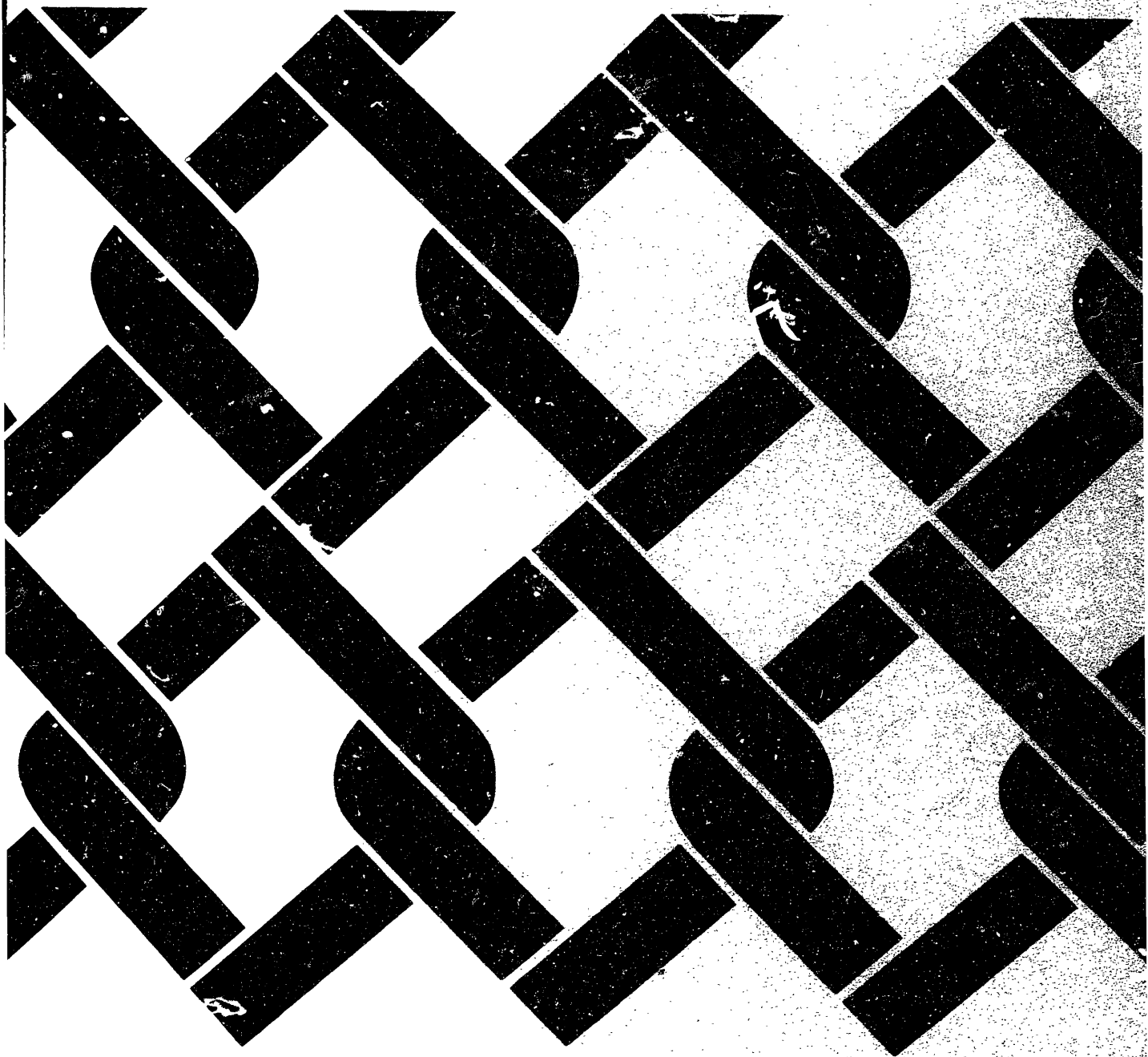


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A Study of Federal Immigration Policies and Practices in Southern California

June 1980



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THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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A Study of Federal Immigration Policies and Practices in Southern California

—A report prepared by the California Advisory Committee to the United States Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the California Advisory Committee to the United States Commission on Civil Rights, and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

CALIFORNIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

June 1980

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Murray Saltzman

Louis Nuñez, *Staff Director*

Sirs and Madam:

The California Advisory Committee submits this report of its study on Federal immigration policies and practices in southern California as part of its responsibility to advise the Commission on civil rights issues within this State.

The purpose of the Advisory Committee's study was to supplement the Commission's national immigration effort and to document the effect of Federal immigration policies and practices on rights of minority aliens and U.S. citizens in southern California.

The Advisory Committee held open meetings June 15 and 16, 1978, in Los Angeles and June 26, 1978, in San Diego to collect public testimony on immigration issues. The Advisory Committee invited representatives of community groups to discuss their concerns and representatives of the U.S. Immigration and Naturalization Service to discuss their respective responsibilities for enforcing and administering Federal immigration laws.

One basic finding of this report is that immigration enforcement efforts by the Federal Government are applied unequally to persons of Hispanic descent, thus affecting both constitutional and civil rights of aliens and U.S. citizens. A second major finding is that public service responsibilities within the Immigration and Naturalization Service are not emphasized to the same degree as enforcement functions.

The Advisory Committee urges the Commissioners to recommend to the appropriate Federal agencies that immigration policies and practices be revised to avoid violations of civil and constitutional rights and to strengthen public service. We urge the Commission to support such recommendations.

Respectfully,

Nadine Hata
Immigration Subcommittee Chairperson
California Advisory Committee

IV

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This report was researched and written by Laurie Campbell. Editing assistance was provided by Sally E. James with support from Grace Diaz and Irene Garcia. All worked under the guidance of Philip Montez, regional director. The Advisory Committee also thanks Gloria Cabrera of the Commission's Southwestern Regional Office, San Antonio, Texas, who provided legal review assistance.

The staff of the Office of Management, Publications Management Division, were responsible for final preparation of the report for publication.

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****The chairperson, U.S. Attorney for the Eastern District of California, did not participate in this study due to a possible conflict of interest with his work for the U.S. Department of Justice.**

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Introduction

We [the United States] legally let in the people who are almost the exact opposite of what is said on the Statue of Liberty. We let in the rich. . .let in those with education. We don't let in the wretched, the poor. . . .Except in the dramatic occasional case of refugees. . . .We think of the immigrant as some dumb little busboy who can't even speak English and who doesn't know how to use a fork right. . . .And this may be the guy who will build the next IBM, or maybe the guy who will decide how we're going to [handle] energy, or maybe just a guy who helps hold the system together by being a decent human being. (Leonel Castillo, Commissioner, U.S. Immigration and Naturalization Service, August 16, 1979.)

The nation has determined. . .in a series of executive, legislative, and judicial decisions (ranging from Brown v. Board of Education through the Civil Rights Acts to the 1965 Immigration amendments) that race, religion, and national origin are not appropriate variables for public policymakers—but these precedents are forgotten by some of those participating in the illegal alien debate. (David North, 1977 annual meeting, American Political Science Association, Washington, D.C., September 1-4, 1977).

National Attitude Toward Immigration

The United States of America is a nation of immigrants.¹ Paradoxically, this nation of immigrants is ambivalent about immigration; through national policy we have been selective in whom we welcome and whom we turn away. For example, from the mid-1800s to 1965 immigration from Asian

countries was restricted.² Since 1965 Federal law has increasingly restricted immigration from the Western Hemisphere.³

For many Americans the immigration problem of the 1970s is synonymous with a "Mexican problem."⁴ A 1979 study found that many Americans have an anti-alien attitude expressed specifically toward Mexicans.⁵ The study concluded that the

¹ The United States is commonly perceived as a nation of immigrants. This widespread perception, however, does not take into account the American Indian populations.

² C. Gordon and H. Rosenfield, *Immigration Law and Procedure*, pp. 9-16 (rev. 1979). In 1965 Federal immigration law was amended to abolish special immigration restrictions relating to Asians and establish an annual quota for all countries in the Eastern Hemisphere at 170,000 persons (Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911).

³ Countries in the Western Hemisphere include Mexico, Canada, and the individual countries of Central and South America. In 1952 no annual quotas existed for these countries (Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952)). In 1965 a quota for the Western Hemisphere was established for the first time at 120,000 persons annually (Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911). In 1976 the Western Hemisphere quota was tightened to 20,000 persons annually per country (Act of Oct. 20, 1976, Pub. L. No. 94-571, 90 Stat. 2703).

⁴ The executive branch of the Federal Government requires all Federal agencies to use the standard classification "Hispanic" which includes "a

person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race" (memorandum from Executive Office of the President, Office of Management and Budget, to heads of executive departments, "Revision of Circular No. A-46, Exhibit F, 'Race and Ethnic Standards for Federal Statistics and Administrative Reporting,'" May 12, 1977). The Advisory Committee's study focused on immigration issues in southern California where the majority of Hispanic aliens are Mexican. Occasionally, speakers at the Committee's informal hearings used regional terms such as Chicano or Latino to designate Hispanics. Such regionalisms are included in this report when appropriate.

⁵ Wayne Cornelius, "America in the 'Era of Limits': The 'Nation of Immigrants' Turns Nativist—Again" (presented at the June 1979 conference sponsored by the Rockefeller Foundation, "Mexican Immigration: Elements of the Debate in the U.S. and Mexico," La Jolla, Calif.), pp. 3-6, 11-12. In his paper Dr. Cornelius also states that racism and racial/ethnic stereotyping combine with economic fears to create an anti-alien attitude. Other fears associated with anti-alien attitude, Dr. Cornelius found, were fears of overpopulation and rising crime (pp. 7-9).

public considers immigration from Mexico a serious problem because of fears about inflation and other economic conditions in this country. In addition, personal perceptions of government officials regarding immigration from Mexico are well-publicized. William Colby, former director of the Central Intelligence Agency, reportedly said in 1978:

One of the most serious problems we [the U.S.] have to face is the doubling of the population of Mexico by the end of the century which would drive an additional 20 million illegal aliens across the border into the United States. The main threat against the United States is from the "have not" nations of the world, such as Mexico, rather than from the Soviet Union.⁶

People immigrate to the United States for many reasons.⁷ Some come for employment; others come to reunite with families or to escape political conditions. Regardless of motive, some individuals live in the United States who are undocumented aliens.⁸ These persons have either entered the United States without authorization or have failed to leave the country when their temporary visas have expired.⁹

Most undocumented aliens from Mexico who are apprehended by the U.S. Immigration and Naturalization Service (INS) have entered the United States without authorization primarily by avoiding immigration inspection at ports of entry. Most non-Mexican undocumented aliens apprehended by INS have overstayed their visas.¹⁰ In 1978 former INS Commissioner Leonel Castillo stated his growing concern about undocumented aliens from countries other than Mexico:

⁶ *Los Angeles Times*, "Colby Calls Mexico Bigger Threat than Russia to U.S.," June 6, 1978.

⁷ For consistency, this report will use the word "immigrate" to refer to the entry of both immigrants and nonimmigrants into the United States. Under the Immigration and Nationality Act nonimmigrants are defined as persons who do not intend to remain in the U.S. as permanent residents (8 U.S.C. §1101(15) (1976)). Technically, they do not "immigrate" to this country.

⁸ In writing this report, the Advisory Committee was dissatisfied with the term "undocumented alien" to identify those persons in the U.S. who are here without legal authorization; however, the Committee was unable to find a comparable term which would correctly identify these individuals without placing a dehumanizing label on them. Some undocumented aliens do have documents which are fraudulent or misused. On the other hand, the terms "illegal alien" and "deportable alien," also used to identify undocumented aliens, are inappropriate. These terms refer to a person who has been found by an immigration judge or an INS officer, through due process, to have entered the country unlawfully or overstayed a visa (U.S. v. Martinez-Fuerte, 428 U.S. 543, 553 n. 9 (1976); *Los Angeles Times*, "County Advised Against Dropping Alien Health Care," Apr. 4, 1979).

⁹ Undocumented aliens who enter the U.S. without authorization include those persons who avoid inspection at U.S. ports of entry and those who enter with fraudulent documents at ports of entry.

¹⁰ U.S., Department of Justice, Immigration and Naturalization Service, *1976 Annual Report*, pp. 13-14. (1977 and 1978 annual reports had not been issued as of fall 1979).

The immigration patterns of the world are changing. The [inexpensive transatlantic] Laker [Airlines] flights are simply the tip of the iceberg. They indicate that people can travel across the globe at little expense. I look for a tremendous increase in air traffic, so we will have a growing problem of "overstays," such as Europeans who look like the Americans surrounding them and can melt into the population.¹¹

The number of undocumented aliens in the United States is unknown, including those who have overstayed their visas. INS is unable to verify the whereabouts of approximately 8.5 million visitors who enter the United States yearly. Commenting on this recordkeeping problem, U.S. Attorney General Griffin Bell stated in 1978, "We know they come in but the question is: Did they leave?"¹²

News stories in the 1970s have depicted aliens who enter the country without documentation as a problem, particularly by using terminology such as "hordes," "border peril," and "invasion," and by frequently publicizing official statements which perceive aliens as a threat. According to Felix Gutierrez, assistant professor of journalism at California State University, Northridge, news coverage about undocumented aliens from Mexico "paves the way for repressive police or public actions" against them because they are portrayed by the media as a menace.¹³ Mark Day, chairman of the journalism department at Los Angeles Southwest College, complained that the media, rather than challenging the perception of undocumented aliens as lawbreakers, has failed to conduct in-depth investigative

¹¹ *Los Angeles Times*, "Cheap Flights to Broaden Alien Influx, INS Chief Says," July 6, 1978.

A recent paper based on a 1976 study concluded that undocumented aliens from countries other than Mexico held better paying jobs in the U.S. than undocumented aliens from Mexico because of the former group's higher education and job skills ("A Summary of Recent Data on and Some of the Public Policy Implications of Illegal Immigration" by David North and Marion Houston, presented at a conference, "Public Policy Perspectives on Alien Workers," sponsored by the National Council of Employment Policy, George Washington University, May 13-14, 1976, p. 9).

¹² *Los Angeles Times*, "Bell Says Immigration Service is 'Drowning' in Paper, Plans Effort to Systematize It," Jan. 31, 1979.

¹³ Informal hearing before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service in California," Los Angeles, Calif., June 15-16, 1978, pp. 112-13 (hereafter cited as Los Angeles Transcript). Mr. Gutierrez presented the Advisory Committee with a 14-month study he conducted in 1977-78 on newspaper coverage of immigration issues in California. From this study he concluded that the majority of sources for these articles came from law enforcement and public officials who tended to portray Mexican undocumented aliens as a problem for the community (written testimony before the California Advisory Committee, Los Angeles, Calif., June 15-16, 1978).

reporting about immigration which such a complex issue warrants.¹⁴

Beginning in 1977, the Federal Government recognized the need to thoroughly investigate immigration to the United States. The Carter administration announced plans to establish the Interagency Task Force on Immigration, and in 1978 Congress created a Select Commission on Immigration and Refugee Policy.¹⁵ During this period, the U.S. Commission on Civil Rights also became involved.

The U.S. Commission on Civil Rights Study

The U.S. Commission on Civil Rights has been concerned about immigration issues for several years. It has received complaints throughout the country alleging that the civil rights of minority citizens and aliens are violated during the enforcement and administration of immigration laws.

In August 1977 President Carter released the administration's proposal for immigration legislation. Soon thereafter, the Commission began a national immigration study which focused on the effect of immigration laws and INS policies and practices on the civil rights of minority citizens and aliens, and the extent to which the administration's immigration proposals would increase or decrease that effect.

The California Advisory Committee Study

The California Advisory Committee to the U.S. Commission on Civil Rights has also been concerned about immigration issues which may impinge on the civil rights of minority citizens and aliens. Since 1973 the Advisory Committee has received complaints that rights of minority persons in California are violated by the enforcement and administration of immigration laws. These complaints allege that INS policies and procedures infringe on civil rights of minority citizens and aliens, that INS personnel

¹⁴ Los Angeles Transcript, p. 104.

Local newspaper representatives refused to discuss criticisms of the media in California with Commission staff. Their refusal was based on a concern about first amendment rights.

¹⁵ U.S., Congress, *An Act to Amend Section 201(a), 202(c) and 203(a) of the Immigration and Nationality Act, As Amended, and to Establish a Select Commission on Immigration and Refugee Policy*, 95th Cong., 2d sess., 1978, H. Rept. 12443.

abuse their powers, and that INS enforcement operations are discriminatory

In conjunction with the Commission's national study, the Advisory Committee undertook to examine these allegations. In September 1977 the Advisory Committee held a public consultation in Los Angeles. The purpose of the consultation was to collect data from immigration experts on several issues, such as the effect of immigration on the economy and immigration enforcement and administrative procedures.

Commission staff conducted interviews from December 1977 to June 1978 with persons from both the public and private sectors who worked with immigration problems on a day-to-day basis, including INS officials, immigration lawyers, community organization and immigrant service group representatives, local government officials, and media representatives. Few individual complainants who alleged abuses by INS were interviewed because the Commission was unable to offer protection from possible repercussions such as deportation.¹⁶

In June 1978 the Advisory Committee held two public meetings, one in Los Angeles and one in San Diego, to collect information on INS operations and policies in an urban area some distance from the U.S.-Mexico border and at the border.

The Advisory Committee's 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.

This report, detailing perceptions about immigration issues, including the relationship between immigration and local economic issues, marks the inconsistencies between community and government officials' responses. The Advisory Committee offers the report as a step toward the clarification of immigration policy and practices and humane, nondiscriminatory enforcement of immigration laws.

¹⁶ At U.S. agency proceedings, witnesses' sole protection is 18 U.S.C. §1505 which provides that any person will be fined not more than \$5,000 or imprisoned not more than 5 years, or both, if he/she endeavors to intimidate, influence, or impede testimony of, by threat or force, any witness in any proceeding before any U.S. agency.

Immigration and the Economy

We have had too many impact studies. They are not worth the paper they are written on. . . it is time to stop impact studies and do something about the undocumented alien problem. (Joseph Sureck, District Director, INS Los Angeles District Office, June 16, 1978)

The exaggerated statements that have circulated between executive agencies, the Congress and the mass media have only served to create a crisis atmosphere. The empirical data generated thus far by independent research, however, leads us to conclude that the charge that illegal aliens are costing taxpayers billions of dollars is unfounded. (Leobardo Estrada, Gilbert Cardenas, and L. Manuel Garcia y Griego, "The First International Symposium on the Problems of Migratory Workers from Mexico and the U.S." Guadalajara, Mexico, July 11-14, 1978)

There are local officials who argue that existing data show undocumented aliens are a drain on local government welfare, health, and law enforcement resources.¹ They advocate that the Federal Government increase its efforts to prevent entry of undocumented aliens as well as reimburse local governments for services provided to them.² Other officials disagree and contend that available information fails

to prove that undocumented aliens are a burden to local taxpayers.³

Little conclusive data exist on the economic impact of undocumented aliens because their numbers are unknown. While existing impact studies do not purport to be definitive, recent reports in southern California on economic issues, conducted independently of each other, have reached similar

¹ Thomas Hibbard, deputy to Los Angeles County Supervisor Peter Schabarum, First District, interview in Los Angeles, Calif., May 24, 1978 (hereafter cited as Hibbard Interview).

² Ibid.; informal hearing before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service in California," Los Angeles, Calif., June 15-16, 1978, p. 60 (hereafter cited as Los Angeles Transcript).

³ Immigration consultation before the California Advisory Committee to the U.S. Commission on Civil Rights, Los Angeles, Calif., Sept. 30, 1977, pp. 148-50 (hereafter cited as Immigration Consultation); Los Angeles Transcript, pp. 32-33.

conclusions. These conclusions are summarized to place the economic issues in perspective.⁴

Tax Contributions

Local officials cannot agree on the significance of tax contributions made by undocumented aliens. Thomas Hibbard, deputy to Los Angeles County Supervisor Peter Schabarum, told Commission staff that regardless of how much money undocumented aliens might pay in Federal and State taxes, little is returned to local coffers for local services.⁵ Within the same county government, Fred Gadson, project director for a cost study conducted by the department of health, wrote:

The undocumented alien group is a unique category that has attracted much attention. Although they are not considered residents for purposes of MediCal or general relief eligibility, many have made their homes in Los Angeles County for years and have contributed (either directly as homeowners or indirectly as renters) to the property tax base which supports county health services.⁶

Not only do undocumented aliens contribute to the property tax base, but they also pay sales tax as

⁴ In a 1979 paper by Dr. Wayne Cornelius, he recommended that a series of comprehensive local studies be conducted to examine all aspects of community life potentially affected by immigration, such as employment, population growth, and environment in order to involve all segments of local population which interact extensively with immigrants. While recent studies have been valuable, Dr. Cornelius said they have only examined isolated alleged impact areas such as welfare and health costs ("Mexican Migration to the United States: The State of Current Knowledge and Recommendations for Future Research," presented at the June 1979 conference sponsored by the Rockefeller Foundation in La Jolla, Calif., "Mexican Immigration: Elements of the Debate in the U.S. and Mexico," pp. 248-49 (hereafter cited as La Jolla Conference).

Current data are scattered; however, findings continue to refute arguments that immigration to the U.S. has an extensive, troublesome effect. For example, Dr. Cornelius' paper found that Mexican immigrants in the U.S. may not have as great an effect on population growth as generally believed since their childbearing behavior closely resembles that of the U.S. population in general (pp. 21-22).

According to other researchers, many persons are confused between the flow of illegal immigration and the number of undocumented aliens residing permanently in the United States:

This confusion in part is responsible for many of the alarmist statements about the so-called "silent invasion" of illegal aliens into the U.S. . . . Concerns about the impact of illegal aliens are not based upon massive dislocations in the U.S. labor force, upon sudden unexplained increases in the use of the U.S. social services programs, or even upon demands that more schools be built to meet the educational needs of the children of undocumented workers. To the contrary, unemployment rates remain essentially at levels of a few years ago, welfare rolls have not reported increases that cannot be explained solely by the increase in total population, and the school systems of most cities are undergoing a period of retrenchment rather than growth (Leobardo F. Estrada, Gilbert Cardenas, and L. Manuel Garcia y Griego, "Measuring the Volume and Social Impact of Undocumented Immigration: Confusions Leading to Unfounded Exag-

consumers, another tax source contributing to the State and local budgets.

Recent reports in southern California have estimated tax contributions by undocumented aliens. While their conclusions are not based on hard data, they indicate that undocumented aliens may constitute an economic advantage for Federal, State, and local governments by contributing more dollars in taxes than they receive from government-supported services.

In Los Angeles the county's chief administrative officer calculated total taxes paid by undocumented aliens for 1975, including property, sales, and income taxes. Three population estimates of undocumented aliens were used: an estimated 54,000 undocumented aliens would produce tax revenues of \$15.5 million; an estimated 135,000 undocumented aliens would produce tax revenues of \$84.1 million; and an estimated 600,000 population would contribute tax monies totaling \$171.9 million. The chief administrative officer estimated that in 1975 Los Angeles County spent \$8.4 million to provide social services to undocumented aliens.⁷

In 1977 a report by the County of San Diego Human Resources Agency, researched and written in conjunction with the San Diego County Immigration Council, estimated Federal and State income tax

generations," a paper included in the proceedings of "The First International Symposium on the Problems of Migratory Workers from Mexico and the U.S.," Guadalajara, Mexico, July 11-14, 1978).

⁵ Hibbard Interview. In a February 1979 newsletter to Californians, Congressman Charles Wilson wrote that undocumented aliens are a burden to taxpayers because they pay no taxes, but he did not cite sources for his conclusion.

⁶ County of Los Angeles, Calif., Department of Health Services, *A Report on the Impact of Nonresidents on Medical Services Provided by the County of Los Angeles Department of Health Services (June 1977)*, introductory letter from Fred Gadson, project director, nonresident cost study, to Martin Finn, chairperson, Patient Treatment Policies Task Force, July 8, 1977, p. 2 (hereafter cited as Introductory Letter). At the La Jolla Conference, Dr. Wayne Cornelius, director of the Center for United States-Mexican Studies at the University of California, San Diego, stated that it is likely that many undocumented aliens pay taxes but do not receive social services (U.S. Commission on Civil Rights Western Regional Office, staff notes of La Jolla Conference).

⁷ County of Los Angeles, Calif., Chief Administrative Officer, *Tax Effort and Service Cost of Illegal Aliens* (Mar. 20, 1975). This report emphasized that these tax contribution figures were estimates due to the absence of definitive data on numbers of undocumented aliens and their employment status (p. 1). According to Ginger Barnard, legislative analyst for the county's chief administrative office, the nature of this data prevented the county's endorsement of the report (telephone interview in Los Angeles, Calif., June 21, 1979).

A report of the U.S. House of Representatives Select Committee on Population entitled *Legal and Illegal Immigration to the United States* noted that, although precise data on the tax payments are lacking, a majority of undocumented aliens are employed and of these many have Federal and State taxes withheld from their pay. Moreover, it stated that the consistency of findings from a number of different sources suggests that aliens pay taxes, which should be taken into account when assessing their use of public services (95th Cong., 2d sess., 1978, H. Rept. 1842, pp. 40-41).

contributions of undocumented workers in that county to be approximately \$49 million per year. The report compared these figures to another finding that undocumented aliens cost San Diego \$2 million in social services per year, including health, welfare, and education costs.⁸

The Task Force on Medical Care for Illegal Aliens in Orange County, California, concluded in 1978 that undocumented aliens were not a burden to other taxpayers because their tax contributions exceeded the cost of their use of tax-supported social services. The task force found that undocumented aliens paid taxes ranging from \$83.1 million to \$145 million based on population estimates of 57,172 to 100,000 undocumented aliens in the county. These taxes included sales, property, and income taxes. Although welfare costs were not provided in dollars, the task force estimated that a mere 2.8 percent of the undocumented alien population collected welfare payments.⁹

Welfare

Federal law prohibits undocumented aliens from receiving federally assisted welfare benefits.¹⁰ The methods for identifying undocumented alien status are determined by individual States and administered by each county.¹¹ Under California law, county administrators of Aid to Families With Dependent Children (AFDC), the largest federally assisted welfare program, must temporarily assist aliens pending verification of their status by INS.¹²

Since 1976 the Los Angeles Department of Public Social Services (DPSS) has conducted annual studies of its verification requests to INS for AFDC applicants. In 1976 DPSS found that out of 6,000 verification requests, INS identified approximately

2,200 aliens as undocumented. The status of an additional 2,700 aliens was unknown because they failed to appear for an INS interview or refused to cooperate during the INS interview.¹³ In 1977 DPSS found that out of 1,980 referrals, INS identified less than half as undocumented aliens and persons of unknown status; in 1978 INS identified only 220 individuals as undocumented aliens and unknowns. DPSS estimated that Los Angeles County costs for temporary assistance to undocumented aliens decreased from \$288,000 in 1976 to \$14,100 in 1977 and \$3,760 in 1978.¹⁴ According to Ray Garcia, legislative coordinator for DPSS, the number of undocumented aliens receiving AFDC is decreasing rapidly, and because the county's AFDC budget totals \$790 million, "the problem is very insignificant as far as welfare [costs] are concerned."¹⁵

In San Diego, the county human resources agency reported that undocumented aliens receiving temporary welfare benefits decreased from 193 cases in May 1976 to 28 cases in December 1976, costing the county \$180,832 out of a \$157,991,860 welfare budget. According to the human resources agency, the county public welfare department attributed this decrease to the effectiveness of the INS referral process.¹⁶

Health

Two reports have studied the cost of public health services for undocumented aliens in southern California: *A Report on the Impact of Nonresidents on Medical Services Provided by the County of Los Angeles Department of Health Services* (June 1977) and *The Economic Impact of Undocumented Immigrants on Public Health Services in Orange County* (March 1978).¹⁷

⁸ County of San Diego, Calif., Human Resources Agency, *A Study of the Socioeconomic Impact of Illegal Aliens on the County of San Diego* (January 1977), pp. 53-58, 173 (hereafter cited as San Diego County Socioeconomic Impact Report).

⁹ County of Orange, Calif., Task Force on Medical Care for Illegal Aliens, *The Economic Impact of Undocumented Immigrants on Public Health Services in Orange County* (March 1978), pp. 17-28 (hereafter cited as Orange County Economic Impact Report).

¹⁰ 45 C.F.R. §233.50 (1978).

¹¹ William Sones, division chief, County of Los Angeles Department of Public Social Services, interview in Los Angeles, Calif., Jan. 11, 1978 (hereafter cited as Sones Interview).

¹² Cal. Welf. & Inst. Code 11104 (West 1972). Although this law requires verification of any alien's application for assistance, only those aliens who have unacceptable documentation of their immigration status or no documentation are referred to INS by the county welfare department (Sones Interview).

¹³ Los Angeles Transcript, p. 66.

¹⁴ Ray Garcia, legislative coordinator, County of Los Angeles Department of Public Social Services, letter to Laurie Campbell, U.S. Commission on

Civil Rights, Nov. 20, 1978. In his letter, Mr. Garcia stated that the county cost of aiding citizen children of nonaided illegal alien mothers was \$1,584,000 in 1976. He told Commission staff in an Oct. 23, 1978, telephone interview that the county does not have these costs for 1977 and 1978.

¹⁵ Los Angeles Transcript, pp. 66-67, 69.

¹⁶ San Diego County Socioeconomic Impact Report, pp. 121, 127-30. The report stated that in 1975 the referral process was modified to include a personal interview between the welfare applicant and INS, thus lessening chances for fraud.

In Los Angeles, however, county officials attributed the decrease from 1976 to 1977 and 1978 to the elimination of a backlog in referrals at INS (Los Angeles Transcript, p. 66). Reasons why numbers of undocumented aliens on welfare are minimal may also be their fear of detection through contact with a government agency and the desire to work for a living.

¹⁷ The Los Angeles report is hereafter referred to as Los Angeles County Health Services Impact Report. The Orange County report was cited previously as Orange County Economic Impact Report. The Los Angeles report defined nonresidents as undocumented aliens, aliens with temporary visas, and U.S. citizens with residences in other counties or States (p. 23). According to Audrey Bahr, an administrator and spokesperson for the Los

The Los Angeles report estimated that costs of health care services for undocumented aliens and aliens with temporary visas were between \$40.4 million and \$67 million out of a total public health cost of \$489 million for the county in fiscal year 1976-1977; in other words, costs for undocumented aliens were approximately 10 percent of all health costs.¹⁸ Audrey Bahr, county health department spokesperson, told the Advisory Committee that estimations of health costs for undocumented aliens include direct costs and support costs such as building maintenance, depreciation, and administration. Support costs, Ms. Bahr added, remain the same regardless of the number of clients.¹⁹

Direct costs for health care include medical staff, supplies and equipment, elective and emergency hospital care, outpatient services, and public health care such as diagnosis and treatment of communicable diseases, immunizations, and prenatal care. Ms. Bahr stated that annual increases in direct costs are attributable to union demands for salary increases and inflation which increases the cost of supplies and equipment, but not to services provided undocumented aliens. In any event, Ms. Bahr told Commission staff that providing public medical services to undocumented aliens protected the health of the community.²⁰ The Los Angeles report noted that denying health services to undocumented aliens would create marginal savings since most health costs remain constant regardless of workload.²¹

The 1978 Orange County report found that health care for undocumented aliens cost that county \$2.6 million a year. The report concluded that since undocumented aliens pay substantial Federal, State, and local taxes, their use of medical services was not a burden to taxpayers.²²

Los Angeles Department of Health Services, health department interviewers had to make assumptions about undocumented alien status since the health department does not verify legal residence (Los Angeles Transcript, pp. 63-64; interview in Van Nuys, Calif., May 5, 1978 (hereafter cited as Bahr Interview)).

¹⁸ Los Angeles County Health Services Impact Report, p. 24; Introductory Letter, p. 1.

¹⁹ Los Angeles Transcript, p. 58.

²⁰ Bahr Interview.

California law authorizes counties to provide emergency relief regardless of a person's eligibility to receive public social service (Cal. Welf. & Inst. Code §17003 (West 1972)). When interviewed in 1978, Ms. Bahr told Commission staff that the county's health policy was to provide emergency care to persons regardless of their eligibility to receive county medical services. She stated, however, that it was difficult to separate emergency from nonemergency cases since every medical problem had the potential of being an emergency situation. She said that the county health department evaluated every person's medical case before determining eligibility for care. A decision to continue treatment beyond the initial evaluation if a person was ineligible for medical care was made at the attending physician's discretion.

At one time Orange County public health facilities required proof of legal residency of all clients; this practice was discontinued when the report was released in 1978. It found that a majority of undocumented aliens in the county were from rural Mexico and did not receive immunization against communicable diseases before entering the United States. It concluded that requiring proof of residence would create a health risk for the entire community since residency questions discouraged undocumented aliens from seeking health care.²³

Law Enforcement

The Advisory Committee found little concrete information on the impact of undocumented aliens on police resources. Law enforcement data in the 1977 San Diego report were too limited to draw conclusions.²⁴ In Los Angeles the Illegal Alien Committee of the Los Angeles Police Department (LAPD) prepared a briefing paper for a staff officers' retreat in January 1977 on this issue but based many of its conclusions on police officer opinions. While the briefing paper acknowledged that "statistical data measuring the level of crime committed by illegal aliens is not available," it concluded that illegal alien involvement in crime was increasing.²⁵

Despite this disclaimer, the *Los Angeles Times* publicized the LAPD briefing paper. The *Times* reported the paper as concluding that "the presence of an estimated 650,000 illegal aliens now living in the city as a 'hidden' population dilutes LAPD services, so that the 'thin blue line' of police protection is much thinner than supposed."²⁶ The briefing paper stated, "Officers from five geographic

In February 1979 the California Attorney General stated that Los Angeles County did not have the legal authority to provide nonemergency medical care to undocumented aliens (62 Ops. Cal. Atty. Gen. 70 (1979)). This opinion, however, did not define what constituted an emergency or nonemergency case. In any event, the Los Angeles County Board of Supervisors voted in May 1979 to provide nonemergency medical care to needy patients in order to protect public health (*Los Angeles Times*, "Supervisors OK Medical Aid to Aliens," May 23, 1979).

²¹ Introductory Letter, p. 2.

²² Orange County Economic Impact Report, pp. 12, 41-46.

²³ *Ibid.*, pp. 55-58, 64-67; Los Angeles Transcript, pp. 40-41.

²⁴ San Diego County Socioeconomic Impact Report, p. 71.

²⁵ "The Illegal Alien Problem and Its Impact on Los Angeles Police Department Resources," briefing paper prepared for staff officers' miniretreat, Los Angeles, Calif., pp. 9-12 (hereafter cited as LAPD Impact Report).

²⁶ *Los Angeles Times*, "L.A. to Have Million 'Illegals' by '81 at Present Rate," Jan. 30, 1977.

areas estimated that over 30 percent of all radio calls for service in their areas involved illegal aliens."²⁷

Los Angeles Police Commissioner Salvador Montenegro refuted the LAPD's alien committee findings in his remarks to the Advisory Committee:

The data was selected from INS, personal opinions, and surveys, and pasted together to make a formulation of opinion. I think the report was laced with biases and prejudice, so it was distorted.²⁸

Los Angeles Police Department Commander Lou Reiter agreed with these criticisms, admitting to the Advisory Committee in June 1978 that the paper's reliance on officers' perceptions of whether persons were undocumented was "not a proper scientific tool to use in coming up with statistics." He added that there are some officers who might say anyone who looks Hispanic is undocumented. He said many persons within the LAPD now recognize that officers "have a [perception] problem we LAPD must deal with through education and training."²⁹

In updating LAPD policy toward aliens, Commission staff learned from Commander Reiter in October 1978 that in the future LAPD will become involved with undocumented aliens only to the extent that they are repeated criminal offenders.³⁰ In March 1979 the Los Angeles Police Commission adopted a policy instructing officers to ignore the immigration status of persons except those charged with serious crimes.³¹

Employment

Studies have not determined if undocumented aliens take jobs away from U.S. citizens, but research conducted in California has examined the employment status of Mexican workers compared to other immigrants and U.S. citizens. This research indirectly bears on the issue of whether undocu-

mented aliens deprive citizens of jobs and is summarized below.³²

Both the 1977 San Diego report and the 1978 Orange County report found that the average hourly wage of undocumented aliens working in southern California was at or below minimum Federal and State wage levels.³³ In 1977 research at the University of California, Los Angeles, found that workers from Mexico did not have labor market skills, such as English language proficiency and education, equivalent to skills of workers from Europe and U.S. citizens. Research at Stanford University's Hoover Institute in 1978 found that earnings of Mexicans who come to the United States are substantially lower than other immigrants, even after an average of 13 years in the United States, due in part to racial discrimination.³⁴ According to Saul Solacne, who conducted the research at the University of California in 1977, workers from Mexico are unable to compete for desirable jobs like workers from Europe because they do not have the same high job market skills.³⁵

During the Advisory Committee's study, community representatives indicated that businesses paying low wages cannot depend on citizen workers. Vic Villalpando, director of the San Diego Human Resources Agency, told the Committee:

I have volumes and volumes of documentation of people, farmers, employers stating that they offered minimum wage and [U.S. citizens] would not come in to work. They would come in once, maybe for a whole week, they'd gut it out, then the [employers] wouldn't see them again.³⁶

He added that programs conducted to fill jobs vacated by undocumented aliens with U.S. citizens have met with little success. In June 1975 a State employment development department recruitment effort for 2,154 jobs in Los Angeles failed to attract

theory that undocumented aliens displace minorities and other disadvantaged persons for jobs, minority communities in California have expressed fears about the impact of undocumented aliens on economic opportunities for minority citizens. For example, some members of the Los Angeles black community recently raised the concern that growing numbers of undocumented aliens, particularly from Mexico, could siphon away Federal funding that would have been earmarked for black neighborhoods (*Los Angeles Times*, "Blacks Voice Concern over Illegal Aliens," July 29, 1979).

²⁷ San Diego County Socioeconomic Impact Report, p. 52; Orange County Economic Impact Report, p. 17.

²⁸ *Los Angeles Times*, "Study Traces Success of White Male Immigrants," June 11, 1978; Letter R. Chiswick, research professor, University of Illinois, letter to Laurie Campbell, U.S. Commission on Civil Rights, Dec. 14, 1978.

²⁹ Immigration Consultation, pp. 55-57.

³⁰ *Ibid.*, p. 157.

²⁷ LAPD Impact Report, p. 9.

²⁸ Los Angeles Transcript, p. 83.

²⁹ *Ibid.*, pp. 96, 98-99.

³⁰ Telephone interview in Van Nuys, Calif., Oct. 18, 1978.

³¹ *Los Angeles Times*, "LAPD Eases Policy Toward Illegal Aliens," Mar. 17, 1979.

³² Studies have suggested that if most undocumented workers are employed in low level jobs, they may be competing with disadvantaged U.S. citizens in the labor market, such as minority groups, women, and the aged, and the handicapped (David North and Marion Houston, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study*, a report prepared for the Employment and Training Administration, U.S. Department of Labor (March 1976), p. 17). On the other hand, researchers and employers state that citizens do not apply for the jobs that undocumented aliens occupy. While there is no evidence to support the

citizen workers. In San Diego an INS program to fill 340 jobs from November 1975 through April 1976 also failed; these jobs were eventually given to noncitizens.³⁷

Walter Gibson, a representative of the Southern California Shoe Manufacturer's Association in Los Angeles, told the Advisory Committee that Mexican workers occupy jobs no one else will take, and if they did not, industry production lines would stop.³⁸ Shoe manufacturer Arthur Sbicca concurred:

Every manufacturer I know needs all the help they can get. Why are these people [Mexican workers] employed? These are the people that

applied for the jobs, and we called the job bank or the unemployment office and we never get anybody.³⁹

Charles Goldstein of the California-based Coalition of Apparel Industries said that over a period of years employers have hired Mexican workers for jobs which are low in status, dirty, or repetitive because they are the only persons willing to do such work. He provided the Advisory Committee with examples of numerous job openings in the clothing industry which were referred to the employment development department and for which few citizens applied.⁴⁰

³⁷ Ibid., pp. 150-51.

³⁸ Los Angeles Transcript, pp. 268-69.

³⁹ Ibid., p. 408.

⁴⁰ Ibid., pp. 203-04, 212-13.

Background to Federal Immigration Policies and Practices

The Immigration and Nationality Act

The admission of aliens to the United States is a privilege not a right.¹ The U.S. Congress has absolute authority over immigration matters; it may bar the entry of aliens or set the conditions for their entry.² Congress has enacted many immigration laws since the late 1700s, and in 1952 it consolidated immigration law under one statute, the Immigration and Nationality Act.³ This act, which has been amended several times since 1952, is a complex body of laws regulating entry and departure of all non-citizens to the United States. It also provides for immigration and naturalization benefits and privileges and delineates criteria for obtaining them.⁴ Thus, the functions involved under this act include both enforcement and public service. The service, or administrative, function is basically to process application for benefits under the law.

The act designates alien applicants for entry into the U.S. as either immigrants or nonimmigrants. Immigrants are persons who apply for permanent residency, and nonimmigrants are persons who apply for temporary admission, such as visitors or students.⁵ Both immigrants and nonimmigrants must receive visas in order to enter the United States.

¹ U.S. *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537 (1950). Under the Immigration and Nationality Act, an alien is defined as a person who is not a citizen or national of the United States (8 U.S.C. §1101(3) (1976)).

² *Lapina v. Williams*, 232 U.S. 78 (1914).

³ Act of June 27, 1952, Pub. L. No. 82-414, 66 Stat. 163.

⁴ 8 U.S.C. §§1101-1503 (1976), as amended by Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907.

⁵ 8 U.S.C. §1101(a)(15), (20).

⁶ 8 U.S.C. §§1151(a), 1152(a). Some categories of aliens may enter as immigrants without limit to the number of aliens admitted. These are children and spouses of U.S. citizens, parents of U.S. citizens at least 21

Congress has established a limit of 290,000 visas for immigrants, with no more than 20,000 from any one country; nonimmigrants are admitted without a numerical limitation.⁶

When Congress enacted the Immigration and Nationality Act, it established three immigration policy goals: (1) reunification of families, (2) protection of the domestic labor force, and (3) immigration of persons with needed labor skills. Therefore, the act provides preference consideration within the numerical visa limitations for persons applying for entry as immigrants who have close relatives in the U.S., certain job skills, or refugee status.⁷ While most immigrants obtain their visas from American consulates before coming to the U.S., the law also provides that nonimmigrants visiting the U.S. with temporary visas may apply to adjust their status to that of immigrant without leaving the country.⁸

Possession of an immigrant or nonimmigrant visa does not assure entry into the United States. Upon arrival at a port of entry, an alien may be denied entry by immigration officers, in their discretion, under one or more of the act's more than 30 exclusionary grounds.⁹ Permanent exclusion, however, can only be ordered by an immigration judge at an exclusionary hearing.¹⁰ Aliens with visas can

years of age, and special immigrants defined under 8 U.S.C. §1101(a)(27) (8 U.S.C. §1151(a)-(b)).

⁷ 8 U.S.C. §1153.

⁸ 8 U.S.C. §1255.

⁹ 8 U.S.C. §§1182, 1225. Examples of excludable aliens under the act are persons who are mentally retarded, drug addicts, alcoholics, paupers and professional beggars, polygamists, prostitutes, individuals who have been convicted of two or more criminal offenses, and aliens who have been arrested and officially deported, unless the Attorney General has consented to their application for admission into the U.S.

¹⁰ 8 U.S.C. §1225(b)-(c). Exclusion hearings may be refused certain

also be deported once they are in the U.S. if: (1) they have not entered the country through a port of entry, (2) they have stayed in the U.S. beyond the time allowed by their visas, or (3) they have violated one or more of the act's deportable grounds, such as commission of a crime involving moral turpitude, after entry.¹¹

For regulating the entry and departure of aliens, the Immigration and Nationality Act gives immigration officers substantial powers. For example, officers are able to conduct interrogations of persons without warrant and make arrests without warrant if there is a likelihood of escape.¹² Further, officers have the discretion under the act to grant relief from deportation and waive exclusion.¹³

Organization of the Immigration and Naturalization Service, Western Region

The U.S. Attorney General has responsibility for administering and enforcing the Immigration and Nationality Act.¹⁴ That responsibility is delegated by the Attorney General to the Commissioner of INS.¹⁵ Chart I presents the organization of INS in 1979.

INS headquarters establishes agency policy, which four regional offices adopt, supplement, and implement in the field. The INS Western Region Office in San Pedro, California, administers five district offices in Los Angeles, Honolulu, San Diego, San Francisco, and Phoenix, and, five border patrol sectors in Livermore, Chula Vista, and El Centro, California, and Yuma and Tucson, Arizona.¹⁶

District offices, which perform field operations, are divided into six branches. The criminal investigations branch searches for and apprehends undocumented aliens in urban areas, such as employment sites, and conducts investigations for fraud of appli-

cants for immigration and naturalization. The detention/deportation branch maintains detention facilities for apprehended undocumented aliens, transports them to other countries, and keeps records of aliens under deportation proceedings. The examination branch adjudicates and processes applications for immigration benefits under the Immigration and Naturalization Act, such as applications to bring relatives into the country and to change nonimmigrant status to immigrant status. It also inspects persons for admissibility to the United States at ports of entry. INS trial attorneys represent the government before immigration judges in cases of exclusion and deportation. The naturalization branch deals with applications for citizenship and proof of citizenship. Finally, the administrative branch provides public information on application procedures and maintains all application files.¹⁷

The U.S. Border Patrol's primary mission is to prevent the unlawful entry of aliens into the United States. The border patrol is an armed and uniformed division of INS.¹⁸ In addition to sector offices located along U.S. borders, the border patrol also has backup stations where officers search for and apprehend aliens who have entered the country without inspection. For example, the Chula Vista sector has jurisdiction over San Diego and Imperial Counties, as well as backup stations at or near San Clemente and Temecula.¹⁹

While border patrol sectors perform only an enforcement function, INS district offices carry out both enforcement and service functions.²⁰ However, INS officials provided confusing and contradictory definitions of office duties, thereby creating difficulties in separating service from enforcement responsibilities at district offices. According to some INS officials, district office inspectors, staff who determine admissibility of persons at ports of entry (and

O'Connor, regional commissioner, INS Western Region, letter to Philip Montez, regional director, U.S. Commission on Civil Rights, Western Regional Office, Aug. 20, 1979 (hereafter cited as August 1979 O'Connor Letter).

¹⁸ Other immigration officers who are uniformed include inspectors, detention officers, and contact representatives (INS personnel who provide information to the public on immigration and naturalization law and INS application procedures for immigration and naturalization benefits). Immigration inspectors and detention officers also may carry arms (August 1979 O'Connor Letter).

¹⁹ Albert Franco, acting chief patrol agent, U.S. Border Patrol, Chula Vista Sector, interview in San Ysidro, Calif., Feb. 1, 1978. During the Advisory Committee study, backup stations included Oxnard and San Luis Obispo; these latter stations have since been transferred to the Livermore sector (August 1979 O'Connor Letter).

²⁰ Joseph Sureck, district director, INS Los Angeles District Office, interview in Los Angeles, Calif., Jan. 20, 1978.

specified aliens if, in the discretion of the Attorney General, their entry would be prejudicial to public interest, safety, or security (U.S.C. §1225(c)). An excluded alien who is a returning U.S. resident, however, must be granted a hearing under due process guarantees (*Chew v. Colding*, 344 U.S. 590 (1953)).

¹¹ 8 U.S.C. §1251.

¹² 8 U.S.C. §1357. An immigration officer is defined as an employee of INS or the Federal Government designated by the Attorney General to perform functions specified by the act (8 U.S.C. §1101(a)(18)).

¹³ 8 U.S.C. §§1182(b)-(i), 1254. Under the act, these discretionary powers are given to the Attorney General who has delegated his powers to officers of INS (8 C.F.R. §100.2 (1979)).

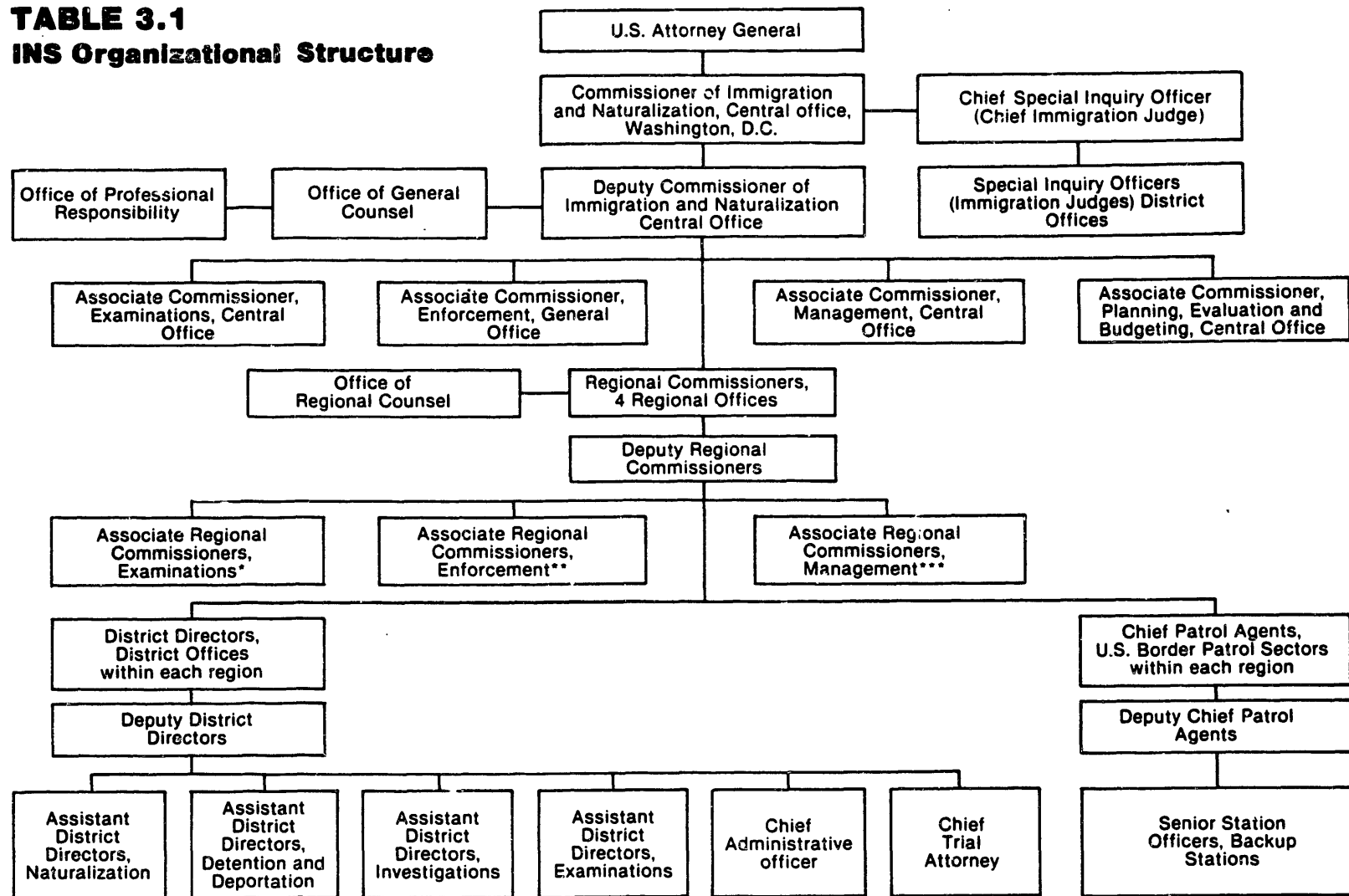
¹⁴ 8 U.S.C. §1103(a).

¹⁵ *Ibid.*, 8 C.F.R. §100.2 (1979).

¹⁶ 8 C.F.R. §100.4(a)-(b), (d) (1979); Edward O'Connor, regional commissioner, INS Western Region, interview in San Pedro, Calif., Feb. 7, 1978.

¹⁷ Immigration interview file, U.S. Commission on Civil Rights, Western Regional Office—INS officials, Los Angeles District Office; Edward

TABLE 3.1
INS Organizational Structure



Sources: 8 C.F.R. §§100.2, 103.1(1979); Immigration interview file, U.S. Commission on Civil Rights Western Regional office; Edward O'Connor, regional commissioner, INS Western Region, telephone interview in San Pedro, Calif., July 6, 1979; and letter to Philip Montez, regional director, U.S. Commission on Civil Rights Western Regional Office, Aug. 20, 1979.

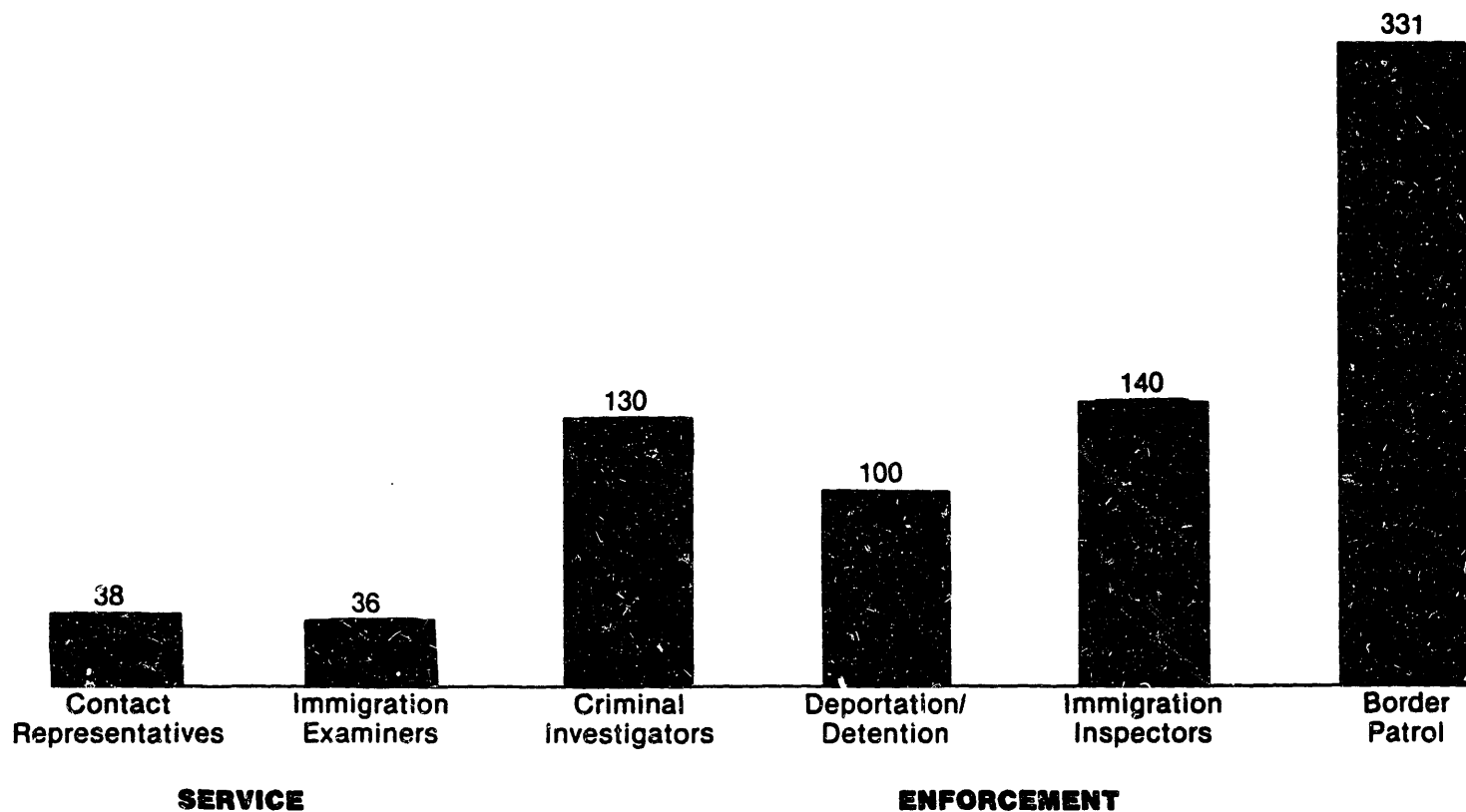
*Examinations is comprised of Inspections, Adjudication, Naturalization, and Contact Representatives.

**Enforcement is comprised of Border Patrol, Investigations, Detention, and Deportation.

***Management is made up of Budget and Accounting, Personnel, Procurement, and Property Management.

TABLE 3.2

**Immigration and Naturalization Enforcement and Service Staff,
Los Angeles and San Diego, 1978**



Source: Immigration interview and correspondence files, U.S. Commission on Civil Rights Western Regional Office; informal hearing before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service in California," San Diego, Calif., June 26, 1978.

exclude nonadmissible aliens), are perceived by the agency as service personnel because they facilitate the entry of individuals into the United States. Further, INS representatives defined criminal investigative personnel who are assigned only to conduct investigations for fraud on applications to INS (thus assisting in the detection of undocumented aliens) as employees who carry out a service function because they assist applications processing at INS.²¹

For this report, enforcement and service functions will be determined according to the actual nature of staff duties. Thus, INS employees who search for, apprehend, and deport or exclude aliens perform an enforcement function; they include border patrol officers, criminal investigators, ports of entry inspectors, and detention/deportation officers. Personnel who provide application information and adjudicate and process immigration and naturalization applications carry out service responsibilities; these include contact representatives and immigration and naturalization examiners.

²¹ James O'Keefe, district director, INS San Diego District Office, interview in San Diego, Calif., May 1978; Robert Mitton, deputy district director, INS San Diego District Office, interview in San Diego, Calif., Jan. 30, 1978 (he stated that port of entry inspectors might also be considered to perform an enforcement function); Joseph Sureck, district director, INS Los Angeles District Office, letter to Sally James, U.S. Commission on Civil Rights, Western Regional Office, Feb. 27, 1978. According to Edward O'Connor's letter of Aug. 20, 1979, however, criminal investigators are considered law enforcement personnel for retirement purposes.

INS officials also gave different definitions of the word "service." Regional Commissioner O'Connor defined it as being able to respond to the immigration needs of the public. District Director Joseph Sureck said it did not refer to servicing the public, but was another word for "bureau" in

An analysis of 1978 district and sector staff, excluding clerical staff, in southern California indicates that most employees had an enforcement function. Chart II illustrates these staff assignments by enforcement and service functions.²² As of mid-1978, 722 immigration officers and contact representatives were stationed in southern California; 74 of these performed solely service functions.

According to INS Regional Commissioner Edward O'Connor, an authorized force of 2,093 persons (including clerical staff) existed in both northern and southern California as of mid-1979. Out of these, 653 were performing service functions. He added:

This preponderance of effort in terms of enforcement is due principally to the large flow of traffic between the Orient and the United States at Los Angeles and San Francisco International Airports, the many workers and visitors who cross between Mexico and California at ports of entry, and the fact that the largest group of undocumented aliens in the United States comes into the United States just south of San Diego.²³

reference to the title of INS (informal hearing before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service in California," Los Angeles, Calif., June 15-16, 1978, p. 346).

²² The inclusion of this chart was objected to by INS Western Regional Commissioner Edward O'Connor. In his Aug. 20, 1979, letter to the Commission, he stated that it does not picture the entire State; however, Mr. O'Connor provided the numbers of staff in California for 1979 which were not substantially different from the numbers of staff in enforcement and service functions showed on chart II for 1978. The statistics on this chart were obtained from INS officials in southern California, although Mr. O'Connor also informed the Commission that his office could not verify them.

²³ August 1979 O'Connor Letter.

Community and Official Perceptions About Enforcement of Federal Immigration Laws

There is an incredible bias on the part of INS toward Latino people. The law is applied unequally to them. (Barbara Honig, Los Angeles attorney, Jan. 3, 1978.)

Our enforcement policy relates the same regardless of nationality. We apprehend aliens that are in this country illegally from all nations. (Philip Smith, Assistant District Director, INS Los Angeles District Office, June 15, 1978.)

Enforcement operations are a major Immigration and Naturalization Service (INS) activity in southern California. INS officers apprehended approximately 432,500 aliens in the Los Angeles and San Diego areas during fiscal year 1977; this figure rose to 571,177 during fiscal year 1978. According to a border patrol official, the number of aliens seized at the San Diego border alone during 1977 comprised 40 percent of that year's number nationwide.¹

Most persons picked up by INS officers in southern California are Mexican nationals apprehended at or near the border. During 1977 the Chula Vista Border Patrol sector seized 349,359 aliens, 343,273 of whom were Mexican nationals. In fiscal year 1977 the Los Angeles and San Diego District Offices apprehended 83,168 aliens, 78,320 of whom were from Mexico. Of the 571,177 aliens INS officers picked up in southern California during

fiscal year 1978, 14,398 were from countries other than Mexico.²

The INS uses two methods to locate undocumented aliens: area control and border control.

Area Control

Area control means that INS officers apprehend aliens in areas away from U.S. borders by conducting searches for an unspecified number of persons.³ INS calls these searches surveys, while community representatives call them raids or sweeps.

INS area control operations are not explicitly authorized by the Immigration and Nationality Act, but INS officials state that the act provides a legal basis for these activities by giving INS officers the discretion to interrogate without a warrant any "person believed to be an alien as to his right to be . . . in the United States."⁴ Under this policy INS

INS apprehension figures include repeated apprehensions of individuals.

¹ Joseph Sureck, district director, INS Los Angeles District Office, letter to Sally James, U.S. Commission on Civil Rights, Feb. 27, 1978 (hereafter cited as Sureck Letter); Robert Mitton, deputy district director, INS San Diego District Office, written testimony before the California Advisory Committee to the U.S. Commission on Civil Rights, San Diego, Calif., June 26, 1978 (hereafter cited as Mitton Written Testimony); Albert Franco, acting chief patrol agent, U.S. Border Patrol, Chula Vista Sector, interview in San Ysidro, Calif., Feb. 1, 1978 (hereafter cited as Franco Interview); Edward O'Connor, regional commissioner, INS Western Region, letter to Laurie Campbell, U.S. Commission on Civil Rights, Mar. 6, 1979 (hereafter cited as March 1979 O'Connor Letter); informal hearing before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service in California," San Diego, Calif., June 26, 1978, p. 195 (hereafter cited as San Diego Transcript).

² Franco Interview; Sureck Letter; Mitton Written Testimony; March 1979 O'Connor Letter. It should be noted that the number of undocumented aliens in the U.S. of all nationalities is unknown. It is likely that many undocumented aliens have entered the U.S. on visitor or other nonimmigrant visas and stayed beyond the expiration date of their visas. While Mexican nationals are apprehended in large numbers while crossing the border, it does not necessarily follow that they represent the largest group of undocumented aliens in the U.S.

³ David Carliner, *The Rights of Aliens* (New York: Avon Books, 1977), pp. 80-81.

⁴ Informal hearing before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service in California," Los Angeles, Calif., June

officers question persons about their immigration/citizenship status and will take them into custody if they are unable to satisfy the officers that they are entitled to remain in this country.

Although INS relies on its interrogation powers to conduct surveys, the extent of its authority to stop persons for questioning is unclear. The act does not distinguish between the questioning of an alien or an undocumented alien. In 1975 the U.S. Supreme Court reserved for a future decision whether INS officers, except at the border and border backup stations, may stop persons believed to be aliens "when there is no reason to believe they are illegally in the country." On the other hand, it also decided that under the fourth amendment, INS officers working in areas away from the immediate border may not stop and question persons solely on the basis of ethnic appearance. The Court stated, however, that ethnic appearance was a relevant factor which could be combined with other "articulable facts"—mode of dress and haircut, characteristics of the neighborhood, and obvious attempts to evade officers—to justify a reasonable suspicion of alienage.⁵

Surveys in Communities

A survey in communities entails a search by INS officers for undocumented aliens in places other than factories,⁶ including bus and train stations, bars and restaurants, and public or private streets.

The Hispanic and legal communities dispute the legality of community surveys.⁷ In 1973 a suit in Federal court in Los Angeles challenged that com-

munity surveys violated the fourth amendment and other constitutional protections, alleging that persons were interrogated solely on the basis of ethnic appearance and that citizens and resident aliens were deported following these surveys.⁸

Since 1973 the use of community surveys as an enforcement technique has been unclear. Some INS Western Region officials stated in 1978 that INS policy as of 1974 prohibited community surveys in the Los Angeles area. This policy was attributed to community animosity toward the surveys, lack of personnel in the investigations branch, and the greater effectiveness of using factory surveys to apprehend undocumented aliens.⁹

Other INS officials categorically denied that INS policy prohibited community surveys. Western Region Commissioner Edward O'Connor wrote Commission staff in 1979:

The [immigration] service does not provide sanctuary to illegal aliens by a policy signaling specific areas where immigration service investigative activities are precluded. Such policy would impede discharge of appropriate and necessary law enforcement obligations of the service.¹⁰

In 1978 Mr. O'Connor told the Advisory Committee that INS officers will conduct surveys in residential areas when local law enforcement has provided

15-16, 1978, pp. 528-53 (hereafter cited as Los Angeles Transcript); 8 U.S.C. §1357(a)(1) (1976).

⁵ U.S. v. Brignoni-Ponce, 422 U.S. 873, 883-887 (1975). Although this decision is based on INS stops of vehicles in areas adjacent to the Mexican border, INS considers this decision applicable to factory and community surveys (Los Angeles Transcript, pp. 516-17).

⁶ Joseph Sureck, district director, INS Los Angeles District Office, interview in Los Angeles, Calif., Jan. 20, 1978 (hereafter cited as Sureck Interview).

⁷ Immigration interview file, U.S. Commission on Civil Rights, Western Regional Office (hereafter cited as Immigration Interview File).

⁸ Loya v. INS, 583 F.2d 1110 (9th Cir. 1978) (order granting right to seek injunctive relief—No. 73-1435 (D.Cal. 1973)).

The above case was dismissed in July 1979 based on a stipulation between the parties to the lawsuit regarding future conduct of INS investigations officers. The parties agreed that: 1) INS area control activities are limited to investigating specific complaints and leads about the presence of undocumented aliens; 2) any entry by INS officers into residences or nonpublic business areas must be based on valid consent of the owner/employer, or valid arrest or search warrant, or court order; 3) persons shall not be interrogated by INS agents unless officers have a reasonable suspicion of alienage based upon specific articulable facts other than ethnic facial appearance and/or Spanish language conversations; 4) officers must reasonably believe that an escape will occur prior to obtaining a warrant if they arrest aliens without warrants. According to Fred Okrand, plaintiffs' attorney in the case, the effect of the stipulation is to provide a moral deterrent for INS surveys in Los Angeles; violations of the stipulation by

INS employees will not be punishable by court contempt proceedings (telephone interview in Los Angeles, Calif., Sept. 26, 1979).

⁹ Sureck Interview.

¹⁰ March 1979 O'Connor Letter. Six months before he wrote this letter, Mr. O'Connor told the Advisory Committee:

We [INS] are not today in this climate going out and sweeping neighborhoods anywhere in this country. . . . There are enough people in industry that are here illegally. There are enough illegal aliens on farms and ranches and [aliens] attempting to cross our borders, but we are not going into neighborhoods (Los Angeles Transcript, p. 538).

In August 1979 Los Angeles INS District Director Joseph Howerton decided to renew surveys for undocumented aliens in residential neighborhoods. He stated, "We [INS]. . . will respond to whatever kind of information we receive that undocumented aliens are present." This decision was severely criticized by the Hispanic community, and in November 1979 U.S. Attorney General Benjamin Civiletti banned immigration investigations in residential neighborhoods except in "unusual circumstances," stating that INS would be returning to its old policy of focusing its arrests of undocumented aliens on places of employment. According to Mr. Civiletti, unusual circumstances justifying neighborhood searches are cases where residences are used for smuggling operations and other "flagrant" violations of immigration law ("Neighborhood Raids for Illegal Aliens Resumed," *Los Angeles Times*, Oct. 10, 1979; "INS Reexamining Renewed Neighborhood Illegal-Alien Raids," *Los Angeles Times*, Oct. 26, 1979; "U.S. Curbs Raids on Chicano Areas," *Los Angeles Times*, Nov. 27, 1979).

them with "articulable facts" indicating the possible whereabouts of undocumented aliens.¹¹ Los Angeles Assistant District Director Philip Smith also confirmed that INS occasionally conducts surveys of bus, train, and airplane terminals when INS personnel are available.¹² In contrast, an INS policy specifically prohibits officers from questioning patrons of public gathering places such as theaters and restaurants.¹³

Some community representatives contend that community surveys are still used regularly by INS. Bert Corona of the Western Center for Immigration Studies told Commission staff that his office received complaints regularly from 1977 through June 1978 that INS officers questioned patrons of markets, bars, and restaurants in predominantly Hispanic neighborhoods of the San Fernando Valley. Since June 1978 his office has received complaints that INS officers are conducting searches of apartments for undocumented aliens.¹⁴ Los Angeles attorneys Robert Olmos, of the Western Center on Law and Poverty, Inc., and Antonio Rodriguez also alleged that community surveys were regular occurrences, adding that these surveys were conducted solely in Hispanic neighborhoods and public places frequented primarily by Hispanics.¹⁵

The Advisory Committee received details about several recent community surveys. They are summarized here as examples of community survey procedures and community objections to these surveys.¹⁶

According to Malibu restaurant owner Ronald Isner, in April 1978 the border patrol searched his restaurant and surrounding streets, parking lots, cars, and construction sites. He objected to the border patrol's search of residential streets and their questioning of only those individuals of apparent Hispanic appearance:

My feelings of the whole operation was very Gestapo-like tactics on their part, very dehumanizing to the people that they were dealing

with. I had another friend of mine observe that they had, for example, after they had handcuffed one of these aliens, picked him up by the seat of the pants and just shoved him.¹⁷

Mr. Isner said the border patrol entered his restaurant through the back door and "at no time did they ask to be admitted to the restaurant, show a warrant of any kind, or indicate what it was that they were doing there." He challenged this method of entry as violating his civil rights, adding that he had to close his restaurant for 4 hours because several of his employees were arrested and the remainder were emotionally distraught by the search.¹⁸ Bernard Karmioli, regional counsel for INS Western Region, denied that the border patrol conducted a sweep of Mr. Isner's restaurant, but added:

Ordinarily [the border patrol] would ask for permission [to enter] of someone in charge, but in this particular situation, I think it was sort of borderline. . . . As far as the owner is concerned, if any of his civil rights, namely a violation of the fourth amendment, a search of his premises without a warrant, is involved, he has his right to legal recourse, but the three employees are not covered by this fourth amendment right. It was not their premises.¹⁹

Testimony, however, suggested an uncertain legal basis for the decision to search the restaurant. Mr. Isner said he called the border patrol office after the officers had left and was told that they were justified in entering his restaurant because the sheriff's department had indicated to them that there were aliens in the Malibu area. Further, the border patrol told Mr. Isner they had justification to come into his restaurant in the future since they had found several aliens in his restaurant. Mr. Isner also stated that one of his employees told him the border patrol, while looking for undocumented aliens in the Malibu area, questioned another employee outside the restaurant

tan areas (Thomas Mason, associate regional commissioner, INS Western Region, interview in San Pedro, Calif., May 16, 1978). Under INS policy, city scouts on patrol are expected to follow the same policy guidelines as INS district office personnel, such as questioning on the basis of specific articulable facts other than ethnic appearance alone and entering buildings with either a warrant or voluntary consent (Memorandum from Regional Commissioner, Western Region, to Chief Patrol Agents, District Directors, and Officers in Charge, Western, "Border Patrol Operations in Urban Areas Removed from the Border," Mar. 24, 1976).

¹¹ Los Angeles Transcript, pp. 418-19; interview in Malibu, Calif., Apr. 14, 1978.

¹² Los Angeles Transcript, pp. 414, 418-19.

¹³ *Ibid.*, pp. 544-45.

¹⁴ Los Angeles Transcript, pp. 514-16.

¹⁵ Interview in Los Angeles, Calif., Feb. 7, 1978.

¹⁶ Memorandum from District Director, Los Angeles, to Director of Investigations, Los Angeles, "Section 287(a)(1) and (a)(2), Immigration and Nationality Act; Procedures," Feb. 10, 1978.

¹⁷ Interview, Jan. 18, 1978, and telephone interview in Sun Valley, Calif., Dec. 18, 1978.

¹⁸ Robert Olmos, interview in Los Angeles, Calif., Jan. 4, 1978; Antonio Rodriguez, interview in Los Angeles, Calif., Jan. 18, 1978.

¹⁹ These community surveys were conducted by border patrol officers. While the majority of border patrol officers are stationed near U.S. borders, some officers, called city scouts, are assigned to patrol inland areas. These officers search for undocumented aliens in rural areas and towns, whereas district office personnel search for undocumented aliens in large metropoli-

who was returning from the market, arrested him, and then followed him back to the restaurant.²⁰ According to Mr. Karmioli, the border patrol may have obtained "articulable facts" from this employee to justify a search of the restaurant, but added "it is all conjecture."²¹

Dr. Armando Navarro, executive director for the National Institute of Community Development, told the Advisory Committee that from July to September 1977 the border patrol regularly patrolled a predominantly Hispanic neighborhood in Ontario with the help of local police, causing consternation and fear among local residents. He said U.S. citizens and resident aliens of Hispanic descent were constantly questioned during this period on their way to church, in their homes without consent or warrants, and while shopping at neighborhood businesses. He added:

On one occasion during the situation, one [border patrol] official went into a home where a lady was taking a shower. The gentleman went inside the home. He proceeded to walk into the restroom where the lady was walking out of the shower, so it was very embarrassing for her. The gentleman did not ask permission to enter the home.²²

According to Dr. Navarro, local community groups began to monitor the border patrol and local police activities by observing and taking pictures. In September representatives of these groups confronted INS and police, accusing them of using enforcement techniques that were unconstitutional. In October 1977 these representatives called a press conference to publicize the alleged unconstitutionality of the surveys. With INS representatives and police present, they accused law enforcers of weekly harassment of churchgoers, arbitrary detainment of individuals, use of racial criteria to question residents, and indiscriminate searches of homes and businesses without warrants or consent. Following these charges the border patrol publicly announced

²⁰ Ibid., pp. 413-16. Mr. Isner said that the sheriff's department told him that they called the border patrol because Malibu citizens complained to the sheriff about some Hispanic workers waiting for rides to work at a gathering site on the highway. Several persons later told Mr. Isner that when the border patrol arrived a sheriff's officer told INS whom to pick up (pp. 416-17).

²¹ Los Angeles Transcript, pp. 542-43.

²² Ibid., pp. 423-26.

²³ Ibid., pp. 425-29. Dr. Navarro stated that the purpose of the press conference was to expose civil rights violations caused by the survey, not to debate the legality of INS' presence in the community (interview in Ontario, Calif., May 10, 1978).

it would terminate the community surveys in this area.²³

Surveys in Factories

A factory survey is a search by INS officers for undocumented aliens in a place of employment. Under INS policy, these surveys emphasize locating deportable aliens in "better paying jobs."²⁴ In Los Angeles, however, INS generally conducts surveys in factories.²⁵

In 1978 the International Ladies Garment Workers' Union (ILGWU) filed a Federal suit to prevent INS from conducting factory surveys in the Los Angeles garment industry, alleging that INS engaged in a pattern or practice of questioning only Hispanic employees, pursued questioning of Hispanics who claimed U.S. citizenship, and used search warrants which violated the U.S. Constitution.²⁶ Another Federal suit in Los Angeles in 1978 challenged the deportation of individuals after a factory survey because INS officers failed to advise workers of their right to counsel. The court in the latter case granted a temporary restraining order, preventing INS from taking workers to Mexico until they were informed of their right to counsel and permitted access to legal representation.²⁷

During its investigation the Advisory Committee heard many allegations of illegality concerning INS methods of entry and interrogation in Los Angeles factory surveys. Mark Rosenbaum, an attorney for the American Civil Liberties Union of Southern California, told the Committee that these surveys reflect violations of the most fundamental constitutional rights, alleging that these violations began even before INS officers enter factories:

The raids themselves are raids that take place on the basis of anonymous tips as to persons who may be undocumented workers. INS agents come to the factories without any particular knowledge that any particular person in the factories has committed any violations [of immigration law]. . . . So we have at the very

²⁴ INS Memorandum from Commissioner to Regional Commissioners, "Policy Governing Area Control Operations," Dec. 17, 1976.

²⁵ Sureck Interview.

²⁶ ILGWU v. Sureck, No. 78-746 (D.Cal., filed Feb. 24, 1978). In 1979 the court ruled in this case that the union did not have standing to challenge alleged constitutional rights violations on behalf of union members; however, the suit's individually named plaintiffs have replaced the union, and they are suing in their private, not official, capacities (Henry Fenton, plaintiffs' attorney, telephone interview in Los Angeles, Calif., Sept. 26, 1979).

²⁷ Vallejo v. Sureck, No. 78-1912 (D.Cal., May 19, 1978)(order granting temporary restraining order).

outset, in even the most generous of terms, a general search. . . and this is a clear violation of the most fundamental fourth amendment values that say before we impinge upon anyone's liberty, be they citizen, be they noncitizen. . . that we must have some articulated knowledge that the person is in violation of one of our laws.²⁸

INS official Philip Smith responded by describing the basis for an INS decision to survey a factory. He said INS will visit factories when it has received tips on the presence of undocumented aliens, and while the majority of tips are anonymous, he said, "We will examine each and every report, and we do not want to waste our time and resources to go to some place where we think there are not undocumented workers."²⁹

At the Advisory Committee's open meeting in Los Angeles, other witnesses objected to the ways INS entered factories to search for aliens. Under the law, the entry of a business or other premises by government agents must be based on voluntary consent unless a warrant has been obtained.³⁰ Attorney Peter Schey of the Legal Aid Foundation of Los Angeles alleged that INS officers entered factories without warrants and without permission. According to him, INS officers tell employers that they have "sufficient reason to believe there are undocumented aliens working within the factory to allow them to enter without a warrant."³¹ Los Angeles immigration attorney Robert Miller described another type of entry without a warrant:

The consent [of the employer] is never fully informed. . . there is always the implied threat [by INS] "you know what we can do." Anybody who reads the papers, anybody who is in the industry, they know the immigration service will follow. . . with a raid, and, indeed, just as night has followed day, where consent has been denied, raids have followed, and so the consent is very rarely a knowing and informed consent. [There is a] coercive power behind it.³²

Shoe manufacturer Arthur Sbicca echoed this statement, telling the Advisory Committee that when INS has come to survey his factory, he gave consent because "it was our feeling we would be better off to cooperate."³³

According to Antonio Rodriguez, representing the Los Angeles Center for Law and Justice, if employers do not give INS permission to enter, the officers will block all exits to the factory. He continued:

What that means is that since all exits are blocked, no worker, no one from inside the factory, can go out of that factory, unless at the risk of having his fourth amendment rights violated, and at the risk of being arrested. In order to leave the factory one is going to have to answer questions regarding citizenship, regarding manner of entry, etc.³⁴

He added that he has seen cases where as much as 3 or 4 hours were taken by INS to get a warrant while people were kept inside the factory.³⁵

INS officials denied that pressure was put on employers to consent to surveys. Los Angeles District Director Joseph Sureck described to the Advisory Committee the procedure INS used to obtain employer permission to enter a factory. He stated that when INS receives information on a particular factory, an INS contact officer is sent to the factory to persuade the owner/manager to give consent to a search of the premises. If the owner gives consent, the officer informs him or her that INS will return at an unstated future time, and advises the employer to inform employees to have their documentation ready. If the owner refuses consent, INS agents will immediately leave the premises but will attempt to obtain probable cause for a warrant by apprehending undocumented alien employees in front of the factory.³⁶

Attorney Henry Fenton of ILGWU objected to INS obtaining warrants in this manner:

the affidavits [for the warrants] consist of a statement by an agent who. . . has spoken to somebody outside a factory whom he has

²⁸ Los Angeles Transcript, pp. 333-34. The fourth amendment gives protection to both citizens and aliens (*Lau v. INS*, 445 F.2d 217 (D.C. Cir. 1971), *cert. den.*, 404 U.S. 864 (1971)).

²⁹ Los Angeles Transcript, pp. 339-40.

³⁰ *Chimel v. California*, 395 U.S. 752 (1970). This case states that Federal agents can enter without permission or warrant if they are pursuing an individual believed to have committed a violent crime endangering life and it is not possible to obtain a warrant in advance.

³¹ Los Angeles Transcript, p. 329.

³² *Ibid.*, pp. 589-90.

³³ *Ibid.*, p. 403.

³⁴ *Ibid.*, pp. 343-44.

³⁵ *Ibid.*, p. 344.

³⁶ *Ibid.*, pp. 519-20. Mr. Sureck said that the INS contact officer is chosen particularly for his or her diplomacy and tact (Sureck Interview). Under INS policy, the contact officer will inspect the factory to diagram entrances and exits and determine the possible numbers of illegal aliens before seeking consent to search (emphasis added) (Memorandum from District Director, Los Angeles to Regional Commissioner, Western Region, "Los Angeles Area Control Operations," Mar. 14, 1977).

interrogated unlawfully from the outset. He will approach a woman perhaps. She is standing outside the factory; she appears to be Latin, and he will ask what her status is. . . and there is no indication in the affidavit [to the warrant] as to how [the woman] knows [there are illegal aliens inside], whether she really knows it, whether it is simply a rumor and so forth. . . . From the affidavits we have seen, they also say, "I [the INS officer] saw 30 Latins standing outside the door."³⁷

Community representatives also criticized the use of warrants. As of June 1978 INS used criminal search warrants under Rule 41 of the Federal Rules of Criminal Procedure, rather than arrest warrants, to search for and arrest undocumented aliens in factories. On the search warrant form, INS crossed out the word "property" and substituted in the words "illegal aliens."³⁸ Immigration attorney Peter Schey told the Advisory Committee:

It seems highly questionable whether the Immigration Service has the authority to utilize a Federal rule of criminal procedure. . . when. . . Congress has not given them any authority to go out and get these types of warrants, and especially when the types of warrants that they obtain are specifically aimed at seizing property, and of course they are not attempting to seize property. They are attempting to seize human beings.³⁹

Henry Fenton challenged these warrants for being unconstitutionally vague:

It is not apparent what [the warrants] are directed at. . . . They purport to be search warrants, but they are arrest warrants because they describe illegal aliens. They say illegal aliens generally. . . they don't describe anyone in particular that they are looking for. . . . I think it makes it plain. . . that what they are doing is illegal.⁴⁰

Further, according to Los Angeles immigration attorney Robert Miller, search warrants under Rule 41 must only be used when there is evidence of crime, and no evidence of crime exists before INS officers enter the factory and question workers inside.⁴¹

INS Regional Counsel Bernard Karmioli countered that INS use of search warrants during factory surveys was consistent with constitutional standards:

Naturally, human beings are not tangible objects. We fought the Civil War on that issue. But the fourth amendment to the Constitution is much broader than Rule 41 [rule of Federal Criminal Procedure]. It just happens that Rule 41 is the only rule that is published as a means of obtaining a search warrant. . . but under the Constitution, a search warrant is available, I believe, on a much broader scope, and Rule 41 in my opinion is not exclusive. Also, I think that our purpose in using a search warrant wherein. . . we put in undocumented alien, or some term like that, is not illegal. . . . I think perhaps, to lay the question to rest, Congress might come up with some provision for us to use these broader type of search warrants.⁴²

Mr. Karmioli emphasized that the warrant was merely a printed form which INS used as a means to an end.⁴³

In February 1979 the U.S. attorney's office in Los Angeles announced it would not approve INS applications for search warrants until a decision was reached in the ILGWU suit which seeks to require INS to name each suspected undocumented alien individually before obtaining a warrant to enter business premises.⁴⁴ Following this announcement, Rule 41 of the Rules of Federal Criminal Procedure (the law used by INS to obtain search warrants) was amended to apply to both persons and property. As of September 1979 the position of the Los Angeles U.S. attorney's office is that the present Rule 41 covers the arrest of "deportable" aliens by INS.⁴⁵

³⁷ Los Angeles Transcript, pp. 340-41.

³⁸ Ibid., pp. 520-21.

³⁹ Ibid., pp. 327-28. The power of INS officers to use search warrants is questionable. Under the Immigration and Nationality Act no authorization exists to use search warrants. The act only specifies the use of arrest warrants for identified individuals determined by immigration officers to be in the country without authorization; however, INS officers are not required to use arrest warrants if they have reason to believe an alien is likely to escape before a warrant can be obtained (8 U.S.C. §1357(a)(2) (1976)). In practice, most aliens are taken into custody by INS without arrest warrants, based upon the arresting officer's judgment that the alien is here illegally and is likely to escape (Carliner, *The Rights of Aliens*, p. 91).

⁴⁰ Los Angeles Transcript, pp. 373-74.

⁴¹ Robert Miller, interview in Los Angeles, Calif., Jan. 10, 1978.

⁴² Los Angeles Transcript, pp. 521-22.

⁴³ Ibid., p. 522.

⁴⁴ "Director of INS Denies Deemphasis on Arrests of Illegal Aliens in Southland," *Los Angeles Times*, Oct. 12, 1978; *ILGWU v. Sureck*, No. 78-740 (D. Cal., filed Feb. 24, 1978).

⁴⁵ Molly Munger, assistant U.S. attorney, telephone interview in Los Angeles, Calif., Sept. 27, 1979. Regardless of the applicability of this rule to INS operations, Ms. Munger stated that INS is not using search warrants to enter factories because most employers give their consent to entry by immigration officers. According to Regional Commissioner O'Connor in March 1979, INS was no longer using search warrants to enter factories (March 1979 O'Connor Letter). The Advisory Committee has included information on this issue to provide another example of INS procedure and community objections to that procedure.

The California Advisory Committee questions, however, the basis for this position; INS has not been given the statutory authority under the Immigration and Nationality Act to obtain search warrants in place of arrest warrants. Further, use of the term "deportable aliens" means that INS has knowledge of criminal activity prior to the search, and INS officials told the Advisory Committee, "When we go into a factory to question individuals, we do not know they are deportable aliens."⁴⁴

The Advisory Committee also heard allegations that INS interrogation procedures during factory surveys were illegal. Steve Holloper of the National Lawyers Guild stated:

If the immigration survey team gets into the factory, they will indiscriminately ask everyone there about their immigration status without following any of their statutory or regulatory duties to find that the person is an alien and then find that the person is undocumented.⁴⁷

According to local attorneys, those who are questioned and the way in which they are interrogated violate fundamental constitutional principles. Mark Rosenbaum said:

The questioning is reminiscent of the most blatant racist practices in our history. The workers who are questioned once INS enters the work place are questioned based upon one criteria and one criteria alone, and that is their skin color. . . . That is the only reason that persons are singled out. White persons are not questioned. Black persons are not questioned. Only brown-skinned persons are questioned.⁴⁸

Henry Fenton told the Advisory Committee:

They [INS officers] go into the factory, and they will go down the lines systematically, interrogating mostly Latin workers. . . . They will sweep through in a row of agents. They will have their badges there. They will have handcuffs, and they will immediately, without providing anyone with rights, they will ask questions such as: Where are you

from. . . where were you born, do you have your papers. . . . Then they will make arrests right away, assuming that they encounter someone. . . who doesn't have papers, and they will handcuff that person. Immediately that heightens the fear and the anxiety on the part of the other workers in the factory, no matter what their status might be.⁴⁹

He added that local attorneys have encountered situations where workers who were U.S. citizens were subjected to questioning, and one U.S. citizen was sent to Mexico because "he didn't have any papers on him. I don't know how many of us who were born here carry papers with us. They [INS] simply disbelieved him because he appeared to look Latin."⁵⁰

Edward O'Connor denied that INS deports U.S. citizens.⁵¹ District Director Joseph Sureck said that INS officers occasionally encounter persons who claim to be lawful resident aliens or U.S. citizens, but have no papers or present what appears to be spurious or altered documents. These persons may be taken into custody temporarily until their status is verified, but, he added, such detainments are rare. Mr. Sureck stated that INS does not keep statistics on these types of cases.⁵²

INS officials told the Advisory Committee that they were following legal guidelines in conducting interrogations. Regional Counsel Bernard Karmioli said INS agents do not question employees unless articulable facts suggesting alienage, other than ethnic appearance alone, exist in relation to each person questioned. "Articulable facts" means that an officer must have more than a hunch that a person is an alien.⁵³ On the other hand, Joseph Sureck emphasized INS enforcement powers, telling the Advisory Committee that legal limitations on INS officers to question individuals in factories are not strict.⁵⁴

Persons questioned by INS officers while in custody have fifth amendment rights to counsel and to remain silent.⁵⁵ Under *Miranda v. Arizona* (384 U.S. 436 (1966)), the Supreme Court held that

Office, Aug. 20, 1979 (hereafter cited as August 1979 O'Connor Letter)). However, staff of the Commission's Western Regional Office have observed handcuffed individuals at the INS Los Angeles District Office.

⁴⁴ Los Angeles Transcript, pp. 342-43.

⁴⁵ Edward O'Connor, regional commissioner, INS Western Region, interview in San Pedro, Calif., Feb. 7, 1978 (hereafter cited as O'Connor Interview).

⁴⁶ Sureck Letter.

⁴⁷ Los Angeles Transcript, pp. 516-17.

⁴⁸ Ibid., p. 518.

⁴⁹ 8 U.S.C. §§2252(b), 1362 (1976); *Ungar v. Seaman*, 4 F.2d 80 (98th Cir.

⁴⁴ Los Angeles Transcript, p. 528.

⁴⁵ Ibid., p. 467.

⁴⁶ Ibid., pp. 334-35.

⁴⁷ Ibid., pp. 341-42. The systematic questioning of employees based on the color of their skin was alleged to affect primarily Hispanic workers owing to their heavy representation in Los Angeles factories; however, attorneys alleged discriminatory interrogations against Asians also occurred (pp. 338, 341-42).

According to INS Western Region Commissioner O'Connor, it is very unusual for INS officers to handcuff persons (letter to Philip Montez, regional director, U.S. Commission on Civil Rights, Western Regional

persons who have been taken into custody by law enforcement officers, or otherwise deprived of their freedom to walk away from officers, must be warned prior to questioning that they have a right to remain silent, to speak to an attorney, and that any statements may be used against them. This case involved a criminal proceeding; courts are divided on whether this decision applies to deportation proceedings, which are civil in nature.

INS regulations require, however, that INS officers give the "Miranda warning" following arrest.⁵⁶ Mark Rosenbaum alleged that the manner of questioning by INS agents violated these due process rights:

There is no way that a person is free to leave the work place once INS enters. . . . You have a classic custodial situation. . . . in which freedom and liberty are removed from all persons. The message is extremely clear to all those who are involved that they must comply with the questioning. . . and they must answer them generally in the way that INS wants. Furthermore, there is no effort to indicate to any of the workers who are being questioned what is really taking place, what is the purpose of the questions that are being asked, what rights they have in the particular situation. We don't have a situation which INS generally characterizes, where they are simply talking to someone as if someone comes up on a street. Rather. . . [workers] are asked extremely pointed questions, questions that can ultimately lead to their deportation.⁵⁷

According to District Director Joseph Sureck:

We do not have to give [aliens before arrest] any warning as to their right to counsel under any court decision. Now, after our questioning, if a determination is made that they are aliens illegally in the United States, even at that time there is no requirement by courts that the

1924) (right to counsel). The fifth amendment protects persons against self-incrimination, not merely citizens. Although INS officers may question "any alien or person believed to be an alien," no person is required by law to answer such questions, even in custody (Carliner, *The Rights of Aliens*, p. 89; *Yiu Fong Cheung v. INS*, 418 F.2d 460 (D.C. Cir. 1969)).

⁵⁶ 8 C.F.R. §§242.2(a), 287.3 (1979).

⁵⁷ Los Angeles Transcript, pp. 336-37. INS officials responded:

The complaint that persons are asked pointed questions should be compared to complaints of officers interrupting factory operations. The survey of a factory should be rapid, to avoid interrupting operations unnecessarily. Less than pointed questions would prolong the survey (August 1979 O'Connor Letter).

⁵⁸ Los Angeles Transcript, p. 528. INS regulations require, however, the Miranda warning following arrest. In *Ungar v. Seaman* (4 F.2d 80 (8th Cir. 1924)) the Federal court of appeals also ruled that INS officers violate due process if they fail to inform persons of their right to counsel before they question them in custody (p. 84).

Immigration Service give them the Miranda warning.⁵⁸

While INS officials stated they were under no legal obligation to inform persons of their fifth amendment rights during questioning, they did state that, as a matter of policy, to protect individual rights and upgrade professionalism within INS, individuals are advised of their rights to remain silent and consult with counsel. Officials explained that persons are informed of their rights after they are questioned and/or after it is established that an immigration law violation has occurred.⁵⁹ According to Mr. Mitton, however, aliens who insist on conferring with counsel are not questioned: "If he [alien] asks for counsel that ends it right there; we are held in limbo until something can be done to get counsel to him."⁶⁰

Mr. Karmioli commented that workers can exercise their right to remain silent during factory surveys, even if the exits to the work place are sealed off. He said:

He [worker] may not be able to get out if the exits are blocked, but he can still refuse to answer, and, actually, if he were smart, or if he has been coached properly by some organization, he would insist on his civil rights that he doesn't have to answer. He can just turn away.⁶¹

He compared the factory survey situation to a case where a pedestrian is stopped by a police officer. In both instances, he stated, persons can avoid answering questions altogether—even those requesting identification.⁶² Mr. Karmioli did not explain, however, how officers distinguished between the legitimate exercise of a right and an act providing "articulable facts" to justify an INS arrest.⁶³ Further, despite testimony from INS officials, the Advisory Committee received numerous complaints during its study that aliens were not informed or were inade-

⁵⁹ Los Angeles Transcript, p. 528; San Diego Transcript, pp. 198-99, 203. According to Mr. Mitton, these rights are explained by INS officers in Spanish to persons who speak only Spanish. Interpreters are hired to read these rights where persons speak languages other than English or Spanish (San Diego Transcript, p. 274).

⁶⁰ San Diego Transcript, p. 203.

⁶¹ Los Angeles Transcript, p. 566.

⁶² *Ibid.*, p. 565.

⁶³ Again, articulable facts justifying a suspicion of alienage include mode of dress and haircut, characteristics of the neighborhood, and obvious attempts to evade officers. The U.S. Supreme Court wrote regarding these facts: "In all situations the [immigration] officer is entitled to assess the facts in light of his experience" (*U.S. v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975)). Attorneys in Los Angeles charged, however, that articulable facts used by INS officers to justify questioning, such as clothing, are subjective considerations which are not separated from ethnic/racial considerations by officers (Los Angeles Transcript, p. 372).

quately informed of their rights while in INS custody.⁶⁴

Besides alleging violations of constitutional rights, community representatives alleged that INS practices severely affected employers and employees. For example, factory owner Mr. Sbicca said factory surveys are costly and disruptive for employers and can ruin production for a whole day, possibly a whole month, when workers are pulled off the production line. He stated that surveys hurt employees because they are unable to do their jobs both during and after them.⁶⁵

An INS program entitled "Operation Cooperation" attempted to avoid assembly line shutdowns by offering assistance to employers during the hiring process. This program was successful, according to INS officials in San Diego.⁶⁶ In contrast, employer association representatives in Los Angeles found this program not feasible because of delays caused by verification of the legal status of applicants.⁶⁷

Community representatives also alleged that factory surveys interfered with union efforts to organize workers.⁶⁸ Peter Schey claimed that the majority of factory surveys in Los Angeles occurred during union organization activities.⁶⁹ INS officials denied that it was INS policy to visit employers on union election days or that a majority of factory surveys in Los Angeles took place during union drives to organize workers.⁷⁰

Border Enforcement

Border enforcement operations are designed to prevent unauthorized border crossings into the United States. They include INS functions at U.S. ports of entry, along the U.S. border, and as far as 100 miles from the border. INS district offices and border patrol sectors share authority for border enforcement; district office personnel are stationed at ports of entry, while border patrol officers guard immediate borders between the ports of entry and conduct traffic and transportation checks.⁷¹

⁶⁴ It is also noteworthy that some persons criticize the INS practice of providing advice about right to counsel after questioning because it renders this right meaningless. Further, they state that without counsel aliens are unable to make knowledgeable choices concerning their rights, and will already have admitted deportability or signed requests for voluntary departure (44 Fed. Reg. 4,651 (1979)).

⁶⁵ Los Angeles Transcript, pp. 402, 405.

⁶⁶ San Diego Transcript, pp. 252-53.

⁶⁷ Los Angeles Transcript, pp. 206-07.

⁶⁸ *Ibid.*, p. 370.

⁶⁹ *Ibid.*, pp. 329-30.

⁷⁰ *Ibid.*, p. 570; August 1979 O'Connor Letter.

⁷¹ Franco Interview; Robert Mitton, deputy district director, INS San Diego District Office, interview in San Diego, Calif., Jan. 30, 1978 (hereafter cited as Mitton Interview).

Immigration officers engaged in preventing unauthorized entries have broad enforcement powers under the Immigration and Nationality Act. They have the right to conduct searches and arrest without warrants. Specifically, officers do not need warrants to enter private lands (but not dwellings) within 25 miles from the border, to search vehicles within a reasonable distance from the border, and to arrest any person who is trying to enter the U.S. unlawfully in the officer's presence.⁷²

While border patrol officers have substantial powers to guard U.S. borders, it is unclear whether they are under the same legal constraints to question persons as district office personnel who conduct area control operations. Border patrol officials told the Advisory Committee that their officers must use articulable facts beyond ethnic appearance alone to justify questioning individuals unless officers have witnessed an unauthorized border crossing.⁷³ The U.S. Supreme Court extended border patrol questioning authority in 1976 when it decided that patrol officers do not need any articulable facts to justify brief questioning of occupant's of vehicles at traffic checks located up to 100 miles from the border.⁷⁴ In a 1979 letter to the Commission, however, INS Western Region Commissioner Edward O'Connor interpreted the border patrol's power to stop persons without articulable facts regarding alienage to extend beyond traffic checks and the immediate patrol of the border. He said that articulable facts were not needed for any border patrol stops up to 100 miles from the border, based on INS authority under the Immigration and Nationality Act to search vehicles for aliens within a reasonable distance from the border.⁷⁵

Border Patrol Line Operations

The purpose of border patrol line operations is to prevent unauthorized entries of persons into the country. These operations are conducted along borders with many patrol officers, electronic detec-

⁷² 8 U.S.C. §1357(a)(2)-(3) (1976).

⁷³ San Diego Transcript, p. 193.

⁷⁴ *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976). This decision involved the San Clemente traffic check. The Court justified the decision on the importance of traffic checks to prevent the flow of undocumented aliens from Mexico, and the limited intrusion on fourth amendment rights by traffic check operations since they involved "only a brief detention of travelers during which all that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a documented evidencing a right to be in the United States" (pp. 557-58). It stated, however, that a search of a vehicle would require consent or probable cause (pp. 555, 567; *U.S. v. Ortiz*, 422 U.S. 891 (1975)).

⁷⁵ March 1979 O'Connor Letter.

tion systems, and aircraft, including planes and helicopters.⁷⁶ Herman Baca, chairperson for the Committee on Chicano Rights, Inc., in San Diego, complained:

Here in San Diego, which can best be described as a Vietnam of sorts because of the border warfare and the Immigration and Naturalization Service's militarization of the border, the local Chicano/Latino community since 1968 has been subjected and made to endure indignities, degradations, and violations of civil, constitutional, and human rights.⁷⁷

Alberto Garcia, representing the United California Mexican American Association and the Community Border Affairs Advisory Council in San Diego, stated:

The U.S. Border Patrol appears increasingly to be faced with a serious conflict in principle in the administration of the immigration laws. First, the border patrol is required by its mission to undertake more restrictive enforcement efforts to deter alien entry and to increase deportation. At the same time, in administering the Immigration and Nationality Act, the border patrol must exercise extraordinary discretion in deciding sensitive issues of human rights. . . . Important questions of fair play and humane administration of immigration laws are directly involved, often with persons who do not speak English and who have little education.⁷⁸

Further, he alleged:

For the past 10 years the U.S. Border Patrol has activated the persecution of Mexican Americans in this State and especially in [the San Diego] area by stopping Chicanos at will on streets, in churches, schools, and places of employment, and breaking into homes without the proper search warrants. We are experiencing Vietnam in our communities with the use of helicopters and many other military equipment. Undocumented aliens are subjected to the most inhuman treatment by U.S. Border Patrol agents. Mexican Americans have suffered humiliating treatment because border patrol officials

with their Gestapo and abusive attitude force them to produce second and third kinds of evidence regarding their citizenship.⁷⁹

Other community representatives echoed Mr. Garcia's allegations. Jesse Ramirez, executive director of the Chicano Federation, Inc., in San Diego, said border patrol helicopters caused many local residents of San Diego County to lose sleep and develop nervous disorders because the helicopters hovered over roofs of homes and shone lights into rooms during the night. Mr. Ramirez also objected to the questioning of Hispanics by border patrol officers, alleging that this interrogation was offensive because of the insensitive way these officers approached persons.⁸⁰

Attorney Timothy Barker of the Legal Aid Society of San Diego questioned the legality of border patrol stops of pedestrians:

If we are talking about a pedestrian walking down the street the [border patrol] officer must have a reasonable suspicion based on articulable facts that that person is an alien. . . from my experience [that standard] is not being followed. Officers are stopping persons based solely on their racial appearance and inquiring into their citizenship status. . . . You can take into account the person's hairstyle, his manner of dress, how he is acting, and a number of other factors. But these are usually ex post facto determinations. The officer will then backtrack and say [after the arrest] "This person looked nervous when I came up to him, and, therefore, I felt he was an illegal alien."⁸¹

Like Mr. Garcia, Jesse Ramirez and Timothy Barker complained that proving citizenship was a problem in San Diego. They alleged that officers often expressed dissatisfaction with documentation that minority citizens carried.⁸² According to Mr. Ramirez:

Minority persons get stopped [by immigration officers] more often than anyone else. The problem here is that the burden of proving legal status is on the individual rather than INS. A

⁷⁶ Franco Interview.

⁷⁷ Written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978 (hereafter cited as Baca Written Testimony). While acknowledging the Vietnam comparison, Mr. O'Connor noted that:

While endeavoring to accomplish our mission, we are dedicated to the protection of the rights of those individuals with whom we come in contact. Due to attacks upon our agents by groups of people ranging in number of 5 to 25, and even more, throwing rocks, bottles, or pieces of metal, it has become necessary to install a heavy metal mesh over all

glass areas of vehicles used in the immediate area of the international boundary (August 1979 O'Connor Letter).

⁷⁸ Written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978 (hereafter cited as Garcia Written Testimony).

⁷⁹ Ibid.

⁸⁰ Interview in San Diego, Calif., Feb. 3, 1978 (hereafter cited as Ramirez Interview).

⁸¹ San Diego Transcript, pp. 103-04.

⁸² Ibid., pp. 106; Ramirez Interview.

person is guilty until he proves himself innocent.⁸³

INS officials denied that their activities at the California border intrude on the civil and human rights of Hispanics. Regional Commissioner O'Connor wrote the Commission:

Border patrol agents are responsible for enforcing the immigration and nationality laws of the United States, regardless of the race/ethnicity of the people violating these laws. Many aliens of nationalities other than Mexican are apprehended each year. However, in a border area like San Diego, these apprehensions are dwarfed due to the sheer number of Mexican nationals who enter this country illegally.⁸⁴

Donald Cameron, border patrol chief at the Chula Vista Border Patrol Sector, said that officers enter dwellings only if they have warrants or invitations to enter, but he added that in his 26 years with INS he has never seen warrants used to enter dwellings.⁸⁵ He also described the use of helicopters to the Advisory Committee:

Helicopters operate at night. They have high intensity lights to illuminate the border at night, to attempt to prevent aliens from entering illegally, or after they do get in, to assist officers on the ground in making apprehensions. . . . Our policy is not to go into neighborhoods.

Now we do go into a neighborhood when we are responding to an officer [who] needs assistance. He's being attacked. We have been requested to assist another police agency when it needs some light down there to catch a burglar or a robber or a rapist. We'll go in and respond to this.⁸⁶

Mr. Cameron adjudged border patrol questioning of U.S. citizens and legal resident aliens a minor problem because his office had received few complaints concerning the questioning of pedestrians.⁸⁷ On the other hand, Timothy Barker told the Advisory Committee that street stops of pedestrians were so numerous that people had given up making complaints.⁸⁸

⁸³ Ramirez Interview.

⁸⁴ March 1979 O'Connor Letter.

⁸⁵ San Diego Transcript, pp. 195, 258-59.

⁸⁶ Ibid., pp. 267-68, 279-80.

⁸⁷ Ibid., p. 198.

⁸⁸ Ibid., p. 104.

Regarding documentation, Mr. Cameron said that border patrol officers are instructed to accept documents such as birth certificates or alien registration receipts cards, but not documents such as drivers' licenses and social security cards which are more easily obtained, yet are acceptable proof of identity for other purposes. He added, however:

We don't have time for street checks. All of our activities are right down on the border, except for the occasional transportation check at Lindbergh Field [San Diego International Airport].⁸⁹

Complaints about the border patrol in San Diego included the treatment of undocumented aliens. In January 1978, Warren Williamson, chief trial attorney for Federal Defenders, Inc., told Commission staff that clients detained by the border patrol were beaten by the officers; if physical violence was evident, these officers alleged self-defense.⁹⁰ John Cleary, executive director of Federal Defenders, provided the Advisory Committee with photographs of physically abused persons who alleged they were beaten by border patrol officers.⁹¹ He commented:

Border patrol [officers] to protect themselves file assault charges on the individuals. . . . Many times when [aliens] go in before the magistrates, the magistrates see the physical condition and know that these individuals are not so irrational as to attack armed border patrol officers.⁹²

Another complainant, Frank Riley, said he had observed border patrol activity near the border for several years. After quoting a section from a border patrol handbook which stated that aliens were entitled to courteous, considerate treatment from INS officers, he said:

I seriously question whether this is in fact the way most officers treat these persons. Having seen a van full of persons packed like animals in the dog catcher approach, I wonder. Having seen persons violently apprehended and thrown into vans, I wonder.⁹³

⁸⁹ Ibid., pp. 244-45, 281.

⁹⁰ Interview in San Diego, Calif., Jan. 30, 1978 (hereafter cited as Williamson Interview).

⁹¹ San Diego Transcript, p. 137.

⁹² Ibid., p. 139.

⁹³ Ibid., p. 303.

Mr. Riley told the Advisory Committee that he had complained to the border patrol about officers' use of physical force and provided the Committee with a letter from the border patrol in response to his complaint. In that letter Acting Patrol Chief Agent Albert Franco wrote that border patrol officers "do not under any circumstances mistreat any person."⁹⁴ Contradicting the letter, Mr. Franco told Commission staff that violations of civil and constitutional rights by officers might exist as a result of "failures by officers to use good judgment as to the permissible extent of their authority, rather than from a lack of professionalism."⁹⁵

According to INS Regional Commissioner Edward O'Connor, allegations that officers beat aliens and claim self-defense later reflect a lack of knowledge:

If they would only check the records that are readily available to them, they would be aware of numerous incidents where aliens, in an irrational state from glue sniffing, taking drugs, or alcohol, have attacked border patrol officers. While border patrol agents are armed, they often encounter undocumented aliens in groups of 20 to 30. Thus a single armed officer may well be attacked when he is stopping such a group.⁹⁶

Shortly after receiving Mr. O'Connor's statement in August 1979, a Los Angeles newspaper reported that four border patrol officers were indicted for their alleged mistreatment of several aliens whom they allegedly beat and then forced back to Mexico. This article stated, "The indictment was believed to be the first instance of federal charges being brought against border patrol agents over treatment of aliens." The U.S. district court upheld the Federal Government's right to try the agents, stating that undocumented aliens are protected by American civil rights laws.⁹⁷

Border patrol official Donald Cameron told the Advisory Committee: "We ask that our officers maintain themselves as officers at all times. We don't

expect them to use violence or abuse or anything like that." He said he was available to groups wanting to discuss complaints about the border patrol, but stated he was personally unaware of many of the complaints presented to the Advisory Committee.⁹⁸ Alberto Garcia disagreed that openness existed:

We have tried very hard to bring these complaints to the attention of this agency [the INS], but its Commissioners from the national to the regional level have not given it the proper attention. . . . We have tried to get border patrol officials to sit with us in a conference table to discuss these concerns. They have ignored the community.⁹⁹

Border Patrol Traffic and Transportation Checks

Border patrol traffic checks are permanent sites on major highways leading away from the border where officers stop vehicles to question occupants and occasionally conduct searches. Transportation checks are inspections by officers of air, bus, and train terminals. Both are designed as backups for line operations.¹⁰⁰

Community representatives stated that the Hispanic community greatly resented traffic and transportation checks.¹⁰¹ San Diego attorney Timothy Barker said these checks were "intrusive and abusive encounters" and added:

If [border patrol officers] have a preconceived idea that a person is here illegally, nothing that the person says to them or shows them will convince them otherwise.¹⁰²

In 1978 Commission staff interviewed community representatives who objected to the discriminatory effect of traffic checks. They alleged that border patrol officers single out motorists of Hispanic appearance at the San Clemente traffic check.¹⁰³ Complaints included allegations of beatings of Hispanic motorists and maltreatment of women includ-

⁹⁴ Ibid., pp. 301-02; written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978. In response to Mr. Riley's allegations, Regional Commissioner Edward O'Connor wrote Commission staff, "To throw a person into a van, or anywhere else, would be grounds for serious disciplinary action, and perhaps dismissal" (August 1979 O'Connor Letter).

⁹⁵ Franco Interview.

⁹⁶ August 1979 O'Connor Letter.

⁹⁷ "Border Officers Accused in Assaults on Aliens," *Los Angeles Times*, Sept. 26, 1979; "Civil Rights Laws Protect Illegal Aliens, Judge Rules," *Los Angeles Times*, Nov. 23, 1979.

⁹⁸ San Diego Transcript, pp. 215, 222, 247-48.

⁹⁹ Garcia Written Testimony. According to officials, an INS representative regularly meets with Mr. Garcia to discuss complaints (August 1979 O'Connor Letter).

¹⁰⁰ Franco Interview. These operations are conducted under INS authority to search any vehicle or conveyance without a warrant within a reasonable distance from the border (8 U.S.C. §1357(a)(3) (1976)). The term "reasonable distance" is defined as 100 air miles from any U.S. external boundary (8 C.F.R. §287.1(a)(2) (1979)).

¹⁰¹ Immigration Interview File.

¹⁰² San Diego Transcript, p. 106.

¹⁰³ Williamson Interview: Herman Baca, chairperson, Committee on Chicano Rights, Inc., interview in National City, Calif., Jan. 25, 1978.

ing sexual advances and inner and outer body checks by male officers at the checkpoint.¹⁰⁴ Alberto Garcia of San Diego wrote the Commission in 1979 that his office receives approximately 20 complaints per month from Mexican Americans about San Clemente border patrol officers' abusive behavior and harassment of motorists.¹⁰⁵

INS officials denied these allegations. Former Acting Chief Patrol Agent Alberto Franco told Commission staff that border patrol officers question persons of every nationality at the San Clemente traffic check because many smugglers of aliens are not Hispanic, adding that officers do not stop as many people as they could in order to avoid complaints of civil rights violations.¹⁰⁶ Chief Patrol Agent Donald Cameron told the Advisory Committee that if initial questioning indicated a person had violated the law, he or she would be subjected to further investigation.¹⁰⁷ When asked what legal standards guide officers in determining the need for further investigation, Mr. Cameron replied:

Sometimes we get people who tell us they are citizens of the United States, or that they have a legal claim to residence status, which is not so. Through questioning, the officer will determine whether or not that person is who they say they are and if they are entitled to the status that they are claiming. Some [officers] are more adroit at eliciting information. Through their experience they know the proper questions to ask and they know how to develop the questions of the interrogation.¹⁰⁸

Mr. Cameron explained that if an officer doubts a motorist's right to be in the country, the car is pulled into a secondary area adjoining the highway and further questioning is conducted quickly.¹⁰⁹ He stated, however, that the length of questioning varied with the individual officer.¹¹⁰

Commenting on allegations of physical abuse at traffic checks, Regional Commissioner O'Connor wrote the Commission:

It is the policy of this service that a minimum amount of force absolutely necessary will be used to make and arrest and control detainees.

When a female is taken into custody, it is the policy of this service that only a matron or female border patrol agent will make a physical search on the subject.¹¹¹

He added that although his office had received allegations of misconduct against San Clemente border patrol officers in 1978, none were substantiated through investigation by the INS central office.¹¹²

Timothy Barker, representing the San Diego Legal Aid Society, described for the Advisory Committee complaints concerning border patrol transportation checks:

At the [San Diego] airport. . .the border patrol is basically just going through the airport lobbies at random looking for persons. . .of Mexican origin and asking them for their papers and status in the United States.¹¹³

He said there have been numerous allegations that persons who had legitimate documentation were arrested at the airport, detained for several hours, and removed to Mexico against their will.¹¹⁴ He continued:

In order for the Immigration Service to remove a person from the United States, they must have that person "voluntarily" waive his right to a hearing before an immigration judge. . . .They [INS officers] actually say, "We are going to make you sit here in this room until you sign this voluntary departure form agreeing to that." So finally after 5 hours a person says it is just as easy to go back to Mexico than sit here and wait this out, so that person signs the voluntary departure agreement and is taken back to Mexico.¹¹⁵

The experiences of a U.S. legal resident of Mexican descent substantiates this allegation of INS practice. In late 1977 Jose Plancarte alleged he was stopped by border patrol officers at the San Diego airport, detained there for about 6 hours, and then sent to Mexico where he remained for 1 week until he could reenter the U.S., losing his job in the interim. According to him, the officers did not accept his alien registration card as proof of his legal status; they told him it was fraudulent and destroyed

¹⁰⁴ San Diego Transcript, pp. 46, 93; Baca Written Testimony.

¹⁰⁵ Alberto Garcia, letter to Laurie Campbell, U.S. Commission on Civil Rights, Jan. 26, 1979. According to Mr. O'Connor, the number of complaints received by the Immigration Service in the Western Region is far less than 20 per month (August 1979 O'Connor Letter).

¹⁰⁶ Franco Interview.

¹⁰⁷ San Diego Transcript, p. 194.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., p. 191.

¹¹⁰ Ibid., p. 194.

¹¹¹ March 1979 O'Connor Letter.

¹¹² Ibid.

¹¹³ San Diego Transcript, p. 105.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

it. He alleged that although he asked officers to call INS to verify his legal status, they refused to do so.¹¹⁶ In June 1978 Alberto Garcia told the Advisory Committee that Mr. Plancarte still had not received his alien registration card and complaints to the border patrol had failed to resolve the problem.¹¹⁷ Despite the existence of specific cases, INS representatives generally denied such allegations throughout the Advisory Committee study.¹¹⁸

Border patrol confiscation of alien registration cards and other documents was perceived as a problem by community representatives and a practice of questionable legality.¹¹⁹ Timothy Barker commented:

Once a person or alien comes under suspicion, the first thing the Immigration Service does is it immediately takes away the alien registration card and oftentimes does not give the person any alternative documentation. Investigations [into the legitimacy of the card] can take from 1 to 2 years. . . . The person has problems getting jobs because some employers feel that they shouldn't be employing persons without documentation. There is a law that says an alien has to have his alien registration receipt card with him at all times, and he is in fact in violation of the law since the Immigration Service has taken it away. . . . It is such a summary procedure that the border patrol is operating under. . . . Person's rights are not given any credence whatsoever. . . . If [the border patrol] took the time and the effort to verify a person's status, [which] a few phone calls could easily determine, then the problem would be obviated, but they don't take the time.¹²⁰

Responding to these complaints, INS official Donald Cameron said:

Many times a document is lifted from an alien who is not entitled to it. This happens more in the border patrol than I guess any other [division]. Where the person claims to be a lawful resident alien and is carrying a counterfeit or altered I-151 [alien registration card] that's taken away and attached to the rest of the record. . . . Our officers are highly trained in what is counterfeit and what is altered. . . . However, if we found that one of

our officers did improperly lift the card, he would be disciplined.¹²¹

Robert Mitton, deputy district director of the San Diego INS District Office, added that immigration officers are able to determine false papers:

We do have the expertise to identify altered documents. . . . I think that some of the complaints that you may have had amounted to the improper lifting of cards. There has been one in the last 3 years. Just one, and I have to admit it was one of our people who did it. . . . He was disciplined. The [alien] had a new card returned to him without cost, with apologies, which is about all we can do.¹²²

When a card is confiscated by INS officers, the issuance of a receipt is not a normal procedure, according to Mr. Mitton, but aliens who request some sort of documentation as a replacement are given temporary papers by INS. He added that confiscated alien registration cards are not voided until their validity is checked at the central office of INS.¹²³

INS official Donald Cameron denied that border patrol officers detained persons after they presented acceptable proof of their legal status.¹²⁴ He told the Advisory Committee:

We wouldn't detain these people for very long. If we couldn't prove within a very reasonable short period of time that they were entitled to be the holder of that document, we would obtain facts as to their residence, and we would release them subject to a further investigation.¹²⁵

INS officials also refuted charges that persons were immediately sent out of the country, saying that persons are informed of their rights to counsel and a deportation hearing shortly after apprehension.¹²⁶ Donald Cameron said:

We permit any alien in custody to. . . get all of their belongings, all of the pay that is due them from employers and make any arrangements that they need prior to being granted voluntary departure. If they have relatives who want to

¹¹⁶ Interview in San Ysidro, Calif., Jan. 26, 1978.

¹¹⁷ San Diego Transcript, p. 53.

¹¹⁸ See discussion below.

¹¹⁹ San Diego Transcript, p. 109.

¹²⁰ Ibid., pp. 106-07, 109.

¹²¹ Ibid., pp. 240-41, 242.

¹²² Ibid., pp. 241-42.

¹²³ Ibid., pp. 241, 243-44.

¹²⁴ Ibid., p. 198.

¹²⁵ Ibid., p. 246.

¹²⁶ Ibid., p. 196.

visit them prior to their departure they certainly are permitted [to see them].¹²⁷

Robert Mitton added that an officer would be fired for a violation of this policy:

I have been at 17 different stations and in each case there is an effort made to get the individual's personal belongings, contact his relatives and bank account, or wages coming to him from an employer. I have never seen a violation of this in 25 years at any of the 17 stations.¹²⁸

Port of Entry Operations

Immigration law requires persons crossing U.S. borders to identify themselves as entitled to enter the country.¹²⁹ Questioning to determine admissibility is mainly an INS district office responsibility. For "primary inspection," the initial questioning of individuals, the U.S. Customs Service and the U.S. Department of Agriculture located at the San Ysidro port of entry south of San Diego may also conduct these interrogations for INS. Only INS personnel may conduct questioning for "secondary inspection," a further interrogation or investigation into legal status at the port of entry.¹³⁰

The Advisory Committee received complaints about the involvement of more than one Federal agency in questioning travelers about citizenship and immigration status. Some complaints involved the need for a better distinction between INS and Customs functions at the border to prevent public confusion about which agency they are dealing with.¹³¹ Alberto Garcia of the Citizens Border Affairs Advisory Council in San Diego contended that the presence of several agencies impeded effective border control because of conflicting agency priorities.¹³² Manny Najera, former director of border operations for the U.S. Customs Service at San Ysidro, agreed:

[Putting border functions] under one agency. . . would [be helpful] in that everyone would be working under the same guidelines which definitely would be an improvement. . . I guess the biggest negative aspect

[of several Federal agencies at the border] would be that you are transferring people from one agency to another agency, and there is always a feeling that it is a putdown.¹³³

Despite the complaints about the number of Federal agencies involved, community representatives presented fewer complaints about Customs Service and Department of Agriculture officers' treatment of travelers.¹³⁴ In reference to the Customs Service, Alberto Garcia stated:

The Chicano community [is] tired of the constant border abuses by border guard inspections from cavity searches to beatings of minorities and Mexican citizens. . . . Through the efforts of Congressman Edward R. Roybal and his committee we managed to stop these abuses, and guidelines were established to cope with many of these inequities. Management was changed, transfers were ordered, minorities were hired, programs of cultural awareness were implemented. . . . To this day these programs are still operating. . . so that the image of Federal officials is [enhanced] and employees in general are in a position to deal with the general public with respect.¹³⁵

In contrast, community representatives criticized INS officers for their treatment of both aliens and U.S. citizens at ports of entry. Complaints included: 1) improper length of questioning during primary and secondary inspections, 2) denial of entry into the U.S., 3) failure to accept documentation of citizenship or immigration status, 4) physical abuse, and 5) forced confessions.

First, while stating that efforts of the Citizen Border Affairs Council have reduced abuses in recent years, Mr. Garcia commented:

We understand that many people are not entitled to enter this country because the present immigration laws have to be enforced, but we also understand that we are not living in a military combat zone. . . . At the San Ysidro port of entry. . . you will see a car with Anglos go to primary [inspection] and that will take maybe 10 seconds to clear. You will see a

¹²⁷ Ibid., pp. 224-25.

¹²⁸ Ibid., pp. 225, 233.

¹²⁹ 8 U.S.C. §§1181(a), 1225 (1976).

¹³⁰ Manny Najera, director of border operations, U.S. Customs Service, interview in San Ysidro, Calif., Feb. 1, 1978; San Diego Transcript, pp. 38-40.

¹³¹ Immigration Interview File, San Diego community representatives.

¹³² Garcia Written Testimony.

¹³³ San Diego Transcript, p. 19. Unlike Mr. Najera, INS officials disagreed with Mr. Garcia's contention and stated that the following inspection priorities of the respective agencies are well-defined:

INS—determines citizenship of applicant for admission-admissibility under I & N Act.

Customs—Examines merchandise coming into United States, assesses duties and levies penalties when applicable.

Agriculture—Examines plants, animals and products to determine if items prohibited, restricted, or eligible to be brought into the United States (August 1979 O'Connor Letter).

¹³⁴ Immigration Interview File.

¹³⁵ Garcia Written Testimony.

Mexican or an individual of Spanish descent delayed on primary inspection 5 to 10 minutes. Sometimes [inspectors] conduct secondary inspections in primary inspection, which they are not supposed to do. They are supposed to refer people to secondary inspection if they want to see further documentation or they want to check the car.¹³⁶

Mr. Garcia said that problems for Hispanics also occur in secondary inspection; U.S. citizens can be delayed for several hours and are sometimes incarcerated.¹³⁷ INS representatives denied allegations of differential treatment during inspection and U.S. citizen incarceration. Further, they stated that primary inspection averages 30 to 40 seconds per auto at San Ysidro to prevent delays; secondary inspection, however, is determined by presentation of satisfactory evidence of citizenship or documents supporting admissibility.¹³⁸

Second, regarding complaints about denials of entry, Edward Begley, former immigration inspector at the San Ysidro port of entry from 1976 to 1978, told the Advisory Committee:

Thousands of people, including U.S. citizens, are "returned to Mexico" yearly without signing any document or being informed of [their] *Miranda* [rights] or having a hearing of any kind.¹³⁹

San Diego INS official Robert Mitton said these charges were untrue. He emphasized to the Advisory Committee that district office personnel at San Ysidro regularly informed persons of their rights to counsel and a hearing:

The individual will make his claim to whatever status he believes is his rightful status, such as U.S. citizenship. If there is anything that triggers the inspector's imagination that this person claiming U.S. citizenship might not be [a citizen], he may ask for the place of birth. He may ask for primary or secondary evidence [such as]

a birth certificate or school record. . . and the [person] is given every opportunity to prove this to the inspector. It is very pertinent, I think, to point out that the inspector has the right to admit but he does not have the right to exclude an individual from the United States. The individual can only be excluded by an immigration judge.¹⁴⁰

Third, according to community representatives, the failure of INS inspectors to accept legitimate documentation is another major problem for minority citizens and aliens.¹⁴¹ For example, Alberto Garcia stated:

When an American citizen of Hispanic descent is returning to the United States, he is constantly asked to produce identification that he is an American citizen, first, second, and third kinds of identification. . . . Birth certificates are no evidence of citizenship to the Immigration and Naturalization Service. . . . They will tell you, "Well, if you are an American. . . we will let you have for \$5 an I-179 card," which is a citizen identification card. Then to them you are an identified American citizen.¹⁴²

Mr. Garcia charged that these cards were issued because "we are brown and that's why they want us to identify ourselves."¹⁴³ He also alleged the cards were difficult to obtain since: 1) any officer stationed at the border had full authority to issue a card and would not do so if she or he did not believe the applicant was a U.S. citizen; 2) documentation requirements for a card were formidable and included school records, parents' birth certificates, and residences back to childhood and 3) it took 1 or 2 years to receive a card once an officer approved its issuance.¹⁴⁴

Regional Commissioner O'Connor responded:

Possession of the [citizen identification] card is not mandatory for any purpose, and the issuance is not confined to a specific ethnic group or groups. Supporting documentary require-

¹³⁶ San Diego Transcript, pp. 54-57. According to Manny Najera, former director of border operations at San Ysidro, primary inspection should take no longer than 2 minutes (San Diego Transcript, p. 9).

¹³⁷ San Diego Transcript, p. 52; interview in San Ysidro, Calif., Jan. 26, 1978. Mr. Garcia stated that as the president of the Mexican American Chamber of Commerce he also was concerned about long delays and mistreatment experienced by residents of Mexico who come into the United States temporarily to purchase goods (San Diego Transcript, p. 52).

¹³⁸ James O'Keefe, district director, INS San Diego District Office, interview in San Diego, Calif., May 1978; August 1979 O'Connor Letter.

¹³⁹ Written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978 (hereafter cited as Begley Written Testimony). INS Regional Commissioner Edward O'Connor objected to the Advisory Committee's use of Mr. Begley's statements throughout this chapter due to

his relationship with INS while he was an immigration officer. However, the Advisory Committee includes Mr. Begley's statements because of their relevance and similarity to other complaints the Committee received about alleged INS practices at the San Ysidro port of entry.

¹⁴⁰ San Diego Transcript, pp. 198-200.

¹⁴¹ San Diego Transcript, p. 50; Marshall Ganz, operations coordinator, United Farm Workers, telephone interview in Salinas, Calif., May 11, 1978. Mr. Ganz stated that INS won't accept birth certificates as proof of U.S. citizenship, but they request documentation most citizens do not carry, such as rent receipts.

¹⁴² San Diego Transcript, pp. 50, 67. This card is now called an I-197 (San Diego Transcript, p. 238).

¹⁴³ San Diego Transcript, p. 68.

¹⁴⁴ *Ibid.*, pp. 68-69.

ments include a certificate of naturalization or citizenship if the applicant was not born in the United States, or satisfactory evidence of birth in this country, if such is the applicant's claim. Delayed birth or baptismal certificates are carefully scrutinized because of their historically high incidence of fraud. Each applicant for a citizen's identification card must be interviewed under oath, and upon establishing his identity as a U.S. citizen and eligibility to the satisfaction of an immigration officer, he shall then be eligible for the issuance of Form I-179.¹⁴⁵

Delays in obtaining these cards, he said, were uncommon.¹⁴⁶

Relating to complaints of physical abuse and forced confessions, former immigration officer Edward Begley alleged that aliens were beaten by INS officers at San Ysidro during his tenure with INS and placed in refrigerated cells without food or water for up to 24 hours. He said that these abuses occurred only to Hispanics. Mr. Begley also alleged that INS obtained forced confessions. He described one incident where INS officers forced a young American citizen of Hispanic descent to state that she was not a U.S. citizen through threats of arrest and detention without food; she was then sent to Mexico after her identification was confiscated.¹⁴⁷ Mr. Begley attributed these practices partly to poor training. He stated further:

Customs supervisors on the border are always in a position to observe their men. Immigration [Service] supervisors are in upstairs isolated offices. They could care less what goes on down the line. I only remember one supervisor in the year and a half I was with them who regularly toured the inspection lanes to see that his officers were performing adequately. The others sat in their offices, drinking their coffee.¹⁴⁸

Regional Commissioner O'Connor responded to Mr. Begley's charges:

It is our contention that the integrity of immigration inspectors at border ports of entry is

such that an allegation of this type is reprehensible. The overall training program afforded each officer, close supervision at all levels of port operations, and management's continuing effort to instill ethnic and human awareness in all inspecting officers should minimize, if not preclude, this type of situation.¹⁴⁹

Local Police Involvement With INS

An individual who is arrested by local police may be detained for INS if police suspect that person of being an undocumented alien.¹⁵⁰ Although local police have the power to arrest undocumented aliens for violations of local or State law, their right to assist in the enforcement of Federal immigration laws is questionable. The Immigration and Nationality Act authorizes INS officers to search for and arrest undocumented aliens, but it is silent on local police involvement.¹⁵¹

In 1973 the U.S. Department of Justice released an opinion on this issue, stating that local police could arrest and detain suspected undocumented aliens only if police officers witnessed unauthorized border crossings, providing that State law authorized police to arrest individuals for violations of Federal law committed in their presence. In other words, it stated that arrest and detention by police at a place other than the border would be constitutional only if the act of unlawful entry (8 U.S.C. §1325) was considered to be an offense which continued beyond the border and beyond the time of entry.¹⁵² As of 1979, this issue had not been decided by the courts. In 1978, however, U.S. Attorney General Griffin Bell said that local police were not authorized to stop, question, detain, or arrest, or place an "immigration hold" on any person solely on the ground of undocumented alien status.¹⁵³

Other offices have also been involved with this issue. In January 1977 the INS deputy commissioner issued a directive to INS regional commissioners stating that local law enforcement agencies did not have the authority to detain undocumented aliens

¹⁴⁵ Edward O'Connor, regional commissioner, INS Western Region, letter to Philip Montez, regional director, U.S. Commission on Civil Rights, Western Regional Office, Sept. 26, 1978.

¹⁴⁶ *Ibid.* In 1979 he wrote that these cards are issued within 90 days of application (August 1979 O'Connor Letter).

¹⁴⁷ San Diego Transcript, pp. 295-98; interview in San Diego, Calif., June 27, 1978; Begley Written Testimony.

¹⁴⁸ San Diego Transcript, pp. 297-98; Begley Written Testimony.

¹⁴⁹ March 1979 O'Connor Letter. In his August 1979 letter to the Commission, Mr. O'Connor again emphasized that these allegations were untrue and that immigration supervisors continuously monitor INS officer activities during primary and secondary inspection.

¹⁵⁰ Immigration Interview File, local police department interviews.

¹⁵¹ 8 U.S.C. §1357 (1976). Only one section of the Immigration and Nationality Act authorizes local law enforcement officers to arrest for an immigration offense, and that is for smuggling and harboring undocumented aliens (8 U.S.C. §1324 (1976), as amended by Act of Nov. 2, 1978, Pub. L. No. 95-582, §2, 92 Stat. 2479).

¹⁵² Telegram from John L. Murphy, Chief, Government Regulations Section, Criminal Division, U.S. Department of Justice, to Harry D. Steward, U.S. attorney, San Diego, Calif., May 7, 1973.

¹⁵³ U.S., Department of Justice, press release, June 23, 1978.

for immigration law violations unless police contacted INS who, in turn, authorized the detentions on an individual basis.¹⁵⁴ In August 1977 the California attorney general's office issued an opinion stating that arrests by police away from the border solely for unlawful entry was unauthorized because entry was completed. Persons, however, could be "temporarily detained" by police while they reached INS personnel, provided that the officers had a "rational suspicion" of an immigration law violation.¹⁵⁵ The opinion continued:

As a practical matter, in the typical situation removed from the border area or its functional equivalent, it may be a rare case in which a California peace officer, largely unfamiliar with immigration law enforcement, would be aware of specific articulable facts which would lead him to a "reasonable suspicion" that a person is illegally in the country.

Even should the hurdle of justifying the initial temporary detention be met, a difficult problem arises in regard to the length and scope of the detention.¹⁵⁶

In 1978 William Steiner, director of the Mexican American Legal Defense and Educational Fund (MALDEF) Los Angeles office, told the Advisory Committee that MALDEF was critical of the California attorney general's opinion because it condoned local police enforcement of Federal immigration laws. According to MALDEF, police involvement has resulted in constitutional and civil rights violations of Hispanic citizens and legal resident aliens because they "might be thought [by police] to resemble undocumented aliens." MALDEF concluded that these violations occur because local police lack training and expertise in immigration law and constitutional rights, and they are not supervised by the U.S. Justice Department which is responsible for administering and enforcing immigration law.

¹⁵⁴ Memorandum from Deputy Commissioner to Regional Commissioners, "Authority to Arrest and Detain Illegal Aliens," Jan. 10, 1977.

¹⁵⁵ Letter from Evelle J. Younger, attorney general, to Michael J. O'Day, chief of police, city of Covina, Aug. 2, 1977. This opinion did not specify the proper length and scope of "temporary" detentions by police, nor did it set up guidelines for police as to what constitutes a "reasonable suspicion" of an immigration law violation. It did state that the act of illegal entry was an offense of limited duration which ended near the immediate area of the border when the person committing the offense had reached a place of temporary safety (p. 9).

¹⁵⁶ *Ibid.*

¹⁵⁷ Los Angeles Transcript, pp. 430-41; William Steiner, written testimony

To support MALDEF's allegations, Mr. Steiner presented the Advisory Committee with a list of incidences reported to his office in 1976 and 1977 by citizens and aliens who claimed they were unlawfully held by police for suspected immigration law violations. He added that MALDEF continued to receive complaints in 1978 about police enforcement of immigration laws.¹⁵⁷

Community representatives in Los Angeles and San Diego contended that local police were actively involved in assisting the INS. Some stated that police provided manpower and patrol cars for INS area control and border operations.¹⁵⁸ Others charged that police arrested and detained persons for suspected undocumented alien status, either without local and State law violations or on the pretext of minor traffic violations.¹⁵⁹ Others claimed that police detained persons for INS for unreasonable periods of time, such as several days, and destroyed documentation of legal status.¹⁶⁰ Members of the Orange County Human Relations Commission told Commission staff that police harassed persons in the community who appeared to be Hispanic or who spoke little English, adding that these persons had to prove continually to police their right to be in the United States.¹⁶¹

Police department representatives in Los Angeles and San Diego responded that their assistance to INS was minimal because legal authority limited their involvement with INS. These representatives told the Advisory Committee that police rarely detained aliens for INS because INS did not have the manpower to respond to police calls.¹⁶²

Written policies of the Los Angeles and San Diego police departments are modeled after the California attorney general's 1977 opinion, according to police. They prohibit officers from stopping or arresting persons solely because they are suspected of being undocumented aliens, but they permit temporary detentions for INS of these persons arrested for violations of local and State laws.¹⁶³

before the California Advisory Committee, Los Angeles, Calif., June 15-16, 1978.

¹⁵⁸ Los Angeles Transcript, pp. 44-46; Immigration Interview File.

¹⁵⁹ San Diego Transcript, pp. 96-97; Immigration Interview File.

¹⁶⁰ Los Angeles Transcript, p. 461; Immigration Interview File.

¹⁶¹ Vice Chairman James Sanchez and members, Orange County Human Relations Commission, interview in Santa Ana, Calif., Feb. 10, 1978.

¹⁶² San Diego Transcript, pp. 80, 86-87; Los Angeles Transcript, p. 442.

¹⁶³ Los Angeles Transcript, pp. 441-44; San Diego Transcript, pp. 80, 85. These policies are representative of other southern California police department policies reviewed by Commission staff in 1977 and 1978 (Immigration Interview File).

Police representatives stated that occasional violations of police immigration policies do occur. In January 1978 Da'yl Gates, then assistant chief for the Los Angeles Police Department, told Commission staff that violations of policy occur because individual officers are frustrated over problems such as rising crime rates which they believe are due to undocumented aliens.¹⁶⁴ Robert Burgreen of the San Diego Police Department said officers near the border work very closely with other government agencies and possibly do stop persons for suspected undocumented alien status. He added:

Because of the number of undocumented aliens that come across the border in San Diego. . . in the section of our city adjacent to the border. . . our officers very quickly gain expertise in determining who is and who is not an undocumented alien.¹⁶⁵

A representative of the San Diego sheriff's department told Commission staff in February 1978 that officers occasionally stop persons solely for undocumented status:

Since most aliens are dark-eyed and dark-skinned, most [U.S.] residents of Mexican origin understand that being stopped [by police] is merely a matter of being in the wrong place at the wrong time.¹⁶⁶

Like police representatives, INS officials stated that cooperation between police agencies and INS was minimal due to legal limitations.¹⁶⁷ Regional Commissioner O'Connor stated, however, that INS maintained a close but informal liaison with local and State law enforcement agencies for information on undocumented aliens.¹⁶⁸ He described to the Advisory Committee this relationship:

The assistance [by police] is in a camaraderie type of assistance. There is nothing that they do that would be called improper or irregular. It is just. . . on weekends, their [police] jails are full of people and many of these people are illegal aliens. They call us. We come down and interview these people, and that is the assistance they give us.¹⁶⁹

¹⁶⁴ Interview in Los Angeles, Calif., Jan. 20, 1978.

¹⁶⁵ San Diego Transcript, pp. 85, 87-88.

¹⁶⁶ Robert E. Torbett, sergeant, International Liaison Officer, San Diego County Sheriff's Department, interview in San Diego, Calif., Jan. 30, 1978.

¹⁶⁷ Mitton Interview.

¹⁶⁸ Edward O'Connor, regional commissioner, INS Western Region, letter to Sally James, U.S. Commission on Civil Rights, Mar. 24, 1978; O'Connor Interview.

Border patrol official Donald Cameron characterized the assistance his office received from police in San Diego:

We don't get [any assistance] formally, but I would be less than honest if I didn't say that some of our people occasionally get together with policemen drinking coffee in a restaurant. And one [policeman] says, "Hey, I think I saw a load [of undocumented aliens] going down the road half an hour ago." But we don't have an official interchange of any kind. . . . We conduct liaison with local law enforcement but we don't ask for their assistance in any specific cases unless, for instance, at the checkpoint at San Clemente. If someone runs the checkpoint, and fails to stop, the California Highway Patrol is asked to assist us in making this stop. . . . We do respond to each other for mutual assistance at all times. If they're in trouble we'll respond for them, and vice versa, and that's only good commonsense. It's standard police procedures.¹⁷⁰

According to former Los Angeles District Director Joseph Sureck's testimony, police in Los Angeles are more active in assisting INS than they are in San Diego. They deliver detainees for suspected law violations to INS offices on their own initiative and detain suspected undocumented aliens overnight if INS cannot interview detainees the day they are arrested. He added that INS is having a problem with one Los Angeles law enforcement agency which is billing INS for keeping aliens in custody without INS authorization.¹⁷¹

Departure of Aliens

Aliens detained by INS for suspected immigration law violations are entitled to due process before INS can require them to leave the United States. Deportation proceedings are civil in nature, but Congress has established due process similar to that used in criminal proceedings. These rights include: an impartial hearing on deportability, legal representation at the alien's expense both before and during a hearing, and an application for release on bond prior to a hearing.¹⁷²

¹⁶⁹ Los Angeles Transcript, p. 577.

¹⁷⁰ San Diego Transcript, pp. 211, 249.

¹⁷¹ Los Angeles Transcript, pp. 582-83.

¹⁷² 8 U.S.C. §§1252(a)-(b), 1362 (1976); Yiu Fong Cheung v. INS, 418 F.2d 460 (D.C. Cir. 1969). A few special classes of aliens are not entitled to receive a deportation hearing. For example, persons who have been

Following the presentation of evidence at a hearing, an immigration judge may issue an order of deportation.¹⁷³ An alien who leaves the country under a deportation order is guilty of a felony if he or she reenters the United States without acquiring special permission from the U.S. Attorney General.¹⁷⁴ An alien, however, can appeal a deportation order.¹⁷⁵

The Immigration and Nationality Act establishes several grounds for relief from deportation. One of these grounds is called "suspension of deportation" which can only be granted at an immigration judge's discretion. It allows a person who entered the country without authorization from INS to remain here if that individual can prove certain factors, including 7 years continuous residence in the United States, good moral character, and extreme hardship as a result of deportation.¹⁷⁶

Voluntary departure is another form of relief from deportation, allowing aliens who do not have criminal records or records of repeated immigration law violations to leave the country without formal deportation proceedings. Unlike aliens who leave the country under a deportation order, persons departing in this way are not guilty of a felony if they reenter the country without special permission from the U.S. Attorney General. Voluntary departure can be granted by an immigration judge during a deportation hearing in place of a formal deportation order. INS officers at immigration detention facilities also have the discretion to allow voluntary departure. Further, the law provides that an alien may be permitted time to make personal or business arrangements prior to leaving the United States under voluntary departure.¹⁷⁷

admitted to the U.S. as crewmen on conditional entry permits which have been revoked can be deported without a hearing (8 U.S.C. §1282(b) (1976)). Along with the right to counsel, new Federal regulations require that aliens be informed of the availability of free legal services and provided with a list of such free services in the area both following arrest and during hearings (44 Fed. Reg. 4,651 (1979) (to be codified in 8 C.F.R. §§242.2(a), 242.16(a), and 287.3)).

¹⁷³ U.S.C. §1252(b)-(c) (1976).

¹⁷⁴ U.S.C. §1326 (1976). INS Regional Commissioner Edward O'Connor wrote Commission staff in 1979 that few aliens who reenter the United States unlawfully after deportation are prosecuted, stating that the consequences of unlawful reentry are only severe where a person has been convicted of illegal entry (a misdemeanor) under criminal proceedings and deported under INS proceedings (August 1979 O'Connor Letter). INS Assistant District Director Philip Smith explained to the Advisory Committee in 1978 why criminal prosecutions for immigration violations are rare:

Our [deportation] process is a civil administrative process. . . . Naturally, if we arrested in excess of a million aliens. . . we certainly could not flood or inundate the courts with a million prosecutions. So only a very small percentage of aliens that we take into custody are prosecuted under Federal criminal statutes (Los Angeles Transcript, p. 346).

During its immigration study, the California Advisory Committee received many complaints from community representatives concerning INS procedures prior to the departure of aliens from the United States. A majority of these related to alleged methods used by immigration officers to send aliens out of the country under voluntary departure.¹⁷⁸

Most aliens detained by INS leave the country without deportation hearings. They are usually escorted to the border on the day of arrest after signing a form in detention agreeing to voluntary departure.¹⁷⁹ The INS Western Region reported that in 1978, 10,587 persons went through deportation hearings, compared with 545,946 persons who were granted voluntary departure by INS officers.¹⁸⁰ INS officials state that the majority of aliens leave the country voluntarily because they are citizens of Mexico who admit to INS officers that they are in the country illegally, and they inform officers that they do not want to waste time and money going through deportation hearings.¹⁸¹

At the Advisory Committee's 1977 immigration consultation, San Francisco attorney Byron Park complained about border patrol practices relating to aliens' departures. He stated:

I don't think they have ever shown very much respect for immigration law. I think they feel that immigration law is something very informal. It's not practical to go by the book, to inform a person of his right to a hearing, his right to counsel, and so forth. I think that the border patrolmen use intimidation as a means of persuading apprehended people to waive their rights and be removed to Mexico by bus immediately after being apprehended.¹⁸²

¹⁷⁸ U.S.C. §1105a (1976); 8 C.F.R. §242.21 (1979). New Federal regulations require that aliens shall be furnished with a written notice of their right to appeal during hearings (form in English and Spanish). (44 Fed. Reg. 4,651 (1979) (to be codified in 8 C.F.R. §242.16(a)).

¹⁷⁹ U.S.C. §1254(a)-(d) (1976).

¹⁷⁷ U.S.C. §§1252(b), 1254(e) (1976), as amended by Act of Oct. 30, 1978, Pub. L. No. 95-549, Title I, §105, 92 Stat. 2066; 8 C.F.R. §§242.5, 242.17(b) (1979).

Other kinds of relief from deportation include applications for permanent residence under certain conditions (8 U.S.C. §§1255, 1259 (1976)), and a claim of persecution (8 U.S.C. §1253(h) (1976), as amended by Act of Oct. 30, 1978, Pub. L. No. 95-549, Title I, §104, 92 Stat. 2066).

¹⁷⁸ Immigration Interview File; Los Angeles and San Diego Transcripts.

¹⁷⁹ Denis Campbell, staff attorney, One-Stop Immigration Center, interview in Los Angeles, Calif., Aug. 9, 1977.

¹⁸⁰ March 1979 O'Connor Letter.

¹⁸¹ Los Angeles Transcript, pp. 183-84, 574-76.

¹⁸² Immigration consultation before the California Advisory Committee to the U.S. Commission on Civil Rights, Los Angeles, Calif., Sept. 30, 1977, pp. 125-26.

In 1978 San Diego attorney Fred Hetter told the Advisory Committee:

The average individual is frequently deported just under the fence, or around the fence, or what have you, when they pick up a number or group of people. This is done. . . just perfunctorily. This is one of their most serious problems because they do not have a record of the deportation. They just throw the man back.¹⁸³

INS officials denied these allegations and stated that INS allows aliens time for departure if they leave the country voluntarily.¹⁸⁴ Robert Miller, INS deputy district director in San Diego, commented:

We are dealing with human beings. You have got to be sensitive. You can't put them into stereotypes. We can't say to some individual, "No, the fact that your kid is in the hospital with pneumonia and two broken legs is not important to us." We are going to wait until the pneumonia is taken care of and the legs healed before [voluntary departure] becomes effective.¹⁸⁵

In Los Angeles, community representatives complained about INS district office procedures. Steve Hollopeter, representing the National Lawyers Guild, told the Advisory Committee:

Voluntary departure, or so-called voluntary return to Mexico, is a device that the Immigration Service came up with to avoid giving people their right to a hearing. They [INS officers] tell them they have to leave [the U.S.] right away. . . . It is a real violation of people's rights to kick them out on the same day.¹⁸⁶

Delfino Varela, executive director of the Mexican American Social Service in Los Angeles, complained of the effects of voluntary departure as granted by INS officers:

In many cases [voluntary departure] works a great hardship because it leaves unattended families. We have had the experience of women being shipped out the same day, leaving U.S. citizen children at home unattended, or even

children here without documents, with babysitters. . . . It is just a summary process that completely disrupts a person's life.¹⁸⁷

Witnesses alleged that the methods INS officers used to receive aliens' acceptance of voluntary departure violated due process. Mark Rosenbaum of the American Civil Liberties Union in Los Angeles stated:

Persons are not apprised of their rights, or they are apprised of their rights in such threatening circumstances that they know it is not well for them to exercise those rights. We have documented instances, for example, where if people are told of their rights, they are told of their rights in the sense that, well, if you want a lawyer, you will have to pay \$2,000. If you want a hearing you are going to have to stay in jail a considerable period of time. . . . So they are put in a situation at the very outset where they are challenged not to exercise any rights.¹⁸⁸

According to Barbara Honig, who represented the Immigration Law Clinic in Los Angeles:

People [detainees] are very scared. They are not only scared because of what is going on in and of itself. . . but also due to the [INS] officers they are dealing with in detention, many of whom do make them very fearful. I know cases where [aliens] were told that if they didn't accept voluntary departure they would not get voluntary departure at the [deportation] hearing. Now, there is no way an officer can make that determination. . . . Yet, many times [aliens] are scared into signing this [voluntary departure] form.¹⁸⁹

Los Angeles immigration attorney Robert Miller alleged that detainees are not explained alternatives to voluntary departure.¹⁹⁰ He added:

If a person does insist [on his or her rights], again this is personal experience, if a person insists on bail, insists on a hearing, insists on an attorney, he will be segregated and ridiculed. He is a troublemaker.¹⁹¹

¹⁸³ San Diego Transcript, p. 133.

¹⁸⁴ *Ibid.*, pp. 224-25, 233; August 1979 O'Connor Letter.

¹⁸⁵ San Diego Transcript, p. 224.

¹⁸⁶ Los Angeles Transcript, p. 471. INS officers are permitted to allow departure time up to 30 days with the added discretion to extend this time limit (8 C.F.R. §242.5(a)(3) (1979)).

¹⁸⁷ Los Angeles Transcript, p. 462.

¹⁸⁸ *Ibid.*, pp. 358-59. Acting Director Ellen Lee of One-Stop Immigration Center alleged that INS district office personnel and border patrol officers in the Los Angeles area do not encourage arrestees to apply for hearings,

telling them, "We will have to keep you in jail [if you do]" (Los Angeles Transcript, p. 192).

¹⁸⁹ Los Angeles Transcript, pp. 185-86.

¹⁹⁰ *Ibid.*, pp. 601-02. According to Los Angeles attorney Pedro Lamdagan, INS deportation personnel stress to detainees the possible bad consequences of a deportation hearing. Thus, he said, aliens are unaware of options other than voluntary departure (interview in Los Angeles, Calif., May 1978).

¹⁹¹ Los Angeles Transcript, p. 607.

Ellen Lee, acting director of One-Stop Immigration Center in Los Angeles, charged that aliens' right to counsel was regularly denied by INS officers:

When a person is first detained, and is not processed yet. . . that person has no access to an attorney, even if an attorney wants to be there at the questioning of the detainee. After the processing [by INS] is over, only then can an attorney talk to the detainee about whatever needs to be done.¹⁹²

Attorney Robert Miller said:

They call it processing rather than interrogating. Processing means getting all the facts they can possibly use against this person. They will prohibit an attorney who is sitting in the waiting room from speaking to that client prior to processing. That is a fact of life.¹⁹³

Attorney Barbara Honig described the effect of this alleged practice:

The service uses the processing forms that were just taken prior to advice of counsel in order to get the person deported [if there is a deportation] hearing. This is a real procedure problem.¹⁹⁴

For example, Ellen Lee told the Advisory Committee:

The questions that are asked detainees have repercussions upon the deportation hearing. [INS] asks about arrests and/or convictions of crimes. . . . That has a bearing on whether the person can get voluntary departure [at a hearing] or not, and that is not explained to the alien. . . . Many times an alien does not know that when they have been arrested and then set free that that was not a conviction. That is not dug into unless the alien has representation.¹⁹⁵

She added that aliens who are not allowed to see attorneys in detention may leave the country even though they may be entitled to remain in the United States under immigration laws:

I have known of cases where persons were eligible for. . . relief [from deportation], and if it weren't for friends that called us, those persons would already have signed a voluntary depart-

ture form and been on the way out on a bus before we caught them in the nick of time. [If there was] a total access to a detainee [by an attorney] before the person is talked to [by INS] that would alleviate a lot of those problems.¹⁹⁶

INS officials in Los Angeles told the Advisory Committee that INS officers do not exert pressure on aliens to accept voluntary departure. Former District Director Joseph Sureck described the voluntary departure procedure under INS policy:

After a person is taken to the [INS] office and the apprehension form is written. . . if this is an individual who has no bad immigration record. . . we will tell him he may apply for voluntary departure. We have a form, an I-274. . . it is written in English and in Spanish, and it advises him that he may apply for voluntary departure. . . but at any time before he goes to Mexico, if he wants a deportation hearing, he may have a deportation hearing, any time he wants to see a lawyer, he may see a lawyer. . . . Frequently, the alien will say, "Well, what will happen if I don't accept voluntary departure?" Then [INS officers] will explain to them, "You are entitled to a deportation hearing. You will go before an immigration judge." "But will I be let out?" [Aliens] know there is a bond set for them for \$1,000 or \$2,000 [so the officer will say], "If you can't put up the bond, then you will be kept in custody. You will probably be sent to El Centro where an immigration judge will conduct a hearing."

So we don't blatantly say, "You either sign this or go to jail." The matter is explained to [the alien], and frequently when he realizes that he is going to be held in custody. . . [or] he doesn't want to spend the money [for a lawyer] he says, "All right I will accept voluntary departure and go back to Mexico."¹⁹⁷

Philip Smith, assistant district director in Los Angeles, described processing at INS detention facilities:

Our processing is by and large the filling out of a relatively simple form. . . . We establish [the detainees'] identity, where they live, family ties, and make a determination as to whether they should be allowed to remain in the country, to pursue any form of relief [from deportation] that might be available. . . . Anyone that is

provide certified copies of conviction documents in order to formally deport an alien (August 1979 O'Connor Letter).

¹⁹⁶ Los Angeles Transcript, pp. 184-85.

¹⁹⁷ Ibid., pp. 574-76.

¹⁹² Ibid., p. 182.

¹⁹³ Ibid., p. 602.

¹⁹⁴ Ibid., p. 186.

¹⁹⁵ Ibid., p. 187. According to Mr. O'Connor, the INS attorney must

represented by an attorney and wants to speak to his attorney, can speak to the attorney, and the attorney can be with him during our processing procedure.¹⁹⁸

Regional Commissioner O'Connor also contended that attorneys are allowed to be with their clients during processing. He added:

It should be noted that the information obtained from the alien generally results in the alien receiving voluntary departure and/or instructions to file for benefits available under the Immigration and Nationality Act.¹⁹⁹

Community representatives also questioned the legality of INS procedures during deportation hearings. John Cleary, executive director of Federal Defenders in San Diego, alleged that INS conducted mass deportation hearings. Criticizing these hearings as arbitrary proceedings where most aliens were unrepresented by counsel, he stated:

These large immigration proceedings don't even come close to the principle of due process. . . . There is no justification for the expeditious procedures that [INS] adopts. When they adopt these types of procedures, they deny fundamental fairness.²⁰⁰

Mr. Cleary said that it was inconceivable under due process standards to deport a person and then use a deportation order for a later felony conviction when an alien went to a mass hearing without counsel.²⁰¹

Immigration attorney Robert Miller alleged that mass deportation hearings have been held by INS for years. He commented:

People who are picked up [by INS] in Los Angeles, these "dangerous" folks who may have entered the country without inspection or overstayed their tourist visas, are processed and then whizzed [to] El Centro 200 miles away [from Los Angeles] where reaching family, reaching their attorneys, or their attorneys getting down to reach them, is a tremendous logistical problem. Deportation hearings are

held of a mass nature. . . within the confines of barbed wire, to which the next step is south [to Mexico]. No criminal I know of. . . will. . . be hauled 200 miles away as far as he can possibly get from his family and attorney, and then tried and taken out.²⁰²

According to a representative of the immigration court in the INS Los Angeles District Office, Judge Jay Segal, this type of proceeding is not legal.²⁰³ He told the Advisory Committee that INS does not conduct mass hearings.²⁰⁴ On the other hand, San Diego Deputy District Director Robert Mitton told the Advisory Committee that INS conducts mass hearings when detainees have identical cases.²⁰⁵ He said that INS calls these proceedings MASH, for Multiple Accelerated Summary Hearings.²⁰⁶ He added that they were not a denial of due process because:

The MASH type of hearing is entirely an alien's elective. He is the one who says, "Let's speed this process up and get me out of here. I figure I don't have a chance anyway." We never impose on the person to be present in a MASH hearing.²⁰⁷

In February 1979 Regional Commissioner O'Connor wrote Commission staff that MASH hearings had been discontinued and that none had been conducted for a year.²⁰⁸

Immigration attorneys also complained about the lack of counsel at deportation hearings. They estimated that a majority of aliens who appeared before the Los Angeles immigration court did not have legal representation.²⁰⁹ Immigration attorney Robert Miller stated:

There should be. . . appointed counsel of some kind, from the private or the governmental sector, who is on duty to provide that kind of advice. As to whether it would make any difference in the long run, I assume it would. The [Los Angeles] county bar did a study as to the effectiveness [of counsel in deportation hearings]. Where counsel had appeared, and

¹⁹⁸ Ibid., pp. 183-84.

¹⁹⁹ August 1979 O'Connor Letter.

²⁰⁰ San Diego Transcript, pp. 135, 145.

²⁰¹ Ibid., pp. 135, 145-46.

²⁰² Los Angeles Transcript, pp. 594-95, 601. In response, INS officials stated:

The only aliens sent to El Centro for hearings are those who do not have ties; i.e., family, attorneys, etc., near place of apprehension. If, after being sent to El Centro, ties are established near place of apprehension, the alien is returned for hearing (August 1979 O'Connor Letter).

²⁰³ Los Angeles Transcript, p. 492.

²⁰⁴ Ibid.

²⁰⁵ San Diego Transcript, p. 204.

²⁰⁶ Ibid., p. 203; March 1979 O'Connor Letter.

²⁰⁷ San Diego Transcript, pp. 233-34.

²⁰⁸ March 1979 O'Connor Letter.

²⁰⁹ Los Angeles Transcript, pp. 477-78. According to INS Regional Commissioner Edward O'Connor, the INS Attorney's Association in San Francisco now provides free legal representation to aliens, "resulting in almost all aliens being represented at deportation hearings" (August 1979 O'Connor Letter). Mr. O'Connor did not mention, however, whether or not such a service is being provided in Los Angeles.

had taken an appeal, we tracked cases right from the original hearing right through the appellate procedure. . . . In at least 70 percent of the cases. . . the alien was still here a year later, and in some kind of legal status.²¹⁰

Mr. Miller complained further that aliens were deprived of qualified, full-time foreign language interpreters at the immigration court in Los Angeles which resulted in misinformation to the alien.²¹¹

Immigration Judge Jay Segal responded to these complaints. He said that in most hearings the presence of counsel is not essential to due process because the issues are not complicated. He stated:

Many times the issue may only be the question of voluntary departure, and the judges at Los Angeles are very concerned that individuals are given enough time to be able to leave without the traumatic break that would come with a sudden departure from the United States. . . . We are very concerned that the rights of the alien are protected.²¹²

He agreed, however, that appointed counsel for aliens at deportation hearings was needed:

Attorneys are of tremendous value in connection with assisting an individual to process an application for other benefits such as suspension of deportation where there are many [legal] elements involved. I think you really need an attorney to flush out such a case which requires a showing of extreme hardship. An uneducated individual would have a very hard time understanding that concept.²¹³

Judge Segal also told the Advisory Committee that the immigration court in Los Angeles had inadequate interpreter services. He stated that there was only one full-time Spanish-speaking interpreter at the Los Angeles immigration court, with 60 to 70 percent of the cases involving aliens who spoke only Spanish. He commented, however:

Interpreters are not always available when we need them [but]. . . I don't think aliens have any trouble understanding their rights. We [judges] explain their rights very carefully. . . . If an interpreter does not correctly translate, it is possible. . . . I really have no idea what the interpreter is saying. Our interpreters are sworn to tell the truth, and that's what we rely on.²¹⁴

Judge Segal reported other problems in the immigration court such as: the lack of court transcribers and the budgetary dependence and physical proximity of the immigration court to the INS district office (the Los Angeles immigration court is located on the same floor as the INS district director's office). Because of the lack of transcribers, he said, records may not be transcribed for a period of up to 2 years, creating onerous delays for those individuals at hearings who want to immigrate to the U.S. He added:

When the case finally comes back to us after it has been transcribed, we have forgotten what the case was about. We have to spend a tremendous amount of time trying to remember what the case was about, and, in many cases, the law has changed.²¹⁵

Judge Segal credited this problem with the low priority the immigration court receives at INS and stated, "If everyone went to a hearing, it would make it a little difficult."²¹⁶ He also commented:

Immigration judges should be removed from the Immigration Service. . . I think that although the independence of the judges is well known. . . it may be that there is a question about the appearance of independence, in that we are [financially] dependent upon the Immigration Service. . . . It would seem to me that an alien may feel that this is just one long line in the meatpacking processing.²¹⁷

²¹⁰ Los Angeles Transcript, p. 597.

²¹¹ Ibid., pp. 595-96.

²¹² Ibid., p. 482.

²¹³ Ibid., p. 483.

²¹⁴ Ibid., pp. 480-81.

²¹⁵ Ibid., pp. 497-98.

²¹⁶ Ibid., p. 499.

²¹⁷ Ibid., pp. 485-86.

Community and Official Views About Federal Immigration Administration and Service

Let us remember while applications are pending the applicants are enjoying the "good life" in the United States so this is no hardship on them. The delays in many cases are caused by the "clever advocates" who take advantage of our appellate and motion system to prolong the stay of their clients and eat up productive staff time, thus delaying the processing of other applications. (Edward O'Connor, Regional Commissioner, INS Western Region, August 20, 1979.)

Congress recently did a study of various Federal agencies, and determined that the Immigration Service provided the worst service to people of any Federal agency. (Peter Schey, Los Angeles immigration attorney, June 16, 1978.)

Application Processing

Community representatives complain that Immigration and Naturalization Service application processing for immigration and naturalization and other public services are inefficient.¹ INS officials concur, but they differ with community representatives on the cause of this problem. INS officials believe it is a result of personnel shortages.² Community representatives perceive the problem as a result of the agency priority given to enforcement functions over service functions.³ Peter Schey of the Legal Aid Foundation in Los Angeles told the Advisory Committee:

While a high percentage of their [INS] budget goes into this law enforcement effort, a low percentage of their concern is directed toward the documentation process. The result of this is

that hundreds of thousands of persons remain in the United States in what can best be described as documentable but as of yet undocumented status. . . . If the Immigration Service went about the business of documenting all of the documentable aliens within the United States, we may well see that the entire [undocumented alien] problem, which they spend so much time trying to convince us exists, may very easily be cut by 50 percent.⁴

INS Regional Commissioner Edward O'Connor told the Advisory Committee that INS does not maintain operation priorities. He said service and enforcement operations are given the same emphasis within the agency.⁵ Other INS officials contended that INS has priorities and, contrary to community opinion, service operations has priority over law enforcement.⁶

¹ Informal hearings before the California Advisory Committee to the U.S. Commission on Civil Rights, "Policies and Practices of the U.S. Immigration and Naturalization Service," Los Angeles, Calif., June 15-16, 1978 (hereafter cited as Los Angeles Transcript) and San Diego, Calif., June 26, 1978 (hereafter cited as San Diego Transcript); immigration interview file, U.S. Commission on Civil Rights, Western Regional Office (hereafter cited as Immigration Interview File).

² Edward O'Connor, regional commissioner, INS Western Region, interview in San Pedro, Calif., Feb. 7, 1978 (hereafter cited as O'Connor Interview); Joseph Sureck, district director, INS Los Angeles District office, interview in Los Angeles, Calif., Jan. 20, 1978 (hereafter cited as Sureck Interview); Los Angeles Transcript, p. 129.

³ Representative Mark Hannaford, written testimony before the California Advisory Committee, Los Angeles, Calif., June 15-16, 1978; Los Angeles Transcript, p. 194; San Diego Transcript, p. 107.

⁴ Los Angeles Transcript, pp. 353-54.

⁵ O'Connor Interview; Los Angeles Transcript, p. 548.

⁶ Los Angeles Transcript, pp. 147, 150, 548. In August 1979 Edward O'Connor agreed:

The [immigration] service does. . . specify priorities. Many of these objectives are related to service to the public. . . . Service to the public, particularly during [Leonel Castillo's] administration has been

TABLE 5.1**Immigrants Born In Asian and Pacific Countries**

Country of Birth	1965	1976	Percent Change
China & Taiwan	4,057	18,823	+ 364.0%
Hong Kong	712	5,766	+ 709.8%
Japan	3,180	4,258	+ 33.9%
Korea	2,165	30,803	+ 1,322.8%
Philippines	3,130	37,281	+ 1,091.1%
Thailand	214	6,923	+ 3,135.0%
Vietnam	226	3,048	+ 1,248.7%
Other Asia	5,426	119,904	+ 266.8%

Source: U.S., Department of Justice, Immigration and Naturalization Service, 1976 Annual Report.

Complaints about service inefficiency included INS failure to provide timely, accurate information on application processing. Immigrant service groups, attorneys, and other community representatives alleged that: 1) persons waited 2 or more hours at INS offices for information, including simple requests for forms, 2) INS required exact change to pay for forms, 3) telephone calls to INS offices for information went unanswered, 4) INS failed to provide interpreters, application forms, brochures, and bulletin boards on immigration law and procedure in languages other than English and Spanish, and 5) INS contact representatives provided incorrect and inadequate advice for processing applications.⁷

Asian immigrants suffer in particular from service inefficiency, according to community representatives. Table I shows the increasing numbers of lawful immigrants from Asian and Pacific countries to the United States since 1965.

emphasized as a priority.

(Letter to Philip Montez, regional director, U.S. Commission on Civil Rights, Western Regional Office, Aug. 20, 1979 (hereafter referred to as August 1979 O'Connor Letter).

⁷ Byron Park, written testimony before the California Advisory Committee, Los Angeles, Calif., Sept. 30, 1977; Los Angeles and San Diego Transcripts; Immigration Interview File.

During fiscal year 1976, Asian immigrants comprised over one-third the total number of immigrants from all countries. Many are likely to reside in California; INS reported that in 1976 more immigrants indicated an intention to reside in California than in any other State.⁸

Beverly Yip, executive director of the Union of Pan Asian Communities in San Diego, stated:

[There is a] lack of equal access to INS service provided Pan Asian individuals. There is a lack of bilingual staff in Pan Asian languages. The numbers of immigrants and visitors from the Asian-Pacific countries are second only to immigrants from the Western Hemisphere, and it is projected that their numbers will increase during the rest of this century. Efforts towards hiring more bilingual staff to more effectively serve clients from the Pacific Asian countries is needed.⁹

⁸ U.S., Department of Justice, Immigration and Naturalization Service, 1976 Annual Report, pp. 6,8. In fiscal year 1976, 398,613 persons were admitted to the U.S. as immigrants; of these, 149,881 individuals came from Asian and Pacific countries. Numbers of immigrants from these countries are likely to increase because of the refugee programs.

⁹ Beverly Yip, written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978.

In Los Angeles, Asian and Pacific community representatives consider the lack of Asian personnel and interpreters who speak Asian languages to be a major problem, thereby resulting in misinformation about application procedures.¹⁰ The INS Western Region reported that in February 1979, 58.8 percent of all employees in the region were fluent in Spanish; however, fluency in all Asian languages was under 2 percent.¹¹

According to Los Angeles immigration attorney Pedro Lamdagan, other factors contribute to hardships for Asians:

If the complexity of the law were simplified for the benefit of applicants and petitioners through outreach organizations or service agencies for local minority groups, it would resolve a lot of difficulties and time-consuming waste of energy to get papers and petitions done correctly. . . . There is a lot of misunderstanding about the law in the minds of a lot of aliens. They are reluctant to go to [INS] because they ask, "Hey, am I going to be sent downstairs to the basement [INS detention facility] if I ask this question?"¹²

Another complaint about public service relates to delays in the adjudication and processing of applications.¹³ Attorney Peter Schey told the Advisory Committee:

It is a matter of common knowledge that the delays in processing applications, both for naturalization and for immigration, are extremely long within the Immigration Service, ranging anywhere from 3 months to 2 years on applications that Congress, when it enacted immigration laws, contemplated would take 2 weeks.¹⁴

Other witnesses complained that processing delays on some applications took as long as 3 and 4 years.¹⁵

¹⁰ Immigration Interview File, Asian community representatives; Los Angeles Transcript, pp. 11, 16-17.

¹¹ Edward O'Connor, regional commissioner, INS Western Region, letter to Laurie Campbell, U.S. Commission on Civil Rights, Mar. 6, 1979 (hereafter cited as March 1979 O'Connor Letter). There are no foreign language requirements for INS job applicants with the exception of part-time interpreters. INS officials state, however, that foreign language ability is given consideration in hiring (San Diego Transcript, pp. 206-07, 266; Joseph Sureck, district director, INS Los Angeles District Office, letter to Sally James, U.S. Commission on Civil Rights, Feb. 27, 1979 (hereafter cited as Sureck Letter)).

¹² Los Angeles Transcript, pp. 23-24.

¹³ Immigration Interview File.

¹⁴ Los Angeles Transcript, p. 353.

¹⁵ *Ibid.*, pp. 16, 159; San Diego Transcript, p. 107.

¹⁶ Written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978.

¹⁷ San Diego Transcript, p. 107; Los Angeles Transcript, p. 158.

¹⁸ Los Angeles Transcript, pp. 128, 160, 173; San Diego Transcript, pp. 128-29; Immigration Interview File.

Beverly Yip described problems encountered in the United States by Asians who submit immigration applications:

Undocumented aliens of the Pan Asian communities are usually students or visitors who have overstayed their visits. Some jumped ship, but the greater percentage left their countries and entered the United States legally. Their problems begin when they decide they want to extend their stay, maybe even remain as resident aliens or marry. They get caught up in the bureaucratic delays and tangles of the Immigration and Naturalization Service. Pan Asian students are in special jeopardy when they are in financial need and are caught in an untenable position of either working illegally and being subject to deportation for violation of INS laws, or going home and giving up their studies.¹⁶

According to other community representatives, the lack of documentation as a result of application delays can separate families, seriously affect a person's employment and travel opportunities, and create a risk of deportation.¹⁷

Community persons also complained that files are lost in INS offices necessitating refile of applications.¹⁸ Related to this problem is the alleged difficulty in obtaining information on the status of applications.¹⁹ Congressman Mark W. Hannaford wrote the Advisory Committee:

On March 14 [1978] members of Congress received a letter from the Los Angeles office of INS. In effect, the letter informed us that requests for status reports on constituent cases must be submitted in writing and in duplicate, and that we were not to make such requests unless cases have been pending for at least eight months.²⁰

¹⁹ Los Angeles Transcript, pp. 178-79; San Diego Transcript, p. 155; Immigration Interview File.

²⁰ Written testimony before the California Advisory Committee, Los Angeles, Calif., June 15-16, 1978. Congressman Hannaford indicated that following congressional concern over INS' letter, a congressional inquiry desk was established at the INS Los Angeles office to handle requests on behalf of constituents.

According to immigration attorneys in Los Angeles, an attorney or service group representative must personally contact persons in charge at INS offices in order to receive answers on the progress of applications or to locate lost documents, while persons without representation are not able to resolve application problems with INS (Los Angeles Transcript, pp. 178, 193). INS officials stated that INS had not established a written procedure whereby applicants could complain about administrative problems; however, attorneys and other representatives could discuss complaints with department heads and other officials at INS (Los Angeles Transcript, p. 178; Sureck Letter).

In San Diego immigration attorney Fred Hetter stated that attorneys often fail to receive final decisions from INS on their clients' applications.²¹

INS personnel attitudes were criticized for contributing to poor service. Some people complained that contact representatives answered questions briefly and impatiently, failed to explain options, and summarily dismissed persons.²² Others said examination officers were unpleasant during interviews with applicants and made arbitrary and unreasonable requests for fraud investigations and documentation to support applications.²³

While INS officials conceded that public service was inefficient, they indicated several improvements made by INS. These included:

- 1) the development of more efficient procedures for information lines and personal interviews;
- 2) the initiation of computerized recordkeeping; and
- 3) the utilization of task forces to alleviate application processing backlogs.²⁴

In addition, Regional Commissioner Edward O'Connor wrote Commission staff in 1979 about improvements in courtesy and public service training:

Every effort is made to train contact representatives to be courteous, helpful, knowledgeable, and efficient. We send them to Office of Personnel Management courses on serving the public; we give them inservice training; and we now have a college professor working with our Los Angeles contact representatives for the

summer in an effort to further improve their services.²⁵

Mr. O'Connor added, however, that because of the long lines and numbers of persons served by INS, the public becomes frustrated and impatient, with the result that they are rude to INS staff and "consider any behavior by INS employees to be unsatisfactory."²⁶

Commission staff received statistics from a 1978 task force at the INS San Diego District Office which indicated minor improvements in that office's applications processing backlog. In January 1978, 5,631 applications for all types of benefits were pending prior to a task force effort; in June 1978, following the task force effort, approximately 4,000 applications were pending.²⁷ Former District Director Joseph Sureck told the Advisory Committee that at the Los Angeles office the lack of permanent clerical staff prevented the timely disposal of cases despite several task force efforts.²⁸

Community representatives contend that task force efforts have not been successful because only certain types of applications are adjudicated under the task force system. They stated that task forces at the Los Angeles office did not adjudicate applications for documents such as lost alien registration cards, U.S. citizenship identification cards, and derivative citizenship certificates.²⁹ Attorney Barbara Honig said:

People who do not have documentation, those [for example] who have lost their residency

²¹ San Diego Transcript, p. 132.

²² Los Angeles Transcript, pp. 9-10; Agnes Matica, assistant executive director, International Institute of Los Angeles, interview in Los Angeles, Calif., Jan. 6, 1978.

According to Elizabeth Strong, chief administrative officer at the INS Los Angeles District office, complaints about contact representatives are often unjustified. She told Commission staff, "People [applicants for information] hear what they want to hear" (interview in Los Angeles, Calif., May 16, 1978 (hereafter cited as Strong Interview)).

²³ Pedro Lamongan, attorney, interview in Los Angeles, Calif., May 1978; Bill Hing, staff attorney, Chinatown Legal Aid Office, interview in San Francisco, Calif., April 21, 1978; Barbara Honig, project director, Immigration Law Clinic, interview in Los Angeles, Calif., Jan. 3, 1978; Los Angeles Transcript, pp. 12-14, 463-64. According to George Lee, president of the Southern California Chinese Lawyer Association, INS requires Chinese applicants to obtain documentary evidence from China, in place of sworn affidavits from witnesses of family relationships, despite the difficulty of obtaining such documents from that country (pp. 12-14). Mr. Lee also alleged that Chinese applicants, unlike other applicants, were required to take blood tests to prove a family relationship if a father and mother were petitioning to immigrate their child (p. 14). Former District Director Joseph Sureck responded, "[Blood tests] are not only for Chinese. We also have blood tests for Yemenites." He said that blood tests are required for any person who is unable to submit documentation due to poor or nonexistent vital statistic records in his or her country of origin and the interviewer has doubts of a family relationship (Los Angeles Transcript, pp. 504-05).

Jack Fortner, assistant district director for the examinations branch of the INS Los Angeles office, told Commission staff that examinations officers use only objective criteria under Federal law to adjudicate applications; any denial of an application can be reconsidered by the district director on the applicant's request (interview in Los Angeles, Calif., Feb. 9, 1978). Some community representatives alleged, however, that inequities in adjudicating applications resulted from the lack of consistency in interpreting Federal law among INS district offices (Los Angeles Transcript, pp. 132-33, 161; George Lee, attorney, interview in Los Angeles, Calif., May 19, 1978).

²⁴ Los Angeles Transcript, pp. 145-50, 175, 503-04; James O'Keefe, district director, INS San Diego District office, interview in San Diego, Calif., May 1978 (hereafter cited as O'Keefe Interview); Sureck Interview. Mr. O'Keefe stated that task forces are comprised of district office personnel who adjudicate applications continuously for temporary periods of approximately 30 days at INS offices.

²⁵ August 1979 O'Connor Letter.

²⁶ Ibid.

²⁷ Robert Mitton, deputy district director, INS San Diego District Office, written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978.

²⁸ Los Angeles Transcript, pp. 569-70.

²⁹ Los Angeles Transcript, pp. 166-69, 171-72. Derivative citizenship certificates are issued to persons born outside the United States to U.S. citizen(s) (8 U.S.C. §§1431-1433 (1976), as amended by Act of Oct. 5, 1978, Pub. L. No. 95-417, §§4-6, 92 Stat. 917).

cards, should in fact be given a high priority because they are in the community without documentation.³⁰

INS official Philip Smith responded:

Something has to suffer with a limited work force. . . . We realize that many of these people do not have documents. We realize that we have backlogs in these areas, but there again, we attempted to develop more time to the granting of [other] applications rather than replacing lost alien registration cards. It is a matter of where you place your priorities.³¹

In a 1979 letter to Commission staff, INS Regional Commissioner Edward O'Connor emphasized that the task force system has been effective in reducing backlogs at district offices. He also stated that other public service improvements have been made since 1978, including:

- 1) the development of a plan to place taped answers to commonly asked questions over the telephone to save answering time;
- 2) the initiation of a concept that would allow the location of files and the finding of the status of applications to be aided by computer;
- 3) the creation of an outreach program to use volunteer organizations to give information and forms to persons seeking immigration services;
- 4) the establishment of a satellite office in Santa Ana, California, to cut travel time to the INS Los Angeles office for applicants; and
- 5) more extensive training to contact representatives who answer public questions and placing of additional staff in the record room of the Los Angeles District Office.³²

Personnel

During the Advisory Committee's immigration study in California, many persons criticized INS for failing to train its employees to prevent abuses of their broad powers.³³ Community representatives credited abuses to the combination of service and

enforcement responsibilities within the same agency. Jesse Ramirez of the Chicano Federation in San Diego wrote the Committee:

The law enforcement mentality prevails throughout INS. . . . Applicants, as well as information seekers, are often treated as criminals instead of persons who are seeking services to which they are entitled. Infractions of the merest law or rule are treated as capital offenses. Persons who choose to enter the United States through means other than through a port of entry are hounded as if they are perpetrators of the most heinous crimes. . . . INS is sorely in need of massive retraining. . . . Countless documented cases of violations of civil rights, inhumane treatment, racism, brutality defy the urgent need for such training.³⁴

John Phalen, executive director of the International Institute of Los Angeles, also commented:

The "mixture" of service and enforcement mechanisms within the INS may be an illustration of the ambivalence [at INS] in terms of a distinct and adequate service response to the newcomer.³⁵

According to Ernest Azhocar, executive director of Involvement of Mexican Population in Active Community Tasks (IMPACT), an immigrant service agency in San Diego, INS officers' mistreatment of the public is a "tremendous problem." He added:

This is a matter of administration. This is where INS has to demand that the people crossing those lines are human beings, and they should be treated as human beings.³⁶

Community representatives recommended that INS training be improved to include instruction in civil and human rights, cultural sensitivity, public relations, and psychology.³⁷ Several Los Angeles attorneys recommended that INS incorporate into training programs strict public conduct guidelines for officers.³⁸ Further, according to John Phalen of the International Institute of Los Angeles, INS

California Advisory Committee, San Diego, Calif., June 26, 1978; Steve Hollopeter, staff, National Lawyers Guild, interview in Los Angeles, Calif., Jan. 4, 1978; John Phalen, executive director, International Institute of Los Angeles, interview in Los Angeles, Calif., Jan 6, 1978; Los Angeles Transcript, pp. 187-88; San Diego Transcript, pp. 61, 74.

³⁵ Peter Schey, directing attorney, Legal Aid Foundation, Legal Services Aliens' Rights Program, interview in Los Angeles, Calif., Jan. 17, 1978; Robert Miller, attorney, interview in Los Angeles, Calif., Jan. 10, 1979 (hereafter cited as Miller Interview). Mr. Miller stated that the discretion of INS employees was originally intended to be ameliorative, but that this discretion was regularly exercised in a punitive manner by INS personnel.

³⁰ Ibid., pp. 193-94.

³¹ Ibid., p. 175.

³² August 1979 O'Connor Letter.

³³ Immigration Interview File; Alberto Garcia, written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978.

³⁴ Written testimony before the California Advisory Committee, San Diego, Calif., June 26, 1978.

³⁵ Written testimony before the California Advisory Committee, Los Angeles, Calif., June 15-16, 1978.

³⁶ San Diego Transcript, pp. 172-73. Mr. Azhocar stated that his clientele complained primarily of verbal abuse by INS personnel.

³⁷ Jesse Ramirez and Alberto Garcia, written testimony before the

service personnel lack cultural sensitivity when they determine immigrants' needs.³⁹ He added:

The INS management team has come up through the ranks of a law enforcement training. . . . We are the only major immigrant-receiving country in the world that has nothing in the way of a service policy with regard to foreign-born persons once they arrive here. . . . I recommend. . . developing a service mission from which can flow a more adequate sense of professionalism. . . and, in general, a more positive approach to accomplishing the service intent of the law.⁴⁰

While improved training was advocated by many persons as a solution to abuses of discretionary powers, some individuals believed that INS needed to employ more minority staff to become more responsive to its clientele.⁴¹ The propriety of this recommendation was brought into question during the Advisory Committee's 1978 informal hearing in San Diego. Community representative Alberto Garcia told the Committee that minority INS officers were creating the most problems for persons in San Diego.⁴² Ernest Azhocar of IMPACT clarified the issue:

[This problem] is possible because sometimes these [officers] have tremendous burdens on them. For example, the fact that it is a minority or Mexican border patrol officer I come across, perhaps because he is one of mine I expect him to understand a little more. . . . On the other hand, he is also quite aware that an Anglo border patrol officer is looking at him. It puts him in quite a difficult position. . . . [In spite of the alleged abuses] with a Latino you [a Hispanic] see someone you identify with. You feel at ease and you can talk. It is an instant communication.⁴³

Former immigration officer Edward Begley concurred:

[INS] minority employees are under a great deal of pressure to put out the work and show

that they are backing up the Immigration Service's [law enforcement] attitude.⁴⁴

According to Alberto Garcia it is a practice of INS to remove from office or fail to promote officers who take too lenient an attitude toward aliens in conducting law enforcement responsibilities.⁴⁵ INS Regional Commissioner Edward O'Connor responded:

The service policy is that all officers and employees will treat each person with whom they come in contact as separate individuals. Officers are taught that it is their duty to serve the public in a fair and impartial manner; also, that the public is entitled to courteous, fair, impartial, and sympathetic treatment. The officers are trained to be courteous, patient, firm, and frank. None of our employees have been removed or denied promotion because they have taken an attitude which is "too lenient toward aliens."⁴⁶

INS officials indicated that both INS hiring and training programs were geared to produce a humane, professional staff. According to border patrol official Donald Cameron, INS looks for job applicants who relate well to the public:

We are looking for persons who will dedicate themselves to their job, who will treat persons properly. A lot of questions that we ask in our interviews are designed to test how the person would act under stress, how they would relate to the person with whom they are dealing. If it doesn't appear that the person meets these qualifications, the recommendation will be against hiring.⁴⁷

Deputy Chief Patrol Agent Albert Franco said that although there are no educational job requirements for border patrol officers other than the ability to write and speak adequately, applicants are expected to show a high standard of conduct during job interviews, including a respect for the rights of others and an ability to act logically and humanely under stressful conditions.⁴⁸

³⁹ Los Angeles Transcript, pp. 161, 187-88.

⁴⁰ Los Angeles Transcript, pp. 161, 176; written testimony before the California Advisory Committee, Los Angeles, Calif., June 15-16, 1978.

⁴¹ San Diego Transcript, pp. 170-71, 177-78.

⁴² Ibid., pp. 58-59, 75-76.

⁴³ Ibid., pp. 172, 177-78.

⁴⁴ Ibid., p. 295.

⁴⁵ Ibid., p. 76-77.

⁴⁶ March 1979 O'Connor Letter.

⁴⁷ San Diego Transcript, pp. 205-06.

⁴⁸ Albert Franco, acting chief patrol agent, U.S. Border Patrol, Chula Vista sector, interview in San Ysidro, Calif., Feb. 1, 1978 (hereafter cited as Franco Interview). According to Fred Hetter, San Diego immigration attorney, the low job qualifications for border patrol officers is more of a problem than INS training since the low qualifications result in low quality applicants (interview in San Diego, Calif., Jan. 26, 1978).

INS Deputy District Director Robert Mitton told the Advisory Committee that persons applying for officer positions at district offices, other than persons who are part of the INS upward mobility program, must take a

Mr. O'Connor told Commission staff that INS hiring programs emphasize minority recruitment. At the Advisory Committee's informal hearing in Los Angeles, he stated that INS conducts an extended effort to recruit Hispanics, adding that the INS Western Region maintains a special emphasis program for their recruitment. Although a similar unit for the recruitment of Asians does not exist, Mr. O'Connor noted that an applicant for a position with INS who is bilingual in languages indigenous to Asian countries may be given "the benefit of quality ranking factor in competing for a job."⁴⁹

Statistics on minority staff received from the INS Western Region show that minority representation in officer and management positions is low, with Hispanics representing the greatest percentage of all minorities. In August-September of 1978 the Western Region employed 1,704 officers. Of these, 284 were Hispanic, 50 were Asian, 62 black, and 3 American Indian. Total supervisory and managerial positions in the Western Region were 327 as of August 1978. Of these, 31 were Hispanic, 8 were Asian, 11 black, and 1 American Indian. A higher percentage of minorities existed in contact representative positions, reflecting the need for bilingual personnel in INS offices; however, Asian employee representation was low. In September 1978 the Western Region employed 64 contact representatives, of whom 21 were Hispanic, 8 were Asian, 13 black, and 1 American Indian.⁵⁰

Low percentages of minorities in officer and management positions may be due in part to the INS upward mobility program by decreasing job opportunities for minorities currently outside INS. This program offers job advancement opportunities to

INS employees and is emphasized by INS.⁵¹ According to INS officials, the majority of district office personnel in officer and management positions were hired from lower level INS positions.⁵² Regional Commissioner O'Connor denied, however, that this program hindered minority representation in agency jobs. He stated:

The program works to encourage the advancement of lower-graded employees into higher grades. Because of our success in recruiting minorities recently, any program which helps lower-graded employees to advance should also help minorities who have joined the Service recently.⁵³

Mandatory officer training programs conducted by INS include 3-months schooling at the INS training academy in Glynco, Georgia, and weekly inservice instruction up to 1 year. These training programs emphasize immigration law and Spanish language instruction, and officers must successfully complete these programs before they are given journeyman positions.⁵⁴ Contact representatives also receive formal instruction; they attend 3-week classes in immigration law and periodic courses sponsored by the Federal Government in law and public relations.⁵⁵ Some INS officials told the Advisory Committee that officers did not receive mandatory instruction in cultural and human relations.⁵⁶ According to Assistant District Director Philip Smith, "I think there is some, but probably not as much as there could be."⁵⁷ Edward O'Connor stated that officers receive instruction at the INS training

civil service examination to qualify as applicants, and that they must have a college degree to qualify for the exam (San Diego Transcript, p. 209).

⁴⁹ O'Connor Interview; Los Angeles Transcript, p. 564; March 1979 O'Connor Letter.

⁵⁰ March 1979 O'Connor Letter. Officer figures provided by INS include district office personnel in criminal investigations, detention and deportation, and examinations and border patrol officers.

Representation by women in 1978 included 160 officers, 31 supervisors and managers, and 54 contact representatives.

⁵¹ Strong Interview.

⁵² INS official Robert Mitton told the Advisory Committee that 60 percent of INS officers were hired from INS ranks (San Diego Transcript, pp. 209, 226). Regional Commissioner Edward O'Connor wrote Commission staff that 99 percent of INS management personnel started out in lower level INS positions (March 1979 O'Connor Letter).

Some INS officials indicated that INS had difficulty in recruiting minorities because of the law enforcement responsibilities of INS officers (Robert Mitton, deputy district director, INS San Diego District Office, interview in San Diego, Calif., Jan. 30, 1978 (hereafter cited as Mitton Interview); Franco Interview). Mr. O'Connor said, however, that the enforcement aspect did not discourage minority applicants, and that INS had the highest percentage of minorities in any Federal agency (O'Connor Interview; Los Angeles Transcript, p. 564).

⁵³ August 1979 O'Connor Letter.

⁵⁴ O'Connor Interview. Various other types of training are available to INS officers and management personnel on a voluntary basis following formal instruction, but this training does not include public and cultural relations. Both governmental and nongovernmental sources sponsor training courses and seminars lasting from 1 to 5 days ranging in subject matters of personnel management, artismuggling, liaison with other agencies, court procedures, secretarial skills, time management, and executive development. In addition, INS sponsors an extension training program utilizing the correspondence method of instruction. Examples of courses of study are immigration law and procedures, employee authority, personnel management, and supervisor development courses. While these courses are voluntary, an employee may receive points for enrolling in these correspondence courses which count toward his or her promotion score (Sureck Letter; Edward O'Connor, regional commissioner, INS Western Region, letter to Sally James, U.S. Commission on Civil Rights, Mar. 24, 1978 (hereafter cited as 1978 O'Connor Letter); San Diego Transcript, pp. 208, 235-36, INS, *Extension Training Program Catalogue* (1974)).

⁵⁵ March 1979 O'Connor Letter.

⁵⁶ Los Angeles Transcript, p. 551; San Diego Transcript, p. 234.

⁵⁷ Los Angeles Transcript, p. 181.

academy in Latin American culture (4 hours) and human relations training (16 hours).⁵⁸

While INS formal training programs include some instruction in cultural or human relations, INS officials indicated that employees receive extensive informal instruction in these areas. They stated that INS officers receive attitudinal and cultural training from their supervisors during their probationary period as officers and are expected to learn to handle sensitive situations and act calmly under stress.⁵⁹ Former District Director Joseph Sureck told the Advisory Committee:

I am certain, although I can't document it now, that in all of our courses we deal with the personal relationship, or how a person should conduct himself, especially investigators and especially the border patrol, especially our contact representatives, our immigrant inspectors, because they are all dealing with people.⁶⁰

Further, Regional Commissioner O'Connor wrote Commission staff that officers must certify in writing that they have carefully studied the INS officer's handbook, *A Guide for Proper Conduct and Relationships with Aliens and the General Public* (M-68, 1972), and make the contents the basis for conduct while on duty; officers are also expected to be familiar with INS administrative manual instructions on conduct and ethics in the performance of official duties.⁶¹ In an interview with Commission staff, San Diego Deputy District Director Robert Mitton said that indepth training was needed at INS offices in human relations and the "golden rule" concept.⁶²

Complaint Procedure

Many community representatives stated that effective procedures to receive and investigate community complaints against INS personnel were needed to control numerous instances of misconduct by employees.⁶³ Many persons contended that INS

complaint and discipline procedures were inadequate to prevent misconduct.⁶⁴

INS procedures for employee misconduct, including complaint and discipline processes, are contained in INS manuals which can be reviewed by the public at INS offices. Whenever a citizen complaint is received by a local INS office, INS procedures require that office to immediately refer the complaint to its regional office. The regional office records all incoming complaints and forwards them to the Office of Professional Responsibility (OPR) at the INS Central Office in Washington, D.C. Once OPR receives the complaint, it decides if the complaint should be investigated by regional or central office personnel. The more serious complaints, involving allegations of criminal conduct and civil rights violations, are investigated by INS personnel under the direction of the Central Office; these complaints are also referred to FBI for investigation. All other complaints are investigated on a regional level, and INS investigators are chosen by regional commissioners from uninvolved local offices.⁶⁵

If a complaint is sustained through an investigation, either by the FBI or INS, administrative action taken by INS against the employee is decided by a district office director or chief border patrol agent upon the respective recommendation of a deputy director or deputy chief patrol agent. Deputy district directors or deputy chief patrol agents make recommendations based on a review of several items, including U.S. Department of Justice guidelines for disciplinary action, the recommendation for discipline from the regional commissioner, the facts of the case, and the officer's written reply to the complaint. Final disciplinary decisions are reviewed by the regional commissioner. According to Regional Commissioner Edward O'Connor, "The regional commissioner is likely to concur with the district

⁵⁸ March 1979 O'Connor Letter. Mr. O'Connor also told the Advisory Committee in 1978 that a proposal was being researched at the University of Hawaii to provide educational guidelines for cultural awareness classes in Asian cultures for all INS officers (Los Angeles Transcript, p. 552). In this letter, he said he was unaware of any plans being made by INS to implement similar programs for Hispanics beyond the aforementioned training.

⁵⁹ O'Connor and Mitton Interviews.

⁶⁰ Los Angeles Transcript, p. 551.

⁶¹ March 1979 O'Connor Letter.

The INS officer's handbook contains INS formal standards of conduct. These standards emphasize the importance of treating persons properly and using "the technique of reversing the situation to determine how it looks from the other man's point of view." Under the handbook, examples of treating persons properly include: never using a vulgar, arrogant, or

unpleasant manner; sparing aliens unnecessary embarrassment in their relations with INS; avoiding giving inaccurate information to the public, and having preconceived notions of guilt or innocence which may "preclude the true administration of justice"; treating women in an inoffensive manner; and never using physical force unless in self-defense or when necessary to prevent an escape. Conduct absolutely forbidden by the handbook includes: remarks of a sarcastic or "kidding" nature regarding a person's nationality, name, religion, or race; the abuse of authority by unfair discrimination in the rights to which aliens are entitled; and the use of force and "third degree methods" to obtain information and to force confessions.

⁶² Mitton Interview.

⁶³ Immigration Interview File.

⁶⁴ Ibid., Los Angeles Transcript, p. 464; San Diego Transcript, p. 55.

⁶⁵ O'Connor Interview and telephone interview in San Pedro, Calif., July 6, 1979; INS, *Operating Instructions*, §287.10 (1978).

director's decision, particularly if the case has national implications."⁶⁶

Community representatives criticized INS handling of complaints. Some persons alleged that INS was unresponsive to community complaints about personnel misconduct.⁶⁷ Alberto Garcia of San Diego stated:

You have got to go to the regional office or you are going to go to the Central Office, or you are going to go to the Attorney General, and it is going to stay there for a year, or whatever, because you don't get a response.⁶⁸

Ernest Azhocar of San Diego's IMPACT told the Advisory Committee that sending complaints away to other INS offices delayed the resolution of complaints locally and increased antagonism between INS and the community.⁶⁹

Some community representatives alleged that disciplining employees was not an INS priority.⁷⁰ Referring to his clientele's allegations of beatings by border patrol officers, Federal Defenders Executive Director John Cleary told the Advisory Committee:

We have brought them to the attention of the border patrol, FBI, Department of Justice, and we have received very little response. . . . [When] we sought some type of investigation of these matters [there was] what I would call a cooperative or protective law enforcement misuse. You will not find law enforcement or FBI looking into these cases [in order] to bring actions against border patrol officers.⁷¹

He recommended that an independent investigative agency be established to evaluate complaints of misconduct.⁷² In Los Angeles, recommendations concerning the investigation of complaints against INS officers were similar. Delfino Varela, representing the Mexican American Social Service, commented to the Advisory Committee:

There is no structure within INS where complaints against inappropriate behavior by individual immigration officers can

be . . . impartially evaluated. . . . I understand that INS now has a national advisory commission. I would like to see the functions of that commission broadened to include the power to hear complaints of inappropriate behavior by INS officers.⁷³

According to other community representatives, many people do not file complaints about mistreatment at INS for various reasons, including fear of INS retaliation, fear of government contact in general, humiliation, and a belief that their reports will not receive proper attention by INS personnel.⁷⁴ Representatives of Immigration Service agencies also stated that persons have given up reporting abuses to INS because these abuses are so numerous; others commented that cases of mistreatment cannot be remedied when the alleged victims have been sent out of the country by INS.⁷⁵

INS representatives in San Diego stated emphatically that they were responsive to complaints from the community.⁷⁶ Immigration Judge Jay Segal reported to the Advisory Committee in Los Angeles:

One of my duties has been in the past to act as a hearing examiner in personnel proceedings, proceedings that are brought for improper conduct that an Immigration Service officer may have been involved in. I know as a fact that when improper conduct is brought to the attention of the appropriate authorities, the Service is quick to act and quick to investigate, and if appropriate, quick to start proceedings.⁷⁷

Regional Commissioner Edward O'Connor told Commission staff that all complaints against INS personnel, no matter how trivial, were thoroughly investigated.⁷⁸ He also stated:

Disciplining employees is, of course, not the reason for the existence of INS. But it is important that we administer the law impartially, and thus following up on instances where it is alleged that this is not the case is a very high priority item. . . . The placement of the Office of Professional Responsibility as a staff arm of

⁶⁶ O'Connor Interview; 1978 O'Connor Letter; INS, *Administrative Manual*, §2235 (1975).

⁶⁷ Robert Olmos, staff attorney, Western Center for Law and Poverty, Inc., interview in Los Angeles, Calif., Jan. 4, 1978; Miller Interview.

⁶⁸ San Diego Transcript, p. 55.

⁶⁹ *Ibid.*, pp. 173-74.

⁷⁰ Morris Baller, director, Developmental Litigation Department, Mexican American Legal Defense and Educational Fund, telephone interview in San Francisco, Calif., Dec. 27, 1977; Mark Rosenbaum, staff attorney, American Civil Liberties Union of Southern California, telephone interview in Los Angeles, Calif., Jan. 19, 1978.

⁷¹ San Diego Transcript, pp. 138-39.

⁷² *Ibid.*, p. 138.

⁷³ Los Angeles Transcript, pp. 464-65.

⁷⁴ Immigration Interview File.

⁷⁵ San Diego Transcript, p. 104; Denis Campbell, staff attorney, One Stop Immigration Center, interview in Los Angeles, Calif., Aug. 9, 1977.

⁷⁶ San Diego Transcript, pp. 222, 248.

⁷⁷ Los Angeles Transcript, p. 495.

⁷⁸ O'Connor Interview.

the Deputy Commissioner is an indication of how important this function is held.⁷⁹

Commission staff received information from the INS Western Region on complaints against INS employees in that region. These statistics show that few complaints reported to the Central Office result in disciplinary action. In calendar years 1977 and

⁷⁹ August 1979 O'Connor Letter.

⁸⁰ 1978 and March 1979 O'Connor Letters. Mr. O'Connor's 1979 letter contained a breakdown of the types of misconduct alleged in 1978 as follows: 41 physical abuse, 10 verbal abuse, 13 bribery, 5 smuggling aliens, 6 sexual abuse or accepting sexual favors, 16 conduct unbecoming an officer, and 18 all others, totaling to 109.

1978 a total of 257 complaints of misconduct were received. Out of these, 20 were sustained in favor of the complainant and resulted in disciplinary action. Also, in 1977, 8 out of 148 allegations of misconduct were referred to the FBI; out of these, none resulted in criminal prosecution or disciplinary action by INS.⁸⁰

He did not state, however, whether the complaints that were sustained were investigated by the regional or national office. Information on FBI referrals in 1978 is unavailable.

Findings and Recommendations

INS practices reflect the ambivalent national attitude toward the immigration of aliens into the United States. First, while many persons eligible for benefits under immigration laws experience delays in services, INS expends a major effort apprehending aliens and sending them out of the country. Second, the Federal Government's enforcement effort is not applied equally to every racial and ethnic group. Despite evidence that many undocumented aliens from countries other than Mexico live in the United States, INS statistics show that enforcement efforts focus on Mexican nationals. Third, INS does not fulfill its service responsibilities to aliens of all nationalities, particularly Asian and Pacific peoples who represent a large percentage of annual immigrants to the United States.

Community complaints about INS operations focused on agency practices and policies, as well as misconduct by INS employees in both enforcement and service. INS officials stated that personnel receive extensive training and supervision, and they denied allegations that their staff abused persons' rights. The Advisory Committee questions, however, the effectiveness of training and supervision at INS because of complaints they received about mistreatment of and disrespect toward minorities and about civil and constitutional rights violations by individual employees. Further, although Federal immigration officials emphasized the civil nature of INS proceedings, the Advisory Committee found that immigration policies and practices involving the entry, apprehension, and departure of aliens often had the effect of treating persons as harshly as criminals or worse.

INS representatives acknowledged the inefficiency of INS services to the public, however, they denied the existence of an agency enforcement priority and provided evidence of agency efforts to improve services, particularly application processing. While the Advisory Committee is aware of these preliminary improvements, it also recognizes that many persons do not receive adequate immigration services.

Findings

1. Inadequate demographic, economic, and social data on undocumented aliens in the United States preclude accurate determination of their effect on American society and create governmental policies based on speculation and myths.
2. INS enforcement policies and practices have a discriminatory effect on Hispanic citizens and aliens in southern California.
3. 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.
4. Authority for INS area control and border control operations is not clearly defined and such operations do not conform to constitutional principles concerning individual rights.
5. INS surveys of neighborhoods and places of business are not based on sufficient evidence of immigration law violations.
6. Many undocumented aliens who are apprehended by INS officers in southern California leave the country without being afforded due process rights.

7. State and Federal Governments differ on the role and authority of local police regarding immigration law enforcement and do not provide adequate guidelines for local police conduct.
8. INS officials in southern California were unable to agree on the definition of their service function, and they exhibited confusion over what service and enforcement responsibilities entailed.
9. Inadequate INS service has deprived many individuals of benefits under the Immigration and Nationality Act and of necessary documentation regarding immigration and citizenship status.
10. INS hiring practices have failed to produce staff in southern California who are characterized as generally courteous and understanding of cultural differences.
11. INS mandatory training programs do not place sufficient emphasis on public relations, cultural sensitivity, and civil and constitutional rights.
12. INS complaint and disciplinary procedures are ineffective in reducing community complaints about verbal and physical abuse by personnel at INS.
13. The exercise of discretionary power by INS officers performing enforcement and service functions is not effectively controlled.

Recommendations

The California Advisory Committee requests that the U.S. Commission on Civil Rights recommend:

1. That the U.S. Census Bureau take steps to ensure that its program for the 1980 census includes data collection and publication procedures on the undocumented alien population.
2. That the Select Commission on Immigration and Refugee Policy develop recommendations for immigration legislation which will deal with the issues of the differential treatment of Hispanic undocumented aliens entering or in the United States and the effect of immigration policies and practices on lawful U.S. residents of Hispanic descent.
3. That the Commissioner of INS, under the guidance of the U.S. Attorney General and in conjunction with the INS citizens advisory committee, develop law enforcement guidelines and standards under the INS formal rulemaking process which will ensure that constitutional rights of persons are observed by immigration officers while on duty, and which will be applicable to INS offices nationwide. The following aspects of area control and border control operations should be particularly considered:

- a. Questioning of persons to determine undocumented alien status.
 - b. Use of warrants to enter private property and entries onto such property without warrants.
 - c. Confiscation of documents.
4. That the Commissioner of INS, under the guidance of the U.S. Attorney General and in conjunction with the INS citizens advisory committee, formulate a government policy which prohibits surveys in neighborhoods and businesses for unidentified persons which do not adhere to the fourth amendment of the U.S. Constitution.
 5. That the Commissioner of INS, under the guidance of the U.S. Attorney General and in conjunction with the INS citizens advisory committee, develop procedures under the INS formal rulemaking process which will ensure that due process rights are observed by immigration officers while persons are being held in INS detention facilities and are appearing before INS immigration courts, particularly:
 - a. Improving efficiency of INS immigration courts.
 - b. Providing more language interpreters to persons going through departure proceedings.
 - c. Assuring the fairness of voluntary departure procedures.
 6. That the Select Commission on Immigration and Refugee Policy produce recommendations for immigration legislation which will provide free legal representation to indigent aliens both in INS detention facilities and during proceedings before INS immigration courts.
 7. That the U.S. Attorney General develop a policy providing guidelines and standards on the relationship of local police to enforcement of immigration laws which will assure lawful police activity.
 8. That the Commissioner of INS, under the guidance of the U.S. Attorney General and in conjunction with the INS citizens advisory committee, examine total agency efficiency, determine the relationship of service to enforcement responsibilities, and develop a service policy which will fulfill INS service responsibilities. In addition, a list of public service objectives should be compiled based on needed services, together with timetables for accomplishing these objectives.
 9. That the Commissioner of INS, under the guidance of the U.S. Attorney General and in conjunction with the INS citizens advisory committee, review current hiring and training programs and

levels of supervision concerning INS officers and contact representatives, and produce programs for both service and enforcement operations which will focus on the development of staff who are able to enforce the law based on a realization of the rights of others, and who are able to provide needed services through job and language skills and personal qualities.

10. That the Commissioner of INS issue a directive to all INS managers concerning their responsibilities toward and support of INS complaint and discipline procedures.

11. That the Select Commission on Immigration and Refugee Policy develop recommendations for immigration legislation which will establish devices so that the discretionary power of INS officers will be effectively controlled.

Appendix

Comments from Edward O'Connor, Regional Commissioner, Western Region, Immigration and Naturalization Service, U.S. Department of Justice

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WESTERN REGION
SAN PEDRO, CALIFORNIA 90731

OFFICE OF THE REGIONAL COMMISSIONER

PLEASE REFER TO THIS FILE NO.
WR 71 E17-C

August 20, 1979

Mr. Philip Montez
Regional Office Director
Western Regional Office
U.S. Commission on Civil Rights
312 North Spring Street, Room 1015
Los Angeles, CA 90015

Dear Mr. Montez:

This letter and the attached notes are in reply to your letter of July 25, 1979, in which you stated that where appropriate, our comments will be incorporated in the final report. We are concerned with the concentration of statistics on Southern California in a report about all of California, and on the use of quotations from persons dissatisfied with Immigration & Naturalization Service actions which are followed by remarks of officers from INS, which are often buried in the notes, instead of in the text. In addition, we are concerned with the quotations from Mr. Begley, who was an INS employee who left the Service at our request, when he was not able to complete his training during his probationary period.

We are also surprised that we were not given Chapters I, II and VI to review, since these chapters include your conclusions and recommendations. Perhaps you'll send these later.

We would appreciate seeing another draft of the text, and if this is not possible, believe that the contents of this letter and its attachment should be part of your report.

Sincerely,


Ed O'Connor
Regional Commissioner

Attachment

COMMENTS AND RECOMMENDATIONS ON PARTICULAR PAGES

Page 24, paragraph 1 - Does not preclude any non-immigrants from adjustment of status to immigrant except because of the numerical limitation.

Page 26 - This INS Organizational Structure is incomplete, although it does have most major organizational units in it. It is recommended that the following be added on the Associate Commissioner, Central Office (third level) line: Planning, Evaluation and Budgeting. On the fifth line, you may wish to footnote the terms Examinations, Enforcement and Management as follows: Examinations comprised of Inspections, Adjudications, Naturalization and as of September 10, 1979 Contact Representatives. Enforcement comprised of the Border Patrol, Investigations, Detention and Deportation. Management made up of Budget and Accounting, Personnel, Procurement and Property Management.

On the line under Deputy District Director, add Assistant District Director, Naturalization and add Chief, Trial Attorney. Below this level, you may wish to add Subdistrict and satellite offices.

Page 27 - If you change the organization chart as we believe you should, then change paragraph 2 from "into four branches" into "into six branches." Within the same paragraph, on the third line after "urban areas" recommend that you add "usually at employment sites". In the same paragraph suggest you add "Trial Attorneys represent the government before Immigration Judges in cases of exclusion or deportation. The Naturalization Branch deals with applications for citizenship and proof of citizenship." These two sentences would fit just before the final sentence of the paragraph.

Second paragraph - under Detention and Deportation, it should read: "maintains records of aliens under proceedings."

Last paragraph - "...Border Patrol is the only armed and uniformed division of INS..." Immigration Inspectors and Detention Officers, and Contact Representatives are uniformed. Immigration Inspectors and Detention Officers may carry arms. Detention Officers often do carry arms.

Page 28 - first paragraph - Eliminate Oxnard and San Luis Obispo. These stations now report to the Livermore Sector.

Second paragraph - insert "times" before INS.

Before second INS listed in second paragraph, insert "some".

Third paragraph - insert clerks and naturalization examiners after last word in paragraph.

Page 28 - we do not believe a report about California should only quote figures about southern California. Using more recent data, we recommend that the last paragraph state the following:

As of mid 1979 of an authorized force of 2,093 in California, 653 were performing service functions. This preponderance of effort in terms of enforcement is due principally to the large flow of traffic between the Orient and the United States at Los Angeles and San Francisco International Airports, the many workers and visitors who cross between Mexico and California at ports of entry and the fact that the largest group of undocumented aliens in the United States comes into the United States just south of San Diego.

Last sentence indicates INS officials define Criminal Investigators as Service personnel. Criminal Investigators are officially law-enforcement personnel for retirement purposes.

Penultimate paragraph. Some of our officers perform both an enforcement and a service function.

Chart II is inaccurate and should be eliminated as it does not picture California-- only Southern California.

Page 30 - We are unable to verify Chart II statistics. We can't tell what date or what positions were counted, but we have no record of a large drop in deportation or detention jobs from 1978 to 1979 as Chart II indicates.

Chapter IV, Page 33 - last paragraph - Eliminate the value biased words "dragnet-type searches". The term is offensive and inaccurate.

Last paragraph - INS does not call surveys community surveys and has not done this type of survey for a number of years.

Page 40 - first paragraph - It would seem a contradiction in terms to use a search warrant without legal authority, since a search warrant gives legal authority.

Page 42- Quotation under second paragraph - The idea that INS kidnaps people is absurd.

Page 44, paragraph 1 - The argument presented over the word "property" being crossed out and the term "illegal alien" being substituted and criminal search warrants is no longer valid as rule 41 has been changed to read "persons" as well as "property".

Page 46, quotation - It is very unusual for our officers to handcuff persons.

Page 47, quotation - The complaint that persons are asked pointed questions should be compared to complaints of officers interrupting factory operations. The survey of a factory should be rapid, to avoid interrupting operations unnecessarily. Less than pointed questions would prolong the survey.

Page 48, line 5 - ROBOR Mitton should be Robert Mitton.

Page 49, fourth paragraph - It is simply untrue that a majority of factory surveys in Los Angeles occurred during union organizing activities. No statistics in the report support or could support this statement.

Page 51, paragraph 2 - Mr. Baca's comparison of San Diego to Vietnam is correct to some degree, in that since 1968, this Service has made over 2,000,000 apprehensions in the San Diego area of persons entering the country illegally.

Paragraph 3 - While endeavoring to accomplish our mission, we are dedicated to the protection of the rights of those individuals with whom we come in contact. Due to attacks upon our agents by groups of people ranging in number from 5 to 25, and even more, throwing rocks, bottles, or pieces of metal, it has become necessary to install a heavy metal mesh over all glass areas of vehicles used in the immediate area of the international boundary.

Page 52, paragraph 1 - There is no conflict in enforcement and/or administration of I&NS laws. The Border Patrol appreciates the understanding expressed by Mr. Alberto Garcia that the Border Patrol does respect human rights. However, as to being "police officer, prosecutor, and judge," this is incorrect. Persons in custody are informed of:

- (1) their rights; in Spanish, or in a language they understand and comprehend.
- (2) right to legal counsel, of their choice.
- (3) and their right to see and speak with the Mexican Consul, or Consul of their country.

Their rights are presented to the individual shortly after apprehension.

Page 52, paragraph 2 - Place footnotes 77 and 81 here in the text.

Page 53, last paragraph - Mr. Cameron is the Border Patrol Chief of the Chula Vista Border Patrol Sector, as opposed to San Ysidro Border Patrol Sector.

Page 55, paragraphs 1 and 2 - Comments by Warren Williamson, Chief Trial Attorney, and John Cleary, Federal Defenders Inc. that "Clients detained by Border Patrol are beaten up, and then these officers allege self-defense," reflect a lack of knowledge. If they would only check the records that are readily available to them, they would be aware of numerous incidents where aliens, in an irrational state from glue sniffing, taking drugs, or alcohol, have attacked Border Patrol officers.

While Border Patrol Agents are armed, they often encounter undocumented aliens in groups of 20 to 30. Thus a single armed officer may well be attacked when he is stopping such a group.

To throw a person into a van, or anywhere else, would be grounds for serious disciplinary action, and perhaps dismissal.

Page 56 - Mr. Garcia meets regularly with government officials and we send a representative to this meeting to hear Mr. Garcia's complaints. Specific complaints are followed up by the Service.

Page 57 - The number of complaints received by the Service in the Western Region is far less than 20 per month for the entire Region.

Page 58 - Insert the word independent in the third paragraph before INS. INS has within its Washington Office an Office of Professional Responsibility which is independent of the line of command in the field and Region. It follows up on complaints and reports directly to the Deputy Commissioner of the Agency.

Page 62, last paragraph, second sentence - Principal inspection priorities of respective agencies well defined and do not impede effective border control (inspections).

INS - determines citizenship of applicant for admission - admissibility under I&N Act.

Customs - Examines merchandise coming into United States, assess duties and levies penalties when applicable.

Agriculture - Examines plants, animals and products to determine if items prohibited, restricted or eligible to be brought into the United States.

Page 63 - paragraph 3 - It is very unlikely that lengthy questioning occurs at primary inspections because such questioning would delay too many motorists. Any questioning of more than a few minutes would occur in secondary inspections. Ordinarily, questions become lengthy when there is some indication that fraud may be involved, or smuggling of undocumented aliens or of goods.

Page 64 - This comments also refers to pages 64, 66 and 67 and 105. It is suggested that comments made on pages 64, 66, 67 and 105 by Mr. Edward J. Begley be viewed in light of Mr. Begley's status with INS.

Mr. Begley entered on duty with INS 10/10/76. He was removed for failure to successfully complete the Immigration Inspector Training Program 3/25/78. Mr. Begley appealed his removal to the Federal Employee Appeals Authority. The FEAA sustained the removal on 9/15/78, stating in part, "...It is clear that he was a less satisfactory employee who required more than normal supervision. On review, we find that the reason relied upon has been sustained by a preponderance of the credible evidence."

Re Alberto Garcia statements:

Primary vehicle/passenger inspections average 30-40 seconds per each auto at San Ysidro.

Secondary inspection time determined by presentation of satisfactory evidence of citizenship or documents supporting admissibility.

No ethnic inspection priorities at San Ysidro or evidence of U.S. citizen incarceration.

Re Begley's statement - denial of entry:

Alien applicants for admission without required travel documents (passport-visa), sufficient funds and/or an urgent/emergent need to enter United States are refused admission and freely return to Mexico; they are not "shoved back across the border."

Page 65 - Alberto Garcia statement, documentation - 45 citizenship: Bona-fide evidence of citizenship acceptable for identification/citizenship purposes of United States citizens.

Citizen Identification cards issued upon presentation of acceptable evidence supporting claim to citizenship - card issued within 90 days of application.

Page 66 - Begley statement - physical abuse, forced confessions, and incarceration in refrigerated cells without food and water a blatant falsification of fact and not worthy of further edifications.

Supervisory Immigration Inspectors continuously monitor, through physical presence, inspection activities at all points of primary and secondary inspection.

Page 73, first paragraph - The consequences of an order of deportation are only severe if a person is convicted of illegal entry. An undocumented alien must be given a trial before such a conviction. In fact, few aliens who re-enter after deportation are presented to the U.S. Attorney for prosecution. The "Special permission" required from the Attorney General allowing the alien the right to reapply for entry into the United States is routinely granted provided the alien has a United States citizen spouse or legal alien spouse or children legally residing in the United States.

Page 75, first and second paragraph - Attorney Park and Mr. Hetter make unsubstantiated allegations without specifics. Both of these men are "Officers of the Court" and, as such, they are obligated to take corrective action at the time problems are first noticed.

Page 76, first paragraph - Section 242(b) and Section 244(e) of the I&N Act, passed by Congress, allows voluntary departure to benefit deportable aliens; that is, to provide a manner for deportable aliens to depart without the institution of formal deportation proceedings.

Page 77, third paragraph - Attorneys are allowed to be with the alien during processing. Sometimes the secretary or another employee of the attorney wants to represent the alien during the interview; however, they are informed they must meet the guidelines set out in 8 CFR 292.

Page 78, first paragraph - Mr. Miller is making inflammatory statements, again without facts to support the statements. It should be noted the information obtained from the alien generally results in the alien receiving voluntary departure and/or instructions to file for benefits available under the I&N Act.

Page 78, second and third paragraphs - Mr. Honig and Ms. Lee clearly are not dealing with the same Immigration Courts with which I am acquainted. The Service Attorney must provide certified copies of conviction documents in order to pursue an order of deportation.

Page 80, last paragraph - INS arrests are based on the likelihood of an alien absconding. The only aliens sent to El Centro for hearings are those who do not have ties; i. e., family, attorneys, etc., near place of apprehension. If, after being sent to El Centro, ties are established near place of apprehension, the alien is returned for hearing.

Page 81, last paragraph - At San Francisco the INS Attorney's Association now provides attorneys pro bono publico to represent aliens at special deportation hearings resulting in almost all aliens being represented at deportation hearings. This results in some private attorneys giving up two days each week; however, it may be an unfair burden for these private attorneys to appeal to higher courts--a time-consuming case that takes away from time available for their own paying cases.

Page 86, note 12 - This note is very important to the discussion and we recommend that it be placed in the text of the report.

Page 89, note 52 - The last paragraph of this note, particularly the last sentence of the paragraph should be written within the text.

Page 94, note 141 - The conversation should be within the text, particularly the order by the Attorney General.

Page 98, last paragraph - The Service does use a Management by objective system which does specify priorities. Many of these objectives are related to Service to the public.

Page 98 - Service to the public, particularly during this administration, has been emphasized as a priority.

Page 99 - The Service is now working on placing taped answers to commonly asked questions to answer more questions which come to us over the telephone. In addition, the Service is working on a Model Office Concept which would allow the location of files and the finding of the status of adjudications to be aided by computer. A model of this system, scheduled for Los Angeles in 1980-81 is working in Houston, Texas now. Finally, the Service is working on using volunteer organizations to give information and forms to persons seeking immigration services, through Project Outreach. In 1979, the Service established a new satellite office in Santa Ana to cut travel time for applicants.

In addition to these improvements, the Service is giving more extensive training to contact representatives who answer the public questions, and it is placing more personnel in records rooms in Los Angeles and San Francisco.

Page 100 - Attorney Schey and Ms. Yip complain about processing time. Let us remember while applications are pending the applicants are enjoying the "good life" in the United States so this is no hardship to them. The delays in many cases are caused by the "clever advocates" who take advantage of our appellate and motion system to prolong the stay of their clients and eat up productive staff time, thus delaying the processing of other applications.

Page 101 and 102 - Every effort is made to train Contact Representatives to be courteous, helpful, knowledgeable and efficient. We send them to Office of Personnel Management courses on serving the public; we give them in-Service training; and we now have a college professor working with our Los Angeles Contact Representatives for the summer in an effort to further improve their services. Because of the long lines and numbers of persons to be served, frustrations and impatience build up among the customers being served to the point that they are rude themselves and sometimes consider any behavior by INS employees to be unsatisfactory. While some of the above efforts are passively mentioned in the notes to Chapter V, page 118, item 49, they should be addressed in the report.

Page 102, second paragraph - Where would we be if we did not utilize the task force concept -- it is effective and has accomplished a great deal.

Page 106 - The fifth line of the last paragraph refers to a special unit for the recruitment of Hispanics and the lack of a similar unit for the recruitment of Asians. The term special emphasis program should be substituted for the word unit as we do not have a special unit for this purpose.

Page 107 - We are unable to verify employment figures since we do not know which jobs they considered as officer jobs.

Second paragraph - first sentence - Eliminate sentence. Sentence states that Upward Mobility Program decreases minority job opportunities. In fact, the program works to encourage the advancement of lower-graded employees into higher grades. Because of our success in recruiting minorities recently, any program which helps lower-graded employees to advance should also help minorities who have joined the Service recently.

Page 108 - The word "permanent" in the second line should be changed to "journeyman." They do have a permanent appointment at the beginning.

Page 111 - Disciplining employees is, of course, not the reason for the existence of INS. But it is important that we administer the law impartially, and thus following up on instances where it is alleged that this is not the

case is a very high priority item. Investigators investigating cases of misconduct have never been told that funds or their time are not available for this function. The placement of the Office of Professional Responsibility as a staff arm of the Deputy Commissioner is an indication of how important this function is held.

Page 113, Note 9 - I believe that placing the statement that 58.8% of all employees are fluent in Spanish should be placed in the text.

Page 114, Note 18 - The establishment of a Congressional inquiry desk in Los Angeles is important enough to be placed in the text.

Page 118 and 119 - Item Nos. 49 and 55 contain efforts on the part of INS to develop and instruct employees on the proper methods of dealing with people. These positive statements should appear in the body of the report which seems to emphasize the negative side of INS and its employees.