or funding to deal effectively with the problem"; also pp. 114-121, 177-189.) This situation led to overreactions on the part of a few Border Patrol agents, who were frustrated at their inability to control the border and at the level of violence directed against themselves by alien criminals.

The federal government, it seems, is beginning to understand the point made by the Federation for American Immigration Reform on p. 114: if illegals were stopped before they crossed the border, there would be fewer civil rights abuses. Until recently, as the FAIR spokesman said, the government has not lived up to the terms of the 1986 Immigration Act. There has been no secure and controlled border (p. 117). That fact, and not "gestapo tactics" on the part of the Border Patrol, has been the main cause of border violence.

The Report does quote Gus de la Vina on p. 190: there has been a 70% reduction in violence since 1990, due to the new enforcement strategies, lights, and cooperation with Mexican officials. But why does the Report not go on to recommend wider implementation of those successful strategies, which at the time of its writing had been put into effect only at El Paso and to a lesser extent at San Diego?

There is a fight going on within the federal government over this very question. Many officials who occupy high positions within the INS prefer the present policy of de facto open borders. Those who want to enforce the law prefer the strategy of "Hold the Line" and "Gatekeeper." When Silvestre Reyes, the man who initiated the El Paso strategy, visited Washington in early 1995, he was received coldly by his superiors there. It is an open secret that many within the INS are angry with him for implementing a successful strategy for closing the El Paso border.

Clearly the politics of this internal INS struggle is influencing the draft Report as well. In our judgment, the Report should not be adopted because it is biased toward the "open borders" side of the argument. It is a disservice to the noble cause of civil rights for the U.S. Commission on Civil Rights to lend its authority to a partisan political agenda.

This concludes the heart of our critique of the draft Report. What follows are several appendices detailing the improper procedures followed by the Western Regional Office in the four-year project on border violence.

#### **Appendix 1. The May 1991 El Paso Briefing**

In May 1991 the Western Regional Office arranged for four State Advisory Committees to the U.S. Commission on Civil Rights (Texas, New Mexico, Arizona, and California) to come to a public

briefing on border violence in El Paso. Prior to this time, the Texas and California Advisory Committees had never discussed the topic and never suggested investigating it. The initiative and conception came entirely from the Western Regional Office.

In a meeting of the Texas Advisory Committee on the day of the May 1991 briefing, Mr. Phil Montez, the Western Regional Director, was asked why the briefing was being held, since the State Advisory Committees had neither requested nor shown any interest in the matter of border violence. He replied that the Commission on Civil Rights had let it be known that they were interested in pursuing the issue. Tom West later asked a Commissioner about this. He replied that he knew nothing about any such interest.

Mr. Montez also admitted during this meeting of the Texas SAC that the Immigration and Naturalization Service and the Border Patrol were deliberately not invited to participate in the meeting. When Tom West protested against this lack of balance, Mr. Montez said, "The SAC voted against you the last time you brought up the question of balance." (He was referring to the 1990 Texas SAC Report on Early Childhood Education, which also promoted an ideological agenda by basing itself on the 13 of 14 invited speakers who shared the viewpoint of Western Regional Office staff.)

Mr. Montez did not even pretend to share West's concern that presentations to the State Advisory Committees be balanced. In fact, he frankly admitted that the six speakers invited by the Western Office all shared the same point of view. He defended this fact by saying that it was not an "official" forum or briefing, because no transcript was being made. Yet Mr. Montez and Mr. Dulles made sure that a substantial audience, including four different SACs, was brought together to hear the invited speakers vilify an official agency of the United States, in the name of the U.S. Commission on Civil Rights. How could such a public briefing not have been "official"? The purpose of the briefing, said Mr. Montez, was to inform the SACs about border violence. How, we wondered, could we possibly be properly informed if the speakers presented only one side of a complex and difficult problem?

At the briefing itself, every speaker made the same extreme claim: the U.S. Border Patrol is running what amounts to a Gestapo-like police state along the border, engaging in wanton acts of violence against illegal immigrants and American citizens. Five of the six speakers were from advocacy groups, such as the American Friends Service Committee and the American Civil Liberties Union, that are known to have a partisan political agenda.

We think it was irresponsible of the Western Office to arrange for such radical charges to be aired in public without any response from the Border Patrol or other informed sources. Erler and West expressed their concern during a brief question period that was reluctantly permitted by Mr. Montez and Mr. John Dulles after the speakers had concluded. (At first it was said that there would be no questions because there was no time left. But then, after a whispered conversation between Mr. Montez and Mr.

John Dulles, a few questions were grudgingly permitted.) Several members of the four assembled State Advisory Committees approached West after the meeting to tell him that they shared his concern about the disgraceful lack of balance in the program.

#### Appendix 2. The June 1992 El Paso Forum

In the spring of 1992, members of the Texas and New Mexico State Advisory Committees were given about six week's notice that there would be a formal SAC forum on border violence. (The Texas SAC had not even met since the El Paso briefing.) SAC members were not solicited for suggestions about participants or format, although the forum was to be conducted in the name of the two SACs. Tom West wrote to Mr. Montez and Mr. Dulles asking them to insure that at least one-half of the speakers provide a viewpoint that would be critical of the extreme accusations that we had heard at the 1991 El Paso briefing. West suggested some names of people who might provide that balance. He never received any response, written or oral, from the Western Office. West learned later that his letter had been denounced behind his back by Mr. Montez. In support of Mr. Montez, Wilfredo Gonzalez, the USCCR acting staff director, circulated a strongly worded private memo to the Commissioners in which West's concerns were curtly dismissed as "nugatory."

West's reasonable request for balance in the upcoming forum did receive one indirect response. Six days after he wrote, Adolf Canales, the chairman of the Texas SAC, acting with the approval of the Western Office, sent him an abrupt note informing him that he had been suspended from the SAC because he was temporarily out of state. The Western Office reinstated him only after a tiresome series of letters and phone calls, in which West pointed out the obvious connection between his suspension and his concerns about the coming forum.

The forum on border violence took place in June 1992. It was not as unbalanced as the 1991 affair had been. Even so, the majority of speakers pushed the same theme as before. The beginning of the article in USCCR's Civil Rights Update, (July/August 1992, p. 5), accurately gives the flavor of the meeting: "The INS's Border Patrol is using police-state tactics in its intensified efforts to close the U.S.-Mexico border to illegal immigration and drug traffic, citizens recently told the Texas and New Mexico SACs in El Paso. Some even compared the alleged civil rights abuses to those perpetrated by police in South Africa, and in Chile during the administration of Augusto Pinochet."

UNIVERSITY  
*of*  
DALLAS

May 8, 1995

Mr. Philip Montez  
Director, Western Regional Office  
USCCR  
3660 Wilshire Blvd., Suite 810  
Los Angeles, CA 90010

Dear Phil:

An administrative assistant at your office informed me that the statement sent by Erler and me concerning the Border Violence draft had been received in your office on May 1.

I have since spoken to Lino Graglia, who wishes to join Erler and me in the statement. Please print his name along with ours as the three signatories at the end of the statement. We are expecting that the statement will be printed at the conclusion of the Border Violence Report.

Yours truly,

*Tom*

Thomas G. West  
Member, Texas Advisory Committee

1207 Woodleigh Dr., Irving, TX 75061  
office: 214-721-5278  
fax: 214-721-4007  
email: tomwest@acad.udallas.edu



June 8, 1995

To: Philip Montez, Director, Western Regional Office, USCCR  
fax no. 213-894-0508

From: Tom West, Ed Erler, and Lino Graglia

On May 1, we sent you a "critique" of the Border Violence Report.

Please consider that critique a dissent from the Report. It should be printed at the conclusion of the Report, as we have done in the past.



## Appendix D

UNITED STATES  
COMMISSION ON  
CIVIL RIGHTS

U.S.C.R. Western Regional Office  
OSD 3660 Wilshire Boulevard  
Suite 810  
RECEIVED Los Angeles, California 90010  
I-659 (213) 894-3437  
'96 AUG -5 11:06

August 2, 1996

Mary K. Mathews  
Staff Director  
U.S. Commission on Civil Rights  
624 Ninth Street, N.W., Room 700  
Washington, D.C. 20425

Re: Response to Dissenting Statement

Dear Ms. Mathews:

This letter is in response to your letter dated July 9, 1996, in which you requested my response to a dissenting statement prepared by Mr. Edward J. Erler, Mr. Lino Graglia, and Mr. Thomas West. The document which you have requested my response to is a statement that was submitted to this office first as a critique, and later a dissent to a draft report prepared by this office, entitled *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities*. By responding to your letter, I am in no way waiving any legal rights or remedies available to me.

It has *never* been the position of the Western Regional Office nor any of the four state advisory committees involved in this project -- Arizona, California, New Mexico, and Texas -- that this dissent was intended to be a part of the official report of its investigation. In fact, the Western Regional Office and the state advisory committees involved in this Federal immigration law enforcement report have made every effort to avoid publication of the comments contained in this dissent. When this office first received the draft dissenting statement, members of the Western Regional Office staff were concerned that many portions were inflammatory, inaccurate, and perhaps libelous. The Advisory Committees are under no obligation to publish the dissenting statement, as the State Advisory Committee Handbook which is distributed to all state advisory committee members clearly states, "dissenting statements *pertinent* to the topic of the report, if any, *may* be appended."

In an abundance of caution and in an effort to work with the authors of the dissenting statement, the Western Regional Office nevertheless decided to incorporate relevant *pertinent* and *factual* portions of the dissenting statement into the body of the draft report, and not to publish the actual dissent. Later, the Commission's General Counsel prepared an opinion in which concern was expressed that portions of the dissenting statement contained material which may defame and degrade individuals or organizations. The dissenters were then given the opportunity to revise their comments so as to remove any possible defamatory remarks. It is my understanding that they declined to do so. Their dissent was not a part of the report which was submitted by

Mary K. Mathews  
Staff Director  
August 2, 1996  
Page 2

this office, nor did the dissent conform to the Commission's standards for Regional Office reports. Their refusal to revise or rewrite their dissent should have closed this discussion.

Despite the best efforts and concerns of the Western Regional Office, fifty-two members of the Commission's state advisory committees who voted to approve the draft report, and the Commission's General Counsel, the dispute over publication of these comments continues. I am concerned that if the Commission publishes this document in its present form -- containing derogatory, slanderous, and nonfactual comments -- the Commission may be exposing itself to liability.

It has always been my experience that the Commission's defame and degrade procedure, providing an opportunity for response, was applied only *after* the allegedly defamatory material was determined to be factual. The Commission has in the past withstood criticism from public officials and others for allegedly defamatory materials because the facts in each instance were well-documented. I have never seen this procedure applied to comments based solely on an individual's partisan political beliefs, with no accompanying facts or data in support of those views.

#### *Procedure*

The authors of the dissent claim that improper procedures were followed in the preparation of the *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities* report. They claim that:

*[(t)he procedure that was followed excluded the State Advisory Committees (SACs) from any significant role in selecting the topic for investigation, planning the briefing and forums, and writing the Report. In reality, the Advisory Committees have had almost nothing to do with the four-year project on border violence that this report claims to summarize.*

These claims are groundless. As indicated above, 52 members of the four state advisory committees involved in this project voted to approve the draft, while only four against the report. These state advisory committees are composed of intelligent, hard-working, committed citizens, and it defies reason to believe that they were somehow "outfoxed" into voting for a report on a project which they knew nothing about.

The Western Regional Office followed all the requisite procedures for Regional projects in the preparation of the *Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities* report, including obtaining state advisory committee approval and involvement at every appropriate step. The four state advisory committees voted in 1991 to proceed with a study of the issue of the administration of justice at our nation's borders. Both

Mary K. Mathews  
Staff Director  
August 2, 1996  
Page 3

the project and the report were the topic of several discussions by the state advisory committees. The report was discussed and approved by each of the respective advisory committees.

### *Content*

The dissenters' second claim that the staff of the Western Regional Office is "ideologically biased" is also unfounded.

As a Federal official, I must abide by the U.S. Commission on Civil Rights' jurisdictional mandate. The Commission's statutory jurisdictional mandate, which also applies to Regional programs and its state advisory committees, requires us to "appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or *in the administration of justice*. The Commission's statutory mandate requires this agency to assess the performance of various governmental entities.

Ideally, in assessing the performance of other governmental entities, this office would prefer to report that in every instance, all procedures are carried out fairly, and that every state, Federal, and local agency satisfactorily protects the civil rights of all persons within the U.S. borders. But we all know that this is not the case. Despite the best efforts of many hard-working public servants, lapses do occur, and we all must be ever vigilant to point out and correct deficiencies when they occur, and praise programs which are effective.

It is evident from the content of the report that the Western Regional Office worked tirelessly to prepare the best report possible. Western Regional Office staff conducted no less than 200 witness interviews with private individuals and officials, possessing points of views and opinions from all sides of the spectrum.

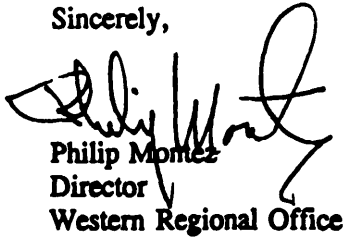
The statement's assertion that the report is biased toward the "open borders" side of the argument is completely groundless. It is beyond the scope and jurisdiction of this report [or in my opinion, any Commission report] to comment on whether the United States should open its borders. The sole purpose of this report was to deal with the issue of Federal immigration law enforcement. It would be impossible to deal with the issue of the administration of justice at our national borders without a discussion of the characteristics of individuals at or near those regions -- including law enforcement officials, U.S. citizens of all races and nationalities, immigrants - both documented and undocumented. If the Western Regional Office does acknowledge a bias, such bias is against violations of individual civil rights in the U.S. This would include violence affecting any individual in the border regions, regardless of race, ethnicity, gender, citizenship, and occupation. Regional staff and the members of our state

Mary K. Mathews  
Staff Director  
August 2, 1996  
Page 4

advisory committees are very committed to this agency's mandate and take their role in the investigation of allegations of civil rights violations very seriously.

Thank you for affording the Western Regional Office the opportunity to respond on behalf of the four State Advisory Committees involved in the project, and all the individuals who cooperated with this office in the preparation of this report, including many Federal, state, and local officials, and civil rights activists.

Sincerely,



Philip Montez  
Director  
Western Regional Office

## Appendix E



UNITED STATES  
COMMISSION ON  
CIVIL RIGHTS

U.S.C.C.R.  
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'96 AUG -5

Rocky Mountain Regional Office  
1700 Broadway, Suite 710  
Denver, CO 80290

(303) 866-1040  
(303) 866-1050 Fax

August 2, 1996

Mary K. Mathews, Staff Director  
U.S. Commission on Civil Rights  
624 9th Street, NW  
Washington, DC 20425

Dear Ms. Mathews:

This is in response to your July 19, 1996, letter affording me the right of response to portions of a statement identified by the Office of General Counsel, U.S. Commission on Civil Rights, as "tending to defame and degrade" me. The statement was submitted by Thomas West and Edward Eler, of the Texas and California Advisory Committees, respectively. According to Mr. West, Lino Graglia of the Texas Advisory Committee also signed on to this statement.

There is a question as to whether the Commission should be proposing to publish a statement which its own Office of General Counsel has determined to defame and degrade not only professional staff of the Commission, but also significant organizations such as the Mexican American Legal Defense and Education Fund; the American Civil Liberties Union; and the American Friends Service Committee. These are recognized national civil rights organizations and whether one agrees with their positions on issues or not, they do not deserve to be disparaged and vilified in this manner. This is not the intent of the four advisory committees whose work this report represents. Furthermore, the dissent defames the Immigration and Naturalization Service, a federal agency which was given its own opportunity to respond to the report and did so in a professional and reasoned manner.

The dissent to the report in question, "Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities" (California, Texas, Arizona and New Mexico Advisory Committees) consists of a series of unfounded allegations intended to damage the credibility and the work of four of the Commission's 51 advisory committees over a period of approximately four years. The Commissioners should not be perceived as supporting such a posture.

It is my opinion that the Commission should not publish such a clearly slanderous statement. This is especially true because an opportunity was afforded the minority members to have their viewpoint represented in the

document. As submitted to the Commission's headquarters office by the four committees, substantial portions of the dissent were incorporated into the footnotes. This was done to accommodate these views while avoiding the publication of defamatory material. The decision to proceed in this manner was based on the best judgment of the Commission's professional staff in the Western Regional Office and the four advisory committee chairs who deliberated on this question. Furthermore, it is my understanding that the Office of Staff Director afforded dissenters an opportunity to remove the defamatory material in order to accommodate their request that the dissent be published separately in the back of the report. This offer was refused. Thus, good faith efforts were made to assure that the minority view was represented. Unfortunately, the dissenters have insisted that their entire statement, with all its deprecatory accusations, be published in whole. I do not believe they are entitled to this, under the policies and regulations governing the publication of advisory committee reports. According to the *State Advisory Committee Handbook* (USCCR, June 1994, p. 10), dissenting statements pertinent to the topic of the report, if any, may be appended (emphasis added). Much of the defamatory material in this dissent is an attack on individuals and organizations and does not address the topic.

The allegations directed at Western Regional staff indirectly indict the almost sixty members of the four advisory committees by suggesting that they were mere pawns in a political agenda directed by that office. This is demeaning to the integrity of these advisory committee members. It should be noted that the four advisory committee chairs who oversaw this effort include: a state district judge in Texas; a long-time member of the Arizona legislature; an educator in New Mexico; and a prominent lawyer in Los Angeles. These chairs, along with their colleagues on the respective committees, guided the work of the staff and were involved in all phases. It is untrue and unfair to suggest that these individuals could be manipulated to the whims of Commission staff members.

The draft report was approved by a combined vote of 52 in favor and four opposed. One of those opposed has never attended a single meeting or function of the advisory committee to which he was appointed. The overwhelming support for the document is reflected in many written comments by advisory committee members on file in the Western Region. (Should the individual statements of members supporting the document also be allowed into publication?) It should be noted that all four committees voted to approve the project at its inception, and that approximately twenty-five members participated in one or both of the two factfinding meetings conducted to collect information for this study. In addition, the Western Region shared voluminous information with the Committees throughout the course of the project and the members were encouraged to provide feedback and advice (which many did).

For purposes of background, the initiative for this project was in fact the United States Congress, certain members of which requested the Commission look at problems relating to the U.S.-Mexico border in 1990. The four southwest advisory committees agreed to undertake this study. It should also be noted that this project addressed the administration of justice in immigration law enforcement and was not a "border violence" study, as sometimes suggested by the dissenters. In a historical sense, this study builds upon earlier work done by the Commission in looking at administration of justice issues in southwestern communities. Most prominent among these reports is the 1970 statutory report, *Mexican Americans and the Administration of Justice in the Southwest*. It also updates and expands upon previous work done by the California and Texas Advisory Committees on immigration enforcement issues [see: *A Study of Federal Immigration Policies and Practices in Southern California*, California Advisory Committee, June 1980; and *Sin Papeles: The Undocumented in Texas*, Texas Advisory Committee, September 1978].

Throughout the course of the project and without the availability of subpoenas, extensive participation of law enforcement authorities and agencies was obtained. Participants at the two factfinding meetings included: officials of the Immigration and Naturalization Service (two district directors); the Border Patrol (three Border Patrol Sector chiefs); the Office of Inspector General, U.S. Department of Justice (including an Assistant Inspector General from Washington, D.C. and two regional representatives); the Federal Bureau of Investigation; the United States Attorneys Office; U.S. Customs officers; the El Paso and San Diego police departments; the sheriff of San Diego County; and Mexican law enforcement authorities. This level of cooperation by law enforcement agencies was critical to the success of the project and much effort went into soliciting this in a voluntary manner. Also participating were local elected officials, business representatives, the National Border Patrol Council (which represents the agents), and several private citizen groups supporting stronger border enforcement. Thus, the agenda for both public meetings reflected balance and diversity and these views are well represented in the report.

To allege that because the report was drafted by Commission staff, it is not representative of the advisory committees, is to be ignorant of the entire advisory committee process. Advisory committee members are volunteers and not compensated for their valuable time serving as the "eyes and ears of the Commission." It is a staff function to prepare reports on their behalf. However, these committees guide the work of the staff and the reports are based in large measure on public proceedings over which they preside. In all cases, a formal vote is taken on the document before it is transmitted to the Commission. This collegial process has served the advisory committees and the Commission well and deserves to be supported. It is based upon democratic principles and it is simply unfair that one member (or a few) have



greater influence than the majority. This report was approved by a greater than ten to one majority of the nearly sixty advisory committee members who participated in the review. It is important that the Commission recognize the hard work of its advisory committees and respect the procedures which guide their actions. To do otherwise undermines this unique federal advisory process.

It is perhaps ironic that the document so harshly criticized by the three dissenters has received favorable comments from the federal law enforcement agencies whose activities were the subject of the study. Comments on the draft report submitted on February 7, 1996, by Doris Meissner, Commissioner of Immigration, include the following:

First, let me commend the Advisory Committees and the Commission on the draft report. Quite obviously, it is the product of enormous investments of time and effort by many committed, thoughtful contributors. My staff and I have found the draft report very helpful in our continuing efforts to improve an absolutely vital aspect of our service to the public: the proper treatment of the people with whom we deal with every day . . . . The draft report is virtually free of substantive inaccuracies.

In his response of February 16, 1996 to the draft report, Michael R. Bromwich, Inspector General, U.S. Department of Justice, includes the following statement:

The Commission and the Advisory Committees should take their own share of credit for the interest and concern they have shown toward border problems, without which many of the improvements would not have occurred.

The above individuals also commented extensively on changes and improvements that they report have been made at their respective agencies; they certainly would not be expected to agree with all of the report's findings and recommendations. The significant fact is that they have indicated their respect and appreciation for the work of the advisory committees, something most notably not acknowledged by the dissenting advisory committee members.

(It might also be noted that the transcripts of the two public factfinding meetings were requested by the Congress and the United States Commission on Immigration Reform, for use in their policy deliberations).

It was a privilege for me to serve as the principal staff person for this project and prepare the draft report. If the defamatory statement appears in the final

report, it will at least demonstrate some of the difficulties presented in confronting controversial issues. To offer different perspectives, to arrive at differing conclusions . . . this is healthy and should be encouraged. To allow a small minority to attempt to obstruct and impede the work of the majority of the Commission's advisory committee members is not, I believe, in keeping with the tradition of our agency as a defender of human rights and a protector of the victims of discrimination.

I appreciate the opportunity to respond, and wish to conclude by expressing my deep appreciation to the many civil rights and law enforcement organizations which assisted in this study; but most especially the many advisory committee members in Arizona, California, New Mexico and Texas who dedicated so much time and effort to bring this product to fruition. Their contributions to the work of the Commission and dedication to civil rights are incalculable.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Dulles". The signature is written in a cursive style with a large, prominent "J" and "D".

**JOHN F. DULLES**  
Regional Director

# Appendix F



U.S. Department of Justice  
Immigration and Naturalization Service

U.S.C.R.  
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RECEIVED  
E-202

Office of the Commissioner

425 I Street NW.  
Washington, DC 20536

'96 AUG 26 P4:11

AUG 21 1996

Ms. Mary K. Mathews  
Staff Director  
United States Commission  
on Civil Rights  
Washington, D.C. 20425

Dear Ms. Mathews:

This is in response to the letters of July 9 and July 15, by which you provided the Immigration and Naturalization Service (INS) the opportunity to comment on that portion of a statement by members of the Texas and California Advisory Committees to the Commission, which your Office of General Counsel identified as tending to defame or degrade the Service.

The El Paso Border Patrol Sector initiated Operation Hold the Line with full INS Headquarters support. The operation began with details for a 30-day period and INS Headquarters provided the necessary funding. That was followed by commitments of personnel, equipment, and technology enhancements, plus acknowledgment of the operation's success in both the INS and Border Patrol National Strategies. El Paso has been used as a model for the concept of "prevention through deterrence," which is the cornerstone of the strategy for stopping illegal immigration between Ports-of-Entry.

Under Phase I of the Border Patrol National Strategy, resources will be focused on San Diego and El Paso to control the border through deterrence. At the same time, all Border Patrol Sectors are to concentrate their available resources at the front lines of the border, with emphasis on preventing illegal entry. As control is gained and maintained in El Paso and San Diego, the focus will shift to the areas with the next greatest rate of illegal entry: the Border Patrol's Sectors in Tucson, Arizona, and Del Rio, Laredo, and McAllen, Texas.

The INS remains committed to this effective strategy which first proved its effectiveness in El Paso.

Sincerely,

A handwritten signature in cursive script that reads "Doris Meissner".

Doris Meissner  
Commissioner









U.S. COMMISSION ON CIVIL RIGHTS  
Western Regional Office  
3660 Wilshire Boulevard, Room 810  
Los Angeles, CA 90010

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