

**Hearing
Before the
United States
Commission on Civil Rights**

**IMMIGRATION POLICY AND PROCEDURE
HEARING HELD IN
WASHINGTON,
D.C.**

**NOVEMBER 14-15, 1978
Volume I: Testimony**

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or the denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Acting Staff Director*

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Tuesday, November 14, 1978

The U.S. Commission on Civil Rights met in Washington, D.C., Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Frankie M. Freeman, Commissioner; Manuel Ruiz, Commissioner; Murray Saltzman, Commissioner; Louis Nunez, Acting Staff Director; Richard Baca, General Counsel; Nicasio Dimas, Donald Chou, and Phyllis Fong, Staff Attorneys.

PROCEEDINGS

CHAIRMAN FLEMMING. The hearing will come to order. My name is Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights. The other members of the Commission who will be participating in this hearing are: Vice Chairman Stephen Horn, president of California State University in Long Beach; Frankie M. Freeman, an attorney specializing in estate and corporation law in St. Louis, Missouri; Manuel Ruiz, an attorney specializing in international law, with offices in Los Angeles, California; and Murray Saltzman, rabbi of the Baltimore Hebrew Congregation in Baltimore.

I would also like to introduce the members of the Commission staff who will participate in the hearing. We have: Louis Nunez, who is Acting Staff Director; Richard Baca, the General Counsel of the Commission; Nicasio Dimas, Donald Chou, and Phyllis Fong, staff attorneys.

The function of this Commission is to investigate deprivations of equal protection of the law and to submit our findings to the Congress and to the President, along with recommendations for corrective action. To enable the Commission to fulfil these duties, the Congress has empowered it to hold hearings and issue subpoenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of '57, as amended. As required by law, notice of the hearing was published in the *Federal Register* on October 13, 1978. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

The Commission on Civil Rights is an independent, bipartisan agency of the United States Government, established by the Congress in

1957. Its duties are the following: First, to investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, national origin, age, or handicap;

Second, to study and collect information regarding legal developments which constitute a denial of equal protection of the law under the Constitution in such fields as voting, education, housing, employment, the use of public facilities, transportation, or in the administration of justice;

Third, to appraise Federal laws and policies with respect to equal protection of the laws;

Fourth, to serve as a national clearinghouse for information with respect to denials of the equal protection of the laws because of race, color, sex, religion, national origin, age, or handicap;

And finally, to investigate sworn allegations of vote fraud in Federal elections.

Today's hearing is part of a national study being conducted by the Civil Rights Commission on the civil rights implications of immigration law and policy, begun as a result of allegations of civil rights violations in the administration and enforcement of the immigration laws, and as a result of fears expressed about proposals to deal with the problem of undocumented immigrants.

In this study, the Commission has been attempting to identify and explore problem areas of immigration law and assess their potential for or susceptibility to violations of the civil rights of U.S. citizens, legal resident aliens, and undocumented workers. Additionally, we are examining other practices and procedures which impact on those problem areas and which may contribute to the potential for civil rights violations.

As a part of this identification and exploration procedure, open meetings have been conducted by the State Advisory Committees associated with the Civil Rights Commission in New York, California and Texas, in February, June and September, respectively.

In essence, the Commission is reviewing the relationship between agencies charged with immigration law enforcement and administration and the general public, particularly American citizens, as well as aliens, documented or undocumented. The Commission's underlying concern is with any discrimination in the policies which are the foundation of the immigration laws and with any discriminatory impact of the immigration laws or the practices and procedures used for their enforcement.

We will be hearing testimony over these next 2 days from a broad range of witnesses, and as a result of this testimony and the previous open meetings to which I have referred, we will be issuing a report to the President and the Congress to assist in their efforts to revise our immigration laws. We hope that this report will also be of assistance to the newly created Select Commission on Immigration, which has been given the monumental task of reviewing the entire Immigration and Nationality Act.

The session we hold today will be a public session. The majority of the witnesses we will hear have been subpoenaed by the Commission, and the schedule, as you will note from the agenda, has been planned in advance. However, tomorrow afternoon at 5 p.m., there will be a session at which persons who have not been subpoenaed, but who feel they have relevant testimony, may appear and speak. Any persons who desire to participate in that session should notify members of our staff no later than noon on Wednesday.

A Commission hearing is not an attempt to embarrass any one State, city, group of people, or individual, but it is, rather, a conscientious and serious attempt to explore problems and relationships which are representative of broader civil rights problems and practices. Throughout the Commission's 21-year history, it has always sought to be scrupulous, honest, and fair in its presentations, even though the subject matter may be intrinsically controversial and emotional. The same objectivity will prevail at this hearing and in our consideration of the evidence that is developed at this hearing.

Federal law protects all witnesses subpoenaed to appear before the Commission. The Commission procedures also require the presence of marshals at the hearing.

At this point I would like to ask one of my colleagues, Commissioner Freeman, to read the rules for this hearing.

COMMISSIONER FREEMAN. Thank you, Dr. Flemming.

At the outset, I should emphasize that the observations I'm about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise within the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

When we use the term executive session, we mean a session in which only the Commissioners are present, in contrast to a session, such as this one, in which the public is invited and present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly in-

tended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible, and to provide persons an opportunity to rebut unfounded charges before they were well publicized.

Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony. Following the presentation of the testimony in executive session and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. Next, if we find the testimony to be of insufficient credibility or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses, even though those witnesses have been subpoenaed to testify in public session.

An executive session is the only portion of any hearing which is not open to the public. The hearing which begins now is open to all, and the public is invited and urged to attend all the open sessions. All persons who are scheduled to appear who live or work within Washington, D.C., or within 50 miles of the hearing site have been subpoenaed by the Commission. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript upon payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the testimony, his or her testimony—errors in the transcript of the hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. attorney for enforcement pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which, in the discretion of the Commission, may be put to the witness. Such person also has a right to request that witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted, in the discretion of the Commission, to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provisions of Title 18, U.S. Code, Section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this to be a very serious matter and we will do all in our power to protect witnesses who appear at the hearing.

A copy of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. attorney when required.

The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders are also to be obeyed.

This hearing will be in public session on both Tuesday and Wednesday. The sessions will begin at 8:30 a.m. and will continue until 5:30 p.m. today and until 6 p.m. tomorrow. On Wednesday the time between 5 and 6 p.m. has been set aside for testimony of persons who have not been subpoenaed, but who wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission staff before 12 o'clock Wednesday, 12 o'clock noon Wednesday. Such persons will be heard in the order in which they sign up.

I wish to repeat, the time between 5 p.m. and 6 p.m. has been set aside for testimony for persons who have not been subpoenaed, but wish to testify. Persons wishing to appear in the open session should be in contact with members of the Commission staff before 12 o'clock noon tomorrow, Wednesday.

Thank you.

CHAIRMAN FLEMMING. Thank you.

Counsel will call the first witness or witnesses.

MR. BACA. Mr. Chairman, two of the witnesses on the first panel are not here. With the Commission's permission, I'd like to start with Mr. Al Perez from MALDEF, and have the other witnesses join us as they come in.

Mr. Perez?

Mr. Perez, I'm sorry. Would you please rise so that you can be sworn? Thank you.

Mr. Chairman.

[Al Perez was sworn.]

MR. BACA. Mr. Perez, good morning.

Would you please identify yourself for the record, giving your name, your title if appropriate, and your mailing address? And I'll ask the gentleman accompanying you to do the same.

MR. PEREZ. My name is Al Perez. I'm the associate counsel in Washington, D.C., for the Mexican-American Legal Defense and Education Fund. Our business address is 1411 K Street, N.W., Suite 300, Washington, D.C., 20005.

MR. SCHACHT. My name is Mark Schacht, S-c-h-a-c-h-t. I'm a research analyst with MALDEF in Washington.

MR. BACA. Thank you.

I notice Mr. Gim has come in the room. Would you come to the table, also? Thank you.

Mr. Chairman, could you swear Mr. Gim?

[Benjamin Gim was sworn.]

MR. BACA. Mr. Perez, I understand that you have a prepared statement which you would like to introduce. With the consent of the Commission, I'd like that introduced in the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. BACA. Could you summarize that statement for us, please?

**TESTIMONY OF AL PEREZ, MEXICAN-AMERICAN LEGAL DEFENSE AND
EDUCATION FUND**

MR. PEREZ. Yes, I'll summarize the statement. I would also like to introduce for the record, Mr. Chairman, my appendix to the record, which is entirely too long to read, but it does provide the support, the legal support, for the contents of my statement.

My name is Al Perez and I work for the Mexican-American Legal Defense Fund, otherwise known as MALDEF, here in Washington, D.C.

I would like to thank, first of all, the Commission and this distinguished body of Commissioners, for this opportunity to present testimony concerning a very important issue of the day, the issue of immigration. Immigration is becoming one of the most important issues of our times. Its increasing importance can be recorded almost daily, as the Congress, the executive branch, the judiciary, and the press intensify their involvement in this area.

Unlike other issues which become fashionable and then dissolve into obscurity, immigration is with us now and will be with us for a long time to come.

The United States is known as a country of immigrants. Between 1820 and 1970, 45 million persons immigrated here. Just between 1961 and 1970, 3.3 million persons came here as immigrants.

It goes without saying that, with very few exceptions, if any, most United States citizens have roots in other parts of the world. A look at your own names—Flemming, Horn, Freeman, Rankin, Ruiz, Saltzman—indicates the cultural and ethnic diversity in this country. Thus the emergence of immigration as an issue of paramount concern is an enigma. It is an enigma because, while this country has absorbed 45 million immigrants, it is now saying that we don't want these immigrants. It is an enigma because, while this country has given refuge and comfort to the disinherited, it is now saying—it is now saying that such succor is not available to these immigrants. It is an enigma because, while the government is concerned about the human rights of persons in foreign lands, it moves to deny such rights to these immigrants. Finally, it is an enigma because, while all available data indicate that these immigrants are not a drain on our labor and economy, the government, the press, and the public choose to believe otherwise.

MALDEF does not deny the importance of immigration as part of the United States-Mexico dynamics. As the distinguished Mexican scholar, Dr. Jorge Bustamonte said recently, reality doesn't stop at the border.

There are extremely important ideological and philosophical questions of trade, energy, language, and immigration that require bilateral comprehensive analysis and bilateral comprehensive solutions.

This morning's *Washington Post* has a front page story on a new oil find in Mexico, pushing the probable reserves for Mexico to 300 billion barrels.

However, neither MALDEF nor the U.S. Commission on Civil Rights is equipped to deal with these major topics. Both MALDEF and the Commission are best equipped to deal with the human factors that necessarily evolve from the development of philosophical and ideological doctrines. From MALDEF's perspective, our concerns can be divided into two broad categories:

One, the civil and constitutional rights of immigrants vis-a-vis Federal and State enforcement policies; two, the civil and constitutional rights of United States citizens of Mexican or Latin descent vis-a-vis State and Federal enforcement practices pursuant to the Immigration and Nationality Act.

This second concern is extremely important for our people, because as the government and as private institutions seek to root out the undocumented immigrant, Mexican Americans are increasingly having their legal rights and their physical persons assaulted.

While MALDEF has labored with many aspects of the immigration field, I will focus today on certain specific issues that may be of interest to you.

One, MALDEF has been very concerned about the congressional and administrative attempts to enact legislation dealing with undocumented immigrants. We worked for many months with the present administration trying to dissuade it from supporting the concept of employer sanctions. We failed. After the administration proposed a legislative plan in August 1977, MALDEF did a lengthy analysis, which is appendix A here, on the plan.

Our objections to the plan were: Employer sanctions would not work and would result in increased discrimination against Latin-looking people; the creation of a temporary resident status group that would not be eligible for any social welfare benefits was essentially the creation of a working caste in this country; the 1970 cutoff date for qualifying for adjustment of status was far too long; and no factual data had been presented to support the belief that undocumented aliens were a drain on our labor and economic resources.

Our major objections were never adequately answered by the administration. For example, to address our concern of potential employer discrimination, President Jimmy Carter told Federal agencies responsible for enforcing employment discrimination laws to increase their efforts to prevent employment discrimination against national origin groups.

As of today, I have not seen any kind of effort by these agencies to increase their efforts to combat employment discrimination against Mexican Americans.

Also, the administration was never able to explain why they were seeking to remedy the labor and economic so-called problems that undocumented aliens allegedly cause, when all available data, including government reports, indicated that in fact no such problems were being created.

MALDEF has also been involved—as you well know, the administration's proposal, S.2252, never got out of the Senate Judiciary Committee. We anticipate that next year the administration might propose a similar plan.

MALDEF has received many—I'd like to go over to issue number two, and that's local police officers and the enforcement of immigration laws. MALDEF has received many complaints from Chicanos who claim that local police officers are enforcing the immigration laws, and in the process these officers are violating the Chicanos' civil and constitutional rights.

We proceeded to analyze the whole legal question of whether local police officers have authority to enforce the immigration laws. Our conclusion is that local police officers have no such authority, and in appendix C is where our legal memorandum is attached. These conclusions were forwarded to the U.S. Attorney General on April 19, 1978.

We asked for a strong policy statement from the U.S. Attorney General stating that local police officers had no authority to enforce immigration laws.

The Attorney General responded with a press statement urging local police officers not to enforce the immigration laws. The effect of this statement is still being analyzed. There is a lot of confusion.

For example, after a recent MALDEF inquiry to INS [U.S. Immigration and Naturalization Service] concerning a local police immigration raid at a farm in Onarga, Illinois, the INS Assistant Commissioner for Investigations wrote back stating, "The Chicago district office detailed 50 officers to conduct an inquiry at the farm; 21 State police and 4 county sheriffs participated in this inquiry solely as observers and were not active participants."

It stretches the imagination to believe that 25 local police officers went on a raid "solely as observers." The INS actions in this instance indicate either a total disregard for the Attorney General's statement or a total confusion as to what INS can do or not do with local police officers.

This problem presents major civil and constitutional rights issues. Friction between the Mexican American community and local police officers is increasing. It is imperative that the Commission on Civil Rights assert its prestige and expertise to assure that the problem is quickly resolved.

I would like to move on to the rights of aliens. MALDEF is very concerned about the developing legal issue of the rights of aliens. Our concerns reflect two elements: How much, if any, can local, State, and Federal Government discriminate against legal or illegal immigrants; and, number two, how can we prevent any such discrimination from spilling over to U.S. citizens of Mexican or Latin descent?

Our position is that, with very few exceptions—possibly, for example, with the right to vote—discrimination should not be allowed against immigrants. That is why MALDEF opposed the administration's creation of a temporary residence status. This status proposed by the administration would also be denied all social and welfare benefits. The administration wanted a group of workers who would be able to work here and pay taxes here, but would not be eligible for health benefits, food stamps, unemployment insurance, or any other kind of public assistance.

MALDEF has also litigated against State legislation that discriminates against immigrants. In a recent decision, *Doe v. Pylar*, which is appendix D, a Federal district court in Texas declared unconstitutional the application of a Texas statute by the Tyler Independent School District which imposed a school tuition fee of \$1,000 on undocumented immigrant children.

MALDEF litigated this case and we won the case. Unfortunately, the Independent School District is now appealing the case to the Fifth Circuit.

There appears to be developing an extremely anti-alien environment in this country. This environment is, to some extent, created by the media. It is also being fueled by decisions of the executive, legislative, and judicial branches of government.

For example, before leaving office, President Ford signed Executive Order 11935, which prohibits resident aliens from working in the Federal competitive service. MALDEF and the Lawyers Committee for Civil Rights Under Law filed a petition—appendix E—9 months ago with President Jimmy Carter asking him for a rescission of Executive Order 11935. We have yet to receive an answer from the White House on our petition.

As this body might also know, the U.S. Supreme Court has decided many cases recently that permit discrimination against even legal immigrants. MALDEF is concerned that such an environment will inevitably result in discrimination against U.S. citizens of Latin descent. We are convinced that if discrimination is allowed against noncitizens, the discrimination will spill over to citizens who physically resemble the noncitizens.

MALDEF has been active in dealing with other immigration issues. For example, we expressed great reservations about the administration's decision to build fences between the U.S. and Mexico. We felt that erecting fences was not a good solution to the immigration problem. This fence was particularly objectionable because it was supposed to maim and injure people. We understand that, notwithstanding our efforts, the construction of the fence will proceed according to plan.

Finally, MALDEF has objected to the President's reorganization project proposal to reorganize the border management agencies by transferring the Border Patrol from the INS to the Bureau of Customs. Our objections were various, but essentially we were concerned that if the transfer took place it would exacerbate the problems that Hispanics have with the Border Patrol.

The Civil Rights Commission has been in the vanguard of many civil rights battles. This hearing, plus the other field hearings already held, indicate that the Commission is willing to use its prestige and resources to deal with the myriad of civil rights issues arising out of the immigration problem.

The Commission can perform an invaluable service to the government and to the public by examining and analyzing the important civil and constitutional rights issues which are developing almost on a daily basis.

I wish to thank you again for your invitation to testify, and to thank you and your staff in advance for the first-rate work that I'm sure the Commission will produce concerning immigration.

MR. BACA. Thank you, Mr. Perez.

Following up on a number of things that you said: At the beginning, you commented that you have seen as yet no steps taken by the ad-

ministration to beef up the antidiscrimination agencies of the Federal Government. What steps do you believe that President Carter had in mind when he made that statement, or what steps would you like to see at this point?

MR. PEREZ. It wasn't clear exactly what Mr. Carter had in mind when he made that statement. After you are in Washington for a while, you will understand that whatever statements you make, unless you back it up with money, it's not going to go anywhere. And so we always look for the budgetary resources allocated to the agencies, and we haven't seen any kind of increase as far as for the specific area: the EEOC, for example; OCR, for example; Civil Rights Division, for example; or the Department of Labor, for example.

So we're looking at the kinds of authorizations and appropriations supported by OMB and funded by the Congress, to see whether the administration and the Congress are really serious about this kind of increased attention to national origin discrimination.

MR. BACA. In MALDEF's opinion, would the mere existence of an employer sanction defense—that is, an employer could offer as a defense to his refusal to hire Hispanic, Asian, or other foreign-looking people that he was not sure that they were citizens or otherwise eligible to work legally in this country—do you think that EEOC would have encountered any particular difficulties in enforcing the antidiscrimination laws, given the fact that the statute had somewhat of a defense built in?

MR. PEREZ. Yes, there's two major—two kinds of thoughts: One is that there's the employer who legitimately wants to obey the law, if the law is passed, but is afraid to hire somebody. And the person, of course, will say, I don't want to hire people that look like the illegal alien.

The other one is the employer who just needs another kind of excuse to discriminate, the malicious type. And again, this kind of law will provide the person with an excuse.

I think there's no question that as the law was drafted with a built-in sort of qualifier that EEOC would have a tremendous problem enforcing the antidiscrimination laws under Title VII.

MR. BACA. Do you think it is generally known by employers that that is not presently the law? Are there employers who are presently engaging in discriminatory hiring practices in the mistaken belief that it is presently against the law to hire such persons?

MR. PEREZ. We have no evidence that that's the case. What evidence we have so far, at least tentatively, would assume a law. And the Brookings Institution is doing a study which initially has found that if there were such a law, that they—that employers would in fact discriminate because of fear of the law.

MR. BACA. Following up on one other thing you said: You said that MALDEF had a number of objections to the merger of the various border-related agencies into one superagency which had total responsi-

bility for border enforcement, Customs, Immigration. What were some of the objections that you had?

MR. PEREZ. Let me sort of clarify my statement. We had objections to the separation of the Border Patrol from INS and being placed in the Bureau of Customs, which falls under the Treasury Department. The administration has never supported the idea of a superagency to deal with border management. They were talking about separating something from one agency and giving that to another agency.

Our objections to at least that portion of it, particularly the transfer of the Border Patrol, is that we felt that Commissioner Castillo, the first Hispanic to head INS, had brought some compassion and sensitivity to INS, which was flowing down to the Border Patrol. We felt that Customs, not being used to dealing with these kinds of issues, and to where the Border Patrol was being transferred, would then sort of set us back as far as the sensitivity and compassion that Mr. Castillo had brought to the Border Patrol.

We just were afraid of losing Mr. Castillo's viewpoints and sensitivity to our community's viewpoint.

MR. BACA. One final thing, Mr. Perez: Did the administration in fact announce its intention to build a fence between some parts of Mexico and the United States? How do you have the information that they were going to build such a fence?

MR. PEREZ. There's two—I guess maybe there were three. The first thing is, we have analyzed the budget hearings dealing with the INS, and, in fact, there is wording in the budget dealing with building of the fence where this kind of thing, the amount of money involved—so there is that kind of evidence.

Number two, there was at least news media articles indicating that a contract had been let to build a fence.

Number three, I just came back from a meeting in New York City where Associate Attorney General Michael Egan and Commissioner Leonel Castillo have indicated that a fence will be built.

MR. BACA. Will be built?

MR. PEREZ. Yes, sir.

MR. BACA. Was there any public announcement of such an intent to build a fence?

MR. PEREZ. There was no public announcement emanating from INS or Justice until maybe after the story broke in the media. There was, if I recall, a press statement to that effect.

MR. BACA. Verifying that they were going to build it?

MR. PEREZ. Yes. The question now is not whether the fence will be built or not, because it will be built, according to the spokespeople at Justice, but the kind of fence that will be built. As you might recall, the press statements had the contractor stating that the fence was being constructed so that it would maim and injure people, in his words, "to sever somebody's toes off."

Now, whether or not that will still be the style of fence being built we're not sure yet. Commissioner Castillo has indicated that he is having those specifications reviewed for possible change.

MR. BACA. But no commitment to change?

MR. PEREZ. No.

MR. BACA. Thank you.

MR. Gim, do you have a statement that you wish to introduce for the record?

MR. GIM. I don't have a prepared statement.

MR. BACA. Thank you.

MR. GIM. These are some notes.

MR. BACA. If you would briefly summarize what you have to say, and then I'll ask some questions.

**TESTIMONY OF BENJAMIN GIM, ASIAN-AMERICAN LEGAL DEFENSE AND
EDUCATION FUND**

MR. GIM. Mr. Chairman, Counsel, members of the Commission.

My name is Benjamin Gim. I appear as spokesperson for the Asian-American Legal Defense and Education Fund, or, the acronym, AAL-DEF. Our organization is comprised of representatives from the Chinese, Japanese, Korean, Filipino, Thai, Vietnamese, Indian, and Pakistani community. Our group is established to furnish legal services to the indigent and for the protection and advancement of the civil rights of members of the Asian community.

We are happy to have this chance to express our views on immigration laws and policies. It has long been our opinion that there is a disturbing contrast between the announced aims and aspirations of a democratic country and the reflection of our policy toward immigrants as indicated in our immigration laws and its administration. In our view, our immigration laws and policies are primitive, anachronistic, antediluvian, racially discriminatory still in large segments, and are unworthy of a country which is supposedly secure in its own appraisal of its primary place in the family of nations.

I think in this respect Asians, of course, perhaps feel the sting of the immigration laws and policies and its racially discriminatory aspects perhaps more than any other group, because after all, we were the first group to be singled out for racial discrimination. As early as 1882, the Chinese were excluded from immigrating to this country. Then in 1917 Congress enacted the so-called Asiatic barred zone formula, in which generally all Asians were excluded from immigrating, with the exception of the Japanese, who were supposed to be covered by the "Gentlemen's Agreement," wherein Japan was supposed to agree to voluntarily limit its own immigration.

And then 8 years later we scrapped the "Gentlemen's Agreement" and barred the Japanese from immigrating. And indeed, up to 1952, our privileges of naturalization, with few exceptions, were limited to

free—so-called “free white” persons and persons of African nativity. Thus, Japanese, Koreans, Burmese, Indochinese, and Filipinos were excluded from the opportunity of becoming United States citizens.

Then in 1952, with the passing of the McCarran-Walter Act, we hypocritically proclaimed a significant advance in racial—in the abolition of racial discrimination by providing for token quotas, usually 100, for Asian nations. However, we had the Asiatic-Pacific triangle formula, wherein all Asians who had one-half Asian blood were charged with the countries of their ancestry regardless of where they were born, and all the other people were charged to the racial quotas of the countries of their birth.

So that we had the case of, say, a Chinese who was born in London, third generation, British citizen, never visited China, who was of at least one-half Chinese blood, would be charged to the meager Chinese quota of 105 and would be excluded from participating in the British quota of something like 65,000.

Now, it is true that the Immigration Reform Act of 1965 abolished the racial origins formula and the Asiatic-Pacific Triangle, and thus made a significant step forward in elimination of racial discrimination. However, there is still a significant remnant of racial discrimination in our immigration statutes, and that is in the colonial subquota formula.

Now, section 202(c) provides that a person born in the colony or possession of a foreign state should not be charged to the quota of the mother country, but should be charged his own subquota, which is now set at 600. Now, the origin of this provision, which dates back to 1952, was blatantly racist, and it was designed to prevent immigration of black immigrants from the British West Indies. You see, prior to 1952 people from Jamaica, Trinidad, the Bahamas, Bermuda, being British subjects, were permitted to immigrate under the British quota, which at that time was largely unused and was the largest quota. It had some 65,000 allocations of visas every year.

Congress was disturbed because the British were not using the quota and a few thousand black immigrants from the Caribbean area were permitted to immigrate under the British quota. So Congress, in its own perception, cleverly designed a subquota formula in which Bermudians, people from Trinidad and the Bahamas, were charged to their own subquota, at that time 100 immigrants a year. This was thinly disguised and widely perceived in the Caribbean area among black countries as an unabashed, racially designed formula to exclude black immigrants.

Now, of course, as it affects Chinese, Hong Kong, being a British colony, was also swept into this colonial subquota formula, and Hong Kong had 100 a year. That is, Chinese persons born in Hong Kong were restricted to 100 a year.

Now, ironically, as the Caribbean countries achieved independence—Jamaica, Trinidad, and the Bahamas, for instance—they were relieved from this colonial subquota restriction and they had their own

independent country quota. So they were freed from this restriction. However, Hong Kong is still shackled to the colonial subquota formula, so that today if we have a legal permanent resident mother who's trying to—born in Hong Kong, who is trying to bring a child born in Hong Kong, she has a 3-year wait.

A citizen-parent who is trying to bring, say, his daughter-in-law, and bring his daughter and son-in-law, has a 5-year wait. A citizen brother or sister who is trying to bring a sibling born in Hong Kong has an 11-year wait.

So that this remains, notwithstanding the proclamation of President Johnson in 1965 that racial discrimination had been finally eliminated from our immigration laws. This remains a significant remnant of the odious racial origins formula in the Asiatic-Pacific triangle, which is still in effect and works a hardship on Chinese persons born in Hong Kong.

Now, we still feel that we perceive significant discrimination in the enforcement of our immigration laws vis-a-vis Asians. One example is the treatment of Philippine war veterans. Ever since World War II—right after World War II, Congress passed a statute which was designed to give Filipino persons who had served in the United States Army in its war against Japan the right to become citizens.

Now, the Immigration and Naturalization Service frustrated this right. They actually subverted a statute of Congress by refusing to post immigration examiners in the Philippines so that Filipinos could come forward and avail themselves of this privilege, and refused to do so until the law had expired.

And when suit was brought, the Government attempted—and it defended this case all the way up to the Supreme Court and won in the *Hibi* case. And finally, in the case of the 68 Filipino war veterans in the United States District Court for the Northern District of California, the aliens won because the United States district judge found that this refusal, this obstinate refusal of the Immigration Service to post examiners in the Philippines so that these Filipino veterans could apply for naturalization, amounted to affirmative misconduct on the part of the Government.

Now, to the credit of Commissioner Castillo, he has finally prevailed on the people in the Justice Department not to appeal this case, so that decision stands.

Then in other areas—now, I don't mean to suggest that all people in the Immigration Service are infected with the virus of racial bias. And I also wish to note that in the short reign of—term of commissionership of Commissioner Castillo, he has made a sincere attempt to orient, to educate Immigration personnel, within the limitations of his budget, to a fair and a more openhanded approach.

But perhaps after a legacy of racial hostility of over three-quarters of a century, it's perhaps too much to expect that laws which were conceived with racial antagonism and racial hostility would not spill

over and infect the people who are given the duty of implementing these laws.

And anybody who has practiced in the immigration field would notice the appearance among immigration judges and immigration examiners of instances, to an alarming degree, a disturbing degree, of open racial bias and hostility.

Now, I would like to quote from a written decision of an immigration judge, and he has written this repeatedly in several decisions denying Filipino aliens adjustment of status to permanent residence in this country and forcing them to return to the Philippines. Now, this is a direct quote: "Everyone dealing with such matters is aware that aliens from the Philippines will engage in any fraud to get here and will do anything to stay."

And then we find that perhaps racial antagonisms can be expressed and manifested and implemented, really, in an even more covert way by nonlawyer immigration examiners, who are given the duty of initially determining aliens' application for adjustment of status. And the fact that Section 245 of the Immigration and Nationality Act gives the Immigration Service examiners discretion to grant or deny an application, even though the alien is otherwise qualified, gives them an opportunity to cloak the decisions which are really motivated by racial bias.

Now, I would like to cite an example which was illustrated by Professor Abraham Sofaer, who is professor of administrative law at Columbia University Law School and who conducted a study of the operations of the Immigration Service in the adjudication process of its immigrant examiners. This study was submitted to the Administrative Conference and was also published in an extensive law review article in the Columbia Law Review.

In this case, two Korean women were nurses and good friends, and they graduated from the same nursing school. They both left Korea at the same time to work in Germany. Then both of them came to the United States at about the same time on visitors' visas, and they both obtained jobs as nurses in the same hospital, and they both specialized in psychiatric nursing. They both passed their nursing examinations, their State examinations, with honors. Both filed extensions of stay of their extensions of visitors' visas, and they both actually concealed the fact that they were working while they were applying for their extensions.

And both applied for adjustment of status and both were represented by the same lawyer. The only difference was that their applications were heard by two different immigrant examiners. One immigrant examiner granted adjustment of status to the one Korean applicant with no problems. The other examiner found three different grounds for denying the application, namely: that this Korean girl had entered as a nonimmigrant in bad faith; she had really intended to stay here; that she had violated her nonimmigrant status by working; and that she had misled the consul and the Immigration Service; and that

as a matter of discretion—see if you don't, if you can't prove anything, if you can't sustain these allegations, then you say as a matter of discretion she should be denied, and this relieves the immigrant examiner of sustaining by proof these factors which he cites, but does not establish, to deny the application.

So that we see that in the administration of a very important section of the immigration law, the adjustment of status provision, these non-lawyer examiners, often people from the enforcement section, people who had transferred from the Border Patrol, are charged with these complicated duties of determining some 32 statutory grounds of exclusion in determining whether a person is eligible for adjustment of status, and in addition, given this discretionary power, frequently abusing this power and expressing, in implementing the decisions, a concealed racial bias.

We also find this is—

MR. BACA. Mr. Gim.

MR. GIM. Yes?

MR. BACA. Excuse me. I'm going to have to interrupt in the interest of time. I will also reserve questions so that the Commissioners may ask. So that I won't be asking any questions at this time, and let the Commissioners question you on that.

Mr. Cortez, as you were late, you haven't been sworn yet. Would you please rise so that we can do that?

[Michael Cortez was sworn.]

**TESTIMONY OF MICHAEL CORTEZ, VICE PRESIDENT FOR RESEARCH,
ADVOCACY, AND LEGISLATION, NATIONAL COUNCIL OF LA RAZA.**

MR. BACA. Mr. Cortez, could you please identify yourself for the record, giving your name, your title if appropriate, and your mailing address?

MR. CORTEZ. I am Michael Cortez, vice president for research, advocacy, and legislation at the National Council of La Raza here in Washington, D.C.

I have prepared written testimony which I can submit at this time. I am prepared to read it if you like. However, I could give a very brief summary.

MR. BACA. I'd prefer that, if you would. Could you submit the entire document for the record, though?

Mr. Chairman, could we have that admitted into the record?

CHAIRMAN FLEMMING. Without objection—

MR. BACA. Thank you.

CHAIRMAN FLEMMING. It will be entered in the record at this point.

MR. CORTEZ. I would like to start by saying I believe it's particularly appropriate that the Commission on Civil Rights should be considering the civil rights implications of current immigration policy proposals. I agree entirely with Al Perez's earlier remarks to the effect that there

is an anti-alien atmosphere prevalent in the country at this time; and it's an atmosphere which is supposedly based on problems of economic self-interest.

There is fear that large numbers of undocumented workers are displacing domestic workers in this country, and there is fear of adverse economic impact. I would emphasize, however, that this line of thinking is based on misinformation, lack of information and, to a large extent, on racial and national prejudice. The facts simply aren't there to support the contention that this country is suffering economically as a result of a supposed invasion of undocumented workers.

In fact, the actual number of workers itself is completely unknown. Estimates, responsible estimates, range from anywhere under a million up to something in excess of 16 million. The facts of the matter simply aren't established. And yet, we're inundated, it seems at this point, with proposals to do something about the undocumented worker problem.

This country has had a history, as Mr. Gim has pointed out, of immigration policies which on the one hand promote expansion of the labor force when major economic interests in this country decree that there is a need for a larger labor force; on the other hand, when the labor demand tapers off, uses exclusionary criteria to limit the influx based on race and nationality: the Chinese Exclusion Act that Mr. Gim mentioned earlier; the Quota Act of 1921; the Immigration Act of 1924; and a number of administrative actions such as the repatriation campaign directed against Mexicans in the 1930s and the Operation Wetback, a quasi-military operation conducted during the 1950s—all clearly manifestations of policies that are openly racist, directed against certain racial and national groups at a time when it suits major economic interests in this country to do so.

This is a legacy that the Carter administration and the 95th Congress has inherited and, while a considerable amount of progress has been made in trying to rely less on racial criteria and so forth in shaping policy, I'm sorry to say that we're far from free of that legacy.

The current policy proposals by the administration and others introduced in the 95th Congress clearly would have a discriminatory impact against Hispanics in the United States. I'd like to emphasize that we're particularly concerned about Hispanics who are citizens of the United States or legal permanent residents of the United States, who would be adversely affected by a number of proposals that are current.

I'd like to focus first on proposed sanctions against employers and undocumented workers. The proposals would, among other things, amount to a cover for employers who already act according to racial prejudice in their hiring decisions. Employer sanctions proposals would make it possible for employers to defend discrimination against Hispanics on the grounds that they were concerned that the person might be an undocumented worker and would place them liable to enforcement of these proposed employer sanctions laws, and therefore discriminate against Hispanics.

But even those employers who are not racists would be presented with some rather substantial economic incentives to discriminate against Hispanics, simply on the basis that it would be bad business to expose themselves to the risk of enforcement of a law which could conceivably get them in trouble.

The Carter administration has proposed what are described as protections against this discriminatory impact that employer sanction proposals would have. However, those protections would—*are* both unworkable and would continue to threaten the civil liberties of Hispanics and possibly others in the United States.

For example, some advocates would have us let employers off the hook if they can document to their employers that they have a right to reside in this country and work in this country. But if this—does this mean that Hispanics only are going to be required to document their right to reside and work in the United States while other prospective employees are not? If that's the case, we clearly have a problem of discrimination.

Even if everyone is required—which is one of the proposed solutions—to document their right to work in the United States at the time of employment, will more extensive documentation be required of Hispanics, in order that employers assure themselves that they aren't hiring an undocumented worker?

It's reminiscent of the voter registration struggles in the South, when voter registrars were able to send prospective voters back, saying, "No, this documentation isn't adequate; go back home and get a birth certificate." Then come back and, "No, that's not adequate; go back and get something else." The same thing could happen again, with employers cast in the role as enforcers of the immigration law under this proposed employer sanctions bill, or a number of proposed employer sanctions bills.

Clearly, the way out of that problem is to require that every prospective employee pass an identical test, regardless of their apparent national origin or race. But then we run into some rather serious implementation problems. What sort of test would that be? What sort of documents would every single applicant in the United States be required to provide in order to secure employment and let the employer off the hook, on this employer sanctions proposal?

There are no counterfeit-proof documents held exclusively by all citizens and permanent residents of the United States necessary to implement that kind of procedure.

There have also been proposals—say that proposal were to be resolved—were to be resolved by instituting a national identification card. Well, this is certainly preferable from our point of view to some of the other clearly discriminatory approaches that would place the burden of demonstrating right to work solely on Hispanics and on other groups.

But clearly a national identification card raises a number of other very fundamental problems as well. I won't get into the issues that, say, the American Civil Liberties Union, for example, might want to raise concerning national identity cards in this country. But there are some aspects of that that are particularly problematic for Hispanics.

There has been a long history of police oppression and abuse of Hispanics in this country. There—in recent years, it seems that it's grown to epidemic proportions. The card would clearly provide yet another tool for police, local police who are predisposed to abuse or harass Hispanics, being able to stop Hispanics on the street and demand identification, demand that they produce this card. Unless steps are taken to effectively prohibit any law enforcement people from ever making use of this card, which seems like a highly unlikely thing to be able to accomplish, this card will soon degenerate into a system for harassing and oppressing Hispanics and possibly others in this country as well.

My colleague Mr. Perez has mentioned the problem of the local police getting involved in the immigration law enforcement—something that under Federal law they're clearly not supposed to do—here again, this national identification card would make it particularly easy for them to continue that practice.

The Carter administration made a distinction between civil and criminal sanctions against employers of undocumented workers, and we found that distinction rather helpful. Instead of the criminal sanctions which have been considered by the 95th Congress, the Carter administration would seek enforcement only against—through civil procedures against employers who engage in a “pattern or practice” of employing undocumented workers.

Now, presumably this means that enforcement attempt would be targeted against employers who frequently hire substantial numbers of undocumented workers. The idea, as the administration explains, is to target enforcement efforts only on willful violators.

I'm concerned, however, and the National Council of La Raza is concerned that “pattern or practice” is only vaguely defined at this point, and that we have not seen any argument that is at all convincing that only willful violators would be subject to the effects of the proposed employer sanctions bills.

There is the problem of discretionary abuse by local—by U.S. attorneys who, perhaps, would be the ones to make the decisions about which employers to go after. We have yet to be convinced that the proposed “pattern or practice” technique advocated by the administration would target just on willful violators and not create a general fear among employers that they might be subject to sanctions for having inadvertently hired undocumented workers.

Another issue of particular concern to us is the policies and practices of the Immigration and Naturalization Service as they impact on Hispanics, particularly Hispanic citizens and permanent residents of

the United States. The inefficiency of the Immigration and Naturalization Service, or the INS, has been a scandal of major proportions.

During the tenure of the current Commissioner, some very promising starts have been made for correcting those problems. The outrageously long lines and the variety of other obstacles thrown up in the path of people seeking to adjust their status and what-not before the INS make seeking of status to which people are entitled particularly costly for immigrants to this country and others.

But there's also the problem of the way the INS allocates resources that it does have at its disposal. I believe there's some justification for the claim that they're very limited by the resources currently at their disposal, and that there are limits to the amount that they can improve service. But the way resources are allocated suggests misformulated priorities.

We're particularly concerned about the choice between spending investigators' time in futile, often futile, and very costly pursuit of the limited number of undocumented immigrants, at the expense of a long backlog of—a very large backlog of petitions outstanding before INS that require some investigation before they can be seen through to completion. It would seem that INS is more interested in hunting down undocumented workers than they are in enabling those who are entitled to remain in this country to secure their rights.

There's also the problem at INS of their employees' attitudes, that at times amount to bigotry. It's a problem common throughout INS, from the workers behind the counter, who make disparaging remarks and are generally uncooperative toward folks who happen to be of a different color or language than themselves, down to the practices of the Border Patrol and other enforcement personnel, whose enforcement activities do place a special burden on Hispanics, including citizens, in this country.

The Border Patrol admittedly uses color, language, and so forth as a basis for singling out people to require proof of citizenship, and Chicanos in the Southwest know this very well.

I'd ask the Commission to try to place themselves in the shoes of Chicanos in the Southwest for just a moment. I believe that the Commissioners themselves would, were you to be stopped going down the street or attending a community festival or driving your car and were required to show proof of citizenship, you might have a very difficult time doing so. Yet the burden would be upon you to do so.

Well, this is unlikely to happen to you, but it happens to Hispanics all the time. So even current enforcement activities do present a special burden for Hispanics.

The act of requiring proof of citizenship is an act which lends itself to abuse, and we're particularly concerned about the lack of mechanisms within INS to detect abuse of authority by enforcement personnel. Clearly, cases—for example, the indirect reports that I receive of sexual coercion by members of the Border Patrol against

females attempting to cross the border, or Border Patrol personnel who exhibit hostile attitudes, and a whole range of misbehavior falling between those two extremes.

MR. BACA. Mr. Cortez—

MR. CORTEZ. Something which is very difficult to detect.

MR. BACA. I'm sorry, excuse me. If we could interrupt your statement at this time and permit time for the Commissioners to ask some questions of the three of you. Did you have something more you wanted to add?

MR. CORTEZ. I would like to add one final point.

MR. BACA. Surely, go ahead.

MR. CORTEZ. I'll cut my remarks very short. Wrapping up that point, improved hiring practices by INS, which I'm sure some study of the problem would indicate are a very serious problem, would do much to alleviate that problem.

My final concern is the plight of undocumented immigrants. I don't know whether the Commission considers this population to be within the purview of its concerns today. But I would emphasize that it's an extremely vulnerable population that has some rather serious problems, such as their children, often U.S. citizens, being excluded from public schools, things of this kind; that many of them are potentially legal residents of the United States, were they only able to cope with INS; that the Carter plan of so-called "amnesty or adjustment of status" does not substantially benefit this population; for reasons I can elaborate on if you like; and, in fact, we have a subclass of de facto immigrants in this country subject to abuse, which I believe creates a climate hostile to the civil rights of all in the United States.

Thank you.

MR. BACA. Thank you. I'm sorry to cut you short.

Mr. Chairman, questions from the Commissioners?

CHAIRMAN FLEMMING. Vice Chairman Horn?

VICE CHAIRMAN HORN. All of you gentlemen have given some very interesting testimony as to the complications in this area and the implications of various proposals. And I think we can all appreciate from your experience firsthand that there are no simple and easy solutions.

Let me try to start from the beginning and ask some basic questions, and get your reaction to them as we struggle with what is an appropriate solution to some of the problems that you have admitted occur, although it's very hard to pinpoint the degree to which they occur.

Number one, I'd like to ask, just taking the case of the American-Mexican border to start with, Do you believe there should be an open border between the two countries and no checking of movement across the border?

I'd just like the reaction of Mr. Perez and Mr. Cortez in particular.

MR. CORTEZ. That clearly is an impractical proposal at this time. For ideological reasons, members, some members of our coalition, would

advocate an open border. But I think, practically speaking, what we would advocate instead is a policy of continued but reasonably controlled immigration into the country.

VICE CHAIRMAN HORN. Mr. Perez, do you have any comment on that?

MR. PEREZ. I think the question, Commissioner, is not really that question. The question is: In the history of the country, what are the events that determine immigration, the number of people that come over here? I mean, at some point in history we had an open border because the economy desires workers here; in other parts of history we don't have an open border.

And so it seems to me that generally it's the kind of a question that's kind of philosophical, and we're not really able to deal with it. But secondly, practically speaking, we have instances where the Border Patrol and the forces in this country allow people to come over here, so to us that's an open border. So I don't think you can just ask that question in that nature without seeing the historical perspective of the why and how many people come here and the reaction of the government to that kind of flow of people.

VICE CHAIRMAN HORN. Well, I fully appreciate and understand the historical perspective. And whether we're talking philosophy or history, I think our concern has to be with what do we do now, if we do anything. And the 19th century is interesting, but that isn't the century we live in; just as the fifties are interesting, but we're living in the seventies, going into the eighties.

So I take it from Mr. Cortez's answer, although some might feel philosophically there should be open borders, generally the position would be there should be some regularized procedures and control on immigration between these borders. So I assume that also means there should be some sort of a border patrol, and the main concerns, as I read the testimony and the evidence we have had in various documents in our State Advisory Committees, get down to the due process, the conduct, etc., some of which you've alluded to, of the Border Patrol.

Now, if we're not to have open borders and we're to have some sort of controls, what I would like to elicit now from all three of you gentlemen, whether we're talking about the American-Mexican border or we're talking about immigration generally, is: What are the criteria you believe it is appropriate for this country to pursue in making judgments as to who should immigrate to the United States and who should not?

Have you got a series of criteria in either of your organizations that would be helpful to this Commission as to how, if you could wave a wand, you could rewrite the laws and have those criteria applied to make what you all admit are very difficult judgments?

MR. CORTEZ. We would, first of all, move to deemphasize, to reduce the pressure on the border that requires such heavy reliance on that kind of criteria. And pursuing a point which I—

VICE CHAIRMAN HORN. Well, what criteria are we talking about?

MR. CORTEZ. I'd like to discuss that in just a moment.

VICE CHAIRMAN HORN. Okay.

MR. CORTEZ. But by way of prefacing my remarks, it's essential that the economic pressures that drive immigrants into this country from extremely impoverished nations in other parts of the world be reduced; that attempts be made to develop those economies so that border enforcement is a less highly charged duty, a less serious problem.

The criteria—we would absolutely require that no further racial criteria, as was the case in the past, be ever used again. We would advocate, rather, dealing with absolute numbers. The move toward hemispheric quotas was progress in that direction.

We would also advocate that if national quotas are to be necessary, that the special relationship that this country has with Mexico be taken into consideration—two highly interdependent economies that indicate privileged treatment for Mexico in matters of quota and immigration policy in general.

VICE CHAIRMAN HORN. Any additions from any member of the group? Talking now worldwide, Mr. Gim, what do you feel the criteria ought to be by which this country should judge immigration?

MR. GIM. Well, I would agree that perhaps there should be a reevaluation of the quota's definition of Mexico's special relationship with the United States, and I would say that generally the standards which are used now are fairly workable and fairly fair. There are certain—for instance, I think the law comes down unduly harsh on a person, say a person possesses, say, one marijuana cigarette or something, when the other Federal laws are decriminalizing possession of narcotics where the only offense is using.

I would say that the most serious thing is the power which is vested in the American consul to issue or refuse a visa, and that decision is not reviewable by even the Secretary of State, and it certainly is not reviewable in the courts. Congress has, by implicit legislation—I think it's section 104—has excluded the consul. A relatively petty official, a vice consul, for instance, his decision on whether to issue a visa or not is not reviewable by the Department of State Visa Office, except as to questions of law, but a question of fact is not reviewable by the Secretary of State and it cannot be overturned, no matter how unjust, even in court. And I think that's one crying area where there is such a potential for abuse, and it is being abused, that needs reform.

VICE CHAIRMAN HORN. All right. That's a due process matter, and I can empathize and sympathize with that. But let's get back to what criteria, if any, would you have this country apply on immigration?

What I gather from the answers is you're talking strictly about numbers on either a hemispheric basis or perhaps a country basis. And as I heard some of your response, those countries that have a special relationship based on, perhaps, interdependence of economy, proximity, etc.—Mexico was the example—might well have, in your judgment, a greater quota than some other countries. Now that's not an unreasonable criteria.

Now, what I'm fishing for is, Are there any other criteria? Would you place, for example, as we have in the existing law, criterion based on special skills, special education? I'm trying to find out how far your groups that you represent would go in this area.

MR. GIM. Well, we would say that, certainly, the present criteria of giving preeminence to family relationship is a very realistic and humanitarian criteria. Certainly, the criteria based on needed skills is a very acceptable criteria. So that basically we don't, with very minor areas, we don't really disagree with the standards set up for selecting immigrants.

We would quarrel with the administration, the way it's being implemented.

VICE CHAIRMAN HORN. Any comments from any other gentlemen on the panel?

Okay. Let's move on now to the problems of the undocumented worker in particular, primarily the Mexican worker coming into the United States. As you will recall, Public Law 78, that administered the—or was the authorization for the so-called bracero program, was on the books until 1964. Under that program, workers were selected, screened, given health examinations, so forth, brought across the border to do a specific task in the agricultural areas of the Southwest and sometimes other areas, returned to Mexico or to other countries that came under Public Law 78.

Now, what I'm curious about by mentioning that is the impact, if any, that the importation of foreign workers either legally or illegally, has on American jobs. That's certainly been the historic fear. We've mentioned the racial problems in our briefing papers. We all know the religious problems, etc., the fears that have arisen from various nativistic, I guess, groups in the United States.

Certainly some basic fears over time have been economic fears. You mentioned the economic plight in developing nations, which caused this pressure for people who have no opportunities in their country, for an exploding population where there's no family planning, to burst the seams and want to go somewhere where there is some economic opportunity.

Nevertheless, as Americans we have the problem of, What is the impact, if any, of such waves of immigration, legal or illegal, on our own workers? And this is particularly important to this Commission when we've been concerned about 40 to 50 to 60 percent teenage unemployment, Mexican Americans, blacks, etc., in the center cities of this country.

Now, if the figures in the *Los Angeles Times* can be believed, and they were published this last weekend in an article on the subject some of you might have seen. They noted that after the end of the bracero program in 1964, the agricultural worker unemployment rate in the United States dropped from 6.5 percent to 4.8 percent. Farm wages in the year or so following the end of the program went up 5.6 percent

versus a 2.9 percent annual increase in farm wages between 1955 and 1964.

Now, if that is true—and I haven't had a chance at this point to check the Bureau of Labor Statistics information in this area. This is strictly from the *Los Angeles Times*. If that's true, one could draw the conclusion that the abolition of foreign workers under P.L. 78 meant that there were greater opportunities for domestics, regardless of racial-ethnic origin, in the agricultural production of California, Texas, other countries; and in order to get those domestics, farm producers had to pay more; and therefore one could conclude that the importation of farmworkers might well have depressed domestic wages to some extent.

Some are making that conclusion now, that undocumented workers—as you say, the estimates run from 1 million to 16 million—might well be depressing wages in the United States, especially in center cities.

The converse argument we often hear from employers is that, "Well, no American citizen wants to do that work; therefore, the undocumented workers will do it. They're good workers; they're nice people; they work hard; they're devoted," etc., etc. We heard all of these arguments in Congress in the early sixties with reference to the bracero program.

Now, what I'd like to know is, What is your reaction to that argument, that unlimited control or, really, little control, of undocumented workers depresses wages, depresses opportunities for the domestic American workers, given the fact that you also have civil rights concerns about the Mexican American teenager, just as this Commission does, about Asian American, Mexican American, American Indian, and black teenagers and others who might be, or one could argue are, in job competition with many of these undocumented workers? I'd like all of your reactions on that.

MR. PEREZ. I'd like to start that out, Commissioner, by saying that the essential thrust behind, I guess, the proposals of the administration in the previous Congresses to deal with this question have been basically economic concerns—and a great portion of the economic concerns have been the impact on the labor market and, number two, the drain on local treasuries by use of social welfare benefits.

And the appendix that I introduced for the record, appendix B, summarized this, almost everything we have found concerning the impact of the undocumented immigrant on certain aspects of the economy.

And we have—the findings have basically shown that if you look at certain elements of the labor market, for example, displacement, for example, the impact on unionization, and just the pure unemployment portion of it, and, of course, the wage—the wage scale, that the only impact they have been able to measure has been in the area of the depressant effect on wages, and even that is further qualified by the statement of the researchers that the impact really falls most heavily

in the areas adjacent to the Mexican border, and they don't find that kind of impact in the more interior kinds of cities like Chicago and New York and vice versa—and so forth.

So that we've done as much research as possible as far as trying to find the kinds of evidence that have been developed by researchers, and this includes research sponsored by the Government itself, the Department of Labor, for example; and there appears to be no substance, or at least little substance, to the broad-scale allegations that the laborer impact is very, very high. Now, we will await any other kind of research that shows the impact. But the only one so far that has some kind of data behind the allegation is the one that deals with the depressing of the wage levels in the areas adjacent to the border.

And I'd like to basically go off a little bit to the economic impact. There, the Government's concern about employment and the labor markets—local communities are concerned to a large extent with the economic impact on their local treasuries. So they talk about aliens being on welfare, aliens taking up food stamps, aliens using up medical care, and so forth.

Again, our findings, our summary of the findings are included in appendix B, and very, very little evidence exists that substantiates those allegations. And as a matter of fact, the researchers have really found out that if you compute into the equation the taxes paid by the immigrant, that most local—localities, cities and States, really benefit from the alien who puts money into the system through taxes, but doesn't take money out of the system, because they really do not use up the sort of social welfare benefits that are provided to other members of those localities.

It's sort of unusual that in our discussions with the administration—and they're asserting that the alien has a major impact on the labor market—on the one hand, they tell us, "We want to regulate immigration because in fact it has its impact." On the other hand, they are also saying, "But we also want to liberalize the (h)(2) program, the certification, the work certification program, by which employers in this country can bring in foreign workers."

So it presents again another enigma to the ones that I've mentioned earlier as to if, in fact, the illegal immigrant has an impact on labor and the economic resources, then why do you want to liberalize the (h)(2) program or, as some others have indicated, why do you want to reinstitute the bracero program?

To summarize generally, we await any kind of hard data, persuasive data—I'm a lawyer and I look for that—that would indicate to me that the reasons or rationales given for trying to control immigration that are based on economic or labor impact, are justified by evidence. Whether it would differ on certain social, philosophical questions of whether or not there should be an open border or whether or not those kinds of people come in or not, that aside, I'm looking for the kinds of really hard statistics and data that would show me and persuade me that, in fact, there is a problem. I haven't seen that.

VICE CHAIRMAN HORN. Well, wouldn't, Mr. Perez, you have to agree that if we have—these weren't your figures, I realize, and I'd like to know what yours are—but if we had between 1 and 16 million, which is the highest figure I've heard yet, undocumented workers, that there has got to be undue competition with American workers when you've got 40 to 50 to 60 percent teenage unemployment in inner cities, and many of the undocumented workers are working in the inner city area of the United States.

Doesn't it just stand to reason that there's got to be a reason for those jobs to be available to teenagers?

MR. PEREZ. I would be naive, Commissioner, if I did not say to you that in my tenure in Washington, D.C., I've seen most of the waiters go from black to brown. And so no question, at least there's the—that the work force has changed. But I would also, I think, be walking on thin ice if I were to then conclude that, in fact, there has been displacement.

For example, it might be that, in fact, black workers are making a move upward and this is the kind of job that no longer appeals to them. I don't know. But I'm sure nobody in this room knows either. And so to act upon the presumption to me, particularly when the action might result in discrimination against Mexican Americans, to me is not the way to proceed.

VICE CHAIRMAN HORN. Well, I can appreciate that. But all I know is, we still have a high teenage unemployment rate, and I have the same experience you have, that I see the change in jobs that could be occupied by very unskilled individuals, mostly teenagers, in this country. I see car washes that at one time might have had black, white, etc., people speaking English; now, all of a sudden, people are brown and do not speak English.

So I've got to assume that there are some job displacements, just based on very limited personal experience and looking at very high unemployment statistics. So what I'm fishing for here is, To what degree is this a legitimate concern? You've stated some good reasons that you're looking for facts, and we all realize the difficulty of finding out anything in this area, given the difficulties of surveys and the fear of people answering questions and so forth.

I wonder if either of the gentlemen has another comment?

MR. CORTEZ. You mentioned a number of fears. And one of the reasons that this issue is extremely troublesome is, there is a good deal more fear than knowledge on this problem. There are some facts that are known.

Mr. Perez alluded to a study being done by Milton Morris of the Brookings Institution, and while his study does not adequately answer those concerns either, it does, in my opinion, represent the forefront of knowledge in this area.

It is known that it is oversimplistic to state that every immigrant, undocumented or otherwise, that comes into this country, an older

member of the domestic work force is displaced. That definitely is not true.

The structure of our labor market is such that traditionally in this country certain segments of the labor market, certain classes of jobs, have traditionally gone to immigrants.

The textile industries in New York, and so forth and so on, are filled by immigrants and have traditionally been viewed—have traditionally been shunned by older members of the domestic work force as being not only too hard or whatever, but also having pejorative associations, being beneath their dignity, in effect.

There are many of those jobs that have always gone to immigrants and now that the supply of documented immigrants has decreased since the 1920s during some of the major influxes—turn of the century, rather—a large proportion of these jobs are going to undocumented workers.

There are known to be marginal industries that are labor-intensive in the United States that have relied on this labor pool extensively, and that are suspected of being major employers of undocumented workers at this point, given the fact that a high proportion of the immigrant work force is now undocumented.

But they also employ members of the domestic work force as well, and the fact that they're marginal means that were their supply of undocumented workers to be cut off, they would become noncompetitive. They would either leave the country and relocate in another nation with a lower pool of labor and begin training a specialized skilled work force, to the extent that they need it for other kinds of job categories, or they'd simply fold and go out of existence.

Either way, that represents an adverse economic impact on our economy. There's a two-way street here. You ask is it—do you go for the businessman's point of view that states that we need more workers? Do you go for labor's point of view that states that it's just a question of what level the wages are going to be.

My hunch is that the truth lies somewhere in between, that there's some degree of displacement going on, and that there is also a rather complex labor market structure, such that you aren't going to employ unemployed teenagers in certain kinds of jobs no matter what they pay.

But we're only dealing with hunches, and so is the administration. And at this point, as the other two witnesses at this table have indicated, it is highly ill-advised to go and to establish major policy initiatives without getting the facts in first.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I believe, Mr. Cortez, you were referring to the need for relieving the economic pressure in the country that makes it necessary for the alien to go somewhere else to get a better job.

Do you or any of your panelists know of or have any recommendations for any ways that the United States or any other country could—any programs that could be developed that would work, working with Mexico, to relieve this economic pressure?

MR. CORTEZ. The administration has indicated a willingness to provide development assistance to countries that are believed to be the major source countries of undocumented immigrants. That is more than just Mexico. For example, in Mexico they're troubled with Guatemalans that are coming into that country as undocumented workers, and some eventually work their way into the United States. So it's a large pattern involved here.

I might also add parenthetically that the proportion of Mexicans among the undocumented population of this country, although unknown, is probably rather exaggerated in the public press.

I also want to add one complicating problem, too. There is a body of theory, which I haven't passed final judgment on, but which I don't heartily subscribe to, that believes that development assistance actually exacerbates immigration or increases immigration flow, undocumented or otherwise, such that developing economies get to such a point that local populations develop skills and become more mobile and become exposed more to the world outside and begin to think in terms of leaving their labor market and going to another more affluent one.

That runs counter to generally held opinion, but it is something that I'd like to insert in the record as a possible complication.

But setting all that aside, we would strongly advocate, and have, and the Carter administration is committed to, although they haven't followed through on it yet, to providing development assistance that would encourage more labor intensive employment in the countries of origin.

There is some research in Mexico that suggests that there are only six or seven really major, highly localized areas that are the principal source of undocumented workers in this country, and that were development assistance to be targeted in those areas where unemployment is highest—it's mainly rural, although the pattern is often that people leave a rural area, go to a Mexican city, and then come to the United States. But you know, these are believed to be one of the driving pressure points. Were it to be targeted to those areas, the flow would be relieved somewhat.

There again, the state of knowledge is less than perfect. But this seems to be the general direction in which we should head.

MR. PEREZ. There are a couple of elements flowing through, Commissioner Freeman. First of all, there's an old axiom or saying that poor Mexico is so far from God and so close to the United States. There has been almost no high-level policy vis-a-vis U.S.-Mexican relationships. Essentially, that kind of policy has been relegated to the backwaters of U.S. foreign policy development, so that the United States foreign policy aspect has always been geared towards Europe or the Far East much more so than Canada or the United States.

I understand now that there is a memorandum being developed by the Security Council on U.S.-Mexican relationships, particularly from the viewpoint of the integration concept, that is, integrating—not only integrating the different kinds of elements that tie this country with Mexico, economic trade, immigration, and now the much more important issue of oil. So we await the results of the memorandum being prepared for the President on this kind of thing.

So I think what needs to be done first of all is the kinds of policy developments at the international level has to be given priority, and it historically hasn't been given priority and now it must be dealt with comprehensively.

Number two, talking to Mexico's leading expert on immigration, Dr. Jorge Bustamonte, his theory is—I guess maybe it was seconded by Mr. Cortez—saying, “Look, don't try to develop Mexico because that's a long term process.” In the long run, he said, that's a kind of policy that will work. But that's a long term policy, given 20 or 30 years, and will require a redistribution of wealth, which might not—might not be possible.

One aspect of it is long term, it's policy, it's the economic development. But he also said that they should focus on labor intensive kinds of economic development in those 5 or 6 Mexican States, and his theory was that, out of 32 Mexican States, 6 are the main States from which all these immigrants come from; that you should focus some kind of economic development geared toward labor intensive development in those 6 States.

So he also proposed—and I think it sounds like a solid idea to me—that you must somehow tie in the labor forces, and he mentioned labor unions. Essentially, he said—I think he was advocating that U.S. labor unions and Mexican labor unions work out some kind of agreement whereby this whole question of workers and the impact of alien or immigrant workers in this country can be dealt with at that level.

So, first of all, the policy development is taking place now; number two, the recognition that six States, six Mexican States, send most of the immigrants, that maybe development should be focused there; number three, the kinds of integration that can be dealt with as far as energy, trade, and people.

Sixty percent of all of Mexico's imports come from the United States. On the other hand, 60 percent of all of Mexico's exports come to the United States. Tremendous merger there of economic elements, so that a further merging or integration of the other elements of energy and people, I think, is in order.

Number three, four—possibly, number four, possibly the working out of an agreement between unions here and in Mexico.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Economic philosophy was interjected into the discussion of to what extent the impact upon our employment problems the undocumented aliens contribute, and we went back to

the bracero program. As I recall, the reason that wages started to go up in the farm areas was not particularly because of the undocumented workers that had stopped coming, because they kept coming after that, but because of the fact that the farm workers began to organize against the employers. But for the unionization of the agricultural workers, wages would have proportionately never gone up.

As long as we had the bracero problem, nobody could unionize, if I recall the law correctly.

And of course it's rather dangerous to indulge in philosophy unless we do have these hard statistics that are needed. As I see the problem, the California economy is the highest and most successful. We have billions of dollars in our treasury, and we have a lot of undocumented workers there in California. And I do know that we have many Puerto Ricans there and, at least in my neighborhood, most of the car washers are Puerto Ricans, and they're American citizens.

So with relation to philosophizing on economy, I think the problem is to get the hard statistics so that we can make a proper recommendation to the Congress.

Now, Mr. Perez, what legislation would you propose to prevent discriminatory treatment of citizens and aliens by local police under color of immigration laws?

MR. PEREZ. If we had—as I mentioned in my testimony, Commissioner Ruiz, there's a lot of problems with local police officers getting into the picture of enforcing the immigration laws, and the reasons are varied. One reason is the fear that this country is being overrun by aliens, and therefore the INS is outmanned, and therefore the local police force—

COMMISSIONER RUIZ. Would you propose some sort of legislation?

MR. PEREZ. The law, I think, right now is sufficient to deal with the problem, if the law were implemented. We presented to the Attorney General our legal findings as to the legality of such activity by local police officers, and we had hoped that he would issue a strong policy statement that we could use for litigation purposes in case you found violations of his statement.

Unfortunately, his response was a press statement, which was not the kind of thing that we can use for litigation purposes. We found that the law seems to indicate, the statute and the Constitution, that local police officers have no business enforcing the immigration law.

Now, obviously we're advocates. Department of Justice stated to us that it's unclear what the law states.

COMMISSIONER RUIZ. Is that the regulation or simply a policy statement?

MR. PEREZ. No, the Department of Justice analysis was based on the Constitution and on the Immigration and Nationality Act. The statement by the Attorney General was based on the policy determination that it wasn't a good thing for local police officers to enforce it. So this was where the problem arose for us in trying to keep local police

officers from enforcing the immigration law. The administration did not say it's against the law to do it; they said the Attorney General encourages local police officers not to enforce the immigration law.

COMMISSIONER RUIZ. Would you suggest some sort of a regulation in order to make it more clear, by some agency? The Immigration—

MR. PEREZ. You could, in fact, amend the immigration law to have a new law, an entirely new law, which states that local police officers cannot and shall not enforce the immigration laws, and if they do so, they're subject to some kind of litigation, some kind of lawsuit. There is no such law on the books now, but it would not be a difficult task to amend the immigration law to do that.

COMMISSIONER RUIZ. Mr Gim, you mentioned that there was a gentlemen's agreement between the United States and Japan, wherein Japan limited the emigration of Japanese citizens to the United States. I do not know what the contents of that gentlemen's agreement was. Is there anything that's pending with relation to Mexico and the United States concerning a gentlemen's agreement that either one of the witnesses may know?

Reference was made to cooperation. But insofar as a gentlemen's agreement where Mexico would say, we will get into the picture and not permit emigration, is there anything pending of that nature?

MR. PEREZ. Not that I know of, Commissioner. There are some high-level task forces, bilateral U.S.-Mexican task forces working on some kind of understanding. But eventually, it's my understanding, or my feeling, that such understanding, if it requires—might require legislation, and therefore you will no longer have a gentlemen's agreement, but you will have acts on the books that you're dealing with.

So that I have heard of no so-called informal, gentlemen's agreement between the U.S. and Mexico. Most of the activity has been the kind of activity that will require legislation, and therefore you take it away from that kind of informal structure to the legislative structure. I have heard of no gentlemen's agreement, no.

COMMISSIONER RUIZ. You wanted to say something, Mr. Cortez?

MR. CORTEZ. I know of no openly stated agreement to that effect. There's a great deal going on informally that isn't subject to public scrutiny at this point. The general predisposition of the Mexican program has been the opposite, that they would favor increased emigration to the United States in order to help cope with their unemployment problems.

I think that the kind of discussion going on now is likely to be conditioned on such matters as the availability of oil from Mexico's oil reserves and things of this kind. But this kind of discussion, I understand, is going on from time to time and is now still—

COMMISSIONER RUIZ. Are you trying to tell me that it's a political problem now—it's becoming a political problem because Mexico may be sitting on a pot of oil?

MR. CORTEZ. Yes, sir.

MR. PEREZ. I think it becomes a problem that requires a comprehensive analysis, and oil being one aspect of it, particularly because oil and its revenue are very important for Mexico's development. There have been some statements to the press that Mexico might not want to develop its oil resources, and one of Mexico's top oil experts stated last week that Pemex, the national oil company in Mexico, will, in fact, reduce the percent of oil that Mexico sends to this country. So while the barrels per day might increase in production, the percent that this country gets is going to go down, according to this expert.

So that obviously oil, because of its tremendous economic development impact, will have to play a major role in any kind of resolution of the problem of immigration.

COMMISSIONER RUIZ. I have one more question. Perhaps Mr. Gim might answer this one. At some place in our reading, it was my understanding that blood tests are made to decide whether a family relationship exists in the case of immigrating Chinese persons. Have you heard of that?

MR. GIM. Yes, well, that's in the regulations. As I understand it, the explanation given by the Service is that that test is imposed where there are no documents, such as birth certificates, to prove filial relationship.

In actual practice that impacts mostly on Chinese, although I understand that there are some 21 countries—Afghanistan, Burma—some 21 countries which do not have birth certificates. The degree of whether or not this singles out—this is a practice where the Chinese are the only people who are affected is something that I can't determine at this present time.

COMMISSIONER RUIZ. Well, I was wondering how possibly a blood test would establish filial relationship. Blood types usually don't exclude people. And is it the American consulate that gives the blood test in a laboratory in a foreign country? How is that done?

MR. GIM. It's a double—the Immigration Service conducts the test over here from a panel of experts, a panel of people; I have no quarrel with their designation. Then the American consul conducts the test and does the matching up. It's only an exclusionary standard. It only proves—only establishes the impossibility of paternity. It's no positive proof. So that it's used as a preliminary exclusionary device. Actually, the fact that the blood tests are compatible is no positive proof at all.

COMMISSIONER RUIZ. I was wondering how they were able to do that, because of the blood tests with respect to parent-child, etc., is very unsatisfactory.

I have no more questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Two questions, gentlemen. What mechanisms would you develop for proof of citizenship, first of all?

MR. PEREZ. Part of the problem right now in trying to determine who is and who is not a citizen is that the States are really kind of

lax in how they hand out birth certificates, and most birth certificates are subject to being forged. So I think if you want to deal with this question, the Federal Government has to step in and somehow persuade all the States to develop a uniform system of issuing birth certificates, and also in reissuing birth certificates, because many people lose theirs and they ask for another one.

So that that's—to me, looking at the question, you have to have a uniform system that the States have to use or should use for issuing birth certificates and the kind that are issued, because if one State has one that's forgeable, then the whole thing falls apart.

But it's a major problem now in trying to determine or proving who is a citizen, because when the very basic—the document that you're given, the birth certificate, the basis, the standard of proof as far as citizenship, and that certificate for many States is duplicable, forged; and secondly, it's very—not uniform, so that there is no national system for issuing these. So I think the U.S. Government has to start getting into the business of persuading the States to develop a system whereby they're uniform and they're also forge-proof.

Now I think once you get into that kind of posture, then it's easier to stop the duplication of instruments. Now, how do you say, I was actually born here? That gets into the logistical problem of, Were you born in the hospital or were you born in the home, and who was there to witness the birth kinds of thing.

I don't think that's really the problem. The problem is in the documentation and that's where the problem arises. And, therefore, the only solution I can see is that the Feds have to step in, and so far they haven't done that.

COMMISSIONER SALTZMAN. Any other comments?

MR. CORTEZ. There have been some measures taken already to tighten up security on the social security cards, and I think there are a number of measures in a similar vein such as Mr. Perez has suggested that could be done with birth certificates.

But aside from, say, a general tightening up on the commonly used identity documents already in existence, we would not advocate any fundamental change or introduction of any new system of establishing citizenship, unless we were faced with such a problem as an employer sanctions law, in which case I believe we'd have to seriously consider advocating introduction of a national identity card as an alternative to some of the other problems I outlined earlier.

The introduction of any new kind of system for determining citizenship is conducive to threats to civil liberties in its everyday applications, and it's not something that we would advocate at this time.

COMMISSIONER SALTZMAN. Thank you. The second question. What is your attitude toward the Executive Order 11935, which bars non-citizens from the service? Do you think that should be—from employment by the government. Do you think that should be rescinded or altered?

MR. PEREZ. We have prepared a document which is in the index as appendix C. What we're arguing is that the wide—the Executive order is on a sweep with a brush that's too broad. It just bans everybody, period.

So we're seeking either a total rescission, which might not be—we understand that certain jobs might be held for citizens because of national security kinds of interests. We cannot say just do away with the Executive order. But, essentially, there's very few jobs of this nature, and the Executive order really bans all—really applies to all kinds of jobs, except for a very few exceptions dealing with scientists from outside the country.

So that we're asking either for a rescission or, in the alternative, that the Civil Service Commission draft an Executive order which would in fact preclude—which would only isolate those jobs that might have a national interest sort of factor to them, and maybe those jobs can be reserved for citizens.

But resident aliens—we're talking about people here who are legally here—are excluded from those jobs. They pay taxes. When there was the draft, they were conscripted. So they essentially have all the duties and functions of a citizen except for the right to vote, and under the Executive order they cannot work in the Federal competitive service.

We advocate a modification of that to open up the jobs that do not have the factor of national security.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Would anyone else want to comment on that? Mr. Nunez?

MR. NUNEZ. I just have one question for Mr. Gim. You related an incident that they had passed a special law allowing Filipino veterans into the United States under, I assume, a special quota or dispensation. And you indicated that the Immigration Service had not supported or implemented the provisions of that law by not sending investigators to the Philippines.

My question to you is, Wouldn't the consular service process those applications, as they do in other foreign countries? Why would it have been necessary to send immigration officials to the Philippines to ensure that the provisions of that law were carried out?

MR. GIM. Well, the naturalization examiners, who are attorneys, are designated by law to act for the Federal courts. The United States consuls would not—did not have the authority to do that. So that that was a legal prescription, and the Immigration Service frustrated that by just not sending their examiners, naturalization examiners, to the Philippines.

MR. NUNEZ. In other words, the law mandated that these immigration examiners—

MR. GIM. Naturalization examiners.

MR. NUNEZ. Naturalization examiners—

MR. GIM. Naturalization examiners, that's right, yes.

CHAIRMAN FLEMMING. Thank you.

MR. BACA. Mr. Chairman—

CHAIRMAN FLEMMING. I have listened to your presentations and also I've listened to the response that you've made to questions on the part of my colleagues. I gather that members of the panel seem to be in agreement on the fact that the fundamental issue that confronts us in this particular area is the issue of proper implementation of existing law or the issue of due process.

In other words, as I listen to you, apparently you're not pressing for any major changes in legislation. In some instances you've referred to Executive orders which you think might be modified in such a way as to improve the implementation, but that your real concern runs to the way the laws are being implemented and as to whether or not people are really being accorded due process.

MR. PEREZ. There are two elements, Commissioner Flemming. One is that we have talked here about policy. We haven't gotten into their detailed proceedings involving visa issuance and deportation. So that another witness might differ as far as the law in that respect.

CHAIRMAN FLEMMING. Yes.

MR. PEREZ. Number two is that I think there has to be a coherency to the way that this country develops immigration policy.

I'll give you one short example. In the dying days of 1976, in 1976, the Congress, within 24 hours, passed a law decreasing the quota from, I think, 45—basically, they applied the 20,000 per country maximum quota, which, in fact, the effect on Mexico was to reduce Mexico's share by 40,000, which, of course, increases illegal immigration.

So we're asking for a coherency in the development of an overall broad immigration legislation.

MR. GIM. Mr. Chairman, may I just add a word? I think that from AALDEF's point of view, we would recommend some—two basic changes. One would be the elimination of the colonial subquota formula, and the other would be to divest the American consul of this absolute power, over which there's no review, to issue or deny visas.

CHAIRMAN FLEMMING. Well, that—your latter one goes to implementation, but you would actually take the authority for implementing the law in that particular instance away from the consul and vest it someplace else.

MR. GIM. Well, no, we could have a bureau of visa appeals. We could set up a statutory board of appeals where the decisions could be reviewed.

CHAIRMAN FLEMMING. All right.

MR. GIM. I think that would cure part of the vice.

CHAIRMAN FLEMMING. All right.

Mr. Cortez?

MR. CORTEZ. There are a couple of very important pieces of legislation in addition to what's been mentioned that we do advocate. One is the form of adjustment of status that would adjust the status of a large proportion of the population of undocumented immigrants, as

opposed to temporary workers, which are also among us today, too, to make them undocumented de facto immigrants to the United States.

The Carter administration at one point introduced legislation which would have allowed adjustment of status for folks that could demonstrate that they had arrived prior to January 1, 1970. And we supported the administration in principle.

Our argument with them was over the date, which excluded a majority of the folks being affected, and which made it very difficult for those who did qualify to demonstrate that they qualified, because proof of residency is difficult after that many years.

So we do still seek such legislation, and our model would be legislation that has been introduced in the past and will be introduced again by Edward Roybal of California in the House of Representatives.

The other piece of law that we'd like to see changed is that referred to by Mr. Perez concerning the reduction of the quota for Mexico down to 20,000. That needs to be changed very quickly. We redefined a large proportion of the normal flow of immigrants as undocumented by passing that legislation.

CHAIRMAN FLEMMING. Thank you all very much.

MR. DIMAS. Yes, I have a question for Mr. Gim. Mr. Gim, you were speaking about the colonial quotas and the effects those have on Asian countries. What about the per country limitation effect on Asian countries?

MR. GIM. Well, first of all, there is a school that says the 20,000 limitation, given the demand from Asia for immigration, is an unfair limitation when many countries are not using their 20,000.

My thought would be that basically that's a workable—a workable limitation. I think perhaps we would get disproportionate immigration from some countries if we were to modify that formula.

MR. DIMAS. Did you not have disproportionate immigration prior to the implementation of that formula, when you were operating under the national origin system?

MR. GIM. We certainly did.

I think that we can see the complexion of our population—I think the abolition of the racial origins, the national origins, formula went a long way in correcting that. Now, do we want to go any further? My offhand feeling is that I would be prepared to stick with it the way it is.

MR. DIMAS. I guess the question is, Would the abolition of the country of origin as a factor in immigration be desirable?

MR. GIM. Beg your pardon?

MR. DIMAS. Would the abolition of the country of origin as a factor in the consideration of prospective immigrants be desirable?

MR. GIM. You mean just have a total worldwide quota of, say, 500,000?

MR. DIMAS. And preference just based on family, for example.

MR. GIM. Well, but then again we'd have—we would alarm, I think, first of all, I think we'll agree it would send shock waves in Congress. They would say that we will have 95 percent Hispanic and Asian immigration, to the exclusion of Caucasian immigration. I think as a practical matter it would probably scare the devil out of them, and it wouldn't be a practical position to take.

MR. DIMAS. What about the problems that you mentioned with the adjudications of petitions and applications? You mentioned various problems. What about some possible solutions for those problems that you raised?

MR. GIM. Well, one of the things is, most of the people making those adjudications are Border Patrol men, not law-trained, and they're called upon to deal with one of the most complex provisions of the immigration statute. So that I think one of the practical solutions would be to make the present naturalization examiners, who are lawyers—they're stuck with menial tasks of asking somebody to write, "I go to work," or "I am a man," or simple rudimentary tests in administering literacy examinations. Those examinations can be done by a clerk.

Now, these examiners are bored to death. They're stuck with this type of clerical duties. They should be shifted over to the adjudications. They should be made the immigrant examiners. They're law-trained, they're knowledgeable, they have a lawyer's approach. And maybe the Border Patrol men could be shifted over to administering these clerical tests. That would be one very practical solution.

MR. DIMAS. Thank you.

CHAIRMAN FLEMMING. We appreciate very much your being with us, offering your views and responding to the questions that counsel has had and also the members of the Commission. Thank you.

MR. PEREZ. We thank all of you for the invitation.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MR. BACA. Commissioner Daniel Leach.

Commissioner, would you remain standing, please, so that you can be sworn?

[Daniel E. Leach was sworn.]

CHAIRMAN FLEMMING. Thank you. We appreciate your being with us.

TESTIMONY OF DANIEL E. LEACH, VICE-CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY WILLIAM WEIR, DIRECTOR, OFFICE OF CONGRESSIONAL AFFAIRS, EEOC

MR. LEACH. Thank you, Mr. Chairman. Mr. Chairman, I'd like to introduce also Mr. William Ware, who will accompany me here this morning. Mr. Ware is the Director of the Office of Congressional Affairs of the Equal Employment Opportunity Commission.

I have a brief statement addressed to you, Mr. Chairman, distinguished members of the Civil Rights Commission, distinguished offi-

cial. I do appreciate this opportunity to come before this Commission on this very sensitive, very difficult issue.

As you know, the Equal Employment Opportunity Commission enforces Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on race, color, sex, religion, national origin.

The issue being addressed today by this Commission concerns the Equal Employment Opportunity Commission to the extent that it relates or may relate to the question of national origin discrimination with regard to employment in our country.

Let me clarify what Title VII says about the connection between national origin discrimination and discrimination based on citizenship.

In 1973 the Supreme Court handed down a key decision on this issue. It's called the case of *Espinosa* against the Farah Manufacturing Company, a case in which the plaintiff, a lawfully admitted resident alien, was refused a job as a seamstress with the Farah company because she was an alien.

She alleged that this refusal to hire violated Title VII of the Civil Rights Act by discriminating against her on the basis of her national origin.

The Supreme Court disagreed with the argument and went on to explain:

Certainly it would be unlawful for an employer to discriminate against aliens because of race, color, sex, religion, or national origin, for example, by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry. Aliens are protected from illegal discrimination under the Act, but nothing in the Act makes it illegal to discriminate on the basis of citizenship or alienage.

The Court went on to say—that closes the quote. The Court went on to say that discrimination on the basis of citizenship will violate Title VII only when such discrimination has the purpose or effect of discrimination on the basis of national origin.

What concerns the Equal Employment Opportunity Commission is that if legislation is enacted with employer sanction provisions as proposed in S.2252 in the 95th Congress, employers might act in certain ways which would have the effect of job discrimination on the basis of national origin.

First of all, employers perhaps will want to make prehire inquiries to ensure that they are not hiring undocumented aliens. While Title VII does allow prehire inquiries in some instances, the likelihood is that employers will ask some applicants, those of Hispanic origin, and not others to show proof of citizenship. This disparate treatment of certain groups may be a violation of law.

Secondly, there's a question of whether Americans of Hispanic national origin would be hired at all, where employers are unsure the

documentation of citizenship presented is a forgery and fear that they might be unknowingly violating the law. Many employers might decide to take no chances and refuse to hire applicants of Hispanic origin. Again, this would constitute national origin discrimination. The agency is also of the opinion that this kind of discrimination would be hard to eradicate.

The bill authorizes, the bill in the 95th Congress authorizes so-called "pattern and practice" suits against employers who violate its provisions. Such suits would be difficult to bring, as the employers who would be most affected by the bill are, by and large, small employers.

The agency, therefore, has several real concerns about this issue and its impact on the job opportunities of Hispanic Americans. And I say all of this with the understanding that presently there is no firm administration position on this matter, as evidenced by the fact that the President endorsed the law creating a commission to study the issue further and make recommendations, just as this Commission is studying it.

I also should point out that I have not cleared this statement or my remarks with the Office of Management and Budget. We are an agency which is a part of the executive branch.

I do recognize this as a problem, a real problem for your Commission, for my Commission; and I suppose I hope, as do you, that we don't make any medicine here harsher than the ailment which we're trying to remedy.

Saying all that, I open it up to the questions of you, Mr. Chairman, and your distinguished colleagues.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Baca?

MR. BACA. Commissioner, thank you for being here today.

You mentioned that the kind of discrimination that might be engendered by passage of an employer sanctions type bill would be hard to eradicate. I think you suggested that part of the reason would be that persons are employed by small businesses. Would you elaborate, please?

MR. LEACH. Well, yes. The thrust of the bill that was introduced in the last Congress and died with the *sine die* adjournment in the last Congress would have, in effect, given employers who are large employers some kind of a penalty if they engaged in a pattern and practice of making erroneous employment decisions in this area.

But the question is, Is this going to really apply or affect a small employer where immigrants of this status are more likely to be attracted, gravitate to?

And I say this as a generalization from the experience of my Commission, mainly in the Southwest, where we have faced a number of national origin complaints based upon discrimination against Hispanics and those of Hispanic origin, and that is the basis for the statement.

MR. BACA. Thank you.

One other thing I'd like to clarify in your statement. You said that certain kinds of pre-hiring inquiries "may be illegal." Are you not sure?

MR. LEACH. The test in Title VII is whether or not citizens, those applicants for jobs, are being accorded similar or like and related treatment. Once an employer begins to request preemployment information from one category of applicants for jobs, without making that kind of a practice uniform for all applicants for jobs, that employer runs a real risk of violating Title VII because he is not—because he is, in effect, engaging in disparate treatment of those applicants, and in this case perhaps disparate treatment based upon national origin.

MR. BACA. So that an employer, in order to protect himself or herself, would have to ask the same questions of all potential employees?

MR. LEACH. In effect, yes.

MR. BACA. We heard earlier that part of the proposal submitted by this administration to the Congress included, besides the employer sanction legislation and some recommendation that border enforcement be stepped up, a commitment on the part of the President that agencies like the EEOC would have an added responsibility and burden of enforcing the antidiscrimination laws.

Would enforcement of this law, for reasons of its lack of clarity, perhaps in affording an employer a ready-built defense against an accusation of discrimination; or because of the present status of EEOC, that is, personnel shortages, would it have been a practical thing to say to EEOC, You have an additional burden which I assume you can shoulder?

MR. LEACH. I'll accept whatever burden the President deems appropriate for EEOC. And, indeed, as Chairman Flemming well knows and the members of this Commission, the President has sought to and has provided the EEOC additional burdens that will be attached beginning in January of 1979 in regard to authority in the civil service sector, Federal employees, in regard to age discrimination, in regard to Equal Pay Act administration, things of that nature.

MR. BACA. With additional personnel to assume that responsibility?

MR. LEACH. With additional personnel, as approved by the Office of Management and Budget, and, in fact, already appropriated from the Congress.

I would assume, in other words, that any additional burdens would be accompanied by adequate personnel to deal with them.

MR. BACA. In your discussions with persons from the administration during the time that this bill was alive in the Congress, were there any discussions specifically about the kinds and numbers of persons that could be expected to be committed to EEOC?

MR. LEACH. No.

MR. BACA. Thank you.

This may not be a fair question, but I'll ask it anyway, and that is, Do you have any information that suggests that some employers are misguidedly not hiring persons on the basis of national origin, in the

belief that it is presently against the law to hire persons who are not legally within the United States?

MR. LEACH. It's a motivation that I am not aware of ever occurring in any of our cases. But that's based on my own information, my own knowledge. I suppose I could make an independent examination within some of our offices to determine whether that fact is arising. So far as I know and so far as the members of the EEOC, the Commissioners themselves, no, I don't believe we have any information like that.

MR. BACA. Thank you.

I asked earlier about your capability of carrying out the responsibilities that would have been assigned by the President. One of the things that critics of the bill alleged was that EEOC had such a tremendous backlog of complaints that it would have been unlikely that they could assume any new responsibilities for that reason. Has the Commission dealt with that backlog or is it dealing with that backlog?

MR. LEACH. You raise a very valid and very identifiable, visible problem. In recent years, the question of backlog in EEOC has come to engulf that agency, and in the past year, year and a half, since the very effective, very dynamic leadership, I must say, of Eleanor Norton, Chair of the agency, we have addressed backlog in a separate and distinct fashion.

We have created in all of our field offices special backlog teams. We have redeployed our staff, begun to redeploy our staff nationwide, from areas of the Nation that are relatively free of backlog to those areas that are heavily impacted with backlog. We have begun to use techniques designed to speed up the process with regard to these old cases, by consolidating, for example, charges against a given respondent and trying to negotiate them with that respondent, with that employer or labor union, en bloc, so to speak.

And I must say that the results to date are very encouraging. In August of this year we had gotten rid of our backlog in the Dallas field office, model office of the agency. We are cutting into the backlog virtually in every one of our other offices, both those which are in our model office areas and those in the traditional areas. So I think that we're beginning to grasp this issue. I think the agency is demonstrating its capacity to get after and resolve these old cases, and I think we're doing it very successfully.

MR. BACA. Back to the matter of immigration for a moment. What would an employer face with applicants who may or may not be legally eligible to work in this country have—well, let me ask the question in a different way, and I want to refer you back to something I asked earlier.

The Commission has heard from witnesses around the country that the large employer, that is, an employer with inhouse legal staff or access to legal staff, would probably correctly implement the law, whatever it turned out to be. But, as we have heard from other witnesses this morning, frequently persons not in this country legally tend to work for smaller employers.

Do you foresee that there would be any particular problem in getting the word out as to what exactly was the law?

MR. LEACH. Well, of course, if assigned the task, we would do our best. But, again, I think that the way you characterize it is most accurate, and that is that the larger employers in the employment area generally—and I speak as an EEOC Commissioner operating under Title VII—larger employers are more sophisticated, have good advice, good counsel; they can afford it as part of their costs.

The smaller employer is perhaps where some of the problems in Title VII remain most severe: those that lack sophistication don't understand the law, choose not to deal with the law.

That's a problem for EEOC as it is. I'm sure it would be a problem and continue to be a problem with any legislation that's proposed in this area.

MR. BACA. I think you also said earlier it would be a problem in terms of enforcement, because of the size of the concern.

Mr. Chairman, questions by the Commissioners?

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Leach, I believe EEOC now has jurisdiction over the discrimination—charges of discrimination in Federal employment. Would you comment on the status right now of the civil rights reorganization plan, especially as it relates to the reorganization for civil service?

MR. LEACH. Yes. We are actually not going to acquire that authority before January of 1979. We are now in the process of negotiating or working with the Civil Service Commission as to the terms and conditions by which we will assume that authority. For example, at the appellate level, on all appeals from agency actions where there are cases alleging employment discrimination, we have—the Commissioners of EEOC have agreed upon a method of handling those appeal cases.

The more difficult, I guess, problem remains with regard to those cases that are so-called "mixed cases." And in the closing days of the Congress I'm sure you'll recall, Commissioner Freeman, that the bill radically amending the civil service law was passed. And as a part of that proposal, in the wisdom of the Congress it was decided that in cases alleging both discrimination complaints and complaints of other natures, a third panel—not the new Merit Service Protection Board, not the Equal Employment Opportunity Commission, but a third panel—would be created to resolve questions that couldn't be resolved by either or both those other bodies.

So we're working very hard to get ready to assume this authority. But there are still some lingering issues that have to be worked out.

COMMISSIONER FREEMAN. It is correct now that EEOC does maintain the pattern and practice suit as it relates to private industry, as it relates to, in some instances perhaps, to local and State governments?

MR. LEACH. Well—

COMMISSIONER FREEMAN. Do you do—

MR. LEACH. Yes. The Department of Justice, really, is going to be more assertive in that area under the reorganization.

COMMISSIONER FREEMAN. Is it contemplated that EEOC would have jurisdiction to determine whether there should be pattern or practice suits against Federal agencies?

MR. LEACH. That's a difficult question, whether I as a Commissioner—you know, we launch pattern and practice cases ordinarily by filing what we call Commissioner charges, alleging a pattern or practice of discrimination.

Legally—our General Counsel now is exploring the question you've raised. That is, whether a Commissioner of EEOC can actually file a pattern or practice cause of action against another agency of government. And it's not clear that we have such authority. We'll be getting that opinion and I'm sure it will be tested by the agencies involved.

What we do have in this area, which I think is going to be just as effective, we hope, is authority to look, take a look at the affirmative action plans that various Federal agencies must submit under Title VII, must have.

And I think in that process of review and making recommendations and so forth, we'll be able to effect the kinds of changes in the status quo that I think Title VII is meant to affect in the Federal sector as well as the private sector.

COMMISSIONER FREEMAN. Does Your—does EEOC have any information concerning the employment patterns of the Immigration and Naturalization Service?

MR. LEACH. No, I don't, not offhand. Today we do not have that authority and won't have it until, as I say, until the 1st of—

COMMISSIONER FREEMAN. Until January.

MR. LEACH. Yes, ma'am.

COMMISSIONER FREEMAN. Two months from now.

MR. LEACH. That's right.

COMMISSIONER FREEMAN. Thank you. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. On this matter of Immigration and Naturalization, I think you made reference to the fact that there was a new Commission the President created.

MR. LEACH. Oh, yes, yes. I referred to the legislation which was passed late in the last session.

COMMISSIONER RUIZ. Yes. Now, with relation to that, what is the membership of this new Commission?

MR. LEACH. I don't have that information, sir, and EEOC, I must say, is not going to be a part of it. We are not participating.

COMMISSIONER RUIZ. You don't know what its role is going to be; you don't know how it's funded?

MR. LEACH. No, I don't.

COMMISSIONER RUIZ. Can you go into that item whatsoever?

MR. LEACH. No.

COMMISSIONER RUIZ. Whether it has subpoena power or anything like that?

MR. LEACH. No, no. It's a bill—

COMMISSIONER RUIZ. I might ask General Counsel, Do we go into that matter sometime during the hearing as to this new commission that's been—

MR. BACA. Several witnesses will touch on it.

COMMISSIONER RUIZ. Thank you.

I have no further questions.

CHAIRMAN FLEMMING. We do appreciate, Commissioner Leach, your coming here and testifying, and we appreciate your very frank testimony relevant to some of the pending legislation in the immigration area. I can certainly see where some of the pending legislation could be interpreted in such a way as to give rise to some real problems in the equal protection area. We appreciate your pointing that out for us.

MR. LEACH. Thank you, Mr. Chairman.

MR. CHOU. I just have a couple questions. Before, we talked earlier about Hispanics and Asians and others identifiable with immigrant groups being employed by small businesses.

MR. LEACH. Yes.

MR. CHOU. Does this pose any problems for EEOC in bringing pattern or practice litigation, this concentration of employment in smaller businesses?

MR. LEACH. Well, it does.

Our cases—under our new, what we call systemic program, the way it's conceived is really to achieve the most impact in any case in a matter alleging a pattern or practice. Impact, I suppose, in one sense means bigness.

So, in effect, while hopefully targeting on a worst-first basis, that formula will also include targeting on the basis of where the end product is going to achieve the greatest results. And that really does mean, I suppose, looking at companies that are not classified as small businesses.

MR. CHOU. Could you tell me how long it takes, on the average, to process or to resolve a pattern or practice suit?

MR. LEACH. My own experience is that a pattern or practice suit or case, which must first go through an exhaustive administrative process, including an investigation, a finding by the Commission, and a protracted negotiation period, which we call the conciliation process—that's the first stage.

If the conciliation fails, then we must consider whether or not we should sue on the basis of the finding of discrimination. And if we choose to sue, that means another protracted process in the courtroom. And very often these matters can last for 2, 3 years, or even longer.

MR. CHOU. How many systemic cases were initiated by the EEOC within the last year?

MR. LEACH. As far as Commissioner charges are concerned, not very many. I don't have the figures at hand. I'll be glad to submit them for the record. I know that I've signed in the last couple of months—or in the last month I've signed two charges alleging patterns and practices.

But I hasten to add that that is not the only way that we attack institutional job discrimination. Very often an individual or a class or category of individuals might bring what you would call a class action or a pattern and practice, a big impact case. And we would treat that as we treat our own initiated cases.

So Commissioner charges are very illusory when it comes to really defining this, or using this as a yardstick in terms of what kind of systemic activity we bring, in terms of this kind of enforcement strategy.

But you're right, if that's what you suggest; there haven't been a great many Commissioner-initiated Commissioner charges in the past year. I will submit them, the number.

MR. CHOU. Thank you.

One other question—one other area I'd like to touch on is, In the event that employer sanctions become law, will it be necessary for EEOC personnel, attorneys, and EEOC specialists to develop expertise in immigration law in order to determine the types of legal status in this country?

MR. LEACH. It may, yes. But I don't think that's an insurmountable burden. We, after all, have been given the task of investigating age discrimination cases, which we will assume next year. We'll have to reprogram and retrain, perhaps, some of our staff in order to assume that burden. I think similar problems or issues would be raised with any new authority you're suggesting.

MR. CHOU. Thank you.

I have no further questions.

CHAIRMAN FLEMMING. Thank you very, very much.

MR. LEACH. Thank you, Mr. Chairman. I appreciate it.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MR. DIMAS. Thank you, Mr. Chairman.

Mr. Gerlach, would you take the stand, please? Stand and be sworn.
[Ernest Gerlach was sworn.]

**TESTIMONY OF ERNEST GERLACH, SOUTHWESTERN REGIONAL OFFICE, U.S.
COMMISSION ON CIVIL RIGHTS**

MR. DIMAS. Would you please state your name, occupation, for the record, please?

MR. GERLACH. My name is Ernest Gerlach. I am a research writer-analyst with the Southwestern Regional Office of the United States Commission on Civil Rights in San Antonio, Texas.

MR. DIMAS. And Mr. Gerlach, in your capacity as a staff member, did you participate in the analysis of present employment statistics of the Immigration and Naturalization Service?

MR. GERLACH. Yes, I did.

MR. DIMAS. And did you prepare a written report based on your analysis?

MR. GERLACH. Yes.

MR. DIMAS. Do you have with you a copy of that report?

MR. GERLACH. I do.

MR. DIMAS. Now, Mr. Chairman, we would ask that a copy of Mr. Gerlach's report be entered into the record.

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

MR. DIMAS. Mr. Gerlach, would you please summarize the findings of your report for the Commissioners, please?

MR. GERLACH. Yes. The paper deals with an analysis of the work force in INS, Immigration and Naturalization Service, at three basic levels: agencywide, central office, and for the four INS regions.

Basically, there were nine findings developed out of this report. I'd like to present these.

The first finding is as follows: As of September 1978, INS employed a total of 11,623 persons in all pay systems. Of this total, 11,133 or 95.7 percent were employed in the general schedule or GS pay system.

Now, slightly over 28 percent of the agency's total GS work force were members of minority groups. Overall, the agency work force was 11.8 percent black, 13.6 percent Hispanic, 0.1 percent American Indian, and 2.5 percent Asian American. The remainder, approximately 72 percent, were white.

The second finding: Of the 11,133 GS employees in the INS, 3,956 or 35.5 percent of this total work force were women. Of this number, 1,595 or 40.4 percent of all female employees were members of minority groups. Overall, the agency's female work force was 24.3 percent black, 12.3 percent Hispanic, 0.2 percent American Indian, 3.6 percent Asian American; 59.6 percent were white.

The third major finding in the report is that, although minorities constitute 28 percent of the INS work force, 32 percent were employed below the GS-4 level and 74 percent were employed at or below the GS-8 level. In contrast, only 46 percent of all white employees were at or below this GS-8 level. At the other end of the GS grade system, over 15 percent of the white work force was employed at or above the GS-12 level. Only 3 percent of all minority employees were at or above this level.

A word about the GS system. There are a number of Federal pay systems in operation. The general schedule, or the GS pay system, is probably the largest. It is the largest. Within this system, you have 18 grade levels. These range from grade GS-1 on up to 18, and within each of the grades you have a series of steps from 1 to 10. These steps indicate incremental salary increases.

Generally, the GS-1 through 4 levels, these are entry level type positions. The GS-5 to 8 range you have either journeymen or trainee type positions. As you move into the 9, GS-9, 10, and 11 grade levels, these become entry levels into management supervisory type positions. And when you get above the GS-12 level, you move into management supervisory and administrative type positions. And, certainly, above the GS-14 level you move into administrative, policymaking kinds of positions.

So the distribution by grade level becomes extremely important in terms of assessing any agency's overall employment—any Federal agency's overall employment.

Finding number four: Nearly 90 percent, or 88.3 percent, of the 3,956 women employed by the INS were at or below the GS-8 level. Only 89 female employees, or about 2 percent of the total female work force, was employed at or above the GS-12 level. In contrast, 1,226 males or 17 percent of the total male work force in the agency was employed at or above this level.

The fifth finding in this report is that, with respect to median grade levels, the data show that minorities and women are significantly lower than white employees within the agency. For example, as of 1978, the median grade for white INS employees agencywide was 8.5; for minorities and women it was only 4.5.

The sixth finding: For the most part, minorities and women have little or no impact on the management and administration of day-to-day operations in the INS. This finding is based on the fact that only 3 percent of the minority work force and 2.2 percent of all the female employees are employed at or above the GS-12 level. In contrast, slightly over 15 percent of the white work force and 17 percent of all males are in this range.

Finding seven: In 1978, nearly 32 percent of the minority work force and about 40 percent of all female employees earned less than \$12,208 a year. In contrast, only about 13 percent of the white employees and 6 percent of all male employees in the INS earned less than this salary. For the agency as a whole, taking the total work force, 18 percent of the total work force was making less than this salary.

At the other end of the pay scale, over 15 percent of the work force agencywide earned more than \$23,000 a year. In contrast, only 3 percent of the minority work force and 2 percent of all female employees were in this particular pay category, or made in excess of \$23,000 a year.

Finding eight: The four most important job categories in the INS with respect to total numbers of employees are the general clerical, investigator, inspector, and patrol officer categories. Together, these four particular jobs encompass over 60 percent of the agency's total work force. Now, minorities comprise about 44 percent of all the clerical jobs in the agency.

Remember, as noted earlier, the total minority work force in the agency is 28.5 percent. However, they make up only 12 percent of all the investigators—128 out of 1,083 employees—19 percent of all the inspectors—440 out of a total of 2,259 employees—and 19 percent of all the patrol officer jobs—approximately 421 out of 2,151 officers.

Finding nine: Female employees are concentrated mainly in the clerical job fields within the INS. In the four major job categories, females make up only 42 percent—make up about 42 percent of the general clerical personnel, but only 4 percent of the investigators, 23 percent of the inspectors, and less than 1 percent of all the patrol officer positions. Of the 2,151 patrol officers in the agency, there are only 21 who are female.

In conclusion, although minorities comprise a fairly significant portion of the total INS work force, they tend to be concentrated in the lower grade and salary levels.

The same condition also holds true for female employees. Although females make up 36 percent of the total INS work force, 88 percent are employed below the GS-8 level, and nearly 40 percent earn less than \$12,000 a year.

These statistics appear to indicate that there are some very severe disparities with respect to their employment—with respect to their employment of minorities and females.

That's the end of my statement.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Chairman, I would like to request that the staff transmit this paper by Mr. Gerlach on January 1, 1979, to EEOC for an evaluation and appropriate action.

CHAIRMAN FLEMMING. Without objection, it will be done.

Does Counsel have any questions?

MR. DIMAS. Yes, Mr. Chairman.

Mr. Gerlach, were there any significant differences within the central office or the regional offices of the INS?

MR. GERLACH. Yes. We find that in the central office, although there's a fairly even split, an almost 50-50 percent split with respect to minorities and white employees, generally the white employees are in very high grade levels.

For example, the median grade is close to—in excess of GS-11, whereas the median grade for female employees and minority employees is very low, down around 5.

And there is also a severe disparity with respect to salary ranges, as might be expected with the grade spread like this. The number—the minority pay scale is extremely low. The same is also true with females.

The regional offices are somewhat better, although the patterns I mentioned in this report reflect agencywide patterns. For the most part, the regional offices reflect these general patterns as well. There are some slight differences among the regions.

MR. DIMAS. So the figures are somewhat improved by the inclusion of the regional offices? The central office actually has slightly lower statistics?

MR. GERLACH. Yes.

MR. DIMAS. Thank you.

CHAIRMAN FLEMMING. Any other members of the Commission have any questions that you'd like to address to Mr. Gerlach before we go to the next witness?

VICE CHAIRMAN HORN. Just one. Maybe I missed it. It might well be in the paper. But could you summarize, based on analysis of new recruits over the last 5 years, how has that changed in terms of minority representation? Do you have those figures?

MR. GERLACH. No, I don't. I will say this here; some of the material that I have received was not included in the report. They have—the INS has increased the number of minorities in its work force. And I cannot say this for sure about the female work force, but in terms of their minority work force there has been an increase, a slight increase over the years since '73.

VICE CHAIRMAN HORN. Well, the reason I asked that question is the obvious one. It's very easy to talk about "average grade levels." People have careers of 20 to 30 years in government. Some in the government at GS-18 started at GS-1 in the oldtime group of the civil service. Most that are GS-18 now started as GS-5s or GS-7s.

So there's a question of when affirmative action hadn't quite caught on in the American Government until perhaps the last decade, as to how rapidly you can readjust so grade average levels by ethnic group are really meaningful comparisons.

That's why I think it's important, if you're going to measure progress in an agency, to ask the question, What percent minority and female hires have there been over perhaps a decade? And if you can see steady growth in one direction, to recognize talents of females and minorities, I think that tells us one thing about personnel practice. If you don't see the growth, then perhaps those grade level figures taken in isolation might mean something.

On the whole, I would say unless you look at both, you cannot just look at the grade average level and feel that it tells you much about the practices in the immediate past. It might tell you a lot about practices 20 years ago, 15 years ago, maybe 10 years ago.

MR. GERLACH. I might add that at the GS-5 level within the INS, your minority employees tend to be concentrated at that level. This is an entry level, which indicates that there is an attempt to bring more minorities in. And this is true also for female employees. This is a high point in the overall grade structure.

CHAIRMAN FLEMMING. Any additional questions?

COMMISSIONER RUIZ. I simply want to make the statement that the analysis, I think, is very good. It's self-revealing and it's self-explanatory. What is meant by it in terms of discriminatory patterns and prac-

tices was envisioned by Commissioner Freeman when she requested that further interpretation and analysis be given to the EEOC. I think that's well taken.

CHAIRMAN FLEMMING. Thank you very much.
Counsel will call the next witness.

MR. CHOU. Mr. Chairman, the next witnesses are James Walker, Neil Conrad, and Rosalind Rechad.

Would those three individuals come forward, please, and remain standing for the swearing in?

[James Walker, Neil Conrad, and Rosalind Rechad were sworn.]

**TESTIMONY OF JAMES WALKER, ASSISTANT COMMISSIONER, PERSONNEL,
NEIL CONRAD, AFFIRMATIVE ACTION COORDINATOR, AND ROSALIND
RECHAD, DEPUTY EEO OFFICER, IMMIGRATION AND NATURALIZATION
SERVICE**

MS. FONG. For the record, would all three of you please state your names, titles, and business addresses?

MR. WALKER. James H. Walker, Assistant Commissioner of Personnel, Immigration and Naturalization Service.

MR. CONRAD. Neil Conrad, Coordinator of Affirmative Action Programs, Immigration and Naturalization Service.

MS. RECHAD. Rosalind Rechad, Deputy EEO Officer, Immigration and Naturalization Service.

MS. FONG. If any of you have a prepared statement, you may summarize it and introduce it into the record at this time.

MR. WALKER. I would like to summarize at this time.

MS. FONG. Okay.

MR. WALKER. And also introduce it into the record.

MS. FONG. Fine.

Mr. Chairman, may we introduce that in the record?

CHAIRMAN FLEMMING. Without objection, the full statement will be included in the record at this point.

MR. WALKER. INS has made significant progress with EEO affirmative action programs since 1976. We would like to call to your attention some of those accomplishments, which we feel have increased the Service's ability to attain a balanced minority and female representation overall and in key occupations and grade levels.

The Immigration and Naturalization Service's total on-duty strength in 1976 was 9,973 versus 11,744 at the end of 1978 fiscal year, September 30. The number of minority employees was 2,642 versus 3,527.

This represents an increase of 1,951 employees, of which 885 or 45.4 percent were minorities. This resulted in an increase in overall employment of minorities from 27 percent in 1976 to 30.1 percent in 1978, a 3.1 percent increase.

Minority representation in INS's three key officer corps occupations—Border Patrol agents, investigators, and inspectors—increased

by more than 3 percent in each occupation: Border Patrol agents from 16.3 percent in '76 to 19.4 percent in 1978, investigators from 9 percent to 12.1 percent, and inspectors from 16.3 percent to 19.6 percent.

Minority employment by grade level: GS-6 through 9 increased from 8.8 percent in 1976 to 9 percent in 1978. GS-10 through 14 increased from 2.1 percent to 2.6 percent. The average grade level for minorities increased from 5.7 in 1976 to 6.1 in 1978, while the Service's overall grade level declined from 7.6 to 7.5.

EEO advisory committees have been established in 61 INS locations. Two were in existence in 1976. And part-time collateral duty employees have increased from 132 in 1976 to 189 in 1978.

To achieve these positive results, the following organizational and programmatic actions were accomplished: Establishment of an organization solely for EEO affirmative action at the branch level within the personnel division; over 70,000 recruitment contacts during FY 1978 with individuals of schools and special interest organizations; establishment of goals and timetables for increasing minority participation in key INS occupations during FY 1978; establishment of the EEO advisory committees through the district and Border Patrol sector levels; establishment of a network of collateral duty, part-time coordinators for the special emphasis program; EEO counseling and EEO investigation through the district and Border Patrol sector levels; establishment of an internal agency fund for training in December of 1976. FY '77 it was \$34,000; FY '78 it was increased to \$144,000; FY '79, we're projecting \$200,000. An increase of EEO training incidence of 52 in 1976 to 1,288 in 1977, with 1,355 in 1978. Emphasis was on EEO training for supervisors and managers, and for the full- and part-time EEO staff members.

Development of affirmative action plans through the district and sector levels—25 affirmative action plans have been developed to date. The FY '78 national affirmative action plan emphasized the procedural parameters to implement an affirmative—an effective affirmative action program. The FY '79 plan concentrates on establishing goals to accomplish an effective affirmative action program. Utilization of personnel management evaluation surveys as vehicles to evaluate the EEO affirmative action program.

Implementation of a formal upward mobility program in March 1978. Significant increase in upward mobility program participation has been established as a goal for FY 1979.

Although we feel the efforts of the Service have produced positive results, we are aware of the need to continue and to increase accomplishments in minority employment at INS. Especially, we recognize the following: One, the need to increase minority and female participation in middle and high-level management positions; Two, the need to increase the number of employees enrolled in the upward mobility program; And three, the need to place emphasis on affirmative action ac-

accomplishments in order to further increase minorities and women in key occupations, higher grade levels, and in supervisory and managerial status.

This completes my summary of our statement.

MS. FONG. Thank you, Mr. Walker. You just referred to your commitment to increasing the representation of minority groups and women in the higher grade levels of management. One reason that we have heard advanced to explain the absence of members of minority groups and women from the upper policymaking positions is that such people have not been in the pipeline long enough.

Is there any kind of conflict between this pipeline concept and affirmative action at INS?

MR. WALKER. There is not any conflict, per se. The only conflict that would exist, which would be in any other organization where you have a time period that's going to elapse before the people who are minorities or females who were brought in at the entrance levels or one or two grade levels above the entrance levels reach the position where they will be competing for the higher supervisory and managerial type positions.

We have, particularly for administrative type jobs, hired individuals from outside of the Service for these positions. If I could cite an example: Not to blow Personnel's horn, but the chief of the EEO affirmative action program, a grade 14, is a black. The Deputy Assistant Commissioner for Personnel is a grade 14 female. And the EEO officer that we hired just recently and came on board Monday is a grade 14 black. That's only by way of example to show where we can bring people in at those grade levels, those minorities and females.

MS. FONG. Okay. Thank you.

Mr. Conrad, Mr. Walker alluded to the Service's upward mobility program in his statement. Could you give us a brief description of that program and tell us how participants are selected for it?

MR. CONRAD. I think I could do that very briefly, not to get in the mechanics and procedures of the upward mobility program, which is quite lengthy.

Essentially, the structure of the program was designed initially to set aside or identify a specific number of positions which would be brought into the personnel divisions of the Service, the central office and the regions, and set up as upward mobility trainee positions, thereby creating the end result, whenever we select into an upward mobility trainee position, there is a position in the career ladder of that occupation available for that trainee when he or she completes the training.

That was a guiding, one of the guiding, principles of it. Another one was to use some of the narrow principles—the reliance on experience, outside experience, the education levels of selectees—and then, inserted into that also was the potential—an assessment of the potential of the candidate who was going into an upward mobility position,

which we felt was key to utilization of, say, dead-ended employees, if we can call them that, employees that are in occupations that end at specific grade levels under grade 8. So we inserted into the merit system also the potential, an assessment and an analysis of that person's potential to function at a higher level.

And then, getting into procedures, we advertised positions and available candidates applied, and the assessments and analysis and rating of different candidates is done by a specific panel, who interview each candidate and then make their analysis, and provide those analyses and those assessments to the selecting official.

I think that's very briefly the structure and the procedures. That does not include them all, by any means.

Ms. FONG. Could you tell us how many employees to date have participated in the upward mobility program?

Mr. CONRAD. Yes, I can, although I'd like to preface that by indicating that the upward mobility program, although it was approved earlier this year, it necessitated implementation guidelines to regional offices and other personnel, and it was—normally, I think, directed implementation for advertising positions, I believe, September 11 or September 1 of this year.

The first three upward mobility candidates were selected at the central office level in the Personnel Division—excuse me, two of them were in the Personnel Division; one of them was in the Information Services Division. Those two candidates are on duty now as upward mobility trainees.

Ms. FONG. So this program is very new?

Mr. CONRAD. Yes, it is. We have in our FY '79 affirmative action plan a goal to select approximately 110 upward mobility trainees throughout the Service. We hope to have 25 in each region, with 10 of those positions in the central office.

Ms. FONG. Okay.

Mr. WALKER. I'd like to add to that that we are in the process of preparing a memo for Commissioner Castillo's signature to the central office and the regions providing support and impetus to the upward mobility program and reminding them of their goals that are to be accomplished during FY '79. That will go out during the next week or so.

Ms. FONG. Thank you.

Mr. Conrad, I have another question for you. The 1977 Inspections Task Force Study, which was conducted by INS Inspections Division, found that there were deficiencies in the Inspections Division's recruitment process, because there were no fully detailed job brochures available to applicants, no indepth interview was conducted by Service personnel, and formal college recruitment programs were curtailed by the Civil Service Commission.

Have any of these problems been corrected or do they still exist in your recruitment process?

MR. CONRAD. I believe we were consistently correcting those problems and are in the process of correcting those problems.

As I read them, the first item that you mentioned was the recruitment literature. We have been working in the Personnel Division to redesign old recruitment literature, to design and develop new recruitment literature, not only for the inspections area of the Service, but for many of our key occupations in the Service. Those—that recruitment literature is nearing completion now and nearing the point where we can send it to the printer and have that available for our affirmative action recruiting.

The second one—Do you want me to take them one by one?

MS. FONG. That's fine.

MR. CONRAD. Your second—your second point was, if I remember correctly, the contacts with colleges, universities, or outside groups; there's no coordinated effort in that; is that correct?

MS. FONG. Well, the effort had been curtailed by the Civil Service Commission. I was wondering if you have implemented any new recruitment programs or efforts.

MR. CONRAD. Okay. Excuse me, I read the question wrong.

Yes, we have. In fact, Mr. Walker alluded to in his statement—prepared statement—that in the last fiscal year, fiscal year '78, affirmative action recruiting contacted over 70,000 different organizations, groups, and individuals. Although the Commission did curtail some of its recruiting activities, we have put into operation procedures whereby we have part-time collateral duty personnel in the affirmative action area who are recruiting coordinators. These are people we send recruitment literature to at local offices, district and sector offices, regional offices, and in their part-time duty they contact local schools, universities, high schools, organizations, and individuals who are interested in coming to work for us.

So we have moved quite rapidly in that area and we will continue to move more rapidly in that area in 1979.

MS. FONG. How successful have your new recruiting efforts been? Is there an increase in the number of minority applicants?

MR. CONRAD. That I believe is too soon to say. The majority of the 70,000 recruiting contacts took place in terms of our Border Patrol register, which was open in the spring of 1978. We do not project using that register, because of a number of things—curtailment in hiring and a number of other things—until late this year, late '79, fiscal year '79.

So the effects in Border Patrol and the effects even in PACE—if you want to talk about PACE, we're backed up on the PACE registers thousands and thousands of people. That effect we believe will begin to show in late '79, early FY '80.

MS. FONG. Okay, thank you.

MS. RECHAD, could you briefly describe the duties of your office?

MS. RECHAD. Yes. Would you like me to explain the chain of command so you can see where we fit in?

Ms. FONG. Just a brief description of what your office does with affirmative action complaints.

Ms. RECHAD. Pardon?

Ms. FONG. With the discrimination complaints.

Ms. RECHAD. The EEO officer is located in an office directly under the Deputy Commissioner, and the Deputy Commissioner has delegated the following responsibilities to the EEO officer:

Maintaining a system to provide counseling or an EEO counselor for an employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, physical or mental handicap, or age;

Providing a system for the receipt, investigation, and disposition of allegations of discrimination within the Service, and for notification of the party submitting the allegation of discrimination of the results of the investigation and its disposition;

Receiving and directing the investigation of complaints of alleged discrimination within the Service;

Reviewing the investigation report on complaints before the Service's proposed disposition is made, and making appropriate efforts to attempt resolution of the complaint by informing or otherwise conferring with management and personnel on issues raised in the complaint;

Issuing proposed dispositions of complaints;

Developing inservice advanced training programs or seminars for EEO investigators and counselors, and assisting in the maintenance of a system for training EEO investigators and counselors;

And implementing remedial action, with prior approval of the Deputy Commissioner or Commissioner.

Ms. FONG. Thank you.

Could you briefly describe the process that an employee who has a discrimination complaint would follow in filing his complaint and having it processed?

Ms. RECHAD. Before a formal complaint may be filed, employees or applicants for employment who feel they have been discriminated against must bring the matter to the attention of an EEO counselor within INS within 30 calendar days after the action in question. Continuing problems may be discussed at any time.

Then the EEO counselor, within 21 days of receipt of a request for counseling, will discuss the questions and problems with the complainant, maintain the complainant's anonymity if it's so requested; ascertain the facts surrounding each question; exercise the authority delegated by the Bureau Director to resolve problems, informally if possible; document the case, including issues raised and attempted resolution on the appropriate forms; notify the complainant in writing of the final counseling interview and of the right to file a formal complaint within 15 days and the appropriate officials with whom to file the complaint; and then, if counseling has not been completed within 21 days, notify the complainant in writing on the 21st day of the com-

plainant's option to file a formal complaint within 15 days, even though counseling is not complete; or to continue counseling and keep a record of the counseling activities.

And then, once the counseling is finished, our office receives a copy of the counseling report in case a formal complaint is filed. As I said, the complainant then has 15 days to file a formal complaint. If a formal complaint is filed, then the EEO officer reviews the complaint. We do not have the authority to reject complaints. That authority rests with the Department of Justice. But the EEO officer can recommend rejection to the Department if he or she feels it's necessary.

If the complaint is accepted, then an investigation is conducted, a thorough investigation is conducted, by an EEO investigator, within 60 days. Then the investigation is submitted to the EEO officer with copies. It is sanitized in accordance with the Privacy Act of 1974. A copy is sent to the complainant and to the regional commissioner so that an informal adjustment may be attempted.

If that is not successful, then we in the EEO officer's office will receive a letter from the region either stating that the informal adjustment has been successful or that it has not. And then, if it has, the complainant generally withdraws the complaint. If it has not, then the EEO officer would issue a proposed disposition on the merits of the complaint.

Again, if the complainant is satisfied with the proposed disposition, they can—he or she will write back to us, inform us that they would be satisfied with the proposed disposition, and withdraw the complaint. If not, they may ask for a hearing.

If they do not make an election, we would ask that the complaints adjudication officer at the Department render a final agency decision. We also do not have the authority to render final agency decisions. The Department of Justice does that.

So if a hearing is requested, then we would send a copy of the complaint file to the Department of Justice so that they can arrange with the Civil Service Commission to have a complaints examiner appointed and have a hearing conducted.

MS. FONG. Okay, thank you.

Is there a departmental regulation describing this process?

MS. RECHAD. Departmental Order 1713.4, amended February 1973. If you like, I have a copy of that that I could enter into the record.

MS. FONG. Mr. Chairman, could we enter that departmental—

CHAIRMAN FLEMMING. Without objection, it'll be entered in the record at this point.

MS. FONG. Ms. Rechad, you mentioned that your office does not have the authority to reject complaints, but it does have the authority to recommend that complaints be rejected.

MS. RECHAD. Right. The Bureau EEO officer may only reject a complaint with the approval of the Director of EEO at the Department of Justice.

Ms. FONG. How many complaints of discrimination which have been filed have been recommended for rejection by your office in the past year? Do you know?

Ms. RECHAD. I can tell you how many have been rejected.

Ms. FONG. That's fine.

Ms. RECHAD. Okay. There were 82 cases that were closed during fiscal year '78, of which 11 were rejected. So that's 13 percent.

Ms. FONG. Do you know why the complaints were rejected? On what grounds?

Ms. RECHAD. There are—I don't know specifically for each one, but I can tell you there are four reasons for which a complaint may be rejected:

One, the complainant fails to meet the time limits for filing a complaint; Two, the complainant refuses to submit a written, signed complaint of discrimination because of race, color, religion, sex, national origin, age, or physical or mental handicap; or the complaint does not allege discrimination because of race, color, religion, sex, national origin, age, or physical or mental handicap; Three, the issues of the complaint center around matters not entirely within the control of the Department of Justice; Four, the issues of the complaint are identical to those contained in a previous complaint filed by the same complainant which is pending or has been processed to completion.

Ms. FONG. Okay. Of the complaints that were not rejected, what happened to them? Were all of them—did all of them result in findings of discrimination?

Ms. RECHAD. Those that were closed during the year?

Ms. FONG. Well, all the complaints that were not rejected. I guess they were either closed—

Ms. RECHAD. Well, there are some that are still pending.

Ms. FONG. Yes.

Ms. RECHAD. But—about half of the complaints closed during fiscal '78 were closed by final agency decisions. Only approximately 7 percent found discrimination—where the Department found discrimination.

Ms. FONG. And what would be the grounds for those findings?

Ms. RECHAD. Pardon?

Ms. FONG. Do you have any breakdown as to the reasons why discrimination was found in those cases?

Ms. RECHAD. Not with me right now.

Ms. FONG. Okay. Could you tell us how investigators are assigned or selected to conduct EEO investigations?

Ms. RECHAD. Well, the investigators are under the—operate in districts. We have an EEO investigator in every district of INS. They are—they work under the Regional Commissioners. Each Regional Commissioner has responsibility for the administration of the regional EEO program, and also the provision of EEO investigators.

EEO investigators volunteer for the assignment, and if more than one volunteers from a particular district then the Regional Commissioner would select the particular person to be assigned the collateral duty of EEO investigator. All of our EEO investigators perform the functions of an EEO investigator on a collateral basis.

Ms. FONG. So all of the EEO investigators are immigration investigators in their full-time jobs?

Ms. RECHAD. All of our EEO investigators are full-time criminal investigators.

Ms. FONG. Right. Are they selected—they are selected by the regional commissioners?

Ms. RECHAD. Right. They volunteer, and then if there is—the ultimate selection is made by the Regional Commissioner. But it's a voluntary assignment.

Ms. FONG. Are these investigators assigned to conduct investigations in the same regions in which they are normally located?

Ms. RECHAD. The regulations stipulate that an EEO investigation must be conducted in another district or sector from—than where the complaint arose. So if we have a complaint that arises in a district, we would have an EEO investigator from the same region, but from a different district, assigned to the case.

If an EEO complaint is against a particular region, then we would have an EEO investigator assigned from a different region. And if a complaint is against the Service, then the Department of Justice would assign an EEO investigator from another bureau.

Ms. FONG. Are these investigators who are assigned to EEO cases given any special training in EEO issues?

Ms. RECHAD. All of them have received Civil Service Commission investigation of complaint discrimination training.

In addition, we held in late August and September advanced in-service EEO training for all of our investigators, covering personnel management procedures that they would have to be aware of in order to conduct a thorough investigation, plus specific requirements that we would need for a thorough investigation.

Ms. FONG. Is any special EEO training given to EEO counselors?

Ms. RECHAD. All the EEO counselors have received the basic Civil Service Commission training. In addition, some have had the advanced training. Some have had training in personnel management as it relates to EEO. And in addition, the regional EEO specialists have conducted training within their regions with their counselors.

Ms. FONG. Could you briefly describe what the role of the regional offices are—is in conducting EEO investigations, and what—do they all follow the same procedures?

Ms. RECHAD. The Regional Commissioner has delegated to the Assistant Regional Commissioner for Personnel, through the Associate Regional Commissioner for Management, responsibilities in complaints of discrimination. They are supported by a regional EEO specialist in each region.

The regional EEO specialist provides technical advice in support to management in terms of EEO. As far as our office is concerned, the EEO specialists assist us in technical matters. Such as, for example, if we have to arrange—if the Civil Service Commission is going to hold a hearing, we would have our EEO specialist find a hearing site and make the arrangements, the physical arrangements, for the hearing.

If there are costs involved for witnesses, they would see that the witnesses' travel costs are paid—things like that.

MS. FONG. Are—excuse me. Are you aware of any differences in the procedures among the various regional offices as to methods of compiling statistics or as to different methods of counseling complainants?

MS. RECHAD. All regions must compile certain statistics that are required by the Department of Justice, precomplaint counseling statistics that each counselor submits to the regional specialist, and then they consolidate the reports and present one regional report to us. In each particular region, the specialists may keep some statistics that—the ones that they are required to keep by the Department of Justice they all keep.

MS. FONG. Are you aware of any differences in procedures among the regional offices in terms of counseling complainants who file complaints?

MS. RECHAD. There may be differences because the EEO program is under the responsibility of the Regional Commissioner. So I can't say that they all are absolutely done the same way. All counselors, you know, provide the same kind of counseling, hopefully, to all of their prospective complainants.

MS. FONG. Thank you.

Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I understand that the President recently imposed a hiring freeze on all Federal employers—employees. Mr. Walker mentioned new hires of minorities. Was that before the freeze?

MR. WALKER. Yes, sir. The freeze was just October 25.

COMMISSIONER RUIZ. So right now we're at a situation where we don't know just exactly what we're going to do with respect to new hires in all our Federal agencies, I assume.

MR. WALKER. Not exactly. Although the freeze was imposed, it is not a total freeze. We can still make hires within the Service either through reassignment or promotions. Additionally, we can hire one out of every two—fill one out of every two positions when an individual leaves the Service. For example, if we lose 20 positions Service-wide, we can fill 10 of those from the outside. So it's not a complete freeze.

COMMISSIONER RUIZ. But I believe you're understaffed, so it's still a problem, isn't it?

MR. WALKER. It will still be a problem for us, yes, sir.

COMMISSIONER RUIZ. To whom do you report as affirmative action coordinator? Who is your superior?

MR. WALKER. My immediate supervisor is the Associate Commissioner for Management.

COMMISSIONER RUIZ. And then to whom does he—

MR. WALKER. He reports to the Deputy Commissioner, who in turn reports to the Commissioner.

Now, I'd like to add that when we established the affirmative Action Program Branch within the Personnel Division, what I just related to you is the official chain of command. However, Commissioner Castillo designated himself as Director of EEO for the Service, and we drew a dotted line from the Commissioner down to myself as Assistant Commissioner of Personnel and the Chief of the EEO Programs Branch, so there would be a direct interface on EEO matters with the Commissioner, except for policy matters, which of course would go through the chain of command.

COMMISSIONER RUIZ. What is the name of the Deputy Commissioner?

MR. WALKER. Mario Noto.

COMMISSIONER RUIZ. I see. And is he the one that's really in charge of the employment situation, or is it the Commissioner? Do they divide their duties or—

MR. WALKER. Well, in that the Deputy Commissioner reports to the Commissioner, both of them would be in charge of the recruitment activity, if you will. The way the operation is operating at the present time, the Deputy Commissioner is more directly involved with day-to-day activities such as recruitment. However, Commissioner Castillo has a tremendous interest in personnel and EEO matters. And we do consult on a weekly basis, at least once and sometimes twice a week, on personnel and EEO matters.

COMMISSIONER RUIZ. With relation to the Regional Commissioners, is there more of a contact with the Deputy Commissioner and the Regional Commissioners than there is with the Commissioner and the Regional Commissioners?

MR. WALKER. I don't think you could define it that specifically. I would say that it is probably equitably distributed between the Deputy Commissioner and the Commissioner, to the best of my knowledge.

COMMISSIONER RUIZ. I noticed that in the investigation process with relation to discriminatory matters, we started out with an investigator who decides whether a complaint is going to be filed. I got the impression from your testimony that from the beginning to the end of a hearing is an undue length of time.

What is the usual length of time from scratch to finally when you get a determination of a hearing involving a complaint made by one who feels he or she has been discriminated against?

MS. RECHAD. Well, even though the regulations state that complaints must be processed, from the date filed through final agency decision, in 180 days; however, the Department of Justice has stipulated to the Bureaus that they will complete their processing, our processing, within 75 days.

So we attempt to complete our processing, from the date that the complaint is filed through the investigation, the attempted informal adjustment, issuance of the proposed disposition, within 75 days.

COMMISSIONER RUIZ. Well now, you attempt to do this. What has been your actual practice? How long does it—has it actually taken for a person to get a determination in practice?

MS. RECHAD. Well, as of the end of last month we had 20 EEO complaints pending at the Service level. We had 54 complaints open, but 34 were at the Department level awaiting their action.

COMMISSIONER RUIZ. Now give me the time lapse with respect to where and when these were originally started.

MS. RECHAD. Okay. Of the 20 that were in process at INS, 8 were current, which means under 75 days; 7 were between 75 days and 180 days; and 5 were over 180 days.

COMMISSIONER RUIZ. Five were over.

MS. RECHAD. So 25 percent were over the regulation length and still in process at INS.

COMMISSIONER RUIZ. Do you personally know why, with relation to those five, the delays have been that long?

MS. RECHAD. I personally don't, because I've only been with Immigration since April. There are all kinds of reasons for delays. Sometimes an investigation has to be delayed because the complainant's going on leave, or a complainant is available but his legal representative is not. Sometimes investigations must be—sometimes an investigation is sent to the EEO officer and the EEO officer determines that more investigation is needed, and it would be remanded for a supplemental investigation.

I cannot say that there is one particular reason why some of them are—

COMMISSIONER RUIZ. Now, this is all an internal process? There are no outside counsel involved with relation to the complainant? Or does the complainant have the right to counsel?

MS. RECHAD. The complainant may have a representative at any time.

COMMISSIONER RUIZ. Pardon?

MS. RECHAD. The complainant may have an outside representative or a representative from the Service or the Department.

COMMISSIONER RUIZ. He's not deprived of that right?

MS. RECHAD. No.

MR. CONRAD. May I just add there?

COMMISSIONER RUIZ. Surely.

MR. CONRAD. In the representation that is allowed for a complainant—

COMMISSIONER RUIZ. His what?

MR. CONRAD. In the representation that a complainant is allowed, we have—they're allowed to have a volunteer representative of their own choosing, a union-recognized bargaining unit representative, or

counsel in the form of an attorney. So he can choose amongst any one of those types of representation to assist them in their processing of the complaint.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Walker, apparently, from what you have said, you are pleased with the progress that the Department has made and you feel that significant strides forward in EEO have taken place in the last several years. But I would assume, as in any effort, there is always more that could be done, a better process evolved.

In the light of, if that assumption is valid in this case, what better procedures or improvements upon the already improving situation would you like to see?

MR. WALKER. I would say that we are satisfied with the results we have achieved to date. Obviously, we know we need to do better in the areas that were specified. Where we want to be able to do better is particularly the higher-level positions.

We have, over the last 2 years, which we've used as our base, started to develop a cadre in the different occupations, if you will, who within the next 2, 3 years will be eligible for promotion to the high-level jobs, to the supervisory positions. This is primarily in the officer corps categories, because obviously you have to have a technical expertise in the Immigration Service in the functions that are performed in that area.

The area that we would like to see more improvement in is the supervisory, the managerial positions. We have not in the Service limited ourselves to only the administrative types of positions. For example, the supervisory positions—or the supergrade positions that we have vacant in the Service now, the majority of these are advertised not only in all sources in the Federal Government, but also we conduct what is called an outside search, whereby individuals who are outside the Federal Government and who do not have career status or reinstatement rights can apply for these positions.

COMMISSIONER SALTZMAN. May I just clarify? Recognizing that present procedures have really advanced your efforts, what I'm asking is, Are there any additional procedures which you feel might even accelerate and improve the present situation?

What other additional recommendations would you want to see in the present situation to improve your record?

MR. WALKER. Let me ask you a question. Are you talking within the Service, or are you talking within the Federal Government?

COMMISSIONER SALTZMAN. No, within your particular area of responsibility.

MR. WALKER. Given the—given the constraints that we have in the Federal hiring system, I think we are making maximum advantage of those. We have the support of Commissioner Castillo, the Regional Commissioners, the EEO advisory committees. I think we have everything in place to be more effective now. From that standpoint,

I don't think we really can expect any more. We've established goals. We're trying to implement the upward mobility program with increased hiring.

One area where we could possibly make better achievements—and we may be able to get some of this under the CSC reforms—is more delegation of direct hire authority to the Service. We did recently meet with the Civil Service Commission to see if we could work out some procedure for direct hire authority using the PACE register for occupations. However, since they are mechanizing the PACE system in Macon, Georgia, we were unable to achieve that at this time. If, for example, Commissioner Sugarman's special emphasis program goes through, of course, we would take maximum advantage of that.

These are the areas where I would like to see more improvement, and, hopefully, under the reforms we will be given more direct hire authority at the Service level.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Walker, are there any positions for which you already have direct hire authority?

MR. WALKER. We do not have direct hire authority for any positions. The closest that we come to that is with the Border Patrol register, where we hire trainees at the entrance level. But we are the primary user of it, and the U.S. Customs Service uses it also.

We do, of course, have direct hire authority for Schedule C type jobs, which are political appointees. But other than that, we do not have direct hire authority. In essence, we have direct hire authority, practically, for clerical positions in the central office, since clerical help is so scarce in the Washington area. But that is something that every Government agency in the Washington area has access to.

COMMISSIONER FREEMAN. How many employees do you have in the Border Patrol at the entry level?

MR. WALKER. In the entrance level?

COMMISSIONER FREEMAN. Yes, the one that—referring specifically to those classifications for which you have direct hiring. You referred to Border Patrol.

MR. WALKER. I don't have the exact number that we would have at the entrance level at the present time. I do know in fiscal '78 we have three Border Patrol classes that we recruited for, two in October and one that came on board on November 6. We have committed another 48 for a January class. Where we go from there I do not know. We are assessing that situation at the present time to determine how many more Border Patrol agents we will be recruiting.

I would say roughly 75 percent of all hires into the Border Patrol are at the entrance level.

COMMISSIONER FREEMAN. What is the entrance level?

MR. WALKER. It is the grade GS-5.

COMMISSIONER FREEMAN. Could you—have you made available to this Commission the information concerning the direct hires of—take any given period, the most recent period. When do you have it? Did you say September?

MR. WALKER. As of September 30, 1978.

COMMISSIONER FREEMAN. Does our—Have you made that information available to our staff?

MR. WALKER. No, I have not. I do not have that information available.

COMMISSIONER FREEMAN. Is it available?

MR. WALKER. It is available, yes.

COMMISSIONER FREEMAN. Is it cross-classified by minorities, ethnicity, race, and sex?

MR. WALKER. It would be, yes.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to request that we ask that the information be submitted to this Commission and inserted in the record at the appropriate place.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. WALKER. This is just for the—

COMMISSIONER FREEMAN. For the Border Patrol and for all of the categories for which the Service has direct hiring authority. That would be the clerical, the Border Patrol—

MR. WALKER. I'd like to clarify that direct-hire authority. We do not have specific direct hire authority in terms of the way you were using it. We are a primary user of that register for Border Patrol which the Civil Service Commission establishes for us.

COMMISSIONER FREEMAN. Subject to that.

MR. WALKER. Right, subject to that, right.

COMMISSIONER FREEMAN. Yes. Thank you.

CHAIRMAN FLEMMING. Vice Chairman Horn?

VICE CHAIRMAN HORN. Yes. I think you ought to carefully define in your written response this direct hire authority, because I think there's a misunderstanding, as I listen to the dialogue here among the Commissioners, as to what they think direct hire is and what you do; and describe the constraints placed on you by the Civil Service Commission.

You perhaps heard my query earlier of our staff representative on his employment paper, where I asked, Do we have information as to the percentages of minority female hires by category going back for several years?

I wonder, how far back can you go in personnel to tell us or to give us a response to that, so that judgments could be made as to the degree of progress, if any, in reaching out to bring in minority and female recruits in some of these categories?

MR. WALKER. Excuse me.

[Panelists confer.]

MR. WALKER. I do not think that I could provide the statistics in the manner which you request. We could determine what our minority employment levels were in 1975 and compare them to 1978. I don't think I could tell you the total number that were hired during that period, other than using those gross figures.

VICE CHAIRMAN HORN. Well, what I was searching for—and I suspect you just answered it—You're saying there are no data available by ethnicity or sex as to either applicant pool or actual hires for a period prior to the last year or so?

MR. WALKER. I'm going to let Mr. Conrad answer that.

MR. CONRAD. Essentially, you just added another dimension to it in the pool. The applicant pool—in any of our positions we have no ethnic data, nor sex data, on our applicant pools.

VICE CHAIRMAN HORN. And that comes from the Civil Service Commission on the roster?

MR. CONRAD. Right. They retain those, and I believe at this time they have implemented an experimental plan to reinstitute the designation of ethnic group or sex on their applications.

For new hires in training positions within the Service, our data we have for the fiscal year '78 and we have limited data for fiscal year 1977. That's as far back as we go.

VICE CHAIRMAN HORN. In other words, you have answered what a lot of us that have to deal with this problem every day have known for years, that what the Government requires of industry and what the Government requires of universities of the country in terms of knowing the ethnicity and sex of the applicant pool in order to judge progress in affirmative action, the Government does not require of itself.

MR. CONRAD. That is true.

VICE CHAIRMAN HORN. That's all I have.

CHAIRMAN FLEMMING. Do you have any further questions?

MR. NUNEZ. Yes, I have several questions of Mr. Walker. I was interested in your breakout of the supergrades. I believe you have 21 supergrades and they're all white, majority males.

MR. WALKER. That is not my breakout. That was Mr. Gerlach's breakout.

MR. NUNEZ. Well, maybe you could correct me.

MR. WALKER. Yes. We have one black supergrade, a GS-16 level.

MR. NUNEZ. Was he hired recently?

MR. WALKER. It was over 2 years ago, prior to my coming to the Service. We had one other Hispanic supergrade, who opted to compete for and was selected for a career type job at the grade 15 level.

MR. NUNEZ. Well, you basically have about 20, 21, something of that sort?

MR. WALKER. Actually, we have 33 supergrades.

MR. NUNEZ. So it's gone up.

MR. WALKER. One black and, of course, Commissioner Castillo, who is a Hispanic.

MR. NUNEZ. But he's not a supergrade, he's a Presidential appointee.

MR. WALKER. He's a Presidential appointee.

MR. NUNEZ. Yes.

Would you say, as the chief personnel officer, that the majority of the supergrades have come up through the ranks from a GS-1 level, a GS-5 level, as has been suggested? Or how would you characterize their entry into the Immigration Service, the civil service? At what level in general? Did they come from the bottom up, or where did they enter the Service, in general?

MR. WALKER. The majority of the supergrades have come up through the operational ranks, if you will. They've entered into the position at some point, which I'm not familiar with, whether they came in from outside or from within the Service, at the entrance level, grade 5, as a Border Patrol agent, an investigator or other type officer; advanced through the career ladder through various supervisory positions and into the supergrade type position.

MR. NUNEZ. You're indicating that they came up through the ranks?

MR. WALKER. They came up through the ranks. There are some individuals in the administrative and the management type positions who were hired from outside the Service and did not come up through those ranks.

MR. NUNEZ. How many—you earlier indicated that you have vacancies or have made some efforts to recruit from outside of your own Service. So aside from the civil service as a whole, you went to the outside?

MR. WALKER. For the supergrades?

MR. NUNEZ. Yes.

MR. WALKER. Yes.

MR. NUNEZ. And let's say in the last 2 or 3 years, which I assume you've been in charge of this whole operation, how many vacancies opened up at the supergrade level, and how many were hired in that period?

MR. WALKER. I don't have that figure at hand on how many opened up in that 2-year period and how many were hired.

MR. NUNEZ. I'm sure you could get those.

MR. WALKER. I could get those figures.

MR. NUNEZ. There are not that many people.

MR. WALKER. There are not that many, but I don't recall the exact number over the 2—over the last 2 years.

MR. NUNEZ. And you made a very concerted effort to seek out women and minorities in this area and you appear not to have been too successful in that endeavor.

MR. WALKER. That will not show up in your figures that we will give to you, because that is a recent innovation, if you will. We have just started that with the supergrade positions that we are recruiting for at the current time. When I came to the Service 2 years ago, the filling of supergrade positions was, for all intents and purposes, restricted to the Service, except for a few of the managerial positions, management type positions, which were filled from outside the Service.

It has only been within the last 6 months, roughly, that we have started using the executive inventory search and advertising Government-wide and doing the outside search for individuals who do not have status with us. So we could not—we would not be able to provide what you're asking for. It's premature. It will be another 5, 6 months before we reach that point.

MR. NUNEZ. So it's a very recent innovation?

MR. WALKER. It's very recent, within the last 6 months.

MR. NUNEZ. You talked in terms of numerical goals and timetables. I'd be interested in knowing what you have set as a goal for your, let's say your policymaking positions, perhaps from GS-15 and above, as what you would feel is an adequate representation, what you've set as your goals.

MR. WALKER. When we set the goals in '78, we did not set them for the supervisory, managerial positions. We set them only for certain occupations. We are still working on the goals for FY '79. The goals that we established in FY '78 were for inspectors, paralegals, Border Patrol agents, investigators, management analysts, and contact reps, and then a group that was defined as a whole series.

MR. NUNEZ. You don't plan to set goals for supervisory?

MR. WALKER. We will probably set them for '79, but we did not do it in '78. Again, as I hope the paper pointed out, there were certain structural and programmatic areas that had to be put into place. There were certain occupations where we and the Commissioner and the Deputy Commissioner felt emphasis should be placed in '78. And we will do the similar effort in FY '79.

MR. NUNEZ. One final question. On your entry level of officers, the Border Patrol men or immigration officer, one of the earlier witnesses indicated that they were looking for people—that they felt, as community leaders, community representatives, that people who were involved with the public should have a compassion and sensitivity to the general public. Do you test for that kind of attribute, or do you have any kind of psychological test for civil service in looking for Border Patrol men, for immigration officers? Do you assess that kind of qualification?

MR. WALKER. The Civil Service Commission does not permit the use of those type of psychological tests.

MR. NUNEZ. Do you feel that they would be useful to have?

MR. WALKER. That's a very difficult question to answer. I would say at the present time I would agree with the Civil Service Commission until the validity of these tests have been proven.

MR. NUNEZ. That's all I have.

VICE CHAIRMAN HORN. Well, excuse me. Could I follow up on that? I think this is a very important question the Acting Staff Director has raised.

I'm well aware of the policy of the Civil Service Commission, but increasingly, police departments in the United States have hired

psychologists, have given prospective recruits batteries of psychological tests in order to weed out some people that have excessively authoritarian personalities and who would use the authority and power given them to abuse their fellow citizens. And I wonder, has the Border Patrol given any serious thought to this and perhaps be willing to make some recommendations to Congress?

MR. WALKER. I would like to answer your question in this manner: We intend to meet with the Dallas Civil Service Commission Region in San Antonio later this month. I will pose that question to both the Area Manager in San Antonio and to the Regional Commissioner for the Civil Service Commission, to see what we can possibly do in this area. We will also have a representative of the Border Patrol with us.

CHAIRMAN FLEMMING. We appreciate very, very much your being with us and providing us with your testimony and also the responses to the questions that have been addressed to you. Thank you all very, very much.

The hearing will be in recess until 1:30.

Afternoon Session, November 14, 1978

CHAIRMAN FLEMMING. The hearing will come to order, please.

Counsel will call the two witnesses.

MS. FONG. Mr. Paul Kirby and Mr. Richard Rogers, will you please stand and be sworn.

[Paul Kirby and Richard Rogers were sworn.]

CHAIRMAN FLEMMING. We're delighted to have both of you with us.

**TESTIMONY OF PAUL V. KIRBY, DIRECTOR, OFFICE OF PROFESSIONAL
INTEGRITY, IMMIGRATION AND NATURALIZATION SERVICE, RICHARD
ROGERS, DEPUTY COUNSEL, OFFICE OF PROFESSIONAL RESPONSIBILITY,
DEPARTMENT OF JUSTICE**

MS. FONG. For the record, would both of you please state your names, your titles, and your business addresses?

MR. ROGERS. My name is Richard Rogers. I am the Deputy Counsel on Professional Responsibility, Department of Justice. My business address is United States Department of Justice, 10th and Constitution Avenue, N.W., Washington, D. C. 20530.

MR. KIRBY. My name is Paul V. Kirby. I am the Director of the Office of Professional Integrity for the Immigration and Naturalization Service, the Department of Justice, located at 425 I St., N.W., Washington, D. C.

MS. FONG. Thank you.

Mr. Rogers, can we start with you. Would you briefly describe the relationship between your office and the Office of Professional Integrity at INS?

MR. ROGERS. The Office of Professional Responsibility is basically an oversight office for the Department. The internal inspection, to use a shorthand term, units had already been in place and most of the components when the Department created the Office of Professional Responsibility in December of 1975.

Its purpose basically is to oversee the integrity and operations of the different components throughout the Department and, on occasion, to conduct separate investigations at the request of the Attorney General or because there might be a possibility of a conflict within a given component in conducting its own investigation.

MS. FONG. Does INS' OPI submit monthly reports to your office detailing the cases of misconduct filed?

MR. ROGERS. Yes, it does.

MS. FONG. Okay. Did the Justice Department's internal audit staff conduct a review of INS' OPI Internal Investigations unit in 1977?

MR. ROGERS. Yes, it did.

MS. FONG. Were the findings of this review included in your office's 1977 annual report?

MR. ROGERS. They were.

MS. FONG. Do you have a copy of that report with you?

MR. ROGERS. Yes, I do.

MS. FONG. Mr. Chairman, could we introduce that into the record?

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

MS. FONG. Thank you.

MR. ROGERS, could you briefly summarize the findings of that review as it pertains to INS' OPI?

MR. ROGERS. Okay, I will tell you what our report said. Our report basically found that the internal controls within INS over internal investigations were inadequate; that there was a difficulty in identifying the responsibilities that existed in the central office in Washington and the various regional and district offices.

We found that many cases that should have been closed continued in an open status, and many of those that had been opened were opened for much too long, over a year—and some had been over a year. And in many cases that had been referred to other components of the department, such as the FBI for a criminal investigation, were not properly monitored and what was happening on them was not followed up.

We concluded that INS needed to adopt some written policies and procedures to provide guidance to its investigators in conducting misconduct cases.

There was some confusion on the part of INS investigators as to what allegations should be pursued. One of the findings I would note is that there was a disagreement on whether or not anonymous complaints should be followed up.

We found that the INS reporting and accounting system was inadequate; that regional offices did not follow any standard procedures in reporting misconduct allegations to the central office.

We also found that, on occasion, INS officials did not assign their most experienced investigators to handle the more complex and serious cases.

And lastly, we found that INS was not reporting all allegations of serious misconduct to our office.

MS. FONG. How often does your office, or the Justice Department, conduct these reviews of the various internal investigations units?

MR. ROGERS. There isn't a set standard on how often it's done. We've been in existence since December of '75. I've been in this office since April of '78. And from my personal knowledge, I came in right after the INS audit was completed and began to talk to the internal audit staff about an audit that's now being conducted of the Marshals Service.

We really can't do much more than one a year. And then what we would do after one is done is follow up by reviewing individual cases and talking to the people in the component.

MS. FONG. Thank you.

Mr. Kirby—

MR. KIRBY. Yes.

MS. FONG. —could you please describe for us the division of responsibility between the central office, the regional offices, and the district offices in terms of monitoring misconduct cases and reporting them to you?

MR. KIRBY. Well, the cases have to be reported into the central office. As far as the—we assign cases to the region to handle, but the central office is obliged to accept all allegations, to review them, and then in turn to assign cases to the regions.

MS. FONG. So the central office accepts the cases and then it allows the regional offices to assign the investigators to handle the cases?

MR. KIRBY. Yes. We've recently had a program to train investigators in all of our regions.

MS. FONG. Could you tell us about that program?

MR. KIRBY. Well, we had a Deputy Director by the name of Norman Alt who's been in the internal investigative field for a number of years. He went out into each of the regions and drew on people from the regions to instruct them into OPI-type investigations. These are investigators from all fields of INS.

MS. FONG. Could you tell us if there are any written guidelines as to how OPI conducts its investigations?

MR. KIRBY. Yes. Well, we have an operations instruction that was recently brought out under the direction of Mr.—Deputy Director Mario Noto which came into being just before I came on board. I've only been associated with the Immigration Service since April of this year. And this operation instruction gives—right from the complaints,

it lists how the people in the field are supposed to give a complaint in to the central office. It explains right down the line how the central office is then to accept these complaints, review them, and then make assignments. The majority of the major cases are handled by the central office staff, the OPI staff.

However, we have to take advantage of people in the field because INS is spread so far out such a distance throughout the country that we have to take advantage of them to do preliminary inquiries. And that is where we have these regional investigators doing a lot of our preliminary inquiries.

MS. FONG. How are regional investigators selected to handle OPI cases?

MR. KIRBY. The ones that have been trained by the OPI staff are the ones that handle the cases.

MS. FONG. Are they full-time OPI investigators?

MR. KIRBY. No, they are not, sir—ma'am. Sorry.

MS. FONG. If they are not full time, what are they?

MR. KIRBY. Well, they are selected on a given basis, I mean in the region. I mean, they are not from the sector where the allegations against an individual employee—if they are a supervisory employee, they could be from that area. However, if they are not a supervisory employee, they cannot be from the same sector or division as the employee.

MS. FONG. But they can be from the same region?

MR. KIRBY. Yes, they can.

MS. FONG. And are these OPI investigators full-time INS criminal investigators?

MR. KIRBY. Yes, they are.

MS. FONG. And they volunteer to do OPI investigations? Or are they assigned?

MR. KIRBY. I would hope that they would be volunteers.

MS. FONG. Is there any procedure for that? Is there any written guideline on how to select these investigators?

MR. KIRBY. We try to take the most capable men, and we have asked for volunteers. They like to put it in their resumes, but I don't think they like to be called an "internal investigator."

MS. FONG. Can you tell me what measures have been implemented by your office to make the public aware of your complaint process in case they have cases which they would like to file?

MR. KIRBY. To make the public aware?

MS. FONG. Right.

MR. KIRBY. I would say in general the way the cases have come to us have come between—from like the President's staff, from the congressional committees, from our own employees, from people who have come in contact with any Immigration staff employee.

However, for us, as OPI, to make the—particularly aware, I can't honestly say that I've had any particular program, except to go out

into the field and instill into our own people, and not so much the public—and any time I'm around with law enforcement, I let them know that we are able to accept complaints of any kind against our employees, that we're an internal unit. In any functions that I've ever attended, I've let people in the law enforcement field know; but to publicly come out and say something, I've never addressed any forum.

MS. FONG. Okay. Could you briefly describe the procedure used by your office to investigate the complaints that are filed?

MR. KIRBY. Well, initially when the complaints come into our office, it's our function to take misconduct cases, whether it's criminal or administrative, to weigh the situation, and if the cases warrant it we immediately assign a preliminary inquiry.

And a preliminary inquiry, as I said, can be conducted, if it's on a high enough official, by the staff in Washington. If it is a general regional case, we would have the preliminary inquiry conducted by the regional officer assigned to OPI.

MS. FONG. Does OPI investigate all complaints that are filed with your office?

MR. KIRBY. Only in the misconduct cases, whether it be criminal or administrative.

MS. FONG. Do you handle cases or complaints of rudeness or verbal abuse by INS officers?

MR. KIRBY. Yes, on a high enough level, on what we call a Category II level. But the rudeness-type cases are handled in the regions directly by the regional people.

MS. FONG. Does your office implement any kind of guideline to help these regional offices with the local complaints? The complaints that are not handled by your office?

MR. KIRBY. Well, it's spelled out in the operations instructions how it would be handled by the regional offices under certain categories.

MS. FONG. And these would include complaints of rudeness and verbal abuse?

MR. KIRBY. Yes, they would; certainly.

MS. FONG. Okay. So you say that your office does investigate all complaints that are filed with it?

MR. KIRBY. Yes.

MS. FONG. How about anonymous complaints?

MR. KIRBY. Anonymous complaints, we also handle.

MS. FONG. Are INS officers, to your information, are they required to report incidents of misconduct of which they are aware by other INS officers?

MR. KIRBY. Yes, they are. Provision is made in the operations instructions that if they have any qualms in reporting it, what they call "up the line," they can come directly to our office either through telephone or through contact in any way.

MS. FONG. Does your office investigate these complaints?

MR. KIRBY. Yes, they do.

MS. FONG. How many have you had in the past year?

MR. KIRBY. Of anonymous complaints?

MS. FONG. No, no, no, of complaints filed by INS officers who are aware of possible misconduct by other INS officers.

MR. KIRBY. Oh, I'd say—I'd have to get that statistic to furnish it to you—I couldn't give it to you off the top of my head, to say the number of cases.

MS. FONG. Have there been any filed in the last year?

MR. KIRBY. Oh, yes.

MS. FONG. They do exist?

MR. KIRBY. Yes.

MS. FONG. Are you aware of an investigation currently being conducted against a Border Patrol officer who testified before the Texas Advisory Committee of this Civil Rights Commission?

MR. KIRBY. Yes, I am.

MS. FONG. Thank you.

Could you provide us with any kind of statistical breakdown as to the number of complaints filed with your office during fiscal year '78?

MR. KIRBY. The total receipt of cases filed?

MS. FONG. Right.

MR. KIRBY. Yes, I could.

MS. FONG. Do you have that information with you?

MR. KIRBY. Yes, I do.

MS. FONG. Mr. Chairman, could we enter that into the record, please?

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

MR. KIRBY. This is the workload for the calendar year—I mean, fiscal year '78 that I have given to you.

MS. FONG. Yes.

MR. KIRBY. Would you like for me to submit this for the record?

MS. FONG. The clerk will come and get it.

VICE CHAIRMAN HORN. Before that's put in the record, I would like to know: How is it organized? Is it organized by source-of-complaint category, and then you detail how many were investigated, what happened, etc.? I'm trying to get at how thorough a picture; I don't have this evidence in front of me.

CHAIRMAN FLEMMING. Would you mind having that handed to him—unless you need it? Do you need it for your testimony?

VICE CHAIRMAN HORN. Let me just see, because I—

CHAIRMAN FLEMMING. You only have one copy there?

MR. KIRBY. Yes, that's all—

VICE CHAIRMAN HORN. What I'm interested in—

MR. KIRBY. —I wasn't sure what you would need.

VICE CHAIRMAN HORN. What I'm interested in is, let's see. Well, what this chart does is tell the workload of cases received, opened, and closed in the fiscal year, and closed in the fiscal year, including those opened before that fiscal year began, and it goes by central office and region.

What I would be interested in—to pursue one of your earlier questions—is a chart that shows the number of complaints received by other employees of INS, the number of complaints from aliens as to misconduct in coming across the border or treatment at airports anywhere in the United States, the number of complaints from U.S. citizens. In other words, I'm trying to get—if you keep data such as that.

MR. KIRBY. I would have to dig that out for you, sir, and try to furnish it to you. We don't keep that, as such.

VICE CHAIRMAN HORN. Because I just wonder how many people know of the complaint process—and I assume Counsel will pursue this, but, for example, if we're dealing with affirmative action, or some cities are dealing with traffic tickets, there's a way that the citizen knows if you don't like how you were treated, here's where you go to get your grievance lodged.

And I'd be interested in trying to get a total understanding of how your process works.

CHAIRMAN FLEMMING. Are you going to make a request?

VICE CHAIRMAN HORN. I am requesting that, and I'd like it expanded in this exhibit. You get the idea of what I'm talking about: Source of complaint; what's happened to them; and I want to get a feel if aliens in contact with INS are filing any complaints. If so, how many were resolved in favor of the alien? How many against, etc.?

I'd like an idea as to the anonymous complaints. You say you do follow up on them. I'd like an idea as to how many people in INS filed complaints about misconduct they observe, say in the Border Patrol. I'd like an idea about how many American citizens file complaints.

CHAIRMAN FLEMMING. In the light of this discussion, Counsel will, or staff will talk with you in connection with developing an exhibit of that kind, and then the exhibit will be entered in the record at this particular point. Counsel, you may proceed.

Ms. FONG. I just have one last question.

Mr. Kirby, do you know how many complaints were filed by aliens with your office last year?

MR. KIRBY. Once again, I'll have to furnish that for the record.

Ms. FONG. Okay. Thank you. I have no further questions at this time.

CHAIRMAN FLEMMING. That would be included in the exhibit that Commissioner Horn has requested.

Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Kirby, has your office made an analysis of the evaluation by the Justice Department that Mr. Rogers spoke of earlier?

MR. KIRBY. Yes, sir. We've tried to correct anything that came out in the internal audit.

COMMISSIONER SALTZMAN. And—I'm sorry. I didn't hear.

MR. KIRBY. We tried to correct everything that came out in the internal audit that was conducted by the Department of Justice.

COMMISSIONER SALTZMAN. Is there a record of the procedures you have attempted to institute as corrective measures to the—in response to the report?

MR. KIRBY. Yes, there is, sir, on the basis of submitting a Form 600 and 632 to account for the allegations that come in, to make sure that everything is reported into us, and then in turn referred to the Office of Professional Responsibility.

COMMISSIONER SALTZMAN. Have you submitted the response to the Justice Department? Or isn't that part of a normal procedure?

MR. KIRBY. Yes, we did submit responses to what we were doing to correct the problems.

COMMISSIONER SALTZMAN. Could that be made available to us, and entered into the record, Mr. Chairman, at this time?

CHAIRMAN FLEMMING. As I understand it, you have in writing a response to the investigation that was conducted by the office of Mr. Rogers. Now the Commission would find it very helpful to have a copy of that particular response.

MR. KIRBY. Yes, sir.

COMMISSIONER SALTZMAN. Mr. Kirby, has your office investigated the procedures under which the INS undertakes so-called "raids" and whether those procedures conform to the processes which INS, and the safeguards that INS would like to see, on business establishments which are suspected of hiring undocumented workers?

MR. KIRBY. Yes, sir.

COMMISSIONER SALTZMAN. Have you investigated or undertaken any investigation of the procedures under which those—and are there recommendations relative to the procedures under which those raids take place?

MR. KIRBY. We have not conducted any investigation into the procedures. When we have allegations of any cases involving employees at any installation, whether it be a business or otherwise, then we would have an open case of—

COMMISSIONER SALTZMAN. But there is no—there is no procedural guidelines for INS officers under which those raids take place to safeguard either the businessperson or the undocumented alien?

MR. KIRBY. I would have to check into that for you, sir, or else have you ask our enforcement people, but I can't honestly answer that directly now.

COMMISSIONER SALTZMAN. Have you had complaints relative to raids?

MR. KIRBY. Yes, against the actual investigators.

COMMISSIONER SALTZMAN. What has been the nature of those complaints?

MR. KIRBY. Essentially, as I recall the case, it was in reference to the way that they had handled the people. It was an abuse-type case—I mean, it might have been a little heavy-handedness or something to that extent.

COMMISSIONER SALTZMAN. Are you aware whether or not those raids usually take place with a warrant? Is a warrant required?

MR. KIRBY. From my understanding, a warrant is required.

COMMISSIONER SALTZMAN. And do most of those take place with a warrant? Or without a warrant?

MR. KIRBY. Most of them have taken place, I believe, with a warrant. There, has been a question lately as to the type of warrant. It came up here, I believe, in the District of Columbia.

CHAIRMAN FLEMMING. Commissioner Saltzman, the next panel is due to discuss the procedures.

COMMISSIONER SALTZMAN. Okay. There was one other question.

MR. KIRBY. Thank you, Mr. Chairman.

COMMISSIONER SALTZMAN. Mr. Kirby, have you investigated the reason for—I'm—maybe I'm asking the wrong person here—the forced expulsions by INS? In a roundup of people, I understand, on occasion a person who has documents undergoes expulsion. Are you aware of any such cases?

MR. KIRBY. I am not, off the top of my head, sir. If there has been one, it should be brought to our attention.

COMMISSIONER SALTZMAN. I have one more.

With respect to—I heard what you were saying, that the Deputy Commissioner went—has gone, in an effort, has visited various regions for preventive—affirmative preventive efforts.

MR. KIRBY. Yes.

COMMISSIONER SALTZMAN. Are there additional programs that you anticipate introducing relative to that kind of preventive program?

MR. KIRBY. General education program, right in the training, and probably reeducation of people that are in the field. In fact, maybe a study where they might have to have a psychologist talk to some of these people and counsel them as to their operations, or something along those lines. I have asked one of the gentlemen on my staff to make a review of some of the allegations that have come in, and to sit down with the members of the enforcement staff and see what could be done if the allegations are leading to where they might be getting stronger, or more plentiful, or along those lines, and he is currently working on that.

COMMISSIONER SALTZMAN. Are mandatory training programs—or are training programs mandatory for those who have enforcement responsibility?

MR. KIRBY. Yes, sir.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Yes, Mr. Kirby. Let's assume the existence of a particularly aggressive patrolman who considers undocumented aliens as enemies of the state, or for some other reason. And this particular patrolman commits acts of unnecessary force and violence upon undocumented aliens outside of the presence of third-party witnesses,

congressional investigations, his adjudicators, coemployees, etc. What procedures, if any, exist by way of notifying these persons, aliens, wherein they are advised of their right to file a complaint?

MR. KIRBY. I would have to say, currently, it has been by members of the official staff of INS who have gone to the media and have let them know. In the boundary areas, they've let the media know that these allegations should be made—you know, these complaints should be made, to be handled.

COMMISSIONER RUIZ. Some members of your office have gone to the media and have advised the media that they can publish something?

MR. KIRBY. No, no. I said that the people of the INS staff—

COMMISSIONER RUIZ. Yes?

MR. KIRBY. —namely, probably someone like the Commissioner has even told, through the radios and the TV, that we'd accept complaints from undocumented aliens on allegations of any misconduct by an officer of the Immigration Service.

COMMISSIONER RUIZ. Do you personally know of a single undocumented alien that has ever filed a complaint with your department with relation to the use of physical force upon him or her?

MR. KIRBY. We have a number of cases of undocumented aliens where there's been—

COMMISSIONER RUIZ. Going back where?

MR. KIRBY. Going back over a 4-year period.

COMMISSIONER RUIZ. A number of cases that go back for a 4-year period—

MR. KIRBY. Over a 4-year period.

COMMISSIONER RUIZ. —that do what?

MR. KIRBY. Where there were allegations made of—

COMMISSIONER RUIZ. By aliens?

MR. KIRBY. Yes, sir.

COMMISSIONER RUIZ. You're talking about aliens that have remained in custody and have not been taken out of the country rapidly, or—

MR. KIRBY. I would think so, sir; yes, sir.

COMMISSIONER RUIZ. And those aliens probably have had counsel, and something else is involved—perhaps a change of status, or they think they're entitled to be here or something like that.

I'm talking about aliens—undocumented aliens that are shoveled right back into Canada, or Mexico, or wherever they might go. As I understand your testimony, there has been some TV announcement, radio announcements that they can nevertheless complain?

MR. KIRBY. Yes, sir; I believe so.

COMMISSIONER RUIZ. But you don't know of any—do you know of any alien, yourself, that has ever done that? That has used that procedure?

MR. KIRBY. No, I don't, but I believe there is at least one or two cases where some of them have been taken across the border, and they've come back, either through the assistance of their fellow aliens,

or fellow—you know, who would assist them in making the allegation, as a witness.

COMMISSIONER RUIZ. Now where has that occurred? How can you pinpoint that down so that we can have a record of those two instances that you've just mentioned? Or three?

MR. KIRBY. I'm just going back—I've only been with the association 5 months, so—

COMMISSIONER RUIZ. Which association?

MR. KIRBY. The Immigration Service. I'm sorry, sir. I believe that I have read this, in reviewing some of the reports, and I will do my best to try to dig them out for you.

COMMISSIONER RUIZ. I wonder if you could dig up three or four of those, and perhaps at this instance we can make a request through the Chairman? I'd like to get the background of those particular instances where the undocumented alien made a complaint against personnel in your department.

MR. KIRBY. Yes, sir.

COMMISSIONER RUIZ. And will you have those made available by way of some sort of exhibit?

MR. KIRBY. I'd be happy to, sir.

CHAIRMAN FLEMMING. I would request the staff to contact you and talk with you about that.

MR. KIRBY. All right, sir.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I have no questions.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. As I understood your responses to Counsel, the complaints can come into the central office. If they concern regional personnel, they're obviously referred to the region for investigation.

Do you have particular investigators that regularly review these complaints at the regional level? Or are they simply assigned to whoever's available by the regional director?

MR. KIRBY. I have four regional coordinators here in Washington that review the initial complaints.

VICE CHAIRMAN HORN. Yes, but who actually goes out and investigates the complaints?

MR. KIRBY. The regional investigator.

VICE CHAIRMAN HORN. And these are—these are known people? They aren't moved from other assignments?

MR. KIRBY. Yes, they are, sir. They're not full time—

VICE CHAIRMAN HORN. Okay, they're not full time on complaint investigations?

MR. KIRBY. Right. Occasionally they could end up full time when we get a considerable amount of complaints in a given area.

VICE CHAIRMAN HORN. Well, this is the point I wanted to get to: that you don't have a trained investigative staff that are regularly assigned to follow up on these matters. They also have other responsibilities.

MR. KIRBY. Yes, but when we give them the assignment of the case, they're supposed to give priority to the internal case.

VICE CHAIRMAN HORN. What would they be likely to be doing when they aren't investigating this type of case?

MR. KIRBY. It might be a fraud case; it might be any other type of case that they might be handling in their own sector.

VICE CHAIRMAN HORN. Can we pinpoint who these investigators are by ethnicity, sex, etc? Or do they move in and out of this so often that we can't do it?

MR. KIRBY. They move in and out. I'd be glad to try to come up with an answer for you, sir.

VICE CHAIRMAN HORN. But our pool is based on a certain type of civil service category, I assume—

MR. KIRBY. That's right.

VICE CHAIRMAN HORN. —which you drew for these investigations?

MR. KIRBY. Right. Right.

VICE CHAIRMAN HORN. Can we pinpoint that?

MR. KIRBY. I'd still have to check it, sir.

VICE CHAIRMAN HORN. Well, I'm just wondering: Is there a particular class of civil servant between a certain GS range, like 5 to 9?

MR. KIRBY. I'd say they're probably in an average of the area.

VICE CHAIRMAN HORN. Average of the 11 area. Who would know the answers to the series of questions I'm asking about the type of people that conduct the investigations? Is it the—

MR. KIRBY. I should have the answers for you, sir, but I didn't anticipate—

VICE CHAIRMAN HORN. Well, could you—well, what we're obviously interested in is the sensitivity of the individuals conducting any investigation in a police department, in a Federal agency, etc.

MR. KIRBY. Yes, sir.

VICE CHAIRMAN HORN. Not that it proves anything, because there are psychological studies that sometimes show people of a particular ethnicity are harder on their own people than people not of that ethnicity—but out of sheer curiosity, I think we'd be interested in having for the record just what is the sex-ethnicity makeup of the pool of investigators that are called upon to investigate complaints of misconduct that involve undocumented workers.

Can you file that with the Commission? Or do you have a way to get at that information?

MR. KIRBY. Sure. I'll just request all the agents that were recently trained in the regions, and what—

VICE CHAIRMAN HORN. I'd say we'd like to know the type of investigators by ethnicity and sex for the last 2 years. Let's just do it then. That ought to be manageable.

Now you mentioned some of the psychological problems just in passing, that they're sometimes encountered by, presumably, Border Patrol, other personnel.

I wonder, even though you've been in office not very long, if you've had a chance to review some of these cases of misconduct? Do you have any advice for us as to the type of personality that ought to be holding some of these enforcement jobs? Or do you see avenues that INS ought to be pursuing to recruit a certain type of person, or not recruit a certain type of person? What's your wisdom, based on your experience?

MR. KIRBY. I would think they should have to have a good psychological evaluation before they were hired. What I was referring to when I brought it up was I thought that the individuals, in enforcement, along with some of my people, should analyze some of these complaints. Where they go from an area—where they might be just slapping or punching, and another one might be hitting or something a little stronger. I just had one of these cases come across the desk. They looked as though they were—

VICE CHAIRMAN HORN. Well, when you—number one, we heard this morning that the Civil Service Commission does not permit a psychological evaluation, in terms of its initial pool at least.

MR. KIRBY. I'm sorry to hear that, sir.

VICE CHAIRMAN HORN. Well, I don't know, but I understand that's correct: that psychological testing of applicants for some of these enforcement positions—or perhaps any psychological testing—is not permitted by the Civil Service Commission. Was I misinformed?

CHAIRMAN FLEMMING. That was the testimony this morning.

VICE CHAIRMAN HORN. That was the testimony, and I think you confirmed it from your own knowledge of the Civil Service Commission.

CHAIRMAN FLEMMING. That is correct.

VICE CHAIRMAN HORN. Yes. So—and Acting Staff Director Nunez and I pursued this question because we're well aware that many progressive police departments do have full-time psychologists, do engage in psychological testing, etc.

Now when you have a discipline case and misconduct is proven, are your sanctions that the INS can impose strictly legalistic ones in the sense of suspension, demotion, leave without pay, this kind of thing? Or can you actually require that individual who has been found to have committed misconduct to undergo a psychological evaluation? Is that one of your remedies to try and help this person, or deal with the person?

MR. KIRBY. I believe it is, sir, but it's more in the—I'd have to check that over with the personnel people to find out whether that can be—what would you say?—voluntarily. In other words, if they approach the individual and asked him to accept counseling?

VICE CHAIRMAN HORN. So you're not really familiar with any tools, beyond the traditional civil service tool that I've outlined, to deal with this type of problem of, say, human abuse of another human being?

MR. KIRBY. Yes, sir.

VICE CHAIRMAN HORN. Do you have any suggestions, based on your experience looking at these cases coming across your desk?

MR. KIRBY. Well, that was the reason I was trying to put my people together with enforcement people to see what the tenor of the allegations were, and I would hope they would come up with a study. I mean, it might come to a point where they might recommend something like rest and recreation to get people out of these areas. Maybe they shouldn't be in the job for only a certain period of time, or something. I mean, if it shows that the same people might be committing these same offenses, I would think they'd want to put them on R&R, or there should be some reason—

VICE CHAIRMAN HORN. Stress, strain on the Border Patrol, just like an air traffic controller.

MR. KIRBY. That's right. Like when they tell me they get into an area where—well, maybe during the period of the riots here, where they had stoning, or sniping, or something like that. If they are out there under that, and they get frustrated, or something, I would hope that they wouldn't be returning fire.

VICE CHAIRMAN HORN. Okay. Thank you.

CHAIRMAN FLEMMING. Mr. Rogers, to whom do you report in the Department of Justice?

MR. ROGERS. Well, as I said before, I am the Deputy Counsel. The Counsel in the office is Mike Shaheen. We report only to the Attorney General.

CHAIRMAN FLEMMING. That was my understanding.

Now I gather prior to your taking this particular position, that this investigation was conducted of Immigration and Naturalization. When that report was complete, of course, it was sent to the Commissioner of Immigration and Naturalization.

Does it also go—called to the attention of the Counsel? And does the Counsel discuss it, for example, with the Commissioner of Immigration and Naturalization?

MR. ROGERS. Yes, that is what happened, and that is why that was—that study was conducted pursuant to a request by the Counsel.

CHAIRMAN FLEMMING. I see.

MR. ROGERS. The report was sent to Commissioner Castillo, and also a copy to the Counsel. And that is why it appears in our annual report as our factual—our findings of administrative problems within the agency.

CHAIRMAN FLEMMING. Now, when Immigration and Naturalization reports back to you as to the steps they have taken as a result of your investigation, is that shared with the Counsel also?

MR. ROGERS. Yes.

CHAIRMAN FLEMMING. And does he, as a matter of practice, discuss anything—any items he is particularly interested in—with the Commissioner of Immigration?

MR. ROGERS. Yes.

CHAIRMAN FLEMMING. So that—what I'm getting at, there is a meaningful interrelationship between the Counsel and the heads of the various units within the Department of Justice?

MR. ROGERS. Oh, yes.

CHAIRMAN FLEMMING. So that there is dialogue back and forth on these matters, topside?

MR. ROGERS. Constantly.

CHAIRMAN FLEMMING. Fine. Okay, Mr. Nunez?

MR. NUNEZ. I have several questions.

One, as I understand the way your unit functions, you're the Director and you have four regional coordinators who actually receive the reports and make some assessment and decide what further action is to be taken on? But you don't have directly reporting for you—reporting directly to you any full-time investigators who really go out in the field and really get involved in any cases? You depend upon field investigators who are doing other things—doing other kinds of investigations. You train them. I understand that. But then you appoint them on a part-time basis to do investigations that come to your attention. Is that the way it works?

MR. KIRBY. Except for the major cases, which are handled out of Washington. In addition to the four regional men, there are also other men in Washington.

MR. NUNEZ. Well, do you have an office here—a unit of full-time investigators? That's what I'm trying to—

MR. KIRBY. Yes, sir. Yes, sir.

MR. NUNEZ. —in your own unit, who report directly to you?

MR. KIRBY. Yes, sir. That's right, sir.

MR. NUNEZ. Now how do you make the determination on how to handle it? Do you delegate it out to one of the field offices? Or handling it out of Washington?

MR. KIRBY. Well, in the first place, it has to be a Category I, or a criminal type misconduct case, and that's handled by us, by OPI. And the investigators here in Washington would handle anything of a high-level nature. I mean, the employee would be of a high-level area. And he would also go into any area in the field.

MR. NUNEZ. I notice, looking at your background, that you have an extensive background in this area of internal investigation. Don't you feel, from your professional experience, that perhaps it might be more useful to have full-time investigators assigned to your office working exclusively for you, rather than having an investigator investigate a case of internal misconduct, or alleged internal misconduct, where he might find himself in a position of investigating one of his colleagues working in the same unit, same district office?

MR. KIRBY. Well, we would hope that that wouldn't come about. That's why we would take people from a different sector.

MR. NUNEZ. You take people from a different office and assign them to that?

MR. KIRBY. Yes, sir.

MR. NUNEZ. Okay, the second question I want to raise with you is the—I was a little confused as to what efforts you are making, your unit is making, or the department is making to bring the existence of your unit to the attention of the general public.

I think you indicated that the Commissioner goes around and makes speeches, and appears on television and radio, but would you have a sign at every district office? In your documentation, in your forms, would you state that if you have a complaint you can write to us, or file a complaint with our unit? There are police departments that do this, and other units of government—law enforcement, that have that in every office where there are—where their people deal with the general public, they have these kinds of signs. Do you do any of that?

MR. KIRBY. No, not at this stage.

MR. NUNEZ. Do you think that is a good idea for the Immigration Service?

MR. KIRBY. I certainly do. Yes, sir.

MR. NUNEZ. You would recommend such a procedure?

MR. KIRBY. I would, sir; yes, sir.

MR. NUNEZ. Thank you.

MR. KIRBY. I mean, to put it in the knowledge of the public.

CHAIRMAN FLEMMING. The time has just about expired on this panel. We will take one question, if you have another one?

MR. CHOU. I have one question, Mr. Chairman.

CHAIRMAN FLEMMING. Okay, let's take one more.

MR. CHOU. There was testimony earlier about an investigation of a Border Patrol agent who testified at the Texas State Advisory Committee's hearing on immigration.

The charge in that case actually involved failure to report a case of INS misconduct. Is that correct?

MR. KIRBY. That was a two-fold investigation, sir. The primary part of the investigation was to establish the identity of the alien, so that we could interview him and find out who the Border Patrolmen were that struck him.

The second part of the investigation was to request of the Border Patrol agent why he hadn't reported it under the operations instruction.

MR. CHOU. Could you tell me how many cases of a similar nature have been investigated by your office, say in the last year? The failure to report a case of misconduct by an INS officer?

MR. KIRBY. Right now, I'd have to say none.

MR. CHOU. Okay, thank you.

CHAIRMAN FLEMMING. We appreciate very, very much both of you being with us. We appreciate your testimony, and we appreciate your response to our questions. Thank you very much.

MR. KIRBY. You are welcome, sir.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. DIMAS. We have Mr. Glenn Bertness, Mr. Donald Day, Mr. Hugh Brien, and we had—excuse me—a recent addition, Mr. Charles Sava.

MR. DIMAS. Would you gentlemen remain standing to be sworn in, please.

[Glenn Bertness, Donald Day, Hugh Brien, and Charles Sava were sworn.]

TESTIMONY OF GLENN BERTNESS, ASSISTANT COMMISSIONER FOR INVESTIGATIONS, DONALD DAY, ASSISTANT COMMISSIONER FOR BORDER PATROL, HUGH BRIEN, ASSISTANT COMMISSIONER FOR DETENTION AND DEPORTATION, AND CHARLES SAVA, ASSOCIATE COMMISSIONER FOR ENFORCEMENT IMMIGRATION AND NATURALIZATION SERVICE.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your being with us. Counsel, you may proceed.

MR. DIMAS. Mr. Sava, I'd like to start with you. Would you identify yourself for the record, your position, and your business address, please?

MR. SAVA. My name is Charles Sava. I'm the Associate Commissioner, Enforcement, Immigration and Naturalization Service, at 425 I St., N.W., Washington, D.C.

MR. DIMAS. And if we may proceed in turn with the other gentlemen who I believe, Mr. Sava, you would introduce?

MR. SAVA. On my right is Mr. Hugh Brien, the Assistant Commissioner, Detention and Deportation. On my left is Mr. Glenn Bertness, the Assistant Commissioner, Investigations. And on his left is Mr. Donald Day, the Assistant Commissioner, Border Patrol.

MR. DIMAS. If I understand the hierarchy correctly, Mr. Sava, you are the immediate supervisor for each of these three gentlemen? Is that correct?

MR. SAVA. That's correct.

MR. DIMAS. And you report directly to the Deputy Commissioner?

MR. SAVA. The Deputy Commissioner, yes, sir.

MR. DIMAS. Mr. Sava, we'll get right into some of the questions that have been raised.

The Domestic Council Committee, appointed by the President in December of 1976, in a report on the undocumented worker problem, stated that: "The strongest reaction to INS enforcement activities in the past has been caused by residential or community enforcement tactics."

Would you please describe what those "tactics" were, and describe the reaction and your response to that, please?

MR. SAVA. You said there has been a reaction to "residential" and what?

MR. DIMAS. "Residential or community enforcement tactics." This was the language of the 1976 Domestic Council report.

MR. SAVA. Our policy on going into residential and community areas is that, for area control operations, those are those that are—as opposed to casework, we go in only when we have information-based on articulable facts which would allow us to know somebody is at a given place, a given address, and to work that information.

As opposed to that, in non-area control cases where we do have specific information and we are working a non-area control type case, where we are not seeking out people in general, but are looking for a specific person for a specific reason to work that information.

MR. DIMAS. And “area control” is where you are not seeking out a specific person for a specific reason?

MR. SAVA. Right. In other words, an “area control operation” would be looking for, let’s say, undocumented workers in an area, or seeking them in a place of employment. While we might have some information they were there, it’s different from having a case where we are going to interview a particular person by name at a given location. We know he’s there; it’s not a question of looking to see he’s there; we go there and work there.

MR. DIMAS. What is the present Service policy with regard to area control operations, Mr. Sava?

MR. SAVA. At the present time, we are concentrating area control operations in places of employment of aliens. In addition to that, Service officers do go into residential areas when they have specific information, based on articulable facts, that there are undocumented workers at a given address or location.

MR. DIMAS. Would a complaint from a local police authority constitute specific articulable facts?

MR. SAVA. If we had found him to be responsible in the past; if he has proven himself to be a responsible person, where the information he gives is accurate, not misleading, and is I’d say a reasonable request, not just a very general thing that “there are a bunch of illegal aliens down here.” If he could, I’d say, document his evidence, tell us how many and where they are, we’d certainly work that.

MR. DIMAS. Would he be required to tell you the source of his information?

MR. SAVA. No.

MR. DIMAS. Would not normally you want to know the source of the information to determine for yourself how valid their determination was?

MR. SAVA. It’s possible, depending on the case, but we make a judgment when he gives us the information as to whether or not we’ll work it. We’re not really checking up on the local police department to see how they’re doing their job, but I think our officers have a feel from their experience with various law enforcement agencies they work with to know what to look for in information they get from the various police departments.

MR. DIMAS. There was a recent article in the *Los Angeles Times* that area control operations had virtually ceased in the Los Angeles area; that apprehensions were down by, I believe, 70 percent, reported within the last month.

Is that information accurate?

MR. SAVA. No, it's not accurate. They have not—I don't know what he means by "virtually ceased." They have not virtually ceased, and they are not—certainly not down 70 percent.

I think one of the things, if you look at the number of people located and apprehended, I'd say recently, within the past year, you have to realize that, taking national figures, you have included in there in the West Coast, and specifically in the Los Angeles area, well over 50,000 who were the Silva-type cases, who came forth and were not apprehended, but they were shown as being located—

MR. DIMAS. By "Silva-type cases," do you mean—

MR. SAVA. Silva-Levy.

MR. DIMAS. —people who are presently without documents, but who are nondeportable due to the ruling of the—the injunction of the Federal judge in the Silva case.

MR. SAVA. Right. Right. Now, I'd be the first to tell you that we won't get 50 or 60,000 of those this year in Los Angeles. And as a result, their total figures, if you just look at them raw, will be down. But area control operations and apprehensions are not down 70 percent. They haven't ceased.

MR. DIMAS. I think specifically what was reported was that the raids on the places of employment have been "virtually ceased."

MR. SAVA. Our operations in places of employment are being affected somewhat by a suit out there—a suit out there which is similar to others. And while that affects it in those areas that don't let us come in without, in the past, a warrant—it has affected those.

But there in the Los Angeles office, we had had quite a few vacancies. And while we've had 25 or 30 of those jobs filled, those trainees have been down at the training site in Georgia training, and they are back on duty now. But it's going to be a little while before they start showing results.

MR. DIMAS. How short-staffed would the Los Angeles office be?

VICE CHAIRMAN HORN. If I might interject, since Counsel has referred to it, Mr. Chairman, I'd like to place in the record at this point the article in the *Los Angeles Times* of November 11, 1978, which indicates some of the charges on which Counsel is basing his questions, and it cites Phillip Smith, Chief Enforcement Officer of the INS in the Los Angeles-Orange County areas, who said, here at least:

"Enforcement and apprehension of illegal aliens has taken a major drop in recent months. Even with the recent addition of 26 trainees to replace officers we lost, I will still be able to field only 130 officers, compared to the 152 we had last year," Smith said. "Because of less manpower and shifting priorities from enforcement to service, total

manpower used to apprehend illegals at work dropped 58.1 percent from fiscal year 1977 to fiscal year 1978," he said.

"Apprehensions here plummeted from 77,833 in fiscal 1977 to 40,966 in fiscal 1978, which means that with the number of illegal aliens in this area, estimated variously from a low of 500,000 to a high of 1.5 million, the number of apprehensions is relatively small."

And you might wish to place the whole article in the record.

CHAIRMAN FLEMMING. Without objection, we will have the article introduced—

VICE CHAIRMAN HORN. Of November 11, '78.

CHAIRMAN FLEMMING. —into the record at this particular point.

MR. DIMAS. Would you care to respond to that reading, Mr. Sava?

MR. SAVA. Well, not having read the article, I could just give you a couple of comments. First, I think, as I said before, that the apprehension figures he talked about there, I think he said, what, 70 to 77,000?

VICE CHAIRMAN HORN. Yes. He says "77,883."

MR. SAVA. That includes the large number of Silva cases—

VICE CHAIRMAN HORN. That was '77, and they dropped to 40,966.

MR. SAVA. Right. And a large percentage of those are Silva cases, and we won't get those this year, but I'd be the first to concede that in the raw figures there does appear to be a drop. Many of those are people who, while we report them as "apprehended or located," they came in under the Silva program and had a record made of their presence here.

We won't get that volume of those this year.

VICE CHAIRMAN HORN. I might say, the article does go on to say:

"Figures supplied by INS in Washington show that, along the nation's borders, apprehensions did increase from 812,541 in fiscal '77 to 862,217 in 1978. But in the interior, apprehensions by INS officers dropped from 220,886 to 185,470, a 16 percent decline."

MR. SAVA. I would say those—that, I think, would be representative. I don't know that they're completely accurate. I see a note here that in 1977 in the Los Angeles area, they had 40,000 Silva cases. In 1978 they only had 20,000.

If you look at them all under that heading of "deportable aliens apprehended or located," there's a difference right there of 20,000. Along the border, our apprehensions are up.

But I think there, when you talk about apprehension at the border being up, and how much they're up, you really need to look into, I think, I assume what the Congress is trying to do, and certainly what we're trying to do, and that's this: If you just keep adding manpower along the border to control illegal entry, some day the apprehension should begin to tail off, because you would have some deterrent effect.

I don't think we can keep saying that because we pour in more and more manpower, we will continue to apprehend more and more people. Somewhere in there, if our strategy works, there should be some

deterrent effect. And while the apprehensions are up, I don't know that it's a good thing to judge the interior necessarily by what you see on the border.

MR. DIMAS. I'd like to clarify one point that I believe you alluded to. You mentioned that the Silva-class people were included in the total of those apprehended?

MR. SAVA. Well, the actual heading is "deportable aliens apprehended or located." I think that's the way the Form I-213 shows: "apprehended or located." And that includes whether or not they are apprehended; whether or not they come in and surrender themselves. It's a standard form we use for any deportable alien who comes to our attention.

MR. DIMAS. So if somebody comes into one of your offices seeking information and he is deportable, he would be counted in this total, and this would be the figure commonly used publicly?

MR. SAVA. Only if he is—through a process—he is actually processed and put under deportation proceedings, which means he could go to a hearing or be given a voluntary departure. But once he is put under a deportation proceeding, one of the forms executed is Form I-213, which is—

MR. DIMAS. Is the record of deportability—

MR. SAVA. I don't think everybody who comes into the office who might be deportable has that filled out on them, but those who are put under proceedings, whether or not they were just located, or whether or not they were actually apprehended are counted under that heading which you usually see referred to as "apprehensions," but the actual title is "deportable aliens apprehended or located."

MR. DIMAS. Mr. Bertness, would you be aware of whether everybody who comes in seeking information who is deportable is placed under that category?

MR. BERTNESS. Those people that walk into the information counter at any of the district offices merely seeking information are not even questioned as to whether or not—what their status is in the United States. They could come in and receive their information and depart without even being inquired of as to their status.

MR. DIMAS. Is this true in all district offices of the Immigration Service?

MR. BERTNESS. The information counters are not manned by investigators. It's not—I'm not saying that it doesn't occasionally happen, that it is developed there that a person is a deportable alien, but, generally speaking, if they come in and ask for forms or ask for what type of information they need, the information clerks or the contact representatives do not inquire into their status, unless it is based—unless what they're inquiring about is based on their status.

MR. DIMAS. Would you explain that, please?

MR. BERTNESS. Well, if they wished to file a petition for a relative, for example, the contact rep would have to determine whether or not

they had the proper status to inquire as a right for a relative to come into the United States.

MR. DIMAS. As a practical matter, are not most people in that category who come in seeking the information?

MR. BERTNESS. I would have to say that most people are, yes.

MR. DIMAS. So that most people would, in fact, be referred to your division for processing as a deportable alien?

MR. BERTNESS. Oh, no, no. I must have misunderstood you. I mean that most of the people who come in to the information counter are legal. They're either citizens or permanent residents. There are very few deportable aliens that voluntarily show up at our offices.

MR. DIMAS. Well, we had mention of all these people under the Silva case, but they are an exception, right?

MR. BERTNESS. That's an exception.

MR. DIMAS. And, Mr. Sava, if I understood you correctly, you said there are now 60,000 people in that category in the Los Angeles area?

MR. SAVA. In the western region, there are 70,000 who have been processed. Over 60,000 of them are at the Los Angeles district.

MR. DIMAS. So that approximately that many of the reported apprehensions located reflect people who voluntarily came in?

MR. SAVA. Persons apprehended locally.

MR. DIMAS. Mr. Day, will you please explain for us what "Operation Cooperation" is?

MR. DAY. I should defer that to Mr. Bertness. If you want me to answer it—

MR. DIMAS. Very well. Mr. Bertness?

MR. BERTNESS. That's a program where we've encouraged employers, in cooperation with the Immigration Service, to determine whether there are on their payroll any deportable aliens and processing those that are, and then in cooperation with the Service, future payroll hires are screened to prevent new deportable aliens from being hired by that particular company.

MR. DIMAS. And what—what steps do you take to seek this cooperation?

MR. BERTNESS. It takes various steps in various places, but either in connection with after we've gone to a place—a place of employment on an operation, we would then seek to have them cooperate in the future; or, in some offices, we've mailed out notices to the industries in the area asking them to cooperate.

MR. DIMAS. I see. In the Los Angeles area, I believe, a letter was being sent out to many employers informing them of this program, and requesting their cooperation. Are you familiar with such letters?

MR. BERTNESS. I believe the letter you refer to is a letter that was used—for example, if Los Angeles visited a particular manufacturer or an employer and removed from the premises deportable aliens, they would then furnish them with a letter telling them how many of the deportable aliens that they removed from the premises, and seeking

their cooperation to prevent it in the future. I believe that was primarily what they were doing.

MR. DIMAS. And would some employers be visited several times, and have several such letters supplied to them?

MR. BERTNESS. I really can't tell you for sure on that. I think that if they found out if they were uncooperative, they did not repeat the procedure more than once.

MR. DIMAS. Well, what about followups by the Service when the person did not choose to cooperate, but nevertheless there had been numerous people picked up in a raid?

MR. BERTNESS. Oh, yes. Yes. They would return on a regular, normal operation like they would have if they were not—if they were uncooperative, yes.

MR. DIMAS. How frequently would you say a particular place may be subjected to checks by the Immigration Service?

MR. BERTNESS. That would vary widely with each office. Again, if we're talking about a place like Los Angeles, some of the larger employers where larger numbers of deportable aliens were found, it might be every 6 to 8 months.

MR. DIMAS. You mention that in this program you attempted to have the employers refrain from hiring undocumented workers? Now would you offer them any kind of assistance in determining who was in fact not entitled to work?

MR. BERTNESS. Yes. That would be part of the—that would be part of the cooperative agreement: that we would provide them with literature on documents that would be shown by aliens that would permit them to accept employment, as well as if they had any questionable cases, they could be referred to the Immigration Service for verification before they were hired.

MR. DIMAS. And how successful was that program?

MR. BERTNESS. Very successful, from the standpoint that we had several hundred employers nationwide that were a party to it. One of the problems is that some of the cooperative employers may have been people who were—or employers that had a low average of hiring deportable aliens in the first place.

MR. DIMAS. Did you have any employers express reservations about cooperating because of a fear of violating other laws such as California's Fair Employment Practice law or EEOC regulation?

MR. BERTNESS. Yes.

MR. DIMAS. And how would you answer that?

MR. BERTNESS. Well, we answered that, of course, they couldn't refuse to hire somebody on the basis that would end up resulting in violation of a State statute or a Federal statute, and that we would help them in any way we could to determine the legal status of an alien to prevent that from being the reason for their not hiring.

MR. DIMAS. Do you have the manpower or the resources to provide that kind of assistance to a large number of employers?

MR. BERTNESS. This is one—this is one of the pacing factors that would have come up on the program. The program has never proceeded to the point where it got to be that large a burden that we were unable to cope with it. It would—it could become a burden if the number of cooperative employers increased each year; yes.

MR. DIMAS. Mr. Day, your responsibility is the Border Patrol. Is that not correct?

MR. DAY. That is correct.

MR. DIMAS. And where does the division of responsibility for apprehensions come in between your division and Mr. Bertness's division?

MR. DAY. Well, the locations are geographically divided. The Immigration Service, as you probably are aware, is divided up into districts under which the investigators operate. In the Border Patrol, they're divided up into sectors.

Now there is a certain overlapping, but the investigators who, for example, may be working within a sector area are confined to strictly investigative activities, while the Border Patrol will pursue those activities which are germane to the enforcement of the border.

MR. DIMAS. Would you describe some of those activities, please?

MR. DAY. Okay, the activities which we normally pursue, number one, of course, is what we call "line watch." This is the immediate patrol of the border and the immediate border area.

We try to detect persons who have entered—either the act of entering or just after they have entered—or to prevent their entry. In other words, our presence, we would hope, at times would prevent them from pursuing their intention to cross over.

We also do what we call "farm and ranch check." We do customary patrolling in the farms and ranch areas adjacent to the border, and also adjacent to some of the coastal areas.

We also do transportation checks. We have Border Patrol agents who are regularly checking public transportation conveyances—

MR. DIMAS. Would you please—

MR. DAY. —buses, trains, airplanes, and so forth.

MR. DIMAS. Would you please describe one of those transportation checks, please?

MR. DAY. A transportation check, for example, at San Clemente, California, where we maintain a permanent checkpoint, the bus would be routed off to the side into a safe area, away from traffic.

The Border Patrol agent, in uniform, will go aboard the bus, he will identify himself, and then he will proceed to question each and every person on the bus as to their citizenship and as to their right to be a passenger who would remain in the United States.

MR. DIMAS. They would question "each and every passenger," you said?

MR. DAY. That is correct.

MR. DIMAS. Would they, under any circumstances, select only a few individuals for questioning?

MR. DAY. There's a possibility that this may happen. As a matter of fact, when I was involved in transportation checks down in the Rio Grande Valley, I knew some of the people who traveled regularly on the train, for example. You would know them; you would know that you had talked to them before; and you would not talk to them again—not to waste your time or their time.

Normally, the agent will check each person on the bus.

MR. DIMAS. I see. Thank you.

And what would happen with somebody that you pulled off one of these buses for being present without the proper documentation?

MR. DAY. Okay, in the case of San Clemente, we're fortunate there in that we have a Border Patrol station which is adjacent to the inspectional area.

The person would be taken into the station, would be processed as an illegal alien in the manner in which Mr. Sava alluded to, by preparation of Form I-213.

A determination would then be made at that point: the extent of the violation, whether or not the individual had violated the immigration laws before, whether or not there may be a smuggling aspect involved in his presence or his entry into the country which possibly would have to be referred for criminal prosecution, or, absent these elements, whether or not the individual is willing to return to Mexico voluntarily. And, if so, they would elect voluntarily to do so and would be returned on the next transportation available to the border.

MR. DIMAS. Now one of these 213s, the Record of Deportable Alien, is created on every person apprehended?

MR. DAY. That is correct.

MR. DIMAS. And you mentioned that it has information on there about prior immigration violations?

MR. DAY. Yes, it does.

MR. DIMAS. Approximately what percentage of the people who are apprehended by the Border Patrol are repeat violators? Do you have any idea?

MR. DAY. I don't have that percentage available to me. I could give you—I could secure that and furnish it at a later time.

MR. DIMAS. Would you, please?

MR. DAY. Sure. Certainly.

MR. DIMAS. You also mentioned that many of the people sign requests to depart voluntarily from the country. Do you have any idea what percentage of the people do that?

MR. DAY. I would say a ballpark figure would be in excess of 75 percent. In the Chula Vista area, I believe it's 85 percent in the adjacent border area.

MR. DIMAS. And on what basis are they allowed to depart voluntarily?

MR. DAY. Well, of course they are advised that, before they make this election, that they do have the right to go through a deportation

proceeding, and also that they have a right to counsel. If they waive these two rights, which they do by signing a statement, then they are elected—they are permitted to return voluntarily to Mexico, if that is the adjacent country.

MR. DIMAS. And the Border Patrol agent who apprehends them is the one who is responsible for explaining their rights to them?

MR. DAY. That is correct.

MR. DIMAS. Does anybody else have this responsibility? Perhaps the Detention and Deportation facilities?

MR. DAY. The—no, the detention officers do not have that responsibility. That is the responsibility of the officer who makes the apprehension, or who processes the individual as a deportable alien.

MR. DIMAS. Are any of your officers ever inclined or required to advise them as to what is—what would be the preferable route for them to take? Whether to accept a hearing or accept a voluntary departure?

MR. DAY. Well, that type of counseling, I really don't think would be within the province of a Border Patrol agent. Now we would advise them, if during the questioning—the interview, if we determine that the alien may have some equities which would give him some benefits to remain in the country, or at some subsequent time to apply for a visa, or any other elements in his behalf, these would be explained to him.

And the Border Patrol agent has just as much of a responsibility in that regard as he does to take the adversary position of trying to expel him from the country.

MR. DIMAS. Well, since he—

MR. DAY. But now insofar as counseling him along the legal aspects, no, we wouldn't do it. We shouldn't do it.

MR. DIMAS. You mention that he has the same responsibility; what about the training that a Border Patrolman has? Would he have similar training to, say, somebody in the Adjudications branch?

MR. DAY. Not as extensively, but the Border Patrol agents are trained extensively in both immigration and nationality law, and they do know the law, we feel, to the extent necessary that they would be able to protect the rights of the individuals whom they come in contact with.

MR. DIMAS. Do most of your Border Patrol agents speak Spanish, and, in fact, advise the people in Spanish?

MR. DAY. Yes, they do.

MR. DIMAS. How fluent would you say your agents are?

MR. DAY. That requires an objective opinion. "Fluency" is something I wouldn't make any guess about.

MR. DIMAS. Well, I guess the question would be: Are they able to converse or are they able to raise some questions and understand the response?

MR. DAY. Yes, they are. They're able to effectively communicate in Spanish in order to do the job.

MR. DIMAS. Would you say “effectively converse” means “free conversation”?

MR. DAY. “Free conversation,” if you were discussing technical aspects of something, I would say they probably could not. But if they control the questioning and it’s along immigration lines, they are able to communicate that, and also they are able to understand the responses.

MR. DIMAS. What happens if the person is trying to explain something somewhat out of the usual context, that is, not exactly related to immigration? For example, say I’ve got to get somewhere in a hurry; it’s an emergency?

MR. DAY. Well, let me say this: Border Patrol agents, like anybody else, will turn to the nearest source for assistance. If there are other aliens there who obviously speak the language better than he does—and I’ve done it myself—he will turn to them and ask them for assistance, or somebody who communicates in English, for example, and there usually is somebody around who is bilingual, or at least fluent in Spanish and can communicate in English. You would turn to them.

If you can’t do it that way, then you would communicate with your sector headquarters in an effort to have a qualified interpreter to assist either by—telephonically, or to come on the scene.

MR. DIMAS. How often would you say an interpreter, or outside assistance, or the assistance of another person is used in the typical apprehension?

MR. DAY. In the typical apprehension, I would say that very seldom is there a need for an interpreter.

MR. DIMAS. I see. So the degree of fluency that they have in Spanish would be sufficient for the average case.

MR. DAY. We feel that it is; yes.

MR. DIMAS. Mr. Brien, if I may direct some questions to you, you are the Assistant Commissioner for Detention and Deportation?

MR. BRIEN. Yes, I am.

MR. DIMAS. And as such, would you describe some of your responsibilities for us, please?

MR. BRIEN. The Detention and Deportation activity is responsible for the performance of deportation proceedings, the detention, or release, or under bond, or recognizance, of aliens unlawfully in the United States.

MR. DIMAS. And how many facilities do you maintain—does the Immigration Service maintain in the United States for the temporary detention of people?

MR. BRIEN. We maintain four major Service processing centers. Three are located in the Southwest and one in New York City. And in addition to that, we also have some hold rooms at district offices which are merely a detention space for a very short detention of aliens in transit, usually back to their home countries.

MR. DIMAS. How long might somebody be held in one of these hold rooms?

MR. BRIEN. It could be from minutes to 3, 4, 5 hours, but no more.

MR. DIMAS. Never as long as a day?

MR. BRIEN. It could happen, a day—when you say “a day,” I assume you mean a work day, 8 or 9 hours?

MR. DIMAS. Yes.

MR. BRIEN. Yes, it could happen that they would be awaiting transportation onward to wherever they're destined, and in that case it could be 8 or 9 hours.

MR. DIMAS. You make no determination, though, as to whether any of these people held in detention should be released under such conditions as recognizance or bond? Is that correct?

MR. BRIEN. As Mr. Day said, when undocumented aliens are apprehended and a determination has been made that they are amenable to deportation proceedings, they are usually delivered to the Detention and Deportation Division, and in that posture, we do not make a decision. The decision has already been made. We merely receive the alien in custody and ensure that he is detained in a humane environment, and that he's safely delivered to wherever he is going.

MR. DIMAS. How long are people typically detained in the Service processing centers—the larger ones that you mentioned?

MR. BRIEN. Our figures for fiscal '78, the average time was 2.7 days, which is slightly less than '77, which was about 3 days, 3.0.

MR. DIMAS. And are those figures somewhat augmented, in a way, I guess you would say, by the asylum applicants that were being detained in some of the centers?

MR. BRIEN. I'm sorry, I don't understand your question.

MR. DIMAS. Well, there was recent publicity—let me clarify that. There was recent publicity about Haitian asylum applicants being held for longer periods of time in some of the detention centers.

MR. BRIEN. Last year we removed over 1 million undocumented aliens. The Haitians that you refer to, I would say, constitute a miniscule percentage and would not, as such, affect the average man days.

MR. DIMAS. So the average stay—the average time of detention would be pretty close to 2.7 days, then, as a whole?

MR. BRIEN. What would impact on the man days, perhaps—and this is a personal opinion—would be the large number of Mexican nationals who are removed very rapidly. As opposed to that, we have some non-Mexican aliens who, for various reasons, are detained for perhaps a week, or several weeks, or even months.

The total number of these are—is quite small, but some of the reasons are: their nationality is clouded, the country where they are scheduled for deportation is tardy in issuing travel documents, and a myriad of reasons like that. And so we would be required to continue the alien in custody until we were ready to expel them.

MR. DIMAS. There have been some press reports about efforts made by the Service to upgrade the facilities, in particular, with reference to people who are held for longer periods of time. Would you comment on those efforts, please?

MR. BRIEN. Well, we have a program, an ongoing program, where we are attempting to upgrade, to the extent possible within budget limitations, the physical environment of our detention facilities.

We have made a number of changes in the facilities. We have increased the recreation facilities at the centers. We have included such things as soccer facilities because many of the foreign nationals do play soccer. We have included volleyball. We have put in modest library facilities and medical facilities. We have enhanced our medical facilities.

We are continuing to do this and have other plans in the coming fiscal year to enhance it further. It's an ongoing process, and we're committed to this.

MR. DIMAS. Do you feel that the resources being spent on the upgrading of these facilities would possibly be better spent on other portions of the service function?

MR. BRIEN. Our budget for—our detention—our alien travel and detention budget for last year ran about \$13 million. The amount that we spent on recreation facilities was very modest. So in those terms, it did not impact on our enforcement effort, if that is your question. I do not feel that we took dollars away—because in the budget, in the budget breakdown, there is a sub-object for “welfare” and for these kinds of things.

MR. DIMAS. Mr. Bertness, would you tell us about your resources that are available for your functions? In other words, something about your budget and how that is being met?

MR. BERTNESS. The existing investigative force consists of approximately 1,150 investigators throughout the United States. The budget for investigations over the last 4 years has modestly increased each year to the tune of probably in the neighborhood of slightly less than 10 percent.

MR. DIMAS. Have you requested larger increases?

MR. BERTNESS. As the bureaucracy always does, we have always asked for more than we get.

MR. DIMAS. How much more? In other words, how much more have you felt was required than what you have actually been receiving?

MR. BERTNESS. Well, we have a problem there, in that we have to determine whether or not we are talking about trying to solve the whole problem, or just take a bigger chunk of the problem. And the requests that have gone forward to Congress have generally been met in the largest percentage. Very seldom have we suffered great losses from Congress.

MR. DIMAS. You say the budgets that have been taken to Congress. Do they get cut down before that time?

MR. BERTNESS. There has been some—according to the Department's and OMB's budget and the White House budget. The Department, of course, of Justice, is given a budget in which everybody has to fit in within the Department, and the Department does determine what our fair share is, yes.

MR. DIMAS. The Justice Department determines what your fair share is?

MR. BERTNESS. Yes—of their budget, yes.

MR. DIMAS. And then the allocations within that budget for the different branches of the INS are determined by the INS?

MR. BERTNESS. Yes.

MR. DIMAS. I see.

Mr. Sava, referring back to the earlier questions about the area control operations, there was a press report recently that a Federal judge here in Washington, D.C., had ruled the search warrants used by the Immigration Service to be illegal and unreasonable. Are you familiar with that?

MR. SAVA. Yes, I'm familiar with that.

MR. DIMAS. Would you tell us—explain for us what effect that ruling would have on INS operations?

MR. SAVA. I'm familiar with it; I'd rather have Mr. Bertness address it because he's a lot closer to the situation.

MR. DIMAS. That's fine.

MR. BERTNESS. The Federal court in the District of Columbia determined that the basis for a search warrant for persons used by the Immigration Service was not proper, in that the Rule 41 of the Federal Rules of Criminal Procedure was used as the basis for the search warrant, and that particular rule of procedure provides for property only. So he ruled that that was not a proper basis for a search warrant for persons and invalidated that particular type of warrant for us for the District of Columbia.

MR. DIMAS. It invalidated that particular type of warrant. What other types of warrants are used by the Immigration Service in carrying out these surveys?

MR. BERTNESS. The administrative warrant has been used, but no warrant at the present time—there is no procedure at the present time to replace the particular search warrant, except getting a direct order from the court.

MR. DIMAS. Except getting a direct order from the court?

MR. BERTNESS. Yes, a court order—it is possible that the court could give us authority to enter a place for the purpose of pursuing deportable aliens.

MR. DIMAS. Has that ever been done?

MR. BERTNESS. No, because the search warrant has always been used until recently.

MR. DIMAS. I see. Then on what do you base the statement that it is possible?

MR. BERTNESS. There are other agencies such as IRS that have used court order procedures to enter premises for the purpose of securing evidence in that—for their enforcement of their particular statute.

MR. DIMAS. I see. And going back to your earlier description of the ruling in that case, the judge ruled that these warrants were only to be used for property?

MR. BERTNESS. Well, the—actually, taken verbatim, that's how the Federal Rules of Criminal Procedure, Rule 41, reads, is "for property." And it has been interpreted in the past, by us and by many courts, that apparently that didn't necessarily apply because we have used the search warrant from that rule in practically every State in the Union, including the Supreme Court, which directed us to go out and use it in a case that was in front of the Supreme Court.

But in this particular case, he ruled, by a strict reading of the basis for the warrant, it did not apply to "persons," it applied only to property.

MR. DIMAS. There was reference made to a suit in California earlier, in Los Angeles—

MR. BERTNESS. That's a similar suit there on the same matter, which has not gone forward yet. It's in the motion stages.

MR. DIMAS. Has this ruling here in Washington had any effect on local operations?

MR. BERTNESS. It's much too soon to tell, but it would depend upon how the business community reacted to the fact that there was no longer a legal premise for entering their premises. If they continued to cooperate—we use search warrants in probably only about 5, a little less than 10 percent of our cases. If that were to increase because of the lack of a legal basis for entry, well, of course, it would greatly affect our operation.

MR. DIMAS. Now the other 90 percent, I take it, would be based on consent?

MR. BERTNESS. Yes.

MR. DIMAS. The owner of the premises allows you to come in and conduct one of your surveys?

MR. BERTNESS. Yes.

MR. DIMAS. Okay, now, once—would you describe a survey for us please, Mr. Bertness?

MR. BERTNESS. Again, they would probably vary, but we'll take Los Angeles as an example.

Los Angeles first goes out to the employer in advance of the visit to the plant and seeks his cooperation. If he does offer to cooperate, if he agrees to cooperate, at a later date which is unspecified to the plant owner or to the plant management, we would then send sufficient number of personnel out there to conduct a survey.

We would enter the plant with the permission of the management of the plant, and would then question those persons for which there were articulable facts that they might be an alien, and determine whether or not they are in the United States lawfully.

MR. DIMAS. You would not question everybody?

MR. BERTNESS. No.

MR. DIMAS. Only those people with whom you had—about whom you had articulable facts?

MR. BERTNESS. Yes.

MR. DIMAS. What would constitute “articulable facts”?

MR. BERTNESS. Well, again, it would be a myriad of things, depending upon—it would be the way the person reacted when you walked down the assembly line, if you’re talking about an assembly line situation. Many of them would be hidden in crevices and in rooms, which you would feel are articulable facts. And the refusal to speak to you, and their reaction to your being present when they found out that you were Immigration people would be the primary—

MR. DIMAS. The refusal to speak to an agent would constitute “articulable facts” if that person was an alien?

MR. BERTNESS. It would be one of the factors that would be considered.

MR. DIMAS. But while this is taking place, the area itself is sealed off—

MR. BERTNESS. Yes.

MR. DIMAS. —by other agents?

MR. BERTNESS. Yes. The door, the exits are sealed off.

MR. DIMAS. Now in determining what constitutes “articulable facts,” is a person’s color taken into account?

MR. BERTNESS. That could be one of the factors, yes.

MR. DIMAS. But only one of the factors?

MR. BERTNESS. Only one of the factors.

MR. DIMAS. Would it, in itself, be sufficient to support questioning?

MR. BERTNESS. No.

MR. DIMAS. I see.

I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Let me say that, Mr. Day, I’ve got great sympathy for the problems faced by the Border Patrol, and I have even more sympathy when I go back and read from the 1931 Report of the Commission on Law Observance and Enforcement in its report on the enforcement of the deportation laws of the United States, the so-called Wickersham Commission, that they noted then:

“The Border Patrol is insufficient in personnel to prevent a large number of illegal entries.” And they also added that, “It is much less expensive to apprehend an alien at the time of effecting illegal entry or shortly thereafter, than it is to ferret him out and prove he is deportable after he has been living here some years.”

MR. DAY. It sounds familiar.

VICE CHAIRMAN HORN. That’s right.

Now, in light of that, what I would like for the record is—and you can furnish it: What has the INS requested for the Border Patrol of

Justice? What has Justice requested of OMB? What has the President asked of the Congress? What has been the House action? What has been the Senate action? What has been the final congressional action, in terms of both dollars and positions, by fiscal year since fiscal year 1968, which is the last year of President Johnson's budget, and brings us up through four Presidents.

I'd also like to know, for those fiscal years, what is the ratio of officers on the line in the field, compared to administrative support and executive staff for the Border Patrol from fiscal year '68 through '79. To furnish that, staff will work out the details, but that's the way I want the matrix laid out.

Now this morning, Mr. Conrad—if that could be on the record, Mr. Chairman, to make sure it's—

CHAIRMAN FLEMMING. Yes. Without objection, it will be received and inserted into the record at this point.

VICE CHAIRMAN HORN. Now this morning, I listened to Mr. Neil Conrad, the affirmative action coordinator, who in passing noted that there was a 1,000 backup on the Border Patrol register.

I wonder if you could tell this Commission what your problems are in recruitment. You now have a freeze that faces many Federal agencies—most Federal agencies. Tell us a little bit about your problems in recruitment for the Border Patrol, in terms of compensation, of attracting minorities and women, difficulty of the assignment. Do people stay in the Service? What's the retention rate, and so forth.

MR. DAY. Yes, sir.

Well, you were correct, sir. We do not have the statistics available from '68 through '79, but we will certainly get it for you.

We feel that we still have a very attractive career to offer to young men and women of this country. And the responses to our recruiting announcements continue to be, in my estimation, rather overwhelming. We do have a very stringent recruiting policy. We have our own examination which is rather unique. It is not unreasonable. It has been upheld as being reasonable by the Civil Service Commission, of course, and by other private and governmental agencies.

We feel that insofar as interest is concerned, of our prospective applicants, there is a particular type of person in our society who enjoys enforcement work, police work. We feel that we attract people who want to work out of doors. They see challenges that are almost insurmountable. Most of them have had a lot of exposure to the media, to the problems that we have, and we feel that we have and always will have a reservoir of people who are interested in having our jobs, in coming to work for the Border Patrol.

The process of investigating individuals—doing a background investigation on them once they have been selected—is one of our impediments. It's time consuming, and really I don't think there's very much we can do about it.

The Civil Service Commission, who conducts our investigations, does a very, very good job. They, too, have their backlogs, and we appreciate that—and I don't mean to be critical, but you asked for problems.

One of our problems is that during this period that the investigation is being conducted, these young men and women turn to other pursuits. They have other offers. And we lose some of them which we feel would be very, very good prospective applicants for the jobs during that process.

VICE CHAIRMAN HORN. Well, right at that point, do you know how many you lose between the time they're on the register and the time the investigation is completed, that have taken other jobs? Half? Two-thirds? What?

MR. DAY. I do not have that figure, and I'd be very reluctant to give you a ballpark figure—

VICE CHAIRMAN HORN. Can you get us the figure?

MR. DAY. I'll get it for you. Yes, sir.

VICE CHAIRMAN HORN. Because I'd also be interested in pursuing a line of questioning as to the makeup of the pool you ultimately choose from.

As I understand it, the Civil Service Commission does not have ethnicity-sex data in that initial pool, but you know whom you hire. And I'd be curious how that has changed over the past few years, what kind of efforts you're making to reach out and attract women and minority members to the Border Patrol. I assume women are eligible as officers—

MR. DAY. They certainly are.

VICE CHAIRMAN HORN. —in the Border Patrol?

MR. DAY. Yes, sir.

VICE CHAIRMAN HORN. What interests me is your comment on the particular type of person "enjoying that type of work." That sometimes can be a problem, as you and I both know. I've got a campus police department of 20 people, so I have some flavor and a slight feel for the problem.

In discussions this morning, Mr. Nunez and I have pursued the problems of psychological testing of applicants for any law enforcement job. As I understand it, this is not possible under the Civil Service. Is it possible under your authority?

MR. DAY. No, sir. We do not have authority to administer psychological tests.

VICE CHAIRMAN HORN. Should you have the authority?

MR. DAY. Personally, I feel that police work is the type in which you should be able to ferret out people who have any type of psychological problem, and perhaps testing would be one of the ways to do it. I feel it would be an important tool, that it would be beneficial both to the individual and to the government, if we could do it.

VICE CHAIRMAN HORN. How many people have you removed from the Border Patrol—well, let's put it this way, How many years have you been in charge of the Border Patrol?

MR. DAY. In charge of the Border Patrol? All of 7 months.

VICE CHAIRMAN HORN. Seven months?

MR. DAY. Yes, sir.

VICE CHAIRMAN HORN. Well, to your knowledge, during your 7 months and the period of your predecessor, how many people have been removed from the Border Patrol because of abuse of authority that perhaps could have been determined through some sort of testing evaluation process?

MR. DAY. Well, of course, to correlate the ultimate removal as to the psychological assessment for the job would be very difficult. However, in the past 5 years, they have—we have sustained 20 cases of alleged misconduct or abuse.

VICE CHAIRMAN HORN. When you say that, it means that you wanted to remove 20 individuals, they protested, tried to appeal it, and your decision was sustained?

MR. DAY. Well, let me correct that. The 20 sustained cases did not result in removals. There was disciplinary action taken, and in some of them there was removal. I don't have the exact percentage.

VICE CHAIRMAN HORN. And that's over the last how many years?

MR. DAY. Five years.

VICE CHAIRMAN HORN. Five years. Were there many more charges brought that did not result in some sort of disciplinary action?

MR. DAY. Yes, sir. There were 360-some-odd.

VICE CHAIRMAN HORN. Of 360 charges in 5 years, 20 resulted in some sort of disciplinary action?

MR. DAY. Twenty of them were sustained, resulting in some sort of disciplinary action; yes, sir.

VICE CHAIRMAN HORN. How many did you attempt disciplinary action on that were not sustained?

MR. DAY. Well, of course a finding of some degree of guilt would be the basis or premise for disciplinary action.

VICE CHAIRMAN HORN. Right.

MR. DAY. So, 20.

VICE CHAIRMAN HORN. That's it, regardless.

MR. DAY. Yes, sir.

VICE CHAIRMAN HORN. In other words, you won all findings on appeal?

MR. DAY. That is correct.

VICE CHAIRMAN HORN. Okay.

You had a question on this point?

CHAIRMAN FLEMMING. I was just going to ask whether or not your background investigation by the Civil Service Commission throws any light on the kind of issue that you've just been discussing with Commissioner Horn?

MR. DAY. It does, indeed, sir. As a matter of fact, very recently I had the opportunity to personally review two very extensive background investigations conducted by the Civil Service Commission, and we felt there were very serious psychological problems. And we feel that to be able to make a determination of that sort, it just wards off so many other problems which can escalate later on if you take the individual into the Service, or into any type of enforcement work.

But it does assist us in ferreting out—in identifying people who have problems of that sort before we actually take them on.

VICE CHAIRMAN HORN. In terms of the time lag, I take it you could furnish us for the record your feelings, or perhaps you'd like to generalize now, as to the time lag of investigation by the Civil Service Commission. You're going to furnish how many left and didn't stick around, but what's your feeling on this? Should you have your own investigative staff go out and do this?

MR. DAY. We feel we could do—we do have qualified investigators, and we do background investigations of applicants for various benefits from the Immigration Service. These are people who are applying for naturalization, for example, and for suspension of deportation.

We do have the expertise. I would, however, be reluctant to accept this responsibility because we do not have the resources. If we had the resources, we could do it. But then, of course, you run into the conflict of: Should the same agency who is going to be the employing agency conduct the investigation? There may be some sort of conflict of interest.

VICE CHAIRMAN HORN. Has veterans preference posed a problem for you in attracting women and minorities to the Border Patrol?

MR. DAY. Not to my knowledge; no, sir, it has not. We would like to reach more minorities. We would like to reach—especially, we'd like to reach more blacks. We're very—we realize that we do not have a great number of blacks. I think it's 1 percent, or less than 1 percent in the Border Patrol, and this causes us some concern.

We have dialogued this with the Civil Service Commission, and we have attempted to get into the communities where we would be able to attract—especially, more black candidates for the job. Unfortunately, it hasn't been successful, but we're still working on it.

VICE CHAIRMAN HORN. How are you doing this? Going to high school, community college, college criminal justice programs—

MR. DAY. Yes, sir.

VICE CHAIRMAN HORN. Going to police departments, and so forth?

MR. DAY. That's right. Mostly in the academic areas where people are in schools.

VICE CHAIRMAN HORN. Is the compensation for the Border Patrol attractive to individuals who are in municipal police departments? Or do you lose people to municipal police departments?

MR. DAY. We lose some, I would say, mostly because people can perhaps get jobs in their own home towns. I think you're always going to have this, which would be the incentive.

Yes, I think we're on par; I think we're competitive with local police departments. If you measure all the benefits that are to be derived from Federal employment, our pension plan and what not, the early retirement which as a law enforcement officer they qualify for, I do believe that we can compete very well with them.

Now, as far as taking somebody— attracting somebody who is already on a police force into our lowest level, we have them start off at the GS-5 level. There may be some sort of disparity at that period, but I think that if the individual weighed it against his target grade of GS-9 with the promotion potential, that it would be attractive to him or her.

VICE CHAIRMAN HORN. I wasn't quite clear on the exchange with Counsel on this court-ordered search process. As I understand it, the D.C. court said you cannot use the basis in the rules of Federal procedure because they're property based, not person based.

You mentioned that in a small number of cases, you do go in and get search warrants. Is there another process there, Mr. Bertness, that is somewhere between those two?

MR. BERTNESS. No, I must—if I gave you the impression that there was another type of search warrant, except there is an administrative arrest warrant—

VICE CHAIRMAN HORN. And who would issue that?

MR. BERTNESS. The District Director in the Service. But that does not authorize you to enter the premises, and again you would need the cooperation of the owner or person occupying the premises.

VICE CHAIRMAN HORN. So your choice at this point, then, is the administrative arrest warrant authorized by the District Director, and now going into court for a regular search warrant?

MR. BERTNESS. No, a court order.

VICE CHAIRMAN HORN. A court order.

MR. BERTNESS. A Federal court order.

VICE CHAIRMAN HORN. How would that differentiate from a municipal police department having to go in for a regular search warrant, and the type of evidence that the judge would need to be persuaded to issue it? What's the standard that's used by the court?

MR. BERTNESS. Well, again, as long as you're searching for—see, under the criminal rules of procedure, the way to get a person is by an arrest warrant, which most of the aliens that we're dealing with are not subject to criminal prosecution, so therefore we don't have access to that particular way of locating persons.

The search warrant, both in the local police departments and the Federal courts, is still for property, and that's not available to us for the purpose of searching for persons.

The standards used are the same. In other words, it's an affidavit by the officers to the judge, to the court, to the magistrate, setting forth the basis for our desire for the search warrant, and then he judges from that as to whether or not its probable cause is established.

VICE CHAIRMAN HORN. Okay, so “probable cause” is interpreted by the Supreme Court, in reference to what? Fourth amendment rights for citizens? Is then the same standard applied by the courts to undocumented aliens?

MR. BERTNESS. Yes. The possible difference under the fourth amendment is that it does say “their person and their homes” rather than—and the question arises as to whether or not places such as factories and farms and private property, to that extent, is protected by the fourth amendment. But we have always interpreted it that it is and that we needed the search warrant if the owners refused our admission.

VICE CHAIRMAN HORN. I see. So INS equates places of employment and the home in terms of the fourth amendment.

MR. BERTNESS. We have.

VICE CHAIRMAN HORN. Is that historically true or just a recent decision?

MR. BERTNESS. I believe our first search warrant was in 1971.

VICE CHAIRMAN HORN. Thank you, both.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, I’m not sure which—I missed part of the testimony, but I guess it would be Mr. Bertness or Mr. Day.

You said that there are—you only have—only 1 percent of the members of the Border Patrol are black. And I don’t know if you had answered it before I came in, as to how many are women?

MR. DAY. I have the answer.

[Pause.]

One.

COMMISSIONER FREEMAN. What’s the total number of the members of the Border Patrol?

MR. DAY. We have 2,800. That’s those which are—

COMMISSIONER FREEMAN. 2,800 members, and then do you say “one person” or “1 percent”?

MR. DAY. Well, you asked me for females.

COMMISSIONER FREEMAN. Yes.

MR. DAY. There’s one female.

COMMISSIONER FREEMAN. You have 1 female out of 2,800?

MR. DAY. All right, the percentage of blacks is—we have 18, total, and the percentage on that is 0.8.

COMMISSIONER FREEMAN. You have less than 1 percent black—

MR. DAY. Yes, ma’am; that’s correct.

COMMISSIONER FREEMAN. And almost 0 percent women.

MR. DAY. That’s correct.

COMMISSIONER FREEMAN. You’ve got a long way to go.

MR. DAY. We have. We recognize it.

COMMISSIONER FREEMAN. How many of Spanish heritage, Hispanics?

MR. DAY. We have 397.

COMMISSIONER FREEMAN. 397?

MR. DAY. That’s 18.2 percent.

COMMISSIONER FREEMAN. How many white males?

MR. DAY. White males, it would be 1,758—that must be wrong. That's not right, either.

COMMISSIONER FREEMAN. About 82 percent?

MR. DAY. All right, 1,758, one thousand seven hundred and fifty-eight.

COMMISSIONER FREEMAN. What are the qualifications for the Border Patrol?

MR. DAY. Well, the basic qualifications are: you have to be an American citizen, 21 years of age, and that's the basic qualifications. Of course, you have to meet a certain physical—you have to have a physical examination.

COMMISSIONER FREEMAN. Is there any educational requirement?

MR. DAY. No, there isn't.

COMMISSIONER FREEMAN. Do you have to be able to read and write?

MR. DAY. Well, you have to take an examination which would require that requisite, yes, ma'am.

COMMISSIONER FREEMAN. But you don't have to be a high school graduate?

MR. DAY. No, you do not.

COMMISSIONER FREEMAN. Now the examination is administered by whom?

MR. DAY. It's administered by the—by the Border Patrol—well, the Civil Service Commission.

COMMISSIONER FREEMAN. And the—what—are you involved in the making up of this examination at all?

MR. DAY. Historically, I really couldn't answer that, whether or not we had any involvement in it—the Border Patrol had input into it before. It's a Civil Service design, and I don't know how much input we had. I could check that out. I don't know. Personally, I've never been involved in it. I'd have to go back historically and find out.

COMMISSIONER FREEMAN. I notice in the "Report of Aliens Required to Depart, by Nationality and Cause, for the year ended June 30, 1976," that—well, you have the breakdown by countries. And from the West Indies, a total of 3,092. What areas—are they apprehended around in the Florida area? Or does it vary?

MR. DAY. Well, most of those people probably would have been apprehended by the investigators in the large cities, the Eastern Seaboard cities, and also the Florida Gulf Coast, or Atlantic Coast.

COMMISSIONER FREEMAN. Now you—is there any trend that you could see as to the apprehensions on the East Coast border, as against the Southwestern border, as against the Northwestern border?

MR. DAY. Do you mean, is there a trend—

COMMISSIONER FREEMAN. The numbers—

MR. DAY. —a trend of aliens coming in illegally from the West Indies, the Caribbean countries, and what not?

COMMISSIONER FREEMAN. Yes.

MR. BERTNESS. In order to give you accurate—any real accurate information, I would have to furnish that to you.

Generally speaking, we have found that there's been a tendency for it to be spread more evenly throughout the United States. In other words, there may have been in the past years, historically, nationalities that stuck generally to one particular area where they had the ethnic groups already residential in the area. But I think the trend has been where they now are scattered throughout the United States, just like the citizens of Mexico are even up in Alaska, which was not true 10 years ago.

COMMISSIONER FREEMAN. Would you respond—and this is my final question, Mr. Chairman—to the statement that has sometimes been made: that there may be undocumented aliens who are less visible, in terms of not being dark, Spanish, Mexican Americans, who are not—there's no effort made to apprehend them?

MR. BERTNESS. That is inaccurate. In other words, we have area control operations which include the Canadian area, and the nationalities that we've apprehended include several nationalities which are not dark skinned.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Does the Immigration Service have a process to punish enforcement officers along the border if they use excessive force in the apprehension of aliens?

MR. DAY. I'm assuming Mr. Kirby must have answered this quite extensively this morning. I'm really—we do have, to answer your question affirmatively, yes. But it's not confined to enforcement officers along the border. We have—of course our disciplinary procedures would apply to enforcement officers, or employees of the Service anywhere who use excessive force or abuses.

COMMISSIONER RUIZ. Now you stated that the Border Patrol agents were in "adversary positions"—and I may have misunderstood you—which means that the alien is not advised of his rights to counsel by the agent, that it would be against that particular "adversary position" to enable him to do so. Did I understand your testimony correctly?

MR. DAY. No, sir. I certainly didn't—if I implied that, I did not mean it. The right to counsel is always given to the alien at the time he's processed. He's advised that he does have the right to counsel.

COMMISSIONER RUIZ. Not at the time of his apprehension, but at the time he is being processed?

MR. DAY. That is correct. And the lapse of time is usually in terms of minutes, at the very most, hours, before the time of apprehension—the point of apprehension and the time he is processed—the "processing" being, of course, a paper function which would require removal, normally, to somewhere that has the use of a typewriter.

COMMISSIONER RUIZ. How many Border Patrol agents do you have along the San Ysidro border that are Hispanic, Mexican Americans, or of Mexican origin?

MR. DAY. The percentage—we have approximately 400 in Chula—well, 400 Border Patrol agents along the Chula Vista area.

COMMISSIONER RUIZ. In that area?

MR. DAY. In that area, yes. What percentage we have that are Hispanics, I really don't know, sir. I could get that for you.

COMMISSIONER RUIZ. Would there be more than 20?

MR. DAY. More than 20 agents? I would say definitely so.

COMMISSIONER RUIZ. You say you can get that percentage?

MR. DAY. Yes, sir, I can.

COMMISSIONER RUIZ. I'd appreciate it if you would submit it, then, as part of the other information that you're going to submit.

CHAIRMAN FLEMMING. When that's furnished, without objection, it will be inserted in the record at this point.

COMMISSIONER RUIZ. And I assume that there are no blacks in that area? Is that a correct assumption?

COMMISSIONER FREEMAN. One.

MR. DAY. No, sir, that is not correct. We have 18 blacks, and frankly I don't know where they are. I assume that they're pretty well spread out all over.

COMMISSIONER RUIZ. Yes. I was wondering, in the San Ysidro area—

MR. DAY. In the San Ysidro area, I don't know. I would assume that there probably are, out of the 18, at least some there, but also I could find that out.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Just to pursue a point that Commissioner Ruiz was asking, Are there specific disciplinary steps known to the officers of the Border Patrol for unwarranted actions?

This is, by the way, one of the recommendations I notice that the Mexican—MALDEF—group indicates, that there really isn't a stipulated process, or program, where the officers know that such-and-such behavior brings about such-and-such disciplinary action. Now, has that been changed?

MR. DAY. To my knowledge, a part of the orientation of all officers coming to work for Immigration, they are furnished with a table of offenses and punishment.

COMMISSIONER SALTZMAN. There is such a list?

MR. DAY. Yes, sir.

COMMISSIONER SALTZMAN. I'm sorry—yes?

MR. SAVA. Just one comment, Mr. Commissioner.

There may not—there's a range, let's say for physical abuse, that could run from, let's say, a relatively minor punishment to dismissal, in addition to what may happen out in the courts, to make sure there is no—let's say we would not have a specific offense that says if you bend someone's arm behind their back you will get 18 days suspen-

sion. There's nothing like that. But there is a table of offenses, and it's not only given to them at the time of entry on duty, it's also contained as part of the instruction in the academy and in our administrative measures.

COMMISSIONER RUIZ. Do we have that manual of instructions, as far as the academy is concerned, Counsel?

MR. DIMAS. I beg your pardon, sir?

COMMISSIONER RUIZ. Do we have the manual for the academy that is used—as an exhibit?

MR. DIMAS. No, we have—

COMMISSIONER RUIZ. In relation to the testimony that was just being given?

MR. DIMAS. No. We have that portion of the Border Patrol handbook only that deals with the border operations.

MR. SAVA. We could furnish that to you, of the curriculum at the academy.

COMMISSIONER RUIZ. All right.

MR. DAY. I would also like to add, sir, if I may, the Border Patrol curriculum includes 31 hours of constitutional law, civil rights, and human relations, during which time there is very, very extensive instruction in this regard.

COMMISSIONER RUIZ. And that's included in what Mr. Sava said?

MR. SAVA. Yes.

MR. DAY. That's the Border Patrol Academy.

COMMISSIONER RUIZ. That would be very important.

MR. DAY. 31 hours.

COMMISSIONER RUIZ. I would suggest that you—

COMMISSIONER SALTZMAN. Are there any inservice training programs beyond the 31 hours?

MR. DAY. Specifically as relates to that subject, I don't think so. It's not a structured part of the inservice training program.

COMMISSIONER SALTZMAN. I understand that there's going to be a fence on the border, or mention or reference has been made to that. Are you aware of the building of this fence?

MR. DAY. Yes, sir, I am.

COMMISSIONER SALTZMAN. Do you think this will be of any assistance in any way in the patrolling of the border?

MR. DAY. I do. I have a statement, if you would like for me to read it, for entry into the record, which is the position the Commissioner has taken on the fence, and it's certainly my view. Would that be permissible?

COMMISSIONER FREEMAN. I'd like to hear that.

COMMISSIONER SALTZMAN. How long will it take?

MR. DAY. It's short.

COMMISSIONER SALTZMAN. Okay.

CHAIRMAN FLEMMING. As you probably know, the Commissioner is following this panel and will be testifying, but we would be very happy to have you present that statement now.

MR. DAY. All right, sir; I sure will.

CHAIRMAN FLEMMING. As I understand it, you're presenting it as the official position of the Service.

MR. DAY. That is correct, yes, sir.

In highly urbanized areas such as Chula Vista, California, and El Paso, Texas, the Immigration Service is faced with the nearly impossible task of controlling the influx of undocumented aliens. Illegal entrants by the thousands cross the line. Their ability to rapidly disappear into the surrounding neighborhoods, or to hastily retreat to Mexico when faced with apprehension, enables some of them to engage in shoplifting, purse snatching, burglary, and other crimes with near impunity.

Local residents, as well as other undocumented aliens, are preyed upon by roving gangs who rob, rape, assault, and in some cases murder their victims. Experience has shown that the most effective and efficient tactic for curbing the influx of illegal entrants is the prevention of entry. To aid in this endeavor, the Service has employed fencing along selected areas at the border for more than two decades.

There are currently 27 miles of fence along the 2,000-mile U.S.-Mexican Border, the majority of which is in the Chula Vista, California, and El Paso, Texas, areas. The existing fence of standard chain-link construction is easily scaled and readily cut. Constant and costly maintenance is required, and still we are unable to prevent almost total destruction.

During fiscal year 1978, the Immigration Service, with the concurrence and support of Congress, commenced a program to enhance and augment the present ineffective fence through the installation of 6.7 miles of fencing in El Paso, Texas, and 5.1 miles at Chula Vista, California.

It was our intention to install a fence system that would present the minimum negative environmental impact and that could not be readily climbed nor cut. The proposed design, we feel, meets these goals.

Border fencing, as employed by the Service, is intended 'solely' to aid in stemming illegal entry, and in no way impedes the normal and lawful interchange of persons between the United States and Mexico.

We are fully aware that fencing alone will not solve the problem. It will, however, channel illegal entrants to less congested areas and, to a large degree, provide security against criminal activity to border residents.

COMMISSIONER SALTZMAN. Why was the present fence ineffective, compared with the fence that is going to be constructed?

MR. DAY. The present fence, which is of chain-link construction, can be cut very readily by pliers, by bolt cutters—as a matter of fact, there are people who sell their services on the other side of the border just for this purpose.

The new design, which at the bottom, the most vulnerable part of the fence, has a 4-foot expanded metal section which is very tempered, we feel it would be very, very difficult to cut, and also the openings in the metal would make it very, very difficult to gain any kind of a hold to climb up.

We did have one unfortunate feature in the design, which is being worked on now by the contractor and which we are very, very hopeful we'll be able to iron out soon and that was in the machine, the metal grid. Unfortunately, the procedure left a sharp edge and this was not intended, and we realize that the fence would never have been constructed with that on it. It was a very, very early stage of development when this particular aspect of the fence was brought to the attention of the public.

But the fence will not have, after it's constructed, any design or any feature which will injure a person, unless, of course, accidentally some mishap should happen—if he should fall off of the fence, or something like that, which is certainly nothing we could control.

VICE CHAIRMAN HORN. How tall is it?

MR. DAY. It's 12 feet, isn't it? The total is 12 foot.

COMMISSIONER SALTZMAN. May I ask, with respect to the survey, Mr. Bertness, of plants and businesses, how many of them are, the proportion, voluntarily consented to by the management?

MR. BERTNESS. All but approximately between 5 and 10 percent. I would estimate that they average about 7 percent of the cases that we do not get access voluntarily.

COMMISSIONER SALTZMAN. Does the survey have, would you estimate, any impact on the operation of the plant?

MR. BERTNESS. That, again, would vary from place to place. In some cases, it has a very marked effect on the operation because of the percentage of the employed persons that turn out to be undocumented aliens.

COMMISSIONER SALTZMAN. So, in effect, the survey might—for at least short periods of time—seriously impede the operation of a plant or a business?

MR. BERTNESS. It could, yes.

COMMISSIONER SALTZMAN. In that case, why would you assume that the voluntary nature of the consent by the management is truly voluntary? Or is there an element of perhaps some intimidation also by the INS undertaking the surveys?

MR. BERTNESS. We have no reason to believe it's intimidation. What the management feels in their mind or in their soul is something, of course, I can't speak to, but most of these are very astute businessmen who are aware of similar places in the same vicinity that have required

search warrants, and they are fully aware of their legal rights, and even have attorneys that we have met with. So I don't believe it's either ignorance of their rights or that they are feeling intimidated.

COMMISSIONER SALTZMAN. There isn't the implication that if you don't go along with the voluntary consent agreement, that there might be some harassment once an order is—or a warrant is given by the INS?

MR. BERTNESS. There is no indication or any intimidation by the Service that there would be harassment. I suppose there is, in the back of the mind of the management, that we have—as long as we have access to the courts and we're likely to get a search warrant, that their refusal may just be a delay of the operation. But as far as any harassment, there is no such intimidation or intent.

COMMISSIONER SALTZMAN. Mr. Sava, how serious do you think this issue of undocumented workers is in our Nation?

MR. SAVA. How serious it is, from any particular angle, Mr. Commissioner?

COMMISSIONER SALTZMAN. Well, from your point of view in terms of total enforcement, and, second of all, to the economy of the country.

MR. SAVA. Well, in regards to the whole enforcement effort, it's serious in that to really get to the nexus of the problem takes several actions working in consort, and there are various things. One is a good departure control on those people who are admitted legally, to make sure that you can keep a timely followup on that before they have been here a long time.

There's a need to have a good area control investigative program in the interior, because that is one of the—the other benefit of it is it gives you a good gauge of how successful your prevention at the border is. And, as the Chairman says, it is much more cost effective and, I think, much less traumatic from many angles to prevent an entry rather than to try to find them once people get in.

From that—from an enforcement angle in the Immigration Service, our business here, the four of us, it's serious in that we don't think we've been doing as good a job as we could do and needs to be done.

COMMISSIONER SALTZMAN. In that respect—you're saying you're not doing as good a job as you think ought to be done? Is that what you just said?

MR. SAVA. Right. I think—I think, to be frank with you, if I have a man who comes in and tells me he's doing the best job, he can do no better, I'd probably start looking for a little training for him.

COMMISSIONER SALTZMAN. Well, what recommendations do you view as important to the improvement, then, of the operation of the enforcement?

MR. SAVA. Well, one thing we have to do, I feel, is, once we are allocated resources, we have to get the people on duty and trained well. I think that getting jobs filled and getting the people working effectively is the most important thing.

I think too many times we feel that we get authorized *X* number of positions, and the day we get them on duty we've got the hole plugged over here, or the things taken care of; and, really, you've got to get the people trained. And I think you've got to have them, whatever their thinking was, from many different walks of life or whatever before they came on, you've got to get their thinking attuned to providing the service, or doing the job they were hired to do and still to do it in a very humanistic, very humane way. And that takes training.

I've had some rather lively discussions around the office about my particular theories. And it gets back into, I think, the question Commissioner Horn asked earlier about problems of people. And I think basically they are psychological problems, in that we get people who the Commission has told us are—the Civil Service Commission—have passed the intelligence requirements; they are qualified; the doctor has told us they meet the physical requirements.

Unfortunately, we never, when we have them in the training program—and our training facility is considered—we share it with many other agencies down at Gynco—is considered to be one of the foremost in the Federal sector—but we never really get the people in a stressful situation so we know how they think under stress.

And I'm very mindful of the fact that we send them through training, and they may be very bright, intellectually inclined, seem well adjusted, and they do pick up the subject matter very readily. But you never really know how they're going to act once they have the authority, and if they're one that carries a firearm and goes out and gets in a stressful situation where he may be, not alone, but working relatively independently in that particular job, how he's going to react under some pressure—whether it's an excited person confronted, you know, outnumbered, or whatever. And that is something, unfortunately, we have no provision for doing.

So I think the better the training and the higher the standards, the better off we are. I really believe that setting a high standard is really half of the job, because I think an organization will only achieve the standard you set.

COMMISSIONER SALTZMAN. Are your standards high enough?

MR. SAVA. I think they're high enough; I just—I think one of my jobs is to make sure people attain them. I think if we set a low standard, it'll get right down there where it is. But I think good—a high standard and good training can make them toe the mark.

COMMISSIONER SALTZMAN. How about the relationship to the economy? Do you feel there is a relationship?

MR. SAVA. Well, I think—I think there is definitely a relationship of—well, there's got to be. I see the arguments in the paper by various people, and they're much more, I am sure, enlightened on the economy and economic factors than I am; but I don't think you can deny, when you look at our statistics, which I'd be happy to provide you, of the undocumented aliens we find in the higher paying jobs—not the

very menial tasks, but where they have gotten, either from bringing a skill with them or being in here for some time and acquiring skills and improving them, that they have gotten into relatively good paying jobs.

We do keep statistics on that, and we get apprehensions and locations of aliens reported by the type of job they have and the salary they're earning.

COMMISSIONER SALTZMAN. Do you have those statistics?

MR. SAVA. I don't have them with me, but I could furnish them.

COMMISSIONER SALTZMAN. Could they be made available to us? Because the testimony earlier that we heard this morning was that the presence of undocumented workers really has no significant impact, since the jobs that most of them take are not jobs that others would largely want to have.

The proportion, for example, of high-paid given to undocumented workers, secured by them, would be relatively insignificant, I think the implication is. Your statistics would indicate otherwise?

MR. SAVA. Well, our statistics would show that we catch many in the better-paying jobs. There's no doubt, no question, that we catch many that are in very low-paying jobs; but many we catch have never had the chance to become employed, and people can only wonder what they would have gotten.

I would say the majority of those that we apprehend or locate have not gotten far enough in and are situated enough to become employed.

COMMISSIONER SALTZMAN. From your point of view—

VICE CHAIRMAN HORN. Excuse me. Can we get that in the record?

COMMISSIONER SALTZMAN. I'm sorry.

MR. SAVA. The document—

CHAIRMAN FLEMMING. The information that you indicated that you will have in response to Commissioner Saltzman's inquiry, if you would furnish us with that, we would appreciate it very much; and without objection it will be included in the record at this point.

VICE CHAIRMAN HORN. Mr. Chairman, could I request that you add to that, that the material be furnished to the Secretary of Labor; and that we secure also at this point in the record the Secretary's opinion as to the degree to which undocumented aliens do create problems of job competition with American workers?

As I reviewed our panels last night, I noted that we did not have individuals from the Department of Labor. And some of the issues that do come up as to cause of problems, the Secretary of Labor apparently does have some views which do differ from other views within the administration. I think we ought to have that for the record.

CHAIRMAN FLEMMING. Without objection, that will be done. Did you have a further question, Commissioner Saltzman?

COMMISSIONER SALTZMAN. Yes.

Do you have any—we heard an estimate this morning—do you have any idea, or would you estimate what you think are the numbers of undocumented aliens in the Nation?

MR. SAVA. Mr. Commissioner, I'd rather not venture a guess. I really—I could give a figure, and you could no more prove me wrong than I could prove I'm right, and it would just be conjecture.

I think there are a very substantial amount, but I wouldn't guess whether it was several millions or what; but I think there are many.

COMMISSIONER SALTZMAN. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. There are just a couple of things I'd like to pursue.

I'd like to go back to the discussion of what I think was referred to as "Operation Cooperation."

MR. SAVA. Yes, sir.

MR. BERTNESS. Yes, sir.

CHAIRMAN FLEMMING. Is that it?

MR. BERTNESS. Yes, sir.

CHAIRMAN FLEMMING. Is that still underway?

MR. BERTNESS. Yes, it is. It still is a program with us, yes.

CHAIRMAN FLEMMING. It's still a program of the Service. One aspect of that program, as I understood you, is that the employer participating in it agrees to refrain from hiring undocumented workers?

MR. BERTNESS. Yes, sir.

CHAIRMAN FLEMMING. Have you had to deal with the allegation that some employers may lean over backwards in an effort to live up to that particular agreement and in so doing will refrain from giving equal employment opportunities to members of the Spanish heritage community, for example?

MR. BERTNESS. We have heard that, yes, sir. But since the agreement that the employer is entering into is purely a voluntary one with no sanctions whatsoever imposed against him, while there are sanctions for him discriminating against persons because of race, religion, or otherwise, we would see no incentive for the employer to endanger his position by discriminating in favor of something that he's not even forced into doing.

CHAIRMAN FLEMMING. Have you discussed this with any of your employers at all, this particular issue?

MR. BERTNESS. Yes, and it was brought up previously, in California. It has been discussed with the employers on several occasions in California by our California offices.

CHAIRMAN FLEMMING. Do they raise this as an issue? I mean, what's been the nature of the discussion?

MR. BERTNESS. Well, it goes back a few years, where even the question was as to whether or not they had the—if it was proper for the employer to request an alien to present evidence of his being in the United States lawfully.

And the ruling by the State of California was that they did have a right to ask for their alien registration receipt card, for example, in order to establish that the alien had permission to be employed in the United States.

And the question has arisen, and there has been correspondence between employers and the State of California in relationship to the Civil Rights Act and other—to make sure that what they were doing in their cooperation in this program was not violating a State statute.

CHAIRMAN FLEMMING. So far, you haven't run into any difficulties?

MR. BERTNESS. We have not been apprised of any circumstances where they've been found that they have been discriminating; no, sir.

CHAIRMAN FLEMMING. If I may go to the question of recruitment for a moment, I am very much interested in the discussion that has taken place in connection with this issue. I was interested particularly in the very small percentage of persons that you have in the Border Patrol from the black community; the fact that you've only been able to recruit one woman up to the present time.

Have you, or has anybody analyzed for you the kind of written examination that the Civil Service Commission has been giving to your applicants, to see whether or not there is anything about that examination that is operating adversely and unfairly as far as members of the black community are concerned, or as far as women are concerned?

MR. DAY. Yes, sir. The Civil Service Commission has evaluated the examination, and—

CHAIRMAN FLEMMING. How recently have they attempted to evaluate or validate it from that point of view?

MR. DAY. There were changes that were made in the examination within the past year.

CHAIRMAN FLEMMING. Within the past year?

MR. DAY. Yes, sir.

CHAIRMAN FLEMMING. So you really haven't had much experience with it since then.

MR. DAY. That's right, that's true.

CHAIRMAN FLEMMING. SO YOU DON'T KNOW WHETHER THAT'S GOING TO LEAD TO ANY DIFFERENT RESULTS OR NOT.

Did they change it with these considerations in mind that I've just identified? Or at least were these some of the considerations that they had in mind when they changed it?

MR. SAVA. I could—I think part of it was due, Mr. Chairman, to the fact that the entrance grades for the Border Patrol changed. It went from GS-7 to GS-5, and the test was adjusted. But some material in there was also adjusted.

However, maybe I should tell you a little bit about the—very briefly, about the test itself.

CHAIRMAN FLEMMING. Yes.

MR. SAVA. The test has—

CHAIRMAN FLEMMING. Could I just—am I right in assuming that the Civil Service Commission works closely with you relative to the content of the exam, and so on?

MR. SAVA. Yes, sir. Yes, sir.

I just wanted to make one comment. While the percentage is still very small, we have had more than one female; we just, at this time, happen to have only one, but we've had possibly two dozen—

MR. DAY. No, excuse me. What we were referring to was one black female.

MR. SAVA. Oh, I'm sorry, one black—we do have several females and have had.

CHAIRMAN FLEMMING. Well, now, wait a minute.

MR. SAVA. We had one—

CHAIRMAN FLEMMING. Now let's clear this up.

COMMISSIONER FREEMAN. The Border Patrol was the question.

CHAIRMAN FLEMMING. The Border Patrol. We were left with the impression that you have just one woman in the Border Patrol.

MR. DAY. My understanding of the question was: How many black women do we have in the Border Patrol? Is that correct?

COMMISSIONER SALTZMAN. No. How many women.

CHAIRMAN FLEMMING. How many women.

MR. DAY. I stand corrected, then. The total female—the total female would be eight.

CHAIRMAN FLEMMING. Eight? Okay. Pardon me.

MR. SAVA. The exam is basically in two parts.

One is a—comprised of what I could best term as an “artificial language” to really test the applicant's ability to see how well he could grasp grammar, so we could apparently tell how well he could pick up a foreign language in training.

The other part of the test lends itself to the reasoning process, to associating words and putting events that took place in order to see if they could establish a sequence of events, and the things a person in the investigative-type work, law enforcement work, do.

To that extent, I don't think the test is to the point where it would really make it more difficult for a female to complete successfully than a male.

I think one of the things, though, right at the beginning is the—I'd say the livelihood of the Border Patrol agent as a whole. The work is I say “rigorous,” I don't mean that rigorous, but it is rigorous, it is outdoors work; for the most part it's shift work. It's a uniform job. It's—while I found it glamorous and interesting, it could get rote, and it has long working hours; and while there are some large sectors and offices along that U.S.-Mexico border, there are many, many small, what a lot of people consider undesirable stations from a living standpoint. A lack of services, facilities, entertainment, and the things that go—and I think it's a different way of life to a certain extent, and I think that is one of the things that possibly mitigates against females to a certain extent, certainly blacks to a certain extent, and possibly to other applicants from large metropolitan areas who would otherwise, you know, find the livelihood and the work attractive.

CHAIRMAN FLEMMING. Just one other thing I'd like to follow up on.

You also, Mr. Sava, have mentioned the importance of trying to recruit persons who can stand up under stress. And in my earlier dialogue with Mr. Day, he indicated that the investigation carried on by the Commission does bring out some relevant information dealing with that issue.

I assume that the Commission is responsive to suggestions from the Service as to the kind of things that you want them to look for in connection with their personal investigation. Am I correct in that assumption?

MR. SAVA. I would have to say, in fairness to the Commission, they give us everything. They don't usually leave any stone unturned. We then have the job of showing the relevance between that background data and the job to be performed.

CHAIRMAN FLEMMING. Right.

VICE CHAIRMAN HORN. Before we leave this, I wonder if we could get in the record—because you raised the question of relations with the Civil Service Commission—when would the last time these examinations were reviewed be, from the standpoint of perhaps cultural bias, if any? And get the Civil Service Commission's comment on the examination as to the degree to which they feel it's adequate.

CHAIRMAN FLEMMING. I'd appreciate that.

VICE CHAIRMAN HORN. That should go in the record at this point. Then my only other question would be: In light of your comments concerning training or examination to test for stress, I guess the question—

CHAIRMAN FLEMMING. It's "evidence."

VICE CHAIRMAN HORN. Or evidence. But I guess the question logically follows: During your training program, as to why you cannot include specially designed courses or units where individuals are placed under great emotional stress from verbal abuse or what have you, and see what the reactions are as a basis for whether or not individuals pass the training program? Well, I just wondered, can we get an answer on that?

MR. SAVA. Well, I think it would be a worthy item to pursue. I have quite a few ideas along that line. I think unless it were of some, I'd say "prolonged period," I don't mean the 16 weeks for the course, but I think most people can put up with anything for a few hours, or a couple of days.

I don't know just what it would take, but I really—I'm not saying to try to wash people out, but to really see what goes on up here so that you could have a reasonable assurance when they go out able to do a lot of things, that you could be relatively sure that you've got a good product on the line, and you're willing to put your imprimatur on it when it walks out of there.

VICE CHAIRMAN HORN. Well, as you know, Professor Zimbardo at Stanford has had a series of experiments incarcerating psychology students, and making junior-grade prison situations, and finding the

changes in behavior. It could be that that type of training might reveal certain psychological breaking points that you wouldn't ordinarily find in the written word.

CHAIRMAN FLEMMING. The hour of 4 having arrived, the time for this particular panel has expired, but may I say to all of the members of the panel: Thank you very, very much for the testimony that you've presented to us; thank you very much for the way in which you have responded to the questions of everyone, Counsel and members of the Commission.

MR. SAVA. Thank you, Mr. Chairman, and members of the Commission and staff.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MR. DIMAS. The next witness will be Commissioner Leonel Castillo, Commissioner, if you will remain standing to be sworn in, please?
[Commissioner Leonel Castillo was sworn.]

TESTIMONY OF LEONEL CASTILLO, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE.

CHAIRMAN FLEMMING. We're very happy to have you with us.

MR. DIMAS. Commissioner, if you would, please state your name—full name and position, for the record?

COMMISSIONER CASTILLO. My name is Leonel J. Castillo, and I am Commissioner of the Immigration and Naturalization Service.

MR. DIMAS. Commissioner, if you have a statement at this time, we would like for you to introduce it into the record if it's written, and you may also summarize it at this point.

COMMISSIONER CASTILLO. I have a short statement, it's about three pages long, that I think I can present both as a statement and a summary because it is—

MR. DIMAS. Would you—excuse me, Commissioner. Would you pull the mike a little bit closer to you, please?

COMMISSIONER CASTILLO. Okay?

I am pleased, of course, to be here to talk about our responsibilities and our achievements. Under the Immigration and Nationality Act, we're charged with two basic functions. One is to ensure that persons that are entering the United States and remaining here are doing so within the law. That's normally defined as the "enforcement" side. And the the other function is to provide public services to those persons who are eligible for benefits under the law—various immigration or nationality laws.

And I must indicate that last year more persons entered the United States legally, legally through our Immigration or Nationality law, than had entered in 50 years. And some people think that more people entered outside of the law than had ever entered before.

We do know that we had more apprehensions last year than at any time in the history of the country: a million apprehensions. And we

also had more people entering the United States legally as immigrants or nonimmigrants than ever before in the history of the country. So that's the context in which we work.

Since I've come on board, we've tried to do a number of things to make our administration more equitable and more humane, and among these—among these were things such as the creation of a Policy Review Committee to review all operating policies for consistency and conformity to the policies of the administration.

We've reviewed our detention facilities, our policies and procedures there. We've invigorated and accelerated our antismuggling efforts. And we've begun to put more emphasis on human relations and constitutional law in our officer training courses, and even in the training of contact reps, the people that meet the public in the offices, who had never before been trained at all.

And all of these measures will be discussed in more detail by the Deputy Commissioner, Mr. Noto, in his testimony.

We've also done our best to propose new regulations and implement new procedures with full regard for due process. Mr. Crosland, the General Counsel, will be discussing these new regulations tomorrow, that provide for services for indigent aliens, and also propose changes in asylum procedures for persons entering the United States.

We've also done a great deal to improve the efficiency of the Service and to make ourselves more available to the public that we serve. As an example, we combined into one form a process that before it took two forms, one four pages and one five pages, and took two interviews; we made that into one four-page form.

That may not seem like too much, except when you discuss it with 400,000 people, that's an enormous administrative improvement.

We've also opened satellite offices in several neighborhoods—Los Angeles and New York—and are opening others throughout the country. We've begun an outreach program to reach community groups so that they might help provide immigration services throughout the United States.

We have helped train over 2,000 volunteers so that immigrants and aliens in this country might be able to avail themselves of the benefits that could accrue to them legally under the Immigration and Nationality Act.

We have also had to process probably additional Indochinese refugees into the United States, and we have run separate programs for refugees from Eastern Europe and now from South America as well.

And despite all of these tremendous workloads, we've adjusted the status, or in effect gave green cards to 106,000 Indochinese refugees since the enactment of the Indochinese Refugee Adjustment Act in October of '77.

And we have continued a commitment and reemphasized the commitment to equal opportunity and affirmative action. These have been discussed by other persons today, and I simply want to assure you that

we are going to continue that effort. Because, while we feel that we are—we have the best overall minority hiring profile of any component in the Department of Justice, we still have many gaps to fill and many problems there in that area.

We expect that, through programs such as upward mobility, we will be able to increase the number of minority employees in supervisory and other responsible positions. And although there are many areas of concern, I think that the Service has made tremendous strides toward improving our service to the public, toward providing a humane enforcement of a difficult law. And I think that our performance, while it clearly is in need of some improvement, is something that when measured in the context of the climate under which our people operate and the tremendous pressures under which they operate, is something of which we can be quite proud.

CHAIRMAN FLEMMING. Thank you very much.

Counsel will have some questions, and then members of the Commission will have questions.

MR. DIMAS. Commissioner, taking right up on your statement: What are some of these areas that you feel still need improvement?

COMMISSIONER CASTILLO. In—in any specific aspect of immigration, or in general?

MR. DIMAS. In general, I mean, taken from your statement.

COMMISSIONER CASTILLO. Certainly.

Well, in general, I think the primary necessity is to assure the public that the laws are being administered humanely and efficiently. Now that becomes more specific when I get into specific areas, such as eliminating these huge backlogs and enforcing the law so that we don't have revolving-door-type justice.

We have done our best to extend due process and to treat persons that we hold in a humane fashion. We hold more people than the Bureau of Prisons, although for shorter times. And the first, primary, objective, was to bring our facilities up to the minimum standards of the Bureau of Prisons.

We process more people than most any other—well, than many other Federal agencies. And again, there the objectives are to provide that service.

Internally—I have to caution you, in that I must first tell you that we were one of those agencies that had never been touched by automation. So that one of my first tasks last year was to bring in automatic typewriters. I had five, nationwide. So I've had to bring in the first computers; and that sort of thing will continue.

Further, we can do a lot with personnel. And the staff operates under constant pressure in all levels—enforcement and service—but they don't usually have very many tools. They don't usually have adequate training because there isn't even time to take off to go train.

We have strengthened our language requirements. We're strengthening our ability to recruit and train people with various ethnic and lan-

guage backgrounds. And I think that these ideas, together, of course, with an overhaul of the Immigration and Nationality Act, which is terribly needed, will help us to be in line once again with our tradition.

MR. DIMAS. You mentioned, of course, the two basic functions of the Immigration Service being in the enforcement area as well as the service area. Do you see any inherent conflict between these two different functions?

COMMISSIONER CASTILLO. I don't; some people do. I think there's an inherent tension, but that's the tension inherent in a teacher trying to get good work and instill discipline as well as encouragement. It's also a tension inherent in any task between discipline and creativity. And so, enforcing the law is one aspect of administering the law. You can't have good administration without some enforcement, some discipline; and you can't have good enforcement without some compassion, some administration.

So I don't see any necessary "conflict," but I do see some tension.

MR. DIMAS. Would it be accurate to say that most of the people within the Immigration Service actually come up through the enforcement ranks?

COMMISSIONER CASTILLO. I think that in the past it was very clearly so, but it's less so now. In the past, because of the way it was structured, people came through the Border Patrol primarily and then gradually worked their way—because of our merit promotion system and our other methods for awarding seniority, and because of who came into the Immigration Service and how it was structured, that was so. But in more recent years, we've begun to bring in more people from other backgrounds, as well.

MR. DIMAS. You have been quoted, I think publicly at several times, expressing a degree of admiration for some of the people who actually make the trip into the United States. Have your observations resulted in any changes in the policies or procedures of the Immigration Service?

COMMISSIONER CASTILLO. Well, that sort of statement usually gets me in trouble.

[Laughter.]

MR. DIMAS. That's not the intent.

COMMISSIONER CASTILLO. But I do have, as do many of the members of the Border Patrol, I do have a great respect for the people that we deal with—both those that come with papers and those without.

And we simply have to admire the spirit of someone who comes back across the border, even after you've deported them 35 times, and who keeps coming. But I think that my feelings on this have been reflected very clearly, especially in several areas. One of them is in the area of detention. Amidst some controversy, we have done our best to upgrade our facilities.

Mind you, we hold these many, many people, although for short terms, several days. But we hold them in dormitories—dormitory-type

facilities—and we hold them without the use of the 12 cells that I have nationwide. We don't ever fill those cells, because these are minimum security type facilities, and the people we hold are, we feel, minimum-security risks.

So we've done a lot there. Some of this may sound very basic to you, but in our facilities, for example, in New York City, we had three books, total, as reading matter for persons we were holding, and all the books were in English and old. So I brought in some books and some material.

We had no exercise equipment, so I brought in that. We brought in a soccer ball, things like that. Yes, we've done quite a bit in terms of upgrading those facilities.

MR. DIMAS. Have you had any particular difficulty in creating this new emphasis within the Immigration Service, Commissioner?

COMMISSIONER CASTILLO. Yes. There's been a great deal of difficulty. There are some people who feel that we should be much harsher and that we should summarily evict people and make the facilities as unpleasant as possible even.

And then there's a constant pressure within the Service, a rational, understandable pressure, for resources. The Border Patrol is one-fifth, I am told—the entire Border Patrol for the United States is one-fifth the size of the Los Angeles Police Department. So they are constantly strapped.

The total investigations or enforcement force in Houston is not quite the size of the vice squad in Houston. And so when you start feeling the pinch, these people want more help, more resources.

The same is true on the other side of the Service, the service side. They also are unbelievably strapped.

MR. DIMAS. What kind of resources do you feel you would need, Commissioner, to be able to adequately handle the problem, as you see it?

COMMISSIONER CASTILLO. Well, we gave an initial budget request to our Department. They, of course, chopped it up immensely before it got to OMB, but—and so it's just pie-in-the-sky at this point—but we felt that at the very least we were talking about a total force that would be twice, three times its current size.

You're talking now of a work force that's roughly 10,000 people.

VICE CHAIRMAN HORN. Is that the whole INS or the Border Patrol?

COMMISSIONER CASTILLO. Oh, no, the whole INS, assuming some changes in the law.

VICE CHAIRMAN HORN. How much would you recommend that the Border Patrol be increased?

COMMISSIONER CASTILLO. Our initial request was for up to 1,100 persons, additional persons.

VICE CHAIRMAN HORN. Additional persons?

COMMISSIONER CASTILLO. Yes, sir. But there's no way that that will happen in a time of anti-inflation struggles. As a matter of fact, we're looking now at possible decreases in staff.

MR. DIMAS. Commissioner, I think we have heard it said at different places that many people here in this country who are now labeled "undocumented" are in fact documentable. That is, they have the equities which would enable them to receive their legal status within this country.

Do you have any idea what percentage of people or how much of the problem could be lessened by the documentation of these people?

COMMISSIONER CASTILLO. I at one time thought that that figure was as high as a half a million. I hope that it's not that high anymore, but I think it's substantial, at least 200,000 or more persons in the United States who, for one reason or another, simply don't know that they could qualify. And now, in view of the recent changes in the law by the last Congress in the last gasping hours, actually there are many more that qualify now even for citizenship who don't know because they have not any way to know.

MR. DIMAS. Well, would some of these people be undocumented because of a pending application for benefits within the Immigration Service, as opposed to some that are undocumented because of a lack of knowledge that they are eligible?

COMMISSIONER CASTILLO. Well, those that have a pending application usually we look at a little differently than those that don't have an application. However, for some countries, the backlog is so great that realistically, even if they have a pending application, it could be 8 years before they're eligible to come legally under our quotas for the country.

MR. DIMAS. Which countries would this be?

COMMISSIONER CASTILLO. I'm speaking of Mexico, some categories, not 8 years, but substantial waits; the Philippines, the waits can go to 10 years; Hong Kong, although it's not a country, the waits there can go 10 years. We're talking about very substantial waits for some parts of the world.

MR. DIMAS. I think you were quoted recently in the local newspaper that the more people that were being naturalized—you were increasing the efficiency of the Naturalization branch—and the more people were naturalized, instead of clearing up the workload, you were actually creating more. Would you comment on that?

COMMISSIONER CASTILLO. Yes. One of the unexpected results of this efficiency effort, this business of bringing in the new typewriters and so on, the first computer, was that we generated more work for ourselves.

What happened was best illustrated by what happened at a naturalization ceremony recently in Baltimore that I attended. We swore in about 700 people. They became new citizens at noon, and by 1 p.m. our office in Baltimore was jammed with people, the same people, who were now petitioning for other members of their family to come to the United States. And so rather than clearing up workloads, we added workloads.

The same is true, of course, in other areas. I think it'll reach a plateau. The immigrant groups in the past, for a while, bring in their relatives, and then eventually it slows. But these new immigrant groups are doing what the others did; they're bringing in their relatives. They're serving as the seed population—or some call it the “hook population.”

MR. DIMAS. Well, these—these applications that were adjudicated at this point had been backlogged for some time, had they not? I think in February of this year, you testified in Los Angeles before a subcommittee of the Appropriations Committee of the House of Representatives that immigration backlogs would be completely cleared up in approximately 7 months. How good was your crystal ball, Commissioner?

COMMISSIONER CASTILLO. It wasn't too good. It was very hopeful, but it wasn't very accurate.

What happened was, we did deal with all the cases that we had pending, but we generated as many and more. As an example, about a year ago, we were handling about 100,000 cases a month—we were receiving about 100,000 and completing about 100,000 cases. Now, we're receiving 177,000 a month with essentially the same staff. That's on the service side.

MR. DIMAS. What is this attributed to?

COMMISSIONER CASTILLO. Well, one, of course, is the fact that as a seed population grows in the United States, it can then bring others. Another cause, a major cause, is the new Indochinese programs which by themselves accounted for 106,000. And still another is the fact that the United States is attractive to many people in many parts of the world, and with better communications, and with better transportation, they find it more likely to come here.

MR. DIMAS. Commissioner, I think we've heard some statements about the outreach program of the Immigration Service, and we've heard both pro statements and statements against it.

I think the ones against it would primarily say that you're asking the people to come in to the agency that will turn around and then remove them from the country. How would you respond to that kind of criticism?

COMMISSIONER CASTILLO. Well, without the outreach program, our problems would be even more serious.

As a result of the tremendous work of the United States Catholic Conference and a number of other groups, what we have is a group of people who help the immigrants in a nonthreatening, nonenforcement environment, who then bring a completed application to us that's relatively good. If it isn't, the immigrant knows that he probably shouldn't show at our office. And as a result, we can process them more easily, more efficiently. So that if someone goes through an outreach center, there's a lot better chance for them to get immediate advice, and good advice, than if they just walk in cold into our office.

MR. DIMAS. Your own people who meet with the public, the contact representatives, are generally clerical-level personnel, are they not, Commissioner?

COMMISSIONER CASTILLO. That's right.

MR. DIMAS. Have you considered upgrading the training of the people at that level?

COMMISSIONER CASTILLO. We've had three training programs for these contact reps, as best I know, in the history of the Service, all of them in the last year. They had never been trained, and they were just put out there and given a very difficult job.

But we've begun to train them, and give them new skills, and we moved them under another section, a section of the Service called "Travel Control" which is the part that deals with examinations. Before, they were under "Records, Files." This will give them a chance to upgrade their status, so they might get a higher GS level because they become quite expert in immigration issues.

MR. DIMAS. You mentioned, I think, briefly some model offices that have been set up, or mention has been made of a model office, particularly in Houston. Could you explain the rationale behind that one?

COMMISSIONER CASTILLO. Well, in my prior life when I was controller of the city of Houston, I had a lot of experience with computers. And I thought that, based on that experience, it would be smarter to start with a small one and see it if went—a "pilot," if you will—and if it goes there, then extend it to others.

And so we tested it. Houston being a place I know, and having some computer people I trust, I thought I'd start there. And what we've done is we've automated as much of the process as we can, and now we're able to take those things that we've developed there and move them into other cities.

For example, we are now planning to automate in Washington, D.C., and we'll move into other cities. I didn't want to run the risk of trying to automate one of the huge offices like Los Angeles where if you made a mistake you could lose the files for a half a million people, or New York City. That would have been more dramatic perhaps, but I was going to be a little cautious.

And the Houston experiment has proven very successful. As an example, in several of our major offices we now have as many as 25 people who are assigned to look for files, because the files aren't lost, they're misplaced. When you try to keep a million files manually, you have trouble. And that's what we've tried to do in New York and in Los Angeles, manual operation, retrieval, the whole works.

So we've got all of these people that run around all day looking for a file. In Houston, we can find most files within a minute with an automated tracking system. We'll move that tracking system now into other places in the country. There are many other aspects of it as well, though.

MR. DIMAS. Commissioner, what's the effect on the people who have these—whose files are lost? What do you hear from them?

COMMISSIONER SALTZMAN. You don't hear.

[Laughter.]

COMMISSIONER CASTILLO. Well—

MR. DIMAS. Only the files are lost.

COMMISSIONER CASTILLO. I was greeted, my first 2 weeks in office, with the results of a study that had been done for the President in which the members of Congress had rated all the Federal agencies and ranked us as among the bottom five. We were getting literally hundreds of complaints from the Congress, and thousands of complaints from the applicants.

They were telling us—if they could reach us on the phone—that they were upset with us losing their file, or the way we handled their case. That's been reduced. We no longer receive those thousands of complaint letters. We still get our good share.

MR. DIMAS. We understand that you yourself did some undercover work to determine what the extent of the problem was at the different offices. Is that correct?

COMMISSIONER CASTILLO. Well, it's not so much "undercover," I simply walked into my own offices and got in line as if I were an applicant; and I walked into inspection booths at airports to see what would happen, and it was an enlightening experience. It was very helpful to me—

MR. DIMAS. In what ways?

COMMISSIONER CASTILLO. —to put myself in—Well, the way I was treated, the time I had to wait, and the questions that were asked of me, and so on.

But I sympathize very much with the poor contact rep, or the inspector in an airport, who has 300 people waiting and doesn't really have a whole lot of time for niceties. He has to get the people through, and the lines were just too long for one person no matter what the procedure. So sometimes they weren't as courteous. Maybe they were a little brusque with me, or other people, but it was very helpful.

MR. DIMAS. Commissioner, moving to something slightly different. You attended for a brief time the open meetings in Texas held by the Texas Advisory Committee to the Civil Rights Commission. We heard testimony there about difficulties between Hispanics and the Border Patrol and the Anglo members of the Border Patrol.

Have you encountered any such problems?

COMMISSIONER CASTILLO. Personally?

MR. DIMAS. No, no. I mean have you had to deal with these problems within the ranks?

COMMISSIONER CASTILLO. Oh, yes. The majority of the Border Patrol officers have a great deal of respect for the Mexicans and other groups, but primarily Mexicans that they deal with. And all of them speak better Spanish than many people that have degrees in Spanish. And many of them, of course living their lives along the border, develop what we call a "border mentality" and a border lifestyle. But

some of them don't, and so there's some problems. And especially now, as we get more and more Hispanics into the Border Patrol, the issues arise as to what level of Spanish, native fluency, or Labona score, issues arise as to whether one person might be more sympathetic, more lenient.

Overall, though, I think the fact that we're now, I believe, 30 percent Hispanic in the Border Patrol is having a good effect, and the persons that are very good in Spanish and understand the culture tend to be very effective along the Mexican border, because if you don't you could be in lots of trouble.

There have been problems, of course, and I would not want to say they don't exist; they clearly do. But I think they're confined to certain sectors, certain parts, places in the country.

It's true that in a recent *Washington Post* article three investigators in this area referred to me as the "Wetback Commissioner," but I'm not quite sure, you know, how to take that—and I know they refer to each other in terms that are very blunt.

These are people who work out in the open all day; they're pretty rough. They used to be a horse patrol, and they are used to staying out, running up and down riverbanks and through deserts and what not, and they speak very directly.

So, yes, there's a problem.

MR. DIMAS. Would you consider the use—the direct use of language such as "wetback" directly to the aliens they deal with to be undesirable?

COMMISSIONER CASTILLO. No, I think it's the tone in which it's said. Some of our Mexican American Border Patrol agents also refer to the Mexicans as "wets" and "wetbacks." Many of the people along the border also use that term, whether in Spanish or in English.

I think it's the way—the tone in which you use it, and then how you treat people. Because over the years, different terms have evolved along the border. We have some people here who are really fine gentlemen but who use the term "wets" all the time. That's what they've used for 30 years. It's very hard to change them. But they're not necessarily bad people.

I prefer, of course, the term "undocumented," but that's a little long, and—to me, it's a better term, but not everybody agrees with that.

MR. DIMAS. Have you heard the developing use of a new term, "tonk," Commissioner?

COMMISSIONER CASTILLO. Yes, that's one of the terms I've heard. That's—that's sort of like the new term for "wet."

VICE CHAIRMAN HORN. Can you tell us the origin, since the staff couldn't tell me what it was? Or can you say that in polite company?

COMMISSIONER CASTILLO. Oh, yes. "Tonk" is sort of like "gook."

VICE CHAIRMAN HORN. So it's sort of a Vietnamese war type comparable—

COMMISSIONER CASTILLO. "Tonk, gonk, gook."

VICE CHAIRMAN HORN. I see.

COMMISSIONER CASTILLO. It's just "tonk," referring to someone entering without papers, along the southern border usually. It's not used that widely. People still use "wet" more than "tonk."

MR. DIMAS. Commissioner, also in Texas we had some testimony regarding possible mistreatment of aliens by a Border patrolman—testimony by a Border patrolman. We understand that there is now an investigation of this Border patrolman.

Could you elaborate on that at all at this point?

COMMISSIONER CASTILLO. A mistreatment—that the Border patrolman himself mistreated the people?

MR. DIMAS. No, no. He testified that he suspected several incidents of abuse.

COMMISSIONER CASTILLO. I don't know—

MR. DIMAS. You're not aware of any investigation of this nature, Commissioner?

COMMISSIONER CASTILLO. No, I heard that someone who had testified in Texas was being himself looked at, but I have not yet corroborated that. I have asked for a report on it, but I don't have any details on it.

MR. DIMAS. Another item I'm sure that you've been asked about quite often recently that's been in the press is the subject of the new fence that's been proposed.

Could you tell us the status of that?

COMMISSIONER CASTILLO. I thought that you might bring that subject up, so I brought you a little schematic describing that. I don't know if you can see it very well from there.

[Showing drawing of proposed fence to the Commissioners.] The fence is one of those difficult subjects. Up above, we have El Paso; and the proposed area for fencing is all of this here. Interestingly enough, all of that area is already fenced, but the fencing is further in and it's of various types. So the proposed new fence, it simply actually covers the existing fence that's been there some years.

In San Diego—

VICE CHAIRMAN HORN. Excuse me. Is that in American soil, on American soil?

COMMISSIONER CASTILLO. Oh, yes, it's all American soil. Oh, yes.

VICE CHAIRMAN HORN. Because I just wondered. That map might be drawn strangely. It's going only up to the river, I take it?

COMMISSIONER CASTILLO. Oh, yes. We didn't put in Mexico.

VICE CHAIRMAN HORN. Okay.

COMMISSIONER CASTILLO. This is primarily the urban area in El Paso where people come across now, and then over here [indicating], the train yard, people come across through the train yard in downtown El Paso. The fence is to sort of buttress an existing fence.

Now in San Diego, down here [indicating] though, we have a very different situation. We have a current fence that exists for most of this

area already, but the fence is very, very bad. Some of it consists of three strands of barbed wire about a foot from each other, and they really don't serve as a deterrent to anything.

And other parts of the current fence consist of an air matting, or airplane matting, the type that is used on runways, with chain link on top of that, and then barbed wire on top of that, and that's easily cut through. And I might show you—this is something that appeared in a Mexican magazine.

[Handing picture to Commissioners.] It's a picture of the fence.

So that in San Diego, the fence that's being proposed is a continuation of the existing fence, and an upgrading of the existing fence. Unfortunately, it's become a very emotional issue and it has been discussed as if it were a new idea. The fence has been there a very long time.

COMMISSIONER FREEMAN. Do you know how many years?

COMMISSIONER CASTILLO. I spoke with a member of the Border Patrol who'd been in the Border Patrol 25 years ago, and he said it was there then when he was there, and that they'd been redoing it ever since, and that's the shape it's in now. But it is—it has become a very heated issue.

MR. DIMAS. Commissioner, has it not become heated because the fence, as proposed, differs substantially in construction from the present one?

COMMISSIONER CASTILLO. Oh, yes. The current fence is that shape, or, as I indicated, for some miles three strands of barbed wire. The proposed fence is much sturdier and would actually be more of an obstacle.

MR. DIMAS. I think there have been reports that it is actually very, very sharp in its lower portions. Is that correct?

COMMISSIONER CASTILLO. There was a confusion in that the design of the fence could have been read so that the lower part—the lower part, the grating, the bottom—could have been read as having sharp edges.

The fence specification people told me that that would only be read that way by people that didn't understand about fences. But I said, "Change it so that anyone, whether they're fence experts or not, cannot read it so that it has sharp edges, and take off the sharp edges." The sharp edges are off. So now what we're discussing is a regular fence.

MR. DIMAS. So that the design specifications are being redone?

COMMISSIONER CASTILLO. Have been redone.

MR. DIMAS. Have been redone. And when is construction scheduled on this fence?

COMMISSIONER CASTILLO. I can't tell you for sure because I just met this afternoon with our people to make sure they had all the design questions resolved, and also that it was clear as to which areas were simply replacement of existing fence, and what schedule they'd follow.

I didn't mention—the other part of San Diego that would have the new fence is an area where we've had an enormous number of difficulties over the past several years, along Spring Canyon and some other names. But in that part of the border, we've had many assaults, robberies, rapes, murders of the aliens who cross and try to go through these canyons, on the Mexican side by Mexican banditos and others, and on the U.S. side by U.S. crooks and bandits.

For a while, the San Diego Police Department had a special tactical force in there who were engaged almost in guerrilla warfare nightly. We think this fence will make a lot of that problem a lot less difficult for everybody because it will start covering the most dangerous areas.

In El Paso, we're looking more at an urban area, and in San Diego we're looking at Spring Valley or the canyons and that part of the border.

MR. DIMAS. Commissioner, we know that one other thing that you've had your hands full with fairly recently has been the administration's proposals for amendments to the Immigration and Nationality Act. However, there was recently created a Select Commission on Immigration by Congress.

The question now becomes, Would you foresee the reintroduction of those proposals, or similar proposals, prior to the completion of the study by the Select Commission?

COMMISSIONER CASTILLO. I think the problem is so serious that we can't afford to wait 2 years for a report and then eventually legislation that would overhaul the complete act.

I think legislation, while maybe not precisely what the President recommended but in that general direction, will be essential very soon. The United States can't afford and should not think about "fencing" or "walling" the border, but it must have a way to regulate entry, and it must have a way to accept the people into the country. A change in the law is needed.

MR. DIMAS. When you say "the problem is so serious," what specifically do you feel is very serious?

COMMISSIONER CASTILLO. I think when you have a million apprehensions—now mind you that's not a million people but a million apprehensions, sometimes the same person many times—but when you have a million apprehensions, when you have so many people living outside the law in a society, and when you have so many abuses and when you have such a disregard for the immigration law, you have a problem.

I think further, when all of the indications are that the numbers will increase, we have a serious problem. I'm not even speaking to the economic issues which are often debated.

Regardless of whether it's good or bad for the U.S. economy, it's clearly a problem to have an unregulated flow of thousands of people coming into the country, if the law says that you will regulate it.

MR. DIMAS. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Commissioner, I am interested and intrigued by the individual who was detained 35 times, and I would like to ask if you have a—if the Service has any program for checking to find out if there is any way in which such an individual, all other things being equal, could at least have been documented?

COMMISSIONER CASTILLO. In the case of the majority of the people that are deported, we have a voluntary departure because the majority of these occur along the U.S.-Mexican border where the majority of the resources are. But the Border Patrol agents are so busy simply apprehending people, taking them back, and then apprehending people and taking them back, that they really don't have time to go into a program to check for rights or possible benefits under the law.

The Mexican consuls do staff, or do have staff at all of our processing centers, and they interview people that are being held. But for those that are being—that are going back right away, there is no counseling program.

COMMISSIONER FREEMAN. It was my understanding from some testimony here that at least within the Service, that is a responsibility—somebody has the responsibility of informing such individuals of their rights and giving them counseling.

COMMISSIONER CASTILLO. We—when they're in the interior of the United States, or when a person argues against voluntary departure, then they have a prospect, a fairly good prospect, of counseling. The majority of the people that are apprehended are apprehended within the border area—that is, within a few miles of the international line—and are simply returned.

Those people that are apprehended further in that are held somewhere, they do have access—to a certain extent, they have access to counseling.

COMMISSIONER FREEMAN. Is there then not a possibility that within that small area there may be some denial of rights?

COMMISSIONER CASTILLO. There could very well be. We've discussed that all the way up to the Attorney General. We're talking, though, about 800,000 deportations, voluntary departures, in a year. And our people are so strapped just making the apprehension and recording it, that realistically there is no way that I can see that they could actually get into a program of counseling.

COMMISSIONER FREEMAN. There's—have you had an opportunity to make any recommendations or ask any of your staff to make any recommendation as to whether such a program would be properly within the jurisdiction of the Service?

COMMISSIONER CASTILLO. Oh, yes. We've discussed that, and tomorrow our General Counsel will discuss a proposed regulation as to advising persons of their legal rights, right to counsel, and so on. And we've also helped with the creation of an outreach program, a volunteer group.

But I must add that immigrants historically came through the East Coast, and that's where we have the most facilities now for immigrants. Unfortunately, they now come through the Southwest and West, and that's where we have the fewest facilities for immigrants.

COMMISSIONER FREEMAN. You're not suggesting that that justifies the denial, are you?

COMMISSIONER CASTILLO. No. I'm just saying that's the historical reason for there being relatively fewer immigration societies in the Southwest and the West, which is where there are many more immigrants than in the Northeast.

COMMISSIONER FREEMAN. Has this problem been brought to the attention of the Attorney General?

COMMISSIONER CASTILLO. Yes, we've brought these points to him. The position of the Department has been, though, that given the resources that we have and the enormous strain already being put upon the judicial system, that it's not realistic for us, through the Department of Justice, through the Immigration Service, to set up a program of that sort. We will work with other groups that are trying to do that.

COMMISSIONER FREEMAN. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I know that San Ysidro area very well and the border very well. For the last—in excess of 50 years—I have been going back and forth about once a month. That's a long time. I recall going across there on horseback, both sides; no fence whatsoever. Those residents that resided in Tijuana, because there were ranchos there, when they wanted to have children they'd go across and Mexican mothers would have their children in San Diego, in the hospitals there, or in San Ysidro.

And therefore, I was quite taken aback with the testimony that was read by Donald Day, Assistant Commissioner for the Border Patrol, as what he designated as "official policy." He was talking about the fence and why it was being built. Emphasis was to prevent aliens from, as I understood it, from committing crimes in the United States, such as rape and purse-snatching, across the border.

You kind of cleared that up and said it was kind of a two-way proposition, that it was not only aliens, but there were Americans, as well, involved.

But what kind of surprised me was that, being very well acquainted with the area subsequent—just below the border on the Mexican side, where there are thousands of tourists that go to the seashore with their trailers, their families and other groups, women tourists walking around with their purses, as they do at home, why the Mexicans, aliens, had to cross the border to commit rape and to commit crimes, when they could well remain in Tijuana and commit the same crimes on the other side if they were trying to do so.

I wish you'd clear that Spring Valley thing up, because apparently it's being used as an excuse not only with respect to the balance of the San Ysidro thing, but it's very inflammatory. It was read with éclat and loudly. It's very—something that causes people to wonder: How many Spring Valleys or Spring Canyons are there?

Are these fences going to be limited only? Is this a start of a larger program? Will not, in the very near future, people say: "Well, it prevented crimes; we have the statistics here without mentioning the Spring Canyon. It prevented rapes. It prevented purse-snatching. Now we want to extend that fence a little bit more."

Is this the beginning? We know that for East and West Germany, it was a single wire at first, a second wire, and then a third alambre, as they say, and then it became a Maginot Line.

What do you foresee in the future, Mr. Commissioner? What is being done with relation—is this a political matter? What is it?

COMMISSIONER CASTILLO. Several years ago, Congress held hearings on our budget and included "fence," as it usually has, except it added a little more fence. And we're talking now about 12 miles of fence, along a 2,000-mile border, and possibly 4 miles of which is new, that is, area which has not been fenced before.

COMMISSIONER RUIZ. I remember when there was no fence, very clearly.

COMMISSIONER CASTILLO. I'm sure that was so. But it's been a while since we've had a fence.

Now, I think that a fence is a symbol of our frustration. We don't have resources to hire people. We don't have a policy that allows for legal entry. We don't have legislation that allows for too many other options. And we don't have money that's going to allow even for other alternatives.

COMMISSIONER RUIZ. Weren't the East Germans frustrated, too? Does frustration mean anything? Does that lead to something? This is what I'm trying to get to.

COMMISSIONER CASTILLO. Well, I think the proper—the reason the Congress decided, of course, would really be properly raised with them. But I think the issue of the fence is being raised now more in a symbolic sense than in a major deterrent sense.

We think a fence does make it harder. There is no plan to fence the U.S.-Mexican border or any border. But I must point out that roughly half of all the apprehensions made by the Border Patrol last year were made in the El Paso and San Diego area. Roughly half. And so that's an enormous traffic.

If the public wants us to stop people from coming in, we're going to have to use people, fences, something. If you don't want people to be stopped coming in, then you've got to change the law. I don't want to say that you must have a fence if you want to stop people. But all of the other alternatives have been voted down or budgeted out.

COMMISSIONER RUIZ. So we have a symbol of frustration, as I get your testimony?

COMMISSIONER CASTILLO. Until there's a change. But I also must point out that the chamber of commerce and at least the elected officials until recently in these communities were all supportive. The people in the affected communities—in El Paso, for example—through newspaper editorials and through other opinions, were supportive of it.

COMMISSIONER RUIZ. I asked an earlier question to one of the members of the panel, on this new commission of 16 persons that the President has created. I tried to get the makeup of the commission. I understood that four were to be appointed by the President, who was to appoint the chairman; four others from the Department of State, Justice, HEW, some other Department; a couple of Senators, Republicans; a couple of Senators, Democrats, probably from the Judiciary Committee; four from the House.

COMMISSIONER CASTILLO. Right.

COMMISSIONER RUIZ. And that they were going to review the Immigration Act for possible changes, etc.

A little while ago I mentioned this is a political question, the creation of this commission as an independent political body, as I see it, for review.

What does the creation of this independent body mean in terms of taking away powers from the commission or taking away powers that now exist in individual agencies and making it a political setup?

COMMISSIONER CASTILLO. The commission has a short life in which its primary objective is to produce the report that would outline these proposed changes. And it's to report toward the end of 1980 on what it proposes.

It follows a pattern established in prior years, most recently in the early sixties, when a similar commission proposed an overhaul after what actually turned out to be 4 years of study; and then other commissions before that, all the way back to the National Origins Act.

So I think the impact of the commission will be beneficial. There certainly are a lot of things that have to be changed. And I think that it won't really get into operations questions. It has a budget of at least \$700,000.

COMMISSIONER RUIZ. I assume, like other commissions, it will have the power of subpoena for purposes of getting evidence? Or do you know too much about it yet? It's a new one.

COMMISSIONER CASTILLO. It's not yet been officially created, but it will have power to collect information.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Commissioner, would you care to comment on the employer sanctions aspect of President Carter's proposal?

COMMISSIONER CASTILLO. Sure. The United States is perhaps the only country, the only developed, industrial country without some measure for penalizing employers who hire persons in that country that are working with the knowledge of the employer. Mexico itself has a very stringent law against persons who do so.

The proposal has cleared the House on several occasions and has never made it through the Senate. The President proposed a modified version that would not have criminal penalties, as had the earlier versions, but would have a civil penalty initially and would use a pattern and practice criteria to determine fault. It also had a more liberal provision in terms of defenses for employers, what they could ask for, how they could show they did ask.

At the moment, of course, the proposal is awaiting possible redrafting for the next session.

COMMISSIONER SALTZMAN. You're supporting it, in other words?

COMMISSIONER CASTILLO. I'm supporting President Carter's proposal.

COMMISSIONER SALTZMAN. What about the impact on minority people? If an employer knows he's going to have to pay a fine, perhaps he won't even bother. He'll look at a person, the color of his skin, and conclude, "I'm not going to take a chance," and not hire a whole class of people. Is that a possibility, do you think?

COMMISSIONER CASTILLO. I think that a discriminatory, prejudiced employer will continue to be discriminatory and prejudiced, even with a change in the law. I think that some employers will end up being sued for abusing this improperly.

But what we have now is the world's largest temporary worker program, totally unregulated, with no restrictions at all, with employers free to do almost anything they want when they have people they know are here without papers. What we have now is a temporary worker program, called "an undocumented worker problem," that is larger than all of Europe's, because we don't regulate it in any fashion.

COMMISSIONER SALTZMAN. Have you followed the response to the Justice Department's evaluation of the Office of Professional Integrity, their recommendations?

COMMISSIONER CASTILLO. Yes.

COMMISSIONER SALTZMAN. Well, did you think that the response from the Office of Professional Integrity to meet the criticism of the Department of Justice has gone far enough and is adequate?

COMMISSIONER CASTILLO. I think that we have made a great deal of improvement. I'm not satisfied with it. I think we've got more cases under investigation and we're giving them a more thorough airing than we had before.

We have fewer cases that have just been allowed to linger for long periods of time. And I think we have trained our people better than we had before. I think we also have a larger staff looking at this sort of thing, and we've set up some criteria as to how you can investigate.

But there is still a lot to be done there. It's one of those very delicate areas where a lot of what you do is even hard to discuss because of the question of confidentiality. But no, I'm not fully satisfied.

COMMISSIONER SALTZMAN. I assume that means that—I'm sure that you're continuing to follow the outcome of your Department's response to its own program.

Thank you, sir.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Commissioner, I'm impressed by the sort of rule of reason that you are trying to follow in the answers to these questions by, one, admitting that we have a problem and that we've got a few choices to handle the problem, and therefore Congress and the Executive will have to decide which is the appropriate course or change existing law.

Let me pursue some of these matters. First, to what degree do you regard it as part of your role as Commissioner to worry about job displacement by aliens coming into the country illegally?

COMMISSIONER CASTILLO. I think it's terribly important, because if I don't know what the actual effect is, then I can't speak very intelligently to the question of, Is it really hurting the economy or helping the economy? And, unfortunately, a lot of people are making very broad generalizations about what's happening to the economy without really knowing.

One of our major questions is just what is happening in terms of labor displacement. And, unfortunately, there are not very many very good answers yet. We know that in some sectors of the economy, in some parts of the country, there is some displacement and it does hurt some groups, and those are the labor unions that are very quick to call us, "Deport these people; they're taking our jobs."

We also know that in some sectors of the country some ethnic groups call us and say, "Deport these people; they're unfair competition." And we have some of that type of evidence. But it's not very scientific and it's not very clear.

VICE CHAIRMAN HORN. Is there any study by the Department of Labor in cooperation with INS to try and determine the extent of the job displacement and the wage depression that might be occurring?

COMMISSIONER CASTILLO. There's a great deal of interest and there have been a few smaller studies, I think, commissioned probably by the Department of Labor on this subject.

Just last week we hosted a conference on the subject of displacement in which we discussed the methodology that might be used to determine what is really happening. We had an economist, Larry Chiswick, and we discussed his proposal, how you might go about trying to get some solid data.

VICE CHAIRMAN HORN. So INS is encouraging working on the data base so we know the extent of the problem we have?

COMMISSIONER CASTILLO. We feel that in a few obvious cases you can tell. If, for example, machinists in a certain city report that there is a lot of work, but that there are members of the machinists union who don't have any work and yet these other people are doing it, and we find that we are deporting a lot of people that are holding jobs as machinists, we think that clearly there is a displacement effect.

But we don't know, though, about some other areas of the economy. And we don't know just to what extent the U.S. workers are not willing to take some jobs. There's a lot of discussion and debate about that, pro and con, but we don't really know. At least I don't really know. Maybe some others do.

VICE CHAIRMAN HORN. Obviously, this Commission has a longstanding concern with reference to minority employment in this country. We've been particularly concerned about the extent of teenage unemployment, primarily in the ghettos and barrios, where, say, 40 to 60 percent of black and Mexican American youth in many of our center cities remain unemployed.

There's obviously a valid question that could be asked here as undocumented workers or illegal aliens, as the case may be, come into this country, take unskilled jobs as waiters, in car washes, etc., and thereby eliminate job opportunities for youth that are in the center cities, and that youth might be Mexican American and black.

Do you have any feelings on that?

COMMISSIONER CASTILLO. We have had numerous calls, complaints, tips from members of the minority communities asking us to deport people because of the competition question, in their view, unfair competition. And even though we may go into the city in the United States with the highest unemployment rate, and we rarely find that the undocumented are unemployed, even though that is usually so, we usually hear the other side saying that they work for so little that they're simply undercutting the other group.

There's very clearly an effect there, and it's perceived, of course, and expressed most directly by the labor unions. The teenage unemployed are not very well organized, so they rarely—they have no spokesperson. But the labor unions are the ones who normally give us the pressure where there may be some, in their view, displacement.

VICE CHAIRMAN HORN. I read to some of our community representatives this morning some of the figures that had been quoted in a *Los Angeles Times* article you might have had read to you—it appeared this past weekend—concerning INS enforcement. And they referred back to Public Law 78, the so-called “bracero legislation.”

Since I happened to live through that issue as the assistant to a United States Senator that was deeply involved and saw the pressure from both sides as to the labor unions, the American workers versus the farm producers, I was intrigued by the figures that appeared in the *Times*, where, essentially, they noted that after the bracero program ended in 1964, there was a drop from 6.5 to 4.8 percent in agricultural unemployment, and farm wages went up 5.6 percent in '65 versus an annual average in the preceding decade of 2.9 percent.

Now that was prior to unionization. Some comment was made after I raised that that this was due to unionization. Cesar Chavez's efforts had not taken hold until the early seventies. We're talking about the mid-sixties.

Now do you feel that what we ought to get back to with Mexico is a regularized worker importation program such as we had under Public Law 78?

COMMISSIONER CASTILLO. The President's proposal had a very controversial section called a "temporary resident alien provision" that would have allowed persons who had arrived in the United States between 1970 and 1977 to have remained here with permits to work for 5 years, but not have qualified for various social service benefits.

Interestingly enough, that proposal was not attacked by the AFL-CIO, but was attacked primarily by Latino groups and by some church groups, some civil liberties groups, as being too harsh because it didn't provide enough benefits. The labor unions—maybe they've changed their position, but at that time AFL-CIO was in support of that idea, which in effect is a 5-year work permit.

VICE CHAIRMAN HORN. Now, of course, as you will recall, in the sixties the AFL-CIO were the main opponents of Public Law 78.

COMMISSIONER CASTILLO. Yes, I know.

VICE CHAIRMAN HORN. Let me ask you, along the line of the President's proposals and the example you just gave. As I understand it, amnesty would be also provided for that immigrant who had come here legally—illegally, but he'd have an opportunity to adjust his or her status and stay in the country.

There's another group that comes to mind, and as a university president I see them every day. We have students from 95 countries on my campus at Long Beach, and probably everyone that comes over here to study, just like the drive behind the undocumented workers that you referred to, is they'd like to remain in the United States.

Now, I wonder, how fair is it to propose that if you came here illegally and you can hide out for several years, you get to adjust your status; but if you came here legally as a student and you played the game and you'd like to stay in the United States, you cannot adjust your status? What's your feeling on that?

COMMISSIONER CASTILLO. One of the groups that was specifically excluded was students from this provision. There were some other problems of trying to reach some balance. Students, to me, were in the position of those people who waited in Hong Kong for 10 years for their chance to come legally.

Had they come 10 years earlier and melted into the population, they might qualify under this proposal. But I think the decision as to where you draw the line, whether you draw it for students, is essentially a political decision. And it gets down to questions of brain drain.

It may be—I'm not absolutely certain of this. I do know that it's so with exchange students because there there's an agreement to return, but with the other students, it could very well be that the United States might serve a better global purpose by helping to ensure that educated, trained, talented people can return to their countries to help develop their economies.

That's not in agreement with some of the students themselves, who argue that they should have a chance to go wherever they wish, but we're going to have to draw some lines. There are roughly a quarter of a million foreign students in this country now.

VICE CHAIRMAN HORN. Well, personally, I agree with you. I think you're right that our best investment in foreign students is if they do return to their own country and provide the leadership that their educational experience might enable them to provide in that country.

But I think it is an irony that this contrast exists. Because here we are in an industrial—postindustrial society, needing skilled manpower, as opposed to the 19th century, where if you swam in or got in through Ellis Island you could take many of the jobs with unskilled labor, and obviously most of the undocumented workers coming in from south of the border are unskilled. They might upgrade themselves here and some might be more than unskilled, but generally they're unskilled.

And so I'm wondering, as you try to devise a policy as to where do you draw the line, given the fact that you have an unknown number coming up from Mexico now because of population pressures, the state of the Mexican economy, lack of job opportunities, just what criteria would you recommend that we apply for admission at the border? Should there be any criteria, besides what's in the law right now, for legal admission? If so, what are they?

COMMISSIONER CASTILLO. I think the criteria that the law sets now for family unification is still very relevant and should be given high importance.

I think the second criteria that the law sets out for labor needs, to meet the needs of the country, is a little more difficult to define, but I think it can be reworked so that it will help us and, hopefully, even help the sending countries. There I think we have the most work to do.

The last criteria or group under our current law, refugees, I would argue for a more generous policy, accepting more political refugees or refugees of oppression than we currently accept, and not bias our acceptance of refugees toward persons coming from communist countries or countries which are dominated by communists.

VICE CHAIRMAN HORN. Would you put an absolute figure on Mexican immigration to the United States? Or would you—would you change the existing country quota, based on their proximity?

COMMISSIONER CASTILLO. Yes.

VICE CHAIRMAN HORN. What figure would you give?

COMMISSIONER CASTILLO. I think the current quota per country, 20,000 per country, is wholly unrealistic for Mexico and should be at the very minimum doubled. There are more Mexicans who are in the United States legally than any other national group. I mean Mexican nationals who reside in the United States legally. And so there are more potential benefits—and there is more traffic between the United States and Mexico than between any two countries in the world.

The port of San Ysidro or San Diego handles more international traffic than all the international airports in the country put together. As a matter of fact, it handles almost five times as many people as do O'Hare, Kennedy, Philadelphia, Dulles, San Francisco, Los Angeles, all of them put together. It's the world's busiest border crossing point, and that means that people are settling on both sides. So, realistically, there should be more numbers to accommodate all of this traffic.

VICE CHAIRMAN HORN. Would you assign the same number to Canada, our neighbor to the north?

COMMISSIONER CASTILLO. At the moment Canada is not even using the 20,000 that are allotted to it. There is no great pressure, at least now. At some future date there may be.

VICE CHAIRMAN HORN. As highly emotional as this subject is, one of the solutions creates perhaps even more emotion and might even border on the emotions that arise when people want to ban handguns and the National Rifle Association goes out to do battle. That is this whole problem of a national identity card.

In order to make some of these proposals work, in order to avoid the pitfalls that Commissioner Saltzman alluded to with employers discriminating against people of brown skin because they do not wish to be violating a law that might be passed on employing undocumented workers, if—

What are your thoughts on the need for us to go to a national identity card, as abhorrent as a lot of us might think that is? But when we look at the alternatives to the problem, we might feel that's the only solution.

COMMISSIONER CASTILLO. I don't like the idea of a national, universal ID card. But, more importantly, my bosses don't like it, Jimmy Carter and Judge Bell.

But we are producing an identity card for foreign nationals. We have the new green card, of which I have a sample.

[Handing identification card to Commissioners.]

COMMISSIONER CASTILLO. And it has a number of security features. It has a picture with an ear showing, for identification. It has a fingerprint. It has a signature and special paper.

Now, on the back side it has what's called an "algorithm encryption," a code that has someone's life story. And it also has a space for what eventually will be a magnetic stripe, sort of like the other green card, American Express, that will help us identify persons.

There is also a provision in the current immigration law that allows U.S. citizens to ask for an ID card. And it's my prediction—hopefully better than my prediction on backlogs—that in the near future many U.S. citizens, especially those who travel quite a bit across the borders, do a lot of international travel, will be asking for various types of ID.

VICE CHAIRMAN HORN. Along that line, is the INS doing anything in terms of automating identification at the border? It seems to me there ought to be a way to electronically store and retrieve fingerprints, etc.,

so you can sort of track the number of border crossings, you can track who have been previously identified as illegals, etc. and speed up the processing. Is there any thought to—

COMMISSIONER CASTILLO. Actually, the formal name for that card is ADITS, Alien Documentation, Identification, and Telecommunications System, which means that that will all hook up some day into an automated system.

At the moment, it's all we can do to just fill out the forms. But at some point in the future, we will have computer terminals at ports of entry and we will have—

VICE CHAIRMAN HORN. A way to do this.

COMMISSIONER CASTILLO. We will have it. We're just now doing this.

VICE CHAIRMAN HORN. Well, I want to thank you for your answers.

I've got two items, Mr. Chairman, I'd like put in the record at this point. One is, I'd like copies of where the fence is at El Paso and San Diego, to be secured by the staff to insert in the record at this point. That—

CHAIRMAN FLEMMING. Without objection, it will be done.

VICE CHAIRMAN HORN. Number two, I'd like the Carter Administration's proposals to be inserted in the record.

And I would also like to secure the section of the Mexican law to which you referred, that provides very severe sanctions against employers, as I understood your answer, who hire undocumented workers or illegal aliens. The staff can follow up with the Mexican ambassador.

CHAIRMAN FLEMMING. Without objection, both of those will be inserted in the record at this particular point.

CHAIRMAN FLEMMING. I was somewhat interested in your response to a question from one my colleagues relevant to the work of the new commission.

As I understand it, the administration is not going to wait for a report from that commission before it resubmits some legislation in this area. Am I correct also in my understanding that you are rethinking some of the proposals that were submitted the last time, I assume, in the light of the discussion that has taken place relevant to those proposals?

So that we should assume, for example, that the proposals that go back up will be identical with the ones that went up for consideration at the last session of Congress.

COMMISSIONER CASTILLO. That's right.

CHAIRMAN FLEMMING. I just thought the record ought to be clear at that point.

Now you responded to a great many questions dealing with some very hot issues, and I personally have appreciated very much the way in which you responded to those questions. The questions haven't related very much to the service side of your responsibilities.

I'm just wondering whether there's anything more that you want to put into the record, as far as the service side of your responsibilities are concerned and your approach to them?

COMMISSIONER CASTILLO. I think the—about the only thing I would add would be that: as we see it, the whole process is a continuum—someone arriving at a port of entry, or a point of entry, and either is an immigrant or a nonimmigrant, tourist, businessman, and once they're in the United States the alien or the noncitizen has, to the fullest extent possible, all the protections of the Constitution that we can afford them, once in the United States.

Although we no longer have the old provisions under Texas law that aliens could vote in local elections as do some European countries now in local elections, we nevertheless try to afford them protections against abuses of their person, invasions of their privacy.

It's a difficult thing to do because a "noncitizen," by definition, is a little more nervous about asserting rights; but we will try, we are trying, to see that everyone gets the protection.

CHAIRMAN FLEMMING. You referred to an outreach program, and at the same time referred to volunteer organizations?

COMMISSIONER CASTILLO. Yes, sir.

CHAIRMAN FLEMMING. So I gather that you're trying to enlist the help of volunteer organizations in the country in connection with the service side of your program?

COMMISSIONER CASTILLO. Yes. A number of groups throughout the United States have expressed a great deal of interest in helping complete the forms, bringing the groups into the mainstream. And we are providing training for these groups so they can help us complete—they can help the noncitizens complete the forms and qualify for the benefits.

And we've also had numerous meetings with the Association of Immigration and Nationality Lawyers and other groups as we go about trying to define this.

We oftentimes are caught by the more volatile issues such as Iranian students who might demonstrate in downtown anywhere, or on some campus somewhere, and where we are called by local police to deport them all. And we have to constantly assert that a student, from wherever, so long as he doesn't violate the law to the extent that he's deportable, may exercise the same rights of free speech as other people.

It's a little painful. A lot of our people feel that's an ungrateful guest, but it's nevertheless a protection of our Constitution.

CHAIRMAN FLEMMING. Well, I—the questions have covered, as I indicated, many controversial issues, and I want to express personally my own appreciation for the very frank and open way in which you've responded to the questions, and for a compassionate approach that you obviously take for these issues involving so many persons.

Now Mr. Nunez, our Staff Director, may have a question or two.

MR. NUNEZ. Yes. I'd like to follow up on one issue that has been a troubling issue for a long time, since I—the whole issue of the number of undocumented immigrants. And I understood that the Department, several years ago, contracted with an outside firm to con-

duct a study to determine that, just once and for all, and that you recently cancelled this contract. And I was not quite clear whether it was felt that you would—I don't want to go into the reasons why you cancelled it—but whether you are going to proceed.

The question I'm raising is, Are you going to proceed with this effort to try to get a better estimate than the ones we have now, which are just no estimates at all? Are you going to continue in that effort?

COMMISSIONER CASTILLO. Well, let me tell you a little bit about that study and a little bit about what preceded it.

When I arrived here in May of '77, I found numerous studies, all by reputable people, that showed that the number of undocumented could be anywhere between 2 and 12 million, which is not very helpful.

One study had used what's called a "delphi approach," or "delphic approach," where you asked a group of experts what they think it might be, and then you sort of, in effect, average out their answers.

[Laughter.]

And another study had used a less formal delphi approach, and they had polled our district directors and asked them what they thought might be the actual population. And the figures just ranged all over the ballpark.

The Immigration Service in 1976 contracted with a firm to actually try once again to determine what the number might be. This firm, for \$750,000, was to go through a process and come up with a number. They were to do 100,000 interviews.

Well, for many reasons—not all their fault, some our fault, some just government red tape in general—for many reasons, the study was a year late. But they had spent the \$750,000, and not only were we not getting 100,000 interviews, but we were getting 10,000 interviews—if we gave them an additional \$132,000.

So at that point, I decided that rather than later on face the questions of, "Why did you have such a massive overrun," that I would just stop it and try to analyze whatever had been collected to date—they claimed they had done the 90 percent of the reduced sample of 10,300—and then go with whatever we could get from that.

That seems to be an unfortunate pattern in all of these attempts to come up with a precise number for this particular population.

MR. NUNEZ. Thank you.

CHAIRMAN FLEMMING. May I, on behalf of all of us, express our gratitude to you for spending this hour and a half with us, and sharing with us your approach to these very, very important problems.

COMMISSIONER CASTILLO. Thank you, sir.

[Whereupon, at 5:31 p.m., the hearing was adjourned, to reconvene at 8:30 a.m., Wednesday, November 15, 1978.]

Morning Session, November 15, 1978

CHAIRMAN FLEMMING. I ask the hearing to come to order. Counsel will call the first witness or witnesses.

MR. CHOU. First witnesses are Ron Chirlin, Donald Hohl, Kalman Resnick, and Dale Swartz. Would you please stand and be sworn.

[Donald J. Hohl and Dale Schwartz were sworn.]

TESTIMONY OF DONALD HOHL, ASSOCIATE DIRECTOR, MIGRATION AND REFUGEE SERVICES, UNITED STATES CATHOLIC CONFERENCE, DALE F. SWARTZ, DIRECTOR, ALIEN RIGHTS LAW PROJECT, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

CHAIRMAN FLEMMING. Thank you; we appreciate your being with us.

MR. CHOU. I would like to ask you to please state your name, your title, and your business address. Could we begin with Mr. Hohl?

MR. HOHL. My name is Donald J. Hohl, H-o-h-l; I'm associate director, Migration and Refugee Services of the United States Catholic Conference, 1312 Massachusetts Avenue, N.W., Washington, D.C.

MR. CHOU. Mr. Swartz?

MR. SWARTZ. My name is Dale Swartz, an attorney, director of the Alien Rights Law Project of the Washington Lawyers' Committee for Civil Rights Under Law, 1733 15th Street, N.W., Washington, D.C.

MR. CHOU. Mr. Hohl, would you explain the involvement of the U.S. Catholic Conference with the problem of refugees worldwide?

MR. HOHL. The Migration and Refugee Services of the United States Catholic Conference was founded in 1920 to provide immigration assistance and naturalization assistance to people not only in the United States but throughout the world.

During the course of our activities, the conference has resettled in excess of 1 million refugees in all parts of the world, principally since World War II. Our present greatest involvement is with the Indochinese refugees, and since the commencement of that program in 1975, we have resettled approximately 70,000 of those refugees, out of a total of perhaps 140 or 150 thousand which have come in.

MR. CHOU. I'm sorry, I forgot to ask. Did you have a preliminary statement that you'd like to deliver before this Commission?

MR. HOHL. No, I did not have a prepared statement.

MR. CHOU. Thank you. Do you have some other remarks that you would like to make at this time?

MR. HOHL. I could outline some specific areas of concern which may be of interest to the Commission. As regards refugees, it is widely agreed that the definition of refugee is inadequate to meet the demands for movement of refugees from all parts of the world.

The refugee definition was written many years ago related only to refugees from the Eastern Hemisphere and refugees from communism. With the establishment of worldwide ceiling, the definition in no way can assist in the movement of refugees, for example, from the right. A new definition is needed.

The definition contained by the U.N. High Commissioner of Refugees is generally accepted as the most useful for purposes in the

United States, also due to the fact that we are members and signatories to the U.N. High Commissioner's program, the convention, and protocol.

We would favor the adoption, of course, requiring legislative action by the Congress of that definition; the second thing as regards refugees is the handling of the matters of asylum. The handling of the stay of deportation under section 243H of the Immigration Act should also be reviewed in the case of section 243H; the suggestion there would be the definition, the terms and so on, by which the State can be granted should be changed again to more or less conform with the procedures which have been set up and the definitions which have been set up for the granting of asylum to political refugees.

The Immigration Service at the present time is revising its procedures for the handling of asylum requests and it would be greatly improved, but there should be certainly some correlation, some uniformity as regards 243H applications and asylum requests.

One final thing that I would like to mention is the matter of family reunion. It is the family reunion that is the cornerstone of the U.S. immigration policy; 76 percent of the visas have been allocated for that purpose. It is one of the features in the Immigration Act which the Catholic Church is extremely concerned about.

The question of who may come into the United States has been pretty well resolved. The various preferences which presently exist causes not too much difficulty. However, there is the problem of the number of visas which are allocated to each preference. They are inadequate, certainly, in the case of the second preferences for the spouses and the unmarried sons and daughters of lawful resident aliens.

That percentage should be increased. Families are being separated at the present time simply because there are insufficient visas available for the purpose of family reunion as regards to second preference. As an adjunct to that, certainly, we run into difficulties on a daily basis as regards section 212(a)(15) of the Immigration Act, which prohibits the entry of any person who, in the opinion of the American consul, is likely at any time after entry to become a public charge.

The difficulties in the application of this section is resulting in the separation of families, and there I'm concerned about the members of the immediate family, the spouse and the children.

I would feel that this whole section should be reviewed to the point of being less stringent, number one, and, secondly, as regards family reunion, consideration might even be given as to not have this section of the law applied when it comes to family reunion of spouses, children, United States citizens, or permanent resident aliens.

MR. CHOU. If I could just follow up on a few things that you mentioned in your brief statement, How is the public charge provision, in your experience, being currently interpreted?

MR. HOHL. By law, the definition is to be interpreted in an individual case by individual consuls throughout the world. The law, again, reads "in the opinion of"; there is no appeal from the decision of an American consul, should he deny entry on this basis.

At the very most, the Visa Office of the Department of State could render an advisory opinion, but even if they suggested to the consul that he may have grounds to review his decision, he cannot be forced to do that, nor can he be forced to change it. It would only be in cases of law that the visa office could order a consul to change a decision. Where he is rendering his discretion authority, where he has the right to form an opinion, he cannot be ordered to change that. There is no appeal.

Now, certain guidelines have been given by the Visa Office to the various consuls throughout the world; instructions have been sent out. Again they are guidelines. We have run into situations where a man has been supporting his wife and his children while he was in the United States temporarily, most times illegally. He's been able to support them. He's been able to keep them off welfare, off public assistance. He has, however, been unable to meet the guidelines which have been set down by the Labor Department, which are being used by the Department of State by the American consuls, again, in trying to form their opinions. We've had a number of cases where the visa has been denied because, in the opinion of the consul following guidelines, his "income is insufficient to support members of his family."

A second thing along the same lines is that the undocumented alien, for example, or it could be any alien who has a U.S. citizen wife and children in this country, who has a low income, however, income which would be sufficient to support himself without any question but in the opinion of the consul would be insufficient to support his entire family, would be denied a visa to come to the United States to be reunited with his family.

Here, again, I've questioned many times the interpretation of this section of the law, which talks about the alien becoming a public charge, not the alien and his family, but the alien becoming a public charge.

The interpretation of that section, however, refers to the fact that somebody—the family unit is considered a whole, so that if any public assistance is given to a part of the family, it is interpreted as being given to all of the family, not just to the alien member, and that certainly should be looked into.

MR. CHOU. Another thing you mentioned, Mr. Hohl, was the need for expanding the numerical limitations for second preference for spouses and of resident aliens.

Could you tell us how that differs from spouses of U.S. citizens who are attempting to enter the country?

MR. HOHL. The spouses and minor unmarried children of U.S. citizens come into the United States without numerical limitation. Also, the parents of adult U.S. citizens enjoy that same privilege. The spouses and unmarried sons and daughters, irrespective of age, are required to come here under a numerical limitation.

At the present time the percentage of the quota is set at 20 percent. If the demands for entry exceed the number of visas available, then it becomes a backlog, a waiting period, and the families remain separated during that course of time.

At the present time, although we have just had a preference system for the Western Hemisphere, since 1976—actually it was in January 1, 1977, when it became effective.

The quota for Mexico in the second preference has become oversubscribed, where previously there was no numerical limitation; there was no problem about the reuniting of families.

In the period of less than a year, or just a little better than a year, that particular section of the quota as regards Mexico is oversubscribed, and there is now a waiting period and it appears that waiting period will continue to increase.

MR. CHOU. In your statement you mentioned that perhaps we should expand the numerical limitation for second preference. Do you have any other suggestions or other alternatives which you would suggest?

MR. HOHL. Other than increasing the numbers themselves, thought certainly could be given to allowing this category of persons to come into the United States without limitation.

MR. CHOU. The U.S. Catholic Conference has also supported the Carter proposals for amnesty, as it is popularly known. Could you explain the Catholic Conference position on this subject?

MR. HOHL. Back in 1971 we presented our first testimony in this area of concern before the then Rodino Committee down in El Paso, Texas. We are concerned, as all Americans are concerned, I'm sure, about the presence of the undocumented aliens in this country. We do not condone their presence; we do not condone violation of law.

There are questions, however, that inasmuch as it is possible for the undocumented to come into the United States and in large numbers, there is the question as to the responsibility of the United States to the presence of these people here. The numbers, of course, we don't know, and I won't even go into the matter of the numbers game.

However, the fact remains there are substantial numbers of people here. They are, of course, subject to immigration because they have violated the law; there's no question about that. These people have become a part of the community. What impact they have had on the economy in the way of employment has already been felt for those who are presently working.

So far as the impact on the community is concerned, they are in the housing, they are taking advantage of the social services to which they are entitled by virtue of the fact that they are paying taxes. The impact on the community has already been felt.

We feel that a very generous amnesty should be granted for the simple reason that until this cancer in our society has been removed, the problems will only continue to increase for the individuals concerned, for the families, and also for the country, in general.

If the amnesty is to be effective, it has to be complete, it has to be simple, it has to attain the purpose for which amnesty is granted. In conjunction with a very, very broad grant of amnesty, we would, however, like to see steps taken by the United States for the enforcement of existing laws, writing new laws, if necessary, to see that the problem does not recur, at least in the proportion which it is believed to exist today.

MR. CHOU. Thank you, Mr. Hohl.

Mr. Chairman, at this time I would like to ask Mr. Resnick to stand so he could be sworn in.

[Kalman Resnick was sworn.]

MR. CHOU. Mr. Swartz, do you have a prepared statement or some opening remarks that you would like to make at this time?

MR. SWARTZ. Just some opening remarks. The Lawyers' Committee established the Alien Rights Law Project only about 8 months ago. Its purpose is to provide legal representation to noncitizens who are unable to afford or retain an attorney in matters involving immigration problems or other civil rights, housing, unemployment, access to government benefits, and straight immigration problems.

In the experience over the last 8 months, we've got involved in a number of individual cases, in a variety of areas, deportation proceedings, application for political asylum, adjustment of status, and we've also gotten involved in a number of larger, what I would call, law reform or impact litigation matters, including problems of having Haitians in the Miami area who are seeking political asylum.

Just very briefly, if there's one main theme that I've become alert to in directing this project, is that there are many, many, invidious assumptions, stereotypes, erroneous impressions about the character of noncitizens in this country, and that in my judgment underlies many of the problems they face.

Just briefly in a couple of examples. We submitted an *amicus* brief together with MALDEF in a case called *Combatti v. Norwood* which challenged a New York law which provided that public school teaching jobs would be reserved for citizens and noncitizens who declared an intention to become a citizen and then pursued the naturalization process. The State's justification for this restriction on access to public school teaching jobs was that noncitizens who could apply for naturalization but refused to do so, thereby demonstrated a lack of appreciation for American institutions, lack of commitment to democratic values, and were unfit to teach in public schools.

It was a classwide assumption, and New York was unwilling to examine those questions through the certification process that they subject each to individual applicant for a teaching job to. They just

wanted to impose a classwide assumption, and a similar assumption, in my judgment, underlies Executive Order 11935, which, I understand, was discussed by Al Perez somewhat yesterday, which provides with certain exemptions that noncitizens may not even compete for Federal Civil Service jobs.

These invidious assumptions, erroneous impressions, lack of information about the number of undocumented workers in this country, about the extent to which noncitizens are deriving welfare benefits, often informs actions taken on the part of the government, or by private individuals that adversely affect or have a discriminatory impact on aliens.

So I think there's a great need for public education in this area and there are many civil rights problems in this area aside from the immigration field. We are handling housing discrimination cases and employment discrimination cases on behalf of noncitizens.

Another major problem, of course, is the administrative nightmare that you confront when you try to work with the Immigration Service. We've done some work in this area relating to substantial delays in the issuance of work authorizations, and very recently the Immigration Service agreed to promulgate new guidelines designed to ensure that persons who applied for adjustment status will immediately receive a work authorization while their application is pending, as long as they've made out a *prima facie* case that they're eligible for adjustment. Mr. Hohl discussed problems with the nonreviewability of consular determinations. We've just agreed to take on a case where a consular official in Bolivia refused to issue an immigration visa to an applicant on the grounds that 4 years before when he sought a tourist visa he misrepresented his intentions to work.

We have been denied any access to the records of the consular official upon which his determination was based. Those records simply reflect an interview with the applicant, so we cannot get access to the consular office records about statements made to him by the applicant for the visa and upon which the visa was denied. The State Department says all such records are confidential.

We took an informal appeal in that case to the State Department, and they conducted an approximately 1-hour interview with the applicant and determined that the consular official had made an erroneous factual determination, and they entered what they call an advisory or recommendation to the consular officer that he reverse his determination; he refused to do so. The State Department says, "Our review of the factual determinations issuing are simply advisory, although we can make binding recommendations of questions of law."

Consular officers, as Mr. Hohl suggests, exercise tremendous discretion in determining who can enter this country. Their decisions are unreviewable as a practical matter and there are many, many, instances where that discretion is reviewed.

MR. CHOU. Mr. Swartz, could I ask you to highlight the remainder of your statement in like a minute or so in the interest of time?

MR. SWARTZ. Sure. I'll be pleased to answer questions about the situation in Miami involving the Haitians. It raises many many, due process and right to counsel questions, and I would like to emphasize the importance of the assistance of counsel in proceedings before the Immigration Service.

There are very few attorneys that practice immigration law. Many persons who are in need of assistance of counsel are indigent, unable to afford counsel and there's a great need for the government, I think, to take steps to make sure the right of counsel is honored.

MR. CHOU. Chairman Flemming, at this time could I ask Mr. Chirlin to stand so he could be sworn.

[Ronald Chirlin was sworn.]

MR. CHOU. I would like to ask Mr. Resnick at this time if he has a prepared statement or some oral remarks he'd like to make?

TESTIMONY OF KALMAN D. RESNICK, LEGAL SERVICES CENTER FOR IMMIGRANTS

MR. RESNICK. I'm the supervisory attorney for the Legal Services Center for Immigrants in Chicago, which is a legal services program to provide assistance to low-income immigrants in the Chicago metropolitan area.

For those of you who aren't too familiar with our situation, Chicago has many large and growing immigrant communities from Latin America, from Eastern Europe, from Asia, and we are involved in providing services to them and engaging in reform litigation on their behalf, and in administrative and legislative advocacy.

We welcome the opportunity to come here today and hope that our experiences of our center can be of assistance to your committee. We think your investigation is an important one because we see many abuses in the administration of the immigration and nationality laws, and we see the way in which the immigration issue is being used to restrict the civil rights of many immigrant communities in the United States, including United States citizens and permanent residents of foreign ancestry.

I would like to draw the Commission's attention to several particular problem areas. First would be in the inequities in the administration of the laws authorizing issuance of immigrant visas. Besides the problems that were spoken of earlier with respect to unfair conduct by the consuls, there's a problem of continual violations which have denied issuances of visa numbers to persons in the Western Hemisphere that were authorized by Congress, and our center has been involved in two important cases in this area, the *Silva v. Levi* case and the *Contreras D'Avila* case, which are seeking to restore numbers in the *Silva* case. We have received an order from the judge restoring 144,999 visa numbers to the Western Hemisphere that were unlawfully not issued by the Department of State and the Immigration and Naturalization Service.

Another area of concern to us would be the inadequacies of the performance of the Immigration Service in its service functions. Resources for a substantial period of time have been put into enforcement rather than service functions, so that you have in many parts of the country long delays in the processing of applications and petitions. In Chicago it takes over a year and a half to be naturalized once you file your initial petition. This is after waiting the 5 years of being a lawfully permanent resident.

Relative visa petitions take over a year in many, many cases. There is inadequate staffing in the Chicago office for service functions. This staff that are working, many of them are inadequately trained, and one of the big problems, even after you've waited a year, if you do not hear about what's happening to your application, there are no procedures available for easily finding out what has happened to your application, either for the attorney or for the applicants herself or himself.

Another large problem in this area—if a person seeks services from the Immigration and Naturalization Service Office, then they are immediately subject to investigation and enforcement actions if it should come to light during the time they are seeking services that they may be a deportable alien or may be subject to investigation as to whether or not they are deportable aliens.

This is a large problem because some people in the INS in the central office have gone on the public record to tell the documentable people to come forward for assistance from the Immigration Service. In Chicago many of these people are being subject to expulsion proceedings, even though they qualify to lawfully immigrate to the country under the quotas.

Another concern of ours in the Chicago area is the unlawful arrest and detentions in investigatory proceedings by the Immigration and Naturalization Service, and we've been involved in several lawsuits against both the Immigration Service and against local and State police departments with respect to constitutional violations of the rights of U.S. citizens and permanent residents who have been subject to arrest and detention by visa officials.

MR. CHOU. Mr. Resnick, could I ask you to highlight the rest of your statement in about a minute or so, so we could cover some of these issues in more detail?

MR. RESNICK. Another concern of ours is coercion of people's rights to waive counsel, who are being coerced to waive the right of counsel, to waive their other statutory and constitutional rights. When they are arrested by the Immigration and Naturalization Service in Chicago, many of them are being forced to waive their right to a deportation hearing and depart the United States without a hearing even though they have U.S. citizen and permanent resident relatives.

Another concern and a growing concern is over discriminatory abuses of the rights of immigrants by governmental agencies, because

of the promulgation of many different regulations and new statutes in different areas, for example, in social security, unemployment insurance, persons who are lawfully in the United States or persons who are U.S. citizens of foreign ancestry are experiencing substantial amounts of discrimination by governmental agencies denying them statutory rights.

The problem is also growing in the area of employment. Because of the talk about legislation with respect to penalties on employers, many employers in the Chicago metropolitan area are very afraid of hiring persons of foreign ancestry, and, as a result, we've had several cases in which we've had people denied access to employment where they have been persons lawfully residing in the United States, and we have engaged in litigation on their behalf.

Some employers in the Chicago area are adopting citizenship requirements, and we've been challenging those successfully through litigation under 42 U.S.C., Section 1981, the 1871 Civil Rights Act.

We also have situations where the immigration issue is being used to prevent persons to engage in organizing efforts, union organizing efforts and other types of labor-protected activity by the use of the immigration issue.

The last area I wanted to mention is our concern about the absence of meaningful relief from expulsion proceedings for persons who have long-term residency in the United States and the absence of the statute as they are currently—provisions that would provide long-term relief to persons who have long-term residency in the United States.

MR. CHOU. Thank you.

MR. CHIRLIN, could you identify yourself and your title for the record, please, and give your business address?

TESTIMONY OF RONALD CHIRLIN, STAFF ATTORNEY, AYUDA, INC.

MR. CHIRLIN. Yes. My name is Ronald Chirlin. I'm a staff attorney with AYUDA, and AYUDA is a legal aid and social services agency for the Spanish-speaking in the Washington metropolitan area, and the address of AYUDA is 1736 Columbia Road, N.W., Washington, D.C.

MR. CHOU. Do you have a prepared statement or some brief oral remarks that you'd like to present to the Commission? If you do, I'd like you to ask you to confine them to a minute or so, in the interest of time.

MR. CHIRLIN. I didn't have a prepared statement. I'd just highlight a couple of points that weren't mentioned since I came in, in just half a moment.

It is interesting to hear that all over the country in different agencies we have the same interests when we're dealing with the immigrant community, and the community of permanent residents and foreign surnamed and naturalized citizens, and I already heard most of my interest highlighted by the other witnesses.

Two points I haven't heard yet relate to—not exactly on point—relate to social services and extra assistance for aliens who are detained by the Immigration Service, and the problems with detention facilities and basic rights of people who are detained or arrested to communicate with the outside and to try to arrange the bonds.

I think it is an area where the rights of people are greatly diminished, in that they would have greater rights in criminal proceedings and they would have greater rights if they spoke English, because they have great difficulty trying to make arrangements for themselves even where bond or something can be posted.

And I believe there should be some kind of system for the Immigration Service to encourage the participation of social service agencies to help people who are in detention situations.

Another point of interest to myself and to, I believe, most of the other people working in this area is the difficulty of the complete lack of social services for the undocumented. And when it's said flat out like that, it is a concept that is offensive but the idea goes a little bit beyond that when you understand the subtleties. The first subtlety is when we talk about minimum services for the undocumented, we're talking about police services, as when someone is raped or assaulted or robbed, and the effect of lack of even such basic services as police services for people who are afraid to have any involvement with the police because they're afraid they will immediately be turned over to the Immigration Service, and related lack of very essential services, such as education for people's children when even they are undocumented. They may be in the United States for long or indefinite periods, and critical medical services, including the medical services that the lack of which may result in the danger to the community at large. And the chilling effect on the rights of permanent residents and citizens in getting services to which they are entitled because of members of their family who may be undocumented or friends or neighbors. And the general chilling effect on people who are entitled to basic services, to receive services, because of the fear of the Immigration Service.

And the concluding sentence to cap that point is that I believe that there should be determined some basic group of services to which even the undocumented are entitled and which they can receive in some way in which they would have immunity from direct apprehension from the Immigration Service, so that they, too, can have some basic humanity.

MR. CHOU. Thank you very much. Mr. Swartz, you mentioned in your opening statement the problem with the INS processing of asylum applications in Miami, Florida. Could you describe that situation for us?

MR. SWARTZ. I would like to preface my remarks briefly by saying that we are still investigating facts in Miami, and I can give you a general impression but it may be 2 weeks from now my understanding

of the facts would be somewhat different, but I would submit for the record prior to the 30-day period a complete comprehensive statement of our assessment of what's happening in Miami.

VICE CHAIRMAN HORN. Without objection, that will be inserted at this point. Did Counsel get all the other statements in the record as you proceeded with each witness?

MR. CHOU. I think they were all oral remarks.

VICE CHAIRMAN HORN. Those will be inserted after the introduction of each of the four witnesses.

MR. RESNICK. I would appreciate it if I could be granted to submit a prepared statement, whatever the customary time is.

VICE CHAIRMAN HORN. All right, that will be inserted.

MR. SWARTZ. The situation in Miami, as I understand, based on the investigation we've done so far, is as follows: There are Immigration Service estimates that approximately 8,800 persons of Haitian descent [are] in the Miami area. Until July of this year, the Immigration Service was processing deportation against Haitians or treating Haitians just as they were treating every other noncitizen in the Miami area, conducted deportation hearings at the rate of approximately 10 a day.

In July a decision was made to increase the rate of deportations involving Haitians only to approximately 60 a day, and in September a decision was made to increase the rate of deportation proceedings against Haitians only in Miami to approximately 120 a day.

Now, most of these Haitians have filed claims for political asylum, and the Government's position seems to be that, firstly, all of the claims for asylum are frivolous, and some governmental officials have expressed to me a great concern that if Haitians in the Miami area are allowed to remain for substantial periods of time, they will simply open up the floodgates. Many other Haitians will have the incentive to come to the United States, and persons from other Caribbean or Latin American countries, similarly, might come to the United States and claim asylum even though they don't have any legitimate basis for making that claim.

As a result of the substantial acceleration of the rate of deportation proceedings, it appears to me that you have violation of right to counsel, violation of other due process protections, and violation of certain statutory and regulatory requirements throughout the process, and this is particularly true since July of this year when the acceleration took place.

There are three attorneys in the Miami area who are providing representation to the Haitians on a *pro bono* basis, or without a fee. There are approximately seven attorneys total providing representation to the Haitians, and this information is based upon interviews we conducted with attorneys and an interview with the president of the local Association of Immigration and Nationality Lawyers.

So we've got a total of seven attorneys, none of whom are doing this full time, attempting to provide representation to approximately 8,800

Haitians, who are being run through the process now at a rate of approximately 120 people a day, and some of these attorneys will have seven or eight or nine deportation hearings scheduled simultaneously in different locations. They simply cannot provide representation.

Sometimes there will be a continuation, sometimes the immigration judge will rearrange the schedule, and other times attorneys simply cannot appear on behalf of one of his clients; and I don't believe that the attorneys can be faulted for taking on too many cases because they are the only people—these six or seven are the only people willing and able to represent the Haitians, that's what we're informed of, and they are tremendously burdened by the rate at which the Service is processing these people.

In addition, the way the process works, an alien can apply for political asylum initially before a district director; a district director reviewing the claim can make three determinations: to grant asylum, to deny it on the grounds that it is frivolous, or consider it questionable and refer it to the State Department for a recommendation.

The district director is obligated under the regulations to conduct interviews before making those determinations. The regulations provide that those interviews must be transcribed; a record must be kept. In the Miami area, from personal observations and from information provided by the attorneys involved, the Section 108 interviews are not being transcribed. If an attorney is present, he is not being allowed to participate in any manner of the proceeding—not being allowed to ask clarifying questions of his clients, not being allowed to object to the way in which questions are asked, and many problems are arising from that.

The transcript—or the answers given during those 108 interviews provide the basis for a decision, and any statement made by the alien during the process can be used against him in a deportation proceedings.

Most of the attorneys involved simply can't attend those critical interviews because they have to attend one of the deportation hearings that are scheduled simultaneously.

Just to summarize: In my judgment, starting from the very beginning, those 108 interviews throughout the process, since July because of the tremendous acceleration of the rate at which people are being processed, the lack of available counsel to provide assistance, and, quite frankly, some fairly blatant efforts by the Immigration Service to intimidate attorneys who are providing representation to the Haitians, all persons who have been through the process since July have had their rights violated, have not had a fair opportunity as required by American law and the U.N. protocol to fully present their claim for political asylum.

MR. CHOU. Mr. Resnick, you mentioned in your opening statement the involvement of local police in the interrogation and arrest of suspected undocumented aliens. Can you tell me about some of the practices that they use in Illinois?

MR. RESNICK. The one case that was brought to litigation involves the Moline, Illinois, Police Department, where the police department would go into local social clubs, bars, restaurants, and interrogate everyone of brown skin who appeared to be a person who might be of Latino ancestry as to what their status was in the United States.

Almost without exception, the persons were U.S. citizens or permanent residents. Some of the persons who did not have their proof of U.S. citizenship on them were arrested and taken to the local police department, were put in jail, had arrest records created.

As a result, we filed a lawsuit over that with respect to the actions of the Moline Police Department in the city of Moline and it was settled with the city of Moline issuing a statement of apology to the Latino community and the persons involved.

It was just one city but there's a common practice throughout the State for local and State police to be interrogating persons, who are stopped for no reason at all on the street or on the highways of the State of Illinois, as to their immigration status, or persons who are stopped solely for traffic violation who present driver's licenses and then are interrogated further as to their status.

The problem is a growing one and one which is related, we feel, to discrimination, particularly in many of the all-white communities outside the city of Chicago against Latinos generally and persons of Latino ancestry.

MR. CHOU. Yesterday we heard the name of the town of Onarga, Illinois. Are you familiar with it?

MR. RESNICK. Yes, I am. I'm involved in representing a number of people who reside in the town of Onarga, Illinois. Onarga is a small community of several thousand people about 80 miles south of Chicago. There is a large Mexican American population there, persons of U.S. citizenship and permanent residents.

The Immigration and Naturalization Service together with the Illinois State Police and the sheriff of Iroquois County, the county in which Onarga is located, and a police officer in Onarga participated on July 7 in a raid upon that community in which they barricaded the major roads in and out of the town, went to several work places, arrested several—about 30 people, 30 to 40 people—went door to door in some sections of the town in which there were a number of Mexicans residing, stopped cars on the street, stopped people on the street. Some people were interrogated four to six times before the Immigration and Naturalization Service left the community.

One of the problems that developed was that we immediately were contacted by several Catholic agencies in the town to provide assistance to persons who had been detained. We contacted the Immigration and Naturalization Service in Chicago to say we would be representing the few persons who had been detained and we had been requested to do such by several groups in Onarga, Illinois.

The Immigration Service told us that the people were being brought to Chicago for processing and we could speak with them there. We later in the day, approximately 15 minutes before the Immigration Service was closing, discovered that the persons had been instead placed on a bus for transportation to Mexico. They had not been informed that there was counsel that would represent them in Chicago if they decided, wished, to go to Chicago for processing.

We thereafter asked that the bus be returned to Chicago so we could talk with our clients; the Immigration Service refused to do that. After some negotiations late into the night on the 7th of July, they agreed to hold the persons in El Paso at the detention facility there, if we would fly at our own expense down to see our clients. So we flew down to El Paso, interviewed our clients, and nine of them, I believe, returned to Chicago, several of whom have U.S. citizens or permanent resident, close relatives who they are separated from by the actions of the Immigration Service.

MR. CHOU. Thank you. Mr. Chirlin, you mentioned—in your opening statement you made some comments about the INS servicing procedures. Could you briefly describe your experience with the INS Adjudication Division?

MR. CHIRLIN. Well, I'm not sure about the specificity of that question, but I'll make some kind of an answer. You can go further in what direction are you interested in. And Mr. Resnick already discussed the problems with long delays and backlogs, and problems in getting information about applications that have been long pending, and not only the difficulty getting information about long-pending applications, but always wondering whether you're getting reliable information, and then many times after several inquiries and being told that a particular case is being processed, you'll finally be told that the file was lost. It seems that the problem of lost files is a problem that's getting worse, at least in the district office that I deal with here in Washington, D.C.

MR. CHOU. What are the consequences of a lost file for your clients?

MR. CHIRLIN. Well, consequences of a lost file are varied. It may not only be the files that are lost by the Immigration Service. Many times—another problem is that is a game where under the law the Immigration Service and the consuls or the Visa Office and the Department of State have joint responsibilities in many cases, and you run into situations where inquiries to the Immigration Service bring the response that you have to talk to the consul and vice versa, or you know who has it but part of the problem is just a communication between the consul and the Immigration Service and you can't—both may be trying to help because they can't communicate with each other.

In a situation like that, you have separation of families, delayed for long periods of time. I presently have a case where a woman who has been separated from her husband for 2 years and is here supporting

her 4-year-old child while I'm making calls at \$20 and \$30 a shot to the consulate in Colombia, trying to clarify the situation.

In other situations with lost files, a lost file for someone who is eligible for permanent resident defers the time when they become a permanent resident and therefore defers the time when they will ultimately become a citizen and accrue other rights.

I think that these delays not only create severe hardships, humanitarian hardships and family separation in individual cases, but they lead to a lot of frustration on the part of the immigrant community and maybe one—I'm sure it's one of the things, first important contacts with U.S. Government, and it's not a healthy process to encourage them to become active and involved citizens when their first contact with bureaucracy is such a disappointing contact.

MR. CHOU. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I recall when it was a crime to buy and sell liquor during Prohibition. We created a superstructure of law enforcement to cope with the violations of the law, and I recall when it was all cleared up all at once, the atmosphere by removal of the cancer, by simply repeal of the law. The repeal amounted to an amnesty, and illegal activities of the month before were suddenly no longer illegal. Persons working under the shadow of the law now came out into the sunshine.

I was very much interested in the casual statement made by Mr. Hohl and that was, he used the word amnesty.

We have been very much concerned here with our internal problems relating to deportation and things that are occurring here in the United States, contact with the bureaucracy that you stated.

Are there any studies being made as to how we can start from scratch all over again, using our past experiences as a point of reference with relation to this thing of amnesty? Obviously, we can't build a Chinese Wall, but the thought has intrigued many people. I've seen it in the press, and perhaps you people who are working in the front-line trenches have some thoughts along that line. I would like Mr. Hohl to give me his thoughts on that.

MR. HOHL. Studies of various types have been undertaken in this area, the most recent one funded by the Immigration Service to try to uncover the undocumented, to talk with him, to count him, find out where he was from, how he came in, how long he had been here, what his routes are, for the most part have been unsuccessful. The Reyes study funded by the Immigration Service just recently has been cancelled because more money was needed and little progress was being made.

It is very difficult to count, to examine, and so on, something which one cannot see. There is no question that the vast majority of the undocumented coming in here are coming for economic purposes, but that is not the sole reason for their presence. One is for the purpose

of family reunion. If in the case of a wife separated from a husband, parent, child, or so on, civil law says that he can't come into the United States and be reunited with his children because of some quota, some civil law, the question arises as to a greater law, perhaps, that he might have a right to be here, at least to be here physically, until the problems can be worked out, if not only physically but also perhaps legally.

COMMISSIONER RUIZ. Do you have any thoughts what studies are being made along the query that I made relative to how we would start all over again with the hypothesis that amnesty might be one solution? How would we start all over again, and do it right this time? Are you suggesting it might be limited to keeping families together in the future? How about the enforcement thing?

MR. HOHL. We have some very definite feelings about the matter, some short term, some long term. As regards Mexico, certainly the long-term solution is going to be the economic development of that country to the point that Mexico is able to provide employment for its population.

Until that takes place we're going to have continued crossing of the border for employment purposes. That would be the long-range solution to probably 75 percent, 95 percent of the movement of people from Mexico into the United States, which has been going on for many, many years. It is not a recent phenomenon.

On the short-term basis, the enforcement of existing laws against employers—right now, as you well know, it is not a violation of law for an employer to hire an undocumented alien. Even if he knows he's undocumented, he's still not violating any law. However, as an employer he's bound by many, many other laws. For example, he must pay a minimum wage. He must conform to the requirements of withholding income tax. He must contribute and also withhold at the same time to the social security system, just to name a few of these laws.

COMMISSIONER RUIZ. Getting back to the original question, do any of the other members of the panel know of any study or projection that is being made on the hypothesis of the amnesty that we have read- ing about or has that simply been tossed out without thinking further?

MR. SWARTZ. I don't know of any other studies, but what seems to me might be an appropriate question to ask the blue ribbon commission on immigration that will be established pursuant to legislation recently signed by President Carter.

COMMISSIONER RUIZ. We've been making reference to that blue ribbon commission here, and I managed, Mr. Chairman, to get a copy of the bill, and since we've been referring to it, I would like to offer it at this time as an exhibit.

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this time.

COMMISSIONER RUIZ. It is your thought with relation to this blue ribbon committee that there was going to be a study and analysis of perhaps this project. I notice that your organization does some lobbying and that is probably why you were prompted to think in those lines?

MR. SWARTZ. Some.

COMMISSIONER RUIZ. It might be well to probe this question that I've put because I think it is an exciting one and may be of assistance to everyone, Mr. Chairman.

MR. CHIRLIN. Are you referring to a statistical analysis of the undocumented immigrant community? Is that what you're talking about?

COMMISSIONER RUIZ. No.

MR. CHIRLIN. Or are you talking about—because, I suppose even when the President—we got the President's proposal in August of 1977 that was based on a number of Cabinet meetings.

COMMISSIONER RUIZ. Oh, I see what you mean. With respect to this last item that we were talking about—

MR. CHIRLIN. Yes.

COMMISSIONER RUIZ. That was a committee formed by the President probably for purposes of going into the entire problem and making recommendations with relation to modifications and changes in the immigration laws as they exist.

MR. RESNICK. I do know that the Mexican-American Legal Defense Fund—I know they testified yesterday. Al Perez in their organization did do an analysis of the President's proposals and the question of amnesty and several other aspects of that. I don't know if that was presented as an exhibit yesterday, but there is that work that was done as an analysis of the President's proposal.

MR. SWARTZ. One other organization—there's been an interagency task force set up under the direction of a gentleman by the name of David Yeres in the Justice Department, the purpose of which was to first study policy, what should our immigration policy be, and make recommendations for statutory regulatory changes pursuant to new policies. It is my understanding that interagency would, in fact, be subsumed by this new blue ribbon commission and the work they have done so far most likely will be funnelled into this new commission.

COMMISSIONER RUIZ. Apparently, from our testimony heretofore, the policy is in a state of flux and this is where we have to nail it down with the new committee, as I understand it.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. For the sake of time, may I just ask a yes-or-no question of each of you? Do you, or acting as representatives of your various groups, does your organization have any specific recommendations you would like to suggest for the improvement of the law or the administration of the law?

MR. SWARTZ. One very specific suggestion that I suggested—

COMMISSIONER SALTZMAN. What I like, if there are specific recommendations your organization would like to make, or have in mind, would you submit those to us?

MR. RESNICK. Yes, I would be happy to submit those in writing. That's one of the things I was planning to submit with the statement that's forthcoming.

COMMISSIONER SALTZMAN. In one specific area, however, I would like a more detailed answer at this point. Yesterday, the Commissioner saw no conflict or contradiction between the enforcement and the service responsibilities of INS, yet he, in his testimony, did make reference to the point that the border police, at the time of their work on the border itself, have no time, are so involved with enforcement and the requirements, of course, of enforcement, to counsel and in effect provide a service to people. That seemed to me to present a contradiction to his point that there was no conflict between the enforcement and the service responsibilities of INS.

Would you say that, indeed, there is a conflict in that area?

MR. RESNICK. I think there's a tremendous conflict in this area; I'll give you some examples. If in Chicago a person who is the spouse of a permanent resident or the child of a permanent resident who is from Mexico, for example, which is a country which is backlogged in the processing of applications for visas for second preference immigrants, if the person goes with his or her U.S. citizen, permanent resident relative to the Immigration Service office to assist to obtain lawful status, they will be processed not only for an application for a visa, they will also be processed for expulsion proceedings from the United States and be set for a deportation proceeding, so the very act of trying to legalize your status, which Congress says you are entitled to do, will result in your being expelled from the United States because of unavailability of visa numbers at the current time.

The result is that many people are afraid to go to the Immigration and Naturalization Service, will not go for assistance, will not go to file applications or to find out what's happened to applications, because they are then subject to expulsion proceedings. There is no bifurcation of these functions in the Immigration and Naturalization Service in Chicago. You may wait in one line that may appear to be a service line, but you may be immediately transferred to another line or to another officer who is engaged in enforcement functions.

COMMISSIONER SALTZMAN. Would any of you be able to evaluate the motive or, What are the sources for the increase in apprehensions over the last year? Is it greater effectiveness upon the part of the present staff of the INS or is there an intensification of influx of undocumented workers? Have you any idea of what explains the increase in apprehension?

MR. HOHL. I would attribute it at least partly to the more sophisticated techniques of detection and apprehension. Also, there certainly has been increased activity on the part of the Service in the whole area of apprehension. As you know, the Service has been under, for a number of years, tremendous pressure on the part of the Congress, the community in the United States, and so on to do a more

effective job. They've been laboring under handicaps of various types. However, with money and with increased staff, they have been able to step up their efforts.

COMMISSIONER SALTZMAN. You don't see it as a result of an increased influx of, necessarily an increase, or do you have any way of really responding to—

MR. HOHL. I couldn't respond to that. One of the things that I certainly would like to know—we talk about apprehension, the million apprehensions, that does not mean a million individual persons. It could have been repeaters and so on, and that happens very, very frequently that they come in back and forth across the border.

One of the things that I would like to know, if the Service had time and staff and so on to do it, would be to get a little case history on each and every person that is apprehended so we have a profile on these people that they pick up.

MR. RESNICK. I would also like to respond that some of the increase is due to what we see as unlawful techniques of investigation violative of the fourth amendment guarantees against unlawful searches and seizures, and what we should realize is that for every undocumented person who may be apprehended there are numbers of persons who are U.S. citizens, permanent residents, residing lawfully in the United States who are subject to the types of interrogations I spoke about in connection with Moline, Illinois, or Onarga, Illinois, who have to go through the humiliation of unlawful search and seizure, being stopped only because their appearance is such that it suggests—because they have brown skin or they have some yellow skin or whatever it is, that they may not be a lawful resident of the United States, from that sole physical characteristic.

So we should be aware of the impact of these investigatory procedures on persons who are lawfully in the United States, which is a humiliation for these immigrant communities, and which is a form of intimidation which we see as limiting the civil rights of these persons, which is preventing them from taking advantage of access to governmental benefits and which they are lawfully entitled to, services which they are lawfully entitled to.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Swartz, I would like to pursue with you the problem of the Haitians. You indicated that in July a decision was made to increase the processing to 60 and then thereafter to 120 a day. Do you have any information as to who made the decision, which agency made that decision?

MR. SWARTZ. My understanding—and I'm not certain this is correct—my understanding is that the decision was made by Associate Attorney John Egan.

COMMISSIONER FREEMAN. The Attorney General—

MR. SWARTZ. Within the Justice Department, that's correct.

COMMISSIONER FREEMAN. Do you have any information as to whether the U.S. Department of State was involved in this decision or not?

MR. SWARTZ. No, I don't have hard information on that. I would assume that the State Department would have been consulted because of the State Department's role in the current regulations in the processing of asylum applications. I think they would have to be consulted because the increase in the rates would have had an impact administratively on their responsibilities.

COMMISSIONER FREEMAN. I'm remembering the treatment of the Cuban refugees. I wonder if you would have any opinion and would compare the treatment of the refugees from Cuba with the 8,800 who come from Haiti.

MR. SWARTZ. Well, I don't have any personal experience with the Cuban refugees, but substantial numbers of persons who came to the United States from Cuba came in pursuant to a parole program.

COMMISSIONER FREEMAN. Of the United States?

MR. SWARTZ. That is right. In fact, there was a judgment made by the government that, as a class, Cubans should be admitted to the United States from the Castro regime. That decision reflected, I think, an inclination or a prejudice in our domestic law to give preferences from persons fleeing communist regimes, as opposed to rightwing regimes.

Haiti is not communist and is considered by many totalitarian but rightwing, and the Haitians in contrast to the Cubans have to establish on an individualized basis, each individual has to establish, that they are entitled to political asylum, and the Government seems to believe that virtually all persons from Haiti in Miami are fleeing economic deprivation but not fleeing political persecution.

I've interviewed personally about 15 members of the Haitian community and I've had affidavits from probably 100, which tell very compelling stories about torture and persecution, physical abuse, expropriation of property they have suffered in Haiti, and although many people in Miami may be fleeing economic conditions, many in my judgment are also fleeing harsh persecution, and our primary concern is that those who indeed had suffered persecution, or indeed would suffer persecution if they returned, are not being identified by the system that has been established in Miami processing asylum applications. They, like everyone else, have their asylum claims denied as frivolous, because the Service is making every effort to complete the process as quickly as possible.

COMMISSIONER FREEMAN. In light of that, Mr. Hohl, one of your recommendations was that the definition of asylum should be changed. Do you have a recommendation as to the process for getting it changed?

MR. HOHL. The definition of refugee is contained in the Immigration and Nationality Act and, therefore, require a legislative change on the

part of the Congress. To broaden that definition, there have been a number of bills introduced containing acceptable definitions but it would require a definition by the Congress, redefinition.

COMMISSIONER FREEMAN. And with respect to the problem which you have defined, Mr. Swartz, this is a public policy, an American public policy, that does not require any legislative action, is that it?

MR. SWARTZ. I don't understand that.

COMMISSIONER FREEMAN. In terms of the way in which the decision—with respect to the fact that the Haitians must go back?

MR. SWARTZ. Well, the decision has been made to process asylum applications very quickly, and there are regulations and sections of the immigration law which establish procedures that the Government is to follow in processing those applications, and in my judgment the facts, as I understand those requirements, have not been satisfied or complied with, and I think we could and may sue and cause the Government to comply with its own regulations.

COMMISSIONER FREEMAN. Just one final question because I'm still troubled by the question of whether these cases which you have described represent political determinations or at the heart of it is racial discrimination.

MR. SWARTZ. I'm somewhat hesitant to make that judgment. There are attorneys in Miami who are very actively involved in representing the Haitians who believe that racial discrimination affects the decisions that have been made regarding the Haitians.

MR. CHIRLIN. May I supplement that a little, although this is more in the field of—I think some of us read a lot of materials by a lot of different people rather than having some of these experiences personally, and one of the problems with refugee determination is that for the most part someone fleeing a communist regime is almost automatically a refugee, and many times without a determination as to whether they ever actually were in any particular danger or had any particular political problem from the country from which they're coming. And people coming from non-Communist regimes are subject to intense scrutiny, and there are some countries from which it is almost impossible to show that a person is a refugee, even though there may be quite extensive evidence of danger in their returning to their native country. They're countries with rightwing regimes with political prisoners in jail, from which there have been applications but no one has been found to be a political refugee.

And with respect to the simple contrast, just kind of a historical social overview between Cubans and Haitians, it is kind of peculiar that we have, however, many Cubans, half a million Cubans, that entered the United States, and they entered in different stages. At one stage they were the businessmen and politicians, and at other times certain kinds of factory workers and other people came, and they were never subject to determinations as to whether they were in any particular political danger, and as those people came in, 95 or 96 percent of them were white.

With the Haitians we're talking about a population where the people coming in are maybe a 100 percent black, and we wonder why Florida can absorb a half million Cubans, a small percentage of whom were maybe in some real political danger, and when we talk about a few thousand Haitians, even those who aren't in political danger, find it almost impossible to be found political refugees, and if nothing else there seems to be the appearance of some kind of racial discrimination involved.

COMMISSIONER FREEMAN. Thank you. I have no further questions.

CHAIRMAN FLEMMING. Vice Chairman Horn?

VICE CHAIRMAN HORN. Mr. Hohl, I was curious—you made the statement that your organization does not condone the presence of the undocumented workers or violations of law, but there is a question of the responsibility of the United States for the numbers here. Could you elaborate on what you mean by that? I wasn't clear.

MR. HOHL. It was just simply this, that the borders of the United States, land borders both north and south, are very, very easily crossed; that it is obvious that the necessary steps to diminish—you're not going to stop it but to diminish—the entry of the undocumented across the borders have not been taken. The free access to the United States, therefore, I believe, contributes to the problem, to the influx, and that the United States is not in the past—and I'm saying it should, all sorts of political problems here—but the fact that over the period of years the United States has not, in effect, sufficiently patrolled that border to control the movement; we, therefore, are responsible for their presence here.

VICE CHAIRMAN HORN. That sounds like you're saying that the police department goes on strike in a city or is insufficiently staffed, all the bank robberies that occur can be blamed on the police department. I must say that sort of logic does confuse me a little.

MR. HOHL. I'm not saying that the United States is solely responsible for the presence of the undocumented here. Certainly we bear—I feel that we bear a certain measure of responsibility for their presence.

VICE CHAIRMAN HORN. Then you also said until this cancer in our society has been removed, the problems will only increase, but you would like to see new laws written so the problem does not recur.

What thoughts do you have besides what the President has proposed in this area?

MR. HOHL. First of all, I oppose what the President has proposed. I think what I said—and if I didn't express myself clearly, I would like to do it at the present time. I believe that the enforcement of existing laws would greatly deter, certainly, the great number of people who come into the United States seeking employment.

At this particular stage of the game, I don't believe that it is necessary to go into the matter of enforcing sanctions against the employer but rather the enforcement of some of the laws to which I made earlier reference, that is, the wage and hour, social security, income tax, and so on.

The undocumented, many of them come in for employment purposes. If he has difficulty obtaining employment, it should be a deterrent to his entry, at least for a certain number. But I would say, try first enforcing present laws which are on the books. If that is ineffective, then we look to other alternatives.

VICE CHAIRMAN HORN. Well, the thing that intrigues me in these proposals—and I mentioned this yesterday to some of the INS witnesses—is that the President's proposal would give amnesty or permit adjustment of status for those that are in this country illegally, and yet we have another group, that those of us who are university presidents are quite familiar with, which are a quarter million students who are in this country from probably 120 different nations in the world. They come here legally; they are prohibited from working by the Attorney General of the United States.

The illegal alien comes here illegally and does work. The students who come here, many of whom would like to stay in the United States, have no opportunity to adjust their status. Certainly under the administration proposals there is no provision for that student to adjust status, so, in a sense, it shows that crime does pay. If you come here as a student, you get an education, you can contribute to an industrial society at a skilled level. We tell you, "Go home; we don't want to waste our time worrying about you." If you come here, hide for 5 years, whatever, you can get an adjustment of status. How fair do you think that is?

MR. HOHL. Perhaps a clarification, at least in my view, of the person who comes to the United States to study. First of all, he is classified as a nonimmigrant, and, at least at the time that he applied for his visa, he must have had the intention of returning to his residence abroad, otherwise, he would not have been granted his visa; he would have been considered an immigrant and be told by the American consul that he should apply for a immigrant visa.

VICE CHAIRMAN HORN. You and I both know there is no real way to really judge one's intention, and I would suspect most people that come to this country want to stay here.

MR. HOHL. Anyhow, that's the basis in law. Now, the fact of the matter is, a great number of persons after having—especially students, students over here for extended periods of time and legally obtain extensions and so on, and in the course of their association with the United States, exposure to our system, to our society, and to opportunities, may very well legitimately change their mind and desire to remain on.

It is possible for a nonimmigrant to change his status while in the United States from temporary to permanent. Certain conditions have to be met, the most important one, of course, being that there be a visa available for his use at the time of his application.

If we're talking about a student, irrespective of marital status, ties, relative ties, and so on to this country, why then he can certainly in

this day and age run into extreme difficulties in qualifying for an occupational preference because, in general, there is not shortage of various occupations in this country, there's just a few in selected areas.

There is, again, no question at all that, if he has been in this country for an extended period of time, he has developed ties here, as an undocumented would after an extended period of time. The amnesty proposed was to take care of persons who were in undocumented status, not those who were maintaining status. If the student, however, had violated his status, by employment, unauthorized over-staying, whatever it may be, then he could also be covered by the amnesty provision.

VICE CHAIRMAN HORN. Let me ask you about another situation, and all of you gentlemen might want to have a view on this; it involves political refugees, if you will. We've had some discussion of how does one determine that, depending on the type of regime, the numbers involved, but let's assume you have an individual from a country with which the United States was engaged in an undeclared war. The individual is admitted to the United States; several years after admission, some in the United States want to remove that individual on the grounds that an immoral act was committed. In this case the act might well have been photographed around the world; presumably the act was committed in the role of one's office at the time against an individual not in uniform in a guerilla war situation. Conceivably some of the individuals involved were attempting to assassinate officials of the American Government abroad, in turn met their own death.

Now, what kind of laws do we have now that pertain to that situation? What kind of laws should pertain to that situation? Are there analogies to be drawn to other political refugees that are coming to this country, whether they are coming from rightwing countries or leftwing countries?

MR. SWARTZ. Well, there are laws on the books, as the case you described suggests, to deal with some of problems. Crimes of moral turpitude is a basis for exclusion or deportation. Reacting to the situation presented, personally I think the fact that the American Government may have been involved in an allied position in an undeclared war, with the war from which this person has left, and that the activity may have been somehow sanctioned by orders from superior officers or by a general policy should be irrelevant, just as it was irrelevant during the Nuremberg trials, and the individuals should be judged on the basis of their individual activities.

VICE CHAIRMAN HORN. Obviously the question arises, Where do you deport that individual? As I understand the law, if no country accepts you, your deportation does not occur, but does one deport one back to one's country when a rival regime has come to power and could well mean the execution of that individual? Is that what political refugee now means in the United States?

MR. SWARTZ. I think under the situation you've described, we decided such person is not entitled to political refugee status and rather was involved in crimes for which he, in effect, may be extradited, just as we extradite other types of criminals who seek refuge in the United States.

VICE CHAIRMAN HORN. But one could say the moral of that story is, a lot of people in war—war itself might be a basic crime. We could argue that philosophically, religiously, any number of ways. I guess the moral of the story is, if you're involved in a war, declared or undeclared, don't get your picture taken.

MR. CHIRLIN. And don't lose.

VICE CHAIRMAN HORN. Any other comments on this type of situation?

[No response.]

I didn't think you'd leap at it.

MR. CHIRLIN. It is a very unusual situation and it is hard to learn how much relevance it has for the general immigration problems. Even with respect to the special task force on Nazi war crimes; there are only six or seven that are under proceedings and maybe another dozen that are being investigated in the whole country.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Just one question that I would like to ask as a followup to the discussion—I would like to address to Mr. Hohl and others may want to comment on. I go back to this question of amnesty.

You said that the Catholic Conference supports the concept of general amnesty. Do I understand that you also support the specific provisions for amnesty that are contained in the administration's proposal, such as the denial of certain benefits to those who would be granted amnesty and the fact that the amnesty would be granted for a specific period of time?

MR. HOHL. We support the general concept of amnesty; in fact, I think we were probably the very first ones to propose that. We do not consider the proposals in the Carter administration to be in any way amnesty, and we are totally opposed both to the early cutoff date of January 1, 1970, to give complete amnesty and to the temporary resident status, completely opposed to that, to both concepts.

CHAIRMAN FLEMMING. I just wanted to clarify that particular point. Anyone else want to comment on that on the specific proposal?

MR. SWARTZ. I would concur with Mr. Hohl's assessment.

MR. RESNICK. And I would concur with that assessment as well.

CHAIRMAN FLEMMING. You want to comment?

MR. CHIRLIN. My agency has previously taken a position that along with the coalition it is opposed to the cutoffs.

CHAIRMAN FLEMMING. Thank you very much. The time for this panel has expired, and we appreciate very much your being with us, and we appreciate the testimony you've presented and your response to the

questions that have been addressed to you. Thank you very, very much.

I'll ask Counsel to call the next witnesses.

Ms. FONG. Mr. Carl Wack, Mr. Sol Isenstein, Mr. Tom Brobson, Mr. Andrew Carmichael, and Mr. Ralph Kramer. Would you all please remain standing to be sworn in?

[Carl Wack, Tom Brobson, Andrew Carmichael, and Ralph Kramer were sworn.]

TESTIMONY OF CARL WACK, ASSOCIATE COMMISSIONER FOR EXAMINATIONS, THOMAS BROBSON, ASSISTANT COMMISSIONER FOR INSPECTIONS, ANDREW CARMICHAEL, ASSISTANT COMMISSIONER FOR NATURALIZATION AND CITIZENSHIP, RALPH KRAMER, DEPUTY ASSISTANT COMMISSIONER FOR ADJUDICATIONS, IMMIGRATION AND NATURALIZATION SERVICE

CHAIRMAN FLEMMING. We appreciate very much your being with us.

Ms. FONG. For the record, would all of you please state your names, your titles, and your business addresses?

MR. WACK. I'm Carl Wack, Associate Commissioner for Examinations, Immigration Service; and Mr. Kramer, who is the Deputy Assistant Commissioner for Adjudications; Mr. Thomas Brobson, who is the Assistant Commissioner for Inspections; Mr. Andrew Carmichael, the Assistant Commissioner for Naturalization and Citizenship; and we are, of course, stationed here in Washington, D.C.

Ms. FONG. Thank you. If you have a written statement prepared, you may submit it into the record at this time.

MR. WACK. We have no written statement. We are here to answer any questions or to amplify anything that may have been said by the gentlemen who were on before us.

Ms. FONG. Mr. Wack, would you please explain the division of responsibility between the INS and the Custom Service at the borders?

MR. WACK. At the borders, the Immigration Service is responsible for the inspection, determination as to the admissibility of individuals; the Custom Service has the basic responsibility of "things." In simple terms, we take a look at the people; they take a look at what's coming across other than people. We share that responsibility by cross-designating.

We designate customs inspectors as immigrant inspectors for the purpose of coordination and cutting down the needs of manpower so that one individual may be inspected by—I mean, one person may be inspected by one individual for a number of agencies. He not only inspects for Immigration but he will inspect for Customs, Agriculture, and for Public Health.

Ms. FONG. So customs inspectors do conduct immigration inspections at the border?

MR. WACK. Yes, and vice versa.

MS. FONG. Do customs inspectors receive any kind of special training in immigration law?

MR. WACK. We have local training at all of our stations.

MS. FONG. Is this a special course or is it conducted by supervisory officials?

MR. WACK. Generally, it is conducted by the supervisory officials.

MS. FONG. When a person comes across the border and is inspected by a customs official, does that official have the authority to reject the person's application for admission?

MR. WACK. Generally, no. If he finds he has a doubt or there's a question, he refers that man to what we refer as secondary, which is an immigration official who has been trained.

MS. FONG. Has your division in the past received any complaints from people alleging misconduct by INS inspectors, where in actuality the officer who was involved was a customs officer?

MR. WACK. Oh, yes.

MS. FONG. Does INS have authority to pursue and to investigate such complaints?

MR. WACK. Well, we carry it to the point where the individual is identified and then refer it to—if it is our man, we take the blame and the corrective action. If it's a member of the other organization, we refer it over to them for them to pursue.

MS. FONG. So INS has no effective way of disciplining a customs officer who misbehaves in the conducting of an immigration inspection.

MR. WACK. I don't believe that we would want to be involved in the—what was the word you used—the discipline. We would refer it to his superiors and expect that they would take the same viewpoint we would—the matter had to be corrected and the individual, if necessary, disciplined.

MS. FONG. I thank you.

MR. WACK. I throw that in if I may, because there have been a number of cases in which you consider that we have a total of 250 million inspections, and we receive maybe two or three complaints in the course of a month and check them out. There are bound to be errors made, but, fortunately, I think fortunately, we've been—we have a good track record on that.

MS. FONG. Mr. Kramer, if I may ask you a question. Could you tell us the extent of the adjudications backlog at this point and what steps have been taken to take care of that backlog?

MR. KRAMER. At the present time, at the end of September, we had 234,000 applications and petitions pending. This is down from 241,000 when we began our crash programs and our efforts to reduce the backlog in a serious vein. That was in June of 1977. However, there's been a distinct difference.

While the total numbers appear to be relatively the same, the workload mix has changed. We have been able to reduce our hours per unit for various activities. What we are now dealing with are applica-

tions and petitions that take less time for us to adjudicate than was the case in June of 1977.

MS. FONG. Could you explain the "remoting out" process that your division used to help with the backlog?

MR. KRAMER. There is a distinction between an immigration examiner who deals with applications and petitions and an immigrant inspector that deals with inspections of people at the ports of entry. These immigrant inspectors have certain times during the day when there are no arrivals or no people coming in to be inspected, and we call that, or we have in the past, called it standby time. And we have taken advantage of that standby time by sending certain petitions and applications to the border ports, ports of entry, to have the work done by the immigrant inspectors when they are not performing inspection duties.

MS. FONG. Approximately how many of your applications have been processed through the "remoting out" program?

MR. KRAMER. The last figure we've had, over the past year we did over 500,000 applications, petitions, and represented something like 42 percent of all our application petitions.

MS. FONG. Are INS inspectors who do such applications given any special training in INS adjudications law?

MR. KRAMER. Yes. What happens, a district office will be assigned one or two ports to send applications and petitions to, and it is the responsibility of that district office to send adjudicators to that port to train the inspectors in their duties.

MS. FONG. In dealing with your backlog, has the division ever used officers from other parts of the agency to conduct interviews for applications?

MR. KRAMER. Yes, we have. During the past year we had a series of task forces, and what we did was to borrow people from one office to an office that had a particular problem, and we would at the same time ask the district office that was conducting the task force to use other members of the staff, investigators and deportation detention officers and the like, who would be given some training in the operation, and they would assist in the task force or they would be doing the work that the office had to do ordinarily.

MS. FONG. We understand that another important function of your office is to detect fraud or possibly fraudulent applications which are submitted to you. Could you tell us briefly how an INS adjudicator can detect incidents of fraud in applications?

MR. KRAMER. Well, it is not easy. Some time ago we discovered that we did have a very serious problem, and many of the officers on their own were conducting fraud investigations. What happens is you get a visa petition, you examine the visa petition, and you determine certain things there in the petition—Is there a great difference between the petitioner and the beneficiary? Is there perhaps—even the nationality seems unusual.

What we have done—let me state—is that we would refer these cases that the screening officer felt needed further inquiry. And we would refer it to a special unit and we would interview the petitioner and the beneficiary, if the beneficiary was in the United States, and determine from the interview whether we had a valid marriage. If we felt that we didn't, or we could establish that we didn't have it, and the marriage had been arranged only to bring the beneficiary in for the immigration purposes, then we would deny the petition.

MS. FONG. Just now you referred to something—you said if a nationality may seem a little unusual. Does that mean that petitions filed by persons from certain countries may involve fraud more often than not?

MR. KRAMER. The history has been so—fraud is apparently more evident in certain countries than others.

MS. FONG. Could you tell us what countries those would be?

MR. KRAMER. I don't have those figures. I'd hesitate to identify those countries.

MS. FONG. If a petition were filed—

VICE CHAIRMAN HORN. Are figures available as to actions by the agency on fraud matters?

MR. KRAMER. We have records, get quarterly reports from our officers as to how many petitions were denied—

VICE CHAIRMAN HORN. Because of fraud?

MR. KRAMER. Because of fraud.

VICE CHAIRMAN HORN. You have that by country?

MR. KRAMER. Not by nationality. I brought in nationality. Perhaps I shouldn't have. There are certain criteria that we use and it really becomes, in many cases, a matter of judgment, a matter of saying, "Well, this doesn't look right," or something like that.

Let me add one further thing. Our fraud program was a separate program until very recently with respect to petitions. We now have a new procedure whereby persons, whose eligibility for adjustment of status is dependent upon a visa petition being approved for that person, can file the petition, and the application for adjustment status can be filed simultaneously.

What happens, where we used to have a separate interview to determine fraud, we don't have that separate interview. What we require is the petitioner and beneficiary to appear at the interview for the adjustment of status application, and at that interview the visa petition is examined and any questions are asked and the petition is approved and the application for adjustment is approved and granted.

So that while we interview more than we ever did before because of this joint filing of petition and application, we don't have, as such, a separate fraud program any longer.

However, if, during the interview, it appears to the adjudicator that something ought to be looked into further, that petition is then referred to investigations to see if the marriage is valid, if there's no sham marriage involved here.

VICE CHAIRMAN HORN. What I'm trying to get, to follow up on Counsel's question, is, Do you keep any summary data on how many petitions or applications were denied because of fraud?

MR. KRAMER. Yes.

VICE CHAIRMAN HORN. And that data is gathered on a national basis, a regional basis, or local office basis?

MR. KRAMER. It's gathered by each office involved. That office will send data to the regional office, the regional office will consolidate the data and send it to us, and we put it on a national basis.

VICE CHAIRMAN HORN. But it is not based on country of origin of the applicant?

MR. KRAMER. No, it is simply statistical. We just say we have so many petitions and applications.

VICE CHAIRMAN HORN. Could you furnish at this point in the record, then, the summary data by office and region of the fraud cases. I'm curious what proportion of total applications and petitions those countries are.

MR. KRAMER. I know we have the figures for national. I doubt if we have what you want.

VICE CHAIRMAN HORN. I'm assuming the region aggregates by office?

MR. KRAMER. I doubt those statistics are kept. Once they prepare their reports, they are finished with it.

VICE CHAIRMAN HORN. You mean, the government throws something away? I find it difficult to believe.

MR. KRAMER. I'll see if we can get it.

VICE CHAIRMAN HORN. Mr. Chairman, I would like to have it at this point in the record.

CHAIRMAN FLEMMING. Without objection, when that information is obtained, it will be entered in the record at this point. Counsel may proceed.

MS. FONG. Thank you. Mr. Kramer, do any of the adjudicators have any prior INS experience before becoming adjudications officers?

MR. KRAMER. Prior immigration training?

MS. FONG. Yes.

MR. KRAMER. Most of our recruiting—the immigration examiner is only one grade, grade 11, and most of our recruiting is done from the immigration inspector ranks who are grade 9s, so all of them have very extensive experience.

MS. FONG. Do any of your examiners have prior Border Patrol experience?

MR. KRAMER. Yes.

MS. FONG. Can you give us a percentage on that, please?

MR. KRAMER. I can't. At one time the percentage was very high, but grades in the Border Patrol have become more attractive and we don't get so many Border Patrol anymore.

MS. FONG. Mr. Carmichael, you're in charge of the Naturalization Division, is that correct? Can you tell us how many applications you received in the last year?

MR. CARMICHAEL. Yes. We received about 240,000 applications during the fiscal year which just ended September 30.

MS. FONG. Have you been able to adjudicate or process all of those applications?

MR. CARMICHAEL. Yes, in that number. We are still working with backlogs which had built in earlier days, and I might add, beginning about 2 years ago, those backlogs amounted to some 100,000 applications.

At the end of the current, past fiscal year, they were down to 80,000, but applications are received at the rate of about 20,000 a month, so the 80,000 represents those which have been received in about a 4-month period. That's a nationwide figure.

MS. FONG. Could you tell us how many of those persons who have naturalization applications pending would be eligible to petition to bring in their immediate relatives into the United States?

MR. CARMICHAEL. I could not give you a percentage. I know a substantial number would be and certainly are interested in that possibility after they are naturalized. We don't keep statistics on that particular feature of naturalization.

MS. FONG. We also understand that persons who have been naturalized by INS can also be denaturalized through certain procedures. Could you tell us the grounds for denaturalization?

MR. CARMICHAEL. Generally, it is on the basis of fraud and misrepresentation and situations which should have prevented their naturalization initially, had we known it.

MS. FONG. Is there any ground for denaturalization concerning criminal convictions? Is that a ground?

MR. CARMICHAEL. After naturalization?

MS. FONG. Right.

MR. CARMICHAEL. No.

MS. FONG. Prior to naturalization?

MR. CARMICHAEL. Prior to naturalization. Revocation of naturalization is based on the concept that the person should not have been naturalized at that time, not conduct which occurs later.

MS. FONG. Do you have any figures on the number of persons who have been denaturalized in the last year?

MR. CARMICHAEL. It would be infinitely small; I would say not more than a dozen.

MS. FONG. Do you have any statute of limitations applicable?

MR. CARMICHAEL. No.

MS. FONG. No statute, so a person could be denaturalized at any time?

MR. CARMICHAEL. He could be, yes, indeed.

MS. FONG. Yesterday a witness suggested to the Commission that naturalization examiners, who are attorneys, we understand, could be used in adjudicating applications for benefits. How feasible is this recommendation?

MR. CARMICHAEL. Well, it's certainly feasible. The question is, Can we spare them for that purpose? One of the reasons that we have intolerable waits for naturalization in certain locations now is an insufficient force to handle just the naturalization workload. I might add this, we are dealing now with a paralegal concept in naturalization, which will expand in time and will bring into our operation the paralegal doing some of the duties that an attorney has done heretofore.

MS. FONG. I think the reason why that suggestion was made is because adjudications officers are not lawyers and naturalization examiners are.

MR. CARMICHAEL. Well, adjudications officers aren't required to be attorneys; naturalization officers are. There may be some lawyers among the adjudications force, but that would be something else.

MS. FONG. Mr. Wack, coming back to you, Could you explain the role of the contact representative in the adjudications process?

MR. WACK. He presently—the contact rep will accept applications across the counter and make a finding as to whether it is *prima facie* eligible on its face only—whether they have the proper documents, whether the relationship appears to be proper, whether the jurat is signed, and so forth, and then refer it to the adjudicator.

MS. FONG. Are contact representatives considered immigration officers?

MR. WACK. No.

MS. FONG. Are they clerical workers?

MR. WACK. Well, they are in the upper grade of the clerical workers, yes.

MS. FONG. Could you give us a grade level of the contact representative?

MR. WACK. 5, 6, and 7.

MS. FONG. Are they given any training in immigration law?

MR. WACK. Yes.

MS. FONG. Could you detail the kind of training they get?

MR. WACK. I couldn't, but I can make it available for the record. They have a training course and some of them take extension courses that we offer, correspondence courses that are offered through the office, but they are not under my jurisdiction as of yet. They are coming under and will become part of the adjudications force.

MS. FONG. In the future?

MR. WACK. Very immediate future.

MS. FONG. Is that a definite move?

MR. WACK. So I understand, yes.

MS. FONG. Mr. Chairman, could we move to enter that information on the contact representative training in the record?

CHAIRMAN FLEMMING. Without objection, it will be entered in the record at this point.

MS. FONG. Mr. Wack, getting back to the contact representatives. Could you tell us what advantages it will provide to your division to have them within your jurisdiction?

MR. WACK. Well, by having them right at the counter, meeting the people, and being able to look over the applications, we figure that it will speed up the process, be able to review it, see if there are deficiencies, and the plan is also that they will give a date at that time for the interview, in the case of adjustment of status interviews.

In some cases we hope they will be able, after we've had more training, to grant such minor things as extensions of stay on the spot, rather than having to get into the chain and take some period of time.

MS. FONG. Thank you. Mr. Brobson, can you briefly describe the inspection process at the border?

MR. BROBSON. People are interviewed by inspectors at the land border ports, by customs or immigration officers or agriculture officers, who are cross-designated to determine, first of all, whether they are United States citizens.

By determination that the person is a citizen, that terminates the inspection for immigration purposes. If the individual is an alien, the determination is then made as to whether or not the person is a permanent resident or a nonimmigrant or inadmissible. The primary inspection is very quick, speedy type of function.

In fiscal year 1976, there were 272 million inspections, so obviously we didn't spend too much time at it. Any questions of admissibility are resolved in secondary, away from the primary flow of traffic. Now, an inspector, except in one instance, cannot exclude any alien.

MS. FONG. What would that instance be?

MR. BROBSON. The one instance is section 235(C) of the Immigration and Nationality Act, where a person is excludable under section 212(a)(27), (28) or (29). They are a threat to the security of the United States or members of the Communist Party.

In that case, the inspector can make a finding of temporary exclusion and then the matter is referred to the regional office for determination as to whether that exclusion becomes permanent or the individual will be given a hearing.

In all other cases, the individual is entitled to a hearing before an immigration judge.

MS. FONG. Can you tell us the standard by which someone is referred from primary inspection to secondary inspection?

MR. BROBSON. The standard?

MS. FONG. What kind of determination must be made by an inspector to refer an applicant from primary to secondary?

MR. BROBSON. Anything that would delay a movement of traffic on primary or any question of admissibility of an alien.

MS. FONG. We have heard allegations or allegations have been made that sometimes persons, even United States citizens, have been detained for questioning at border entry points for long periods of time. Could you give us the standard length of time a person can be detained for questioning? Is there any guideline on that?

MR. BROBSON. Invariably, there will be occasions when, because of the traffic flow, there will be delays. For example, let's take an airport where traffic is normally scheduled to have a 747 arrive every hour but because of weather conditions all three flights come in at one time.

We can only staff for an average flow of traffic, not for peaks, so that you get into a situation where a question of admissibility arises and the individual is referred to secondary.

It's possible that the person might sit there for an hour before we get to them, but it is usually some situation that's causing this beyond our control. We like to dispose of a case as quickly as possible.

MS. FONG. At the land border ports of inspection, are you aware of any instances where people have been detained for more than a day for questioning?

MR. BROBSON. No, I'm not.

MS. FONG. Is the *Miranda* or *Miranda* type warning required to be given by applicants who present themselves for inspection?

MR. BROBSON. No.

MS. FONG. Can you cite us a regulation on that? Is there a policy?

MR. BROBSON. Well, the *Miranda* relates to a person who is being arrested. We are not arresting people. We are questioning their admissibility to the United States. It is a civil proceeding and not a criminal proceeding.

MS. FONG. So your officers do not in fact give any kind of warning?

MR. BROBSON. No.

MS. FONG. There's no requirement?

MR. BROBSON. No.

MS. FONG. Has your division received any complaints in the past year by aliens of possible abuse or misconduct by INS inspectors?

MR. BROBSON. We receive complaints, as Mr. Wack indicated, perhaps three a week, where allegations are made and we do investigate them.

MS. FONG. Are these complaints referred to the Office of Professional Integrity?

MR. BROBSON. Some are.

MS. FONG. Of the ones that are not, does your division investigate them?

MR. BROBSON. We get a report from our local office on an incident.

MR. WACK. They're referred to the regional commissioner or to the district director, depending on the seriousness of the allegation, or he may send in someone from another district to investigate the allegation. Or in some cases it even goes so far as to be referred to the Office of Civil Rights or the Federal Bureau of Investigation.

MS. FONG. So those complaints which are not sent to the Office of Professional Integrity are investigated at the local level, the district office level?

MR. WACK. Some are.

MR. DIMAS. What kind of complaints would those be that remain at the district level?

MR. WACK. Rudeness, generally; someone has indicated that the inspector spoke harshly to them, that sort of thing. If it gets into allegations of actual misconduct, or of criminal nature, it is turned over to the Bureau.

MR. DIMAS. You mean actual physical misconduct?

MR. WACK. Yes.

VICE CHAIRMAN HORN. I take it that answer was affirmative?

MR. WACK. I thought I said yes.

VICE CHAIRMAN HORN. I'm sorry, I didn't hear it in the record.

MS. FONG. Mr. Wack, can you tell us Service policy on handling persons who present themselves for inspection at the border, and to document themselves they present apparently fraudulent documents? How are those cases handled?

MR. WACK. They are given an opportunity, if the inspector arrives at the conclusion that they are fraudulent documents—First of all, the documents are seized, and then the individual is given his opportunity either to return to his home country or to stay and present himself for a hearing before an immigration judge and to present his side of the matter.

MS. FONG. How many aliens or persons seeking to enter the United States avail themselves of this hearing before the immigration judge?

MR. WACK. I'm sorry, I'll have to furnish that for the record.

MS. FONG. Can we enter that, Mr. Chairman?

CHAIRMAN FLEMMING. When the material is received, it will be entered in the record at this point.

MS. FONG. Of those persons who desire to avail themselves of the hearing, are they detained pending the hearing?

MR. WACK. If they are in the country at airports, they are; if they are outside the country at land border ports, they remain within—for example, Canada or Mexico.

MS. FONG. Of those persons who chose not to take the hearing, what happens to them?

MR. WACK. They return to the place whence they came.

MS. FONG. And the documents are kept by INS?

MR. WACK. If they are obviously fraudulent documents, if it is a question of inadmissibility or a question as to the legitimacy of their claim, then, we, of course, would have no control over that. It would be returned.

MS. FONG. Are documents ever destroyed, apparently fraudulent documents?

MR. WACK. Yes.

MS. FONG. And how can an inspector tell that a document is fraudulent?

MR. WACK. Some of them are so crude it could be spotted a number of feet away. Others are far more sophisticated and they don't discover them.

MS. FONG. I have one last question for you. Could you please define the terms "wetting down" or "breaking an alien"?

MR. WACK. We are now in an area that—not my area, but it goes back to a long time ago that an expression brought up in the enforcement area in which they question an individual and, when he finally admits that he is an alien, he has been “wetted down.” It is associated with the term “wetback.”

MS. FONG. So this is the process by which INS attempts to get an alien to admit they are fraudulent?

MR. WACK. Yes.

MS. FONG. To accomplish this purpose, do INS inspectors ask questions?

MR. WACK. Yes.

MS. FONG. Simple questions?

MR. WACK. They can be simple and—well, they would ask whatever questions they deemed to be necessary to bring forth the best information.

MS. FONG. Are INS inspectors ever authorized to conduct strip searches of persons?

MR. WACK. No.

MS. FONG. Are they ever authorized to conduct body cavity searches?

MR. WACK. No.

MS. FONG. Is any INS officer ever authorized to conduct such types of searches, as far as you know?

MR. WACK. When you say such types, are you restricting to personal and body cavity?

MR. FONG. Right, personal strip searches and body cavity searches.

MR. WACK. No.

MS. FONG. Is that policy written down in the regulations or the Officers Handbook?

MR. WACK. I don't believe that there's anything that prohibits it. There's nothing that permits it.

MR. DIMAS. What would be the sanction against somebody who did that, Mr. Wack?

MR. WACK. I think we would take very strong disciplinary action, but it has never arisen. We are dealing with—I'll have to go back to an earlier question, that was, when an individual determines, when a customs officer, for example, determines, that there is a problem in immigration, he refers that individual to secondary, which is an immigration specialist.

Conversely, if an immigration officer finds there's a problem custom-wise, he refers them to customs secondary. Now, when we get into such things as physical search, cavity search, and so forth, we're dealing with a different agency.

MS. FONG. Thank you, I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Kramer, I was interested in the statement you made that there is a tendency on the part of some nationals to commit fraud. On what basis do you make that, or do you just want to retract that?

MR. KRAMER. I withdrew that.

COMMISSIONER SALTZMAN. Can you tell me how many examiners you have, sir, on your staff?

MR. KRAMER. About 365 and an almost equal number of clerical people.

COMMISSIONER SALTZMAN. Do you have, apart from the clerical people, examiners themselves, the 365, any EEO breakdown by race and sex?

MR. WACK. We don't have it for examiners as a whole. We have it for the examiner and inspectors.

COMMISSIONER SALTZMAN. I mean, apart from clerical people.

MR. BROBSON. This is officer—

MR. WACK. This is officer personnel. Between the two, we have a total of 2,242, and of that number 22.7 percent are female and 7.2 percent were minority.

COMMISSIONER SALTZMAN. You don't have any ethnic breakdown?

MR. WACK. We have broken down black, Hispanic, Native American, and Asian American.

COMMISSIONER SALTZMAN. Can you give us those figures?

MR. WACK. Yes, sir.

COMMISSIONER SALTZMAN. Are they listed? Can they be submitted?

MR. WACK. They can be submitted. Frankly, they were prepared by EEO people and I spent 20 minutes this morning trying to understand them. But we will submit them, sir, when I say, the way they are presented. We will present a table showing the—

COMMISSIONER SALTZMAN. Okay. Do you think that—

CHAIRMAN FLEMMING. Might I interrupt? When that table is received, why, we'll enter it in the record at this point.

COMMISSIONER SALTZMAN. Do you think that counsel should be available to the clients—that's what they are called, people appealing or people going through the process for examination and adjudication—that counsel might be available to them in that process? Would that be helpful to them?

MR. WACK. Well, to say no is to be against sin. In deportation proceedings, they are always advised and, if they have an exclusion hearing, they are advised that they may have counsel, but to say that they should have it in the course of an inspection, no. It would not—it's not a practical suggestion.

MR. KRAMER. In adjudications, there is an increasing tendency for aliens to come to an interview or file a simple paper by an attorney. More and more they are having attorney representation.

COMMISSIONER SALTZMAN. Mr. Wack, in your introductory comments you sort of implied that you would like to make some comments on some of the statements made by the previous panel.

MR. WACK. What I meant to imply was that I thought there had been enough said, that perhaps I would be questioned about some of those comments and I was prepared to respond to some of them.

COMMISSIONER SALTZMAN. Would you like to make some specific comments?

MR. WACK. No. There had been references about the inadequacies of the adjudications, and we admit to it; however, we also at the same time, as Mr. Kramer did point out, that we have reduced them considerably. The public charge aspect, the State Department will answer, I'm sure of that.

The comment was made on better detention facilities or better areas. I learned when I first joined the Immigration Service, too many years ago, that no matter what decision we make it is 50 percent wrong. If we decide to hold someone, we should have deported them and vice versa.

With respect to, for example, better detention facility or processing center, we prefer to call them—I don't know if any of you noticed, but here about a month ago we went through a publicity campaign against us because we had spent some \$10,000 or \$11,000 for soccer equipment and fixing up some exercise areas down in our detention facilities. I think that we are doing our best to provide the most humane and comfortable quarters that we can, under the circumstances. Obviously, anyone who is put behind a locked door has a problem, and we will recognize that also.

COMMISSIONER SALTZMAN. I have one final question. Individuals come to me who are involved in the processes of examination, adjudications, etc., relative to their standing as either students or people seeking admission for long-term residency, and I have intervened by calling the Immigration Service and found myself having to go from person to person, sometime six, seven calls, one person saying, "You have to speak to that person," another person, I have to speak to a third person, and I imagine when this is an immigrant, or even an alien, legal or undocumented, who has some problems with language, let alone bureaucracy, that it becomes an overwhelming task.

Is there some way to manage the contact point where that kind of runaround can be avoided and indeed the INS become a more effective service organization to aid people?

MR. WACK. We have in all of our offices a problem with respect to the manning of our contact points with the public, where we are overwhelmed. In some areas we have put in as high as 10, 20 phones, manned phones, and even then the telephone company tells us that they take surveys and find that so many hundred calls a day, according to their equipment, have not been responded to.

However, in each office we do have a contact point and the phone that is listed is—will automatically go to that number. That's part of the problem, by trying to concentrate the calls at one point so that to eliminate the very problem you described, we, in effect, overwork that particular instrument or individual.

They are not supposed to refer cases unless it is one of difficulty. Unfortunately—and by this I am not implying that you are one of them—what happens is that an individual will contact someone and they will say, “Call John Jones at such and such a number.”

Well, John Jones had helped that individual at another time on perhaps an immigration problem but of a slightly different nature. John Jones gets it, and says, “I’m sorry, really you have to talk to Pete Smith because Pete Smith is a specialist.” And Pete Smith isn’t in that day. And I agree, I’ve had this runaround myself, in trying to call a district office, in wanting to talk to a particular individual, “Well, he is not in today.”

It is a problem that we have instructed all of our people to keep to a minimum. One contact point.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Mr. Wack, because of another personal experience, I would like to have a more specific explanation of primary inspectors, secondary inspectors. As I understood your testimony, the primary inspector points the finger of suspicion upon whoever is in front of him as they go through the line, and then the secondary takes over; is that correct?

MR. WACK. Yes, sir.

COMMISSIONER RUIZ. Now, as I understand your testimony, you also say that secondary inspectors are entirely unassociated and disassociated from the Immigration and Naturalization Service?

MR. WACK. No, sir. No, sir, I did not.

COMMISSIONER RUIZ. It is the same Service then?

MR. WACK. The secondary for Immigration are manned by immigration inspectors. Secondary for Customs are by customs inspectors. What I was pointing out was that, while I am inspecting an individual as an inspector and he is coming before me, I may be inspecting him both for Immigration and for Customs, and I find that I’ve got a doubt or I’ve got a problem, I will refer him to secondary of whichever agency that problem concerns.

COMMISSIONER RUIZ. Do immigration inspectors do body searches?

MR. WACK. No, sir.

COMMISSIONER RUIZ. Who does the body search?

MR. WACK. That would be Customs.

COMMISSIONER RUIZ. Any other organization?

MR. WACK. I can’t think of any, no, sir.

COMMISSIONER RUIZ. Now, in San Ysidro, within the city limits of San Diego, are there ever any officers there in assisting the inspectors, whether it be Customs or Immigration, officers, that is to say, of the city of San Diego?

MR. WACK. Assisting, no, sir.

COMMISSIONER RUIZ. You don’t have local officers, in a sense?

MR. WACK. No, sir.

COMMISSIONER RUIZ. Are any *Miranda* rights given to people who are inspected, being citizens of the United States?

MR. WACK. No, sir.

COMMISSIONER RUIZ. They go right ahead and do body searches on the suspicion that they may have—

MR. WACK. I take exception. As I stated—first, we do not do body searches and, secondly, the moment we make a determination or have reason to believe that an individual is a United States citizen, he is no longer subject to our jurisdiction.

COMMISSIONER RUIZ. Who does the body search on the U.S. citizen?

MR. WACK. United States Customs Service.

COMMISSIONER RUIZ. And that is done?

MR. WACK. They are the only ones that have jurisdiction.

COMMISSIONER RUIZ. In that jurisdictional ambit, do they give *Miranda* rights to American citizens?

MR. WACK. I'm sorry, sir, I couldn't answer that. Well, I mean, not that I couldn't, I do not know the answer.

COMMISSIONER RUIZ. Does any other member of the panel know them?

VICE CHAIRMAN HORN. I would think that question ought to be referred to Customs and the Commissioner of Customs ought to file the answer at this point in the record.

COMMISSIONER RUIZ. That's a very good suggestion. May we have that provided for in the record?

CHAIRMAN FLEMMING. At this point we'd like to request the staff to contact the Commissioner of Customs and address that question to the Commissioner of Customs, and when his reply comes in, insert it in the record at this point. Commissioner Freeman?

COMMISSIONER FREEMAN. I have no questions.

CHAIRMAN FLEMMING. Vice Chairman Horn?

VICE CHAIRMAN HORN. I have no questions.

CHAIRMAN FLEMMING. I would just like to follow up on one comment that was made relative to the naturalization proceedings.

Mr. Carmichael, you said that consideration is being given or maybe actual use is being made of paralegal—

MR. CARMICHAEL. That is correct, sir.

CHAIRMAN FLEMMING. —personnel, at the present time. Could you elaborate on that a little bit? How far have you gone with that?

MR. CARMICHAEL. About a year and a half, 2 years ago, we put in trial programs, supplemental programs, at both Miami and Los Angeles; and as those developed we realized there was a way in which paralegal specialists could be used in the naturalization hearing process, and earlier this year we prepared an indepth study as to how that could be, not only how you could use a paralegal and what duties a paralegal could perform but where they would do this, particularly in high volume, large city areas, and to what extent they would, in time, reduce the staff of attorneys in favor of paralegals.

CHAIRMAN FLEMMING. Are there authorized positions for a paralegal person?

MR. CARMICHAEL. Well, it works two ways, Mr. Chairman. There are authorized paralegal positions at the outset of this program. We would hope that there would be more in time. Additionally, in these large offices, until we reach a ratio of attorney to paralegal, and as attorney positions become vacant, we will convert what was an attorney position to that of a paralegal specialist and we're already doing that.

CHAIRMAN FLEMMING. What qualifications do you establish for the paralegal assistant and how do you go about recruiting?

MR. CARMICHAEL. Well, I think personnel people could answer better, but I'll try, Mr. Chairman. We are looking for highly qualified people from such areas as the PACE register, also people within our Service who have experience and educational trained backgrounds would qualify them for this type of work, and in the selections we've made thus far, we're pleased.

CHAIRMAN FLEMMING. The process is carried on through Civil Service, I assume.

MR. CARMICHAEL. Oh, yes.

CHAIRMAN FLEMMING. One other thing I want to just clear up. Some questions were asked relative to the new training program for the contact representatives. You will, I assume, be able to provide us with a document which will acquaint us with the nature of that training program, is that correct?

MR. WACK. Yes.

CHAIRMAN FLEMMING. And when we get that, we'll include that as a part of the record also.

Counsel have any additional questions?

MR. DIMAS. I have a couple questions, if I may, Mr. Chairman.

Mr. Wack, in the evaluation of the employees at the border, is there any consideration taken to the number of *mala fide* applicants which they detect?

MR. WACK. No.

MR. DIMAS. They are not required to detect any particular number of *mala fide* applicants, there is no pressure on them to reject a certain portion of the people seeking entry?

MR. WACK. I would say no, but I would have to qualify it. It is possible that someone could have that idea. For example, at the beginning of the year, or during the budgetary process, we do indicate that we expect within the particular year to have X-number of *mala fide* entrants—

CHAIRMAN FLEMMING. Could I interrupt just a minute. Could we have that term defined?

MR. DIMAS. Well, a person presenting himself for entry into the United States who would not be legally entitled to enter the United States.

MR. WACK. Or who is entering the United States, attempting to enter, for one purpose and stating that he is doing so for another. In other words, he may be coming in, he says, "I want to go into El Paso to shop," and in reality she has a job as a maid, and this would be a *mala fide* entrant that—and when it is stopped, it would be recorded as a *mala fide* entrant.

CHAIRMAN FLEMMING. Just a new expression, that's all. I appreciate the definition. Go ahead.

MR. DIMAS. You mentioned somebody could interpret it that way, are you aware of any such instance?

MR. WACK. No, I say, there have been allegations in the past from others, not from within the Service, but who have come across this number in the budgetary presentation, and they automatically say, "Well, you have a goal you're looking forward to. You're going to stop that many. You're going to find ways of doing it." That's not the point at all. That's just our best estimate as to—

MR. DIMAS. Have you ever taken steps to ensure that it is not interpreted that way at the lower level?

MR. WACK. Yes, sir.

MR. DIMAS. What would those steps be?

MR. WACK. By actually having the regional commissioners advised and the district directors advised that no one is under any quota.

MR. DIMAS. Is this oral advisement or is this set out in operations instructions at all?

MR. WACK. It would be—the only one that I can think of was oral. We did have an instance in which someone made an allegation, and I remember picking up the telephone and telling them, "Look, get those people straightened out." That was the only time, to my knowledge, that this has ever happened.

MR. DIMAS. Get the prospective entrants straightened out or the inspector?

MR. WACK. Get the inspector straightened out who had made the statement that apparently he was going to get a quota.

MR. DIMAS. How long ago was that, may I ask?

MR. WACK. About 2 years ago.

MR. DIMAS. Under any circumstances may an inspector confiscate the documents of a person presenting himself at the border for entry; in other words, remove the documents from the possession of that person and not return them, either retaining them or destroying them.

MR. WACK. That's a question that we are working on at the present time, and there have been answers both ways, and I know that, regrettably, there have been actions both ways. A border crossing card, for example. An individual comes in and he's caught in an obvious lie. He's a *mala fide* entrant and the immigration inspectors have taken his card and said, "I'm excluding you and I'm tearing up your card so you can't go down to the next entrance and use it."

We are in the process of coming out, or at least we hope to come out, with instructions that no such card can be taken without a hearing. In other words, if the individual says, "Wait a minute, there's more to it than that and I want to hold on to my card; I want a hearing."

Actually, that is the case today, but there is a question in my mind as to whether or not every individual is aware of it. I must be honest about that.

VICE CHAIRMAN HORN. You leave the card in the possession of the individual or you would retain the card in custody until the hearing?

MR. WACK. You would retain the card in custody.

VICE CHAIRMAN HORN. Right. You wouldn't let the card go back to the individual?

MR. WACK. No.

VICE CHAIRMAN HORN. But not destroy it?

MR. WACK. That is right.

MR. DIMAS. Are you aware of any instances in which the complaint has been that the documents were actually destroyed?

MR. WACK. Yes.

MR. DIMAS. How recent have those complaints been?

MR. WACK. The last one I recall was about 5 or 6 months ago.

MR. DIMAS. And the destruction of these documents would be against Service policy?

MR. WACK. Well, as I said, that's where it gets cloudy. That's why we want to come out with something more definitive and that's what we're working on at the present time.

MR. DIMAS. Are you planning to put that in the operations instructions?

MR. WACK. It would go in regulations.

MR. DIMAS. But not go out simply in the form of a policy memorandum?

MR. WACK. It would be policy but it would be under 8 C.F.R.

MR. DIMAS. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate your coming here and appreciate the testimony that you presented to us. Thank you.

Counsel will call the next witnesses.

MR. CHOU. Elizabeth Harper, Cornelius Scully.

[Elizabeth J. Harper and Cornelius D. Scully were sworn.]

TESTIMONY OF ELIZABETH J. HARPER, DEPUTY ASSISTANT SECRETARY OF STATE FOR VISA SERVICES, CORNELIUS D. SCULLY, III, CHIEF, REGULATIONS AND LEGISLATION DIVISION, VISA OFFICE, STATE DEPARTMENT

MR. CHOU. Beginning with Ms. Harper, could you please each state your name, your business address, and the title that you hold?

MS. HARPER. My name is Elizabeth J. Harper. I am Deputy Assistant Secretary of State for Visa Services. My address is the Department of State, Washington, D.C.

MR. SCULLY. I'm Cornelius D. Scully, III. I'm Chief of the Regulations and Legislation Division of the Visa Office of the Department of State, and my address is also the Department of State, Washington, D.C.

MR. CHOU. Ms. Harper, do you have a prepared written statement that you would like to—

MS. HARPER. No, I did not want to presume to prejudge the interest of the Commissioners and wish, prefer just to answer questions.

MR. CHOU. Mr. Scully, do you have a prepared statement?

MR. SCULLY. No, I do not.

MR. CHOU. Mr. Scully, could you briefly describe the role of the State Department in the immigration process?

MR. SCULLY. Yes. Under the immigration law, aliens seeking entry into the United States are required, with certain exceptions, to be in possession of visas. The law specifies that the issuance and refusal of visas is a function of the consular officer; consular officers are employees of the Department of State. They are foreign service personnel who have been designated for this purpose.

Also, under the law the Secretary of State has the responsibility for the administration and enforcement of the immigration laws as they relate to the issuance and refusal of visas. And under that authority, he has the responsibility for promulgating regulations, procedures, prescribing reports, forms, etc.

This is the role of the Department of State, to provide the regulations, procedures, forms, and interpretations of law pursuant to which consular officers adjudicate visa applications.

MR. CHOU. Could you describe a little bit about the consular processing of visa applications?

MR. SCULLY. There are two processes actually. You have—under the law all aliens are characterized as immigrants except those aliens who establish that they fit into one of the authorized classes for temporary entry. And there are 12 major categories of temporary entry with subdivisions, each one of which is defined in terms of a purpose of temporary travel to the United States.

Now, an alien seeking to travel to the United States who is required to be in possession of a visa must make application for that visa to a consular officer overseas. Looking first at the nonimmigrant classifications, these include temporary travelers, tourists, business visitors, temporary workers, students, foreign government officials assigned to the United States, aliens in transit to third countries, exchange participants in exchange programs, a variety of categories.

In each case, the applicant must make application. There's a standard form to be filled out which is presented to a consular officer together with any requisite supporting documentation, and in certain

categories there is supporting documentation required. As, for example, in the case of a prospective student, there is a document that is issued to that student by the institution which has accepted him, which signifies that he has, in fact, been accepted for enrollment in the school.

In the case of temporary workers, the prospective employer must petition the Immigration Service for permission or authorization to bring in temporary workers. In the case of exchange participants, that is, participants in exchange programs, there is another form that the sponsor of the exchange program prepares to identify the individual as a participant in the exchange program.

In other cases, there may not be specific documentation; a specific form must be completed and signed. There may be other documents that the applicant may bring or may have that would relate to and explain his purposes.

In any event, the applicant must apply to the consular officer or to a consular office. There is a nonimmigrant visa application form; it is now called Form OF156, I believe, or is it 166? It is used to be known as a form FS257. We've had a change in nomenclature in that respect.

In any event, the applicant presents this. There are certain cases in which it may be presented without the personal appearance of the applicant. There are other cases in which the applicant must present himself for a personal appearance.

Where the applicant will be personally interviewed, the application is checked by clerical employees to be sure that it is complete, that all the questions have been answered, information has been filled out. The records—the consular officer will check to see if there's any prior record or information concerning the applicant, and at a given point the applicant will then be interviewed by a consular officer for purposes of determining whether that applicant is qualified for temporary entry into the United States. If the applicant is so qualified, then the visa is issued. If the applicant is not, then it is necessary to refuse the application.

Now, in the case of an immigrant applicant, the procedure is much more complex. There are numerical limitations on immigration. Only certain classes of persons, also, are eligible to immigrate.

You have a system under which, within the numerical limitations, preferences are granted to certain classes of relations, of relatives. Preferences are granted to persons having occupational and professional skills in short supply.

There are procedures that the applicant is required to follow to establish the existence of the relationship. This is the visa petition procedure, to which reference has been made this morning. There are procedures the applicant must follow in order to establish that he has the necessary occupational skill or an occupational skill in short supply. This is referred to as the labor certification procedure. In order to qualify to compete for immigration, the applicant must first take

that step, and the applicant really does not enter into the consular processing until that step has occurred. And once it has occurred, the applicant has now acquired an immigrant status. He's qualified for consideration under one of these preference categories or as an immediate relative, in the case of the spouses and children of citizens, parents of adult citizens, and at that point, once that step has been taken, then the consular process begins.

The consular process largely turns on—not the steps, but the timing of the steps turns largely on whether the applicant is a class subject to numerical limitations or not, and then, secondly, if the applicant is in one of the classes that is subject to a numerical limitation, what the level of demand is against the availability under that numerical limitation.

Now, if the applicant has qualified in a class that is subject to a numerical limitation and the demand exceeds the limitation prescribed by law, then at that point, there's nothing further, essentially, immediately that can be done other than to record the applicant on a waiting list, and the applicant then has to wait until his turn is reached in a chronological way before the further processing can occur, but assuming—

VICE CHAIRMAN HORN. If I might interrupt at that moment, I wonder, Counsel, do we have in the record by country, or do we have knowledge of the wait involved by country? Are those statistics kept by the Department of State?

MR. SCULLY. In what sense, Mr. Horn?

VICE CHAIRMAN HORN. For example, just on your point that even if you're admissible, you still have the numerical limit, and let's say you have 20,000 in the country or you have the hemisphere quota, does the Department of State know by country, because you do give a number to the applicant, how many people are waiting in line—

MR. SCULLY. Yes.

VICE CHAIRMAN HORN. —to be admitted to the United States?

MR. SCULLY. Yes.

VICE CHAIRMAN HORN. Has that been entered into the record as yet?

MR. CHOU. No, it hasn't.

VICE CHAIRMAN HORN. Well, let us get that into the record at this point, since it is pertinent to your testimony.

MR. SCULLY. We will furnish that information for the record.

CHAIRMAN FLEMMING. Without objection, when it is furnished, it will be entered into the record at this point.

MR. DIMAS. Would that be the visa bulletin, Mr. Scully, that you're referring to?

MR. SCULLY. There are two documents, essentially, that are relevant. There's the monthly visa bulletin, which is simply a publication of the Department of State, showing for each category—

MR. DIMAS. That is what you intended to—

MR. SCULLY. That's one of the documents.

VICE CHAIRMAN HORN. It shows by country, by category?

MR. SCULLY. It only shows by country to the extent that the demand in a particular country is such that it is reaching or exceeding the 20,000 per country limit. For example, we start off by showing what the situation is overall, under the preferences. Now, we would not show on that bulletin—let's say, we would not have a separate listing for the United Kingdom on that bulletin because demand from the United Kingdom does not approach a 20,000 limitation; therefore, it is not necessary to administer the limitation separately for the United Kingdom because they can be treated as part of the general overall system, since the demand out of the U.K. does not reach or exceed an annual rate of 20,000. But whereas, the Philippines, for example, it far exceeds 20,000; therefore, because of the requirements of law, there has to be a separate listing of availability for the Philippines.

VICE CHAIRMAN HORN. We often hear, for example, and we have heard testimony there's a 10-year wait, an 8-year wait, and so forth. Does the Department of State have an estimate of what the wait is likely to be, given normal processing from particular countries?

MR. SCULLY. We do not, Mr. Horn.

COMMISSIONER RUIZ. What is your independent memory at this time with relation to the wait in Mexico—2 years, 3 years?

MR. SCULLY. Depends upon the preference category, Mr. Ruiz. You'll have to give me some specifics about an individual applicant. You can't generalize about a particular country.

COMMISSIONER RUIZ. How many preferences are there?

MR. SCULLY. There are seven preference categories.

COMMISSIONER RUIZ. Let's get the first one, if you know.

MR. SCULLY. To the best of my recollection, there is no waiting period in the Mexican first preference.

COMMISSIONER RUIZ. What is the second?

MR. SCULLY. There is a waiting period in Mexican second preference; without referring to a copy of the bulletin, I could not give you the extent of the oversubscriptions.

COMMISSIONER RUIZ. What's the third one?

MR. SCULLY. Third preference is for professionals. It is, to the best of my recollection, there's not a waiting period for Mexican third.

COMMISSIONER RUIZ. What is the fourth?

MR. SCULLY. That is the married sons and daughters of United States citizens. I'm not sure but that there may be a waiting period there.

COMMISSIONER RUIZ. How about the fifth one?

MR. SCULLY. Fifth preference is for the siblings of adult United States citizens, and I believe there's a waiting period in that, in Mexico.

COMMISSIONER RUIZ. Which one is the longest waiting period of the seven categories at the present time, out of Mexico, if you have an independent memory on the matter?

MR. SCULLY. Ms. Harper indicates her recollection is fifth. Without having a copy of the bulletin to consult, I'd hesitate to make a specific answer. We will furnish a copy of it for the record.

COMMISSIONER RUIZ. It is your testimony there is very little waiting period out of Mexico; is that correct?

MR. SCULLY. That's not my testimony. You're asking about preference classes.

COMMISSIONER RUIZ. Well, what is the longest one with relation to all the classes. I'm trying to get a waiting period because I've been down to consular offices in Tijuana and different places in Mexico and seen a long list and they say, "I've got to wait 2 or 3 years."

What are they talking about?

MR. SCULLY. I'd be more than happy to explain. If you wouldn't mind having about a 15-minute, highly technical explanation of it, I'd be delighted to give it to you.

CHAIRMAN FLEMMING. Could I suggest that Counsel proceed with the questioning, but on the matter that has just been covered, I would also suggest that Mr. Scully be given the opportunity of presenting the table with the exact figures on it, and that will be included in the record at this particular point so he doesn't have to rely exclusively on his memory.

COMMISSIONER RUIZ. I'm wondering whether the table would be sufficient because the last response was, it's a technical explanation that will take 15 minutes, and I think a lot of people are involved in this, and, if it's a technical explanation, I would like to get a little more technicality into it in order to find out what the actual situation is and why.

MS. HARPER. If I may clarify what the table is that Mr. Scully referred to, sir, what it indicates is the date of cutoff, the latest priority date that can be reached within any given month. Let's take a hypothetical.

Let us say, for the sake of discussion, that the first preference is oversubscribed. I don't recall that it's being oversubscribed in Mexico, but let's suppose that it is. The monthly bulletin for the month of November would show a date of perhaps June 15, 1977. That means that anybody with priority date in the first preference earlier than June 15, 1977, would have a visa available in the month of November 1978. The same thing would appear under the second preference, a different date but a date covering the same idea would appear under each of the preferences if the preference is oversubscribed. If it is not, then in that column, it will say "all," meaning anybody with any priority date can get a visa in the month of November in that preference.

Under nonpreference, which has not been addressed, it will show "none" if the country is oversubscribed, because by law the visas must be issued in the order and in the percentages of preference classification; and, therefore, in an oversubscribed situation, there are no numbers available for nonpreference and that column will read "none" for that particular country.

COMMISSIONER RUIZ. Now "none" means how long of the non-preference? Does it mean 9 months, 1 year, 4 years?

MS. HARPER. It could mean anything, sir.

COMMISSIONER RUIZ. It could be mean 4 years?

MS. HARPER. It could mean anything, any number of years, yes, sir. If there is a preference demand in excess of 20,000 year in and year out, then for that many years there will not be any nonpreference.

COMMISSIONER RUIZ. Then the nonpreference waiting list and waiting line, assuming the applications have been handled through Immigration and Naturalization Service, a person who has nonpreference would be qualified. Assuming that, then he would never know when the 2, 3, 4, 5, 10-year period might be applicable for his stay, is that correct?

MS. HARPER. That is correct.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Counsel may proceed.

MR. CHOU. Mr. Scully, could you tell me what is the standard under which a visa would be denied?

MR. SCULLY. A consular officer is required to deny a visa if he knows or has reason to believe that the alien is ineligible to receive that visa under one or more of the provisions of law, or that he is not entitled to the classification—that is to say, claims to be a visitor but the consular officer is not satisfied that that he is, in fact, a visitor; or he claims to have a preference status, if the consular officer has evidence that he is not entitled to that. The consular officer must know or have reason to believe that the alien is excludable or inadmissible, if you will, under one of or more of the provisions of law.

MR. DIMAS. Does this mean, in effect, that it is the consul who must be satisfied, and that is the criteria?

MR. SCULLY. That is the exact terminology of the law, Mr. Dimas.

MR. CHOU. Ms. Harper, critics of the current visa application process have argued that in order to have consular accountability for visa decisions, it is necessary to create a system of appellate review. What is the State Department's position regarding this suggestion or recommendation?

MS. HARPER. The State Department does not favor a system of appellate review in the United States. I assume you're speaking about reviewing refusals here. Visa refusals are reviewed in the field. By regulation, every visa refusal must be scrutinized and upheld or overturned, as the case may be, by a senior officer at the same foreign service post; but we disfavor an appellate system in the United States.

MR. CHOU. This review that you referred to by every consular officer, are applicants notified of this review?

MS. HARPER. Not unless they ask about it.

MR. CHOU. Are applicants or their legal or personal representative allowed to participate in this review process?

Ms. HARPER. The review process is essentially a paperwork process, that is to say, the senior officer looks at the file and at the material presented by the subordinate consular officer with respect to the refusal and on the basis of that paperwork decides either this judgment was good or bad, as the case may be.

Relatively few refusals are overturned, I might add, but some are. If, however, the applicant says, "I want to appeal this to somebody higher than you. Let me see the chief of section or let me see the Consul General or whomever it is," the applicant has access to that individual and may make his own case. If he wishes to have an attorney with him, he may.

MR. CHOU. In its analysis of the review procedures for visa denials, the President's reorganization project of the Office of Management and Budget stated that, if a visa is denied, only rudimentary appeals process exist and is rarely used. Could I have your reaction to that statement?

MS. HARPER. Well, I don't know what is intended by the term rudimentary, but insofar as rarely used is concerned, as I say, every visa refusal is reviewed by regulation.

MR. DIMAS. Would you classify, Ms. Harper, this review as more of a managerial review?

MS. HARPER. Not really. What I would consider a managerial review is the spot checking we do of issuances to ensure uniformity of standards. No, we would characterize the review of refusals as a modest appellate system in order to ensure that there are no abuses by consular officers, but not necessarily deliberate abuses, I don't mean that, but simply faulty judgment, not really to weed out officers as much as to preclude injustice to the applicants.

MR. DIMAS. Would the supervisory official have the authority to overturn the decision?

MS. HARPER. Absolutely.

MR. DIMAS. At what level is that official?

MS. HARPER. Normally, it would be the chief of the consular section, who, as a consular officer himself, has the authority to issue or deny visas, and who, if he or she feels that the judgment of the junior officer was faulty, would undertake to issue the visa himself or herself.

VICE CHAIRMAN HORN. At this point, let me ask, do we have records that you gather from the field as to the number of times a particular consular officer was overruled by the Consul General or someone between that officer and the Consul General?

MS. HARPER. No, sir, to the best of my knowledge, we do not keep records of that sort. It is safe to assume that if any consular officer is consistently erroneous in his approach and the senior officer feels it necessary to overturn the refusals, this will be a matter of the man in the personnel file of the junior officer, and would very easily lead to a selection out of the foreign service or transfer into a different function in the foreign service, if this person is marvelously qualified in other respects but not for issuing visas.

VICE CHAIRMAN HORN. I must say, I find it strange that as a review process of management such records are not kept; the analogy to my own institution, a university, would be a grade appeal system which I have in each school, and we do gather data as to what happens to the appeals at the school level in an attempt to decide or to spot those situations where no appeal is ever granted and every appeal is granted, and to just get some feeling as to whether justice is being done, because sometimes the extremes will reveal that.

I take it no thought has been given in requiring that from the post?

MS. HARPER. Not to my knowledge.

MR. SCULLY. Not to my knowledge, either.

MS. HARPER. As I said, Mr. Horn, not very many on a percentage basis, not very many refusals are overturned. Most of them are well founded.

MR. CHOU. I would like to cover one final area with Mr. Scully.

Under the current visa application process, U.S. consular officers are authorized to deny visas to any alien who they believe is likely to become a public charge.

MR. SCULLY. Not authorized, required.

MR. CHOU. Required, okay. What factors are taken into consideration in making this determination?

MR. SCULLY. That's a very difficult question, Mr. Chou.

MR. CHOU. How does a consular officer determine whether a person is likely to become a public charge?

MR. SCULLY. There are three basic conceptual ways that an applicant can demonstrate his ability to support himself. In the rare case the applicant may be personally wealthy, as I say, have his own resources from which he can live. Obviously, that occurs but rarely. A second possibility is the applicant has prearranged employment in the U.S. which will provide him a living wage. A third alternative may be that the applicant has a close relative in the United States or some other person who is willing to guarantee, if you will, the support of that applicant as necessary.

Every applicant presents evidence of one or a combination of those three types. That evidence, normally in documentary form, has to be evaluated as to the level of income, as to the likelihood that that income will actually be forthcoming or those resources, whatever they may be, and a determination has to be made on that basis.

Factors, I think, necessarily have to enter into it. An applicant claiming to have prearranged employment or claiming to be entering into a particular occupation, I think consular officers have to make a judgment as to the likelihood that this particular applicant will carry through on it and that it will in fact occur.

On the basis of the documents that are presented and the consular officer's evaluation of them, and as a result of his interview of the applicant—and, by the way, an interview is required, mandatory in immigrant cases. It is optional in some nonimmigrant cases, but it is not

optional in immigrant cases; every immigrant applicant must be interviewed.

On the basis of the documents and the consular officer's evaluation of the situation as reflected in the documents and in the interview with the applicant, the consular officer has to make a judgment as to whether the individual is likely to become a public charge.

MR. CHOU. Are there written financial guidelines concerning the level of income an alien must make and maintain?

MR. SCULLY. The Department has promulgated and furnished all consular officers what are, so-called, the poverty guidelines, published periodically by, I think it is now called the Community Services Administration. Those are not absolute standards. They are guidelines for use by consular officers in evaluating individual situations, but they are promulgated, they are incorporated into the visa manual, which is the operating handbook consular officers use in adjudicating applications and in processing applications and they are intended as guidelines, so there is a presumption that, if an individual's prospective income, income falls below, or a family unit, if you will, income falls below that set out in the guidelines, there is a presumption, which the individual may overcome in an individual case, that he likely will become a public charge.

It is not a determination; it is not an absolute breaking point, but the presumption does arise where the applicant's income falls below the level specified by the CSA.

CHAIRMAN FLEMMING. Would you provide us, for the record, the latest issuance dealing with that issue?

MR. SCULLY. Certainly, sir.

CHAIRMAN FLEMMING. When it is received, without objection, it will be entered in the record at this point.

MR. CHOU. You mentioned that he may be able to overcome the public charge provision notwithstanding not meeting that financial guideline. How may an applicant overcome that situation?

MR. SCULLY. This is very difficult, Mr. Chou. We've had many discussions of it.

MR. CHOU. Are there any written guidelines saying how it can be overcome?

MR. SCULLY. We have set forth in the visa manual material relating to the public charge. I don't believe we have anything specifically saying how an applicant whose prospective income falls below the guideline may overcome the presumption by A, B, C. To the best of my recollection, we do not have any specific written material which sets that out.

MS. HARPER. One of the ways, of course, would be with the affidavits of support to which Mr. Scully referred earlier. Somebody is, let us say, near the poverty line, below it but near it, not well below it, and indicates through submission of an affidavit in support that if this prearranged employment at that salary level will not suffice, this

friend or relative will help pick up the difference. That would be one easy way to supplement.

MR. CHOU. The written guidelines, the written financial guidelines, do they vary from region to region, depending on where the applicant desires to emigrate to the United States?

MR. SCULLY. No, the Community Services Administration guidelines talk only in terms of foreign families or nonforeign families; there is no geographic distinction made under those guidelines.

MR. CHOU. Is there a distinction made for Alaska or Hawaii?

MR. SCULLY. Yes, I believe there is; there is a distinction between the continental 48 and those 2 States and then between farm and non-farm. Within the continental 48 there is no distinction made between one State or region and another State or region.

MR. CHOU. Ms. Harper, do you think the public charge provision places a burden on U.S. consuls to predict in advance, forecast events which they can't predict?

MS. HARPER. In an abstract sense, yes: In a practical sense, I think usually there are objective factors in every case which provide the consular officer with the opportunity to use rational judgment. After all, the law says "has reason to believe" or "is likely to become a public charge."

The consular officer is not going to grasp at straws and find it likely—if one is dealing with a healthy working age applicant with skills or talents that are marketable, he is not likely, under the normal circumstances, to become a public charge, and I think that consular officers would normally find that to be true.

MR. CHOU. Mr. Chairman, I don't have any further questions at this time

CHAIRMAN FLEMMING. Vice Chairman Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Ms. Harper and Mr. Scully, I note that each of you has been with the State Department for a number of years, one in 17 and one in 26. You referred to a law which has imposed a great deal of authority and powers on the consular officials. I would like to ask if either of you would describe the necessary qualifications for consular officials? How does one get to be a consular official?

MS. HARPER. Well, I was trying to think, if I could, but I really can't give you a breakdown between career foreign service officers who are consular officers and support staff who have worked their way up to the rank of consular officer. The foreign service officer is one who has gone through an examination system, written examination, customarily a college graduate, although that's not required—if you can pass the examine without a degree, more power to you—followed by a formal examination for general suitability for foreign service work. That's the background and essence of the career officer.

We also have in our system the opportunity for upward mobility, people who have come in as clerical personnel and who, over the years, have risen in grade and have become specialists in consular work and who are consular officers after so long a period of time.

Those people also frequently do have a college background. They are at least high school graduates, possibly with just some undergraduate work, possibly with a degree at the university level. They are people who have worked in the area of citizenship or visas or protection and welfare activities, whatever the consular activities are, which have been assigned over a great many years. They are so-called staff persons, staff officers.

COMMISSIONER FREEMAN. So that you do have in the service individuals who may be making decisions as economists or social scientists who may be high school graduates?

MS. HARPER. Yes.

MR. SCULLY. Not in the consular field, Ms. Freeman. We do not make decisions as economists or as social scientists when you're issuing or refusing visas. You make decisions in accordance with the law.

COMMISSIONER FREEMAN. When you make a judgment as to poverty status or anticipate as to whether that person may or may not become a public charge, this is a judgment that is made by an economist or a social scientist, is it not?

MR. SCULLY. I see the point you're driving at.

MS. HARPER. That's the reason I said yes before Mr. Scully said no.

VICE CHAIRMAN HORN. May I say to my colleagues, since my mother was a welfare director for 25 years, that decision is also made by almost every welfare worker in the United States, in the sense of welfare policy.

COMMISSIONER FREEMAN. And the policy of the welfare worker, and the decision is reviewable. This is the point that I'm making. The other question is, I would like to ask with respect to the number of employees, does either of your office have—how many consular officials are there?

MS. HARPER. There are approximately 750 serving abroad.

COMMISSIONER FREEMAN. Do you have a breakdown by race, creed, color, sex, national origin, cross-classified by race and sex; if so, you don't have to give it to us—I would like to request, Mr. Chairman, that the information be provided and inserted in the record at this point?

MS. HARPER. I will check with the EEO office when we get back and make every effort to give it to you.

CHAIRMAN FLEMMING. Without objection, when the information is received, it will be entered into the record at this point.

COMMISSIONER FREEMAN. We will omit the request with respect to creed. Do you have any independent recollection as to the number of consular officials who are female of the 750.

MS. HARPER. Five years ago I would have said the majority were. Now, I think there is probably a more even split.

COMMISSIONER FREEMAN. Well, do you have an independent recollection as to how many are black?

MS. HARPER. No, I don't. At my last post, out of eight consular officers, three were.

COMMISSIONER FREEMAN. Hispanic?

MS. HARPER. One out of that eight, and a couple of women. We were diversified, just at that one post.

COMMISSIONER FREEMAN. Are the majority white male?

MS. HARPER. No, I think that we didn't have a majority. As I said, we're dealing with eight consular officers and we had some of everything.

COMMISSIONER FREEMAN. You had 750—

MS. HARPER. Oh, of the 750? I would seriously doubt that the majority of the 750 are white males.

COMMISSIONER FREEMAN. It is the 750 that I was requesting the breakdown for.

CHAIRMAN FLEMMING. She doesn't have any independent recollection of the total.

COMMISSIONER FREEMAN. If from the 750, or perhaps within the whole area of the inquiry of this hearing, whatever information that you have you will provide. Thank you very much.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Yes, given the Mexican sensitivity to international affairs, did the Naturalization and Immigration Service contact the Department of State, to your knowledge, for diplomatic advice on the building of that fence in Tijuana and Juarez?

MS. HARPER. No, sir.

COMMISSIONER RUIZ. I understand that around 40 miles of fencing was being contemplated to be built. Now, there is a diplomatic political stance or procedure where your office would be very much interested in pursuing the same, in our bilateral relations with Mexico, and I'm a little bit surprised that that liaison hasn't existed.

I have before me here an October 31, 1978, *St. Louis Post Dispatch* release. It's called "Tortilla Curtain, A Steaming Issue." Have you read that one?

MS. HARPER. I have not read that one. I have read several others on the "Tortilla Fence."

MR. SCULLY. Can I offer a comment, Mr. Ruiz? It is my understanding that this is not a question of constructing the fence; it is a question of replacing one that has existed for many years, and I think there is a distinction between constructing one where none existed and replacing one where one did exist.

COMMISSIONER RUIZ. I've been there on the spot and, therefore, I have a different opinion, sir.

MR. SCULLY. I said it was my understanding.

COMMISSIONER RUIZ. As recently as 1 week ago.

MS. HARPER. It was my understanding, if we're just going in for understandings, that it is both.

COMMISSIONER RUIZ. Yes, it is both.

MS. HARPER. They were going to replace existing fence and extend it.

CHAIRMAN FLEMMING. We received specific information on it yesterday from the Commissioner, and I don't think it was 40 miles, however, Commissioner.

VICE CHAIRMAN HORN. I thought it was 12.

CHAIRMAN FLEMMING. 12 miles, but the total may be 12.

COMMISSIONER RUIZ. The total is 40 miles.

CHAIRMAN FLEMMING. But the new construction is about 12.

COMMISSIONER RUIZ. The total is 40 miles. That is correct. And reading this extract, and then even before the query, in a recent address to a group of American newspaper executives in Tijuana, Lopez Portillo remarked with surprising frankness, "We are treated neither with priority nor with respect by the United States."

I don't know how accurate this is; nevertheless, the record is that the Immigration and Naturalization Service did not ask the intercession of the Department of State in this unilateral act.

MS. HARPER. No, sir, I think we were all surprised by it.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No questions.

CHAIRMAN FLEMMING. I'd like to ask this question relative to the consular officers and the discharge of the responsibilities that they have under the law. What kind of special training are the consular officers given in connection with the discharge of these particular responsibilities?

MS. HARPER. When a foreign service officer is commissioned, he goes through a course that, at least when I went through it, was called A100; I don't know what it is called now at the Foreign Service Institute, which covers all facets of foreign service work—consular, political, economic, the whole gamut of activities in which he might be assigned.

There is also at the Foreign Service Institute a very specific, basic, several-weeks course in consular work going into more detail in consular work, visas, passports and citizenship, protection and welfare activities, quasi-legal activities, notariats, things of that sort.

At a more senior level we have a mid-career consular course, which I think is 2, 2-1/2 weeks, something like that, which in large measure is as much management oriented as it is technically oriented, because, of course, at mid-career, one has the basics of the technical course that would have been given to the junior officers.

That, in essence is, as far as I know, the extent of specifically consular oriented training, although, of course, as I'm sure you are aware, the Department of State Foreign Service Institute has a wide range of courses available to everybody, including consular officers.

MR. SCULLY. There is also a correspondence course which officers can take, one specifically in visa work.

CHAIRMAN FLEMMING. That was going to be my next question, whether or not there were any training materials that were furnished to consular officers. Now, on that particular course, you say they can take it?

MR. SCULLY. That's correct.

CHAIRMAN FLEMMING. They are not required to take it?

MR. SCULLY. They are not required to take it, to the best of my knowledge.

MS. HARPER. Officers are not required to take it because they are required to go through that other course; however, I would note that the correspondence course really was not designed for officers. It was designed for clerical staff and it was designed for our foreign service national employees who wish to get a greater grasp of the technicalities of the function in which they are engaged.

MR. SCULLY. Officers do take it, however.

MS. HARPER. Officers may take it, but I mean it is not really designed for them.

CHAIRMAN FLEMMING. Vice Chairman Horn suggests that it would be helpful in the development of our record if we could have copies of the materials that are used for instructional purposes. For example, that correspondence course dealing with visa work, if we could have a copy of that, I think that would be very helpful.

VICE CHAIRMAN HORN. I think there's a manual for consular officers to pursue. I think that would be useful, if the staff hasn't already explored it.

MR. SCULLY. A copy of the manual was furnished—

MS. HARPER. But we can provide the visa correspondence course, and I think that we could provide you with at least some of the materials, because I don't know how much of it is written down, but at least some of the materials, for instance, role playing kind of things that they do in that mid-career course.

CHAIRMAN FLEMMING. That would be helpful. Then in addition to this, this is training in the broad sense, but we're dealing with this difficult problem of determining whether or not a person may become a public charge. Does the Department, in addition to the materials to which you referred, put out materials from time to time designed to help the consular officer who is performing that particular function in the discharge of those specific duties?

MS. HARPER. I would say yes, in the sense that from time to time, not that specific duty exclusively but with regard to any area of the implementation of the law, we feel that there is a problem or a misinterpretation or we can't get out a new revision in the manual soon enough, we send out so-called aerograms which we elaborate on the subject.

I think we perhaps do more, however, through such mechanisms as our consular conferences. We hold conferences regionally as well as within country, but regionally at least once a year. We call together

the consular officers from a whole area, the most recent one was in Manila and covered officers from all of the East Asian posts and people shared their experiences. Senior departmental personnel attend these and offer their guidance, and I think that does more to, in the training field, iron out problems and variances than anything you put on paper.

MR. SCULLY. May I offer an additional comment on that? We have made, Mr. Flemming, over the last several years, a very strong effort to reduce the amount of instructional material that was outside the visa manual. The visa manual itself is a large book. It is intended and designed as the basic operating handbook, and we had received substantial complaints over the years from our own personnel that there were too many instructions, modifications of instructions, changes of procedure that were issued outside the scope of the manual, and it became an administrative problem keeping track of these things, tying them back into the basic material in the manual, so we had made very strong efforts to reduce the amounts of outside material and to focus our attention on inserting into the manual the latest information, guidance, and instructions and doing that more expeditiously, so to that extent there is much less now of this outside material and much more concentrated inside the manual or within the manual itself.

CHAIRMAN FLEMMING. I understand that problem. It seems to me that the policy that is now being followed is definitely an improvement. There's just one other question that I had, and this has to do with the review of the adverse decision. Does the senior officer who is reviewing the adverse decision have the right to, in effect, reopen the record and go back and ask for additional evidence and does that include right on his part to take the initiative in reinterviewing the applicant?

MS. HARPER. Yes, sir, to both; yes, sir.

CHAIRMAN FLEMMING. Do you know whether or not that happens very often in connection with the review process?

MS. HARPER. I doubt that it happens very often because usually visa refusals are well documented at the time he gets it. The reviewing officer does look at it as if he were handling the case *de novo*, but with all the pieces of paper there. If he finds shortages in the documentation, if he finds lack of tie-in between this statement and this conclusion reached from that statement, then he will indeed request additional materials from the officer who had refused the case and/or from the visa applicant, as appropriate.

CHAIRMAN FLEMMING. Just to clarify one other matter that you touched on. If the applicant or her or his representative asks to interview the senior officer who is reviewing the file, that request would be granted?

MS. HARPER. Yes, sir.

CHAIRMAN FLEMMING. Okay. Counsel have additional questions?

MR. DIMAS. Mr. Chairman, yes, I would, if I may, please.

Mr. Scully, Mexico was first subjected to the 20,000 per year limitation, I believe, as a result of the 1976 amendments to the Immigration and Nationality Act which were to take effect on January 1, 1977.

MR. SCULLY. That is correct; that is also correct with respect to all other Western Hemisphere countries.

MR. DIMAS. Right. Now, how many visas were actually made available in calendar year 1977 to Mexico?

MR. SCULLY. In calendar year 1977, Mr. Dimas, since we had two separate fiscal years in calendar year 1977, I cannot give you an answer to that question without referring to the statistical materials. I have to look at the monthly total.

MR. DIMAS. Was it substantially under 20,000?

MR. SCULLY. In calendar year 1977 I have no way of knowing that without referring to the statistics.

MS. HARPER. Mr. Dimas, you must realize that the numerical limitation is not by calendar year, it is by fiscal year which is the way, which is why Mr. Scully is having a problem with your question.

MR. DIMAS. Yes, I understand that.

MR. SCULLY. You're talking about 9 months of one fiscal year and 3 months of another fiscal year, and you're talking about calendar year and therefore without referring to statistics for 2 separate years—

MR. DIMAS. The law also requires that you use a quarterly allocation of those visas, so that you could still speak of three-quarters of one fiscal year during calendar year 1977 and one-quarter of the following fiscal year.

MS. HARPER. We could but I think that it would be wiser to go back to our statistician and get the actual figures for you.

MR. DIMAS. Let me rephrase the question that I'm actually interested in. Were not allocations made against the 1977 quota for Mexico in the last quarter of calendar year 1976?

MS. HARPER. Yes, sir.

MR. SCULLY. Mr. Dimas, I personally would prefer not to answer any further questions about this matter. It is under litigation in the courts, and I think this might be an inappropriate forum for treating something which is currently being litigated.

MR. DIMAS. Would you tell us exactly what is being litigated, Mr. Scully?

MR. SCULLY. Complaint has been filed. Plaintiff's name is Contreras, and Contreras and others are claiming that visa issuances which were made to natives of Mexico during the period October 1, 1976, to December 31, 1976, a period prior to the effective date of Public Law 94-571, were charged against the 20,000 limitation for Mexico which became effective for fiscal year 1977 as of January 1, 1977. And it seems to me that since the matter is being litigated, we have a position on this which has been presented to the courts, and it seems to me this might be an inappropriate forum to argue the merits of that since the courts are already seized with that.

MR. DIMAS. We're not trying to argue the merits.

CHAIRMAN FLEMMING. I think you should honor Mr. Scully's request.

MR. DIMAS. I have one final question, if I may, Mr. Chairman. I asked the gentlemen in the previous panel about the confiscation of documents at the border, and I would like to pose the same question to you about confiscation of documents at the consular level. Could you comment? Does this happen?

MS. HARPER. Mr. Dimas, I would not characterize it as confiscation.

MR. DIMAS. Retention?

MS. HARPER. Documents are voluntarily presented to the consular official in support of the visa application; we retain them.

MR. DIMAS. Under what circumstances?

MS. HARPER. Well, certainly, if they lead to a visa refusal, that is, they are germane to a visa refusal, we retain them as evidence of the validity of the refusal.

MR. SCULLY. If they are legitimate, on the other hand, and they support the claim and a visa is issued as a result of those documents, they are then incorporated into the issued immigrant visa and become a part of the alien's permanent file at the Immigration and Naturalization Service after he's admitted.

MS. HARPER. That is by law, I might add.

MR. DIMAS. What would happen if the visa were denied on a ground such as the public charge, and there was no question as to the validity of, say, the birth certificates that were presented?

MS. HARPER. We have no objection to giving back any document that an applicant wants unless it is germane to a refusal.

MR. DIMAS. Thank you.

MR. SCULLY. I believe it is a practice to return it so we're not burdened with it.

MS. HARPER. We voluntarily—We don't wait to be asked.

MR. CHOU. Mr. Chairman, I have one question.

CHAIRMAN FLEMMING. All right, let's just take one.

MR. CHOU. In regard to the retention of documents, if it is germane to the visa denial and the visa applicant asserts that the document is neither fraudulent nor in his wrongful possession, what process or procedure is available to him to reacquire those documents?

MR. SCULLY. Well, Mr. Chou, let's assume that the document is conceded to be valid, that there's no question as to its fraudulence or its inaccuracy, it is simply a question that because of insufficiency of evidence, the evidence is legitimate, it's genuine, but it just isn't sufficient to meet the requirements of the law.

Now, I would assume—and we do not have to my knowledge a specific instruction on this—but if the applicant needed that original document back, an arrangement could be made to make a copy of it so that the file would retain the copy so the applicant could have it back.

I'm not aware that we have a specific instruction which instructs that that occur, but I would assume that would be something that could be normally arranged at the applicant's request.

MS. HARPER. To the best of my knowledge, Mr. Chou, the reason we don't have any instructions in regard to it is because we've never had that problem. I have never had raised with me, except by you, the question of return of document that a consular officer felt was required in the file.

MR. CHOU. Thank you.

CHAIRMAN FLEMMING. We want to express our appreciation to both of you for being here with us and providing us with this information. Thank you very, very much.

The hearing is in recess until 1 o'clock.

Afternoon Session, November 15, 1978

CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next witness.

MR. CHOU. Will Deputy Commissioner Noto please come forward and remain standing so he can be sworn in?

[Mario T. Noto was sworn.]

TESTIMONY OF MARIO T. NOTO, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

MR. CHOU. Mr. Noto, could you state your name, your title, and your business address for the record, please?

MR. NOTO. Mario T. Noto, Deputy Commissioner, Immigration and Naturalization Service located at 425 I Street, N.W., Washington, D.C.

MR. CHOU. If you have a prepared statement, you may introduce it into the record and summarize it at this point.

MR. NOTO. I have a short statement that I would like to briefly read.

To Members of the Commission: I am pleased to be here today to discuss the Immigration—

MR. CHOU. Could you move the microphone closer?

MR. NOTO. Members of the Commission: I am pleased to be here today to discuss the Immigration and Naturalization Service's attitude and approaches to the issue of human relations and civil rights which are intrinsic to the enforcement of the immigration and nationality laws. Ironically, during the past few weeks I have been asked to publicly state my personal philosophy as to the obligations which our agency has in its dealings and relationships with aliens in the United States. With no objections from the committee, I can't think of a more appropriate and better forum to do so than this hearing which itself focuses upon the very issues of the observance of human and civil rights.

As you know, the Immigration and Naturalization Service has been given by Congress the responsibility of administering and enforcing the immigration and nationality laws of the United States. It is my personal belief that this responsibility carries with it a concomitant and unqualified agency obligation to ensure that no person coming to the

attention of INS is denied equal protection and benefits which may be due under the law because of sex, religion, race, nationality, origin, or color.

This obligation to me is inviolate and it assumes even greater importance which the Service gives to persons who are illegally here or who have entered illegally.

But even this states far too simplistically the difficulty of humanely enforcing immigration statutes, since these statutes are in violation of those laws which invariably involve the right of people to remain in the United States.

This means that the Service has not only the task of administering and enforcing the law by deporting people from the United States, but also of deciding who will be allowed to stay in this country. This is, in my opinion, an awesome and tremendous responsibility requiring judgment and decisions of conscience and required by law. It is one which cannot be taken too seriously since the decisions affect not only the lives of the persons with whom the Service deals, but those of families and loved ones as well.

For this reason alone, it is essential that INS enforcement be not only efficient, effective, and productive, but that it be humane and compassionate with every regard for the rights of those people with whom it comes into contact. This Service must maintain a delicate balance between enforcement responsibilities which are mandated by our Congress and still uncompromising adherence to the human and civil rights dictated by conscience and plain decency.

This balance becomes even more important, particularly today, in view of the present national controversy as to the number, location, and destiny of the many aliens who are here in violation of law and who live behind the shadows of their illegal status and the constant fear of deportation.

In support of the administration's commitment to respect human rights, we in the Immigration and Naturalization Service adhere to the policies that have been announced by President Carter and as directed by the Attorney General, Griffin Bell.

Our mandate is that human and civil rights are inviolate and must be protected under law. In implementing our policies, INS has taken various remedial measures, information on some of which have already been given to the Commission previously in the course of the investigations which your staff had, interviews with staff and members of our Service, where I have some others with me, information on INS activities in this particular area, should you wish to discuss them should you deem to do so. These do not represent nor will they be our only efforts in the area of human and civil rights.

As an agency dealing with and holding the future of people, its enforcement mandates we shall and must continue to plan and continue to review INS policies and procedures. Where necessary or desired, we shall take initiatives to protect the basic rights of all those persons who

come to INS' attention. Thank you for letting me make this statement, which I'll be pleased to respond to any questions which the Commission may have.

MR. CHOU. Can we have that statement entered into the record?

CHAIRMAN FLEMMING. Without objection the full statement will be entered into the record at this point.

MR. CHOU. When did you assume the position of Deputy Commissioner?

MR. NOTO. I was appointed Deputy Commissioner on May 31, 1977, but I had been with the Immigration and Naturalization Service from 1941 to 1968, with the exception of 3 years of military service.

MR. CHOU. Could you briefly describe the duties of your office?

MR. NOTO. My current responsibilities are to oversee the operations of the Service, to assure that our implementation of policies that have been promulgated or statutes that have been enacted are adhered to within the dictates of the policies which we believe to be humanitarian, and yet enforcement of them as mandated by law.

MR. CHOU. We understand that in '77 the Central Office Committee for Policy Review was created; is that correct?

MR. NOTO. That is correct.

MR. CHOU. Why was this Committee created and could you briefly tell us what its findings and recommendations were?

MR. NOTO. Yes. I created the Committee because it was apparent that many INS policies which have been set forth in memorandums and in written and oral instructions did not appear to be a matter of public knowledge, and I found additionally that in some instances existing policy instructions were not in accord with what the new administration believed to be its mandate to enforce the immigration and nationality laws.

It was my concept that regulations, instructions, or any top directions which applied internally should have, wherever permissible under law, been made public so that we would no longer be cast in the role of practicing secret law or that an alien or an attorney or, for that matter, the entire public would not be in the position to not have had knowledge, public knowledge, of why we were acting in a certain way or to be accountable for the acts and judgments which were being made by the immigration officers and staff.

For that reason I appointed a five-member Policy for Review Committee, which met on two occasions in the central office, and their goal was to ensure that all of our policies and operations were completely compatible with administration policies, philosophy, programs, and responsibility and that the implementation of these would be as uniform as possible notwithstanding the locale of operations; in short, the type of administration that was being made in New York should be equally applicable under the same circumstances in San Francisco, and it was an attempt to try to create a uniform system whereby decisions would be uniformly administered insofar as com-

patible, so that it would be an additional method through which we would achieve what I regard as compatibility with due process.

When the review was completed, the findings and recommendations were reviewed by staff level officers, and as a result of that, those which were accepted were promulgated very formally for publication either in Federal regulations, operations instructions which could be published, or provisions of the administrative manual which would be available to the public.

In short, the conceptualization of the setting up of this Committee was to remove any secret or confidential memoranda which had been improperly classified as such, or which had been withheld from the public for their knowledge in the administration and enforcement of immigration and nationality laws and regulations.

MR. CHOU. You mentioned the ones that were acceptable were implemented into regulations and policy. What about those that you would consider "unacceptable"?

MR. NOTO. Those that were deemed acceptable were put into the format that was appropriate, whether it was a Federal regulation or whether it was an operation instruction for internal purposes but still made available to the public, and those that were not accepted, well, we tried to fit them into some scheme whereby, if they were properly classified as being confidential, well, then, they were so classified.

MR. CHOU. Thank you. After you assumed the office of Deputy Commissioner, you undertook a review of various operations of the INS divisions; is that correct?

MR. NOTO. That is true.

MR. CHOU. Have you reviewed the operations of the INS internal investigations unit?

MR. NOTO. Yes, I did. The—when I took office on May 31, 1977, it did not take but 1 day to ascertain that the internal investigations unit for the Service, which had the responsibility for the investigation of complaints and allegations made against Service employees, was a chamber of horrors. It had no accountability; it had no supervision in the sense that there was a uniform approach or that there were criteria. It was a helter-skelter operation, run by a few individuals who felt that they were accountable only to themselves and God.

The net result of it was that I inherited hundreds of cases that had been hanging on, subject to investigation for years, on some of the most flimsy of allegations, which should have been clarified very soon and which, unfortunately, cast a cloud upon the individuals concerned, bringing about havoc in private lives, impeding effective and efficient operations, and, in short, the unit called the internal investigations unit had been left to its own devices, and it operated on the whim, the caprices, of the people that were immediately responsible for its administration and supervision.

The very following day, on June 1, I had a meeting with the staff that was responsible for that, explained to them the need for complete

reformation. It was my concept that the government cannot and must not operate in that fashion. We have employees who are entitled to the same dignity and to the same protection and to the same adherence of civil rights and the basic human rights as the aliens have been.

We had further meetings on June 7, and on June 17 of 1977, I issued a mandate to them requesting very detailed information for my advice. I'd be glad to make that as a matter of record. It is an instruction from me dated June 17, 1977, to the acting director of the internal investigations unit.

When I received the information, we had it studied and began to compare it to operations from within the Department of Justice itself, because there is a counterpart to it in the Office of Professional Responsibility which answers to the Department. It was my conviction that we should be as equitable as possible to the Department's administrative structure and governing rules so that we could all operate with compatibility. The Department had an internal audit unit conduct an investigation at my request. I asked them to come in and to help me clean it up, and they did.

They came in—and I say with some pride—we were commended by the internal audit unit of the Department of Justice for having shown the initiative and the willingness to bring about a reformation of this type.

The results of it were that we reconstructed the internal investigations unit and made it into an Office of Professional Integrity. We restructured its entire administrative capabilities, made it accountable from the lowliest investigator up to myself, and we tried to parallel our system as much as we could with that of the Department of Justice.

Subsequently, hearings were held by a subcommittee on the Committee of Government Operations of the House on April 18, 20, and 24 of 1978. This was a House investigation of Justice Department internal investigations policies.

They conducted, under the chairmanship of Congressman Richardson Preyer, a very comprehensive inquiry as to what had we found and what had we brought about as remedies to improve internal investigations of employees. Again, I say with a great deal of pride, in pointing to statements that appear in the transcript of the hearing, the Chairman commended us again for the work that we had done to overhaul the office and to meet some of the problems and some of the allegations that have come up in the past.

With the Commission's permission, I would like those, if possible, to be made a part of the record, that is, that pertinent portion of the hearings before the subcommittee on the Committee of Government Operations that I referred to, just that portion of it that refers to the internal investigation policies of the Immigration and Naturalization Service and also a letter from the director of the internal audit staff of the Department of Justice, addressed to us, dated March 13, 1978,

which reflects their findings in an observation of our remedial measures.

I think that those two documents will confirm the fact that the improvements that we took were substantial achievements in the area of protecting the rights of the employees of the Immigration and Naturalization Service.

CHAIRMAN FLEMMING. Without objection, both of those documents will be entered into the record at this point. Thank you.

MR. NOTO. Thank you, Mr. Chairman. I would like to again say with certain pride that we have cleaned up the investigations which had been pending 3, 4, and even 5 years; that we now have a staff that I commend for their respectability and adherence to the basic concepts of conscience in applying themselves to rapidly disposing, into a rapid disposal of any allegation that reflects upon the character and integrity of the Service and the employee.

We are not without problems, but we are now entertaining and taking positive steps towards resolution of allegations against employees, particularly in order to avoid what must be a horrendous way of living with a cloud that is constantly over you among your fellow employees.

We have even a system of confidentiality so that even I myself do not know who is being investigated. I have symbols so that we maintain at all times a very tight security as to which employees are under investigation. We also conduct a preliminary inquiry so that we need not conduct, not only from a productive viewpoint and expense, but for the sake of the employee's morale, conduct a preliminary investigation so that we may immediately resolve whether there is any truth or substance to the allegations which are made so that we may immediately separate those which are baseless and those which are just motivated for ulterior purposes.

A number of cases now are referred to the Federal Bureau of Investigation or to the Department's Office of Professional Responsibility because of the gravity of the offense or charges which are sustained on preliminary inquiry and we thus remove ourselves from a very sensitive and perhaps very penetrating investigation that may transcend the capabilities of our own investigative staff.

I think, in short, I may say with pride that our Office of Professional Investigations now is functioning properly with a twofold issue, that is, to inquire and resolve as rapidly as possible allegations that are seriously impinging upon either the integrity or operational feasibilities, and, secondly, to remove any stigma of charges that may be made against our employees where, in fact, there is no basis but pure ulterior motivation to be making such an allegation.

MR. CHOU. You also reviewed regulations dealing with the due process rights of aliens—is that correct?

MR. NOTO. That is correct.

VICE CHAIRMAN HORN. Before we leave this, so the record is complete, Could we get a table from you, if that's available—and I as-

sume you have this for monitoring—at this point in the record that summarizes the number of cases and whether the final decision on a particular disciplinary complaint went for or against the individual officer of INS involved? You understand what I mean?

MR. NOTO. I do very well, sir, because I have a compilation of such cases.

VICE CHAIRMAN HORN. We could just insert that into the record at this point.

MR. NOTO. Before I insert that into the record, let me bring it more current, because I notice in glancing through it it may not be as current as perhaps would serve the Commission's wishes, so if you will allow me to submit that for the record, but I do have that and it will give you a complete tabulation of the types of cases, the number of cases, and the substance of the allegations that are either confirmed or disproved.

VICE CHAIRMAN HORN. Fine, that can be inserted.

CHAIRMAN FLEMMING. Without objection, that will be inserted into the record at this point.

MR. CHOU. In 1977 you proposed some changes in regulations to expand the due process rights of aliens in immigration proceedings; is that correct?

MR. NOTO. That is correct, sir.

MR. CHOU. One of your proposals was to provide for the review of an immigration judge of a district director's denial of an alien's request for extension of voluntary departure. Why was it necessary to request this amendment?

MR. NOTO. Well, I am in the fortunate position of having spent close to three decades of my life in government service in the Immigration and Naturalization Service, and over that period of time, you get to see the trees and you begin to lose your perspective of the individual trees, you just see the forest.

During the period of time, during the 9 years that I was out of the Service, I practiced law for a few years, and in my experiences as a lawyer practicing before the Immigration and Naturalization Service, I could not help but notice and observe that there were practices and procedures that were being employed, in my responsibility as a lawyer to my client, that I thought were violative of either rights or privileges which they were entitled to. At times I thought I saw too much of an arbitrary abuse of discretion.

Sometimes I saw, hidden behind the cloak of lack of accountability because of the immunity that exists when you avail yourself of government titles, that there seemed to be an attitude that if you wanted further recourse, you would go to the courts.

I don't want my remarks to be interpreted as an indictment because it is not so intended, but I think in any organization, such as the Immigration and Naturalization Service, and not unlike other organizations, when you begin to deal with the human element over a period

of time, there is a tendency in individuals to begin to lose a certain perspective. And the net result of it is that you no longer take into consideration some basic human qualities that perhaps are indispensable and prerequisite for the administration and dispensation of justice; these things gnawed at me and I thought that there was a need for reform.

When I returned, I came back with a certain sense of dedication to see to it that I would at least make an attempt to try to correct that which I believe to have been either abuses or injustices, notwithstanding they may have been innocently committed, but I thought there was a need to perhaps formalize some of the procedures and perhaps to set forth criteria and other rules which would impose in a very definite sense of responsibility and accountability to the people who were making administrative decisions that had such far-reaching consequences on the lives of people. In other words, in short, to make the decision which is required by law, but it must be made in accordance with the dictates that law requires and not one which is wholly dependent upon your capricious understanding or appreciation of what you think you would like to see as the net result.

So, some time after I came back, I had a study conducted as to where we could improve in our processes, and I had a study conducted and on the basis of that, I issued a memorandum on September 23, 1977, from myself to the Commissioner and it was entitled "Recommendations concerning proposed regulations to expand the due process rights of aliens in service procedures." My first recommendation was to provide for a review by an immigration judge of the district director's denial of an alien's request for extension of voluntary departure time. The reason for that was not too difficult to understand.

So long as you have the enforcement responsibilities of the Service separated into one area, any appeal for administrative relief, if not incompatible, certainly presents an anomaly as to whether you can get a fair and a conscientious decision from an administrator; therefore, since the district director was the individual who had originally instituted the deportation process, it was difficult for me to reconcile in my mind how that same individual, who, having initiated the process, would be the same individual to which you would come in and to plead for more time to remain in the United States.

Since the immigration judges are completely removed from any supervision or responsibility to any of the officials or the staff or even to the Commissioner of the Service, it was my belief that the immigration judge could more impartially and more objectively make a ruling upon an application for an extension of time for voluntary departure. I thought that this was basic to our institutions, that there be a separation of functions and responsibilities between those who act and those who decide.

The second proposal was that I wanted to propose that the immigration judges would have the authority to set the voluntary departure

time following the reopening of the deportation hearing. That is not an uncommon practice in immigration, where, on the basis of either newly discovered evidence or on the basis of some meritorious reason, there is a need to reopen a deportation hearing, and this is not unlike any civil process or criminal process, but the time to allow the person to leave voluntarily, in my opinion, was to be given to the immigration judge and not to the district director.

Again, for the same reasons, one officer, the district director—and I don't say this critically, that is his responsibility, he has a very definite enforcement responsibility, and that is, he is mandated by law to deport illegal aliens, but there also is a time that you must achieve that balance which I referred to between that which is meritorious and that which warrants some compassion and some form of understanding, perhaps in the form of an extension.

The third was a proposal that an immigration judge could reinstate an alien student in lawful status during the course of the deportation proceeding.

Now, let me explain this: We have thousands upon thousands of foreign students who are in the United States. Many of them are here on grants and in many instances they have either run out of money or they have not failed in the institution, though there is an occasion to change courses because they are not adaptable to the course that they had originally been signed up for, or there could be a change of circumstances back at home. In short, a student, foreign student, who comes here may find themselves in a predicament, either because of the reasons that I have mentioned or because there just is nobody coming forth to pay tuition or living costs, and in some instances, very much against the law, they do seek employment. It is unauthorized. It hurts the economy, for the very simple reason that in all likelihood they are taking a job away from an American person or an American student.

So it isn't something to be tolerated very easily, but in many instances there are mitigating circumstances, and I believe that when, in the course of deportation hearing, where a student is being deported, and the process has been started, that if there were sufficient mitigating circumstances, the discretion as to whether or not to restore that student to a proper legal status should be with the discretion of the immigration judge.

The reason for it being, since the district director who is charged with rigid enforcement of the law, it would be difficult for him to immediately go to the other side of the scale and look upon this as a case where perhaps the student should have been restored, and he wanted to restore the student. He may have had that opportunity and that discretion before he started the process, but once the process got under way, it would be a hard road for him to come back to.

For that reason, here again the immigration judge represents an objective, fair, and impartial person, and his discretion, perhaps, would

have more validity in light of all of the circumstances that would be developed, on the basis of the record before him, as to whether or not he should reinstate that student and put him back in as a lawful student without any loss of authority of that student to remain in the United States.

This has tremendous impact that the average person is unaware of, because when you talk to these students, they fail to understand the complexities of our law and the niceties that accompany law enforcement. Consequently, at times it is very essential that in order to maintain that image that's been projected, to try to make friends of these people, because these are the future prime ministers, the future leaders of the foreign countries, and they are here to see us work and to operate, and it is essential, to me it is indispensable, that they do not get a misunderstanding of our application of law, so that in the course of the exercise of the discretion to restore a student to lawful status, I think, and this is my opinion, it was shared by the committee that went into it, that perhaps an immigration judge may be a more suitable person to have the authority to restore a student to lawful status.

The last regulation that I proposed was to change the criteria for people that are kept in detention or that are released on bond. I found that existing regulations had a very, very flexible, rude guide who should go into jail, and that regulation simply provided that you could put a person in arrest and detention whenever it appeared the arrest of the respondent was necessary or desirable. That is too far-reaching; it is too elastic a criteria when you are dealing with the seriousness of taking a person's liberty and putting them into jail, or setting a high enough bond that you know they can't make bond and consequently they will end up into detention.

I think the amendment of that particular part of our regulations is essential, because it is judicial interpretation that before an alien may be detained, you will have to satisfy that they are either potential abscondee or that they present, in truth, a genuine threat to our national security. It is difficult in case after case to try to apply that criteria to an innocent student who, through no fault or circumstances beyond their control, find themselves in violation of law, and they are just as subject to the full measure of the law as one who would be a deliberate violator of the law.

Another regulation was one which would authorize the immigration judge, in exclusion cases, to redetermine a bond which has been imposed upon a person who applies for admission to the United States.

As of now, our immigration judges do not have that authority, and it is my conviction that they should have that authority, because in instances some of the bonds that are set on applicants for admission are high and arbitrary. In giving the authority for redetermination by an immigration judge, is just one more step in the direction of assuring equity and also a hearing which will be based upon a record before an immigration judge.

In short, these are the recommendations that were made. They are not all-inclusive; there were others, but these represent substantial forward movement in the area of trying to expand or at least to try to retain a measure of due process of rights of people who come under the jurisdiction of the Immigration and Naturalization Service.

MR. CHOU. What is the status of those proposed regulations?

MR. NOTO. They are pending with the Commissioner with the exception of one which has already been adopted.

MR. CHOU. And that one is?

MR. NOTO. The proposal to authorize an immigration judge in exclusion hearings to redetermine a bond which has been imposed upon an applicant for admission. That has been approved and the others are currently under consideration by the Commissioner.

VICE CHAIRMAN HORN. Excuse me, on that point, under the Federal Rules of Administrative Procedure, do all of those have to go out for public hearing or is this just the decision of the Commissioner?

MR. NOTO. No, he has not approved them yet, not for publication but for acceptance; in other words, they are under consideration as to whether they will even be accepted. The point after that will be a determination as to whether or not they will be published with advance notice to the public or not.

VICE CHAIRMAN HORN. What I'm hearing is that it took—it's been under consideration for 14 months; is that correct?

MR. NOTO. Yes, but I must say in defense of that, that is, that the regulations we are contractually bound—these have to go to the employee unions, so they have had to comment on it. The district directors have taken time to make comments, so it has gone a rather long route or path to give everyone a bite at the apple, so as to say, before a final decision is made on them, so that there are other views to consider besides those which I have presented.

CHAIRMAN FLEMMING. To clear up one point, assume that the Commissioner agrees, must he then, under existing law, publish them for comment in the *Federal Register*?

MR. NOTO. I don't know, Mr. Chairman, whether there is a legal obligation to do so, but I am confident that if these are accepted, they would be promulgated with public notice, which means we would publish them for public comment.

MR. CHOU. In that memorandum you stated that the only opposition voiced to those proposals stem from district directors. Could you tell us the basis for their opposition to those proposed regulations?

MR. NOTO. No, I don't recall having said opposition, although I'm sure there may be some opposition. What I said was that these regulations are by mandate or by some form of contractual obligation required to have to be circulated to the district directors for their comments and also to the unions that represent the INS employees, so what their comments are at this point I'm not that sure. I'm confident, though, that there have been comments expressed on both sides, both favorably and unfavorably.

MR. CHOU. Thank you. Mr. Chairman, could we have that memorandum introduced into the record at this point?

CHAIRMAN FLEMMING. Without objection, we'd be very happy to have this memorandum inserted in the record at this point in the hearing.

MR. CHOU. Could you tell us about the study made of INS bond setting practices that was conducted last year?

MR. NOTO. I'm sorry, I don't get the—

MR. CHOU. Mr. Noto, could you tell us about the study made concerning INS bond setting practices?

VICE CHAIRMAN HORN. Bond setting.

MR. NOTO. I see. I see. Yes. Here again, I came into the Service with the experience of 2 years of having seen that there were some questionable practices in the setting of bonds or custodial status of aliens. As I indicated earlier, the guidelines were very loose and very flexible, which in turn permits a wide variety of discretion to the point that at times it can become arbitrary.

To have absolute objectivity and to avail ourselves of the best expertise that would be available, we contracted with Bruce Beaudin, who is an authorized authority on the Bail Bond Act, which he was instrumental in enacting. He has been very much involved in bond matters.

Quite candidly, the way I got his name was through the American Bar Association. Not having met him, I asked the American Bar Association if they could recommend a person with that type of expertise and they recommended Mr. Beaudin.

Mr. Beaudin did undertake the study and he completed it in July of this year, and based upon his study we have made certain revisions: and one is that no alien shall be placed under arrest unless there is a reasonable ground to believe that he will abscond from the jurisdiction or that he is reasonably a threat to national security. This is a new element.

MR. CHOU. Is that the proposed regulation you referred to earlier?

MR. NOTO. [Nods.] We have set forth a criteria which would be the basis for the warrant; in other words, we are attempting to set forth certain criteria, certain elements, certain factors which, in our opinion, deserve consideration by the individual who makes the decision to put you in jail or to set bond, and we have mandated that you must consider close family ties, age, fixed address, prior immigration or any law violations, history of employment, financial conditions, previous attempts to abscond, reasonable causes to believe that the respondent will not appear but will attempt to evade immigration process, and several others.

In other words, heretofore, there was no such criteria. When you are dealing with 34, 35, or 36 different districts, you are, in fact, exercising the judgment and discretion of so many different people, and unless there is a yardstick with which they can adhere to and balance in their minds to arrive at an honest, equitable, and fair judgment,

there is almost an inevitable reason for abuse of discretion, perhaps unconscious, perhaps unintentional, perhaps inadvertent, but nonetheless a possible violation of the security of an individual person's liberty by putting him in jail.

We have also, with the idea in mind of achieving uniformity throughout the country, it is our belief that for the same type of infraction against immigration and nationality laws, you should not be put into jail in New York and in San Francisco be released on your own recognizance, if all factors are the same.

I might add this is not a problem that is peculiar to just the Immigration and Naturalization Service; this is a problem that prevails throughout our entire system of law enforcement in the country. The fact of the matter is, if it is a problem, there is no reason we can't undertake some initiative to try to bring about some remedial reforms in this area. We provided that no alien can be detained without bond, or for a bond of over a thousand dollars unless there is a prior approval of the Regional Commissioner.

The reason for that is, not that there is no trust of the district director but it is an additional check and balance system that are all deliberately calculated and designed to try to enhance and maximize the protection that is given to an individual's due rights, basic rights, and human rights, despite the fact that they may be in violation of the law.

Now, with these types of innovations, it is our belief that the Service can move into an area where we very deeply impact civil rights and do so with a clear conscience that we are doing the best that we can with what we have, and any infractions or trespasses upon basic rights ought to be at a minimum, and those only attributable to inadvertency or ignorance rather than acts of just plain arbitrariness.

MR. CHOU. Do you have a copy of that bail study with you at this time?

MR. NOTO. I don't have a copy of the bail study with me, and if you're asking for it, I would have to check back with our people as to whether it is available or not. I can't imagine that it is not available to you, but I would reserve the right to check with our people as to whether there is any type of legal impediment in our Service to furnishing it for you for your records.

CHAIRMAN FLEMMING. If you do that, then when it is received, we'll include it in the record at this point.

MR. CHOU. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Vice Chairman Horn?

VICE CHAIRMAN HORN. Commissioner Noto, I wonder if INS has pursued this thought in an attempt to get at the question of the impact of undocumented workers on the domestic work force. The thought is this: Has any crosscheck been run with either IRS or Social Security as to the wages received, taxes paid by those undocumented workers

who do become identified and are deported primarily to Mexico to see, one, if they have been in jobs where there has been withholding of taxes, they have earned money and taxes have been paid, and, two, the social security situation?

Have you pursued any crosschecking studies such as that?

MR. NOTO. Only to the extent that we have a close liaison and agency coordination and a working relationship with HEW insofar as the issuance of social security cards are concerned, and with IRS on the payment of taxes.

We have a working relationship with the Social Security Agency to the extent that, when an alien seeks to apply for a social security card, that through liaison and referral of records that is checked as against our records to determine whether or not the person is lawfully in the United States. If a person is not in the United States legally, of course, then INS will take over jurisdiction.

As far as IRS is concerned, when we do come into contact with an alien, there is a check made prior to deportation to ascertain whether or not taxes that may be due as a result of income earned during the pendency of their stay in the United States, whether it has been paid or whether it is due, and at that time it becomes a matter between the IRS and the alien.

To that extent there is a close coordination among the agencies that are impacted with the problem of undocumented workers.

VICE CHAIRMAN HORN. Is there a study available from either INS or IRS as to the average wages earned by undocumented workers who are found out and return either voluntarily or are deported?

MR. NOTO. I know none that our agency has but that is not to say that the Labor Department or the IRS may not have them. I cannot speak for them. I do know we do not have such a study.

VICE CHAIRMAN HORN. Let me ask Counsel to pursue these questions with both the Internal Revenue Service, Social Security Administration, and Department of Labor. I think it is important that we get at what is the wage impact.

You mentioned earlier when we were talking about foreign students, you said, if foreign students seek a job, they hurt the economy. Now, there are approximately a quarter of a million foreign students in the United States. As your comments suggest, the Attorney General has held that they cannot hold jobs while they are in the United States.

We do not know how many undocumented workers are in the United States. I have heard estimates in the last day from various witnesses without, and I think we all admit there are not reliable data, that the range is from 2 million to 12 or 16 million. A few years ago, the previous Commissioner had used the figure 7 and 8 million.

We are aware of your study that has been cancelled, the \$750,000 study just to find a number, and apparently we still don't have a number, but what concerns me is, if foreign students are assumed to be hurting the economy—and that's your testimony—I would assume

your testimony is that undocumented workers are also hurting the economy? Is that the position of INS?

MR. NOTO. Well, let me answer you on both issues. Let's go back to the student. I think this needs to be clarified for the record. A foreign student who comes to the United States is allowed to come here to pursue a course of study, and he is not, nor is she, authorized to gain employment in the United States because, prior to the time that a visa is issued to that student by the State Department, not by INS but by the State Department, we must accept conclusively that that student, after examination by the State Department visa-issuing authority, is concluded to have assets enough to pursue a course of study, educational competency to complete the course for which it has been approved, and, thirdly, a sufficient source of income or funds so that that person need not be employed in the United States.

If either one of those elements were to be missing, a visa issued to such a student or prospective student would be an error. However, American law is very kind and it allows flexibility, so that, if a student comes to the United States having met those three conditions by the Department of State abroad, but, unfortunately, through circumstances that were not reasonably foreseeable, or circumstances that arise that are beyond the control of the student, there is a need to gain income, to get employment, that student may be given permission by INS to be employed for 20 hours a week.

Now the theory behind that is, a student in good standing, a student who is otherwise bona fide, who eventually may become an asset to us abroad, should not be penalized, should not be required to return home with an uncompleted education solely because he has run out of funds and that is solely due to circumstances beyond his control. For that reason we have discretion to permit that student 20 hours of employment.

Now, when we do, we attempt, within reason, to assure ourselves that that foreign student is not taking a job away from an American student. What I was referring to in my testimony, which you alluded to, was those who do so illegally and without authorization, who are willing to work for less wages, who are willing to work for more hours, and unscrupulous employers will employ them. That's the group that I referred to, who do present a threat to job opportunities that should be available to American students.

Now, as to the second part—

VICE CHAIRMAN HORN. Before we move off that, are there any statistics available from INS as to the number of these decisions that have been made where foreign students have requested the opportunity to work 20 hours a week because unforeseen financial circumstances have arisen and INS has granted or refused that appeal? Do we have data from the region or the district offices?

MR. NOTO. I believe that that is available, but again I must tell you the reservation because I don't know our statistical capabilities.

VICE CHAIRMAN HORN. If it is available, Mr. Chairman, I would like to insert it at this point in the record so we can get a picture—

MR. NOTO. If it is available, you'll have it.

CHAIRMAN FLEMMING. Without objection, it will be entered.

VICE CHAIRMAN HORN. Proceed.

MR. NOTO. As to the question of the overall impact on the economy of undocumented workers—and I'm giving you a personal opinion—it would seem to me that throughout the United States there have got to be numbers of undocumented workers who are engaged in occupations which could very well be filled by American workers. The extent or location to me are unknown factors, but I would be hard put to say that the undocumented worker has no impact upon either operational opportunities or upon the economy of the Nation.

VICE CHAIRMAN HORN. In terms of the administration attempting to determine this question, has INS been involved in discussions with the Department of Labor as to how one might go about ascertaining the impact of undocumented workers, or is this strictly a responsibility of the Department of Labor in which INS has no interest?

MR. NOTO. Well, to the first part of your question, I do not know of any discussions that have been going on or that are going on in that area. As to the second part of it, I think, whether or not any potential or actual work force has any impact upon the economy of this country or any type of an impact upon the labor force is a matter strictly within the province of the Secretary of Labor, and I would look upon him as being the only competent person to have a voice in it.

VICE CHAIRMAN HORN. Well, unfortunately, as I've said yesterday, and that's the Commissioners' fault we didn't catch it in the review of witnesses, we have not scheduled a panel from the Department of Labor, and we will have to follow up, and I assume the staff will follow up, am I correct? If not, I ask officially that they follow up with the Secretary of Labor to get at this problem of what is the impact, if any, in the Secretary's judgment, as to the undocumented workers' affect on wage depression, lost jobs for American citizens, by having them work in the United States.

Let me go back a minute to one more aspect of the foreign student matter. I was delighted to hear you remark that many of these individuals are future prime ministers and leaders of their country. That certainly has been my experience.

One of the ironies I find in the administration's proposal, which I have mentioned to several other witnesses, is that the administration permits adjustment of status for illegal aliens who have hidden out in the country for years if they come forward and yet, to my knowledge, does not permit adjustment of status for students who have come from abroad, are legally here, and who might well wish to stay in the United States.

Do you feel that's an inconsistency and shouldn't adjustment of status opportunities be provided for more than undocumented wor-

kers? Are there any categories besides students and undocumented workers that might be considered?

MR. NOTO. No, I think at first blush it may appear as an inconsistency in the law in its application. I think when you ponder it, you look into it further, there is no inconsistency. The reason that a student—and I use the word discrimination very advisedly, only to illustrate but not in the actual context of the meaning of the word—if a student were to know that, as a student, he could come to the United States and by remaining here after the authorized period of time when he's completed his education, if he had that knowledge, there would be more likelihood of that student not wanting to return home, and he or she would be using the student route through which to gain permanent residence, in short, a circumvention of law.

Now, since a student knows—and again you cannot disregard the basic conceptualization situation that exists for allowing foreign students to come to this country. The whole theory is that a foreign student comes here to pursue studies that will improve his perception of our system, our democracy, our demeanor, our way of life, our governmental structure, and, hopefully, will entertain the optimism that he or she will go back and compare us with a foreign nation and, again hopefully, to begin to work toward making governments parallel to ours, in the sense that we would have governments throughout having a due regard for due process, for civil rights, basic human dignity. That's the basis for it.

To allow them to come here with almost an inducement that is veiled behind law, that would allow them to come here and in effect be told, "If you can evade detection by the Immigration and Naturalization Service for a prescribed period of time, all will be forgiven and you can remain in the United States," I would speculate that you would have many students coming here not to pursue studies, solely to come here as a vehicle as a student, because they cannot qualify under the regular immigration statutes for permanent residency.

VICE CHAIRMAN HORN. Personally, I agree with you, but I also believe that justice is what is sauce for the goose is sauce for the gander. What it appears to me is that because only students are only a quarter of a million, if a few hide in the country and don't return home, if we find them, we deport them. Because undocumented workers are several million—nobody knows how many million—and because they have political clout in the country, we don't touch them. We grant—we send up proposals to grant amnesty or whatever you want to call it, and that just seems to me a backward way to run a just immigration policy.

Now, either we ought to treat them all the same, and say, "Folks, the barriers are down; if you can hide out in the country long enough, eventually it will be past and it's a okay and we will forget about the rest of the immigration laws," or we ought to say, especially with the foreign students, many of whom have great skills and have come over

here and honed those skills more. We're talking about an industrial economy, not an agricultural economy any more, and although there's some of that, I would think we would treat skilled workers the same as we're treating primarily unskilled workers.

I guess that is what concerns me on this whole discussion.

MR. NOTO. Let's not lose sight of one factor, that is, that the distinction with students is not a regulatory or executive decision, but is a decision that the Congress has made statutorily—where the student is not permitted to avail themselves of the statutes that will allow adjustment to permanent status while being here in the United States for a period of time, so that if you are quarreling, really you're quarreling with a congressional mandate, not with an administrative or executive interpretation of policy.

VICE CHAIRMAN HORN. Okay, I agree with you, and what you're saying is, if Congress approves it, it doesn't matter how idiotic it may sound, and that's what we live with, and I understand that as an administrator, and I realize that Congress has not approved the proposals that have been sent up yet, but I just raise this as a broad-based philosophical question of what is fair.

MR. NOTO. I think I can appreciate your philosophical approach but I have to be quite pragmatic in my responses to you.

VICE CHAIRMAN HORN. I understand.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Noto, I want to pursue the statement that you made with respect to the granting of INS permission to students to work where necessary for up to 20 or more hours a week, and I wanted to know if this—if there is any coordination with the Department of Labor? It was not clear to me just what the process is, if you do any checking out or anything concerning the type of work that a student is going to do or not?

MR. NOTO. It is a matter that is handled at the district level, Ms. Freeman, and I can't say this with certainty but I would hazard a guess that in the grant of permission to work or deny work authority to students, there is a certain amount of liaison that is conducted at that level with the local employment agencies, which is more or less a test of the market to determine whether or not this could threaten a job for other students. I can't say that with certainty, but I would assume that is a condition that exists at the district level.

COMMISSIONER FREEMAN. Do you know whether there is any memorandum of understanding or any sort of agreement between INS and the Division of Employment with respect to this, or is it just limited to however a particular locality may judge it?

MR. NOTO. I don't recall any formal memorandum to that effect.

COMMISSIONER FREEMAN. Do you know of any working arrangements that INS has with the Labor Department concerning employment?

MR. NOTO. Yes, but not insofar as students are concerned. Of course, we have a very close relationship on the certification process but that's not applicable to students.

COMMISSIONER FREEMAN. Will you describe the certification process?

MR. NOTO. I would be glad to. You see, you have a provision in the law which provides that a person may come to the United States as a permanent resident under what is called a sixth preference, because people come to the United States as permanent residents in certain categories, one, two, three.

Now, the sixth preference is a legislative device through which a potential immigrant to the United States can apply to come here or, if they are here, to convert their status to that of a permanent resident if they are skilled or unskilled workers.

Now, in effect what happens was this: when that law was enacted in 1965, the basic concept underlying it was to protect the American worker, and Congress felt at that time, and properly so, that if you were an intended immigrant to the United States, that you were coming here to make this your home, that you were going to assimilate in our midst and become part of us, that you should have sufficient assets to either maintain yourself or that, if you were going to have to work to maintain yourself, that you certainly were not going to threaten or displace an American worker's job, and the concept was very valid.

To effectuate that, Congress provided a system whereby that, if you are a skilled or unskilled worker and you do need to work in the United States, assuming that you have no dispensation situation from that requirement, because there are some, but I think we're dealing with the generalization here.

If you do have a need to work, you would have to have an offer of employment in the United States, because, if not, you're just going to end up in the ranks of the unemployed looking for a job. So the law requires that you have an offer of a job, which will pay you a certain wage under certain conditions, for what type of work, and that you do have the qualifications to do that type of work.

However, the law also requires that you assure the government that you are not taking a job away from an American, and the way that that is implemented is that your offer of a job and your qualifications are forwarded to the Department of Labor. It then is the responsibility of the Department of Labor to determine whether or not a particular job and the individual match and whether or not the job that you are coming here to engage in is one which could be filled by an American worker who is ready, willing, able, and competent to work.

If the Department of Labor is satisfied that there is no competent, ready, willing, and able worker to perform the work that you are coming here to perform, then the rationalization is very simple: you are not displacing an American worker. Consequently, the Department of Labor would issue a certification, its net effect being to say, "You can come here because you are not a threat to an American job."

That's half the battle. The other half then is for you to be approved insofar as your immigration qualifications are concerned. Assuming

that those are complied with, you then can become a permanent resident, whether you are abroad, or whether you are eligible to convert to permanent status while in the United States.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Commissioner Noto, I wonder whether you would comment on the recommendation—I can't recall who or what, an earlier witness who testified—that with respect to the employer sanction suggestion or recommendation of the President, it would be better to have stricter enforcement of existing law, such as the wages, minimum wage—how would you go about this issue? What do you think is a better approach?

MR. NOTO. I would go about it exactly as President Carter proposed to go through it in the last Congress, and that is to advocate legislation that would impose a certain penalty on unscrupulous employers who would deliberately hire aliens that they know to be here illegally, and that in doing so they are actually assisting, aiding, and abetting circumvention of law.

There is no question but that the work incentive to the illegal alien in the United States, or those that are outside who seek to come in, is a very strong and compelling factor, and it is a human factor. There's hardly a human being that doesn't wish to improve his economic standing and he's looking for economic betterment. Many of these come from countries where there is no economic opportunity.

Now, when they come here for such purpose, they immediately become prey to the whims of an unscrupulous employer who does what? He seeks advantage of, firstly, the illegal status of the alien. You have a hold over that person. You have a constant threat.

Secondly, because of that threat, he can afford to treat you as he would not treat an American worker; he can pay you less than minimum wage. He can subject you to all violations of OSHA—

COMMISSIONER SALTZMAN. Excuse me, but I think that was why that person was recommending we enforce the minimum wage standard laws, more effectively enforce, rather than create a new law.

MR. NOTO. Yes, but the enforcement of the minimum wage law becomes one element among many. I might say this, just as a matter of coincidence, I think the finest example, the finest answer to your question can be found in a letter opposite the editorial page of the *New York Times* last Saturday or Sunday which recites in detail the vicious lot led by two people who are working in sweatshop conditions in New York City, and they came from Latin America, and South America, and they give you a very vivid and, I might say, a very accurate description of what life can be when you are employed unscrupulously by an employer who takes every advantage of you because you have no recourse to anyone, and I would commend its reading and putting it into your record, because I think it is something that actually comes from truth and straight from the mouths of people who have actually or are actually doing it today in New York.

CHAIRMAN FLEMMING. I ask members of the staff to obtain that communication and insert it into the record at this point in the hearing. Thank you.

COMMISSIONER SALTZMAN. Again, I recall reading somewhere there was a survey, some 600 sample survey, undocumented aliens, and it was discovered that approximately, I think the figure was 20 percent of them pay Social Security and pay taxes, and I'm not clear.

Now, if they are paying Social Security and taxes, you're not aware and INS is not aware of their existence?

MR. NOTO. Not necessarily. There was a point of beginning, and, if I may, let me go back some years, because I think you've got to know some of the past history to have a real sense of appreciation for the situation as it is today.

Years ago when the initial Immigration and Nationality Act was passed in 1952, there was an attempt at close liaison and coordination with the Social Security Administration. We in INS had approached Social Security and had asked them at that time if, upon application for a Social Security card, foreign birth was alleged, to refer the card or to refer the data to the local office of INS so that INS could check its records to determine whether or not that foreign birth, person, was either legally in the United States or illegally here.

The Social Security Administration would not do it. They had a variety of reasons for not doing it, principally that they felt that they could not do so properly under the law. They felt they had a legal prescription against it. Secondly, they felt that they were being put into the position of making at least a preliminary judgmental decision as to whether a person was or was not an alien, notwithstanding the fact that it was an affirmative statement being made by the individual in the application, and the attempt at this type of coordination just never was fruitful.

Now, at that time, to those of us who were involved in it, it seemed to be a comparatively easy problem, that as each person came to a Social Security office to apply for a Social Security card, in filling out my obligation I do have to set forth my place of birth, and citizenship is also a question, and that, if I said birth in a foreign country, and I did not allege United States citizenship, that card could have been referred to the local INS for quick record checking, but that never came to pass.

Now, today—so consequently, as a result of that, there is no going back. You just can't go back to the Social Security Administration and ask them to go through the millions and hundreds of millions of records and say, "Let's pick those that have an alien birth." So it is something that you can only apply in the future, and we now do have a working arrangement with the Social Security Administration whereby that data is given to us for checking purposes so that it is working now, but I cannot say to you that this has been so in the past. If we are—we cannot disregard that there are, among the millions of

illegal aliens, that many of them have been here long before the period of this comity between Social Security and INS and of necessity they are more or less lost to the entire process.

COMMISSIONER SALTZMAN. How long has that comity been in existence?

MR. NOTO. I have to beg off on that and let me check it out.

COMMISSIONER SALTZMAN. I wonder if there has been the ascertainment of undocumented aliens through this process?

MR. NOTO. I cannot answer you on the time. My recollection is that it is relatively recent but in the matter of a year or two, or thereabouts, I'm not sure. I'll furnish that information for the record. We'll check that out.

COMMISSIONER SALTZMAN. And specifically, whether INS has identified undocumented aliens through this process.

MR. NOTO. I understand.

COMMISSIONER SALTZMAN. Do you view this as perhaps an invasion on the part of INS, in this relation, to why Social Security in former years was determined not to cooperate; is that rationale now no longer valid?

MR. NOTO. I don't view it as an invasion, and I think the rationalization, perhaps, is more the direct result of new people being in new jobs rather than the theory behind it. I think that in the early days—when I say early days I'm going perhaps 20, 22, perhaps 23 years ago—but in those days there was a great deal of reluctance for one agency to disclose to another that type of data for fear of either a legal action or fear of some other threat. I still find it very difficult to accept the rationalization but, nonetheless, it was there. You just couldn't go into court to try to get a *mandamus* to try to compel another sister agency to do something.

COMMISSIONER SALTZMAN. At this point I request that the material be placed into the record.

CHAIRMAN FLEMMING. Without objection that will be done.

COMMISSIONER SALTZMAN. One final question: Do you, sir, see any problem in the relationship between the responsibilities of INS as an enforcement agency and its responsibilities as a service agency?

For example, at the border, one can understand the pressures to which the Border Patrol is subject to, and yet at that time also, there might be a responsibility of INS to do some affirmative counseling or in other such situations where legal counsel might be, in a deportation process, might be recommended, and yet INS, because it has at that point an interest in deportation, might not assure the individual in the process that he should have counsel.

MR. NOTO. Well, the separation of enforcement and service responsibilities, although not completely incompatible, do, at first blush, present a picture of two forces working in diametrically opposite directions. It is not impossible to achieve the type of compatibility or reconciliation between a planned enforcement of the law and at the same time offering service.

There's a delicate balance there that can be achieved, but you're dealing with human nature. You're dealing with the human element, and at times it becomes a real challenge to try to take an individual, who is being given policies to adhere to rigid enforcement, to take aliens and deport, arrest, pick up, and deport, and then conversely try to tell him that despite his efforts to enforce the law so strictly, that he has the obligation to tell this person, "Now that I've arrested you and I've picked you up and I'm going to try to put you out of the United States, I must tell you, though, that you can remain here under the following conditions."

When you do that very objectively, you can't help but notice that it is almost an irreconcilable position, but if you work closely with it, I think that some of us can achieve that fine, delicate, almost invisible balance between separating the enforcement responsibilities from those that are strictly service oriented.

As a matter of fact, just by way of background, when I first came into the Immigration Service, we had a situation where the immigration inspector was the only officer, and he was the investigator, and he was the judge, and he was the deportation officer.

Now, without being facetious, the immigration inspector would go out to arrest you and he would bring you into the office, take off his hat, sit behind the desk, and then give you a hearing to determine whether you were deportable or not, what you would be entitled to.

After he found you deportable, he put his hat on again and took you out of the room to process and arrange for your physical expulsion. I don't think that type of governmental action would be tolerated today. We've moved far ahead in the field of administrative practice and the field of administrative due process even as distinguished from judicial due process. We've come a long way from that.

We now have the investigator, who investigates; he will issue the order to show cause and put you under the deportation process, which is strictly an enforcement responsibility. Then, when he brings you before a hearing, you do come up before the immigration judge, who is impartial, objective, fair, equitable, and quasi-judicial.

COMMISSIONER SALTZMAN. Then you've already said that there should be an immigration judge who is objective and impartial and separate from the enforcement process, and yet he operates under the enforcement umbrella and funds can be captured, I imagine, by the enforcement tendencies and the pressures to enforce the law over against the service aspects and should not that be a greater demarcation? You yourself have said it is such a fine, sensitive line.

MR. NOTO. It wouldn't be any different than if you went out here in the District of Columbia and you had a crime wave going on and you read in the paper headline after headline and you had citizens groups protesting about the increase in the commission of crime.

I don't think you can deny that would have to have even an imperceptible impact upon the judicial determinations that would be made,

because no judge, whether he's administrative or judicial, is that immune nor is he that insulated from the realities of life.

Consequently, if you have an immigration judge who would read in the newspapers and be cognizant of the pressures that are being exerted as a result of the large immigration—large illegal population of the United States—I can't speak for them, but I would think that they would be less than a human being if somehow or other there wasn't at least some form of indirect impact that might impute a little bit into the judgments that they would be exercising, and yet I can't find that as a ground of criticism. I think that it just proves they're human beings.

COMMISSIONER SALTZMAN. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. In reconciling the irreconcilable, and the achievement of that delicate balance which you mentioned, indicates to me that you may be a perfectionist, at least you're optimistic and it does also indicate to me as to why you undertook on September 23, 1977, to propose regulations to expand the civil rights of aliens, the right to review administrative relief, as you said, reopen and allow time to leave, reinstatement by immigration judges, mitigating circumstances.

It made me feel good to listen to you because, although the process that you mentioned and the ratification and adoption of these rules seems to be rather an elaborate procedure, as I understood, the rules will be approved by the Commissioner, and after they're approved by the Commissioner, they're submitted to the union, 33 different divisions—I may have just misunderstood—I like very much the proposal of the immigration judge.

I would like to ask you from what pool do you expect to select this independent immigration judge? Would he be an administrative officer in the sense that we usually—from within the Service, would the administrative judge—how would he be selected?

MR. NOTO. Our immigration judges are administrative law judges, and they are recruitable from the outside and from within the Service. In other words, there's no restriction as to the manner of recruitment. It is a case of meeting the requirements for eligibility for consideration.

CHAIRMAN FLEMMING. If I can interrupt. They are selected and operate under the Administrative Procedures Act?

MR. NOTO. Mr. Chairman, it is a strange fact, but the immigration judges, who were formerly known as special inquiry officers, are removed legislatively from operating under the Administrative Procedures Act, but I can say to you without hesitation and without fear of contradiction that their conduct on the bench is far more protective on their own than that which would be required by the Administrative Procedures Act, so that despite the fact that we don't have that as a legal requirement or stricture, their conduct leaves very little to be desired by way of compliance with, not only the actual contents

of the APA, but actually going beyond it and going to its concept and spirit.

COMMISSIONER RUIZ. How long do you think it will take before these regulations or rules that you submitted may be become a part of the system?

MR. NOTO. Well, I'm hopeful. I know that the Commissioner is devoting a great deal of time to it and that he's giving it a lot of deliberation, and, hopefully, in the weeks or in the very early months to come, I would hope to see them completed or at least some disposition to be made of them according to the dictates of the Commissioner's judgment.

COMMISSIONER RUIZ. I would like to submit the following: Other Government agencies, such as Department of Labor, Health, Education, and Welfare, make up regulations and oftentimes they send them to the United States Civil Rights Commission.

Will you please comment on these? We feel that your input is valuable. We just like to go through this once rather than twice or three times and have things tested in court. In your position within the Service, would you be interested in such an input on both regulations?

MR. NOTO. If I interpret you correctly, Commissioner, you're referring to—in other words, referral to the Commission—

COMMISSIONER RUIZ. On the civil rights part, with respect to civil rights.

MR. NOTO. I would like to feel that we are under no legal compulsion or otherwise to have to do so, but in the spirit of comity and cooperation, since we are working for the same cause and dedicated to the same principles and working for the same government, being members of the same executive branch, that we would certainly coordinate and touch base with you and at least elicit an opinion from you.

COMMISSIONER RUIZ. Only with respect to the civil rights.

CHAIRMAN FLEMMING. Commissioner Ruiz, the document that contains these proposals has been made a part of the record of this hearing, and it will be one of the documents that we will be looking at and will be commenting on in connection with any report that we come out with.

COMMISSIONER RUIZ. So it will be done in any event?

MR. NOTO. No doubt about these. I was looking a bit in context for future relationships.

CHAIRMAN FLEMMING. As the Commissioner indicates, now and then the Department, not because they're required to but because they want to, will send something to us for comment, and we're very happy to respond to requests of that kind if people do it on a voluntary basis.

MR. NOTO. We'll certainly appreciate your assistance, Mr. Chairman.

CHAIRMAN FLEMMING. Fine. Well, our hour and a half has expired. We do want to tell you how much we appreciate your coming here and sharing with us in the way in which you have. Your own observa-

tions, your own conviction growing out of a long period of service with the Immigration and Naturalization Service—it's been very helpful to all of us. Thank you very much.

MR. NOTO. Thank you.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. DIMAS. Could we have Jack Wasserman, Mr. David Carliner, and Mr. Steve Mukamal, please?

[Jack Wasserman, David Carliner, and Stephen Mukamal were sworn.]

**TESTIMONY OF JACK WASSERMAN, DAVID CARLINER, AND STEPHEN
MUKAMAL, IMMIGRATION ATTORNEYS**

CHAIRMAN FLEMMING. Thank you. Very happy to have you with us. Counsel may proceed.

MR. DIMAS. Thank you, Mr. Chairman. I'd like to ask each of you gentlemen in turn to please identify yourself for the record by stating your name, your occupation, and your business address, starting with you, Mr. Wasserman.

MR. WASSERMAN. Jack Wasserman; I'm an attorney, 1707 H Street, N.W., Washington, D.C.

MR. CARLINER. My name is David Carliner. I'm also an attorney-at-law and my address is 1511 K Street, N.W., Washington, D.C.

MR. MUKAMAL. My name is Stephen S. Mukamal. I'm an attorney. I practice immigration law in New York City at 127 John Street, and I also serve as president of the Association of Immigration and Nationality Lawyers, a bar association consisting of some 800 attorneys who practice immigration law throughout the United States.

MR. DIMAS. Thank you. I would like to ask each of you gentlemen if you have a prepared statement that you'd like to submit for the record, we would like to have that submitted, and Mr. Wasserman, will you please, if you have one, summarize your statement for us, please.

MR. WASSERMAN. Yes, sir, I do have a prepared statement and I am leaving it here at the desk. In essence, my statement summarizes the discriminations in the immigration and nationality laws based upon race and national origin. I think our immigration laws have been a national disgrace. From earliest times we have discriminated both on the basis of race and on the basis of national origin.

Our earliest discriminations were against Chinese, and we singled them out on a racial basis. Thereafter, we discriminated against the Japanese. Both were subject to exclusion from the United States, solely on the basis of race. Thereafter, we discriminated against people because they were of Asiatic background, and our border laws that were enacted in 1924 discriminated against southern and eastern Europeans. Thereafter, we established a colonial basis for quotas in the 1952 act, and this was intentionally designed to exclude blacks from the Caribbean area. It has also resulted in discrimination against the Chinese, notably those born in Hong Kong.

Today we not only have the colonial discrimination but we do discriminate on the basis of place of birth; place of birth determines quota chargability, and each independent country is restricted to 20,000. We now have a worldwide ceiling of 290,000 but within that worldwide ceiling we have limitations of 20,000 per nation.

In addition to these place of birth discriminations and national origin or national discriminations, we do discriminate against citizens on the basis of age. Citizens who are over 21 can petition to bring their parents, can petition to bring brothers and sisters. Those who are under 21 cannot do so.

Now, it just seems to me that when our national policy throughout all the other provisions of law—housing, employment, transportation—are to avoid this type of discrimination, that the time has come when we should eliminate these discriminations from our immigration laws.

Unfortunately, our immigration laws contain a provision to the effect that there shall be no discrimination except the discriminations described by the act, and it is those discriminations that I think should be eliminated. I think that provision should be eliminated from the statute. And that's the substance of my statement.

MR. DIMAS. Mr. Carliner?

MR. CARLINER. I haven't prepared a formal statement to submit to the Commission; however, I previously prepared a monograph for the Commission which I call to the Commissioners' attention. I assume it's part of the files; it is "The Effect of Discrimination Laws and Policies Upon Undocumented Alien and Minority Citizens." I will not take time to develop the thesis of this report in any elaborate language.

I'll simply say briefly, to supplement what Mr. Wasserman has said, I think that the present thrust of our immigration laws has, in the language which is used in this field, has a disparaging and discriminatory effect upon persons who come from Mexico and the nearby Central American countries. As Mr. Wasserman has indicated, there's a ceiling of 20,000 aliens who could immigrate to the United States from any individual country. This has a facade of equality because 20,000 applies to every country in the world, and it is said that there's no discriminatory treatment by treating all countries equally.

However, the United States has a historic relationship with Mexico which I suggest must take into account demographic and sociologic factors relating to the exchange of people between these two countries. The monograph which I have done as well as more authoritative studies have indicated that throughout the history of the United States and Mexico there have been a flow of peoples, particularly from Mexico, into lands which the Mexican people have regarded, correctly, at one time, their territory.

The border between the United States and Mexico has been described as an illusory border; for most of our history it was not at all a closed border. It was not intended to be closed. People could go

back and forth without any difficulty. Beginning in 1924 there were efforts to close off the border, and in recent years by, say, methods by use of Border Patrol officers. In recent years there have been what are regarded as more sophisticated methods of closing off the borders by using electronic sensors helicopters, brick walls, stone walls, whatever, but the movement of the peoples, I think, as sociologists have recognized, cannot be controlled by these type of physical or legalistic restrictions. They have been determined by economic and social factors largely.

One of the—it really need not be said to this Commission—but one of the major irritants between the Mexican people and the people of the United States is perception that the people from Mexico are taken in when the economy of United States is expanding and that they are expelled when the economy of the United States is believed to be contracting. Expansions and contractions, as we know, come in relatively short term, perhaps circular in nature, except for some of the relatively fewer long term depressions that we've had, I think we could say in retrospect now, some say contemporaneously, the scandal of the expulsion of large numbers of persons of Mexican origin, many of whom are citizens of the United States during the Depression.

We had a recurrence during what was called invidiously "operation wetback" in 1954, and one—I think one has to say now, those of us who are contemporary with the events, that the recent administration of the Immigration and Naturalization Service under General Chapman was a national disaster in terms of our international relations.

He probably single-handedly did more than anyone else to create hysteria against persons from Mexico without any factual basis. I'm talking about the large numbers of what he described as illegal aliens in the United States who were taking jobs away from the American citizens. So it is in this context, I think, that it is very helpful for this Commission to be examining the problem, and many of us in this field believe that there has to be an adjustment of immigration pattern between the United States and Mexico because of the unique relationship between our two countries. This exists in other countries.

Sweden, for example, has as many aliens living within its midst proportionately as the United States does, and they have a symbiotic relationship with Finland where the large number of Finns who live in Sweden with all the rights I understand the Swedish citizens have. There are patterns which are less favored among European countries where people from other countries are brought in as guest workers who don't really have any rights as residents in those countries. What I'm saying is that the pattern of industrialized countries, generally in the northern part of the hemisphere, needing the supplementary help of persons from other countries is not a unique one and United States governmental policies have not recognized this.

The second thing I would like to dwell on is the administration of immigration laws now. The administration¹¹ of the Immigration Act by

General Chapman and other generals before him was singularly, I won't even say neutral, but it was administered in a way which had a discriminatory impact upon persons in the United States who had what are perceived to be foreign-looking appearances. Foreign-looking appearances, for the most part, means people who are dark complected and, effectively, it meant people from Central American and countries south of our border, to some extent, people who are quite dark-complected, as to say people who are black from Africa who tend to be darker for the most part than American blacks.

The way in which the laws are administered, a person could walk down the street and if he looked "foreign" to an immigration inspector, he could be stopped on the street, be questioned, be taken into custody. This is something which rarely ever happened to a fair-haired, blue-eyed person who had fair skin. This type of enforcement still persists, although I should say that Commissioner and Deputy Commissioner who testified here today are doing their best to eradicate it; however, they have a very difficult job because the subcadre underneath them are made up of people who have largely been trained and schooled and had their attitudes formed under previous administrations, and I think it is fair to say that the efforts which Mr. Noto and Mr. Castillo are attempting to make are being opposed very vigorously by persons from the district director level.

These people have their political rights to assert their interests themselves and to have access to the press, of course, but it is not without significance that they are planting news articles in various newspapers around the country to attack the changes of policy which the Commissioner and the Deputy Commissioner are trying to put into effect.

My personal knowledge of many of these people—they have what they think is a long-term view and they will be here still when the Commissioner and Deputy Commissioner, they feel, will no longer be there to govern them. I think that it requires constant scrutiny and surveillance and pressure on the part of bodies such as yours to make certain that there is an equal enforcement of the law without discrimination among different groups in the United States.

MR. DIMAS. Thank you, Mr. Carliner. Mr. Mukamal?

MR. MUKAMAL. I do not have a prepared statement to give to the Commission; however, I would like to have the opportunity to submit one at the end of the hearings, within the next couple of weeks, because the thrust of my coming down here is to not talk about the infringement of civil rights in that aspect but to specifically aim at one particular area which our association and I personally have taken to indicate a deprivation of civil rights to aliens coming to the United States, and this, of course, is a breakdown of the process of the government, the government agency causing inordinate delays and adjudications in the adjudicative process of the Immigration and Naturalization Service. If you will, the word "Service" would indicate the performance of a service, and in many instances what happens is the

present structure of the agency, because of its dual function in enforcement and adjudications, much of the funding which the agency gets as a result of the Office of Budget and Management—the Office of Budget and Management, much of the allocation goes towards enforcement, and subsequently the adjudicative process of the Service fails to function appropriately.

What this will do is create a workload in various offices of the Immigration Service. I'm talking about your larger district offices, such as New York, Los Angeles, Chicago, Miami, which in most instances are doing more than half of the adjudications in the country.

Backlogs and delays which in effect will cause a violation, in our opinion, of the civil rights of not only the aliens themselves but of Americans, the petitioner, whether it be a company who is seeking to have the services of a particular individual who is coming to the United States, or the spouse of a U.S. citizen, or the U.S. citizen spouse who wants her husband to come to the United States, and various petitions of the various categories of the immigration to the United States, such as brothers, sister, mother, father, and so forth, and the delays are such that, in some instances, many of the attorneys that are in practice have found it necessary to seek judicial review in the form of mandamus in the Federal courts to compel the district director to make an adjudication on an application that he has pending sometimes—and this is not to be facetious—for as long as 5 and 6 years, where applications for a person who is seeking to bring his family from the mainland of China will have to wait 5 years until the Immigration Service will do whatever it has to do in order to adjudicate an application.

And this, regardless of how difficult or how wide in scope the application may be, it is certainly an inordinate period of time. For the most part, adjudications in your major offices are not adjudicated. Lack of adjudication is just as harmful as adjudicating 2 years down the road.

We have sought to work with the Office of Budget and Management at the present time in connection with a reorganization program which seeks to modify the existence of this—well, actually, the modification is the merging of duplication of functions which both the Treasury Department does and the Immigration Service does.

Needless to say, we're not interested as a bar association, or I individually as a practitioner, who gets the job done as long as the job gets done, and if Congress allots only *X* number of dollars to get the job done, then get the job done with the number of dollars that you're given. Failure to do the job because you say, "We don't have enough money to do the job" is not—it's just not a viable answer. It does not serve the public. It does not serve the aliens or the citizens, nor does it—and what it basically does is it creates a repetition of work. Both the Congressmen and Senators who now are inundated with requests to help them get material out of the Immigration Service, where I as

a petitioner will go to my Congressman's office, and say, "Please help me because I've sent papers to Immigration 2 years ago and I haven't been called on to be naturalized. Now I'm a potential citizen of the United States." And for the most part even in applications for citizenship you've got delays that will extend, depending on what part of the country, as much as anywhere from 14 months on upwards.

There was a period of time in New Jersey, I can recall to you, where an application for citizenship from beginning to end would take over 2 years. This is after an alien has met the statutory requirements and has filed an application, and technically he should be—his application should have been processed and he should have been sworn in as a citizen, if he was found eligible and qualified, in a period of 60 days, and it has taken over 2 years to accomplish that.

The President's reorganization plan serves to present a new outlook to attempt to solve part of this problem. There are other instances in the course of the reorganization plan which brings about a review of visa applications. These are applications that an individual alien will make outside the United States. The review power would be similar to that which is structured in the United States, in the case of adjustment of a status application, so that an individual who is applying for an immigrant visa outside the United States would be able to have that decision by a consular officer reviewed by a body composed of judges who would travel what you call a circuit throughout the world to hear applications that had been denied. For the most part, the aggrieved party in this instance is not necessarily the alien abroad but it would be the petitioner in the United States.

So, for example, if I am General Motors and I have sent to have a specific type of engineer come to the United States to work here and this person has been denied a visa, what in essence has happened is that the corporation General Motors is denied the opportunity to have this person come to the United States and fill the vacancy which definitely existed. Or, for example, if I am sending for my father, and I'm a citizen of the United States and my father has been denied a visa to come here to live with me, I am the aggrieved party, and I am the person who suffers a violation of his civil rights, because at the present time it does not exist, a reviewability of a denial of an application for an immigrant visa, whether it be immigrant or nonimmigrant as the case may be.

MR. DIMAS. Thank you. Mr. Wasserman, you mentioned in your opening remarks there about discriminatory provisions that remain at the present. What specifically would you recommend in terms of changes to eliminate those provisions?

MR. WASSERMAN. Well, I would first eliminate the provision in the law that says there shall be no discrimination except the discrimination herein provided. Second of all, I would eliminate any colonial limitation which today is, if you're born in an area that's called a dependent area—in other words, not in an independent country—like Hong Kong,

British Honduras, you are restricted to a quota of 600 rather than to a quota of 20,000.

I would eliminate that colonial limitation. There's no doubt that the whole basis for that colonial limitation was a racial bias or fear that too many blacks would come into the United States.

If anyone reads the history of the provision, the debates in Congress, you will find that that was the purpose to—it was a fear that too many people would come in from Jamaica. That was the primary fear at the time.

MR. DIMAS. Would the Jamaicans be coming in under the British quota at the time?

MR. WASSERMAN. Yes, in 1952.

MR. DIMAS. What effect was that having? In other words, were they able to use a substantially large quota?

MR. WASSERMAN. They were chargeable to the British quota which at that particular time was open. British quota in 1952 was—I don't think the British quota has ever been oversubscribed, and as a result the Jamaicans were coming in under the British quota, and this was intended to limit the number of Jamaicans, and it was purely a racially biased provision that was inserted into the law. There were complaints by—I remember Adam Clayton Powell delivered a very serious and scathing denunciation of this provision but his voice didn't carry at the time.

MR. DIMAS. You also mentioned a national origins discrimination.

MR. WASSERMAN. Well, we limit quotas based on 20,000 per nation. Now, it seemed to me the overall worldwide ceiling is 290,000. Why shouldn't people coming under that quota come on the basis of their merit and their ability and their relationship rather on the basis of a 20,000 limitation? I would remove the 20,000 limitation.

MR. DIMAS. What about the definition of refugee, Mr. Wasserman? Doesn't that refer to geographical areas of the world?

MR. WASSERMAN. Yes. That's an additional discrimination. We only recognize refugees from communism or from catastrophes in the Middle East, but we do not recognize refugees from South America or the Western Hemisphere, and there are many refugees from those areas. It would seem to me that limitation should be removed.

MR. DIMAS. How long have you been practicing immigration law, Mr. Wasserman?

MR. WASSERMAN. I've been practicing immigration law—I've been involved in immigration law since 1941 when I came to the Board of Immigration Appeals as a staff attorney in the Department of Justice, and I later became a member of the Board of Immigration Appeals, and since 1947 I've been practicing immigration law.

I've written a book on the subject. I've lectured at various colleges, at Practising Law Institute, and I'm very active in the field. I'm a past president of the Association of Immigration and Nationality Lawyers.

MR. DIMAS. Well, you would have a great deal of familiarity, I would take it then, with the deportation process within the immigration laws?

MR. WASSERMAN. Yes.

MR. DIMAS. I would like to have your opinion as to, first of all, very briefly how far we've come, but most importantly, what remains to be done?

MR. WASSERMAN. Well, I think we have come far as Commissioner Noto indicated. I think we can go further. It would seem to me that, first of all, there is no reason why the immigration judges shouldn't be under the Administrative Procedure Act. I was the one who argued the case in the Supreme Court which ruled that the immigration judges were not subject to the Administrative Procedure Act, solely by reason of the fact that the statute prescribed the deportation procedures and that gave them an exemption.

It would seem to me that we should reach the point where the immigration judges should be completely independent of the Immigration Service itself. There are two suggestions, as I understand it—well, there are really three pending suggestions—1) that they remain in the Immigration Service; 2) they come under an Assistant Attorney General outside the Immigration Service, and 3) they be under the Board of Immigration Appeals, which is independent of the Immigration Service.

And it would seem to me that it is desirable to make them independent of the Immigration Service. Today, they are dependent on the district director for the assignment of space, for travel vouchers; they really have to ask his permission on a number of administrative details, and it would seem to me that that's rather demeaning and it shouldn't be.

MR. DIMAS. One other question, briefly, Mr. Wasserman. I understand you were the attorney involved in the case here in Washington, D.C., that challenged the search warrants used by the Immigration Service. Would you tell us about that briefly, including the facts behind the case and the holding in that case?

MR. WASSERMAN. Yes, sir. You are referring to Blackie's House of Beef against the Immigration Service, and I probably sued the Commissioner in that case as well as some of the agents who were involved.

Blackie's felt that the Immigration Service were not acting properly. They wanted him to give a complete list of all the illegal aliens in his establishment and he employs some 600 people. As a result of which the Immigration Service determined they hadn't the right to search the place and he wouldn't give consent.

They thereupon proceeded to obtain a search warrant from a magistrate and the search warrant was to search for "things"—that's what a search warrant is restricted to. The Supreme Court has distinguished between warrants of arrest which are to search for and arrest individuals and search warrants which are to search for evidence. They obtained a search warrant to search the premises solely, not to obtain the books, not to obtain a list of names, but to search out for aliens, and they arrested some 15 aliens, 10 of whom had entered without in-

spection; the others, included, I think, one who was a permanent resident, and the 4 others had entered the United States legally. In their return, which they filed with the magistrate, they listed that the "things" that they had obtained pursuant to the search warrant was the 15 aliens.

I went into court on the theory that this was an improper search warrant, even though it had been issued by a magistrate. The government insisted in the argument, both in writing and orally, that they had the right to seize tangible objects and that aliens were tangible objects, and, of course, the court wouldn't give cognizance to that argument at all and ruled in my favor.

VICE CHAIRMAN HORN. Not since Dred Scott, in any event.

MR. DIMAS. Mr. Carliner, you're the author of a book entitled "The Rights of Aliens"; is that correct?

MR. CARLINER. Yes, I am.

MR. DIMAS. And in one chapter in that book, you state that, if I may quote, "An alien who is in the process of losing, in the words of the Supreme Court opinion, 'all that makes life worth living' afforded all the procedures that seem due for such a drastic government action."

What procedures would you feel would be due, Mr. Carliner?

MR. CARLINER. Well, the comparison that I was attempting to make there, it's been made by others, is that if a person were arrested in Washington, D.C., for, say, shoplifting or for any other relatively minor offense, he would be given all of the rights which are accorded by the fifth and the fourth amendments of the Constitution to protect him and various other statutory rights.

There is a movement to give greater rights to persons who are apprehended by the Immigration and Naturalization Service, but I must say with due regard to the steps that have been taken, they are rather niggardly. It's been said many times by the Supreme Court that placing an alien under deportation and sending him back to where he came from is not a criminal proceeding and the protections under the Constitution afforded those persons don't apply.

Not only is it not criminal but they say it is not even punitive. It seems to me something on the stretch of the use of English words to urge that persons who have lived here, as the one case that is well known, since he was 8 months old until 65 years of age, to place him under deportation proceedings and send him to a country where he was born, to say that's not punitive just isn't a realistic use of words. Nonetheless—where he never lived. Mr. Wasserman calls my attention to—

I think that these protections, which are afforded to persons who are regarded as criminal and who are under criminal proceedings, should be afforded to aliens placed under deportation proceedings, and I don't suppose I have to spell all these out. I'm simply saying, for the present here, that as a result of litigation brought in California by the Legal Services project there, the Immigration Service has announced

regulations which will advise aliens at a particular moment that they are entitled to have counsel representing them and that, if they do not have the money, that free legal services are available, legal services being provided by various nonprofit organizations of one kind or another.

The difficulty which I have in accepting with grace these proposed regulations is they come after it's effective. Typically, an alien who is taken into custody, is apprehended at a place of work, or apprehended while he's walking down the street, and the procedure is for an immigration officer, who may or may not have a substantial basis for knowing that the person is an alien other than his impression of what he looks like—he looks Chinese; he looks foreign; he looks Mexican; he wears certain types of clothes. At one time they had an operational instruction—not operational instruction but guideline of Immigration Service Officers in New York—whose description stated, "People who wear foreign-looking clothing and carried brown bags." They were assumed to be Spanish-speaking aliens from Spanish-speaking countries because that combination, in the experience of Immigration Service, reflected a person who had his lunch in this brown bag and he had foreign-cut clothing, he was probably not a citizen of the United States or not even a permanent resident alien of the United States.

This is absurd, of course, because all kinds of people carry brown bags these days, all kinds of people wear what we call foreign-cut clothing. That person could have been a permanent resident alien and do both and be here perfectly legally. That person could have been stopped thousands of times by Immigration and Naturalization Service officers in New York and other cities.

Now, when a person is stopped, he's asked, "Where are you from," and instinctively most people tell the truth, and they may say they're from Bolivia and the moment they say they're from Bolivia, they say, "Produce something that shows you're legally in the United States," and if they're unable to produce anything that shows they are legally in the United States, the officer says, "Come with me."

The immigration judges have heard these cases and the courts which have reviewed these cases have held the phrase "come with me" is not an arrest, but we know practically that a person in this situation who is being told by a man who carries a badge and has a gun, frequently has a uniform on, when he tells someone come with him, the person who is being given this direction thinks he's under arrest, and the person attempts to elude that person. The officer will physically take him into custody and hold him.

So in my opinion that, if the rights of aliens or other persons are to be given effective protection, they must know before the effort is made to take him into custody that he has the right not to say anything, if he chooses to say nothing, and he should have the counsel. The proposed regulations do not give this protection. There are other questions which are larger and perhaps more difficult.

MR. DIMAS. In the interest of time, Mr. Carliner, if I may cut you short on that.

MR. MUKAMAL, I would like to address a question to you. You were discussing the backlogs and I think you are quite concerned with that particular problem. What effect has the training or the level of the adjudicators had on this problem, and can you suggest any possible solution to that problem?

MR. MUKAMAL. Well, the problem does not stem from downwards up; it stems from the Central Office, which is what dictates the policy of how things can be done. Now, if the attitude at Central Office is, "Look, this is the way we've been adjudicating things for the past 50 years or 40 years," or ever since the act was enacted in 1940 and subsequently amended, when it was. Let's put it this way, you could do it that way at that time, but what you now have is an increase in adjudications that come in. For example, in 1978, the Commissioner will verify this, there's been an increase in adjudications by some 100 percent over last year.

So the budgetary commitment is the same. Now, if you continue to process the application the same way you did it 20 years ago, you're going to have backlogs and you'll continue to have backlogs because that's the way you did it. Unless an attitude change is made up on top, "Look, this is the money we've got; this is what Congress wants us to do; this is what we're going to do to clear up the backlogs," you'll continue to have backlogs, so the problem stems right on top. It does not come from the training of personnel—they are not going to take the initiative to adjudicate something where there is any degree of discretion involved.

MR. DIMAS. The greater commitment of resources, which you are discussing, I think, to the adjudications branch, could be utilized in several different ways. We've had suggestions from earlier witnesses that some of that could be used to have legally trained adjudicators to handle some of the applications. How do you react to that?

MR. MUKAMAL. Only if training on top permits these individuals to get the job done with the funding that's available, not to set up a criteria of that's how you do it and then continue to use that criteria. I'll give you a specific example if you'll permit me.

There was a program to look into fraudulent applications—people who had married citizens just to gain a benefit to stay in the United States—and the result of this program was that there were many applications which the Immigration Service had found to be applications submitted by aliens who fraudulently married for the purpose of getting an immigration benefit.

They set up a program of interview. The interview process would require the husband and the wife to come to the Immigration Service and undergo a complete interrogation that would last for 2, maybe 3 hours, sometimes longer, and they would be interviewed separately.

What each adjudicator was told to do is, if there are six discrepancies, send them upstairs. Now, that, if I walked in and I said, "I've got six children with this woman," is there a need for me to go upstairs? And yet the adjudicator, because they had been told six discrepancies, they go upstairs. They didn't care that these people had been married for 20 years; they indicated they had children and were now having a fight, they sent them upstairs.

What happens is you create a lot of backlog. There is no discretion on the part of that adjudicator, "Look, we've got 10,000 cases; we've got to get them out; I've got to do it the best way I know how to get those cases out."

So training, yes, that's great but it has got to be done in the framework of to get the job done. This doesn't mean that the job is going to be of superior quality. Until Congress wants to give you more money to perform a job of superior quality, then they'll give you more money, but if they are not going to give you any more money to do the job other than what they are giving you, then you may produce an inferior product. That's evidently what Congress wants.

MR. DIMAS. I believe we've also had several witnesses testifying, Mr. Mukamal, about the other portion of the visa application process, that is of concern to some of them, and that is the process at the American consulates abroad.

Could you comment on that particular one in particular? Do you feel that there is need for legislative change in that?

MR. MUKAMAL. Yes, I do. Now, I want to tell you that, for the most part, I would say that 90 percent of the system presently works. What we're looking at, and the purpose for having a review panel is to take that 10 percent that probably doesn't work right now and make it perfect. That's what we're looking at.

For the most part most consular officers do their job and do it correctly. But every once in a while you do have a consular officer who will lose sight of the purpose of why he's there and function outside of the law, the existing law, and there's nothing that you or I could presently do about it.

Perfect example in mind is an 8-year-old in Pakistan who had to come to the United States for heart surgery and the American consul would not give her a visa to come here, finding her as a person who is likely to become a public charge and an intending immigrant.

It took I don't know how many Congressmen and whatever influence, and even then the visa was issued in a different post. That's how powerful that American consul is when he sits at that post. He's the law.

That doesn't sit right with me in this kind of a system. It does not sit right with me that this 'country which has democratic process should permit this type of system to continue and it absolutely requires change.

We can initially start by having some sort of review for immigrant visas or what we call 212 exclusion type of nonimmigrant visa where the exclusion is based on some ground of law; for example, the person may have had a criminal record or something like that, and that would be the initial start to it. I don't know whether the process would work right now if we had a review power that would extend to even, to every level of nonimmigrant visas.

MR. DIMAS. Thank you, Mr. Mukamal. Mr. Chairman, I have no further questions for the witnesses at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, this morning we heard some testimony concerning the apprehension and detention of the Haitian refugees, refugees from Haiti. Do any of you have any information concerning that problem?

MR. MUKAMAL. I do.

COMMISSIONER FREEMAN. Could you speak to that?

MR. MUKAMAL. It has come to my attention that there are delays which exist in Florida, where this problem is presently localized, as a result of Haitian alleged quote "refugees" or individuals who have been coming in on boats, flats, or what have you from the Bahamas making applications for asylum in the United States.

We believe, generally speaking, that many of these claims are legitimate claims. The process that's being—in handling these applications is not in what you call the spirit of giving these individuals their civil rights. For example, in the taking of a statement to determine eligibility for political asylum under the protocol agreement, they are being rushed from one office to the other; the statements are totally incomplete, half of them are inaccurate; many times there are not sufficient interpreters furnished by the Immigration Service. Many times the individual is not being given the opportunity to fully express himself, because what the Immigration Service wants to do is to complete the project, it is true, but at the same time I believe that there is a violation of the civil liberties of these individuals.

MR. CARLINER. Madam Commissioner, if I may supplement Mr. Mukamal's answer, I have some additional things to say. First of all, let me identify myself in another capacity. I'm honorary chairman of the American Haitian Refugee Committee which is made up largely of Haitians who are emigres from countries since the first Duvalier takeover and also persons from the United States who are sympathetic with their interest in helping Haitian persecutees.

I'm also a general counsel of the American Civil Liberties Union and in both connections I have followed rather closely the procedures which have taken place in Florida, although, I must say, from a distance, and some of my information is secondhand.

The underlying problem there is one which is not of the making of the immigration judges who are hearing the cases, but in the perception which is being given to the problem. Let me be specific. The Im-

migration and Nationality statute, as you are aware, provides for the withholding of deportation of an alien to a country where the alien can show that he'll be subject to political, racial, or religious persecution, and the provisions in regard to political asylum status have a somewhat different standard and refer to persons, in addition to those who are subject to persecution on the three other grounds, who have been discriminated against because they come from a social group.

In the administration of these programs, the United States Government, I think it is fair to say, has given quite different treatment to aliens who have come from communist countries and those who have come from other countries. This is noted already in the treatment of refugees.

Specifically, with regard to the Caribbean area, the United States has taken in more than 600,000, by now it must be 700,000 persons from Cuba. None of the people who have come in from Cuba have been required to establish that they are persecuted by the Castro government for political, racial, or religious reasons, and I think it is fair to say they haven't been able—required to establish they are part of a social group, and I think we know from human experience that most of the people who left Cuba did not leave because the Castro government was going to do anything to them personally; it was simply they took away their previous grocery stores, drugstores, their status as middle-class professional business people. And because these people are opposed to socialism and wanted to live in a society where there is free enterprise and opportunity to run your own businesses and to live free from the restriction of socialism, they preferred to live in Florida or New York and the rest of the United States.

Haiti, people leave for comparable reasons but yet under the scale—they're desperately poor and the society there doesn't help the poor have a decent standard of living, so enforcing this law with regard to refugees, the United States allows the Cubans, the Vietnamese, the Hungarians to come in without any questions asked; the Haitians have to prove they are subject to persecution.

Now there has to be change if you're going to administer this law fairly. There should be some recognition of the reasons that Haitians are leaving. And in addition to that, the point Mr. Mukamal has made with regard to the lack of fair procedures arises partly because of the eagerness the Immigration and Naturalization Service has to dispose of thousands of cases—they don't want a backlog to happen and because of a preconceived judgment that 99 percent of these people are not true persecutees, that they are simply economic refugees, and they feel that their claims that they are subject to political, racial, and religious persecution are, in their words, frivolous, so they don't want to allow an expanded period of time to develop frivolous procedures and, as a result, they're given a very short timetable to develop these cases.

Well, it may be that many of them have frivolous cases even within their own standards, but you can't tell unless you have someone who

can talk Creole-Haitian. I don't speak Parisian French, and you can't tell unless you have an opportunity to develop the cases. Very few of these people have any money. Private lawyers cannot afford to handle thousands of cases unless somebody is going to pay the expense of it.

In Miami there are very few legal services available for these people. As a result, the heavy workload has been thrust upon about six lawyers, two of whom I believe are employed by the National Council of Churches and another organization, and they just literally don't have the time to handle all these cases, and, as a result, they're caught in a bind between the pressure of the service because of the economic situation, and I think it is fair to say that they're not getting very good treatment.

MR. WASSERMAN. May I add, there's a further complication in the Haitian cases and that is that the Immigration Service, after promising to promulgate regulations on asylum so that an application for asylum could be renewed in exclusion proceedings, took a long time to get the regulation out, then when they did promulgate the regulation, they did it without notice to the public to permit them to comment on it.

Lawyers representing some of these Haitians went into court and declared that the regulations without the notice was invalid, and now they have to repromulgate the regulations, so they don't even have a procedure that can be followed through at the moment, because there were no final regulations covering renewal of asylum claims in exclusion proceedings.

COMMISSIONER FREEMAN. Do any of you gentlemen have any recommendations that you could make to this Commission as to changes in the law, and I'm referring specifically to your statement, Mr. Wasserman, that the immigration law itself reflects racial discrimination? Do you have any specific changes that should be recommended to the Congress or to the Attorney General with respect to regulations that you could make to us?

MR. WASSERMAN. I would specifically include people from the Caribbean area, Western Hemisphere, within the definition of refugees. It should not only be people who are fleeing persecution from communism and dangers of the Middle East, but it should include anyone fleeing from persecution anywhere in the world.

In addition, the way the regulations and the statute is geared at the moment, you can only apply for refugee status within certain seven or eight designated countries in Europe and the Middle East. They are listed in the regulations and they totally exclude applying for asylum either in the United States—well, you can apply for asylum, but you can't apply for conditional entrance or refugee status as such unless you come from these designated countries, unless you make the application at designated places. Now, both of those limitations should be removed.

COMMISSIONER FREEMAN. And they are regulations not statutory?

MR. WASSERMAN. No, it's statute and regulations.

MR. WASSERMAN. So that they both should be changed?

MR. WASSERMAN. That is correct.

MR. MUKAMAL. I would like to recommend another change in the provisions of section 243 (h), which now places the presumption of the burden of proof on the alien to—let me try to recall how it reads. The alien has the presumption of proving that he himself personally will be physically harmed in some form because of race, religion, or political opinion, and the burden of proof is too great on someone who is escaping or fleeing from such a country. And this—what I would like to see—

MR. NUNEZ. Pardon me. Let me interject—how would he be able to prove?

MR. MUKAMAL. Well, at the present time it's not very easy. That's why not too many cases are granted under that provision of the law. As a matter of fact, I can't recall a one. I don't know if you can in recent time, where an individual has been able to successfully make use of this provision of the law.

COMMISSIONER FREEMAN. But there was no such burden on the Vietnamese or Cubans?

MR. MUKAMAL. No, they're refugees fleeing from a Communist-dominated country, whereas a Haitian is not fleeing from a Communist-dominated country. He has to submit proof individually as to his own personal persecution, and the same thing would apply to the members of the Philippine community where they haven't had an election there in the last 6 years, and documentation by the American Civil Liberties Union who maintains files and files and files on each country broken down as to what's going on would indicate to anybody with any intelligent reason that, my God, there's something with these countries.

We ought to take some things for granted rather than make this individual submit proof by—I mean how can he submit proof. He just fled the country to save his life and he's testified under oath, "I fled because Mr. Duvalier was going to put me in jail because I was at a rally or something and I spoke out against him," and this would not be enough under the existing law.

He does not have any corroborative evidence to support that.

COMMISSIONER FREEMAN. Thank you.

MR. CARLINER. Madam Commissioner, in addition to the provisions of the statute, which are now discriminatory, which Mr. Wasserman has called your attention to, there are a number of others which I would like to mention briefly that involve other constituency. Maybe it has a large constituency, I don't know.

Under the present immigration act the child who is illegitimate through his mother is able to get a benefit from immigration and nationality law if the mother is a citizen or a permanent resident of the United States. A child who is illegitimate through the father, in other words, the father has an illegitimate child, and that father is a citizen or a permanent resident of the United States, he cannot sponsor his illegitimate child.

If this were a function of domestic law, it would be clearly unconstitutional, because the Supreme Court has held with regard to various types of laws that you cannot make sexual discrimination based on—sexual discriminations. Because this involved bringing aliens from another country into the United States—The Supreme Court in a recent decision said it was beyond their power to review, that Congress has plenary jurisdiction over whether aliens can come to the United States.

We know that fathers are fathers as well as mothers are mothers and there's no reasonable basis for discriminating against them. The argument made is that is harder after the resident has arrived for a child to know his own father, that it's harder to prove the relationship, but the relationship would have to be proved whether it's by the mother or the father, and I suggest there's no reason for discrimination.

There is another discrimination which Mr. Wasserman, I think, called your attention to in his prepared statement that wasn't read, dealing with who can sponsor parents. A 21-year-old citizen can file a petition on behalf of his mother and father and enable that mother and father to become permanent residents of the United States.

One would think that the need of a 21-year-old child for his parents is much less great than the need is for 1, 2, 3, up to 21-year-old child, but under the Immigration and Nationality Act, the child who is younger than 21 cannot sponsor his father and mother even though that child may be a citizen of the United States. That has a substantial impact on that type of a parent.

There is another constituency which is a rather vocal one, the homosexual community. Under the Immigration and Nationality Act, the person who is, quote, "afflicted with a sexual deviation" is excludable from the United States, and if such a person somehow gets into the United States unbeknownst to the Immigration Service and it is discovered that he had this so-called sexual deviation before he came here, he can be deported.

Many people come here as visitors and they decide to stay and they are denied eligibility under the Immigration and Nationality Act, and if it is established that they are, quote, "sexual deviates," they can be denied their application to become a permanent resident of the United States.

VICE CHAIRMAN HORN. On that point, is this limited to homosexuals or does that include heterosexual deviations? I can think of some Hollywood producers or movie stars that—let me qualify—

MR. CARLINER. It is a fair question, Mr. Vice Chairman, one that the homosexual community took great pains to call attention to, because it is said that so-called deviate practices are engaged in by people who have heterosexual relations, and I don't know how one defines people's sexual relations, but various types of sexual relations are said to be deviate. The homosexual community claims that at least 10 percent of the people in the United States are homosexual and, if there are that many, they say it can't be deviate.

Whatever the arguments are, it is an act of privacy and so long as it doesn't involve persons other than consenting adults, they figure there should be no stigma or bars placed upon them..

I don't know if this Commission has looked into discriminations against homosexuals, but, as you know, many city governments have adopted ordinances, some of them rescinded but nonetheless some adopted, to forbid discrimination against persons who are homosexual. I call this to the attention of the Commission with my own recommendation as a human being, as an immigration lawyer, and as general counsel to the American Civil Liberties Union, which strongly supports this, that this be repealed, apart from the fact that it is somewhat vague.

CHAIRMAN FLEMMING. Commission Saltzman?

COMMISSIONER SALTZMAN. Mr. Wasserman, you were pointing to the abuses around—but sometimes they are called survey or raids of businesses and you were indicating—describing a situation where there were 600 employees. What about the small mamma-papa restaurants, and sometimes it is raided, and small business where they don't have recourse to the kinds of legal help, perhaps, that—expertise that other people have? Aren't there significant abuses in that area, too?

MR. WASSERMAN. Certainly there are. I think it's just as much an abuse to surround a small restaurant, and I have represented small restaurants where this has occurred. The Immigration—they don't do it now as frequently as they used to and maybe the practice has stopped, but there was a time when the Immigration Service would say, "Which restaurant are we going to surround and raid tonight?" And they would always do it at the supper hour where there was greatest disruption.

Their justification was that most of the employees would be on, but they never had any lead other than suspicion that they would catch some illegal aliens, or they might have been after a specific illegal alien, but they would try to sweep and find out who the other aliens were who might not have the documentation.

COMMISSIONER SALTZMAN. What might this Commission recommend relative to that practice?

MR. WASSERMAN. I think that unless the Immigration—there shouldn't be these general raids on business establishments, at homes, or at any other place, in my judgment.

COMMISSIONER SALTZMAN. Well, the defense that we heard said to us that these were voluntary. I happen to have been in a situation where, yes, the management of the business consented under the real intimidation of the officer from the INS, "You either give us your consent or we'll get a warrant and then you'll be worse off once we get a warrant."

MR. WASSERMAN. That's exactly what they did with Blackie's. They threatened him with a warrant if he didn't consent and he stood up to them. But I agree with you, there are very few business establish-

ments who will stand up to the Immigration Service under this type of threat, and I think while the Immigration Service is contending that there is consent, I don't think there is a true consent.

COMMISSIONER SALTZMAN. So that you think the practice ought to be prohibited entirely?

MR. WASSERMAN. Yes, sir.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I think my colleagues have very well covered the area.

CHAIRMAN FLEMMING. Mr. Horn?

VICE CHAIRMAN HORN. Gentlemen, since you are all immigration attorneys, let me start out with this question and get your advice. I spent 5-1/2 years on the Hill as an assistant to a U.S. Senator, and obviously a lot of immigration cases come in to a senatorial office, as they do in to a Member of the House.

In talking to a number of Senators, a number of Members of the House, their staff, etc., over the years, I've had a feeling that the field of immigration law, as with probably every field in America, has its share of unscrupulous practitioners, and I also had the feeling that often aliens or citizens that were facing problems of deportation, based on their original naturalization process and allegations concerning it, were being charged outrageous sums by the legal profession for what a postage stamp and a letter to a United States Senator or a Member of the House would remedy equally well.

And often that's all I found that some attorneys did. What is your feeling on the abuses that are occurring, of those in trouble in immigration, aliens, essentially, undocumented workers, if they are able to secure a lawyer and have an opportunity to, and what is being done by societies of which you are members to try to get at some of those abusers?

MR. WASSERMAN. Well, first of all, I am not aware that lawyers generally charge outrageous fees. As a matter of fact, in my book I published a fee schedule which was in use some 10 years ago, and, of course, everything has gone up since that time. I've prepared a revised edition in which I set forth the fee schedules of two lawyers who are members of our association, one out of Texas and the other out of Seattle, and the Seattle lawyer by far has the highest fees, but he tells me he only charges those real high fees when millionaire clients come into his office and there are some millionaire alien clients.

For my part, I have handled a number of free cases and I don't always charge the fees that other lawyers charge. I don't doubt that there have been some abuses by attorneys in the fee schedule. I had heard, for instance, that there was one lawyer who used to charge a fee for introducing private bills, and the fee schedule would depend on how long Congress would remain in session after the bill was introduced. If it was at the beginning of the session, the fee was much higher and as it got to the tail end of the session, the fee went down.

I don't approve of that type of practice. I think Mr. Mukamal will be able to address himself to what his experience with the attorneys throughout the country are much better than myself.

VICE CHAIRMAN HORN. On that case of the attorney that charged based on the length of the congressional session, is there any provision in the canons of legal conduct of the American bar that would get at something like that, or is it what the traffic will bear?

MR. WASSERMAN. Well, no, there is a canon of ethics to the effect that you are supposed to charge depending upon the type of work you do. As a matter of fact, it doesn't even have a provision in there that relates to the ability of the client to pay, and it would seem to me that, if all an individual is doing is writing a letter to a Congressman or Senator or calling a friend who is an administrative assistant, and if he's getting paid for that type of work and charging a substantial fee, I think it is a violation of the canons of ethics.

VICE CHAIRMAN HORN. I agree with you.

MR. CARLINER. I have a slightly divergent point of view from Mr. Wasserman. I think the problem of giving legal services to aliens is a major issue. It is a major issue because most of the aliens who are taken into custody by the Immigration Service and who have problems don't usually have much benefit available to them under the immigration and nationality laws except for the opportunity to remain in the United States for a relatively brief time after they've been placed under deportation proceedings.

Most of these aliens have very low income. If Washington, D.C., may be used as an illustration, the Immigration Service will typically raid parking lots, where they arrest parking lot attendants who largely come from Central American countries, or they will go to restaurants where they will arrest busboys, dishwashers, and kitchen helpers who have very low income. They are working in occupations where they cannot get any benefit under the immigration laws because there's no labor shortage of that particular occupational group, and for the most part they don't have any relatives in the U.S. who are in a position to sponsor them.

The nature of the legal services provided by the lawyer is very limited. He can arrange for his release from custody if the alien is being held under bond, and the bond is usually quite high for them, at least \$1,000. He'll have a hearing, and normally, if he can show that he's going to leave the United States voluntarily, with or without a lawyer, the immigration judge will always give him 30 days, maybe 60 days, maybe 90 days to stay in the United States.

The alien who hires a lawyer for this purpose is having to pay the lawyer virtually the amount of money that he gets in the next 30, 60, or 90 days. He's not getting any substantial economic benefit for it. I personally think it is unconscionable for lawyers to perform this role, but I can't say that there are not lawyers who do it, and I can't deny it; on occasion, I've done it myself.

I think that the solution for this is to have an expanded program of legal services for indigent aliens.

VICE CHAIRMAN HORN. Do you think a sort of public defender system within INS is one solution separate from the administrative line? You talked about separating out the immigration judge from the administrative line; I think that's quite appropriate, and just a fundamental tenet of—that we've really tried to start with the Administrative Procedure Act, but how about a public defender system being provided also, under INS but separate from the line authority of INS?

MR. CARLINER. I think that has to be the solution ultimately. There are organizations of a nonprofit nature which are attempting to provide this service, but they have to raise the money someplace. Their access to funds isn't available.

Now, with regard to fees charged to clients for other purposes, we have our range of people who are exorbitant and some who are venal and who charge fees for not doing anything, and I think that where this happens—I know the Association of Immigration Nationality Lawyers, to which we all belong and which Mr. Mukamal is the president—It is a great pain to present this kind of behavior, but within the bar, at various levels, sometimes at the very highest levels, people who don't behave with ethical responsibilities.

I don't think that the fees which are charged in immigration law are necessarily subject to abuse any more than they are in other kinds of criminal cases and others, and I don't know that the immigration bar should be singled out for it. There—one of the major problems—

VICE CHAIRMAN HORN. I'm not singling out the immigration bar; I would single out most bars if I had a chance to talk to specialists in the field. But since you're immigration specialists, I thought I'd recall that—

MR. CARLINER. I think it is very appropriate to put the question to us, but I think that the greatest vice, the greatest misconduct is caused by people who are not lawyers at all and who have really a conflict of interest in dealing with aliens. These are travel agencies who will deal with people, and they want to promote trips of one kind and another, and the travel agent gives aliens immigration advice. They prepare forms to be filed with Immigration and Naturalization Service where they fail to put in the name of the person who prepared the form. At the initiative of the Immigration Lawyers Association, the Immigration Service, several years ago, required that anyone preparing the form for another person should state his or her name and who he is. Well, these travel agencies who prepare these forms omit their names.

It is also done by so-called visa consultants, by people in employment agencies where they are getting jobs for people, and they earn their fees for other activities, and there should be some way to make them accountable for ethical and an honest conduct.

MR. WASSERMAN. Could I add one other thought? I would like to call your attention to the fact that of thousands of cases that I've handled, I don't think there's a single case where I've been able to dispose of it by writing a single letter, as you seem to have indicated. I might tell you, you have a wide range of cases, from a case that may involve a simple matter to a case, such as I've handled—one of my cases involved hearings of 52 days.

Another case that I am presently handling, I've been involved in—it's the one that Mr. Carliner mentioned—since 1954. I'm scheduled to be in court later this month on it, just on another phase of it, so—

VICE CHAIRMAN HORN. It sounds like a desegregation case.

MR. WASSERMAN. Not quite. It does involve this alien who's been here since the age of 8 months, so that you can't make a judgment based on a simple situation. I—when I am approached on a case where I feel like there's no relief that the individual can obtain under the immigration laws, I may in turn refer him to his Congressman or to his Senator, and sometimes I even write a letter for him. So you do have that type of case, but I can assure you that most of our cases involve much more than just writing letters.

VICE CHAIRMAN HORN. Okay. Mr. Mukamal?

MR. MUKAMAL. First of all, those cases that you say require a letter and that's all that needs to be handled is the result of nothing more than adjudicative delay in the processing of an application. That's why that person came to a Congressman—because Immigration did not act on his application.

VICE CHAIRMAN HORN. Well, often it's to prevent action by Immigration. As you know, the introduction of a private bill is designed to prevent action by the Immigration and Naturalization Service.

MR. MUKAMAL. Yes.

VICE CHAIRMAN HORN. And that's often the reason why private bills are introduced.

MR. MUKAMAL. This for the most part, at least my experience has been, is not a function of the practice, the general practice, of immigration law. I would like to write this down for you so that you get a comprehensive picture of really what happens.

There are unscrupulous, I will not call them practitioners, I'll call them individuals, who will take advantage of aliens. My particular office has 12 attorneys practicing, and we probably handle some 10,000 volume cases on the average of any particular time. We do not charge for consultation. Twenty percent of our time is devoted to giving free consultation to people walking into our office.

One in five becomes a case. The other four have been given adequate—whatever I can give them in terms of telling them, "Look, I can't help you," and I've sent them out the door.

The minute that person walks out of my door, he has seen the hopelessness of staying in this country. What will ultimately happen with

that person is he'll get hooked up with a travel agent, he'll get hooked up with a notorio who puts out a sign, "Immigracion notorio, come in; I'll do something for you," and along the way, out of hopelessness, that person will pay somebody \$500, \$1,000, \$1,500, what have you, to get something done, and once he pays the money to this notorio, what happens is he's able to go to sleep because he thinks something is being done for him.

A year later the notorio who's taken his money, or the travel agent, or what have you decides, "Jesus, I've got to get rid of this guy; what's the best way for me to get rid of this guy? Well, I'll call Immigration and tell them where he is."

And in addition to not only collecting that money from that person, he now picks up another \$25 for giving Immigration a tip; a month later, headache gone.

Now, as an attorney, most attorneys have a license to protect. It is not worth it for an attorney to get involved in something like that. I just can't believe that any one of our members or even any practitioner who's practicing before a bar would subject himself to any kind of scrutiny by the Appellate Division, by the—whatever the governing body happens to be in the State where he's practicing. Most of these unscrupulous practices come as a result of the fact that our government still permits this complicated field of law to come into the hands of friends, people who can fill out an application and say, "Look, I'm his friend so I'm filling out the application for him."

VICE CHAIRMAN HORN. You make a very good point here, and it's something that this Commission in making its recommendations ought to consider. This is the first time I've heard of this. I'm not from New York; I don't know the nuances of life in New York, but it seems to me that if you have individuals practicing that sort of deceit, taking money for it, and then tipping off Immigration, there ought to be a way to draft a Federal law as part of reform of immigration acts getting that and try to cross-reference that situation—

MR. MUKAMAL. Immigration is aware of it. They have conducted several investigations. Some of these agencies have been closed down. Some of them exist right here in the Washington area that are doing this on wholesale by running ads in newspapers abroad. What was one of them here—some overseas operation that was running ads \$500 for this, \$200 for this, "Send us the money we'll take care of you." This person wasn't even—

VICE CHAIRMAN HORN. What's the way to get at a problem like that in your judgment? How do you get at it? Does it take statute? Could Immigration do it? Take statute.

MR. MUKAMAL. It takes statute. I would not—you see, the way it is right now, let's assume I'm making an application to Immigration, and there's no governing body to govern this, these people. We're governed by the Appellate Division of the State of New York; the city bar association will send me a letter and I've got to account to them for exactly how I earn my money, what I did to earn the money.

Now, there's no regulatory agency to govern these people in terms of having them respond to somebody for their action, and in many instances they refuse to identify themselves on the application.

MR. CARLINER. With regard to lawyers, I don't think that the statute, the case that Mr. Mukamal is referring to, happens to have involved a member of the bar, and it is my understanding he was disbarred and he is now in jail someplace in Massachusetts, but he conducted his operations under the rubric of an employment agency, but with regard to members of the bar, and there are complaints in what I've heard, and occasionally justifiable complaints. Local bars normally have the mechanism where people can come and make claims; they should be publicized, and I think they can be taken care of. The people who cannot be taken care of are the notaries, the visa consultants, the employment agencies, and now as a matter of State law, and I can say with regard to Washington, D.C., Maryland, and Virginia, there's just no effective way of doing anything unless their behavior is so egregious that the Immigration Service decides to go after them, which they have done already or several occasions.

VICE CHAIRMAN HORN. I think the Commission would welcome suggestions that any of you gentlemen or others want to make as to how we get at the problem and what kind of recommendation would be appropriate for us to make.

MR. MUKAMAL. There's one very minor recommendation I can make that would at least put one foot in the door, make it a crime for a person who submits an application to Immigration without identifying himself, a crime, 1 year in jail, so that this person at least now says, "If I'm going to do this on a wholesale basis, and if I don't put my name down, I may go to jail."

VICE CHAIRMAN HORN. You're thinking the person that prepared the application, just as with income tax where the person preparing the tax—

MR. MUKAMAL. Exactly. Use the same format that the Internal Revenue uses where the person must identify himself and now apply it to the travel agent or the notorio; all attorneys file a G28. There's a notice of appearance that—

VICE CHAIRMAN HORN. That's a good suggestion and then you could cross-check that with tips to Immigration on certain cases.

MR. MUKAMAL. So now you can catalog, at least determine, how many did this guy submit. Now go back and it is easy to at least keep some tabs on him. You're not going to get them all but it's one foot in the right direction.

VICE CHAIRMAN HORN. Now, let me pursue another area here. Mr. Carliner, you felt that the 20,000 limitation on all countries is really pretty much a facade, and Mr. Wasserman, I believe, would have people come in based on the abilities and the categories rather than a numerical limitation.

I would like to ask all of you gentlemen, or those that wish to comment, just what limit numerically, if any, would you place on Immigration?

MR. WASSERMAN. Well, sir, you can still have the 290,000, which is the overall ceiling that we now have.

MR. MUKAMAL. I must—

VICE CHAIRMAN HORN. You would keep that but make flexibility with it on a hemispheric basis. Is that your recommendation?

MR. WASSERMAN. No, on a worldwide basis.

VICE CHAIRMAN HORN. I means on a worldwide basis.

MR. MUKAMAL. I can't go along with that, only because my personal feeling is what we would end up having is an unfair relationship in terms of having—at the present time what you'd be doing is eating up half the quotas with Mexicans, and I'm not against having Mexicans come to the United States, but there just isn't enough numbers.

If we don't put a ceiling—some sort of ceiling on each country, what would happen is there are certain countries in the world where, because of economic conditions, or political conditions they would totally eat up a good portion of whatever Congress has allotted for immigration.

VICE CHAIRMAN HORN. Well, I've got a similar concern having spent a couple of months in India in the last 2 years. There's about 650 million people there. If they could figure out a way to get here—a lot of them would come. The People's Republic of China has 800 million and, if we take the test, really, of one of you gentlemen, as I recall, I think it was you, Mr. Mukamal, that said where the Philippines have not conducted an election in 6 years, perhaps that ought to be, I would assume, automatic reason for admission. We've got the Soviet Union and the People's Republic of China that we've got a lot of potential recruits from—

MR. MUKAMAL. Yes. That's true and you still don't have a limitation. The test is not that; the test is that you're not making these people permanent residents. You still have a quota limitation for refugees, 7 percent of the annual quota.

That doesn't mean these people are going home. What that means is that you withhold their deportation and let them stay here. Until 1965—between 1963 and 1965 my recollection is that President Kennedy permitted some 10,000 refugees to come in from Hong Kong who had absolutely no visa numbers at all until the act went into effect. These people were here as what we call parolees. They were not permanent residents. They were not in any way—had begun the process towards becoming permanent residents; that's the humane aspects of the law. This is not regulatory to determine the numbers, the numbers required, the annual numbers that Congress allots.

VICE CHAIRMAN HORN. Yes?

MR. CARLINER. Frankly, I don't have a definitive answer to this. Two hundred ninety thousand doesn't state the number of persons who

have been coming to the United States since 1965. On an average it's been around 400,000. This arises because some people are outside the quota; spouses of United States citizens, for example, are outside the quota. We also have brought in, as we know, 600,000 Cubans who originally were charged to the quota, but it's been held that that was a mistake, so they are not now charged to the quota. We brought 140,000 Vietnamese, Laotians, Cambodians, so the 290,000 would be a very arbitrary figure to fix, in terms of the expansion of our population as to the number, but it is a question that I as a lawyer don't have the answer to.

And there was several years ago a population commission to—which was going to answer this question; they weren't able to answer it either; it depends upon our rate of population growth and our economy and so on.

I would tend to agree with Mr. Mukamal, that if you eliminate allocations by countries altogether, you would—most of them would be absorbed by the increasing number of people who want to come in, not only from Mexico but other South American countries where the rate of birth control is much higher than it is for the more industrialized countries of Europe.

I don't know—I'm not in favor of trying to pick people from different countries because of their ethnicity, but at the same time we have to allow the opportunity for people from all countries of the world to come in if we think we need them.

Also, to eliminate it altogether, it would mean that the people who have preferences because they have wives, husbands, brothers, sisters, children, parents, or citizens other than permanent residents of the United States, they would tend to eat up most of the quota, with some little going to people who have occupational skills. It leaves no room at all for people who are without any skills at all but who have the basic native intelligence and the ability to work.

The United States, after all, was settled by people without regard to these skills, and studies by a man who has been quoted time and again, Mr. Cornelius, who is the repository of most of our knowledge about the major Mexican areas, who have immigrated, indicate that most of the Mexicans are coming here are young males who are 18 to 26, and what they have to contribute is their intelligence and their ability to work. I think that should also be a criteria.

VICE CHAIRMAN HORN. Let me ask you one last question which I think I've got a little confusion on as I listen to the testimony. Mr. Wasserman, you said you would include anyone fleeing from persecution anywhere in the world for admission. As I recall, Mr. Carliner, when he referred to the Cuban situation, he said that none of the Cubans had to show persecution, and then you said, that Castro did not do anything personally to them but he merely took away some of their businesses, as I recall. I would like to know, Should it be a political torture-brutality test or is economic deprivation also an example of persecution in the judgment of you gentlemen?

MR. WASSERMAN. I think economics would enter into the picture. It's a—

CHAIRMAN FLEMMING. Make the response very brief.

MR. WASSERMAN. Yes, it should be considered.

VICE CHAIRMAN HORN. All right, you feel both should be considered. I agree.

MR. CARLINER. I think so, too.

MR. MUKAMAL. Absolutely.

VICE CHAIRMAN HORN. I'm glad we clarified that.

CHAIRMAN FLEMMING. I feel at times like the moderator of a TV program, but the time has run out. It has expired for this particular panel. There are other issues that undoubtedly we would like to explore with you, some that I would like to explore, but I do want to express to you our appreciation for your coming here and sharing with us your views growing out of your long experience in this field. Thank you very, very much.

MR. WASSERMAN. Thank you.

MR. CARLINER. Thank you.

MR. MUKAMAL. Thank you.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MS. FONG. Judge Herman Bookford, Mr. David Crosland, Mr. Paul Schmidt. Will you please remain standing while you're being sworn in.

[Judge Herman Bookford, David Crosland, and Paul Schmidt were sworn.]

TESTIMONY OF JUDGE HERMAN BOOKFORD, CHIEF IMMIGRATION JUDGE, DAVID CROSLAND, GENERAL COUNSEL, AND PAUL SCHMIDT, DEPUTY CHIEF COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE

MS. FONG. For the record, would all three of you please state your names, your titles, and your business addresses?

JUDGE BOOKFORD. My name is Herman Bookford; I'm Chief Immigration Judge of the Immigration Service. The address is 425 I Street, N.W., Washington D.C.

MR. CROSLAND. David Crosland, General Counsel, Immigration and Naturalization Service. The address is 425 I Street, N.W., Washington.

MR. SCHMIDT. Paul Schmidt, Deputy General Counsel, Immigration and Naturalization Service. The address 425 I Street, N.W., Washington, D.C.

MS. FONG. Thank you. If any of you have prepared a written statement, you may introduce it into the record at this time.

MR. CROSLAND. Let me ask whether the Commission, the Commissioners, would prefer a statement introduced in the record or read. Since a number of the issues have already been raised, you may prefer to get right into the question rather than my reading the statement, which may not be quite what you're interested in.

CHAIRMAN FLEMMING. If you have a statement, if you could give us a very brief summary of it, and then we'll include the complete statement in the record. Or if the statement itself is brief, I mean, if it's short, go ahead and read it.

MR. CROSLAND. Why don't I just introduce it into the record rather than attempting to summarize it. Having said that I will make a short introduction.

There have been a number of cases in the last few years affecting immigration law, affecting the authority of law enforcement sections of the Immigration Service. I think you are going to see more cases in the next few years raising issues as to the authority of the immigration officials to perform their tasks. I think in the last year, year and a half, there has been a considerable amount of introspection within the Immigration Service.

Under the leadership of Leonel Castillo, there has been a willingness to examine our policies, our practices, to not hide behind the bureaucracy of layers of lawyers, going through the General Counsel's office over to the government reg. section of the Criminal Division and the U.S. Attorney, and speaking through three people until you finally speak to plaintiffs' lawyers, but to meet with opposing sides, whether we are in litigation or whether there is a possibility of litigation, so that we fully appreciate what the concerns of the other side are.

Sometimes we have not agreed, and sometimes we have modified our position, but I think it serves to draw issues more clearly and eliminate unnecessary litigation. One of the matters that we have in the General Counsel's office paid close attention to and the Commissioner has given high priority to is that of the handling of alleged war criminals.

In the past, INS has received criticism for the handling of these cases. What we did was to set up a special litigation which is composed of five lawyers; we just recently have gotten authority from the Associate Attorney General to add two more lawyers, so we'll have seven lawyers, five secretaries, two investigators, a historian, and four research analysts who will work on nothing but alleged Nazi war criminals. We've got something like 260 active investigations and the team of lawyers has reviewed over half of those cases. We sent two lawyers to the Soviet Union. That's the first time the Soviet Union has allowed INS lawyers to come there and to interview witnesses, and we are expecting a good deal of activity in the next year. In fact, right now, we're having a case being tried in Baltimore. We'll be happy to answer any questions.

MS. FONG. Thank you, Mr. Crosland.

Earlier in your statement you referred to the fact that INS is under Commissioner Castillo examining its policies and practices. In conjunction with that, would you please explain the present legal standards which the Service uses for stopping, questioning, and arresting people—immigration status violations?

MR. SCHMIDT. Well, present standards for most of the authorities of INS enforcement officers are set forth in section 287 of the Immigration and Nationality Act which is 8 U.S.C. 1357. They are also set forth in recent Supreme Court cases which have interpreted that section, namely the *Almeda-Sanchez v. U.S.*, *Brignoni-Ponce v. U.S.*, *Ortiz v. U.S.*, and *Martinez v. Fuente*. You know, it is a quite complex area.

There are different standards depending on where you are. At the border, or its functional equivalent, the INS can make stops and searches, just upon belief that the person has come from a foreign country to the border. It can also make searches. A roving patrol away from the border needs reasonable suspicion based on articulable facts that there are illegal aliens in a vehicle before it can stop a vehicle and search it.

At a fixed checkpoint away from the border, the INS can make brief stops to question the occupants of a car as to their citizenship and their alien status; however, if they want to search the car, they would have to have probable cause or consent in order to search. There are various cases in litigation now dealing with the issue of stops of people, nonvehicular stops, pedestrian stops. The section 287 says that the INS has a right to interrogate anybody believed to be an alien about his right to be in the United States.

This question, the exact interpretation of that section, was left open by the Supreme Court in *Brignoni-Ponce*. The Seventh Circuit Court of Appeals has indicated that pedestrian stop without detention could be made upon reasonable suspicion that the person is an alien, without necessarily having to believe that the person is in the United States in violation of law.

On the other hand, there's been a case in 1977, in the Southern District of New York, the *Marquez* case, where the district judge held that INS could only stop and question somebody upon having reasonable suspicion based upon articulable facts that the person is a alien illegally in the United States.

MS. FONG. Is this *Marquez* case binding upon INS?

MR. SCHMIDT. Well, there has never been a final order issued. *Marquez* is a published decision; the Court has never issued a final order and, therefore, the Government has never been able to make a final determination as to whether or not to appeal the case, so it is not binding in a nationwide sense. It is being followed, I believe, in the Southern District of New York for the time being. But basically in the *Brignoni-Ponce*, the Supreme Court set forth some guidelines that the INS officer should use in considering whether there's reasonable suspicion to stop somebody.

In that particular case they said that mere foreign appearance in and of itself is not enough to justify vehicular stop. On the other hand, foreign appearance combined with other factors, such as, say, a car driving without its lights, close to the border, speeds away upon seeing an officer approach, combined with foreign looking appearance, these

things might be—allow the officer to develop a reasonable suspicion to stop the car.

Ms. FONG. Thank you, Mr. Schmidt.

Mr. Crosland, if I may get back to you. Can you tell me the date of the last updated manual regarding the authority of INS to make arrests—when that manual was last published?

MR. CROSLAND. I don't know when it was last published; I can tell you it's about to be republished. The M69 is a manual you have reference to, and it's in a final draft which will be submitted to the Associate Attorney General's office shortly for review.

Ms. FONG. This is updating a previous M69 publication?

MR. CROSLAND. Perhaps I should have read my statement. Let's see, the name of it is the "Law of Search and Seizure for Immigration Officers." I don't know the date of the last publishing of the M69, but we expect there will be something coming out soon. We submitted a draft of the—our proposed manual to social organizations such as MALDEF, the lawyers in the *Pilliod* case in Chicago, Peter Shey in Los Angeles, and got their comments.

Ms. FONG. You just mentioned the *Pilliod* case. We understand that the court in the *Pilliod* case criticized the older manual for being obsolete and outdated. Can you tell us what INS officers have used as authority to question people in the interim between the date of publication of the last manual and the proposed publication of your new revised edition?

MR. CROSLAND. I assume they would use the old manual with consultation where necessary to the regional counsel, trial attorneys, General Counsel's office on questions that come up. We try to keep the field advised of decisions that affect the operation and will send out copies of decisions with interpretation to Regional Commissioners and then down to the district officers.

Ms. FONG. So it is up to the district officers to make sure that their officers in the field are aware of these decisions?

MR. CROSLAND. I'm advised the M69 was actually withdrawn from all districts so they have been using training materials and materials that were provided which are up to date.

Ms. FONG. Thank you. We understand that in the past, before the Blackie's House of Beef case, INS would obtain warrants to search factories and other places of employment for aliens who are illegally in the country. We understand that INS obtained these warrants under rule 41 of the Federal Rules of Criminal Procedure authorizing searches for property. Can you tell us the INS rationale for obtaining warrants under Rule 41?

MR. CROSLAND. Rule 41 of the Federal Rules of Civil Procedure provides—criminal procedure, I'm sorry—provides that a person can conduct searches for property and tangible objects. It's been used to search for kidnap victims, for example.

Ms. FONG. Is that the analogy that has been drawn?

MR. CROSLAND. That is an analogy, yes, and it has been and it is presently used in districts throughout the United States with the exception presently of the District of Columbia, where Blackie's House of Beef was decided.

MS. FONG. So the Blackie's House of Beef, the effect of that decision is to outlaw the use of those search warrants in the District of Columbia and nowhere else; is that correct?

MR. CROSLAND. That's correct; presently, the matter is still ripe for appeal and still under consideration for appeal.

MS. FONG. Is it correct that there are also lawsuits pending on this very issue in other cities, such as Los Angeles and Chicago?

MR. CROSLAND. That is also correct.

MS. FONG. Yesterday Mr. Bertness testified, he's from your enforcement division, that in the future INS will need to obtain, instead of search warrants, INS will need to obtain court orders in order to search places of employment; is that a correct interpretation of the Service's legal policy for the future?

MR. CROSLAND. We are exploring other ways, other than criminal search warrants, other than search warrants under the Rule 41; civil search warrants are being considered.

MS. FONG. On what basis would the civil search warrants be issued?

MR. CROSLAND. They would be issued under the authority of the Attorney General to enforce the laws of the Immigration and Nationality Act. There's no specific statutory authority presently. There may be some need for clarification through legislation, but we think there's adequate authority presently for the Attorney General to obtain orders for civil search warrants.

MS. FONG. In a press release on June 23, 1978, the Attorney General stated that the enforcement of the immigration laws is properly within the jurisdiction of INS and not within the jurisdiction of local law enforcement officers.

Has INS, to your knowledge, taken any steps to eliminate local police enforcement of the immigration laws?

MR. CROSLAND. The first statement from INS came under Deputy Commissioner James Green, who was the previous Deputy Commissioner of INS under the former administration. At that time he sent out a memorandum to all the Regional Commissioners asking them to notify all officers and to notify local law enforcements persons of the responsibility for the enforcement of immigration laws as being left up to the Immigration and Naturalization Service.

Now, the Attorney General's statement, which received wide press coverage, especially in areas such as Los Angeles and along the border, I think, certainly had the effect of putting local law enforcement personnel on notice that they should not attempt to enforce the Immigration and Naturalization Act.

MS. FONG. So this is basically a matter of policy to be implemented by your local offices?

MR. CROSLAND. Well, your—

Ms. FONG. There is no written guideline prohibiting that?

MR. CROSLAND. I think it's pretty clear written guideline by the Attorney General. He said two things very clearly: one is, do not stop people and question them about violating the immigration laws, and, two, if you stop them for some other reason in violation of State or local ordinance, do not detain them unless INS asks you to detain them.

One of the complaints has been that Mexican Americans especially have been questioned by local law enforcement officers as to their citizenship, and another complaint is that they are detained for fairly substantial periods of time, even after they might otherwise be released, and I think this is the first time the Attorney General has taken a stand, has made that statement.

I might also state that the position of INS through our legal research is that there may well indeed be local authority, State authority enabling local law enforcement in some very limited instances to enforce immigration law, but because of the balancing process of considering the possible constitutional violations of U.S. citizens, we have recommended to the Attorney General that he take the position that he took.

So I think it is exceptional that here the Attorney General has taken a position, very strong position, that they shouldn't enforce immigration laws even if they have the authority to do so.

Ms. FONG. Well, let me ask a followup question to that: If a local law enforcement police officer detains an undocumented alien and turns them over to an INS office for processing and deportation, will the INS office accept that alien and process him for deportation?

MR. CROSLAND. What INS has asked is that they detain them only if we ask them to detain them.

Ms. FONG. And so local law enforcement officers are not authorized to detain undocumented aliens absent an authorization from INS?

MR. CROSLAND. That's correct.

Ms. FONG. That's correct? Judge Bookford, may we ask you a few questions? Can you tell us briefly what an immigration law judge does?

JUDGE BOOKFORD. Yes, chiefly the immigration law judge holds deportation hearings; this is the majority of his work, and at a deportation hearing, which is initiated through instruments of an order to show cause, the Government has the burden of proof to show that the alien who is charged with being deportable is actually deportable. The Government is usually represented by a trial attorney, the alien may be represented by counsel at no expense to the Government.

Ms. FONG. Judge, I notice that you were present in the audience when Mr. Wasserman testified that the immigration judges are administratively dependent upon the district directors. Is this a correct assessment of the situation?

JUDGE BOOKFORD. Now, that is correct. The allocation of resources, including funds for clerical personnel, for courtroom facilities, for

mechanical equipment, all phases of administrative support are allocated to the district directors, and it's up to the district director to decide how much of that he wants to allocate to the immigration judge.

MS. FONG. Would you say that the district director and the immigration judges often have different priorities?

JUDGE BOOKFORD. Yes, they have quite different priorities. First of all, the district director is a law enforcement officer, and, as such, when he institutes proceedings against an alien, he is interested in seeing that that is carried through to a successful conclusion, otherwise he would not have instituted the proceeding in the beginning. The immigration judge, on the other hand, takes no stand either way, either for the Service or for the alien.

Secondly, the priorities arise because the district director has no responsibility for the immigration judge's activity. If the immigration judge's activity is very successful, the district director gets no credit. If it is unsuccessful, if it is very poor, he gets no blame. So, on the other hand, if his investigative staff does a poor job, he gets blamed for that. If his adjudicators fall behind, he will get complaints from Members of Congress and from members of the public.

If there is a long delay in naturalizing applicants for naturalization, he will get complaints about those delays. On the other hand, if the immigration judge is unable to get a decision typed because of a shortage of clerical personnel and that, that's delayed for 2 years, no one complains. The alien is usually very happy about the delay. The public doesn't know about it. And so the district director is under pressure to allocate his resources to the slots where he's going to get criticism.

MS. FONG. Would you say that there is currently a backlog of cases to be processed by the judges?

JUDGE BOOKFORD. Yes, there is, in almost all offices. The backlog varies from perhaps 3 months to, as far as typing goes, in some places it might be as high as 2 years.

MS. FONG. So frequently that backlog is due to the lack of support facilities given by the district directors to the administrative law judges, the immigration judges?

JUDGE BOOKFORD. That's correct.

MS. FONG. Is it possible for the district directors to withhold administrative support from the judges to such a degree that the judge's work is adversely affected?

JUDGE BOOKFORD. Yes, it is possible. When a decision is made with limited resources as to what clerical personnel to recruit and hire, the district director may decide that he will hire very few Spanish interpreters, which is the case in our Los Angeles office, for example, where almost all of the deportation hearings are held through a Spanish interpreter and yet they do not have any full-time Spanish interpreters in that office.

The district director must allocate his resources to the various functions and, of course, he's under pressure to allocate those, as I said before, to activities where he may receive criticism or where he is held responsible for the success or failure of the activity.

Ms. FONG. Who controls the deportation case files? Are those the district directors or the immigration judges?

JUDGE BOOKFORD. Once a hearing has been started, the record file is controlled by the immigration judge. The files are separated into two categories, one is called the administrative file, and this is the file that is compiled before the hearing starts. It may have sworn statements by the alien. It may have the report of the investigator. It may have—usually does have—an application for an order to show cause. None of these are seen by the immigration judge.

All that the immigration judge receives at the beginning of the hearing is the order to show cause, which is a statement of the charges against the alien, the facts which presumably make the alien deportable and a statement of the section of law under which he is presumed to be deportable.

Ms. FONG. In light of your testimony, do you think that an independent immigration court system is advisable?

JUDGE BOOKFORD. Yes, I do. I think it is very much advisable, not only from the standpoint of carrying out the work efficiently, but from the standpoint of a public view of the operation. We must not only be independent but we must, I think, give the appearance of independence. We must convince the aliens, the public, the members of the bar that our decisions are independent, and when we are so closely allied with and a part of the Immigration Service, it's very difficult to convince these people that we are indeed independent, although, when it comes to decisionmaking we do have independence.

Ms. FONG. Could you briefly describe the MASH [Multiple Accelerated Summary Hearings] hearing procedure or mass deportation hearing procedure?

JUDGE BOOKFORD. Yes, these are group hearings and in these hearings, in New York, for example—I'll describe a typical one which would happen in New York. A trial attorney has talked to the alien or to the alien's counsel in advance, and he has found that this is a simple case where the only issue is whether voluntary departure should be granted and, if it should be granted, how much time is involved.

If there is an attorney present, the hearing takes place in a large room where there may be 30, 40, 50 aliens with their counsel. They come up one at a time as their names are called with counsel, if they have counsel, and the trial attorney and counsel will inform the immigration judge that the alien, through his counsel, has conceded deportability; his only request is for voluntary departure for 60 days; the Government has no objection. In that case the immigration judge will enter an order for voluntary departure, 60 days.

Or the trial attorney may say the alien wants 90 days. Under the circumstances of his case, I think only 30 days is justified, and in that case the immigration judge would go into the facts to make a determination as to how much voluntary departure should be granted.

If the alien appears without counsel, he will be advised of his rights, and, again, these are cases which have been screened in advance so that the only issue is voluntary departure and the amount of voluntary departure, and the immigration judge will make a decision on that case.

If, during the course of the hearing, it is found that there is a more complex, complicated issue involved, or if the alien denies that he is deportable, or if he asks for some other form of relief, or if the trial attorney opposes the relief asked by the alien, the case will be adjourned to put over on the regular calendar.

MS. FONG. Are there sufficient trial attorneys assigned to each district to adequately screen each of these cases which are heard in the MASH hearings to make sure that the aliens are indeed deportable?

JUDGE BOOKFORD. Unfortunately, there are not sufficient trial attorneys and in some places what are known as acting trial attorneys are used; these are investigators. I know that the General Counsel has made an effort to get additional trial attorneys, which we are backing to the fullest extent because they are very helpful to us in the conduct of a hearing, but budgetary limitations make it impossible for them to appear in all cases. I think they are appearing in two-thirds of the cases.

MR. CROSLAND. Last year we had roughly 60,000 cases and trial attorneys appeared in 45,000—Sixty thousand hearings, 45,000 of which trial attorneys made appearances.

MS. FONG. Mr. Chairman, I have no further questions at this point.

CHAIRMAN FLEMMING. Judge Bookford, I would like to ask one question. Who recruits the trial judges; how are they recruited?

JUDGE BOOKFORD. An announcement is made of the vacancy, and the announcement states that it is open to anyone who wants to apply who meets certain requirements. The requirement for people within the Service is that they have a certain number of years of experience as a naturalization examiner or trial attorney or both.

The requirement for people outside the Service is that they have 6 years of experience, responsible experience in the practice of immigration law.

CHAIRMAN FLEMMING. Who makes the selection?

JUDGE BOOKFORD. The selection is made by the Commissioner.

CHAIRMAN FLEMMING. By the Commissioner?

JUDGE BOOKFORD. Yes.

CHAIRMAN FLEMMING. Who makes the assignments of judges?

JUDGE BOOKFORD. I make the assignments of judges to the various places throughout the country.

CHAIRMAN FLEMMING. And from an administrative point of view, do the judges report to you?

JUDGE BOOKFORD. They report to me from—yes, technical and professional and I guess administrative, except in the sense that I previously pointed out with respect to clerical personnel.

CHAIRMAN FLEMMING. Yes, I appreciate that. But they, as judges, they report to you?

JUDGE BOOKFORD. Yes.

CHAIRMAN FLEMMING. And do you report directly to the Commissioner?

JUDGE BOOKFORD. Yes, I—well, it's—the organization chart shows a dotted line from the Commissioner to my office, so it's a sort of quasi-independence.

CHAIRMAN FLEMMING. Are you designated by the Commissioner?

JUDGE BOOKFORD. Yes.

CHAIRMAN FLEMMING. I mean, you occupy your present position by designation by the Commissioner?

JUDGE BOOKFORD. Yes, the selection was made by the Commissioner.

CHAIRMAN FLEMMING. Then, as I have understood the discussion, the trial attorneys are a part of the staff of the General Counsel and are selected by the General Counsel; is that correct?

MR. CROSLAND. That's correct.

CHAIRMAN FLEMMING. And you in turn assign those to the various districts?

MR. CROSLAND. That's correct.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Judge Bookford, as an attorney, I'm impressed with what seems to me to be an impelling need for reorganization with respect to at least the dependency of the immigration judge. What we need to know, however, is precisely what has to happen to remove the immigration judge from under the director? Is it a matter of statute or regulation or can—

JUDGE BOOKFORD. It could be done by regulation by the Attorney General.

COMMISSIONER FREEMAN. The Attorney General could do it tomorrow if he chose. Has this matter or has the problem been brought to the attention of the Attorney General?

JUDGE BOOKFORD. Yes, the matter of removing the immigration judges from the Immigration Service is a matter that has been proposed. It's been considered by several people in the Department and I know it is under active consideration by various people in the Department.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to request that this Commission transmit a communication to the Attorney General with respect to this issue and that that communication not await the report which would come up as a result of this hearing. And I would like to request that the staff prepare such a letter to go to the—

CHAIRMAN FLEMMING. I'd like to clarify something. You want a letter prepared by the staff which the full Commission would consider?

COMMISSIONER FREEMAN. That is right, for consideration by the full Commission to go to the Attorney General on this matter.

CHAIRMAN FLEMMING. All right. Without objection that will be done.

COMMISSIONER FREEMAN. Thank you; I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. I have no questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Mr. Crosland, as General Counsel, I understand that you are called upon from time to time to comment on pending legislation involving immigration laws.

MR. CROSLAND. Yes.

COMMISSIONER RUIZ. Does that include proposed regulations within the Service?

MR. CROSLAND. Within the Service. We comment on all proposed regulations, yes.

COMMISSIONER RUIZ. Mr. Noto was testifying and stated that early in September last year he had proposed some regulations to expand the civil rights of aliens. Are you acquainted with that?

MR. CROSLAND. I'm not sure exactly what Mr. Noto had reference to.

COMMISSIONER RUIZ. He specifically referred to the date of September 23, 1977, where he had proposed regulations to expand the civil rights of aliens, the right to review, or administrative relief to permit extensions of time, to reopen and allow more time to leave the United States, reinstatement by immigration judges, mitigating circumstances, a good many other things.

MR. CROSLAND. That went through our office.

COMMISSIONER RUIZ. Are you acquainted with that?

MR. CROSLAND. That went through our office.

COMMISSIONER RUIZ. That went through?

MR. CROSLAND. We approved the recommendations.

COMMISSIONER RUIZ. And he stated that he had remitted it to the Commissioner, where it was at the present time, for the Commissioner's approval. I believe he also testified that after the Commissioner, if and when he approved, that it had to go through a process of going through all of the districts. I wasn't quite sure what this process was. I was wondering what the time restraints were and just who had to be involved in that because of the time element. Could you expand on that a little more and tell us about that?

MR. CROSLAND. Well, I'm not sure exactly the time element, but the district directors have asked and the Commissioner agreed that where regulations are going to be published, rather than their being treated as the public since they are the folks who have to actually apply them, that after we circulate them through the central office, we circulate them in the field, so that the central office would have the benefit of the thinking of the field prior to the actual publication of proposed regulations. I don't know how long that'll take.

COMMISSIONER RUIZ. Well, what I'm trying to find out about this circulation business, is there a definitive time involved within which, during that circulation, an answer must come back or do they just wait until—

MR. CROSLAND. That would have been something more appropriately put to the Commissioner. I'm not really sure. Do you know?

MR. SCHMIDT. No. I—the Commissioner could sign the regulations now. It is up to him if he feels he wants to send them out for further comment, and it would be within his discretion to decide how long to give the field to comment on them.

COMMISSIONER RUIZ. Well, this is the point that I wanted to find out, because it seemed odd to me that the Commissioner would sign and approve and then he would delegate it out to the various districts to veto it,

MR. SCHMIDT. He'll do it before he signs.

MR. CROSLAND. That's not the procedure. The Commissioner would get the thoughts of the field prior to approving them and publishing them.

COMMISSIONER RUIZ. I see.

CHAIRMAN FLEMMING. My counsel can check me on this, but my recollection is, Commissioner Ruiz, that the comments from the field are in. That circulation has taken place and the comments from the field are in. Now the matter is being considered by the Commissioner, and then I did ask the question whether, after the Commissioner decided when he was going to sign, whether then they would be published through the *Federal Register* as proposed regulations, giving the public the opportunity to comment on them. My understanding was that whether that's required or not, probably that would be the procedure that would be followed.

MR. CROSLAND. I think that's the procedure as you outlined it.

JUDGE BOOKFORD. Mr. Chairman, one of those was published as a proposed regulation and that was the one for reinstatement of students to lawful status, and the comments that were received from the public were also received from the district directors. It was only proposed and nothing has been done since that time.

CHAIRMAN FLEMMING. Fine. Commissioner Ruiz?

COMMISSIONER RUIZ. That's all.

CHAIRMAN FLEMMING. All right. Mr. Nunez?

MR. NUNEZ. I would like to follow up on Chairman Flemming's question as to the nature of the immigration law profession. How many immigration judges do you have now?

JUDGE BOOKFORD. Forty.

MR. NUNEZ. Their average grade level?

JUDGE BOOKFORD. They are all the same grade, 15.

MR. NUNEZ. Fifteen. You indicated that you have two areas of recruitment; one within the Service, people who have had experience within the Immigration Service and also outside attorneys who have had immigration experience.

Could you give me an approximate number of how they have flowed into this position, the breakout?

JUDGE BOOKFORD. At the present time, the great majority are people from within the Service, and there is a practical difficulty that people outside the Service experience in learning of these jobs. They are announced; they are posted in Civil Service Offices, but, of course, attorneys will not be running over to Civil Service.

The announcement is only valid for about 2 weeks or maybe 3 weeks. In other words, they are posted and the application has to be in in 3 weeks and the attorneys are not going to run in the Civil Service Commission all the time to see whether there's a vacancy, so sometimes they are missed. We have had up to this point, some of the attorneys who belong to the Immigration and Nationality Lawyers Association, of which Mr. Mukamal is president, have indicated that they would be interested in applying, but we have not received any applications up to this point, so that a great majority of the immigration judges, 95 percent, are from the Immigration Service.

MR. NUNEZ. You indicated further that the Commissioner basically makes the final selection, but I would imagine that he would rely on your assessment or recommendation. Would that be true?

JUDGE BOOKFORD. I do make a recommendation, yes.

MR. NUNEZ. Could you tell me whether there are any minorities or women as immigration lawyers—judges?

JUDGE BOOKFORD. Yes, we have one woman, and what do you mean by "minority"?

MR. NUNEZ. Well, recognized minorities, Hispanics, blacks—

JUDGE BOOKFORD. Hispanics? We have two Hispanics; we do not have any blacks.

MR. NUNEZ. Do you have any kind of affirmative action plan that focuses on the recruitment of immigration judges?

JUDGE BOOKFORD. Well, as I previously indicated, we don't actually recruit in the sense that we go out and look for people. We simply post an announcement there is a vacancy and then we act on whatever applications are received. There is an affirmative action plan if it's possible. I mean, maybe—sometimes we'll only get one application for a vacancy.

MR. NUNEZ. Well, Judge, what sort of further affirmative action plan would be kind of aggressive, affirmatively going out and seeking minorities to apply for a position? I am just wondering whether your unit has ever made that effort.

JUDGE BOOKFORD. No, we have not. We have, as I'm sure you've heard from others, we have a staff whose function is to implement an affirmative action plan in all areas of Service operations. We have relied on them.

MR. NUNEZ. You don't feel that, personally, you as the chief judge has any responsibility in this area?

JUDGE BOOKFORD. No, and I don't know very well how I would carry it out, to be frank with you.

MR. NUNEZ. No further questions.

CHAIRMAN FLEMMING. Counsel have further questions?

MR. DIMAS. Yes, Mr. Chairman, I do have a couple of questions I'd like to ask Judge Bookford.

Judge, suppose somebody going through a deportation proceeding raises a claim of impropriety on the part of the arresting agent. What would be available in the nature of relief that you could afford to him or an immigration judge could afford to him?

JUDGE BOOKFORD. Well, that would depend on the nature of the improper act. The Ninth Circuit has held that the exclusionary rule does not apply in deportation proceedings, which means that, if the arrest were improper, this would not invalidate the deportation proceeding, and that evidence could be used which might be obtained indirectly as a result of that unlawful arrest.

This, of course, stems from the basic premise of the Supreme Court that this is a civil proceeding and not a criminal proceeding, and although you have heard while I've been—you've heard some expressions which are true about the drastic nature of deportation proceedings which are—sometimes have results which are more severe than criminal actions. In one sense, I think it is good that these are called civil actions, because it makes it clear that these people are not criminals, and I think that is an important point that should be emphasized.

These people who are in deportation proceedings are not criminals. They have not been accused of any criminal act and this is a civil action, so they are not stigmatized by being called criminals, so I think that is one good aspect of a concept which has several undesirable aspects, I mean the fact people would argue that the exclusionary rule should apply in deportation proceedings, but court decisions are the other way.

MR. DIMAS. You mentioned the Ninth Circuit, is this being applied nationwide?

JUDGE BOOKFORD. Yes, it is.

MR. DIMAS. Oh, I see. So that the situation as it stands is, if a person alleges an illegal search or seizure and proves that to your satisfaction, you can offer him no relief? He would still be deportable?

JUDGE BOOKFORD. Well, if it were shown that the evidence obtained was solely the result of that illegal search and seizure, the immigration judge might terminate the proceedings. They have done that on a few occasions, but in most cases this is not what happens.

What happens is that the illegal search and seizure, or the illegal arrest, points out to the Immigration Service the identity of the alien, so the Immigration Service is then able to go to its own file and produce from its file evidence which establishes deportability. That evidence, the courts say, is not tainted, and this evidence can be used.

Now, if the evidence was obtained directly as a result—if the only evidence in the case was the result of an illegal search and seizure, I

think an immigration judge might hold that the proceedings should be terminated. There is a Second Circuit case in which it was only dicta, because they did not actually terminate the proceedings, but they did indicate there, in the Second Circuit, that any evidence obtained illegally should not be used in a deportation proceedings, but they held in that case that it did not apply, so it was only dicta.

COMMISSIONER RUIZ. By termination of proceedings, what is meant? Is that the case order to show cause order is dismissed?

JUDGE BOOKFORD. Exactly.

COMMISSIONER RUIZ. The alien is released?

JUDGE BOOKFORD. Released.

MR. DIMAS. Can you reconcile your previous statement that the exclusionary rule is not applicable and your later statement that a judge might terminate proceeding?

JUDGE BOOKFORD. Well, our judges are bound only by court decisions in the circuit in which they operate and by decisions of the Board of Immigration Appeals, and in areas—a judge outside the Ninth Circuit would be free to take a different approach to that question.

When I say we are operating on that principle generally, I think that is the general feeling throughout the country, but it does not bind an immigration judge, who has the power to make an independent decision except where, if he's in the Ninth Circuit, he has no choice.

MR. DIMAS. Judges are bound by the decisions of the Board of Immigration Appeals, are they not?

JUDGE BOOKFORD. Yes.

MR. DIMAS. Has the board of appeals ruled on the applicability of the exclusionary rule?

JUDGE BOOKFORD. Not to my knowledge.

MR. DIMAS. Mr. Crosland, has the Office of General Counsel taken a position on this?

MR. CROSLAND. The Department of Justice has taken a position on the position; we speak with one voice. The Department of Justice position is that the exclusionary rule does not apply in civil proceedings.

Can I go back a minute to something Mr. Nunez brought up and that is the statistical profile in terms of minorities, brought up in terms of immigration judges; no one asked but I would like to volunteer, if I could. We've got 53 trial attorneys. And among those—

CHAIRMAN FLEMMING. I was about to ask about the attorneys.

MR. CROSLAND. Great. We've got 6 Hispanics, 10 females, 4 Asian Americans, so we've got not quite half but almost half of minorities. I don't think it is a good enough record, again. My own immediate office we have four women, four females. I do think that I have the responsibility in my recruitment efforts to try to not only rely on the personnel but also contact and have contacted organizations, the Association of Immigration Lawyers, minority lawyers within that organization.

And I might add that we hire from GS-11s on up through GS-15s, and we do recruit through the honors program which is handled out of the Associate Attorney General's office.

The Associate Attorney General's office has put a heavy emphasize on the hiring of minorities, and we hope that we will increase our minority profile through the hiring process.

CHAIRMAN FLEMMING. I gather from the testimony you've just given that authority to go out and recruit is delegated to you as far as the attorneys for your particular unit is concerned?

MR. CROSLAND. Right. All the lawyers in the Justice Department are Schedule A, I have the authority to advertise or not to advertise and make that judgment based on what sort of pool of applicants we have.

For example, in the General Counsel's office last year we had two vacancies become available, and we had a large number of applicants. The second—we had a third vacancy come open and we hired from the pool of applicants we already had. I would think most of the time we would hire, after advertising through the normal processes, but also try to make some personal contact with various minority employers to see if we can, and organizations, to see if we can increase the number of applicants who come from minority groups.

CHAIRMAN FLEMMING. If I could just ask one other question to clarify one other piece of testimony. Going back to the memorandum that the Deputy Commissioner referred to where he was dealing with certain issues in due process, did I understand your response—I think Commissioner Ruiz asked—to the effect that you didn't support those various proposals for improving the due process aspects of the—

MR. CROSLAND. Our response was that we approved, in fact expanded, some of the recommendations, if we're talking about the same memorandum that it was sort of a shotgun approach to setting standards of discretion for district directors.

CHAIRMAN FLEMMING. As I recall the presentation, the discussion of that, this would add considerably to the duties and responsibilities of the immigration judges also since that memorandum became competent.

MR. CROSLAND. That is correct.

JUDGE BOOKFORD. That is correct.

CHAIRMAN FLEMMING. Did you have the opportunity also of commenting on those proposed changes in regulations?

JUDGE BOOKFORD. Yes, they came to me for approval and, of course, I did approve those. I think all of the judges are very interested in taking every possible step to see that every person who comes before the immigration judge receives a full measure of due process, which is essentially fair treatment. Fair treatment includes the right to appeal from an adverse decision and to have your case adjudicated by an impartial objective adjudicator.

MR. DIMAS. I have another question, Mr. Chairman.

Judge Bookford, you mentioned the right to appeal a decision of the immigration judge. Immigration judges would normally inform a person in deportation proceedings of this right to appeal; is that not correct?

JUDGE BOOKFORD. That is correct, that is required by regulation.

MR. DIMAS. Now we've heard, I think, some testimony at one of the regions that some immigration judges at the conclusion of the ruling use language to the effect, "are you satisfied with my decision?" to, in effect, secure or serve as the waiver of the right to appeal.

Are you familiar with such use?

JUDGE BOOKFORD. That was the practice in cases in the past where the immigration judge felt that the alien whose case he had just heard had received the maximum relief to which he was entitled under law and as a matter of discretion, and where the immigration judge felt that an appeal in such a case would be frivolous. In other words, the man comes in, he says, "Yes, I concede that I am here illegally. I was supposed to leave last June. I'm still here. I acknowledge that. All I want is 60 days to wind up my affairs and go home and I'll be satisfied." The judge says, "I'll give you 60 days; are you satisfied with that decision?"

The judge felt that the man got everything he wanted. But in recent months, that is no longer done. Now, in every case the judge is required to inform the alien that he has the right to appeal within 10 days, and as a matter of fact he gets a written notice of his appeal rights which not only informs him of his right to appeal but also that, if he does appeal, no further action will be taken to enforce his departure from the United States until the appeal is disposed of.

MR. DIMAS. Thank you very much.

MR. CROSLAND. Could I add one thing to that? I think there's been some discussion prior to our testimony about the *Munoz* case in California which raised the right of having notice of counsel, a right to counsel at no government expense but the availability of free legal services within the district.

We have published regulations which are now subject to public comment which advise all persons who are going to go either into a deportation proceedings, which is the proceeding arising out of the *Munoz* case, as well as exclusionary proceedings, of their right of counsel, availability of free legal services within the district, and also the right of appeal. So everybody who is going to go to any sort of hearing is going to get one of these.

MR. DIMAS. This is at the institution of proceedings and not at the time of apprehension; is that correct?

MR. CROSLAND. That's correct, but they're getting a written notice of a right to appeal that they haven't had before, and they are also provided with the names of all free legal services in the particular area.

MR. DIMAS. As a matter of practice how many people would be actually advised, of those numbers that are apprehended and removed from the country by the Immigration Service?

MR. CROSLAND. I don't know the numbers. I'm not prepared to answer the question. We can provide it for the record if you want it.

MR. DIMAS. Judge Bookford, would you have any idea on that?

JUDGE BOOKFORD. You mean at the time of institution of deportation proceedings?

MR. DIMAS. Yes.

JUDGE BOOKFORD. How many are advised of their right to free access—

MR. DIMAS. No. I believe Mr. Crosland—

MR. CROSLAND. I think the question probably is how many people go into deportation and exclusion proceedings as opposed to the number of persons who leave either through voluntary departure or who choose not to try to stay—who choose to leave rather than to go into exclusionary proceedings.

MR. DIMAS. That's correct; the question behind that was how many people is this going to affect, this proposed regulation?

JUDGE BOOKFORD. Well, the last figures that I saw were that 800,000 people were given voluntary departure without hearing. We had 60,000 hearings last year.

MR. DIMAS. Thank you very much. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. We appreciate very much your being with us. We appreciate the testimony and the response to questions. You've been very kind.

Mr. Crosland, Judge Bookford, Mr. Schmidt. Thank you.

At the opening of this hearing yesterday, I indicated that it is the custom of the Commission to reserve some time at the end of the last day of the hearing to hear from persons who have not been subpoenaed. This is known as our "5-minute rule."

I indicated that anybody desiring to be heard under that rule should notify staff no later than noon today. It is my understanding that one person has indicated a desire to be heard. I want to, without knowing who that person is, I want to underline the fact that the Commission rules call for this presentation to be for a period not to exceed 5 minutes, that, if the person has a statement, we will accept the entire statement and make the entire statement a part of the record of the hearing.

I'll ask Counsel to call the name of the person.

MR. DIMAS. Mr. Frank Shaffer-Corona.

CHAIRMAN FLEMMING. I'll ask Counsel to keep time and to notify the witness 2 minutes before the time is up.

[Frank Shaffer-Corona was sworn.]

STATEMENT OF FRANK SHAFFER-CORONA, MEMBER-AT-LARGE, D.C. BOARD OF EDUCATION

MR. CORONA. Mr. Chairman, members of the U.S. Commission on Civil Rights, I want to thank you for the opportunity to appear before you to share with you some of the concerns of the Chicano/Latino people living in the U.S. My name is Frank Shaffer-Corona. I am a member-at-large of the District of Columbia Board of Education. In that capacity I represent 750,000 persons, 85 percent of whom are persons of color, who live in the colonized capital city as yet unrepresented in the national legislative bodies. I also appear before you as the Washington representative of La Raza Unida party, a national Chicano/Latino political party with chapters in 22 States, and La Alianza de Pueblos Libres, a national organization of some 50,000 members struggling to protect our property rights on our own land.

As a concerned government official serving the citizens of our Nation's Capital, I have had numerous opportunities to observe both the abuses and the effects of those abuses upon our community at the hands of the gestapo-like agents of the Immigration and Naturalization Service. I do not want to bore you with these, because I am sure you have heard them and seen press and other reports of them. As the Washington representative of two organizations clearly in the forefront of the Chicano/Latino struggle for equality and self-determination in this land of the free, I could relate countless horror stories to you, stories of government murder, kidnapping, racism, and other abuses. Again, I am certain that your records are overflowing with these stories. I would also surmise that you are familiar with the efforts of the two popularly-chosen leaders of the Chicano movement—Jose Angel Gutierrez and Reyes Lopez Tijerina—to fight against the racism which leads to the abuses not only of the INS, but of the FBI, CIA, and other elements of the government against our people. I will be happy to provide you with a substantial amount of documentation which will speak to these matters, for the record of these proceedings, and if the record is to be open for a certain number of days, I'd appreciate knowing how long I have.

CHAIRMAN FLEMMING. If you'll consult with Mr. Baca, he'll indicate to you just how long the record will be open.

MR. CORONA. Thank you, Mr. Chairman. I would rather take this opportunity to propose several possible solutions to the various problems created by the entire immigration mess. Number one, the U.S. Government could attack the problem of the abuse of undocumented persons by granting them some form of dual temporary citizenship which would obtain during their stay in this country. Number two, the U.S. Government could grant full constitutional protections to all persons regardless of their citizenship status. Number three, the U.S. Government could administer and enforce immigration laws, even the present restrictive ones in a manner consistent with the U.S. Constitution which assumes innocence until proof of guilt has been provided

by Government, rather than a Napoleonic Code which begins with the assumption of guilt. Number four, the U.S. Government could outlaw runaway shops which create an annual permanent drain of between 300 and 400,000 jobs lost to our economy, thus creating an ever-increasing permanent unemployment. Number five, the U.S. Government could begin to seriously and dramatically alter the exploitive relationship of its multinational corporations to the rest of the world and to the Third World in particular. All of these suggestions are consistent with the principles upon which this country was founded.

To accomplish a return of our ideals, the U.S. Government must begin to reorder its priorities in such a way as to encourage, promote, and bolster an educational system designed to tell the truth to people about the phenomena and the traditions that have led to the present situation. A serious commitment to quality education would be a significant step in the direction of achieving true democracy in our society. The ratio of \$120 billion for weapons and an offensive military establishment versus—or to \$12 billion for education is criminal and must be addressed if we are to find a democratic and humanistic solution to the problems you are considering here.

In conclusion, I would like to explain briefly something symbolic to you. In Spanish, the INS is called "Servicio de Inmigración y Naturalización. The acronym, therefore, is SIN, S-I-N, (in Spanish) without rights, without humanity. In English, we know what a sin is. I recognize that you must listen to the opposing views in a Nation such as this. I ask that you not be swayed by the culprits in the immigration matter. Inviting INS to testify here is like asking the Ku Klux Klan, with whom the INS has cooperated along the U.S.-Mexico border, to provide information on the black movement for civil rights and equality. As an example, we heard earlier in the testimony that one is not stigmatized by being called a criminal in all of these proceedings, but I think there's an equal stigma to the use of the word "alien" in this country where we highlight an immigrant but we treat an alien as a criminal.

If we are to overcome the problems of the past and the abuses of the present, we must do better in the future. The people I represent, both as an elected official and as the spokesperson for the Chicano leadership and organizations I mentioned earlier, believe in a better America, one where equality and opportunity for all are part of the culture, not merely phrases in a history textbook. We stand ready to assist you in reaching our common goals. Please join us and help us because we are among the "we" in "We the people of the United States."

CHAIRMAN FLEMMING. Thank you very much. We appreciate your appearing and presenting that very thoughtful statement, and I'm going to ask staff to make sure that it is duplicated and transmitted to our two colleagues, who had to leave early, so that they will have the opportunity of reading it. Thank you very, very much.

The hearing is adjourned.

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